

Discussion Note on important issues under section 263 of Income Tax Act, 1961

For Colloquium dated 20/07/2020

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Text of section 263

E.—Revision by the Principal Commissioner or Commissioner

Revision of orders prejudicial to revenue.

263. (1) The Principal Commissioner or 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 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.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) an order passed 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 Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under [section 144A](#);
 - (ii) an order made by the Joint 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 Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under [section 120](#);
- (b) "record" 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 Principal Commissioner or Commissioner;
- (c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

Explanation 2.—For the purposes of this section, it is hereby declared that 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 Principal Commissioner or Commissioner,—

- (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 Board under [section 119](#); or
- (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.

(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 at any time 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, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time 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.

Leading decisions on section 263:

- i) ***Commissioner of Income Tax vs. Gabriel India Ltd. [(1993) 203 ITR 108 (Bom)]***
- ii) Bombay high court decision in case of Nirav Modi 390 ITR 292
- iii) Supreme court in Kwaliti Steel 395 ITR Page 1 Held : "Where two views are possible and the Assessing Officer has taken one view and the CIT again revised the said order on the ground that he does not agree with the view taken by the Assessing Officer, in such circumstances the assessment order cannot be treated as an order erroneous or prejudicial to the interest of the Revenue, 'Reason is simple. While exercising the revisionary jurisdiction, the CIT is not sitting in appeal."
- iv) In Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC) it was held that jurisdiction under Section 263 of the Act cannot be assumed in respect of a „debatable issue“. This was reiterated in CIT vs. Max India Ltd. (2007) 295 ITR 282 (SC).
- v) Allahabad high court in 420 ITR 216 (Meerut Flour case) Held
Revisional jurisdiction under section 263 Where the original assessment was a scrutiny assessment after issue of notice under section 143(2) with the Assessing Officer raising as many as 28 queries and the final order passed after considering elaborate replies thereto, the Commissioner acting under section 263 still found that part of the reply relating to unsecured loans and creditors were accepted without all

the requisite details and confirmations, so that he felt, that this omission constituted prejudice to the Revenue and accordingly he remitted the matter for examination of unsecured loans and creditors. The objection that the original assessment, having been made under section 143(3), could not be subject matter of revision especially since no fault has been found in the assessment except for the Commissioner's inference that further verification was necessary as ordered by him. The Tribunal confirmed the order of the Commissioner, so that the assessee came up before the High Court in Meerut Roller Flour Mills Pvt. Ltd. v. CIT [2020] 420 ITR 216 (All), wherein it was found that no prejudice to the Revenue was indicated by the Commissioner and that a reply of the assessee to an enquiry needed verification. The order of revision was held not justified by the High Court after elaborately discussing the facts of the case and citing a large number of precedents on the subject.

- vi) *Supreme court in Amitabh Bachan case (384 ITR 200) (Opportunity requirement explained)*

Select Issues :

- i) Whether while putting defense in section 263 proceedings , first assessee should try to raise objection (if any) on seminal and primordial jurisdictional facts u/s 263 (that is twin conditions of erroneous and prejudicial to interest of revenue) , before replying on merits of the case?

Yes (refer decisions cited in beginning of the note supra)

(Notably burden lies on revenue (PCIT) to show jurisdictional conditions specified in section 263 are met when section 263 is recourse to as sans that invocation of section 263 would be ultra vires and without authority of law)

- ii) Whether where assessee raises preliminary objection to assumption of jurisdiction u/s 263 by PCIT whether PCIT is supposed to first meet with jurisdictional objection before entering into merits of the case?

Authors opinion Yes *GKN Drivshaft 259 ITR 19* analogy should apply here too.

- iii) Whether while exercising jurisdiction u/s 263 of the Act PCIT Concerned, for an assessment which was for limited scrutiny (CASS) can pcit concerned u/s 263 expand scope of the limited scrutiny assessment first time in revision proceedings u/s 263 of the Act ?

In authors opinion No refer:

Delhi G bench ITAT recent decision in case of **M/s. Sunray Cotspin (P) Ltd order dated 21.02.2020**; Delhi ITAT **Monica Gupta order dated 14.02.2019**; Delhi ITAT **CBS international projects Ltd order dated 28.02.2019**; Delhi ITAT **Urban Improvement Co. (P) Ltd., ORDER dated 07.02.2020**; Mumbai ITAT **K.R.Construction order dated 28.02.2020**; Mumbai G bench ITAT order in case of **Su-Raj Diamod Dealers Pvt Ltd order dated 27.11.2019**; Mumbai D bench ITAT order in case of **R&H Property Developer Pvt Ltd order dated**

30.07.2019; Cuttack bench in Akash Ganga Promoters case in ITA 164/CTK/2019 (18.12.2019)

Like where a case was selected for limited scrutiny for large share premium ao finding no defect in valuation of share premium u/s 56(2)(viib) completed the assessment , PCIT says in sec.263 that AO should have also invoked section 68 to check source of source requirement bypassing limited scrutiny scope, whether PCIT is correct?

(Authors opinion NO refer Delhi G bench ITAT recent decision in case of M/s. **Sunray Cotspin (P) Ltd order dated 21.02.2020)**

Like where AO in a case completed the limited scrutiny assessment on basis of increase in capital source of which was adequately explained , now PCIT in sec 263 says AO should have gone deep into genuineness of source (which is basis for capital induction) u/s 68 whether PCIT is correct?

(Authors opinion No)

In a limited scrutiny CASS assessment where assessee fully explained basis of limited scrutiny that is sale of immovable property being already disclosed in tax computation for capital gains purposes , and thus completed the assessment , can PCIT ask in sec 263 that AO should have checked other components of capital gains (cost of improvement etc) where limited scrutiny was on basis of sale proceeds of immovable property ?

Authors opinion No **Mumbai D bench ITAT order in case of R&H Property Developer Pvt Ltd order dated 30.07.2019**

- iv) Whether in section 263 revision proceedings before PCIT, assessee can challenge for first time the validity of assessment in revision that same is invalid and if yes to what extent?

Illustrations:

Where an assessment was completed u/s 148 at Nil income , when section 263 proceedings is initiated, can assessee plead that revision is not maintainable because reopening /underlying assessment itself is invalid on account of:

- a) Lack of valid notice u/s 148; (say 148 notice issued to dead person; 148 notice by non jurisdictional AO)
- b) Lack of valid reasons to believe /lack of valid sanction of competent authority (refer recent Delhi ITAT Char Bhuja Marmo case)
- c) Lack of valid/timely notice u/s 143(2);
- d) Violation of GKN Drivershaft in reopening proceedings ;
- e) Lack of valid satisfaction u/s 153C etc
- f) Assessment framed on non existing/dead person (refer SC Maruti case 406 ITR 613 vis a vis section 263)

Authors opinion: Yes assessment can very well contest in revision proceedings u/s 263 validity of underlying assessment proceedings on any jurisdictional /legal aspect as illustrated above.

Refer:

- **Calcutta high court Keshab Narayan Banerjee 238 ITR 694 (validity of primary assessment can be challenged in appeal against revision order u/s 263)**
- **Delhi bench ITAT in NKG infrastructure Ltd ITA 3825/del/2018 order dated 05/09/2018 Held: 19. We are, therefore, convinced with this argument of the Ld. AR and hold that the assessment order is barred by limitation, the assessee can challenge the validity of the same during this appellate proceedings relating to the examination of the validity of the order passed under section 263 of the Act. Respectfully following the decision of the**

Hon'ble Apex Court in the case of Kiran Singh (supra); the decisions of the Tribunal in West life Development Ltd (supra) followed by the Delhi Tribunal in Chennai Industries (ITA 1398- 99/Del/2012); and the Kolkata Tribunal in M/s Classic Floor And Food Processing Private Ltd (supra), we hold that the order which was barred by limitation cannot be revised under section 263 of the Act by the Learned principal Commissioner of Income Tax.

- Kol bench ITAT in M/s Rozelle Sales & Services Pvt Ltd ITA 2030/Kol/2018 (AY 2010-2011) Para 10 “We conclude in view of aforesaid discussion that the assessee is very much entitled to challenge validity of above said reassessment in collateral proceedings” *so validity of primary assessment can be challenged in sec.263 proceedings.*

- v) Whether PCIT u/s 263 can revise defective /invalid reasons recorded u/s 148 (which is basis of underlying assessment under revision) ?
No
(Delhi ITAT SPJ Hotels case)
- vi) Whether PCIT while taking recourse to section 263 and calling for assessee's explanation has to state with clarity the proposed error in mind of PCIT which is treated to be erroneous and prejudicial to interest of revenue and whether PCIT can go beyond such pointed errors (put to assessee in show cause notice /otherwise) if yes , how far? (like in a case where initially PCIT felt AO order is based on lack of adequate enquiry later in final revision order u/s 263 PCIT himself straightway passes order making final addition/disallowance without even setting aside the case to AO and without any further additional opportunity to assessee to put his defense on such final addition/disallowance?)

