CHAPTER 16

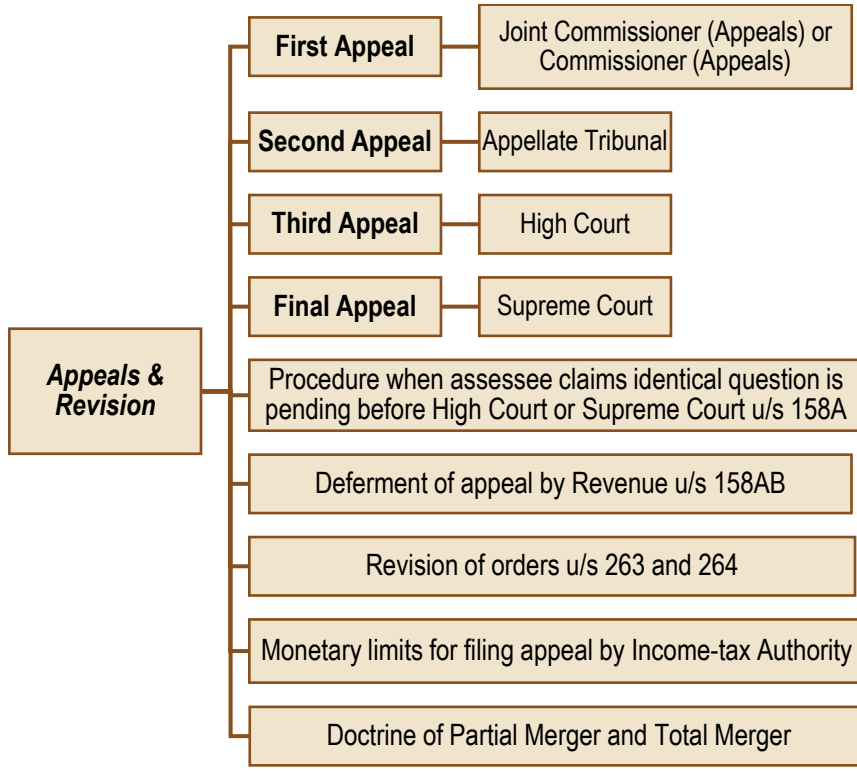
APPEALS AND REVISION

LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **identify** the orders appealable before different appellate authorities;
- **recall** the time limit for filing appeals before different appellate authorities;
- **appreciate** the powers of different appellate authorities;
- **comprehend and appreciate** the provision in law for avoiding repetitive appeals;
- **appreciate** the procedure for appeal by Revenue when an identical question of law is pending before Supreme Court;
- **identify** the circumstances when an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, for initiation of revision proceedings under section 263;
- **appreciate** the procedure for revision of other orders under section 264;
- **recall** the time limit for revision of orders;
- **identify** the cases where doctrine of total merger and doctrine of partial merger are applicable;
- **analyse and apply** the above provisions to determine whether an order is appealable before a particular appellate authority, the time limit for filing of appeal and address other issues in non-complex to moderately complex scenarios.

CHAPTER OVERVIEW



16.1 APPEALS BEFORE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER (APPEALS)

(1) Appealable Orders before Joint Commissioner (Appeals) [Section 246(1)]: Any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against -

Intimation u/s 143(1) or assessment order u/s 143(3) or 144 or u/s 147

(a) an order being an intimation under section 143(1), where the assessee objects to the making of adjustments, or any order of assessment under section 143(3) or section 144, where the assessee objects to-

(i) the amount of income assessed, or

(ii) the amount of tax determined, or

(iii) the amount of loss computed, or

(iv) the status under which he is assessed;

Status *means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.*

(b) an order of assessment, reassessment or recomputation under section 147;

(c) an order being an intimation under section 200A(1) where the deductor objects to the making of adjustments;

(d) an order under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;

(e) an order under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;

(f) an order being an intimation under section 206CB(1) where the collector objects to the making of adjustments;

(g) an order imposing a penalty under Chapter XXI; and

(h) an order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (g):

Deeming a deductor or collector of tax to be an assessee-in default

or

an order of penalty or a rectification order

No appeal can, however, be filed before the Joint Commissioner (Appeals), if any of the above orders is passed by or with the prior approval of an income-tax authority above the rank of Deputy Commissioner.

(2) Appeal pending before Commissioner (Appeals) in respect of appealable orders mention in (1) above may be transferred to Joint Commissioner (Appeals): Where any appeal filed against an order referred in section 246(1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorised by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals). The Joint Commissioner (Appeals) may then proceed with such appeal or matter from the stage at which it was before it was so transferred [Section 246(2)].

Transfer of appeal

(3) **Appeal pending before Joint Commissioner (Appeals) may be transferred to the Commissioner (Appeals):** The Board or an income-tax authority so authorised by the Board in this regard, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals). The Commissioner (Appeals) may then proceed with such appeal or matter from the stage at which it was before it was so transferred [Section 246(3)].

(4) **Opportunity of being reheard is to be given before transferring the pending appeals:** Where an appeal is transferred under the provisions of section 246(2)/(3), the appellant shall be given an opportunity of being reheard.

(5) **Central Government empowered to notify faceless appeal scheme:** For the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a scheme, by notification in the Official Gazette. This scheme will facilitate disposal of appeals in an expedient manner with transparency and accountability, by eliminating the interface between the Joint Commissioner (Appeals) and the appellant, in the course of appellate proceedings to the extent technologically feasible. The Central government may direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by the Joint Commissioner (Appeals), shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

(6) **Cases or Class of Cases where appeal cannot be made before Joint Commissioner (Appeals):** The Board may specify that the provisions of section 246(1) shall not apply to any case or any class of cases.

(7) **Appealable Orders before Commissioner (Appeals) [Section 246A]:** An assessee or any deductor or any collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against such orders under section 246A -

(i) an order passed by a Joint Commissioner under section 115VP(3)(ii) refusing to approve the option for tonnage tax scheme; or

(ii) an order against the assessee where the assessee denies his liability to be assessed under this Act; or

(iii) an intimation under section 143(1) or section 200A(1) or section 206CB(1), where the assessee or the deductor or the collector objects to the making of adjustments; or

(iv) any order of assessment under section 143(3) except an order passed in pursuance of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules] or a best judgement order under section 144, in relation to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(v) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules or section 150 where assessment is in pursuance of an order on appeal;

(vi) an order made under section 92CD(3) modifying the total income of the relevant assessment year in accordance with the arm's length price (ALP) determined as per the Advance Pricing Agreement (APA) entered into.

(vii) a rectification order made under section 154 or section 155 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 except an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules;

(viii) an order made under section 163 treating the assessee as the agent of a non-resident;

(ix) an order made under section 170(2)/(3) assessing income of business prior to succession in the hands of the successor;

(x) an order made under section 171 relating to assessment after partition of HUF;

(xi) an order made under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;

(xii) an order made under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;

(xiii) a refund order made under section 237;

(xiv) an order made under section 239A with respect to refund for denying liability to deduct tax at source.

(xv) an order imposing a penalty under section 221; or

(xvi) an order imposing a penalty under Chapter XXI of the Income-tax Act;

(xvii) an order of assessment made by an Assessing Officer under section 158BC(1)(c) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1.9.2024.

(xviii) 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.

It is also provided that an appellant may demand that before proceeding further with the appeal and the matter, the previous proceedings or any part thereof be re-opened or the appellant be re-heard.

(8) Form of appeal and prescribed fees [Section 249(1)]: Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Prescribed fees - In case of an appeal made to the Commissioner (Appeals) or to the Joint Commissioner (Appeals) irrespective of the date of initiation of the assessment proceedings, the appeal shall be accompanied by a fee of:

	Case	Prescribed fees
(i)	where the total income of the assessee as computed by the Assessing Officer is ₹ 1,00,000 or less	₹ 250
(ii)	where the total income of the assessee computed as above is more than ₹ 1,00,000 but not more than ₹ 2,00,000	₹ 500
(iii)	where the total income of the assessee computed as above is more than ₹ 2,00,000	₹ 1,000
(iv)	in any case other than (i), (ii) and (iii) above	₹ 250

(9) Time limit [Section 249(2) & (3)]: An appeal to Joint Commissioner (Appeals) or to the Commissioner (Appeals) against any order which is appealable is to be presented within 30 days from the date specified below in the particular cases. However, Joint Commissioner (Appeals) or the Commissioner (Appeals) may admit an appeal even after the expiry of the said period of thirty days, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the specified time. The dates from which the limitation period of 30 days has to be reckoned are as follows:

	Appeal relating to	30 days to be reckoned from
1.	Assessment/penalty	Date of service of notice of demand
2.	Any other case	Date on which intimation of the order sought to be appealed against is served.

Period to be excluded while computing 30 days in case of appeal relating to assessment/penalty

Application	Period to be excluded	
	From	To
Under section 270AA(1)	The date on which the application is made	The date on which the order rejecting the application is served on the assessee

(10) Tax to be paid at the time of filing the appeal [Section 249(4)]: No appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal,

- **In a case where return has been filed:** The assessee has paid the tax on the amount of income returned by him in a case where a return has been filed by the assessee.
- **In a case where no return has been filed:** If, however, no return has been filed by the assessee and an assessment has been made on him by the Assessing Officer, then, the assessee must pay an amount equal to the amount of advance tax which was payable by him before filing the appeal. In this case, the Joint Commissioner (Appeals) or the Commissioner (Appeals) is, however, empowered for good and sufficient reasons to be recorded in writing, to exempt an appellant from the requirement of payment of advance tax, on receipt of an application from the appellant made specifically for this purpose.

