Faceless Appeals

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Procedure in Appeal before CIT(Appeals) [Section 250]

Procedure in Appeal [Section 250]

- On account of an appeal, the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the assessee and to the Assessing Officer, against whose order the appeal is made. Both the assessee and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative. The Commissioner (Appeals) has the power to adjourn the hearing of the appeal from time to time.
- 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 willful or unreasonable.
- The order of the Commissioner (Appeals) disposing of the appeal 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.
- 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 under section 246A(1).

Powers of Commissioner (Appeals)

Powers of the Commissioner (Appeals) [Section 251]

While disposing of an appeal the Commissioner (Appeals) is vested with the following powers viz.,

(i) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

(ii) In an appeal against an order imposing a penalty he may confirm or cancel such order or vary it in such a way as to enhance or reduce the penalty.

(iii) In any other case, the Commissioner (Appeals) may pass such orders in the appeal as he deems fit.

The Commissioner (Appeals), however, is not empowered to enhance an assessment or a penalty or to reduce a refund due to the assessee **without giving the assessee a reasonable opportunity of showing cause against such an enhancement or reduction.** In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed even if such matters were not raised before the Commissioner (Appeals) by the appellant.

Faceless Appeals

Meaning of Faceless Assessments

“Faceless appeals” means the appeal proceedings before the Commissioner (Appeals), conducted electronically in 'e-Proceeding' facility through appellant's registered account in designated portal. CBDT has prescribed www.incometax.gov.in as the “designated portal” for the purpose of Faceless Appeals.

Backdrop

The filing of appeals before the first appellate authority, i.e., the Commissioner (Appeals), in the prescribed Form 35, had already been enabled in an electronic mode, since March 1, 2016. An appellant can file his/her appeal through his/her registered e-filing account, on the e-filing portal of the Income tax Department. However, the appellate proceedings that followed after filing of appeal electronically in Form 35, was neither electronic nor faceless.

Faceless Appeal Enters Legislation

Enabling Provisions in the Income Tax Act, 1961

In order to ensure that the reforms initiated by the Central Government to eliminate human interface in the assessment proceedings reach the next level of appellate proceedings, the **Finance Act, 2020** has inserted **new sub-sections (6A), (6B) and (6C) in section 250 of the Income Tax Act**, to provide for the following:

- Empowering Central Government to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability.
- Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
- Optimizing utilization of the resources through economies of scale and functional specialisation.
- Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

Launch of Faceless Appeal Scheme

Our Hon'ble PM Sh. Narendra Modi ji on 13th August, 2020, while launching the new platform for transparent taxation, *"Honoring the Honest"*, had announced launching of the Scheme for Faceless Appeals on 25th September, 2020, on the birth anniversary of Pt. Deen Dayal Upadhayay.

Accordingly, the Central Board of Direct Taxes (CBDT), in exercise of the powers conferred by sub section (6B) of section 250 of the Income Tax Act, 1961, has legislated the ***'Faceless Appeal Scheme, 2020'***, vide its Gazetted Notification bearing F.No. S.O. 3296 (E), dated 25.9.2020.

Under this Faceless Appeals Scheme, 2020, w.e.f. 25.9.2020, all Income Tax appeals before the first appellate authority i.e., the CIT (Appeals), shall be finalised in a faceless manner under the faceless ecosystem with the exception of appeals relating to serious frauds, major tax evasion, sensitive and search matters, international taxation and black money. All the pending and new appeals of the taxpayers before the CIT(Appeals) w.e.f. 25.9.2020, shall be adjudicated and disposed of by the dynamic jurisdiction and not by the jurisdictional CIT(Appeals).

Faceless Appeal Scheme

Subsequently, the Faceless Appeal Scheme, 2020, was re-nomenclatured as the Faceless Appeal (Amendment) Scheme, 2021 vide CBDT Notification No. S.O. 1438(E.) dated 31.3.2021 and the reference to the National e-Assessment Centre in the faceless appeal scheme was substituted by "the National Faceless Assessment Centre."

In this first version of the faceless appeal scheme, the appellant was not having any by-default right of personal hearing through video conferencing and this right was subject to the discretion of the Chief Commissioner or the Director General, in charge of the Regional Faceless Appeal Centre, who may approve such request of the appellant for personal hearing through video conferencing, if the case falls within the ambit of notified circumstances by CBDT. However, no such circumstances were notified by the CBDT.

Rationale for Personal Hearing through VC

Consequently, the Hon'ble Delhi High Court in the case of '**Lakshya Budhiraja v. UOI & Anr**.' **W.P.(C) 8044/2020,** has issued notice on 16th October 2020 to CBDT, on the grounds of the petitioner that the mechanism where the approval of the Chief Commissioner or the Director General of Income-tax is required for video conference facility, is discriminatory in nature as it gives them the discretion to deny the same and that no person should be judged without a fair hearing in which each party is given an opportunity to respond to the evidence against them.

This case travelled up to the hon'ble Supreme Court, and the hon'ble Apex Court in its judgement '**CBDT vs. Lakshya Budhiraja & Anr.'**, dated 1.10.2021, in transfer petition (civil) no. 1445-1446/2021, has deferred the matter for final adjudication, for three months, on the submission of the Additional Solicitor General of India (representing CBDT) that the CBDT was having a second look on the Faceless Appeal Scheme, 2020, and it may require the Change of Law.

New Faceless Appeal Scheme, 2021

Accordingly, in order to meet the deadline of three months, the CBDT has notified the amended**, Faceless Appeal Scheme, 2021, vide its Notification No. S.O. 5429(E.), dated 28.12.2021, in suppression of its earlier Faceless Appeal Scheme, 2020, w.e.f. 28.12.2021.**

Under the amended Faceless Appeal Scheme, 2021, a by-default right of personal hearing through video conferencing has been vested in the appellant. It has been mandated that the appellant may request for a personal hearing through video conferencing, and on receipt of such a request of the appellant, the respective Commissioner (Appeals), in the Appeal Unit, shall grant such personal hearing to the appellant through video conferencing.

