

**POST ASSESSMENT REMEDIES-
APPEALS, REVISION, RECTIFICATION**

SEMINAR AT NASHIK

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CA REEPAL TRALSHAWALA

REMEDIES AVAILABLE

Following remedies available post assessment order-

- Appeal to CIT(A) u/s.246A
- Revision to CIT u/s.264
- Rectification to AO u/s.154

Appeal to CIT(A)

- Sec. 246A
 - Right to appeal conferred by Statute and not inherent
 - Section lists out orders that are appealable
 - Thus, orders not specified in this section are not appealable such as certificate granted u/s.197; order refusal to grant stay of demand; order for levy of interest u/s.234A, 234B, 234C; 220(2); order passed u/s.264 rejecting revision petition, order passed in pursuance to direction of DRP; etc.
 - Person aggrieved only can file appeal and no one else
 - Additions/Disallowances accepted in assessment proceedings [refer- Rameshchandra & Co. v. CIT 168 ITR 375, 380 (Bom); Western India Automobiles v. CIT 112 ITR 1048 (Bom)]
 - whether any remedy lies;
 - What if such acceptance is by Authorised Representative
 - What if such acceptance is in respect of legal issue

Appeal to CIT(A)

- Sec. 249 (1)
 - Appeal to be filed in prescribed form (Form 35) and verified in prescribed manner (to be filed in duplicate)
 - Grounds of Appeal & Statement of Facts to be attached alongwith-
 - Copy of order appealed against
 - Original notice u/s.156
 - Challan showing payment of prescribed fees
 - If appeal against penalty order, then copy of main order i.e. assessment order also to be attached.
 - Payment of prescribed Fees
 - Total income as computed by AO is-
 - » Less than Rs.1 lac – Fees to be paid is Rs.250/-
 - » More than Rs.1 lac but less than Rs.2 lacs – Fees is Rs.500/-
 - » More than Rs.2 lacs – Fees is Rs.1,000/-
 - » Appeal filed not covered by above, then fees is Rs.250/-
 - » Total income determined at negative figure – Minimum fees of Rs.250/- to be paid – Gilbs Computer Ltd. v. ITAT 317 ITR 159 (Bom) – same for appeal against penalty orders – Fees Rs.250/-

Appeal to CIT(A)

- Sec. 249 (2)
 - Time Limit for filing appeal
 - Within 30 days from service of-
 - Notice of demand where appeal is against assessment or penalty;
 - In any other case, intimation of order sought to be appealed
 - Limitation commences from date of receipt of notice of demand and not from the date of receipt of assessment order – Charki Mica Mining Co. Ltd. v. CIT 111 ITR 193 (Cal)(HC)
 - Within 30 days from date of tax payment, if appeal u/s.248
 - Hence, important to preserve envelop or at least make note of date of receipt of demand notice so as to file the appeal in time and also prove the date of receipt.

Appeal to CIT(A)

- Sec. 249 (3)
 - Condonation of delay in filing appeal
 - Only if CIT(A) is satisfied of reasonable cause
 - Delayed appeal admission not matter of right but depend upon reasonable and sufficient cause
 - Few important decisions-
 - » Collector of Land Acquisition v. Mrs. Katiji & Ors. 167 ITR 471 (SC) – Courts should have pragmatic and liberal approach in admitting appeal beyond period of limitation
 - » N. Balkrishna v. M. Krishnamurthy (1998) 7 SCC 123 (SC) – condoned delay of 833 days – condonation is matter of discretion of Court – only criteria being explanation for delay – primary function of Court is to advance substantial justice.
 - Delay of each day to be explained
 - Frivolous or false explanation would not hold good
 - Letter of condonation alongwith Affidavit (if possible) to be filed alongwith appeal requesting for condonation of delay in filing appeal

Appeal to CIT(A)

