

Income Represented in the Form of Asset

1. Introduction: -

Section 149 as per the Finance Act 2021 is reproduced as under:

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 accounts 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:

Explanation.—For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

Thus, it is amply clear that beyond a period of 3 years section 148 notice can be issued only if:

- a) The A.O. has in his possession Books of Accounts or other documents or evidence;
- b) Which reveal;
- c) Income Chargeable to tax, represented in form of asset;
- d) Which has escaped assessment;
- e) Amounts to or is likely to amount fifty lakh rupees or more.

Further as per the explanation, An asset **includes**:

- a) Immovable property being land or building or both; or
- b) Shares and Securities; or
- c) Loans and Advances; or
- d) Deposits in bank accounts.

Therefore beyond a period of three years The Assessing officer cannot assume jurisdiction unless he **possesses** evidence/material revealing that income represented in form of an asset valued at Rs. 50 lakhs or more has escaped assessment.

Possession here means physical possession; or personal knowledge of the existence of the undisclosed asset which need to be spelled out in clear terms (not vaguely). Information flagged in respect of assessee would not suffice.

2. Asset: Inclusions & Exclusions

An asset represents an economic resource, either immovable or movable, having value, such as immovable property viz., land or building, investment held in shares and securities, loans & advances given and deposits in bank account.

Whereas, ‘Liability’ includes items such as share capital, reserves, loans obtained (secured as well as unsecured) etc. which cannot be characterized or classified as ‘Asset’.

Similarly, items of ‘expenses’ or revenues in form of ‘sales’ / ‘turnover’ does not constitute ‘asset’. (‘Asset’ below falls within the ambit of the explanation to Section 149 of the Act)

It is a basic accounting concept, that “debit” denotes “asset” and “credit” denotes “liability”.

Profit & Loss Account	
Particulars (Debit)	Particulars (Credit)
Expenses	Revenues

Balance Sheet	
Liabilities (Credit)	Assets (Debit)
Share Capital; Reserves; Loans (Secured or Unsecured); Current Liabilities	Immoveable Properties (Land or Building or both) Loans & Advances Shares & Securities Bank Balance

As per the legal Maxim for interpretation “**Expressio Unius Est Exclusio Alterius**” express mention of one is the exclusion of other and this maxim has been accepted by the Hon. Supreme Court in **GVK Industries Ltd. Vs. ITO [197 Taxman 337]** (Constitution bench of 5 Judges).

The Legislature by specifying the jurisdictional fact as ‘asset’ valued Rs. 50 Lakhs or more, has impliedly excluded the other items such as:

- a) items of income or revenue;
- b) items of expenditure;
- c) liabilities / credits falling in the left side of the Balance Sheet.

When the legislature has specified that for invoking jurisdiction u/s 148 of the Act, the AO ought to have in his possession undisclosed assets of assessee, then the jurisdiction cannot be invoked with the aid of any material which reveal unexplained expenditure or unexplained cash credits. Reliance is placed the dictum of the **Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253** (followed by Hon. Supreme Court), that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all.

In my understanding, unless the AO has material that the assessee has ‘investment held in shares & securities’, which is not disclosed in the books or whose source is unexplained such asset cannot be said to have escaped assessment for the purpose of section 149. It can’t include the proceeds received upon sale of regular/disclosed investments.

Further, any credits in a disclosed bank account, like sale proceeds/ credit etc. is found to be unexplained, then it may be a case of undisclosed ‘income’ / ‘cash credit’ but it does fall under meaning of an undisclosed ‘asset’ for invoking jurisdiction u/s 148 beyond 3 years.

3. Conclusion:

Hence, the reopening beyond a period of three years can be made only if where AO possess books of accounts, documents or evidence which reveals that:

- a) the assessee owns an undisclosed immovable property; or
- b) the assessee had given loans or advances outside the regular books; or
- c) Assessee held unaccounted investments in shares & securities, which do not form part of regular books of accounts or
- d) if undisclosed bank accounts having deposits.

The most important aspect is that, these ‘assets’ must have been found to be undisclosed or unaccounted, in the regular books of account maintained by the assessee, resulting in escapement of income.

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CA Milind Wadhwani

DISA(ICAI), FAFD(Cert.), CCCA(Cert.), Research (Ph.D.) Scholar

Mobile +91 9826273333

Mail ID: - MILIND.WADHWANI20@GMAIL.COM