



Reopening / Reassessment - Under Income Tax Act

Speaker :

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Income Escaping Assessment or Reassessment Proceedings

- ❑ The Finance Act 2021 had substituted sections 147 to 151 with effect from April 1, 2021.
- ❑ Until 31-March-2021, the notice under section 148 could be issued
 - **within 4 years** from the end of the relevant assessment year if the amount of income that has **escaped assessment is less than Rs. 1 lakh**.
 - Where, it **exceeds Rs. 1 lakh**, the notice could be issued **within 6 years** from the end of the relevant assessment year.
 - **16 years** from end of relevant assessment year if the income in relation to an asset (including financial interest in any entity) located **outside India** has escaped assessment.
- ❑ Under the new provisions applicable from April 1, 2021, the 148 notice can be issued
 - ~~within 3 years~~ **3 years & 3 months** from the end of the relevant assessment year.
 - However, the amount of escaped **income exceeds Rs. 50 lakh**, the notice can be issued **within 10 years** ~~5 year~~ **& 3 months (fr 01.09.2024)** from the end of the relevant A.Y.

Erstwhile Procedure under Re assessment scheme

- ❑ **Section 148(2) Recording of "reasons to believe":** Demonstrating income has escaped assessment, prior to initiation of Re-assessment proceedings
- ❑ **Re-assessment was initiated beyond four year:** Findings that income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly material facts
- ❑ **Valid sanction under section 151:** Prior to issuance of 148 notice
- ❑ **Time limit for issuance of notice under section 149: 4 years, 6 years and or 16 years** (in case of foreign asset) from the end of the assessment year depending on the category of case
- ❑ **Issuance of notice under section 148:** initiation of re-assessment proceedings and directing filing of return of income filing of Return of Income and seeking reasons

- ☐ **Furnishing reasons recorded along with other documents:** -AO was obliged to provide :
 1. Copy of reasons recorded u/s 148(2)
 2. Copies of the sanction u/s 151 and
 3. Documents/ information/ evidence relied upon
- ☐ **Filing of preliminary legal objections:** assessee was at liberty to challenge Notice
- ☐ **Order disposing off legal objections:** required to pass a separate speaking order disposing off the legal objections
- ☐ **If not disposed off through speaking order,** assessee could challenge the same invoking writ jurisdiction of the Hon'ble Jurisdictional High Court
- ☐ **Completion** of re assessment proceedings and passing the assessment order

The aforesaid procedure has been approved by the Supreme Court in the landmark case of GKN Driveshafts Ltd , 259 ITR 19 (SC)

- ❑ **Review of an assessment** in the guise of Re-assessment proceedings was barred, being an in built and inherent check on the arbitrary exercise of power of reassessment by AO **Concept of change of opinion** was to be read into the Re-assessment scheme .
- ❑ **Kelvinator 2010 (2) SCC 723 Supreme Court** had succinctly summarized the legal requirements for a valid notice under Section 147 and stated inter alia that, "Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "**tangible material**" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief".
 - Court has further held that “**Change of Opinion**” is an inbuilt test to check the abuse of power u/s 147/148 by the AO.
- ❑ **Usha International [2012] 348 ITR 485(Delhi)**: The new information need not come from an outside source so long as it can be seen that the **assessee had furnished certain incorrect material facts**.

Important Judicial Pronouncement - Carry out fishing and roving enquiries

- ❑ Re-assessment proceedings **could not** be a means to **carry out fishing and roving enquiries** necessary enquiry/investigation should precede initiation of re assessment proceedings.
- ❑ If additions are not made on the “information” which suggests that income has escaped assessment albeit additions/ disallowances are made on some other ground.
- ❑ The Hon’ble Bombay High Court in the case of CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom)(HC) held that if after issuing a notice under section 148 of the Act, the **Ld. Assessing Officer accepts the contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income;** if he intends to do so, a fresh notice under section 148 of the Act would be necessary, legality of which would be tested in event of a challenge by assessee.

Reasons – Recorded to be supplied – Communication of Reasons – Mandatory

- ❑ Recording of reasons before issue of notice is mandatory hence Reassessment was held to be bad in law

Blue Star Ltd. (2018) 162 DTR 302 / 301 CTR 38 (Bom HC)

- ❑ Passing an order under section 147 recording of reasons u/s. 148 and communication thereof to party concerned is mandatory.

Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj) 1

Nandlal Tejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)

- ❑ If assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee another opportunity:

CIT vs. Safetag International India Pvt Ltd [2012] 332 ITR 622 (Delhi High Court)

Assessee can file his objections/reply to the reasons recorded for reopening – AO has to dispose off the assessee objection and serve the order on assessee:

- ❑ **Hon. Bombay High Court Asian Paint Ltd. [2009] 296 ITR 90 (Bom)(HC)** Once the reasons are provided to the assessee , the assessee may choose to file objections against the reasons recorded for reopening the assessment . **It is mandatory for the Assessing officer to dispose off the assessee objection** and serve the order on assessee. Assessing officer should not proceed with assessment for 4 weeks thereafter.
- ❑ It is mandatory for the AO to follow the procedure laid down in **GKN Driveshafts 259 ITR 19 (SC)** and to pass a separate order to deal with the objections. **The disposal of the objections in the assessment order is not sufficient compliance with the procedure.** The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (**Bayer Material Science 382 ITR 333 (Bom) & KSS Petron (ITXA No. 224 of 2014 dt 20-03-2017 (Bom)**)

Disposal of objections – To be linked with recorded reasons

- ❑ **Pransukhlal Bros. v. ITO (2015) 229 Taxman 444 (Bom.)(HC):** where in Assessment of the assessee was reopened. The recorded reasons stated that the assessee had taken accommodation entries from a Surat based diamond concern and this information (according to the recorded reasons) was obtained by the Department from search and survey action on the said diamond concern. At the time of

- ❑ **Alden Prepress Services Private Limited vs. DCIT – Writ Petition No.13815 of 2011 and WMP. Nos.7943 and 7944 of 2017 (Mad.) (HC)** AO can make a reference to the TPO only after rejecting the assessee's objections filed against the reopening by passing a speaking order.

Important Judicial Pronouncement – Rejection of objection without assigning reason

Scan Holding P. Ltd. v. ACIT (2018) 402 ITR 290 (Delhi) (HC)

- ❑ The AO initiated reassessment proceedings. The assessee raised various objections to proposed reassessment proceedings. The AO rejected the objections filed by the assessee.
- ❑ It was held that where assessee raised objections to reopening of assessment, in view of fact that AO rejected those objections without elucidating and dealing with contentions and issues raised in objection letter, impugned order was to be set aside and, matter was to be remanded back for disposal afresh.

Karti P. Chidambaram v. ACIT (2018) 402 ITR 488 (Mad.)(HC)

- ❑ It was held that *since reassessment order was passed without disposing of assessee's objections to reopening of assessment and without passing a speaking order, same was unjustified.*

Honest/bonafide belief of a prudent person which has **live link/ connection** with the **tangible information** on the basis of which such belief is formed.

- ❑ **Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC)** Analyzed the Phrase "reason to believe" and observed that *"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn."*
- ❑ **Greenworld Corporation (2009) 314 ITR 81 (SC)** *it was held that the assessment order passed on the dictates of the higher authority being wholly without jurisdiction, was a nullity.*
- ❑ **United Shippers Ltd. v. ACIT (2015) 371 ITR 441 (Bom.)** *Reopening of assessment on basis of letter of Commissioner (Appeals) containing identical facts stated by assessee was held not valid.*

Important Judicial Pronouncement - Approval and Sanction

- ❑ **Valid sanction under section 151** an inbuilt check on the undue exercise of power under section 147 - cannot be reduced to mere formality -Sanction must be proper . (Till 1.9.24 – PCIT for reopening upto 3 years & PrCC reopening beyond that) (**Now JCIT/Addl. Commissioner**)
- ❑ **S. Goenka Lime and Chemical Ltd (2016) 237 Taxman 378 (SC)** wherein it was held that when the sanctioning authority only recorded so “Yes. I am satisfied”, then sanction has to be held as mechanical way of recording satisfaction which accords a sanction clearly unsustainable and hence the order of the Tribunal quashing the reassessment and notice u/s 148 of the Act was upheld.
- ❑ **Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del)(HC)** *The approval is a safeguard and has to be meaningful and not merely ritualistic or formal.*

Important Judicial Pronouncement - Approval and Sanction

Aquatic Remedies (P.) Ltd [2018] 406 ITR 545 (Bom HC) & also confirmed by the Apex Court

