



Practical approach to Reassessment in Income tax

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Deluge of reopening

Transition
year

A.Y.

2013-14
2014-15
2015-16
2016-17
2017-18


AY 2013-14
and 2014-15

Doctrine of
Legitimate
expectation

CBDT
Circular 4th
March 2021

UCO Bank
237 ITR
889

2 Lakh
Potential
cases



SECTION 147:

- ▶ Empowers the Assessing officer to reopen the assessment for any assessment year if he has **REASON TO BELIEVE** that any income which is chargeable to tax has escaped assessment.
 - ▶ **Reason to believe** - It suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour.
 - ▶ Chintpurni Medical College (SC) – sharing of jurisdiction
 - ▶ Stage of recording reasons- existence of material
-



Notices issued

Non filer of Return cases

High Value property deals

Investment in Mutual funds

Penny stock/ unexplained credit from entry providers

Profit/ Loss taken from entry providers

Information received pursuant to survey/search

AIR info on Cash deposit in Saving accounts

High Foreign travel expenses



Potential cases

Non filing
Monitoring
System
identified

Audit
objection
based

Information
from
Government
and Law
enforcement
agencies

Information
obtained
during
survey

Internal
information
of
Department
+CCIT
approval



Prerequisites

It is on the basis of such reasons recorded in the file that the validity of the order reopening a assessment has to be decided.

Recorded Reasons must have a live link with formation of the belief

AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.

If beyond four years and original 143(3) then failure on part of Assessee must

GKN Driveshaft Procedure 259 ITR 19 SC

file the return,

If he so desires, to seek reasons for issuing the notices.

AO is bound to furnish reasons within a reasonable time.

file objections to issuance of notice, based on reasons

AO is bound to dispose of the same by passing a speaking order.

Writ against rejection or continue normal



Not to Harass

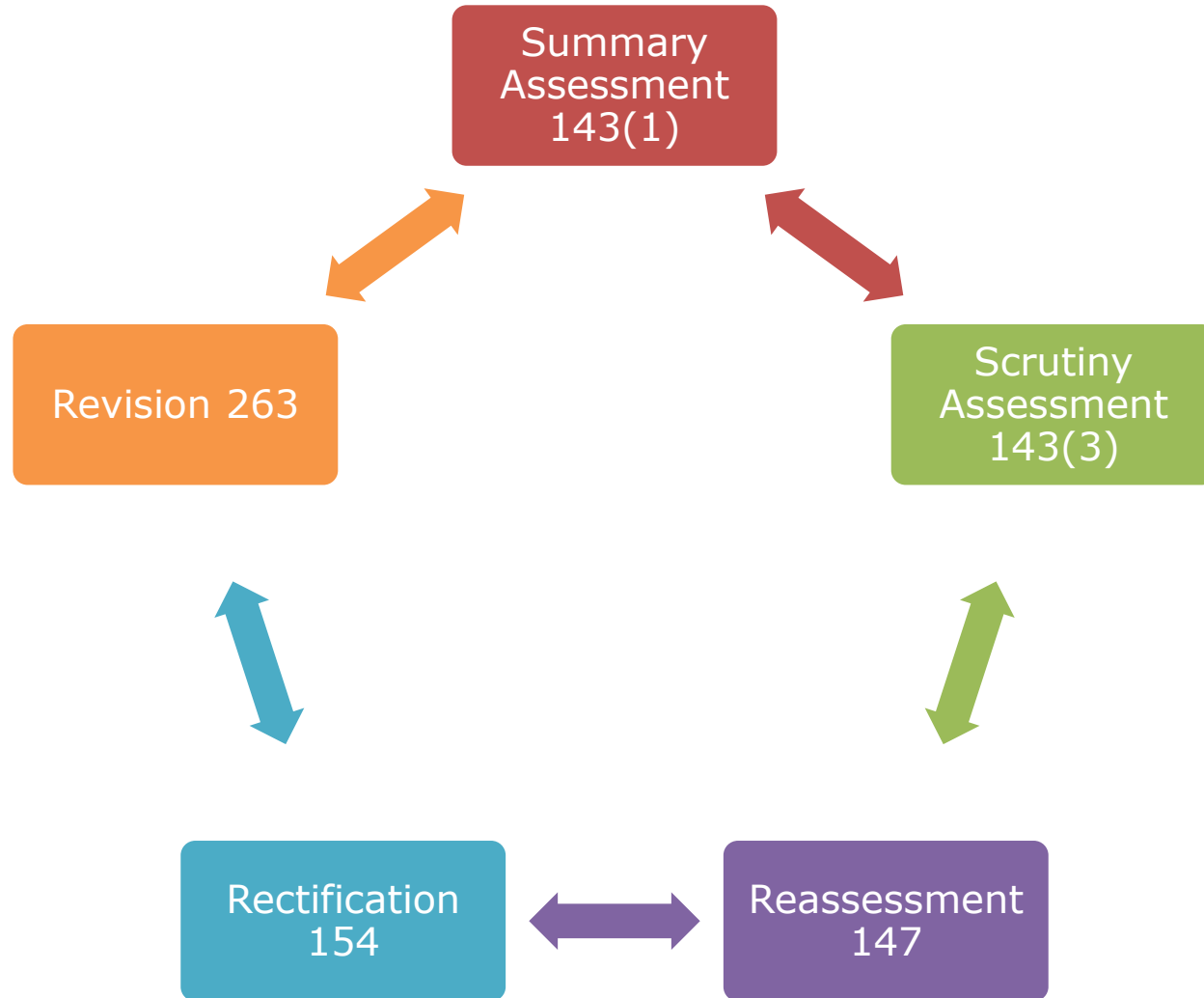
The Courts have consistently warned the department not to harass taxpayers by reopening assessments in a mechanical and casual manner.