(11) Procedure in appeal [Section 250]:

(i) The Joint Commissioner (Appeals) or the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the assessee and to the Assessing Officer, against whose order the appeal is made.

Fix a day and place for hearing appeal

(ii) Both the appellant and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative.

(iii) The Joint Commissioner (Appeals) or the Commissioner (Appeals) has the power to adjourn the hearing of the appeal from time to time.

(iv) The Joint Commissioner (Appeals) or the Commissioner (Appeals), before passing an order on an appeal, may make such further enquiries as he thinks fit or direct the Assessing Officer to make further enquiries and report the result of the same to him.

(v) The Joint Commissioner (Appeals) or the Commissioner (Appeals) may also allow the appellant to go into any grounds of appeal not specified previously by the appellant if he is satisfied that the omission of that ground was not wilful or unreasonable.

(vi) The order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On disposal of the appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals) must communicate the order passed by him to the assessee as well as to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(vii) In every appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, 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 section 246(1) or transferred to him under section 246(2)/(3) or under section 246A(1), as the case may be.

May hear or decide appeal within 1 year from the end of F.Y. of filing appeal

(viii) Section 250(6B) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

Accordingly, in the exercise of powers under section 250(6B), the Central Government has notified Faceless Appeal Scheme, 2021.[1]

(12) Powers of the Joint Commissioner (Appeals) or Commissioner (Appeals) [Section 251(1)/(1A)]: While disposing of an appeal the Joint Commissioner (Appeals) or Commissioner (Appeals) is vested with the following powers viz.,

(i) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

Confirm, reduce, enhance or annul the assessment order or enhance or reduce penalty

W.e.f. 1.10.24, where such appeal is against an order of assessment made under section 144, he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.

(ii) In an appeal against an order imposing a penalty he may confirm or cancel such order or vary it in such a way as to enhance or reduce the penalty.

(iii) In any other case, the Commissioner (Appeals) may pass such orders in the appeal as he deems fit.

The Joint Commissioner (Appeals) or Commissioner (Appeals), however, is not empowered to enhance an assessment or a penalty or to reduce a refund due to the assessee without giving the assessee a reasonable opportunity of showing cause against such an enhancement or reduction.

In disposing of an appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed even if such matters were not raised before the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be by the appellant.

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[1] For detailed reading of the Faceless Appeal Scheme, 2021, students are advised to visit https://www.incometaxindia.gov.in/Pages/faceless-scheme.aspx

16.2 APPEALS TO THE APPELLATE TRIBUNAL [SECTIONS 252 TO 255]

(1) Constitution [Section 252(1)] - The Central Government shall constitute an Appellate Tribunal consisting of judicial and accountant members to exercise the powers and discharge the functions conferred on the Tribunal by the Act.

(2) Orders appealable before the Appellate Tribunal [Section 253]: Section 253(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –

Order passed by	Section	Particulars
Assessing Officer	115VZC(1)	Power of Assessing Officer to exclude a tonnage tax company from the tonnage tax scheme if such company is a party to any transaction or arrangement which amounts to an abuse of such scheme.
	143(3)/147	An order of assessment passed by an Assessing Officer in pursuance of the directions of Dispute Resolution Panel or an order passed under section 154 in respect of such order.
	143(3)/147	An order of assessment passed by an Assessing Officer with the approval of Principal Commissioner or Commissioner as referred to in section 144BA(12), where tax consequences have been determined under the provisions of Chapter X-A relating to general anti-avoidance rules, or an order passed under section 154 or section 155 in respect of such order.
Joint commissioner (Appeals) or Commissioner (Appeals)	250	Order of the **Joint Commissioner (Appeals)** or Commissioner (Appeals) disposing of the appeal
	270A	Order levying penalty for under-reporting and misreporting of income.
	271A	Order imposing penalty for failure to keep, maintain or retain books of account, documents etc.

	271AAC	**Order imposing penalty in a case where income determined includes income referred under section 68, 69, 69A, 69B, 69C or 69D.**
	271AAD	**Order imposing penalty if during any proceedings it is found that in the books of account maintained by any person there is a false entry or an omission of any entry which is relevant for computation of total income of such person to evade tax liability.**
	271J	Order imposing penalty for furnishing incorrect information in any report or certificate by an accountant, merchant banker or registered valuer.
	154	Order rectifying a mistake
Commissioner (Appeals)	***158BFA***	***Order imposing levy of interest and penalty in certain cases [inserted w.e.f. 1.10.24]***
	271AAB	Order imposing penalty in a case where search is initiated under section 132.
	272A	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
Principal Commissioner or Commissioner	12AA/12AB	Order refusing/canceling registration of trust or institution
	80G(5)(vi)	Refusal to grant approval to the Institutions or Fund
	263	Revision of erroneous order passed by Assessing Officer
	270A	Order imposing penalty for under-reporting of income and mis-reporting of income.
	272A	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
	154	Amending any of the orders passed by him

Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director	263	**Revision of erroneous order passed by Assessing Officer**
	272A	**Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.**
	154	**Amending any of the orders passed by him**
Principal Commissioner or Commissioner	10(23C)(iv)/(v)/(vi)/(via)	Order passed by the prescribed authority refusing approval of a fund/ institution for charitable purposes or trust or institution for public religious purposes or wholly for public religious and charitable purposes, university or other educational institution solely for educational purposes and not for purposes of profit or hospital or other institution solely for philanthropic purposes and not for purposes of profit under section 10(23C)(iv)/(v)/(vi)/(via).

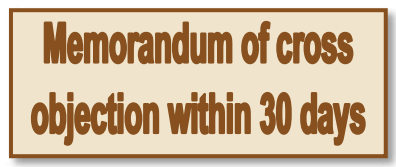
Section 253(2) provides that the Principal Commissioner or Commissioner may, if he objects to any order passed by the Joint Commissioner (Appeals) or the Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Time limit for filing appeal or memorandum of cross objection under section 253(1)&(2) [Section 253(3), (4) & (5)]

(i) Every appeal to the Appellate Tribunal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or Commissioner, as the case may be.

W.e.f. 1.10.2024, time limit for filing appeal ***is two months from the end of the month*** *in which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or Commissioner, as the case may be.*

(ii) Further, on receipt of notice that appeal against an order has been preferred by the Assessing Officer or the assessee, as the case may be, the other party can file **memorandum of cross objections within 30 days of receipt of notice** against any part of such order. The



Appellate Tribunal has to dispose of the memorandum of cross objections as if it were an appeal filed within the given time limit.

(iii) However, the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objection even after expiry of the prescribed time limit, if he is satisfied that there was sufficient cause for not presenting it within that period.

(4) Fees [Section 253(6) & (7)]

	Case	Prescribed fees
(i)	Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is ₹ 1,00,000 or less	₹ 500
(ii)	Where the total income exceeds ₹ 1,00,000 but is not more than ₹ 2,00,000	₹ 1,500
(iii)	Where the total income is more than ₹ 2,00,000	1% of the assessed income, subject to a maximum of ₹ 10,000.
(iv)	In any other case	₹ 500
(v)	Where appeal is filed to the Appellate Tribunal by an Assessing Officer on the direction of the Commissioner or Principal Commissioner, against the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) under section 154 or 250	No fees
(vi)	Filing of memorandum of cross-objections.	No fees
(vii)	Application for stay of demand	₹ 500

(5) Scheme for Appeal to Appellate Tribunal [Section 253(8), (9) & (10)]

Section 253(8) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of appeal to the Appellate Tribunal, so as to impart greater efficiency, transparency and accountability by—

(a) optimising utilisation of the resources through economies of scale and functional specialisation;

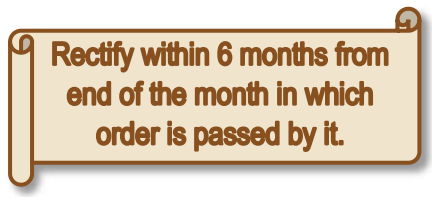
(b) introducing a team-based mechanism for appeal to Appellate Tribunal, with dynamic Jurisdiction.

The Central Government may, for the purpose of giving effect to such scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after ***31.3.2025*** [Section 253(9)].

Every such notification issued under section 253(8) or section 253(9) has to be laid before each House of Parliament as soon as may be after issue of the notification.

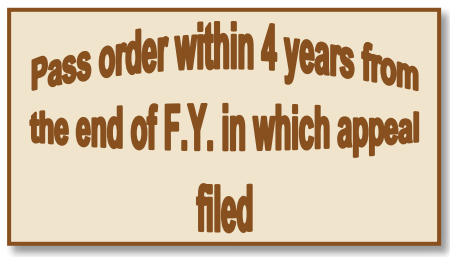
(6) Order [Section 254(2), (3) & (4)]: The Appellate Tribunal may, after giving both the parties to the appeal a reasonable opportunity of being heard, pass such orders on any appeal as it thinks fit. The Tribunal must send a copy of any orders passed by it to the assessee and to the Principal Commissioner or Commissioner. Such orders passed by the Appellate Tribunal shall be final unless appeal is made to the High Court under section 260A.

