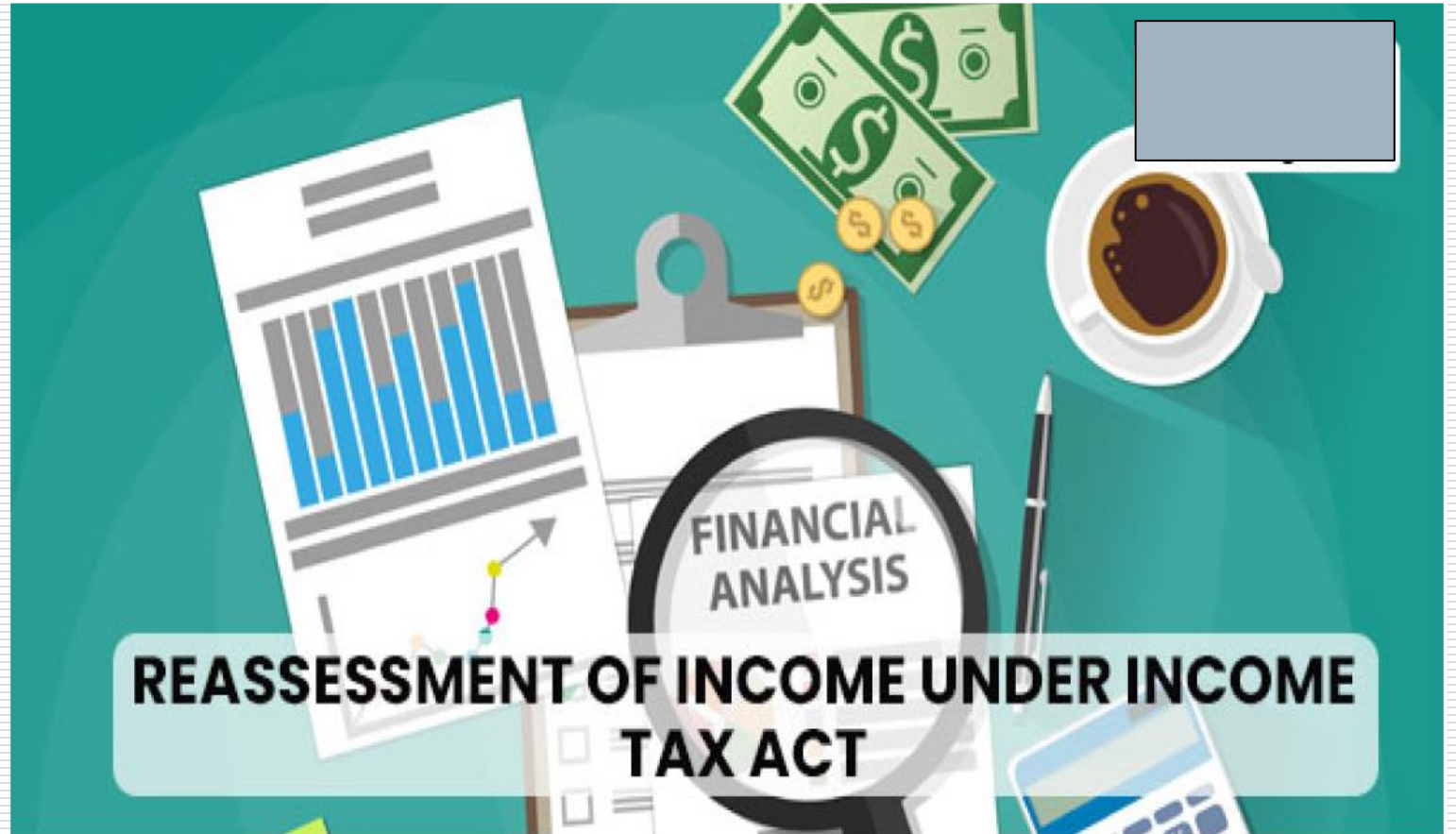


# Re-Assessment under Income Tax Act

**By**  
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**Consultant**



## 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"

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- 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 ?

File your ROI

Checking your ITR by Dept

## Various Sections under which ITR is filled

- ➡ 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





**Assessee / Tax Payer**



**IT - DEPARTMENT**

## Various Sections of Assessment under Income Tax Act



140 (A) - Self Assessment



143 (1)- Summary Assessment



143 (3) - Regular Assessment

- Limited Scrutiny
- Complete Scrutiny



144 – Best Judgement



147 - Re- Assessment / Re-computation  
including Search etc

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# **RE-ASSESSMENT – U/S 147 – Provisions up to 31<sup>st</sup> March 2021**

## Re- Assessment under Section 147.

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- 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.

