

# Reassessment



**-By CA Mahendra Sanghvi**

# Reassessment & Re-computation u/s. 147

## RELEVANT SECTIONS:

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

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## Other remedies available under the Act.

- Sec. 154 – Rectification of mistake.
- Sec. 263 – Revision of orders which are erroneous and prejudicial to revenue.
- When one or more modes of assessment or remedies are available to the taxing authority which is matter of the least prejudice to the assessee. *J. C. Thakkar vs. CIT; 27 ITR 658(Bom)*
- When remedy u/s. 154 is open for rectification, reopening u/s. 147 is not warranted. *Hindustan Uniliver Ltd. vs. Dy. CIT; 325*

# Reassessment or Re-computation u/s. 147

## Sec .147 – Income Escaping Assessment

If

- the Assessing Officer
- has reason to believe
- that any income chargeable to tax has escaped assessment for any assessment year,
- he may, subject to the provisions of sections 148 to 153,
- assess or reassess such income

and

also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section,

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- The principal condition for issuance of notice is the reason to believe that “any income chargeable to tax has escaped assessment for any assessment year”. - *Nivi Trading Ltd vs. Union of India-Writ Petition No.2314 of 2015(Bombay HC)*
- If the Assessing Officer finds that the income that he has reason to believe that it has escaped assessment is not chargeable to tax or has not escaped assessment then the reassessment proceedings would fail and the Assessing Officer will not have power to assess any other income. - *Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136(Del)*
- Assessing Officer has wide power to assessee. Once assessment is re-opened it can look all matters. - *Sun Engineering 198 ITR 297(SC)*.

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- Where income believed to be escaped has not escaped – reassessment fails. – *CIT vs. Jet Air Ways 331 ITR 236(Bom.)*

A Contrary view is expressed by Punjab & Haryana High Court in case of *Manjinder Singh Kang vs. CIT (2012) 344 ITR 358 (P&H)*, *CIT vs. Mehak Finvest P Ltd (2014) 367 ITR 769(P&H)* where it was held that :

*“even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.”*

Similar view is expressed in case of *N.Govindaraju vs. ITO(2015)377 ITR 243 (Kar)*

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Deemed to be cases where income chargeable to tax has escaped assessment, namely:-

- (a) where no return of income has been furnished although total income during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the A.O. that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

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- (c) where an assessment has been made, but –
- (i) income chargeable to tax has been under assessed ; or
  - (ii) such income has been assessed at too low a rate ; or
  - (iii) such income has been made the subject of excessive relief under this Act ; or
  - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(d) w.e.f. 1.7.2012 where a person is found to have any asset (including



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## REASON TO BELIEVE

- There must be reason to believe that income chargeable to tax has escaped assessment.
- The existence of tangible material is necessary.
- Reason to believe is stronger than “is satisfied” .
- Reason to believe does not mean “reason to suspect” .
- Reason must be good in faith and must have rational connection with the relevant grounds.
- Belief must not be based on suspicion, gossip or rumors.

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## Change of Opinion

- Assessing officer is not empowered to **review** on the same set of facts, the assessment order which had already been framed by application of mind, of his own decision or the decision of predecessor.
- Observation of Supreme Court in case of CIT vs. Kelvinator of India Ltd (2010) 320 ITR 561

*“post 1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, s. 147 would give arbitrary powers to the AO 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. ....if the concept of "change of opinion" is removed, ... then, in the garb of reopening the assessment, review would take place. .... Hence, after 1st April, 1989, AO has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from*

*assessment. Reasons must have a live link with the formation of the belief.”*

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- Difference between “power to review” and “power to reassess”. A.O. cannot review its own order. Change of Opinion not a basis of **re opening even within four years.** - *Ritu Investment P. Ltd. vs. DCIT.* 345 ITR 214 (Del)

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Reasons must be based on the relevant material on record at the time of recording reasons:

- The validity of the reopening of assessment has to be determined with reference to the reasons which have weighted with the Assessing Officer. Those norms could not be added to or supported on a basis which was not present in the mind of the Assessing Officer when he issued the notice to reopen - *3i Infotech Ltd. vs. ACIT; 329 ITR 257(Bom)*.
- Reassessment at the dictates of CIT - Assessing Officer not applying mind - Reopening not valid. - *CIT vs. Aslam Ulla Khan 321 ITR 150(Kar.)*
- The assessing officer himself has to form belief on his own. Assessing Officer simply cannot issue notice for reopening on the basis of audit objection.- Reassessment not valid - *Adani Exports vs. DCIT 240 ITR 224 (Guj.); ICICI Home Finance Co. Ltd. Vs ACIT (2012) 82 CCH 103 (Bom)*
- No subsequent improvement can be made on the objections by the assessee raised before the Assessing Officer - *Crown Consultants Pvt Ltd. vs. CIT Writ Petition*

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## First proviso to sec. 147

- Notice u/s. 148 **cannot** be issued after 4 years from end of relevant A.Y. even if escaped income is Rs. 1 lakh or more provided that -
  - the assessee should have filed return u/s. 139 or in response to notice issued u/s. 142(1) or u/s. 148
  - where an assessment is made u/s. 143(3) or u/s. 147 for the relevant assessment year,
  - the assessee should have made full & true disclose all material facts necessary for his assessment, for that assessment year.

Reassessment initiated after 4 years due to retrospective amendment to Sec.80HHC is invalid. No failure to disclose fully & truly all material facts while filing tax return. *Dishman Pharmaceuticals & chemicals Ltd. Vs. Deputy CIT 346 ITR 245 Guj. HC*

- *Jurisdictional Requirement - Reassessment proceedings to be initiated after 4 years - Assessing Officer must state in reasons that- Failure on part of Assessee to make full and true disclosure*

# Reassessment or Re-computation u/s. 147

- W.e.f. 01-07-2012 - Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.
- If Assessing Officer has not applied mind or certain issues were not verified than assessment can be re-opened. - *Honda Siel 340 ITR 64(SC)*

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## Full & True Disclosure

- To disclose fully and truly all material facts for its assessment.
- Fullness and truthfulness of the material should be present.
- Material Facts are those facts which if taken into account they would have an adverse effect on assessee by the higher assessment of income than the one actually made.
- Not relevant whether omission is deliberate or inadvertent.
- Explanation-1 to S. 147 states that mere production before the AO, of books of account or other documents from which material evidence could with due diligence be discovered by the AO will not necessarily amount to disclosure of fully and truly

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## Sec. 148 - Issue of Notice where Income has escaped assessment.

- Before making the assessment, reassessment or re-computation u/s. 147, the A.O. shall serve on the assessee a notice requiring assessee to furnish within such period as may be specified in notice, a return of income of the relevant A.Y.
- Service of notice u/s. 148 is mandatory:

Issue and service of notice u/s. 148 is a precondition for a valid reassessment proceeding. - *CIT vs. Mani Kakkar*(2009) 18 DTR 145(Del); *CIT vs. Harish J. Punjabi*; 297 ITR 424(Del.)

- Expression “*to issue*” means it should be sent out in reasonable time to be served on the assessee. Notice for assessment year 2003-04 was signed by the assessing officer on 31/03/2010 and sent to speed post on 07/04/2010. It was held that notice is issued after 6 years from the end of the relevant assessment year. - *CIT vs. Kanubhai M. Patel HUF* 237 CTR 544(Guj.); *CIT vs. Major Tikka Khushwant Singh* (1995) 212 ITR 650 (SC) 21st May, 2016



# Reassessment or Re-computation u/s. 147

- For an assessing officer to assume jurisdiction to re-open an assessment the first and foremost condition is to record his reasons.
- The Assessing Officer shall, before issuing any notice under this section, record his reason for doing so – Mandatory.- Johri Lal 88 ITR 439 (SC); Asia Satellite Telecommunications Co. Ltd. vs. Asst. Director Of Income Tax (INTERNATIONAL TAXATION)(2012) 253 CTR (Del) 150
- The recorded reasons are the basis for determining the validity of the reopening.
- Recording of reasons is condition precedent ,but reasons can be communicated to the assessee subsequently- *GKN Driveshafts 259 ITR 19(SC)*
- Recorded reasons must be furnished to the assessee after filing return of income pursuant to the notice u/s. 148.

