

# REVISION U/S 263 OF INCOME TAX ACT, 1961



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# PRE-CONDITIONS FOR INVOKING SECTION 263



## **1. Twin conditions**

- Order is erroneous
- Prejudicial to the interest of the revenue

*Malabar Industrial Co. Limited v. CIT [2000] 243 ITR 83 (SC), CIT v. Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC)*

*S. Murugan v. ITO [2012]135 ITD 527 (Chennai) (Trib.), J. K. Construction Co. v. ITO [2007]162 Taxman 46 (Jodhpur) (Trib)*

## PRE-CONDITIONS FOR INVOKING SECTION 263



### **2. Meaning of the term “erroneous”**

- Non application of mind to relevant material or an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of order being erroneous.

CIT v. Jawahar Bhattacharjee [2012] 341 ITR 434  
(Gauhati) (HC) (FB)

## PRE-CONDITIONS FOR INVOKING SECTION 263



- **If income is assessed in wrong hands order is erroneous**
- Whether even where an income has not been earned and is not assessable, merely because assessee wants it be assessed in his or her hand in order to assist some one else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to interest of revenue. The Commissioner has ample jurisdiction u/s 263 to cancel the assessment.

*Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)*

## PRE-CONDITIONS FOR INVOKING SECTION 263



- **Order assessing income which is not earned is an erroneous order**
- The pre-requisite to exercise of jurisdiction by the Commissioner u/s 263 is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1).

## PRE-CONDITIONS FOR INVOKING SECTION 263



- There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer; it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind.
- *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)*

## PRE-CONDITIONS FOR INVOKING SECTION 263



### **3. Meaning of the term “prejudicial to the interest of the revenue”**

- The term “prejudice” contemplated is prejudice to the income-tax administration as a whole.
- *Pratap Footwear v. ACIT [2003] SOT 638 (Jabalpur) (Trib.)*. In the case of *CIT v. Bhagwan Das [2005] 272 ITR 367 (All.) (HC)*, the High Court held that non-application of mind by the Assessing Officer was prejudicial to the interest of the revenue.

## PRE-CONDITIONS FOR INVOKING SECTION 263



- Every loss of revenue as a consequence of the order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue.
- *Hero Briggs & Stratton Auto Ltd. v. CIT [2007] 161 Taxman 127 (Delhi) (Trib.)*



## PRE-CONDITIONS FOR INVOKING SECTION 263



- **‘Prejudice’ must be prejudice to the administration**
- The word prejudice must be judicially examined. What constitutes prejudice to the revenue has been the subject matter of a judicial debate. One view was that ‘prejudice to the interest of the revenue’ does not necessarily mean loss of revenue. The expression is not to be construed in a pettifogging manner, must be given a dignified construction. The interests of the Revenue are not to be equated to rupees and paise merely. There must be grievous error in the order passed by reckoning, the commissioner might think to be prejudicial to the revenue administration. The prejudice must be prejudice to the revenue administration
- *Bismillah trading Co. v Intelligence Officer [2001] 248 ITR 292 (Ker.)*

## PRE-CONDITIONS FOR INVOKING SECTION 263



### **4. Tax effect**

- In absence of any finding that there is loss of revenue, interference is not justified.

*CIT v. G. R. Thangamalgai [2003] 259 ITR 129 (Mad.) (HC)*

- Where the tax effect an order is NIL, such order is not open to revision even if erroneous being prejudicial to the interest of the revenue,
- *Punjab Wool Syndicate v. ITO [2012] 17 ITR 439 (Chandigarh) (Trib.)*

# SCOPE OF REVISION UNDER SECTION 263



- The Assessing Officer held entitled to consider only those grounds which were considered by the Commissioner

*CIT v. D. N. Dosani [2006] 280 ITR 275 (Guj.)(HC)*

- The error envisaged by Section 263 should actually be an error either of fact or of law.

*ACIT v. Technip Italy Spa [2006] 150 Taxman 13 (Delhi) (Trib.), Pratap Footwear v. ACIT [2003] SOT 638 (Jabalpur) (Trib.)*

# SCOPE OF REVISION UNDER SECTION 263



- Section 263 does not require any specific show cause notice detailing specific grounds on which revision of assessment order is tentatively being proposed affecting initiation of exercise in absence thereof or to require commissioner to confine himself to terms of notice and foreclosing consideration of any other issue or question of fact; Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, provided an opportunity of hearing is afforded to assessee to contest facts on basis of which he had exercised revisional jurisdiction.
- *CIT v. Amitabh Bachchan [2016] 69 taxmann.com 170 (SC)*

# SCOPE OF REVISION UNDER SECTION 263



## **1. Orders that can be revised**

- It is not limited to exercising revisional powers qua order of assessment only; it would take within its sweep even orders wherein either the proceedings are dropped or proceedings are filed.

