

# REASSESSMENT: SEC. 147 – 153 :

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# For Detail Article

- ▶ [https://www.itatonline.org/articles\\_new/a-comprehensive-guide-to-the-law-of-reopening-of-assessments-under-sections-147-to-153-of-the-income-tax-act-1961/#link](https://www.itatonline.org/articles_new/a-comprehensive-guide-to-the-law-of-reopening-of-assessments-under-sections-147-to-153-of-the-income-tax-act-1961/#link)

# Introduction

- ▶ The scope and effect of a reopening of assessment is still shrouded in mystery even after various judgments of the Supreme Court and High courts. Reassessment is one of the distinguishing weapons in the armory of the Department, empowers the Assessing Officer to assess, reassess or recompute income, turnover etc, which has escaped assessment. A number of intricate issues crop up during the reassessment proceedings. Some of the issues are been dealt with here under:

## I. Preconditions:

1. It is well known that powers of the Assessing Officer to re-open a completed assessment are not unfertile. Sec. 147 and Section 148 of the Act contains the perquisite conditions to be fulfilled for invoking the jurisdiction to reopen the assessment.

2. The general principle is that once an assessment is completed it becomes final. Section 147 empowers the Assessing Officer to reopen an assessment if the conditions prescribed therein are satisfied. The conditions are:
- i. The Assessing Officer has to record the reason for taking action under section 147. It is on the basis of such reasons recorded in the file that the validity of the order reopening a assessment has to be decided. Recorded reasons must have a live link with the formation of the belief.
  - ii. The Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.
  - iii. The jurisdictional condition under section 147 is the formation of belief by the Assessing Officer that income chargeable to tax has escaped assessment for any assessment year.
  - iv. No action can be initiated under section 147 after the expiry of 4 years from the end of the relevant assessment year *unless* the income chargeable to tax has escaped assessment by reason for the failure on the part of the taxpayer to disclose fully and truly all material facts necessary for his assessment..

## II. PROCEDURE TO CHALLENGE THE REASSESSMENT PROCEEDINGS:

1. The Apex Court in the case of **GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (SC)** has laid down the procedure to challenge the reassessment proceedings.

When a notice u/s.148, is issued, the proper course of action :

- (a) is to file the return ,
- (b) if he so desires, to seek reasons for issuing the notices.
- (c) The assessing officer is bound to furnish reasons within a reasonable time.
- (d) On receipt of reasons, the assessee is entitled to file objections to issuance of notice and
- (e) the assessing officer is bound to dispose of the same by passing a speaking order.
- (f) the assessee if desires can file a writ challenging the order or can proceed with the assessment .

However the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before appellate authority.

2. The courts have consistently held that the **pre condition** are jurisdiction conferring on the AO to reopen the assessment and their **non fulfillment** renders the initiation itself **ab-initio void**. The High Court in appropriate cases has power to issue an order prohibiting the Income-tax Officer from proceeding to reassess the income when the conditions precedent do not exist.

Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, will issue appropriate orders or directions to prevent such consequences.

**Department is warned not to harass taxpayers by reopening assessments in a mechanical and casual manner.**

**AOs also directed to strictly comply with the law laid down in GKN Driveshafts(2003)259 ITR 19 (SC) as regards disposal of objections to reopening assessment:**

- ▶ **Pr. CIT v. Samcor Glass Ltd. (Delhi) ; [www.itatonline.org](http://www.itatonline.org);**
- ▶ **CIT .v. Trend Electronics( 2015) 379 ITR 456 (Bom.)(HC)**
- ▶ **Bayer Material Science Pvt. Ltd.v. DCIT(2016) 382 ITR 333 (Bom.)(HC)**
- ▶ **Zuari Foods and Farms Pvt. Ltd vs. ACIT (2018) 408 ITR 279(Bom.)(HC)**

### III. ALTERNATIVE REMEDY NOT A BAR TO ENTERTAIN A WRIT:

1. Reassessment–Alternative remedy–Writ petition to challenge a reassessment order should not be entertained.

CIT v. Chhabil Das Agarwal. (2013) 357 ITR 357 (SC).

Alternative remedy no bar– Reassessment was held to be bad in law.

The argument, based on JCIT vs. Kalanithi Maran, that this Court should not exercise its writ jurisdiction under Article 226 of the Constitution of India and the petitioner should be left to avail of the statutory remedies available under the Act is not acceptable.

Aroni Commercial Ltd vs. ACIT[2017] 393 ITR 637 (Bombay High Court)

*Crompton Greaves Ltd. v. ACIT (2015) 275 CTR 49 / 229 Taxman 545 (Bom)(HC)*



Similarly in the case of **Annamalai University v. ITO (2018) 401 ITR 80 (Mad) (HC)** the assessee had applied for exemption u/s. 10(23C)(vi) and final orders were awaited. The assessee was issued notices under section 148 for reopening of the assessments for the AYs: 1999 – 2000 to 2004 – 05. On writ petitions, the Court held, that the assessee was entitled to seek reasons for reopening of the assessment, under section 147 and on receipt of the reasons, the assessee was entitled to file its objections.

Thus an assessee is entitled to writ remedy under Article 226 of the Constitution, if the action of the authorities in reopening the assessment was beyond their jurisdiction.

**Cedric DeSouza Faria. v. DCIT (2018) 400 ITR 30 (Bom) (HC)**

## IV.REASONS – RECORDED TO BE SUPPLIED AND COMMUNICATION OF REASONS –MANDATORY

1. Recording of reasons before issue of notice is mandatory hence Reassessment was held to be bad in law [ CIT v. Blue Star Ltd. (2018) 162 DTR 302 / 301 CTR 38 (Bom)]

It is now a settled position of law that for passing an order under section 147 recording of reasons u/s. 148 and communication thereof to party concern is mandatory.

- *Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj) 1*
  - *Nandlal Tejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)*
2. If assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee another opportunity:
    - *CIT vs. Safetag International India Pvt Ltd [2012] 332 ITR 622(Delhi High Court)*
  3. Reasons for reassessment was not furnished to the assessee before completion of assessment, held reassessment not valid.  
CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.)

4. In absence of recorded reasons for reopening the assessment, the notice issued under section 148(2) of the Act would be bad-in-law.  
**Prashanth Projects Ltd v. CIT, [2011] 333 ITR 368 , (Bom) (HC)**
5. **Recorded reasons not communicated – Produced before the Tribunal**  
**– Reassessment is bad in law .**  
**PCIT v. Ramaiah (2019) 262 Taxman 17 (Karn) (HC)**  
**Editorial : SLP of revenue is dismissed . PCIT v. Ramaiah (2019) 262 Taxman 16 (SC)**
6. **On the day of furnishing the recorded reasons – Reassessment order is passed – Order passed in hasty manner – Order is set aside.**  
**Kanchan Agarwal (Mrs.) v. ITO (2019) 263 Taxman 682 (Karn.)(HC)**

## V. NEW REASONS CANNOT BE ALLOWED TO BE INTRODUCED OR SUPPLIED:

1. Proper Reasons to believe must, even if there is no assessment u/s. 143(3) – Only reasons recorded by Assessing officer must be considered.

***Prashant s. Joshi vs. ITO 324 ITR 154 (Bom)***

2. Reason must be based on the relevant material on record at the time of recording reasons.

***3i Infotech Ltd v/s. ACIT (2010) 329 ITR 257 (Bom.)***

3. If the recorded reasons show contradiction and inconsistency it means necessary satisfaction in terms of the statutory provision has not been recorded at all. **The Court cannot be called upon to indulge in guess work or speculate as to which reason has enabled the AO to act –Reassessment was quashed:**  
**Plus Paper food Pac Ltd. v. ITO(2015) 374 ITR 485 (Bom.)(HC)**

4. **New reasons cannot be allowed to be introduced or supplied by way of affidavit.** Validity of an order must be judged by the reasons so mentioned therein. Reasons recorded cannot be supplemented by filing affidavit or making oral submission.

**New Delhi Television Ltd vs. DCIT [CIVIL APPEAL NO. 1008 OF 2020 dated : 3<sup>rd</sup> April , 2020 Supreme court ]**

- ***Hindustan Lever Ltd. vs. R.B. Wadkar 268 ITR 332 Bom***
- ***Mohinder Singh Gill vs. Chief Election AIR 1978 SC 851***
- ***Mrs. Usha A Kalwani vs. S.N. Soni 272 ITR 67 (BOM)***
- **Godrej Industries Ltd. v. B.S. Singh, DCIT (2015) 377 ITR 1 (Bom.)(HC)**
- **Aroni Commercial Ltd v/s DCIT (2014) 362 ITR 403 (Bom).**
- **Northern Exim Pvt Ltd v/s Dy.CIT (2013) 362 ITR 586 (Del).**

5. Reasons cannot be supplied subsequent to the recording of such reasons either in the form of an order rejecting the objections or an affidavit filed by the Revenue.

**Sabharwal Properties Industries Pvt. Ltd. v. ITO (2016) 382 ITR 547 (Delhi)(HC)**

6. It is not open to the AO to improve upon the reasons recorded at the time of issuing the notice either by adding and/or substituting the reasons by affidavit or otherwise—quashed.

**GKN Sinter Metals Ltd. v. Ramapriya Raghavan (Ms.), ACIT (2015) 371 ITR 225 (Bom.)(HC)**

7. Court cannot allow the AO to improve upon the reasons in order to support the notice of reassessment

**Amarjeet Thapar v. ITO (2019) 411 ITR 626 (Bom) (HC)**

If the reopening is based on some information or material , the same should have a reference in the reasons recorded which will have to be the basis for reopening.

**1. In the case Pransukhlal Bros. v. ITO (2015) 229 Taxman 444 (Bom.)(HC)**

Held, since the facts were not even remotely adverted to in the recorded reasons, and hence, the order disposing off objections was held unsustainable in law with fresh opportunity to AO to dispose off the objections keeping in mind the recorded reasons.

