Issues and controversies in Supreme Court Judgement u/s. 148 of IT Act, 1961

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FM Budget speech

Reduction in Time for Income Tax Proceedings

153. Honourable Speaker, presently, an assessment can be re-opened up to 6 years and in serious tax fraud cases for up to 10 years. As a result, taxpayers have to remain under uncertainty for a long time.

154. I therefore propose to reduce this time-limit for re-opening of assessment to 3 years from the present 6 years. In serious tax evasion cases too, only where there is evidence of concealment of income of `50 lakh or more in a year, can the assessment be re-opened up to 10 years. Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income Tax Department.

Explanatory memorandum

Income escaping assessment and search assessments

Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer 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 under section 147 of the Act by issuing a notice under section 148 of the Act.

However, such reopening is subject to the time limits prescribed in section 149 of the Act.

Explanatory memorandum

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases.

These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act.

This was done due to failure of block assessment in its objective of early resolution of search assessments.

Also, the procedural issues related to block assessment were proving to be highly litigation-prone.

However, the experience with this procedure has been no different.

Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Explanatory memorandum

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 Act (statement of financial transaction or reportable account).

Similarly, information is also received from other law enforcement agencies.

This information is also shared with the taxpayer through Annual Information Statement under section.

Explanatory memorandum

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases.

It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

Explanatory memorandum

The salient features of new procedure are as under:-

(i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

(iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

[Clauses 35]

Explanatory memorandum

(iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system. [Clauses 36]

Explanatory memorandum

(v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment. [Clauses 36]

(vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted. [Clauses 36]

Explanatory memorandum

(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee.

After considering his reply, the Assessing Officer shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.

The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority.

However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

[Clauses 37]

Explanatory memorandum

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

- **in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.**
- **in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;**

Explanatory memorandum

- **Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.**
- **Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153Cand 153D of the Act, the aforesaid time limitation shall not apply to such cases.**

Explanatory memorandum

- **It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded.**
- **If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.**

[Clauses 38]

Explanatory memorandum

(ix) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be -

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

[Clauses 39]

Explanatory memorandum

(x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

These amendments will take effect from 1st April, 2021.

[Clauses 40]

NEW SCHEME OF RE-ASSESSMENT

The new scheme of re-assessments are contained in the following provisions:

(a) Section 147: Assessment of income escaping assessment;

(*b*) Section 148: Issue of notice where income has escaped assessment.

(*c*) Section 148A: Conducting inquiry, providing opportunity before issue of notice under section148.

(*d*) Section 148B: Prior approval for assessment, reassessment or recomputation in certain cases.

(e) Section 149: Time limit for notice.

(f) Section 151: Sanction for issue of notice.

(h) Section 151A: Faceless assessment of income escaping assessment;

(i) Section 153: Time limit for completion of assessment or re-assessment.

(j) Section 135A : Faceless collection of information

SECTION 147

Income escaping assessment.

"147. If **any income chargeable to tax**, in the case of an assessee, has **escaped assessment for any assessment year**, the **Assessing Officer** may, **subject to the provisions of sections 148 to 153**, **assess or reassess** such income or **re-compute the loss or the depreciation allowance or any other allowance or deduction** for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—**For the purpose of assessment or reassessment** *or re-computation* **under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.".**

SECTION 148

Issue of notice where income has escaped assessment

148. Before making the assessment, reassessment or recomputation under section 147, **and**

- **subject to the provisions of section 148A**,
- the Assessing Officer **shall serve on the assessee a notice**,
- **along with a copy of the order passed, if required,**
- **under clause (d) of section 148A,**
- requiring him to furnish within such period,
- as may be specified in such notice,

- a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year,
- in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed;
- and the provisions of this Act shall, so far as may be,
- apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is **information with the Assessing Officer which suggests that the income chargeable to tax** has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has **obtained prior approval of the specified authority to issue such notice:**

[Provided *further that* ***no such approval shall be required*** *where the Assessing Officer, with the* ***prior approval of the specified authority, has passed an order under clause (d) of section 148A*** *to the effect that it is a fit case to issue a notice under this section.*]

Explanation 1

For the purposes of this section and section 148A, the **information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means.**

(i) **any information [~~flagged~~]** in the case of the assessee for the relevant assessment year **in accordance with the risk management strategy formulated by the Board from time to time;**

(ii) **any audit ~~final objection raised by the Comptroller and Auditor General of India~~ objection** to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) **any information received under an agreement referred to in section 90 or section 90A of the Act, or**

(iv) **any information made available to the Assessing Officer under the scheme notified under section 135A; or**

(v) **any information which requires action in consequence of the order of a Tribunal or a Court]**

Explanation 2

For the purposes of this section, where,

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under subsection (2A) **[~~or sub-section (5)~~]** of that section, on or after the 1st day of April, 2021,in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A incase of any other person on or after the 1st day of April, 2021 pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be **deemed to have information which suggests that the income chargeable to tax has escaped assessment** in the case of the assessee **where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.**

Explanation 3-For the purposes of this section, **specified authority means the specified authority referred to in section 151**.]

Section 148A

Conducting inquiry, providing opportunity before issue of notice under section148.

148A. The Assessing Officer shall, before **issuing any notice** under section 148-

(a) **conduct any enquiry**,

- **if required,**
- with the **prior approval of specified authority,**
- **with respect to the information which suggests that the income chargeable to tax has escaped assessment:**

(b) provide an **opportunity of being heard to the assessee** by serving upon him a notice to **show cause** within such time,

- as may be specified in the notice,
- **being not less than seven days and**
- **but not exceeding thirty days from the date on which such notice is issued,**
- **or such time, as may be extended by him**
- **on the basis of an application in this behalf as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and**
- **results of enquiry conducted,**
- **if any, as per clause (a):**

(c) consider **the reply of assessee furnished**, if any, **in response to the show-cause notice** referred to in clause (b):

(d) decide, on the **basis of material available on record including reply of the assessee**,

- whether or not it is a **fit case to issue a notice** under section 148,
- by **passing an order**,
- with the **prior approval** of **specified authority**,
- within **one month from the end of the month** in which the reply referred to in clause (c) is received by him, or
- where **no such reply is furnished**,
- within **one month from the end of the month in which time or**
- **extended time allowed** to furnish a reply as per clause (b) **expires:**

Provided that the provisions of this section **shall not apply** in a case where-

(a) a **search** is initiated under section **132** or **books of account, other documents or any assets** are **requisitioned** under section **132A** in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any **money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person** on or after the 1st day of April, 2021, **belongs to the assessee**; or

(c)the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any **books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person** on or after the 1st day of April, 2021, **pertains or pertain to, or any information contained therein relate to, the assessee,** or

(d) the Assessing Officer has received **any information under the scheme notified under section 135A** pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]

Explanation For the purposes of this section, **specified authority means the specified authority referred to in section 151**]

Insertion of new section 148B

[Prior approval for assessment, reassessment or recomputation in certain cases.

148B. No order of assessment or reassessment or recomputation under this Act hall be passed by an Assessing Officer below the rank of Joint Commissioner,

- in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of
- the Additional Commissioner or
- Additional Director or
- Joint Commissioner or Joint Director

SECTION 149

SECTION 149 - [FA 2020]	**SECTION 149 – [**FA 2021]
Time limit for notice. **149.** (1) No notice under section 148 shall be issued for the relevant assessment year,- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*) or clause (*c*); (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;	Substitution of new section for section 149. 38. For section 149 of the Income-tax Act, the following section shall be substituted, namely:— **Time limit for notice.** "149. (1) **No notice under section 148 shall be issued for the relevant assessment year,**- (a) **if three years** have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) **if three years, but not more than ten years**, have elapsed from the end of the relevant assessment year **unless the Assessing Officer has in his possession books of accounts or other documents or evidence** which reveal that the income chargeable to tax, represented in **the form of asset,** which has escaped assessment **amounts to or is likely to amount to fifty lakh rupees or more for that year:**

SECTION 149 - [FA 2020]	**SECTION 149 – [**FA 2021]
(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.	**Deleted**

SECTION 149 - [FA 2020]	**SECTION 149 – [**FA 2021]
	1st Proviso Provided that **no notice under section 148** shall be issued at any time in a case for the relevant assessment year beginning **on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section,as they stood immediately before the commencement of the Finance Act, 2021:** **2nd Proviso** Provided further that **the provisions of this sub-section shall not apply in a case,** where **a notice under section 153A, or section 153C read with section 153A,** is required to be issued in relation to a **search initiated** under **section 132** or **books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:**

SECTION 149 - [FA 2020]	SECTION 149 – [FA 2021]
	3rd Proviso Provided also that for the purposes of **computing the period of limitation as per this section,** the **time or extended time** allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period **during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:** **4th Proviso** Provided also that where immediately **after the exclusion of the period referred to in the immediately preceding proviso,** the period of **limitation available to the Assessing Officer** for passing an order **under clause (d) of section 148A** is **less than seven days, such remaining period shall be extended to seven days and the period of limitation** in sub-section (1) **shall be deemed to be extended accordingly.**

SECTION 149 - [FA 2020]	**SECTION 149 – [**FA 2021]
Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.	***Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.***
(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.	(2) **The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.".**

Time limit for notice. (FA 2022)

149.(1) No notice under section 148 shall be issued for the relevant assessment Year, -

(a) **if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b)**;

[(b) **if three years, but no more then ten years**, have elapsed from the end of the relevant assessment year unless **the Assessing Officer has in his possession books of account or other document or evidence which reveal that the income chargeable to tax, represented in the form of –**

(i) **an asset :**

(ii) **expenditure in respect of a transaction or in relation to an event or occasion; or**

(iii) **an entry or entries** in the **books of account**,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that **no notice under section 148** shall be issued at any time in a case for the relevant assessment year beginning **on or before 1st day of April, 2021 if** ***[a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be]*****, as they stood immediately before the commencement of the Finance Act, 2021:**

Provided further that **the provisions of this sub-section shall not apply in a case**, where **a notice under section 153A, or section 153C read with section 153A** is required to be issued in relation to a **search initiated** under **section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:**

Provided also that for the purposes of **computing the period of limitation as per this section, the time or extended time** allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period **during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:**

Provided also that where immediately **after the exclusion of the period referred to in the immediately preceding proviso,** the period of **limitation available to the Assessing Officer** for passing an order **under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub – section shall be deemed to be extended accordingly.**

Explanation - **For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account**.

