Rectification of Mistake & New Claim under Income Tax Act

By

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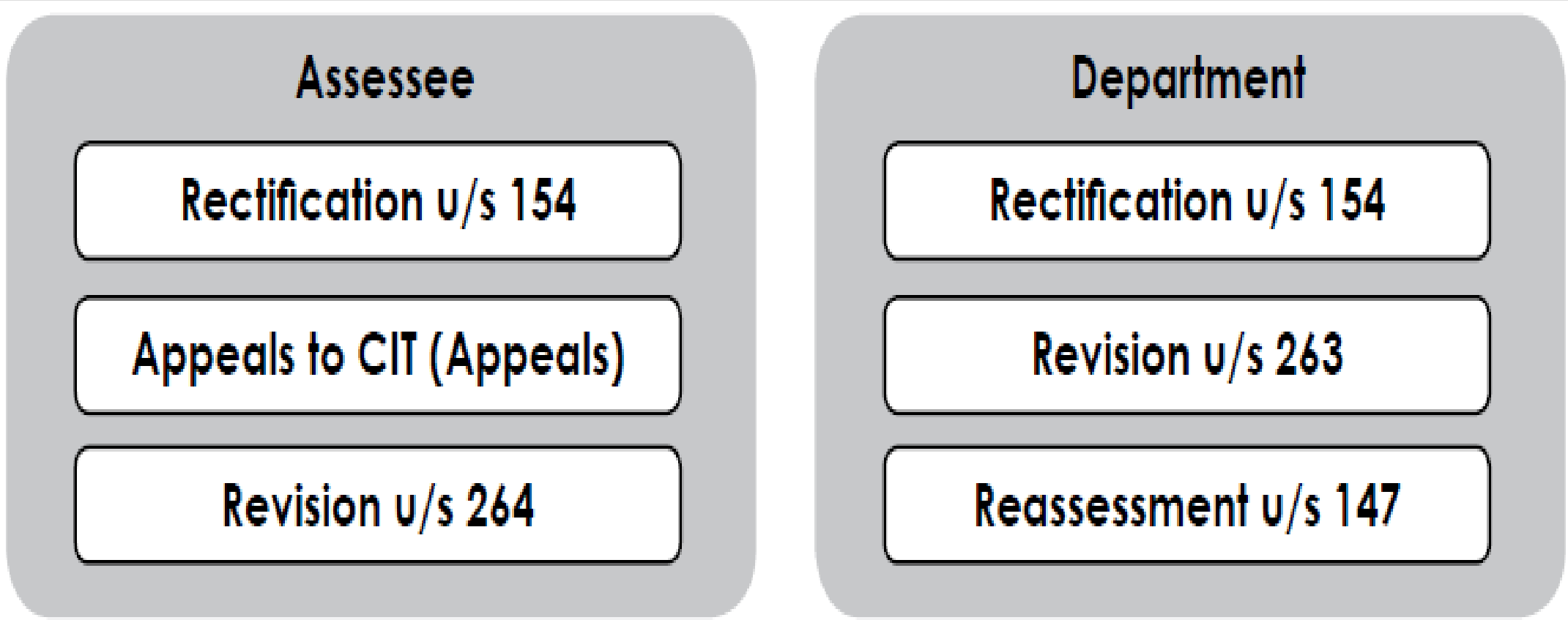
DEMAND

