Reassessment & Revision

Under Income Tax Important Provisions

Organised by

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Re-assessment : Assessement includes Re assessement 2(8)

Section 147: Income escaping assessment: If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year :

Reason to believe *: AO should have 'reason to believe' that income chargeable to tax has escaped assessment.*

The words " reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the assessing officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumor.

Following constitutes reason to believe for invoking sec 147 –

- *Evidence in possession of AO that the assessee has understated his income*
- *Evidence in possession of AO that the assessee has claimed excessive loss/deductions, allowances, reliefs*

Where AO only stated that note attached to return of income indicated 'possible escapement of income income' and he was not sure about it, notice u/s 147 seeking to reopen assessment could not be permitted to stand
Case: Nitin P. Shah vs. DCIT (2005) 276 ITR 411 (Guj)

An opinion of the audit party regarding application or interpretation of law is not information, and as such , a reassessment based on opinion of audit party is not valid
Case: CIT vs. Lucas TVS Ltd(2001) 249 ITR 306 (SC)

Sec 147 does not authorize the AO to reopen assessment under grab of "reason to Believe" , to review its own decision
Case: CIT v Smith Kline Beecham Consumer Brands Ltd. (2003) 126 Taxman 104 (Chd.) (Mag.)

Mere change of opinion will not give rise to reopening of assessment.
Case:CIT v. Bhanji Lavji (1971)79 ITR 582(SC),

AO having granted benefit of S. 72A to the assessee in respect of unabsorbed depreciation of the amalgamating company after the assessee had furnished the relevant particulars and the AO was satisfied about the eligibility of the assessee for the benefit of S. 72A are not applicable to the facts of the case amounted to a case of change of opinion and, therefore, reassessment proceedings was held to be not sustainable.
Stock Exchange Ahmedabad vs. ACIT (1997) 227 ITR 906 (Guj) (Assessment year 1989-1992 to 1993-1994)
Apollo Hospital Enterprises Ltd vs. ACIT (2006) 287 ITR 25 (Mad.)

Restrictions on re opening: Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset including financial interest in any entity located outside India, chargeable to tax, has escaped assessment for any assessment year

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

If there is no failure on part of assessee to disclose fully and truly material facts, wrong interpretation of accounts by AO leading to excessive relief cannot be a ground for reopening and, thus, cannot confer jurisdiction on AO
Case: Amiya Sales & Industries V. ACIT (2005) 274 ITR 25(Cal.)

RE-OPENING BEYOND 4 YEARS : *Tribunal having concluded that all the material facts were fully and truly disclosed by the assessee at the time of original assessment, invoking the of provisions of S. 147 after the expiry of four years from the end of the relevant asst. year was not valid.*
Jashan Textiles Mills P. Ltgd. Vs. DCIT (2006) 284 ITR 542 (Bom)
German Remdeis Ltd vs. DCIT (2006) 287 ITR 494 (Bom)
CIT vs. Former Finance (2003) 264 ITR 566 (SC)

There was no tangible material before the Assessing Officer to form the belief that the income had escaped assessment and therefore, reopening of assessment under section 147 was not valid.
Balakrishna Hiralal Wani vs. ITO (2010) 321 ITR 519 (Bom.)

Disclosure: *Explanation 1.*—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Deemed to be cases where income chargeable to tax has escaped assessment:

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;

(*ba*) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed ; or

(*ii*) such income has been assessed at too low a rate ; or

(*iii*) such income has been made the subject of excessive relief under this Act ; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(*d*) where a person is found to have any asset (including financial interest in any entity) located outside India.

Issues other than the reasons recorded for re opening the assessment can also be assessed: *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.

Once Asst is open any other income can be considered. Expl 3 to sec 147
CIT v/s. Best Wood (2011) 331 ITR 63 (Ker.) FB.

If Assessing officer does not assess income for which reasons were recorded u/s. 147 he cannot assess other income u/s. 147.
CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom)

Though Explanation 3 to s. 147 inserted by the F Y 2009 w.r. e.f 1.4.1989 permits the AO to assess or reassess income which has escaped assessment even if the recorded reasons have not been recorded with regard to such items, it is essential that the items in respect of which the reasons had been recorded are assessed. If the AO accepts that the items for which reasons are recorded have not escaped assessment, it means he had no "reasons to believe that income has escaped assessment" and the issue of the notice becomes invalid. If so, he has no jurisdiction to assess any other income.
Ranbaxy Laboratories Ltd vs. CIT (2011) 60 DTR 77(Delhi) (High Court)

Retrospective amendment*: Explanation 4.*—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Section 148 : Issue of notice where income has escaped assessment.

