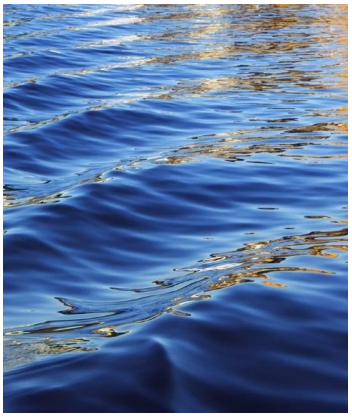
Revisit Income Tax Act, 1961

-Sec. 263
-Sec 264
- Tax Payers Rights / Charter Sec. 288B

D S Vivek, Suresh & Co

Sec 285BB-26AS – Annual Information Statement

Data is New Oil, Ease of Tax Compliance



Changes in Information in 26AS (AIS)

Particulars	Old 26AS	New 26AS (AIS)
Name	Annual tax Statement	Annual Information System
Provisions	Sec 203AA read with Rule 31AB	Sec 285BB read with Rule 114-I
Available	Efiling Portal of Tax Payer	E Filing Portal of Tax Payer
Time Limit	Issued till 31st July	Updated with in 3 Months form end of month (No Time limit In respect of information received from i) officer under any other laws ii) foreign Govt exchange of information iii) any other person)

Information it will capture

Particulars	Old 26AS	New 26AS (AIS)
TDS/TCS	Yes	Yes
Payment of Taxes	Yes	Yes
Refund Status	Yes	Yes
Demand Status	No	Yes (was available to Tax Payer in other parts)
Pending Proceedings	No	Yes (was available to Tax Payer in other parts)
Completed Proceedings	No	Yes (was available to Tax Payer in other parts)
Information	AIR	SFT
Exchange of Information under Treaty	No	Yes
Other law officers(GST/SEBI/CBI etc)	No	Yes (More detailed)
From other person (tax evasion petition)	No	Yes

SFTs -285BA-Who Should Report

(*a*) an assessee; or

(*b*) the prescribed person in the case of an office of Government; or

(*c*) a local authority or other public body or association; or

(*d*) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

(*e*) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988) ; or

(*f*) the Post Master General as referred to in clause (*j*) of section 2 of the Indian Post Office Act, 1898 (6 of 1898) ; or

(*g*) the Collector referred to in clause (*g*) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) ; or

(*h*) the recognised stock exchange referred to in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ; or

(*i*) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934) ; or

(*j*) a depository referred to in clause (*e*) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996) ; or

[20][(*k*) a prescribed reporting financial institution[21]; or

(*l*) a person, other than those referred to in clauses (*a*) to (*k*), as may be prescribed,]

SFT-Rule114E (out of the persons mentioned in 285BA)

- Any person who is liable for audit under section 44AB of the Income – tax Act
- A Banking Company
- A Co-operative Bank
- Post Master General of Post office
- A Nidhi referred to in sec 406 of the Companies Act 2013
- A Non-banking Financial Company (NBFC)
- Any Institution issuing Credit Card
- A Company or Institution issuing bonds or debentures
- A Company issuing shares
- A company listed on a recognised stock exchange purchasing its own securities
- A Trustee of a Mutual Fund or such other person authorized by the trustee
- Authorized Dealer, Money Changer, Off-shore Banking Unit or any other person defined in FEMA, 1999
- Inspector-General or Sub-Registrar appointed under Registration Act, 1908

Specified Financial Transaction

- (*a*) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
- (*b*) transaction for rendering any service; or
- (*c*) transaction under a works contract; or
- (*d*) transaction by way of an investment made or an expenditure incurred; or
- (*e*) transaction for taking or accepting any loan or deposit,

  - which may be prescribed with prescribed different values for different transactions

Pre Filing Income Tax Returns -Rule 114E (5A)

