Analysis of sections 147, 148, 148A, 149 and 151 of the Income Tax Act, 1961 (Act) as substituted vide Finance Act, 2021.

For the sake of convenience, pre-substituted sections and sections substituted Vide Finance Act, 2021 are tabulated as under:

Pre-Substituted Sections	**Newly amended/substituted sections by Finance Act, 2021**
Income escaping assessment. **147.** If the Assessing Officer has **reason to believe** that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income **and** also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) : **Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year: **Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year: **Provided also** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.	**Income escaping assessment.** **147.** If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or **deduction** for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year). *Explanation.*—For the purposes of assessment or reassessment or recomputation 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 the provisions of section 148A have not been complied with**.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. *Explanation 2*.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :— (*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ; (*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ; (*ba*) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E; (*c*) where an assessment has been made, but— (*i*) income chargeable to tax has been underassessed ; or (*ii*) such income has been assessed at too low a rate ; or (*iii*) such income has been made the subject of excessive relief under this Act ; or (*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed; (*ca*) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;	

(*d*) where a person is found to have any asset (including financial interest in any entity) located outside India. *Explanation 3.*—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148. *Explanation 4.*—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.	
Issue of notice where income has escaped assessment. **148.** (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 : **Provided** that in a case— (*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and (*b*) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to	**Issue of notice where income has escaped assessment.** *148.* Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139: Provided that no notice under this section shall be issued unless **there is information** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the **specified authority** to issue such notice. *Explanation 1.*—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment **means**,— (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the **risk management strategy formulated** by the Board from time to time; (ii) any final objection raised by the Comptroller and Auditor-General of India to the effect that the

in this clause shall be deemed to be a valid notice: **Provided further** that in a case— (*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and (*b*) subsequently a notice has been served under clause (*ii*) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (*ii*) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice. *Explanation.*—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section. (2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.	assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act. *Explanation 2.*—For the purposes of this section, where,— (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or (ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or under section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. *Explanation 3.*—For the purposes of this section, specified authority means the specified authority referred to in section 151.
	Conducting inquiry, providing opportunity before issue of notice under section 148. **148A.** The Assessing Officer shall, before issuing any notice under section 148,— (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

	(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a); (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b); (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the **prior approval of specified authority**, **within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:** Provided that the provisions of this section shall not apply in a case where,— (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee. *Explanation.*—For the purposes of this section, specified authority means the specified authority referred to in section 151.

Time limit for notice. **149.** (1) No notice under section 148 shall be issued for the relevant assessment year,— (*a*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*) or clause (*c*); (*b*) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year; © if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. *Explanation.*—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section. (2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151. (3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year. *Explanation.*—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.	**Time limit for notice.** **149.** (1) No notice under section 148 shall be issued for the relevant assessment year,— (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year: Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021: Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021: Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded: Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly. *Explanation.*—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

	(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.
Sanction for issue of notice. **151.** (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. (2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice. (3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.	**Sanction for issue of notice.** **151.** Specified authority for the purposes of section 148 and section 148A shall be,— (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year; (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Understanding of individual sections and comments thereon are as under:

Section 147 of the Act:

1.1 The phrase *"if the Assessing officer has reason to believe"* is removed in the newly substituted section 147 of the Act. However, first proviso of newly substituted section 148 of the Act states that a notice u/s 148 of the Act for reopening the assessment cannot be issued unless the AO has "*information"* which *"suggest"* that the income chargeable to tax has escaped the assessment. AO has to take the approval from specified authorities before reopening the assessment. Interestingly, section 147 of the Act prior to its substitution vide Finance Act 1987 also has the same phrase that AO can reopen the assessment "*....in consequence of information in his possession"*. Also, the word *"reason to believe"* has been removed vide Finance Act, 1987 which again got re-inserted vide Finance Act, 1989. Thus,

substitution vide Finance Act, 2021 has gone back to era prior to 1987. With the substituted section in place, it is to be seen as to what will be effect of removing the phrase "*"if the Assessing officer has reason to believe"* from pre-substituted section 147 and replacing the word *"suggest"* in newly substituted section 148 as against *"believe"* in pre-substituted section 147 of the Act.

