

ASSESSMENT PROCEDURES

NOTICE UNDER SECTION 142(1)

Section 142(1)(i): If return of income has not been furnished under section 139(1), then the Assessing Officer may issue a notice requiring the assessee to furnish the return of income within the time specified in the notice. The notice under section 142(1)(i) **can also be issued after 31st December of the relevant AY.**

Section 142(1)(ii): For making an assessment, by issuing this notice the Assessing Officer can require the assessee to furnish accounts, documents, various other information and also a statement of assets and liabilities, **whether included in the accounts or not.**

Notes:

- Assessing Officer shall obtain **previous approval of the JCIT** before requiring the assessee to furnish a statement of assets and liabilities not included in the accounts.
- Assessing Officer shall not require the production of any accounts relating to a **period more than 3 years prior to the previous year.**
- Notice under section 142(1)(ii) can be issued whether the assessee has filed return of income or not.
- Assessing Officer cannot make an assessment by issuing notice under section 142(1)(ii) alone. This notice is normally issued after giving notice under section 143(2), 144, 148.

SECTIONS 142(2A) - 142(2D): DIRECTION FOR SPECIAL AUDIT

1. Direction under section 142(2A) can be issued if the case is pending before the Assessing Officer in an assessment/ reassessment and he is of the opinion that it is necessary to get the accounts audited having regard to:
 - (i) **nature and complexities involved in accounts; or**
 - (ii) **volume of the accounts; or**
 - (iii) **doubts about the correctness of the accounts; or**
 - (iv) **multiplicity of transactions in the accounts; or**
 - (v) **specialised nature of business activity of the assessee; AND**
 - (vi) **it is in the interest of the revenue to get the special audit done.**
2. A show cause notice shall be given to the assessee **to show cause as to why direction under section 142(2A) should not be issued to him.** Where assessee proves that no complexities, etc. are involved in the accounts and interest of

revenue is not affected adversely, then Assessing Officer cannot issue direction under section 142(2A). If Assessing Officer issues direction under section 142(2A) in such a case, then assessee can file a WRIT PETITION in High Court and High Court shall quash such direction issued under section 142(2A).

3. If direction under section 142(2A) is issued without giving a show cause notice to the assessee, then assessee can file a WRIT PETITION in High Court against such direction and High Court shall quash such direction issued under section 142(2A).
4. **This direction can be issued with the previous approval of CCIT/ CIT. (For Faceless Assessment, procedure as given in section 144B shall be followed.)**
5. The accounts shall be audited by a Chartered Accountant nominated by the CCIT/ CIT and the audit fees and expenses relating to audit shall also be fixed by the CCIT/ CIT. And **remuneration of the auditor and other audit expenses shall be paid by the Central Government.**
6. Direction under section 142(2A) can be given **even if the accounts of the assessee have been audited under the Income-tax Act or under any other law.**
7. The assessee is to furnish the report of such audit in the prescribed form to the Assessing Officer within the time period specified in the direction. Such period may be extended by Assessing Officer, suo motu, or on an application made by the assessee and for any good and sufficient reason. However, aggregate of the time period originally fixed and the extended time period **shall not exceed 180 days from the date the direction is received by the assessee.**
8. The assessee shall be **given an opportunity of being heard (except where an assessment is made under section 144)** in case any material gathered on the basis of audit under section 142(2A) is proposed to be utilised for the purposes of assessment.

CONSEQUENCES OF NON-COMPLIANCE WITH A NOTICE ISSUED UNDER SECTIONS 142(1)(i)/ 142(1)(ii) / 143(2) / OR A DIRECTION ISSUED UNDER SECTION 142(2A)

1. It may result in a **best judgment assessment** under section 144 and/ or
2. **Penalty under section 272A** – Penalty of ₹ 10,000 for each such failure and/ or
3. **Prosecution under section 276D** - Imprisonment which may extend upto 1 year with or without fine.

SECTION 142A: ESTIMATE BY VALUATION OFFICER IN CERTAIN CASES

Applicability where the following conditions are met:

- a) For the purposes of assessment or reassessment
- b) to estimate the value, including fair market value, of any asset, property or investment

Procedure

- a) Assessing Officer may make a reference to a Valuation Officer
- b) **Reference may be made whether or not the Assessing Officer is satisfied about the correctness or completeness of the accounts of the assessee**
- c) Valuation Officer may estimate value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions

- d) Valuation Officer shall send a copy of the report to the Assessing Officer and the assessee, **within 6 months from the end of the month** in which reference is made
- e) Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment

SECTION 143(1): SCHEME OF PROCESSING OF RETURNS

1. ADJUSTMENTS TO BE MADE BY SOFTWARE TO THE RETURNED INCOME WHILE PROCESSING UNDER SECTION 143(1)

Where a return has been made under section 139, or in response to a notice under section 142(1), the total income or loss shall be computed after **making any/all of the following exhaustive list of adjustments:**—

- (i) any arithmetical error in the return; or
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under section 139(1);
- (iv) disallowance of expenditure **OR INCREASE IN INCOME** indicated in the audit report but not taken into account in computing the total income in the return;
- (v) disallowance of deduction claimed under section 10AA **OR UNDER ANY OF THE PROVISIONS OF CHAPTER VI-A UNDER THE HEADING C-DEDUCTIONS IN RESPECT OF CERTAIN INCOMES** (i.e., section 80-IA to section 80RRB), if return is furnished beyond the due date specified under section 139(1);
- (vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return. **(If there is a difference in the income shown in return and income appearing in Form 26AS/16/16A, then no adjustment can be made)**

No adjustment shall be made unless an intimation is given to the assessee of such adjustments.

Further response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within 30 days of the issue of such intimation, such adjustments shall be made.

2. Intimation under section 143(1) shall be sent in the following three cases only:

- (i) **Where tax or interest or fee under section 234F is found payable** or
- (ii) **Where any tax or interest is found refundable** or
- (iii) Where adjustments referred to in section 143(1) have been made **resulting in increase / reduction of loss declared by the assessee and no tax or interest and fee under section 234F** is payable by the assessee and no tax or interest is refundable to the assessee.

In any other case, acknowledgement of filing of return of income is deemed as an intimation under section 143(1).

3. No revision under section 263/264 can be made against the intimation under section 143(1). Intimation and deemed intimation under section 143(1) can be rectified under section 154.

4. An appeal can be filed to CIT(A) against the intimation under section 143(1).
5. The intimation under section 143(1) is deemed as notice of demand under section 156. Thus, demand in the intimation should be paid within 30 days from the date of receipt of such intimation. In case of failure, assessee shall be deemed to be an assessee in default.
6. As per section 143(1), the intimation for tax payable/ refundable shall not be sent after the expiry of 9 months from the end of the financial year in which return is filed. However, the limitation of 9 months shall not apply to issue of cheque of refund.
7. As per Finance Act, 2019, relief of tax under section 89 shall be given by the software while processing the return under section 143(1).

SECTION 241A: PROCESSING OF RETURN OF REFUND IN CASE OF SCRUTINY

If return is filed having a claim of refund and case is selected for scrutiny under section 143(2), then the refund shall be granted to the assessee under section 143(1). The Income Tax Department cannot stop the refund till the completion of assessment under section 143(3). **The return shall be processed under section 143(1) even if the case is selected for scrutiny and there is a refund.**

However, to protect the interest of revenue section 241A has been inserted, wherein Assessing Officer has been given:

- power to withhold the refund under section 143(1)
- upto the date on which assessment is made under section 143(3)
- only in cases where Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the interest of revenue (e.g. massive tax evasion detected or assessee is a habitual tax offender).
- But in this case Assessing Officer has to take previous approval of CIT
- and has to record reasons as to how the grant of refund will affect the interest of revenue.

SECTION 143(3): REGULAR/ SCRUTINY ASSESSMENT

1. For making assessment under section 143(3) the Assessing Officer is required to serve a notice under section 143(2). **This notice has to be served within 3 months from the end of the Financial Year in which return is furnished.**
2. **Notice under section 143(2) need not be necessarily issued by the jurisdictional Assessing Officer.** The Prescribed Income Tax Authority can issue the notice under section 143(2) in electronic form or in paper form. **Now this notice is issued by National Faceless Assessment Centre.**
3. **DOCUMENT IDENTIFICATION NUMBER:** On or after 01.10.2019, any communication by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval, etc. to the assessee or any other person shall be treated as invalid unless a computer generated Document Identification Number (DIN) is duly quoted in the body of such communication.

4. **Where no return of income has been furnished, notice under section 143(2) cannot be issued** and consequently assessment under section 143(3) is not possible. This is because notice under section 143(2) can be issued only if the assessee has filed return under section 139 or in response to a notice issued under section 142(1).
5. The Assessing Officer can reduce the income below the returned income and can assess the loss higher than the returned loss under section 143(3).
6. **GOETZE (INDIA) LTD. (SUPREME COURT): A claim can be made before the Assessing Officer in the assessment proceedings only through a revised return and not through a letter. Therefore, if a deduction has not been claimed in the return and the assessee wants to claim the said deduction in the assessment proceedings then he can do so, only by filing a revised return.**

7. First Proviso to section 143(3)

Assessing Officer cannot himself disallow the exemption under section 10(21)/ 10(22B)/ 10(23A)/ 10(23B) while making an assessment under section 143(3). He can under section 143(3) disallow the exemption under the said sections **only if the Government/ prescribed authority has rescinded the notification of exemption**. Assessing Officer shall intimate the contraventions to Government/ prescribed authority who shall withdraw the exemption.

The time period for making the assessment shall be increased in this case as discussed in Chapter of Time limits for assessment.

8. Second Proviso to section 143(3) added by Finance Act, 2022

Finance Act, 2022 has amended section 12AB/10(23C) to provide for procedure of cancellation of registration of trusts or institutions claiming exemption under section 11/10(23C).

Second Proviso to section 143(3) provides that where the Assessing Officer finds that the trust or institution registered under section 10(23C) or section 11 has made any contraventions referred to in section 12AB(4), then the Assessing Officer shall

- (a) Send a reference to Principal Commissioner of Income Tax/ Commissioner of Income Tax to withdraw/ cancel the registration and
- (b) Disallow exemption under section 10(23C)/ section 11 as per the order of Principal Commissioner of Income Tax/ Commissioner of Income Tax cancelling the registration

The time period for making the assessment shall be increased in this case as discussed in chapter of Time limits for assessment.

9. Third Proviso to section 143(3)

Assessing Officer is empowered to recommend to the Central Government to withdraw the approval under section 35(1)(ii)/ 35(1)(iii) in case the Assessing Officer finds that such institution is not complying with the conditions subject to which approval was granted to it. On recommendation of the Assessing Officer, the Central Government will cancel the approval granted under section 35(1)(ii)/ (iii).

