Question 1

An appeal was preferred by the assessee to the Commissioner (Appeals) against the order of assessment made by the Assessing Officer. The appeal was allowed by the Commissioner (Appeals). The assessee later found that he was entitled to a certain deduction, which was neither claimed by him nor allowed by the Assessing Officer in the course of assessment. The issue of deduction was not raised by the assessee in the appeal before the Commissioner (Appeals) and was not considered by the Commissioner (Appeals). Examine the power of the Commissioner to revise under section 264 the order of assessment in order to allow such deduction on an application by the assessee.

Answer

Section 264(4)(c) provides that the Principal Commissioner or Commissioner shall not revise an order which has been made the subject of an appeal to the Commissioner (Appeals). This bar remains unaffected by the scope of the appeal to the Commissioner (Appeals). Therefore, the fact that the relief claimed in the application filed by the assessee under section 264(1) was not the subject matter of appeal to the Commissioner (Appeals) does not alter the position that the order of assessment was the subject of the appeal.

The Supreme Court has, in Hindustan Aeronautics Ltd. v. CIT (2000) 243 ITR 808, held that the Principal Commissioner or Commissioner has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Tribunal, even if the relief claimed in the revision is different from the relief claimed in the appeal.

The word ‘order’ in section 264(4)(c) refers to the order appealed against and not to the relief claimed in appeal. In view of this, the Principal Commissioner or Commissioner cannot exercise his powers under section 264 to revise the order of assessment and allow the deduction claimed by the assessee in his application.

Question 2

The assessment of Ashok for assessment year 2016-17 was completed under section 143(3) on 15th January, 2018. The Commissioner acting under section 263 directed the Assessing Officer to add a certain amount appearing in the Balance Sheet in the total income of Ashok.

Ashok did not challenge the order of the Commissioner under section 263 by filing appeal to the Tribunal. The Assessing Officer passed a fresh assessment order on 1st October, 2018 including the said amount in the total income of Ashok pursuant to the order of the Commissioner.

Ashok disputed the fresh assessment order in appeal to Commissioner (Appeals) under Section 246A. The Commissioner (Appeals) dismissed the appeal on the ground that the Assessing Officer only complied with direction of the Commissioner under section 263, which was not disputed by
Ashok in appeal to Tribunal. Examine the correctness of the stand taken by the Commissioner (Appeals).

Answer

An assessee can file an appeal to the Tribunal against the order passed by the Principal Commissioner or Commissioner under section 263. However, in this case, the assessee did not file any appeal to the Tribunal against the order of the Commissioner under section 263. He waited for the fresh assessment order to be passed by the Assessing Officer in pursuance of the direction of the Commissioner. The order of any fresh assessment made under section 150 pursuant to a direction contained in an order of revision under section 263 is itself appealable under section 246A(1)(b). Therefore, the mere fact that the assessee did not dispute the order of the Commissioner by filing an appeal to the Tribunal does not take away the right of the assessee to dispute the fresh assessment order by filing appeal to Commissioner (Appeals) under section 246A. Therefore, the stand taken by the Commissioner (Appeals) is not correct in law.

Question 3

Examine the following propositions:

(i) The Income Tax Appellate Tribunal cannot admit additional evidence during the hearing of the appeal.

(ii) The Commissioner of Income-tax can revise an order during the pendency of an appeal before the First Appellate Authority.

(iii) The Commissioner of Appeals cannot admit an appeal filed beyond 30 days from the date of receipt of order by an assessee.

Answer

(i) Rule 29 of Appellate Tribunal Rules, 1963 deals with production of additional evidence before the Appellate Tribunal.

The parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal. However, the following are the exceptions to this rule –

(a) where the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause; or

(b) where the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by the them.

In case (a) above, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed.

In case (b) above, the Tribunal may allow such evidence to be adduced.
However, in both cases, the Tribunal should record its reasons in writing.

(ii) Revision of orders by the Commissioner can be carried out under section 263 or section 264.

**Revision of orders prejudicial to the interest of revenue [Section 263]**

Section 263(1)(c) provides that if an order passed by the Assessing Officer has been the subject matter of any appeal, the same cannot be revised. However, at the same time, the power of the Principal Commissioner or Commissioner under sub-section (1) of section 263 shall extend to such matters as had not been considered and decided in such appeal.

**Revision of other orders [Section 264]**

The Principal Commissioner or Commissioner shall not revise any order under section 264, where an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal, but it has not been made and the time within which such appeal may be made has not expired. However, if the assessee has waived his right of appeal, the Principal Commissioner or Commissioner can revise the order under this section.

(iii) As per section 249(3) of the Income-tax Act, 1961, the Commissioner (Appeals) may admit an appeal after the expiry of the period of 30 days specified in section 249(2) if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the prescribed time.