Course of action after Assessment



Rectification of Mistake – u/s 154

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

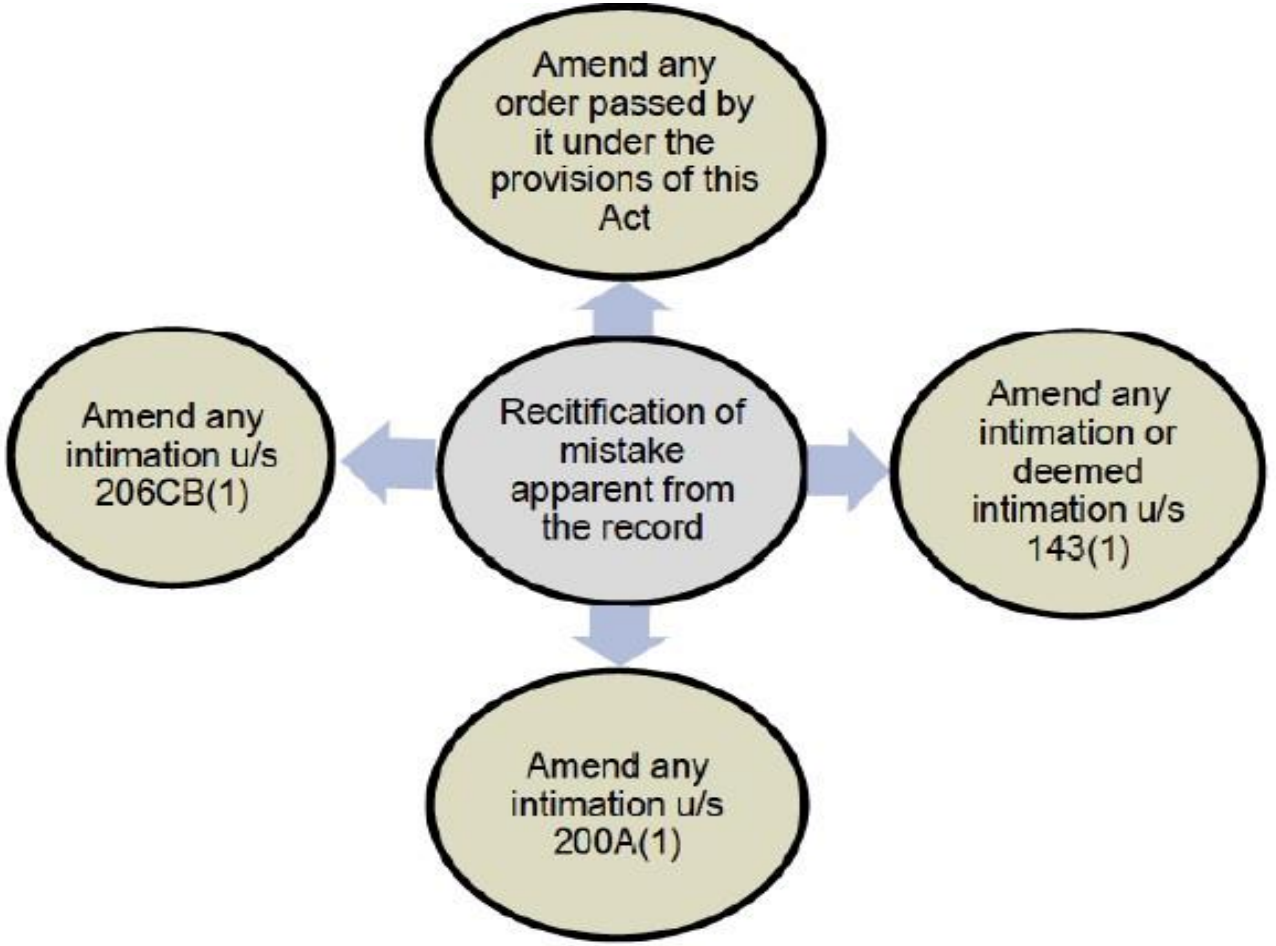
- ***(a) Amend any order passed by it***
- ***(b) Amend intimation or deemed intimation under section 143(1)***
- ***(c) Amend intimation under section 200A(1)***
- ***(d) Amend any intimation under sub-section (1) of section 206CB.***

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

- 4. ITAT can make rectification subject to the provisions of **Section 254(2)**
- **5.** Where an assessment order not in tuned 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

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 bought 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.

(CBDT CIRCULAR NO. 14/2001 Dated- 9-11-2001)

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)

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).

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)**

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, butit 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

- Writ petition to quash a notice under section 154 without exhausting such remedies is not maintainenable - 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

- **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

New Claim - Background

Reason of New Claim – as not claimed in the return of Income:

- Inability to file revised returns as Original returns weren't file within due date
- Expiry of Due-date for filing revised returns
- Fail to claim / short claim certain deductions/exemptions
- Subsequent Retrospective amendments
- Subsequent Judicial pronouncements delivered
- Cases where Rectification / Revision of orders aren't made / cannot be made.

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New Claim - Background

Indian Constitution

- Article 265 of the Constitution of India lays down that no tax shall be levied except by authority of law. Hence only legitimate tax can be recovered and even a concession by a tax-payer does not give authority to the tax collector to recover more than what is due from him under the law.

