

# The Chamber of Tax Consultants

## Reassessment under Income Tax - Law and Practice

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# Background

- Concept of Self Assessment
  - Computation of income [Section 14 – 59]
  - Estimation of income and payment of advance tax [Section 207-219]
  - Filing of return of income [Section 139]
  - Payment of self assessment tax [Section 140A]
- Assessment under Income-tax Act.
  - Section 2(8) – assessment includes reassessment
  - Summary Assessment u/s 143(1)
  - Scrutiny Assessment u/s 143(3) or 144
  - Reassessment u/s 147
  - Assessment in case of search – section 153A.
- % of returns taken up for scrutiny.
  - Less than 1%

# Background

- Revision of Assessment [Section 263 and 264]
  - Section 263 – assessment order is erroneous and prejudicial to the interest of the revenue (only scrutiny assessment orders can be revised u/s 263)
  - Section 264 – order can be revised in a manner so as to be not prejudicial to the assessee (scrutiny as well as summary assessment order can be revised u/s 264)
- Rectification of assessment [Section 154]
  - Any order can be rectified to correct any mistake apparent from record
- Concept of finality to assessment
  - 106 ITR 1(SC) Parashuram Pottery Works Co. Ltd. vs. ITO  
*“we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.”*

New provisions

Reassessment, Search and Survey

# Introduction

- Limited assessment u/s 143(3):
  - 143(2) to be issued within 3 months from the end of the FY in which return of income is filed
  - Completion within 12 months from the end of the AY
- Therefore, most of the assessments would now be u/s 147 of the Act
  - Information driven
  - Information would be uploaded after sometime.
  - Information in pursuance to search and survey etc.
- Is 148 the new 143(3)?
  - Under the guise of restricting the years from 6 to 3, they have extended the scrutiny assessment provisions from 1 to 3 years.
  - Under the guise of restricting the years from 6 to 3, they have extended the reassessment provisions from 6 to 10 years.

# Section 147

*"147. Income escaping assessment.—If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation.—For the purposes of assessment or reassessment or recomputation 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, irrespective of the fact that the provisions of section 148A have not been complied with."*

Old section

If the Assessing Officer has **reason to believe** that any income chargeable to tax has escaped assessment then he may assess or reassess such income and also any other income

# Section 147

## Issues:

- Old section 147 - comprised of a section, three provisos and four explanations. New section - one section and one Explanation
- “*Reason to believe*” removed – does that mean now they have to first conclude escapement and then reopen?
- 147 – main assessment provision – conditions to be fulfilled
- Escaped **assessment** – there should be prior assessment?
  - See assessment – 2(9) assessment includes reassessment.
  - Rajesh Jhaveri 291 ITR 500 (SC) – 143(1) is not an assessment
  - Clause (b) to Explanation 2 – removed – deemed escapement if no assessment made
- Concept of “*Failure to disclose fully and truly*” – if assessment beyond 4 years removed
- Cannot reassess matters which are the subject matters of any appeal, reference or revision (3<sup>rd</sup> proviso) – this exclusion is no longer there – doctrine of merger?
  - Ambiguous result - same issue would be considered by the appellate forum as well as AO.

# Section 147

Issues:

- Deemed escapement in Explanation 2 not present in the new section
- Income has escaped assessment – assess such income – what if loss or depreciation/ expense claimed in excess? (Compare with Expln 2 to old section)
  - *“or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year”* – has no meaning
  - Not defined income escaping assessment
  - Clause (b) and sub-clause (iv) of clause (c) of the said explanation included cases where excessive loss or depreciation allowance or any other allowance under this Act was claimed



# Section 147

Issues:

- Addition of any other income –
  - **CIT vs. Jet Airways Ltd. - 331 ITR 236(Bom)** , that for making addition on any other issue, an adjustment on the main issue for which the assessment has been reopened should be made - has now been done away with
  - Other view – where on the main issue no addition has been made – then assumption of jurisdiction itself is not correct.
  - Which comes to his notice subsequently – Cannot not make any fishing or roving inquiry
  - As per the SOPs issued for faceless assessment - The questionnaire shall seek specific and focussed information and evidences on the points of enquiry as provided in the specific grounds that led to reopening of the assessment u/s 148.
  - Only other income can be assessed, but the other issues cannot include, recomputation of loss or deduction etc.

# Section 148

*“148. Issue of notice where income has escaped assessment.—*

*Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within ~~such period, as may be specified in such notice~~, a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

***Provided** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year **and** the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

*“Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section”*

# Section 148

*Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139*

*“Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment **means**,—*

*(i) any information ~~flagged~~ in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;*

*~~(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.~~*

*“(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or*

*(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or*

*(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or*

*(v) any information which requires action in consequence of the order of a Tribunal or a Court”*

# Section 148

*“Explanation 2.—For the purposes of this section, where,—*

*(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or*

*(ii) a survey is conducted under section 133A, other than under sub-section (2A) ~~or sub-section (5)~~ of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*

*(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

*(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,*

*the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee ~~for the three assessment years immediately preceding the assessment year relevant to the previous year in which where~~ the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.*

*Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”*

# Section 148

## Issues:

- Before making any assessment, reassessment u/s 147 – therefore, conditions of section 147 to continue
- Requirement to issue notice and filing of return of income continues
  - Such notice must leave AO's hands before the last day
  - Notice cannot be issued on a deceased assessee or an entity which is no longer in existence (see amendment in section 170)
  - Notice should be issued at the correct address/ e-mail address. Service on portal is not a valid mode of service
  - Notice must be a signed notice
  - Issuance of notice u/s 143(2) is mandatory. Belated notice or non-issuance of notice u/s 143(2) would be fatal.  
(See amendment by FA 2023)
- Before issuing notice u/s 148, a new procedure is prescribed u/s 148A – both jurisdictional requirement
- No notice can be issued unless :
  - there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped **assessment**
  - prior approval of the specified authority, except where order is passed u/s 148A(d) with prior approval

# Section 148

Issues:

- **For the purpose of this section and section 148A** - Information which suggests income has escaped assessment..... is defined in **exhaustive manner**:
  - any information in the case of the assessee in accordance with the risk management strategy
    - New tangible material?
    - Risk management strategy not defined?
  - any audit objection to the effect that the assessment in the case of the assessee has not been made in accordance with the provisions of this Act
    - this clause requires a prior assessment – in fact section 147, 148A requires assessment
    - the assessment has not been made in accordance with the provisions of this Act – formation of opinion
    - Audit objection – argument gone?
    - Change of opinion – gone? – See Kelvinator – inherent check-up
  - information received under an agreement referred to in section 90 or section 90A of the Act
    - But it should suggest income escaping assessment - therefore, income escaped assessment in 147 becomes important

# Section 148

## Issues:

- any information made available to the Assessing Officer under the scheme notified u/s 135A
  - But it should suggest income escaping assessment – therefore, income escaped assessment in 147 becomes important
  - 135A – faceless collection of information
- any information which requires action in consequence of the order of a Tribunal or a Court.
  - any information which requires action in consequence of the order of a Tribunal or a Court – meaning?
  - To give effect to section 150
- 147 requirement – income escaped assessment; whereas proviso to S. 148 - information to suggest – otiose?
  - Explanation 1 is only for the purpose of section 148 and 148A
  - After receipt of such information, AO has to apply his mind, and has to arrive **at a conclusion** that income has escaped assessment
  - Section 148A(a) – requires AO to make further inquiries after receiving information suggesting escapement.

