

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

Procedure of Authority.

245V. The Authority shall, subject to the provisions of this Chapter, have power to regulate²² its own procedure in all matters arising out of the exercise of its powers under this Act.]

CHAPTER XX **APPEALS AND REVISION**

²³[A.—*Appeals* ²⁴[***] *to the Deputy Commissioner (Appeals) and Commissioner (Appeals)*]

Appealable orders.

246. (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy

22. *See also Authority for Advance Ruling (Procedure) Rules, 1996.*

23. Substituted for the heading and section 246 by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Prior to its substitution sub-heading along with section 246, as amended by the Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1966, w.e.f. 1-4-1967, Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, Finance Act, 1979, w.e.f. 1-6-1979, Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984, Finance Act, 1984, w.e.f. 1-4-1985, Finance Act, 1987, w.e.f. 1-4-1988 and Finance Act, 1988, with retrospective effect from 1-4-1988/1-6-1987, stood as under:

'A.—Appeals to the Deputy Commissioner (Appeals) and Commissioner (Appeals)

246. Appealable orders.—(1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of any Assessing Officer may appeal to the Deputy Commissioner (Appeals) against such order—

- (a) [***]
- (b) an order imposing a fine under sub-section (2) of section 131;
- (c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (d) an order under section 146 refusing to reopen an assessment made under section 144;
- (e) an order of assessment, reassessment or recomputation under section 147 or section 150;
- (f) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (g) an order made under section 163 treating the assessee as the agent of a non-resident;
- (h) an order under sub-section (2) or sub-section (3) of section 170;
- (i) an order under section 171;
- (j) an order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185;

(Contd. on p. 1.712)

(Contd. from p. 1.711)

- (k) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186;
- (l) an order under section 201;
- (m) an order under section 216;
- (n) an order under section 237;
- (o) an order imposing a penalty under—
 - (i) section 140A, or
 - (ia) section 221, or
 - (ii) section 270, or
 - (iii) section 271, or
 - (iiia) section 271A, or
 - (iv) section 272, or
 - (iva) section 272B, or section 272BB, or
 - (v) section 273 [***]

[***]

Explanation.—[***]

(2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against such order—

- (a) an order specified in clauses (b) to (h) (both inclusive) and clauses (l) to (o) (both inclusive) of sub-section (1) or an order under section 104, as it stood immediately before the 1st day of April, 1988, in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment years, made against the assessee, being a company;
- (b) an order specified in clauses (c) to (o) (both inclusive) of sub-section (1) where such order is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 125 or section 125A;
- (c) an order made by the Deputy Commissioner imposing a fine under sub-section (2) of section 131;
- (d) an order of assessment made after the 30th day of September, 1984, on the basis of directions issued by the Deputy Commissioner under section 144A;
- (e) [***];
- (f) an order of assessment under sub-section (3) of section 143 or section 144 made on the basis of directions issued by the Deputy Commissioner under section 144B;
- (ff) an order made by the Deputy Commissioner under section 154;
- (g) an order imposing a penalty under clause (c) of sub-section (1) of section 271 where such penalty has been imposed with the previous approval of the Deputy Commissioner under the proviso to clause (iii) of sub-section (1) of that section;
- (gg) an order imposing a penalty under section 271B;
- (h) an order made by a Deputy Commissioner imposing a penalty under section 272A;
- (i) an order made by an Assessing Officer under the provisions of this Act in the case of such persons or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Every appeal against an order specified in sub-section (2) which is pending immediately before the appointed day before an Appellate Assistant Commissioner or a Commissioner and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

(Contd. on p. 1.713)

Commissioner) may appeal to the Deputy Commissioner (Appeals) against such order—

- (a) an order against the assessee, where the assessee denies his liability to be assessed under this Act ²⁵], or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments,] or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (b) an order of assessment, reassessment or recomputation under section 147 or section 150;
- (c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order under sub-section (2) or sub-section (3) of section 170;
- (f) an order under section 171;

(Contd. from p. 1.712)

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceedings or any part thereof be reopened or that he be reheard.

(4) Every appeal against an order specified in clauses (b) to (h) (both inclusive) and clauses (l) to (o) (both inclusive) of sub-section (1) made against the assessee, being a company, which is pending immediately before the 1st day of June, 1979, before an Appellate Assistant Commissioner and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on the day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be reheard.