- ❑ The AO issued a notice u/s 148 seeking to re-open the assessment. The assessee had challenged the issuance of the re-opening notice on the ground that sanction for issuing of the notice had to be obtained from the Add. Commissioner u/s 151(2) while the sanction in this case was obtained from the Commissioner in breach of section 151.
- ❑ It was held that **“It is undisputed position that in terms of S. 151(2), the sanctioning/permission to issue notice u/s 148 has to be issued by the Add. Commissioner. The AO has not sought the approval of the Designated Officer but of the Commissioner”.**
- ❑ **Since in terms of section 151(2), sanction to issue notice u/s 148 has to be issued by Add. Commissioner, reopening of assessment with approval of Commissioner was unsustainable.**

- ❑ Due to the COVID-19 pandemic in 2020 and 2021 and consequent nationwide lockdown, the Government had extended the due dates of various compliances on multiple occasions.
- ❑ The limitation period to issue the notice under the old provision was also extended.
- ❑ The chronology of these limitation periods is mentioned in the below table –

Due dates falling between March 20, 2020 and –	Extended to	Notification
June 29, 2020	June 29, 2020	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]
December 31, 2020	March 31, 2021	Notification S.O. 2033(E) [No. 35/2020], dated June 24, 2020
March 30, 2021	March 31, 2021	Notification S.O. 4805(E) [No. 93/2020], dated December 31, 2020
March 31, 2021	April 30, 2021	Notification S.O. 1432(E) [No. 20/2021], dated March 31, 2021
March 31, 2021	June 30, 2021	Notification S.O. 1703 (E) [No. 38/2021], dated April 27, 2021

New Reassessment Scheme:

- ☐ Section 148 has been completely substituted to provide that re-assessment proceedings can be initiated u/s 148 when there is **INFORMATION** with the AO *“which suggests that income chargeable to tax has escaped assessment for the relevant year”*

- ☐ **“Information”** for the purpose of section 148 has been specifically defined in Explanation 1
 - i. any information in accordance **with risk management strategy** of the Board
 - ii. any **audit objection** that assessment has not been made in accordance with the provisions of the Act.
 - iii. any information received under **DTAA**
 - iv. any information made available to the Assessing Officer under the **scheme notified u/s 135A** – Scheme for faceless collection for information
 - v. any information which requires action in consequence of the **order of a Tribunal or a Court**
 - vi. Any information emanating from Survey action u/s. **133A wef 1.4.24**

New Reassessment Scheme:

~~☐ In the following cases it shall be **deemed that AO is having Information-**~~

~~i) a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A.~~

~~**ii) a survey is conducted u/s 133A** (other than TDS/TCS survey).~~

~~iii) the AO is satisfied with the prior approval of the PCIT/CIT, that any money, bullion, jewellery or other valuable article or thing or Books of accounts, documents seized or requisitioned u/s 132 or 132A in case of any other person, belongs to or pertains to or information related to the assessee.~~

Sec 148 : Issue of Notice where income has escaped Assessment

- ❑ The AO shall serve on the Assessee a notice, along with a copy of the order passed, if required under clause (d) of Sec 148A, requiring him to furnish within (from 1.4.23 ~~a period of 3 months from the end of the month in which such notice is issued, or such further period as may be allowed by the AO on the basis of an application made in this regard by the assessee~~), w.e.f. 1.9.24 **within such period as may be specified in the notice, not exceeding three months from the end of the month in which such notice is issued**, a return of Income and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139.
- ❑ Provided that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139 (1.4.2023).

- ☐ **Furnishing reasons recorded along with other documents:** -AO was obliged to provide :
 1. Copy of reasons recorded u/s 148(2)
 2. Copies of the sanction u/s 151 and
 3. Documents/ information/ evidence relied upon
- ☐ **Filing of preliminary legal objections:** assessee was at liberty to challenge Notice
- ☐ **Order disposing off legal objections:** required to pass a separate speaking order disposing off the legal objections
- ☐ **If not disposed off through speaking order,** assessee could challenge the same invoking writ jurisdiction of the Hon'ble Jurisdictional High Court
- ☐ **Completion** of re assessment proceedings and passing the assessment order

The aforesaid procedure has been approved by the Supreme Court in the landmark case of GKN Driveshafts Ltd , 259 ITR 19 (SC)

Prior to issuance of 148 Notice: Procedure needs to follow by AO Prior to 01.09.24

- ❑ Prior to issuance of notice under section 148, AO is required to follow the procedure prescribed under section 148A and pass an order under section 148A(d).
- ❑ The AO, under section 148A, is obliged to
 - a. Conduct enquiry, if required** with the **prior approval of the specified higher authority**, with respect to information which suggests that income of the assessee has escaped assessment.
 - b. Issue a SCN** upon the assessee to show cause why notice under section 148 should not be issued and provide an opportunity of being heard to the assessee.
Time period of **at least 7 days but not exceeding 30 days** to be provided to respond to show cause notice.
 - c. Consider the reply** of the assessee.
 - d. “Decide” on the basis of material available** on record and the reply furnished by the assessee, by passing **“an order whether or not it is a fit case for issuance of notice under section 148”** within one month of receipt of assessee's reply **with prior approval of specified authority**.

