

Re - Assessment under Income Tax Act – Provisions & how to handle under IT Act, 1961

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What is Assessment Procedure ?

- Every Person, who is earning, which is chargeable to tax, has to furnish his return of income to the Income Tax Department. ... The process of examination of the return by the Income Tax Department .
- Is called "Assessment"

- Assessment simply means determination of Tax
- It is Procedure for determining of Tax Liability and **Recovery of Tax**
- This is determined as per Taxation law existing in that particular Assessment Year



How Much did you earn ?

12/19/2021

File your ROI

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Checking your ITR by Dept

Various Sections under which ITR is filled



14-59 - Computation of Income

207-209 – Estimation of Income & payment of Advance Tax

140 (A) - Self Assessment

139 (1) - Normal Return

139 (3) – Return of Loss

139 (4) – Belated Return

139 (5)–Revised Return

142(1) – Directions by AO to file the ROI

148 – Re-assessment of Income U/s 147 in compliance provisions u/s 148A

153 A/C – Block Assessment in case of Action U/s 132 / (From 4/2021 U/S 147)



Assessee / Tax Payer



IT - DEPARTMENT

Various Sections of Assessment under Income Tax Act Less than 1% of the return filed



140 (A) - Self Assessment



143 (1)- Summary Assessment



143 (3) - Regular Assessment

→ Limited Scrutiny
→ Complete Scrutiny



144 – Best Judgement



147 - Re- Assessment



153 (A)/ 153(C) Block Assessment (up to March 2021)
From 01.04.2021 will be u/s 147

Self-Assessment Tax Payable- Section 140A

| | | |
|---|------|------|
| Find out income-tax, surcharge and health and education cess as per return of income | | XXXX |
| Add: Interest and fee— | | |
| Interest under section 234A for late submissions of return of income* | XXXX | |
| Interest under section 234B for non-payment or short payment of advance tax* | XXXX | |
| Interest under section 234C for non-payment or short payment of different instalments of advance tax* | XXXX | |
| Fee under section 234F for late submission of return of income | XXXX | XXXX |
| Total tax, interest and fee | | XXXX |
| Less: Advance tax, tax deducted at source, tax collected at source, MAT credit under section 115JAA, alternate minimum tax credit under section 115JD and relief under section 90/90A/91A | | XXXX |
| Self-assessment tax payable under section 140A | | XXXX |

Self-Assessment - Section 140A

- ❑ **In case of payment of shortfall of tax**
 - ❖ first be adjusted towards fee and
 - ❖ thereafter towards interest payable and
 - ❖ the balance, if any, shall be adjusted towards tax payable.

- ❑ After assessment, any amount paid under this section shall be deemed to have been **paid towards such assessment**.
- ❑ If an assessee fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to **be an assessee in default**.
- ❑ A return furnished without paying self-assessment tax & interest, if any, shall be treated as **defective return**.

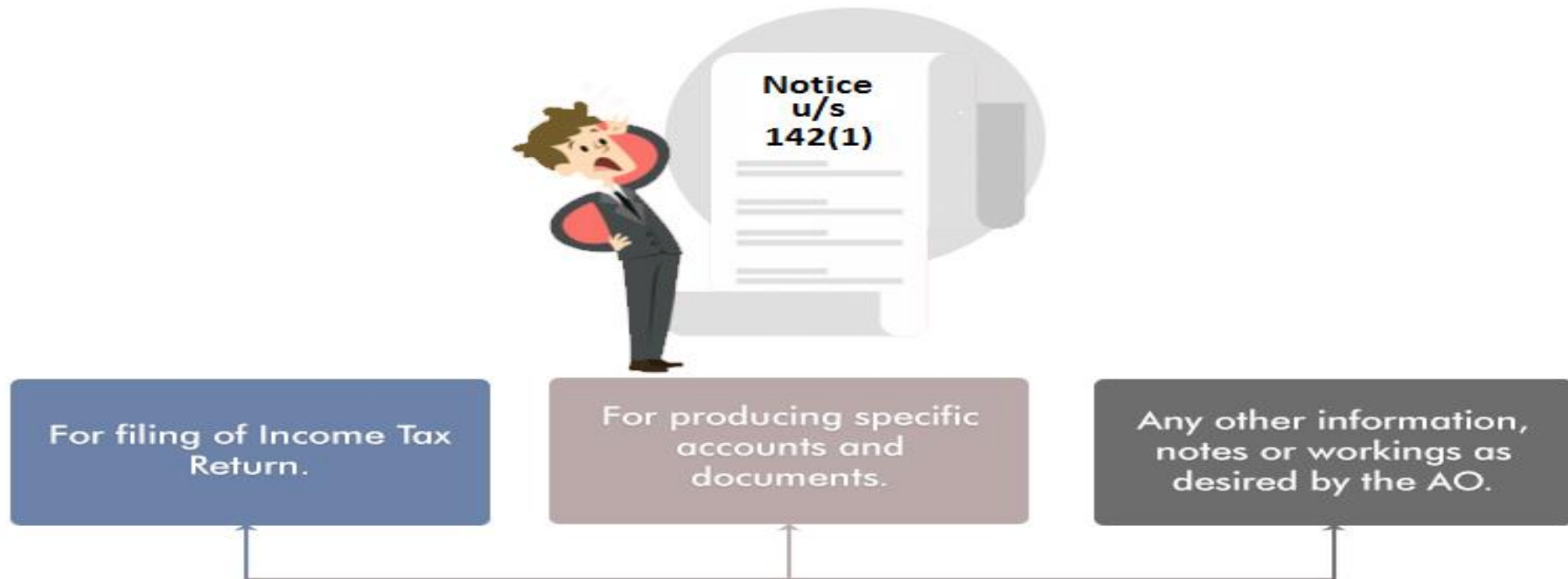
INTIMATION OR ASSESSMENT BY INCOME-TAX DEPARTMENT

- ❑ 1. Intimation u/s 143(1);
- ❑ 2. Scrutiny Assessment u/s 143(3);
- ❑ 3. Best Judgment Assessment u/s 144;
- ❑ 4. Income Escaping Assessment u/s 147

INQUIRY BEFORE ASSESSMENT

- ❑ 1. Issue of notice to the assessee [Sec. 142(1)]
 - ❖ - to submit a return [Sec. 142(1)(i)]
 - ❖ - to produce accounts, documents etc. [Sec. 142(1)(ii) & (iii)]
- ❑ 2. Making inquiry [Sec. 142(2)]
- ❑ 3. Giving direction to get books of account audited [Sec. 142(2A) to (2D)]
- ❑ 4. Opportunity of being heard [Sec. 142(3)]
- ❑ 5. Estimate by Valuation Officer in certain cases [Sec. 142A]

INQUIRY BEFORE ASSESSMENT



INQUIRY BEFORE ASSESSMENT

- ❑ Issue of notice to the assessee [Sec. 142(1)]
- ❑ For making assessment, the Assessing Officer may serve a notice on any person -
 - ❖ • who has not submitted a return within time limit allowed u/s 139; or
 - ❖ • before the end of relevant assessment year
- ❑ Such notice may require the Assessee to submit the Return of Income [Sec. 142(1)(i)]:

Tax Point: In case assessee has not furnished the return of income, it is not mandatory for the AO to issue notice u/s 142(1)(i) if he wishes to make best judgment assessment.

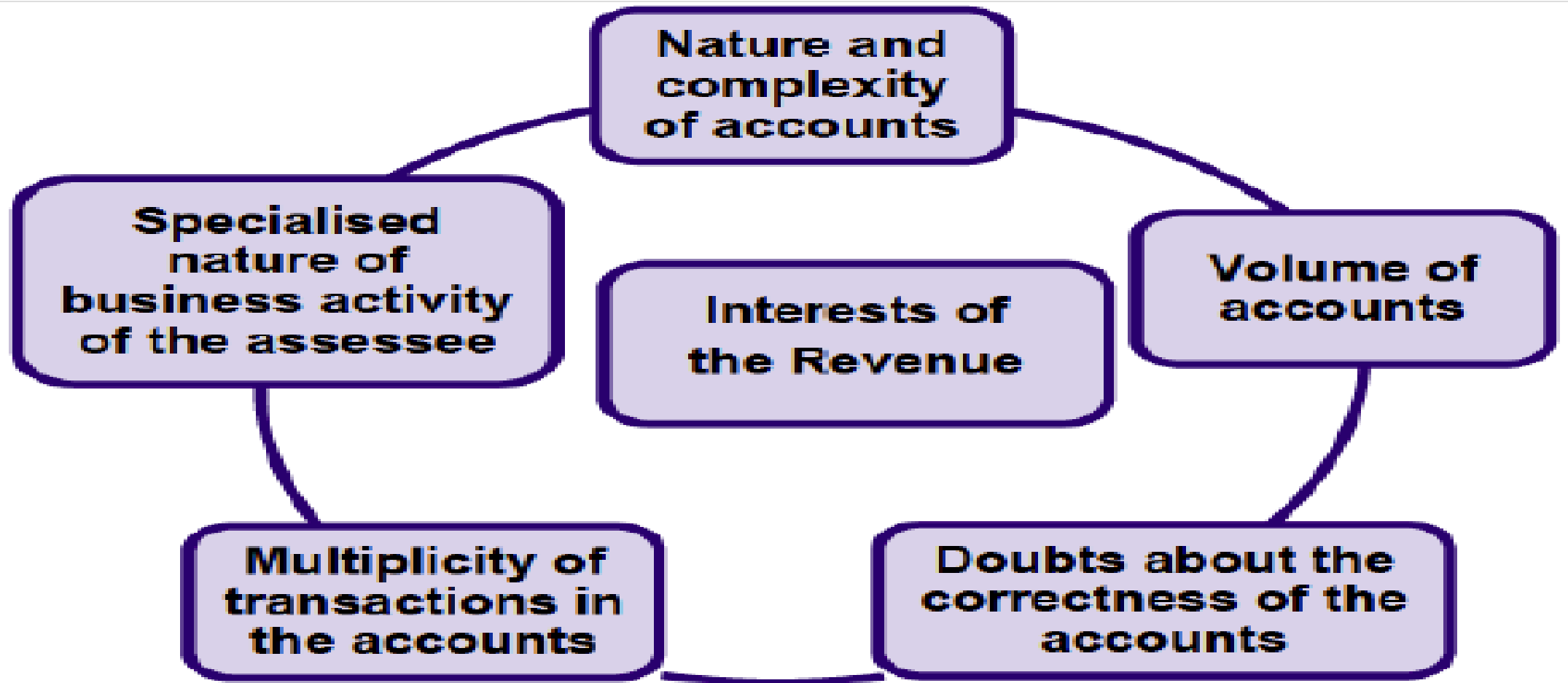
INQUIRY BEFORE ASSESSMENT

- ❑ **Notice to produce accounts, documents etc. [Sec. 142(1)(ii)]:**
 - ❖ **Exception:** AO shall not require the production of any accounts pertaining to a period more than 3 years prior to the previous year.
- ❑ **Notice to furnish information [Sec. 142(1)(iii)]:**
 - ❖ AO may require the assessee to furnish in writing and liabilities of the assessee, whether included in the accounts or not.
 - ❖ Prior approval of the JCIT shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts.
 - ❖ **Tax point:** Notice u/s 142(1)(i) can be served only if return has not been submitted whereas notice u/s 142(1)(ii) & (iii) can be served whether return has been furnished or not.

INQUIRY BEFORE ASSESSEMENT

- ❑ **Making inquiry [Sec. 142(2)]**
- ❖ **For the purpose of obtaining full information in respect of the income (or loss)**
- ❑ **Tax point: U/s 142(1) Assessing Officer collects information from the assessee, however u/s 142(2) Assessing Officer has the power to collect information from any source.**
- ❑ **Giving direction to get books of account audited [Sec. 142(2A) to (2D)]**
- ❖ **AO to provide reasonable opportunity to assessee**
- ❖ **May direct the assessee to get his accounts audited if he is of the opinion that**
- ❑ **.**

Audit under section 142



INQUIRY BEFORE ASSESSEMENT –

- ☐ Such direction can be issued in addition to Audit made u/s 44AB or any other law for the time being in force
- ☐ **Notes:** Prior approval of Pr. CCIT / Pr. CIT / CIT / Commissioner
 - ❖ For conducting special audit.
 - ❖ Nomination of such auditor.
- ☐ Such order can be issued at any stage of the proceedings before the Assessing Officer but not after the completion of assessment/reassessment.
- ☐ **Time Limit for audit report:** not exceed 180 days from the date on which such direction received by the assessee
- ☐ **Form of audit report:** Form 6B
- ☐ **Audit fees:** The audit fees and audit expenditure shall be determined by Dept.

