

**RECTIFICATIONS,**  
**REVISIONS & APPEALS**

Organised by  
**WIRC**

At  
**ICAI Bhavan, Mumbai**

On  
25<sup>th</sup> January, 2014  
Timing: 4:00 p.m. to 5:30 p.m.

Prepared by  
**CA Haridas Bhat**

### **Rectification of mistake.**

Order can be passed u/s 154 of Act to rectify any mistake apparent from the record.

### **The rectification can be made for the following orders:**

- any order passed by it under the provisions of this Act ;
- intimation u/s [143](#)(1)
- intimation u/s 200A(1)

### **Matters which cannot be rectified**

- Issues which are decided by way of appellate order or revision order.

### **Procedure**

- ✓ The authority passing the order on its own motion  
or
- ✓ Or on application by the assessee or deductor

Any rectification pre judicial to the assessee or deductor shall be made only after a reasonable opportunity of being heard is given to the assessee.

For returns filed online the rectification shall be filed online.

### **Time limit for rectification**

Four years from the date of passing the order sought to be rectified.

### **Order**

The order shall be passed in writing and shall be accompanied by demand notice u/s 156 in case of demand or shall make the refund due after rectification.

Order shall be passed within six months of application allowing the claim of the assessee or refusing the claim.

The department issued instruction no. 03/2013 dt. 5<sup>th</sup> July 2013 based on Hon'ble Delhi HC order summarized as follows:

Every application u/s 154 of the act shall be dealt with as under:

- ✓ All applications must be duly entered into system and acknowledgement number shall be given
- ✓ Physical application shall be made to the AO alongwith the acknowledgement number
- ✓ Every application shall be disposed of within six months from the end of the end month in which application is made.
- ✓ If online rectification is filed then CPC has to identify immediately whether it can process the same or to be transferred to jurisdictional AO. CPC also has to strictly adhere to the time limit for disposing the application.
- ✓ On transfer the jurisdictional AO shall follow the procedures mentioned above and shall dispose off the within the time frame.
- ✓ As per citizens charter the application shall be disposed off with two months and the authorities has been instructed to abide by this time limit as far as possible.

## **INCOME TAX AUTHORITIES EMPOWERED TO RECTIFY-SUB-S. (1)**

- Powers given to all officers who constitute "Income-tax authority"
- Power conferred to amend intimation sent under Section 143(1)
- Power to rectify intimation after issuance of notice under s. 143(2)

CIT vs. Udaipur Distillery Co. Ltd. (2003) 182 CTR (Raj) 284 CIT vs. Gujarat Electricity Board (2003) 181 CTR (SC) 28 : (2003) 260 ITR 84 (SC) The High Court held that once the proceedings for regular assessment had already been initiated by issuing notice under s. 143(2), intimation under s. 143(1)(a) could not be rectified for making a disallowance under s. 43B, more so when the question of allowability of deduction raises a debatable issue.

- Powers of Tribunal to rectify mistake in its order

Section 254(2) empowers the Tribunal to rectify its orders. The proviso to Section 254(2) provides that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made unless the Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

- Powers of Settlement Commission to rectify its orders

Section 245F(1) lays down that in addition to powers conferred on the Settlement Commission under Chapter XIX-A it shall have all the powers which are vested in an IT authority under the Act. Power to rectify a mistake apparent from the record has been vested in an IT authority under s. 154 of the Act. Hence although Settlement Commission is not an IT authority referred to in Section 116, powers of rectification conferred under s. 154 on an IT authority referred to in Section 116 are exercisable by the Settlement Commission.

- Powers of competent authority to rectify its orders

Section 269N lays down that with a view to rectify any mistake apparent from the record, the competent authority may amend any order made by him under Chapter XX-A at any time before the time for presenting an appeal against such order has expired, either on his own motion or on the mistake being brought to his notice by any person affected by the order. The proviso to said section lays down that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

- Powers of Appropriate Authority to rectify its orders

Sec. 269UJ lays down that with a view to rectifying any mistake apparent from the record, the Appropriate Authority may amend any order made by it under Chapter XX-C, either on its own motion or on the mistake being brought to its notice by any person affected by the order. The first proviso to Section 269UJ lays down that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard while the second proviso to said section provides that no amendment shall be made under said section after the expiry of six months from the end of the month in which the order sought to be amended was made.

- Power of Authority for Advance Rulings to rectify mistake.

it is evident that the Authority is empowered to amend any order subject to the following two conditions : (1) there must be a mistake apparent from the record in the order sought to be rectified; and (2) rectification of such a mistake can be made before the ruling pronounced by it is given effect to.