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- **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.

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- **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.

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- (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.

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- 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.

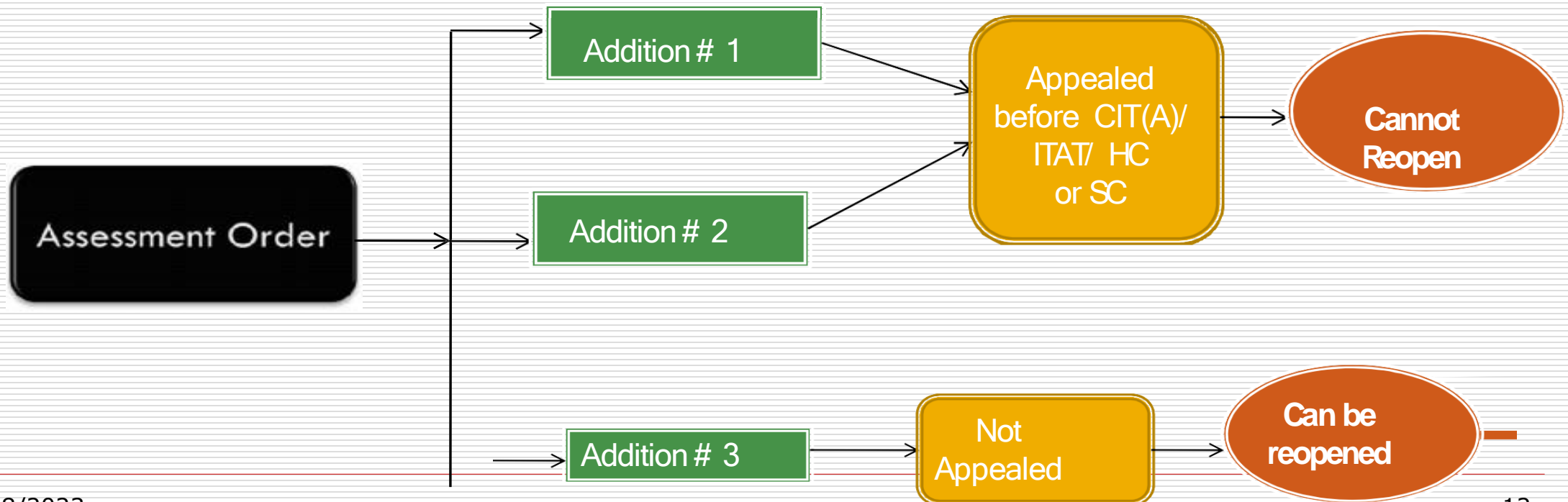
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(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

- ❑ **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.

# 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:

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- ❑ 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   |
|--|---------------------------------|---|
| <b>Where assessment has already been completed u/s 143(3) or 147</b>   |                                 |   |
| 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. |
| <b>Where assessment has not been completed u/s 143(3) or 147</b>   |                                 |   |
| 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. |
| <b>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</b>  |                                 |   |
| 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 believe

- 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....

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- 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

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- 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

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- 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

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- 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)**



## Issues in Reason to believe

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## Assessment on issues not included in Reason to believe

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- **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.**

