



Revision u/s 263 & 264 - Provisions and Procedural Aspect



*“Behind Every Successful Business Decision, there is always a **CMA**”*



The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)
Tax Research Department

Online Certificate Course on Revision u/s 263 & 264 **- Provisions and Procedural Aspect**

Appeals Hierarchy under Income Tax

Assessment Order passed u/s 143(3)



CIT (Appeals) u/s 246A : 30 Days



ITAT u/s 254 : 60 Days



High Court u/s 260A: 120 Days



Supreme Court u/s 261: 90 Days

Appeals under Income Tax

Introduction to Appeals:

- ❖ Always First Appeal made by Assessee, but not by Department
- ❖ ITAT is the highest Authority for FACT Finding

Ex: Ownership of P&M

- ❖ HC & SC will entertain the cases involved “Question of Law” (Interpretation)

Ex: Applicable rate of Depreciation as per IT Act

- ❖ Appeals to CIT & ITAT shall function in accordance with IT Act, 1961
- ❖ Appeals to HC & SC shall function in accordance with Code of Civil procedures, 1908
- ❖ Function means : Describes about Form, Fees, Time limit and Procedure to be followed.
- ❖ Appellate Authority has an inherent power to grant “Stay of Demand”
- ❖ Stay of Demand refers to “Stay on the Tax Recovery proceedings” by the Department.

Introduction to Appeals

- ❖ Appeal can be made for all orders passed by the IT Authorities except the following
- ❖ There is no right of Appeal against the following orders
 - Order Levying Interest u/s 234A/B/C
 - Revisional Order u/s 264
 - Order of Settlement Commission (ITSC)
 - Order of AAR
 - Order of ITAT on Question of Facts

Appeals to CIT(A)

- Appeal means a lodging a complaint with higher authority **against** his sub-ordinate
- Appeals to CIT(A) deals with S.246A to S.251
- Time limit : with in 30 Days from the date of **Service of Order** (*receipt*) *by the Assessee*
- However delay can be condone by CIT(A)
- CIT Appeals would be filed with following documents
 - Form No. 35
 - Statement of Facts
 - Grounds of Appeal
 - Copy of Order of A.O
 - Applicable filing Fees
- All the above set of documents known as **Memorandum of Appeal**
- Memorandum of Appeal filed in “**Duplicate**” to the department

Appeals to CIT(A)

- ❖ CIT(A) shall pass an order / judgement within 1 year from the end of FY in which appeal is filed
- ❖ The following Orders can be appealed
 - ✓ Assessment orders passed by A.O u/s 143(3), 144, 147, 153A
 - ✓ Intimation u/s 143(1) or 200A or 206CB
 - ✓ Rectification order passed u/s 154
 - ✓ Any other order passed by A.O
- ❖ Stay of Demand : Can be granted by A.O or CIT(A)
- ❖ Additional grounds can be made under Appellate Authority (Q1)
- ❖ Appeal Filing Fees to CIT(A) is Max Rs 1,000/-

Appeals to CIT(A): Faceless Appeals

Faceless Appeals:

Sec. 250(6B) : The CG may make a scheme, for the purposes of disposal of appeal by CIT(A), so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the CIT(A) and the appellant in the course of appellate proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT(A).

Sec. 250(6C) : The CG may, for the purposes of giving effect to the scheme made under sub-section 250(6B), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by CIT(A) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2022. Sec. (6D) Every notification issued under sub-section (6B) and (6C) shall, as soon as may be after the notification is issued, be

Appeals to ITAT

- ❖ Appeals to ITAT is called as second level of Appeals
- ❖ Appeals to ITAT deals with S.252 to S.255
- ❖ Appeals to ITAT can be made by aggrieved party either Assessee or Dept. (A.O)
- ❖ Time Limit : within 60days from the date of receipt of CIT(A) order copy
- ❖ However delay can be condone by ITAT for sufficient cause
- ❖ Cases at ITAT level heard by Bench (refers to panel of judges)
- ❖ Normally Bench consist of 2 members (Division Bench), One Judicial member & Other Revenue member (Accountant member)
- ❖ If Total Income is upto Rs 50 lakhs then, it heard by Single member
- ❖ Decision at ITAT level shall be taken according to the opinion of the “**Majority**”
- ❖ If the members differ on any point, and the members are equally divided on that point, then such will be referred to the president of ITAT
- ❖ Then president shall refer the case to be heard by another member and then decision shall be taken according to the opinion of the majority.