- Sec. 249 (4)
 - Appeal not to be admitted unless at time of filing appeal -
 - Has paid tax on returned income, if return of income is filed
 - Has paid equal amount of advance tax payable, if no return is filed, provided that the CIT(A) may exempt from this condition if application is made in writing and for sufficient cause
 - As per the provision, it is Payment of tax only and not interest
 - Tax on returned income has to be paid before filing of appeal. Hence, if tax paid after filing appeal or during appeal proceedings, the appeal may be treated as non-maintainable
 - » In such case, Letter of condonation alongwith Affidavit (if possible) to be filed requesting for condonation of delay in filing appeal since the date of filing would be considered only on the date of payment of tax on returned income

Appeal to CIT(A)

- **Check list for filing a CIT appeal**
 - On receipt of order, check for original notice of demand.
 - Note the date of service of order and notice of demand.
 - Check difference between returned income and assessed income so as to figure out the exact additions / disallowance made so as to find the point of grievance.
 - Check for any legal issues arising such as - notice u/s.143(2) was issued & Served within prescribed time limit; reasons for issue of 148 notice given; order is passed within the prescribed time limit
 - For prima-facie mistakes apparent on the face of record, file application for rectification u/s. 154 also in addition to filing appeal on such issues, which can later on withdrawn if accepted by AO in order passed u/s.154.
 - Draft grounds of appeal & statement of facts & fill Form 35 properly and get the same signed by person authorised u/s.140
 - Payment of prescribed appeal filing fees and challan attached with appeal
 - Ensure the provisions of section 249 (4) is duly complied with before filing the appeal.
 - Stay application and reply to penalty notice to AO within prescribed time as given in notice

Appeal to CIT(A)

- Preparing Grounds of appeal & statement of facts:
 - Following points to be kept in mind while drafting Grounds of appeal-
 - Grounds should be in English
 - Grounds should be concise without any argumentative / narrative
 - Grounds must cover the exact nature of dispute and without repetition
 - Grounds must be properly numbered and as far as possible disputes should be raised in line with assessment order
 - Always take alternative grounds wherever possible / required, which should start with 'Without Prejudice'
 - Last ground should be always taken for amending, altering, adding or deleting any grounds
 - If proper opportunity of hearing is not given, then specific ground for Natural Justice violation be taken and as far as possible this should be the first ground
 - If wrong or contrary to facts observations are made, then specific ground should also be taken in this regard

Appeal to CIT(A)

- Preparing Grounds of appeal & statement of facts:
 - Following points to be kept in mind while drafting Statement of Facts (SOF) -
 - Mandatory requirement of filing statement of facts with appeal
 - Statement of facts should be detailed and not cryptic
 - Should contain rebuttal to each of incorrect observation or incorrect facts recorded in order since this is the first and immediate reaction after receipt of order
 - Signed and Verified by Assessee
 - Factual matter and factual aspect in assessment proceedings to be brought out clearly, if required
 - Detailed SOF with relevant citations helps if appeal is disposed of ex-parte for any reason
 - If reliance is placed on some evidence not given by AO, the same should be clearly pointed out as also if examination or cross examination is not allowed, the same should also be pointed out
 - If additions are stated to be agreed by Assessee / AR, counter the same clearly if contrary to facts and if possible file Affidavit also.

Appeal to CIT(A)

- Procedure in Appeal – Sec.250:
 - CIT(A) -
 - Shall give notice of hearing and allow representative to appear
 - Shall have power to adjourn hearing
 - May allow filing of additional evidence
 - May allow filing of additional grounds
 - May remand matter / issue to AO for his report
 - May direct AO to make further enquiry / verification in the matter
 - May pass order within one year from end of financial year in which appeal was filed
 - Shall pass order in writing on all grounds / issues in appeal and give his decision on all issues / grounds and reason for such decision
 - Shall communicate the order so passed
 - No time limit for passing orders – only suggestive time limit given. Hence, no issue of time barring appeals

Appeal to CIT(A)

