

TOPIC: INCOME TAX SEARCH - ASSESSMENTS/ REASSESSMENTS

1. How to respond to notice u/s 148A(1)? How much time should the AO provide to respond to the notice? What is a reasonable opportunity?

- Assessee should file a preliminary reply seeking for the information/ material/ statement/ investigation report mentioned in the notice u/s 148A(1). Also an opportunity for cross examination should be demanded at the earliest possible time. Copy of Approval (if any) should also be demanded.

- i) Sabh Infrastruture vs ACIT(Delhi HC) reported in 398 ITR 198
- ii) GKN Driveshafts (India) Ltd. ITO (SC) reported in 259 ITR 19.
- iii) Kishore Kumar Singh vs DCIT (Patna HC) reported in 174 taxmann.com 32 (*Notice not backed by reasons/ specific material - 148 bad in law*)
- iv) Sanjay Kaul vs ITO (Delhi HC) reported in 175 taxmann.com 384 (*No specific material – 148 bad in law*)
- v) Banyan Real Estate Fund Mauritius vs DCIT (Delhi HC) reported in 473 ITR 466 (*Reasons cannot be improved even in 148A(b) and factual inaccuracies in reasons can also not be improved subsequently*)
- vi) Catchy Propbuild (P) Ltd. vs ACIT (Delhi HC) reported in 448 ITR 671 (*Reasons cannot be improved or supplemented even in 148A(b) and factual inaccuracies in reasons can also not be improved subsequently*)

- **AO is supposed to comply with time limits as enshrined in section 149 for issuance of notice u/s 148, beyond which the notice will be time barred.**

- i) UOI vs Rajeev Bansal (SC) reported in 469 ITR 46
- ii) Ram Balram Buildhome (P) Ltd. vs ACIT (Delhi HC) reported in 171 taxmann.com 99 (*Where by virtue of TOLA, Assessing Officer had period of twenty-nine days limitation left on date of commencement of reassessment proceedings to issue a notice under section 148, accompanied by an order under section 148A(d), an order under section 148A(d) was required to be passed within said twenty-nine days notwithstanding time stipulated under section 148A(d)*)
- iii) Manju Somani vs ITO (Delhi HC) reported in 466 ITR 758 (*Where Assessing Officer issued on assessee a notice under section 148 dated 29-4-2024 in respect of assessment year 2016-17, since section 149(1)(b) as it stood prior to amendment by Finance Act, 2021 prescribed that no notice under section 148 shall be issued if four years but not more than six years have elapsed from end of relevant assessment year, impugned notice deserved to be quashed*)
- iv) Flowmore vs DCIT (Delhi HC) reported in 467 ITR 177 (*Where Assessing Officer pursuant to a search conducted in case of a party on 9-2-2022 issued on assessee a notice under section 148 dated 31-3-2023 seeking to reopen assessment for assessment year 2013-14, in view of first proviso to section 149(1), assessment year 2013-14 fell beyond ten year block period as set out under section 153C read with section 153A and consequently impugned notice deserved to be set aside*)
- v) Hexaware Technologies Ltd. vs ACIT (Bombay HC) reported in 464 ITR 430

- Reasonable opportunity of being heard should be given to assessee, even though no time period has been prescribed in the Act in the amended provisions w.e.f. 01.09.2024, but still going by the erstwhile provisions of section 148A(b), said period can be anything between 7 days to 30 days.
- i) *Rajam Sevi vs ITO (Madras High Court) reported in 301 Taxman 455 (Where Assessing Officer had passed an order under section 148A(d) on ground that there were unexplained credit to account of assessee, without providing an opportunity to assessee to submit his objection in person, impugned order and notices issued under sections 148A(b) and 148 were to be set aside and Assessing Officer was to be directed to pass orders after affording reasonable opportunity of personal hearing to assessee)*
 - ii) *Popatlal Ummedmalji Jain vs ITO (Bombay High Court) reported in 159 taxmann.com 150 (Where revenue authority passed an order under section 148A(d) and issued notice under section 148 holding that assessee had incurred huge expenses on marriage of his daughter which escaped assessment within meaning of section 147 and assessee claimed that he was not provided personal hearing by, AO revenue was directed to follow due procedure laid down in law and ensure that assessee be extended an adequate and reasonable opportunity to contest notice under section 148)*
 - iii) *Vayoo Nandan Finance Company P. Ltd. vs ITO (Delhi HC) reported in 151 taxmann.com 343 (Where a reopening notice under section 148A(b) was issued on ground that an information was received from Investigation wing that assessee had entered into transactions with two parties who were accommodation entry providers, since no reasonable time was given to assessee to file reply to said notice and, further, it was completely unclear, at this juncture, as to whether any information was actually*

received by Assessing Officer which was then furnished to assessee, impugned order passed under section 148A(d) and consequent notice issued under section 148 were to be set aside)

