

CHAPTER TWO

STATUTORY PROVISIONS : APPEALS AND REVISIONS

2.1 INTRODUCTION:

In the present Chapter, the statutory provisions pertaining to the appeals and revisions as they stand in the Income-tax Act, 1961, are being reproduced verbatim so as to analyse them in the succeeding Chapter. These provisions have been extracted from the Taxmann's "Income Tax Act", 1990 Edition. The explanation of the footnote numbers has been given in the 'References' part of the Chapter for illustrating as to how these provisions have undergone legislative changes over the time through various Finance Acts.

2.2 TEXT OF THE PROVISIONS:

CHAPTER XX

APPEALS AND REVISION

¹[A. - Appeals ²[***] to the Deputy Commissioner (Appeals) and Commissioner (Appeals)

Appealable Orders.

246.

- (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) against such order -
- (a) an order against the assessee, where the assessee denies his liability to be assessed under this Act or

- any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
- (b) an order of assessment, reassessment or recomputation under section 147 or section 150;
- (c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;
- (d) an order made under section 163 treating the assessee as the agent of a non-resident;
- (e) an order under sub-section (2) or sub-section (3) of section 170;
- (f) an order under section 171;
- (g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185³ [***];
- (h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186³ [***];
- (i) an order under section 201;
- (j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year;
- (k) an order under section 237;
- (l) an order imposing a penalty under -
- (i) section 221, or
- (ii) section 271, section 271A, section 271B,^{3a} [section 271BB,]⁴ [***]⁵ [section 272A, section 272AA or section 272BB];
- (iii)⁶ [***] section 272, section 272B or section 273, as they stood immediately before the 1st day of

April, 1988, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years.

- (2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against such order -
- (a) an order specified in sub-section (1) where such order is made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 120 or section 124;
 - (b) an order specified in clauses (a) to (e) (both inclusive) and clauses (i) to (l) (both inclusive) of sub-section (1) ⁷ [or an order under section 104, as it stood immediately before the 1st day of April, 1988 in respect of any assessment for the assessment year commencing on the 1st day of April, 1987 or any earlier assessment year] made against the assessee, being a company;
 - (c) an order of assessment made after the 30th day of September, 1984, on the basis of the directions issued by the Deputy Commissioner under section 144A;
 - (d) an order made by the Deputy Commissioner under section 154;
 - (e) an order imposing a penalty under section 271B ⁸ [or section 271BB];
 - ⁹ [(ee) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;]
 - (f) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
 - ¹⁰ [(ff) an order made by a Deputy Commissioner imposing a penalty under section 272AA;]
 - ¹¹ [(g) an order imposing a penalty under Chapter XXI by the

Income-tax Officer or the Assistant Commissioner, where such penalty has been imposed with the previous approval of the Deputy Commissioner under sub-section (2) of section 274;]

(h) an order made by an Assessing Officer (other than Deputy Commissioner) under the provisions of this Act in the case of such person or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.

(3) Notwithstanding anything contained in sub-section (1), the Board or the Director General, or the Chief Commissioner or Commissioner if so authorised by the Board may, by order in writing, transfer any appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) if the Board or, as the case may be, the Director General or Chief Commissioner or Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred;

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be re-opened or that he be reheard.

Explanation : For the purposes of this section, -

- (a) "appointed day" means the 10th day of July, 1978, being the day appointed under section 39 of the Finance (No.2) Act, 1977 (29 of 1977);
- (b) "status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.]

¹²**[Appeal by partner.**

247. Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the ¹³[Deputy Commissioner (Appeals)] ¹⁴[or, as the case may be, the Commissioner (Appeals)] against any order of an ¹⁵[Assessing Officer] determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but he cannot agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss]

Appeal by person denying liability to deduct tax.

248. Any person having in accordance with the provisions of sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the ¹⁶[Deputy Commissioner (Appeals)] ¹⁷[or, as the case may be, the Commissioner (Appeals)] to be declared not liable to make such deductions.

¹⁸**Form of appeal and limitation.****249.**

- (1) Every appeal under this Chapter shall be in the prescribed form and shall be verified in the prescribed manner.
- (2) The appeal shall be presented within thirty days of the following date, that is to say, -
 - (a) where the appeal relates to any tax deducted under sub-section (1) of section 195, the date of payment of the tax, or
 - (b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty;

¹⁹**[Provided** that, where an application has been made under section 146 for reopening an assessment, the

period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or]

(c) in any other case, the date on which intimation of the order sought to be appealed against is served.