LAW RELATING TO FACELESS ASSESSMENT

ASSESSMENT UNDER SECTION 143(3)/144/147 TO BE FACELESS ASSESSMENT

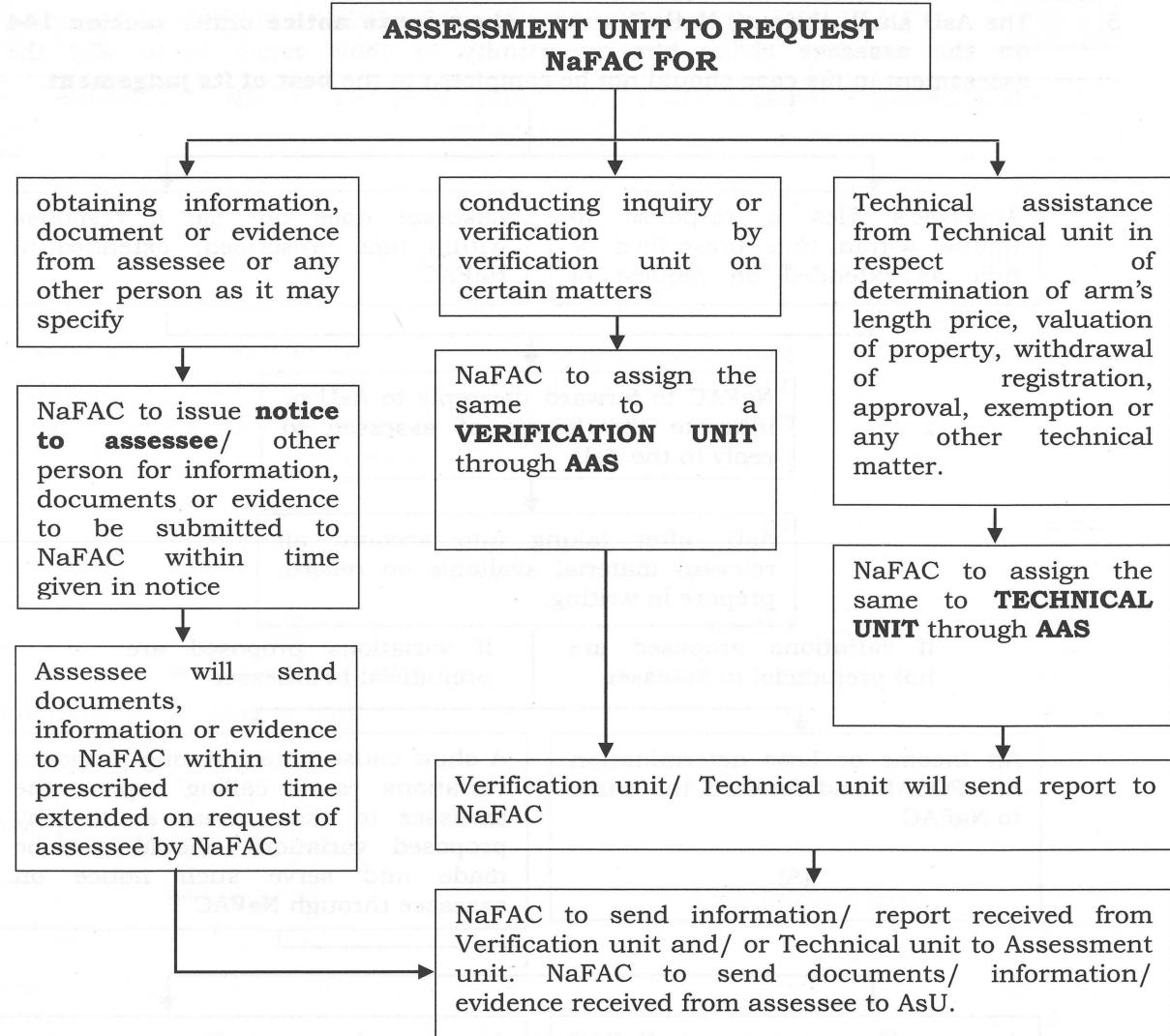
FACELESS-ASSESSMENT CENTERS AND UNITS

- **National Faceless-Assessment Centre (NaFAC) (Centralised Body)**
- **UNITS:**
 - Assessment Unit (**AsU**) [Assessing Officers having powers assigned by Board]
 - Verification Unit (**VU**) [Assessing Officers having powers assigned by Board]
 - Technical Unit (**TU**) [Assessing Officers having powers assigned by Board]
 - Review Unit (**RU**) [Assessing Officers having powers assigned by Board]

Note: Final Assessment order shall be made by Assessment Unit.

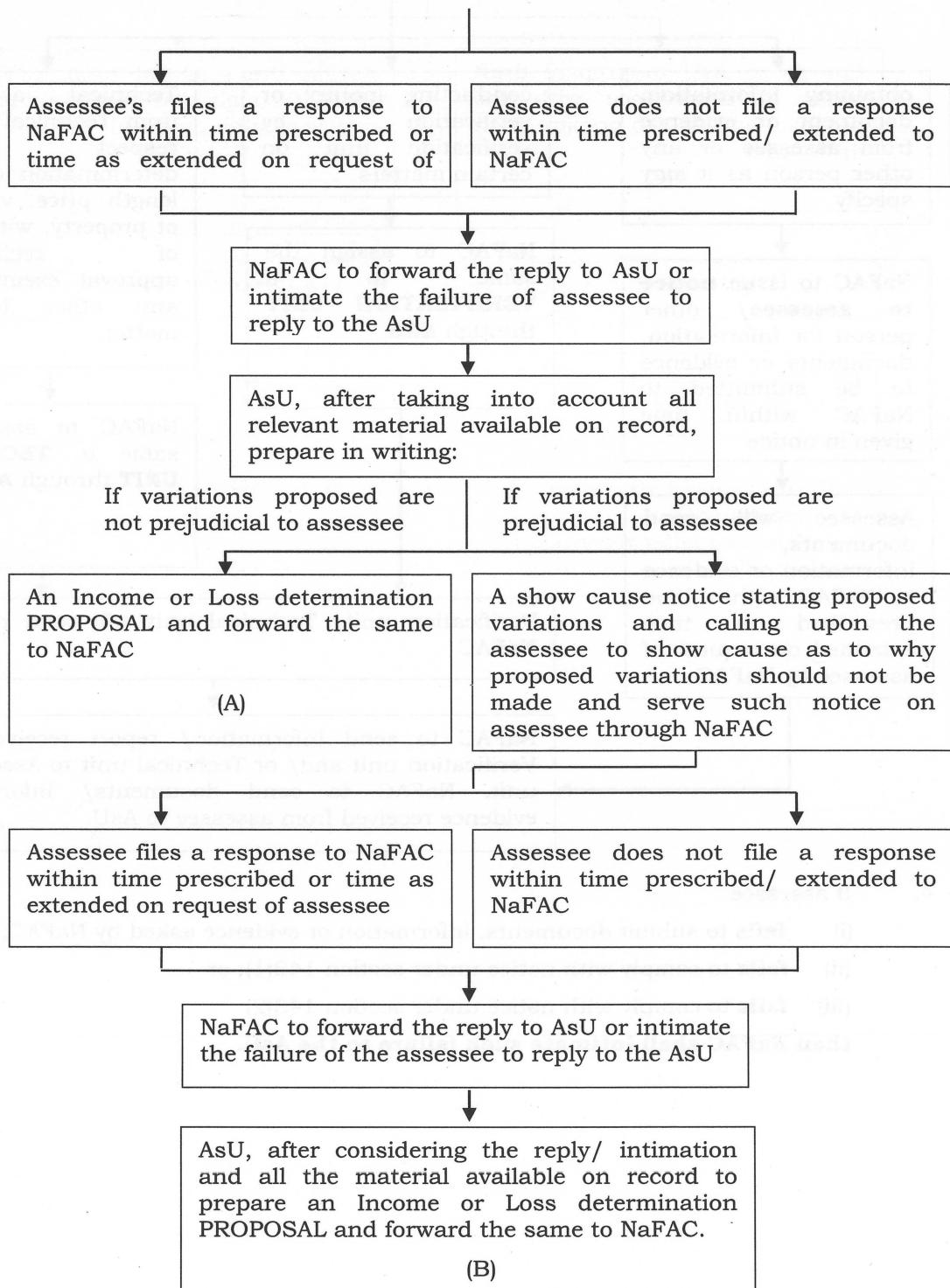
FUNCTIONS OF UNITS	
Assessment Units	Verification Units
<ul style="list-style-type: none">• Identification of points or issues• Seeking information / clarification• Analysing the material furnished by the assessee• Assist in Assessment	<ul style="list-style-type: none">• Enquiry and cross verification• Examination of books of account and witnesses• Recording of statements• Other functions that may be required for verification purpose
Technical Units	Review Units
<ul style="list-style-type: none">• Technical assistance• Advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or other technical matters• Advice on agreements entered into under section 90/90A.	<ul style="list-style-type: none">• Review of draft assessment order• Checking whether the relevant and material evidence is on record, relevant points of facts and law are duly incorporated and issues requiring addition or disallowance have been incorporated; and• Other functions necessary for review purpose

1. NaFAC to assign case selected for faceless assessment under this section to an AsU through Automated Allocation System (**AAS**) and intimate the assessee that assessment shall be completed under section 144B in Faceless manner.
2. Notice under section 143(2) or 142(1) to be served on the assessee by NaFAC and assessee to file his response within the time so specified in the notice.
3. NaFAC to forward the reply so received to the AsU:

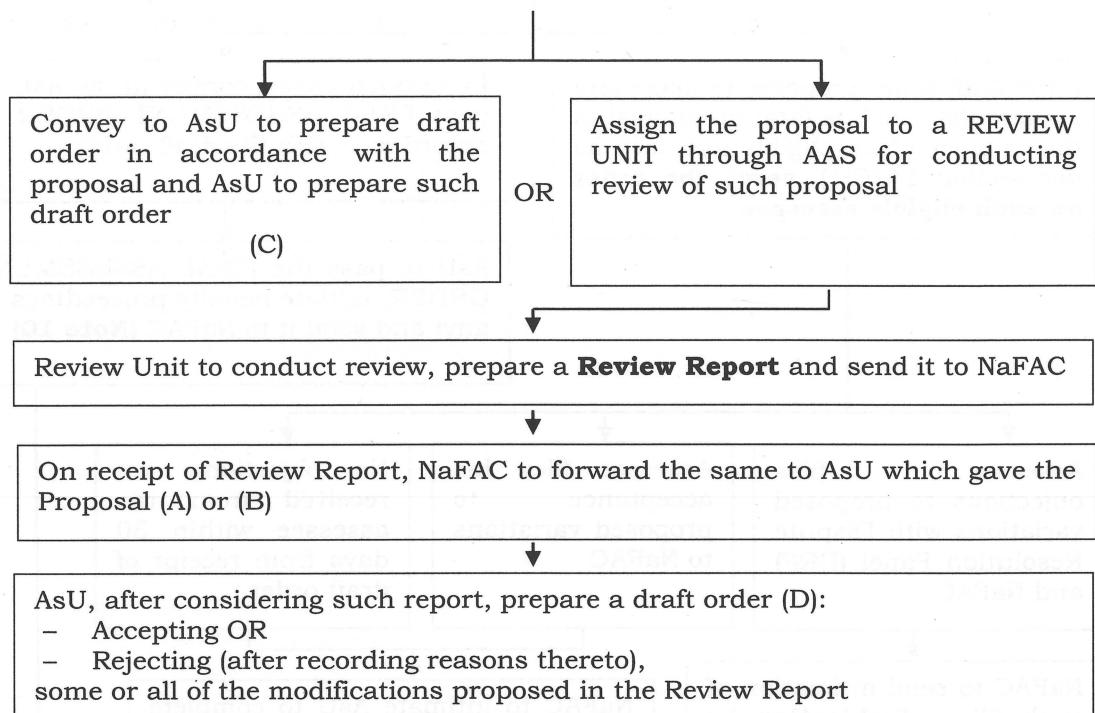


4. If assessee
- (i) **fails** to submit documents, information or evidence asked by NaFAC; or
 - (ii) **fails** to comply with notice under section 142(1); or
 - (iii) **fails** to comply with notice under section 143(2)
- then NaFAC shall intimate such failure to the AsU.**

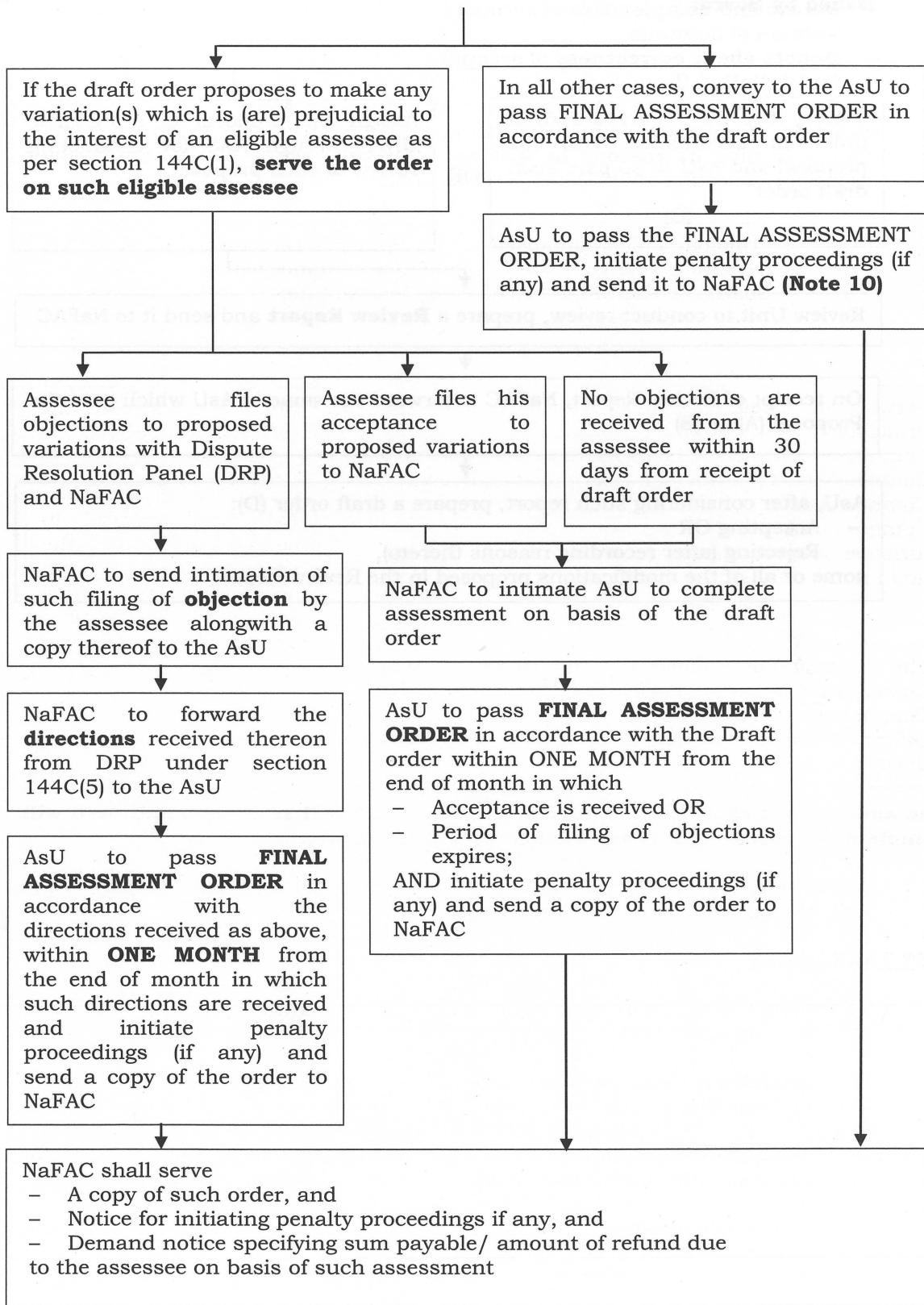
5. The AsU shall, through NaFAC serve a **show-cause notice** under **section 144 on the assessee** giving him opportunity to show cause as to why the assessment in his case should not be completed to the **best of its judgement.**



