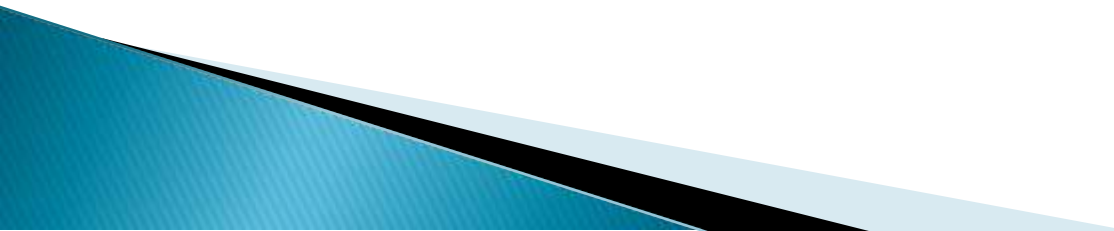


**Section 263 &
264 of the
Income Tax
Act, 1961**

- ▶ SECONDARY PARAMETER AFTER RESPONSE FROM THE ASSESSMENT AND ANY OTHER ORDER ON POST ASSESSMENT EFFECT
 - ▶ MAJOR SOURCE DOCUMENTS: REVISION OF ASSESSMENT
 - ▶ SPECIAL SOURCE DOCUMENTS: EFFECT AFTER ASSESSMENT
 - ▶ OUTCOMES: REVISION THEREOF
- 

▶ **KEY FEATUERS:**

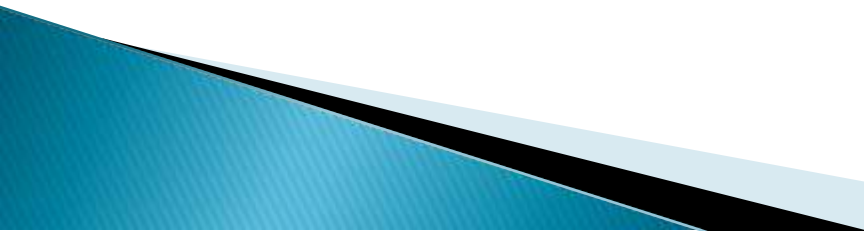
- ▶ ASSESSMENT IS MADE ERRONEOUSLY AND PREJUDICIAL TO THE INTEREST OF REVENUE

▶ **CONDITIONS**

- ▶ THE ORDER IS PASSED WITHOUT MAKING INQUIRIES OR VERIFICATION WHICH SHOULD HAVE BEEN MADE ;
- ▶ THE ORDER IS PASSED ALLOWING ANY RELIEF WITHOUT INQUIRIES INTO THE CLAIM ;
- ▶ THE ORDER HAS NOT BEEN MADE IN ACCORDANCE WITH ANY ORDER, DIRECTION, OR INSTRUCTION ISSUED BY THE BOARD U/S 119 ; OR
- ▶ THE ORDER HAS NOT BEEN PASSED IN ACCORDANCE WITH ANY DECISION WHICH IS PREJUDICIAL TO THE INTEREST OF THE ASSESSEE, RENDERED BY THE JURISDICTIONAL HIGH COURT OR THE APEX COURT IN THE CASE OF THE ASSESSEE OR ANY OTHER PERSON EXACTLY IN THE SAME NATURE

- ▶ 260A Filing appeal to High Court against order of Tribunal Within 120 days of date of communication of order
- ▶ **263(2) Revising orders prejudicial to revenue by Principal Commissioner/Commissioner** Within 2 years from end of financial year in which order sought to be revised was passed
- ▶ 263(3) Revision by Principal Commissioner/Commissioner of orders passed pursuant to any finding or direction by Tribunal, National Tax Tribunal, High Court or Supreme Court No time limit.
- ▶ **Section 264: Prejudicial to the interest of the Assessee**
- ▶ 264(2) Revision of orders by Principal Commissioner/Commissioner on his own motion (not prejudicial to assessee) Within 1 year of order sought to be revised.

