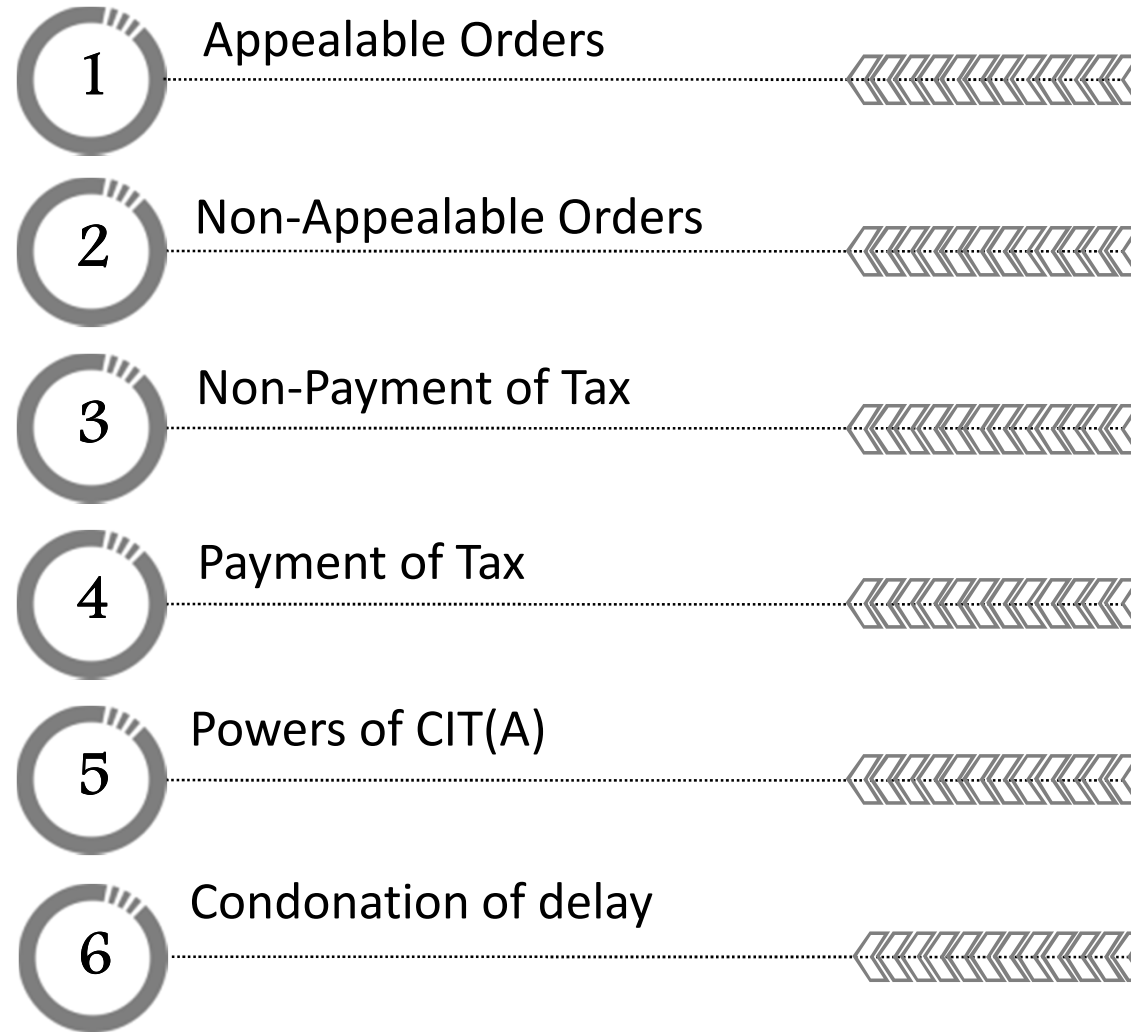


**PRESENTATION BEFORE CIT (A)**

# ROAD MAP



# ROAD MAP





# APPEALABLE ORDERS

Particulars	Section
Intimation/Notice issued	143(1) or 143(1B)
Assessment or reassessment order	143(3)/144/147/150
Modified Order in respect to Advance pricing agreement	92CD(3)
Rectification order/consequential effect on partner's income upon assessment or reassessment of the firm	154/155
Order treating assessee as agent of non-resident	163
Where under an agreement or other arrangement, the tax deductible on any income, other than interest, u/s195 is to be borne by the payer who claims that no tax was required to be deducted on such income	248 w.r.s. 195



