ASSESSMENT & RE-ASSESSMENT PROCEEDINGS UNDER SECTION 147 OF THE INCOME TAX ACT, 1961

Presented by: CA. Sanjay Kumar Agarwal
Email id: agarwal.s.ca@gmail.com

INDEX

There may be cases where certain incomes have escaped assessment or income has been assessed at a low rate or excessive loss or allowance like depreciation, etc. have been allowed. In such cases, the A.O. is empowered to assess/ reassess such income or recompute the loss/ allowance. The provisions regarding assessment/ reassessment are covered under section 147 to 153

Section	Particulars
147	Income Escaping Assessment
148	Issue of notice where income has escaped assessment.
149/151	Time limit and sanction for issue of notice
152	Other Provisions
153	Time Limits for making assessment or reassessment.

SECTION 147

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

- **Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

SECTION 147…..

- **Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located **outside India,** chargeable to tax, has escaped assessment for any assessment year:

- **Provided also** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

- **Explanation 1.—** Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

SECTION 147…..

- **Explanation 2.**—For the purposes of this section, the following shall also be **deemed to be cases** where income chargeable to tax has escaped assessment, namely:—

a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(*ba*) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

SECTION 147…..

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

i. income chargeable to tax has been underassessed; or

ii. such income has been assessed at too low a rate; or

iii. such income has been made the subject of excessive relief under this Act; or

iv. excessive loss or depreciation allowance or any other allowance under this Act has been computed;

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

SECTION 147…..

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

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

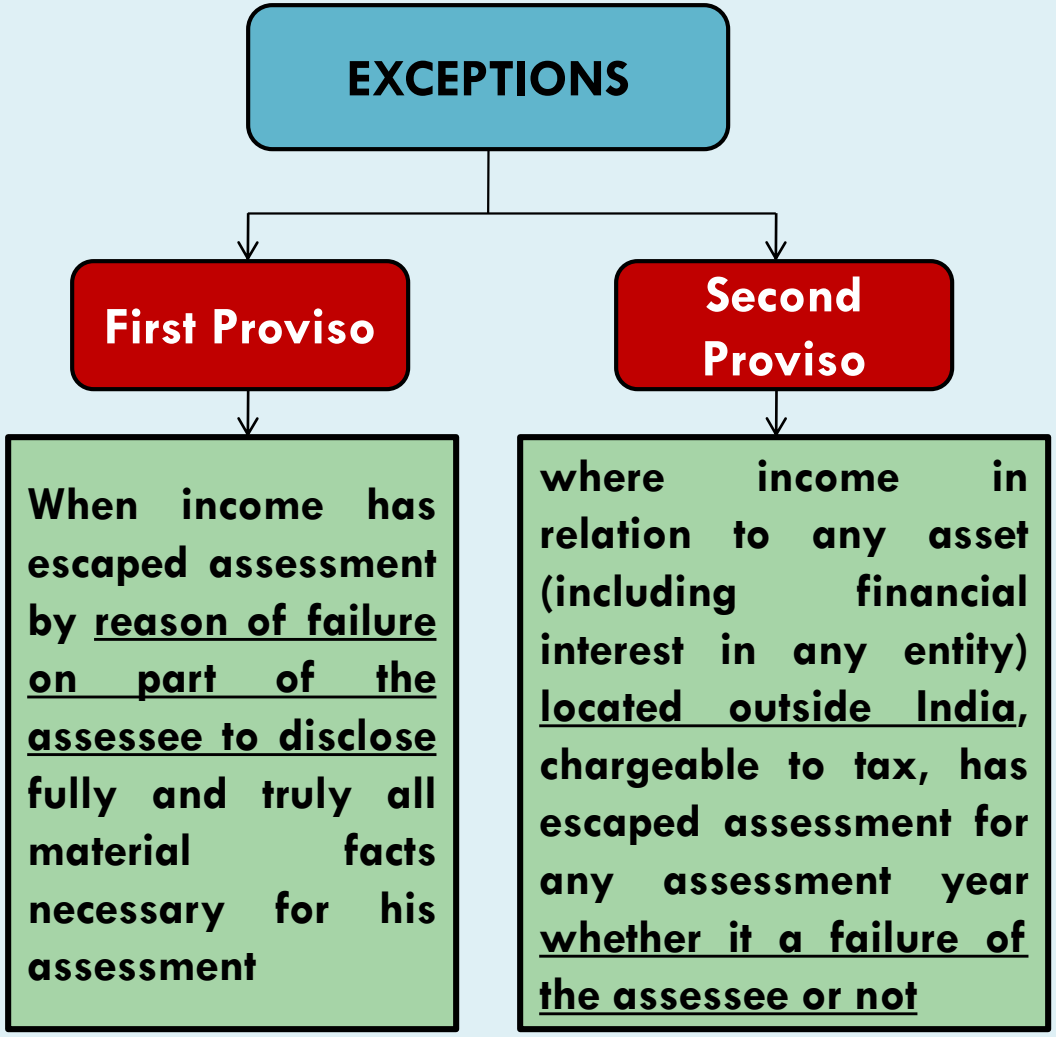
Basic conditions for opening/ re-opening of Assessment