(5) Notwithstanding anything contained in sub-section (1), the Board may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending to the Commissioner (Appeals) if the Board is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be reheard.

Explanation.—For the purposes of this section,—

- (a) “appointed day” means the date appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);
- (b) [***]
- (c) “status” means the category under which the assessee is assessed as “individual”, “Hindu undivided family” and so on.’

24. “or applications” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

25. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

- (g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 ^{26[***]} ²⁷[in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 ^{28[***]} ²⁹[in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992];
- (i) an order under section 201;
- (j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year;
- (k) an order under section 237;
- (l) an order imposing a penalty under—
 - (i) section 221, or
 - (ii) section 271, section 271A, section 271B, ^{30[***]} ³¹[section 272A, section 272AA or section 272BB];
 - (iii) ^{32[***]} section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment years.

(2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against such order—

- (a) ³³[an intimation or order specified in sub-section (1) where such intimation is sent or such order] is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;
- (b) an order specified in clauses (a) to (e) (both inclusive) and clauses (i) to (l) (both inclusive) of sub-section (1) ³⁴[or an order under section

26. “in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

27. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

28. “in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year” omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

29. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

30. “section 271C, section 271D, section 271E,” omitted by the Finance Act, 1990, w.e.f. 1-4-1990.

31. Substituted for “section 271E or section 272A” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

32. “sub-section (1) of section 271,” omitted, *ibid*.

33. Substituted for “an order specified in sub-section (1) where such order” by the Finance Act, 1994, w.e.f. 1-6-1994.

34. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year] made against the assessee, being a company;

- (c) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;
- (d) an order made by the Deputy Commissioner under section 154;
- ³⁵[(da) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or after the 1st day of January, 1997;
- (db) an order imposing a penalty under sub-section (2) of section 158BFA;]
- (e) an order imposing a penalty under section 271B ³⁶[or section 271BB];
- ³⁷[(ee) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;]
- (f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
- ³⁸[(ff) an order made by a Deputy Commissioner imposing a penalty under section 272AA;]
- ³⁹[(g) an order imposing a penalty under Chapter XXI by the Income-tax Officer or the Assistant Commissioner where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (2) of section 274;]
- (h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Notwithstanding anything contained in sub-section (1), the Board or the Director General, or the Chief Commissioner or Commissioner if so authorised by the Board, may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner

35. Inserted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997.

36. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990.

37. Inserted, *ibid.*

38. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

39. Substituted, *ibid.*, for the following :

“(g) an order imposing a penalty under clause (c) of sub-section (1) of section 271, as it stood immediately before the 1st day of April, 1989 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment years, where such penalty has been imposed with the previous approval of the Deputy Commissioner under the proviso to clause (iii) of sub-section (1) of that section;”

(Appeals) if the Board or, as the case may be, the Director General or Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

Explanation.—For the purposes of this section,—

- (a) “appointed day” means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No. 2) Act, 1977 (29 of 1977);
- (b) “status” means the category under which the assessee is assessed as “individual”, “Hindu undivided family” and so on.]

⁴⁰[**Appealable orders before Commissioner (Appeals).**

246A. (1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—

- (a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (b) an order of assessment, re-assessment or re-computation under section 147 or section 150;
- (c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order made under sub-section (2) or sub-section (3) of section 170;
- (f) an order made under section 171;
- (g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for

⁴⁰. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Original section 246A was inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later on omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

- the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;
- (i) an order made under section 237;
 - (j) an order imposing a penalty under—
 - (A) section 221; or
 - (B) section 271, section 271A, section 271F, section 272AA or section 272BB;
 - (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;
 - (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
 - (l) an order imposing a penalty under sub-section (2) of section 158BFA;
 - (m) an order imposing a penalty under section 271B or section 271BB;
 - (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;
 - (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
 - (p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;
 - (q) an order imposing a penalty under Chapter XXI;
 - (r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

Explanation.—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for “Deputy Commissioner” and “Deputy Director” shall be substituted by “Joint Commissioner” and “Joint Director” respectively.

(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation.—For the purposes of this section, “appointed day” means the day appointed by the Central Government by notification⁴¹ in the Official Gazette.]