1.2 Undisputed principle for reopening the assessment as explained in series of judicial precedents is that there must be a nexus or live link between reasons recorded and formation of belief to come to a conclusion that income chargeable to tax has escaped the assessment. In the substituted section, though the phrase *"reason to believe"* is removed but assessment cannot be reopened unless AO has some information suggesting that income has escaped the assessment. Therefore, it can be very well argued that the information in the possession of the AO must have a direct nexus or live link in the form of some evidence to suggest that the income of the assessee has escaped the assessment. Hence, the removal of phrase *"reason to believe"* coupled with insertion of the condition that assessment cannot be reopened in absence of information, the position is not changed and all the judicial pronouncements on the subject can relied upon. Few of the judgements quoted below:

- **CIT vs Kelvinator of India Ltd [320 ITR 561 SC]**
- **CIT vs Chandball Rice Mills (P) Ltd [203 ITR 368 Cal]**
- **Hemjay Construction Co Pvt Ltd vs ITO [419 ITR 39 Guj]**
- **M.R. Organisation vs ITO [431 ITR 528 Guj]**
- **Rakesh Gupta vs CIT [405 ITR 213 P & H HC]**
- **Chetan Sabharwal vs ACIT [310 CTR 690 Del]**
- **AMSA India P. Ltd. v. CIT (2017) 393 ITR 157 (Delhi)(HC)**
- **BPTP Limited vs. PCIT (2020) 185 DTR 372 (Delhi)(HC)**

1.3 Since, the section empowers the AO to reopen the assessment on the basis of "*information"* that the income chargeable to tax has escaped the assessment, it is important to understand the meaning of information. Hon'ble Supreme Court in the case of **Larsen and Toubro Limited vs State of Jharkhand and othrs [CAN 5390/2007]** has explained in meaning of information. Hon'ble Supreme Court has held that *"21) It is also pertinent to understand the meaning of the word 'information' in its true sense. According to the Oxford Dictionary,* ***'information' means facts told, heard or discovered about somebody/something****. The Law Lexicon describes the term 'information' as the act or process of informing, communication or reception of*

knowledge*. The expression 'information' means instruction or knowledge derived from an external source* ***concerning facts*** *or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute 'information' for the purposes of the State Act. But the word "information" used in the aforesaid Section is of the widest amplitude and should not be construed narrowly.* ***It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated****……..*

1.4 For the meaning of "information" judgment of Hon'ble Supreme Court in cases of **CIT v. A. Raman & Co. [1968] 67ITR11 (SC)** and **Maharaj Kumar Kamal Singh v. CIT [1959] 35 ITR 1 (SC)** are also relevant. Therefore, in order to re-open the assessment the *"information"* must be factual, supported by evidences. On getting the information, the AO must apply his mind to the information to decide whether information received is enough in the light of evidences to reopen the assessment. Thus, reopening of the assessment on the basis of vague information or wrong facts can be challenged and all the precedents given while dealing with pre-substituted section may be applicable here. Few are decisions listed as under:

- **PCIT vs RMG Polyvinyl (P) Ltd [396 ITR 5 Del]**
- **Sagar Enterprises vs ACIT [257 ITR 335 Guj]**
- **Shri Ram Mohan Rawat vs ITO [ITA 1014/JP/2018]**
- **Baba Kartar Singh Dukki Education Trust vs ITO [ITA 444/Chd/2014]**
- **Rajendra Prasad Chaudhari vs ACIT [ITA 1495/JP/2018]**
- **PCIT vs G & G Pharma India Ltd [384 ITR 147]**
- **Shri Dheeraj Yadav vs ITO [ITA No 6701/Del/2019]**
- **Chhugamal Rajpal v. S. P. Chaliha [1971] 79 ITR 603 SC]**
- **Sheo Nath Singh vs AACIT [82 ITR 147 SC]**
- **Murlidhar Bhagwandas & Co vs. CIT [181 ITR 319 -Bom]**
- **Technocraft Industries & ORS. vs. ITO [185 ITR 465 (BOM]**
- **Vijaykumar M. Hirakhanwala vs. ITO [287 ITR 443 (Bom)]**

1.5 Further the phrase "*and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section"* does not find place in newly substituted section. Pre-substituted section 147 of

the Act conferred power to the AO that after reopening the assessment u/s 148 of the Act having reason to believe that income of the assessee has escaped the assessment, the AO may "*assess or reassess such income **and also** any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section*" On interpretation of provision, few Hon'ble High Courts had set the precedent on the line that if assessment is reopened having the belief that income "A" has escaped the assessment and during the course of re-assessment proceeding, AO found that income "B" has also escaped the assessment then the addition of income "B" cannot be made unless addition is made of income "A" as the provision requires the assessment of income for which reason is recorded *"and also"* any other income. Thus, unless the addition is made of item which is recorded in the reasons, addition of other cannot me made.