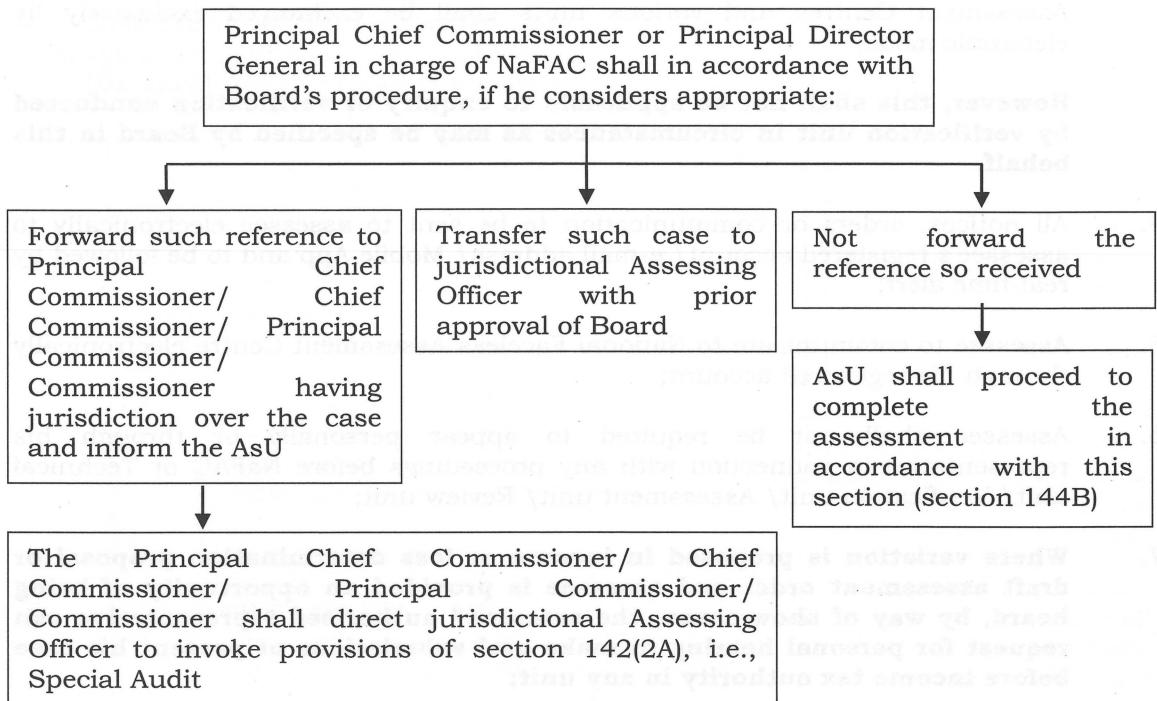
6. Upon receipt of Proposals as (A) or (B) above, the NaFAC **on basis of guidelines issued by Board:**



7. AsU shall forward draft orders as (C) and (D) above to NaFAC. NaFAC to:



8. If at **any stage of proceedings** before it, the AsU having regard to the
- **Nature** and **complexities** of accounts,
 - **Volume** of accounts,
 - **Doubts about correctness** of accounts,
 - **Multiplicity** of transactions in accounts,
 - **Specialised nature** of business activity of assessee **AND** **interests of revenue**, is of the **opinion** that it is necessary to do so, it **may**, upon recording its **reasons in writing**, **refer the** case to NaFAC for invoking provisions of section 142(2A), i.e., Special Audit.



The audit report shall be forwarded to NaFAC which will send it to AsU. AsU will complete the assessment in accordance with audit report.

9. NaFAC after completion of assessment to transfer all electronic records to the A.O. having jurisdiction over the assessee.

KEY TAKEAWAYS

1. Assessment Unit, Verification Unit, Technical Unit and Review Unit shall have the following authorities:
 - (a) **Additional Commissioner** or Additional Director or Joint Commissioner or Joint Director, as the case may be;
 - (b) **Deputy Commissioner** or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;
 - (c) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

2. **All communication** among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment **shall be through the National Faceless Assessment Centre;**
3. **All communications** between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person **shall be exchanged exclusively by electronic mode;** and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode;

However, this shall not be applicable to enquiry or verification conducted by verification unit in circumstances as may be specified by Board in this behalf.

4. All notices, orders or communication to be sent to assessee electronically to assessee's registered account/ e-mail address/ Mobile App and to be followed by real-time alert;
5. Assessee to communicate to National Faceless Assessment Centre electronically through his registered account;
6. Assessee shall not be required to appear personally or through his representative in connection with any proceedings before NaFAC or Technical unit/ Verification unit/ Assessment unit/ Review unit;
7. **Where variation is proposed in income or loss determination proposal or draft assessment order and assessee is provided an opportunity of being heard, by way of show-cause, the assessee/ authorised representative can request for personal hearing to make oral submissions or present his case before income tax authority in any unit;**
 - The Income-tax authority of relevant unit **may** shall approve for personal hearing through NaFAC.
 - Such personal hearing will be conducted ONLY THROUGH Video-Conferencing or Video Telephony.
8. Any examination or recording of statement of assessee other than statement under section 133A or any other person shall be conducted by an income tax authority in a unit only through Video Conferencing or Video-Telephony;
9. CBDT to establish facilities for Video-Conferencing or Video-Telephony at various locations so that assessee who does not have Video-Conferencing or Video-Telephony facility can use them;
10. The time limit for passing the order shall be as per section 153.

SECTION 144: BEST JUDGMENT ASSESSMENT

If any person:

- (a) **fails to furnish a return of income under section 139(1)** and has not furnished the return under **section 139(4) OR AN UPDATED RETURN UNDER SECTION 139(8A)** upto the date of issue of show cause notice under section 144, or
- (b) fails to comply with all terms of a **notice issued under section 142(1)(i) or 142(1)(ii), or**
- (c) fails to comply with a **direction for special audit issued under section 142(2A), or**
- (d) fails to comply with all terms of a **notice issued under section 143(2),**

then the Assessing Officer after taking into account all relevant material which he has gathered, shall make an assessment to the best of his judgment and determine the tax payable by the assessee.

Notes:

1. **The Assessing Officer shall not make the assessment unless he gives an opportunity of being heard to the assessee by issue of a show cause notice.**
2. This notice is not required to be issued where a notice under section 142(1)(i) has already been issued to the assessee.
3. The Assessing Officer under section 144 cannot assess the income below the returned income and cannot assess the loss higher than the returned loss.
4. The assessment under section 144 **cannot be made in an arbitrary manner** or on adhoc basis. The assessment must be based on the material which the Assessing Officer collects. e.g. last year's ROI, current year's ROI, growth rate of industry etc. The Assessing Officer must specify the basis of computation of income under section 144 and the basis must be a rational and scientific basis. The order under section 144 should be a **SPEAKING ORDER.**

SECTION 144A: POWERS OF THE JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES

1. **A Joint Commissioner may,**
 - a) on his own motion, or
 - b) on a reference made to him by the Assessing Officer, or
 - c) on the application of an assessee,
call for and examine the record of any pending assessment/ reassessment.
2. If he considers that having regard to the nature of the case or the amount involved or for any other reason, it is necessary to issue directions, then he may issue such directions as he thinks fit for the guidance of the Assessing Officer (**AC/DC/ITO**) to enable him to complete the assessment.
3. **Such directions shall be binding on the Assessing Officer (AC/DC/ITO).**
4. No directions prejudicial to the assessee shall be issued before an opportunity of being heard is given to the assessee.
5. No appeal can be filed against the directions issued under section 144A.

SECTION 145: METHOD OF ACCOUNTING

1. **Income under the head "P/G/B/P" or "other sources", shall be computed by either cash or accrual system of accounting, regularly employed by the assessee.**
2. **The Assessing Officer shall make the assessment to the best of his judgment under section 143(3)/ 144/ 147 as the case may be, in which he finds that -**
 - the accounts are not correct and complete to his satisfaction or
 - no method of accounting has been regularly employed by the assessee (unless the charge is for a BONAFIDE REASON) or
 - Income under the head "P/G/B/P" or "other sources" has not been computed in accordance with ICDS.

In the above cases, the Assessing Officer gets the **power to reject the books of account** and make an assessment to the best of his judgment.

SECTION 144C: REFERENCE TO DISPUTE RESOLUTION PANEL (DRP)

1. APPLICABILITY

Before completing assessment under section 143(3)/ 147, Assessing Officer shall follow the procedure of forwarding a draft assessment order under section 144C to the assessee for reference to DRP in the following cases:

- (i) **In case of any non-resident or foreign company:** Where Assessing Officer wants to make any variation prejudicial to the interests of any non-resident or foreign company.

As per Finance Act, 2020, the Assessing Officer has to make a draft order in case of NON-RESIDENT or foreign company if:

- i. he makes any variation where by returned income is increased or returned losses are reduced or
 - ii. he makes any variation whereby retuned income/ returned loss is not changed but tax liability of the assessee increases. E.g. he recharacterises the royalty income taxable @ 10% as normal business income taxable @ 30%/ 40% e.g. he disallows any relief in tax.
- (ii) **In case of any assessee:** Where variations in total income arise on account of order of Transfer Pricing Officer passed under section 92CA. If there are no additions on account of order of TPO, then Assessing Officer cannot follow the procedure laid in section 144C.

2. PROCEDURE

- **Assessing Officer to forward a draft assessment order under section 143(3)/147 to the eligible assessee where proposed variation is prejudicial to the assessee**
- **On receipt of the draft order, assessee shall within 30 days of the receipt by him of the draft order:**
 - (i) file his acceptance of the variations to the Assessing Officer; or
 - (ii) file his objections to the variations with DRP and the Assessing Officer.

- If no objections are received within the above period of 30 days, Assessing Officer shall pass the final assessment order.
3. Notwithstanding the time limits provided under section 153, the **Assessing Officer shall complete the assessment on the basis of draft order within 1 month from the end of the month in which:**
- (i) Acceptance of the assessee is received; or
 - (ii) Period of 30 days for filing the objections expires and no objections are received from the assessee.
4. **DRP shall** in a case where any objection is filed by the assessee against the draft order, **issue directions for the guidance of the Assessing Officer** to enable him to complete the assessment. However, **such directions shall not be issued after 9 months** from the end of the month in which the draft order is forwarded to the assessee.
5. **DRP may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction for further enquiry and passing of the assessment order.**

Note: Power of DRP to enhance the variation shall include the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

6. **Every direction issued by the DRP is binding on the Assessing Officer.**
7. Notwithstanding the time limits provided under section 153, the Assessing Officer, on receipt of the directions of DRP shall **complete the assessment within 1 month from the end of the month in which such directions are received from DRP.**
9. If Directions of DRP are against the assessee and Assessing Officer passes an order under section 143(3)/ 147 on basis of such Directions, the **assessee can file an appeal to ITAT against the order of Assessing Officer.** The appeal can be filed within 60 days from receipt of order.

