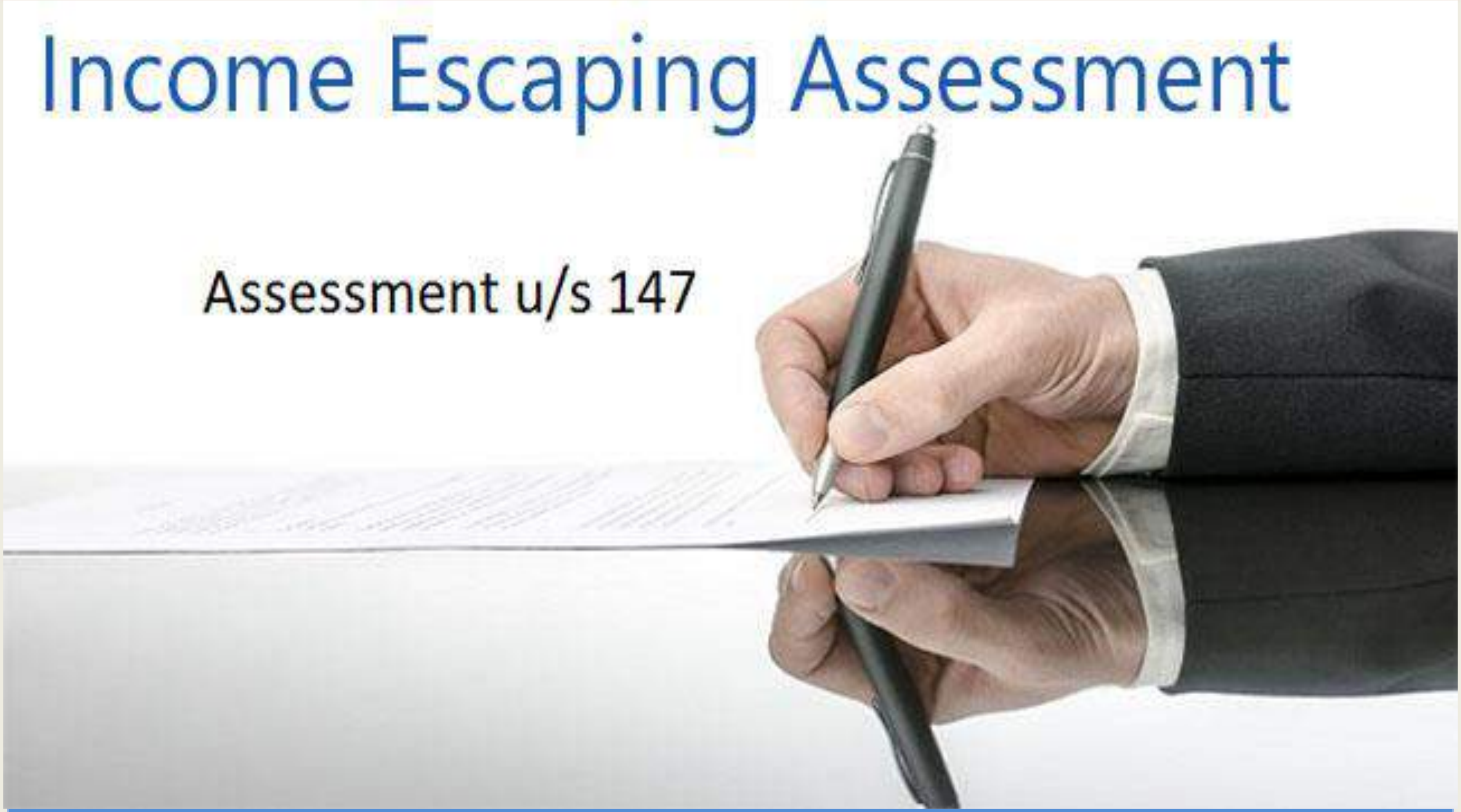
Income Escaping Assessments



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Income Escaping Assessment/ Reassessments

Section 147 of The Income Tax Act, 1961
[Substituted by Finance Act 2021, w.e.f. 1.4.2021]

147. *If any income chargeable to tax, in the case of an assessee, has **escaped assessment** for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, **assess or reassess** such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

Explanation.—*For the purpose of assessment or reassessment or recomputation 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, irrespective of the fact that the provisions of section 148A have not been complied with.*

Reason to Believe vs Information

- **Substitution of "Reason to Believe" by "Information"**

  The Finance Act 2021, has substituted the old re-assessment regime with a new re-assessment regime, by substituting the sections 147-151 with the new sections.