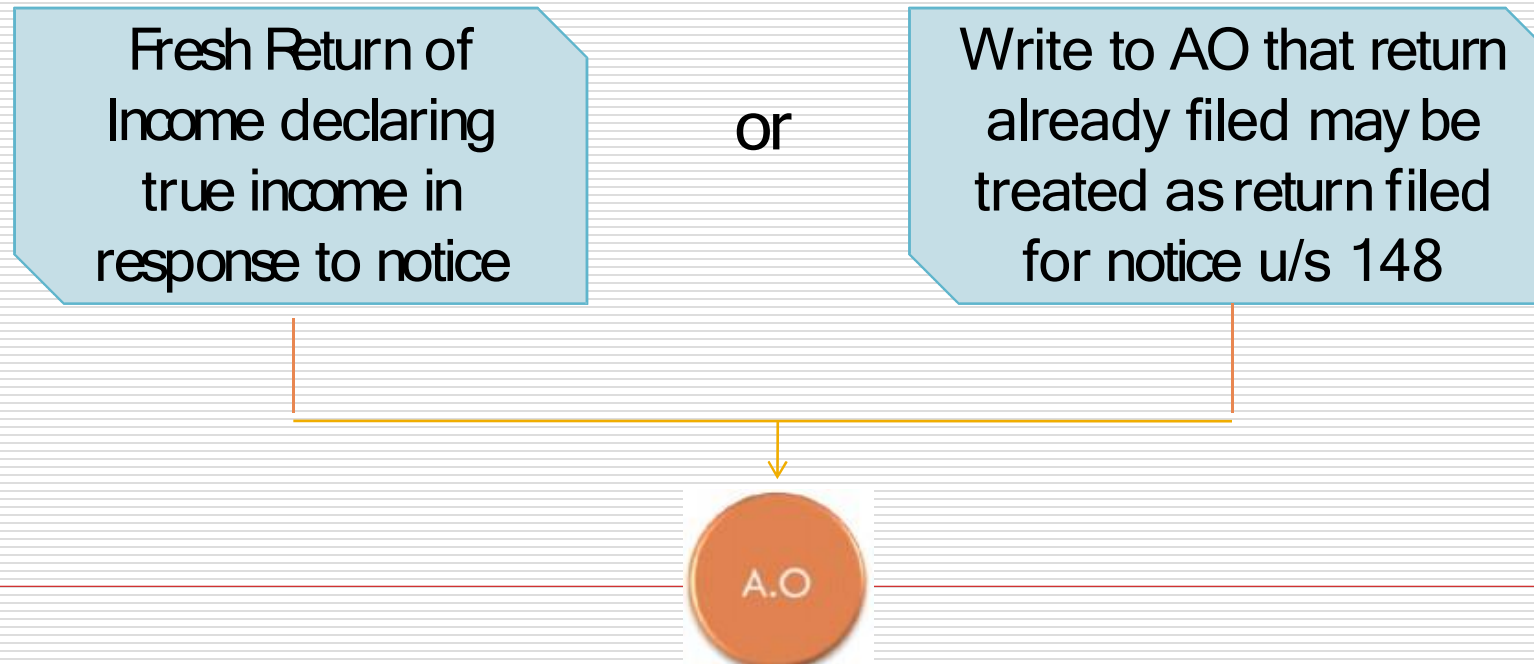
## Assessment on issues not included in Reason to believe

- 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)

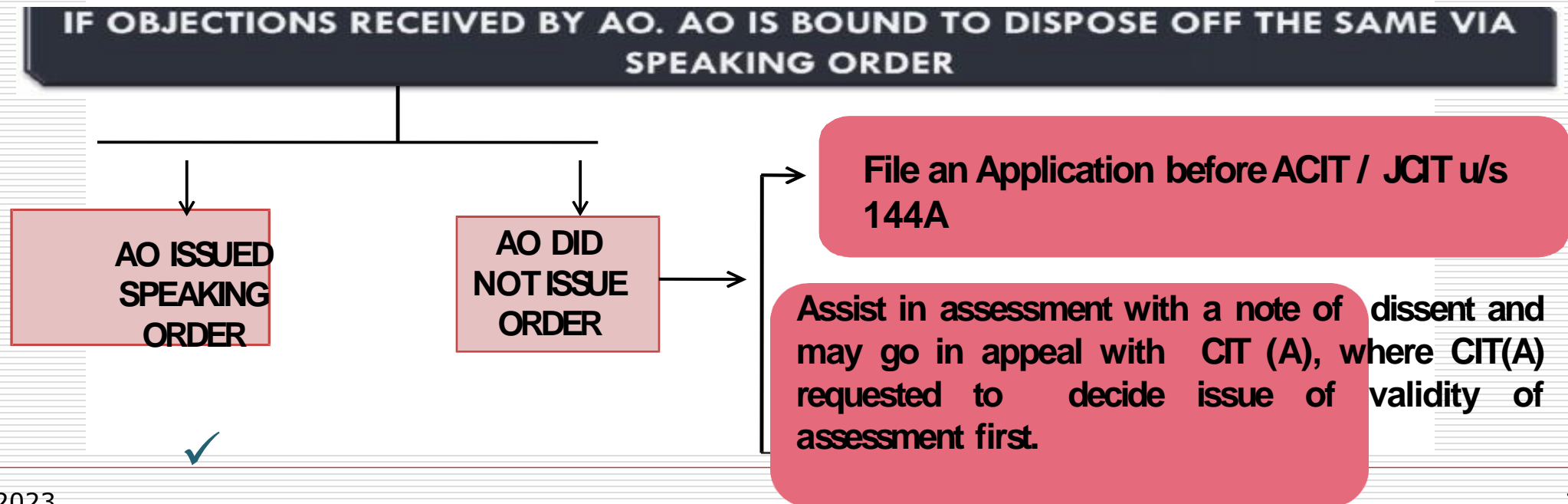


Principles laid by Apex court in G.K.N  
Driveshafts (India) Ltd. Vs. ITO....