[(1A) Not withstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

(2) **The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]**

SECTION 151

[Sanction for issue of notice.

151. Specified authority for the purposes of section 148 and section 148A shall be, -

(i) Principal Commissioner or Director, if three Principal Director or Commissioner or years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.]

Section 151A

[Faceless assessment of income escaping assessment.

151A. (1) The Central Government may make a scheme,

- by notification in the Official Gazette, for the purposes of assessment,
- reassessment or re-computation under section 147 or
- issuance of notice under section 148 or
- **[conducting of enquiries or issuance of show-cause notice or passing of order under section 148A]** or
- sanction for issue of such notice under section 151,
- **so as to impart greater efficiency, transparency and accountability by-**

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible.

(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1),

- by notification in the Official Gazette,
- direct that any of the provisions of this Act shall not apply or
- shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section(2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 29th March, 2022

S.O. 1466(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its publication in the Official Gazette

2. Definitions –

(1) In this Scheme, unless the context otherwise requires -

(a) "Act" means the Income-tax Act, 1961 (43 of 1961);

(b) "automated allocation" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Scope of the Scheme.—For the purpose of this Scheme,—

(a) assessment, reassessment or recomputation under section 147 of the Act,

(b) issuance of notice under section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

[Notification No. 18/2022/F. No. 370142/16/2022-TPL(Part1]

SECTION 135A

[Faceless collection of information.

135A.(1) The Central Government may make a scheme, by notification in the Official Gazette,

- for the purposes of calling for information under section 133,
- collecting certain information under section 133B,
- or calling for information by prescribed income-tax authority under section 133C,
- or exercise of power to inspect register of companies under section 134,

- or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by -

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1),

- by notification in the Official Gazette,
- direct that any of the provisions of this Act shall not apply or shall apply with such exceptions,
- modifications and adaptations as may be specified in the notification:
- Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall,

- as soon as may be after the notification is issued,
- be laid before each House of Parliament.]

SECTION 119 OF THE INCOME-TAX ACT, 1961 - CENTRAL BOARD OF DIRECT TAXES - INSTRUCTION TO SUBORDINATE AUTHORITIES - INSTRUCTION REGARDING UPLOADING OF INFORMATION ON VRU FUNCTIONALITY ON INSIGHT PORTAL FOR IMPLEMENTATION OF RISK MANAGEMENT STRATEGY FOR ISSUE OF NOTICE UNDER SECTION 148.

INSTRUCTION F. NO. 225/135/2021/ITA-II, DATED 10-12-2021

Kindly refer to the above.

2. As per the amended provisions of the section 148 of the Income-tax Act,1961('the Act'), the information which has escaped assessment has been defined to include the two categories of information, i.e., (i) the information which is flagged in accordance with the risk management strategy formulated by the Board; and (ii) final audit objection raised by the C&AG.

Meaning of "information in accordance with the risk management strategy formulated by the Board".

3. For effective implementation of risk management strategy, the Central Board of Direct Taxes (Board), in exercise of its powers under section 119 of the Act, directs that the Assessing Officers shall identify the following categories of information pertaining to Assessment Year 2015-16 and Assessment Year 2018-19, which may require action under section 148 of the Act, for uploading on the Verification Report Upload (VRU) functionality on Insight portal:

(i)		Information from any other Government Agency/Law Enforcement Agency
(ii)		Information arising out of Internal Audit objection, which requires action u/s 148 of the Act
(iii)		Information received from any Income-tax Authority including the assessing officer himself or herself
(iv)		Information arising out of search or survey action
(v)		Information arising out of FT&TR references
(vi)		Information arising out of any order of court, appellate order, order of NCLT and/or order u/s 263/264 of the Act, having impact on income in the assessee's case or in the case of any other assessee
(vii)		Cases involving addition in any assessment year on a recurring issue of law or fact:
	a.	exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune while at other charges, quantum of addition should exceed Rs. 10 lakhs;
	b.	exceeding Rs. 10 crore in transfer pricing cases.

and where such an addition:

- has become final as no further appeal has been filed against the assessment order; or
- has been confirmed at any stage of appellate process in favor of revenue and assessee has not filed further appeal; or
- has been confirmed at the 1st stage of appeal in favor of revenue or subsequently; even if further appeal of assessee is pending, against such order.

5. As per the provisions of section 149(1)(*b*) of the Act, in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year.

Further, the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (*b*), as they stood immediately before the proposed amendment.

As per explanation provided to section 149 of the Act, the term "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

5.1 In view of the above, it is directed that the information pertaining to Assessment Year 2015-16, which requires action u/s 148 of the Act shall be identified and uploaded on the VRU functionality on insight portal only as per the provisions of section 149(1)(*b*) of the Act.

6. The above exercise of identifying and uploading the information along with the underlying documents in the above categories of cases must be completed by 20-12-2021.

7. These Instructions shall be applicable to the Jurisdictional Assessing Officers and Assessing Officers of Central Charges and International Taxation.

8. The above Instructions may be brought to the notice of the officers concerned under your region.

9. This issues with the approval of Chairman, CBDT.

Sudesh Taneja Wife Of Shri C P ... vs Income Tax Officer on 27 January, 2022 Civil Writ Petition No. 969/2022

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

37. In this context we have perused the provisions of reassessment contained in the Finance Act, 2021.

We have noticed earlier the major departure that the new scheme of reassessment has made under these provisions.

The time limits for issuing notice for reassessment have been changed.

The concept of income chargeable to tax escaping assessment on account of failure on the part of the assessee to disclose truly or fully all material facts is no longer relevant.

Elaborate provisions are made under Section 148A of the Act enabling the Assessing Officer to make enquiry with respect to material suggesting that income has escaped assessment, issuance of notice to the assessee calling upon why notice under Section 148 should not be issued and passing an order considering the material available on record including response of the assessee if made while deciding whether the case is fit for issuing notice under Section 148.

There is absolutely no indication in all these provisions which would suggest that the legislature intended that the new scheme of reopening of assessments would be applicable only to the period post 01.04.2021.

In absence of any such indication all notices which were issued after 01.04.2021 had to be in accordance with such provisions.

To reiterate, we find no indication whatsoever in the scheme of statutory provisions suggesting that the past provisions would continue to apply even after the substitution for the assessment periods prior to substitution. In fact there are strong indications to the contrary.

We may recall, that time limits for issuing notice under Section 148 of the Act have been modified under substituted Section 149. Clause (a) of sub-section (1) of Section 149 reduces such period to three years instead of originally prevailing four years under normal circumstances.

Clause (b) extends the upper limit of six years previously prevailing to ten years in cases where income chargeable to tax which has escaped assessment amounts to or is likely to amount to 50 lacs or more.

Sub-section (1) of Section 149 thus contracts as well as expands the time limit for issuing notice under Section 148 depending on the question whether the case falls under clause (a) or clause (b).

In this context the first proviso to Section 149(1) provides that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021 if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of Section 149 as they stood immediately before the commencement of the Finance Act, 2021.

As per this proviso thus no notice under Section 148 would be issued for the past assessment years by resorting to the larger period of limitation prescribed in newly substituted clause (b) of Section 149(1).

This would indicate that the notice that would be issued after 01.04.2021 would be in terms of the substituted Section 149(1) but without breaching the upper time limit provided in the original Section 149(1) which stood substituted.

This aspect has also been highlighted in the memorandum explaining the proposed provisions in the Finance Bill.

If according to the revenue for past period provisions of section 149 before amendment were applicable, this first proviso to section 149(1) was wholly unnecessary.

Looked from both angles, namely, no indication of surviving the past provisions after the substitution and in fact an active indication to the contrary, inescapable conclusion that we must arrive at is that for any action of issuance of notice under Section 148 after 01.04.2021 the newly introduced provisions under the Finance Act, 2021 would apply.

Mere extension of time limits for issuing notice under section 148 would not change this position that obtains in law.

Under no circumstances the extended period available in clause (b) of sub-section (1) of Section 149 which we may recall now stands at 10 years instead of 6 years previously available with the revenue, can be pressed in service for reopening assessments for the past period.

This flows from the plain meaning of the first proviso to sub-section (1) of Section 149.

In plain terms a notice which had become time barred prior to 01.04.2021 as per the then prevailing provisions, would not be revived by virtue of the application of Section 149(1)(b) effective from 01.04.2021.

All the notices issued in the present cases are after 01.04.2021 and have been issued without following the procedure contained in Section 148A of the Act and are therefore invalid.