# Section 148

Issues: - As per Explanation 2, in the following cases, it shall be **deemed** that the AO has information which suggests escapement of income:

| Situations   | Deemed for how many years  |
|--|--|
| Where a search is <u>initiated</u> u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, on or after the 01.04.2021, in the case of the assessee;   | <del>3</del> AYs immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned   |
| Where a survey is conducted u/s 133A in the case of the assessee on or after the 01.04.2021  | <del>3</del> AYs immediately preceding the assessment year relevant to the previous year in which survey is conducted in the case of the assessee  |
| Where AO is <u>satisfied</u> , with <u>the prior approval</u> of the <u>Principal Commissioner or Commissioner</u> , that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after 01.04.2021, <u>belongs</u> to the assessee;  | <del>3</del> AYs immediately preceding the assessment year relevant to the previous year in which money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. |
| Where AO is <u>satisfied</u> , with the <u>prior approval</u> of <u>Principal Commissioner or Commissioner</u> , that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, <u>pertains or pertain to</u> , or any information contained therein, <u>relate to</u> , the assessee |  |



# Section 148

## Issues:

- In case of search or a requisition proceeding (153A), or in case of third parties (153C) - ~~the deeming fiction was only restricted to 3 years and not 6 or 10 years~~ – but now amended and kept open ended
- Survey u/s 133A – there were no separate assessment provision – 148 applied – now deemed information for **3 years**
  - Can reopen for any years – even in case of survey
  - Except TDS survey u/s 133A(2A) ~~and survey to verify expenditure incurred by an assessee, in connection with any function, ceremony or event u/s 133(5)~~
- There has to be escapement of income, nevertheless – Explanation 2 is for the purpose of this section.
- abated and unabated assessment and incriminating material – gone
- Search cases – deemed information but if beyond three years from end of AY then one has to satisfy conditions of section 149(1)(b)
- Explanation 2 vs. Explanation 1
  - Deeming fiction in Explanation 2 – therefore, no deeming fiction in Explanation 1

# Section 148

Issues:

- 153C cases –
  - AO (of assessee) will have to record a satisfaction with prior approval of Principal Commissioner or Commissioner.
  - Thereafter, for reopening the assessment, requisite approval has to be obtained from the prescribed authority as specified u/s 151.
  - Thus, there are two approvals needed for reopening in such case.
  - 153C - AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person – no such condition for 148 – but section 147 still there
  - mere asset belonging to such person can empower AO to reopen– no requirement to find out whether undisclosed income or not? - Therefore, the argument of escapement of income u/s 147
  - Reassessment based on search in case of any person – mandatorily has to follow – Explanation 2 and record satisfaction and not issue notice u/s 148A of the Act?

# Section 148

Some recent - case laws

## **Whether any “income” has escaped assessment?**

- **(2023) 7 NYPCTR 110 (Del) BLACKSTONE CAPITAL PARTNERS (SINGAPORE) VI FDI THREE PTE. LTD. vs. ACIT**
  - AO has not considered the submission that investment in shares is capital account transaction. Therefore, set aside.
  - The AO will, inter alia, deal with the petitioners contention, that the transaction in issue is a capital account transaction, and that no income whatsoever chargeable to tax accrues or arises in India.

## **Wrong information**

- **(2022) 6 NYPCTR 1450 (Del) GDR FINANCE & LEASING (P) LTD. vs. ITO**
  - Information incorrect – alleged transaction with X entity –However, no transaction with such entity – therefore, notice and order bad in law. Quashed.
- **(2023) 7 NYPCTR 25 (Del) G4S SECURE SOLUTIONS (INDIA) (P) LTD. vs. ACIT**
  - No prior inquiry and based on incorrect information - In our view, had such an enquiry been conducted before issuance of the notice, then the kind of flaws that have emerged, to which we have made a reference above, would not have, possibly, occurred. - As noticed above, instead of conducting an independent enquiry, the respondents/revenue relied upon the information supplied by the CGST authorities.

# Section 148

Some recent - case laws

## **Notice is unsigned**

- **(2023) 451 ITR 27 (Bom) PRAKASH KRISHNAVTAR BHARDWAJ vs. ITO**
  - the notice under s. 148 having no signature affixed on it, digitally or manually, the same is invalid and would not vest the AO with any further jurisdiction to proceed to reassess the income of the petitioner.
- **[2022] 444 ITR 41 (Allahabad) Daujee Abhushan Bhandar (P.) Ltd. VS. UOI**
  - considering the provisions of sections 282 and 282A of the Act, 1961 and the provisions of section 13 of the Act, 2000 and meaning of the word "issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record
- **[2022] 448 ITR 1 (Allahabad) Vikas Gupta vs. UOI**
  - an unsigned approval in an electronic record said to be pushed through electronic mode at a particular point of time could not be said to be a valid satisfaction under section 151 for assumption of jurisdiction by Assessing Officer to issue notice to an assessee under section 148

# Section 148

Some recent - case laws

## **Notice is unsigned/ Date of despatch**

- **[2022] 449 ITR 517 (Delhi) Suman Jeet Agarwal vs. ITO**

- Notices which were sent through the registered e-mail ID of the respective JAOs, though not digitally signed are held to be valid.
- For uploading of the Notices in the E-filing portal of the assessee, to be considered valid service, the Department should have issued a real time alert as provisioned in the aforementioned Section 144(B)(6)(ii)(a) of the Act of 1961. If this is not followed it is akin to no due despatch of Notices.
- mere generation of Notice on the ITBA Screen cannot in fact or in law constitute issue of notice, whether the notice is issued in paper form or electronic form. In case of paper form, the notice must be despatched by post on or before 31st March 2021 and for communication in electronic form the e-mail should have been despatched on or before 31st March 2021.
- when Notices were issued, the date and time of when the ITBA e-mail software system is triggered and the Notices leave the last ITBA server would be considered
- the issuance of e-mail attaching electronic notice to an unrelated e-mail address does not constitute as due despatch and therefore, the Notices cannot be said to have been issued on 31st March, 2021

# Section 148

Case laws

## **Notice on non-existent person**

- **(2022) 6 NYPCTR 1428 (Bom) Kamlesh Mavji Ravaria Vs. ITO**
  - Notice in the name of deceased assessee bad in law
- **(2022) 6 NYPCTR 1092 (Del) SUMANT INVESTMENTS (P) LTD. vs. ACIT**
  - notice in the name of non-existent person – bad in law. (amalgamation)

# Section 148

## Information suggesting income escaping assessment

(2022) 329 CTR (Mad) 809 DR. MATHEW CHERIAN & ORS. vs. ACIT

- Caveat/pre-condition is that such information must enable the suggestion of escapement of tax. Then again, the mandate cast upon the officer under s. 148A(d) is that he is to decide whether it is a 'fit case' for issue of a notice for reassessment, upon a study of the material in his possession, including the response of the assessee.
- Thus, not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for reassessment, and it is only such 'information' that suggests escapement and which, based upon the material in his possession, that the officer decides as 'fit' to trigger reassessment, that would qualify.
- **The 'information' in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax.** This is not to say that the sufficiency or adequacy of the 'information' must be tested, as such an analysis would be beyond the scope of jurisdiction of this Court in writ jurisdiction. However whether at all the 'information' gathered could lead to a suggestion of escapement from tax can certainly be ascertained.
- With the necessity for 'belief' effaced from the statutory provision, the dimension of subjectivity that existed pre 1st April, 2021 stands substantially whittled. In the present regime of reassessments, **an AO must be able to establish proper nexus of information in his possession, with probable escapement from tax.** No doubt the term used is 'suggests'. **That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.**

# Section 148

## Information suggesting income escaping assessment

### (2022) 328 CTR (Cal) 710 EXCEL COMMODITY & DERIVATIVE (P) LTD. vs. UOI

- As pointed out in the aforesaid mentioned decision, the term "information" in Expln. 1 under s. 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the Revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim.

