Guide to the law on reopening of assessments u/s 147 of the Income-tax Act

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The scope and effect of a reopening of assessment is still shrouded in mystery even after various judgments of the Supreme Court and High courts. Reassessment is one of the distinguishing weapons in the armoury of the Department, empowers the Assessing Officer to assess, reassess or recompute income, turnover etc, which has escaped assessment. A number of intricate issues crop up during the reassessment proceedings. Some of the issues are been dealt with here under:

I. Preconditions:

1.1 It is well known that powers of the Assessing Officer to re-open a completed assessment are not unfertile. Sec. 147 and Section 148 of the Act contains the perquisite conditions to be fulfilled for invoking the jurisdiction to reopen the assessment.

1.2 The general principle is that once an assessment is completed it becomes final. Section 147 empowers the Assessing Officer to reopen an assessment if the conditions prescribed therein are satisfied. The conditions are:

i) The **Assessing Officer** has to **record the reason** for taking action under section 147. It is on the basis of such reasons recorded in the file that the validity of the order reopening a assessment has to be decided. Recorded reasons must have a live link with the formation of the belief.

ii) The Assessing Officer has **reason to believe** that **any income** chargeable to tax **has escaped assessment** for any assessment year.

iii) The jurisdictional condition under section 147 is the **formation of belief by the Assessing Officer** that income chargeable to tax has escaped assessment for any assessment year.

iv) No action can be initiated under section 147 **after the expiry of 4 years** from the end of the relevant assessment year unless the income chargeable to tax has escaped assessment by reason for the failure on the part of the **taxpayer to disclose fully and truly all material facts** necessary for his assessment..

1.3 The Apex Court in the case of **GKN Driveshafts (India) Ltd. v/s D.C.I.T. (2003) 259 ITR 19 (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.

1.4 The courts have consistently held that the pre condition are jurisdiction conferring on the AO to reopen the assessment and their non fulfillment renders the initiation itself ab-

initio void. The High Court in appropriate cases has power to issue an order prohibiting the Income-tax Officer from proceeding to reassess the income when the conditions precedent do not exist. It is well-settled however that though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, will issue appropriate orders or directions to prevent such consequences.

2. **REASONS – RECORDED TO BE SUPPLIED AND OBJECTIONS TO BE DISPOSED OFF:**

2.1 Assessing officer should dispose off the assessee objection and serve the order on assessee. Assessing officer should not proceed with assessment for 4 weeks thereafter.
Asian Paint Ltd. vs. Dy. CIT (2008) 296 ITR 96 (Bom)

2.2 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)**

2.3 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.) *Matter set-a-side to pass fresh order.*

- ***Bhabesh Chandra Panja vs. ITO (2010) 41 SOT 390 (TM) (KOL)***
Assessing officer completed the asst without providing the reasons recorded inspite of request – Held Assessment order invalid set aside for fresh orders.

2.4 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)

COMMUNICATION OF REASONS – MANDATORY

2.5 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)

2.6 **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)
(www.itatonline.org.com).

2.7 **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.)

- **The Mumbai ITAT recently followed the above decision and quashed the reassessment proceedings in the case of Tata International Ltd. vs. Dy. CIT ITA Nos. 3359 to 3361/M/2009, A.Ys. 2001-02 to 2002-03, Bench "E" dated 29/6/2012.**

2.8 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

NEW REASONS CANNOT BE ALLOWED TO BE INTRODUCED OR SUPPLIED:

2.9 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)

2.10 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.)

2.11 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)

2.12 **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.)

REOPENING IS NOT PERMISSIBLE ON BORROWED SATISFACTION OF ANOTHER ASSESSING OFFICER:

2.13 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 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.)

3. **REASONS – NON APPLICATION OF MIND:**

3.1. A.O. having communicated to the auditor that a certain decision of a High Court did not apply to the facts of the petitioner case but later rejected the objections raised by the petitioner to the notice u/s. 148 taking a contrary view without giving any reasons as to why he has departed from the earlier view that the decision was not applicable there was total non application of mind on the part of the AO, impugned communication is set aside and the matter is remanded back to the AO for de nevo consideration.
Asian Cerc Information Services (P) Ltd vs. ITO
(2007) 293 ITR 271 (Bom)
Purity Tech Textiles Pvt. Ltd. vs. ACIT (2010) 325 ITR 459 (Bom)

3.2 **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)

4. **REASON TO BELIEVE:**
The Apex Court in the case of **Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC)** analysed the Phrase **"reason to believe"** and observed that "It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn."
It is not for somebody else to tell the assessing authority what inferences, whether of facts or law, should be drawn.

