

CIT v. Fortaleza Developers (2015) (Bom)

Can CIT invoke revisionary jurisdiction u/s 263, when the subject matter of revision has been decided by CIT(A) & the same is pending before Tribunal?

When the order of the first appellate authority is complete & the appeal is pending before the Tribunal, the Comm. is precluded from invoking sec 263 for revision of the very same matter decided by the first appellate authority since the law provides that commissioner u/s 263 can revise only those matters which have not gone for appeal. Accordingly, the High Court held that the order passed by AO got merged with the order of first appellate authority. Same issue can't be revised by invoking revisionary jurisdiction u/s 263.

Multiple Choice Questions

- 1) When any matter of order has been the subject matter of any appeal, other subject matter of order cannot be revised u/s 264 - a) True b) False
- 2) If assessee files application to PCIT to revise order u/s 264, then revisionary order has to be passed within----- from end of FY in which application is made by assessee for revision
a) 6m b) 1year c) 2years d) 4years
- 3) Concept of total merger was applicable in case of ----- & partial merger in case of-----
a) Sec 263 and Sec 264, Sec 154 b) Sec 154 and Sec 263, Sec 264
c) Sec 264 and Sec 263, Sec 154 d) Sec 264, 263 and Sec 154
- 4) When any matter of order has been the subject matter of any appeal, any other matters of that order cannot be revised u/s 263
a) True b) False
- 5) Which of the following can be filed without fees Answers :
a) Appeal against AO to Commissioner (Appeals) 1) a 2) b

--

b) Appeal against Commissioner (Appeals) to ITAT 3) c 4) b 5) c
c) Memorandum of cross-objections
d) Application for revision of order u/s 264

7. REVISION

For Your practice - Solved Questions

P1 Assessment of Rampyare Ltd. was completed u/s 143(3) with an addition of ₹15 lakhs to the returned income. The assessee-company preferred appeal before the CIT (A) which is pending now.

In this backdrop, answer the following:

i) Can the assessee-company seek revision u/s 264 in respect of matters other than those preferred in appeal?

ii) Can the Commissioner make a revision u/s 263 both in respect of matters covered in appeal and other matters? [May 2015]

Solution

i) As per section 264(4), the Commissioner shall not revise any order u/s 264, where such order has been made the subject of an appeal to the CIT (A). Thus, the concept of total merger would apply in the case of section 264. Therefore, u/s 264, the Commissioner cannot revise an order which is pending before the CIT (Appeals), even if the revision pertains to a matter, other than the matter(s) covered in the appeal.

ii) As per section 263, the Commissioner has the power to revise an order prejudicial to revenue, even if the order is the subject matter of appeal before CIT (A). However, the power of the CIT u/s 263 shall extend to only such matters as had not been considered and decided such appeal. Here again, the doctrine of partial merger would apply.

In a case where the appeal is pending but not yet decided, the CIT cannot exercise his revisionary jurisdiction in respect of those issues which are the subject matter of appeal.

P2 The assessment of South West Bank Limited for AY 2016-17 was made u/s 143(3) on 30th November, 2017 allowing deduction u/s 36(1)(viiia) on account of provision for doubtful debts and deduction in respect of foreign

exchange rate difference as claimed in the return of Income. Subsequently, the AO initiated reassessment proceeding u/s 147 in respect of deduction u/s 36(1)(viii) for special reserve created by bank. The order u/s 147 was passed on 31st December, 2019.

Later the PCIT after examining the record of assessment, initiated revisionary proceeding u/s 263 by issue of show cause notice to the bank and passed an order u/s 263 on 31st August, 2020 for disallowing in part deduction u/s 36(1)(viii) and deduction for foreign exchange rate difference.

The bank claims that the order passed by the PCIT u/s 263 is barred by limitation.

Examine the correctness or otherwise of the claim of the bank. [Nov 2015]

Solution

Section 263 provides that no revisionary order shall be made u/s 263 after the expiry of 2 years from the end of FY in which the order sought to be revised was passed.