In authors opinion even if a PCIT as per Supreme court decision in Amitabh Bachan case (supra) is just supposed to meet principle of natural justice and not mandated to issue show cause notice as such even then it is submitted that without specific natural justice being met/fulfilled qua stated changed/variation made in final revision order u/s 263 same may not be valid legally and ITAT should quash the order without giving any second innings to PCIT to cure this fatal error.

Refer recent Hon'ble Jurisdictional Calcutta high decision in case of Kesoram Industries Ltd (order dated 2/08/2019) reported in **423 ITR 180** relevant extract of which is reproduced below:

"In the present case, four broad aspects were questioned before the Tribunal. By the order impugned dated November 4, 2016, the Tribunal held in favour of the assessee.

The first aspect pertains to an order under Section 143(3) of the Act which was found to be erroneous and prejudicial to the interest of the Revenue. The specific matter pertained to the difference in the addition of fixed assets of about Rs.1.10 crore. The notice under Section 263 of the Act was issued to clarify the difference. The assessee clarified the difference by its written submission and a reconciliation statement was also used. However, the Commissioner, instead of considering the reply, recorded that the issue had not been verified by the assessing officer.

The Tribunal set aside the decision of the Commissioner on the ground that the show-cause notice indicated a specific purpose but the matter was dealt with on another count after the receipt of the reply. The Tribunal relied on a view taken by a coordinate bench reported at 54 SOT 172 (Visuvius India Limited v. CIT) and a judgment of the Andhra Pradesh High Court reported at 211 ITR 336 (CIT v. G.K. Kabra). In both cases, it was held that if the object of the notice was one and the matter was treated for a different purpose in the ultimate order, that may not be the appropriate exercise of the jurisdiction.

In the light of a possible view taken on the facts as they presented themselves in such regard, the order of the tribunal in respect of the first of the four heads does not call for any interference.

The tribunal found that the Commissioner had not even indicated in the show- cause notice that "adequate enquiries were not carried out." The tribunal found that the assessing officer had conducted an enquiry regarding the addition of fixed assets. The tribunal referred to the notice issued under Section 142(1) of the Act and the reply of the assessee. The tribunal reasoned that the order passed by the assessing officer in such circumstances could neither be held to be erroneous nor prejudicial to the interest of the Revenue. In such regard, the tribunal referred to a judgment of the Allahabad High Court where it was observed that the Commissioner could exercise his jurisdiction under Section 263 of the Act "only in cases where no enquiry is made by the assessing officer."

On the second aspect pertaining to disallowance under Section 14A of the Act read with Rule 8D (2) (ii) of the Income Tax Rules, 1962, the tribunal found that the assessing officer had netted off the interest paid with the interest income for working out the disallowance under Rule 8D. According to the tribunal, the assessing officer had applied his mind to the issue and it was not something that escaped the attention of the assessing officer for the

Commissioner to assume jurisdiction under [Section 263](#) of the Act on the ground that no enquiry in such regard had been conducted by the assessee.

Apropos the third aspect pertaining to trade discount, the tribunal found that the Commissioner had issued the notice for addition of trade discount on the ground that the assessee's claim for trade discount was not in order. The tribunal also found that details of the trade discount had been furnished by the assessee to the assessing officer at the time of assessment under [Section 143\(3\)](#) of the Act and the details of such discount had been included in the paper-book filed before the tribunal. Further, the tribunal found that the Commissioner had changed his stand as indicated in the notice and at the time of passing the order under [Section 263](#) of the Act. For the same reasons, as in respect of the first head pertaining to fixed assets, the tribunal found that the Commissioner had acted without basis.

Finally, as regards the fourth issue pertaining to depreciation, the tribunal found that the Commissioner had raised the issue in the notice under [Section 263](#) of the Act for excess depreciation but concluded in his order that proper enquiries had not been made by the assessing officer. Again, the tribunal found that there was a change in stand with regard to the notice and in the revision order, which was impermissible.

In matters of the present kind where there is a specialized tribunal in place for dealing with matters pertaining to a particular subject, the scope of interference is limited in the present jurisdiction. Once it is seen that a plausible or reasonable view has been taken by the tribunal upon a fair discussion of the matter, this Court in exercise of the authority available in this jurisdiction would not supplant its view in place of the tribunal's unless the error is apparent and palpable.

The tribunal has given adequate reasons, and relied on precedents, as to why the manner in which the jurisdiction exercised by the Commissioner under [Section 263](#) of the Act was found to be erroneous. There does not appear to be any legal error committed by the tribunal in either taking up the appeal or in deciding the same, particularly since cogent grounds have been indicated for interfering with the order of the Commissioner passed under [Section 263](#) of the Act.”

So once charge itself has been left unspecific and without any perspicacity both in show cause notice and impugned order u/s 263 of Ld CIT, can same be modified or altered here before ITAT which has been held by **P&H high court Jagadhari Electricity case 140 ITR 490 (P & H)** to be proscribed in law in following words:

“22. The jurisdiction vested in the Commissioner under [Section 263\(1\)](#) of the Act is of a special nature or, in other words, the Commissioner has

the exclusive jurisdiction under the Act to revise the order of the ITO if he considers that any order passed by him was erroneous in so far as it was prejudicial to the interests of the Revenue. Before doing so, he is also required to give an opportunity of being heard to the assessee. If after hearing the assessee in pursuance of the notice issued by him under [Section 263\(1\)](#) of the Act, he is not satisfied, he may pass the necessary orders. Of course, the order thus passed will contain the grounds for holding the order of the ITO to be erroneous, as contemplated under [Section 263\(1\)](#) of the Act. Feeling aggrieved therefrom, the assessee may file an appeal against the same, as provided under [Section 253\(1\)\(c\)](#) of the Act. In the memorandum of appeal, the assessee is supposed to attack the order of the Commissioner and to challenge the grounds for decision given by him in his order. **At the time of the hearing, if the assessee can satisfy the Tribunal that the grounds for decision given in the order by the Commissioner are wrong on facts or are not tenable in law, the Tribunal has no option, but to accept the appeal and to set aside the order of the Commissioner. The Tribunal cannot uphold the order of the Commissioner on any other ground which, in its opinion, was available to the Commissioner as well. If the Tribunal is allowed to find out the ground available to the Commissioner to pass an order under [Section 263\(1\)](#) of the Act, then it will amount to a sharing of the exclusive jurisdiction vested in the Commissioner, which is not warranted under the Act, It is all the more so, because the Revenue has not been given any right of appeal under the Act against an order of the Commissioner under [Section 263\(1\)](#) of the Act.** In case he proceeds thereunder after hearing the assessee in pursuance of the notice given by him, then the appeal filed by the

assessee under [Section 253\(1\)\(c\)](#) of the Act cannot be treated on the same footing as an appeal against the order of the AAC passed in assessment proceedings, where both the parties have been given the right of appeal. In this view of the matter, the argument raised on behalf of the Revenue, that, in appeal, the Tribunal may uphold the order appealed against on the grounds other than those taken by the Commissioner in his order, is not tenable. Under [Section 263](#) of the Act it is only the Commissioner who has been authorised to proceed in the matter and, therefore, it is his satisfaction according to which he may pass necessary orders thereunder in accordance with law. If the grounds which were available to him at the time of the passing of the order do not find a mention in his order, appealed against, then it will be deemed that he rejected those grounds for the purpose of any action under [Section 263\(1\)](#) of the Act. In this situation, the Tribunal, while hearing an appeal filed by the assessee, cannot substitute the grounds which the Commissioner himself did not think proper to form the basis of his order.”

- vii) Whether merely to strengthen AO's order (where already additions are made in full) can PCIT exercise jurisdiction u/s 263 of the Act?

No

Refer

Gujarat high court JMC Projects (India)Limited order dated 21/12/2015 (held section 263 cant be invoked to improvise order where otherwise all additions are made in assessment order) Held :

14. As noted, when tax additions were made which resulted into orders of assessment being framed levying tax on the same income, the orders of assessment cannot be stated to be prejudicial to the interests of the revenue. To the factual aspect, even the Revenue is unable to raise any contest. The apprehension of the revenue appears to be that if

the logic adopted by the assessing officer is not accepted in appeal, the entire additions would be deleted. Under the circumstances, if the correct methodology, as suggested by the Commissioner in the impugned notice, is adopted, the additions would stand the test of law. In other words, the Commissioner desires that the order of assessment should be better written and flaws, if any, be ironed out. In our opinion, powers under section 263 of the Act are not meant for improving an order of assessment. As long as the income is assessed and tax as per the law levied, the order cannot be stated to be prejudicial to the interests of the revenue and, therefore, not revisable.

