

Rectification & Revision of Orders under Income Tax Act

By

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REVISION – Section 263 and 264



Course of action after Assessment

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

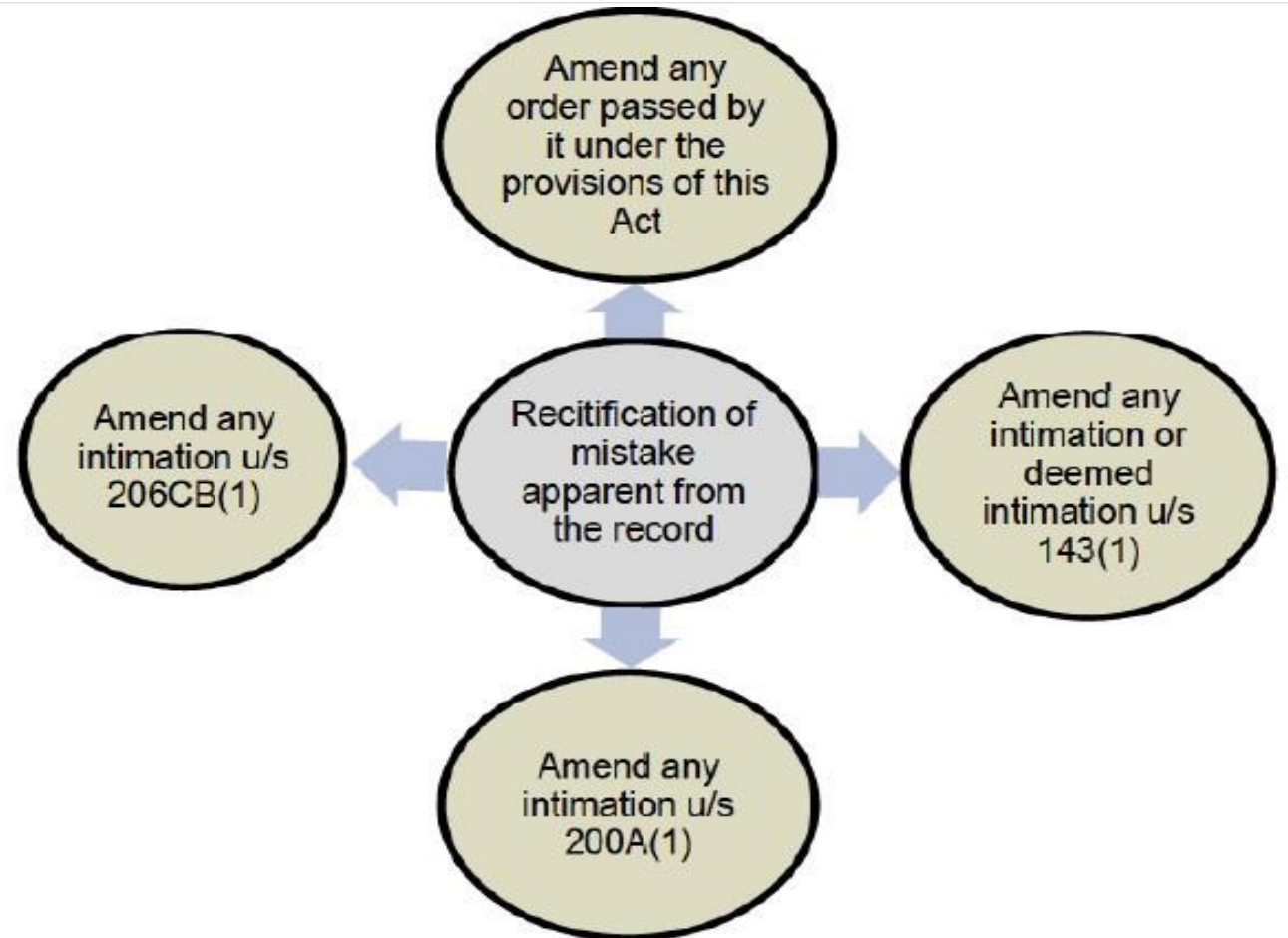
Section 154 (1) With a view to rectify any mistake apparent from record an Income Tax Authority referred under section 116 may

- ☐ ***(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 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 \(GAU\)](#)]
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Mistake apparent from Record

- ❑ 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)**]
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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

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.
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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]
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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

- ❑ 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)**
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Rectification of Error – Few Judiciary Pronouncements

- ❑ 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).**
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Rectification of Error – Few Judiciary Pronouncements