Further, the role of the Regional Faceless Appeal Centre, as provided in the earlier Faceless Appeal Scheme, 2020, has been done away with, and the National Faceless Appeal Centre, shall assign the appeal, for disposal, directly, to a Commissioner (Appeals) of a specific appeal unit, through an automated allocation system.

All Communication in Electronic Mode No Physical Interface

Under the faceless appeals eco-system, everything from e-allocation of appeal, e-communication of notice/ questionnaire, e-verification/e-enquiry to e-hearing and finally e-communication of the appellate order, the entire process of appeals before the CIT (Appeals) shall be online, dispensing with the need for any physical interface between the appellant and the CIT (Appeal). There shall be no physical interface between the taxpayers or their counsel/s and the CIT (Appeal).

As per data with CBDT, as on date there is a pendency of almost 4.6 lakh appeals at the level of the Commissioner (Appeals) in the Department. Out of this, about 4.05 lakh appeals, i.e., about 88 % of the total appeals will be handled under the Faceless Appeal mechanism and almost 85% of the present strength of Commissioners (Appeals) shall be utilised for disposing off the cases under the Faceless Appeal mechanism.

Scope & Coverage of Faceless Appeals Scheme, 2021

Scope and Coverage of Faceless Appeal Scheme, 2021

Clause 3 of the Faceless Appeal Scheme, 2021 provides that the appeal under this Scheme shall be disposed of in respect of such territorial area or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

The CBDT has not issued any Notification in exercise of powers conferred under Clause 3 of the Faceless Appeal Scheme, 2021 yet.

However, as per the general understanding emanating from the information brochures of the Income Tax department, all Income Tax appeals before the first appellate authority i.e., the CIT (Appeals), shall be finalised in a faceless manner under the faceless ecosystem **with the exception of appeals relating to serious frauds, major tax evasion, sensitive and search matters, international taxation and black money.** All the pending and new appeals of the taxpayers before the CIT(Appeals) w.e.f. 25.9.2020, shall be adjudicated and disposed of by the dynamic jurisdiction and not by the jurisdictional CIT(Appeals).

Faceless Appeals Hierarchy

For the purpose of conducting of the faceless appeals, the CBDT is setting up:

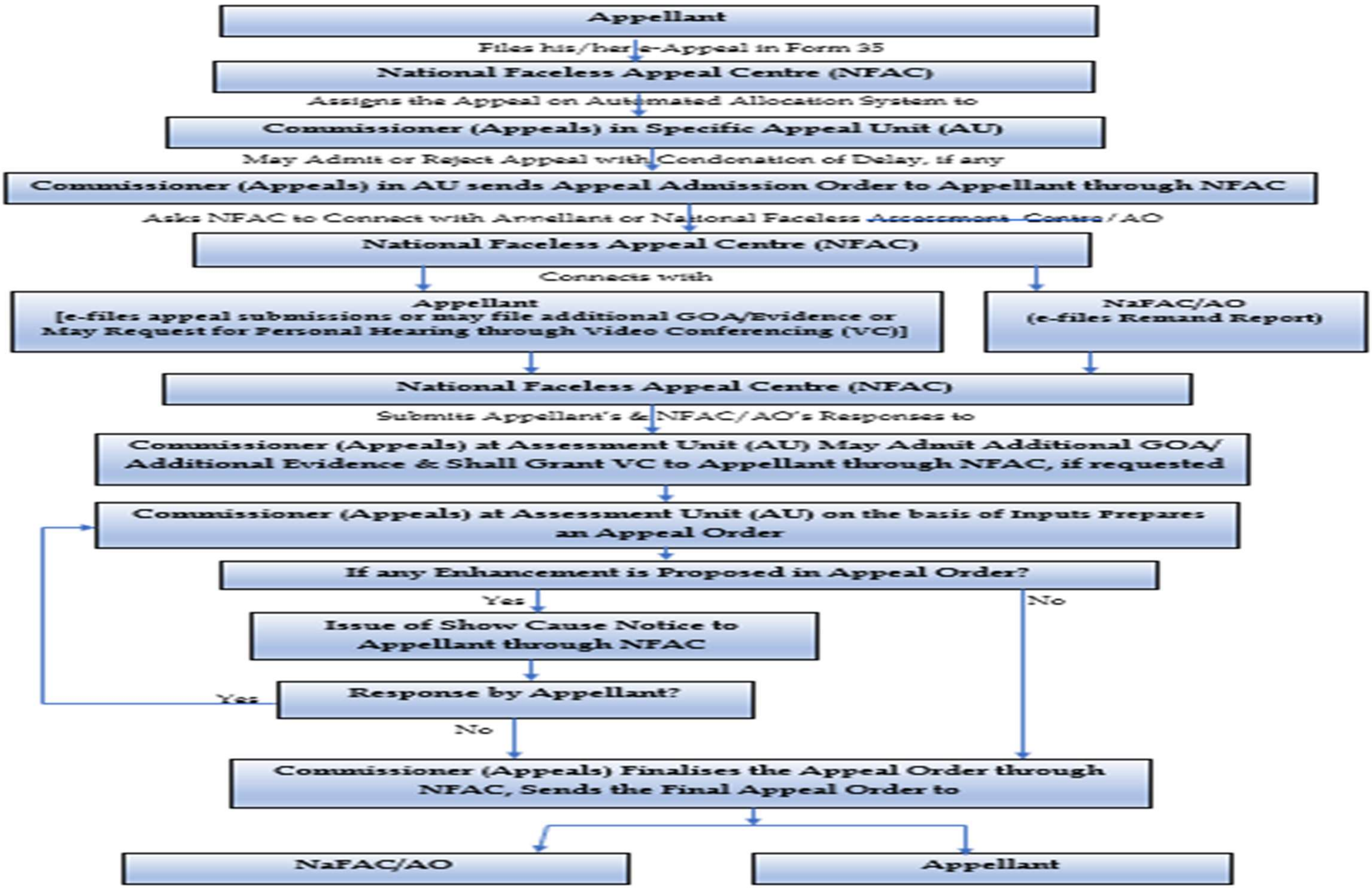
(i) a **National Faceless Appeal Centre** to facilitate the conduct of e-appeal proceedings in a centralised manner; and