4.1 The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The power is not akin to a review. The existence of tangible material is necessary to ensure against an arbitrary exercise of power.
Aventis Pharma Ltd. vs. ACIT (2010) 323 ITR 570 (Bom)

4.2 **NO REASSESSMENT JUST TO MAKE AN ENQUIRY OR VARIFICATION:**
No reopening to make fishing inquiries.
1. Bhor Industries Ltd. v/s. ACIT – [(2004) 267 ITR 161 (Bom)]
2. Hindutan Lever Ltd. v/s. R. B. Wadkar, ACIT – [(2004) 268 ITR 332 (Bom)]
3. Bhogwati Sahakari Sakhar Karkhana Ltd. v/s. Dy. CIT [(2004) 269 ITR 186 (Bom)]
4. Ajanta Pharma Ltd. v/s. ACIT – [(2004) 267 ITR 200 (Bom)]
5. Grindwell Norton v/s. Jagdish Prasad Jabgid, ACIT – [(2004) 267 ITR 673 (Bom)]

Reasons to believe – Survey Subsequently

4.3 Detection of excess stock or unaccounted expenditure on renovation of business premises at the time of survey u/s. 133A in a subsequent year, could not constitute reason to believe that such discrepancies existed in earlier years also and, therefore, reopening of assessments for those years on the basis of aforesaid reason to believe was not valid.
CIT vs. Gupta Abhushan (P) Ltd (2008) 16 DTR (Del) 76 - Assessment Year 1999-2000 to 2001-2002

4.4 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 cannot be sustained.
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.)

4.5 **Irrelevant and non existing reasons :**
Balakrishna H. Wani vs. ITO (2010) 321 ITR 519 (Bom)

- **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.

4.6 ***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)
(Jet Airways Supra followed).

- ***Hotel Regal International & Anr. Vs. ITO (2010) 320 ITR 573 (Cal.)***
Petitioner were called upon to file objection to the notice u/s. 148 proposing to reopen the assessment on ground that Rs. 73,219 had escaped asst. Now the authorities could not shift their stand and pass on order on other ground that valuation report received subsequent to passing of the order disposing the objection the Assessing officer must consider the material and pass speaking order. Assessment quashed.

ITO v Bidbhanjan Investment & Trading CO (P) Ltd (2011) 59 DTR 345 (Mum) (Trib)

4.7 **Procedural defect:**
No notice u/s. 148 having been served on the assessee prior to re-opening of assessment, Asst. made u/s. 147 was bad in law; argument based on S. 292BB was not sustainable on the facts of the case.
CIT vs. Mani Kakkar (2009) 18 DTR (Del) 145 (Asst yr 2001-2002)

4.8 Issue of notice beyond limitation period : Expression "to issue" – Meaning send out – Notice signed on 31/3/2010 sent to speed post on 7/4/2010 – Notice issue after Six years for the relevant A.Y. 2003-04
Kanubhai M. Patel (HUF) vs. HIren Bhatt (2010) 43 DTR 329 (Guj.)

4.9 Notice issued within period of limitation but send after that period – Direction to ascertain when the notice had been dispatched by reg. post.
CIT vs. Major Tikka Khushwat Singh (1995) 212 ITR 650 (SC)
R.K. Upadhaya vs. Shanabhai P. Patel (1987) 166 ITR 163 (SC)

4.10 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 us 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)

4.11 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).

4.12 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)

5. **Notice u/s. 143(2) is Mandatory:**

- **CIT vs. Mundra Nanvati (Bombay High Court)**
  (2009) 227 CTR 387 Bom.
- **CIT vs. Pawan Gupta (2008) 304 ITR 177 (Del.)**
- **CIT vs. Virendry Kumar Agarwal**
  Appeal No. 2429 OF 2009 DT. 7/1/2010 (Bom. H.C.)
- **CIT vs. Central – II vs. Mr. Salman Khan ITXA No. 508 of 2011**

Dt. 6/6/2011 Bombay High Court.

- **UKT Software Technologies vs. ITO (ITAT - Delhi) Source: www.itatonline.org**

6. NO REASSESSMENT U/S. 148, IF ASSESSMENT OR REASSESSMENT IS PENDING:

6.1 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)

6.2 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.)

6.3 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.)