- viii) Whether in an assessment framed under instructions and guidance and supervision of PCIT /CIT/PDIT/DIT as evident from case records etc can PCIT still invoke his powers u/s 263 of the Act?

No

Refer Mumbai ITAT in Trustees of Parsi Panchayat Funds 57 ITD 328

Refer Pune ITAT Shanti Builders 88 TTJ 519

- ix) Whether second revision u/s 263 is maintainable qua second assessment u/s 263/143(3) framed in pursuance to 1st revision order u/s 263 ?

No (also refer SC in Parsuram Pottery 106 ITR 1)

Refer:

Nagpur bench ITAT in case of Kalpa Construction Co 37 ITD 165

Held

Next we find that the assessment for the assessment year 1980-81 dated 23-3-1981 was the subject matter of an order under section 263 by the CIT, Jabalpur, dated 21-3-1983, but this CIT had taken action under section 263 not on account of the ITO, accepting the fact that Nirman Engineers & Contractors were a benamidar of Kalpa Constructions.

This CIT even after scrutiny of the records did not find any irregularity or mistake or error on the part of the ITO in accepting that the firm was getting a portion of its work done through M/s. Nirman Engineers & Contractors for which it got a certain percentage

of the billed amount. The CIT did not find anything wrong in this finding of the ITO. He took action under section 263 for a different reason and that was to direct the ITO to disallow a sum of Rs. 42,500 which it paid to Sarvashri D.K. Gupta and N.K. Gupta which, according to the CIT, was a capital expenditure. **The subsequent order passed by the ITO, on 29-3-1985 for the assessment year 1980-81 was an order to give effect to the order of the CIT under section 263. As we have pointed out in therecitation of facts, the ITO while passing this order specifically stated that this order was passed in accordance with the directions of the CIT in his order under section 263 dated 21-3-1983. Therefore, in an order of this type, there could possibly no error since it was an order consequent to an order of a superior authority and in fact an order to give effect to the directions of that authority. Such an order can never be an erroneous**

order. This principle has been laid down by the Bombay High Court in the case of Birhan Maharashtra Sugar Syndicate Ltd. (supra), to which we have already made reference hereinabove. When an officer passed his order implementing an order of a higher authority (CIT in this case) that order cannot be erroneous or prejudicial to the interests of the revenue. The CIT can proceed under section 263 where an order of the ITO is erroneous and the error has resulted in prejudice to the interests of the revenue and such prejudice must be caused by an error on the part of the ITO himself. This is the substance of judgment of the Supreme Court in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323.

Chennai bench ITAT in case of A.kannan (order dated 31.05.2017)

7. Against this order of the Ld.AO, the Principal Commissioner again found that the Ld.AO has not made any proper enquiry as directed by the Principal Commissioner. The fact remains that the Ld.AO examined the matter afresh as directed by the Principal Commissioner in the first revisional order. It is not in dispute that the assessee engaged himself in the business of finance. In the de-nova proceedings before the Ld.AO, the assessee has filed all the details with regard to cash deposits, withdrawals and redeposit, etc., The Principal Commissioner after examining the matter afresh in light of the materials filed by the assessee including the documents impounded during the course of survey operation found that the peak credit can be taken as income of the assessee, since there are multiple withdrawals and redeposits. **The question arises for consideration is when the Ld.AO for the second time examined the matter afresh as directed by the Principal Commissioner and found that there are withdrawals and deposits and only the peak credit can be taken as income, can the Principal Commissioner revise that order as erroneous and prejudicial to the interest of the Revenue. This Tribunal is of the considered opinion that the Ld.AO made proper enquiry in the second round of litigation. In the first round of litigation also, the Ld.AO has made enquiries and recorded his findings with regard to peak credit. Therefore exercising revisional jurisdiction for the second time U/s.263 of the Act is not called for.** When the Ld.AO examined the matter as instructed by the Commissioner and found that only peak credit has to be taken, this Tribunal is of the considered opinion there are two views possible in the matter. The Ld.AO has taken one of the possible views. When the Ld.AO has taken one of the possible view after taking in to consideration the material available on record, the

Principal Commissioner cannot say for the second time that the order of the Ld.AO is erroneous and prejudicial to the interest of the Revenue.

Ranchi ITAT in Padam Kumar Jain Date of Pronouncement : 08/07/2020 /ITA No.289/Ran/2019

18. We note that finality in the legal proceedings is a must. There must be a point of finality in all legal proceedings and the stale issues should not be re-activated beyond a particular stage and the lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it is must in other spheres of human activity. For that we rely on the judgment of the Hon'ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO (1977) 106 ITR 1 (SC), wherein it was held as follows: "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity." We note that in assessee's case the loss and damage expenses of Rs. 4,00,00,000/- has been examined by assessing officer in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, the said expenditure has also been examined by the assessing officer in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act which was framed by the assessing officer in pursuance of the direction given by Id PCIT, by his first 263 order. Therefore, the said loss and damage expenses of Rs. 4,00,00,000/- has been examined by the assessing officer twice. Again, in second 263 order, Id PCIT has directed the assessing officer to examine the said loss and damage expenses of Rs. 4,00,00,000/-, this means the assessing officer would examine third time said loss and damage expenses of Rs. 4,00,00,000/-. Likewise, the sales incentive expenses of Rs. 9,45,96,300/- has been examined by assessing officer in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, the said expenditure has also been examined by the assessing officer in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act which was framed by the assessing officer in pursuance

of the direction given by Id PCIT, by his first 263 order. Therefore, the said sales incentive expenses of Rs. 9,45,96,300/- has been examined by the assessing officer twice. Again, in second 263 order, Id PCIT has directed the assessing officer to examine the said, sales incentive expenses of Rs. 9,45,96,300/- this means the assessing officer would examine third time said sales incentive expenses of Rs. 9,45,96,300/-. Since these expenses have already been scrutinized and examined by the assessing officer twice, that is, in the original assessment u/s 153A/143(3) of the Act dated 28.12.2016, and in the second assessment order passed by the assessing officer u/s 143(3) r.w.s. 263 of the Act. Now, the Id PCIT is directing again to the assessing officer by way of his second 263 order to examine these expenses again, we note that if this is allowed under section 263 of the Act, then there would not be any finality in the legal proceedings/ assessment proceedings in the assessee's case, and this attitude of the Department is tantamount to do harassment to the assessee which is against the principle of natural justice and the main object of section 263 of the Act.

- x) Whether where PCIT u/s 263 wishes to revise an order passed in search assessment case (passed with approval u/s 153D), is it must that PCIT shows approval u/s 153D was also not properly given (to invoke section 263) and mere pointing deficiency in assessment order u/s 153A/153C etc would not be good enough?

Yes

Refer Mumbai ITAT in Shri Surendra L. Hiranandani Date of Pronouncement : 14.02.2018 (ITA No.3226/M/2017, 3227/M/2017, 3228/M/2017, 3229/M/2017, 3230/M/2017, 3231/M/2017, 3232/M/2017)

- xi) Whether use of explanation appended to section 263 by PCIT (added by finance act 2015) requires any specific formation of opinion on part of PCIT?

Yes clear cut opinion must be spelt out

For opinion word meaning refer **Apex court decision in Bikhu Bhai Patel case 4 SCC 144 on requirement of intense application of mind)**

- xii) Whether revision u/s 263 can be made in those cases where there is no positive impact on exchequer and issue remains tax /revenue neutral?