**1. In the case Varshaben Sanatbhai Patel v. ITO (2016) 282 CTR 75 (Guj.)(HC) it was observed that since the belief of the AO was not based upon the material on record, but on some other material from an external source which did not find reference in the reasons recorded by him, it was held that the basic requirement of section 147 was not satisfied**

## **VI. Succeeding Assessing Officer cannot improve upon the reasons which were originally communicated to the assessee.**

In the absence of any tangible material assessment could not be reopened under section 147, further succeeding Assessing Officer has clearly attempted to improve upon the reasons which were originally communicated to the assessee which was not permissible. ( A.Y.2006-07)

*Indivest PTE Ltd v. ADDIT (2012) 250 CTR 15 / 206 Taxman 351 (Bom.)*



## **VII. REOPENING IS NOT PERMISSIBLE ON BORROWED SATISFACTION OF ANOTHER ASSESSING OFFICER:**

1. AO recording reasons for assessment and assessing officer issuing notice u/s.148 must be the same person. **Successor AO cannot issue notice u/s.148 on the basis of reasons recorded by predecessor AO .** Notice issued invalid – quashed.
  - Notice u/s. 148 invalid as it was issued on direction of CIT
  - **ITO vs. Rajender Prasad Gupta (2010) 48 DTR 489 (JD)(Trib)**
  - Reasons to be formed only by Jurisdictional AO and not any other AO ,and issuance of notice is mandatory:  
***ACIT v. Resham Petrotech Ltd. (2012) 136 ITD 185 (Ahd.)(Trib.)***
  - Reassessment Notice- Jurisdiction – Assessment in Kolkata Reassessment notice in Delhi, such reassessment is held to be without jurisdiction. (S. 127 )
  - **Smriti Kedia (Smt.) v. UOI (2012) 71 DTR 245 / 250 CTR 221 (Cal.)**
  - Notice was issued by the AO who had no jurisdiction– **Gaurav Joshi v. ITO (2019) 174 DTR 353 / 197 TTJ 946 (Asr.) (Trib.)**

## VIII. ASSESEE CAN FILE HIS OBJECTIONS/REPLY TO THE REASONS RECORDED FOR REOPENING – AO HAS TO DISPOSE OFF THE ASSESSEE OBJECTION AND SERVE THE ORDER ON ASSESSEE:

1. AO should dispose off the assessee objection and serve the order on assessee. AO should not proceed with assessment for 4 weeks thereafter.  
**Asian Paint Ltd. vs. Dy. CIT [2009] 296 ITR 90 (Bom)(HC)**
- ▶ Order was passed before expiry of 4 weeks of passing the orders of objection was held to be void .  
**Meta Plast Engineering P. Ltd. v. ITO, ITA NO.5780/Del/2014, dtd: 06/04/2018 (Delhi)(Trib),**
2. Reassessment framed by the AO without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed. Bom HC set-aside the assessment for fresh hearing in case of **IOT Infrastructure and Eng. Services Ltd. vs. ACIT (2010) 329 ITR 547 (Bom)**
3. Reasons for notice must be given and objections of assessee must be considered.  
**Allana cold storage vs. ITO (2006) 287 ITR 1 (Bom.)**  
(Followed the order passed by SC in the case of GKN Driveshaft) *Matter set-aside to pass fresh order.* Reassessment– After expiry of four years–Business income – Capital gains– Order passed within four weeks from date of rejection of assessee's objections– Reassessment was held to be bad in law.  
**Bharat Jayantilal Patel v. UOI (2015) 378 ITR 596 (Bom.)(HC)**

4. **Reassessment–Non disposal of objections**–Providing the assessee with the recorded reasons towards the end of the limitation period and passing a reassessment order without dealing with the objections results in gross harassment to the assessee which the Pr. CIT should note & remedy : **Bayer Material Science Pvt. Ltd.v. DCIT(2016) 382 ITR 333 (Bom.)(HC)**
4. Similarly the Madras HC observed that the order passed without disposing of objections raised by assessee for reopening was improper and null and void. **GKN Driveshafts (India) Ltd. lays down a law and failure to comply would render the assessment order without jurisdiction Jayanthi Natarajan (Ms. ) v. ACIT(2018) 401 ITR 215 (Mad) (HC)**
5. *However the Apex court in the case of Home Finders Housing Ltd. v. ITO (2018) 256 TAXMAN 59(SC) held that Reassessment Order passed without following the procedure , said Order passed before disposal of objections raised by assessee on reasons recorded for reopening is curable irregularity does not vitiate the proceedings. Matter can be remitted for compliance with procedure.*

## **IX. Disposal of objections – To be linked with recorded reasons.**

- 1. S. 148: Reassessment – Suspicious purchases – Disposal of objections – To be linked with recorded reasons.**

Fresh opportunity to AO to dispose off the objections keeping in mind the recorded reasons.

**M/s Pransukhlal Bros. v. ITO, ITA WP Lodging no. 2124 of 2014 dt. 20/8/2014, (Bom HC)**

Order on disposal of objections must deal with the objection

- Ankita A. Choksey v. ITO ( 2019) 411 ITR 207 (Bom)(HC)**
- Swastik Safe Deposit and Investments Ltd. (2019)263 Taxman 303 / 176 DTR 423 (Bom)( HC)**

## Rejection of objection without assigning reasons:

1. In case of **Scan Holding P. Ltd. v. ACIT (2018) 402 ITR 290 (Delhi) (HC)** held allowing the appeal that; the AO had merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with the contentions and issues raised in the objection. The AO had not applied his mind to the assertions and contentions raised by the assessee and the core issue to be examined and considered. The reassessment proceedings were not valid.  
  
➤ **Karti P. Chidambaram v. ACIT (2018) 402 ITR 488 (Mad. )(HC)**
2. In the case of **Venkatesan Raghuram Prasad v ITO (2018) 94 taxmann.com 249 (Mad)**, Where A.O reopened assessment of assessee and assessee participated in assessment proceeding **without raising any objection** before A.O to effect that there was no valid issuance or service of reassessment notice upon assessee, such an objection could not be raised before first Appellate Authority.

## **X. IRRELEVANT AND NON EXISTING REASONS : VAGUE AND GENERAL REASONS NOT PERMISSIBLE:**

**Balakrishna H. Wani vs. ITO 321 ITR 519 (Bom)**

Notice based on suspicion and surmise – Notice is not valid. The requirement of law is “reason to believe” and not reason to “suspect”.

**Krown Agro Foods P. Ltd.v. ACIT (2015) 375 ITR 460 (Delhi) (HC)**

- **DCIT v. Dr. M.J. Naidu (2017) 59 ITR 13 (SN) (Vishakha) (Trib)**
- **Suresh M. Bajaj v. ITO ITA NO. 7/Del/2013, AY 2005–06, dtd:19/02/2016 (Delhi)(Trib.)[www.itatonline.org](http://www.itatonline.org)**
- **PCIT v. Rajesh D. Nandu (HUF) (2019) 261 Taxman 110 (Bom.)**  
it was observed that since reasons as recorded in support of impugned notice to doubt genuineness of gift was not based on any material

## **XI REASONS RECORDED FOR REOPENING OF THE ASSESSMENT BASED ON FACTUAL ERROR:**

*Sagar Enterprises vs. ACIT (2002) 257 ITR 335 (Guj)* – Notice u/s 148 issued on the ground of factually incorrect basis that the assessee had not filed its return could not be sustained even on the basis of alternative reason since it could not be said with certainty as to which factor weighed with the concerned officer when he issued the impugned notice and when the respondent authority was himself unsure as to the year of taxability of the income which is stated to be undisclosed income.

### **ALSO SEE:**

- **Shri Harakchand K. Gada (HUF) v. ITO ITA No.2800/Mum/2014, date:09/12/2015 (Mum.) (Trib.)**
- **KMV Collegiate Sr. Sec. School v. ITO (2017) 163 ITD 653 (Asr.) (Trib.)**
- **Baba Kartar Singh Dukki Educational Trust v. ITO (2016) 158 ITD 965 (Chd.)(Trib.)**
- **PCIT vs. Shodiman Investments Pvt. Ltd, ( 2018) 93 taxmann.com 153/ 167 DTR 290 (Bom.)(HC)**



## XII. REASONS – REASSESSMENT MERELY ON THE BASIS OF INVESTIGATION WING :

1. When there was total non application of mind on the part of the AO, impugned communication was set aside and the matter was remanded back to the AO for de novo consideration.
  - ▶ ***Asian Cerc Information Services (P) Ltd vs. ITO (2007) 293 ITR 271 (Bom)***
  - ▶ ***Purity Tech Textiles Pvt. Ltd. vs. ACIT (2010) 325 ITR 459 (Bom)***
  - ▶ ***Pr. CIT v G. Pharma India Ltd.[2017] 384 ITR 147 (Delhi) (H C)***
  - ▶ ***CIT v/s Meenakshi Oversea's Pvt Ltd (2017) 395 ITR 677(Del) (HC)***
2. Reassessment merely on the basis of investigation wing held to be not valid.
  - ▶ ***CIT v. Kamdhenu Steel & Alloys Ltd. (2012) 248 CTR 33 (Delhi)***
  - ▶ ***CIT v. Multiplex Trading & Industrial Co Ltd (2015) 128 DTR 217 (Delhi)(HC)***
3. Similarly in the case of CIT v. Indo Arab Air Services (2016) 130 DTR 78/ 283 CTR 92 (Delhi)(HC) it was held that mere information that huge cash deposits were made in the bank accounts could not give the AO prima facie belief that income has escaped assessment. The AO is required to form prima facie opinion based on tangible material which provides the nexus or the link having reason to believe that income has escaped assessment. The AO



# REASSESSMENT MERELY ON THE BASIS OF INVESTIGATION WING :

- ▶ Latest:
- ▶ Gateway Leasing Pvt. Ltd vs. ACIT (Bombay High Court)  
[www.itatonline.com](http://www.itatonline.com)

Reopening for bogus capital gains from penny stocks: The Dept's argument that though the assessee disclosed details of the transactions pertaining to purchase and sale of shares, it did not disclose the real colour / true character of the transactions and, therefore, did not make a full and true disclosure of all material facts which was also overlooked by the AO, is not correct. The assessee disclosed the primary facts to the AO & also explained the queries put by the AO. It cannot be said that the assessee did not disclose fully and truly all material facts necessary for the assessment

The AO cannot proceed mechanically and on erroneous information supplied to him by investigation wing  
**Akshar Builders and Developers vs. ACIT, (2019) 411 ITR 602 (Bom.)(HC)**

INFORMATION RECEIVED FROM INVESTIGATION WING : BOGUS PURCHASES : ACCOMMODATION ENTRIES: PENNY STOCK :

- ▶ In the case of PCIT v. Manzil Dineshkumar Shah[2018] 95 Taxmann.com 46 (Guj) HC), the Court held that; even the assessment which is completed u/s 143(1) cannot be reopened without proper 'reason to believe'. If the reasons state that the information received from the VAT Dept that the assessee entered into bogus purchases *"needed deep verification"*, it means the AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe, which is not permissible.
- ▶ Precilion Holdings Ltd v. DCIT ( 2019) 412 ITR 43 (Bom)(HC),
- ▶ Editorial : SLP of revenue is dismissed, DCIT v. Precilion Holdings Ltd (2019) 418 ITR 15 (St)
- ▶ Usha Exports vs. ACIT (2020) 312 CTR 237/ 185 DTR 87 (Bom.)(HC),
- ▶ Reassessment solely made on the basis of information received from investigation wing as assessee was beneficiaries of accommodation entries was held to be not valid when no cross examination allowed to the assessee.
- ▶ ITO v. Reliance Corporation (2017) 55 ITR 69 (SN) (Mum.) (Trib.)

## AGAINST DECISIONS :

- ▶ However In the case of **Jayant Security & Finance Ltd. v. ACIT (2018) 254 Taxman 81 (Guj. )(HC)** the court held that; Information from investigation Wing stating that loan from company working as an entry operator and earning bogus funds to provide advances to various persons. **Reassessment was held to be valid.**
- ▶ Similarly in the case of **Ankit Agrochem (P. ) Ltd. v. JCIT (2018) 253 Taxman 141 (Raj)(HC)** the Court held that; reassessment on the basis of information for DIT stating that the assessee had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, **reassessment on basis of said information was justified.**
- ▶ Similar where Unsecured loans are there – on Subsequent information discovered as bogus– Reassessment was held to be justified. **Virbhadra Singh v. Dy.CIT (2017) 291 CTR 439/ 146 DTR 65 (HP)(HC)**
- ▶ **South Yarra Holdings v. ITO (2019) 263 Taxman 594 (Bom.)(HC)**

## REOPENING – CLIENT CODE MODIFICATION

- ▶ On the basis of information from investigation wing, in order to verify the genuineness of transaction in modification of clients code, reassessment was held to be bad in law.