- Powers of rectification conferred on Settlement Commission, competent authority and Appropriate Authority are analogous to powers conferred by s. 154 on an IT authority
- Power of rectification of the CIT(A)

The Commissioner (Appeals) can rectify an order under section 154. This does not however confer the power on the CIT(A) to recall his order in its totality. Om Prakash Bhola vs. CIT (2004) 192 CTR (Del) 544.

- Power of rectification cannot be invoked when no order has been passed by the concerned authority
- Powers of rectification can be invoked by successor in office but not by altogether different IT authority
- Power to rectify a particular order not specifically conferred on an IT authority-That order cannot be rectified
- Power under s. 154 is not discretionary
- Successive applications not maintainable
- Powers under s. 154 of the Act are similar to powers of High Court under Art. 226 of the Constitution

## MEANING AND SCOPE OF "MISTAKE"

- Mistake-Not confined to mere clerical or arithmetical mistake
- Mistake need not be one of law only-It could be one of either fact or law
- Reasons to be adduced - Motor Industries Co. Ltd. vs. CIT & Anr. (2009) 314 ITR 29 (Kar)

### **Mistakes which are and which are not covered by s. 154**

- Incorrect computation of allowable deduction under particular section of the IT Act can be corrected in exercise of powers under s. 154 of the Act. Birla Bombay (P) Ltd. vs. CIT (1979) 12 CTR (Bom) 4 : (1980) 121 ITR 142 (Bom)
- Where it was obligatory on AO to consider provisions of s. 6(1)(a) and s. 6(1)(c) but he considered provisions only s. 6(1)(a), there was apparent mistake which was rectifiable under s. 154. Vijay Mallya vs. Asstt. CIT (2003) 185 CTR (Cal) 233].
- while determining amount payable by assessee, having not adhered to method provided in Explanation to s. 140A, same constituted mistake apparent and was rightly rectified by recourse to s. 154. In CIT vs. Industrial Cables (India) Ltd. (2009) 310 ITR 351 (P&H)
- Sec. 154 does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof Ved Prakash Madanlal vs. CIT 1978 CTR (Bom) 309
- The mistake should be a mistake apparent on record and not a mistake which could be discovered by a process of elucidation, argument or debate. The expression 'mistake apparent from record' should not be equated in some aspects with mistake on the face of the record [Arvind N. Mafatlal vs. ITO (1957) 32 ITR 350 (Bom) : TC53R.143].
- Although the mistake may be a mistake of fact as well as a mistake of law yet it is necessary that it should be a glaring, obvious or self-evident mistake and should not be one which could be discovered by a long drawn process of reasoning or examining arguments on points where there may conceivably be two opinions [National Rayon Corporation Ltd. vs. G.R. Bhamani, ITO (1965) 56 ITR 114 (Bom)]
- Sec. 154 would not cover a case where in order to ascertain whether there was a mistake, a prolonged investigation of a controversial nature was required to be made [N.V.N. Nagappa Chettiar & Ors. vs. ITO (1958) 34 ITR 583 (Mad)]
- If in order to discover a mistake some matter or evidence extraneous to the record is required to be looked into, then such a mistake which is not gatherable from the record as it stands cannot be said to be a mistake apparent from the record within the meaning of this section [CIT vs. Harnandrai Shrikishan Akodia (1966) 61 ITR 50 (MP)]

- The mistake which can be rectified is one created or made by the concerned authority or one in creation of which the concerned authority had some contribution. Hence if the alleged mistake in the order is attributed to an impression formed by the counsel who had appeared before the authority towards which the authority had done nothing, the alleged mistake would not be one apparent from the record [Joseph Thomas vs. Agri. ITO (1979) 13 CTR (Ker) 362]
- Grant of relief under a provision of law which does not obviously apply to the facts of the case would attract powers of rectification [CIT vs. Sundaram Textiles Ltd. (1984) 43 CTR (Mad) 30]
- Similar would be the case of non-consideration of an appropriate provisions of law [CIT vs. Quilon Marine Produce Co. (1985) 48 CTR (Ker) 135 : (1985) 157 ITR 448 (Ker) and Addl. CIT vs. India Tin Industries (P) Ltd. (1986) 57 CTR (Kar) 70 : (1986) 166 ITR 454 (Kar) :
- An assessment order which is obviously inconsistent with a provision of law would be liable to be rectified in exercise of powers of rectification [M.K. Venkatachalam, ITO vs. Bombay Dyeing & Manufacturing Co. Ltd. (1958) 34 ITR 143 (SC)]
- Mere fact that an appeal had not been filed against the original order which was correct and valid when passed would not be a ground for the ITO to refuse to rectify that order when in view of subsequent decisions of jurisdictional High Court on the point involved the original order is shown to suffer from a mistake apparent from the record [Parshuram Pottery Works Co. Ltd. vs. D.R. Trivedi, WTO (1975) 100 ITR 651 (Guj)].
- Meaning of expression "mistake" or "obvious or patent mistake"-Not involving a debatable point
- Difference between the expressions "mistake apparent from the record" and "error apparent on the face of the record"
- Line of demarcation neither firm nor fixed In CIT vs. E.I.D. Parry Ltd. (1995) 216 ITR 489 (Mad) : TC53R.342
- Invalid order cannot be made valid by resort to s. 154

