

[Annul vs. Set Aside: Judicial Interpretations & Legal Implications](#)

Background: The terms "annul" and "set aside" are often used interchangeably in legal contexts, but they have distinct meanings. This article aims to clearly differentiate between the two.

[Definition of "Set Aside"](#)

According to the Black's Law Dictionary, the term "set aside" means:
QUOTE "to reverse, vacate, cancel, annul or revoke a judgment, order, etc." **UNQUOTE**

[Definition of "Annul"](#)

According to the Black's Law Dictionary, "annul" means:

QUOTE "To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. To cancel; destroy; abrogate.

To annul a judgment or judicial proceeding is to deprive it of all force and operation, either ab initio or prospectively as to future transaction." **UNQUOTE**

[Definition of "Annulment"](#)

According to the Black's Law Dictionary, "annulment," means:

QUOTE "To nullify, to abolish, to make void by competent authority. An "annulment" defers from a divorce in that a divorce terminates a legal status whereas an annulment establishes that a marital status never existed." **UNQUOTE**

[Judicial Interpretations:](#)

In **ITO vs. Kalyan Kumar Roy Trust 75 ITD 36 (Cal.) (TM)**, the Hon. ITAT clarified that while both actions effectively "nullify" the original assessment order, the key difference lies in the scope for revival. An annulled assessment or order cannot generally be revived, while a set-aside assessment can be redone if specific directions are given.

This distinction was earlier also embedded in Section 251(1)(a) of the Income-tax Act, 1961, which granted appellate authorities the power to annul or set aside assessments.

An annulled assessment typically results from lack of jurisdiction—whether pecuniary, territorial, or subject-matter. In such cases, no

fresh assessment order can be passed. However, if an assessment is set aside due to procedural irregularities or incomplete inquiries, the appellate authority may direct the Assessing Officer (AO) to make a fresh assessment after curing the irregularity.

Practical Implications of Setting Aside Without specific Directions:

In the absence of clear directions to redo an assessment, a "set aside" order can have the same effect as an annulment.

In **Fu Sheen Tannery v. ITO 262 ITR 456**, the Hon. Calcutta High Court held that setting aside an assessment without directions for a fresh assessment amounted to an annulment.

Likewise, the ITAT Chennai, in **DCIT v. Jaya Publications 123 ITD 53**, held that setting aside an assessment without specific directions renders the assessment void, preventing the AO from taking any further action.

Conclusion:

While both annulment and setting aside nullify an assessment or order, the difference lies in the appellate authority's directions and the possibility of further action.

An annulled assessment is void, with no scope for revival, whereas, a set-aside assessment, can be revived if specific directions are provided. In cases where no such directions are given, the set-aside order effectively serves as an annulment, extinguishing the AO's jurisdiction to proceed any further.

■ ■

CA Milind Wadhvani

Ex-Young Professional ITAT (Income Tax Department)

DISA(ICAI), FAFD(Cert.), CCCA(Cert.), Research (Ph.D.) Scholar

Mobile +91 9826273333

Mail ID: - MILIND.WADHWANI20@GMAIL.COM