

THREADBARE ANALYSIS OF NEW REASSESSMENT PROVISIONS

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Introduction

- The Finance Act, 2021 has substituted the existing sections 147, 148, 149 and 151 and also inserted a new section 148A making a complete change in the assessment proceedings related to:
 - Income escaping assessment.
 - search-related cases.
- These amendments came into effect from **01.04.2021**.

Section 147: Income Escaping Assessment

Section 147

- 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 re-compute 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).
- For the purposes of assessment or reassessment or re-computation 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.**

Discontinuance of Search related Assessment Proceedings

Reason for discontinuing procedure of section 153A -153C

- In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment was made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases.
- These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone.
- However, the experience with assessment procedure u/s. 153A to 153C has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.
- Accordingly, the assessment proceedings relating to search/survey/seizure are now embodied within the ambit of section 147 of the Act.

Discontinuation of procedure provided u/s. section 153A -153C

- The provisions of section 153A and section 153C, of the Act are made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

Section 148A:

Conducting Inquiry, Providing Opportunity
Before Issue Of Notice Under Section 148.

Procedure before Issuance of Notice

The Assessing Officer shall be required to follow the below mentioned procedure as laid down in Section 148A before issuing a notice under new Section 148 in cases other than search, survey or requisition:

- **Conducting Inquiry: [Section 148A(a)]**

The Assessing Officer shall conduct an enquiry, if required, concerning the information which suggests that income chargeable to tax has escaped assessment.

In **Divya Capital One (P) Ltd. vs. ACIT (Supra)**, it was held that:

“10. In fact, perusal of para 9 of the impugned notice dated 17th March, 2022 suggests that reassessment in the present case was sought to be initiated merely for verification. This Court is of the view that even if the re-assessment was being done for verification in accordance with Explanation 1 to Section 148, nothing prevented the Assessing Officer from conducting an enquiry with respect to the said information in accordance with Section 148A(a) of the Act...”

Conducting Inquiry prior to issue of notice

G4S Secure Solutions (India) (P) Ltd. vs. ACIT

[WP(C) 6625/2022; Order dated 19.12.2022](Delhi HC)

- Reassessment initiated based on the information received from the GST authorities. It was alleged that the taxpayer was involved in providing fake/bogus invoices through some entity.
- However, the necessary details to establish that no purchases were made from such an entity by taxpayer were furnished by it.
- Bald allegations made merely based on GST authorities information without any material to suggest that accommodation entries were provided through any such entity.
- Held that reassessment initiated based on incorrect and false information without any enquiry. **Such enquiry u/s. 148A(a) should have been conducted prior to the issue of notice.**
- **Reassessment was initiated merely relying upon information from GST authorities.**

Notice to be issued only when there is escapement of income

- Reassessment cannot be initiated in the absence of escapement of income.
- In *Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. vs. ACIT W.P.(C) 2562/2022 & CM APPL. 7332/2022 dt 30.01.2023*, transaction of issue of shares was under consideration. **To whom?**
- Held that investment in share capital was a capital account transaction, there is no escapement of income.
- Further, the assessee being a non-resident, no income whatsoever chargeable to tax accrues or arises in India.

Section 147

- In the decision of Delhi High Court in **Divya Capital One (P) Ltd. vs. ACIT (2022) 326 CTR (Del) 781**, it was held that:

“8. This Court is further of the view that under the amended provisions, the term “information” in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment. 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”

Procedure before Issuance of Notice

- **Granting an opportunity of being heard: [Section 148A(b)]**

The Assessing Officer shall provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause **as to why a notice under new Section 148 should not be issued based on inquiry conducted or information, which suggests that income chargeable to tax has escaped assessment** .

Assessee to reply within the specified time as mentioned in the notice, being not less than 7 days and not exceeding 30 days from the date of such notice.

Such time allowed for furnishing the reply may be extended by the AO based on an application made by the assessee in this behalf.

Granting an opportunity of being heard: [Section 148A(b)]

Samadha Corporation vs . ITO

[WP No. 2154/2022 dt 20.09.2022] (Bom HC)

- Notice issued under Section 148A(b) of the said Act required the response of the petitioner within a period of three days.
- Held that issuance of a show cause notice with a period lesser than seven days would vitiate the reassessment proceedings.

Procedure before Issuance of Notice

- **Consider Reply of Assessee: [Section 148A(c)]**

The Assessing Officer **shall consider the reply furnished by the assessee**, if any, in response to the show-cause notice issued by AO.

- **Passing an Order: [Section 148A(d)]**

The Assessing Officer shall decide, based on **material available on record** including reply of the assessee, whether or not it is a fit case to issue a notice under new Section 148, by passing an order, Such order to be passed within:

- **one month from the end of the month** in which the reply of assessee is received, 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 by the Assessee expires.

Non-applicability of Procedure u/s.148A

- **The provisions of section 148A shall not apply if the case where:**
 - (a) **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;
 - (b) 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
 - (c) **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 or requisitioned in case of any other person on or after the 1st day of April 2021, **belongs to the assessee; or**
 - (d) **The Assessing Officer is satisfied**, with the prior approval of PCIT or CIT, that any books of account or documents, seized or requisitioned 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.**

Violation of procedure u/s 148A of the Act

Anurag Gupta vs. ITO [WP No. 10184 of 2022 (Bom)]

- Notice initiating reassessment issued without providing the information or material relied upon.
- The reassessment proceedings initiated are unsustainable on the ground of violation of the procedure prescribed under s.148A(b) on account of failure of the AO to provide the requisite material

Mrs. Chitra Supekar vs. ITO WP No. 15580 of 2022(Bom) :

- The assessee had income below exemption limit and so no return was filed for the AY.
- Notice u/s 148A(b) dt. 20.03.2022 was not received by the assessee since it was delivered to her old address. Thus, the assessee could not respond and 148A(d) order was passed ex parte.
- Further, notice u/s 148 was also hand delivered when the assessee visited the office of the AO.
- Change of address was updated by the assessee in the return of income of subsequent AY.
- In spite of having the details of new address of the assessee, notices were served on old address.
- Held that invalid service of notice is a jurisdictional error.
- Notice set aside.