## MEANING OF WORD "RECORD" IN THE EXPRESSION "MISTAKE APPARENT FROM THE RECORD"

- Wide meaning to be given  
The word 'record' has not been defined under s. 154 or in the definition section. Therefore the said word will have to be given a wider import by including the record that is available with the AO. CIT vs. Lakshmi Vilas Bank (2010) 230 CTR (Mad) 185.
- Intimately connected record  
A mistake which could not be gathered from the record as it stood and required, for being shown to be a mistake, matter or evidence extraneous to the record, was not a mistake apparent from the record which could be corrected CIT vs. Harnandrai Shrikishan Akodia (1966) 61 ITR 50 (MP)
- For invoking the provisions of s. 154, there has to be a mistake apparent from the record. In other words, a look at the record must show that there has been an error and that error may be rectified, A reference to document outside the record is not permissible. The Supreme Court in CIT vs. Keshri Metal (P) Ltd. (1999) 237 ITR 165 (SC)
- Records of different assessment years of the same assessee
- Record where valuation of closing or opening stock-in-trade is involved  
The value of closing stock of earlier year automatically becomes the value of opening stock of immediately succeeding year and hence whenever value of closing stock of earlier year gets disturbed, the value of opening stock of succeeding year was bound to be rectified [Mahendra Mills Ltd. vs. P.B. Desai, AAC 1975 CTR (SC) 82
- Record of an enquiry subsequent to assessment
- If a mistake was discovered as a result of an enquiry or investigation made subsequent to the assessment, the record of such enquiry would not be regarded as a record which could be looked into in order to ascertain whether the mistake was apparent from the record In CWT vs. R.D. Shah (1994) 207 ITR 271 (AP)
- Assessment record of firm is not part of assessment record of partner for the purposes of s. 154(1)



## DIFFERENT ASPECTS OF RECTIFICATION

### Interpretation of law

- Where only one interpretation of a provision of law is possible

Where only one interpretation of a section of the Act was possible and any other interpretation was not possible, an earlier order which is not in conformity with the only possible interpretation of the section would be liable to be rectified as the mistake would be regarded as one apparent from record [ITO vs. Raleigh Investment Co. Ltd. (1976) 102 ITR 616 (Cal)]

- Where two interpretations of a provision of law are possible

If a statutory provision was capable of two interpretations, and one such interpretation has been adopted in passing the original order, such an order cannot be amended so as to bring it in conformity with the other possible interpretation by exercise of power of rectification under s. 154.

- **Conflicting decisions of Courts**

Where there is difference of opinion amongst the High Courts on the relevant matter The principle stated earlier, namely, power of rectification cannot be exercised

- **Even if order is deliberate, it can be rectified if it is manifestly wrong in law**

The fact that the ITO while passing the original order had applied his mind and had passed the impugned order deliberately would not by itself oust his jurisdiction to rectify that order if that order was manifestly wrong in law. [A.H. Wheeler & Co. (P) Ltd. vs. ITO (1964) 51 ITR 92 (All)]

- **Misreading a provision of law**

Where a wrong view is taken by misreading a provision of law, the mistake would be one apparent from the record and as such liable to be rectified [CIT vs. McLeod & Co. Ltd. (1982) 134 ITR 674 (Cal)]

- Review vis-a-vis rectification Order cannot be reviewed or revised under the garb of rectification
- Difference between appellate powers and powers of rectification
- Rectification consequent to appellate order vis-a-vis principle of merger
- Retrospective amendment in statutory provision and exercise of powers of rectification
- Where retrospective amendment does not make mandatory provision in the statute-No mistake
- Rectification on the basis of subsequent Supreme Court decisions and/or decisions of jurisdictional High Court
- Rectification on the basis of subsequent interpretation of law in a Supreme Court decision- Where assessment made by the AO was not in conformity

with law laid down by the Supreme Court subsequently, it suffered from mistake apparent from record and therefore, rectification under s. 154 was valid. In Southern Industrial Corpn. Ltd. vs. CIT (2002) 178 CTR (Mad) 346