INQUIRY BEFORE ASSESSEMENT

❑ Consequences of failure to get books of account audited:

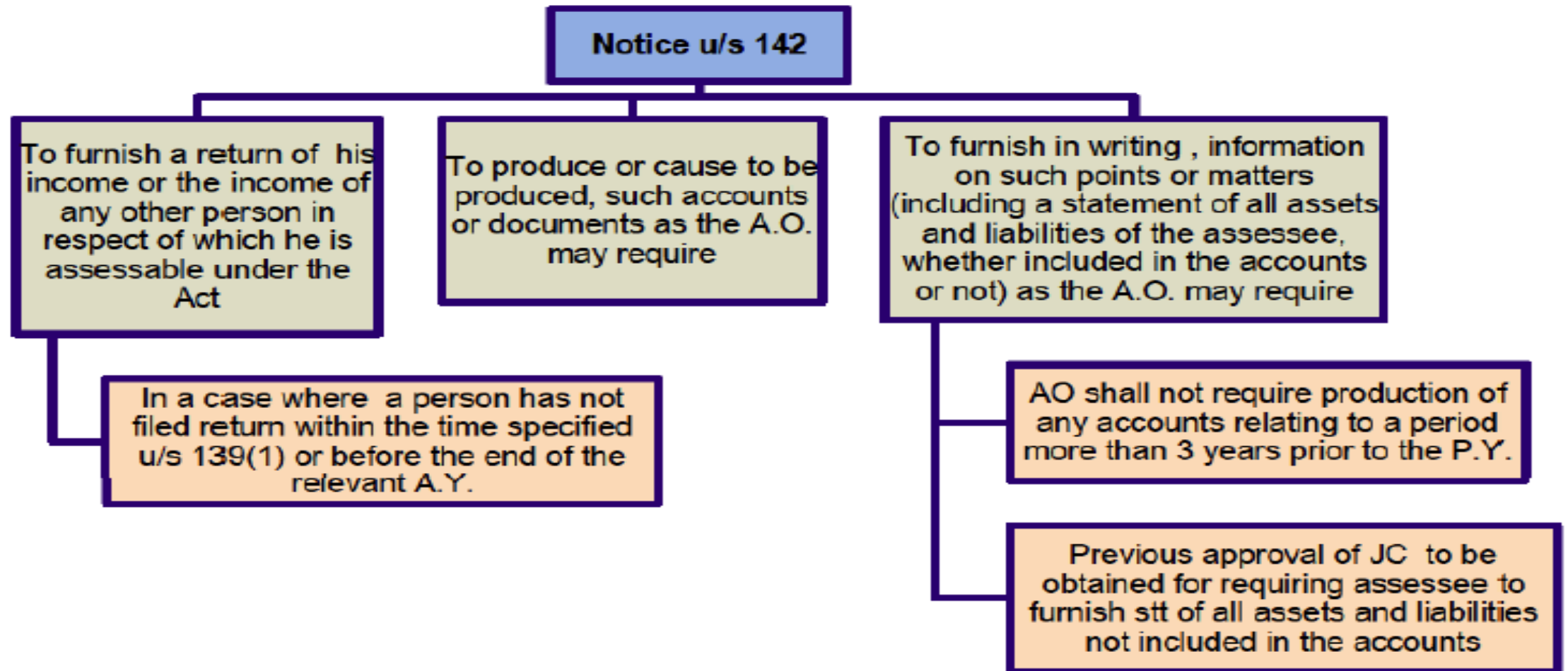
In case assessee fails to get books of account audited, it -

- ❖ • will be liable to Best Judgment Assessment u/s 144; and**
- ❖ • attracts penalty and prosecution.**

❑ Penalty imposed after providing opportunity of being heard [Sec. 142(3)]

- ❖ The assessee must be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry u/s 142(2) or any audit u/s 142(2A) and is proposed to be utilised for the purpose of the assessment.**

Note: Sec. 142(3) shall not be applicable in case of assessment u/s 144.



Note - It may be noted that the time-limit for completion of assessment under section 153(1) is 21 months/18 months/12 months, as the case may be, from the end of the assessment year in which the income was first assessable. Therefore, since assessment has to be completed within the said period, it appears that notice under section 142(1) should also be issued within that period.

INQUIRY BEFORE ASSESSEMENT

- ❑ **Estimation by Valuation Officer in certain cases [Sec. 142A]**
- ❖ The AO may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.
- ❖ AO may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

INTIMATION – u/s 143(1)

Intimation [Sec. 143(1):

- ❖ On the basis of return filed; or Regular assessment
- ❖ • On the basis of further evidence gathered by him [Scrutiny Assessment u/s 143(3)]
- ❖ • On the basis of best of his judgement [Best Judgement Assessment u/s 144]

INTIMATION [Sec. 143(1)]

- ❑ Where a return has been made u/s 139 or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely:—
 - ❖ a. the total income or loss shall be computed after making the following adjustment:
 - ❖ (i) any arithmetical error in the return;
 - ❖ (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

INTIMATION – u/s 143(1)

- ❖ (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished after the due date;
- ❖ iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
- ❖ v. disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return is furnished after the due date; or
- ❑ Such adjustments shall not be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode.
- ❑ The response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within 30 days of the issue of such intimation, such adjustments shall be made.

INTIMATION – u/s 143(1)

- ☐ **b. the tax, interest and fee, if any, shall be computed on the total income computed above;**
- ☐ **c. the sum payable by (or the amount of refund due to), the assessee shall be determined after adjustment of the tax, interest and fee, if any, by any TDS, TCS, advance tax paid, any relief, tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee;**
- ☐ **d. an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee; and**
- ☐ **e. the amount of refund due to the assessee in pursuance of the determination shall be granted to the assessee.**

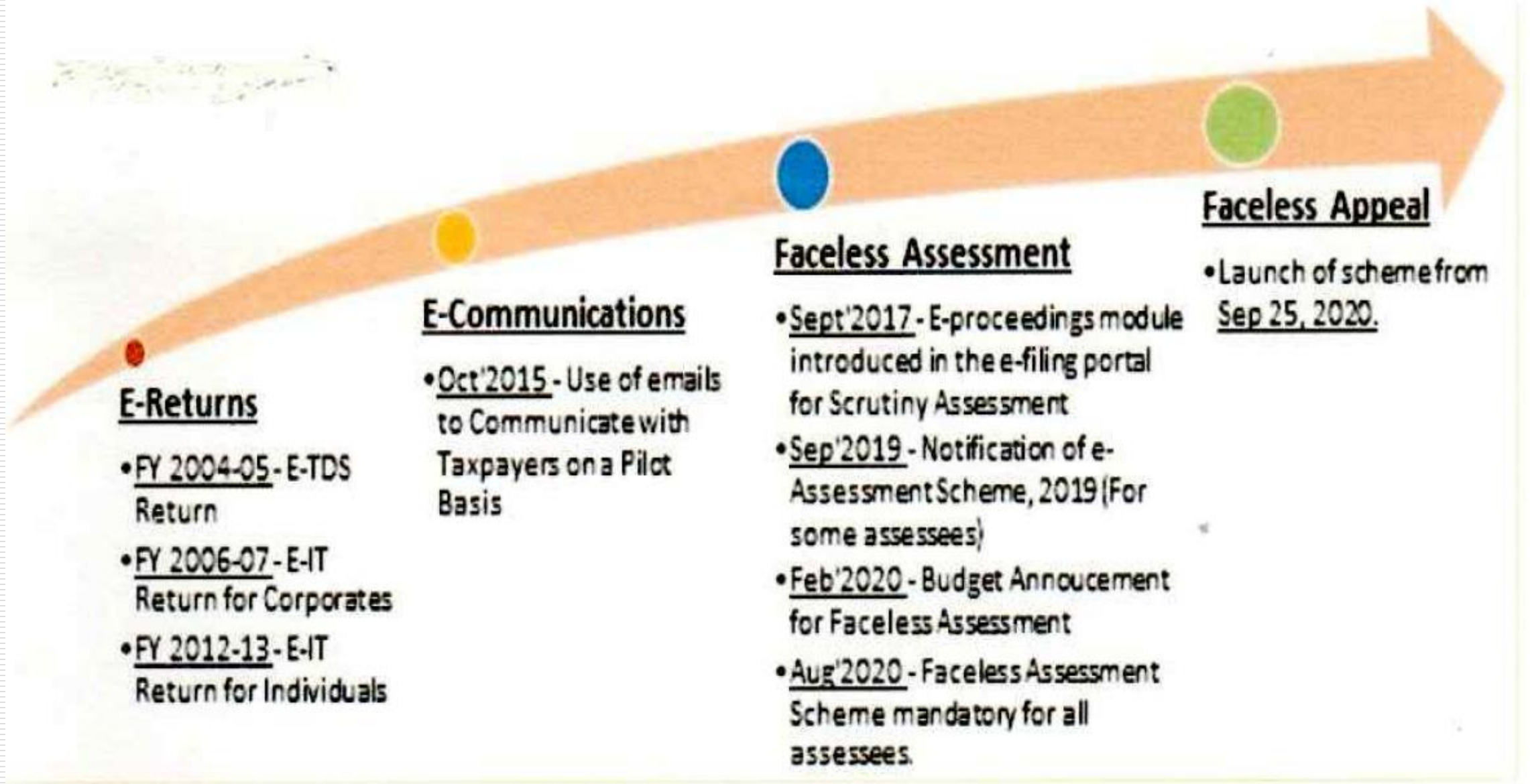
INTIMATION – u/s 143(1)

- ❑ f. An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest or fee is payable by, or no refund is due to, him.
- ❑ **Time limit for intimation:**
 - ❖ No intimation after the expiry of 1 year from the end of the financial year in which the return is made. (1 year from PY / 31st March of AY – FA 2021)
 - ❖ The period of limitation will run from the date of filing of latest revised return.
- ❑ **Notes: An incorrect claim apparent from any information in the return shall mean a claim, on the basis of an entry, in the return,—**
- ❑ (a) of an item, which is inconsistent with another entry of the same or some other item in such return;

INTIMATION – u/s 143(1)

- ❑ (b) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
- ❑ (c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;
- ❑ The acknowledgment of the return shall be deemed to be intimation where either no sum is payable by the assessee or no refund is due to him.
- ❑ In case, where refund becomes due to the assessee u/s 143(1):
 - ❖ with approval of Pr Commissioner / Commissioner may withheld if grant of the refund is likely to adversely affect the revenue.
 - ❖ **Time limit for intimation: 1 year from the end of the FY in which the return / revise return is made. (9 months as amended in FA 2021)**

❖ Filing of response to Notice.pdf



SCRUTINY ASSESSMENT u/s 143(3)

- ❑ AO considers it necessary to ensure that the assessee has not -
 - ❖ • understated his income; or
 - ❖ • declared excessive loss; or
 - ❖ • under paid the tax,
- ❑ he can make a scrutiny in this regard and gather such information and evidence as he deems fit.
- ❑ And on the basis of such information and evidence so collected, he shall
 - ❖ Pass an regular assessment order based upon such information / evidence collected .

SCRUTINY ASSESSMENT u/s 143(3)

☐ Conditions for scrutiny assessment

- ❖ • A return has been furnished u/s 139 or in response to a notice u/s 142(1); &
- ❖ • AO considers it necessary or expedient to ensure that the assessee has not understated his income, declared excessive loss or under-paid the tax.

SCRUTINY ASSESSMENT u/s 143(3)

- ❑ **Procedure to be followed**
- ❑ **Notice for scrutiny [Sec. 143(2)]** - requiring the assessee, on a date specified in the notice, to produce, or cause to be produced, any evidence on which assessee may rely, in support of the return.
- ❑ **Time limit of notice :** No notice shall be served on the assessee after the expiry of 6 months from the end of the financial year in which the return is furnished.

With effect from 13th August, 2020, the CBDT vide Notification No. 79/2020, dated 25.9.2020, authorized the Assistant Commissioner/Deputy Commissioner of Income-tax (National e-Assessment Centre) having his headquarters at Delhi, to act as the Prescribed Income-tax Authority for the purpose of this section i.e., section 143(2), in respect of returns furnished under section 139 or in response to a notice issued under section 142(1), for the purpose of issuance of notice under this section.

