

Litigation Management (Assessment, Appeal, Offences), E- Assessment and Faceless Assessment

BY CA JAYA KRISHNA KAPOOR

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Type of Assessment

143(1)-Summary
Assessment

143(3)- Scrutiny
Assessment

Assessment under
section 144, i.e.,
Best judgment
assessment.

Assessment under
section 147, i.e.,
Income escaping
assessment.

Search and
Seizure-153A and
153C

Assessment u/s. 143(1)

Meaning

- Preliminary assessment and is referred to as summary assessment without calling the assessee (i.e., taxpayer).

Time Period to Complete

- within 1 year from the end of the financial year in which the return of income is filed.
- **Amendment – Reduced to 9 months from 01.04.2021**

Assessment u/s. 143(1)

- ▶ Section 143(1)(a) provides **for following adjustments** to the returned income:-
 - ▶ any **arithmetical error** in the return; or
 - ▶ an **incorrect claim**, if such incorrect claim is apparent from any information in the return.
 - ▶ **Disallowance of loss** claimed, if return of the previous year for which set-off is claimed was filed beyond due date u/s 139(1)
 - ▶ **Disallowance of expenditure indicated in the audit report** but not taken into account in computing the total income in the return
 - ▶ **Disallowance of deduction u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE**, if return is filed beyond due date u/s 139(1)
- ▶ However, before making any such adjustments, in the interest of natural justice, intimation has to be given to the assessee requiring him to respond to such adjustments.
- ▶ If **no response within 30 days** – Adjustments are considered for finalizing the total tax liability

Assessment u/s. 143(3)-Notice u/s 143(2)

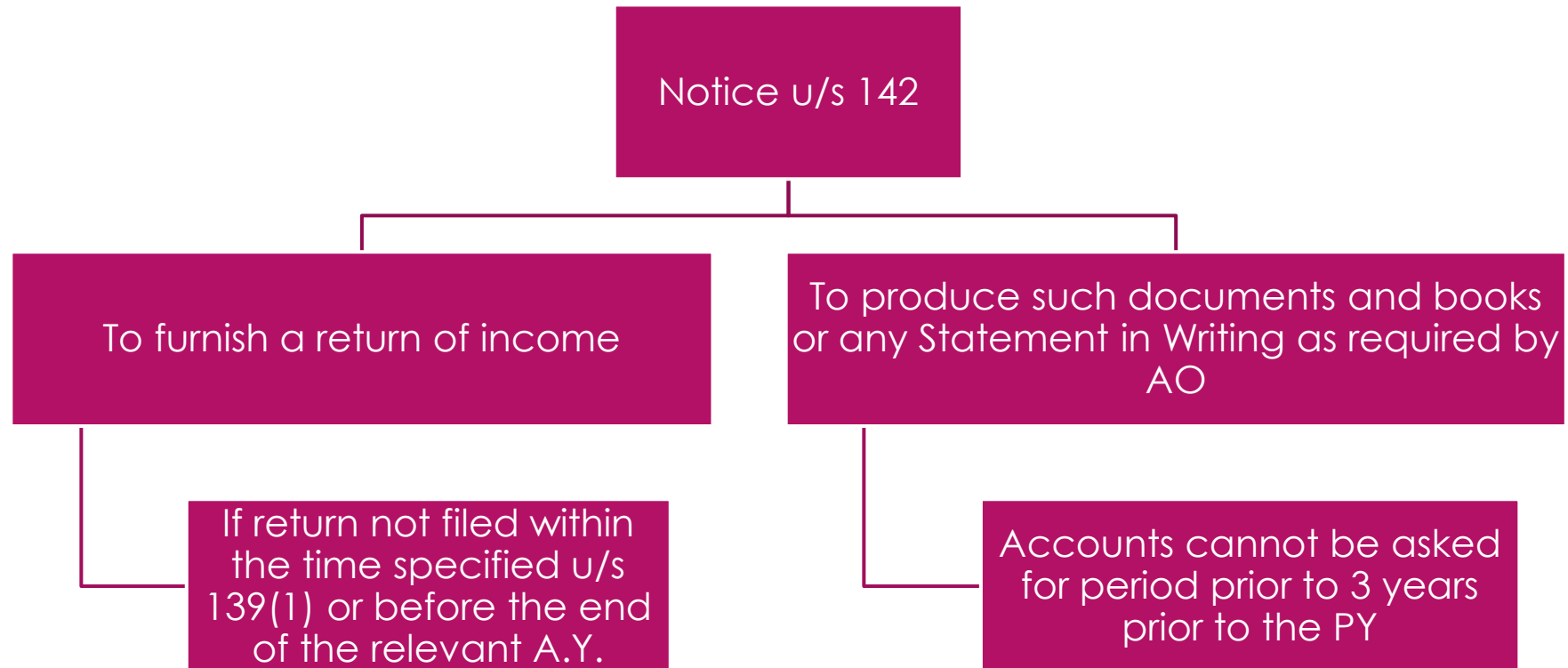
When

- To ensure that income is not understated or excessive loss is not claimed or has not underpaid his tax in any manner