2. **When approval of competent authority is required in initiating proceedings u/s 148A and issuing notice u/s 148?**

- In the new provisions applicable w.e.f. 01.09.2024, no approval is required for issuing any notice u/s 148A(1), however, for passing an order u/s 148A(3) (*erstwhile 148A(d)*) and issuing 148, prior approval has to be obtained from the specified authority as mentioned in section 151 of the Act (Additional Commissioner or Additional Director or Joint commissioner, Joint director w.e.f. 01.09.2024).
- i) Abhinav Jindal HUF vs ITO (Delhi HC) reported in 166 taxmann.com 536 (*TOLA would not alter or amend structure for approval and sanction which stands erected by virtue of section 151; where notice for reopening of assessment was issued four years after end of assessment year 2015-16, approval granted by Joint Commissioner for reopening of assessment would not be compliant with scheme of amended section 151 and was liable to be quashed*)
- ii) Rohit Kumar vs ITO (Delhi HC) reported in 170 taxmann.com 506

3. **How to see defects in the approval granted u/s 151?**

- Common defects to be seen are: whether common approval, factual inaccuracies, absence of material/ information/ statement/ investigation report while issuing notice u/s 148A(1), (3) and 148. Whether due and proper application of mind by the AO and also by specified authority.
- i) Vinod Kumar Solanki vs DCIT (Delhi HC) reported in 166 taxmann.com 71 (*Where approval granted by Principal Commissioner for reopening assessment*

was a general order of approval for 111 cases and there was not even a whisper as to what material had weighed in grant of approval in present case, approval granted by Principal Commissioner for action under section 147/148 was not valid)

- ii) Pr. CIT v. Pioneer Town Planners (P.) Ltd. (Delhi HC) reported in 465 ITR 356
- iii) SBC Minerals (P) Ltd. vs ACIT (Delhi HC) reported in 475 ITR 360 (*Where Assessing Officer issued on assessee a notice under section 148A(b) and passed order under section 148A(d) and consequently issued notice under section 148, since approval order under section 151 was bereft of any reasons, approval granted by prescribed authority for issuance of order under section 148A(d) was not valid and thus, notice under section 148 issued pursuant to order under section 148A(d) were to be set aside and quashed*)
- iv) Shourya Infra (P) Ltd. vs ITO (Delhi HC) reported in 157 taxmann.com 730 (*The form for obtaining approval is what appears to have been placed before the Asstt. Commissioner and Pr. Commissioner. The mandatory entries were not made. Therefore, the weight of the evidence seems to suggest that the Asstt. Commissioner cleared the path without delving into the aspect that this was, indeed, a case of under-assessment and likewise the Pr. Commissioner rubber-stamped the request made by the Assessing Officer for initiating the reassessment proceeding qua the assessee without applying his mind to the requisite aspects. [Para 49]*)

4. **What should be done after receiving notice u/s 148? Whether JAO can issue notice u/s 148? Stand of different High Courts and Supreme Court?**

- Section 148A(3) order needs to be examined and if the same is based on non application of mind or without any

specific tangible material or incorrect approval, then assessee should think of filing a writ petition in Hon'ble High Court or if the matter is not caste iron then participate in the reassessment proceedings.

- Various high courts have taken contrary views on issuance of notice u/e 148 by JAO, as Bombay, Gujarat, Gauhati, Madras, Telangana, Punjab have held that JAO is not empowered to issue notice u/s 148 of the Act, whereas, Delhi High Court have taken a contrary view.
 - i) Hexaware Technologies Ltd. vs ACIT (Bombay High Court) reported in 464 ITR 430 (In Favour of assessee)
 - ii) Kankanala Ravindra Reddy vs ITO (Telangana High Court) reported in 295 Taxman 652 (In Favour of assessee)
 - iii) Ram Narayan Shah vs UOI (Gauhati High Court) reported in 163taxmann.com478 (In Favour of assessee)
 - iv) TVS Credit Services Ltd. vs DCIT (Madras High Court) reported in 174 taxmann.com 1078 (In favour of assessee)
 - v) Jatinder Singh Bhangu vs UOI (P&H HC) reported in 165 taxmann.com 115
 - vi) T.K.S. Builders (P) Ltd vs DCIT (Delhi HC) reported in 469 ITR 657 (Against Assessee)
 - vii) 156 taxmann.com 318 (Calcutta HC) (Against Assessee)

5. Time limits for issuing notice u/s 148 in 148A as well as in search cases? Whether extension in time limit is possible, if yes, when?