(3 months from AY 2021-22 – Finance Act 2021)

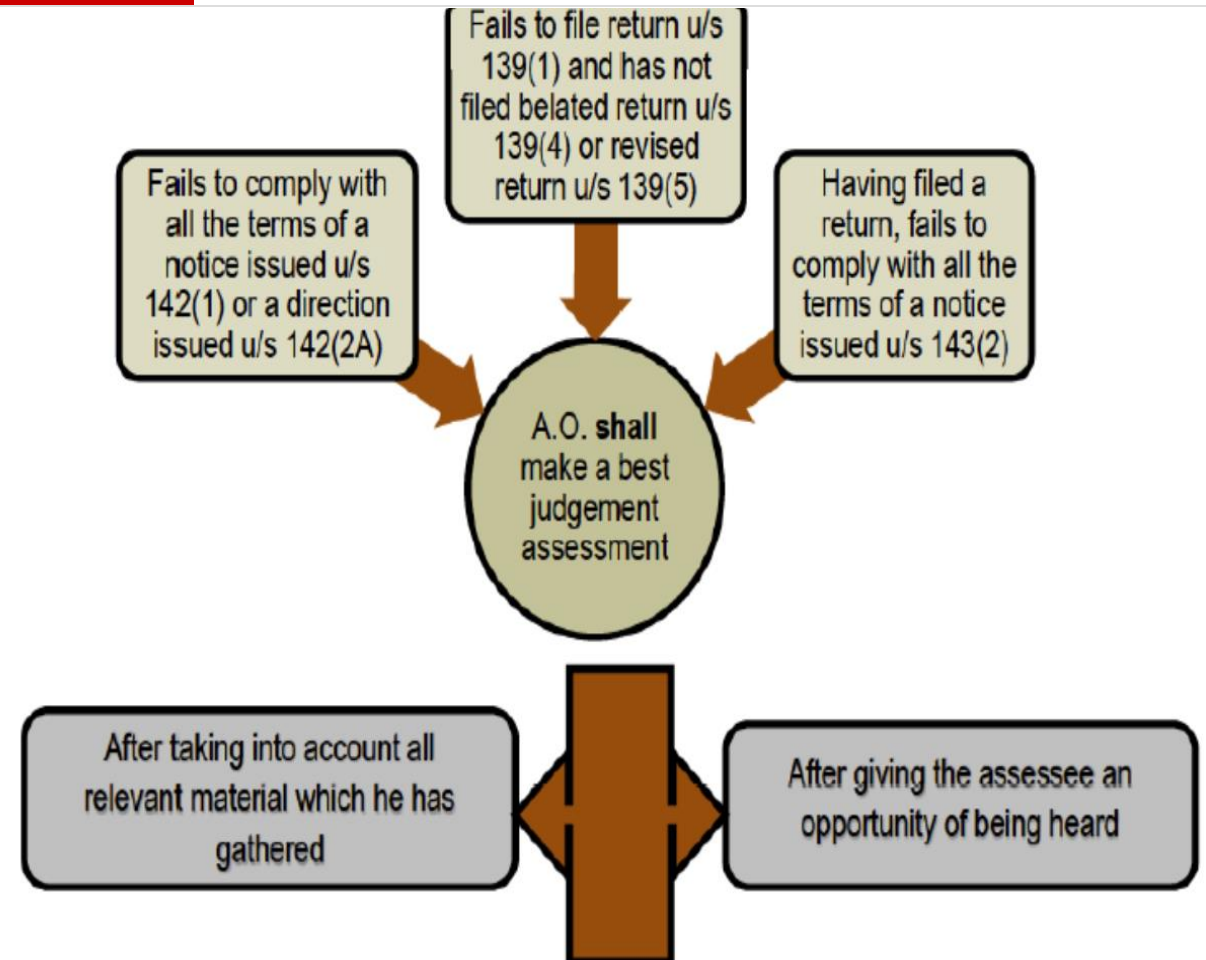
SCRUTINY ASSESSMENT u/s 143(3)

- ❑ **Order:**
- ❖ After collecting such information and hearing such evidence as the assessee produces in response to the notice u/s 143(2) and
- ❖ after taking into account all relevant materials, which the Assessing Officer has gathered;
- ❑ shall, by an order in writing, **make an assessment of the total income or loss of the assessee and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.**
- ❑ **Time limit for completion of scrutiny assessment: 12 months from the end of the relevant assessment year.**

BEST JUDGMENT ASSESSMENT [Sec. 144]

Situation in which it is applicable: -

- ❑ a. fails to file the return u/s 139(1), 139(4) or 139(5); or
- ❖ b. fails to comply with the terms of notice u/s 142(1); or
- ❖ c. fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or
- ❑ d. fails to comply with the terms of notice u/s 143(2), requiring his presence or production of evidence and documents.
- ❑ **It is not the discretionary power of the AO but mandatory in nature.**



❑ Best Judgement Assessment - Section 144

Opportunity of being heard

- ❖ The assessment u/s 144 can only be made after giving the assessee a reasonable opportunity of being heard.
- ❖ Such opportunity shall be given by serving a “**Show cause notice**” calling upon the assessee to show cause(s), on a date and time specified in the notice, why the assessment should not be completed to the best of judgment of the Assessing Officer.
- ❖ **Exception:** Such opportunity need not be given, where notice u/s 142(1) has already been issued.
- ❑ **Time limit for completion of assessment [Sec. 153(1)] - 12 months from the end of relevant assessment year (9 months from the end of the assessment year in which the income was first assessable, applicable from AY 2021-22.)**

REFERENCE TO DISPUTE RESOLUTION PANEL [Sec. 144C]

- ❑ **Who constitutes DRP:** A DRP comprise of three Pr. CIT or CIT constituted by the Board
- ❑ **Who can approach to DRP:** Following assesseees
 - ❖ A Foreign Company
 - ❖ Any person in whose case variation in returned income or loss arises as a result of order of Transfer Pricing Officer under section 92CA

Amendments in Finance Act 2020:

- ❖ When AO proposes any variation which is prejudicial to the interest of Assessee within the ambit of section 144C
- ❖ Expand the scope of said section by including a non-resident / foreign company in the definition of eligible assessee.

REFERENCE TO DISPUTE RESOLUTION PANEL [Sec. 144C]

☐ How to approach DRP:

- ❖ When AO proposes to make any variation in the income or loss declared in the return of income which is prejudicial to interest of Assessee.
- ❖ Forward the draft assessment order.
- ❖ Within 30 days of receipt either the accept or object to the draft order.
- ❖ Submit objection in Form No. 35A.

☐ What if no objection is filed: AO shall complete the assessment as per the draft assessment order if:

- ❖ He receives acceptance of the assessee for the proposed variations; or
- ❖ Assessee fails to file any objection for the proposed variation within 30 days

REFERENCE TO DISPUTE RESOLUTION PANEL [Sec. 144C]

☐ How DRP disposes the objection:

DRP shall consider the following for issuing direction:

- ❖ Draft order forwarded by the Assessing Officer
- ❖ Objections filed by the assessee
- ❖ Evidences furnished by the assessee
- ❖ Report of AO or Valuation Officer or TPO or any other authority, if any
- ❖ Records relating to draft order
- ❖ Evidences collected by or caused to be collected by it
- ❖ Result of enquiry made by or caused to be made by it
- ❖ May make further enquiry

REFERENCE TO DISPUTE RESOLUTION PANEL [Sec. 144C]

☐ Powers of DRP

- ❖ DRP may confirm, reduce or enhance the variations which were proposed in the draft assessment order.

☐ Time Limits -For issuing directions:

- ❖ Within 9 months from the end of the month in which draft assessment order is forwarded to the assessee.

☐ Time Limit -For completion of assessment:

- ❖ within one month from the end of the month in which such directions are received.
- ❖ No further opportunity of being heard to the assessee.

REFERENCE TO DISPUTE RESOLUTION PANEL [Sec. 144C]

- ❑ **Other Provisions related to DRP:**
- ❖ **Decision by majority:** If members of DRP differ in opinion on any point, then such point shall be decided according to the opinion of the majority of the members.
- ❑ **Binding nature of directions:** AO is bound to comply with every direction issued by the DRP.
- ❑ **Opportunity of Being Heard:** Opportunity of being heard to be provided to AO and Assessee as the case may be where directions to be issued by the DRP, are prejudicial to the interest
- ❑ **Appeal against assessment order:** Order passed by the AO u/S 143(3) or u/s 154, in conformity with the directions of the DRP - appealable to the ITAT .



RE-ASSESSMENT – U/S 147

Re- Assessment under Section 147.

- If the Assessing Officer has **reason to believe** that any income chargeable to tax has **escaped assessment** for any assessment year, he may, subject to the provisions of **sections 148 to 153**, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

Re- Assessment under Section 147.

- **Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located **outside India**, chargeable to tax, has escaped assessment for any assessment year:
- **Provided also** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.
- **Explanation 1 .—** Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Re- Assessment under Section 147.

- **Explanation 2.**—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—
 - a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;
 - b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

Re- Assessment under Section 147.

(c) where an assessment has been made, but—

- i. income chargeable to tax has been underassessed; or
- ii. such income has been assessed at too low a rate; or
- iii. such income has been made the subject of excessive relief under this Act; or
- iv. excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

Re- Assessment under Section 147.

- The AO must have reason to believe that income has escaped assessment & the same must be recorded before issuance of notice u/s 148.
- No action shall be taken after the expiry of **4 years** from the end of relevant AY if the assessment was made u/s 143(3), **unless** any income chargeable to tax has escaped assessment by reason of
 - the failure on the part of the assessee to file return u/s 139 or in response to a notice u/s 142(1) or section 148 **or**
 - to disclose fully and truly all material facts necessary for his assessment, for that assessment year
- No action shall be taken after the expiry of **16 years** where income in relation to any asset (including financial interest in any entity) **located outside India**, chargeable to tax, has escaped assessment for any assessment year.

Re- Assessment under Section 147.

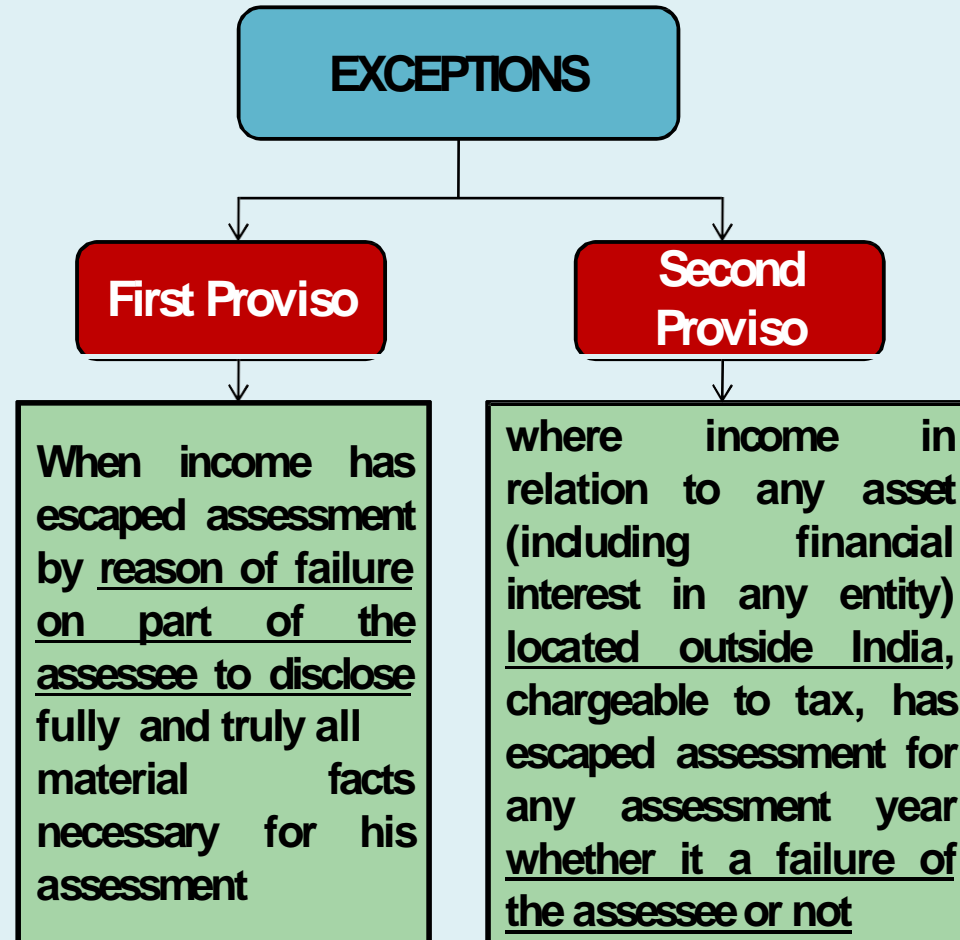
(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

- ❑ **Explanation 3.**—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.
- ❑ **Explanation 4.**—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

In Nutshell....

