# REASSESSMENT – LATEST DEVELOPMENTS AND ISSUES

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# OBJECT / SCOPE

*To deliberate and discuss the provisions of reassessment under the Income Tax Act (Act)*

*To discuss some latest landmark Judicial Developments on Income Tax Front*

# Relevant Provisions in the Act

- Section 147 – Income Escaping Assessment – ***"subject to provisions of section 148 to section 153"***
- Section 148 - Issue of notice where income has escaped assessment
- Section 149 – Time limit for notice
- Section 150 – Assessment in pursuance of an order of appeal
- Section 151 – Sanction for issue of notice
- Section 152 – Other provisions

***(Inclusive)***

# Constitutional Validity of Reassessment Provisions

- SC in Good Year case AIR 1990 SC 781: *Constitution is not a mere law but a machinery by which all the laws are enacted …..*
- Reassessment Provisions under the Act- *Intra Vires the powers of Parliament– Indian Constitution – Held by Raj HC in Vimal Chandra Golecha 134 ITR 119 stating that in-built safe-guards in the Act in the form of reasons and sanction are there*

# Golden Words of Supreme Court in Parshuram Potteries 106 ITR 1

- *It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it is must in other spheres of human activity*

# Latest Words of SC in Green World on Reopening at dictates of superiors 314 ITR 81 May'09

*"It is beyond any doubt or dispute that only in terms of the directions issued by the Commissioner dated 12.7.2004 under Section 263 of the Act, notices under Section 148 of the Act were issued.*

*30. Indisputably, CIT (Shimla) had no jurisdiction to issue directions. Notices issued pursuant thereto would be bad in law. …*

*32. When a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order; by no stretch of imagination a higher authority can interfere with the independence which is the basic feature of any statutory scheme involving adjudicatory process."*

# Latest Words of SC in Kelvinator of India 18/01/2010

- DHC full Bench ruling in 256 ITR Page 1 Approved/Affirmed in FULL

- Tangible Material having live nexus required for reopening (Fresh/Existing)

- Power to review and Change of Opinion not allowed implicit in WORDS reasons to believe as INBUILT SAGEGUARD emerging from Schematic Interpretation

- Power wide after 1989 changes : Applied on 20/01/2010 by DHC in Goetze's case

# Legislative History / Developments

- Provisions re-shuffled by Direct Taxes Laws Amendment Act 1987 w.e.f 1 April 1989 – Analysed latestly by SC in Rajesh Jhaveri case 291 ITR 500 – Refer **CBDT Circular No. 589 dated 31 Oct 1989**
- Two Provisos and Explanation inserted in Section 148 to overrule Delhi SB ITAT ruling in Raj Kr Chawla by Finance Act, 2006 w.r.e.f 1 October 1991 (constitutional validity since affirmed by P&HHC in Punjab Cooperative case 290 ITR 15 , SLP dismissed by SC)- *do not apply after 1 Oct 2005*

# Legislative History / Developments

- Second Proviso to section 147 inserted by Finance Act, 2008 to overrule BHC ruling in Metro case 286 ITR 618 w.e.f 1 April 2008 (Doctrine of Partial Merger Introduced on similar lines of section 263 & section 154)
- Explanation inserted in section 151 – to overrule Allahabad High Court ruling in Dr Shahsi Garg 285 ITR 158 followed by Delhi ITAT in 114 TTJ 243 (B.R.Mittal) w.r.e.f 1 October 1998

# Section 147 – Umbrella Provision

- Section 147 which gives authority to assess income escaping assessment is specifically made subject to provisions of section 148 to section 153 i.e in case there is some lapse/irregularity in compliance of section 148 to section 153 same will travel to root of the matter
- Also gives authority to assess "other income" provided; such income is- a) chargeable to tax b) has escaped assessment c) comes to the "notice" of AO during reassessment proceedings d) pertains to relevant AY

# Section 147 – Umbrella Provision

- Section 147 contains -
  - Two Proviso – Ist Proviso giving protection from reassessment where in earlier regular assessment true and full disclosure has been made by assessee AND reopening is after four years, Another proviso discussed in earlier slide
  - Two Explanations – Ist discussing true and full disclosure as stipulated in Ist proviso (supra) , IInd - deemed escapement cases ; **Explanation III by Latest Finance Act No 2 2009**

# Section 147 – Issues

- Connotation of "subject to provisions of section 148 to section 153" – Jurisdictional and Non Compliance fatal – refer:
  - For Non recording of reasons u/s 148 – Latest Jharkhand High Court in Kavee Enterprises 301 ITR 156 relying on SC in G.K.N Driveshaft 259 ITR 19 –
  - Wrong Sanction : In case of sanction recd from JCIT taken from CIT – fatal – held in Shanti Vijay 60 TTJ 748 , R.P.Gupta & Sons 157 Taxman 158 (Mag), Santosh Gupta ITA 2361/del/2004 (substantial question of law admitted and pending before DHC in ITA 1736/2006 Santosh Gupta etc.)
  - Non recording of finding as to escapement of income above Rs. 1 lac while invoking extended prd. Of six years (after 4 yrs) held in 96 ITD 362

# Section 147 – Issues

- Scope of addition on "unconnected issues" (issues other than one on which reopening is made and reasons are recorded):
  - Whether addition on main/parent/original issue must – connotation of phrase "and" as connecting section 147….
    - Held yes by Raj HC in Shree Ram Singh 217 CTR 345 and Dr Devender Gupta 220 CTR 629
    - Fav Ker HC in Travancore Rubber 305 ITR 170 (applied by Delhi High Court in Jai Bharat Maruti) (EXPLAINED NEXT SLIDES)
    - Del ITAT in Software Consultants ITA 2554/2004; CJ International ITA 2736/2006; Narayan Securities ITA 309/Del/2007;
    - Asr ITAT in R.K.Kakkar 108 TTJ 1; Darshan Kaur BCAJ Sep 2008
    - Jodhpur ITAT in 118 TTJ 276
    - Agra ITAT in Saraf Gramudyog BCAJ Jun 2007
    - P&HHC in Gardhara Singh 173 Taxman 46
    - Delhi ITAT in Ch Ranjit Singh (TIOL) ITA 257/2002

# Section 147 – Issues

- Scope of addition on "unconnected issues" :
  - Whether addition possible after making roving and fishing enquiries Held No in
    - Delhi ITAT in K.G.Baliga (ITA No. 3840/2003)
    - Expotech (ITA 1016/2004),
    - Poonam Rani Singh 97 ITD 390,
    - Jaipur ITAT in Gyarsi Lal 95 TTJ 386,
    - Manoj Kr Gupta 114 TTJ 253 etc.
    - *DHC in Jai Bharat Maruti &*
    - *Del ITAT in Ravina Associates 15 DTR 1;*
    - *Del ITAT in S Harishanker 19 DTR 72*
    - *Del ITAT in Jeevan Prakash Gupta 1016/Del/2004*
- *Impact of SC ruling in Alagendran Finance 293 ITR 1 stating reopening do not wash previous assessment and is open qua escaped issues*

