

Assessment/Reassessments
under Income Tax Act, 1961.

Assessment / Reassessment- Sec 147-153

- **Sec 147** – Assessment or Reassessment of Incomes Escaping Assessment “**Subject to provisions of section 148 to Section 153**”.
- **Sec 148** – Notice for making assessment / reassessment u/s 147
- **Sec 149(1)** –Time Limits for issue of notice u/s 148 (exceptions - provision to sec 147, sec 149(3), sec 150(1))
- **Sec 151** -Sanctions for issue of notice u/s 148
- **Sec 152** – Other Provisions.
- **Sec 153** – Time Limits for making assessment or reassessment.

Constitutional Validity of Reassessment Provisions

- Reassessment Provisions under the Act are Intra Vires the powers of Parliament - Indian Constitution – Held by Rajasthan HC in Vimal Chandra Golecha 134 ITR 119 stating that in-built safe-guards in the Act in the form of reasons and sanction are there.
- SC in Good Year case AIR 1990 SC 781: Constitution is not a mere law but a machinery by which all the laws are enacted

Legislative History/Developments

- Provisions re-shuffled by Direct Taxes Laws Amendment Act 1987 w.e.f 1 April 1989 – Analysed latest by SC in Rajesh Jhaveri case 291 ITR 500 – Refer CBDT Circular No. 589 dated 31 Oct 1989
- Two Provisos and Explanation inserted in Section 148 to overrule Delhi SB ITAT ruling in Raj Kr Chawla by Finance Act, 2006 w.r.e.f 1 October 1991 (constitutional validity since affirmed by P&HHC in Punjab Cooperative case 290 ITR 15 , SLP dismissed by SC)- *do not apply after 1 Oct 2005*

Legislative History/Developments

- Second Proviso to section 147 inserted by Finance Act, 2008 to overrule BHC ruling in Metro case 286 ITR 618 w.e.f 1 April 2008
- Explanation inserted in section 151 – to overrule Allahabad High Court ruling in Dr Shahsi Garg 285 ITR 158 followed by Delhi ITAT in 114 TTJ 243 (B.R.Mittal) w.r.e.f 1 October 1998

Situation for Assessment or Reassessment u/s 147

- ROI filed – Intimation u/s 143(1) –Assessment u/s 143(3) –Reassessment u/s 147
- ROI filed –Intimation u/s 143(1) –No Assessment u/s 143(3)/144 –Assessment u/s147
- ROI filed –Intimation u/s 143(1) –Assessment u/s 144 – Reassessment u/s 147
- ROI filed –Intimation u/s 143(1) –Assessment u/s 143(3) –Reassessment u/s 147 –Reassessment u/s 147

Situation for Assessment or Reassessment u/s 147

- No ROI filed – Assessment u/s 144 –Reassessment u/s 147
- No ROI filed – No Assessment u/s 144 –Assessment u/s 147
- No ROI filed –Assessment u/s 144 –Reassessment u/s 147 (Any no. of times)

Case: Trustees of HEH. The Nizams supplemental Family Trust vs. CIT (2000) 242 ITR 381 (SC)

No reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.

S. 147 – Provision for assessment
or reassessment of Income
escaping assessment.

“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, gossip 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

Cases on “Reason to believe”

- Where AO only stated that note attached to return of income indicated ‘possible escapement of income’ and he was not sure about it, notice u/s 147 seeking to reopen assessment could not be permitted to stand

Case: Nitin P. Shah vs. DCIT (2005) 146 Taxman 536(Guj.)

- An opinion of the audit party regarding application or interpretation of law is not information, and as such, a reassessment based on opinion of audit party is not valid

Case: CIT vs. Lucas TVS Ltd(2001) 249 ITR 306 (SC)

- If there is no failure on part of assessee to disclose fully and truly material facts, wrong interpretation of accounts by AO leading to excessive relief cannot be a ground for reopening and, thus, cannot confer jurisdiction on AO

Case: Amiya Sales & Industries V. ACIT (2005) 274 ITR 25(Cal.)

Does “Reason to believe” includes “change of opinion” - ?

- NO , Mere change of opinion will not give rise to reopening of assessment. (Cir. No. 549 Dt. 31.10.89)

Case: (CIT v. Bhanji Lavji (1971)79 ITR 582(SC), CIT v. Kelvinator of India Ltd. (2002)123 Taxman 433/256 ITR 1 (Del. FB)- SLP admitted 264 ITR 34 (SC) (st.), Jindal Photo Films. Ltd. V. DCIT (1998) 234 ITR 170 (Del.), CIT vs. Soh Kisan Cold Storage (1994) 209 ITR 700 (Patna – HC)

- Sec 147 does not authorize the AO to reopen assessment under grab of “reason to Believe” , to review its own decision

Case: CIT v Smith Kline Beecham Consumer Brands Ltd. (2003) 126 Taxman 104 (Chd.) (Mag.)