- ❑ 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)
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Rectification of Error – Few Judiciary Pronouncements

- ❑ 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).**
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Rectification of Error – Few Judiciary Pronouncements

- ❑ 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)**
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Rectification of Mistake

☐ 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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Revision of order prejudicial to Revenue – Section 263

❑ **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
 - ❖ *(vi) order of assessment made by the Assistant Commissioner on the basis of the*
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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
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Revision of order prejudicial to the Revenue

☐ Scope of Powers and Functions of the Pr. Chief CIT or Chief CIT or Pr. CIT or CIT – Section 263(1)

- ❖ Prior to the initiation of revision proceedings, the IT Autho. (for the short) may call for and examine the records” of any proceedings under the Act**
 - ❖ After examining the records the IT Autho. may form an opinion that order passed is an erroneous as well prejudicial to the interest of the Revenue**
 - ❖ The IT Autho. has to give an opportunity of being heard to the assessee**
 - ❖ Not restricted to revise original assessment order, but includes revision of reassessment order or rectification order or order passed by the TPO**
 - ❖ The IT Autho. can revise whole of the order to be made denovo or revised or set aside the order on limited issue**
 - ❖ Explanation 1, 2 and 3 below Section 263(1) – it’s relevance**
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Meaning of “order being erroneous and prejudicial to the interests of the Revenue”

Explanation 1 to Section 263:

□ Explanation 1(b):

❖ “Record” means all the records relating to any proceedings under the Act (i.e. the order which is subject to revision) available IT Autho. at the time of examination

□ Explanation 1(c):

❖ No power to the IT Autho. u/s 263 to extend to those issues which are the subject matter considered and decided in appeal.

❖ Doctrine of merger

❖ If there is no order of CIT (Appeals), there is no merger

❖ However, where the AO had partly disallowed expenses which had been confirmed by the CIT (Appeals), no jurisdiction u/s 263

❖ The issue of any expenses/deduction/exemption/relief already decided in favour of the assessee by the Tribunal in assessee’s own case , no powers u/s 263

❖ MBL Infrastructure Ltd. Vs. DCIT (2020) 84 ITR (Trib.) 189 (Kol.)
Alfa Laval Lund AB Vs. CIT (TP) (2021) 92 ITR (Trib.) (SN) 4 (Pune)
Sir Dorabji Tata Trust Vs. Dy.CIT (Exemption) (2021) 209 TTJ 409 (Mum.)
JRD Tata Trust Vs. Dy.CIT (Exemption) (2021) 85 ITR (Trib.) 431 (Mum.)

Revision of order prejudicial to Revenue – Section 263

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.

Revision of order prejudicial to Revenue – Section 263

Explanation 2 to Section 263:

❑ Explanation 2(a):

- ❖ AO/TPO pass the order without making inquiries or verification which should have been made – revision powers available u/s 263
- ❖ Difference between lack of inquiry and inadequate inquiry
- ❖ No unfettered powers to the IT Autho. u/s 263 – powers u/s 263 available in the case of lack of inquiries and not for inadequate inquiries as per the personal views of IT Autho. CIT Vs. Max India Ltd. (2007) 295 ITR 282 (SC)

❑ Explanation 2(b):

- ❖ Allowing any relief in respect of any expenditure, deduction, exemption, allowance or set off, without inquiring into the claim – revision powers available u/s 263
- ❖ AO granted relief/partial relief for the deductions claimed, after making detailed inquiry and adopting the plausible view, which is not unsustainable in law, the IT Autho. has no power u/s 263 CIT Vs. Nirma Chemical Works Pvt. Ltd. (2009) 182 Taxman 183 (Guj.)

Revision of order prejudicial to Revenue – Section 263

❑ Explanation 2(c):

- ❖ The onus is upon the “IT Autho.” to establish which order, direction, instruction of the Board not followed by the AO

❑ Explanation 2(d):

- ❖ The onus is upon the “IT Autho.” to establish which order of Court applicable to the facts of the case and having binding effect and not followed by the AO
- ❖ Where there are two contrary decisions of Courts and there is no decision of the jurisdictional High Court, then taking one view by the AO will not make the order erroneous in so far as prejudicial to the interests of the Revenue

- The foremost condition to assume the jurisdiction u/s 263 is that the order passed by the AO/TPO should be erroneous and such error must be prejudicial to the interest of the Revenue
- Twin conditions has to be satisfied by the IT Autho.
- Mere inadequate inquiry on an issue is not enough to invoke revisional powers u/s 263
- An incorrect assumption of facts or an incorrect application of law will fall within the concept of “erroneous”
- Every loss of Revenue as a consequence of an order of the AO/TPO cannot to be treated as prejudicial to interests of the Revenue