**Question 4**

The assessment of South West Bank Limited for Assessment Year 2014-15 was made under section 143(3) on 30th November, 2015 allowing deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference as claimed in the return of income. Subsequently, the Assessing Officer initiated reassessment proceeding under section 147 in respect of deduction under section 36(1)(viii) for special reserve created by the bank. The order under section 147 was passed on 31st December, 2017. Later, the Principal Commissioner, after examining the record of assessment, initiated revisionary proceeding under section 263 by issue of show cause notice to the bank and passed an order under section 263 on 31st August, 2018 for disallowing in part deduction under section 36(1)(viia) and deduction for foreign exchange rate difference. The bank claims that the order passed by the Principal Commissioner under section 263 is barred by limitation.

Examine the correctness or otherwise of the claim of the bank.

**Answer**

Section 263(2) provides that no revisionary order shall be made under section 263(1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

The issue under consideration is whether the period of limitation for an order passed under section 263 has to be reckoned from the original order passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147.
The facts of the case are similar to the facts in *CIT v. ICICI Bank Ltd. (2012) 343 ITR 74*, wherein the above issue came up before the Bombay High Court. Similar issue also came up before the Bombay High Court in *CIT v. Lark Chemicals Ltd (2014) 368 ITR 655*. The Bombay High Court relied on the Apex Court decision in the case of *CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1*, wherein it was held that in such cases where the subject matter of revision was not the same as the subject matter of reassessment, the period of limitation would commence from the date of original assessment and not from the date of reassessment.

In this case, the period of limitation as referred to in section 263 is with reference to the assessment in which the claim of the assessee as to deduction under section 36(1)(viia) on account of provision for doubtful debts and deduction in respect of foreign exchange rate difference was considered. These issues were not the subject matter of reassessment proceedings, which were only in respect of deduction under section 36(1)(viii) for special reserve created by the bank.

Accordingly, applying the rationale of the Bombay High Court rulings cited above, the period of limitation shall be reckoned with reference to the original assessment order and not from the date of the order of reassessment.

Therefore, in this case, the revision proceedings are barred by limitation since the original assessment order was made on 30.11.2015 and the revision should have been made by 31.3.2018. However, the revision order was passed only on 31st August, 2018 and hence, the same is barred by limitation.

Accordingly, the claim of the bank that the order passed by the Principal Commissioner under section 263 is barred by limitation is correct.

**Question 5**

Can Commissioner (Appeals) refuse to admit an appeal even though such appeal is filed within time? Examine.

**Answer**

As per section 249(4), the Commissioner (Appeals) can refuse to admit an appeal, even though such appeal is filed within the stipulated time, where at the time of filing of the appeal:

(a) In a case where a return of income has been filed by the assessee, the assessee has not paid the tax due on the income returned by him; or

(b) In a case where no return of income has been filed by the assessee, the assessee has not paid an amount equal to the amount of advance tax which was payable by him.

However, in case (b), the assessee/appellant can apply to the Commissioner (Appeals) for exemption from the requirement of prepayment of advance tax. The Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the said requirement.
**Question 6**

M, an individual, had let out his building on a monthly rent of ₹ 20,000. The tenant deducted tax under section 194-I from the rent paid to M, but did not remit such tax to the credit of the Central Government. M filed his return of income for the assessment year 2018-19 including therein the rental income from the said building and paid the balance tax on his total income after taking credit for tax deducted at source by the tenant. The Assessing Officer has called upon M to pay the tax to the extent of tax deducted at source. Is the Assessing Officer justified in doing so?

**Answer**

Section 205 of the Income-tax Act, 1961 provides that where tax is deductible at source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. Section 205, therefore, bars a direct demand being made on an assessee to the extent of tax deducted from the income. The Income-tax Department can recover the tax deducted at source from the tenant and not from M in view of the clear mandate in section 205.

The Karnataka High Court has, in *Smt. Anusuya Alva v. DCIT (2005) 278 ITR 206*, ruled that tax deducted at source by the tenant from the rent paid but not remitted to the credit of the Central Government can be recovered only from the tenant and not from the landlord. Therefore, in view of the clear mandate in section 205, the Assessing Officer is not justified in law in calling upon M to pay the said tax.

**Question 7**

A sum of ₹ 60,000 was paid to Mr. Dastur, an advocate, on 1st July, 2017 towards fees for his professional services without deducting tax at source. Later on, a further sum of ₹ 70,000 was due to him on 28th February, 2018 from which tax of ₹ 13,000 was deducted at source. The tax so deducted was deposited on 25th June, 2018. Compute interest payable by the deductor under section 201(1A).

**Answer**

In this case, tax is deductible@10% under section 194J in respect of fees for professional services. Since there has been a delay in deduction and deposit of tax, interest under section 201(1A) is attracted.

As per the provisions of section 201(1A), if a person who is liable to deduct tax at source fails to deduct tax at source or after deducting such tax, fails to pay the tax as required by the Act, then he is liable to pay interest as follows -

(i) 1% for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.

