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# ASSESSMENT, RECTIFICATION AND REVISION OF ORDERS

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## INVESTIGATION : SOURCE OF INFORMATION : FORWARDED TO JURISDICTION ASSESSING OFFICER/CENTRAL CIRCLE

- Search
- Survey
- Statement of annual financial transaction including property transactions from registrar office
- Exchange of information under DTAA
- GST department – Surrender of input credit.
- MCA 21
- Banks – via financial intelligence unit – suspicious transactions
- Police : FIRs cash transaction frauds
- Election time : Cash transaction limitation
- Courts : income information referred to tax office
- Direct complaints

## SELF ASSESSMENT - INFORMATION : AVAILABLE TO ASSESSEE

- **Form 26AS (Annual Tax Statement) :**

Helps in computation of income and claim prepaid tax credits at the time of filing Income Tax Return (ITR) on income.

- **Taxpayer Information Summary (TIS):**

TIS is a statement that summarizes the tax information available with the Income Tax Department for a particular taxpayer.

- **Annual Information Statement (AIS):**

AIS is comprehensive view of information for a taxpayer displayed in Form 26AS.

AIS includes savings account interest, dividend, rent received, purchase and sale transactions of securities/immovable properties, foreign remittances, interest on deposits, GST turnover etc.

**AIS also provides the taxpayer the option to give feedback on the transactions reported.**

## OTHERS POINTS OF ASSESSMENT

- Update the profile
- Adjournments file in time
- Covering letter : Seriatim reply , reply to each query raised, information and documents called etc.
- Annexures page numbers in continuation
- In letter : at the end .....Glad to submit further information and documents if required in this regard.
- File details or submission in Part/ full
- Video conference request
- Uploading submission
- Difficulty vs Grievance

## CASE STUDY

“On perusal of the records, it has been observed that Sh. Anand Kumar Jain and Sh. Naresh Kumar Jain (the Jain Brothers) who are in the business of providing accommodation entries to various beneficiaries through cheques/DD/RTGS/NEFT in lieu of cash, through various paper and dummy companies floated and controlled by them. The Jain Brothers had created a network of shell companies and concerns in order to provide the accommodation entries such as provision of cheque/RTGS etc. for unaccounted cash, provision of fake purchase & sale, commodity profit/loss, fake commission, one time entry or other mode of entries. It is also revealed that the assessee M/s T. R E Private Limited has obtained the accommodation entry amounting to Rs. 1,50,00,000/-”

- A) Where this amount was received in year
- B) Where this amount was repaid in the year
- C) Where the amount received and repaid both during the year

## INGREDIENTS OF SECTION 68 OF THE ACT

- 1) A sum is credited into the books of the assessee
- 2) Maintained for the previous year
- 3) Assessee does not give any explanation about the source of the sum
- 4) Assessee does not give any explanation about the nature of the sum
- 5) The answer by the Assessee does not satisfy the Income Tax Officer

If the above conditions are satisfied, sum is credited to the income of the assessee in the previous year

## CONT..... SECTION-68

### Source of source –

The explanation is required about the nature and source of the said sum in the hands of the person whose name credit is recorded. In case of share capital / share application and premium (resident person )

Thus,required to explain 'source of source'.

This shifts the burden under section 68 and overrides the earlier position, namely, that the assessee can only be asked to explain source of credit in its own books of account but not 'source of source'

[ Tolaram Daga v. CIT [1966] 59 ITR 632 (Assam); Sarogi Credit Corpn. v. CIT [1976] 103 ITR 344 (Pat.)].

This concept of source of source has been negated by various jurisdictional courts.

- a) CIT Vs Daulat Ram Rawatmull 87 ITR 349 (SC)
- b) Anil Rice Mills Versus Commissioner of Income Tax, (2006) 282 ITR 0236
- c) DCITVs Rohini Builders 256 ITR 360

CONT.....  
SECTION-68

- Very exhaustive in nature
- Credited into the account ....any from and nature.
- Applied to all the credits .....whatever ....name ....called ?



# CONT.....SECTION-68

Based-on decisions settled legal position which is applicable to any 'cash credit', like, loans, deposits, advances, share capital or others, is :

- Primary onus is on assessee;
- An assessee does not have to establish **source of source**; except
  - share capital on closely held company and
  - in case of loan or borrowing or any such amount (w.e.f. 1 April 2023)
- If primary onus is discharged, burden shifts to Tax Department;
- AO needs to discharge his burden and reach an objective satisfaction;
- AO has a discretion to assess cash credits;

## OBLIGATION TO PROVE

Hon'ble Calcutta High Court in case CIT vs. Precision Finance Pvt. Ltd. (1994)208 ITR 465 (Cal)

Laid down the following criteria:-

1. Identity of his creditors;
2. Capacity of creditors to advance money; (man of means) and
3. Genuineness of transaction.

## IDENTITY:

- Copy of PAN Card
- Documentary Evidence of Regd. Address of the Investor Entity;
- Master Data Sheet downloaded from the official site of MCA, showing the active status and reflecting CIN No. and all other particulars of the investor entity.
- Copy of Memorandum of Association & Articles of Association of Investor Entity.
- CIN No.,
- Any registrations with MSME, SEBI (in case broker/sub-broker) etc.