- Moreover there is nothing in sec 147 to suggest that an AO cannot re-open an assessment where he had failed to investigate and find out truth at initial stage

Case : Ram Prasad V. ITO (1995) 82 Taxman 199 (All.)

Does “Reason to believe” includes “change of opinion” - ?

- It would have no application where the order of assessment did not address itself to the aspect which was the basis for reopening of the assessment

Case: Consolidated Photo and Finvest Ltd. Vs. ACIT (2006) 281 ITR 394 (Del HC)

- Once the change in the method of accounting had been knowingly allowed by the ITO after taking into account all the relevant facts it was not permissible for the ITO, or his successor to reopen the assessment at a later point of time u/s 147(b) of the Income Tax Act unless any information came from an extraneous source.

Case: Andhra Bank Ltd. vs. CIT (1997) 225 ITR 447 (SC)

- Reassessment cannot be made on fresh opinion on the same facts or in view of changed legal position

Case: Sirpur Paper Mills Ltd. V. ITO (1978)114 ITR 404(AP), Maharaja Shree Umaid Mills Ltd. V. ITO (1962) 44 ITR 303 (Punj.)

S. 147 – Adjacent application of other sections

- Section 147 which gives authority to assess income escaping assessment is specifically made subject to provisions of section 148 to section 153 i.e in case there is some lapse/irregularity in compliance of section 148 to section 153 same will travel to root of the matter.

- Connotation of “subject to provisions of section 148 to section 153” – Jurisdictional and Non Compliance fatal – refer:
 - For Non recording of reasons u/s 148 – Latest Jharkhand High Court in Kavee Enterprises 301 ITR 156 relying on SC in G.K.N Driveshaft 259 ITR 19
 - Wrong Sanction : In case of sanction reqd from JCIT taken from CIT – fatal – held in Shanti Vijay 60 TTJ 748 , R.P.Gupta & Sons 157 Taxman 158 (Mag), Santosh Gupta ITA 2361/del/2004 etc.
 - Non recording of finding as to escapement of income above Rs. 1 lac while invoking extended prd. Of six years (after 4 yrs) held in 96 ITD 362

Umbrella Provision

Once an assessment has been reopened, any other income which has escaped assessment and which comes to the notice of the AO subsequently in the course of the proceeding u/s 147 can be included in the assessment.

Cases against to this provision are:(these cases need to be used with caution)

Vipan Khanna Vs. CIT 255 ITR 220(P& H)

&

**Amrinder Singh Dhiman Vs. ITO-cum –
AO 269 ITR 378 (P&H)**

Relevant Case laws

- The reason for the formation of the belief must have a rational connection with the information received. Rational connection, postulates that there must be direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of the belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly material facts. It is to be borne in mind that it is not any and every material, howsoever vague and indefinite or distant remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.

Case: Peerless General Finance & Investment Co. Ltd. v. Dy. CIT [2005] 273 ITR 16/146 Taxman 475 (Cal.)

- No additions possible on account of any such item of income merely on the basis of information gathered from the assessee during the course of reassessment proceedings by making roving and fishing enquiries during the reassessment proceedings .

Case law : K.G. Baliga (ITA No. 3840/Del/2003), Expotech (ITA No. 1016/Del/2004), Poonam Rani Singh 97 ITD 390 (ITAT - Del), Gyarsi Lal 95 TT 386 (ITAT - Jaipur), Manoj Kumar Gupta 114 TTJ 253 (ITAT - Jaipur).

First proviso to section 147

- If assessment has already made u/s 143 or section 147.
- No reassessment can be made after expiry of 4 years from the end of relevant A.Y.
- Only except if assessee has failed to make return u/s 139/142(1)/148 or fails to disclose fully and truly all material facts necessary for his assessment for that assessment year.

“Explanation 1 – Production before the AO of account books or other evidence from which material evidence could, with due diligence, have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso.”

Scope of proviso to section 147

- If the AO wants to take action within 4 years (from the end of the AY)and the original assessment was completed u/s 143(1),143(3),144 or 147; or
- If the AO wants to take action after the expiry of 4 years and the original assessment was completed u/s 143(1) or 144.

