CHAPTER 16

APPEALS AND REVISION



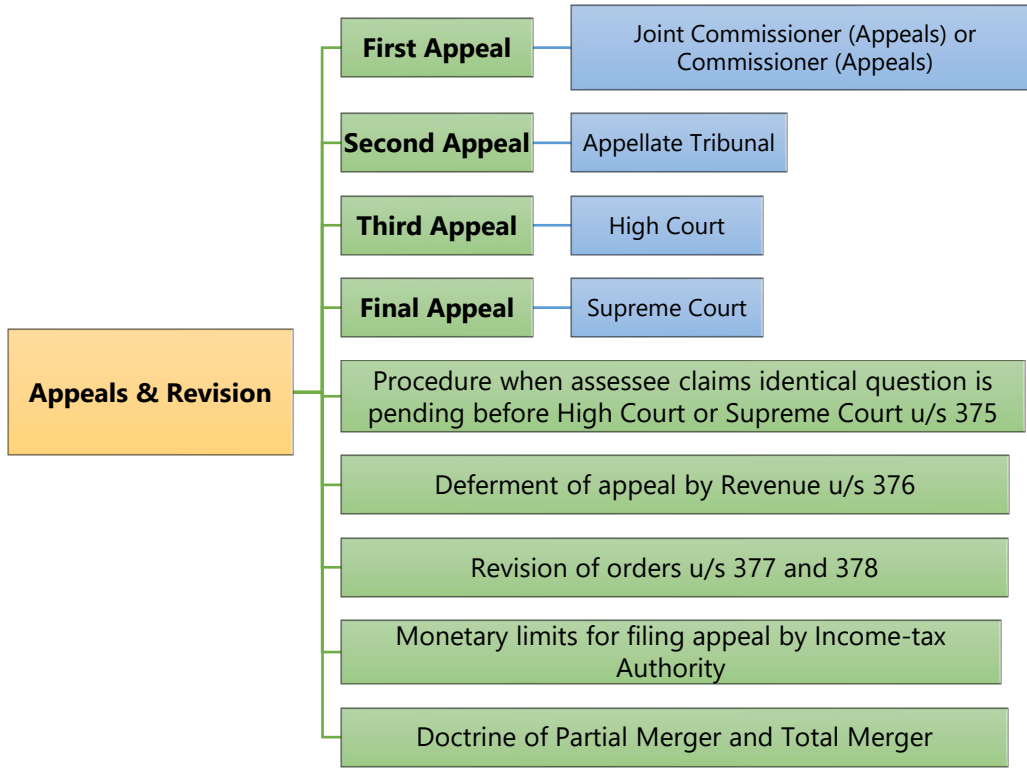
LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **identify** the orders appealable before different appellate authorities;
- **recall** the time limit for filing appeals before different appellate authorities;
- **appreciate** the powers of different appellate authorities;
- **comprehend and appreciate** the provision in law for avoiding repetitive appeals;
- **appreciate** the procedure for appeal by Revenue when an identical question of law is pending before Supreme Court;
- **identify** the circumstances when 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, for initiation of revision proceedings under section 377;
- **appreciate** the procedure for revision of other orders under section 378;
- **recall** the time limit for revision of orders;
- **identify** the cases where doctrine of total merger and doctrine of partial merger are applicable;
- **analyse and apply** the above provisions to determine whether an order is appealable before a particular appellate authority, the time limit for filing of appeal and address other issues in non-complex to moderately complex scenarios.

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CHAPTER OVERVIEW



16.1 APPEALS BEFORE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER (APPEALS)

(I) Appealable Orders before Joint Commissioner (Appeals) [Section 356(1)]

Any assessee, deductor, collector, aggrieved by any of the following orders of an Assessing Officer (**below the rank of Joint Commissioner)** may appeal to the Joint Commissioner (Appeals) against -

(a) an order being an intimation under section 270(1) or 399(1), where the assessee, deductor or collector objects to the adjustments made therein; or

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(b) an order of assessment under section 270(10) or 271 (i.e., best judgement assessment), where the assessee objects to-

(i) the amount of income assessed, or

(ii) the amount of tax determined, or

(iii) the amount of loss computed, or

(iv) the status under which he is assessed;

(c) an order of assessment, reassessment or recomputation under section 279; or

(d) an order under section 398 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;

(e) an order imposing a penalty under Chapter XXI; or

(f) an order under section 287 or 288 amending any of the orders or intimations mentioned in clauses (a) to (e).

(i) Restriction on filing appeal before Joint Commissioner (Appeals) [Section 356(2)]

No appeal can, however, be filed before the Joint Commissioner (Appeals), if any of the above orders is passed by or with the prior approval of an income-tax authority **above the rank** of Deputy Commissioner.

(ii) Power of the Board to transfer appeals between Commissioner (Appeals) and Joint Commissioner (Appeals) [Section 356(3)]

The Board or an income-tax authority so authorised by the Board in this regard, may transfer-

(a) any appeal filed against an order referred to in section 356(1), which is pending before Commissioner (Appeals), and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals); or



(b) any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals), regardless of anything contained in section 356(1) and clause (a) above.

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The Commissioner (Appeals) or Joint Commissioner (Appeals) may proceed with such appeal or matter, from the stage at which it was before it was so transferred.

Where an appeal is transferred under the provisions of section 356(3), the appellant shall be given an opportunity of being reheard.

(iii) Central Government empowered to notify faceless appeal scheme [Section 356(5)]

For the disposal of appeal under this section, the Central Government may notify a scheme, so as to dispose of appeals in an expedient manner with transparency and accountability, by eliminating the interface between the Joint Commissioner (Appeals) and the appellant, to the extent technologically feasible and direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of such appeals, shall not apply or shall apply with exceptions, modifications and adaptations.

(iv) Cases or Class of Cases where appeal cannot be made before Joint Commissioner (Appeals) [Section 356(6)]

The Board may specify that any provisions of this section shall not apply to any case or class of cases.

(v) Meaning of 'Status'[Section 356(7)]

For the purposes of this section and section 357, "status" means the category of person as defined in section 2(77) under which the assessee is assessed.



Appeal lies before the Joint Commissioner (Appeals) only where -

- the impugned order is passed by an **Assessing Officer below the rank of Joint Commissioner**; or
- such order has **not** been passed by, or with the prior approval of, an income-tax authority **above the rank of Deputy Commissioner**.

Otherwise, the appeal lies before the **Commissioner (Appeals)** under section 357.

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(II) Appealable Orders before Commissioner (Appeals) [Section 357]

An assessee or deductor or collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against-

(i) an order passed by a Joint Commissioner under **section 231(4)(b)** refusing to approve the option for tonnage tax scheme; or

(ii) an order against the assessee where the assessee denies his liability to be assessed under this Act; or

Appealable orders before CIT(A)

(iii) an intimation under **section 270(1) or 399(1)**, where the assessee or the deductor or the collector objects to the adjustments made therein; or

(iv) any order of assessment under **section 270(10)**, **except** an order passed in pursuance of the directions of Dispute Resolution Panel or an order referred to in 274(12) or **271**, where the assessee objects 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; or

(v) an order of assessment, reassessment or recomputation under **section 279 except** an order passed in pursuance of the directions of Dispute Resolution Panel or an order referred to in section 274(12)] or an order under **section 283**; or

(vi) an order made under **section 169(3)(a)** where an order has been passed by Assessing Officer in relation to a modified return of income filed by appellant to give effect to advance pricing agreement.

(vii) an order made under **section 287 or 288** having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections **except** an order referred to in section 274(*12*); or

(viii) an order made under **section 306** treating the assessee as the agent of a non-resident; or

(ix) an order made under **section 313(2)/(4)** assessing income of business prior to succession in the hands of the successor; or

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(x) an order made under **section 315** relating to assessment after partition of HUF; or

(xi) an order made under **section 398** deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source; or

(xii) a refund order made under **section 431**; or

(xiii) an order made under **section 434** with respect to refund for denying liability to deduct tax at source; or

(xiv) an order imposing or enhancing a penalty under **Chapter XXI**; or

(xv) an order imposing a penalty under **section 412;** or

(xvi) an order of assessment made by an Assessing Officer under **section 294(1)(c)** in respect of search initiated under section 247 or books of account, other documents or any assets requisitioned under section 248; or

(xvii) an order imposing a penalty under **section 298(*2*)**; or

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

(i) Form of appeal and prescribed fees [Section 358(1)]

Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Rule 167 – Form and manner of filing appeal

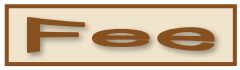
As per Rule 167-

- an appeal before the Joint Commissioner (Appeals) or the Commissioner (Appeals) shall be made in **Form No. 99**;
- the appeal shall be furnished electronically-
  - under **digital signature**, where the return of income is furnished under digital signature; or
  - through **Electronic Verification Code (EVC)** in other cases;

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- even where an assessee has the option to furnish the return in paper form, the appeal shall still be furnished electronically;
- the appeal shall be verified by the person authorised to verify the return of income under **section 265**; and
- every document accompanying Form No. 99 shall be furnished in the same manner as the appeal.