### (2022) 326 CTR (Del) 781 Divya Capital One (P) Ltd. vs. Asstt. CIT

- This Court is further of the view that under the amended provisions, the term 'information' in Expln. 1 to s. 148 cannot be lightly resorted to so as to reopen assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is 'information to suggest' under amended law or 'reason to believe' under erstwhile law the benchmark of 'escapement of income chargeable to tax' still remains the primary condition to be satisfied before invoking powers under s. 147 of the Act. Merely because the Revenue respondent classifies a fact already on record as 'information' may vest it with the power to issue a notice of reassessment under s. 148A(b) but would certainly not vest it with the power to issue a reassessment notice under s. 148 post an order under s. 148A(d)."



# Section 148A

148A. Conducting inquiry, providing opportunity before issue of notice under section 148.—The Assessing Officer shall, before issuing any notice under section 148,—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, ~~with the prior approval of specified authority~~, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

# Section 148A

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

*(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or*

*(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

*(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee or*

*(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee*

*Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151."*

# Section 148A

Issues:

- 148A is mandatory - 'shall' - **UOI vs. Ashish Agarwal (138 taxmann.com 64)(SC)**
- Prior approval of the authority before each step viz. conducting inquiry, ~~issue of notice u/s 148A~~ and passing of order
- Interestingly, a SCN will be issued for the first time to show-cause as to why a notice u/s 148 should not be issued.
- Assessee will be provided with the information in possession of AO, all the material on which reliance is placed, as well as the material of enquiry conducted (See Circular dated 01.08.2022 and **UOI vs. Ashish Agarwal (138 taxmann.com 64)(SC) – documents and material to be provided**
  - Time to reply – minimum time of 7 days to be counted from the date of provision of the material (Inst. 1/ 2022)
- Assessee may disclose the income in return filed in response to 148 notice – Any implications on penalty – 270A(2)
- Opportunity of being heard and not just written submission – Tata Capital Financial Services Ltd. (Bom HC) (Circular of 01.08.2022)
- Dispose by passing an order in writing – why fit case to issue notice u/s 148 of the Act.
  - Have to consider all the criteria including income escaped assessment or not (Circular of 01.08.2022)
  - Otherwise no purpose for section 148A(d).

# Section 148A

Issues:

- 148A order not appealable – can file writ
  - tacit acceptance of **GKN Driveshafts (India) Ltd. vs. ITO**. 259 ITR 19 (SC) – **See Bom HC, Raj HC and SC**
  - Can also file appeal relying on **Genpact India (P.) Ltd.** 419 ITR 440(SC) – “denies his liability to assess under the Act” – but cannot challenge 148 notice, that proceeding will continue – to get a stay – writ is a better option.
  - No 264 – since order passed after the approval of the PCIT/ CCIT
  - Whether any income has escaped assessment?
  - Whether there is any information to suggest income has escaped assessment?
  - Whether the requisite approval of the prescribed authority has been taken?
  - Whether the reopening of assessment is not time barred u/s 149 of the Act?
- 148A SCN would replace reason to believe? One cannot improve upon the same (See Hindustan Unilever Bom HC)
- Will it be done in faceless manner? (See S. 151A) and Notification No. 18/2022 dated 29.03.2022
- Specified authority for this purpose would be the ones prescribed in section 151.

# Section 148A

## Exceptions:

- **SC in Ashish Agarwal (supra)** - no notice u/s 148 of the IT Act can be issued without following the procedure prescribed u/s 148A of the IT Act – condition precedent
- search cases and cases pertaining to third party in respect of which satisfaction has been recorded by the AO
- the AO has received any information under the scheme notified u/s 135A, **pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee**
  - Compare with wordings of Explanation 1 to S. 148
  - Why no opportunity of being heard when information is received u/s 135A scheme? Even in case of survey – 148A has to be followed
- How do one challenge? Can we ask for reasons for reopening of assessment?
  - Whether any income has escaped assessment?
  - Whether conditions of section 149 fulfilled?
  - Whether all approvals taken?
- Survey proceeding requires order u/s 148A (Circular of 01.08.2022)

# Section 148A

## Case Laws:

### Violation of procedure prescribed u/s 148A of the Act

#### Proceedings to be quashed

- **Writ Petn. No. 10184 of 2022 (Bom) Anurag Gupta vs. ITO –**
  - The reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under s.148A(b) on account of failure of the AO to provide the requisite material which ought to have been supplied along with the information in terms of the said section
- **WP No. 15580 of 2022(Bom) – Mrs. Chitra Supekar vs. ITO**
  - A condition precedent for any proceeding including a proceeding u/s. 148A, is a valid service of notice, lest it would be a jurisdictional error. Despite availability of new address, notice u/s 148A(b) served on old address. Therefore, the proceedings are bad in law
- **(2022) 6 NYPCTR 1440 (Ker) Nambiar Balakrishnan Narendran vs. ITO**
  - Notice u/s 148A not served before issue of notice u/s 148. Since it is clear that there is no record to suggest that the procedure contemplated under s. 148A of the Act were followed before issuing notice under s. 148 of the Act, this writ petition is allowed. Fresh proceedings may be initiated as per law
  - Specific argument, that the no permission to issue fresh notice

# Section 148A

- **(2022) 6 NYPCTR 1236 (Bom) SAMADHA CORPORATION vs . ITO**
  - SCN has sought response of the petitioner within a period of three days Sec. 148A(b) of the said Act requires grant of minimum time of seven days to an assessee to file its reply to the show-cause notice.
- **(2022) 328 CTR (Jharkhand) 239 JINDAL FORGINGS vs. PCIT & ORS.**
  - The contention of the Revenue that though only three days time was given to the petitioner to file its reply but the order has been passed on seventh day as the assessee did not file any reply, is not acceptable as the legislature has categorically stipulated mandatory timeline of minimum 'seven days' and maximum 'Thirty days' to be given to the petitioner before the order under s. 148A(d) can be passed for reassessment proceeding. In the case at hand admittedly, the same has not been followed; as such the instant writ application is maintainable under the writ jurisdiction.
- **(2022) 6 NYPCTR 1237 (Bom) AGRICULTURE PRODUCE MARKET COMMITTEE vs. ITO**
  - Given the aforesaid facts, we are of the view that the impugned order passed under s. 148A(d) of the Act of 1961 has been issued without considering the petitioner's reply inasmuch as paragraph 1 of the said order records that the petitioner failed to submit its Explanation. In view of aforesaid the impugned order dt. 31st March, 2022 passed under s. 148A(d) of the Act of 1961 is set aside. The respondents are at liberty to take further steps in accordance with law and as permissible under the said Act.

