

**RE-ASSESSMENT U/S 147
(FOR DEPT. EXAM)**

BY

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PROVISIONS RELATING TO RE-ASSESSMENT

S.147 = INCOME ESCAPING ASSESSMENT

S.148 = ISSUE OF NOTICE

S.149 = TIME LIMIT FOR ISSUE OF NOTICE

S.150 = EXCEPTION TO THE TIME-LIMIT FOR ISSUE

S.151 = SANCTION FOR ISSUE OF NOTICE

S.152 = TAX RATES & DROPPING OF PROCEEDINGS

S.153 = LIMITATION FOR COMPLETION

SEC.147-INCOME ESCAPING ASSESSMENT

SEC.147:-

IF A.O. HAS REASON TO BELIEVE THAT **INCOME CHARGEABLE TO TAX HAS ESCAPED** ASSESSMENT, HE MAY **ASSESS/RE-ASSESS SUCH INCOME AND ANY OTHER ESCAPED INCOME** WHICH HE NOTICES SUBSEQUENTLY OR **RECOMPUTE LOSS OR DEPRECIATION/ANY OTHER ALLOWANCE.**

INTIMATION U/S 143(1)(a) IS NOT AN ASSESSMENT
– 29 ITR 500 (SC)

SEC.147 – (CONTD.)

FIRST PROVISIO TO S.147:-

IF ASST. U/S **143(3) OR 147** IS ALREADY OVER, S.147 CANNOT BE INVOKED AFTER **EXPIRY OF 4 YEARS** FROM END OF A.Y. **UNLESS** ESCAPEMENT IS DUE TO FAILURE OF ASSESSEE TO-

(A) FILE RETURN U/S 139 OR IN RESPONSE TO NOTICE U/S 142(1)/148;

OR

(B) **DISCLOSE** FULLY & TRULY ALL MATERIALS FACTS

SECOND PROVISIO TO S.147:-

FIRST PROVISIO NOT APPLICABLE IN CASE OF FOREIGN ASSET

SEC.147 – (CONTD.)

THIRD PROVISIO TO S.147:-

A.O. MAY ASSESS/RE-ASSESS INCOME OTHER THAN THOSE UNDER APPEAL, REFERENCE OR REVISION

EXPLANATION 1 TO S.147:-

PRODUCTION OF BOOKS/EVIDENCE FROM WHICH EVIDENCE COULD, WITH DUE DILIGENCE, HAVE BEEN DISCOVERED WILL NOT AMOUNT TO DISCLOSURE

SEC.147 – (CONTD.)

EXPLN. 2 TO S.147 (DEEMED ESCAPEMENT):

- (a) NO RETURN BUT INCOME ABOVE TAXABLE
LIMIT
- (b) RETURN FILED BUT **NO ASSESSMENT** &
INCOME UNDERSTATED OR EXCESSIVE
LOSS/DEDUCTION/ALLOWANCE/RELIEF CLAIM
- (ba) FAILED TO FILE REPORT U/S 92E (3CEB)

(CONTD.)

SEC.147 – (CONTD.)

- (c) IN THE ASSESSMENT MADE THERE IS -
 - (i) UNDERASSESSMENT; OR
 - (ii) COMPUTATION OF TAX AT LOW RATE; OR
 - (iii) GRANT OF EXCESSIVE RELIEF ; OR
 - (iv) COMPUTATION OF EXCESSIVE LOSS OR DEPRECIATION ALLOWANCE OR ANY OTHER ALLOWANCE
- (ca) RETURN NOT FURNISHED OR FURNISHED AND ON THE BASIS OF INFORMATION RECEIVED U/S 133C(2), A.O. FINDS THAT INCOME EXCEEDED NON-TAXABLE LIMIT OR INCOME UNDERSTATED OR EXCESSIVE LOSS, DEDUCTION, ALLOWANCE OR RELIEF CLAIMED
- (d) FOREIGN ASSET FOUND

SEC.147 – (CONTD.)

EXPLANATION 3 TO SEC.147:

A.O. MAY ASSESS ESCAPED INCOME ON ANY ISSUE WHICH HE NOTICES, EVEN IF IT WAS NOT INCLUDED IN THE REASONS RECORDED.