38. The second question framed by us arises in this context. Would the explanation contained in both the notifications of CBDT dated 31.03.2021 and 27.04.2021 save the situation for the revenue?

39. It is well settled that there is presumption of constitutionality of a statute (refer to the Constitution Bench judgment in case of The State of Jammu & Kashmir, Vs. Triloki Nath Khosa and Ors., reported in AIR 1974 SC 1).

The said principle of presumption of constitutionality also applies to piece of delegated legislation.

In case of St. Johns Teachers Training Institute Vs. Regional Director, National Council For Teachers Education and Another, reported in (2003) 3 SCC 321, it was observed that it is well settled in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid.

However it is equally well settled that the subordinate legislation does not enjoy same level of immunity as the law framed by the Parliament or the State Legislature.

The law framed by the Parliament or the State Legislature can be challenged only on the grounds of being beyond the legislative competence or being contrary to the fundamental rights or any other constitutional provisions.

Third ground of challenge which is now recognized in the judgment in case of Shayara Bano Vs Union of India reported in 2017 9 SCC 1 is of legislation being manifestly arbitrary.

A subordinate legislation can be challenged on all these grounds as well as on the grounds that it does not conform to the statute under which it is made or that it is inconsistent with the provisions of the Act or it is contrary to some of the statutes applicable on the subject matter.

In case of J.K. Industries Ltd. and Ors. Vs. Union of India and Ors., reported in (2007) 13 SCC 673, it was observed as under:-

"63. At the outset, we may state that on account of globalization and socio-economic problems (including income disparities in our economy) the power of Delegation has become a constituent element of legislative power as a whole. However, as held in the case of Indian Express Newspaper v. Union of India reported in (1985) 1 SCC 641 at page 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made.

It may further be questioned on the ground that it is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject matter. Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be inconformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution."

[2022] 137 taxmann.com 396 (Karnataka)

HIGH COURT OF KARNATAKA

Mohammed Mustafa

v.

Income Tax Officer, Ward-6(3)(1)

dated 18.04.2022

INCOME TAX : NOTICES U/S 148, IF ISSUED ON OR AFTER 1-4-2021,EVEN FOR PAST YEARS, SHOULD COMPLY WITH NEW PROVISIONS/TIME LIMITS & THE PROCEDURE U/S 148A.

REASSESSMENT NOTICE ISSUED ON OR AFTER 1-4-2021 SHOULD COMPLY WITH NEW PROVISIONS AS SUBSTITUTED BY FINANCE ACT, 2021 AS THE OLD REASSESSMENT PROVISIONS WERE REPEALED AND SUBSTITUTED BY NEW PROVISIONS SANS ANY SAVINGS CLAUSE.

CIRCULAR & NOTIFICATION : NOTIFICATION NO.20/2021, DATED 31ST MARCH,2021, ISSUED BY THE CENTRAL GOVERNMENT U/S. 3(1) OF THE RELAXATION ACT,2020 AND NOTIFICATION NO. 38/2021, DATED 27TH APRIL, 2021, ISSUED BY THE CENTRAL GOVERNMENT U/S 3(1) OF THE RELAXATION ACT, 2020

Supreme Court Judgement of Union of India & Ors v. Ashish Agarwal Civil Appeal No. 3005/2022 on 04.05.2022

Justice M R Shah **Justice B V Nagarathna**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

a) Order is of 34 pages

b) 12 Paragraphs

c) Page 1 to 3 details of civil appeal number and civil appeal number arising out of SLP(C) mentioned.

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 1 (Page no 4)

1. Feeling **aggrieved and dissatisfied** with the impugned **common judgment and order passed by the High Court of Judicature at Allahabad in Writ Tax No. 524/2021** and other allied writ tax petitions,

by which the **High Court has allowed the said writ petitions and has quashed several reassessment notices issued by the Revenue, issued under section 148** of the Income Tax Act, 1961,

on the **ground that the same are bad in law in view of the amendment by the Finance Act, 2021 which has amended Income Tax Act by introducing new provisions i.e. sections 147 to 151 w.e.f. 1st April, 2021,**

the **Revenue has preferred the present appeals.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 2 (page no 4)

2. Similar judgments and orders are passed by various other High Courts including High Court of Delhi; High Court of Rajasthan; High Court of Calcutta; High Court of Madras; High Court of Bombay, the particulars of which are as under:

Sl. No.	Particulars
1	**Ashok Kumar Agarwal Vs. UOI (Allahabad HC)** **Judgment passed by the Hon'ble High Court of Allahabad at Allahabad in Writ Tax No. 524/2021 dated 30.09.2021**
2	**Bpip Infra Pvt. Ltd. Vs. Income Tax Officer & Others (Rajasthan HC)** **Judgment in S.B. Civil Writ Petition No. 13297/2021 passed by the Hon'ble High Court of Rajasthan at Jaipur dated 25.11.2021**
3	**Mon Mohan Kohli Vs. ACIT (Delhi HC)** **Judgment passed by the Hon'ble High Court of Delhi in W.P.(C) No. 6176/2021 dated 15.12.2021**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Sl. No.	Particulars
4.	**Bagaria Properties & Investment Pvt. Ltd. Vs. UOI (Calcutta HC)** **Judgment passed by the Hon'ble High Court of Calcutta in W.P.O No. 244/2021 dated 17.01.2022**
5.	**Manoj Jain Vs. UOI (Calcutta HC)** **Judgment passed by the Hon'ble High Court of Calcutta in W.P.A. No. 11950 of 2021 dated 17.01.2022**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

6.	**Sudesh Taneja Vs. ITO (Rajasthan HC)** **Judgment passed by the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No. 969 of 2022 dated 27.01.2022**
7.	**Vellore Institute of Technology Vs. CBDT (Madras HC)** **Judgment passed by the Hon'ble High Court of Madras in W.P. No. 15019/2021 dated 04.02.2022.**
8.	**Tata Communications Transformation Services Vs. ACIT (Bombay HC)** **Judgment passed by the Hon'ble High Court of Bombay in Writ Petition No. 1334 of 2021 dated 29.03.2022**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 2.1 (page no 7)

2.1 The **common judgment and order passed by the Allahabad High Court is the subject matter of the present appeals.**

Leanred Shri N. Venkataraman, learned ASG, stated at the bar

that the **Revenue is contemplating to prefer appeals against the similar judgments and orders passed by various High Courts.**

However, as the **issue is common** and there will be **multiplicity of the proceedings** and to **lessen the burden of this Court** and for the reasons stated hereinbelow,

as **we propose to pass an order in exercise of powers under Article 142 of the Constitution of India** the present order shall **govern all the other judgments and orders passed by various High Courts on the similar issue.**

Hence, we observe that the **Revenue need not file separate individual appeals which may be more than 9000 in numbers.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 3.1 (page 13)

3.1 In pursuance to the **power vested under section 3 of the Relaxation Act, 2020,** the Central Government issued following **Notifications interalia extending the time lines prescribed under section 149** for **issuance of reassessment notices under section 148** of the Income Tax Act, 1961:

Date of Notification	Original limitation for issuance of notice under Section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 3.1 (Contd….) (page 13)

The **Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 issued under section 3 of the Relaxation Act, 2020 also stipulated that the provisions, as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated there under.**

Para 3.2 (Page 14 to 19)

Substituted section 147 to 149 and section 151 applicable w.e.f 01.04.2021 passed in FA 2021 (Page 14 to 19).

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 3.3 (Page no 19)

3.3 In subsection (1) of section 151A of the Income Tax Act, in the opening portion, after the words and figures "issuance of notice under section 148", the words, figures and letter "or conducting of enquiries or issuance of show cause notice or passing of order under section 148A" are inserted.

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 4 (Page no 19)

4. Despite the **substituted sections 147 to 151** of the Income Tax Act, 1961 by the Finance Act, 2021 **coming into force on 1st April, 2021**, according **to learned ASG**, **the Revenue issued approximately 90,000 reassessment notices to the respective assessees under the erstwhile sections 148 to 151 thereof by relying on explanations in the Notifications dated 31st March, 2021 and 27th April, 2021.**

The said reassessment notices were the subject matter of writ petitions before the various High Courts.

The **respective High Courts have held** that all **the respective reassessment notices** issued under the erstwhile sections 148 to 151 of the Income Tax Act, 1961, are **bad in law as the reassessment notices issued after 01.04.2021 are governed by the substituted sections 147 to 151 of the Income Tax Act, 1961, substituted by the Finance Act, 2021.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 4 (Page no 19)

Consequently, the **respective High Courts have set aside** all the **reassessment notices** issued under section 148 of the Income Tax Act, 1961 **wherever assailed.**

The common judgment and order passed by the High Court of Allahabad is the subject matter of the present appeals.

However, the **High Court of Delhi** in its common judgment and order dated 15.12.2021 while quashing the respective reassessment notices has **also observed that if the law permits the revenue to take further steps in the matter they shall be at liberty to do so.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 6 (page no 21)

6. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (IT Act) by the Finance Act, 2021, **radical and reformative changes are made governing the procedure for reassessment proceedings.**

Amended sections 147 to 149 and section 151 of the IT Act prescribe the procedure governing initiation of reassessment proceedings.

However, for several reasons, the same gave rise to numerous litigations and the reopening were challenged *inter alia,* on the grounds such as

(1) no valid "reason to believe"

(2) no tangible/reliable material/information in possession of the assessing officer leading to formation of belief that income has escaped assessment,

(3) no enquiry being conducted by the assessing officer prior to the issuance of notice; and reopening is based on change of opinion of the assessing officer and

(4) lastly the mandatory procedure laid down by this Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and ors**; (2003) 1 SCC 72, has not Been followed.