Extract of Article 265 of Constitution of India

- "265. Taxes not to be imposed save by authority of law No tax shall be levied or collected except by authority of law"

New Claim - Background

CBDT Circular on Assessee's Rights : Circular No:14 (XL-35) dated April 11, 1955.

❖ **"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should**

- **(a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;**
- **(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."**

New Claim - Background

- **CBDT Circular No: 14 (XL-35) dated April 11, 1955 - Judicially noted and approved in many judgments and has been relied upon in support of the Assessees claim.**

- **Supreme Court: New Claims need not be accepted by Assessing Officers when made by Assessees through a Letter, if same is not claimed in return filed under section 139**

- **Goetze (India) Ltd. v. CIT [TS-21-SC-2006-O] judgment dated 24-3-2006**

Goetze (India) Ltd. v. CIT [TS-21-SC-2006-O] judgment dated 24-3-2006

- The assessee filed its return of income on 30-11-1195 for A.Y. 1995-96. During assessment proceedings it sought to claim a deduction by way of a letter dated 12-1-1988. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Income-tax Act to make amendment in the return of income otherwise than by revising the return.

- In appeal before the CIT (A), the Assessees claim was allowed. However the ITAT allowed Departments' appeal against the order by CIT (A). The assessee in appeal before the Supreme Court relied upon the Apex Court' decision in National Thermal Power Co. Ltd. v. CIT [TS-18-SC-1996-O] to contend that it was open to assessee to raise the points of law even before the Tribunal.

- The Apex Court held that the claim of deduction not made in the return cannot be entertained by the assessing officer otherwise than by filing a revised return. The court also held that the decision does not impinge upon the powers of the Tribunal under section 254 of the Act.

- This judgment in Goetze's' case is generally relied upon by the Assessing Officers, ignoring Article 265 of the Indian Constitution and CBDT Circular No. 14(XL-35) cited above in dis-allowing deductions / claims made by the Assesses for the first time.

Distinction between a Fresh Claim and Revised Claim

No Fresh Claim:

- Where necessary evidence in respect of a claim is already on record but the Section / mode / method / Quantum of deduction needs revision due to various factors, such claims through letter shall to be accepted by the Assessing Officers.

- In such cases there is already a claim by the assessee and there being no fresh claim the judgment in Goetze's case, with due respect shall not be applicable.

Distinction between a Fresh Claim and Revised Claim Allahabad High Court in CIT v. Dhampur Sugar Ltd. [TS-5083-HC-1972(ALLAHABAD)-O] held that:

- "There is distinction between a revised return and a correction of return. If the assessee files some application for correcting a return already filed or making amends therein, it would not mean that he has filed a revised return. It will retain the character of an original return. But once the revised return is filed, the original return must be taken to have been withdrawn and to have been substituted by a fresh return for the purpose of assessment."
- The assessee had asked for re-computation of deduction under section 80-IB. Relying on Goetze (India) Ltd. (supra) the Revenue rejected the claim. As the assessee had not made any new claim the court held that the said decision may not be squarely applicable.
- It held that the Courts have taken a pragmatic view and not the technical view as what is required to be determined is the taxable income of the assessee in accordance with the law. In this sense, assessment proceedings are not adversarial in nature.

Distinction between a Fresh Claim and Revised Claim

[CIT v. Natraj Stationery Products (P) Ltd., [TS-121-HC-2008(DEL)-O]

- Since claim of depreciation at a higher rate, as made before the Assessing Officer is not at all a new claim, as held in **'JCIT vs. Hero Honda Finlease Ltd.' [TS-5186-ITAT-2008(DELHI)-O],** whereas 'Goetze (India) Ltd.' is with regard to only a new claim made in the assessment and not concerning modification of claim;

Distinction between a Fresh Claim and Revised Claim [Solaris Bio Chemicals Limited, Vs. DCIT, [TS-5929-ITAT-2012(DELHI)-O]

HC dismisses Revenue's appeal, allows Sec 10A deduction on the basis of revised computation of income filed by assessee during assessment proceedings; Notes that pursuant to revised computation, loss shown for Sec 10A unit was revised at an income upon correcting error made in classifying revenues pertaining to Sec 10A and non-10A units, however AO refused to take cognizance of the revised computation in absence of a revised return filed by assessee relying on SC ruling in Goetze (India) Ltd.;

- Relies on co-ordinate bench rulings in
  - Western India Shipyard Limited,
  - Sam Global Securities Ltd.,
  - Influence and Jai Parabolic Springs Ltd.
- Bombay HC ruling in
  - Pruthvi Brokers & Share holders (P) Ltd. to hold that SC ruling in Goetze (India) "would not apply if the Assessee had not made a new claim but had asked for recomputation of the deduction";

Power of the CIT – Appeals / ITAT

Commissioner of Income Tax v. Jai Parabolic Springs Ltd. [TS-5472-HC-2008(DELHI)-O]

- "17. In Goetze (India) Limited v. Commissioner of Income Tax [TS-21-SC-2006-O] wherein deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal."

