The assessee is given a right of appeal by the Act where he feels aggrieved by the order of the assessing authority. However, the assessee has no inherent right of appeal unless the statute specifically provides that a particular order is appealable. There are four stages of appeal under the Income-tax Act, 1961 as shown hereunder –

Assessment Order
↓
First Appeal
Commissioner (Appeals)
↓
Second Appeal
Appellate Tribunal
↓
Third Appeal
High Court
↓
Final Appeal
Supreme Court

24.1 Appealable Orders before Commissioner (Appeals) [Section 246A]

24.1.1 An assessee or any deductor aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against such orders under section 246A -

(a) an order passed by a Joint Commissioner under section 115VP(3)(ii) or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under section 143(1)/(1B) or section 200A(1), where the assessee or the deductor objects to the making of adjustments, or any order of assessment under section 143(3) (except an order passed in pursuance of the directions of Dispute Resolution Panel) 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, reassessment or recomputation under section 147 (except an order passed in pursuance of the directions of Dispute Resolution Panel) or section 150;

(c) an order of assessment or reassessment under section 153A, except an order passed in pursuance of the directions of the Dispute Resolution Panel;
(d) 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;

(e) an order of assessment or reassessment passed by the Assessing Officer under section 92CD(3) in accordance with the Advance Pricing Agreement pursuant to a modified return filed in accordance with section 92CD(1);

(f) an order made under section 163 treating the assessee as the agent of a non-resident;

(g) an order made under section 170(2)/(3);

(h) an order made under section 171;

(i) an order made under section 201;

(j) an order made under section 206C(6A) [Right of appeal by a person deemed to be an assessee in default for failure to collect or pay tax];

(k) an order made under section 237;

(l) an order imposing a penalty under

(i) Section 221; or

(ii) Section 271, section 271A, section 271AA, section 271AAA, section 271AAB, section 271F, section 271FB or section 272BB;

(m) an order of assessment made by an Assessing Officer under section 158BC(c), in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1st January, 1997;

(n) an order imposing penalty under section 271B or section 271BB;

(o) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, section 271D, or section 271E;

(p) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;

(q) an order made by a Deputy Commissioner imposing a penalty under section 272AA;

(r) an order imposing or enhancing penalty under section 275(1A);

(s) an order imposing a penalty under Chapter XIX;

(t) 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 class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

It is also provided that the aforesaid provision will apply to all orders whether made before or after the appointed date which has been defined in the section as “the day appointed by the Central Government by notification in the Official Gazette.”

It is further provided that every appeal which is pending before the appointed day before the Deputy Commissioner (Appeals) 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 in which it was on that day.

It is also provided that an appellant may demand that before proceeding further with the appeal and the matter, the previous proceedings or any part thereof be re-opened or the appellant be re-heard.

**24.1.2 Appeal by person denying liability to deduct tax under section 195 [Section 248]:** This section provides that where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

This section restricts the eligibility of filing an appeal only to cases where the tax is borne by the assessee. Therefore, the cases where the tax is to be borne by the non-resident is outside the scope of section 248 and no appeal can be filed in such cases.

**24.1.3 Form of appeal and prescribed fees [Section 249(1)]:** Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

**Prescribed fees** - In case of an appeal made to the Commissioner (Appeals), irrespective of the date of initiation of the assessment proceedings, the appeal shall be accompanied by a fee of:

1. **(i) where the total income of the assessee as computed by the Assessing Officer is ₹ 1,00,000 or less**
   - ₹ 250

2. **(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

3. **(iii) where the total income of the assessee computed as above is more than ₹ 2,00,000**
   - ₹ 1,000

4. **(iv) in any case other than (i), (ii) and (iii) above**
   - ₹ 250

**24.1.4 Time limit [Section 249(2) & (3)]:** An appeal to the Commissioner (Appeals) against any order which is appealable is to be presented within 30 days from the dates specified below in the particular cases. However, the Commissioner (Appeals) may admit an appeal even after the expiry of the said period of thirty days, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the specified time. The dates from which the limitation period of 30 days has to be reckoned are as follows:

<table>
<thead>
<tr>
<th>Appeal relating to</th>
<th>30 days to be reckoned from</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Section 248</td>
<td>Date of payment of tax</td>
</tr>
<tr>
<td>2. Assessment/penalty</td>
<td>Date of service of notice of demand</td>
</tr>
<tr>
<td>3. Any other case</td>
<td>Date on which intimation of the order sought to be appealed against is served.</td>
</tr>
</tbody>
</table>
24.1.5 Exemption in respect of tax to be paid at the time of filing the appeal [Section 249(4)]: No appeal to the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal, the assessee has paid the tax on the amount of income returned by him in cases where a return has been filed by the assessee. If, however, no return has been filed by the assessee and an assessment has been made on him by the Assessing Officer, then the assessee must pay an amount equal to the amount of advance tax which was payable by him before filing the appeal. The Commissioner (Appeals) is, however, empowered for good and sufficient reasons to be recorded in writing, to exempt an appellant from the operation of the requirement in regard to payment of advance tax, on receipt of an application from the appellant made specifically for this purpose, giving the reasons for the non-payment of the tax. The concerned authority is also required to pass an order in writing while granting the exemption indicating also the reasons on account of which the exemption is granted to the assessee.

24.1.6 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), 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 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.

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 the 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 sub-section (1) of section 246A.

24.1.7 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 the assessment order in respect of which the proceeding before the Settlement Commission abates under section 245HA, to confirm, reduce, enhance or annul the assessment after taking into consideration the following -

(1) all the material and other information produced by the assessee before the Settlement Commission;

(2) the results of the inquiry held by the Settlement Commission;
(3) the evidence recorded by the Settlement Commission in the course of the proceeding before it; and

(4) such other material as may be brought on his record.

(iii) 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.

(iv) 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.

24.2 Appeals to the Appellate Tribunal [Sections 252 to 255]

24.2.1 Constitution - The Central Government shall constitute an Appellate Tribunal consisting of judicial and accountant members to exercise the powers and discharge the functions conferred on the Tribunal by the Act.

Judicial Member - qualification

1. Must have held at least for 10 years a judicial office in the territory of India; or

2. Must have been a member of the Indian Legal Service in Grade II or any equivalent or higher post for at least three years; or

3. Must have been an advocate for at least 10 years.

Accountant Member - qualification

1. Minimum 10 years in the practice of accountancy as a Chartered Accountant; or

2. Must have been a member of the Indian Income-tax Service, Group A and must have held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

The Central Government shall appoint –

(i) a person who is a sitting or retired Judge of a High Court and who has completed not less than 7 years of service as a Judge in a High Court; or

(ii) the Senior Vice-President or one of the Vice Presidents of the Appellate Tribunal to be the President thereof.

The Government may appoint one or more members of the Tribunal to be the Vice-President or Vice-Presidents thereof. The Central Government may appoint one of the Vice-Presidents to be the Senior Vice-President. 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 in writing.
### 24.2.2 Orders appealable before the Appellate Tribunal [Section 253]:

Section 253(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

<table>
<thead>
<tr>
<th>Order passed by</th>
<th>Section</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assessing Officer</td>
<td>115VZC(1)</td>
<td>Power of Assessing Officer to exclude a tonnage tax company from the tonnage tax scheme if such company is a party to any transaction or arrangement which amounts to an abuse of such scheme.</td>
</tr>
<tr>
<td></td>
<td>143(3)/147/153A/153C</td>
<td>An order of assessment passed by an Assessing Officer in pursuance of the directions of Dispute Resolution Panel or an order passed under section 154 in respect of such order</td>
</tr>
<tr>
<td>2. Commissioner (Appeals)</td>
<td>154</td>
<td>Order rectifying a mistake</td>
</tr>
<tr>
<td></td>
<td>250</td>
<td>Order of the Commissioner (Appeals) disposing of the appeal</td>
</tr>
<tr>
<td></td>
<td>271</td>
<td>Order imposing penalty for failure to furnish return, comply with notices, concealment of income etc.</td>
</tr>
<tr>
<td></td>
<td>271A</td>
<td>Order imposing penalty for failure to keep, maintain or retain books of account, documents etc.</td>
</tr>
<tr>
<td>3. Commissioner</td>
<td>12AA</td>
<td>Order refusing/canceling registration of trust or institution</td>
</tr>
<tr>
<td></td>
<td>80G(5)(vi)</td>
<td>Refusal to grant approval to the Institutions or Fund</td>
</tr>
<tr>
<td></td>
<td>263</td>
<td>Revision of erroneous order passed by Assessing Officer</td>
</tr>
<tr>
<td></td>
<td>271</td>
<td>Order imposing penalty for failure to furnish return, comply with notices, concealment of income etc.</td>
</tr>
<tr>
<td></td>
<td>272A</td>
<td>Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.</td>
</tr>
<tr>
<td>4. Chief Commissioner or Director General or Director</td>
<td>272A</td>
<td>Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.</td>
</tr>
</tbody>
</table>