Appeals to ITAT

The following orders can be **appealed** against ITAT

- ✓ Order of CIT (A)
- ✓ Order of A.O passed on the basis of Direction of Dispute Resolution Panel (DRP) u/s 144C
- ✓ Revision Order u/s 263
- ✓ Order of A.O passed with approval of CIT/PCIT under section 144BA
- ✓ Any other Order of CIT / CCIT / DIT / DGIT

Note:

- ❑ CIT(A) covered under IT Authorities, it can rectify its order u/s 154 (Time Limit 4 Years)
- ❑ ITAT can rectify its order if there is mistake apparent on record within **6 Months** from the end of the month in which original order was passed .
- ❑ ITAT can rectify its mistake
 - ✓ on own motion (or)
 - ✓ on an application made by the Assessee (or) A.O

Appeals to ITAT

- ITAT filed in
 - Form No. 36
 - Statement of Facts
 - Grounds of Appeal
 - Copy of Order of CIT(A)
 - Applicable filing Fees : 1% of Assessed Income (Max Rs 10,000)
- Memorandum of Appeal filed in “**Triplicate**”
- Time Limit to pass order : within **4** years from the end of the year in which appeal was received by it, if possible
- Application Fees for Stay of Demand to ITAT is Rs 500/-

Appeals to ITAT

Stay of Demand:

- ❖ While filing appeal to ITAT, the Assessee can apply for stay of demand
- ❖ ITAT may after considering the merits of application can grant stay of demand for 180 days
- ❖ If Assessee deposits **at least 20%** of the amount of Tax, Interest, fees, penalty or any sum payable under this provisions of the IT Act, 1961
- ❖ If ITAT fails to give judgment with in 180 days and delay is not due to assessee then ITAT can extend stay period (Original + Extend) : Max 365 days
- ❖ Rectification of Mistake : u/s 254 ITAT can rectify “mistake apparent from the record” within 6 months from the end of the month of order
- ❖ ITAT can consider additional grounds of evidence where -
- ✓ IT authority not given sufficient opportunity to Assessee to produce
- ✓ ITAT feels such evidence enable it to pass its order

Difference between CIT(A) & ITAT

Difference between Power of CIT (A) & ITAT		
	CIT (A)	ITAT
Power to enhance the Assessment	yes	No
Power to reduce / confirm the Assessment	yes	yes
Power to set aside and refer back to A.O. for fresh assessment.	No	yes
Power to condone delay .	yes	yes
Power to make inquiries	yes	yes
Power to rectification of mistake	yes-sec.154	yes-sec.254
Power to review	No	No
Power to admit additional grounds of appeal	yes	yes
Power to admit additional evidence	yes (Note 1)	yes (Note 2)
Power to grant stay .	yes	yes
Power to Award cost (in case of frivolous Appeal)	No	yes
Power to Reject appeal .	yes	yes