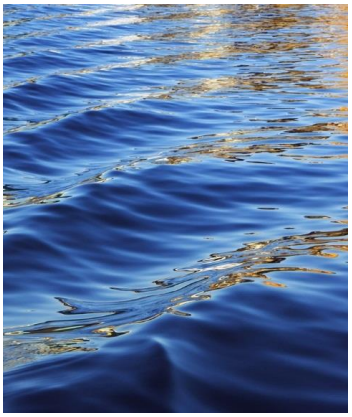
- **Notification No. 16/2021 dated 12.03.2021**
- *Purposes of pre-filling the return of income, a SFT containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income as prescribed shall be furnished by specified persons such form, at such frequency, and in such manner, as may be specified*
- *SFT-15 for Dividends by all Companies*
- *SFT-16 Interest Income*
- *This would also appear in 26AS*
- *Filing Form 61A for FY 20-21 is extended till 30th June 2021 (Income Tax returns extended till 30th Sept 2021)*
- *This will ease tax filing compliance but at same time increase the reporting compliance on reportees*

Other Country Reporting Requirements

- US has elaborate Form 1099 (different forms for different income and expenses)

Sec 119A-Tax Payers Charter

With Power Comes Responsibility



Sec 119A-Tax Payers Charter

Board shall adopt and declare Tax Payers Charter

Issue such orders, instructions , directions or guidelines to tax authorities for administration of the Charter

Not able to verify , if any such orders are issued till date

Tax Payers Right Under the Charter

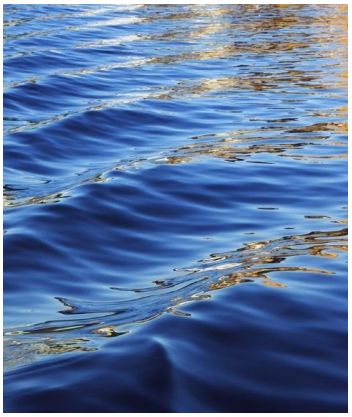
- To assist taxpayers in a courteous, fair and reasonable manner.
- To treat taxpayers as honest unless the department has a reason to believe otherwise.
- **To provide for a fair and impartial appeal procedure and review mechanism.**
- **To provide accurate and complete information for tax compliance purposes.**
- To complete and decide income tax proceedings in a time-bound manner.
- To ensure the collection of the correct amount of tax dues.
- To respect a taxpayer's privacy and to conduct an enquiry or examination after following the due process under the tax law. There will be no undue enquiry or enforcement actions.
- To maintain the confidentiality of information provided by the taxpayers. There will be no disclosure unless required under any other law in force.
- To ensure accountability for the actions of the income tax officers.
- To give a taxpayer the freedom to choose their authorised representatives as per the income tax law.
- To put in place a procedure to raise complaints and grievance redressal mechanisms.
- To adopt a fair and impartial approach to the resolution to tax disputes.
- To review and publicly report the standards on delivery of services.
- **To consider the cost of compliance, administration and collection of taxes. The department seeks to reduce the cost of tax compliance for a taxpayer.**

Tax Payers Obligation

- To make a complete and honest disclosure of facts and information to the department. The taxpayer should ensure compliance with all the tax filing and reporting obligations.
- To seek an understanding of the tax obligations applicable to a taxpayer. For this purpose, a taxpayer can seek clarifications and assistance from the department.
- To maintain accounting records and documents as prescribed under the income tax law.
- To be informed about the representations before the department and seek details from their authorised representatives.
- To respond to income tax notices and information requests in a time-bound manner.
- To pay their income tax dues and comply with their filing requirements within the due dates.

Sec 263: Revisionary Powers of PCIT (Pro Revenue)

To err is human , Power to make it right without misuse



Sec 263: Revisional powers to Pr CIT / CIT

Who : Jurisdictional Principal Commissioner (PrCIT) / Commissioner (CIT)

What : Order passed by AO

When: PrCIT/CIT is of the opinion the order is ERRONEOUS & PREJUDICIAL TO THE INTERESTS OF REVENUE

How: Giving **opportunity of being heard** and after **making or causing** to be made **such enquiry as he deems necessary**

Method: pass such orders as the circumstances justify including enhancing or modifying or cancelling and directing fresh assessment

Time limit to pass Revisionary order

- Sec 263(2): With in 2 years from end of the year in which the order sought to be revised was passed.

