

# **Demand of Income Tax and Rectification of Mistake under Income Tax Act**

**By**

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## **DEMAND**

## **RECTIFICATION**



## Course of action after Assessment

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### Assessee

**Rectification u/s 154**

**Appeals to CIT (Appeals)**

**Revision u/s 264**

### Department

**Rectification u/s 154**

**Revision u/s 263**

**Reassessment u/s 147**

## Rectification of Mistake – u/s 154

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***Section 154 (1) With a view to rectify any mistake apparent from record an Income Tax Authority referred under section 116 may***

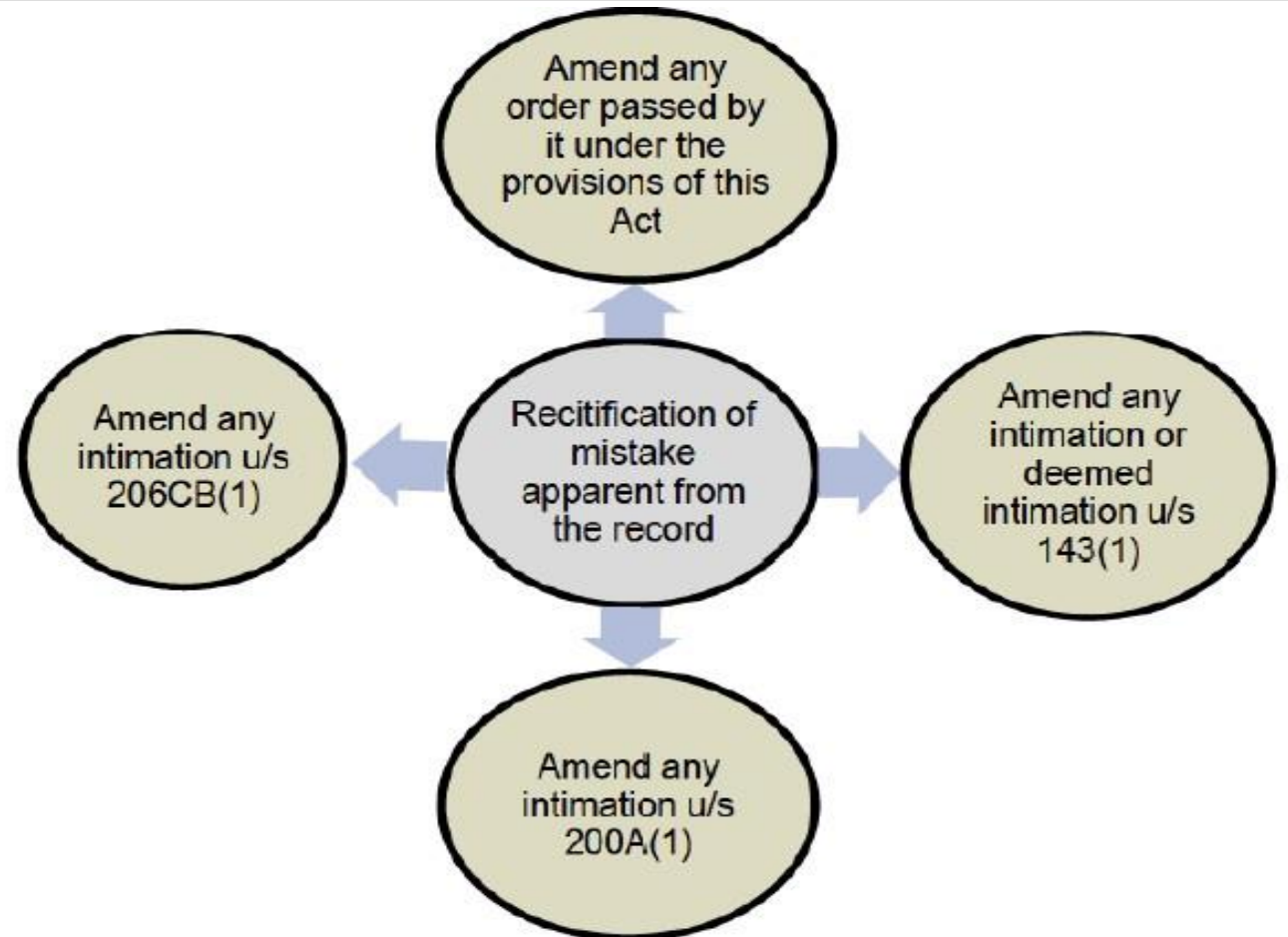
- ☐ ***(a) Amend any order passed by it***
- ☐ ***(b) Amend intimation or deemed intimation under section 143(1)***
- ☐ ***(c) Amend intimation under section 200A(1)***
- ☐ ***(d) Amend any intimation under sub-section (1) of section 206CB.***

**Note: Income Tax Authority referred u/s 116 (does not include Tribunal)**

**may amend any ORDER passed by it or Intimation under section 143(1) or 200A(1) if found any MISTAKE APPARENT FROM RECORD.**

**An income-tax authority, is empowered  
(suo moto or on application by assessee) to**

- ❑ (a) rectify any mistake apparent in an order passed by him; or
- ❑ (b) amend any intimation issued u/s 143(1) or deemed intimation
- ❑ (c) amend any intimation issued u/s 200A(1) or 206CB(1).





## Mistake apparent from Record

**Mistake apparent from the record may be a mistake of fact as well as mistake of law** - For instance, the treatment of non-agricultural income as agricultural income and granting exemption in respect of such income is an obvious mistake of law which could be rectified under section 154.

**Mere change of opinion cannot be basis for rectification** - A mere change of opinion, however, cannot be the basis on which the same or the successor Assessing Officer can treat a case as one of rectification of mistake. A mistake is one apparent from the record in case, where it is a glaring, obvious, patent or self-evident. Mistake, which has to be discovered by a long drawn process of reasoning or examination or arguments on points, where there may be two opinions, cannot be said to be mistake or error apparent from the record.

**Subsequent decision of Supreme Court** - A mistake arising as a result of subsequent interpretation of law by the Supreme Court would also constitute error apparent from the record.

**Retrospective amendment of law** - could also lead to rectification if an order is plainly and obviously inconsistent with the specific and clear provision, as amended retrospectively.



## Mistake apparent from Record

**Doctrine of Partial Merger** - Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to a rectifiable order, the authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided.

**Amendment may be *suo motu* or the same may be brought to notice by the assessee or deductor** - The concerned authority may make an amendment on its own motion. However, he should mandatorily make the amendment for rectifying any such mistake which has been brought to its notice by the assessee or the deductor. Where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (appeals), the mistake can be pointed out by the Assessing Officer also.

**Opportunity of being heard to be given to the assessee or deductor before enhancing an assessment or reducing a refund** - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor, shall not be made unless the authority concerned has given notice to the assessee or the deductor of its intention so to do and has allowed the assessee or the deductor a reasonable opportunity of being heard.

## Mistake apparent from Record

- ❑ **Note 1** – Order does not necessarily means original order, it include amended order and rectified order. [[Hind Wire Industries Ltd. V CIT \(1995\) 212 ITR 639 SC](#)]
- ❑ **Note 2** – Obvious mistake of law cannot be rectified under section 154, while mistake of fact apparent from record can be rectified. [[Venkatachalam \(M.K.\) ITO V Bombay Dying & Mfg Co.Ltd 1958 34 ITR 143 SC, AIR 1958 SC 875, 1959 SCR 703](#)]
- ❑ **Note 3** – Records must show that there has been an error and that error may be rectified; Reference of documents outside the record and the law is impermissible when applying the provisions of section 154. [[CIT V Keshri Metal Pvt Ltd. \(1999\) 237 ITR 165 SC](#)]
- ❑ **Note 4** – Mistake means commission that is not designed and which is obvious and something which has no two opinions or which is debatable. [[CIT V Lakshmi Prasad Lahkar \(1996\) 220 ITR 100 \(GAU\)](#)]

