

**ORGANISED BY: Western India Regional Council of
The Institute of Chartered Accountants of India**

SUBJECT: Reassessment under section 147

DATE: 21th June, 2015

TIME: 12.15 PM TO 1.30 PM

VENUE: Terapanth Bhavan, Thakur Complex, Kandivali (East), Mumbai.

BY CA VIMAL PUNMIYA

A) RE-ASSESSMENT.

Reassessment is one of the distinguishing weapons in the armoury of the Department, empowers the Assessing Officer to assess, reassess or recompute income, turnover etc, which has escaped assessment.

Powers of the Assessing Officer to re-open a completed assessment are not unfertile. Sec. 147 and Section 148 of the Act contains the requisite conditions to be fulfilled for invoking the jurisdiction to reopen the assessment.

✚ Procedure for Re-assessment:-

Step	Action
1	The AO must have reasons. The existence of reasons is mandatory.
2	On the basis of such reasons, the OA must form a belief that there is a situation of actual or deemed escapement of Income and therefore action is required u/s 147. (If time limit is not passed.)
3	AO must record such reasons in writing.
4	AO must obtain sanctions from higher authority u/s 151, wherever necessary.
5	AO must issue notice u/s 148 with in prescribed time limit.
6	AO must serve notice upon the assessee.
7	Assessee SHALL submit return within time period prescribed in the Notice.
8	Issue Notice u/s 143(2).
9	Assessee may demand reasons of proceeding u/s 147 from AO.
10	If the assessee does not demand reasons, the AO can proceed to complete assessment.
11	If the assessee demands reasons, the AO must provide reasons to the assessee.
12	Assessee can submit the objections.
13	AO must passed the speaking order on objection raised by assessee.
14	Assessee can file Writ Petition before High Court if aggrieved by the order of objection and re-assessment proceeding.
15	File details and advance all the arguments.
16	Assessment shall be completed by passing order within prescribed time limit.

Important Points:-

✚ **STAP 5:-**Normally time limit for issue of Notice period is 4 or 6 years:-

- i) 4 years if the escaped Income less than Rs.1,00,000/-.
- ii) 6 years if the escaped income is Rs.1,00,000/- or more.
- iii) 16 years if related to Asset located outside India.

But, if there is any specific direction contain in an order passed by the authority in any proceeding under act by way of appeal/ revision or by a court. In that situation indefinite period. But, if at the time when the order which was subject matter of appeal or revision was passed, the time-limit fir issuance of Notice u/s 148 had already expired, the Time limit of indefinite period will not apply.

☞ **STEP 7:-** Assessee instead of filing fresh return, can request for considering the return filed u/s 139(1) or 139(1)/(4)/(5) in response to Notice u/s 148.

<u>Specimen copy of letter to AO</u>	
<p>To,</p> <p>.....,</p> <p>.....</p> <p>.....</p> <p style="text-align: center;">REG:-Assessee Name PAN:-..... SUB: - REPLY TO NOTICE U\S 148 OF INCOME TAX ACT 1961 FOR A.Y.</p> <p>Respected sir,</p> <p style="text-align: center;">In connection with the aforesaid subject matter and under instruction from our aforesaid client. We would like to state that—</p> <p>The Assessee has filed the return of income for the Assessment Year dated The Original return filed on should be considered as return U\s 148.</p> <p>We request your good self to kindly <u>provide us the reasons recorded for re-opening</u> the assessment. Which would enable us to file proper objection/ details.</p> <p>Thanking You</p>	<p>Date:-</p>
<p>For</p>	

☞ **STEP 8:-** Notice u/s. 143(2) is Mandatory. CIT vs. Mundra Nanvati (Bombay High Court) (2009) 227 CTR 387 Bom.

☞ **STEP 11:-** Assessing officer is duty bound to provide the copy of reason recorded within reasonable time as per guidelines of Hon'ble Supreme Court in case of **GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (SC).**

☞ **STEP 12:-** Reopening u/s 148 can be challenged on the Following Grounds:

A. Issue is subject matter of appeal, therefore out of the scope of section 148.

Appeal pending from original assessment order. Reassessment cannot be done as the order merged with order of Higher authorities.

Proviso to section 147 has been inserted by Finance Act, 2008, w.e.f. 2008.

Notes on clauses.(2008) 298 ITR 163 (st),

Memorandum explaining the provision.(2008) 298 ITR St. 222 to 224

Metro Auto Corporation vs. ITO (2006) 286 ITR 618 (Bom)

<i>Vodafone Essar Gujarat Ltd. Vs. ACIT (2010) 37 DTR 259 (Guj.)</i>	
Appeal was pending before ITAT and the matter was subject matter of appeal before CIT(A).No Reassessment. Once an issue is subject matter of appeal before Tribunal, issuance of Notice of reassessment on said ground has to be considered bad-in-law.	<i>Chika Overseas (P) Ltd v ITO 2011) 131ITR 471(Mum)(Trib)</i>

B. Permission is not obtained from appropriate authority.

Section 151 put condition on AO to take the prior approval from appropriate authority. If the AO obtain the approval from any other authority even from higher authority. Then also proceeding u/s 148 is invalid.

