

Direct Tax Refresher Course

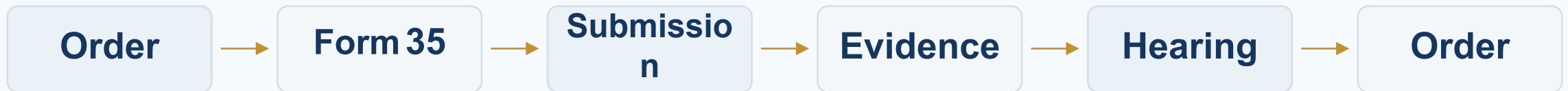
Handling Appeals before First Appellate Authority

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Income-tax Appeals | Form 35 | Drafting | Evidence | Rule 46A | Hearing Strategy

Handling First Appeals before First Appellate Authority

A practical session



Form 35 | Drafting | Evidence | Rule 46A | Faceless Appeals | Hearing Strategy

Learning objectives

- Check appealability, limitation and Form 35 requirements
- Draft better statement of facts and grounds of appeal
- Build evidence-ready written submissions with annexure references
- Handle Rule 46A, remand reports, enhancement risk and VC hearings
- Use issue-wise appeal strategy for common income-tax disputes

Outcome

A repeatable professional workflow for filing, arguing and managing first appeals.

Why the first appeal is critical

- 1 First effective remedy
- 2 Detailed fact-correction stage
- 3 Foundation for ITAT record
- 4 Opportunity to cure procedural prejudice

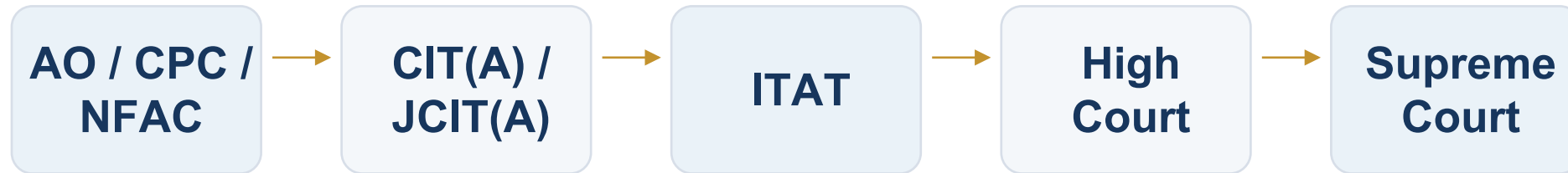
Appeals are won on law, facts and presentation.

The first appellate record often decides how far the matter can travel.

procedural prejudices which include

| Procedural issue | Meaning |
|-----------------------------------|---|
| Not given adequate opportunity | Order passed without sufficient time or hearing |
| Not considered submissions | Replies / documents filed by assessee ignored |
| Not supplied relied-upon material | Addition made on material not provided to assessee |
| Not allowed cross-examination | Third-party statement used without cross-examination |
| Passed non-speaking order | AO did not properly discuss facts, evidence or objections |
| Violated natural justice | Assessment completed unfairly or hurriedly |

Appellate hierarchy



- First appeal is a mixed forum of fact and law.
- Higher forums usually rely heavily on the record built at this stage.
- A clean appeal file improves both relief and future litigation strength.

Appealable orders

| Provision | Coverage | Practical check |
|---------------|---------------------------------|--|
| Section 246A | Orders appealable before CIT(A) | Assessment, reassessment, penalty and specified orders |
| Section 246 | Appeals before JCIT(A) | Verify order category and jurisdiction |
| Before filing | Test appealability | Not every notice or communication is appealable |

- Confirm the section under which order is passed.
- Read demand notice and appellate remedy paragraph.
- Where doubtful, preserve limitation through appropriate filing strategy.

Appeal vs Rectification – Practical Strategy

| Situation | Suggested Course |
|---|---|
| Only apparent calculation / arithmetical mistake | File rectification u/s 154 |
| Additions / disallowances require challenge | File appeal against original order within limitation |
| Both calculation mistake and disputed additions exist | File Form 35 against original order and pursue s.154 separately |
| Rectification order is adverse | File appeal against s.154 order, if appealable |
| Rectification is pending | Do not let appeal limitation expire |

Rectification is not a substitute for appeal. Protect limitation first; pursue s.154 separately for mistakes apparent from record.

