NOTES OF DR KAPIL GOEL ADV

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

SEARCH RELATED MATTERS

STEP	DESCRIPTION (BRIEF)	REMARKS	RELEVANT
1	VALID SEARCH ACTION ("INITIATED") U/S132 OF 1961 ACT ON SOME PERSON ON/AFTER 01.04.2021 BEFORE 01.09.2024	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 "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])	JURISPRUDENCEHon'blePunjab&Haryanahighcourtincase ofMistyMeadowsPrivateLimitedvsUOICWPNo.5139of2024(O&M)NeutralCitationNo:=2024:PHHC:066872-DBDateofDecision:13.05.2024(465 ITR 630)GUJ HC IN CASE OF CITvs Ramesh D. Patel (2014)362 ITR 492 (Guj.)RAIPUR BENCH ITAT(THIRD MEMBER)DECISION IN CASE OFShri Ashish SinghaniaIT(SS)A Nos. 02, 03, 04 &05/RPR/2021 (12.07.2024)Hon'bleMadrashigh court in case ofM/s.Saravana
			Selvarathnam Retails Private Limited W.P.Nos.9753, 9757, 9761 & 11176 of 2023 (12.02.2024)
2	DISCOVERY/ UNEARTHING AND GATHERNG OF VALID /RELEVANT INFORMATION /SEIZURE OF VALUABLE ASSET ETC LEADING TO DETECTION OF HIDDEN/UNACCOUNTED /UNDISCLOSED INCOME/ASSET ETC	FOR VALID ASSUMPTION OF JURISDICTION U/S148 Two Category Category 1: Within three years Category 2: Beyond three years (outer limit 10 years) REER PROVISO TO SEC 148 (prior to amendment by FINANCE ACT 2024)	<i>"Provided</i> 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 assesse for the relevant assessment year and the Assessing Officer has obtained prior

1 Page DR KAPIL GOEL (NOTE ON DEEMED ESCAPEMENT - SEARCH MATTER) <u>advocatekapilgoel@gmail.com</u>

PROVISO		AND FOR CASES BEYOND THREE YEARS (SEC 149(1)(b)) THERE MUST BE DISCOVERY/DETECTION DURING SEARCH ACTION Refer Parliament response of Hon'ble FM dated 06.02.2023 IMPORTANCE OF FULFIMMENT OF PRELIMINARY CONDITIONS: 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"	approval of the specified authority to issue such notice" AY WISE EXISTENCE OF INFORMATION SUGGESTING INCOME ESCAPING ASST MUST IN NORMAL CASES Sec 149(1)(b) 49. <i>Time limit for notice.</i> — (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 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 (<i>iii</i>) 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:
PROVISO			4L 469 ITR 32 &
3	RECEIPT OF INFORMATION AT END OF CONCERNED AO OF ASSESSEE (JAO) (<u>LATEST CBDT</u> <u>GUIDELINESS DATED 27</u> <u>FEB 2025</u> SAY SEARCH RELATED INFORMATION	CATEGORY 1 SEARCHED PERSON CATEGORY 2 NON SERCHED PERSON Timely dissemination of	RELEVANT CLAUSE IN SEC 148 (EXPL 2) FOR SEARCHED PERSON CLAUSE APPLY IS (<i>i)a search is initiated</i>
	TO BE DIRECTLY	information is crucial.	under <u>section 132</u> or