## GENUINENESS:

- Copy of Confirmation from the Investor Entity;
- Copies of Share Certificates;
- Certified Copy of Board Resolution of the assessee company, duly authorizing the subscription in the share capital by the investor entity;
- Copy of Allotment Letter;
- Copy PAC 3 Return filed with ROC, duly evidencing the allotment of shares to the investor entity;
- Copies of Share Valuation Report under Section 56(2)(viib) read with Rule 11UA(2)(a) of Income Tax Rules;

## CREDITWORTHINESS:

- Copy of the Bank Statement of the investor entity duly evidencing
  - the availability of sufficient funds at the time of making investments in the share capital of assessee company;
  - duly reflecting the investment in share capital of the assessee company;
- Immediate source of funds as per bank statement of remitter
- Copy of Audited Balance Sheet of the investor entity, duly evidencing
  - the availability of sufficient funds in the form of share capital / reserves and surplus and borrowings, for making investment in the share capital of the assessee company;
  - duly reflecting the investment in the share capital of the appellant company
- Copy of ITR of the investor entity

# Investigation process

- ❑ Notice u/s 133(6)
- ❑ Notice u/s 131
- ❑ Importance of affidavit

## INQUIRIES MADE BY AO ON IDENTITY OF INVESTORS :

- Investor not found on the address given
- Investors responded to the AO/Parties did not respond to the AO
- Investors did not appear before AO
- Nexus of the information with the assessee
- Low income of investing companies
- AO relied on statement of the head of entry providers
- The deponent not offered for cross examination
- The deponent did not take the name of assessee
- No Examination of bank account of the investors by AO

### **Addition on the basis of suspicion**

- Unless an appropriate authority like MCA or AO of those companies declare paper/shell company,
- the inference of AO of third party that investor-company is shell company will not be sustainable.

# KEY POINTS

On the basis of report of investigation wing that loan/share capital is obtained from companies of accommodation entry provider will not be sustainable unless:

- (i) there is corroborative evidence in addition to information from investigation wing,
- (ii) there is linkage of the assessee with the accommodation entry,
- (iii) there is unexplained cash deposit entry in the bank account of lender,
- (iv) the deponent on whose statement reliance is placed against the assessee is offered for cross examination.
- (v) it is not established that investing companies are shell companies,



# KEY POINTS

- vi. investment into assessee company by the investing companies has been made from their own resources,
- vii. identity of the investing companies is established,
- viii. there is no cash deposit in the bank account of investing companies,
- ix. credit entries in the bank account of investing companies are explained,
- x. there is no evidence that money of the assessee-company is routed through investing company for making investment into assessee-company, then the principles laid down by the Hon'ble Apex Court in CIT v. Lovely Exports (P.) Ltd. [2009] 319 ITR 5 cannot be ignored

## CASE STUDY

The information from investigation Wing with a category High Risk Case. It has been stated in the information that a survey action was conducted u/s 133A of the Income Tax Act, 1961 in the case of Sh. NKA , Prop. M/s N H Factory and during the course of survey proceeding, it has been established that he is indulged in providing accommodation entry in the form of bogus sales/purchases to beneficiary entities through the various entities/concerns controlled by him in lieu of commission. The assessee Mr. Singh, Prop. R. A. Enterprises has made bogus purchase amounting to Rs. 1,22,50,000/- from the entity of Sh. N K A.

# CHECK LIST

- Audited Financial Statements for the year.
- Audit Report in Form 3CB-CD.
- The Party Wise summary of Purchases made during the financial year
- Copy of purchase ledger Account for the Financial year in the books of assessee.
- Copy of Ledger Accounts of N k Textiles in Assessee books of accounts.
- Copy of purchase bills/ invoice of N.K Textiles for the financial year.
- Proof of transportation of goods.
- Proof of transportation charges paid
- Stock Register of Items purchased from the N.K Textiles
- Copy of extract of Bank Statements in support of payments made to N.K Textiles.
- Party Wise summary of Sales made during the financial year
- Sales ledger account for the Financial year in the books of assessee
- Copy of corresponding sales invoice for the financial year
- Copy of extract of Bank Statements in support of payments received from parties for corresponding sales
- Comparative chart of Gross profit ratio of FY with earlier two year

## CONTI.....

- Confirmation of accounts by M/s. NK.Textiles , confirming the Assessee transactions with his firm. (latest date )
- Affidavit of Mrs. N.Aggarwal, Proprietor of M/s N. k.Textiles on oath confirming the factual matrix of transactions with Assessee
- Ask for confront information and statement of person if that information and documents are being used against Assessee.
- Ask for cross examination of person whose statement is being rely and used against the assessee
- Settled law that in case of alleged bogus purchases,
  - If the sale proceeds of goods have been duly accounted for in books of Accounts and offered to tax and the Assessee made payments through Banking channels, then entire purchase made by the Assessee could not be added back as income but only profit element embedded there can be treated as income of the Assessee
  - Mere presumption on the basis of conjectures, surmises and premises that in the guise of bogus/ accommodation entries, assessee's own unaccounted income/on- money, had been routed in its books of account, and without bringing on record any corroborating material or evidence, to substantiate the source and generation of 'on-money' by the assessee.