Service of notice for filing of return : Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply

accordingly as if such return were a return required to be furnished under section 139 :

Provided that in a case—
(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
(*b*) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—
(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
(*b*) subsequently a notice has been served under clause (*ii*) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (*ii*) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

[*Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

Recording of reason before issue of notice : The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Section 149 : Time limit for notice.

No notice under section 148 shall be issued for the relevant assessment year

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c)

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset including financial interest in any entity located outside India, chargeable to tax, has escaped assessment.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.]

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

Agent of non resident: If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Retrospective amendment: Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Section 150 : Provision for cases where assessment is in pursuance of an order on appeal, etc.

No time limit for issue of notice for giving effect to order of court etc. Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or 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.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

*In **ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC)** held that the word "finding" can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The apex court further held that the appellate authority may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the assessment year in question. Similarly, the expression "direction" has been construed by the apex court to mean a direction which the appellate or revisional authority as the case may be, is empowered to give under the sections mentioned therein.*

Apart from the above, section 150(1) of the Act provides that the power to issue notice under section 148 of the Act in consequence of or giving effect to any finding or direction of the appellate/revisional authority or the court is subject to the provision contained in section 150(2) of the Act. Section 150(2) provides that directions under section 150(1) of the Act cannot be given by the appellate/revisional authority or the court if on the date on which the order

impugned in the appeal was passed, the reassessment proceedings had become time-barred.
K. M. Sharma vs. ITO (2002) 254 ITR 772 (SC)

Section 151: Sanction for issue of notice

Reassessment of concluded assessment: In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

Other cases: In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

	Upto 4 years from the end of the relevant assessment year	*Beyond 4 years but up to 6 years from the end of the relevant AY*
In cases subject to	By an AO not below the	1)Same approval , And

scrutiny by way of assessment u/s143(3) or 147	rank of AC/DC . Any AO below the rank of AC/DC will require prior approval of the JC before issuing the notice	2)Notice can be issued only after obtaining the prior approval of CCIT or CIT
In other cases	By any AO	By an AO not below the rank of JC . Any officer below the rank of JC can issue the notice with the prior approval of JC

Section 152 : Other provisions.

Relevant rates for the assessment year : In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

Dropping of proceedings : Where an assessment is reopened under section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262, or 263.

RECTIFICATION VIS-A-VIS REASSESSMENT

Provisions of s. 154 and Section 147 may overlap in some cases while in others only Section 147 and not s. 154 may be applicable

Difference between rectification proceedings and reassessment proceedings as far as initiation was concerned - was that whereas there was no statutory provision for issue of notice for initiation of rectification proceeding while as far as reassessment proceeding was concerned a statutory notice after recording reasons was necessary for initiation and initiation without such statutory notice was without jurisdiction as far as reassessment proceeding was concerned Girdharilal Jhajharia vs. CIT (1970) 78 ITR 133 (Cal)

ISSUES IN REASSESSMENT

CONSTITUTIONAL VALIDITY OF REASSESSMENT PROVISIONS:

Reassessment Provisions under the Act are Intra Vires the powers of Parliament -Indian Constitution–Held by Rajasthan 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. Further SC in Good Year case

IS THERE A RESTRICTION ON THE NUMBER OF RE ASSESSMENTS

No limit on number of re re-assessment.
CIT v. S.S.K.G. Arthanariswamy (1982) 136 ITR 145 (Mad.)

RECORDING AND COMMUNICATION OF REASONS – MANDATORY:

The Apex Court in the case of ***GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 1(SC)*** *has laid down the procedure to challenge the reassessment proceedings. When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action is to file the return and, if he so desires, to seek reasons for issuing the notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order.*

For passing an order under section 147 recording of reasons u/s. 148 and communication thereof to party concern is mandatory.
Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj) 1
Nandlal Tejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)

If assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee another opportunity:
CIT vs. Safetag International India Pvt Ltd (Delhi High Court)

Reasons for reassessment was not furnished to the assessee before completion of assessment, held reassessment not valid. The Tribunal following the judgment of Bombay High Court in CIT v. Fomento Resorts and Hotels Ltd ITA no 71 of 2006 dated 27th November, 2006 , has held that though the reopening of assessment was within three years from the end of relevant assessment year, since the reasons recorded for reopening of the assessment were not furnished to the assessee till date the completion of assessment, the reassessment order cannot be upheld, moreover, Special Leave Petition filed by revenue against the decision of this court in the case of CIY v. Fomento Resorts and Hotels Ltd , has been dismissed by Apex Court, vide order dated July 16, 2007. The court dismissed the appeal of the revenue.
CIT v. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.)