- With effect from 01.09.2024, the Revenue has to adhere to Chapter XIV B provisions for making assessments in search cases i.e. provisions of section 148 are inapplicable for the same w.e.f. 01.09.2024.
- However, with regards to searches during the period from 01.04.2021 to 31.08.2024, learned AO is supposed to adhere to provisions of section 148 read with Explanation 2 and also proviso to section 148A (*as there is no requirement to issued 148A notices and learned AO can directly issue notice u/s 148*).
- The time period to reopen matters given in section 149 are subject to first proviso with regards to assessment years prior to 01.04.2021 with regards to searched conducted between 01.04.2021 to 31.08.2024.
 - i) Manju Somani vs ITO (Delhi HC) reported in 466 ITR 758 (*Where Assessing Officer issued on assessee a notice under section 148 dated 29-4-2024 in respect of assessment year 2016-17, since section 149(1)(b) as it stood prior to amendment by Finance Act, 2021 prescribed that no notice under section 148 shall be issued if four years but not more than six years have elapsed from end of relevant assessment year, impugned notice deserved to be quashed*)
 - ii) Flowmore vs DCIT (Delhi HC) reported in 467 ITR 177 (*Where Assessing Officer pursuant to a search conducted in case of a party on 9-2-2022 issued on assessee a notice under section 148 dated 31-3-2023 seeking to reopen assessment for assessment year 2013-14, in view of first proviso to section 149(1), assessment year 2013-14 fell beyond ten year block period as set out under section 153C read with section 153A and consequently impugned notice deserved to be set aside*)
 - iii) PCIT vs Ojus Medicare (P) Ltd. (Delhi HC) reported in 465 ITR 101

- iv) Hexaware Technologies Ltd. vs ACIT (Bombay HC) reported in 464 ITR 430
- v) Ram Balram Buildhome (P) Ltd. vs ACIT (Delhi HC) reported in 171 taxmann.com 99 (*Where by virtue of TOLA, Assessing Officer had period of twenty-nine days limitation left on date of commencement of reassessment proceedings to issue a notice under section 148, accompanied by an order under section 148A(d), an order under section 148A(d) was required to be passed within said twenty-nine days notwithstanding time stipulated under section 148A(d)*)

6. Whether ITR can be filed beyond the time prescribed in the notice issued u/s 148?

- In the amended provisions applicable w.e.f. 01.09.2024 and also in erstwhile period i.e. 01.04.2021 to 31.08.2024, return of income has to be filed within a period of not exceeding three months from the date of notice u/s 148. The said period cannot be extended by AO and any return filed thereafter will not be taken as return of income u/s 139 of the Act. Kindly see proviso to section 148(2) of the Act.

7. What, if the AO does not issue notice u/s 143(2)? What is the position of law if the AO issued notice u/s 143(2) immediately on the same day of filing the ITR, or within two/three days after filing the ITR?

- Issuance of notice u/s 143(2) is mandatory, as the return of income filed in response to notice u/s 148 of the Act is akin to a return of income filed u/s 139 of the Act. Time period to issue 143(2) is as per proviso to section 143(2) i.e. within three months from the end of the financial year in which return of income is filed by the assessee.
- Notice u/s 143(2) issued on same day or within two to three days will be seen on the facts of each case and cannot be held invalid universally.

- i) Hemant Mittal vs ITO (ITAT Delhi) reported in 183 ITD 295
- ii) DIT vs Society for Worldwide Interbank Financial, Telecommunications (Delhi HC) reported in 323 ITR 249.
- iii) Sh. Santosh Mahalingam vs ACIT (ITAT Delhi) in ITA No. 283/Del/2020.

8. What is the position of law when the AO issues notice u/s 143(2) just before two/three days of passing the assessment order.?

- Issuance of notice u/s 143(2) is mandatory, as the return of income filed in response to notice u/s 148 of the Act is akin to a return of income filed u/s 139 of the Act. Time period to issue 143(2) is as per proviso to section 143(2) i.e. within three months from the end of the financial year in which return of income is filed by the assessee. Any notice issued beyond the above period will make the notice time barred and illegal.

9. What if the AO does not give an opportunity to cross examine the person whose statement is being used against the assessee?

- The said issue of cross examination should be taken up in appeal before CIT (A) and thereafter, before ITAT. As it is an elementary principle of law, to provide cross examination with regards to any statement adverse to assessee relied by department. In absence of the same, the same is fatal to assessment and proceedings will be held to be bad in law.
 - i) [2014] 44 taxmann.com 460 (Raj) CIT vs. Supertech Diamond Tools (P.) Ltd.
 - ii) 258 ITR 317 (Del) United Electricals vs. CIT
 - iii) [1980] 125 ITR 713 (SC) KishinchandChellaram vs. CIT
 - iv) 288 ITR 345 (Del) CIT vs. SMC Share Broker Ltd.