(ii) Prescribed fees [Section 358(2)]



An appeal made to the Commissioner (Appeals) or to the Joint Commissioner (Appeals) shall be accompanied by a fee of:

	Case	Prescribed fees
(i)	where the total income of the assessee as computed by the Assessing Officer is ₹ 1,00,000 or less	INR 250
(ii)	where the total income of the assessee computed as above is more than ₹ 1,00,000 but not more than ₹ 2,00,000	INR 500
(iii)	where the total income of the assessee computed as above is more than ₹ 2,00,000	INR 1,000
(iv)	in any case other than (i), (ii) and (iii) above	INR 250

(iii) Time limit [Section 358(3), (4) & (5)]

An appeal to Joint Commissioner (Appeals) or to the Commissioner (Appeals) against any order which is appealable is to be **presented within 30 days** from the date specified below in the particular cases.



The dates from which the limitation period of 30 days has to be reckoned are as follows:

	Appeal relating to	30 days to be reckoned from
1.	Assessment/penalty	The date of service of notice of demand
2.	Any other case	The date on which intimation of the order sought to be appealed against is served.

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Period to be excluded while computing 30 days in case of appeal relating to assessment/penalty:

Application	Period to be excluded	
	From	To
Under section 440(1) i.e., waiver of penalty and immunity from prosecution	The date on which the application is made	The date on which the order rejecting the application is served on the assessee.

However, Joint Commissioner (Appeals) or the Commissioner (Appeals) may admit an appeal even after the expiry of the said period of thirty days, if he is satisfied that the appellant had **sufficient cause** for not presenting the appeal within the specified time.

Service of order (Rule 191)

As per Rule 191:

- the intimation of an order referred to in section 358(3)(b) shall be served in the same manner as prescribed under **section 501** for the service of a notice or requisition; and
- any other order (other than a notice or requisition) may be served by post or in the manner in which a summons is served by a Court under the **Bharatiya Nagarik Suraksha Sanhita, 2023**.

(iv) Tax to be paid at the time of filing the appeal [Section 358(6) & (7)]

No appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal,

Tax to be paid before filing appeal

- **In a case where return has been filed:** Assessee has paid the tax due on the income returned by him in a case where a return has been filed by the assessee.
- **In a case where no return has been filed:** If, however, no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him.

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The Joint Commissioner (Appeals) or the Commissioner (Appeals) is, however, empowered for **reasons to be recorded in writing**, to exempt an appellant from the requirement of payment of advance tax in case no return has been filed, on receipt of an application from the appellant made specifically for this purpose.

(v) Procedure in appeal [Section 359]

(i) **Fixing of hearing and issue of notice [Section 359(1)]:** The Joint Commissioner (Appeals) or the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preffered.



(ii) **Right of hearing [Section 359(2):** Both the appellant and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative.

(iii) **Powers during appellate proceedings [Section 359(3)]:** The Joint Commissioner (Appeals) or the Commissioner (Appeals) may-

(a) adjourn the hearing of the appeal; or

(b) make such further inquiry as he thinks fit, before disposing of any appeal, or may direct the Assessing Officer to make further inquiry and report the result of the same; or

(c) allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(iv) **Contents of appellate order [Section 359(4)]:** The order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(v) **Time limit for disposal [Section 359(5)]:** The Joint Commissioner (Appeals) or the Commissioner (Appeals), where it is possible, may hear and decide such appeal **within one year from the end of the financial year** in which such appeal is filed or transferred to him under section 356.

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(vi) **Communication of appellate order [Section 359(6)]:** On disposal of the appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals) must communicate the order passed by him to the assessee as well as to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(vi) Production of additional evidence before Joint Commissioner (Appeals) and Commissioner (Appeals)

As per Rule 192(1) of the Income-tax Rules, 2026, an appellant shall not be entitled to produce before the Joint Commissioner (Appeals) or the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced before the Assessing Officer, except in the following circumstances:

(i) where the Assessing Officer has refused to admit evidence which ought to have been admitted;

(ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer;

(iii) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(iv) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Further, Rule 192(2) provides that no such additional evidence shall be admitted unless the Joint Commissioner (Appeals) or the Commissioner (Appeals) records the reasons for its admission in writing.

In addition, under Rule 192(3), such evidence cannot be taken into account unless the Assessing Officer is given a reasonable opportunity to examine the evidence or cross-examine the witness produced by the appellant, or to produce evidence or witnesses in rebuttal.

However, Rule 192(4) clarifies that these restrictions do not affect the powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals) to direct the production of any document or the examination of any witness if it is necessary for disposal of the appeal or for any other substantial cause, including enhancement of assessment or penalty or imposition of penalty under section 439.

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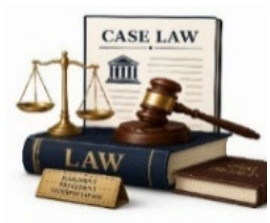
(vii) Powers of the Joint Commissioner (Appeals) or Commissioner (Appeals) [Section 360]

(i) Powers of the Joint Commissioner (Appeals)/Commissioner (Appeals) while disposing of an appeal [Section 360(1)]

Nature of appeal	Powers of the Joint Commissioner (Appeals)/Commissioner (Appeals)
Appeal against an assessment order	He may confirm, reduce, enhance or annul the assessment.
Appeal against best Judgement Assessment under section 271	The Commissioner (Appeals) set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.
Appeal against a penalty order	He may confirm or cancel the penalty, or vary it so as to either enhance or reduce the penalty.
Any other appeal	He may pass such orders as he thinks fit.

(ii) The Joint Commissioner (Appeals) or Commissioner (Appeals), however, is not empowered to enhance an assessment or a penalty or to reduce a refund due to the assessee without giving the assessee a **reasonable opportunity of showing cause** against such an enhancement or reduction.

(iii) The Joint Commissioner (Appeals) or the Commissioner (Appeals) **may consider and decide any matter arising out of the proceedings** in which the order appealed against was passed, irrespective of the fact that such matter was not raised before him by the appellant.



CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.)

Issue: Can an assessee make an additional/ new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?

Analysis & Decision: The appellate authorities have jurisdiction to permit

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additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion.

In case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same.

Additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.

Note – This view of the High Court has been endorsed by the Apex Court in Wipro Finance Ltd. v. CIT (2022) 443 ITR 250 (SC)

16.2 APPEALS TO THE APPELLATE TRIBUNAL [SECTIONS 361 TO 364]

(I) Constitution of the Appellate Tribunal [Section 361]

(i) The Central Government shall constitute an Appellate Tribunal consisting of judicial and accountant members to exercise the powers and discharge the functions conferred on the Tribunal by the Act.

(ii) **Appointment of President [Section 361(3)]:** The Central Government shall appoint **–**

- a person who is sitting or retired Judge of a High Court having **at least 7 years' service** as a High Court Judge; or
- one of the **Vice-Presidents** of the Appellate Tribunal

to be the **President of the Appellate Tribunal.**

(iii) **Appointment of Vice-President [Section 361(4)]:** The Central Government may appoint **one or more members** of the Appellate Tribunal as **Vice-President(s)**.

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(iv) Powers of Vice-President [Section 361(5)]: A Vice-President shall exercise such powers and perform such functions of the President as may be **delegated by the President** by a **general or special order in writing**.

(II) Orders appealable before the Appellate Tribunal [Section 362]

Section 362(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –



Order passed by	Section	Particulars
Commissioner (Appeals) or Joint Commissioner (Appeals);	-	An order passed under the Act
Principal Commissioner or Commissioner	332(7)/ (8)/ (9)	Order refusing/ canceling registration of trust or institution
	351(2)(ii)/ 354(3)	Refusal to grant approval to fund, trust, institution, university, educational institution, hospital or other medical institution
	377	Revision of an erroneous order prejudicial to the interests of the revenue passed by Assessing Officer
	439	Order imposing penalty for under-reporting or mis-reporting of income.
	465	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
	287	Rectification of any of the above orders
Principal Chief Commissioner or Chief Commissioner	377	Revision of an erroneous order prejudicial to the interests of the revenue
	465	Order imposing penalty for failure to

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or Principal Director General or Director General or Principal Director or Director		answer questions, sign statements, furnish information returns or statements, allow inspections etc.
	287	Rectification of any of the above orders
Assessing Officer	234(4)	Order excluding a tonnage tax company from the tonnage tax scheme if such company is a party to any transaction or arrangement which amounts to an abuse of such scheme.
	270(10) / 279 (pursuant to DRP directions)	An order of assessment or reassessment in pursuance of the directions of Dispute Resolution Panel or an order passed under section 287 in respect of such order.
	270(10)/270(9) read with 275(14)	An order of assessment with the approval of Principal Commissioner or Commissioner as referred to in section 274(12), where tax consequences have been determined under the provisions of Chapter XI relating to general anti-avoidance rules, or an order passed under section 287 or section 288 in respect of such order.

(III) Filing of Appeal by Assessing Officer [Section 362(2)]

Section 362(2) provides that the Principal Commissioner or Commissioner may, if he objects to any order passed by the Joint Commissioner (Appeals) or the Commissioner (Appeals) under this Act, **direct the Assessing Officer** to appeal to the Appellate Tribunal against such order.

(i) Time limit for filing appeal or memorandum of cross objection under section 362(1) & (2) [Section 362(3), (4) & (5)]

(i) Every appeal to the Appellate Tribunal has to be filed **within two months from the end of the month** in which the order sought to be appealed against is **communicated** to the assessee or the Principal Commissioner or Commissioner.