# Section 148A

## SCN in the name of deceased person/ non-existent person

- **(2023) 7 NYPCTR 219 (Bom) NARINDERPAL GUPTA vs. ACIT** - If the show cause notice u/s 148A(b) is issued in the name of deceased person, then the proceedings are bad in law
- **(2023) 7 NYPCTR 189 (Guj) MADHUBEN KANTILAL PATEL vs. UOI**- Notice u/s 148 in first round in the name of deceased person. Post Ashish Agarwal, notice in the name of legal heirs. Held - the first Notice under s. 148 of the IT Act was issued on 30th June, 2021 which itself was not sustainable and was illegal



# Section 148A

## Matter set aside

- **(2023) 7 NYPCTR 281 (Del) ALANKAR APARTMENT (P) LTD. vs. AICT** - Not dealt with the objections raised in a satisfactory manner and not dealt with the evidences furnished. Order u/s 148A(d) and notice u/s 148 quashed and set aside – AO to carry out denovo exercise.
- **(2023) 7 NYPCTR 252 (Del) RISHAB GARG vs. ITO** – AO has not dealt with the submission of the Petitioner. However, liberty to carry out fresh exercise.
- **(2023) 7 NYPCTR 55 (Del) CHARU CHAINS & JEWELS (P) LTD. vs. ACIT** - Material not supplied – therefore, set aside –
- **(2022) 6 NYPCTR 1449 (Del) LEMON TREE HOTELS LTD. vs. CIT** - Personal hearing not granted – therefore, set aside -
- **(2022) 6 NYPCTR 1227 (Bom) SUNRISE ASSOCIATES vs. ITO** - Documents and reply not considered. Remanded the matter back
- **(2022) 447 ITR 439 (All) NABCO PRODUCTS (P) LTD. vs. UNION OF INDIA & ORS.** - Order passed without considering the reply of the Petitioner due to technical glitch - For all the reasons aforesaid, the impugned order and the notice as aforesaid are quashed. Liberty is granted to the respondents to pass an order afresh under s. 148A(d) of the Act 1961 after affording reasonable opportunity of hearing to the petitioner.

# Section 148A

## Alternate remedy

- **(2022) 449 ITR 256 (SC) ANSHUL JAIN vs. PCIT** - What is challenged before the High Court was the reopening notice under s. 148A(d) of the IT Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the AO in the reassessment proceedings.
- **(2023) 6 SLPCTO 65 (SC) RED CHILLI INTERNATIONAL SALES vs. ITO** - we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration.

# Section 148A

## Cannot travel beyond SCN

- **(2023) 330 CTR (Chhattisgarh) 317 U.S. ASSOCIATES vs. PCIT**
- In the absence of the same being reflected in the notice, the assessment yet being made of the said amount would be prima facie bad in the light of the judgment of the Supreme Court in case of Commr. of Customs vs. Toyo Engineering India Ltd. 2006 (7) SCC 592 wherein in para 16 the Supreme Court has emphatically held that the Department cannot travel beyond the show-cause notice. Order and notice set aside
- **(2022) 6 NYPCTR 1175 (Del) CATCHY PROP-BUILD (P) LTD. vs. ACIT**
- Having perused the paper book and having heard learned counsel for the parties, this Court is of the view that in the notice issued under s. 148A(b) of the Act, the petitioner was never asked to explain the source of funds that were used by Manu Garments to purchase the shares of Bert Marketing (P) Ltd. Keeping in view the aforesaid, the present writ petition along with applications is allowed and the show-cause notice issued under s. 148A(b) of the Act as well as the order passed under s. 148A(d) of the Act and the notice issued under s. 148 of the Act for the asst. yr. 2018-19 are quashed. However, if the law permits, the respondents/Revenue to take further steps in the matter, they shall be at liberty to do so.
- **146 taxmann.com 547 (Delhi) Usha Rani Girdhar v. Income-tax Officer\***
- This Court in *Catchy Pro-Build (P.) Ltd. v. Asstt. CIT* [\[2022\] 145 taxmann.com 510/448 ITR 671](#) High Court has held, " if the foundational allegation is missing in the notice issued under section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice".

# Section 148A

**(2022) 328 CTR (Cal) 710 EXCEL COMMODITY & DERIVATIVE (P) LTD. vs. UOI**

- **Specific question - Whether the matter should be remanded or quashed?**
- On a reading of the said order, we find that the AO has indirectly accepted the explanation given by the appellant/assessee that they have not indulged in fictitious derivative transaction. We say so because in the order dt. 7th April, 2022 in para 4 therein, the AO alleges that prima facie the appellant/assessee has taken accommodation entry by way of fund transfer from M/s Brightmoon Suppliers (P) Ltd. which is a different company. Thus, the order passed under cl. (d) of s. 148A of the Act is not based on the reason for which notice dt. 22nd March, 2022 was issued under s. 148A(b) of the Act. Therefore, the order dt. 7th April, 2022 is illegal and has to be held to be wholly unsustainable. In such factual position, the necessity to remand the matter back to the AO does not arise.
- As pointed out in the aforesaid mentioned decision, the term "information" in Expln. 1 under s. 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the Revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim. The AO has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. Therefore, on that score also the order dt. 7th April, 2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue.

# Section 148A

Order to be passed on “material on record” and not on suspicion

(2022) 447 ITR 698 (Raj) Abdul Majeed vs. ITO

- **The expression ‘material available on record’, has been** consciously used by the legislature to put a fetter on the exercise of power in the manner that an order under s. 148A of the Act deciding to issue notice under s. 148 of the Act can be based only on the basis of material available on record.
- The authority, as is apparent, sought to bridge the statutory impediment of section 149(1)(b) not on the basis of any material available on record but only with the help of a surmise that the assessee may have some more accounts. Even before this Court, when the reply has been filed by the respondent, no material has been placed to show that at the time when the authority passed order under s. 148A of the Act, there was some material on record that the income chargeable to tax which escaped assessment amount to or is likely to amount Rs. 50,00,000 or more for that year.
- Only on the basis that the cash deposits of Rs. 19,39,000 chargeable to tax have escaped assessment, without anything more, the authority was not justified in jumping to the conclusion that the assessee may have more bank accounts. If such an interpretation is placed on the provision of s. 148A(d) of the Act with reference to expression ‘material available on record’, then in that case, it will open flood gate and even without availability of any material, the authority would be initiating proceedings under s. 148 of the Act, which will completely frustrate the object of incorporation of s. 148A in the Act. It is well settled principle of interpretation that the taxing statute is required to be construed strictly.

# Section 148B

*148B. No order of assessment or reassessment or recomputation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director*

Search and survey matter – take approval of Additional or Joint CIT before passing the order of assessment, reassessment etc.

# Section 149

*'149. Time limit for notice.—(1) No notice under section 148 shall be issued for the relevant assessment year,—*

*(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*

*(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of*

*(i) asset,*

*(ii) expenditure in respect of a transaction or in relation to an event or occasion; or*

*(iii) an entry or entries in the books of account,*

*which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*

*Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if ~~such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section~~, a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:*

# Section 149

*Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

*Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section 148, where,—*

*(a) a search is initiated under section 132; or*

*(b) a search under section 132 for which the last of authorisations is executed; or*

*(c) requisition is made under section 132A,*

*after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:*



# Section 149

*Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,—*

*(a) a search under section 132 which is initiated; or*

*(b) a search under section 132 for which the last of authorisations is executed; or*

*(c) a requisition made under section 132A,*

*after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:”;*

*Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

*Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is ~~less than seven days~~ does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*

*Explanation.—For the purposes of clause (b) of this sub- section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*

# Section 149

*“(1A) Notwithstanding anything contained in subsection (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of subsection (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”*

*(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.’.*

# Section 149

Issues:

- The old time limits have changed from 4 to 6 and 16 years to 3 to 10 years. The outer limit for reopening the assessment is 3 years now.
- If the following conditions are fulfilled, then the assessment can be reopened upto 10 years from the end of the relevant assessment year:
  - AO has in his **possession** “books of accounts” or “other documents” or “evidence” –
    - this will not include information from investigation wing – but actual evidences like statement or incriminating material
    - Letter or information on the insight portal will not be sufficient
    - New tangible material
    - *Noscitur a sociis* - take colour from “evidence”
  - Such documents etc. **reveal** that the **income chargeable** to tax has **escaped assessment**
    - Conclusive evidence is must – not just a belief
  - Income escaping assessment is **Rs. 50 lakhs or more**.