Nambiar Balakrishnan Narendran vs. ITO [Wp No.: 18182/2022; order dated 25.11.2022] (Kerala HC)

- Notice under section 148A not served before issue of notice under section 148.
- Notice set aside for not following the procedure.

Section 148:

Issue of notice where
income has escaped assessment.

Issue of Notice

- Before making any assessment or re-assessment or re-computation, a notice is **required to be served u/s.148** along with a copy of the order passed under clause (d) of section 148A, requiring the assessee to furnish return of his income or the income of any other person in respect of which he is assessable under Act during the previous year corresponding to the relevant assessment year.
- **Time limit to furnish return of income in response to section 148 enhanced to 3 months or such further extension given by Assessing officer if any.**
- **Any ITR filed beyond the time period allowed shall not be deemed to be a return under Section 139 and accordingly statutory requirement of serving notice u/s. 143(2) would not apply.**
- Notice can be issued only **when 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.
- Prior approval of specified authority required at the time of issue of order u/s 148A(d) of the Act. Wherever the order u/s 148A(d) is not required to be passed, approval of specified authority required at the time of issue of notice u/s 148 of the Act.
- Specified Authority = specified authority referred to in section 151

Notice or Order or copy of approval should be signed/authenticated

- In the decision of *Prakash Krishnavtar Bhardwaj vs. ITO [WP No.: 9835/2022; order dated 09.01.2023]* (Bombay HC), it was held that unsigned notice issued under section 148 vitiates the entire re-assessment proceedings and consequently notice under section 148A(b); order passed under section 148A(d) and notice issued under section 148 were quashed.

Notice or Order or copy of approval should be signed/authenticated

Hon'ble High Court of Allahabad in the case of *Vikas Gupta vs. UOI [2022] 142 taxmann.com 253 (Allahabad)* held that:

- The first and foremost condition under sub-section (1) of section 282A is that notice or other document to be issued by any Income-tax Authority shall be signed by that authority.
- In the above case, the copy of sanction/approval initiating reassessment was unsigned. Therefore, the point of time when the Assessing Officer issued notices under section 148, he was having no jurisdiction to issue the impugned notices under section 148 of the Act, 1961

Relevant Para-

- the expression "shall be signed" used in section 282A(1) of the Act 1961 makes the signing of the notice or other document by that authority a mandatory requirement. It is not a ministerial act or an empty formality which can be dispensed with. "Signed" means to sign one's name; to signify assent or adhesion to by signing one's name; to attest by signing or when a person is unable to write his name then affixation of "mark" by such person. The document must be signed or mark must be affixed in such a way as to make it appear that the person signing it or affixing his mark is the author of it. Therefore, a notice or other document as referred in section 282A (1) of the Act, 1961 will take legal effect only after it is signed by that Income-tax Authority, whether physically or digitally. The usage of the word "shall" make it a mandatory requirement.

Notice issued in the name of non-existent person

Kamlesh Mavji Ravaria Vs. ITO WP(L) NO. 33885 OF 2022 dt 13.12.2022

- Notice u./s 148 of the Act was issued when the taxpayer was alive.
- Show cause notice u/s 148A(b) in consequence of SC decision in Ashish Agarwal order issued when the taxpayer was no more.
- Even after communicating factum of death, which was duly acknowledged, the AO continued with the proceedings ignoring the objections raised by the petitioner.
- Held that a notice issued under Section 148 of the Act against a dead person would be invalid.
- Reassessment notice quashed.

Notice issued in the name of non-existent person

New Age Buildtech Private Limited Vs NFAC WRIT PETITION NO. 5308 OF 2022 dt. 26.04.2023

Reassessment initiated in the name of erstwhile entity after amalgamation, even after bringing out the said fact to the notice of the AO.

Reassessment set aside.

Also see:

- **NARINDERPAL GUPTA vs. ACIT WRIT PETITION NO.1334 OF 2021**
- **MADHUBEN KANTILAL PATEL vs. UOIFIRST APPEAL NO. 305 OF 2005**

***Pr. CIT v. Mahagun Realtors P. Ltd.
(2022) 137 taxmann.com 91 (SC)***

Facts:

- **MRPL** amalgamated with **MIPL**.
- **All the notices** were issued in the name of **MRPL**.
- ROI was filed in the name of **MRPL**.
- PAN of **MRPL** was used in the ROI.
- In ROI under business reorganization details “**NOT APPLICABLE**” was mentioned in Amalgamation details.
- A survey proceeding was conducted after the amalgamation wherein also **it was not specifically informed** that MRPL had been amalgamated with MIPL.
- Assessment Order was passed in the name of : **“MRPL represented by MIPL”**

Pr. CIT v. Mahagun Realtors P. Ltd.
(2022) 137 taxmann.com 91 (SC)

ITAT & HC: Dismissed the appeal of the Revenue → order passed in the name of non-existent entity following [PCIT vs. Maruti Suzuki India Limited \(SC\)](#)

Revenue challenged the order before Supreme Court:

Assessee's argument:

Upon amalgamation the corporate identity of MRPL extinguished. MRPL thereafter was no longer “person” as defined u/s. 2(31).