Trustees of H.E.H. The Nizam's Supplemental Family Trust v/s. CIT – [(2000) 242 ITR 381 (SC)]
Ghanshyamdas v/s. Regional Assistant Commissioner of Sales Tax – [(1964) 51 ITR 557 (SC)]
CIT v/s. S. Raman Chettiar – [(1965) 55 ITR 630 (SC)]
Commercial Art Press v/s. CIT – [(1978) 115 ITR 876 (All)]
A.S.S.P & Co. v/s. C.I.T – [(1988) 172 ITR 274 (Mad)]
CIT v/s. P. Krishnakutty Menon – [(1990) 181 ITR 237 (Ker)]
Indian Tube Co. Ltd. v/s. ITO – [(2005) 272 ITR 439 (Cal)]

7. RE-OPENING BEYOND 4 YEARS :

7.1 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)

7.2 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.)

7.3 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)

7.4 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 re-examining 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.)

7.5 Notice after expiry of four years - 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.)

7.6 Reopening in the absence of "fresh tangible material" is invalid

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

7.6 **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 be 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)

8. **APPROVAL AND SANCTION :**

8.1 CIT having mechanically granted approval for reopening of assessment without application of mind, the same is invalid and not sustainable.
German Remedies Ltd vs. Dy. CIT (2006) 287 ITR 494 (Bom) (Asst. Yr. 1997-1999)
CIT vs. Suman Waman Chaduahry (2010) 321 ITR 495 (Bom)
SLP dismissed on 12/2/2008 (2009) 312 ITR 339 (St.)
United Electrical Company (P) Ltd vs. CIT & Ors (2002) 258 ITR 317 (Del)
(Asst yr 1996-1997)

8.2 Merely affixing a 'yes' stamp and signing underneath suggested that the decision was taken by the Board in a mechanical manner as such, the same was not a sufficient compliance under section 151 of the Act. (A. Y. 1965-66)
Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del.)(H C)

8.3 **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)

9. **Disclosure of Primary Facts :**

9.1 Order of Assessing officer u/s. 143(3) reflects that the primary facts relating to case was before the Assessing officer therefore there was disclosure of all primary facts relating to claim of deduction u/s. 80IB(10).
Mistry Lalji Narsi Development Corp. vs. ACIT (2010) 229 CTR 359 (Bom)

9.2 Allowance of bad debt was specifically raised in the original assessment proceedings and on receiving explanation from assessee the claim of assessee was allowed, reassessment held to be invalid.(A. Y. 2004-05)
Yash Raj Films P. Ltd. vs. ACIT (2011) 332 ITR 428 (Bom.)

9.3 **Reassessment – Despite "Wrong Claim", reopening invalid if failure to disclose not alleged:**
It is necessary for the AO to first state that there is a failure to disclose fully and truly all material facts. If he does not record such a failure he would not be entitled to proceed u/s 147.There is a well known difference between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts.
Titanor Components Limited vs ACIT (2011) 60 DTR 273 (Bom.) (High Court)
Editorial-Hindustan Lever(2004) 268 ITR 332 (Bom) followed).

Statement of unconnected person :

9.4 In the absence of any material before the AO a statement by an unconnected person did not constitute reason to believe that assessee income had escaped assessment especially when the assessee had produced all the material and relevant facts and therefore the reassessment proceedings could not be sustained.
Praful Chunilal Patel vs. M.J. Makwana, ACIT (1999) 236 ITR 832 (Guj)
(Asst year 1991-1992)
JCIT & Ors vs. George Williamson (Aassam) Ltd (2002) 258 ITR 126 (Guj)
(Asst year 1991-1992)

9.5 Disclosure in balance sheet also amounts to disclosure
CIT vs. Corporation Bank Ltd (2002) 254 ITR 791 (SC)
Arthus Anerson & Co. vs. ACIT (2010) 324 ITR 240 (Bom)
Considering the decision against of Dr. Amin's Pathology Lab vs. P.N. Prasad (2001) 252 ITR 673 (Bom)

9.6 **Full and true disclosures of all material facts *:***
Bhagwati Shankari Karkhana (2004) 269 ITR 186 (Bom)
Western Outdoor Interactive (2006) 286 ITR 620 (Bom)
Hindustan Lever Ltd. (2004) 267 ITR 161 (Bom)
Prashant Project Ltd. vs. Asst. CIT (2011) 333 ITR 368 (Bom)
Hindustan Petroleum Corporation Ltd. vs. Dy. CIT
(2010) 328 ITR 534 (Bom)
Nihilent Technologies (P) Ltd v Dy CIT (2011) 59 DTR 281 (Bom)
Shriram Foundry Ltd v. Dy.CIT (2012) 250 CTR 116 (Bom.)
Monitor India (P) Ltd v. UOI (2012) 68 DTR 313 (Bom)
HCL Corporation Ltd. v. ACIT (2012) 66 DTR 473 (Delhi)(High Court)
Kimplas Trenton Fittings Ltd. v.ACIT (2012) 340 ITR 299 (Bom.)

