

INCOME TAX ACT 1961

SECTION 147

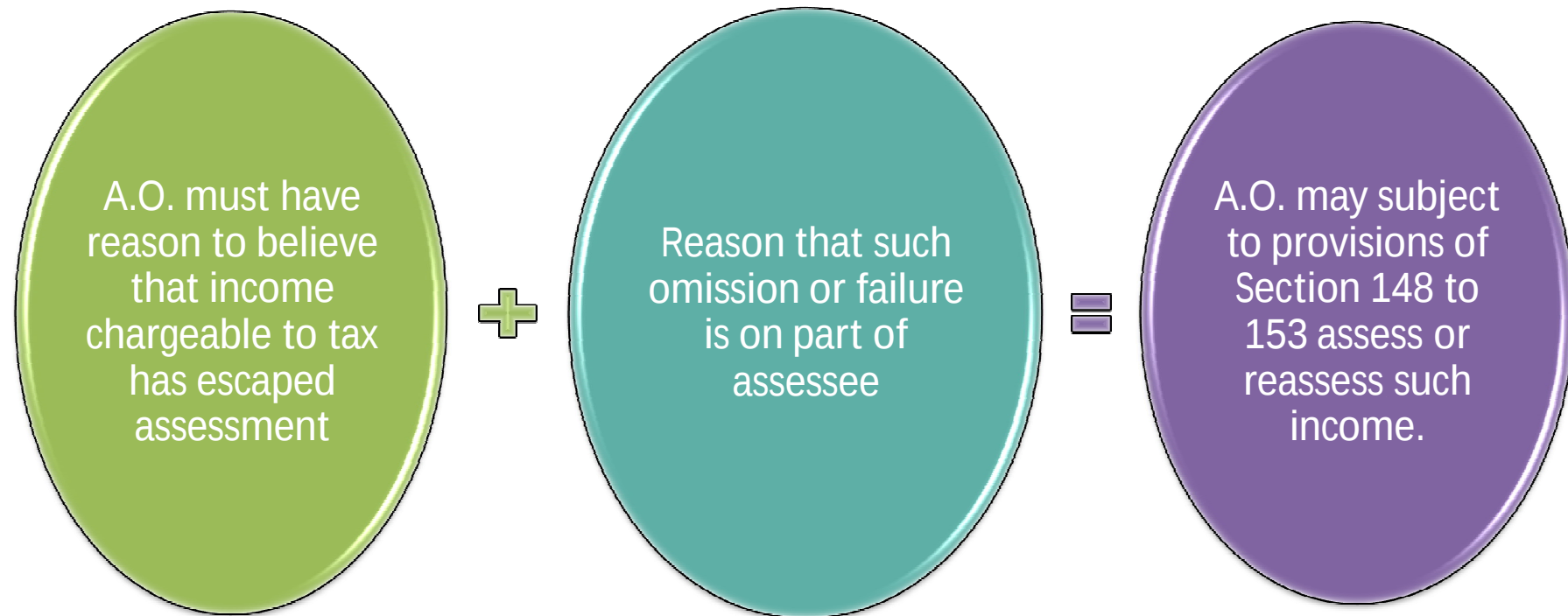
INCOME ESCAPED ASSESSMENT



Concept of Income Escaping Assessment

- ❖ Scheme of Taxation charges taxes on an Income in Relevant Assessment Year in hands of a person who has earned it.
- ❖ If Income is not taxed in Relevant Assessment Year itself then it has been escaped from assessment.

Interpretation of Section 147



Prerequisite to Invoke Section 147

- The Assessing officer must have reason to Believe that the Assessee has certain income which has escaped assessment.
- Before issuing notice u/s 148 A.O. shall record his reasons for issuing the notice.
- There must be direct nexus between material comes to the notice of A.O. and formation of believe that there has been escapement of Income from assessment in particular Year.
- Mere suspicion on part of A.O. would not allow him to go for reasons u/s 147.

What are the Incomes which have Escaped Assessment

As per Explanation IInd of Section 147

When No ROI Filed by assessee

- Income Exceeded the maximum amount not chargeable to tax .

When ROI is filed but no assessment has been made

- Income assessed above the amount of ROI filed.

Where assessment has been made

- Income assessed above the previous assessed income.

Where person is found to have any assets (Including financial interest in any entity) located outside India

- Such Assets which is located outside India.

Reason To Believe Includes

Retrospective change in Law disallowing particular expenses or taxing any receipt

Evidence in Possession of Assessing Officer that assessee has understated income or claimed excessive losses/ deductions.

