

# **APPEALS AND REVISION**

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# APPEALS BEFORE COMMISSIONER (APPEALS)

- **Appealable Orders before Commissioner (Appeals) [Section 246A]**
- **Appeal by person denying liability to deduct tax under section 195 [Section 248]**
- **Form of appeal and prescribed fees [Section 249(1)]**
- **Time limit [Section 249(2) & (3)]**
- **Exemption in respect of tax to be paid at the time of filing the appeal [Section 249(4)]**
- **Procedure in appeal [Section 250]**
- **Powers of the Commissioner (Appeals) [Section 251]**

# APPEALS BEFORE COMMISSIONER (APPEALS) [SECTION 246A]:

- (i) an order passed by a Joint Commissioner under section 115VP(3)(ii) refusing to approve the option for tonnage tax scheme; or
- (iii) an intimation under section 143(1)/(1B) or section 200A(1) or section 206CB(1)
- (iv) any order of assessment under section 143(3) except an order passed in pursuance of the directions of DRP or order making GAAR applicable or a best judgement order under section 144, in relation to the 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;
- an order of assessment, reassessment or recomputation under section 147
- an order made under section 92CD(3) in relation to order passed by the AO modifying the total income in accordance with ALP determined as per APA;
- a rectification order made 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

# APPEALS BEFORE COMMISSIONER (APPEALS) [SECTION 246A]:

- an order made under section 163 treating the assessee as the agent of a non-resident;
- an order made under section 170(2)/(3) assessing income of business prior to succession in the hands of the successor;
- an order made under section 171 relating to assessment after partition of HUF;
- an order made under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;
- an order made under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;
- a refund order made under section 237;

# APPEALS BEFORE COMMISSIONER (APPEALS) [SECTION 246A]:

- an order imposing a penalty under
  - (i) Section 221; or
  - (ii) Section 271A, section 271AAB, section 272AA or section 272BB;
- an order imposing penalty under section 271B;
- an order imposing a penalty under section 271C, section 271CA, section 271D, or section 271E;
- an order imposing a penalty under section 272A;
- an order imposing a penalty under section 272AA;
- an order imposing or enhancing penalty under section 275(1A);
- an order imposing a penalty under Chapter XXI;
- Appeal by person (bearing tax u/s 195) denying liability to deduct tax u/s 195.

# PRESCRIBED FEES (SECTION 249(1))-

	CASE	PRESCRIBED FEES
1	where the total income of the assessee as computed by the Assessing Officer is Rs. 1,00,000 or less	Rs. 250
2	where the total income of the assessee computed as above is more than Rs. 1,00,000 but not more than Rs. 2,00,000	Rs. 500
3	where the total income of the assessee computed as above is more than Rs. 2,00,000	Rs. 1000
4	in any case other than (i), (ii) and (iii) above	Rs. 250

# TIME LIMIT [SECTION 249(2) & (3)]:

An appeal to the Commissioner (Appeals) against any order which is appealable is to be presented within 30 days from the dates specified below in the particular cases. Condonation of delay on sufficient cause possible. The dates from which the limitation period of 30 days has to be reckoned are as follows:

	<b>Appeal relating to</b>	<b>30 days to be reckoned from</b>
1.	Section 248	Date of payment of tax
2.	Assessment/penalty	Date of service of notice of demand
3.	Any other case	Date on which intimation of the order sought to be appealed against is served.

# **EXEMPTION IN RESPECT OF TAX TO BE PAID AT THE TIME OF FILING THE APPEAL [SECTION 249(4)]:**

- No appeal to the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal, the assessee has paid the tax on the amount of income returned by him in cases where a return has been filed by the assessee.
- If, however, no return has been filed by the assessee and an assessment has been made on him by the Assessing Officer, then, the assessee must pay an amount equal to the amount of advance tax which was payable by him before filing the appeal.
- The Commissioner (Appeals) is, however, empowered for good and sufficient reasons to be recorded in writing, to exempt an appellant from the operation of the requirement in regard to payment of advance tax, on receipt of an application from the appellant made specifically for this purpose, giving the reasons for the non-payment of the tax.