# Section 147 – Issues

Latest Amendment in Budget 2009

"*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.".***

# Section 147 – Issues

Ker HC In Travancore (supra) : Ratio Laid Down

a) When an Assessing Officer (AO) proceeds to make addition on an unconnected issue (that is, an issue other than one on which reopening was originally made), in same set of proceedings, it must be ensured on revenue's part that said "unconnected issue" is otherwise interlinked to main/parent issue on which reopening was made and in case, if both the issues (say original and subsequently noticed) are totally alien to each other, then without initiating separate proceedings u/s 148(2), no addition can be made on said subsequently noticed "alien" issue. (*here reopening issue was excise duty inclusion in closing stock – and other issues chased were fixed asset addition/ repair vouchers etc asked by AO vide general questionnaire)- IMPACTED BY LATEST AMENDMENT*

# Section 147 – Issues

Ker HC In Travancore (supra) : Ratio Laid Down

b) As regards, making of general enquiries post reopening during reassessment proceeding, by way of issue of general questionnaire etc, Ker HC has concluded that no general and fishing enquiry can be made qua "unconnected issues" unless some direct and specific material regarding their escapement comes to notice of Ld AO. In this regard, ***Ker HC drew support from earlier P&HHC ruling in Vipan Khanna case 255 ITR 220 and SC ruling in Sun Engg 198 ITR 297***

# Section 147 – Issues

Latest Delhi High Court order in Jai Bharat Maruti ITA 501/2007:

Facts AO made reopening on MODVAT issue and

Made additions on general issues like

disallowance of deduction u/s 80I on Interest Income and disallowance of expense as capital in Nature

HELD NOT PERMISSIBLE UNDER LAW APPLIED

KER HC TRAVANCORE (SUPRA) DOUBTFUL

# Section 147 – Issues

***HELD BY Del ITAT IN EXPOTECH CASE (SUPRA) : "The Operative words used in section are "comes to notice". The requirement is of AO positively coming to notice and only then to assess. In the present case, nothing Had come to the notice of assessee during subsequent proceedings under section 147 that other income has escaped assessment. In that sense, requiring assessee to furnish further information qua items totally unconnected with the claim u/s 80-O, was nothing else but a roving and fishing enquiry"***

# Section 147 – Issues

***Also Del ITAT in Poonam Rani Singh (supra)***

***"8) The Assessing Officer can exercise power under section 147 in relation to other items of income which were not the basis for formation of belief or reasons to believe for issuing notice under section 148 but for assessing such income he should indicate that any material or information has come to his notice during reassessment proceedings through external or internal source but he cannot reassess any item of income only after gathering general information or on conducting general probe from the assessee during the course of reassessment proceedings."***

# Section 147 – Reopening after 143(1)

- In case previously intimation is issued u/s 143(1) and no 143(3) is there – albeit no "opinion" as such is expressed in 143(1), still 148 not possible to bypass 143(2) – that is "reasons to believe must" and new material must come to notice of AO – held ***Delhi ITAT TM OP Chawla 8 SOT 242; Mum ITAT in Apita Marketing 21 SOT 302; Patna ITAT in Acharya Shukat Khalil 113 TTJ 765;Cochin ITAT in Muthoot Leasing 21 SOT 281; Nag ITAT in Malli Chand Baid 99 TTJ 1016***

# Section 147 – Reopening after 143(1)

- *SC in Rajesh Jhaveri 291 ITR 500 (ALSO HELD 143(1) INTIMATION IS NOT ASSESSMENT ORDER AS ALSO NO OPINION IS RELFLECTED THEREIN)*
- *"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word 'reason in the phrase 'reason to believe' would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers .. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief."*

# Section 147 – Reopening after 143(1)

- **DHC in the case of Batra Bhatta & Co**, while upholding underlying Del ITAT and CIT-A order, in case where earlier mere 143(1) intimation was issued, has interalia concluded that a) *Assessing Officer (AO) cannot invoke section 148 stating that return of assessee requires "deeper scrutiny" b) That is, in absence of anything new on record, merely to scrutinize information available in return, section 148 cannot be resorted c) It needs to adjudicated in every case where 148 is invoked, whether the same is arbitrary or reasonable d) Section 148 cannot be resorted on whim and fancies of AO, e) Distinction between two phrases viz. "if the AO has reasons to believe" and "if the AO believes" needs to be appreciated as former presupposes existence of tangible "material" on which belief is founded and same is the requirement of section 148 of the Act*. While so concluding, DHC has extensively relied upon SC ruling in Chugmal Rajpal 79 ITR 603 and **has observed that SC ruling in Rajesh Jhaveri 291 ITR 500 has not diluted this legal position and has rather vindicated it** - **220 CTR 531- SLP Dismissed by Supreme Court 3/8/2009**

# Section 147 – Reopening after 143(1)

- Merely on receipt of Valuation report from DVO u/s 142A disclosing estimated higher cost of construction as compared to value disclosed in assessee's books/return of income, *even after mere 143(1) (no regular assessment),* same cannot be a "cause/justification" for reopening the case u/s 148. **While holding so, Guj HC has deliberated at length SC ruling in Rajesh Jhveri 291 ITR 500** and arrived at a conclusion that: **(SLP Dismissed on 21/08/2009)**

  "*Thus, for all the three years in question the reasons recorded do not indicate that the respondent authority was in possession of any material which would permit the respondent to hold a belief so as to form an opinion, or have reason to believe that any income has escaped assessment.* The relevant tests for this examination in the words of Supreme Court as stated in the case of Assistant Commissioner of Income-tax v. Rajesh Jhaveri Stock Brokers P. Ltd. (Supra) are..." **(MANJUSHA ETSTATE)**

# Section 147 – Reopening after 143(1)

- In case of **Gupta Abhushan,** DHC in context of reopening u/s 148 after earlier 143(1), in case where revenue sought to reopen the cases on basis of subsequent survey action u/s 133A, ***while highlighting the difference between reasons to believe and reasons to suspect, it has been concluded that mere reasons to suspect on basis of survey action, cannot lead to reopening for which there must a belief duly backed by reasons*** – **16 DTR 76**

- Also refer DHC Shipra Sricastava WP(C) No 8683/2007 dated 8/9/2009 Per Justice Valmiki Mehta (material subsequent to 143(1) must)

