

Section 150 - Revenue's Life Jacket, Taxpayer's Noose?

Oct 18, 2023



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(A) Introduction

1 Section 147 of the Income-tax Act, 1961 empowers the Assessing Officer to assess or reassess any income in respect of which he has reason to believe that such income has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. While section 148 of the Act makes it mandatory for issue of a notice, section 149 of the Act sets the time-limit for the same. However, the time-limit set under section 149 is relaxed in a case falling under section 150. Thus, section 150 is solid weapon available to Revenue to reopen past assessment which is otherwise time barred as on the date of issuing notice u/s 148 as per provision of Section 149 of the Act. Various Hon'ble Courts including ITAT have not often or frequently used provisions of Section 150 of the Act to give new life to Department for issuing notice under section 148 of the Act for those assessment years which have already become time barred subsequently at the time of giving verdict by Courts at later point of time. However, recently Hon'ble Supreme Court delivered a judgment in a batch of Income-tax matters, the lead matter being **Principal Commissioner of Income-tax, Central-III v. Abhisar Buildwell Pvt. Ltd.** [[TS-202-SC-2023](#)] (hereinafter referred to as the Case) and **DCIT Central Circle 20 v. U.K. Paints (Overseas) Ltd.** [[TS-229-SC-2023](#)] dealt with scope and ambit of section 153A/153C of the Income-tax Act, 1961 and based upon the same, CBDT vide [Instruction No 1 OF 2023](#) dated 23/08/2023, in the guise of provisions of Section 150 of the Act, empowered AO to issue fresh notices u/s 148 of the Act for various assessment years which have already become time barred. **(Observations of Supreme Court considered as 'Finding' and 'direction' in view of Section 150 in such instruction and opened the gate of new controversies/litigations).** Hon'ble Mumbai ITAT in the case of **Naresh Manakchand Jain Vs ACIT** [[TS-511-ITAT-2023\(Mum\)](#)] while dealing with the case of accommodation entry provider (Assessment year involved being AY 2012-13) has directed AO to share information on 32,855 beneficiaries of accommodation entries to various AOs of such persons and observed that such cases may be reopened and dealt with according to the decision of Hon'ble Supreme Court in case of PCIT v. Abhisar Buildwell (P.) Ltd (supra) and instructions of CBDT and observed that AO may treat it as directions u/s 150 of the Income tax Act. **However, Bombay High Court has stayed such ex-parte order of the Tribunal.** The ratio of both decisions followed by CBDT instruction have given rise to various interconnected issues, litigations and intricacies evolved around provisions of Section 150 of the Act. Hence, it is important to analyse the same; let's delve into the same: To analyse provision of Section 150 and its implication, reproduced hereunder are section 150 and other section having reference of the same:

(B) Relevant Provisions of the Act and issues involved therein Section 150:

Provision for cases where assessment is in pursuance of an order on appeal, etc.

150. (1) Notwithstanding anything contained in [section 149](#), the notice under [section 148](#) may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any **finding or direction** contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall **not apply** in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

Section 153 :

Time limit for completion of assessment, reassessment and recomputation(discussed at para 3.3 below)

2. The reading of above section clarifies few major issues which require consideration as enumerated below:

1. There should be “finding or direction”; mere remarks or observation by Assessing Officer from appellate orders, could not be taken as a finding or direction of appellate authorities within meaning of section 150(1)
2. Authority empowered to give such “finding or direction” within meaning of section 150(1)
3. Which order to be considered as **“the order which was the subject-matter of the appeal, reference or revision”**,
4. In case income is excluded from the total income of one person and held to be the income of another person, **validity of order passed without giving opportunity of being heard.**

All the aforementioned issues are discussed herein below:

(C) There should be “finding or direction”, mere remarks or observation by Assessing Officer from appellate orders, could not be taken as a finding or direction of appellate authorities within meaning of section 150(1):

3.1 Foremost important condition for invoking powers u/s 150 of the Income Tax Act, 1961 is ‘finding’ and ‘direction’ of any authority. So, it is important to understand what constitute ‘finding’ or ‘direction’. **Hon’ble Supreme Court** in the case of **Rajinder Nath v. Income-tax Officer [TS-3-SC-1979]** and **Commissioner of Income-tax, Shimla v. Greenworld Corporation [CIVIL APPEAL NO. 3312 OF 2009]** had clearly brought out and discussed the expression of “finding” and “direction” by observing that the expressions “finding” and “direction” have limited meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. As regards the expression “direction”, it is well settled that it must be an express direction necessary for the disposal of the case before the authority or Court. It must also be a direction which the authority or Court is empowered to give while deciding the case before it. Thus, as per the law laid by the Hon’ble Apex Court, the term “finding” and “direction” has to be a specific finding and direction. They cannot be incidental; rather finding and direction should be of the case and of the order which is before the authority adjudicating the same.