Revision of order prejudicial to Revenue – Section 263

☐ The order of the AO/TPO will be “erroneous” if –

- ❖ a) The order passed on incorrect assumption of facts.
- ❖ b) The order passed for lack of enquiry
- c) The order is potentially wrong or unlawful
- ❖ d) The return of income is accepted as it is without conducting any inquiry and non-application of mind on the issue

- ❖ e) The AO/TPO grievously failed to follow the order of the jurisdictional High Court or the Supreme Court
 - ❖ f) The view/inferences in the order is contrary to law or based on mistaken view of law or erroneous application of legal principle
 - ❖ g) The assessment proceedings concluded arbitrarily in violation of principles of natural justice and the AO/TPO failed to act as a quasi judicial officer
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Revision of order prejudicial to Revenue – Section 263

❑ The order of the AO/TPO will be “prejudicial to the interests of the Revenue” if –

- ❖ a) The order is passed without conducting inquiries
- ❖ b) The order is not in accordance with law, as a result whereof, the lawful revenue has not been realized
- ❖ c) The order passed without applying the principles of natural justice or without application of fair and judicious mind

❑ Landmark Judgements:

- ❖ Malbar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)
 - ❖ CIT Vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bom.) Para 9 & 10
 - ❖ CIT Vs. Amitabh Bachchan (2016) 69 taxmann.com 170 (SC)
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Revision of order prejudicial to Revenue – Section 263

❑ 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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Significant propositions: Revision under Section 263

- ❖ Where two views are possible and both are sustainable in law and the issue is debatable (contrary judgments of the different High Courts and no judgment of the jurisdictional High Court), no powers to invoke the provisions of Section 263. CIT Vs. Ansal Housing Finance & Leasing Co. Ltd. (2013) 29 taxmann.com 303 (Delhi)
- ❖ No reassessment proceedings when the order has been set aside u/s 263 and pending before the AO
- ❖ Scope of assessment in set aside matter is confined to the specific issue set aside and cannot be extended to other issues for making de novo assessment
- ❖ Mandatory requirement to issue and serve the Show Cause Notice
 - Principle of natural justice
 - Revision order passed on the issue not included in SCN – without jurisdiction and bad in law
 - Dipak Natwarlal Dholakiya Vs. Addl./ Joint/ Deputy/ACIT (2023) 149 taxmann.com 151 (Gujarat)

Significant propositions: Revision under Section 263

- ❖ If the assessment order is void (being non-est), no revision permissible u/s 263
 - ❖ Draft order u/s 144C – No jurisdiction available u/s 263
 - ❖ No powers u/s 263 merely on the allegation that the AO did not write specific reasons for accepting the explanations of the assessee
 - ❖ Powers of revision – Not to make fishing or roving inquiry
 - ❖ No powers u/s 263 in the cases where the AO has raised the query on the specific issue, carried out inquiries, appreciated the replies filed by the assessee and after in-depth verification / examination of corroborative materials, reached to the conclusions to allow the claim of the assessee, but not discussed/dealt with in the body of the assessment order-
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Significant propositions: Revision under Section 263

- ❖ Reassessment proceedings brought by the AO adopting one of the plausible/possible views, no revision u/s 263
- ❖ The issue has already been covered in the order u/s 263, no jurisdiction u/s 147 with the AO
- ❖ Date of passing the order u/s 263 and not the date of receipt of the order by assessee, would have relevance for the purpose of counting period of limitation – the word “made” used in Section 263(2) – CIT Vs. Mohammed Meeran Shahul Hameed (2021) 131 taxmann.com 94 (SC)
- ❖ **Plausible views–no jurisdiction u/s 263**
 - CIT Vs. Usha martin Ventures Ltd. (2023) 150 taxmann.com 491 (Calcutta)
 - Pr. CIT Vs. Shreeji Prints (P.) Ltd. (2021) 130 taxmann.com 294 (SC) – SLP of Revenue dismissed
 - Pr. CIT Vs. Cartier Leafin (P.) Ltd. (2023) 146 taxmann.com 281 (SC)
 - Abdul Hamid Vs. ITO (2020) 207 TTJ 1109 (Gau.)