Time Period to Issue the Notice

- Cannot be issued after the expiry of 6 months from the end of the financial year in which ROI furnished
- Amendment: To be issued within 3 months

Notice u/s 142(1)



Sample 143(2)



भारत सरकार/ GOVERNMENT OF INDIA
वित्त मंत्रालय/ MINISTRY OF FINANCE
आयकर विभाग/ INCOME TAX DEPARTMENT
कार्यालय / OFFICE OF THE

राष्ट्रीय ई-निर्धारण केन्द्र (राईनिके) / National e-Assessment Centre (NeAC)

सेवा में/ To,

ABC PRIVATE LIMITED
XYZ NAGAR
NEW DELHI-11XXXX
INDIA

स्थायी लेखा संख्या/ PAN:
AAACA1234H

निर्धारण वर्ष/ AY:
2018-19

नोटिस संख्या / Notice No.:
ITBA/AST/S/143(2)/2019-
20/1018157 347(1)

दिनांक/ Dated:
22/09/2019

आयकर नियम 1962 के नियम 12 ई के साथ पठित आयकर अधिनियम 1961 की धारा 143 (2) के अधीन नोटिस
Notice under section 143(2) of the Income-tax Act, 1961 read with Rule 12 E of Income Tax Rules, 1962

संवीक्षा (जांच) (कंप्यूटर आधारित संवीक्षा चयन)
Scrutiny (Computer Aided Scrutiny Selection)

प्रिय करदाता,
Dear Taxpayer,

आपके द्वारा निर्धारण वर्ष 2018-19 के लिए दिनांक. 31/10/2018 को प्राप्त की गई 363073501311018 के तहत आयकर विवरणी दायित्व करने के लिए आपको धन्यवाद।

Thank you for filing your return of income for Assessment Year 2018-19 vide Ack. no. 363073501311018 on 31/10/2018.

विवरणिका को तैयार करने में आपके ध्यान एवं परिश्रम को स्वीकार करते हुए, कुछ मुद्दों पर और स्पष्टीकरण की आवश्यकता है, जिनके कारण आपकी आय विवरणिका को संवीक्षा (जांच) के लिए चुना गया है, ये मुद्दे प्रारंभ में निम्नानुसार हैं:

2. While acknowledging the care and diligence you may have taken in preparing the return, there are certain issues which need further clarification, for which your return of Income has been selected for scrutiny and such issues initially are as under:

S. No.	Issues
(i)	Income from Real Estate Business
(ii)	Unsecured Loans

Sample 142(1)



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National e-Assessment Centre
Delhi

To,
ABC PRIVATE LIMITED
XYZ NAGAR
NEW DELHI- 11XXXX
INDIA

PAN:
AAACA1234H

AY:
2018-19

Dated:
12/08/2020

DIN & Notice No. :
ITBA/AST/F/142(1)/2020-21/1XXXXX

Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 22/09/2019 for A.Y 2018-19 for conducting assessment proceedings under E-assessment Scheme, 2019.

2. You are requested and required to kindly furnish or cause to be furnished on or before 21/08/2020 by 11:00 AM, the accounts and documents specified in the Annexure to this notice.

3. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Assessment u/s. 143(3)

- ▶ The Assessing Officer carries out a detailed scrutiny of the return of income and will satisfy himself regarding various claims, deductions, etc., made by the taxpayer in the return of income.
- ▶ Time Limit to Complete the Assessment-12 months
- ▶ Amendment- This time period has been reduced to 9 months from 01.04.2021 applicable
 - ◀ Notice U/s. 142(2)
 - ◀ Show Cause Notice
 - ◀ Final Order

Assessment u/s. 144- Best Judgement Assessment

Reason for Initiation

- This assessment is carried out in cases where the taxpayer fails to comply with the requirements specified in section 144.

