




Reassessment – new regime

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Section 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 purpose 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.

General principles

- Relevancy of change of opinion
- Review v. reassessment – 320 ITR 561 SC
- Relevancy of ‘reason to belief’

Change in jurisdictional condition

- Reason to believe v. Information suggesting escapement
- Compare section 147 before and after amendment – AO has reason to believe that any income chargeable to tax has escaped assessment v. if any income chargeable to tax, in the case of an assessee, has escaped assessment. Notice the change in jurisdictional requirement
- Rajesh Jhaveri 291 ITR 500 SC on RTB to mean mere supposition is no longer good law
- Sec 148A(d), 149(1)(b) [reveals that income chargeable tax has escaped assessment and is or likely to exceed]

Appellate order and re-assessment

- Erstwhile section 147 3rd proviso : AO may assess/reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to ta and has escaped assessment.
- Erstwhile section recognized partial merger
- Present set of sections does not cover this
- Merger theory

1. Radhaswamy Salt Works [\[TS-144-SC-2018\]](#)

2. Vaikundom Rubber Co. Ltd. [2001] 249 ITR 19 [Ker](#)

3. **VF Arvind Brands Pvt. Ltd. v. Addl. CCT [2014] 71 VST 458 (Karn. – HC)**

Cases on full merger

- *J.K. Synthetics Ltd. v. Addl. CIT* [1976] [105 ITR 344 All](#)
- **Tejaji Farasram Kharawala [1953] 23 ITR 412 (BOM.)**

It is a well established principle of law that when an appeal is provided from a decision of a Tribunal and the appeal Court after hearing the appeal passes an order, the order of the original Court ceases to exist and is merged in the order of the appeal Court, and although the appeal Court may merely confirm the order of the trial Court, the order that stands and is operative is not the order of the trial Court but the order of the appeal Court. In this case although the Appellate Assistant Commissioner may not have disagreed with the Income-tax Officer and may have confirmed the order, the ultimate order of assessment which was in operation was the order of the Appellate Assistant Commissioner confirming the decision of the Income-tax Officer.

Cases on partial merger

- However, partial merger was recognized in *CIT v. Sakseria Cotton Mills Ltd.* 124 ITR 570 **Bombay following** *State of Madras v. Madurai Mills Co. Ltd.* [1967] 19 STC 144; AIR 1967 SC 681, 683, which observed as follows :

" But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal or revision, there is a fusion or merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion, the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. "

- *Karsandas Bhagwandas Patel v. G.V. Shah, ITO* [1975] [98 ITR 255 Guj](#)
- *Poonjabhai Vanmalidas v. WTO* [1978] [114 ITR 38 Guj](#)

Appellate order and re-assessment

- See provisions like section 154(1A) and section 263 – Explanation 1(c) which provide for partial merger
- Consider implications of sections 251/263 to justify full merger theory

Explanation to section 147

- This Explanation is similar but not identical to Explanation 3 to erstwhile section 147
- AO may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under section 147.
- AO may do it irrespective of fact that the provisions of section 148A have not been complied with.
- Earlier law provided 'notwithstanding that the reasons for such issue have not been included in the reasons recorded under section 148(2)

Explanation to section 147

- Erstwhile section 147 had in the main body ‘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’.
- New section 147 does not have these words in the main body.
- An overall reading of new provision suggests that for assessment or reassessment of any other income, what is dispensed with is only procedure of section 148A
- Does it mean that requirement of section 148 notice and attendant condition of ISE should be satisfied for taxing such income?
- Are missing words ‘and also...’ enabling provisions or restrictive provisions

Explanation to section 147

- Does omission of these words overrule Jet Airways 331 ITR 236 bby and Ranbaxy336 ITR 136 Delhi and reaffirm Govindraju in 377 ITR 243 Kar?
- Once a return is filed under section 148, it appears that the AO may proceed to assess/reassess any other income.
- Note that the word ‘recompute’ is missing in Explanation [it was missing in erstwhile Explanation 3 as well]

Issue of notice under section 143(2)

- Erstwhile section 148(1) had two provisos and one Explanation validating belated issue of notice under sec 143(2) during 1.6.1991 to 30.9.2005
- This showed legislative intent that even an assessment under section 147 is to be carried out by issue of notice under section 143(2) in pursuance to return under section 148
- Hotel Blue Moon's case [2010] 321 ITR 362 (SC)
- However, the aforesaid provisos are missing in new section 148.
- Once a re-assessment proceeding is validly initiated, the previous assessment proceeding and assessment order are deemed to be set aside and AO has the power nay the duty to levy tax on entire income which has escaped the assessment N. Govindaraju v. ITO 377 ITR 243 Kar