Power of the CIT – Appeals / ITAT

CIT v. Ramco International [TS-132-HC-2008(P & H)-O]

- The assessee did not make a claim for deduction u/s. 80IB in the return. The assessee however filed Form 80CCB and other relevant documents during assessment proceedings. The claim was disallowed by the assessing officer. The CIT(A) allowed the claim. The ITAT upheld the order by CIT(A). The High Court upheld the ITAT order.

Power of the CIT – Appeals / ITAT

Commissioner of Income Tax v. Rose Services Apartment India P. Ltd., [TS-5186-HC-2009(DELHI)-O]

- Relying upon the decision of the Supreme Court in National Thermal Power Co. Ltd. [TS-18-SC-1996-O], the Court rejected the plea of the Revenue that the Tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim of loss, if at all, under one section/provision or the other.

Power of the CIT – Appeals / ITAT

CIT v. Pruthvi Brokers & Shareholders Pvt. Ltd. – [TS-463-HC-2012(BOM)-O]

- It is well settled that an assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have the discretion whether or not to permit such additional claims to be raised. It cannot, however, be said that they have no jurisdiction to consider the same.

Power of the CIT – Appeals / ITAT

Chicago Pneumatic India Ltd. v. Deputy Commissioner of Income Tax [TS-5164-ITAT-2007(MUMBAI)-O]

- **It has been held that even though the assessee did not revise its claim under sections 80HH and 80-I, in the revised return, the IT authorities were obliged to consider the revised figures placed before them during assessment.**

Thomas Kurian v. Assistant Commissioner of Income Tax [TS-5350-ITAT-2006(COCHIN)-O]

- **AO being a quasi-judicial authority, once having noted in the assessment order that assessee had export turnover, was duty bound to ask the assessee as to why he had not claimed deduction under section 80HHC. The matter was remanded to the AO to decide Assessees claim for deduction under section 80HHC.**

Distinction between a Fresh Claim and Revised Claim

CIT v. Rose Services Apartment India (P) Ltd [TS-5186-HC-2009(DELHI)-O]

- **Relying upon the decision of the Supreme Court in National Thermal Power Co. Ltd. (supra),a Division Bench of this Court rejected the plea of the Revenue that the tribunal could not have entertained the plea, holding that the tribunal was empowered to deal with the issue and was entitled to determine the claim of loss, if at all, under one section / provision or the other.**

Distinction between a Fresh Claim and Revised Claim

CIT v. Jindal Saw Pipes Ltd [TS-5642-HC-2010(DELHI)-O]

- **Decision in Goetze (India) Ltd. (supra) was again relied upon by the Revenue in CIT v. Jindal Saw Pipes Ltd [TS-5642-HC-2010(DELHI)-O] but the contention was not accepted, observing that the tribunal's jurisdiction is comprehensive and as simulates issues in the appeal from the order of the CIT (Appeals) and the tribunal has the discretion to allow a new ground to be raised.**

Distinction between a Fresh Claim and Revised Claim

CIT vs. Jai Parabolic Springs Ltd." [TS-5472-HC-2008(DELHI)-O],

- **It was held that the CIT (A) had the jurisdiction to entertain the additional claim not filed before the Assessing Officer.**

CIT vs. Lucknow Public Educational Society", [TS-5024-HC-2009(ALLAHABAD)-O]

- **The original return had been filed late, due to which, the revised return was treated by the Assessing Officer as a nonest, it was held that a claim to which the assessee is legally entitled cannot be denied by the Assessing Officer on technical grounds, even if such a claim has not been made by the assessee.**