# Section 147 – Reopening after 143(1)

- **Case Study:**
  - An assessee renting property offers the rental for taxation under the head business income. AO merely on basis of reasoning that said rental were to be offered under house property head without anything more (viz. bogusness of expenses under business head) reopens the case u/s 148 of the Act after earlier 143(1). Whether valid? –

  - Seems to be NO (refer Bang ITAT in K Damodar12 SOT 389- Action u/s 148 cannot be taken for applying different percentage of income to receipts stands offered for taxation etc )
  - *Mere deposit in bank a/c cannot lead to inference that it is liable to taxed as income and assessee having not disclosed the said deposits – it has escaped assesssment – Agra ITAT 108 ITD 115(Prior Period expense query)*

# Section 147 – Reopening after 143(1)

| Precedent | Brief Ratio |
|---|---|
| Kar HC Dr N Thippa Setty & *Rama Krishna Hegde July 2009* | Reasons must be cogent and valid and based on RELEVANT material |
| DHC In Jai Bharat Maruti (supra) | Reasonable material required from angle of reasonable person |
| Chd ITAT in Shiva Exports 28 SOT 512 (ALSO refer 183 Taxman 148 mag) | Even after Rajesh Jhaveri – It is important that 148 is made on basis of some material and not on mere information in Return |

# Section 147 – Reopening after 143(1)

| Precedent | Brief Ratio |
|---|---|
| Raj HC in Jyoti Devi ITA 20/2006 | Merely on basis of material on record with ITR, reopening not allowed |
| Raj HC in 220 CTR 369 | Reasons must be based on cogent & relevant material; direct/indirect |
| Del ITAT in Jagan Lamps 25 SOT 111 (IMPLIEDLY OVERRULED BY BATRA BHATTA ETC) | Held on Rajesh Jhaveri basis that on mere information in return, to verify it reopening can be made (NOT matters reopening is to circumvent 143(2)) |

# Section 147 – Reopening after 143(1) – Investigation Wing

- ***Latest Delhi ITAT in Takshila Distributors: Reasons recorded: 20 DTR 156 (same Insta Power ITA 415/08- 4/9/2009- Also kumum lata 10 DTR 82)***

***"Takshila Distributors (P) Ltd assessed to tax with circle 16(1) New Delhi had filed its return of income for AY 1999-2000 on 7/3/2001. However, it has come to the notice of undersigned that the assessee company is an operator and made various transactions of accommodations entries. The said entries are reflected in the bank account of the company with the Bank of Rajasthan Janpath New Delhi A/c No 40381. Since the assessee company has been introduced its own unaccounted funds as accommodation entries, assessment is sought to be reopened for AY 1999-2000 to tax the amount involved"*** Held Not Sufficient to Reopen after 143(1) in light of Batra Bhatta/DHC

# Section 147 – Reopening after 143(1) – Investigation Wing

| Precedent | Ratio in Brief |
|---|---|
| Cosmos Fibre<br>18 DTR 307<br>**(Also refer for similar ratio in Luck ITAT ruling at 156 Taxman 132 Mag)** | In case reopening is based on Information from Investigation Wing – Statement of Third Party – If no specific reference of assessee – Reopening bad |
| Gulati Fabrication/ DHC (*SLP dismissed by SC applied in Rameshwar Dayal by DHC) 217 CTR 494* | Specific information from investigation wing as collected during search/survey etc- directly implicating assessee- can be used for reopening u/s 148 |

# Section 148 – qua Information from Investigation Wing

- Scope of section 148 vis a vis information recd from Investigation Wing (e.g on bogus loans/share application money/ purchases/ gifts etc) etc
  - Must be specific and particular to assessee (I.e should not be vague and general)
  - In case based on statement of 3rd Party, must be confronted (also request for sharing of back information (if any) with AO, if reasons so disclose, desirable to be put at beginning)
  - Refer DHC in Vinita Jain 299 ITR 383, DHC in Gulati Fabrication 1661/2006, P&HHC in Parmajeet Kaur 168 Taxman 39(Fav) DHC in 258 ITR 317, Mum TM ITAT in 62 ITD 21, Asr ITAT in 100 TTJ 453 (Vague, Non specifc, general information was there)
  - DHC in Vipin Batra 293 ITR 389, DHC in Highgain Finvest 214 CTR 441, Del ITAT in Capital and Management ITA No 4274/del/2006 (specific and particular information was there)
  - Also Refer Agra ITAT in 23 DTR 50 Jitendra Agarwal; Luck ITAT in 122 TTJ 839

# Section 148 – qua Information from Investigation Wing

- Karnataka High Court Aslam Ulla Khan Jan 2010 ITA 451/2004: FAVORABLE on dictated reoepning
- Mumbai Bench in Double Dot 33 DTR 442 favorable on dictated 148
- Delhi High Court in Jagit Pal Singh (if AO examined the matter on its own and there is no action spelt out by higher authority- reopening ok)
- Asr Bench in Rishi Grover 33 DTR 309 (adverse on reopening- investigation information) & Chd Bench in Chandigarh Theatres 28 DTR 358 (adverse)
- Mumbai Bench of ITAT in Amritraj Punmiya 31 DTR 441 favorable (on suspicion)
- Asr Bench of ITAT in Bansi Lal 318 ITR 367 AT adverse held assessee not able to show mechanical reopening
- Delhi Bench of ITAT in INsta Power ITA No 415/2008 dated 4/9/2009 favorable & Delhi ITAT in Rainee Singh ITA 2474/2005

# Section 147 – Matrix

- In case previously assessment is made u/s 143(3) and reopening is within 4 years –

- Held by DHC in Kelvinator 256 ITR 1 (FB) : *"When a regular assessment order is passed u/s 143(3), a presumption can be raised that such order has been passed after due application of mind" That is even if details furnished by Assessee during assessment are not specifically discussed in assessment order, revenue cannot say AO did not apply his mind thereto.* ***(also see Latest DHC in Harig Crank Shaft 173 Taxman 152)*** *Therefore, if AO seeks to reopen the earlier regular assessment u/s 143(3), on very same issues, without anything new, same will be hit by "change of opinion".*

# Section 147 – Matrix

- In case **previously assessment is made u/s 143(3) and reopening is within 4 years** –

- Therefore, **protection of "change of opinion" and "reasons to believe" both available** – CBDT Instruction (CIT - Mum Judicial) (reopening cannot be made in callous manner without application of mind) and *DHC in Feather Foam 296 ITR 342 (SLP since dismissed by SC)*,BHC in Siemens 295 ITR 333, Guj HC in 231 ITR 779, *BHC in M.J.Pharmaceuticals 297 ITR 119 (change of opinion applied); DHC in Jagson : 18 DTR 144; MPHC in 173 Taxman 190 (Pitamphur); DHC Carlton Writ 9180/2007- 18/8/2009*
- *Latest Adverse All High Court* ***EMA India*** *Civil Writ 181/2004 – 16.9.2009 &* ***BHC Yuvraj***