Section 253(2) provides that the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.
24.2.3 Time limit for filing appeal or memorandum of cross objection under section 253(1) & (2) [Section 253(3) & (4)]: An assessee can appeal to the Appellate Tribunal. The Commissioner, if he objects to any order passed by a Commissioner (Appeals) under section 154 or 250 may direct the Assessing Officer to file an appeal to the Tribunal. Every appeal to the Appellate Tribunal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Commissioner, as the case may be.

The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of Commissioner (Appeals) has been preferred under section 253(1) & (2), by the other party, may file a memorandum of cross-objections, verified in the prescribed manner, against such order or any part of such order within 30 days of receipt of such notice. Such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the specified time period.

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.

24.2.4 Income-tax authorities authorized to file an appeal to Income-tax Appellate Tribunal against the order passed in pursuance of the directions of the Dispute Resolution Panel [Sections 253 & 254]

(i) As per section 144C(8), the DRP has the power to confirm, reduce or enhance the variation proposed in the draft order. Under section 144C(10), the directions given by the Dispute Resolution Panel (DRP) are binding on the Assessing Officer. The taxpayer has been given a right to appeal directly to the Income-tax Appellate Tribunal (ITAT) against the order passed by the Assessing Officer in pursuance of the directions of the DRP.

(ii) By virtue of the provisions of section 253(2A), the Department is also vested with the right to file an appeal against the directions given by the DRP. Section 253(2A) provides that:

(1) in case the Assessing Officer passes any order completing the assessment or reassessment in pursuance of the direction issued by the DRP under section 144C(5), in respect of any objection filed by the assessee under section 144C(2) on or after 1st July, 2012, and

(2) the Commissioner objects to such direction issued by the DRP, then the Commissioner may direct the Assessing Officer to file an appeal to the Appellate Tribunal against the order.

(iii) Every appeal under sub-section (2A) shall be filed within 60 days of the date on which the order sought to be appealed against is passed by the Assessing Officer in pursuance of the directions of the DRP under section 144C(5).

(iv) Further, the Assessing Officer or the assessee, as the case may be, on receipt of a notice that an appeal has been filed against the order passed in pursuance of the directions of the DRP under this section by the other party, may file a memorandum of cross-objections, against such order or any part of such order of the Assessing Officer within 30 days of receipt of such notice. This is irrespective of the Assessing Officer or
the assessee, as the case may be, not having filed an appeal against such order or any part thereof.

Such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the specified time period.

(v) In respect of every appeal filed under section 253(2A), the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of 4 years from the end of the financial year in which such appeal is filed. [Section 254(2A)]

### 24.2.5 Fees

1. 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
2. Where the total income exceeds ₹ 1,00,000 but is not more than ₹ 2,00,000: ₹ 1,500.
3. Where the total income is more than ₹ 2,00,000: 1% of the assessed income subject to a maximum of ₹ 10,000.
4. A fee of ₹ 500 will be payable in any case other than those mentioned in (1) to (3) above.
5. No fee need be paid by a Commissioner or in the case of filing of memorandum of cross-objections.
6. An application for stay of demand shall be accompanied by a fee of ₹ 500.

The Appellate Tribunal may, after giving both the parties to the appeal a reasonable opportunity of being heard, pass such orders on any appeal as it thinks fit. Such orders passed by the Appellate Tribunal shall be final unless appeal is made to the High Court under section 260A up to the date when the National Tax Tribunal is constituted. Thereafter, such orders passed by the Appellate Tribunal shall be final unless appeal is made to the National Tax Tribunal (NTT) under section 15 of the National Tax Tribunal Act, 2005.

### 24.2.6 Rectification

The Appellate Tribunal may, at any time within 4 years from the date of the order, with a view to rectifying any mistake apparent from records, amend any order passed by it. However, if the mistake is brought to its notice by the assessee or the Assessing Officer, the Tribunal is bound to rectify the same. In cases where the amendment has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee, the Tribunal shall not pass any order of amendment unless it has given notice to the assessee of its intention to do so and has allowed him a reasonable opportunity of being heard. The Tribunal must send a copy of any orders passed by it to the assessee and to the Commissioner.

