

NEW ASSESSMENT PROCEDURE U/S 147

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Chapter XIV of The Income Tax Act 1961, titled as “Procedure for Assessment” provides the mechanism for assessment as well as re-assessment of the return filed by assessee(s). These provisions, specifically Section 147, 148, Section 148A, and Section 149 of the Income Tax Act, have completely transformed the law related to reassessment, assessment, and recomputation under the Act.

In the recent times, the machinery of reassessment proceedings under the Income Tax Act, 1961 have been invoked by the Income Tax Department now, more than ever before. This is largely due to advancement of technology and information about Specified Financial Transactions (SFT's) collected by the Department. The information collected through SFT is compared with ITR filed by the taxpayer and is also used to detect non-filers of returns. Reassessment proceedings are initiated accordingly.

Accordingly Finance Act 2021 has completely revamped the substantive and procedural law related to reassessment.

Though, the legislative intent for bringing in these amendments in the re-assessment regime, by the Finance Act, 2021, was to reduce litigations, and to provide certainty to the finality and conclusiveness of the already concluded assessments, but, at the ground-level, the recent litigative trends, in respect of this new-reassessment regime, are conveying an altogether different and opposite story.



SECTION 147- INCOME ESCAPING ASSESSMENT

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purpose of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.

ANALYSIS – OLD SECTION VS NEW

There is no material difference between this provision and the earlier provision except the expression "has reason to believe" which was there previously and which does not find place in the newly substituted legal provision.

To allay these fears, the Amending Act, 1989, amended section 147 to reintroduce the expression "has reason to believe" in the place of the words "for reasons to be recorded by him in writing, is of the opinion".

Now the amendment to section 147 vide Finance Act, 2021 has omitted again the words "reason to believe" and section 148A(a) mandates enquiry based on the information which suggests that the income chargeable to tax has escaped assessment. Thus, the expression "reason to believe" got omitted once again after about 3 decades.

In the pre-amended re-assessment regime, applicable uptill 31.3.2021, the formation of reason to believe by the jurisdictional assessing officer that any income of the assessee, has escaped assessment, was a compulsory condition, in order to render legality to the assumption of jurisdiction by such jurisdictional assessing officer u/s 147/148. Reopening, solely on the basis of some borrowed information and some borrowed satisfaction without conducting any independent enquiry by the assessing authority itself, was a complete nullity in the eyes of law and was void ab initio.

CONDUCTING ENQUIRY, PROVIDING OPPORTUNITY BEFORE ISSUE OF NOTICE UNDER SECTION 148 – SECTION 148A

This section provides that the Assessing Officer shall do the following before issuing a notice under section 148

- Conduct any enquiry with the prior approval of specified authority [Approval -1], with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- Provide an opportunity of being heard to the assessee by serving a show cause notice and granting time of not less than 7 days but not more than 30 days from the date of issue of such notice. Assessee can request the Assessing Officer in s.148A proceedings for materials, documents and statements on oath etc. which formed basis for issuance of notice . It is then the Assessing Officer's duty to supply the same to the assessee- Vinod Lalwani v. Union of India [2023] 146 taxmann.com 204/455 ITR 738 (Chhattisgarh)
- Where the assessee has replied to the show cause notice, consider the reply of assessee to the show cause notice;
- Decide, on the basis of material available on record, whether or not it is a fit case to issue a notice under section 148 by passing an order with the prior approval of specified authority [Approval -2]. However, such order must be passed within one month from the end of the month in which the reply to show cause notice was received and where no such reply was furnished by the assessee within one month from the end of the month in which the time or the extended time allowed expires.

Following are the instances which suggests the presence of information with the Assessing Officer that the income chargeable to tax has escaped assessment:

- (i) any information of the assessee which was obtained in accordance with risk management strategy formulated by the Board from time to time; or
- (ii) any audit objection to the effect that the assessment in the case of the assessee was not done in accordance with the provisions of the Act; or
- (iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or
- (iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or
- (v) any information which requires action in consequence of the order of a tribunal or a court.