*New Jagat Textile Mills (P.) Ltd. v. CIT [2006] 282 ITR 399 (Guj)(HC)*

# SCOPE OF REVISION UNDER SECTION 263



- Any issue, which Assessing Officer has not considered in the assessment u/s 143(3) r.w.s. 147, can be brought to life by Commissioner in exercise of his powers u/s 263.

*Spencer & Co. Ltd. v. ACIT [2012] 137 ITD 141 (Chennai)  
(Trib) (TM)*

# SCOPE OF REVISION UNDER SECTION 263



- Any communication by the Assessing Officer under Section 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.)

# SCOPE OF REVISION UNDER SECTION 263



- Invoking of power of revision u/s 263 by the Commissioner is within the permissible limits of the law if the order passed by the authority, to give effect to the orders of the Tribunal is covered under the phrase “any order”.

*Pentamedia Graphics Ltd. v. ACIT [2012] 17 ITR 302  
(Chennai) (Trib.)*



# SCOPE OF REVISION UNDER SECTION 263



## **2. Can intimation under Section 143(1) be revised**

- The Commissioner can exercise jurisdiction under section 263 in respect of assessment under section 143(1) as applicable after 1-4-1989.

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

# SCOPE OF REVISION UNDER SECTION 263



## **3. Non-initiation of penalty by the Assessing Officer**

- Not good ground to invoke Section 263.

*Master Vijay R Oswal v. ITO [2003] 87 ITD 98  
(Rajkot)(Trib.)*

*Ambica Chemical Products (Regd.) v. ACIT [2003]86 ITD 1  
(Visakhapatnam) (Trib.)*

# SCOPE OF REVISION UNDER SECTION 263



## **Contrary view**

- Commissioner can revise the order of the Assessing Officer dropping penalty proceedings.

*R.A. Himmat singka and Co. v. CIT [2012] 340 ITR 253 (Patna) (HC), CIT v. Braj Bhushan Cold Storage [2005] 275 ITR 360 (All.) (HC)*

# SCOPE OF REVISION UNDER SECTION 263



## **4. Substitution of judgement of the Commissioner**

- If the decision is held to be erroneous.

*Antala Sanjaykumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Manish Kumar v. CIT [2012] 134 ITD 27 (Indore) (Trib.)*

- Order passed cannot be branded as erroneous, merely because Commissioner is of other view or in his opinion order passed is weak and not a detailed order.
- *Allied Engineers v. CIT [2009] 180 Taxman 70 (Mag.) (Delhi) (Trib.)*

# SCOPE OF REVISION UNDER SECTION 263



## **5. Can the assessee make a new claim**

- Assessee is not eligible to claim any new benefit  
*ACIT v. ITW India (P) Ltd. [2010] 40 SOT 348 (Hyd.) (Trib.)*
- Where assessee did not prefer any appeal against a revision order of the Commissioner, no ground relating to revision order could be taken in appeal against fresh assessment order passed giving effect to revision order.  
*Crew B.O.S. Products Ltd v. ACIT [2012] 135 ITD 542 (Delhi) (Trib.)*

# PRINCIPLES OF NATURAL JUSTICE



- The notice must mention how the impugned order is prejudicial to the interests of the Revenue.

*Brahma Builders v. DCIT [2012] 77 DTR 249 (Pune) (Trib.)*

- The show-cause issued must indicate the material and the reasons; and the order under Section 263 should not be contrary to the existing material and reasons for revision.

*ShyamBiri Works (P) Ltd. v. ACIT [2003] 84 ITD 124 (All.)(Trib.)*

# PRINCIPLES OF NATURAL JUSTICE



- Before exercising revisional powers, the assessee must be called, his explanation sought for and examined by Commissioner, and thereafter, if Commissioner is of the view that order is erroneous and prejudicial to interest of revenue, Commissioner may pass revisional orders.

*CIT v. Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC)*

- The Commissioner must pass a speaking order.

*Jewel of India v. ACIT [2003] 87 ITD 527 (Mum.)(Trib.)*

# PRINCIPLES OF NATURAL JUSTICE



- Granting an opportunity to comply with a query raised in a proceeding under Section 263 within less than a day, could not be held to be a reasonable opportunity of hearing.

*Peerless General Finance & Investment Co. Ltd. v. ACIT [2005] 5 SOT 17 (Kol.)(Trib.)*



# PRINCIPLES OF NATURAL JUSTICE



- Revision order passed on a ground in addition to the grounds mentioned in his show cause notice issued cannot be sustained.