Reasons for notice must be given and objections of assessee must be considered. ***Allana cold storage vs. ITO (2006) 287 ITR 1 (Bom.) (Asst Yr 2001-2002)****(Followed the order passed by Supreme Court in the case of GKN Driveshaft. supra) Matter seta-side to pass fresh order.*
Bhabesh Chandra Panja vs. ITO (2010) 41 SOT 390 (TM) (KOL)

Reassessment framed by the assessing officer without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed. Bombay High Court set-aside the assessment for fresh hearing in case of ***IOT Infrastructure and Eng. Services Ltd. vs. ACIT (2010) 329 ITR 547 (Bom)***

Assessee is entitled to be supplied with the reasons in the event he challenges the notice for reassessment; assessee is not stopped from challenging the impugned notice after having submitted to the jurisdiction of the officer by filing returns.

Berger Paints India Ltd vs. Asst. Commr. Of income tax and Ors (2004) 266 ITR 462 (Cal)

Language of section 148(2) does not permit recording of reasons between date of issuance of notice and service of notice, words used by provisions in no uncertain terms require recording of reasons before issuing any notice.
Rajoo Engineers vs. Dy. CIT (2008) 218 CTR (Guj.) 53

WHETHER NEW REASON CAN BE SUPPLIED IN THE COURSE OF ASSESSMENT OR MODIFICATION OF REASONS ORIGINALLY RECORDED

New reasons cannot be allowed to be introduced or supplied: Proper Reasons to believe must, even if there is no assessment u/s. 143(3) – Only reasons recorded by Assessing officer must be considered.
Prashant s. Joshi vs. ITO (2010) 324 ITR 154 (Bom)

Reason must be based on the relevant material on record at the time of recording reasons.
3i Infotech Ltd v/s. ACIT (2010) 329 ITR 257 (Bom.)

New reasons cannot be allowed to be introduced or supplied by way of affidavit. Validity of an order must be judged by the reasons so mentioned therein. Reasons recorded cannot be supplemented by filing affidavit or making oral submission.
Hindustan Lever Ltd. vs. R.B. Wadkar (2004) 268 ITR 332 Bom
Mohinder Singh Gill vs. Chief Election AIR 1978 SC 851
Mrs. Usha A Kalwani vs. S.N. Soni (2005) 272 ITR 67 (BOM)

Succeeding Assessing Officer cannot improve upon the reasons which were originally communicated to the assessee. The assessee company filed its return of income for the A.Y. 2006-07 on 31st Oct. 2006 declaring nil income. The assessee claimed that profits earned from the transactions in Indian securities are not liable to tax in India in view of art 7 of the India- Singapore treaty because the assessee company did not have PE in India. The assessment was reopened on the ground that no foreign companies are allowed to invest through stock exchange in India unless it is approved as FII by

the regulatory authorities Viz- RBI, SEBI. Etc .According to the Assessing Officer the gain earned on investment as FII is liable to be taxed under section 115AD. The reassessment notice was challenged before the Court, the Court held that the attention was drawn to the notice of Assessing Officer that the assessee is not an FII and that provisions of section 115AD would not be attracted. The Assessing Officer attempted to improve upon the reasons which were originally communicated to the assessee. Those reasons constitute the foundation of action initiated by the Assessing Officer for reopening of assessment .Those reasons cannot be supplemented or improved upon subsequently . The court held that in the absence of any tangible material assessment could not be reopened under section 147, further succeeding Assessing Officer has clearly attempted to improve upon the reasons which were originally communicated to the assessee which was not permissible. (A.Y.2006-07)

Indivest PTE Ltd v. ADDIT (2012) 250 CTR 15 / 206 Taxman 351 (Bom.)

SATISFACTION OF THE JURISDICTION ASSESSING OFFICER:

Reopening is not permissible on borrowed satisfaction of another assessing Officer:Assessing officer recording reasons for assessment and assessing officer issuing notice under section 148 must be the same person. Successor assessing officer cannot issue notice under section 148 on the basis of reasons recorded by predecessor assessing officer. Notice issued invalid and deserves to be quashed.

Hyoup Food and Oil Industries Ltd. vs. ACIT (2008) 307 ITR 115 (Guj.)
CIT & Anr vs. Aslam Ullakhan (2010) 321 ITR 150 (Kar)

Notice u/s. 148 invalid as it was issued on direction of CIT
ITO vs. Rajender Prasad Gupta (2010) 48 DTR 489 (JD)(Trib)

Assessee at Suratgarh – Notice issued by ITO at Delhi – matter later transferred to ITO Suratgraph – he did not issued fresh notice or recorded reasons – Held ITO did not have jurisdiction notice invalid.
CIT Vs. Shree Rajasthan Syntex Ltd. (2009) 212 Taxation 275 (Raj.)