Issue of notice under section 143(2)

- See the interplay between Jagmohan 75 ITR 373 SC, Sun Eng 198 ITR 297 SC, Mewalal Dwaraka 176 ITR 529 SC and Sri Hari 250 ITR 193 SC
- Scrutiny Guidelines for FY 2022-23 [F No.225/81/2022 dt 11.5.22] Sl.No.4 in the Table] indicates that issue of notice is mandatory
- Section 144B(1)(iii) mandates for issue of notice under section 143(2)

Other noticeable changes section 147

- Recomputation of deduction is now included in section 147. You may notice that 'deduction' was missing in erstwhile section 147
- Sequence of filing of return
 - 1) Old law : File a return, ask for reasons, get reasons, file objections and await order overruling objections
 - 2) New law : Get a notice u/ 148A(b) along with ISE, respond to the same, get an order u/s 148A(d), get a notice u/s 148 and then file the return
- Ability to include escaped income in ROI and implications of section 270A(2)(a)/(b)/(c)

Certain provisions continue to apply

- Section 150

- Section 152

Section 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 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:

Section 148- Issue of notice where income has escaped assessment

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- Issue of notice where income has escaped assessment

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 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 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

Section 148- Issue of notice where income has escaped assessment

(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- Issue of notice where income has escaped assessment

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) 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

Section 148- Issue of notice where income has escaped assessment

(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 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.

Section 148- Issue of notice where income has escaped assessment

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

Preconditions for issue of Notice u/s 148

- Order under section 148A is passed
- AO has ISE or deemed ISE [as required by 1st proviso to sec 148 – 1st limb]
- AO has prior approval of specified authority [1st proviso to sec 148 – 2nd limb]
[this condition applies only where procedure of section 148A is not followed because of proviso thereunder]

Notice under section 148

- 1st Proviso says no notice u/s 148 shall be issued unless AO has ISE
- This does not mean that in all cases of ISE, notice u/s 148 could be issued
- Issue of notice under section 148 is subject to additional condition of complying with section 148A procedure.
- A combined reading of 1st proviso and 148A would suggest that before notice u/s 148 is issued, the ISE as a raw material should be churned out under sec 148A to get the finished product of 'fit case for issue of notice u/s 148'.

Quality of ISE

- 1st Proviso to section 148 says AO has ISE in the case of the assessee for the relevant AY
- Therefore the words “in the case of the assessee for the relevant AY” should be read at the end of each of the clauses in Explanation 1
- Explanation 1 uses “means” i.e. exhaustive
- Any and every information does not mean ISE

Quality of ISE

- Meaning of information : Larsen And Toubro Ltd Vs State of Jharkhand 2017-TIOL-129-SC

What is information? According to the Oxford Dictionary, 'information' means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term 'information' as the act or process of informing, communication or reception of knowledge. The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as **to law relating to and/or having a bearing on the assessment. A mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute 'information' for the purposes of the State Act.** But the word "information" used in the aforesaid Section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. - para 21

- A mere listing in Explanation 1 does not suffice as such item shall carry with 'income escaping assessment' inherently in it.

ISE – Amendment by FA 2022

- Whether amendment to Explanation 1 by FA 2022 applies to past assessment years or would apply only from AY 22-23 onwards
- Re-assessment provisions being procedural [circular 549], would apply to all actions taken on or after 1.4.22 irrespective of relevant AY
- Legal position to be seen on date of issue of notice u/s 148A
- However, in respect of cases where notice u/s 148A is already issued prior to 1.4.22, the unamended Explanation alone would apply.
- During the course of hearing u/s 148A, it is not permissible for AO to improvise on ISE on the basis of amendment.
- Eg : court order referred to in ISE(v) v. section 150(1)

ISE – Amendment by FA 2022

- Effect of SC ruling in Ashish Agarwal's case where notices under section 148 are deemed to be notices under section 148A.
- This would mean that the legal position on the date of issue of such deemed notice should be considered.
- As all such notices were prior to 1.4.2022, the ISC as per FA 2021 alone would apply and not ISE as per FA 2022

Interplay between ISE and sec 150(1)