Therefore, prima-facie, it appears, that what was impermissible in the pre-amended reassessment regime uptill 31.3.2021, i.e., reopening on the basis of borrowed information and borrowed satisfaction, has in fact, now been made the pre-condition for such reopening.

Currently, no information or details are available in the public domain, in respect of the meaning and scope of the expression, "as per the risk management strategy of CBDT".

From other AO

From other agencies

From Investigation Wing

From Insight Portal

The Hon'ble Delhi High Court, in the case of 'Divya Capital One Private Limited vs.ACIT', held that

"This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act.

Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d).

A progressive as well as futuristic scheme of re-assessment whose intent is laudatory, has in its implementation, not only been rendered nugatory but has also had an unintended opposite result.“

In Fena (P) Ltd. v. ACIT [2022] 445 ITR 434 (Delhi) it was held that a reassessment notice is not valid in law where it was issued relying upon the information of the risk management strategy of the Department but without conducting an independent enquiry. Similar view could be found in Digi I Electronics (P) Ltd v. Asstt. CIT [2023] 458 ITR 478 (Bom).

Order passed u/s 148A(d) and further notice issued u/s 148 without considering reply filed by the assessee was to be set aside – Anu Gupta Vs ITO [2023] 454 ITR 785 (Delhi)

Where assessee by way of writ challenged order passed under section 148A(d) and reopening notice on ground that impugned order was passed without taking into account assessee's reply, since proceedings initiated against petitioner were yet to be concluded by statutory authorities, writ Court should not interfere at such premature stage – Rajesh Patidar Vs ITO (MP) [2024] 158 taxmann.com 2

Explanation to section 147 opens floodgates for taxation of any other income which has escaped assessment and which comes to the notice of the Assessing Officer in the course of reassessment proceedings. Thus, it may impact court decisions such as CIT v. Jet Airways (India) Ltd. [2010] 195 Taxman 117/[2011] 331 ITR 236 (Bom.);

Explanation 2 to section 148 lists out instances where it is deemed that the Assessing Officer has information which suggests that the income chargeable to tax has escaped assessment.

They are listed below:

- (a) In the case of an assessee if a search is initiated under section 132 or action under section 132A on or after 1st day of April, 2021; or
- (b) A survey under section 133A conducted on or after 1st day of April, 2021 (does not cover survey for TDS/TCS); or
- (c) Where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person on or after 1st day of April, 2021 belongs to the assessee (and has obtained the approval of PCIT or CIT to reach such conclusion); or
- (d) The Assessing Officer is satisfied that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person on or after 1st day of April, 2021 pertains or pertain to, or any information contained therein relate to, the assessee (and the Assessing Officer has obtained the approval of PCIT or CIT to reach such conclusion);

Section 148B says that no order of assessment or reassessment or recomputation shall be passed in respect of the above said 4 instances (contained in Explanation 2 to section 148) except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

EXCEPTIONS – WHEN PROCEDURE U/S 148A IS NOT REQUIRED

- Where a search is initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A in the case of an assessee on or after the 1st day of April, 2021; or
- Where the Assessing Officer is satisfied with the prior approval of PCIT or CIT that any money, bullion, jewellery or other valuable article or thing seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after 1st day of April, 2021, belongs to the assessee; or
- Where the Assessing Officer is satisfied, with the prior approval of the PCIT or CIT that any books of account or other documents, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein relate to the assessee; or
- Where the Assessing Officer has received any information under the Scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

TIME LIMIT FOR ISSUE OF NOTICE U/S 148 – SECTION 149

- a) no notice under section 148 shall be issued if 3 years have elapsed from the end of the relevant assessment year, except in the cases stated in (b) below.
- b) No notice under section 148 shall be issued if 3 years but not more than 10 years have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of (i) an asset; (ii) expenditure in respect of a transaction or in relation to an event or occasion; or (iii) an entry or entries in the books of account – which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more;

The Finance Act, 2021 prescribed this monetary limit of Rs.50 lakhs for each assessment year and the Finance Act, 2022 has substituted clause (b) of section 149 w.r.e.f 01.04.2021 and thus if the aggregate amount of income escaping assessment if exceeds Rs.50 lakhs, the extended time period up to 10 years could be used by the tax administration.