## APPEALABLE ORDERS

Particulars	Section
Order imposing or enhancing various penalties as specified in Chapter XXI	221/271/271A etc.
Order passed by AO in respect to tonnage tax scheme in case of shipping companies	115VP
Defective return (CIT vs Tata Cummins Ltd.[2002]82 ITD798 (Kol Trib) <i>“Communication by AO to assessee to rectify defects in return rejecting carry forward of losses tantamount to order of assessment appealable u/s246”</i>	139(9)
Order under Block Assessment	153A/153C/158BC(c)



# APPEALABLE ORDERS

Particulars	Section
Order of succession to business otherwise than on death	170(2)/170(3)
Order of assessment after partition of HUF	171
Order in case of failure to deduct or deposit TDS/TCS	201/206C(6A)
Order for refund matters	237

## NON-APPEALABLE ORDERS

Particulars	Section
Certificate granted for lower deduction of tax	197(1)
Order imposing interest (ANZ Grindlays Bank PLC v. CIT (241 ITR 269) (Cal.))	220(2)
Orders passed rejecting revision petition	263 & 264
Order passed by AO u/s195(2) cannot be challenged u/s 246A <u>Alternate remedy</u> : Appeal to be filed u/s248 DCIT(IT) vs. Abu Dhabi Ship Building PJSC [2016] 70 taxmann.com 224 (MumTrib.)	195 r.w.s. 246A & 248



# ADMINISIBILITY OF APPEAL

- Sec249(4)(a)–unpaid tax on returned income
- Sec249(4)(b)–unpaid tax (equivalent to advance tax) in case of non-filing of return
- Proviso to sec.249(4)–Provides relief from tax payment for“ good and sufficient cause”
  
- **Eg. of good and sufficient cause:**
  - ❖ **Losses incurred by assessee**  
Hotel Sai Siddi (P) Ltd vs DCIT [2011]13taxmann.com 155 (Pune Trib)
  
  - ❖ **Incorrect advice by consultant**  
Smt. Banu Begum vs DCIT[2012] 22 taxmann.com 235 (Hyd. Trib)
  
  - ❖ **Financial instability** – Shyam Electric Works vs CIT(2005) 149 Taxman 588 (MP HC)
  
  - ❖ **Attachment of property** & no other source of income/liquid assets  
Shamraj Moorjani vs CIT(2005) 2 SOT 321 (Hyd. Trib)



## ADMISSIBILITY OF APPEAL

- **Sec. 249(4)** – Whether interest u/s 234A, 234B, 234C and 140A should be paid before appeal could be admitted?
  - ❖ CIT vs. Manoj kumar Beriwal (2008) 217 CTR 407 (Bom HC)
  - ❖ Subbiah Nadar & Sons vs ACIT (2003) 84 ITD 55 (Chennai Trib)
  
- **Sec. 249(4)** – Whether payment condition is applicable in case of penalty appeal
  - ❖ CIT vs. Samanthakamani (2003) 259 ITR 215 (Mad HC)
  
- Where despite payment of tax by way of adjustment of seized amount, full amount of tax due from assessee is not paid before appeal, assessee's appeal is not maintainable
  - ❖ Bharkumar Sekhsaria vs CIT (2002) 82 ITD 512 (Mum Trib)

## POWERS OF CIT(A)

**Recall his own order passed ex-parte u/s 251(1)(c)**

- CIT vs vs Prajapati Bababhai Nathabhai (2005) (Guj HC)
- Taj Pal Om Parkash vs ITO [1982] 2 ITD 107 (Del Trib)