3.2 It is relevant to refer to a few judicial pronouncements wherein, after considering above decision of Supreme Court, it is held that no notice u/s 148 in pursuance of section 150(1) can be issued on the assessee in absence of any finding or direction in order passed by the appellate authority:

- Decision of **Hon'ble BOMBAY High Court** in case of **Lotus Investments Ltd. vs. ACIT** WRIT PETITION NOS. 2465 TO 2475 OF 2006 wherein it is held that while deleting disallowances in appeal against block assessments, observation of CIT(A) that Assessing Officer was free to look into and consider disallowances under section 148 in relevant assessment years in terms of section 150(1), read with Explanation 2 to section 153 could not be construed to be a direction to reopen assessments so as to issue reassessment notices even after expiry of six years from end of relevant assessment years as contemplated under section 150 and, therefore, reopening after expiry of six years on basis of said observation was time barred under section 149.
- Decision of **Hon'ble Lucknow tribunal** in case of **M/S Pt. Ranglal Trust, Kanpur vs ACIT-1** vide ITA No.320/LKW/2018 dated 03.05.2018. In this case CIT(A) has observed that "However, the AO may consider the computation of Capital Gains in A. Y. 2005-06". Here, tribunal held that had the word "may" been used as "shall", it would have a specific direction or finding. With the word "may" it was an observation, a plausible view of the CIT(A), thus it cannot be "finding" or "direction" and ingredients of section 150(1) was not satisfied, therefore, issuance of notice under section 148 was directly hit by the provisions of section 149 limitation and time barred.
- **Hon'ble BOMBAY High court** in case of **Eskay K'n' IT (India) Ltd. vs. Deputy Commissioner of Income-tax, Central-Circle 33 [TS-513-HC-2014(BOM)]**
- Decision of **Hon'ble Ahmedabad ITAT** in case of **Vadilal Dairy International Ltd. vs. ACIT** IT APPEAL NO. 460 (AHD.) OF 2009, wherein Tribunal held that **Mere remarks or observation by the Assessing Officer from the appellate orders cannot be taken as a finding or direction of the appellate authorities within the meaning of section 150(1) of the Income-tax Act.**

3.2 However, there are also decisions which are against the assessee, which are numerated as under:

- Decision of **Gujarat High Court** in case of **Kalyan Ala Barot v. M.H. Rathod [SPECIAL CIVIL APPLICATION NO. 10726 OF 1996]**, wherein High Court has held that the very fact that income has been excluded from the total income of the assessee for an assessment year by virtue of an order referred to in clause (ii) of sub-section (3) would be sufficient for the purpose of making an assessment of such income in another year and for the purpose of section 150 and section 153, the same would be deemed to have been made in consequence of or to give effect to any finding or direction contained in the said order.
- Decision of **Hon'ble Calcutta High Court** in case of **Commissioner of Income-tax, Central-II, Kolkata vs. Glass Equipment (India) Ltd** ITAT No. 189 of 2013, wherein it is held that whenever an income is deleted or excluded from one year a corresponding inclusion in appropriate year by resorting to reopening of assessment for that year is specifically permitted by Explanation 2 to section 153(3), thus, reassessment of escaped income, without any express 'finding' or 'direction' could be made under Explanation 2 to section 153(3) and in a case where no express finding or direction was there, reassessment could be made under section 153(3)(ii).
- Decision of **Delhi High Court** in case of **Commissioner of Income-tax v. PP Engineering Work [IT APPEAL NO. 179 OF 2012]**

3.3 Here, it is relevant to refer to explanation 2 to Section 153 which states that any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to **any finding or direction contained in the said order**, and order referred in this explanation is order of clause (i) to 153(6). Thus it is hereby invited reference of clause (i) to Section 153(6) as under:

(6) Nothing contained in sub-sections (1), (1A) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3), (5) and (5A), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be; or

From combined reading of Clause (i) of section 153(6) and Explanation 2 to section 153, it transpires that foremost condition is finding or direction, without which income cannot be included in total income of another assessment year or in total income of another person. Same has been held by **Hon'ble Bombay High Court** in case of **Kala Niketan vs. Union of India** [TS-647-HC-2016(BOM)] which is rendered after the decision of Calcutta High Court in case of **Glass Equipment (India) Ltd.** In this case, High Court held that when there is no finding, it falls beyond **the scope of Section 150(1) read with Explanation 2 of Section 153 of the Act**

(iii) Further, deemed word used in Explanation (2) to Section 153(3) infers that once income excluded from total income of assessee for an assessment year, then assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order. It is never stated that once income excluded from one assessment year, it is deemed to be added in another assessment year. Thus, from the above it is clear that important condition for making assessment u/s 150 is finding or direction, in absence of which, section 150 cannot be invoked.

