

6. APPEALS

questions of law arose u/s 260A, the High Court proceeded to answer the two questions. Against this judgment, the assessee filed a review petition whereupon the Division Bench of the High Court recalled its entire order for adjudication on the ground that it had not formulated the substantial questions of law before hearing of the appeal and had not invited the parties to have their say in the matter which amounted to denial of opportunity of effective hearing to the parties concerned, particularly, the review petitioners.

Supreme court observed that there is nothing in article 226 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. In this case, the High Court had entertained the second petition since the interested parties were not given an effective opportunity of being heard, before passing the judgment; therefore, keeping in mind the requirement of the principles of natural justice, the High Court had exercised its inherent power of review.

It is held that sec 260A(7) does not curtail or restrict provisions of Code of Civil Procedure as said section only states that all provisions that would apply qua appeals in Code of Civil Procedure would apply to appeals u/s 260A.

National Thermal Power Co Ltd (SC)

U/s 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. The power of the Tribunal is not restricted only to the grounds of appeal raised by the assessee or the department.

If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a taxable item is not to be taxed or a deduction is to be allowed, then there is no reason why the

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assessee should be prohibited from raising that question before the Tribunal for the first time. Similarly, if the Tribunal finds that as a result of judicial decision given when the appeal is pending before the Tribunal, a non-taxable item is to be taxed or a permissible deduction is to be disallowed, then it can tax the item or disallow the deduction. There is no reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of CIT (A). There is no reason why the Tribunal should be prevented from considering questions arising in assessment proceedings though not raised earlier.

The view that the Tribunal has to confine itself to the issues arising out of the appeals before the CIT (A) is not a correct view and the Tribunal has power to consider any ground raised by the assessee or the department for the first time before the Tribunal although it has not been raised before the lower authorities.

CIT v. Pruthvi Broker & Shareholders (2012)

Question Before Court: an additional claim can be raised before the Appellate Authority even if no revised return is filed.

Decision: The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion.

Lachman Dass Bhatia Hingwala (P) Ltd v. ACIT (2011)

Question before Court: ITAT power to recall its own order

Decision: 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.

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Ajith kumar Pitaliya vs ITO (2009)

Appellate Tribunal is bound to decide the application on merits & 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.

CIT v Earnest Exports Ltd (2010)

Question before court : Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?

Decision: Tribunal, while dealing with the application u/s 245(2), virtually reconsidered entire matter & came to different conclusion. This amounted to reappraisal of correctness of earlier decision on merits, which is beyond scope of power conferred u/s 254(2)

CIT v Subrata Roy (2016)

Question Before Court: Can High Court exercise its inherent power to recall its order by exercising jurisdiction u/s 260A(7) read with the relevant Rule of Code of Civil Procedure, 1908 even if that order is not an ex-parte order?

Decision: The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013

Samsung India Electronics P Ltd v. DCIT (2014)

Question Before Court: Can an assessee, objecting to the reassessment notice issued u/s 148, directly approach HC in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?

Decision: The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation & crystallise the issues, if and when the question comes up before the Court

Spinacom India P Ltd v CIT (2018)(SC)

Question Before Court: Whether delay in filing appeal u/s 260A can 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?

Decision:

1. Rectification Application before the ITAT u/s 254(2) not an alternate remedy to filing of appeal before HC u/s 260A
2. SC held that application before ITAT u/s 254(2) is for rectifying a mistake apparent from the record which is much narrower in scope than appeal before HC u/s 260A. SC held that u/s 260A, an order of the ITAT can be challenged on substantial questions of law.
3. Since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for condonation of delay.

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Multiple Choice Questions

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| 1) What are the powers of CIT(A)?
a) To confirm assessment
b) To reduce assessment
c) To enhance assessment
d) All of above | 6) Appeal to ITAT be filed if there is
a) Question of Law
b) Question of Fact
c) (a) or (b) d) None |
| 2) Order passed by AO under directions of Dispute Resolution Panel is appealable to
a) AO b) CIT(A) c) ITAT d) NA | 7) CIT(A) to dispose off appeal within
a) 1 yr from date when appeal filed
b) 6 m from date when appeal filed
c) 1 yr from end of FY in which such appeal is filed
d) 6 m from end of FY in which such appeal is filed |
| 3) Appeal can be filed to HC only if there is question of fact
a) True b) False | 8) Where an order made u/s 154 or sec 155 having the effect of enhancing the assessment/reducing a refund, appeal lies with
a) AO b) CIT(A) c) ITAT |
| 4) Appeal to HC against order of ITAT can be filed within-----from date on which appeal is against is received by assessee
a) 60D b) 90D c) 120D d) 360D | 9) Appeal can be filed with CIT(A) only if the assessee has paid the tax on the amount of income returned by him in cases where a return has been filed by Assessee
a) True b) False |
| 5) Appellate tribunal may at any time within ----- from end of month in which order is passed with a view to rectify any mistake apparent from the records, amend any order passed by it
a) 3m b) 6m c) 9m d) 12m | |