Reasons to be formed only by Jurisdictional Assessing Officer and not any other Assessing Officer ,and issuance of notice is mandatory. The basic requirement of section 147 is that the assessing officer must have a reason to

believe that any income chargeable to tax has escaped assessment and such belief must be belief of jurisdictional assessing officer and not any other assessing officer or authority or department. Therefore the jurisdiction of AO to reopen an assessment under section 147 depends upon issuance of a valid notice and in absence of the same entire proceedings taken by him would become void for want of jurisdiction.(A.Y. 2006-07)
ACIT v. Resham Petrotech Ltd. (2012) 136 ITD 185 (Ahd.)(Trib.)

Reassessment Notice- Jurisdiction – Assessment in Kolkata Reassessment notice sent in Delhi,such reassessment is held to be without jurisdiction. (S. 127)Assessment having been made by AO in Kolkata, in the absence of any order under section 127 transferring the case, reassessment notice issued by AO at Delhi and all subsequent proceedings based on said notice are without jurisdiction. (A.Y. 1999-2000)
Smriti Kedia (Smt.) v. UOI (2012) 71 DTR 245 / 250 CTR 221 (Cal.)

ISSUE OF NOTICE:

The notice prescribed by section 148 cannot be regarded as a mere procedural requirement. It is only if the said notice is served on the assessee that the ITO would be justified in taking proceedings against the assessee. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the ITO would be illegal and void.
Y. Narayan chetty V. ITO (1959) 35 ITR 388 (SC),
CIT V. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC)
CIT V. Kurban hussain ibrahimji Mithiborwala (1971) 82 ITR 821 (SC)

Notice issued to individual. His HUF cannot be assessed on the ground that notice was issued to individual who was Karta of HUF. Defect of jurisdiction.
Suraj Mal HUF vs. ITO (2007) 109 ITR 327 (Del.)(TM).

Where notice was not sent by registered post nor served upon assessee in any other manner whatsoever, proceedings for assessment were void.
CIT vs. Harish J. Punjabi (2008) 297 ITR 424 (Del.)

Invalid Service of notice not a procedural defect. Service by affixture. No material to prove efforts made by Depart to serve notice in normal course.
Arunlal vs. ACIT (2010) 1 ITR 1 (Trib) (Agra) (TM)

REASONS – NON APPLICATION OF MIND:

Reassessment merely on the basis of investigation wing held to be not valid. Notice issued after the expiry of four years from the end of the relevant assessment year by the assessing officer merely acting mechanically on the information supplied by the Investigation wing about the accommodation entries provided by the assessee to certain entities without applying his own mind was led to be not justified.(A.Y.2004-05, 2006-07)
CIT v. Kamdhenu Steel & Alloys Ltd. (2012) 248 CTR 33 (Delhi)(High Court)

CHANGE IN OPINION:

Issue regarding addition of amount of deferred taxation for computing book profits u/s. 115JB having been raised by the AO at the time of original assessment u/s. 143(3) and no addition having been made by AO on the account on being satisfied with the explanation of the assessee reopening of assessment on the very same issue suffered from change of opinion in the absence of any fresh material hence invalid.
M.J. Pharmaceuticals Ltd vs. CIT (2008) 297 ITR 119

Once an assessment has been completed under section 143 (3) after raising a query on a particular issue and accepting assessee's reply to the query. Assessing Officer has no jurisdiction to reopen the assessment merely because the issue in question is not specifically adverted in the assessment order ,unless there tangible material before the Assessing Officer to come to the conclusion that there is escapement of income.(Asst Year 1998-99).
Asst CIT v Rolta India Ltd. (2011)132 ITD 98 (Mumbai) (TM) (Trib)

Points not decided while passing assessment order under section 143(3) not a case of change of opinion. Assessment reopened validly.
Yuvraj vs. Union Of India (Bom.) (2009) 315 ITR 84.

REVIEW NOT POSSIBLE UNDER THE GRAB OF RE ASSESSMENT :

For AY 2002-03, the assessee filed a ROI declaring income of Rs.14.99 crores. A revised ROI was then filed claiming 30% adhoc expenses (Rs. 6.31 crores) and offering income of Rs. 8.11 crores. When the AO asked the assessee to substantiate the expenses, he withdrew the claim. The AO passed a s. 143(3) assessment determining the income at Rs.56.41 crores. The AO then issued a s. 148 notice (within 4 years) to reopen the assessment on the ground that the claim for expenses (which was withdrawn) had to be assessed as "unexplained expenditure" u/s 69. The CIT (A) & Tribunal struck down the reassessment order on the ground that the material on the basis of which the assessment was sought to be reopened was always available at the time of the original proceeding and there was no new material. On appeal by the department to the High Court, HELD dismissing the appeal:The assessee had made a claim for 30% adhoc expenditure. This was withdrawn by the assessee when asked by the AO to substantiate. The reopening on the basis that the said adhoc expenditure constituted "unexplained expenditure" u/s 69 was based on the same material. There was no fresh tangible material before the AO to reach a reasonable belief that the income liable to tax has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible.