## Mistake apparent from Record

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- ❑ 4. ITAT can make rectification subject to the provisions of **Section 254(2)**
- ❑ 5. Where an assessment order not in tune with the law laid down by a binding precedent, it would amount to an error apparent on the record for the purpose of invoking rectification under section 154. [**Hindustan Lever Limited Vs JCIT (Calcutta High Court)**]
- ❑ 6. Addition of debatable nature cannot be subject of Section 154 rectification. [**ACIT Vs Shri Punit J. Patel (ITAT Mumbai)**]
- ❑ 7. Notice Mandatory to Pass Rectification Order U/s. 154 [**Aparna Ashram Vs. ADIT(E) (ITAT Delhi)**]
- ❑ 8. Section 154 AO cannot refuse rectification for mistake attributed to assessee [**ACIT Vs Rupam Impex (ITAT Ahmedabad)**]



## Action of the Assessing Officer on Rectification

	Case	Action to be taken by A.O.
(i)	Where an amendment is made under this section	An order shall be passed in writing by the authority concerned
(ii)	Where any such amendment has the effect of reducing the assessment, or otherwise reducing the liability of the assessee or the deductor	The Assessing Officer shall make any refund due to such assessee or the deductor
(iii)	Where any such amendment has the effect of enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee or the deductor	The Assessing Officer shall serve on the assessee or the deductor, as the case may be a notice of demand in the prescribed form specifying the sum payable

# Mistake Apparent from Record

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**The meaning of “Mistake” from the perspective of section 154 is as follows:**

- ❖ Mistake includes any arithmetical & clerical errors/mistakes
  - ❖ Misreading a clear provision of the Income Tax Act
  - ❖ Applying an inapplicable provision of the act
  - ❖ Non-following a decision of Jurisdictional High court
  - ❖ Erroneous application of a provision of the act
  - ❖ Overlooking a non-discretionary but mandatory provision
- ❑ **Some examples related to these above-mentioned mistakes are:**

- ❖ Mismatch in Advance Tax.
- ❖ Gender specified incorrectly.
- ❖ Mismatch in tax credit.
- ❖ At the time of filing additional details were not submitted for capital gains.

## OTHER RELEVANT JUDGEMENTS:

- ❑ 1. When mistake apparent from record is brought to the notice of Assessing Officer, he is mandatorily bound to pass such order. [ Hirday Narain (L) V ITO (1970) 78 ITR 26 (SC)]
- ❑ 2. The power to rectify the error must extend to the elimination of error, may be the error may be such as to go to the root of order and its elimination may result in the whole order falling to the [Blue Star Engineering Co. (Bombay) Pvt. Ltd V CIT (1969) 73 ITR 283]
- ❑ 3. Subsequent interpretation of law by Supreme Court would constitute as Mistake Apparent from Record. [ Seshvatram (B V K) V CIT (1994) 210 ITR 633 AP

## Time limit for Rectification [Sec.154(7)]

- ❑ Within **4 years** from the end of the financial year in which the order sought to be amended was passed.
- ❑ However, in respect of an application made by the assessee or deductor or collector, the authority shall, within a period of 6 months from the end of the month in which the application is received by it, pass an order –
  - ❖ a. making the amendment; or
  - ❖ b. refusing to allow the claim.

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## Rectification of Error – Few Judiciary Pronouncements

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- ❑ The word '**order**' in expression 'from the date of the order sought to be amended' in section 154(7) includes amended or rectified order. Therefore, where original assessment was subsequently rectified, a second application for rectification made within four years from date of rectificatory order was valid. **Hind Wire Industries Ltd. v. Commissioner of Income-tax [1995] 80 Taxman 79 (SC)/[1995] 212 ITR 639 (SC)/[1995] 124 CTR 219 (SC)**
- ❑ Limitation period is applicable only to making of order and not issue of demand notice. – **S.T.Telu v. CIT (1958) 33 ITR 463 (Mad)**

## Rectification of Error – Few Judiciary Pronouncements

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- ❑ The period of limitation of four years for purpose of section 154(7) would start from date of fresh assessment and not from date of initial assessment and, therefore, rectification made was not barred by limitation. Rectification order passed within period of limitation for giving effect to law laid down by Supreme Court subsequently, was perfectly proper exercise of power. **Southern Industrial Corpn. Ltd. v. Commissioner of Income-tax [2003] 126 TAXMAN 170 (Madras)**
- ❑ Merely because appeal or revision of assessment order was pending, there was no embargo on power of amendment / rectification, as matter did not assume character of a subjudice matter. **Piramal Investment Opportunities Fund v. Assistant Commissioner of Income-tax, Mumbai. [2019] 111 taxmann.com 5 (Bombay).**

## Rectification of Error – Few Judiciary Pronouncements

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- ❑ Where Assessing Officer failed to apply binding precedent that blending of tea leaves was not manufacturing or production activity and had wrongly allowed deduction under section 80-I, same being an error apparent on face of record, assessment order was to be rectified. Hindustan Lever Ltd. v. Joint Commissioner of Income-tax, Special Range-2, Calcutta.
- ❑ Settlement Commission cannot reopen its concluded proceedings by invoking section 154 so as to levy interest under section 234B - Brij Lal v. Commissioner of Income-tax, Jalandhar[2010] 194 Taxman 566 (SC)/[2010] 328 ITR 477 (SC)/[2010] 235 CTR 417 (SC)

## Rectification of Error – Few Judiciary Pronouncements

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- ❑ Rectification petition under section 154 is not obligatory on the part of Assessing Officer if clear data is not available. – **Anchor Processing (P) Ltd v. CIT, 1986 161 ITR 159 (SC)**
- ❑ If an error creeps in in an order due to uploading of return or software, it is an error apparent from record and can be rectified u/s 154 – **Zentech Offshore Eng. (P) Ltd v. CIT, (2017 ) 82 taxmann.com 71 (Mum)**
- ❑ Order of assessment is not only mean as record, but it comprises of all proceedings on which assessment order is based upon - **Maharana Mills (P.) Ltd. v. Income-tax Officer, [1959] 36 ITR 350 (SC).**



## Rectification of Error – Few Judiciary Pronouncements

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- ❑ Writ petition to quash a notice under section 154 without exhausting such remedies is not maintainable - V. K Construction Works Ltd v. CIT (1995) 215 ITR 26 ( P&H).
  
- ❑ In terms of provisions of Explanation 1(ii) to section 153, period of limitation for assessment can be stayed only by an order or injunction of any Court and as soon as said order or injunction of Court is vacated, period of limitation shall re-start even though order vacating injunction is not communicated to department - **Commissioner of Income-tax-1, Agra v. Chandra Bhan Bansal - [2014] 46 taxmann.com 108 (Allahabad)/[2014] 226 Taxman 421 (Allahabad)/[2015] 273 CTR 450 (Allahabad)**

## Rectification of Mistake

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### ❑ Order of Rectification [Section 154(4)]:

- ❖ An order of rectification shall be passed in writing by the income-tax authority concerned.
- ❖ Refusal to make rectification shall also require an order under this section.

### ❑ Refund to be given in case Rectification results into Reduction of Assessment [Sec-154(5)]:

- ❖ AO shall make any refund which may be due to such assessee or deductor or collector.
- Notice of Demand to be issued in case Rectification results in to Enhancing the Assessment, etc. [Section 154(6)]:**
- ❖ If rectification has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the AO shall serve on the assessee or the deductor or the collector, as the case may be, a notice of demand in the prescribed form specifying the sum payable.
  - ❖ such notice of demand shall be deemed to be issued u/s 156 and the provisions of the Income-tax Act shall apply accordingly.

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# How to Rectify Mistakes under E- Proceedings

## Pre-Requisites to file online Rectification Request U/s 154

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- ☐ The Income Tax Return corresponding to the relevant AY should have been processed.
- ☐ Income Tax Department must have issued either intimation u/s 143(1)/154.
- ☐ In case, Intimation u/s 143(1)/154 is not available with you, then you can apply for new service request for intimation on efiling website.
- ☐ In case you have mistakenly submitted/uploaded wrong documents, you can withdraw your rectification request within end of the day of request and submit a new rectification request.
- ☐ Submission of Rectification can be done also in cases where rectification rights transferred to AO



## **Pre-Requisites to file online Rectification Request U/s 154**

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- ☐ Only online rectification can be filed in the case of electronic returns.
- ☐ You can file a rectification request only if previous rectification request is processed (if any)
- ☐ You need not upload XML file in case you are correcting Tax Credits.
- ☐ You should be a registered user on an efilings portal to file rectification request.
- ☐ In case the refund has been adjusted against the demand of other AY. In such a case, if problems are related to the other assessment year then, rectification requests should be filed for the other assessment years i.e., demand year and not for the current year.