The Pr CIT were directed to issue instructions to AOs to strictly adhere to the law and GKN Driveshafts as regards disposal of objections to reopening assessment:

- *Pr. CIT v. Samcor Glass Ltd. (Delhi)*;
- *CIT v. Trend Electronics 379 ITR 456 (Bom.)(HC)*.



Overlapping of Jurisdiction



WRIT

Reassessment
order

Reopening
Notice

Not
Maintainable

Maintainable

**Chhabil Dass
Agarwal 357
ITR 357 (SC)**

**Calcutta
Discount Co
41 ITR 191
SC**

**Jeans Knit
Private
Limited vs.
DCIT (SC)**

Challenge under Writ

Jurisdictional Issue

- **Foramer v. CIT(SC)**
- **Kunisetty Satyanarayana(SC)**

Gross violation of natural justice

- **Kothari Metals (Kar)**
-
- 

*CIT v. Chhabil Das
Agarwal. 357 ITR 357
(SC)*

- The assessee cannot be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he has adequate remedy open to him by an appeal to the CIT (Appeals).

*Aroni Commercials
Ltd v. ACIT (Bom)*

- Writ Petition challenging lack of jurisdiction to issue s. 148 notice on the ground that it is based on 'change of opinion' & preconditions of s. 147 are not satisfied is maintainable.

New reasons cannot be allowed to be introduced or supplied

Reasons recorded cannot be supplemented by filing affidavit or making oral submission.

- *Hindustan Lever Ltd. v. R. B. Wadkar* 268 ITR 332 (Bom)
 - *Mohinder Singh Gill v. Chief Election* AIR 1978 SC 851
-



CIT vs. Trend Electronics (Bombay High Court)

- ▶ **S. 148: If Dept behaves in an irresponsible manner and does not furnish the record reasons on the basis that the assessee was already aware of them, the assessment has to be quashed**





Change of Opinion

Review

Accepted

Not Accepted

Noted. Accepted



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- ▶ `Mere Change of Opinion' do not appear in the section and is Judge made law. First coined by K.N. Rajagopala Sastri in the case of Maharaj Kumar Kamal Singh [1959] 35 ITR 1 (SC)
 - ▶ **Kelvinator SC - `change of opinion' must be treated as an in-built test to check abuse of power by Assessing Officer and that the reasons must have a live link with formation of belief.**
 - ▶ **Power to ~~review~~ vs. reassess**
 - ▶ "Change of opinion" it is essentially a **Review** which cannot be done as it is a separate statutory process.



In year 1989 Under Section 147 Parliament

- deleted the words '**reason to believe**'
- inserted the word '**opinion**' in section 147

However based on representations it reversed the amendments and again

- Introduced "**reason to believe**"
- Deleted the word '**opinion**'

'Change of Opinion' rebuts the formation of 'Reason to Believe' which is the crux.


Rajesh Jhaveri Stock Brokers (P.) Ltd.

291 ITR 500 (SC)

Held

- Intimation under section 143(1)(a) cannot be treated to be an order of assessment
- if ingredients of section 147 are fulfilled, failure to take steps under section 143(3) does not take away the power to reopen the assessment even in a case where intimation under section 143(1) has been issued.

