

PUNE TAX CONFERENCE
Pune Branch of WIRC of ICAI

**Reassessment Under Income Tax -
Law and Practice**

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Background

- Concept of Self Assessment
 - Estimation of income and payment of advance tax [Section 207-219]
 - Computation of income [Section 14 – 59]
 - Filing of return of income [Section 139]
 - Payment of self assessment tax [Section 140A]
- Assessment under Income-tax Act.
 - Section 2(8) – assessment includes reassessment
 - Summary Assessment u/s 143(1)
 - Scrutiny Assessment u/s 143(3) or 144
 - Assessment in case of search – section 153A.
- % of returns taken up for scrutiny.
 - Less than 1%

Background

- Revision of Assessment [Section 263 and 264]

- Section 263 – assessment order is erroneous and prejudicial to the interest of the revenue (only scrutiny assessment orders can be revised u/s 263)
- Section 264 – order can be revised in a manner so as to be not prejudicial to the assessee (scrutiny as well as summary assessment order can be revised u/s 264)

- Rectification of assessment [Section 154]

- Any order can be rectified to correct any mistake apparent from record

- Concept of finality to assessment

- 106 ITR 1(SC) Parashuram Pottery Works Co. Ltd. vs. ITO

“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.”

Introduction to reassessment

- Relevant provisions
 - Section 147 : Income escaping assessment
 - Section 148 : Issue of notice where income has escaped assessment
 - Section 149 : Time limit for notice
 - Section 150 : Provision for cases where assessment is in pursuance of an order on appeal, etc.
 - Section 151 : Sanction for issue of notice
 - Section 152 : Other provisions
 - Section 153 : Time limit for completion of assessment, reassessment and recomputation

Each of the above sections act as a check on the abuse of the power of reopening of the assessment and therefore, if any conditions of such sections are breached, then the same is sufficient to quash the reassessment

Introduction to reassessment

- At what stage can the income be reassessed?
 - If no return of income is filed
 - If return of income is filed but only summary assessment u/s 143(1)
 - Earlier scrutiny assessment is completed u/s 143(3) or 144
 - Earlier reassessment is done u/s 148
 - Earlier scrutiny assessment as well as reassessment is completed
 - Earlier two or more reassessments are completed.
- At what stage the reassessment proceedings cannot be initiated?
 - When any assessment or reassessment proceedings are pending and not completed
(See 51 ITR 557(SC) – Ghansyamdas vs. Regional Asst. Comr. of ST, 263 ITR 402(Cal) – CESC Ltd. vs. DCIT, 266 ITR 664(All) Jhunhunwala Vanaspati Ltd. vs. ACIT)

Section 147

Jurisdictional section

If the **Assessing Officer** has **reason to believe** that **any income chargeable to tax has escaped assessment**

then

he may 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 under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be

Section 147

- Who must have reason to believe – AO
 - Non-jurisdictional AO cannot form reason to believe.
 - 220 ITR 446(P&H) Lt. Col. Paramjit Singh vs. CIT
 - 250 CTR 221 (Cal.) Smriti Kedia (Smt.) v. UOI
 - Receipt of information from outside source – AO has to apply his mind and form his own reason to believe.
 - 79 ITR 603 (SC) Chhugamal Rajpal v. SP Chaliha
 - Cannot be by way of borrowed satisfaction. Cannot act at the behest of some superior authority
 - 176 ITR 352(Patna) – Sheo Narain Jaiswal vs. ITO
 - There cannot be a mechanical or non-application of mind to the information received from external source. AO has to verify the information received with the records and form reason to believe.
 - 404 ITR 312(Del) PCIT vs. SNG Developers Ltd.
 - 325 ITR 285 (Delhi) CIT v. SFIL Stock Broking Ltd.

Section 147

- Who must have reason to believe – AO
 - Receipt of information from source like audit unit
 - 119 ITR 996(SC) Indian & Eastern Newspaper Society vs. CIT
 - 230 Taxman 61 (Bom) CIT .v. DRM Enterprises
 - 234 Taxman 332(Guj) National Construction Co. vs. JCIT
 - Receipt of information from source like investigation wing
 - 93 taxmann.com 153 (Bom) PCIT v. Shodiman Investments (P.) Ltd.
 - 395 ITR 677(Del.) PCIT Vs. Meenakshi Overseas Ltd.
 - 396 ITR 5 (Delhi) PCIT vs. RMG Polyvinyl (I) Ltd.
 - 411 ITR 321(Bom) Avirat Star Homes Venture (P.) Ltd. vs. ITO (Against)
 - WP No. 3656 of 2018 (Bom) Kalsha Builders Pvt Ltd vs. ACIT (Against)
 - 404 ITR 105 (Guj) Aradhna Estate Pvt. Ltd. v. DCIT (Against)