(ii) **Appeal units**, as it may deem necessary to facilitate the conduct of e-appeal proceedings by the Commissioner (Appeals). The appeal unit shall have the following authorities, namely:

(a)one Commissioner (Appeals);

(b)such other income-tax authority, ministerial staff, executive or consultant to assist the Commissioner (Appeals) as considered necessary by the Board.

Procedure in Faceless Appeal Scheme, 2021



No Personal Appearance

No personal appearance in the Appeal Centres or Units & Vested Right of Personal Hearing through Video Conferencing

(1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the income-tax authority at the National Faceless Appeal Centre or appeal unit set up under this Scheme.

(2) The appellant or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the Commissioner (Appeals), through the National Faceless Appeal Centre, under this Scheme.

(3) The concerned Commissioner (Appeals) shall allow the request for personal hearing and communicate the date and time of hearing to the appellant through the National Faceless Appeal Centre.

(4) Such hearing shall be conducted through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

Appeal Form 35

INCOME-TAX RULES, 1962

FORM NO. 35

(See rule 45)

Appeal to the Commissioner of Income-tax (Appeals)

Personal-information	First Name	Middle Name	Last Name or Name of Entity	Permanent Account Number or Aadhaar Number	
				TAN (if available)	
	Flat/Door/Block No.		Name of Premises/Building/Village	Road/Street/Post Office	
	Area/Locality		Town/City/District	State (Select)	
	Country (Select)	Pin Code	Phone No. with STD code/Mobile No.	Email Address	
				Whether notices/communication may be sent on email? Yes/No	

Order against which Appeal is filed	1		Assessment year in connection with which the appeal is preferred/Enter financial year in case appeal is filed against an order where assessment year is not relevant	Assessment Year / Financial Year
	2		Details of the order appealed against	
		a	Section and sub-section of the Income-tax Act,1961	
		b	Date of Order	
		c	Date of service of Order/Notice of Demand	
	3		Income-tax Authority passing the order appealed against	
Pending Appeal	4		Whether an appeal in relation to any other assessment year/financial year is pending in the case of the appellant with any Commissioner (Appeals)	Yes/No
	4.1		If reply to 4 is Yes, then give following details.-	
		a	Commissioner (Appeals), with whom the appeal is pending	
		b	Appeal No. and date of filing of appeal	
		c	Assessment year/financial year in connection with which the appeal has been preferred	
		d	Income-tax Authority passing the order appealed against	
		e	Section and sub-section of the Income-tax Act, 1961, under which the order appealed against has been passed	
		f	Date of such Order	
Appeal Details	5		Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred	
	6		If appeal relates to any assessment	
		a	Amount of Income Assessed (in Rs.)	
		b	Total Addition to Income (in Rs.)	
		c	In case of Loss, total disallowance of Loss in assessment (in Rs.)	
		d	Amount of Addition/Disallowance of Loss disputed in Appeal (in Rs.)	
		e	Amount of Disputed Demand (in Rs.) – Enter Nil in case of Loss	
	7		If appeal relates to penalty:	
		a	Amount of penalty as per Order (in Rs.)	
		b	Amount of penalty disputed in Appeal (in Rs.)	
Details of Taxes paid	8		Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full	Yes/No/Not Applicable
	8.1		If reply to 8 is Yes, then enter details of return and taxes paid	
		a	Acknowledgement number	
		b	Date of filing	
		c	Total tax paid	
	9		Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(*b*) of the Income-tax Act, 1961 has been paid	Yes/No/Not Applicable

Appeal Form 35

	9.1	If reply to 9 is Yes, then enter details Tax Payments			
	BSR Code		Date of payment	Sl. No.	Amount
	Total				
	10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)			
	BSR Code		Date of payment	Sl. No.	Amount
Statement of facts, Grounds of Appeal and additional evidence	11	Statement of Facts			
		Facts of the case in brief (not exceeding 1000 words)			
		List of documentary evidence relied upon			
	12	Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of rule 46A			Yes/No
	12.1	If reply to12 is Yes, furnish the list of such documentary evidence			
	13	**Grounds of Appeal** (each ground not exceeding 100 words)			
		1.			
		2.			
		3.			
Appeal filing details	14	Whether there is delay in filing appeal			Yes/No
	15	If reply to 13 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)			
	16	Details of Appeal Fees Paid			
	BSR Code		Date of payment	Sl. No.	Amount
	17	Address to which notices may be sent to the appellant			

Form of verification

I, ... the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row

12.1 above has been filed.

Place ....