No (for academic purpose only section 263 cant be recourse)

(requirement of prejudice to revenue in section 263 would be missing)

CPC Order VII Rule 11 (Plea of demurrer)

- xiii) Whether mere pendency of appeal before first appellate authority is a bar on exercise of power by PCIT under section 263 in certain situations *where same issue taken up in proceedings u/s 263 is already alive before CIT-A ?*

Recent Mumbai bench ITAT order in ACC Ltd (08.07.2020)

Held

“11. The coordinate bench of this Tribunal (Mumbai ITAT) in Everest Industries CIT **dated 21.08.2019** while considering the validity of order passed under section 263, when similar issue was pending adjudication before CIT(A) held as under; “25. We have considered the rival stands on this aspect carefully. Factually speaking, it is quite evident that the issues raised by the Commissioner with regard to the treatment of excise duty and sales tax incentives was indeed dealt with in the course of assessment proceedings by the Assessing Officer. It is also clearly emerging that the stand of the assessee was not accepted by the Assessing Officer and the matter has travelled to the CIT(A) for consideration. In this context, the implications of clause (c) of Explanation 1 to Section 263 of the Act, which read as under is quite relevant. “(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the Commissioner under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.” It is evident from the above that the Commissioner is not empowered to exercise his jurisdiction on an issue which is subject matter of appeal before the CIT(A). *In the present case, it is undisputed that the matter on the two issues in question is pending before the CIT(A). Thus, we find that the Commissioner has no jurisdiction to consider these issues in revisionary proceedings under Section 263 of the Act in terms of clause (c) to Explanation 1 to Section 263 of the Act.*”

Renuka Philip(Smt) v. ITO (2018) 409 ITR 567/(2019) 173 DTR 24 (Mad) (HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue -Capital gains- Two views possible and also when an appeal is pending before the CIT(A) on particular issue , Commissioner has no power to revise the order regarding that issue – Court also held that , since the matter has been pending for a quite long number of years and there has been repeated orders of assessment , the Court directed the AO to give effect to the of reassessment dt 31-12-2009 , wherein the AO has granted the benefit of S.54F of the Act . [S.45,54, 54F , 263(1)(c)]

Allowing the appeal of the assessee, the Court held that , the AO while completing the reassessment proceedings the AO has allowed the deduction u/s 54F and not u/s 54 of the Act. As regards the cost of acquisition and claim u/s 54 the matter was pending before the CIT(A). Mean while the Commissioner passed the revisional

order stating that the claim under S.54F was not correctly allowed by the AO. Appeal of the assessee before Tribunal was also dismissed . On appeal to the High Court allowing the appeal of the assessee the Court held that, order passed by the AO two views possible and also when an appeal is pending before the CIT(A) on particular issue , Commissioner has no power to revise the order regarding that issue . Court also held that , since the matter has been pending for a quite long number of years and there ahs been repeated orders of assessment , the Court directed the AO to give effect to the of reassessment dt 31-12-2009 , wherein the AO has granted the benefit of S.54F of the Act . (AY.2005 -06)

Also held : “As observed, we cannot expect an Assessing Officer to write a judgment.” “17. The Revenue raised an objection stating that the assessee never claimed relief under Section 54F of the Act, therefore, the Assessing Officer, transgressed his powers and granted the relief which was not asked for. The said submission made by the Revenue should be out rightly rejected. There is duty cast upon the Assessing Officer to compute the correct rate of tax to be collected under the correct head. Anything which is unauthorisedly levied and collected will be illegal and without sanction of law. Therefore, the Assessing Officer while completing the assessment is bound to grant relief to the assessee, if in his opinion, it is found that a particular provision of law can be applied in the assessee's case. Therefore, we cannot find fault with the Assessing Officer in the exercise of such jurisdiction”

- xiv) The AO when he completed the assessmentfor AY 2011-12 i.e., the assessment which is the subject matter of question by the CIT in the impugned order passed u/s.263 of the Act, was fully aware of the decision of the CIT(A) and had completed assessment on that basis. In such circumstances, can the CIT in exercise of his powers u/s.263 of the Act term the action of the AO as erroneous?

No

Refer: Such question had come for consideration before the Hon’ble Calcutta High Court in the case of Russel Properties Pvt.Ltd. Vs. ACIT 109 ITR 229 wherein the Hon’bleCalcutta High Court held that if the AO follows decision of Tribunal on an issue, the CIT cannot revise the same u/s.263 of the Act on the ground that an appeal has been filed against the order of the Tribunal.

- xv) How far PCIT jurisdiction u/s 263 cane be contested by assessee as to whether PCIT has jurisdiction over a case or not?

Refer Kolkata ITAT in case of Pushpa Devi Sonthalia, order dated 10.06.2020

Held 5. There is again no dispute between the parties that the PCIT herein, thereafter sought to treat the impugned regular assessment dated 11.01.2016 as an erroneous one causing prejudice to interest of the revenue followed by his directions to the AO to frame a fresh assessment under challenge. The assessee's case accordingly is that as per the jurisdiction history obtained from ITBA portal, it is clear that the DCIT's assessments are beyond the territorial supervision of the PCIT-12, Kolkata. Ld. Counsel has also placed on record the relevant details to this effect that the assessee's jurisdiction; once transferred to Central Circle, Kolkata, does not come under the PCIT-12, Kolkata but lies with the PCIT, Central Circle-1, Kolkata. This clinching aspect of territorial jurisdiction was duly confronted to the CIT(DR) who has to dispute all these factual developments in assessee's case. We thus, are of the view that the PCIT-12, Kolkata has erred on facts and not law in invoking his Section 263 revision jurisdiction in assessee's case since lacking territorial jurisdiction. We quote hon'ble jurisdictional high court's decision of Ramshila Enterprises Pvt. Ltd. vs. PCIT [2016] 68 taxmann.com 270 (Cal) holding similar revision order by a nonjurisdiction Commissioner as a nullity. We accordingly reverse the PCIT-12, Kolkata's revision order under challenge as not sustainable for lack of territorial jurisdiction.

Kolkata ITAT in M/s. Rungta Irrigation Limited Date of Pronouncement 06.09.2019

I.T.A. No. 1224/Kol/2019

25. *In this case which is reported as M/s. Ramshila Enterprises Pvt. Ltd. Vs. Pr. CIT (2016) 383 ITR 546 (Cal), we note that the gist of department's contention was taken note by the Hon'ble High Court, which is as under: "Mr. Ghosal, learned senior advocate appearing for the Revenue submitted that the transfer order itself indicates that jurisdiction of the Income-tax Officer, Wd-4(1), Kolkata was transferred to ACIT/DCIT, Central Circle-XIX, Kolkata, which is at page 584. The jurisdiction of the Commissioner of Income-tax remained unchanged. In other words, it is the jurisdiction of the trial court, which was changed. The jurisdiction of the appellate authority remained unchanged. Therefore, the order under challenge was validly passed by the Commissioner of Income-tax."* 26. *Per contra; in that case, the assessee contended that as per the Explanation appended to section 127 of the Act that the expression 'transfer of a case' would mean all pending and future proceedings and in that case it was pointed out that Tribunal also agreed that only CIT, Central, Kolkata had jurisdiction over the pending cases as well as future cases. The Ld. AR of the assessee pleaded before the Hon'ble High Court as under: "Mr. Poddar, learned senior advocate, drew our attention to an order dated 3rd September, 2012 appearing at page 584 of the additional papers filed by him, which is an order passed under section 127 of the Income Tax Act by no other than the CIT, Kolkata-II, Kolkata, who passed the impugned order under Section 263, transferring*

the jurisdiction over five assessees including the appellant before us to the ACIT/DCIT, Central Circle XIX, Kolkata in the interest of revenue for better coordination, effective investigation and meaningful assessment consequent to a search conducted on 17th November, 2011 against the business concern of Atha Mines. Mr.Poddar contended that the appellant before us is not in any way connected with Atha Mines Group. But the point of substance is that the impugned order under section 263 was passed by the CIT, Kolkata-II, Kolkata in spite of the fact that the jurisdiction had already been transferred by his predecessor-in-office by his order dated 3rd September, 2012 with immediate effect. Mr.Podder contended that CIT, Kolkata-II, Kolkata thereafter had no longer any jurisdiction left with him to be exercised in respect of the return or returns filed by the assessee or assessments made. He submitted that the exercise of power was not only ex parte, without notice, but was also without jurisdiction. He drew our attention to the letter dated 18th March, 2013 received by his client from the Deputy Commissioner of Income-tax, which is a notice under section 143(2) pertaining to the assessment year 2012-2013. He submitted that the order dated 3rd September, 2012 transferring jurisdiction to a ACIT/DCIT, Central Circle-XIX, Kolkata had already become operative and was also acted upon. Therefore, CIT, Kolkata-II, Kolkata could not have exercised jurisdiction. The impugned order passed by him is altogether without jurisdiction and is, therefore, a nullity. He drew our attention to a judgment of the Apex Court in the case of Pandurang and Others versus State of Maharashtra reported in (1986) 4 SCC436 for the proposition that even a right order by a wrong forum is a nullity. In the aforesaid judgment their Lordship held as follows: "4. When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having been heard by a court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. The accused was entitled to be heard by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by at least two learned Judges cannot be done by one learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The judgment under appeal is therefore no judgment in the eye of law. This Court in State of Madhya Pradesh v. Dewadas (1982) 1 SCC 552 has taken a view which reinforces our view. We, therefore, allow the appeal, set aside the