- 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.

In Nutshell....

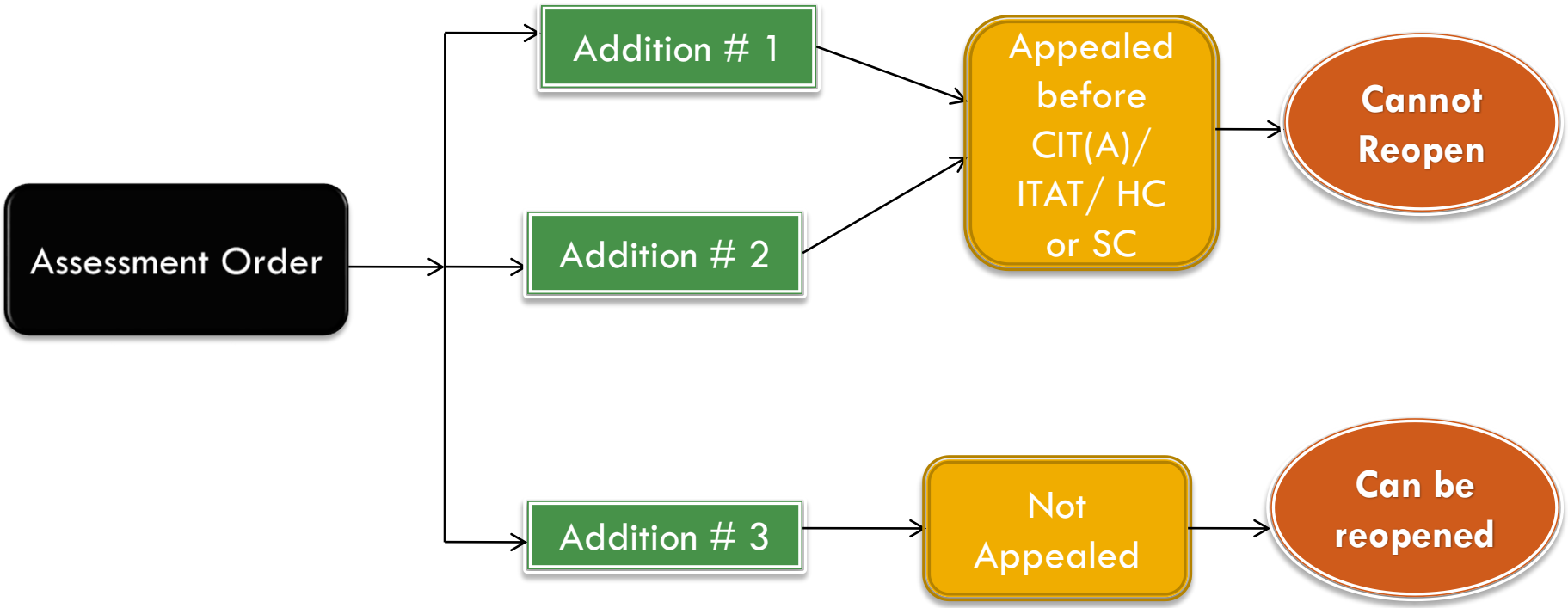
As a general rule, an assessment can be opened only within 4 years from the end of relevant AY **IF** AO has reasons to believe.