Note: In both the above cases , the AO is free to initiate proceedings 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)(a) had been issued

**Case: CIT v. Abad Fisheries (2002) 125 Taxman 616/258
ITR 641(Ker.)**

Relevant Case laws

A general enquiry could not be made by issuing notice under sub-section (2) of section 143. It was not the case of the Revenue that during the course of proceedings under section 147 it had come across any material relating to the items mentioned in the notice under section 142 suggesting escapement of income under any of the heads mentioned therein. The Assistant Commissioner could not make a fishing enquiry in concluded matters unconnected with the issue on the basis of which proceedings under section 147 were initiated. Further, there was no allegation of escapement or underassessment of income either in the reasons recorded or during the course of proceedings under section 147. The words “such income and also any other income” in section 147, as it stood with effect from April 1, 1989, would indicate that the escaped income for which reassessment proceedings are initiated should continue to exist so as to clothe the Assessing Officer with jurisdiction to assess or reassess any other escaped income chargeable to tax and which has come to his notice subsequently in the course of the reassessment proceedings.

Case Law : Travancore Cements Ltd. Vs. Assistant Commissioner of Income-tax [2008] 305 ITR 170, also refer decision in the case of Shri Ram Singh 217 CTR 345 (Raj.)

Relevant Case laws

- Merely because certain amount has been taxed in the hands of another , that cannot preclude AO from assessing same in hands of right person by reopening assessment of such person

Case: Sunil Kumar Jain vs. ITO (2005) 147 Taxman 463 (All.)

- Where the assessee fails to disclose all the material facts at the time of original assessment , then the question of status can be determined in the reassessment proceedings, if on account of such non-disclosure, income has escaped assessment

Case: Dr. Surmukh Singh Uppal vs CIT (No. 2)144 ITR 191(P&H)

- A fresh notice needs to be served on the assessee before assessing an entity in a different status from the status in which it was previously assessed , without which the AO is not competent to assess the assessee in a different status

Case: CIT vs Associated Cement & Steel Agencies 147 ITR 776(Bom.)

Relevant Case laws

■ Once an order of assessment is reopened, the previous under-assessment will be held to be set aside and the whole proceedings would start afresh, but that would not mean that even when the subject-matter of reassessment is distinct and different, the entire proceeding would be deemed to have been reopened.

Case law : Commissioner of Income-tax Vs. Alagendran Finance Ltd. [2007] 293 ITR 1 (SC).

■ In case previously intimation is issued u/s 143(1) and no 143(3) is there – albeit no “opinion” as such is expressed in 143(1), still 148 not possible to bypass 143(2) – that is “reasons to believe must” and new material must come to notice of AO

Case Law : Delhi ITAT TM OP Chawla 8 SOT 242, Del HC in Batra Bhatta 174 Taxmann 444.

Relevant Case laws

- In case previously assessment is made u/s 143(3) and reopening is within 4 years – protection of “change of opinion” and “reasons to believe” both will be available)

Case law : DHC in Feather Foam 296 ITR 342 (SLP since dismissed by SC), BHC in Siemens 295 ITR 333, Guj HC in 231 ITR 779, DHC FB in Kelvinator 256 ITR 1, DHC in United Electrical 258 ITR 317 etc.

- In case previously assessment is made u/s 143(3) and reopening after 4 years – protection of first proviso, “change of opinion” and “reasons to believe” available (further allegation in notice o 148 as to escapement of income due to failure on part of assessee- must)

Case law : Del ITAT in 414/del/2003 , Del ITAT in Goetz 112 TTJ 1 , BHC in Idea Cellular 215 CTR 288, BHC Desai 188 CTR 375, DHC in Jindal Photo, DHC in Kelvinator, Mad HC in Elgi 286 ITR 274 Delhi ITAT in Handsome Investments 116 TTJ 155 (subject allegation as to escapement must – otherwise asst. bad) etc., also refer DEL ITAT in 115 TTJ 510 , 112 TTJ 220

Relevant Case laws

Issue: In original regular assessment AO asks assessee to file submissions/details on allowability certain expenses and finally passes the asst order without discussing the same specifically in body of asst order and without making any disallowance on expenses: Whether it can be said that AO has expressed opinion or applied mind to those details as far as subsequent reopening on allowability of said expenses is concerned?

Case law : Fav Precedents : DHC FB in Kelvinator 256 ITR 1, DHC in Jindal Photo Films, DHC in KLM 292 ITR 49, DHC in Eicher 294 ITR 310, DHC in Feather Foam and BHC in Idea Cellular, Mad HC in Apollo Hospitals 287 ITR 25

Adverse Precedents : DHC in Consolidated Finvest 281 ITR 394

Deemed Cases of Income Escaping Assessment

Explanation 2 to sec147 clarifies that the following shall be deemed to be cases of income escaping assessment

- Where no return has been furnished by an assessee , although total income is above the taxable limit;
- Where a return of income has been furnished , but no assessment has been made , and the assessee has understated the income or has claimed excessive loss , deduction , allowance or relief
- Where an assessment has been made but
 - Income has been under assessed, or
 - Income has been made subject of excessive relief under the Act, or
 - Excessive loss, depreciation or any other allowance has been allowed to the assessee, or
 - The income has been assessed at a lower rate.