A Later Supreme Court Judgment

Mistake Apparent Form records

Notice u/s 148

- Assessing officer is required to issue separate notice for each assessment year for which proceedings are to be taken u/s 147.
- Such notice is required to be served.
- Notice does not need to speak about reason to believe.
- Such notice requires from assessee to file Return of his income for relevant assessment year.

Compliance to be made by assessee

- The assessee have to file return of his income in response of notice u/s 148.
- This is an opportunity for assessee to disclose that income in the ROI which have been escaped by assessee while filing his original ROI so that concealment penalty can not be evoked on the assessee u/s 271(c)
- If assessee has filed his ROI u/s 139 & he do not want to do any change in ROI then he can write a letter that ROI filed u/s 139 may be treated as ROI for notice u/s 148.

Consequences when default is made in response to notice u/s 148

➤ Assessee shall be liable to pay interest u/s 234A(3) on the amount of tax determined exceeding tax determined in earlier assessment at the rate of 1 % for every month or part of the month.

When ROI is filed
after expiry of time
allowed under notice
of 148

- From the day immediately following the expiry of time allowed and up to the date of furnishing ROI.

When no ROI is filled

- From the day immediately following the expiry of time allowed and up to the date of completion of assessment u/s 147.

*Benefits to the assessee after complying
with notice u/s 148*

- After complying with notice u/s 148, the assessee can ask from the Assessing officer about **Reason recorded** for invoking assessment u/s 147.

How it is beneficial for the Assessee

- If Assessing officer refuse to give recorded reason then notice can be quashed.
- If A.O. provides the reasons then if assessee comes to know that the reasons recorded are not valid or irrelevant then he can challenge the notice by filling a writ petition.
- The objection should be filed by giving reasons for challenging the legality of the notice u/s 148.

*Duty of Assessing Officer when notice is
challenged by the Assessee*

- Assessing officer is bound to pass an speaking order (also called interim order) before he proceeds further u/s 147.
- If assessee has any problem about interim order passed by A.O. then he can challenge the same in a writ petition.

Section 149

Time Limit for issuing Notice u/s 148

If reason to believe is for income less than Rs. 1 Lac

- Up to 4 Years from the end of relevant Assessment Year

If reason to believe is for income equals to or more than Rs. 1 Lac

- Up to 6 Years from the end of relevant Assessment Year

If reason to believe is in relation to any assets (including financial interest in any entity) located outside India.

- Up to 16 years from the end of relevant Assessment Year

Check point for the Assessee after serving of Notice



- When notice is served upon assessee then firstly he should check whether such notice is issued within time limit of Section 149 or not.
- If such notice is time bared then proceedings of u/s 147 shall become void.
- Then Assessee is not required to respond to such notice.

- If assessee had responded to that notice which is time bared then it shall be deemed that such notice is issued on time & such assessee shall be precluded from taking any objection that” such notice was not issued in time.”
- **But assessee can still mend his mistake by raising the objection before completion of assessment u/s 147.**

Exceptions of Sec 149

Which are
beneficial to
assessee

- As per proviso of Section 147, If an assessment has already completed u/s 143(3) or 147 (**not 144**) and there was no failure on part of assessee to make ROI or to disclose fully & truly all material facts necessary for assessment, then no assessment u/s 147 can be done after 4 years from the end of relevant F.Y.

Which are
against the
assessee

- As per Section 150(1) Notice u/s 148 may be issued at any time to give effect to finding or direction contained in any order u/s 250,254,260A,262,263 or 264 of IT act or the order of Court under any other Law .

Duty of A.O. If he initiates the proceedings on the assessee covered under proviso of 147

- A.O. In addition of recording the reason has to establish the fact that such escapement is on the account of omission or commission attributable to assessee.
- If assessee has come to know that such facts are not valid then he can challenge the notice issued by A.O.

Section 153(2)

Time Limit for Completion of Assessment u/s 147

- The Re-Assessment shall be completed within **One Year** from the end of financial year in which notice u/s 148 was **Served**.

Section 153(3)

*No time limit of completion of Assessment
in following cases*

Where an assessment is made on assessee to give effect to any finding or direction contained in order u/s 250,254,260,262,263 & 264 or order of court under any other Law.

