

# **Re-assessment under section 148 – New Regime/ New Controversies**

**Navi Mumbai Branch of WIRC of ICAI**

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# Introduction to reassessment proceedings

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- ▶ The provision for assessment of income escaping assessment was initially part of Income Tax Act, 1922 and after various amendments from time to time, the same has been in present form, before being substituted by new provisions in Finance Act, 2021.
- ▶ The earlier provisions relating to reassessment in the Income Tax Act, 1961 provided that if the Assessing Officer ('AO') has "reason to believe" that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re-compute the total income for such year.
- ▶ The Memorandum explaining Finance Bill, 2021, mentions the intention of Parliament to introduce new provisions for reassessment wherein it is stated that due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the ITA (statement of financial transaction or reportable account).
- ▶ Similarly, information is also received from other law enforcement agencies. Thus, in order to empower Tax Authority to reopen the assessment in such a situation, bring in the new provisions, the Tax Authority has been allowed to reopen the assessment on the basis of the information so collected by the Tax Authority.
- ▶ In view of the above, we would like to discuss some of the important facets of the old and new provisions of reassessment proceedings and also the comparative analysis between old and new provisions of reassessment proceedings.

# Old Regime vs. New Regime

Sr. No.	Particulars	Old Regime	New Regime
1	Section 147	<ul style="list-style-type: none"> <li>▶ Reason to believe</li> <li>▶ Income chargeable to tax has escaped assessment for any assessment year</li> <li>▶ Assess or re-assess such income <u>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</u> or re-compute the loss or the depreciation allowance or any other allowance for the assessment year</li> <li>▶ 1<sup>st</sup> Proviso – Where assessment has taken place under section 143(3) – no proceedings after 4 years unless income escapes assessment due to failure on part of the assessee to make return under section 139/ 142(1)/ 148 or to disclose fully and truly all material facts necessary to assessment for that year.</li> <li>▶ <u>2<sup>nd</sup> Proviso – AO can assess/ re-assess income other than the income involving matter subjected to any appeal/ reference/ revision</u></li> <li>▶ Explanation 1 – Production of BOA/ other evidences from which material evidence could be discovered with due diligence will not necessarily amount to disclosure</li> <li>▶ Explanation 2 – Cases deemed to be a case where income chargeable to tax has escaped assessment</li> <li>▶ Explanation 3 – AO can assess/ re-assess incomes which comes to his notice subsequently during the proceedings notwithstanding the facts that it does not form part of the recorded reasons.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Income chargeable to tax has escaped assessment for any assessment year</li> <li>▶ Assess or re-assess such income or re-compute the loss or the depreciation allowance or any other allowance for the assessment year</li> <li>▶ Explanation – AO can assess/ re-assess incomes which comes to his notice subsequently during the proceedings notwithstanding the facts that provisions of section 148A have not been complied with.</li> </ul> <p>[Rajesh Jhaveri (291 ITR 500) (SC) – 143(1) is not an assessment proceeding]</p>

# Old Regime vs. New Regime

Sr. No.	Particulars	Old Regime	New Regime
1	Section 147 (Contd.)		<p>Does explanation cover re-compute the loss or the depreciation allowance or any other allowance?</p> <p>Does removal of second proviso to erstwhile section 148 can be considered by the appellate forum as well as AO?</p> <p>Does ration of Jet Airways Ltd. [331 ITR 236 (Bombay HC)] still hold good?</p>

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2022
2.1	Primary reason for assuming jurisdiction for reassessment	<p>▶ Reason to believe that income has escaped assessment</p>	<p>The AO has <b>information which suggests that income has escaped assessment</b>. The scope of the information is as follows (Explanation 1 to section 148):</p> <ul style="list-style-type: none"> <li>▶ Any information <b>flagged</b> in accordance with the risk management strategy (RMS)</li> <li>▶ Final Audit objection raised by C&amp;AG</li> </ul>	<p>The Finance Act 2022 has increased the scope of the information as follows:</p> <ul style="list-style-type: none"> <li>▶ Removed the reference to the word 'flagged' and now entire RMS data base may become basis for reopening.</li> <li>▶ Extended the scope to also include 'any audit objections' as against only "Final objection by C&amp;AG" i.e. This means that any kind of audit objection (whether internal audit objection, revenue audit objection, objections by C&amp;AG, etc.) raised could be used to reopen the assessment</li> <li>▶ Extended the scope to also include any information received from a foreign jurisdiction under an agreement entered into under Section 90 or section 90A</li> </ul>

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2022
2.1	Primary reason for assuming jurisdiction for reassessment (Contd.)			<p>▶ Extended the scope to also include information received under a scheme notified under section 135A (Dealing with information collected by tax authority electronically under different provisions . The scheme yet to be notified)</p> <p>▶ Extended the scope to also include any information requiring action in consequence of a tribunal/court order.</p> <p>Relevance of timing of information – what if available during assessment proceedings or received subsequently?</p> <p>Will it Overlap provisions of Section 150?</p> <p>Whether an assessee's case be re-opened due to the order of another year?</p> <p>Whether proceedings maybe initiated due to the order of a third party?</p>

# Old Regime vs. New Regime (Contd.)

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## Decisions where impugned transaction was not of assessee:

### **GDR Finance & Leasing Pvt. Ltd. [W.P.(C) 11952/2022 dated 21 December 2022 (Delhi HC)] – AY 2015-16**

- ▶ Where assessing officer re-opened the proceedings of an assessee alleging receipt of accommodation entries from an entity when in fact no transaction took place with said entity, the notice under section 148 and the order under section 148A(d) were bad in law and liable to be quashed.

### **G4S Secure Solutions (India) Private Limited [W.P.(C) 6625/2022 dated 19 December 2022 (Delhi HC)] –AY 2018-19**

- ▶ The Department contended that the assessee was the beneficiary of accommodation entries from M/s. Flash Forge Pvt. Ltd. based on a report generated by the GST authorities. The Hon'ble HC observed that FFPL is alleged to have provided accommodation entries not only includes the petitioner but companies such as BHEL, IOC Ltd., HMT Machine Tools Ltd., Hindustan Shipyard Ltd., Hindustan Aeronautics Ltd., Hindustan Petroleum Corporation Ltd., Godrej and Boyce Manufacturing Company Ltd. and L&T Ltd. and there was no material to suggest, that accommodation entries were provided by FFPL to these companies Accordingly, the Hon'ble HC held that notice under section 148A(b) is to be issued after conducting an independent enquiry as required under Section 148A(a) and not by merely relying upon the information supplied by the GST authorities. Since no prior inquiry has been conducted in terms of section 148A(a) and proceedings were initiated based on incorrect information, the order under section 148A(d) and notice under section 148 were quashed.

# Old Regime vs. New Regime (Contd.)

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## Decision where impugned transaction was examined by the AO during the original assessment proceedings:

**Azim Premji Trustee Co. (P.) Ltd. [146 taxmann.com 58 dated 28 October 2022 (Karnataka HC)] – AY 2014-15**

- ▶ The assessee is a trustee of a private discretionary trust which received gift of shares of Wipro Limited. These transactions were duly disclosed contemporaneously to the stock exchanges and in the audited accounts. During the year, the assessee sold a portion of said shares and disclosed capital gains arising therein in its returns which was accepted by the assessing officer during the course of the original assessment proceedings without treating the gift as taxable income under section 56(2)(vii)(c). Subsequently, the assessee was in receipt of a notice under section 148 alleging that capital gains arising on sale of shares were taxable under section 56(2)(vii)(c).
- ▶ The Hon'ble HC observed that section 149(1)(b) does not apply to the case since the allegation of escapement of income is not based on books of account or other documents or evidence in the possession of the assessing officer. On the contrary, the allegation of escapement of income is based only on the disclosure expressly made by the petitioner-assessee itself of the gift of shares received by it and the very same information was readily available with the Assessing Officer when the original assessment order was passed by him.
- ▶ Accordingly, it is only section 149(1)(a) that was applicable and consequently, the impugned proceedings pursuant to the notice issued beyond the period of limitation (which expired on 31 March 2018) are hopelessly barred by limitation and the impugned proceedings and order deserve to be quashed.
- ▶ Alternatively, if section 149(1)(b) is invocable, even then the right of the revenue to issue a notice and initiate proceedings is limited by the first proviso.
- ▶ Further, since during original assessment, the assessing officer had examined assessee's demat account, which gave full information about gift so received, sale made thereof and market value of said shares and thereafter completed assessment without treating gift of shares as assessee's taxable income under section 56(2)(vii)(c) is indicative of the fact that the assessing officer had complete and full knowledge it cannot be said that the income of the petitioner had escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and consequently, the impugned order deserves to be quashed on this ground also.