**S. 148 – Issue of notice where
income has escaped assessment.**

Scope of Section 148

- For making assessment u/s 147 **service** of notice u/s 148 is a pre-requisite, where in assessee is required to furnish return of income within such period as may be specified therein.
- Notice u/s 143(2) should be served within 12 months of return filed in pursuance to notice u/s 148 but before the completion of assessment as provided u/s 153(2), however in case of returns filed between 01/10/1995 to 30/09/2005, if time limit of 12 months is not followed then that shall not invalidate such notice.
- AO before issuing any notice under this section shall record his reasons in writing.

Validity of Notice

Notice not correctly addressed

- Where name of assessee was not correctly mentioned in notice issued under section 148, such notice was vague and not valid and, therefore, consequent reassessment proceedings were null and void

Case: Sri Nath Suresh Chand Ram Naresh v. CIT [2005] 145 Taxman 186 (All.)

Service of notice

- A notice contemplated under section 148 is a jurisdictional notice and is not curable under section 292B if it is not served in accordance with provisions of Act

Case: CIT v. Shital Prasad Kharag Prasad [2005] 147 Taxman 441 (All.)

Validity of Notice

When asst order is set aside on technical ground like asst time barred, AO cannot issue 148 on very same facts again.

Case law : Anchi Devi in ITA 208 of 2007 relying upon its earlier decision in 254 ITR 273 (P&H) where in it was held that But it was held in 254 ITR (supra) that the validity of the second notice has to be adjudged in the light of the findings on the basis of which the earlier notice has been quashed. When a notice is quashed on some technical ground, it would be in order to issue a fresh notice under section 148 provided all other legal requirements of law have been complied with. For instance, if a notice under section 148 is quashed on the ground that no reasons had been recorded, a second notice shall be in order after recording the reasons)

Validity of assessment vis a vis Validity of Notice.

- The proceedings which are initiated u/s 154/155 cannot be made a ground of defense for invalidating the notice issued u/s 147/148 , as both the proceedings are independent of each other and cannot successfully be argued to point out that they overlap

Case: Dev Son (P.) Ltd. V. UOI (1991) 56 Taxman 122 (J&K)

- Where notice, though originally invalid, but is subsequently validated by statute , reassessment is valid

Case: Dayaldas Khushiram v. CIT (1943) 11 ITR 67 (Bom.)

- Where return is filed within the time allowed in response to invalid notice for reassessment , second notice of reassessment by treating such return as invalid , will not be valid

Case: CIT v. S.Raman Chettiar (1965)55 ITR 630 (SC)

Case laws on Recording of Reasons

- Before issue of notice u/s 148, recording of reasons is mandatory

Case: East West Commercial Co. Ltd. V. ITO (1981) 128 ITR 326 (Cal.)

- Only requirement in law for initiating proceedings u/s 148 is that there must be reasons to justify belief that there is escapement and suppression of income , and there is no need to disclose reasons in the notice

Case: Dr. V.Mohan das v Dy CIT (1991)188 ITR 727 (Ker.)

- Where the assessee makes an application for getting a copy of reasons recorded by assessing authority to proceed u/s 148, then the assessing authority shall communicate reasons subject to necessity of protecting his source/information if he thinks such protection is necessary

Case: Jindal Products v. ITO (1993) 70 Taxman 111(All.)

- Writ remedy is not available where assessee has already filed objections to reassessment notice and Assessing Officer is yet to dispose of such objections

Case: Jagdish Preshad Gupta v. Jt. CIT [2005] 147 Taxman 493 (Delhi)

Case laws on Recording of Reasons

- Writ petition against notice on grounds that no reason had been recorded or disclosed u/s 148 and that assessee had already received a notice earlier and submitted a return in response to it and that second notice was barred by time- dismissal of writ petition by HC was not valid

Case Law : *Comunidadado of Chicalim vs ITO* 247 ITR 271(SC)

- Requirement to record reasons before issuing notice is mandatory and where it was clear from contradictions in note-sheet recording reasons, that reasons were not recorded before issuing notice but were ante-dated, reassessment in pursuance of such notice was without jurisdiction

Case Law : *CIT v. Shiv Ratan Soni* [2005] 146 Taxman 392/279 ITR 261 (Raj.)