- Powers of CIT(A) – Sec.251:
 - CIT(A) shall have following powers-
 - Confirm, reduce, enhance or annul assessment / penalty
 - In any other case, pass orders as think fit
 - Following are inherent powers [discretion with CIT(A)]
 - Power to stay demand
 - ITO v. Mohd. Kunhi (1969) 71 ITR 815 (SC)
 - Tin Mfg. Co. of India v. CIT (1995) 212 ITR 451 (All)
 - Bongaigoan Refinery & Petrochemicals Ltd. v. CIT (1999) 239 ITR 871 (Gau)
 - Pradeep Ratanshi v. ACIT (1996) 221 ITR 502 (Ker)
 - Power to rectify mistake
 - CIT(A) has no power to-
 - **to set aside an order and refer the case back to AO for fresh assessment [w.e.f 01-06-2001]**
 - award costs to parties
 - review except power of rectification u/s. 154
 - consider validity of Act or Rules [*CIT Vs. Straw Products Ltd. 60 ITR 156 (SC)*]

Appeal to CIT(A)

- Powers of CIT(A) – Sec.251:
 - Power of ENHANCEMENT:
 - CIT(A) power coterminous as that of AO
 - Hence, what AO failed to do, CIT(A) can do – CIT v. Kanpur Coal Syndicate 53 ITR 225 (SC)
 - Can correct assessment order and go beyond the grounds of appeal & jurisdiction is over the whole assessment
 - However, before doing so, CIT(A) has to give notice for enhancement and thereby give proper opportunity of hearing to the assessee
 - Contrary views exists with respect to the issue as to whether the CIT(A) enhancement can lead to discovery of new source of income or restricted to those areas and sources considered by AO-
 - View on restriction to areas and sources considered by AO as held in- CIT v. Shapoorji Pallonji Mistry 44 ITR 891 (SC) & CIT v. Rai Bahadur Hardut Roy Motilal Chamaria 66 ITR 445 (SC).
 - View that power of enhancement can lead to new source of income held in – CIT v. Kanpur Syndicate Ltd. 53 ITR 225 (SC) & CIT v. Nirbheram Daluram 224 ITR 610 (SC)

Appeal to CIT(A)

- Powers of CIT(A) – Sec.251:
 - Power of Remand:
 - W.e.f. 1-6-2001, no power to set aside the matter back to AO
 - Instead, power given for remanding the matter and calling for the report from the AO – reasons, demand stays
 - Power discretionary but necessary to be used if additional evidence filed or circumstance so demand
 - Generally power to remand must be used-
 - Where the interest of justice so requires;
 - When additional evidence is filed;
 - Where submission before AO are defective and assessee pleads for opportunity to correct it;
 - When AO failed to record finding in respect of any issue or material / evidence filed;
 - When factual contrary observations are made by the AO in the order;
 - Where findings of AO lack precision or are not sufficiently specific

Appeal to CIT(A)

- Filing of Additional Evidences – Rule 46A:
 - Only if any of the four conditions given is fulfilled that the additional evidence can be admitted by CIT(A)
 - AO refused to admit the evidence which ought to have been admitted;
 - Assessee was prevented by sufficient cause from filing evidence called upon by AO;
 - Assessee was prevented by sufficient cause from filing evidence before AO and which is relevant to any grounds of appeal;
 - AO did not give sufficient opportunity to Assessee to file evidence relating to any grounds of appeal
 - CIT(A) to record reason in writing for admission of additional evidence
 - CIT(A) must give opportunity to AO to examine the evidence or cross-examine any witness produced or adduce any evidence in rebuttal to that produced by assessee
 - Refer – Smt. Prabhavati S. Shah v. CIT 231 ITR 1 (Bom)
 - Additional Evidence must be filed in separate Paper Book and by separate application requesting for admission of the same and also clearly mentioning the clause under which the same should be admitted (Rule 46A) and also that AO be given opportunity to deal with the same

Appeal to CIT(A)