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)**

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- ❑ 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 **CTT 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

- ❑ 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

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- ❑ 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

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- ❑ 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

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- 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

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- ❑ 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, Ward 1(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)**

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- 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

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- 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

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- 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

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- 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

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- ❖ 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).**

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# **REASSESSMENT**

## **Paradigm Shift in the Law of Re-assessments**

### **From 1<sup>st</sup> April 2021**

## NEW SCHEME OF RE-ASSESSMENT

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**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.**

## Income Escaping Assessment – Section 147

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***Income escaping assessment [Section 147]*** - *If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (i.e., relevant assessment year).*

*The Assessing Officer may also, 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, irrespective of the fact that the provisions of section 148A have not been complied with (Explanation to Section 147).*

*In other words, Assessing Officer may assess any income in respect of any issue that has escaped assessment which comes to his notice subsequently in the course of the proceeding, even if the steps prescribed in new section 148A were not followed in relation thereto.*



## Income Escaping Assessment – Section 147

If any income chargeable to tax has escaped assessment for any A.Y., the AO may

- **assess or reassess** such income or
- **recompute** the loss or the depreciation allowance or any other allowance or deduction for such assessment year

**A.Y. for which  
income has  
escaped  
assessment is  
known as  
Relevant  
Assessment  
Year (RAY)**

*The AO 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. In such a case, compliance stipulated u/s 148A is not necessary.*

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

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- ❑ 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.



# Income Escaping Assessment

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- ? When no return is filed by the assessee even though his total income exceeds the amount which is not chargeable to income tax.
- ? When return is furnished by the assessee but no reassessment is made and Assessing Officer notices that the assessee had understated the income or has claimed excessive loss, deduction, allowance or relief in return.
- ? When the assessee fails to submit a report in respect of international transaction as required under Section 92 E.
- ? When income chargeable to tax has been under assessed, assessed at low rate or excessive loss or depreciation allowance has been computed.
- ? When a person is found to have assets outside India.

## WHEN DOES INFORMATION SUGGEST THAT INCOME HAS ESCAPED ASSESSMENT?

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- *[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?

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❑ *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 1<sup>st</sup> 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?*

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- ❑ **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?*

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- ☐ 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?*

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### ❑ *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?*

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### ☐ 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?*

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### ❑ *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*

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❑ 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]

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- (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;
- (b) **provide an opportunity of being heard to the assessee**, with the prior approval of specified authority, **by serving upon him a notice to show cause** within such time, as may be specified in the notice, **being 7 days to 30 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);

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

- (c) **consider the reply of assessee** furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) **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**,
  - (i) within one month from the end of the month in which the reply referred to in clause (c) is received by him; or
  - (ii) 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.

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

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### ☐ **Service of Order and Notice u/s 148:**

- ❖ **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.**

### ☐ **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).**

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## ***Meaning of Specified Authority [Section 151]***

*Specified authority for the purposes of section 148 and section 148A shall be*

*In a case where three years or less than three years have elapsed from the end of the relevant assessment year*



Principal Commissioner or Principal Director or Commissioner or Director

*In a case where more than three years have elapsed from the end of the relevant assessment year*



- Principal Chief Commissioner (PCC) or Principal Director General (PDG)
- Chief Commissioner or Director General (where there is no PCC or PDG)

**Procedure is silent as to whether the assessment shall be carried on ‘incriminating material’ or it will be regular assessment.**

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- ❑ ***Following expresum facit cessare taciturn [ “when there is express mention of certain things, then anything not mentioned is excluded”] it can be assumed that this is no longer a condition.***
  - ❑ **Ratio laid down by following judgements is nullified where it was held that in absence of incriminating material, no addition could be made for unabated assessments.**
    - ❖ ***1.Pr. CIT v. Meeta Gutgutia [2018] 257 Taxman 441 (SC)***
    - ❖ ***2.CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi)***
    - ❖ ***3.CIT v. Sinhgad Technical Education Society(2017) 397 ITR 344 (SC)***
    - ❖ ***4.CIT v. Continental Warehousing Corpon. Nhava Sheva Ltd. [2015] 374 ITR 645 (Bom.)***
    - ❖ ***5.CIT v. Gurinder Singh Bawa [2016] 386 ITR 483 (Bom)***
  - ❑ **In the absence of any concept of abated or unabated assessments, and especially in view of the express deeming fiction of possession of information by the AO suggesting that income of the assessee has escaped assessment is all cases of search u/s 132, survey u/s 133A or requisitions u/s 132A, presence of incriminating material is no more a mandatory requirement.**
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## What Remedy is Available to Assesses if Notice u/s 148 and Order u/s 148A(b) has been passed?