10. **REASSESSMENT WITHIN FOUR YEARS :ASST COMPLETED U/S. 143(3):**

10.1 An asst. order passed after detailed discussion cannot be reopened within a period of 4 years unless the AO has reason to believe that there is to some inherent defect in the assessment.

Techspan India (P) Ltd & Anr vs. ITO (2006) 283 ITR 212 (Del)
{Assessment Year 2001-2002}
German Remedies Ltd vs. DCIT & Ors (2006) 285 ITR 26 (Bom)
Siemens Information System Ltd. vs. ACIT (2007) 295 ITR 333 (Bom)
Kartikeya International vs. CIT (2010) 329 ITR 539 (All.)
Godrej Agrovet Ltd. 323 ITR 97 (Bom)
Aakash Land Developers ITA No. 7350/M/2008 & 7351/M/2008 dt. 29/10/2010.

10.2 **Change of opinion- Within period of Four year:**

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)

11. RE-ASSESSMENT – CHANGE OF OPINION

11.1. **CHANGE OF OPINION**

Amendment as per Direct tax laws (Amendment) Act, 1989 w.e.f. April 1, 1989 as also of sec. 148 to 152 have been elaborated in circular No. 549, dated October 31, 1989. A perusal of clause 7.2 of the said circular makes it clear that the amendments had been carried out only with a view to allay fears t hat the omission of the expression reason to believe" from sec. 147 would give arbitrary power to AO to reopen past assessments on a mere change of opinion i.e. a more change of opinion cannot form basis for reopening a completed assessment.

CIT vs. Kelvinator of India Ltd (2002) 256 ITR 1 (Del) (FB)
(Asst yr 1997-1998)
Approved by Supreme Court in (2010) 320 ITR 561 (SC)

11.2. The assessing officer has been given power to reassess under section 147 upon certain conditions being satisfied, and the assessing officer does not have power to review. If such a change of opinion were to be permitted as a ground of reassessment then it would amount to granting a licence to the assessing officer to review his decision, which he does not have under the provision of section 147.

D. T. & T. D. C. Ltd. vs. CIT (2010) 324 ITR 234 (Del.).

11.3. 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 (Bom) (Assessment Year 2003-2004)

11.4. In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.
Raymond Woollen Mills Ltd. Vs. Income Tax Officer And Others
(1999) 236 ITR 34 (S.C.)

11.5. 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.

Change of Opinion : Case Laws

a. Asteroids Trading & Investment P. Ltd. vs DCIT
(2009) 308 ITR 190 (Bom) (193)
No new material brought on records – Reassessment on change of opinion of officer not valid.

b. Asian Paints Ltd. vs. DCIT (2008) 308 ITR 195 (Bom) (198)
Mere change of opinion of A.O. not ground for reassessment.

c. ICICI Prudential Life Insurance Co. Ltd. (2010) ***325 ITR 471*** (Bom)
Re-opening of assessment on the same ground in the absence of any tangible material was based on mere change of opinion and therefore is not sustainable.

d. Aventis Pharma Ltd. vs. Astt. CIT (2010) 323 ITR 570 (Bom) (577)
Re-opening of assessment on mere change of opinion not sustainable.

e. Bhavesh Developers vs. A.O. (2010) 224 CTR 160 (Bom)

f. International Global Networks BV v. DDIT (IT) (2012) 50 SOT 433 (Mum) (Trib.),

g. *General Insurance Corporation of India v. Dy .CIT (2012) Vol.114 (1) Bom. L.R. 0246 (High Court):*

The communication of Chairman of CBDT has also considered by the Assessing Officer in original assessment proceedings. Accordingly the High Court quashed the reassessment proceedings. (A. Y. 2006-07).