## View the submitted Rectification Request :

1. Logon to 'e-Filing' Portal <https://incometaxindiaefiling.gov.in>
2. Go to the 'My Account' menu located at upper-left side of the page ↓ Click 'View e-Filed Returns/Forms'
3. Select 'Rectification Status' from drop down list Click 'Submit'

**Note:** (i) Taxpayer can withdraw rectification within end of the day of request.

(ii) Submission of Rectification allowed for both paper filed and e-Filed Returns and for rectification rights transferred to AO.

## Common mistakes while filing Rectification

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- ❑ 1. It is noticed that **Communication Reference Number** mentioned in the CPC Order (u/s 143(1) or 154) is entered wrongly. It must be mentioned exactly as it appears on the CPC order.
- ❑ 2. **Right Assessment Year** should be selected.
- ❑ 3. The complete **Income Tax Return should be e-Filed** and NOT just the schedules/ fields that need change/correction.
- ❑ 4. In case of change in 'Income', a rectification should NOT be filed. A revised Income Tax Return should be filed in this case, of course, subject to the time limit as per the Income Tax Act, 1961.
- ❑ 5. In case of change in '**Bank Account details**' OR '**Address Details**', a **Rectification should NOT be filed**. You can LOGIN and GO TO My Account → Refund Re-issue request and raise a request for change in the Bank Account/Address details (in case of refund failure).

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# DEMAND & RECOVERY



## 7.1 DEMAND NOTICE [Sec. 156] & PROVISIONS RELATING THERETO [See. 220]

On completion of assessment (or intimation generated after processing of TDS statement), a demand notice [in Form 7] is served for additional demand raised in the assessment.

**Time limit for payment of tax:** The assessee should make the payment of amount demanded within 30 days of service of notice [Sec. 220(1)] Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then he may with the previous approval of the Joint Commissioner direct that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice.

**Extension of time limit:** On an application made by the assessee before the expiry of due date, the Assessing Officer may extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose in the circumstances of the case.

**Interest on delay in payment:** If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable @ 1% for every month (or part thereof) of the delay [Sec. 220(2)]

## Demand under IT Act 1961

**Taxpoint:** Where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged under this section on the same amount for the same period. Similarly, where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under this section on the same amount for the same period.

**Waiver or reduction of interest [Sec.220(2A)]:** The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee u/s 220(2), if he satisfied that:

- (a) payment of such amount has caused or would cause genuine hardship to the assessee;
- (b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and
- (c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within a period of 12 months from the end of the month in which the application is received. No order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

## Demand under IT Act 1961

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**Assessee in default [Sec.220(4)]:** If the amount is not paid within the time (or extended time) at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default. Further, if, in a case where payment by installments is allowed, the assessee commits default in paying any one of the installments within the time, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installment or installments shall be deemed to have been due on the same date as the installment actually in default.

## Demand under IT Act 1961

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**Exception:** In the following circumstances, the assessee may not be considered as an assessee in default:

- (a) Where an assessee has presented an appeal u/s 246A, the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.
- (b) Where an assessee has been assessed in respect of income arising outside India in a country, the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

For this purpose, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form.



## 7.2 PENALTY PAYABLE WHEN TAX IN DEFAULT [Sec. 221]

When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable u/s 220(2), be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears.

### Notes:

- (a) The assessee shall be given a reasonable opportunity of being heard.
- (b) Where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section.
- (c) An assessee shall not cease to be liable to any penalty merely by reason of the fact that before the levy of such penalty he has paid the tax.
- (d) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

### 7.3 CERTIFICATE TO TAX RECOVERY OFFICER [Sec. 222]

- When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form (Form 57) specifying the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below (in accordance with the rules laid down in the Second Schedule)
  - (a) attachment and sale of the assessee's movable property;
  - (b) attachment and sale of the assessee's immovable property;
  - (c) arrest of the assessee and his detention in prison;
  - (d) appointing a receiver for the management of the assessee's movable and immovable properties.
- The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly after 31-5-1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, **and** which is held by, or stands in the name of, any of the persons aforesaid.

If the movable or immovable property was transferred to his minor child or his son's minor child, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the assessee's movable or immovable property for recovering any arrears due from the assessee.



## Certificate of tax Recovery

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- No step in execution of a certificate shall be taken until the period of 15 days has elapsed since the date of the service of the notice. However, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of his property, he may at any time direct, for reasons to be recorded in writing, an attachment of such property.

Further, if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

- Arrear amount includes:
  - (a) interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sec. 220(2); and
  - (b) all charges incurred in respect of:
    - (i) the service of notice and of warrants and other processes; &
    - (ii) all other proceedings taken for realising the arrears

## Certificate of tax Recovery

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- The proceeds shall be disposed of in the following manner:
  - (a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;
  - (b) if there remains a balance, the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were realised; &
  - (c) the balance, if any, remaining after above adjustments shall be paid to the defaulter.
- The order of Tax Recovery Officer relating to the execution or discharge etc. shall be final.

However, a suit may be brought in a civil court upon the ground of fraud.
- If at any time after the certificate is drawn up by the Tax Recovery Officer the defaulter dies, the proceedings (except arrest and detention) may be continued against the legal representative of the defaulter.
- An appeal from any original order passed by the Tax Recovery Officer shall lie to the Chief Commissioner or Commissioner. Such appeal must be presented within 30 days from the date of the order appealed against. Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.

#### 7.4 TAX RECOVERY OFFICER BY WHOM RECOVERY IS TO BE EFFECTED [See. 223]

- The Tax Recovery Officer competent to take action u/s 222 shall be:
  - (a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate; or
  - (b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate,

the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is authorised in this behalf by the Board in pursuance of sec. 120.

- Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up:
  - (a) is not able to recover the entire amount by sale of the property, movable or immovable within his jurisdiction; or
  - (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property and, thereupon, that Tax Recovery Officer shall also proceed to recover the amount as if the certificate or copy thereof had been drawn up by him.

## 7.5 VALIDITY OF CERTIFICATE AND CANCELLATION OR AMENDMENT THEREOF [Sec. 224]

It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

## 7.6 STAY OF PROCEEDINGS [Sec. 225]

- It shall be lawful for the Tax Recovery Officer to grant time for the payment of any tax and when he does so, he shall stay the proceedings for the recovery of such tax until the expiry of the time so granted.
- Where the order giving rise to a demand of tax for which a certificate has been drawn up is modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.
- When the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, TRO shall amend the certificate or cancel it.



## Other mode of recovery of demand

• Section	Description
• 226	Other modes of recovery
• 227	Recovery through state government
• 228A	Recovery of tax as per agreements with foreign countries
• 229	Recovery of penalties, fine, interest and other sums
• 232	Recovery by suit or under other law not affected
• 254	Orders of Appellate Tribunal
• 276	Removal, concealment, transfer or delivery of property to make bar for the tax recovery proceedings
• 276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
• 276BB	Failure to pay the tax collected at source.
• 276C	Wilful attempt to evade tax, etc.
• 281	Certain transfers to be void
• 281B	Provisional attachment to protect revenue in certain cases

# Stay of Demand

- CBDT Instruction dated 29 February 2016 ¶ Modifies instruction No. 1914 dated March 21, 1996 to lay down guidelines for stay of demand pending appeal before CIT(A)
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- ¶ Cases where outstanding demand disputed, AO to grant stay of demand till disposal of appeal by CIT(A) on payment of 15% of disputed demand, subsequently CBDT vide instruction No. F.NO.404/72/93 – ITCC dt.31/07/2017 replaced 15% by 20% only keeping all the condition remain enforced lays down exceptions
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- ¶ Illustrates that where addition on same issue confirmed by appellate authorities in earlier years or by SC or HC in favour of Revenue or where such addition based on credible evidence collected in search or survey, AO can refer matter to Pr CIT/CIT if AO feels that payment of lump sum amount higher than 15% is warranted
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- ¶ Where addition on same issue deleted by appellate authorities in earlier years or SC or HC decided issue in favour of assessee. AO can refer matter to CIT if it feels that payment of lump sum lower than 15% is warranted
- 
- ¶ CIT to hold power of review, all appeal, review and reference to be decided within 2 weeks, A.O. empowered to impose conditions

# Stay of Demand

- Stay Proceedings before AO
- Principles/Guidelines prescribed by Bombay High Court in case of UTI Mutual Fund (345 ITR 71) (Bom)
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- ► No recovery of tax should be made pending:-
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- ► Expiry of the time limit for filing an appeal; ► Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.
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- ► The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and keeping in mind the guidelines in KEC International Ltd. v. B.R. Balakrishnan (2001) 251 ITR 158 (Bom)
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- ► If the AO has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay.