(7) Rectification: The Appellate Tribunal may, at any time within **6 months from the end of the month in which order is passed**, with a view to rectifying any **mistake apparent from record**, amend any order passed by it. However, if the mistake is brought to its notice by the assessee or the Assessing Officer, the Tribunal is bound to rectify the same. In cases where the amendment has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee, the Tribunal shall not pass any order of amendment unless it has given notice to the assessee of its intention to do so and has allowed him a reasonable opportunity of being heard.



(8) Fees for rectification: Any application for rectification filed by the assessee shall be accompanied by a fee of ₹ 50.

(9) Time limit: 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** under sub-section (1)/(2) of section 253.



Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay subject to the condition that the assessee deposits not less than

20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, **unless** –

(i) **the assessee** makes an application and has complied with the condition of **depositing 20%** of tax, interest, fee, penalty or funishes security of equal amount and

(ii) the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee,

However, **the aggregate of the period of stay** originally allowed and the period of stay so extended **should not exceed 365 days** and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such **appeal is not so disposed** of within 180 day period or the period or periods extended not exceeding 365 days, the order of **stay shall stand vacated after the expiry of such period** or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

(10) Cost of appeal: The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal [Section 254(2B)].

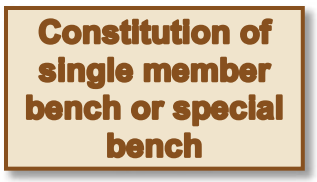
(11) Final authority on facts: On all questions of fact the orders passed by the Appellate Tribunal on appeal shall be final and binding on the assessee as well as the Department [Section 255].

(12) Benches:

(i) Section 255(1) provides that the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal among the members thereof.

(ii) As per section 255(2), a Bench should normally consist of one judicial member and one accountant member.

(iii) However, section 255(3) provides for constitution of a single member bench and a Special Bench.



(iv) Section 255(3) provides that the President or any other member of the tribunal authorized by the Central Government in this behalf may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer in the said case does not exceed ₹ 50 lakh.

(v) The President may, for the disposal of any particular case constitute a special Bench consisting of three or more members, one of whom must necessarily be a judicial member and one an accountant member.

Where members differ - If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority. However, if the members are equally divided, they should state the points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point by one or more of the other members of the Tribunal: then, such points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

Regulating power - The Appellate Tribunal is empowered to regulate its own procedure and the procedure of its Benches in all matters arising out of the exercise of its power or of the discharge of its functions, including the places at which the Benches shall hold their sittings. The Tribunal is vested with all the powers which are exercisable by Income-tax authorities under section 131 for the purpose of discharging its functions. Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding for the purpose of the Income-tax Act, 1961 and the Indian Penal Code and that Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of the Income-tax Act, 1961 and the Code of Criminal Procedure, 1898.

Scheme for disposing of appeal [Section 255(7), (8) & (9)] - Section 255(7) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Appellate Tribunal and the parties to the appeal in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic Jurisdiction.

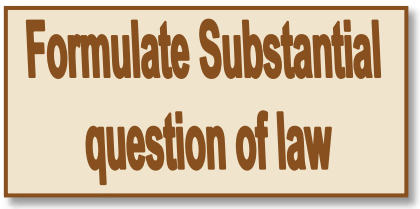
The Central Government may, for the purpose of giving effect to such scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after ***31.3.2025*** [Section 255(8)].

Every such notification issued under section 255(7) or section 255(8) has to be laid before each House of Parliament as soon as may be after issue of the notification.

16.3 APPEALS TO HIGH COURT [SECTIONS 260A & 260B]

Section 260A provides for direct appeal to the High Court against the orders of the Appellate Tribunal.

(1) **Appeal -** Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal**,** if the High Court is satisfied that the case involves a substantial question of law. If the High Court is so satisfied, it shall formulate that question.



The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court under this section.

(2) **Form for appeal** - The appeal shall be in the form of a memorandum of appeal, precisely stating in it the substantial question of law involved.

(3) **Time limit for appeal** - The appeal shall be filed **within 120 days from the date on which the order** appealed against **is received** by the assessee, or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

The High Court has and always had the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within that period.

(4) **Matters on which appeal can be heard** - The appeal shall be heard only on the question formulated. However, the respondent shall at the hearing of appeal, be allowed to argue that the case does not involve such question. Further, the Court shall also have power to hear the

appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. However, such power shall be exercised by the Court only after recording the reasons for hearing such other question.

Further, the High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in section 260A(1).

(5) Delivery of judgment - After the appeal is heard, the High Court shall decide the question of law so formulated and deliver such judgment thereon, but such judgment should contain the grounds on which such decision is founded.

(6) Award of costs - The High Court is empowered to award such costs as it deems fit.

(7) Code of Civil Procedure - Unless otherwise provided in this Act, the Code of Civil Procedure, 1908, relating to appeals to the High Court, shall apply to appeals under this section.

(8) Case before High Court to be heard by not less than two judges [Section 260B]

Strength of the bench hearing the appeal - The appeal shall be heard by a bench of not less than 2 judges of the High Court.

Decision of the majority - The appeal shall be decided in accordance with the opinion of the judges or the majority, if any.

Where there is no such majority, the point of law upon which the judges differ shall be referred to one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

16.4 APPEAL TO THE SUPREME COURT [SECTION 261]

According to section 261, an appeal shall lie to the Supreme Court from any judgment of the High Court, in a case which the High Court certifies to be a fit one for appeal to the Supreme Court. The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of all appeals to the Supreme Court in the same manner as in the case of all appeals from decrees of a High Court. The cost of appeal shall be decided at the discretion of the Supreme Court. Where the judgment of a High Court is varied in the appeal, effect should be given to the order of the Supreme Court in the same manner as provided in the case of a judgment of the High Court.

Time limit for filing appeals

Before Joint Commissioner (Appeals) u/s 246 or Commissioner (Appeals) u/s 246A

Within 30 days from	
Appeal related to	**Date of**
Assessment / Penalty	Service of Notice of Demand.
Any other case	Service of intimation of order sought to be appealed against.

Before Appellate Tribunal u/s 253

Within **60 days** from the date on which the order sought to be appealed against is communicated.

***W.e.f. 1st October, 2024, within 2 months from the end of the month in** which the order sought to be appealed against is communicated.*

Before High Court u/s 260A

Within **120 days** from the date of receipt of order appealed against.

Note: The above time period can be extended by the Appellate Authority if the appellant shows sufficient cause for not presently the appeal within the specified time.

16.5 PROCEDURE WHEN ASSESSEE CLAIMS IDENTICAL QUESTION OF LAW IS PENDING BEFORE THE HIGH COURT OR SUPREME COURT [SECTION 158A]

(1) **Identical question of law pending before High Court/Supreme Court:** Section 158A makes provision for avoiding repetitive appeals when identical question of law is pending before High Court or Supreme Court. This is applicable to a situation **where an assessee** claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court.

(2) **Assessee to furnish declaration:** In such a situation, notwithstanding anything contained in the Act, the assessee may furnish a declaration in the prescribed form that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the present case, the final decision passed on the other case, the assessee shall not raise again the same question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.

(3) **Assessing Officer's report on correctness of claim:** Where such a declaration is furnished by the assessee to an appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim. Where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard, it shall allow him such opportunity.

(4) **Admission or rejection of claim by order in writing:** The Assessing Officer or the appellate authority, as the case may be, may, by order in writing –

(i) admit the claim if satisfied that the question of law is identical in the present as well as the other case; or

(ii) reject the claim, if not so satisfied.

(5) **Consequences where claim is admitted: Where a claim is admitted, -**

(i) the Assessing Officer or appellate authority, as the case may be, may make an order disposing of the present case without waiting for the final decision on the other case.

(ii) the assessee would then not be entitled to raise in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

(6) **Final decision of Supreme Court/High Court to be applied to the case:** When the final decision on the question of law is passed in the other case, the Assessing Officer or the appellate authority, as the case may be would apply it to the present case and amend the order passed, if necessary, in order to conform to such decision.

(7) **Finality of the order:** An order admitting or rejecting the claim of the assessee, as the case may be, would be final. Such order cannot be called in question in any proceeding by way of appeal, reference, revision under the Act.

(8) Meaning of certain terms:

Term	Meaning
Appellate authority	Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal.
Case	Any proceeding under the Act for assessment of the total income of the assessee or for the imposition of any penalty or fine on him.

16.6 DEFERMENT OF APPEAL BY REVENUE WHEN AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT [SECTION 158AB]

(1) Deferment of any appeal against an identical question of law pending before the High Court or Supreme Court: Section 158AB provides that where the collegium (comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the CBDT in this behalf) is of the opinion that

Collegium

- any question of law arising in the case of an assessee for any assessment year (i.e., relevant case) is identical with a question of law already raised
  - in his case for any other A.Y. or
  - in the case of any other assessee for any assessment year,

  which is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such assessee (i.e., other case), the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under section 253(2) or to the jurisdictional High Court under section 260A(2) in the relevant case against the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

(2) **Direction to Assessing Officer to make an application to the Tribunal or High Court:** On receipt of a communication from the collegium, the Principal Commissioner or Commissioner shall direct the Assessing Officer **to make an application** to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form

Application within 120 days from the date of receipt of order

- within 120 days from the date of receipt of the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be,
- stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

This is notwithstanding anything contained in section 253(3) or 260A(2)(a) which provide the time limit for filing appeal before Tribunal or High Court.