- Departmental Circular regarding rectification based on Supreme Court decision- Departmental Circular No. 68 dt. 17th Nov., 1971 the Board has recognised the legal position that an order can be rectified on the basis of subsequent Supreme Court decision.
- Rectification on the basis of subsequent decision of jurisdictional High Court -An assessment which was contrary to a judgment subsequently rendered by the jurisdictional High Court could be rectified in exercise of power under s. 154 of the Act as such a judgment would suffer from a mistake apparent from the record In M.K. Kuppuraj vs. ITO & Anr. (1995) 128 CTR (Mad) 407
- Rectification on the basis of a binding decision which overrules earlier decision
- Rectification on the basis of subsequent decision of jurisdictional High Court in cases where other High Courts have taken different view
- Rectification on the basis of jurisdictional High Court which is not directly on the point involved
- Rectification on a debatable point of law on the basis of decision of non-jurisdictional High Court
- Rectification on the basis of decision of jurisdictional High Court when reference on merits had been refused
- Rectification on the basis of decision of jurisdictional High Court which had not been cited
- Rectification on the basis of subsequent decision of the Tribunal -When point is debatable on the date on which rectification order is passed and subsequently Supreme Court decides the point
- Order passed under a rule which was ultra vires -Where an order is passed in pursuance of a rule which is ultra vires, such an order is one which is incompetently passed and as such can be set aside in exercise of powers of rectification [CIT vs. Harnandrai Shri Kishan Akodia (1966) 61 ITR 50 (MP)].
- Claiming relief when investigation of facts necessary
- Change of opinion because of finding recorded in the assessment of another assessee In CIT vs. Homi Mehta & Sons (P) Ltd. (1982) 27 CTR (Bom) 238 : (1982) 137 ITR 213 (Bom)
- Relief not claimed in assessment proceeding cannot be granted by rectification if there were no materials on record to support the claim Anchor Pressings (P) Ltd. vs. CIT (1975) 100 ITR 347 (All)

- Orders of rectification are parts of assessment proceedings
- Mere mention of wrong section or provision does not vitiate rectification order
- Rectification of mistake different from that mentioned in the notice
- Notice of rectification without application of mind
- Absence of valid objection to rectification -In the absence of this, the rectification order could not be challenged [Sarangpur Cotton Mfg. Co. Ltd. vs. CIT (1982) 29 CTR (All) 315
- No material difference in tax-liability by proposed rectification-Notice of rectification liable to be quashed -Burmah Shell Refineries Ltd. vs. A.V. Raman, ITO (1965) 56 ITR 310 (Bom)
- Amendment of order under s. 154 extends to cancellation of entire order also
- Questions expressly raised before or decided by the appellate or revisional authority cannot be re-agitated by initiating rectification proceeding Rajputana Mining Agencies & Ors. vs. ITO (1979) 10 CTR (Raj) 127
- Successive rectifications can be made in the same order if mistakes apparent on record are discovered
- Rectification of one apparent mistake does not prevent subsequent rectification Hira Lal Sutwala vs. CIT (1965) 56 ITR 339 (All)
- An order set aside earlier by the Tribunal-No rectification in that order can be made
- Assessee agreeing to rectification-No right to agitate before CIT(A) and Tribunal [CIT vs. Cochin Malabar Estates & Industries Ltd. (1989) 180 ITR 152 (Ker)
- Recovery proceedings may be stayed during pendency of rectification proceeding - Sultan Leather Finishers Pvt. Ltd. vs. Asstt. CIT & Anr. (1991) 191 ITR 179 (All)
- Assessment invalid-Cannot be rectified under s. 154- CIT vs. Fatehlal (1996) 130 CTR (MP) 287 : (1996)