Significant propositions: Revision under Section 263

❖ Under new reassessment regime:

- ❖ Order u/s 148A(d) passed, after considering the reply of the assessee as required u/s 148A(c), with the prior approval of the Specified Authority, that it is not the fit case to issue notice u/s 148, no powers u/s 263
- ❖ Reassessment Order passed u/s 148 after following the procedure u/s 148A of the Act can be subject to the revision u/s 263 only in respect of those issues which was subject matter of reassessment

- ❖ Limitation will apply in respect of the issues covered under reassessment proceedings, w.e.f. the date of reassessment order
- ❖ Limitation will apply in respect of the issues covered in original assessment order w.e.f. the date of original assessment order passed – CIT Vs. Laxmi Vilas Bank Ltd. (2023) 146 taxmann.com 227 (Madras)

Significant propositions: Revision under Section 263

❖ Under new reassessment regime:

Limited scrutiny – the AO cannot travel beyond the issues before him for scrutiny no revision u/s 263 on other issues

Balvinder Kumar Vs. PCIT (2021)125 taxmann.com 83 (Delhi-Trib.)

Su-raj Diamond Dealers Pvt. Ltd. Vs. Pr. CIT (2020) 203 TTJ 137 (Mum.)

❖ The position of the law as on the date of passing the order u/s 263 is relevant

Revision of order prejudicial to Revenue – Section 263

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

- ❑ **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.
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- ❑ Whether Order passed u/s 263 is an appealable order? Yes.
 - ❖ Appeal to be filed before the jurisdictional ITAT with appeal filing fee of Rs. 500/-
 - ❖ Request to the JAO to keep in abeyance the assessment proceedings under the direction of order u/s 263 till the outcome of the appeal before the ITAT
 - ❑ **Section 263 vs. Section 154:**
 - ❖ Revisional power u/s 263 is not comparable with the power of rectification of mistake u/s 154.
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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.

■

REVISION OF ORDER UNDER SECTION 264

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

- 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.
 - ❖ Faceless revision of orders – Section 264A
- **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 / Joint Commissioner (Appeals) shall be deemed to be an authority subordinate to the Commissioner.

□

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

☐ 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.
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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.

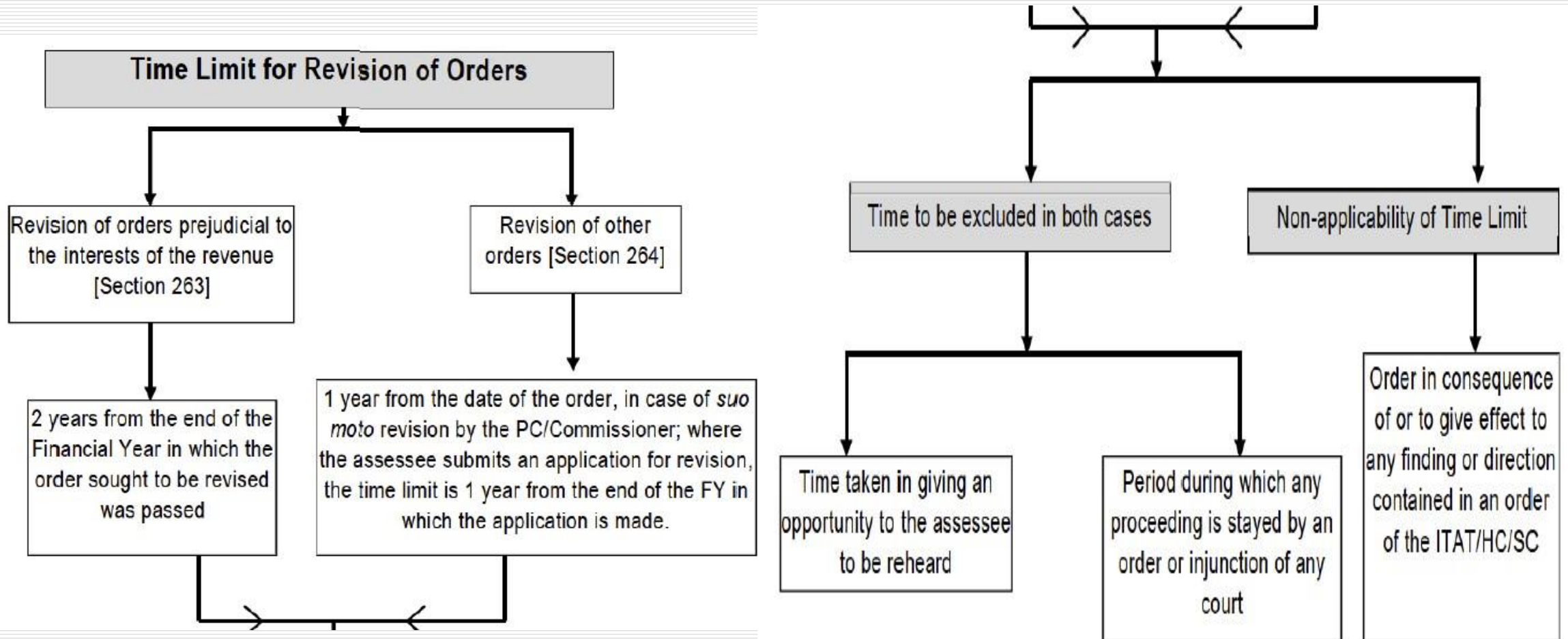
☐ Admission of Belated Application: if the assessee was prevented by sufficient cause from making the application within time.