(It is to be noted that as amended by FA 2022, w.e.f. 01.04.2022, the AO is not required to get approval of the prescribed authority before issuing SCN u/s 148A & 148 in case approval u/s 148A(d) is obtained)

Procedure provided in section 148A is not applicable in cases of search, survey or requisition initiated or made on or after 01.04.2021

Consider the reply of the assessee - Fair & independent application of mind

HIGH COURT OF CHHATTISGARH

Deputy Commissioner of Income-tax v. Surendra Kumar Jain (**JULY 18, 2024**)

Therefore, in view of above discussion, the law on the point can be summed up as under:

- i) The **Statutory authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion which is impermissible in law.**
- ii) General power of superintendence must be distinguished from the interference in the adjudication process. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner.
- iii) iii) The Court must be mindful of the fact that the adjudication process must be free from any kind of bias. The true test of bias is not whether the judge is actually biased or not, but whether there is a real danger of bias from the view point of fair-minded and informed observer. [Para 54]

Pramukh Export Gujarat HC (AUGUST 13, 2024)

Information received from GST department and from GSTR 1 the AO concluded that there is income escaping assessment.

Assessing Officer has failed to justify any of the reasons assigned to come to the conclusion that it is a fit case to reopen the assessment for the year under consideration. The Assessing Officer by considering the total of party-wise purchases and party-wise sales as stated in Form GSTR-I has come to the conclusion that there is escapement of income without there being any material/information on record. Thus the Assessing Officer has passed the impugned order with **total non application of mind.** (The assessee has already recorded the same in the books off accounts.

Non Application of Mind and 135A

Benaifer Vispi Patel v. Income-tax Officer (Bom. HC) JULY 15, 2024

Section 148, read with sections 148A and 135A, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Electronic information) - Assessment year 2020-21 - **Assessing Officer dispensed with applicability of section 148A on ground that information with respect to discrepancies in interest income was received as per scheme notified under section 135A, which provided for faceless collection of information - Assessee contended - However, Assessing Officer without dealing with said remarks issued reopening notice - Whether it could not be conceived that at all material times, information available in electronic mechanism/system would be free from errors and defects - Held, yes - Whether once a defect was pointed out on information as available on portal, it would be duty of Assessing Officer to examine version of assessee in pointing out that information was not correct and same would require due consideration for any further action to be taken to issue notice under section 148 - Held, yes - Whether, therefore, impugned reopening notice was arbitrary and vitiated by non-application of mind and same was to be set aside - Held, yes [Paras 23, 25, 26 and 29] [In favour of assessee]**

Prior to issuance of 148 Notice: Procedure needs to follow by AO Prior to 01.09.24

Samp Furniture (P.) Ltd. v. Income-tax Officer* (Bom. HC) AUGUST 5, 2024

Section 148, read with sections 69A and 151A, of the Income-tax Act, 1961 - Income Escaping Assessment - Issue of notice for (Jurisdiction to issue reopening notice) - Assessment year 2017-18 - Assessee made a cash deposit in his bank account after demonetization - **Assessing Officer made addition** under section 69A with respect to said cash deposits - Thereafter, Commissioner (**Appeals**) **deleted** said additions - Meanwhile, Jurisdiction Assessing Officer (**JAO**) **also issued reopening notice** on very same ground - It was noted that JAO was aware of outcome of order passed by Commissioner (Appeals) wherein issue raised in reopening notice was already dealt with but ignored same while issuing reopening notice - Furthermore, **Chief Commissioner also accorded sanction under section 151 for reopening** assessment in mechanical manner without application of mind - Whether since except for stand taken by JAO that decision of High Court in Hexaware Technologies Ltd. (supra) was not accepted by department, so as to justify impugned notices, there was no acceptable justification as to why proceedings qua impugned notice under section 148 would not stand covered by decision in Hexaware Technologies Limited (supra) and thus, impugned notice was to be set aside- Held, yes [Paras 8, 11, 14 and 15] [In favour of assessee]