# PROCEDURE IN APPEAL [SECTION 250]:

- Opportunity of hearing to both the assessee and the Assessing Officer.
- Make enquiries or direct the AO to make enquiries.
- Admission of additional ground
- In every appeal the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed under section 246A(I).
- Faceless appeal

# PROCEDURE IN APPEAL [SECTION 250]:

- Section 250(6B) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of the disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency & accountability by-
  - Eliminating the interface
  - Optimizing utilization
  - Introducing an appellate system with dynamic jurisdiction
- Accordingly, in the exercise of powers u/s 250(6B) of the Act, the Central Government has notified Faceless Appeal Scheme, 2020

# POWERS OF THE COMMISSIONER (APPEALS) [SECTION 251]:

- While disposing of an appeal the Commissioner (Appeals) is vested with the following powers viz.,
  - In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.
  - In an appeal against the assessment order in respect of which the proceeding before the Settlement Commission abates under section 245HA, to confirm, reduce, enhance or annul the assessment after taking into consideration the following –
    - All material and other information produced by the assessee before Settlement Commission
    - Results of inquiry by settlement commission
    - Evidence recorded by the Settlement Commission
  - In an appeal against an order imposing a penalty he may confirm or cancel such order or vary it in such a way as to enhance or reduce the penalty.

# APPEALS TO THE APPELLATE TRIBUNAL [SECTIONS 252 TO 255]

• **Constitution**[Section 252(1)]

• **Qualifications, terms and conditions of service of President, Vice President and Member** [Section 252A]

• **Orders appealable before the Appellate Tribunal** [Section 253]

• **Time limit for filing appeal or memorandum of cross objection under section 253(1) & (2)** [Section 253(3), (4)& (5)]

• **Fees**

• **Rectification**

• **Fees for rectification**

• **Time limit**

• **Cost of appeal**

• **Final authority on facts**

• **Benches**

# QUALIFICATION OF ITAT MEMBERS

- Bench shall have 1 Judicial and 1 Accountant Member
- Single bench where total income less than Rs. 50 lakhs
- Special bench shall have 3 members
- Judicial Member
  - District Judge and Additional District Judge for 10 yrs
  - Member of Indian Legal Service with 10 years experience and Additional Secretary for 2 yrs
  - Advocate for 10 yrs
- Accountant Member
  - CA for 25 yrs
  - PCIT for 2 yrs and performed quasi judicial or adjudicating function for 3 yrs
- President
  - Sitting or retired judge of HC and who has completed not less than 7 yrs of service as judge
  - Vice President of ITAT

# ORDERS APPEALABLE BEFORE ITAT

- Order passed by AO
  - excluding company from tonnage tax scheme where such company is party to transaction which amounts to abuse
  - u/s 143(3)/147/153A/153C in pursuance of DRP Directions or rectification order u/s 154.
  - 143(3)/147/153A/153C invoking GAAR or rectification order u/s 154.
- Order of CIT(A)
  - disposing of the appeal or
  - levying penalty u/s 270A or 271A or 271J or 272A or 154
- Order of PCIT/CIT
  - u/s 12AA refusing or cancelling trust registration
  - u/s 80G(5)(vi) refusing to grant approval to institution
  - Order refusing approval to funds u/s 10(23C)
  - Revision order u/s 263
  - Penalty u/s 270A or 272A or 154

- **Time Limit-**

- ✓ Every appeal to the Appellate Tribunal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or Commissioner, as the case may be.
- ✓ Further, on receipt of notice that appeal against order of Commissioner (Appeals) has been preferred by the Assessing Officer or the assessee, as the case may be, the other party can file memorandum of cross objections within 30 days of receipt of notice against any part of the order of Commissioner (Appeals). The Appellate Tribunal has to dispose of the memorandum of cross objections as if it were an appeal filed within the given time limit.
- ✓ Condonation of delay on sufficient cause possible

