

4. ASSESSMENT PROCEDURE

MEANING OF INCOME ESCAPED- Explanation 3

For the purpose of assessment / reassessment under this section, AO may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-sec (2) of section 148.

Notice u/s 148

- The A.O. before making an assessment or re-assessment or re-computation U/s.147 shall serve on the assessee a notice U/s.148
- The A.O. shall record his reasons for doing.
- If notice is not served properly assessment is illegal and Void
- The ROI is required to be furnished within time prescribed in notice by A.O.

After expiry of 4 years from end of relevant AY the notice u/s 148 cannot be issued unless

A) assessee has not filed a return u/s 139 / 142/ 148

B) Assessee has failed to fully and truly disclose all material facts at the time of assessment.

However this proviso shall not apply if any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any A.Y

For a return filed in response to notice u/s 148, the notice u/s 143(2) must be served within 6months from the end of FY in which ROI was filed, otherwise, Ass./Reass. u/s 147 shall be void.

The objective of this sec. is to increase the revenue collection.

Hence the tax liability of an assessee cannot be reduced further in proceedings under this Sec.

CBDT Circular: [Note Ban] : Reopening of case u/s 147 is feasible only when the AO has reason to believe that any income chargeable to Tax

4. ASSESSMENT PROCEDURE

has escaped Assessment & not merely on the basis of any reason to suspect merely increase of turnover because of use of digital mode of payment in a particular year cannot be reason to believe that income has escaped Assessment.

Sec.147	Sec.148	Sec.149	Sec.151
.Assessment .Re-assessment .Re-Computation	Notice to be issued	Time Limit for issue of notice.	Sanction required for issuing notice.

Sec 149 Time Limits for Issue of Notice u/s 148

No notice u/s 148 shall be issued for the relevant Assessment Year

If four years have lapsed from the end of the relevant AY, unless the case falls under Clause (b) or Clause (c);

If four years, but not more than 6 years, have lapsed from the end of the relevant AY unless the income chargeable to tax which has escaped assessment amounts to / is likely to amount to ₹1,00,000 or more for that year.

If four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Section 149(2) provides that the provisions of section 149(1) as to issue of notice shall be subject to the provisions of section 151.

Sec 150 No Time Limit for issue of Notice

Notwithstanding anything contained in section 149, a notice u/s 148 may be issued at any time for the purposes of making an assessment or reassessment in consequence of or in order to give effect to the finding or direction contained in an order u/s 250, 254, 260A, 262, 263 or 264 of the Income tax Act / the **ORDER OF A COURT UNDER ANY OTHER LAW.**

4. ASSESSMENT PROCEDURE

Sec 151 Sanctions for Issue of Notice u/s 148

Notice can be issued upto 4 years from the end of the relevant Assessment Year	Notice can be issued after 4 years but upto 6 years/ 16 years from the end of the relevant Assessment Year
By Joint Commissioner. However, the Assistant Commissioner/ Deputy Commissioner/ Income Tax Officer can issue the notice if Joint Commissioner is satisfied on reasons recorded by AO that it is a fit case for issue of such notice.	By any Assessing Officer if Chief Commissioner of Income-tax / Commissioner of Income-tax is satisfied on reasons recorded by Assessing Officer that it is a fit case for issue of such notice.

R.K. UPADHYAYA VS. SHENEBHAI P.PATEL (SUPREME COURT)

There is a clear distinction between the words "issue" & "serve". Sec 149(1) lays down the time limits for issue of notice. Therefore, if a notice is issued within the time limit prescribed u/s 149(1) but is served after that date, it will be a valid notice.

EXCEPTIONS TO THE TIME LIMITS GIVEN IN SECTION 149(1)

> 1st Proviso to Sec 147

Where an assessment has been made earlier u/s 143(3) or u/s 147, then the notice u/s 148 shall not be issued after the expiry of 4 years from the end of the relevant AY if both the following conditions are satisfied :

- i) Assessee has filed ROI which he was required to furnish under any provision of Income Tax Act, AND
- ii) Assessee has disclosed fully and truly all material facts necessary, for assessment.

(This is possible only when income has escaped assessment because of mistake of Assessing Officer)

> 2nd Proviso to Sec 147

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial

4. ASSESSMENT PROCEDURE

interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

Sec 152 Other Provisions

In an assessment or reassessment made u/s 147, the tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.

SUN ENGINEERING PRIVATE LIMITED (SUPREME COURT)

The assessee filed a ROI for AY 2012-13 declaring income of ₹20 lakhs. The AO u/s 143(3) made on 31.12.2014 disallowed expense A of ₹15 lakhs, although Supreme Court has held in some other case that expense A is allowable. The AO assessed the income at ₹35 lakhs u/s 143(3). The assessee did not file any appeal to CIT (Appeals) / revision application u/s 264/ rectification application u/s 154 and the time for filing appeal/ revision / rectification have all expired. AO finds income escaping assessment of ₹25 lakhs for AY ,2012-13 on 31.1.2019 & issues a notice u/s 148 to assess the escaped income of ₹25 lakh. Assessee files Return u/s 148 as under

Original assessed income	35 lakhs
Add: Escaped income	25 lakhs
Less: Expense wrongly disallowed u/s 143(3)	15 lakhs
	45 lakhs

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- Since the assessee has not appealed against the original order of AO passes u/s 143(3), it has become final. On re-assessment u/s 147, original assessment is not wiped off & original order does not cease & it remains.
- The assessee cannot seek the reopening of the entire assessment and cannot claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim re-computing of the income or redoing of an assessment and cannot be allowed a claim which he either

4. ASSESSMENT PROCEDURE

failed to make or which was otherwise rejected at the time of original assessment, which has since acquired finality.