(3) **Application to be made only if the assessee accepts that the question of law is identical:** The Principal Commissioner or Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. In case no such acceptance is received, the Principal Commissioner or Commissioner shall, notwithstanding anything contained in section 253(3) or 260A(2)(a), proceed in accordance with the provisions contained in section 253(2) or section 260A(2)(c).

(4) **Consequences where the order of Joint Commissioner (Appeals) or CIT (Appeals) or the Appellate Tribunal is not in conformity with High Court's or Supreme Court's decision in the other case:** Where the order of the Joint Commissioner (Appeals) or Commissioner (Appeals) or the order of Appellate Tribunal, as the case may be, is not in conformity with the final decision on the question of law in the other case (if the High Court or Supreme Court decides the other case in favour of the Department), as and when such order is received, the Principal Commissioner or the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or Jurisdictional High Court, as the case may be, against such order.

Unless otherwise provided in section 158AB, all other provisions of Part B-"Appeals to Appellate Tribunal" and Part CC – "Appeals to High Court" of Chapter XX would apply accordingly.

(5) Time limit for filing appeal in the relevant case: The appeal in the relevant case shall be filed within 60 days to the Tribunal or 120 days to the High Court, as the case may be, from the date on which the order of the High Court or the Supreme Court in any other case, is communicated to the Principal Commissioner or Commissioner, in accordance with the procedure specified by the CBDT.

60 days - ITAT
120 days - HC

Example: Let us suppose a question of law (Q1) has arisen in case of an assessee Mr. X and he has received a favourable decision on Q1 from the Commissioner (Appeals). Further, in case of another assessee Mr. Y, where Department's appeal on identical question of law (Q2) in his case is pending before the jurisdictional High Court or the Supreme Court. The collegium is of the opinion that Q1 in case of Mr. X and Q2 in case of Mr. Y are identical questions of law. In this situation, the provisions of section 158AB can be invoked by Revenue to defer filing of appeal in respect of Q1 in case of Mr. X to the higher appellate authority till a decision on Q2 in case of Mr. Y is communicated to the Principal Commissioner or Commissioner having jurisdiction over the assessee, Mr. X. Such a decision on deferment will be subject to acceptance by the assessee Mr. X that question of law in his case Q1 is identical to Q2 in the case of the assessee Mr. Y.

16.7 REVISION OF ORDERS [SECTIONS 263 AND 264]

(1) Revision of Orders prejudicial to the Revenue [Section 263]

(i) Under section 263(1), if the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer or the Transfer Pricing Officer (TPO) under section 92CA, as the case may be, is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order, including an order

Enhance, modify, cancel and direct fresh assessment.

(a) enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(b) an order modifying the order under section 92CA; or

(c) an order cancelling the order under section 92CA and directing a fresh order under the said section.

(ii) An order passed by the Assessing Officer or the Transfer Pricing Officer (TPO), as the case may be**,** shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the CBDT under section 119;

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

(iii) The term 'record' shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(iv) Where any order referred to in section 263(1) passed by the Assessing Officer or the TPO, as the case may be, had been the subject-matter of any appeal, the powers of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(v) No order shall be made **after the expiry of 2 years from the end of the financial year** in which the order sought to be revised was passed.

(vi) In computing the period of 2 years, the time taken in giving an opportunity to the assessee to be reheard under section 129 and any period during which the revision proceeding is stayed by an order or injunction of any court shall be excluded.

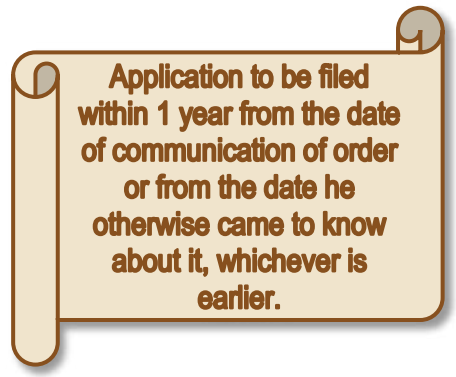
(vii) The time limit, however, does not apply in case where the effect has to be given to a finding or direction contained in the order of the Appellate Tribunal, High Court or the Supreme Court.

(2) Revision of other orders [Section 264]

(i) In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may either on his own motion or on receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed. After making such enquiries as may be necessary the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may pass such order as he thinks fit.

(ii) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised.**

(iii) If the application for revision is made by the assessee, it 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 comes to know of it, whichever is earlier.



(iv) However, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may admit an application even after the expiry of one year, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period.

(v) The application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner for revision must be accompanied by a fee of ₹ 500.

(vi) If an order is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner declining to interfere in any proceeding, it shall not be deemed to be an order prejudicial to the assessee.

(vii) However, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order** in the following cases, viz.,

(a) where an appeal against the order lies to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Tribunal but has not been made and the time within which the appeal may be made has not expired or in the case of an appeal to the Joint Commissioner (Appeals) or to the Commissioner (Appeals) or to the Tribunal the assessee has not waived his right of appeal;

Revision not permissible if –

(i) Time for filing appeal before JCIT(A) or CIT(A) or ITAT has not expired or assessee has not waived his right of appeal

(ii) Order is subject matter of appeal before JCIT(A) or CIT(A) or ITAT

(b) where the order has been made subject to an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal.

(3) Limitation of time for revision of orders by Principal Commissioner or Commissioner of Income-tax under section 264

Under section 264, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax is empowered to revise an order passed by the subordinate authority where no appeal has been filed. There is a limitation of one year for filing the application.

(a) It shall be obligatory on the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to pass an order within a period of **one year from the end of financial year in which such application is made by the assessee for revision.**

Order to be passed within 1 year from the end of F.Y. in which application is made

(b) In computing the above referred period of limitation, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded [*Explanation* to section 264(6)].

(c) The **aforesaid time limit shall not apply** to any 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, High Court or the Supreme Court.

(4) Faceless Revision [Section 264A]

(i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of revision of orders under section 263 or section 264, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based revision of orders, with dynamic jurisdiction.

(ii) Every notification has to be laid before each House of Parliament, as soon as may be after the notification is issued.

(5) Faceless Effect of Orders [Section 264B]

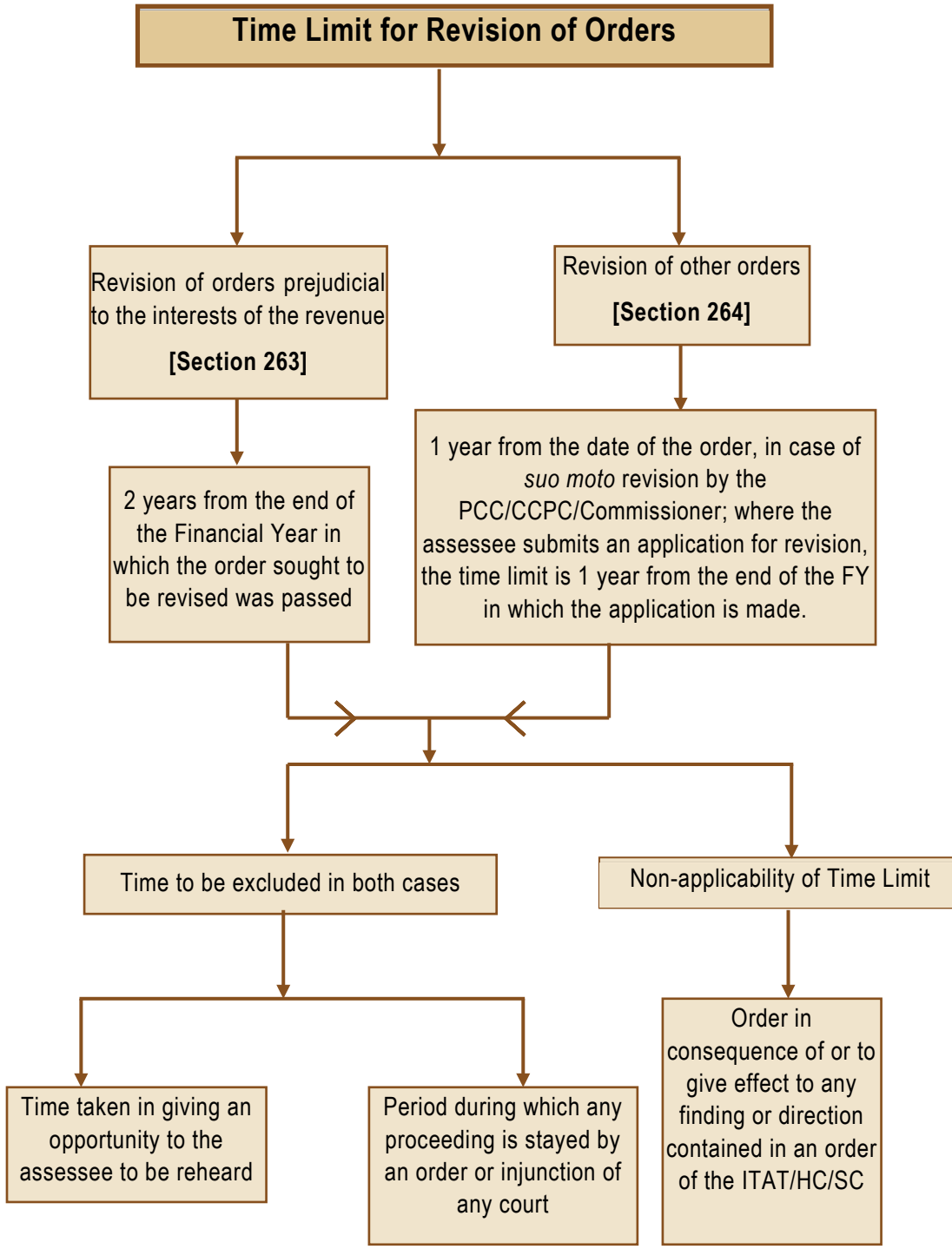
(i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of giving effect to an order under section 250, 254, 260, 262, 263 or 264, so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based giving of effect to orders, with dynamic jurisdiction

(ii) Every notification has to be laid before each House of Parliament, as soon as may be after the notification is issued.



