

Reopening/Reassessment– Under Income Tax Act

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Background

- ❑ The Finance Act 2021 had substituted sections 147 to 151 with effect from April 1, 2021.
- ❑ Until 31-March-2021, the notice under section 148 could be issued
 - **within 4 years** from the end of the relevant assessment year if the amount of income that has **escaped assessment is less than Rs. 1 lakh**.
 - Where, **it exceeds Rs. 1 lakh**, the notice could be issued **within 6 years** from the end of the relevant assessment year.
 - **16 years** from end of relevant assessment year if the income in relation to an asset (including financial interest in any entity) located **outside India** has escaped assessment.
- ❑ Under the new provisions applicable from April 1, 2021, the 148 notice can be issued
 - **within 3 years** from the end of the relevant assessment year.
 - However, the amount of escaped **income exceeds Rs. 50 lakh**, the notice can be issued **within 10 years** from the end of the relevant assessment year.

Erstwhile Procedure under Re assessment scheme

- ❑ **Section 148(2) Recording of reasons to believe:** Demonstrating income has escaped assessment, prior to initiation of Re-assessment proceedings
- ❑ **Re-assessment was initiated beyond four year:** Findings that income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly material facts
- ❑ **Valid sanction under section 151:** Prior to issuance of 148 notice
- ❑ **Time limit for issuance of notice under section 149:** 4 years, 6 years and or 16 years (in case of foreign asset) from the end of the assessment year depending on the category of case
- ❑ **Issuance of notice under section 148:** initiation of re-assessment proceedings and directing filing of return of income filing of Return of Income and seeking reasons

- ❑ **Furnishing reasons recorded along with other documents:** -AO was obliged to provide :
 1. Copy of reasons recorded u/s 148(2)
 2. Copies of the sanction u/s 151 and
 3. Documents/ information/ evidence relied upon
- ❑ **Filing of preliminary legal objections:** assessee was at liberty to challenge Notice
- ❑ **Order disposing off legal objections:** required to pass a separate speaking order disposing off the legal objections
- ❑ **If not disposed off through speaking order,** assessee could challenge the same invoking writ jurisdiction of the Hon'ble Jurisdictional High Court
- ❑ **Completion** of re assessment proceedings and passing the assessment order

The aforesaid procedure has been approved by the Supreme Court in the landmark case of GKN Driveshafts Ltd , 259 ITR 19 (SC)

Important Judicial Pronouncement - Change of opinion

- ❑ **Review of an assessment** in the guise of Re-assessment proceedings was barred, being an inbuilt and inherent check on the arbitrary exercise of power of reassessment by AO **Concept of change of opinion** was to be read into the Re-assessment scheme .
- ❑ **Kelvinator 2010 (2) SCC 723 Supreme Court** had succinctly summarized the legal requirements for a valid notice under Section 147 and stated inter alia that, "Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief". • Court has further held that "Change of Opinion" is an inbuilt test to check the abuse of power u/s 147/148 by the AO.
- ❑ **Usha International [2012] 348 ITR 485(Delhi)**: The new information need not come from an outside source so long as it can be seen that the assessee had furnished certain incorrect material facts.

Important Judicial Pronouncement - Carry out fishing and roving enquiries

- ❑ Re-assessment proceedings **could not** be a means to **carry out fishing and roving enquiries** necessary enquiry/investigation should precede initiation of re assessment proceedings.
- ❑ If additions are not made on the “information” which suggests that income has escaped assessment albeit additions/ disallowances are made on some other ground.
- ❑ The **Hon’ble Bombay High Court in the case of CIT v. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom)(HC)** held that if after issuing a notice under section 148 of the Act, the Ld. Assessing Officer accepts the contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 of the Act would be necessary, legality of which would be tested in event of a challenge by assessee.

Reasons – Recorded to be supplied – Communication of Reasons – Mandatory

❑ Recording of reasons before issue of notice is mandatory hence Reassessment was held to be bad in law [**CIT v. Blue Star Ltd. (2018) 162 DTR 302 / 301 CTR 38 (Bom) (HC)**]

❑ Passing an order under section 147 recording of reasons u/s. 148 and communication thereof to party concerned is mandatory.