Assessment framed in the name of MRPL was invalid pursuant to section 170(2) which requires the assessment in the name of Amalgamated/Resultant Company.

***Pr. CIT v. Mahagun Realtors P. Ltd.
(2022) 137 taxmann.com 91 (SC)***

Held:

In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. **Yet, in every other sense of the term, the corporate venture continues** – enfolded within the new or the existing transferee entity.

In Amalgamation, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues.

Decision of Spice Infotainment Ltd (Del HC) and Maruti Suzuki India Ltd (SC) **distinguished on facts** → in those cases Assessee had duly informed the AO about the Amalgamation and they had represented themselves as the Amalgamated/Transfree entity. → **still the order was passed in the name of non-existent entity.**

***Pr. CIT v. Mahagun Realtors P. Ltd.
(2022) 137 taxmann.com 91 (SC)***

*“Furthermore, it would be anybody’s guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, **this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee.”***

“Before concluding, this Court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 81 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.”

Order passed in the name of MRPL held to be valid.

Meaning of information

- **In cases other than Search, Survey or Requisition :- Explanation 1 to section 148**

The information **suggesting that the income chargeable to tax has escaped assessment** means:

- 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; or
- 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

contd.....

Meaning of information

- Any information received under an agreement referred to in section 90 or section 90A of the Act; or
- Any information made available to the Assessing Officer under the scheme notified under section 135A; or
- Any information which requires action in consequence of the order of a Tribunal or a Court.

What constitutes – ‘information’?

- CIT v. A. Raman & Co. [1968] 67ITR11 (SC) :the expression 'information' means ' instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment'.
- Maharaj Kumar Kamal Singh v. CIT [1959] 35 ITR 1 (SC): word 'information' includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions.

Meaning of information

- **GDR Finance & Leasing(P) Ltd. vs. ITO WP(C) 12040/2022 dated 21.12.2022**

Based on a third party search, the assessee was alleged to be involved in providing accommodation entries through dummy companies.

Name and PAN of the assessee wrongly mentioned in the investigation wing information.

Held that since information relied upon was incorrect, reassessment should be quashed.

Information should suggest escapement of income

DR. MATHEW CHERIAN & ORS. vs. ACIT (2022) 329 CTR (Mad) 809

- On the basis of documents seized in the course of a survey at a hospital, the AO came to the conclusion that an employer-employee relationship was established between the doctors, and the hospital and income should be taxed as salary.
- Held that a mere existence of an agreement that indicated some measure of regulation of the service of the doctors, could not lead to a conclusion that they were salaried employees.
- **The 'information' in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax**

Information should suggest escapement of income

Excel Commodity & Derivative (P) LTD. v UOI (2022) 328 CTR 715

- The AO alleged that the assessee entered into fictitious derivative transactions.
- Order passed without considering the submissions of the Assessee.
- Held that the term "information" in Expln. 1 under s. 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the Revenue. Case remanded back to AO.

Information should suggest escapement of income

Divya Capital One (P) Ltd. vs. ACIT (2022) 326 CTR (Del) 781

- Reopening initiated without appreciating the accounting and taxation of derivative transactions and a cryptic order passed.
- **Held- matter set aside to AO**
- *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 s. 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 reassessment under s. 148A(b) but would certainly not vest it with the power to issue a reassessment notice under s. 148 post an order unders. 148A(d)."*

Re-assessment based on audit objection?

- Supreme court in the case of **FIS Global Business Solutions India (P.) Ltd [2019] 104 taxmann.com 169 (SC)** dismissed an SLP against the decision of the Delhi High Court; wherein it was held that the audit objection being only information, **reassessment notice based on said audit objection is not sustainable.**

[Also see: Indian & Eastern Newspaper Society vs. CIT (119 ITR 996 (SC)]

- **Mobis India Ltd. v. Dy. CIT (2020) 421 ITR 463 (Mad.)(HC) -**
Re-assessment cannot be based on objection raised by **audit party of Comptroller and Auditor General.**
- **However, pursuant to the amendment to the Explanation 1 to section 148A of the Act, the first clause was amended to say that any audit objection would constitute information to reopen assessment.**
- **The aforesaid decisions pertain to pre-amended position.**

Deemed information suggesting Income has escaped Assessment?

- In search, survey or requisition cases: – Explanation 2 to section 148

In search, survey or requisition cases initiated or made or conducted, **on or after 01.04.2021, it shall be deemed that the Assessing Officer has information which suggests that the income chargeable to tax has escaped assessment** relevant to the previous year in the following cases:

- (a) 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 01.04.2021, in the case of the assessee;
- (b) A Survey is conducted under section 133A in the case of the assessee;

Deemed information suggesting Income has escaped Assessment?

- In search, survey or requisition cases: – Explanation 2 to section 148
- (c) **The AO is satisfied, with the prior approval** of PCIT or CIT, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 01.04.2021, **belongs to the assessee**; or
- (d) **The AO is satisfied, with the prior approval** of PCIT or CIT, that any books of account or documents, seized or requisitioned in case of any other person on or after the 01.04.2021, pertains or pertain to, or any information contained therein, **relate to, the assessee**.

Deemed information suggesting Income has escaped Assessment?