1.6 In order to nullify such judgments, Explanation 3 has been inserted vide Finance Act, 2009 stating 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, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148."* Insertion of Explanation 3 came up for consideration before Hon'ble Bombay High Court in the case of **CIT vs Jet Airways (I) Ltd [331 ITR 236 Bom]** wherein Hon'ble High Court has held that "***However, Expln. 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of s. 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory***. *Sec. 147 has this effect that the AO has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings.* ***However, if after issuing a notice under s. 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under s. 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.****"*.

Identical view has been taken in following judicial:

- **Ranbaxy Laboratories Ltd. vs. CIT [336 ITR 136 Del]**

- **CIT vs. ICICI Bank Ltd [349 ITR 482 – Bom]**
- **CIT vs. Cheil Communications India (p) Ltd. [354 ITR 549 - Del]**
- **CIT vs. Living Media India Ltd. [359 ITR 106 Del]**

1.7 However, Karnataka High Court in the case of **N Govindaraju [TS-407-HC-2015(KAR)]** decided against the assessee and held that addition of other escaped income can be made even if the addition of the item stated in reason is not made.

1.8 In order to nullify the judgment in case of Jet Airways (supra) and similar decisions, the substituted section has removed the phrase "*and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section".* In the case of Jet Airways (supra), Hon'ble Supreme Court has further held that "*Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative.* ***It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as well as "also" have been used together and in conjunction****"* Thus, on reading of newly substituted section read with Explanation and pre-substituted section as explained by Hon'ble Bombay High Court, it is thinkable that the AO can make the addition of income for which he has no information at the time of reopening the assessment but he found during the re-assessment proceeding that other income of the assessee has also escaped the assessment.

1.9 First provision to pre-substituted section is also removed which stated that "***Provided*** *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:"* With the removal of above proviso, the department may take a view that assessment can now be reopened even if all the material facts necessary for assessment is disclosed by the assessee. In such circumstances, the assessee can submit/argue that though the first proviso is removed, but since all the material facts necessary for assessment

have been disclosed during the original assessment proceeding, the reopening on same set of facts constitute review of completed assessment which cannot be done by reopening the assessment or reopening of assessment on same set of facts constitute change of opinion which can also not the basis for reopening the assessment. Following decisions can be quoted for above proposition:

- **CIT vs Kelvinator of India Ltd [320 ITR 561 SC]**
- **ITO vs Techspan India (P) Ltd [404 ITR 10 SC]**
- **Capegemini India Pvt. Ltd [TS-277-HC-2015-Bom HC]**
- **Vinodkumar Bhupendrakumar [ITA 1059/Mum/2014]**
- **Abdul Hamid Haji Abdul Karim Shaikh [ITA 2014/Mum/2014]**

Section 148 of the Act:

2.1 Section 148 of the substituted section states that for reopening the assessment u/s 147 of the Act, a notice u/s 148 of the Act required to be served. This provision is same as in pre-substituted section. Newly substituted section further states that *"no notice under this section shall be issued unless there is information available with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the* ***specified authority*** *to issue such notice."* Meaning of "*information"* for reopening the assessment is already discussed at the paragraphs 1.3 and 1.4 above; hence, the same is not repeated here to avoid the duplication.