Distinguished in 143(1) cases of no new material

- Aipita Marketing (P.) Ltd **[2008] 21 SOT 302 (Mumbai)**
 - Bapalal & Co. Exports [2007] 289 ITR 37(Mad)
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Change of opinion

- ▶ Original assessment u/s 143(1)
 - ▶ No opinion formed – Rajesh Jhaveri SC
- ▶ Original assessment u/s 143(3)
 - ▶ Issues examined in original assessment
 - ▶ View taken by AO based on replies of Assessee
 - ▶ Reopening cannot be done merely on change of opinion
- ▶ Jurisprudence
 - ▶ CIT vs. Kelvinator of India Ltd. (Delhi) (FB) (256 ITR 1)
 - ▶ CIT vs. Pithampur Steels (P) Ltd. (2008) 11 ITJ 696 (MP)



No new information

- ▶ Asian Paints Ltd. v. CIT 308 ITR 195 (Bom.) (HC)
 - ▶ All facts were before AO at the time of original assessment as well as reopened asst. Even assuming that he failed to apply his mind, assessment cannot be reopened u/s. 147.



Sanction u/s 151

Approval must be beyond four years

Mechanical approval or mere YES affixature not sufficient

- German Remedies Ltd 287 ITR 494 (Bom)

Request by way of letter to provide copy of approval



Limitation

Parshuram Pottery 106 ITR 1(SC)

- *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 stageand that lapse of time must induce repose in and set at rest judicial and quasijudicial controversies as it must in other spheres of human activity.”*



Inspection of file

Internal communications

AO defends allowance of claim

Audit objection

Borrowed satisfaction

Order sheet showing application of mind

Enquiries made and change of opinion

Right under RTI to obtain copies



Maintain Chronology of events

Date	Event
18.08.2008	ITO 2(2) issued questionnaire asking confirmations and details of Share application money. <i>(Refer Page 25 of Paper Book ("PB"))</i>
14.11.2008	Assessee submitted the details of Share application money along with confirmations, PAN, Address, etc. <i>(Refer Page 26 to 36 of PB)</i>
04.12.2008	Assessment order u/s 143(3) was passed accepting the share application money. <i>(Refer Page 22 to 24 of PB)</i>
21.07.2010	Revenue Audit Party conducted Audit of Assessment order and raised audit objections i.e. - Non addition of share application money received in excess of authorized share capital
24.02.2011	Letter from ITO 2(2) to CIT-I stating that issue of share application money is examined in detail in original assessment and therefore the audit objection is not acceptable.
25.02.2013	Letter from the then ITO2(2) to CIT-I stating that Audit objection in respect of share application money had not been accepted and reply was sent to DAG, Delhi that source was examined in Assessment and under no circumstances the amount can be treated as unexplained. However since the issue is pending with DAG and the limitation period was approaching therefore necessary remedial action was sought from CIT-I.
05.03.2013	Letter from ITO (Tech.) to ITO2(2) stating that CIT-I has approved remedial action u/s 148 subject to condition that the RAP is settled upto 31.03.2013.
28.03.2013	Notice u/s 148 was issued. <i>(Refer Page 14 of PB)</i>
21.02.2014	Second Reassessment order was passed after addition of Rs.45,30,000 on account of share application money received based on Audit objection.

Reason to believe

If the AO himself in any communication does not agree to the factual audit objection and protests it

It proves that he does not believe that income has escaped assessment

- **Raajratna Metal Industries Ltd vs. ACIT (Gujarat High Court)**



Disagreement with RAP

If the AO disagrees with the information/objection of the audit party and

is not personally satisfied that income has escaped assessment

but still reopens the assessment on the direction issued by the audit party,

the reassessment proceedings are without jurisdiction.

- Larsen & Toubro Ltd. v. State of Jharkhand [2017] 79 Taxmann.com 267 (SC)



Vague and General reasons not permissible

Assessee received a gift

Case reopened by the AO recording reason in support of impugned notice to doubt genuineness of gift

Such reason was not based on any material so as to form belief that assessee's income had escaped assessment on account of gift not being genuine

it is only a suspicion subject to enquiry, impugned reopening notice issued by Assessing Officer was unjustified

- PCIT v. Rajesh D. Nandu (HUF) (2019) 261 Taxman 110 (Bom.)(HC)




Factually incorrect reasons

Notice u/s 148 issued on the ground of factually incorrect basis that the assessee had not filed its return. Alternative reason was also there

Held that reassessment could not be sustained even on the basis of alternative reason

since it could not be said with certainty as to which factor weighed with the concerned officer

when he issued the impugned notice and when the respondent authority was himself unsure as to the year of taxability of the income which is stated to be undisclosed income.