- Explanation 2 to section 148 deals with the extent of deemed information **(i.e. reopening without inquiry)** in case of search/survey. Earlier the deeming period was applicable up to 3 years. Vide Finance Act, 2023 amendment, the deeming provisions might apply up to 10 years as well.
- Prior to amendment, income escaping assessment was required to be represented in the form of assets which amounts to or is likely to amount to Rs. 50 lakhs or more.
- **The scope was has been widened by FA 2022 and 2 more categories were added as below:**
 - **expenditure in respect of a transaction or in relation to an event or occasion;**
 - **an entry or entries in the books of account,**

Section 148B- Prior approval

- In respect of the AYs to which Explanation 2 to section 148 applies, the assessment order may be passed by an assessing officer below the rank of Joint Commissioner only after prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director of Income tax.
- Additional approval mechanism introduced in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies. (similar to erstwhile section 153D)
- Provision introduced vide Finance Act 2022

‘Reasons to believe’ vs. ‘information suggesting escapement’

- There must be a nexus or live link between reasons recorded and formation of belief to come to a conclusion that income chargeable to tax has escaped the assessment.
 - ITO v. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)
 - CIT v. Kelvinator of India Limited (2010) 320 ITR 561(SC)
 - Asset Reconstruction Company India Pvt. Ltd. v DCIT (2020) 424 ITR 715 (Bom.)(HC)
 - Sabharwal Properties Industries Pvt. Ltd. v. ITO (2016) 382 ITR 547 (Delhi)(HC)
- the phrase “reason to believe” is removed.
- However, **information suggesting escapement** is required for reopening the assessment. Therefore, it can be argued that the **information in the possession of the AO must have a direct nexus or live link to suggest that the income of the assessee has escaped the assessment.**

Section 149: Time Limit for Notice u/s 148

Time Limit for Issuance of Notice u/s 148

Particulars	Time Limit
In general Scenario	No notice shall be issued if 3 years have elapsed from the end of the relevant assessment year.
Where the Assessing Officer has evidence in his possession which reveals that the income escaping assessment, represented in the form of asset, or expenditure in respect of a transaction or in relation to an event or occasion; or an entry or entries in the books of account amounts to or is likely to amount to Rs. 50 lakhs or more.	Notice can be issued beyond a period of 3 years but not beyond the period of 10 years from the end of the relevant assessment year.
“Asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.	

Time Limit for Issuance of Notice u/s 148

- For cases where the period of 6 years has elapsed:

Notice under section 148 of the Income-tax Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if such notice could not have been issued at that time on account of being beyond the time limit of 6 years, i.e., time-limit prescribed under the existing provisions of Section 149(b), as it stood immediately before the new amendment.

Cases for A.Y. 2013-14 to A.Y. 2015-16 reopened during April to June 2021, pending before various HC as to the applicability of the above proviso to section 149(1).

Time Limit for Issuance of Notice u/s 148

Period of exclusion

Further, to compute the period of limitation for issuance of notice under new section 148, the time or extended time allowed to the assessee in providing an opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than 7 days, the remaining time shall be extended to 7 days.

Section 149(1A):

Sub section (1A) of 149 of the Act provides that if escaped income, represented in the form of asset or expenditure in respect of transaction, event or occasion, is spread over more than 1 year and the total escaped income in all these years is Rs. 50 lakhs or more, then AO gets jurisdiction to issue a notice under Section 148 for all those years.

Proviso to section 149(1)(b) w.r.t. Explanation 1 to section 148

- Where information as per Explanation 1 to section 148 (i.e. other than search and survey cases) emanates from a statement recorded during summons or documents impounded during survey proceedings on or before 31st march of a financial year, consequent to search, survey and requisition that is initiated after 15th day of March of any FY, 15 days period is to be excluded while calculating limitation period u/s 149.
- Notice u/s 148A(b) would be deemed to be issued on 31 March of such FY.

Proviso to section 149(1)(b) w.r.t. Explanation 2 to section 148

- In respect of reopening in search and survey cases under Explanation 2 to section 148, consequent to search, survey and requisition that are initiated after 15th day of March of any FY and period to issue notice u/s 148 expiring on 31st day of March of such FY, a period of 15 days would be excluded from computing limitation period u/s 149.
- Such notice would be deemed to be issued on 31 March of such FY.

Section 151: Sanction for Issue of Notice

Sanction

- 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 Chief Commissioner or Director General, *if more than three years have elapsed from the end of the relevant assessment year.*

No Mechanical Approval

Where prescribed authority having mechanically granted sanction for reopening of assessment without application of mind, the same is invalid and not sustainable.

- CIT v. S. Goyanka Limes & Chemical Ltd. (2016) 237 Taxman 378 (SC)
- German Remedies Ltd v. Dy. CIT (2006) 287 ITR 494 (Bom.)(HC)
- United Electrical Company (P) Ltd v. CIT (2002) 258 ITR 317 (Delhi)(HC)
- Central India Electric Supply Co. Ltd. vs. ITO [2011] 333 ITR 237 (Delhi)

Section 151A:

Faceless assessment of income escaping
assessment.

Faceless Re-assessment

With effect from 01-11-2020, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has inserted a Section 151A to empower the Central government to make a scheme to carry out the following functions in a faceless manner:

- (a) Assessment, reassessment or re-computation under Section 147 ('re-assessment');
- (b) Issuance of notice under section 148 for conducting re-assessment; or
- (c) Sanction under section 151 for the issue of notice under section 148 for conducting re-assessment.
- (d) conducting of enquiries or issuing show-cause notice or passing an order under new Section 148A (before issuance of notice under new Section 148)

Faceless Re-assessment

- Such a scheme is to be formed to impart greater efficiency, transparency and accountability by:
 - (a) Eliminating the interface between the Income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) Optimising utilisation of the resources through economies of scale and functional specialisation; and
 - (c) Introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.
- Notification dated 29.03.2022 introducing faceless scheme states that the notice under section 148 is required to be issued and the entire reassessment proceedings under section 147 is required to be conducted in a faceless manner as is prescribed under section 144B.
- **Thus, if the notice under section 148 is issued by the jurisdictional Assessing Officer and not through the NFAC then the said notice may be challenged as bad in law.**

Section 153:

Time limit for completion of assessment,
reassessment and re-computation.

