

CHAPTER – III
TAXES APPELLATE TRIBUNAL

11. Establishment of Appellate Tribunal.-

(1) For the purpose of exercising the functions of the Appellate Tribunal under this ordinance, the Government shall establish a Taxes Appellate Tribunal consisting of a President and such other '[judicial and accountant] members as the Government may, from time to time, appoint.

²[(2) A judicial member shall be a person who is or has been a District Judge or who has practiced as an advocate in a court not lower than that of a District and Sessions Judge for a period of not less than ten years.]

³[(3) A person shall not be appointed as a member of the Taxes Appellate Tribunal unless-

⁴[(i) he was or is a member of the Board or holds the current charge of a member of the Board; or]

(ii) he was a Commissioner of Taxes; or

(iii) he is a Commissioner of Taxes; or

(iv) he is a chartered accountant and practiced professionally for a period not less than eight years; or

(v) he is a cost and management accountant and practiced professionally for a period not less than eight years; or

(vi) he is an income tax practitioner within the meaning of section 174(2)(f) and practiced professionally for not less than twenty years; or

¹ Omitted by F.A. 2002.

² Subs. by F.A. 1991 and subsequently omitted by F.A. 2002

³ Subs. Sub-se(3) by F.A 1991, Subs. by F.A. 1996 and again subs. by F.A. 2002

⁴ Subs. by F.A. 2009

- (vii) he is a professional legislative expert having not less than eight years experience in the process of drafting and making financial and tax laws; or
 - (viii) he is an advocate and practiced professionally for not less than ten years in any income tax office ‘[; or
 - ²[(ix) he is, was or has been a District Judge.]
- ³[(4) The Government shall appoint one of the members of the Appellate Tribunal to be the President thereof ⁴[, who is a member of the Board or holds the current charge of a member of the Board.]

Explanation. – For the purpose of this section, period of practice as chartered accountant shall include any period of practice as chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961(X of 1961) ⁵[or Bangladesh Chartered Accountants Order, 1973 (P.O. No. 2 of 19730] or as registered accountant enrolled on the register of accountants under the Auditor’s Certificate Rules, 1950.]

12. Exercise of power of the Tribunal by Benches. –

- (1) Unless the president in any particular case or class of cases otherwise directs, the powers and functions of the appellate Tribunal shall be exercised by Benches of the Appellate Tribunal, hereinafter referred to as Bench, to be constituted by the President.
- (2) A Bench shall be so constituted that it has not less than two members. ⁶[and that there is equality in number of judicial members and accountant members:]

1. Subs. “;or” for full-stop and ins. clause(ix) by F.A. 2010
2. Subs. by F.A 2011
3. Subs F.A 1996
4. Ins. by F.A 2010
5. Ins by F.A. 2001
6. Omitted by F.A. 2002

¹*[Provided that in a Bench of which the President himself is a member he shall be deemed to be a judicial member.]*

13. **Decision of Bench.-**

(1) Subject to the provisions of sub-sections (2) and (3), the decision of Bench in any case or on any point shall be given in accordance with the opinion of the majority of its members.

(2) Any point on which the members of a Bench are equally divided shall be stated in writing and shall be referred by the President to one or more other members of the Appellate Tribunal for hearing and the point shall be decided according to the majority of the members of the Appellate Tribunal who have heard it including those who first heard it.

(3) Where there are only two members of the Appellate Tribunal and they differ in any case, the Government may appoint an additional member of the Appellate Tribunal for the purpose of hearing the case; and the decision of the case shall be given in accordance with the opinion of the majority of the members of the Appellate Tribunal as constituted with such additional member.

14. **Exercise of power by one member.-**

Notwithstanding anything contained in section 12, the Government may direct that the powers and functions of the Appellate Tribunal shall be exercised by any one of its members, or by two or more members jointly or severally.

15. **Regulation of Procedure.-**

Subject to the provisions of this Ordinance, the Appellate Tribunal shall regulate its own procedure and the procedure of its Benches in matters arising out of the discharge of its functions including the places at which a Bench shall hold its sittings.

158. Appeal to the Appellate Tribunal.-

(1) An assessee may appeal to the Appellate Tribunal if he is aggrieved by an order of-

(a) an appellate Joint Commissioner or the Commissioner (Appeals) as the case may be, under section 128 or 156.

³[(b) an Inspecting Joint Commissioner exercising the powers of a Deputy Commissioner of Taxes under section 10; or

(c) an Inspecting Joint Commissioner under section 120.]

