

# IMPORTANT ASPECTS IN NOTICES UNDER INCOME TAX ACT

131, 133(6), 143(2),  
148, 153C, 154, 263

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**KNOWLEDGE  
IS**



**POWER**

**IN THIS WORLD  
NOTHING IS CERTAIN  
BUT DEATH & TAXES**

# Tax Revenue (gross)

(In `crores)

Tax Revenue		Actual 2018-19	Revised 2019-20	Budget 2020-21
1	Corporation Tax	663,572	610,500	681,000
2	Taxes on Income	473,003	559,500	638,000
3	Wealth Tax	41		
4	Customs	117,813	125,000	138,000
5	Union Excise Duties	231,045	248,012	267,000
6	Service Tax	6,904	1,200	1,020
7	Commodities and Services	937		
8	(GST)	581,559	612,327	690,500
9	Taxes of Union Territories	5,592	6,884	7,500
Total		2,080,465	2,163,423	2,423,020

Due dates for	Time limit if	Extended
<p>a. issue of notice, b. intimation, c. notification, d. approval order, e. sanction order, f. filing of appeal, g. furnishing of return, h. statements, i. applications, j. reports, k. any other documents l. time limit for completion of proceedings by the authority m. any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, PBTT Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas Scheme</p>	<p>limit if expiring between 20<sup>th</sup> March to 29<sup>th</sup> June 2020</p>	<p>to 30<sup>th</sup> June 2020</p>

## s. 131 & 131(1A)

# Power regarding discovery, production of evidence, etc.

Question	Remarks
Who can issue summons u/s. 131	The Assessing Officer, Commissioner (Appeals), Chief Commissioner, Commissioner, Dispute Resolution Panel
For what purpose summons u/s. 131 can be issued	(a)discovery and inspection; (b)enforcing the attendance of any person, including a bank officer; (c)compelling the production of books of account and other documents; and (d)issuing commissions



## s. 131 & 131(1A)

# Power regarding discovery, production of evidence, etc.

Question	Remarks
Who can issue summons u/s. 131(1A)	The Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner or Assistant Director or Deputy Director
For what purpose summons u/s. 131(1A) can be issued	has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority

## s. 131 & 131(1A)

# Power regarding discovery, production of evidence, etc.

- The summons issued should reflect application of mind and cannot be issued for conducting roving enquiries
- Sweeping information cannot be sought
- Nexus of information sought should be there with purpose for which information is sought
- Non-compliance can lead to penalty u/s. 272A @ Rs. 10,000/- per summon.



## s. 131 & 131(1A)

### **Power regarding discovery, production of evidence, etc.**

- Statements u/s. 131 are recorded on oath and false statement can lead to prosecution u/s. 277.
- No reliance can be placed upon statements in absence of opportunity to grant cross-examination of the witness whose statements were recorded u/s. 131 is not granted to the assessee.
- The notice u/s. 131/131(1A) would refer whether the assessee or its authorized representative have right to appear.

## s. 131 & 131(1A)

### **Power regarding discovery, production of evidence, etc.**

- Statements should be recorded in the vernacular language which the witness understands.
- If assessee's health is not comfortable, then he can seek fresh date for further statements.
- The assessee can carry relevant documents in support of his statements.
- Assessee's counsel can sit with the assessee during the time his statements are being recorded, however, he cannot interfere or guide his client.

## s. 131 & 131(1A)

# Power regarding discovery, production of evidence, etc.

- Where ITO is not authorized to exercise powers u/s. 131(1A), reports submitted by him could not have formed valid basis for reopening assessment. Sky View Consultants (P.) Ltd. [2018] 96 taxmann.com 424 (SC)].
- Income tax Authority can exercise power vested on them u/s. 131(1) only during pendency of some proceedings before it and not otherwise.

## s. 133(6)

# Power regarding calling of information

Question	Remarks
Who can issue notice u/s. 133(6)	<ul style="list-style-type: none"><li>• When Proceedings <u>are pending</u>: The Assessing Officer, Commissioner (Appeals), Principal Director General or Director-General, Principal Chief Commissioner or Chief Commissioner, Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director</li><li>• When Proceedings are <u>NOT pending</u>:<ul style="list-style-type: none"><li>➤ With sanction of Principal Director or Director or Principal Commissioner or Commissioner OR</li><li>➤ ISSUED BY Joint Director or Deputy Director or Assistant Director</li></ul></li></ul>