Section 147

Reason to believe

“We may also mention that the expression "reason to believe" refers to the belief which prompts the Assessing Officer, to apply section 147, to a particular case; that it will depend on the facts of each case ; that the belief must be of an honest and reasonable person, based on reasonable grounds; that the Assessing Officer is required to act, not on mere suspicion, but on direct or circumstantial evidence ; that the expression "reason to believe" does not mean a subjective satisfaction on the part of the Assessing Officer.” - 251 ITR 420 (Bom) IPCA Laboratories Ltd. vs. DCIT

“The expression "reason to believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith : it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income-tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income-tax Officer.....The expression therefore predicates that the Income-tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income-tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion : it must be founded upon information. - 41 ITR 191 (SC) Calcutta Discount Co. Ltd. vs. ITO

Section 147 – Reason to believe

- Reason to suspect
 - 159 ITR 956(SC) Indian Oil Corporation vs. ITO
 - 200 ITR 710(Bom) India Finance & Construction Co. P. Ltd. vs. DCIT
- There should be reasonable belief and not conclusive finding
 - 236 ITR 832(Guj) – Praful Chunnilal Patel vs. ACIT
 - 268 ITR 400(All) – Brij Mohan Agarwal vs. ACIT
- Cannot reopen for verification purpose
 - 257 CTR 112(Guj) Agrawal JV vs. ITO
 - 375 ITR 308(Bom) Navi Trading Limited vs. UOI
 - 95 Taxmann.com 46 (Guj) PCIT v. Manzil Dineshkumar Shah
- Cannot reopen for making fishing and roving inquiry
 - 103 taxmann.com 291 (Bom) Precilion Holdings Limited vs. DCIT
 - WP No. 3618 of 2018 (Bom) NuPower Renewables Pvt. Ltd. vs. ACIT
 - 56 DTR 212(Guj) Bakulbhai Ramanlal Patel vs. ITO

Section 147

- Income chargeable to tax escaping assessment
 - Live link or nexus between the reason to believe and income chargeable to tax escaping assessment.
 - 103 ITR 437(SC) ITO vs. Lakhmani Mewal Das
 - There should be some income chargeable to tax which should have escaped assessment
 - 385 ITR 60 (SC) P.G. & W. Sawoo (P.) Ltd. vs. ACIT
 - 102 taxmann.com 69 (Bom) Integra Garments & Textiles Ltd. Vs. ITO
 - AIR information of cash deposit
 - WP No. 3629 of 2018(Bom) Mohanlal Champalal Jain vs. ITO
 - 53 taxmann.com 366(Del) Bir Bahadur Singh Sijwali vs. ITO
 - 159 ITD 797(Asr) Gurpal Singh vs. ITO
 - 159 ITD 329(Asr) Amrik Singh vs. ITO

Section 147

- Income chargeable to tax escaping assessment
 - Information that the SDV value of property purchased/ constructed is more than the purchased value/ construction cost
 - 328 ITR 515(SC) ACIT vs. Dhariya Construction Co
 - 327 ITR 592(Bom) CWT vs. Sona Properties (P) Ltd
 - Can be based on illegally obtained material.
 - 232 ITR 846(Gau) Thakurdas Banwarilal vs. CIT
 - Non-existent ground/ wrong grounds / erroneous reasons/ incorrect basis
 - 400 ITR 167(Guj) Vijay Patel vs. ITO – return of income not filed
 - 396 ITR 5(Del) PCIT vs. RMG Polyvinyl (I) Ltd
 - 292 CTR 222(Guj) Sunbarg Tradlink (P) Ltd. vs. ITO.
 - 242 ITR 238(MP) Anil Kumar Satish Kumar Nahta vs. Insp. AC

Section 147

Change of opinion not permissible

Since the purpose is to give finality to completed proceedings, therefore there cannot be any reassessment for verifying the same issue or reapplication of mind to same set of facts or on account of change of opinion

- 41 ITR 191(SC) Calcutta Discount Co Ltd. vs. ITO
- 320 ITR 561(SC) CIT vs. Kelvinator Of India Ltd.
- 382 ITR 93(Bom) Nirmal Bang Securities (P) Ltd. v. ACIT.
- 372 ITR 762 (Bom) CIT v. Jet Speed Audio P. Ltd.