**No power to review**

- Except power of rectification u/s 154

**Retrospective amendment in law**

- Aquarius Travels (P.) Ltd. vs ITO [2008] 111 ITD 53 (Del Trib)
- CIT vs Straw Products Ltd (1966) 60 ITR 156 (SC)



## CAN APPEAL BE WITHDRAWN?

- ❖ Yogendra Prasad Santosh Kumar vs CIT [2014] 44 taxmann.com 299 (All HC)  
*“There is no provision in IT Act which permits withdrawal of an appeal, once it is filed, and registered”*
- ❖ M. Loganathan vs ITO [2012] 25 taxmann.com 174 (Mad HC)  
*“Assessee, after filing appeal, could not at his option or at his discretion withdraw it; if it is done, in view of pendency of application before Settlement Commission, on rejection of settlement application, appeal proceeding would continue”*

## CONDONATION OF DELAY - SUFFICIENT CAUSES

### Delay due to mistake of AO

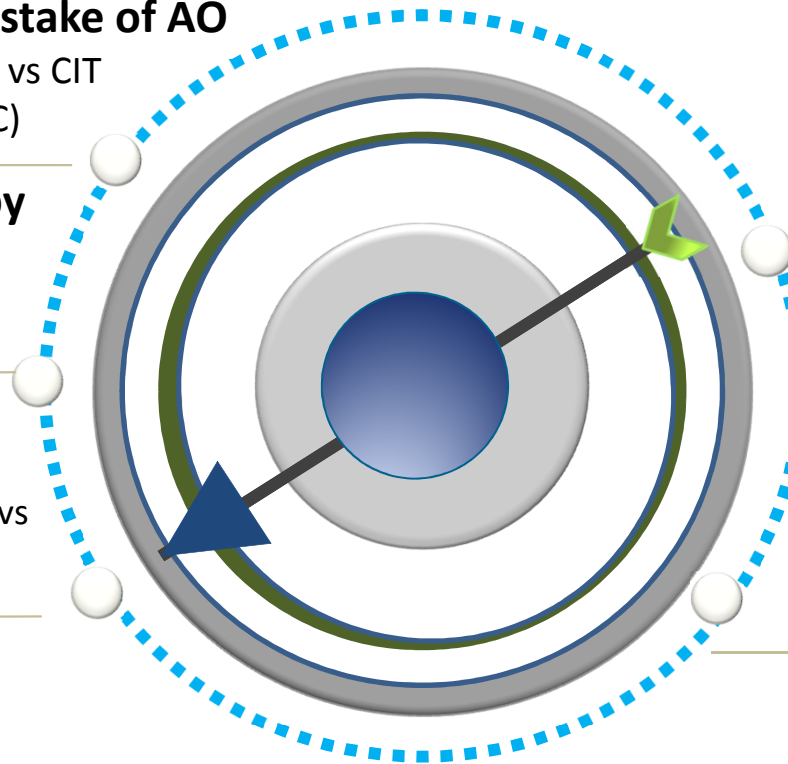
(Avtar Krishan Dass vs CIT  
133 ITR 338(Del HC)

### Incorrect advice by Consultant

(R.Ranganayaki vs CIT  
38 ITR 20(Mad.)

### Medical Grounds

(Collector Land Acquisition vs  
Mst.Katiji & Ors.(1987)(SC)



**Mistake committed by  
Counsel before a wrong  
forum** (Ajib Singh AIR  
(1989) (Punj.)153)

**Death of assessee**  
(Balwant Singh vs Jagdish  
Singh & Ors (SC) (2010)



## STAY OF DEMAND

### RIGHT TO STAY OF DEMAND– WHOM TO APPROACH?

**Limit for pre-deposit of disputed tax demand** has been increased to **20% from 15%** vide CBDT Circular F.No.404/72/93-ITCCdated31.07.2017

#### Approach:

- ❖ Assessing Officer-As per Para 4(B) of CBDT Circular dated 29-2-2016
- ❖ If still aggrieved, then Jurisdictional Pr. CIT/CIT- As per Para 4(C) of CBDT Circular dated 29-2-2016