⁴(2) No appeal under sub-section (1) shall lie against an order of the Appellate Joint Commissioner or the Commissioner (Appeals), as the case may be, unless the assessee has paid ⁵[ten percent] of the amount representing the difference between the tax as determined on the basis of the order of

1. Subs. for the words "a period of one year from the end of the month in which the appeal was filed." by F.A. 2002
2. Subs. for "ninety days from the date" by F.O. 2007 again subs. for "ninety days from the end of the month" by F.A. 2009.
3. Clause (b) & (c) omitted by F.A. 1990
4. Subs. by F.A. 2000 again subs. by F.A. 2002 again subs. by F.A. 2004
5. Subs. for "five percent" by F.A. 2011

the Appellate Joint Commissioner or the Commissioner (Appeals) as the case may be, and the tax payable under section 74¹]:

Provided that on an application made in this behalf by the assessee, the Commissioner of Taxes, may reduce, the requirement of such payment if the grounds of such application appears reasonable to him.]

²(2A) The Deputy Commissioner of Taxes may, ³[with the prior approval of the Commissioner of Taxes], prefer an appeal to the Appellate tribunal against the order of an Appellate Joint Commissioner, or the Commissioner (Appeals) under section 156.]

⁴(3) **The Deputy Commissioner of Taxes may appeal to the Appellate Tribunal against the order of an Appellate Joint Commissioner, or the Commissioner (Appeals) under section 156 if the Commissioner directs him to prefer an appeal against the order.**

⁴(4) Every appeal under ⁶[sub-section (1) or sub-section (2A)] ⁷[**or sub-section (3)**] shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be:

Provided that the Appellate Tribunal may admit an appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not presenting the appeal within that period.]

(5) An appeal to the Appellate Tribunal shall be in such form and verified in such manner as may be prescribed.

1. Subs. "full-stop" for "colon" and proviso omitted by F.O 2007 subsequently subs. "colon" for "full-stop" and inserted proviso by F.A. 2011
2. Ins. by F.A. 2003
3. Subs. for "with the prior approval of the Board" by F.O. 2008
4. Omitted by F.A. 2002
5. Subs. by F.A 1999
6. Subs. for "sub-section (1)" by F.A. 2003
7. Omitted by F.A. 2002

¹[and shall except in the case of an appeal under sub-section (2A)], ²[except in the case of an appeal under sub-section (3)] be accompanied by a fee of ³[one thousand] taka.

159. Disposal of appeal by the Appellate Tribunal.-

- (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders on the appeal as it thinks fit.
- (2) Before disposing of any appeal, the Appellate Tribunal may call for such particulars as it may require respecting the matters arising in the appeal or cause further enquiry to be made by the Deputy Commissioner of Taxes.
- (3) Where, as a result of the appeal, any change is made in the assessment of a firm or association of persons, or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may direct the Deputy Commissioner of taxes to amend accordingly any assessment made on any partner of the firm or any member of the association.
- (4) The Appellate Tribunal shall communicate its order on the appeal to the assessee and to the Commissioner ⁴[within ⁵[thirty days] from the date of such order.
- (5) Save as thereafter provided in this Chapter, the orders passed by the Appellate Tribunal on appeal shall be final.
- ⁶(6) Notwithstanding anything contained in this Ordinance an appeal filed by an assessee to the Appellate Tribunal shall be deemed to have been allowed if the Appellate Tribunal fails to make an order thereon within a period.

1. Subs. for "and shall" by F.A. 2003

2. Omitted by F.A. 2002

3. Subs. for "three hundred" by F.A. 1993 and "five hundred" by F.O. 2007

4. Ins. by F.A. 1997

5. Subs. for "fifteen days" by F.O. 2007

6. Is. by F.A. 191

of ¹[²[six months] from the end of the month in which the appeal was filed:]

Provided that the provisions of this sub-section shall not apply to an appeal filed by an assessee at any time before the first day of July, 1991];

³[Provided further that the provisions of this sub-section shall, in relation to an appeal filed by an assessee at any time during the period between the first day of July, 1995 and the thirtieth day of June, 1996(both days inclusive), have effect as if for the words” two years” the words “Three years” were substituted on the day on which section 21 of অর্থ আইন, ১৯৯১(১৯৯১ সালের ২১ নং আইন) came into force:]

⁴[Provided further that the provisions of this sub-section shall, in relation to an appeal filed by an assessee on or after the first day of July, 1999, have effect as if for the words” two years from the end of the year” the words “two years from the end of the months” were substituted:]

⁵[Provided further that the provisions of this sub-section shall in relation to an appeal filed by an assessee before the first day of July, 2002 have effect as if the words “six months from the end of the month in which appeal was filed” were substituted by the words “one year from the end of the year in which appeal was filed:

Provided further that the appeals filed by the Deputy Commissioner of Taxes on or before the thirtieth day of June, 2002 on which no order was passed by the Appellate Tribunal till that date shall be deemed to have been withdrawn from first of July, 2002.]

1. Subs. the words for “two years from the end of the year in which the appeal was filed” by F.A. 2002
2. Subs for “ four months” by F.O. 2007
3. Ins. by F.A 1999
4. Ins. by F.A 1998
5. Ins by F.A 2002