- Section 150(1) only deals with time limit and it overrides section 149
- Section 150(1) deals with an order of assessment etc., in consequence of or to give effect any finding or direction contained in any order.....
- However, such case has to fall under one of ISEs and the onus is on AO which needs to be discharged in proceeding under section 148A

ISE – Explanation 1(i)

- Information in accordance with RMS formulated by board from time to time.
- Instruction dated 10.12.2021 for AY 15-16 and AY 18-19
- Instruction dated 4.3.2021/15.3.2021 as amended in 12.3.2021/27.3.2021 for AY 13-14 to AY 17-18
- Can assessee seek the details of RMS?
- Should board publish RMS from time to time? [see Instruction NO.225 dt 10.12.21 for AY 15-16 and AY 18-19

ISE – Explanation 1(i)

- RMS cannot suggest fishing and roving enquiry

ISE – Explanation 1(ii)

- Meaning of ‘assessment has not been made in accordance with the provisions of the Act’
- Audit objection – C&AG or any other audit
- Interim objection v. final objection – the word final is necessarily built into ‘objection’
- However, any other auditor should be the one who is competent to make a statement that assessment has not been made in accordance with provisions of this Act.
- A comment by a CA under section 142(2A) for a past year – is he legally competent to make such objection?

ISE – Explanation 1(ii)

- Objection on fact or on law – 119 ITR 996 SC
- Does this Explanation cover only an objection on law
- Provisions of this Act v. provisions of Rule
- There are situations where rules may not have been followed in making assessment – Rules 11UA, 26,115,128 etc.

ISE – Explanation 1(iii)

- Information collected under section 90 or section 90A alone would be relevant
- Information from leaks cannot be considered
- Information from CbCR not being under section 90 or section 90A may not be covered
- Information from other agreements or other MLIs [not being MLI under AP15] may not be covered
- Mere information does not suffice – such information should indicate escapement of income chargeable to tax

ISE – Explanation 1(iv)

- Information made available to AO under scheme notified under section 135A

Section 135A- Faceless Collection of Information

(1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

Section 135A- Faceless Collection of Information

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Section 135A- Scheme

- E-Verification Scheme 2021 notified vide SO 5187(E) dated 13.12.21
- Paragraph 4(12) deals with the processed information
- If it relates to pending scrutiny, the same should be electronically made available to the faces AO or JAO as the case may be
- If it does not relate to pending scrutiny, it shall be utilised for further necessary action in accordance with the provisions of the Act

ISE – Explanation 1(v)

- Information which requires action in consequence of the order of a tribunal or court
- Meaning of ‘requires action’ – should the order say so?
- The words ‘requires action’ coupled with ‘in consequence of the order’ – do they mean even suo motu call by AO
- The words ‘in consequence’ v. ‘in consequence of or to give effect to finding or direction’ used in section 150
- The words ‘in consequence’ appear both in this clause as well as in section 150.

ISE – Explanation 1(v)

- Order of a tribunal or court
- Tribunal or court under both IT Act and any other law
- Foreign courts/tribunal?
- Any authority lower than court or tribunal not covered
- Authorities like Approving Panel under GAAR, AAR, Settlement Commission, DRP etc., are not covered

DISE – Explanation 2

- Explanation 2 deems information suggesting escapement of income chargeable to tax
- It has four clauses dealing with search and survey
- Even DSE should also relate to assessee and for relevant assessment year

DISE (i)/(ii)

- These clauses will apply whether or not incriminating material is found
- However, where is the question of section 147, if nothing is found
- Position if nothing is found but an adverse statement is extracted

DISE (iii)

- Satisfaction by AO of searched party or other party
- See the language of section 153C(1)
- Meaning of satisfaction – Godrej & Boyce 394 ITR 449 SC and Maxopp Investments Ltd. 402 ITR 640 SC
- Third party search where the assessee is not a searched party – prior approval of PCIT or CIT is a must for concluding that money etc belongs or books etc., pertain to or relates to the assessee

RECOURSE AFTER NOTICE U/S 148

- Is writ remedy still available?
- GKN laid law v. section 148A [has this section codified GKN?]
- Possible grounds of writ
 - 1) Non speaking order u/s 148A
 - 2) AO not furnishing ISE to assessee
 - 3) Order u/s 148A not indicating actual escapement of income

Section 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, 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);

Section 148A- Conducting inquiry, providing opportunity before issue of notice under section 148.

(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- Conducting inquiry, providing opportunity before issue of notice under section 148.

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

Section 148A- Conducting inquiry, providing opportunity before issue of notice under section 148.