THE DEPARTMENT CANNOT CHALLENGE THE DIRECTIONS OF DRP. THE DEPARTMENT IS BOUND BY DIRECTIONS OF DRP.

SECTION 147-151: ASSESSMENT OR REASSESSMENT OF INCOMES ESCAPING ASSESSMENT AND RELATED PROVISIONS

♦ ANALYSIS OF PROVISIONS ♦

I. ASSESSMENT OF INCOME UNDER SECTION 147

1. Section 147 provides that if any income chargeable to tax has escaped assessment for any assessment year (**relevant assessment year**) the Assessing Officer may,
- **subject to provisions of sections 148 to 153**
 - assess or reassess such income or
 - recompute the loss or depreciation allowance or any other allowance or deduction.

2. For making assessment /reassessment / recomputation under section 147, the Assessing Officer has **to serve a notice on the assessee under section 148**. This notice shall be served **alongwith the order passed under section 148A(d)**.¹

Assessment/ Reassessment made under section 147, without the service of notice under section 148 is void-ab-initio.

3. In the notice issued under section 148, the assessee shall be asked to furnish, within the time period specified in the notice, a return of income for the relevant assessment year. It shall be deemed that this return was required to be furnished under section 139.

The assessee is required to file the ROI under section 148 even if he has filed the ROI earlier in the normal course. **Return filed under section 148 cannot be revised.**

4. Explanation to section 147 provides that where a notice has been issued under section 148 in accordance with section 148 and 148A and while making assessment / reassessment / recomputation under section 147, the Assessing Officer **finds some other income(s) which have escaped assessment and which come(s) to his notice subsequently in the course of proceedings under section 147**, then Assessing Officer can assess / reassess such other income(s) also **without being required to issue fresh notice under section 148 and without being required to pass another order under section 148A(d)** for such income which comes to his notice subsequently in the course of proceedings under section 147.
5. For making an assessment/ reassessment/ recomputation under section 147, a separate notice under section 148 and order under section 148A(d) is required to be issued for each Assessment Year whose income is to be assessed or reassessed under section 147.

In the following illustrations, it is assumed that the cases are not covered by the 4 cases mentioned in proviso to section 148A.

Illustration 1:

The Assessing Officer issues notice under section 148 and order under section 148A(d) to the assessee for the Assessment Year 2017-18 on 1.9.2022. The Assessing Officer has information relating to business income in Mumbai exceeding ₹ 50,00,000 which has not been disclosed by the assessee in his return of income and the said escapement has been mentioned in the order passed under section 148A(d).

While Assessing Officer is making assessment under section 147, he also comes across income of the Pune business which was not disclosed by assessee in ROI. However, this income had not been considered while passing the order under section 148A(d) as no information relating to the same had been received by the Assessing Officer at the time of passing of order under section 148A(d). Assessing Officer assesses under section 147 both the income from Mumbai Business as well as income from Pune Business.

¹ Order under section 148A(d) is not to be passed in certain cases as mentioned in proviso to section 148A. In those cases, there is no need to serve order under section 148A(d) with notice under section 148.

Assessee contends that assessment under section 147 of Pune Business Income is invalid as he had received notice under section 148 and order under section 148A(d) only for assessment of Income of Mumbai Business.

Answer:

The contention of the assessee is incorrect. Explanation to section 147 provides that 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, irrespective of the fact that provisions of section 148A have not been complied with.

Illustration 2:

For Assessment Year 2019-20, the Assessing Officer issued a notice under section 148 alongwith an order under section 148A(d) on 01.09.2022 to the assessee to assess the income under the head "Profits and gains of business or profession". In the course of proceedings under section 147, he finds that:

Case I: Income under the head Capital Gains of ₹ 2,00,000 has also escaped assessment for Assessment Year 2019-20.

Case II: Income under the head Capital Gains of ₹ 2,00,000 has also escaped assessment for Assessment Year 2020-21.

Whether Assessing Officer is required to give a fresh notice under section 148 alongwith order under section 148A?

Answer:

Case I: Income under the head Capital Gains can be assessed along with P/G/B/P. The Assessing Officer is NOT required to issue a fresh notice under section 148 and not required to pass fresh order under section 148A(d).

Case II: A separate notice under section 148 and order under section 148A is required to be issued for Assessment Year 2020-21 to assess the capital gains under section 147.

Illustration 3:

For Assessment Year 2018-19, the assessment was completed under section 143(3) on 31.12.2019 at ₹ 10,00,000. The Assessing Officer received information that further income of ₹ 58,00,000 has escaped assessment. On 05.01.2023, notice under section 148 alongwith order under section 148A(d) is served to the Assessee.

Case I: The Assessing Officer receives information on 08.08.2023 that a further income of ₹ 42,00,000 has escaped assessment for Assessment Year 2018-19. Assessment proceedings under section 147 were pending on that date.

Case II: The Assessing Officer receives information on 15.06.2024 that a further income of ₹ 62,00,000 has escaped assessment for Assessment Year 2018-19.

Analyse, in which cases, can the Assessing Officer assess the incomes that have escaped assessment assuming procedure under section 148A has been followed

wherever applicable and required, and approvals from specified authority have been taken.

Answer:

Case I: As per Explanation to Section 147, since the issue has come to the notice of the Assessing Officer subsequently in the course of proceedings, the same can be assessed by the Assessing Officer without being required to issue a fresh notice under section 148 and without a fresh order under section 148A(d). As per section 153(2), the time-limit for completion of reassessment under section 147 is 31.03.2024.

Case II: As the assessment proceeding would have been completed by 31.03.2024, the Assessing Officer cannot assess the further income of ₹ 62,00,000 without issuing fresh notice to the assessee and fresh order of 148A(d).

As the income escaping assessment exceeds ₹ 50,00,000, the notice under section 148 can be issued upto 31.03.2029.

Therefore, the Assessing Officer can issue a notice under section 148 after complying with section 148A on 15.06.2024 and reassess the income.

6. **Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period? Assume that provisions of section 148A have been complied with.**

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A notice under section 148 with order under section 148A(d) dated 27th March, 2023 was addressed to the assessee for the assessment year 2019-20 to tax the escaped income of ₹ 30,00,000. The notice and order under section 148A(d) got returned unserved with the postal authorities endorsing on it the remarks "addressee expired". Later, the Assessing Officer issued a letter dated 15.06.2023 to the petitioner seeking details of legal heirs/successors of the deceased (assessee) to complete the proceedings for the assessment year 2019-20.

The Assessing Officer proceeded to make the assessment under section 147 which the assessee challenged by means of a writ.

The time limit for issue of notice was 31.03.2023, since the income escaping assessment did not exceed ₹ 50 lakhs. On March 27, 2023 when the notice was issued, the assessee was already dead. If the Department intended to proceed under section 147, it could have done so prior to 31.03.2023 by issuing a notice to the legal representatives of the deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee.

The High Court, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.

II. ISSUE OF NOTICE UNDER SECTION 148

1. **PRE-REQUISITES FOR ISSUE OF NOTICE UNDER SECTION 148** – Assessing Officer can issue notice under section 148 only if **following three conditions are cumulatively satisfied**:

- (A) There is information with Assessing Officer which suggests that income chargeable to tax has escaped assessment.
- (B) Assessing Officer has obtained prior approval of Specified Authority to issue such notice. **However, as per amendments by Finance Act, 2022, no such approval is required where the Assessing Officer has passed an order under section 148A(d) with prior approval of Specified Authority.**
- (C) Assessing Officer has complied with procedure laid down in section 148A and passed the order under section 148A(d). **[This order is not required to be passed in 4 cases discussed later]**

2. **INFORMATION WITH ASSESSING OFFICER WHICH SUGGESTS THAT INCOME CHARGEABLE TO TAX HAS ESCAPED ASSESSMENT:**

- (A) **Information in case of assessee in accordance with risk management strategy formulated by the CBDT**

The sources of information, to illustrate, could be:

- (i) High Value transactions analysed by the CBDT using information technology systems.
 - (ii) Statement of Financial Transactions or Reportable Account under section 285BA
 - (iii) Transaction details furnished by stock exchanges (including information relating to shares, mutual funds, etc.); commodity exchanges; Property registering authorities or GST Department.
 - (iv) Information or document received from other departments of Government.
- (B) **Any Audit objections to the effect that assessment in case of the assessee for the relevant assessment year has not been made in accordance with provisions of this Act**

EXPANSION OF SCOPE OF AUDIT OBJECTIONS BY FINANCE ACT, 2022

Prior to Finance Act, 2022, the final objections raised by Comptroller and Auditor General of India (C&AG) to the effect that assessment has not been properly made amounted to information with Assessing Officer which suggests that income has escaped assessment.

Now, as per the Finance Act, 2022, the following shall amount to information with the Assessing Officer which suggests that income has escaped assessment:

- (i) **Objections raised by Comptroller and Auditor General of India.**
- (ii) **Objections raised by the Internal Audit Team of the Revenue Department.**

Earlier the objections of C&AG were to be final objections, i.e., C&AG had heard the Assessing Officer on objections and then finalised the objections. **As per the amendment by Finance Act, 2022, the objections of C&AG and Internal audit Team can be considered as information even if Assessing Officer has not been heard on these objections.**

Some of the audit objections that can be raised by the Audit Team are illustrated below:

- (i) Deduction has been allowed although Supreme Court has held it to be disallowable
- (ii) Receipt has not been taxed although Supreme Court has held it to be taxable
- (iii) Additional Depreciation was not allowable to assessee
- (iv) Deductions under section 10AA, 80-IA, etc. have been wrongly allowed to the assessee.

CLAUSES (C) TO (E) HAVE BEEN ADDED BY FINANCE ACT, 2022

(C) INFORMATION RECEIVED UNDER DATA AND/ OR TIEA (FINANCE ACT, 2022)

Under section 90 and 90A, the Central Government enters into agreements with Governments of foreign countries for exchange of information for prevention of evasion or avoidance of income tax or for investigation of cases of tax evasion or tax avoidance. There are two types of Agreements namely:

- (i) **DTAA:** Double Taxation Avoidance Agreements
- (ii) **TIEA:** Tax Information Exchange Agreements

Any information received under DTAA/ TIEA shall be treated as information with the Assessing Officer which suggests that income has escaped assessment.

For example, if under DTAA with Government of Switzerland, information is received that assessee holds bank account in Swiss bank which has not been disclosed in return of income, then such information shall be treated as information with Assessing Officer which suggests that income has escaped assessment.

(D) INFORMATION MADE AVAILABLE TO ASSESSING OFFICER UNDER SECTION 135A (FINANCE ACT, 2022)

Under section 135A, the prescribed Income tax Authority collects and verifies information and passes on the same to concerned Assessing Officer.

The Finance Act, 2022 provides that such information shall be treated as information with the Assessing Officer which suggests that income has escaped assessment.

Following are the examples:

- (i) Assessee has claimed purchases but such purchases are found to be bogus.
- (ii) Certain sales have not been accounted by the assessee.

- (iii) Expenses claimed by assessee are bogus.
- (iv) Loan received by assessee is infact income and not Loan.
- (v) Loans received by assessee are infact cash deposits made by assessee.

(E) ANY INFORMATION WHICH REQUIRES ACTION IN CONSEQUENCE OF ORDER OF A TRIBUNAL OR A COURT (FINANCE ACT, 2022)

If any income becomes taxable or any expense becomes disallowable because of the **final order of any Tribunal or Court**, then such order shall constitute information available with the Assessing Officer which suggests that income has escaped assessment.

The following are some examples:

- (i) Supreme Court passes an order under section 262 that Expense A is disallowable or Receipt B is taxable. Now the cases of assessees can be reopened under section 147 if they have claimed Expense A to be allowable or Receipt B to be not taxable.
- (ii) ITAT under section 254 passes an order in case of Mr Alok and deletes income of ₹ 12 lakhs from assessment of Mr Alok and holds that such income belongs to wife of Mr Alok. Now case of wife of Mr Alok can be reopened under section 147 on basis of such order of ITAT.
- (iii) The High Court under the Customs Act held that 20 kg gold seized from Mr Zamil was smuggled by Mr Zamil. No further appeal is made to Supreme Court. Now on the basis of order of High court, case of Mr Zamil can be reopened under section 147.