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(ii) Further, on receipt of notice that an appeal against an order 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 such order in the prescribed form and verified in the prescribed manner.



Rule 193- A memorandum of cross-objections under section 362(4) shall -

- be made in **Form No. 116**; and
- where it is filed by the assessee, the **Form, Grounds of Cross-objections and Verification** shall be signed by the person authorised to verify the return of income under **section 265**.

The Appellate Tribunal must dispose of the memorandum of cross-objections as if it were an appeal filed within the prescribed time limit.

(iii) However, the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections even after expiry of the prescribed time limit, if he is satisfied that there was **sufficient cause** for not presenting it within that period.

(ii) Fees [Section 362(6) (7) & (8)]

	Case	Prescribed fees
(i)	Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is ₹ 1,00,000 or less	₹ 500
(ii)	Where the total income computed as aforesaid is more than ₹ 1,00,000 but not more than ₹ 2,00,000	₹ 1,500
(iii)	Where the total income computed above is more than ₹ 2,00,000	1% of the assessed income, subject to a maximum of ₹ 10,000.
(iv)	In any other case	₹ 500
(v)	Where appeal is filed to the Appellate Tribunal by an Assessing Officer on the direction of the Commissioner or Principal Commissioner,	No fees

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	against the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals)	
(vi)	Filing of memorandum of cross-objections.	No fees
(vii)	Application for stay of demand	₹ 500

Rule 193 – Form of appeal

Appeal to the Appellate Tribunal

An appeal to the Appellate Tribunal under section 362(1) or section 362(2) shall-

- be made in **Form No. 115**; and
- where the appeal is filed by the assessee, the **Form of Appeal, Grounds of Appeal and Verification** shall be signed by the person authorised to verify the return of income under **section 265**.

(IV) Orders of Appellate Tribunal [Section 363]

The Appellate Tribunal may, after giving both the parties to the appeal a reasonable opportunity of being heard, pass such orders on any appeal as it thinks fit [Section 363(1)].

(i) Rectification of mistake apparent from the record [Section 363(2), (3) & (4)]

Rectify within 6 months from end of the month in which order was passed

The Appellate Tribunal may amend any order passed by it under sub-section (1) for the rectification of any mistake apparent from record, **within six months from the end of the month in which the order was passed**, if the mistake is brought to its notice by the assessee or the Assessing Officer.

In cases where the amendment has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee, the Tribunal shall not pass any order of amendment unless the assessee has been allowed **a reasonable opportunity of being heard**.

Fees for rectification: Any application for rectification filed by the assessee shall be accompanied by a fee of ₹ 50.

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(ii) Time limit for disposal of appeal [Section 363(5)]

In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal **within a period of four years from the end of the financial year in which such appeal is filed** under section 362(1) or (2).

(iii) Power to grant stay of demand [Section 363(6), (7) & (8)]

Under section 363(6), the Appellate Tribunal may after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal for a period not exceeding 180 days from the date of granting such stay subject to the condition that the assessee either-



(i) 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

(ii) furnishes security of equal amount in respect thereof.

and the Appellate Tribunal **shall** dispose of the appeal within the period of stay specified in such order.

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** –

(i) **the assessee** makes an application and has complied with the condition of **depositing 20%** of tax, interest, fee, penalty or furnishes security of equal amount **and**

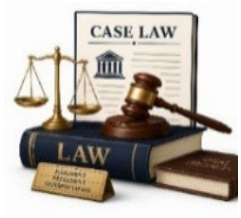
(ii) the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee.

However, **the aggregate of the period of stay** originally allowed and the period of stay so extended **should not exceed 365 days** and 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 the 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.

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DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC) **Issue**:

Issue: Would automatic vacation of stay order upon expiry of extended period of stay of 365 days be valid, where the delay in disposing of the appeal is not attributable to the assessee?

Analysis & Decision: Section 363(8) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

The Apex Court observed that the Appellate Tribunal, wherever possible, must hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay is granted by the Appellate Tribunal that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, the condition of automatic vacation of stay on expiry of the period becomes mandatory so far as the assessee is concerned.

The Apex Court also pointed out that the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time, for no fault of the assessee. Further, vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary, being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

Accordingly, the Apex Court held that the section 363(8) has to be read without the word "even" and the word "not" after the words "delay in disposing of the appeal". Thus, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

(iv) Cost of appeal

The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal [Section 363(9)].

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(v) Communication of orders by the Appellate Tribunal

The Appellate Tribunal shall-

- send a copy of its order to the assessee; and
- send a copy of such order shall also be sent to the to the **jurisdictional Principal Commissioner or Commissioner** electronically through the designated portal prescribed by the Director General or Principal Director General.

  The provisions relating to time limits under the Act for appeal, reference or revision shall apply accordingly. [Section 363(10)].

(vi) Final Fact-Finding Authority

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 [Section 363(11)].

(V) Procedure of the Appellate Tribunal [Section 364]

(i) Constitution of Benches [Section 364(1) to (4)]

Particulars	Provision
Constitution of Benches	Benches are constituted by the President from amongst the Members of the Tribunal.
Normal Bench	One Judicial Member and one Accountant Member.
Single Member Bench	The President or a Member authorised by the Central Government may dispose of any case allotted to him, where the total income computed by the Assessing Officer does not exceed **₹ 50 lakh**.
Special Bench	The President may constitute a Special Bench consisting of **three or more Members**, including at least one Judicial Member and one Accountant Member.

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(ii) Difference of opinion between Members [Section 364(5)]: If the members of a Bench differ in opinion on any point:

Decision according to opinion of majority

- the point shall be decided according to the opinion of the **majority**, where there is a majority;
- where the Members are **equally divided**, they shall state the point(s) on which they differ, and the case shall be referred by the President to one or more other Members for hearing on such point(s); and
- the point(s) shall thereafter be decided according to the opinion of the majority of the Members who have heard the case, including the Members who first heard it.

(iii) Regulating power [Section 364(6)]: 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 or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(iv) Judicial powers of the Tribunal [Section 364(7)]: The Tribunal is vested with all the powers which are exercisable by Income-tax authorities under section 246 for the purpose of discharging its functions. Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 229 and 267 and for the purposes of section 233 of the Bharatiya Nyaya Sanhita, 2023, and the Appellate Tribunal shall be deemed to be a **Civil Court** for all the purposes of section 215 and Chapter XXXVII of the Bharatiya Nagarik Suraksha Sanhita, 2023.

16.3 APPEALS TO HIGH COURT [SECTIONS 365 & 366]

(1) Appeal: Section 365(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Formulate Substantial question of law

If the High Court is so satisfied, it shall formulate that question [Section 365(4)].

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(2) Form and time limit for appeal [Section 365 (2) & (3)]: The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be-

(i) filed **within 120 days from the date on which the order** appealed against **is received** by the assessee, or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;

(ii) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

The High Court may condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was **sufficient cause** for not filing the appeal within that period.

(3) Matters on which appeal can be heard [Section 365(5), (6), & (8)]: Where the High Court is satisfied that the case involves a substantial question of law, it shall formulate that question. The appeal shall be **heard only on the question formulated**. However, the respondent shall at the hearing of appeal, be allowed to argue that the case does not involve such question.

Further, the Court shall also have power, for reasons to be recorded, to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

Further, the High Court may determine any issue which the Appellate Tribunal-

(a) has not determined; or

(b) has wrongly determined, by reason of a decision on such question of law as is referred to in section 365(1).



CIT v. A.A. Estate Pvt. Ltd. (2019) 413 ITR 438 (SC)

Issue: Considering the procedure as prescribed u/s 365, is the High Court justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant?

Analysis & Decision: There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The substantial questions of

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law, which are proposed by the appellant fall u/s 365(2)(b) whereas the substantial question of law is required to be framed by the High Court fall u/s 365(4). Under section 365(5), the appeal is heard on merits only on the substantial question of law framed by the High Court u/s 365(4). If the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 365 for its admission and accordingly should have dismissed the appeal *in limine*.

However, this was not done. Instead, the appeal was heard only on the questions urged by the appellant u/s 365(2)(b), which is not in line with the requirement contained in section 365(5). The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 365.

(4) Delivery of judgment and award of costs [Section 365(7)]: The High Court shall decide the question of law so formulated and deliver such judgement thereon containing the grounds on which such decision is founded and may award such costs as it deems fit.

(5) Code of Civil Procedure: Unless otherwise provided in this Act, the Code of Civil Procedure, 1908, relating to appeals to the High Court, shall apply to appeals under this section.

(6) Assessing Officer to Give Effect to High Court Judgment: Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such order by the Assessing Officer, on the basis of a certified copy of the judgment.

(7) Case before High Court to be heard by not less than two judges [Section 366]

Strength of the bench hearing the appeal: The appeal shall be heard by a bench of not less than 2 judges of the High Court.

Decision of the majority: The appeal shall be decided in accordance with the opinion of the judges or the majority, if any.

Where there is no such majority, the point of law upon which the judges differ shall be referred to one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

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Sunil Vasudeva & Others v. Sundar Gupta & Others (2019) 415 ITR 281 (SC)

Issue: Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?

Analysis & Decision: The High Court can review its own order, where the grounds for review were:

(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him;

(ii) mistake or error apparent on the face of the record;

(iii) any other sufficient reason.