**Sunita jain ( Smt) v. ITO, ITA NO. 502/Ahd/2016, AY 2008–09 dtd: 09/03/2017(Ahd.)(Trib.);www.itatonline.org**

**Rachna Sachin jain(Smt.) v. ITO (Ahd.)(Trib.);www.itatonline.org**

### Statement of unconnected person :

1. In the absence of any material before the AO a statement by an unconnected person did not constitute reason to believe that assessee income had escaped assessment especially when the assessee had produced all the material and relevant facts and therefore the reassessment proceedings could not be sustained.
  - ▶ ***Praful Chunilal Patel vs. M.J. Makwana, ACIT (1999) 236 ITR 832 (Guj)***
  - ▶ ***JCIT & Ors vs. George Williamson (Asam) Ltd (2002) 258 ITR 126 (Guj)***
2. Reassessment based on **statement of third party**–Assessee not given opportunity to be heard–Reassessment not valid.  
**Kothari Metals v. ITO (2015) 377 ITR 581 (Karn.)(HC)**

3. Share premium amount–No lack of disclosure or suppression of any material facts – No tangible reasons in notice – Notice not valid.

**Alliance Space P. Ltd. .v. ITO (2015) 375 ITR 473 (Bom.)(HC)**

4. In the case of Subhash Chander Goel v. ITO (2016) 156 ITD 808 (Chd.)(Trib.) it was observed that Statement recorded by Police Officer under section 161 of Code of Criminal Procedure, 1973, is neither given 'on oath' nor it is tested by cross examination. Therefore, such a statement cannot be treated as substantive evidence to reopen assessment proceedings.

5. In the case of AMSA India P. Ltd. v. CIT (2017) 393 ITR 157/ 82 taxmann.com 29 (Delhi)( HC) the Court held that; the statement of third person not having live link with assessee's suspected income, the reassessment was held to be bad in law . The material should have a live link with the assessee`s suspected income or non-disclosure of a material fact. That kind of live link was absent. Therefore the notice under section 148 read with section 147 of the Act was to be quashed.

6. **Kamla Devi S. Doshi v. ITO (2017) 57 ITR 1 (Mum.) (Trib)**

### **XIII. INCRIMINATING MATERIAL FOUND IN SEARCH OF THIRD PARTY : 153C vis a vis 148 :**

In the case of **Rajat Saurabh Chatterji v. ACIT ITA NO. 2430/Del/2015, AY 2007-08 dtd: 20/05/2016 (Delhi)(Trib)** the Tribunal observed that where the AO detects incriminating material in search, he has to be processed only u/s 153C and not u/s 147. A notice u/s.148 to assess such undisclosed income is void ab initio.

We have a contrary view. Search operations in premises of third person – Documents found belonging to third person and not to assessee – Reassessment was held to be justified **Yamuna Estate P. Ltd. v. ITO (2016) 45 ITR 517 (Mum.)(Trib.)**

The Tribunal held that when the AO had issued a notice u/s 153C to which the assessee had complied with. Thereafter the AO did not continue with the proceedings u/s 153C. Subsequently the AO issued a notice u/s 148, which was held to be bad in law. (ITA No. 3275/Mum/2015 & 3276/Mum/2015) (. Y. 2003 – 04, 2005 – 06) **Rayoman Carriers Pvt. Ltd. v. ACIT (Mum) (Trib.)**

## **XIV. INFORMATION FROM U. K. TAX AUTHORITY**

In the case of CIT v. Late K.M. Bijli (2017) 390 ITR 402 (Delhi) (HC), the Court held that; the exclusive reliance placed upon the U.K. revenue authorities' information was not sufficient to conclude that the amount which was attributed to the deceased assessee belonged to him. The materials showed that the amounts were brought to tax in the hands of the assessee's relative. There were pointers to omissions, leads that could have been developed by the Assessing Officer, such as queries to the bank for foreign inward remittances and their source. Having received information the Department could have proceeded through reassessment proceedings at the earliest opportunity. However, the Department chose to wait for three years and sought to reopen a decade late completed assessment and by then the assessee had died. The order of the Appellate Tribunal deleting the additions was not perverse.



## **XVI. REASON TO BELIEVE OF THE AO:**

- ▶ The Apex Court in the case of **Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC)** analysed the Phrase "**reason to believe**" and observed that "It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn."
- ▶ It is not for somebody else to tell the assessing authority what inferences, whether of facts or law, should be drawn.
- ▶ Reopening of assessment on basis of letter of Commissioner (Appeals) containing identical facts stated by assessee–Not valid.  
**United Shippers Ltd. v. ACIT (2015) 371 ITR 441 (Bom.)(HC)**
- 1. 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.  
**Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 570 (Bom)**



# Information Received From Another AO:

- ▶ Similarly where Notice is issued in a mechanical manner, based on information received from another AO, and sanction is accorded by the CIT in a mechanical, reopening is bad in law. [**Banke Bihar Properties Pvt. Ltd. v. ITO (Delhi)(Trib)** [www.itatonline.org](http://www.itatonline.org)] Also see [**Sunil Agarwal v. ITO** ITA NO. 988/Del/2018, AY 2008–09 dtd: 24/05/2018 (Delhi)(Trib)]
- ▶ Where A.O accepted loss declared by the assessee on sale of immovable property in which she was one of co-owners, he could not reopen assessment subsequently on ground that in case of another co-sharer of same property, AO had disputed value and referred question to DVO and, on basis of valuation so presented, he had computed certain capital gain and, on basis of valuation so presented, he had computed certain capital gain.  
**Kalpna Chimanlal Shah v. ITO**, [2018] 94 taxmann.com 252 (Guj) (HC)
- ▶ Reassessment on the basis of finding in case of another assessee is held to be bad in law . Even in recorded reason the AO has not linked any material and the assessment order **PCIT v. Vaman Estate** (2020) 113 taxmann.com 405 ( Bom) (HC) (UR)

## Reasons to believe – Survey :

1. Detection of excess stock or unaccounted expenditure on renovation of business premises at the time of survey u/s. 133A in a subsequent year, could not constitute reason to believe that such discrepancies existed in earlier years also and, therefore, reopening of assessments for those years on the basis of aforesaid reason to believe was not valid.

***CIT vs. Gupta Abhushan (P) Ltd (2008) 16 DTR (Del) 76***

2. Reasons recorded prior and subsequent to survey not satisfying requirement of law – Nothing before Assessing Officer to record belief that escapement has taken place –Notice is not valid.

**Hemant Traders v.ITO (2015) 375 ITR 167 (Bom.)(HC)**

3. Reassessment not resulting in assessment of higher income  
Reassessment notice not valid.[ S. 115JB, 147, 148]

**Motto Tiles P. Ltd. v. ACIT (2016) 386 ITR 280 (Guj.)(HC)**

The latest decision of Supreme Court in case of **New Delhi Television Ltd. Vs. DY.CIT (CA NO. 1008 of 2020 ; dated : 3<sup>rd</sup> April , 2020 (AY:2008-09) (SC)** where in the court held that subsequent facts which come to the knowledge of the AO can be taken into account to decide whether the assessment proceedings should be reopened or not. Information which comes to the notice of the AO during proceedings for subsequent assessment years can definitely form tangible material to invoke powers vested with the assessing officer u/s. 147 of the Act.

## XVII. PROCEDURAL DEFECT: ISSUE AND SERVICE OF NOTICE ETC : S. 292BB

1. No notice u/s. 148 having been served on the assessee prior to re-opening of assessment, Asst. made u/s. 147 was bad in law; argument based on S. 292BB was not sustainable on the facts of the case.

***CIT vs. Mani Kakkar (2009) 18 DTR (Del) 145 (Asst yr 2001-2002)***

2. Issue of notice beyond limitation period : Expression “to issue” – Meaning send out – Notice signed on 31/3/2010 sent to speed post on 7/4/2010 – Notice issue after Six years for the relevant A.Y. 2003-04

***Kanubhai M. Patel (HUF) vs. Hiren Bhatt (2010) 43 DTR 329 (Guj.)***

3. Notice issued within period of limitation but send after that period – Direction to ascertain when the notice had been dispatched by reg. post.

**CIT vs. Major Tikka Khushwat Singh 212 ITR 658 (SC)**

**R.K. Upadhaya vs. Shanabhai P. Patel (1987) 166 ITR 163 (SC)**

4. Date of issue would be date on which notice is handed over to Postal Department–Notice handed over to Postal Department before expiry of time hence notice was not barred by limitation.

The Court held that; the date of issue of notice under section 149 of the Act, would be the date on which it was handed over for service to the proper officer, i.e., the Postal Department. The approval was granted by the Principal Commissioner of the Income-tax also on March 30, 2015. The notice was valid. (AY. 2008– 2009)

**Rajesh Sunderdas Vaswani v. C.P. Meena, Dy.CIT (2017) 392 ITR 571 / 149 DTR 49 (Guj.)(HC) Editorial :** SLP of the assessee was dismissed, **Rajesh Sunderdas Vaswani v. C.P. Meena, Dy.CIT (2016) 389 ITR 7(St.)**

5. Notice issued to individual. His HUF cannot be assessed on the ground that notice was issued to individual who was Karta of HUF. Defect of jurisdiction.

***Suraj Mal HUF vs. ITO (2007) 109 ITD 327 (Del.)(TM).***

6. Assessment – Amalgamation – Transferor company – Scheme of amalgamation sanctioned by the High Court – No proceedings can be initiated against the transferor company.

***Khurana Engineering Ltd. v. DCIT (2013) 217 Taxman 75 (Guj.)(HC)***

7. However the of SC in case of **Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 390 (SC)** held that; notice issued in the name of a company which does not exist upon its conversion into a LLP is valid if there is material to show that the issue in the name of the company was a clerical mistake. The Court also observed that, in the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under S. 292B of the Act.

**Editorial.** Order in **Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 109 (Delhi) (HC)** is affirmed

**However a subsequent decision in case of Pr. CIT , New Delhi v. Maruti Suzuki India Ltd [2019] 416 ITR 613 (SC) held that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name**

8. Assessment – Amalgamation – Transferor company – Scheme of amalgamation sanctioned by the High Court – No proceedings can be initiated against the transferor company.  
***Khurana Engineering Ltd. v. DCIT (2013) 217 Taxman 75 (Guj.)(HC)***
9. Service of notice on ***accountant of assessee-company*** – Power of attorney given to accountant to conduct assessment proceedings not including authority to accept any fresh notice– Reassessment was not valid.  
**CIT v. Kanpur Plastipack Ltd. (2017) 390 ITR 381 (All) ( HC)**
10. Notice issued in name of ***deceased assessee*** — Objection raised by legal heir of deceased assessee before completion of reassessment — Notice was held to be null and void. **Jaydeepkumar Dhirajlal Thakkar v. ITO (2018) 401 ITR 302 (Guj) (HC)**
11. In **ITO v/s. Dharam Narain (2018) 253 CTR 479 (SC)** held that non availability of the assessee to receive the notice sent by registered post as many as on two occasions and service of notice on authorized representative of the assessee whom the assessee disowned, is sufficient to draw an inference of deemed service of notice on the respondent assessee and sufficient compliance of the requirement of sec 143(2).