Distinction between a Fresh Claim and Revised Claim

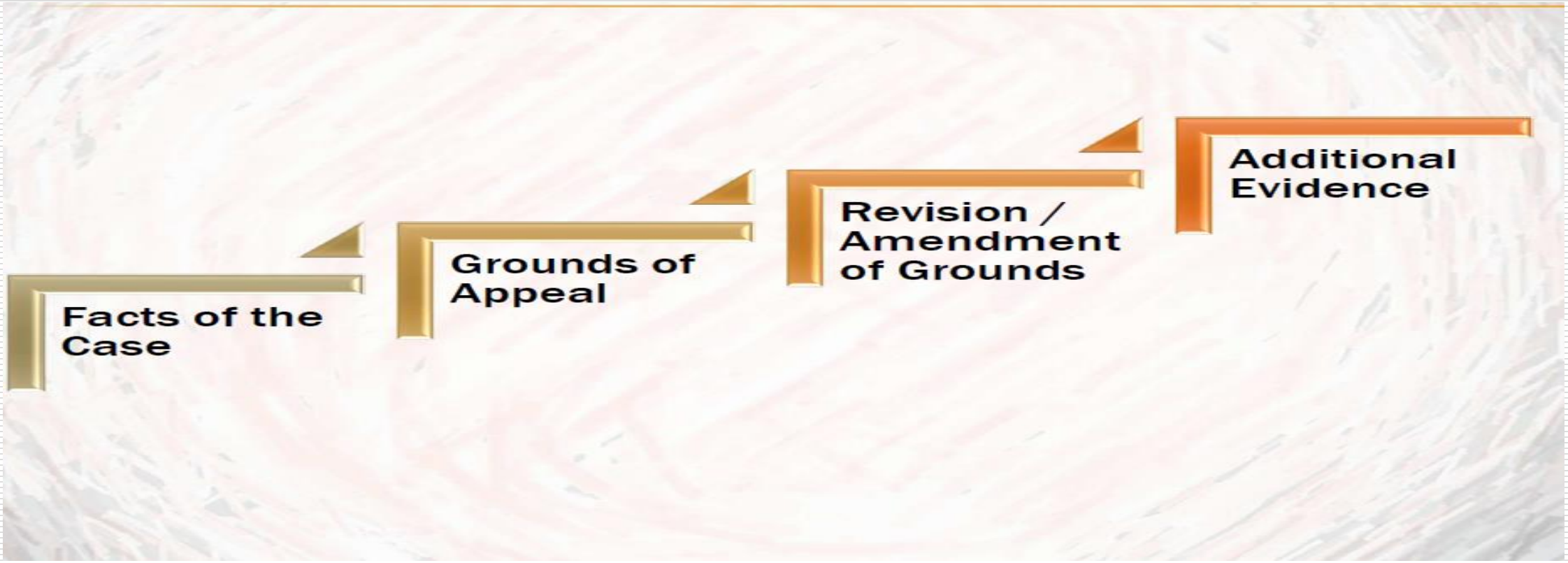
Rachhpal Singh vs. Income-tax Officer" [TS-5088-ITAT-2005(Amritsar)-O]

- **The assessee withdrew its claim before the Assessing Officer considering that it was not entitled to such claim. Subsequently, the assessee made that very claim before the appellate authority, which was accepted.**

Deepak Nitrite Ltd. vs. CIT", [TS-5560-HC-2008(GUJARAT)-O]

- **In the original return deduction was claimed u/s 32A of the Act, whereas in the belated revised return, such claim was rectified and made u/s 32AB, which claim was accepted.**

Making New Claim / Additional Ground / Additional Evidence – Provisions & Proceedures



RELATED PROVISIONS

S. 250(5)	• Ground of Appeal Revision
S. 251 Expl	• Powers of CIT(A)
R. 46A	• Additional Evidence

AMENDMENT / REVISION OF GROUNDS

- Can it be done?
- Is it a New Ground or Amendment of Existing Ground?
- S. 250(5) - CIT (A) may, at hearing of an appeal, allow appellant to go into any ground of appeal not specified in grounds of appeal, if he is satisfied that omission of that ground from Form of appeal was not:
  - wilful or
  - unreasonable.