(ii) 1½% for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.
Therefore, in the given case, interest under section 201(1A) would be computed as follows –

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1% on tax deductible but not deducted i.e., 1% on ₹ 6,000 for 8 months</td>
<td>480</td>
</tr>
<tr>
<td>1½% on tax deducted but not deposited i.e. 1½% on ₹ 13,000 for 4 months</td>
<td>780</td>
</tr>
<tr>
<td><strong>Total interest payable under section 201(1A)</strong></td>
<td><strong>1,260</strong></td>
</tr>
</tbody>
</table>

**Question 8**

The Assessing Officer within his jurisdiction surveyed a popular Cyber Café at 12 o’clock in night for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Cyber Café is kept open for business every day between 2 p.m. and 2 a.m. The owner of the Cyber Café claims that the Assessing Officer could not enter the café in late night. The Assessing Officer wanted to take away with him the books of account kept at the Cyber Café. Examine the validity of the claim made by the owner and the proposed action of the Assessing Officer.

**Answer**

The Assessing Officer can exercise his power of survey under section 133A only after obtaining the approval of the Joint Commissioner or Joint Director, as the case may be. Assuming that he has obtained such approval in this case, he is empowered under section 133A to enter any place of business of the assessee within his jurisdiction only during the hours at which such place is open for the conduct of business.

In the case given, the cyber cafe is open from 2.00 p.m. to 2.00 a.m. for the conduct of business. The Assessing Officer entered the cyber cafe at 12 o’clock in the night which falls within the working hours of the cyber cafe. Therefore, the claim made by the owner to the effect that the Assessing Officer could not enter the cyber cafe at late night is not in accordance with law.

Further, as per section 133A(3)(ia), the Assessing Officer may, impound and retain in his custody for such period as he thinks fit, any books of account or other documents inspected by him. However, he shall not impound any books of account or other documents except after recording his reasons for doing so. He shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be.

**Question 9**

T, an individual, filed his return of income for the assessment year 2018-19 on 18.10.2018 declaring a total income of ₹ 1,20,000. He later discovered that he had not claimed a particular deduction amounting to ₹ 2,10,000 while computing his business income in the said return. He filed a revised
return on 29.3.2019 declaring a total loss of ₹ 90,000. The Assessing Officer proposes to disallow the claim of T for carry forward of the business loss under section 72(1) amounting to ₹ 90,000 for the reason that the revised return declaring loss for the first time was filed beyond the time prescribed under section 139(3). Examine the validity of the proposed action of the Assessing Officer.

Answer

T has filed his original return of income for the assessment year 2018-19 within the due date specified in section 139(4) for filing a belated return i.e., on or before 31.3.2019. Section 139(5) empowers an assessee, who discovers any omission or wrong statement in the return filed by him under section 139(1) or 139(4), to file a revised return before the end of relevant assessment year or before the completion of the assessment, whichever is earlier. T, having discovered an omission to claim a particular deduction in the return filed by him belatedly under section 139(4), has filed a revised return within the time prescribed under section 139(5), i.e., on or before 31.3.2019. A revised return has the effect of replacing the original return and relates back to the date of the original return. Thus, where a return was filed under section 139(4) declaring income and later it was revised declaring a loss, the revised return shall substitute the original return which was filed belatedly. However, for carry forward of business loss under section 72(1), the original return should have been filed on or before the due date under section 139(1). In this case, since the original return was filed belatedly under section 139(4), and was subsequently revised under section 139(5), the revised return would replace the belated return and not the original return. Hence, carry forward of losses on the basis of a revised return which replaces the return filed belatedly, is not permitted. Therefore, the proposed action of the Assessing Officer to deny the benefit of carry forward of business loss to T is valid in law.

Question 10

EIH Private Ltd.’s assessment for assessment year 2011-12 was completed under section 143(3) on 31st August, 2012. The company went in appeal to the Commissioner (Appeals) and the appeal was decided on 16th August, 2013 and the appeal effect was duly given by the Assessing Officer on 25th August, 2013. Thereafter, on 1st September, 2017 the Assessing Officer noticed a mistake in calculation of depreciation on a particular block of assets, which reduced the income excessively by ₹ 1.10 lacs. The Assessing Officer issued notice under section 154 for the purpose of rectifying the mistake. Is such rectification permissible?

Answer

Any rectification order under section 154 has to be passed within 4 years from the end of financial year in which the order sought to be amended was passed. Order sought to be amended does not necessarily mean the original order. It could be any order including the amended or rectified order. Where any matter has been considered and decided in any proceeding by way of appeal or revision, the authority passing such order may amend the order in relation to any matter other than the matter which has been so considered and decided.
For subsequent rectification, the time limit of 4 years shall be from the end of the financial year in which the earlier rectification order was passed. [Hind Wire Industries Ltd vs. CIT (1995) 212 ITR 639 (SC)]. In the given case, the time limit of 4 years has to be reckoned from the end of the financial year in which the order giving effect to the CIT(Appeal)'s decision was passed. Therefore, the rectification order can be passed by the Assessing Officer at any time before expiry of 4 years from the end of the financial year 2013-14 i.e. on or before 31st March, 2018. In this case, the mistake was noticed by the Assessing Officer on 1st September, 2017, for which he issued notice under section 154 for rectifying the mistake. Such rectification is permissible as the time limit of 4 years expires only on 31st March, 2018.