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- ❑ In the case of **Jeans Knit Private Limited v. The Deputy Commissioner of Income Tax** the Hon'ble Supreme Court has already held that Writ Petition challenging the issuance of Notice under section 148 of Income Tax Act, 1961 are maintainable in High Courts the respective High Courts must decide the matter on merits. Hence, if Notice under section 148 and Order under section 148A(b) of IT Act, 1961 has been passed by the Assessing Officer such assesses can approach the Hon'ble High Court of their respective state setting aside such Notice and Order.

## Non Applicability of Section 148A

**Non- applicability of section 148A** – *The provisions of this section shall not apply in a case where-*

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after 01.04.2021; or*
- (b) 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 01.04.2021, belongs to the assessee; or*
- (c) 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 01.04.2021, pertains or pertain to, or any information contained therein, relate to, the assessee.*

*In other words, in cases (a), (b) and (c) mentioned above, the Assessing Officer need not conduct enquiry and provide an opportunity of being heard as required under section 148A before issuing notice under section 148.*

## Fulfil of Condition for issue of Notice

**Conditions:** Notice can be issued only when-

- there is **information** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and
- the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

For the purposes of this section and section 148A, **the 'information'** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) 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;
- (ii) any **final objection raised by the Comptroller and Auditor General of India** 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.

**Cases where Assessing Officer shall be deemed to have information-** The Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where-

- (i) **a search is initiated under section 132** or books of account, other documents or any assets are requisitioned under section 132A, on or after 01.04.2021, in the case of the assessee; or
- (ii) **a survey is conducted under section 133A**, other than under sub-section (2A) or sub-section (5) of that section, on or after 01.04.2021, in the case of the assessee; or
- (iii) 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 or requisitioned under section 132 or section 132A** in case of any other person on or after 01.04.2021, belongs to the assessee; or



## Cases where Assessing Officer shall be deemed to be have information

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(iv) *the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that **any books of account or documents, seized or requisitioned under section 132 or section 132A** in case of any other person on or after 01.04.2021, pertains or pertain to, or any information contained therein, relate to, the assessee,*

*for the **three assessment years immediately preceding the assessment year relevant to the previous year** in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.*