- ▶ 264(3) Filing revision petition to Principal Commissioner/Commissioner (order not to be prejudicial to assessee) Within 1 year from date of communication of order sought to be revised or date of his knowledge in respect thereof or within extended time
- ▶ 264(6) Passing order on revision application made by assessee on or after 1-10-1998 Within 1 year from the end of the financial year in which application is made
- ▶ **Important time line for the completion of the order both U/s 263 and 264:**
- ▶ Issuance of the Notice: U/s 263 is two years from the end of the F.Y. in which the assessment order was passed however U/s 264 is one year from the date of the assessment order.
- ▶ Completion of the order both U/s 263 and U/s 264: Two years from the end of the F.Y. in which the assessment order was passed.

- ▶ **TIME LIMIT FOR COMPLETION OF ORDER:**
 - ▶ **WITHIN TWO YEARS FROM THE END OF THE FINANCIAL YEAR IN WHICH THE ORDER SOUGHT TO BE REVISED WAS PASSED**
 - ▶ **ISSUANCE OF REPETITIVE NOTICE CAN BE ALLOWED BUT WITHIN THE TIME LIMIT**
 - ▶ **TIME LIMIT CAN NOT BE EXTENDED BY THE A.O. EVEN BY THE CHIEF CIT SAVE AND EXCEPT BY THE COMPETENT AUTHORITY UNDER CBDT**
 - ▶ **NOTICE CAN BE ISSUED WITHIN THE ASSESSMENT**
- 

SECTIONS OF REVISION

Section 263,264, 264A & 264B

Section 263 PREJUDICIAL TO THE INTEREST OF REVENUE

Section 264 PREJUDICIAL TO THE INTEREST OF THE ASSESSEE

Section 264A FACELESS REVISION OF ORDERS

Section 264B FACELESS EFFECTS OF

▶ RELEVANT CASE LAWS

- ▶ S.263: Commissioner–Revision of orders prejudicial to revenue–Additional depreciation Estimated downward revision of sales--Revision on these two points set aside by High Court– –Subsequent events obviating need to go into justification for revision. [S.32(1)(ia)]
- ▶ Dismissing the appeal of the revenue, the Court held that ; This court is of the opinion that the
- ▶ question of law framed in this appeal has to be answered in favour of the assessee. The Commissioner acted erroneously in exercising revisional power under section 263. The orders of the Commissioner and the Income–tax Appellate Tribunal are hereby set aside. The order of the Assessing Officer dated November 27, 2006 is restored. However, the merits of that order, on aspects other than what has been discussed here and pending in appeal, are not being touched upon. The appeal is allowed in the above terms. (AY. 2005–2006)

- ▶ **CIT v. NTPC Ltd. (2017) 392 ITR 426 (SC) S. 263:**
- ▶ Commissioner–Revision of orders prejudicial to revenue – Failure by Assessing Officer to examine actual price of land purchased by assessee– Revision by Commissioner was held to be justified.[S. 40A(3), 132]


- ▶ Allowing the appeal of the revenue, the Court held that; failure by Assessing Officer to examine actual price of land purchased by assessee, revision by Commissioner was held to be justified .It would, however be open to the assessee to adduce appropriate evidence to prove that it was not connected with the land purchased, evidenced by the title deeds found during the course of the search in the premises of the assessee.

- ▶ **CIT v. Bharat Lub Industries (P) Ltd. (2017) 393 ITR 417 (Cal.)(HC)**
- ▶ **S. 263: Commissioner–Revision of orders prejudicial to revenue – Assessing Officer allowing all related expenditure without applying provisions of section 40A(3)–Revision order setting aside assessment order restored. [S.40A(3), 132, 158BC].**
- ▶ **Allowing the appeal of the revenue. the Court held that; as regards the applicability of section 40A(3) of the Income–tax Act, 1961 there were never two views possible. It was not open to the Assessing Officer to ignore the provisions of section 40A(3) nor did he appear to have done so consciously. The revision order passed by the Commissioner was justified and was to be restored.(BP. 1–4–1996 to 25–9–2002)**
- ▶ **CIT v. Mohanlal Agarwal (2017) 393 ITR 402 (Cal)(HC)**

