Federation of Indian Professionals

SECTION 147 / 148 OF THE INCOME TAX ACT, 1961

10-05-2021

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Section 147

- If the AO has reason to believe
- that any income chargeable to tax has escaped assessment for any assessment year,
- he may, subject to the provisions of sections 148 to 153, assess or reassess such income
- and also
- any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings

Section 147

1st Proviso to Section 147

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

Not Applicable – In cases income in relation to any asset (including financial interest in any entity) located outside India,

Section 147

2nd Proviso to Section 147

- AO may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision

Explanation 1.—

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

Section 147

Explanation 2 – Cases DEEMED to be income chargeable to tac escaping assessment

1. Where no return of income furnished - Income exceeded the maximum amount which is not chargeable to income-tax

2. Return furnished but no assessment has been made and assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return

3. Where the assessee has failed to furnish TP Report

4. where an assessment has been made, but—
   (i) income chargeable to tax has been under assessed ; or
   (ii) such income has been assessed at too low a rate ; or
   (iii) such income has been made the subject of excessive relief ; or
   (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

Section 147

Explanation 2 – Cases DEEMED to be income chargeable to tac escaping assessment

5. Reference received from the prescribed income-tax authority, u/s 133C

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

Section 148

- Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall
- serve on the assessee
- a notice requiring him to furnish a return of his income 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
- The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Reason to Believe

- **Belief should not be arbitrary or irrational but should be reasonable and based on relevant and material reasons -** The important words under section 147 are 'has reason to believe' and these words are stronger than the words 'is satisfied'. The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. - ***Ganga Saran & Sons (P.) Ltd. v. ITO [1981] 130 ITR 1 (SC); ITO v. Nawab Mir Barkat Ali Khan Bahadur [1974] 97 ITR 239 (SC)/Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)***.

- **Belief must be in good faith, and cannot merely be a pretence -** The expression 'reason to believe' does not mean a purely subjective satisfaction on the part of the ITO. The belief must be held in good faith; it cannot merely be a pretence - ***S. Narayanappa v. CIT [1967] 63 ITR 219 (SC).***

Reason to Believe

- **Suspicion, gossip or rumour should not form the basis -** The words 'reason to believe' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds, and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour.- ***Sheo Nath Singh v. AAC [1971] 82 ITR 147 (SC).***

- **Extraneous and irrelevant material should not be basis for conclusion -** There should be some direct nexus between the conclusion of fact arrived at by the authority concerned and the primary facts upon which that conclusion is based. The use of extraneous and irrelevant material in arriving at that conclusion would vitiate the conclusion of fact - ***CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC); ITO v. Lakshmani Mewal Das [1976] 103 ITR 437 (SC).***

- The expression 'reason to believe' cannot be interpreted to mean reason to suspect. ***Anil Tibrewalav.ITO [2004] 1 SOT 90 (Mum. - Trib.)***

Reason to Believe

- **Courts power to intervene–** The he Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147(a). ***Ganga Saran & Sons (P.) Ltd. v. ITO [1981] 130 ITR 1 (SC)***

- In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. ***Raymond Woolen Mills Ltd v. ITO (1999) 236 ITR 34 (SC)***

Reason to Believe

- The expression **'reason to believe' means** that there is a reason coupled with the belief. If there is no rational and intelligible nexus between the reason and the belief so that on such reason no one properly instructed on the facts of the case could reasonably entertain the belief, the conclusion would be inescapable that the Assessing Officer could not have had reason to believe. In such a case the notice issued by him would be liable to be struck down as being invalid and without jurisdiction. The materials having a natural nexus with the formation of the belief will have to be disclosed by the Assessing Officer. He can do so by filing an affidavit ***Berger Paints India Ltd.v.Asstt. CIT [2004] 139 Taxman 200/266 ITR 462 (Cal.)***

Certain issues

- Belief of A.O. only (Not of CIT/ex-officer) ***SheoNarain v ITO 176 ITR 352, Hyoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj)***

- Live link or close nexus between material obtained and formation of belief. ***ITO v Lakshmani 103 ITR 437 (SC).***

- Information to form Reason to believe available at the time of reopening not subsequent to it. ***CIT Vs Smt. Paramjit Kaur 311 ITR 38 (P&H)***

- **In ACIT Vs. Dhariya Construction Co. (2010) 328 ITR 515 (SC)** opinion of the DVO per se is not information for the purposes of reopening assessment under Section 147 of the Act.

- In **Income Tax Officer Vs. Saradbhai M. Lakshmi, (2000) 243 ITR 1**, the Supreme Court held that the decision of the High Court would constitute information and the initiation of reassessment proceeding on the basis of the decision of the High Court has been justified.