# Stay of Demand

- **Valid service of Notice of demand made U/s 156**
- **Mohan Wahi v. CIT(2001) 248 ITR 799(SC)**
- The court held that valid service is mandatory; in case of failure to serve the notice, recovery proceedings are held to be not valid. Service of demand notice constitutes foundation for subsequent proceedings. Demand Notice not received by assessee, recovery proceeding held to be not valid.
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- **► CIT v. Sattandas Mohandas Sidhi (1982) 230 ITR 591 (MP) (High Court)**
- It was held that, it is mandatory that notice must be served only in the manner provided in section 282 of the Income Tax Act, hence notice by telegram could not be said to be a substitute for notice by post. However, now even Electronic mode is prescribed u/s 282(2) as acceptable mode of communication of notice. At the relevant time only service by post or by way of summons issued by court under CPC were available.
- 
- **► CIT v. Malchand Surana (1958) 28 ITR 684 (Cal.) (High Court)**
- General Clauses Act, 1897, Section 27 deals with meaning of service by post. If it is sent by registered post and acknowledgement is produced the presumption is that it is a proper service.



# Stay of Demand

- **Stay Proceedings before CIT(A)**
- Powers of CIT(A) to grant stay of demand
- ► No necessity to approach the AO before the CIT(A).
- Based on certain judicial precedents like Tin Manufacturing Co of India (212 ITR 451) (All) and Kesav Cashew Co (210 ITR 1014) (Ker) , it is possible to contend that the assessee need not approach the AO before applying to CIT(A) for stay of recovery of tax.
- However, practically it is advisable to approach the AO before filing a stay petition with the CIT(A). In case the AO rejects the stay petition, then an assessee may approach the CIT(A).
- 
- ► **When an appeal is pending before the CIT(A)**
- ► The CIT(A) is empowered to stay the recovery of tax against an application filed by the assessee.
- ► The assessee has to first file the appeal before filing the stay application. It is his discretion either to stay the recovery proceedings or to reject the same, depending upon the facts and circumstances of each case.
- ► The power of the appellate authority to stay the recovery of the demand of dues which are the subject matter of appeal pending before him is independent of the provisions of sub-section(6) of section 220 of the Act.
- In practice, it is advisable to make application to the Assessing Officer & CIT(A) simultaneously to stay the recovery proceedings. In following cases it has been held that the CIT(A) has the power to Stay the Recovery Proceedings.



## Stay of Demand

- it is judicially accepted that the CIT(A) has the inherent powers to stay the recovery of taxes in appropriate cases, while deciding the appeal pending before it. The same has been held in the following cases:-
- ► MK Mohammed Kunhi 71 ITR 815 (SC)
- ► TIN Manufacturing Co of India 212 ITR 451 (All)
- ► Debasish Moulik 231 ITR 737 (Cal)
- ► Keshav Cashew Co v DCIT 210 ITR 1014 (Ker)
- ► Prem Prakash Tripathi v. CIT(1994) 208 ITR 461 (All) (High Court)
- ► Paulsons Litho Works v. ITO(1994) 208 ITR 676 (Mad) (High Court)
- ► Agricultural Produce Market Committee vs. CIT (2005) 279 ITR 371 (Pat.)(High Court)
- ► Debasish Moulik vs. Dy. CIT (1998) 231 ITR 737 (Cal.)(High Court)
- ► LG Electronics India Pvt. Ltd. v. CIT (2012) 209 Taxman 536 (All)(High Court)
- ► CITY ad Industrial Development Corporation of Maharashtra Ltd. v. ACIT (2012) 343 ITR 102 (Bom) (High Court)
- ► Idea Cellular Ltd. v. CIT (2012) 75 DTR 105 (MP) (High Court)
- ► Balaji Universal Tradelink (P) Ltd. v. UOI (2012) 76 DTR 132 (Bom) (High Court)

# Stay of Demand

- **Stay Proceedings before ITAT**
- Procedure for Stay Petition – Rule 35A of the ITAT Rules 1963
- ► Every Stay Application shall be presented in Triplicate
- ► Application to set forth concisely the following:-
- ► Short Facts
- ► Results of Appeal
- ► Tax, interest, penalty etc. demanded, amount undisputed therefrom and amount outstanding
- ► Date of Filing Appeal
- ► Result of any Stay Application to the lower Revenue Authorities
- ► Reasons for seeking stay
- ► Whether Applicant is prepared to offer security, and if so, in what form
- ► Clear and Concise prayers
- ► Affidavit
- ► An application which does not confirm with the above, liable to be summarily rejected

# Stay of Demand

- **Documents to be accompanied when filing Stay Petition to Hon'ble Tribunal**

- ▶ Covering Letter
- ▶ Stay Application
- ▶ Correspondences before lower authorities
- ▶ Documents highlighting financial position
- ▶ Any other relevant documents for stay
- ▶ Duly notarised affidavit on Stamp Paper of Rs. 500
- ▶ Challan of Rs. 500

- **Stay on Protective assessment**

- **Any Recovery** in pursuance of such protective assessment is not permitted. However order of protective attachment can be made.
- ▶ Sunil Kumar v. CIT (1983) 139 ITR 880 (Bom) (High Court)
- ▶ Lalji Haridas v. ITO (1961) 43 ITR 387 (SC)
- ▶ Jagannath Bawri v. CIT (1998) 234 ITR 464 (Gau)(High Court)
- ▶ Jagannath Hanumanbux v. ITO (1957) 31 ITR 603 (Cal) (High Court)
- ▶ R. Rajbabu v. TRO (2004) 270 ITR 256 (Mad) (High Court)
-

# Stay of Demand

- **Consequences of being Assessee in Default**

- ► Charge of mandatory interest under section 220(2). At present it is 1% p.m. or part of a month
- ► Penalty under section 221 of the Act
- ► Attachment / auction of moveable / immovable properties
- ► Prosecution / arrest / detention
- 

- **Stay of Demand : Section 220(3), 220(4)**

- ► Reply of assessee to keep the demand in abeyance
- ► An application for stay of disputed demand must be made before the Assessing Officer before the expiry of time prescribed in notice of demand
- ► Reply should be with reasons stating how the assessee is entitled for stay of recovery, how addition made was not proper, financial difficulties etc.
- ► The assessee must request for stay of recovery till the appeal is disposed. If the issue is covered by jurisdictional High or Apex Court, refer the case laws.
- ► Assessee may also refer the financial difficulties faced by the assessee. How the assessee is complying with the guidelines laid down by the courts may also be demonstrated. This will help the assessee, when they approach for stay of recovery before Commissioner or High Court.
- ► One may also request that if the Assessing Officer decides to proceed further one more opportunity of personal hearing may be given.