- ▶ S. 263: Commissioner–Revision of orders prejudicial to revenue –Order of Commissioner enhancing disallowance was held to be unsustainable.[S. 14A]
- ▶ Dismissing the appeal of the revenue, the Court held that; the amount of disallowance under section 14A of the Income–tax Act, 1961 was restricted to the amount of exempt income only and 146 Consolidated Digest of Case Laws (January 2017 to May 2017)
<http://www.itatonline.org>not at a higher amount. For the assessment year 2008–09 the issue was answered in favour of the assessee. The exercise of jurisdiction under section 263 was not proper. The order of the Appellate Tribunal quashing the order under section 263 was justified. No question of law arose. (AY. 2009–2010)
- ▶ **PCIT v. State Bank of Patiala (2017) 393 ITR 476 (P&H)(HC)**

- ▶ S.263: Commissioner–Revision of orders prejudicial to revenue – partial was held to be valid –Revision in was Failure to make necessary enquiries, order of revision was held to be valid.[S. 11,13, 80G]
- ▶ The Court held that, The Commissioner had also noted that the assessee trust had claimed various expenses as debited in its income and expenditure which needed to be examined/verified to ascertain genuineness before it could have been accepted that its claim was applied towards its objects. Merely because it had been granted exemption under section 12AA of the Act, it could not be said that therefore, nothing was required to be done during the assessment proceeding except to accept the return of the charitable institution. Hence it was not a fit case for setting aside the order of revision. The Court also observed that The Assessing Officer while making assessment was to keep in mind the fact that both the order refusing renewal of approval under section 80G and the show–cause notice for cancellation of registration had been quashed by the court and accordingly decide the matter in accordance with law.

- ▶ **Imarat Shariah Educational and Welfare Trust v. CIT (2017) 392 ITR 301 / 245 Taxman 101 (Patna)(HC)**
- ▶ **Shri Mahavir Sthan Nyas Samiti v. UOI(2017) 392 ITR 301 /245 Taxman 101 (Patna) (HC)**
- ▶ **S. 263 : Commissioner–Revision of orders prejudicial to revenue –Commission payment to sister concern– Revision was held to be not justified.**
- ▶ **Dismissing the appeal of the revenue, the Court held that ; because no income had escaped taxation and no prejudice or loss was caused to the Revenue. The Tribunal was right in deleting the disallowance made by the Commissioner. (AY.1998–1999)**

- ▶ **CIT v. Micromatic Grinding Technologies Ltd. (2017) 392 ITR 268 (All)(HC)**
 - ▶ **S.263: Commissioner–Revision of orders prejudicial to revenue –Changing method of accounting in accordance with Accounting Standard 7–Not erroneous and prejudicial to Revenue. [S.145]**
 - ▶ **Dismissing the appeal of the revenue, the Court held that ; when the assessee followed the accounting standard and the scrutiny assessment was completed, the revision was held to be not justified. (AY .2007–2008)**
 - ▶ **CIT v. A2Z Maintenance and Engineering Services Ltd. (2017) 392 ITR 273/246 Taxman 193 (Delhi)(HC)**
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- ▶ S.263 : Commissioner–Revision of orders prejudicial to revenue – Where the AO failed to consider the absence of any business activity for the purpose of treating an expenditure allowable for deduction, the order of AO was erroneous and prejudicial to Revenue and therefore, revision u/s. 263 by the CIT was sustainable.
- ▶ Dismissing the appeal of the assessee, the Court held that; where the AO failed to consider the absence of any business activity for the purpose of treating an expenditure allowable for deduction, the order of AO was erroneous and prejudicial to Revenue and therefore, revision u/s 263 by the CIT was sustainable.
- ▶ **Zuari Management Services Ltd. (2017) 146 DTR 177/ 292 CTR 327 (Bom.)(HC)**
- ▶ S.263: Commissioner–Revision of orders prejudicial to revenue–CIT can revise an assessment order where an issue has not been examined by the AO. 147

- ▶ Consolidated Digest of Case Laws (January 2017 to May 2017) <http://www.itatonline.org> Dismissing the appeal of the assessee the Court held that; the assessee did not furnish the valuation of unquoted shares even after AO had raised a specific query. Thereafter, the AO did not enquire into the same. Thus, this is case of non-enquiry as opposed to inadequate enquiry and accordingly, CIT was right in revising the assessment order. (AY. 1997-98)
- ▶ **Jeevan Investment & Finance (P.) Ltd. v. CIT (2017)**
291 CTR 241 / 145 DTR 252 (Bom.) (HC)
- ▶ S. 263: Commissioner–Revision of orders prejudicial to revenue – The fact that the AO is silent in the assessment order does not mean that he has not applied his mind so as to justify exercise of revisional powers by the CIT.