Certain issues

- Cannot make fishing inquiries. ***Ajanta Pharma Ltd. v. ACIT (2004) 267 ITR 200***

- Applying one of the different legally permissible methods to assess larger income. ***CIT v. Simon Carves Ltd.105 ITR 212 (SC). Eg. Calculation Of ALP.***

- Statement by an unconnected person. ***PrafulChunilal Patel vs. M.J. Makwana, ACIT (1999) 236 ITR 832 (Guj)***

- Reopening solely on basis of objection of audit party without application of mind by the AO is not valid***. (JagatJayantilal Parikh v. DCIT) (2013) 355 ITR 400 (Guj-HC).***

- Opinion of audit party on a point of law cannot be regarded an information***. Indian & Eastern Newspaper Society v. CIT, (1979) 119 ITR 996.***

Procedure for Assessment u/s 147

G.K.N Driveshafts (India) Ltd. Vs. ITO [2003] 259 ITR 19

Hon'ble SC laid down the procedure to be followed where notice of reassessment is issued.

- **Step 1 –** File return (Fresh / existing be deemed as return u/s 148)
- **Step 2 –** Request AO to provide reasons for issuing notices.
- **Step 3 –** AO is bound to furnish reasons within a reasonable time.
- **Step 4 –** On receipt of reasons, assessee is entitled to file objections to issuance of notice
- **Step 5 –** AO is bound to dispose of the same by passing a speaking order..

Disclosure of reasons to the assessee

- Reassessment order passed by the AO without supplying reasons recorded though specifically asked by the assessee is invalid. ***(CIT vs. Videsh Sanchar Nigam Ltd (2012) 340 ITR 66 (Bom.)***

- Where AO provided only gist of reasons, the same cannot be treated as reasons actually recorded by the AO as per sec. 148(2). It amounts to failure on part of AO to furnish reasons to the assessee despite repeated requests and demands. ***Tata International Ltd. Vs. DCIT [2012] 23 taxmann.com 18 (ITAT-Mum.)***

- While the AO is required to record reasons, Law does not mandate the AO to suo moto supply the reasons to the assessee. It is for the assessee to demand the reasons and raise objections. If assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee anot`her opportunity: ***CIT vs. Safetag International India Pvt Ltd [2012] 332 ITR 622 (Delhi High Court)***

New reasons cannot be allowed to be introduced

- Reason must be based on the relevant material on record at the time of recording reasons. ***3i Infotech Ltd v/s. ACIT (2010) 329 ITR 257 (Bom.) (HC)***

- Court cannot allow the AO to improve upon the reasons in order to support the notice of reassessment ***Amarjeet Thapar v.ITO (2019) 411 ITR 626 (Bom) (HC)***

- Succeeding Assessing Officer cannot improve upon the reasons which were originally communicated to the assessee. ***Indivest PTE Ltd v. ADDIT (2012) 250 CTR 15 / 206 Taxman 351 (Bom.)(HC)***

Disposal of objections

- Once the reasons are provided to the assessee , the assessee may choose to file objections against the reasons recorded for reopening the assessment . It is mandatory for the Assessing officer to dispose off the assessee objection and serve the order on assessee. Assessing officer should not proceed with assessment for 4 weeks thereafter. ***Hon. Bombay High Court Asian Paint Ltd. vs. Dy. CIT [2009] 296 ITR 90 (Bom)(HC) ;***

- Reassessment framed by the assessing officer without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed. **IOT Infrastructure and Eng. Services Ltd. vs. ACIT (2010) 329 ITR 547 (Bom) (HC)**

- Where the Order passed within four weeks from date of rejection of assessee's objections- Reassessment was held to be bad in law in the case of **Bharat Jayantilal Patel v. UOI (2015) 378 ITR 596 (Bom.)(HC)**

Change in Opinion

- Power is to reassess, not review an order already passed.
- Reopening can never be done on the basis of change of opinion.
- In **CIT vs. Kelvinator of India Ltd., 320 ITR 561 (Supreme Court)**
  - One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess….One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer.
  - it was held by the Hon'ble Apex court that AO has power to re-open, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment; reasons must have a live link with formation of belief.

Change in Opinion

- Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly. ***Yuvraj vs. Union Of India (2009) 315 ITR 84. (Bom.)***

- During the original assessment, the Assessing Officer had examined the claim of the assessee of the expenditure in question being revenue in nature. Without any additional material, the Assessing Officer exercised power of reassessment and held that the expenditure was capital in nature which was fully impermissible. ***Pr. CIT – Central 4 vs. M/s. Shreya Life Sciences Pvt Ltd, (Bom)(HC)***

- No new material brought on records – Reassessment on change of opinion of officer not valid. ***Asteroids Trading & Investment P. Ltd. vs DCIT (2009) 308 ITR 190 (Bom) (HC)***

- Reassessment has to be based on "fresh material". A reopening based on reappraisal of existing material is invalid. ***DIT v. Rolls Royal Industries Power India Ltd. (Delhi)(HC)***

Addition of Other issues not part of reason

- Section 147 empowers AO to assess or reassess income in reason recorded ***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

- However, if no addition is made on the issue forming part of the Reasons to believe, no addition can be made on subsequently identified issue. ***Ranbaxy Laboratories Ltd. Vs. CIT [2011] 336 ITR 136 (Del.), CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom.)***

- ***Conflicting Decision - Karnataka High Court in the case of N. Govindaraju v. ITO [2015] 60 taxmann.com 333/233 Taxman 376/377 ITR 243*** held that "if notice under section 148(2) of the Act is found to be valid, then addition can be made on all grounds or issues which may come to notice of Assessing Officer subsequently during course of proceedings under section 147 of the Act, even though reason for notice for 'such income' which may have escaped assessment, may not survive."