16.8 MONETARY LIMITS FOR REGULATING FILING OF APPEALS BY INCOME TAX AUTHORITIES [SECTION 268A]

(i) As per section 268A(1), the CBDT is empowered to issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is for the purpose of regulating filing of appeal or application for reference by any income tax authority.

(ii) Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –

(1) the same assessee for any other assessment year; or

(2) any other assessee for the same or any other assessment year.

(iii) Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

(iv) The Appellate Tribunal or Court should take into consideration the above mentioned orders/instructions/directions of the CBDT and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

(v) Every order/instruction/direction which has been issued by the CBDT fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and all the provisions of this section shall apply accordingly.

Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court

The CBDT has specified the monetary limits and other conditions for filing departmental appeals before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court vide *Circular No. 8/2023 dated 31.5.2023, Circular No. 5/2024, Dated 15-3-2024, F. No. 279/Misc./M-93/2018-ITJ (Pt), Dated 6-9-2019* and ***Circular No. 09/2024 dated 17.9.2024.***

It has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

Monetary Limits specified:

Appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

The above monetary limits have been revised w.e.f. 17.09.2024 vide Circular No. 09/2024 dated 17.9.2024 as under:

S. No.	*Appeals/ SLPs in Income-tax matters*	*Monetary Limit (₹)*
1.	*Before Appellate Tribunal*	*60,00,000*
2.	*Before High Court*	*2,00,00,000*
3.	*Before Supreme Court*	*5,00,00,000*

Exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

Monetary limits given above with regard to filing appeal/SLP would be applicable to all cases including those relating to TDS/TCS with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

a. *Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or*

b. *Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or*

c. *Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence*

agencies such as CBI, ED, DR!, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or

d. *Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or*

e. *Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or*

f. *Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/ 12AAI12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.*

g. *Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or*

h. *Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or*

i. *Where mandated by a Court's directions, or*

j. *Writ matters, or*

k. *Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or*

l. *In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-*

- *Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or*
- *Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation A voidance Agreement or otherwise*

m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

Meaning of Tax Effect:

	Case	Tax Effect
i.	In case not covered in ii, iii and iv below	The tax on the total income assessed (-) 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 ("disputed issues"). **Note** – However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.
ii.	In case the chargeability of interest is the issue under dispute	The amount of interest
iii.	In case where returned loss is reduced or assessed as income	The tax effect would include notional tax on disputed additions
iv.	In case of penalty orders	Quantum of penalty deleted or reduced in the order to be appealed against
Note – Tax effect shall be tax including applicable surcharge and cess.		

For calculating the tax effect of cases involving TDS/TCS, the cumulative effect, of all orders passed for an assessment year of a deductor, to be taken into account and would include interest u/s 201(1A).

Computation of tax on the total income assessed where income is computed under the provisions of section 115JB or section 115JC:

In such case, tax on the total income assessed would be computed as given below -

(A - B) + (C - D)

Where,

A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (i.e., the general provisions)

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions

C = the total income assessed as per the provisions contained in section 115JB or section 115JC

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of the disputed issues under said provisions

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Manner of calculation of tax effect of different assessment years

The Assessing Officer has to calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified. Further, even in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the 'tax effect' is less than the prescribed monetary limit. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

Department not precluded from filing an appeal against disputed issues for subsequent assessment years if the tax effect exceeds the specified monetary limits in those years

In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Principal Commissioner or Commissioner of Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in the Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

Cases in respect of which appeal is not filed due to tax effect being less than specified monetary limit not to have any precedent value

In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of section 268A(4).

As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.

In cases where appeals are not being filed due to low tax effect despite the judgment not being acceptable on merits or appeals are being filed despite low tax effect in view of exceptions, the Pr. CIT/CIT shall submit a monthly report, to the CIT(J)/Addl./Jt. CIT(J) office. Further, the CIT(J)/ Addl/Jt CIT(J) office shall collate and disseminate the departmental stand, as regards filing of appeals, in respect of the issues involved in such appeals, within the region.

Non-applicability of specified monetary limits in case involving bogus LTCG/ STCG through penny stocks [Circular No. F. No. 279/Misc./M-93/2018-ITJ (Pt), Dated 6-9-2019]

However, in exercise of power conferred by section 268A, CBDT has clarified that the above monetary limits shall not apply in case of assessee claiming bogus LTCG/ STCG through penny stocks and appeals/ SLPs in such cases shall be filed on merits.

Exceptions to monetary limits for filing appeals deferred under section 158AB [Circular No. 8/2023 dated 31.5.2023]

The CBDT has, vide this circular clarified that references to collegiums constituted u/s 158AB for deciding on the deferral of appeal(s)/grounds of appeal(s) would be made having

regard to the extant monetary limits read along with the exceptions to the same as mentioned above and the exceptions provided below.

Scenarios on the applicability of monetary limits:

(i) **Only one ground is contested:** In cases where only one ground is contested and where the tax effect is greater than the monetary threshold as per the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and section l58AB is applicable to it, appeal may be deferred in the current year in which appeal is under consideration in view of the provisions of section 158AB. The appeal is to be filed in the year in which the final decision on the identical question of law is received in favour of Revenue in other case.

(ii) **Multiple grounds are contested:** In cases where multiple grounds are contested and where the total tax effect of all the disputed grounds (i.e., grounds to which Section 158AB is applicable and otherwise) is greater than the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and Section 158AB is applicable only to certain grounds, the guidelines for filing appeal are as follows:

(a) in the current year in which appeal filing is under consideration

- filing of appeal on the grounds to which section 158AB is applicable may be deferred in view of the provisions of that section, and
- appeal may be filed on the residual grounds.

(b) in the year in which the final decision on the identical question of law is received in favour of Revenue in the other case, appeal is to be filed on the grounds to which section 158AB is applicable, irrespective of the monetary limit at that point in time.

In respect of deferring appeals under section 158AB, while adhering to the guidelines as laid down in the preceding paras, it is to be ensured that when judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' should be contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.

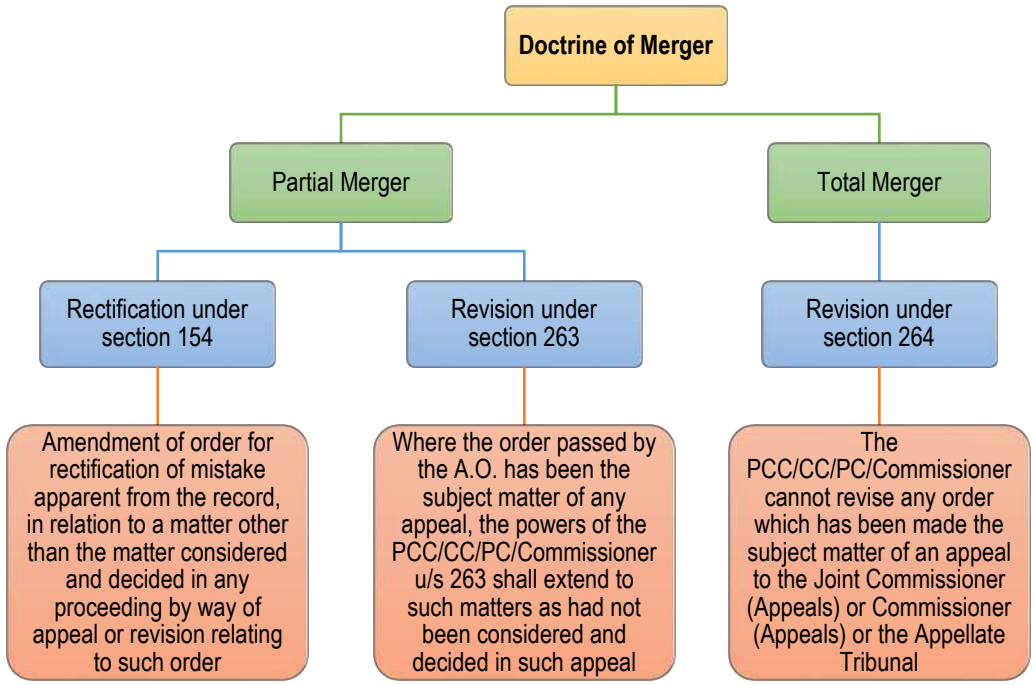
Further, if the judicia! outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.

16.9 DOCTRINE OF PARTIAL MERGER AND DOCTRINE OF TOTAL MERGER

Section 154 provides that the doctrine of partial merger shall apply where any matter has been considered and decided in any proceeding, appeal or revision relating to 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. The doctrine of partial merger also holds good for section 263.