Gujarat Fluorochemicals Ltd vs. DCIT (2008) 15 DTR (Guj) 1

Nandlal Tejmal Kothari vs. Inspecting ACIT (1998) 230 ITR 943 (SC)

❑ If assessee does not ask for s. 147 reasons & object to reopening, ITAT cannot remand to AO & give assessee another opportunity:

CIT vs. Safetag International India Pvt Ltd [2012] 332 ITR 622 (Delhi High Court)

Important Judicial Pronouncement – Objection Disposed off or not

Assessee can file his objections/reply to the reasons recorded for reopening – AO has to dispose off the assessee objection and serve the order on assessee:

- ❑ **Hon. Bombay High Court Asian Paint Ltd. [2009] 296 ITR 90 (Bom)(HC)** Once the reasons are provided to the assessee , the assessee may choose to file objections against the reasons recorded for reopening the assessment . It is mandatory for the Assessing officer to dispose off the assessee objection and serve the order on assessee. Assessing officer should not proceed with assessment for 4 weeks thereafter.
- ❑ It is mandatory for the AO to follow the procedure laid down in **GKN Driveshafts 259 ITR 19 (SC)** and to pass a separate order to deal with the objections. The disposal of the objections in the assessment order is not sufficient compliance with the procedure. The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (**Bayer Material Science 382 ITR 333 (Bom)** & **KSS Petron (ITXA No. 224 of 2014 dt 20-03-2017 (Bom)**)

Important Judicial Pronouncement – Objections disposal to be linked

Disposal of objections – To be linked with recorded reasons

Pransukhlal Bros. v. ITO (2015) 229 Taxman 444 (Bom.)(HC): where in Assessment of the assessee was reopened. The recorded reasons stated that the assessee had taken accommodation entries from a Surat based diamond concern and this information (according to the recorded reasons) was obtained by the Department from search and survey action on the said diamond concern.

Alden Prepress Services Private Limited vs. DCIT – Writ Petition No.13815 of 2011 and WMP. Nos.7943 and 7944 of 2017 (Mad.) (HC) AO can make a reference to the TPO only after rejecting the assessee's objections filed against the reopening by passing a speaking order.

Rejection of objection without assigning reasons:

Scan Holding P. Ltd. v. ACIT (2018) 402 ITR 290 (Delhi) (HC)

Karti P. Chidambaram v. ACIT (2018) 402 ITR 488 (Mad.)(HC)

Important Judicial Pronouncement - Reason to believe

- ❑ Honest/bonafide belief of a prudent person which has live link/ connection with the tangible information on the basis of which such belief is formed.
- ❑ **Calcutta Discount Co. Ltd. (1961) 41 ITR 191 (SC)** Analyzed the Phrase "reason to believe" and observed that *"It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn."*
- ❑ **Greenworld Corporation (2009) 314 ITR 81 (SC)** *it was held that the assessment order passed on the dictates of the higher authority being wholly without jurisdiction, was a nullity.*
- ❑ **United Shippers Ltd. v. ACIT (2015) 371 ITR 441 (Bom.)** *Reopening of assessment on basis of letter of Commissioner (Appeals) containing identical facts stated by assessee was held not valid.*

Important Judicial Pronouncement - Approval and Sanction

- ❑ **Valid sanction under section 151** an inbuilt check on the undue exercise of power under section 147 - cannot be reduced to mere formality -Sanction must be proper .
- ❑ **S. Goenka Lime and Chemical Ltd (2016) 237 Taxman 378 (SC)** wherein it was held that when the sanctioning authority only recorded so “Yes. I am satisfied”, then sanction has to be held as mechanical way of recording satisfaction which accords a sanction clearly unsustainable and hence the order of the Tribunal quashing the reassessment and notice u/s 148 of the Act was upheld.
- ❑ **Central India Electric Supply Co. Ltd. vs. ITO (2011) 51 DTR 51 (Del)(HC)** *The approval is a safeguard and has to be meaningful and not merely ritualistic or formal.*