# Old Regime vs. New Regime (Contd.)

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## Decisions on 'information':

### **Divya Capital One Private Limited [445 ITR 0436 dated 12 May 2022 (Delhi HC)]**

- ▶ The Department alleged that income amounting to Rs. 10,07,05,88,04,543 has escaped assessment. Against the notice under section 148A(b), the assessee objected to its legal validity on the ground that there was no information that suggested that income had escaped assessment whilst requesting the information/documents relied upon.
- ▶ It was further stated that Rs.10,02,75,60,94,439 (around 99%) is stated to be on account of sale of equity share/ equity oriented unit otherwise than by way of actual delivery, sale of options and sale of futures and is not the actual turnover of the assessee.
- ▶ Upon filing the writ, the assessing challenged the order under section 148A(d) and notice under section 148 on the ground that they have been passed without any application of mind and without appreciating the nature of the assessee's business. The Hon'ble HC held as under:
  - ▶ New re-assessment scheme was introduced by with the intent of reducing litigation and to promote ease of doing business.
  - ▶ A progressive as well as futuristic scheme of re-assessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result.
  - ▶ The term "information" in Explanation 1 to section 148 cannot be lightly resorted to so as to re-open assessment. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under section 147. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under section 148 post an order under section 148A(d).
  - ▶ Non-furnishing of information/material stated in the show cause notice issued under section 148A(b) with the assessee is denial of an effective opportunity to file a response/reply.
  - ▶ Assessee has a right to get adequate time in accordance with the Act to submit its reply.

# Old Regime vs. New Regime (Contd.)

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## Decisions on 'information' (contd.):

### **Excel Commodity And Derivative Pvt. Ltd. [328 CTR 0710 dated 29 August 2022 (Calcutta HC)]**

- ▶ The Department alleged that the assessee has done fictitious derivative transactions with M/s. Blueview Tradecom Pvt. Ltd. in relation to which the assessee submitted its detailed reply. In the order under section 148A(d), the assessing officer has indirectly accepted the explanation but alleged that alleges that prima facie the assessee has taken accommodation entry by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. Aggrieved, the assessee filed a writ petition [WPO/2298/2022 dated 30 June 2022] which was disposed by a single judge bench which remanded the matter back to the assessing officer holding that the order under section 148A(d) was devoid of reasons.
- ▶ The assessee then approached the division bench which held that the term “information” in Explanation 1 to Section 148 cannot be lightly resorted to so as to reopen assessment and cannot be a ground to give unbridled power to the revenue. Where the assessee had submitted the explanation to the notice along with documents to the satisfaction of the AO who however, proceeded on a fresh ground for alleging that the transaction with another company was an accommodation entry, the order under section 148A(d) is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue since the AO has indirectly accepted the explanation.

# Old Regime vs. New Regime (Contd.)

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## Decisions on 'information' (contd.):

### **Dr. Mathew Cherian [450 ITR 568 dated 1 September 2022 (Madras HC)] – AY 2018-19**

- ▶ During a survey under section 133(2A) in case of Kovai Medical Centre and Hospital, various documents ['employee confidentiality agreement', 'revised guidelines for practice of medicine at KMCH' and joining reports] were found and seized, which according to the Department indicated that the doctors were employed with the hospital and were not visiting consultants. Accordingly, the Department came to a conclusion that (i) employer-employee relationship is established (ii) petitioners are to be construed as employees and not full time/visiting consultants and (iii) the income returned by them has to be assessed under the head 'salary' and not 'professional income'. Accordingly, proceedings under section 148 were initiated in case of the doctors.
- ▶ Against the order under section 148A(d) and notice under seton 148, the assessee preferred a writ where it submitted that none of the documents found are incriminating and that as medical professionals, the assessee is an independent consultants only and not salaried employee.
- ▶ The Hon'ble HC held that not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for reassessment, and it is only such 'information' that suggests escapement and which, based upon the material in the AOs possession, that the officer decides as 'fit' to trigger reassessment, that would qualify. The 'information' in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax and AO must be able to establish proper nexus of information in his possession, with probable escapement from tax. No doubt the term used is 'suggests'. That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2022
2.2	Primary reason for assuming jurisdiction for reassessment (Contd.)		<p>Explanation 2 to section 148:</p> <p>Cases where AO is deemed to have information suggesting escapement of income <u>for 3 years preceding</u>:</p> <ul style="list-style-type: none"> <li>▶ Search under section 132 on or after 1 April 2021</li> <li>▶ Requisition under section 132A on or after 1 April 2021</li> <li>▶ Survey under section 133A [other than TDS Survey {section 133A(2A)} and Expenditure Survey {section 133A(2A)}]</li> <li>▶ AO (with prior approval of PCIT/ CIT) is satisfied that any money, bullion, jewellery, other valuable article or thing, books of account or documents seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1 April 2021, belongs to the assessee.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Deeming fiction for 3 years deleted.</li> <li>▶ Reference to Expenditure Survey [section 133A(2A)] removed.</li> </ul>

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2022
3	Procedure up to issuance of notice under section 148	<p>Step 1: Obtain approval from JCIT/PCIT/ CCIT/CIT (as the case may be)  <b>[Refer German Remedies Ltd (152 Taxman 269) (Bombay HC)]</b></p> <p>Step 2: Formally record reasons to believe that the income has escaped assessment            [The reasons must be recorded in detail and not based on borrowed satisfaction. Change of opinion cannot be basis of reopening. Further, the fresh information (i.e. tangible material) available with the assessing officer should reasonably indicate evasion of tax]</p>	<p>Step 1: Conduct an inquiry with a prior approval of the authority under section 151 [The approval should be speaking order]</p> <p>Step 2: Issue of SCN granting taxpayer an opportunity of being heard <a href="#">after approval of the authority under section 151</a></p>	Finance Act 2022 now provides that no prior approval of the authority under section 151 would be required prior to issuing SCN to provide the assessee an opportunity of being heard.

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2022
3	Procedure up to issuance of notice under section 148 (Contd.)	<p>Step 3: Issue a notice under 148</p> <p><b>[Refer GKN Driveshafts (India) Ltd (259 ITR 19) (SC)]</b></p> <p><b>[Refer Asian Paints (296 ITR 90)]</b></p>	<p>Step 3: Consider the reply of the Assessee and decide if the case is fit for reopening by passing an order with prior approval of the authority under section 151.</p> <p>Step 4: Issue of notice under 148 with prior approval of the authority under section 151.</p> <p>► It is pertinent to note in the above procedure, there is no remedy available with Taxpayer in the ITA to contest the order under section 148A(d) of ITA. Thus, the Taxpayer has an option to file writ against the said order before High Court.</p>	<p>Finance Act 2022, provides that no separate approval would be required to issue notice under section 148 if a speaking order is passed by the AO holding that the case is fit for reassessment [2<sup>nd</sup> proviso to section 148]</p> <p>If notice is issued at pre selection stage then separate approval under Section 151 for issue of notice under Section 148 is not required.</p>

**Procedure under section 148A is mandatory and assessee to be provided all information and material relied upon by the AO - Ashish Agarwal [(138 taxmann.com 64)(SC)]**

# Old Regime vs. New Regime (Contd.)

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## Decisions where information not supplied to the assessee:

### **Alaknarayan Poosapati Gajapati Raju [145 taxmann.com 551 dated 31 October 2022 (Delhi HC)] – AY 2016-17**

- ▶ Where reassessment proceedings in case of assessee were initiated pursuant to a Tax Evasion Petition (TEP) alleging that assessee had entered into significant financial transaction of sale of an immovable property and had received cash and had not shown capital gains, since all material as available with Assessing Officer as 'Information' were not provided to assessee and thereby assessee had no occasion to respond to same, reassessment proceedings were to be set aside and Assessing Officer was to be directed to consider matter afresh.

### **Kusum Gupta [451 ITR 142 dated 28 September 2022 (Delhi HC)] – AY 2013-14**

- ▶ Where assessee was sufficiently informed that initiation of reassessment proceeding was due to fact that Assessing Officer had reasons to believe that assessee had earned bogus LTCG by trading in penny scrip of 'M', however, detailed report of Investigation Wing on suspicious trading activity of 'M' was not provided to assessee, thereby, denying assessee an effective opportunity to answer findings in report, impugned order passed under section 148A(d) and notice issued under section 148 were to be set aside with a direction to the petitioner to file its additional reply, responding to the findings of the Report within two weeks.

# Old Regime vs. New Regime (Contd.)

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## Decision where 148A(d) was passed without considering assessee's reply:

### **Agricultural Produce Market Committee (WP No. 5460/ 2022 dated 17 October 2022 (Bombay HC))**

- ▶ The Hon'ble HC observed that the impugned order passed under section 148A(d) issued without considering the petitioner's reply inasmuch as paragraph 1 of the said order records that the petitioner failed to submit its Explanation. Accordingly, the impugned order was set aside and the Department was at liberty to take further steps in accordance with law and as permissible under the said Act.

### **Nabco Products (P.) Ltd. [447 ITR 439 dated 3 August 2022 (Allahabad HC)]**

- ▶ Where assessee filed reply to notice issued under section 148A(b) but revenue passed order under section 148A(d) without considering reply of assessee on ground that reply of assessee was not reflected in noting maintained in portal, impugned order passed was in gross violation of principles of natural justice and same was to be quashed. Liberty granted to the Department to pass a fresh order under section 148A(d) after affording reasonable opportunity of being heard. Department also directed to take forthwith all required steps to remove shortcomings in the system and to develop a system of accountability of erring officers/employees. Cost of Rs. 50,000 levied and to be paid in two weeks.

### **Sunrise Associates [WP No. 2860/ 2022 dated 18 October 2022 (Bombay HC)] – AY 2018-19**

- ▶ Documents and reply not considered. Accordingly, impugned order set aside and matter remanded for fresh consideration. Assessee to be allowed two weeks time to render further explanation. Assessing officer open to pass the appropriate orders in accordance with law.