Costs imposed on ITO & Pr CC



**Prior to issuance of 148 Notice: Procedure needs to follow by AO Prior to
01.09.24**

Guidelines 28.06.2024

- ☐ Material supply
- ☐ Speaking order
- ☐ Sanctions copy supply
- ☐ Personal Hearing
- ☐ Sanctions – How the same was granted
- ☐ Whether following guidelines is mandatory Yes – RajashthanHigh
Court- R K Infrabuildcreations

Sanctions 111

[2024] 166 taxmann.com 71 (Delhi)

Vinod Kumar Solanki v. ACIT (Delhi High Court) AUGUST 14, 2023

Section 151, read with section 148, of the Income-tax Act, 1961 - Income Escaping Assessment - Sanction for issue of notice (Recording of satisfaction) - Assessment year 2015-16 - Whether satisfaction arrived at by prescribed authority under section 151 must be clearly discernible from expression used at time of affixing its signature while according approval for reassessment under section 148; said approval cannot be granted in a mechanical manner as it acts as a linkage between facts considered and conclusion reached - Held, yes - Whether where approval granted by Principal Commissioner for reopening assessment was a general order of approval for 111 cases and there was not even a whisper as to what material had weighed in grant of approval in present case, approval granted by Principal Commissioner for action under section 147/148 was not valid - Held, yes [Para 20] [In favour of assessee]

HIGH COURT OF DELHI

SBC Minerals (P.) Ltd. v. ACIT (Delhi High Court) AUGUST 20, 2024

Section 151, read with sections 148 and 148A, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Scope of provision) - Assessment year 2016-17 - Assessing Officer issued on assessee a notice under section 148A(b) and passed order under section 148A(d) and consequently issued notice under section 148 - Assessee filed writ petition challenging to grant of sanction under section 151 stating that same had been granted mechanically and **without application of mind**.

HIGH COURT OF DELHI

PCIT v. Pioneer Town Planners (P.) Ltd (Delhi High Court) FEBRUARY 20, 2024

Section 151, read with section 148, of the Income-tax Act, 1961 - Income escaping assessment - Sanction for issue of notice (Conditions precedent) - Assessment year 2009-10 - Whether satisfaction arrived at by prescribed authority under section 151 must be clearly discernible from expression used at time of affixing its signature while according approval for reassessment under section 148 as said approval cannot be granted in a mechanical manner as it acts as a linkage between facts considered and conclusion reached - Held, yes - **Whether where Principal Commissioner had merely written 'Yes' without specifically noting his approval while recording satisfaction that it was a fit case for issuance of notice under section 148, said approval could not be considered to be a valid approval - Held, yes**

Sanctioning authority JAO/ FAO

Kairos Properties (P.) Ltd. v. ACIT (Bombay High Court) AUGUST 5, 2024

Income Escaping Assessment - Issue of notice for (JAO v. FAO) - Assessment year 2017-18 - Assessee filed its return of income for year - Assessing Officer issued a notice under section 148A to assessee which was followed by a notice under section 148 - Whether since notice under section 148A and order passed thereon were issued by Jurisdictional Assessing Officer (JAO) and not by a Faceless Assessing Officer (FAO), as required by provisions of section 151A, impugned notice under sections 148A(b)/148 were not sustainable and were liable to be set aside - Held, yes [Paras 5 and 6] [In favour of assessee]

A notice dated 30-3-2024 was issued under section 148A(b) and order passed thereon under section 148A(d) dated 25-4-2024 and consequent notice under section 148 dated 25-4-2024 was issued to the assessee in respect of returns filed by the assessee for the assessment year 2017-18.

HIGH COURT OF PUNJAB & HARYANA

Jasjit Singh v. Union of India JULY 29, 2024

Notices issued by JAO under section 148 and re-assessment proceedings initiated thereafter without conducting faceless assessment as envisaged under section 144B were contrary to provisions of law and same were to be quashed

Jatinder Singh Bhangu v. Union of India JULY 19, 2024

Whether scheme of faceless assessment is applicable from stage of show cause notice under section 148 and therefore, its object would be defeated if show cause notice is issued by Jurisdictional Assessing Officer - Held, yes - Whether mandate of sections 144B, 151A, and notification dated 29.03.2022 being clear and unambiguous it could not be overridden by any Instructions/circulars - Held, yes - Whether therefore, notices issued by Jurisdictional Assessing Officer under section 148 were liable to be quashed - Held, yes