12. **RE-ASSESSMENT – AUDIT OBJECTION**

12.1 A.O. having communicated to the auditor that a certain decision of a HC did not apply to the facts of the petitioners case but later rejected the objections raised by the petitioner to the notice u/s. 148 taking a contrary view without giving any reason as to why he has departed from the earlier view that the decision was not applicable, there was total non application of mind on the part of AO; matter remanded back to AO for de-novo consideration.
Asian Cerc Information Services (P) Ltd vs. ITO (2007) 293 ITR 271 (Bom)

12.2 AO having allowed assessee's claim for depreciation in the regular assessment and reopened the assessment pursuant to audit objection, it cannot be said that he had formed his own opinion that the income had escaped assessment, and the reopening being based on mere change of opinion, same was not valid.
IL & FS Investment Managers Ltd. vs. ITO & Ors. (2008) 298 ITR 32 (Bom) (Asst year 2003-2004)
Vijaykumar M. Hirakhanwala (HUF) vs. ITO & Ors (2006) 287 ITR 443 (Bom) (Asst years 1997-1998 to 1999-2001 to 2002-2003)
CIT vs. Lucuns TVS Ltd. (2001) 249 ITR 306 (SC)
Purity Tech Textiles Pvt. Ltd. vs. ACIT (2010) 325 ITR 459 (Bom)

12.3 Audit Objection cannot be the basis for reopening of assessment to income tax by the revenue.
Indian & Eastern Newspaper Society Vs. CIT (1979) 119 ITR 996 (SC).

12.4 Reassessment was not valid as the AO held no belief on his own at any point of time that income of assessee had escaped asst. on account of erroneous computation of benefit u/s 80HHC and was constrained to issue notice only on the basis of audit object.
Adani Exports vs. DCIT (1999) 240 ITR 224 (Guj) (Asst yr 1993-94)

13. **REASSESSMENT – INTERPRETATION OF HIGH COURT DECISION:**
Reopening of assessment on the basis of wrong interpretation of high court decision was invalid.
Assam Co. Ltd vs. UOI & Ors (2005) 275 ITR 609 (Gau)

14. **DIRECTION OF THE HIGHER AUTHORITIES:**

14.1 Revisional authority having directed the AO to adjudicate specific issues which were addressed and examined by him, asst made by the AO on a higher total income by assuming more powers than that of the revisional authority is patently illegal and without jurisdiction.
N. Seetharaman vs. CIT (2008) 298 ITR 210 (Mad)
(Asst yr 1989-1990 to 1999-2000)

14.2. The assessing officer for the assessment year 2000-01 recorded a specific note in the assessment order which indicated that the assessment order was passed under the dictates of the commissioner. The supreme court in the challenge to the reopening for

the same assessment year held that the assessment order passed on the dictates of the higher authority being wholly without jurisdiction, was a nullity. Therefore with a view to complete the justice to the parties. The Supreme Court directed that the assessment proceedings should be gone through again.
CIT Vs. Greenworld Corporation (2009) 314 ITR 81 (SC).

15. ***Supreme court decision cannot be the basis for Reopening:***
The ITO cannot seek to reopen an assessment under section 147 on the basis of the Supreme Court decision in a case where assessee had disclosed all material facts.
Indra Co. Ltd. V. ITO (1971) 80 ITR 559 (Cal.)(Asst yr 1959-1960)
***SESA Goa ltd v/s* Jt. CIT (2007) 294 ITR 101 BOM**
Subsequent High court decision - beyond 4 year Discloure of complete facts. Reopening bad in law.
Contrary Decision:
Kartikeya International vs. CIT (2010) 329 ITR 539 (All.)
Asst. CIT v. Ventral Warehousing Corp.(2012) 67 DTR 356 (Delhi)

16. **REASSESSMENT BASED ON RETROSPECTIVE AMENDMENT.**
NOT JUSTIFIED:

- Denish Industries Ltd. Vs. ITO (2004) 271 ITR 340 (Guj.) (346)
  SLP dismissed (2005) 275 ITR 1 (St.)
- Rallies India Ltd. vs. ACIT (2010) 323 ITR 54 (Bom)
- SGS India Pvt. Ltd. vs. ACIT (2007) 292 ITR 93 (Bom)
  Law in subsequent A.Y. is different, reopening not proper.
- Siemens Information Ltd. (2007) 293 ITR 548 (Bom)
  Notice u/s. 148 based on amended law not applicable to relevant A.Y.
- Sadbhav Engineering Ltd. vs. Dy. CIT (2011) 333 ITR 483 (Guj.)
- Kalpataru Sthapatya (P) Ltd. (2012) 68 DTR 221 (Guj)(High Court).
- **Reopening, even within 4 years, on basis of retrospective amendment to section 80IB(10) is held to be invalid.:**
  Ganesh Housing Corporation Ltd. v. Dy. CIT (Guj) (High Court) www.itatonline.org
- **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)

17. **<u>Appeal pending from original assessment order. Reassessment cannot be done as the order merged with order of Higher authorities</u>.**
Proviso to section 147 has been inserted by Finance Act, 2008, w.e.f. 2008.
(2008) 298 ITR 163 (st), - Notes on clauses.
(2008) 298 ITR St. 222 to 224 Memorandum explaining the provision.
Metro Auto Corporation vs. ITO (2006) 286 ITR 618 (Bom)
Vodafone Essar Gujarat Ltd. Vs. ACIT (2010) 37 DTR 259 (Guj.)