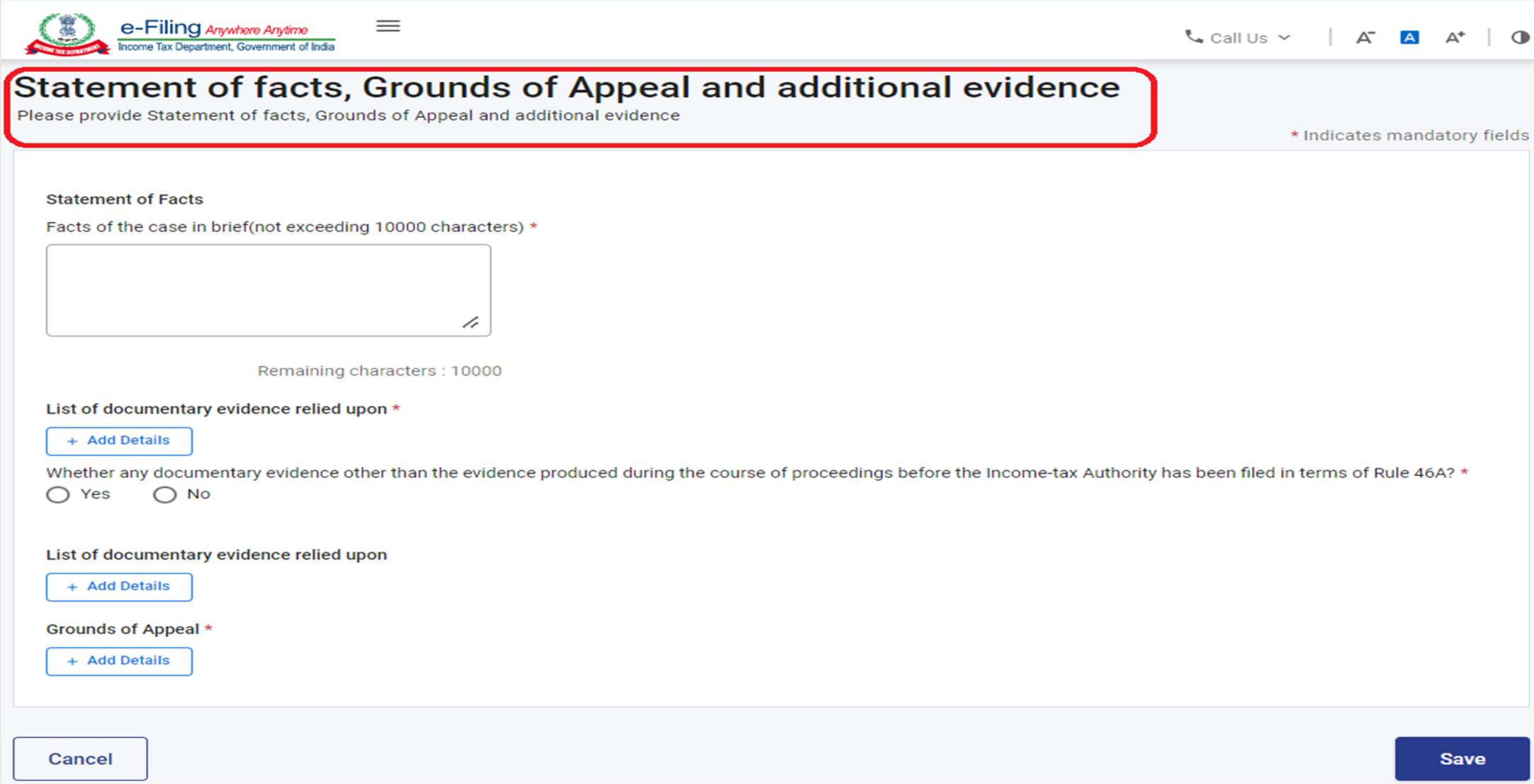
Signature ....

Date ....

Practical Tips for Filing Grounds of Appeal

Sixth Column in electronic Appeal Form 35 : Statement of Facts, Grounds of Appeal and Additional Evidence

This is the most important section of electronic filing of Appeal Form 35 with the Commissioner (Appeals). In this section, the appellant is required to submit **Statement of facts not exceeding 10,000 characters** and List of Documentary Evidences relied upon. The appellant may also furnish Additional Evidence as per Rule 46A of the Income Tax Rules, by enclosing them as attachments in the ***'Add Details'*** tab.