  In this new re-assessment regime, the well-settled and established legal position in respect of mandatory condition of formation of an independent **reason to believe**, of escapement of income, by the jurisdictional assessing authority, has been replaced with the presence of any **information** as per the **risk management strategy of CBDT** or an **audit objection**, **suggesting that income of the assessee has escaped assessment**.

Preliminary Enquiry u/s 148A

Conducting enquiry, providing opportunity before issue of Notice u/s 148 [Section 148A, applicable w.e.f. 1.4.2021]

In the new reassessment regime, the procedure to be completed by the AO, before issuing Notice u/s 148, as mandated in the landmark decision of the Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd. v. ITO 259 ITR 19 (SC),** has been included in the statute, itself, by way of insertion of a new section **148A**, w.e.f. 1.4.20201.

In new reassessment regime, the procedure of recording of reasons for reopening, getting approval of the competent income tax authority and supply of the said reasons to the assessee, has been incorporated in section 148A of the Income Tax Act.

Under section 148A, before issuing Notice u/s 148, the AO is required to carry out enquiries, after taking the prior approval of the competent income tax authority, and issue a show cause notice to the assessee that is a fit case to issue Notice u/s 148. The AO is required to pass a speaking order, within one month, with the approval of the competent income tax authority, u/s 148A(d), before issuing Notice u/s 148 of the Act.

Meaning of ‘Information’

Meaning of the term “Information” [As per Finance Act 2021]

The information with the Assessing Officer is defined under ***Explanation 1*** to **section 148** as below:

i. any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

ii. any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Expansion in the Meaning of 'Information'

Expansion in Scope of the term "Information" by Finance Act 2022
As per amended Explanation 1 to Section 148, "Information" means:

- any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- any audit objection to the effect assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- any information received under an agreement referred to in section 90 or section 90A of the Act; or
- any information made available to the Assessing Officer under the scheme notified under section 135A; or
- any information which requires action in consequence of the order of a Tribunal or a Court.

Instances of ‘Deemed Information’

Explanation 2 to Section 148, provides the undermentioned 4 scenarios of ‘Deemed Information’ with the AO, wherein AO is not required to do preliminary enquiry and issue Notice u/s 148A. These 4 instances are:

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after 01.04.2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, [other than under sub-section (2A) or sub-section (5)]* of that section, on or after 01.04.2021, in the case of the assessee; or

(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 01.04.2021, 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 01.04.2021, pertains or pertain to, or any information contained therein, relates to the assessee

* Omitted by Finance Act 2022, w.e.f. 1.4.2022.

Sanction for Issue of Notice u/s 148A

Sanction for issue of Notice.

151. Specified authority for the purposes of **section 148A** shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Time Period for Issuance of Notice u/s 148

Time Period for Issuance of Notice u/s 148 [Section 149 as amended by Finance Act 2021]

a) Notice u/s 148 is to be issued within 3 years from the end of the relevant assessment year. However, there is an exception to this provision as under:

b) No notice for reassessment u/s 148 could be issued after three years till ten years unless the Assessing officer has in possession, books of accounts/documents/evidence which reveal that income chargeable to tax exceeding fifty lakh rupees, in an assessment year, represented in form of an asset, has escaped assessment.

The Finance Act 2022 has further widened the time limit for issue of notice u/s 148 to provide that a notice under section 148 can be issued after three years till ten years where the Assessing Officer has in his possession books of account/documents/evidence which reveal that the income chargeable to tax, represented,