The issue under consideration is whether the period of limitation for an order passed u/s 263 has to be reckoned from the original order passed by the AO u/s 143(3) of the Income-tax Act, 1961 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.

The facts of the case are similar to the facts in CIT v. ICICI Bank Ltd. (2014), wherein the above issue came up before the Bombay High Court, wherein it was held that in such cases where the subject matter of revision was not the same as the subject matter of reassessment, the period of limitation would commence from the date of original assessment and not from the date of reassessment.

In this case, the period of limitation as referred to in sec 263 is with reference to the assessment in which the claim of the assessee as to deduction u/s 36(1)(viii) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference was considered

7. REVISION

These issues were not the subject matter of reassessment proceedings, which were only in respect of deduction u/s 36(1)(viii) for special reserve created by the bank.

Accordingly, applying the rationale of the Bombay High Court cited above, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment.

Therefore, in this case the revision proceedings are barred by limitation since the original assessment order was made on 30.11.2017 & revision order should have been made by 31.3.2020. However, the revision order was passed only on 31st August, 2020 and hence, the same is barred by limitation.

Accordingly, the claim of the bank that the order passed by the PCIT u/s 263 is barred by limitation is correct.

Know Your Exams - Unsolved Questions

P1 An assessee who had been served with an order of assessment passed u/s 143(3) on 1.1.2021 had filed an application against this order before the CIT as per sec 264 on 11.1.2021. However, the CIT refused to entertain the application on the pretext of premature application. Assessee seeks your opinion

P2 The assessment for A.Y. 2017-18 was completed as per sec 143(3) considering various claims so made by assessee on 23.12.2018. Subsequently, this was reopened u/s 147 on certain issues, but excluding claim of assessee as to "Lease Equalisation Fund". The order of reassessment was passed on 18.11.2019. The CIT u/s 263 passed an order on 11.4.2021 rejecting the claim of assessee. The assessee challenges that the action of the CIT is not sustainable because the same was barred by limitation

P3 Mrs. Santosh filed her return of income for the A.Y. 2019-20 declaring total income of ₹3.15 Lakhs. The return was processed u/s 143(1) and later, the case was selected for scrutiny and statutory notice u/s 143(2) was issued. The AO, after being satisfied with the replies given for the enquires, completed the assessment by accepting the declared income. Subsequently, the Commissioner invoked revisionary jurisdiction u/s 263, holding that the AO had not made enquiry properly. Is invoking of revisionary jurisdiction u/s 263 justified? [May 2017]

P4 The AO has made two additions in the assessment of Rohit & Co. (sole proprietorship firm):

- i) Disallowance u/s 43B of ₹10 lakhs
- ii) Unexplained cash credits of ₹80 lakhs.

The firm filed an appeal before CIT(A) with respect to the second addition only. The CIT(A) confirmed the addition. Further, the assessee has filed an appeal to the Appellate Tribunal w.r.t. addition of unexplained cash credit against the order of CIT(A). The Appellate Tribunal has also confirmed the addition. He then preferred the revision petition before Principal CIT u/s 264 for disallowance u/s 43B. The petition has been rejected on the ground that the assessment was subject matter of an appeal before the Appellate Tribunal. Is the petition maintainable? [May 2018 (Old Syllabus)]

P5 AUM Enterprises, a partnership firm filed its return of income for the A.Y. 2018-19 on 30.07.2018. The assessment u/s 143(3) was completed on 15th June, 2020 & A.O. made two additions to the income of assessee namely,-

- i) Addition of Lakhs for unexplained cash credit u/s 68 and
- ii) Addition of ₹3 lakhs u/s 40(a) (ia) due to non-furnishing of the evidence of TDS payment.

The assessee being aggrieved, contested the addition of ₹8 Lakhs u/s 68 & made an appeal to the CIT (A). The appeal was decided on 5th January, 21

7. REVISION

against the assessee. Now, the assessee seeks your advice as to whether it should apply for revision to CIT u/s 264 or for rectification u/s 154 to the A.O. as regards disallowance u/s 40(a)(ia). Advise? [May 2018 (New)]