Answers :

1) d	2) c	3) b	4) c	5) b	6) c	7) c	8) b	9) a
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For your practice - Solved Questions

P1 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 review its own order. [May 2010]

Solution

- i) Supreme Court in case National Thermal Power Co. Ltd. held as under:
U/s 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. The power of the Tribunal is not restricted only to the grounds of appeal raised by the assessee or the department. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a taxable item is not to be taxed or a deduction is to be allowed, then there is no reason why the assessee should be prohibited from raising that question before the Tribunal for the first time. Similarly, if the Tribunal finds that as a result of judicial decision given when the appeal is pending before the Tribunal, a non-taxable item is to be taxed or a permissible deduction is to be disallowed, then it can tax the item or disallow the deduction. There is no reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of CIT (A). There is no reason why the Tribunal should be prevented from considering questions arising in assessment proceedings though not raised earlier.
The view that the Tribunal has to confine itself to the issues arising out of the appeals before the CIT (Appeals) is not a correct view and the Tribunal has power to consider any ground raised by the assessee or the department for the first time before the Tribunal although it has not been raised before the lower authorities. In view of the above said judgement of Supreme Court, ITAT can allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner of Income-tax (Appeal).

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- ii) ITAT can rectify mistake in its order. As per Sec 254(2), the ITAT may, at any time within 6 months from the end of the month in which order was passed, with a view to rectify any mistake apparent from record, amend any order passed by it u/s 254(1), and shall make such amendment if the mistake is brought to its notice by the assessee or AO. However, an amendment which has the effect of increasing the tax liability of the assessee shall be made only after the assessee has been given a reasonable opportunity of being heard.

ITAT can only rectify mistake in its order, however, ITAT cannot review its order. Review is possible only by a higher authority. Order of ITAT can be reviewed only by High Court. Therefore, ITAT cannot review its own order.

P2 Discuss 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. [Nov. 2011], [Nov. 2012], [May 2013], [Nov. 2015]

Solution

- i) The statement given is not correct. As per the provision of section 255, in the event of difference in opinion between the members of the Bench of the ITAT, 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 to the President of ITAT 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. 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) Supreme Court in case of Meghalaya Steels Ltd. (SC) observed that there is nothing in article 226 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. Therefore, where the High Court commits any error in his order, which violates the law of natural justice, it can review its order.

However, as a general rule, no authority can review its order. The High Court cannot review its earlier order if there is no error in the same. The order of High Court can be reviewed by Supreme Court if an appeal is filed to Supreme Court against the order of High Court.

Know your exams - Unsolved Questions

- P1 "SVS Popcon" did not make claim of ₹20L in ROI filed for A.Y. which was disallowed in the previous AY u/s 43B. However, the said claim was also not considered by the AO during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?
- P2 Can rectification order u/s 254 of IT Act, 1961 be passed by ITAT beyond 6m from end of month in which the order sought to be rectified was passed?
- P3 Is CIT(A) empowered to consider an appeal filed by assessee challenging order of assessment in respect of which proceedings before SC abates? Examine.
- P4 In an appeal filed against an order of penalty passed by AO, the CIT (A) finds that the principles of natural justice have been violated and, therefore, sets aside the order with a direction to pass afresh order. [Nov'13]

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P5 Discuss the following:

- 1) CIT (A) has no power to decide a matter that was not raised before him.
- 2) The Income-tax Appellate Tribunal cannot amend its order.
- 3) A case before the Appellate Tribunal cannot be dealt when there is a difference of opinion amongst the members of the bench
- 4) An appeal shall lie to the High Court against the order of the Tribunal.

[May 2001]

P6 State the circumstances where the appellant shall be entitled to produce additional evidence oral or documentary before the CIT (A) other than the evidence produced during the proceedings before the Assessing Officer?

P7 The Appellate Tribunal is empowered to grant indefinite stay for the demand disputed in appeals before it. Examine the correctness of the statement.

[Nov 2008]

P8 Income-tax authority did not file an appeal to the ITAT against an order of the CIT (A) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for AY 2018-19 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In AY 2019-20 similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the CIT (Appeals) against the Department. Can the Income-tax department move appeal to the Tribunal in respect of AY 2019-20 against the orders of the CIT (A) for Alpi and her sister Palki?