# How to respond to Income Tax Demand

The detailed process to submit the Response to Outstanding Tax Demand is as below

- **Login** on to [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) with your **User ID, Password** and **Date of Birth/ Incorporation**
- Go to **e-File → Response to Outstanding Tax Demand**

The screenshot shows the top navigation bar of the e-filing portal with the following items: Dashboard, My Account, e-File, Compliance, PMGKY, Profile Settings, Worklist, and e-Nivaran. A dropdown menu is open under the 'e-File' tab, listing the following options: Upload Return, Prepare and Submit Online ITR, e-File in response to Notice u/s 139(9), Prepare and Submit Online Form (Other than ITR), e-Verify Return, Upload Form BB (Return of Net Wealth), **Response to Outstanding Tax Demand** (highlighted with a red box), e-File u/s 119(2)(b)/92CD, and Rectification. On the left side of the page, there are sections for 'View Returns / Forms' and 'My Pending Actions'. At the bottom, there is a green notice: 'Please make sure you have entered the correct details against your profile. These details are important and will be used for all communications.' The text 'NT !!!' is partially visible on the right side of the page.



- Enter PAN and Captcha code and click on **Submit** button

## Response to Outstanding Tax Demand

PAN	<input type="text" value="PERPA3256A"/>
Captcha Code	<input type="text"/>
Image	
Enter the number as in above image *	<input type="text"/>
<input type="button" value="Submit"/> <input type="button" value="Cancel"/>	

- On successful validation if there is any Outstanding Tax Demand, the “**Response to Outstanding Tax Demand**” available with the following details

# Response to Outstanding Tax Demand

## Response to Outstanding Tax Demand

Records are as per the data available at CPC, Bengaluru.

Date of last refresh 30/09/2016

Date of Notice u/s 245 issued : 30/09/2016

A.Y.	Section Code	Demand Identification Number (DIN)	Date on which demand is raised	Outstanding demand amount (₹)	Uploaded By	Rectification Rights	Response		Pay Tax
2016-17	1431a	2016201739200118310T	02/12/2015	1800	Demand Determined by CPC	CPC	<a href="#">Submit</a>	<a href="#">View</a>	<a href="#">Click Here</a>

- Assessee must click on the download button under “**Outstanding demand amount**” column for the respective AY in order to View/Download the Tax and Computation PDF.
- A Note is displayed stating that - “Please click on the download button next to Outstanding Tax Amount to view the Tax and Computation Sheet in case the demand is raised by Assessing Officer”
- A column “Pay Tax” is available for online payment of outstanding tax demand. Under this column a link “**Click here**” should be displayed.

## Response to Outstanding Tax Demand

Records are as per the data available at CPC, Bengaluru.

Date of last refresh 30/09/2016

Date of Notice u/s 245 issued : 30/09/2016

A.Y.	Section Code	Demand Identification Number (DIN)	Date on which demand is raised	Outstanding demand amount (₹)	Uploaded By	Rectification Rights	Response		Pay Tax
2016-17	1431a	2016201739200118310T	02/12/2015	1800	Demand Determined by CPC	CPC	<a href="#">Submit</a>	<a href="#">View</a>	<a href="#">Click Here</a>

- On Clicking on the link the user will be directed to e-Pay tax Page and click on “**Confirm**” button.

[e-Pay Tax](#)

You will be redirected to the NSDL website to pay Outstanding Tax

CONFIRM



**Disclaimer:**



This is to inform that by clicking on the hyper-link, you will be leaving e-Filing Portal and entering website operated by other parties. Such links are provided only for the convenience of the client and e-Filing Portal does not control or endorse such websites, and is not responsible for their contents. The use of such websites is also subject to the terms of use and other terms and guidelines, if any, contained within each such website. In the event that any of the terms contained herein conflict with the terms of use or other terms and guidelines contained within any such website, then the terms of use and other terms guidelines for such website shall prevail.



# Response to Outstanding Tax Demand

- On Successful Submission, the user shall be redirected to TIN website to pay the tax. All required information shall be auto populated from PAN Master.

## e-Payment Income Tax Department

Tax Applicable <input checked="" type="radio"/> (0020)INCOME-TAX ON COMPANIES(CORPORATION TAX) <input type="radio"/> (0021)INCOME-TAX (OTHER THAN COMPANIES)			Challan No./ ITNS 280		
Permanent Account No		XXXXX0000X		Assessment Year	2015-16
Full Name					
Name (as per Income Tax Department database) will be displayed on confirmation screen					
Flat/Door/BlockNo.	AAAAAAA	Name of premises/Building/ Village		BBBBBBBBB	
Road/Street/Lane	XXXXXXXXX	Area/Locality		CCCCCCCCC	
City/District	DDDDDDDD	State		KARNATAKA	
Pin Code	000001				
Type Of Payment <input checked="" type="radio"/> (400)TAX ON REGULAR ASSESSMENT					
Demand Identification Number (DIN)		2016201700000000000T		Total Amount*	10000
Bank Name*		Bank Name			
Type the characters you see in the picture below. These characters are case sensitive.					
  click to refresh image					

- User needs to select Bank Name and enter Captcha Code available and click on “Proceed” button. On Successful Validation, the following details shall be displayed to the users.

## TIN e-Tax Payment

Users are requested to ensure that Assessment Year, PAN, Type of Payment etc. displayed are correct before proceeding.

### Confirm Data Page

Tax Applicable	0020	CHALLAN NO./ITNS 280	
Permanent Account Number	XXXXX0000X	Assessment Year	2015-16
Full Name	AAAAAAA	Financial Year is 2014-15 for the above Assessment Year displayed.	
Flat/Door/BlockNo.	BBBBBBBBB	Name of premises/Building/ Village	CCCCCCCCC
Road/Street/Lane	DDDDDDDD	Area/Locality	XXXXXXXXXX
City/District	ZZZZZZZZ	State	KARNATAKA
Pin Code	123456		
Type of Payment	400		
Bank Name*	HDFC Bank		
Demand Identification Number (DIN)	2016201700000000000T		
Total Amount*	10000		

The name of the taxpayer is as per the ITD PAN Master. You are required to verify the name before making payment. In case any discrepancy is observed, please confirm the PAN displayed. Any change required in the name displayed as per the PAN Master can be updated by filling up the relevant change request form for PAN.

If the name is correct, then click on "Submit to the bank"

[Submit To the Bank](#) [Edit](#)



- User needs to click on “**Submit to Bank**” button to make the payment.
- Assessee must click on “**Submit**” link under Response column for the respective AY in order to submit the response. Assessee has to select one of the options from the radio button.

### Response To Outstanding Tax Demand

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Response \*

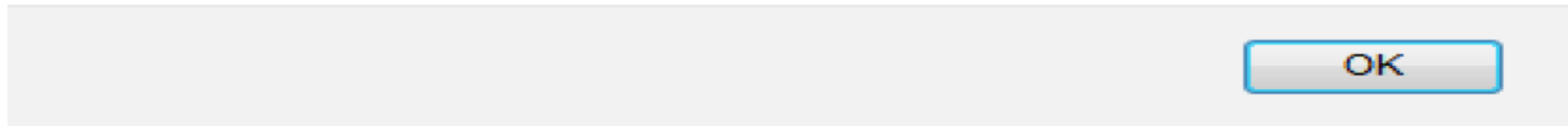
- ☒ Demand is correct
- ☐ Demand is partially correct
- ☐ Disagree with demand
- ☐ Demand is not correct but agree for adjustment

## Response to Outstanding Tax Demand

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- If assessee selects "**Demand is correct**", then a pop up is displayed as "If you confirm 'Demand is correct' then you cannot 'Disagree with the demand'. Click on Submit. A success message is displayed and no further action is required.

If you confirm 'Demand is correct' then you cannot 'Disagree with the demand'



- If assessee selects "**Demand is partially correct**", then two amount fields will be available.
  - **Amount which is correct** - Enter the amount which is incorrect.  
If the amount entered here is equal to the demand amount, then one pop is displayed "Since the amount entered is equal to outstanding demand amount, please select the option "Demand is correct"
  - Note:** If amount entered is equal to Outstanding demand amount than user shall not be allowed to submit with this option.
  - **Amount which is incorrect:** Amount is auto filled which is the difference between the outstanding amount and Amount which is correct.