☐ 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.

Time Limit of Revision of Order



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

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.

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

☐ 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.

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"> 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

Judiciary decisions – Section 264

- ❑ 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

- ❑ 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

- ❑ 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

□ 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)

Judiciary decisions – Section 264

- ❑ 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

- ❑ 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).**

Case Study - 1

Examine whether the Assessing Officer has the power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?

Answer

The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

- (i) any arithmetical error in the return; or
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.
- (iii) disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
- (iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return
- (v) disallowance of deduction claimed under section u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if return is filed beyond due date u/s 139(1)

Case Study – 1 – Contd.

No such adjustment shall be made unless as intimation is given to the assessee of such adjustment either in writing or electronic mode. Further, Assessing Officer shall make any adjustment after considering the response received from the assessee, if any. Where no response is received within 30 days of the issue of such notice, the above adjustment can be made.

For the purpose of section 143(1), “an incorrect claim apparent from any information in the return” means such claim on the basis of an entry, in the return of income:

- (i) of an item, which is inconsistent with another entry of the same or some other item in such return;
 - (ii) in respect of which, the information required to be furnished under the Income-tax Act, 1961 to substantiate such entry, has not been so furnished;
 - (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage or ratio or fraction.
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Case Study – 2

The Assessing Officer issued a notice under section 142(1) on the assessee on 24th December, 2019 calling upon him to file return of income for Assessment Year 2019-20. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.

Answer

As per the provisions of section 139(3), any person who has sustained loss under the head 'Profit and gains of business or profession' is allowed to carry forward such a loss under section 72(1) or section 73(2), only if he has filed the return of loss within the time allowed under section 139(1). Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, *inter alia*, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head "Capital gains") or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a "specified business"). However, there is no such condition for carry forward of unabsorbed depreciation under section 32.

In the given case, the assessee has filed its return of loss in response to notice under section 142(1). As per the provisions stated above, the return filed by the assessee in response to notice under section 142(1) is a belated return and therefore, the benefit of carry forward of business loss under section 72(1) or section 73(2) or section 73A shall not be available. The assessee shall, however be entitled to carry forward the unabsorbed depreciation as per provisions of section 32(2).

Case Study – 3

Dishant received a notice under section 148 from the Assessing Officer for A.Y. 2016-17 on the ground that depreciation on certain assets was allowed in excess. The Assessing Officer recorded the reason for reopening. The original assessment was completed under section 143(3). In course of reassessment proceeding, the Assessing Officer also disallowed certain sum under section 14A in respect of expenses purported to be in relation to dividend from companies and tax-free interest. However, the Assessing Officer did not record the reason for applying the provisions of section 147 in respect of the issue of disallowance under section 14A and passed the order disallowing the excess depreciation and also certain sum under section 14A. Dishant contended that the Assessing Officer can make disallowance under section 14A, since the same was not the reason for reopening the assessment. Discuss the correctness of Dishant's contention.

Answer

Explanation 3 to section 147 permits the Assessing Officer to assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under section 147, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

Therefore, in the instant case, the Assessing Officer has the power to disallow expenses under section 14A in addition to disallowing excess depreciation for which notice under section 148 was issued even though the reason for issue relating to disallowance under section 14A was not recorded under section 148(2).

Hence, the contention of Dishant is not correct.