**Notice issued in name of deceased assessee —Department attempting to correct error by changing name of entity in reasons to believe" —Not curable defects notice is invalid**

**Rajender Kumar Sehgal. v. ITO (2019) 414 ITR 286 (Delhi)(HC)**

**Notice against dead person – Chandreshbhai Jayantibhai Patel v. ITO (2019) 413 ITR 276 (Guj.)(HC)**

The fact that the AO was not informed of the death before issue of notice is irrelevant.

**Rupa Shyamsundar Dhumatkar v. ACIT (2020) 420 ITR 256 (Bom)(HC)**

**Notice in the name of deceased assessee – For acquiring jurisdiction to reopen an assessment, notice should be issued in name of living person, i.e., legal heir of deceased assessee – S.292B could not be invoked to correct a fundamental/substantial error :**

**Sumit Balkrishna Gupta. v. ACIT (2019) 414 ITR 292 (Bom)(HC)**



## **XVIII. SERVICE BY AFFIXTURE :**

1. Where notice was not sent by registered post nor served upon assessee in any other manner whatsoever, proceedings for assessment were void.

**CIT vs. Harish J. Punjabi (2008) 297 ITR 424 (Del.)**

2. Invalid Service of notice not a procedural defect. Service by affixture. No material to prove efforts made by Depart to serve notice in course.

***Arunlal vs. ACIT (2010) 1 ITR 1 (Trib) (Agra) (TM)***

Similarly in case of *ITO V/s. Om Praksh Kukreja (2016) 134 DTR (Chd,. Tribl) 208* it was held that where A.O having served the notice under S.148 by affixture at a wrong address where the assessee was not residing it cannot be said that the notice u/s 148 was served upon the assessee and therefore the resultant reassessment proceedings were invalid and bad in law.

3. *A strict procedure has to be followed for service by affixture. If done improperly, the notice and the resultant assessment order are null and void*

***Sanjay Badani vs. DCIT [2014] 35 ITR (T) 536 (ITAT Mumbai)***

4. No valid notice served upon assessee either through registered post or through affixture, reassessment was held to be not valid.

**Auram Jewellery Exports P. Ltd. v. ACIT (2017) 54 ITR 1 (Delhi) (Trib.)**

## **XIX. NOTICE U/S. 143(2) IS MANDATORY:**

Issue of a notice u/s.143(2) is mandatory. The failure to do so renders the reassessment void (*CWT v. HUF of H. H. Late Shri. J.M. Scindia (2008) 300 ITR 193 (Bom)*). S.292BB was inserted w.e.f. 1-4-2008 and came into operation prospectively for AY 2008-09 and onwards.

- **CIT v. Salman Khan (Bom.)(HC) [www.itatonline.org](http://www.itatonline.org).**
- **CIT vs. Mundra Nanvati (Bombay High Court) 227 CTR 387 Bom.**
- **CIT vs. Virendra Kumar Agarwal, Appeal No. 2429 OF 2009 DT. 7/1/2010 (Bom. H.C.)**
- **Dy. CIT v. Dharampal Satyapal Ltd. (2016) 130 DTR 241 (Delhi)(Trib.)**

One should note that a Jurisdictional error cannot be cured by section 292BB. A reference can be made to a recent decision of Delhi High Court in the case **PCIT v.Silver Line (2016) 383 ITR 455 (Delhi)(HC)** . The ratio is followed in;

**Alok Mittal v. DCIT (2017) 167 ITD 325 (Kol) (Trib.)**

**Anil Kumar v. ITO (2017) 55 ITR 97 (Asr.) (Trib.)**

## **XX. NO REASSESSMENT U/S. 148, IF ASSESSMENT OR REASSESSMENT IS PENDING:**

1. So long the asst proceedings are pending the AO cannot have any reason to believe that income for that year has escaped asst ( period for issue of notice u/s. 143(2) had not expired)

***CIT v/s. Qatalys Software Technology 308 ITR 249 (Mad)***

2. 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.)***

3. Notice under section 148 cannot be issued for making reassessment, when time limit is available for issue of notice under section 143(2) for making an assessment under section 143(3)

***CIT vs. TCP Ltd. (2010) 323 ITR 346 (Mad.)***

- Trustees of H.E.H. The Nizam's Supplemental Family Trust v/s. CIT – [(2000) 242 ITR 381 (SC)]
- Ghanshyamdas v/s. Regional Assistant Commissioner of Sales Tax – [(1964) 51 ITR 557 (SC)]
- CIT v/s. S. Raman Chettiar – [(1965) 55 ITR 630 (SC)]
- Commercial Art Press v/s. CIT – [(1978) 115 ITR 876 (All)]
- A.S.S.P & Co. v/s. C.I.T – [(1988) 172 ITR 274 (Mad)]
- CIT v/s. P. Krishnakutty Menon – [(1990) 181 ITR 237 (Ker)]
- Indian Tube Co. Ltd. v/s. ITO – [(2005) 272 ITR 439 (Cal)]
- ***CIT vs Rejendra G. Shah (247 ITR 372) (Bom) [in favour of assessee]***
- ***Jimmy F. Bilimoria [ITA No.6063/Mum/2012] (Against the assessee)***
- XL India Business Services (P.) Ltd.v ACIT (2014) 67 SOT 117/167 TTJ 467 (Delhi)(Trib.)(In context to reference to TPO . In favour of assessee)
- CIT.v. Shamlal Bajaj (2014)222 Taxman 173 (Mag.) (Mad.)(HC)  
S.147 : Reassessment – Non-initiation of action u/s 143(2) though time is available Reassessment is held to be valid. ***(Against the assessee)***
- ***CIT v. Jora Singh (2013) 215 Taxman 424 / 262 CTR 630 (All.)(HC)***
- ***Vardhman Holdings Ltd. v. ACIT (2016) 158 ITD 843 (Chd.)(Trib.)***

## **XXI. NO REASSESSMENT JUST TO MAKE AN ENQUIRY OR VERIFICATION:**

No reopening to make fishing inquiries.

- i. Bhor Industries Ltd. v/s. ACIT – [(2004) 267 ITR 161 (Bom)]
- ii. Hindutan Lever Ltd. v/s. R. B. Wadkar, ACIT – [(2004) 268 ITR 332 (Bom)]
- iii. Bhogwati Sahakari Sakhar Karkhana Ltd. v/s. Dy. CIT [(2004) 269 ITR 186 (Bom)]
- iv. Ajanta Pharma Ltd. v/s. ACIT – [(2004) 267 ITR 200 (Bom)]
- v. Pr. CIT .v. G & G Pharma India Ltd.[2017] 383 ITR 147 (Delhi)(HC)
- v. **Reassessment– Distinction between reason to believe and reason to suspect.**

**Universal Power Systems (P) Ltd. V/s Asst. CIT 48 ITR (Tribunal) 191 (Chennai)**

The Assessment re.opened merely to verify discrepancy– i.e. variation between Income declared by assessee and Income shown in TDS Certificate i.e. case re.opened on reasons to suspect is not valid.

- vi. No Reason to believe that income has escaped assessment – Assessing Officer wanted to **inquire about source of funds** of an immovable property purchased by assessee – No reason to issue notice for reassessment.

**CIT v. Maniben Velji Shah (2006) 283 ITR 453 (Bom.)(High Court)**

- vi. Pr. CIT .v. G & G Pharma India Ltd. (Delhi)(HC) ;

- vi. Merely because the assessee's income is "shockingly low" and others in the same line of business are returning a higher income. The invocation of the jurisdiction on the basis of suspicions and presumptions cannot be sustained .

**Rajendra Goud Chepur v. ITO (AP&T)(HC);[www.itatonline.org](http://www.itatonline.org)**

- v. **Giriraj Enterprises v. ACIT (2019) 174 DTR 409 /102 taxmann.com 188 (Bom.)(HC)**

## XXII. EXPL 3 TO SEC 147: ANY OTHER INCOME :

1. Once Asst is open – any other income can be considered. Expl 3 to sec 147:

*CIT v/s. Best Wood 331 ITR 63 Ker FB.*

If Assessing officer does not assess income for which reasons were recorded u/s. 147 he cannot assess other income u/s. 147

2. CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom)

It is essential that the items in respect of which the reasons had been recorded are assessed. If the AO accepts that the items for which reasons are recorded have not escaped assessment, it means he had no “*reasons to believe that income has escaped assessment*” and the issue of the notice becomes invalid. If so, he has no jurisdiction to assess any other income. Ranbaxy Laboratories Ltd vs. CIT (2011) 60 DTR 77(Delhi) (High Court) (Jet Airways Supra followed)

3. DIT (IT) v. Black & Veatch Prichard, Inc. (2019) 265 Taxman 93 Bom)  
Editorial : SLP is granted to the revenue, DIT (IT) v. Black & Veatch Prichard, Inc. (2019) 265 Taxman 92 (SC)

## **XVII. EXPL 3 TO SEC 147: ANY OTHER INCOME :**

### **3. Hotel Regal International & Anr. Vs. ITO (2010) 320 ITR 573 CAL**

Petitioner were called upon to file objection to the notice u/s. 148 proposing to reopen the assessment on ground that Rs. 73,219 had escaped asst. Now the authorities could not shift their stand and pass on order on other ground that valuation report received subsequent to passing of the order disposing the objection the Assessing officer must consider the material and pass speaking order. Assessment quashed.

*A Reference can also be made to following decisions :*

- **ITO v Bidbhanjan Investment & Trading CO (P ) Ltd ( 2011) 59 DTR 345 ( Mum) (Trib)**
- **Dy. CIT v. Takshila Educational Society (2016) 131 DTR 332/ 284 CTR 306 (Pat.) (HC)**
- **Anugrah Varhney v. ITO ITA NO. 134/Agra/2014 dt. 05/04/2016 [A.Y. 2003-04] (Agra)(Trib.)**



## XXII. RE-OPENING BEYOND 4 YEARS :

**CONDITION – SANCTION – FAILURE ON PART OF ASSESSEE TO DISCLOSE MATERIAL FACT :**

1. 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.
  - ***German Remdeis Ltd vs. DCIT (2006) 287 ITR 494 (Bom)***
  - ***CIT vs. Former Finance (2003) 264 ITR 566 (SC)***
  - ***Tata Business Support Services Ltd. v. Dy. CIT (2015) 232 Taxman 702 (Bom.)(HC)***
  - ***Gujarat Eco Textile Park Ltd. v. ACIT (2015) 372 ITR 584 (Guj.)(HC)***
  - ***Nirmal Bang Securities (P) Ltd. v. ACIT. (2016) 382 ITR 93 (Bom.)(HC)***
2. There was no tangible material before the Assessing Officer to form the belief that the income had escaped assessment and therefore, reopening of assessment under section 147 was not valid.
  - ***Balakrishna Hiralal Wani vs. ITO (2010) 321 ITR 519 (Bom.)***

## Continue.....

- ▶ *CIT vs. Former Finance (2003) 264 ITR 566 (SC)*
- ▶ *Tata Business Support Services Ltd. v. Dy. CIT (2015) 232 Taxman 702 (Bom.)(HC)*
- ▶ *Tirupati Foam Ltd. v. Dy. CIT (2016) 380 ITR 493 (Guj.)(HC)*
- ▶ *Gujarat Eco Textile Park Ltd. v. ACIT (2015) 372 ITR 584 (Guj.)(HC)*
- ▶ *Nirmal Bang Securities (P) Ltd. v. ACIT. (2016) 382 ITR 93 (Bom.)(HC)*

3. Where the deduction under section 80IB of the Act was allowed to the assessee by the assessing officer in the original assessment order under section 143(3) of the Act after considering the audit report in Form 10CCB and the other details filed by the assessee, it cannot be said that there was a failure on the part of the assessee to disclose fully and truly all the facts for the assessment so as to invoke the provisions of section 147 for re-examining the deduction under section 80 IB of the Act, after expiry of four years from the end of the assessment year.