- Sagar Enterprises vs. ACIT (2002) 257 ITR 335 (Guj) (HC)
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AO lost sight of legal provision

The assessment cannot be reopened (within 4 years) on the ground that the AO lost sight of a statutory provision like 50C

- This amounts to a review.
- PCIT vs. Inarco Limited, INCOME TAX APPEAL NO.102 OF 2016, dtd: 23/07/2018 (Bombay High Court)





Beyond Four Years

Reopening beyond four years

Notice issued Four years
after end of Assessment
Year

Original Assessment
under Section 143(3)

Failure must on part of
Assessee to disclose
material fact



Failure must on part of Assessee to
disclose material fact

Failure must on part of Assessee to disclose material fact

**Disclosure
in balance
sheet also
amounts
to
disclosure**

- CIT vs. Corporation Bank Ltd (2002) 254 ITR 791 (SC)
- Arthus Anerson & Co. vs. ACIT (2010) 324 ITR 240 (Bom)(HC)
- Considering the decision against of Dr. Amin's Pathology Lab vs. P.N. Prasad
- (2001) 252 ITR 673 (Bom)(HC)
- CIT .v. Lincoln Pharmaceuticals Ltd. (2015) 375 ITR 561 (Guj.)(HC)



Failure must on part of Assessee to disclose material fact

Computation of income

- Computation is the basic document for making the s. 143(3) assessment. If there is a disclosure in the computation, it leads to the prima facie necessary inference that there is application of mind by the AO.
- The fact that the AO did not raise specific queries & is silent in the assessment order does not mean there is no application of mind (Techspan 404 ITR 10(SC) followed, other contra judgements distinguished)
- State Bank Of India vs. ACIT, (2019) 411 ITR 664 (Bom)



oversight, inadvertence or mistake

Assessment order is not a scrap of paper & AO is expected to have applied his mind.

Reopening on ground of "oversight, inadvertence or mistake" is not permissible.

- CIT vs. Jet speed Audio Pvt. Ltd. (2015) 372 ITR 762 (Bom.)(HC)



HCL TECHNOLOGIES LTD [2017] 397 ITR 469 (Delhi)

- ▶ for complying with the jurisdictional requirement under the first proviso to Section 147 of the Act, the reasons would have to show in what manner the Assessee had failed to make a full and true disclosure of all the material facts necessary for the assessment. The failure to do so would not be a mere irregularity. It would render the reopening of the assessment after four years vulnerable to invalidation.
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Vareli Weavers Pvt. Ltd. vs. DCIT (1999) 240 ITR 77 (Guj)

- ▶ No reopening when as there being no whisper in the reasons recorded by the AO about failure on the part of the assessee to disclose truly and fully all material facts.



CIT Vs. DCM Ltd.,(2009) 24 DTR(Del) 72

- ▶ *that there was no allegation in the reasons recorded by the AO that the assessee had failed to file its return or that it had failed to disclose fully and truly all material facts in its return nor was there any allegation by the Assessing Officer that the assessee had failed to disclose fully and truly all material facts in its return of income nor even there was any allegation regarding escapement of income.*
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Phoolchand Bajranglal SC

- ▶ *"One of the purposes of [Section 147](#), appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say **"you accepted my lie, now your hands are tied and you can do nothing"**. It would be **travesty of justice to allow the assessee that latitude.**"*



Fresh Claim in reassessment

CIT v. Sun Engg. Works (P.) Ltd.
[1992] 198 ITR 297 (SC)

- for the benefit of the revenue and not for the assessee
- Not lower than original assessment

If no return was filed before S.148 notice, whether entitled to refund?

- Chiranjay Jaiswal v. CIT (Jharkhand)
 - CIT v. Vali Bros. 282 ITR 149 (All.)
-



S.153C vs. 148


Section 153C

- Search or requisition taken place in case of any person.
- AO is satisfied that any assets/documents seized or requisitioned belongs to another person
- Books/documents handed over to AO of another person

Non obstante clause indicated that no 148 but only 153C in case of such another person

- Rajat Saurabh Chatterji vs. ACIT (ITA 2430/Del/2015)
- ACIT vs. Arun Kapur – 140 TTJ 249 (Amritsar)
- Asstt. CIT v. Global Estate [2013] 32 taxmann.com 158

Contrary

- Yamuna Estate P.Ltd. v. ITO (2016) 45 ITR 517 (Mum.)(Trib.)
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Revenue Audit Objection

- ▶ Indian & Eastern Newspaper Society v. CIT [1979] 119 ITR 996 (SC)
 - ▶ an opinion of an audit party on a point of law cannot be regarded as an information within the meaning of section 147 and it cannot lead to a valid initiation of reassessment proceedings
- ▶ Mehsana District Central Co-op Bank Ltd (Gujarat)
 - ▶ Reopening wrong if the AO was acting under the compulsion of the audit party. Even after notice AO maintains that no income escaped assessment
- ▶ Elecon Engineering Co Ltd vs. ACIT (Gujarat)
 - ▶ Factual mistake shown by audit party - valid



No borrowed satisfaction

Assessing Officer recording reasons for assessment and Assessing Officer issuing notice under section 148 must be the same person.

Successor Assessing Officer cannot issue notice under section 148 on the basis of reasons recorded by predecessor Assessing Officer.