- Filing of Additional Ground:
 - Only if facts in respect of the same are on record
 - Jute Corporation of India Ltd. v. CIT 187 ITR 688 (SC)
 - National Thermal Power Co. Ltd. v. CIT 229 ITR 353 (SC)
 - Discretion of CIT(A) to admit additional grounds, which should be exercised judicially
 - Additional Ground to be filed separately with duplicate (since one set to be send to AO) i.e. not part of written submission but separate ground of appeal
 - To be filed with covering letter giving proper reasons as to why the same was not filed earlier and why the same should be admitted
 - To file separate written submission for the additional ground filed so as to deal with the same properly
 - On receipt of additional grounds, the CIT(A) must forward one copy to the AO for his comments and report on the same

Appeal to CIT(A)

- Withdrawal of Appeal:
 - Assessee has no right to withdraw appeal once filed
 - Entire discretion with the CIT(A)
 - In CIT v. *Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)* it has been held that: “It is also well-established that an assessee having once filed an appeal cannot withdraw it. In other words, the assessee having filed an appeal and brought the machinery of the Act into working cannot prevent the AAC from ascertaining and settling the real sum to be assessed, by intimation of his withdrawal of the appeal. Even if the assessee refuses to appear at the hearing, the Appellate Assistant Commissioner can proceed with the enquiry and if he finds that there has been an under-assessment, **he can enhance the assessment**”
 - CIT(A) may allow withdrawal of appeal if he is satisfied that no prejudice will be caused to revenue to allow withdrawal-
 - *Bharati Steel Engineering Co. P. Ltd. v. ITO 97 ITR 154 (Cal)*

Revision u/s.264

- Applies to any order
 - other than an order to which section 263 applies
 - Passed by an authority subordinate to the CIT
- CIT may act suo motu or on application made by the assessee
- CIT may call for the record of any proceeding under the Act in which such order has been passed
- CIT may make such inquiry or cause such inquiry to be made
- CIT may pass such order, not being an order prejudicial to the assessee, as he thinks fit.
 - An order declining to interfere is not an order prejudicial to the assessee

Revision u/s.264

- This is alternate remedy available with the Assessee, however various conditions are required to be fulfilled before making an application to the Principal CIT or CIT for revision of the order. The conditions are-
 - Application cannot be made until the time limit for preferring appeal to CIT(A) or ITAT (in case of direct appeal from order of AO), as the case may be, has not expired, unless the assessee waives his right to appeal;
 - No application can be filed where the order has been made subject of an appeal to the CIT(A) / ITAT;
 - Application is made within one year from the date of service of order to be revised or from the date on which the assessee came to know of the order, whichever is earlier – (discretion is given to condone the delay in filing the application if assessee prevented by sufficient cause)
 - Fees of Rs.500/- to be paid alongwith filing the applicaiton
- Orders not appealable u/s.246A can also be referred for revision or modification – Dwarka Nath v. ITO 57 ITR 349 (SC)

Revision u/s.264

- Scope of expression 'subject of an appeal' to the CIT(A) / ITAT;
 - The CBDT has, vide circular No 367 dt. 26.7.1983, clarified the scope of the expression 'Subject of an appeal' as used in S.264(4)(c). The aforesaid circular is reproduced as follows :

“Section 264(4)(c) of the Income-Tax Act, 1961, provides that the Commissioner shall not revise any order under that section where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal. A doubt has been raised whether in the following situations the order can be said to have been made 'subject of an appeal':

 - (i) Where the appeal was withdrawn by the assessee and it was dismissed as such;
 - (ii) Where the appeal was dismissed on the ground that the appeal was incompetent;
 - (iii) Where the appeal was dismissed on ground of limitation.

2. The Board are of the view that the order cannot be said to have been made 'subject of an appeal' if the appeal has been disposed of by the Commissioner (Appeals) or the Appellate Tribunal, without passing an order under section 251(1) or 254(1) on merits.”