*Purity Techtextile (P) Ltd. vs. ACIT & Anr. (2010) 325 ITR 459 (Bom.)*

## SECOND REASSESSMENT

1. Issue raised in second reassessment was part of original assessment hence second reassessment was held to be not valid. **CIT v. Central Warehousing Corporation (2015) 371 ITR 81 (Delhi) (HC).**
2. During assessment proceedings and first reassessment proceedings questions regarding dealer's commission as well as TDS on those amounts were replied to AO. Revenue considering same, disallowed certain portion. Notice was issued once again on the same issue . Allowing the petition the Court held that an attempt of AO to revisit same issue for third time without any tangible or fresh material could not be held as valid reassessment. **Vodafone South Ltd. .v. Union of India (2014) 363 ITR 388 (Delhi)(HC)**
3. **Failure to disclose all material facts was not mentioned in the recorded reasons Reassessment was held to be not valid.**

Notice after expiry of four years - As there is **no allegation** in the reasons for failure to disclose material facts necessary for assessment reopening beyond four years was held to be not valid.

**Sound Casting(P) Ltd v. Dy.CIT (2012) 250 CTR 119 (Bom.)**

**Tao Publishing (P) Ltd..v. Dy.CIT (2015) 370 ITR 135 (Bom.)(HC)**

**Tata Business support Services Ltd. v. DCIT( 2015) 232 Taxman 702 (Bom)(HC)**

4. Beyond four years–Reassessment held to be not valid in the absence of any new or additional information.

**NYK Line (India) Ltd. v. Dy. CIT (2012) 68 DTR 90 (Bom)(High Court)**

5. When a regular assessment is completed in terms of section 143(3) of the a presumption can be raised that such an order has been passed upon a proper application of mind. The escapement of income by itself is not sufficient for the reopening the assessment in a case covered by the proviso to section 147, unless and until there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. Unless and until the recorded reasons specifically indicate as to which material fact or facts was or were not disclosed by the assessee in the course of the original assessment, there could not be any reopening of assessment.

**Oracle Systems Corporation v. ACIT (2016) 380 ITR 232 (Delhi) (HC)**

**6. Reassessment – Despite “Wrong Claim”, reopening invalid if failure to disclose not alleged:**

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 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.

**Titanor Components Limited vs ACIT (2011) 60 DTR 273 (Bom)**

**7. Reassessment – Transfer pricing – Permanent establishment – Income had already been disclosed by the Indian subsidiary and found by the Transfer Pricing Officer (TPO) to be at arm's length. Reassessment was held to be bad in law.**

**Honda Motor Co. Ltd. v. ADCIT (2018) 301 CTR 601 (SC)**

## XXIII. APPROVAL AND SANCTION

1. CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable.
- German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom) (A.Y.1997-99)
  - CIT vs. Suman Waman Chaduahry (2010) 321 ITR 495 (Bom)
  - SLP dismissed on 12/2/2008 (2009) 312 ITR 339 (St.)
  - CIT v. S. Goyanka Lines & Chemical Ltd. (2016) 237 Taxman 378 (SC)
  - United Electrical Company (P) Ltd vs. CIT & Ors (2002) 258 ITR 317 (Del)
  - Asiatic Oxygen Ltd.v. Dy. CIT (2015) 372 ITR 421 (Cal.) (HC)
  - Maruti Clean Coal And Power Ltd. v. ACIT (2018) 400 ITR 397 (Chhattisgarh) (HC)
  - ITO v. Virat Credit & Holdings Pvt. Ltd. ITA NO. 89/DEL/2012 dt. 09/02/2018 (A.Y.2005-06)(Delhi)(Trib), [www.itatonline.org](http://www.itatonline.org)
  - Sunil Agarwal v. ITO [2002] 83 ITD 1 (TM) (Delhi)(Trib)
  - Banke Bihar Properties Pvt. Ltd. v. ITO (Delhi)(Trib) [Supra];

2. Merely affixing a ‘yes’ stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance under section 151 of the Act. The approval is a safeguard and has to be meaningful and not merely ritualistic or formal.

*Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del.)(H C)*

Dy. CIT v. Dharampal Satyapal Ltd. (2016) 130 DTR 241/ 175 TTJ 217 (Delhi)(Trib.)

PCIT v. N. C. Cables Ltd. (2017) 391 ITR 11/ 149 DTR 90 (Delhi)(HC)

3. Failure on part of Assessing Officer to take sanction of appropriate authority would go to very root of validity of assumption of jurisdiction by Assessing Officer hence the order is bad in law.

*Anil Jaggi. v. CIT (2018) 168 ITD 599 (Mum) (Trib.)*



**3. Sanction of commissioner instead of JCIT renders reopening is void.**

When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner (SPL's Siddhartha Ltd followed)(A.Y. 2004-05)

**Ghanshyam K. Khabrani v. ACIT (Bom)(High Court) [www.itatonline.org](http://www.itatonline.org)**

- **DSJ Communication Ltd. .v. Dy.CIT (2014) 222 Taxman 129 (Bom.)(HC)**
- **Purse Holdings India P. Ltd. v. ADDIT(IT)( 2016) 143 DTR 1(Mum.)(Trib.)**
- **Yum ! Restaurants Asia Pte Ltd v. Dy. DIT (No.1) (2017) 397 ITR 639 (Delhi) (HC)**

**4. In case of CIT v. Gee Kay Finance And Leasing Co. Ltd. (2018) 401 ITR 472 (Delhi) (HC) it was observed that the satisfaction and approval of the Chief Commissioner or the Commissioner under section 151(1) was a sine qua non before issuance of a notice under section 148 by the Assessing Officer, who might be of the rank of an Income-tax Officer or Assistant Commissioner or Deputy Commissioner, but when such notice was to be issued after the expiry of four years period of limitation, the sanction of the Chief Commissioner was a precondition. The proviso to section 151(1), when it referred to an Assessing Officer, could also mean not merely an Assessing Officer below the rank of an Assistant Commissioner and a Deputy Commissioner but also all Assessing Officers**



## XXIV.DISCLOSURE OF PRIMARY FACTS:NO POWER TO REVIEW

1. Order of Assessing officer u/s. 143(3) reflects that the primary facts relating to case was before the Assessing officer, therefore there was disclosure of all primary facts relating to claim of deduction u/s. 80IB(10).  
*Mistry Lalji Narsi Development Corp. vs. ACIT (2010) 229 CTR 359 (Bom)*
2. Allowance of bad debt was specifically raised in the original assessment proceedings and on receiving explanation from assessee the claim of assessee was allowed, reassessment held to be invalid.(A. Y. 2004-05)  
*Yash Raj Films P. Ltd. vs. ACIT (2011) 332 ITR 428 (Bom.)*
3. Reassessment – Despite “Wrong Claim”, reopening invalid if failure to disclose not alleged:  
Titanor Components Limited vs ACIT (2011) 60 DTR 273 (Bombay)  
[www.itatonline.org](http://www.itatonline.org).  
Editorial-Hindustan Lever( 2004) 268 ITR 332 (Bom) followed).

## Continue ....

- ▶ Assessment order is not a scrap of paper & AO is expected to have applied his mind. Reopening on ground of "oversight, inadvertence or mistake" is not permissible.

**CIT .v. Jet speed Audio Pvt. Ltd. (2015) 372 ITR 762 (Bom.)**

- ▶ AO has no power to review – it was not open for AO to re-look at same material only because he was subsequently of view that conclusion arrived at earlier was erroneous. Housing Development Finance Corporation Ltd. .v. J. P. Janjid (2014) 225 Taxman 81(Mag.) (Bom.)(HC); CIT v. Amitabh Bachchan [2012] 349 ITR 76 (Bom.) (HC),

- ▶ All facts were before AO at the time of original assessment as well as reopened asst. Even assuming that he failed to apply his mind, assessment cannot be reopened u/s 147.

**Asian Paints Ltd. v. CIT [2009] 308 ITR 195 (Bom.) (HC)**

- ▶ In the absence of any fresh material – Reopening would amount to change of opinion.

## Continue ....

- ▶ **The CIT– 8. Vs. M/s. Advance Construction Co. Pvt. Ltd. [INCOME TAX APPEAL NO.77 OF 2014; dt 28/6/2016 (Bombay High Court )]**
- ▶ **Full particulars were furnished in the course of original assessment proceedings Crescent Construction Co. v. ACIT (2017) 188 TTJ 497 (Mum.) (Trib.)**
- ▶ **There was no failure on part of assessee to submit related documents Muniwar Abad Charitable Trust v. ACIT (E) (2017) 59 ITR 204 Mum) (Trib)**
- ▶ **Reassessment – After the expiry of four years – Deemed dividend – No failure to disclose material facts hence reassessment was held to be not valid**  
**Gujarat Mall Management Company Private Limited v. ITO (2018) 400 ITR 329 (Guj) (HC)**
- ▶ **Reassessment – After the expiry of four years – There was no failure to disclose all material facts – Reassessment was held to be not valid – Alternative remedy is no bar to file writ petition if the action of the authority is beyond their jurisdiction.**  
**Cedric De Souza Faria. v. DCIT (2018) 400 ITR 30 (Bom) (HC)**

## **XXV. Disclosure in balance sheet also amounts to disclosure**

1. Disclosure in balance sheet also amounts to disclosure:
  - *CIT vs. Corporation Bank Ltd (2002) 254 ITR 791 (SC)*
  - *Arthus Anerson & Co. vs. ACIT (2010) 324 ITR 240 (Bom)*
  - *Considering the decision against of Dr. Amin's Pathology Lab vs. P.N. Prasad (2001) 252 ITR 673 (Bom)*
  - *CIT .v. Lincoln Pharmaceuticals Ltd. (2015) 375 ITR 561 (Guj.)(HC)*

### **Against :**

**ACIT v. M.P. Laghu Udyog Nigam Ltd. (2017) 165 ITD 446 (Indore) (Trib.)**

2. Mere production of account books from which material evidence could have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the proviso. Hence reopening of assessments is perfectly in accordance with law hence same is upheld.