## How to Respond to Section 148 Notice?

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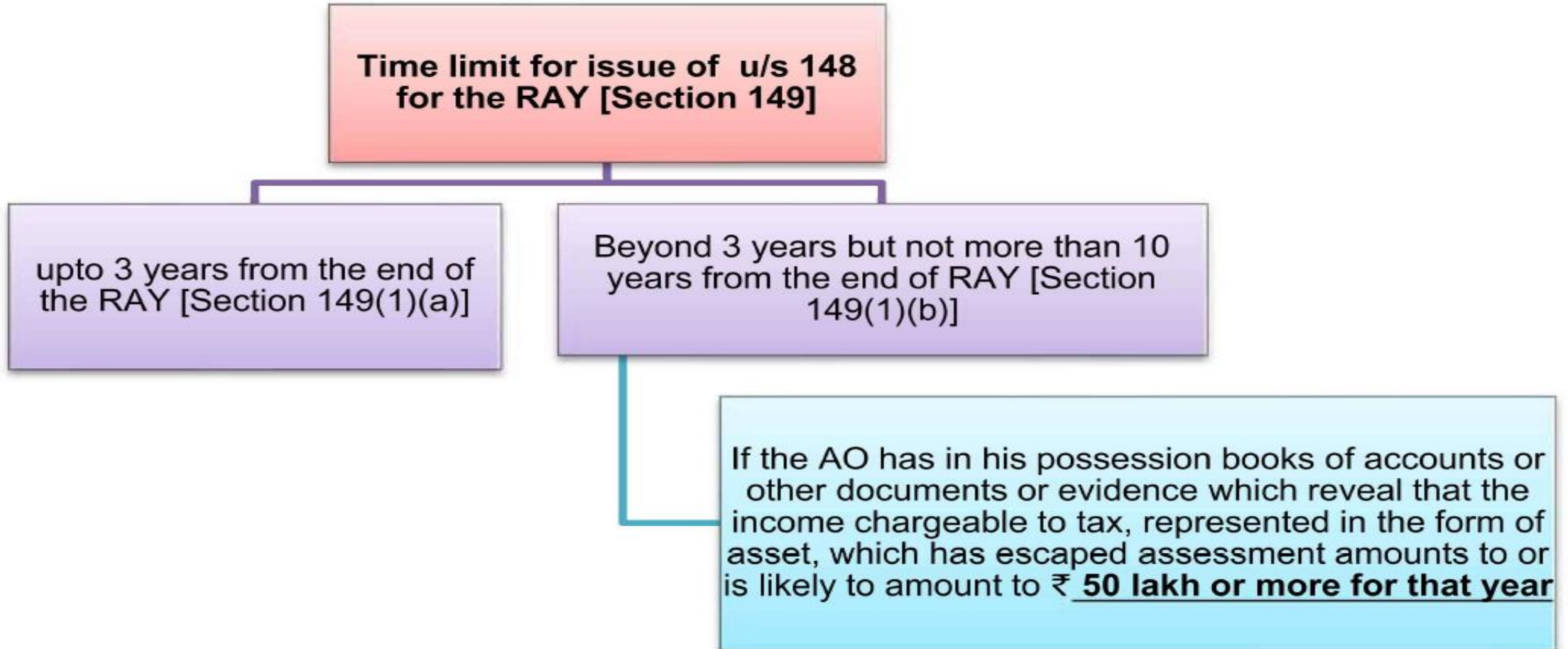
- ❑ It is important that you should not take the notice lightly. In case you receive the notice under section 148, you need to follow the guidelines:
- ❖ **Check the notice for reasons to believe which are recorded by the AO for issuing the notice under section 148. If the notice doesn't include the reasons, then you could request the assessing officer to send a copy of the recorded reasons.**
- ❖ **If you are satisfied with reasons to believe stated by the AO then file the return at the earliest. In the case already filed, send the copy to the AO.**

## How to Respond to Section 148 Notice?

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- ❑ It is important that you should not take the notice lightly. In case you receive the notice under section 148, you need to follow the guidelines:
- ❖ **If where you are filing the ITR in response to notice issued under section 148, ensure that you file it after performing proper due diligence. Also make sure that you declare all your income and expenses carefully reflecting a true and fair view.**
- ❖ **If you believe that notice isn't served validly, or reasons provided by the AO for opening assessment under section 147 aren't proper then you could challenge the validity of such notice before the assessing officer or higher authorities.**

# Time Limit of Issue of Notice (Section 149)





**"Asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.**

*No notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of section 148(1)(b), as they stood immediately before the commencement of the Finance Act, 2021 i.e. 6 years from the end of relevant assessment year.*

**Note** – *The provision of section 149(1) shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before 31.03.2021.*

## What is the meaning of “Relevant Assessment Year (RAY)”?

| Explanation 1 to Section 148  | Explanation 2 to Section 148 <sup>2</sup>   |
|---|---|
| I. Where the information with AO suggest that income has escaped assessment:  | II. Where AO shall be <b><u>deemed to have information</u></b> suggesting that income has escaped assessment  |
| <p>In such a case, the <u>RAY</u> is the assessment year:</p> <ul style="list-style-type: none"><li>- for which information is flagged in the system in accordance with risk management strategy formulated by the CBDT or</li><li>- for which CAG has raised final objection,</li></ul> <p>as the case may be.</p> | <p>The <b><u>RAYs means</u></b> the <b><u>3 A.Y.s immediately preceding the A.Y.</u></b> relevant to the P.Y. in which the search is initiated u/s 132 or survey is conducted u/s 133A or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. (This applies in respect of search initiated or books of account requisitioned on or after 1.4.2021)</p> |

The following flow chart attempts to provide an overview of the procedure for making assessment u/s 147:

**When can notice be issued for making assessment u/s 147 ?**

When AO is in possession of following “**information**” suggesting that income has escaped assessment for the purposes of section 148 & 148A [*Explanation 1* to section 148]

Any **information flagged** for the RAY as per risk management strategy formulated by the Board from time to time

Any **final objection raised by CAG** that the assessment has not been made as per the provisions of the Act

