

RECTIFICATION OF MISTAKES & POWERS RELATING TO AMENDMENT OF ORDER

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Seminar on Post Assessment Issues under IT Act by WIRC – 22nd Mar 2014

RECTIFICATION – SEC. 154

- Any **mistake apparent from the record** can be rectified by an Income Tax authority by –
 - (a) Amending any order passed by such authority under the Act;
 - (b) Amending any intimation or deemed intimation u/s 143(1)
 - (c) Amending any intimation u/s. 200A(1)

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Who can rectify mistake u/s. 154:

- An “income-tax authority” – as listed in Sec. 116
- TRO can rectify the order passed by the AO – Rule 117C r.w.s. 2(44)
- Settlement Commission can rectify the mistake apparent from record within 6 months from the date of order u/s. 245D(6B) – Brij Lal’s decision is overruled
- DRP can also rectify its direction as per Rule 13 of DRP Rules, 2009
- ITAT can rectify mistakes u/s. 254(2) within 4 years from the date of the order
- Not the person but the authority is relevant. Successor cannot deny to rectify the order passed by predecessor - Trustees of Indore Cancer Foundation Charitable Trust vs. UOI 248 ITR 730 (MP)

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Orders which can be rectified:

- Intimation or deemed intimation u/s. 143(1)
- Intimation u/s. 200A
- Assessment or reassessment order
- Review order
- Rectification order
- CIT (A)’s order
- Penalty order
- Order granting stay.....

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Meaning and scope of 'mistake' :

- ❑ Dictionary Meaning: An unintentional act, omission or error
- ❑ It need not be merely clerical or arithmetical mistake
- ❑ Mistake can be either of fact or of law
- ❑ T.S. Rajam vs. Controller of Estate Duty 69 ITR 342 (Mad):
 - ❑ It comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned.
 - ❑ In the ultimate analysis, the conclusion a well equipped and trained judicial mind will reach after scrutinising the record, will govern and his finding whether it is a mistake or not has to be accepted.

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Meaning and scope of 'apparent' :

- ❑ Must be an obvious & patent mistake. Not something which can be established by a long drawn process of reasoning on which two opinions are possible – T.S.Balaram, ITO vs. Volkart Brothers 82 ITR 50 (SC)
- ❑ Look at the records must show there has been an error. Reference to documents outside records & law is impermissible – CIT vs. Keshri Metal Ltd. 237 ITR 165 (SC)
- ❑ Merely because an issue is complex and requires genuine and fair probing and reasoning, the issue does not become non-rectifiable - T.S. Rajam vs. Controller of Estate Duty 69 ITR 342 (Mad).

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Meaning and scope of 'record' :

- ❑ Record does not mean only the order of assessment but it comprises all proceedings on which the assessment order is based – Maharana Mills (Pvt) Ltd vs. CIT 36 ITR 350 (SC).
- ❑ The 'record' for purpose of section 154(1) is the record available to the authorities at the time of initiation of proceedings for rectification and not merely the record of the original proceeding sought to be rectified – CIT vs. MRM Plantations (P) Ltd. 240 ITR 660 (Mad).
- ❑ IT authority cannot go beyond the records and look into fresh evidence or material which were not on record at the time the order sought to be rectified was passed – Gammon India Ltd. vs. CIT 214 ITR 50 (Bom).

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Meaning and scope of 'record' :

- ❑ Power of rectification u/s. 154 can be exercised with reference to all records of assessee available with AO not necessarily of same assessment year – Mahendra Mills Ltd. vs. ACIT 99 ITR 135 (SC) Indra Singh & Sons vs. UOI 64 ITR 501 (Cal) [Contrary view: Ganapathi Hegde 84 ITR 523 (Mys)]
- ❑ Record of other assessee – If income of minor son is excluded from the assessment of father in an appeal then record of appeal of the father should be regarded as record in relation to minor son – Deven Prakash vs. ITO 72 ITR 151 (All)

