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# SCOPE OF JURISDICTIONAL CHALLENGE OF INCOME ESCAPING ASSESSMENT PROCEEDINGS BEFORE THE HON'BLE GUJARAT HIGH COURT

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FENIL MEHTA

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# SECTION 147 : INCOME ESCAPING ASSESSMENT

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- 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 purposes 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.]

## **SECTION 148A : CONDUCTING INQUIRY, PROVIDING OPPORTUNITY BEFORE ISSUE OF NOTICE UNDER SECTION 148.**

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- The Assessing Officer shall, before issuing any notice under section 148,—
  - (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
  - (b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
  - (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
  - (d) decide, on the basis of material available on record including reply of the assessee, 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, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

## **SECTION 148A : CONDUCTING INQUIRY, PROVIDING OPPORTUNITY BEFORE ISSUE OF NOTICE UNDER SECTION 148. (CONTINUED...)**

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- **Provided** that the provisions of this section shall not apply in a case where,—
  - (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
  - (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner 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 the 1st day of April, 2021, belongs to the assessee; or
  - (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in 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*
  - (d) *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.] [Sub. for "relate to, the assessee." w.e.f. 1-4-2022.]*

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

# SECTION 148 : ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT.

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- Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

## SECTION 148 : ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT. (CONTINUED...)

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- **Provided** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

*Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.]*

**[Inserted by F.Act, 2022]**



# SECTION 148 : ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT. (CONTINUED...)

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- *Explanation 1.*—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—
  - (i) any information [\*\*\*] in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; **[Word "flagged" omitted, w.e.f. 1-4-2022.]**
  - [(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this 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.]*

**[Clauses (ii) to (v) sub. for clause (i) w.e.f. 1-4-2022.]**

# SECTION 148 : ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT. (CONTINUED...)

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- *Explanation 2.*—For the purposes of this section, where,—
  - (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
  - (ii) a survey is conducted under section 133A, other than under sub-section (2A) [\*\*\*] of that section, on or after the 1st day of April, 2021, in the case of the assessee; [ Words "or sub-section (5)" omitt. w.e.f. 1-4-2022.] or
  - (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
  - (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in 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,the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee *where* the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.  
*Explanation 3.*—For the purposes of this section, specified authority means the specified authority referred to in section 151.]



## SECTION 149 : TIME LIMIT FOR NOTICE

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- (1) No notice under section 148 shall be issued for the relevant assessment year,—
  - (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
  - [(b) if three years, but not more than ten 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 fifty lakh rupees or more:]*

[Sub. w.e.f. **1-4-2022.**]



## SECTION 149 :TIME LIMIT FOR NOTICE (CONTINUED...)

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- **Provided** that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:
- **Provided further** that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

## SECTION 149 :TIME LIMIT FOR NOTICE (CONTINUED...)

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- **Provided also** that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:
- **Provided also** that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

## SECTION 149 :TIME LIMIT FOR NOTICE (CONTINUED...)

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- *Explanation.*—For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

[(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.] [Ins. by the Act No. 06 of 2022, w.e.f. **1-4-2022**.]

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]

## SECTION 151 : SANCTION FOR ISSUE OF NOTICE

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- Specified authority for the purposes of section 148 and section 148A shall be,—
  - (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
  - (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]

## ARTICLE 226 OF THE CONSTITUTION OF INDIA: POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS

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- (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

## **ARTICLE 226 OF THE CONSTITUTION OF INDIA: POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS [CONTIUNED..]**

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- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

## OLD SECTION 149: TIME LIMIT FOR NOTICE.

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- **149.** (1) No notice under section 148 shall be issued for the relevant assessment year,—
  - (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
  - (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;**
  - (c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.



## NEW SECTION 149: FIRST PROVISO

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- **Provided** that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

## **CASE LAW NO.I**

# **JAYABEN MOHANBHAI PADALIYA V. ITO**

**SPECIAL CIVIL APPLICATION NO.2839 OF 2023 - THE HIGH COURT OF GUJARAT**

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- **Facts:**

148 notice was issued on 19.04.2021 – A.Y.2013-14 under old law of reopening that stood before Finance Act, 2021 on the strength of notification issued in exercise of powers conferred by the TOLA.