Practical Tips for Filing Grounds of Appeal

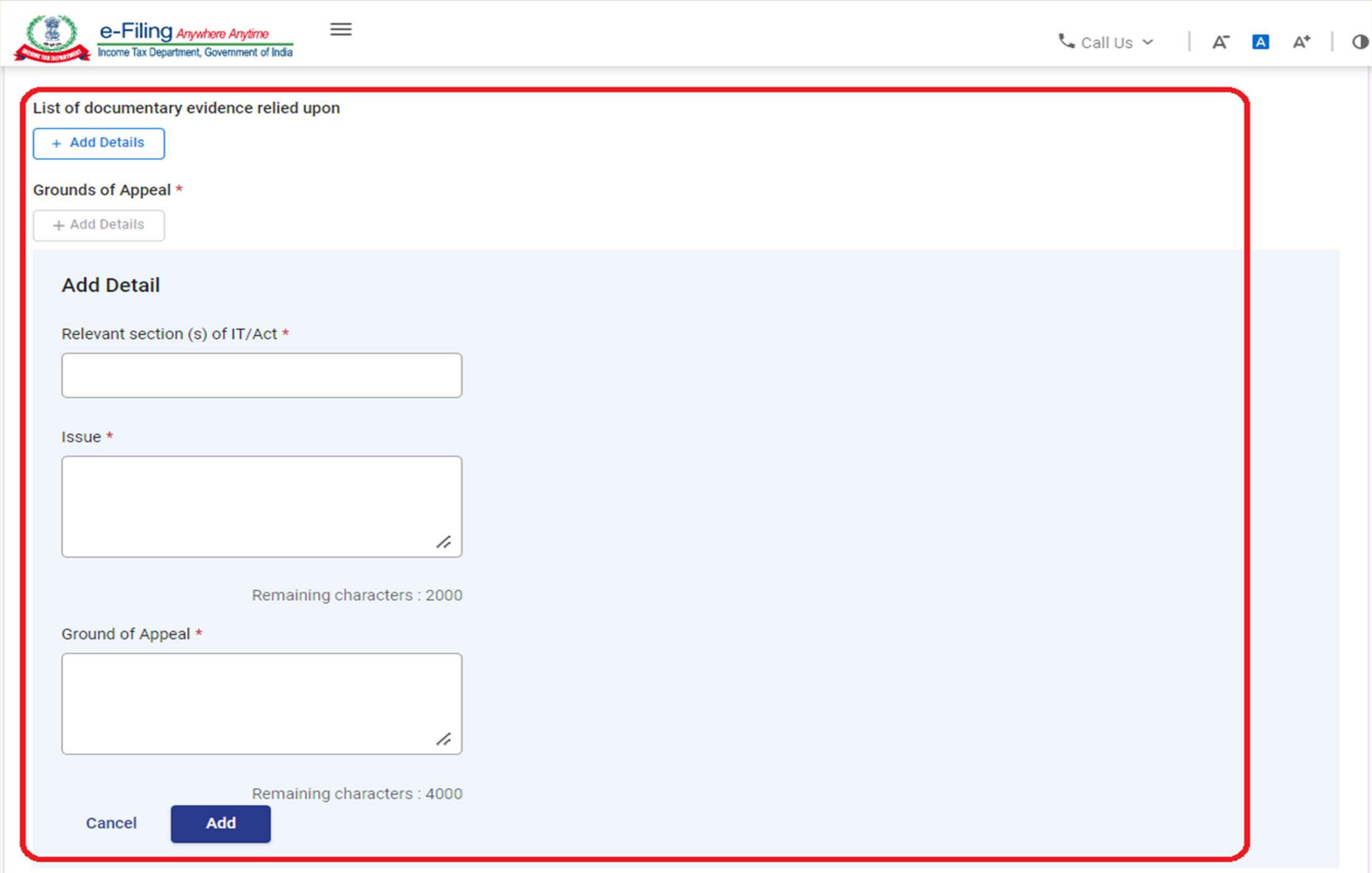
The appellant also needs to fill in **Grounds of Appeal,** by clicking on the ***'Add Details'*** tab under the ***'Grounds of Appeal'*** field.

After clicking on 'Add Details' tab under 'Grounds of Appeal' field, the appellant is directed to a new window, wherein he is required to fill in the requisite details in three sub-columns viz.

i) **Relevant Section of Income Tax Act, under which the Addition/Disallowance has been made.**
ii) **Describing the 'Issue', in 2000 characters, and**
iii) **'Ground of Appeal' in 4000 characters.**

The appellant can add as many Grounds of Appeal, as he requires, and he needs to fill in above details for each one of such Ground of Appeal.

Practical Tips for Filing Grounds of Appeal



Uploading of Supportings

Uploading of Supporting Records & Documents as Attachments:

After filling in the required details in seven columns, as discussed in previous paragraphs, the assessee is directed to a new window of 'Attachments', wherein the assessee is required to attach the undermentioned documents, along with the Appeal Form 35:

i) Copy of Order/Intimation Appealed against (compulsory enclosure);
ii) Copy of Notice of Demand (compulsory enclosure);
iii) Documentary Evidences in support of Appeal Submission;
iv) Documentary Evidences as Additional Evidence, if the assessee, so opts.

Important Points: i) Size of each attachment should not exceed 5MB; (ii) All attachments together cannot exceed 50MB; and (iii) All attachments should be in PDF or ZIP (containing PDF only) formats only.

Uploading of Supportings

e-Filing Anywhere Anytime
Income Tax Department, Government of India

Call Us

Dashboard > Income-tax Forms > Form 35

Attachments

Please provide Attachments

* Indicates mandatory fields

As per the inputs provided by you, please attach the following documents.

Notes :

- Size of each attachment should not exceed 5MB.
- All the attachments together cannot exceed 50MB.
- All attachments should be in PDF or ZIP (can contain only pdf) formats only.

Copy of order/intimation appealed against *

Attach File

Copy of Notice of demand *

Attach File

Documentary Evidence

Attach File

Documentary Evidence(Additional Evidence)

Attach File

Any other Attachment

Attach File

Attach File

Attach File

e-Verification & Uploading of Online Appeal Form 35

e-Verification & Uploading of Online Appeal Form 35

On the Preview page, the appellant needs to verify the details, and click ***'Proceed to e-Verify'***

Important Points on How to e-Verify Forms on the e-Filing Portal

The e-Verify service is available to both registered and unregistered users on the e-Filing portal.

The User can e-Verify his/her Income Tax Return Form and any other Form like Appeal Form 35, using any of the several modes available. Additionally, the User can also e-Verify any other Income Tax related submissions / services / responses / requests on the e-Filing portal to complete the respective processes successfully. The User can choose any one of the following modes available for e-Verification:

- **Digital Signature Certificate**
- **Aadhaar OTP**
- **Electronic Verification Code (using bank account / Demat account)**
- **Electronic Verification Code (using Bank ATM - offline method)**
- **Net Banking**

Appeal Hearing Notice u/s 250

After the filing of Appeal Form 35 electronically, by the appellant, the National Faceless Appeal Centre, assigns such appeal case to any one Commissioner (Appeals) in the Appeal Unit, based on automatic allocation system, and such Commissioner (Appeals), issues Appeal Hearing Notice u/s 250 of the Act, to the appellant, through the National Faceless Appeal Centre.