  Order Date : 15th April 2020 , 15th Oct 2020
  End of Year : 31st March 2021
  Two Years Time frame ends on : 31st March 2023

- Can initiate proceedings any time before the above date such that reasonable time is there for proper conduct of proceedings
- Sec 263(3): Where revision is done in consequence of or give effect to any finding or direction contained in order of ITAT, High court or Supreme Court – NO TIME LIMIT

  * Where there is re-assessment u/s147 , revision is respect of a matter not part of the re assessment proceedings still needs to be done with in the time frame for the original 143(3) order.

Time Limit for AO to pass order

Fresh assessment order in pursuance of an order u/s 263 , setting aside and direction for fresh assessment , to be made before 12 months from the end of the financial year in which the order u/s 263 was passed.

263 order : 15th Jan 2021
Year end : 31st March 2021
Time limit to pass fresh order : 31st March 2022

Where the revision is wholly or partly to give effect other than fresh assessment , then the order to be passed with in 3 months from the end of the month in which 263 order is passed . Ie in above example before 30th April 2021.

AO can seek approval in writing from Pr CIT to extend it by additional 6 months

Where in verification is to be done or opportunity to be provided , then with in the 12 month period prescribed above.
* Covid extensions also expired by 31st March 2021 (No Further extensions as of now)

Monetary Limit

- Is there any Monetary limit for revision?

-As per statutory provisions there is no monetary limit for taking up an order for revision

-Practically only important material matters are taken up for revision

What orders are covered

- Void ab initio orders can not be revised – Where original order is invalid or void such orders can not be revised . Eg: Order passed on a dissolved firm or an amalgamating company

  - Supreme Court – **PCIT v. Maruti Suzuki India Ltd**. – [2019] 107 taxmann.com 375
  - Delhi ITAT – ACIT v. DLF Cyber City Developers Ltd. – [2015] 53 taxmann.com 81

- An order passed by AO with directions u/s 144A can also be revised
- There is different views on revision of intimation u/s 143(1)
  View 1: There is no application of mind . No opinion formed by AO, Thus revision can not be done u/s 263 (Rajesh Jhaveri Stock Brokers 291 ITR 500

View 2: It can be revised. Hon'ble Bombay High Court in the case of CIT v. Anderson Marine & Sons (P.) Ltd [2004] 266 ITR 694 (Bom.)(HC). As 143(1) can be appealed so can be revised.

What orders are covered

- Order u/s 147 to the extent the matter was not part of the 147 proceedings can be revised. *Spencer & Co. Ltd. v. ACIT [2012] 137 ITD 141 (Chennai) (Trib) (TM)*
- Order U/s 195/197 can also be revised *Board of Control for Cricket in India v. DIT (Exemption) [2005] 96 ITD 263 (Mum.)(Trib.)*
- An order of AO to give effect to Tribunal order can also be revised u/s 263 . On matters not part of the appeal proceedings. *Pentamedia Graphics Ltd. v. ACIT [2012] 17 ITR 302 (Chennai) (Trib.)*
- TPO order u/s 92CA can not be revised as the TPO is under administration of DIT and not CIT **Essar Steel** Ltd [TS-698-ITAT-2012(Mum)-TP],
- However if AO has not followed TPO directions or has not referred to TPO as per mandatory requirement , such order of AO can be revised. **Delhi HC** – Ranbaxy Laboratories Ltd. v. CIT [2012] 204 Taxman 294
- AO orders which have been effected due to Appeal orders can be revised on matters that were not part of appeal.

Prejudicial to Revenues Interest

- Income has been under assessed;
- Loss has been over assessed;
- Income has been assessed at a lower rate;
- Excess deductions, allowances and reliefs have been allowed to assessee.

If there is no loss of revenue, revision u/s 263 is not justified . [CIT v. G. R. Thangamaligai [2003] 259 ITR 129 (Mad.) (HC)].

Non-application of mind by the AO was held as prejudicial to the interest of the revenue in the case of CIT v. Bhagwan Das [2005] 272 ITR 367 (All.)(HC).