# Section 149

Issues:

- Such income is **represented in the form of:**
  - **Asset**
  - **expenditure in respect of a transaction or in relation to an event or occasion; or**
  - **an entry or entries in the books of account**
- "asset" shall **include** immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.
  - Cash deposit in bank account, Credits in the bank account - – should reveal income escaping assessment
  - Unsecured loan/ share application money – not asset but liability
  - It should be an **investment** in the asset – see section 149(1A)
- Income escaping assessment vs. represented in the form of expenditure
  - bogus expenditure
  - Legal issues like capital expenditure/ personal expenditure can be said to be covered?
- Entry in books of account –
  - Will cover accommodation entries –
  - Will apply only in case where books are maintained.

# Section 149

Issues:

- Insert a new sub-section (1A) in section 149 to provide - **If asset or expenditure is more than Rs. 50 lakh but spread over 2 or more years – can reopen all the years**
  - *Notwithstanding anything contained in subsection (1),*
  - *income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of Rs. 50 lakh, has escaped the assessment and the*
  - ***investment** in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of subsection (1),*
  - *a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.”*
- **Backtracking on the promise – Memo - “To bring clarification and align them with the intent”**

# Section 149

## Issues:

- Section 149 deals with the time limit for issue of notice u/s 148 and not section 148A – but impliedly covers 148A
  - for computing the time limit, the period granted to the assessee for replying u/s 148A is to be excluded
  - Very confusing provisions (3<sup>rd</sup> and 4<sup>th</sup> proviso)
- Example:
  - AY 2018-19 – 3 year ends on 31.03.2022
  - Notice u/s 148A(b) on 15.03.2022, allowing 10 days time – such time to be excluded
  - Order u/s 148A(d) to be passed within 30 days from the end of the month in which replied is filed i.e. 30 April 2022
  - However, Order has to be passed and notice u/s 148 to be issued notice upto 11 April 2022.

4<sup>th</sup> proviso is useless – since there can never be a situation where the time limit available to pass order u/s 148A(d) is less than 7 days.

# Section 149

Issues:

## Assessment year on or before AY 2021-22

- First Proviso to section 149(1)(b) deals with reassessment of AY 2021-22 and earlier years.
- The amended provisions shall apply to all the reassessments taking place after 1.4.2021.
- In case of assessment years, on or before AY 2021-22, if the same could not have been reopened as on a particular date as being beyond 6 years under the erstwhile section 149(1)(b), then the same cannot be reopened under the proposed section 149(1)(b).
- Thus, AY 2015-16 would become time barred as on 31.03.2022 under the erstwhile section 149(1)(b). All years prior to and including AY 2015-16 cannot be reopened under the new provisions, though it will fall within the extended time limit of 10 years.
- However, if a notice could not have been issued as on 31.03.2021 as a result of first proviso to existing section 147, in absence of any failure on the part of the assessee to disclose fully and truly all material facts etc., the same can still be reopened if the provisions of the proposed section 149(1)(b) are satisfied.
- Not time barred u/s 149(1)(c) since foreign asset – still time barred under new provision

# Section 149

Issues:

Assessment year on or before AY 2021-22

- If no notice could have been issued u/s 153A/ 153C, 148 then no notice can be issued under the new section
  - For 6-10 years conditions in fourth proviso to S. 153A – AO has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years; and search is conducted after 1.4.17



# Section 149

| <b>AYs</b>                   | <b>Old section (6 years)*</b> | <b>Assessment – 143(3)</b> | <b>New section (3 years)</b> | <b>New Section (10 years)</b> |
|------------------------------|-------------------------------|----------------------------|------------------------------|-------------------------------|
| AY 2012-13 and earlier years | Upto 31.03.2019               | NA                         | NA                           | Cannot reopen                 |
| AY 2013-14 and 14-15         | 31.03.2021                    | NA                         | NA                           | Cannot reopen                 |
| AY 2015-16                   | 31.03.2022                    | NA                         | NA                           | 31.03.2022                    |
| AY 2016-17                   | 31.03.2023                    | NA                         | NA                           | 31.03.2023                    |
| AY 2017-18                   | 31.03.2024                    | NA                         | NA                           | 31.03.2024                    |
| AY 2018-19                   | 31.03.2025                    | 30.06.2021                 | 31.03.2022                   | 31.03.2025                    |
| AY 2019-20                   | 31.03.2026                    | 30.06.2021                 | 31.03.2023                   | 31.03.2026                    |
| AY 2020-21                   | 31.03.2027                    | 31.03.2022                 | 31.03.2024                   | 31.03.2027                    |
| AY 2021-22                   | 31.03.2028                    | 31.12.2022                 | 31.03.2025                   | 31.03.2028                    |

# Section 149

## Search prior to 1.4.2021

- *Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*
- Cannot reopen if search is prior to 1.4.2021 and either 153A or 153C is applicable?

## Search post 1.4.2021 (proposed 3<sup>rd</sup>) (Search and requisition)

- If search initiated or last of the authorization executed or requisition made u/s 132A after 15.03 –
- and the period for issue of notice under section 148 expires on the 31st day of March - Which period? Three year or 10 years?
- A period of 15 days shall be excluded and notice shall be deemed to be issued u/s 148 on 31.03.
- But they have to still form a belief that income has escaped assessment?

# Section 149

## **Search post 1.4.2021 (proposed 4<sup>th</sup> proviso) (survey consequent to search)**

- information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A on or before 31.03
- Such section 131 or 133A should be in consequence of a search under section 132 which is initiated; or (b) a search under section 132 for which the last of authorisations is executed; or (c) a requisition made under section 132A after 15.03.2022
- a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section
- and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year.
- Survey or statement only in consequence of search after 15.03
- No mention of any time getting barred, therefore irrespective of any limit.
- Notice u/s 148A(b) shall be deemed to be issued on 31.03.2023.

# Section 149

## **(2022) 447 ITR 698 (Raj) Abdul Majeed vs. ITO**

- Therefore, while passing an order under s. 148A of the Act, the authority is required to reach satisfaction to not only that income chargeable to tax has escaped assessment, but in case where three years have elapsed from the end of the relevant assessment year, the order under s. 148A of the Act for issuance of notice under s. 148 of the Act could be passed if there were no statutory impediment as contained in s. 149 sub-s. (1)(b) of the Act, referred to hereinabove.
- There has to be a finding in the order as to what is the books / document/ evidence which reveal that income has escaped assessment in the forms prescribed.

## **(2023) 331 CTR (Kar) 173 : AZIM PREMJI TRUSTEE COMPANY (P) LTD. vs. DCIT**

- For s. 149(1)(b) assessment cannot be reopened based on the very same information was readily available with the AO when the original assessment order dt. 28th June, 2016 was passed by him.
- If barred by first proviso to section 147 of the Act (unamended provision), then cannot reopen, under the new law.