CIT vs. Amitabh Bachchan (Bombay High Court) www.itatonline.org

<u>NO REASSESSMENT U/S. 148, IF ASSESSMENT OR REASSESSMENT IS PENDING:</u>

So long the asst proceedings are pending the AO cannot have any reason to believe that income for that year has escaped asst (period for issue of notice u/s. 143(2) had not expired)

CIT v/s. Qatalys Software Technology (2009) 308 ITR 249 (Mad)

When time limit for issue of notice under section 143(2) has not expired, Assessing Officer cannot initiate proceedings under section 147.

Super Spinning Mills Ltd. vs. Addl. CIT (2010) 38 SOT 14 (Chennai)(TM)(Trib.)

Notice under section 148 cannot be issued for making reassessment, when time limit is available for issue of notice under section 143(2) for making an assessment under section 143(3).

CIT vs. TCP Ltd. (2010) 323 ITR 346 / 235 CTR 414 (Mad.)

ISSUES IN REOPENING BEYOND 4 YEARS

Assessee having fully and truly disclosed all the material facts necessary for the assessment as required by the AO, the precondition for invoking the proviso to S. 147 was not satisfied and therefore AO acted wholly without jurisdiction in issuing notice u/s. 148 beyond four years period mentioned in S. 147.
Wel Intertrade (P) Ltd & Anr vs. ITO (2009) 308 ITR 22 (Asst yr 2000-2001)

Where the deduction under section 80IB of the Act was allowed to the assessee by the assessing officer in the original assessment order under section 143(3) of the Act after considering the audit report in Form 10CCB and the other details filed by the assessee, it cannot be said that there was a failure on the part of the assessee to disclose fully and truly all the facts for the assessment so as to invoke the provisions of section 147 for reexamining the deduction under section 80 IB of the Act, after expiry of four years from the end of the assessment year.
Purity Techtextile (P) Ltd. vs. ACIT & Anr. (2010) 325 ITR 459 (Bom.)

Beyond four years-Reassessment held to be not valid in the absence of any new or additional information.: Where the assessee had made full and true disclosure and also there was a note by the auditor in his audit report, reopening of assessment beyond the period of four years was held to be not valid notwithstanding the fact that for subsequent assessment year a similar addition had been made by the assessing officer. Assessment cannot be reopened on the basis of a mere change of opinion. There should be some tangible material with the assessing officer to come to the conclusion that there is an escapement of income. A mere change of opinion on the part of the assessing officer in the course of assessment for a subsequent year cannot justify the reopening of an assessment.(A.Y.2006-07)
NYK Line (India) Ltd. v. Dy. CIT (2012) 68 DTR 90 (Bom)(High Court)

As there is no allegation in the reasons for failure to disclose material facts necessary for assessment reopening beyond four years was held to be not valid. The assessment was completed under section 143 (3) on 14th

December, 2007 accepting the melting loss at 7.75 percent. The notice for reopening was issued on the ground that in the similar line of business other assessee have claimed the melting loss at 5.5 percent. The objection of assessee was rejected by the Assessing Officer. The assessee challenged the reopening by writ petition. The court allowed the writ petition and held that there is no allegation in the reasons which have been disclosed to the assessee that there was any failure on his part to fully and truly disclose material facts necessary for assessment and therefore reopening beyond four years was not valid. (A.Y. 2005-06)

Sound Casting(P) Ltd v. Dy.CIT (2012) 250 CTR 119 (Bom.)

CAN ASSESSMENT BE RE OPENED ON THE BASIS OF RETROSPECTIVE AMENDMENT IN THE ACT:

Reassessment held to be invalid only on the basis of retrospective amendment as there is no failure to disclose fully and truly all material facts. [S. 80IB(10)]: Assessee claimed the deduction under section 80(IB)(10) after enquiry the deduction was allowed. The amendment was introduced by Finance Act, 2009, inserting Explanation with retrospective effect from 1st April, 2001 which denied benefit of deduction under section 80IB(10) to works contractors execution housing project. The only reason for issuing the notice, was amendment brought in the statute book with retrospective effect. The said notice was challenged before the High Court. High Court quashed the notice and held that reopening only on the basis of retrospective amendment of law is not justified. (A. Y. 2004-05).