- Hyoup Food and Oil Industries Ltd. v. ACIT (2008) 307 ITR 115 (Guj.)
 - CIT & Anr v. Aslam Ullakhan (2010) 321 ITR 150 (Kar.)
-



Non existent / Deceased person

Revenue can't compel legal-heir to participate in deceased's re-assessment; Death non-intimation irrelevant

- **TS-315-HC-2018(MAD)]**
- Vipin Walia 216 Taxpundit 36 (Del)
- Rupa Shyamsundar Dhumatkar v. ACIT (2020) 420 ITR 256 (Bom)(HC)
- Sumit Balkrishna Gupta. v. ACIT (2019) 414 ITR 292 (Bom)(HC)
- ACIT Vs. Neha Enterprises (ITAT Mumbai)

Smt. Kaushaliya bai 238 ITR 1008 (M.P.)

- widow participated – defect cured

Sky Light Hospitality LLP SC

- **notice issued in the name of a company which does not exist upon its conversion into a LLP is valid**



"292BB. Notice deemed to be valid in certain circumstances.—

- ▶ **Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment,** it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—
 - ▶ (a) not served upon him; or
 - ▶ (b) not served upon him in time; or
 - ▶ (c) served upon him in an improper manner:
 - ▶ **Provided** that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment."
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Any other income apart from Reasons

CIT v. Jet Airways (I) Ltd. v. CIT 331 ITR 236

- where original reasons for reopening assessment were found to be incorrect or non-existent, AO
- could not proceed to assess any other item of income which was not covered by the first notice.

ACIT vs. Major Deepak Mehta
(Chattisgarh)

- If the AO does not assess the income in respect of which the s. 148 notice was issued, it means there was no 'reason to believe' that income had escaped assessment.



Roving Enquiries / Verification

C M Mahadeva vs. CIT (Karnataka HC)

- AO cannot undertake a general, fishing and roving inquiry while proceeding under section 147.

Shakun Polymers Ltd ITA No.756/Ahd/2013

- for mere verification of the claim, power for reopening of assessment could not be exercised.
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No fishing or roving enquiries

Bhor Industries Ltd. v. ACIT 267 ITR 161 (Bom)]

Hindustan Lever Ltd. 268 ITR 332 (Bom)]

Bhogwati Sahakari Sakhar Karkhana Ltd. 269 ITR 186 (Bom)]

Ajanta Pharma Ltd. v. ACIT 267 ITR 200 (Bom)]

Pr. CIT v. G & G Pharma India Ltd. (Delhi)(HC)



Reason to believe not suspect

Universal Power Systems (P) Ltd.
v. Asst. CIT [48 ITR (Tribunal) 191
(Chennai)]

- Distinction between reason to believe and reason to suspect
- The assessment reopened merely to verify discrepancy- i.e. variation between Income declared by assessee and Income shown in TDS Certificate i.e. case reopened on reasons to suspect is not valid.



Shockingly low income

Merely because the assessee's income is "shockingly low" and others in the same line of business are returning a higher income.

The invocation of the jurisdiction on the basis of suspicions and presumptions cannot be sustained .

Though Explanation 2 of s. 147 authorizes the AO to reopen an assessment wherever there is

- an "understatement of income", **the AO is not entitled to assume that there is "understatement of income" merely because the assessee's income is "shockingly low" and others in the same line of business are returning a higher income.**

The invocation of the jurisdiction u/s 147 on the basis of suspicions and presumptions cannot be sustained.

- Rajendra Goud Chepur v. ITO (AP&T)(HC)(WP. No. 36483/2016, dt. 13.02.2017) (AY. 2012-13)



Issue vs. Serve

Issue of notice beyond limitation period:

Expression “to issue” – Meaning send out –

- Notice signed on 31-3-2010 sent to speed post on 7/4/2010
- Notice issued after six years – Invalid
- ***Service by email***

Kanubhai M. Patel (HUF) v. Hiren Bhatt
(2010) 43 DTR 329 (Guj.)



Reason recorded and Issue of notice

The officer recording the reasons u/s 148(2) for reopening the assessment & the officer issuing notice u/s 148(1) has to be the same person

If different then the reassessment proceedings are invalid.

The fact that the assessee participated in the proceedings is irrelevant

- Pankajbhai Shah vs. ACIT (2020) 312 CTR 300 (Guj.)(HC)



S.143(2) notice mandatory

Jurisdictional error

- CIT v. Salman Khan (Bom.)(HC)
www.itatonline.org.
- CIT v. Mundra Nanvati (Bombay High Court) 227 CTR 387 Bom.

Cannot be cured by section 292BB

- PCIT v. Silver Line (2016) 383 ITR 455 (Delhi)(HC).