The first proviso to section 149 provides some comfort to the taxpayers that if a notice under section 148 could not have been issued on account of it being beyond the time limit specified under section 149(1)(b) as it stood immediately before the commencement of the Finance Act, 2021 such notice cannot be issued based on the extended time provided by virtue of the Finance Act, 2021.

Thus, for the assessment year 2013-14 the time limit for issue of notice would expire by 31st March, 2020 and for the assessment year 2014-15 it would expire by 31st March, 2021 as per section 149(1)(b).

Therefore, any notice issued after 31st March, 2021 by virtue of the Finance Act, 2021 cannot cover assessment year 2014-15 and preceding assessment years.

Issues – Whether income pertaining to a period beyond limitation will be reckoned for computing monetary limit of Rs 50 Lacs

Section 149(1A) says that where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion referred to in section 149(1)(b) and investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous year relevant to the assessment years within the period referred above, a notice under section 148 has to be issued for every assessment year for assessment, reassessment or recomputation as the case may be.

Section 149(1A) however does not cover issue of notice for each of the assessment year where the escapement of income arises due to entry in the books of account. This could also be a possible area open for litigation.

ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT- SECTION 148

- The Assessing Officer before making the assessment, reassessment or recomputation under section 147 and subject to the provisions of section 148A shall serve on the assessee a notice along with a copy of the order, if required, passed under section 148A(d), asking the assessee to furnish an ITR within 3 months from the end of the month in which such notice is issued or within such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee.. The provisions of the Act shall, so far as may be, apply to such ITR as if it was filed under section 139.
- First proviso to section 148 says that such notice shall be issued if the Assessing Officer has information which suggests that the income chargeable to tax has escaped assessment and it shall be issued after obtaining the approval of the specified authority.
- Second proviso to section 148 says that such approval is not required if an order was passed under section 148A(d).
- Third proviso to section 148 inserted by the Finance Act, 2023 says that where the ITR is filed beyond the period allowed in the notice or beyond the extended time given by the Assessing Officer based on the request of the assessee, it shall be deemed that the return filed is not a return under section 139. In other words, it would be construed that the assessee has not filed an ITR in response to a notice issued under section 148.

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- The Hon'ble Calcutta High Court in Triton Overseas (P.) Ltd. v. Union of India [2023] 156 taxmann.com 318 vide its decision dtd.13.9.2023 upheld the validity of the issuance of the notice u/s.148 by the jurisdictional Assessing Officer instead of by the NFAC as such a case does not fall under the ambit of s. 144B
 - However, the Hon'ble Telengana High Court in Kankanala Ravindra Reddy v. ITO [2023] 156 taxmann.com 178/295 Taxman 652 vide its order dtd.14.09.2023, quashed the order u/s.148 (d) and the notice u/s.148 issued by the Jurisdictional assessing Officer on the ground that after the introduction of 'Faceless Jurisdiction of Income-tax Authorities Scheme, 2022' and 'e-Assessment of Income Escaping Assessment Scheme, 2022' it became mandatory for revenue to conduct / initiate proceedings pertaining to reassessment/ss. 147, 148 and 148A in a faceless manner.

SANCTION FOR ISSUE OF NOTICE – SPECIFIED AUTHORITY – SECTION 151

- The specified authority shall be PCIT or PDIT or CIT or DIT for the purpose of issue of notice under section 148 and for conducting enquiry under section 148A besides passing an order under section 148A(d) in cases where the time period which has elapsed from the end of the relevant previous year is less than 3 years.
- The specified authority shall be PCCIT or PDGIT or PCIT or DGIT if more than 3 years have elapsed from the end of the relevant assessment year to which the escaped incomes relate.

Section 147 vs. Section 153A / Section 153C:

Prior to amendment made vide Finance Act, 2021, assessment in cases of search u/s. 132 or requisition u/s. 132A of the Act was to be done in accordance with the provisions of Section 153A in the case of searched person and u/s. 153C in the case of person other than the searched person. In other cases, where the Assessing Officer ('AO') had reasons to believe that income chargeable to tax has escaped assessment, Notice u/s. 148 of the Act was issued and reassessment proceedings were completed u/s. 147 of the Act. Thus, there were different provisions to deal with search / requisition cases and non-search cases.