Time Limit

- Within 12 months from the end of the Relevant AY
- AMD: To be Completed within 9 months of the Relevant AY

Scope of Best Judgement Assessment

- Failure to Furnish ROI u/s. 139(1) or 139(4) or 139(5)
- Failure to Comply with Notice u/s. 142(1)
- Failure to Comply with Direction u/s. 142(2A)
- Failure to Comply with Notice u/s. 143(2)

Assessment u/s. 147- Reassessment Proceedings

Reason for Initiation

- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year

Time Limit to complete Assessment

- With In 12 Months from end of the FY in which Notice u/s. 148 Served

Assessment u/s. 147

Amendment

TIME LIMIT TO ISSUE NOTICE U/s 148 read with 149

In case Income is in relation to Asset located o/s India

Notice can be issued within 16 years from the end of the AY

Where Income escaping assessment is more than 1 Lakh rupees

Notice can be issued within 6 years from the end of the AY

Other cases

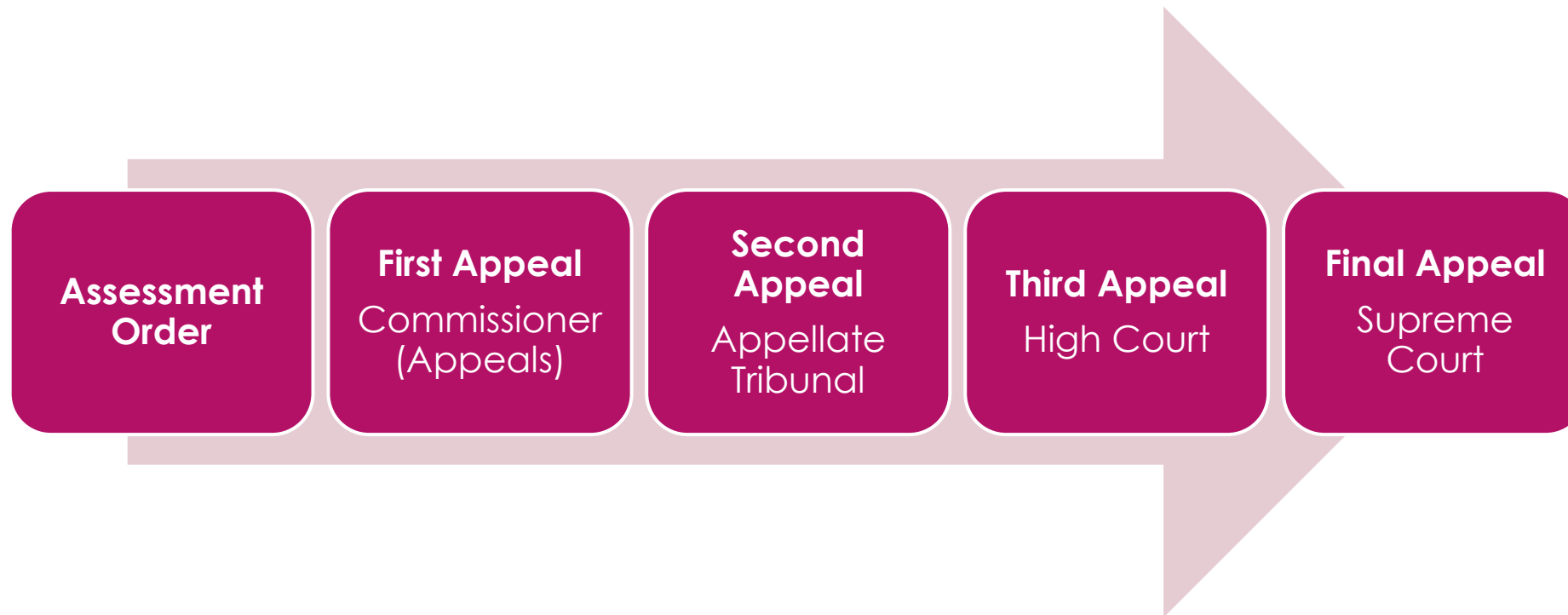
Notice can be issued within 4 years from the end of the AY

General Points for Consideration

- ▶ Rectification u/s. 154 in case of any discrepancy in the Order passed
- ▶ Appeal to CIT(A)
- ▶ Stay of Demand
- ▶ Impact in Subsequent ITRs & Assessments

APPEALS and REVISIONS

Appeal Stages



Appeal Filing and Other Related Aspects

- ▶ **Time limit for filing Appeal before CIT** : within 30 days from the dates on which the **Notice of Demand** is served.
- ▶ However, the Commissioner (Appeals) may admit an appeal even after the expiry of the said period of 30 days, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the specified time.

Appeal Procedure- For CIT(A)

Which Orders can be appealed Before CIT(A)- 246A

any order of
assessment under
section 143(3)*

an order of
assessment,
reassessment or
recomputation
under section 147*

an order of
assessment or
reassessment under
section 153A
pursuant to search*

a rectification order
made under section
154 or section 155

Order Imposing
Penalty under
Various Sections

Others

** Except where orders are passed in pursuance of the directions of Dispute Resolution Panel*

Appeal Filing and Other Related Aspects

▶ Documents to be Submitted Along with Appeal

- ▶ Grounds of Appeal
- ▶ Statement of Facts
- ▶ Order Appealed Against
- ▶ Copy of Notice of Demand
- ▶ Appeal Fee Challan
- ▶ Any Additional Evidence- Rule 46A