order passed by the learned Single Judge, and send the matter back to the High Court for being placed before a Division Bench of the High Court, which will afford reasonable opportunity of hearing to both the sides and dispose it of in accordance with law, expeditiously.” He also relied upon a Division Bench judgement of this Court in the case of *ITO Vs/. Ashoke Glass Works* reported in (1980) 125 ITR491(Cal) wherein the following view was expressed (page 505): “So when the jurisdiction is validly removed by a competent authority under the provisions of a statute, the original court or any Tribunal or authority in such event will be incompetent, as having ceased to have jurisdiction, to proceed further with the pending proceeding or proceeding which may be instituted after such removal of jurisdiction.” 27. After hearing both the parties the Hon’ble High Court has held as under: “We have considered the rival submissions. It is not necessary for us to consider whether the Commissioner had jurisdiction to restrict the order of transfer, for the simple reason that the order of transfer in this case was not a restricted one. Reading the order dated 3rd September, 2012 as a whole, it does not appear that any restricted transfer was sought to be made for any particular year or years or otherwise. The order of transfer, as we have already indicated, was passed in the interest of revenue for better coordination, effective investigative and meaningful assessment. The actual transfer of files may have taken place on 29th July, 2013 but admitted position is that a notice under Section 143(2) by the transferee assessing officer was issued on 18th March, 2013. The existence of files does not confer the jurisdiction when the same has validly been transferred and also acted upon. The jurisdiction over the subject-matter has to be conferred by law. The jurisdiction in this case had been transferred by the order dated 3rd September, 2012 by no other than the CIT Kolkata- II, Kolkata himself. Once that was done CIT Kolkata – II, Kolkata lost the seisin over the matter. He became ‘functus officio’. Reference in this regard may be made to the Stroud’s Judicial Dictionary of Words and Phrases, 7th Edition, Page 1085 wherein the following meaning has been expressed: “FUNCTUS OFFICIO. An arbitrator or referee cannot be said to be functus officio when he has given a decision which is held to be no decision at all (*Davies v Howe Spinning Co LTD*. 27 B.W.C.C.207). Where a judge has made an order for a stay of execution which has been passed and entered, he is functus officio, and neither he nor any other judge of equal jurisdiction has jurisdiction to vary the terms of such stay (*Re V.G.M.Holding Ltd* [1941]. 3 All E.R.417). An arbitrator or umpire who has made his award is functus officio, and could not by common law alter it in any way whatsoever; he could not even correct an obvious clerical mistake. See *Mordue v Palmer*, 6 Ch. App.22; *Henfree v Bromley*, 6 East, 309; *Brooke v Mitchell*, 6 M.& W.473. See now *Arbitration Act 1950* (c.27).s.17.” Reference may also be made to the judgement in the case of *Re V.G.M.Holdings, Ltd*. 1941 (3) All England Law Reports, 417 wherein the following views were expressed: “I think that it would be a strange

position if a judge were at liberty to reconsider his decision and grant a stay of execution after he had made an order refusing it. I think that, when a judge has made an order such as that in the present case, the only remedy for the respondent, if he is dissatisfied with the order, is to go to the Court of Appeal..." A special bench in the case of *Komal Chand –versus The State of Madhya Pradesh*, reported in AIR 1966 Madhya Pradesh 20 opined in this regard as follows: "Section 35 of the Stamp Act, inter alia, says that no instrument chargeable with duty shall be registered by any public officer unless such instrument is duly stamped. This provision thus casts a duty on the registering officer to examine whether an instrument presented for registration is duly stamped. If, as section 36 says, an instrument chargeable with duty shall not be registered unless such instrument is duly stamped, then it follows that the registering officer must perform the duty of seeing whether an instrument presented for registration is or is not duly stamped before admitting it to registration and not afterwards. If he finds that the document is not duly stamped, then he must impound it under Section 33 of the Act. Neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the registering officer registers a document presented to him for registration, the function in the performance of which the document was produced before him is over and thereafter becomes functus officio having no power under section 33 to impound the instrument. The matter is really concluded by the decision of the Supreme Court in *Govt. of Uttar Pradesh v. Mohammad Amir Ahmad Khan*, AIR1961SC787 That was a case where the question arose whether the Collector has any power to impound an instrument sent to him for adjudication under section 31 of the Stamp Act. The Supreme Court held that under that section the Collector had no such power, as the provision gave him the power only to give his opinion as regards the duty with which in his judgment the instrument was chargeable and when that function was performed by the Collector he became functus officio. It was observed by the Supreme Court that the power to impound only exists when an instrument is produced before judicial officers or other officers performing judicial functions as evidence of any fact to be proved, or before other public officers who have to perform any function in regard to those instruments as, for example, registration. The Supreme Court also approved the decisions in *Collector, Ahmednagar v. Rambhau*, AIR 1930 Bom 392 (FB). *Paiku v. Gaya*, ILR (1948) Nag 950 : (AIR1949Nag 214) and *Panakala Rao v. Kumaraswami*, AIR 1937Mad 763 where the doctrine of functus officio was applied and it was held that the Court had no power to recall and impound a certificate of sale after executing it and delivering it to the purchaser, or to reopen a case and impound documents proved after signing the decree, or to impound an instrument admitted in evidence after delivery of judgment. Here, when the SubIn the present case, the Sub-Registrar purported to act under paragraph 232

of the Registration Manual when he made a report to the Collector that the 'Takseemnama' was not duly stamped. But on reading paragraphs 231 and 232 it is clear that they do not say that after a document is admitted to registration, the registering officer can make a report to the Collector that it was not sufficiently stamped on the other hand, paragraph 231 expressly lays down a direction that before taking any further action, that is to say, in the matter of registration, the registering officer must see that the document is duly stamped. The words "after registering the document" occurring in paragraph 232 obviously refer to the entry of the document in the Register maintained of documents presented for registration. They do not mean that the registering officer can make a report about insufficiency of stamp after the document has been admitted to registration." In the case of *SBI – versus S.N. Goyal* reported in 2009 (8) SCC92 the following views were expressed: "It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes *functus officio* in regard to an order made by him. P. Ramanatha Aiyar's *Advanced Law LexiCo.* (3rd Edn., Vol. 2, pp. 1946-47) gives the following illustrative definition of the term "*functus officio*": Thus a judge, when he has decided a question brought before him, is *functus officio*, and cannot review his own decision." *Black's Law Dictionary* (6th Edn., p. 673) gives its meaning as follows: "Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority." We may first refer to the position with reference to civil courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Subrule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer [if the Judge is specially empowered (sic by the High Court) in this behalf]. The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes *functus officio*

when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become *functus officio* only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become *functus officio*. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became *functus officio* when it signed the note dated 18-1-1995. "Applying the law laid down in S.N. Goyal's (*supra*) case we are reinforced, in our opinion that the CIT Kolkata – II, Kolkata had become *functus officio* prior to 18th March, 2013 because the transferee – assessing officer had assumed jurisdiction without which the notice dated 18th March, 2013 under Section 143(2) could not have been issued. Therefore, the order of transfer was duly published/ notified and/or communicated and thereafter acted upon by the transferee-assessing officer. We are, as such of the opinion that the issuance of the notice dated 18th March, 2013 under Section 263 and the consequent order dated 26th March, 2013 passed under Section 263 of the Income Tax Act were acts without jurisdiction and therefore a nullity. For the aforesaid reasons the question No.(a) is answered in the negative. The point is, thus decided in favour of the assessee. The appeal stands allowed." (Emphasis given by us)

28. From the aforesaid order of the Hon'ble High Court at Calcutta, we understand that in this case after the order u/s. 127 of the Act dated 03.09.2012 was passed by the CIT-2, Kolkata, he became *functus officio* and therefore the Hon'ble High Court held that he could not have exercised jurisdiction over the assessee's case u/s. 263 of the Act and consequently therefore he erred in passing an order dated 26.03.2013 u/s 263 setting aside the order of the ITO, Ward-4(1), Kolkata dated 21.05.2010. 29. Coming back to the case in hand, and having taken note of the ratio laid down by the Hon'ble jurisdictional High Court (*supra*), we note that in the present case, after the order of the CIT-V, New Delhi dated 08.10.2008 transferring the jurisdiction of the assessee's case to DCIT, Central Circle, Ranchi, the CIT, Delhi became *functus officio* and thereby his subordinate officers viz., ACIT, Circle 21(1), New Delhi, could not have issued notice u/s. 143(2) dated 28.07.2016 and in that view of the matter the notice issued by the ACIT, Circle-21(1), New Delhi u/s 143(2) was without jurisdiction and, therefore, non-est in the eyes of law."