Extension in due dates

- ❑ Due to the COVID-19 pandemic in 2020 and 2021 and consequent nationwide lockdown, the Government had extended the due dates of various compliances on multiple occasions.
- ❑ The limitation period to issue the notice under the old provision was also extended.
- ❑ The chronology of these limitation periods is mentioned in the below table –

Due dates falling between March 20, 2020 and –	Extended to	Notification
June 29, 2020	June 29, 2020	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]
December 31, 2020	March 31, 2021	Notification S.O. 2033(E) [No. 35/2020], dated June 24, 2020
March 30, 2021	March 31, 2021	Notification S.O. 4805(E) [No. 93/2020], dated December 31, 2020
March 31, 2021	April 30, 2021	Notification S.O. 1432(E) [No. 20/2021], dated March 31, 2021
March 31, 2021	June 30, 2021	Notification S.O. 1703 (E) [No. 38/2021], dated April 27, 2021

New Reassessment Scheme:

- ❑ Section 148 has been completely substituted to provide that re-assessment proceedings can be initiated under section 148 when there is **information** with the AO *“which suggests that income chargeable to tax has escaped assessment for the relevant year”*
- ❑ **“Information”** for the purpose of section 148 has been specifically defined in Explanation 1
 - a) any information in accordance with **risk management strategy of the Board**
 - b) any **audit objection** that assessment has not been made in accordance with the provisions of the Act.
 - d) any information received **under DTAA**
 - e) any information made available to the Assessing Officer under the scheme notified under **section 135A – Scheme for faceless collection for information**
 - f) any information which requires action **in consequence of the order of a Tribunal or a Court**

New Reassessment Scheme:

❑ In the following cases it shall be **deemed that AO is having Information-**

- a) a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A.
- b) a survey is conducted u/s 133A (other than TDS/TCS survey).
- c) the AO is satisfied with the prior approval of the PCIT/CIT, that any money, bullion, jewellery or other valuable article or thing or Books of accounts, documents seized or requisitioned u/s 132 or 132A in case of any other person, belongs to or pertains to or information related to the assessee.

Prior to issuance of 148 Notice: Procedure needs to follow by AO

- ❑ Prior to issuance of notice under section 148, AO is required to follow the procedure prescribed under section 148A and pass an order under section 148A(d).
- ❑ The AO, under section 148A, is obliged to
 - a. **Conduct enquiry, if required** with the **prior approval of the specified higher authority**, with respect to information which suggests that income of the assessee has escaped assessment.
 - b. **Issue a SCN** upon the assessee to show cause why notice under section 148 should not be issued and provide an opportunity of being heard to the assessee.
Time period of **at least 7 days but not exceeding 30 days** to be provided to respond to show cause notice.
 - c. **Consider the reply** of the assessee.
 - d. **“Decide” on the basis of material available** on record and the reply furnished by the assessee, by passing **“an order whether or not it is a fit case for issuance of notice under section 148”** within one month of receipt of assessee's reply **with prior approval of specified authority**.

(It is to be noted that as amended by FA 2022, w.e.f. 01.04.2022, the AO is not required to get approval of the prescribed authority before issuing SCN u/s 148A & 148 in case approval u/s 148A(d) is obtained)

Procedure provided in section 148A is not applicable in cases of search, survey or requisition initiated or made on or after 01.04.2021

Sec 148B- Prior approval for asst./re-asst. or recomputation in certain cases

- ❑ Where search initiated u/s 132 in case of assessee or any other person or survey conducted u/s 133A (other than TDS/TCS survey) then assessment or reassessment shall not be made by AO below the rank of JC, except with the approval of JC/JD/Add. CIT/ Add. DIT.

