

TABULAR – STEP WISE NOTE OF EXPLANATION 2 TO SEC 148 (DEEMED ESCAPEMENT)

SEARCH RELATED MATTERS

STEP	DESCRIPTION (BRIEF)	REMARKS	RELEVANT JURISPRUDENCE
1	VALID SEARCH ACTION (“INITIATED”) U/S132 OF 1961 ACT ON SOME PERSON ON/AFTER 01.04.2021 BEFORE 01.09.2024	<p><i>VALID WARRANT/PANCHNAMA (Initiation of search is beginning of the road and not end that is mere search action would not mean mandatory action under sec 148 under expl 2 – refer SC in K Krishnamurthy on how discretion to be exercised 473 ITR 557</i></p> <p><i>“Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. [See: Som Raj and Others vs. State of Haryana and Others, (1990) 2 SCC 653])</i></p>	<p><u>Hon’ble Punjab & Haryana high court in case of Misty Meadows Private Limited vs UOI CWP No. 5139 of 2024 (O&M) Neutral Citation No:=2024:PHHC:066872-DB</u></p> <p><u>Date of Decision: 13.05.2024</u> (465 ITR 630)</p> <p>GUJ HC IN CASE OF CIT vs Ramesh D. Patel (2014) 362 ITR 492 (Guj.) RAIPUR BENCH ITAT (THIRD MEMBER) DECISION IN CASE OF Shri Ashish Singhania IT(SS)A Nos. 02, 03, 04 & 05/RPR/2021 (12.07.2024)</p> <p>Hon’ble Madras high court in case of M/s.Saravana Selvarathnam Retails Private Limited W.P.Nos.9753, 9757, 9761 & 11176 of 2023 (12.02.2024) 463 ITR 523</p>
2	DISCOVERY/ UNEARTHING AND GATHERNG OF VALID /RELEVANT INFORMATION /SEIZURE OF VALUABLE ASSET ETC LEADING TO DETECTION OF HIDDEN/UNACCOUNTED /UNDISCLOSED INCOME/ASSET ETC	<p>FOR VALID ASSUMPTION OF JURISDICTION U/S148</p> <p>Two Category Category 1: Within three years Category 2: Beyond three years (outer limit 10 years)</p> <p>REER PROVISIO TO SEC 148 (prior to amendment by FINANCE ACT 2024)</p>	<p><i>“Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior</i></p>

		<p>AND FOR CASES BEYOND THREE YEARS (SEC 149(1)(b)) THERE MUST BE DISCOVERY/DETECTION DURING SEARCH ACTION</p> <p><u>Refer Parliament response of Hon'ble FM dated 06.02.2023</u></p> <p><u>IMPORTANCE OF FULFIMMENT OF PRELIMINARY CONDITIONS:</u> <u>Notably hon'ble apex court in case of UOI vs Rajeev Bansal case 469 ITR 46 has pertinently highlighted that "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"</u></p>	<p>approval of the specified authority to issue such notice"</p> <p>AY WISE EXISTENCE OF INFORMATION SUGGESTING INCOME ESCAPING ASST MUST IN NORMAL CASES</p> <p>Sec 149(1)(b)</p> <p>49. Time limit for notice.— (1) No notice under section 148 shall be issued for the relevant assessment year,— (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of— (i) an asset; (ii) expenditure in respect of a transaction or in relation to an event or occasion; or (iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:</p>
<p>LIMITATION ASPECT: SEARCH CASES SEC 148 /149 REFER PROVISO TO SEC 149(1)- TEN YEARS CALCULATION DHC DINESH JINDAL 469 ITR 32 & FLOWMORE 467 ITR 177</p>			
3	<p>RECEIPT OF INFORMATION AT END OF CONCERNED AO OF ASSESSEE (JAO) <u>(LATEST CBDT GUIDELINESS DATED 27 FEB 2025 SAY SEARCH RELATED INFORMATION TO BE DIRECTLY</u></p>	<p>CATEGORY 1 SEARCHED PERSON</p> <p>CATEGORY 2 NON SERCHED PERSON</p> <p>Timely dissemination of information is crucial.</p>	<p>RELEVANT CLAUSE IN SEC 148 (EXPL 2)</p> <p>FOR SEARCHED PERSON CLAUSE APPLY IS <i>(i)a search is initiated under section 132 or</i></p>