## ILLUSTRATIONS OF MISTAKES APPARENT FROM RECORD WHICH ARE RECTIFIABLE

- Arithmetical or clerical mistake
- An arithmetical or clerical mistake in the orders passed by the IT authority.
- Mistakes in calculation of tax, rebate relief, etc.
- Miscalculation of tax on misreading of a section of which only one interpretation was possible.
- Refund of tax paid as per provisional assessment as a consequence of setting aside of regular assessment. [R.A. Boga vs. AAC (1977) 110 ITR 1 (P&H) (FB)]
- Omission to apply formula for calculation of double tax relief in computing corporation tax. [Sutlej Cotton Mills Ltd. vs. CIT (1979) 120 ITR 399 (Cal)]
- Excess rebate granted in respect of premium on life insurance policy. [I.N. Sundresh (HUF) vs. Agrl. ITO (1983) 34 CTR (Kar) 337]
- Grant of credit to the assessee bank for tax deducted at source in respect of Electricity Board Bonds when admittedly those bonds, though purchased in the name of the assessee bank belonged to its constituents who had kept them as security for loans advanced to them and interest income from the bonds was not offered by the assessee bank for taxation. [CIT vs. Tanjore Permanent Bank Ltd. (1986) 55 CTR (Mad) 391 : (1986) 149 ITR 788 (Mad)]
- Grant of rebate to a person by treating him as "a non-resident", while in fact he was a person who was "not ordinarily resident". [Chimanbhai K. Patel vs. CWT (1985) 49 CTR (Guj) 104 : (1985) 156 ITR 373 (Guj)]
- Allowability of relief under Section 80J when private company is converted into public limited company
- Order granting deductions under Section 80L and Section 80M before set off of losses
- Other deductions under Chapter VI-A -Issue regarding deduction of unabsorbed depreciation and unabsorbed losses from the profits and gains of business or profession while computing deduction under s. 80HHC was a debatable issue and therefore, Dy. CIT had no jurisdiction to pass the impugned order under s. 154 holding that the assessee-company is entitled to deduction under s. 80HHC at nil as there is no positive income after setting off the unabsorbed depreciation and unabsorbed business losses of the earlier years. [Royal Cushion Vinyl vs. CIT (2009) 227 CTR (Bom) 663].
- Value of closing or opening stock
- Penalty
- Carry forward of loss
- Wrong deduction of tax liability
- Double taxation relief and other rebate -Allowance of excessive double taxation relief when facts on the basis of which such relief is to be

calculated are undisputed.[CIT vs. United Commercial Bank (1994) 206 ITR 641 (Cal) : TC53R.468]

- Capital gains
- Computation of book profit under s. 115JA

### **Interest –**

- Excess interest paid to assessee by the Government on advance tax paid by the assessee Simplex Mills Ltd. vs. P.S. Subramanyam, ITO (1958) 34 ITR 711 (Bom)
- Mistaken calculation of disallowance of interest under Section 40(b). [Sugar Dealers vs. CIT (1993) 115 CTR (Guj) 284
- Calculation of interest after giving erroneously credit for advance tax paid after the end of the financial year. [Life Bond Fabric (P) Ltd. vs. CIT (1995) 128 CTR (Guj) 19 : (1995)
- Failure to charge interest under when levy of such interest was mandatory. [Mulchand Patti Mfg. Co. vs. CIT (1995) 127 CTR (Raj) 438 : (1995) 215 ITR 746 (Raj)
- Failure to grant interest on the refund granted in proceeding under s. 154. [Laxmiben Hemdas Patel vs. S.B. Rohtagi, ITO (1994) 120 CTR (Guj) 494

### **Written down value-Depreciation, extra-shift allowance, etc.**

- Obvious mistake in determining written down value of the assets. [Maharana Mills (P) Ltd. vs. ITO (1959) 36 ITR 350 (SC)
- grant of depreciation at incorrect rate. [Addl. CIT vs. P.V.S.K. Palaniappa Nadar & Sons (1980) 17 CTR (Mad) 347
- Omission to allow depreciation on certain assets although income from such assets was charged to tax under the head "Income from other sources". [Addl. CIT vs. Kanta Behan (1982) 27 CTR (Del) 40
- Omission to allow extra-shift allowance in relation to plant and machineries of a sugar factory working on seasonal basis when there was a High Court decision stating that extra shift allowance was allowable. [CIT vs. Purtabpore Co. Ltd. (1986) 54 CTR (Cal) 169
- Allowance of depreciation by treating a power tiller as a tractor when obviously a power tiller is entirely different from a tractor. [Veerarajendra Estate Ltd. vs. Agrl. ITO (1988) 68 CTR (Kar) 25
- Granting of extra-shift allowance on electrical machinery when there was clear provision in depreciation table that extra-shift allowance was not allowable on such machinery. [Bharat Suryodaya Mills vs. CIT (1996) 130 CTR (Guj) 49

## **RECTIFICATION VIS-A-VIS REASSESSMENT**

Provisions of s. 154 and Section 147 may overlap in some cases while in others only Section 147 and not s. 154 may be applicable

Difference between rectification proceedings and reassessment proceedings as far as initiation was concerned - The main difference between rectification proceeding and reassessment proceeding, as far as initiation was concerned was that whereas there was no statutory provision for issue of notice for initiation of rectification proceeding while as far as reassessment proceeding was concerned a statutory notice after recording reasons was necessary for initiation and initiation without such statutory notice was without jurisdiction as far as reassessment proceeding was concerned Girdharilal Jhajharia vs. CIT (1970) 78 ITR 133 (Cal)

Reassessment notice invalid-Reassessment order passed on the basis of such notice can be cancelled by exercise of powers under s. 154

## **APPEALS VIS-A-VIS RECTIFICATION**

Objection regarding jurisdiction for passing rectification order can be raised for the first time in appeal [Swaran Yash vs. CIT (1982) 138 ITR 734 (Del) : TC7R.670]

Appeal against rectification order by the ITO under the 1961 Act –

In the IT Act, 1961 Section 246(1)(c), Section 246(2)(a), Section 246(2)(b), Section 246 Section 246(2)(h) provide for appeal against an order under s. 154 or under Section 155 which has the effect of enhancing the assessment or reducing the refund or which refuses to allow the claim made by the assessee under either of those sections.