Period limitation

AY 16-17

HIGH COURT OF DELHI

Manju Somani v. Income-tax Officer JULY 23, 2024

Where Assessing Officer issued on assessee a notice under section 148 dated 29-4-2024 in respect of assessment year 2016-17, since section 149(1)(b) as it stood prior to amendment by Finance Act, 2021 prescribed that no notice under section 148 shall be issued if four years but not more than six years have elapsed from end of relevant assessment year, impugned notice deserved to be quashed

Period limitation

AY 17-18

Shreenath Finstock (P.) Ltd. v. Union of India (Bombay HC) AUGUST 9, 2024

Section 151A, read with sections 148 and 149, of the Income-tax Act, 1961 - Income Escaping Assessment - Faceless Assessment - Assessment year 2017-18 - Assessee received a notice under section 148 for Assessment Year 2017-18, issued by Jurisdictional Assessing Officer instead of Faceless Assessing Officer as required by section 151A - Whether in faceless proceedings revenue has to comply with provisions of section 151A while issuing notice under section 148 - Held, yes - Whether since in instant case, it was apparent that revenue had not complied with Scheme notified by Central Government pursuant to section 151A(2), whole proceedings stood vitiated - Held, yes - **Whether further since in instant case, notice under section 148 was issued on 19 April, 2024 by which time, time limit for issuance of notice as stipulated under section 149 had expired, on this ground too, re-assessment proceedings stood vitiated - Held, yes [Paras 5 and 7] [In favour of assessee]**

Applicability of mind on material received from investigation wing

Well Trans Logistics India (P.) Ltd. v. Add. CIT (Delhi HC) SEPTEMBER 2, 2024

Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credit (Reassessment) - Assessment year 2011-12 - Assessing Officer received information from Investigation Wing that assessee had deposited substantial amount of cash in different bank accounts - Assessing Officer based on said information opined that cash deposited in bank had escaped assessment - It was noted that there was no close nexus or live link between tangible material and reason to believe that income had escaped assessment - **Whether information received from Investigating Unit could not be sole basis for forming belief that income of assessee had escaped assessment - Held, yes - Whether thus, once information was received from Investigating Wing, it was incumbent upon Assessing Officer to make further enquiries and garner further material and if such material indicated that income of assessee had escaped assessment, then form a belief that income of assessee had escaped assessment - Held, yes - Whether since Assessing Officer had not acquired any material to form such belief, impugned reassessment notice issued against assessee was to be set aside - Held, yes [Paras 25, 26 and 27] [In favour of assessee]**

Having received information from the Investigating Wing, it was incumbent upon the Assessing Officer to take further steps, make further enquiries and garner further material and if such material indicate that the income of the assessee has escaped assessment and then form a belief that the income of the assessee has escaped assessment. [Para 25]

Change of Opinion

Dinesh Singla v. ACIT (High Court Punjab & Haryana) SEPTEMBER 2, 2024

Section 148, read with sections 2(14) and 147, of the Income-tax Act, 1961 - Income Escaping Assessment - Issue of notice for (Reassessment) - Assessment year 2013-14 - Petitioner had purchased agricultural land from three brothers and later on sold same to company DSS - As land was agricultural land and not a capital asset, it was not eligible to tax and no income was taxable either in hands of seller or with petitioner which was verified by ITO Intelligence in its verification report - Assessing Officer had passed an assessment order under section 143(3) without making any additions for undisclosed income or capital gains - Later on, a notice under section 148 was issued upon assessee on ground that source and genuineness of investment made as well as short term capital gain (STCG) received by assessee remained unexplained and, therefore, income to extent of Rs. 19.34 crores had escaped assessment - Accordingly, he had passed an order under section 144 read with section 147 making addition of Rs. 19.34 crores - Whether since no document was produced by respondents to show that they had any new information or documentary evidence for reopening of case, **ITO could not be allowed to merely reopen assessments already finalized based on his opinion that earlier assessment was wrongful or that he had a reason to suspect that assessment was done wrongfully - Held, yes** - Whether, even otherwise, since land was beyond municipal limits and did not come within ambit of section 2(14)(iii)(a), no capital gain was liable to be taxed - Held, yes [Paras 37 to 40] [In favour of assessee]

