

TABULAR “COMPARATIVE”VIEW ON VARIOUS REGIMES OF SEC 148 (REOPENING LAW)

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ON SERIOUS IMPORTANCE OF VALID AND JUST TAX ASSESSMENT, reference is made to recent ***three judge bench decision of hon'ble apex court in case of UOI vs RAJEEV BANSAL case 2024 INSC 754*** “Although the power to levy taxes is plenary, it is subject to certain well-defined limitations. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. A taxing statute must be valid and conform to other provisions of the Constitution. Article 265 makes a distinction between “levy” and “collection.” The expression “levy” has a wider connotation. It includes both the imposition of a tax as well as assessment. A taxing statute must be valid and conform to other provisions of the Constitution. **23. Thomas Cooley describes assessment as the most important of all the proceedings in taxation. He further describes the necessity of assessment** thus: “An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment they have no support, and are nullities. The assessment is, therefore, the most important of all the proceedings in taxation, and the provisions to insure its accomplishing its office are commonly very full and particular. If there is no valid assessment, a tax on sale of lands is a nullity. A want of assessment is not a mere irregularity remedied by a curative statute. On the other hand, no assessment is necessary where the statute itself prescribes the amount to be paid, and this can be recovered by suit. For instance, where a statute imposes a tax at a specified rate upon bank deposits, no other assessment other than that made by the statute itself is necessary.”

RELEVANT ASPECT	REGIME I PRIOR TO 01.04.2021	REGIME II BETWEEN 01.04.2021 TO 31.08.2024	REGIME III AFTER 01.09.2024 REFER SEC 152(3)/SEC 152(4)
BASIC CONCEPT	“REASONS TO BELIEVE” THAT INCOME HAS ESCAPED ASSESSMENT LANDMARK RULING SC DICTUM IN LAKHMANI MEWALDAS 103 ITR 437 SEC 148(2)	INFORMATION “SUGGESTING” ESCAPEMENT OF INCOME FOR PERIOD BEYOND THREE YEARS “BOOK DOCUMENT EVIDENCE REALISING ESCAPEMENT OF INCOME REPRESENTED IN FORM OF PRESCRIBED ASST/EXPENDITURE/ENTRY ETC FOR CHANGE IN NORM OF REASONS TO BELIEVE TO INFORMATION SUGGESTING ESCAPEMENT OF INCOME REFER KAR HC 470 ITR 536 (VASANTHI RAMDAS PAI) BHC 465 ITR 232(KARAN MAHESHWARI)	INFORMATION SUGGESTING ESCAPEMENT OF INCOME

		<p>DHC 445 ITR 436 (DIVYA CAPITAL) MAD HC 450 ITR 568 & 459 ITR 169 (DR MATHEW CHERIAN AND IDFC LTD) ORI HC (BIJU JANTA DAL) MEANING OF WORD “SUGGEST:ANALYSED IN ABOVE DECISIONS</p> <p>CONCEPT OF CHANGE OF OPINION STILL EXISTS -REFER DHC <i>Aarti Fabricott Pvt Ltd vs ITO 467 ITR 612 ; BASIC CLOTHING PVT LTD VS ITO WP(C)</i> 16462/2022 order dated 19.09.2023 (464 ITR 771) ; <i>BASIC CLOTHING PVT LTD VS ITO WP(C)</i> 16462/2022 order dated 19.09.2023 (464 ITR 771) Hon'ble Bombay high court in case of <i>Knight Riders Sports Pvt Ltd vs ACIT 459 ITR 16</i>; Hon'ble Bombay high court in case of <i>Hasmukh Estates Pvt Ltd vs ACIT 459 ITR 524</i> & SC IN CASES OF 461 ITR 159 (MANGALAM PUBLICATIONS) AND KELVINATOR (320 ITR 561)</p> <p>EXPL 1 & 2 TO SEC 148 TOTAL CASES 9</p> <ol style="list-style-type: none"> 1) RMS BASED 2) AUDIT OBJECTION BASED 3) SEC 135A BASED 4) COURT ORDER BASED 5) FOREIGN INFORMATION BASED 6) OWN SEARCH ACTION U/S 132 	
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LIMITATION PERIOD	SEC 149(1) FOUR & SIX YEARS (IN FOREIGN ASSET CASE MORE PERIOD)	<p>SEC 149(1)</p> <p>THREE YEARS</p> <p>TEN YEARS (MONETARY THRESHHOLD OF RS 50 LACS – QUA “INCOME” ESCAPING ASST REFER SC NITIN NEMA AND MPHC NITIN NEMA – 468 ITR 105; 458 ITR 690) ONLY NET AMOUNT TO BE SEEN FOR LESS THAN 50 LACS IMPORTANCE (SURVIVING AMOUNT TO BE SEEN)</p> <p>SEE- JHAR HC RATAN BEJ 467 ITR 268; RAJ HC BIJENDER SINGH VS ITO & KAR HC 455 ITR 370 (SANATH MURALI)</p> <p><u>FIRST PROVISIO RESTRICTING TO SIX YEARS IN GENERAL CASES</u></p>	<p>THREE YEAR PLUS THREE MONTHS FIVE YEAR PLUS THREE MONTHS</p> <p><u>READ WITH SEC 152(3)/SEC 152(4) SAVING CLAUSE</u></p>