Completion of Re-assessment

- The reassessment under Section 147 must be completed within 12 months from the end of the financial year in which notice was served.
- This time limit shall be extended by 12 months if reference is made to the Transfer Pricing Officer.

SOPs issued for faceless assessment

- For conducting the assessments and re-assessments under the new Faceless Regime, certain Standard Operating Procedures (SOPs) were introduced vide **Notification dated 03.08.2022**, bearing number: *NaFAC/Delhi/CIT-1/2022-23/112/92*.
- The SOPs provide guidance to the Units and outline the process for facilitating assessments as envisaged under the provisions of Section 144B of the Income-tax Act.
- Several checks and alerts apart from systemic intervention have been introduced by CBDT as part of the latest SOPs to minimise incidence of procedural errors at the level of the faceless assessing officer

SOPs issued for faceless assessment

- Point C of the SOPs deals with initial questionnaire u/s 142(1) of the Act. The relevant extract pertaining to re-opening cases is re-produced below:

“C.2.4 In Reopened cases – The initial questionnaire shall seek specific information/ evidence on the grounds that led to reopening”

Guidelines by CBDT dated 01.08.2022 for 148 Notices

The AO shall **conduct enquiries**, if required, on any information he has which suggests income chargeable to tax has escaped assessment.

On receipt of show cause notice under section 148A(b) of the Act if the assessee requests for a **personal hearing**, it will be mandatory to grant such opportunity to the assessee.

The AO has to **pass a speaking order** under section 148A(d) and has to deal with each and every objection in the reply/submission of the assessee.

Guidelines by CBDT dated 01.08.2022 for 148 Notices

- **Information** relevant to the case of the assessee must be provided to the assessee.
- It shall be mandatory for the AO to **supply the approval of the specified authority** obtained by the AO alongwith the notice under section 148 and order passed under section 148A(d) even where the reassessment is initiated in search cases.
- All the issues even if spread over more than one assessment year may be taken up simultaneously and cases may be **reopened at one go.**

Issues

Notices issued between 01.04.21 – 30.06.21

Supreme Court decision- Ashish Agarwal

Supreme Court in UOI vs. Ashish Agarwal (138 taxmann.com 64) – invokes Article 142 to deem the notice u/s 148 of the Act as issued u/s 148A(b) of the Act. Some directions are as under:

- a. The Apex Court has deemed the notices issued u/s 148 of the Act, to be notices issued u/s 148A of the Act, and treated as show cause notices issued u/s 148A(b) of the Act;
- b. AO has been directed to provide the assessee with the information and material relied upon within 30 days from 04.05.2022 i.e., the date of the judgment;
- c. Assessee has been given two weeks' time to reply to the notice, material and information provided;
- d. Requirement of conducting inquiry, with the prior approval of the specified authority, has been dispensed with, as a one-time measure;
- e. AO has to thereafter, pass order in terms of section 148A(d) of the Act, as per the Act;
- f. All the defences available u/s 149 of the Act or under the amended provisions relating to reassessment shall be available to the assessee;
- g. The said findings and directions of the Apex Court shall substitute and modify the respective judgments passed by High Courts.

Due date for issuing Notice u/s 148 for AY 13-14 and AY 14-15

- The Ministry of Finance, had announced few relief measures under the Income Tax Act, to the assesses due to the COVID-19 pandemic by extending certain due dates in The Taxation And Other Laws (Relaxation of certain Provisions) Act, 2020 (TLA, 2020) and the compliances falling due between 20.03.2020 to 31.12.2020 (including issue of notice u/s 148 for AY 2013-14) were extended to 31.03.2021.
- Vide Notification No. 93/2020 dated 31.12.2020, the due date was extended to 31.03.2021 in respect of the compliances falling due up to 30.03.2021 (including issue of notice u/s 148 for AY 2013-14).
- Thereafter, vide Notification No. 20/2021 dated 31.03.2021, the due date was yet again extended to 30.04.2021 in respect of the compliances falling due upto 31.03.2021. (including issue of notice u/s 148 for AY 2013-14 and for A.Y. 2014-15).
- Vide another Notification No. 38/2021 dated 27.04.21, the due date for issuance of notice under section 148 for reopening the assessment where income has escaped assessment in cases where on account of various extension notifications, the due date is expiring on 30-04-2021 - was extended to 30.06.2021

Instruction No. 1/2022 dated 11.05.2022

- Para 2 –
 - Notices u/s 148 were issued under the law as it existed prior to 1.4.2021
 - w.e.f. 1.4.2021, old law has been substituted with new section 147-151
- Para 4 – instruction issued u/s 119 of the Act, for uniform implementation
- Para 5 – judgment applies to all notices irrespective of the fact whether notices have been challenged or not
- Para 6.1 - “Decision of the Hon’ble Supreme Court read with the time extension provided by TOLA will allow the extended reassessment notices to travel back in time to their original date when such notices were to be issued and the new section 149 of the Act is to be applied at that point.”
- Para 6.2 –
 - AY 2013-14, 2014-15 and 2015-16 – can be reopened – beyond three years – therefore, 149(1)(b) and 151(ii) applicable
 - AY 2016-17 and 2017-18 – within three years - therefore, 149(1)(a) and 151(i) applicable