- FEES

	Case	Prescribed fees
1.	Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is Rs. 1,00,000 or less	Rs.500
2.	Where the total income exceeds Rs. 1,00,000 but is not more than Rs. 2,00,000	Rs. 1,500
3.	Where the total income is more than Rs. 2,00,000	1% of the assessed income, subject to a maximum of Rs. 10,000.
4.	In any other case	Rs.500
5.	Where appeal is filed to the Appellate Tribunal by an Assessing Officer on the direction of the Commissioner or Principal Commissioner, against the order of the Commissioner (Appeals) under section 154 or 250	No fees
6.	Filing of memorandum of cross-objections.	No fees
7.	Application for stay of demand	Rs. 500

- **Rectification** - Within 6 Months from the end of the month in which order is passed if mistake apparent from record.
- **Fees For Rectification**- ₹50.
- **Time limit**- 4 years from the end of the financial year in which such appeal is filed.
- **Stay on demand of tax**

Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless-

- ✓ the assessee makes an application & has complied with the condition of depositing 20% of tax, interest, fee, penalty, or furnishes security of equal amount &
- ✓ the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee,

However, the aggregate of the period originally allowed and the period of stay so extended should not exceed 365 days & the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within 180 day period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

- **Final authority on facts**- On all questions of fact the orders passed by the Appellate Tribunal on appeal shall be final and binding on the assessee as well as the Department

**Where members differ-** If the member 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. However, if the members are equally divided, they should state the points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point by one or more of the other members of the Tribunal: then, such points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

**Regulating power-** The Appellate Tribunal is empowered to regulate its own procedure and the procedure of its Benches in all matters arising out of the exercise of its power of the discharge of its functions, including the places at which the Benches shall hold their sittings. The Tribunal is vested with all the powers which are exercisable by Income-tax authorities under section 131 for the purpose of discharging its functions. Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding for the purpose of the Income-tax Act, 1961 and the Indian Penal Code and that Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of the Income-tax Act, 1961 and the Code of Criminal Procedure, 1898.

# APPEALS TO HIGH COURT [SECTIONS 260A & 260B]

• **Appeal**

• **Form for appeal**

• **Time limit for appeal- 120Days**

• **Matters on which appeal can be heard**

• **Delivery of judgment**

• **Award of costs**

• **Code of Civil Procedure**

• **Case before High Court to be heard by not less than two judges [Section 260B]-(i) Strength of the bench hearing the appeal, (ii) Decision of the Majority**