Issuance of Notice u/s 148 Notice

❑ **Issuance of jurisdictional notice under section 148:** Once the mandatory procedure set in section 148A is undertaken, the AO shall issue notice under section 148 requiring the assessee to furnish, within the prescribed period, its return of income for the relevant year.

(It is to be noted that **order passed u/s 148A(d) is not appealable** in a view the same can be only challenged by way of **Writ Petition to the HC** or the same can be **challenged also in regular appeal** once the same is culminated into the assessment order)

❑ **Completion of reassessment:** After filing of the return, the assessment proceedings thereafter, shall be carried out in terms of sections 143(3)/144/144B of the Act, as the case may be and the order completing the re-assessment shall be passed within the time limit prescribed under section 153.

❑ **Explanation 2 to section 148 provides that in case of search, survey or requisition initiated or made on or after 01.04.2021 assessing officer shall be deemed to have information which suggest that income chargeable to tax has escaped assessment.**

❑ **Re-opening can be sought:**

- a. Within 3 years from the end of the relevant assessment year
- b. Within 10 years from the end of the relevant assessment year, where, the AO has in his possession 'books of accounts' or 'other documents' or ' which reveal that income chargeable to tax, which has escaped assessment amounts to or is likely to amount to Rs 50 lakhs or more for the said year, and is represented in the form of an asset, expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account.

❑ **Grandfathering Clause:** If, under the erstwhile provisions, a case could be not have been reopened i.e. time limit for issuance of notice under section 148 has expired on 31.03.2021, the case cannot be re-opened under the new scheme.

- ❑ Time limit prescribed under section 149 of the Act shall exclude:
 - a. the time or extended time allowed to the assessee to respond to show cause notice under section 148A(b) and
 - b. any period during which the proceedings under section 148A are stayed by an order of any Court

If after excluding the aforesaid period, time available for passing order under section 148A(d) is less than 7 days, the remaining time shall be deemed to be extended to 7 days

Section 151 – Approval from Specified Authority

- ❑ For the purposes of section 148 and 148A, the AO is required get prior permission from the specified authority.

(However as amended by FA 2022, **approval to issue show cause notice u/s 148A(b)** and notice U/s 148 **is not required** in case approval U/s 148A(d) (while passing order) is obtained - w.e.f. 01.04.2022)

- ❑ In cases where re-assessment is initiated on the basis of search, requisition and survey cases, no reassessment order shall be passed by an AO below the rank of JT Commissioner except with prior approval of the Addl CIT/ Addl DIT or Jt CIT/ DIT.

Section 147 - Comparison

- ❑ In the amended section 147, the phrase ***“reason to believe that any income has escaped assessment”*** deleted and states, ***“if any income has escaped assessment”***
- ❑ The amended section 148 provides that no notice can be issued unless there is ***“information which suggests that income has escaped assessment”*** In the erstwhile section 148, AO was only required to record the reasons for reopening before issuance of notice. The Courts have interpreted the phrase ***“reason to believe”*** to lay down several judicial principles.
- ❑ It can be safe to assume now that without any ***“information”*** the AO cannot reopen the case only on the basis of ***“reasons to believe”***.
- ❑ However, a question pertains that given the high paced tech revolution in the country and huge amounts of data being available to the Department, how and in what sense will the term ***“information”*** be understood and if and to what extent can the scope of the term can be broadened in the future.

The Term “Information”

- ❑ The **Delhi High Court**, in the case of **Divya Capital One Private Limited**, [W.P.(C) NO. 7406 of 2022 of dated 12-5-2022] has stated that the “new re-assessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 **with the intent of reducing litigation and to promote ease of doing business.** In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO*, (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings under Section 148 of the Act.
- ❑ The HC further said that **“under the amended provisions, the term “information” in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment.** This information cannot be a ground to give unbridled powers to the Revenue. **Whether it is “information to suggest” under amended law or “reason to believe” under erstwhile law the benchmark of “escapement of income chargeable to tax” still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act.** Merely because the Revenue-respondent classifies a fact already on record as “information” may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d).”