Specimen of Appeal Hearing Notice

भारत सरकार / GOVERNMENT OF INDIA
वित्त मंत्रालय / MINISTRY OF FINANCE
आयकर विभाग / INCOME TAX DEPARTMENT
राष्ट्रीय पहचान विहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)
दिल्ली / DELHI

Notice under section 250 of the Income-tax Act, 1961

ABCDE1234F XYZ PRIVATE LIMITED PQRS ENCLAVE TUV NAGAR- 112233	DIN: ITBA/NFAC/F/APL_1/2021-22/1038101764(1) Date: 24/12/2021 Appeal No:CIT (A), Delhi- 7/10621/2016-17 Assessment Year:2014-15

Why are you getting this communication?

Dear Appellant,

This communication is in connection with the above referred appeal preferred by you against the order under section 143(3) of the Income-tax Act,1961 passed by **CIRCLE 19(1), DELHI** vide DIN No. NA on 09/12/2016 for the Assessment Year 2014-15.

What you need to do?

In support of your *Grounds of Appeal*, you are requested to furnish or cause to be furnished Ground-wise written submission, along with supporting documentary evidence(s) and/or documents as specified in the attached Annexure, if any.

How will you produce the submission and documents?

You may furnish or cause to be furnished the above written submission(s) and documents electronically in 'E-proceedings' facility through your account in e-Filing Website (www.incometax.gov.in).

What steps should you taken for furnishing the written submission(s) and documents(s) electronically?

You may refer to the Help Guide available at following path at e-filing portal for step-by-step instructions for furnishing the written submission(s) and documents(s) electronically.

Navigation Path: e-filing Portal Home (https://www.incometax.gov.in)-->**Help-->General Help -->e-proceeding-Plan for Paperless Proceeding**

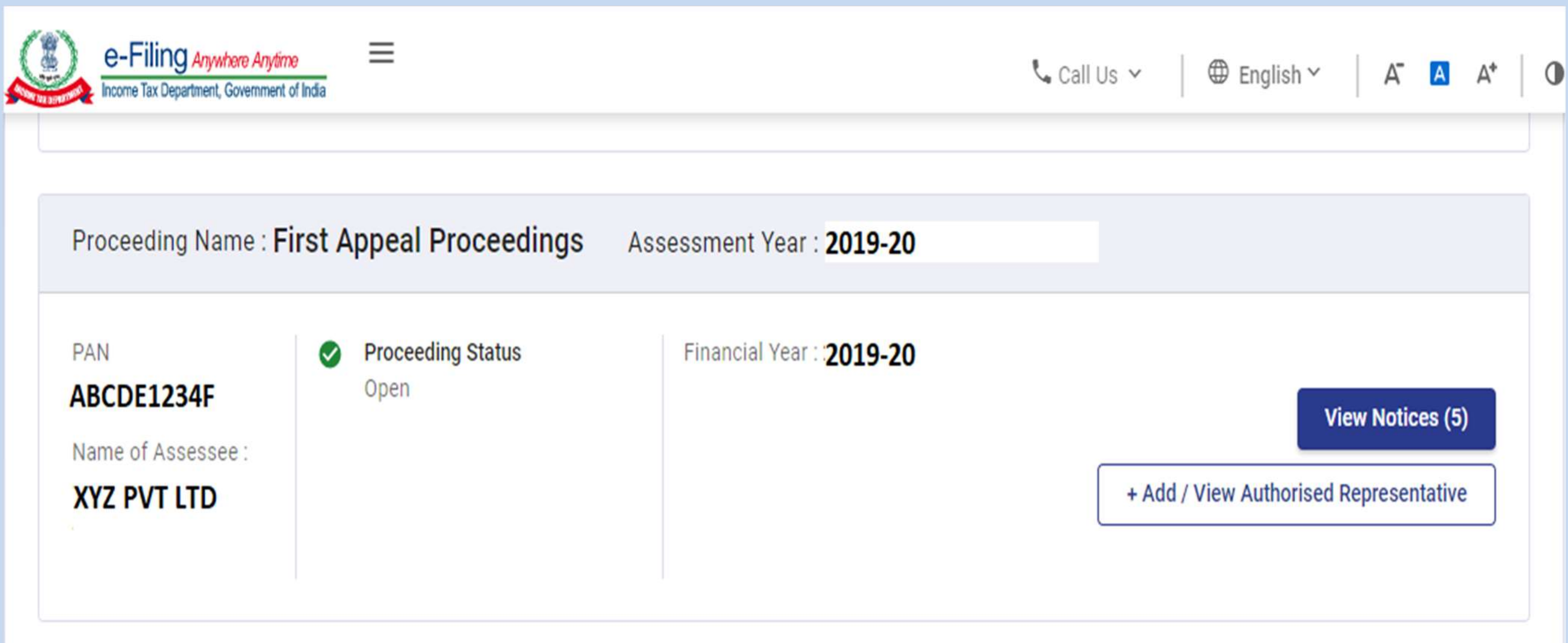
Is there any time limit involved?

The above written submissions may please be furnished on or before **29/12/2021**.