<i>Reassessment proceedings based on an approval granted by Commissioner of Income Tax instead of Additional Commissioner / Joint Commissioner of Income Tax are required to be held to be invalid.</i>	<p>a) <i>ITO V SHRI RUPKUMAR BALCHAND ROHRA I.T.A NO. 4999 / MUM / 2010</i></p> <p>b) <i>DSJ COMMUNICATIONS LTD V DCIT [2014] 41 TAXMANN.COM 151 BOMBAY</i></p> <p>c) <i>Sunita Investment & Technologies P Ltd. V/s ACIT [2012] 26 taxmann.com 260 (delhi)</i></p>
<i>Whether since section 151(2) mandates that sanction to be taken for issuance of notice under section 148 in certain cases has to be of Joint Commissioner, reopening of assessment with approval of Commissioner is unsustainable - Held, yes</i>	<i>d) SHRI GHANSHYAM K KHABRANI V ACIT [2012] 20 TAXMANN. COM 716 [BOM HC]</i>

C. Assessment year involved in reassessment proceeding is out of the Time limit for Reopening.

Re-assessment proceeding can be initiated only for last 6 re-assessment year. If the year involved is beyond the 6 years. Re-assessment proceeding cannot be initiate. However, the time limit will be 4 years only if assessment has already been made and where assessee has not failed to file a return of income u/s 139, 142(1) or 148 or has not failed to disclose fully and truly all material facts necessary for the assessment for that AY.

D. Proceeding u/s 148 cannot be initiate on audit objection:

Adani Exports vs. DCIT (1999) 240 ITR 224 (Guj)

Reassessment was not valid as the AO held no belief on his own at any point of time that income of assessee had escaped asst. on account of erroneous computation of be Benefit u/s 80HHC and was constrained to issue notice only on the basis of audit objection.

E. Proceeding u/s 148 cannot be initiate to review the earlier opinion:

<i>The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power.</i>	<i>Aventis Pharma L td. vs. ACIT (2010) 323 ITR 570 (Bom)</i>
<i>AO having allowed assessee's claim depreciation in the</i>	<i>IL & FS Investme</i>

<i>regular assessment and reopened the assessment pursuant to audit objection, it cannot be said that he had formed his own opinion that the income had escaped assessment, and the reopening being based on mere change of opinion, same was not valid.</i>	<i>nt Managers Ltd. vs. ITO & Ors. (2008) 298 ITR 32 (Bom)</i>
<i>The assessing officer has been given power to reassess u/s147 upon certain conditions being satisfied and the AO does not have power to re-view. If such a change of opinion were to be permitted as a ground of reassessment then it would amount to granting license to the AO to re-view his decision, which he doesn't have under the Provision of Section 147.</i>	<i>D. T. & T. D. C. Ltd. vs. CIT (2010) 324 ITR 234 (Del.)</i>
<i>Issue regarding addition of amount of deferred taxation for computing book profits u/s115JB having been raised by the AO at the time of original assessment u/s. 143(3) and no addition having been made by AO on the account on being satisfied with the explanation of the assessee reopening of assessment on the very same issue suffered from change of opinion in the absence of any fresh material hence invalid.</i>	<i>M.J. Pharmaceuticals Ltd vs. CIT (2008) 297 ITR 119 (Bom)</i>
<i>In determining whether commencement of reassessment proceeding was valid it has only to be seen whether proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the same. The sufficiency of correctness of the material is not a thing to be consider at this stage.</i>	<i>Raymond Woollen Mills Ltd. Vs. ITO (1999) 236 ITR 34 (S.C.)</i>
<i>No new material brought on records- Reassessment on change of opinion of officer not valid</i>	<i>Asteroids Trading & Investment P. Ltd. vs DCIT (2009) 308 ITR 190 (Bom) (193)</i>
<i>Reopening of assessment on the same ground in the absence of any tangible material was based on mere change of opinion and therefore is not sustainable.</i>	<i>ICICI Prudential Life Insurance Co Ltd. (2010) 325 ITR 471 (Bom)</i>
<p>AO has no power to reopen case on change of opinion. <i>CIT vs. Kelvinator of India Ltd (2010) 320 ITR 561 (SC)</i> <i>Asian Paints Ltd. vs. DCIT (2008) 308 ITR 195 (Bom) (198)</i> <i>Bhavesh Developers vs. A.O. (2010) 224 CTR 160 (Bom)</i> <i>International Global Networks BV v. DDIT (IT) (2012) 50 SOT 433 (Mum) (Trib General Insurance Corporation of India v. Dy .CIT (2012) Vol.114 (1) Bom. L. R. 024 (High Court):</i></p>	