Instruction No. 1/2022 dated 11.05.2022

- Para 7.1 – if for AY 2013-14, 2014-15 and 2015-16 – income escaping assessment is less than Rs. 50 lakhs, then no need to proceed
- Para 8.1 –
 - Notice u/s 148 deemed to be issued u/s 148A(b) of the Act, therefore, all prior requirements shall be deemed to be complied
 - Information material to be provided within 02.06.2022
 - 2 weeks to file reply – if extension sought, then extension to be granted

- AY 2013-14, 2014-15, 2015-16

- a) Cannot be reopened because of 1st proviso to section 149(1)
- b) Notification No. 20/2021 and 38/2021 – do not have any impact
- c) Without prejudice – defence available u/s 149(1)(b) – beyond three years

- AY 2016-17 and AY 2017-18

- a) Board has considered AY 2016-17 and 2017-18 to be proceedings within 3 years from the end of the AY
- b) But it is beyond three years therefore, defence u/s 149(1)(b) is available

- Sanction/ Approval

- a. Sanction before issue of notice u/s 148A(b) of the Act – beyond 3 years and within 3 years
- b. In para 8.1., it has been stated that since the Court has deemed such notice to be issued u/s 148A(b) of the Act, therefore it is deemed that all the prior requirements have been complied with.
- c. 148A(d) and 148 - Board has considered AY 2016-17 and 2017-18 to be proceedings within 3 years from the end of the AY

Rajeev Bansal vs UOI- Allahabad High Court

- In the recent decision of Allahabad High Court in *Rajeev Bansal Vs UOI [2023] 147 taxmann.com 549 (Allahabad)*, it was held that the notice issued between 1-4-2021 & 30-6-2021 that were deemed to be notice issued u/s 148A cannot be saved from time-barring as a result of extensions by TOLA.
- Benefit of TOLA will also not be available in respect of the proceedings where the first proviso to Section 149(1)(b) is attracted.

- Para 98 and 99-

98.....All defences available to the assessee including those available under Section 149 of the Income Tax Act and all rights and contentions available to the assessee have been made available. The right and contentions to the revenue under the Finance Act, 2021 and in law are also continued to be available.

99. The said observations of the Apex Court cannot be read to mean that extensions in time under the unamended Section 149 has been granted by the Apex court by applying TOLA, 2020 to the reassessment notices in respect of the proceedings relating to the past assessment years, where such notices were not issued uptill 31.3.2021 and they can be treated as “extended reassessment notices” and allowed to travel back in time to their original date when such notices were to be issued and then to apply amended Section 149 as interpreted by the revenue in Para 6.1 of the CBDT Instructions dated 11.5.2022.

Keenara Industries Pvt Ltd vs ITO- Gujarat High Court

- In *Keenara Industries Pvt Ltd vs ITO R/Special Civil Application No. 17321 of 2022*, the HC held that substituted provisions of sections 147 to 151 shall be applicable w.e.f. 01.04.2021, and as per First Proviso to Section 149, limitation as specified under un-amended provision as it stood prior to 01.04.2021, shall be applicable.
- As per unamended provision prescribing limitation, no notice can be issued under section 148, if six years have elapsed from the end of the relevant assessment year. For assessment year 2013-14, six years had ended on 31.03.2020 and for assessment year 2014-15, six years had ended on 31.03.2021. Had there been no amendment in Section 149, TOLA and through its delegated legislation by way of Notifications could have extended the time for 'issuance of notice'.

Relevant Paras-

Extension of Limitation from time to time in relation to all the proceedings by the Apex Court led to the enactment of TOLA.

It permitted the procedure under the new Act for those proceedings initiated before 01.04.2021 to 30.06.2021 and at the same time all contentions were kept open for the litigating parties to raise. 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.

The time limit as per unamended section 149(1)(b) rendered six years from the end of assessment year. TOLA has not altered time limit provided in clause (b) of unamended section 149 of the IT Act.

Touchstone Holdings (P.) Ltd. Vs ITO- Delhi High Court

Adverse decision

- Held that where assessee challenged reopening notice issued on 20-7-2022 on ground that same was time barred, since initial reopening notice in instant case was issued on 29-6-2021 under un-amended section 148, same will be deemed to be issued under section 148A and first proviso to section 149 would not be attracted; furthermore income alleged to have escaped being more than Rs. 50 lakhs, section 149(1)(b) was satisfied and impugned reopening notice would not be time barred.
- Further it was held that the challenge to the paragraph 6.2. (i) of the CBDT Instruction No. 1/2022 dated 11th May, 2022 is not maintainable.

Supreme Court SLP

- The Delhi High Court in *Salil Gulati v. ACIT W.P.(C) 12541/2022 & CM APPLs.37959-37961/2022* held that the contention that fresh 148 notices for AY 2013-14 and AY 2014-15 was time barred u/s 149(1)(b) was incorrect.
- The SLP preferred before the Supreme Court in SLP No. 7466/2023 against the impugned decision was dismissed by the Supreme Court.
- SLP also preferred against the decision of Allahabad High Court in *Rajeev Bansal Vs UOI (supra)*. Notice was issued by the Supreme Court in April 2023.

Re-assessment of new issue subsequently discovered

- Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd [2011] 331 ITR 236 (Bombay) held that if after issuing a notice u/s.148, **if AO accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open for AO to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary.**
- Thus, if no addition is made in respect of primary issue then reassessment cannot survive for the new issue discovered during the course of re-assessment proceeding.
- **Whether, the above legal position would hold good even for the new reassessment procedure?**

Changes in the section

Erstwhile Section 147

Explanation 3—For the purpose of assessment or reassessment 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, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Amended Section 147

Explanation.—For the purposes of assessment or reassessment or re-computation 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.]