# Section 147 – Matrix

***In case of Cartini India Limited: BHC in context of reopening within four years (not covered by proviso to section 147), after considering SC in Rajesh Jhaveri 291 ITR 500 at length, has interalia concluded that when once AO has raised a specific query in relation to subject disallownace in original 143(3) assessment and assessee has submitted a detailed note/explanation on the same, AO cannot reopen the assessment as "once the AO on consideration of material on record and the explanation offered, arrives at a final conclusion that assessee is entitled to the deduction as claimed then, on the basis of the very same material, the AO cannot form a prima facie opinion that deduction is not allowable and accordingly reopen the assessment on the ground that income chargeable to tax has escaped assessment."*** – 314 ITR 275

Similar Conclusion in ICICI BHC ruling June 2009 & Contrary Proposition in Yuvraj 25 DTR 185

# Section 147 – Matrix

***Case Study:***

***In original 143(3) assessment, assessee made disclosure in P&L and Balance Sheet/ Notes to Accounts/ Tax Computation on certain claims/expenses and AO did not ask any question during 143(3) assessment. Assessee's said claims stands accepted by AO without discussion in assessment order. Whether reopening for non verification and wrong allowance can be made by AO, within 4 years of relevant asst year?***

# Section 147 – Matrix

***Case Study:***

***Apparently NO because:***

***a) BHC latestly in Supreme Treves & Mum ITAT in Tata Motors 19 DTR 310; Chennai ITAT in 121 TTJ 568 : Held disclosure in P&L/Trading account etc is true and full disclosure***

***b) Section 143(3) presumes that AO has applied his mind to claim made by assessee in P&L account etc. (DHC in Harig Shaft & DHC in Kelvinator) – also refer DHC in Anant Raj Industries and Jal Hotels May 2009***

# Section 147 – Matrix

***Proviso to section 14A : Bar from Reopening of cases prior to AY 2001-2002: From reassessment and enhancement of assessment etc :***

***Latest Mum ITAT order in Bombay Dyeing 30 SOT 461 applied earlier Mum ITAT in 106 ITD 141; 91 TTJ 809; 94 ITD 178 Hyd ITAT***

# Section 147 – after 143(3) – after 4 years

- In case previously assessment is made u/s 143(3) and reopening after 4 years – ***protection of***

  ***a) first proviso (in case true and full disclosure is made in earlier regular assessment- no reopening after 4 years), b)"change of opinion" and***

  ***c)"reasons to believe" available***

  ***d) (further allegation in notice of 148 as to escapement of income due to failure on part of assessee- must)*** – refer Del ITAT in 414/del/2003 , Del ITAT in Goetze 112 TTJ 1 , BHC in Idea Cellular 215 CTR 288, BHC Desai 188 CTR 375, DHC in Jindal Photo, DHC in Kelvinator, MadHC in Elgi 286 ITR 274 **etc.**
- On above, also refer DEL ITAT in 115 TTJ 510 , 112 TTJ 220

# Section 147 – after 143(3) – after 4 years

- DHC in Wel Intertrade 308 ITR 22 & Haryana Acrylic 308 ITR 38 (applied by DHC in JSRS Udyog) Held that in case *reasons recorded do not specifically contain allegation that assessee failed to make "true and fair" disclosure* – Reopening bad in law also refer Delhi ITAT in Handsome Investments 116 TTJ 155 (subject allegation as to escapement must – otherwise asst. bad)
- **Further In context of reopening after earlier 143(3); SC in Rajesh Jhaveri has no application as same was in context of 148/Reopening after 143(1)/Intimation Held In : a) BHC in Supreme Treves (supra); b) BHC in Bang Securities 314 ITR 256 c) Del ITAT in 115 TTJ 766**

# Section 147 – after 143(3) – after 4 years

- DHC in Haryana Acrylic (supra)

  DHC on true and fair disclosure under first proviso to section 147, in facts of the instant case where assessee furnished share application money details (viz. confirmation etc) during original asst. proceedings, on specific query from AO, albeit not specifically adjudicated in asst. order, assessee, has held that ***AO cannot be permitted to retract from the aforesaid position so as to contend that a) same has not been examined/verified and b) there was no application of mind by AO c) assessee has not made "true and fair disclosure". (Para 27)*** In this connection, DHC has distinguished SC ruling in Phool Chand Bajrang Lal stating that mere "information" from external source will not allow AO to contend assessee's primary details/version was false.

# Section 147 – after 143(3) – after 4 years

- DHC in JSRS Udyog on Reasons recorded on Bogus Share Application Money: has held reasons recorded therein as vague & quite general:

"***There is no indication of any specific information with regard to any accommodation entry being provided by the assessee / petitioner. Apart from merely saying that the receipts of the share application money were bogus and sham transactions, there is nothing indicated either in the reasons or in the impugned order dated 28.11.2008 to enable us to arrive at such a conclusion.***"

# Section 147 – after 143(3) – after 4 years

- Explanation 1 to section 147 : stating mere production of books etc will not "necessarily" amount to disclosure under first proviso to section 147

- Issues:

- Scope of Above Explanation: Held do not apply to information contained in P&L/Balance Sheet which are available with Return of Income Mum ITAT in 112 TTJ 50 (also see 11 SOT 322 Cochin ITAT)
- Connotation of phrase "necessarily": Held by DHC in Haryana Acrylic that exception from disclosure given in explanation is not inescapable and depends on facts

# Section 147 – Case Study

- Issue: In original regular assessment AO asks assessee to file submissions/details on allowability certain expenses and finally passes the asst order without discussing the same specifically in body of asst order and without making any disallowance on expenses: Whether it can be said that AO has expressed opinion or applied mind to those details as far as subsequent reopening on allowability of said expenses is concerned?
- Fav Precedents : DHC FB in Kelvinator 256 ITR 1, DHC in Jindal Photo Films, DHC in KLM 292 ITR 49, DHC in Eicher 294 ITR 310, DHC in Feather Foam and BHC in Idea Cellular, MadHC in Apollo Hospitals 287 ITR 25
- Adverse Precedents : DHC in Consolidated Finvest 281 ITR 394

# Section 148 - Issues

- Jurisdictional section ;
- SC in GKN Driveshaft (supra) held : First Assessee to file return after receipt of 148 notice , then AO to furnish reasons on assessee's request and Assessee may file objections (to reasons) if any, then AO bound to dispose objections by speaking order – in case AO fails: CIT-A to do the same…
- **Consequence of non furnishing of reasons as recorded in section 148 of the Act** : Whether Fatal/Asst null and void or mere irregularity suitable for remand? Delhi ITAT in Gurinder Kaur 102 ITD 189 held the same to be irregularity same conclusion in 205 CTR 546, 106 TTJ 504,111 TTJ 55; **However, latest DHC in Haryana Acrylic 308 ITR 38 Fav; Fav Mum ITAT in Mafatlal BCAJ Oct 2006; Fav 96 TTJ 832 Hyd ITAT**

