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FINAL CA

MAY '19
REVISION NOTES

DIRECT TAX

Part - 7

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TAX DEDUCTED ON SOURCE

DUTIES OF PAYER			
1	When Payer is liable to deduct TDS?	Some Sections	Some Sections
		Payment	Payment or Credit whichever is earlier
2	When Payer is liable to deposit TDS?	Payer	Due Date
		Government	7th of Next Month
		other Assessee	April - February - 7th of Next Month
			March - 30th April
		If TDS is deducted u/s 194IA	Within 30 Days from the end of month of deduction
		If TDS is deducted u/s 194IB	
3	Filing of Returns	Quarter	Due Date
		April - June	31st July
	Forms	July - Sept	31st Oct
	Form 24Q - Salaries	Oct - Dec	31st Dec
	Form 26Q - Other Than Salaries	Jan - Mar	31st May
	Form 27Q - Non Resident		
	Form 26QB - 194IA	If TDS is deducted u/s 194IA	Within 30 Days from the end of month of deduction
	Form 26QC - 194IB	If TDS is deducted u/s 194IB	
4	Issuance of TDS Certificate	Forms	Due Date
		Form 16 - Salaries	Within 15 days from the due date under point 3
		Form 16A - Other Than Salaries	
		Form 16B - 194IA	
		Form 16C - 194IB	

Requirement to furnish Permanent Account Number (Section 206AA)

Any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), **failing which** tax shall be deducted at the higher of the following rates, namely:—

- a. at the rate specified in the relevant provision of this Act; or
- b. at the rate of twenty per cent.

Section	192	194B	194BB
Nature of Payment	TDS from Salaries	Winnings other than Horse races	Winnings from Horse races
Payer	Employer	Any Person	Any Person
Time Of Deduction	Payment	Payment	Payment
Rate of TDS	Average rate of Tax	30%	30%
Payee	Resident/Non Resident	Resident/Non Resident	Resident/Non Resident
Threshold Limit	<=BEL	<=10000	<=10000
other Points	1. Calculation 2. parallel employment 3. succeeding Employment	IF Winnings are in KIND then TDS is to be recovered from Payee	IF Winnings are in KIND then TDS is to be recovered from Payee

Section	194DA	192A	194LA
Nature of Payment	Amount received from Insurance Company	Amount received from provident Fund	Compensation in case of compulsory acquisition of Immovable Property
Payer	Insurance Company	Any Person	Any Person
Time Of Deduction	Payment	Payment	Payment
Rate of TDS	1%	10%	10%
Payee	Resident	Resident/Non Resident	Resident
Threshold Limit	<100000	<50000	<=250000 p.a
other Points	If Amount is exempt under section 10(10D) - then section 194DA is not applicable	If Amount is exempt under section 10(11) - then section 192A is not applicable	-

Section	194I	194IB	194H
Nature of Payment	Rent	Rent	Commission and Brokerage (other than insurance Commission)
Payer	Any Person Other than Individual and HUF. IF Individual and HUF is covered by tax audit in preceding Financial Year then they are liable to deduct TDS	Individual and HUF not covered by tax audit	Any Person Other than Individual and HUF. IF Individual and HUF is covered by tax audit in preceding Financial Year then they are liable to deduct TDS
Time Of Deduction	Payment or Credit whichever is earlier	Payment or Credit whichever is earlier (last months rent or last month of tenancy)	Payment or Credit whichever is earlier
Rate of TDS	Plant and Machinery - 2% Other Asset - 10%	5%	5%
Payee	Resident	Resident	Resident
Threshold Limit	<=180000	<=50000 per month or part of the month	<=15000
Non Applicability of TDS Provision			MTNL/BSNL making payment of commission to PCO Franchisee is not subjected to TDS
Other Points			Commission and brokerage includes any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered or for any services in course of buying and selling of goods or in relation to any transaction to any asset, valuable article or a thing other than securities