The Term “Information”

❑ **Excel Commodity And Derivative Pvt. Ltd. [328 CTR 0710 dated 29 August 2022 (Calcutta HC)]** - *The Department alleged that the assessee has done fictitious derivative transactions with M/s. Blueview Tradecom Pvt. Ltd. in relation to which the assessee submitted its detailed reply. In the order under section 148A(d), the assessing officer has indirectly accepted the explanation but alleged that prima facie the assessee has taken accommodation entry by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. Aggrieved, the assessee filed a writ petition [WPO/2298/2022 dated 30 June 2022] which was disposed by a single judge bench which remanded the matter back to the assessing officer holding that the order under section 148A(d) was devoid of reasons.*

*The assessee then approached the division bench which held that the term “information” in Explanation 1 to Section 148 **cannot be lightly resorted to so as to reopen assessment and cannot be a ground to give unbridled power to the revenue.** Where the assessee had submitted the explanation to the notice along with documents to the satisfaction of the AO who however, proceeded on a fresh ground for alleging that the transaction with another company was an accommodation entry, the order under section 148A(d) is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue since the AO has indirectly accepted the explanation.*

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

(A) Salary — Difference between salary and professional income — Factors to be considered whether particular income constituted salary — Remuneration of doctors working in hospital — Contracts between hospital and doctors should be considered — Contracts showing relationship between hospital and doctors not of master and servant — Remuneration not taxable as salary

(B) Reassessment — Notice — Law applicable — Effect of amendments w.e.f. 1st April, 2021 — Show-cause notice under section 148A and opportunity to assessee to be heard — Notice under section 148A should be based on tangible “information” — Remuneration of doctors working in hospital — Order under section 148A for issue of notice of reassessment without examining contracts between the hospital and doctors — Order under section 148A not valid

Important Amendment through Finance Act 2022

- ❑ Clause (b) of Section 149(1) substituted if 3 years have elapsed but not more than 10 years, has in possession books of accounts or other documents or evidence which reveal that the income chargeable to tax , represented in the form of
 - (i) Asset
 - (ii) Expenditure in respect of transaction or in relation to an event or occasion or (inserted through Finance Act, 22)
 - (iii) an entry or entries in the books of accounts (inserted through Finance Act, 22)

Which has escaped assessment or is likely to amount to Rs.50 lakhs or more (**words 'per year' deleted**)

Amendment through Finance Act 2022

- ❑ New sub section 1A inserted in Section 149 ;
- ❑ Notwithstanding provisions of sub section (1) where the income escapement as referred to in sub clause (b) of subsection (1) and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than 1 previous years, within period of 10years, **148 notice shall be issued every such assessment years.**
- ❑ S. 149(1A) provides that when such sum of Rs.50.00 lacs is incurred in more than one year, all such year or years could be covered in the extended limitation period.
- ❑ Law is silent as regards what is an event or occasion and how the expenditure of Rs.50.00 lacs in relation to such an event or occasion is to be calculated.

Section 151 - Sanction for issue of notice

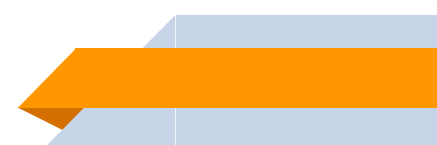
- ❑ As per section 151 of the Act, specified authority for the purpose of sanction of notice under section 148 and 148A would include Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General if more than three years have elapsed from the end of relevant assessment year.
- ❑ Now, it has been proposed to delete the phrase “ where there is no Principal Chief Commissioner or Principal Director General ” and thus in effect, it would mean that any of these authorities may sanction the issue of notice u/s 148 and 148A.