Investment In property

"The assessee has filed R/I for A.Y.2004-05 on 21.3.05 declaring Taxable income of Rs.75,397/- and Agricultural income of Rs.50,000/-. The assessee has purchased a residential house for Rs.10,00,000/- consideration and in addition he has spent Rs.10,270/- towards registration of the document on 25.7.2003. To examine the sources of investment, summons were issued. The assessee by mistake had stated that the date of purchase was in the year 2004-05. As such, notice u/s 143(2) was issued for scrutinizing the documents. The assessee produced copy of Registered Deed, where in it was noticed that date of purchase is 25.7.2003. This transaction relates to Asst. Year 2004-05. Hence asst. for 2005-06 is completed accepting R/I after verifying the details and documents produced.

This transaction relates to Asst. Year 2004-05. The assessee has produced self prepared statements to show that the investments is out of HUF funds. As further investigation are required, proceedings have to commence for A.Y.2004-05.

Considering the details filed by the assessee I have reason for believe that sources of investment for the purchase of the property is not acceptable, and further investigations are necessary, I have reasons to believe that in income subject to tax has escaped from Asst. for A.Y.2004-05 within the meaning of Sec.147.

Issue notice u/s 148 for A.Y.2004-05."



C M Mahadeva vs. CIT (Karnataka HC)

- ▶ *"In the present case also the reason for reopening is for further investigation to find out the source of investment for the purchase of property which is not permissible in law*
- ▶ *Merely by mentioning the income of the assessee in the assessment year, and the investment made by him for the purchase of residential property, it cannot be concluded that the difference would automatically be the income which had escaped assessment.*
- ▶ *It was for the AO to take proper steps earlier by issuing notice under Section 143(2), and if the law does not now permit issuance of any such notice, then invoking some*
- ▶ *other provision, which would not be applicable*

Cash Deposit in Banks

Reasons for

Reopening

▶ During the financial year 2007-08, the assessee has made transaction of Rs 10,24,100 (deposits in cash) in his saving bank account but no return of income was filed by the assessee. As such, it was reason to believe that there is an escapement of income at Rs 10,24,100 on the link between conclusion and the evidence...."



FINDINGS OF ITAT

- ▶ All that the reasons recorded for reopening indicate is that cash deposits aggregating to Rs 10,24,100 have been made in the bank account of the assessee, but the mere fact that these deposits have been made in a bank account does not indicate that these deposits constitute an income which has escaped assessment.
- ▶ The reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and the income from such a business has not been returned by the assessee.
- ▶ As we do not have the liberty to examine these reasons on the basis of any other material or fact, other than the facts set out in the reasons so recorded, it is not open to us to deal with the question as to whether the assessee could be said to be engaged in any business; all that is to be examined is whether the fact of the deposits, per se, in the bank account of the assessee could be basis of holding the view that the income has escaped assessment. **The answer, in our humble understanding, is in negative.**

Cash Deposit in bank account

- ▶ **Shri Mahavir Prasad ITA No. 924/DEL/2015**
 - ▶ basic requirement for reopening of assessment that the **AO must apply his mind to the materials in order to have reasons to believe** that the income of the assessee escaped assessment was found to be missing when the AO proceed to reopen the assessment which is in nature of a post mortem exercise after the event of reopening of the assessment
 - ▶ the AO has reopened the assessment mechanically without application of mind to conclude that the said amount of Rs.6 lac deposit in the bank account of the assessee constitutes the income of the assessee and the same has escaped assessment.



CIT v. Indo Arab Air Services (2016) 130 DTR 78/ 283 CTR 92 (Delhi)(HC)

- ▶ mere information that huge cash deposits were made in the bank accounts could not give the AO prima facie belief that income has escaped assessment. The AO is required to form prima facie opinion based on tangible material which provides the nexus or the link having reason to believe that income has escaped assessment. The AO was also required to examine whether the cash deposits were disclosed in the return of income to form an opinion that income has escaped assessment.
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S.143(1) cases

Rajesh Jhaveri(SC) merely holds that no opinion formed so 'change of opinion' plea not available

Inductotherm (India) (Gujarat HC)

- *S. 143(1) intimation cannot be reopened u/s 147 in absence of "tangible material"*

Orient Craft (Del HC)

- Even s. 143(1) Intimation cannot be reopened u/s 147 without "fresh material"


Telco Dadajee Dhackjee Ltd vs. DCIT (ITAT TM)

- S. 143(1) assessment cannot be reopened u/s 147 in absence of "new material"
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Other defenses available

It is open to the assessee to challenge a notice issued u/s.148 as being without jurisdiction for absence of reason to believe even in case where the assessment has been completed earlier by Intimation u/s 143(1) of the Act.