Ladhabhai Damjibhai Panara vs. PCIT [2017] 86 taxmann.com 48 (Guj HC)

*Where AO as well as Pr. CIT did not disclose reasons which persuaded them to approve collection of 50 per cent of tax demand during pendency of appellate proceedings, order passed by them being in violation of principles of natural justice, could not be upheld*

## SCOPE OF ENHANCEMENT

### ➤ AGAINST ASSESSEE

#### ❖ CIT vs Kanpur Coal Syndicate 53 ITR 225(SC)

*CIT(A) may consider and decide any matter arising out of the proceedings, notwithstanding that such matter was not raised before CIT(A)*

#### ❖ CIT vs. Nirbheram Daluram 224 ITR 610 (SC)

*CIT(A) can make addition in respect of new source of income if it is not considered by AO*

#### ❖ Ugar Sagar Works Ltd vs CIT (1983) 141 ITR 326 (Bom HC)

*The competence of appellate authority ranges over whole assessment proceedings without restrictions on him. His jurisdiction therefore extends to subject matter of assessment and not confines to subject matter of appeal*

#### ❖ Vijay Kumar Sarda vs DCIT [2013] 40 taxmann.com 113 (Mum Trib.)

*Appellate Authority cannot give directions to Assessing Officer in relation to a third person, whose appeal is not pending before him*

## SCOPE OF ENHANCEMENT

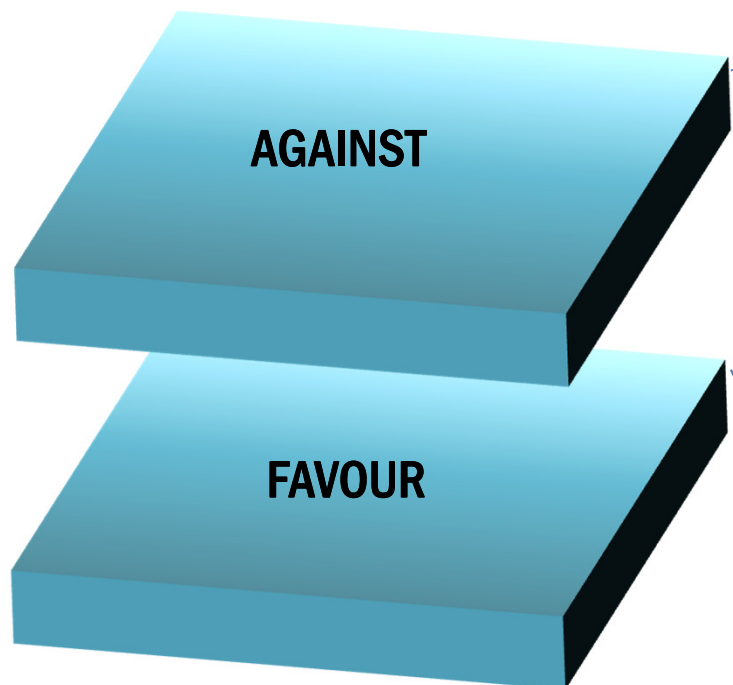
### ➤ FAVOUR OF ASSESSEE

❖ CIT vs Sardarilal & Co. (2001) 251 ITR 864 (Del HC)

*“Whenever question of taxability of income from a new source of income is concerned which had not been considered by Assessing Officer, jurisdiction to deal with same in appropriate cases may be dealt with under section 147/148 and section 263 if requisite conditions are fulfilled and it is inconceivable that in presence of such specific provisions a similar power is available to first appellate authority”*

❖ CIT vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443 (SC)

## AGREED ADDITIONS



**Rameshchandra & Co. vs. CIT  
(1987) 168 ITR 375 (Bom HC)**

*“Where assessee has made statement of facts, he can have no grievance if the taxing authority taxes him in accordance with that statement. If he can have no grievance, he can file no appeal.”*