Section 147

How to establish that AO has applied his mind on an earlier occasion to demonstrate change of opinion.

Whether there can be deemed application of mind?

- 348 ITR 0325 (Bom) - Parveen P. Bharucha vs. DCIT
- 96 taxmann.com 77 (Bom) State Bank of India vs. ACIT
- 348 ITR 485(Del)(FB) – CIT vs. Usha International Limited (Against)

Section 147 – How reasons to be recorded?

268 ITR 332(Bom) Hindustan Lever Ltd. vs. ACIT - Cannot supplement the reasons.

- It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons.
- No inference can be allowed to be drawn based on reasons not recorded.
- It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons.
- It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence.
- The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.
- The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced

Section 147

Can assess or reassess such income and any other income which comes to his notice subsequently in the course of the proceedings

- Also see Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.
- If main issue on which reopened, no addition is made, can addition be made on other issues?
 - 331 ITR 236(Bom) CIT vs. Jet Airways Ltd.
 - 349 ITR 482(Bom) CIT vs. ICICI Bank
 - 355 ITR 172(Guj) CIT vs. Mohmed Juned Dadani
 - 344 ITR 358(P&H) Majinder Singh Kang vs. CIT (Against)
 - 377 ITR 243 (Kar) N Govindaraju vs. ITO (Against)
- Can the AO issue a blanket notice calling for all information and then make additions? Addition can be made only if any issue comes to his notice subsequently, and he cannot dig for issues.
 - 138 ITR 742(Bom) I B M World Trade Corporation vs. IAC

Section 147

First proviso to section 147 (safeguard)

- Where an assessment u/s 143(3) or 147 has been made for the relevant assessment year
- then 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 for such assessment year by reason of
 - failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or
 - failure to disclose fully and truly all material facts necessary for his assessment, for that assessment year:
- Explanation 1.—Production before the Assessing Officer 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 – first proviso

- No failure to disclose truly or fully, no reassessment possible
 - 320 ITR 561(SC) CIT vs. Kelvinator Of India Ltd.
 - 333 ITR 368(Bom) Prashant Projects Ltd. vs. ACIT
 - 328 ITR 534(Bom) – HPCL vs. DCIT
- No allegation of failure
 - 268 ITR 332 (Bom) Hindustan Lever Ltd. v/s. R.B. Wadkar
 - 382 ITR 93(Bom) Niraml Bang Securities P Ltd. vs. ACIT
 - 369 ITR 648(Bom) M/s. Allanasons Limited vs. DCIT (Against)
 - WP No. 3656 of 2018 (Bom) Kalsha Builders Pvt Ltd vs. ACIT (Against)
- The fact that the assessee did not disclose the material is not relevant if the AO was otherwise aware of it.
 - WP No. OF 2018 (Bom) Rajbhushan Omprakash Dixit vs. DCIT

Section 147 – first proviso

- Duty of the assessee to disclose primary and material facts and reassessment cannot be initiated if the AO failed to draw correct inference therefrom – i.e. mistake of AO
 - 100 ITR 1(SC) Gemini Leather Stores vs. ITO - a case of oversight
 - 106 ITR 1(SC) Parashuram Pottery. - It is no responsibility of the assessee to advise the ITO with regard to the inference which he should draw from the primary facts
- Explanation 1 need not obliterate the provisions of first proviso
 - WP No. OF 2018 (Bom) Rajbhushan Omprakash Dixit vs. DCIT
 - 340 ITR 299(Bom) Kimplas Trenton Fittings Ltd. vs. ACIT
 - 351 ITR 23(Del) Ranbaxy laboratories Ltd. vs DCIT
 - 348 ITR 452(Del) Rose Service Apts. Ltd. vs. DCIT
- Fresh information exposing the falsity of earlier facts
 - 203 ITR 456(SC) Phool Chand Bajrang Lal vs. ITO
 - 221 ITR 538(SC) Sri Krishna P Ltd. vs. ITO
 - 404 ITR 105(Guj) Aradhna Estate P Ltd. vs.DCIT – information from investigation wing
 - 408 ITR 303(Guj) Kiran Ravjibhai Vasani vs. ACIT - information from investigation wing
 - WP No. 3656 of 2018 (Bom) Kalsha Builders Pvt Ltd vs. ACIT - information from investigation wing