## s. 133(6)

# Power regarding calling of information

Question	Remarks
For what purpose notice u/s. 133(6) can be issued	<ul style="list-style-type: none"><li>• to furnish information in relation to such points or matters or</li><li>• to furnish statements of accounts and affairs verified in the manner specified,</li></ul> <p>Which will be useful for, or relevant to, any enquiry or proceeding under this Act. (<i>Powers are quite wide</i>)</p>
Onus upon Assessing Officer to seek information	<ul style="list-style-type: none"><li>• Where assessee furnishes all requisite information, but Assessing Officer fails to issue summons u/s. 131/133(6) then no adverse view can be taken against the assessee. <b>Chankaya Builders</b> (2014) 43 taxmann.com 91 (Gujarat).</li><li>• Simpliciter non-service of summons u/s. 131/133(6) cannot be ground to make the addition in absence of further collaborative evidence.</li></ul>

## s. 133(6)

Question	Remarks
<b>Notice issued as a prequel to 148 proceedings</b>	<ul style="list-style-type: none"><li>• Internal guidelines of the department to seek information u/s. 133(6) where s. 148 proceedings are sought to initiated based on AIR information.</li><li>• Assessee should provide the information sought u/s. 133(6) so that proceedings u/s. 148 are not initiated by the Assessing Officer.</li><li>• However, if the assessee doesn't response to notice u/s. 133(6) and the AO commits jurisdictional error based on wrong source of information, then assessee can get advantage of that. For example, notice issued on a dead person or property was purchased by Company and not the Director. If correct information is provided then responsibility upon the successor would be there.</li></ul>

# Adjustments to IT Return: 143(1)

- |       |   |
|-------|---|
| (i)   | any arithmetical error in the return  |
| (ii)  | an incorrect claim, if such incorrect claim is apparent from any information in the return  |
| (iii) | disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;         |
| (iv)  | disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;   |
| (v)   | disallowance of deduction claimed u/s. 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; |



# Assessment/E-Assessment

Assessment	E-Assessment
Applicable till A.Y. 2017-2018	Applicable for A.Y. 2018-2019
Section 147, 144, 153A continues as E-Proceedings/Manual Proceedings	<p>Following assessments are excluded:</p> <ul style="list-style-type: none"><li>• 147/148, i.e., Re-assessment</li><li>• 144, i.e., Best Judgment assessments</li><li>• 153A, i.e., Search assessments</li></ul>

# Assessment/E-Assessment

Assessment	E-Assessment
Assessing Officer used to carry out assessment and post assessment follow-ups	<ul style="list-style-type: none"><li>• Role of Assessing Officer shall be limited to only imposition of penalty, collection and recovery of demand, rectification of mistake, etc.</li><li>• Assessment to be carried out through E-Assessment Centers</li></ul>
Service of notice as per section 282 mandatory	Placing of authenticated copy on assessee's registered account is sufficient, whether seen or not becomes irrelevant

# E-Assessment

## E-Assessment Procedure

- (1) 'National e-assessment Centre' shall serve a notice on the assessee under section 143(2) specifying the issues for selection of his case for e-assessment;
- (2) The assessee is required to file his response to the NEAC within 15 days from the date of receipt of such notice;
- (3) The case shall be assigned to a specific assessment unit in any one REAC through an automated allocation system;
- (4) NEAC may issue appropriate notice to assessee for obtaining information, documents or evidence as required by the assigned assessment unit for the purpose of conducting e-assessment;
- (5) After taking into account all the relevant material available on the record, the assessment unit shall make a draft assessment order and a copy of such order shall be sent to NEAC;

# Assessment/E-Assessment

## E-Assessment Procedure

- |       |  |
|-------|--|
| (6)   | NEAC shall examine the draft assessment order in accordance with the risk management strategy specified by the Board and it may decide to:                                   |
| (i)   | Finalize the assessment as per the draft assessment order and serve a copy of such order to the assessee along with the demand notice or refund of any amount due to him     |
| (ii)  | Provide an opportunity to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order |
| (iii) | Assign the draft assessment order to a review unit in any one REAC, through an automated allocation system, for conducting review of such order                              |

# Assessment/E-Assessment

## E-Assessment Procedure

- (7) In a case where no response to the show-cause notice is received, the NEAC shall finalize the assessment as per the draft assessment order. If a response is received by the NEAC, the same shall be forwarded to assessment unit.
- (8) The Assessment Unit shall make a revised draft assessment order after taking into account the response furnished by the assessee
- (9) The NEAC shall transfer all the electronic records of the case to the jurisdictional Assessing Officer after the completion of assessment

# Limited Scrutiny Assessment

- **Limited Scrutiny:** Additions made beyond the reasons for which assessment was selected under limited scrutiny assessment without administrative approval of Commissioner is void-ab-initio.
- **Proceedings u/s. 263** cannot be initiated for increasing the scope of assessment, if the case was under Limited Scrutiny if the assessment order was not erroneous.