### 24.2.7 Fees for rectification

Any application for rectification filed by the assessee on or after 1-10-1998 shall be accompanied by a fee of ₹ 50.

### 24.2.8 Time limit

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)/(2)/(2A) of section 253 [Sub-section (2A)].

Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay. If the appeal is not disposed
of within 180 days, the stay order shall stand vacated after the expiry of the said period.

Where an order of stay has been passed and the appeal has not been disposed of within the specified period of 180 days from the date of such order, the Appellate Tribunal may extend the period of stay or pass an order of stay for a further period or periods, as it thinks fit, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee.

However, the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

24.2.9 Cost of appeal: The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal [Sub-section (2B)].

24.2.10 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 [Section 255].

24.2.11 Benches: The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of Tribunal from amongst the members thereof. Ordinarily, a Bench shall consist of one judicial member and one accountant member. However, 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 Assessing Officer in the case does not exceed ₹ 5,00,000. The President may, for the disposal of any particular case constitute a special Bench consisting of three or more members, one of whom must necessarily be a judicial member and one an accountant member.

Where members differ - If the member 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 should state the points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point by one or more of the other members of the Tribunal: then, such points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

Regulating power - The Appellate Tribunal is empowered to regulate its own procedure and the procedure of its Benches in all matters arising out of the exercise of its power of the discharge of its functions, including the places at which the Benches shall hold their sittings. The Tribunal is vested with all the powers which are exercisable by Income-tax authorities under section 131 for the purpose of discharging its functions. Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding for the purpose of the Income-tax Act and the Indian Penal Code and that Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of the Income-tax Act, 1961 and the Code of Criminal Procedure, 1898.
24.3 Effect to the Decision of Supreme Court and of the NTT [Section 260]

(i) Sub-section (1) provides that the Supreme Court upon hearing any reference made to it by the Appellate Tribunal under section 257 shall decide the question of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

[Note - Section 257 provides for direct reference by the Appellate Tribunal to the Supreme Court against an application made by the assessee or the Commissioner under section 256 for reference to the High Court, where there is a conflict in the decisions of the High Courts in respect of any particular question of law. It may be noted that an application under section 256 can be made only against order passed by the Appellate Tribunal before 1.10.98]

(ii) A copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal.

(iii) The Appellate Tribunal shall pass such orders as are necessary to dispose of the case conforming to such judgment.

(iv) Sub-section (2) provides that where the National Tax Tribunal delivers a judgment in an appeal filed before it or in any matter transferred to it under the National Tax Tribunal Act, 2005, effect shall be given to the order of that Tribunal by the Assessing Officer on the basis of a certified copy of the judgment.

(v) Sub-section (3) provides that the cost of any reference to the Supreme Court (which shall not include the fee for making the reference) shall be at the discretion of the Court.

Note – This section would come into force only from the date on which the National Tax Tribunal is constituted [See Note at the end of the chapter].

24.4 Appeal to High Court [Section 260A]

Section 260A provides for direct appeal to the High Court against the orders of the Appellate Tribunal.

(i) Appeal - Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal up to the date of establishment of the NTT, 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. After the establishment of the NTT, the appeal shall lie to the NTT.

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 under this section.

(ii) 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.

(iii) 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 Chief 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.

(iv) **Matters on which appeal can be heard** - The appeal shall be heard only on the question formulated. However, the respondent shall at the hearing of appeal, be allowed to argue that the case does not involve such question. Further, the Court shall also have power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. However, such power shall be exercised by the Court only after recording the reasons for hearing such other question.

Further, 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 section 260A(1).

(v) **Delivery of judgment** - After the appeal is heard, the High Court shall decide the question of law so formulated and deliver such judgment thereon, but such judgment should contain the grounds on which such decision is founded.

(vi) **Award of costs** - The High Court is empowered to award such costs as it deems fit.

(vii) **Code of Civil Procedure** - Unless otherwise provided in this Act, the Code of Civil Procedure, 1908, relating to appeals to the High Court, shall apply to appeals under this section.

(viii) **Case before High Court to be heard by not less than two judges [Section 260B]**

**Strength of the bench hearing the appeal** - The appeal shall be heard by a bench of not less than 2 judges of the High Court.