(3) The ¹⁶[Deputy Commissioner (Appeals)] ¹⁷[or, as the case may be, the Commissioner (Appeals)] may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

¹⁹[(4)No appeal under this Chapter shall be admitted unless at the time of filing of the appeal, -

(a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or

(b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him;

Provided that, ²⁰[in a case falling under clause (b) and] on an application made by the appellant in this behalf, the ¹⁶[Deputy Commissioner (Appeals)] ¹⁷[or, as the case may be, the Commissioner (Appeals)] may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of ²¹[that clause].]

Procedure in appeal.

²²250.

(1) The ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the ²⁵[Assessing] Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal -

- (a) the appellant, either in person or by an authorised representative;
- (b) the ²⁵[Assessing] officer, either in person or by a representative.
- (3) The ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] shall have the power to adjourn the hearing of the appeal from time to time.
- (4) The ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the ²⁵[Assessing] Officer to make further inquiry and report the result of the same to the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)].
- (5) The ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] is satisfied that the omission of the ground from the form of appeal was not wilful or unreasonable.
- (6) The order of the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.
- (7) On the disposal of the appeal, the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] shall communicate the order passed by him to the assessee and to the ²⁶[Chief Commissioner or Commissioner].

Powers of the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)].

251.

- (1) In disposing of an appeal, the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] shall have the following power -
- (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the ²⁵[Assessing] Officer for making a fresh assessment in accordance with the directions given by the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] and after making such further inquiry as may be necessary, and the ²⁵[Assessing] Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;
 - (b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
 - (c) In any other case, he may pass such orders in the appeal as he thinks fit.
- (2) The ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing the cause against such enhancement or reduction.

Explanation : In disposing of an appeal, the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the

²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] by the appellant.

B. - Appeals to the Appellate Tribunal

Appellate Tribunal.

252.

(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

²⁷[(2)A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Central Legal Service and has held a post in Grade I of that Service or any equivalent or higher post for at least three years or who has been an advocate for at least ten years.

Explanation : For the purpose of this sub-section, -

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) An accountant member shall be a person who has for at least ten years been in the practice of accountancy as a

chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant, or who has been a member of the Indian Income-tax Service, Group A and has held the post of Commissioner of Income-tax or any equivalent or higher post for at least three years.]

(3) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof.

²⁸ [(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case may be, Vice-Presidents thereof.]

²⁹ [(4A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.]

³⁰ (5) ³¹ [The Senior Vice-President or a Vice-President] shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

³² **Appeals to the Appellate Tribunal.**

253.

(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) an order passed by a ²³ [Deputy Commissioner (Appeals)]
²⁴ [or, as the case may be, a Commissioner (Appeals)]
 under ³³ [***], ³⁴ [section 154], ³⁵ [***] section 250,
³⁶ [section 271, section 271A or section 272A]; or

(b) ³⁷ [***]

(c) an order passed by a Commissioner under section 263
³⁸ [or under section 272A] ³⁹ [***] or an order passed
 by him under section 154 amending his order under
 section 263] ⁴⁰ [or an order passed by a Chief Commi-

ssioner or a Director General or a Director under section 272A].

- (2) The Commissioner may, if he objects to any order passed by a ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, a Commissioner (Appeals)] under ⁴¹[section 154 or] section 250, direct the ²⁵[Assessing] Officer to appeal to the Appellate Tribunal against the order.
- (3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.
- (4) The ²⁵[Assesing] Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)] has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the ²³[Deputy Commissioner (Appeals)] ²⁴[or, as the case may be, the Commissioner (Appeals)], and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and

shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of ⁴²[two hundred rupees].

Orders of the Appellate Tribunal.

254.

- (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.
- (1A) ⁴³[***]
- (2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the ²⁵[Assessing] Officer:
Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.
- (3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the ⁴⁴[Chief Commissioner or Commissioner].
- (4) Save as provided in section 256, orders passed by the Appellate Tribunal on appeal shall be final.

Procedure of Appellate Tribunal.

⁴⁵255.

- (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the

President of the Appellate Tribunal from among the members thereof.

- (2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.
- (3) The President or any other member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the ²⁵[Assessing] Officer in the case does not exceed ⁴⁷[one lakh rupees], and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.
- (4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.
- ⁴⁸(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (6) The Appellate Tribunal shall, for the purpose of

discharging its functions, have all the powers which are vested in the income-tax authorities referred to in section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of sections 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).⁴⁹

Statement of case to the High Court.