FOUR SCENARIOS IN RE-ASST. PROCEEDINGS:

1. NO ADDITION ON REOPENED ISSUE & NO OTHER ADDITION ON ANY OTHER ISSUE
2. ADDITION ON REOPENED ISSUE & NO OTHER ADDITION ON ANY OTHER ISSUE
3. ADDITION ON REOPENED ISSUE & ADDITION ON OTHER ISSUE/S
4. NO ADDITION ON REOPENED ISSUE BUT ADDITION ON OTHER ISSUE/S

SEC.147 – (CONTD.)

1.NO ADDITION ON REOPENED ISSUE & NO OTHER ADDITION ON ANY OTHER ISSUE:

PROCEEDINGS TO BE DROPPED.

A. WHETHER APPROVAL IS REQUIRED TO DROP?

MANUAL OF OFFICE PROCEDURE-VOL.II-PG.35- PARA 9(viii)-

“A.O. CAN DROP BUT IT IS PREFERABLE TO BRING THIS TO THE NOTICE OF HIGHER AUTHORITIES AND TAKING THEIR APPROVAL BEFORE DROPPING.”

WHICH HIGHER AUTHORITY?

MY VIEW- WHICHEVER HAS APPROVED RE-OPENING.

B. IF REOPENING IS ON ACCOUNT OF AUDIT OBJECTION:

IF PCIT IS NOT THE APPROVING AUTHORITY, ALSO OBTAIN HIS APPROVAL IN CASE OF ALL RAP OBJECTIONS (MINOR & MAJOR) & MAJOR OBJECTIONS OF IAP.

2. ADDITION ON REOPENED ISSUE & NO OTHER ADDITION ON ANY OTHER ISSUE:

3. ADDITION ON REOPENED ISSUE & ADDITION ON OTHER ISSUE/S:

THERE ARE NO ISSUES IN THE ABOVE TWO SCENARIOS.

SEC.147 – (CONTD.)

4. NO ADDITION ON REOPENED ISSUE BUT ADDITION ON OTHER ISSUE/S:

FOR NOT MAKING THE ADDITION ON REOPENED ISSUE/S, TAKE ADMINISTRATIVE APPROVAL OF HIGHER AUTHORITIES. COMPLETE ASSESSMENT BY MAKING OTHER ADDITIONS.

(IN THE CASE OF MANJINDER SING KANG, P&H HC UPHELD MAKING OTHER ADDITIONS ONLY. ASSESSEE'S SLP (CIVIL) NO.13028 OF 2011 DISMISSED BY SC. IN ITA 504/2013 DT.1-7-2015 IN GOVINDARAYLU'S CASE KARNATAKA HC SUPPORTED THIS VIEW.)

MY VIEW:

1. IF THERE IS TIME TO REOPEN ON OTHER ISSUES WITHOUT OTHER LEGAL IMPLICATIONS, DROP PENDING PROCEEDINGS & REOPEN ON NEW GROUNDS OF ESCAPEMENT AS THERE ARE ASSESSEE FAVOUR DECISIONS ALSO.
2. IF NOT, COMPLETE ON THE STRENGTH OF ABOVE DECISIONS.

SEC.148- ISSUE OF NOTICE

S.148(1):

BEFORE MAKING ASSESSMENT, REASSESSMENT OR RECOMPUTATION, A.O. SHALL **SERVE** NOTICE REQUIRING FILING OF RETURN WITHIN **SPECIFIED PERIOD**; AND PROVISIONS OF ACT SHALL APPLY **AS IF SUCH RETURN WERE REQUIRED U/S 139.**

S.148(2):-

A.O. SHALL RECORD **HIS** REASONS BEFORE ISSUING NOTICE.

SOP FOR ISSUE OF NOTICE

CBDT's SOP DATED 10-1-2018:

PARA 1 (PRELIMINARY DETAILS):

DETAILS OF ASSESSEE, NATURE OF BUSINESS, BRIEF DETAILS OF RETURN FILED & DETAILS OF PROCESSING, ASST./RE-ASST.