# Old Regime vs. New Regime (Contd.)

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## Decision where 148A(d) was passed without considering assessee's reply (contd.):

### **Rishab Garg [WP(C) 1840/ 2023 dated 14 February 2023 (Delhi HC)] – AY 2018-19**

- ▶ AO has not dealt with the submission of the assessee. Accordingly, impugned order set aside and assessing officer open to carry out de novo exercise. If the assessing officer were to carry out the exercise afresh, before proceeding further, the assessing officer will furnish the available information/ material and assessee to be allowed at least one week's time to file supplementary reply as well as provide personal hearing.

### **Alankar Apartment (P) Ltd. [WP(C) 2115/ 2023 dated 17 February 2023 (Delhi HC)] – AY 2017-18**

- ▶ Not dealt with the objections raised in a satisfactory manner and not dealt with the evidences furnished. Order u/s 148A(d) and notice u/s 148 quashed and set aside and AO to carry out denovo exercise after proving personal hearing.

# Old Regime vs. New Regime (Contd.)

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## Decision where reasons under 148A(b) notice and 148A(d) order were different:

### **Catchy Prop-Build (P.) Ltd. [448 ITR 671 dated 17 October 2022 (Delhi HC)]– AY 2018-19**

- ▶ Where Assessing Officer issued on assessee notice under section 148A(b) seeking to initiate reassessment proceedings on account of some transactions of purchase and sale of shares undertaken by it and thereafter passed order under section 148A(d) holding that company 'M' was not sound so as to make an investment of Rs. 3 crores to purchase shares of company 'B' and so source of investment remained unexplained, as in notice under section 148A(b) assessee was never asked to explain source of funds that were used by 'M' to purchase shares of 'B', impugned notice as well as order were to be quashed. Further, if the foundational allegation is missing in the notice issued under section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice.
- ▶ Followed in **Usha Rani Girdhar [146 taxmann.com 547 dated 25 November 2022 (Delhi HC)] – AY 2017-18**

# Old Regime vs. New Regime (Contd.)

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## Decisions where proceedings were quashed for violation of procedure prescribed under section 148A:

### **Nambiar Balakrishnan Narendran [WP(C) 18182/ 2022 (Delhi HC) dated 25 November 2022] – AY 2018-19**

- ▶ The assessee contended that under the new regime, before issue of notice under section 148, it is incumbent on the assessing officer to serve a show cause notice as contemplated by Section 148A of the Act. It was also pointed out that a minimum of seven days is to be given to the petitioner to reply to the same. The learned counsel for the petitioner submits that the notice under section 148A(b) of the Act was not actually served on the petitioner prior to the issuance of notice under Section 148 and the same was subsequently served. Before the Hon'ble HC, the Department prayed that it be permitted to issue fresh notice under section 148A and continue with the proceedings in due compliance with the law.
- ▶ However, the Hon'ble HC held that since it is clear that there is no record to suggest that the procedure contemplated under section 148A were followed before issuing notice under section 148 the notice under section 148 was quashed without prejudice to the right of the Department to initiate fresh proceedings in accordance with law.

### **G4S Secure Solutions (India) Private Limited [W.P.(C) 6625/2022 dated 19 December 2022 (Delhi HC)] –AY 2018-19**

- ▶ The Hon'ble HC held that notice under section 148A(b) is to be issued after conducting an independent enquiry as required under Section 148A(a) and not by merely relying upon the information supplied by the GST authorities. Since no prior inquiry has been conducted in terms of section 148A(a) and proceedings were initiated based on incorrect information, the order under section 148A(d) and notice under section 148 were quashed.

# Old Regime vs. New Regime (Contd.)

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## Decisions where proceedings were quashed for violation of procedure prescribed under section 148A (contd.):

### **Alkem Laboratories Limited [WP(C) No.8343 of 2022 dated 28 March 2023 (Patna HC)] - AY 2018-19**

- ▶ The Department proposed to re-assessee the assessee's income basis information received from 'other income tax authority that the assessee's income has escaped assessment. Notice under section 148(b) was issued and the only information which was supplied to the assessee was that as per the information received from 'other Income Tax authority' the capital gains of Rs. 2.67 Cr during the year, was not shown properly in the ITR.
- ▶ Against the notice under section 148A(b), the assessee preferred to file a writ which was disposed by the Hon'ble HC who held that section 148A requires conduct of an inquiry and the information, as contemplated under section 148A(a) must contain clear basis and cannot be in abstract for issuing the notice under section 148A(b). Further, reliance was also placed on the decision of the Hon'ble SC in case of Ashish Agarwal (supra) unequivocally held that no notice under section 148 could be issued without following the procedure prescribed under section 148A, which are in the nature of condition precedent for issuance of the reassessment notice.
- ▶ Further, with regards to the Departments' contention that the writ is premature and that the assessee can agitate this issue while responding to notice under section 148, the Hon'ble HC explained that the decision to issue notice for reassessment under section 148 attains finality after passing of order under section 148A(d), which cannot be revisited by the Revenue while exercising jurisdiction under Section 147.
- ▶ Accordingly, considering the nature of information furnished to the assessee, the Hon'ble HC has quashed and set-aside the notice under section 148A(b), order under section 148A(d) and the notice under section 148. However, remits the matter to consider issuance of fresh SCN under section 148A(b).

# Old Regime vs. New Regime (Contd.)

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## Decisions where proceedings were quashed for violation of procedure prescribed under section 148A (contd.):

### **Stalco Consultancy & Systems (P.) Ltd. [291 Taxman 390 dated 1 November 2022 (Orissa HC)] – AY 2013-14**

- ▶ Where Assessing Officer issued on assessee three notices under section 148 dated 31-3-2021, 1-4-2021 and 5-4-2021 seeking to reopen assessment for assessment year 2013-14, as notice dated 31-3-2021 was issued after more than six years from end of assessment year, it deserved to be quashed and other two notices also deserved to be quashed, as they were bad in law for non-compliance with mandatory requirements of prior inquiry by Assessing Officer in terms of section 148A with a direction to the petitioner to file its additional reply, responding to the findings of the Report within two weeks.

## Decision on writ against notice under section 148(b):

### **North End Foods Marketing (P.) Ltd. [146 taxmann.com 67 dated 23 September 2022 (Delhi HC)] - AY 2013-14**

- ▶ The Department alleged that the assessee is involved in High Value Transactions with Mr. Naveen Sharma [Proprietor of M/s Mahamaya Trading Company and M/s Surya Trading Company] who provides accommodation entries through the entities of which the assessee is one of the beneficiaries.
- ▶ A notice under section 133(6) was issued but no reply was received from the assessee pursuant to which the notice under section 148(b) was issued against which the assessee preferred to file a writ.
- ▶ The Hon'ble HC while disposing the writ held that where assessing officer reopened assessment on ground that assessee was found to be a beneficiary of accommodation entries received from an entity, however, assessee contented that transaction with said entity was done in course of business, since there were rival pleas and their determination was pure question of fact which would have to be determined by statutory authorities after appreciation of evidence, writ petition filed by assessee against the notice under section 148A(b), thus, same was not maintainable.

# Old Regime vs. New Regime (Contd.)

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## Decisions where court refused to interfere:

### **Indure (P.) Ltd. [288 Taxman 721 dated 1 August 2022 (SC)] – AY 2013-14**

- ▶ SLP dismissed against High Court order that where in view of testimony of one of alleged supplier of assessee-company that he had not carried out any transactions with assessee which were appearing in his bank account a prima facie case of escapement of income was made out and a reopening notice under section 148 was issued, such matter was to be proceeded further and Assessing Officer was to decide matter on merits.

### **V.S.Dhandapani & Son [148 taxmann.com 483 dated 3 January 2023 (Madras HC)] – AY 2014-15**

- ▶ Where assessee-company challenged impugned reopening proceedings initiated against it on ground that department had committed an error in wrongly recording cash deposits as Rs. 169921 lacs instead of Rs. 1699.21 lacs, since matter was at a premature stage, no interference was required qua impugned notice.

### **Smt. Seema Gupta [146 taxmann.com 289 dated 17 November 2022 (Delhi HC)] – AY 2015-16**

- ▶ Where order under section 148A(d) and notice under section 148 were passed in case of assessee on ground that assessee failed to establish genuineness of purchase of shares from a person involved in providing accommodation entries, claim of assessee that Assessing Officer had initiated proceedings on wrong assumption that assessee had claimed LTCG on sale of said shares, being disputed questions of facts, could not be adjudicated by a writ court exercising jurisdiction under article 226 of Constitution.

# Old Regime vs. New Regime (Contd.)

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## Decisions where less than 7 days were given to reply to notice under section 148(b):

### **Samadha Corporation (Partnership Firm) [WP No. 2154/ 2022 (Bombay HC) dated 20 September 2022]**

- ▶ Order under section 148A(d) set aside and the Department at liberty to take further steps in accordance with law and as permissible under the Act.

### **Jindal Forgings [143 taxmann.com 263 dated 11 July 2022 (Jharkhand HC)] – AY 2018-19**

- ▶ Order under section 148A(d) and notice under section 148 set aside and quashed . Department at liberty to take further steps in accordance with law and as permissible under the Act.