Limitation, appeal fee and Form 35

| Item | Professional control point |
|------------|--|
| Limitation | Compute from service of order / demand notice; file early if close to expiry |
| Appeal fee | Verify assessed income / subject matter-based fee |
| Form 35 | Order details, demand, tax paid, grounds, facts and verification |
| Delay | Separate condonation petition with sufficient cause and evidence |
| Record | Download acknowledgement and maintain appeal folder |

Practical caution:

**Do not wait for all documents when limitation is close.
File protectively and supplement submissions later where permissible.**

How to read an assessment order

- First reading: understand order and additions
- Second reading: mark issue-wise AO findings
- Third reading: identify facts, law, evidence ignored and procedural defects

| Issue | Amount | AO reason | Evidence ignored | Relief |
|----------------|----------|--------------------|---------------------------|-------------------|
| Sec. 68 | Rs. ____ | Credit unexplained | Confirmation / bank proof | Delete |
| Expenses | Rs. ____ | Unverifiable | Ledger / invoices | Delete / restrict |
| Classification | Rs. ____ | Capital gains | Books / conduct | Treat as business |

Issue identification matrix

| Addition | Factual issue | Legal issue | Evidence | Prayer |
|----------------------|----------------------|-------------------------|-------------------|-----------------|
| Sec. 68 loan | Creditor details | Burden under section 68 | PAN, ITR, bank | Delete addition |
| Expense disallowance | Business nexus | Section 37 / 145 | Vouchers, bank | Allow expense |
| Reassessment | Notice validity | Sections 147-151 | Reasons, sanction | Quash order |

Convert every addition into a separate appellate workstream.

Statement of facts

| Do | Avoid |
|--|---------------------------|
| Chronological narration | Arguments and allegations |
| Return, notices, replies and order history | Long case-law discussion |
| Documents filed before AO | Emotional language |
| Neutral factual errors | Vague accusations |

The statement of facts is the spine of the appeal.

It should help the authority understand the record without searching the file.

Grounds of appeal

Specific but wide enough to permit arguments

Relief-oriented and linked to the impugned order

Separate legal, factual, jurisdictional and alternative grounds

Use section 250(5) for additional grounds where omission was not wilful or unreasonable

Grounds are not written submissions.

They are the legal challenges to the order.

Ideal Drafting Sequence

| | Type of Ground | Opening Wording |
|---|--|---|
| 1 | Jurisdiction / validity of reopening | Direct Challenge |
| 2 | Natural justice / procedural defect | Direct or supporting jurisdictional ground |
| 3 | Addition on merits | “Without prejudice to the above...” |
| 4 | Alternative computation / telescoping / rate issue | “Without prejudice and in the alternative...” |

Additional grounds

| Use case | Drafting point |
|-----------------------|---|
| Jurisdictional defect | Can often be raised when apparent from record |
| Pure legal ground | Explain why omission was not wilful or unreasonable |
| Computational relief | Frame alternate relief precisely |
| Natural justice | State prejudice caused by omission / order |

1. File a short application with reasons.
2. Do not bury additional grounds inside long submissions.
3. Connect the additional ground to relief sought.

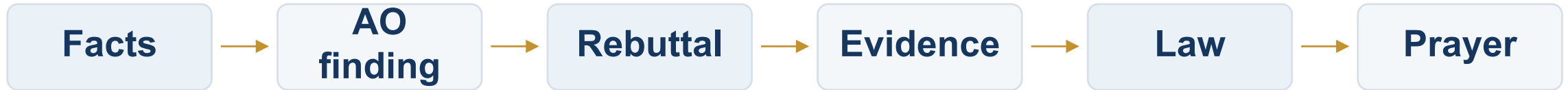
Examples when Additional grounds are to be taken

| Use case | Example |
|----------------------|---|
| Jurisdictional Issue | Appeal against reassessment order. Initially, only addition on merits was challenged. Later, it is noticed that approval under section 151 was not validly obtained before issue of notice under section 148. |
| Pure legal ground | Addition is made under section 68. Later, it is noticed that the addition was made in respect of opening balance brought forward from earlier year. No new evidence is required; the issue is apparent from balance sheet and ledger already on record. |
| Computational relief | Primary claim is that entire addition should be deleted. However, as an alternative, assessee wants telescoping / peak credit / correct rate / correct indexation / lower GP estimation. |
| Natural justice | AO relied on a third-party statement / report but did not supply copy of the material or allow cross-examination. |

Common drafting mistakes

| Mistake | Impact | Correction |
|-----------------------|---------------------------------|------------------------------|
| Vague grounds | Authority cannot identify issue | Draft issue-wise grounds |
| Argumentative facts | Confuses Form 35 record | Keep facts neutral |
| No prayer | Relief unclear | End each issue with prayer |
| No alternative ground | Computational relief lost | Add without-prejudice ground |
| Dumping case law | Weakens focus | Use ratio and application |

Written submission structure



Mirror the grounds of appeal.