Section 149 – Time limit for notice

Notice to be **issued**

Upto 4 years from the end of the relevant assessment year	Beyond 4 years but up to 6 years from the end of the relevant AY	Beyond 4 years but up to 16 years from the end of the relevant AY
Assessment can be reopened whatever is the amount of income escaped **subject to sanction u/s 151.**	If the escaped income is likely to be Rs. 1,00,000/- or more for that **year subject to sanction u/s 151.**	If the escaped income is in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax for that year **subject to sanction u/s 151.**

Section 149 – Time limit for notice

- Section 149 talks about ISSUE of notice and not SERVICE. Accordingly, if served after the limitation period, but issued prior to limitation. – Valid

- Merely signing the notices on 31-3-2010, could not be equated with issuance of notice as contemplated under section 149. The date of issue would be the date on which the same were handed over for service to the proper officer, which in the facts of the case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the assessees. ***Kanubhai M. Patel (HUF) vs. HIren Bhatt (2010) 43 DTR 329 (Guj.)***

Service of Notice

- It must be noted that SERVICE of notice is sine qua non for the assessment u/s 147 / 148.

- No notice u/s. 148 having been served on the assessee prior to re-opening of assessment, Asst. made u/s. 147 was bad in law; ***CIT vs. Mani Kakkar (2009) 18 DTR (Del) 145 (Asst Yr 2001-2002)***

- Assessee raised plea of improper service of notice for first time before Tribunal and, moreover, in response to notice issued under section 148, one director of assessee-company had appeared before Assessing Officer, it could be concluded that provisions of section 292BB would apply to assessee's case and, thus, assessment proceedings could not be regarded as invalid for want of proper service of notice ***Sudev Industries Ltd. v. Commissioner of Income-tax [2018] 259 Taxman 221 (SC)***

Service of Notice – Non existent entity

- Notice issued in the name of a company which does not exist upon its conversion into a LLP is valid if there is material to show that the issue in the name of the company was a clerical mistake. ***Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 390 (SC)***

- Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppels against law. ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd [2019] 416 ITR 613 (SC) held that the***

- ***Same logic in case of death of a person***

Issue of notice section u/s 143(2)

- Necessary to issue notice under section 143(2) after filing of return under section 148.

- Failure to issue notice u/s 143(2)- Notice not valid. In the absence of fulfillment of the mandatory requirement of issuance of notice u/s 143(2), the notice of reassessment was not valid. Ratio in ***CIT .v.Sukhini P. Modi (2014) 367 ITR 682 (Guj.)***

Section 151 – Sanction for issue of notice

Notice under section 148 to be issued by the Assessing Officer

Subsection 1	Subsection 2
After expiry of 4 yrs from the end of A.Y.	Within 4 yrs from the end of A.Y.
CONDITION	**CONDITION**
PR. CCIT/ CCIT OR PR. CIT/ CIT is Satisfied With Reasons Of A.O	(1) Notice shall be issued by an A.O. not below the rank of Jt.CIT (2) If issued by A.O. below J.C., J.C. should be satisfied With reasons of A.O.

Subsection 3 *The Authorities mentioned in Conditions above, on being satisfied about the reasons of the A.O. need not issue the notices themselves.*

Section 151 – Sanction for issue of notice

- CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable. ***German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom)***.

- Merely stating "Approved" is not sufficient sanction of CIT and renders reopening void. Commissioner has to apply mind and due diligence before according sanction to the reasons recorded by the AO. ***PCIT v. N. C. Cables Ltd. (2017) 391 ITR 11 (Delhi)***.

- Sanction to issue of notice u/s 148 in terms of Section 151(2) has to be issued by Addl. Commissioner, reopening with approval of Commissioner was held unsustainable. ***CIT Vs Aquatic Remedies (P) Ltd. (2018) 96 taxmann.com 609 (Bombay HC)***

Section 153(2) – Time limit for completion of assessment

- **Notice issued before 01-04-2019 -** Order within nine months from the end of the FY in which the notice under section 148 was served

- **Notice issued before 01-04-2019 -** Order within twelve months from the end of the FY in which the notice under section 148 was served:

Questions ???

THANK YOU

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