Section	194D	194G	194C
Nature of Payment	Insurance Commission	Commission on Sale of Lottery Tickets	Payment to contractors
Payer	Any person	S	Any Person Other than Individual, HUF, AOP or BOI. IF Individual, HUF, AOP or BOI is covered by tax audit in preceding Financial Year then they are liable to deduct TDS
Time Of Deduction	Payment or Credit whichever is earlier	Payment or Credit whichever is earlier	Payment or credit whichever is earlier
Rate of TDS	5%	5%	IF Payee is Individual/HUF - 1% In any other Case 2%
Payee	Resident	Resident / Non Resident	Resident
Threshold Limit	<=15000	<=15000	<= 30000 (for single contract) or <=100000 (aggregate)
Non Applicability of TDS Provision			<ol style="list-style-type: none"> 1. Manufacturing and supplying of goods as per specification of customer by using materials purchased from person other than such customer. 2. Services are availed for personal purpose 3. Payment to Goods Transport Agency owing not more than 10 vehicles plus declaration is furnished to payer along with PAN
Other Points			<p>Work Includes</p> <ol style="list-style-type: none"> 1) Advertising 2) Broadcasting and Telecasting (Including production of Programme for broadcasting and Telecasting) 3) Catering Services 4) Transportation of goods or passengers by any mode other than railway 5) Manufacturing and supplying of goods as per specification of customer by using materials purchased from such customer.

Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting [Circular No. 04/2016, dated 29-2-2016]

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a ‘work contract’ liable for tax deduction at source under section 194C or a contract for ‘professional or technical services’ liable for tax deduction at source under section 194J.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

- (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and
- (ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term ‘work’ in section 194C and, therefore, subject to TDS under that section.

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for “carrying out any work”, as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C.

Section	194J	193	194A
Nature of Payment	Professional Fees / Royalties/ Technical fees/ Non-Compete Fees/ Directors Fees	Interest on securities	Interest on securities other than interest on securities
Payer	Any Person Other than Individual and HUF. IF Individual and HUF is covered by tax audit in preceding Financial Year then they are liable to deduct TDS	Person who issues Securities	Any Person Other than Individual and HUF. IF Individual and HUF is covered by tax audit in preceding Financial Year then they are liable to deduct TDS
Time Of Deduction	Payment or credit whichever is earlier	Payment or credit whichever is earlier	Payment or credit whichever is earlier
Rate of TDS	10%	10%	10%
Payee	Resident	Resident	Resident
Threshold Limit	<= 30000 - professional fees/ Royalties/ Technical Fees/Non-Compete Fees (Individually)		
Non Applicability of TDS Provision	Services are availed for personal purpose	1. Interest payable by Government 2. Demat Securities	1. Interest payable by banks/cooperative banks post office upto Rs 10000(Senior citizen - 50000) 2. Interest paid to any other person 5000 3. Interest paid by firm to partners 4. Interest paid by central

			government under direct tax laws
			5. Interest payable to LIC/Banks/UTI
Other Points			

Payments to non-resident sportsmen or sports association [Section 194E]**(1) Applicability**

This section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

(2) Rate of TDS

Deduction of tax at source @20.8% should be made by the person responsible for making the payment. **Health and education cess @4%** on TDS rate of 20% would be leviable, since payment is made to a non-resident.

(3) Time of deduction of tax

Such tax deduction should be at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(4) Income referred to in section 115BBA

(i) income received or receivable by a non-resident sportsman (including an athlete) by way of-

(a) participation in any game or sport in India; or

(b) advertisement; or

(c) contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

(ii) income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

Payment under specified agreement [Section 194-IC]**(1) Applicability and Rate**

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of **10%**.

(2) Time of deduction

This deduction is to be made **at the time of credit of such sum to the account of the payee or at the time of payment** thereof in cash or by issue of cheque or draft or by any other mode, **whichever is earlier**.

(3) Non-applicability of section 194-IA

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(4) Meaning of specified agreement

Specified agreement under section 45(5A):

- It means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both.

- The consideration, in this case, is a share, being land or building or both in such project; Part of the consideration may also be in cash.

Payment on transfer of certain immovable property other than agricultural land [Section 194-IA]**(1) Applicability and Rate**

Every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferor shall deduct tax, at the rate of 1% of such sum.

(2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

(3) Threshold limit

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property is less than ` 50 lakh.

(4) Non-applicability of TDS under section 194-IA

Since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(5) No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.

Section 201(1A) Interest in case of Late deduction/ late payment of TDS

Simple interest @1% for every month or part of month on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually deducted and

Simple interest @1½% for every month or part of month from the date on which tax was deducted to the date on which such tax is actually paid [Section 201(1A)].

