

Practical Guide- Drafting and Filing of Appeals



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Process of filing of appeal:

- o Vide Income Tax (Third Amendment) Rules, 2016; existing Rule 45 was substituted to provide for filing of appeal to CIT(A) in e-filing mode in New Form 35.
- As per the amended R. 45, new form no. 35 is to be furnished in following manner:
 - (a) in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12,—
 - (i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
 - (ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);
 - (b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub- rule(2) or in paper form.

Process of filing of appeal:

- o Statement of facts must not exceed 1000 words
- o Grounds of appeal must not exceed 100 words per ground.
- o However, one can upload separate scanned pdf file containing statement of facts and grounds of appeal.
- o Do not use special characters like ('-', '/', '@', '&' etc.)
- o Overall attachment size should not exceed 50 MB and the same must be zip/pdf format.
- o DSC of the person authorised to verify is must when the return is digitally filed.
- o Copies of assessment order, demand notice to be attached in scanned pdf format.
- o Details of challan for appeal fees paid should be correctly filled. (eg. BSR Code, Date of payment, SI No., amount etc.)

Process of filing of appeal:

- o Form 35 is to be filed through the e-filing website namely 'incometaxindiaefiling.gov.in'
- o The form to be verified by a person authorised to verify the return of income u/s. 140 of the Act, as applicable to the assessee
- o The form is verified using Electronic Verification Code (EVC) which identifies the verifier of the form.
- o EVC is generated on the e-filing website. Where the verifier represents any entity (i.e. AOP/HUF/Firm etc.) then the verifier should be registered in the e-filing website as a Principle Contact of the entity.
- o EVC generated is unique to specific PAN or TAN and not valid for other PAN/TAN. One EVC is used to verify only one form pertaining at a time, irrespective of the assessment year.
- o The verifier may use more than one mode to generate EVC and can generate EVC multiple times.

Online filing appeal:

- o List of documentary evidences relied upon by the assessee is to be mentioned in form 35.
- o If any evidence other than evidence submitted to the AO is relied upon, then ensure that the additional documentary evidence is listed in the Form 35 and if possible upload while filing appeal.
- o Prepare PDF copies of the Assessment order and the Notice of demand which is duly attested
- o In the new Form 35, it is required to cite the relevant Section(s) under which the addition/ disallowance has been made.
- o Ensure active Email Address & Mobile no. is entered in Form 35.
- o Have to make a choice for correspondence i.e. through email or physical.

Additional Evidences:

- o Now the online form 35 requires to mention reliance on any additional evidences.
- o Specify if any evidences while filing form itself.
- o Mention the same in SOF as well as why the same could not be submitted.
- o Make a prayer to allow additional evidences in GOA
- o Keep application under Rule 46A ready while filing the appeal itself.
- o The Commissioner (Appeals) has a discretionary power to admit fresh or additional evidence subject to conditions in Rule 46A i.e. a) The AO has refused to admit evidence which ought to have been admitted. b)The assessee was prevented by sufficient cause from submitting the evidence in the assessment proceedings. c) The AO has made assessment order without giving sufficient opportunity to the assessee.

Who can sign the appeal:

Assessee	To be signed by
Individual	Himself
HUF	Karta and in his absence from India , by any other adult member of the family
Firm	Managing Partner, in the alternative, Partner
Local Authority	Principal officer
Association of Person	Member of the Association or the Principal Officer
Company	Managing Director, director or any other person as prescribed.
Any other person	The person or person competent on his behalf.

Basics and Check list before drafting:

- o Drafting of appeals is an Art.
- o Check whether appeal lies or not
- o Do not file frivolous appeals
- o Carefully study the appealable orders and find anomalies and differences from facts.
- o Ascertain the authority before whom appeal lies.
- o Ascertain the limitation period within which appeal is to be filed.
- o Check computation of income and tax and interest computation thereof.
- o Hairsplit which errors are to be appealed and which errors are required to be rectified.

Essentials while drafting:

- o Appeal against penalty can be filed even if appeal not filed against the assessment order.
- o Ensure whether authority passing the order had jurisdiction to file the order
- o Ensure whether assessment/appeal order was passed within limitation period.
- o Note that whether if any claim had remained to be raised fresh plea can be raised
- o Ensure that fees for appeal is paid under the appropriate head and sub head.
- o Certified copy of challan evidencing payment of appeal to be filed.

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Some types of grounds:

- o Technical grounds
- o Challenging jurisdiction grounds.
- o Natural Justice grounds
- o Legal grounds based on merits of the case.
- o Alternate grounds/Without Prejudice grounds.
- o Consequential Grounds.
- o Additional grounds (section 250(5))

Points to be taken care in drafting grounds:

- o Grounds should be precise, concise, simple and without any ambiguity.
- o Should be wide and not restrictive.
- o Should not be argumentative
- o Avoid multiple grounds for single issue unless every ground is distinct.
- o Always add prayer at the end with specific requests.
- o Last ground should be to grant leave to add, amend, withdraw any ground.
- o Never add decisions to grounds unless absolutely essential
- o Use of clear and simple language and avoid jargons.
- o Nature of dispute and relief expected should be highlighted.