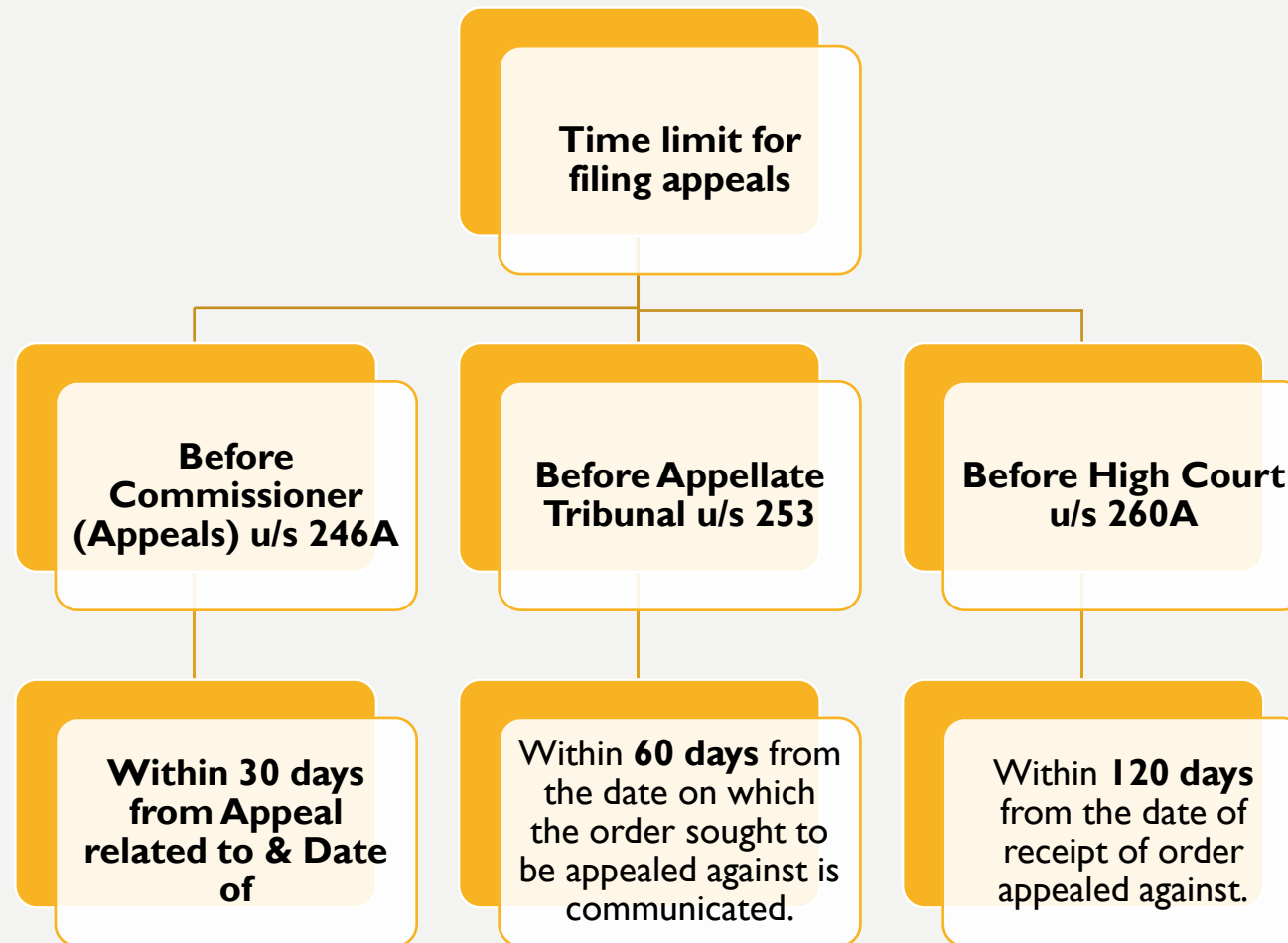
# APPEAL TO HC

- Substantial question of law
- T/L – within 120 days from the date on which order appealed against is received by the assessee or PCIT/CCIT/PCCIT/CIT
- Condonation of delay
- Power of HC
  - Appeal on only question formulated
  - Other substantial question of law not formulated by it
  - Determination of issue not determined by ITAT or wrongly determined by ITAT
  - Bench not less than 2 judges

# APPEAL TO THE SUPREME COURT [SECTION 261]

- According to section 261, an appeal shall lie to the Supreme Court from any judgment of the High Court, in a case which the High Court certifies to be a fit one for appeal to the Supreme Court.

# APPEAL TO THE SUPREME COURT [SECTION 261]



Note: Time Period can be extended by the Appellate Authority if the appellant shows sufficient cause for not presenting the appeal within the specified time.

# PROVISION FOR AVOIDING REPETITIVE APPEALS [SECTION 158A]

- **Identical question of law pending before High Court/Supreme Court**
- **Assessee to furnish declaration**
- **Assessing Officer's report on correctness of claim**
- **Admission or rejection of claim by order in writing**
- **Consequences where claim is admitted: Where a claim is admitted,**
- **Final decision of Supreme Court/High Court to be applied to the case**
- **Finality of the order**
- **Meaning of certain terms**

# **PROCEDURE FOR APPEAL BY REVENUE WHEN AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE SUPREME COURT [SECTION 158AA]**

- **Assessing Officer to make an application within prescribed period**
- **Application to be made only if assessee accepts that the question of law is identical**
- **Consequences where CIT(Appeals) order is not in conformity with Supreme Court's decision**