## CASE STUDY :

- Facts of last case study only change is sale in place of purchase

## CASE STUDY :

During the year under consideration, as per details available on records, it is noticed that the assessee has made bogus transaction with Trade next Securities Limited (Erstwhile Lifeline Securities Limited) and broker Dayanand Singh, details of which are as under:

<b>Sr. No.</b>	<b>Name</b>	<b>Transaction Details</b>	<b>Amount</b>
1	Dayanand Singh	Fictitious Profit in Equity/Derivative Trading	28,86,000/-
2	Dayanand Singh	Fictitious Profit in Equity/Derivative Trading	21,39,000/-
3	Lifeline Securities Limited	Bogus LTCG through reputed stocks by issuing ante dated forged contract notes.	49,69,626/-

## CASE STUDY ..CONTI...

- Where no such income / loss is part of computation of income
- Where exemption u/s 10(38) claimed
- where no fictitious Profit in Equity/Derivative Trading in computation of income

## CHECK LIST :

In support of sale of equity shares the following documents :

- Contract note of sale of shares
- STT paid as per Securities Transaction Tax under chapter VII of the Finance (No 2) Act 2004
- Copy of Bank Account Statement for the F.Y. in respect of sales consideration of such shares received through banking channel
- Copy of Assessee's account in the books of broker in respect of sale of shares during the financial year
- Copy of Demat account statement of the assessee in respect of shares sold during the financial year





In support of purchase of shares the following documents :-

- Copy of Contract Note and Purchase Invoice in respect of shares of from the SEBI registered stockbroker
- Copy of Assessee's account in the books of registered stockbroker
- Extract of bank statement from where the payment made for purchase of shares.
- D - Mat account in which these shares transfer in Assessee account

## OTHER FACTS

- The Assessee is engaged in trading of shares and dealing in F& O (Derivatives) ;
- The Assessee is regularly buying and selling shares in the market;
- The Assessee Broker and depository is “renowned broker ” ;
- The shares purchased through broker from the stock market (The shares are not allotted as preference shares by company or not acquired by way of offline transaction) ;
- The payment has been made by RTGS to the broker from bank for purchase of shares ;
- The Shares have been credited in assessee demat account on date purchase of shares (There is no delay in dematerialization of shares) ;
- Detail of bonus shares / split share / transaction of these shares reported in the demat account.

# OTHER SUBMISSION

- The volume of transactions carried out of that scrip to substantiate actively traded
- In case of profit transactions – proof that tax paid on that
- Explain the mode of operation in stock exchange where – buyer & seller are unaware of each other and filed nature of transactions done on stock market – with snapshots
- Bring on record that no penalty has been imposed by SEBI, hence it's a genuine transaction
- Establish broker (sales) and Broker ( purchase ) are independent and not related

## RE - ASSESSMENT

- Jurisdictional Assessing Officer
- Faceless Assessing Officer

# CHECK LIST

Notice u/s 148A (b) of the Act : Show cause notice issued

DIN number

Period to comply - minimum 7 days maximum 30 days

limitation period : 3 years / 10 years from the end of AY

information provided with that notice

Extension/ adjournment

Information suggest escapement of income

148A ( c) : Considering the reply submit by Assessee.

Order 148A(d) of the Act with notice u/s 148

DIN

Whether order pass in time : 30days From end of month

Decide on objections disposal

Options : file return / writ

# VARIOUS SOP'S

**SOP Personal Hearing** : Standard Operating Procedure (SOP) for Personal hearing through Video Conference under the Faceless Assessment Scheme, 2019

*Circular F. No. Pr. CCIT/NeAC/SOP/2020-21, dated 23-11-2020*

The Principal Chief Commissioner of Income Tax, National e-assessment Centre, with the prior approval of the Central Board of Direct Taxes, New Delhi, lays down the following circumstances in which personal hearing through Video Conference shall be allowed in the Faceless Assessment Scheme, 2019:

Where any modification is proposed in the draft assessment order (DAO) issued by any AU and the Assessee or the authorized representative in his/her written response disputes the facts underlying the proposed modification and makes a request for a personal hearing, the CCIT ReAC may allow personal hearing through Video Conference, after considering the facts & circumstances of the case, as below:-

1. The Assessee has submitted written submission in response to the DAO.
2. The Video Conference will ordinarily be of 30 minutes duration. It may be extended on the request of the Assessee or authorised representative.
3. The Assessee may furnish documents/ evidence, to substantiate points raised in the Video Conference during the session or within a reasonable time allowed by the AU, after considering the facts and circumstances of the case.

# SOP ISSUED

**SOP Assessment Units** : Standard Operating Procedure (SOP) for Assessment Unit under the Faceless Assessment Scheme, 2019

*Circular F. No. Pr. CCIT/NeAC/SOP/2020-21, dated 19-11-2020*

- A. Issue of Initial Questionnaire u/s 142(1)
- B. Process of issuance of notice u/s 142(1)/ questionnaire
- C. Grant of adjournment to initial notice u/s 142(1) on request of taxpayer or a Suo-moto adjournment
- D. Procedure to be adopted in case of non-compliance of any notice u/s 142(1) & passing of best judgement assessment u/s 144 of the Act
- E. Issue of penalty notice & levy of penalty u/s 272A for non-compliance of 142(1) notice

## SOP ASSESSMENT UNITS ...CONTI...

- F. Analysis of Information submitted in response to questionnaire u/s 142(I)
- G. Issue of additional questionnaire u/s 142(I)
- H. Reference to Verification Unit for online enquiry/Verification.
- I. Sending reference to VU for field physical verification.
- J. Sending reference to Technical Unit (TU) \*
- K. Handling Re-assessment under section 148 of the Act
- L. Handling approval for withholding of refunds u/s 24IA of the Act
- M. Handling of revised return cases
- N. Handling of unverified return cases
- O. Handling of cases with CPC related defect issues