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



Issues that are subject matter of Appeal....

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



Reasons 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....

- 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….

- 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 on Reasons to Believe….

- If the AO's reason to believe lacks validity, the reopening of the assessment would not be permissible. **Gujarat Narmada Valley Fertilizers Co. Ltd. .v. Dy. CIT (2014) 369 ITR 763 / 223 Taxman 109 (Guj.)(HC).** *[SLP of revenue was dismissed SLA (C) No 17450 of 2014 dt 18-11-2014 Dy.CIT v. Gujarat Narmada Valley Fertilizers Co Ltd (2015) 229 Taxman 220 (SC)]*
- Where AO holds the opinion that because of excessive loss/ depreciation allowance, the income has escaped assessment, the reasons 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 on Reasons to Believe….

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

Assessment on issues not included in Reasons to believe

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

Assessment on issues not included in Reasons to believe....

Contd....

- 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. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Guj.)**

Principles laid by Apex court in case of G.K.N Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 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 (FILING RETURN OF INCOME)

Fresh Return of Income declaring true income in response to notice

or

Write to AO that return already filed may be treated as return filed for notice u/s 148

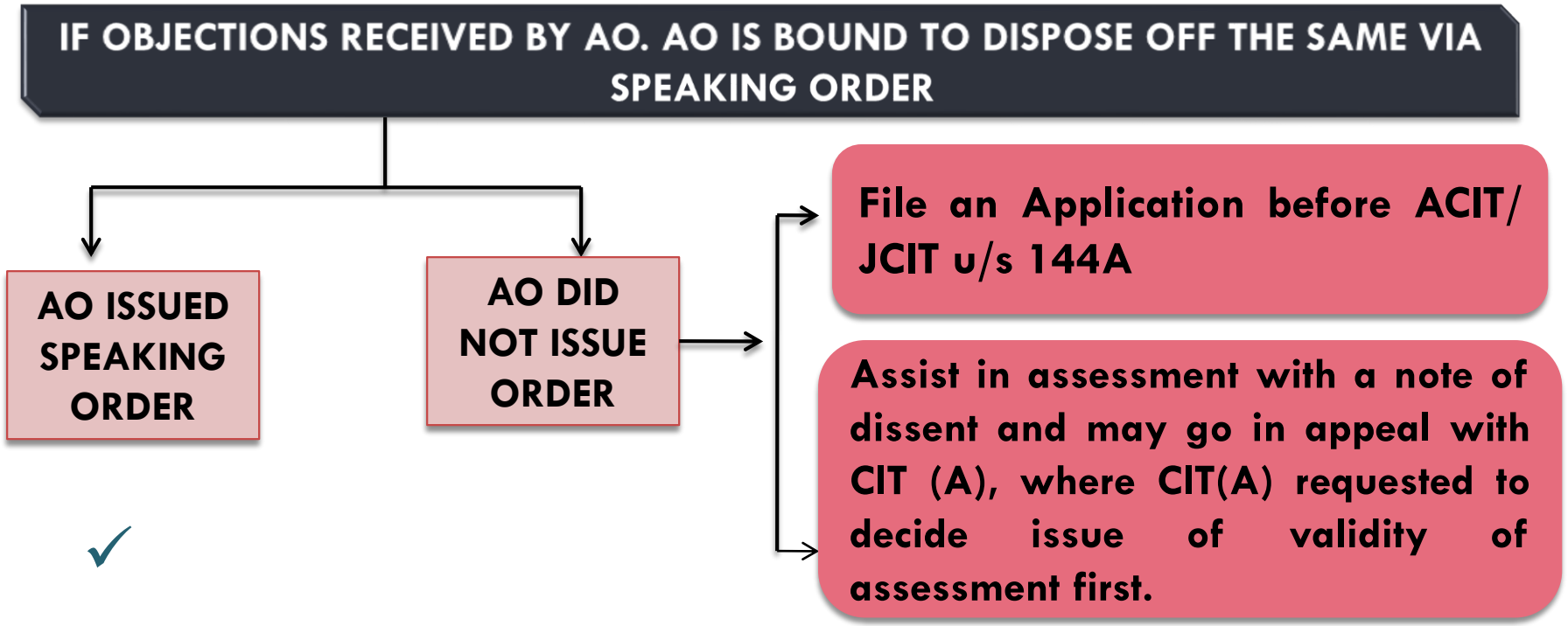
A.O

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....

- 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- Banglore**
- 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)**

Reopening based on change in opinion

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

Reopening based on change in opinion

Contd….

- 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

Contd….

- 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

Contd….

- 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

Contd….

- 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, W.P. (C) 7828/2010, Date of Order: 26.07.2017, High Court of Delhi**

Reopening based on change in opinion

Contd….

- 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 persued 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.)**

Reopening on the basis of tax audit report not allowed

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

