

## **Revision of orders by the Commissioner of Income-tax**

### **U/s 264 of the IT Act 1961.**

**By S. K. Tyagi**

**[Published in 97 Taxman (Mag.) p.205 (Part No.6)]**

An assessee aggrieved by an order passed by the Assessing Officer(AO) may file an appeal against the same, to the DyCIT (A) or the CIT(A). As an alternative remedy the assessee may prefer an application to the CIT for revising the orders passed by the AO. A remedy U/s 264 is contemplated by the Legislature only to meet a situation faced by an aggrieved assessee who is unable to approach the appellate authorities for relief and has no other alternative remedy under the Act. Even those orders which are not appealable before the DyCIT(A) or CIT(A), may be referred by the assessee to the CIT for seeking revision or modification. -- Dwarka Nath Vs ITO 57 ITR p.349(SC).

A public duty is imposed on the revisional authority not only to entertain such application but also to deal with the same in accordance with law after giving the aggrieved party a reasonable opportunity of being heard as the discretion vested in him is a judicial discretion and has to be exercised judiciously. It is a power to be exercised in **the interest of justice** to the assessee. It is also the duty of the revisional authority to revise an assessment which is found to be erroneous on the admitted facts of the case -- OCM Ltd (London) Vs CIT 138 ITR p.689(All). If he detects an error committed by the subordinate officer, he has been given the right to correct it and pass such orders in relation thereto, as he thinks fit -- Haryana State Small Industries and Export Corporation Ltd Vs CIT 142 ITR p.293 (P & H).

By virtue of Explanation - 2 to S.264, the DyCIT(A) is deemed to be an authority subordinate to the CIT and, therefore, orders passed by the DyCIT(A) can also be revised by the CIT.

### **2. Nature of Jurisdiction U/s 264**

The power of revision conferred by S.264 on the CIT is not an administrative power. It is a quasi - judicial power. He can not permit his judgement to be influenced by matters not disclosed to the assessee nor by dictation of another authority including any circular. -- Sirpur Paper Mills Ltd Vs CWT 77 ITR p.6 (SC).

#### **The CIT has power to issue directions**

S.264 is not a provision of law dealing with the question of imposition of liability on the assessee. It is only a part of machinery section. It cannot be construed in a narrow manner. The CIT has the power U/s 264, to issue directions to the AO -- Mohammadi Begum Vs CIT 158 ITR p.622 (AP).

#### **New ground can be entertained by the CIT**

The revisional powers conferred by S.264 on the CIT are very wide. It is open to the CIT to entertain even a new ground, not urged before the lower authorities, while exercising revisional powers. -- C.Parikh & Co Vs CIT 138 ITR p.689 (All). A new claim for deduction made by the assessee in revision petition is to be examined on merits -- Rashtriya Vikas Ltd Vs CIT 99 CTR p.68(All).

**The assessee can file a revision petition against an addition erroneously accepted by him**

The CIT cannot reject a petition for revision on the ground that the assessee itself had returned income which it claims in the revision petition as not its income. In such a situation the CIT is bound to apply his mind to the question whether the assessee is liable to be taxed in respect of that income. -- Pt. Sheonath Prasad Sharma Vs CIT 66 ITR p.647 (All).

**Even an order passed in violation of the principles of natural justice can be corrected U/s 264**

Even an order wherein the principles of natural justice have been ignored, can be corrected in exercise of revisional powers U/s 264. -- Mohammadi Begum Vs CIT 158 ITR p.622 (AP).

**3. Orders against which a revision U/s 264, lies**

The opening lines of S.264 define the scope of the orders which may be revised under that section. A revision petition may lie only after an order has already been passed by the concerned authority. A petition filed during the pendency of assessment or other proceedings, does not lie. -- Bhavana Chemicals Ltd Vs CST (1978) TLR p.2210 (All). S.264(4)(b) places a ban on the CIT to revise any order where an appeal is pending before the DyCIT, against that order. Further by virtue of S.264(4)(c) where the order has been made subject of an appeal to the CIT(A) or to the Appellate Tribunal, the revisional powers of the CIT U/s 264 come to an end. In other words, it cannot be exercised at all during the pendency, or even after the disposal, of the appeal. The position does not change even if the order of the appellate authority is challenged before the Appellate Tribunal by the IT Department and not by the assessee. -- CWT Vs Mrs. Kasturbai Walchand and others 177 ITR p.188(SC).

**Scope of the expression ‘Subject of an appeal’**

The CBDT has, vide circular No 367 dt 26.7.’83, 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.”

**Order not appealable, may be made subject - matter of revision petitions**

A petition for revision U/s 264, may be made against orders which are not appealable under the Statute. --- Dwarka Nath Vs ITO 57 ITR p.349. Thus an order of the AO refusing to grant interest U/s 214, can be challenged by way of a revision petition to the CIT U/s 264.

### **Revision against levy of penal interest**

A revision lies to the CIT against the levy of penal interest U/s 139(8), 215 or 217, against which no appeal has been provided for -- CIT Vs Geetaram Kaliram 121 ITR p.708 (All - FB). In Gupta Builders (P) Ltd Vs CIT 191 ITR p.114 (Bom), interest charged U/s 139(8), was directed to be waived in full.

#### **4. Time limit for filing revision petition U/s 264**

Where the CIT, on his own, revises any order, such revision must be done within one year from the date of the original order. If, however, an assessee makes an application U/s 264, the same must be made within one year from the date of communication of the order, or the date on which, he otherwise comes to know of it, whichever is earlier.