A review will, however, not be maintainable in the following cases:

(i) repetition of old and overruled argument;

(ii) minor mistakes of inconsequential import.

The following observations were also made by the Supreme Court in relation to entertaining a review application:

(i) review proceedings cannot be equated with the original hearing of the case.

(ii) a review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in a miscarriage of justice.

(iii) a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

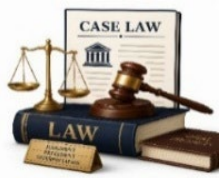
(iv) The mere possibility of two views on the subject cannot be a ground for review.

(v) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(vi) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(vii) A review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

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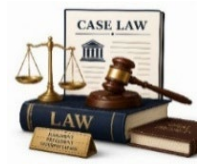


CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)

Issue: Does the High Court have an inherent power under the Income-tax Act, 2025 to review an earlier order passed on merits?

Analysis & Decision: High Courts being courts of record under Article 215 of the Constitution of India, the power of review would inhere in them. There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

Section 365(9) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 365(9) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals u/s 365.



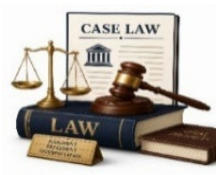
Spinacom India (P.) Ltd. v. CIT (2018) 258Taxman 128 (SC)

Issue: Can the delay in filing appeal u/s 365 be condoned where the stated reason for the delay is the pursuit of an alternate remedy by way of filing an application before the ITAT u/s 363(2) for rectification of a mistake apparent on record?

Analysis & Decision: The Supreme Court rejected the question of invoking section 14 of the Limitation Act 1963, which allows condonation of delay on demonstration of sufficient cause. The Supreme Court refused to accept the submission that the application before the ITAT u/s 363(2) was an alternate remedy to filing of an application u/s 365. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter.

Under section 365, an order of the ITAT can be challenged on substantial questions of law. The Supreme Court stated that the appellant had the option of filing an appeal u/s 365 while also mentioning in the Memorandum of Appeal that its application u/s 363(2) was pending before the ITAT. The time period for filing an appeal u/s 365 does not get suspended on account of the pendency of an application before the ITAT u/s 363(2).

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SAP Labs India Pvt. Ltd. v. ITO (and other appeals) [2023] 454 ITR 121 (SC)

Issue: In an appeal u/s 365, is the High Court precluded from examining the correctness of the determination of the ALP on the ground that once the Tribunal determines the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law?

Analysis and Decision: The Apex Court laid down the following with respect to the powers of High Court to consider the substantial question of law involving the determination of ALP:-

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 2025, namely, sections 161 to 173 of the Act and Rules 77 to 85 of the Rules. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal u/s 365.

  When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

- The High Court can also examine the question of comparability of two companies or the selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/ evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

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Therefore, the view taken by the Karnataka High Court in the case of *Softbrands India (P.) Ltd.* that in the transfer pricing matters, the determination of the ALP by the Tribunal is final and cannot be subject matter of appeal under section 365 cannot be accepted. In an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 365, whether while determining the ALP, the guidelines laid down under the Income-tax Act and the Rules are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

16.4 APPEAL TO THE SUPREME COURT [SECTION 367 & 368]

Appeal to Supreme Court [Section 367]

An appeal shall lie to the Supreme Court against any judgment of the High Court delivered on an appeal made to High Court in respect of an order passed under section 363 in any case which the **High Court certifies to be fit for appeal to the Supreme Court.**

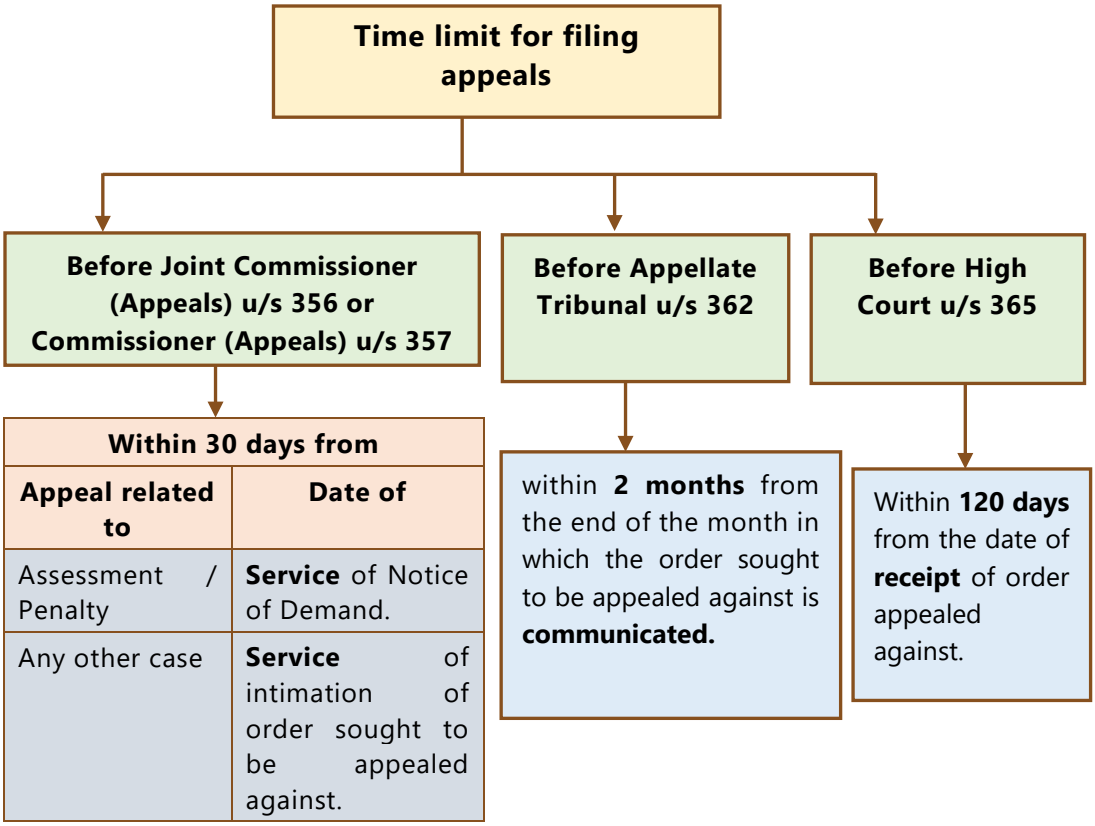
Hearing before Supreme Court [Section 368]

(i) The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of all appeals to the Supreme Court in the same manner as in the case of all appeals from decrees of a High Court.

(ii) The cost of appeal shall be decided at the discretion of the Supreme Court.

(iii) Where the judgment of a High Court is varied or reversed in the appeal, effect should be given to the order of the Supreme Court in the same manner as provided in the case of a judgment of the High Court.

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

16.5 GENERAL PROVISIONS [SECTIONS 369 TO 372]

(I) Tax payable irrespective of appeal [Section 369]

The mere filing of an appeal before the High Court or the Supreme Court does not suspend the liability to pay tax. Accordingly, tax shall continue to be payable in accordance with the assessment made, irrespective that an appeal has been preferred to the High Court or the Supreme Court.

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(II) Execution of costs awarded by the Supreme Court [Section 370]

Where the Supreme Court awards costs, the High Court may, on a petition made for execution of such order, transmit the order for execution to any Court subordinate to it.

(III) Amendment of assessment on appeal [Section 371]

Where, as a result of an appeal under section 356, 357 or 362,-

- the assessment of a Body of Individuals (BOI) or an Association of Persons (AOP) is modified; or
- a new assessment is directed in such cases,

the Joint Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, shall pass an order authorising the Assessing Officer to-

- amend the assessment of any member of such BOI or AOP; or
- make a fresh assessment on such member.

(IV) Exclusion of time taken for obtaining copy of order [Section 372]

While computing the period of limitation prescribed for filing an appeal or an application under the Act-

- the day on which the order complained of is served; and
- where a copy of such order is not supplied along with the notice, the time required for obtaining a copy of the order,

shall be excluded.

16.6 FILING OF APPEAL BY INCOME-TAX AUTHORITY [SECTION 373]

(i) As per section 373(1), CBDT is empowered to issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is for the purpose of regulating filing of an appeal or an application for reference by any income tax authority.

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(ii) 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 tax 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 tax year; or

(2) any other assessee for the same or any other tax year.

(iii) 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.

(iv) The Appellate Tribunal or Court should take into consideration the above mentioned orders/instructions/directions of the CBDT and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.



Non-filing of an appeal by the income-tax authority due to the monetary limits prescribed by the Board **does not amount to acceptance of the disputed issue**, and the Department is not precluded from filing an appeal on the same issue in another case or another tax year.

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. 5/2024, Dated 15-3-2024 and Circular No. 09/2024 dated 17.9.2024.



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.

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(i) Specified Monetary Limits

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

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	60,00,000
2.	Before High Court	2,00,00,000
3.	Before Supreme Court	5,00,00,000

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.