ATS Infrastructure Ltd. v. ACIT (Delhi High Court) JULY 18, 2024

Section 148, read with section 147, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Recording of reasons) - Assessment years 2014-15 to 2016-17 - Whether Assessing Officer would have to establish that reassessment is warranted on account of information in its possession which appears to indicate that income chargeable to tax had escaped assessment but once assessment itself is reopened, it would not be confined to those subjects only ; this would, however, be subject only to one additional rider and that if, in course of reassessment, Assessing Officer ultimately comes to conclude that no additions or modifications are warranted under those heads, it would not be entitled to make any additions in respect of other items forming part of original return - Held, yes - On basis of information that assessee had received loan from its 100 per cent subsidiary and said issue was not examined during assessment proceedings, notice under section 148A(b) was issued to assessee - In response to notice under section 148A(b), assessee submitted that during year relevant to assessment year, it had received no loans rather repayment had been made of advance received earlier - Assessing Officer in order passed under section 148A(d) considered reply of assessee and had found it tenable and observed that assessee had not provided any evidences with regard to source of funds utilized for making payment of loan and he, thus, treated loan repayment amount as income and made addition to income of assessee - **Whether Assessing Officer after receiving reply from assessee had merely sought to ascertain source of funds on basis of which repayments were made and those loans was clearly not edifice on which section 148A(b) notice was based - Held, yes - Whether Assessing Officer could not supplement or improve upon reason which formed basis for initiating action under section 148A - Held, yes - Whether since foundational material alone would be relevant for purposes of evaluating whether reassessment powers were justifiably invoked, impugned**

Prakashchandra Chhotalal Shah v. ITO (Gujarat High Court) FEBRUARY 14, 2023

Section 69A, read with sections 148 and 148A, of the Income-tax Act, 1961 - Unexplained moneys (Unaccounted investments) - Assessment year 2018-19 - Assessee was an individual, engaged in business of trading - It filed return of income under section 139(1) - An intimation under section 143(1) was issued, accepting returned income - Thereafter, a notice under section 148A/148 was issued, after obtaining prior approval of CBDT - Notice indicated that information was flagged on 'Insight Portal' in accordance with Risk Management Strategy formulated by CBDT that assessee had made unaccounted transactions of investment which were not found genuine on basis of corroborative evidence and admission of a party - Whether assessee had not been furnished information with all requisite details including name of party with whom he was said to have transacted and, therefore, there was a clear violation of requirement of principles of natural justice and also statutory requirement under law - Held, yes - Whether in absence of basic details of name of persons with whom assessee was said to have made unexplained transactions, no reply could have been given by assessee - Held, yes - Whether therefore, notice issued under section 148/148A and consequential proceedings pursuant thereto were to be set aside - Held, yes [Paras 7, 10 and 11] [In favour of assessee]

Corroborative evidence

Pavitra Realcon pvt ltd. Delhi HC

Necessity of Corroborative Evidence:- High Court emphasized that statement recorded u/s. 132(4) of the IT Act has significant evidentiary value but cannot be the sole basis for making additions. There must be corroborative evidence to support the statements. This is consistent with the legal precedent set in Kailashben Manharlal Chokshi v. CIT, where it was held that additions cannot be made solely on admissions without supporting material

Cross examination

SUPREME COURT OF INDIA

CIT v. Jindal Steel & Power Ltd. DECEMBER 6, 2023

It was noted that consultant had categorically stated that he had rendered services to assessee and that assessee had not obtained any bogus accommodation bills from him and moreover, no opportunity was given to assessee to cross-examine consultant - Whether in those circumstances, there was no admissible material to deny claim of expenditure made by assessee - Held, yes

Penny Stock – cross examination – K K Mahapatra Case Orissa HC

**Prior to issuance of 148 Notice: Procedure needs to follow by AO Prior to
01.09.24**

If date of search is prior to 01.04.2021 the as per Shyam Sunder Khandelwal – Rajshtan HC – provisions of 153 C is applicable & not 148

If search is post 01.04.21 then it would be under deemed escapement provision

Prior to issuance of 148 Notice: Procedure needs to follow by AO Prior to 01.09.24