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Retrospective Amendment whether mistake apparent from record:

- ❑ An order which was valid when made can be said to be erroneous by way of retrospective amendment of law. [M.K.Venkatachalam, ITO vs. Bombay Dyeing & Manufacturing Co. 34 ITR 143 (SC)]
- ❑ Retrospective Amendments prove no controversy on issue on the anterior date & hence 154 rectification permissible. [IAC of Agrl IT vs. V.M.Ravi Namboodripad 96 ITR 73 (SC)]
- ❑ J.M.Bhatia, AAC vs. J.M.Shah 156 ITR 474 (SC)
- ❑ GTC Industries vs. DCIT 105 TTJ (Mum)(TM) 1010
- ❑ Contrary: CIT vs. Suhdir S. Mehta 265 ITR 548 (Bom), ACIT vs. GTL Limited – Mum ITAT

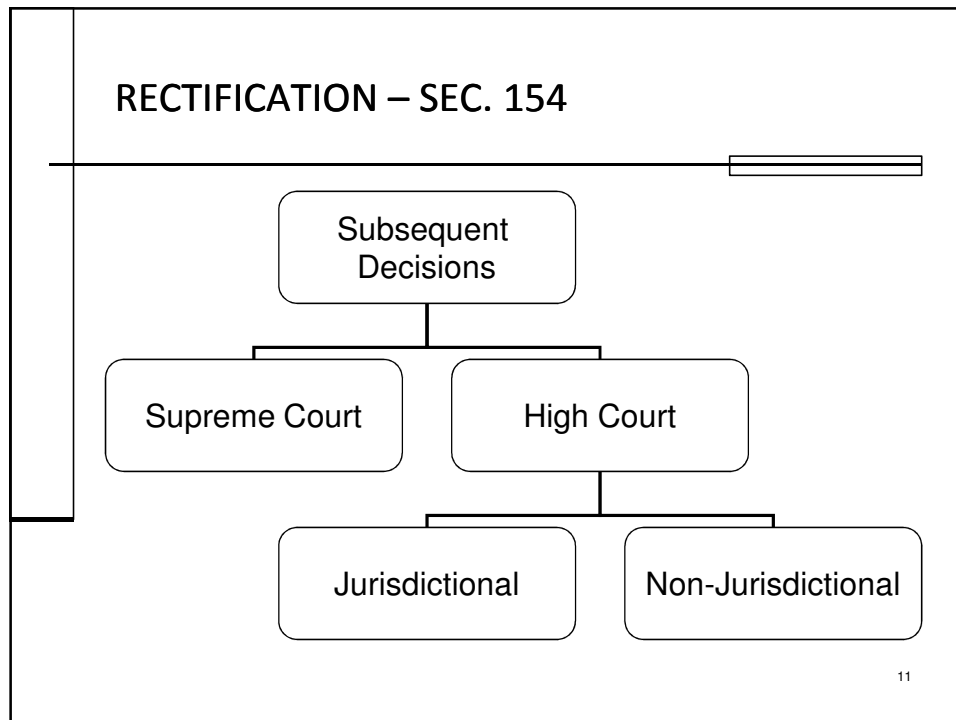
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Retrospective Amendment whether mistake apparent from record:

- ❑ Shriram Chits (Bangalore) Ltd. 41 DTR 366 (Kar.): Assessment based on the Supreme Court decision cannot be rectified on subsequent retrospective amendment of law. [Misunderstood SC decision in CIT vs. Max India Ltd. 295 ITR 282?].

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Subsequent SC Decision:

- ❑ Circular No. 68 dt. 17.11.1971: A mistake arising as a result of subsequent interpretation of law by the Supreme Court would constitute 'a mistake apparent from the records'.
- ❑ ACIT vs. Saurashtra Kutch Stock Exchange Ltd. 305 ITR 227 (SC) approving the decision of Suhrid Geigy Ltd. 237 ITR 834 (Guj) wherein order contrary to subsequent decision of jurisdictional HC was held to be rectifiable.
- ❑ Contrary view: Jiyajeerao Cotton Mills Ltd 130 ITR 710 (Cal) – A subsequent decision of SC resolving the conflict on a debatable point does not obliterate the conflict existing prior to the decision.