## Decision where information basis Ashish Agarwal decision were not provided:

### **Anurag Gupta [WP No. 10184 of 2022 dated 13 March 2023 (Bombay HC)] – AY 2018-19**

- ▶ Order under section 148A(d) and notice under section 148 set aside and quashed . Department at liberty to take further steps in accordance with law and as permissible under the Act after providing the information.

### **Charu Chains & Jewels (P) Ltd. [WP(C) 17577/ 2022 dated 22 December 2022 (Delhi HC)] – AY 2016-17**

- ▶ Matter remitted back to the assessing officer who will furnish the underlying material concerning the petitioner, within three weeks of receipt of the decision. The assessee will have further three weeks to file a response after which the assessing officer will grant personal hearing.

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2023
4	Issue of notice under section 148	<ul style="list-style-type: none"> <li>▶ Before making the assessment/ reassessment/ recomputation, the AO shall serve a notice to the assessee requiring him to furnish a return of income within the time specified therein.</li> <li>▶ Such return shall be treated as a return of income filed under section 139 .</li> <li>▶ AO shall record reasons before issuing the notice.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Before making the assessment/ reassessment/ recomputation and after complying to the provisions of section 148A , AO shall along with the order under section 148A(d) , serve a notice to the assessee requiring him to furnish a return of income within the time specified therein.</li> <li>▶ No notice shall be issued unless there is information present with the AO which suggests that income chargeable to tax has escaped assessment.</li> <li>▶ Prior approval to of the authority under section 151 to be obtained unless the AO has obtained approval prior to passing of order under section 148A(d) .</li> </ul>	<ul style="list-style-type: none"> <li>▶ Return of income to be filed within 3 months from the end of the month in which the notice is issued or such further period as allowed by the AO on application made to him.</li> <li>▶ Where return of income has been furnished beyond the specified period, it shall not be deemed to be a return of income under section 139 .</li> </ul>



# Old Regime vs. New Regime (Contd.)

## Decisions on verification of notice:

- **Suman Jeet Agarwal [(2022) 449 ITR 517 dated 27 September 2022 (Delhi HC)] – AY 2013-14 to 2017-18** - The Hon'ble HC has grouped the various cases before it under the following five categories and ruled on the date of issuance in each scenario as under:

Category	Date of generation of Documentation Identification Number (DIN) <sup>6</sup> /notice	Date on which document was digitally signed using a Digital Signature Certificate (DSC)	Date on which e-mail containing notice was received by taxpayer	Conclusion of HC on date of issue of notice
A	On or before 31 March 2021	On or after 01 April 2021	On or after 01 April 2021	► Date of notice itself would be the date on which digital signature is affixed (i.e., on or after 01 April 2021). Additionally, the dispatch of notice through e-mail was also post 01 April 2021.
B	On or before 31 March 2021	Not Signed	On or after 01 April 2021	<p>► Notice without digital signature is valid as long as it mentions the name, designation and jurisdiction of the JTA. Therefore, the date of notice continues to be 31 March 2021.</p> <p>► In such cases, notices may be said to be issued when the e-mail leaves the last server of the ITBA system (to be determined by JTA).</p>
C	On or before 31 March 2021	On or before 31 March 2021	On or after 01 April 2021	► Similar to Category B, even in this case, the notices may be said to be issued when the e-mail leaves the last server of the ITBA system (to be determined by JTA).

# Old Regime vs. New Regime (Contd.)

## Decisions on verification of notice (contd.)

### ► Suman Jeet Agarwal [(2022) 449 ITR 517 dated 27 September 2022 (Delhi HC)] (contd.)

Category	Date of generation of Documentation Identification Number (DIN) <sup>6</sup> /notice	Date on which document was digitally signed using a Digital Signature Certificate (DSC)	Date on which e-mail containing notice was received by taxpayer	Conclusion of HC on date of issue of notice
D	On or before 31 March 2021	On or before 31 March 2021	Notice not served on taxpayer (manually or through e-mail). Taxpayer comes to know of the notice later through its registered account on the e-filing portal of the income tax department	► While mere upload of notice on the taxpayer's e-filing account does not constitute valid issuance since, in the facts of the case, taxpayers did ultimately become aware of the notice and the assessment in their case is still pending, the reassessment notices so issued were not quashed. Rather, the JTA was directed to determine the date on which notices were first accessed by the taxpayer on the e-filing portal, which may be considered as its date of issuance.
E	On or before 31 March 2021	Manually signed. Hence, date of signature not available.	Notice was served on taxpayer only through speed post which was dispatched on or after 01 April 2021	► The date of dispatch through speed post is determined as the date of issuance of such notice (i.e., on or after 01 April 2021).

In addition to the above, the Hon'ble HC also dealt with another scenario not falling within the Categories A to E above, where the notices dated 31 March 2021 were issued by the ITBA system to an unrelated e-mail address not belonging to the taxpayer. In such case, the Department was directed to determine the date on which notices were first accessed by the taxpayer on the e-filing portal, which may be considered as its date of issuance.

# Old Regime vs. New Regime (Contd.)

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## Decisions on verification of notice (contd.):

### **Cluster Overseas (P.) Ltd. [146 taxmann.com 509 dated 27 September 2022 (Delhi HC)] – AY 2013-14**

- ▶ Assessee filed writ petition challenging validity and legality of notice under section 148 and contended that date of issuance of notice should be considered for purpose of determining limitation and not date of preparation or generation. The assessee contended that the notice was sent for despatch through speed post on 2 April 2022 whilst the Department contended that notice was sent for despatch through speed post on 31 March 2022.
- ▶ Accordingly, the Hon'ble HC directed the assessing officer to verify records and if it was found that notice was handed over to postal office on 31-3-2021 for despatch then reassessment proceedings would be initiated under old regime of section 148.

### **Prakash Krishnavtar Bhardwaj [WP No. 9835/ 2022 dated 9 January 2023 (Bombay HC)] – AY 2015-16**

- ▶ Notice under section 148 having no signature affixed on it, digitally or manually, is invalid and does not vest the AO with any further jurisdiction to proceed with the scrutiny. Consequently, any steps taken by the Department in furtherance to notice under section 148A(b) or order under section 148A(d) would be without jurisdiction, arbitrary and contrary to Article 14 of the Constitution of India. Accordingly, proceedings quashed.

### **Daujee Abhushan Bhandar (P.) Ltd. [(2022) 444 ITR 41 dated 10 March 2022 (Allahabad HC)] – AY 2013-14**

- ▶ In terms of sections 282 and 282A of the Income-Tax Act, 1961 and section 13 of the Information Technology Act, 2000, a notice should be signed by the AO and should then be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 to constitute a valid issue of notice. Mere digitally signing the notice is not the issuance of notice.

# Old Regime vs. New Regime (Contd.)

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## Decisions on communication sent to incorrect address/ e-mail ID:

### **Lok Developers Registered Partnership Firm [(2023) 149 taxmann.com 93 dated 15 February 2023 (Bombay HC)] – AY 2015-16 to 2017-18**

- ▶ Where Assessing Officer issued a notice under section 148 to assessee on secondary email address as per PAN instead of the primary email address as per PAN or the updated email id filed with the last ROI available, there was nothing wrong with assessee's refusal to participate in proceeding vitiated by valid service of notice. The assessing ought to have sent the notice under section 148 to both the primary address and the email address mentioned in the last ROI filed to pre-empt a jurisdictional error on account of valid service. However, the Department will be at liberty to proceed with the assessment after issuance of fresh notice in accordance with law.

### **Mrs. Chitra Supekar [WP No. 15580 of 2022 dated 15 February 2023 (Bombay HC)]**

- ▶ Notice under section 148A(b) served on old address and therefore, the proceedings are bad in law. It is imperative for the assessing officer to have checked if there was a change of address before initiating a proceeding and that a valid service of notice under section 148 is a condition precedent lest it would be a jurisdictional error. Accordingly, order under section 148A(d) and notice under section 148 quashed. However, the Department will be at liberty to proceed with the assessment after issuance of notice and providing the assessee a hearing after a response is filed. Such exercise shall be completed preferably within a period of twelve weeks from the date of receipt of the order.

### **DSV Solutions Pvt. Ltd. [ITA No. 7597/Mum./2019 dated 9 November 2022 (Mumbai ITAT)]**

- ▶ Where there was no forwarding, not even an effort to forward, draft assessment order to correct address of assessee, or at least address furnished to Assessing Officer under proviso to rule 127(2) [which provides that the address in database ceases to be applicable when an assessee furnishes in writing any other address for communication purposes], within permitted time frame under section 153 read with section 144C, said order was barred by limitation especially when a notice under section 142(1) bore the new address.