		<p>REFER DHC MANJU SOMANI 466 ITR 758 * SEARCH CASES 153A/153C VS 149 – TEN YEAR PERIOD – DHC DINESH JINDAL & FLOWMORE – 467 ITR 177</p> <p>SEE SSC UOI VS RAJEEV BANSAL 2024 SCC OnLine SC 2693</p> <p>AY 2016-2017 /AY 2017-2018 NON SEARCH CASES TIME BARRED RESP AFTER 3.103.2023 & 31.03.2024 SEARCH CASES CALCULATE TEN YEAR PERIOD AS PER DHC FLOWMORE /DINESH JINDAL ETC</p>	
SANCTION /APPROVAL REGIME	<p>JCIT/CIT SEC 151</p> <p>WITHIN FOUR YEARS- JCIT/ADD CIT</p> <p>AFTER FOUR YEARS: PCIT/CIT</p>	<p>SEC 151</p> <p>WITHIN THREE YEARS- PCIT/CIT</p> <p>AFTER THREE YEARS PCCIT/CCIT</p> <p>IMPORTANC OF VALID SANCTION</p> <p>REFER DHC PCIT VS PIONEER TOWN PLANNERS PVT LTD 465 ITR 356</p> <p>BHC VODAFONE IDEA LTD VS DCIT CASE 464 ITR 385 & DHC SBC MINERALS PVT LTD AND</p> <p>DUTY TO SUPPLY SANCITON US 151 ALONG WITH NOTICE – REFER DHC & SC 468 ITR 5 & 468 ITR 10 & DHC 462 ITR 33 & CBDT GUIDELIINES</p> <p>SEC 148B (FOR SEARCH RELATED CASES) ADDITIONAL AND SEPRARTE APPROVAL REQD QUA ASST FROM RANGE HEAD</p>	<p>SEC 151</p> <p>ONLY ONE AUTHORITY : ADD CIT/JCIT</p> <p>IN NEW BLOCK ASST APPROVAL AT BOTH NOTICE ISSUE AND FINAL ASST STAGE REQD</p>

SEARCH RELATED PROVISIONS STATUS	<p>SEPARATE SEARCH PROVISIONS SEC 153A/SEC 153C</p> <p>SEC 148 VS SEC 153C – <u>REFER RAJ HC SHYAM SUNDER KHANDELWAL 471 ITR 45; KAR HC 454 ITR 21; BHC 454 ITR 456; GUJ HC 279 TAXMAN 24; DHC 432 ITR 384; SC 453 ITR 417</u> FOR SEARCH ACTION TILL 31.03.2021</p>	<p>PART OF SEC 148 DEEMED ESCAPEMENT EXPL 2 TO SEC 148 FOR SEARCH ACTION AFTER 01.04.2021</p>	<p>AGAIN BLOCK ASST INTRODUCED CH XIV B (SEC 158BC/SEC 158B) FOR SEARCH ACTION AFTER 01.09.2024</p>
VARIOUS STAGES/STEP BY STEP PROCESS	<p>A) RECEIPT OF MATERIAL/INFORMATION by concerned AO (JAO/FAO) (should be complete receipt of relevant material and not partial or incomplete)</p> <p>B) RECORDING OF REASONS U/S 148(2) BY CORRECT /COMPETENT “AO” (importance of reasons to be recorded by right /correct AO completing asst refer Mad HC 448 itr 563 Charu K bagadia) <i>(issue of borrowed satisfaction/independent application of mind; tangible material ; live nexus; change of opinion ; reasons based on incorrect /wrong and erroneous facts etc)</i> Reasons to be prior to notice – refer SC TATA Sons Ltd – 449 ITR 166</p> <p>C) TAKING SANCTION U/S 151 <i>(Importance of valid “prior” sanction and application of mind on part of sanctioning authority – rubber stamp/proforma /mechanical sanction and sanction by incorrect authority)</i> Refer SC in UOI vs Rajeev Bansal case Hon’ble Apex court recent decision in case of UOI va Rajeev Bansal case (supra)</p>	<p>A) RECEIPT OF MATERIAL/INFORMATION by concerned AO (JAO/FAO) (should be complete receipt of relevant material and not partial or incomplete)<u>RMS & INSIGHT PORTAL ROLE?</u></p> <p>B) PRIOR INQUIRY U/S 148A(a) importance (Guj HC <u>ON INTERPLAY OF SEC 148A(a) and Sec 148A(b) INQUIRY IN GARB OF SCN: hon’ble Gujarat high court recent decision in case of ONIR INFRASPACE PRIVATE LIMITED Versus INCOME TAX OFFICER WARD 3(1)(1) SPECIAL CIVIL APPLICATION NO. 12704 of 2024 (01.01.2024),)</u></p> <p>C) SCN U/S 148A(b) VALID SCN IMPORTANCE – REFER DHC IN ATS INFRSTRUCTURE CASE</p>	<p>SIMILAR</p>