F. No reassessment just to make an enquiry or varification:

<p>i. No reopening to make fishing inquiries. ii. <i>Bhor Industries Ltd. v/s. ACIT - [(2004) 267 ITR 161 (Bom)]</i> iii. <i>Hindutan Lever Ltd. v/s. R. B. Wadkar, ACIT [(2004) 268 ITR 332 (Bom)]</i> iv. <i>Bhogwati Sahakari Sakhar Karkhana Ltd. v/s DCIT (2004) 269 ITR 186 (Bom)</i> v. <i>Ajanta Pharma Ltd. v/s. ACIT - [(2004) 267 ITR 200 (Bom)]</i> vi. <i>Grindwell Norton v/s. ACIT [(2004) 267 ITR 673 (Bom)</i></p>
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G. Reopening on the basis of information provided by other person or other officer is bad-in-law.

<p>CIT v. Smt. Laxmi Mehrotra [2014] 41 taxmann. com 427 (All. HC)</p>	<p>AO initiated reassessment proceedings on basis of information supplied by Investigation wing that assessee had made certain investment in purchase of plot and carrying out construction on it - Commissioner (Appeals) as well as Tribunal set aside reassessment proceedings taking a view that said proceedings were initiated mechanically on basis of information supplied by Investigation Wing and without ascertaining as to whether assessee had disclosed factum of purchase of plot and cost of construction in original return - Whether since revenue authorities could not controvert finding recorded by authorities below, impugned order passed by them was to be upheld - Held, yes</p>
<p>Madanlal Jindal Vs. ITO (92 ITR 546)</p>	<p>The Court observed that there is no indication in the reasons as to the source of material for the formation of belief. It was held that the Income-tax Officer has merely acted on the strength of the letter forwarded to him by another Income-tax Officer. The Court observed that although the letter of another Income-tax Officer could be a source of information upon which the Assessing Officer could form his independent belief, but in the present case, it is not clear as to whether the Assessing Officer made any efforts to form any independent belief or he has acted merely on the suggestion of another Income-tax Officer. Accordingly the notice u/s.148 of the Act was quashed by the Court.</p>

H. The reasons to believe is not the same thing as reasons to suspect".

<p><i>"The reasons to believe is not the same thing as reasons to suspect",</i></p>	<p>o <i>Indian Oil Corporation V/s ITO 159 ITR 956 (SC)</i></p>
<p><i>Under section 147 of I.T. Act, 1961, the words are "reason to believe" and not "reason to suspect" The belief entertained by the A.O. must not be arbitrary or rational. It must be in good faith and not a mere pretence, should have a rational connection and relevant bearing on the formation of the belief, and should not be extraneous or irrelevant. The material should be relating to the particular year, which the assessment is sought to be reopened. It is not any and every material, however vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of income.</i></p>	<p>o <i>Dass Friends Builders P. Ltd. vs. DCIT (2006) 280 ITR 77(All)</i></p>
<p><i>A.O. acting under information from investigation wing - no independent application of mind - not amount to formation of belief - notices to be quashed.</i></p>	<p>o <i>Sarthak Securities Co. P. Ltd. vs. ITO - (2010) 329 ITR 110 (Delhi)</i></p>
<p><i>A mere confessional statement by a third party (who is a lender of the assessee) that he was a mere name-lender and that all his transactions of loans were bogus, without naming the assessee as one who had obtained bogus loans, would not</i></p>	<p>o <i>S.P. Agarwalla alias Sukhdeo Prasad Agarwalla v. ITO [1983] 140 ITR 1010 (Cal.)</i></p>

<i>be sufficient to hold that the assessee's income had escaped assessment.</i>	
<i>"Reason to believe" in section 26 of the Indian Penal Code held that reason to believe is not the same as suspicion and a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned.</i>	○ <i>Joti Prasad vs. State of Haryana 1993 AIR 1167 (SC)</i>
<i>"The words "if the Income Tax Officer has reason to believe "used in Section 147(a) suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act under this Section on direct or circumstantial evidence but not on mere suspicion gossip or rumor. The powers under this section are not plenary. They are subject to judicial review".</i>	○ <i>Ashok Kumar Sen V/s CIT 132 ITR 707 (Del. HC)</i>
<i>Proceedings under section 147 of the Act cannot be initiated on the basis of the other than tangible material.</i>	○ <i>ITO vs. Lakhmani Mewal Das 103 ITR 437</i> ○ <i>United Electrical Co. Pvt. Ltd. vs. CIT (2002) 258 ITR 317 (Del HC)</i> ○ <i>CIT v. Kelvinator India 256 ITR 1(SC)</i>
<i>The words has "reason to believe" entertained by the Assessing Officer must not be arbitrary or irrational</i>	○ <i>Ganga Saran & Sons Pvt. Ltd. vs. ITO 130 ITR 1</i>