Now, under the new provisions, a sunset clause has been inserted in Section 153A and 153C. Thus, assessment relating to search initiated / requisition done on or after 1st April, 2021 will be done in accordance with the new provisions of Section 147.

RELEVANCE OF CHANGE OF OPINION

In ITO v. TechSpan India (P.) Ltd. [2018] 92 taxmann.com 361/255 Taxman 152/404 ITR 10 (SC) it was held that mere change of opinion would not entitle initiation of reassessment proceedings. Now section 148A mandates an enquiry based on information which suggests escapement of income. This information unless it is fresh, merely based on the old set of facts and records it would not be possible to trigger reassessment provisions.

NOTICE U/S 148 ISSUED AFTER 30/06/2021 FOR PERIOD BEYOND 3 YEARS

Notice for period beyond 3 years can only be issued in search / requisition (earlier covered u/s 153A/153C) / survey cases i.e. cases where the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax has escaped assessment amounting to Rs 50 Lacs or more.

Merely any AIS/TIS/AIR / SFT information with AO cannot be treated that AO has in his possession evidence which reveals that income chargeable to tax has escaped assessment, because the word, “information” has nowhere been used in Section 149(1)(b) and ‘information in possession’ is very different than the term ‘AO has in his possession books of accounts or other documents or evidence’ as used in Section 149(1)(b).

Thus, initiation of reassessment proceedings beyond 3 years merely on the basis of AIS/TIS/AIR / SFT information such as cash deposit, sale of immovable property, etc. is against the provisions of new section 148.



Validity of Notice u/s. 148 issued between 01.04.2021 to 30.06.2021 and analysis of the Latest Judgment of Hon'ble Supreme Court of India:

When Finance Act 2021 changed the procedure for reassessment wef 01/04/2021, IT department still continued to issue notice u/s 148 till 30/06/2021 under the old procedure taking shelter under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 which extended the period of limitation to issue notice under erstwhile sec 148 till 30/06/2021.

Various writ petitions were filed in High Courts across the country challenging the validity of Notice u/s. 148 issued without following the procedure laid down under the new section 148A. Various High Courts including that of Bombay, Calcutta, Allahabad, Rajasthan, Madras and Delhi have held Notices u/s. 148 issued from 01.04.2021 to 30.06.2021 to be invalid and were quashed.

Aggrieved from the same, the revenue filed Civil Appeal before the Hon'ble Supreme Court of India (Civil Appeal No. 3005/2022) [2022] 138 taxmann.com 64 (SC) which has now been finally decided by the Supreme Court vide its judgment dated 4th May, 2022 whereby the Hon'ble SC has exercised Article 142 of the Constitution of India and has held that the Order of the Hon'ble SC dated 04.05.2022 will be applicable PAN INDIA.



The Hon'ble SC has held as under:

1. Notice issued u/s. 148 shall be deemed to be Show Cause Notice u/s. 148A(b).
2. AO shall provide the information and material relied upon by the revenue within 30 days from the date of judgment of Hon'ble SC, i.e., upto 3rd June, 2022.
3. Assessee to reply to SCN within two weeks thereafter. (i.e., from the date of receipt / information from the AO)
4. Requirement of conducting any enquiry u/s. 148A(a) dispensed with as a one-time measure only for Notice u/s. 148 issued between 01.04.2021 to 30.06.2021.
5. AO to pass an Order u/s. 148A(d) (prior approval of specified authority would be required).
6. Issue Notice u/s. 148 if required (prior approval of specified authority would be required).
7. All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.

To give effect to the above-mentioned judgment of Hon'ble Supreme Court, CBDT had issued Instruction No. 1/2022 dated 11.05.2022 whereby the CBDT has stated as under:

For AY 2013-14, AY 2014-15 and AY 2015-16: Fresh Notice u/s. 148 of the Act can be issued with the approval of Pr.CCIT u/s. 151(ii) only if the case falls u/s. 149(1)(b).