Case Study – 4

The assessment of CNK Associates, a partnership firm, for the assessment year 2017-18 was made under section 143(3) on 31st July, 2019. The Assessing Officer made two additions to the income of the assessee viz. (a) addition of ₹ 2 lacs under section 40(a)(ia) due to non-furnishing of evidence of payment of TDS and (ii) addition of ₹ 5 lacs on account of unexplained cash credit. The assessee contested addition on account of unexplained cash credit in appeal to the Commissioner (Appeals). The appeal was decided in January, 2020 against the assessee. The assessee approaches you for your suggestion as to whether it should apply for revision to the Commissioner under section 264 or rectification to the Assessing Officer under section 154 as regards disallowance under section 40(a)(ia). What should be your suggestion?

Answer

The Commissioner cannot exercise his power of revision under section 264 where the order sought to be revised has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal [Section 264(4)], even if the relief claimed in the revision is different from the relief claimed in the appeal. This was the view of the Supreme Court in the case of *Hindustan Aeronautics Limited vs. CIT* (2000) 243 ITR 808. It is not open to the assessee to seek recourse to revision under section 264 after the appeal is decided. Therefore, although the matter of addition of ₹ 2 lacs under section 40(a)(ia) was not taken before the Commissioner (Appeals), the assessee, CNK Associates cannot apply for revision under section 264 in respect of the same.

Under section 154(1A), where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by the Assessing Officer. However, in respect of the matter which has not been considered and decided in the appeal or revision, the order of the Assessing Officer can be rectified under section 154. Thus, the assessee can apply to the Assessing Officer for rectification of the order in respect of addition under section 40(a)(ia), as this matter has not been considered and decided in any proceeding by way of appeal or revision.

In view of above, the assessee, CNK Associates should seek rectification under section 154.

Case Study – 4

Question 12

Examine critically in the context of provisions of the Act “Can the Assessing Officer issue notice under section 148 to reopen the same assessment order on the same grounds for which the CIT had issued notice under section 263 of the Act”?

Answer

The Assessing Officer cannot issue notice under section 148 to reopen the same assessment order on the same grounds for which the Commissioner had issued notice under section 263 of the Income-tax Act, 1961, since the third proviso to section 147 specifically provides that the Assessing Officer may assess or reassess an income which is chargeable to tax and has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, if the income relates to a matter which is the subject matter of revision under section 263, then the Assessing Officer cannot issue notice under section 148 to reopen the assessment order.

Case Study – 5

Is the Assessing Officer empowered to assess or reassess an income which is chargeable to tax and has escaped assessment, in a case which is pending before the Appellate Tribunal? Discuss.

Answer

As per third proviso to section 147, the Assessing Officer may assess or reassess an income which is chargeable to tax and which has escaped assessment, other than the income involving matters which are the subject matter of any appeal, reference or revision. Therefore, in respect of the matters which are the subject matter of an appeal before the Appellate Tribunal, it is not possible for the Assessing Officer to initiate proceeding under section 147. However, in respect of other matters, which are not the subject matter of the appeal, the Assessing Officer can initiate proceeding under section 147.

Case Study – 6

Can the Assessing Officer complete the assessment of income from international transactions in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of the assessee?

Answer

Section 92CA(4) provides that the order of the Transfer Pricing Officer determining the arm's length price of an international transaction is binding on the Assessing Officer and the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer.

Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer and on the basis of contention raised by the assessee.

Case Study – 7

In the case of Mr. Rajesh, a summary assessment was made under section 143(1) for assessment year 2016-17 without calling him. Thereafter, Mr. Rajesh has received a notice under section 148 on 6th April, 2019 for reopening of assessment. Can Mr. Rajesh challenge the legality of the notice on the ground of change of opinion?

Answer

Under the scheme of section 143(1), only the adjustments relating to any arithmetical error in the return, incorrect claim which is apparent from any information in the return, disallowance of loss claimed where return of income for set-off of loss is claimed was filed beyond the due date under section 139(1), disallowance of expenditure indicated in the audit report but not taken into account in computing total income in the return and disallowance of deduction claimed under section 10AA, sections 80-IA to 80-IE, where return is furnished beyond due date. In short, what is permissible is only correction of errors apparent on the basis of the of the return and tax audit report filed. Therefore, the intimation given under section 143(1) is only a preliminary assessment, commonly referred to as a summary assessment without calling the assessee. The same cannot be treated as an order of assessment under section 143(3). Since there has been no assessment under section 143(3) in this case, the question of change of opinion does not arise.

Therefore, the assessee cannot challenge the legality of the notice issued under section 148 reopening the assessment on the ground of change of opinion in a case where no assessment is made under section 143(3). This inference is supported by the Supreme Court ruling in *ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd.* (2007) 291 ITR 500.

Q&A