(D) Authority empowered to give such "finding or direction" within meaning of section 150(1)

4.1 Section 150 contemplates "any finding or direction contained in an order passed by **any authority**". For first appellate authority i.e. CIT(A), power has been defined u/s 251 of the Act, which gives power to confirm, reduce, enhance or annul assessment. Before 01/06/2001, CIT(A) had power to set aside the assessment which is omitted by Finance Act, 2001, w.e.f. 1-6-2001. Thus, power of first appellate authority is confined to decide the matter relating only to the assessment year before him and not to disturb any Earlier/subsequent Assessment Years which was not in appeal before him. Thus, CIT(A) lacks statutory power to give direction to the Assessing Officer for reopening of the completed assessment. Thus, a view can be taken that direction/finding given by CIT(A) to open earlier/subsequent Assessment Years which was not in appeal before him is unsustainable.

4.2 It is relevant to refer to following judicial pronouncement which can help assessee on similar facts.

- **Hon'ble Mumbai ITAT** in case of **Bholaram Malviya vs. ITO** vide I.T.A. No. 5965/Mum/2019 dated 21.04.2023 held that CIT(A) has no power to issue directions to AO to reopen the assessment for earlier/subsequent Assessment Years which was not in appeal before him.
- **Hon'ble Delhi ITAT** in case of **M/S. GLOBE AGENCIES VERSUS ACIT**, vide ITA NO.2206 /DEL/2018 dated 26.11.2021 held that directions issued by CIT(A) to AO to reopen the assessment in pursuance of section 150 are beyond his power conferred by section 250 of the Act and CIT(A) being a statutory authority has no power to exceed his jurisdiction beyond the subject matter of the appeal being decided by him against the impugned order of rectification, the di/rections issued by him are not sustainable, hence set aside.
- **Hon'ble Kolkata ITAT** in case of **ITO V. SRI BISWAJIT CHATTERJEE** vide ITA No. 565/Kol/2013.

(E) Which order to be considered as "the order which was the subject-matter of the appeal, reference or revision"

5.1 Section 150(1) provides department with solid weapon to reopen assessment at any time disregarding time restriction stipulated under section 149. However, to put a cap on the power of assessing officer to issue notice u/s 148 taking shelter under the provisions of section 150(1), proviso to sub-section 1 of section 150 is inserted in the form of sub-section 2 of section 150 wherein it is stated that **the relaxation on part of assessing officer to issue notice u/s 148 based on any finding or direction contained in an order passed by any authority in any law will not apply where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time the order which was the subject matter of appeal, reference or revision, as the case may be, was made on account of the expiry of the time limit at that point of time itself**. So, it is clear from above discussion that **no notice u/s 148 can be issued to the assessee in case where the time limit for making an assessment or reassessment as per section 149 as on the date of order which was the subject matter of appeal has expired.**

5.2 Thus, the words "at the time the order which was the subject-matter of appeal, reference or revision, as the case may be, was made.." in section 150(2) are significant. Thus, question arises as to order of which authority is to be considered for computing limitation under section 149 of the act from the end of relevant assessment year. The revenue authority because of the word 'appeal' may contend that the **subject-matter should be construed as the original order** i.e. Assessment order, which give department the power to reopen very old years which otherwise cannot reopen due to section 149.

Here, it is relevant to understand that there are two tiers of appeals from the assessment order; one to the Commissioner and another to the Tribunal. However, the next word is reference, which is made under section 256(1) of the Act, in which what is referred is the subject-matter of the order of the Tribunal **Can we say that when the Tribunal refers the matter to the High Court, the order that was considered by the Tribunal is the order of the Assessing Officer? No. It is the order of the Tribunal that is being referred to High Court**. For example, in this case, where there is a reference to the High Court against the order of the Tribunal, it will be order of the Tribunal that will be material and not the original assessment order. Thus, it is clear that the order which should be considered is the order which is considered by authority while passing the order and not the original order.