(w.e.f. 01.04.2023)



Supreme Court on

Reassessment controversy



Hon'ble Supreme Court in Union of India vs **Ashish Agarwal [2022] 138 taxmann.com 64 (SC)** dated [04-05-2022]:

- ❑ **Affirmed the view of various High Courts** that notice under section **148 under the old law could not be issued after 1-4-2021,**
- ❑ The notice issued under **section 148 under the old law** during the period between 1-4-2021 to 30-6-2021 shall be **deemed to be notice issued under section 148A(b)** under the new law
- ❑ The Assessing Officer shall provide the **reasons recorded and other material in his possession, within one month,** which were the basis for recording the reasons and issue of notice under section 148 under the old law

- ❑ After receiving the material/reasons, the **assessee shall furnish within 15 days** the objections/reply to such reasons.
- ❑ After receipt of the objections, the **Assessing Officer shall dispose of the same by passing an order under section 148A(d)** after holding whether it is a fit case to issue a notice under section 148 or not.
- ❑ Where it is held that it is **not a fit case to issue a notice under section 148**, the assessee shall be **intimated** accordingly.

- ❑ Where it is held that it is a **fit case to issue a notice under section 148**, such **notice shall** be issued along with the **order under section 148A(d)**
- ❑ **All the defences and the rights available** to the assessee under **section 149(1)** shall be available in respect of these proceedings.
- ❑ The judgment will be applicable in respect of the cases, whether pending before Apex Court or not, where a notice under section 148 under old law has been issued during the period between 1-4-2021 to 30-6-2021

Positive findings in the SC ruling

- ❑ **Underlying materials should be served on the assessee**
- ❑ **The Hon'ble Delhi High Court in case of SABH Infrastructure Ltd. v. Asstt. CIT [2018] 99 taxmann.com 409 / [2017] 398 ITR 198** had held under the old law of reassessment that all the underlying material(s) and the standard forms seeking approvals etc., basis which the reassessment has been initiated, should be served to the assessee.
- ❑ A certain section of officers of revenue had taken a view that this ruling is not applicable under the new law of reassessment.
- ❑ The Hon'ble Court has also upheld this aspect."10. (i) *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.*"

Burning issues arising in the new re assessment scheme

- ❑ Applicability of amended provisions of section 147, 148, 149, 151 year in which notice is issued or assessment year to which notice belongs.
- ❑ Fate of reopening notices issued for AY 2013-14/2014-15 in case of income escaping assessment
- ❑ Fate of reopening notices for AY 2015-16 issued before 30.06.21 and now 148 to be issued after 01.04.22.
- ❑ Fate of reopening Notices U/s 148 for AY 2016-17 & 2017-18 issued after 01.04.22

Burning issues arising in the new re assessment scheme

- Whether information defined in section 148 is **required to be tangible valid precise reliable, or mere existence** of some purported information shall authorize the AO to initiate re assessment proceedings?
- Whether the judicial **concept of change of opinion** developed under the erstwhile re assessment law is still applicable to the new re assessment scheme?
- Whether issues which are subject matter of appeal/revision can be covered in proceedings reopened under section 147?

Burning issues arising in the new re assessment scheme

- ❑ Whether reassessment proceedings can be initiated on the **basis of surmises and conjectures to conduct fishing and roving enquiries** merely on the pretext of availability of some information as defined in section 148?
- ❑ Whether **legally inadmissible documents information evidence** (such as statement recorded on oath during survey, etc. can be held to be information under section 148?
- ❑ Whether there must be a **live link nexus between the alleged and the suggestion** that income has escaped assessment at the stage of 148 A proceedings?

❑ **Allahabad HC in Rajeev Bansal Writ Tax No.1086 of 2022 on 22.02.2023 holds that the**

(i) Reassessment proceedings cannot be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act, 2020 (TOLA) up to Mar 30, 2021, and the time limit prescribed in Section 149(1)(b) (as substituted w.e.f. Apr 1, 2021) cannot be counted by giving such relaxation from Mar 30, 2020 onwards to the Revenue,

(ii) The relaxation law under TOLA would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act, 2021, in such cases

(iii) the reassessment notices issued to the petitioners in this bunch of writ petitions, on or after Apr 1, 2021 for AY 2013-14 to 2017-18 are to be dealt with, accordingly, by the Revenue.