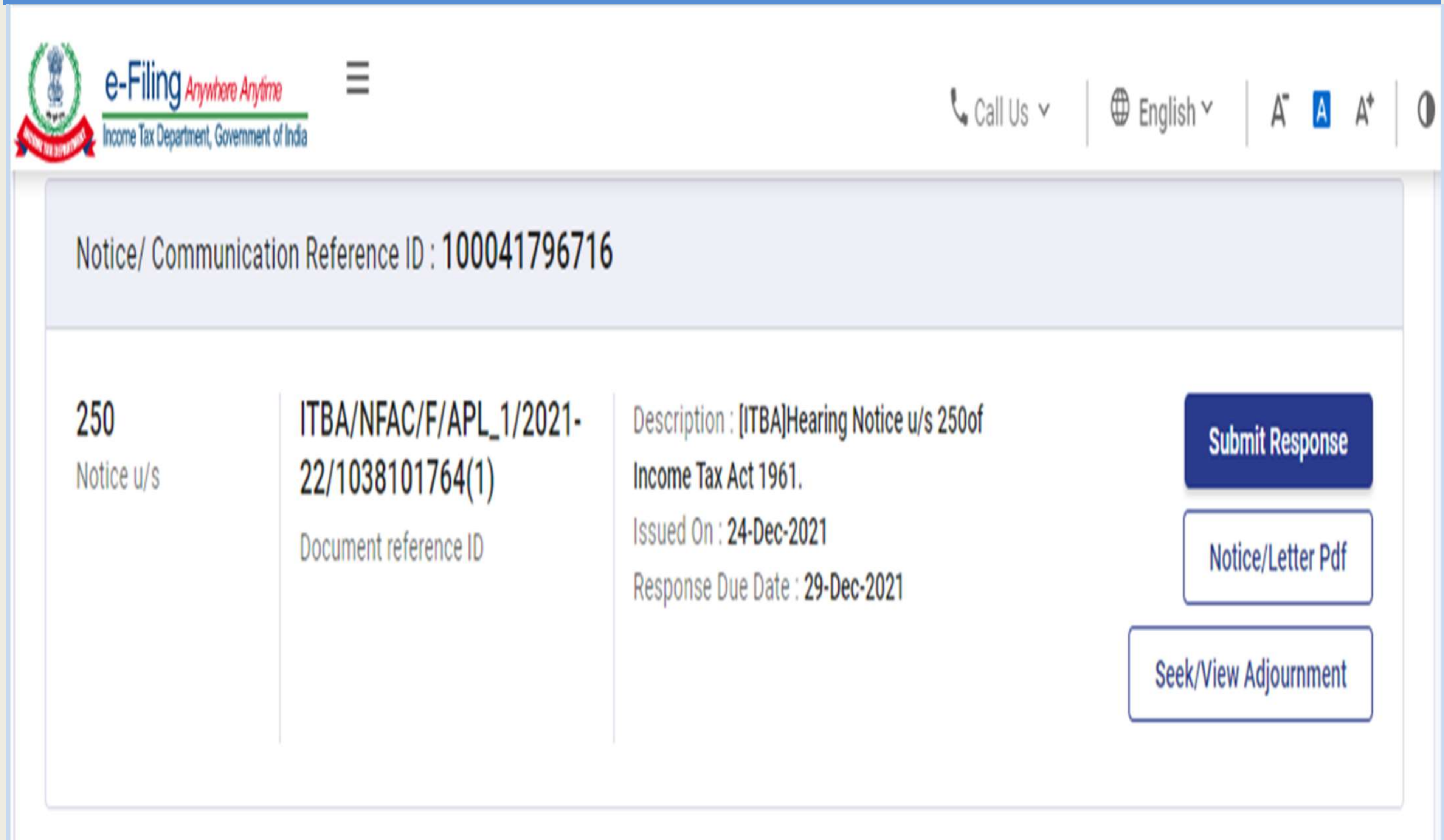
What if we do not hear from you?

E-Filing of Appeal Submissions

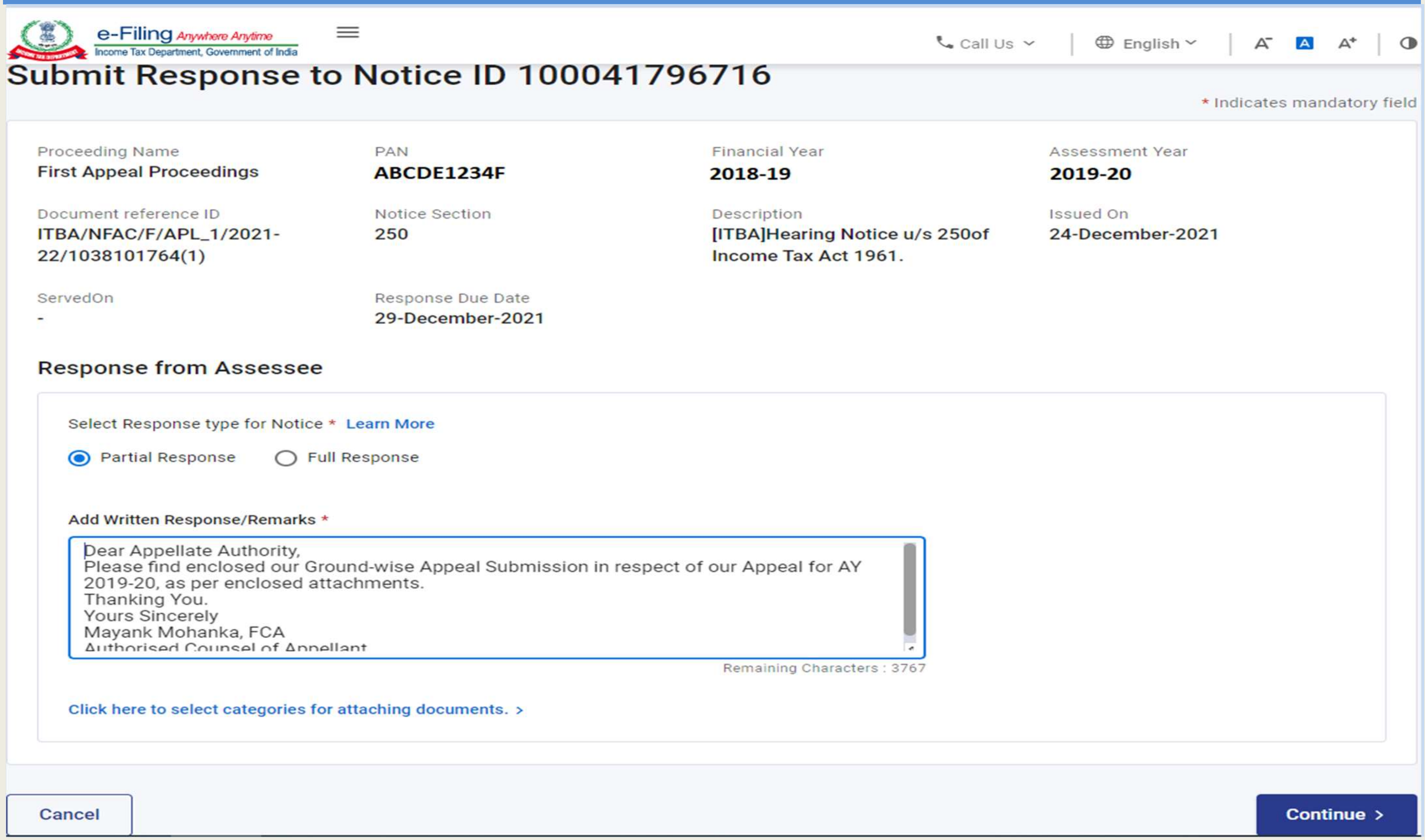
On receipt of such Appeal Hearing Notice u/s 250 of the Act, the appellant is required to submit his appeal submissions along with the requisite supporting attachments, electronically in the e-Proceedings utility of the e-Filing portal, exactly in the similar manner, as that of e-filing of his assessment submissions