- xvi) **How to reconcile the difference in operative area of enhancement power conferred to CIT-A in sec 251 vis a vis revision power conferred on PCIT u/s 263?**

Difference between subject matter of assessment versus scope of assessment to be seen as former may fall in section 251 but latter can be covered in section 263 (refer Jaipur ITAT in Zuberi Engineering case)

Third CIT-A cant go beyond subject matter of assessment while including new items as explained by Kerala high court IN 399 ITR 524 & Delhi high court citations in 240 ITR 556; 251 ITR 864; 348 ITR 170 & SC in 66 ITR 443

That CIT-A in garb of enhancement cant go into areas falling in exclusive domain of CIT in sec. 263 and in sec. 148/154

- xvii) **Whether a case which appropriately could have been taken for revision u/s 263 but for want of time could not be taken and is time barred now can same be taken u/s 148 of the Act?**

Authors opinion No

Refer 256 ITR 1 Delhi high court kelvinator case (full bench) later followed DLP Power case (29/11/2011); Atma Ram Properties (11/11/2011) etc

- xviii) **Whether in appeal before ITAT against an order u/s 263 can stay of set aside assessment proceedings be requested to ITAT?**

Indore bench ITAT in M/s. Radhishwari Developers Pvt. Ltd Date of Pronouncement: 19.12.2018

We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that question of validity of invoking provision of section 263 of the Act is pending before this Tribunal in ITA No.493/Ind/2018. It is also not disputed that the assessment has been framed in pursuance to order passed u/s 263 of the Act. Ld. Counsel for the assessee has relied on the judgement of Hon'ble A.P. High Court in the case of ITO Vs. Khalid Mehdi Khan (supra) wherein the Hon'ble High Court held as under: "1. These two writ petitions filed by the Income-tax Officer raise a common question for our consideration and can be disposed of together. It is sufficient if we state the facts in W. P. No. 1440/1976. 2. In respect of the assessment years 1971-72

and 1972-73 the respondent assessee filed returns of his income showing the receipt of certain amounts towards his 1/5th share in the lease amount in respect of Skyline Theatre building, furniture, fittings and machinery. The said return was accepted by the Income-tax Officer. However, the Commissioner of Income-tax, in exercise of his powers under Section 263 of the Income-tax Act, revised the order of assessment and directed the Income-tax Officer to reassess the same according to law. Under the said order dated February 27, 1976, the Commissioner of Income-tax expressed his prima facie opinion that the lease income from the said theatre should be assessed in the hands of the association of persons comprising of the respondent assessee herein and other interested persons, and not separately in the hands of each assessee. As against the said order of the Commissioner, the assessee preferred appeals before the Income-tax Appellate Tribunal, Hyderabad. Two appeals were preferred in respect of the two assessment years. Along with his appeals, the assessee applied for stay of further proceedings in pursuance of the orders of the Commissioner. The Appellate Tribunal, by its order dated April 2, 1976, granted stay of further proceedings, including the making of a fresh assessment in pursuance of the orders of the Commissioner. Under the same order, the Tribunal directed the appeals to be posted for hearing within two months from the said date. It is against the said order granting stay that these two writ petitions have been filed by the department. 3. It is contended by Sri P. Rama Rao, the learned standing counsel for the department, that even if the Income-tax Appellate Tribunal is presumed to have the power to grant stay of operation of the order appealed against, as held by the Supreme Court in *Income-tax Officer v. M.K. Mohammed Kunhi* [1969] 71 ITR 815 (SC), even then, by virtue of the introduction of Sub-section (2A) in Section 153 of the Act by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, the said power of the Tribunal become curtailed and must now be read in the light of the said sub-section, and particularly Clause (ii) in Explanation 1 in Section 153(3). He submits that inasmuch as the Tribunal has not been held to be a "court", the department cannot have the benefit of Clause (ii) in Explanation 1 and cannot, therefore, seek to exclude the period during which the stay granted by the Tribunal is in operation. He submits that, in a given case, it may happen that the stay-granted by the Tribunal may be operative for a sufficiently long period, leaving no sufficient time for the department to complete the assessment within the period of limitation prescribed by Sub-section (2A) of Section 153, which would naturally result in grave prejudice to the revenue. 4. For the purpose of examining the said contention, it is necessary to refer to the relevant provisions in the Act. Section 253 provides for an appeal to the Appellate Tribunal against the orders of the Appellate Assistant Commissioner, and the Commissioner, passed under specified provisions of the Act. Sub-section (1) of Section 254 empowers the Tribunal to pass such orders on the appeal as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. In *Income-tax Officer v. M. K.*

Mohammed Kunhi [1969] 71 ITR 815 (SC), the Supreme Court held that Section 254 of the Act confers on the Appellate Tribunal powers of widest amplitude in dealing with appeals before it and that, by necessary implication, it also confers on the Tribunal the power of doing all such acts or employing all such means as are essentially necessary for the exercise of its substantive power, viz., a proper and effective disposal of the appeal. In other words, it was held that the conferment of the substantive power to entertain and dispose of the appeal carried with it, by necessary implication, all the ancillary and incidental powers which are necessary to make the exercise of the substantive power fully effective. While holding that the Income-tax Appellate Tribunal is not a "court", it was held that it exercises all the judicial powers similar to and identical with the powers of an appellate court under the Civil Procedure Code and that, therefore, the power to grant stay is necessarily implied. However, it was observed that the said power shall not be exercised by the Tribunal in a routine manner or as a matter of course, but will be exercised only where a strong prima facie case is made out and after considering the several relevant circumstances, and only on being satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory if the proceedings sought to be stayed are allowed to continue during the pendency of the appeal. 5. The question that then arises is, whether the introduction of Sub-section (2A) of Section 153 of the Act makes any difference to the principle enunciated by the Supreme Court in the above decision. Sub-section (2A) of Section 153 reads as follows : "(2A) Notwithstanding anything contained in Sub-sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh, assessment under Section 146 or in pursuance of an order, under Section 250, Section 254, Section 263 or Section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under Section 146 cancelling the assessment is passed by the Income-tax Officer or the order under Section 250 or Section 254 is received by the Commissioner or, as the case may be, the order under Section 263 or Section 264 is passed by the Commissioner. " 6. It would also be relevant to set out Explanation 1 in so far it is relevant: "Explanation 1.--In computing the period of limitation for the purposes of this section--..... (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court.....shall be excluded." 7. Now, it would be seen that neither Sub-section (2A) nor any other provision in the Act expressly qualifies or abridges the power of the Tribunal to pass all necessary orders under Section 254(1) of the Act. Does it do so by necessary implication? It is, no doubt, true that Clause (ii) in Explanation 1 may not help the department in seeking to exclude the period during which the stay granted by a Tribunal is in operation, since the Tribunal is, admittedly, not a court, yet we are not convinced that Subsection (2A) has the effect of depriving or abridging the power of the Tribunal to grant appropriate

interim orders under Section 254(1) of the Act. The decision of the Supreme Court was rendered in September, 1968, while Sub-section (2A) was introduced by the Taxation Laws (Amendment) Act, 1970. Parliament must be presumed to have known about the said decision of the Supreme Court with reference to the powers of the Tribunal under Section 254 of the Act, and if it wanted to deprive the Tribunal of the said power or to abridge the same, it could have done so expressly. Moreover, no reasons are placed before us compelling us to hold that Sub-section (2A) cuts down the power of the Tribunal under Section 254(1) of the Act in any manner. However, it is obvious that the provision contained in sub-section (2A) shall have to be an additional factor which the Tribunal has to take into consideration while passing an order of stay or other interlocutory order pending the appeal before it. In other words, while granting the stay or any other interlocutory order, the Tribunal shall have to keep in mind the period of limitation prescribed in Section 153(2A) of the Act and pass orders in the light of the same. It is always open to the department to bring to the notice of the Tribunal the particular difficulties, if any, it would face in case a stay is granted, and the Tribunal shall of course consider the said plea and all other relevant circumstances and shall exercise its power having regard to them and in the light of the principles enunciated by the Supreme Court in *Income-tax Officer v. Mohammed Runki* [1969] 71 ITR 815 (SC). That the Tribunal has taken into consideration the relevant circumstances in this case is evident from the fact that, having granted a stay, it directed the appeals to be posted for hearing within two months therefrom. We are told, however, that the appeals could not be so heard on account of the filing of these writ petitions which necessitated the remittance of relevant records to this court. 8. We may also point out that granting of stay or any other interlocutory order pending the appeal is within the discretion of the Tribunal, and this court will not ordinarily interfere with the exercise of discretion by a Tribunal, unless a strong case is made out establishing that the Tribunal has exercised its power in a totally arbitrary manner, or under a total misapprehension of legal position, or without applying its mind to the relevant circumstances and without regard to the principles enunciated by the Supreme Court in the aforementioned decision in [1969] 71 ITR 835 (SC). Of course, the grounds indicated by us are not exhaustive ; the question of interference will be a matter to be decided by the court in each case having regard to the facts of the case. In view of the above circumstances, we do not find any grounds warranting interference with the interlocutory orders passed by the Tribunal and, accordingly, these writ petitions are dismissed but, in the circumstances, without costs. Advocate's fee Rs. 150 in each.” 6. Therefore, we hereby direct the A.O. to stay the assessment proceedings for a period of 60 days or till the disposal of present appeal in ITA No.493/Ind/2018, whichever is earlier. We are also supported by the decision of Hon'ble A.P. High Court rendered in the case of *ITO Vs. Khalid Mehdi Khan* (supra).