- **Challenge:**

Challenge was made in view of the first proviso to section 149 as amended by F.Act, 2021.

- **Judgement of Gujarat High Court:**

Quashed the 148A(d) order and 148 notice on the ground of limitation.

## **CASE LAW NO.II**

# **RAJESH MANSUKHLAL GADOYA V. ITO**

**SPECIAL CIVIL APPLICATION NO.20610 OF 2022 - THE HIGH COURT OF GUJARAT**

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- **Facts:**

148 notice was issued on 04.06.2021 – A.Y.2014-15 under old law of reopening that stood before Finance Act, 2021 on the strength of notification issued in exercise of powers conferred by the TOLA.

- **Challenge:**

Challenge was made in view of the first proviso to section 149 as amended by F.Act, 2021.

- **Judgement of Gujarat High Court:**

Quashed the 148A(d) order and 148 notices on the ground of limitation.

## **CASE LAW NO.III**

# **PATEL RAJNI MOHANBHAI PADALIYA V. ITO**

**SPECIAL CIVIL APPLICATION NO.5561 OF 2023 - THE HIGH COURT OF GUJARAT**

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- **Facts:**

Original 148 Notice was issued on 19.04.2021 for A.Y.2015-16.

- **Challenge:**

Challenge was made primarily on the premise that even alleged escapement is neither represented in form of asset nor escapement of income is beyond 50 Lakhs

- **Judgement of Gujarat High Court:**

Pending for adjudication.

## **CASE LAW NO.IV**

# **BRIJESH BHARATBHAI BUDHBHATTI V. ITO, GANDHIDHAM**

**SPECIAL CIVIL APPLICATION NO.5547 OF 2023 - THE HIGH COURT OF GUJARAT**

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- **Facts:**

Original 148 Notice was issued on 21.04.2021 for A.Y.2016-17.

- **Challenge:**

Challenge was made primarily on the premise that no approval of competent authority was obtained for passing 148A(d) order and issuing 148 Notice and also on the ground that even alleged escapement does not exceed 50 Lakhs.

- **Order of Gujarat High Court:**

High court has granted a stay in the matter.

# **CASE LAW NO.V**

## **ADITYA HARESHBHAI SONPAL V. ITO**

### **[2023] 148 TAXMANN.COM 13 (GUJARAT)**

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- **Facts**

Relevant A.Y. – 2018-19, 148A(b) Notice dt 20.03.2022, Adjournment dt 27.03.2022, allowed only one day on 05.04.2022. On 06.04.2022 passed 148A(d) order and issued 148 Notice

- **Judgement and observation of the Hon'ble Gujarat High Court**

Where assessee sought time to file objections to show cause notice issued by department under section 148A(b) but department did not pay heed to same and all of a sudden, it directed assessee to file its reply, since it was not a case of time barring assessment nor was there any urgency for it, this approach of department was in violation of principles of natural justice and hence, 148A(d) order deserved to be quashed.

## **CASE LAW NO.VI**

### **RAKESHKUMAR BABULAL AGARWAL V. PCIT**

**[2022] 136 TAXMANN.COM 329 (GUJARAT)**

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- **Facts**

To be stated orally. Release of Gold Jewellery.

- **Judgement of the Hon'ble Gujarat High Court**

The respondent No.1 shall accord the approval for release of the seized gold jewellery weighing 524.500 grams in favour of the writ applicant at the earliest.

## **CASE LAW NO.VII**

### **VINODBHAI SHAMJIBHAI SAGPARIYA LR OF SHAMJIBHAI SAGPARIYA V. ITO SPECIAL CIVIL APPLICATION NO.23107 OF 2022 - THE HIGH COURT OF GUJARAT**

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- **Facts**

To be stated orally. Case of dead person.

- **Judgement of the Hon'ble Gujarat High Court**

This petition is allowed quashing and setting aside the order of assessment dated 22.03.2022 for the assessment year 2014-15 and all consequential notices.





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