(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.

PROCEDURE U/S 148A

- Cases not covered by section 148A
- Whether covered by 148A or not, ultimate destination is same i.e. meeting the jurisdictional requirement of income escaping assessment.
- What can assessee demand from AO? Can he ask for ISE and more?

Reconciliation between

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graph TD; A[Reconciliation between] --> B[Explanation 1 to section 148]; A --> C[Explanation 2 to section 148]; A --> D[Proviso to section 148A];
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Explanation 1 to
section 148

Explanation 2 to
section 148

Proviso to section
148A

Information suggesting
escapement

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graph TD; A[Information suggesting escapement] --> B[Explanation 1 to section 148]; B --> C["(i) any information in the case of the assessee for the relevant AY in accordance with the risk management strategy formulated by the Board from time to time.  
(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant AY has not been made in accordance with the provisions of Act; or  
(iii) any information received under an agreement referred to in section 90 or section 90A; 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."];
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Explanation 1 to
section 148

- (i) any information in the case of the assessee for the relevant AY in accordance with the risk management strategy formulated by the Board from time to time.
- (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant AY has not been made in accordance with the provisions of Act; or
- (iii) any information received under an agreement referred to in section 90 or section 90A; 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.

Deemed Information suggesting escapement

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graph TD; A[Deemed Information suggesting escapement] --> B[Explanation 2 to section 148]; B --> C["(i) search initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 01.04.2021, in the case of the assessee; or  
(ii) survey conducted under section 133A, other than under section 133A(2), on or after the 1.04.2021, in the case of the assessee; or  
(iii) AO is satisfied, with approval of PCIT or CIT that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021 belongs to assessee; or  
(iv) AO is satisfied, with approval of PCIT or CIT, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021 belongs to the assessee."];
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Explanation 2 to section 148

- (i) search initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 01.04.2021, in the case of the assessee; or
- (ii) survey conducted under section 133A, other than under section 133A(2), on or after the 1.04.2021, in the case of the assessee; or
- (iii) AO is satisfied, with approval of PCIT or CIT that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021 belongs to assessee; or
- (iv) AO is satisfied, with approval of PCIT or CIT, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021 belongs to the assessee.

AO deemed to have information where search is initiated or books of accounts, 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.

	Deemed Information suggesting escapement [Explanation 2 to section 148]	Dispensation of 148A procedure [Proviso to sec 148A]
Overlapping cases	Search initiated u/s 132 or books, other documents or any assets requisitioned u/s 132A in case of assessee on or after 01.04.2021.	Search initiated u/s 132 or books, other documents or any assets requisitioned u/s 132A in case of assessee on or after 01.04.2021.
	AO satisfied, with approval of PCIT or CIT that money, bullion, jewellery or other valuable article or thing, seized u/s 132 or requisitioned u/s 132A in case of other person on or after 01.04.2021 belongs to assessee.	AO satisfied, with approval of PCIT or CIT that money, bullion, jewellery or other valuable article or thing, seized u/s 132 or requisitioned u/s 132A in case of other person on or after 01.04.2021 belongs to assessee.

	Deemed Information suggesting escapement [Explanation 2 to section 148]	Dispensation of 148A procedure [Proviso to sec 148A]
Overlapping cases	AO satisfied, with approval of PCIT or CIT that any books or documents seized u/s 132 or requisitioned u/s 132A in case of other person on or after 01.04.2021 pertains or information therein relates to assessee.	AO satisfied, with approval of PCIT or CIT that any books or documents seized u/s 132 or requisitioned u/s 132A in case of other person on or after 01.04.2021 pertains or information therein relates to assessee.

	Deemed Information suggesting escapement [Explanation 2 to section 148]	Dispensation of 148A procedure [Proviso to sec 148A]
Non-overlapping cases	Survey conducted under section 133A, other than under section 133A(2), on or after the 1.04.2021, in the case of the assessee	
		AO has received information under scheme notified u/s 135A pertaining to income escaping assessment for any AY in case of assessee.

Case covered by section 135A

Explanation 1 to section 148

any information made available to the Assessing Officer under the scheme notified under section 135A

Explanation 2 to section 148

Not covered

Proviso to section 148A

AO has received information under scheme notified u/s 135A pertaining to income escaping assessment for any AY in case of assessee.