*CIT v. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC),  
CIT v. Contimeters Electricals (P) Ltd. [2009] 317  
ITR 249 (Delhi) (HC), CIT v. D. N. Dosani [2006] 280  
ITR 275 (Guj.) (HC)*

# PRINCIPLES OF NATURAL JUSTICE



- As the Commissioner did not consider the merits of the objections raised by the assessee to the show cause notice, the matter was remanded to CIT for adjudication and to record his findings on the objections of the assessee.
- *Religare Finvest Ltd. v. CIT [2013] 152 TTJ 647 (Delhi) (Trib.)*

# PRINCIPLES OF NATURAL JUSTICE



- When the Assessing Officer has specifically mentioned in the order that books of accounts along with purchase / sales, invoices, ledgers, bank accounts were examined, verified and test checked, setting aside by Commissioner, in absence of any finding that Assessing Officer's order is factually incorrect, and not justified.
- *Vijay Kumar Megotia v. CIT [2010] 3 ITR (T) 760 (Pat.)(Trib.)*

# PRINCIPLES OF NATURAL JUSTICE



- **Issue of Notice is not mandatory**
- Section 263 does not in express terms require a notice to be served as in the case of section 147. Section 263 merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of the service of notice u/s 147 cannot be therefore be applied to a proceeding u/s 263

*Gita Devi Aggarwal v. CIT [1970] 76 ITR 496 (SC)*

*CIT v. Hukamchand Mohanlal [1971] 82 ITR 624 (SC)*

# CHANGE OF OPINION



## 1. Two views are possible- Revision is not valid

- When the Assessing Officer takes one of the two views permissible in law and which the Commissioner does not agree with and which results in a loss of revenue, it cannot be treated as erroneous order prejudicial to the interest of revenue, unless the view taken by the Assessing Officer is completely unsustainable in law.
- *CIT v. Max India Limited [2007] 295 ITR 282 (SC)*  
*Malbar Industries Co Ltd v. CIT [2000] 243 ITR 83 (SC)*
- This decision of the SC has been followed by the Bombay, Delhi, Madras, Punjab & Haryana, Gujarat High Courts and a number of Tribunals in the country.

# CHANGE OF OPINION



- In one case, where the view of the Assessing Officer had also been expressed by the Special Bench of the Tribunal, revision under Section 263 was held to be invalid.

*Anik Development Corporation v. ACIT [2011] 44 SOT 100 (UO) (Mum.)(Trib.)*

- Even an audit objection and a possibility of a second view was held to be reason good enough for not invoking Section 263.

*CIT v. Sohana Woollen Mills [2007] 296 ITR 238 (P&H) (HC)*

# CHANGE OF OPINION



## 2. Can the Revenue change its earlier view

- The department is not entitled to reopen an assessment based on a fresh inference of transactions accepted by the revenue for several preceding years on the pretext of dubbing them as erroneous.

*CIT v. Escorts Ltd. [2011] 338 ITR 435 (Delhi) (HC)*

- An order which became erroneous due to retrospective amendment in the law would be amenable to revision under section 263.

*CIT v. Vincast Engineering [2006] 280 ITR 385(All)(HC)*

## REVISION ON THE BASIS OF HIGH COURT JUDGEMENT



- The Commissioner has no jurisdiction to revise an order on the ground that the order which based on a decision of the jurisdictional High Court, was prejudicial to revenue, even if the High Court decision relied upon is set aside by the Supreme Court, subsequently.

*CIT v. G. M. Mittal Stainless Steel (P.) Ltd. [2003]  
263 ITR 255 (SC)*



# REVISION ON THE BASIS OF HIGH COURT JUDGEMENT



## **Contrary view**

- Even though the view of the Assessing Officer is in conformity with decision of jurisdictional High Court or any other High Court, the Commissioner is entitled to invoke jurisdiction under section 263 subject to condition that view of jurisdictional High Court is subject matter of an appeal before the Supreme Court.

*Hindustan Tin Works Ltd. v. DCIT [2005] 92 ITD 101 (Del.) (Trib)*

# APPLICATION OF MIND BY THE ASSESSING OFFICER



- In these cases, since the Assessing Officer made proper enquiry and examined accounts, it could not be said that there was non-application of mind by him. Hence, the action under Section 263 was held invalid.

*Antala Sanjaykumar Ravjibhai v. CIT [2012] 135 ITD 506 (Rajkot) (Trib.), Roshan Lal Vegetable Products (P) Ltd. v. ITO [2012] 51 SOT 1 (URO) (Asr.)(Trib.), Fine Jewellery (India) Ltd. v. ACIT [2012] 19 ITR 746 (Mum.)(Trib.)*

# APPLICATION OF MIND BY THE ASSESSING OFFICER



- When the order of the Assessing Officer was silent on the claim made by assessee, and allowed such claim, without any discussion, it was held that such an order was erroneous and prejudicial to the interest of revenue.

*Bharat Overseas Bank Ltd. v. CIT [2013] 152 TTJ 546 (Chennai) (Trib.)*

- Areas where Assessing Officer had applied mind – Section 263 proceedings not valid, areas where he didn't apply mind – Section 263 proceedings valid.