Pravin Kumar Bhogilal Shah v. ITO (2012) 66 DTR 236 (Guj.)(High Court)
Vinayak Construction v. ITO (2012) 66 DTR 233 (Guj.)(High Court)

PROPER SACNTION IS NECESSARY

*Sanction of commissioner instead of JCIT renders reopening is void **:**There is no statutory provision under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular*

manner, it has to be done in that manner (SPL's Siddhartha Ltd followed)(A.Y. 2004-05)
Ghanshyam K. Khabrani v. ACIT (2012) 249 CTR 370 (Bom)(High Court)

SECTION 143(1) AND REASSESSMENT

When intimation under section 143 (1) is issued : So long as the ingredients of section 147 are fulfilled, Assessing Officer is free to initiate proceeding under section 147 even where intimation under section 143(1) has been issued; as intimation under section 143 (1) (a) is not assessment there is no question of treating re assessment in such a case as based on change of opinion.
Asstt. CIT V. Rajesh Jhaveri Stock Brokers (P) Ltd.
(2007) 291 ITR 500 (SC) (Asst yr 2001-2002)

No reassessment if no 'reason to believe' even in cases of section 143 (1) : Even in case of assessment under section 143 (1):
1. Prashant Joshi v/s. ITO [(2010) 324 ITR 154 (Bom)]

Even if there is no assessment u/s 143 (3), reopening u/s 147 is bad if there are no proper "reasons to believe" recorded by the AO.
2. Bapalal & Co. v/s. Jt. CIT – (2007) 289 ITR 37 (Mad.)

NO REASSESSMENT IF THE ISSUE IS THE SUBJECT MATTER OF APPEAL:

Appeal pending from original assessment order. Reassessment cannot be done as the order merged with order of Higher authorities: Appeal was pending before ITAT and the matter was subject matter of appeal before CIT(A). No Reassessment. Once an issue is subject matter of appeal before Tribunal, issuance of notice of reassessment on said ground hasto be considered bad in law. (A.Y.2000-01).

Chika Overseas (P) Ltd v ITO (2011) 131 ITD 471 (Mum) (Trib).

CAN A NEW CLAIM BE MADE IN THE RE ASSESSMENT PROCEEDINGS IF NOT CLAIMED IN THE ORIGINAL ASSESSMENT:

During reassessment the assessee can put forward claims for deduction of any expenditure which is relatable to income which is sought to be assessed as escaped income

CIT v. Caixa Economica De Goa (1994) 210 ITR 719(Bom.)

Principles emerging from Sun engineering (P) Ltd. (SC) (1992) 19 198 ITR 297 (SC)

On reassessment u/s 147, the original assessment is not wiped of Off but it remains. Matters lost in the original assessment proceedibut proceedings ngs which have since acquired finality cannot be claimed in the reassessment proceedings. Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings u/s147. However , the expenses pertaining to the income which hau/has escaped assessment can be claimed. If ROI was filed and no assessment was made and the case is taken up u/s147, then the expenses not claimed in the original ROI cannot be claimed u/s14expenses s147. However , expenses pertaining to escaped income can be claimed u/s147. U/s 147 the income cannot be reduced below the income originally assessed. Similarly , u/s147 , the losses cannot be assessed above the losses originally assessed, Sec147 is for the benefit of revenue and not for the benefit of the assessee.

REVISIONS (263 & 264)

REVISION OF ORDERS PREJUDITIAL TO THE REVENUE 263

POWER WITH COMMISSIONER

The Commissioner may call for and examine the record of any proceeding under this Act,

ORDERS WHICH ARE PREJUDICIAL TO THE REVENUE

if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue,

OPPORTUNITY TO THE ASSESSEE

he may, after giving the assessee an opportunity of being heard

ENQUIRY AS NECESSARY

and after making or causing to be made such inquiry as he deems necessary,

ORDER

pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

MATTERS COVERED IN APPEAL SHALL BE SPARED

where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

TIME LIMIT

No order shall be made after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

NO TIME LIMIT WHEN COVERED BY TRIBUNAL OR COURT ORDER

an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

EXCLUSIONS FOR TIME LIMIT

In computing the period of limitation the time taken in giving an opportunity to the assessee to be reheard and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

COMMISSIONER OF INCOME TAX vs. MAX INDIA LTD. (2007) 295 ITR 282 (SC)

When the CIT passed the impugned order under s. 263, two views were inherently possible on the word "profits" occurring in the proviso to s. 80HHC(3) and therefore, subsequent amendment of s.80HHC made in the year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under s. 263.