## Response To Outstanding Tax Demand

Response \*

- ☐ Demand is correct  
☒ Demand is partially correct  
☐ Disagree with demand  
☐ Demand is not correct but agree for adjustment

Amount which is correct \*

1000

Amount which is incorrect

3305

## Reasons\*

- ☐ Demand Paid
- ☐ Demand already reduced by rectification / Revision
- ☐ Demand already reduced by Appellate Order but appeal effect to be given
- ☐ Appeal has been filed
- ☐ Rectification / Revised Return filed at CPC
- ☐ Rectification filed with AO
- ☐ Others

Submit

Cancel

# Response to Outstanding Tax Demand

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- If amount entered is not equal to outstanding demand amount than user should mandatorily fill one or more reasons listed below-
  - Demand Paid
    - ✓ Demand paid and challan has CIN
    - ✓ Demand paid and challan has no CIN
  - Demand already reduced by rectification/revision
  - Demand already reduced by Appellate Order but appeal effect to be given
  - Appeal has been filed
    - ✓ Stay petition filed with
    - ✓ Stay granted by
    - ✓ Instalment granted by
  - Rectification / Revised Return filed at CPC
  - Rectification filed with AO
  - Others
- Based on the reason selected, the assessee's needs to provide additional information as per the below table.

Reason Selected	Additional Details Required
<b>Demand paid and challan has CIN</b>	BSR Code
	Date of payment
	Serial Number
	Amount
	Remarks
<b>Demand paid and challan has no CIN</b>	Date of payment
	Amount
	Remarks
	Upload Copy of Challan
<b>Demand already reduced by rectification / Revision</b>	Date of Order
	Demand after rectification/ revision
	Details of AO
	Upload Rectification / Giving appeal effect order passed by AO
<b>Demand already reduced by Appellate Order but appeal effect to be given</b>	Date of Order
	Order passed by
	Reference Number of Order
<b>Appeal has been filed:</b> Stay petition has been filed	Date of filing of appeal
	Appeal Pending with
	Stay petition filed with
<b>Appeal has been filed:</b> Stay has been granted	Date of filing of appeal
	Appeal Pending with



## Response to Outstanding Tax Demand

<b>Appeal has been filed:</b> Instalment has been granted	Stay granted by
	Upload copy of Stay
	Date of filing of appeal
	Appeal Pending with
	Instalment granted by
<b>Rectification / Revised Return filed at CPC</b>	Upload copy of stay/instalment order
	Filing Type
	e-Filed Acknowledgement No.
	Remarks
	Upload Challan Copy
	Upload TDS Certificate
	Upload Letter requesting rectification copy
<b>Rectification filed with AO</b>	Upload Indemnity Bond
	Date of application
<b>Others</b>	Remarks
	Others

**Note:** Total Attachments size should be up to 50 MB.

- If assessee selects "**Disagree with the Demand**", then assessee must furnish the details for disagreement along with reasons. Reasons are same as provided under "**Demand is partially correct**".

#### Response To Outstanding Tax Demand

Response \*

- ☐ Demand is correct  
☐ Demand is partially correct  
☒ Disagree with demand  
☐ Demand is not correct but agree for adjustment

Reasons\*

- ☐ Demand Paid
- ☐ Demand already reduced by rectification / Revision
- ☐ Demand already reduced by Appellate Order but appeal effect to be given
- ☐ Appeal has been filed
- ☐ Rectification / Revised Return filed at CPC
- ☐ Rectification filed with AO
- ☐ Others

Submit

Cancel

- If assessee selects "**Demand is not correct but agree for adjustment**", then assessee must furnish the details for disagreement along with reasons. Reasons are same as provided under "**Demand is not correct but agree for adjustment**".

## Response to Outstanding Tax Demand

### Response To Outstanding Tax Demand

Response \*

- ☐ Demand is correct  
☐ Demand is partially correct  
☐ Disagree with demand  
☒ Demand is not correct but agree for adjustment

Reasons\*

- ☐ Demand Paid  
☐ Demand already reduced by rectification / Revision  
☐ Demand already reduced by Appellate Order but appeal effect to be given  
☐ Appeal has been filed  
☐ Rectification / Revised Return filed at CPC  
☐ Rectification filed with AO  
☐ Others

Submit

Cancel

Fill the necessary details and click on "**Submit**" button.

- After assessee submits the response the success screen must be displayed along with the Transaction ID.  
The success message is as follows:

### Response To Outstanding Tax Demand



Your Outstanding Tax Demand response has been successfully submitted and the Transaction ID is : 1000222615  
In case of any queries, please contact 1800 4250 0025.

- Assesseees can click on “**View**” link under Response column to view the response submitted. The following details are displayed:
  - S. No.
  - Transaction ID – A hyper link
  - Date of Response
  - Response Type

### Response To Outstanding Tax Demand

S.No.	Transaction ID	Date of Response	Response Type
1	<a href="#">1000222555</a>	03/12/2014	Disagree with demand

Back

Click on Transaction ID to know the details of response submitted.

# Response to Outstanding Tax Demand

[View Response Details](#)

[Disagree with demand](#)

## Rectification filed with AO

Date of Application (DD/MM/YYYY)

08/12/2014

Remarks

Application Submitted

### Note:

- Demand position gets updated every day
- Interest demand u/s 220(2) is linked to the principal demand of the same assessment year. This indicates that principal demand is already adjusted/ paid and interest demand is the only outstanding value. Hence does not require any confirmation.
- If demand is shown to be uploaded by AO in the above table, rectification right is with Assessing Officer, please contact your jurisdictional Assessing Officer for the same.
- For the demand against which there is "No Submit response option" available such demand is already confirmed by the Assessing Officer. Kindly contact your Jurisdictional Assessing officer.



## Revision of order prejudicial to Revenue – Section 263

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- ☐ **Orders which may be revised:** Any order passed by the Assessing Officer, which is
    - ❖ *a) Erroneous;*
    - ❖ *b) Prejudicial to the interests of the revenue; and*
    - ❖ *c) Passed by an authority subordinate to the Principal Commissioner or Commissioner*
  - ☐ **Notes :** a) Orders passed by the Assessing Officer includes –
    - ☐ there are following categories of the Assessment orders;
    - ☐ i) Regular Assessment Order u/s 143(3) / intimation u/s 143(1) can be revised
    - ☐ ii) Reassessment Order passed u/s 147
    - ☐ iii) Block Assessment Orders u/s 153A and 153C
    - ☐ iv) The Assessment Order passed u/s 143(3) read with 144BA (Chapter X-A – AA Agreement)
    - ☐ v) The Assessment Order passed u/s 143(3) read with 144C
-

## Revision of order prejudicial to Revenue – Section 263

---

- ❑ **No revision:** Order made by the AO after making proper enquiries and considering relevant details and decisions of Supreme Court cannot be said to be erroneous and prejudicial to the interest of the revenue.
  - ❑ **An order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue:** If, in the opinion of the Principal Commissioner or Commissioner:
    - ❖ a) the order is passed without making inquiries or verification which should have been made;
    - ❖ b) the order is passed allowing any relief without inquiring into the claim;
    - ❖ c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
    - ❖ d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in case of assessee or any other person
-

## **Revision of order prejudicial to Revenue – Section 263**

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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 Principal Commissioner or Commissioner.

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 Principal Commissioner or 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.

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## Revision of order prejudicial to Revenue – Section 263

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### □ Treatment of an order, which is subject matter of the appeal

- ❖ Revision u/s 263 of an order, which is subject matter of appeal, cannot be made.

*Notes :The Principal Commissioner or Commissioner can revise such order (which has been a subject matter of appeal) which had not been considered and decided in such appeal.*

### □ E.g., From the perusal of the order u/s 143(3) passed by the AO following was observed:

- ❖ – **Point A:** Against the assessee
  - ❖ – **Point B:** In favour of the assessee
-

## Revision of order prejudicial to Revenue – Section 263

---

### ☐ Treatment of an order, which is subject matter of the appeal

**EXAMPLE:** The assessee being aggrieved with point A in the order passed by the Assessing Officer, preferred an appeal to the Commissioner (Appeals). However, the Commissioner wants to revise the order u/s 263 for point B (subject to other conditions being fulfilled). It is possible as doctrine of partial merger of the order is applicable in case of sec. 263. However, the Commissioner cannot revise the order for point A (as the same is subject matter of an appeal)

### ☐ An order cannot be said to have been made subject of an appeal if the appeal has been disposed of by the appellate authority without passing an order

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## Revision of order prejudicial to Revenue – Section 263

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☐ Procedure to be followed for Revision u/s 263

☐ 1. Examination of Records:

- ❖ Pr CIT / CIT may call for & examine the records of any proceeding under the Act.
- ❖ If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment.