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Subsequent SC Decision:

- ❑ Mepco Industries 319 ITR 208 (SC) –
 - ❑ Subsidy treated as capital receipt based upon P.J. Chemicals 210 ITR 830 (SC)
 - ❑ Subsequent decision of SC in Sahney Steel 228 ITR 253 held that incentive subsidy received is a revenue receipt – based upon facts of that case [decision was not contrary to earlier decision]
 - ❑ Rectification based upon such subsequent decision held to be invalid since
 - ❑ Examination of nature of subsidy cannot be undertaken u/s. 154
 - ❑ It amounts to change of opinion

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Subsequent SC Decision:

- ❑ Universal Capsule (P) Ltd. 2010 TIOL 497 (Mum)(ITAT) –
After considering decision of Mepco (SC) held that '*When HC lays down principle of law which can be applied without verifying its applicability, the principles of law are applicable. But, in cases where facts have to be examined to verify whether law laid by HC applicable or not, 154 not possible.*'
- ❑ If assessee does not challenge assessment order in which AO has refused relief by filing an appeal, assessment order becomes final & rectification application u/s. 154 cannot be made on basis of a subsequent decision of HC or SC. [Krone Communication Ltd. (2010) 41 DTR 206 (Kar.)]

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Subsequent jurisdictional HC Decision:

- ❑ Rectification possible on basis of subsequent jurisdictional HC judgements [CIT vs. Smt. Aruna Luthra 170 CTR 73 (P&H)(FB)]
- ❑ Even if view of other HCs is contrary, rectification possible based on subsequent decision of jurisdictional HC:
 - ❑ CIT vs. Ram Lal Babu Lal 234 ITR 776 (P&H)
 - ❑ Omega Sports & Radio Works 134 ITR 28 (All)
 - ❑ Ramjibhai Hirjibhai & Sons 110 ITR 411 (Guj)
 - ❑ Sunil Kumar 212 ITR 238 (Raj)

Contrary Decisions –

- ❑ Rajesh Talkies 220 ITR 107 (P&H)
- ❑ V.R. Sonti 117 ITR 838 (Cal)
- ❑ Orient Paper Industries Ltd. 208 ITR 158 (Cal);
- ❑ T.N. Viswanatha Reddy 190 ITR 266 (AP)

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Subsequent non-jurisdictional HC Decision:

- ❑ Decision of HC of other state is not binding precedent for Courts or authorities outside its territorial jurisdiction. So, rectification u/s. 154 not possible even though no other decision available. [Consolidated Pneumatic Tool Co. (I) Ltd. vs. CIT 209 ITR 277 (Bom)]

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Rectification of order which is subject matter of appeal or revision :

- Matter considered and decided in appeal or revision: Rectification can be done only by the authority passing appeal or revision order
- Other matter (not subject to appeal or revision): Rectification can be done by the authority passing original order
- Pending appeal or revision, rectification can be done for any matter by the authority passing original order
- Even if revision proceeding is dropped, ITO has no power to rectify since matter is considered – Shivalik Hatcheries P. Ltd. vs. JCIT – Chandigarh ITAT

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Notice and Opportunity of being heard:

- Necessary if proposed rectification is prejudicial to the assessee
- When AO in his notice of initiating rectification proceeding mentions a particular mistake but in order he rectifies any other mistake never mentioned in notice his order would be invalid. [Hakim Uddin Khan 40 ITR 402]
- Amendment u/s. 155, if prejudicial to the assessee, also requires notice to be served and opportunity to be given – CIT vs. Tej Kumar Sethi (HUF) 143 ITR 757 (MP)

At whose instance:

- Suo-moto by IT authority
- Upon an application by assessee
- Upon an application by AO in respect of CIT(A)'s order

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Results of proceedings:

- Order in writing
- Notice of demand u/s. 156 if sum is payable
- Granting of refund if it becomes due
- Power to rectify conferred upon ITO is to ensure that injustice to parties may be avoided. Exercise of power is not discretionary - L. Hirday Narain v. ITO 78 ITR 26 (SC)
- Recovery proceedings could not be taken till the disposal of rectification application – Sultan Leather Finishers (P) Ltd. vs. ACIT 191 ITR 179 (All)
- Rectification order is appealable u/s. 246A – if agreed for rectification, not appealable – Cochin Malabar Estates 180 ITR 152
- No express remedy against inaction by AO upon rectification application

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Fresh claim by assessee in rectification:

- Precise factual material must be contained in the record in order to enable ITO to discharge his obligation to grant relief which was not claimed earlier before ITO or AAC - Anchor Pressings (P) Ltd. vs. CIT 161 ITR 159 (SC)
- Case not decided on the basis that the assessee had failed to claim relief in his return or at the time of assessment. But since particulars for relief were not on record and hence not mistake apparent from record – Chokshi Metal Refinery 107 ITR 63 (Guj)
- AO cannot entertain claim for deduction otherwise than by filing revised return – Goetze (India) Ltd vs CIT 284 ITR 323 (SC)
- One has to look into AO's duties to allow proper relief rather than his power to entertain any claim made otherwise than by way of revised return – Chicago Pneumatic 15 SOT 252 (Mum)

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Fresh claim by assessee in rectification:

- Decisions wherein claim was allowed:
 - CIT vs. K.N. Oil Industries 142 ITR 13 (MP)
 - West Bengal State Warehousing Corp. vs. CIT 157 ITR 149 (Cal)
- Decisions wherein claim was not allowed:
 - Mrs. Frenzy S. Contractor 63 TTJ (Mum)(TM) 758
 - Punjab State Co-op. Supply & Marketing Federation Ltd v. 173 Taxman 15 (P&H)
- Where full materials are not on record for fresh claim, revision u/s. 264 is only remedy provided time limit not expired & matter is not subject matter of appeal.

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Fresh claim by assessee in rectification:

- Errors committed by assessee in return which is processed u/s. 143(1)(a) with such errors – can it be rectified u/s. 154 upon application by the assessee:
 - Decisions against:
 - Pawan Kumar Aggrawal vs. ACIT 146 ITD 787 (Del)
 - Jhansi Development Authority vs. DCIT 60 SOT 97 (Agra)
 - Harinder Singh vs. ITO 49 SOT 464 (Chandigarh)
 - Decisions in favour:
 - Shrikant Real Estates (P.) Ltd. vs. ITO 140 ITD 155 (Mum) → the present system of e-filing of return is totally dependent upon the usage of software and there are possibilities of entering incorrect data without having the expert knowledge.

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When mistake is rectifiable u/s. 154, whether AO can resort to other remedies?:

- Reopening of assessment u/s. 147 to rectify an error or mistake which can be rectified u/s. 154 is invalid. When more than one remedies are available, the remedy which causes least prejudice to the assessee must be adopted - Hindustan Unilever vs. DCIT 38 DTR 91 (Bom)
- For retrospective amendment rectification under section 154, as well as reopening of assessment under section 147 are permissible as they are not mutually exclusive – Ester Industries Ltd. vs. UOI 39 taxmann.com 107 (Delhi)
- When specific remedy has been provided u/s. 155, then the AO cannot invoke provisions of reopening u/s. 147 – CIT vs. Shyama Charan Gupta 261 ITR 362 (All), Sakthi Finance Ltd. vs. ACIT 41 DTR (Chennai)(Trib) 407

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Time-Limits:

- Time limit for rectification is 4 years from end of F.Y in which order sought to be amended was passed.
- Once application filed in time, it cannot be rejected on the ground of period of limitation [Sree Ayyanar Spinning & Weaving Mills Ltd. vs. CIT 301 ITR 434 (SC)]
- Time limit for passing rectification order if assessee makes application is 6 months from end of month in which application is received - either making rectification or refusing the claim.
- For time limit of rectification, word used is “order” sought to be amended. Since intimation is not an order, no time limit for rectification of intimation.