Considering the totality of the facts, we deem it necessary that hearing of appeal be taken up out of turn.”

- Also refer : Oracle India (P) Ltd vs Add CIT Range 13 New Delhii (88 Taxmann.com 241 Delhi TRIBUNAL)
- CIT vs ITAT reported in 216 Taxman 14(Del) - stay granted against consequential assessment proceedings u/s 143(3) pursuant to order u/s 263 of the Act.

- xix) Whether concealment penalty or underreporting penalty resp u/s 271(1)(c)/270A be levied where AO initially accepted assessee's claim reversed by PCIT in section 263 showing difference of opinion between two authorities within the revenue on same cause of action?
Seems No (refer Calcutta high court Pilani Investment case) 383 ITR 635
- xx) Whether section 263 use in so called/alleged penny stock cases (section 10(38)) is permitted ?

Apropos issue of section 263 (revision by PCIT) in cases of alleged penny stock , one may gainfully refer to Delhi bench of ITAT decision in case of Smt. Manita ITA.No.3432/Del./201 Date of Pronouncement : 12.07.2019 (*Held: It would, therefore, prove that A.O. examined the issue of long term capital gains with reference to sale of shares at assessment stage in the light of evidence and material on record. Thus the reasons for which the case was selected for scrutiny have been satisfied by the A.O. Learned Counsel for the Assessee has pointed out several documents in the paper book to show that on the issue of long term capital gains, A.O. raised a query to the assessee which is duly responded by assessee supported by all the documentary evidences. The assessee also filed copies of bank statement, cash flow and cash book to prove availability of funds with the assessee to make investment with M/s. Mohit Ispat (P) Ltd., and expenses incurred for construction of home. All these documentary evidences were before A.O. Thus, it is not a case of even inadequate enquiry... Therefore, Ld. D.R. was not justified in contending that report of Investigation Wing have not been considered by the A.O. Since it was the sole reason for completing the scrutiny assessment, therefore, it could not be believed that A.O. would not have gone through the material available before him on record. May be the A.O. has not discussed the details in the assessment order but it would not give right to the Ld. Pr. CIT to hold that no investigation or enquiry have been made at assessment stage. It appears that A.O. has taken one of permissible view in the matter as per Law and if the Ld.Pr. CIT does not agree with the view of the A.O, the assessment order could not be treated as erroneous in so far as it is prejudicial to the interests of the Revenue..)*

& Kolkata bench of ITAT in case of **Tanish Dealers Pvt. Ltd. I.T.A.**

No.1153/Kol/2019 Date of Pronouncement 01.07.2019 (Held

“...On examination of the material placed before him by the appellant, the AO was satisfied that the short term capital loss was incurred by the appellant on sale of shares listed on the Bombay Stock Exchange. The appellant had filed before the Ld. AO the relevant details and also produced the time stamped contract notes issued by its broker. All the transactions were made through registered share broker at rates prevailing on the stock exchange on the relevant dates. The payment for acquisition of shares and the subsequent sale proceeds were also transacted through the appellant's regular bank account. It is noted that the listed shares were sold within a period of one year from the date of acquisition and therefore the gain/loss was short term in nature. In the facts and circumstances as discussed above therefore we find that the AO had discharged his duties as an investigator as well as that of an adjudicator and applied his mind on the issue before him and taking into consideration the explanation rendered by the appellant, had taken a reasonable and plausible decision to allow the claim of short term capital loss as made by the appellant in the return of income. In this factual background therefore we are of the considered opinion that while passing the assessment order the AO did not follow a view which can be said to be 'unsustainable in law'. In the circumstances therefore, the jurisdictional facts for usurping the jurisdiction, being absent, we hold that the action of Ld. Pr. CIT was without jurisdiction and all subsequent actions are 'null' in the eyes of law”

&Jaipur bench of ITAT decision in case **of Vinay Kumar Sogani** ITA No.

444/JP/2018 Date of Pronouncement: 26/07/2018 (Held : ..once the assessee has produced evidence which established the genuineness of the transaction being holding of shares by the assessee in the demat account and purchase of the shares against the consideration paid through banking channel then in the absence of bringing any contrary fact or disapproving the evidence produced by the assessee, the mere setting aside issue by the Pr. CIT for denovo consideration is not sustainable. Though Explanation-2 to Section 263 mandates a proper enquiry as the AO should have conducted however, even in the opinion of the Pr. CIT, the AO has not conducted a proper enquiry as it ought to have been once the AO has examined

therelevant record in support of the claim of the assessee then, the Commissioner in the proceedings U/s 263 of the Act it also required to have conducted an enquiry to contradict evidence. In the absence of any efforts on the part of the Commissioner to cause a routine inquiry on the issue that has already been conducted by the AO, the order passed by the Pr. CIT merely setting aside the issue to the AO for conducting the denovo assessment is not permissible.... Thus, when the entire evidence in support of the claim was available on the assessment record and the Assessing Officer has already examined the same, then the Pr. CIT directing a re-enquiry on the issue is not permissible U/s 263 of the Act)

Lastly one may refer to recent Ahmedabad bench ITAT decision in case of Shardaben Patel I.T.A. No. 1026/Ahd/2018 order dated 25/09/2019 wherein it is held that (while quashing revision order of PCIT in section 263 where one of allegation was relating to alleged bogus LTCG):

“To reiterate, the grounds for revision in the show cause notice is vague and opportunity given to the assessee is effectively no opportunity despite express request . The action of the Revisional Commissioner in violation of the express mandate of Section 263 of the Act cannot thus be countenanced. A question may momentarily arise that the gaffes in following principles of natural justice is only a procedural irregularity and therefore matter should be restored to the file of the PCIT to restart the proceedings from the place where the irregularity has occurred. We are not inclined to agree. The opportunity was specifically sought but denied. The breach of sacrosanct opportunity expressly enjoined by the legislature in Section 263 of the Act is fundamental and goes to the root of the issue. It is not open to proceed to frame the revisional order by overriding express intent of law. Such flaw is fatal which seeks to ensue civil consequences and effects the rights of the assessee in a completed matter. The provisions of Section 263 of the Act expressly enjoin providing opportunity. The assessee had on its part has exercised its right to seek background information to enable it to file an informed defense. The dissuasion of such categorical request renders the action of the Revisional Commissioner incompetent in law. The total absence of opportunity alone renders the revisional order null and void.”

- xxi) Whether section 263 proceedings can be initiated on proposal of AO who passed the assessment order which is sought to be revised u/s 263?

No refer Kolkata ITAT in case of Sinhotia Metals & Minerals Pvt.
Ltd. Date of Pronouncement : 16 /01/2019 & Hyderabad ITAT M/s. AashiPlywood
Industries, Date of Pronouncement : 13.11.2015

xxii) Whether merely because assessment order is not written in detail , whether it would ipso facto make the said order as erroneous and prejudicial to interest of revenue u/s 263 ? No
refer 390 ITR 292 & 420 ITR 216

xxiii) How far direct writ petition against show cause notice u/s 263 be filed before jurisdictional high court ?

Madras high court in recent case of Wabco India limited 407 ITR 317 has eloquently held that “Allowing the writ petition the high Court held that ; question was whether the show-cause notice was at all without jurisdiction, whether the respondent wrongly assumed jurisdiction by erroneously deciding jurisdictional facts, whether in the facts and circumstances of the case, the appellant at all had any liability in respect of the capital gains in question, and whether the appellant could be said to be an agent under section 163(1)(c) . The High Court had jurisdiction to consider the question in writ proceedings. Court also observed that , no case was made out by the Department that in respect of transfer of shares to a third party, that too outside India, the Indian company could be taxed when the Indian company had no role in the transfer. Merely because those shares related to the Indian company, that would not make the Indian company an agent qua deemed capital gains purportedly earned by the foreign company. The notice was not valid.:

Also refer Madras high court in case of M/s.Indira Industries **W.A.No.1092 of 2017** Date of Decision : 14.06.2018

xxiv) Whether AO in set aside assessment made in consequence to order passed u/s 263 can go beyond what is directed/observed in order of revision u/s 263 by PCIT Concerned ?