Use short paragraphs and page references.

Reply to every adverse observation.

End every issue with a specific prayer.

Replying to AO findings

| AO observation | Assessee reply | Evidence | Legal support |
|-------------------------|---|---------------------------------|---------------------------|
| Unexplained Cash Credit | Identity, creditworthiness and genuineness proved | PAN, ITR, bank, confirmation | Section 68 principles |
| Expenses unverifiable | Books audited; no specific defect | Ledger, invoices, payment proof | Sections 37 / 145 |
| TDS default | Payee offered income / compliance available | TDS challans / Form 26A | Section 40(a)(ia) proviso |

The submission must answer the order, not merely repeat the assessment-stage reply.

Evidence and annexure management

| Annexure | Description | Page | Filed before AO? | Relevance |
|----------|------------------------|-------|------------------|-------------------|
| A-1 | Return and computation | 1-10 | Yes | Base facts |
| A-2 | Ledger / confirmation | 11-28 | Yes / No | Transaction proof |
| A-3 | Bank statements | 29-60 | Yes / No | Money trail |
| A-4 | Case law compilation | 61-75 | N.A. | Legal support |

- Use one indexed PDF bundle where feasible.
- Mention exact page numbers in submissions.
- Preserve upload acknowledgements and screenshots.

Rule 46A additional evidence

| Question | Professional response |
|-------------------------------|---|
| Was evidence filed before AO? | If yes, prove filing and avoid unnecessary Rule 46A issue |
| If not filed, why? | State precise reason and applicable Rule 46A condition |
| Is it relevant? | Explain nexus with ground and prejudice if rejected |
| What next? | Be ready for remand report and rejoinder |

File a separate Rule 46A application. Do not merely upload fresh evidence.

Remand report handling

- Read AO's remand comments line by line.
- Highlight facts accepted by AO.
- Rebut new allegations with evidence and natural justice objection.
- File a structured rejoinder with page references.

| Remand observation | Rejoinder method |
|-------------------------|-------------------------------------|
| Fact accepted | Use as admission |
| Verification incomplete | Submit concise clarification |
| New allegation | Seek opportunity and rebut |
| Adverse inference | Provide evidence and legal response |

Powers of CIT(A) / JCIT(A)

| Power | Practical implication |
|-----------------------|--|
| Confirm | Sustain addition / disallowance |
| Reduce | Partly delete or restrict |
| Enhance | Increase assessed income after opportunity |
| Annul | Cancel invalid assessment |
| Call enquiry / remand | Seek AO comments or factual verification |

Section 251 gives wide powers; strategy must consider relief and exposure.

Enhancement risk

- Appellate authority must give reasonable opportunity before enhancement.
- Do not introduce unsupported factual positions.
- Review alternate claims for unintended tax exposure.
- Keep a defensive note on scope and limitation of enhancement where relevant.

Professional caution

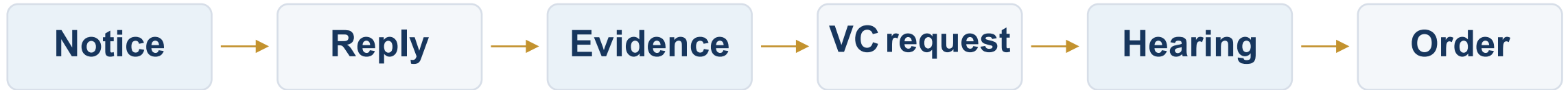
- **A new explanation can sometimes open a new issue.**
- **Examine consequences before filing.**

Enhancement Risk Review:

| Checkpoint | Question to Ask |
|----------------------|---|
| Factual exposure | Are we opening any weak facts? |
| Documentary weakness | Are vouchers / confirmations / agreements complete? |
| Alternate claim | Can the alternate claim increase tax exposure? |
| New evidence | Will additional evidence invite wider scrutiny? |
| Pending years | Will admission in this appeal affect other years? |

Appeal strategy should balance relief with exposure.