Tax Collection at Source**Applicability and Rate [Section 206C(1)/(1C)/(1F)]**

	Nature of Goods	Percentage
(i)	Alcoholic liquor for human consumption	1%
(ii)	Tendu leaves	5%
(iii)	Timber obtained under a forest lease	2.5%
(iv)	Timber obtained by any mode other than (iii)	2.5%
(v)	Any other forest produce not being timber or tendu leaves	2.5%
(vi)	Scrap	1%
(vii)	Minerals, being coal or lignite or iron ore	1%

Under section 206C(1), sellers of certain goods are required to collect tax from the buyers at the specified rates. The specified percentage for collection of tax at source is as follows:

Section 206C(1C) provides for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any -

- parking lot or
- toll plaza or
- a mine or a quarry

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business. The tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, at the rate of 2%.

Note – Mining and quarrying excludes mining and quarrying of mineral oil. Mineral oil includes petroleum and natural gas. Thus, mining and quarrying excludes mining and quarrying of petroleum and natural gas. Consequently, the oil exploration and incidental services are relieved from the applicability of TCS provisions, since these services are in the organized sector.

For the purposes of above TCS, Buyer means a person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in subsection (1) or the right to receive any such goods but does not include –

⊗ a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club, or

⊗ a buyer in the retail sale of such goods purchased by him for personal consumption

TCS on sale of Motor Vehicles

Section 206C(1F) provides that every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ` 10 lakhs, shall collect tax from the buyer@1% of the sale consideration.

For this purpose, Buyer means a person who obtains in any sale, goods of the nature specified therein, but does not include –

- the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
- a local authority as defined in Explanation to section 10(20); or
- a public sector company which is engaged in the business of carrying passengers.

Q.1 Whether TCS@1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?

A. To bring high value transactions within the tax net, section 206C has been amended to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding ₹ 10 lakhs. This is brought to cover all transactions of retail sales and accordingly, it will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

Q.2 Whether TCS@1% on sale of motor vehicle is applicable only to luxury cars?

A. No, as per section 206C(1F), the seller shall collect tax@1% from the purchaser on sale of any motor vehicle of the value exceeding ₹ 10 lakhs.

Q.3 Whether TCS@1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?

A. Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS@1% under sub-section (1F) of section 206C.

Q.4 Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

A. Tax is to be collected at source@1% on sale consideration of a motor vehicle exceeding ₹ 10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

Q.5 Whether TCS@1% on sale of motor vehicle is applicable in case of an individual?

A. The definition of "Seller" as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also.

Accordingly, an individual who is liable to audit as per the provisions of section 44AB during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Q.6 How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

A. The provisions of TCS on sale of motor vehicle exceeding ₹ 10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding ₹ 10 lakhs would attract TCS@1%.

APPEALS AND REVISION

The assessee is given a right of appeal by the Act where he feels aggrieved by the order of the assessing authority. However, the assessee has no inherent right of appeal unless the statute specifically provides that a particular order is appealable. There are four stages of appeal under the Income-tax Act, 1961 as shown hereunder –

Assessment Order



First Appeal

Commissioner (Appeals)



Second Appeal

Appellate Tribunal



Third Appeal

High Court



Final Appeal

Supreme Court

APPEALS BEFORE COMMISSIONER (APPEALS)

- Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- Prescribed fees** - In case of an appeal made to the Commissioner (Appeals), irrespective of the date of initiation of the assessment proceedings, the appeal 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	₹ 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	₹ 500
(iii) where the total income of the assessee computed as above is more than ₹ 2,00,000	₹ 1,000
(iv) in any case other than (i), (ii) and (iii) above	₹ 250

- Time limit [Section 249(2) & (3)]:**

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

- Exemption in respect of tax to be paid at the time of filing the appeal [Section 249(4)]:** No appeal to the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal, the assessee has paid the tax on the amount of income returned by him in cases where a return has been filed by the assessee. If, however, no return has been filed by the assessee and an assessment has been made on him by the Assessing Officer, then, the assessee must pay an amount equal to the amount of advance tax which was payable by him before filing the appeal. The Commissioner (Appeals) is, however, empowered for good and sufficient reasons to

be recorded in writing, to exempt an appellant from the operation of the requirement in regard to payment of advance tax, on receipt of an application from the appellant made specifically for this purpose, giving the reasons for the non-payment of the tax. The concerned authority is also required to pass an order in writing while granting the exemption indicating also the reasons on account of which the exemption is granted to the assessee.

5. **Procedure in appeal [Section 250]:** On account of an appeal, the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the assessee and to the Assessing Officer, against whose order the appeal is made. Both the assessee and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative.