Reassessment on the basis of audit objection not valid

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

Reassessment on the basis of report of District Valuation Officer not valid

- Where the Assessing Officer completed assessment u/s 143(3) making certain addition in respect of unexplained investment, he could not reopen said assessment u/s 147 for enhancement of said addition merely on basis of report of District Valuation Officer. **Akshar Infrastructure (P.) Ltd. *Vs.* ITO, Ward1(1), [2017] 79 taxmann.com 239 (Gujarat)**

Reassessment on the basis of report of internal auditor not valid

- Reopening on the basis of an opinion formed by the internal auditor of the department, cannot 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)

- 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) Contd....

- 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?

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

Can retrospective amendment be a valid reason to reopen assessment?

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

Disclosure given in Return of Income

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

Disclosure given in Return of Income.....

Contd....

- 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 section147, 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.....

Contd....

- 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)**

Explanation 2 to Section 147 (Deemed cases of Income escapement)

S.No	CASE	PARTICULARS
a)	No ROI, no assessment	Total income > Max. Amount not chargeable to tax
b)	ROI filed, no assessment	Noticed by AO that assessee has understated income, claimed excessive loss, deduction, allowance or relief in return
ba)	Report in respect of international transaction required u/s 92E not furnished	
c)	Assessment done, ROI may or may not furnished	Income has been i) Under- assessed ii) Assessed at too low a rate iii) Excessive relief claimed iv) Excess loss/ depreciation/ allowance computed
ca)	ROI may or may not furnished, Information received u/s 133C(2)	Total income > Max. Amount not chargeable to tax or assessee has understated income, claimed excessive loss, deduction, allowance or relief in return
d)	Person is found to have asset outside India including financial interest in entity	

SECTION 148

Issue of notice where income has escaped assessment.

Scope of Section 148

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

Scope of Section 148....

Contd....

- Notice is to be served as per provisions of **section 282 of the Act.**

Section 282- Service of notice generally.

