



**REASSESSMENTS WITH SPECIAL
REFERENCE TO RECENT
DEVELOPMENTS AND
PRACTICE ASPECTS THERETO**

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Income Escaping Assessment (S. 147)

- S. 147 – “If AO has reason to believe that income chargeable to tax escaped the assessment
- AO has reason to believe that:
 - Means cause or justification
 - Not to act mere suspicion, gossip or rumor.
 - “reason to believe” is not “reason to suspect”
 - Income chargeable to tax escaped the assessment.
 - Live link or close nexus between material and formation of belief
 - Mere change of opinion with regard to inference is not sufficient.
 - No action merely on directive of Commissioner/ Higher authorities
Sheo Narain Vs. ITO [176 ITR 352 (Pat)]
ACIT Vs. Radheshyam Mohanlal Maheshwari
[50 SOT 75 (URO) (Ahd)]

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- On the basis of audit objection or on behest of audit party is bad-in-law
 - Indian & Eastern Newspaper Soc. Vs. CIT [119 ITR 996 (SC)]
 - Cadila Healthcare Ltd. Vs. ACIT [355 ITR 393 (Guj)]
- Re-opening of assessment only on basis of report of DVO is void-ab-initio. Valuation Report without any corroborative cogent material is not “reason to believe”. It is only “reason to suspect”
 - CIT Vs. Virndaben Real Estate (P) Ltd. [31 taxmann Com 12 (All)]
 - Mahashay Chunilal Vs. DCIT [362 ITR 314 (Del)]
- Re-opening on the basis of subsequent CBDT circular – not valid
 - Arvind Polycot Ltd. Vs. Chandra Ram [353 ITR 511 (Guj)]

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- Information from a survey circle or investigation wing without examining cannot be said to be belief. Information could be of fact or law – must established escapement of income at the time of initiation of proceedings.
 - CIT Vs. Vignesh Kumar Jewellers 330 ITR 209.
- Income chargeable to tax has escaped assessment
 - covers deemed income e.g. S. 2(22)(e)
Dishman Pharmaceuticals & Chemicals Ltd. Vs. DCIT
[346 ITR 228(Guj)]
 - Agricultural Income if chargeable to tax – would be covered by deeming provisions

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- Assess or reassess such income
 - more than once for the same assessment year
 - For benefit of revenue - CIT Vs. Sun Engg. Works [198 ITR 297 (SC)]. Hence deduction can not be claimed which was not claimed earlier.
- Subject to provisions of S. 148 to 153 - comes to AO's notice subsequently in the course of proceedings, assessed or reassessed.
 - Also includible any other income chargeable to tax which has escaped the assessment
 - Sun Engg. Works Vs. CIT [198 ITR 297(SC)-
 - ITO Vs. Srihari [250 ITR 193 (SC)]

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- Recompute the loss or depreciation or any other allowance
- If assessment is completed u/s. 143(3) or u/s. 147, no action under this section – after expiry of 4 years from end of the relevant assessment year, unless:
 - i) No ROI filed u/s. 139(1) or u/s. 142(1) or u/s. 148.
 - ii) failure to disclose fully and truly all material fact necessary for assessment.
 - Sri Sakthi Textiles Ltd. Vs. JCIT [340 ITR 144 (Mad)]
 - Kimplas Trenton Fittings Ltd. Vs. ACIT [340 ITR 299 (Bom)]

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- So by implication assessment without scrutiny or u/s. 143(1) would be made beyond 4 years, even if assessee made true disclosure as per assessee but AO finds that income chargeable to tax has escaped, is more than Rs. 1/- lakh by JC only – S.151(2) i.e. live link is necessary for reason to believe that income has escaped the assessment.
 - CIT Vs. Kiranbhai Jamndas Sheth (HUF). 39 Taxmann. com 116(Guj)]
 - Ratna Tragi Reality Service Pvt. Ltd. Vs. ITO [356 ITR 493 (Guj)]
 - Mohan Gupta (HUF) Vs. CIT [366 ITR 115 (Del)]

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- However, AO has power to assess income chargeable to tax on any assets (including financial asset) located outside India escaped the assessment upto 16 years from end of the relevant assessment year.
- This provision is applicable from asst. yr. 2012/13, though w.e.f. July 01, 2012, as per Explanation 4 to S. 147.
- AO may assess or reassess such income which are not subject matter of appeal, reference or revision – therefore merger theory applies.
 - Prashant Projects Ltd. Vs. ACIT [333 ITR 368 (Bom)]
- Clarification that mere production of A/c. book or other evidence from which material evidence could with due diligence have been discovered by AO will not necessarily amount to disclosure.
 - Disclose all material fact truly and fully for assessment and need not draw inference.

