

Chapter 7 : Revision

Chapter Index

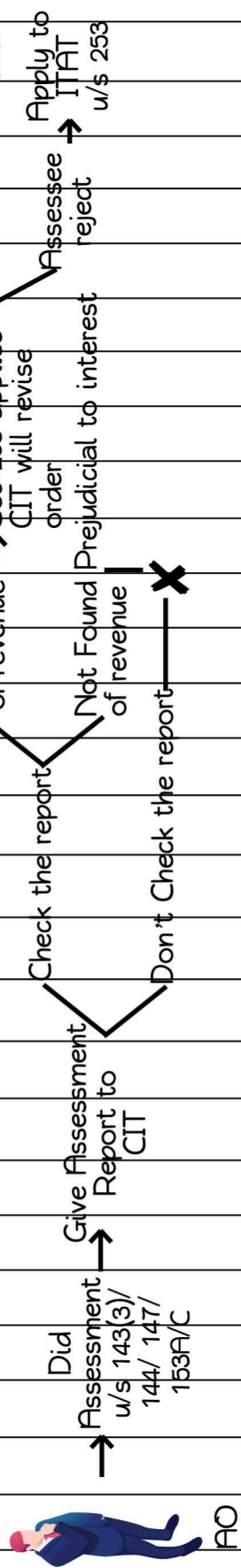
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7. REVISION

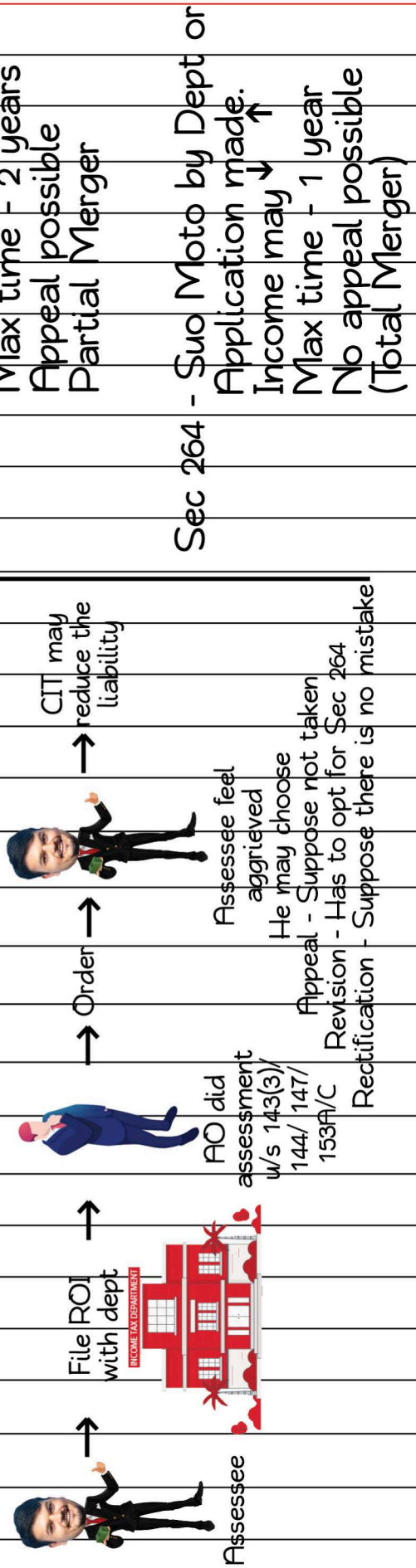
Space for Important Points / Notes

Revision in Income Tax by CA Vijay Sarda

How Sec 263 works?



How Sec 264 works?



7. REVISION

Sec 263 Revision of orders prejudicial to revenue

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

Explanation 1 to Sec 263(1) -

- a) an order passed on or before or after the 1st day of June, 1988 by AO shall include—
- i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner u/s 144A;
 - ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an AO conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;
- b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner; where any order referred to in this sub-section and passed by the AO had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the PCIT or CIT under this sub-section shall extend and shall be deemed always to have extended to such

matters as had not been considered and decided in such appeal.

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

Explanation 2 to Sec 263(1) -

For the purposes of this section, it is hereby declared that an order passed by the AO 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 PCIT / CIT -

- a) the order is passed without making inquiries or verification which should have been made;
- b) the order is passed allowing any relief without inquiring into the claim;
- c) the order has not been made in accordance with any order, direction or instruction issued by the Board u/s 119; or
- d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

Sec 263(2) - No order shall be made under sub-section (1) after the expiry of 2 years from the end of the FY in which the order sought to be revised was passed.

