

**Clarificatory Note – Reg. provisions of section 147 r.w. Expl.3 thereto, of the I.T. Act, 1961**

Of late, there has been a lot of confusion created by a number of legal precedents regarding the correct interpretation of *Explanation 3* to section 147 of the Income-Tax Act, 1961 (the Act). For the sake of ready reference the aforesaid *Explanation 3* is reproduced as follows :

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**147. *Income escaping assessment.***

*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.*

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The aforesaid *Explanation 3* was inserted in section 147 of the Act, vide Finance (No.2) Act, 2009, w.e.f. 1.4.1989. It may, thus, be seen that the aforesaid *Explanation* was inserted with retrospective effect from 1.4.1989.

For the first time the aforesaid *Explanation 3* was interpreted by the Bombay High Court in the case of *CIT Vs Jet Airways (I) Limited [2011] 331 ITR 236 (Bom)*. In this case, the Bombay High Court has summarized the effect of section 147, as it now stands after the amendment of 2009, as follows :

- (i) The Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year;
- (ii) Upon the formation of that belief and before he proceeds to make an assessment, reassessment or re-computation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148;
- (iii) The Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment 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 the section; and
- (iv) Though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section.

As regards the aforesaid *Explanation 3*, it was held by the Bombay High Court that *Explanation 3* does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of

section 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. It was further held that if after issuing a notice under section 148, the AO accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe has escaped assessment, has as a matter of fact not escaped assessment, it is not open to him to independently to assess some other income. If he intends to do so, a notice under section 148 would be necessary in the event of a challenge by the assessee.

Thereafter, another very significant judgement was delivered on the issue by Delhi High Court in the case of *Ranbaxy Laboratories Ltd. Vs CIT [2011] 336 ITR 136 (Del) : 57 DTR 281 (Del)*.

It was held in this case that the AO had jurisdiction to reassess income other than the income in respect of which proceedings under section 147 were initiated but he was not justified in doing so when the very reasons for initiation of those proceedings ceased to survive. Legislature could not be presumed to have intended to give blanket powers to the AO that on assuming jurisdiction under section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction.

It was further held that the Tribunal was right in holding that the AO had the jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated but he was not so justified when the reasons for initiation of those proceedings ceased to survive.

In this context, the observations of the Hon. High Court on pages 147 and 148 of the Report in 336 ITR, are very relevant. The same are reproduced as follows :

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*We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v Jet Airways (I) Limited [2011] 331 ITR 236 (Bom). We may also note that the heading of section 147 is "Income escaping assessment " and that of section 148 " Issue of notice where income escaped assessment ". Sections 148 is supplementary and complementary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he*

would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. **For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.** ( Emphasis added )

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From the aforesaid observations of the Hon. High Court, it is quite clear that for every new issue coming up before the AO during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148 of the Act.

The aforesaid judgement makes the picture totally clear in this regard, as it implies that the Assessing Officer cannot reassess any item of income unless he follows the procedure in respect thereof, as laid down under section 148 of the Act. In other words, for every additional item of income which the AO considers to have escaped assessment and thereafter, intends to assess the same, the AO will be required to issue a fresh notice under section 148 of the Act.

The picture so far regarding the proceedings in respect of reassessment of income under section 147 read with *Explanation 3* thereto, was rather clouded. The same has become quite clear in the light of the aforesaid judgements of Bombay and Delhi High Courts.

It is, therefore, advised that whenever the AO intends to make any addition during the course of the reassessment proceedings under section 147 of the Act, in respect of any other item of income, he should not be allowed to do so, unless he follows the procedure laid down under section 148 of the Act, in respect of such item of income.

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