Cases to be contested on merits

(ii) Exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits

Monetary limits given above with regard to filing appeal/SLP would be applicable to all cases including those relating to TDS/TCS with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be **constitutionally invalid**, or

b. Where any order, notification, instruction or circular of the Board or the Government has been held to be **illegal or *ultra vires* the Act** or otherwise constitutionally invalid, or

c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DR!, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or

d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or

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e. Where strictures/adverse comments have been passed and/or cost has been levied against the Department of Revenue, CBDT or their officers, or

f. Where the tax effect is not quantifiable or not involved.

g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or

h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or

i. Where mandated by a Court's directions, or

j. Writ matters, or

k. Matters related to any matter other than the Income Tax Act, or

l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-

- Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or
- Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation A voidance Agreement or otherwise

m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

In respect of deferral of appeals under section 376, exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

(a) When judicial finality is achieved in favour of Revenue in the "other case", appeal in the "relevant case" is contested on merits subsequent to the decision in the "other case" irrespective of the extant monetary limits.

(b) If the judicial outcome in the "other case" is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the "other case" irrespective of the extant monetary limits, to arrive at judicial finality.

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Meaning of Tax Effect:

	Case	Tax Effect
i.	In case not covered in ii, iii and iv below	The tax on the total income assessed (-) 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"). **Note** – However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.
ii.	In case the chargeability of interest is the issue under dispute	The amount of interest
iii.	In case where returned loss is reduced or assessed as income	The tax effect would include notional tax on disputed additions
iv.	In case of penalty orders	Quantum of penalty deleted or reduced in the order to be appealed against
Note – Tax effect shall be tax including applicable surcharge and cess.		

For calculating the tax effect of cases involving TDS/TCS, the cumulative effect, of all orders passed for a tax year of a deductor, to be taken into account and would include interest u/s 398.

(iii) Computation of tax on the total income assessed where income is computed under the provisions of section 206(1) or section 206(2)

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 206(1) or section 206(2) (i.e., the general provisions)

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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 206(1) or section 206(2)

D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 206(1) or section 206(2) 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 206(1) or section 206(2) and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

(iv) Manner of calculation of tax effect of different tax years

The Assessing Officer has to calculate the tax effect separately for every tax year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one tax year, appeal can be filed in respect of such tax year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit. No appeal shall be filed in respect of an tax year or years in which the tax effect is less than the monetary limit specified. Further, even in case of a composite order of any High Court or appellate authority, which involves more than one tax year and common issues in more than one tax year, no appeal shall be filed in respect of an tax year or years in which the 'tax effect' is less than the prescribed monetary limit. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

(v) Department not precluded from filing an appeal against disputed issues for subsequent tax years if the tax effect exceeds the specified monetary limits in those years

In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Principal Commissioner or Commissioner of Income-tax shall specifically record that "even

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though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in the Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other tax year, or in the case of any other assessee for the same or any other tax year, if the tax effect exceeds the specified monetary limits.

(vi) Cases in respect of which appeal is not filed due to tax effect being less than specified monetary limit not to have any precedent value

In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other tax year or in the case of any other assessee for the same or any other tax year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of section 373(4).

As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr. CIT/ CIT must be maintained in a systemic manner for easy retrieval.

In cases where appeals are not being filed due to low tax effect despite the judgment not being acceptable on merits or appeals are being filed despite low tax effect in view of exceptions, the Pr. CIT/CIT shall submit a monthly report, to the CIT(J)/Addl./Jt. CIT(J) office. Further, the CIT(J)/ Addl/Jt CIT(J) office shall collate and disseminate the departmental stand, as regards filing of appeals, in respect of the issues involved in such appeals, within the region.

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16.7 PROCEDURE WHEN ASSESSEE CLAIMS IDENTICAL QUESTION OF LAW IS PENDING BEFORE THE HIGH COURT OR SUPREME COURT [SECTION 375]

(1) Identical question of law pending before High Court/Supreme Court: Section 375 makes provision for avoiding repetitive appeals when i**dentical question of law** is pending before High Court or Supreme Court.

This is applicable to a situation **where an assessee** claims that any question of law arising in his case for a tax year which is pending before the Assessing Officer or any appellate authority (i.e. "relevant case") is identical with a question of law arising in his case for another tax year (i.e. "other case");

Such question of law in other case is pending –

- before the High Court on a reference under section 256 or on an appeal under section 260A of the Income-tax Act, 1961; or
- before the Supreme Court on a reference under section 257 or on an appeal under section 261 of the Income-tax Act, 1961; or
- before the High Court on an appeal made under section 365; or
- before the Supreme Court on appeal made under section 367; or
- in a Special Leave Petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court,

he may furnish a declaration to the Assessing Officer or the appellate authority, in such form and manner, as may be prescribed, that if the Assessing Officer or the appellate authority agrees to apply in the relevant case the final decision on the question of law in the other case, he shall not raise such question of law in the relevant case before any appellate authority or in a subsequent appeal before a higher forum.

(2) Assessee to furnish declaration: Where a declaration under section 375(1) is furnished to any appellate authority, the appellate authority shall-

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(i) call for a report from the Assessing Officer on the correctness of the claim made by the assessee; and

(ii) allow the Assessing Officer an opportunity of being heard in the matter, if such request is made by him.

(3) Admission or rejection of claim by order in writing: The Assessing Officer or the appellate authority, by order in writing –

(i) admit the claim of the assessee if he or it is satisfied that the question of law is identical in the present as well as the other case; or

(ii) reject the claim, if not so satisfied.

(4) Finality of the order: An order admitting or rejecting the claim of the assessee, as the case may be, would be **final**. Such order cannot be called in question in any proceeding by way of appeal or revision under this Act.

(5) Consequences where claim is admitted: Where a claim is admitted, -

(i) the Assessing Officer or appellate authority, may make an order disposing of the relevant case without waiting for the final decision on the other case.

(ii) the assessee would then **not be entitled** to raise in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before a higher forum.

(6) Final decision of Supreme Court/High Court to be applied to the case: When the final decision on the question of law is passed in the other case, the Assessing Officer or the appellate authority, as the case may be would apply it to the present case and amend the order passed, if necessary, in order to conform to such decision.

(7) Meaning of certain terms:

Term	Meaning
Appellate authority	Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal.
Case	In relation to an assessee, any proceeding under the Act for assessment of the total income of the

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	assessee or for the imposition of any penalty or fine on him.
Subsequent appeal before a higher forum	Appeal before the High Court under section 365 or appeal before the Supreme Court under section 367 or in a Special Leave Petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court.

16.8 DEFERMENT OF APPEAL BY REVENUE WHEN AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT [SECTION 376]

(1) Deferment of any appeal against an identical question of law pending before the High Court or Supreme Court: Section 376 provides that irrespective of anything contained in the Act, where the **collegium** comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners is of the opinion that

Collegium

- any question of law arising in the case of an assessee for any tax year (i.e., relevant case) is identical with a question of law already raised
  - in his case for any other tax year; or
  - in the case of any other assessee for any tax year, and
- which is pending before
  - the jurisdictional High Court under section 260A of Income-tax Act, 1961 or section 365 of this Act or
  - the Supreme Court in an appeal under section 261 of the Income-tax Act, 1961 or section 367 of this Act or
  - in a reference under section 256 of Income-tax Act, 1961 before the Jurisdictional High Court or

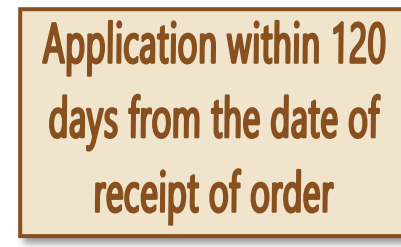
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- in a reference before the Supreme Court under section 261 of Income-tax Act, 1961 or
- in a special leave petition under article 136 of the Constitution,

against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in ***favour of such assessee*** (i.e., other case),

the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under section 362(2) or to the jurisdictional High Court under section 365(2) in the relevant case against the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

(2) Direction to Assessing Officer to make an application to the Tribunal or High Court: On receipt of a communication from the collegium, the Principal Commissioner or Commissioner shall direct the Assessing Officer to make an application to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.



(3) Time limit for filing application under Section 376(2): The application referred to in 376(2) shall be filed **within 120 days from the date of receipt of the order** of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

This is notwithstanding anything contained in section 362(3) or 365(2)(a) which provide the time limit for filing appeal before Tribunal or High Court.

(4) Application to be made only if the assessee accepts that the question of law is identical: The Principal Commissioner or Commissioner shall direct the Assessing Officer-

(i) to make such an application under sub-section 376(2) **only if an acceptance is received from the assessee** to the effect that the question of law in the other case is identical to that arising in the relevant case;

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(ii) to proceed as per section 362(2) or section 365(2)(b), if no such acceptance is received irrespective of anything in section 362(3) or section 365(2)(a).

(5) Consequences where the order of Joint Commissioner (Appeals) or CIT (Appeals) or the Appellate Tribunal is not in conformity with High Court's or Supreme Court's decision in the other case: If the order of the Joint Commissioner (Appeals) or Commissioner (Appeals) or the order of Appellate Tribunal, as the case may be, is not in conformity with the final decision on the question of law in the other case (if the High Court or Supreme Court decides the other case in favour of the Department), as and when such order is received, the Principal Commissioner or the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or Jurisdictional High Court, as the case may be, against such order.

Unless otherwise provided in section 376, all other provisions of Part A.2- "Appeals to Appellate Tribunal" and Part A.3 – "Appeals to High Court" of this chapter shall apply accordingly.