Where in case of a partnership firm, an assessment is made on a partner of the firm in consequence of an assessment made on firm u/s 147

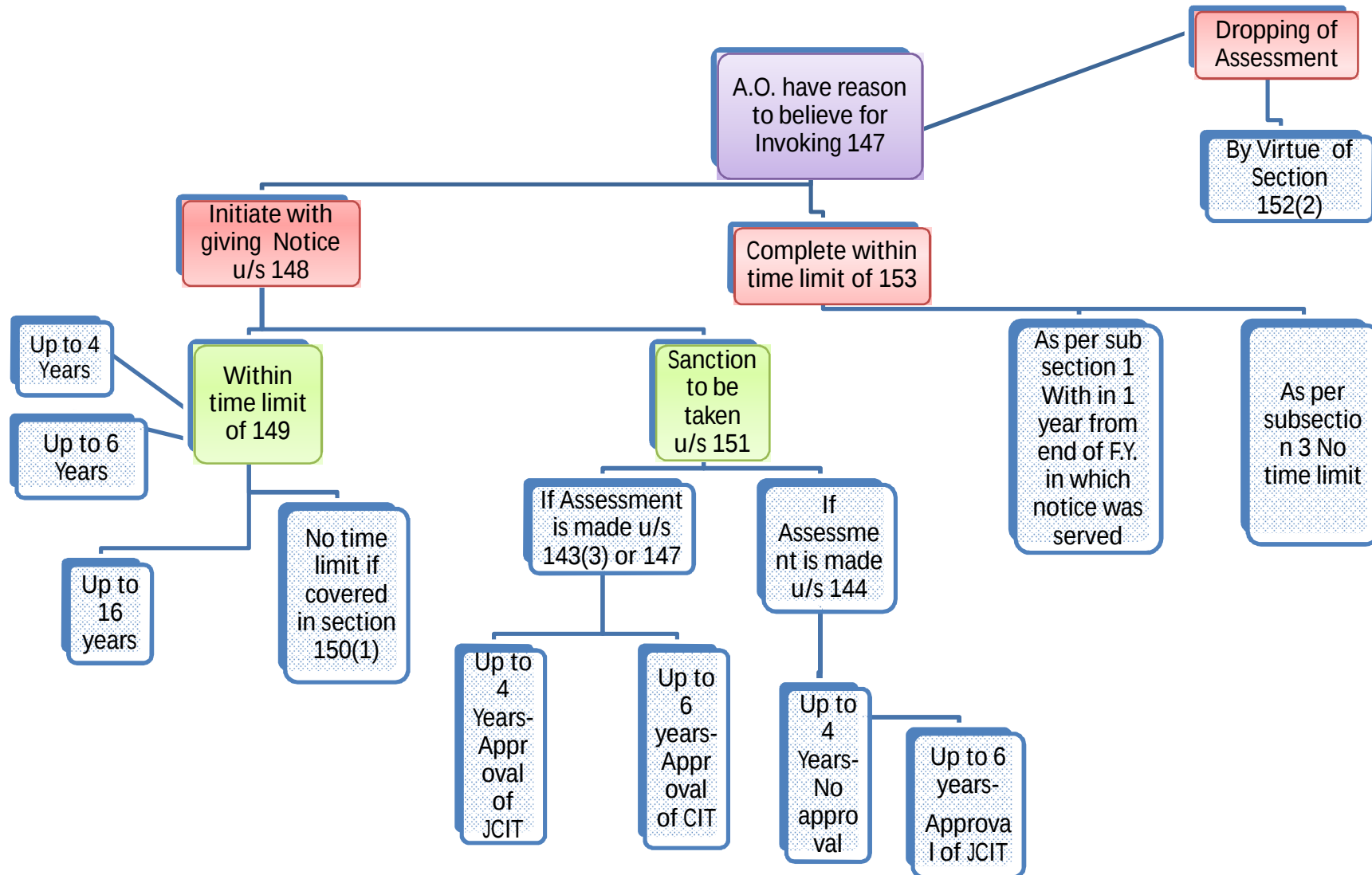
How can an Assessee drop the proceedings of Section 147

- As per Section 152(2) if already an assessment u/s 147 has done on assessee and assessee has not impugned any part of that assessment order under sections 246 to 248 or under section 264 and if A.O. reopens assessment u/s 147 then assessee after showing that he had been assessed on an amount not lower than what he would be rightly liable for, can claim that the proceedings u/s 147 shall be dropped.

OTHER IMPORTANT POINTS

- ✓ Return filed in response to notice u/s 148 can never be revised.
- ✓ Section 149 provides the time limit of issue of notice, not of serving. Thus if a notice is issued within time limit but served afterwards is valid in Law.
- ✓ As per explanation 3 of Section 147 If any issue comes to the notice of assessing officer subsequently in course of proceeding which proves that income has escaped then A.O. may assess such issue whether or not such issue has been included in the reason recorded u/s 148(2).
- ✓ Assessment , Reassessment or Recomputation made u/s 147, the tax shall be chargeable at the rate at which it would have been charged had the income not escaped assessment.

Summary



THANK YOU



Presented By:

NEHA ARORA