No

Refer:

Gujarat High Court

Commissioner Of Income-Tax vs D.N. Dosani on 5 October, 2005

Equivalent citations: 2006 280 ITR 275 Guj

“11. Considering the issue from a slightly different angle. The assessee was called upon by CIT to tender explanation qua two items mentioned in the show cause notice. On a plain reading of [Section 263\(1\)](#) of the Act, it is apparent that the CIT could not have treated any further item or part of the assessment order as being erroneous and prejudicial to the interests of the revenue without giving the assessee an opportunity of being heard. Therefore, what the CIT himself could not have done, cannot be permitted to be done by the assessing officer while giving effect to the order under [Section 263](#) of the Act. It is necessary to bear in mind that powers of revision can be exercised only by the CIT and therefore, the assessing officer cannot, under the guise of framing fresh assessment, exercise the said powers in relation to other items forming part of the assessment record. The provision which permits exercise of jurisdiction under [Section 263](#) of the Act in the first instance requires the CIT to call for and examine the record of any proceeding under the Act. The logical presumption is, therefore, that before issuance of show cause notice under [Section 263](#) of the Act, the CIT has examined the record, and found prima facie that the assessment order is erroneous and prejudicial to the interests of the revenue only in relation to the items mentioned in the show cause notice. For the assessing officer, to substitute his opinion in place of the opinion of CIT is not envisaged by the provision and therefore also, action of the assessing officer in expanding scope of consequential assessments cannot be upheld.

12. [The Scheme of the Act](#) has provided different powers to different authorities and these are required to be exercised after satisfying the pre-requisite conditions and jurisdictional facts. The assessing officer can disturb / re-open a finalized assessment by invoking his powers either under [Section 154](#) or under [Section 147](#) of the Act, provided he can show that the necessary requirements are fulfilled. If, what revenue contends today, is accepted, these and other such provisions which empower different authorities to exercise jurisdiction at different point of time in distinct settings would be rendered otiose and that can never be the legislative intent. It is almost akin to providing separate keys for separate locked doors and the person wanting to open a particular door is required to apply the correct key which matches the concerned lock. Therefore, in proceedings, to give effect to order under [Section 263](#) of the Act, the assessing officer cannot be permitted to undertake an exercise not warranted by the legislative scheme.

13. The Tribunal was, therefore, right in holding that the operative part of the order under [Section 263](#) of the Act has to be read in context of what had preceded, namely, the discussion in the revisional order, and both the notice and the order under [Section 263](#) of the Act, have to be read as a whole. That the direction to the assessing officer to re-do the assessments is after looking into the aspects discussed by the CIT in his order and the directions made in the body of the order. The sentence recorded in paragraph No.7 of the revisional order cannot be read in isolation, nor can it be read by omitting certain portion of the sentence so as to mean that the assessing officer was entitled to process further items while giving effect to the order

under Section 263 of the Act. The Tribunal was, therefore, justified in holding that the assessing officer had travelled beyond his jurisdiction.

14. The decision in case of CIT v. Geo Industries and Insecticides (I) Pvt. Ltd. (supra) is not an authority for the proposition that the revenue is canvassing in the present case. In fact, the observations made by the Hon'ble High Court of Madras at pages 545 accord with the view that this Court has expressed. What is stated thereafter does not appear to be a correct expression of the legal position and this Court is in respectful disagreement with the opinion expressed by the Hon'ble High Court of Madras.

15. Thus, on the facts and circumstances of the case, the Tribunal was right in law in holding that, in the fresh assessment orders passed in pursuance of consolidated order under Section 263 of the Act, the assessing officer was entitled to consider only those two items which had been considered by the CIT and was not entitled to consider any other item afresh for making additions. The question referred at the instance of the Commissioner is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

16. Insofar as question referred at the instance of the assessee is concerned, the same is left unanswered for want of prosecution in absence of the assessee at the hearing.”

xxv) Whether PCIT u/s 263 can cancel a reassessment order where assessee in return filed in pursuance to notice u/s 148 declared and accepted “escaped” amount as returned income (which was also shown in pre 148 notice – revised computation filed by assessee) treating it to be erroneous and prejudicial to interest of revenue u/s 263 of the Act?

Pune ITAT in case of Shri Ishwar Vasantlal Sakla, Date of Pronouncement:
16.09.2015

9.2 The substantive case of the CIT is that the undisclosed income relates to the assessment year 2006-07 and accordingly assessed correctly in that year and explanation of the assessee that the source of cash deposits have been earned in the preceeding years i.e. assessment years 2003-04 to 2005-06 is without any credible evidence and thus erroneous and prejudicial to the interest of the Revenue in the facts of the case. He simultaneously alleged that the Assessing Officer has acted in nonchalant manner in completing the assessment without application of mind.

9.3 In essence, the objection of the CIT is two-fold. One, the income relates to assessment year 2006-07 and ought not to have been assessed in assessment years 2003-04 to 2005-06 and secondly, the requisite

verification of relevant facts have not been carried out in impugned assessment years

Held

16. The Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Works Pvt. Ltd. reported in (1992) 198 ITR 297 (SC) held that object and purpose in proceedings under section 147 are benefit of the Revenue alone and not an assessee. The case cannot be reopened to grant any benefit to the assessee. The prejudice to the assessee is therefore implicit as well as explicit at the stage of issuance of notice itself when the Assessing Officer believes that the chargeable income has escaped assessment for a given assessment year and which income is thereafter disclosed by way of filing the return in pursuance to the notice, the grievance of the Revenue ceases to exist. ***Therefore, to the extent of escaped income declared by the Assessee as alleged in the reasons recorded prior to issue of notice under section 147, it is not incumbent upon the AO to embark into any enquiry or investigation. No purpose would be served to doing so. Therefore lack of enquiry or inadequacy thereof in the course of re-assessment for an income for which escaped assessment has been alleged based on objective facts is not necessary when the undisclosed income itself has been declared in consequence to the advantage of revenue. The cause of action to the extent of allegation of escapement of income thus ceases to exist. It is not the case of the CIT in the present case that the escapement was for a larger sum than what has been assessed in these years. By coming forward and declaring the income in the return filed pursuant to notice under S. 148, the alleged error in understatement of income stands cured for the relevant assessment year. The interest of revenue thus stands protected in so far as that year is concerned. Therefore, in our considered view, the action of the Assessing Officer in accepting the escaped income declared by the Assessee, to the advantage of revenue cannot be faulted in proceedings under S. 263.***

17. In the facts of the given case, what can probably be erroneous is the very basis of filing of return of income and assessment thereof i.e. the issuance of notice under section 147 of the Act at all. The filing of return and assessment thereof is consequential. The CIT has not impugned the act of issuance of notice. The notice under S. 148 / 147 survives and has not been vacated. The Commissioner under 263 has sought to impugn the assessment orders pursuant to an un-assailed notice under section 147 of the Act where the income alleged to have escaped assessment has been

accepted as declared following the process of law. The aforesaid reassessment orders assessing the income allegedly escaped pursuant to statutory notices can neither be said erroneous nor prejudicial to the interest of the Revenue.”

- xxvi) Whether PCIT in section 263 can initiate penalty proceedings u/s 271(1)(c) qua additions made by AO in assessment order or whether PCIT in section 263 can initiate penalty u/s 269SS violation not referred/described in assessment order? No (*refer 379 ITR 521 SC Jai Laxmi Rice Mills case*)

Ahmedabad ITAT in case of Easy Transcription & Software

Pvt. Ltd. Date of Pronouncement 10/01/2017

15. The action of CIT under S. 263 is required to be struck down for other reason also. As noted above, arriving at the ‘satisfaction’ is the foundation of action under S. 271(1)(c) of the Act. Admittedly, the CIT is a designated authority to form satisfaction post amendment. Nevertheless, the impugned ‘satisfaction’ towards default enumerated in 271(1)(c) is required to be formed not later than the conclusion of proceeding before it i.e. assessment proceeding in the instant case. Thus the designated authorities would become functus officio once the proceedings are concluded. Admittedly, the assessment proceedings were concluded and post facto satisfaction is not permissible. The penalty proceedings being distinct and separate, the assessment per se can alone be reviewed in accordance with law. However, the completed assessment cannot be set aside to enable the subordinate authority to initiate a separate and distinct proceeding in conflict the scope of authority vested under S. 263. The Commissioner in exercise of his revisional powers cannot arrogate to himself a status to surrogate the other authorities and supplant their roles under the Act. The Commissioner is not a substitute of the other statutorily prescribed fora with codified functions dischargeable in terms of the prescribed procedure in the situations comprehended thereby. When read in conjunction with the decision of Parmanand Patel (supra), the language of Section 263 is not capable of and does not admit of a construction to empower the CIT to set aside an assessment order to initiate a distinct penalty proceeding. The legislature, in our view, has allowed this position to be sustained so far except expanding the scope of authority under S. 271(1)(c) to include administrative CIT within its ambit.

203