Section 147 – first proviso

- No new tangible material – any new material or some already on record would suffice
 - 320 ITR 561(SC) CIT vs. Kelvinator Of India Ltd.
 - 346 ITR 361(Bom) Nyk Line India Ltd. vs. DCIT
 - 87 DTR 305(Bom) Bedmutha Industries Ltd. vs. DCIT
 - 365 ITR 181(Bom) Bombay Stock Exchange Ltd. vs. DDIT
 - 350 ITR 651(Bom) EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD. vs. Addl. CIT (Against)
 - 348 ITR 485 (Del)(FB) CIT vs. Usha International. (Against)

Section 147

- Safeguard – Third proviso - AO may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.
- Principle of merger
 - Circular No. 1 of 2009 dt. 27th March, 2009
 - 400 ITR 249 (Guj) Radhawami Salt Works vs. ACIT
 - 246 CTR 0292 (Bom) ICICI Bank Ltd. vs. DCIT

Section 147

- Deemed escapement of income (Explanation 2) –
 - where no return of income has been furnished by the assessee although his total income during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
 - where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return
 - where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;
 - where a person is found to have any asset (including financial interest in any entity) located outside India.
 - where an assessment has been made, but—
 - (i) income chargeable to tax has been underassessed ; or
 - (ii) such income has been assessed at too low a rate ; or
 - (iii) such income has been made the subject of excessive relief under this Act ; or
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

Section 147

- Deemed escapement of income (Explanation 2) –
 - 236 ITR 832(Guj) Praful Chunilal Patel vs. ACIT
- “If the Assessing Officer prima facie finds or discovers that the case falls in any of the clauses of Explanation 2, then those cases will be deemed cases of income that has escaped assessment and without anything more beyond such finding or discovery, he can initiate the proceedings under section 147 of the Act”

Section 147

- Reassessment in case of earlier assessment u/s 143(1)
 - Wider power to reassess if earlier 143(1), one cannot argue change of opinion
 - 291 ITR 500(SC) ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd.
 - 373 ITR 661 (SC) DCIT vs. Zuari Estate Development & Investment Co. Ltd.
 - Tangible material
 - 356 ITR 481(Guj) Inductotherm India P. Ltd. vs. DCIT
 - 354 ITR 536 (Del) CIT vs. Orient Craft Ltd.
 - 350 ITR 660 (Del) Rambagh Palace Hotels Private Limited vs. DCIT (Against)

Section 147

- Reassessment in case of earlier assessment u/s 143(1)
 - However, still there should be reason to believe that income chargeable to tax has escaped assessment – cannot be for making further inquiry.

- WP No. 14490 of 2018 (Bom) Akshar Builders and Developers vs. ACIT

“Even in a case where the return filed by the assessee is accepted without scrutiny, as per the settled law, the Assessing Officer can issue a notice of reopening of assessment provided he has reason to believe that income chargeable to tax has escaped assessment. The Assessing Officer cannot proceed mechanically and also on erroneous information that may have been supplied to him. In fact, we note that in the present case the Assessing Officer had issued a notice to a wrong person”

- WP No. 3344 of 2018 (Bom) Ankita A. Choksey vs. ITO

“even in cases where the return of income has been accepted by processing under Section 143(1) of the Act, reopening of an assessment can only be done when the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. The mere fact that the return has been processed under Section 143(1) of the Act, does not give the Assessing Officer a carte blanc to issue a reopening notice.”

Section 148

- AO shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed;
- 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.

Section 148

- Must leave his hand before 31st March i.e. the last day
 - 43 DTR 329 (Guj.) Kanubhai M Patel HUF vs. ITO
- Service at wrong address.
 - 311 ITR 0235 (Del) CIT vs. Rajesh Kumar Sharma
 - 405 ITR 422 (Chhat) Ardent Steel Ltd. vs. ACIT
- Deceased assessee
 - WP No.404 of 2019 (Bom) - Rupa Shyamsundar Dhumatkar vs. DCIT
 - 95 taxmann.com 155(Mad) Alamelu Veerappan vs. ITO
- Amalgamated company or company converted into LLP- notice in name of old entity
 - 217 Taxman 75 (Guj.) Khurana Engineering Ltd. v. DCIT
 - 254 Taxman 390 (SC) Skylight Hospitality LLP v. ACIT (Against)

Section 148

- All other provisions of the Act shall apply viz.
 - Issuance of notice 143(2) is mandatory. Belated notice or non issuance of notice u/s 143(2) would be fatal
 - 321 ITR 362(SC) ACIT vs. Hotel Blue Moon
 - 341 ITR 247(Del) Alpine Electronics Asia Pte. Ltd. vs. DGIT
 - 214 Taxman 83(Bom) ACIT vs. Geno Pharmaceuticals Ltd.
 - Revision of return of income
 - 120 ITD 126 (Chennai) ACIT vs. Cavinkare (P.) Ltd

