



REASSESSMENT U/S 147

Dev Shah

Email : devrshah4@gmail.com

Navigating the Minefield :

Assessment and reassessment proceedings u/s. 147 of the Income-Tax Act, 1961

Introduction

Section 147 of the Income-Tax Act, 1961 (“the Act”) provides for the reopening of assessment proceedings when the Assessing Officer (“AO”) possesses information which suggests that any income which is chargeable to tax has escaped assessment, giving power to the AO to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section.

Section 147 - Income Escaping Assessment

The old provisions empowered the AO to reopen assessment proceedings if they had *reason to believe* income had escaped assessment. However, it faced criticism for potentially being subjective and allowing for arbitrary use of power.

Under the new provisions the words “reason to believe” have been removed from section 147. Therefore, the *Apex Court's* decision in the case of *ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.* [2007] 291 ITR 500 (SC) on reason to believe to mean mere supposition / to reopen an assessment for whatever reason is no longer good in law. These new provisions aim to address concerns faced earlier while still empowering the tax authorities to assess income that has escaped assessment involving a more structured and time-bound framework for reassessment, with specific grounds and time limits for the AO to take action.

For making assessment u/s. 147, AO is bound to serve a notice u/s. 148. Such notice can be served only after following the procedure given u/s. 148A (exception in some cases). Prior approval of specified authority is also required to be obtained before issuance of such notice by the AO. During the assessment u/s. 147, if AO finds some other income escaped assessment for the same assessment year (“AY”) then AO can assess or reassess such income also without issuing a fresh notice u/s. 148 and without passing order u/s. 148A.

Addition of any other income escaped assessment

The *Bombay High Court* in case of *CIT vs. Jet Airways Ltd.* 331 ITR 236 held that if the AO accepts the objection of the assessee and does not assess the income which was the basis of the notice, it is not open to him to assess income under some other issue independently. The above was held based on the words “*and also*” which indicate that reassessment must be with respect to the income for which AO as formed opinion *and also* in respect of any other income which comes to his notice subsequently. However, these words have been removed from the amended provisions of section 147, potentially broadening the scope of reassessment as the department could now argue that it can reassess income in respect of any other issue.

Does omission of these words overrule *Jet Airways (supra)* and *Ranbaxy Laboratories Ltd. v. CIT* [2011] 336 ITR 136 (Del. HC) and reaffirm *Sri N Govindaraju vs. ITO* 377 ITR 243?

Section 148A - Conducting inquiry, providing opportunity before issue of notice u/s. 148

Section 148A was newly introduced by the Finance Act ("FA"), 2021. Pre-amendment, section 147 provided that if AO finds an income chargeable to tax for any assessment year that has escaped assessment, then he can assume jurisdiction u/s. 147, but such assessment or reassessment was subject to sections 148 to 153. The concept of recording reasons before issuing a notice u/s. 148 is replaced by section 148A. The amended procedure for issuing notice u/s. 148 is as below :

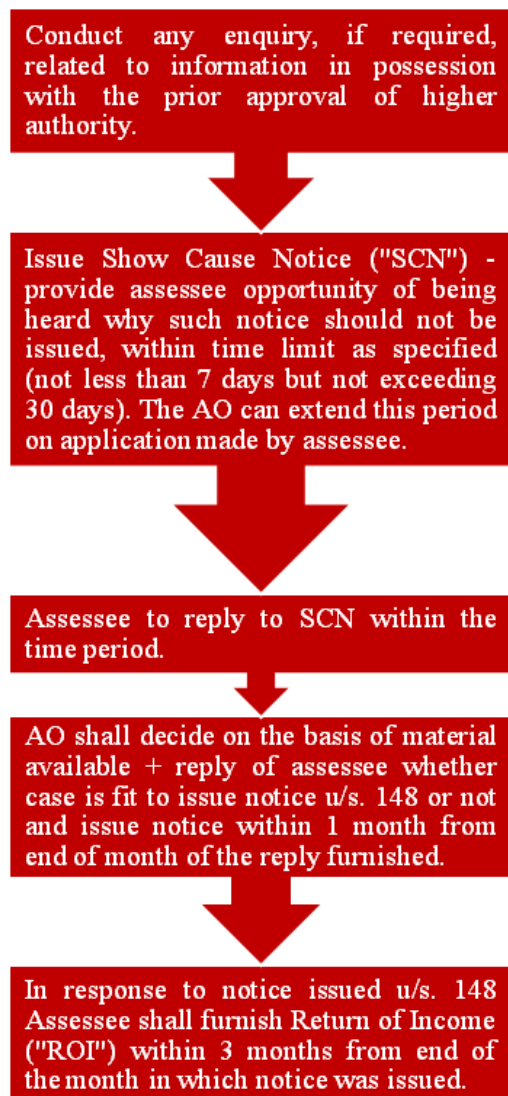


Illustration: AO is having information related to income escape assessment of Mr. X for AY 2020-21. AO issued SCN to Mr. X on November 11, 2022 with time limit to reply by December 05, 2022.