# **REVISION BY THE PRINCIPAL COMMISSIONER OR COMMISSIONER [SECTIONS 263 AND 264]**

- **Revision of Orders prejudicial to the Revenue [Section 263]**
- **Revision of other orders [Section 264]**
- **Limitation of time for revision of orders by Principal Commissioner or Commissioner of Income-tax under section 264**
- **Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit [Section 268A]**

# REVISION OF ORDERS PREJUDICIAL TO THE REVENUE [SECTION 263]

- If PCIT/CIT considers that any order passed by AO 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 an enquiry, pass an order enhancing or modifying the assessment made by the AO or cancelling the assessment and directing fresh assessment.
- An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the PCIT/CIT
  - (a) the order is passed without making inquiries or verification which should have been made;
  - (b) the order is passed allowing any relief without inquiring into the claim;
  - (c) the order has not been made in accordance with any order, direction or instruction issued by the CBDT under section 119;
  - (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.
- Doctrine of partial merger
- No order shall be made after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.

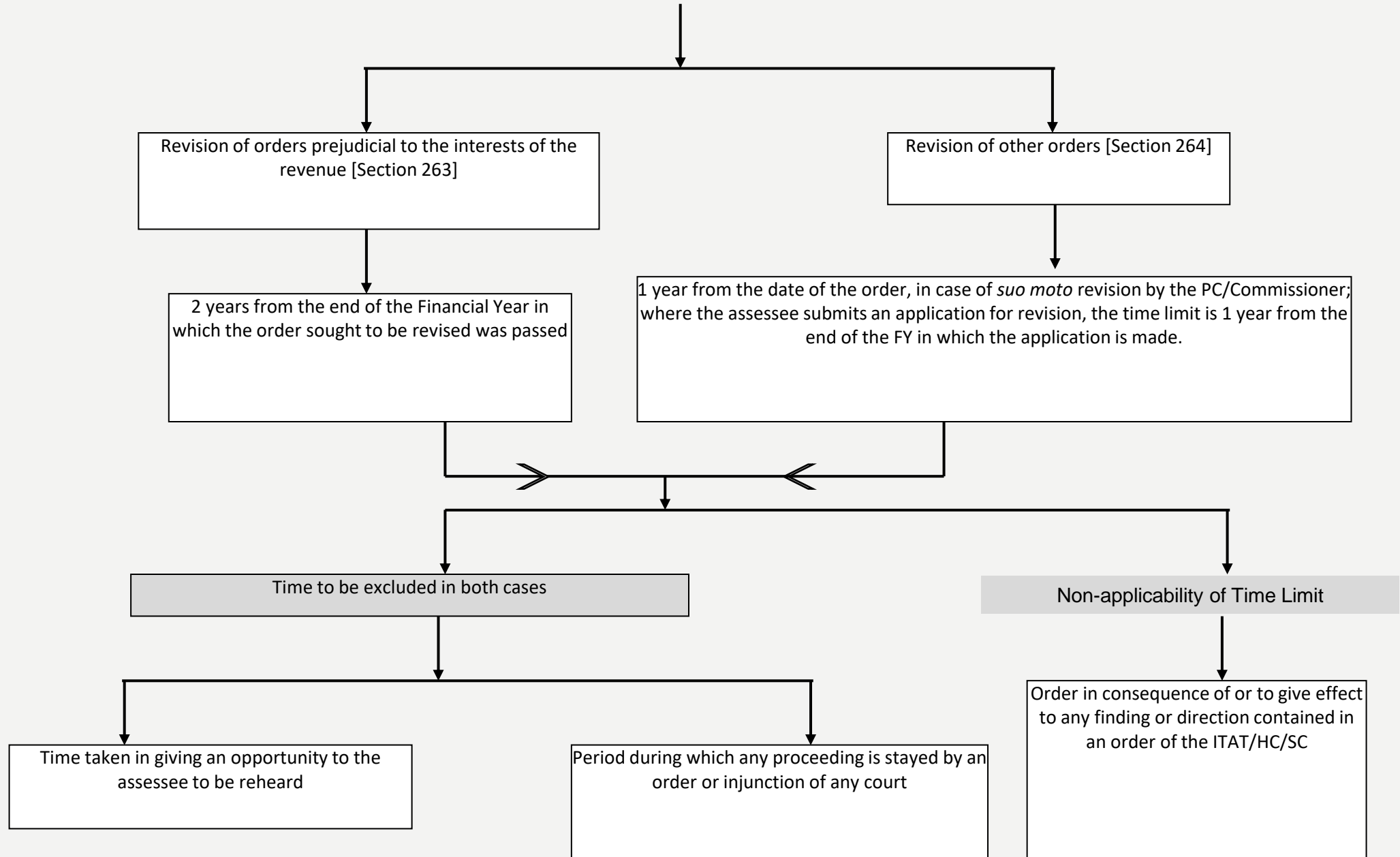
# REVISION OF OTHER ORDERS [SECTION 264]