*CIT v. Hindustan Lever Ltd [2012] 343 ITR 161 (Bom.) (HC)*

# APPLICATION OF MIND BY THE ASSESSING OFFICER



## 2. Requirement to pass a detailed order

- In one case, where the High Court found that the Assessing Officer examined all the details with respect to assessee's claim of deduction, the order could not be said to be erroneous or was passed without application of mind merely because the same was not elaborate order.

*CIT v. Design & Automation Engineers (Bombay) (P) Ltd. [2008] 323 ITR 632 (Bom.)(HC), Manish Kumar v. CIT [2012] 134 ITD 27 (Indore) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



- The Tribunal held that the order may be brief or cryptic but that by itself is not sufficient to brand assessment order as erroneous or prejudicial to interest of revenue.  
*Maithan International v. ACIT [2012] 134 ITD 393 (Kol.)(Trib.)*
- If it could not be said that it was “lack of enquiry” and therefore, the assessment order passed by the Assessing Officer cannot be revised under section 263.  
*CIT v. Sunbeam Auto Ltd. [2009] 289 Taxman 436 (Delhi) (HC), Vodafone Essar South Ltd. v. CIT [2011] 141 TTJ 84 (Delhi) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



- Mere lack of inquiry by Assessing Officer is not sufficient for revision under section 263.

*CIT v. Vikas Polymers [2010] 194 Taxman 57 (Delhi) (HC)*

- Non-Examination of issue by Assessing Officer does not, per se, make the assessment order prejudicial to interest of revenue for revision under section 263.

*Institute of Chartered Accountants of India v. DIT [2011] 136 TTJ 548 (Delhi) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



- Whether just collecting voluminous details and not perusing same and completing assessment in hurry by accepting submission of assessee at face value and without application of mind, is valid reason for invoking powers under section 263
- Whether where Assessing Officer passed assessment order without examining vital issues which had phenomenal effect of determination of correct total income, commissioner was justified, in exercising jurisdiction under section 263

*Pancard Clubs Ltd.vs. Deputy Commissioner of Income-tax 7(1), Mumbai [2011] 12 taxmann.com 16 (Mum.)*

# ENQUIRY BY THE ASSESSING OFFICER



- Where original assessment order had been revised under section 264 and, thus, no longer existed, order passed by Commissioner under section 263 revising original assessment was void ab initio.
- No cross objections are maintainable in an appeal against order of revision in terms of section 253(4)

*Commissioner of Income-tax, Mangalore. v. New Mangalore Port Trust\*(HC)(Karnataka) [2016] 67 taxmann.com 229*



# ENQUIRY BY THE ASSESSING OFFICER



## **Contrary view**

- The onus lay on the assessee to establish the identity of the person making gift and his capacity to make a gift and that it has been actually received as a gift from donor was not satisfactorily discharged by assessee, the Assessing Officer was not justified in accepting said gifts without making further enquiry about creditworthiness of donors as well as source of funds. In this case the revision under Section 263 was held to be valid.
- *Anil Kumar v. ACIT [2005] 147 Taxman 5 (Mag.) (Delhi) (Trib.)*,
- When the assessee claimed the advances to be trading advances but no material was available on record to suggest that persons to whom advances were made had any trading activity with assessee, the Assessing Officer ought to have conducted further enquiry before accepting assessee's claim. In these circumstances, revision under Section 263 was held to be valid.

*Super Cloth v. ACIT [2006] 99 ITD 300 (Chennai) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



## 1. Possibility of further enquiry

- Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by Assessing Officer while making assessment/assessment order cannot be declared to be erroneous and prejudicial to interest of revenue.
- *Salora International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



- In the following cases, it was held that assessment framed under section 143(3) cannot be revised on ground that desired inquiry was not made.

*Amrik Singh v. ITO [2003] 127 Taxman 87 (Mag.) (Chd.) (Trib.), Baljees v. ACIT [2003] 127 Taxman 150 (Mag.) (Chd.) (Trib.)*

# ENQUIRY BY THE ASSESSING OFFICER



## **2. Where the Assessing Officer makes enquiry but does not mention the same in the assessment order**

- Where the assessing officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the assessing officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction under section 263 of the Act.

*CIT v. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC),*

*CIT v. Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC)*

# ENQUIRY BY THE ASSESSING OFFICER



- If the Assessing Officer allows the claim, on being satisfied with the explanation of assessee, on an enquiry made during the course of Assessment Proceedings, the decision of Assessing Officer cannot be held to be erroneous, on ground that there is no elaborate discussion in that regard in the order. It is the practice that whenever any claim of the assessee is accepted, Assessing Officer may not discuss the same in his order.

*Anil Shah v. ACIT [2007] 162 Taxman 39 (Mum.)(Trib.)*

## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- Once the issue was considered and decided by the COMMISSIONER (APPEALS), revision under section 263 cannot be done.