- If Mr. X replied on November 28, 2022 then AO shall pass order u/s. 148A up to December 31, 2022.
- If Mr. X did not reply. AO shall pass order u/s. 148A up to January 31, 2023.

In case of *Sky Light Hospitality LLP v. ACIT [2018] 405 ITR 296* it was observed that notice for reassessment u/s. 148 was issued in the name of the erstwhile company and even the PAN number mentioned was incorrect. It was held that this was only a human error and should not nullify proceedings which are otherwise valid, hence the notice cannot be invalidated.

In case of *Catchy Pro-Build (P.) Ltd. v. ACIT [2022] 448 ITR 671* where notice u/s. 148A(b) was issued regarding tax on capital gains, however, order u/s. 148A(d) was passed alleging that source of certain investment was not disclosed, the *High Court* held that if the foundational allegation is missing in the notice issued u/s. 148A(b), the same cannot be incorporated by issuing a supplementary notice and the order was quashed.

Section 148A not applicable in following cases (issue notice u/s. 148 without following section 148A) :

- A search is initiated u/s. 132 or books of account, other documents or any assets are requisitioned u/s. 132A.
- The AO is satisfied with the prior approval of the PCIT/CIT, that any assets like money, bullion, jewellery or other valuable article or thing, or Books of Accounts ("BOA"), documents, seized or requisitioned u/s. 132 or 132A in case of any other person on or after 1st April, 2021, belongs to or pertains to or information belongs to or relates to the assessee.
- The AO has received any information under the scheme notified u/s. 135A (i.e. Faceless Collection of Information) pertaining to income chargeable to tax escaping assessment.

Section 148 - Issue of notice where income has escaped assessment

In response to notice u/s. 148, the assessee is required to file his ROI for the previous year ("PY") relevant to such AY. The ROI shall be deemed as the assessee were required to file u/s. 139. The ROI is required to be filed even if return has already been filed earlier as per normal provisions. Return filed u/s. 148 cannot be revised, as return can be revised only if return is made u/s. 139(1) or 139(4).

Preconditions to issue notice u/s. 148 :

1. AO *possess information* which suggests that any income which is chargeable to tax has escaped assessment.
2. AO has *obtained prior approval* of higher authority u/s. 151.
3. AO has *complied* with the procedure given u/s. 148A.

Information suggesting income escaping assessment

In the case of *Dr. Mathew Cherian v. ACIT [2023] 450 ITR 568* it was observed that 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.

In the case of *Excel Commodity & Derivative (P) Ltd. v. UOI [2022] 328 CTR 710* it was observed that the term "information" in explanation 1 u/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.

Information as per explanation 1 –

- Information flagged in accordance with the Risk management strategy formulated by the Central Board of Direct Taxes ("CBDT"). Refer CBDT instructions dated December 10, 2021.
- Any audit objection raised to the effect that the assessment has not been made in accordance with the provisions of this Act. The *Supreme Court*, in its judgment in case of *Larsen & Toubro Limited [2017] 103 VST I*, has meticulously laid down the scope of "information" as a basis for audit objections.
- Any information received under an DTAA agreement from any foreign source.
- Any information made available to the AO under the scheme notified u/s. 135A i.e. Faceless collection of information.
- Any information received from the order of court or tribunal which requires an action.

In case of *GDR Finance and Leasing [W.P.(C) 11952/2022 (Del. HC)]* where information in possession of the department was incorrect as no transaction had taken place with an entity, despite claims to the contrary. Therefore, notice issued u/s. 148 was bad in law and would collapse.

Similarly in case of *DCIT v. Bhawna Computers (P.) Ltd. [2023] 154 taxmann.com 326* where no proof of service of reasons record

In case of *Azim Premji Trustee Co. (P.) Ltd. V. DCIT [2023] 331 CTR 173 (Kar. HC)* it was held that assessment cannot be reopened based on the very same information which was readily available with the AO when the original assessment order was passed by him.