5.3 One may argue that when an order is passed by the original authority and an appeal is filed, the order passed by the original authority merges with that of the order of the appellate authority. When a second appeal is filed, the subject-matter is the order of the appellate authority. Thus, when order of the Tribunal is challenged, what is the subject-matter, is the order of the Tribunal and not the order of the AO.

5.4 The assessee may rely upon ratio laid down by following decisions:

- **Hon'ble Kerala High Court** in case of **CIT v. Vaikundom Rubber Co. Ltd.** vide IT REFERENCE NOS. 102 TO 106 OF 1998 held that 'order which was subject-matter of appeal before Tribunal' within meaning of section 150(2), was to be construed as order passed by Commissioner (Appeals) on 1-3-1984.
- **Hon'ble PUNJAB HARYANA HIGH COURT** in case of **Praveen Kumari v. CIT (1999) C.W.P. NOS. 18644 AND 18676 OF 1997 and Sharma (KM) v. ITO (2002) CIVIL APPEAL NO. 7742 OF 1997 (SC)**, held that the order of the Commissioner dated March 29, 1990, is the order which was the subject-matter of appeal before the Tribunal.
- **Hon'ble Jaipur ITAT** in case of **Ramesh Chand Soni, HUF vs. Income Tax Officer, Ward Behror** vide I.T. APPEAL NOS. 1024 & 1025 (JP.) OF 2013 held that where directions were passed by Tribunal then order of Commissioner (Appeals) was subject matter of appeal before Tribunal and therefore, order of Commissioner (Appeals) was relevant for purpose of section 150(2) and not original assessment order.
- **Hon'ble ANDHRA PRADESH HIGH COURT** in case of **CIT vs G. Viswanatham** Referred Case No. 236 OF 1982 dated 27.11.1987

5.5 However, there are judicial pronouncements against the assessee wherein the original assessment order was considered as subject-matter of appeal.

- Hon'ble CALCUTTA HIGH COURT in case of ITO vs. Eastern Coal Co. Ltd vide APPEAL NO. 72 OF 1971 held that original order for assessment dated 29.12.1960, is the subject-matter of appeal within the meaning of section 150(2).
- Hon'ble Cochin ITAT in case of Peninsular Plantations Ltd. vs DCIT vide IT APPEAL NOS. 1059 TO 1067 (COCH.) OF 1990

(F) In case of income is excluded from the total income of one person and held to be the income of another person, **validity of order passed without giving opportunity of being heard.**

6. As provided under clause (b) to Explanation 2 to Section 153 "when any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order if such other person was given an opportunity of being heard before the said order was passed. **Thus, the most important condition here is opportunity of being heard before the passing of**

order in which finding or direction is made. Hon'ble Bombay HIGH COURT in case of **Dinar Tarcar vs. ACIT** WRIT PETITION NOS. 500 OF 2014 & 72 OF 2015 and Hon'ble Delhi High Court in case of **Rural Electrification Corporation Ltd. vs. CIT** W.P. (C) NOS. 7944 TO 7947 OF 2011 supports such view.

(G) Regarding CBDT circular to give effect to decision of Hon'ble Supreme court in case Abhisar buildwell

7. Hon'ble Supreme court in case of Abhisar Buildwell in para no 14 at pg. no 56 has concluded as under:

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

7.1 CBDT has inferred observations made by the Hon'ble Supreme Court to the effect that the powers of Revenue under section 147/148 are saved as a 'finding' or a 'direction' in order to invoke section 150 to reopen the proceedings in the extended period of limitation and issued instruction 1/2023. This observation in instruction may create pandora box of litigation because **to invoke Section 150, there should be finding or direction and mere remark/observation made by Hon'ble Supreme court which may not be considered as 'Finding' or 'direction' in view of Section 150 of the Act.**