Appeals to HC

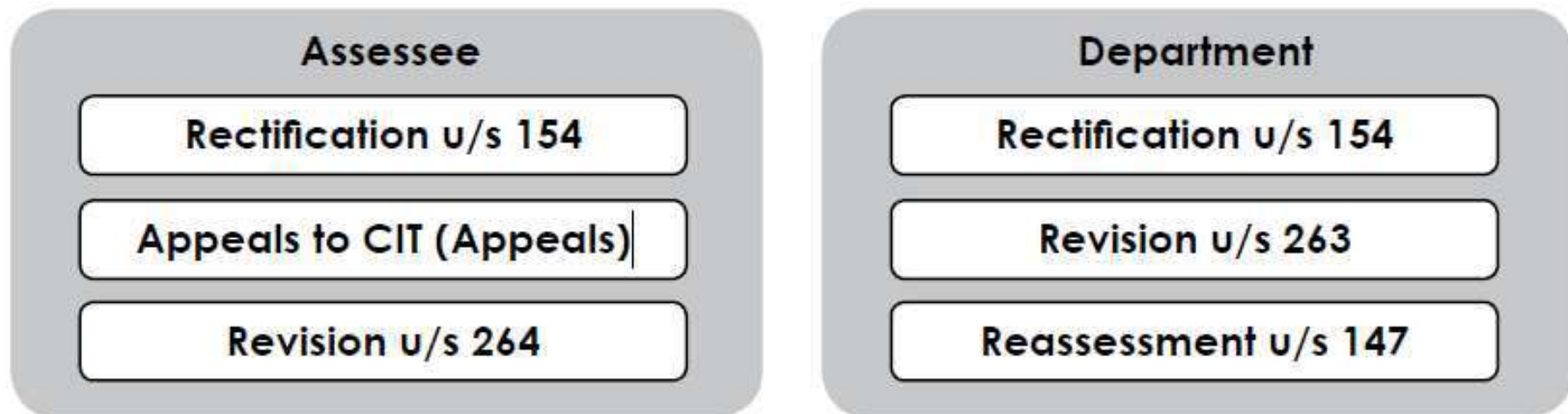
- ❖ Appeals to HC is 3rd level of Appeals
- ❖ Appeals to HC deals u/s 260A & 260B
- ❖ Appeals HC is called as **“Writ Petition”**
- ❖ Appeals to HC can be made by aggrieved party either Assessee or Dept.
- ❖ Appeals to HC can be made only matters involved **“Question of Law”**
- ❖ Appeals to HC can be filed within 120 Days of ITAT order
- ❖ Appeal form, fees & procedure governed by Code of Civil Procedures, 1908 and followed accordingly
- ❖ HC have power to review its own orders.

Appeals to SC

- ❖ Appeals to SC is 4th level of Appeals
- ❖ Appeals to SC deals u/s 261 & 262
- ❖ Appeals SC is called as “**Special Leave Petition (SLP)** ”
- ❖ Appeals to SC is final and conclusive
- ❖ Order passed by SC is “Law of Land” & “Supremo in the Nature”
- ❖ The Order is binding on both Assessee and A.O
- ❖ Appeals to SC can be made by aggrieved party either Assessee or Dept.
- ❖ Appeals to SC can be made only matters involved “**Question of Law**”
- ❖ Appeals to SC can be filed within 90 Days of HC order
- ❖ Appeal form, fees & procedure governed by Code of Civil Procedures,1908 and followed accordingly.
- ❖ SC have power to review its own orders...

