

4. ASSESSMENT PROCEDURE

- 2) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147, on or before the expiry of 12 months from the end of the month in which the assessment order in the case of the firm is passed.

Sec 153 - Explanation 1 -

For the purposes of this section, in computing the period of limitation -

- 1) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or
- 2) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- 3) the period commencing from the date on which the AO intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) / (22B) / (23A) / (23B) / sub-clause (iv) / (v) / (vi) / (via) of clause (23C) of sec 10, under clause (i) of the proviso to sec 143(3) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the AO; or
- 4) the period commencing from the date on which the AO directs the assessee to get his accounts audited u/s 142(2A) and -
 - a) ending with last date on which the assessee is required to furnish report of such audit under that sub-sec; or
 - b) where such direction is challenged before a court, ending with the date on which the order setting aside such



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- direction is received by the Principal Commissioner or Commissioner; or
- 5) the period commencing from the date on which the AO makes a reference to the Valuation Officer u/s 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
- 6) the period (not exceeding sixty days) commencing from the date on which the AO received the declaration u/s 158A(1) and ending with the date on which the order under sub-section (3) of that section is made by him; or
- 7) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission u/s 245C and ending with the date on which the order u/s 245D(1) is received by the PCIT or CIT u/s 245D(2); or
- 8) the period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q(1) and ending with the date on which the order rejecting the application is received by the PCIT or CIT under sub-section (3) of section 245R; or
- 9) the period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the PCIT \ or Commissioner under sub-section (7) of section 245R; or
- 10) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in sect 90 / 90A and ending with the date on which the information requested is last received by the PCIT or CIT or a period of one year, whichever is less; or
- 11) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the PCIT or CIT u/s 144BA(1) and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer,

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shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than 60 days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Provided further that where the period available to the TPO is extended to 60 days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the AO for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Provided also that where a proceeding before the Settlement Commission abates u/s 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly.

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Relevant case law

Rajesh Jhaveri Stock Brokers LTD.

Case: Whether intimation u/s 143(1) can be treated as order of Assessment for the purpose of 147??

Held: Assessee cant challenge on the grounds of change in opinion, since making the adjustment u/s 143[1] AO has no power to beyond the information given in return & make any allowance or disallowances. Hence 143[1] Intimation can't be treated as order of Assessment.

Aventis Pharma

Case: Can assessee open reassessment on the basis on change in opinion

Held: NO

Hemant Trader

Case: can notice u/s 148 be issued solely on the grounds that survey u/s 133A was carried out where nothing has been found therein which indicate escapement of Income

Held: merely because survey has taken place cannot be a ground for reopening of Assessment something more is required i.e. evidence.

Sky Light Hosp. LLP v. Assistant CIT (Del) [2018]

Is notice for reass. issued u/s 148 on the basis of tax evasion report received from Investigation Unit of Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile Co which has now been converted into an LLP?

HC observed that notice issued on the basis of tax evasion received from investigation unit of IT Dept. is valid since there was a reason to believe even though the notice was erroneously issued in the name of earlier company

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Ranbaxy Laboratories Ltd (Delhi)/Jet Airways (I) Ltd (Bombay)

Case: Can the AO reassess issues other than the issues in respect of which proceedings were initiated u/s 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?

Held : As per section 147, the AO may assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice in the course of proceedings under this section.

The Delhi High Court observed that the words "and also" used in section 147 are of wide amplitude. The assessment or reassessment must be in respect of the income, in respect of which the AO has formed a reason to believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the AO to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the sec as having escaped assessment. If he intends to do so, fresh notice un/s 148 would be necessary.

Godrej Industries Ltd (Bom)

Case: Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?

Held : The High Court held that the position of law on the date of issue of notice u/s 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable. Accordingly, the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

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Vipin Walla (Del)

Case: Would the reassessment proceedings initiated u/s 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?

Held: The High Court, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.

Multiple Choice Questions

- | | | | | | | | | | |
|---|--|------|------|------|------|------|------|------|------|
| <p>1) "Belated return cannot be revised."
a) True b) False</p> | <p>6) Who among the following will verify the return of the company?
a) Founder of the Company
b) MD c) Senior most employee
d) Company itself</p> | | | | | | | | |
| <p>2) Time limit for issue of notice u/s 148 where income which has escaped assessment amounts to 1.5L will be --years from the end of relevant AY.
a) 2 b) 4 c) 6 d) 16</p> | <p>7) Every person is required to mandatorily quote Aadhar Card in
a) PAN Form b) ROI
c) Both d) None</p> | | | | | | | | |
| <p>3) Can Chartered Accountant be a TRP
a) Yes b) No</p> | <p>8) In case of LLP, who is authorised to verify the return
a) Designated Partner
b) Senior most partner
c) Any partner of LLP
d) Principal Officer</p> | | | | | | | | |
| <p>4) Ass. order u/s 154 will be amended if
a) Mistake apparent from records
b) Change of Opinion of AO
c) (a) & (b)
d) Cannot be rectified</p> | <p>Answers :</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td>1) b</td> <td>2) c</td> <td>3) b</td> <td>4) a</td> </tr> <tr> <td>5) c</td> <td>6) b</td> <td>7) c</td> <td>8) a</td> </tr> </table> | 1) b | 2) c | 3) b | 4) a | 5) c | 6) b | 7) c | 8) a |
| 1) b | 2) c | 3) b | 4) a | | | | | | |
| 5) c | 6) b | 7) c | 8) a | | | | | | |
| <p>5) Expenses of Special Audit will be paid by
a) Assessee b) PCIT/CIT
c) Central Govt</p> | | | | | | | | | |