III. PROCEDURE TO BE FOLLOWED BY ASSESSING OFFICER BEFORE HE ISSUES NOTICE UNDER SECTION 148

SECTION 148A

Section 148A has been inserted with effect from April 1, 2021. It provides for the provisions regulating pre-reassessment enquiry after providing an opportunity of being heard to assessee before issue of notice under section 148. The provisions of section 148A are given below –

1. Assessing Officer shall conduct any enquiry, **IF REQUIRED**, with respect to the information which suggests that income chargeable to tax has escaped assessment. **However, such enquiry can be conducted only with prior approval of SPECIFIED AUTHORITY.**

There is no need to conduct any enquiry where it is prima facie apparent that income has escaped assessment. For example:

- (i) Assessee has claimed a deduction which has been disallowed by Supreme Court
 - (ii) There is a cash deposit of ₹ 10 crores in savings account and assessee has filed return of ₹ 5 lakhs or not filed return of income.
2. Whether Assessing Officer conducts inquiry or not, **he is required to give an opportunity of being heard to the assessee**, by serving upon him a **SHOW**

CAUSE NOTICE to show cause as to why a notice under section 148 should not be issued to him. (**SHOW CAUSE NOTICE UNDER SECTION 148A**)

3. In the show cause notice, the Assessing Officer is duty bound to supply to the assessee:

- (i) Information which suggests that income chargeable to tax has escaped assessment.
- (ii) Results of the enquiry, if conducted by Assessing Officer.

Except for the cases mentioned in proviso to section 148A, the Assessing Officer cannot proceed to issue notice under section 148 without providing an opportunity of being heard to assessee by serving upon him a show cause notice under section 148A.

4. The assessee has to reply to the show cause notice within a period which shall not be less than 7 days but also not exceeding 30 days from the date on which the show cause notice under section 148A is issued. This time period shall be specified in the show cause notice issued under section 148A. The Assessing Officer can extend this time period on an application made by the assessee in this behalf.

For example, for Assessment Year 2016-17, the Assessing Officer has information that income of ₹ 10 crores has escaped assessment. Now notice under section 148 can be issued upto 31.03.2027. The Assessing Officer on 10.04.2022, issues show cause notice under section 148A as to why notice under section 148 should not be issued. The said notice is served on 12.04.2022. Now, Assessing Officer can ask the assessee to reply to the show cause notice under section 148A and the earliest date by which the Assessing Officer can demand reply is 17.04.2022. The latest date by which Assessing Officer can demand reply is 10.05.2022. Let us say the Assessing Officer asks the assessee to reply to show cause notice by 02.05.2022.

5. **Order under section 148A** – The Assessing Officer shall consider the reply of the assessee to the show cause notice issued under section 148A. The Assessing Officer shall pass an order under section 148A with prior approval of **SPECIFIED AUTHORITY** as to whether:

- (i) It is a fit case to issue notice under section 148 OR
- (ii) It is not a fit case to issue notice under section 148.

The order under section 148A shall be passed on the basis of:

- (i) Information which suggests that income chargeable to tax has escaped assessment
- (ii) Results of the enquiry conducted by Assessing officer, if any
- (iii) Reply of the assessee to show cause notice issued under section 148.

If the assessee does not reply to the show cause notice issued under section 148A, then the Assessing Officer shall pass the order under section 148A on basis of (i) and (ii).

6. **Time Limit for passing order under section 148A** – The order under section 148A shall be passed within:

- (i) One month from the end of the month in which reply to show cause notice issued under section 148A is received by Assessing Officer. In our example,

say assessee replies to show cause notice issued under section 148A on say 30.04.2022, the Assessing Officer has to pass the order under section 148A by 31.05.2022.

- (ii) Where assessee does not reply to show cause notice issued under section 148A, then within one month from the end of the month in which time allowed to furnish the reply expires. In our example, assessee was required to file the reply by 02.05.2022, and therefore, order under section 148A can be passed upto 30.06.2022 if the assessee does not reply to the show cause notice under section 148A.

7. Whether an appeal can be filed against an order under section 148A?

Section 246A lists down the orders of Assessing Officer against which appeal can be filed to CIT (Appeals). There is no mention of order under section 148A in section 246A and therefore, no appeal can be filed to CIT (Appeals) against the order under section 148A.

Even otherwise, logically also appeal cannot be filed against the order under section 148A to CIT (Appeals) since order under section 148A has to be passed with prior approval of either Principal CIT/ CIT/ Principal Director of Income-tax/ Director of Income-tax OR Principal CCIT/ CCIT/ Principal Director General of Income-tax/ Director General of Income-tax.

Section 253 lays down list of orders against which appeal can be filed to ITAT. There is no mention of order under section 148A in section 253 and therefore appeal cannot be filed to ITAT against the order passed under section 148A.

The only remedy against the order under section 148A is to file a **WRIT PETITION** to High Court which is a Constitutional remedy.

IV. SPECIAL CONSIDERATION FOR CASES OF SEARCH, SEIZURE AND SURVEY

IV(A). CASE IN WHICH ASSESSING OFFICER CAN ISSUE NOTICE UNDER SECTION 148 WITHOUT HAVING INFORMATION WHICH SUGGESTS THAT INCOME HAS ESCAPED ASSESSMENT FOR ANY OF THE 10 ASSESSMENT YEARS WHICH ARE TO BE REOPENED UNDER SECTION 147

In the following cases, it shall be **deemed that Assessing Officer has information** which suggests that income chargeable to tax has escaped assessment **where search is initiated** under section 132/ Books, documents or other assets are **requisitioned** under section 132A/ Survey is **conducted** under section 133A.

- (i) Where search is conducted under section 132 or where books of account, documents and/ or assets are requisitioned under section 132A.
- (ii) Where a survey has been conducted under section 133A **except TDS/ TCS survey under section 133A(2A)** and **except survey in function, ceremony or event under section 133(5)**. That means if a TDS/ TCS survey or survey in function, ceremony or event is conducted then Assessing Officer must possess information which suggests that income has escaped assessment.

Prior to Finance Act, 2022 a survey conducted under section 133A(5) did not amount to a case where Assessing Officer shall be **deemed to have information** which suggests that income has escaped assessment. Section 133A(5) is a survey made by Department to find out the nature and scale of expenditure incurred in any function, ceremony or event.

As per the amendment by Finance Act, 2022, the **findings of survey conducted under section 133A(5)** shall be **deemed to be a case** where Assessing Officer has information which suggests that income has escaped assessment and Assessing Officer can issue notice under section 148.

- (iii) Where a search under section 132/ requisition under section 132A is not conducted/ made on the assessee and is conducted/ made in case of any other person and Assessing Officer is satisfied with prior approval of Principal Commissioner or Commissioner that any **money, bullion, jewellery or other valuable article or thing seized** or requisitioned under section 132/ 132A does not belong to the other person but belongs to the assessee.
- (iv) Where a search under section 132/ requisition under section 132A is not conducted/ made on the assessee and is conducted/ made in case of any other person and Assessing Officer is satisfied with prior approval of Principal Commissioner or Commissioner that any **books of account or document seized** or requisitioned under section 132/ 132A does not belong to the other person but belongs to the assessee or information contained in the documents pertains to the assessee.

For example, assessee's name is Mr Zebra. A search is conducted under section 132 on Mr Lion and money, bullion, jewellery, valuable article or thing, and/ or books documents, found in the search on Mr. Lion, are proved to the satisfaction of Assessing Officer, that they belong to/ pertain to Mr Zebra, and Assessing Officer has taken prior approval from Principal CIT/ CIT to this effect, then notice can be issued to Mr Zebra also under section 148 and it **shall be deemed** that Assessing Officer has information which suggests that income of Mr Zebra has escaped assessment. Needless to say that notice shall also be issued to Mr Lion under section 148 and it **shall be deemed** that Assessing Officer has information which suggests that income of Mr. Lion has escaped assessment.

Note 1: RE-ASSESSMENT NOTICE IN SEARCH CASES SHALL NOT BE RESTRICTED TO 3 YEARS

Prior to the amendment by the Finance Act, 2022, the deeming fiction created by Explanation 2 to section 148 mentioned that the Assessing Officer shall be deemed to have information FOR three assessment years immediately preceding the assessment year relevant to the previous year in which search was initiated or survey was conducted. The Finance Act, 2022 has omitted the reference of "three assessment years immediately preceding the assessment year relevant to the previous year," thereby resulting in widening the scope of reassessment.

This amendment has far-reaching consequences. Earlier the scope of deemed information as a result of search/survey was confined to only 3 assessment years immediately preceding the assessment year relevant to the previous year in which search was initiated or survey was conducted. Now the concept of deemed information applies to all 10 assessment years which may be reopened under section 147 as a result of the search/survey.

For example if search is started on 30.06.2022 and search is completed on 01.07.2022, then for Previous Year 2012-13 to Previous Year 2021-22, it shall be deemed that Assessing Officer has information which suggests that income has escaped assessment.

Note 2: However, if Assessing Officer wants to issue notice under section 148 in above case on say 10.07.2022 for A/Y 2012-13 to A/Y 2019-20, then he can do so only if the income represented in form of asset/ expenditure/ entry in books of account which has escaped assessment amounts to or is likely to amount to ₹ 50,00,000 or more.

Note 3: In the 4 cases mentioned above, the Assessing Officer shall be **deemed to have information** which suggest that income has escaped assessment.

However, Finance Act, 2022 has introduced section 148B which provides that in these 4 cases, the assessments or reassessment shall be made by Joint Commissioner or Joint Director or Additional Commissioner or Additional Director. Any officer below the rank of these officers will require the prior approval of these officers before making assessment or reassessment under section 147.

IV(B). CASES WHERE PROVISIONS OF SECTION 148A SHALL NOT APPLY FOR ANY OF THE 10 ASSESSMENT YEARS WHICH MAY BE REOPENED UNDER SECTION 147 BY ISSUING NOTICE UNDER SECTION 148

- (i) Where search is conducted under section 132 or where books of account, documents and/ or assets are requisitioned under section 132A
- (ii) Where a search under section 132/ requisition under section 132A is not conducted/ made on the assessee but is conducted/ made in case of any other person and Assessing Officer is satisfied with prior approval of Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing seized or requisitioned under section 132/ 132A does not belong to the other person but belongs to the assessee.
- (iii) Where a search under section 132/ requisition under section 132A is not conducted/ made on the assessee but is conducted/ made in case of any other person and Assessing Officer is satisfied with prior approval of Principal Commissioner or Commissioner that any books of account or document seized or requisitioned under section 132/ 132A does not belong to the other person but belongs to the assessee or information contained in the documents pertains to the assessee.

For example, assessee's name is Mr Zebra. A search is conducted under section 132 on Mr Lion on 30.06.2022 and money, bullion, jewellery, valuable article or thing, and/ or books documents, found in the search on Mr Lion, are proved to the satisfaction of Assessing Officer, that they belong to/ pertain to Mr Zebra, and Assessing Officer has taken prior approval from Principal CIT/ CIT to this effect, then notice can be issued to Mr Zebra also under section 148 for A.Y. 2012-13 to A.Y. 2022-23 without following the procedure laid down in section 148A subject to provisions of section 149.

Note: IT MAY BE NOTED THAT PROCEDURE LAID DOWN IN SECTION 148A HAS TO BE FOLLOWED IN CASE OF ANY KIND OF SURVEY UNDER SECTION 133A AND IN CASE OF ANY SURVEY, THE PROCEDURE UNDER SECTION 148A NEEDS TO BE FOLLOWED FOR ALL/ANY OF THE 10 ASSESSMENT YEARS WHICH ARE TO BE REOPENED UNDER SECTION 148 PROVIDED THE ASSESSING OFFICER CAN ISSUE NOTICE UNDER SECTION 148 FOR THAT ASSESSMENT YEAR AS PER THE TIME-LIMIT UNDER SECTION 149(1).

- (iv) **As per Finance Act, 2022**, the Assessing Officer is not required to follow the procedure laid down in section 148A, where information is received from prescribed I.T. Authority under section 135A which suggests that income has escaped assessment.

It is pertinent to note that as per amendment in section 148 by Finance Act, 2022 such information shall be deemed to be information available with the Assessing Officer which suggests that income has escaped assessment. In such a case the Assessing Officer can straightway issue notice under section 148 after taking prior approval of Prescribed Authority.

Note: In the above four cases, although Assessing Officer is not required to pass an order under section 148A, but he has to take prior approved of Prescribed Authority before issuing a notice under section 148.