- Khubchandani Healthparks Pvt. Ltd. v. ITO [2016] 384 ITR 322 (Bom.)(HC)
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Penny Stock/ Share capital, etc

Writ against reopening on Inv wing info

▶ Jayant Securities (Guj HC)

- ▶ Advances made by M/s. East West Fininvest India Limited to the assessee came up under consideration
 - ▶ At this stage, it is not necessary for the Assessing Officer to establish with certainty that additions would invariably be made in the reassessment proceedings. What is necessary is his bona fide formation of belief that income chargeable to tax has established assessment. The sufficiency of the material on the basis of which he formed such a belief is not open to judicial review.
 - ▶ Yogendrakumar Gupta v. Income-tax Officer, reported in [2014] 366 ITR 186 [Guj]
-



Reopening based on Inv wing info

CIT v. Kamdhenu Steel & Alloys Ltd. 248 CTR 33 (Delhi)(High Court)

- Notice issued after the expiry of four years
- merely acting mechanically on the information supplied by the Investigation wing about the accommodation entries provided by the assessee to certain entities without applying his own mind was led to be not justified



Info from Inv. Wing

- ▶ In case of **PCIT vs. RMG Polyvinyl (I) Ltd [2017] 83 taxmann.com 348 (Delhi)** it was held by the **Hon'ble Delhi High court** that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified



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- ▶ In case of **PCIT vs. Meenakshi Overseas (P.) Ltd. [2017] 82 taxmann.com 300 (Delhi)** it was held by the Hon'ble Delhi High court that where reassessment was resorted to on basis of information from DIT(Investigation) that assessee had received accommodation entry but and there was no independent application of mind by Assessing Officer to tangible material and reasons failed to demonstrate link between tangible material and formation of reason to believe that income had escaped assessment, reassessment was not justified
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- ▶ In case of **Haryana Acrylic Manufacturing Co. v. CIT [2008] 175 Taxman 262 (Delhi)** it was held by the Hon'ble Delhi High Court that notice under section 148, giving reason that it had come to his notice that assessee had taken accommodation entries from 'H' during relevant year when assessee, in course of original assessment proceedings, had supplied all relevant details; in assessment order which were verified and moreover, in reasons supplied to assessee there was no allegation that it had failed to disclose fully and truly all material facts necessary for assessment and because of its failure there had been an escapement of income chargeable to tax, reopening of assessment after expiry of four years from end of relevant assessment year was without jurisdiction



Statement of third / unconnected person :

In the absence of any material before the AO a statement by an unconnected person did not constitute reason to believe that assessee income had escaped assessment

especially when the assessee had produced all the material and relevant facts and therefore the reassessment proceedings could not be sustained.

- Praful Chunilal Patel vs. M.J. Makwana, ACIT (1999) 236 ITR 832 (Guj)(HC)
- JCIT & Ors vs. George Williamson (Assam) Ltd (2002) 258 ITR 126 (Guj)(HC)



Statement of third / unconnected person :

Reopening mainly based on statement of Shri Pravin Kumar Jain which had been retracted by him on Affidavit before the issuance of notice.

Held reopening was found to be illegal and void holding that reasons recorded were mechanical and without application of mind whatsoever by the Assessing Officer to the information received from the DGIT (Inv.)


- **Komal Agrotech P. Limited v. ITO (ITA.No.437/Hyd/2016)**
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Statement of third / unconnected person :

Reassessment based on statement of third party-Assessee not given opportunity to be heard-Reassessment not valid.

- Kothari Metals v. ITO (2015) 377 ITR 581 (Karn.)(HC)

Statement recorded by Police Officer under section 161 of Code of Criminal Procedure, 1973, is neither given 'on oath' nor it is tested by cross examination. Therefore, such a statement cannot be treated as substantive evidence to reopen assessment proceedings.

- Subhash Chander Goel v. ITO (2016) 156 ITD 808 (Chd.)(Trib.) it
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Statement of third/unconnected persons

Statement of third party cannot be the sole basis for disallowing the claim of the assessee in respect of capital gains .

The s. 131 statement implicating the assessee is not sufficient to draw an adverse inference against the assessee

when the documentary evidence in the form of contract notes, bank statements, STT payments etc prove genuine purchase and sale of the penny stock.

Failure to provide cross examination is a fatal error. Additions made by the AO was deleted. Reassessment was held to be invalid .