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Time-Limits:

- ❑ Time limit vis-à-vis old intimations u/s. 143(1) not served:
Liberty Pesticides & Fertilizer Ltd. vs. ACIT 144 ITD 49 (Ahm):
“Where intimation issued under section 143(1) on 30-6-1999 had not been served on assessee and assessee in March, 2006 having come to know that credit of TDS amount was not properly being granted to it made an application under section 154 on 20-3-2006 seeking rectification of impugned intimation, Assessing Officer was wrong in dismissing rectification application on ground of limitation prescribed under section 154(7)”

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RECTIFICATION – SEC. 154

Time-Limits:

For rectification from when to start counting Time Limit of 4 years when -

Reassessment subsequent to original order

Original order is rectified

Original order is subject-matter of appeal

RECTIFICATION – SEC. 154

Time-Limits - case when Reassessment Order passed:

When after assessment u/s. 143(3), if reassessment u/s. 147 is done then time limit for rectification will be reckoned from date of original assessment or from date of reassessment?

- One view – in respect of matters not subject to reassessment from date of original order & matters subject to reassessment from the date of reassessment order:
 - Standard Chemicals & Co. (P) Ltd. vs. ITO 110 ITR 832 (All)
 - Mettur Chemical & Industrial Corp. Ltd. vs. CIT 110 ITR 822 (Mad)
- Another view – entire original order ceases to exist and time-limit from the date of reassessment order:
 - Saran Engineering Co. Ltd. vs. CIT 143 ITR 765 (All)
 - CIT vs. Mysore Iron & Steel Ltd. 157 ITR 531 (Kar)

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RECTIFICATION – SEC. 154

Time-Limits - case when Reassessment Order passed:

When after assessment u/s. 143(3), if reassessment u/s. 147 is done then time limit for rectification will be reckoned from date of original assessment or from date of reassessment?

- SC approved another view in Hind Wire 212 ITR 639
- However, in the context of S. 263, the first view as approved by SC in Alagendran Finance Ltd. 293 ITR 1

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Time-Limits - case when order rectified once:

Decision of Hind Wire Industries - 212 ITR 639 (SC):

- Original Order rectified within 4 years time limit
- Subsequent rectification on an issue other than that of 1st rectification - time limit of 4 yrs to be taken from rectified order and not from original order.
- SC treated reassessment order & rectified order on same footing
- For reassessment cases, rectification time limit from reassessment order since new order replaced original.
- SC relied on cases wherein effect of reassessment orders stated.
- Contrary: **Kothari Industrial Corp. Ltd - 230 ITR 306 (Kar)**

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Time-Limits - case when Appellate Order passed:

- Time limit from date of appellate order and not from original assessment order, even though matter to be rectified was not subject matter of appeal - CIT vs. Tony Electronics 320 ITR 378 (Del)(HC) relying upon SC decision in case of Hind Wire
- Contrary Views - Doctrine of merger not applicable to matters which are not subject matter of appeal
 - Poonjabhai Vanmalidas 114 ITR 38 (Guj)
 - Sakseria Cotton 124 ITR 570 (Bom)
 - CIT vs. Shaw Wallace & Co. Ltd. 199 ITR 105 (Cal)
- In case of revision u/s. 264, original order merges only to the extent revised & not entirely & time-limit from original order in respect of issues not revised – Saran Engineering 143 ITR 765