*Ranka Jewellers v. Addl. CIT [2010] 328 ITR 148 (Bom.)(HC)*

- Matter not considered and decided in appeal can be subjected to revision.

*CIT v. Ram Kishore Raj Kishore [2004] 135 Taxman 511 (All.) (HC)*

## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- The doctrine of merger applies only in respect of such items which were the subject matter of appeal and not in respect of those which were not.

*CIT v. Alagendian Finance Ltd [2012] 293 ITR 1 (SC),  
CIT v. Ram Kishore Raj Kishore [2004] 135 Taxman 511  
(All.)(HC)*

- The proceedings under section 263 were held to be invalid during the pendency of an appeal, even though the issues in revision are different from those in appeal.

*Aerens Infrastructure & Technology Ltd. v. CIT [2004]  
271 ITR 15 (Delhi) (HC)*

## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- Despite fact that Commissioner under section 263 has set aside the whole assessment, it cannot be considered that Commissioner has also set aside that part of order which is not erroneous and prejudicial to interest of revenue or has also set aside those additions which have attained finality.
- *ITO v. Uma Kant Newatia [2005] 97 ITD 414 (Kol.)(Trib.)*



## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- The consequence of the amendment made in section 263 with retrospective effect from 1-6-1988 is that the power u/s 263 of the commissioner shall extend and shall be deemed to have extended to such matter as had not been considered and decided in an appeal.
- *CIT v. Shri Arbuda Mills Ltd. [1998] 231 ITR 50 (SC)*
- *CIT v, Jaykumar B. Patil [1999] 263 ITR 469 (SC)*

## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- **In case of appeal dismissed on ground of limitation**
- If for any reason an appeal is dismissed on the ground of limitation and not on the merits, that order would not merge with the orders passed by the first appellate authority
- *Raja Mechanical Co. P Ltd. V. CCE [2012] 345 ITR 350 (SC)*

# DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



## 1. **Partial or complete merger of order of the Assessing Officer with that of the Commissioner (Appeals)**

- In this case, the ITO allowed deduction under section 35B on an amount lower than that claimed by the assessee. Thereafter, the CIT invoked section 263 and set aside the assessment order on the ground that the deduction was allowed without going into the details. The assessee argued that section 263 could not have been invoked as the impugned assessment order was subject matter of appeal before the COMMISSIONER (APPEALS) and had merged with the order of the COMMISSIONER (APPEALS). The HC held that deduction under section 35B, in so far as it pertained to the amount allowed by the Assessing Officer, was not the subject matter of appeal before the COMMISSIONER (APPEALS) and hence the doctrine of merger did not apply in this case. Hence, the revision under section 263 was held to be valid.
- *CIT v. RatilalBacharilal& Sons [2006] 282 ITR 457 (Bom.) (HC)*

## DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



- Only that part of the order of the Assessing Officer merges with that of the Commissioner (Appeals) which has been considered and decided upon by the latter. If the Commissioner (Appeals) does not apply his mind on a particular aspect, the jurisdiction of the Commissioner under section 263 cannot be ousted. In this case, the Commissioner (Appeals) considered only the question of eligibility of deduction under section 80-IB(10) and not the computation part. It was held that the aspect of computation of deduction was open to revision by the Commissioner under section 263.
- *Heritage Housing Development v. Addl. CIT – ITA No. 6484/M/2009 decided by Third Member on 1st June, 2012, ITAT Mumbai – “H” Bench*

# DOCTRINE OF MERGER – ORDERS SUBJECT MATTER OF APPEAL



## **Contrary view**

- In this case, the assessee claimed investment allowance under section 32A of Rs. 5,35,424/- on certain fixed assets. However, the Assessing Officer allowed the claim only in respect of certain fixed assets. On appeal before the COMMISSIONER (APPEALS), the issue was decided in favour of the assessee. Thereafter, the Commissioner invoked the provisions of section 263 on the ground that the action of the Assessing Officer in granting deduction under section 32A on certain fixed assets was erroneous. The HC held that once the COMMISSIONER (APPEALS) allowed the assessee's claim on certain fixed assets, the order of the Assessing Officer stood merged with that of the COMMISSIONER (APPEALS) and hence, no part of the order of the Assessing Officer could have been revised by the Commissioner under section 263.
- *CIT v. Shashi Theatre Pvt Ltd [2001] 248 ITR 126 (Guj.) (HC)*

# OTHER ISSUES



## 1. Void orders – Whether revision possible

- As the order passed u/s 147 /143(3) was itself void, the order of CIT passed u/s 263 for quashing this order was without jurisdiction.