Faceless appeal proceedings



- Monitor e-proceedings and compliance dates.
- Use searchable, paginated PDFs with clear file names.
- Request VC in high-pitched, factual or complex matters.
- Download every acknowledgement.

Personal hearing / VC strategy

| Before | During | After |
|------------------------------|-------------------------------|---------------------------|
| One-page issue note | Lead with strongest point | File short note if needed |
| Page reference list | Do not read entire submission | Clarify oral submissions |
| Computation and relief chart | Guide to annexures | Preserve record |

Hearing is for persuasion and clarification, not repetition.

Appeals involving section 68

| Test | Evidence |
|------------------|--|
| Identity | PAN, address, confirmation, ROC/KYC |
| Creditworthiness | ITR, financials, capital account, bank balance |
| Genuineness | Bank trail, agreement, repayment, interest/TDS |
| AO objection | Creditor-wise rebuttal table |

- **Do not file confirmations alone.**
- **Establish the complete transaction trail.**

Business income vs capital gains

- Intention at acquisition
- Treatment in books of account
- Frequency and pattern of sales
- Development or improvement activity
- Past accepted treatment and conduct

**Build the story from documents:
purchase intention, accounting
treatment, approvals,
development activity, sales
pattern and consistency.**

Expense disallowance appeals

| Defence line | Evidence |
|---------------------|--|
| Business nexus | Purpose note, employee/project details |
| Voucher support | Bills, invoices, approvals |
| Payment proof | Bank statement, ledger, receipt |
| No defect in books | Audit report, books, reconciliation |
| Ad hoc disallowance | Absence of specific adverse finding |

Appeals where AO Rejects Books and Estimates Income

| Defence line | Evidence |
|-------------------------------------|---|
| Books rejected under section 145(3) | Challenge whether specific defects are recorded |
| GP / NP estimated | Compare past history, industry margins and accepted results |
| Purchases / sales doubted | File quantitative records, stock register, delivery proof and payment trail |
| Audited books ignored | Emphasize tax audit, ledger consistency and absence of material defects |
| Best judgment assessment | Argue that estimation must be fair, reasonable and evidence-based |

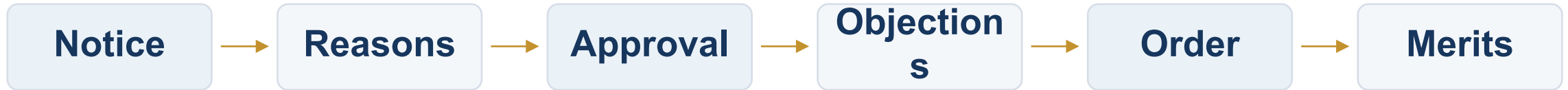
There must be dissatisfaction about the correctness or completeness of accounts

Once books are rejected, the dispute does not end. The next question is whether the rejection is valid, and even if valid, whether the income estimated by the AO is reasonable, comparable and supported by material.

Penalty appeals

- Assessment addition is not automatic penalty.
- Analyze disclosure, explanation and bona fides.
- Distinguish concealment from debatable claim or estimate.
- For legacy cases, examine section 271(1)(c) satisfaction and notice.
- For current cases, examine section 270A under-reporting / misreporting conditions.

Reassessment appeals



- Argue jurisdiction and merits separately.
- Check limitation, sanction and tangible material.
- Preserve natural justice objections.
- Do not ignore merits even if jurisdictional ground is strong.

Case law strategy

| Principle | Practice |
|-------------|---|
| Hierarchy | Supreme Court and jurisdictional High Court first |
| Relevance | Use cases with factual similarity |
| Ratio | Quote the principle, not long extracts |
| Application | Explain why the case applies to the facts |
| Number | Use few strong authorities rather than many weak ones |

Pre-filing and pre-hearing checklists

| Pre-filing | Pre-hearing |
|---------------------------------|--------------------------------|
| Limitation and appealability | One-page issue note |
| Order, demand and Form 35 | Submission copy and page refs |
| Facts, grounds and fee | Evidence index and computation |
| Condonation, if delayed | Case law list and relief chart |
| Attachments and acknowledgement | Post-hearing note plan |

10-point appeal handling model

- 1 Read order fully
- 2 Check limitation
- 3 Map issues
- 4 Draft facts
- 5 Draft grounds
- 6 Index evidence
- 7 Prepare submissions
- 8 Handle Rule 46A / remand
- 9 Attend hearing
- 10 Follow up order

Do not merely file an appeal; build an appellate record.

Thank you! Questions?

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