This List of Documents, with proper narration and duly indexation, to be filed in Duplicate before CIT(A) in the Form of Additional Evidence along with Prayer u/r 46A

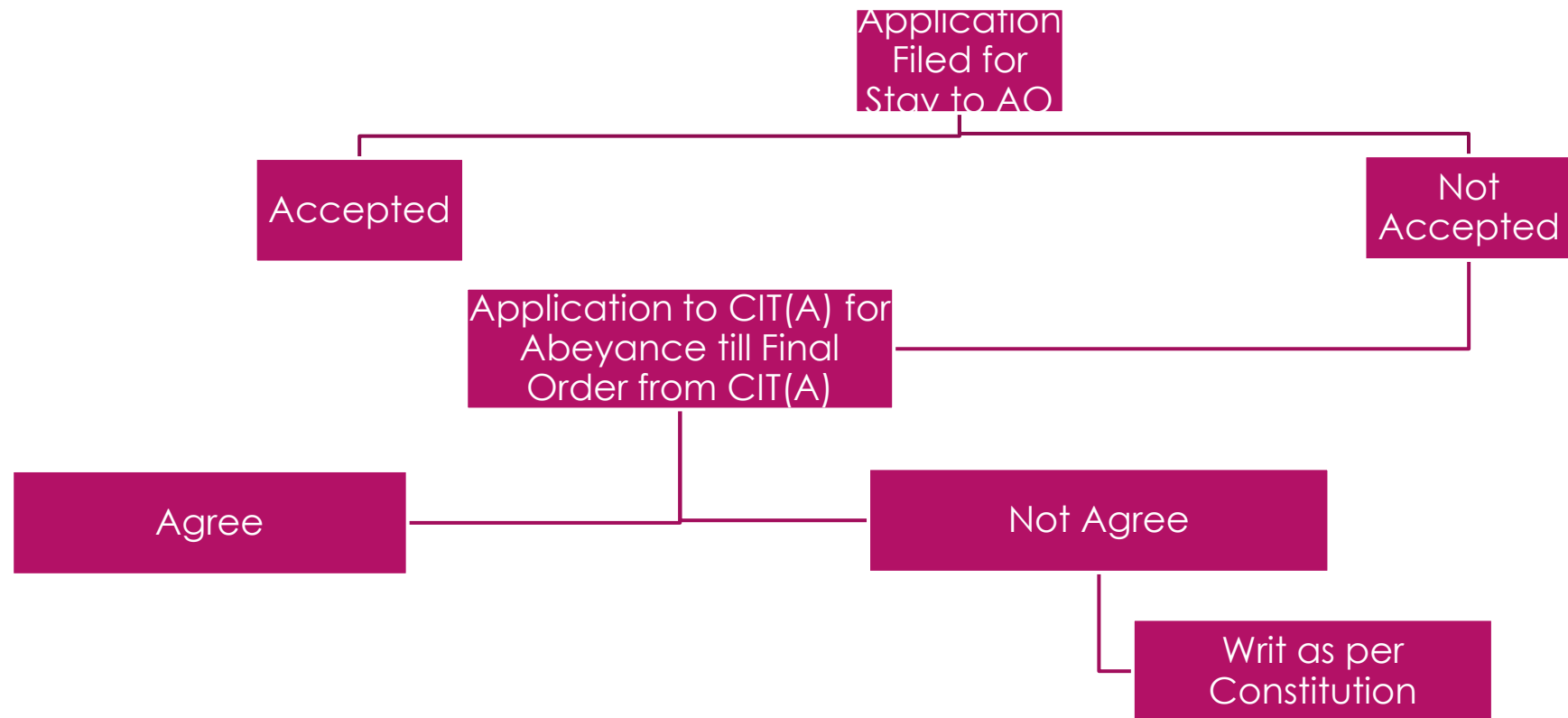
Stay of Demand- CIT(A)

- ▶ Payment or Stay against Notice of Demand
 - ➔ Time Limit for Payment is Stated in Notice
 - ➔ Generally it is 30 Days from Date of Service of Notice u/s. 156
 - ➔ Within such time limit;
 - ➔ Either Demand is to be Paid; or
 - petition is to be filed before AO u/s. 220(6)

Stay of Demand- CIT(A)

- ▶ While filing Stay application before the Assessing Officer, the assessee will have to give the brief facts as under:
- ▶ The assessment history of the assessee,
- ▶ His conduct and co-operation with the department,
- ▶ Points raised in the appeal,
- ▶ The chances of recovery in case the appeal is dismissed and
- ▶ The hardship that would be caused to the assessee by persistent demand of the tax by the department.