# Old Regime vs. New Regime (Contd.)

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## Decisions on issue of notice in name of non-existent entity / deceased person:

Notice in name of non-existent person is bad in law:

- ▶ **Kamlesh Mavji Ravaria [Writ Petition (L) No. 33885/ 2022 dated 13 December 2022 (Bombay HC)]**
- ▶ **Sumant Investments (P.) Ltd. [146 taxmann.com 32 dated 28 September 2022 (Delhi HC)] – AY 2014-15**
- ▶ **Late Smt Madhuben Kantilal Patel Through Legal Heir And Son Kalpeshbhai Kantilal Patel [R/SPECIAL CIVIL APPLICATION NO. 3917 of 2022 dated 10 January 2023 (Gujarat HC)] – AY 2017-18 - [proceedings quashed since 1<sup>st</sup> notice under section 148 dated 30 June 2021 was issued in name of deceased person]**

**Vijay Garg [146 taxmann.com 231 dated 27 September 2022 (Delhi HC)] – AY 2015-16**

- ▶ Where initial reassessment notice was issued in name of assessee and upon being apprised of death of assessee, Assessing Officer had passed order under section 148A(d) and notice under section 148 in name of deceased assessee through legal heir and had thus taken steps as mandated by section 159 to continue assessment proceedings against legal representative of deceased assessee, contention raised by legal heir of assessee that notice under section 148A(b) had been issued in name of dead assessee and thus, consequent proceedings were void, was not sustainable.

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime		New Regime		Amendments by Finance Act, 2022
5	Period of limitation for initiating proceedings	Up to 4 years		Upto 3 years		
		After 4 years but up to 6 years	<ul style="list-style-type: none"> <li>▶ Where income escaping assessment exceeds Rs. 1,00,000</li> <li>▶ Where income has been assessed under section 143(3), income escapes assessment due failure of Assessee to file return of income or disclose fully all material facts during assessment</li> </ul>	Beyond 3 years but up to 10 years	Where income chargeable to tax escaping assessment amounts to or is likely to amount to Rs. 50,00,000 or more represented in form of an asset <b>for the year</b>	<p>If the aggregate value of investments in assets/expenditure incurred in multiple years exceeds Rs. 50,00,000, then reassessment notice are required to be issued for all such years thereby including it in 10 years limit.</p> <p>Expansion of scope to also include:</p> <ul style="list-style-type: none"> <li>a) Expenditure in relation to transaction;</li> <li>b) Expenditure in relation to an event or occasion;</li> <li>c) an entry or entries in books of accounts</li> </ul> <p>Deletion of the phrase 'for the year'</p>
		Up to 6 years	Where there has been assessment, reassessment or recomputation incase of any person in the capacity of agent of a non-resident.			<p><b>It needs to be analysed that the deletion of the word " for the year" means that the Rs. 50,00,000 limit should be now computed in aggregate for all the years.</b></p>
		Up to 16 years	Income in relation to any asset (including any financial interest) located outside India and chargeable to tax, has escaped assessment.			<p><b>Whether the time limit under section 149 is for notice under section 148 or 148A?</b></p> <p><b>Course of action if notice under section 148A received March?</b></p>

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime	New Regime	Amendments by Finance Act, 2023
5	Period of limitation for initiating proceedings (Contd.)		<ul style="list-style-type: none"> <li>▶ 1<sup>st</sup> Proviso to section 149 - No notice can be issued in case of AYs prior to AY 2021-22 if the notice under sections 148/ 153A/ 153C at the time on account of it being time barred in terms of section 149(1)(b)/ 153A/ 153 as they stood before commencement of Finance Act, 2021.</li> <li>▶ 2<sup>nd</sup> Proviso to section 149 – 1<sup>st</sup> Proviso does not apply where notice under section 153A/ 153C is required to be issued in relation to search initiated or books of accounts/ other document/ other assets requisitioned before 31 March 2021.</li> <li>▶ 3<sup>rd</sup> Proviso to section 149 – Time or extended time allowed as per show cause notice under section 148A(b) to be excluded while computing the period of limitation.</li> <li>▶ 4<sup>th</sup> Proviso to section 149 – Where after excluding the time allowed as per show cause notice under section 148A(b) , the time available to pass the order under section 148A(d) is less than 7 days, then the remaining period shall be extended to 7 days.</li> <li>▶ Where income escapes assessment in the form of an asset or expenditure in relation to an event/ occasion (value exceeding Rs. 50 lakhs) and the investment/ expenditure is incurred over multiple years, then notice under section 148 is required to be issued for each year.</li> </ul>	<ul style="list-style-type: none"> <li>▶ 3<sup>rd</sup> Proviso to section 149 – Where a search has been initiated or whose last authorization has been executed or requisition is made after 15 March of any year and the period for issue of notice under section 148 expires on 31 March of such year, then a period of 15 days shall be excluded while computing the period of limitation and the notice under section 148 shall be deemed to be issued on 31 March.</li> <li>▶ 4<sup>th</sup> Proviso to section 149 – Where information referred to in Explanation 1 to section 148 emanates from a statement recorded or document impounded under section 131 or 133A before 31 March, in consequence of actions referred to in the 3<sup>rd</sup> proviso, then a period of 15 days shall be excluded while computing the period of limitation and the notice under section 148A(b) shall be deemed to be issued on 31 March.</li> <li>▶ Erstwhile 3<sup>rd</sup> and 4<sup>th</sup> proviso renumbered.</li> <li>▶ In the erstwhile 4<sup>th</sup> Proviso – ‘is less than 7 days’ substituted for ‘does not exceed 7 days’.</li> </ul>

# Old Regime vs. New Regime (Contd.)

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## Decision on construction of the threshold of Rs. 50 Lakhs in case of capital gains:

### **Sanath Kumar Kurali [WP 7647/2023 dated 13 April 2023 (Karnataka HC)] – AY 2016-17**

- ▶ Writ petition has been filed challenging the reassessment proceedings with respect to capital gains case where sale consideration exceeds Rs. 50 Lakhs but capital gains is below Rs. 50 Lakhs. The Hon'ble HC has granted interim stay on the reassessment proceedings until the next date of hearing. Assessee contends that the reassessment proceedings is covered by section 149(1)(a) and therefore, no proceedings could be initiated beyond Mar 31, 2020 emphasising that for application of extended limitation period of 10 years under Section 149(1)(b), the income escaping assessment should be Rs.50 Lacs or more whereas the his LTCG (net of indexed cost of acquisition) from sale consideration of Rs. 55.77 lakhs amounts only to Rs.33.85 lakhs. Appellant has also contended that the sanction given under Section 151 is without application of mind since the present case falls under section 149(1)(a) and not under section 149(1)(b). After grant of interim stay, the matter has been listed for hearing in the week commencing May 22, 2023.

### **Naresh Balchandrarao Shinde [451 ITR 149 dated 26 September 2022 (Bombay HC)] – AY 2015-16**

- ▶ Where AO issued a reopening notice on ground that assessee purchased an immovable property amounting Rs. 40 lakhs and also deposited an amount of Rs. 20.71 lakhs and Rs. 16.20 lakhs in his bank account which escaped assessment, since said property belonged to daughter of assessee and assessee was only acting as a power of attorney for her, same was to be excluded from consideration and since remaining consideration so escaped was less than jurisdictional required of Rs. 50 lakhs as contemplated under section 149(1)(b), impugned reopening notice issued beyond permissible period of three years was liable to be quashed.



# Old Regime vs. New Regime (Contd.)

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## Decision on construction of the threshold of Rs. 50 Lakhs in case of capital gains (contd.):

### **U.S. Associates [WP(T) No. 254/ 2022 dated 1 December 2022 (Chhattisgarh HC)]**

- ▶ Primary contention of the assessee was that the authorities while passing the order under section 148A(d) and notice under section 148 have not considered certain transactions which were not part of the notice under erstwhile section 148 as well as notice under section 148A(b). If the new transaction which has been considered by the Department is excluded from the proceedings then the amount would be less than Rs. 50 lakhs. Hon'ble HC quashed the proceedings on the premise that absence of the impugned transaction in the notice, makes the assessment bad in the light of the judgment of the Supreme Court in case of Toyo Engineering India Ltd. [2006(7) SCC 592] where it has emphatically held that the department cannot travel beyond the show-cause notice.

### **Abdul Majeed [(2022) 447 ITR 698 dated 29 June 2022 (Rajasthan HC)] – AY 2015-16**

- ▶ Where AO issued reopening notice by passing order under section 148A(d) after expiry of three years from end of relevant assessment year on ground that assessee made undisclosed cash deposits amounting to Rs. 52 lakhs in his bank account, however no material was available to show that cash deposits of more than Rs. 19.39 lakhs were made, AO was not justified to presume that assessee might have more bank accounts merely on basis that cash deposits of Rs. 19.39 lakhs had escaped assessment and, thus, impugned order and notices were to be set aside.