# REASSESSMENT PROCEEDINGS





# NOTICE ISSUED U/S. 148

## COMMON BLOGS

154	263	153A/ 153C	148	251/ 150(2)
Rectification of Mistake	Revision of assessment order	Search & Survey	Reassessment	CIT(A)
Mistake apparent on the face of the record	Erroneous & prejudicial to the interest of the revenue	Material gathered at the time of search	Escapement of income	Directi ons by CIT(A)

## S. 148

- On an average only approx 0.75% of the returns filed are selected for scrutiny assessment;
- The most potent tool left in the hands of the department is to take shelter to reassessment proceedings u/s. 148 to tax escaped income.
- Section 148 is for the benefit of the department and not for the assessee, any deduction or exemption, which is missed out cannot be claimed under reassessment proceedings.

# ESCAPEMENT OF INCOME S. 147

In following cases, it would be deemed that income chargeable to tax has escaped assessment (**Section 147**):

1. where no return is furnished for the relevant Assessment Year;
2. where return has been furnished but assessment is not done and the Assessing Officer notices that assessee has:
  - understated the income or
  - has claimed excessive loss, deduction, allowance or relief in the return;
3. where the Assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

# ESCAPEMENT OF INCOME S. 147

4. where an assessment has been made earlier, but—

- income chargeable to tax has been under-assessed or
- such income has been assessed at too low a rate or
- such income has been made subject of excessive relief under the Act or excessive loss or depreciation allowance or any other allowance under the Act has been computed.

5. where no return is furnished for the relevant Assessment Year or where return has been furnished but information is received from Principal Director General or Director General or Principal Director or Director u/s. 133C of the Act;]

6. Where a person is found to have any financial asset located outside India

7. Assessing Officer can go beyond the reasons recorded.

# COMMON SOURCES OF INFORMATION

- ❖ Information received on the basis of search/survey at some other premises;
- ❖ Information gathered on the basis of survey at assessee's premises
- ❖ Judicial pronouncement in favour of the Revenue
- ❖ Retrospective amendment in the Act
- ❖ Clarificatory amendment in the Act
- ❖ Information received from Investigation Wing of the department
- ❖ Information received from VAT/Service-tax/GST, Bank's, Registry's, AIR information, Mutual Funds, etc.
- ❖ Revocation of exemption u/s. 12AA/10(23C) with retrospective effect
- ❖ Issues missed out at the time of 143(3) assessment raised by Audit Wing

## NOTICE ISSUED U/S. 148: LINE OF ACTION

- File online Income-tax Return in compliance to notice u/s. 148 within a period of 30 days of **receiving the notice** (*preferably prior to 31<sup>st</sup> March*) (Assessee should revise the original return of income where he himself notices any mistake or omission and pay correct tax and interest thereon);
- Seek reasons for selecting the case for reassessment and copy of sanction received from sanctioning authority granting approval of reassessment;
- Check whether the notice issued u/s. 148 is by the **jurisdictional** Assessing Officer {s. 2(7A), 124, 127, 148}

## NOTICE ISSUED U/S. 148: LINE OF ACTION

- Check whether the assessee has filed Income-tax Return or assessment is completed u/s. 143(3), if yes whether four years have passed or not
- Assessing Officer has to mandatorily provide the reasons recorded; *if reasons are not provided then proceedings become illegal;*
- Once the copy of reasons and sanction is received from the Assessing Officer then Assessee has a right to file detailed Legal Objections highlighting the infirmities and illegalities in the issuance of notice



# NOTICE ISSUED U/S. 148

## ➤ COMMON OBJECTIONS :

- a. Change of opinion,
- b. Reason to suspect or reason to believe,
- c. Fishing or roving enquiry,
- d. Application of mind on information received,
- e. Source of information received by the AO,
- f. Legal authorities on merits of the case,
- g. Jurisdictional errors committed by the AO,
- h. Notice served improperly,
- i. Sanction not proper,
- j. Audit Objection,
- k. Assessee is alive or dead,
- l. On the basis of directions of superior authorities