In both these cases, **notice is to be issued for the A.Y. for which income has escaped assessment, subject to the following compliances stipulated u/s 148A**, for which prior approval of SA is required:

**Conducting an enquiry, if required**, with respect to the information suggesting escapement of income

3/28/2023

Providing an **opportunity of being heard** to the assessee by serving a show cause notice

When AO is “**deemed to have information**” suggesting that income has escaped assessment for the purposes of section 148 [*Explanation 2* to section 148]

(1) a **search is initiated u/s 132** or books of account, other documents or any assets are requisitioned u/s 132A, on or after 1.4.2021

(2) a **survey is conducted u/s 133A** on or after 01.04.2021

(3) any money, bullion, jewellery or other valuable article or thing, or any books of account or documents **seized or requisitioned, in case of any other person** on or after 01.04.2021 **belongs to the assessee** or any information contained therein, **relate to the assessee**

**Conducting an enquiry, if required,** with respect to the information suggesting escapement of income

Providing an **opportunity of being heard** to the assessee by serving a show cause notice

(3) any money, bullion, jewellery or other valuable article or thing, or any books of account or documents **seized or requisitioned, in case of any other person** on or after 01.04.2021 **belongs to the assessee** or any information contained therein, **relate to the assessee**

Deciding, based on the material available on record including reply of the assessee, in response to show cause notice, decide, whether or not it is a fit case to issue notice u/s 148, by passing an order, with prior approval of SA

In cases (1) and (3) above, compliances stipulated u/s 148A are **not necessary** [as per proviso to section 148A]. However, in case of survey u/s 133A, such exception has not been expressly spelt out in proviso to section 148A.

In cases (1), (2) and (3) mentioned above, the AO shall be **deemed to have information** suggesting that income has escaped assessment **for 3 A.Y.s immediately preceding the A.Y.** relevant to the P.Y. in which

- search is initiated or books of account, other documents or any assets are requisitioned or
- survey is conducted in the case of the assessee or
- money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

AO will serve notice u/s 148 along with a copy of the order passed, if required, u/s 148A, requiring the assessee to furnish ROI within the specified time limit prescribed u/s 149 for making the assessment u/s 147.



Let us understand with the help of the following examples, the contextual meaning of RAY and the time limit upto which a notice u/s 148 can be issued in cases mentioned in *Explanation 1 & 2* below to section 148.

**Example 1:** In a case, where information is flagged in the system which suggests income has escaped assessment:

| Information flagged in the system for | RAY     | Date of expiry of the <u>3</u> year time limit | Can notice be issued on or after 1.4.2021?   |
|---------------------------------------|---------|--|--|
| A.Y. 2016-17                          | 2016-17 | 31.03.2020                                     | No, notice <b>cannot</b> be issued, since <b>3 years have elapsed</b> from the end of the RAY.   |
| A.Y. 2017-18                          | 2017-18 | 31.03.2021                                     |  |
| A.Y. 2018-19                          | 2018-19 | 31.03.2022                                     | Yes, notice <b>can</b> be issued, since 3 years have <u>not</u> elapsed from the end of the RAY. |
| A.Y. 2019-20                          | 2019-20 | 31.03.2023                                     |  |
| A.Y. 2020-21                          | 2020-21 | 31.03.2024                                     |  |

**Example 2:** In a case, where search is initiated u/s 132 during the P.Y. 2021-22, AO is deemed to have information suggesting income has escaped assessment for the 3 A.Y.'s **immediately preceding the A.Y.** relevant to the P.Y. in which the search is initiated u/s 132. Accordingly, the RAY's would be A.Y. 2021-22, A.Y. 2020-21 and A.Y. 2019-20. Thus, notice can be issued for these A.Y.'s, since 3 years have not elapsed from the end of the RAY.

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

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- 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.

## Provision for cases where assessment is in pursuance of an order on appeal, etc.

### [Section 150]

- (i) As per section 149, no notice can be issued after the expiry of 3 years [unless *the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more for that year*] for assessment, reassessment or recomputation where income has escaped assessment.
- (ii) The restriction of time limit under section 149(1) is not applicable where notice u/s 148 is issued for making an assessment, reassessment or re-computation 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 in any proceeding under any other law. This relaxation is contained in section 150(1).