*Inder Kumar Bachani (HUF) v. ITO [2006] 101 TTJ 450 (Lucknow) (Trib.)*

- Order of Commissioner u/s 263 cancelling original assessment was cancelled by the Tribunal and department's reference application was pending before High Court, Assessing Officer had no jurisdiction to make second assessment in pursuance of a non-existing order u/s 263.

*ITO v. Garg Enterprises [2005] 142 Taxman 42 (Mag.) (Chd.) (Trib.)*

# OTHER ISSUES



- It was held that the Commissioner cannot exercise his power of revision under section 263 in respect of original assessment order which already stood rectified under section 154.
- *CIT v. Kalyan Solvent Extraction Ltd. [2005] 276 ITR 154 (MP) (HC)*

# OTHER ISSUES



## 2. Incorrect finding by the Commissioner

- Where the finding of the CIT that the Assessing Officer had arrived at his findings without conducting an enquiry, was itself erroneous, the CIT wrongly exercised the powers by recourse to section 263.
- *CIT v. Development Credit Bank Ltd. [2010] 323 ITR 206 (Bom.) (HC)*
- The Commissioner exercising jurisdiction under section 263 of the Act on the ground that the order of the Assessing Officer was prejudicial to the interest of revenue on the ground that the assessee failed to produce the share-holders and the creditors before the Assessing Officer was held to be not justified.
- *CIT v. Unique Autofelts P. Ltd. [2009] 30 DTR 231 (P&H) (HC)*



# OTHER ISSUES



## 3. Can the Commissioner simply remand the matter back to the Assessing Officer

- The CIT cannot remand the matter to the Assessing Officer for further enquiries or to decide whether the findings recorded are erroneous without a finding that the order is erroneous and how that is so. A mere remand to the Assessing Officer implies that the CIT has not decided whether the order is erroneous but has directed the Assessing Officer to decide the aspect which is not permissible.
- *ITO v. DG Housing Projects [2012] 343 ITR 329 (Delhi) (HC)*

# OTHER ISSUES



## 4. Meaning of the term “record”

- “Record” does not mean only the record available with ITO at time of passing of assessment order. It would include the records available with the Commissioner at the time of passing of the order by the Commissioner.
- *CIT v. K. Ramachandran (Dr.) [2004] 139 Taxman 320 (Mad.) (HC)*

# OTHER ISSUES



- Record, connotation of Word record used in section 263(1) would mean record as it stands at the time of examination by commissioner and not as it stands at the time of order passed by AO and, as such, Commissioner would be justified in invoking section 263 on the basis of valuation report submitted by DVO subsequent to assessment order
- CIT v. Shree Manjunathesware packing products & Camphor Works [1998] 96 Taxmann 1 (SC)

# OTHER ISSUES



- There is nothing in the provision of the act, particularly in section 263, which would require the court to accept the narrow view that the record must be of the assessee concerned and that the commissioner has no power, jurisdiction and authority to take action u/s 263 in the case of an assessee on the basis of records in the cases of other persons
- CIT v. Arunaben Sumankumar [2002] 124 Taxmann 57 (Guj.)

# OTHER ISSUES



## 5. Remedy against section 263 order

- The appropriate remedy against the order passed by the CIT in exercise of its revision jurisdiction under section 263 is to file appeal before the Tribunal
- *John George Vettath v. CIT [2007] 162 Taxman 134 (Ker.) (HC)*

# OTHER ISSUES



## 6. Writ against section 263 proceedings

- If prima-facie opinion is recorded by commissioner that order sought to be revised is erroneous and prejudicial to revenue, Court in its writ jurisdiction cannot pre-empt proceedings under section 263.

*Pankaj Goyal v. CIT [2004] 270 ITR 201 (HP) (HC)*

# OTHER ISSUES



- In view of an alternate remedy, writ against an order under Section 263 was held to be invalid.

*CIT v. B&A Plantation and Industries Ltd [2013] 212 Taxman 137(Mag.) (Gau.)(HC)*

- The proper course of action against an order passed under section 263 is to approach the Tribunal and not the High Court in writ.

*John George Vettath v. CIT [2007] 162 Taxman 134 (Ker.) (HC)*

# OTHER ISSUES



## 7. Revision and Transfer pricing

- CIT has no administrative jurisdiction over the TPO, he could not have revised the order passed by the TPO under section 92CA(3).