Cases where it shall be deemed that AO having information for the 3 AY's preceding the AY relevant to the PY in which the search is initiated or BOA, documents or any assets are requisitioned or survey is conducted in the case of the assessee or any assets or BOA or documents are seized or requisitioned in case of any other person:

- A search is initiated u/s. 132 or BOA, other documents or any assets are requisitioned u/s. 132A.
- A survey conducted u/s. 133A (other than TDS/TCS survey and Function, ceremony, event survey).
- The AO is satisfied, with the prior approval of the PCIT/CIT, that any assets or BOA documents, seized or requisitioned u/s. 132 belongs to the assessee.

Section 148B - Prior Approval for Assessment / Reassessment / Re-computation

In case of Search initiated u/s. 132 or survey is conducted u/s. 133A in the case of assessee, then any assessment or re-assessment u/s. 147 can only be conducted by the JCIT / JDIT / ACIT / ADIT. However, it can also be carried out by lower-level authority if prior approval is given for the same.

Section 149 - Time limit for Notice u/s. 148

Provisions dealing with reopening of tax assessment, interfering in the finality of closed assessment, need to be strictly interpreted to serve concept of finality to assessment. *Hon'ble Supreme Court* in the case of *Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1* observed that “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.”ed for reopening was supplied to assessee, reassessment order passed by AO was to be quashed as bad in law.

Notice u/s. 148 can be issued :	Prior approval u/s. 151	
Unless case falls below.	Up to 3 years from the end of Relevant AY.	PCIT / PDIT / CIT / DIT
AO has in his possession BOA or other documents or evidence which reveal that the income chargeable to tax, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more.	Up to 10 years from the end of Relevant AY.	PCCIT / PDGIT / CCIT / DGIT

The prior approval simply cannot be given without application of mind or as a mechanical process. The commissioner has to apply his mind and verify the facts. Refer *Sea Glimpse Investments Pvt. Ltd. v. DCIT [2022] 324 CTR 535 (Bom. HC.)* and *Sagar Bullion Pvt. Ltd. v. UOI [2022] 444 ITR 686 (Bom. HC.)*

Note : Notice u/s. 148 cannot be issued for AY 2021-22 or earlier AY's if such notice could not have been issued as per old provision of section 149.

In 2020 the CG issued a notification extending the timelines prescribed u/s. 149 for issuing reassessment notice till June 30, 2021. Meanwhile the Parliament through FA 2021 introduced reformatory changes which were applicable from 01.04.2021. Yet the department issued 90,000 (approx.) reassessment notices under the erstwhile provisions. These notices were challenged before various high courts. The decision of the *Hon'ble Supreme Court* in *UOI vs Ashish Agarwal [2022] 444 ITR 1* briefly stated that notice issued u/s. 148 under the old law during the period between April 1, 2021 to June 30, 2021 shall be deemed to be notice issued u/s. 148A(b) and prescribed procedure for inquiry and providing information for passing order u/s. 148A(d) shall be as per the new scheme.

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

No time limit to issue notice u/s. 148 for reassessment if it's necessary to implement any finding or directions in order passed by CIT(A), ITAT, HC, SC or revision or any court under any other law. However, this exception doesn't apply if the time limit for reassessment had already expired at the time the order was passed. This section does not limit or affect the application of 148A.

General

- As per section 152 tax shall be chargeable at the rate at which it would have been charged had the income not escaped assessment.
- The AO may, in their considered judgment, determine that the continuation of proceedings u/s. 147 is not warranted and accordingly drop such proceedings if the assessee has not initiated any appellate or revisionary proceedings and is able to demonstrate to the satisfaction of the AO that there will not be any impact on the tax liability on inclusion of the income that had initially escaped assessment.
- Order u/s. 147 to be made before the expiry of nine months from the end of the financial year in which the notice u/s. 148 was served [Twelve months where notice u/s. 148 is served before the April 1, 2019].
- Appeal to CIT(A)/ ITAT is not possible against order u/s 148A. Assessee can file WRIT to High Court if principle of natural justice is not complied by the AO.

Conclusion

Section 147 of the Act plays a significant role in ensuring proper assessment of taxpayers whose income has not been appropriately evaluated. It is seen that AO has power to bring the escaped income to the tax net within a specified time limit if he possesses information. Reassessment proceedings u/s. 147 are for the benefit of the revenue and not for the assessee as held by the *Hon'ble Supreme Court* in the case of *CIT v. Sun Engg. Works (P.) Ltd. [1992] 198 ITR 297*. It is vital to take any notice received under this section seriously and respond promptly by providing accurate and complete information about the income and expenses. Failing to respond within the specified time frame may lead to an assessment based on the AO's discretion, which may pose penalties u/s. 271(1)(b) for concealing income or u/s. 271(1)(c) for furnishing inaccurate particulars of income.