- No specific form for recording reasons under section 148 has been prescribed under Act or Rules made there under and if an assessee voluntarily filed a return, for which omission had been detected in assessment proceedings in subsequent assessment year and taking note of revised return, a notice under section 148 was issued, reasons would be sufficient

Case Law : *Bharat Rice Mill v. CIT* [2005] 148 Taxman 145/278 ITR 599 (All.)

Course of action for assessee and department after issuance of notice u/s 148

GKN Drive Shafts India Ltd. V. ITO (2003) 259 ITR 19(SC)
has framed the procedure as follows:

- The assessee can file a fresh return of income declaring his true income in compliance to the notice
- Alternatively he can write to the AO that the return already filed u/s 139(1) may be treated as return filed in compliance to notice u/s 148
- After filing the return subsequently request for the supply of reasons for the issue of notice u/s 148
- He may file his objections to the issue of notice after taking legal advice and the AO is bound to dispose of the same by a speaking order. If the AO does not do so then file an application before ACIT/JCIT u/s 144A
- Alternatively he may assist in the assessment proceedings with a note of dissent and may go in an appeal before the CIT(A) against the order of assessment. CIT(A) may be requested to decide the issue of validity of assessment first.

Also refer Allana Cold Storage Ltd. Vs. Income-tax Officer [2006] 287 ITR 001 (Bom)

Validity of Notice on the basis of information from Investigation Wing

- Scope of section 148 vis a vis information recd from Investigation Wing (e.g on bogus loans/share application money/ purchases/ gifts etc) etc

- Must be specific and particular to assessee (I.e should not be vague and general)
- In case based on statement of 3rd Party, must be confronted (also request for the same, if reasons so disclose)
- Refer DHC in Vinita Jain 299 ITR 383, DHC in Gulati Fabrication 1661/2006, P&HHC in Parmajeet Kaur 168 Taxman 39(Fav) DHC in 258 ITR 317, Mum TM ITAT in 62 ITD 21, Asr ITAT in 100 TTJ 453 (Vague, Non specific, general information was there)
- DHC in Vipin Batra 293 ITR 389, DHC in Highgain Finvest 214 CTR 441, Del ITAT in Capital and Management ITA No 4274/del/2006 (specific and particular information was there)

Miscellaneous Issues

- If assessee objects to reasons for reopening assessment, any order passed by Assessing Officer without considering assessee's objection would have to be quashed

Case: K.S. Suresh v. Dy. CIT [2005] 279 ITR 61 (Mad.)

- Non furnishing of reasons does not render the assessment null and void, it is merely an irregularity.

Refer decision of Delhi ITAT in the case of Gurinder Kaur 102 ITD 189, 205 CTR 546, 106 TTJ 504,111 TTJ 55 (Also see latest DHC in Haryana Acrylic)

Miscellaneous Issues

- Reasons not recorded in original proceedings, 148 on same material held to be bad in law.

Case law : Commissioner of Income-tax Vs. Air Craft Radio Corporation [2007] 292 ITR 64 (P&H)

- Reassessment done to circumvent original asst since held to be time barred – is not valid in law

Case law : 83 ITD 691 (Mum – ITAT)

- Second 148 notice not possible when on very same reasons first 148 issued (first consequential asst since held to be lacking jurisdiction) has been annulled (to circumvent /defeat appeal order)

Case law : 103 TTJ 554 (Nag – ITAT), Anand Samrat and Co. Vs. Income-tax Officer [1999] 240 ITR 852 (AP)

Time limit and other conditions for issue of notice- sec 149

PROVISIONS AS APPLICABLE FROM JUNE 1, 2001

Upto 4 years from the end of the relevant assessment year	Beyond 4 years but up to 6 years from the end of the relevant AY
Assessment can be reopened whatever is the amount of income escaped subject to sanction u/s 151.	If the escaped income is likely to be Rs. 100000/- or more for that year subject to sanction u/s 151.

Section 149 – finding on escapement of income etc.