V. TIME LIMIT FOR ISSUE OF NOTICE UNDER SECTION 148

1. **Time-limit for notice [Section 149]** - With effect from April 1, 2021, the time-limit for issue of notice under section 148 shall be as follows –

Time Limit	Circumstances in which notice can be issued under section 148
Upto 3 years from the end of relevant assessment year	In all cases
Beyond 3 years and upto 10 years from the end of relevant assessment year	Where the Assessing Officer has in his possession books of account or documents or evidence which reveals that the income escaping assessment for the relevant assessment year, represented in the form of asset, expenditure or entry in books of account amounts to or is likely to amount to ₹ 50 lakh or more for the relevant assessment year. For the purpose of this provision, "asset" shall include immovable property (being land or building or both), shares and securities, loans and advances, deposits in bank account.

2. **Sub-section (1A) introduced by the Finance Act, 2022 provides that if such escaped income, represented in the form of asset or expenditure in respect of transaction, event or occasion, is spread over more than 1 year and the total escaped income in all these years is ₹ 50 lakhs or more, then AO gets jurisdiction to issue a notice under Section 148 for all those years. It is now no longer necessary that escaped income of ₹ 50 lakh should be only in 1 year. It is only to be seen that the aggregate of such escaped income is ₹ 50 lakh or more, and in such a situation, notice under Section 148 can be issued for all such years.**

For example, on 10.01.2023, the Assessing Officer finds that assessee has made following investments and incurred following expenditures out of undisclosed incomes:

Assessment Year 2013-14
Assessment Year 2014-15
Assessment Year 2015-16
Assessment Year 2018-19

Investment of ₹ 20 lakhs
Expenditure of ₹ 3 lakhs
Investment of ₹ 15 lakhs
Expenditure of ₹ 15 lakhs

Now, as per the amendment by Finance Act, 2022 i.e., insertion of section 149(1A), the Assessing Officer can issue notices under section 148 for A/Y 2013-14, A/Y 2014-15, A/Y 2015-16 and A/Y 2018-19 since the total income escaping assessments is ₹ 53 lakhs in aggregate for all the Assessment Years. Assessing Officer shall follow the procedure laid in section 148A and take necessary approvals.

3. **PROVISO TO SECTION 149(1): Time to be excluded** - For the purposes of computing the period of limitation for issue of notice under section 148, the time (or extended time) allowed to the assessee in providing opportunity of being heard under section 148A or period during which such proceedings under section 148A are stayed by an order or injunction of any court, shall be excluded.

Furthermore, since order under section 148A(d) is to be served alongwith a notice under section 148, if after excluding such period, time available to the Assessing Officer for passing order under section 148A(d), about fitness of a case for issue of notice under section 148, is less than 7 days, then the Assessing Officer shall be given 7 days to pass the order under section 148A(d) and time period for issue of notice under section 148 shall also be increased correspondingly.

EXAMPLE 1: Let us say, for Assessment Year 2019-20, the Assessing Officer finds on 01.03.2023 that income of ₹ 25,00,000 has escaped assessment. The Assessing Officer issues Show Cause Notice under section 148A on 01.03.2023 and assessee is asked to file the reply to it by 25.03.2023. The assessee files reply on 20.03.2023 and order under section 148A(d) is passed on 10.04.2023. Now time period for issue of notice which was 31.03.2023 shall be increased by the time allowed to the assessee in the Show Cause Notice under section 148A which is from 01.03.2023 to 25.03.2023. Therefore, notice under section 148 alongwith order under section 148A(d) shall be issued upto 25.04.2023.

If in the above case, the assessee files a WRIT PETITION against the order under section 148A(d) on 15.04.2023 and High Court Stays the proceedings under section 148 on 15.04.2023. Let us say, the stay and writ petition is dismissed on 31.05.2023. The time period for issue of notice shall be further increased by 47 days (15.04.2023 to 31.05.2023). The notice under section 148 can be issued upto 10.06.2023.

EXAMPLE 2: For Assessment Year 2019-20, the Assessing Officer finds on 01.03.2023 that income of ₹ 25,00,000 has escaped assessment. The Assessing Officer issues show cause notice under section 148A on 01.03.2023 and assessee is asked to file the reply by 25.03.2023. The assessee on 26.03.2023 files a WRIT PETITION to High Court against the proceedings under section 148A and High Court stays the proceedings under section 148A on 26.03.2023. The High Court dismisses the WRIT PETITION on 15.05.2023 and vacates the stay.

Now, the time period for passing the order under section 148A(d) was 30.04.2023 and the same has expired. Assessing Officer shall be given 7 days from 15.05.2023 to pass the order under section 148A(d) i.e., upto 22.05.2023.

The time period for issue of notice under section 148 which was 31.03.2023 shall be increased by the following time period:

- (i) (01.03.2023 to 25.03.2023) i.e., 25 days AND
- (ii) (26.03.2023 to 15.05.2023) i.e., 51 days AND

- (iii) 7 days allowed above to the Assessing Officer to pass order under section 148A(d)

Hence, notice under section 148 can be issued upto 22.06.2023.

VI. SPECIFIED AUTHORITY WHOSE APPROVAL IS REQUIRED FOR ISSUE OF NOTICE UNDER SECTION 148 AND FOR CONDUCTING INQUIRY UNDER SECTION 148A

If 3 years or less than 3 years have elapsed from the end of the relevant assessment year	Principal CIT or Principal Director of Income tax or CIT or Director of Income-tax
If more than three years have elapsed from the end of the relevant assessment year	Principal CCIT or Principal Director General of Income-tax, or where there is no PCCIT or Principal Director General of Income-tax, CCIT or Director General of Income-tax

Kanubhai M. Patel (HUF) (Guj.)

Mere signing of notice cannot tantamount to issuance of notice as contemplated under section 149. **The date of issue would be the date on which the notices were handed over for service to the proper officer, i.e., the date on which the said notices were actually handed over to the post office for the purpose of effecting service on the assessee.**

ILLUSTRATIONS ON SECTION 148 R/W 149(1)

In the following illustrations, it is assumed that the cases are not covered by the 4 cases mentioned in proviso to section 148A.

Illustration 1:

For Assessment Year 2019-20, the assessment was completed under section 143(3) on 30.11.2020 at ₹10,00,000. The Assessing Officer receives information that the income of ₹20,00,000 has escaped assessment for Assessment Year 2019-20 and issues a notice under section 148 alongwith order under section 148A(d) on 30.6.2023.

Answer:

As per section 149(1), the notice under section 148 could have been issued upto 31.03.2023. Thus, the notice issued on 30.06.2023 is time barred and hence, invalid.

Illustration 2:

For Assessment Year 2018-19, the assessment was completed on 31.03.2019 under section 144 at ₹5,00,000. The Assessing Officer receives information that the income of ₹ 60,00,000 for Assessment Year 2018-19 has escaped assessment and issues a notice under section 148 alongwith order under section 148A(d) on 14.06.2023.

Answer:

As per section 149(1), the notice under section 148 could have been issued upto 31.03.2029. Therefore, the notice issued on 14.06.2023 is a valid notice.

Illustration 3:

For Assessment Year 2018-19, the assessment was completed on 31.12.2019 under section 143(3) at ₹ 60,00,000. The Assessing Officer receives information that the income of ₹ 9,00,000 has escaped assessment for Assessment Year 2018-19 and issues a notice under section 148 alongwith order under section 148A(d) on 31.07.2023.

Answer:

As per section 149(1), the notice under section 148 can be issued upto 31.03.2022 as the income escaping assessment does not amounts or exceed ₹ 50,00,000 and therefore, the notice issued on 31.07.2023 is time barred and invalid.

Illustration 4:

For Assessment Year 2016-17, the assessment was completed on 31.12.2017 under section 144 at ₹10,00,000. The Assessing Officer receives information that the income of ₹ 50,00,000 has escaped assessment for the Assessment Year 2016-17. The Assessing Officer issues a notice under section 148 alongwith order under section 148A(d) on 4.06.2022. But when the assessment is made under section 147 on 31.07.2022, the Assessing Officer finds that the income which had escaped assessment was ₹ 49,00,000 and assesses the income at ₹ 59,00,000. (₹ 10,00,000 + ₹ 49,00,000)

Answer:

As per section 149(1), the notice under section 148 can be issued upto 31.03.2027 since the income escaping assessment is **likely to be** ₹ 50,00,000 or more. Therefore, the notice issued on 04.06.2022 is valid. As per section 151, the order under section 148A(d) can be issued by any Assessing Officer after approval from Principal Chief Commissioner of Income-tax or Principal Director of Income-tax or in their absence, from Chief Commissioner of Income-tax or Director General of Income-tax.

ILLUSTRATIONS ON SECTION 148A R/W 149**Illustration 1:**

For Assessment Year 2019-20, the Assessing Officer receives information on 05.03.2023 that income amounting to ₹ 32,00,000 has escaped assessment. He issues show cause notice under section 148A(b) to the assessee after conducting enquiry on 15.03.2023 asking him to reply to the notice by 22.03.2023. The notice is served on assessee on 19.03.2023. Assessee could not furnish the reply by the due-date and the Assessing Officer passes order under section 148A(d) and serves the same alongwith notice under section 148 to assessee on 02.04.2023. Assessee contends that the Assessing Officer has not followed procedure under section 148A and that he was not given sufficient time to reply to the notice.

Answer:

The contention of the assessee is incorrect. The Assessing Officer is required to give time to the assessee to furnish his reply within a period which shall not be less than 7 days from the date on which such notice is ISSUED by him.

Furthermore, notice under section 148 as per the amended section 149(1) could be issued upto:

$$= 31.03.2023 + (15.03.2023 - 22.03.2023 \text{ i.e., } 8 \text{ days})$$

$$= 08.04.2023$$

Hence notice issued under section 148 and order under section 148A(d) served on the assessee on 02.04.2023 are valid and not time-barred.

Illustration 2:

For Assessment Year 2019-20, the Assessing Officer receives information on 10.03.2023 that income of ₹ 10,00,000 has escaped assessment. The Assessing Officer issues show-cause notice under section 148A(b) to the Assessee on 11.03.2023 which is received by him on 14.03.2023. The Assessing Officer gives time to the assessee to furnish reply to the notice by 25.03.2023. Assessee furnishes response to notice on 23.03.2023. The Assessing Officer passes order under section 148A(d) on 05.04.2023 and serves it alongwith notice under section 148 to the assessee on 07.04.2023. Assessee contends that the notice under section 148 is time barred and invalid.

Answer:

Notice under section 148 as per section 149(1) can be issued in the given case upto:

$$= 31.03.2023 + (11.03.2023 - 25.03.2023 \text{ i.e., } 15 \text{ days})$$

$$= 15.04.2023$$

The notice under section 148 is valid as it is within time.

Illustration 3:

On February 20, 2023, the Assessing Officer issues a show-cause notice under section 148A(b) to X Ltd. as to why a notice under section 148 should not be issued on the basis of information which suggests that income of ₹ 40 lakh chargeable to tax has escaped assessment for the assessment year 2019-20 (X Ltd. has to reply within 10 days as specified in the notice, no extension is given). After considering the reply of X Ltd., the Assessee Officer passes an order under section 148A(d) (with the prior approval of PCIT) indicating that it is a fit case to issue notice under section 148. Along with order under section 148A(d), the Assessing Officer issues a notice on April 6, 2023 under section 148 for the reassessment in the aforesaid case. X Ltd. wants to know whether (or not) notice under section 148 is issued within a time-limit permitted by section 149(1).

Answer:

Quantum of income which has escaped assessment (as per records of the Assessing Officer) is less than ₹ 50 lakh. Under section 149(1)(a), notice in this case cannot be issued after the expiry of 3 years. This time-limit expires on March 31, 2023 (i.e., assessment year 2019-20 + 3 years). However, time allowed to assessee in providing opportunity of being heard (under section 148A) shall be excluded (10 days' time is given for this purpose to the assessee). Consequently, the time limit which expires on March 31, 2023 shall be extended to April 10, 2023 (March 31, 2023 + 10 days).

Section 148 notice issued on April 6, 2023 is within the time-limit and legally tenable.

Illustration 4:

For Assessment Year 2019-20, the Assessing Officer receives information on 23.03.2023 that income of ₹ 20,00,000 has escaped assessment for Assessment Year 2019-20. He issues show-cause notice to assessee under section 148A on 27.03.2023 to furnish reply to the notice by 25.04.2023. The assessee replies to the notice on 04.04.2023. What is the time-limit by which the Assessing Officer may pass the order under section 148A(d) & serve it alongwith a notice under section 148 to the assessee?

Answer:

Time-limit to pass an order under section 148A(d) as per section 148A is:

One month from the end of month in which reply is received i.e., by 31.05.2023. However, time-limit to issue notice under section 148 as per section 149(1) shall be:

= 31.03.2023 + (27.03.2023 to 25.04.2023 i.e., 30 days)

=30.04.2023

Since, notice under section 148 is to be served alongwith with a copy of the order under section 148A(d), Order under section 148A(d) should also be passed by 30.04.2023.