# Section 148 - Issues

- While adjudicating validity of reasons to believe u/s 148, only reasons recorded can be seen and nothing beyond can be seen (e.g result of subsequent enquiries in reassessment etc) for supporting the reasons. Refer: Guj HC ruling in 251 ITR 270 APHC in 243 ITR 427 MPHC in 257 ITR 502

- Further, in case revenue admits before Appellate Authority (ITAT/High Court etc) that reasons recorded are not available/traceable in records, reopening bad as adverse inference needs to be drawn (DHC in 174 Taxman 295; **ITAT 57 TTJ 120** etc)

# Section 148 - Issues

- **Whether service of notice u/s 143(2) within 12 months is must in present law – Seems to be yes as per expl to section 148 (in present scenario); Whether non service of notice within 12 months is fatal or irregularity justifying remand back** : Fav, MHC in 281 ITR 444, Gau HC in Bandana Gogoi 289 ITR 28, BHC in HUF of J.M.Scindia WTA 1001 of 2007, Ahd ITAT in 113 TTJ 63,Gau HC in 97 ITR 553 , Guj HC in 201 CTR 308 & Adverse in Mad HC in 294 ITR 233 (followed Raj HC Gyan Prakash Gupta 165 ITR 501), Mum ITAT in 112 TTJ 774 (LATEST FAV DHC IN PAWAN GUPTA)
- AND BHC in 287 ITR 1 (objections not disposed – asst order set aside with directions to frame fresh order after following SC in GKN case)

# Section 148 – qua Section 154

- Scope of Section 148/147 qua section 154:
  - SECTION 154 pending – 147 assessment bad in law held by Mum ITAT in 109 TTJ 1 and Del ITAT in 96 TTJ 798 (whether internal endorsement in the file that proceedings dropped without communication to assessee would complete the proceedings- held no by SC in 109 Taxman 193) followed by Del ITAT in 23 DTR 29
  - In case section 154 exercised whether section 147 completely ruled out on relevant issue : Fav Guj HC in Damodar Shah 245 ITR 772, Mad HC EID Parry 216 ITR 489, Del ITAT in 96 TTJ 798 (held opinion expressed in previous 154) Contrary proposition in Del ITAT in Boeing Investments ITA No. 4299/2000 (held :needs to be analysed on what count 154 dropped earlier- MERE dropping etc), All HC 208 ITR 795 etc.

# Section 148 – qua appeal order

- Scope of section 148 qua appeal order CIT-A/ITAT ETC):
  - Issue 1 : When asst order is set aside on technical ground like asst time barred, can the AO issue 148 on very same facts? Held No by P&HHC in Anchi Devi in ITA 208 of 2007 relying upon its earlier decision in 254 ITR 273

  - (But it was held in 254 ITR (supra) that the ***validity of the second notice has to be adjudged in the light of the findings on the basis of which the earlier notice has been quashed. …. When a notice is quashed on some technical ground, it would be in order to issue a fresh notice under section 148 provided all other legal requirements of law have been complied with***. For instance, if a notice under section 148 is quashed on the ground that no reasons had been recorded, a second notice shall be in order after recording the reasons)

# Section 148 – qua appeal order

- P&HHC in 292 ITR 64 (reasons were not recorded in original proceedings – subsequent/IInd 148on same material held to be bad in law) – did not considered R.K.Kakkar (supra)
- Mum ITAT in 83 ITD 691 held reassessment done to circumvent original asst since held to be time barred – is not valid in law
- Nag ITAT in 103 TTJ 554 : held on basis of 240 ITR 852 that second 148 notice not possible when on very same reasons first 148 issued (first consequential asst since held to be lacking jurisdiction) has been annulled (to circumvent /defeat appeal order)

# Section 148 – qua appeal order – case study

- In a case where notice u/s 143(2) on certain AIR information was issued to assessee and final assessment was completed without any service of notice on assessee (by serving notice after limitation period on CA of assessee), with addition of bank deposits as unexplained income, when said 143(3//144 assessment is quashed for want of service in time limitation, can on basis of same information 148/reopening be done?

# Section 148 – qua Block Asst

- Can block assessment u/s 158BC or 158BD be reopened u/s 148? Mum ITAT reopening not possible for **BLOCK PERIOD** in Western Bakers 87 ITD 607
- Whether single year out a block period already subjected to block asst u/ch XIV-B can be reopened u/s 148? Refer: Expl to section Section 158BA(2) , escapement qua particular year as reqd u/s 147 whether can be made applicable to year covered under block assessment? (provided time limitation remains)
- Ambiguity cannot be ruled out
- Held in 158 Taxman 35 (Mag) Chennai ITAT that seized material pertaining to block period can be used in Cx XIV-B Undisclosed income determination and not under section 147
- Similar conclusion in 12 SOT 49 (Jodhpur ITAT) (URO); Guj HC in Cargo 218 CTR 541 (comprehensive)
- Also refer 172 Taxman 40(Mag) Chennai ITAT and BHC Pune Bench in Mira Naik 221 CTR 149

# Section 148 – qua section 150(1)

- Delhi ITAT in Henemp 101 ITD 19 held reopening valid when addition under block was held by ITAT to be subject matter of regular assessment, since same amounted to finding/direction u/s 150(1) CONTRARY & FAV PROPOSITION AVAILABLE IN BHC IN LOTUS INVESTMENTS 288 ITR 459 (followed in Rakesh N Dutt 214 CTR 462)
- What is “finding or direction” under section 150(1), so as to invoke extended period of issuing notice u/s 148? Refer SC in 52 ITR 335

☐ *SC in 52 ITR 335 : “that the expression "finding" cannot be any incidental finding, but says that it must be a conclusion on a material question necessary for the disposal of the appeal, though it need not necessarily conclude the appeal. … A "finding", therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year.”……*

☐ *“…The expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give under section 31. Under that section he can give directions, inter alia, under section 31(3)(b), (c) or (e) or section 31(4).”*

# Section 148 – qua section 150(1)

Case Study:
In appeal proceedings of a company assessee, regarding addition of share capital u/s 68, following SC in Lovely exports 216 CTR 195, addition is deleted but a line stating "AO is free to proceed in individual cases of shareholders and if advised can pursue the matter u/s 148" is added at the Bottom of the order. Whether same amounts to "direction/finding" under section 150(1) to issue 148 notice without time limit?