## Old Regime vs. New Regime (Contd.)

Sr. No.	Particulars	Old Regime		New Regime	
6	Requirement of prior approval under section 151	<b>Upto 4 years</b>	<b>JCIT</b>	<b>Upto 3 years</b>	PCIT/PDIT/CIT/DIT
		<b>Beyond 4 years</b>	PCCIT/CCIT/P CIT/CIT	<b>Beyond 3 years</b>	PCCIT/PDGIT <del>or where there is no PCCIT/PDGIT</del> , CCIT/ DGIT (deletion made by Finance Act, 2023)  <b>Mrs. Chitra Supekar [WP No. 15580 of 2022 dated 15 February 2023 (Bombay HC)] – AY 2018-19 - Sanction after three years has to be by PCCIT and not by PCIT (pre-amendment by Finance Act, 2023)</b>
7	Period of limitation for complete proceedings	12 months (24 months if reference made to TPO)			
8	Can Tax authority reassess items of income not indicated in reasons so recorded	Yes			
9	Is taxpayer required to furnish ROI in response to notice u/s. 148 of the ITA?	Yes			
10	Whether recording of reasons is required?	Yes		No	

# Old Regime vs. New Regime (Contd.)

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## Decision on approval under section 151:

### **Vikas Gupta [(2022) 448 ITR 1 dated 8 September 2022 (Allahabad HC)] – AY 2013-14 to 2015-16**

- ▶ An unsigned approval in an electronic record said to be pushed through electronic mode at a particular point of time could not be said to be a valid satisfaction under section 151 for assumption of jurisdiction by Assessing Officer to issue notice to an assessee under section 148. A satisfaction, to be a valid satisfaction under section 151 has to be recorded by the specified authority under his signature on application mind and not mechanically, as also held by the Hon'ble Supreme Court in the case of Chhugamal Rajpal (1 SCC 453).

### **JM Financial and Investment Consultancy Services Private Limited [WP No.1050 of 2022 dated 4 April 2022 (Bombay HC)] – AY 2015-16**

- ▶ In view of TOLA, the Department contented that AY 2015-16 falls under the category within four years as on 31st March 2020 and therefore, approval may be accorded by the Additional CIT. The Hon'ble HC observed that even if the view expressed by the Department is agreed with, it would apply only to cases where the limitation was expiring on 31 March 2020 and since, in case of AY 2015-16, the six years limitation expires on 31 March 2022, therefore, TOLA does not apply. Accordingly, the Hon'ble HC held that though the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 of the Act. Therefore, since four years had expired from the end of the AY, as provided under Section 151(1) of the Act, only the PCCIT/ CCIT/ PCIT/ CIT could have accorded the approval and not the Additional CIT.
- ▶ Similar view also taken in the following decisions:
  - ▶ **Voltas Limited [(2022) 288 Taxman 506 dated 5 April 2022 (Bombay HC)] – AY 2015-16**
  - ▶ **SYLVESA Infotech Private Limited [W.P.(C) Nos. 38822 and 38823 of 2021 dated 5 November 2022 (Orissa HC)] – AY 2015-16 and AY 2016-17**

## Section 148B

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Finance Act, 2022 has introduced a new section which provides that no officer below the rank of JCIT shall pass an order without the prior approval of Add'l CIT/ Add'l DGIT/ JCIT/ JDIT where search, survey or requisition is involved.

## Impact of amendment in case of search, requisition and survey proceedings with reassessment [w.e.f 01 April 2022]

Sr. No.	Particulars	Is it part of defined information for reassessment?	Requirement to follow Pre-Notice procedure of section 148A	Requirement of approval to pass order [inserted by FA 2022]
1	Information received under section 135A	Yes by way of specific entry. Hence met in all cases [FA 2022]	No [FA 2022]	No
2	Search under section 132 or requisition under section 132A initiated against the Assessee	Yes under deeming fiction.	No	Yes
3	Survey u/s 133A (other than covered above) A. In case of the Assessee  B. In case of a third party	Yes under deeming fiction.  Forms part of 'information'	Yes	Yes
4	Survey revealing Information pertaining to extravagant expenses incurred on function, event or occasion received under section 133A(5) A. In case of the Assessee  B. In case of a third party	Yes under deeming fiction.  Forms part of 'information'	Yes	Yes

## Impact of amendment in search, requisition and survey proceedings with reassessment [w.e.f 01 April 2022] (Contd.)

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Sr. No.	Particulars	Is it part of defined information for reassessment?	Requirement to follow Pre-Notice procedure of section 148A	Requirement of approval to pass order [inserted by FA 2022]
5	Seizure of money, bullion, etc. in course of Search u/s 132 or Requisition u/s 132A in case of third person pertains to Taxpayer	No	No	Yes
6	Books, documents or evidence seized under section 132 or requisitioned under section 132A in case of third person pertains to Taxpayer	No	No	Yes

# Recent Judicial Pronouncements

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## Decisions on alternate remedy:

### **Anshul Jain [449 ITR 256 dated 2 September 2022 (SC)] - AY 2018-19**

- ▶ What is challenged before the High Court was the re-opening notice under section 148A(d) of the Income-tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

### **Red Chilli International Sales [146 taxmann.com 224 dated 3 January 2023 (SC)] – AY 2018-19**

- ▶ Where assessee by way of writ petition challenged order passed under section 148A(d) along with notice issued under section 148 on ground that response filed by assessee to notice under section 148A(b) had not been considered, High Court was required to examine in depth jurisdiction pre-condition for issue of notice under section 148 and, thus, observation made by High Court in impugned order that writ petition would not be maintainable in view of alternative remedy was to be set aside.

### **Harinder Singh Bedi [147 taxmann.com 197 dated 27 October 2022 (Madhya Pradesh HC)] – AY 2014-15**

- ▶ Assessee had filed instant writ petition challenging show cause notice issued to him under unamended section 148, order passed under section 148A(d) and consequential notice passed under section 148 against him wherein it argued that the Department had misinterpreted decision of the Hon'ble SC in case of Ashish Agarwal which has never condoned the delay in taking up assessment proceedings by the authorities and therefore, proceedings for AY 2014-15 are time barred. Further, it was also contended that Instruction No. 1 of 2022 has illegally extending limitation for continuing reassessment proceedings in a colourable exercise of power.
- ▶ The Hon'ble HC dismissed the writ by holding that assessee was having a remedy to challenge order/notice by way of filing an appeal and ground raised by him with respect to jurisdiction of authorities could always be considered by authorities. Even otherwise, a writ petition against a show cause notice is not maintainable and therefore, impugned orders/notices cannot be interfered with.

# Recent Judicial Pronouncements (Contd.)

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## Decisions where reopening was upheld:

### **Ajay Gupta (HUF) [147 taxmann.com 277 dated 17 November 2022 (Delhi HC)] – AY 2016-17**

- ▶ Where a reopening notice was issued on ground that an information was received that assessee was beneficiary of accommodation entry in form of long-term capital gain (LTCG) on sale of shares claimed as exempt under section 10(38), since said transactions of sale and purchase were admitted by assessee and it had not brought on record anything to suggest that reassessment proceedings were being undertaken in arbitrary manner, in light of abovesaid information which formed basis of initiation of inquiry said reopening notice was justified.

### **Saroj Chandna [448 ITR 28 dated 30 August 2022 (Delhi HC)] – AY 2013-14**

- ▶ Where Assessing Officer passed reassessment order making addition on account of an amount received by assessee from a party holding that said transaction had escaped assessment, since assessee elected not to furnish information related to this transaction as required by Assessing Officer in reopening notice, assessee could not contend that she was denied opportunity of hearing and, thus, impugned reassessment order was valid.

### **Vikas Jain [146 taxmann.com 210 dated 7 October 2022 (Delhi HC)] – AY 2014-15**

- ▶ Where Assessing Officer passed order under section 148A(d) on assessee and issued notice under section 148, on ground that report of DDIT (Investigation), Mumbai shared with Assessing Officer suggested that long-term capital gain earned by assessee on sale of shares and claimed as exempt was bogus, since assessee had not placed on record any documents evidencing its purchase of shares i.e. contract note, bank statement and Demat account for relevant period similarly, ITR for assessment year 2012-13, declaring initial purchase of said shares had also not been placed on record order passed under section 148A(d) called for no interference.



## Recent Judicial Pronouncements (Contd.)

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### Decision where no incriminating material is found during the search:

**Abhisar Buildwell (P.) Ltd. [149 taxmann.com 399 dated 24 April 2023 (SC)]**

- ▶ If a search or requisition is conducted, the AO assumes jurisdiction for block assessment under section 153A of the Act. All pending assessments/reassessments will stand abated, meaning they will no longer be valid. If any incriminating material is found during the search, the assessing officer can assess or reassess the total income, taking into consideration the incriminating material and other material available with the assessing officer, including the income declared in the returns.
- ▶ However, if no incriminating material is found during the search, the assessing officer cannot make any additions to the completed/ unabated assessments. The assessing officer can only re-open these assessments under sections 147/ 148 of the Act, subject to the fulfilment of the conditions mentioned under those sections.

Revenue has approached the Hon'ble SC with a Miscellaneous Application for clarification vis-a-vis initiation of reassessment proceedings under the prevailing provisions of section 147 to 151 in the cases where proceedings under Sections 153A/153C do not survive.