AMENDMENT / REVISION OF GROUNDS

- Explanation to S. 251 - In disposing of an appeal, the CIT (A) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the CIT (A) by the appellant

JUDICIAL PRONOUNCEMENTS

- *Madras High Court in M/s Ramco Cements Ltd. vs. DCIT Tax case Appeal No. 916/2014* - It is to be noted herein that the Act does not contain any express provision preventing the assessee from raising new grounds in appeal and there is no provision in the act restricting the Appellate Authority to entertain such new ground in the appeal. In the absence of statutory bar, the appellate authority is vested with the power, which is co-terminus with that of original authority, to allow the assessee to raise new ground, if same is bonafide and not willful or unreasonable

JUDICIAL PRONOUNCEMENTS

- S. 250(5) empowers CIT(A) to allow appellant to raise additional grounds of appeal if satisfied that, omission thereof was not willful or unreasonable. It is a discretionary power which is exercised based on the facts and circumstances of each case - *Jute Corporation of India Ltd. vs. CIT: 187 ITR 688 (SC)*
- Where a claim is not made in ROI, including revised ROI, although the AO is not empowered to allow such claim, the same can be raised before CIT(A) as additional grounds of appeal -
  - *Goetze India Ltd. v. CIT 284 ITR 323 (SC)*
  - *CIT v. Jai Parabolic Springs Ltd. 306 ITR 42 (Del.)*

JUDICIAL PRONOUNCEMENTS

- If facts not on record, additional Grounds of appeal can be admitted, and matter may be set aside for verification by AO –
  - *DCM Benetton India Ltd. v. CIT: 173 Taxman 283 (Del. HC);*
  - *ONGC v. Addl. CIT: ITA No. 357 & 358/Del./2005 (Del. ITAT)*
- By when can we file the additional grounds?
- There is no time limit to file additional grounds of appeal –
  - *K.C. Khajanchi v. ITAT in C.W. No. 2164/99;*
  - *Zakir Hussain v. CIT (2006) 202 CTR (Raj.) 40;*
  - *Jindal Polyester & Steel Ltd. v. DCIT (ITA No.2521/Del/1997) (Del.Tri.)*

JUDICIAL PRONOUNCEMENTS

- *CIT vs. Jindal Saw Pipes Ltd. (2010) 78 CCH 0717 Del HC* - Authority of the CIT is co-extensive with that of the AO. Moreover, s. 250(5) allows the assessee to raise an issue not even forming part of the grounds of appeal. CIT (A) was therefore justified in allowing revised claim of the assessee company for deduction.
- *Ramgopal Ganpatrai & Sons Ltd. vs. CIT (1953) 21 CCH 031 Mum HC* - Assessee is entitled to raise new ground which was not raised before AO, nor stated in grounds of appeal.

[CIT VS E FUNDS INTERNATIONAL INDIA PVT LTD [TS-5509-HC-2015(DELHI)-O]

Appellate Authorities can admit new ground or evidence either suo motu or at the invitation of the parties

- **Section 251 of the Act describes the powers of the Appellate Commissioner in such an appeal. Under Section 251(1)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (b) thereof he may set aside the assessment and direct the Income Tax Officer to make a fresh assessment.**
- **Explanation to Section 251 also provides that In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, not withstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.**

[CIT VS E FUNDS INTERNATIONAL INDIA PVT LTD [TS-5509-HC-2015(DELHI)-O]

- **Section 254 of the Income-tax Act, provides that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law.**

- **The Judgement in Goetze's' Case makes it clear that the question addressed is limited to the power of the assessing authority and does not impinge on the power of the Income Tax Appellate Commissioner or the Tribunal under section 251 and 254 of the Income Tax Act, 1961.**

National Thermal Power Co. Ltd. vs CIT[TS-18-SC-1996-O] / 229 ITR 383 (SC):

Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same ?

- Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders there on as it thinks fit.
- The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms.
- The purpose of the assessment proceedings before the taxing authorities is to assess correctly the taxliability of an assessee in accordance with law….
- We do not see any reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals).
- Both the assessee as well as the Department has a right to file an appeal / cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier

Jute Corporation of India Ltd. v. CIT – (1991) 187 ITR 688

- An appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions.

- In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter….

- Appellate ACIT should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. (same for ITAT)

Jute Corporation of India Ltd. v. CIT

- ITAT have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.
- The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.