**CIT v. Tata Ceramics Ltd. (2018) 403 ITR 389 (Ker) (HC)**

## **XXVI. FULL AND TRUE DISCLOSURES OF ALL MATERIAL FACTS:**

- *CICI Securities Ltd. .v. ACIT (2015) 231 Taxman 460 (Bom.)(HC)*
- *Business India .v.DCIT(2015) 370 ITR 154/299 Taxman 289 (Bom.) (HC)*
- *Prashant Project Ltd. vs. Asst. CIT (2011) 333 ITR 368 (Bom)*
- *Hindustan Petroleum Corporation Ltd. vs. Dy. CIT(2010) 328 ITR 534(Bom)*
- *Betts India (P.) Ltd. v. Dy. CIT (2015) 235 Taxman 77 (Bom.)(HC)*
- *Kimplas Trenton Fittings Ltd. v.ACIT (2012) 340 ITR 299 (Bom.)*
- *Hamdard Laboratories (India) & Anr. v. ADIT(E) (2015) 379 ITR 393 (Delhi)(HC)*
- *Dempo Brothers Pvt Ltd. v. ACIT (2018) 403 ITR 196 (Bom) (HC )*
- *ACIT v. Kalyani Hayes Lemmerz Ltd (Bom) (HC)*
- *Kotarki Constructions (P) Ltd. v. ACIT (2018) 162 DTR 49 (Karn) (HC)*

## XXVII. REASSESSMENT WITHIN FOUR YEARS :ASST COMPLETED U/S. 143(3):

1. An asst. order passed after detailed discussion cannot be reopened within a period of 4 years unless the AO has reason to believe that there is to some inherent defect in the assessment.
- German Remedies Ltd vs. DCIT & Ors (2006) 285 ITR 26 (Bom)
  - Siemens Information System Ltd. vs. ACIT (2007) 295 ITR 333 (Bom)
  - Godrej Agrovat Ltd. 323 ITR 97 (Bom)
  - Capgemini India (P.) Ltd. v. ACIT (2015) 232 Taxman 149 (Bom.)(HC)
  - Friends of WWB India v. DIT (2018) 402 ITR 350 (Guj) (HC)
  - CIT v. Aroni Commercial Ltd. (2017) 393 ITR 673 (Bom)
  - United States Pharmacopiea India Pvt.Ltd. v. DCIT (2017) 57 ITR 312 (Hyd. Trib.)
  - Vijay Harishchandra Patel. v. ITO (2018) 400 ITR 167 (Guj) (HC)
  - Pr. CIT v. Century Textiles and Industries Ltd[ Income tax Appeal no 1367 of 2015 dt :03/04/2018 (Bombay High Court)].

2. **Change of opinion- Within period of Four year:**

Once an assessment has been completed under section 143 (3) after raising a query on a particular issue and accepting assessee's reply to the query. Assessing Officer has no jurisdiction to reopen the assessment merely because the issue in question is not specifically adverted in the assessment order ,unless there tangible material before the Assessing Officer to come to the conclusion that there is escapement of income.( Asst Year 1998-99).

**Asst CIT v Rolta India Ltd ( 2011)132 ITD 98 (Mumbai) (TM ) (Trib)**

4. During original assessment, assessee's claim was processed at length and after calling for detailed explanation from him, same was accepted. ***Merely because a certain element or angle was not in mind of Assessing Officer while accepting such a claim, could not be a ground for issuing notice under section 148 for reassessment.*** Mere failure of AO to raise such a question would not authorise him to reopen assessment even within period of 4 years from end of relevant assessment year, any such attempt on his part would be based on mere change of opinion, therefore, notice issued under section 148 was liable to be quashed.

**Cliantha Research Ltd. .v. Dy. CIT (2014) 225 Taxman 102 (Mag.) (Guj.)(HC)**



# **XXVIII. RE-ASSESSMENT – CHANGE OF OPINION**

## **1. CHANGE OF OPINION**

Amendment as per Direct tax laws (Amendment) Act, 1989 w.e.f. April 1, 1989 as also of sec. 148 to 152 have been elaborated in circular No. 549, dated October 31, 1989. A perusal of clause 7.2 of the said circular makes it clear that the amendments had been carried out only with a view to allay fears that the omission of the expression “reason to believe” from sec. 147 would give arbitrary power to AO to reopen past assessments on a mere change of opinion i.e. a mere change of opinion cannot form basis for reopening a completed assessment.

**CIT vs. Kelvinator of India Ltd (2002) 256 ITR 1 (Del) (FB) (Asst yr 1997–1998)**

**Approved by Supreme Court in (2010) 320 ITR 561 (SC)**

**ITO v. Techspan India (P) Ltd (2018) 404 ITR 10/ 302 CTR 74 (SC)**



3. In determining whether commencement of reassessment 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 case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

***Raymond Woollen Mills Ltd. Vs. Income Tax Officer And Others  
(1999) 236 ITR 34 (S.C.)***

4. Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.

***Yuvraj vs. Union Of India (Bom.) (2009) 315 ITR 84.***

## Change of Opinion : Case Laws:

### No new material brought on records – Reassessment on change of opinion of officer not valid.

- a. Asteroids Trading & Investment P. Ltd. vs DCIT (2009) 308 ITR 190 (Bom)
- b. Asian Paints Ltd. vs. DCIT (2008) 308 ITR 195 (Bom) (198)
- c. ICICI Prudential Life Insurance Co. Ltd. (2010) **325 ITR 471** (Bom)
- d. Aventis Pharma Ltd. vs. Astt. CIT (2010) 323 ITR 570 (Bom) (577)
- e. Nirmal Bang Securities (P) Ltd. v. ACIT. (2016)382 ITR 93 (Bom.)(HC)
- f. **Aryan Arcade Ltd v. DCIT (2017) 390 ITR 67 (Guj)(HC)**
- g. **Change of opinion–Labour charges– Subsequent assessment year– Reassessment was held to be bad in law: CIT v. Srusti Diam (2015) 232 Taxman 127 (Bom.)(HC) ; PCIT v. Jai Prakash Associates Ltd. (2018) 403 ITR 41 (All) (HC)**
- h. **Reopening on mere change of opinion by subsequent Assessing Officer is not permissible. Orient News Prints Ltd. v. Dy. CIT (2017) 393 ITR 527 (Guj.)(HC) ; Ajanta Pvt. Ltd. v. DCIT (2018) 402 ITR 72 (Guj) (HC)**

**Reassessment has to be based on "fresh material". A reopening based on reappraisal of existing material is invalid.**

1. DIT v. Rolls Royal Industries Power India Ltd.[Supra] (Delhi)(HC),[www.itatonline.org](http://www.itatonline.org)
2. Golden Tobacco Limited v. DCI ITA NO. 5858 & 5859 /M/2012 Dt. 28/10/2015 (A. Y. 2005-06 & 2006-07)(Mum.)(Trib.)  
[www.itatonline.org](http://www.itatonline.org)
3. Uttaranchal Jal Vidyut Nigam Ltd v. ACIT (2016) 47 ITR 198 (Delhi) (Trib)
4. PCIT v. Anil Nagpal (2017) 291 CTR 272/ 145 DTR 209 (P&H)(HC)
5. Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj) (HC)
6. Giriraj Steel v. DCIT (2018) 402 ITR 204 (Guj) (HC)

## XXIX. RE-ASSESSMENT – AUDIT OBJECTION

1. If the AO disagrees with the information/ objection of the audit party and is not personally satisfied that income has escaped assessment but still reopens the assessment on the direction issued by the audit party, the reassessment proceedings are without jurisdiction.

***Larsen & Toubro Ltd. v. State of Jharkhand CIVIL APPEAL NO. 5390 OF 2007 DT. 21/03/2017 (SC) [www.itatonline.org](http://www.itatonline.org)***

2. AO having communicated to the auditor that a certain decision of a HC did not apply to the facts of the petitioners case but later rejected the objections raised by the petitioner to the notice u/s. 148 taking a contrary view without giving any reason as to why he has departed from the earlier view that the decision was not applicable, there was total non application of mind on the part of AO; matter remanded back to AO for de-novo consideration.

***Asian Cerc Information Services (P) Ltd vs. ITO (2007) 293 ITR 271 (Bom)***

3. AO having allowed assessee's claim in the 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.
- ***IL & FS Investment Managers Ltd. vs. ITO & Ors(2008) 298 ITR 32 (Bom)***
  - ***Vijaykumar M. Hirakhanwala (HUF) vs. ITO & Ors (2006) 287 ITR 443 (Bom)***
  - ***CIT vs. Lucuns TVS Ltd. 249 ITR 306 (SC)***
  - **Prothious Engineering Services Pvt. Ltd. v. ITO (2016) 46 ITR 438 (Mum.)(Trib)**
  - ***Purity Tech Textiles Pvt. Ltd. vs. ACIT (2010) 325 ITR 459 (Bom)***
  - **CIT .v. DRM Enterprises (2015) 230 Taxman 61/ 120 DTR 401(Bom.)(HC)**
  - **Reckit Benckiser Healthcare India P. Ltd v. Dy. CIT (2017) 392 ITR 336 (Guj.)(HC)**
  - **Torrent Power S.E.C. Ltd v. ACIT (2017) 392 ITR 330 (Guj.)(HC)**
  - **Mehsana District Central Co-op Bank Ltd. v. ACIT [2018] 93 TAXMANN.COM 219(Guj.)(HC),**

4. Audit Objection cannot be the basis for reopening of assessment to income tax by the revenue.  
***Indian & Eastern Newspaper Society Vs. CIT (1979) 119 ITR 996 (SC)***
5. 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 benefit u/s 80HHC and was constrained to issue notice only on the basis of audit object.  
***Adani Exports vs. DCIT (1999) 240 ITR 224 (Guj) (Asst yr 1993-94)***
6. S. 147: If AO contests the audit objection but still reopens to comply with the audit objection, it means he has not applied his mind independently and the reopening is void:  
**National Construction Co. v. Jt. CIT (2015) 234 Taxman 332 (Guj.)(HC)**  
**Raajratna Metal Industries Ltd vs. ACIT (Gujarat High Court)**
7. Assessing Officer tried to justify his order and requested to drop the proceedings. Notice based solely on opinion of audit party– Not valid  
**Shree Ram Builders v. ACIT (OSD) (2015) 377 ITR 631 (Guj.)(HC)**

**6. Audit objection vis-à-vis debatable issue:-**

Letter written by AO to CIT showing that AO himself found that the issue on which reassessment was sought was debatable, reasons recorded by A.O did not meet the requirements of law.

***Sunil Gavaskar V/s ITO (2016) 134 DTR (Mumbai ITAT) 113.***

CBDT instruction directing remedial action in case of audit objections – Notice based solely on such instruction (CBDT Instruction No. 9 of 2006). – No failure to disclose fact – No allegation that material facts had not been disclosed – Notice not valid.

**Sun Pharmaceutical Industries Ltd. v. Dy.CIT (2016) 381 ITR 387/ 237 Taxman 709(Delhi)(HC)**

**7. Assessing Officer disagreeing with audit objection yet issuing notice –Reassessment was held to be not valid**

**AVTEC Ltd. .v. DCIT(2015) 370 ITR 611 (Delhi)(HC)**

**XIII. Reassessment – Interpretation of High Court decision**

Reopening of assessment on the basis of wrong interpretation of high court decision was invalid.

***Assam Co. Ltd vs. UOI & Ors (2005) 275 ITR 609 (Gau)***

## XXXI. DIRECTION OF THE HIGHER AUTHORITIES:

1. Revisional authority having directed the AO to adjudicate specific issues which were addressed and examined by him, asst made by the AO on a higher total income by assuming more powers than that of the revisional authority is patently illegal and without jurisdiction.