I. No Reopening If Assessee Disclosed All The Facts Fully & Truly At The Time Of Original Assessment.

<i>Tribunal having concluded that all the material facts were fully and truly disclosed by the assessee at the time of original assessment, invoking the provisions of S. 147 after the expiry of four years from the end of the relevant asst. year was not valid.</i>	<i>Jashan Textiles Mills P. Ltgd. Vs. DCIT (2006) 284 ITR 542 (Bom):</i>
<i>Full and true disclosures of all material facts: Re-opening is invalid</i> a) <i>Bhagwati Shankari Karkhana (2004) 269 ITR 186 (Bom)</i> b) <i>Western Outdoor Interactive (2006) 286 ITR 620 (Bom)</i> c) <i>Hindustan Lever Ltd. (2004) 267 ITR 161 (Bom)</i> d) <i>Prashant Project Ltd. vs. Asst. CIT (2011) 333 ITR 368 (Bom)</i> e) <i>Hindustan Petroleum Corporation Ltd. vs. Dy. CIT (2010) 328 ITR 534 (Bom)</i> f) <i>Nihilent Technologies (P) Ltd v Dy CIT (2011) 59 DTR 281 (Bom)</i> g) <i>Shriram Foundry Ltd v. Dy.CIT (2012) 250 CTR 116 (Bom.)</i> h) <i>Monitor India (P) Ltd v. UOI (2012) 68 DTR 313 (Bom)</i> i) <i>HCL Corporation Ltd. v. ACIT (2012) 66 DTR 473 (Delhi)(High Court)</i> j) <i>Kimplas Trenton Fittings Ltd. v.ACIT (2012) 340 ITR 299 (Bom.)</i>	
<i>Division Bench of this Court observed that the assessment cannot be reopened to verify whether any income chargeable to tax has escaped assessment and further that reopening of assessment cannot be permitted on vague and nonexistent reasons for a mere fishing inquiry.</i>	<i>Bakulbhai Ramanlal Patel v. Income Tax Officer</i>
<i>It is necessary for the AO to first state that there is a failure to disclose fully and truly all material facts. If he does not record such a failure he would not be entitled to proceed u/s 147. There is a well-known difference</i>	<i>Titanor Components Limited vs ACIT (2011) 60 DTR 273 (Bom.) (High Court)</i>

<i>between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts.</i>	<i>Hindustan Lever (2004) 268 ITR 332 (Bom) followed).</i>
<i>The assessing officer is not entitled to make a pure guess and make an assessment without reference of any evidence or materials at all.</i>	<i>Dhakeshwari Cotton Mills V, CIT 26 ITR 775,782-SC</i>

☞ **STEP 13:- Assessing Officer should passed the speaking order on objection filed by the assessee:**

The hon'ble Supreme Court Decided the Ratio of Re-assessment In case of **GKN DRIVESHAFIT (INDIA) LTD. V/S ITO 259 ITR 19** u/s 147 as under:

*we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. 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. In the instant case, as the reasons have been disclosed in these proceedings, **the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment** in respect of the abovesaid five assessment years.*

Thus, AO has under obligation to first dispose of the objections raise by assessee and thereafter frame the reassessment order.

<i>Where Assessing Officer started reassessment proceedings, Assessing Officer was required to decide preliminary objections and pass a speaking order disposing of objections raised by petitioner and until such a speaking order was passed, Assessing Officer could not undertake reassessment.</i>	<i>Arvind Mills Ltd. v. Asst. CWT (No. 1) [2004] 270 ITR 467 (Guj.) Mgm Exports v. DCIT [2010] 323 ITR 331 (GUJ.)</i>
<i>Assessing Officer has to apply his mind to objections raised by assessee to reopening and has to deal with same in order.</i>	<i>Jay Bharat Maruti Ltd. v. ACIT [2013] 33 taxmann.com 361 (Delhi)</i>
<i>Whether where Assessing Officer passed assessment order under section 147 without first passing a speaking order on objections raised by assessee to issuance of notice under section 148, in view of decision of Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19/[2002] 125 Taxman 963, assessment was liable to be set aside - Held, yes</i>	<i>Keshav Shares & Stocks Ltd. v. ITO [2008] 174 TAXMAN 63 (DELHI)</i>
<i>Whether where assessee filed objections against a notice issued under sections 147 and 148, Assessing Officer has to dispose of such objections by passing a speaking order before proceeding with assessment - Held, yes</i>	<i>Smt. Kamlesh Sharmav. B.L. Meena, ITO, Ward 23(3) [2007] 159 TAXMAN 330 (DELHI)</i>
<i>Where Assessing Officer did not deal with objections filed</i>	<i>IOT Infrastructure &</i>

