

REASSESSMENT U/S 147

INRELATION TO NOTICE U/S 148

UNDER THE INCOME TAX ACT,1961

- By virtue of the Constitutional right under Article 265 of the Constitution of India 'No tax shall be levied or collected except by authority of law'.
- An assessee of any civilized country is bound to pay the tax to the government for which he is liable under the law. The Government on the other hand is obliged to collect only that amount of tax which is lawfully payable by an assessee.
- The entire object of administration of tax is to secure the revenue for the development of the Country and not charge assessee more tax than that which is due and payable by the assessee.
- To curb the black money the Income-tax Act, 1961 has provided rigorous powers to the revenue department to recover the tax demand including the power to arrest and detain is provided under the Act. Hence it's highly important to understand the provisions for due maintenance of the Accounts and assessment thereof under the Income Tax Act.

- The legislatures amended the provisions of section 148 w.e.f. 1 April 2021 making it mandatory to follow the procedures as stipulated U/s 148A, prior to issue of notice U/s 148. Under the new regime, an opportunity is provided by the revenue to the assessee by issuing a notice u/s 148A, which requires the assessee to explain his case and to get the proceedings dropped with the satisfaction of the AO.

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Under the new regime, it is obligatory for the AO to Issue Notice U/s 148A(b) to the assessee, containing the information along with adverse material purporting escapement of income, which can be countered by the assessee by way material and evidences available with him. This is a major change qua the old provisions in which this information (reasons for re-opening and satisfaction recorded) was made available to the assessee after issuance of notice U/s 148 of the erstwhile regime and filing of return of the Income by the assessee.

- Section: 148A,148A(a),148A(b),148A(c) and lastly 148A(d) GKN Drive Shafts India Ltd.Vs. ITO [2003] 259,ITR 19

148A. The Assessing Officer shall, before issuing any notice under section 148, —

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

- (a) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

- **Provided** that the provisions of this section shall not apply in a case where, —

- (a) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, Jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or
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- (a) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

- The Assessing Officer before issuing notice conduct an enquiry , if required, with the prior approval of the specified authority, with respect to the information in his possession, which suggests that the income chargeable to tax has escaped assessment.
- Explanation – 1 to section 148 clarifies the nature of information as follows:
- any information 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;
- *any audit objection 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; or*
- *any information received under an agreement referred to in section 90 or section 90A of the Act; or*
- *any information made available to the Assessing Officer under the scheme notified under section 135A; or*
- *any information which requires action in consequence of the order of a Tribunal or a Court.]*
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- **Section 148A(b) Show Cause Notice to Assessee**
- The Assessing Officer has to provide an opportunity to the assessee, with the prior approval of specified authority
- The time to be specified in the notice shall not be less than 7 days but not exceeding 30 days from the date on which such notice is issued.
- SCN requiring assessee to explain, as to why a notice u/s 148 should not be issued on the basis of information, which suggest that income chargeable to tax has escaped assessment in the case for the relevant assessment year and as results of enquiry conducted if any, as per Clause (a) of Section 148A.
- Reply furnished by the assessee in response to notice referred in Clause (b) of section 148A, i.e., Show Cause Notice.

- In case the assessee has made a request for personal hearing or cross examination of third party or statement of third party, then the Assessing Officer is bound to provide the same with the approval of specified or Specified authority.
- AO to decide whether or not it is a fit case to issue a notice u/s 148, by passing a speaking order U/s 148A(d), with the prior approval of specified authority.
- The decision of the Assessing Officer U/s 148A(d), either, the purposed re-opening of assessment shall be dropped or
- re-opening of assessment u/s 147 shall be made by way of issuing a notice u/s 148 of the Income Tax Act.
- Time Limit : one month from the end of month in which the reply referred in Clause(c) is received by the Assessing Officer or
- where no such reply is furnished, within one month from the end of month in which time or extended time was allowed to furnish a reply as per Clause (b) expires

- If the Assessing Officer is dis-satisfied with the submissions filed by the assessee, then he shall pass an order under clause (d) of section 148A and thereafter issue a notice u/s 148 for the relevant assessment year, directing assessee to file return of income for the relevant assessment year.
- After receiving the aforesaid order and notice u/s 148 the assessee needs to file the return of income for the relevant assessment year within time prescribed in the notice u/s 148 and proceedings for reassessments shall start.
- And as per amended provisions the power of the A.O. have been widened and he can make full scrutiny of the case under reference while making assessment u/s 148.

- In case the AO has not provided the information relied upon, i.e., adverse material available against the assessee, the assessee must ask for providing adverse material to him.
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- The assessee should co-relate the entire charges mentioned by the Assessing Officer in the notice/SCN issued u/s 148A and should file a detailed reply rebutting the charges / accusation made by the AO and submit entire material and evidences available with the assessee to counter the allegation / charges levied against him for escapement of income in the said notice issued u/s 148A.
- The assessee should ask for providing statement of third party relied upon by the Assessing Officer along with enquiry made if any as well as prior approval of specified authority in this respect.
- the assessee should ask for providing cross examination of the third party based on whose statements, the notice u/s 148A has been issued.
- the assessee should deny all the allegations made against him for which he has counter replies and material available with him.
- the assessee should ask for his personal hearing to the Assessing Officer.

- the assessee must find out if minimum seven days' time has been provided to him to make the compliance of notice u/s 148A served upon him.
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- In case the assessee has sought an adjournment on e-portal or by email or by sending adjournment application through Speed Post, well in advance then whether that adjournment has been granted to him or not.
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- In case the application for adjournment has not been considered by the Assessing Officer and he has passed the order u/s 148A(d) before the time sought by the assessee through adjournment application then the such order is bad in Law, ought to be quashed.
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- In case after examination and making thorough analysis of order passed u/s 148A(d) and finds that the proper procedure as envisaged u/s 148A has not been followed or the order is out of jurisdiction and time bared, then the assessee can file a Writ Petition against such order passed u/s 148A(d), since this is not only violative of principles of natural justice but it also violates the procedure as envisaged u/s 148A

- *S. R.Ashok Associates Private Limited versus ACIT, Circle 22(2), Delhi (Delhi High Court) (W.P.(C) 8238/2022)*
- *Dharmendra Kumar Singh, Union of India and 2 Others, Allahabad High Court (WRIT TAX No. – 641 of 2022*
- *M/s RN Fashion Vs Union of India and ORS, (Calcutta High Court) (APOT/85/2022*
- *Jasmine Bonny Agitok Sangma v. Union of India & Ors. Meghalaya High Court WP (C) No. 179/2022*
- *Aten Capital Private Limited Vs ACIT, Circle 1(1) Delhi, (Delhi High Court) (W.P.(C) 7415/2022)*

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