E-Filing of Appeal Submissions



E-Filing of Appeal Submissions



Enhancement by CIT (Appeals)

The first appellate authority is invested with very wide powers under section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. The Supreme Court in **Jute Corporation of India Ltd. v. CIT[1991] 187 ITR 688 (SC)** has stated that the declaration of law is clear that the power of the appellate authority is co-terminus with that of the Assessing Officer.

The Supreme Court in the case of **CIT v. Rai Bahadur Hardutroy Motilal Chamaria** [1967] 66 ITR 443 (SC), has held that – “The principle that emerges as a result of the authorities of this court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the Income-tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and, therefore, the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under section 31(3) of the Act is restricted to the subject-matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the taxability of the assessee.

Additional Evidence

Additional Evidence under Rule 46A Read with Section 250(4) of The Income Tax Act

As per **Rule 46A**, the assessee is entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer],in the following circumstances, namely :

(a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) Where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Additional Evidence

Additional Evidence under Rule 46A Read with Section 250(4) of The Income Tax Act

As per the provisions of **section 250(4)** of the Income Tax Act, the CIT(A) may before disposing of the appeal make such further enquiry as he thinks fit or may ask the AO to carry out certain further enquiry.

Legal Precedents:

Keshav Mills Co. Ltd v Commissioner of Income Tax, Bombay North, Ahmedabad reported in 56 ITR 365;

Smt. Prabhavati S. Shah v. Commissioner of Income Tax reported in 231 ITR 1 & Commissioner of Income Tax, UP v. Kanpur Coal Syndicate wherein it has been held that the powers of the appellate authority are co-extensive & co-terminous with that of the Assessing Officer & the Appellate Authorities may if they consider it necessary, ask for & allow submission of additional evidence, necessary for the judicious disposal of the subject appeal.

Case Law on Additional Evidence

Shahrukh Khan vs Dy Cit, Special Range 21 [13 SOT 61 (TMUuM)

The brief facts of the case are that the learned Assessing Officer had made an addition of Rs. 21,98,000 on account of unexplained cash credits available in the books of assessee. Dissatisfied with this addition assessee carried the matter in appeal before learned Commissioner (Appeals) and he filed additional evidences under rule 46A of the Income-tax Rules in order to explain the cash credits appeared in his books. The learned first appellate authority after receiving the additional evidence called for a remand report on such evidence from the assessing officer which was received on 24-10-2002. In this remand report it appears that apart from commenting on the merits learned Assessing Officer raised an objection for entertaining the fresh evidence under rule 46A. The learned Commissioner (Appeals) after going through the remand report arrived at a conclusion that sufficient opportunities were granted to the assessee and his case does not fall in any of the exception available in sub-rule (1) of rule 46A. In this way learned Commissioner (Appeals) refused to admit the additional evidence and consequently confirmed the additions.

Case Law on Additional Evidence

Shahrukh Khan vs Dy Cit, Special Range 21 [13 SOT 61 (TMUuM)

Decision of Hon'ble Mumbai ITAT

In the present case though from the record it is not discernible whether permission to adduce additional evidence was granted by recording reasons in writing, but impliedly it is discernible that after filing the additional evidence learned Commissioner took step provided in sub-rule (3) so it gives an inference that the additional evidence sought to be produced by the assessee was a relevant material and the learned Commissioner (Appeals) had entertained this additional evidence and only thereafter sent it to the assessing officer under sub-rule (3) for verification. Thus after calling of the remand report on merit as contemplated in sub-rule (3) of rule 46A the learned Commissioner (Appeals) is precluded with his discretion for refusing to admit the additional evidence. He can reject it as not sufficient or not proved but it is to be construed that evidence has been taken on record. Apart from all these things sub-rule (4) of rule 46A provide vast powers to the learned Commissioner (Appeals). He can exercise his discretion for enter any evidence even though the case of the assessee does not fall within the exceptions provided in clauses (a) to (d) of sub-rule (1), the moment learned Commissioner (Appeals) arrive at a conclusion that the evidence sought to be produced by the assessee is essential for the just decision of the appeal or for the substantial cause of justice, it is necessary to call such material on record. In that situation interdiction provided in sub-rules (1) and (2) would not come in its way. In view of the above we are of the opinion that learned Commissioner (Appeals) has wrongly refused to admit the additional evidence produced by the assessee and his order deserves to be set aside.

PPT on Faceless Appeals

Thank You