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 6.1 (Page no 22)

6.1 Further **pre Finance Act, 2021,** the reopening was permissible for **a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time.**

Therefore, **Parliament** thought it fit to **amend the Income Tax Act** to **simplify the tax administration**,

ease compliances and

reduce litigation.

Therefore, with a view to achieve the said object, by the Finance Act, 2021, sections 147 to 149 and section 151 have been substituted.

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Para 6.2 (Page no 22)

6.2 Under the substituted provisions of the IT Act vide Finance Act, 2021, **no notice under section 148** of the IT Act can be issued **without** following the procedure prescribed under **section 148A of the IT Act.**

Along with the **notice** under section **148** of the IT Act, the assessing officer **(AO)** is required to **serve the order** passed under section **148A of the IT Act**.

Section 148A of the IT Act is a new provision which is in **the nature of a condition precedent.**

Introduction of **section 148A** of the IT Act can thus be said to be a **game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.**

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Para 6.3 (Page no 23)

6.3 But prior to pre Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in the case of **GKN Driveshafts (India) Ltd.** (supra).

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Para 6.4 (Page no 23 to 24)

6.4. However, by way of **section 148A, the procedure has now been streamlined and simplified.**

It provides that before issuing any notice under section 148, the assessing officer shall

(i) **conduct any enquiry**, **if required**, with the approval of specified authority, with respect to the **information which suggests that the income chargeable to ta**x has escaped assessment;

(ii**) provide an opportunity** of being heard to the assessee, with the prior approval of specified authority;

(iii) **consider the reply of the assessee furnished**, if any, in response to the show-cause notice referred to in clause (b); and

(iv) **decide, on the basis of material available on record including reply of the assessee,** as to whether or not it is a **fit case to** issue a notice under section 148 of the IT Act and

(v) the AO is required to pass a **specific order within the time stipulated**.

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Para 6.5 (Page no 24 to 25)

6.5. Therefore, all safeguards are provided before notice under section 148 of the IT Act is issued.

At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per section 148A(a).

Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry.

Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.

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Para 6.6 (Page no 25)

6.6. Substituted section 149 is the provision governing the time limit for issuance of notice under section 148 of the IT Act.

The **substituted section 149 o**f the IT Act has **reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases ten years.**

It also provides further additional safeguards which were absent under the earlier regime pre Finance Act, 2021.

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 7 (Page no 25 to 26)

7. Thus, the **new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest**,

the respective High Courts have rightly held that the **benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021.**

We are in complete agreement with the view taken by the various High Courts in holding so.

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Para 8. (Page no 26 to 29)

8. However, at the same time, the **judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act.**

The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated.

It is true that due to a **bonafide mistake** and **in view of subsequent extension of time vide various notifications**, the Revenue issued the **impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148.**

In our view the same **ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions** of sections 147 to 151 of the IT Act **as per the Finance Act, 2021**.

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There appears to be **genuine non application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced.**

Therefore, we are of the opinion that **some leeway must be shown in that regard which the High Courts could have done so.**

Therefore, **instead of quashing and setting aside the reassessment notices** issued under the unamended provision of IT Act, **the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A** and the **Revenue ought to have been permitted to proceed further** with the reassessment proceedings **as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021,** subject to **compliance of all the procedural requirements and the defences**, which may be **available** to the assessee **under the substituted provisions of sections 147 to 151 of the IT Act and** which may be available **under the Finance Act, 2021 and in law**.

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Therefore, we **propose to modify the judgments and orders passed by the respective High Courts as under:**

(i) The respective **impugned section 148 notices** issued to the respective assessees **shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be showcause notices in terms of section 148A(b).** The respective assessing officers shall **within thirty days from today provide to the assessees the information and material relied upon by the Revenue** so that the **assessees can reply to the notices within two weeks thereafter;**

(ii) The **requirement of conducting any enquiry** with the prior approval of the specified authority **under section 148A(a) be dispensed with as a onetime 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 & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

(iii) The assessing officers shall thereafter **pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b)** in respect of each of the concerned assessees;

(iv) **All the defences which may be available to the assessee under 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** and;

(v) The **present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices** issued under unamended section 148 of the IT Act **irrespective of whether they have been assailed before this Court or not.**

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Para 9 (Page no 29 to 31)

9. There is a **broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assesses.**

We are also of the opinion that if the aforesaid order is passed, it will **strike a balance between the rights of the Revenue as well as the respective assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices,** the **Revenue may not suffer as ultimately it is the public exchequer which would suffer.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Therefore, we have proposed to **pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts**, the particulars of some of which are referred to hereinabove.

We have also proposed to **pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India** by holding that the present order shall govern, **not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 10 (Page no 31 to 33)

10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART.

The impugned common judgments and **orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:**

(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 assesees **can reply to the showcause notices within two weeks thereafter**;

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

(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 onetime 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.**

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;

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

(iii) The assessing officers shall thereafter **pass orders in terms of section 148A(d)** in respect of each of the concerned assessees; 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 assesses including those available under section 149 of the IT Act** and **all rights and contentions** which may be available **to** the concerned **assessees and Revenue** under the **Finance Act, 2021 and in law shall continue to be available.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 11 (Page no 33 to 34)

11. The present order **shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent.**

The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals.

We also observe that **present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.**

Union of India & Ors vs Ashish Agarwal in civil appeal no. 3005/2022 dated 04.05.2022.

Para 12 (Page no 34)

12. The impugned **common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts,** more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, **shall stand modified/substituted to the aforesaid extent only.**

All these appeals are accordingly partly allowed to the aforesaid extent.

In the facts of the case, there shall be no order as to costs.

Background

Sections 40 to 44 of the Finance Act, 2021 substituted the provisions of Sections 147, 148, 149 and 151 by new sections. There is an overhaul of reassessment provisions in the Income Tax Act which are effective from Apr 1, 2021.

During the period between Apr 1, 2021 to Jun 30, 2021, the department on the basis of TOLA Notifications Nos. 20/2021 dt. Mar 31, 2021 and 38/2021 dated Apr 27, 2021 kept on issuing notices under the erstwhile provision of Section 148 without complying with the newly inserted provision of Section 148A of the IT Act, completely disregarding the latest will of the legislature.

Background

Except the High Court of Chhattisgarh [TS-816-HC-2021(CHAT)], most High Courts quashed the Notices issued under the erstwhile provisions of Section 148.

They held that reassessment notices issued after Apr 1, 2021 are required to be governed by the substituted sections 147 to 151 of the Income Tax Act, 1961, substituted by the Finance Act, 2021.

Hence there was a national consensus across the country that the Notices issued under the erstwhile provisions of Section 148 were invalid.

However, the department appealed against the order of the Allahabad High Court [TS-926-HC-2021(ALL)] before the Hon'ble Supreme Court.

On 04.05.2022, the Hon'ble Supreme Court passed the judgement on this issue.

BINDING OBSERVATIONS BY SUPREME COURT

1. It was noted that approximately 90,000 reassessment notices under erstwhile Section 148 were issued by the Department post Apr 1, 2021 relying on the explanations in the Notifications dated Mar 31, 2021 and Apr 27, 2021.

2. Around nine thousand writ petitions were filed before various High Courts across the country. The High Courts, taking consistent view, have set aside the respective reassessment notices issued under section 148 on similar grounds.

3. Under the substituted provisions of the IT Act vide Finance Act, 2021, no notice under section 148 of the IT Act can be issued without following the procedure prescribed under section 148A of the IT Act.

4. Finance Act, 2021 substituted the reassessment provisions to simplify the tax administration, ease compliances and reduce litigation.

5. The AO is required to serve the order passed under section 148A along with the notice under section 148 of the IT Act which is a pre-condition precedent to issue notice under Section 148. No notice under section 148 of the IT Act can be issued without following the procedure prescribed under section 148A of the IT Act.

6. Introduction of section 148A of the IT Act is “a game changer” with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

7. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per section 148A(a).

8. Substituted Section 149 of the IT Act has reduced the permissible time limit for issuance of such a notice to 3 years and to 10 years only in exceptional cases

9. The Hon'ble Court accepted that the High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April 2021. Even the Hon'ble Court held that "In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021."

10. However, the Hon’ble Court applied the purposive interpretation and held that there would no reassessment proceedings at all for the that period and the Revenue would be made remediless. It held that some leeway must be shown as the Revenue was under a bonafide belief that the amendments might not yet have been enforced.

Directions by Supreme Court

The Hon'ble Court proposed to modify the judgment/orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions as under:

1. The notices issued under erstwhile section 148 of the IT Act shall be deemed to have been issued under newly inserted Section 148A of the IT Act and be treated as show cause notice issued in terms of section 148A(b);
2. The AO shall provide to the assessees the information and material relied upon by the Revenue within 30 days from May 4, 2022;
3. The assessees can reply to the notices within 2 weeks thereafter;

4. The requirement of prior approval of the specified authority for conducting any enquiry under Section 148A(a) was dispensed with as a onetime measure for the 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;
5. The AO shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;
6. All defenses which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the AO under the Finance Act, 2021 are kept open and/or shall continue to be available;

7. This order shall substitute/modify respective judgments passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

8. The Hon'ble Court opined that this order would strike a balance between the rights of the Revenue as well as the respective assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately ninety thousand such notices. The Hon'ble Court also stated that "The Revenue may not suffer as ultimately it is the public exchequer which would suffer."