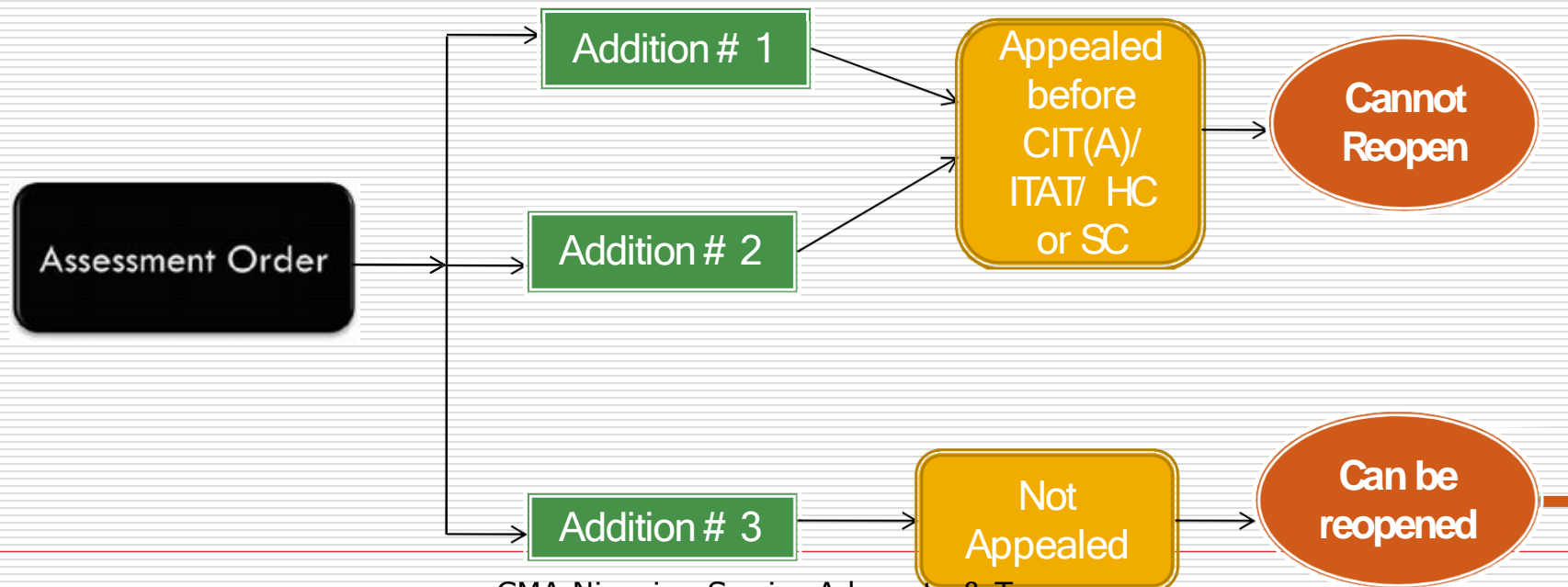
As a general rule, an assessment can be opened only within 4 years from the end of relevant AY **IE** AO has reasons to believe.

However, there are **two exceptions** to such rule →



Issues that are subject matter of Appeal....

Third proviso to Section 147 prescribes that AO cannot reopen the case to assess the income chargeable to tax escaped the assessment if that income is subject matter of an appeal or revision.



INCOME ESCAPING ASSESSMENT [Sec. 147]

Income chargeable to tax has escaped assessment: Example:

- ☐ 1. Where no return of income has been furnished by the assessee
- ☐ 2. Where a return of income has been furnished by the assessee but no assessment has been made
- ☐ 3. Where the assessee has failed to furnish a report in respect of any international transaction which he was so required u/s 92E;
- ☐ 4. Where an assessment has been made, but—
 - ❖ • income chargeable to tax has been under-assessed; or
 - ❖ • such income has been assessed at too low a rate; or
 - ❖ • such income has been subject to excessive relief under this Act; or
 - ❖ • excessive loss or depreciation allowance or any other allowance under this Act has been computed.

INCOME ESCAPING ASSESSMENT [Sec. 147]

Income chargeable to tax has escaped assessment: **Example:**

-
- ❑ 5. Where information / document received u/s 133C(2)
 - ❖ income exceeds exceeds the maximum amount not chargeable to tax,
 - ❖ the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.
 - ❑ 6. Where a person is found to have any asset (including financial interest in any entity) located outside India.

INCOME ESCAPING ASSESSMENT [Sec. 147] – Time limit of Notice – Upt AY 2021-22

Time limit for notice [Sec. 149]

Notice u/s 148 can be issued subject to the following time limit—

| Time limit for issue of notice | Size of escaped income | Person authorised to issue notice |
|--|---------------------------------|---|
| Where assessment has already been completed u/s 143(3) or 147 | | |
| Upto 4 years from the end of the relevant assessment year | Any amount | Any Assessing Officer with the permission of Joint Commissioner. |
| Beyond 4 years and upto 6 years from the end of relevant assessment year. | ₹ 1,00,000 or more | Assessing Officer after approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. |
| Where assessment has not been completed u/s 143(3) or 147 | | |
| Upto 4 years from the end of relevant assessment year. | Any amount | Any Assessing Officer with the permission of Joint Commissioner. |
| Beyond 4 years and upto 6 years from the end of relevant assessment year. | ₹ 1,00,000 or more | Assessing Officer after approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. |
| If the person on whom a notice u/s 148 is to be served, is a person treated as the agent of a non-resident u/s 163 | | |
| Up to 6 years from the end of relevant assessment year. | Escaped income is of any amount | Assessing Officer |
| <i>Taxpoint: The above time limit is for issuance of notice and not for service of notice. If the notice is issued within the above time limit but served to the assessee after the above time limit, shall be a valid notice.</i> | | |

PROCEDURE IN BRIEF

Examination of the information by the A.O

Formation of Belief

Recording of Reasons

Issuance of Notice u/s 148

Filing of Return

**Obtaining copy of Reasons
Recorded**

**Filing objections by the
Assessee and Disposal
of Objections By A.O**

**Reassessment
Proceedings**

Reason to beleive

- AO should have ‘**reason to believe**’ that income **chargeable to tax has escaped assessment.**
- The words “reason to believe” suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the assessing officer may act on direct or circumstantial evidence but **not on mere suspicion or rumor.**
- Following constitutes reason to believe for invoking sec. 147:
 - ❧ Evidence in possession of AO that the assessee has understated his income
 - ❧ Evidence in possession of AO that the assessee has claimed excessive loss/ deductions, allowances, reliefs.

Issues on Reasons to Believe....

- Before making assessment u/s 147, the AO must have “reasons to believe” that income, chargeable to tax has escaped assessment. **The important words u/s 147 are ‘has reason to believe’ and these words are stronger than the words ‘is satisfied’.** **Ganga Saran & Sons P. Ltd V. ITO (1981) 130 ITR 1(SC)**
- In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. **Raymond Woolen Mills Ltd v. ITO (1999) 236 ITR 34 (SC)**

Issues on Reasons to Believe....

Contd....

- There must exist reasons for holding a belief of escapement of income, **the question whether reasons were adequate or sufficient is not for the courts to decide**. It is open to the assessee to establish that there in fact existed no belief or that the belief was not a bonafide one or was based on vague, irrelevant and non specific information. **Phool Chand Bajrang Lal v ITO (1993) 203 ITR 456 (SC)**
- Where the reason to believe recorded does not refer to any material that came to the knowledge of the AO from which the AO could have formed a reasonable belief that the expenditure referred to had not crystallized during the relevant year. The recorded reasons to believe that income had escaped assessment were not based on any direct or circumstantial evidence and were in the realm of mere suspicion. In absence of adequate reasons the reassessment was set aside. **SMCC Construction India Ltd. v. ACIT (2014) 220 Taxman 354 (Delhi)**

Issues in Reason to believe

- If the AO's reason to believe lacks validity, the reopening of the assessment would not be permissible. **Gujarat Narmada Valley Fertilizers Co. Ltd. .v. Dy. CIT (2014) 369 ITR 763 / 223 Taxman 109 (Guj.)(HC).** [SLP of revenue was dismissed SLA (C) No 17450 of 2014 dt 18-11-2014 Dy.CIT v. Gujarat Narmada Valley Fertilizers Co Ltd(2015) 229 Taxman 220 (SC)]
- AO holds the opinion that because of excess loss or depreciation allowance the income escaped assessment the reason recorded by AO must disclose by what process of reasoning, he holds such belief. Merely recording the reason that excessive loss or depreciation allowance or other deductions have been computed without disclosing the reasons by which AO holds such belief does not confer jurisdiction to take action u/s 147. **DCIT Vs Indian Syntans Investments (P.) Ltd., [2007] 107 ITD 457 (ITAT-Chennai)**

Issues in Reason to believe

- An assessment cannot be reopened merely to verify the genuineness of the expenses. **Le Passage to India Tours and Travels P. Ltd. .v. Addl. CIT (2014) 369 ITR 109 (Delhi)**
- At the stage of recording reasons and issuing notice u/s 148, it is only expected of the AO to reach a prima facie conclusion that income chargeable to tax had escaped assessment. At that stage, he is not expected to build a fool-proof or cast-iron case against the assessee before proceeding to issue the notice. He is not expected to make a complete investigation before issuing the notice. **ITO Vs. Smt. Gurinder Kaur [2006] 102 ITD 189 (ITAT-Del.)**

Issues in Reason to believe

- Reopening of assessment u/s 147 merely on the issue of cash deposit during demonetisation period is liable to be set aside if jurisdictional aspect is completely ignored by AO. **Swati Malove Divetia Vs. ITO 2018-TIOL-2042 Guj.HC.**
- Reopening of assessment u/s 147 after the order of Administrative Commissioner u/s 263 on the same issue is invalid. **Asst.CIT Vs. Shri N Ramachandran 2018-TIOL-1842-ITAT-MADRAS.**
- Tax evasion petition received for previous years couldn't be used as basis for reopening of assessment of current year if AO hasn't referred to orders passed therein in the preceding years at the time of recording reasons for the current assessment year. **ITO Vs. Sky View Consultants (P.) Ltd. 96 taxmann.com 424. (Supreme Court)**

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Assessment on issues not included in Reason to believe

- **Explanation 3 to Sec. 147** provides that AO may assess/ reassess on any issue which comes to his notice subsequently in the course of the proceedings or re-compute the loss or the depreciation allowance or any other allowance for the assessment year concerned.
- **Hon'ble High Court of Kerala (Full Bench) in CIT vs. Best Wood Industries & Saw Mills [2011] 11 taxmann.com 278** held that in course of income escaping assessment, if it comes to notice of AO that any other item of income, other than item of escaped income for assessment of which assessment originally completed was reopened, also have escaped from original assessment, **he is bound to assess such item or items of income also in course of reassessment under section 147.**

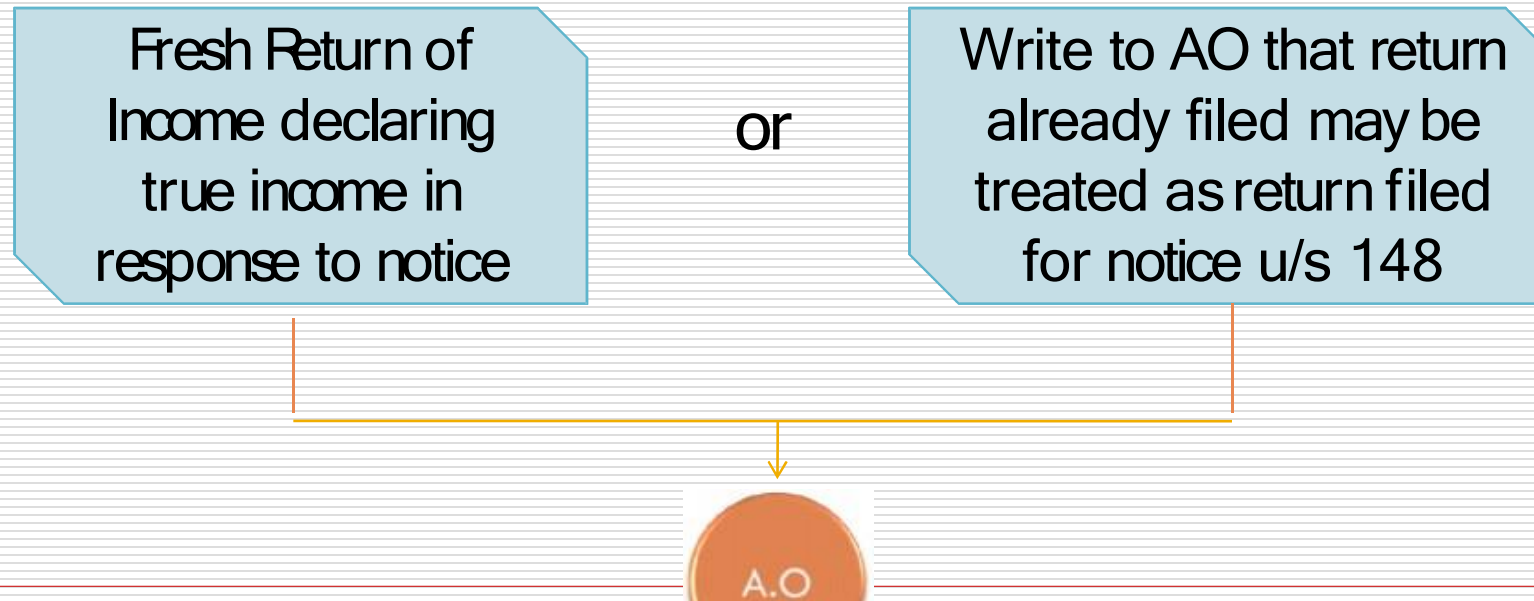
Assessment on issues not included in Reason to believe

- However, if no addition is made on the issue forming part of the Reasons to believe, no addition can be made on subsequently identified issue. **Ranbaxy Laboratories Ltd. Vs. CIT [2011] 336 ITR 136 (Del.), CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom.), Adhunik Niryat Ispat Ltd. [2011] 63 DTR 212 (Del.)**
- Also, for every new issue coming before AO during course of proceedings of assessment/reassessment of escaped income & which he intends to take into account, he would be required to issue a fresh notice u/s 148. **Ranbaxy Laboratories Ltd. vs. CIT [2011] 336 ITR 136 (Delhi)**
- Where **ground** on which reassessment notice u/s 148 was issued was **dropped** while passing reassessment order, AO **could not reassess or assess any other income** which has escaped assessment and comes to his notice in reassessment proceedings. **CIT vs. Double Dot Finance Ltd [2013] 31 taxmann.com 352 (Bom.), CIT vs. Mohamed Juned Dadani [2013] 30 taxmann.com 1 (Guj.)**

Principles laid by Apex court in case of G.K.N Driveshafts (India) Ltd. V s. I T O [2003] 259 I T R 19

The Hon'ble Supreme court laid down principles which would serve as valuable rules of guidance and as a binding precedent in cases where notice of reassessment is issued.