17.1 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).

17.2 **ICICI Bank Ltd. v. Dy. CIT (2012) 246 CTR 292/ 204 Taxman 65 (Mag.)(Bom.)(High)**

18. **<u>JURISDICTION – REASSESSMENT :</u>**
Jurisdiction can be challenged in second appeal
Investment Corpn Ltd vs. CIT (1992) 194 ITR 548 (Bom) (556)
N. Nagaganath Iyer vs. CIT (1996) 60 ITR 647 (Bom) (655)
Hemal Knitting Industries vs. ACIT (2010) 127 ITD 160 (Chennai)(TM)

- **Rule 27 of ITAT Rules:** Reassessment ground can be raised.
- If assessee does not ask for the reasons recorded and object to reopening, ITAT cannot remand to Assessing officer and give assessee another opportunity. CIT vs. Safetag Int. India Pvt. Ltd. dt. 3/2/2011 (Del.) (H.C.)

19. **<u>RECTIFICATION PROCEEDINGS INITIATED AND DROPPED.</u>**

19.1 Dept. having taken one of the two possible views in the matter of calculation of deduction u/s. 10B and 80HHE asst. cannot be reopened by taking the other view more so when the CIT(A) has already quashed the rectification us. 154 which was made on the very same ground.
Westun Outdoor Interactive (P) Ltd vs. A.K. Phute, ITO & Ors
(2006) 286 ITR 620 (Bom) (Asst yr 2000-2001)

19.2 Allowance u/s. 80HHC having been granted by the ITO in rectification proceedings. The remedy the against lay with the dept. either u/s. 154 or S. 263 and not S. 147 further reassessment having been made on a date earlier than fixed same was bad.
Smt. Jamila Ansari vs. ITO & Anr (1997) 225 ITR 490 (Addl)
(Asst yr 1988-1989)

19.3 **<u>SEC. 147 VIZ – A – VIZ SEC.154</u>**
Section 147 reopening for rectifying sections 154 mistakes are invalid.

- ***Hindustan Unilever Ltd. vs. Dy. CIT (2011) 325 ITR 102 (Bom.)***
- **CIT v/s. EID Parry Ltd. (1995) 216 ITR 489 (Mad)**

The jurisdiction under sections 147(b) and 154 are different but in cases where they seem to overlap, the ITO may choose one in preference to the other and once he has done so, he should not give it up at a later stage and have recourse to the other.

- **Reassessment- Rectification pending – (S.154)**
  When proceedings under section 154 were pending on the same issue and not concluded , parallel proceedings under section 147 initiated by the Assessing Officer are invalid ab inito , especially when except the return and its enclosures , no other material or information was in the possession of the assessing Officer.(Asst year 2004-05).
  Mahinder Freight Carriers v Dy CIT (2011) 56 DTR 247 (Mum) (Trib).

- **Berger Paint India Ltd. v/s. ACIT & Ors. [(2010) 322 ITR 369 (Cal)]**
- **Jethalal K. Morbia v/s. ACIT [(2007) 109 TTJ (Mum) 1]**
  Followed in:
- **S.M. Overseas P. Ltd. v/s. ACIT [(2009) 23 DTR (Del) (Trib) 29]**

19.4 **Against:**

- CIT v/s. India Sea Foods (2011) 54 DTR (Ker) 223
- Accordingly, the fact that there were section 154 proceedings is not a bar to the section 147 proceedings. It was further held that the scope of section 154 & 147 / 148 are different and it cannot be said as a general principle that if notice under section 154 is issued, then notice under section 147 / 148 is barred or prohibited (Hindustan Unilever Ltd**.** 325 ITR 102 (Bom.) distinguished).(A. Y. 2000-2001)
  Honda Siel Power Products Ltd. vs. Dy. CIT(2011) 197 Taxman415 (Delhi). (Delhi High Court).
  Assessee's SLP dismissed **Honda Siel Power Products Ltd vs DCIT (SC) .www.itatonline.org.**