Re-assessment of new issue subsequently discovered

U.S. ASSOCIATES vs. PCIT (2023) 330 CTR (Chhattisgarh)

- Certain transactions which were not part of the notice that was originally issued under section 148 (old provision) and under section 148A(b) (new provision) were mentioned in the order u/s 148A(d) of the Act.
- Held- reassessment cannot be initiated based on the issues not disclosed in the earlier notices since the Department could not travel beyond the show-cause notice.
- Reassessment set aside.

Re-opening vs. Review

- First proviso to section 147 (pre-amended) → Reopening beyond 4 years can be made only if there is failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.
- This proviso is not provided under the new procedure of reassessment.
- Therefore, can department reopen assessment even when the assessee has disclosed fully and truly all the material facts during regular/re-opening assessment made earlier?
- Power to 'Reopen' is not akin to power of 'Review'.
 - a) CIT vs. Kelvinator of India Ltd [2010] 320 ITR 561 (SC)
 - b) Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 570 (Bom.)(HC).
 - c) PCIT v. Inarco Ltd. (ITA No. 102 of 2016, dt: 23/07/2018 (Bom.)(HC)

Power to Reopen vs Review

- Relevant Para from **CIT vs. Kelvinator of India Ltd (Supra)**

“However, one needs to give a schematic interpretation to the words 'reason to believe', failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess, but the reassessment has to be based on fulfilment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer..”

No specific discussion required in the Order about every aspect

Oracle Financial Services Software Ltd v. Dy. CIT [2022] 135 taxmann.com 143 (Bombay)

On a writ petition challenging the validity of reassessment, the Hon. High Court held that once the assessing officer has raised a query during the original assessment proceedings and the assessee has disclosed all primary facts, which are not rejected by the assessing officer, **the assessing officer is deemed to have considered the submission of the assessee even if there is no specific discussion about the same in the assessment order.**

Later reopening of the assessment on the basis of the same material on records amounts to change of opinion and review of the earlier assessment order which is not permissible under section 147 of the Act.

Accordingly, the reassessment was held to be not valid and the writ of the assessee was allowed.

***Daujee Abhushan Bhandar Pvt. Ltd.v. UOI
[2022] 136 taxmann.com 246 (Allahabad HC)***

Facts:

For AY 2013-14 a notice u/s.148 digitally signed by the AO was sent to the assessee through e-mail and e-mail was undisputedly received by the assessee on his registered e-mail I.D. on **06.04.2021** i.e. **(beyond 6 years)**

Assessee submitted that the notice was time-barred and, thus, without jurisdiction as it was issued on **06.04.2021** whereas the limitation for issuing notice u/s. 148 r.e.s.149 expired on **31.03.2021**.

The objection filed by the assessee was rejected by the AO holding that since the **notice was digitally signed by AO on 31.03.2021**, it would be deemed to have been issued within time i.e. on 31.03.2021.

Writ was filed before the HC.

***Daujee Abhushan Bhandar Pvt. Ltd.v. UOI
[2022] 136 taxmann.com 246 (Allahabad HC)***

Held:

Pursuant to provisions of section 149 r.w.s. 282 r.w.s. 282A; signing of notice and issuance or communication thereof have been recognised as different acts.

Pursuant to Rule 127A(1); the issuance of notice and other document would take place when the e- mail is issued from the designated e-mail address of the concerned income tax authority.

Pursuant to section 13(1) of the Information technology Act, 2000 read with relevant provisions of the income tax law; after a notice is digitally signed and **when it is entered by the income tax authority in computer resource outside his control i.e. the control of the originator then that point of time would be the time of issuance of notice.**

Mere digitally signing the notice is not the issuance of notice. Notice held invalid.

Vishal Ashwin Patel Vs ACIT CIVIL APPEAL NO. 2200 OF 2022 (SC)

The objections to initiation of reassessment proceedings of the assessee were disposed of in a cryptic and non-speaking order.

The assessee preferred a Writ Petition before the Bombay High Court to have the impugned proceedings quashed. But, the High Court did not specifically deal with the objections of the assessee and passed a non-speaking order against the assessee.

On appeal, the Supreme Court allowed the SLP of the assessee.

It was held by the SC that when a number of issues/grounds were raised in the writ petitions, it was the duty cast upon the court to deal with the same and thereafter, to pass a reasoned order.

In this regard, reliance was placed on the rulings in Central Board of Trustees Vs. Indore Composite Private Limited, (2018) 8 SCC 443 and Union Public Service Commission Vs. Bibhu Prasad Sarangi and Ors.(2021) 4 SCC 516, wherein the necessity to pass a reasoned order has been adjudicated in detail.

Also See: **H. P. Diamonds India Pvt. Ltd Vs DCIT Appeal (C) No. 8743/2022) (SC)**

***Sanjay Moreshwar Potdar Vs NFAC WRIT
PETITION (LODGING) NO. 4866 OF 2023 Bombay
HC***

Notice u/s 148 issued to reassess the creditworthiness and genuineness of unsecured loan involving several parties.

The assessee was unable to file the responses due to certain technical glitches.

Adjournment requests ignored and assessment order passed in haste compromising principles of natural justice.

**Writ Petition preferred before the Ho'ble Bombay High Court-
Interim stay granted holding it a prima facie case of violation of
natural justice.**

Ajay Bhandari vs. Union of India
WT No. 347 of 2022 – Order dated 17-5-2022 (All. HC)

Notice u/s. 148 was issued on **01.04.2021** for A.Y2014-15 (**i.e. beyond 6 years**).

The income escaping assessment was less than Rs. 50 Lakhs.