“An assessee may revise a return filed under section 148 but said revision has to be restricted only to benefit of revenue and it cannot be revised to claim higher relief than what has been concluded in original assessment “

Section 149

- Time limit

Period	Condition
Upto 16 year from the end of the AY	income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. – 149(1)(c)
Upto 6 years from the end of the AY	income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year – 149(1)(b)
Upto 4 years from the end of the AY	If not falling in the above clauses - 149(1)(a)

The above timelines are subject to 1st proviso to section 147. Therefore, if income has not escaped assessment by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, then no reassessment after 4 years from the end of relevant AY.

Section 150

Time limit of section 149 not to apply in the following case

- notice under section 148 may be issued at any time
 - for the purpose of making an assessment or reassessment or recomputation
 - in consequence of or to give effect to
 - any finding or direction contained
 - in an order passed by
 - any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.
- The above provision shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

Section 150

- 1st proviso to section 147 would still prevail over this
 - 207 ITR 1038(Mad) CIT vs. J Jayaraman
- Such order should be of the assessee only
 - 234 ITR 865(Pat) Gauri Shankar Choudhary vs. Addl.CIT

Section 151

- As per section 149(2) - provisions of section 149(1) as to the issue of notice shall be subject to the provisions of section 151.
- Provision w.e.f. 1.6.2015

Period	Sanctioning authority
Beyond four years from the end of the relevant AY	Sanction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
In any other case	Sanction of JCIT (if the AO is below the rank of JCIT)

Note:

- Sanction means - Person giving sanction must be satisfied, on the reasons recorded by the AO that it is a fit case for the issue of such notice.
- Also, person giving sanction need not issue such notice themselves.

Section 151

- Provision before 1.6.2015

Period	Sanctioning authority
Beyond four years from the end of the relevant AY where an earlier assessment was made u/s 143(3) of 147	Sanction of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
In any other case	Sanction of JCIT (if the AO is below the rank of JCIT)

Section 151

- Sanction by JCIT in place of PCIT or vice versa – Not valid
 - 346 ITR 443 (Bom) Ghanshyam K. Khabrani vs. ACIT
 - 406 ITR 545 (Bom) CIT vs. Aquatic Remedies (P.) Ltd.
 - 222 Taxman 129 (Bom) DSJ Communication Ltd. vs. DCIT
- Mechanical satisfaction – non-application of mind by CIT – mere writing of yes, I'm satisfied would not be sufficient
 - 79 ITR 603(SC) Chhugamal Rajpal vs. S. P. Chaliha
 - 333 ITR 237(Del) Central India Electric Supply Co. Ltd. vs. ITO
 - 231 Taxman 73(MP) CIT vs. S. Goyanka Lime & Chemicals Ltd.
- Satisfaction based on wrong facts or based on non-existent section – not a valid satisfaction
 - WP No. 3307 of 2018(Bom) Alok Knit Exports Private Limited vs. DCIT
 - WP(L) No. 3063 of 2017 (Bom) Smt. Kalpana Shantilal Haria vs. ACIT
 - 218 ITR 730(MP) CIT vs. Man Mohan Das
 - 397 ITR 665(Del) YUM! Restaurants Asia Pte.Ltd. vs. DDIT

Section 152

- In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

Section 153

153(2)

No order of assessment, reassessment or recomputation shall be made under section 147 after the **expiry of nine months** from the end of the financial year in which the notice under section 148 was served.

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "**twelve months**" had been substituted.

153(4)

If reference is made to TPO, then the time is further extended by 12 months

Procedure of reassessment

- Recording of reasons by the AO for reopening of the assessment
- Obtaining sanction by the AO for reopening of the assessment u/s 151
- Issuance of notice u/s 148 of the Act requiring assessee to file return of income
- Filing of return of income in response to the notice u/s 148 of the Act
 - Now a days the officers insist on filing of e-returns.
- Requesting of reasons for reopening of the assessment
- AO to provide reasons for reopening of assessment
- Filing of objections to the reasons for reopening of the assessment with the AO
- AO to dispose off the objections filed with a separate written reasoned order
- Such order disposing assessment can directly be challenged in a writ petition before the High Court

Procedure of reassessment

- If not challenging then AO can continue with the assessment proceedings.
- After waiting for 4 weeks from the date of the receipt of the order disposing of objections, the AO can continue with the reassessment proceedings.
- Issuance of notice u/s 143(2) of the Act
- Issuance of notice u/s 142(1) of the Act.
- Completion of reassessment proceedings by following principles of natural justice.
- Appeal to CIT(A) – can challenge both reassessment validity and the additions on merits.