STEP # 1 (FLING RETURN OF INCOME)

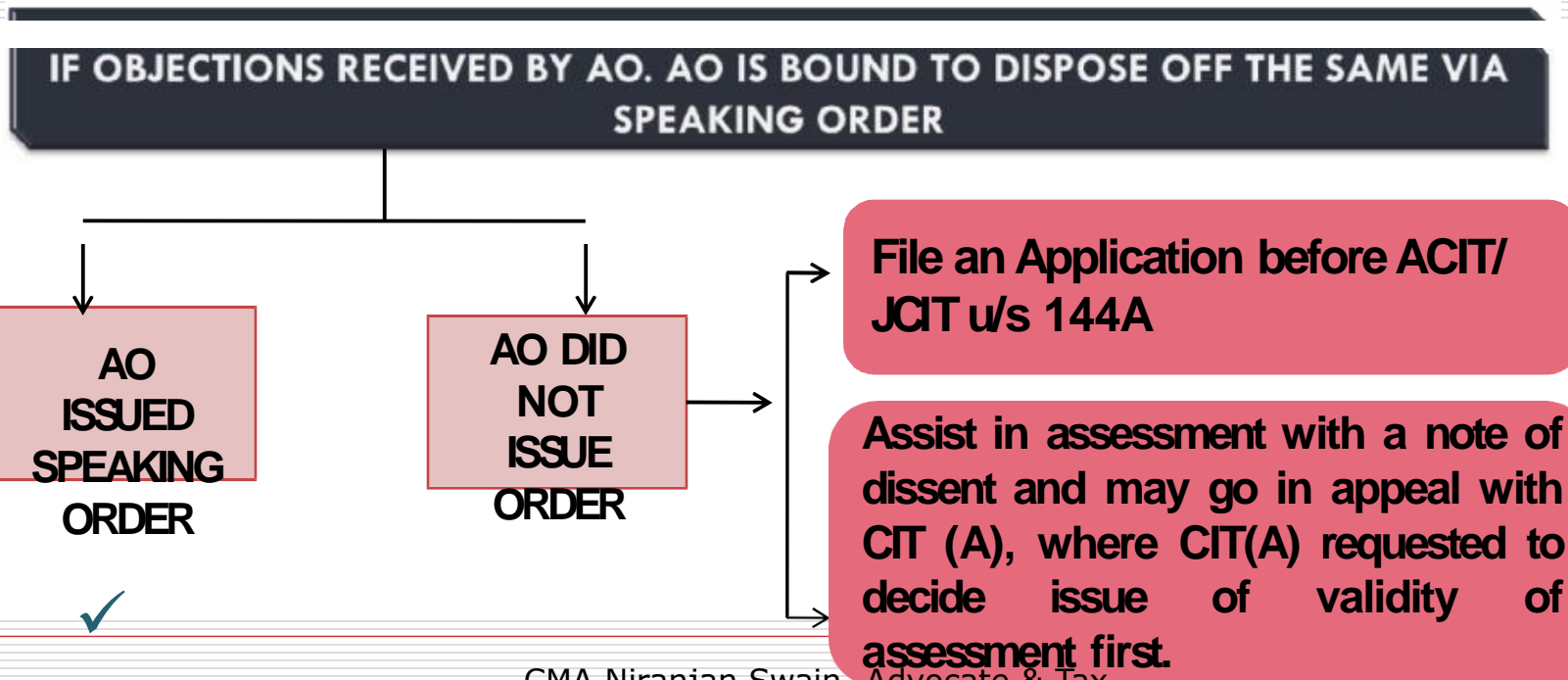


Principles laid by Apex court in G.K.N Driveshafts (India) Ltd. Vs. ITO....

Contd....

STEP# 2 (REQUEST FOR SUPPLY OF REASONS FOR ISSUANCE OF NOTICE U/S 148)

STEP# 3 (FILING OF OBJECTIONS WITH AO)



Disclosure of reasons to the assessee....

- The assessee can ask for reasons recorded by the Assessing Officer for reopening of assessment.
- Reassessment order passed by the AO without supplying reasons recorded though specifically asked by the assessee is invalid. **(CIT vs. Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 (Bom.)**
- Where AO provided only gist of reasons, the same cannot be treated as reasons actually recorded by the AO as per sec. 148(2). It amounts to failure on part of AO to furnish reasons to the assessee despite repeated requests and demands. **Tata International Ltd. Vs. DCIT [2012] 23 taxmann.com 18 (ITAT-Mum.)**

Disposal of objections by AO....

- ❑ Non-compliance of direction of SC in GKN Driveshafts (India) Ltd Vs. ITO as regards to disposal of objections by passing a speaking order is a procedural irregularity which could be cured by remitting matter to authority. **Home Finders Housing Ltd. Vs ITO 94 taxmann.com 84 (SC)**
- ❑ If assessee objects to reasons for reopening assessment, any order passed by AO without considering assessee's objection would have to be quashed. **K. S Suresh v. Dy. CIT [2005] 279 ITR 61 (Mad.). Also see Sri**
- ❑ **A.S. Chinnaswamy Raju Vs. ACIT, ITA 1559/BANG./2010, ITAT- Bangalore**
- ❑ It is **mandatory** for the A.O. to dispose of preliminary objections raised by assessee against reasons recorded for reopening assessment by **passing speaking order before proceeding with assessment**. **Banaskantha District Oilseeds Growers Co-op. Union Ltd. V. Asst. CIT [2015] 59 taxmann.com 328 (Gujarat)**

Procedure to challenge the reassessment proceedings:
GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (SC)

- ❑ When a notice u/s 148 of the IT Act, 1961, is issued, the proper course of action
 - ❖ (a) is to file the return ,
 - ❖ (b) if he so desires, to seek reasons for issuing the notices.
 - ❖ (c) The assessing officer is bound to furnish reasons within a reasonable time.
 - ❖ (d) On receipt of reasons, the assessee is entitled to file objections to issuance of notice , and
 - ❖ (e) the assessing officer is bound to dispose of the same by passing a speaking order.
 - ❖ (f) the assessee if desires can file a writ challenging the order or can proceed with the assessment.
 - ❖ However, the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before appellate authority.

Reopening based on change in opinion

- Reopening can never be done on the basis of change of opinion. **Section 147** does not empower the A.O to review on the same set of facts the assessment order which had already been framed merely by fresh application of mind to its own decision or to the decision of predecessor.
- In **CIT vs. Kelvinator of India Ltd., 320 ITR 561** it was held by the Hon'ble Apex court that AO has power to re-open, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment; reasons must have a live link with formation of belief. **Also see Direct Information Pvt. Ltd. Vs. ITO [2011] 203 Taxman 70 (Bomb.), Transwind Infrastructure P.Ltd. Vs ITO [2014] 362 ITR 67 (Guj.)**

Reopening based on change in opinion

- Where AO has completed assessment u/s 143(3) & there is no failure on part of assessee to disclose truly and fully all material facts necessary for assessment, initiating reassessment proceedings after expiry of 4 years is not valid.
- **CIT v. Mirza International Ltd. (2015) 54 taxmann.com 217 (All.), Sopan Infrastructure P. Ltd v. ITO (2017) 391 ITR 107 (Guj.), DCIT V. Smithkline Beecham Consumer Brands Ltd. [2003] 126 Taxman 104 (CHD.)(MAG), DCIT, Vs. Sambhav Energy Ltd. [2017] 80 taxmann.com 389 (Rajasthan), Radhawami Salt Works vs. Asst. CIT [2017] 83 taxmann.com 195 (Guj.), Bharat Bijlee Ltd. v. ACIT. (2014) 364 ITR 581 (Bom.), Yash Raj Films P. Ltd. vs. ACIT (2011) 332 ITR 428 (Bom), Orient News Prints Ltd. v. Dy. CIT (2017) 393 ITR 527 (Guj.), Gujarat Carbon & Industrial Ltd. Vs. JCIT [2009] 179 Taxman 6 (Guj.), CIT v. Central Warehousing Corporation (2015) 371 ITR 81 (Delhi), Tirupati Foam Ltd. v. Dy. CIT (2016) 380 ITR 493 (Guj.), Donaldson India Filters (P) Ltd v. Dy. CIT (2015) 371 ITR 87 (Delhi), Crompton Greaves Ltd. v. ACIT (2015) 229 Taxman 545 (Bom).**

Reopening based on change in opinion

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- ❑ Reopening would amount to change of opinion in the absence of any fresh material. **Nirmal Bang Securities (P) Ltd. v. ACIT. (2016) 382 ITR 93 (Bom.), CIT v. Amitabh Bachchan [2013] 349 ITR 76, SIRO Clinpharm (P) Ltd. v. DCIT (2014) 49 taxmann.com 62 (Mum.)(Trib.)**
- ❑ AO completed assessment u/s 143(3) after taking into consideration accounts furnished by assessee. After lapse of 4 years from relevant AY, AO reopened assessment on ground that during relevant year assessee company had incurred a loss in trading in share, which was a speculative one & therefore chargeable to tax, accordingly passed order u/s 147. Since after a mere re-look of accounts which were earlier furnished by assessee, AO had come to conclusion that income had escaped assessment, same was not permissible u/s 147 as it was clearly a change of opinion. **ACIT vs. ICICI Securities Primary Dealership Limited [2012] 24 taxmann.com 310 (SC)**

Reopening based on change in opinion

- The Court held that AO has no power to review assessment order under shelter of re-opening of assessment u/s 147, therefore, it was not open for AO to re-look at same material only because he was subsequently of view that conclusion arrived at earlier was erroneous. **Housing Development Finance Corporation Ltd. v. J. P. Janjid (2014) 225 Taxman 81(Mag.) (Bom.)**
- Where AO allowed assessee's claim for deduction of payment of interest in absence of any failure on assessee's part to disclose fully & truly all material facts necessary for assessment, he could not initiate reassessment proceedings merely on basis of **change of opinion** that interest expenditure in question was capital in nature. **Business India v. DCIT (2015) 370 ITR 154 (Bom.)**
- Depreciation claim was allowed during the course of scrutiny assessment by AO. Thereafter, AO issued notice u/s 148 after period of 4 years seeking to reopen assessment of assessee on ground that earlier AO had allowed excessive depreciation. Reopening was held not justified. **Niko Resources Ltd. .v. ADIT (2014) 51 taxmann.com 568 (Guj.)(HC)**

Reopening based on change in opinion

- AO having allowed assessee's claim for deduction u/s 80-IA/ 80-IB in course of assessment u/s 143(3) could not initiate reassessment proceedings on ground that there was inappropriate allocation of expenses between various units eligible for deduction. Validity of proceedings could not be upheld as the same was based on mere change of opinion. **GKN Sinter Metals Ltd. v. Ramapriya Raghavan (Ms.), ACIT (2015) 371 ITR 225 (Bom.).**
- Reopening is invalid if failure to disclose not alleged Despite of “Wrong Claim”. There is a well known difference between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts i.e. False Claim. **Titanor Components Limited vs ACIT (2011) 60 DTR 273 (Bom.) Also see Oracle India Private Limited vs Asst. CIT, WP. (C) 7828/2010, Date of Order: 26.07.2017, High Court of Delhi**

Reopening based on change in opinion

- If the AO had any doubt or dispute pertaining to valuation of the undisclosed stock and, consequently, about the disclosure of additional income by the assessee, **he ought to have pursued the issue further during the assessment itself.** It will not amount to failure of assessee. **Rajendra Kantibhai Patel (HUF) v. ACIT (2014) 69 ITR 232 (Mag.) (Guj.)**
- Where based only on assessment records, AO opined that depreciation on 'plant & machinery' and 'land & building' given on lease was not allowable, since there was no failure on part of assessee to fully and truly disclose all material facts, reopening of assessment was not valid **ACI Oils P. Ltd. .v. DCIT (2015) 370 ITR 561 (All.)**
- Reassessment after four years on account of non disclosure of material facts by raising the plea that assessee has mentioned wrong year of Commencement of manufacture in Form No. 56G is invalid if other materials furnished indicated correct year of manufacture. **MBI KTS International vs. ITO (2018) 408 ITR 1(Madras HC).**