*Essar Steel Limited v. ACIT 55 SOT 1 (Mum.) (Trib.)*

- The Assessing Officer's omission to follow the binding Circular, which makes it mandatory for the Assessing Officer to make a reference to the TPO if the aggregate value of the international transaction exceeds Rs. 5 crores, amounted to making assessment without conducting proper inquiry and investigation and resulted in the order becoming "erroneous and prejudicial to the interest of the Revenue".
- *Ranbaxy Laboratories Ltd. v. CIT [2012] 204 Taxman 294 (Delhi) (HC)*



# OTHER ISSUES



## 8. Change in law when the Commissioner invokes section 263

- It was held that legal decisions available at the point of time when Commissioner is examining the matter for exercise of powers under section 263 cannot be ignored. What is to be seen is the legal position prevailing as on the point of time when revision order is passed and not when the Assessing Officer passed the impugned order.
- *Star India Ltd. v. Addl. CIT [2012] 49 SOT 422 (Mum.)(Trib.)*

# OTHER ISSUES



## 9. Impact of subsequent events

- If, at that particular time, when the power under section 263 is exercised, a decision of the jurisdictional High Court was there, it would not be open to Commissioner to have proceeded on the basis that the Assessing Officer who had acted in terms of High Court's decision had acted erroneously, when the decision had not been set aside by the SC or at least had not been appealed from.
- *CIT v. G. M. Stainless Steel (P) Limited [2003] 263 ITR 255 (SC)*

# OTHER ISSUES



- Once the law on the subject has been declared by the High Court, the pronounced judgment dates back to the date of the enactment. Therefore, the order of Assessing Officer, though passed prior to such judgment, but contrary to law pronounced subsequently by High Court would be erroneous and prejudicial to interests of revenue.

*Intellinet Technologies India P. Ltd. v. ITO [2010] 134 TTJ 744 (Bang.)(Trib.)*

# OTHER ISSUES



- **Subsequent amendment in law**
- Position of law as on date when assessing officer passes an order has to be taken into consideration; no subsequent change, in law, can constitute basis for exercise of power u/s 263
- *CIT v. Saluja Exim Ltd. [2011] 199 taxmann 69 (Mag.) (Punj. & Har.)*

# OTHER ISSUES



- **Principle of consistency must be followed**
- Commissioner can take recourse to revisional powers under section 263 on fundamental aspects of a transaction on which a view had been taken and accepted by revenue for several preceding years; such an approach is against the principle of consistency. The department had not shown any special circumstances warranting deviation from the said principle
- *CIT v. Escorts Ltd. [2011] 198 Taxmann 324*

# OTHER ISSUES



## 10. Time limit to pass the revised order

- The period of limitation is to be reckoned from the date of the original assessment order under section 143(3) when the issues in respect of which the order was revised were decided in the original assessment order.

*CIT v. ICICI Bank Ltd. [2012] 343 ITR 74(Bom.)(HC),  
Ashoka Buildcon Limited v. ACIT [2010] 325 ITR 574  
(Bom.) (HC)*

# OTHER ISSUES



- **Time bar applies to Suo moto orders only**
- The time bar u/s 263(2) should be taken to apply Suo moto orders of revision by the commissioner and not to orders made by him pursuant to a direction or order passed by the tribunal or by any other higher authority. Section 263(3) must be regarded as an ex majore cautela provision and must be regarded as declaratory of the law which was already prevailing

*CIT v. National Taj Traders [1980] 121 ITR 535 (SC)*

# OTHER ISSUES



- Where through a reassessment had been made, commissioner, in exercising its revisional jurisdiction, reopened order of assessment in relation to an item, which was not subject of reassessment proceedings, period of limitation provided for in section 263(3) would begin to run from date of order of original assessment and not from order of reassessment
- *CIT v. Alagendran Finance Ltd. [2007] 162 Taxmann 465 (SC)*



# OTHER ISSUES



## 11. Can a revision order be partially valid?

- In this case, the Commissioner revised the order under section 263 on more than one ground. It was held that that the revision on certain grounds was valid while in case of certain other grounds, it was invalid.

*Colorcraft Kashimira Ceramic Compound v. ITO*  
*[2007] 105 ITD 599 (Mum.) (Trib)*

# OTHER ISSUES



## 12. Non-initiation of penalty proceeding is an ‘error’

- Failure of assessing officer to initiate penalty proceedings at the time of passing of the assessment order will render the order erroneous and prejudicial to the interest of the revenue
- *CIT v. Sri Surendra Prasad Agarwal [2005] 275 ITR 113 (All.)*
- *CIT v. Ashok Construction Co. [2006] 280 ITR 368 (All.)*

# OTHER ISSUES



## 13. Order not levying cannot be revised

- If the commissioner finds, while examining the records of an assessment order u/s 263, that the assessing officer has not initiated penalty proceedings, he cannot direct the initiation of penalty proceedings because penalty proceedings are not part of assessment proceedings. The Commissioner cannot pass an order u/s 263 pertaining to penalty

*Addl. CIT v. J.K. D'Costa [1982] 133 ITR 7 (Delhi)*

*CIT v. Nihal Chand Rekyan [2000] 242 ITR 45 (Delhi)*

## INSTANCES WHEN REVISION WAS HELD VALID



- The assessee had claimed deduction under Section 80 HHC and 80-IA and the same was allowed. The Commissioner, while exercising his revisional powers, held that assessment is erroneous and prejudicial to the interest of the revenue, as the assessee while computing the deduction under section 80HHC, had not reduced the claim of deduction allowed under section 80-IA from the profits and gains from the business. In this case, the revision under section 263 was held to be valid – *CIT v. Abhishek Industries Ltd. [2013] 255 CTR 504 (P&H) (HC)*