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- ❑ Intimation u/s. 143(1) **cannot** be rectified u/s 154 after issue of notice u/s 143(2) – Arihant Industries 255 ITR 458 (P&H).
- ❑ Mandatory levy – interest u/s. 234A, B or C not charged can be rectified u/s. 154 – ITO vs. Prabhu K. Chandani 4 SOT 190 (Mum)
- ❑ Discretionary levy – if a particular levy is discretionary, non-levy of the same cannot be rectified u/s. 154 - CIT vs. Himaliya Drug Co. 135 ITR 368 (All)
- ❑ Point which is not examined on fact or in law cannot be dealt with as mistake apparent on the record - CIT v. Hero Cycles (P) Ltd. 228 ITR 463 (SC)
- ❑ Rectification at the behest of superior officers not permissible - Rajputana Mining Agencies v. ITO 118 ITR 585 (Raj.); ITO v. Eastern Scales (P.) Ltd. 115 ITR 323 (Cal.)

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- ❑ Fresh determination of facts should not be involved - Oil India Ltd. v. CIT 183 ITR 412
- ❑ Rectification cannot be based on change of opinion – Mrs. Khorshed Shapoor Chenai vs. ACED 122 ITR 21 (SC)
- ❑ In a proceeding for rectification, the assessing authority cannot change his opinion merely relying upon a circular which although available but not noticed by the assessing authority by the date of the order - Bhagathram and Sons (111 STC 39)
- ❑ Subsequent notification can give rise to mistake apparent from record – Circular No. 725 dated 16.10.1995
- ❑ Time limit is waived for rectifying penalty orders due to cancellation or annulment of the assessment orders – Circular NO. 87 dated 19.6.1972

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OTHER AMENDMENTS – SEC. 155

Section	Situation	Time Limit
155(1A)	Mistake in assessment of partners due to firm's assessment [disallowance of remuneration u/s. 40(b)]	Within 4 years from end of FY in which final order of firm passed
155(2)	Mistake in assessment of members due to assessment of AOP/BOI [with respect to share of members in income of AOP/BOI]	Within 4 years from end of FY in which final order of firm passed
155(4)	Recomputation of income for succeeding years because of recomputation of loss or depreciation u/s. 147	Within 4 years from end of FY in which order u/s. 147 passed

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OTHER AMENDMENTS – SEC. 155

Section	Situation	Time Limit
155(7B)	Deemed capital gain u/s. 47A	Within 4 years from end of PY in which capital asset is converted into stock or in which holding co. ceases to have 100% shareholding in subsidiary
155(11)	Amendment to exclude capital gain not chargeable to tax by virtue of Section 54H	Within 4 years from end of PY in which compensation was received by the assessee

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OTHER AMENDMENTS – SEC. 155

Section	Situation	Time Limit
155(15)	Recomputation of capital gains based on value adopted by SVA u/s 50C subsequently revised in any appeal or revision u/s. 50C(2)(b)	Within 4 years from end of PY in which order revising value was passed in that appeal or revision.
155(16)	Reduction of normal or enhanced compensation received and taxable u/s. 45(5) as per Court or Tribunal order	Within 4 years from end of PY in which such order reducing compensation was passed

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OTHER AMENDMENTS – SEC. 155

Section	Situation	Time Limit
155(17)	Withdrawal of deduction u/s. 80RRB on account revocation of patent or exclusion of name of assessee from patent register either by Court or Controller	Within 4 years from end of PY in which the Court or Controller has passed the order

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OTHER AMENDMENTS – SEC. 155

- ❑ For rectification u/s. 155(1A), immaterial whether on day of reassessment of firm or order u/s. 155, partner continued in partnership or not. [M.R.Jayaram 147 ITR 807 (Mad)]
- ❑ U/s. 155(4) only adjustments of losses referred to in S. 72 to 74A in later year consequent upon reassessment of earlier year can be made and no further adjustment can be made in the figure of deduction u/s. 80-I as result of such adjustment of losses – Indian Farmers Fertilisers Co-Op Ltd. vs. JCIT 105 ITD 33 (Del)

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