Appeal by partner.

247. ⁴²[*Omitted by the Finance Act, 1992, w.e.f. 1-4-1993*]

Appeal by person denying liability to deduct tax.

248. Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the ⁴³[* * *] ⁴⁴[Commissioner (Appeals)] to be declared not liable to make such deduction.

Form of appeal and limitation.

249. (1) Every appeal under this Chapter shall be in the prescribed form⁴⁵ and shall be verified in the prescribed manner ⁴⁶[and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by a fee of,—

- (i) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one hundred thousand rupees or less, two hundred fifty rupees;
- (ii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, five hundred rupees;
- (iii) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one thousand rupees;]

^{46a}[(iv) *where the subject matter of an appeal is not covered under clauses (i), (ii) and (iii), two hundred fifty rupees.*]

41. Notified “appointed day” is 1-10-1998.

42. Prior to omission, section 247, as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under :

“247. *Appeal by partner.*—Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) against any order of an Assessing Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but he cannot agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss.”

43. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

44. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

45. See rules 45 and 46 and Form No. 35 for form of appeal to Commissioner (Appeals).

46. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

46a. Inserted by the Finance Act, 1999, w.e.f. **1-6-1999**.

(2) The appeal shall be presented within thirty days of the following date, that is to say,—

- (a) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax, or
- (b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty:
⁴⁷[**Provided** that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or]
- (c) in any other case, the date on which intimation of the order sought to be appealed against is served.

(3) The ⁴⁸[* * *] ⁴⁹[Commissioner (Appeals)] may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

⁵⁰[(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—

- (a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or
- (b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him :

Provided that, ⁵¹[in a case falling under clause (b) and] on an application made by the appellant in this behalf, the ⁵²[* * *] ⁵³[Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of ⁵⁴[that clause].]

Procedure in appeal.

⁵⁵**250.** (1) The ^{55a}[* * *] ^{55b}[Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the ⁵⁶[Assessing] Officer against whose order the appeal is preferred.

47. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

48. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

49. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

50. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975.

51. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

52. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

53. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

54. Substituted for “this sub-section” by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

55. See rule 46A.

55a. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

55b. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

56. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

(2) The following shall have the right to be heard at the hearing of the appeal—

- (a) the appellant, either in person or by an authorised representative;
- (b) the ⁵⁷[Assessing] Officer, either in person or by a representative.

(3) The ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)] shall have the power to adjourn the hearing of the appeal from time to time.

(4) The ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the ⁵⁷[Assessing] Officer to make further inquiry and report the result of the same to the ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)].

(5) The ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)] is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the ⁵⁸[* * *] ⁵⁹[Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

^{59a}[(6A) *In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.*]

(7) On the disposal of the appeal, the ⁶⁰[* * *] ⁶¹[Commissioner (Appeals)] shall communicate the order passed by him to the assessee and to the ⁶²[Chief Commissioner or Commissioner].

Powers of the ⁶⁰[* * *] ⁶¹[Commissioner (Appeals)].

251. (1) In disposing of an appeal, the ⁶⁰[* * *] ⁶¹[Commissioner (Appeals)] shall have the following powers—

- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the ⁶³[Assessing] Officer for making a fresh assessment in accordance with the directions given by the ⁶⁰[* * *] ⁶¹[Commissioner (Appeals)] and after making such further inquiry as

57. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

58. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

59. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

59a. Inserted by the Finance Act, 1999, w.e.f. **1-6-1999**.

60. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

61. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

62. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

63. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

may be necessary, and the ^{63a}[Assessing] Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

- (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- (c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The ⁶⁴[* * *] ⁶⁵[Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the ⁶⁴[* * *] ⁶⁵[Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the ⁶⁴[* * *] ⁶⁵[Commissioner (Appeals)] by the appellant.

B.—Appeals to the Appellate Tribunal

Appellate Tribunal.

252. (1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

⁶⁶(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the ⁶⁷[Indian] Legal Service and has held a post in Grade ⁶⁸[II] of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

Explanation.—For the purposes of this sub-section,—

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;
- (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held

^{63a}. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

⁶⁴. Words “Deputy Commissioner (Appeals) or, as the case may be, the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier “Deputy Commissioner (Appeals)” was substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988 and “or, as the case may be, the” was inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

⁶⁵. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

⁶⁶. Substituted by the Finance Act, 1981, w.e.f. 1-4-1981.