### **Condonation of delay in filing petition U/s 264**

Proviso to S.264(3) empowers the CIT to admit and entertain an application for revision U/s 264(1), if the assessee is prevented by 'sufficient cause' from making the application within the specified period. The word 'sufficient cause' occurring in the proviso to S.264(3) should receive a liberal construction so as to advance substantial justice. In collector, Land Acquisition Vs Mst. Katiji & others 167 ITR p.471(SC), it was held that the court should adopt a liberal approach in the matter of condonation of delay.

#### **5. Nature of orders U/s 264**

The jurisdiction conferred U/s 264 is a judicial one. In the exercise of this power the CIT must bring to bear an unbiased mind, consider impartially the objections raised by aggrieved party and decide the dispute according to procedure which is in consonance with the principles of natural justice. He cannot permit his judgement to be influenced by matters not disclosed to the assessee, nor by dictation of another authority including any circular. -- Sirpur Paper Mills Ltd Vs CWT 77 ITR p.6(SC).

### **Writs lie against orders passed U/s 264.**

An order U/s 264 refusing to revise the order passed by a subordinate authority, is amenable to writ jurisdiction of the High court. If tax beyond the legitimate amount has been levied in a given case, it will be a case of an illegal demand which contravenes the constitutional provisions that tax has to be imposed in accordance with the law. In such a case a petition under Article 226 for a writ of certiorari to quash an unjust or illegal order of the CIT, is maintainable. -- Dwarka Nath Vs ITO. 57, ITR p.349(SC).

#### **6. Whether hearing is to be granted to the applicant.**

An applicant must be granted an oral hearing by the CIT before disposing of his application U/s 264. A written submission cannot be substituted for oral argument before the CIT, while dealing with a revision petition. The CIT should fix the date for hearing and give an opportunity to the applicant to have his say in the matter - Dulalchand Pramanick Vs CIT 84 ITR p.720 (Ori) and Industrial Rubber Products Vs CIT. 194 ITR p.141(Mad). The same view was expressed by the Apex Court in the case of Dwarka Nath Vs ITO 57 ITR p.349(SC). It was held in this case that it is implicit in such revisional jurisdiction that the revising authority should give an opportunity to the party affected to put forward his case. The Madras High Court in the case of S.K.Veeraraghavan Vs CIT 71 ITR p.823(Mad), held that if the CIT does not give an opportunity of being heard to the assessee, his orders are liable to be quashed.

**Whether a copy of AO's report is to be served on the applicant.**

If after going through the revision petition the CIT calls for, and in compliance thereof, the AO sends, a report, it is not necessary to apprise the applicant with the contents of the report, if it does not contain any new material. As per the decision of Allahabad High Court in the case of Asharfi Lal Vs ITO 66 ITR p.63(All), copy of AO's report filed in response to revision petition, need not necessarily be given to the assessee but it would be in the interest of justice and fair-play, if a copy of such report is made available to the assessee. The assessee would thus be in a position to appreciate whether the AO has travelled beyond the material existing on the record.

**7. No revision till period of limitation for filing appeal, expires.**

As per S.264(4)(a) the CIT cannot revise any order where an appeal against that order lies to the CIT(A) / DyCIT(A) or to the Appellate Tribunal but the same has not been made and the period, within which such appeal may be made, has not expired. But so far the orders appealable to the CIT(A) or to the Appellate Tribunal, are concerned, the CIT may revise such orders even before the expiry of the period of limitation for filing such appeals, if the assessee waives his right of such appeal. The fact of such waiver of right is to be specifically stated in the application for revision.

**8. The order U/s 264 cannot be prejudicial to the assessee.**

As per the provisions of S.264(1), the order passed by the CIT U/s 264, cannot be prejudicial to the assessee. An order by the CIT declining to interfere shall not be deemed to be an order prejudicial to the assessee, according to Explanation - 1 to S.264.

The order passed by the CIT U/s 264 should not be prejudicial to the assessee even indirectly. It was so held in the case of ACIT Vs M.V.Kenlucky, 60 ITD p.492 (Pune - Trib). In this case, on a petition U/s 264 by the assessee the CIT set aside the assessment, with a direction to make a fresh assessment. The AO completed the fresh assessment without any change in total income and tax originally assessed. The AO also initiated penalty proceedings U/s 271(1)(c), though no such penalty proceedings were initiated in the original order of the AO. The Hon. Tribunal held that order U/s 264 of the CIT, had indirectly resulted in the levy of penalty U/s 271(1)(c) and as such was prejudicial to the interest of the assessee. The cancellation of order U/s 271(1)(c) was accordingly held to be justified.

**9. A Suggestion to the I.T. Authorities**

An assessee can file a petition U/s 264 against an order passed by DyCIT(A). However, no revision petition can be filed to the CIT against an order passed by the CIT(A), as the CIT(A) is not subordinate to the CIT. This leads to discrimination against those assessment orders, against which appeal lies to the CIT(A), vis-à-vis the assessment orders against which appeal lies to the DyCIT(A). It is, therefore, suggested that a provision may be made in the Act whereby the appellate orders passed by the CIT(A) could be revised by the Chief CIT, the CIT(A) being subordinate to the Chief CIT.

---

<b>S. K. TYAGI</b>	☎ Office	: (020) 613 3012	Flat No.2, (First Floor)
M.Sc., LL.B., <b>Advocate</b>	Fax	: (020) 612 1131	Gurudatta Avenue
Ex-Indian Revenue Service	Residence	: (020) 668 2032	Popular Heights Road
<b>Income-Tax Advisor</b>		: (020) 668 2444	Koregaon Park
	E-mail	: sktyagidt@vsnl.com	PUNE - 411 001

---