Cases not covered by section 148A - Remedy

- Cases not covered would get notice under section 148 directly
- This is similar to earlier regime
- Therefore, in such cases, GKN procedure may continue to apply

Section 148B- Prior Approval for assessment, reassessment or recomputation in certain cases

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.

Section 148B- Prior Approval for assessment, reassessment or recomputation in certain cases

- Language is “No order of assessment or reassessment or recomputation under this Act”
- Section applies to four situations covered in Explanation 2 to section 148 dealing with DSE and not to four situations covered by Proviso to section 148A dealing with dispensation of procedure under sec 148A.
- Would it cover even normal assessment covered by situations enlisted in Explanation 2 to section 148

Section 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);

Section 149- Time limit for notice

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

(i) an asset;

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

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

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

Section 149- Time limit for notice

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 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- Time limit for notice

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 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:

Section 149- Time limit for notice

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, 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- Time limit for notice

(1A) Notwithstanding anything contained in sub-section (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 sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

Section 149- Time limit for notice

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

Sec 149 time limit

149(1)(a)

3 yrs from end of AY

149(1)(b)

10 yrs from end of
AY

AO has in his possession books or other documents or evidence which reveal income chargeable, represented in form of –

- (i) An asset; or
- (ii) Expenditure in respect of a transaction or in relation to an event or occasion; or
- (iii) An entry or entries in books

Where escaped income amounts to or likely to amount to Rs. 50 lakhs or more

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graph TD; A[ ] --> B[Subject to 1st Proviso for AY up to 21-22]; B --> C[Section 149(1A)];
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Subject to 1st Proviso for
AY up to 21-22

Section 149(1A)

1st Proviso to section 149(1)

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 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(1A)

(1A) Notwithstanding anything contained in sub-section (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 sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

Exp 1(v) to
sec 148



any
information
which
requires
action in
consequence
of the
order of a
Tribunal or a
Court.

150(1)



Notwithstanding anything contained in section 149, 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.

153(6)(i)



where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 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 twelve 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

Section 149 - issues

1. What is the applicable law? Is it at the time of issue of notice u/s 148?
2. If so, whether the extended time limit would apply?
3. Principles in S.S.Gadgil [1964] 53 ITR 231 (SC) and K.M. Sharma [2002] 254 ITR 772 (SC)
4. Impact of amendment by FA 2022
5. Non asset based cases were added by FA 2022 for extended time upto 10 years
6. In case of AYs upto AY 2018-19, non asset based cases expired by 31.03.2022.
7. Therefore, amendment by FA 2022 wef 1.4.2022 should not apply to such cases

Section 149 – Represented in the form of asset, expenditure or entry

1. AO should have in his possession books of account or other documents or evidence
2. books of account or other documents or evidence should reveal
3. Should these books etc., be beyond what assessee had himself furnished?
4. It cannot be just a guess work

Section 149 – Represented in the form of asset

1. Should the asset exist at the time of issue of notice under section 148?
2. Escaped income should be invested in such asset
3. Language is ‘an asset’ in contrast to ‘entry or entries in the books..’
4. Before amendment by FA 2022, FA 2021 used the word ‘asset’ and not ‘as asset’
5. This means Rs.50L limit is to be reckoned with reference to each asset. If undisclosed income of Rs.1.2 Cr of a year is invested in three distinct assets of Rs.40L each in the same year, section 149(1)(b) is not applicable.
6. Compare the language in section 269ST/section 54 before and after amendment

Section 149 – Represented in the form of asset

1. Change in form of asset is not a criterion
2. An asset representing partly escaped income and partly non escaped income?
3. Absence of use of words ‘wholly or partly’
4. Definition of asset – Explanation below 149(1)(b) – Asset ‘shall include’ immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.
5. See 4th Proviso to section 153A and compare the language

Section 153A – 4th Proviso

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant Assessment year or years unless-

- a) The Assessing Officer 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***;
- b) The income referred to in clause(a) or ***part thereof*** has escaped assessment for such year or years; and

The search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April 2017

Section 149 – Represented in the form of expenditure

1. Expenditure in respect of a transaction – “in respect of” means “on” as per Engineering Analysis 125 Taxmann.com 42 SC
2. One item of expenditure
3. The expenditure referred here is the actual expenditure [real expenditure]
4. It does not cover inflated or bogus expenditure.
5. Revenue expenditure later sought to be treated as capital expenditure [may be covered]
6. Expenditure really incurred but disallowed for various reasons like section 40a(i)(a)/(ia)/43B

Section 149 – Represented in the form of expenditure

1. Expenditure could be business or non business
2. TP cases may not come as unless disturbed, assessee's transactions are at ALP.
3. Without prejudice, if TP results in enhancement of income, it is not covered by any of the clauses
4. If TP results in disallowance of expenditure, it may be covered under this clause
5. However, it may be neutralised on the basis of understanding that 'expenditure' is single expenditure.