(6) Time limit for filing appeal in the relevant case: The appeal in the relevant case shall be filed within 60 days to the Tribunal or 120 days to the High Court, as the case may be, from the date on which the order of the High Court or the Supreme Court in any other case, is communicated to the Principal Commissioner or the Commissioner, in accordance with the procedure specified by the CBDT.

60 days - ITAT
120 days - HC



Let us suppose a question of law (Q1) has arisen in the case of an assessee Mr. X and he has received a favourable decision on Q1 from the Commissioner (Appeals). Further in the case of another assessee Mr. Y the Department's appeal on identical question of law (Q2) in his case is pending before the jurisdictional High Court or the Supreme Court. The collegium is of the opinion that Q1 in case of Mr. X and Q2 in the case of Mr. Y are identical questions of law.

In this situation, the provisions of section 376 can be invoked by Revenue to defer filing of appeal in respect of Q1 in case of Mr. X to the higher appellate authority till a decision on Q2 in case of Mr. Y is communicated to the Principal Commissioner or Commissioner having jurisdiction over the assessee Mr. X. Such a decision on deferment will be subject to acceptance by the assessee Mr. X that question of law in his case Q1 is identical to Q2 in the case of the assessee Mr. Y.

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16.9 REVISION OF ORDERS [SECTIONS 377 AND 378]

(1) Revision of Orders prejudicial to the Revenue [Section 377]

(i) Revision of orders by Competent Authority

Under section 377(1), if the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner (hereinafter referred as "Competent Authority") may call for and examine the record of any proceeding under this Act and if he considers that any order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, 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 an inquiry as he deems necessary, pass an order, including an order

(a) enhancing or modifying the assessment or

(b) cancelling the assessment and directing a fresh assessment; or

(b) an order modifying the order under section 166; or

(c) an order cancelling the order under section 166 and directing a fresh order under the said section.

(ii) Meaning of Order

As per section 377(2)(a), **an order** passed by the Assessing Officer or the Transfer Pricing Officer, **shall include**:

(a) an order of assessment made on the basis of the directions issued by the Joint Commissioner under section 272.

(b) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer or the Transfer Pricing Officer, conferred on, or assigned to, him 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 under section 241.

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(c) an order under section 166 passed by the Transfer Pricing Officer determining the Arm's length price in relation to the International Transactions or Specified Domestic Transactions.

(iii) Order deemed to be Erroneous

As per section 377(3), an order passed by the Assessing Officer or the Transfer Pricing Officer (TPO), 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 Competent Authority, the order-

(a) is passed without making inquiries or verification which should have been made; or

(b) is passed allowing any relief without inquiring into the claim; or

(c) has not been made in accordance with any order, direction or instruction issued by the CBDT under section 239; or

(d) 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.

(iv) Meaning of Record

As per section 377(2)(b), the term 'record' shall include all records relating to any proceeding under this Act available at the time of examination by the Competent Authority.

(v) Issues in appeal not subject to revision

As per section 377(2)(c), where any order referred to in section 376(1) passed by the Assessing Officer or the TPO, had been the subject-matter of any appeal, the powers of the Competent Authority shall extend to **such matters as had not been considered and decided in such appeal.**

(vi) Time Limit

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 [Section 377(4)].

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

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finding or direction contained in the order of the Appellate Tribunal, the High Court, or the Supreme Court [Section 377(5)].

Section 377(6) provides that in computing the period of limitation of 2 years, the following period shall be excluded -

(a) time taken in giving an opportunity to the assessee to be reheard under section 244(2); and

(b) the period commencing on the date on which stay on any proceeding under this section has been granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay is received by the jurisdictional Principal Commissioner or Commissioner.

If after the exclusion of the period provided in section 377(6), the time limit for completion, as provided in section 377(4) is less than sixty days, such remaining period shall be extended to sixty days and such period of limitation shall be deemed to have been extended accordingly [Section 377(7)].



CIT v. Industrial Development Bank of India Ltd. [2023] 454 ITR 811(SC)

Issue: Is the limitation period for exercising the powers under section 377 reckoned from the date of passing of the original assessment order rather than the date of the reassessment order for the issues covered under the original assessment but not covered in the reassessment proceedings?

Relevant Provision, Analysis and Decision: Section 377 provides that where the Principal Chief Commissioner, Chief Commissioner, Principal Commissioner or Commissioner of Income-tax considers that an order passed by the Assessing Officer or Transfer Pricing Officer is erroneous in so far as prejudicial to the interests of the Revenue, he may pass a revisionary order. The order for revision shall be made within a period of two years from the end of the financial year in which the order ought to be revised was passed.

As observed and held by the Court in the earlier decisions, once an order of assessment is re-opened, the previous order of assessment will be held to be set aside. The whole proceedings would start afresh, but the same would not mean that even when the subject matter of reassessment is distinct and different, the entire proceedings would be deemed reopened.

It means that only in a case where the issues before the Commissioner at the time of exercising powers under section 377 relate to the subject matter of reassessment

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would the limitation start from the date of the reassessment order. However, if the subject matter of the reassessment is distinct and different, in that case, the relevant date for the purpose of determining the period of limitation for exercising powers under section 377 would be the date of the original Assessment Order.

Accordingly, the Supreme Court held that the issues before the Commissioner while exercising the powers under section 377 related to the original assessment order, which were not covered in the reassessment proceedings and, therefore, the limitation would start from the original assessment order and not from the reassessment order.



CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)

Issue: Can the Commissioner invoke revisionary jurisdiction u/s 377, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction u/s 141) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?

Analysis & Decision: When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 377 for revision of the very same matter decided by the first appellate authority Section 377(2)(*c*) debars the same.

Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction u/s 377.

(II) Revision of other orders [Section 378]

(i) Revision of Order on Application by Assessee or *Suo Motu* by Competent Authority

As per section 378(1), in the case of any other order *(not being an order prejudicial to the Revenue)* passed by any subordinate authority, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner *(herein after referred as "Competent Authority")* may either on his own motion or on receipt of an application from the assessee for revision -

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(a) call for the record of any proceedings under the Act in the course of which the order has been passed;

(b) make such inquiry or cause such inquiry to be made; and

(c) subject to the provisions of this Act, pass such order, not being an order prejudicial to the assessee, as he thinks fit.

For the purposes of this section, an order by the Competent Authority declining to interfere shall, not be deemed to be an order prejudicial to the assessee [Section 378(11).

(ii) Time limit for revision by the Competent Authority on its own motion

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order on his own motion if the order has been made more than one year previously [Section 378(2).**

(iii) Time limit for application by the assessee

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 earlier [Section 378(3).

However, the Competent Authority may admit an application even after the expiry of one year, if he is satisfied that the assessee was prevented by **sufficient cause** from making the application within that period [Section 378(4).

(iv) Cases where revision is not permissible

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order** in the following cases, viz.,

Revision not permissible if –
(i) Time for filing appeal before JCIT(A) or CIT(A) or ITAT has not expired or assessee has not waived his right of appeal
(ii) Order is subject matter of appeal before JCIT(A) or CIT(A) or ITAT

(a) where an appeal against the order lies to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal, but has not been made and the **time within which such appeal may be made has not expired**;

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(b) where the appeal lies to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal but the assessee **has not waived his right of appeal; or**

(c) where the order has been made subject to an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal [Section 378(5)].

(v) Fee for revision application

Every application by an asseesee for revision must be accompanied by a fee of ₹ 500 [Section 378(6).

(vi) Limitation of time for revision of orders by Principal Commissioner or Commissioner of Income-tax under section 378

(i) On every application by an assessee for revision under this section, an order shall be passed **within one year from the end of the financial year in which such application is made [Section 378(7).**

Order to be passed within 1 year from the end of F.Y. in which application is made

(ii) In computing the period of limitation under section 378, the following period shall be excluded:

