

Revision under Sec.264 - An Alternative Remedy for Quicker Relief?

Jan 19, 2024



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Introduction

The current appellate regime is mostly faceless and though the scheme has many merits, the system integration does pose certain issues and disposal of appeals involving even smaller disputed amounts or single issue do get delayed. Where the disputes are on one or two issues and are very clear and straightforward, the aggrieved tax payers can think of alternate remedy available under the Act itself namely filing of petition under section 264. However, the one reason why 264 is falling into dispute or controversy is that most of the CIT's discourage the assessee's from filing application under this provision and as a result with conservative mindset relief is very limited and in few cases the assessee even loses right of any further appeal. However, with time the provisions under section 264 are fairly evolved and a look at the 264 provisions with open mindset would help reduce litigation in cases where relief is more or less straightforward. The law regarding section 264 is fairly evolved and settled as examined hereunder with reference to case laws.

Section 264

1. The Legislature for the benefit of the assessee has in the Income Tax Act provided an alternative to the legal remedy available to the assessee through normal appellate channel, by virtue of powers to revise orders under section 264 granted to the PCCIT/CCIT/PCIT on orders passed by the AO. This remedy has been provided by the legislature as a means to redress the grievance of an aggrieved assessee who has been unable to follow the path of appeal for whatever reasons. Even an order which is not appealable is covered within the purview of this section. Further the assessee can by virtue of section 264 hope for natural justice on orders which have been issued by the AO without providing due opportunity under the faceless regime.
2. The legislative mandate of Section 264 of the Act and the revisionary power conferred on the Commissioner empowers the Jurisdictional Commissioner to revise any order (other than an order to which Section 263 applies) passed by an authority subordinate to him, on his own motion or on an application by the assessee for revision. By virtue of this section, 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** [\[TS-5562-HC-1982\(PUNJAB\)-OI\]](#). Thus an order issued by the AO falls well within this purview. The statutory power which have been conferred on the Commissioner to examine and correct any order passed by a subordinate authority are Quasi-judicial powers and not administrative powers — **Mohammadi Begum Vs CIT** [\[TS-5053-HC-1985\(ANDHRA PRADESH\)-OI\]](#).
3. The Commissioner is authorised to make any inquiry and is empowered to call for the record of any proceeding under the Act in which such an order has been passed. The Honorable Calcutta high court in the judgement of **Phool Lata Somani vs CIT** [\[TS-5508-HC-2005\(CALCUTTA\)-OI\]](#) has held that the CIT has a duty to consider all the facts placed before him, even if the same is not placed before the AO. Even if the facts are not presented to the AO, the CIT has a responsibility to consider them all to the largest extent possible. 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** [\[TS-5395-HC-1979\(GUJARAT\)-O\]](#)

4. For the purposes of this section, “order” has a broad definition, which means that in addition to orders under section 143(3) or the 147 or the 153A, and the 153C, intimation under section 143(1) or application under section 197 are also encompassed in the name “order” under this section. **Land Acquisition Vs Mst. Katiji & others** [\[TS-5008-SC-1987-O\]](#) This clause gives the revisionary authority more power to remedy not just errors perpetrated by subordinate authorities, but also errors that has been committed by the assessee as held in the case of **Hitech analytical services versus PCIT** [\[TS-6130-HC-2017\(GUJARAT\)-O\]](#). The assessee has the right to make a new claim for deduction in revision petition, the same is to be examined by the CIT on merits — **Rashtriya Vikas Ltd Vs CIT** [\[TS-5542-HC-1991\(ALLAHABAD\)-O\]](#). Revision is allowable for genuine ITR Mistakes even if Assessee is claiming change in all figures. The Commissioner is bound to apply his mind to the question of whether the assessee was taxable on that income, and his powers are not limited to correcting the error committed by the subordinate authorities but could even be exercised where the assessee commits errors. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim when filing the return and the error is subsequently discovered and raised for the first time in an application under section 264

5. The proceedings under section 264 are intended to meet a situation faced by an assessee who cannot approach the appellate authorities for relief and has no other alternative remedy available under the Income-tax **Act-Diwaker Tripathi (Bombay HC, WP No. 1337/2022, Order dt. Aug 29, 2023)**

6. The time limit for filing application under section 264 is within one year of receiving notice of the challenged order. In the case of **Muthiah Chettiar versus CIT, the Madras High Court** [\[TS-5098-HC-1950\(MADRAS\)-O\]](#) defined “Date of Order” as the date on which the order is notified to the assessee. In case of a belated revision petition, appropriate reasons should be accompanied and CIT should remain liberal, in the matter of delay- **Parijat chemicals Pvt Ltd vs ITO** [\[TS-5121-HC-1995\(MADHYA PRADESH\)-O\]](#)

7. However, there are some restrictions and constraints on exercise of power as per Sub-section 264 (4), these are

1. Orders which can be appealed against and where the assessee has not waived his right of appeal;
2. where the order is already pending in appeal before any appellate authority
3. when an appeal against the order lies to any appellate authority but such appeal has not been filed and the time within which such appeal may be filed has also not expired.
4. The three conditions; non-filing of appeal, time to file appeal had not expired and non waiver of right to appeal are cumulative.

The objective and purpose of these restrictions and constraints is to ensure that the Assessee does not assail the same order before two forums and that it can elect between either filing an appeal or a revision. The Assessee cannot avail of both remedies against the same order for the same Assessment Year. If the time period for filing the appeal has not expired, the revision cannot be entertained – only to ensure that after filing of Revision, the assessee does not thereafter file an appeal. Even thereafter, the requirement is that the assessee should have waived his right to appeal. CIT cannot refuse to entertain a revision petition filed by the assessee under section 264 if it is maintainable on the ground that a similar issue has arisen for consideration in another year and is pending adjudication in appeal or another forum ; negative stipulations are clearly not attracted—**Paradigm Geophysical Pty Ltd. vs. CIT** [\[TS-547-HC-2017\(DEL\)\]](#)

8. Section 264 revision is allowable against order of CIT(A) rejecting an appeal ab initio. Once an appeal is considered as non-est in the eye of the law, order challenged in such appeal cannot be considered as “subject of an appeal”, as the issues raised in the appeal has not been adjudicated on merits. It should be noted that under section 251(1)(a) an appeal filed before the appellate authority, is to be considered as disposed of, if order under challenge is either confirmed, reduced, enhanced, or annulled considering the merits of the matter. -**S. Ravinder vs CIT** [\[TS-6060-HC-2021\(TELANGANA\)-O\]](#)

9. Thus under the above scenarios an aggrieved assessee can use this alternative remedy and can file an

application for revision before the Jurisdictional PCCIT/CCIT/PCIT if he does not prefer to go through the appellate channel or the same is not available to him. Since, the Commissioner cannot pass any order which is prejudicial to the Assessee, there cannot be any such fear when the assessee files an application under this section. This will help to save time of both the assessee and the department and grievances would be redressed by taking this course rather than be in appellate loop for a long period especially if disputed amounts are relatively small and are not priority appeals for regular appellate authorities.

The author recently retired as Chief Commissioner of Income Tax after 35 years of service. She is from 1988 IRS batch.