Procedure of reassessment

- **259 ITR 19 (SC) GKN Driveshafts (India) Ltd. vs. ITO**
 - ✓ However, it was clarified that when a notice under section 148 is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notice. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.
- **370 ITR 107 (Gujarat) Sahkari Khand Udyog Mandal Ltd. vs. ACIT**
 - ✓ Issue of notice by AO u/s 148
 - ✓ Assessee to file ROI within the time permitted in such notice
 - ✓ AO shall supply the reasons recorded by him **within 30 days** of the filing of the return by the assessee without waiting for the assessee to demand such reasons.
 - ✓ Assessee to file objections **within 60 days** of receipt of such reasons
 - ✓ AO to dispose off objections **within 4 months** from the date of receipt.

This is being done in order to ensure that sufficient time is available with the AO to frame the assessment after carrying out proper scrutiny.

Procedure of reassessment

- **296 ITR 90(Bom) – Asian Paints Ltd. vs. CIT**
- ✓ If AO does not accept the objections so filed, he shall not proceed further in the matter within a period of **four weeks from the date of receipt** of service of the said order on objections, on the assessee.

Procedure of reassessment

- **Reasons not recorded prior to issue of notice, reassessment bad in law**
 - 301 CTR 38 (Bom) CIT v. Blue Star Ltd.
- **If reasons not supplied inspite of requesting, assessment to be quashed**
 - 340 ITR 66 (Bom) CIT v. Videsh Sanchar Nigam Ltd.
 - 76 taxmann.com 227 (Bom) CIT vs. s. IDBI Ltd.
 - 379 ITR 456 (Bom) CIT vs. Trend Electronics
- **If objections not disposed off**
 - **Assessment not good in law**
 - 382 ITR 333(Bom) - M/s. Bayer Material Science Pvt. Ltd. vs. DCIT
 - 236 Taxman 494(Del) Pr. CIT vs. Tupperware India (P) Ltd.
 - 394 ITR 733(Mad) Martech Peripherals (P.) Ltd. vs. DCIT
 - **Set aside for disposal of objections**
 - 329 ITR 547(Bom) IOT Infrastructure & Energy Services Ltd. vs. ACIT
 - 404 ITR 611(Mad) Home Finders Housing Ltd. vs. ITO

Procedure of reassessment

- **If AO passed the reassessment order within 4 weeks of the order disposing of the objections, assessment order to be set aside.**
 - 362 ITR 403(Bom) – Aroni Commercials Limited vs. DCIT
 - 233 Taxman 98(Bom) – Bharat Jayantilal patel vs. UOI
 - 68 SOT 205(Mum)(UO) – Hirachand Kanuga vs. DCIT
- **No objections filed at the time of reassessment proceedings, still can object the same in the appellate proceedings**
 - 162 ITR 788(Cal) Indian Aluminium Co. Ltd. vs. CIT
 - 191 ITR 300(Ker) CIT vs. K.N. Thankappan Pillai
 - 207 ITR 213(Bom) Nagpur Zilla Krushi Audyogik Sahakari Sangh Ltd. vs. Second ITO

Others issues

- **SC ruling in case of Sun Engineering Works – 198 ITR 297(SC)**

“Section 147, although part of a taxing statute, imposes no charge on the subject but deals merely with the machinery of assessment and in interpreting a provision of that kind, the rule is that construction should be preferred which makes the machinery workable. Since the proceedings under section 147 are for the benefit of the revenue and not an assessee and are aimed at gathering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable”

- **Remand in case of reassessment proceedings** – cannot make other additions

- **Revision of a reassessment order u/s 263**

- Limitation for passing revisionary order is to begin from date of original order instead of reassessment order, where subject matter of additions made in revision are not dealt with in reassessment - 218 Taxman 112 (Delhi)(MAG.) CIT vs. Bharti Airtel Ltd., 388 ITR 135 (All) L.G. Electronics India (P.) Ltd. vs. PCIT

- **Revision of a reassessment order u/s 264** – cannot be for the benefit of the assessee, therefore cannot make a new claim.

QUESTIONS, IF ANY?

THANK YOU

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