Stay of Demand- CIT(A)



Appeal Filing and Other Related Aspects

Appeal Filing Fees

	Case	Prescribed fees
(i)	where the total income of the assessee as computed by the Assessing Officer is ` 1,00,000 or less	` 250
(ii)	where the total income of the assessee computed as above is more than ` 1,00,000 but not more than ` 2,00,000	` 500
(iii)	where the total income of the assessee computed as above is more than ` 2,00,000	` 1,000
(iv)	in any case other than (i), (ii) and (iii) above	` 250

Appeal Filing and Other Related Aspects

Challan Number -280

Major Head-20/21- As the case may be

Minor Head- Self Assessment Tax

Type of Payment- Others

Appeal Fees Amount-As per Section 239

Statement of Facts – Points to be Noted

Final Stage to produce Statement of Facts.

- Highlight all the Mistakes/Errors/Observations/Adverse Inference of AO along with the correct position.
- Specifically and Separately highlight the, “Violation of Principle of Natural Justice”, for bringing out the base of admissibility for additional evidence, if any u/r 46A
 - No Opportunity of Being Heard
 - Lack of Proper Opportunity of Being Heard
 - Denial of Opportunity of Cross Examination
 - Relying on the Material behind Appellant Back
- ▶ without providing opportunity to rebut

Appeal Filing and Other Related Aspects

- ▶ A day shall be fixed for the hearing of the appeal and CIT shall give notice of the same to the assessee and to the Assessing Officer, against whose order the appeal is made. (Adjournment/ Representative Assessee)
- ▶ The Commissioner (Appeals), before passing an order on an appeal, **may make such further enquiries as he thinks fit or direct the Assessing Officer to make further enquiries** and report the result of the same to him. He may also allow the appellant to go into **any grounds of appeal not specified previously** by the appellant if he is satisfied that the omission of that ground was not wilful or unreasonable.
- ▶ CIT Order shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- ▶ **On disposal** of the appeal the Commissioner (Appeals) must **communicate the order passed by him to the assessee as well as to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.**
- ▶ Decision of an appeal to be delivered **within a period of one year from the end of the financial year in which such appeal is filed under section 246A(1).**

Appeal Procedure- For ITAT

Which Orders can be appealed Before ITAT

any order of assessment
under section
143(3)/147/153A- in
pursuance of Directn of
DRP

Order Passed by CIT(A)

Order Passed by CIT
(Exemp)

Appeal Procedure- For ITAT

Appeal Filling Fees

	Case	Prescribed fees
(i)	Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is ` 1,00,000 or less	` 500
(ii)	Where the total income exceeds ` 1,00,000 but is not more than ` 2,00,000	` 1,500
(iii)	Where the total income is more than ` 2,00,000	1% of the assessed income, subject to a maximum of 10,000.
(iv)	In any other case	` 500
(V)	Filing of memorandum of cross-objections.	No fees
(vii)	Application for stay of demand	` 500

Appeal Procedure- For ITAT

Stay of Demand

- ▶ can grant stay of demand **only up to 180 days** from the date of granting such stay subject **but with Atleast Payment of Tax of 20%** the amount of tax, interest, fee, penalty, or any other sum payable
- ▶ **No extension** granted where such appeal is not so disposed of within the said period of stay as specified in the order of stay, **unless** –
 - ▶ **Payment of 20% Tax Made and**
 - ▶ Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee,
- ▶ However, the **aggregate of the period of stay** originally allowed and the period of stay so extended **should not exceed 365 days** and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.
- ▶ **If such appeal is not so disposed of within 180 day period or the period or periods extended** not exceeding 365 days, the order of **stay shall stand vacated** after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

Appeal Procedure- For ITAT

- ▶ **Time limit for filing appeal or memorandum of cross objection under section 253(1) & (2) [Section 253(3), (4) & (5)]**
 - ▶ Within 60 days from the order sought to be appealed
- ▶ Further, on receipt of notice that appeal against order of Commissioner (Appeals) has been preferred by the Assessing Officer or the assessee, as the case may be, the other party can file memorandum of **cross objections within 30 days of receipt of notice against any part of the order of Commissioner (Appeals)**. The Appellate Tribunal has to dispose of the memorandum of cross objections as if it were an appeal filed within the given time limit.
- ▶ However, the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objection even after expiry of the prescribed time limit, if he is satisfied that there was sufficient cause for not presenting it within that period.

Appeal Procedure- For ITAT

Rectification

- ▶ The Appellate Tribunal may, at any time within 6 months from the end of the month **in which order is passed**

Other Points

- ▶ **Final authority on facts:** On all questions of fact the orders passed by the Appellate Tribunal on appeal shall be final and binding on the assessee as well as the Department

Time limit

- ▶ may hear and decide the appeal **within a period of four years** from the end of the financial year in which such appeal is filed

Appeal Procedure- For High Court

Which Orders can be appealed Before High Court

every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. If the High Court is so satisfied, it shall formulate that question.