- Kamla Devi S. Doshi v. ITO (2017) 57 ITR 1 (Mum.) (Trib) the tribunal observed that the



Other decisions on 148 based on Inv wing

CIT vs. Insecticides (India)
Ltd. (2013) 357 ITR 330
(DEL)

Signature Hotels Pvt. Ltd.
vs. ITO (2011) 338 ITR
51(Del)



Return in response to 148 and Penalty

Notice u/s 148 received

Assessee offers additional income In return filed in response to S.148 before receipt of reasons

Return income is accepted in S.147 order

No penalty u/s 271(1)(c)

- CIT v. Suresh Chandra Mittal 251 ITR 963 (SC)
- Meeta Gutgutia ITA No. 327/Del/2014
- CIT v. Rajiv Garg [2009] 313 ITR 256 (P&H)
- Swati Pearls (ITA 1401/Hyd/2014)

► • Prem Pal Gandhi; 335 ITR 23 (Against)

SUSPICIOUS TRANSACTIONS

Commodity profits entries

Commodity loss entries

Third Party statements

- Reassessment based on statement of third party-Assessee not given opportunity to be heard-Reassessment not valid.
- *Kothari Metals v. ITO (2015) 377 ITR 581 (Karn.)(HC)*



Report of DVO

AO has to apply his mind

Merely on basis of DVO report reopening invalid

- *Prakash Chand v. Dy. CIT & Ors.* 269 ITR 260 (MP)
- *Girdhar Gopal Gulati v. UOI*(2004) 269 ITR 45 (All)
- *Meena Devi Mansighka* (2008) 303 ITR 351
- *Assistant CIT v. Dhariya Construction Co.* (2010) 328 ITR 0515.



Reopening based on Retro amendment

Within four years

- Permissible

Beyond four years

- Not permissible



Section 150 : LIMITATION PRESCRIBED

The Tribunal do not have power to give any finding or direction in respect of another year / period which is not before the authority as held by Supreme Court in

- CIT vs. Green World Corporation [2009] 314 ITR 81 (SC).



**Analysis of Motilal R. Todi vs.
ACIT (ITAT Mumbai)**

Motilal R. Todi vs. ACIT (ITAT Mumbai)

Availability of the new tangible material indicating escaped income of the assessee,

which should have come into possession of the AO, after the passing of original assessment order,

whether u/s 143(3) or 143(1),



Motiram Todi

- ▶ 'Reasons' recorded should not be based on **change of opinion**
 - ▶ 'Reasons' should be such that any person of **ordinary prudence** should be in a position to **make a belief about escapement** of income on the basis of facts narrated and material referred to
 - ▶ The 'Reasons' should show that, there is rational **nexus and cause & effect relationship between the material sought be relied upon in the Reasons and belief sought to be formed** by the AO about escapement of income.
-



Motilal R. Todi vs. ACIT (ITAT Mumbai)

- ▶ In case reopening is sought to be done by the AO **after expiry of four years** from the end of the relevant assessment year and
- ▶ original assessment was framed u/s **143(3)** then
- ▶ reasons can be recorded only if there was **failure on the part of the assessee** in disclosure of material of facts, as has been envisaged in first proviso to section 147.




Motilal R. Todi vs. ACIT (ITAT Mumbai)

Before **issuing notice** on the reasons recorded

sanction from the competent authority

Before granting its sanction, the sanctioning authority is required to

- record its satisfaction based upon its independent application of mind,
 - making out a case that as per the facts narrated and material referred to in the 'Reasons'
 - a belief can be formed about escapement of income and case sought to be reopened is a fit case for reopening
-
- 

Motilal R. Todi vs. ACIT (ITAT Mumbai)

After obtaining the sanction, the AO is required to

issue and serve notice u/s 148 upon the assessee,

within the time limit as prescribed u/s 149,

to enable him to assume jurisdiction to reopen the assessment




Motilal R. Todi vs. ACIT (ITAT Mumbai)

The assessee is required to file a return of income, in response to notice u/s 148 and may request for the copy of reasons.

The AO is bound, as per law, to provide a certified and verbatim copy of Reasons to the assessee.

The assessee may file its objections before the AO, to the Reasons recorded, if any.

AO is obliged to dispose of these objections and intimate the same to the assessee, before proceeding further with the reassessment proceedings.



Motilal R. Todi vs. ACIT (ITAT Mumbai)

- ▶ Thereafter, the AO is obliged to issue and serve notice u/s 143(2) to enable him to make assessment of the return filed by the assessee.
- ▶ Framing of the re-assessment order by the AO u/s 147/143(3) after providing adequate opportunity of hearing to the assessee and considering replies and evidences of the assessee



At a glance

Note the date of receipt of notice

Evaluate your facts before submitting return

Read the reasons very minutely

Inspect Assessment records

Object on technical as well as factual front

File objections

Always take jurisdiction ground



▶ Way ahead...

- ▶ Time limit reduced to 3 yrs
- ▶ Reasons to be informed upfront
- ▶ Over 50L asset evasion 10 yrs

"What was a heavily litigated area, we have tried to rationalise it to the extent that it is no longer left to the discretion of assessing officer. It would be more of information-based attempt to reopen the cases. It would be primarily based on data analytics and risk assessment which the system throws up which would lead to reopening of assessment,"

CBDT Chairman



Thank You

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