Revision u/s.264

- Duty is imposed by the Legislature to correct the orders in favor of assessee by revising the orders found to be erroneous on admitted facts
- Power to be exercised in the interest of justice to the assessee
 - Sirpur Paper Mills Ltd. v. CWT (1970) 77 ITR 6 (SC)
 - OCM Ltd. (London) v. CIT (1982) 138 ITR 689 (All)
 - J.J. Corp. v. CIT (1995) 211 ITR 925 (Guj)
 - To detect and correct errors committed by subordinate officers and pass orders as he deems fit – Haryana State Small Industries & Export Corporation Ltd. v. CIT 142 ITR 293 (P&H)
- It is Quasi-judicial power given and not administrative power
- Powers:
 - Power to issue directions to AO – Mohammadi Begum v. CIT 158 ITR 622 (AP)
 - Power to admit new ground not raised before lower authorities – C. Parikh & Co. v. CIT 122 ITR 610 (Guj); Smt. Phool Lata Somani v. CIT 276 ITR 216 (Cal)

Revision u/s.264

- Application can be filed in respect of additions erroneously accepted before AO – Pt. Sheonath Prasad Sharma v. CIT 66 ITR 647 (All) – In this case, assessee filed returned income, which was not income of the assessee and hence, filed revision petition. CIT bound to apply his mind whether assessee liable to be taxed in respect of that income. Similar view taken in -
 - Kewal Krishnan Jain v. CIT [2014] 42 taxmann.com 84 (P&H)
 - Assam Roofing Ltd. v. CIT [2014] 43 taxmann.com 316 (Gau) – even intimation u/s.143(1) can be revised u/s.264
 - Sanchit Software & Solutions P. Ltd. v. CIT [2012] 349 ITR 404 (Bom)
 - Chandrakant J. Patel v. V.N. Srivastava [2012] 339 ITR 310 (Guj)
- Order passed in violation of principles of natural justice can be corrected u/s.264 – Mohammadi Begum v. CIT 158 ITR 622 (AP)
- CIT can on his own motion revise any order and such revision can be done within one year from the date of order. Hence, similar to the provisions of sec.263, which favors revenue, provisions of sec.264 is incorporated to favor assessee.

Revision u/s.264

- Once assessee approaches CIT for relief u/s.264, the CIT cannot pass order invoking provision of s.263 for the reason that s.264 debars CIT from passing order prejudicial to assessee – Vineet Sharma v. CIT [2014] 148 ITD 619 (Del)
- Order of revision should contain some reasoning
 - Bhupatlal J. Sheth v. ITO [2012] 210 Taxman 481 (Bom)
- Order not to be prejudicial to the assessee
 - ACIT v. M.V. Kenlucky 60 ITD 492 (Pune)
- Power given to condone the delay – Parajit Chemicals P. Ltd. v. ITO (1995) 216 ITR 221 (MP); Pravin V. Ashar v. CIT (2001) 247 ITR 828 (Guj)
- Only remedy against the order u/s.264 is to file Writ in High Court since this is not an order appealable to Appellate Tribunal as per provisions of sec.253

Appeal v. Revision u/s.264

Who can begin the proceedings	Assessee only	Assessee on application or CIT suo moto
Adjudicating Authority	CIT(A)	CIT
Against which order	All the orders specified u/s.246A	Any order in any proceedings passed by subordinate officer
Time limit for Filing	Within 30 days from the date of service of notice of demand / order to be appealed against – condonation of delay possible	Within one year of the communication or knowledge of the order sought to be revised – whichever is earlier – condonation of delay possible

Appeal v. Revision u/s.264

Fees Payable	Minimum Rs.250/- & maximum Rs.1,000/-	Rs.500/-
Result	Assessment / Penalty may be either confirmed, annulled, reduced or enhanced	Order can be either status quo or in favor of assessee – cannot be prejudicial to assessee, hence, no power of enhancement
Payment of tax as per returned income	Sec.249(4) is applicable and hence, tax on returned income has to be paid before filing appeal	No such condition of payment of tax on returned income exists
Remedy against the order	Appeal to ITAT	Writ Petition to HC

Rectification of mistake u/s.154

- Rectification of only those mistakes that are apparent from the record and not otherwise
- Rectification can be done-
 - On own motion; or
 - On application made by assessing bringing mistake to the notice of authority concerned
- If rectification results in Enhancement, opportunity of being heard has to be given to the assessee
- If rectification results in enhancement, notice of demand u/s.156 is to be given to the assessee alongwith the order passed, which can be then appealable to CIT(A) u/s.246A(1)(c)
- Rectification can also result in reducing the assessment
- The order for rectification can be any order and not necessarily the original order.