- Whether in order to exercise extended period of six years beyond four years, it is incumbent upon AO to record his finding on quantum of escaped income, in reasons recorded while initiating 148 proceedings?
- Held Yes in :
- 39 TTJ 497, final assessment may go below the amount originally estimated
- 23 TTJ 334,
- 89 ITD 199
- 56 ITD 254
- Asr SB ITAT in 92 ITD 85

S. 151 - Sanctions for issue of notice

	Upto 4 years from the end of the relevant assessment year	Beyond 4 years but up to 6 years from the end of the relevant AY
In cases subject to scrutiny by way of assessment u/s143(3) or 147	By an AO not below the rank of AC/DC . Any AO below the rank of AC/DC will require prior approval of the JC before issuing the notice	1)Same approval , And 2)Notice can be issued only after obtaining the prior approval of CCIT or CIT
In other cases	By any AO	By an AO not below the rank of JC . Any officer below the rank of JC can issue the notice with the prior approval of JC

Section 150 –Sanctions

- Whether sanction u/s 150 can be given mechanically, by merely stating Yes before reasons recorded by AO ?
- Held No in :
- SC in Chhugamal 79 ITR 603
- SC in 88 ITR 439
- SC LARGER BENCH IN Sahara India
- DHC in 258 ITR 317
- DHC in Vinita Jain (supra)

Exceptions to time limits given in sec 149(1)

- Sec 149(3) - If the person to whom notice u/s 148 is to be issued is a person treated as an agent of the non-resident u/s 163 and the assessment or reassessment is to be made on him as the agent of the non-resident, then the notice u/s 148 shall not be issued after the expiry of 2 years from the end of the relevant AY
- Sec 149(3) shall not apply if sec 150(1) applies

Exceptions to time limits given in sec 149(1)

- Sec 150(1) - No time limit for issue of notice
- Notwithstanding anything contained in sec 149 , a notice u/s 148 may be issued at any time for the purposes of making an assessment or reassessment in consequence of or in order to give effect to the finding or direction contained in an order u/s 250, 254, 260A, 262, 263 or 264 of the Income tax Act or the order of a court under any other law
- Sec 150 overrides sec 149(2) also , sec 151 is not applicable where sec 150 applies

Other Miscellaneous Issues

claim of expenses disallowed in original assessment?

- During reassessment the assessee can put forward claims for deduction of any expenditure which is relatable to income which is sought to be assessed as escaped income

Case: CIT v. Caixa Economica De Goa (1994) 210 ITR 719(Bom.)

- Principles emerging from Sun engineering (P) Ltd. (SC) (1992) 198 ITR 297 (SC)
- On reassessment u/s 147, the original assessment is not wiped off but it remains. Matters lost in the original assessment proceedings which have since acquired finality cannot be claimed in the reassessment proceedings. Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings u/s147. However, the expenses pertaining to the income which has escaped assessment can be claimed. If ROI was filed and no assessment was made and the case is taken up u/s147, then the expenses not claimed in the original ROI cannot be claimed u/s147. However, expenses pertaining to escaped income can be claimed u/s147. U/s 147 the income cannot be reduced below the income originally assessed. Similarly, u/s147, the losses cannot be assessed above the losses originally assessed, Sec147 is for the benefit of revenue and not for the benefit of the assessee.

Is there any limit on number of re-assessment or is it possible to issue second notice for reassessment without completing re-assessment on the basis of first notice

- No limit on number of re-assessment.

Case: CIT v. S.S.K.G. Arthanariswamy (1982) 136 ITR 145 (Mad.)

- Where however , a return has been submitted in pursuance of notice u/s 148 and the same has yet not been disposed of , second notice to reopen assessment is not justified.

Case: A.S.S.P. & Co. v. CIT (1988)172 ITR 274 (Mad.)

- It is well settled that during the pendency of proceedings u/s 147 having been initiated on the basis of escapement of a particular income , no second initiation for escapement of the same income can be resorted to.

Case: Kanhaiya Ice Factory , Belanganu V. CIT (2003)87 ITD 77 (Agra)(SMC)

Section 148 – qua Block Asst

- Can block assessment u/s 158BC or 158BD be reopened u/s 148? Mum ITAT reopening not possible for BLOCK PERIOD in Western Bakers 87 ITD 607
- Whether single year out a block period already subjected to block asst u/s XIV-B can be reopened u/s 148? Refer: Expl to section Section 158BA(2) , escapement qua particular year as reqd u/s 147 whether can be made applicable to year covered under block assessment? (provided time limitation remains)
- Ambiguity cannot be ruled out
- Held in 158 Taxman 35 (Mag) Chennai ITAT that seized material pertaining to block period can be used in XIV-B Undisclosed income determination and not under section 147
- Similar conclusion in 12 SOT 49 (Jodhpur ITAT) (URO)

Section 148 – qua section 150(1)

- Delhi ITAT in Henemp 101 ITD 19 held reopening valid when addition under block was held by ITAT to be subject matter of regular assessment, since same amounted to finding/direction u/s 150(1) CONTRARY & FAV PROPOSITION AVAILABLE IN BHC IN LOTUS INVESTMENTS 288 ITR 459 (followed in Rakesh N Dutt)
- What is “finding or direction” under section 150(1), so as to invoke extended period of issuing notice u/s 148? Refer SC in 52 ITR 335
- What are the fetters on powers of AO to initiate 148 proceedings once the addition stands deleted in appellate proceedings?