However, the concept of total merger would apply in the case of section 264. The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Tribunal, even if the relief claimed in the revision is different from the relief claimed in the appeal and irrespective of the fact whether the appeal is by the assessee or by the Department.

Partial Merger – Sections 154 & 263
Total Merger – Section 264



SIGNIFICANT SELECT CASES

S.No.	Case Law	
1.	*CIT v. Industrial Development Bank of India Ltd. [2023] 454 ITR 811(SC)*	
	Issue	***Relevant Provision, Analysis and Decision***
	Does the limitation period for exercising the powers under section 263 reckoned from date of passing of the original assessment order rather than the date of reassessment order for the issues covered under the original assessment but not covered in the reassessment proceedings?	Section 263 provides that where the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner of Income-tax considers that an order passed by the Assessing Officer or Transfer Pricing Officer is erroneous in so far as prejudicial to the interests of the Revenue, he may pass a revisionary order. The order for revision shall be made within a period of two years from the end of the financial year in which the order sought to be revised was passed. As observed and held by the Court in the earlier decisions, once an order of assessment is re-opened, the previous order of assessment will be held to be set aside. The whole proceedings would start afresh, but the same would not mean that even when the subject matter of reassessment is distinct and different, the entire proceedings would be deemed reopened. It means that only in a case where the issues before the Commissioner at the time of exercising powers under section 263 relate to the subject matter of reassessment would the limitation start from the date of the reassessment order. However, if the subject matter of the reassessment is distinct and different, in that case, the relevant date for the purpose of determining the period of limitation for exercising powers under section 263 would be the date of the original Assessment Order.

		Accordingly, the Supreme Court held that the issues before the Commissioner while exercising the powers under section 263 related back to the original assessment order which were not covered in the reassessment proceedings and, therefore, the limitation would start from the original assessment order and not from the reassessment order.
2.	***Genpact India Pvt. Ltd. v. DCIT & Ors (2019) 419 ITR 440 (SC)***	
	Issue	**Analysis & Decision**
	Is appellate remedy by way of appeal before Commissioner (Appeals) u/s 246A available to a company denying its liability to pay additional income-tax @ 20% on the distributed income u/s 115QA[2]?	The situations referred to in section 246A(1)(a) of the Income-tax Act, 1961 are: (i) An order against the assessee, where the assessee denies his liability to be assessed under the Act, or (ii) An intimation u/s 143(1), where the assessee objects to the making of adjustments, or (iii) Any order of assessment u/s 143(3)/144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed. The contingencies detailed in (ii) and (iii) hereinabove arise out of assessment proceedings but the first contingency is a standalone postulate and is not dependent purely on the assessment proceedings either u/s 143 or section 144. The expression "denies his liability to be assessed" is quite comprehensive to take within its fold every case where the assessee denies his liability to be assessed under the Act.

[2] ***W.e.f. 1.10.2024, a domestic company is not required to pay additional income-tax on buy back of shares that takes place on or after 1.10.24.***

		Any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of the first postulate referred to hereinabove i.e., "an order against the assessee, where the assessee denies his liability to be assessed under this Act". Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability u/s 115QA.
3.	***CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.)***	
	Issue	**Analysis & Decision**
	Can an assessee make an additional/ new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion. In case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same. **Additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.** ***Note –*** *This view of the High Court has been endorsed by the Apex Court in Wipro Finance Ltd. v. CIT (2022) 443 ITR 250 (SC)*
4.	***Wipro Finance Ltd. v. CIT (2022) 443 ITR 250 (SC)***	
	Issue	**Analysis & Decision**
	Would the loss incurred in foreign currency fluctuation at the time of	Under section 37, any expenditure (not being in the nature of expenditure described

	repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure? Can the Tribunal entertain a fresh claim for the first time in exercise of its powers under section 254?	in sections 30 to 36), and **not** being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing income chargeable under the head "Profits and gains of business or profession". Section 254(1) empowers the Appellate Tribunal to pass such orders as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. **Facts of the case**: The assessee-company, which was in the leasing business, obtained a loan in foreign currency from Commonwealth Development Corporation (CDC), having its registered office in the United Kingdom, to be utilised by the assessee for financing the procurement of capital equipment by existing Indian enterprises on hire purchase or lease basis. While repaying the loan, due to the difference in the rates of foreign exchange, the assessee had to pay a higher amount, resulting in loss to the assessee. For the relevant assessment year, the assessee declared, *inter alia*, a loss of Rs.1.11 crores owing to fluctuation in the rates of foreign exchange. The assessee in its return had taken a conscious explicit plea with regard to part of the claim being ascribable to capital expenditure (Rs.2.46 crores) and partly to revenue expenditure (Rs.1.11 crores). Thereafter, for the first time before the Tribunal it pleaded that the entire claim must be treated as revenue expenditure. The Tribunal was conscious that this claim was made by the assessee for the first time before it and the same was contrary to the stand taken in the return filed by the assessee for the assessment year including the notings made by the officials of the

		assessee. Yet, the Tribunal entertained the claim as permissible, relying on the dictum of the court in *National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC),* wherein it was held that the Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. Accordingly, in this case, the Tribunal held that the entire loan and the utilisation thereof was in trading operations of the company more profitably leaving the fixed capital untouched and hence the expenditure was on revenue account and allowable. The Tribunal allowed the entire claim of Rs. 3.57 crores. **Analysis:** The activity of the assessee of financing existing Indian enterprises for procurement or acquisition of plant, machinery and equipment on lease and hire purchase basis, was an independent transaction or activity being the business of the assessee. The transaction of loan between the assessee and CDC was in the nature of borrowing money by the assessee, which was necessary for carrying on its business of financing. It was not for creation of an asset of the assessee as such or acquisition from a country outside India for the purpose of its business. In such a scenario, the assessee would be justified in availing of deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37. The loan was wholly and exclusively used for the purpose of business of financing existing Indian enterprises, which in turn, had to acquire plant, machinery and equipment to

		be used by them. It was a different matter that they may do so because of the leasing and hire purchase agreement with the assessee. That would, nevertheless, be an activity concerning the business of the assessee. The Supreme Court held that the analysis and the conclusion arrived at by the Tribunal in respect of the claim of the assessee were correct. As regards the restriction in powers to accept a new claim for the first time, such limitation on accepting new claims would apply to the "assessing authority", but would not impinge upon the plenary powers of the Tribunal bestowed under section 254. **Decision:** As a result of allowing the entire claim of the appellant to the tune of Rs. 3.57 crores being revenue expenditure, suitable amendment will have to be effected in the final assessment order passed by the Assessing Officer for the concerned assessment year, thereby treating the consequential benefits such as depreciation availed of by the appellant-assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalized (being Rs. 2.46 crores), as unavailable. ***Note*** *– The crux of this case is that the assessee was engaged in leasing business. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease from it. For such financing, the assessee had obtained loan in foreign currency and incurred loss on account of currency fluctuation while repaying the loan. It was held that since the loan was borrowed for the financing activity, which was an activity concerning the business of the assessee, the loss was allowable under section 37. It was not a loan*

		borrowed for acquisition of asset, in which case, the loss would have had to be adjusted against the actual cost of the asset.
5.	***Smt. Ritha Sabapathy v. DCIT [2019] 416 ITR 191 (Mad)***	
	Issue	**Analysis & Decision**
	Can the Appellate Tribunal dismiss an appeal, without deciding the case on its merits, solely on the ground that the assessee had not appeared on the appointed date of hearing?	Even if the assessee could not appear, the Tribunal could have decided the appeal only on merits, *ex parte,* after hearing the Revenue's contentions. It reiterates that the fact-finding Appellate Tribunal should not shirk its responsibility to decide a case on its merits. A legal and binding responsibility, therefore, lies upon the Tribunal to decide the appeal on merits, irrespective of the appearance or otherwise of the assessee or his counsel before it.
6.	***CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)***	
	Issue	**Analysis & Decision**
	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. **Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance.** Section 254(2) is not a mandate to unsettle decisions taken after due reflection. **In this case, the Tribunal, while dealing with the application u/s 254(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred u/s 254(2)**

7.	*Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)(FB)*	
	Issue	**Analysis & Decision**
	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety, where there is a mistake apparent from record?	One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. In that case, the Tribunal had not considered the material which was already on record while passing the judgment. The Apex Court in *Honda Siel Power Products Ltd. v. CIT (2007) 295 ITR 466* took note of the fact that the Tribunal committed a mistake in not considering material which was already on record and the Tribunal acknowledged its mistake and accordingly, rectified its order. **The Tribunal, while exercising the power of rectification u/s 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.**
8.	*Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 (SC)*	
	Issue	**Analysis & Decision**
	Can the powers under section 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits?	Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record. Such amendment may be *suo moto* or if the mistake is brought to its notice by the assessee or the Assessing Officer.