☐ 2. Inquiry: He must make or cause to be made such inquiry as he deems necessary.

☐ 3. Opportunity of being Heard: No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard.

☐ Order: Finally, he may pass such revision order as the circumstances of the case justify including an order enhancing, modifying or cancelling the assessment and directing a fresh assessment.

---

## Revision of order prejudicial to Revenue – Section 263

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- ❑ **Time limit for passing revision order:** 2 years from the end of the financial year in which the order sought to be revised was passed.
  - ❑ **How to Compute Period of Limitation:** Following period shall be excluded-
    - ❖ Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
    - ❖ Any period during which any proceeding under this section is stayed by an order or injunction of any court.
  - ❑ **Exception:** There is no time limit for passing a revision order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.
  - ❑ **Appeal against order u/s 263:** A revisional order passed by the Principal Commissioner or Commissioner u/s 263 can be appealed to the Tribunal.
  - ❑ **Section 263 vs. Section 154:**
    - ❖ Pr CIT or CIT can exercise the power even in a case where the issue is debatable.
    - ❖ Revisional power u/s 263 is not comparable with the power of rectification of mistake u/s 154.
-

## Evaluation of Various Possibilities

Scenarios	Remarks
The order is passed without making inquiries or verification which should have been made	In this proposition, it may be argued that the order is passed after getting approval and sanction of designated Income Tax Authority. The designated Income Tax Authority is bound to consider and examine the records and thus, the order passed either with the approval or JCIT/Pr. CIT or same is being passed after their approval, same clearly falls outside the purview of scope of clauses (a) to (c).
The order is passed allowing any relief without inquiring into the claim	
The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119	
The order has not been passed in accordance with any decision which is prejudicial to the Assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the Assessee or any other person	
	Though this category of error may not directly be covered in the above proposition, and hence, provision of section 263 can be applied in this scenario.

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## **ACTION OF ASSESSEE**

**Revision of the Order which is not prejudicial to the  
interest of Revenue – Sec 264**

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## Revision of the Order which is not prejudicial to the interest of Revenue – Sec 264

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☐ Any order which is -

- ❖ • erroneous;
- ❖ • not covered u/s 263 (i.e. not prejudicial to the interest of the revenue);
- ❖ • passed by an authority subordinate to the Pr CIT or CIT.

☐ **Tax Point:** No order under this section can be passed which is prejudicial to the assessee.

☐ **Notes:**

- ❖ a) Order which is not appealable before the Commissioner (Appeal) can also be referred to the Commissioner for revision.
- ❖ b) For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the Commissioner.

☐

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## Revision of the Order which is not prejudicial to the interest of Revenue – Sec 264

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### □ On whose motion is revision possible:

- ❖ Either on own motion of the Principal Commissioner / Commissioner or
- ❖ on an application by the assessee for revision.

### □ Procedures to be Followed:

- ❖ **1.Examination of Records:** Once revision proceedings have been initiated, the Pr CIT or CIT may call for and examine the record of any proceeding.
  - ❖ **2.Inquiry:** He must also make or cause to be made such inquiry as he deems necessary
  - ❖ **3.Order:** He may pass such revision order as the circumstances of the case justify & the order passed should not be prejudicial to the assessee.
-

## Revision of the Order which is not prejudicial to the interest of Revenue – Sec 264

---

### ☐ Time limit for filing an application:

- ❖ Where revision initiated by assessee: within 1 year from the date on which the order in question was communicated to the assessee or
- ❖ If initiated by Pr CIT / CIT: One year or the date on which he otherwise came to know of it, whichever is earlier.

### ☐ Admission of Belated Application: if the assessee was prevented by sufficient cause from making the application within time.

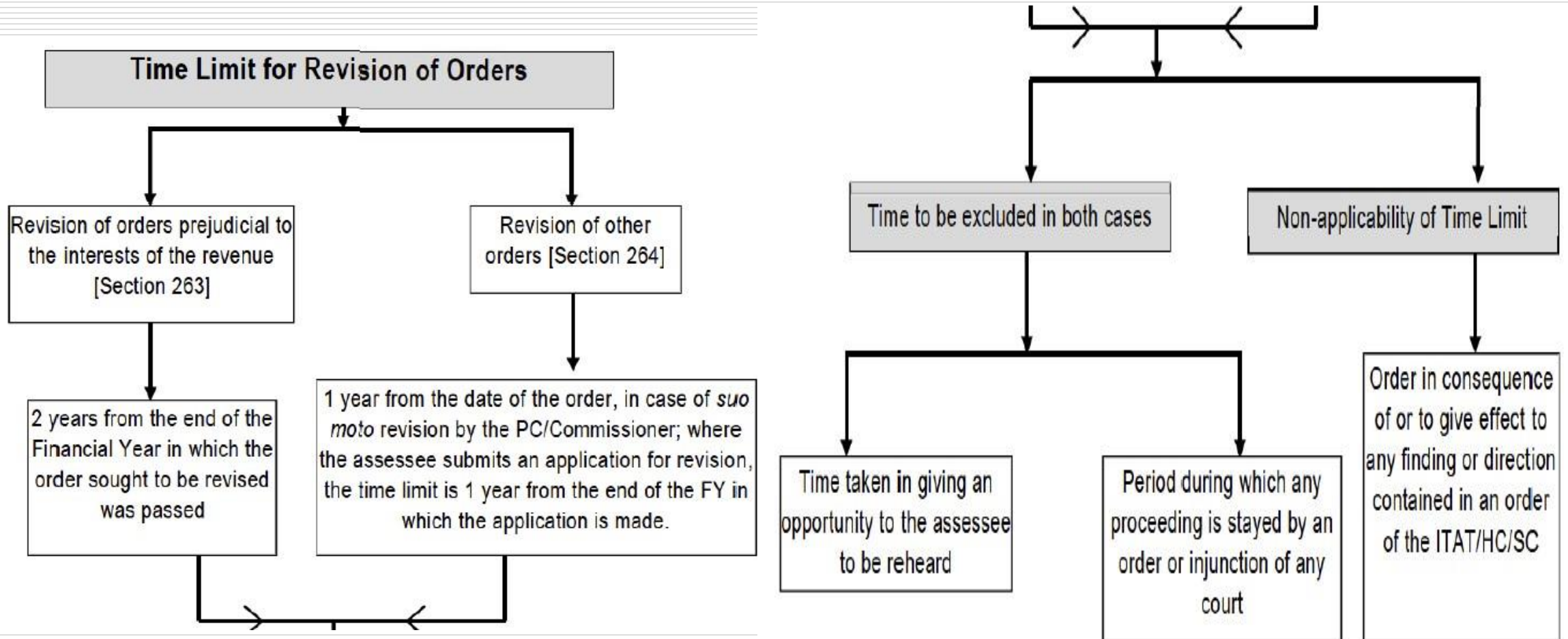
### ☐ In computing the above period of limitation following time shall be excluded:

- ❖ Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
- ❖ Any period during which any proceeding under this section is stayed by an order or injunction of any court. [Section 264(6)]

However, there is no time limit for passing a revision order for giving effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

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# Time Limit of Revision of Order



## Revision of the Order which is not prejudicial to the interest of Revenue – Sec 264

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### ☐ Orders which cannot be revised [Section 264(4)]

- ❖ (a) Where an order is appealable but no appeal has been made to CIT (Appeals) or to the ITAT and time within which such appeal can be made, has not expired.

**Note:** Where an appeal lies to the CIT(Appeals) or to the ITAT and the right of appeal is waived by the assessee, the PrCIT / CIT may revise the order even before the expiry of time limit of appeal.

- ❖ b) Where the order has been made the subject of an appeal to the CIT(Appeals) or to the ITAT.

**Example:** E.g., the assessee has been aggrieved with point A and point B in the order passed by the Assessing Officer. He preferred an appeal to the Commissioner (Appeals) in respect of point A and seeks to file revision petition u/s 264 in respect of point B. It is not possible, he cannot file revision petition u/s 264 due to doctrine of total (or complete) merger of the order. He has to choose either way of the course.