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- Assessing Officer has to pass an order on objections.
- No reasons supplied even during assessment proceedings – Order passed u/s. 147 is null and void. – *Videsh Sanchar Nigam Ltd. 340 ITR 66(Bom.)*.
- In the case of *Sahkari Khand Udyog Mandal Ltd. Vs. Asst Commissioner of Income Tax (2014) 106 DTR 182 (Guj HC)*, High Court gave the following directions:

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\* The requirement and the time-frame for supplying the **reasons without being demanded by the assessee would be applicable only if the assessee files his return of income within the period permitted in the notice for reopening.**

\*\* The time frame for the Assessing Officer to dispose of the objections would apply only if the assessee raises objections within the time provided

- In the communication supplying the reasons recorded by the Assessing Officer, he shall intimate to the assessee that he is expected to raise the objections within 60 days of receipt of the reasons

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- After the return is filed by the assessee, the Assessing Officer shall issue **notice u/s.143(2)** (This notice should be served within 6 months from the end of the year in which return is filed u/s. 148.) – **Otherwise assessment or reassessment or re-computation u/s. 147 shall be void.**

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## Sec. 149 - Time Limit for Issue of Notice u/s. 148

Situations	Time Limit for issue of notice
Escaped Income Less than Rs. 1 lakh	<b>Within 4 years</b> from end of the relevant A.Y.
Escaped Income Rs. 1 lakh or more	<b>Within 6 years</b> from end of the relevant A.Y.
In case of agent of non-resident u/s. 163*	<b>Within 6 years</b> from end of the relevant A.Y.
Escaped Income in relation to any asset (including financial interest in any entity) located outside India.*	<b>Within 16 years</b> from end of the relevant A.Y.

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## Sec. 150: Time Limit Not to Apply

(1) Notwithstanding anything contained in sec. 149, the notice u/s. 148 may be issued at any time for the purpose of making an assessment or reassessment or re-computation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or re-computation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or re-computation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or re-computation may be taken.

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## Sec. 151 - Sanction for Issue of Notice

W.e.f. 01.06.2015 notice u/s. 148 can be issued only after the Assessing Officer takes the permission as follows -

Situation	Permission from
If notice to be issued after the expiry of a period of four years	Permission required of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
In any other case	<u>ITO/ACIT/DCIT</u> requires permission of <u>Joint Commissioner</u> .



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- Procedure strictly accordingly to law. Satisfaction of one authority cannot be substituted by satisfaction of another authority.

In case of CIT vs SPL's Siddhartha Ltd. (Del. HC.)345 ITR 223 sanction of JCIT was required but sanction from CIT was obtained. Reopening was held as invalid.

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## Sec. 152 - Other Provisions

### 1. Tax Rates

The escaped income shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

### 2. Dropping of Proceedings

If the assessee shows that his tax liability after considering escaped income would remain the same or it will be less than the amount which was originally assessed,

then the assessee can be claim that proceedings under this section should be dropped, provided he should not opposed the original assessment order u/s. 246 to 248 or 264.

Where the assessee has preferred an appeal, he would not be entitled to invoke the provisions of section 152(2) only with regard to items agitated by him in the appeal and in regard to other items the benefit of section 152(2)

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## Sec. 153 - Time Limit for Completion of Reassessment

Subsection (2) of section 153 provides time limit for completing the reassessment proceedings u/s. 147.

- The normal time limit is **one year** from end of the financial year in which notice u/s. 148 was served.
- Where reference u/s.92CA (1) is made the time limit is **two years.**

**THANK YOU**