WHEN TO REVISE

- When it can be / should be done?
  - Error
  - New points
  - Summarise, if earlier was detailed
  - New AR and wants additional grounds
- Ground: "*That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.*"

ADDITIONAL EVIDENCE

- CIT(A)can admit additional evidence or documents only after applying rule 46A
- Additional evidences cannot be accepted without giving a reasonable opportunity to AO to examine and rebut the said evidences
- If AO objects to admission of additional evidence, then CIT (A) should give categorical finding in terms of rule 46A for admission thereof
- Proper reasons must be given for non-acceptance of additional evidence under rule 46A
- To render justice, CIT (A) can admit new evidence
- Additional evidence must be allowed for reasonable cause

WHEN AO REFUSE TO ADMIT AE

- It is mandatory that AO should receive the additional evidences while disposing off the remand report.
- The AO may refuse to admit the additional evidences in his remand report
- In such cases, the CIT (A) can admit the additional evidences by his own to render the justice.
- In case, AO refused or decline, It's the power of the CIT (A) to receive and consider the same.

ADDITIONAL EVIDENCE

- Application to be made:
  - in writing
  - in duplicate
  - with prayer for acceptance of additional document
  - along with justification
  - specifically mention the sub rule of Rule 46 A in which these paper are being filed.

ADDITIONAL EVIDENCE

- CIT (A) shall not take into account any additional evidence unless the AO has been allowed a reasonable opportunity:
  - to examine the evidence or document or to cross-examine witness produced by appellant
  - to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant

SUO-MOTO POWER

- R. 46A(4) - Nothing contained in this rule shall affect the power of CIT (A) to direct the production of any document, or examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty whether on his own motion or on the request of the AO u/s 251(1)(a) or the imposition of penalty u/s 271.

RELEVANT SUB-RULE 46A(1)

a. Where AO refused to admit the said evidence which ought to have been admitted
b. Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal
c. Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal
d. Where AO made the impugned order without giving sufficient opportunity to appellant

R. 46A(1)(A)

- Where AO refused to admit the said evidence which ought to have been admitted
  - Faceless assessment !!!
  - Manually
    - Bulk
    - Any other reason
  - Evidence of refusal
    - E-mail
    - Speed post / courier

R. 46A(1)(B) / (C)

- Where appellant was prevented by sufficient cause from producing evidence called upon by AO or relevant to any ground in appeal
- Where appellant was prevented by sufficient cause from producing the AO any evidence which is relevant to any ground of appeal
  - Not giving sufficient time
  - Evidence not with appellant – ED / GST, etc
  - Fire or another calamity
  - Third party refusing

R. 46A(1)(D)

- Where AO made the impugned order **without giving sufficient opportunity** to appellant
  - x Suo-moto additions
  - x Assessment u/s 144
  - x Addition without show cause

PROCEDURE

Apply to admit Additional Evidence in duplicate

CIT(A) to send one set to AO for his Remand Report

AO to submit his Remand Report

CIT(A) to give the assessee a copy of Remand Report

Assessee to submit rejoinder on Remand Report

CIT (A) to decide on admission and follow further Appeal process

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JUDICIAL PRONOUNCEMENTS

- Bombay High Court in *Smt. Prabhavati S. Shah vs. CIT [1998] 231 ITR 1* - AAC should have admitted additional evidence in exercise of power u/s 250(5) as well as under Rule 46A(1)(c) considering the fact that AO had considered loan as income only on ground that summons issued to lenders were returned unserved and didn't provide opportunity to assessee during assessment proceedings

JUDICIAL PRONOUNCEMENTS

- *CIT v. Virgin Securities and Credits P. Ltd (2011) 332 ITR 396 (Del)* - CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal.
- Delhi High Court *in Chandrakant Chanu Bhai Patel 202 Taxman 262* - if additional evidence is without any blemish and in order to advance the cause of justice, the same ought to be admitted.

JUDICIAL PRONOUNCEMENTS

- High Court of Delhi in *CIT vs. Manish Build Well (P) Ltd. in ITA No.928/2011 dt. 15.11.2011 (2011) 63 DTR 369* - after admission of additional evidence, it is mandatory to follow Rule 46A(3) of the Rule. It was found that the AO only objected the admissibility of additional evidence and restricted himself to comment on the merits of the evidence. Therefore, the Hon'ble court observes that the ld. CIT (A) did not follow the mandatory procedure for consideration of additional evidence at the first appellate stage.