- ▶ **Form for appeal** - The appeal shall be in the form of a memorandum of appeal, precisely stating in it the substantial question of law involved.
- ▶ **Time limit for appeal** - The appeal shall be filed within 120 days from the date on which the order appealed against is received by the assessee, or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- ▶ The High Court has and always had the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within that period.

Appeal Procedure- For Supreme Court

Which Orders can be appealed Before Supreme Court

Appeal can be filed against order of HC

- ▶ **Form for appeal** - The appeal shall be in the form of a memorandum of appeal, precisely stating in it the substantial question of law involved.
- ▶ **Time limit for appeal** - The appeal shall be filed within 90 days from the date on which the order appealed against is received by the assessee, or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

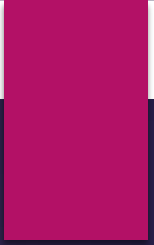
General Provision

It has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

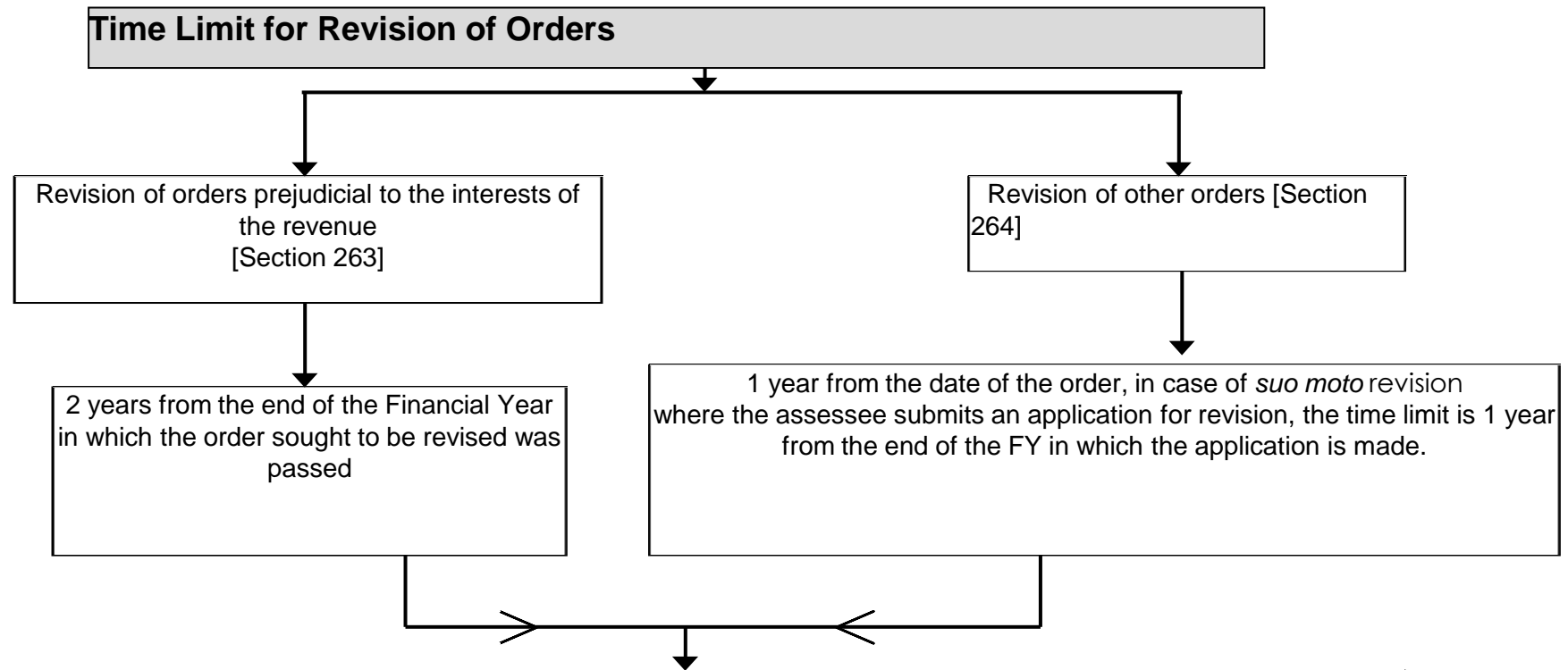
**Non-applicability of specified monetary limits in case involving bogus LTCG/ STCG through penny stocks*

