

CHAPTER - VII

APPEALS, REVISIONS AND SETTLEMENT OF CASES

55. Appeals to the Deputy Commissioner (Appeals). - (1) Any person aggrieved by any order issued or proceedings recorded other than those under sub-section (3), sub-section (8) or subsection (9) of section 16, sub-section (8) of section 19, section 22, section 24, passed by an authority empowered to do so under this Act not being an authority above the rank of an Assistant Commissioner may, within a period of thirty days from the date on which the order was served on him, appeal against such order to the Deputy Commissioner (Appeals):

Provided that the Deputy Commissioner (Appeals) may admit an appeal presented after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

Provided further that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of, —

(a) the entire tax assessed, where the appeal is against an assessment completed under sub-section (3) of section 22; and

(b) the tax or other amounts admitted by the appellant be due or such installment thereof as might have become payable, as the case may be, where the appeal is against an assessment completed under sub-section (6) of section 23, or under section 24 or section 25.

(2) Where an appeal lies against any order under sub-section (1), any order issued under section 66 to rectify any error in such order shall also be appealable under the said sub-section.

(3) The appeal shall be in such form and shall be verified in such manner as may be prescribed, and shall be accompanied by a fee of five hundred rupees.

(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amounts shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the Deputy Commissioner (Appeals) may, in his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) In disposing of an appeal, the Deputy Commissioner (Appeals) may, after giving the appellant a reasonable opportunity of being heard, -

- (a) in the case of an order of assessment or penalty, either confirm, reduce, enhance or annul the assessment or the penalty or both;
- (b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed;
- (c) or pass such other orders as he may think fit; or
- (d) in the case of any other order, confirm, cancel or vary such order:

Provided that, at the hearing of any appeal against an order of the assessing authority, the assessing authority or the officer empowered by the commissioner in this behalf shall be heard.

(6) The order of the Deputy Commissioner (Appeals) disposing of an appeal before it shall state the point for determination, the decision thereon and the reason for arriving at such decision.

(7) Where as a result of the appeal any change becomes necessary in the order appealed against, the Deputy Commissioner (Appeals) may, direct the assessing authority to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or as the case may be the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

56. Powers of revision of the Deputy Commissioner suo motu. - (1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by any officer or authority subordinate to him which in his opinion is prejudicial to the interest of the Revenue and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this act, may pass such order thereon as he thinks fit.

Explanation: - For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Deputy Commissioner shall not pass any order under sub-section (1) if, -

- (a) the time for appeal against the order has not expired;
- (b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or
- (c) more than four years have expired from the year in which the order referred to therein was passed.

(3) Notwithstanding anything contained in sub-section (2), the Deputy Commissioner may pass an order under sub-section (1) on any point which has not been decided in an

appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

57. Power of revision of Deputy Commissioner on application: - (1) Any person objecting to an order passed or proceedings recorded under this Act for which an appeal has not been provided for in Section 55 or section 60 may, within a period of thirty days from the date on which a copy of the order or proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the Deputy Commissioner:

Provided that the Deputy Commissioner may admit an application for revision presented after the expiration of the said period, if he is satisfied that the applicant had sufficient cause for not presenting the application within the said period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner, and be accompanied by a fee of five hundred rupees.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of the Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction, in such form and in such manner, as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

58. Powers of revision of the Commissioner suo-motu. - (1) The Commissioner may *suo motu* call for and examine any order passed or proceedings recorded under this Act by any officer or authority, subordinate to him other than that of the Deputy Commissioner (Appeals) not being the orders passed by him against any order issued or proceedings recorded under sub-section (3) of section 25, sub-section (8) or sub-section (9) of section 44, section 49, section 67, section 68, section 69 or section 70 which in his opinion is prejudicial to the interest of revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act may pass such order thereon, as he thinks fit.

Explanation: - For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Commissioner shall not pass any order under sub-section (1) if -

- (a) the time for appeal against that order has not expired;
- (b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired from the year in which the order referred to therein has passed.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

59. Power of revision of the Commissioner on application.

- (1) Any person objecting to an order passed by the Deputy Commissioner other than an order of the Deputy Commissioner (Appeals) under section 55 may, within a period of thirty days from the date on which a copy of the order was served on him file an application for revision of such order to the Commissioner:

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period if he is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(2) Such application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of seven hundred and fifty rupees.