PARA 2 (DETAILS OF INFORMATION):

DETAILS OF INFORMATION AND MATERIAL RECEIVED, COLLECTED OR FOUND BY A.O. SUBSEQUENT TO PROCESSING OR ASST./RE-ASST. & DATE OF COLLECTION/RECEIPT.

IF RECEIVED FROM INV. WING/OTHER ENFORCEMENT AGENCY- DETAILS OF LETTER, BRIEF SUMMARY, RELEVANT PORTION & DETAILS OF DOCUMENTS RELIED UPON.

SOP (CONTD.)

PARA 3 (ANALYSIS OF INFORMATION):

COMPRISING OF - DETAILS OF PARTIES INVOLVED, NATURE & DETAILS OF TRANSACTIONS, DETAILS OF MATERIALS/DOCUMENTS RELIED UPON & PRIMA-FACIE CONCLUSION.

PARA 4 (ENQUIRIES MADE):

ENQUIRY TO HAVE "LIVE LINK" WITH INFO. INCLUDES - ANALYSIS OF ROI, P&L, B.S., ASST. FOLDER, ITBA/360 DEGREE PROFILE, OTHER AGENCIES (MCA, WEBSITE, ETC), 133(6), 131 FROM ASSESSEE/PARTIES.

SOP (CONTD.)

PARA 5 (SUMMARY OF FINDINGS):

ON THE BASIS OF ANALYSIS OF INFORMATION & RESULT OF ENQUIRIES.

PARA 6 (CONCLUSION):

BASIS OF "REASON TO BELIEVE" ALONG WITH NATURE & QUANTUM OF ESCAPEMENT (*SHOULD BE 1 LAKH OR MORE – BETWEEN 4 AND 6 YEARS)

IF A REGULAR ASSESSMENT WAS ALREADY MADE:

DRAW A LINK BETWEEN FINDINGS & "REASON TO BELIEVE".
RECORD CATEGORICAL FINDING OF APPLICATION OF A.O.'s MIND TO THE FACTS & INFO. AND NOT CHANGE OF OPINION.

*NOT MENTIONED IN SOP.

SOP (CONTD.)

PARA 7 (4 YEARS OVER AFTER REGULAR ASSESSMENT):

DETAILS & INSTANCES ALONG WITH CORROBORATIVE MATERIAL TO PROVE THAT ASSESSEE HAS FAILED TO DISCLOSE FULLY & TRULY ALL MATERIAL FACTS NECESSARY FOR ASSESSMENT; **OR** FACTS OF THE CASE ARE COVERED BY EXPLANATION 1 TO SEC.147

PARA 8 (FOREIGN ASSET):

DETAILS OF ASSETS (INCLUDING FINANCIAL INTEREST IN ANY ENTITY) LOCATED OUTSIDE INDIA AND NATURE OF INCOME IN RELATION TO THE ASSET. HIGHLIGHT THAT FIRST PROVISIO TO SEC.147 WILL NOT APPLY.

REQUIREMENTS FOR REOPENING

UPTO 4 YEARS

<u>NO ROI & NO ASSESSMENT</u>	<u>NO ROI BUT ASSESSMENT</u>	<u>ROI BUT NO ASSESSMENT</u>	<u>ROI & ASSESSMENT</u>
1.ESCAPEMENT 2.JC APPROVAL	1. ESCAPEMENT 2. JC APPROVAL 3. NO CHANGE OF OPINION (IF SAME ISSUE)	1. ESCAPEMENT 2. JC APPROVAL	1. ESCAPEMENT 2. JC APPROVAL 3. NO CHANGE OF OPINION (IF SAME ISSUE)

REQUIREMENTS FOR REOPENING

AFTER 4 YEARS & UPTO 6 YEARS

NO ROI & <u>NO ASSESSMENT</u>	NO ROI BUT <u>ASSESSMENT</u>	ROI BUT <u>NO ASSESSMENT</u>	ROI & <u>143(3)/147</u>	ROI & <u>144</u>
1.> 1 LAKH	1. > 1 LAKH	1. > 1 LAKH	1. > 1 LAKH	1. > 1 LAKH
2.CIT APP.	2.CIT APP.	2. CIT APP.	2.CIT APP.	2. CIT APP.
	3.NO CHANGE OF OPINION (SAME ISSUE)		3.NO CHANGE OF OPINION (SAME ISSUE)	3.NO CHANGE OF OPINION (SAME ISSUE)
			4.NON-DISCLOSURE OF FACTS	

WHETHER AUDIT OBJECTION CAN BE A GROUND FOR REOPENING?