<p><i>by assessee to reopening of assessment, in view of decision of Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2003]259 ITR 19 , matter was to be remitted to Assessing Officer to pass fresh order on objections raised by assessee to proposed reassessment.</i></p>	<p><i>Energy Services Ltd.v .ACIT [2010] 233 CTR 175(BOM.)</i></p>
<p><i>Where the Assessing Officer passed an order of reassessment without hearing objections of assessee, it was held that the Assessing Officer had acted arbitrarily and in a manner clearly contrary to law in passing an order without disposing of the objections of the assessee and such order was liable to be set aside.</i></p>	<p><i>Rabo India Finance Ltd. v. DCIT [2012] 27 taxmann.com 163 (Bombay)</i></p>

⚡ **STEP 14:** Against the order passed on objection is not an appeal order. Therefore, appeal cannot be filed before CIT(A) or ITAT. Therefore, Assessee can file write petition to High Court. However, the assessee can challenge of validity of reopening u/s 148 before CIT(A) during appeal Proceeding against the re-assessment order.

⚡ **STEP 15:** During the reassessment proceeding the assessee advance all the argument and provide all the details for proving that Income had not escape the assessment. Now days the issue of bogus purchase are in lime lite. For that issue representative can advance their arguments on following points:-

SN	Basis of Argument	Decision in support
1	Suspicious cannot take place the evidence	1. DCIT v. Shri Rajeev G. Kalathil, (Mum) (Trib) (ITA No. 6727/M/2012 dt.20/8/2014 2. K.P. Varghese v. ITO, (1981) 131 ITR 579 (SC); 3. CIT v. Roman & Co., (1968) : 67 ITR 11 (SC); 4. CIT v. Calcutta Discount Co. Ltd.', (1973) 91 ITR 8 (SC); 5. Umacharan Shaw & Bros v. CIT', (1959) 37 ITR 271 (SC)
2	Observation of Third party cannot be basis of addition. Satisfaction of AO is must:	6. ITO V/s Permanand [2008 25 SOT 11] 7. ITO v. Vinod Kumar, Prop., Vinod Brothers, Sriganganagar, [ITA No. 623/Jodh. of 2005 8. ITO V/s Arora Alloys Ltd. [2012] [12 ITR (trib) 263]
3	Term Suspicious as M-VAT was not paid, by collecting the M-VAT Sales tax department acknowledge that purchases are genuine:	9. Balaji Textile Industries P Ltd. V/s ITO 49 ITD(177 (Bom)

4	<i>100% Gross Profit not possible:</i>	<i>For making Purchase, there has to be sales. 100%gross profit cannot be possible.</i>
5	<i>When Quantity tallied, No addition can be made:</i>	<p>10. Balaji Textile Industries (P) Ltd v. ITO(1994) 49 ITD 177(Bom)</p> <p>11. DCIT v. Adinath Industires (2001) : 252 ITR 476 (Guj)</p> <p>12. CIT v. M K Brothers (1987) : 163 ITR 249 (Guj)</p> <p>13. DCIT v. Adinath Industries (2001) : 247 ITR 35</p> <p>14. DY. CIT V. BRAHMAPUTRA STEELS (P) LTD. [2002] 122 TAXMAN 32 (ATA-GAUHATI)-</p>
6	<i>Purchase party not found but the sales against the purchase is accepted. Then the addition cannot be made:-</i>	<p>15. Rajesh P Soni V/s ACIT 100 TTJ 892 (Ahd)</p> <p>16. CIT V/s Nikunj Eximp Enterprises (P.) Ltd.* [2013] 35 taxmann.com 384 (Bombay HC)</p>
7	<i>Addition cannot be made without evidence:</i>	<p>17. ITO V/s Permanand [2008 25 SOT 11]</p> <p>18. CIT V/s M K Bros. [163 ITR 249]</p> <p>19. CIT V. Kashiram Textile Milss P Ltd. [2006] 284 ITR 61 (GUJ)</p> <p>20. Saraswathi Oil Traders V. CIT [2000] 254 ITR 259 (SC), 174 CTR 108 (SC)</p>
8	<i>AO relied on third party information without cross-examination. Hence, can't be relied :</i>	<p>21. Kishan Chand Chella Ram v. CIT [1980] 125 ITR 713 (SC)</p> <p>22. Marneedi Satyam V/s Masimukkula Venkataswami [AIR 1949 Mad 689]</p> <p>23. ITO V/s Permanand [2008 25 SOT 11]</p>
9	<i>AO failed to discharge his duty to prove the transaction as bogus :</i>	<p>24. ITO V/s Permanand [2008 25 SOT 11]</p> <p>25. DCIT v. Shri Rajeev G. Kalathil, (Mum) (Trib) (ITA No. 6727/M/2012 dt.20/8/2014.</p>
10	<i>Payments were made by account payee cheques. This fact would over shadow all other short coming.</i>	<p>26. Mather & Platt (India) Ltd. vs CIT 168 ITR 493 Cal</p> <p>27. ITO V/s Kashmir Ind. Palace 99 Taxmann (Chd) (Mag)</p> <p>28. Ramanand Sagar V/s DCIT 256 ITR 134 (Bom)</p> <p>29. CIT-I v. Nangalia Fabrics (P.) Ltd. [2013] 40 taxmann.com 206 (Gujarat)</p> <p>30. CIT V. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (CAL)</p>