REVISION OF OTHER ORDERS 264

POWER WITH THE COMMISSIONER

the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

TIME LIMIT

The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

TIME LIMIT FOR APPLICATION BY THE ASSESSEE

In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier:

POWER OF COMMISSIONER TO ADMIT

the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

EXCLUSIONS

The Commissioner shall not revise any order under this section in the following cases-where an appeal against the order lies to the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal the assessee has not waived his right of appeal; or
where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

FEES FOR REVISION APPLICATION

Every application by an assessee for revision under this section shall be accompanied by a fee of [five hundred] rupees.

TIME LIMIT TO DISPOSE APPLICATION

On every application by an assessee for revision an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

NO TIME LIMIT WHEN COVERED BY TRIBUNAL OR COURT ORDER

an order in revision may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court

ISSUES IN REVISION

PRE-CONDITIONS FOR INVOKING SECTION 263- TWIN CONDITIONS TO BE SATISFIED SIMULTANEOUSLY

Recourse to Section 263(1) cannot be taken if the impugned order is erroneous but not prejudicial to the interest of the revenue; or if it is prejudicial to the interest of the revenue but not erroneous.
Malabar Industrial Co. Limited v. CIT [2000] 243 ITR 83 (SC), CIT v.Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC)

The Commissioner gets power of revision under Section 263 where the assessment order is erroneous and prejudicial to the interest of revenue. The twin conditions are required to be satisfied simultaneously.
S. Murugan v. ITO [2012]135 ITD 527 (Chennai) (Trib.), J. K. Construction Co. v. ITO [2007]162 Taxman 46 (Jodhpur) (Trib)

MEANING OF THE TERM "ERRONEOUS"

Non application of mind to relevant material or an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of order being erroneous.
CIT v. Jawahar Bhattacharjee [2012] 341 ITR 434 (Gauhati) (HC) (FB)

The error envisaged by Section 263 is not one that depends on possibility or guess work, but it should actually be an error either of fact or of law.
ACIT v. Technip Italy Spa [2006] 150 Taxman 13 (Delhi) (Trib.), Pratap Footwear v. ACIT [2003] SOT 638 (Jabalpur) (Trib.)

MEANING OF THE TERM "PREJUDICIAL TO THE INTEREST OF THE REVENUE"

*In the case of **CIT v. Bhagwan Das [2005] 272 ITR 367 (All.)(HC)**, the High Court held that non-application of mind by the Assessing Officer was prejudicial to the interest of the revenue.*

SCOPE OF REVISION UNDER SECTION 263

The Assessing Officer was held entitled to consider only those grounds which were considered by the Commissioner and not any other items to make fresh assessment.
CIT v. D. N. Dosani [2006] 280 ITR 275 (Guj.)(HC)

Revision is not like reopening of assessment, entire assessment is not opened before the Assessing Officer.
Geometric Software Solutions Co. Ltd. v. ACIT [2009] 32 SOT 428 (Mum.)(Trib.)

ORDERS THAT CAN BE REVISED

Section 263 is not limited to exercising revisional powers qua order of assessment only; it would take within its sweep even orders wherein either the proceedings are dropped or proceedings are filed.
New Jagat Textile Mills (P.) Ltd. v. CIT [2006] 282 ITR 399 (Guj)(HC)

Income-escaping assessment order passed under section143(3), r.w.s. 147, is an assessment order passed by Assessing Officer and therefore, any issue, which Commissioner thinks that Assessing Officer has not considered in the said assessment, can be brought to life by Commissioner in exercise of his powers under section 263.
Spencer & Co. Ltd. v. ACIT [2012] 137 ITD 141 (Chennai) (Trib) (TM)

The order passed by the authority, which is subordinate to the Commissioner, to give effect to the orders of the Tribunal is covered under the phrase "any order". Thus, invoking of power of revision under Section 263 by the Commissioner is within the permissible limits of the law.
Pentamedia Graphics Ltd. v. ACIT [2012] 17 ITR 302 (Chennai) (Trib.)

CAN THE ASSESSEE MAKE A NEW CLAIM

Assessee is not eligible to claim any new benefit in assessment proceedings pursuant to section 263.
ACIT v. ITW India (P) Ltd. [2010] 40 SOT 348 (Hyd.) (Trib.)

Where assessee did not prefer any appeal against a revision order of the Commissioner, no ground relating to revision order could be taken in appeal against fresh assessment order passed giving effect to revision order.
Crew B.O.S. Products Ltd v. ACIT [2012] 135 ITD 542 (Delhi) (Trib.)

PRINCIPLES OF NATURAL JUSTICE

The notice must mention how the impugned order is prejudicial to the interests of the Revenue.
Brahma Buildersv. DCIT [2012] 77 DTR 249 (Pune) (Trib.)