20. **REOPENING BASED ON VALUATION REPORT**

20.1 AO had no jurisdiction to reopen the concluded assessments on the strength of valuation report of valuation officer obtained officer obtained subsequently and that too not in exercise of powers u/s. 55A impugned notices under S. 148 quashed.
Prakash Chand vs. Dy. CIT & ors. (2004) 269 ITR 260 (MP)
(Asst yr 1997-2001)

20.2 Assessing Authority having made a detailed enquiry before making the assessment of the petitioner u/s. 143(3) the impugned notice u/s. 148 was issued only on the basis of change of opinion and was therefore, invalid, notice was also illegal on the ground that it was based on the valuation report of cost of construction.
Girdhar Gopal Gulati vs. UOI (2004) 269 ITR 45 (All)
(Asst yr 1996-1998 to 1999-2000)

20.3 Mere DVO's report cannot constitute reason to believes that income has escaped assessment for the purpose of initiating reassessment and therefore tribunal was justified on holding that the reassessment proceedings initiated on the basis of DVO's

report were invalid abinitio, more so when it has found that the DVO's report sufers from various defects and mistakes.
CIT vs. Smt. Meena Devi Mansighka (2008) 303 ITR 351
(Asst yr 1995-1997 to 1998-1999)

20.4. ***Valuation report cannot by itself form the basis***
Where apart from the valuation report which was relied upon by the ITO there was no material before him to come to the prima facie conclusion that the assessee had received the higher consideration than what had been stated in the sale deed, reassessment would not be justified.
ITO V. Santosh Kumar Dalmia (1994) 208 ITR 337 (Cal.)(Asst yr 1973-1974)
ITO v Shiv Shakti Build Home (P) Ltd (2011) 141 TTJ 123 (Jodhpur) (Trib).

Reopening of the assessment – based on the opinion given by the District Valuation Officer

Reopening of the assessment – based on the opinion given by the District Valuation Officer – opinion of the DVO per se is not an information for the purposes of reopening assessment under section 147 of the Income-tax Act,1961 – Held that: –. The Assessing Officer has to apply his mind to the information, if any, collected and must form a belief thereon- Department was not entitled to reopen the assessment.
Assistant Commissioner of Income-tax vs. Dhariya Construction Co. (2010) 328 ITR 0515

21. **REASSESSMENT JURISDICTION IS AVAILABLE FOR BENEFIT OF REVENUE ONLY.**

21.1. Since the proceedings under section 147 are for the benefit of the revenue and in the assessee, and are aimed at gathering the escaped income of the revenue and an assessee and are aimed at gathering the escaped income of an assessee the same cannot be allowed to be converted as revisional or review proceedings at the instance of the assessee, thereby making the machinery workable.
CIT vs. Sun Engineering Works (p.) Ltd. (1992) 198 ITR 297 (SC)(Asst yr 1960-1962)

21.2. Proceeding under section 147 are for the benefit of the revenue and not the assessee and hence the assessee cannot form the be permitted to convert the reassessment proceedings as his appeal or revision in disguise and seek relief in respect of items earlier rejected, or claim relief inrespect of items not claimed in the original assessment proceedings unless relatable to the escaped income and reagitate concluded matters. Allowance of such a claim in respect of escaped assessment in the case of reassessment has to be limited to the extent to which they reduce the income to that originally assessed. Income for the purpose of reassessment cannot be reduced beyond the income originally assessed.
K. Sudhakar S. Shanbhag V. ITO (2000) 241 ITR 865 (Bom.) (Asst yr 1987-1989)

Assessee having not claimed deduction under section 80HHC, in its return because it had only income from other sources and no business income, claim made in the revised

return by filing audit report under section 147 due to disallowances under section 43B is upheld.
ITO vs. Tamil Nadu Minerals Ltd. (2010) 124 ITD 156 (Chennai)(TM).

22. ***Ignorance of board circular is not sufficient to Reopen:***
The mere fact that the ITO was not aware of the circular of the board is not sufficient to reopen the assessment.
Dr. H. Habicht V. Makhija (1985) 154 ITR 552 (Bom.) (Asst yr 1975-1977)

23. ***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):

A. ***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.)**
A notice issued under s. 148 of the Act should be a reasoned one. In the absence of any new material, the AO is not empowered to reopen an assessment irrespective of the fact whether it is made u/s. 143(1) or section 143(3) of the Act.

4. **Aipta Marketing P. Ltd. v/s. ITO - [(2008) 21 SOT 302 (Mum.)]**

5. **Pirojsha Godrej Foundation v/s. A.D.I.T. (Exemption) – [(2010) 133 TTJ (Mum) 194]**

6. **Rajgarh Liquors v/s. CIT - [(2004) 89 ITD 84 (Ind.)]**
Where only intimation was issued u/s. 143 (1) and no notice was issued u/s. 143(2) within the prescribed time limit, a substantive right is created of not being put to scrutiny could be said to have accrued and could not be snatched away by resorting to other provisions of the Act.