		31. CIT V/s Basant Investment Corporation (1999) 238 ITR 680 (Cal).
11	Transaction duly supported by the evidence, no evidence that cash received back. Addition cannot be made:	32. CIT V/s M K Bros. [163 ITR 249] 33. ITO V/s Kanchanwala Gems 122 TTJ 854
12	No Defects in books of account found by the AO. Hence, the addition cannot be made on mere statement basis:	34. R K Synthetics V/s ITO 81 TTJ 909
13	Identity, Source of payment explained, Bank payment, Books of account accepted, Then addition of book entries cannot be take place:	35. Babulal C Borana V/s ITO [282 ITR 251]
14	Bank Account open after KYC. Hence, identity prove.	36. Shri Ganpatraj A Sanghavi V/s ACIT I .T.A. No.2826/Mum/2013
15	WITHOUT PREJUDICE TO ABOVE: Credit of Bogus purchase will be allowed if the same is sold or lying in stock:	37. Free India Assurance Services Ltd. V/s DCIT [2011] 12 taxmann.com 424 (Mum)
16	Section 69C cannot be apply when the source is explained:	When purchase party payment is shown in bank account. Thus, the source of purchase is explained. Hence, addition cannot be made.
17	Suppliers names appear in the list of hawala dealers of the sales-tax dept and that assessee is unable to produce them does not mean that the purchases are bogus if the payment is through banking channels & GP ratio becomes abnormally high.	38. Asstt. CIT V/s Shri Ramila Pravin Shah ITA No.5246/Mum/2013 39. Shri Paresh Arvind Gandhi v/s Income tax Officer-25 (2)(2) ITA No.5706/Mum/2013
18	Assessment made without disclosing to the assessee the information is violation of fundamental rules of justice.	40. Lalchand Bhagat Ambica Dav V/s CIT (37 ITR 28)(SC) 41. DCIT v. M/S. PREMSONS (ITAT MUMBAI) [2009] 42. CIT v/s S. Khader Khan Son [2012] 25 taxmann.com 413 (SC) 43. DHAKESWARI COTTON MILLS LTD. v. CIT [1954] 26 ITR 777 44. SETH GURUMUKH SINGH v. CIT [1944] 12 ITR 393 45. Jai Karan Sharma v/s DCIT [2012] 23 taxmann.com 300 (Delhi) 46. Hamish Engineering Industries (P.) Ltd.

		V/s DCIT [2009] 120 ITD 166 (MUM. Trib.) 47. Kishinchand Chellaram v/s CIT [1980] 4 Taxman 29 (SC)
19	Non-production of parties cannot be basis for addition	48. ANIL KUMAR MIDHA (HUF) V/s ITO [2006] 153 TAXMAN 65 (JODH.) (MAG.) 49. CIT V/s Divine Leasing etc 299 ITR 268 (Del HC) SLP was also dismissed by Hon'ble Supreme Court. 50. Mather & Platt (India) Ltd. V/s CIT (1987) 168 ITR 493 (Cal HC) 51. Dy CIT V/s Rohini Builders [2002] 256 ITR 360 (GUJ). SLP was also dismissed by the Hon'ble Supreme Court. 52. Anis Ahmed V/s CIT (2008) 297 ITR 441 (SC) 53. CIT V/s U K Shah (1973) 90 ITR 396 (Bom. HC) 54. Add. CIT V/s Hanuman Agarwal (1984) 151 ITR 150 (Patna HC) 55. Jhaver Bhai Bihari Lal & Co. v. CIT [1985] 154 ITR 591/ 21 Taxman 238 56. CIT vs. Sahibganj Electric Cables (P) Ltd. [1978 115 ITR 408]

✎ **STEP 16:** Assessment order should be passed within the prescribed Time limit of 1 year from the end of the Financial Year in which notice u/s 148 is served upon the assessee.