JUDICIAL PRONOUNCEMENTS

- ITAT Delhi in *ITO Vs. Kuber Chand Sharma- ITA No. 3982/Del/2009* – CIT (A) has admitted the additional evidence without fulfilling the categorical conditions laid down in Rule 46A, as explained by Hon'ble Delhi High Court in the case of Manish Build Well Pvt. Ltd. Consequently, his order on this issue is not tenable; however, the issue of merits remains. Besides, from the record it emerges that assessee wanted to file only government records & revenue record about crops - Matter set aside, restored back to AO to decide the same afresh after affording the assessee sufficient opportunity of being heard.

REASONABLE OPP. TO AO

- CIT (A) cannot proceed with additional evidences by its own without giving an opportunity to assessing officer to verify additional evidences. It is mandatory for CIT (A) to remand additional evidences to AO.
- ITAT Delhi *ITO Vs Mrs. Anvita Abbi ITA No. 3707 / Del/2011 Ld.* CIT (A) admitted fresh evidences but did not allow any opportunity to AO for examining those evidences or furnishing any evidence in rebuttal as required by Rule 46A(3). Therefore, order of ld CIT (A) is in violation of Rule 46A. Matter set aside to AO.

FINDING OF CIT(A) ON AO OBJECTION

- If AO objects to admission of additional evidence, then CIT (a) should give categorical finding in terms of rule 46A for admission thereof - *ITAT Delhi , ITO Vs. Kuber Chand Sharma (ITA No. 3982/Del/2009)*
- Reasons must be given for non-acceptance of additional evidence under rule 46A
  - *Abhay Kumar Shroff V/s. ITO 63 ITD 144(Pat)*
  - *Smt. Prabhavati S. Shah V/s. CIT, 231 ITR 278*
  - *Collector Land Katji 167 ITR 471 (SC)*

OPPORTUNITY TO AO

- ITAT Chandigarh, *ITO Vs Bhagwan Dass, Contractor IT Appeal No. 383 (Chd.) of 2011.* On plain reading of Rule 46A, it is clear that it is introduced to place fetters on the right of the appellant, to produce before 1st Appellate Authority, any evidence, whether oral or documentary, other than the evidence produced by him, during the course of proceedings before the AO, except in the circumstances set out therein. It does not deal with the power of the 1st appellate authority, to make further enquiry.

OPPORTUNITY TO AO

- In present case, assessee has already filed requisite details before AO & further detail was to be filed before AO & he refused to accept the same. Therefore, assessee was compelled to file details by way of Speed Post. Further, new evidence filed by assessee from govt. agency & the same are essential for disposal of appeal. AO was given due opportunities & he submitted remand report hence, CIT(A) has given due opportunity to AO, within Rule 46A.

SUO MOTO CALL OF CIT(A)

- Where CIT (A) has called for production of any document on his own during the course of appellate proceedings, then he is not obliged to call for a remand report from AO on the said evidences. In such circumstances the revenue cannot raise the issue of violation of Rule 46A
  - *CIT v Surtech Hospital & Research Centre Ltd 293 ITR 53 (Bom),*
  - *CIT v Sagar Construction Pvt Ltd [2015] 56 taxmann.com 434 (Patna)*
  - Contrary view by the Kerala High Court in *CIT v E. D. Benny 283 CTR (Ker) 212*

SUO MOTO CALL OF CIT(A)

- Assessee filed reply before AO in which several details as per query of AO were furnished at assessment stage including copy of cash book.
- Even if CIT(A) called for books of account, details and vouchers at appellate stage for examination, there was nothing wrong in his power to examine books of account as per Rule 46A(4)
  - *ITO & Anrs v Jaidka Woolen & Hosiery Mills P. Ltd & Anrs (2018) 68 ITR (Trib) 0216 (Delhi)*

FAVORABLE REMAND REPORT

- **Where CIT(A) has admitted additional evidences and called for remand report from AO & if AO gives the report in favour of assessee i.e. where AO accepts evidences filed by assessee & opines that additions are not warranted considering evidences, then CIT(A) considering remand report may allow appeal in favour of assessee. Revenue cannot be aggrieved by order of CIT(A) & file appeal before ITAT for which favourable remand report was given by AO.**
  - *B.Jayalakshmi v ACIT [2018] 407 ITR 0212 (Mad)*
  - *Ramanlal Kamdar v CIT [1977] 108 ITR 0073 (Mad)*
  - *Jivatlal Purtapshi v CIT [1967] 65 ITR 0261 (Bom)*
  - *M.M. Annaiah v CIT [1970] 76 ITR 0582 (Mys)*

Q&A

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