Section 147 Ist Proviso – S. 153

- Section 147 w.r.s. 153(2) Gujarat Credit Corporation Ltd. ITA No. 1122/Ahd/04 ITA No.311/Ahd/06
- Whether proviso to section 147 has the effect of curtailing the limitation period for passing the order u/s 147 as prescribed u/s 153(2)?
- Order dated 9 May 2008 : Held NO: because proviso to section 147 merely relates to initiation of reassessment proceedings and do not extend to section 153 which is applicable to completion/passing of re-asst. order.

Section 148 – qua Section 154

- Scope of Section 148/147 qua section 154:
 - SECTION 154 pending – 147 assessment bad in law held by Mum ITAT in 109 TTJ 1 and Del ITAT in 96 TTJ 798 (whether internal endorsement in the file that proceedings dropped without communication to assessee would complete the proceedings- held no by SC in 109 Taxman 193)
 - In case section 154 exercised whether section 147 completely ruled out on relevant issue : Fav Guj HC in Damodar Shah 245 ITR 772, Mad HC EID Parry 216 ITR 489, Del ITAT in 96 TTJ 798 (held opinion expressed in previous 154) Contrary proposition in Del ITAT in Boeing Investments ITA No. 4299/2000 (held :needs to be analysed on what count 154 dropped earlier- MERE dropping etc), All HC 208 ITR 795 etc.

Section 148 – qua Collateral Proceedings

- Whether challenge to reassessment proceedings (lack of jurisdiction viz non service of notice of 148, non recording of reasons etc – coram non judice) can be made in collateral proceedings like section 154 and section 271 when the same remained unchallenged in principal proceedings? Held Yes Del ITAT in 296 ITR 68 and Del ITAT in Tide Water 97 TTJ 130, 107 TTJ 98, 171 ITR 381 etc.

Section 148 – qua Audit Objection

- Whether audit objection can justify initiation of reassessment proceedings? Depends upon prior 143(1) and 143(3) – In case prior 143(1) – yes – SC in 292 ITR 500, Del ITAT in 90 ITD 768, Del ITAT in 108 TTJ 933 etc. In case prior 143(3) – change of opinion – SC in 292 ITR 500, Kol ITAT in 289 ITR 76 etc
- Refer DHC latest case in 170 Taxman 229 IN para 7 held that as regards audit objection, independent examination by AO must qua escapement of income

Section 148 – qua DVO report

- Whether on basis on DVO report, reassessment proceedings valid? Depends upon:
 - In case reference made after conclusion of asst. proceedings and/or after passing intimation : Held No
 - In case reference made before conclusion of asst. proceedings and DVO report obtained after asst. order (passed due to limitation factor) – held yes
 - Refer BHC in Sona Properties WTA 188 of 2004, DHC in 237 ITR 505, Ker HC FB in 213 ITR 14 etc.
 - Further, in case asst. has been earlier made u/s 143(3) and books have been accepted as correct – added protection from subsequent 148
 - Further, reference during asst proceedings can be made only after rejection of books (if any) u/s 145 as otherwise depicting cost of construction – Luck ITAT TM in Rohtas, Del ITAT TM in Hari OM general Mills 27 ITD 1 etc

Section 148 – qua pending asst. etc.

- In case assessment proceedings u/s 143(3) pending (eg time limit available for issuance of 143(2) etc.) issuance of 148 notice or in case after issuance of Ist 148 without disposing the same, second notice of 148 (viz to gain more time etc), whether the same is valid?
- Held No Refer :
- SC in HEZ Nizam Trust 109 Taxman 193 and SC in 55 ITR 630 and SC in 159 Taxation 8 (mere internal note in AO's file without its communication to Assessee, do not dispose off the proceedings)
- Cal HC in 272 ITR 439 (second 148 notice, when first 148 pending for disposal), Cal HC in 253 ITR 296
- DHC in KLM Royal Dutch Airlines, AllHC in 183 Taxation 7
- BHC in 247 ITR 772, 271 ITR 50
- Del ITAT in Kamaljeet 181 Taxation 31, 112 TTJ 220, Jaipur ITAT in 24 Taxworld 320, Mum ITAT in 113 TTJ 608
- Jp ITAT in 114 TTJ 103 (143(2) time available)
- Luck ITAT in 114 TTJ 416 (Pendancy of Valid return)

S. 148 – Proviso inserted vide Finance Act 2006

- Whether proviso inserted by Finance Act, 2006 in section 148 providing protection for non service of notice within prescribed 12 months (for specified period), mandates/requires issuance of notice within outer limit of 153(2)?
- Held Yes by Ahd ITAT in 113 TTJ 63
- In 106 TTJ 388 Chennai ITAT held that subject new proviso will not save/protect a case wherein no notice u/s 143(2) has been served at all.....

