

Assessee Can Claim Reasons For Issue Of Notice U/S 148 Before Filing Of Return U/S 148.

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Section 148 of the Income Tax Act, 1961 is possibly the most belligerent combat tank in the armoury of Income Tax Department. This tank has been further strengthened by recent amendments by Finance Act 2012 which gives department power to issue notice u/s 148 where not more than sixteen years have elapsed from the end of the relevant assessment years, if there is any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, which has escaped assessment.

However, judiciary of the country has ensured that this tank is not misused to harass assessee, where there lies no reason that may cause an assessing officer to believe that income has escaped assessment.

Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 259 ITR 19 (SC) had held that :-

"When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action for the notice is to file the return and, if he so desires, to seek reasons for issuing the notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order."

A point has always been bone of contention between department and representatives whether reasons for issue of notice u/s 148 can be issued prior to filing of return of income. Or to be more specific, are reasons required to be sent along with notice u/s 148.

So far as Section 148(2) of the Act is concerned, it is silent regarding 'communication of reasons' and as to whether the same are to be communicated before or after filing of return.

Allahabad High Court, while addressing this issue in the case of Mithilesh Kumar Tripathi vs CIT 2006) 280 ITR 16 (All.) held that :

- 1. Normally one expects 'Reasons' to be communicated along with notice so that assessee is informed of the 'ground' for initiating reassessment in order to ensure that action is not 'arbitrary'. It shall enable an 'assessee' to take care of the 'escaped assessment' (which is the basis/foundation of the notice) as well as to take care, while filing fresh return, to disclose/ explain any other income, if any, which may have otherwise escaped assessment.*
- 2. Notice Under Section 148(2) of the Act requiring an assessee to file 'Revised-Return' for re-assessment without disclosing ground/'reasons' is no notice of the case to be met or opportunity to explain. Such a notice for sure lacks basic information and thus for certain fails to apprise the party even the*

basic ground/circumstance on the basis of which he is compelled by Assessing Officer to file revised return. It is complete denial of opportunity to defend and answer the Notice. Assessee is left in dark and compelled to make a 'roving and fishing search' to detect/locate alleged "escaped income". In case reason/ground is disclosed along with the notice (without disclosing 'source of information' or 'other material') it will definitely facilitate expeditious filing of revised return and also enable the 'Assessee' to declare, apart from the 'escaped income' pointed out in the notice, other 'escaped income' or 'undisclosed income'.

- 3. *In our considered opinion, if reasons are supplied along with notice under Section 148(2) of the Act, it shall obviate unnecessary, harassment to the assessee as well to the Revenue by avoiding unnecessary litigation which will save Courts also from being involved in unproductive litigations. Above all it shall be in consonance with the principles of natural justice, as discussed above.***