**R.T. Balasubramaniam vs ITO  
(1994) 50 ITD 513 (Mad Trib)**

*“Whether where AR’s agreement for impugned additions was based on misapprehension of facts and mistaken belief, assessee would be an aggrieved party within meaning of section 246(1) and his appeal would be a valid appeal “*



# ADDITIONAL EVIDENCE

## FAVOUR OF ASSESSEE

❖ Smt. Prabhavati S. Shah vs. CIT [1998] 231 ITR 1 (Bom HC)

*“AAC should have admitted additional evidence in exercise of power u/s 250(5) as well as under Rule 46A(1)(c) considering the fact that AO had considered loan as income only on ground that summons issued to lenders were returned unserved and didn't provide opportunity to assessee during assessment proceedings”*

❖ CIT vs Essence Commodities Ltd [2015] 61 taxmann.com 87 (MP HC)

*“Where AO sought one month time for due verification of additional evidence produced by assessee by stating that he was on election duty and number of cases of assessment in which time limitation was going to expire was pending, Commissioner (Appeals) should accept his demand”*

# ADDITIONAL EVIDENCE

## AGAINST OF ASSESSEE

- ❖ ITO vs Rajan Manhazi Ayroorkarot [2011] 15 taxmann.com 297 (Mum Trib)  
*“Where assessee had neglected opportunity provided by AO to explain adverse documents, it was necessary for CIT(A) to have strictly complied with Rule 46A of Income-tax Rules, 1962 while accepting additional evidences in appeals”*