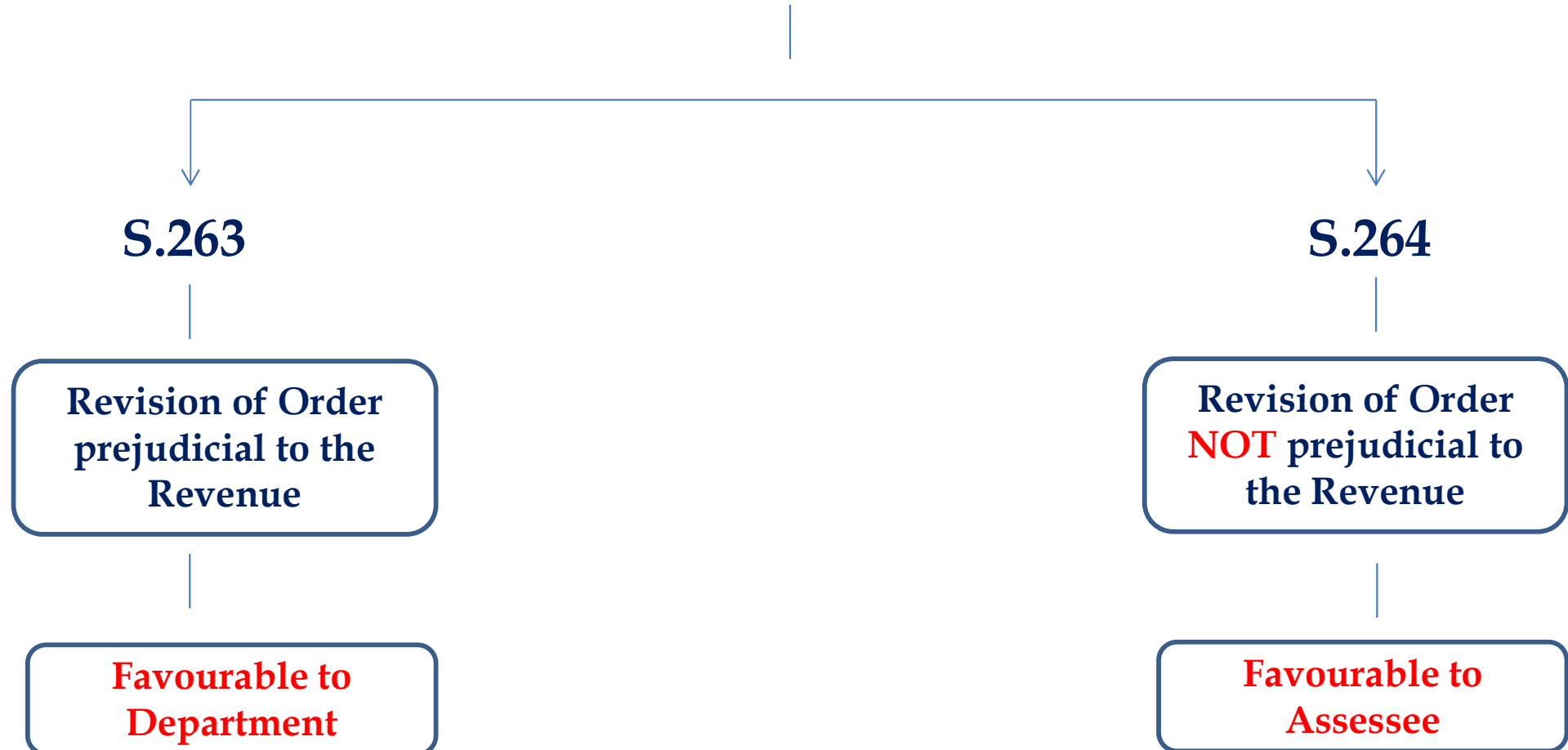
Remedies Available

- ❖ Once the Assessment Order passed u/s 143(3) / 144 by the A.O
- ❖ The following remedies available to Assessee Vs. Department



Revisionary Powers of CIT

Revision



S.263 Revisionary Powers of CIT

Orders which may be revised	<p>Any order passed by the Assessing Officer, which is -</p> <ul style="list-style-type: none">(a) Erroneous;(b) Prejudicial to the interests of the revenue; and(c) Passed by an authority subordinate to the Principal Commissioner or Commissioner. <p>Notes</p> <ul style="list-style-type: none">(a) Orders passed by the Assessing Officer includes -<ul style="list-style-type: none">(i) An order of assessment made by the Assistant Commissioner on the basis of the directions issued by the Joint Commissioner u/s 144A;(ii) An order made by the Joint Commissioner as an Assessing Officer.(b) Even an intimation u/s 143(1) can be revised
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***Prejudicial = harmful / detrimental**

S.263 Revisionary Powers of CIT

Tax Point:

An order passed by the A.O 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 PCIT or CIT:

(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 of High Court or Supreme Court.

S.263 Revisionary Powers of CIT

The CIT / PCIT / CCIT / PCCIT may opinion that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment.