1. CONTRARY DECISIONS HAVE/WILL COME FROM SC ON “WHETHER AUDIT OBJECTION CAN BE A GROUND FOR REOPENING?” DEPENDING UPON FACTS OF THE CASE, MOST IMPORTANT BEING THE SATISFACTION NOTE OF AO.
2. REVENUE FAVOUR DECISIONS MAY BE USED TO DEFEND PAST ACTIONS. BUT PRESENTLY A.O.s SHOULD RECORD REASONS IN THEIR OWN LANGUAGE, RECORDING THEIR OWN SATISFACTION USING THE INFORMATION. DO NOT USE THE LANGUAGE OF AUDIT PARTY.
3. FIND OUT OTHER REASONS FOR ESCAPEMENT & RECORD THEM ALSO.
4. IN P.V.S. BEEDIES P.LTD 237 ITR 13, SC HELD THAT REOPENING ON THE BASIS OF FACTUAL ERRORS POINTED OUT BY AUDIT IS VALID. IN INDIAN & EASTERN NEWSPAPER SOCIETY 119 ITR 996 SC HELD AS INVALID REOPENING ON THE BASIS OF INTERPRETATION OF AUDIT.

TIME LIMITS FOR ISSUE OF NOTICE

FROM WHAT DATE NOTICE U/S 148 CAN BE ISSUED?

AFTER INCOME "**HAS ESCAPED**" ASSESSMENT. i.e. AFTER THE LAPSE OF TIME-LIMIT TO FILE A VALID RETURN. e.g. FOR A.Y. 2016-17 & 2017-18 IT CAN BE ISSUED ON OR AFTER 1-4-2018 ONLY

UPTO WHAT DATE NOTICE U/S 148 CAN BE ISSUED – SEC.149:-

- A. UPTO 4 YEARS FROM END OF ASST. YEAR EXCEPT UNDER B OR C
- B. UPTO 6 YEARS IF ESCAPED INCOME IS OR IS LIKELY TO BE ONE LAKH OR MORE
- C. UPTO 16 YEARS IF ESCAPED INCOME IS IN RELATION TO ANY ASSET (INCLUDING FINANCIAL INTEREST IN ANY ENTITY) LOCATED OUTSIDE INDIA

LIMITATION - DATE OF ISSUE OR SERVICE?

DATE OF ISSUE. BUT ENSURE HANDING OVER TO POSTAL DEPT. ON OR BEFORE LIMITATION DATE

“REASON TO BELIEVE”

“REASON TO BELIEVE” – WHAT DOES IT MEAN?

1. THERE MUST BE REASON COUPLED WITH BELIEF - 63 ITR 572 (ALL.)
2. MERE BELIEF WITHOUT BASIS WILL NOT JUSTIFY-31 STC 293 (SC)
3. BELIEF MAY NOT BE BASED ON MERE SUSPICION. IT MUST BE FOUNDED UPON INFORMATION – 41 ITR 191 (SC)
4. REASON TO BELIEVE MUST BE OF A.O. AND NOT OF ANY OTHER AUTHORITY - 115 ITR 336 (CAL.)
5. IF A.O. HAS NOT FORMED HIS OWN BELIEF BUT ACTS AS PER THE DIRECTIONS OF ANY SUPERIOR AUTHORITY, IT IS BAD IN LAW-176 ITR 352 (PAT.)

“REASON TO BELIEVE” (CONTD.)