2.2 Explanation 1 to substituted section 148 of the Act states that the "*information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment* ***means****,—*

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the ***risk management strategy formulated*** *by the Board from time to time;*

(ii) any final objection raised by the Comptroller and Auditor-General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

2.3 It is important to understand as to what information can be flagged by Central Board of Direct Taxes (CBDT) under risk management strategy to reopen the case. CBDT formulates the Risk Management Strategy to identify the high-risk cases for the re-assessment. The CBDT

does the risk analysis based on the data gathered from various sources such as information about the specified financial transactions collected from the third parties under Section 285BA (Statement of Financial Transaction or Reportable Account) or the information received from other law enforcement agencies or the foreign countries. Such information collected from various sources, shall be flagged as per the risk management strategy (RMS) formulated by the CBDT. In the arena of faceless assessment proceeding, it to be understood that such flagging of information would largely be done by the computer-based system on basis of pre-defined algorithms which may not be made public. However, as stated at above paraghraphs 1.3 and 1.4, it is important to re-open the assessment that the *"information"* must be factual, supported by evidences. On getting the information, the AO must apply his mind to the information to decide whether information received is enough in the light of evidences to reopen the assessment.

2.4 Another information suggesting that the income has escaped the assessment can be objection raised by CAG that particular assessment is not made in accordance with the law. Here it is very important to understand as to whether interpretation of law (while holding that assessment is not completed in accordance with law) by audit party whether internal or CAG can be a basis to reopen the assessment. Following three judgments of Hon'ble Supreme Court are very vital to through light on this situation:

- **Indian & Eastern Newspaper Society v. CIT [119 ITR 996 SC]**
- **IT v. PVS Beedies (P.) Ltd. [237 ITR 13 – SC]**
- **CIT v. Lucas T.V.S. Ltd. [249 ITR 306 - SC]**

2.5 In the case of *Indian & Eastern Newspapers Society* (*supra*), the assessee received some amount on account of occupation of its conference hall and rooms which was assessed by the AO as 'Business income.' The audit party of the Department formed an opinion that the amount should have been taxed under the head 'Income from house property.' It was in this backdrop of the facts that the Hon'ble Supreme Court held that the opinion of the internal audit party on a **point of law** cannot be a ground for initiation of re-assessment proceedings. Similar is the position in the case of *Lucas TVS Ltd.* (*supra*). In that case, the original assessment was completed by allowing deduction for a sum of Rs.6,37,003/- u/s 37(2) of the Act. The audit party pointed out that only a sum of Rs.2,95,131/- was incurred during the year and the balance amount related to earlier years and hence could not be allowed. The AO in the assessment made u/s 147, restricted the claim of deduction to Rs.2,95,135/-. It is on the basis of such facts that the Hon'ble Supreme Court held that the opinion of the audit party **on a question of law**, could not constitute an information justifying the initiation of re-assessment proceedings. In the case of *PVS Beedies (P.) Ltd*. (*supra*), the original assessment was completed allowing deduction u/s 80G. The audit party observed that the payment made to the trust, for which deduction was allowed, was not a recognized charitable trust as its recognition had expired and, hence, no deduction should be allowed u/s 80G. The Hon'ble Apex Court upheld the initiation of re-assessment proceedings on the basis of factual error pointed out by internal audit party.

2.6 It is apparent from a close look at the above three judgments rendered by the Hon'ble Apex Court that where the **audit party interprets the provision of law** in a manner contrary to what the AO had done, it does not lay down a valid foundation for the initiation of re-assessment proceedings. If however, the audit party does not offer its own interpretation to the provisions and simply communicates the **existence of law to the AO** or **any other factual inaccuracy**, then the initiation of reassessment proceedings on such basis cannot be faulted with.

2.7 Therefore, it can be concluded that if assessment is done taking one view on the law whereas the CAG has another view then the reopening of assessment is not justified. Whereas when the assessment is done totally ignoring any provision of the law and existence of such law is communicated by the audit report to the AO then such communication can be the "*information"* forming basis of reopening the assessment. The reason for above conclusion is that internal auditor cannot be allowed to perform functions of judicial supervision over the Income-tax authorities by suggesting to the Assessing Officer about how a provision should be interpreted and whether the interpretation so given by the AO to a particular provision of the

Act is right or wrong. An interpretation to a provision given by the internal audit party cannot be construed as a declaration of law binding on the AO. When an internal audit party objects to the interpretation given by the AO to a provision and proposes substitution of such interpretation with the one it feels right, it crosses its jurisdiction and enters into the realm of judicial supervision, which it is not authorized to do. In such circumstances, the initiation of reassessment, based on the substituted interpretation of a provision by the internal audit party, cannot be sustained.