	<p><u>CHANNELIZED TO JAO AND NO THROUGH RMS)</u> <u>Also Refer CBDT Guidelines dated 28.06.2024 & 01.08.2022</u></p> <p><u>(TRANSFER CENTRALISATION ORDER IF ANY OF SEC 127 AND ITS OPERATIVE EFFECT TO BE CAREFULLY SEEN VIS A VIS JURISDICTION OF AO)</u></p>	<p><u>BOTH ARE EXCLUDED FROM SEC 148A VIDE PROVISIO THERETO (so no sec 148A qua searched person /non searched person connected to search action)</u></p>	<p><i>books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee</i></p> <p>FOR NON SEARCHED PERSON CLAUSE APPLY IS</p> <p>“(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,”</p>
4	<p>RECORDING OF SATISFACTION U/S 148 AT END OF CONCERNED AO</p>	<p>SEC 148 (EXPL 2) CRITICAL IS WHICH CATEGORY (SEARCHED /NON SEARCHED) AND WHICH YEAR BASKET (WITHIN THREE/BEYOND THREE YEARS) TO BE SEGREGATED AND REVNEUE HAS “LUMPED” EVERYTHING</p> <p><i>NOTE: IMPORTANCE OF PRELIMINARY OBJECTIONS AGAINST SATISFACTION AND ITS VALID DISPOSAL BY SEPARATE SPEAKING</i></p>	<p>EXERCISING OF SATISFACTION IS TO BE WITH PROPER DUE APPLICATION OF MIND AND SAME CAN NOT BE DONE IN ABDICATED MANNER AND SAME HAS TO BE AFTER CONSIDERING THE MATERIAL ON RECORD (LIKE ASSESSEE ITR/PREVIOUS ASST AND INQUIRY IF ANY ETC)</p>

		<p>/REASONED ORDER IS CRITICA (<i>Hon'ble Gauhati high court in case of CIT vs Fortune Vanijya Pvt Ltd 459 ITR 72;</i> <i>Motilal Bimalchand Jain (HUF) Vs. CIT)(2006) 285 ITR 224 (MP).</i> <i>hon'ble Rajasthan high court in case of Deep Chand Kothari vs CIT 171 ITR 381</i> <i>Hon'ble Delhi high court in case of AJAY SINGH HUF vs ITO W.P.(C) 9689/2024 (18.07.2024 L</i></p>	<p>IF SATISFACTION IS FAULTY /DEFECTIVE EVERYTHING FURTHER GOES</p> <p><u>Hon'ble SC 5 judge constitution bench decision in case of High Court Bar Association vs State of UP 2024 SCC Online SC 207</u> <i>"Application of mind is an essential part of any decision-making process."</i></p> <p>CONCEPT OF BORROWED SATISFACTION TO BE KEPT IN MIND –</p> <p>REFER Celebrated decision in case of : The aspect of abdication of discretion was succinctly explained by the Supreme Court in Anirudhsinghji Karansinhji Jadeja vs State of Gujarat [1995] 5 SCC 302 (per hon'ble justice Hansaria</p> <p><i>" 13. It has been stated by Wade and Forsyth in 'Administrative Law', 7th Edition at pages 358 and 359 under the heading 'SURRENDER, ABDICATION, DICTATION' and sub-heading "Power in the wrong hands" as below:- Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their</i></p>
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5	<p>VALID /INDEPENDENT APPROVAL U/S 148 EXPL 2 CLAUSE (III) & IV</p>	<p>PROFORMA OF APPROVAL PESCRIBED IN CBDT GUIDELINES DATED 28 JUNE 2024</p> <p>THIS APPROVAL U/S 148 IS DIFFERENT FROM SEC 151 SANCTION BOTH HAVE DIFFERENT ROLE/IMPACT</p>	<p>ON IMPORTANCE /SIGNIFICANCE/ MEANING OF APPROVAL</p> <p><i>Hon'ble apex court in epochal decision of three judge bench in case of UOI vs Rajeev Bansal 469 ITR 46 on quality of approval /sanction u/s 151 has succinctly observed as under (which is binding under art 141 of constitution of india) (ratio/principle fully applies u/s 153D here)“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>Hon'ble Apex court decision in case of CMJ FOUNDATION AND OTHERSAPPELLANT(S) vs STATE OF MEGHALAYA AND OTHERS</p>