# NOTICE ISSUED U/S. 148

## LINE OF ACTION

- Assessing Officer has to discharge the Legal Objections by passing a speaking order disposing the Legal Objections, in absence of passing of Legal Objections the proceedings become invalid;
- Assessing Officer shouldn't pass re-assessment order within a period of 4 weeks of passing of Legal Objections; if time line not adhered then the proceedings become invalid

# NOTICE ISSUED U/S. 148 LINE OF ACTION



**High  
Court**

**Assessing  
Officer**

# NOTICE ISSUED U/S. 148

## COMMON BLOGS

- Assessing Officer has to issue mandatory notice u/s. 143(2) to continue with reassessment proceedings;
- If Assessee doesn't ask for reasons or doesn't file objection then in appellate proceedings it cannot be remanded back to AO to do the necessary compliance (*Safetag International*);



# NOTICE ISSUED U/S. 148

## COMMON BLOGS

- 148 proceedings initiated when time to issue notice u/s. 143(2) was still pending is '*bad in law*';
- **Documents found during the course of search:**  
Notice to be issued u/s. 153C or u/s. 148. If incriminating material found during course of search carried out against M/s. BBFL relating to M/s. SCPL and reassessment is based on the search material then proper recourse available to AO was to initiate proceedings u/s. 153C rather than u/s. 148, hence, reassessment proceedings are to be set-aside. **Saurashtra Colortones Pvt. Ltd. v. ITO** (ITAT Delhi)



# NOTICE ISSUED U/S. 148

## COMMON BLOGS

No ITR filed	ITR filed but not assessed	Assessed u/s. 143(3) but < 4 years	Assessed u/s. 143(3) but > 4 years
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# NOTICE ISSUED U/S. 148

## COMMON BLOGS

- How may reassessment proceedings against an assessee??? **Santosh Jawa** {RHC 2<sup>nd</sup> reassessment quashed)};
- Appeal already pending before CIT(A): *reassessment on issue already before CIT(A): Not permissible*
- More than 4 years passed after regular scrutiny assessment order? Onus to prove *failure to disclose material facts* upon the AO;
- More than 4 years passed in case of regular scrutiny assessment order? Only in case of fresh or new or additional information.
- Reassessment initiated where two views were possible / debatable issue: **not permissible.**

# NOTICE ISSUED U/S. 148

## CHANGE OF OPINION

- Right to reassess is not equivalent to right of review.
- Review is not permissible under the garb of reassessment.
- Query raised in the assessment proceedings & it has been replied by the assessee. To relook the issue would be change of opinion.
- It is not necessary that in the assessment order some discussion should be there.
- Not permissible in case subsequently issue is decided in favour of Revenue
- No difference whether 4 years have passed or not.



# NOTICE ISSUED U/S. 148

## REASON TO BELIEVE

- ◉ The Assessment reopened merely to verify variation between Income declared by assessee and Income shown in TDS Certificate, i.e., case reopened on reasons to suspect is not valid?
- ◉ Income-tax return not filed: whereas Income-tax return was filed.
- ◉ Verification of source to purchase property.
- ◉ Average wage paid viz-a-viz total receipts is more (*in case of a contractor*).
- ◉ Verification of cash deposited in the bank account.
- ◉ Reasons cannot be based on borrowed satisfaction.

## SECTION 149 / 150 / 151

- Escapement should be more than Rs. 1.00 lacs
- If reassessment within 4 years: Sanction from JCIT
- If reassessment after 4 years: Sanction from CIT
- Mechanical approval: Renders reassessment invalid
- Beyond 6 years: not permissible *{even in case of observation by Supreme Court/High Court/ITAT or CIT(A)}*
- 16 years period if escapement of income is relating to assets located outside India
- **Service of notice or issuance of notice: s. 148**  
Notice should be issued within limitation (*handed over to postal authorities*). s. 143(2) Notice should be served within limitation.

# SECTION 292BB

## ➤ Jurisdictional errors not curable:

- ✓ Notice u/s. 143(2) not issued;
- ✓ Sanction not received from proper authority;
- ✓ Notice not issued by jurisdictional AO: Jurisdictional objection has to be raised within 30 days by Assessee
- ✓ Notice was sent at wrong address
- ✓ Notice was issued to a dead person
- ✓ Notice was issued to a amalgamated company (not in existence)
- ✓ Fresh 148 notice was issued even when assessment / reassessment is pending

# SECTION 153C

## ASSESSMENT OF INCOME OF ANY OTHER PERSON

- Documents found during the course of search proceedings and the Assessing Officer is satisfied that such documents belonged to a person other than searched person, then in his hands, proceedings u/s. 153C are initiated.
- Recording of satisfaction by Assessing Officer is a pre-condition to initiate proceedings in terms of section 153C.
- Before the issue of notice under section 153C, the Assessing Officer is required to arrive at a conclusive satisfaction that the documents belong to a person other than searched person.