## CASE STUDIES

**Taxability of FGN Income**

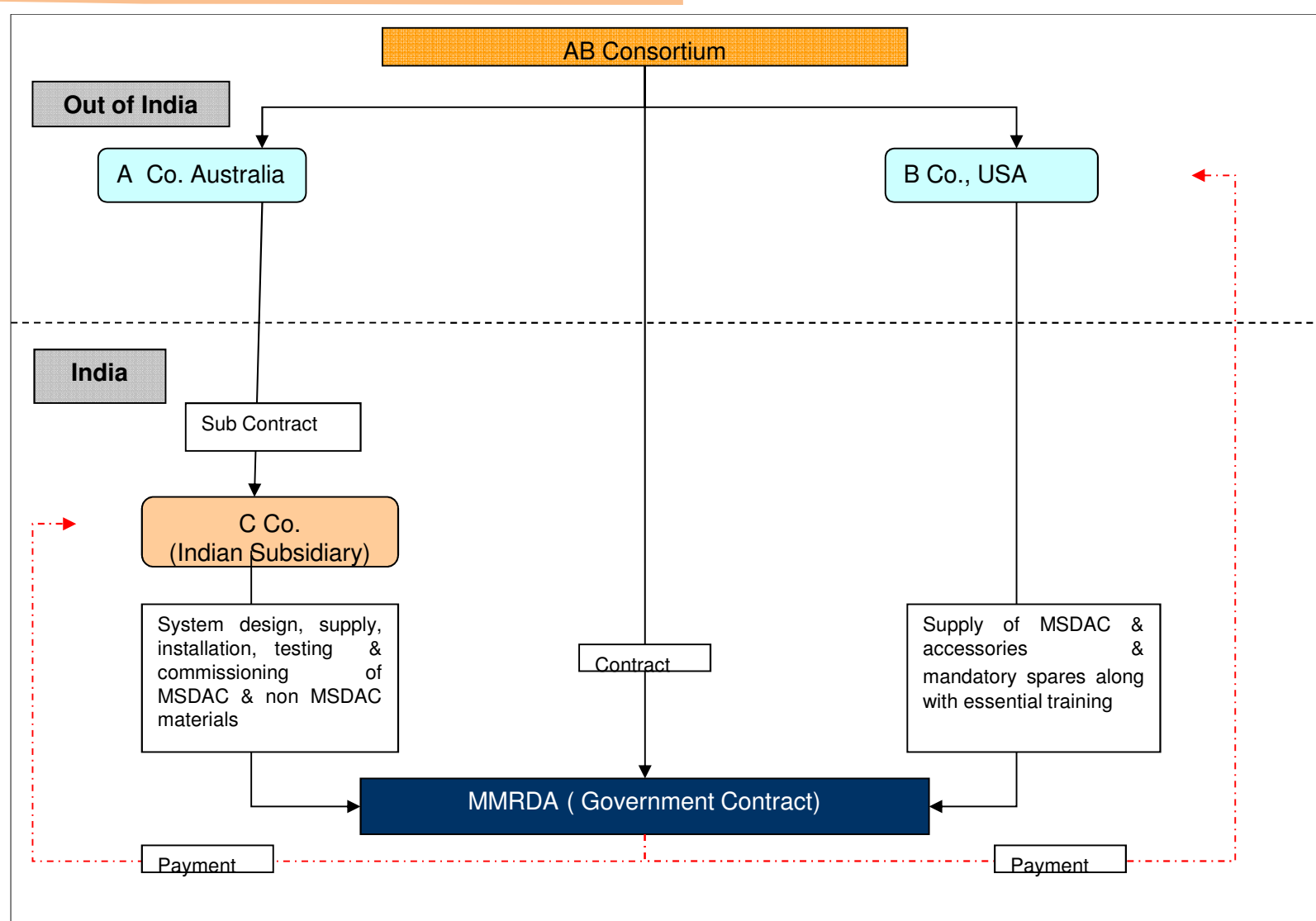
**54 & 54F**

**Interest Disallowance**

***“BURNING  
ISSUES”***



# TAXABILITY OF FOREIGN INCOME



# 54 & 54F

(Rs in Crores)

Particulars	Sale Value	ICOA	Exemption	CG	Section	HP No	HP-Cost
<b><u>ORIGINAL RETURN</u></b>							
3-CP	84.50	48.50	5.50	30.50	54F	301&302	11.70
1-RP	8.75	3.50	5.25	-	54	302	5.30
<b>Total</b>	<b>93.25</b>	<b>52.00</b>	<b>10.75</b>	<b>30.50</b>			<b>17.00</b>
<b><u>REVISED RETURN</u></b>							
3-CP	84.50	48.50	3.00	33.00	54F	205	5.00
1-RP	13.00	3.50	9.50	-	54	301&302	13.00
<b>Total</b>	<b>97.50</b>	<b>52.00</b>	<b>12.50</b>	<b>33.00</b>			<b>18.00</b>

# 54 & 54F

(Rs in Crores)

Particulars	Sale Value	ICOA	Exemption	CG	Section	HP No	HP-Cost
<b>OPTION 1 - Two Properties Considered</b>							
3-CP	84.50	48.50	4.50	31.5	54F	301	9.00
1-RP	13.00	3.50	9.00	5.00	54	302	9.00
<b>Total</b>	<b>97.50</b>	<b>52.00</b>	<b>13.50</b>	<b>32.00</b>			<b>18.00</b>
<b>OPTION 2 - Three Properties Considered</b>							
3-CP	84.50	48.50	-	36.00	54F	205	5.00
1-RP	13.00	3.50	9.50	-	54	301&302	13.00
<b>Total</b>	<b>97.50</b>	<b>52.00</b>	<b>9.50</b>	<b>36.00</b>			<b>18.00</b>