Seems to be NO: refer All HC in Foramer 247 ITR 436 (SLP dismissed by SC) & SC in 120 ITR 14 – No conclusive finding/direction (Also from ALL HC in 135 ITR 504 applied by Del ITAT in 60 TTJ 748- seems arguable that in case third party is not given prior hearing opportunity By appellate authority, directions cannot be said to be legal and hence reassessment bad in law- also See Guj HC in 203 ITR 186)

# Section 148 – qua section 150(1) Latest SC in Green World 6/5/2009

Held:

- "SC in Green World Corporation : Interalia Held Reopening on strength of appeal result without time limit u/s 150(1) requires specific fidning in appeal order, which attracts specific disposal

  "The aforementioned provision (section 150(1))although appears to be of a very wide amplitude, but would not mean that recourse to reopening of the proceedings in terms of Sections 147 and 148 of the Act can be initiated at any point of time whatsoever. Such a proceeding can be initiated only within the period of limitation prescribed therefor as contained in Section 149 of the Act.

# Section 148 – qua section 150(1) Latest SC in Green World 6/5/2009

Held:

Section 150 (1) of the Act is an exception to the aforementioned provision. It brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. For the said purpose, the records of the proceedings must be before the appropriate authority. It must examine the records of the proceedings. If there is no proceeding before it or if the Assessment year in question is also not a matter which would fall for consideration before the higher authority, Section 150 of the Act will have no application....

It is, thus, evident that jurisdiction to issue directions is limited."

# Section 148 – qua section 150(1)

Latest ITAT ruling SMC in Neelam Gupta Held where CIT-A stated in his order “Assessing officer was however free to take action in assessment year 1997-1998” is not “direction” which will attract section 150(1) 30 SOT 49 Luck URO Section

# Section 148 – qua section 150(1)

- What are the fetters on powers of AO to initiate 148 proceedings once the addition stands deleted in appellate proceedings? - Answered by First Proviso – Partial Merger – Matters Subject to Appeal/Revision Proceedings are Locked for Reopening
- Also refer APHC 240 ITR 852; MPHC 241 ITR 224 (Held It is not open to the assessing authority to go on resorting reassessment proceedings in piecemeal on fresh appraisal of material available on record and reopening cannot be made to disturb finality of prevailing ITAT order)
- Also refer CBDT *Circular : F. No. 45A/180/52-IT, dated 6-12-1955*

# Section 150(2) – qua section 150(1)qua proviso to section 147

- *Latest Delhi ITAT ruling in 123 TTJ 208 SUNIL MALIK*
- *LUCK ITAT IN 110 TTJ 714*
- *DEL ITAT IN 106 TTJ 1073*

# Section 147 Ist Proviso – Section 153

- Section 147 w.r.s. 153(2) Gujarat Credit Corporation Ltd. ITA No. 1122/Ahd/04 ITA No.311/Ahd/06 – **113 ITD 133**
- Whether proviso to section 147 has the effect of curtailing the limitation period for passing the order u/s 147 as prescribed u/s 153(2)?
- Order dated 9 May 2008 : Held NO: because proviso to section 147 merely relates to initiation of reassessment proceedings and do not extend to section 153 which is applicable to completion/passing of re-asst. order.

# Section 148 – qua Collateral Proceedings

- Whether challenge to reassessment proceedings (lack of jurisdiction viz non service of notice of 148, non recording of reasons etc – coram non judice) can be made in collateral proceedings like section 154 and section 271 when the same remained unchallenged in principal proceedings? Held Yes Del ITAT in 296 ITR 68 and Del ITAT in Tide Water 97 TTJ 130, 107 TTJ 98,171 ITR 381 etc.
- LATEST ALLHABAD HIGH COURT IN RAGHURAJ PARTAP 307 ITR 450
- Latest Luck ITAT in Surinder Kaur 18 DTR 38
- Latest Kar High Court in BTP Structural India July 2009 (Limitation Plea for Time Barred Asst. First Time Taken in 271(1)(C) allowed by HC reversing ITAT order to favor of assessee)

# Section 148 – qua Audit Objection

- Whether audit objection can justify initiation of reassessment proceedings? Depends upon prior 143(1) and 143(3) – In case prior 143(1) – yes – SC in 291 ITR 500, Del ITAT in 90 ITD 768, Del ITAT in 108 TTJ 933 etc. In case prior 143(3) – change of opinion – SC in 291 ITR 500, Kol ITAT in 289 ITR 76 etc
- Refer DHC latest case in 170 Taxman 229 IN para 7 held that as regards audit objection, independent examination by AO must qua escapement of income (earlier 143(3))
- Latest Asr ITAT in 17 DTR 281 : Held reopening on fresh legal interpretation placed by audit objection after earlier 143(3) – without any fresh facts- suffers from “change of opinion”

# Section 148 – qua DVO report

- Whether on basis on DVO report, reassessment proceedings valid? Depends upon:
  - In case reference made after conclusion of asst. proceedings and/or after passing intimation : Held No
  - In case reference made before conclusion of asst. proceedings and DVO report obtained after asst. order (passed due to limitation factor) – held yes
  - Refer BHC in Sona Properties WTA 188 of 2004, DHC in 237 ITR 505, Ker HC FB in 213 ITR 14 etc.
  - Further, in case asst. has been earlier made u/s 143(3) and books have been accepted as correct – added protection from subsequent 148
  - Further, reference during asst proceedings can be made only after rejection of books (if any) u/s 145 as otherwise depicting cost of construction – Luck ITAT TM in Rohtas, Del ITAT TM in HariOM general Mills 27 ITD 1 etc

# Sec 142A – Reopening on Valuation Report

- Whether reopening allowed on basis on DVO report where previously 143(1)/intimation is issued? Held:
  - Yes in 107 TTJ 779 Pune ITAT, Luck ITAT Dinesh Dua 120 TTJ 545&
  - Ref BHC in 216 CTR 217 & TM Ahd ITAT in 113 ITD 255 For Principles laid
  - No in 22 SOT 156 Del ITAT, Jp ITAT in 9 DTR 459; 107 TTJ 291; Luck ITAT in Vijeta 118 ITD 382
  - *HELD NO By Guj HC in Manjusha Estates Pvt Ltd March 2009 314 ITR 263*
  - *Held No by Jaipur ITAT in Shree Goverdhan Builders 29 SOT 72 (URO)*
  - Agra ITAT Magzine – 173 Taxman 21