			<p>.....RESPONDENT(S) 2025 INSC 211</p> <p><i>“39. It is clearly discernible from the above precedents that ‘subject to’ means ‘conditional upon’ in law. Therefore, it can safely be inferred that the appointment of Chancellor was conditional upon the approval of the Visitor. 40. The term ‘approval’ has been interpreted by this Court in the case of Vijay S. Sathaye v. Indian Airlines Ltd.26, in the following manner:-</i></p> <p><i>“10. Approval means confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. The very act of approval means, the act of passing judgment, the use of discretion, and determining as an adjudication therefrom unless limited by the context of the Statute.....”</i></p> <p><i>In the present case, it is an undisputed fact that the Visitor’s approval was never granted for the appointment of the Chancellor of the University.</i></p> <p><i>Therefore, the contention of the learned counsel for the appellants that the failure of the Visitor to grant approval for appointment of the Chancellor would lead to a ‘deemed approval’ is totally misplaced and unsubstantiated by law.</i></p> <p><i>45. It is a settled legal proposition that if a statute provides for the approval of the higher Authority, the order cannot be given effect to unless it is approved and the same remains inconsequential and a</i></p>
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			<i>dead letter in the eyes of law”</i>
6	SECTION 151- APPROVAL OF SPECIFIED AUTHORITY	DEPENDING ON REOPENING WITHIN /POST THREE YEARS APPROVAL OF CONCERNED AUTHORITY TO BE TAKEN	IMPORTANCE OF PRIOR APPROVAL SEE Hon’ble Apex court decision in case of INDEPENDENT SUGAR CORPORATION LTD. APPELLANT(S) VERSUS GIRISH SRIRAM JUNEJA & ORS. RESPONDENT(S) 2025 INSC 124
7	ISSUE OF NOTICE U/S 148 (WITHOUT SEC 148A EXERCISE)	REOPENING NOTICE TO BE ISSUED BY COMPETENT AO	VALID ASSUMPTION OF JURISDICTION – REFER CBDT INSTRUCTION 1/2011 ETC(PECUNIARY JURISDICTION)
8	FIRST REVENUE MUST SUPPLY RELEVANT DOCUMENTS TO ASSESSEE TO WHOM DIRECT NOTICE U/S 148 IS ISSUED	<ul style="list-style-type: none"> - SATISFACTION OF AO - SANCTION/APPROVAL - INCRIMINATING MATERIAL - STATEMENT U/S 132(4) AS REFERRED IN SATISFACTION RECORDED	<i>WITHOUT SUPPLY OF COMPLETE /RELEVANT DOCUMENTS ASSESSEE IS NOT SUPPOSED TO FILE RETURN U/S 148 AS FIRST IT IS HAS BE ESTABLISHED THAT THERE IS VALID ASSUMPTION OF JURISDICITON U/S 148</i> <i>(Hon ’ble apex court in case of T.TAKANO VS SEBI 2022 8 SCC 162)</i> <i>Three Judge bench decision of Hon’ble Apex court in case of Reliance Industries Ltd vs SEBI reported at 2022 10 SCC 181 (also take note of decision in case of T. Takano v. Securities and Exchange Board of India, 2022 SCC Online SC 21</i>
9.	ASSESSEE CAN /SHOULD FILE OBJECTIONS ONCE RELEVANT DOCUMENTS SUPPLIED	NOTE: IMPORTANCE OF PRELIMINARY OBJECTIONS AGAINST SATISFACTION AND ITS VALID DISPOSAL BY SEPARATE SPEAKING	GKN DRIVESHAFT SC 259 ITR 19 MUST APPLY HERE

		/REASONED ORDER IS CRITICA (Hon'ble Gauhati high court in case of CIT vs Fortune Vanijya Pvt Ltd 459 ITR 72; Motilal Bimalchand Jain (HUF) Vs. CIT)(2006) 285 ITR 224 (MP). hon'ble Rajasthan high court in case of Deep Chand Kothari vs CIT 171 ITR 381 Hon'ble Delhi high court in case of AJAY SINGH HUF vs ITO W.P.(C) 9689/2024 (18.07.2024 L	
10.	DISPOSAL OF OBJECTIONS BEFORE PROCEEDING FURTHER	AO IS SUPPOSED TO MEET AND PASS PROPER ORDER DISPOSING OFF ASSESSEE'S OBJECTIONS	DISPOSAL ORDER OF OBJECTIONS-
THEN AFTER THIS RETURN FILING U/S 148 (IN DIRECT NOTICE CASE) SHOULD ARISE AND NOT PRIOR TO THIS			

SO ABOVE 10 STEPS ARE SANCROSANCT AND MUST BE STRICTLY OBEYED IN LETTER AND SPIRIT.

DR KAPIL GOEL ADV.