- In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority including the Deputy Commissioner (Appeals), the PCIT/CIT may either on his own motion or on receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed.
- The PCIT/CIT is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised.
- If the application for revision is made by the assessee, it 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 comes to know of it, whichever is later.
- Condonation of delay
- The application to the PCIT/CIT for revision must be accompanied by a fee of Rs.500.
- If an order is passed by the PCIT/CIT declining to interfere in any proceeding, it shall not be deemed to be an order prejudicial to the assessee.
- However, the PCIT/CIT is not empowered to revise any order in the following cases, viz.,
  - where an appeal against the order lies to the CIT(A)/ITAT but has not been made and the time within which the appeal may be made has not expired or in the case of an appeal to the ITAT the assessee has not waived his right of appeal;
  - where the order is pending on an appeal before the CIT(A)
  - where the order has been made subject to an appeal to the CIT(A)/ITAT

# **LIMITATION OF TIME FOR REVISION OF ORDERS BY PCIT/CIT U/S 264**

- PCIT/CIT is empowered to revise an order passed by the subordinate authority where no appeal has been filed. There is a limitation of 1 year for filing the application.
- It shall be obligatory on the Principal Commissioner or Commissioner to pass an order within a period of 1 year from the end of financial year in which such application is made by the assessee for revision.

# Time Limit for Revision of Orders



# ***FACELESS REVISION [SECTION 264A]***

- The CG may make a scheme, by notification in the Official Gazette, for the purposes of revision of orders u/s 263 or section 264, so as to impart greater efficiency, transparency & accountability by-
  - Eliminating the interface between the income-tax authority & the assessee or any other person to the extent technologically feasible;
  - optimising utilisation of the resources through economies of scale and functional specialisation;
  - introducing a team-based revision of orders, with dynamic jurisdiction.
- The Central Government, may, for the purpose of giving effect to the scheme made under section 264A(1), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after 31.3.2022.
- Every notification issued under (i) and (ii) above has to be laid before each House of Parliament, as soon as may be after the notification is issued.

# FACELESS EFFECT OF ORDERS [SECTION 264B]

- The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of giving effect to an order under section 250, 254, 260, 262, 263 or 264, so as to impart greater efficiency, transparency and accountability by—
  - eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
  - optimising utilisation of the resources through economies of scale and functional specialisation;
  - introducing a team-based giving of effect to orders, with dynamic jurisdiction
- The Central Government, may, for the purpose of giving effect to the scheme made under section 264B(1), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after 31.3.2022.
- Every notification issued under (i) and (ii) above has to be laid before each House of Parliament, as soon as may be after the notification is issued.