(3) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order against which the application has been preferred:

Provided that the Commissioner may in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee, or other amount, if the applicant furnishes sufficient security to his satisfaction in such manner as may be prescribed.

(4) On admitting an application for revision, the Commissioner may call for and examine the record of the order against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act pass such order thereon as he thinks fit.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

60. Appeal to the Appellate Tribunal. - (1) Any person objecting to an order passed by the Deputy Commissioner (Appeals) under sub-section (5) of section 55 or any officer empowered by the Government in this behalf may, within a period of sixty days from the date on which the order was served on him, in the manner prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

Provided further that no appeal shall lie in cases where *suo moto* revision proceedings under section 58 is pending.

(2) The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof,

file within thirty days of the receipt of the notice, a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the Deputy Commissioner (Appeals) and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand rupees.

(4) In disposing of an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard either in person or by a representative, -

- (a) in the case of an order of assessment or penalty, -
 - (i) confirm, reduce, enhance or annul the assessment or penalty or both;
 - (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or
 - (iii) pass such other orders as it may think fit; or
- (b) in the case of any other order, confirm, cancel or vary such order:

Provided that if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition to the High Court against such decision or an appeal to the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition to the High Court or the appeal to the Supreme Court is disposed of.

(5) Where as a result of the appeal any change becomes necessary in the order appealed against, the Appellate Tribunal may authorize the assessing authority to amend such order accordingly and on such amendment being made any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

Provided further that where the Appellate Tribunal has passed an order of stay in an appeal it shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided also that if such appeal is not so disposed of within the period specified in the second proviso the stay order shall stand vacated after the expiry of the said period.

(7) The Appellate Tribunal may, on the application of the appellant or the respondent review any order passed by it under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made:

Provided that no such application shall be preferred more than once in respect of the same order.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed, and where the application is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of rupees three hundred.

(9) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (7) shall be communicated in the manner prescribed, to the appellant, the respondent, the authority on whose order the appeal was preferred, the Deputy Commissioner concerned, and the Commissioner.

61. Filing of application for settlement of cases. - (1) Notwithstanding anything contrary contained in this Act an assessee may, at any stage of an appeal or revision pending before any authority under the Act or the High Court, make an application in such form and in such manner as may be prescribed, containing a full and true disclosure of his turnover which had not been disclosed before the Assessing authority including the additional amount of tax payable on such turnover and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless, the assessee has furnished the return of turnover, which he is or was required to furnish under any of the provisions of this Act.

Provided further that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) On receipt of an application under sub-section (1), the Settlement Commission shall call for a report from the Deputy Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstance of the case or complexity of investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded, with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that the Deputy Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission, and if the Deputy Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(5) A copy of every order under sub-section (4) shall be sent to the applicant and to the Deputy Commissioner.

(6) Subject to the provisions of sub-section (7), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (4) allowing the applications to be proceeded with, pay the additional amount of tax or other amount payable on the turnover disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(7) Where the additional amount of tax or other amount referred to in sub-section (6) is not paid by the assessee within the time specified under that sub-section, the Settlement Commission may, at its discretion, permit the assessee to pay the amount within a period not exceeding fifteen days.

(8) Where an application is allowed to be proceeded with under sub-section (4), the Settlement Commission may call for the relevant reports from the Deputy Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Deputy Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matter covered by the application and any other matter relating to the case.

(9) After examination of the records and the report of the Deputy Commissioner received under sub-sections (4) or (8) and after giving an opportunity to the applicant and to the Deputy Commissioner to be heard, either in person or through a representative duly authorised in this behalf and after examining such further evidences as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Deputy Commissioner under sub-section (4) or sub-section (8).

(10) Every order passed under sub-section (9) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(11) Where any tax payable in pursuance of an order under sub-section (9) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, the assessee shall be liable to pay interest at the rate of one per cent for each month or part thereof, for the first three months after the date specified for its payment; and at the rate of two percent for each month or part thereof, subsequent to the first

three months aforesaid, on the amount remaining unpaid from the date of expiry of the period of thirty-five days.