## SOP ASSESSMENT UNIT CONTI....

- P. Handling of reference for attachment u/s 281B of the Act (Need to make reference to Board for amendment after reading New scheme)
- Q. Handling of Compulsory Scrutiny cases & Handling of Legacy Set Aside cases
- R. Handling of PAN marked as fraud PAN.
- S. Preparation and Submission of draft assessment order.
- T. Issue of Show Cause Notice
- U. Passing of Final Assessment Order
- V. Handling Clarifications sought by VU / TU
- W. Handling of cases received by new AU after suggestion of modification by RU

## SOP ASSESSMENT CONTI...

### J. \* Sending reference to Technical Unit (TU)

- ✓ Interpretation of law / legal issues
- ✓ Analysis of Books of Accounts
- ✓ Forensic Analysis of documents, data, device etc.
- ✓ Special Audit/ Forensic Audit
- ✓ Assistance for finding passwords and deciphering digital files, applications etc.
- ✓ Valuation of tangible or intangible assets.
- ✓ Determination of Armed Length Price and Fair Market Value.
- ✓ Translation, transcription etc.
- ✓ Assistance on trade related practices, technical or Management Issues
- ✓ Other technical matters.

# SOP – ASSESSMENT UNITS

## **SOP Assessment Units**

### ➤ **Annexure I - 1**

SOP for handling non-responsive cases

### ➤ **Annexure I - 2**

SOP for handling Address Verification Requests

### ➤ **Annexure I - 3**

SOP for handling untraceable cases

# STAY OF DEMAND - PRECAUTIONS / REMEDY

- Movement you are served an assessment order
  - Find apparent errors (no two views possible and no doubts) → Prepare rectification application → Defence
    - Pending 154 petition – Recovery cannot be made till disposal of petition
  - File a Stay petition within 30 days of order/ less time as mentioned in notice. This should include:
    - Prima facie nature of case
    - Merit in the case - to highlight in facts as well as law
    - If certain evidence could not be filed during assessment, file with stay petition
    - Financial and Liquidity position
      - If assessee is strained due to borrowing – file evidence
      - File balance sheet to establish the hardship as evidence
  - Should be well drafted in a manner if stay petition is rejected – can be used for Writ Petition in HC
- Application to High Pitched assessment committee.

## GUIDELINES FOR STAYING DEMAND

(i) A demand will be stayed only if there are valid reasons for doing so. Mere filing an appeal against the assessment order will not be sufficient reason to stay the recovery of demand. A few illustrative situations where stay could be granted are—

- (a) if the demand in dispute relates to issues that have been decided in assessee's favour by an appellate authority or Court earlier; or
- (b) if the demand in dispute has arisen because the Assessing Officer had adopted an interpretation of law in respect of which there exist conflicting decisions of one or more High Courts (not of the High Court under whose jurisdiction the Assessing Officer is working); or
- (c) if the High Court having jurisdiction has adopted a contrary interpretation but the Department has not accepted that judgment.

It is clarified that in these situations also, stay may be granted only in respect of the amount attributable to such disputed points.

## STAY OF DEMAND

- CBDT Instruction No. 96 dated 21.8.1969 read with instruction No. 1914 dated 2.12.1993
- Where the demand is high pitched and excessive stay should be granted.
- Hon'ble Delhi High court in case of Soul & DCIT (2010) 323 ITR 305 (Delhi) and Taneja Development and Infrastructure Ltd.Vs.ACIT & Others (2010) 324 ITR 247 (Delhi)
- Paragraph 2 of the Instruction No. 96, dated 21-8-1969 issued by the CBDT stated that where the income determined is substantially higher than the returned income, that is, twice the latter amount or more, then the collection of tax in dispute should be held in abeyance till the decision on the appeal is taken

## STAY OF DEMAND

It is true that Instruction No. 4(B)(b) of the Circular dated 29-2-2016, gives two instances where less than 15 per cent can be asked to be deposited. However, it is equally true that the factors, which were directed to be kept in mind both by the Assessing Officer, and by the higher superior authority, contained in Instruction No.2B(iii) of Circular No.1914, continue to exist. For, as noted above, the said part of Circular No.1914 has been left untouched by the Circular dated 29-2-2016

Flipkart India (P) Ltd. v. Asstt. CIT [2017] 396 ITR 551/79 taxmann.com  
159/248 Taxman 555 (Karn.)(HC)

## STAY OF DEMAND

- What if stay is not granted? (Alternate remedies available)
  - Filed before AO → Rejected
  - File before Principal commissioner → Plead for instalment payments.
  - File writ petition before High Court (high demand case)





# RECTIFICATION OF MISTAKE U/S 154

# RECTIFICATION U/S 154: UNDERSTANDING THE SECTION



## Scope of section 154:

- Where there is a **mistake apparent from record**, With a view to rectifying the mistake, **the Income tax authority** may amend:
  - Any order passed by it.
  - Intimation or deemed intimation under 143(1).
  - Intimation u/s 200A(1)
  - Intimation u/s 206CB.
- Income tax authorities is referred u/s 116 of the Income Tax Act, 1961

**Point to be noted:** Order passed by the ITAT can not be rectified as it is not covered under the ambit of Income Tax Authority as per section 116 of the Act. However, ITAT can rectify the mistake in its order u/s 254(2).