Judicial precedents on what is Erroneous

- No enquiries or verification is made by the AO
- Without application of mind to relevant material
- Incorrect assumption of facts or incorrect application of law

Malabar Industrial Co. Ltd. v CIT [2000] 109 Taxman 66 (SC)/ 243 ITR 83
Himachal Pradesh Financial Corpn. [2010] 186 Taxman 105 (Himachal Pradesh)
CIT v. Jawahar Bhattacharjee [2012] 341 ITR 434 (Gauhati) (HC) (FB)

Deemed to be Erroneous Expl 2 to Sec 263(1)

- The order should be erroneous, if not it can not be revised.
- The order is deemed to be erroneous (subject to it being prejudicial to interest of revenue) with effect from 1 June 2015.
  a) order is passed without making inquiries or verification **which should have been made** *(this has made this very subjective)*

b) order is passed allowing relief without inquiring into the claim

c) order is not in line with directions issued by CBDT

d) order has been passed not in line with decision rendered by jurisdictional High court or supreme court , which is prejudicial to the asseee.

Judicial Review of Explanation 2

- Commissioner's responsibility to demonstrate that the ***enquiries or verification conducted by the TOs were not in accordance with the enquiries or verification that would have been carried out by a prudent officer***
  - Crompton Greaves Limited v. CIT [2016] 46 ITR(T) 465 (Mumbai – Trib.) .
  -Mumbai ITAT in the case of Shri Narayan Tatu Rane vs. ITO – ITA No. I.T.A. No. 2690/Mum/2016 [6 May 2016]
  -M/s Amira Pure Foods Pvt. Ltd vs. Pr. CIT – ITA No. 3205/DEL/2017 [29 NOVEMBER 2017]
- *the opinion of the Ld. CIT has to be in consonance with that of the well settled judicial principles and cannot be arbitrarily made discarding the judicial precedent on the subject. Explanation to substantive section should be read as to harmonize with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of the section. Explanation (2) inserted by the Parliament u/s 263 cannot override the main section i.e. sec. 263(1) of the Act.(* Khetawat Properties Ltd. vs. Pr. CIT – [2020] 113 taxmann.com 8 (Kolkata – Trib.) [22 NOVEMBER 2019])

Learnings from Judicial decisions

- No revision , if there are 2 views and AO has taken one view .
  Supreme Court in the case of Greenworld Corporation – [2009] 181 Taxman 111 (SC)
  Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. – [2012] 28 taxmann.com 273 (Delhi)

Delhi High Court in the case of CIT v. Anil Kumar Sharma – [2010] 194 Taxman 504 (Delhi)
CIT v. Max India Limited [2007] 295 ITR 282 (SC) Malbar Industries Co Ltd v. CIT [2000] 243 ITR 83 (SC)

Where AO has made appropriate enquiries as applicable to the facts and circumstances , revision can not be made . Delhi Tribunal in the case of Braham Dev Gupta v. PCIT – [2017] 88 taxmann.com 831
Bombay High Court in the case of CIT v. Nirav Modi – [2016] 71 taxmann.com 272 (Bombay) [’s SLP dismissed by SC]

Learnings from Judicial Decisions

- Where detailed enquires are made by AO, revision should not be made Supreme Court in the case of PCIT vs. Shree Gayatri Associates – [2019] 106 taxmann.com 31 (SC)
- If AO had adopted a plausible view, revision u/s 263 not sustainable Supreme Court in the case of PCIT vs. V. Dhana Reddy & Co. – [2018] 100 taxmann.com 358 (SC)
- Where commissioner does not record reasons why an order is erroneous then such order is unjustified CIT v. Philips India Ltd. [2015] 64 taxmann.com 402/[2016] 237 Taxman 538 (Cal.)
- the Hon'ble Gauhati ITAT in the case of Abdul Hamid vs. ITO held that **there is no concept of "partial application of mind" by the AO and there could either be application of mind or non-application of mind**.

Fresh Assessment by AO

- AO can consider only those grounds regarding which direction was given by the Pr. CIT /

CIT in 263 order and can make fresh assessment on said grounds only.