- ▶ **Small Wonder industries v. CIT (Mum.)(Trib.);www.itatonline.org**
- ▶ S. 263: Commissioner – Revision of orders prejudicial to revenue – Non submission of report of prescribed authority, revision was held to be not justified. [S.35(2AB)]
- ▶ Allowing the appeal of the assessee, the Tribunal held that ; where the assessee had already obtained approval of its in house Research & Development facility in Form 3CM, revision merely on ground of non-submission of report of prescribed authority in form 3CL was held to be not justified . (AY. 2009 – 2010)

- ▶ **Sun Pharmaceutical Industries Ltd. v. PCIT (2017) 162 ITD 484 (Ahd.)(Trib.) S. 263 : Commissioner – Revision of orders prejudicial to revenue –Capital gains –**
- ▶ Investment in bonds – Transfer of shares to be considered on the date of execution transfer form neither the date of agreement nor the date of receipts. [S. 2(47), .45, 54EC, 54F, 263]
- ▶ Assessment was completed u/s 143(3), allowing the claim u/s54EC and S. 54 F of the Act.

- ▶ Commissioner in revision proceedings held that, period of six months to be computed from the date of receipt of money. Giving a share certificate along with share transfer form at a subsequent date would not change the nature of transaction. Accordingly the assessee was held to be not eligible for exemption u/s 54EC and 54F of the Act. On appeal allowing the appeal, the Tribunal held that transfer of shares to be considered on the date of execution transfer form neither the date of agreement nor the date of receipts. Order of AO was up held.(AY.2010–11)

- ▶ **Y.V. Ramana v. ADIT (2017) 162 ITD 662 / 183 TTJ 337 (Visakha) (Trib.) S.263:**
- ▶ Commissioner–Revision of orders prejudicial to revenue – Not earned any dividend during the relevant years–Revision was not justified for disallowance of expenses u/s 14A.
- ▶ [S.14A] Allowing the appeal of the revenue, the Tribunal held that ;Revision was not justified for disallowance of expenses u/s 14A, when the assessee has not earned any dividend during the relevant years. (AY. 2008–09 to 2012– 2013)

- ▶ **Dabwali Transport Co. Ltd. v. DCIT (2017) 163 ITD 579 (Asr.) (Trib.)**
- ▶ **S. 263:Commissioner–Revision of orders prejudicial to revenue – Claim was allowed by the Assessing Officer without applicability of the notification, hence revision was held to be justified.[S. 54F]**
- ▶ **Dismissing the appeal of the assessee, the Tribunal held that the Assessing Officer failed to examine applicability of notification dealing with sale of share of Indian company to non–resident 148 Consolidated Digest of Case Laws (January 2017 to May 2017) <http://www.itatonline.org> by assessee and allowed claim of assessee u/s 54F, hence the revision was held to be justified. (AY. 2011–12)**

- ▶ **Ravi Kannan vs. C.I.T. (2017) 163 ITD 640 (Chennai) (Trib)**
- ▶ S. 263 : Commissioner–Revision of orders prejudicial to revenue–Depreciable asset– insurance claim–AO was directed to re do the assessment in accordance with law without influencing the observations of the Commissioner. [S.45 (IA)]
- ▶ Fire accident took place on assessee's cold storage and it received claim from insurance company. Assessee claimed long term capital loss under section 45(1A) by adopting indexation cost of acquisition. Assessing Officer simply accepted return filed by assessee and allowed capital loss claimed by assessee without asking any query in respect of capital loss claimed by assessee – In revision, Commissioner observed that once asset was put to use, it would amount to a depreciable asset and consequently, it would attain character of a short term capital asset, which is not entitled for indexation of its cost. On appeal the Tribunal held that;

- ▶ since Commissioner had not considered provision of Act, his findings were baseless and deserved to be set aside. AO was directed to re do the assessment in accordance with law without influencing the observations of the Commissioner .(AY. 2009–10)

THANK YOU