The implications of this judgment will be that all 148 reassessment proceedings for asstt year 2013-14 and 2014-15 initiated on or after 1st April,2021 will have to be closed irrespective of income escaping asstt. And all reassessment proceedings for AY 2015-16 to 2017-18 , where income escaping asstt is less than Rs 50 lakhs or where income escaping asstt is not represented by any assets shall also have to be closed as barred by limitation.

❑ High Court Of Gujarat in Keenara Industries (P.) Ltd. [2023] 147 taxmann.com 585 (Gujarat):

- *Substitution of sections 147 to 151 by Finance Act with entire new set of provision having different conditions and procedures on which existence of subsidiary legislation TLA Act depends itself and ceased to exist, provision contained in TLA cannot have any effect after enactment of Finance Act, 2021 - Held, yes*
- *Notification Nos. 20/2021 and 38/2021 would not extend time period provided under proviso to section 149(1) - Held, yes*
- *CBDT's Instructions No. 1 of 2022 dated 11-5-2022 if permits Jurisdictional Assessing Officer to act beyond jurisdiction prescribed under statute, same is ultra vires provision of Finance Act, 2021 - Held, yes*
- *Unamended provisions of reopening itself ceased to exist on 1-4-2021, Notification Nos. 20/2021 and 38/2021 cannot extend time limit - Held, yes*
- *For assessment years 2013-14 and 2014-15 last date for issuance of notice under section 148 would be 31-3-2020 or 31-3-2021 (being six years from end of relevant assessment year) and thus impugned notices under section 148 issued beyond that period were clearly time barred - Held, yes [In favour of assessee].*

❑ Grant of approval without application of Mind

[2023] 155 taxmann.com 335 (Bombay) HIGH COURT OF BOMBAY in case of Bhavesh Maganlal Dharod-

- *PCIT granted sanction u/s 151 wherein it was stated that time limit of proceedings was covered u/s 149(1)(b) and income escaped assessment was four lakhs, since notice under section 148A(b) was issued within three years time limit, current proceedings should be covered u/s 149(1)(a), furthermore no notice could be issued for amount less than Rs. 50 lakhs u/s 149(1)(b) and approval could only be granted by Principal Chief Commissioner, thus, grant of approval was made mechanically without application of mind.*
- *It is opined that if only the Principal Commissioner had read the Form for approval carefully, she would not have come to the conclusion that there is any material to treat it as a fit case to issue notice under section 148 or pass order under section 148A(d).*

Recent Case Laws on Section 148/148A

❑ Order passed u/s 148A(d) and Notice u/s 148 are in name of a different entity

[2023] 154 taxmann.com 429 (Delhi) HIGH COURT OF DELHI in case of AVS Infrabuild (P.) Ltd.-

- *Assessing Officer passed an order under section 148A(d) on assessee and subsequently assessee received a notice under section 148 which was in name of a different entity and in meantime Assessing Officer intimated assessee that aforesaid notice had been issued to it. Assessing Officer further passed reassessment order on assessee and issued demand notice and penalty notice*
- *Insofar as the reliance placed on section 292B is concerned, a mistake, which can be corrected under section 292B should be such that if excised it does not change the tenor and scope of the documents/proceedings referred to therein.*
- *Undoubtedly there is a misstep on the part of the Assessing Officer, since he has not assumed jurisdiction as per law. **Therefore, the impugned notice issued under section 148 and the reassessment order and notices of demand and penalty and the order issued under section 148A(d) deserve to be quashed.***

❑ Inadvertently name mentioned by Investigation Wing in report due to similarity in Names

[2023] 157 taxmann.com 249 (Delhi) HIGH COURT OF DELHI in case of Tirupati Trading Corporation-

- Writ petition was directed against order passed under section 148A(d) and consequent notice issued under section 148 wherein allegation against assessee was that it had received bogus entry from an entry provider.
- It was found that no transactions had been carried out by assessee with 'R' and his name was inadvertently mentioned by Investigation Wing in report due to similarity in names.
- *Whether since a mistake had been made in triggering reassessment proceedings against assessee, impugned order passed under section 148A(d) and consequential notice were to be set aside - Held, yes.*