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Points to be taken care in drafting grounds:

- o Expected relief should be clearly mentioned.
- o In case of more than one issues involved, preference of grounds should be decided.
- o Avoid using long sentences.
- o In case of opportunity of being heard not granted, the same should be clearly taken in grounds
- o Decide order in which grounds should appear.
- o All grounds needs to be adjudicated in the order so ensure that the grounds are not repetitive or too many.
- o Read order carefully to take hidden grounds.

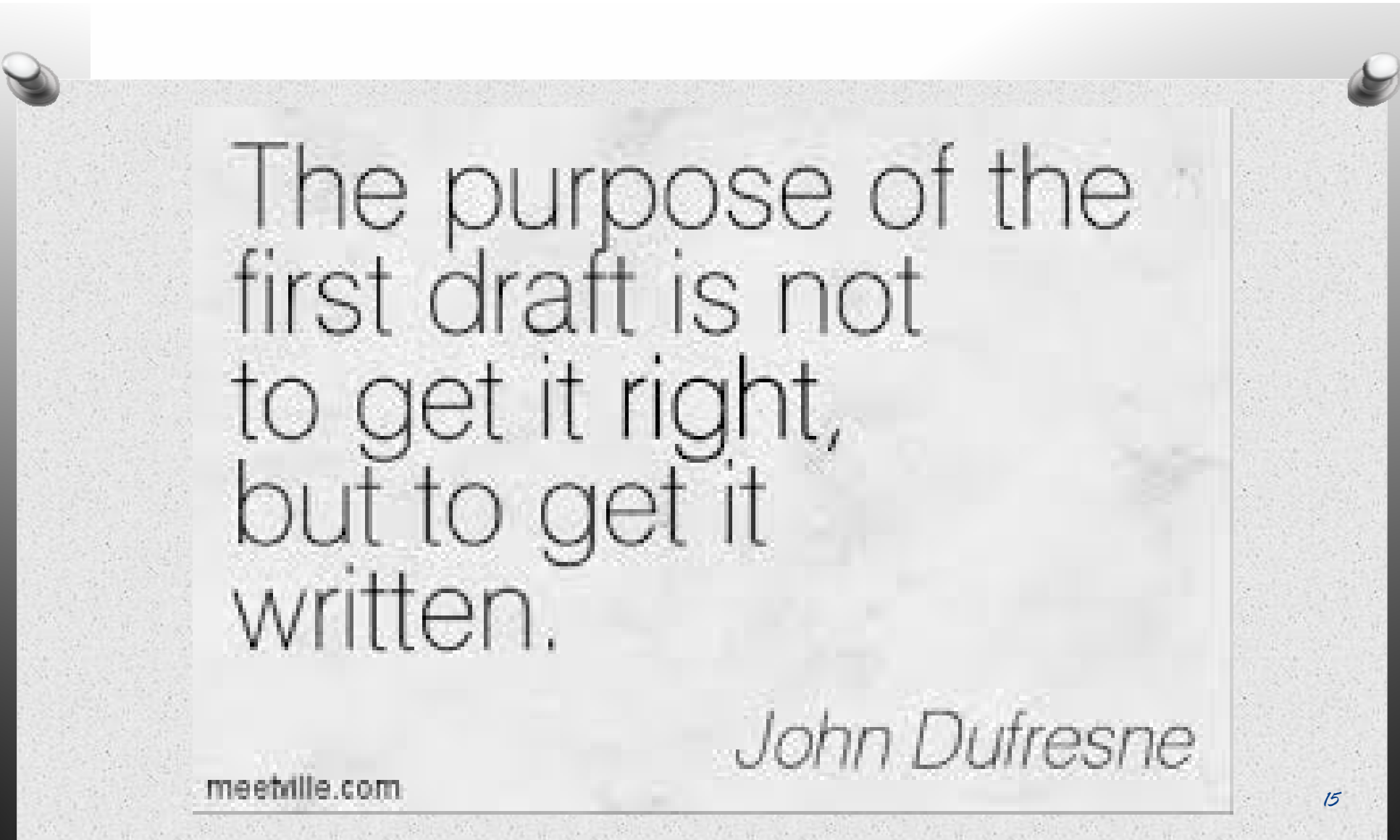
Points to be taken care in drafting statement of facts (SOF):

- o SOF should be descriptive and detailed.
- o Should not be argumentative
- o Ensure to add only those facts which are disclosed in the assessment proceedings.
- o SOF should be just facts and not be turned in submissions.
- o Add every minute details and facts with dates and sequence of how it happened in earlier proceedings.
- o Basic details should be always given like ROI filed date, returned income ,heads of income , about the assessee.
- o If too many grounds, better to classify SOF based on each ground taken up.

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Grounds for certain common issues:

- o 14A Disallowance.
- o Penny stock matters.
- o Reopening matters.
- o Penalty matters.
- o Demonetisation matters.
- o Bogus purchases.



The purpose of the
first draft is not
to get it right,
but to get it
written.

John Dufresne

THANK YOU !!

Presented by CA Kinjal Bhuta