## RECTIFICATION U/S 154: MEANING OF CERTAIN TERMS



**Mistake:** The dictionary meaning of the word 'mistake' is incorrect idea or opinion, thing incorrectly done or thought, error of judgement, misunderstand the meaning of. This word has a special significance in the Income Tax Act because only those mistakes which are apparent from record could only be rectified. Thus, the mistake which can be rectified u/s 154 is not confined to clerical or arithmetical mistakes. The **Supreme Court in the case of T.S. Balaram, ITO v. Volkart Brothers and ors.[1971] 82 ITR 50 (SC)**, had held that a **mistake apparent from the record must be an obvious and patent mistake. It should not be such which can be established by a long drawn process of reasoning on points in which there may be conceivably two opinions.** That is, the mistake may be a mistake of fact or mistake of law but it must not involve a debatable point of law. Further, **where the mistake has to be determined on fresh investigation of facts, rectification will not be justified.**

## RECTIFICATION U/S 154: MEANING OF RECORD

**Record:** 'Record' includes the entire proceedings - The 'record' referred to in section 154 does not mean only the order of assessment, but it comprises all proceedings on which the assessment order is based, and the assessing officer is entitled for the purpose of exercising his jurisdiction under section 154 to look into the whole evidence and the law applicable to ascertain whether there was an error.

'Record' under section 154 means record of the case comprising the entire proceedings including documents and materials produced by the parties and taken on record by the authorities which were available at the time of passing of the order which is the subject-matter of the proceedings for rectification. They cannot go beyond the records and look into fresh evidence or materials which were not on record at the time the order sought to be rectified was passed - ***Gammon India Ltd. v. CIT [1995] 214 ITR 50 (Bom.)***. Documents outside the record cannot be referred to - Under section 154, there has to be a mistake apparent from the record. In other words, a look at the record must show that there has been an error and that error may be rectified. Reference to documents outside the record and the law is impermissible when applying the provisions of section 154 - ***CIT v. Keshri Metal (P.) Ltd. [1999] 237 ITR 165 (SC)***.

The 'record' for purpose of section 154(1) is the record available to the authorities at the time of initiation of the proceedings for rectification and not merely the record of the original proceeding sought to be rectified - ***CIT v. M.R.M. Plantations (P.) Ltd. [1999] 240 ITR 660 (Mad.)***.

Entire record of the assessee can be looked into - The power of rectification under section 154 is to be exercised with reference to the records of the assessee available with the Assessing Officer and not with particular reference to the assessment alone. The error apparent on the face of the record cannot be said to be the record of one assessment but the entire record of the assessee relating to all the assessment years - ***Upasana Hospital and Nursing Home v. CIT [2002] 253 ITR 507 (Ker.)***.

Also ref: ***Mahendra Mills Ltd Vs. P.B. Desai, ACIT (1975) 99 ITR 135 (SC)***.

## RECTIFICATION U/S 154: MEANING OF MISTAKES APPARENT FROM RECORD

- **'Mistake'** is not only an arithmetical or clerical error. It is subjective and is something which a duly and judiciously instructed mind can find out from the record  
- *Hotz Hotels (P.) Ltd. v. CIT [2001] 118 Taxman 94/248 ITR 647 (Delhi)*
- **'Apparent'** must be something which appears to be so ex facie and is incapable of argument or debate  
- *Cobra Instalacions Y Services, SA v. Dy. DIT [2008] 21 SOT 613 (Delhi)*
- Mistake apparent from the record v. Mistake apparent on the face of record
  - T.S. Balaram v. Volkart Brothers, Bombay, (1971) 2 SCC 526 "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record"
  - IT Act v. Civil Procedure Code, 1908
- Simple mistake cannot be a test
  - what is simple to one mind may not be simple for another mind
- Whether subsequent decision of the Apex Court, jurisdictional High Court or any other High Court amounts to a mistake?
  - Judgments only clarify the law
- Mistake is not confined to the mistake of facts, but includes mistake of law as well
- Arguable points are not mistakes

## RECTIFICATION U/S 154 : UNDERSTANDING THE SECTION

### A. Whether The Doctrine Of Partial Merger Or Total Merger Will Be Applicable In Case Of Section 154?

Where any matter has been considered and decided in any proceedings by way of appeal or revision, then rectification can be made of any matter except the matter which has been considered and decided in appeal or revision.

That is Doctrine of total mere is overruled here and doctrine of Partial merger shall hold true.

For better understanding,

Let's suppose, there are 4 expenses which have been disallowed by the AO and the assessee has filed an appeal for the 2 expenses out of the 4, disallowed and the matter related to the 2 expenses has been decided in the appeals.

Here in this case, rectification under section 154 cannot be made for the 2 expenses that have been considered and decided in appeals. However, rectification can be made for the other 2 expenses that have been disallowed and not a subject matter of appeals.

### B. When can section 154 be invoked?

The authority concerned may make amendment under 154(1):

of it's own motion or

when the mistake has been brought to it's notice by:

○the assessee or

○by the deductor or

○by the collector or

○Where the authority concerned is Joint commissioner of Appeals or the commissioners of Appeals, by the AO

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## RECTIFICATION U/S 154 : OTHER POINTS TO BE NOTED

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Reasonable opportunity should necessarily be given to the assessee before making any enhancement of liability or reduction in refund (i.e Order prejudicial to the assessee).