		Facts of the Case: The Department filed an appeal before the Tribunal against the order of Commissioner (Appeals). By a detailed order dated September 6, 2013, the Tribunal allowed the Department's appeal. Against this order, the assessee filed a miscellaneous application for rectification u/s 254(2). The contentions of the applicants in the miscellaneous applications, briefly summarized, were that in the initial order of the Tribunal on the income-tax appeals dated September 6, 2013, there are inadvertent errors and which need to be modified/rectified. The first main heading 'Agreement and general terms and conditions of purchase'. The complaint of the assessee is that it was not considered in arriving at the final conclusion. Then comes heading No. 2 which reads thus: 'Mistake in reading the ratio of the Delhi High Court's decision in the case of *DIT v. Ericsson A. B. reported in [2012] 343 ITR 470*'. The third main heading is 'Ignoring the decisions of the co-ordinate Benches and not constituting larger Bench in case a different view is taken'. Such application was made to the Tribunal seeking correction of the mistakes which are styled as 'apparent from the record'. On being served with such applications, the petitioner-Department raised an objection to the maintainability thereof. Simultaneously, the assessee also filed an appeal before the High Court against the Tribunal's order dated September 6, 2013. By order dated November 18, 2016, the Tribunal allowed the assessee's miscellaneous application filed under section 254(2) and recalled its original order dated September 6, 2013. Immediately thereafter, the assessee withdrew the appeal preferred before the High Court

		against the original order dated September 6, 2013. Against the order passed by the Tribunal allowing the miscellaneous application under section 254(2) of the Act and recalling its order dated September 6, 2013, the Department preferred a writ petition before the High Court. The High Court dismissed the writ petition observing that, *inter alia*, the Department itself had gone into the merits of the case in detail before the Tribunal and the parties had filed detailed submissions based on which the Tribunal passed its order recalling its earlier order. **Analysis**: The order dated November 18, 2016 passed by the Tribunal recalling its earlier order dated September 6, 2013 was beyond the scope and ambit of the powers u/s 254(2). While allowing the application u/s 254(2) and recalling its earlier order dated September 6, 2013, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). A detailed order was passed by the Tribunal on September 6, 2013 holding in favour of the Department. That order could not have been recalled by the Appellate Tribunal in exercise of powers u/s 254(2). If the assessee was of the opinion that the order passed by the Tribunal was erroneous, either on the facts or in law, the only remedy available to the assessee was to prefer an appeal before the High Court. In this case, the assessee had already filed appeal before the High Court, and the same was withdrawn by it after the Tribunal, by order dated November 18, 2016, recalled its earlier order dated September 6, 2013.

		Decision: The order passed by the Tribunal dated November 18, 2016 recalling its earlier order dated September 6, 2013 was unsustainable, and ought to have been set aside by the High Court. ***Notes -(1)*** *In this case, the Supreme Court directed that the original order passed by the Tribunal dated September 6, 2013 passed in the respective appeal preferred by the Department be restored; and that the assessee may prefer appeal before the High Court against the original order dated September 6, 2013.* ***(2)*** *The Delhi High Court's ruling in case of Lachman Dass Bhatia Hingwala (P) Ltd. reported above at Sl. No. 7 still hold good since it is with respect to power of the Tribunal to recall its order solely to rectify the mistake apparent from record. In the present case, the Supreme Court held that the Tribunal do not have power to recall an order and rehear the entire order on merits. The crux of the both the rulings is that Tribunal have the power to recall its order only for the purpose of rectifying mistake apparent from records. However, it cannot recall its order in entirety to* ***rehear/review*** *its order on merits.*
9.	***DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC)***	
	Issue	**Analysis & Decision**
	Would automatic vacation of stay order upon expiry of extended period of stay of 365 days be valid, where the delay in disposing of the appeal is **not** attributable to the assessee?	The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, **even if the delay in disposing of the appeal is not attributable to the assessee**.

		The Apex Court observed that the Appellate Tribunal, wherever possible, has to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay is granted by the Appellate Tribunal, the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, the condition of automatic vacation of stay on expiry of the period becomes mandatory so far as the assessee is concerned. The Apex Court also pointed out that the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned. Accordingly, the Apex Court held that the third proviso to section 254(2A) has to be read without the word "even" and the word "not" after the words "delay in disposing of the appeal". **Thus, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.**
10.	***CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)***	
	Issue	**Analysis & Decision**
	Can the Commissioner invoke revisionary jurisdiction u/s 263, when the subject matter of revision (i.e., whether the manner of allocation of	**When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from**

	revenue amongst the members of AOP would affect the allowability and/or quantum of deduction u/s 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?	**invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the *Explanation 1* to section 263 debars the same.** Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction u/s 263
11.	***Sunil Vasudeva & Others v. Sundar Gupta & Others (2019) 415 ITR 281 (SC)***	
	Issue	**Analysis & Decision**
	Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?	The High Court can review its own order, where the grounds for review were: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) mistake or error apparent on the face of the record; (iii) any other sufficient reason. A review will, however, not be maintainable in the following cases: (i) repetition of old and overruled argument; (ii) minor mistakes of inconsequential import. The following observations were also made by the Supreme Court in relation to entertaining a review application: (i) review proceedings cannot be equated with the original hearing of the case. (ii) a review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

		(iii) a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. (iv) The mere possibility of two views on the subject cannot be a ground for review. (v) The error apparent on the face of the record should not be an error which has to be fished out and searched. (vi) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition. (vii) A review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.
12.	***CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)***	
	Issue	**Analysis & Decision**
	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	High Courts being courts of record under Article 215 of the Constitution of India, the power of review would inhere in them. **There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.** Section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals u/s 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

13.	*CIT v. A.A. Estate Pvt. Ltd. (2019) 413 ITR 438 (SC)*	
	Issue	**Analysis & Decision**
	Considering the procedure as prescribed u/s 260A, is the High Court justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant?	There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The substantial questions of law, which are proposed by the appellant fall u/s 260A(2)(c) whereas the substantial question of law is required to be framed by the High Court fall u/s 260A(3). **U/s 260A(4), the appeal is heard on merits only on the substantial question of law framed by the High Court u/s 260A(3).** If the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly should have dismissed the appeal *in limine*. However, this was not done. Instead, **the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c), which is not in line with the requirement contained in section 260A(4). The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.**
14.	*Spinacom India (P.) Ltd. v. CIT (2018) 258 Taxman 128 (SC)*	
	Issue	**Analysis & Decision**
	Can the delay in filing appeal u/s 260A be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT u/s 254(2) for rectification of mistake apparent on record?	The Supreme Court rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause. The Supreme Court refused to accept the submission that the application before the ITAT u/s 254(2) was an alternate remedy to filing of the application u/s 260A. The former is an application for rectifying a 'mistake

		apparent from the record' which is much narrower in scope than the latter. U/s 260A, an order of the ITAT can be challenged on substantial questions of law. The Supreme Court stated that the appellant had the option of filing an appeal u/s 260A while also mentioning in the Memorandum of Appeal that its application u/s 254(2) was pending before the ITAT. **The time period for filing an appeal u/s 260A does not get suspended on account of the pendency of an application before the ITAT u/s 254(2).**
15.	***SAP Labs India Pvt. Ltd. v. ITO (and other appeals) [2023] 454 ITR 121 (SC)***	
	Issue	**Analysis and Decision**
	In an appeal u/s 260A, is the High Court precluded from examining the correctness of the determination of the ALP on the ground that once the Tribunal determines the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law?	The Apex Court laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of ALP :- - While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Rules. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal u/s 260A. When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP

		has been determined while taking into consideration the relevant guidelines under the Act and the Rules. - The High Court can also examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/ evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not. Therefore, the view taken by the Karnataka High Court in the case of *Softbrands India (P.) Ltd.* that in the transfer pricing matters, the determination of the ALP by the Tribunal is final and cannot be subject matter of appeal under section 260A cannot be accepted. In an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act and the Rules are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

TEST YOUR KNOWLEDGE

Questions

1. *"SVS Propcon" did not make a claim of ₹ 20 lakhs in the return of income filed for A.Y. 2025-26 which was disallowed in the previous assessment year under section 43B. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?*

2. *Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:*

   (i) An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.

   (ii) A High Court does not have an inherent power to review an earlier order passed by it on merits.

3. *Does the Income-tax Appellate Tribunal have the following powers?*

   (i) Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals).

   (ii) Power to recall its own order solely for rectification of mistake apparent from the records.