# Section 148 – qua pending asst. etc.

- In case assessment proceedings u/s 143(3) pending (eg time limit available for issuance of 143(2) etc.) issuance of 148 notice or in case after issuance of Ist 148 without disposing the same, second notice of 148 (viz to gain more time etc), whether the same is valid?
- Held No Refer :
- SC in HEZ Nizam Trust 109 Taxman 193 and SC in 55 ITR 630 and SC in 159 Taxation 8 (mere internal note in AO's file without its communication to Assessee, do not dispose off the proceedings)
- Cal HC in 272 ITR 439 (second 148 notice, when first 148 pending for disposal), Cal HC in 253 ITR 296
- DHC in KLM Royal Dutch Airlines, AllHC in 183 Taxation 7
- BHC in 247 ITR 772, 271 ITR 50
- Del ITAT in Kamaljeet 181 Taxation 31, 112 TTJ 220, Jaipur ITAT in 24 Taxworld 320, Mum ITAT in 113 TTJ 608
- Jp ITAT in 114 TTJ 103 (143(2) time available)
- Luck ITAT in 114 TTJ 416 (Pendancy of Valid return)
- Asr ITAT in 22 DTR 470 – Tarsem Singh

# Section 149 – finding on escapement of income etc.

- Whether in order to exercise extended period of six years beyond four years, it is incumbent upon AO to record his finding on quantum of escaped income, in reasons recorded while initiating 148 proceedings?
- Held Yes in :
- 39 TTJ 497, final assessment may go below the amount originally estimated
- 23 TTJ 334,
- 89 ITD 199
- 56 ITD 254
- Asr SB ITAT in 92 ITD 85

# Section 151 –Sanction of Higher Authority

- Whether sanction u/s 151 can be given mechanically, by merely stating Yes before reasons recorded by AO ?
- Held No in :
- SC in Chhugamal 79 ITR 603
- SC in 88 ITR 439
- SC LARGER BENCH IN Sahara India
- DHC in 258 ITR 317
- DHC in Vinita Jain (supra)
- *Indore ITAT 117 TTJ 417 (Note of CIT satisfaction not produced before ITAT – adverse inference drawn reopening quashed for non fulfillment of mandatory condition)*
- *Cochin ITAT 14 SOT 462 (CIT words "I am satisfied – bad in law)*
- Cal ITAT in 32 ITD 518

# Section 148 –Proviso of Finance Act 2006

- Whether proviso inserted by Finance Act, 2006 in section 148 providing protection for non service of notice within prescribed 12 months (for specified period), mandates/requires issuance of notice within outer limit of 143(2)?
- Held Yes by Ahd ITAT in 113 TTJ 63 (that is only limited protection given is service of notice u/s 143(2) is made after 12 months time limit)
- In 106 TTJ 388 Chennai ITAT held that subject new proviso will not save/protect a case wherein no notice u/s 143(2) has been served at all…..
- (Caution: In light of new provision u/s 292BB, it is advisable that objection as to non service of notice u/s 143(2)/148 is made during reassessment proceedings)

# Section 148 – Certain Issues

- Whether reopening made by an AO not having jurisdiction over assessee (notice of 148 by non jurisdictional AO) and final asst by jurisdictional AO as proceedings are transferred mid way, is valid in eyes of law? Seems to be NO as reasons has to be of AO of the Assessee and reasons/their approval by non jurisdictional officer is bad in law – Caution Object in beginning of proceedings as per sec 124(3) – Proper Course is earlier proceedings are dropped and fresh proceedings if timely permissible can be initiated by relevant AO *(Refer P&HHC in 220 ITR 446 , DHC in Anjali Dua 219 CTR 183, DHC in Anil Kohsla ITA 838/2008, Del ITAT in Ranjeet Singh 120 TTJ 517, Luck ITAT in MI Builders 117 TTJ 72 )*

# Section 148 – Certain Issues

- A Co ABC Limited for AY 2000-2001 filed its return with ITO Ward 1 and later on when its name was changed, after taking changed PAN No. and intimating ITO Ward 1, started filing returns with new ITO Ward 2. Later on for information on income escaping asst for AY 2000-2001, ITO Ward 1 reopens the case and makes the reassessment. Whether reassessment is jurisdictionally valid? Seems to be No

# Section 148 – Certain Issues

- Whether reopening made u/s 148 by an AO, wherein along with certain external information on income escaping asst, as regards ROI filed by assessee, it is observed IN REASONS RECORDED by AO that records are not traceable? May be "No" as when records as to ROI are not available/traceable – how can reasons to believe for income escaping assessment on information recd can be formed?

# Section 148 – Certain Issues

- Whether reassessment completed u/s 148, on basis of 143(2) issued simultaneously/ along with 148 notice is valid in eyes of law? Seems to be NO as 143(2) can be issued only in pursuance to return filed u/s 148 Refer Asr ITAT in 108 TTJ 998
- Whether 148 can be issued/reasst u/s 147 can be framed *merely* where assessee files its return with non jurisdictional authority/AO (eg In E-Return jurisdiction is wrongly filled) and consequentially, assessee's ROI skips requisite scrutiny u/s 143(2)? Held NO by Luck ITAT in Patni Trade Linkers 171 Taxman 30 Mag as assessee is not bound itself to get it scrutinized

# Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendancy of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues ? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.

- *First argument* can be since AO issued 154 on subject eight issues, there can be no subsequent 148 in any condition (refer Guj HC in 245 ITR 772 Damodar Shah etc)

# Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendancy of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.

- *Second argument* can be since 154 proceedings were not dropped before 148 notice (as recorded in 154 order), on six issues, reopening is bad in law (refer 109 TTJ1 Mum ITAT). Not only dropping of 154 is required before 148 notice, but also its communication is must as per 109 TTJ 1.

# Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendancy of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done

- *Third argument* can be with reference to doctrine of partial merger as provided in proviso to section 147, on subject two issues, as during pendancy of appeal on rectification, no reopening/reassessment can be done on issues being subject matter of appeal.

# Section 148 – Certain Issues

- Case Study: For an AY, AO after making 143(3) assessment, initiated on certain 8 issues rectification proceedings, out of which for 2 issues 154 order was passed by AO (adverse to the Assessee) and for others matter was kept open. Assessee carried the matter before CIT-A who reversed 154 order of AO on said 2 issues and revenue carried the matter further before ITAT. In the meanwhile, during pendancy of revenue's appeal on 154 order before ITAT, AO reopened the case u/s 148 on subject six pending issues? Whether reopening action is valid? Further in final order no addition is made on reopening six grounds and addition was made on two issues on which rectification was done.