- ☐ Prior to issuance of notice under section 148, AO is required to follow the procedure prescribed under section 148A and pass an order under section 148A(d).
- ☐ The AO, under section 148A, is obliged to
 - a. Conduct enquiry, if required** with the **prior approval of the specified higher authority**, with respect to information which suggests that income of the assessee has escaped assessment.
 - b. Issue a SCN** upon the assessee to show cause why notice under section 148 should not be issued and provide an opportunity of being heard to the assessee.
Time period of **at least 7 days but not exceeding 30 days** to be provided to respond to show cause notice.
 - c. Consider the reply** of the assessee.
 - d. “Decide” on the basis of material available** on record and **the reply furnished by the assessee**, by passing **“an order whether or not it is a fit case for issuance of notice under section 148”** within one month of receipt of assessee's reply **with prior approval of specified authority.**

(It is to be noted that as amended by FA 2022, w.e.f. 01.04.2022, the AO is not required to get approval of the prescribed authority before issuing SCN u/s 148A & 148 in case approval u/s 148A(d) is obtained)

Procedure provided in section 148A is not applicable in cases of search, survey or requisition initiated or made on or after 01.04.2021

❑ After 1.9.20.24

Procedure before issuance of notice under [section 148](#).

148A. (1) *Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under [section 148](#) provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under [section 148](#) should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.*

(2) *On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.*

(3) *The Assessing Officer shall, on the basis of material available on record and **taking into account the reply** of the assessee furnished under sub-section (2), if any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under [section 148](#).*

(4) *The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under [section 135A](#).*

Explanation.—*For the purposes of this section and [section 148](#), "specified authority" means the specified authority referred to in [section 151](#).]*

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Sec 148B- Prior approval for asst./re-asst. or recomputation in certain cases

☐ Prior to 2024

- ☐ Where search initiated u/s 132 in case of assessee or any other person or survey conducted u/s 133A (other than TDS/TCS survey) then assessment or reassessment shall not be made by AO below the rank of JC, except with the approval of JC/JD/Add. CIT/ Add. DIT.

☐ Post 2024

- ☐ Assessment or reassessment shall not be made by AO below the rank of JC, except with the approval of JC/JD/Add. CIT/ Add. DIT

- ❑ **Issuance of jurisdictional notice under section 148:** Once the mandatory procedure set in section 148A is undertaken, the AO shall issue notice under section 148 requiring the assessee to furnish, within the prescribed period, its return of income for the relevant year.
(It is to be noted that **order passed u/s 148A(d) is not appealable** in a view the same can be only challenged by way of **Writ Petition to the HC** or the same can be **challenged also in regular appeal** once the same is culminated into the assessment order)
- ❑ **Completion of reassessment:** After filing of the return, the assessment proceedings thereafter, shall be carried out in terms of sections 143(3)/144/144B of the Act, as the case may be and the order completing the re-assessment shall be passed within the time limit prescribed under section 153.
- ❑ **Explanation 2 to section 148 provides that in case of search, survey or requisition initiated or made on or after 01.04.2021 assessing officer shall be deemed to have information which suggest that income chargeable to tax has escaped assessment.**

❑ Re-opening can be sought prior to 1.9.24:

⁷²[Time limit for notice.

- ⁷³**149.** (1) No notice under [section 148](#) shall be issued for the relevant assessment year,—
- (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
 - ⁷³[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year 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—
 - (i) an asset;
 - (ii) expenditure in respect of a transaction or in relation to an event or occasion; or
 - (iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if ⁷⁴[a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the

❑ Re-opening can be sought post 1.9.24:

62-68 [Time limit for notices under sections 148 and 148A.

149. (1) No notice under [section 148](#) shall be issued for the relevant assessment year,—

- (a) *if three years and three months* have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) *if three years and three months, but not more than five years and three months*, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence *related to* any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more.

(2) No notice to show cause under [section 148A](#) shall be issued for the relevant assessment year,—

- (a) *if three years* have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) *if three years, but not more than five years*, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to fifty lakh rupees or more.]

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- ☐ Time limit prescribed under section 149 of the Act shall exclude:
- a. the time or extended time allowed to the assessee to respond to show cause notice under section 148A(b), and
 - b. any period during which the proceedings under section 148A are stayed by an order of any Court

If after excluding the aforesaid period, time available for passing order under section 148A(d) is less than 7 days, the remaining time shall be deemed to be extended to 7 days

Section 151 – Approval from Specified Authority

☐ NOW JC / ADDL CIT

☐ Prior to 2024

79[Sanction for issue of notice.

☐ **151.** Specified authority for the purposes of [section 148](#) and [section 148A](#) shall be,—

- (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
- (ii) Principal Chief Commissioner or Principal Director General or [79a](#)***] Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:]

79b [Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of [section 149](#).]

Thanking You....

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