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The order shall necessarily be passed in writing and demand notice shall necessarily be served u/s 156 in case of enhancement of liability of the assessee.

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Where the order u/s 154 reduces the liability ( i.e. order in favour of the assessee), The AO should make any refund that may be due to the assessee.

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If there is a retrospective amendment in law, the same can be given effect to by passing a rectification order under 154. However, the period of limitation of four year shall apply.

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If rectification order is passed by the AO, then against such rectification order an appeal can be filed to CIT(A) or revision application can be made to CIT u/s 264.

## IMPORTANT ISSUES IN RECTIFICATION U/S 154: TIME PERIOD FOR FILING RECTIFICATION

- As per section 154(7) of the Income Tax Act , the rectification of order can be sought within **4 years** from the **end of financial year in which order under any other section is passed**. Here various question crept in the curious mind Whether four years shall be counted from original order or rectified order.
- Where the application for rectification has been filed by the assessee, the authority shall amend the order or refuse to allow the claim within **6 months** from the end of the month in which the application is received by the authority.
- Point to be noted: **The Honorable Supreme court in the case of Hind Wire Industries Ltd. v. CIT 1995 AIR 1133** that 4 years shall be counted from the last order and not from the original order.





## RECTIFICATION U/S 154: CIRCULARS RELATED TO SECTION 154

- ***As per Circular No. 4/2012 dated 20<sup>th</sup> June 2012***, If the assessee has made the rectification application within the prescribed period of 4 years and the concerned authority could not pass the rectification order within the said 4 years, then it is permitted that the IT Authority can make a belated rectification order to the **advantage of the assessee**.
- ***As per Circular No. 68 dated 17<sup>th</sup> November 1971***, A mistake arising as a result of subsequent interpretation of law by supreme court\* would constitute a mistake apparent from record and rectification u/s 154 is possible. However, the overall time limit of 4 years for passing any rectification order shall continue to apply.

\*Rectification u/s 154 is not possible on the basis of high court judgement.

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## IMPORTANT ISSUES IN RECTIFICATION U/S 154:

### **Intimation cannot be rectified after issue of notice**

If a notice has been issued under section 143(2) after sending the intimation under section 143(1)(a), proceedings under section 154(1)(b) cannot be initiated for rectifying that intimation

Lakhanpal National Ltd. v. Dy. CIT [1996] 222 ITR 151 (Guj.).

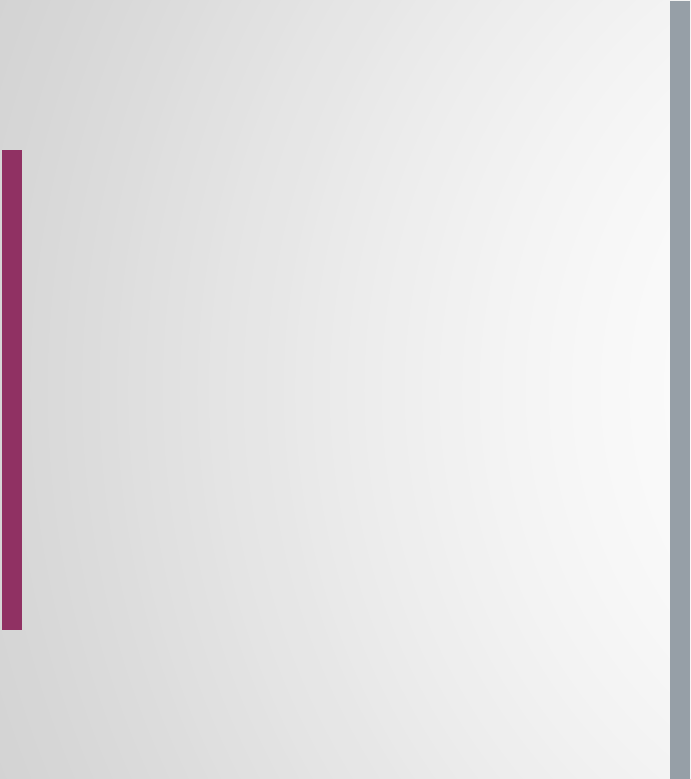
## SECTION 157A – FACELESS RECTIFICATION/ AMENDMENTS SCHEME - YET TO BE NOTIFIED

1. The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of rectification of any mistake apparent from record under section 154 or other amendments under section 155 or issue of notice of demand under section 156, or intimation of loss under section 157, 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) Optimizing utilisation of the resources through economies of scale and functional specialization
  - c) Introducing a team- based rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of laws, with dynamic jurisdiction.
2. The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:
3. Provided that no direction shall be issued after the 31st day of March 2022.
4. Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

## RECTIFICATION U/S 154: ISSUES IN SECTION 154

**The most common issues faced by the assessee for which rectification under section 154 can be sought:**

- Tax Credit mismatch
- Disallowance of an expense (mistake apparent from record)
- Presentation error made by the assessee due to which disallowance is done in the intimation.
- Interest u/s 234, wrongly charged.
- Error of principle- Same income added twice
- Deduction not allowed
- Set off not allowed for brought forward losses in the past



REVISION OF OTHER  
ORDERS PREJUDICIAL  
TO REVENUE U/S 263

# REVISION

## U/S 263:

### BASICS

- **Section 263:**

Section 263(1) of the Income-tax Act, 1961 ('the Act') provides revisionary power to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner if he is of the opinion that an order passed by the AO is **erroneous and prejudicial to the interests of the revenue**.