# Section 150

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

*(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 recomputation 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 recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation 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 recomputation may be taken.*

- Remains as it is
- But 148A has to be followed

# Section 151

*151. Sanction for issue of notice. —Specified authority for the purposes of section 148 and section 148A shall be,—*

*(i) Principal Commissioner or Principal Director or Commissioner or Director, **if three years or less than three years** have elapsed from the end of the relevant assessment year;*

*(ii) Principal Chief Commissioner or Principal Director General or ~~where there is no Principal Chief Commissioner or Principal Director General~~, Chief Commissioner or Director General, if **more than three years** have elapsed from the end of the relevant assessment year."*

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

- The word 'satisfied' has now been replaced by the word 'approved' – No different - Mechanical satisfaction or non-application of mind by the authority would not be sufficient.
- Further, sanction/ approval of an authority in place of another authority would not be valid.

# Section 151

- **Beyond 3 years** – PCCIT or PDGIT and where there is no such authority then DG or CC.? **Amendment proposed**
- In Mumbai – all notices after 1.4.21 beyond 3 years cases, with the approval of PCCIT
- Section 149(2) states that section 149 (1) is subject to 151.
- 148A(b) within 3 years, but 148A(d) after three years?
- **WP No. 15580 of 2022(Bom) – Mrs. Chitra Supekar vs. ITO**
  - Sanction after three years has to be by PCCIT and not by PCIT
  - *Amendment made by FA 2023*

# Procedure of reassessment under new section

## Non search cases

| Sr. No. | Steps   | Approval            | Time period  |
|---------|---|---------------------|--|
| 1       | AO to come into possession of information which suggests that income has escaped assessment                           | NA                  | Within limit u/s 149   |
| 2       | AO to conduct inquiry if required prior to issue notice 148A(a)   | Specified Authority | Within limit u/s 149   |
| 3       | SCN to assessee along with the information and results of enquiry conducted - (prior approval of specified authority) | NA                  | Within limit u/s 149   |
| 4       | Assessee to reply   | NA                  | 7-30 days or extended time   |
| 5       | Pass order u/s 148(d) whether it is a fit case of issue notice  | Specified Authority | One month from the end of the month in which reply is received or time allowed expires |



# Procedure of reassessment under new section

## Non search cases

| Sr. No. | Steps  | Approval                                | Time period  |
|---------|--|---|--|
| 6       | Notice u/s 148 and order u/s 148A to be served on the assessee                         | Specified Authority<br>(Proviso to 148) | Within limit u/s 149 and subject to 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> and 6 <sup>th</sup> proviso to section 149 |
| 7       | Can file writ petition against the 148A order and 148 notice                           | NA                                      | No time limit  |
| 8       | If not filing Writ – then file Return of income in response to                         | NA                                      | Such period as may be notified   |
| 9       | Issuance of notice u/s 143(2) of the Act and issuance of notice u/s 142(1) of the Act. | NA                                      | Time limit prescribed in section 143(2) – 3 months from the end of FY in which return is furnished                                 |

# Procedure of reassessment under new section

## Non search cases

| Sr. No. | Steps  | Approval | Time period   |
|---------|--|----------|---|
| 10      | Completion of reassessment proceedings by following principles of natural justice.       | NA       | Time limit prescribed in section 153 – 12 months from the end of the FY in which the notice u/s 148 is <b><u>served</u></b> |
| 11      | Appeal to CIT(A) – can challenge both reassessment validity and the additions on merits. | NA       | 30 days from the date of receipt of notice of demand  |

## Note:

- Procedure to apply whether 3 years or 10 years
- For beyond 3 years - added condition u/s 149(1)(b) to be complied with
- This procedure will also apply to survey cases but deemed information as per Expln. 2 to 148.

# Procedure of reassessment under new section

## Search cases

| <b>Sr. No.</b> | <b>Steps</b>  | <b>Approval</b>                      | <b>Time period</b>                         |
|----------------|---|--------------------------------------|--|
| 1              | Search process u/s 132 of the Act   | As per section 132                   | NA   |
| 2              | Notice u/s 148 to be served on the assessee                                 | Specified Authority (Proviso to 148) | Within limit u/s 149                       |
| 3              | File return of income   | NA                                   | Such period as may be notified             |
| 4              | Seek reasons for reopening of assessment – whether any escapement of income | NA                                   | Along with filing of return of income      |
| 5              | File objections to the reopening  | NA                                   | In reasonable time from receipt of reasons |
| 6              | AO to pass order disposing off objections                                   | NA                                   | In reasonable time from receipt of reasons |

# Procedure of reassessment under new section

## Search cases

| Sr. No. | Steps  | Approval | Time period   |
|---------|--|----------|---|
| 7       | Can file writ petition against the 148 notice and order  | NA       | No time limit prescribed  |
| 8       | If not filing Writ – then issuance of notice u/s 143(2) of the Act and issuance of notice u/s 142(1) of the Act. | NA       | Time limit prescribed in section 143(2) – 3 months from the end of FY in which return is furnished                          |
| 9       | Completion of reassessment proceedings by following principles of natural justice.                               | NA       | Time limit prescribed in section 153 – 12 months from the end of the FY in which the notice u/s 148 is <b><u>served</u></b> |
| 10      | Appeal to CIT(A) – can challenge both reassessment validity and the additions on merits.                         | NA       | 30 days from the date of receipt of notice of demand  |

# Procedure of reassessment under new section

## Search cases

- Deemed information suggesting escapement for all years preceding the year of search –
- For beyond 3 years –conditions of section 149(1)(b)
- 148A not to apply to search cases (subject to SC)

# Procedure of reassessment under new section

## Search cases – third party

| Sr. No. | Steps  | Approval                                      | Time period                                |
|---------|--|---|--|
| 1       | Search process u/s 132 of the Act  | As per section 132                            | NA   |
| 2       | <b>AO to be satisfied that that any money, bullion, jewellery or other valuable article or thing, belong to or any books of account or documents, pertains or pertain to, or any information contained therein, relate to, the assessee.</b> | <b>Principal Commissioner or Commissioner</b> | <b>Within limit u/s 149</b>                |
| 3       | Notice u/s 148 to be served on the assessee  | Specified Authority (Proviso to 148)          | - Do -                                     |
| 4       | File return of income  | NA  | Such period as may be notified             |
| 5       | Seek reasons and <b>satisfaction notes</b> for reopening of assessment – whether any escapement of income  | NA  | Along with filing of return of income      |
| 6       | File objections to the reopening   | NA  | In reasonable time from receipt of reasons |

# Procedure of reassessment under new section

## Search cases – third party

| Sr. No. | Steps  | Approval | Time period   |
|---------|--|----------|---|
| 7       | AO to pass order disposing off objections  | NA       | In reasonable time from receipt of reasons  |
| 8       | Can file writ petition against the 148 notice and order  | NA       | No time limit prescribed  |
| 9       | If not filing Writ – then Issuance of notice u/s 143(2) of the Act and issuance of notice u/s 142(1) of the Act. | NA       | Time limit prescribed in section 143(2) – 3 months from the end of FY in which return is furnished                          |
| 10      | Completion of reassessment proceedings by following principles of natural justice.                               | NA       | Time limit prescribed in section 153 – 12 months from the end of the FY in which the notice u/s 148 is <b><u>served</u></b> |
| 11      | Appeal to CIT(A) – can challenge both reassessment validity and the additions on merits.                         | NA       | 30 days from the date of receipt of notice of demand  |

# Procedure of reassessment under new section

## Search cases - third party case

- Deemed information suggesting escapement for all years preceding the year of search –
- For beyond 3 years –conditions of section 149(1)(b)
- 148A not to apply to search cases –
- The presumption of objection and disposal of objections is because:
  - There has to be escapement of income – without which no jurisdiction
  - GKN Driveshaft therefore to apply.
  - Can also challenge absence of approval.