⁶⁷. Substituted for “Central” by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

⁶⁸. Substituted for “I”, *ibid.*

judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of ⁶⁹[Additional] Commissioner of Income-tax or any equivalent or higher post for at least three years.]

(3) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof.

⁷⁰[(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.]

⁷¹[(4A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.]

⁷²(5) ⁷³[The Senior Vice-President or a Vice-President] shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

⁷⁴**Appeals to the Appellate Tribunal.**

⁷⁵**253.** (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

- (a) an order passed by a ⁷⁶[Deputy Commissioner (Appeals)] ⁷⁷[before the 1st day of October, 1998] ⁷⁸[or, as the case may be, a Commissioner (Appeals)] under ⁷⁹[***] ⁸⁰[section 154], ⁸¹[***] section 250, ⁸²[section 271, section 271A or section 272A]; or

69. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

70. Inserted by the Finance Act, 1972, w.e.f. 1-4-1972.

71. Inserted by the Finance Act, 1984, w.e.f. 1-4-1984.

72. For functions and powers delegated to Vice-President, refer Taxmann's Direct Taxes Circulars, 1999 edn., Vol. 3, pp. 1.3536-1.3539.

73. Substituted for "A Vice-President" by the Finance Act, 1984, w.e.f. 1-4-1984.

74. See rule 47(1) and Form Nos. 36 and 36A for form of appeal to Appellate Tribunal and form of cross-objections.

75. See also Instruction Issued by the Income-tax Appellate Tribunal. For details, see Taxmann's Master Guide to Income-tax Act.

76. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

77. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

78. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978

79. "sub-section (2) of section 131," omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

80. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

81. "section 246A," omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989. Earlier, it was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.

82. Substituted for "or section 271" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

⁸³[(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or]

(c) an order passed by a Commissioner ^{83a}[*under section 12AA or*] under section 263 ⁸⁴[or under section 272A] ⁸⁵[***] or an order passed by him under section 154 amending his order under section 263] ⁸⁶[or an order passed by a Chief Commissioner or a Director General or a Director under section 272A.]

(2) The Commissioner may, if he objects to any order passed by a ⁸⁷[Deputy Commissioner (Appeals)] ⁸⁸[before the 1st day of October, 1998] ⁸⁹[or, as the case may be, a Commissioner (Appeals)] under ⁹⁰[section 154 or] section 250, direct the ⁹¹[Assessing] Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be :

⁹²[**Provided** that in respect of any appeal under clause (b) of sub-section (1), this sub-section shall have effect as if for the words “sixty days”, the words “thirty days” had been substituted.]

(4) The ⁹³[Assessing] Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the ⁹⁴[Deputy Commissioner (Appeals)]

83. Substituted by the Income-tax (Amendment) Act, 1997, w.e.f. 1-1-1997. Prior to its substitution, clause (b), as inserted by the Finance Act, 1995, w.e.f. 1-7-1995, read as under : “(b) an order passed by an Assessing Officer under clause (c) of section 158BC; or” Earlier clause (b) was amended by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964, the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976, the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978 and later on omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

83a. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

84. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-4-1976.

85. “or under section 285A” omitted by the Finance Act, 1988, w.e.f. 1-4-1988. Omitted words were earlier inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

86. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

87. Substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

88. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

89. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

90. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6-10-1964.

91. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

92. Inserted by the Finance Act, 1995, w.e.f. 1-7-1995.

93. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

94. Substituted for “Appellate Assistant Commissioner”, *ibid*.

⁹⁵[or, as the case may be, the Commissioner (Appeals)] has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the ^{95a}[Deputy Commissioner (Appeals)] ⁹⁵[or, as the case may be, the Commissioner (Appeals)], and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

⁹⁶[(6) An appeal to the Appellate Tribunal shall be in the prescribed form^{96a} and shall be verified in the prescribed manner and shall, in the case of an appeal made, on or after the 1st day of October, 1998, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