(1) The service of a notice or summon or requisition or order or any other communication under this may be made by delivering or transmitting a copy thereof in following manner—

(*a*) by post or by such courier services as may be approved by the Board; or

(*b*) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(*d*) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

Validity of Notice

- Where the name of assessee was not correctly mentioned in notice issued u/s 148 such notice was vague and not valid and therefore, consequent reassessment was null and void. **Shri Nath Suresh Chand Ram Naresh V. CIT [2005] 145 taxman 186 (All.), also see Shraddha Jain Vs. ITO, ITA No. 3280/Del./2015, ITAT- Delhi**
- A notice contemplated u/s 148 is a jurisdictional notice and is not curable u/s 292BB if not served within provisions of the Act. **CIT v. Shital Prasad Kharag Prasad [2005] 147 taxman 441 (All.)**

Recording of Reasons

- A notice for reopening the assessment has to be sustained and supported **only on the basis of reasons recorded by the AO** and not with the help of extraneous ground, material or possible improvement. **Dhruv Parulbhai Patel .v. ACIT (2014) 367 ITR 234 (Guj.)**
- Only requirement in law for initiating proceedings u/ s 148 is that 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**. **Dr. V. Mohan das v Dy CIT (1991) 188 ITR 727 (Ker.)**
- 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 antedated, reassessment in pursuance of such notice was without jurisdiction CIT v. Shiv Ratan Soni [2005] 146 Taxman 392 (Raj.)**

Recording of Reasons

Contd….

- **No specific form for recording reasons** u/s 148 has been prescribed and if an assessee voluntarily filed a return, for which omission had been detected in assessment proceedings in subsequent AY and taking note of revised return, a notice u/s 148 was issued, reasons would be sufficient. **Bharat Rice Mill v. CIT [2005] 148 Taxman 145/ 278 ITR 599 (All.)**
- Notice u/s. 148 sent on a **wrong address** and served on a person who was neither employee nor authorised agent of assessee was not valid and therefore, the consequent assessment was held to be **bad in law. Chetan Gupta .v. ACIT (2014) 98 DTR 209(Delhi)(Trib.)**

SECTION 149/151

Time limit and sanction for Issue of notice

TIME LIMITS – SECTION 149(1)

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	Beyond 4 years but up to 16 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. 1,00,000/- or more for that **year subject to sanction u/s 151.**	If the escaped income is in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax for that year **subject to sanction u/s 151.**

EXCEPTIONS TO TIME LIMITS

- **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**
- **Sec 150(1)** -No time limit for issue of notice
- Sec 150 overrides sec 149(2) also , **sec 151 is not applicable where sec 150 applies**

Cases Related to Section 149

- Where the assessment was completed allowing the special deduction on the basis of a decision of the High Court, the subsequent reversal of the legal position by the Supreme Court would not authorize the Department to reopen the assessment which stood closed on the basis of the law as it stood at the relevant time. **DCIT Vs. Simplex Concrete Piles (India) Ltd. [2013] 358 ITR 120 (SC)**

- Where assessee did not have any asset outside India and, therefore, there was no question of having any income in relation to such an asset, in such a case, notice issued under section 148 after expiry of six years from end of relevant year relying upon provisions of section 149(1)(c) was not sustainable. **Deccan Digital Networks (P.) Ltd. v. ITO (2014) 50 taxmann.com 277 (2015) 113 DTR 147 (Delhi)**

SECTION 150

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

SECTION 150....

1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or re-computation **in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.**

2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or re-computation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or re-computation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken.

SECTION 150....

Contd....

- Notice u/s 148 may be issued at any time in consequence of or to give effect to any finding or direction contained in an order passed by:
  - Any authority in any proceeding under this Act by way of appeal or revision u/s 250/254/260A/262/263/264
  - By any court in any proceeding under any other law.

- Exceptions: Where any such assessment/ re-assessment relates to an AY in respect of which an assessment, reassessment could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken.

SECTION 150....

Contd....

