

7. REVISION

Sec 264 Revision of other orders

Sec 264(1) - In the case of any order other than an order to which sec 263 applies passed by an authority subordinate to him, the PCIT / CIT may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

Sec 264(2) - The PCIT or CIT shall not of his own motion revise any order under this section if the order has been made more than 1 year previously.

Sec 264(3) - In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier. Provided that the PCIT / CIT may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

Sec 264(4) - The PCIT or CIT shall not revise any order under this section in the following cases—

- a) where an appeal against the order lies to the Deputy Commissioner (A) or to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- b) where order is pending on an appeal before Deputy Commissioner (A); or
- c) where the order has been made the subject of an appeal to the CIT (A) or to the Appellate Tribunal.

Sec 264(5) - Every application by an assessee for revision under this section shall be accompanied by a fee of ₹500.

Sec 264(6) - On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within 1 year from the end of the FY in which such application is made by the assessee for revision.

Explanation to Sec 264(6) -

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

Sec 264(7) - Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court / Supreme Court.

Explanation 1 to Sec 264(7) -

An order by the PCIT / CIT declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2 to Sec 264(7) -

For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the Principal Commissioner or Commissioner.

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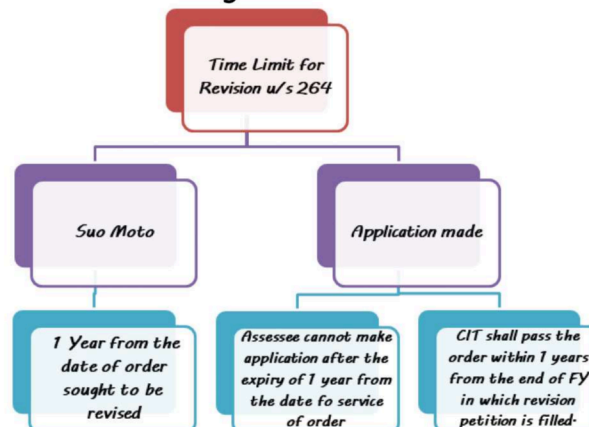
Simplified Analysis :

1. In case of any order other than an order to which sec 263 applies, passed by an authority subordinate to the Commissioner, he may,
- either of his own motion or
 - on an application by the assessee for revision,
- call for the record of any proceeding under this Act in which such order has been passed and may make further inquiries.

Meaning of "any order other than an order to which sec 263 applies"
An order of Assessing Officer which has been revised u/s 263 cannot be revised u/s 264. However after revision u/s 264, revision u/s 263 is possible.

Key notes:

- U/s 264, only the order of AO can be revised.
- Intimation or deemed intimation u/s 143(1) is not an order & therefore can't be revised under section 264.
- CIT u/s 264 can declare the assessment to be void ab - initio.
- CIT u/s 264 can cancel / set aside the order of assessment of the AO & direct him to make a fresh assessment & such directions shall not be prejudicial to the assessee. CIT decline to Interfere does not amount to Prejudicial to Interest of Assessee.
- Under 264 no order prejudicial to Assessee can be passed
- Commissioner cannot revise u/s 264 till the time limit for completion of appeal is not over.
- U/s 264 CIT can entertain fresh grounds /evidence as well.



2. He may also admit the application after expiry of one year.

Note 1: Revision u/s 264 is not possible if an appeal has been file to CIT(A) on any issue.

Note 2: Revision u/s 264 is possible if the assessee has not filed an appeal to CIT (A) and

- The time period for filing an appeal to CIT(A) has expired or
- Where the time for filing appeal to CIT (A) has not expired, the assessee has waived his right to appeal to CIT(A).

3. Application for revision filed by assessee shall be accompanied by fee of ₹500.

Key Notes:

- No appeal is possible against an order u/s 264. No appeal is possible against the order u/s 264 whether the CIT has totally rejected the application by passing an order u/s 264 or has granted a relief partially.

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2. Order u/s 264 can be challenged in the High Court through WRIT PETITION & thereafter in the Supreme Court through a SPECIAL LEAVE PETITION.
3. If there is a mistake apparent from record in the order passed u/s 264, then the CIT can rectify the mistake in the order u/s 264 by passing a rectification order u/s 154.

