

REVISION OF ORDER

U/S 263, 264

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Revision of orders prejudicial to revenue

- ▶ **263.** (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

- ▶ *Explanation 1.*—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,
- ▶ (a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—
 - ▶ (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under [section 144A](#);

- ▶ (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under [section 120](#);
- ▶ (b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal ^{9a}*[Chief Commissioner or Chief Commissioner or Principal]* Commissioner or Commissioner;

- ▶ (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

- ▶ *Explanation 2.*—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer 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 ^{9a}*[Chief Commissioner or Chief Commissioner or 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 the case of the assessee or any other person.

- ▶ (2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.
- ▶ (3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.
- ▶ *Explanation.*—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to [section 129](#) and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Conditions to exercise revisional jurisdiction u/s 263 and procedure to be followed in revision proceedings [Sec. 263(1)]

- The Pr. CIT/CIT may call for and examine the record of any proceeding under this Act, and
- if he considers that any order passed therein by the AO is **erroneous**
- in so far as it is **prejudicial to the interests of the revenue**,
- he may,

- after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary,
- pass such order thereon as the circumstances of the case justify,
- including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Erroneous order

Prejudicial to the revenue's interests

Audit Alteram Partem / Opportunity of being heard

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**Whether 143(1) intimation can be revised
u/s 263?**

**Whether order passed u/s 147 can be
revised u/s 263?**

**Whether an order passed u/s 195/197
can be revised u/s 263?**

Record

- ▶ ✓ “record” shall include and shall be deemed always to have included
- ▶ ✓ all records relating to any proceeding under this Act
- ▶ ✓ available at the time of examination by the Pr. CIT/CIT;
- ▶ Thus, any record can be considered by Pr. CIT/CIT provided it is available when the Pr. CIT/CIT exercises his jurisdiction u/s 263, even if it was not considered by the AO. For example, Pr. CIT / CIT can revise the order on the basis of a valuation report which came to the records subsequent to the assessment. Valuation report forms part of the assessment records even if it came subsequent to assessment.

**An order is not erroneous if it is not a
case of “no inquiry”**

**If detailed inquiries made by AO,
revision u/s 263 not sustainable**

Two views are possible- Revision is not valid

**If AO had adopted a plausible view,
revision u/s 263 not sustainable**

Time limit for passing order u/s 263 [Sec. 263(2) and Sec. 263(3)]

▶ Sec. 263(2)

- ▶ ✓ No order shall be made under sub-section (1)
- ▶ ✓ after the expiry of 2 years
- ▶ ✓ from the end of the financial year in which the order sought to be revised was passed.
- ▶ In view of above, if an order which is sought to be revised was passed by the AO on 10 December 2019, revisional order u/s 263 shall be passed on or before 31 March 2022 *(i.e. on or before expiry of 2 years from the end of financial year 2019-20 in which the order sought to be revised was passed)*.

Fresh assessment by the AO

AO can consider only those grounds regarding which direction was given by the Pr. CIT / CIT in 263 order and can make fresh assessment on said grounds only.

Appeal before Hon'ble ITAT against 263 Order [Section 253(1)(c)]

Revision of other orders

- ▶ **264.** (1) In the case of any order other than an order to which [section 263](#) applies passed by an authority subordinate to him, the Principal ^{9b}[*Chief Commissioner or Chief Commissioner or Principal*] Commissioner or Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.
- ▶ (2) The Principal ^{9b}[*Chief Commissioner or Chief Commissioner or Principal*] Commissioner or Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Principal ^{9b}[*Chief Commissioner or Chief Commissioner or Principal*] Commissioner or Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Principal ^{9b}*[Chief Commissioner or Chief Commissioner or Principal]* Commissioner or Commissioner shall not revise any order under this section in the following cases—

- (a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- (b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or
- (c) where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

- ▶ (5) Every application by an assessee for revision under this section shall be accompanied by a fee of five hundred rupees.
- ▶ (6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.
- ▶ *Explanation.*—In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to [section 129](#) and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

- ▶ (7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.
- ▶ *Explanation 1.*—An order by the Principal ^{9b}[*Chief Commissioner or Chief Commissioner or Principal*] Commissioner or Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.
- ▶ *Explanation 2.*—For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the Principal ^{9b}[*Chief Commissioner or Chief Commissioner or Principal*] Commissioner or Commissioner.

Nature of Jurisdiction under section 264

The power of revision conferred by Section 264 on the CIT is not an administrative power. It is a quasi – judicial power.

Pre conditions for revision of other orders

- ▶ Applicable to any order other than an order to which section 263 applies;
- ▶ Commissioner may act suo moto or on application made by the assessee;
- ▶ Commissioner may call for the record of any proceedings under the Act in which such order has been passed;
- ▶ Order may be passed not being prejudicial to the assessee. However an order declining to interfere is not an order prejudicial to the assessee

Assessee seeking CIT blessing under section 264 can not be surprised with revisionary order under section 263

**Order under section 264 cannot be
prejudicial to the assessee**

Time limit for filing revision petition under section 264 [Section 264(3)]

Condonation of delay in filing petition under section 264 [Proviso to Section 264(3)]

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Application Fee [Section 264(5)]

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Situations where any order under section 264 can not be revised [Section 264(4)]

- ▶ **Text of Section 264(4)**
- ▶ 264(4). The Principal Commissioner or Commissioner shall not revise any order under this section in the following cases—
- ▶ (a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- ▶ (b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or
- ▶ (c) where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

**No revision till period of limitation for
filing appeal, expires**

Disposal of Revision petition [Section 264(6)]

THANK YOU

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