- c) The assessee cannot re-agitate in the reassessment proceedings, the matter which he had lost during the original assessment proceedings. The reassessment does not wipe off the original assessment.
- d) A matter not agitated in the concluded original assessment proceedings cannot be permitted to be agitated in the reassessment proceedings unless it relates to the item sought to be taxed as escaped income. In the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to the assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the said income. The reassessment proceedings are for the benefit of the revenue and not for the benefit of the assessee and an assessee cannot be permitted to convert the reassessment proceedings into appeal or revision and seek relief in respect of items rejected earlier or in respect of items not claimed in the assessment proceedings.
- e) Re-assessment cannot result in reduction of income beyond the income originally assessed. In the present case, the assessee cannot be allowed Expense A of ₹15 lakhs since the issue of expense A has acquired finality

Principles derived from Sun Engineering Case :

- 1) On reassessment u/s 147, the original assessment is not wiped off but it remains.
- 2) Matters lost in the original assessment proceedings which have since acquired finality (i.e. against which no appeal/rectification application /revision application filed) cannot be claimed in the reassessment proceedings. Therefore, expenses disallowed/ incomes taxed in the original assessment against which no appeal/revision/rectification application was filed cannot be claimed as allowable/ non-taxable in the reassessment proceeding u/s 147

4. ASSESSMENT PROCEDURE

- 3) Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings u/s 147. However, the expenses pertaining to the income which has escaped assessment can be claimed. The assessee can prove that the income which is alleged to have escaped assessment is not taxable.
- 4) U/s 147 the income cannot be reduced below the income originally assessed. Similarly, u/s 147 the losses cannot be assessed above the losses originally assessed.
- 5) Section 147 is for the benefit of revenue and not for the benefit of the assessee. Therefore, if no return was filed earlier and no assessment was made earlier, then u/s 147, the Assessing Officer cannot compute the loss of the assessee.

Sec 156 Notice of Demand

- 1) When any tax interest, penalty, fine, or any other sum is payable in consequence of any order passed, the A.O. shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable.
- 2) Where the income of the assessee of any assessment year, includes income of the nature specified in Sec 17(2)(vi) & such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by current employer, being an eligible start-up referred to in sec 80-IAC, the tax / interest on such income included in notice of demand referred to in sub-sec (1) shall be payable by assessee within 14 days -
 - (i) after the expiry of 48 months from the end of the relevant AY; or
 - (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or
 - (iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,whichever is earliest. [FA'20]

4. ASSESSMENT PROCEDURE

Sec.157 Intimation of Loss

In the course of the assessment of the total income, if it is established that a loss has taken place which the assessee is entitled to c/f, the A.O. shall notify the assessee by an order in writing, the amount of such loss.

Sec.158A Procedure When Assessee Claims Identical Question Of Law Is Pending Before High Court Or Supreme Court

- 1) Appellate Authority: means the CIT (Appeals) or the ITAT.
- 2) Where an assessee claims that any question of law arising in his case for an AY which is pending before the AO or any appellate authority is identical with a question of law arising in his case for another AY which is pending before the High Court in an appeal u/s 260A or Supreme Court in an appeal u/s 261, then he may furnish a declaration to the AO or the appellate authority, as the case may be.
- 3) The declaration shall be in the prescribed form and shall be to the effect that if the AO or the appellate authority, as the case may be, agrees to apply in the relevant case, the final decision on question of law in the other case, then he shall not raise such question of law in the relevant case in any appeal.
- 4) Where the declaration is furnished to the appellate authority, the appellate authority shall call for a report from AO on the correctness of the claim of the assessee.
- 5) The AO / appellate authority, as the case may be, by an order in writing
 - i) admit the claim of assessee if he or it is satisfied that the question of law arising in relevant case is identical with question of law in other case or
 - ii) reject the claim of the assessee if not so satisfied

4. ASSESSMENT PROCEDURE

- 6) Where the claim of the assessee is admitted
- a) the Assessing Officer or the Appellate Authority, as the case may be, may make an order disposing of the relevant case without awaiting for the final decision on question of law in the other case; and
- b) the assessee shall not be entitled to raise, in relation to the relevant case, such question of law in any appeal before any appellate authority or in appeal before the High Court u/s 260A or the Supreme Court u/s 261.
- 7) When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the AO or the Appellate Authority shall, if necessary, amend the earlier order in the relevant case in conformity with such decision.

Sec 158AA Procedure When in an Appeal by Revenue an Identical Question of Law is Pending Before Supreme Court

- 1) Notwithstanding anything contained in this Act
- where the Commissioner is of the opinion that any question of law arising in the case of an assessee for any AY (such case being herein referred to as relevant case)
 - is identical
 - with a question of law arising in his case for another AY which is pending before the Supreme Court, in an appeal u/s 261 against the order of the High Court in favour of the assessee (such case being herein referred to as the other case),
 - he may, instead of directing the AO to appeal to the Appellate Tribunal
 - direct the AO to make an application to the Appellate Tribunal in the prescribed form within 60 days from date of receipt of the order of CIT (A) stating that an appeal on the question of law arising in the relevant case
 - may be filed when the decision on the question of law becomes final in the other case.