- **For Example:** Completing the assessment proceedings for A.Y. 2001-02, the A.O. passed an order on 5/7/2003 disallowing certain expenses which was being allowed to assessee from AY 1971-1972. The order of an appeal filed by assessee in the supreme court held that expenses are not allowed. Can assessing officer issue notice for reassessment for all assessment years starting from A.Y. 1971-72?
- As per sec. 150(1) notice could have been issued for reassessment for all assessment years starting from A.Y. 1971-72. However, applying the limitations of sec. 150(2) we will consider the provisions applicable on 5/7/2003 i.e. date of passing order which is subject matter of appeal. As per provisions on 5/7/2003 the assessing officer could issue notice for reassessment only for a maximum period of 6 yrs. Hence on 5/7/2003 notice could not have been issued for AY 1971-72 to1996-97. Hence in given case as per limitation of 150(2) notice can be issued by assessing officer for AY 1997-98 to 2002-03.

SECTION 151

Sanction for Issue of notice

Section 151...

[As amended by Finance Act, 2015 w.e.f. 01-06-2015]

(1) No notice shall be issued u/s 148 by an AO, after the expiry of a period of **four years** from the end of the relevant AY, **unless** the Pr. CCIT or CCIT or Pr. CIT or CIT is satisfied, on the reasons recorded by the AO, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued u/s 148 by an AO, who is below the rank of Jt. CIT, unless the Jt. CIT is satisfied, on the reasons recorded by such AO, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) & sub-section (2), the Pr. CCIT or CCIT or Pr. CIT or CIT or Jt. CIT, as the case may be, being satisfied on the reasons recorded by the AO about fitness of a case for the issue of notice u/s 148, need not issue such notice himself.

Section 151 in Brief....

Notice under section 148 to be issued by the Assessing Officer

Subsection 1

After expiry of 4 yrs from the end of A.Y.

CONDITION

PR. CCIT/ CCIT OR PR. CIT/ CIT is Satisfied With Reasons Of A.O

Subsection 2

Within 4 yrs from the end of A.Y.

CONDITION

(1) Notice shall be issued by an A.O. not below the rank of Jt.CIT

(2) If issued by A.O. below J.C., J.C. should be satisfied With reasons of A.O.

Subsection 3

The Authorities mentioned in Conditions above, on being satisfied about the reasons of the A.O. need not issue the notices themselves.

Old Provisions of Sec. 151 (before 01-06-2015)

Situation	Upto 4 years from the end of the relevant AY	Beyond 4 years but up to 6 years from the end of the relevant AY
Where assessment order passed u/s 143(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 Jt.CIT before issuing the notice.	Notice can be issued only if Pr. CCIT/ CCIT/ Pr.CIT/ CIT is satisfied on the reasons recorded by the AO.
No order passed u/s 143(3)/ 147	By any AO	By an AO not below the rank of Jt.CIT. Any officer below the rank of Jt.CIT can issue the notice with the prior approval of Jt. CIT

Issues on Section 151

- Non-mentioning in the reasons that approval has been obtained vitiates the reopening & become bad in law. **GTL Limited v. ACIT, ITA No. 6416/Mum./2010, Date of Order: 02-01-2015, ITAT- Mumbai**
- Merely affixing a 'yes' stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance u/s 151. **Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del.)**
- CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable. **German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom).**
- Merely stating "Approved" is not sufficient sanction of CIT and renders reopening void. Commissioner has to apply mind and due diligence before according sanction to the reasons recorded by the AO. **PCIT v. N. C. Cables Ltd. (2017) 391 ITR 11 (Delhi). Also see ITO v. Direct Sales (P) Ltd., ITA No.3545/Del./2010, date of order: 25-02-2015 (ITAT Delhi)**

Issues on Section 151

- The approval of JCIT stating 'yes' to reasons recorded by the AO cannot be held to be invalid if application of mind is otherwise demonstrable from material on record. **Lalita Ashwin Jain v. ITO (2014) 363 ITR 343(Mag) (Guj.)**

SECTION 152

Other Provisions

Section 152

(1) In an assessment, reassessment or recomputation made u/s 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened u/s 147, the assessee may, if he has not impugned any part of the original assessment order for that year either u/s 246 to 248 or u/s 264, claim that the proceedings u/s 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

Provided that in so doing he shall not be entitled to reopen matters concluded by an order u/s 154, 155, 260, 262, or 263.