Comparison of Sec 263 & 264 [Self read]

Similarities -

1. Revision by CIT
2. Revision of order of Assessing Officer
3. Revision can be suo - moto
4. Assessment can be cancelled / set aside and a direction be given to AO to make fresh assessment.
5. Can be rectified under section 154.

Distinctions -

Section 263	Section 264
Revision of orders prejudicial to revenue	Revision of orders prejudicial to assessee
An appeal can be filed to ITAT against order passed u/s 263.	No appeal can be filed against the order passed under section 264.
Revision is possible of issues which have not been considered & decided in an appeal	Revision u/s 264 is not possible on any issue if an appeal has been filed to CIT(A)
Revision u/s 263 is possible after revision u/s 264	Revision u/s 264 is not possible if revision has been made u/s 263.
Revision is suomoto /when the error is brought to notice by the Assessing Officer	Revision is suo - moto or on an application made by the assessee.
Order u/s 263 can be passed upto 2 years from the end of FY in which order sought to be revised was passed.	Order u/s 264 can be made suo - moto upto 1 year from the date of the order sought to be revised. In case of application made by the assessee, the order has to be passed within 1 year from the end of the FY in which application was filed.

Doctrine of Partial Merger

Where matter has been decided in any appeal / revision such matter cannot be decided by lower authority rest other matters can be decided by such

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lower authorities In sec 263, 154 & 147, doctrine of PARTIAL MERGER has been affirmed.

Illustration 1: The AO in an assessment u/s 143(3) allowed deductions A & B & disallowed C, D & E. assessee filed an appeal to CIT (A) on deduction C, D & E. The CIT (A) allows deductions C, D and E. it is later on found by CIT that deductions A, B, C and E are not allowable to the assessee. Can CIT invoke sec 263 & disallow the deductions?

Answer: CIT can disallow deduction A and B u/s 263. He cannot disallow deduction C & E u/s 263.