# SECTION 153C

## ASSESSMENT OF INCOME OF ANY OTHER PERSON

- Even if the Assessing Officer is the same person, the recording of satisfaction is a must.
- Amended section 153C, w.e.f. 01.06.2015 requires that satisfaction should be recorded by both the Assessing Officers, i.e., one is sending information and the jurisdictional Assessing Officer.
- Satisfaction can be recorded:
  - (a) at the time of or along with the initiation of proceedings against the searched person;
  - (b) in the course of the assessment proceedings;
  - (c) immediately after the assessment proceedings are completed of the searched person.

# SECTION 153C

## ASSESSMENT OF INCOME OF ANY OTHER PERSON

- Satisfaction note can be recorded before transfer of seized material.
- Satisfaction note should conclusively hold that the seized documents, do not belong to the searched persons.
- Assessing Officer could not have passed an assessment order under section 153C for relevant assessment year as same was beyond period of six years from end of financial year in which satisfaction note was recorded by Assessing Officer

# SECTION 153C

## ASSESSMENT OF INCOME OF ANY OTHER PERSON

- In absence of any incriminating material or documents, no addition u/s. 153C could be made.
- Seized documents did not belong to assessee but were seized from residential premises of one DD who had later retracted his statement, no action under section 153C could be undertaken in case of assessee - It further held that since entire decision was based on seized documents and there was no material to conclusively show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under section 69C were not sustainable.

# SECTION 154

## RECTIFICATION OF MISTAKE

- Reference to documents outside the record and the law is impermissible when applying the provisions of section 154.
- 'Record' under section 154 means record of the case comprising the entire proceedings including documents and materials produced by the parties and taken on record by the authorities which were available at the time of passing of the order which is the subject-matter of the proceedings for rectification.



# SECTION 154

## RECTIFICATION OF MISTAKE

- Mistake of fact can only be rectified and not mistake of law.
- A decision on a debatable point of law is not a mistake apparent from the record.
- ‘Power to Rectify’ is not equivalent to ‘Power to Review’. Act grants power to rectify and not power to review.

# SECTION 263

## REVISION OF ASSESSMENT ORDER

- PCIT may call for assessment records and if he considers the order to be erroneous & prejudicial to the interest of the revenue, direct it to be reconsidered.
- 'Record' means record available for examination of PCIT. (Definition is different viz-a-viz section 154, wherein record means as on date of passage of Assessment Order)
- PCIT cannot look into issues which are under appeal before CIT(A).
- Period of limitation is 2 years from the end of the financial year in which the assessment order was passed.

# SECTION 263

## REVISION OF ASSESSMENT ORDER

- An order shall be erroneous & prejudicial if (Explanation 2):
- (a) the order is passed without making inquiries or verification which should have been made;
  - (b) the order is passed allowing any relief without inquiring into the claim;
  - (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
  - (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

# SECTION 263

## REVISION OF ASSESSMENT ORDER

An order shall be erroneous & prejudicial if (**Khetawat Properties v. PCIT**: Kolkata Tribunal):

- (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law;
- (ii) Assessing Officer's order is in violation of the principles of natural justice;
- (iii) if the AO's order is passed by the without application of mind; or
- (iv) if the AO has not investigated the issue before him.

# SECTION 263

## REVISION OF ASSESSMENT ORDER

- Jurisdiction of the AO is confined to issues referred by the CIT.
- Where the AO took one of the plausible views, the order cannot be said to be erroneous.
- An incorrect application of facts or an incorrect application of law will constitute an erroneous order.
- If assessee submits information to the PCIT's notice and it is marked for AO's verification, then the order u/s. 263 deserves to be set-aside as PCIT failed to give independent finding

# SECTION 263

## REVISION OF ASSESSMENT ORDER

- If Commissioner had to hold view of Assessing Officer to be erroneous as well as prejudicial to revenue he was required to conduct enquiries and record a finding that assessee's calculation of fair market value of Rs. 150 was unsustainable in law and Commissioner having not done so, action of Assessing Officer, who had conducted enquiry on issue and called for documents and after examination had not drawn any adverse view against assessee, could not be held to be erroneous well as prejudicial to revenue. **Trimex Fiscal Services**
- An order is not erroneous simply because Commissioner carries a different view. **Minal Nayan Shah**



**Thank You  
Siddharth Ranka**