SECTION 150: NO TIME LIMIT FOR ISSUE OF NOTICE

Notice under section 148 may be issued **at any time** for the purposes of making an assessment/ reassessment in **consequence of or in order to give effect to the finding or direction contained in an order under section 250, 254, 260A, 262, 263 or 264 of the Income-tax Act or the ORDER OF A COURT UNDER ANY OTHER LAW. [See Section 153(6)(i)]**

IMPORTANT NOTE:

If a deduction is **retrospectively disallowed by a Finance Act**, then the Assessing Officer will disallow the deduction by issuing notices under section 148 and making assessment/ reassessment under section 147. BUT IN SUCH CASES THE NOTICES UNDER SECTION 148 CAN BE ISSUED WITHIN THE TIME LIMITS PRESCRIBED UNDER SECTION 149(1). SECTION 150 SHALL NOT APPLY.

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1. **On reassessment under section 147, the original assessment is not wiped off but it remains.**
2. **Matters lost in the original assessment proceedings which have since acquired finality (i.e. against which no appeal/rectification application/revision application filed) cannot be claimed in the reassessment proceedings. Therefore, expenses disallowed/ incomes taxed in the original assessment against which no appeal/revision/rectification application was filed cannot be claimed as allowable/non-taxable in the reassessment proceeding under section 147.**
3. **Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings under section 147. However, the expenses pertaining to the income which has escaped assessment can be claimed. The assessee can prove that the income which is alleged to have escaped assessment is not taxable.**

SECTION 153: TIME LIMIT FOR COMPLETION OF ASSESSMENT OR REASSESSMENT

	Normal Period of Assessment/ Reassessment	Period of Assessment/ Reassessment where a reference has been made to Transfer Pricing Officer to determine Arm's Length Price
Assessment under section 143(3) or under section 144	9 months from the end of the relevant Assessment Year. [Section 153(1)]	21 months from the end of the relevant Assessment Year.
Assessment or reassessment under section 147	12 months from the end of the financial year in which notice under section 148 was served. [Section 153(2)]	24 months from the end of the financial year in which notice under section 148 was served.
Fresh assessment under section 143(3) /144/147 where assessment has been cancelled and referred back to Assessing Officer for fresh assessment by an order under section 254, 263 or 264	12 months from the end of the financial year in which order under section 254 is received by the CIT or order under section 263 or 264 was passed by the CCIT/CIT. [Section 153(3)]	24 months from the end of the financial year in which order under section 254 is received by the CIT or order under section 263 or 264 was passed by the CCIT/CIT.

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"Assessment" or "Reassessment" is an integral process of involving not only the determination of Total Income, but also determination of Tax. **Notice of Demand should also be prepared within time prescribed under section 153. If notice of demand is prepared after the time limit of section 153, then the assessment/reassessment shall be time barred and void ab-intio.**

FINANCE ACT, 2022

1. As per Finance Act, 2022, the Chief Commissioner of Income Tax/ Commissioner of Income Tax have been given power under section 263 to:
 - (i) modify the order of Transfer Pricing Officer passed section 92CA
 - (ii) cancel the order of Transfer Pricing Officer passed under section 92CA and direct Transfer Pricing Officer to make fresh order under section 92CA.
2. As per the amendment in section 153(3) by the Finance Act, 2022, if order of Transfer Pricing Officer passed under section 92CA is cancelled or set aside by the order of Chief Commissioner of Income Tax/ Commissioner of Income Tax under section 263, then the Transfer Pricing Officer shall pass a fresh order under section 92CA within 12 months from the end of the financial year in which order under section 263 is passed by Chief Commissioner of Income Tax/ Commissioner of Income Tax. [Time-limit for Assessing Officer to pass an order giving effect to such order of Transfer Pricing Officer shall be as per section 153(5A)]

SECTION 153(5): APPEAL EFFECT OR REVISION EFFECT

- Where by an order under section 250/254/260A/262/263/264, an expense is allowed/ disallowed or an income is held to be taxable/exempt
- **and in the said order, the assessment has not been cancelled/ set aside and Assessing Officer is not directed to make fresh assessment**
- then Assessing Officer shall modify his assessment order to give effect to the said order
- and he shall pass modification order **within 3 months from the end of the month** in which the said order under section 250, 254, 260A or 262 is received by Commissioner of Income-tax or order under section 263 or 264 is passed by **Chief Commissioner of Income-tax or** Commissioner of Income-tax. **(If the order does not require verification of any issue by way of submission of documents and does not require an opportunity of being heard to be provided to the assessee).**
- However, if it not possible for Assessing Officer to pass modification order within the said 3 months for reasons beyond his control, then on request of Assessing Officer, Commissioner of Income-tax may allow **additional time of 6 months.**
- However, where the order under section 250/254/260A/262/263/264 requires
 - **verification** of any issue by way of submission of any document by assessee or any other person or
 - **an opportunity of being heard** to be provided to the assessee.

Then Assessing Officer shall pass modification order within **12 months from the end of the financial year** in which order under section 250/254/260A/262 is **received by the CIT** or order under section 263//264 is **passed by the CCIT/CIT.**

♦ ANALYSIS OF AMENDMENTS BY FINANCE ACT, 2022 IN SECTION 153(5) ♦

1. As per Finance Act, 2022 the Chief Commissioner of Income Tax/ Commissioner of Income Tax have been given power under section 263 to:
 - (i) **modify the order of Transfer Pricing Officer passed section 92CA**
 - (ii) **cancel the order of Transfer Pricing Officer passed under section 92CA and direct Transfer Pricing Officer to make fresh order under section 92CA.**
2. If Chief Commissioner of Income Tax/ Commissioner of Income Tax by his order under section 263 makes modification in order of Transfer Pricing Officer passed under section 92CA and Chief Commissioner of Income Tax/ Commissioner of Income Tax under section 263 **do not cancel/ set aside the order of Transfer Pricing Officer passed under section 92CA**, then as per amendment by Finance Act, 2022 in section 153(5), the Transfer Pricing Officer shall pass his

modification order to give effect to direction in the order under section 263 as under:

- (a) Within 3 months from the end of the month in which order under section 263 is passed by Chief Commissioner of Income Tax/ Commissioner of Income Tax.
- (b) If it is not possible for Transfer Pricing Officer to pass the modification order within the above said 3 months for reasons beyond his control, then Commissioner of Income Tax will allow him additional period of 6 months to pass the modification order.
- (c) However, if order of Chief Commissioner of Income Tax/ Commissioner of Income Tax under section 263 requires verification of any issue by way of submission of any documents by the assessee/ any other person or where an opportunity of being heard is to be provided to the assessee, then Transfer Pricing Officer shall pass modification order within 12 months from the end of financial year in which order under section 263 is passed.

SECTION 153(5A): EFFECT TO ORDER UNDER SECTION 153(3) OR 153(5) OF TPO

Where the Transfer Pricing Officer gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.

(Finance Act, 2022)

SUMMARY OF TIME LIMITS IN CASES INVOLVING ORDERS U/S 92CA PASSED ON BASIS OF ORDER UNDER SECTION 263 (AMENDMENTS BY FINANCE ACT, 2022)

PARTICULARS	TIME LIMIT FOR ORDER TO BE PASSED BY TPO	TIME LIMIT FOR ORDER TO BE PASSED BY A.O.
DIRECTION IS GIVEN TO T.P.O. IN AN ORDER PASSED UNDER SECTION 263		
1. To make Fresh Order u/s 92CA	12 months from the end of financial year in which the order u/s 263 is passed by CCIT/ CIT [153(3)]	2 months from the end of the month in which the order of T.P.O. is received by A.O. [153(5A)]
2. To make modification in the order passed under section 92CA	3 months from the end of the month in which order u/s 263 is passed by CCIT/CIT [153(5)] Note 1: However, an additional period of 6 months may be given by Commissioner on a request by Transfer Pricing Officer Note 2: However, if the order requires verification of any	2 months from the end of the month in which the order of T.P.O is received by A.O. [153(5A)]

<p>below bolded part below underlined part</p>	<p>issue or opportunity to assessee of being heard, then the order u/s 92CA shall be passed within 12 months from end of financial year in which order under section 254/263 is passed by CCIT/CIT [Second proviso to 153(5)]</p>
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SECTION 153(6): TIME LIMIT FOR COMPLETION OF ASSESSMENT OR REASSESSMENT IN CERTAIN CASES PURSUANT TO DIRECTIONS OF APPELATE AUTHORITIES AND COURTS

SECTION 153(6)(i)

1. In case the assessment is not cancelled/ set-aside but, **a direction is given in the order passed under section 250, 254, 263 or 264 as a result of which income of any AY escapes assessment**, then such assessment or reassessment shall be made **before the expiry of 12 months from the end of the month in which such order is received by CIT or passed by CCIT/CIT, as the case may be**. This is possible only in the following two cases:
 - (i) **Direction is given to exclude the income from the total income of one person and to include the said income in the total income of some other person.**
 - (ii) **Direction is given to exclude income from the total income of the assessee in one AY and to include the said income in the total income of another AY.**
2. If income escapes assessment because of a **finding or direction given in an order under section 260A or section 262**, or order of a court under any other law, then such assessment or reassessment shall be made **before the expiry of 12 months from the end of the month in which such order is received by CIT**.
3. In case the assessment is cancelled/ set-aside and a direction is given to make a fresh assessment by an order under section 254, 263 or 264, then, the provisions of section 153(3) shall apply.

SECTION 153(6)(ii)

Where in case of a firm, an assessment is made on the partner of the firm in consequence of an assessment or reassessment made on the firm under section 147, then such assessment or reassessment shall be made before the expiry of 12 months from the end of the month in which assessment order is passed in case of firm.

For example, notices of 148 alongwith order under section 148A(d) were issued and served on the firm and its partners for Assessment Year 2019-20 on 02.04.2023. Now assessment shall be completed on the firm under section 147 by 31.03.2025. Suppose, assessment is made on firm on 10.12.2024. Now, Assessing Officer can complete assessment of 147 on partners by 31.12.2025.

EXPLANATION 1 TO SECTION 153: Exclusion of following time period while computing the period of limitation relating to assessment or reassessment under section 153

- (i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under proviso to section 129.
- (ii) the period during which the assessment proceeding is stayed by an order or injunction of any court.
- (iii) the period commencing from the date on which the **Assessing Officer intimates the Central Government or the prescribed authority**, the contravention of the provisions of section 10(21)/(22B)/(23A)/(23B), under section 143(3) and **ending with the date on which the copy of the order withdrawing the approval or rescinding the notification is received by the Assessing Officer**;
- (iv) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer,
- (v) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and
 - (a) **ending with the last date on which assessee is required to furnish a report of audit under section 142(2A); or**
 - (b) **where such direction is challenged before a Court, ending with the date on which the order setting aside such direction is received by the CIT.**
- (vi) the period commencing from the date on which a reference or **first of the references for exchange of information** is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information **so requested is last received by the Commissioner or a period of 1 year, whichever is less**.
- (vii) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under section 158A and ending with the date on which order under sub-section (3) of section 158A is made by him (order of accepting or rejecting the declaration).

(Finance Act, 2022)

- (viii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under section 12AB(4), is received by the Assessing Officer,

(Added by Finance Act, 2022)

In all the above cases, where immediately after excluding the above time periods, the period of limitation available to the Assessing Officer for making an assessment or reassessment is less than 60 days, then such remaining period shall be extended to 60 days and the above said periods shall be deemed to be extended accordingly.

Note: Financial Year 31.03.2024 is a leap year having 366 days

Illustration 1:

For Assessment Year 2022-23 assessee filed return on 31.12.2022 and Assessing Officer served a notice under section 143(2) on 30.06.2023. The assessee challenges the notice served under Section 143(2) in a writ petition before the High Court on 15.07.2023. The High Court granted a stay on 15.07.2023 against the assessment proceedings. The writ petition of the assessee is dismissed on 31.03.2024 and the stay is vacated on that date. What is the time period for completion of assessment under section 143(3)?

Answer:

Time period for completion of assessment under section 143(3):

$$= 31.12.2023 + (15.07.2023 \text{ to } 31.03.2024 \text{ i.e., } 261 \text{ days})$$

$$= 17.09.2024$$

The assessment under section 143(3) can be made upto 17.09.2024.