a. in the form of an asset; or

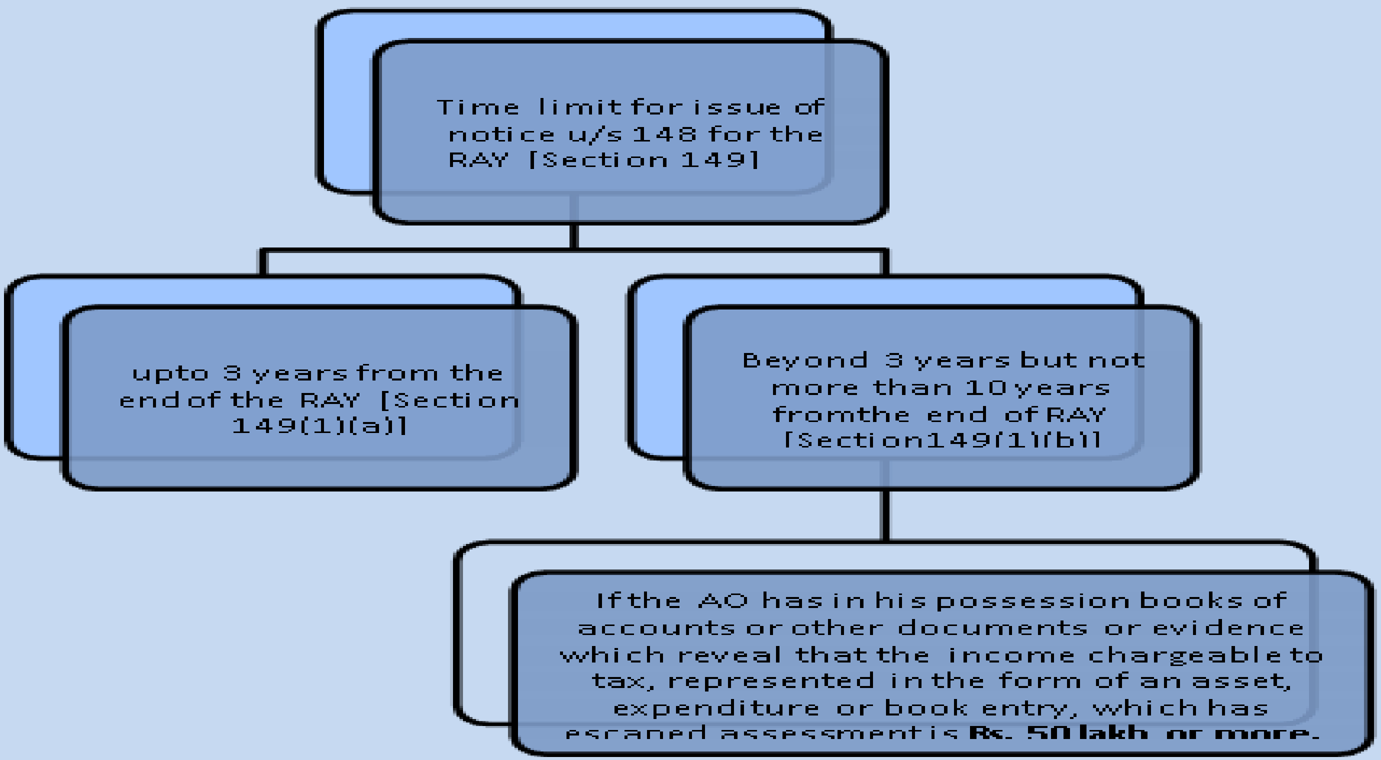
b. expenditure in respect of a transaction or in relation to an event or occasion; or

c. an entry or entries in the books of account,

which has escaped assessment amounts to or likely to amount to **fifty lakh rupees** or more, in any or all of such assessment years.

Time Period for Issuance of Notice u/s 148

Time Period for Issuance of Notice u/s 148 [Section 149 as amended by Finance Act 2021]



Time Period for Completion of Reassessment

Time Period for Completion of Income Escaping Assessments u/s 147 [Section 153]

The Income Escaping Assessments u/s 147 are to be completed within a period of 12 months (one year) from the end of the financial year in which Notice u/s 148 of the Act has been issued and served on the assessee.

Time Limits for Issuance of Notice u/s 148 & Completion of Reassessments

AY	Time Limits (Information as per Explanation 1 to Section 148, Notice can be Issued up to 3 years)		Time Limits (Information as per Explanation 2 to Section 148, Notice can be Issued up to 10 years)	
	Issue of Notice	Completion of Assessment	Issue of Notice	Completion of Assessment
2022-23	31.3.2026	31.3.2027	31.3.2033	31.3.2034
2021-22	31.3.2025	31.3.2026	31.3.2032	31.3.2033
2020-21	31.3.2024	31.3.2025	31.3.2031	31.3.2032
2019-20	31.3.2023	31.3.2024	31.3.2030	31.3.2031
2018-19	31.3.2022	31.3.2023	31.3.2029	31.3.2030
2017-18	-	-	31.3.2028	31.3.2029

Recent Litigative Developments on Validity of Notices u/s 148

Validity of Notices u/s 148
Notices issued between April 01, 2021 to June 30, 2021

The issue of validity of Notices issued between April 01, 2021 and June 30, 2021 has been a subject matter of major litigation in the past year. More than 5000 Writ Petitions were filed across the country challenging the constitutional validity of the Notice issued under the section 148 of the Act.