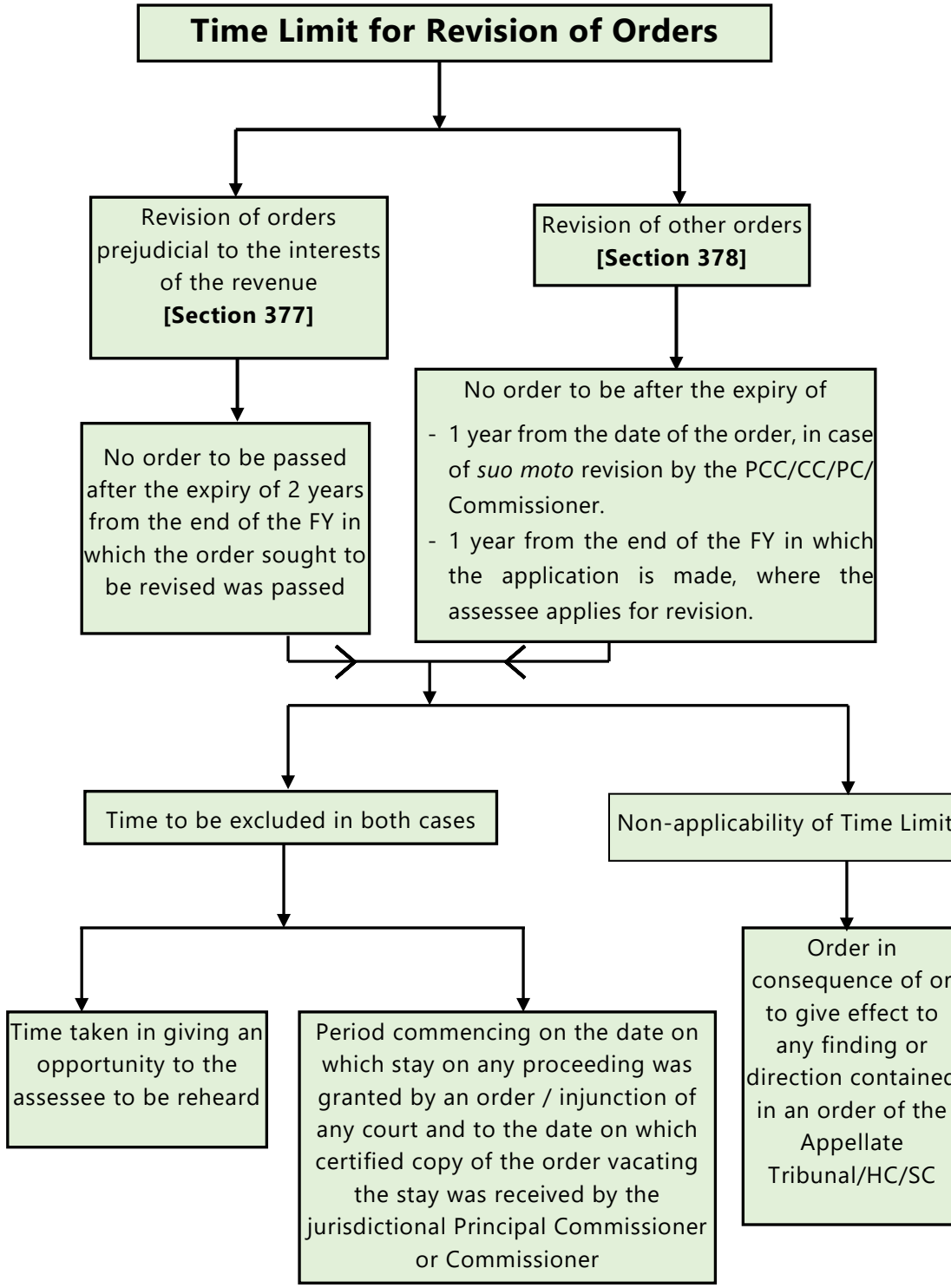
(a) the time taken in giving an opportunity to the assessee to be reheard under section 244(*2*); and

(b) the period commencing on the date on which stay on any proceeding under this section has been granted by an order or injunction of any court and ending on the date on which certified copy of the order or injunction vacating the stay is received by the jurisdictional Principal Commissioner or Commissioner [Section 378(8).

(iii) If after the exclusion of the aforesaid period, the time limit for completion as provided in 378(7) is less than sixty days, such remaining period shall be extended to sixty days and such period of limitation shall be deemed to have been extended accordingly [Section 378(9).

(iv) Irrespective of limitation period of 1 year as specified above, an order in revision may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court [Section 378(10).

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16.10 DOCTRINE OF PARTIAL MERGER AND DOCTRINE OF TOTAL MERGER

(1) **Doctrine of Partial Merger:** Section 287 provides that the doctrine of partial merger shall apply where any matter has been considered and decided in any proceeding, appeal or revision relating to rectifiable order. The authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided. The doctrine of partial merger also holds good for section 377.



An assessment order contains two additions-

- *Addition of ₹ 5,00,000 towards unexplained cash credits; and*
- *Disallowance of ₹ 2,00,000 towards business expenditure.*

The assessee files an appeal only against the disallowance of business expenditure, and the Commissioner (Appeals) decides that issue. Subsequently, the Competent Authority initiates revision proceedings under section 377.

In this case, the Competent Authority cannot revise the issue relating to business expenditure since it has already been considered and decided in appeal. However, revision can be made in respect of the addition for unexplained cash credits, as that issue was not the subject matter of the appeal.

(2) **Doctrine of Total Merger:** However, the concept of total merger would apply in the case of section 378. The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax has no power to revise any order under section 378, 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.

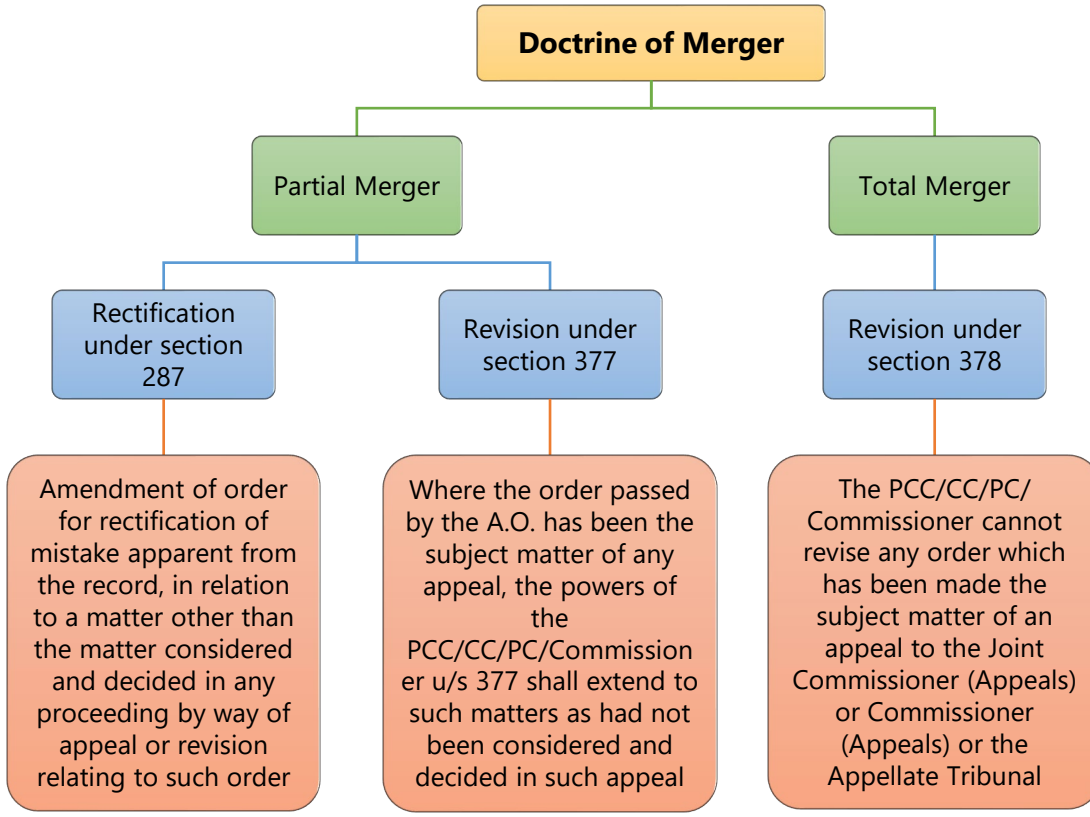
Partial Merger – Sections 287 & 377
Total Merger – Section 378

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EXAMPLE

Suppose an assessee file an appeal before the Commissioner (Appeals) against an assessment order challenging only the disallowance of business expenditure. Thereafter, the assessee files an application under section 378 seeking revision of the addition made towards unexplained cash credits.

In this case, the Competent Authority cannot entertain the revision application under section 378 since the assessment order has already become the subject matter of an appeal. The limitation under section 378(5) applies even though the issue sought to be revised was not raised in the appeal.



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TEST YOUR KNOWLEDGE

Questions

1. *"SVS Propcon" did not make a claim of ₹ 20 lakhs in the return of income filed for tax year 2027-28 which was disallowed in the previous tax year that is tax year 2026-27 under section 37. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such a claim before the appellate authority?*

2. *Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 2025:*

   (i) An appeal before Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.

   (ii) A High Court does not have an inherent power to review an earlier order passed by it on merits.

3. *Does the Appellate Tribunal have the power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals)?*

4. *An Income-tax authority did not file an appeal to the Appellate Tribunal against an order of the Commissioner (Appeals) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for the tax year 2026-27 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In tax year 2027-28, a similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the Commissioner (Appeals) against the Department. Can the Income-tax department move an appeal to the Tribunal in respect of tax year 2027-28 against the orders of the Commissioner (Appeals) for Alpi and her sister Palki?*

5. *A petition for stay of demand was filed by XYZ Ltd. before the Appellate Tribunal in respect of a disputed demand for which an appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2027 for a period of 180 days from the date of such order, on deposit of 20% of the amount*

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of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2028, and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2027, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2027. Thereafter, on 5.1.2028, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay on it. The Assessing Officer, however, rejected the contention of the assessee, stating that the stay period expired on 31.12.2027, after which the order of stay stood vacated automatically. Examine the correctness of the contention of the Assessing Officer.