Section 148 – Certain Issues

Whether reopening made by an AO not having jurisdiction over assessee (notice of 148 by non jurisdictional AO) and final asst by jurisdictional AO as proceedings are transferred mid way, is valid in eyes of law? Seems to be NO as reasons has to be of AO of the Assessee and reasons/their approval by non jurisdictional officer is bad in law – Caution Object in beginning of proceedings as per sec 124(3) – Proper Course is earlier proceedings are dropped and fresh proceedings if timely permissible can be initiated by relevant AO (Refer P&HHC in 220 ITR 446 , DHC in Anjali Dua, DHC in Anil Kohsla, Del ITAT in Ranjeet Singh, Luck ITAT in MI Builders)

Section 148 – Certain Issues

- A Co ABC Limited for AY 2000-2001 filed its return with ITO Ward 1 and later on when its name was changed, after taking changed PAN No. and intimating ITO Ward 1, started filing returns with new ITO Ward 2. Later on for information on income escaping asst for AY 2000-2001, ITO Ward 1 reopens the case and makes the reassessment. Whether reassessment is jurisdictionally valid? Seems to be No
- Whether reopening made u/s 148 by an AO, wherein along with certain external information on income escaping asst, as regards ROI filed by assessee, it is observed IN REASONS RECORDED by AO that records are not traceable? May be “No” as when records as to ROI are not available/traceable – how can reasons to believe for income escaping assessment on information recd can be formed?

Section 148 – Certain Issues

- Whether reassessment completed u/s 148, on basis of 143(2) issued simultaneously/ along with 148 notice is valid in eyes of law? Seems to be NO as 143(2) can be issued only in pursuance to return filed u/s 148 Refer Asr ITAT in 108 TTJ 998
- Whether 148 can be issued/reasst u/s 147 can be framed merely where assessee files its return with non jurisdictional authority/AO (eg In E-Return jurisdiction is wrongly filled) and consequentially, assessee's ROI skips requisite scrutiny u/s 143(2)? Held NO by Luck ITAT in Patni Trade Linkers 171 Taxman 30 Mag as assessee is not bound itself to get it scrutinized

Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendency of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues ? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.
- First argument can be since AO issued 154 on subject eight issues, there can be no subsequent 148 in any condition (refer Guj HC in 245 ITR 772 Damodar Shah etc)

Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendency of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.
- Second argument can be since 154 proceedings were not dropped before 148 notice (as recorded in 154 order), on six issues, reopening is bad in law (refer 109 TTJ1 Mum ITAT). Not only dropping of 154 is required before 148 notice, but also its communication is must as per 109 TTJ 1.

Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendency of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done
- Third argument can be with reference to doctrine of partial merger as provided in proviso to section 147, on subject two issues, as during pendency of appeal on rectification, no reopening/reassessment can be done on issues being subject matter of appeal.

Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendency of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.
- Fourth argument can be since no addition is made on reopening ground, reassessment is bad in law. Refer Raj HC in Shri Ram Singh; Devender Gupta; Ker HC in Travancore, Del ITAT in C.J.International, Software Consultants, Narayan Securities Asr ITAT in 108 TTJ 1 , etc

Section 148 – Reopening Matrix – Certain Situations

Situation	Citation
Alleged Bogus Capital Gains	DHC 299 ITR 383; 166 Taxman 102 All HC 268 ITR 400; Del ITAT in 6 DTR 141 & 9 DTR 564; P&HHC in Anupam Kapoor 299 ITR 180; 140 Taxman 410
Alleged Bogus Share Application Money	DHC in Anita/Vinita Jain 299 ITR 383; DHC in High Gain Finvest 164 Taxman 142; Gulati Fabrication 217 CTR 494 (SLP dismissed by SC) JSRS Udyog / Haryana Acrylic
Alleged Bogus Lenders/Creditors	DHC in Vardhman Estates ITA 993 of 2005 date 19/7/2007

Section 148 – Reopening Matrix – Certain Situations

Situation	Citation
Alleged Bogus Donations	P&HHC in 220 CTR 601; Raj HC 220 CTR 369
Alleged Bogus Deductions	Asr ITAT in 105 ITD 305
Alleged Bogus Payments Alleged Bogus Agricultural Payments	Gau HC in 243 ITR 540 DHC in Pardeep Gupta

Thank You