For AY 2016-17 and AY 2017-18: Fresh Notice u/s. 148 can be issued with the prior approval of Pr.CIT/CIT u/s. 151(i) and it has been stated that cases for AY 2016-17 and AY 2017-18 fall within time limit of 3 years.

Now once again some of these have found challenge on the sole ground of period of limitation u/s 149 before the Delhi High Court in a batch of 50 odd cases who vide judgement pronounced recently on 10.11.2023 [Ganesh Das Khanna Vs ITO] held that in the absence of any income tax provision in section 119 or section 149 enabling extension of time limit set by the 2020 ordinance followed by TOLA powered notifications the notices issued in the extended time citing under powers granted by TOLA /board instruction cannot survive. In these 50 cases the authorities have issued notices for AY 2016-17 and 2017-18 citing escapement of income of less than INR 50 lacs beyond 3 year limitation period bearing in mind extended period of limitation even after the coming into force of FA 2021 which place a limitation of 3 years in such cases.

The “Travel back in time” theory is declared bad in law.

Similar view has been held by Bombay High Court too in Siemens' Financial Services (P.) Ltd. v. Dy. CIT [2023] 154 taxmann.com 159/457 ITR 647 .

ARGUMENT BY TAX PAYERS

It is being argued that the instruction is not in accordance with the provisions of the Income Tax Act, 1961 on the following grounds i.e.:

- (a) AY 2013-14 & 2014-15 can't be reopened under the new provision in view of the first proviso to section 149(1) which stipulates that no notice can be issued under the new law if they could have not been issued under the time limit as prescribed under the old law which is 6 years, hence, the time limit have already elapsed on 31-3-2021.
- (b) As regards AY 2015-16, 2016-17 & 2017-18, it is being argued that they are barred by limitation as three years have already elapsed on 31-3-2021 & therefore, no notice under section 148 can be issued under the new provision on or after 1-4-2021. (In respect of the cases, where the amount of escaped income is less than Rs.50 lakhs.)

ARGUMENT BY REVENUE

It is argued that The Calcutta High Court in the case of Bagaria Properties and Investment (P.) Ltd. v. Union of India⁷, has only declared the Explanation A(a) of the Notification No. 20 [S.O. 1432 (E) dated 31st March, 2021 issued under sec 3(1) of the TOLA as ultra vires to the parent legislation. The parent Act, TOLA is still valid and is very much in operation. It is applicable to the provisions of old section 148 till 30-3-2021, and from 1-4-2021 it is applicable to the new provisions.

Accordingly, the time barring dates for AY 2013-14 & 2014-15 under the old provision falling on 31-3-2020 & 31-3-2021 got extended to 30-6-2021.

As per TOLA all time barring dates for issue of notice under section 148 (whether old or new) got shifted to 30-6-2021. As such, AY 2013-14 & 2014-15 are not hit by the restriction imposed by the first proviso to section 149(1) and accordingly, very well be reopened under the new provision till 30-6-2021. Therefore, there is no so called legal infirmity in the instruction of the CBDT relating to direction to issue notice to reopen the assessments for AYs 2013-14 & 2014-15 if income escaping assessment is 50 lakhs or more. The CBDT instruction duly deals with this aspect.

As regards AY 2016-17 & 2017-18, again TOLA extends the three years' time limit from 31-3-2020 & 31-3-2021 to 30-6-2021 and therefore, these two AYs are also within the time limit prescribed.

DECISIONS ON THE ISSUE

The CBDT vide instruction dated May 11, 2022, while explaining its understanding of the SC ruling (supra), showed the way forward in how the Revenue should apply to the SC ruling. However, interpretation of the SC order by CBDT and its reading with the law has again opened a Pandora box where thousands of writ petitions have got filed or are in pipeline to oppose the notices issued on the basis of such interpretation.

The Delhi High Court ('HC'), Gujarat HC, Rajasthan HC and many others have interpreted this matter differently. Where the Allahabad HC has considered the CBDT instructions as a "surreptitious" attempt to overturn directive of the Supreme Court's ruling in the case of Rajeev Bansal v. Union of India, the Delhi HC has passed the order in the favour of the Revenue considering these instructions in line with the SC ruling in the case of Touchstone Holdings (P.) Ltd. v. ITO.