Illustration 2:

For Assessment Year 2022-23, assessment proceedings were going on under Section 143(3). The assessee challenges the assessment proceedings in a writ petition before the High Court on 01.12.2023. The High Court granted a stay on 01.12.2023 against the assessment proceedings. The writ petition of the assessee is dismissed on 20.01.2024 and the stay is vacated on that date. What is the time period for completion of assessment under Section 143(3)?

Answer:

Time period for completion of assessment under section 143(3):

$$= 31.12.2023 + (01.12.2023 \text{ to } 20.01.2024 \text{ i.e. } 51 \text{ days})$$

$$= 20.02.2024$$

Since, the time period for making assessment under section 143(3), as on 20.01.2024 is less than 60 days, the assessment under section 143(3) can be made upto 20.03.2024.

Illustration 3:

Suppose in Illustration 2 above the stay is vacated on 20.02.2024, then what is the time period for completion of assessment under Section 143(3)?

Answer:

Time period for completion of assessment under section 143(3):

$$= 31.12.2023 + (01.12.2023 \text{ to } 20.02.2024 \text{ i.e. } 82 \text{ days})$$

$$= 22.03.2023$$

Since, the time period for making assessment under section 143(3), as on 20.02.2024 is less than 60 days, the assessment under section 143(3) can be made upto 20.04.2024.

Illustration 4:

For Assessment Year 2022-23, the due date of filing of return was 30.11.2022. The return of income was filed on 30.11.2022. Notice under Section 143(2) was served on the assessee on 31.12.2022. Direction for special audit under Section 142(2A) was issued on 1.2.2023 which is received by the assessee on 4.2.2023. The assessee is directed to submit the report of special audit by 26.5.2023.

Case I: Assessee does not furnish audit report under Section 142(2A).

Case II: Assessee takes extension of the time period to furnish the report by 15.6.2023 and submits the report on 10.6.2023.

Answer:

Case I: Time period for completion of assessment under section 143(3):

= 31.12.2023 + (01.02.2023 to 26.05.2023 i.e. 115 days)

= 24.04.2024

The assessment under section 143(3) can be made upto 24.04.2024.

Case II: Time period for completion of assessment under section 143(3):

= 31.12.2023 + (01.02.2023 to 15.06.2023 i.e. 135 days)

= 14.05.2024

The assessment under section 143(3) can be made upto 14.05.2024.

Illustration 5:

Suppose in Illustration 4 above, assessee on 05.02.2023 challenged the Direction for special audit in a Writ Petition in the High Court. The High Court decides on 25.07.2023 that Direction under section 142(2A) was invalid and sets aside the said Direction. The said order of the High Court is received by the Commissioner of Income-tax on 31.07.2023.

Now, time period for completion of assessment under section 143(3) is:

= 31.12.2023 + (01.02.2023 to 31.07.2023 i.e. 181 days)

= 29.06.2024

The assessment under section 143(3) can be made upto 29.06.2024.

Illustration 6:

Suppose in Illustration 5 above, the High Court decides on 25.07.2023 that Direction under section 142(2A) was valid and asks the assessee to furnish the report to Assessing Officer by 31.08.2023.

Now, time period for completion of assessment under section 143(3):

= 31.12.2023 + (01.02.2023 to 31.08.2023 i.e., 212 days)

= 30.07.2024

The assessment under section 143(3) can be made upto 30.07.2024.

Illustration 7:

For Assessment Year 2022-23, an institution claiming exemption under section 10(23B) filed a return on 30.10.2022 declaring NIL income. The institution has claimed exemption of ₹ 2 crores under section 10(23B). The Assessing Officer serves a notice under section 143(2) on 28.02.2023 and finds in the course of assessment proceedings that the institution has violated the conditions of section 10(23B) and is not entitled to exemption. The Assessing Officer intimates the violations to the prescribed authority on 01.04.2023 and the prescribed authority rescinds the notification of approval under section 10(23B) for assessment year 2022-23 on 24.12.2024. The said order rescinding the notification is received by Assessing Officer on 31.12.2024. By what time can the Assessing Officer complete the assessment under sections 143(3)?

Answer:

The Assessing Officer can complete the assessment under section 143(3) and disallow the exemption under section 10(23B) by

= 31.12.2023 + (01.04.2023 to 31.12.2024 i.e., 641 days)

= 02.10.2025.

Illustration 8:

The assessment of M/s XYZ for Assessment Year 2022-23 is going on under section 143(3). The Joint Commissioner has evidence that assessee has received commission in Hong Kong in Previous Year 31.3.2022 which has not been disclosed by him. The Joint

Commissioner under the Tax Information Exchange Agreement (TIEA) entered with Hong Kong under section 90 writes to the Hong Kong Government to furnish the details of Bank account of assessee in Hong Kong. The request was made on 01.01.2023. The information is received by the Commissioner of Income-tax on 30.06.2023.

The Joint commissioner on 01.03.2023 under TIEA with Macau writes to Macau Government to furnish the details of Bank account in Macau and the said information is received by Commissioner of Income-tax on 31.08.2023.

The time period of completion of assessment under section 143(3) i.e., 31.12.2023 shall be increased by:

(i) 1st January 2023 to 31.08.2023 i.e. 243 days; or

(ii) 1 year,

whichever is less.

Therefore, assessment period shall be increased to 30.08.2024.

Illustration 9:

The assessment of Assessment Year 2022-23 is taken up for scrutiny assessment. The Assessing Officer on 1-1-2023 makes a reference to Valuation Officer under section 142A. The report of Valuation Officer is received by Assessing Officer on 30-6-2023. What is the time limit for completion of assessment under section 143(3)?

Answer:

The assessment under section 143(3) can be completed upto:

31.12.2023 + (1.1.2023 to 30.6.2023 = 181 days)

= 29.06.2024

Illustration 10:

For Assessment Year 2022-23, the case of assessee trust was picked up for scrutiny assessment under section 143(3). Trust is registered under section 12AB. On 01.07.2023, the Assessing Officer makes a reference to Commissioner to cancel the registration of the Trust as the trust has applied its income for objects other than the objects of the Trust. CIT made inquiries and gave reasonable opportunity of being heard and found the Trust has committed violations as per section 12AB. CIT by his order dated 10.12.2023 under section 12AB cancelled the registration of the Trust. The said order is received by Assessing Officer on 12.12.2023. Now, Assessing Officer wants to complete the assessment under section 143(3) disallowing the exemption under section 11.

The time period for completion of assessment under section 143(3) is 9 months from the end of the assessment year i.e., 31.12.2023. As per the amendment by Finance Act, 2022 this time period shall be increased by 165 days (01.07.2023 to 12.12.2023). Assessing Officer can complete the assessment under section 143(3) by 13.06.2024.

SECTION 154: RECTIFICATION OF MISTAKE

1. With a view to rectify any mistake apparent from record, an Income-tax Authority referred to in section 116 may

(a) amend any **order** passed by it.

(b) amend any **intimation or deemed intimation** under section 143(1).

(c) amend any intimation passed under section 200A(1) i.e. **TDS intimation**.

(d) amend any intimation passed under section 206CB(1) i.e., **TCS intimation**.

Note: Under section 154, a "Mistake apparent from Record" can be rectified. "Mistake apparent from Record" means a mistake about which no two views are possible and about which there could be no arguments.

When a mistake itself has to be determined on investigation of facts, it cannot be said that there is a mistake apparent from record and consequently rectification under section 154 is not possible.

2. The Income-tax Authority may make rectification -

- (a) on its own motion or
- (b) where the mistake is brought to its notice by the assessee or the deductor or
- (c) **where the authority concerned is CIT(A), and mistake is brought to its notice by the Assessing Officer also.**

3. The amendment/ rectification shall be done by passing an order.

4. Section 154(7)

No amendment shall be made under this section **after the expiry of 4 years from the end of the Financial Year in which the order sought to be amended was passed.**

5. Section 154(8)

Without prejudice to the provisions of sub-section (7), where an application for amendment is made by the assessee, the Income-tax authority shall pass an order, within a period of 6 months from the end of the month in which the application is received by it -

- (a) making the amendment or
- (b) refusing to allow the claim.

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The order sought to be amended does not necessarily mean original order but rectified order also. 4 years shall be computed from the end of the F/Y in which rectified order was passed for the second rectification under section 154.

7. The doctrine of partial merger has been affirmed and doctrine of total merger has been overruled. The Assessing Officer can rectify those matters under section 154 which have not gone in an appeal or revision.

8. If the assessee has made the rectification application within the prescribed period of 4 years and the concerned Income-tax authority could not pass the rectification order within the said 4 years, then it is permitted that the Income-tax authority can make a **belated rectification** (after the said 4 years) **TO THE ADVANTAGE OF THE ASSESSEE.**

9. If there is a retrospective amendment in law, the same can be given effect to by passing a rectification order under section 154. However, the period of limitation of 4 years shall apply.

10. A mistake arising as a result of subsequent interpretation of law by the Supreme Court would constitute a "mistake apparent from records" and rectification under section 154 is possible. [Not available in case of High Court judgement]

Where an assessee moves an application under section 154 pointing out that in light of a later Supreme Court judgment, a mistake has occurred in any of the completed assessments, then rectification under section 154 shall be made provided that the rectification application is made within the prescribed period of 4 years.

11. The Income-tax authority can disallow a deduction under section 154 on the basis of a later Supreme Court judgment. But in this case, the rectification order must be passed within the prescribed period of 4 years.

SECTION 156: NOTICE OF DEMAND

When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, then the Assessing Officer shall serve upon the assessee a notice of demand specifying the sum so payable.

Provided that where any sum is determined to be payable by the assessee under section 143(1) or under section 200A(1) [TDS] or under section 206CB(1) [TCS], the intimation under these sections shall be deemed to be a notice of demand for the purposes of this section.

SECTION 156A: MODIFICATION AND REVISION OF NOTICE IN CERTAIN CASES (ADDED BY FINANCE ACT, 2022)

- (1) Where **any tax, interest, penalty, fine or any other sum** in respect of which a notice of demand has been issued under section 156, **is reduced as a result of an order of the Adjudicating Authority** as defined in the Insolvency and Bankruptcy Code, 2016, **the Assessing Officer shall modify the demand payable in conformity with such order** and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, **and such notice of demand shall be deemed to be a notice under section 156** and the provisions of this Act shall accordingly, apply in relation to such notice.
- (2) **Where the order referred to in sub-section (1) is modified by the National Company Law Appellate Tribunal or the Supreme Court**, as the case may be, **the modified notice of demand** as referred to in sub-section (1), issued by the Assessing Officer **shall be revised accordingly**.

♦ ANALYSIS OF SECTION 156A ♦

It has been noted that in the cases of business reorganisation, instances have been found where the Court or Tribunal or an Adjudicating Authority, as defined in the Insolvency and Bankruptcy Code, 2016, as the case may be, as a part of the restructuring process, recast the entire liability to ensure future viability of such sick entities and in the process, modify the demand created vide various proceedings in the past, by the Income Tax department as well amongst other things.

However, it is observed that there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, it is proposed to insert a new section 156A to the Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

PROTECTIVE ASSESSMENT

Though there is no provision in the Income-tax Act authorizing the levy of Income-tax on a person other than by whom the Income-tax is payable, yet it is open to Income-tax authorities to make a **protective** or alternative **assessment if it is not ascertainable who is really liable to pay the tax among a few possible persons**.

Examples of cases where Protective Assessment can be made are:

(i) Litigation between two parties concerned in Civil Courts:

Suppose there is a dispute between Mr. A and Mr. B over the ownership of a house property and both of them claim to be the owner of the property. Now the Assessing Officer can make a protective assessment of the income from such property in which he will assess the income from house property in hands of both Mr. A and Mr. B and will write in the assessment order, that one of the assessment will be annulled as and when it is decided as who is the real owner. Suppose, the Civil Court decides that Mr. A is the real owner, then the protective assessment in the hands of Mr. A is sustainable and the protective assessment in the hands of Mr. B will be declared as void-ab-initio.

(ii) Possibility of Benami Transaction but still not totally clear:

If the Assessing Officer suspects that the property which is registered in the name of Mr. X really belongs to Mr. Y, i.e., Mr. Y is the benami holder, then he can make a protective assessment in the hands of Mr. X and Mr. Y till such time he ascertains as to who is the real owner.

In short, where it appears to Income-tax authorities that certain income has been received during the relevant Assessment Year but it is not clear who has received that income and prima facie it appears that income may have been received by one party or another or by both **it would be open to authorities to take appropriate proceedings against both. As and when the final assessment is made, the department must recover the tax from the person in whose hands the income is finally assessed.**

It must, however be noted that while protective assessment is permissible, a protective order for recovery is not permissible. In making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided one way or another. Furthermore, a protective order of assessment can be passed but not a protective order of penalty.