The Hon'ble **Chhattisgarh High Court** in the case of **Palak Khatuja v. UOI [2021] 438 ITR 622 (Chh)(HC)** held that the Notices were valid and were covered by the *Doctrine of Conditional Legislation.*

Subsequently, the Hon'ble **Allahabad High Court** in the case of **Ashok Kumar Agarwal & Ors v. UOI (2021) 439 ITR 1 (All)(HC)** held the Notices to be invalid observing, *inter alia,* that a delegated legislation can neveroverreach any Act of the principal legislature.

Subsequently, the Hon'ble **Delhi High Court** in the case of **Mon Mohan Kohli v. ACIT & Anr [2022] 441 ITR 207 (Del)(HC)** has held that Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021, which extended the period of issuance of Notices beyond March 31, 2021 are declared to be ultra vires the TOLA and are therefore the Notices issued under section 148 of the Act on or after April 01, 2021 are bad in law, and null and void.

Recent Litigative Developments on Validity of Notices u/s 148

Validity of Notices u/s 148
Notices issued between April 01, 2021 to June 30, 2021

Subsequently, the Hon'ble Rajasthan High Court – Jodhpur Bench in the case of **Bpip Infra Private Limited and Ors v. ACIT and Ors [2021] 133 taxmann.com 48 (Raj)(HC)** followed the decision of the Hon'ble Allahabad High Court in the case of **Ashok Kumar Agarwal (Supra)**

Pursuant thereto, the Hon'ble Calcutta High Court in the case of **Manoj Jain v. UOI [2022] 134 taxmann.com 173 (Cal)(HC)** held that the impugned notices under Section 148 of the Income Tax Act are quashed with liberty to the Assessing Officers concerned to initiate fresh re- assessment proceedings in accordance with the relevant provisions of the Act as amended by Finance Act, 2021 and after making compliance of the formalities as required by the law.

Thereafter, the Hon'ble High Court of Rajasthan – Jaipur Bench in the case of **Sudesh Taneja v. ITO [2022] 135 taxmann.com 5 (Raj)(HC) (Raj)(HC)** held that the subordinate legislation could not have travelled beyond the powers vested in the Government of India by the parent Act and quashed all the impugned Notices.

Recent Litigative Developments on Validity of Notices u/s 148

Validity of Notices u/s 148
Notices issued between April 01, 2021 to June 30, 2021

Thereafter, the Hon'ble High Court of Rajasthan – Jaipur Bench in the case of **Sudesh Taneja v. ITO [2022] 135 taxmann.com 5 (Raj)(HC) (Raj)(HC)** held that the subordinate legislation could not have travelled beyond the powers vested in the Government of India by the parent Act and quashed all the impugned Notices.

Similarly, the Hon'ble Bombay High Court in the case **Tata Communications Transformation Services v. ACIT [2022] 137 taxmann.com 2 (Bom) (HC)** and High Court of Madras (Division Bench) in **Vellore Institute of Technology v. CBDT and Anr. [2022] 135 taxmann.com 285 (Mad)(HC)** followed the above-mentioned decisions and held the issue in favour of the assessee.

The Revenue has filed a Special Leave Petition before the Hon'ble Supreme Court against the order of the Hon'ble Allahabad High Court in the case of **UOI v. Ashish Agarwal SLP(C) No. 1767 of 2022 dated February 04, 2022** and the matter is *sub judice* before the Hon'ble Supreme Court.

Applicability of Established Legal Jurisprudence to New Provisions

RATIO DECIDENDI FROM JUDICIAL PRECEDENTS ON INTERPRETATION OF THE PHRASE "REASONS TO BELIEVE"

1	*ITO* v *Lakhmani Mewal Das*, [1976] 103 ITR 437 (SC)		
	(a)	The reasons to believe must have a material bearing on the question on escapement of income. It does not mean a purely subjective satisfaction of the assessing authority; the reason be held in good faith and cannot merely be a pretence.	Proviso to section 148 provides that "unless there is information with the Assessing Officer which suggests that income chargeable to tax has escaped assessment ………" The use of the word "unless" imposes a binding condition. The requirement that information should be such as suggests escapement of income has the same effect as the words "the reason to believe must have a material bearing on the question on escapement of income".