1. **Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83:**

- Whether in order to invoke section 263 Assessing Officer's order must be erroneous and also prejudicial to revenue and if one of them is absent, i.e., if order of Income-tax Officer is erroneous but is not prejudicial to revenue or if it is not erroneous but is prejudicial to revenue, recourse cannot be had to section 263(1) - Held, yes
- Whether, where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified - Held, yes

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## REVISION U/S 263:

- The following orders may be passed u/s 263 after making such an inquiry and after giving an opportunity of being heard:
  - Enhancing the assessment
  - Modifying the assessment
  - Cancelling the assessment and directing the fresh assessment\*

\*Appeal against fresh assessment will be filed before CIT(A) [Crompton Greaves Limited v. CIT [2016] 46 ITR(T) 465 (Mumbai - Trib.)]

## REVISION U/S 263: TIME LIMIT FOR REVISION OF ORDER

- No order shall be made under this section after the expiry of 2 years from the end of the financial year in which order sought to be revised was passed.
- However, an order under this section may be passed any time to give effect to the finding or direction contained in an order Appellate Tribunal, High Court or Supreme Court.





REVISION U/S  
263:

## When is an order deemed to be erroneous and prejudicial to the Interest of the revenue?

When in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner:

- The order is passed **without making inquiries or verification** which should have been made;

*-Crompton Greaves Limited v. CIT [2016] 46 ITR(T) 465 (Mumbai - Trib.)*

- The order is passed allowing any **relief without inquiring** into the claim;
- The order has not been made in accordance with any order, direction, or instruction issued by the Board under section 119; or
- 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.

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Failure to make necessary inquiries by the AO can result in an erroneous order and accordingly it can result in Revision u/s. 263. On the other hand, Reassessment does not permit a review of the order passed by the AO unless there is some fresh tangible material. Failure on the part of the AO can not result in Reassessment.

**REVISION U/S 263:  
REVISION U/S 264 v/s REASSESSMENT U/S 147**

## REVISION U/S 263:

### A. Whether 143(1) intimation can be revised u/s 263?

- View 1:-Intimation or deemed intimation under section 143(1) is not an order and therefore cannot be revised under section 263 - ***Rajesh Jhaveri Stock Brokers 291 ITR 500(SC)***

- View 2: A contrary view was taken by the Hon'ble Bombay High Court in the case of

***CIT v. Anderson Marine & Sons (P.) Ltd [2004] 266 ITR 694 (Bom.)(HC)***

### B. Whether an order passed u/s 195/197 can be revised u/s 263?

- Any communication by the AO u/s 195(2) that disposes of application made under section 195(1) and determines liability towards tax to be deducted at source in accordance with provisions of section 195(2), is an order for purposes of section 263.

***Board of Control for Cricket in India v. DIT (Exemption) [2005] 96 ITD 263 (Mum.)(Trib.)***

## REVISION U/S 263:

**C. Where the commissioner set aside the assessment order u/s 263 on issues relating to a particular business can the AO make enquires relating to another business, in respect of which the original order passed by the AO has attained finality.**

The Allahabad High Court in the case of Smt. Shobha Govil v. ACIT held that the AO's query should be confined only to the said business and cannot extend to the other business.

**D. Whether the doctrine of Partial Merger applicable on section 263.**

Explanation 1(c): where any order passed by the Assessing Officer or the Transfer Pricing Officer had been the subject matter of any appeal filed, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend to such matters as had not been considered and decided in such appeal. Hence, the doctrine of partial merger has been affirmed. - **CIT v. Fortaleza Developers (2015) (Bom)**

## REVISION U/S 263: OTHER POINTS TO BE NOTED

Material which was made available after the assessment can also be considered for the purpose of Section 263.

**- CIT v. Export House [2002] 122 Taxmann 879/256 ITR 603 (Pun. & Har.)**

Where the assessee had given a detailed explanation regarding his claim and AO passed an order in which he did not make an elaborate discussion, the commissioner would not have the power to exercise revisionary jurisdiction u/s 263. The commissioner had no power to revise revisionary jurisdiction u/s 263 in the given facts and the circumstances of the present case.

**- Dhruv N. Shah v. Dy. CIT 273 ITR 59 (Bom. - Trib.) (AT)**

where advance tax paid by assessee on basis of its own estimate was less than seventy-five per cent of tax determined on completion of regular assessment, but ITO did not calculate interest and make demand of it, order of ITO was prejudicial to interest of revenue and, therefore, Commissioner while exercising power under section 263, was right in directing ITO to charge interest under section 215.

**- Addl. CIT v. Saraya Distillery [1978] 115 ITR 34 (All.)**



# REVISION OF OTHER ORDERS U/S 264

## UNDERSTANDING THE SECTION:

- Applicable to **any order other than an order to which section 263 applies.**
- Commissioner may act **Suo moto** or on **application made by the assessee**
- Commissioner may call for the record of any proceedings under the Act in which such order has been passed
- Order may be passed **not being prejudicial to the assessee**
- An **order declining to interfere** is **not an order prejudicial to the assessee**

**REVISION OF  
OTHER ORDERS  
U/S 264:**

# REVISION U/S 264: TIME LIMIT U/S 264

## Time Limit u/s 264

- The Commissioner shall not of his **own motion** revise any order under this section if the order has been made **more than one year previously**.
- 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

## Remedy available to the assessee

- If commissioner is satisfied that the assessee was prevented by sufficient cause from making the application within that period, he may admit an application made after the expiry of that period.