(12) Where a settlement become void as provided under sub-section (10), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the authority concerned may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(13) If the matter is settled under the provisions of this section the Deputy Commissioner shall intimate the fact of such settlement to the authority specified in sub-section (1) or to the High Court as the case may be.

62. Appeals to the High Court. - (1) Any person objecting to an order affecting him passed under section 58 or section 94 may, within a period of ninety days from the date on which a copy of the order was served on him in the manner prescribed, appeal against such order to the High Court:

Provided that the High Court may admit an appeal preferred after the period of ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand five hundred rupees.

(3) In disposing of an appeal, the High Court may, after giving the parties a reasonable opportunity of being heard either in person or by a representative,

(a) in the case of an order of assessment or penalty,-

- (i) confirm, reduce, enhance or annual the assessment or penalty or both;
 - (ii) set aside the assessment and direct that a fresh assessment may be made after such further enquiry as may be directed; or
 - (iii) pass such other orders as it may think fit; or
- (b) in the case of any other order, confirm, cancel or vary such order.

(4) Where as a result of the appeal any change becomes necessary in the order appealed against, the High Court may authorize the Commissioner to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(5) Every order passed in appeal under this section shall be final.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) The High Court may, on the application of the appellant or the Commissioner, review any order passed by it under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by the applicant, when the order was made.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of three hundred rupees.

(9) The High Court may, at its discretion, award the cost in an appeal under sub-section (1) or in a review under sub-section (7).

63. Revision by the High Court. - (1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of section 60, or any person objecting to an order passed by the Commissioner under sub-section (4) of section 59 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal or the Commissioner has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where it is preferred by a person other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of one thousand five hundred rupees.

(3) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4) If the High Court does not dismiss the petition summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question of law raised, or pass such order in relation to the matter as the High Court thinks fit.

(5) Where the High Court remits the matter under sub-section (4) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.

(6) Before passing an order under sub-section (4) the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.

(7) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred.

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(8) The High Court may, on the application of any party to a revision under this section, review any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

(9) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is preferred by a person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand five hundred rupees.

(10) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount paid in excess by any person shall be refunded to him, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(11) The High Court may at its discretion, award the cost in a revision under sub-section (1) or in a review under sub-section (8).

64. Appeals, petitions and applications to the High Court to be heard by a Bench of not less than two judges. - Every appeal preferred to the High Court under section 62, every petition under section 63 and every application under the said sections shall be heard by a Bench of not less than two judges, and in respect of such appeal, petition or application, the provisions of section 98 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, so far as may be, apply.

65. Fee for interlocutory petitions. - Every interlocutory application prescribed by the Government and filed before the authorities under this Act specified below, other than those filed by officers empowered by Government, shall be accompanied by the following fees, namely: -

Before the Deputy Commissioner (Appeals) or the Deputy Commissioner	Two hundred rupees
Before the Commissioner or	Three hundred rupees

66. Power to rectify any error apparent on the face of the record. - (1) Any authority including Appellate Tribunal and Settlement Commission issuing any order or proceedings under this Act may, on application or otherwise, at any time within four years from the year in which the order is passed by it, rectify any error apparent on the face of the record.

Provided that no such rectification, which has the effect of enhancing an assessment or any penalty, shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund to the person entitled thereto.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer or other person, a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made there under shall apply as if such notice has been given in the first instance.

Explanation: - The liability to pay the tax or other amount shall arise only from the date specified in the revised notice.

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(1) in section 55, in sub-section (1), the words, figures and brackets "sub-section (3) of section 25, sub-section (8) or sub-section (9) of section 44, section 49, section 67, section 68, section 69 or section 70" shall be omitted;

(2) in section 58, in sub-section (1) after the words "the Deputy Commissioner (Appeals)" the words "not being the orders passed by him against any order issued or proceedings recorded under sub-section (3) of section 25, sub-section (8) or sub-section

(9) of section 44, section 49, section 67, section 68, section 69 or section 70", shall be inserted;

(3) in sub-section (1) of section 60 A after the existing proviso, the following proviso shall be inserted, namely :-

"Provided further that no appeal shall lie in cases where *suo moto* revision proceedings under section 58 is pending.";