7.2 The Hon'ble Supreme Court in above referred case, was not adjudicating the issue as to whether notice u/s.148 can be issued where no incriminating material is found during the course of search but issue was whether addition can be made in absence of incriminating material found during the course of search and same has been adjudicated by it. The observation of Hon'ble Supreme Court in para 14 of its order that powers of revenue to reopen the proceedings u/s.148 are saved but this does not mean it is finding or direction as contemplated in section 150 of the Act. The provisions of the Act has never debarred the AO to issue notice u/s.148 of the Act for the issues of escapement of income when during the course of search no incriminating material is found. The observation of Hon'ble supreme Court is with reference to specific contention of revenue as referred in para 3.1 (XI) wherein it was contended that *"it is submitted that when section 153A requires assessment of 'total income', can it be interpreted so as to exclude a part of the 'total income' while making the assessment? It is submitted that if income based on incriminating material from sources other than the search is excluded from assessment under section 153A, how can the same be brought to tax? It is submitted that the language and meaning of Section 153A is plain and unambiguous, i.e., if search under section 132 of the Act, 1961 is conducted in a case, assessment of 'total income' for each of the six assessment years pending the assessment year relevant to the previous year in which such search is conducted, has to be made."* Thus, this finding cannot be considered as direction / finding given by Hon'ble Supreme Court to reopen the proceedings under the guise of provision of section 150 of the Act. Further, Hon'ble Supreme Court has categorically held that reassessment notice can be subject to fulfilment of condition as envisaged in section 147/148 and had it been direction / finding (as required in section 150) as contemplated by CBDT in above referred instruction, the Hon'ble Court might not have used the wording that reassessment should be subject to

fulfilment of provisions of section 147 & 148.

7.3 **Hon'ble Supreme Court** in the case of **Rajinder Nath v. ITO**, [\[TS-3-SC-1979\]](#) has stated that finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. Here, in **Abhisar Buildwell**, question before authority was to decide whether in respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A, which supreme court has answered in affirmative. **The observation made by Supreme court which considered as finding by CBDT is not at all necessary for the disposal of the particular case i.e. Abhisar Buildwell, thus it can't be finding or direction as held by Hon'ble Supreme Court in the case of Rajinder Nath**. Further, **Hon'ble BOMBAY HIGH COURT** in case of **Rakesh N. Dutt** WRIT PETN. NOS. 2017 & 2018 OF 2007, in which tribunal held that additions by way of undisclosed income by applying the provisions of sections 68 to 69C cannot be made in a block assessment and the same can be made in the regular assessments. Here, also Tribunal stated that regular assessment can be done similar as Supreme court stated reassessment u/s 147/148 can be done, in this case **Hon'ble Bombay High court held that observation of Tribunal could not be said to be a 'finding' or 'direction' within meaning of section 150 for reopening assessee's assessment beyond a period of six years**.

7.4 Thus, here CBDT has considered observation of Supreme Court as finding or direction to take shelter of Section 150 to reopen past assessment which are otherwise cannot be reopened due to Section 149, and issued notice to assessee to reopen old assessments which are otherwise time barred. **However, this exercise by CBDT would give rise to litigation as CBDT here by itself has considered observation of Supreme court as finding or direction in view of Section 150 and assumed power of Section 150, which cannot be intention of law. The observation of Hon'ble Supreme Court was related to connected matter therein which is not finding/direction as envisaged in section 150 and in other unconnected cases one may further argue direction / finding as required in section 150 should be assessee specific and assessment year specific.**

7.5 Further, important point which require consideration is that department has also filed misc. application before Supreme court seeking clarification of order passed in **Pr. CIT v. Abhisar Buildwell (P.) Ltd.** [\[TS-247-SC-2023\]](#) and submitted that waiver of limitation as stipulated in section 150(2) is to be read in respect of the date of issue of notice for reassessment under section 148 (i.e.) if as on the date the assessment under section 153A or section 153C was passed, a notice under section 148 could have been issued as per the law then in force, then fresh proceedings for reassessment of such income not arising from the incriminating material found in search can now be initiated pursuant to the findings of this Hon'ble Court. However, Supreme Court has not entertained such application stating that prayers sought are in the form of review which requires detailed consideration looking to the importance of the matter and relegated Revenue to file review application.

CONCLUSION:

The provisions of Section 150 r.w. Explanation 2 to 153(3) of the Act provides life saving jacket to department to issue reassessment notice for time barred assessment subject to following conditions:

1. There should be express "direction/finding" which should be necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year and not mere remarks/observation.
2. No notice u/s 148 can be issued to the assessee in case where the time limit for making an assessment or reassessment as per section 149 as on the date of order which was the subject matter of appeal has expired as envisaged in 150(2) and such order is not original assessment order but order which is subject to appeal before authority.
3. Further, for reopening assessment another person, opportunity of being heard should be given to such another person.

Thus, department can use such life saving jacket of Section 150 after considering such intricacies, otherwise it would lead to long drawn litigation and substantial time and money in such litigation would be spent which is not the intent of law.