	<p><i>“In Chhugamal Rajpal v. S P Chaliha, a three-Judge Bench of this Court held that Section 151 must be strictly adhered to because it contains “important safeguards”</i></p> <p><i>“iii. Sanction of the specified authority 73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under Section 148. The purpose behind this procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments.”</i></p> <p>BHC SANCTION U/S 151 ARE NOT “NATIONAL SECRET” TO BE SHARED WITH ASSESSEE- REFER BHC IN Vodafone Idea Limited 2024:BHC-OS:2099-DB (06.02.2024)</p> <p><i>“Even in the affidavit in reply, the Department is refusing to give the sanction which makes us wonder what is the national secret involved in that, that Assessee is being refused what he is rightfully entitled to receive from the Department”</i></p> <p>D) ISSUE OF NOTICE U/S 148 (importance of valid notice u/s 148- jurisdiction issue- 396 ITR 167 GUJ HC & DHC RAJ SHEELA – 466 ITR 26 & CAL HC DIVINE LIGHT FINANCE CASE etc) <u>CBDT INSTRUCTION 1/2011 (CAL HC SHREE SHOPEERS LTD 468 ITR 18& BHC 452 ITR 53 & INTERPLAY WITH SEC 153C REFER</u></p>	<p>18.07.2024 & P&HHC DINESH SINGHLA (02.09.2024)) ; <u>APPLICATION OF MIND ASPECT</u></p> <p><u>NATURE OF TRANSACTION /FACTS OF THE TRANSACTION TO BE CORRECTLY REFERRED</u></p> <p><u>CONSIDERTION OF PREVIOUS ASST/ITR ETC (CHANGE OF OPINION /REVIEW ANGLE)</u></p> <p>RECORDED SALES- REOPENING NOT PERMISSIBLE; REFER BHC IN SV NADHAV AND GUJ HC PRAMUKH EXPORT AND JK BULLION& P&H HHC VISHAL GARG ETC FOR ALLAGED BOGUS PURCHASES WHICH ARE OTHERWISE ACCOUNTED/PROVEN WITH DOCUMENTATRY EVIEDNCE CAN NOT BE LIGHTLY DOUBTED (REFER BHC ASHOK RUNGTA CASE/PATNA HC NARAYAN KUMAR ETC)</p> <p>BEYOND THREE YEARS CASE – SEC 149(1)B) JURISDICTIONAL THRESHHOLD (LIKE RS 50 LACS & BOOKS/DOCUMENT/EVIDENCE</p>	
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	<p>E) FILING OF RETURN U/S 148 (compliance aspect)</p> <p>F) REQUESTING /TAKING REASONS COPY SC GKN DICTUM 259 ITR 19 (duty to supply reasons with complete material and sanction – refer DHC & SC SABH INFRASTRUCTURE CASE 398 ITR 198 & 461 ITR 339) & SC IN TIA ENTP CASE APPROVING DHC – 468 ITR 5 & 468 ITR 10- FOR REASONED SANCTION – REFER DHC IN PIONEER CASE 465 ITR 356 & BHC VODAFONE 464 ITR 385)</p> <p>G) FILING OBJECTIONS AGAINST REASONS SC DICTUM GKN CASE 259 ITR 19 (IMPORTANCE OF RAISING “PRELIMINARY” OBJECTION QUA REASONS RECORDED)</p> <p>H) DISPOSAL OF OBJECTION (SPEAKING ORDER DISPOSAL MUST)</p> <p>I) THEN MAIN ASST SEC 143(2)/142 CAN START IMPORTANCE OF VALID 143(2) IN SEC 147/148 REFER DHC 460 ITR 532; BHC 459 ITR 100; PAT HC 460 ITR 270 & SC</p> <p>J) FINAL ASST. (IMPORTANCE OF VALID /JUST/FAIR ASST IMPORTANCE OF PRINCIPLE OF NATURAL JUSTICE REFER SC LATEST DECISION IN CASE OF 466 ITR 205 SEC 206C;CROSS EXAMINATION REFER SC JINDAL STEEL/RELIANCE CAS 460 ITR 162 ETC) VALID SCN – REFER JHAR HC PASARI CASTING CASE 463 ITR 469</p>	<p>ETC)</p> <p><u>GIVING SCN IN GARB OF QUESTIONNAIRE /INQUIRY</u></p> <p><u>CLEAR SEVEN DAYS TIME TO BE GIVEN</u></p> <p>RELEVANT RELIED UPON MATERIAL TO BE SUPPLIED WITH NOTICE – REFER SC RAJEEV BANSAL CASE <i>Divya Capital One (P) Ltd vs ACIT 445 ITR 436 ; Best Buildwell Private Limited Vs. Income Tax Officer 2022, 447 ITR 26/ 141 taxmann.com 558 (Delhi); Mahashian Di hatti pvt ltd vs DCIT 448 ITR 667) held vague show-cause notice was virtually asking the assessee to search for “a needle in a haystack”.) and recent decision of