In a second appeal arising out of a rectification order under s. 154 or under Section 155, the Tribunal should first decide whether there was a mistake which comes in the category of mistake apparent on record before remanding the matter for decision on merits [Oil India Ltd. vs. CIT (1990) 183 ITR 412 (Cal) : (1990) TAX 99(3) -65 : TC8R.1151].

## **JURISDICTION OF CIT UNDER S. 263 VIS-A-VIS RECTIFICATION OF ASSESSMENT UNDER S. 154**

Scope and ambit of a proceeding for rectification of an order under s. 154 and a proceeding for revision under s. 263 are distinct and different CIT vs. Ralson Industries Ltd. (2007) 207 CTR (SC) 201

## **REVISIONS (263 & 264)**

### **REVISION OF ORDERS PREJUDICIAL TO THE REVENUE 263**

#### **POWER WITH COMMISSIONER**

The Commissioner may call for and examine the record of any proceeding under this Act,

#### **ORDERS WHICH ARE PREJUDICIAL TO THE REVENUE**

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,

#### **OPPORTUNITY TO THE ASSESSEE**

he may, after giving the assessee an opportunity of being heard

#### **ENQUIRY AS NECESSARY**

and after making or causing to be made such inquiry as he deems necessary,

#### **ORDER**

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.

#### **MATTERS COVERED IN APPEAL SHALL BE SPARED**

where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal the powers of the 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.

#### **TIME LIMIT**

No order shall be made after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

#### **NO TIME LIMIT WHEN COVERED BY TRIBUNAL OR COURT ORDER**

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, the High Court or the Supreme Court.

#### **EXCLUSIONS FOR TIME LIMIT**

In computing the period of limitation the time taken in giving an opportunity to the assessee to be reheard and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

COMMISSIONER OF INCOME TAX vs. MAX INDIA LTD. (2007) 295 ITR 282 (SC)

When the CIT passed the impugned order under s. 263, two views were inherently possible on the word "profits" occurring in the proviso to s. 80HHC(3) and therefore, subsequent amendment of s.80HHC made in the year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under s. 263.



## **REVISION OF OTHER ORDERS 264**

### **POWER WITH THE COMMISSIONER**

the 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.

### **TIME LIMIT**

The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

### **TIME LIMIT FOR APPLICATION BY THE ASSESSEE**

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:

### **POWER OF COMMISSIONER TO ADMIT**

the 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.

### **EXCLUSIONS**

The Commissioner shall not revise any order under this section in the following cases-where an appeal against the order lies 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 the assessee has not waived his right of appeal; or where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

### **FEES FOR REVISION APPLICATION**

Every application by an assessee for revision under this section shall be accompanied by a fee of [five hundred] rupees.

### **TIME LIMIT TO DISPOSE APPLICATION**

On every application by an assessee for revision 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.

### **NO TIME LIMIT WHEN COVERED BY TRIBUNAL OR COURT ORDER**

an order in revision 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, the High Court or the Supreme Court

## **APPEALS**

The income tax procedure starts with the Assessee filing Return of income.

The first stage after the filing of the Return of income is the Assessment of the same by the Assessing Authorities.

The appeals and revisions comes in to picture on the assesment of the Returned income when the Assessee does not agree on certain additions, treatments and procedures.

Currently the Income tax appeals are contested in four stages,

1. Commissioner Appeals,
2. Income Tax Appellate Tribunal.
3. In the Jurisdictional High Court
4. In the Supreme Court.

The Chartered Accountants are eligible to fight the cases till the level of Income Tax Appellate tribunal.

The Relevant sections of the Act are in the Chapter XX of the Income Tax 1961, starting from Section 246 .

The Rules relevant to the same are Rule 45 to 48.