The High Court held that as per Clauses 6.2 and 7.1 of Board's Circular dated 11.05.2022, if a case does not fall u/s. 149(1)(b) for AY 2013-14, 2014-15 and 2015-16 (**where income of an assessee escaping assessment to tax is less than Rs.50,00,000/-**) and **notice has not been issued within limitation under the un-amended provisions of Section 149**, then proceedings under amended provisions cannot be initiated.

Also see (for escaped income less than Rs. 50 Lakhs):

Abdul Majeed Son of Shri Ali Mohammed vs. ITO [2022] 140 taxmann.com 485 (Rajasthan) → AY 2015-16

Ekaksh Commerce Pvt Ltd vs. ITO [WPO/2522/2022; order dated 08.09.2022] → AY 2018-19

Pavan Morarka vs. ACIT (Bombay HC)
[WP No. 602/2014; Order dated 17.02.2022]

Hon'ble Delhi HC passed an order in the case of a company wherein it was stated that provisions of section 2(22)(e) were not applicable to such company; **however it was stated that revenue may take corrective measure to tax the deemed dividend in the hands of respective shareholders.**

Assessee's (one of the share-holder) jurisdiction in Mumbai →

Notice u/s. 148 was issued by ITO (Delhi) within 6 years.

Upon objection being raised, new notice u/s. 148 was issued by ITO (Mumbai) – **however, 6 years had elapsed.**

Held 1: The notice issued by the AO(Mumbai) was independent of the notice issued by the ITO(Delhi) and, therefore, the validity thereof has to be decided independently.

The AO (Mumbai) cannot assume jurisdiction from notice issued by the ITO (Delhi) as the notice issued by ITO(Delhi) was itself void-ab-inito on account of want of jurisdiction.

Pavan Morarka vs. ACIT (Bombay HC)
[WP No. 602/2014; Order dated 17.02.2022]

Revenue contended that the notice issued u/s. 148 by AO (Mumbai) was issued u/s. 148 r.w.s. 150(1).

When section 150 is invoked limitation period as provided in section 149 do not apply. Reopening can be made at anytime to give effect to any **"finding"** or **"direction"** contained in an order passed by **any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.**

Held 2:

Finding: A finding given in an appeal, revision or reference arising out of an assessment **must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year.** To be a necessary finding, it must be directly involved in the disposal of the case.

Direction: "direction" in Section 153(3)(ii) **must be an express direction necessary for the disposal of the case before the authority or court.** It must also be a direction which the authority or court is empowered to give while deciding the case before it.

Pavan Morarka vs. ACIT (Bombay HC)
[WP No. 602/2014; Order dated 17.02.2022]

Authority: Hon'ble Delhi High Court does not fall within the term 'authority' being income tax authorities defined u/s. 116

Order: order of the Hon'ble Delhi High Court is not an order in any provision under any other law. It is an order under the proceedings under the Act.

In any case, Assessee was not a party before the Delhi High Court and, therefore, there cannot be any finding or direction in respect of Assessee.

Therefore, none of the requirements of Section 150 are fulfilled.

Svitzer Hazira Pvt. Ltd vs. ACIT (Bombay HC)
[WP No. 3554/2019; order dated 21.12.2021]

AY 2014-15 →

31.03.2019→ Notice u/s. 148 uploaded on 2.40 PM

31.03.2019→ Approval u/s. 151 was digitally signed at 2.55PM

Held:

Prior approval as contemplated by section 151 operates as a shield from the arbitrary exercise of power by the AO.

The expression 'No notice shall be issued ' used in section 149 **cannot be construed to mean post-facto approval**. Prior approval is the sine qua non before issuance of notice.

The power of prior approval has been conferred on the superior Officer so that the superior Officer shall examine the reasons, material or grounds and adjudicate whether they are sufficient and adequate to the formation of necessary belief on the part of the AO.

Re-assessment held invalid.

Sanjeev Amritlal Chheda vs. ITO (Bombay HC)
[WP No. 3620/2019; order dated 05.01.2022]

Reasons recorded → “I have reason to believe that by accepting cash loan of Rs.16,30,000/-, the assessee has violated the provision of section 269SS Hence, there is escapement of assessment by reason of the failure on the part of the assessee to disclose fully and truly

Held:

AO says ‘there is escapement of assessment’ and NOT “there is escapement of income chargeable to tax that has escaped assessment’.

‘A loan cannot be any reason to be even considered as income.’

Once AO proceeds on the basis that Assessee had accepted cash loan of Rs.16,30,000/- that loan could never be considered as income and therefore **there cannot be any escapement of income of the loan amount** of Rs.16,30,000/-.

Re-assessment quashed; however, liberty given to proceed under section 271D

Sunrise Associates Vs ITO (Bom. HC)[WP no. 2860 of 2022]

SCN issued by the AO u/s 148A(b) stating Assessee had accepted cash against the sale of an immovable property.

Assessee Filed an objection along with substantiating evidences that the said information was false and the amount of sale consideration was received through banking channels.

Without taking into account the submission of the Assessee; the AO passed order u/s. 148A(d).

Held:

AO ought to have considered the submissions of the Assessee before passing the order u/s. 148A(d).

Matter remanded back to the Assessing Officer for fresh consideration.

HPG Community Pvt. Ltd Vs ACIT (Bombay HC)[WPL No. 10912/2023

- The vires of Explanation 2 to section 148 of the Act challenged in the said petition.
- In case of a search, the AO is deemed to have information to reopen the assessment without following the procedure as per 148A(d) of the Act.
- The validity of the said provision challenged before the High Court.
- Interim relief granted.

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Thank
you