this hon’ble court in case of Saraswati Petrochem Pvt ITd vs ITO 470 ITR 47 ,where it is consistently held that not providing relied upon material is fatal to reopening. To same effect are decisions of hon’ble Bombay high Court in Anurag Gupta case 454 ITR 326; Bombay high court in case of Riddhi Siddhi Colleciton vs UOI 2019 (368 ELTR 852) as applied in case of DSM Nutritional Product India Pvt Ltd vs UOI (2023 BHC OS 14326 DB); notable is Shirpur Gold refinery Ltd vs UOI (2023 :BHC:OS”15230) where it is held</i></p>	
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	<p>K) Importance of case order sheet- refer CBDT directive dated 30.11.2017 & Hon’ble Apex court in case of SUBODH KUMAR SINGH RATHOUR ...APPELLANTVERSUSTHE CHIEF EXECUTIVE OFFICER & ORS. ...RESPONDENTS 2024 INSC 486 In CIVIL APPEAL NO. 6741 OF 2024 Judgment dated 09 july 2024.</p> <p><u>COMBINATION OF JAO & FAO</u></p> <p>HON’BLE CHATTISGARH HIGH COURT IN CASE OF 1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh. ---- Appellant Versus 1. Surendra Kumar Jain (Dead) Through Legal Heirs 2024:CGHC:25811-DB Judgment delivered on 18-07 – 2024 ITA No. 6 of 2005 ON IMPUGNED REOPENING U/S 147/148 AND ASSESSMENT CARRIED OUT ON BASIS OF DICTATES OF DDIT(INV) AND WITHOUT INDEPENDENT APPLICATION OF MIND</p>	<p><i>that “certainly no assessee on earth could have satisfactorily replied” without relied upon material being provided u/s 148A of 1961 Act at show cause notice stage. and recent one being from hon ’ble Jharkhand high court in case of M/s Chotanagpur Diocesson Trust Asson vs The Union of India, W.P.(T) No. 2042 of 2023 order dated 12.09.2023; hon ’ble Patna high court in case of Alkem Laboratories Ltd vs PCIT 459 ITR 551; Patna high court Lakhendra Kumar Raushan @ Lakhendra Kumar Roushan Vs PCIT-1 Patna Civil Writ Jurisdiction Case No.8526 of 2023 order dated 05.10.2023 (467 ITR 549)</i></p> <p>D) REPLY TOBE FILED BY ASSESSEE ON SCN U/S 148A (DENIAL ASPECT- IMPORTANCE- REFER CHANDRIKA DHANSUKHLAL GANDHI Versus ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(2) & ANR SPECIAL CIVIL APPLICATION NO. 14391 of 2021 (23.09.2024) & REOPENING ON FALSE FACTS- Hon’ble Gujarat high court in case of ARTI RATILAL POPAT Versus INCOME TAX OFFICER WARD 1 SPECIAL</p>	
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		<p>H) RETURN U/S 148 (MERE COMPLIANCE EXERCISE – NO ESTOPPEL AGAINST THE STTAUTE)</p> <p><u>FAO (SEC 144B STAGE)</u></p> <p>I) NOTICE U/S 143(2)/142/SCN</p> <p>J) FINAL ASST</p> <p>FACELESS ASST IMPORTANT ASPECTS</p> <p>REFER SC 466 ITR 205 (ORAL HEARING AD VOID SCN IMPORTANCE)</p> <p>REFER SC 460 ITR 162 (CROSS EXAMINATION)</p> <p>REFER VARIATION/CHANGE IN REASONS U/S 148A AND FINAL ASST-FATALITY</p> <p>REFER ALL HC SATISH KUMAR BANSAL HUF 464 ITR 578 & VS FINANCE CASE WRIT TAX No. - 716 of 2024 “ ..That requirement mandates the quasi judicial authorities to first confront the noticee with the adverse material and the tentative conclusions that may arise therefrom. Second, equally mandatory is the requirement to give the noticee sufficient time to respond to the notice after he has been confronted with the adverse material. Only after the first two requirements are met, the third necessary ingredient of natural justice may arise - to give reasonable opportunity of hearing to the noticee, wherever required. Thereafter, the last</p>	