# Procedure of reassessment under new section

Some of the old jurisdictional requirement which are done away with are as under:

- Reason to believe
- More than 4 years – failure on the part of the assessee
- Foreign assets reopening upto 16 years

Some of the old jurisdictional requirements which shall still continue under the new provisions are as under:

- Change of opinion
- Income escaping assessment
- Jurisdictional AO
- Cannot reopen for verification purpose/ for making fishing and roving inquiries– See faceless asst. SOPs
- Recording of reasons in the form of show cause notice u/s 148A(b)
- Issues related to service of notice u/s 148
- Approval of specified authorities– application of mind
- Procedure of assessment

# Procedure of reassessment under new section

Some of the new jurisdictional requirements are as under:

- information with the Assessing Officer suggesting that the income chargeable to tax has escaped assessment
- prior approval of the specified authority at various stages
- Inquiry, opportunity of being heard and order u/s 148A
- Third party in case of search – satisfaction and prior approval.
- Cross examination before 148A(d)
- Conditions for extended time limit of 10 years u/s 149(1)(b) – many jurisdictional requirement – possession, revealing escapement, more than 50 lakh, in the form of asset, expenditure or book entry.

# Section 148

Some relevant case laws

**(2023) 331 CTR (Kar) 173 : AZIM PREMJI TRUSTEE COMPANY (P) LTD. vs. DCIT**

- In the instant case, a perusal of the notices, show-cause notices and the impugned order clearly establish that s. 149(1)(b) does not apply, because the allegation of escapement of income is not based on books of account or other documents or evidence in the possession of the AO; on the contrary, the allegation of escapement of income is based only on the disclosure expressly made by the petitioner-assessee itself of the gift of Wipro shares received by it and the very same information was readily available with the AO when the original assessment order dt. 28th June, 2016 was passed by him.
- It is significant to note that at the time of passing the said order dt. 28th June, 2016, the AO came to the definite conclusion that s. 56(2)(vii)(c) did not apply insofar as the petitioner was concerned despite having all details, information and material in this regard that was required at that time and based on the very same material, it was impermissible for the AO to simply/merely change his mind and initiate reassessment proceedings by issuing a notice dt. 30th June, 2021 it is therefore clear that in the facts of the instant case, s. 149(1)(b) was not applicable and it was only s. 149(1)(a) of the IT Act that was applicable and consequently, the impugned proceedings pursuant to the notice dt. 30th June, 2021 issued beyond the period of limitation

# Section 148

## **(2022) 329 CTR (Mad) 809 DR. MATHEW CHERIAN & ORS. vs. ACIT**

- AO must be able to establish proper nexus of information in his possession, with probable escapement from tax. No doubt the term used is 'suggests'. That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.
- Whether under the old or new regimes of reassessment, it is a settled position that issues decided categorically by judicial precedent should not be revisited in the guise of reassessment.

## **(2022) 445 ITR 436 (Del) DIVYA CAPITAL ONE (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR.**

- This Court is further of the view that under the amended provisions, the term "information" in Expln. 1 to s. 148 cannot be lightly resorted to so as to reopen assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under s. 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of reassessment under s. 148A(b) but would certainly not vest it with the power to issue a reassessment notice under s. 148 post an order under s. 148A(d).

# Section 148

**(2023) 451 ITR 320 (Cal) GIRDHAR GOPAL DALMIA vs. UNION OF INDIA & ORS.**

- From the above information, it is not clear as to how reopening of the assessment could have been resorted to. The report is as vague as possible as it states that possible financial transactions could be deduced and decoded from hard copies obtained from Dy. Director of IT (Inv.). Further, it says there is potential cash borrowed from various lenders and the probable names of the group have been mentioned and set out without any particulars
- As could be seen from the communication dt. 21st Jan., 2022 referred above, in more than one place the authority has used the word "potential" and also the word "probable".
- reopening of the assessment was bad as it was based on certain alleged "potential" cash borrowings and certain alleged "possible" financial transactions.
- That apart, the AO did not independently apply its mind to the information furnished by the Dy. Director of IT (Inv.) which he is required to do while exercising the power to reopen an assessment.
- Therefore, the reopening proceedings could not have been done based on assumptions and presumptions as could be seen from the above material.

# Section 148

**(2023) 330 CTR (Bom) 449 :NARESH BALCHANDRARAO SHINDE vs. ITO**

- On a bare perusal of the registered sale deed, it becomes evident that the petitioner is not the purchaser of the said property as stated in the notice issued under s. 148A(b) of the Act of 1961. Despite supplying copy of the registered sale deed to the AO, it has not been taken into consideration by him before passing the order under s. 148A(d) of the Act of 1961. The same thus clearly indicates lack of application of judicious mind to the material on record. After excluding this amount, the amount is less than Rs. 50,00,000/- therefore, bad in law

# Section 148A

## **(2022) 447 ITR 698 (Raj) Abdul Majeed vs. ITO**

- The authority, as is apparent, sought to bridge this statutory impediment not on the basis of any material available on record but only with the help of a surmise that the assessee may have some more accounts. Even before this Court, when the reply has been filed by the respondent, no material has been placed to show that at the time when the authority passed order under s. 148A of the Act, there was some material on record that the income chargeable to tax which escaped assessment amount to or is likely to amount Rs. 50,00,000 or more for that year.
- Only on the basis that the cash deposits of Rs. 19,39,000 chargeable to tax have escaped assessment, without anything more, the authority was not justified in jumping to the conclusion that the assessee may have more bank accounts. If such an interpretation is placed on the provision of s. 148A(d) of the Act with reference to expression 'material available on record', then in that case, it will open flood gate and even without availability of any material, the authority would be initiating proceedings under s. 148 of the Act, which will completely frustrate the object of incorporation of s. 148A in the Act. It is well settled principle of interpretation that the taxing statute is required to be construed strictly.

Notices issued between 01.04.21 – 30.06.21



# Notices issued between 01.04 – 30.06

- Several High Courts in favour
- Supreme Court in **UOI vs. Ashish Agarwal (138 taxmann.com 64)** – invokes Article 142 to deem the notice u/s 148 of the Act as issued u/s 148A(b) of the Act. Some directions are as under:
  - a. The Apex Court has deemed the notices issued u/s 148 of the Act, to be notices issued u/s 148A of the Act, and treated as show cause notices issued u/s 148A(b) of the Act;
  - b. AO has been directed to provide the assessee with the information and material relied upon within 30 days **from 04.05.2022** i.e., the date of the judgment;
  - c. Assessee has been given two weeks' time to reply to the notice, material and information provided;
  - d. Requirement of conducting inquiry, with the prior approval of the specified authority, has been dispensed with, as a one-time measure;
  - e. AO has to thereafter, pass order in terms of section 148A(d) of the Act, as per the Act;
  - f. All the defences available u/s 149 of the Act or under the amended provisions relating to reassessment shall be available to the assessee;
  - g. The said findings and directions of the Apex Court shall substitute and modify the respective judgments passed by High Courts.
- **Instruction No. 1/2022 dated 11.05.2022 issued by Department – more confusion**