## INSTANCES WHEN REVISION WAS HELD VALID



- As the Assessing Officer had not clearly indicated the computation with the relevant Articles of the DTAA and the basis, it could be construed as an order both erroneous and prejudicial to the interest of revenue, hence the revision order was justified – *CIT v. Infosys Technologies Ltd. (No 2)*[2012] 341 ITR 293 (Karn.)(HC)
- Failure by the Assessing Officer to make enquiry in respect of payments liable to tax deduction at source was good enough to invoke revision under section 263 – *Bharti Hexacom Ltd. v. CIT* [2013] 21 ITR (T) 648 (Delhi) (Trib.)

## INSTANCES WHEN REVISION WAS HELD INVALID



- When neither section 80HH, nor section 80I statutorily obliged to maintain the accounts unit wise, the consolidated accounts held to be valid and revision was held to be not valid – *CIT v. Bongaigaon Refinery & Petrochemical Ltd [2012] 349 ITR 352 (SC)*
- There cannot be revision of a non-existing order and where there is no order either for levy or waiver of interest under section 158BFA(I) or section 234A, 234B or 234C of Act in existence, Commissioner can have no jurisdiction to invoke provisions of section 263 for directing Assessing Officer to charge interest under section 158BFA(1) – *Anand Kumar Agarwal (HUF) v. ACIT[2005] 92 TTJ 81 (Agra)(Trib.)*

## INSTANCES WHEN REVISION WAS HELD INVALID



- Revision of order on the basis of a non-jurisdictional High Court which was not approved by the jurisdictional High Court is not valid – *Hindustan Lever Ltd v. CIT*[2012] 70 DTR 182 (Cal.)(HC)
- Assessment order following binding precedent is not amenable to revision under Section 263. It was held that the AAR ruling was binding despite contrary rulings on the subject – *Prudential Assurance Co. Limited v. DIT (IT)* [2010] 324 ITR 381 (Bom.)(HC)

## INSTANCES WHEN REVISION WAS HELD INVALID



- When the assessment for AY 1987-88 was completed under section 143(1)(a) and notice under section 143(2) had not been issued and time for completing asst. under section 143(3) had expired, the Commissioner could not direct assessment under section 143(3) by his revision order under section 263. On these facts, the order was held to be contrary to provisions of section 143(2), 143(3) and 153(1)(a) – *V. Narayanan v. DCIT [2011] 127 ITD 133 (Chennai)(Trib.) (TM)*



## INSTANCES WHEN REVISION WAS HELD INVALID



- During the year under consideration, the assessee company had invested sums in its subsidiaries outside India. The Commissioner observed that the Assessing Officer had completed the assessment without examining/referring these transactions to the Transfer Pricing Officer to determine whether these investments were made at arm's length and invoked section 263. The Tribunal held that investment in share capital of the subsidiaries outside India is not in the nature of transactions referred to section 92B and hence, the order of the Commissioner under section 263 was set aside –  
*Vijai Electricals Limited v. Addl. CIT-ITAT Hyderabad "A" Bench dated 31st May, 2013, source: www.itatonline.org*

## INSTANCES WHEN REVISION WAS HELD INVALID



- If an existing circular is in conflict with the law of the land laid down by the High Courts or the Supreme Court, the Revenue authorities while acting quasi-judicially, should ignore such circulars in discharge of their quasi-judicial functions. The sole reason for invocation of section 263 was a Board circular. Since the outcome of the original order of assessment was in tune with the Division Bench decisions of the jurisdictional court, the order of revision was held invalid – *Bhartia Industries Limited v. CIT* [2013] 353 ITR 486 (Cal.) (HC)

# CONCLUSION



- Thus, we can see that the abovementioned judicial precedents have greatly helped in shaping the law on the powers of the Commissioner under section 263 of the Act. We can see that not only orders of assessment can be revised under this section but also such orders where proceedings have been filed or dropped. Jurisdiction under section 263 can be assumed upon the fulfillment of the twin conditions viz. erroneous order and prejudice to the revenue. However, the judge laid law has ensured that in cases where two views are possible or where the issue is debatable, revision under section 263 cannot be done. Furthermore, the observance of the principles of natural justice in section 263 proceedings has gone a long way in ensuring that the taxpayers are not subject to avoidable harassment, without compromising the remedy available to the Income-tax authorities in genuine circumstances.

# REVISION U/S 263 OF INCOME TAX ACT, 1961



# THANK YOU

**BY CA PIYUSH .S. CHHAJED**