☐ It is to be noted that for the purpose of sec. 264, doctrine of total merger is applicable, on the other hand, for the purpose of sec. 147, 154 and 263, doctrine of partial merger is applicable.

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## Revision of the Order which is not prejudicial to the interest of Revenue – Sec 264

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### ☐ Orders which cannot be revised [Section 264(4)]

- ❖ The assessment order could not be said to have been made subject matter of appeal, where an appeal was dismissed –
  - a) on the ground that the same was incompetent; or
  - b) as barred by limitation; or

☐ **Fee:** Rs 500 where the application for revision is made by the assessee.

☐ **Appeal against order u/s 264:** A revisional order passed by the Pr CIT or CIT u/s 264 cannot be appealed to the Tribunal or the High Court. However, a petition for a writ of certiorari under Article 226 is maintainable

### ☐ Other points

- The assessee cannot claim the right of revision in respect of an earlier year on the basis of finding of the Tribunal for a subsequent year.
  - An order by the Pr CIT or CIT declining to interfere shall not be deemed to be an order prejudicial to the assessee.
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## Comparative Study of Revision u/s 263 & u/s 264

Basis	Sec. 263	Sec. 264
Which order can be revised	Order, which is prejudicial to the interest of revenue.	Order, which is prejudicial to the interest of assessee.
Proceedings at the motion of	At the own motion of the Pr. Commissioner or commissioner.	At the own motion of the Pr. Commissioner or commissioner or on the application of the assessee.
Scope	Revision is possible of the issues which have not been considered and decided in an appeal, i.e., doctrine of partial merger is applicable	Revision u/s 264 is not possible on any issue if an appeal has been filed, i.e., doctrine of total merger is applicable
Time limit for application	Assessee does not apply	Within 1 year from the date on which the order in question was communicated to the assessee
Time limit for passing a revisional order	2 years from the end of the financial year in which the order sought to be revised was passed.	<ul style="list-style-type: none"> <li>Where the Pr. Commissioner or commissioner acts on his own motion: within 1 year from the date of original order.</li> <li>Where the application is made by the assessee: within 1 year from the end of the financial year in which such application is made.</li> </ul>
Fee	Not applicable	₹ 500 where the application for revision is made by the assessee.
Appeal against order	Appeal can be filed to the Tribunal	No appeal can be filed.
Beneficial to	Revenue	Assessee

## Judiciary decisions – Section 264

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- ❑ Even those orders which are not appealable before the Dy CIT(A) or CIT(A), may be referred by the assessee to the CIT for seeking revision or modification. — **Dwarka Nath Vs ITO 57 ITR 349(SC)**.
  - ❑ A public duty is imposed on the revisional authority not only to entertain such application but also to deal with the same in accordance with law after giving the aggrieved party a reasonable opportunity of being heard as the discretion vested in him is a judicial discretion and has to be exercised judiciously. It is a power to be exercised in **the interest of justice** to the assessee. It is also the duty of the revisional authority to revise an assessment which is found to be erroneous on the admitted facts of the case — **OCM Ltd (London) Vs CIT 138 ITR 689(All)**
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## Judiciary decisions – Section 264

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- ❑ If he detects an error committed by the subordinate officer, he has been given the right to correct it and pass such orders in relation thereto, as he thinks fit — **Haryana State Small Industries and Export Corporation Ltd Vs CIT 142 ITR 293 (P & H).**
  - ❑ The revisional powers conferred by S.264 on the CIT are very wide. It is open to the CIT to entertain even a new ground, not urged before the lower authorities, while exercising revisional powers. — **C. Parikh & Co Vs CIT 138 ITR 689 (All).**
  - ❑ A new claim for deduction made by the assessee in revision petition is to be examined on merits — **Rashtriya Vikas Ltd Vs CIT 99 CTR 68(All).**
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## Judiciary decisions – Section 264

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- ❑ Assessee can file a revision petition against an addition erroneously accepted by him — **Pt. Sheonath Prasad Sharma Vs CIT 66 ITR 647 (All)**.
  - ❑ Even an order wherein the principles of natural justice have been ignored, can be corrected in exercise of revisional powers U/s 264. — **Mohammadi Begum Vs CIT 158 ITR 622 (AP)**.
  - ❑ A revision petition may lie only after an order has already been passed by the concerned authority. A petition filed during the pendency of assessment or other proceedings, does not lie. — **Bhavana Chemicals Ltd Vs CST (1978) TLR p.2210 (All)**.
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## Judiciary decisions – Section 264

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□ S.264(4)(b) places a ban on the CIT to revise any order where an appeal is pending before the Dy CIT, against that order. Further by virtue of S.264(4)(c) where the order has been made subject of an appeal to the CIT(A) or to the Appellate Tribunal, the revisional powers of the CIT U/s 264 come to an end. In other words, it cannot be exercised at all during the pendency, or even after the disposal, of the appeal. The position does not change even if the order of the appellate authority is challenged before the Appellate Tribunal by the IT Department and not by the assessee. — **CWT Vs Mrs. Kasturbai Walchand and Others 177 ITR 188(SC).**

□ A petition for revision U/s 264, may be made against orders which are not appealable under the Statute. — **Dwarka Nath Vs ITO 57 ITR 349.** (It may be challenged by way of Writ)

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## Judiciary decisions – Section 264

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- ❑ A revision lies to the CIT against the levy of penal interest U/s 139(8), 215 or 217, against which no appeal has been provided for — **CIT Vs Geetaram Kaliram 121 ITR 708 (All – FB)**.
- ❑ **In Gupta Builders (P) Ltd Vs CIT 191 ITR 14 (Bom)**, interest charged U/s 139(8), was directed to be waived in full.
- ❑ Proviso to S.264(3) empowers the CIT to admit and entertain an application for revision U/s 264(1), if the assessee is prevented by 'sufficient cause' from making the application within the specified period. The word 'sufficient cause' occurring in the proviso to S.264(3) should receive a liberal construction so as to advance substantial justice. In **Collector, Land Acquisition Vs Mst. Katiji & Others 167 ITR 471(SC)**, it was held that the court should adopt a liberal approach in the matter of condonation of delay.

## Judiciary decisions – Section 264

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- ❑ An order U/s 264 refusing to revise the order passed by a subordinate authority, is amenable to writ jurisdiction of the High court in case of an illegal demand which contravenes the constitutional provisions that tax has to be imposed in accordance with the law. In such a case a petition under Article 226 for a writ of certiorari to quash an unjust or illegal order of the CIT, is maintainable. — **Dwarka Nath Vs ITO. 57, ITR 349(SC).**
- ❑ An applicant must be granted an oral hearing by the CIT before disposing of his application U/s 264. A written submission cannot be substituted for oral argument before the CIT, while dealing with a revision petition. The CIT should fix the date for hearing and give an opportunity to the applicant to have his say in the matter – **Dulalchand Pramanick Vs CIT 84 ITR 720 (Ori) and Industrial Rubber Products Vs CIT. 194 ITR 141(Mad). / Dwarka Nath Vs ITO 57 ITR 349(SC).**

## Judiciary decisions – Section 264

- ❑ It was held in this case that it is implicit in such revisional jurisdiction that the revising authority should give an opportunity to the party affected to put forward his case. If the CIT does not give an opportunity of being heard to the assessee, his orders are liable to be quashed **S.K.Veeraraghavan Vs CIT 71 ITR 823(Mad),**
- ❑ A copy of AO's report filed in response to revision petition, need not necessarily be given to the assessee but it would be in the interest of justice and fair-play, if a copy of such report is made available to the assessee. The assessee would thus be in a position to appreciate whether the AO has travelled beyond the material existing on the record. **Asharfi Lal Vs ITO 66 ITR 63(All),**
- ❑ As per the provisions of S.264(1), the order passed by the CIT U/s 264, cannot be prejudicial to the assessee. The order passed by the CIT U/s 264 should not be prejudicial to the assessee even indirectly. **ACIT Vs M.V.Kenlucky, 60 ITD p.492 (Pune – Trib).**

# Q&A

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