# Instruction No. 1/2022 dated 11.05.2022

- Para 2 –
  - Notices u/s 148 were issued under the law as it existed prior to 1.4.2021
  - w.e.f. 1.4.2021, old law has been substituted with new section 147-151
- Para 4 – instruction issued u/s 119 of the Act, for uniform implementation
- Para 5 – judgment applies to all notices irrespective of the fact whether notices have been challenged or not
- Para 6.1 - *“Decision of the Hon’ble Supreme Court read with the time extension provided by TOLA will allow the extended reassessment notices to travel back in time to their original date when such notices were to be issued and the new section 149 of the Act is to be applied at that point.”*
- Para 6.2 –
  - AY 2013-14, 2014-15 and 2015-16 – can be reopened – beyond three years – therefore, 149(1)(b) and 151(ii) applicable
  - AY 2016-17 and 2017-18 – within three years - therefore, 149(1)(a) and 151(i) applicable
- Para 7.1 – if for AY 2013-14, 2014-15 and 2015-16 – income escaping assessment is less than Rs. 50 lakhs, then no need to proceed

# Instruction No. 1/2022 dated 11.05.2022

- Para 8.1 –
  - Notice u/s 148 deemed to be issued u/s 148A(b) of the Act, therefore, all prior requirements shall be deemed to be complied
  - Information material to be provided within 02.06.2022
  - 2 weeks to file reply – if extension sought, then extension to be granted

# Notices issued between 31.03 – 30.06

- Whether applicable to all notices even if not challenged? – 2 views

## **1<sup>st</sup> view**

- Judgment is applicable only to such cases where writ remedy has been exercised – whether disposed or pending
- cases before the Apex Court are those cases, where the notices were directly, challenged
- Such procedure cannot be followed, especially in a case, where the assessment proceedings have been completed
  - Where assessment has been completed one can argue, that old law has been followed
- See Article 142 – by law or ordinance

## **2<sup>nd</sup> view**

- judgment shall apply to all cases, including cases where writ remedy has not been exercised (Para 5.1. of the Instruction)
- certain practical difficulties in implementing the procedures –
  - Assessment completed/ show cause issued/ order disposing objections passed/ ITR filed
- For the AY 2013-14, 2014-15 and 2015-16, as discussed later, the notices will become time barred.

# Notices issued between 31.03 – 30.06

- AY 2013-14, 2014-15, 2015-16

- a) Cannot be reopened because of 1<sup>st</sup> proviso to section 149(1)
- b) Notification No. 20/2021 and 38/2021 – do not have any impact
- c) Without prejudice – defence available u/s 149(1)(b) – beyond three years

- AY 2016-17 and AY 2017-18

- a) Board has considered AY 2016-17 and 2017-18 to be proceedings within 3 years from the end of the AY
- b) But it is beyond three years therefore, defence u/s 149(1)(b) is available

- Sanction/Approval

- a. Sanction before issue of notice u/s 148A(b) of the Act – beyond 3 years and within 3 years
- b. In para 8.1., it has been stated that since the Court has deemed such notice to be issued u/s 148A(b) of the Act, therefore it is deemed that all the prior requirements have been complied with.
- c. 148A(d) and 148 - Board has considered AY 2016-17 and 2017-18 to be proceedings within 3 years from the end of the AY

# Notices issued between 31.03 – 30.06

- Time limits
  - a. AO has to issue material and information within 30 days from 04.05.2022 i.e. upto 03.06.2022.
  - b. Even in a case, where the writ petition may be disposed off after 04.05.2022 or even after 03.06.2022, the AO will have to provide material and information upto 03.06.2022
- Amendment vide Finance Act, 2022 whether applicable? No – Departments accepts
- [2023] 147 taxmann.com 585 (Gujarat) Keenara Industries (P.) Ltd. vs. ITO
- [2023] 147 taxmann.com 549 (Allahabad) Rajeev Bansal vs. UOI
- **Onus to prove that all the jurisdictional conditions have been fulfilled is on the AO.**

# Notices issued between 31.03 – 30.06

- Article 142 - *“for doing complete justice”*
  - a. Invoked for following reasons - Revenue cannot be made remediless/ object and purpose of reassessment proceedings cannot be frustrated/ controversy arose due to a bonafide mistake and in view of subsequent extension of time vide various notifications/ Invocation of Article 142 will strike a balance between the rights of the Revenue as well as the respective assesses/ Revenue may not suffer as ultimately it is the public exchequer which would suffer.
  - b. Cannot be invoked to do justice in matters where revenue is effected/ where there is a technical or jurisdictional issue
  - c. Tax and equity are stranger – cannot be invoked in tax matter
  - d. Will it be invoked where assessee has been left without any remedy?

# Notices issued between 31.03 – 30.06

- Defences available under the new law
  - a. There should be a conclusive statement that income has escaped assessment and not merely “reason to believe” that income has escaped assessment.
  - b. Change of opinion is not permissible.
  - c. Notices and order are to be issued by FAO
  - d. Cannot reopen for verification purpose/ for making fishing and roving inquiries. There has to be a valid statement that income has escaped assessment.
  - e. Various issues related to issue and service of a valid notice u/s 148 and 148A of the Act like, beyond the time limit, at the wrong address, unsigned notice etc.
  - f. Approval of specified authorities at various stages and after application of mind.
  - g. Notice u/s 148 should contain DIN
  - h. Sanction of notice u/s 148A(b) of the Act
  - i. Non-provision of material



# Notices issued between 31.03 – 30.06

## **(2022) 6 NYPCTR 1139 (Del) NAGESH TRADING CO. vs. ITO**

- Having heard learned counsel for the parties, this Court is of the view that the respondent having issued and served the impugned notice on 31st March, 2021 under s. 148 of the unamended Act, could not have issued another notice under s. 148A(b) of the Act dt. 2nd June, 2022 to the petitioner.
- Further the directions given by the Supreme Court in *Ashish Agarwal* (supra) were applicable to cases, where notices under s. 148 of the Act had been issued during the period 1st April, 2021 to 30th June, 2021 which is not the case in the present matter.

# Post order u/s 148A(d)

- Check for the following jurisdictional requirements

- **Order u/s 148A(d)**

- is like reasons recorded – it cannot be improved upon or supplemented
    - Should deal with all the contentions and arguments made – 147, 148, 148A, 149 etc. as well as on merits
    - Should be a speaking order
    - Violation of natural justice – if hearing asked for
    - With the prior approval of specified authority – AY 13-14 till 17-18 approval of PCCIT (since beyond 3 years)
    - In the name of correct entity
    - Not time barred

- **Notice u/s 148**

- With the prior approval of specified authority – AY 13-14 till 17-18 approval of PCCIT (since beyond 3 years)
    - In the name of correct entity
    - Not time barred
    - **Whether information suggesting income escaping assessment is as per Explanation 1 to section 148**

# **Taxpayers' Charter**

## **THE INCOME TAX DEPARTMENT**

### **is committed to**

- |  |   |
|--|---|
| 1. provide fair, courteous, and reasonable treatment | 9. hold its authorities accountable                   |
| 2. treat taxpayer as honest                          | 10. enable representative of choice                   |
| 3. provide mechanism for appeal and review           | 11. provide mechanism to lodge complaint              |
| 4. provide complete and accurate information         | 12. provide a fair & just system                      |
| 5. provide timely decisions                          | 13. publish service standards and report periodically |
| 6. collect the correct amount of tax                 | 14. reduce cost of compliance                         |
| 7. respect privacy of taxpayer                       |   |
| 8. maintain confidentiality                          |   |

### **and expects taxpayers to**

- |                            |  |
|----------------------------|--|
| 1. be honest and compliant | 4. know what the representative does on his behalf |
| 2. be informed             | 5. respond in time                                 |
| 3. keep accurate records   | 6. pay in time                                     |

Apex Court in case of **CIT vs. J.H. Gotla [(1985) 156 ITR 323 (SC)]** has held that *“Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.”*

## QUESTIONS, IF ANY?

THANK YOU

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