The Gujarat HC has held in the case of Keenara Industries (P.) Ltd v. ITO, that the CBDT's interpretation for issuance of directions to the Assessing Officers by relying on the TOLA Act is contrary to the ratio of the Apex Court. Again, it is an unquestionable proposition that notifications which are the creation of the executives, issued under section 3 of TOLA Act, 2020 cannot override the legislation no matter how grave the situation may be and pandemic due to COVID-19 virus would also not be potent enough to dilute this principle.

Recently, the SC has dealt with the matter in the case of Salil Gulati v. Asstt. CIT and dismissed the SLP filed by the taxpayer against the order of Delhi HC which was in the favour of the Revenue. However, the order of SC was a totally non-speaking order and does not provide any path to move further.

In the judgment of Ashish Agarwal(supra), the Apex Court considered the wrongdoing of the Revenue as a bonafide mistake, and revived all of the quashed notices by providing the benefit of doubt. It was held that the non-application of the amendments seems to be genuine, as the tax officers may have been under the bonafide belief that they have not yet been enforced. Further, in the case of Salil Gulati(supra), the Apex Court also dismissed the SLP of the assessee without giving any justification in respect to the interpretation by the CBDT.

In such circumstances, all of the High Court rulings interpreting the CBDT instruction, either in favour of the revenue or the taxpayers, will be appealed before the SC. The Supreme Court's endeavour to put an end to thousands of writ petitions through its ruling in the Ashish Agarwal case will get defeated, and the door for numerous writs and petitions will once again open.

The Noble Laureate Economist Dr Milton Friedman stated that -

“The government solution to a problem is usually as bad as the problem”

The new procedure of reassessment, rather than achieving its stated objective of reducing litigation, resulted in more than 90000 WP being filed across India and the conundrum still continues.



CHECKLIST

- Check the Assessment year and amount alleged to have escaped assessment
- If the AY is 2013-14 or AY 2014-15, defense can be taken of first proviso to Section 149(1). Reference is drawn to the decision of the Hon'ble Delhi High Court in the case of Nestle India Ltd. v. DCIT [2016] 384 ITR 334 (Delhi) (HC) where reopening beyond the period six years was held to be invalid and barred by limitation.
- Check Applicability of 149(1)(a) or 149(1)(b)
- Check sanction of specified authority at various stages DSJ Communication Ltd. v.DCIT [2014] 41 taxmann.com 151 (Bom)(HC)
- Sanction should be obtained prior to issuance of Notice. CIT v. Smt. Suman Waman Chaudhary [2010] 321 ITR 495 (Bom) (HC)
- There are instances where less than 7 days have been given to the assessee to respond to the Notice issued under section 148A of the Act. This results in violation of the procedure laid down by law. Jindal Forgings v. PCIT & Ors 328 CTR 239 (Jharkhand) (HC)
- Always ask for a copy of all the information with the Department i.e., reports, statements, evidence etc. Not providing the same would render the reassessment proceedings illegal. Refer to the case of Vinod Lalwani v. UOI [2023] 146 taxmann.com 204 (Chh)(HC)and Swal Ltd v. UOI [2023] 450 ITR 148 (Cal)(HC)
- The Assessing Officer to pass a detailed order considering the reply of the assessee. Upinder Kumar Wanchoo v. ITO & Anr WP(C) 5856 of 2023 dated May 08, 2023 (Del)(HC)
- The Order passed under section 148A (d) of the Act should be passed within one month.
- Section 148A of the Act is not applicable for certain cases but AO has to obtain prior sanction of specified authority before issue of notice u/s 148
- Survey cases will be deemed information but a notice u/s 148A has to be issued.
- If the Assessee wishes to challenge the reassessment proceedings by way of Writ, the same has to be filed within a reasonable time after the issuance of the Notice under section 148 of the Act.



Questions
are
guaranteed in
life;
Answers
aren't.

THANK YOU