Applicability of Established Legal Jurisprudence to New Provisions

(b)	The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation is belief regarding escapement of income.	Clause (d) of section 148A provides that the Assessing Officer **shall**, **before** issuing any notice under section 148 **decide, on the basis of material available on record** including reply of the assessee, whether or not it is a **fit case** to issue a notice under section 148, by passing an order. The use of the words **"on the basis of material available on record"** incorporates the condition of having a rational connection between the material coming to the notice of the Assessing Officer **("AO")** and the formation of belief regarding

Applicability of Established Legal Jurisprudence to New Provisions

(c)	The fact that the words "definite information" which were there in section 34 of the Act of 1922 before 1948, are not there in section 147 of the 1961 Act would not lead to the conclusion that action can now be taken for reopening an assessment even if the information is wholly vague, indefinite, far-fetched or remote	In the Proviso to section 148, the word "information" is suffixed by the words "which suggests that income chargeable to tax has escaped assessment ....". By virtue of the above provision, the possibility of an information being "wholly vague, indefinite, far-fetched or remote" is completely ruled out.
(d)	The powers of the Assessing Officer to reopen an assessment, though wide, are not plenary.	The powers bestowed upon the AO under section 147 are **subject to the provisions of sections 148 to 153;** and this ensures that his powers are not plenary.

Applicability of Established Legal Jurisprudence to New Provisions

2 ***CIT* v. *Kelvinator of India Ltd.*** **[2010] 187 Taxman 312/320 ITR 561 (SC)**

"However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place."

Explanation 1 to Section 148 enumerates specific sources of information, for the purposes of section 148 and 148A and on the basis of such information only, the proceedings for assessment/re-assessment of escaped income can be initiated.

Applicability of Established Legal Jurisprudence to New Provisions

3	***Calcutta Discount Co. Ltd.* v. *ITO* [1961] 41 ITR 191 (SC); *S. Narayanappa* v. *CIT* [1967] 63 ITR 219 (SC); *ITO* v. *Nawab Barkat Ali Khan Bahadur* [1974] 97 ITR 239 (SC); *R.S. Chiranji Lal & Sons* v. *CIT* [1959] 36 ITR 407 (Punj. & Har.); *Y. Rajan* v. *ITO* [1970] 77 ITR 839 (AP); *Sambalpur Rolling & Flour Mills (P.) Ltd.* v. *ITO* [1988] 36 Taxman 291/173 ITR 588 (Ori.).**	
	Existence of belief and existence of reasons for that belief. The belief must be held in good faith; it cannot be merely a pretence and not purely subjective satisfaction of the Assessing Officer.	Clause (a) of section 148A mandates that the AO must conduct any enquiry with respect to the information which suggests that the income chargeable to tax has escaped assessment. Any information is required to be enquired into and its result provides the reason. So, there cannot be merely a pretence or a subjective satisfaction of AO.

Understanding Amendments with Case Laws

Friends, the most convenient way to understand the practical impact of any proposed budget amendment relating to any legislative provision is to see it in the light of existing jurisprudence concerning that legislative provision.

So, in order to have better and clear understanding of the practical implications of the proposed amendments relating to newly proposed regime of income escaping assessments and search related assessments, **let us analyse some of the interesting judicial pronouncements in the cases of some very renowned and popular celebrities and try to imagine the amended fate or the final outcome of the said judgements in the newly substituted regime of income-escaping assessments.**

Understanding Amendments with Case Laws

Commissioner of Income Tax, Central-I vs. Amitabh Bachchan (High Court of Judicature At Bombay), Income Tax Appeal No. 4646 Of 2010 | 05-07-2012

Facts of the Case:

"On 5th April, 2006, a notice under Section 148 of the said Act was issued to the respondent assessee seeking to reopen the assessment proceedings for the Assessment Year 2002-03. The reasons recorded for reopening the assessment were as under:

"On perusal of the records, it is seen that the assessee filed the revised return claiming estimated expenses @ 30% on the professional receipts, based on adhoc estimated expenses claimed by the Insurance Agents because they cannot prove certain expenses being incurred to persuade the Insurers. However, when the Assessing Officers asked to substantiate these expenses, the claim was withdrawn by the assessee without furnishing the details regarding sources for incurring these expenses were incurred out of undisclosed source which required further verification under the provisions of Sec.69 of the Income Tax Act."

The Hon'ble Bombay High Court in the said judgement have held in favour of the assessee Shri Amitabh Bachchan as under:

"Both the Commissioner of Income Tax (Appeal) and the Tribunal have correctly come to the conclusion that there was no fresh tangible material before the Assessing Officer to reach a reasonable belief that the income liable to tax has escaped assessment. The order passed originally on 29th March 2005 under Section 143(3) of the said Act was passed after the respondent had made adhoc claim for expenditure at 30% of the professional receipts in the revised return of income which was later withdrawn. In fact, the reasons for reopening the assessment for the year 2002-03 itself records that the claim of 30% adhoc expenses was withdrawn when the respondent assessee was asked to substantiate the claim. Therefore, the same material was a subject matter of consideration during the proceedings for assessment leading to order dated 29th March, 2005. In the circumstances there could be no basis for the Assessing Officers <u>to form a belief</u> that income has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible. In the circumstances, we uphold the order of the Tribunal dated 19th March, 2010.