***N. Seetharaman vs. CIT (2008) 298 ITR 210 (Mad) (A.Y.1989-1990 to 1999-2000)***

2. The assessing officer for the assessment year 2000-01 recorded a specific note in the assessment order which indicated that the assessment order was passed under the dictates of the commissioner. The supreme court in the challenge to the reopening for the same assessment year held that the assessment order passed on the dictates of the higher authority being wholly without jurisdiction, was a nullity. Therefore with a view to complete the justice to the parties. The Supreme Court directed that the assessment proceedings should be gone through again.

***CIT Vs.Greenworld Corporation (2009) 314 ITR 81 (SC)***



## **XXXII. Supreme court decision cannot be the basis for Reopening:**

- ▶ The ITO cannot seek to reopen an assessment under section 147 on the basis of the Supreme Court decision in a case where assessee had disclosed all material facts.

***Indra Co. Ltd. V. ITO (1971) 80 ITR 559 (Cal.) (Asst yr 1959–1960)***

***SESA Goa ltd v/s Jt CIT 2007 294 ITR 101 (BOM)***

***CIT v. ITW India Ltd. (2015) 377 ITR 195 (P & H)(HC)***

- ▶ Subsequent High court decision – beyond 4 year Disclosure of complete facts. Reopening bad in law.

### **Contrary Decision:**

- ▶ ***Kartikeya International vs. CIT (2010) 329 ITR 539 (All.)***
- ▶ ***Asst. CIT v. Central Warehousing Corp.(2012) 67 DTR 356 (Delhi)***

## XXIII. REASSESSMENT BASED ON RETROSPECTIVE AMENDMENT NOT JUSTIFIED:

- ▶ Denish Industries Ltd. Vs. ITO 271 ITR 340 (Guj.) (346) SLP dismissed 275 ITR 1 (St.)
- ▶ Rallies India Ltd. vs. ACIT (2010) 323 ITR 54 (Bom)
- ▶ SGS India Pvt. Ltd. vs. ACIT (2007) 292 ITR 93 (Bom)  
Law in subsequent A.Y. is different, reopening not proper.
- ▶ Siemens Information Ltd. (2007) 293 ITR 548 (Bom)  
Notice u/s. 148 based on amended law not applicable to relevant A.Y.
- ▶ Sadbhav Engineering Ltd. vs. Dy. CIT (2012 )333 ITR 483 (Guj.)
- ▶ Kalpataru Sthapatya (P) Ltd. (2012) 68 DTR 221 (Guj)(High Court).

- Reopening, even within 4 years, on basis of retrospective amendment to section 80IB(10) is held to be invalid:

Ganesh Housing Corporation Ltd. v. Dy. CIT (Guj)(High Court)  
[www.itatonline.org](http://www.itatonline.org)

- Reassessment held to be invalid only on the basis of retrospective amendment as there is no failure to disclose fully and truly all material facts. [S. 80IB(10)]

The only reason for issuing the notice, was amendment brought in the statute book with retrospective effect. The said notice was challenged before the High Court. High Court quashed the notice and held that reopening only on the basis of retrospective amendment of law is not justified. (A. Y. 2004-05)

Pravin Kumar Bhogilal Shah v. ITO (2012) 66 DTR 236 (Guj.)(High Court)  
Vinayak Construction v. ITO (2012) 66 DTR 233 (Guj.)(High Court)

## XXXIV. 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.
- ▶ (2008) 298 ITR 163 (st), – Notes on clauses.
- ▶ (2008) 298 ITR St. 222 to 224 Memorandum explaining the provision.
- ▶ Metro Auto Corporation vs. ITO (2006) 286 ITR 618 (Bom)
- ▶ Vodafone Essar Gujarat Ltd. Vs. ACIT (2010) 37 DTR 259 (Guj.)

1. 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. ( A.Y. 2000-01).

**Chika Overseas (P) Ltd v ITO ( 2011) 131 ITD 471 (Mum) (Trib).**

**ICICI Bank Ltd. v. Dy. CIT (2012) 246 CTR 292/ 204 Taxman 65 (Mag.)(Bom.)(High)**

2. Reassessment – Change of opinion – Beyond four years – Third proviso – Merger – There was no failure on part of assessee to disclose full and true particulars, and order of original assessment was merged with order of the appellate Authority, hence the reassessment held to be invalid.
  - **CIT v. Reliance Energy Ltd. (2013) 81 DTR 130 / 255 CTR 357 (Bom.)(HC)**
  - **Allanasons Ltd. v. ACIT (2015) 230 Taxman 436 (Bom.)(HC)**
  - **GTL Ltd . v. Asst CIT (2015) 37 ITR 376 (Mum.)(Trib.).**
  - **Radhaswami Salt Works v. ACIT (Guj.)(HC), [www.itatonline.org](http://www.itatonline.org)**

## XXXV. JURISDICTION ISSUE CAN ALWAYS BE RAISED AT ANY STAGE :

- ▶ Jurisdiction can be challenged in second appeal.

*Investment Corpn Ltd vs. CIT (1992) 194 ITR 548 (Bom) (556)*

*N. Nagaganath Iyer vs. CIT (1996) 60 ITR 647 (Bom) (655)*

*Hemal Knitting Industries vs. ACIT (2010) 127 ITD 160 (Chennai)(TM)*

- ▶ **Rule 27 of ITAT Rules:** Reassessment ground can be raised.
- ▶ If assessee does not ask for the reasons recorded and object to reopening, ITAT cannot remand to Assessing officer and give assessee another opportunity. CIT vs. Safetag Int. India Pvt. Ltd. dt. 3/2/2011 (Del.) (H.C.)

## Continue ....

- ▶ A question relating to jurisdiction which goes to the root of the matter can always be raised at any stage– Issue of notice or service of notice in the setaside appeal can be raised– Matter was set aside to Tribunal to decide the jurisdictional issue of reassessment. ( ITA No. 87 of 2009, dt. 30.03.2017)(AY. 1997–98). **Teena Gupta v. CIT (All.)(HC)**; [www.itatonline.org](http://www.itatonline.org) [ referred Sun Engineering Works P. Ltd.]

- ▶ Jurisdiction to issue notice was challenged after limitation period prescribed under S.124 (3) – Reassessment was held to be valid .

Assessee having not challenged territorial jurisdiction of AO issuing notice under section 148 within 30 days as required under section 124 (3) of the Act, belated challenge cannot be accepted. The court further held that the contention of the assessee that objection is raised when it came to know about the CBDT notification regarding jurisdiction is not tenable as absence of knowledge of notification will not suspend running of limitation. (AY. 2012–13 to 2014–15)

**Elite Pharmaceuticals v. ITO (2017) 152 DTR 226/297 CTR 428 (Cal) (HC)**

## Continue ....

- ▶ In this context reference is made to the decision of **Bombay High Court in case of CIT v/s. LalitKumar Bardia (2018) 404 ITR 63** wherein the court held that though the assessee has taken part in the assessment proceedings, waiver will not confer jurisdiction on Assessing Officer. Irregular exercise of jurisdiction and absence of jurisdiction is explained.
- ▶ Similarly in **Tata Sons Ltd. v. ACIT (2017) 162 ITD 450 (Mum.) (Trib.)** Additional ground on jurisdiction was admitted– Assessment order passed without authority of law was held to be bad in law. [In favour of assessee]
- ▶ Section 292B would not empower the A.O. to treat a proceeding taken u/s 147(b) as a proceeding u/s 147(a). This is not a mere technicality but a question of jurisdiction.  
**Sunrolling Mills (P) Ltd. vs. ITO (1986) 160 ITR 412 (Cal)**  
**P.N.Sasikumar & Ors. vs. CIT (1988) 170 ITR 80 (Ker)**



## XXXVI. RECTIFICATION PROCEEDINGS INITIATED AND DROPPED

1. Dept. having taken one of the two possible views in the matter of calculation of deduction u/s. 10B and 80HHE asst. cannot be reopened by taking the other view more so when the CIT(A) has already quashed the rectification us. 154 which was made on the very same ground.

***Westun Outdoor Interactive (P) Ltd vs. A.K. Phute, ITO & Ors (2006) 286 ITR 620 (Bom) (Asst yr 2000-2001)***

2. Allowance u/s. 80HHC having been granted by the ITO in rectification proceedings. The remedy the against lay with the dept. either u/s. 154 or S. 263 and not S. 147 further reassessment having been made on a date earlier than fixed same was bad.

***Smt. Jamila Ansari vs. ITO & Anr (1997) 225 ITR 490 (Addl)***

### 3. SEC. 147 VIZ – A – VIZ SEC.154

Section 147 reopening for rectifying sections 154 mistakes are invalid.

- *Hindustan Unilever Ltd. vs. Dy. CIT (2011) 325 ITR 102 (Bom.)*
- *CIT v/s. EID Parry Ltd. [(1995) 216 ITR 489 (Mad)]*
- The jurisdiction under sections 147(b) and 154 are different but in cases where they seem to overlap, the ITO may choose one in preference to the other and once he has done so, he should not give it up at a later stage and have recourse to the other.
- **Reassessment- Rectification pending – (S.154)**
- *Mahinder Freight Carriers v Dy CIT ( 2011) 56 DTR 247 (Mum) (Trib).*
- *Berger Paint India Ltd. v/s. ACIT & Ors. [(2010) 322 ITR 369 (Cal)]*
- *Jethalal K. Morbia v/s. ACIT [(2007) 109 TTJ (Mum) 1]*
- *Followed in:*
- *S.M. Overseas P. Ltd. v/s. ACIT [(2009) 23 DTR (Del) (Trib) 29]*

#### 4. Against:

- CIT v/s. India Sea Foods [(2011) 54 DTR (Ker) 223]
- The fact that there were section 154 proceedings is not a bar to the section 147 proceedings. It was further held that the scope of section 154 & 147 / 148 are different and it cannot be said as a general principle that if notice under section 154 is issued, then notice under section 147 / 148 is barred or prohibited (Hindustan Unilever Ltd. 325 ITR 102 (Bom.) distinguished).
- *Honda Siel Power Products Ltd. vs. Dy. CIT( 2011) 197 Taxman415 (Delhi). Assessee's SLP dismissed* Honda Siel Power Products Ltd vs DCIT ( SC) .[www.itatonline.org](http://www.itatonline.org).

## XXXVII.REOPENING BASED ON VALUATION REPORT

1. AO had no jurisdiction to reopen the concluded assessments on the strength of valuation report of valuation officer obtained 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)**

2. Notice was also illegal on the ground that it was based on the valuation report of cost of construction.

***Girdhar Gopal Gulati vs. UOI(2004) 269 ITR 45 (All)***

3. Mere DVO's report cannot constitute reason to believes that income has escaped assessment for the purpose of initiating reassessment and therefore tribunal was justified on holding that the reassessment proceedings initiated on the basis of DVO's report were invalid abinitio, more so when it has found that the DVO's report suffers from various defects and mistakes.