- *Fourth argument* can be since no addition is made on reopening ground, reassessment is bad in law. Refer Raj HC in Shri Ram Singh; Devender Gupta; Ker HC in Travancore, Del ITAT in C.J.International, Software Consultants, Narayan Securities Asr ITAT in 108 TTJ 1 , etc

# Section 148 – Certain Issues

- Case Study: For an AY, AO made reopening on 30 March 2008, giving time to file return by 30 April 2008, in which on 7 April 2008 AO u/s 148 made reference to Transfer Pricing Officer, and 148 return was filed on 30 April 2008. Whether said reference is valid vis a vis section 147 is concerned?
- Whether any other income has come to notice of AO during reassessment proceedings?
- Connotation of phrase “comes to notice”.
- Landmark Ker HC ruling in Travancore 305 ITR

# Section 148 – Certain Issues

- Second Notice u/s 148 or successive notice u/s 148 on same set of facts (eg AO partly processing investigation information in first round and seeking to reopen the earlier reassessment on left out areas in first round of reassessment) Held Not Permissible Jodhpur ITAT in 110 TTJ 728 & Mum ITAT in 26 SOT 50 Aum Chemicals

# Section 148 – Certain Issues

- In case, certain information was available at the time when notice u/s 143(2) could have been issued, but same not being issued, cannot be revisited in 148 proceedings – Refer Raj HC in 213 CTR 193 – Distinguished by Delhi ITAT in ELAND 26 DTR 113

- Case Study: Tax Audit report with ROI mentioned some prior period expenses not disallowed by assessee taking dissenting position- no 143(2)/143(3) whether subsequent 148 possible?

# Section 148 – Certain Issues

- DHC in Silver Oak: In case reopening for a Asst Year is purely based on disallowance made in a Asst Year and those disallowances gets deleted by ITAT (attained finality), subject reopening will not survive. WP 17719/2006

- Whether first proviso to section 147 covers 144 assessments when it specifically refers 147 and 143(3) cases?

# Section 148 – Certain Issues

- Mail Today news item on Liechtenstien LGT Bank Germany
- Information treated as “actionable” and highly explosive
- Reopening done as informed by Minsiter of State for Finance

# Section 148 – Certain Issues

- If Section 148 notice is held as bad in law, then whether tax deposited suo-motto in 148 return will be refunded or not?

# Section 148 – Certain Issues

- Refer latest Kol ITAT ruling in Van Oord 112 TTJ 229 – in original asst assessee did not contended no PE under DTAA and in subsequent 148 proceedings, also assessee did not contended – for first time before CIT-A raised fresh plea as non existence of PE- CIT-A Denied– ITAT held permissible Held SC Sun Engg do not apply to CIT-A and only apply to AO

- New Claims not permissible before AO u/s 148 : Refer J&K HC in 248 ITR 487; ITAT in 101 TTJ 192 in light of SC in Sun Engg; Delhi ITAT in Gloric 32 SOT 11(URO) (TDS/Section 239 vis a vis Section 148 new claims)

# Section 147 – Issues

- Scope of First Proviso to section 147 :
  - *Whether applies to search assessment in section 153A that is in case asst is made for a year u/s 153A whether same shall be eligible to protection of first proviso, being treated as asst u/s 143(3)? .*
  - *Albeit proviso only mentions section 143(3) and 147 assessment on basis of explanation to section 153A- it is arguable 153A assessment is covered thereunder*

# Section 148 Notice on Deceased Person

- Where notice u/s 148 was issued in the name of deceased person, without issuance of notice in name of legal heirs, notice was held to be invalid by All ITAT in 39 ITD 444 (advisable to object for issuance of notice u/s 148 in such cases at beginning of proceedings) – also similar conclusion in 192 Taxation 77 Delhi ITAT

- When notice u/s 148 was issued in name of one of legal heirs without impleading of other legal heirs and no objection raised at any time as to non impleading of all the legal heirs and full participation was there of noticee legal heir- held in 80 ITD 33 (TM) & 75 ITD 127 – mere irregularity – fresh assessment ordered (advisable to raise timely objection IN BEGINNING OF ASSESMENT PROCEEDING on above)

# Section 148 Notice on Deceased Person

- Other noteworthy case laws:
  - Del ITAT in Triveni 93 TTJ 806
  - Del HC in 200 CTR 451 & Del ITAT in 89 ITD 429 (OBJECTION AS NON SERVICE OF NOTICE ON ALL LEGAL HEIRS DURING ASSESSMENT MUST)
  - Asr ITAT in 95 TTJ 309 (reopening notice u/s 148 for deceased assessee as per section 159, 2(29) – must be to legal representative as defined u/s 2(11) Civil Procedure Code)
  - Also refer MPHC ruling at 276 ITR 62 held assessment on deceased with bringing on record legal heir bad in law; Chennai ITAT in 105 TTJ 391 (similar conclusion)

- Held by Kol ITAT in 15 SOT 331, assessment after amalgamation for period before amalgamation to be made through amalgamated/successor company and in case, assessment completed on amalgamating company – invalid (also similar conclusion by Del ITAT in Hewlett Packard case ITA 4016/Del/2005)

# Section 148 Notice on Deceased Person

***P&H High Court in Rakesh Kumar Assessment made pursuant to search warrant issued in name of dead Person is void ab initio 313 ITR 305 – SLP dismissed by Supreme Court***

# Section 148 – Reopening Matrix – Certain Situations

| Situation | Citation |
|---|---|
| Alleged Bogus Capital Gains | **DHC 299 ITR 383; 166 Taxman 102** All HC 268 ITR 400; Del ITAT in 6 DTR 141 & 9 DTR 564; **P&HHC in Anupam Kapoor 299 ITR 180**; 140 Taxman 410 |
| Alleged Bogus Share Application Money<br><br>(HELD SPECIFIC STATEMENT IMPLICATING ASSESSEE IS REQUIRED) | DHC in Anita/Vinita Jain 299 ITR 383; DHC in High Gain Finvest 164 Taxman 142; **Gulati Fabrication 217 CTR 494 (SLP dismissed by SC)**<br>**JSRS Udyog/Haryana Acrylic 308 ITR 38** |
| Alleged Bogus Lenders/Creditors | DHC in Vardhman Estates ITA 993 of 2005 date 19/7/2007 |

# Section 148 – Reopening Matrix – Certain Situations

| Situation | Citation |
|---|---|
| Alleged Bogus Donations | P&HHC in 220 CTR 601 (there must be more than suspicion and reopening cannot be for roving and fishing inquiries) ; Raj HC 220 CTR 369 |
| Alleged Bogus Deductions | Asr ITAT in 105 ITD 305 |
| Alleged Bogus Payments | Gau HC in 243 ITR 540 |
| Alleged Bogus Agricultural Payments<br><br>(for onus while reopening also refer All HC in 222 ITR 323) | DHC in Pardeep Gupta ***(Held reopening on basis of third party statement not provided for cross examination is bad in law) (further in reassessment onus is on revenue to prove income escapement irrespective that earlier 143(1) is made 303 ITR 95)*** |

# Thank You

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