In view of the above, no substantial question of law arises for consideration by this court. Appeal is dismissed. No order as to costs."

Understanding Amendments with Case Laws

DCIT Cc 2, Mumbai vs Aishwarya Rai Bachchan, Mumbai on 18 January, 2017, in ITA No.3873/Mum/2013

Facts of the Case:

The assessee **Aishwarya Rai Bachchan** is a renowned model-cum-actress.

It is submitted that in the Income & Expenditure Account filed along with return of income the appellant has credited an amount of Rs. 7,37,25,6561 on account of professional fees from foreign sources which is net of tax. In the said Income and Expenditure account the gross professional receipt was shown at Rs. 8,98,84,130/- in respect of services rendered in India (Page No. 47 of the paper book). In the capital account filed along with the return of income the appellant debited tax deducted at source of Rs. 65,04,630/- in respect of tax deducted in India on professional fees. However, in the capital account the tax deducted at source in the countries outside India amounting to Rs.52,83,630/- was not debited but the same was claimed separately under the head "TDS" in the computation of total Income filed along with the return of Income. It is therefore submitted that the appellant had disclosed foreign professional fees net of tax in her return of income, which is established from her computation of total income, Income & Expenditure Account and Capital Account field along with the return of income. During the course of original assessment proceedings, the appellant filed before the Ld. AO the copy of bank statements wherein' the foreign professional receipts of Rs. 7,37,25,656/- were credited and details of professional receipt in convertible foreign exchange, which clearly established that foreign professional fees was offered to tax at net of withholding taxes abroad. Further along with return of income the appellant filed the withholding tax certificates in respect of Tax Deducted at Source in the countries outside India. All these evidences filed along with return of income and/or filed during the original assessment proceedings clearly established the fact that the appellant has offered to tax the professional fees received by her in convertible foreign exchange from the person's resident outside India at net of tax which is accepted by the Ld. AO in the original assessment proceedings.

Understanding Amendments with Case Laws

DCIT Cc 2, Mumbai vs Aishwarya Rai Bachchan, Mumbai on 18 January, 2017, in ITA No.3873/Mum/2013

The Hon'ble ITAT, Mumbai has held in favour of the assessee as under:

The fact that the foreign professional receipts was disclosed in the return of income by the appellant at net of tax are fully and truly disclosed in the return of income and or during the course of original assessment proceedings and therefore the assessment reopened by the Ld. AD by invoking the provisions of section 147 is clearly barred by the limitation in view of the first proviso to section 147 of the Income Tax Act, 1961. The action of the Ld. A.O is based on mere change of opinion and therefore the same cannot be sustained. It may be noted that the Ld. A.O must ensure that he has significant reasons to believe that the income escaped assessment for the fault on the part of the assessee and there is essentially failure of the assessee to disclose the income that affects the assessment proceedings. The judiciary has time and again thrown light on the meaning of the term 'reason to believe '. The standard laid down has been that of a reasonable person, who will act on a reasonable ground and come to a rational conclusion. The very important conclusion that has been time and again laid drawn by the judiciaries is that mere change of opinion will not give the officer reason to reopen the assessment proceedings. If the Ld. A.O forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous,' it is not a valid reason under the law to reopen assessment. If at the time of the original proceedings, the A.O has examined all the facts on record and the belief on his part that there was some error in the decision and used this as a basis for reopening of the proceedings, the reopening cannot be sustained.

Understanding Amendments with Case Laws

DCIT Cc 2, Mumbai vs Aishwarya Rai Bachchan, Mumbai on 18 January, 2017, in ITA No.3873/Mum/2013

In the instant case, the original assessment u/s.143(3) was completed on 29.12.2006 and there was no failure on the part of the appellant to disclose fully and truly all material facts necessary for its assessment, for the assessment year 2004-05 Therefore, no action can be taken u / s.147 after the expiry of four years from the end of relevant assessment year. It is therefore, submitted that the time limit for initiation of action u/s.147 has expired on 31.03.2009 and in the instant case the notice u/s.148 has been issued on 17. 03.2011. Therefore, it is submitted that the issue of notice u / s.148 and the consequent assessment u/ s.143(3) r. w.s, 147 are illegal as the same is barred by limitation in view of the first proviso to Sec. 147 and therefore, the same is liable to be quashed. This proposition is duly supported by following the decisions of the Hon'ble jurisdictional High Court.