## Period of Limitation u/s 264

- An order shall be passed **within one year from** the end of the financial year in which such application is made by the assessee for revision.
- Time taken in giving an opportunity to the assessee to be re heard under section 129 and any period during which any proceeding under this section is stayed by an order shall be excluded.



## REVISION U/S 264:

- If 263 applies, then no 264 but if 264 then 263 may also apply. An order of AO which has been revised u/s 263 cannot be revised u/s 264.. Therefore, after revision u/s 263, revision u/s 264 is not possible. However, after revision u/s 264, revision u/s 263 is possible.

- *Illustration 1:* Assessing officer in his order:

Allows Deduction A

Allows Deduction B

Allows Deduction C

Disallows Deduction D

Disallows Deduction E

Commissioner under section 263 makes a revision of order of A.O. and disallows deduction A & B. Now revision under section 264 is not possible on any issue.

- *Illustration 2:* Assessing officer in his order:

Allows Deduction A

Allows Deduction B

Allows Deduction C

Disallows Deduction D

Disallows Deduction E

Commissioner under section 264 makes a revision and allows deduction D & E. Now Commissioner under section 263 can revise the order of the order of A.O. and disallow deduction A, B and C.

## REVISION U/S 264:



### **Precondition for invoking section 264:**

- Revision under section 264 is not possible if an appeal has been filed to CIT appeal on any issue
- Revision u/s 264 is possible if the assessee has not filed an appeal to CIT appeal and
  - The time period for filling an appeal to CIT(A) has expired or
  - where time for filing appeal to CIT(A) has not expired, the assessee has waived his right to appeal to CIT(A).

## REVISION U/S 264: OTHER POINTS TO BE NOTED

No appeal is possible against an order u/s 264. however, it can be challenged in the high court or supreme through writ petition and leave petition respectively

If there is a mistake apparent from record in order passed u/s 264, then CIT can rectify the mistake in order section 264 passing a rectification order u/s 154.

**Doctrine of Total Merger:** Commissioner does not have a power to revise an order under section 264 if same order has been made subject to an appeal to Tribunal, even though relief claimed in revision is different from relief claimed in appeal before Tribunal (irrespective of fact whether appeal is by assessee or by department)

- **Hindustan Aeronautics Ltd. v. CIT [2000] 243 ITR 808**

## REVISION U/S 264: OTHER POINTS TO BE NOTED

Where an assessee made bonafide mistake of including exempt income in her return as taxable income and same could not be rectified by filing revised return as original return was filed belatedly, since assessee had no other remedy except taking recourse to file revision application under section 264, Commissioner could not have rejected revision application merely on ground that assessee failed to file revise return.

***Ena Chaudhuri v. Assistant Commissioner of Income-tax (HC)(Calcutta)***

Condonation of delay in filing petition u/s 264: Proviso to Section 264(3) empowers the CIT to admit and entertain an application for revision under section 264(1), if the assessee is prevented by 'sufficient cause' from making the application within the specified period.

## REVISION U/S 263 v/s REVISION U/S 264

S.N	Section 263	Section 264
1	Revision of order prejudicial to the revenue	Revision of orders prejudicial to the assessee.
2.	An appeal can be filed to ITAT against the order passed u/s 263	No appeal can be filed against the order passed u/s 264. Only Writ petition
3.	Revision is possible of the issue which have not been considered and decided in appeal.	Revision u/s 264 is not possible on any issue if an appeal has been filed to CIT(A).
4.	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.
5.	Revision is suo moto or when the error is brought to the notice by the Assessing Officer.	Revision is Suo moto or on an application made by the assessee.
6.	Order u/s 263 can be passed upto 2 years from the end of financial year 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 financial year in which application was filed.

## 264A

# FACELESS REVISION OF ORDERS SCHEME – YET TO BE NOTIFIED

(1) 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.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

**Provided** that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

## INTERPLAY BETWEEN RECTIFICATION AND REVISION U/S 264:

- Assessee can opt for rectification u/s 154 with a view to rectify any mistake apparent on record. However, the assessee can opt for revision u/s 264 for other issues also.
- Revision Order passed u/s 264 cannot be prejudicial to the assessee. However, rectification order passed u/s 154 may result in enhancement of the liability of the assessee or reducing the refund amount. It can only be passed after providing the opportunity of being heard to the assessee.
- Assessee can opt for rectification u/s 154 up to the expiry of 4 years from the end of the financial year in which order sought to be rectified was passed. However, revision proceedings u/s 264 can be opted by making an application within 1 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.
- As per the provisions of rectification u/s 154, the authority shall pass an order, within a period of 6 months from the end of the month in which the application is received. However, as per the provisions of revision u/s 264, an order shall be passed within 1 year from the end of the financial year in which such application is made by the assessee.
- If the assessee has opted for an appeal before CIT(A) or ITAT, then he can also opt for rectification u/s 154 for that part of the order which was not the subject matter of an appeal and was left untouched by the appellate authority.

However, where the order passed is the subject matter of an appeal before CIT(A) or ITAT, the revision power u/s 264 comes to an end. In other words, the assessee cannot opt for revision u/s 264 during the pendency, or even after the disposal of the appeal by the CIT(A) or the ITAT.

THANK YOU



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