The Commissioner (Appeals), before passing an order on an appeal, may make such further enquiries as he thinks fit or direct the Assessing Officer to make further enquiries and report the same to him. He may also allow the appellant to go into any grounds of appeal not specified previously by the appellant if he is satisfied that the omission of that ground was not willful or unreasonable.

The order of 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. On disposal of the appeal the Commissioner (Appeals) must communicate the order passed by him to the assessee as well as the Commissioner.

In every appeal the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed under section 246A(1).

Appeal to ITAT

An assessee can appeal to the Appellate Tribunal. The Principal Commissioner or Commissioner, if he objects to any order passed by Commissioner (Appeals) under section 154 or 250 may direct the Assessing Officer to file an appeal to the Tribunal. Every appeal to the Appellate Tribunal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Commissioner, as the case may be.

Further, on receipt of notice that appeal against order of Commissioner (Appeals) has been preferred by the Assessing Officer or the assessee, as the case may be, the other party can file memorandum of cross objections within 30 days of receipt of notice against any part of the order of Commissioner (Appeals). The Appellate Tribunal has to dispose of the memorandum of cross objections as if it were an appeal filed within the given time limit.

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

Fees

	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 exceeds ₹ 1,00,000 but is not more than ₹ 2,00,000	₹ 1,500
(iii)	Where the total income 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, against the order of the Commissioner (Appeals)	No fees
(vi)	Filing of memorandum of cross-objections.	No fees
(vii)	Application for stay of demand	₹ 500

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. Such orders passed by the Appellate Tribunal shall be final unless appeal is made to the High Court under section 260A.

(3) Rectification: The Appellate Tribunal may, at any time within 6 **from the end of the month in which order is passed**, with a view to rectifying any mistake apparent from records, amend any order passed by it. However, if the mistake is brought to its notice by the assessee or the Assessing Officer, the Tribunal is bound to rectify the same. 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 it has given notice to the assessee of its intention to do so and has allowed him a reasonable opportunity of being heard. The Tribunal must send a copy of any orders passed by it to the assessee and to the Commissioner.

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

(5) Time limit: 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 sub-section (1)/(2) of section 253.

Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay. If the appeal is not disposed of within 180 days, the stay order shall stand vacated after the expiry of the said period.

Where an order of stay has been passed and the appeal has not been disposed of within the specified period of 180 days from the date of such order, the Appellate Tribunal may extend the period of stay or pass an order of stay for a further period or periods, as it thinks fit, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee.

However, the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days, even if the delay in disposing of the appeal is not attributable to the assessee. If the appeal is not disposed of within such period or periods, the order of stay shall stand vacated after the expiry of such period or periods.

(6) Cost of appeal: The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal [Sub-section (2B)].

(7) Final authority on facts: On all questions of fact the orders passed by the Appellate Tribunal on appeal shall be final and binding on the assessee as well as the Department [Section 255].

Benches:

Section 255(1) provides that the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal among the members thereof.

As per section 255(2), a Bench should normally consist of one judicial member and one accountant member.

However, section 255(3) provides for constitution of a single member bench and a Special

Bench.

Section 255(3) provides that a single member bench may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer in the said case does not exceed ` 50 lakh.

The President may, for the disposal of any particular case constitute a special Bench consisting of three or more members, one of whom must necessarily be a judicial member and one an accountant member.

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

PROVISION FOR AVOIDING REPETITIVE APPEALS [SECTION 158A]

- (1) Identical question of law pending before High Court/Supreme Court:** Section 158A makes provision for avoiding repetitive appeals when identical 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 an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court on an appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court.
- (2) Assessee to furnish declaration:** In such a situation, notwithstanding anything contained in the Act, the assessee may furnish a declaration in the prescribed form that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the present case, the final decision passed on the other case, the assessee shall not raise again the same question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.
- (3) Assessing Officer's report on correctness of claim:** Where such a declaration is furnished by the assessee to an appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim. Where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard, it shall allow him such opportunity.
- (4) Admission or rejection of claim by order in writing:** The Assessing Officer or the appellate authority, as the case may be, may, by order in writing –
 - (i) admit the claim if 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.
- (5) Consequences where claim is admitted:** Where a claim is admitted, -
 - (i) the Assessing Officer or appellate authority, as the case may be, may make an order disposing of the present 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 the High Court under section 260A or the Supreme Court under section 261.
- (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) 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, reference, revision under the Act.

(8) Meaning of certain terms:

Term	Meaning
Appellate authority	The Deputy Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal.
Case	Any proceeding under the Act for assessment of the total income of the assessee or for the imposition of any penalty or fine on him.