✎ **Some Other Points:-**

- A) Once Asst is open – any other income can be considered. Expl 3 to sec 147: CIT v/s. Best Wood (2011) 331 ITR 63 (Ker.) FB.
- B) Reasons to be formed only by Jurisdictional Assessing Officer and not any other Assessing Officer, and issuance of notice is mandatory.
- C) No reassessment u/s. 148, if assessment or reassessment is pending. CIT v/s. Qatalys Software Technology (2009) 308 ITR 249 (Mad).
- D) When time limit for issue of notice under section 143(2) has not expired, Assessing Officer cannot initiate proceedings under section 147. Super Spinning Mills Ltd. vs. Addl. CIT (2010) 38 SOT 14 (Chennai)(TM)(Trib.).
- E) AO had no jurisdiction to reopen the concluded assessments on the strength of valuation report of valuation officer obtained subsequently and that too not in exercise of powers u/s. 55A impugned notices under S. 148 quashed. Prakash Chand vs. Dy. CIT & ors. (2004) 269 ITR 260 (MP)

F) Reassessment jurisdiction is available for benefit of revenue only. CIT vs. Sun Engineering Works (p.) Ltd. (1992) 198 ITR 297 (SC).

G) Ignorance of board circular is not sufficient to Reopen. Dr. H. Habicht V. Makhija (1985) 154 ITR 552 (Bom.).

H) Concept of Deemed Escapement:-

- a) Where no return is filed although the total income exceeded the maximum amount not chargeable to tax.
 - b) Where a return has been furnished, but no assessment is finalized and it is noticed by the AO that assessee has:-
 - i) Understated income, or
 - ii) Claimed excessive loss, deduction, allowance or relief in return
 - c) Where an assessment has been made but:-
 - i) Income has been under-assessed, or
 - ii) Income has been assessed at too low rate, or
 - iii) Income has been made subjective to excessive relief, or
 - iv) Excessive loss/ depreciation/ any other allowance has been computed.
 - d) Where the assessee has failed to submit a report in respect of International transaction u/s 92E.
- I) Where a person found to have any asset (Including financial interest in any entity) located outside India.

☞ **After Reassessment order:-**

After re-assessment order, if the Assessee is aggrieved by the order of the AO, he can file appeal before CIT(A).

☞ **Penalty Proceeding:-**

- a) It is the general policy of Income Tax Officers to initiate penalty for Every addition made during assessment.
- b) Against the initiation of penalty first assessee can request AO to keep penalty proceeding in abeyance u/s 275 till the order of the appellate authorities.
- c) And otherwise raised the submission of following aspects.

SN	Observation:	Judgments:
1.	A mere making of the claim, which is not sustainable in the law, by itself will not amount to furnishing inaccurate particulars of income of the assessee./ Mere erroneous claim, in the absence of concealment or inaccurate particulars of income cannot be a ground for levying penalty.	<ul style="list-style-type: none"> • CIT V. Reliance Petro products (P) Ltd. 189 TAXMAN 322/230 CTR 320/322 ITR 158 (SC) • CIT V. SSP LTD. TAXMAN 282/328 ITR 643

2.	A legal claim per se, right or wrong, cannot amount to furnishing of inaccurate particulars of income.	<ul style="list-style-type: none"> Industrial Development Bank of India Ltd. Vs. Dy. CIT 42 SOT 325
3.	Mere addition to income does not mean there is concealment of income	<ul style="list-style-type: none"> CIT V. IndenBislars 240 ITR 943, 158CTR 323, 118 Taxmann 766
4.	Unless the filing of return is accompanied by a guilty mind, penalty u/s 271(1)(c) cannot be levied.	<ul style="list-style-type: none"> Cement Marketing Co. of India Ltd. v. Asst. CST(1980) 124 ITR 15 (SC) CIT v. Ahmed Tea Co.(P) Ltd.(1978) 113 ITR 74 (Gau) Addl. CIT v. Sawan Motor Stores 109 ITR 660 (AP)
5.	Where additions was on estimation and was reduced by appellate authority, in light of above, there was no justification in imposing penalty especially when necessary information / particulars were furnished by assessee.	<ul style="list-style-type: none"> DabawaliTransaport Co. Asst. CIT (2010) 3 ITR (TRIB.) 785 CHD.)
6.	Concealment is attributable to an intention on part of the assessee to hide or conceal the income to avoid imposition of tax/ Case of conscious concealment was not visible.	<ul style="list-style-type: none"> K.C. Builders Vs. ACIT 265 ITR 562 India Cine Agencies Vs DCIT 275 ITR 430 CIT v. Sureshchandra Gupta 226 ITR 613 (MP) CIT v. GurbaxLal& Co. 176 CTR 82 (P & H)
7.	Where assessee has furnished all particulars of income, imposition of penalty is not automatic in nature.	<ul style="list-style-type: none"> Dilip N. Shroff V/S. Jt. CIT 291 ITR PG. 519 Twin Star Jupiter Co-op Hsg Ltd. V. ITO 31 SOT 474 ACIT Vs. Enpakc Motors Pvt. Ltd ITA NO. 914/MUM/2008.
8.	When income declared in survey on advice of survey officers that no penalty would be levied, - No case for penalty.	<ul style="list-style-type: none"> 68 ITD 550 (Pune) Silver Palace 94 TTJ 156 (Jd) – Narendra Kumar
9.	No presumption of concealment - No penalty u/s. 271(1)(c) for declaration in survey proceedings	<ul style="list-style-type: none"> 49 ITD 606 (Dli) - Amirchand
10.	Revised return filed after Survey – ITAT Held no concealment	<ul style="list-style-type: none"> 250 ITR 852 (Karn) – V Narashima Prasad 250 ITR 528 (Bom) Sudhir Kumar