9. The Hon'ble Court proposed to pass an order in exercise of powers under Article 142 of the Constitution of India holding that the order shall not only govern the impugned judgment passed by the Allahabad High Court of, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country. The order shall be applicable to "PAN INDIA."

10. The Court dispensed with filing of separate individual appeals by the Revenue "which may be more than 9000 in numbers"

Bombay HC disposes of petitions challenging Sec.148 notices as per SC ruling; Quashes assessment orders

May 11, 2022 | ★★★★★

Downloads: Dhruv_Chheda | Pride_Purple_Properties | Sai_Cylinders_Private_Limited | Team_Ineventrure_Export_India | Suresh_Dhirajlal_Shah | Euro_Pacific_Securities_Limited | Chhagan_Chandrakant_Bhujbal | Hindustan_Petroleum | A_and_L | Emcure_Pharmaceuticals_Limited

Bombay HC disposes of a batch of writ petitions in the wake of SC ruling in Ashish Agarwal & Ors.; Quashes assessment orders and consequential notices/orders, wherever passed; States that the Revenue may restart the process as per the directions of the Apex Court; Also observes that since all rights and contentions of the parties are kept open, the assessees may take such steps if they are aggrieved by any order passed by the Revenue

The writ petitions were heard by the Division Bench of Bombay High Court comprising Justice K.R. Shriram and Justice N.R. Borkar.

Senior Advocate J.D. Mistry, Advocates Fereshte Sethna, Madhur Agrawal, Atul Jasani, Aarti Sathe, Devendra Jain, Dharan Gandhi, Satish Mody and others appeared for the Assessee while the Revenue was represented by Advocates Suresh Kumar and Akhileshwar Sharma.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2231 OF 2022

Dhruv Chheda … Petitioner

Versus

Income Tax Officer Ward 27(1)(1),
Mumbai and others … Respondents

1. The Hon’ble Apex Court in the judgment of Union of India & Ors.vs.AshishAgarwal (1 Civil Appeal No. 3005/2022 dated 4th May, 2022) partially set aside the order and judgment issued by the Hon’ble High Court Judicature at Allahabad in WritTax No.524 of 2021 and other Writ Tax Petitions. The order also covers the judgments passed by various other High Courts including this court in Tata Communications Transformation Services Limited V/s. Assistant Commissioner of Income Tax 14(1)&Ors. (2. Writ Petition No.1334 of 2021 dated 29th March, 2022.)

2. The Hon'ble Apex Court has in paragraph No.10 passed the following directions :

"10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/ petitions, is/are hereby modified and substituted as under:

(i) The impugned section 148 notices issued to the respective assessees which were issued under un amended 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 assessees 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 un amended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.

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 assessees; 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 assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available."

3. In view of the above Petitions dispose.

4. Certainly, since all rights and contentions of the parties are kept open, the assessees may take such steps if they are aggrieved by any order passed by the Assessing Officer.

5. In view of the above, wherever the assessment order has been passed those assessment orders will stand quashed and set aside. So also the consequential orders/notices.

6. Revenue may restart the process as directed by the Hon'ble Apex Court.

Instruction No. 01/2022

F. No 279/Misc./M-51/2022-ITJ
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
ITJ Section

New Delhi. Dated: 11th May 2022

Subject: Implementation of the judgment of the Hon'ble Supreme Court dated 04.05.2022 (2022 SCC Online SC 543) (Union of India v. Ashish Agarwal) – Instruction regarding

1 . Hon'ble Supreme Court, vide its judgment dated 04.05.2022 (2022 SCC Online SC 543). in the case of Union of India v. Ashish Agarwal has adjudicated on the validity of the issue of reassessment notices issued by the Assessing Officers during the period beginning on 1st April, 2021 and ending with 30th June 2021,within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. 2020 [hereinafter referred to as " TOLA"] and various notifications issued thereunder (these reassessment notices hereinafter referred to as " extended reassessment notices").

2. These extended reassessment notices were issued by the Assessing Officers under the provision of section 148 of the Income-tax Act. 1961 (hereinafter referred to as “the Act”) following the procedure prescribed under various sections pertaining to reassessment namely sections 147 to 151, as they existed prior to their amendment by the Finance Act 2021 (hereinafter referred to as “old law”) with effect from 1st April 2021, the old law has been substituted with new sections 147-151 (hereinafter referred to as the “new law”).

3. Hon'ble Supreme Court has held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under clause (b) of section 148A of the new law and has directed Assessing Officers to follow the procedure with respect to such notices. It has also held that 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. Hon'ble Supreme Court has passed this order in exercise of its power under Article 142 of the Constitution of India.

4. The implementation of the judgment of Hon'ble Supreme Court is required to be done in a uniform manner. Accordingly, in exercise of its power under section 119 of the Act, the Central Board of Direct Taxes (hereinafter referred to as " the Board") directs that the following may be taken into consideration while implementing this judgment.

5.0 Scope of the judgment:

Taking into account the decision of the Hon'ble Supreme Court in various paragraphs, it is clarified that the judgment applies to all cases where extended reassessment notices have been issued. This is irrespective of the fact whether such notices have been challenged or not.

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.2020) (before its amendment by the Finance Act, 2022) reads as under:-

149. *(1) No notice under section 148 shall he issued for the relevant assessment year -*

(a) if three years have elapsed from the end of the relevant assessment year unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal (that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided *that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April 2021. if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*

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.

7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 **Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013- 14, AY 2014-15 and AY 2015- 16. if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case for AY 2013-14. AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.**

8.0 Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:

- The extended reassessment notices are deemed to be show cause notices under clause (b) of section 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.
- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.

- Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assessees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.
- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.

- After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148A of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assesse then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.
- If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.
- If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.

ISSUES AND CONTROVERSIES

1. a) Earlier the notice(s) U/s 148 was quashed on the reasons that the same have not been issued as per the amended provisions applicable w.e.f 1st April, 2021.

b) Now since such notices are deemed to be issued U/s 148A i.e. as per the new procedure, then it means that a separate order U/s 148A(d) needs to be passed in each case.

c) The natural corollary shall be that in case, if such order is passed "without following the prescribed procedure", "against the principles of natural justice", "not considering the reply of the assessee", "is a non-speaking order", then in such a case challenge to the same shall be available in writ jurisdiction, as there is not appeal remedy provided u/s.148A(d) of the Act.

d) The issue shall therefore become "subjective" to each case rather than being "generic" as earlier.

2. a) Hon'ble Supreme Court has clearly observed that the defence(s) as per section 149 per Finance Act and under law, shall be available both to the revenue and to the assessee.

   b) This is a very germane finding and needs a specific mention and deliberation.

   c) As regards the assessee is concerned, this shall mean that if the cases which could have been opened upto 31st March, 2021, cannot be opened after 1st April, 2021. (See first proviso to section 149 of the Act as applicable w.e.f. 1st April, 2021) .

d) The cases for the A.Y. 2013- 14 (due to the extended period i.e. six years plus one year) and for the A.Y. 2014-15 (six years from the end of the relevant assessment year) could not have been opened after 31st March, 2021 and hence the same cannot be opened w.e.f. 1st April, 2021 as per the first proviso to section 149 as applicable w.e.f. 1st April, 2021.

e) However, for the other assessment years i.e. starting from 2015-16 onwards, the date for issuing the notice U/s 148 was available, even after 31st March, 2021 hence the first proviso shall not be applicable in such cases and therefore such cases can be opened in view of the amended section.

3. a) From reading between the lines, there may be a catch.

b) The Hon'ble Supreme Court has also observed that "All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act 2021 and under law".

c) The literal interpretation of this is that although the cases for the A.Y. 2013-14 to 2014-15 could not have been reopened beyond 31st March, 2021 in view of the first proviso to section 149, but the same could have been opened if the escapement of income therein is more than fifty lacs, because w.e.f 1st April, 2021 the new section 149 was already in place.

d) The Income Tax Act permitted such cases to be opened till 31st March, 2021, but the 'Relaxation Act' (i.e. the law) had already extended the time limit to 30th June, 2021, hence the words "and under law" is of great significance.

e) In other words, the 148 notices issued between 1st April, 2021 to 30th June, 2021 for the A.Y. 2013-14 to 2014- 15, having the escapement of income of more than fifty lacs may survive and may be governed by the decision of the Hon'ble Supreme Court.

4. a) As regards the department is concerned, the finding of the Hon'ble Supreme Court means that the cases for three years from the end of the relevant assessment years, irrespective of the amount of escaped assessment and the cases beyond three years, but within ten years can be opened only when the amount of escaped assessment is fifty lakh or more for that year.

   b) The cases which are already opened shall be governed by the observations of the Hon'ble Supreme Court.

   c) Since the Hon'ble Supreme Court has observed that the aforesaid order has been passed with the "broad consensus on the aforesaid aspects" the matter may not be expected to be escalated further, since it is stated be a consent order.