2.8 Explanation 2 states that in case of search and survey, the AO is deemed to have information which suggest that the income chargeable to tax has escaped the assessment in case of the assessee for the three assessment years immediately preceding the assessment year relevant to assessment year in which search is initiated. With the substitution of newly section, provision of section 153A and 153C of the Act are subsumed in the reassessment proceedings. If the search will take place on or after 1/4/2021 then the assessment will be done u/s 148/147 of the Act as against 153A/153C of the Act before its substitution.

Section 148A of the Act:

3.1 This is newly inserted section vide Finance Act, 2021. Clause (a) of the section empowers the AO with the prior approval of specified authority to conduct the enquiry before issuing the notice u/s 148 of the Act. Clause (b) states that AO shall give an opportunity to the assessee by serving the notice to show cause as to why notice u/s 148 of the Act shall not be issued on the basis of information available. Clause (c) and (d) states that the AO shall consider the reply of the assessee and will decide by passing an order on the basis of material available including the reply of the assessee as to whether it is fit case for reopening the assessment or not?

3.2 In this newly inserted section, the AO is given power to conduct the enquiry and after the enquiry the power to decide whether notice shall be issued or not. All the action of the AO is to be done in monitoring of specified authority. For conducting the authority, the AO as well as specified authority must come to the conclusion that information is facts based having evidentiary value. AO as well as specified authority must apply mind to the information available then issue notice to the assessee. Once, the assessee reply to the notice of the AO, again the AO as well as specified authority shall apply mind to the information available and the reply filed by the assessee and conclude whether information along with reply of the assessee justify the reopening of the assessee. All such functioning of the AO as well as of the

specified authority shall be on due application of mind and not in mechanical manner. The order passed should deal with each contention of the assessee. The approval granted by the specified authority shall also deal with each contention of the assessee against the reopening of the assessee. Mechanical approval of the specified authority to reopen the case can be challenged. In such scenario, all judicial precedents rendered on pre-substituted section 151 of the Act can be relied upon and reopening can be challenged. Few of the judgements are quoted below:

- **CIT vs Shankardas B Pahajlani [ITA No. 1432/2007 – Bom HC]**
- **CIT vs Reliance Industries Limited [382 ITR 574 Bom]**
- **Marwadi Shares and Finance Limited vs ITO [407 ITR 49 Guj]**
- **PCIT vs Minakshi Overseas Limited [395 ITR 677 Del]**
- **Harikishan Sunderlal Virmani vs DCIT [394 ITR 146 Guj]**
- **CIT vs Shree Rajasthan Syntex Ltd. [313 ITR 231] [Raj HC]**
- **Air India vs. V.K. Srivastava CIT [213 ITR 739(Bom)]**
- **DR. H. Habicht & ANR. vs. MAKHIJA & ANR [154 ITR 552 (BOM)]**
- **Samir Diamonds Export Pvt. Ltd vs ITO & ANR [189 ITR 410 (BOM)]**

3.1 Whether conducting enquiry is mandatory or optional? First line of the section uses the word "shall" whereas clause (a) uses the word "*conduct any enquiry, if required".* It can be contested that the AO must (shall) conduct the enquiry before issuing the notice so that assessee can represent his case and AO can also use his discretion whether to proceed with the reopening or drop the same. It is also to be noted that order passed u/s 148A of the Act is not appealable so the same has to be challenged through writ petition.

Proviso to section states that no inquiry will be conducted in case of search.

Section 149 of the Act:

4.1 Time limit for issuing the notice as per clause (a) is stated as three years from the end of relevant assessment year unless case fall in clause (b) which states that notice can be issued till ten years from the end of relevant assessment years if the AO has in his possession books of accounts or other documents or evidence which suggest that the income chargeable to tax, represented in the form of asset, which has escaped the assessment is likely to be fifty lacs rupees or more. In pre-substituted section, the time limit was four years, six years and sixteen years as tabulated above. The proviso to the sections safe guard the situation where notice could

not be issued before 1/4/2021 due to lapse of time limit. It states that in such circumstances no notice shall be issued.

Section 151 of the Act:

5.1 Specified authorities stated to mean Principal Commissioner or Principal Director or Commissioner or Director where case is reopened within 3 years from the end of relevant assessment years and where case is reopened beyond three years the specified authorities are Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.