In the assessment years 2004-2005, 2005-2006, CIT(A) has held the reopening as invalid, illegal and barred by limitation not only because of change of opinion but also on the plea that reopening was beyond 4 years and there is no failure on the part of the assessee to disclose fully and truly all materials facts necessary for assessment. He has also confirmed that the claim of the assessee is based on its order for the Asst. Year 2000-01. He further observed that the reasons for reopening do not allege any failure on the part of the assessee, hence the assessment cannot be reopened beyond 4 years. The CIT(A) further observed that 14A disallowance is not a part of the reasons for reopening for any assessment year."

Understanding Amendments with Case Laws

Sunil Gavaskar, Mumbai vs Assessee on 16 March, 2016 in ITA No. 3970 and 3971/Mum/2010

Facts of the Case:

These appeals have been filed by the assessee against separate orders of the learned Commissioner (Appeals)-10, Shri Sunil Gavaskar Mumbai, passed against the separate assessment orders under section 143(3) r/w section 147 of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2001-02 and 2002-03.

….The second issue raised by the learned Counsel for the assessee is that there was some audit objection raised by the audit team in its draft review report on eligibility of the assessee to claim deduction under section 80RR. With the assistance of both the parties, it is noted that there is a letter dated 29th September 2006, returned by the Assessing Officer to the CIT, City-5, Mumbai, on the subject of "Review on assessment of selected companies in selected sectors in the case of Shri Sunil Gavaskar - A.Y. 2000-01 to 2002-03 - comments reg". One relevant para from the said letter is reproduced hereunder:-

"At the outset it is submitted that when the returns for A.Y. 2000-01 & 2002-03 are processed under section 143(1) of I.T. Act, 1961 and the adjustment pointed by the audit are not permissible while processing the return u/s 143(1), hence, in principle the objections raised by the audit are not acceptable for these two years. However, since the issue involved in all the three assessment years is of debatable in nature, further necessary action in this case will be taken after carrying out necessary verification. A final reply will be sent to the audit in due course."

Understanding Amendments with Case Laws

Sunil Gavaskar, Mumbai vs Assessee on 16 March, 2016 in ITA No. 3970 and 3971/Mum/2010

The Hon'ble ITAT Mumbai has held in favour of the assessee Sunil Gavaskar as under:

"The jurisdictional requirements to reopen an assessment are:

(i) the AO must have reason to believe that the income chargeable to tax escaped assessment;

(ii) the AO in the regular assessment proceedings had not formed an opinion in regard to the issue on which the reopening notice is issued; and

(iii) there has been a failure on the part of the Assessee to truly and fully disclose all necessary facts for the assessment.

Understanding Amendments with Case Laws

Sunil Gavaskar, Mumbai vs Assessee on 16 March, 2016 in ITA No. 3970 and 3971/Mum/2010

In this case, the CIT (A) as well as the Tribunal have, on consideration of the facts arising before them, have concluded that none of the three conditions precedent have been satisfied. The reason to believe that income chargeable to tax has escaped assessment on the part of Shri Sunil Gavaskar the AO is a sine qua non for issue of a reopening assessment under section 148 of the Act as non- satisfaction of reason to believe would by itself make the notice fatal. In such a case, the satisfaction of other conditions would not even require examination.

Both the CIT(A) as well as the Tribunal, on the aforesaid basis came to the conclusion that in view of the fact that the AO himself has not accepted the audit objection, there could be no reason for him to believe that income chargeable to tax has escaped assessment. It is clear from Section 147 of the Act that the jurisdictional requirement to issue a notice for reopening the assessment is the satisfaction of the "AO." This satisfaction of the AO cannot be outsourced or arrived at on the basis of directions of his superiors. The Act requires his reason to believe that income chargeable to tax has escaped assessment. Thus, the impugned notice is not sustainable. In that view, the first condition precedent of reason to believe is that income chargeable to tax is escaped assessment being the primary requirement is not satisfied, the notice for reopening is without jurisdiction

Understanding Amendments with Case Laws

Sunil Gavaskar, Mumbai vs Assessee on 16 March, 2016 in ITA No. 3970 and 3971/Mum/2010

The third issue raised by the learned Counsel, which is also quite significant in law, is that the impugned reopening is Shri Sunil Gavaskar barred by limitation in view of the fact that reopening has been done after expiry of four years and original assessment having been done under section 143(3), reopening could not have been done as there was no failure on the part of the assessee in disclosure of material facts.