6. A CIRCULAR ISSUED BY RANGE-HEAD THAT CERTAIN PERSONS WITH WHOM ASSESSEE HAD TRANSACTIONS WERE DOING BOGUS TRANSACTIONS - NOT SUFFICIENT TO FORM “BELIEF” - 103 ITR 437(SC)
7. COURTS CANNOT GO INTO ADEQUACY OF MATERIAL BUT REASONS FOR FORMATION OF BELIEF MUST HAVE RATIONAL CONNECTION WITH FORMATION OF BELIEF - 103 ITR 437 (SC)
8. BELIEF MUST BE THAT OF AN HONEST & REASONABLE PERSON BASED UPON REASONABLE GROUNDS. A.O. MAY ACT ON DIRECT OR CIRCUMSTANTIAL EVIDENCE BUT NOT ON MERE SUSPICION, GOSSIP OR RUMOUR – 82 ITR 147 (SC)

CHANGE OF OPINION

1. S.147 CANNOT BE INVOKED FOR CHANGE OF OPINION ON INTERPRETATION OF A PROVISION EARLIER ADOPTED BY A.O. – 215 ITR 295 (GUJ.)
2. BAR OF CHANGE OF OPINION CANNOT ARISE WHEN THERE HAVE BEEN NO PRIOR ASSESSMENT PROCEEDINGS IN RESPECT OF THE AMOUNT UNDER REFERENCE – 98 ITR 382 (ALL.)
3. WHERE A.O. HAD NO OPPORTUNITY TO CONSIDER A MATTER, IT CANNOT BE SAID THAT WHEN HE SUBSEQUENTLY CONSIDERS IT, THAT WOULD AMOUNT TO CHANGE OF OPINION -101 ITR 94 (MAD.)
4. A.O. HAS NO POWER TO REVIEW. HE HAS THE POWER TO RE-ASSESS - KELVINATOR OF INDIA LTD. (2010) 320 ITR 561 (SC)
5. IF ASST. ORDER IS NON-SPEAKING, CRYPTIC OR PERFUNCTORY IN NATURE, IT MAY BE DIFFICULT TO ATTRIBUTE TO A.O. ANY OPINION ON QUESTIONS THAT ARE RAISED IN RE-ASST. PROCEEDINGS – TECHSPAN INDIA PVT.LTD. – SC IN C.A. 2732/2007 ON 21-4-2018. (THE ABOVE PARA IS IN FAVOUR OF REVENUE BUT THE DECISION WAS IN FAVOUR OF ASSESSEE SINCE IT WAS PROVED THAT MATERIAL FACTS WERE PLACED DURING ORIGINAL ASSESSMENT)

SEC.150 – ASST. PURSUANT TO APPEAL ORDER

S.150(1):-

INSPIRE OF S.149, NOTICE U/S 148 MAY BE ISSUED AT ANY TIME IN CONSEQUENCE OF OR TO GIVE EFFECT TO ANY FINDING/DIRECTION IN AN APPEAL, REFERENCE OR REVISION ORDER UNDER I.T. ACT OR BY ANY COURT UNDER ANY OTHER LAW

S.150(2):-

S.150(1) WILL NOT APPLY IF SUCH ASST. RELATES TO AN ASST. YEAR FOR WHICH ASST. COULD NOT HAVE BEEN MADE WHEN THE SUBJECT ORDER WAS MADE, DUE TO LIMITATION.

ILLUS.: C.G. ASSESSABLE FOR A.Y.2008-09 ASSESSED IN A.Y. 2009-10 BY NOTICE DT. 31-3-2016. & ORDER DT.31-12-2016.

NOTICE CANNOT BE ISSUED U/S 150(1).

SEC.151-SANCTION FOR ISSUE OF NOTICE

W.E.F. 1.6.2015

S.151(1) :-

NOTICE U/S 148 SHALL NOT BE ISSUED BY AN A.O. AFTER EXPIRY OF 4 YEARS FROM END OF ASST. YEAR UNLESS PCCIT/CCIT/PCIT/CIT IS SATISFIED ON REASONS RECORDED BY A.O. THAT IT IS A FIT CASE

S.151(2):-

IN OTHER CASES, NOTICE U/S 148 SHALL NOT BE ISSUED BY A.O., WHO IS BELOW JCIT, UNLESS JCIT IS SATISFIED ON REASONS RECORDED BY A.O. THAT IT IS A FIT CASE

AFTER ISSUE OF NOTICE...