# **MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL, HIGH COURTS AND SLPs/APPEALS BEFORE SUPREME COURT**

- *The CBDT has specified the monetary limits and other conditions for filing departmental appeals before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court vide Circular No. 3/2018, Dated 11-7-2018, F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018, Circular No. 17/2019, Dated 8-8-2019 and F. No. 279/Misc./M-93/2018-ITJ (Pt), Dated 16-9-2019.*
- *It has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.*

# MONETARY LIMITS FOR FILING OF APPEALS BY THE DEPARTMENT BEFORE INCOME TAX APPELLATE TRIBUNAL, HIGH COURTS AND SLPs/APPEALS BEFORE SUPREME COURT

- *Monetary Limits specified:*

*Appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:*

<b>S. No.</b>	<b>Appeals/ SLPs in Income-tax matters</b>	<b>Monetary Limit (Rs.)</b>
1.	<i>Before Appellate Tribunal</i>	<i>50,00,000</i>
2.	<i>Before High Court</i>	<i>1,00,00,000</i>
3.	<i>Before Supreme Court</i>	<i>2,00,00,000</i>

*It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.*

- **Meaning of Tax Effect:**

	<b>Case</b>	<b>Tax Effect</b>
1.	<i>In case not covered in ii, iii and iv below</i>	<p>The tax on the total income assessed (-)</p> <p>The tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (“disputed issues”).</p> <p><b>Note</b> – However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.</p>
2.	<i>In case the chargeability of interest is the issue under dispute</i>	The amount of interest
3.	<i>In case where returned loss is reduced or assessed as income</i>	The tax effect would include notional tax on disputed additions
4.	<i>In case of penalty orders</i>	Quantum of penalty deleted or reduced in the order to be appealed against
<p><b>Note</b> – Tax effect shall be tax including applicable surcharge and cess.</p>		

# **CONSEQUENCE OF NON-FILING OF APPEAL IN RESPECT OF CASES WHERE THE TAX EFFECT IS LESS THAN THE PRESCRIBED MONETARY LIMIT [SECTION 268A]**

- Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –
  - (1) the same assessee for any other assessment year; or
  - (2) any other assessee for the same or any other assessment year.
- Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

**Computation of tax on the total income assessed where income is computed under the provisions of section 115JB or section 115JC:**

- In such case, tax on the total income assessed would be computed as given below -
- $(A - B) + (C - D)$
- Where,
- A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (i.e., the general provisions)
- B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions
- C = the total income assessed as per the provisions contained in section 115JB or section 115JC
- D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of the disputed issues under said provisions
- However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

## ***Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits***

- *Adverse judgments relating to the issues enumerated hereunder should be **contested on merits** notwithstanding that the tax effect entailed is less than the specified monetary limits or there is no tax effect:*
- *Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
- *Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*
- *Where Revenue Audit objection in the case has been accepted by the Department, or*
- *Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.*
- *Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).*
- *Cases where prosecution has been filed by the Department and is pending in the Court.*

- **Specified monetary limit not to apply to writ matters and direct tax matters other than income-tax**

*Filing of appeals in other direct tax matters shall continue to be governed by the relevant provisions of statute and rules.*

*Further, filing of appeal in cases of income-tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/ 12AA, filing of appeal shall not be governed by the specified monetary limits and decision to file appeal in such cases may be taken **on merits** of a particular case.*

- **Non-applicability of specified monetary limits in case involving bogus LTCG/ STCG through penny stocks**

*However, in exercise of power conferred by section 268A, CBDT has clarified that the above monetary limits shall not apply in case of assessee claiming bogus LTCG/ STCG through penny stocks and appeals/ SLPs in such cases shall be filed on merits.*

# DOCTRINE OF PARTIAL MERGER AND DOCTRINE OF TOTAL MERGER

- The third proviso in section 147, provides that the doctrine of partial merger shall apply to reopening in a case where an assessee has filed an appeal etc. for an assessment year. It has been provided that the Assessing Officer may assess or reassess such income, other than income which has been the subject matter of any appeal or reference or revision, which is chargeable to tax and has escaped assessment. The doctrine of partial merger also holds good for section 154 and section 263.
- However, the concept of total merger would apply in the case of section 264. The Principal Commissioner or Commissioner of Income-tax has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Tribunal, even if the relief claimed in the revision is different from the relief claimed in the appeal and irrespective of the fact whether the appeal is by the assessee or by the Department as the concept of total/complete merger is applicable for section 264.