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

(1) Assessee to submit a claim before the Assessing Officer or any appellate authority: Section 158A enables an assessee, during pendency of proceedings in his case for an assessment year, to submit a claim before the Assessing Officer or any appellate authority that -

- (i) a question of law arising in the instant case for the assessment year under consideration is identical with the question of law already pending in his own case before the High Court or Supreme Court for another assessment year; and
- (ii) if the Assessing Officer or any appellate authority agrees to apply the final decision on the question of law in that earlier year to the present year, he will not agitate the same question of law once again for the present year before higher appellate authorities.

(2) Admission of claim and application of rationale of High Court/Supreme Court decision: The Assessing Officer or any appellate authority before whom his case is pending can admit the claim of the assessee and as and when the decision on the question of law becomes final, the ratio of the decision of the High Court or Supreme Court for that earlier case would be applied to the relevant year's case also.

(3) Need for Section 158AA: Prior to 1.6.2015, there was no corresponding provision for revenue to not file appeal for subsequent years where the Department is in appeal on the same question of law for an earlier year. Consequently, appeals were filed by the revenue year after year on the same question of law until it is finally decided by the Supreme Court. This had the effect of increasing the pending litigation. Consequently, section 158AA has been inserted by the Finance Act, 2016 with effect from 1st June, 2015.

(4) Assessing Officer to make an application within prescribed period: Section 158AA provides that irrespective of anything contained in the Act, where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court, in an appeal or in a special leave petition under Article 136 of the Constitution filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may, instead of directing the Assessing Officer to appeal to the Appellate Tribunal under section 253(2) or section 253(2A), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within sixty days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

- (5) Application to be made only if assessee accepts that the question of law is identical:** The Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application under section 158AA(1), 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. However, in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2) or section 253(2A). Accordingly, the Commissioner or Principal Commissioner may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.
- (6) Consequences where CIT(Appeals) order is not in conformity with Supreme Court's decision:** Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.
- Unless otherwise provided in section 158AA, all other provisions of Part B of Chapter XX "Appeals to Appellate Tribunal" shall apply accordingly.

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

- (1) Revision of Orders prejudicial to the Revenue [Section 263]**
- (i) Under section 263(1), if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is **erroneous in so far as it is prejudicial to the interests of the Revenue**, he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order enhancing or modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.
- (ii) An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Commissioner or Commissioner,—
- (a) the order is passed without making inquiries or verification which should have been made;
- (b) the order is passed allowing any relief without inquiring into the claim;
- (c) the order has not been made in accordance with any order, direction or instruction issued by the CBDT under section 119;
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.
- (iii) The term 'record' shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Principal Commissioner or Commissioner.
- (iv) Where any order referred to in section 263(1) passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Principal Commissioner or Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.
- (v) 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.

(2) Revision of other orders [Section 264]

- (i) In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority including the Deputy Commissioner (Appeals) the Principal Commissioner or Commissioner may either on his own motion or on receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed. After making such enquiries as may be necessary the Principal Commissioner or Commissioner may pass such order as he thinks fit.
- (ii) The Principal Commissioner or Commissioner is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised.
- (iii) If the application for revision is made by the assessee, it must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is later.
- (iv) However, the Principal Commissioner or Commissioner 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.
- (v) The application to the Principal Commissioner or Commissioner for revision must be accompanied by a fee of ` 500.
- (vi) If an order is passed by the Principal Commissioner or Commissioner declining to interfere in any proceeding, it shall not be deemed to be an order prejudicial to the assessee.
- (a) However, the Principal Commissioner or Commissioner is not empowered to revise any order in the following cases, viz., where an appeal against the order lies to the Commissioner (Appeals) or the Tribunal but has not been made and the time within which the appeal may be made has not expired or in the case of an appeal to the Tribunal the assessee has not waived his right of appeal;
- (b) where the order is pending on an appeal before the Deputy Commissioner (Appeals);
- (c) where the order has been made subject to an appeal to the Commissioner (Appeals) or the Appellate Tribunal.

Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit [Section 268A]

- (i) As per section 268A(1), the 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 appeal or application for reference by any income tax authority.
- (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 assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –
 - (1) The same assessee for any other assessment year; or
 - (2) Any other assessee for the same or any other assessment year.
- (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.
- (v) Every order/instruction/direction which has been issued by the CBDT fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub- section (1) and all the provisions of this section shall apply accordingly.