Section 149 – Represented in the form of entry or entries

1. Entry or entries convey multiple entries as well
2. Applies only if books are maintained
3. Bogus/inflated expenditure could be covered
4. Exempt income treated as taxable may be covered
5. Additions under section 56(2)(viib)
6. Adjustments to book profits under section 115JB

Section 149- Time limit for notice

(1A) Notwithstanding anything contained in sub-section (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 sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

Section 149(1A) – Implications

1. Introduced by FA 2022
2. It overrides section 149(1)
3. Applies only to escaped income represented in the form of an asset or expenditure in relation to an event or occasion
4. Does not apply to escaped income represented in the form of expenditure in respect of a transaction
5. Does not apply to escaped income represented in the form of an entry or entries in books of account
6. Looks like applicable to investment in a single asset over several years or expenditure on a single event or occasion over several years
7. Section 149(1A) does not override section 148/148A. Those conditions are to be complied with

Section 149(1A) – Implications

1. Purpose of section 149(1A)
2. Take a case of a person found to have invested in a house in 4th, 5th and 6th year at rs.75L, rs.75L and rs.50L totalling to rs.2 cr but no source is explained. In such case, under section 69/69A/69B would get attracted in respective years. In such case, section 149(1A) is not required.
3. Take a case of a person found to have invested in a house in 4th, 5th and 6th year at rs.20L, rs.30L and rs.40L totalling to rs.90L but no source is explained. In such case, under section 69/69A/69B would get attracted in respective years. In such case, section 149(1A) is pressed for all 3 years

Section 149(1A) – Implications

1. Take a case of a person found to have invested in a house in -1st, 1st and 2nd year at rs.20L, rs.30L and rs.40L totalling to rs.90L but no source is explained. In such case, under section 69/69A/69B would get attracted in respective years. In such case, section 149(1A) is pressed for 1st year and 2nd year.
2. Take a case of a person found to have invested in a house in 1st, 1st and 2nd year at rs.20L, rs.30L and rs.40L totalling to rs.90L and source is explained to be of an earlier year. In such case, section 149(1A) fails to operate. Notice under section 149 could be issued only in the year of source.
3. Notice for the years of investment cannot be issued as there is ISE for such years.

Section 149(1) – 1st Proviso

1. Protection in respect of AYs upto AY 2021-22
2. The larger time limit of 10 years under section 149(1)(b) i.e. 10 years is now restricted only to 6 years
3. Even a case of 16 years limit covered under erstwhile section 149(1)(c) is now slashed to 6 years
4. In respect of search taking place on or after 1.4.2021, past years cannot be reopened under new section 147 beyond the time limit of erstwhile sections 153A/C
5. The 10 years under section 153C – 4th Proviso is only if escaped income is represented in the form of asset [expenditure and entry or entries do not apply to it].

Section 153A – 4th Proviso

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant Assessment year or years unless-

- a) The Assessing Officer 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***;
- b) The income referred to in clause(a) or ***part thereof*** has escaped assessment for such year or years; and

The search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April 2017

Section 149(1) – 2nd Proviso

1. This proviso is intended to continue application of sec 153A/C in cases of search initiated on or before 31.03.2021
2. However, this is not the right place for this provision
3. This provision should have come under section 147 itself

Section 149(1) – 3rd Proviso

1. The time allowed or extended under section 148A is excluded
2. Time taken by AO to pass order under section 148A is not excluded
3. Period of stay of proceedings under section 148A is excluded
4. SC deemed notice under erstwhile section 148 as notice under section 148A(b) - implications

Transition

1. Notices upto 31.3.21 and pending on 1.4.2021

2. Notices post 31.3.21

3. Limitation under section 149 for AYs 21-22 and earlier

SC decision in Ashish Agarwal

1. Notice under sec 148 issued upto 4.5.2022 are deemed to be notices under section 148A
2. Approval of specified authority was required even for issue of notice u/s 148A(b) upto 31.03.2022
3. By inference, the SC is considered to have waived it.
4. Unlike the dispensation of approval under section 148A(a), there is no explicit mention



Thank You

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