## **APPEAL BEFORE COMMISSIONER OF APPEALS**

The following orders can be appealed with Commissioner appeals

- (a) an order against the assessee
  1. where the assessee denies his liability to be assessed under this Act
  2. where the assessee denies an intimation under sub-section (1) or sub-section (1B) of section 143,
  3. where the assessee objects to the making of adjustments,
  4. the assessee objects to any order of assessment under sub-section (3) of section 143 (Regular Assessment) or section 144 (Best Judgement Assessment) ,
  5. the assessee objects to income assessed,
  6. the assessee objects to the amount of tax determined,
  7. the assessee objects to the amount of loss computed,
  8. the assessee objects to the status under which he is assessed;
- (b) an order of assessment, re-assessment or re-computation under section 147(Income Escaping Asst) or section 150 (Appeal effect order);
- (c) an order of assessment or reassessment under section 153A (Search or acquisition w.e.f.2003)
- (d) an order made under section 154 (Rectification order) or section 155 (Effecting Other amendments)having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (e) an order made under section 163 treating the assessee as the agent of a non-resident;
- (f) an order made under sub-section (2) or sub-section (3) of section 170; (Assesment of Successor)
- (g) an order made under section 171 (Asst after partition of HUF)
- (h) an order made under section 201 (Tax Deduction related Asst.)
- (i) an order made under section 237 (Refund order)
- (j) an order imposing a penalty under-section 221(Default to pay tax); or section 271 (Assesment related penalties) , section 271A (Failure to maintain books) section 271F (Failure to file Return), section 272AA (Failure to submit the information asked for) or section 272BB (Tax Collection at source);
- (k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, (Block Assesment) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;
- (l) an order imposing a penalty under sub-section (2) of section 158BFA (Block Assesment)
- (m) an order imposing a penalty under section 271B (Audit of Accounts) or section 271BB ( Specified shares);
- (n) an order imposing a penalty under Chapter XXI;
- (o) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.
- (p) Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction,

may appeal to the [\* \* \*] [Commissioner (Appeals)] to be declared not liable to make such deduction.

### **FORM OF APPEAL AND LIMITATION FORM**

Every appeal under this Chapter shall be in the prescribed form (Form No 35) and shall be verified in the prescribed manner.

Appeal fee

Assessed income	Appeal Fees
Upto 100000	Rs.250
100001 to 200000	Rs.500
200001 and above	Rs.1000
Matter not covered by Assessed income	Rs.250

### **TIME LIMIT**

The appeal shall be presented within thirty days of the

- a) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax,
- b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty:
- c) where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded,
- d) in any other case, the date on which intimation of the order sought to be appealed against is served.

### **RELAXATION OF TIME LIMIT**

The Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

### **DISQUALIFICATION TO FILE AN APPEAL**

- (a) where a return has been filed by the assessee, the assessee has NOT paid the tax due on the income returned by him;
- (b) where no return has been filed by the assessee, the assessee has NOT paid an amount equal to the amount of advance tax which was payable by him:

### **RELAXATION OF DISQUALIFICATION TO FILE AN APPEAL**

on an application made by the appellant in this behalf, the Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of that clause

## **PROCEDURE OF APPEAL**

### **NOTICE OF HEARING**

The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to

- 1) the appellant and
- 2) to the Assessing Officer against whose order the appeal is preferred.

### **RIGHT OF HEARING**

The following shall have the right to be heard at the hearing of the appeal-  
the appellant, either in person or by an authorised representative;  
the Assessing Officer, either in person or by a representative.

### **POWER OF ADJOURN.**

The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.

### **POWER TO ENQUIRY**

The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)

### **ADDITIONAL GROUNDS DESCRETION OF THE CIT(A)**

The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

### **APPEAL ORDER**

The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

### **TIME LIMIT TO PASS THE ORDER**

In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

### **COMMUNICATION OF ORDER**

On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner

## **POWERS OF COMMISSIONER APPEALS**

- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment
- (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
- (c) in any other case, he may pass such orders in the appeal as he thinks fit.

## **ENHANCEMENT CAN NOT BE DONE WITHOUT GIVING OPPORTUNITY**

The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

## **DESCRETION TO CONSIDER ANY MATTER EVEN IF NOT RAISED**

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, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

## **GROUND OF APPEAL**

The issues raised by the Appeal should be classified into separate grounds when the same issue is contested by law as well as by facts of the case separate ground is suggested.

End the grounds of appeal with a statement reserving the right to add or delete any grounds.

## **STATEMENT OF FACTS**

The contents of the statement of facts should contain the particulars about the assessee sufficient enough to understand the case.

The general clause about the assessee sufficient enough to understand about the assessee's business and the grounds of appeal should be part of the preamble.

Ground wise statement of facts should be then be submitted alongwith the citations of the case laws which are relied upon as a part of the paper book.

End the statement of facts with a statement reserving the right to add or delete any statements of facts.

## **SUBMISSIONS**

The statement of facts shall be explained in detail alongwith the further developments in the case as submissions before the CIT (A)

An Index of the evidences and records which are relied upon, alongwith the relevant records and evidences shall be made in the form of a book serially numbered.

