

# **INCOME TAX REASSESSMENT NOTICES UNDER NEW PROVISIONS**

Hon'ble Supreme Court in its order today i.e. 4<sup>th</sup> May, 2022 in the matter of UOI vs. Ashish Agarwal, reversed the decisions of the several High Courts and restored the notices issued under new provisions of income tax in reassessment matters which were applicable w.e.f. 01.04.2021.

The decisions of the various High Courts which have been reversed with this decision of Hon'ble Supreme Court include Bombay High Court, Allahabad High Court and Delhi High Court among others.

## **NEW PROVISIONS UNDER BRIEF**

Let us recap the substituted sections 147 to 149 and section 151 applicable w.e.f. 01.04.2021, passed in the Finance Act, 2021, before discussing further:

### **Income escaping assessment**

Section 147 provides that 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 recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year.

### **Issue of notice where income has escaped assessment**

Section 148 provides that 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:

**Conducting inquiry, providing opportunity before issue of notice under section 148**

Section 148A provides that 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, with the prior approval of specified authority, 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:

### **Time limit for notice**

Section 149. (1) provides that 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 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 subsection (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

### **Decisions of various High Courts**

The major issue in quashing the notices by the Hon'ble High Courts was the mandatory procedure under section 148A of the Finance Act, 2021 which is applicable with effect from 01.04.2021, which was not followed, before issuing these notices.

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 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.

In the matter of Ashok Kumar Agarwal Vs. Union of India, Hon'ble Allahabad High Court in its order said that;

“ 76. Upon the Finance Act 2021 enforced w.e.f. 1.4.2021 without any saving of the provisions substituted, there is no room to reach a conclusion as to conflict of laws. It was for the assessing authority to act according to the law as existed on and after 1.4.2021. If the rule of limitation permitted, it could initiate, reassessment proceedings in accordance with the new law, after making adequate compliance of the same. That not done, the reassessment proceedings initiated against the petitioners are without jurisdiction.”

Hon'ble Rajasthan High Court also quashed the reassessment Notice/s issued under section 148 after April 01, 2021 on the basis of erstwhile section 148 which were issued without following the procedure mentioned in Section 148A.

On similar facts. The single-judge bench of Justice Inderjeet Singh in the light of the decision of the Division Bench of the Allahabad High Court in

the matter of ‘Ashok Kumar Agarwal Vs. Union of India” (Supra), also quashed the said notices.

## **EFFECTS OF THE DECISION OF HON’BLE SUPREME COURT**

Now reversing the above and several other decisions the High Courts, the Hon’ble Supreme Court has made the following points;

1. 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.
2. However, for several reasons, the same gave rise to numerous litigations.
3. 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.
4. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated.
5. 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.
6. 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.

7. There appears to be genuine nonapplication 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.
8. 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 assessee information and material relied upon by the Revenue, so that the assessee can reply to the show cause notices within two weeks thereafter
9. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis à vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.
10. 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;
11. 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).
12. All defences which may be available to the assessee including those available under section 149 of the IT Act and all rights and contentions

which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available.

13. 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.

14. 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.

#### About the Author

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