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		<p>requirement of passing a reasoned order may be met.</p> <p>8. All four steps are integral to and must be seen to co-exist - to establish the purity and (legal) sanctity of the decision making process, that may stand the scrutiny of judicial review. The above procedural requirements are essential to sustainable decision making, in exercise of quasi-judicial powers. They necessarily involve grant of reasonable time at each stage, for each essential requirement of natural justice, to be fulfilled. 11. Under the new regime, though the assessing authority may remain faceless, at the same time, it cannot act mindless of the procedural law.”</p> <p>REFER P&H HIGH COURT IN CASE OF unjal BCU Centre of Innovation and Entrepreneurship v. CIT (Exemptions) (P&H) . . . 463 ITR 560 ON IMPORTANCE OF VALID EMAIL OF NOTICE MERE UPLOADING OF NOTICE IS NOT GOOD ENOUGH</p> <p>ASPECT OF FAIRNESS AND JUSTNESS IN ASST. REFER <u>Hon’ble Madras high court in case of Sree Venkateswara Educational Trust vs The Income Tax Officer, T.C.A.Nos.168 and 169 of 2020 (02.09.2024) & hon’ble Bombay high court decision in case of M/s Soremartec S. A., Luxembourg vs The State of Maharashtra 2024:BHC-AS:41233-DB</u></p>	
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		<p>DUTY TO GIVE ALTERNATE RELIEF ON AVAILABLE FACTS WITHOUT ASKING</p> <p><i>HIGHLIGHT IMPORTANCE OF REGULAR/AUDITED BOOKS AT 148A/ASST STAGE SEC 145(3) – REFER DHC IN CASE OF M/S FORUM SALES PVT. LTD 468 ITR 392 & KER HC KERALA HIGH COURT IN CASE OF M/S.DIAMOND FOOD PRODUCTS VS CIT</i></p> <p>2024:KER:83118 & GUJ HC IN CASE OF <u>PRAMUKH EXPORT THROUGH ITS PROP. SANJAYKUMAR GANGARAM PATEL Versus</u></p> <p><u>INCOME TAX OFFICER WARD 1, MEHSANA OR HIS SUCCESSOR</u> <u>13/08/2024</u></p> <p><u>ALWAYS SEEK ORAL HEARING AND CROSS EXAMINATION ETC</u></p>	
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three judge bench recent decision of hon'ble apex court in case of UOI vs RAJEEV BANSAL order dated 03rd October 2024 2024 INSC 754 (basic aspects):

- 1.1 The procedure of reassessment of tax is quasi-judicial because it prejudicially affects the vested rights of the assessee;
- 1.2 Since the assessing officers perform a quasi-judicial function during reassessment, the powers vested in them are regulated by law
- 1.3 Jurisdiction is defined as the power of a court, tribunal, or authority to hear and determine a cause or exercise any judicial power concerning such cause. The Revenue officers must have requisite jurisdiction to perform their functions and responsibilities following the provisions of the Income Tax Act

1.4 The taxing statutes generally lay down the procedure for issuance of notice to the proposed assessee in respect of income or property proposed to be taxed. It also prescribes the authority and procedure for hearing any objections to the liability for taxation

1.5 If a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself. Further, when a statute vests certain power in an authority to be exercised in a particular manner, then that authority has to exercise its power following the prescribed manner. Any exercise of power by statutory authorities inconsistent with the statutory prescription is invalid.

1.6 A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction. There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction. Thus, the power of assessing officers to reassess is limited and based on the fulfilment of certain preconditions