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Know your exam

- P1 The A.O issued a notice u/s142(1) on assessee on 24th Dec, 2021 calling upon him to file ROI for A.Y.21-22. In response to said notice, assessee furnished a return of loss & claimed c/f of business loss & unabsorbed depⁿ. State whether assessee would be entitled to carry forward as claimed in the return.
- P2 The regular assessment of MNO Ltd. for the A.Y 2019-20 was completed u/s 143(3) on 13th March, 2021. There was an audit objection by the Revenue Audit team that interest on loan should be disallowed partly as there was diversion of borrowed fund to sister concern without charge of interest Based on the above facts:
- State, with reasons, whether the A.O can issue notice u/s 148 on the basis of audit objection of the Revenue Audit team
 - If the action stated in (i) above is not permitted, what is the option open to the Revenue Department to deal with the said audit objection?
- P3 Dishant received a notice u/s 148 from A.O for A.Y. 2017-18 on ground that depreciation on certain assets was allowed in excess.A.O recorded reason for reopening. The original assessment was completed u/s 143(3). In course of reassessment proceeding, A.O also disallowed certain sum u/s 14A in respect of expenses purported to be in relation to dividend from companies & tax-free interest. However, A.O didn't record reason for applying provisions of sec.147 in respect of issue of disallowance u/s 14A and passed order disallowing excess depreciation and also certain sum u/s 14A. Is there any infirmity in order passed by the A.O?
- P4 The A.O has power to make assessment to best of his judgment, in certain situations. What are they?

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- P5 Examine critically as per provisions of the Act “Can the A.O issue notice u/s 148 to reopen same assessment order on same grounds for which CIT had issued notice u/s 263 of the Act”?]
- P6 Is A.O empowered to assess/reassess an income chargeable to tax & has escaped assessment, in a case pending before Appellate Tribunal? Discuss
- P7 Does A.O have power to make any adjustment to income disclosed by assessee in the ROI in course of processing return u/s 143(1)?
- P8 Tai Ltd. filed its ROI for A.Y 2020-21 on 6th June, 2020. The return is selected for regular assessment u/s 143(3) for which notice u/s 143(2) is served on the company on 3rd Oct,2021. The company responded to the notice under section 143(2). State whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.
- P9 The assessment was made u/s 143(1) for A.Y 2019-20. The assessee has received a notice u/s 148 on 6th April, 2021 for reopening of assessment. Can the assessee challenge the legality of the notice on the ground of change of opinion?
- P10 The A.O within the powers vested in him u/s 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground “that the opportunity was not provided to them by the A.O prior to passing of such an order”. Decide the correctness of the action of the A.O.

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P 11 Ram, an individual, filed his return of income for the A.Y 2021-22 on 15.6.2021. He later discovered that he had not claimed deduction u/s80C in the said return. He claimed the said deduction through a letter addressed to the A.O. The A.O completed the assessment without allowing the deduction claimed by Ram. Is the A.O justified in doing so?

P 12 A company submitted the return of income for A.Y 2019-20 on 10th Oct,19. The A.O served a notice u/s143(2) on the company on 14th Sep, 2020 in order to make assessment u/s 143(3). Thereafter, on 3rd April, 2021, the A.O issued intimation u/s 143(1). Such intimation shows a demand for ₹10,500 towards tax & interest. Discuss the correctness of action of A.O.

P 13 Mr. Hari, aged 65 yrs, is a ROR in India for the A.Y.2021-22. He owns a HP in Dubai, which he purchased on 30.4.2017, & he also has a bank account in the Bank of Dubai.

(a) Mr. Hari contends that since his total income of ₹ 2,80,000 for the P.Y. 2020-21, comprising of income from HP & bank interest, is less than basic exemption limit, he need not file his return of income for AY.

(b) Mr. Hari also contends that the notice issued by the A.O u/s 148 in June, 2020 for A.Y.2013-14 is not valid due to the following reasons -
There is no escaped income relating to that year; and
The time period prescribed in sec.149 for issuing notice u/s 148 for A.Y. has since lapsed.

Discuss the correctness of the above contentions of Mr. Hari