Reopening based on Information Available in Another Assessment Year

- ❑ Reopening of case for preceding assessment year on the basis of information gathered during current year that assessee has breached condition claiming for deduction U/S 80-IB in preceding assessment year is invalid as there was no failure on part of assessee to disclose truly and fully all material facts. **Royal Infrastructure vs.DCIT (2018) 407 ITR 358(Guj.HC)**

Reopening on the basis of tax audit report not allowed

- ❑ Reassessment can not be made on the basis of information contained in the tax audit report furnished by the assessee at the time of assessment, as no new tangible material comes into possession of AO. It was held to be just change of opinion in the mind of the A.O. therefore, **reopening proceeding was quashed. CIT Vs Modipon Ltd. 2011-TIOL-355-HC-DEL-IT**
- ❑ Consideration paid for purchase of copyright was disclosed in the original assessment proceedings. AO after discussing issue passed a detailed order. AO cannot later form another opinion on same primary facts that income had escaped assessment, **therefore notice on basis of audit report that excess payment should be treated as deemed gift was held to be not valid. Jagran Prakashan Ltd. V. CIT (2014) 367 ITR 534 (Mag.) (All.)(HC)**

Reassessment on the basis of audit objection not valid

- Where belief has been borne only because of the audit report furnished by the assessee for the purpose of assessment of its income and other material information available on record. Details of payments made by assessee to persons specified in section 40A, audit report and controversy in relation thereto were within knowledge of AO at time of assessment u/s 143(3). **Raymon Glues & Chemicals v. Dy.CIT (2015) 231 Taxman 376 (Guj.)**
- If AO contests the audit objection but still reopens to comply with the audit objection, it means he has not applied his mind independently and the reopening is void. **Raajratna Metal Industries Ltd v. ACIT (2014) 49 taxmann.com 15 (Guj.). Also see National Construction Co. v. Jt. CIT (2015) 234 Taxman 332 (Guj.)**
- The notice u/s 148 was issued by the CBDT. These audit objections were not accepted by the AO. CBDT instruction directing remedial action in case of audit objections - Notice based solely on such instruction not valid. **Sun Pharmaceutical Industries Ltd. v. Dy.CIT (2016) 381 ITR 387 (Delhi).**

Reassessment on the basis of report of District Valuation Officer / Internal Audit Report not valid

- ❑ Where the Assessing Officer completed assessment u/s 143(3) making certain addition in respect of unexplained investment, he could not reopen said assessment u/s 147 for enhancement of said addition merely on basis of report of District Valuation Officer. **Akshar Infrastructure (P.) Ltd. Vs. ITO, Ward1(1), [2017] 79 taxmann.com 239 (Gujarat)**
- ❑ Reopening on the basis of an opinion formed by the internal auditor of department, can not be treated valid because it amounts to change of opinion. **CIT Vs The Simbhaoli Sugar Mills Ltd, 2011-TIOL 293 - HC- DEL-IT**

Initiation of Assessment u/s 147 after Intimation u/s 143(1)

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- In **CIT Vs. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] in 291 ITR 500**, the Apex Court held that Intimation u/s 143(1) does not amount to an “assessment” and in the absence of an assessment, there may not be question of “change of opinion”, the Court also held that there must be “reason to believe” i.e. “cause or justification” that income had escaped assessment. The court further held that so long as the ingredients of section 147 are fulfilled, *the AO is free to initiate proceeding u/s 147 and failure to take steps u/s 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation u/s 143(1) had been issued*

Initiation of Assessment u/s 147 after Intimation u/s 143(1)

- The finality of an intimation u/s 143(1) can be disturbed even by dispensing with the requirement of "reason to believe". It was observed that no assessment order is passed when the return is merely processed u/s 143(1) & an intimation to that effect is sent to the assessee. However, where proceedings u/s 147 are sought to be taken with reference to an intimation framed earlier u/s 143(1), the ingredients of Sec. 147 have to be fulfilled; the ingredient is that there should exist "reason to believe" that income chargeable to tax has escaped assessment. The Supreme Court in *Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P). Ltd.* [2007] 291 ITR 500 does not give a carte blanche to AO to disturb the finality of the intimation u/s 143(1) at his whims and caprice; he must have reason to believe within the meaning of the Section. **CIT Vs. Orient Craft Ltd. [2013] 29 taxmann.com 392 (Delhi).**

Can retrospective amendment be a valid reason to reopen assessment? - No

- Whether assessee had disclosed fully and truly all material facts necessary for relevant AY would depend on the law as applicable as on date of filing of return. **Denish Industries Ltd. Vs. ITO (2004) 271 ITR 340 (Guj.) (346) SLP dismissed (2005) 275 ITR 1 (St.)**
- While a subsequent decision of a Court or a legislative amendment enforced after the order of assessment may legitimately give rise to an inference of an escapement of income, before the Assessing Officer proceeds to reopen an assessment after the expiry of four years of the end of the relevant assessment year, he must nonetheless apply his mind to the fundamental question as to whether there has been a failure to disclose on the part of the assessee. **Voltas Ltd. v. ACIT [2012] 349 ITR 656 (Bom.), CIT v. Avadh Transformers (P) Ltd. 51 Taxmann.com 369 (SC)**

Can retrospective amendment be a valid reason to reopen assessment?

- ❑ Where AO after minutely examining claim of deduction of assessee u/s 80- IB(10) allowed the same, AO cannot reopen the case beyond period of 4 years after retrospective amendment in the section. **Ganesh Housing Corporation Ltd. v. Dy. CIT [2016] 74 taxmann.com 172 (Gujarat).**
- ❑ If an Explanation is added to a section of a statute for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. Where the assessee had disclosed all the materials regarding its activities & there was no suppression of materials, in spite of such disclosure, AO gave benefit of the provision by considering the then Explanation which was substantially the same and, thus, it could not be said that any income escaped assessment in accordance with the then law. The AO has now given a second thought over the same materials and it cannot be basis to reopen an assessment. **Parixit Industries (P.) Ltd. v. ACIT [2013] 352 ITR 349 (Guj.). SLP dismissed by SC [2012] 25 taxmann.com 301 (SC)**

Disclosure given in Return of Income

- A notice of reassessment was issued beyond 4 years on the ground that the assessee had set off the loss of MEK and Foods division against profit on sale of assets of the assessee from which the assessee received Rs. 7.51 crores and the remainder was credited to the P&L account instead of taking the entire amount. **Held, the in the notes to return, the assessee clearly stated the reason for doing so. Thus, there was no failure on part of the assessee to disclose truly and fully all material facts. Also, there was no hint in the recorded reasons that there was any such failure on part of the assessee. Hence, notice was liable to be quashed. Gujarat Carbon & Industries Ltd .v. CIT (2014) 365 ITR 464 (Guj.)(HC)**
- Where the assessee has disclosed all material primary facts, proceedings u/s 147 cannot be taken if the AO fails to draw the correct legal inference from such facts or fails to pursue the matter appropriately. **CIT v P. Krishnankutty Menon [1989] 181 ITR 237 (Ker.)**

Disclosure given in Return of Income

- Where assessee had furnished all information claiming that no capital gain arose as land sold was agricultural land but department treated the said land as capital assets, and issued reassessment notice, department acted beyond ambit of provisions of section 147, which vests upon him power to reassess income and not 'review' of subject transaction **S.M. Kutubuddin vs. Asst. CIT [2017] 83 taxmann.com 126 (Madras)**
- In the absence of any allegation that there was any failure on the part of the assessee in disclosing the true and correct facts due to which, there was escapement of income from the assessment, the notice for reassessment was not valid. **Micro Inks P. Ltd. v. ACIT (2017) 393 ITR 366 (Guj.)**

Disclosure given in Return of Income

- ❖ Where assessee- Australian company had fully disclosed income and applied tax rate of 15% taking benefit of Article 11(2) of India-Australia DTAA, initiation of reassessment after 4 years on ground that tax rate should be 40 per cent would be unjust. **Standard Chartered Grindlays (P.) Ltd v. Dy. DIT (2015) 53 taxmann.com 35 (Mag.) (Delhi)**
- ❖ Assessee had disclosed all material facts related to closing stock, reopening of assessment beyond four years on ground of understatement of closing stock was not justified. **AVTEC Ltd. v. DCIT(2015) 370 ITR 611 (Delhi)**
- ❖ Non-Disclosure of taxing event i.e. allotment of shares and absence of any declaration as to value amounts to non disclosure of primary facts even though assessment was originally completed u/s 143(3). **Sonia Gandhi Vs. Asstt.CIT 407 ITR 0594 (Delhi HC).**

■

REASSESSMENT

Paradigm Shift in the Law of Re-assessments

NEW SCHEME OF RE-ASSESSMENT

New scheme of re-assessments are contained in the following provisions:

- ❖ **(a) Section 147: Assessment of income escaping assessment;**
- ❖ **(b) Section 148: Issue of notice for re-assessment;**
- ❖ **(c) Section 148A: Procedure to be followed before issuing a notice for re-assessment;**
- ❖ **(d) Section 149: Time limit for issuing a notice for re-assessment;**
- ❖ **(e) Section 150: Assessment in pursuance of an order on appeal, etc. (no amendment has been proposed);**
- ❖ **(f) Section 151: Specified Authorities for authorising the issue of notice for re-assessment;**
- ❖ **(g) Section 151A: Faceless assessment of income escaping assessment; and**
- ❖ **(h) Section 153: Time limit for completion of assessment or re-assessment.**

Section 147: Initiation and completion of Assessment of income escaping assessment

-
- ❑ AO can make the re-assessment of an income escaping assessment if the following conditions are satisfied:
 - ❖ (a) Any income chargeable to tax has escaped assessment for any assessment year; and
 - ❖ (b) The assessing officer follows the provisions of sections 148 to 153.
 - ❑ **Income Escaping Assessment:** recompute the loss or income or the depreciation allowance or any other allowance or deduction for such assessment year. It is imperative to note that the
 - ❑ **Note:** AO can assess or reassess all those incomes which have escaped assessment and which come to his notice subsequently in the course of such proceeding notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS ESCAPED ASSESSMENT?

- *[Explanation 1 to Section 148] -In cases other than search, survey or requisition*

Deemed to be Escaped Assessment

(a) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(b) any final objection raised by the CAG to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

❑ *In search, survey or requisition cases [Explanation 2 to Section 148]*

Deemed to be Escaped Assessment

❖ Search, survey or requisition cases initiated or made or conducted, on or after 1st April 2021.

❖ It shall be deemed that the AO has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ❖ The information for the relevant AY shall be flagged as per the 'Risk Management Strategy (RMS)' formulated by the CBDT.
- ❖ Flagging of “information” would largely be done by the computer-based system on basis of pre-defined algorithms which may not be made public.
- ❖ Which 'information' can be flagged.: Whether it should be collected from the third parties only or it can be due to the retrospective amendment in the law or court rulings.
- ❖ Oxford Dictionary-, 'Information' means facts told, heard or discovered about somebody/something. The Law Lexicon: the term 'information' as the act or process of informing, communication or reception of knowledge.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ❑ **The expression 'information' means** instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment.
- ❑ **CIT v. A. Raman & Co. [1968] 67ITR11 (SC):** the expression 'information' means 'instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment'.
- ❑ **Maharaj Kumar Kamal Singh v. CIT [1959] 35 ITR 1 (SC):** the word 'information' includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

-
- ❑ **Conclusions: the expression 'information' shall** mean the particulars obtained from the third parties or due to change in the facts or subsequent court's rulings or the correct interpretation of a provision given by the Board for Advance Ruling. Based on such particulars, the re-assessment can be initiated by the AO provided such information is flagged in the RMS by the CBDT.
 - ❑ **Section 150:** AO authorizes to issue a notice for re-assessment at any time to give effect to any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court.
 - ❑ **Such Notice can be issued only if the CBDT takes cognizance of such case** and flag the information in the RMS of all those assesseees who have to be issued a notice u/s 148.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ☐ AO has to follow the process of Section 148A before issuing a notice under Section 150 *read with* Section 148.
- ☐ In such a case, the assessing officer can issue a notice even beyond the time limit of 3 years / 10 years proposed in new Section 149.

(For Serious Tax Evasion cases, where evidence of concealment of Income is more than Rs. 50 Lacs, notice can be issued beyond 3 years but not beyond 10 years.)

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ❑ *Formulation of Risk Management Strategy by the CBDT*
- ❖ CBDT does the risk analysis based on the data gathered from various sources
 - (i)SFT - collected from the third parties u/s - 285BA (Statement of Financial Transaction or Reportable Account) or (ii)the information received from other law enforcement agencies or (iii) the foreign countries.
- ❖ *Parashuram Pottery Works Co. Ltd. [1977] 106 ITR 1 (SC)* - that there must be a finality in all legal proceedings and reopening is not permitted unless a case falls strictly within four corners of the law providing for reopening of assessment.
- ❖ AO has no power to review, he has the power to reassess and the reassessment has to be based on the fulfilment of certain pre-conditions.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

☐ Final Objection raised by CAG

- ❖ It is intriguing to note that the CAG is not enlisted as an authority in section 116 of the Income-tax Act.
- ❖ It is settled law that initiation of reassessment proceedings only based on the audit objections, be it an internal audit of the dept. or of the CAG, is legally invalid.
- ❖ Various court rulings suggest that a case cannot be reopened based on the comments of a third party like audit or some other Assessing Officer.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

❑ *Final Objection raised by CAG*

❖ **FIS Global Business Solutions India (P.) Ltd [2019] 104 taxmann.com 169 (SC)** dismissed an SLP against the decision of the Delhi High Court that the audit objection being only information, reassessment notice based on said audit objection is not sustainable.