## CAPITALISATION OF INTEREST

### FACTS OF THE CASE:

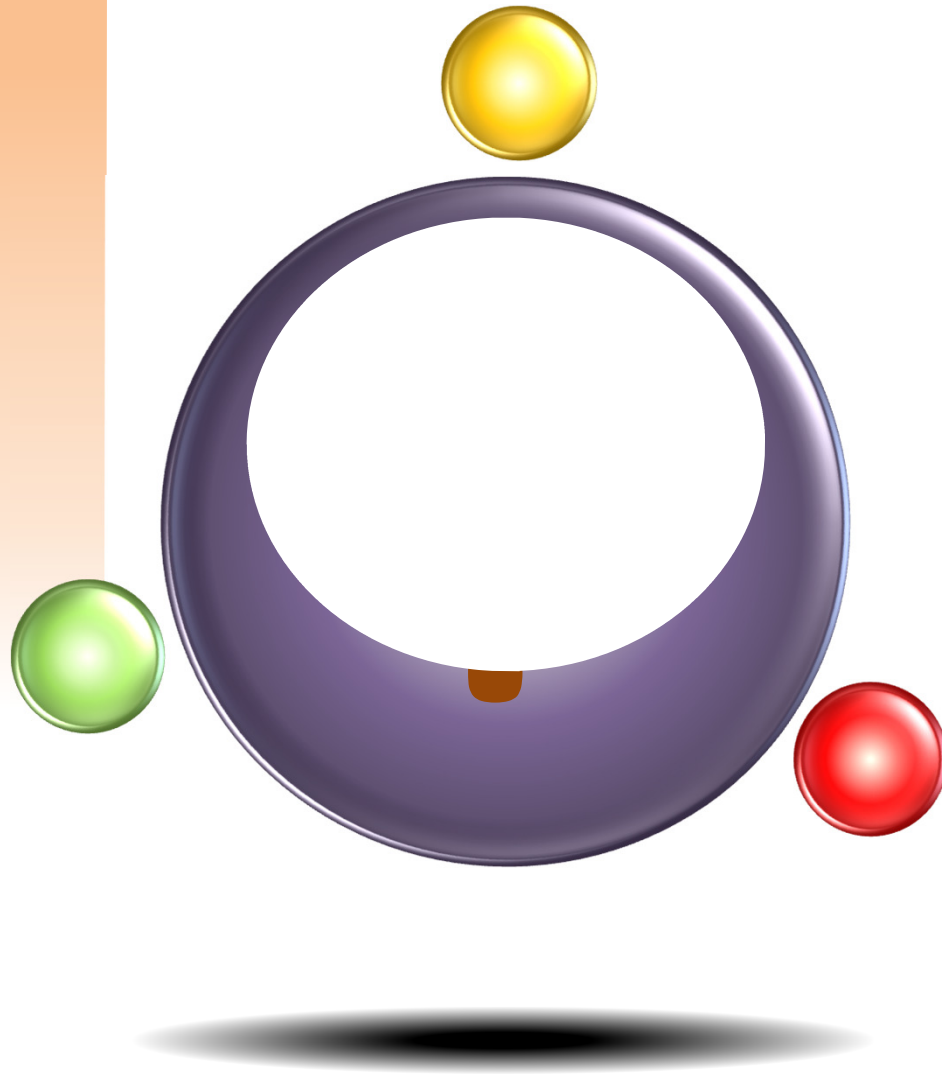
Extract of Balance-sheet of Co "A" is tabulated below

Particulars	2017 (Rs. In Crores)	2016 (Rs. In Crores)
Own funds	13.71	13.68
Borrowed funds		
- Specific Purpose	3.45	2.61
- Working Capital	24.96	35.43
Interest Free funds	2.00	-
Depreciation	0.35	0.29
Capital WIP(Sep2013)	2.00	-
Finance Cost		
- Specific purpose	2.93	1.82
- Working Capital	1.13	0.59

## ADMISSIBILITY OF IRREGULARITY

- 1 Manual filing of appeal rather than online accepted mode
- 2 Incomplete or inaccuracy in Form 35  
viz. fees, statement of facts, grounds of appeal
- 3 Belated filing of an application of appeal





Any questions  
around this topic?

## Disclaimer

Author has expressed his view on the subject and shared distinguishing rulings where-ever possible. Author shall suggest to take expert opinion based on facts of the case beside relying on decisions discussed any of the topics covered in this presentation.

Charak Noy

**CA. Darshak Shah  
S N & Co  
Chartered Accountants**

Borivali(w):::Sion(w)

TelNo.022-28910968

+91-9699915474

Website: [www.snco.in](http://www.snco.in)

EmailId: [office@snco.in](mailto:office@snco.in)