Deemed to have escaped the assessment Explanation 2

- Deemed to be causes where income chargeable to tax escaped the assessment .
 - a) No return has been furnished though total income chargeable to tax has exceeded the exemption amount not chargeable to tax
 - b) Though ROI has been furnished but no assessment has been made and AO notices that assessee has understated the income or claimed excessive loss, deduction, allowance or relief.
 - c) Assessee has failed to furnish report u/s. 92E

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- d) Where assessment has been made but:
 - i) Income is under- assessed
 - ii) Income tax been assessed at too low rate MAT instead of normal rate
 - iii) Excessive relief
 - iv) Excessive loss or depreciation or allowance.
- In all these cases re-assessment after four years is not possible, if there is no failure to disclose fully and truly material facts necessary for assessment .
 - CIT Vs. Purolator India Ltd. [343 ITR 155 (Del)
 - Titanor Components Ltd. Vs. ACIT [343 ITR 183(Bom)]
 - Monitor India P. Ltd. Vs. UOI [343 ITR 236 (Bom)]
- e) A person is found to have any asset including financial interest in any entity located outside India
 - Black Money Act

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- Explanation 3 provides that all escape incomes are includible even though reasons recorded for issue of notice u/s. 148 does not cover the same
 - Majinder Singh Kang Vs. CIT [344 ITR 358 (P& H)]
- Reopening after 4 years on the basis of subsequent Supreme Court judgement is not valid except ROI not filed or facts are not fully and truly disclosed.
 - Austin Engg. Co. Ltd. Vs. CIT [312 ITR 70 (Guj)]

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- Validity of notice seeking to reopen an assessment has to be determined on the law as it prevailed on the date of notice of reopening of assessment.
 - IOT Infrastructure & Energy Services Ltd. Vs. ACIT [332 ITR 587(Bom)]
- Even retrospective amendment in a section can not be ground for reopening beyond a period of 4 years unless proviso is satisfied i.e. facts are not fully disclosed .
 - Vodafone West Ltd. Vs. ACIT [354 ITR 562 (Guj)]
 - Doshion Ltd. Vs. ITO [342 ITR 6 (Guj)]
 - DIL Ltd. Vs. ACIT [343 ITR 155 (Del)]

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

- Before assessing or reassessing income u/s. 147 the AO has to issue a notice to assessee requiring him to furnish within such period ROI.
- Said ROI is to be considered as ROI filed u/s. 139. The words are “so far as may be applied”
- The AO shall before issue of notice record his reason for doing so.
- Reasons recorded must be made available to assessee within a reasonable time and order passed without supplying reasons is not valid.
 - GNK Driveshafts 259 ITR 19 (SC)

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- In the aforesaid decision the court pointed out that once notice u/s. 148 is issued the following steps be followed
 - a) Noticee must file a ROI and seek reasons for issuing the notice
 - b) AO is bound to furnish reasons within 'reasonable time'
 - c) On receipt of the reasons the assessee has to file objections.
and
 - d) AO has to dispose the same by passing a speaking order – Not necessary by separate order

Assessment or Reassessment

- No notice u/s. 143(2) within stipulated time, reassessment proceedings are not valid.
 - Alpine Electronics Asia Pte Ltd. Vs. DGIT 341 ITR 247
 - ACIT Vs. Geno Pharmaceuticals Ltd. [32 Taxmann. com 162(Bom)]
- No notice u/s. 148 when assessment proceedings are pending .
 - Jhunjhunwala Vanaspati Ltd. Vs. ACIT 266 ITR 664.
- AO may assess or reassess the income which has escaped the assessment even though the reasons for such issue have not been included in the reasons recorded u/s. 148 – Explanation 3 to sec. 147.

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- Once assessment is open, the whole assessment gets open and AO has power to include all the incomes escaped the assessment.
 - Sun Engg. Works Vs. CIT [198 ITR 297 (SC)]
 - ITO Vs. Srihari [250 ITR 193 (SC)]
- However, reassessment has to be on the basis of reasons recorded. If reassessment is on the other ground than the reasons recorded then it is not a valid assessment.
 - Swarnadhar IJMII Integrated Township Dev. Co. Ltd. Vs. DCIT [37 Taxmann. Com 18 (Hyd)]
 - Mihni Dal Mills Vs. ITO [42 Taxmann. com 149 (Jab)]
 - CIT Vs. Mohmed Jumed Dadani [355 ITR 17 (Guj)]
 - Northern Exim Pvt. Ltd. Vs. DCIT [357 ITR 586 (Del)]
- Notice without jurisdiction – not a bar for issue of writ
 - Mihir Textiles Ltd. Vs. JCIT [347 ITR 546 (Gu)]