***CIT vs. Smt. Meena Devi Mansighka (2008) 303 ITR 351***

4. Valuation report cannot by itself form the basis of reopening  
Where apart from the valuation report which was relied upon by the ITO there was no material before him to come to the prima facie conclusion that the assessee had received the higher consideration than what had been stated in the sale deed, reassessment would not be justified.
- *ITO V. Santosh Kumar Dalmia (1994) 208 ITR 337 (Cal.)*
  - *ITO v Shiv Shakti Build Home ( P) Ltd ( 2011) 141 TTJ 123 ( Jodhpur) ( Trib).*
  - *Akshar Infrastructure P. Ltd. v. ITO (2017) 393 ITR 658 (Guj.)(HC)*
  - *CIT v. P. Nithilan. (2018) 403 ITR 154 (Mad) (HC)*
5. Reopening of the assessment – based on the opinion given by the District Valuation Officer:

Reopening of the assessment – based on the opinion given by the District Valuation Officer – opinion of the DVO per se is not an information for the purposes of reopening assessment under section 147 of the Income-tax Act, 1961 – Held that: –. The Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon–

**Assistant CIT vs. Dhariya Construction Co. (2010) 328 ITR 0515.**

## XXXVII. REASSESSMENT IS AVAILABLE FOR BENEFIT OF REVENUE ONLY

1. Since the proceedings u/s.147 are for the benefit of the revenue and in the assessee, and are aimed at gathering the escaped income of the revenue and an assessee and are aimed at gathering the escaped income of an assessee the same cannot be allowed to be converted as revisional or review proceedings at the instance of the assessee, thereby making the machinery workable.  
*CIT vs. Sun Engineering Works (p.) Ltd. (1992) 198 ITR 297 (SC).*

2. Proceeding u/s. 147 are for the benefit of the revenue and not the assessee and hence the assessee cannot form the be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected, or claim relief in respect of items not claimed in the original assessment proceedings **unless relatable to the escaped income and re-agitate concluded matters**. Allowance of such a claim in respect of escaped assessment in the case of reassessment has to be limited to the extent to which they reduce the income to that originally assessed. Income for the purpose of reassessment cannot be reduced beyond the income originally assessed.

*K. Sudhakar C. Shanbhag V. ITO (2000) 241 ITR 865 (Bom.)*

- Assessee having not claimed deduction under section 80HHC, in its return because it had only income from other sources and no business income, claim made in the revised return by filing audit report under section 147 due to disallowances under section 43B is upheld.

***ITO vs. Tamil Nadu Minerals Ltd. (2010) 124 ITD 156 (Chennai)(TM).***

***xxii. Ignorance of board circular is not sufficient to Reopen:***

The mere fact that the ITO was not aware of the circular of the board is not sufficient to reopen the assessment.

***Dr. H. Habicht V. Makhija (1985) 154 ITR 552 (Bom.) (Asst yr 1975–1977)***

## **XXXVIII. When intimation under section 143 (1) is issued**

- ▶ So long as the ingredients of section 147 are fulfilled, Assessing Officer is free to initiate proceeding under section 147 even where intimation under section 143(1) has been issued; as intimation under section 143 (1) (a) is not assessment there is no question of treating re assessment in such a case as based on change of opinion.

***Asstt. CIT V. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 291 ITR 500 (SC) (Asst yr 2001–2002)***

Original assessment completed under section 143(1)– Intimation is not an assessment–No question of change of opinion.

**CIT v. Zuari Estate Development and Investment Co. Ltd. (2015) 373 ITR 661(SC).**

It is open to the assessee to challenge a notice issued u/s.148 as being without jurisdiction for absence of reason to believe even in case where the assessment has been completed earlier by Intimation u/s 143(1) of the Act.

**Khubchandani Healthparks Pvt. Ltd. v. ITO[2016] 384 ITR 322 (Bom.)(HC)**



## NO REASSESSMENT IF NO 'REASON TO BELIEVE' EVEN IN CASES OF SECTION 143 (1):

### A. Even in case of assessment under section 143 (1):

1. Prashant Joshi v/s. ITO [(2010) 324 ITR 154 (Bom)]

Even if there is no assessment u/s 143 (3), reopening u/s 147 is bad if there are no proper “reasons to believe” recorded by the AO.

2. Bapalal & Co. v/s. Jt. CIT – [(2007) 289 ITR 37 (Mad)]
3. Aipta Marketing P. Ltd. v/s. ITO – [(2008) 21 SOT 302 (Mum.)]
4. Pirojsha Godrej Foundation v/s. A.D.I.T. (Exemption) – [(2010) 133 TTJ (Mum) 194]
5. Rajgarh Liquors v/s. CIT – [(2004) 89 ITD 84 (Ind.)]

Where only intimation was issued u/s. 143 (1) and no notice was issued u/s. 143(2) within the prescribed time limit, a substantive right is created of not being put to scrutiny could be said to have accrued and could not be snatched away by resorting to other provisions of the Act.

6. Assessment u/s 143(1) – Reopening on mechanical basis void even where section 143(3) assessment not made.

For purpose of reopening of assessment under section 147, Assessing Officer must form and record reason before issuance of notice under section 148. The reasons so recorded should be clear and unambiguous and must not be vague. There can not be any reopening of assessment merely on the basis of information received without application of mind to the information and forming opinion thereof.

***Sarthak Securities Co. (P.) Ltd. vs. ITO (2010) 329 ITR 110***

***B. [Within four year]***

1. Asian Paints v/s. Dy. CIT & Anr. – [(2009) 308 ITR 195 (Bom)]
2. Audco India Ltd. v/s. ITO – [(2010) 39 SOT 481 (Mum)]
3. Dy. CIT v/s. Pasupati Spinning & Weaving Mills Ltd. – [(2010) 6 ITR (Trib) 689 (Del)]

## XXXIX. Section 150 : LIMITATION PRESCRIBED

1. The Section 150 of the Act provides that notwithstanding the limitation prescribed under section 149, notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under the Act by way of appeal, reference or revision or by a court in any proceeding under any other law.
2. *ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC)* held that the word “finding” can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The apex court further held that the appellate authority may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the assessment year in question. Similarly, the expression “direction” has been construed by the apex court to mean a direction which the appellate or revisional authority as the case may be, is empowered to give under the sections mentioned therein.

3. Apart from the above, section 150(1) of the Act provides that the power to issue notice under section 148 of the Act in consequence of or giving effect to any finding or direction of the appellate/revisonal authority or the court is subject to the provision contained in section 150(2) of the Act. Section 150(2) provides that directions under section 150(1) of the Act cannot be given by the appellate/revisonal authority or the court if on the date on which the order impugned in the appeal was passed, the reassessment proceedings had become time-barred.

### K. M. Sharma vs. Ito 254 ITR 772 (SC)

4. According to s. 150(2), the provisions of s. 150(1) shall not apply where, by virtue of any other provision limiting the time within which action for assessment, reassessment or recomputation may be taken, such assessment, reassessment or recomputation is barred on the date of the order which is the subject-matter of the appeal, reference or revision in which the finding or direction is contained. Thus, s. 150(2) enacts a well-settled principle of law that an appellate or revisonal authority cannot give a direction which goes to the extent of conferring upon the AO if he is not lawfully seized of jurisdiction

5. Similarly Bom. High court in the case of **Rakesh N Dutt v/s. Asst CIT (2009) 311 ITR 247** wherein it was held, that the Tribunal had held that the addition of Rs. 90 lakhs, if at all permissible legally, it could be considered in the hands of the two companies and not in the hands of the assessee. There was no finding that the amount of Rs. 90 lakhs was liable to be taxed in the hands of the assessee. Consequently, reopening of the assessments by invoking the provisions of section 150 of the Act could not be sustained. Once it was held that section 150 was not applicable, then the reopening of the assessment beyond the period of six years from the end of the relevant assessment year would be time barred.
6. The Tribunal do not have power to give any finding or direction in respect of another year / period which is not before the authority as held by **Supreme Court in CIT vs. Green World Corporation 314 ITR 81 (SC)**.
7. The decision of the apex court in the case of ***CIT v/s. Green World Corporation 314 ITR 81 (106) SC*** wherein it was observed that the provision of s. 150 although appears to be of a very wide amplitude, but would not mean that recourse to reopening of the proceeding in terms of ss. 147 and 148 can be initiated at any point of time whatsoever. Such a proceedings can be initiated only within the period of limitation prescribed therefore as contained in s. 149. Sec. 150(1) is an exception to the aforementioned provision. It brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. For the said purpose, the records of the proceedings must be before the appropriate authority. It must examine the records of the proceedings. If there is no proceeding before it or if the assessment year in question is also not a matter which would fall for consideration before the higher authority, s. 150 will have no application.

## 8. Finding or Direction. (S.149.)

- Sec 148 r.w.s 150: Reopening of assessment – Based on Tribunal “finding or direction ” in respect of any other year or period – Beyond six years – Not valid

**Shri Anil Suri v/s. ITO 11(1)(3) ; ITA No. 1640/M/2010; dtd 16-4-2014 (Mum ITAT).**

- Assessment having not been reopened to give effect to the order of the CIT (A). According to the Assessing Officer because of giving effect to the order made by the CIT (A) , will result in to escapement of income . The court held that section 150 did not apply. As there was no failure on the part of assessee to disclose fully and truly all material facts , reassessment is clearly time barred.( A.Y. 1988-89).

**Harsiddh Specific Family Trust v JCIT ( 2011) 58 DTR 149 ( Guj) (High Court).**

- Since no findings or directions had been given in assessment year 1992-93 to tax the receipt in question in assessment year 1994-95 under appeal which is also inherently impossible in view of the findings that it is capital receipt ,provisions of section 150 would apply in the case of the assessee and reopening of the assessment made after a period of six years from the end of the assessment year was clearly time barred.( A.Y. 1994-95).
- **Vadilal Dairy International Ltd v Asst CIT ( 2011) 140 TTJ 371 ( Ahd) (Trib).**

- Observation of Tribunal in AY. 1990-91 is not a finding or direction u/s. 150 and thus reassessment proceedings are not sustainable.[S. 45 (4),147, 148, Art. 226]

**Kala Niketan v. UOI (2016) 293 CTR 178/148 DTR 121 (Bom.) (HC)**

- Finding given by Tribunal could not enable Assessing Officer to extend period of limitation–Order barred by limitation.

**EskayK'n' IT (India) Ltd. v. Dy. CIT (2015) 229 Taxman 204 (Bom.)(HC)**

- **Power of Appellate authority.**

Section 150 does not enable or require an appellate authority to give any directions for reopening of assessment, but it deals with a situation in which a reassessment is to be initiated to give effect to finding or direction of appellate authority or Court.( A.Y. 2002-03).

**Sujeer Properties (AOP) v ITO ( 2011) 131 ITD 377 (Mum) (Trib).**

- The limitation of six years under S. 149, must be alive on the date of passing of the order of CIT (A).

**Intec Corporation v. ACIT (2019) 184 DTR 425 / (2020) 312 CTR 3 (Delhi)(HC)**

**XL. Applicability of second proviso to sec 147 of the Act i.e asset or financial interest in foreign country – Amendment to S. 149, by Finance Act, 2012**

**Brahm Datt v. ACIT (2019) 260 Taxman 380/ 173 DTR 1 /306  
CTR 114(Delhi)(HC)**

**XLI. Section 153 – Time Limits for Reassessment**

The order u/s. 147 has to be passed within one year from the end of the financial year in which the notice u/s. 148 has been served. – section 153(2)

- If during the reassessment a reference is made to TPO then time limit will be two years from the end of the F.Y. in which the notice u/s. 148 has been served.

Finance Act 2016 – Limits in both the above cases has been reduced by 3 months – Reduced to 9 months and 21 months respectively



# THANK YOU



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