Revision order passed by the Commissioner under Section 263 of the Act on a ground in addition to the grounds mentioned in his show cause notice issued cannot be sustained.
CIT v. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC), CIT v. Contimeters Electricals (P) Ltd.
[2009] 317 ITR 249 (Delhi) (HC), CIT v. D. N. Dosani [2006] 280 ITR 275 (Guj.) (HC)

CHANGE OF OPINION

Two views are possible- Revision is not valid: When the Assessing Officer takes one of the two views permissible in law and which the Commissioner does not agree with and which results in a loss of revenue, it cannot be treated as erroneous order prejudicial to the interest of revenue, unless the view taken by the Assessing Officer is completely unsustainable in law.
CIT v. Max India Limited [2007] 295 ITR 282 (SC)
Malbar Industries Co Ltd v. CIT [2000] 243 ITR 83 (SC)

*Even an audit objection and a possibility of a second view was held to be reason good enough for **not** invoking Section 263.*
CIT v. Sohana Woollen Mills [2007] 296 ITR 238 (P&H) (HC)

Revision on the basis of retrospective amendment : An order which became erroneous due to retrospective amendment in the law would be amenable to revision under section 263.
CIT v. Vincast Engineering [2006] 280 ITR 385(All)(HC)

APPLICATION OF MIND BY THE ASSESSING OFFICER

When the order of the Assessing Officer was silent on the claim made by assessee, and allowed such claim, without any discussion, it was held that such an order was erroneous and prejudicial to the interest of revenue.
Bharat Overseas Bank Ltd. v. CIT [2013] 152 TTJ 546 (Chennai) (Trib.)

Areas where Assessing Officer had applied mind – Section263 proceedings not valid, areas where he didn't apply mind – Section 263 proceedings valid.
CIT v. Hindustan Lever Ltd [2012] 343 ITR 161 (Bom.) (HC)

In one case, where the High Court found that the Assessing Officer examined all the details with respect to assessee's claim of deduction, the order could not be said to be erroneous or was passed without application of mind merely because the same was not elaborate order.
CIT v. Design & Automation Engineers (Bombay) (P) Ltd. [2008] 323 ITR 632 (Bom.)(HC),
Manish Kumar v. CIT [2012] 134 ITD 27 (Indore) (Trib.)

POSSIBILITY OF FURTHER ENQUIRY

Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by Assessing Officer while making assessment/assessment order cannot be declared to be erroneous and prejudicial to interest of revenue.
Salora International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.)

In the following cases, it was held that assessment framed under section 143(3) cannot be revised on ground that desired inquiry was not made.
Amrik Singh v. ITO [2003] 127 Taxman 87 (Mag.) (Chd.) (Trib.),

NON SPEAKING ASSESSMENT ORDER

Where the assessing officer during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the assessing officer but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction under section 263 of the Act.
CIT v. Ashish Rajpal [2009] 320 ITR 674 (Delhi) (HC),
CIT v. Vikash Polymers [2010] 194 Taxman 57 (Delhi) (HC)

NO REVISION IN PENDENCY OF APPEAL

Once the issue was considered and decided by the COMMISSIONER (APPEALS), revision under section 263 cannot be done.
RankaJewellers v. Addl. CIT [2010] 328 ITR 148 (Bom.)(HC)

Matter not considered and decided in appeal can be subjected to revision.
CIT v. Ram Kishore Raj Kishore [2004] 135 Taxman 511 (All.) (HC)

NO REVISION CAN BE MADE IF THE ORDER ITSELF IS VOID:

As the order of the Assessing Officer passed under section 147 / 143(3) was itself void, the order of CIT passed under section 263 for quashing this order was without jurisdiction.
Inder Kumar Bachani (HUF) v. ITO [2006] 101 TTJ 450 (Lucknow) (Trib.)

REMEDY AGAINST SECTION 263 ORDER

The appropriate remedy against the order passed by the CIT in exercise of its revision jurisdiction under section 263 is to file appeal before the Tribunal
John George Vettath v. CIT [2007] 162 Taxman 134 (Ker.) (HC)

CHANGE IN LAW WHEN THE COMMISSIONER INVOKES SECTION 263

It was held that legal decisions available at the point of time when Commissioner is examining the matter for exercise of powers under section 263 cannot be ignored. What is to be seen is the legal position prevailing as on the point of time when revision order is passed and not when the Assessing Officer passed the impugned order.

Star India Ltd. v. Addl. CIT [2012] 49 SOT 422 (Mum.)(Trib.)

CAN A REVISION ORDER BE PARTIALLY VALID?

In this case, the Commissioner revised the order under section 263 on more than one ground. It was held that that the revision on certain grounds was valid while in case of certain other grounds, it was invalid.

Colorcraft Kashimira Ceramic Compound v. ITO [2007] 105 ITD 599 (Mum.) (Trib)