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Section 149 of Income Tax Act 1961 as Modified by Finance Act 2021

Section 149 is modified by [Finance Act 2021](#) and now any case can be reopened within three years from the end of relevant assessment year as per clause (a) of Section 149(1) if Assessing Officer has information which suggests that income chargeable to tax has escaped assessment as prescribed in Explanation 1 to Section 148 and upto 10 years as provided in Clause (b) of Section 149(1) in case 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.

First Provision is very important and its provides that no case can be reopened for any assessment year beginning on or before 1st April 2021 if such notice could not have been issued at that time on account of being beyond the time limit specified under old Section 149(1)(b). This means that cases for assessment year 2011-12, 2012-13, 2013-14 & 2014-15 can not be reopened under clause (b) of Section 149(1) as they have already become time barred on 31.3.2018 & 31.3.2019 for Assessment years 2011-12 & 2012-13 and as per extended time period upto 30th June 2021 for Assessment year 2013-14 & 2014-15. This is a welcome step by Government of India to close those matters which have already become time barred on various dates and can not be reopened by amended period of ten years. This is in conformity with various judicial pronouncements, some of them are given below :

Brahan Dutt v. ACIT, 100 Taxmann.com 324 Delhi High Court

K.M. Sharma v. ITO, 254 ITR 772 (SC)

CIT v. Scindia Steam Navigation Co. Ltd. 42 ITR 589 (SC)

Cases for Assessment years 2015-16 onwards can be reopened upto ten years from end of assessment years provided other condition is satisfied. Now after 3 years upto 10 years cases can be reopened in case income represented in the form of asset amounts to rupees fifty lakh or more. Various situations are discussed below where assessment can be reopened in extended period of ten years. 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. Here asset can be presumed to be in possession of assessee at any time during the year for which assessment is sought to be reopened.

Situation 1

The department has received information that the assessee has purchased immovable property and amount paid is more than fifty lakh rupees. The case can be reopened subject to Section 148A being complied with.

Situation 2

The department has received information that the assessee has invested in fixed deposits in bank or deposit in any bank account and the aggregate investment with accrued interest upto 31st March of the same year is more than fifty lakh rupees. The case can be reopened subject to Section 148A being complied with.

Situation 3

The department has received information that the assessee has invested in shares and securities and the aggregate investment with dividend received upto 31st March is more than fifty lakh rupees. The case can be reopened subject to Section 148A being complied with. The dividend is taxable from AY 2021-22 onwards.

Situation 4

The department has information gathered information that the assessee has invested in purchase of jewellery by using unaccounted income in the form of cash and aggregate amount is more than fifty lakh rupees. Both jewellery and cash are not included in asset as per explanation to Section 149. No opinion can be given in such a situation about assessment will be reopened or not.

Situation 5

The department has gathered information that the assessee has spent huge amount on marriage of daughter or son out of undisclosed income in the form of cash and amount is more than fifty lakh rupees. The asset in the form of cash was available with assessee before marriage. No asset was created after making the said expenditure. No opinion can be given in such a situation about assessment will be reopened or not.

Situation 6

The department has gathered information that in one year the assessee has claimed expenditure of fifty lakh rupees in profit and loss account and was allowed in assessment for that year but in fact not allowable, the assessment can not be reopened as no asset was there in respect of that expenditure.

Situation 7

The department has gathered information that for a certain year statutory liabilities as per

section 43B are neither paid before due date nor added in computation of total income amounting to more than fifty lakh rupees, the assessment can not be reopened as no asset was created.

Situation 8

The department has gathered during search and seizure proceedings that the assessee had incurred expenditure of more than fifty lakh rupees on foreign travelling in one year, no asset was formed. However the assessee must have cash before going for foreign travel. No opinion can be given in such a situation about assessment will be reopened or not.

Situation 9

During search & seizure the department gets hold of certain diaries which contains details of loans & advances given by assessee to various persons and aggregate amount is more than fifty lakh rupees. In such case assessment can be reopened.

This is a very different type of provision and answer is very difficult. The basic scheme of Income Tax Act is to tax the income irrespective of the fact that asset is formed or not. There can be a number of other such situations, and it is very difficult to give an answer till a suitable clarification comes from Government of India. This type of provision was first introduced in Section 153A by Finance Act 2017 which was effective from 1.4.2017 which deals with assessment of search cases, now omitted w.e.f. 1.4.2021 In this provision 3 more years were allowed in search cases beyond the period of 6 years in case income represented in the form of asset was found which has escaped assessment and the amount was rupees fifty lakh or more. Searches conducted after 1.4.2021 shall now be assessed as per new Sections 147, 148, 149 and 151. 148A is not applicable in search or requisition cases.

I hope the above article shall be useful to readers.

Date: 2021-07-18