5. Reason to Believe vs Information in Possession

a) In the new re-assessment regime, applicable w.e.f. 1.4.2021, as per the amended provisions in the Finance Act 2021, the well-settled and established legal position in respect of mandatory condition of formation of an independent reason to believe, of escapement of income, by the jurisdictional assessing authority, has been replaced with the condition of possession of an information with the assessing authority, as per the risk management strategy of CBDT or the final audit objection of C&AG, suggesting that income of the assessee has escaped assessment.

b) Since, the impugned Notices issued on or after 1.4.2021 and uptill 30.6.2021, under the old section 148, as per the SC judgement, shall now be deemed to be issued under new section 148A, as per the Finance Act 2021, the mandatory condition of formation of reason to believe of escapement of income by the jurisdictional AO (hitherto applicable, for the validity of the impugned Notices u/s 148, before the SC Judgement), shall now be replaced with the condition of possession of an information, as per the risk management strategy of CBDT or the final audit objection of C&AG, suggesting that income of the assessee has escaped assessment.

c) Therefore, if the assessing authority, is not able to establish that it is in possession of an information, as per the risk management strategy of CBDT or the final audit objection of C&AG, suggesting that income of the assessee has escaped assessment, then all such Notices which shall now be issued by the assessing authorities under the new section 148, in consequence of the SC judgement deeming the impugned Notices issued under old section 148, as issued under the new section 148A, are amenable to be considered as bad in law.

7. The Supreme Court in the operative para of 8(i) has stated as under– "The respective impugned section 148 notices issued to the respective assessee shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessee the information and material relied upon by the Revenue so that the assesses can reply to the notices within two weeks thereafter:"

The issue arises who is provide this information to the assessee within a time frame of 30 days. The issue arises who is going to issue the information, whether the Faceless Assessment center or the respective field officers. This issue has been raised in one of the letters by the Association for the clarification from the CBDT. This question is pertinent in view of the CBDT Notification no 18/2022/F. No. 370142/16/ 2022-TPL (part-I) dated 29-03-2022 i.e. E-Assessment of the Income escapement Scheme 2022.

8. The other issue which are being raised by the above-mentioned letter is that

“During the period from 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?

9. There are only 4 sources of getting the information where the AO can proceed under 148. The issue that is debatable is that what are the risk management strategy and how the information is flagged and whether these information's are in public domain. The issue further arises that whether the assessee can raise any objection that if the information is flowing to the AO from a source which are not mentioned above.

10. Generally 5 types of cases are pending for sec 148. These are as under-

i. Assessee who filed writ petition before a Court.

ii. Assessee who did not file any petition before any of the High Courts but challenged the validity of the notice before the JAO without relying on any decisions from any of the High Courts.

iii. Assessee who did not file any petition themselves but after the verdicts of different High Courts challenged the validity of the notice before the JAO relying on such decision.

iv. Assessee who has not challenged the issue of the notice at all.

v. Assessee who has not challenged the issue of the notice and filed ITR in response to the notice.

The issue arises how to handle all the above type of cases.

Whether the AO is required to send the information and consequently pass order u/s 148A(d) followed by issue of notice u/s 148, in fit cases, to all the assesses as above or to only to certain segment(s) of the assesses.

All the cases need to be separately analyzed by the AO in terms of the amended provisions and the limitation applicable and then only proceed towards 148A(d).

However, another challenge will come through the ITBA portal wherein 148 notice which are already issued.

In such circumstances, there may be some modification will be required in the ITBA portal to overcome this technical issue on the portal.

More litigation ahead (Finance Act 2022)

11. The scope and coverage of the meaning of the term "Information“ expanded by amending Explanation 1 to section 148. (Finance Act 2022)

a) As per amended Explanation 1 to Section 148, "Information" means:

- any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- any audit objection to the effect assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- any information received under an agreement referred to in section 90 or section 90A of the Act; or
- any information made available to the Assessing Officer under the scheme notified under section 135A; or
- any information which requires action in consequence of the order of a Tribunal or a Court.

b) The Finance Act 2022, has further widened the time limit for issue of notice u/s 148, to provide that a notice under section 148 can be issued after three years and uptill ten years, where the Assessing Officer has in his possession books of account/documents/evidence which reveal that the income chargeable to tax, represented,

a. in the form of an asset; or
b. expenditure in respect of a transaction or in relation to an event or occasion; or
c. an entry or entries in the books of account,

which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more, in any or all of such assessment years.

c) The hon'ble Supreme Court, in the captioned judgement, has very clearly stipulated that the timelines for issuance of Notice u/s 148, as per the amended provisions of the Finance Act, 2021, are to be adhered to, by the concerned revenue authorities, and all other applicable provisions as per the amended sections 147-151 of the Income Tax Act, as per the Finance Act, 2021 are to be complied with.

d) However, one grey area is somehow, still left. As per the SC Judgement, all such impugned Notices issued on or after 1.4.2021 and uptill 30.6.2021, under the old section 148, shall now be deemed to be issued under new section 148A, as per the Finance Act 2021, and the assessing authorities are supposed to issue the consequential Notices u/s 148, after complying with the requirements of section 148A, and other amended provisions of section 147-151 of the Act.

e) **Thus, all such consequential notices u/s 148 shall now be issued at present, i.e., on or after 1.4.2022, when the amended provisions of section 148 are in place by virtue of the Finance Act, 2022.**

f) Will lead to increased litigation, if the revenue authorities adopt the extended definition of the meaning of the term 'information' as per the amended Explanation 1 to section 148, as per the Finance Act, 2022, to include any information and any audit objection, including that of their internal audit department, and not just the final audit objection of C&AG, for reopening the cases for three years, for the impugned deemed notices u/s 148A of the Act.

g) Will lead to increased litigation if the revenue authorities, for reopening the cases beyond three years and uptill 10 assessment years, adopt the more liberal condition of presence of escaped income exceeding Rs 50 lakhs in any or all 10 assessment years and not necessarily in one assessment year, as per the amended Explanation 2 to section 148, as per the Finance Act, 2022.

Benefit for the assessee

h) However, if the revenue authorities, attempt to adopt and make applicable, the extended scope of the term 'information' and the liberal criteria of spreading up of escaped income to all ten years, as per the amendments made in the Finance Act, 2022, on the ground that the Notices u/s 148, consequential to the deemed Notices u/s 148A, are now being issued on or after 1.4.2022, then the assessees shall also get the equivalent right to argue that such an interpretation will simultaneously reduce the validity of issuance of such 148 notices, issued on or after, 1.4.2022, for one more assessment year, i.e. in cases of alleged escaped income of up to Rs. 50 lakhs, to AY 2019-20 and in cases of alleged escaped income exceeding Rs. 50 lakhs, to AY 2012-13.

Doctrine of 'Complete Justice' as per Article 142 of the Constitution of India

Part V of the Constitution discuss about “The Union “and Chapter IV of this Part discuss about the “The Union Judiciary “. Article 124 to 147 are the part this Chapter IV.

In the Normal Course, the judgements of the Supreme Court are covered under article 141. Article 141 states that Law declared by Supreme Court shall be binding on all Courts within the territory of India.

However, the Supreme Court can also invoke Article 142 for doing “complete justice” in a given case. The Article 142 is reproduced as follows –

Article 142 in Constitution of India

"142. Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.-

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

This power under Article 142, is to be exercised by the hon'ble Supreme Court, broadly for two purposes, viz.

(i) **to grant relief to do "complete justice" in a given case dehors the applicable statutory provisions and;**

(ii) **to issue directions to fill, what the court perceives as "legislative gaps", which directions operate as the law of the land until such time that the legislature or the executive steps in**

Interestingly, **uptill now, the power granted under Article 142 of the Constitution of India, has been exercised by the hon'ble Supreme Court, majorly in cases of public interest and social justice, and unrelated to tax laws.**

Landmark Judgements, where the power granted under Article 142, has been exercised by the Hon'ble Supreme Court

(i). In the case of **A R Antulay Vs R S Nayak AIR 1988 SC 1531**, It was stated that Supreme Court can grant appropriate relief – (i) Where there is some manifest illegality (ii) Where there is manifest want of jurisdiction (iii) where some pulpable injustice is shown to have been resulted. Such a power can be traced either to – Article 142 or power inherent to the court as the Guardian of the Constitution.

(ii) The Court can grant equitable relief to eradicate injustice. There should be question of law of General importance. (**Manish Goel Vs Rohini Goel AIR 2010, SC 1099).**

(iii). The Supreme Court in the case of **Anil Kumar Jain Vs Maya Jain (Civil Appeal no -5952/2009)** as held as under – (Para 18 & 19)

18. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other Courts can exercise such powers. The other Courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties.

19. The various decisions referred to above merely indicate that the Supreme Court can in special circumstances pass appropriate orders to do justice to the parties in a given fact situation by invoking its powers under Article 142 of the Constitution, but in normal circumstances the provisions of the statute have to be given effect to. The law as explained in Smt. Sureshta Devi's case (supra) still holds good, though with certain variations as far as the Supreme Court is concerned and that too in the light of Article 142 of the Constitution.

(iv) M Siddiq (D) The. Lrs. v. Mahant Suresh Das, 2018 (II) SCALE 667, - Supreme Court verdict in the landmark judgement in the **Shri Ram Janm Bhumi, Ayodhya case,** in Civil Appeal Nos. 10866-67/2010.

The Hon'ble Supreme Court has invoked Article 142, while passing a unanimous judgment on Ayodhya case wherein the bench handed over the disputed land of 2.77 acres to a trust to be formed by the central government within three months for the construction of a temple, under the Acquisition of Certain Area at Ayodhya Act, 1993. Another 5 acres of land was allotted for the construction of a mosque in Ayodhya.