## Assessment in pursuance to order of Appeal etc ( Section 150)

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- (iii) However, such relaxation will not apply where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time **the order which was the subject matter of appeal, reference or revision**, as the case may be, was made on account of the expiry of the time limit at that point of time itself. This restriction is contained in section 150(2).
- (iv) Section 150(1) operates to relax the time restriction stipulated under section 149. Such relaxation can be made use of by the Assessing Officer only if the restriction placed under section 150(2) does not affect the operation of section 150(1). It may be noted that the restriction placed under section 150(2) is applicable only in respect of appeal, reference or revision referred to in section 150(1) but it does not apply with reference to an order passed by a Court in any proceeding under any law.



## MANNER OF CONDUCTING ASSESSMENT PROCEEDINGS [SECTION 151A]

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- ❑ **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]**

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- ☐ **All of the following procedures shall be conducted in a faceless manner:**
  - ❖ **Re-assessment proceedings to be take up 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.**

## 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:<br>(a) Conduct an Inquiry;<br>(b) Grant an opportunity of being heard to the assessee;<br>(c) Consider reply of the assessee;<br>(d) Pass an Order. |   |
| Authority for issuing notice   | Up to 4 years  | JCIT                         | Up to 3 years   | PCIT or PDIT or CIT or DIT<br>( after 3 Yrs PCCIT or PGDIT and where no PCCIT/PDGIT then after approval of CCIT / DGIT) |
|  | 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   |   |
| 3/28/2023  |  |                              | 87  |   |

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In the matter of *R. K. Upadhyay v. Shanab Bhai P. Patel*<sup>[9]</sup>, the Supreme Court held that the limitation period for issuance of notice under Section 148 as prescribed under Section 149 commences from the date of its issuance and not from the date of service.

<sup>[9]</sup> (1987) 3 SCC 96.

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# **Supreme Court Decisions of Union of India v. Ashish Agarwal**

**Judgments reversed as the Apex Court in the said judgment has exercised its power conferred under 142 by the Indian Constitution.**

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- ☐ **Ashok Kumar Agarwal v UOI [131 taxmann.com 22] [All]**
- ☐ **Bpip Infra (P) Ltd [133 taxmann.com 48] [Raj]**
- ☐ **Mon Mohan Kohli v Asstt. CIT [133 taxmann.com 166] [Del]**
- ☐ **Bagaria Properties & Investment (P) Ltd vs UOI [134 taxmann.com 196] [Kol]**
- ☐ **Manoj Jain vs UOI [134 taxmann.com 173] [Kol]**
- ☐ **Sudesh Taneja vs ITO [135 taxmann.com 5] [Raj]**
- ☐ **Vellore Institute of Technology vs CBDT [135 taxmann.com 285] [Mad]**
- ☐ **Tata Communications Transformation Services v Asstt. CIT [137 taxmann.com 2] [Bom]**

# Union of India vs Ashish Agarwal (2022) 138 taxmann.com 64

- (i) The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;*
- (ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a onetime measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;*
- (iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;*
- (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;*
- (v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.*

# **Ajay Bhandari Vs Union of India (Allahabad High Court)**

**Appeal Number : Writ Tax No. 347 of 202 Date of Judgement/Order : 17/05/2022**

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- Reassessment — Reopening of assessment — Reopening notice issued under unammended provisions — Reliefs sought in petition is to quash impugned notice u/s 148 — Held, as per Clauses 6.2 and 7.1 of Board's Circular dated 11.05.2022, if a case does not fall under Clause (b) of sub-Section (i) of Section 149 for Assessment Years 2013-14, 2014-15 and 2015-16 (where income of an assessee escaping assessment to tax is less than Rs.50 Lakhs) and notice has not been issued within limitation under unamended provisions of Section 149, then proceedings under amended provisions cannot be initiated — For all reasons aforestated, impugned notice under Section 148 issued on 01.04.2021 for Assessment Year 2014-15 and impugned notice dated 13.01.2022 under Section 144 and reassessment order dated 13.01.2022 under Section 147 read with Section 144B passed by respondent No.4 are hereby quashed — Assessee's petition allowed



**CBDT issues instructions for AOs to implement SC's ruling  
upholding validity of old reassessment notices**

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**CBDT INSTRUCTION  
NO. 1/2022 [F.NO. 279/MISC/M-51/2022-ITJ],  
DATED 11-5-2022**

**CBDT issues instructions for AOs to implement SC decision.docx**

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# **Filing of Return with reference to Notice issued u/s 148**

[https://www.youtube.com/watch?v=\\_NvPsyMRJ7A](https://www.youtube.com/watch?v=_NvPsyMRJ7A)

<https://www.youtube-nocookie.com/embed/4adbvEfJrFg?hl=en>

# Q&A