	CHANNELIZED TO JAO AND NO THROUGH RMS) <u>Also Refer CBDT Guidelines</u> dated 28.06.2024 & 01.08.2022 (<u>TRANSFER</u> <u>CENTRALISATION ORDER</u> IFANY OF SEC 127 AND	BOTH ARE EXCLUDED FROM SEC 148A VIDE PROVISO THERETO (so no sec 148A qua searched person /non searched person connected to search action)	books of account, other documents or any assets are requisitioned under <u>section 132A</u> , on or after the 1st day of April, 2021, in the case of the assessee
	ITS OPERATIVE EFFECT TO BE CAREFULLY SEEN VIS A VIS JURISDICTION		FOR NON SEARCHED PERSON CLAUSE APPLY IS
	<u>OFAO)</u>		"(<i>iii</i>) 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 <u>section</u> 132 or <u>section 132A</u> in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (<i>iv</i>) 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 <u>section</u> 132 or <u>section 132A</u> 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
4	RECORDING OF SATISFACTION U/S 148 AT END OF CONCERNED AO	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	assessee," 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
		NOTE: IMPORTANCE OF PRELIMINARY OBJECTIONS AGAINST SATISFACTION AND ITS VALID DISPOSAL BY SEPARATE SPEAKING	RECORD (LIKE ASSESSEE ITR/PREVIOUS ASST AND INQUIRY IF ANY ETC)

	/REASONED ORDER IS	IF SATISFACTION IS
	CRITICA	FAULTY /DEFECTIVE
	(EVERYTHING
	Hon'ble Gauhati high court in	FURTHER GOES
	case of CIT vs Fortune Vanijya	
	Pvt Ltd 459 ITR 72;	<u>Hon'ble SC 5 judge</u>
	Motilal Bimalchand Jain (HUF)	constitution bench
	Vs. CIT)(2006) 285 ITR 224	
	(<i>MP</i>).	decision in case of High
		Court Bar Association
	hon'ble Rajasthan high court in	vs State of UP 2024
	case of Deep Chand Kothari vs	SCC Online SC 207
	<i>CIT 171 ITR 381</i>	"Application
	Hon'ble Delhi high court in case	
	of AJAY SINGH HUF vs ITO	of mind is an essential
	<i></i>	part of any decision-
	·····(c) > 00 > 202 · (10.0 ··202 · E	making process."
		CONCEPT OF
		BORROWED
		SATISFACTION TO BE
		KEPT IN MIND –
		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
		<i>"13. It has been stated by</i>
		Wade and Forsyth in
		'Administrative Law', 7th
		Edition at pages 358 and
		359 under the heading
		0
		'SURRENDER,
		ABDICATION,
		DICTATION' and sub-
		heading "Power in the
		wrong hands" as below:-
		Closely akin to delegation,
		and scarcely
		distingushable 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

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	wishes or instructions.
	The effect then is that the
	discretion conferred by
	parliament is exercised, at
	<i>least in part, by the wrong</i>
	authority, and the
	resulting decision is ultra
	vires and void. So strict
	are the courts in applying
	this principle that they
	condemn some
	administrative
	arrangements which must
	seem quite natural and
	proper to those who make
	them"
	SC in case of Amarendra
	Kumar Pandey
	Appellant(s); Versus
	Union of India and
	Others Respondent(s).
	2022 SCC OnLine SC 881
	Per J.B. PARDIWALA,
	J.:—
	<i>"29. Where an Act or the</i>
	statutory rules framed
	thereunder left an action
	dependent upon the
	opinion of the authority
	concerned, by some such
	expression as 'is satisfied'
	or 'is of the opinion' or 'if
	it has reason to believe' or
	<i>'if it considered</i>
	necessary', the opinion of
	the authority is
	conclusive, (a) if the
	procedure prescribed by
	the Act or rules for
	formation of the opinion
	was duly followed, (b) if
	the authority acted bona
	fide, (c) if the authority
	itself formed the opinion
	and did not borrow the
	opinion of somebody else
	and (d) if the authority did
	not proceed on a
	fundamental
	misconception of the law
	and the matter in regard
	to which the opinion had
	to be
	formed.
	<i>30. The action based on</i>
	the subjective opinion or