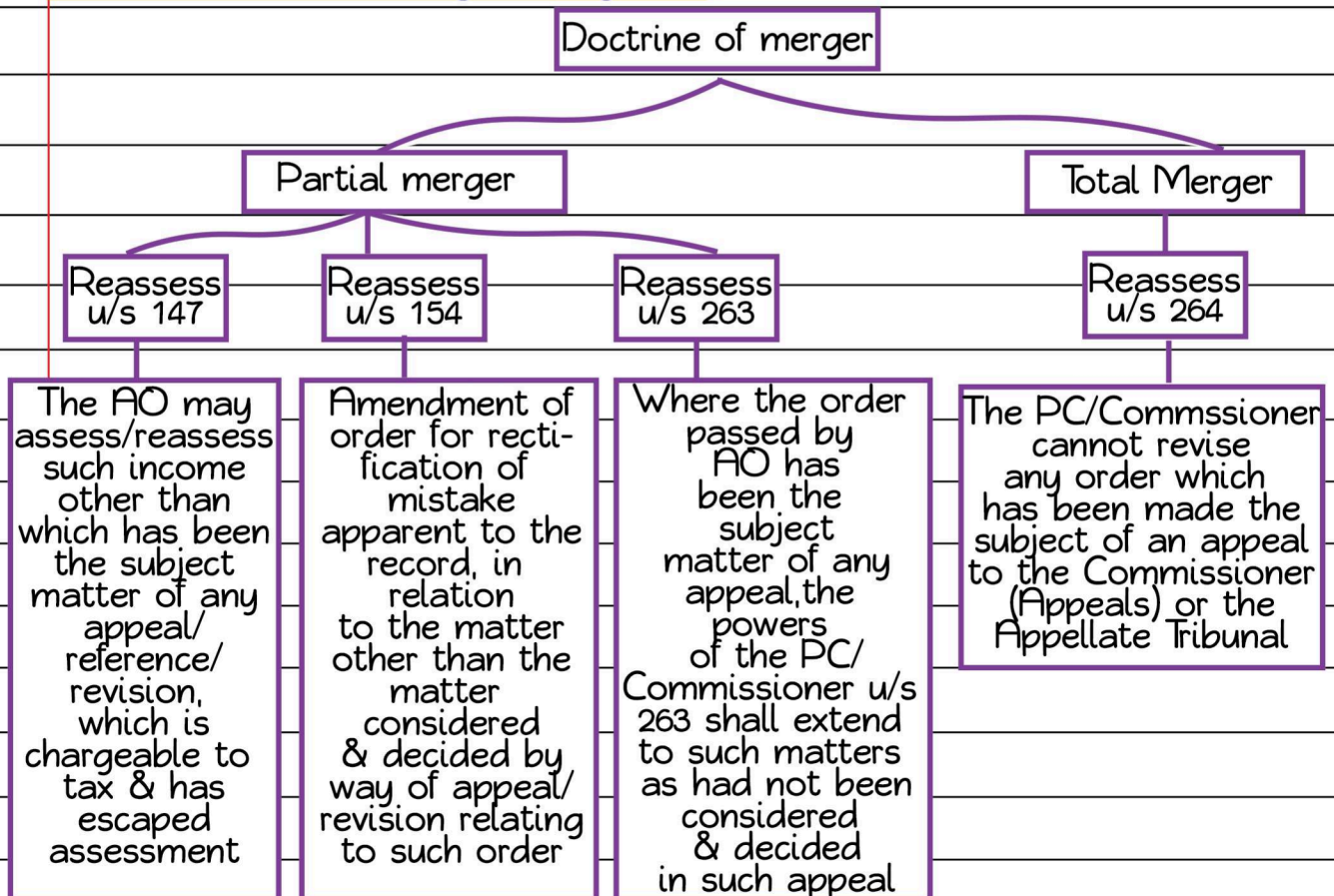
Doctrine of Total Merger

Where matter has been decided in Appeal/Revision then the lower authority cannot decide upon such case nor any other case related therewith. Doctrine of TOTAL MERGER has been affirmed in sec 264

Illustration 2: The AO in an assessment u/s 143(3) disallowed deductions A & B Assessee applied for Revision u/s 264 to CIT, AO wants to rectify the order u/s 154 related to matter A

Answer: AO cannot do so. Doctrine of Total merger applies

Recall : Romancing Analysis



Remedies against Sec 264

- 1 No appeal can be filed either by Assessee or Department
- 2 Even no Appeal against order refusing to do revision u/s 264
- 3 Rectification u/s 154 can be done where there is a mistake apparent on record
- 4 Only remedy is Writ petition

Difference between Set Aside order & cancel order

There is a scope for Fresh Assessment in Set Aside Order (Power available only with ITAT)	There is no scope for Fresh Assessment in Cancel Order
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Relevant Case laws

SV Gopala and Others (Supreme Court)

Does the Central Board of Direct Taxes (CBDT) have the power to amend legislative provisions through a Circular?

Facts: The CBDT had issued a Circular invoking the powers u/s 119 of the Income-tax Act, 1961. The Circular amended the provisions contained in Rule 68B of the Second Schedule to the Income-tax Act, 1961 relating to time limit for sale of attached immovable property.

Issue: Does the CBDT have the power to amend legislative provisions through a Circular?

Supreme Court's Decision: The Supreme Court observed that the CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular. The Supreme Court, accordingly, quashed the circular for being ultra vires.

Delhi Flour Mills Co. Ltd, v CIT

Circulars are not binding on the court.

CIT v. ICICI Bank Ltd. (Bom.)

Would the period of limitation for an order passed u/s 263 be reckoned

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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?

In the present case, an order of assessment for AY 2013-14 was passed u/s 143(3) on 30.1.2015 allowing the deductions u/s 36(1)(vii), 36(l)(viiia) & foreign exchange rate difference. Further, on 10-2-2017 notice of reassessment was issued u/s 148 & an order of reassessment was passed u/s 147 on 31.12.2017 which did not deal with the above deductions. Certain incomes not shown by assessee were assessed u/s 147.

Later, the Commissioner passed an order u/s 263 on 31-3-2019 for disallowing the deduction u/s 36(l)(vii), 36(l)(viiia) & in respect of foreign exchange rate difference which have not been taken up in the reassessment proceedings u/s 147 but which was decided in the original order of assessment passed u/s 143(3).

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. Therefore, Commissioner of Income-tax could have passed the order u/s 263 upto 31.3.2017 & order passed by Commissioner of Income-tax on 31.3.2019 is time barred & invalid.

Smt. Sumitra Devi Khirwal

The Commissioner can revise the order even where records are placed before him by his subordinates who points out the error.

S.M. Oil Extraction Pvt. Ltd.

The CIT 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 assessment.