6. *An assessee who had been served with an order of assessment passed under section 270(10) on 1.11.2028 had filed an application against this order before the Competent Authority as per section 378 on 11.11.2028. However, the CIT refused to entertain the application on the pretext of a premature application. Assessee seeks your opinion.*

7. (a) *The Commissioner of Income-tax issued a notice to revise the order passed by an Assessing Officer under section 270(10). During the pendency of proceedings before the Commissioner, on the basis of material gathered during survey under section 253 after issue of the first notice, the Commissioner of Income-tax issued a second notice, the contents of which were different from the contents of the first notice. Examine whether the action of the Commissioner is justified as to the second notice.*

   (b) *Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Joint Commissioner (Appeals) or the Commissioner (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.*

8. *Examine the correctness or otherwise whether the powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals) to enhance the assessment are plenary and quite wide of the following propositions in the context of the Income-tax Act, 2025.*

9. *At the time of hearing the rectification application, the Appellate Tribunal can re-appreciate the evidence produced during the proceedings of the appeal hearing. Examine.*

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10. *The High Court cannot interfere with the factual finding recorded by the lower authorities and the Tribunal without any valid reasons. Examine.*

11. *An assessee, who is aggrieved by all or any of the following orders, is desirous of knowing the available remedial recourse and the time limit against each order under the Income-tax Act, 2025:*

    (i) passed under section 270(10) by the Assessing Officer.

    (ii) passed under section 377 by the Commissioner of Income-tax.

    (iii) passed under section 465 by the Director General.

    (iv) passed under section 363 by the Appellate Tribunal.

12. *Who can file a memorandum of cross-objections before the Appellate Tribunal? What is the time limit? What is the fee for filing a memorandum of cross-objections?*

Answers

1. Yes, the assessee is entitled to raise additional claims before the appellate authorities even though such claim was not made in the original return of income.

The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claim made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in *Goetze (India) Ltd v. CIT (2006) 284 ITR 323.*

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in *CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336. This view is also endorsed by the Supreme Court in case of Wipro Finance Ltd. v. CIT (2022) 443 ITR 250.*

Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed.

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2. **(i)** **The statement given is not correct.** As per the provisions of section 364(5), in the event of difference in opinion between the members of the Bench of the Appellate Tribunal, the matter shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing on such points by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who had first heard it.

(ii) **The statement given is not correct.** The Supreme Court, in *CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112*, observed that the power of review would inhere in High Courts, being courts of record under Article 215 of the Constitution of India. There is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 365(9) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 365(9) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 365. The Supreme Court opined that this does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

3. The Appellate Tribunal has the power to entertain a question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of *National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC)* supports this view.

4. Under section 373(1), the CBDT is empowered to issue orders, instructions or directions to the other income-tax authorities, fixing such monetary limits, as

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it may deem fit, to regulate the filing of appeals or application for reference by any income-tax authority.

Under section 373(2), where an income-tax authority has not filed any appeal on any issue in the case of an assessee for any tax year, due to the above-mentioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal on the same issue:

- in the case of the same assessee for any other tax year or
- any other assessee for the same or any other tax 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.

In view of above provision, it would be in order for the Income-tax Department to move an appeal to the Tribunal against the orders of the CIT(A) in respect of tax year 2027-28 both for Alpi and Palki.

5. As per section 364(11), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order 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 as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and 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 of stay originally allowed and the period of stay so extended cannot exceed 365 days and 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 days or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, **only if the delay in disposing of the**

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appeal is attributable to the assessee. It was so held by the Supreme Court in *DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295.*

Accordingly, if an appeal is not heard by the bench due to the bench functioning intermittently, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days expired on 31.12.2027, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2028 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the **Assessing Officer is not correct**. The order of stay would stand vacated after 31.12.2027, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

6. An application for revision under section 378 is maintainable only if the conditions prescribed under section 378(5) are satisfied. Under this provision, the Competent Authority shall not revise an order-

- where an appeal against such order lies to the Joint Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal and the time prescribed for filing such appeal has not expired;
- where the assessee has not waived the right of appeal; or
- where the order has already been made the subject of an appeal.

In the given case, the order under section 270(10) was passed on 01.11.2028 and the application for revision was filed on 11.11.2028. Since the order was appealable before the Joint Commissioner (Appeals) or the Commissioner (Appeals), the assessee had time up to 1.12.2028 to file an appeal. On the date of filing the revision application, the prescribed time for filing the appeal had not expired and the assessee had also not waived the right of appeal.

Accordingly, the conditions specified under section 378(5) were not fulfilled, and the application for revision was not maintainable. **Therefore, the Competent Authority's action in rejecting the application for revision is correct.**

Note: *In practical situations, the Competent Authority could have kept the proceedings in abeyance till the expiry of the time prescribed for filing appeal by the assessee and thereafter, could have assumed jurisdiction for making revision besides taking an undertaking from the assessee for waiving his right of appeal. In reality, taxpayers usually will not prefer revision in such a short*

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time period, nor would the Competent Authority reject the application, the moment it is received by him.

7. (a) The action of the Competent Authority in issuing the second notice is not justified.

As per section 377(2)(b), the term **"record"** includes all records relating to any proceeding under the Act available at the time of examination by the Competent Authority i.e.in this case the Commissioner. Thus, information, material or reports which were not in existence when the assessment order was passed but came into existence subsequently may also be taken into consideration by the Competent Authority while exercising the revisionary jurisdiction under section 377, provided such material forms part of the record available at the time of examination.

The examination of the record precedes the issuance of a notice under section 377. In the present case, the Competent Authority had already examined the record and issued the first notice under section 377. The second notice was subsequently issued on the basis of material gathered during proceedings under section 253, which was unrelated to the issues proposed to be revised in the first notice. Such material did not form part of the record available at the time of examination and, therefore, could not constitute the "record" for the purpose of issuing a fresh notice under section 377 on altogether different grounds.

Accordingly, the action of the Competent Authority in issuing the second notice is not in accordance with the provisions of section 377 and, therefore, is not justified.

(b) As per Rule 192(1) of the Income-tax Rules, 2026, an appellant shall not be entitled to produce before the Joint Commissioner (Appeals) or the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced before the Assessing Officer, except in the following circumstances:

(i) where the Assessing Officer has refused to admit evidence which ought to have been admitted;

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(ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer;

(iii) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or

(iv) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Further, Rule 192(2) provides that no such additional evidence shall be admitted unless the Joint Commissioner (Appeals) or the Commissioner (Appeals) records the reasons for its admission in writing.

In addition, under Rule 192(3), such evidence cannot be taken into account unless the Assessing Officer is given a reasonable opportunity to examine the evidence or cross-examine the witness produced by the appellant, or to produce evidence or witnesses in rebuttal.

However, Rule 192(4) clarifies that these restrictions do not affect the powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals) to direct the production of any document or the examination of any witness if it is necessary for disposal of the appeal or for any other substantial cause, including enhancement of assessment or penalty or imposition of penalty under section 439.

8. The proposition is correct in law. The Supreme Court has, in *CIT vs. McMilan & Co. (1958) 33 ITR 182 and CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225*, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do, what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate relief.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwala (2006) 280 ITR 318*, held that the appellate authority is empowered to consider and

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decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding the fact that such matter was not raised before him by the assessee. The Joint Commissioner (Appeals) or the Commissioner (Appeals) is entitled to direct additions in respect of items of income not considered by the Assessing Officer.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT (1991)* 187 *ITR* 688, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

Thus, the powers of the Joint Commissioner (Appeals) or the Commissioner (Appeals) in enhancing the assessment are very wide and plenary.

9. Section 363(2) specifically empowers the Appellate Tribunal to amend any order passed by it, on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within **6 months** from the end of the month of the order sought to be amended was passed.

The powers of the Tribunal under section 363(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification *[CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P & H), CIT v. Ballabh Prasad Agarwalla (1998) 233 ITR 354 (Cal.) & Niranjan & Co. Ltd. v. ITAT (1980) 122 ITR 519 (Cal.)]*

10. A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 365. The Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 365 only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In *CIT vs. P. Mohanakala (2007) 291 ITR 278 and M. Janardhana Rao v. Joint CIT (2005) 273 ITR 50*, the Apex Court observed that the High Court had set aside

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the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence. There is no scope for interference with the factual findings, unless the findings are *per se* without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

11. (i) An assessee, aggrieved by the order passed under section 270(10) by the Assessing Officer, can file an appeal before the Joint Commissioner (Appeals) under section 356 or the Commissioner of Income-tax (Appeals) under section 357, within 30 days of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 378 within a period of one year from the date on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.

(ii) An assessee, aggrieved by the order passed under section 377 by the Commissioner of Income-tax, can file an appeal to Income-tax Appellate Tribunal under section 362(1)(b) within two months from the end of the month in which order sought to be appealed against is communicated to the assessee.

(iii) An assessee, aggrieved by the order passed under section 465 by the Director General, can file an appeal before the Appellate Tribunal under section 362(1)(c) within two months from the end of the month in which order sought to be appealed against is communicated to the assessee.

(iv) An assessee, aggrieved by the order passed under section 363 by the Appellate Tribunal, can file an appeal before the High Court under section 365 within 120 days from the date of receipt of order of Appellate Tribunal, only where the order gives rise to a **substantial question of law.**

12. Section 362(4) of the Income-tax Act, 2025 gives the respondent (assessee or the Assessing Officer), in every appeal filed before the Appellate Tribunal, a right to file a memorandum of cross-objections against any order of the

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Joint Commissioner (Appeals) or the Commissioner (Appeals). This right of filing a memorandum of cross-objections is an independent right given to the respondent in an appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 362(1) or section 362(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and has to be filed within 30 days of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of a memorandum of cross-objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 362(3).

There is no fee for filing a memorandum of cross-objections.

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