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		satisfaction, in our
		opinion, can judicially be
		reviewed first to find out
		the existence of the facts
		or circumstances on the
		basis of which the
		authority is alleged to
		have formed the opinion.
		It is true that ordinarily
		the court should not
		inquire into the
		correctness or otherwise
		of the facts found except
		in a case where it is
		alleged that the facts
		which have been found
		existing were not
		supported by any evidence
		at all or that the finding in
		regard to circumstances
		or material is so perverse
		that no reasonable man
		would say that the
		facts and circumstances
		exist. The courts will not
		readily defer to the
		conclusiveness of the
		authority's opinion as to
		the existence of matter of
		law or fact upon which
		the
		validity of the exercise of
		the power is predicated."
		SC in CHIEF
		REVENUE
		CONTROLLING
		OFFICER CUM
		Appellant(s)INSPECTOR
1		GENERAL OF
1		REGISTRATION, &
1		ORS. VERSUSP. BABU
1		Respondent(s)
1		CIVIL APPEAL NOS. 75-
1		76 of 2025
		On
		importance/connotation
		of reasons to believe
		Per Hon'ble Justice (J.B.
		PARDIWALA)
		Hanthla Summary Court
		Hon'ble Supreme Court
1		in case of
		BHUDEV MALLICK
		ALIAS BHUDEB
		MALLICK & ANR.
		Appellant(s) VERSUS
		RÂNAJIT GHOSHAL &
		ORS. Respondent(s) 2025
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 INSC 175 Landmark decision on 360 degree view on scope of "URISDCTIONAL. ERROR" 56. There is no exhaustive liss of jurisdictional errors. but case low has identified such an error exists when a decisionmaker has: identified a wrong sissue; a sked a wrong question; ignored relevant material; plated to observe a requirement of procedural fullnes; made a decision involving fraud; made a decision involving fraud; made a decision without evidence; applied a policy inflexibly. SEE 472 ITR 346 (CH HC SURENDER KR JAIN) Hou 'ble Bombay high court in Case of PCIT vs Subdima Investments (2020) 422 ITR 337; Hon 'ble Bombay high court in Case of Veetu M Candidity as ITO 462 TTR 59; Hon'ble Bombay high court in Case of Veetu M Candidity as XITO 462 TTR 59; Hon'ble Sunhay high court in Case of Veetu M Candidity as XITO 462 TTR 59; Hon'ble Sunhay high court in Case of PCIT vs Subdima Investments (2020) 422 ITR 337; Hon 'ble Bombay high court in Case of Veetu M Candidity as XITO 462 TTR 59; Hon'ble Sunhay high court in Case of Veetu M Candidity as XITO 462 TTR 59; Hon'ble Sunhay high court in Case of Veetu M Candidity as XITO 462 TTR 59; Hon'ble Sunhay high court in Case of PARESH BARUMAR AND AND AND AND AND AND AND AND AND AND	
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5	VALID /INDEPENDENT APPROVALU/S 148 EXPL 2 CLAUSE (III) & IV	PROFORMA OF APPROVAL PESCRIBED IN CBDT GUIDELINES DATED 28 JUNE 2024	ON IMPORTANCE /SIGNIFICANCE/ MEANING OF APPROVAL
		THIS APPROVAL U/S 148 IS DIFFERENT FROM SEC 151 SANCTION BOTH HAVE DIFFERENT ROLE/IMPACT	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." Hon'ble Apex court decision in case of CMJ FOUNDATION AND OTHERS APPELLANT(S) vs STATE OF MEGHALAYA AND OTHERS

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			dead letter in the eyes of law"
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	 SATISFACTION OF AO SANCTION/APPROVAL INCRIMINATING MATERIAL STATEMENT U/S 132(4) AS REFERRED IN SATISFACTION RECORDED 	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 (Hon'ble apex court in case of T.TAKANO VS SEBI 2022 8 SCC 162) 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
9.	ASSESSEE CAN /SHOULD FILE OBJECTIONS ONCE RELEVANT DOCUMENTS SUPPLIED	NOTE: IMPORTANCE OF PRELIMINARY OBJECTIONS AGAINST SATISFACTION AND ITS VALID DISPOSAL BY SEPARATE SPEAKING	<i>GKN DRIVESHAFT SC 259 ITR 19 MUST APPLY HERE</i>

		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-

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

DR KAPIL GOEL ADV.