In the said case the Hon'ble Supreme Court described its power under Article 142, as under:

"*The phrase 'is necessary for doing complete justice' is of a wide amplitude and encompasses a power of equity which is employed when the strict application of the law is inadequate to produce a just outcome. The demands of justice require a close attention not just to positive law but also to the silences of positive law to find within its interstices, a solution that is equitable and just. The legal enterprise is premised on the application of generally worded laws to the specifics of a case before courts".*

(v) Union Carbide Corporation v. Union of India Etc on 4 May, 1989(Bhopal Gas Tragedy)1990 AIR 273, 1989 SCC (2) 540

In another landmark judgment, the Hon'ble Supreme Court while awarding the compensation of $470 million to victims of Bhopal Gas Tragedy, has observed that:

"Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of —*"complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."*

(vi) Manohar Lal Sharma v. The Principal Secretary on 25 August, 2014 (Coal Block Allocation Case), in Writ Petition No. 120 0f 2012

The hon'ble Supreme Court has once again invoked Article 142 of the Constitution in 2014 to cancel the allocation of coal blocks granted from 1993 onwards and has also imposed a penalty of INR 295 per tonne of coal already mined.

(vii) State of Tamil Nadu represented by SEC. v. K. Balu in Civil Appeal No. 12164-12166 of 2016

In December 2016, the Hon'ble Supreme Court has again invoked Article 142, for banning the sale of alcohol and ensuring that liquor vends are not visible or directly accessible from the highway within a stipulated distance of 500 meters form the outer edge of the highway, or from a service lane along the highway. As per the hon'ble Court, such a decision was taken to avoid accidents due to drunk and drive.

Landmark Judgement of the Hon'ble Supreme Court on Limiting Factors on Invocation of Article 142

The hon'ble Supreme Court, in its landmark judgement in the case of **E.S.P. Rajaram v. Union of India**, dated 1.1.2001, in Civil Appeal No. 441 of 2001, has very beautifully analysed the discretion and limitations of invocation of the power granted under Article 142 of the Constitution of India and has held as under:

"If it is necessary to trace the source of power of this Court to issue the directions and pass the order as in paragraph 18 of M Bhaskar's case (supra) one can straightaway look to Article 142 of the Constitution. The said provision vests power in the Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any case or mater pending before it. The provision contains no limitation regarding the causes or the circumstances in which the power can be exercised nor does it lays down any condition to be satisfied before such power is exercised. The exercise of the power is left completely to the descretion of the highest court of the country and its order or decree is made binding on all the Courts or Tribunals throughout the territory of India.

However, this power is not to be exercised to override any express provision. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a super structure. This Court has not hesitated to exercise the power under Article 142 of the Constitution whenever it was felt necessary in the interest of justice.

In the case of M S Ahlawat v. State of Haryana and another (2000) 1 SCC 278) a bench of three learned Judges of this Court considering the power of the Court to recall its own order in a criminal case referred to the relevant observations in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409) and held that under Article 142 of the Constitution the Supreme Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute.

The following passage from the headnote of the case of Supreme Court Bar Association v. Union of India (supra) was quoted with approval :

"However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to 'supplant' substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.

The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by 'ironing out the creases' in a cause or matter before it. Indeed, the Supreme Court is not a court of restricted jurisdiction of only dispute-settling. The Supreme Court has always been a law-maker and its role travels beyond merely dispute settling. It is a 'problem solver in the nebulous areas' but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by the Supreme Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."[Emphasis supplied]

Invocation of Article 142 in Supreme Court case of Union of India Vs Ashish Aggarwal [TS-339-SC-2022] dated 04.05.2022

Before invocation of Article 142 the revenue was able to canvass and also convinced the Court that amended 148A is a procedural in nature and not substantive. Once the law is declared to be procedure in nature , that open a wide ambit to the judiciary to modulate it in such a manner , with the object of complete justice , so that substantial right is not impeded.

The Revenue relied upon the para no – 65 to 67 of the Delhi High court order in the case of Mon Mohan Kohli vs ACIT as reported in [TS-6605-HC-2021(DELHI)-O] which held as under:-

65. Based on the aforesaid substituted provisions as well as the speech of Finance Minister and the Memorandum explaining the provisions in the Finance Bill, 2021, it is apparent that the legislative intent behind the aforesaid substitutions/amendments is to reduce the time limit in ordinary cases to three years and to increase the threshold amount of income having escaped assessment to Rs.50 lakhs for invoking extended time limit of ten years is to reduce litigation and compliance burden, remove discretion, impart certainty and promote ease of doing business.

66. This Court is of the opinion that the new provisions are remedial and benevolent provisions which are meant and intended to protect the rights and interests of assessee as well as promote public interest. In **Imperial Tobacco Ltd v. Attorney General [1979] QB 555 at 581**, Ormrod LJ said, 'The object of all procedural rules is to enable justice to be done between the parties consistently with the public interest'. If the procedural rules are defective, the legal apparatus works less efficiently and the public interest suffers. If legislation is introduced to remedy the defective rule and no one suffers thereby, it is sensible to apply it to pending proceedings.

67. Consequently, this Court is of the view that the Finance Act, 2021 introduces a new regime regarding the procedure to be complied with in respect of the re-opening of an Income-tax assessment and accordingly, the benefit of the new provisions must necessarily be made available even in respect of proceedings relating to past Assessment Years provided, of course, Section 148 notice has been issued on or after 1st April, 2021.

Thus, once the law held to be a procedural law, it can operate both retrospective and prospectively. In matters of procedures are presumed to be retrospective unless such a construction is textually inadmissible. The rule that an act of Parliament is not to be given retrospective effect applies only to the statutes which affect vested rights . It does not apply to the statute which only alter the form of procedure or the admissibility of the evidence or the effect which the court gives to the evidence. If the New act affects matters of procedure only, then prima facie , it applies to all action pending as well as future . (**Extracted from Page no 585 of the Principle of Statuary Interpretation by Justice G P Singh , 14th Edition).**

Further in the procedural law, it is well settled that the rule or procedures are handmaid of justice and not its mistress (**Supreme court in the case of Auraiya Chamber of Commerce).**

Further in the case of **Noor Mohammed vs Jethanand & Anr (2013) 5 SCC 202**, the apex court has held that procedure law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural Prescription are the handmaid and not the mistress, a lubricant not a resistant in the administration of justice.

Therefore, Supreme Court in order to cure the procedural defect and when the re-assessment is also possible under the amended provision has held that revenue cannot be made remediless, and object and purpose of the re-assessment proceeding cannot be frustrated. Further it held that since the revenue has issued around 90000 notices under a bonafide belief that amendment may not yet had been enforced, a leeway has been carve out, without upturning the High Court order, in order to do a complete justice by invoking Article 142 and giving the lifeline to so called still -born notices by treating such notices issued under 148A(b).

Supreme Court judgement may need to be reviewed or referred to the larger bench for the following reasons

- In **Tanna & Modi v. CIT, (2007) 7 SCC 434** it was held that "It is now well settled that this Court does not exercise its jurisdiction only because it is lawful to do so. It, for the purpose of doing complete justice to the parties, not only may or may not interfere with the impugned judgment but also issue directions for the purpose of doing complete justice to the parties in terms of Article 142 of the Constitution of India.".

Substituting/modifying the respective judgments passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act **irrespective of whether they have been assailed before this Court or not, curtailed the fundamental rights of the assessee. The same do not fall within the phrase "in any cause or matter pending before it" under Article 142 of the Constitution.**

Article 142 does not provide the Hon'ble Court to issue order repugnant to the statute. **In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372 at page 730**, (7 Judges Bench) it was held that as under as per Hon'ble Justice S. Ranganathan (though partly dissented, concurred with the majority for the following portion) Article 140 is only a provision enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdiction conferred on it by or under the Constitution. Article 142 is also not of much assistance. In the first place, the operative words in that article, again are "in the exercise of its jurisdiction".

The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a Special Judge vis-a-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under Article 141 are, they do not in my view, envisage an order of the type presently in question. The Nanavati case [K.M. Nanavati v. State of Bombay, (1961) 1 SCR 497 : AIR 1961 SC 112 : (1961) 1 Cri LJ 173] to which reference was made by Shri Jethmalani, involved a totally different type of situation. Secondly, **it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the court, has actually resulted in injustice,** an aspect discussed a little later.

Thirdly, **however wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute.** If the provisions of the 1952 Act read with Article 139-A and Sections 406-407 of the CrPC do not permit the transfer of the case from a Special Judge to the High Court, that effect cannot be achieved indirectly. It is, therefore, difficult to say, in the circumstances of the case, that the Supreme Court can issue the impugned direction in exercise of the powers under Article 142 or under Section 407 available to it as an appellate court.

Referring the aforesaid decision, in **Union of India v. V. Sriharan**, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695 : 2015 SCC OnLine SC 1267 at page 188, the **Constitution Bench held that:**

285. As stated in Prem Chand Garg [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] an order in exercise of **power under Article 142 of the Constitution of India must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. In A.R. Antulay v. R.S. Nayak** [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] a direction by which the **petitioner was denied a statutory right of appeal was recalled**. A fortiori, a statutory right of approaching the authority under Sections 432/433 CrPC which authority can, as laid down in Kehar Singh [Kehar Singh v. Union of India, (1989) 1 SCC 204 : 1989 SCC (Cri) 86] and Epuru Sudhakar [Epuru Sudhakar v. State of A.P., (2006) 8 SCC 161 : (2006) 3 SCC (Cri) 438] eliminate the effect of conviction, cannot be denied under the orders of the Court.

In **Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409** at page 431, the Constitution Bench held as under:

47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties.

This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". **It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it.**

This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise.