Sec 263(3) - Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

7. REVISION

Explanation to Sec 263(3) -

In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Simplified Analysis

1. CIT may call for & examine the record of any proceeding under the Act & if he considers that any order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard pass such order as he deems fit.

Sec 263 cannot be invoked if the CIT is merely of opinion that particular deduction should not have been allowed to the assessee. As in sec 147, in sec 263 also revision is not possible on account of change in personal opinion.

“Record” shall include all records relating to any proceedings under this Act available at the time of examination by CIT. Where search is conducted during pendency of revision proceeding then CIT cannot take that material gathered into consideration for sec 263 since it is not record available.

Order can be erroneous

- i. Order passed without making enquiry or Verification
- ii. Relief allowed with inquiring the claim
- iii. Order has not been passed as per Board's direction
- iv. Not as per order of HC/ SC

[Malabar Industry (SC)]

Where 2 views are possible & AO has adopted one of the view order cannot be said to be erroneous though it maybe prejudicial to interest of revenue

An order can be said to be prejudicial to the revenue if

- Income has been under assessed
- Losses have been over assessed
- Income is assessed at lower rate
- Excessive loss, deductions, allowances & reliefs have been allowed to assessee.

Order Passed by AO [Not Include Intimation]

A. U/s 263, the CIT can revise only the order of the AO.

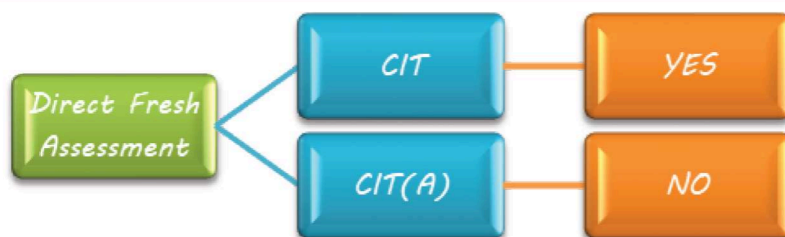
B. Intimation or deemed intimation u/s 143(1) is not an order & therefore cannot be revised under section 263.

CIT can do following

- a) enhance or
- b) modify the assessment or
- c) cancel the assessment and directly a fresh assessment.

Remedies against the Order u/s 263:

- a) Rectification u/s 154
- b) Appeal to ITAT u/s 253



A. If the AO has completed the assessment without initiating penalty proceedings, then order of AO cannot be said to be erroneous. The CIT cannot set aside order of assessment of AO & direct him to initiate penalty proceedings. For the applicability of section 263, there are two requisites namely:

- ORDER MUST BE ERRONEOUS AND
- ORDER MUST BE PREJUDICIAL TO THE REVENUE

B. An opportunity of being heard is required to be given by the CIT before he passes an order u/s 263. If order u/s 263 is passed without giving an opportunity of being heard to assessee, then the order is void-ab-initio

7. The order shall be made within 2 years from the end of FY in which order sought to be revised was passed. However, an order under this section may be passed at any time to give effect to the finding or direction contained in an order of the High Court or Supreme Court.

8. The CIT will be competent to revise an order of assessment passed by the AO on all matters except those that have been considered & decided in an appeal.[CIT(A)/ITAT/HC/SC] - Doctrine of partial Merger.

Key cases:

a. Time limit shall be counted from the date of Assessment order & not from date of rectified order u/s 154. **CIT V. Shriram Eng Construction co.**

b. **CIT v. ICICI Bank Ltd. (2012) (Bom.)**

Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by the AO u/s 143(3) or from the order of reassessment passed u/s 147, where the subject matter of revision is different from the subject matter of reassessment u/s 147? Held- period of limitation in respect of the order of Commissioner u/s 263 in respect of a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order u/s 143(3) & not from the date of the reassessment order u/s 147.

c. The Commissioner can revise the order even where records are placed before him by his subordinates who points out the error - **(Smt. Sumitra Devi Khirwal)**

d. The Commissioner can revise the order on the basis of a valuation report which came to the records subsequent to the assessment. Valuation report forms part of the assessment records although it may come subsequent to the assessment. **(S.M. Oil Extraction Pvt. Ltd.)**