1. ENSURE SERVICE.
2. MONITOR MANUAL/ONLINE FILING.
3. IF ASSESSEE FILES LETTER REQUESTING TO TREAT THE RETURN ALREADY FILED AS IN RESPONSE TO THE NOTICE, REPLY IMMEDIATELY REJECTING THE REQUEST & ASKING TO FILE A FORMAL RETURN, MANUAL OR E-RETURN AS PER LAW.
4. IF, BEFORE FILING RETURN, HE ASKS FOR REASONS FOR REOPENING, REPLY IMMEDIATELY STATING THAT "AS PER DECISION IN **GKN DRIVESHAFTS INDIA LTD. Vs. ITO (2003) 259 ITR 19 (SC)**, REASONS WOULD BE COMMUNICATED AFTER FILING OF RETURN"

AFTER FILING OF RETURN...

1. IMMEDIATELY COMMUNICATE REASONS TO THOSE ASSESSEES WHO REQUESTED.
2. SERVE NOTICE U/S 143(2) IMMEDIATELY. IN ANY CASE WITHIN THE LIMITATION DATE U/S 143(2).
3. IF ASSESSEE RAISES OBJECTIONS & IF THEY ARE–
 - (A) NOT TENABLE, REJECT THEM THRO' A SPEAKING ORDER;
 - (B) ACCEPTABLE, DROP THE PROCEEDINGS (AFTER OBTAINING APPROVAL OF RANGEHEAD/PCIT). **PLACE EVIDENCE ON FILE.** IN CASE OF DOUBT, SEEK DIRECTIONS U/S 144A

IF THERE IS NO RESPONSE....

DO NOT ISSUE ANOTHER NOTICE, CALLING FOR RETURN, U/S 142(1) OR 148.
DO NOT GRANT FURTHER TIME, EVEN IF REQUESTED (NO SUCH POWER TO AO). INSTEAD ISSUE NOTICE ASKING ASSESSEE TO SHOW CAUSE AS TO WHY-

(A) PROSECUTION U/S 276CC SHOULD NOT BE LAUNCHED FOR NON-FILING OF RETURN IN RESPONSE TO NOTICE ISSUED

(B) BEST JUDGEMENT ASSESSMENT SHOULD NOT BE MADE U/S 144
IF RETURN IS NOT FILED EVER AFTER THIS NOTICE, IMMEDIATELY **CALL FOR-**

(C) BOOKS OF ACCOUNTS AND/OR *DOCUMENTS U/S 142(1)(ii); AND

(D) IF REQUIRED, INFORMATION (INCLUDING STATEMENT OF ALL ASSETS & LIABILITIES) U/S 142(1)(iii), WITH PRIOR APPROVAL OF RANGE-HEAD

*INCLUDES P&L A/C, B.S., SCHEDULES, BANK A/C STATEMENT, CONFIRMATION LETTERS FROM CREDITORS, CLOSING STOCK INVENTORY, PURCHASE/SALES BILLS, ETC, AS APPLICABLE.

144 FOR FAILURE TO RESPOND TO 148?

MANUAL OF OFFICE PROCEDURE-VOL.II-PG.36- PARA 9(x):-

“IN CASE ASSESSEE FAILS TO COMPLY WITH NOTICE U/S 148, ASSESSMENT HAS TO BE FINALISED U/S 144.”

MANUAL OF OFFICE PROCEDURE-VOL.II-PG.36- PARA 9(xii):

“REOPENED ASST. CAN BE COMPLETED EITHER U/S 143(3) OR U/S 144”

IN THE CASE OF R.B.SETH SHREERAM DURGAPRASAD Vs CIT (1988) 170 ITR 23 (BOM) IT WAS HELD AS UNDER:

“WE HOLD THAT WHERE AN ASSESSEE DOES NOT RESPOND TO A NOTICE ISSUED UNDER [SECTION 148](#) OF THE INCOME-TAX ACT, 1961, IT IS PERMISSIBLE FOR THE TAXING AUTHORITY TO ASSESS HIM ON A BEST JUDGMENT BASIS UNDER [SECTION 144](#) OF THE SAID ACT.”

SEC.153

- ALREADY COVERED IN PREVIOUS PPT

THANK YOU