- (a) where the total income of the assessee as computed by the Assessing Officer, in the case to which the appeal relates, is one hundred thousand rupees or less, five hundred rupees,
- (b) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than one hundred thousand rupees but not more than two hundred thousand rupees, one thousand five hundred rupees,
- (c) where the total income of the assessee, computed as aforesaid, in the case to which the appeal relates is more than two hundred thousand rupees, one per cent of the assessed income, subject to a maximum of ten thousand rupees,

^{96b}[(d) *where the subject matter of an appeal relates to any matter, other than those specified in clauses (a), (b) and (c), five hundred rupees:*]

95. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

95a. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

96. Substituted for sub-section (6) by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Prior to its substitution, sub-section (6), as amended by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971, the Finance Act, 1981, w.e.f. 1-6-1981 and the Finance Act, 1992, w.e.f. 1-6-1992 and later on substituted by the Finance Act, 1993, w.r.e.f. 1-6-1992, read as under:

"(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, in the case of an appeal made on or after the 1st day of June, 1992, irrespective of the date of initiation of the assessment proceedings relating thereto, be accompanied by a fee of,—

- (a) where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is one lakh rupees or less, two hundred and fifty rupees;
- (b) where the total income of the assessee computed as aforesaid in the case to which the appeal relates is more than one lakh rupees, one thousand and five hundred rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4)."

96a. See rule 47 and Form Nos. 36 & 36A.

96b. Inserted by the Finance Act, 1999, w.e.f. 1-6-1999.

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) An application for stay of demand shall be accompanied by a fee of five hundred rupees.]

Orders of Appellate Tribunal.

254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(1A) ⁹⁷[***]

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the ⁹⁸[Assessing] Officer :

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard :

⁹⁹[**Provided further** that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees.]

^{99a}[(2A) *In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) of section 253.*

(2B) *The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.*]

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the ¹[²[***] Commissioner].

97. Omitted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1-1-1973. Original sub-section was inserted by the Finance Act, 1964, w.e.f. 1-4-1964. In connection with this amendment, section 25 of the Taxation Laws (Amendment) Act, 1972 has made the following independent provision:

“Savings and special provision.—(1) Notwithstanding the omission of sub-section (1A) of section 254 of the Income-tax Act, 1961 (43 of 1961), by section 3 of this Act, every requisition by an appellant for the making of a reference under that sub-section and every reference made under that sub-section before such omission shall be dealt with as if the said section has not been omitted, and, save as aforesaid, no such reference shall be made after such omission.”

98. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

99. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

99a. Sub-sections (2A) and (2B) inserted by the Finance Act, 1999, w.e.f. **1-6-1999**.

1. Substituted for “Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

2. Words “Chief Commissioner or” were omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.

(4) Save as provided in section 256 ^{2a}[*or section 260A*], orders passed by the Appellate Tribunal on appeal shall be final.

Procedure of Appellate Tribunal.

³255. (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the ⁴[Assessing] Officer in the case does not exceed ⁵[five hundred thousand rupees], and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

⁶(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate

2a. Inserted by the Finance Act, 1999, w.e.f. **1-6-1999**.

3. See Letter [UO No. F. 38-AD(AT)/71], dated 9-8-1971. For details, see Taxmann's Master Guide to Income-tax Act.

4. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

5. Substituted for "one hundred thousand rupees" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "one hundred thousand rupees" was substituted for "forty thousand rupees" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989 and "forty thousand rupees" was substituted for "twenty-five thousand rupees" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

6. See Standing Order notified *vide* Notification F. No. 63-AD (AT)/97, dated 16-9-1997. For details, see Taxmann's Income-tax Rules.

Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)⁷.

C.—Reference to High Court

Statement of case to the High Court.

256. ⁸(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order ⁹[passed before the 1st day of October, 1998,] under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of ¹⁰[two hundred rupees], require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

Statement of case to Supreme Court in certain cases.

257. If, on an application made ¹¹[against an order made under section 254 before the 1st day of October, 1998,] under section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

7. Now the Code of Criminal Procedure, 1973 (2 of 1974).

8. See rule 48 and Form No. 37 for form of Reference to High Court.

9. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

10. Substituted for "one hundred and twenty-five rupees" by the Finance Act, 1981, w.e.f. 1-6-1981. Earlier "one hundred and twenty-five rupees" was substituted for "rupees one hundred" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.

11. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

Power of High Court or Supreme Court to require statement to be amended.

258. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Case before High Court to be heard by not less than two judges.

259. (1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Decision of High Court or Supreme Court on the case stated.

260. (1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

¹²[(1A) Where the High Court delivers a judgment in an appeal filed before it under section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of judgment.]

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

¹³[*CC.—Appeals to High Court*

Appeal to High Court.

260A. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) ^{13a}[*The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—*]

(a) filed within one hundred and twenty days from the date on which the order appealed against is ^{13b}[*received by the assessee or the Chief Commissioner or Commissioner*];

¹². Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

¹³. Sub-heading “CC” and sections 260A and 260B, inserted, *ibid*.

^{13a}. Substituted for “An appeal under this sub-section shall be—” by the Finance Act, 1999, w.e.f. 1-6-1999.

^{13b}. Substituted for “communicated to the appellant”, *ibid*.

(b) ^{13c}[***]

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

^{13d}[(7) *Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.*]

Case before High Court to be heard by not less than two Judges.

260B. (1) When an appeal has been filed before the High Court under section 260A, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.]

D.—Appeals to the Supreme Court

Appeal to Supreme Court.

261. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 ¹⁴[against an order made under section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under section 254 on or after that date] in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

^{13c}. Omitted by the Finance Act, 1999, w.e.f. **1-6-1999**. Prior to its omission, clause (b) read as under:

“(b) accompanied by a fee of ten thousand rupees where such appeal is filed by an assessee;”

^{13d}. Inserted, *ibid*.

¹⁴. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

Hearing before Supreme Court.

262. (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

E.—Revision by the Commissioner

Revision of orders prejudicial to revenue.

263. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the ¹⁵[Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

¹⁶[*Explanation.*—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) an order passed ¹⁷[on or before or after the 1st day of June, 1988] by the Assessing Officer shall include—
 - (i) an order of assessment made by the Assistant Commissioner ¹⁸[or Deputy Commissioner] or the Income-tax Officer on the basis of the directions issued by the ¹⁹[Joint] Commissioner under section 144A;
 - (ii) an order made by the ¹⁹[Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing

15. Substituted for “Income-tax” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

16. Substituted by the Finance Act, 1988, w.e.f. 1-6-1988. Prior to its substitution, *Explanation*, as inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988, read as under :
 “*Explanation.*—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Assessing Officer shall include—

- (a) an order of assessment made on the basis of directions issued by the Deputy Commissioner under section 144A or section 144B; and
- (b) an order made by the Deputy Commissioner in exercise of the powers or in performance of the functions of an Assessing Officer conferred on, or assigned to, him under clause (a) of sub-section (1) of section 125 or under sub-section (1) of section 125A.”

17. Inserted by the Finance Act, 1989, with retrospective effect from 1-6-1988.

18. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

19. Substituted for “Deputy”, *ibid.*

Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120;

- (b) “record” ²⁰[shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner;
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal ^{20a}[filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend ^{20a}[and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

²¹[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Revision of other orders.

²²**264.** (1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

20. Substituted for “includes” by the Finance Act, 1989, w.r.e.f. 1-6-1988.

20a. Inserted, *ibid*.

21. Substituted for the following by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984:

“(2) No order shall be made under sub-section (1)—

(a) to revise an order of reassessment made under section 147, or

(b) after the expiry of two years from the date of the order sought to be revised.”

22. See also Circular No. 367, dated 26-7-1983 and Letter [F. No. 6/52/68-ITJ], dated 30-7-1970. For details, see Taxmann’s Master Guide to Income-tax Act.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

- (a) where an appeal against the order lies to the ²³[Deputy Commissioner (Appeals)] ²⁴[or to the Commissioner (Appeals)] or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal ²⁵[to the Commissioner (Appeals) or] to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- (b) where the order is pending on an appeal before the ²⁶[Deputy Commissioner (Appeals)]; or
- (c) where the order has been made the subject of an appeal ²⁷[to the Commissioner (Appeals) or] to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

²⁸[(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

Explanation.—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.]

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

23. Substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

24. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

25. Inserted, *ibid*.

26. Substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

27. Inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

28. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

Explanation 2.—For the purposes of this section, the ²⁹[Deputy Commissioner (Appeals)] shall be deemed to be an authority subordinate to the Commissioner.