** Specified monetary limit not to apply to writ matters and direct tax matters other than income-tax*

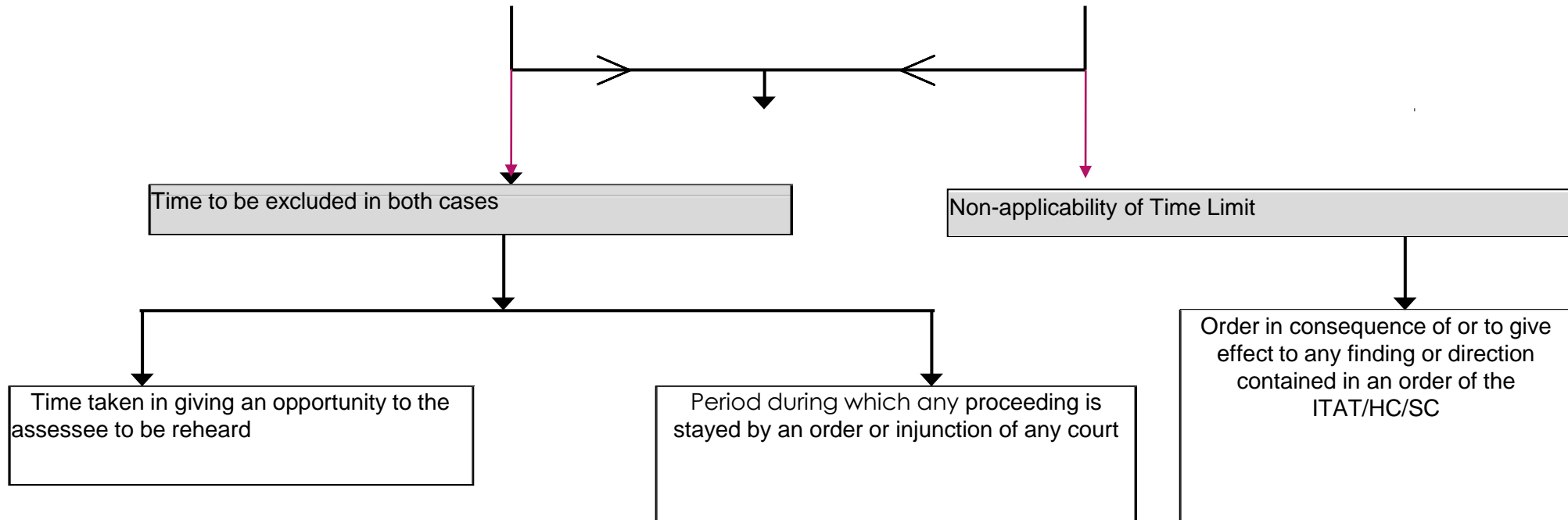


REVISION BY THE PRINCIPAL
COMMISSIONER OR
COMMISSIONER [SECTIONS
263 AND 264]

Revision of Orders



Revision of Orders



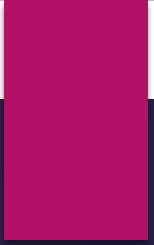
E-Filing of Appeals

E-Filing of Appeal

- ▶ Before CIT(A)
- ▶ The CBDT has vide press release dated 30.12.2015 made announcement regarding electronic filing of appeal before the Commissioner of Income Tax (CIT (A)).
- ▶ All the communication related to their appeals, like filing of appeal, fixation for hearing, adjournments, pronouncements and disposals will be sent to the appellant's/respondent's Mobile as well as E-Mail Id. CIT(A) Orders will also be sent to their E-Mail Id.
- ▶ To e-File your appeals, visit new income tax portal

E-Filing of Appeal

- ▶ Before ITAT
- ▶ Electronically file the appeals and get acknowledgement for the same. Later on, submit the physical documents in the Tribunal Office.
- ▶ All the communication related to their appeals, like filing of appeal, fixation for hearing, adjournments, pronouncements and disposals will be sent to the appellant's/respondent's Mobile as well as E-Mail Id. Tribunal Orders will also be sent to their E-Mail Id.
- ▶ To e-File your appeals, etc. visit <https://itat.gov.in/efiling/register> page.