- ❖ Examination of Records
- ❖ Inquiry
- ❖ 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.
- ❖ OBH shall be given to the Assesse in the case of enhancing the order

S.263 Revisionary Powers of CIT

Time Limit to pass any such order: **2 years** from the end of the financial year in which the original order of A.O was passed.

Implication:

PY : 2021-22

ROI Filed: 31-07-2022

S.143(2) : 30.09.2023 (within 6m from the end of RAY)

S.143(3) : 31.12.2023 (within 9m from the end of RAY)

Time limit for **S.263** = 31-03-2024 + 2 years = 31-03-2026

❑ A revisional order passed by the Principal Commissioner or Commissioner u/s 263 can be appealed to the **Tribunal i.e., ITAT.**

S.264 Revisionary Powers of CIT

Orders which may be revised	<p>Any order which is -</p> <ul style="list-style-type: none">• erroneous;• not covered u/s 263 (i.e. not prejudicial to the interest of the revenue);• passed by an authority subordinate to the Principal Commissioner or Commissioner. <p>Taxpoint: No order under this section can be passed which is prejudicial to the assessee.</p> <p>Notes:</p> <ol style="list-style-type: none">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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***Prejudicial = harmful / detrimental**

S.264 Revisionary Powers of CIT

On whose motion is revision possible :

- ✓ on own motion of the PCIT / CIT
- (Or)
- ✓ on an Application made by the assessee for revision

Procedure to be followed :

- ✓ Examination of Records
- ✓ Inquiry
- ✓ Order: He may pass such revision order as the circumstances of the case justify. However, the order passed should **not** be prejudicial to the assessee.

S.264 Revisionary Powers of CIT

Assessee can apply for Revision u/s 264 ONLY if:

- ✓ Time limit to file CIT(A) has been expired (30 Days)
(Or)
- ✓ Assessee waived his right of appeal in writing

Points to Remember:

- ✓ Assessee can prefer either an Appeal or can apply for revision u/s 264
- ✓ Both remedies can't be available simultaneously
- ✓ Revisional order u/s 263 can be appealed to ITAT but order u/s 264 can't be appealed
- ✓ Only orders issued by A.O can be revised u/s 263 & 264 but not intimation served u/s 143(1)

S.264 Revisionary Powers of CIT : Time Limits

(i) On own motion of the PCIT / CIT:

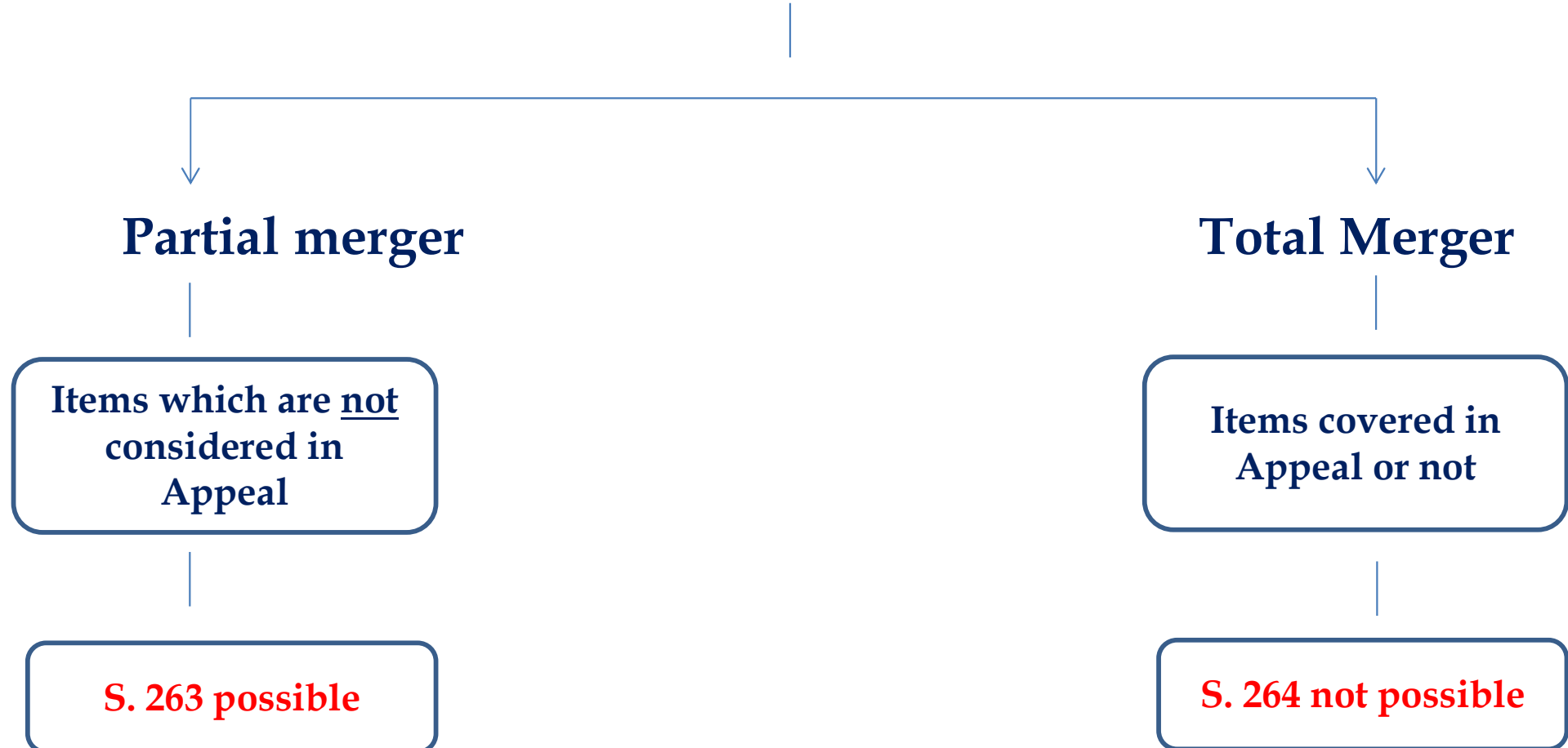
- ✓ With in 1 year from the date of order passed by the A.O

(ii) On an application made by the assessee

- ✓ Assessee has to make an application within 1 year from the date of receiving a copy of order from A.O
- ✓ CIT has to pass an order u/s 264 with in 1 year from the end of the FY in which application was made by the assessee.
- ✓ Order should not be prejudicial to the interest of the Assessee u/s 264

Revisionary Powers of CIT

Doctrine of Merger



Revisionary Powers of CIT

❖ Partial Merger:

- ✓ Partial merger means the items which are **not** covered in CIT(Appeals) can be considered u/s 263
- ✓ Partial merger is possible only in section 263 of Revisionary powers of CIT
- ✓ Example: Item No. A, B, C are in CIT(A), now CIT u/s 263 can't touch the items of which are in appeal i.e., Item A,B,C but he can touch other than other than A,B,C

❖ Total Merger:

- ✓ Total merger means once the case is at CIT(Appeal) level the same shall not be entertained in Revisionary Powers of CIT u/s 264
- ✓ Total merger will arise in section 264 of Revisionary powers of CIT

A COMPARATIVE STUDY OF REVISION U/S 263 & REVISION 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"> Where the Pr. Commissioner or commissioner acts on his own motion: within 1 year from the date of original order. Where the application is made by the assessee: within 1 year from the end of the financial year in which such application is made.
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



QUESTION ANSWER RELATIONSHIP

CedarBridge Academy, February 2009

*{Arise, awake and stop not until the goal is reached}
- Swami Vivekananda*



By
CA CMA Kedarnath
P Kedarnath & Associates
Chartered Accountants
Mobile No. 9985162155
Pkedarnathassociates@gmail.com