256.

- ⁵⁰(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of ⁵¹[two hundred rupees], require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court:
- Provided** that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.
- (2) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court

may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

- (3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of such refusal, withdraw his application, and, if he does so, the fee paid shall be refunded.

Statement of case to Supreme Court in certain cases.

257. If, on an application made under section 256, the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

Power of High Court or Supreme Court to require statement to be amended.

258. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

Case before High Court to be heard by not less than two judges.

259.

- (1) When any case has been referred to the High Court under section 256, it shall be heard by a Bench of not less than

two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

- (2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Decision of High Court or Supreme Court on the case stated.

260.

- (1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.
- (2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

D. - Appeals to the Supreme Court

Appeal to Supreme Court.

261. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Hearing before Supreme Court.**262.**

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 261 as they apply in the case of appeals from decrees of a High Court;

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of section 260 or section 265.

- (2) The costs of the appeal shall be in the discretion of the Supreme Court.
- (3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 260 in the case of a judgment of the High Court.

E. - Revision by the Commissioner**Revision of orders prejudicial to revenue.****263.**

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the ²⁵[Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

⁵²[Explanation : For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, -

- (a) an order passed ⁵³[on or before or after the 1st day of June, 1988] by the Assessing Officer shall include -
- (i) an order of assessment made by the Assistant Commissioner or the Income-tax Officer on the basis of the directions issued by the Deputy Commissioner under Section 144A;
- (ii) an order made by the Deputy Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120;
- (b) "record" ⁵⁴[shall include and shall be deemed always to have included] all records relating to any proceeding under this Act available at the time of examination by the Commissioner.
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of appeal, ⁵³[filed on or before or after the 1st day of June, 1988] the powers of the Commissioner under this sub-section shall extend ⁵³[and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.]

⁵⁵[(2)No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

- (3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal,

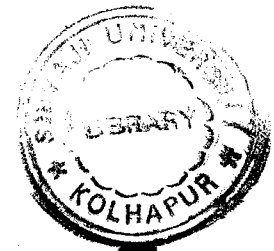
the High Court or the Supreme Court.

Explanation : In computing the period of limitation for the purposes of sub-section (2), the time is taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Revision of other orders.

⁵⁶264.

- (1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.
- (2) 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.
- (3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of, whichever is earlier.
Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.
- (4) The Commissioner shall not revise any order this section in the following cases -



- (a) where an appeal against the order lies to the ²³ [Deputy Commissioner (Appeals)] ⁵⁷ [or to the Commissioner (Appeals)] or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired or, in the case of an appeal ⁵⁸ [to the Commissioner (Appeals) or] to the Appellate Tribunal, the assessee has not waived his right of appeal; or
- (b) where the order is pending on an appeal before the ²³ [Deputy Commissioner (Appeals)]; or
- (c) where the order has been made the subject of an appeal ⁵⁷ [to the Commissioner (Appeals) or] to the Appellate Tribunal.
- (5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation 1 : An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2 : For the purposes of this section, the ²³ [Deputy Commissioner (Appeals)] shall be deemed to be an authority subordinate to the Commissioner.

REFERENCES

1. Substituted for the heading and section 246 by the Direct Tax Laws (Amendment) Act, w.e.f. 1.4.1989.
2. "or applications" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
3. "in respect of any assessment for the assessment year commencing on the 1st day of April, 1988 or any earlier assessment year" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
- 3a. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
4. "section 271C, section 271D, section 271E", omitted by the

- the Finance Act, 1990, w.e.f. 1.4.1990.
5. Substituted for "section 271E or section 272A" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
 6. "sub-section (1) of section 271" omitted: ibid.
 7. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
 8. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
 9. Inserted, Ibid.
 10. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
 11. Substituted for the following, ibid.
(g) an order imposing a penalty under clause (c) of sub-section (1) section 271, as it stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April 1988 or any earlier assessment years, where such penalty has been imposed with the previous approval of the Deputy Commissioner under the proviso to clause (iii) of sub-section (1) of that section".
 12. Reintroduced by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was omitted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
 13. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
 14. Inserted by the Finance (No.2) Act, 1977, w.e.f. 10.7.1978.
 15. Substituted for "Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
 16. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
 17. Inserted by the Finance (No.2) Act, 1977, w.e.f. 10.7.1978.
 18. See Rules 45 and 46 and Form no.35.
 19. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.

20. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
21. Substituted for "*this sub-section*" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
22. See Rule 46A.
23. Substituted for "*Appellate Assistant Commissioner*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
24. Inserted by the Finance (No.2) Act, 1977, w.e.f. 10.7.1978.
25. Substituted for "*Income-tax*" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
26. Substituted for "*Commissioner*", *ibid.*
27. Substituted by the Finance Act, 1981, w.e.f. 1.4.1981.
28. Inserted by the Finance Act, 1972, w.e.f. 1.4.1972.
29. Inserted by the Finance Act, 1984, w.e.f. 1.4.1984.
30. For functions and powers delegated to Vice-President, refer instructions issued by the Income-tax Appellate Tribunal, Bombay.
31. Substituted for "*A Vice-President*" by the Finance Act, 1984, w.e.f. 1.4.1984.
32. See rule 47(1) and Form nos.36 and 36A.
33. "*sub-section (2) of section 131*" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
34. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6.10.1964.
35. "*section 246A*" omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier, it was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from the same date.
36. Substituted for "*or section 271*" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
37. Omitted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.10.1984. Prior to its omission, clause (b), which was amended first by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6.10.1974, then by the Finance (No.2) Act, 1977,

w.e.f. 10.7.1978, and then by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976, stood as under:

"(b) an order passed by an Inspecting Assistant Commissioner under section 154; or"

38. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
39. *"or under section 285A"* omitted by the Finance Act, 1988, w.e.f. 1.4.1988. Omitted words were earlier inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6.10.1964.
40. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
41. Inserted by the Direct Taxes (Amendment) Act, 1964, w.e.f. 6.10.1964.
42. Substituted for *"one hundred and twenty-five rupees"* by the Finance Act, 1981, w.e.f. 1.6.1981; *"one hundred and twenty-five rupees"* was substituted for *"rupees one hundred"* by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
43. Omitted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1.1.1973. Original sub-section was inserted by the Finance Act, 1964, w.e.f. 1.4.1964. In connection with this amendment, section 25 of the Taxation Laws (Amendment) Act, 1972, has made the following independent provision:
"Saving and special provision. - (1) Notwithstanding the omission of sub-section (1A) of section 254 of the Income-tax Act, 1961 (43 of 1961), by section 3 of this Act, every requisition by an appellant for the making of a reference under that sub-section and every reference made under that sub-section before such omission shall be dealt with as if the said section has not been omitted, and, save as aforesaid, no such reference shall be made after such omission".
44. Same as 25 above.
45. Substituted for *"Commissioner"* by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.

46. See also letter [UO no.F.38-AD(AT)/71] dated 9.8.1971.
47. Substituted for "forty thousand rupees" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989. Earlier "forty thousand rupees" was substituted for "twenty-five thousand rupees" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
48. For relevant notifications issued under the sub-section, refer Taxmann's Direct Taxes Circulars, Vol.2, 1988 edn.
49. Now Code of Criminal Procedure, 1973 (2 of 1974).
50. See rule 48 and Form no.37.
51. Substituted for "one hundred and twentyfive rupees" by the Finance Act, 1981, w.e.f. 1.6.1981; "one hundred and twenty five rupees" was substituted for rupees one hundred" by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
52. Substituted by the Finance Act, 1988, w.e.f. 1.6.1988. Prior to its substitution, Explanation as inserted by the Taxation Laws (Amendment) Act, 1987, w.e.f. 1.10.1984 and amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988, read as under:
Explanation : For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Assessing Officer shall include -
(a) an order of assessment made on the basis of directions issued by the Deputy Commissioner under section 144A or section 144B; and
(b) an order made by the Deputy Commissioner in exercise of the powers or in performance of the functions of an Assessing Officer conferred on, or assigned to, him under clause (a) of sub-section (1) of section 125 or under sub-section (1) of section 125A."
53. Inserted by the Finance Act, 1989, with retrospective effect from 1.6.1988.
54. Substituted for "includes", ibid.

55. Substituted for the following by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.10.1984:
- "(2) No order shall be made under sub-section (1) -*
- (a) to revise an order of reassessment made under section 147, or*
- (b) after the expiry of two years from the date of the order sought to be revised".*
56. See also Circular No.367, dated 26.7.1983 and Letter [F.no. 6/52/68-ITJ] dated 30.7.1970.
57. Inserted by the Finance (No.2) Act, 1977, w.e.f. 10.7.1978.
58. Inserted, Ibid.