❖ Since the audit report merely gives an opinion and does not give any new or fresh material before the AO, the reopening of assessment merely on basis of audit objection could not be sustained.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT? Final Objection raised by CAG

❑ Reassessment u/s 147 based solely on audit party's remarks would be invalid under law. **CIT v. Metturre Chemicals & Industrial Corporation Ltd [2000] 242 ITR 119.**

❑ Audit party's view regarding interpretation of legal provisions would not constitute a reason for issue of notice .The AO must satisfied himself about correctness of the audit report before issue of notice u/s 148. **Duncan Services Lte v. ITO [1992] 198 ITR 264 (Delhi), Transworld International Inc v. CIT [2005] 142 Taxman 35 , Vijay Ramesh Gupta v. CIT [2013] 215 Taxman 465 (Guj) , Cadila Healthcare Ltd v. CIT [2013] 355 ITR 393 9Guj0, Vodafone West Ltd v. CIT [2013] 37 taxman.com 158(Guj), Jagal Jagannath Parikh v. CIT [2013] 215 Taxman 444 (Guj).**

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Conducting Inquiry:

Before issue of Notice, AO shall conduct enquiries, if required.

- ❖ Prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment**
- ❖ AO cannot conduct an enquiry on any information which has not been obtained through RMS of the CBDT or the objection raised by the CAG.**

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Granting an opportunity of being heard

- ❖ AO shall provide an opportunity of being heard to the Assessee (prior approval of specified authority),
- ❖ Notice to Show Cause to be issued to Assessee within time not being less than 7 days but not exceeding 30 days from the date on which such notice is issued (may be extended).

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ **Pass an order:**

- ❖ **Material available on record & reply of the assessee, the AO shall decide, whether or not it is a fit case to issue a notice under new Sec. 148.**
- ❖ **AO shall pass Order within 1 month from end of the month in which the reply of the assessee is received / where no such reply is furnished, within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires.**
- ❖ **Serve a copy of such order along with such notice on the assessee.**
- ❖ **Copy of the order passed by the AO under Section 148A shall be supplied along with the copy of the notice issued u/s 148.**

PROCEDURE TO BE FOLLOWED BEFORE ISSUING NOTICE FOR RE-ASSESSMENT [SECTION 148A]

☐ Action of the Assessee on receipt of Notice:

❖ If the Assessee does not agree with the order passed by the AO u/s 148A, he cannot file an appeal against such order with the CIT(A) or the ITAT. (Only can challenge this by filing a Writ in the High Court).

❖ Other Provisions

❖ In the case of a survey, the AO has to follow the procedure laid down in Section 148A before issuing a notice u/s 148.

❖ AO shall follow the following procedure before issuing a notice under new Section 148.

REVISED TIME LIMITS FOR ISSUE OF NOTICE [Section 149]

| Particulars | Time Limit New Provisions |
|--|---|
| In general | No notice shall be issued if 3 years have elapsed from the end of the relevant assessment year. |
| Where the Assessing Officer has evidence in his possession which reveals that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to Rs. 50 lakhs or more. | Notice can be issued beyond a period of 3 years but not beyond the period of 10 years from the end of the relevant assessment year. |

How to Compute Period of Limitation for issue of Notice:

- ❑ Time or extended time allowed to the assessee in providing an opportunity of being heard or period during which such proceedings before issuance of notice u/s 148 are stayed by an order or injunction of any court, shall be excluded.
- ❑ If after excluding such period, time available to the AO for passing an order, about the fitness of a case for the issue of notice u/s 148, is less than 7 days, the remaining time shall be extended to 7 days.

How to Compute Period of Limitation for issue of Notice:

□ Where search or requisition is initiated or made on or before 31st March 2021:

❖ the assessment or reassessment or re-computation shall be continued as per the existing provision of Section 153A, 153B, 153C and 153D, and the aforesaid time limitation shall not apply to such cases.

□ Clarification : Notice under new section 148 cannot be issued at any time in a case for the relevant AY beginning on or before 1st day of April 2021, if such notice could not have been issued at that time on account of being beyond the time limit of 6 years.

How to Compute Period of Limitation for issue of Notice: EXAMPLE

□ Mr. A has an undisclosed income of Rs. 10 crores for the assessment year 2012-13. Under the existing provisions, the notice for re-opening of such assessment could have been issued up to 31st March 2019. Under the new scheme of assessment, the notice can be issued up to 10 years where the income escaping assessment is Rs. 50 lakhs or more. So under the new provisions, such notice could have been issued up to 31st March 2023. However, due to the *first proviso* to Section 149(1), the notice under section 148 cannot be issued since the time limit of 6 years as prescribed under the existing provisions has already expired.

PRIOR APPROVAL OF SPECIFIED AUTHORITIES [SECTION 151]

| <i>Time Limit</i> | <i>Specified Authority</i> |
|--|---|
| If 3 years or less than 3 years have elapsed from the end of the relevant assessment year | Principal Commissioner of Income-tax (PCIT) or Principal Director of Income-tax (PDIT) or Commissioner of Income-tax (CIT) or Director of Income-tax (DIT) |
| If more than 3 years have elapsed from the end of the relevant assessment year | PCIT or PDIT, or where there is no PCIT or PDIT, CCIT or DGIT |

MANNER OF CONDUCTING ASSESSMENT PROCEEDINGS [SECTION 151A]

- ❑ **All of the following procedures shall be conducted in a faceless manner:**
 - ❖ **(a) Assessment, reassessment or re-computation under Section 147;**
 - ❖ **(b) Issuance of notice under Section 148;**
 - ❖ **(c) Conducting of enquiries or issuance of show-cause notice or passing of an order u/s 148A;**
 - ❖ **(d) Sanction for issue of such notice under Section 151.**

MANNER OF CONDUCTING ASSESSMENT PROCEEDINGS [SECTION 151A]

- ❑ **All of the following procedures shall be conducted in a faceless manner:**
 - ❖ Central Govt. will bring a scheme to carry out the re-assessment proceedings in a faceless manner.
 - ❖ Reassessment u/s 147 must be completed within 12 months from the end of the financial year in which notice was served. (extended by 12 months if reference is made to the TPO).
 - ❖ **Rate of taxation [Sec. 152(1)]:** tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.

TIME LIMIT FOR COMPLETION OF RE-ASSESSMENT PROCEEDINGS [SECTION 153]

| <i>Income escaping assessment belongs to the Assessment year</i> | <i>Time limits if notice can be issued up to 3 years</i> | | <i>Time limits if notice can be issued up to 10 years</i> | |
|--|--|------------------------------------|---|------------------------------------|
| | <i>Last date to issue notice</i> | <i>Last date to pass the order</i> | <i>Last date to issue notice</i> | <i>Last date to pass the order</i> |
| | | | | |
| 2021-22 | 31-Mar-25 | 31-Mar-26 | 31-Mar-32 | 31-Mar-33 |
| 2020-21 | 31-Mar-24 | 31-Mar-25 | 31-Mar-31 | 31-Mar-32 |
| 2019-20 | 31-Mar-23 | 31-Mar-24 | 31-Mar-30 | 31-Mar-31 |
| 2018-19 | 31-Mar-22 | 31-Mar-23 | 31-Mar-29 | 31-Mar-30 |
| 2017-18* | - | - | 31-Mar-28 | 31-Mar-29 |

TIME LIMIT FOR COMPLETION OF RE-ASSESSMENT PROCEEDINGS [SECTION 153]

Note: As per the existing provisions, in respect of the assessment year 2017-18, the notice under Section 149 can be issued up to 31-03-2022 (4 years) or 31-03-2024 (6 years), as the case may be. As the new re-assessment scheme shall come into force with effect from 01-04-2021, the time-limit shall be reduced from 4 years to 3 years if income escaping assessment is up to Rs. 50 lakhs. Thus, the assessing officer will have to issue a notice under Section 149 on or before 31-03-2021. If he does not do so, he shall not be able to issue the notice under the new provision.

COMPARISON OF NEW SCHEME & OLD SCHEME OF RE-ASSESSMENT

| Basis | Old Scheme | | New Scheme | |
|--|--|------------------------------|---|---|
| Issue of notice u/s 148 | AO has reasons to believe that income has escaped assessment. | | AO which suggests that income has escaped assessment. | |
| Procedure before issuing a notice (In non-search or non-requisition cases) | Record reasons to believe that the income has escaped assessment | | Follow the process laid down in Section 148A, namely: (a) Conduct an Inquiry; (b) Grant an opportunity of being heard to the assessee; (c) Consider reply of the assessee; (d) Pass an Order. | |
| Authority for issuing notice | Up to 4 years | JCIT | Up to 3 years | PCIT or PDIT or CIT or DIT (after 3 Yrs where no PCIT/PDIT then DIT or CIT) |
| | After 4 years | PCCIT or CCIT or PCIT or CIT | After 3 years | |
| Issue of Notice Time-limit | 4 to 16 Years | | 3 to 10 years | |
| Time-limit to complete assessment | 12 months from the end of the financial year in which notice was served. To be extended by 12 months if reference is made to the Transfer Pricing Officer. | | No Change | |

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|---------|-------------------------------------|--------------------|---------------------|----------------|----------------|
| 1 | Statement of Financial Transactions | 2020-21 | 114E | 31st May 2021 | 30th June 2021 |
| 2 | Statement of reportable account | Calendar year 2020 | 114G | 31st May 2021 | 30th June 2021 |
| 3 | TDS returns | Jan to March 2021 | 31A | 31st May 2021 | 30th June 2021 |
| 4 | Form 16 wrt Tds salary returns | 2020-21 | 31 | 15th June 2021 | 15th July 2021 |
| 5 | TDS/TCS book adjustment Form 24G | May-21 | 30 & 37CA | 15th June 2021 | 30th June 2021 |

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|----------------|--|-----------------------|----------------------------|-----------------------|------------------------|
| 6 | Tax Deduction statement by trustees of approved superannuation fund | 2020-21 | 33 | 31st May 2021 | 30th June 2021 |
| 7 | Statement of Income paid or credited by investment fund in Form 64D | 2020-21 | 12CB | 15th June 2021 | 30th June 2021 |
| 8 | Statement of Income paid or credited by investment fund in Form 64C | 2020-21 | 12CB | 30th June 2021 | 15th July 2021 |
| 9 | Income tax returns for non-audit cases | 2020-21 | Section 139(1) | 31st July 2021 | 30th Sept. 2021 |

Reportable dates of Filing Returns

CBDT vide Income Tax Circular No. 9 of 2021 Dated 20th May, 2021

| Sl. No. | Compliances relating to | Period Covered | Appl. Rule/ Section | Original Date | Extended Date |
|----------------|---|-----------------------|------------------------------|--------------------------|-----------------------|
| 10 | Audit report | 2020-21 | Income Tax Act | 30th Sept. 2021 | 31st Oct. 2021 |
| 11 | Audit report for international transaction or specified domestic transaction | 2020-21 | Section 92E | 31st October 2021 | 30th Nov. 2021 |
| 12 | Income tax returns for audit/ company cases | 2020-21 | Section 139(1) | 31st Oct. 2021 | 30th Nov. 2021 |
| 13 | Income tax returns with due date 30th November 2021 | 2020-21 | Section 139(1) | 30th Nov. 2021 | 31st Dec. 2021 |
| 14 | Belated/ Revised income tax returns | 2020-21 | Section 139(4) 139(5) | 31st Dec. 2021 | 31st Jan. 2022 |

LIFE CYCLE OF A RETURN AND ASSESSMENT FOR THE A.Y. 2021-22

| Milestone | Existing due date | Revised Due Date |
|--|--|--------------------------|
| Filing of original return of income (as the case may be) | 31-07-2021 31-10-2021 30-11-2021 | No Change |
| Filing of belated or revised return of income | 31-03-2022 | 31-12-2021 |
| Processing of return u/s 143(1) | 31-03-2023 | 31-12-2022 |
| Issue of notice for scrutiny assessment u/s 143(2) | 30-09-2022 | 30-06-2022 |
| Completion of scrutiny assessment u/s 143(3) | 31-03-2023 | 31-12-2022 |
| Completion of best judgment assessment u/s 144 | 31-03-2023 | 31-12-2022 |
| Issue of notice under new Section 148 within time-period specified in new Section 149 after following the procedure laid down in Section 148A (as the case may be) | 31-03-2026 31-03-2028 31-03-2038 | 31-03-2025 31-03-2032 |
| Completion of re-assessment u/s 147 (as the case may be) | 31-03-2027 31-03-2029 31-03-2039 | 31-03-2026 31-03-2033 |

What Gone with Change in Provisions of Sec 147

- ☐ a. Concept of Reason to believe [*CIT v. Amitabh Bachchan* [2012] 349 ITR 76 (Bom.) nullified?]
- ☐ b. Application of mind(definitions are provided.AO has to just slot it).
- ☐ c. Establish a direct nexus or live link between the material coming to the notice of the AO and the formation of his belief.
- ☐ c1. It appears that what is required now is only possession of information suggesting escapement of income chargeable to tax in “normal” cases.
- ☐ d. **Failure on the part of the assessee to disclose fully and truly all material facts** necessary for the purpose of assessment finds no place.[*Dy. CIT v. Aishwarya Rai Bachchan* [IT Appeal No.3873 (Mum) of 2013, dated 18-1-2017] nullified?] [*Sunil Gavaskar v. ITO(IT)* [2017] 88 taxmann.com 372 (Mum.) has no impact now?]
- ☐ d1. So **change of opinion** goes as well?. But hon’ble Supreme Court had observed that concept of ‘change of opinion’ must be treated as an in-built test to check abuse of power by Assessing Officer.[*CIT v. Kelvinator of India Ltd.* [2010] 320 ITR 561 (SC)].