E-Assessment Proceedings or Faceless Assessment

E-Assessment Proceedings

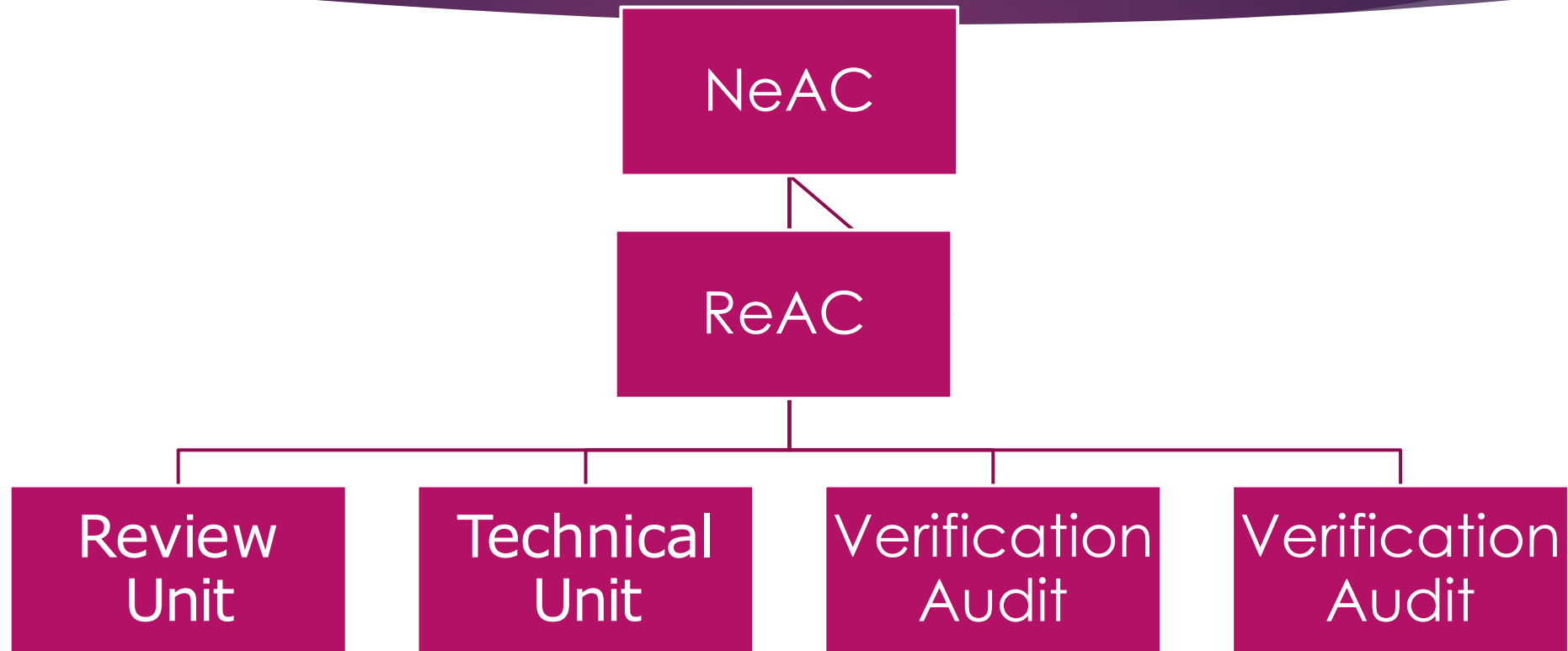
Central Government has, vide Notification No.61/2019 dated 12.9.2019 as amended by Notification No.60/2020 dated 13.8.2020, notified the Faceless Assessment Scheme

12 Sep. 2019

7 Oct. 2019

On 7th of October 2019, the Revenue Secretary has launched the faceless assessment in the Income Tax Department by inaugurating the NeAC (NeAC) in Delhi.

E-Assessment Proceedings



E-Assessment Proceedings

The e-Assessment Scheme introduces the concept of team based assessment with dynamic jurisdiction which would bring about transparency, efficiency and standardization of procedures by eliminating the human interface between the taxpayer and the Income-tax Department.

There would be a NeAC in Delhi to be headed by Principal Chief Commissioner of Income-tax,

8 Regional e-Assessment Centers (ReAC) at Delhi, Mumbai, Chennai, Kolkata, Ahmedabad, Pune, Bengaluru and Hyderabad which would comprise Assessment unit, Review unit, Technical unit and Verification units.

Cases for the specified work shall be assigned by the NeAC to different units by way of automated allocation systems

E-Assessment Proceedings

- ▶ Every submission shall be accompanied with a covering letter
- ▶ In the typing box, it is advised to write your reply in letter format giving reference to the notice and covering letter
- ▶ The attachment shall be in PDF or Excel format and the maximum size of the attachment shall not be more than 5 MB
- ▶ Maximum ten attachments in one submission can be made. In case, there are more than ten attachments, you can submit the same again on the same link
- ▶ The attachment name shall not contain any special character or space
- ▶ It is advisable, in case you are submitting full response, to reply each and every points of notice. In case, any requirement is not applicable to the assessee, please mention that the certain point is not applicable to the assessee along with the reason in the covering letter
- ▶ It is advisable to submit reply within fifteen days of receipt of the notice. If not, the submission window will be closed and an ex- parte order may be passed.
- ▶ It is advised to make a system wherein on alternate days, you check on e-Proceeding if any notice has been issued by the department.

Faceless ITAT Proceedings

In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

Such directions are to be issued on or before 31st March, 2023.



THANK YOU

CA JAYA KRISHNA KAPOOR

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