		Chottubhai
11.	Declaration in survey is not a case of penalty as no concealment is detected and adv. Tax is paid as per return filed.	<ul style="list-style-type: none"> • 2996/M/01 Sushil H Gupta “A’ 23-12-2004
12.	Penalty u/s 271(1)(c) cannot be imposed in case where purchases are treated as bogus since assessee has failed to produce the parties before Assessing Officer for examination.	<ul style="list-style-type: none"> • Chempur v/s ITO I.T.A.No.451 /M/2006
13.	All the transactions were entered into between the parties through account payee cheque makes the question of identity of creditors fall into oblivion and it becomes absolutely irrelevant. Therefore, in assessee’s case no question of concealment arises especially when all transactions were through account payee cheque.	<ul style="list-style-type: none"> • Addl CIT vs. Bahri Bros. P.Ltd.,(154 ITR 244) Patna HC
14.	Section 271(1)(c) penalty not valid if “satisfaction” not recorded in the assessment order.	<ul style="list-style-type: none"> • Madhu Shree Gupta, 317 ITR 107 (Del HC)
15.	Assessee agreed for an addition of the undisclosed income, but does not agree for addition on the basis that the undisclosed income is his concealed income. Department has not brought any other materials to show that the assessee had concealed the income or furnished inaccurate particulars so as to warrant penalty under S. 271(1)(c) of the Act. No penalty can be imposed.	<ul style="list-style-type: none"> • CIT V/s C.J. Rathnaswamy 1997 223 ITR 5 (Mad HC)
16.	Where the addition is made on the basis of difference of opinion between the AO and the assessee, penalty u/s 271(1)(c) cannot be levied. <ul style="list-style-type: none"> • ITO Vs. Oasis Securities Ltd. (2010) 37 SOT 63 • CIT(Central) Ludhiana V. Sanitary Improvement & Tiles Mfg. Co.133 ITR 334. • CIT V.Prem Das(NO.1) 248 ITR 234 2001(P & H) • ACIT v. Firmenich Aromatics (India) Pvt. Ltd. [ITA No. 4654/Mum/2009] • Sarnath Infrastructure (P) Ltd. V. Asst. CIT (2009) 120 TTJ (LUCKNOW) 216. • CIT VsCaplin Point Laboratories Ltd. (Mad) 293 ITR 524 Madras 	
17.	Where the assessee makes a bonafide claim and no malafide can be attributed, then penalty cannot be levied./ Certain amounts claimed by assessee and disallowed	

	<p>does not mean that the assessee is guilty of fraud or willful neglect.</p> <ul style="list-style-type: none"> • CIT V. Aretic Investment (P) Ltd. (2010) 190 TAXMAN 157 • Yogesh R. Desai V. Asst. CIT (2010) 2 ITR 267 • CIT V/S. Phi Seeds India Ltd. 301 ITR 13 Delhi • CWT v. HasmukhlalGandalal (2003) 264 ITR 42 (Guj) • CIT V. IndenBislars(1999) 240 ITR 943(Mad) • Karan Raghav exports (P) Ltd. V. CIT (2012) 21 Taxman 8 (Del.) • CIT Vs. Zoom Communication P. Ltd. : [2010] 327 ITR 510 (Del) • CIT VS. Shri Pawan Kumar Dalmia 168 ITR 379
18.	<p>It is well settled law that findings in the assessment proceedings are relevant but not conclusive in penalty proceedings because the considerations that arise in penalty proceedings are different from those that arise in the assessment proceedings. [Assessee disclosed all material facts-although expenditure was disallowed- penalty u/s 271(1)(c) cannot be initiated.</p> <ul style="list-style-type: none"> • Ashok GrihUdyog Kendra (P) Ltd. Vs. ACIT [(2009) 120 ITD 151]
19.	<p>Assessing officer must have some definite evidence to refuse assessee's claim or evidence or explanation/ On account of non – acceptance of evidence furnished by assessee, addition can be made, but penalty under section 271 (1) (c) cannot be levied.</p> <ul style="list-style-type: none"> • ITO Vs. Raj Rajeshwari Enterprises [(2009) 30 SOT 521 (MUM)] • Mangilal G Biyani Vs. Asst. CIT [(2007) 158 TAXMAN 31 MUM] • CIT Vs. SardarmalShivdayal [(1996) 220 ITR 431]

THANKING YOU