**Decision of the majority** - The appeal shall be decided in accordance with the opinion of the judges or the majority, if any.

Where there is no such majority, the point of law upon which the judges differ shall be referred to 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.

24.5 **Appeal to the Supreme Court [Section 261]**

According to section 261, an appeal shall lie to the Supreme Court from any judgment of the High Court **delivered before the establishment of the NTT**, in a case which the High Court certifies to be a fit one for appeal to the Supreme Court. **Thereafter, an appeal shall lie to the Supreme Court from any judgment of the NTT as per the provisions of the National Tax Tribunal Act, 2005**: The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of all appeals to the Supreme Court in the same manner as in the case of all appeals from decrees of a High Court. The cost of appeal shall be decided at the discretion of the Supreme Court. Where the judgment of a High Court is varied in the appeal, effect should be given to the order of the Supreme Court in the same manner as provided in the case of a judgment of the High Court.
24.6 Provision for avoiding repetitive appeals [Section 158A]

(1) Section 158A makes provision for avoiding repetitive appeals when identical question of law is pending before High Court or Supreme Court. This is applicable to a situation where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court on an appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court. In such a situation, notwithstanding anything contained in the Act, the assessee may furnish a declaration in Form No. 8 that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the present case, the final decision passed on the other case, the assessee shall not raise again the same question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.

(2) Where such a declaration is furnished by the assessee to an appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim. Where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard, it shall allow him such opportunity.

(3) The Assessing Officer or the appellate authority, as the case may be, may, by order in writing:
   (i) admit the claim if satisfied that the question of law is identical in the present as well as the other case; or
   (ii) reject the claim, if not so satisfied.

(4) Where a claim is admitted, -
   (i) the Assessing Officer or appellate authority, as the case may be, may make an order disposing of the present case without waiting for the final decision on the other case.
   (ii) the assessee shall then not be entitled to raise in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

(5) When the final decision on the question of law is passed in the other case, the Assessing Officer or the appellate authority, as the case may be shall apply it to the present case and amend the order passed, if necessary, in order to conform to such decision.

(6) An order under sub-section (3) above admitting or rejecting the claim of the assessee, as the case may be, shall be final and cannot be called in question in any proceeding by way of appeal, reference, revision under the Act.

(7) For the purposes of this section –
   (i) “Appellate authority” means the Deputy Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal.
   (ii) “Case” means any proceeding under the Act for assessment of the total income of the assessee or for the imposition of any penalty or fine on him.
24.7 Revision by the Commissioner [Sections 263 and 264]

24.7.1 Revision of Orders prejudicial to the Revenue [Section 263]

(i) The Commissioner may call for and examine the record of any proceeding under the Act. If he considers that any order passed by the 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 may be necessary, pass a suitable order.

(ii) He can enhance, modify or cancel an assessment. He can also direct that a fresh assessment should be made.

(iii) The term ‘record’ shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Commissioner.

(iv) Where any order referred to in section 263(1) passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(v) No order shall be made after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.

(vi) In computing the period of 2 years, the time taken in giving an opportunity to the assessee to be reheard under section 129 and any period during which the revision proceeding is stayed by an order or injunction of any court shall be excluded.

(vii) The time limit, however, does not apply in case where the Commissioner has to give effect to a finding or direction contained in the order of the Appellate Tribunal, High Court or the Supreme Court.

24.7.2 Revision of other orders [Section 264]: In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority including the Deputy Commissioner (Appeals) the Commissioner may either on his own motion or on receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed. After making such enquiries as may be necessary the Commissioner may pass such order as he thinks fit. The Commissioner is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised. If the application for revision is made by the assessee, it 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 comes to know of it, whichever is later. However, the Commissioner may admit an application even after the expiry of one year, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period. The application to the Commissioner for revision must be accompanied by a fee of ₹500. If an order is passed by the Commissioner declining to interfere in any proceeding, it shall not be deemed to be an order prejudicial to the assessee.
However, the Commissioner is not empowered to revise any order in the following cases, viz.,

(i) where an appeal against the order lies to the Commissioner (Appeals) or the Tribunal but has not been made and the time within which the appeal may be made has not expired or in the case of an appeal to the Tribunal the assessee has not waived his right of appeal;

(ii) where the order is pending on an appeal before the Deputy Commissioner (Appeals);

(iii) where the order has been made subject to an appeal to the Commissioner (Appeals) or the Appellate Tribunal.