As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

Again in **M.S. Ahlawat v. State of Haryana,** (2000) 1 SCC 278 : 2000 SCC (Cri) 193 : 1999 SCC OnLine SC 1123 at page 283, it was observed that **"It was made clear in Supreme Court Bar Assn. case [(1998) 4 SCC 409] that under Article 142 of the Constitution this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute."**

In **Chandrakant Patil v. State**, (1998) 3 SCC 38 : 1998 SCC (Cri) 720 at page 43, it was held that "It is now well nigh settled that Supreme Court's powers under Article 142 of the Constitution are vastly broad-based. That power in its exercise is circumscribed only by two conditions, first is, that it can be exercised only when Supreme Court otherwise exercises its jurisdiction and the other is that the order which Supreme Court passes must be necessary for doing complete justice in the cause or matter pending before it.

It is well accepted that reopening a completed assessment causes great hardship to the assessee and also brings uncertainty. Gujarat Power Corporation Ltd. vs. ACIT in [TS-5514-HC-2012(GUJARAT)-O] referred in Sudesh Taneja vs. ITO [TS-48-HC-2022(RAJ)]. Was the Hon'ble Apex Court right in taking the divergent view from the many other High Courts, thus providing the opportunity to the revenue to play third innings in assessing the income of the assessees.

The department could not have played the bonafide or ignorance card when they have issued 90,000 reassessment notices under erstwhile Section 148.

In **Parashuram Pottery Works Co. Ltd. v. ITO [TS-5056-SC-1976-O]**, it was held that "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves, with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, one has to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

One must not forget that the **Notifications** Nos. 20/2021 dated Mar 31, 2021 and 38/2021 dated Apr 27, 2021 were **issued against the latest will of Legislature by the Finance Act, 2021. Hence, the question of bonafide does not arise at all.**

It is pertinent to note that the Hon'ble Supreme Court **has only held that the issuance of the notice under the erstwhile Section 148 is deemed to be the notice issued under Section 148A and provision of Section 148A(b) is complied with.**

The **AO has to pass an order in terms of section 148A(d) thereafter and all the subsequent proceedings have to be complied with in accordance with law**. The Hon'ble Court has ordered that all defenses which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the AO under the Finance Act, 2021 are kept open and/or shall continue to be available.

Consequently, the impugned notice, if any, issued under Section 148 of the IT Act would not survive considering the time limits under amended provisions of Section 149. As per the substituted provision of Section 149(1)(a), no notice under section 148 shall be issued for the relevant assessment year if three years have elapsed from the end of the relevant assessment year. Hence the department can now issue notices under Section 148 only with respect to AY. 2019-20 and thereafter.

In this regard one may refer to **para 4 of the decision of Ashok Kumar Agarwal [TS-926-HC-2021(ALL)]. The Hon'ble Allahabad Court has listed the writ petitions filed by the assessees. One may observe that the assessment years involved in the petitions were AYs 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. Hence the Department cannot issue notice under Section 148 for the impugned assessment years which were the subject matter of the dispute before the Hon'ble Supreme Court.**

Without prejudice, the **notices under erstwhile provision were issued on the basis of alleged 'reason to believe'.**

In Raymond Woollen Mills Ltd. v. ITO [TS-26-SC-1997-O] it was held that the sufficiency or correctness of the material was not a thing to be considered at this stage.

However, **Section 148A** provides for prior opportunity to file objections against the "**information which suggests that the income chargeable to tax has escaped assessment".**

The correctness and sufficiency come with the word "has escaped assessment".

Hence the notices under erstwhile Section 148 issued on different edifice cannot survive under the substituted provisions of reassessment which require the concrete material to establish that income has escaped assessment.

Writs filed against order passed u/s. 148A(d)

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 6482/2022 & CM APPL.19664/2022

BHARAT HEAVY ELECTRICALS LTD. ..... Petitioner
Versus
PRINCIPAL COMMISSIOER OF INCOME TAX -1, DELHI & ANR. ..... Respondents

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

25.04.2022

Present writ petition has been filed challenging the order dated 31st March, 2022 passed under Section 148A(d) and notice dated 31st March, 2022 under Section 148 of the Income Tax Act, 1961 (for short the 'Act') for the Assessment Year 2018-19.

Learned counsel for the petitioner states that Petitioner is a reputed PSU which has been awarded ‘Maharatna’ status in the past. He further states that the petitioner is under the direction supervision of Union Government and has strict internal controls. He states that the Petitioner had filed returned income of Rs.1,707/- crores for the Assessment Year 2018- 19.)

He also states that the Petitioner is subject to dual audit under the Companies Act as well as by CAG and has been given a clean chit for theAssessment Year 2018-19. He also emphasises that complete scrutiny assessment had been done in the case of petitioner for the relevant Assessment Year.

Issue notice.

Mr. Sanjay Kumar, learned counsel accepts notice on behalf of the Respondents. He prays for and is permitted to file a counter affidavit within four weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

List on 3rd November, 2022.

Keeping in view the aforesaid, this Court is of the view that it is highly unlikely that the petitioner would be engaged in input tax credit fraud as alleged by the Respondents. Accordingly, till further orders, no action shall be taken in pursuance to the impugned order and notice dated 31st March, 2022.

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 5787/2022 & CM APPL.17297/2022

GULMUHAR SILK PVT LTD ..... Petitioner

Versus

INCOME TAX OFFICER WARD 10(3) DELHI ..... Respondent

Date of Decision: 7th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 28th March, 2022 passed by Respondent under Section 148A(d) of the Income Tax Act, 1961 [‘the Act’] for the assessment year 2018-19, Show Cause Notice dated 7th March, 2022 issued under Section 148A(b) of the Act as well as notice dated 28th March, 2022 purportedly issued under Section WP(C)5787/2022 Page 2 of 4 148 of the Act.

2. Learned counsel for the petitioner states that the impugned order dated 28th March, 2022 is a non-speaking order which does not deal with the contentions raised by the Petitioner in reply to the impugned Show Cause Notice dated 7th March, 2022. In support of his submission, he relies upon the judgment of the Supreme Court in **Kranti Associates Pvt. Ltd. & Anr. Vs. Mashook Ahmed Khan and Ors, SLP (C) No.20428/2007.**

3. He states that the impugned order dated 28th March, 2022 has been issued in a mechanical manner and without any independent application of mind by placing reliance on the information provided by the investigation wing which does not have any rational nexus with the petitioner. He states that the information mentioned in the Show Cause Notice pertains to the Assessment Year 2014-15 which has been used to frame reason to believe escapement of income for the Assessment year 2018-19.

4. A perusal of the paper book reveals that in the impugned order dated 28th March, 2022, the respondent has opined that the petitioner-assessee has not been able to rebut the statement made on oath by the entry provider. It is also stated that the DGGI, Ghaziabad had conducted a search and seizure action in this case under CGST Act, 2017 at Shop No.10, Aman Banquet, Sector-5, Rajendra Nagar, Sahibabad, Ghaziabad on 18th and 19th April, 2018 and had reached the same conclusion. Consequently, this Court is of the view that the impugned order is a speaking and reasoned order. Accordingly, the judgment of the Supreme Court in **Kranti Associates Pvt. Ltd. & Anr.** (supra) has no application to the facts of the present case.

5. Pertinently, the assessee has only submitted bank statements and not the books of accounts before the Assessing Officer. Further, this Court is of the view that the ratio of the Supreme Court judgment in **Raymond Woollen Mills Ltd. vs. Income-tax Officer, Centre Circle XI, Range Bombay and Ors. (2008) 14 SCC 218,** is clearly attracted to the facts of the present case inasmuch as in the said judgment it has been held, "In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage".

6. Though it is the petitioner's case that the impugned order is erroneous on facts, yet this Court is of the opinion that the petitioner would have ample opportunity during the course of proceedings before different statutory forums to show that the finding of fact arrived at was erroneous. Moreover, at this stage, no assessment order has been passed and it has only been observed that it is a fit case for issuance of notice under Section 148 of the Act. In fact, the Supreme Court in Commissioner of Income Tax and Ors. Vs. Chhabil Das Agarwal, (2014) 1 SCC 603 has held that as the Income Tax Act, 1961 provides complete machinery for assessment/reassessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226.

Consequently, the present case does not fall under the exceptional grounds on which a writ petition is maintainable at the interim stage in tax matters. [See: Ghanashyam Mishra And Sons Private Limited Vs. Edelweiss Assetre Construction Company Limited, (2021) 9 SCC 657 and M/S Radha Krishan Industries vs. State of Himachal Pradesh and Ors, (2021) 6 SCC 771].

7. Accordingly, the present writ petition along with pending application stands dismissed with liberty to the petitioner to raise all its grounds before the Assessing Officer and the subordinate forums.

Taxpayers'Charter

THE INCOME TAX DEPARTMENT

is committed to

1. provide fair, courteous, and reasonable treatment
2. treat taxpayer as honest
3. provide mechanism for appeal and review
4. provide complete and accurate information
5. provide timely decisions
6. collect the correct amount of tax
7. respect privacy of taxpayer
8. maintain confidentiality
9. hold its authorities accountable
10. enable representative of choice
11. provide mechanism to lodge complaint
12. provide a fair & just system
13. publish service standards and report periodically
14. reduce cost of compliance

and expects taxpayers to

1. be honest and compliant
2. be informed
3. keep accurate records
4. know what the representative does on his behalf
5. respond in time
6. pay in time

Thanks to my Staff

Sri.N.Beeresh Kumar and Sri. Vinay Kumar .H