7 **Assessment u/s 143(1) - Reopening on mechanical basis void even where section 143(3) assessment not made.**
For purpose of reopening of assessment under section 147, Assessing Officer must form and record reason before issuance of notice under section 148. The reasons so recorded should be clear and unambiguous and must not be vague. There can not be any

reopening of assessment merely on the basis of information received without application of mind to the information and forming opinion thereof.
Sarthak Securities Co. (P.) Ltd. vs. ITO (2010) 329 ITR 110

B. ***[Within four year]***

1. Asian Paints v/s. Dy. CIT & Anr. – [(2009) 308 ITR 195 (Bom)]
2. Audco India Ltd. v/s. ITO – [(2010) 39 SOT 481 (Mum)]
3. Dy. CIT v/s. Pasupati Spinning & Weaving Mills Ltd. – [(2010) 6 ITR (Trib) 689 (Del)]

24. **Section 150**

24.1 The Section 150 of the Act provides that notwithstanding the limitation prescribed under section 149, 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 proceedings under the Act by way of appeal, reference or revision or by a court in any proceeding under any other law.

24.2. 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.

24.3 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)

24.4 According to s. 150(2), the provisions of s. 150(1) shall not apply where, by virtue of any other provision limiting the time within which action for assessment, reassessment or recomputation may be taken, such assessment, reassessment or recomputation is barred on the date of the order which is the subject-matter of the appeal, reference or revision in which the finding or direction is contained. **Thus, s. 150(2) enacts a well-settled principle of law that an appellate or revisional authority cannot give a direction which goes to the extent of conferring upon the AO if he is not lawfully seized of jurisdiction**.

24.5 Similarly Bombay High court in the case of **Rakesh N Dutt v/s. Asst CIT (2009) 311 ITR 247** wherein it was held, that the Tribunal had held that the addition of Rs. 90 lakhs, if at all permissible legally, it could be considered in the hands of the two companies and not in the hands of the assessee. There was no finding that the amount of Rs. 90 lakhs was liable to be taxed in the hands of the assessee. Consequently, reopening of the assessments by invoking the provisions of section 150 of the Act could not be sustained. Once it was held that section 150 of the Act was not applicable, then the reopening of the assessment beyond the period of six years from the end of the relevant assessment year would be time barred.

24.6 The Tribunal do not have power to give any finding or direction in respect of another year / period which is not before the authority as held by **Supreme Court in CI T vs. Green World Corporation 314 ITR 81 (SC).**

24.7 The decision of the apex court in the case of CIT v/s. Green World Corporation 314 ITR 81 (106) SC wherein it was observed that the provision of S. 150 although appears to be of a very wide amplitude, but would not mean that recourse to reopening of the proceeding sin terms of ss. 147 and 148 can be initiated at any point of time whatsoever. Such a proceedings can be initiated only within the period of limitation prescribed therefore as contained in S. 149. Sec.150(1) 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, s. 150 will have no application.

24.8 **Finding or Direction. (S.149.).**

- Assessment having not been reopened to give effect to the order of the CIT (A). According to the Assessing Officer because of giving effect to the order made by the CIT (A) , will result in to escapement of income . The court held that section 150 did not apply. As there was no failure on the part of assessee to disclose fully and truly all material facts , reassessment is clearly time barred. (A.Y. 1988-89).

  Harsiddh Specific Family Trust v JCIT (2011) 58 DTR 149 (Guj.) (High Court).

- Since no findings or directions had been given in assessment year 1992-93 to tax the receipt in question in assessment year 1994-95 under appeal which is also inherently impossible in view of the findings that it is capital receipt ,provisions of section 150 would apply in the case of the assessee and reopening of the assessment made after a period of six years from the end of the assessment year was clearly time barred.(A.Y. 1994-95).

Vadilal Dairy International Ltd v Asst CIT (2011) 140 TTJ 371 (Ahd.) (Trib.).

- **Power of Appellate authority.**
  Section 150 does not enable or require an appellate authority to give any directions for reopening of assessment, but it deals with a situation in which a reassessment is to be initiated to give effect to finding or direction of appellate authority or Court.(A.Y. 2002-03).

  Sujeer Properties (AOP) v ITO (2011) 131 ITD 377 (Mum) (Trib).

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