❑ Anurag Gupta [WP No. 10184 of 2022 dated 13 March 2023 (Bombay HC)]

- *Initiation of reassessment proceedings was unsustainable on ground of violation of procedure prescribed under section 148A(b)*
- *Assessing Officer failed to provide requisite material which ought to have been supplied along with information in terms of said section to assessee - Held, yes*

❑ Charu Chains & Jewels (P) Ltd. [WP(C) 17577/ 2022 dated 22 December 2022 (Delhi HC)]

- *Information/material which formed basis for triggering assessment/reassessment proceedings was not furnished to assessee*
- *Impugned order passed under section 148A(d) and consequential notice of even date, issued under section 148 was to be set aside - Held, yes [Matter remanded]*

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

- *Notice that was issued under Section 148A(b) of the said Act required the response of the petitioner within a period of three days.*
- *Relying upon the provisions of Section 148A of the said Act it was submitted that under the said provisions minimum time of seven days has to be granted to an assessee to file his reply to the show cause notice.*
- *Since the notice with a shorter period was issued the same was in contravention of Section 148A of the said Act.*
- *Order under section 148A(d) set aside.*

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

- *Legislature categorically stipulated mandatory timeline of minimum seven days and maximum thirty days to be given to assessee before order under section 148A(d) could be passed for reassessment proceeding*
- *Impugned order and reopening notice was to be quashed - Held, yes*
- *Defect committed by revenue was a curable defect and if law permits, revenue can issue fresh letter to assessee in continuation to notice issued under section 148A(b) by giving him at least seven days time - Held, yes [In favour of assessee]*

- ❑ **Catchy Prop-Build (P.) Ltd. [448 ITR 671 dated 17 October 2022 (Delhi HC)]– AY 2018-19**
- *Assessing Officer issued on assessee a notice under section 148A(b) seeking to initiate reassessment proceedings*
- *He further passed an order under section 148A(d) holding that company 'M' was not sound so as to make an investment of Rs. 3 crores to purchase shares of company 'B'*
- *He also issued notice under section 148 to assessee*
- *It was further noted that if foundational allegation was missing in notice issued under section 148A(b) same could not be incorporated by issuing a supplementary notice*
- *Notice issued under section 148A(b) as well as order passed under section 148A(d) and notice issued under section 148 required to be quashed - Held, yes [In favour of assessee]*

❑ **Usha Rani Girdhar [146 taxmann.com 547 dated 25 November 2022 (Delhi HC)] –
AY 2017-18**

- *The intent behind issuing notice under section 148A(b) is to inform assessee of allegation against him/her with sufficient particulars so that he/she can put forward his/her defense - Held, yes*
- *Assessing Officer incorporated incorrect information and failed to admit that he had committed a mistake while issuing notice under section 148A(b) even at time of passing order under section 148A(d), show cause notice issued under section 148A(b) as well as order passed under section 148A(d) and notice issued under section 148 were to be set aside - Held, yes*

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

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

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

- *Impugned order set aside and assessing officer open to carry out de novo exercise.*
- *If the assessing officer were to carry out the exercise afresh, the assessing officer will furnish the available information/ material and assessee to be allowed at least one week's time to file supplementary reply as well as provide personal hearing.*

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

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

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

- *The impugned order passed under Section 148A(d) of the Act of 1961 has been issued without considering the petitioner's reply inasmuch as paragraph 1 of the said order records that the petitioner failed to submit its explanation.*
- *In view of aforesaid the impugned order dated passed under Section 148A(d) of the Act of 1961 is set aside.*

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

- *Impugned orders passed by Assessing Officer were in gross violation of principles of natural justice and were to be quashed - Held, yes*
- *However, revenue was granted liberty to pass order under section 148A(d) after affording reasonable opportunity of hearing to assessee - Held, yes [In favour of assessee]*



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