❑ If an assessee voluntarily files a return, then the AO cannot proceed under section 147 / 148 against such assessee – **Motorola Inc v. CIT [2005] 147 Taxman 39.**

❑ Mere change of opinion or wrong legal reference will not empower AO to reopen assessment. **CIT v. Bhanji Lavji [1971] 79 ITR 582 (SC).**

❑ Reassessment without any additional information amounts to change of opinion. **Fluorcent Fixtures (P) Ltd v. ITO [2009] 34 SOT 48.**

❑ Assessee-firm took over business and was granted deductions under sections 80HH and 80J in original assessments. The successor ITO held deductions not admissible and issued notices under section 148 read with section 147(b) initiating reassessment proceeding. The impugned notices is not valid. **Kamalchand v. Income-tax Officer, [1980] 4 Taxman 216 (Madhya Pradesh)/[1981] 128 ITR 290 (Madhya Pradesh)**

❑ 'Reason to believe' of Assessing Officer is founded on an information which might have been received by Assessing Officer after completion of assessment, it may be a sound foundation for exercising power under section 147, read with section 148. **Commissioner of Income-tax v. Kelvinator of India Ltd. [2002] 123 Taxman 433 (Delhi)/[2002] 256 ITR 1 (Delhi)/[2002] 174 CTR 617 (Delhi)**

□ Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Non-disclosure of primary facts - Assessment years 1991-92 to 1994-95 - Whether

□ Assessee had disclosed fully and truly all material facts necessary for purpose of assessment. A notice, issued after expiry of four years from relevant assessment year under section 148 to invoke provisions of section 147, on basis of mere change of opinion of Assessing Officer that a larger sum ought to have been disallowed under original assessment, failed to satisfy conditions as prescribed in proviso to section 147. **Oil & Natural Gas Corpn. Ltd. v. Deputy Commissioner of Income-tax [2003] 133 Taxman 27 (Uttaranchal)/[2003] 262 ITR 648 (Uttaranchal)/[2004] 187 CTR 462 (Uttaranchal)**

□ Where during original assessment assessee's claim was processed at length and after calling for detailed explanation same was accepted, merely because a certain element or angle was not in mind of Assessing Officer while accepting such a claim, could not be a ground for issuing notice under section 148 for reassessment. **Clantha Research Ltd. v. Deputy Commissioner of Income-tax, Ahmedabad Circle - [2013] 35 taxmann.com 61 (Gujarat)**

❑ If assessment is to be reopened after expiry of four years from end of relevant assessment year, in view of proviso to section 147, **AO must have reason to believe that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts;** a subsequent decision of a Court cannot justify reopening of an assessment after a period of four years as subsequent decision does not mean failure on part of an assessee to disclose fully and truly all material facts. **Sesa Goa Ltd. v. Joint Commissioner of Income-tax [2008] 168 Taxman 281 (Bombay)/[2007] 294 ITR 101 (Bombay)/[2007] 213 CTR 579 (Bombay) , IT v. Premier Mills Ltd [2009] 179 Taxman 13 9Mad0, Austin Engineering Co Ltd. V. CIT [2009] 312 ITR 70 (Guj)**

❑ Subsequent amendments or subsequent interpretation of statute is not a ground to reopen of concluded assessments. Commissioner of Income-tax, Thiruvananthapuram v. B. Mohanachandran Nair, [2014] 45 taxmann.com 384 (Kerala)/[2014] 226 Taxman 52 (Kerala)

❑ If the requirements of the act for reopening of assessment were not satisfied and notices issued were wholly illegal and invalid and had to be quashed - Sheo Nath Singh v. Appellate Assistant Commissioner of Income-tax [1971] 82 ITR 147 (SC)

❑ Section 147 does not limit any limit on number of times an Assessing Officer may invoke his power in respect of an assessment order. **CIT v. Arthanariswarry [1982] 136 ITR 147 9Mad), CIT v. Surendra Kumar BHANDARI [1987] 164 ITR 323 (Pat).**

❑ Where assessee miserably failed to challenge reopening of assessment at appropriate time, he could not have been encouraged to challenge order of assessment straight away by filing a writ petition before High Court. **Doosan Bobcat India (P.) Ltd. v. Deputy Commissioner of Income-tax [2019] 111 taxmann.com 473 (Madras)**

❑ Assessee filed returns in response to notices under section 148 issued by ITO and the said returns were pending for disposal. Assessee's file was transferred to jurisdiction of ITO, who issued second notice under section 148. Since the reassessment proceedings were pending, impugned second notice was not valid - **A.S.S.P. & Co. v. Commissioner of Income-tax [1986] 27 Taxman 623 (Madras)/[1988] 172 ITR 274 (Madras)/[1986] 55 CTR 375 (Madras).**

❑ When return filed along with refund application being a valid return and as no assessment order had been communicated to assessee, no action under section 147/148 could have been taken. **Trustees of H.E.H. the Nizam's Supplemental Family Trust v. Commissioner of Income-tax. [2000] 109 Taxman 193 (SC)/[2000] 242 ITR 381 (SC)/[2000] 159 CTR 114 (SC)**



- Retrospective amendment in a section cannot be ground for reassessment beyond a period of 4 years. **Vodafone West Ltd v. CIT, (2013) 354 ITR 562 (Guj).**
- Reopening cannot be ordered by the AO merely on presumption that returned income is extremely low in compare to gross total receipt. **Rajender Goud Chepur v. ITO [2017] 80 taxmann.com 387 (AP)**

Scope of section 148 – Notice

- Issue of notice u/s 148 is mandatory and if not properly issued, reopening is illegal.
- Notice u/s 148 requires notice to be “Issued”, **actual service is irrelevant**. Whereas Notice u/s 143(2) says “Notice to be Served”.
- Section 148 Notice has to **specify the period** in which return is filed. The return filed in response shall be treated as if return was return required to be furnished u/s 139 and therefore, the AO shall have to serve notice u/s 143(2) within a period of 12 months from the end of the month in which return was furnished.
- **Separate Notice u/s 148 for each AY**: During the course of proceedings u/s 147 for a particular A.Y, if any other income chargeable to tax has also escaped assessment for that particular A.Y. and it comes to the notice of the A.O, he can assess or reassess that income **(this is called umbrella provision)** but he cannot do so for any other A.Y. unless separate notice u/s 148 is issued. **Chaya Sinha Vs. ACIT, ITA No. 2462/Del/2014, Date of Order: 11.03.2016**
- As per sec 148(2), before issuing any notice u/s 148, the AO shall **record his reasons in writing**.

Notice u/s 148 – To be issued as per section 282

☐ **Section 282- Service of notice generally.**

- (1) The service of a notice or summon or requisition or order or any other communication under this may be made by delivering or transmitting a copy thereof in following manner—
 - (a) by post or by such courier services as may be approved by the Board; or
 - (b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons; or
 - (c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
 - (d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.
- (2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named

Validity of Notice

- Where the name of assessee was not correctly mentioned in notice issued u/s 148 such notice was vague and not valid and therefore, consequent reassessment was null and void. **Shri Nath Suresh Chand Ram Naresh V. CIT [2005] 145 taxman 186 (All.), also see Shraddha Jain Vs. ITO, ITA No. 3280/Del./2015, ITAT- Delhi**
- A notice contemplated u/s 148 is a jurisdictional notice and is not curable u/s 292BB if not served within provisions of the Act. **CIT v. Shital Prasad Kharag Prasad [2005] 147 taxman 441 (All.)**
- Where AO had completed assessment u/s 143(3) r.w.s 147 of the assessee without issuing any notice under section 143(2), re-assessment order passed was legally unsustainable and same could not be justified by invoking provisions of section 292BB. **PCIT v. Oberoi Hotels (P) Ltd [2018] 96 taxmann.com 104 (Calcutta)**

Validity of Notice

- Notice issued u/s 148 on basis of search in premises of third party revealing unaccounted investments by assessee was held to be valid even when return of assessee was accepted without scrutiny u/s 143(1). **Kiran Ravjibhai Vasani Vs. Assistant CIT 408 ITR 303(Guj.HC).**
- Assessment proceedings initiated u/s 147 wouldn't be vitiated for want of proper service of notice if such ground was not raised by assessee. **CIT Vs. M/s Sudev Industries Ltd. 2018-TIOL-1060 Delhi HC.**
- Reassessment Notice issued on the basis of assessment order of earlier year was to be set aside if the assessment order was set aside by appellate authority before issue of reassessment notice. **DIT Vs. Atomstroyexport 95 taxmann.com 260 (SC)**

Case related to section 149 – Time limit

- Where the assessment was completed allowing the special deduction on the basis of a decision of the High Court, the subsequent reversal of the legal position by the Supreme Court would not authorize the Department to reopen the assessment which stood closed on the basis of the law as it stood at the relevant time. **DCIT Vs. Simplex Concrete Piles (India) Ltd. [2013] 358 ITR 120 (SC)**
- Where assessee did not have any asset outside India and, therefore, there was no question of having any income in relation to such an asset, in such a case, notice issued under section 148 after expiry of six years from end of relevant year relying upon provisions of section 149(1)(c) was not sustainable. **Deccan Digital Networks (P.) Ltd. v. ITO (2014) 50 taxmann.com 277 (2015) 113 DTR 147 (Delhi)**

Validity of Issue of Notice up to 30th June 2021 for Reassessment

Validity of Issue of Notice up to 30th June 2021 for Reassessment

□ However, assessee-Petitioners have challenged the non-applicability and non-adherence to the new provisions of law. The Hon. **Bombay High Court in Armada D1 Pvt. Ltd. v. DCIT WP(L) No. 11766 of 2021 dated 03.06.2021** has stayed the proceedings of reassessment on account of non-adherence to the new procedure laid down under section 148A of the Act.

Validity of Issue of Notice up to 30th June 2021 for Reassessment

□ Hon. **Bombay High Court in Tata Communications Transformation Services Limited v. ACIT WP No. 1334 of 2021 dated 05 July, 2021** wherein the Petitioner has contended that section 3 of the Ordinance and Explanation in **Notification No. 20 of 2021** and Explanation in **Notification No. 30 of 2021 dated April 27, 2021** (2021) 434 ITR (St) 11 are ultra-vires the Income Tax Act, 1961 and the **Finance Act, 2020** and are unconstitutional, posing challenge to them urges for striking them down. The Court has stayed the proceedings in this case as well.

□ The finality of the Petitions cannot be decided at this stage. However, it can be inferred that the Courts are likely to grant a stay on Notices issued under section 148 of the Act between April 01, 2021 to June 30, 2021, without following the procedure laid now under the new law i.e., 148A of the Act.

Validity of Issue of Notice up to 30th June 2021 for Reassessment

- ❑ The Hon. Apex Court in **Bhagat Ram Sharma vs. Union of India and Ors** observed that It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'
- ❑ Secondly, the CBDT is a statutory authority functioning under the Central Board of Revenue Act, 1963. The issuance of Notification extending the due date for issuance of Notice under the Act beyond the existence of relevant provisions of such act would amount to excessive delegation.

Validity of Issue of Notice up to 30th June 2021 for Reassessment

□ The Hon'ble Supreme Court in the case of **Addl. District Magistrate (Rev.) Delhi Admn. vs. Siri Ram** held that it is a well-recognised principle of interpretation of a statute that conferment of rulemaking power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

Validity of Issue of Notice up to 30th June 2021 for Reassessment

□ Further, the Hon'ble Supreme Court in the case of **State of Tamil Nadu and Ors. vs. P. Krishnamurthy and Ors.** wherein it was held that there is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. Further, the court considering the validity of a sub-ordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. It was also observed that, where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy.

Q&A