Proceedings u/s 147 can be dropped – conditions [Sec 152(2)]

- **Conditions for dropping re-assessment proceedings u/s 147 are:**
  - The assessee has not filed an appeal or revision application against the original assessment order
  - The assessee has already been assessed at a higher rate than what he would be liable to when escaped income is also taken into account.

- Even though the original assessment was subject matter of appeal, the assessee is entitled to invoke provisions of sec 152(2) with reference to an item which was not made subject matter of appeal **[CIT v. Dharam Chand Jalan (1983) 140 ITR 972 (Bom.)]**

SECTION 153

Time Limits for making assessments/ Reassessments

Time limit for completion of assessment/ reassessment u/s 147

- No order of assessment, reassessment or re-computation shall be made u/s 147 after the expiry of **9 months from the end of the FY in which the notice u/s 148 was served**. **[sub-sec (2)]**

- Where the notice u/s 148 is **served on or after the 1st day of April, 2019**, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "**twelve months**" had been substituted. **[Proviso to sub-sec (2)]**

- Where an order of **fresh assessment in pursuance of an order u/s 254/ 263/ 264**, setting aside or cancelling an assessment, may be made at any time **before expiry of 9 months from the end of FY** in which the order u/s 254 is received by the Pr.CCIT/CCIT or Pr.CIT/CIT or, as the case may be, the order u/s 263/ 264 is passed by the Pr.CIT/ CIT. **[sub-sec (3)]**

Time limit for completion of assessment/ reassessment u/s 147....

Contd....

- Where the order u/s 254 is received by Pr.CCIT/CCIT or Pr.CIT/CIT or, as the case may be, the order u/s 263/ 264 is passed by Pr.CIT/CIT on or after **1st day of April, 2019**, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "**twelve months**" had been substituted. **[Proviso to sub-sec (3)]**

- Where effect to an order u/s 250/254/260/262/ 263/264 is to be given by the AO, wholly or partly, **otherwise than by making a fresh assessment or reassessment**, such effect shall be given **within a period of three months from the end of the month** in which order u/s 250/254/260/262 is received by the Pr.CCIT/CCIT or Pr.CIT/CIT, as the case may be, the order u/s 263/264 is passed by the Pr.CIT/CIT. **[sub-sec (5)]**

Time limit for completion of assessment/ reassessment u/s 147....

Contd....

- Where it is not possible for the AO to give effect to such order within the aforesaid period, for reasons beyond his control, the Pr.CIT/CIT on receipt of such request in writing from the AO, if satisfied, may allow an **additional period of 6 months** to give effect to the order. **[First Proviso to sub-sec (5)]**
- Where an order u/s 250/254/260/262/263/ 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order u/s 250/254/260/262/263/264 shall be made within the time specified in sub-section (3) i.e. 9 months or 12 months. **[Second Proviso to sub-sec (5)]**

Time limit for completion of assessment/ reassessment u/s 147....

Contd....

- Where a **reference u/s 92CA(1)** is made during the course of the proceeding for the assessment/reassessment, the period available for completion of assessment or reassessment, as the case may be, the period shall be **extended by twelve months**. **[sub-sec (4)]**
- Subject to provisions of Sub-sections (3) and (5), the assessment be completed— **[Sub-sec (6)]**
  - Where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding/ direction contained in an order u/s 250/254/260/262/263/264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of **12 months from the end of the month in which such order is received or passed** by the Principal Commissioner or Commissioner, as the case may be, or

Time limit for completion of assessment/ reassessment u/s 147....

Contd....

- Where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147, on or before the expiry of **twelve months from the end of the month in which the assessment order in the case of the firm is passed**.