# Timelines

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AY	Old Regime (6 years)	Regular Assessment	New Regime (3 years)	New Regime (10 years)
AY 2012-13 & Prior	31 March 2019	NA	NA	Cannot Re-open
AYs 2013-14 and 2014-15	31 March 2021	NA	NA	To be discussed
AY 2015-16	31 March 2022	NA	NA	31 March 2022
AY 2016-17	31 March 2023	NA	NA	31 March 2023
AY 2017-18	31 March 2024	NA	NA	31 March 2024
AY 2018-19	31 March 2025	30 June 2021	31 March 2022	31 March 2025
AY 2019-20	31 March 2026	30 June 2021	31 March 2023	31 March 2026
AY 2020-21	31 March 2027	31 March 2022	31 March 2024	31 March 2027
AY 2021-22	31 March 2028	31 March 2022	31 March 2025	31 March 2028

**Union of India vs. Ashish Agarwal  
[(444 ITR 1) (SC)]**



# Union of India vs. Ashish Agarwal [(444 ITR 1) dated 4 May 2022 (SC)]

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- ▶ The Hon'ble Apex Court upon hearing the arguments of the Revenue as well as the taxpayers has, at Para 7 of its order, agreed with the views adopted by the various High Courts.
- ▶ However, it has taken cognizance of the fact that approx. 90,000 notices under section 148 have been issued by the Revenue during the impugned period against which approx. 9,000 writs were filed before the various High Courts and that the notices were issued by the Revenue under bonafide mistake.
- ▶ Accordingly, the Hon'ble Supreme Court, to ensure complete justice, has tried to *“strike a balance between the rights of the Revenue as well the respective assessee's because of the bonafide belief of the officers of the Revenue in issuing approx. 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.”*
- ▶ It has done so, by modifying the judgments and orders passed by the Allahabad High Court as under whilst also extending its applicability to PAN India for all writs passed/ pending by various High Courts by invoking Article 142 of the Constitution of India:
  - (i) *The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesses can reply to the show-cause notices within two weeks thereafter;*
  - (ii) *The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.*

# Union of India vs. Ashish Agarwal [(444 ITR 1) dated 4 May 2022 (SC)] (Contd.)

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*Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;*

*(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);*

*(iv) All defences which may be available to the assessee including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.”*

- ▶ Since, the judgements and orders passed by the Hon’ble Allahabad High Court is modified and its applicability extended, the Hon’ble Supreme Court has consequently set aside all judgements and orders of the other High Courts.
- ▶ **Accordingly, the Hon’ble Supreme Court has directed that notices issued under section 148 issued during the impugned period be deemed to be notices under section 148A(b). Further, a one time relief has been provided to the Revenue from compliance required under section 148A(a) but the assessing officers shall be required provide to the assessee the information and material relied upon, within 30 days, so that the assessee can reply to the notices within two weeks thereafter pursuant to which the assessing officer shall pass the order under section 148(d) followed by issuance of notice under section 148, if required.**
- ▶ **However, all the defences available to the assessee under section 149 (i.e. 2<sup>nd</sup> proviso to section 149) and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.**
- ▶ **Procedure laid down in section 148A is mandatory.**

# Clarifications sought by the Income Tax Gazetted Officer's Association on 6 May 2022

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Pursuant to the Hon'ble SC's order, the understandings were as under:

- ▶ Impugned notices issued under section 148 deemed to be SCN under section 148A(b);
- ▶ The AO has to communicate the information, based upon which the notices were issued, to the assessee within 02-06-2022, taking 04-05-2022 as day one;
- ▶ The assessee has to reply within 2 weeks from the receipt of such communication;
- ▶ The AO with the approval of the specified authority should pass the order under section 148A(d) and issue fresh notice under section 148 in appropriate cases within one month from the end of the month in which the reply of the assessee is received or the time of 2 weeks is over in case no response is received from the assessee;
- ▶ For all AYs up to AY 2017-18, orders u/s 148A(d) is to be passed with prior approval of Principal CCIT.

However, certain clarifications were sought, which inter-alia included:

- ▶ Who is going to handle such cases - FAOs or JAOs?
- ▶ Can the AO issue notices in respect of cases for AYs 2015-16, 2016-17 and 2017-18 that have escaped income below Rs. 50 lakhs as those will be beyond the 3 year limit as on 01-04-2021 [considering Para 10(iv) of the judgment]?
- ▶ Can the AO at all issue notices in respect of cases for AYs 2013-14 & 2014-15 which are beyond the 6 year limit as on 01-04-2021 but time limit was extended due to TOLA? Further what happens if the amount of escapement for these two years is below Rs. 50 lakhs?
- ▶ During the period 01-04-2021 to 30-06-2021, notices were issued based on information from 4 sources viz. (i) from other AOs, (ii) from other agencies, (iii) from investigation wing and (iv) insight portal. Other than the information received from insight portal no other source qualify for the criterion of flagged in accordance with the risk management strategy. Will the AO proceed in these cases where information is not flagged in accordance with the risk management strategy?
- ▶ Whether the AOs need to send the information and consequently pass order under section 148A(d) followed by issue of notice under section 148, in fit cases, to all the assesseees as above or to only to certain segment(s) of the assesseees?

# Further clarifications sought by the Income Tax Gazetted Officer's Association on 11 May 2022

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On a conjoint reading of the Hon'ble SC's decision and the amended provisions of sections 147 to 151, the following conclusions can be arrived at:

- ▶ Only cases for AYs 2015-16, 2016-17 and 2017-18 can be revisited where notices under unamended section 148 were issued from 01.04.2021 to 30.06.2021, as these cases are within the limitation of 6 years as is mentioned in the 1st proviso to section 149;
- ▶ Out of the cases mentioned above, only those cases are to be revisited where the quantum of escapement is at least Rs. 50 Lakhs and such escapement is represented in the form of asset vide section 149(1)(b);
- ▶ Out of the above, only those cases are to be acted upon in which revenue audit objection was final OR information flagged in accordance with the risk management strategy during the issue of notices under unamended section 148.
- ▶ All cases need to be revisited, even if the assessee had not raised any objection and filed return, as all the notices under unamended section 148 stands modified to show cause notice u/s 148A(b).
- ▶ In few of the cases for A.Y. 2015-16 and 2016-17, information from insight portal has come after the issue of notices under unamended section 148. In such cases for A.Y. 2015-16, no action can be taken as the information was not available in insight portal during the time when the notices under unamended section 148 were issued.
- ▶ For A.Y. 2016-17, the earlier notice under unamended section 148 can be dropped and a fresh proceeding u/s 148A be initiated either by making inquiry u/s 148A(a) or issue of show cause notice u/s 148A(b). The judgment of the Hon'ble Supreme Court will not have any effect on such cases pertaining to A.Y. 2016-17.



## **CBDT Instruction No. 01/ 2022 dated 11 May 2022**

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In order to implement the decision of the Hon'ble Apex Court, CBDT, exercising its powers under section 119, has issued a set of instructions which the AOs may take into consideration.

- ▶ In case where the assessment years involved are 2013-14, 2014-15 and 2015-16 and notice under section 148 was not issued – Fresh notice can be issued with the approval of the specified authority only if the case is covered by section 149(1)(b) as amended by the Finance Act, 2021.
- ▶ In case where the assessment years involved are 2016-17 and 2017-18 and notice under section 148 was not issued – Fresh notice can be issued, with the approval of the specified authority, under section 149(1)(a).
- ▶ In case where the assessment years involved are 2013-14, 2014-15 and 2015-16 and income escaping assessment, in that case and that year, amounts to or likely amounts to less than Rs. 50 Lakhs – AOs may not provide the information and material and separate instruction shall be issued regarding procedure for disposing such cases.
- ▶ CBDT has re-iterated the one-time procedure laid down by the Hon'ble Supreme Court and the procedure laid down under section 148A(c) and onwards.



# **CBDT Instruction No. 01/ 2022 dated 11 May 2022 (contd.)**

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***“6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:***

*6.1 With respect of operation of new section 149 of the Act, the following may be seen:*

- Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*
- Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under-*  
*.....*
- Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.*

*6.2 Based on above, the extended reassessment notices are to be dealt with as under:*

- (i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*
- (ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section.”*

# Revised guidelines for issue of notice under section 148 dated 1 August 2022

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- ▶ Before issuing notice under section 148, the assessing officer must observe the procedures laid down under section 148A except in certain categories of cases specified in the proviso to section 148A.
- ▶ If an assessee requests for a personal hearing, the same may be dealt with following the principle of natural justice by giving a reasonable period for compliance of notice specifying the date of hearing.
- ▶ The assessing officer has to consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in section 148A(b) before passing the order under section 148A(d).
- ▶ The assessing officer shall mandatorily pass a speaking order under section 148A(d) irrespective of whether issuance of notice under section 148 is being recommended or not.
- ▶ Once an order under section 148A(d) has been passed, no further approval is required for issuance of notice under section 148 except for cases in which procedure under Section 148A is being applied for implementation of the Hon'ble SC's decision in the case of Ashish Agrawal (supra).
- ▶ In the cases emanating out of Audit objection, AO has to ensure that extant instructions/ guidelines/ SOPs have been duly adhered with.
- ▶ The confidential information such as from FIU, foreign jurisdictions, LEAs etc would be governed by respective guidelines.
- ▶ Information relevant to the case of the assessee's income escaping assessment must be provided and information not relevant to the case of the assessee must be redacted.

# Revised guidelines for issue of notice under section 148 dated 1 August 2022 (contd.)

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- ▶ As far as possible the assessing officer to make endeavour that at the stage of compliance of provisions under section 148A/ issuance of notice under section 148, all issues even if spread over more than one assessment year may be taken up simultaneously information suggesting escapement of income relating to a particular assessee for more than one AY may be reopened at one go.
- ▶ The Assessing officer, as far as possible, may dispose all such pending matters relating to passing of orders under section 148A(d)/ issuance of notice under section 148 on a continuous basis rather than towards close to time barring date.
- ▶ Guidelines are only indicative and not exhaustive. The assessing officer may take suitable decision on a case-to-case basis for the situations not specifically covered in these guidelines. However, in doing so, he/she shall follow the general principles enunciated in the guidelines.