- v) [2007] 293 ITR 43 (Del) CIT vs. S.M. Aggarwal
- vi) 322 ITR 396 (Del) CIT vs Ashwani Gupta
- vii) 295 ITR 105 (Del) CIT vs. Dharam Pal Prem chand Ltd.
- viii) 306 ITR 27 (Del) CIT vs. Rajesh Kumar
- ix) 303 ITR 95 (Del) CIT vs. Pradeep Kumar Gupta
- x) 127 DTR 241 (SC) Andaman Timber Industries vs. CCE

10. In search cases where no order u/s 148A(d) is required to be passed, what precautions should be taken while filing the ITR in response to notice u/s 148 and submission of information before the AO?

- In amended provisions w.e.f. 01.09.2024, search proceedings will be taken up under Chapter XIV B and there would be no requirement to issued notice u/s 148 of the Act.
- However, with regards to searched conducted during 01.04.2021 to 31.08.2024, learned AO is required to adhere to provisions of section 148 read with Explanation 2 and also as per proviso to section 148A, there would be no requirement to issued notices u/s 148A.
- Assessee should file a preliminary reply seeking for the information/ material/ statement/ investigation report mentioned in the notice u/s 148. Also an opportunity for cross examination should be demanded at the earliest possible time. Copy of Approval should also be demanded.
- Time periods given in first proviso to section 149(1) should be calculated and if any assessment year prior to 01.04.2021 is time barred, the said submission should be made before the AO at the earliest.
 - i) *Flowmore vs DCIT (Delhi HC) reported in 467 ITR 177 (Where Assessing Officer pursuant to a search conducted in case of a party on 9-2-2022 issued on assessee a notice under section 148 dated 31-3-2023 seeking to reopen assessment for assessment year 2013-14, in view of first proviso to section 149(1), assessment*

year 2013-14 fell beyond ten year block period as set out under section 153C read with section 153A and consequently impugned notice deserved to be set aside)

- ii) Kad Housing (P) Ltd. vs DCIT (Delhi HC) reported in 168 taxmann.com 470 (*Where Assessing Officer on basis of search conducted upon a party issued a reopening notice under section 148 to assessee, since impugned notice was issued beyond ten year period from end of relevant assessment year, as per provisions of section 149(1)(b) impugned notice was time barred*)

11. What if an AO does not follow judgments of SC, High Courts and Tribunals?

- AO is judicially bound to follow the judgments of higher forums in view of Article 141 to Constitution of India, as the same are binding on the AO.
 - i) CIT vs Smt. Godavari Saraf (Bombay High Court) reported in 113 ITR 589
 - ii) UOI vs Kamlakshi Finance Corporation Ltd. (SC) reported in 55 ELT 433
 - iii) Prashant Chandra vs DCIT (Allahabad HC) reported in 165 taxmann.com 471
- Even if two views are available of difference high courts (not of jurisdictional high court), then view favourable to assessee should be applied.
 - i) CIT vs Vegetable Products Ltd. (SC) reported in 88 ITR 192.
 - ii) Tej International (P) Ltd. vs ITO (Delhi ITAT) reported in 118 Taxman 59 (Magz).
 - iii) UOI vs Onkar S Kanwar (SC) reported in 258 ITR 761

12. What if an AO makes prima facie incorrect additions/disallowances?

- i) Raj Kumar Bothra vs DCIT (Chattisgarh High Court) reported in 476 ITR 249
- ii) Ms. Susheila Natarajan vs ITO (ITAT Chennai) reported in 153 ITD 534
- iii) A2Z Infra Services Ltd. vs DCIT (ITAT Delhi) in ITA No. 970/Del/2023

13. What if the AO completes the assessment without jurisdiction, (monetary/territorial jurisdiction)

- If there is a caste iron case i.e. there blatant abuse of jurisdiction then in such cases writ petitions can be filed before Hon'ble High Court. Otherwise, the matters should be persued through appellate forums.

14. How to use landmark judgments of Hon'ble Supreme Court such as Ashish Agrawal, Rajiv Bansal and others in reassessment and other cases ?

- Rajiv Bansal reported in 469 ITR 46 (SC) should be used for computation of time period for issuance of notice u/s 148 of the Act with regards to assessment years prior to 01.04.2021 i.e. first proviso to section 149(1) and also for applicability of fifth and sixth proviso to section 149. Also to check whether the approval u/s 151 has been accorded by appropriate specified authority
- Also on points of interpretation i.e. deeming fictions, equity, harmonious and strict interpretation when applicable in Income Tax Proceedings.
- Ashish Aggarwal reported in 444 ITR 1 (SC) on applicability of TOLA and defences available to assessee with regards to proviso to section 149 of the Act. Statutory provisions cannot be overcome by any notification or explanation by CBDT.