It has also been mentioned in the said reply that assessee was conferred Sanman certificate as one of the top tax payer and copy of Sanman certificate was enclosed with the reply. It was also mentioned that assessee was prepared to give further details and evidences in support of income and expenditure claimed in the return of income. Perusal of the Income and Expenditure A/c again reveals that complete item- wise break-up of the income received by the assessee from Shri Sunil Gavaskar various sources has been given. These avenues of income include column writing and commentary, foreign remittances and honorariums and royalty on books. We find that as far as disclosures are concerned, the assessee had provided requisite information and details in his return of income and also furnished further details and evidences during the course of original assessment proceedings. It is not at all a case of failure on the part of the assessee in disclosure of material facts. If at all there was any failure, it would be on the part of the AO in not appreciating the facts and applicable legal position, in the manner as the AO and his DIT want now at the reassessment stage. The law in this regard is very clear. The AO cannot be given benefit of its own wrong, and particularly in those cases which are covered by the first proviso to section 147. The position of law in this regard is well settled on the basis of umpteen numbers of judgments from Hon'ble Jurisdictional High Court and various other Courts of the Country. For ready reference, we shall rely upon a judgment of Hon'ble Bombay High Court in the case of Hindustan Petroleum Corporation Ltd. v. DCIT 328 ITR 534 (Bom) and MAPS Enzyms Ltd. v. DCIT 41 taxmann.com 527 (Guj) wherein it was held that if the assessee had made disclosure of all material facts relating to its claim for the deductions in the return which were allowed by the AO, during the course of original assessment proceedings, then, reopening u/s 147 sought to be done beyond the period of 4 years from the end of the relevant assessment year, on the Shri Sunil Gavaskar ground that the assessee had wrongly been allowed deduction was not permitted under the law and barred by limitation, in view of first proviso to section 147 of the Act. Thus, in view of the above discussion, we find impugned reopening to be barred by limitation in terms of first proviso to section 147."

Faceless Income Escaping Assessments [Section 151A]

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020', has inserted a new Section 151A in the Income Tax Act, w.e.f. 1.4.2021.

Section 151A empowers the Central Government to make a scheme for the purpose of:

(a) Assessment, reassessment or recomputation under Section 147 (Income-escaping assessment);

(b) Issuance of notice under Section 148 for conducting income-escaping assessment; or

(c) Conducting of enquiries or issuance of show-cause notice or passing of order under Section 148A; or

(d) Sanction under Section 151 for the issue of notice under section 148 for conducting the income-escaping assessment.

Such a Scheme is to be formed to impart greater efficiency, transparency and accountability by:

- Eliminating the interface between the Income-tax authority and the assessee or any other person to the extent technologically feasible;
- Optimising utilisation of the resources through economies of scale and functional specialisation; and
- Introducing a team-based assessment, reassessment, recomputation or issuance or sanction of notice with dynamic jurisdiction.

E-Assessment of Income Escaping Assessment Scheme, 2022

By virtue of powers conferred u/s 151A of the Income Tax Act, CBDT has notified 'e-Assessment of Income Escaping Assessment Scheme, 2022' vide its Notification No. 18/2022 dated 29.3.2022. The Scheme is applicable with effect from 29-03-2022.

The Scheme provides that assessment, reassessment or recomputation under Section 147 and issuance of notice under Section 148 shall be done:

***(a)* through automated allocation, in accordance with the risk management strategy formulated by the Board as referred to in section 148 for issuance of the notice, and**

***(b)* in a faceless manner, to the extent provided in Section 144B with reference to making assessment or reassessment of total income or loss of assessee.**

Some Practical Aspects

Exclusions from Faceless Income Escaping Assessments: Cases under the charge of Central Circle & International Taxation are outside the purview of faceless assessments u/s 144B. So, the same also holds good for Reassessment cases.

In other cases, the initial notice u/s 148 was being issued by jurisdictional AO and subsequent proceedings were conducted by faceless hierarchy uptill 29.3.2022.

On 29.3.2022, e-assessment income Escaping Assessment Scheme has been launched, so, w.e.f. 29.3.2022, even notice u/s 148 should also be issued by the faceless hierarchy only.

But still in some cases, notices u/s 148 have been issued by jurisdictional AOs only even after 29.3.2022, and even in cases other than central circle & International Taxation. So, such notices can be challenged, for want of jurisdiction.

PPT on Income Escaping Assessments

Thank You