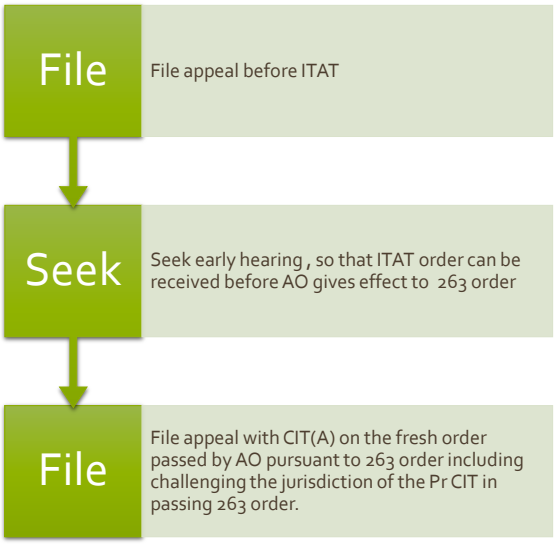
CIT v. D. N. Dosani [2006] 280 ITR 275 (Guj.)(HC)

- Unlike re-assessment u/s 148, in fresh assessment pursuance to 263 order entire assessment is not opened before the AO.

Geometric Software Solutions Co. Ltd. v. ACIT [2009] 32 SOT 428 (Mum.)(Trib.)

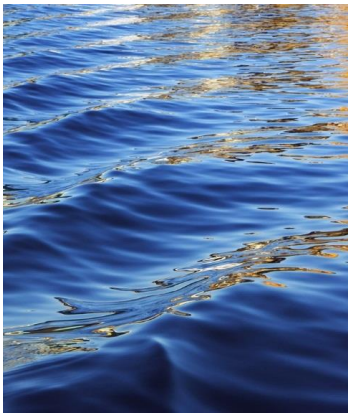
- Assessee is not eligible to claim any new benefit in fresh assessment proceedings pursuant to 263 order.

Process to be followed post order u/s 263



Sec 264: Revisionary Powers of PCIT (Pro Assesee)

To err is human , Power to claim back with is due



Revision u/s 264

- **Who** : Pr CIT / CIT
- **What** : Order other than an order to which Sec 263 applies passed by an authority subordinate to him
- **How** : Suo Moto or an application by asseee for revision along with Rs 500/- , call for records and make or cause an enquiry , pass an order which is not prejudicial to the assesee
- **When** : Suo moto before one year of the order being passed . In case of application made , where the application is made before one year of order being communicated to him or he becoming aware of .

  PrCIT/CIT can also condone the delay in making the application

What orders can not be revised u/s 264

- Where an appeal against the order lies with CIT Appeals or ITAT . Where appeal not filed and time is not over , the assesses has not waived his right to appeal.
- Where appeal is pending before DC (Appeals)
- Where the order has been made a subject of any appeals before CIT (A) or ITAT

Time Limit for order u/s 264

Order to be passed with in one year from the end of the financial year in which the application is made.

Where revision is to be made in consequence of or to give effect to ITAT/ High court/ SC order , then there is no time limit.

Other matters

- Where assessee has filed an application u/s 264, PrCIT or CIT can not pass any order prejudicial to the asseee , including order u/s 263. *[Vineet Sharma v. CIT (2014) 148 ITD 619 : 41 taxmann.com 141 (ITAT Delhi)]*
- Intimation u/s 143(1) can be considered in revision application, Commissioner was directed to consider the revision application . Can use this to claim benefits not claimed earlier in the original tax returns or during the assessment.
- Application for revision is maintainable if appeal against assessment order withdrawn
- Application for revision is maintainable if appeal against assessment order is dismissed due to delay in filing or appeal is not maintainable
- Where an expenditure is disallowed on account of 143(3) in a specific year and the same is allowable in a different year , the same can be claimed u/s 264 against the 143(1) or 143(3) order.
- Assessee can file a revision petition against an addition erroneously accepted by him *[Pt. Sheonath Prasad Sharma v. CIT (1967) 66 ITR 647 (All)]*

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