The copies of the citations which are relied upon should be the part of the paper book.

Additional submissions and records shall be submitted as per the requirement of the case.

### **RESTRICTIONS ON PRODUCTION OF ADDITIONAL EVIDENCE**

The appellatant shall not be entitled to produce before the Commissioner (Appeals) , any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer,

### **EXCEPTIONS**

- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted;
- (b) where the appellatant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer;
- (c) where the appellatant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal;
- (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellatant to adduce evidence relevant to any ground of appeal.

No evidence shall be admitted the Commissioner (Appeals) records in writing the reasons for its admission.

the Commissioner (Appeals) shall not take into account any evidence produced unless the Assessing Officer has been allowed a reasonable opportunity-

- (a) to examine the evidence or document or to cross-examine the witness produced by the appellatant,
- (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellatant.

The restrictions shall not effect the power of the Commissioner (Appeals) to direct the production of any document, or the 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 Assessing Officer



## **PROCEDURE OF FILING APPEAL AND ANNEXURES**

1. The form of appeal, grounds of appeal and form of verification thereto shall be signed by a person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.
2. The memorandum of appeal, (in duplicate)
3. statement of facts (in duplicate)
4. the grounds of appeal (in duplicate)
5. copy of the order appealed against (duly certified)
6. the notice of demand in original, if any.
7. Filed with the CIT (A) as mentioned in the Notice of Demand.
8. The memorandum of appeal shall be accompanied by a fee
9. The fee should be credited in a branch of the authorised bank or a branch of the State bank of India or a branch of the Reserve Bank of India after obtaining a challan from the Assessing officer and a copy of challan sent to the Commissioner of income-tax (Appeals).

## **TRIBUNAL**

### **APPEALABLE ORDERS**

#### **APPEAL BY ASSESSEE**

By Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order:-

1. an order passed by a Commissioner (Appeals)] under section 154, section 250, section 271, section 271A or section 272A;
2. an order passed by a Commissioner under section 12AA or under section 263 or under section 271 or under section 272A
3. an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A.

#### **APPEAL BY THE DEPARTMENT**

The Commissioner may, if he objects to any order passed by a Commissioner (Appeals)] under [section 154 or] section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against the order.

### **INSTRUCTION NO. 3/2011 [F. NO. 279/MISC. 142/2007-ITJ], DATED 9-2-2011**

<b>S. No.</b>	<b>Appeals in Income-tax matters</b>	<b>Monetary Limit (In Rs.)</b>
1.	Appeal before Appellate Tribunal	3,00,000
2.	Appeal u/s 260A before High Court	10,00,000
3.	Appeal before Supreme Court	25,00,000

For this purpose, "tax effect" means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total

income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed Issues”). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.

COMMISSIONER OF INCOME TAX vs. SURYA HERBAL LTD.(2011) 243 CTR (SC) 327 Liberty is given to the Department to move the High Court pointing out that the Instruction No. 3 of 2011, dt. 9th Feb., 2011, should not be applied ipso facto, particularly, when the matter has a cascading effect.

### **DUE DATE**

Every appeal shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be :

### **CROSS OBJECTIONS**

The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified

### **RELAXATION OF DUE DATE**

The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.

### **APPEAL FEES**

An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, be accompanied by a fee of,-

Assessed income	Appeal Fees
Upto 100000	Rs.500
100001 to 200000	Rs.1500
200001 and above	1% of income subject to a maximum of Rs.10000
Matter not covered by Assessed income	Rs.500

Provided that no such fee shall be payable in the case of or a memorandum of cross-objections

## **PROCEDURE**

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.

## **TIME LIMIT FOR RECTIFICATION OF MISTAKE**

The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.

## **NO AMENDMENT OF ENHANCEMENT WITHOUT GIVING OPPORTUNITY**

an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard :

## **FEEES FOR EFFECTING AMENDMENT**

any application filed by the assessee in this regard shall be accompanied by a fee of fifty rupees.

## **TIME LIMIT FOR HEARING**

In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed

## **TIME LIMIT OF STAY PETITION HEARING**

where an order of stay is made in any proceedings relating to an appeal filed the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order.

Provided further that if such appeal is not so disposed of within the period specified in the first proviso, the stay order shall stand vacated after the expiry of the said period.

## **COST OF APPEAL**

The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal.

## **COMMUNICATION OF ORDER**

The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.

*Disclaimer:- The opinion and views expressed in this compilation are those of the compiler. The WIRC of ICAI does not necessarily concur with the same. While every care is taken to ensure the accuracy of the contents of this compilation, neither the compiler nor the WIRC of ICAI are liable for any inadvertent errors.*