24.7.3 Limitation of time for revision of orders by Commissioner of Income-tax under section 264: Under section 264, the Commissioner of Income-tax is empowered to revise an order passed by the subordinate authority where no appeal has been filed. There is a limitation of one year for filing the application.

(a) It shall be obligatory on the Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision.

(b) In computing the above referred period of limitation, 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 [Explanation to section 264(6)].

(c) The aforesaid time limit shall not apply to any 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, NTT, High Court or the Supreme Court.

The assessee is bound to pay the tax due from him in accordance with the assessment made on him irrespective of the fact that a reference to the High Court or an appeal to the Supreme Court has been made to him [Section 265]. The High Court may, on a petition made to it for the execution of the order to the Supreme Court in respect of any costs awarded, thereby transmit the order for execution to any Court subordinate to it [Section 266]. Where as a result of an appeal under section 246 or section 246A 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 Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorizing 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 [Section 267].

Section 268 - In computing the period of limitation prescribed for an appeal 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, should be excluded.
24.7.4 Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit [Section 268A]

(i) As per section 268A(1), the CBDT is empowered to issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is for the purpose of regulating filing of appeal or application for reference by any income tax authority.

(ii) Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –

1. the same assessee for any other assessment year; or
2. any other assessee for the same or any other assessment year.

(iii) Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(iv) The Appellate Tribunal or Court should take into consideration the above mentioned orders/instructions/directions of the CBDT and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(v) Every order/instruction/direction which has been issued by the CBDT fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and all the provisions of this section shall apply accordingly.

24.8 Doctrine of Partial Merger and Doctrine of Total Merger

The second proviso in section 147, provides that the doctrine of partial merger shall apply to reopening in a case where an assessee has filed an appeal etc. for an assessment year. It has been provided that the Assessing Officer may assess or reassess such income, other than income which has been the subject matter of any appeal or reference or revision, which is chargeable to tax and has escaped assessment. The doctrine of partial merger also holds good for section 154 and section 263.

However, the concept of total merger would apply in the case of section 264. The Commissioner of Income-tax has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Tribunal, even if the relief claimed in the revision is different from the relief claimed in the appeal and irrespective of the fact whether the appeal is by the assessee or by the Department as the concept of total/complete merger is applicable for section 264.

Note: National Tax Tribunal (NTT) means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005. The National Tax Tribunal Act, 2005 has been enacted by the Parliament in pursuance of Article 323B of the Constitution. It came into force with effect from December 28th, 2005. The notified date of establishment of the National Tax Tribunal by the Central Government is 6th January, 2006.
The objective behind the enactment of the National Tax Tribunal Act, 2005 is to modify the present system of appeals under the Income-tax Act, 1961 by substituting the National Tax Tribunal for the High Court, for facilitating quick adjudication of disputes under direct and indirect tax laws and achieve uniformity in the interpretation of central legislation.

This Act provides that, on establishment of the National Tax Tribunal, High Courts will not have appellate jurisdiction in matters of direct and indirect taxes. This Act vests jurisdiction in NTT to decide direct and indirect tax disputes on appeal from the decision of the respective Appellate Tribunals. Appeal to NTT can be filed both by the assessee and the revenue, from an order passed by the ITAT or CESTAT, on a substantial question of law. Appeal to NTT will lie only if the NTT is satisfied that the case involves a substantial question of law. The NTT shall formulate the substantial question of law for the purpose of hearing of appeal by it.

A party to an appeal, other than the Government, may either appear in person or authorize one or more chartered accountants or legal practitioners or any person duly authorized by him or it to present the case before the NTT. The Government may authorize one or more legal practitioners or any of its officers to present its case before the NTT. It may be noted that the Act does not permit chartered accountants to present the case of the Government before the NTT.

The Act provides that any person, including any department of the Government, aggrieved by any decision or order of NTT may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the NTT to him. The Supreme Court can allow filing of the appeal beyond 60 days, if the appellant was prevented by sufficient cause from filing the appeal within the said period of 60 days.

However, the Bombay High Court, in P.C. Joshi vs. Union of India (2006) 152 Taxman 285, has passed an ad-interim order restraining the Government from constituting the NTT and transferring the matters pending in the High Court to the NTT. Therefore, the constitution of the NTT will take effect only after the stay is vacated.