Time Limit for notice (S. 149)

- No notice u/s. 148 shall be issued:
 - a) After 4 years from the end of the relevant assessment year.
 - b) After 4 years but before 6 years – if income chargeable to tax has escaped the assessment for Rs. 1/- lakh or more.
 - c) After 4 years but before 16 years – if income chargeable in relation to any asset including financial interest in any entity located outside India, w. e. f. July 01,2012 but effective from asst. yr. 2012/13 as per Explanation 4 to S. 147
- No notice to agent of a non resident u/s. 163 be issued after the expiry of 6 years instead of 2 years from end of the relevant assessment year, w.e.f July 01,2012. [S.149 (3)]

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- Period of limitation run from the end of relevant assessment year and not accounting year.
- Time limits laid down in this section do not apply to cases covered by S. 150 (1) where notice may be issued at any time i.e. for giving effect to any findings or directions in order of any higher authorities
- However, S. 150(2) provides that no notice u/s. 150(1) can be issued if original assessment, reassessment or re-computation could not have been made due to limitation of time under other provisions of the Act.
- S. 153(2A) – No order of fresh assessment after one year from the end of the financial year, in which order is passed by [CIT(A) – S. 250], [CIT-S.263/264], [ITAT – S.254] set aside or cancelling the assessment.

Sanction for issue of notice (S. 151)

- No notice u/s. 148 can be issued by AO not below rank of AC/DC – if assessment u/s. 143(3) of S. 147 has been completed unless JC is satisfied that reasons recorded by AO is fit case for issue of such notice.
- Sanction by CIT when required by J.C.– not valid – Ghanshyam K. Khabrani Vs. ACIT [346 ITR 443(Bom)]
- Satisfied means applying his mind to the facts of the case
 - Amarlal Bajaj Vs. ACIT [60 SOT 83 (URO) (Mum)]
- However, no such notice shall be issued unless CIT or CCIT or PC or PCC is satisfied after expiry of 4 years.
- If any other case i.e. u/s. 143(1) no notice u/s. 148 be issued by AO below the rank of JC, if reasons recorded by AO is fit case for issue of such notice.

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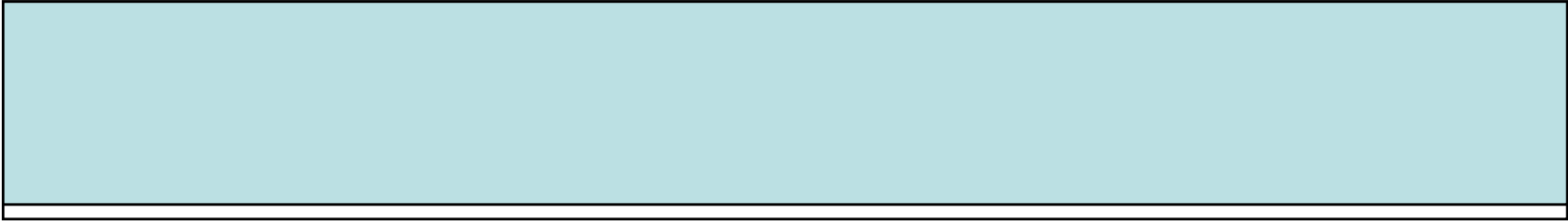
- Proviso to S. 151(3) provides that if CIT or CCIT or PC or PCC is satisfied on the reasons recorded by the AO about the fitness of the case for issue of notice u/s. 148 may direct that such notice need not be issued by the JC.

Other Provisions (S. 152)

- Enabling provision
- In assessment or reassessment tax shall be chargeable at the rate or rates which would have been charged – had the income not escaped the assessment.
- If assessment is reopened the assessee may prove that he had been properly assessed on the income then, proceeding under section 147 may be dropped.

Time Limit for completing the Reassessment (U/s. 153)

- One year from the end of the financial year in which notice u/s. 148 was served.
- Miscellaneous
 - S. 147 Vs. S. 154
 - S. 147 Vs. S. 263
 - CIT(A) 246A(1)(b)
 - Writs - Notice without jurisdiction [Mihir Textiles Ltd. Vs. JCIT – 347 ITR 546 (Guj)]
- Penalty u/s. 271(1)(c) “Concealment of income “or” furnishing inaccurate particulars of income.



THANK YOU