MISCELLANEOUS ISSUES

Issue: Profit on Sale of property used for residential house

- AO completed assessment u/s 143(3) allowing assessee's claim for deduction u/s 54. Subsequently, initiated reassessment proceedings on ground that property transferred by assessee was agriculture land and, therefore, capital gain arising out of it was not eligible for deduction u/s 54. It was noted that property sold was located in urban area and was subjected to property tax. Even otherwise, in case land had to be treated as agricultural land, then sale was not a sale of a capital asset within meaning of section 2(14) and thus, no capital gains tax would have been payable, in aforesaid circumstances. **Reassessment proceedings were held to be not valid. CIT v. Chintoo Tomar (2015) 54 taxmann.com 160 / 229 Taxman 260 (Delhi)(HC)**

Other Issues....

- Keeping in view **the object & purpose of the proceedings u/s 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and re-agitate the concluded matters.** Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed. **CIT Vs. Sun Engineering Works P. Ltd. (1992) 198 ITR 297 (SC)**
- No reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of return already filed are not terminated. **Trustees of H.E.H. The Nizam's supplemental family Trust vs. CIT(2000) 242 ITR 381(SC)**

Other Issues....

- Court held that S.147 has not used the word "the block period". The reason is simply that **the block assessment itself is the reassessment proceedings.** There was no necessity for providing reassessment of the reassessment proceedings. S.147/ 148 of the Act for reassessment are not applicable to the assessment under Chapter XIV-B of the Act. Appeal of revenue was dismissed. **ACIT .v. Sunil Kumar Jain (2014) 367 ITR 370 (Chhattisgarh)**
- A notice u/s 148 was issued & the assessee submitted that original return may be treated as return in response to the notice u/s 148. Thereafter, the AO made the additions u/s 147. However, no assessment order was passed either u/s 142(1)(a); 143(3); or 144. **The High court held that without passing the assessment order, there was no occasion to pass the re-assessment order u/s 147. CIT .v. P.N. Sharma (2014)222 Taxman 178(Mag.)(All.)**
- Notice u/s 148(1) issued to assessee had been taken by authorized representative of assessee who was accountant of assessee, it could not be said that service of notice was not proper and, therefore, reassessment proceeding initiated would be held to be valid and legal. **Modern Farm Services .v. CIT (2014) 42 taxmann.com 314 (Mag.)(P&H)**

Other Issues....

- The AO cannot acquire two jurisdictions to issue notice u/s 148 as well as u/s 143(2) with respect to the original return filed by the assessee. The jurisdiction u/s 147 can be acquired only after the limitation to issue notice u/s 143(2) had expired. Therefore the notice u/s 148 is bad in law. **Dy.CIT v. Mangat Ram (2013) 154 TTJ 24 (UO)(Asr.)(Trib.)**
- Where the assessee did not file 'disclaimer certificate' in support of claim for deduction u/s 80HHC and further supplier to whom supply was effected by assessee had claimed deduction u/s 80HHC, reopening of assessment of assessee was justified. **Veeteejay Exports (P.) Ltd. v. DCIT (2013) 215 Taxman 122 (Mag.) (Ker.)**
- Where time is available to assessee for filing return u/s 139(4), it cannot be said that any income has escaped assessment and issuance of notice u/s 148 is not valid. **U.P. Housing & Development Board vs. ACIT [2014] 50 taxmann.com 214 (Lucknow - Trib.)**

Other Issues....

- The assessment made by the Assessing Officer under section 143(3)/147 without issuance of the statutory notice under section 143(2) is bad in law and the same is liable to be cancelled. **Alok Mittal *Vs.* DCIT, [2017] 86 taxmann.com 275 (Kolkata)**
- **Failure to issue notice u/s 143(2)- Notice not valid.** In the absence of fulfillment of the mandatory requirement of issuance of notice u/s 143(2), the notice of reassessment was not valid. Ratio in **CIT .v. Sukhini P. Modi (2014) 367 ITR 682 (Guj.)**

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

THANK YOU..!!

Presented by: CA. Sanjay Kumar Agarwal
Email id: agarwal.s.ca@gmail.com