Rectification of mistake u/s.154

- Time Limit for rectification- 4 years from the end of the financial year in which order sought to be amended was passed, however, this time limit not to apply to cases falling in s.155 / 186(4)
 - Is 4 years time limit inclusive of passing the order u/s.154 or outer limit for making any application for rectification u/s.154
 - There were contrary decisions, however, the SC in CIT v. Shree Ayyanar Spinning & Weaving Mills Ltd. 301 ITR 434 (SC) has clarified that once the application for rectification is moved within the specific period of four years, the Tribunal can pass order u/s.254(2) even if such a period has expired.
 - The above position will also equally apply for passing rectification order u/s.154 by the Income-tax authorities.
 - Time limit of passing order within six months is provided in s.154(8). The Authorities take stand that since time limit has expired, rectification order cannot be passed. With the above judgment of the Apex Court, in my view, even this position becomes clear and authorities are not precluded from passing order beyond six months.

Rectification of mistake u/s.154

- Rectification only of mistakes apparent from the record
 - Refer – T.S. Balaram v. Volkart Bros. (1971) 82 ITR 50 (SC) – Obvious & Patent mistake & not something which can be established by long drawn process of reasoning
 - Two views applicable cannot be said to be mistake apparent from the record – Debatable issues are out of purview of rectification
 - Can the order be rectified in view of debatable issue being later on settled by jurisdictional High Court or Supreme Court
 - ***Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 (SC)***: It is held that a judicial decision acts retrospectively. If a subsequent decision alters the earlier one, it (the later decision) does not make a new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite sometime, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood.

Rectification of mistake u/s.154

- Rectification only of mistakes apparent from the record
 - ITO v. Padam Prakash (HUF) [2011] 131 ITD 121 (Del) (SB) – Held in para 13 of the order-

“13. Moreover, what has been done by the Tribunal by the order dated 27.11.2009 is that by keeping in view the latest decision of Hon'ble Supreme Court, it was observed that the observations made by it in earlier order dated 26.9.2008 are no more relevant and therefore, those observations have been withdrawn. According to the well established law, the order of the Tribunal has to brought in conformity with the decision of the Apex Court, even if the said decision is rendered subsequently to the pronouncement of the order and reference in this regard can be made to the decision of Hon'ble Supreme Court in the case of ACIT Vs. Saurashtra Kutch Stock Exchange Ltd. – 305 ITR 227 (SC).”
 - Also refer – CIT v. Smt. Aruna Luthra 252 ITR 76 (P&H)(FB)
- Language of s.154 and s.254 is similar i.e. uses the words – ‘mistake apparent from the records’. Hence, the above decisions would also be applicable to 154 proceedings subject to fulfilling other conditions such as time lime, etc.

Rectification of mistake u/s.154

- Record – meaning of:
 - Not confined to assessment order but includes all the documents and material produced by parties i.e. the entire assessment proceeding records
 - Record available at the time of passing the rectification order – Gamon India Ltd. v. CIT (1995) 214 ITR 50 (Bom)
 - No fresh evidence or material to be considered for rectification. Outside material not permissible – CIT v. Keshari Metal P. Ltd. (1999) 237 ITR 165 (SC)
 - Record not confined to a particular year but of any period of the assessee can be looked into – CIT v. MRM Plantations P. Ltd. (1999) 240 ITR 660 (Mad); Upasana Hospital & Nursing Home v. CIT (2002) 253 ITR 507 (Ker)

- Recovery proceedings may be stayed if rectification application is pending – Sultan Leather Finishers P. Ltd. v. ACIT (1991) 191 ITR 179 (All)

Thank You

CA Reepal Tralshawala
tralshawalareepal@gmail.com