4. *Can a rectification order under section 254 of the Income-tax Act, 1961 be passed by the Income-tax Appellate Tribunal beyond 6 months from the end of the month in which the order sought to be rectified was passed?*

5. *What do you mean by substantial question of law? Examine.*

6. *An Income-tax authority did not file an appeal to the Income-tax Appellate Tribunal against an order of the Commissioner (Appeals) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for assessment year 2024-25 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In assessment year 2025-26, similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the Commissioner (Appeals) against the Department. Can the Income-tax department move an appeal to the Tribunal in respect of A.Y. 2025-26 against the orders of the Commissioner (Appeals) for Alpi and her sister Palki?*

7. *A petition for stay of demand was filed by XYZ Ltd. before the Income-tax Appellate Tribunal in respect of a disputed demand for which appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2024 for a period of 180 days from the date of such order, on deposit of 20% of the amount of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2025 and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2024, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2024. Thereafter, on 5.1.2025, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay over it. The Assessing Officer, however, rejected the contention of the assessee stating that the stay period expired on 30.12.2025, after which the order of stay stood vacated automatically. Examine the correctness of contention of the Assessing Officer.*

8. *An assessee who had been served with an order of assessment passed under section 143(3) on 1.1.2025 had filed an application against this order before the CIT as per section 264 on 11.1.2025. However, the CIT refused to entertain the application on the pretext of premature application. Assessee seeks your opinion.*

9. (a) *The Commissioner of Income-tax issued notice to revise the order passed by an Assessing Officer under section 143. During the pendency of proceedings before the Commissioner, on the basis of material gathered during survey under section 133A after issue of the first notice, the Commissioner of Income-tax issued a second notice, the contents of which were different from the contents of the first notice. Examine whether the action of the Commissioner is justified as to the second notice.*

   (b) *Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Commissioner of Income-tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.*

10. *Examine the correctness or otherwise of the following propositions in the context of the Income-tax Act, 1961:*

    (a) *The powers of the Commissioner of Income-tax (Appeals) to enhance the assessment are plenary and quite wide.*

    (b) *At the time of hearing of rectification application, the Income-tax Appellate Tribunal can re-appreciate the evidence produced during the proceedings of the appeal hearing.*

(c) *The High Court cannot interfere with the factual finding recorded by the lower authorities and the Tribunal, without any valid reasons.*

11. *An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each order under the Income-tax Act, 1961:*

(i) *passed under section 143(3) by the Assessing Officer.*

(ii) *passed under section 263 by the Commissioner of Income-tax.*

(iii) *passed under section 272A by the Director General.*

(iv) *passed under section 254 by the ITAT.*

12. *Who can file memorandum of cross-objections before the Income-tax Appellate Tribunal? What is the time limit? What is the fee for filing memorandum of cross objections?*

Answers

1. Yes, the assessee is entitled to raise additional claims before the appellate authorities.

The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claim made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in *Goetze (India) Ltd v. CIT (2006) 284 ITR 323.*

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in *CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336. This view is also endorsed by the Supreme Court in case of Wipro Finance Ltd. v. CIT (2022) 443 ITR 250.*

Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed.

2. **(i)** **The statement given is not correct.** As per the provisions of section 255, in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal, the matter shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing

on such points by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who had first heard it.

(ii) **The statement given is not correct.** The Supreme Court, in *CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112*, observed that the power of review would inhere on High Courts, being courts of record under article 215 of the Constitution of India. There is nothing in article 226[3] of the Constitution to preclude a High Court from exercising the power of review which is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. The Supreme Court opined that this does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

3. **(i)** The Income-tax Appellate Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of *National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC)* supports this view.

(ii) The Delhi High Court, in *Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243* observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in *Honda Siel Power Products Ltd. v. CIT (2007) 295 ITR 466,* dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent

[3] Article 226, empowers the High Courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs.

power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.

When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety, if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

4. The issue as to whether a rectification order can be passed by the Income-tax Appellate Tribunal under section 254 beyond six months from the end of the month in which order sought to be rectified was passed, has been addressed in *Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT (2008) 301 ITR 434 (SC)*. Section 254(2), dealing with the power of the Appellate Tribunal to pass an order of rectification of mistakes, is in two parts. The first part refers to the *suo motu* exercise of the power of rectification by the Appellate Tribunal, whereas the second part refers to rectification on an application filed by the assessee or Assessing Officer bringing any mistake apparent from the record to the attention of the Appellate Tribunal.

If Income-tax Appellate Tribunal, *suo moto,* makes the rectification of its order, then the order has to be passed within 6 months from the end of the month in which the order sought to be rectified was passed. Where the application for rectification is made by the Assessing Officer or the assessee within 6 months from the end of the month in which the order sought to be rectified was passed, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 6 months from the end of the month in which the order sought to be rectified was passed. However, the application for rectification cannot be filed belatedly after 6 months from the end of the month in which the order sought to be rectified was passed. [*Ajith Kumar Pitaliya vs ITO (2009) 318 ITR 182 (M.P.)]*

5. The expression "substantial question of law" has not been defined anywhere in the Act. However, it has acquired a definite meaning through various judicial pronouncements. The tests are:

(1) whether directly or indirectly it affects substantial rights of the parties; or

(2) the question is of general public importance; or

(3) whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court; or

(4) the issue is not free from difficulty; or

(5) it calls for a discussion for alternative view.

6. Under section 268A(1), the CBDT is empowered to issue orders, instructions or directions to the other income-tax authorities, fixing such monetary limits, as it may deem fit, to regulate filing of appeal or application for reference by any income-tax authority.

Under section 268A(2), where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to above-mentioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of the same assessee for any other assessment year or any other assessee for the same or any other assessment year. Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

In view of above provision, it would be in order for the Income-tax Department to move an appeal to the Tribunal against the orders of the CIT(A) in respect of A.Y. 2025-26 both for Alpi and Palki.

7. As per section 254(2A), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, However, the aggregate of the period of stay originally allowed and the period of stay so extended cannot exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within 180 days or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, **only if the delay in disposing of the appeal is attributable to the assessee.** It was so held by the Supreme Court in *DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295.*

Accordingly, if an appeal is not heard by the bench, due to the bench functioning intermittently, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 30.12.2024, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2025 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the Assessing Officer is not correct. The order of stay would stand vacated after 30.12.2024, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

8. An assessee, who is aggrieved by the order of the Assessing Officer under section 143(3) passed on 1.1.2025, had moved an application for revision of order under section 264 on 11.1.2025. The order passed by the Assessing Officer under section 143(3) is an order appealable before the Joint Commissioner (Appeals) or the Commissioner (Appeals). The time limit for filing an appeal is 30 days from the date of order i.e., upto 31.1.2025. This time limit had not expired on 11.1.2025 and the assessee had also not waived his right of appeal while filing the application for revision on 11.1.2025 before the Commissioner of Income-tax. The application filed before the Commissioner of Income-tax for revision under section 264 by the assessee will only be considered when the conditions specified under section 264(4) have been complied with. One of the conditions is that the Commissioner shall not revise any order where an appeal against the order lies to the Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired, unless the assessee has waived his right of appeal. In the present case, the time limit had not expired on 11.1.2025 and the assessee had also not waived the right of appeal while filing the application for revision before the Commissioner of Income-tax on 11.1.2025 under section 264. Therefore, the Commissioner's refusal to entertain such application is correct.

Note : *In practical situations, the Commissioner could have kept the proceedings in abeyance till the expiry of the time prescribed for filing appeal by the assessee and thereafter, could have assumed jurisdiction for making revision besides taking an undertaking from the assessee for waiving his right of appeal. In reality, taxpayers usually will not prefer revision in such short time period nor would the Commissioner reject the application, the moment it is received by him.*

9. **(a)** The action of the Commissioner in issuing the second notice is not justified. The term "record" has been defined in clause (b) of *Explanation* to section 263(1). According to this definition "record" shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the *Explanation* to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner.

Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be "record" available at the time of examination as emphasized in *Explanation (b)* to section 263(1).

(b) As per Rule 46A(1) of the Income-tax Rules 1962, an appellant shall be entitled to produce before the Commissioner (Appeals), evidence, either oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, only in the following circumstances -

(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Further, no evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.

10. (a) The proposition is correct in law. The Supreme Court has, in *CIT vs. McMilan & Co. (1958) 33 ITR 182 and CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225*, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do, what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate relief.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwala (2006) 280 ITR 318*, held that the appellate authority is empowered to consider and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding the fact that such matter was not raised before him by the assessee. The Commissioner (Appeals) is entitled to direct additions in respect of items of income not considered by the Assessing Officer.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT (1991)* 187 *ITR* 688, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

Thus, the powers of the Commissioner of Income-tax (Appeals) in enhancing the assessment are very wide and plenary.

(b) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within **6 months** from the end of the month of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification *[CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P & H), CIT v. Ballabh Prasad Agarwalla (1998) 233 ITR 354 (Cal.) & Niranjan & Co. Ltd. v. ITAT (1980) 122 ITR 519 (Cal.)]*

(c) The proposition is correct in law. A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A. The Income-tax Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 260A only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In *CIT vs. P. Mohanakala (2007) 291 ITR 278 and M. Janardhana Rao v. Joint CIT (2005) 273 ITR 50*, the Apex Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence. There is no scope for interference with the factual findings, unless the findings are *per se* without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

11. **(i)** An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an appeal before the Joint Commissioner (Appeals) under section 246 or the Commissioner of Income-tax (Appeals) under section 246A(1), within 30 days of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

(ii) An assessee, aggrieved by the order passed under section 263 by the Commissioner of Income-tax, can file an appeal to Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order (w.e.f. 1.10.24, two months from the end of the month in which order) sought to be appealed against is communicated to the assessee.

(iii) An assessee, aggrieved by the order passed under section 272A by the Director General, can file an appeal before the Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order (w.e.f. 1.10.24, within two

months from the end of the month in which order) sought to be appealed against is communicated to the assessee.

(iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can file an appeal before the High Court under section 260A within 120 days from the date of receipt of order of Income-tax Appellate Tribunal, only where the order gives rise to a substantial question of law.

12. Section 253(4) of the Income-tax Act, 1961 gives the respondent (assessee or the Assessing Officer), in every appeal filed before the Income-tax Appellate Tribunal, a right to file a memorandum of cross-objections against any order of the Joint Commissioner (Appeals) or the Commissioner (Appeals). This right of filing a memorandum of cross-objections is an independent right given to the respondent in an appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 253(1) or section 253(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and has to be filed within 30 days of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of memorandum of cross-objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3). There is no fee for filing a memorandum of cross-objections.