# CBDT Instruction regarding uploading of data on functionalities/ portal dated 22 August 2022

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- ▶ Before initiating proceedings, any information available on data-base/portal of Department shall be verified before drawing any adverse inference against the taxpayers.
- ▶ *“It is not out of place to mention here that the information made available/data uploaded by the reporting entities may not be fully accurate due to inter alia, error of human nature technical nature, etc. Therefore, due verification may be carried out and opportunity of being heard be given to the taxpayer before initiating proceedings under Section 148/147 of the Act.”*
- ▶ In addition to the guidelines dated 1 August 2022, all the information/ reports being uploaded on any of the functionalities/ portal of Directorate of Systems should be verified by the officer uploading the said information/reports.
- ▶ Supervisory authorities are to ensure that all extant Instructions/ Guidelines/ Circulars/ SOPs in this regard are duly followed by Officer uploading the said information/reports.

**Judicial Developments post SC decision  
incase of Ashish Agarwal (supra)**



## Nagesh Trading Co. [146 taxmann.com 513 dated 12 October 2022 (Delhi HC) (AY 2017-18)]

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- ▶ Assessing Officer pursuant to directions of Supreme Court in case of Ashish Agarwal (supra) issued a notice under section 148A(b) in respect of assessment year 2017-18.
- ▶ Assessee in reply submitted that impugned notice had been wrongly issued as initial notice under unamended section 148 was issued on 31-3-2021 and served vide e-mail on same date.
- ▶ Despite reply of assessee Assessing Officer passed an order under section 148A(d) and issued notice under section 148 on 28-7-2022.
- ▶ The Hon'ble HC held that AO having issued and served notice on 31-3-2021 under section 148 of unamended Act could not have issued another notice under section 148A(b) to assessee.
- ▶ Further, directions given by Supreme Court in case of Ashish Agarwal (supra) were applicable to cases where notices under section 148 had been issued during period 1-4-2021 to 30-6-2021 which was not case in present matter.
- ▶ Accordingly, notice issued under section 148A(b) and order passed under section 148A(d) and notice issued under section 148 dated 28-7-2022 deserved to be quashed.

## Salil Gulati [W.P.(C) 12541/2022 dated 31 August 2022 (Delhi HC) (AY 2013-14)]

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- ▶ The contention of the learned counsel for the petitioner that the present proceedings is time barred is not correct, as reassessment proceeding was initiated during the time limit extended by TOLA.
- ▶ The impugned notice was quashed by this Court in petitioner's earlier writ petition being W.P.(C) 7582/2021 vide judgment reported as Mon Mohan Kohli dated 15 December 2021 as the mandatory procedure of Section 148A of the Act was not followed before issuing the said notice. The court also clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021 since the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.
- ▶ The Hon'ble SC in Ashish Aggarwal held that the impugned notices under section 148 issued between 1st April 2021 to 30th June, 2021, will be deemed to have been issued under section 148A of the Act and therefore the notice dated 23rd June, 2021, issued to the petitioner stood revived.
- ▶ Since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021 and the income alleged to have escaped assessment is beyond Rs.50 lakhs, the first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case and even without the benefit of Instruction No.01/2022 the impugned notice is within limitation.

SLP was preferred by the assessee [SLP(C) No. 7466/2023 dated 11 April 2023] which has been dismissed by the Hon'ble SC.

## Touchstone Holdings (P.) Ltd. [142 taxmann.com 336 dated 9 September 2022 (Delhi HC) (AY 2013-14)]

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- ▶ During a survey conducted by the Investigation Wing at premises of assessee and its group companies, it was noticed that its group companies were engaged in unaccounted cash transactions and provided bogus share capital and share premium to other companies. AO on perusal of investigation report concluded that transfer of shares carried out by assessee was of inconsistent value and required examination.
- ▶ Notice under section 148 was initially issued on 30 June 2021.
- ▶ The Supreme Court in case of Ashish Aggarwal (supra) declared that the reassessment notices issued between 1 April 2021 to 30 June 2021 shall be deemed as a notice issued under section 148A of the Act and permitted Revenue to complete the said proceedings.
- ▶ Order under section 148A(d) and notice under section 148 were passed on 20 July 2022 for AY 2013-14 whose validity was challenged by the assessee by way of writ on the ground that they are time-barred in light of the 1<sup>st</sup> proviso to section 149.
- ▶ Dismissing the writ, the Hon'ble HC held that since initial reopening notice in instant case was issued on 29 June 2021 under the unamended section 148, same will be deemed to be issued under section 148A and first proviso to section 149 would not be attracted. Furthermore, income alleged to have escaped being more than Rs. 50 lakhs, section 149(1)(b) was satisfied and impugned reopening notice would not be time barred.



## Rajeev Bansal [147 taxmann.com 549 dated 22 February 2023 (Allahabad HC) (AYs 2013-14 to 2017-18)]

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- ▶ The Hon'ble HC held that there is no specific clause in the Finance Act, 2021 to save the provisions of the TOLA granting extensions in the time limit under the unamended Act, or the notifications issued thereunder on or before 31.3.2021.
- ▶ The Hon'ble SC's observations, in the Ashish Agarwal case, cannot be interpreted as granting extensions under the unamended Section 149 by applying TOLA, 2020 to reassessment notices for past assessment years that were not issued before March 31, 2021. These notices cannot be considered "extended reassessment notices" and allowed to travel back in time to their original date of issuance. Instead, the amended section 149 should be applied as interpreted by the revenue in Para 6.1 of the CBDT Instructions dated 11 May 2022.
- ▶ The reassessment proceedings initiated with notices under Section 148 issued between April 1, 2021, and June 30, 2021, cannot benefit from the relaxation or extension provided under the TOLA. Moreover, the time limit specified in Section 149(1)(b) (as amended from April 1, 2021) cannot be extended by such relaxation granted from March 30, 2020, onwards to the revenue.
- ▶ In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, the benefit of TOLA 2020 will not be available to the revenue. In other words, the relaxation law under TOLA 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act 2021.
- ▶ Further, it also observed that CBDT attempted to overreach the Hon'ble SC's ruling through Instruction No. 1/2022 dated May 11, 2022 and therefore held Clause 6.1 (third bullet) and Clause 6.2 (i) and (ii) of the Instruction to be lacking binding force for being in teeth of the SC ruling in Ashish Agarwal.

Department has filed an SLP before the Hon'ble SC against the decision of the Hon'ble Allahabad HC. The Hon'ble SC on 13 April 2023 has issued notice and has granted stay on the operation of the decision.

## Keenara Industries (P.) Ltd. [147 taxmann.com 585 dated 7 February 2023 (Gujarat HC) (AYs 2013-14 and 2014-15)]

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- ▶ Common issue for consideration before the Hon'ble HCs was whether the reassessment notices, revived by virtue of the Supreme Court decision in case of Ashish Agarwal (supra) for AYs 2013-14 and 2014-15 were barred by limitation.
- ▶ The Hon'ble HCs held that reassessment notices so revived pursuant to SC ruling in Ashish Agarwal's case being issued beyond the limitation period are barred by limitation.
- ▶ The HCs also held that the CBDT Instruction to the extent it provided guidance to tax authority to consider the time limit under new reassessment regime after taking into consideration the extension provided under Relaxation Act is not consistent with the correct interpretation of law and the SC ruling in Ashish Agarwal's case.
- ▶ It was also held that in view of the fact recorded by the Hon'ble Supreme Court that about 90,000 reassessment notices were issued after 01 April 2021, which were the subject matter of more than 9,000 petitions/ appeals and further permitting the revenue to deal with about 90,000 notices, with clear directions to make the said decision applicable to PAN India and the submission of petitioners that the decision in the case of Ashish Agarwal (supra) would be applicable only to the cases where such notices have been challenged before different High Courts are not acceptable.

Decision of the Hon'ble Delhi HC distinguished on the basis that Hon'ble HC's observation that the Hon'ble SC in Ashish Aggarwal (supra) has held that the impugned notices issued between 1 April 2021 to 30 June 2021 are legal and valid notice issued within the permissible time limits is misplaced. Therefore, 1<sup>st</sup> proviso to section 149 applies.

## Harinder Singh Bedi [147 taxmann.com 197 dated 27 October 2022 (Madhya Pradesh HC)] – AY 2014-15

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- ▶ Assessee had filed instant writ petition challenging show cause notice issued to him under unamended section 148, order passed under section 148A(d) and consequential notice passed under section 148 against him wherein it argued that the Department had misinterpreted decision of the Hon'ble SC in case of Ashish Agarwal which has never condoned the delay in taking up assessment proceedings by the authorities and therefore, proceedings for AY 2014-15 are time barred. Further, it was also contended that Instruction No. 1 of 2022 has illegally extending limitation for continuing reassessment proceedings in a colourable exercise of power.
- ▶ The Hon'ble HC dismissed the writ by holding that assessee was having a remedy to challenge order/notice by way of filing an appeal and ground raised by him with respect to jurisdiction of authorities could always be considered by authorities. Even otherwise, a writ petition against a show cause notice is not maintainable and therefore, impugned orders/notices cannot be interfered with.

**Thank You!!**