F.—General

Tax to be paid notwithstanding reference, etc.

265. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

Execution for costs awarded by Supreme Court.

266. The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

³⁰[**Amendment of assessment on appeal.**

267. Where as a result of an appeal under section 246 or section 253, any change is made in the assessment of a body of individuals or an association of persons or a new assessment of a body of individuals or an association of persons is ordered to be made, the ³¹[* * *] Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made on any member of the body or association or make a fresh assessment on any member of the body or association.]

Exclusion of time taken for copy.

268. In computing the period of limitation prescribed for an appeal ³²[or an application] under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

29. Substituted for “Appellate Assistant Commissioner” by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

30. Substituted by the Finance Act, 1992, w.e.f. 1-4-1993. Prior to its substitution, section 267, as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988/1-4-1989 and the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, read as under:

“267. *Amendment of assessment on appeal.*—Where as the result of an appeal under section 246 or section 253, any change is made in the assessment of a firm or body of individuals or an association of persons or a new assessment of a firm or a body of individuals or an association of persons is ordered to be made, the Deputy Commissioner (Appeals), or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer either to amend the assessment made on any partner of the firm or any member of the body or association or make a fresh assessment on any partner of the firm or on any member of the body or association.”

31. Words “Deputy Commissioner (Appeals) or the” omitted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

32. Inserted by the Finance Act, 1990, w.e.f. 1-4-1990. Earlier these words were omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

Definition of “High Court”

269. In this Chapter,—

“High Court” means—

- (i) in relation to any State, the High Court for that State ;
- ³³[(ii) in relation to the Union territory of Delhi, the High Court of Delhi ;
- (ii) ³⁴[* * *]]
- (iii) ³⁵[* * *]
- (iv) in relation to the Union territory of the Andaman and Nicobar Islands, the High Court at Calcutta ;
- (v) in relation to the Union territory of ³⁶[Lakshadweep], the High Court of Kerala ;
- ³⁷[(va) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana ;]
- ³⁸[(vi) in relation to the Union territories of Dadra and Nagar Haveli and ³⁹[* * *] Daman and Diu, the High Court at Bombay ; and
- (vii) in relation to the Union territory of Pondicherry, the High Court at Madras.]

⁴⁰[**CHAPTER XX-A**

**ACQUISITION OF IMMOVABLE PROPERTIES IN CERTAIN CASES OF
TRANSFER TO COUNTERACT EVASION OF TAX**

Definitions.

269A. In this Chapter, unless the context otherwise requires,—

(a) ⁴¹[“apparent consideration”,—

(I) in relation to any immovable property transferred, being

- 33. Substituted for clause (ii) by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968, with retrospective effect from 1-11-1966.
- 34. Omitted by the State of Himachal Pradesh (Adaptation of Laws on Union Subjects) Order, 1973, with retrospective effect from 25-1-1971.
- 35. Clause (iii) omitted by the Finance Act, 1994, w.e.f. 1-4-1995. Prior to omission, clause (iii), as substituted by the North-Eastern Areas (Reorganisation) (Adaptation of Laws on Union Subjects) Order, 1974, with retrospective effect from 21-1-1972, read as under :
“(iii) in relation to the Union territories of Arunachal Pradesh and Mizoram, the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura);”
- 36. Substituted for “the Laccadive, Minicoy and Amindivi Islands” by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, with retrospective effect from 1-11-1973.
- 37. Inserted by the Punjab Reorganisation and Delhi High Court (Adaptation of Laws on Union Subjects) Order, 1968, with retrospective effect from 1-11-1966.
- 38. Inserted by the Taxation Laws (Extension to Union Territories) Regulation, 1963, w.e.f. 1-4-1963.
- 39. Word “Goa” omitted by the Finance Act, 1994, w.e.f. 1-4-1995.
- 40. Chapter XX-A, consisting of sections 269A to 269S, inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 15-11-1972 and ceased to operate in respect of transfer of immovable property made after 30-9-1986.
- 41. Substituted for ‘ “apparent consideration”, in relation to any immovable property transferred, means,—’ by the Income-tax (Amendment) Act, 1981, w.e.f. 1-7-1982.