



**Newsflash:**  
**Supreme Court validates the reassessment**  
**notices issued under unamended section 148 of**  
**the Income Tax Act between 01 April 2021 to 30**  
**June 2021**

## Newsflash

### Supreme Court validates the reassessment notices issued under unamended section 148 of the Income Tax Act between 01 April 2021 to 30 June 2021

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#### 1.0 BACKGROUND

- 1.1 In a notable ruling, the Supreme Court has put an end to Tax controversy surrounding Section 148A of the Income Tax Act (hereinafter referred to as 'IT Act') by upholding the validity of the notices issued u/s 148 of the IT Act.
- 1.2 With regards to the notices issued by Revenue authorities u/s 148 of the IT Act after 31<sup>st</sup> March 2021, many assesseees had approached the Court by way of filing Writ Petition on the basis that such notices issued were void in accordance with the amendments introduced by the Finance Act 2021.
- 1.3 In this case, the Allahabad High Court, with regards to **Writ Tax No. 524/2021** and other allied writ tax petitions, allowed the said writ petitions and has quashed several reassessment notices issued by the Revenue under section 148 of the IT Act, on the ground that the same are bad in law in view of the amendment by the Finance Act, 2021. Similar judgements were passed by other jurisdictional High Courts such as Delhi, Rajasthan, Calcutta, Madras and Bombay except the Chattisgarh High Court which had taken a legal position in the favour of the Revenue.
- 1.4 However, a Bench of Justices MR Shah and BV Nagarathana of the Supreme Court in an appeal preferred by the Revenue against the decision of the Allahabad High Court [**Union of India Vs Ashish Agarwal Civil Appeal No. 3005/2022**] holding a batch of 24 cases, set aside the order of the High Court and allowed partial relief to the Revenue by way of upholding the validity of the notices issued u/s 148 of the IT Act after 31<sup>st</sup> March 2021.

#### 2.0 FACTS OF THE CASE

- 2.1 The Parliament introduced reformative changes to Sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021, which was passed on 28th March, 2021. The Finance Act 2021 newly introduced Section 148A of the IT Act for the purpose of conducting inquiry, providing opportunity before issue of notice under section 148 of the IT Act and the said section was to be made applicable w.e.f. 1st April 2021.

- 2.2 In accordance with such newly introduced section 148A of the IT Act, the re-opening procedure was streamlined by way of providing that before issuing any notice under section 148, the assessing officer ('AO') 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 tax 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.**
- 2.3 Apart from the same, the Finance Act had also restricted the period for reopening of assessments to 3 years instead of the erstwhile period of 6 years.
- 2.4 However, owing to the pandemic situation in the country, the Government vide The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as 'TOL Act') extended various regulatory compliance due dates. In pursuance to the power vested under section 3 of the TOL Act, 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 IT Act:

| Date of Notification | Original limitation for issuance of notice under Section 148 of the IT 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          |

- 2.5 The Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 issued under section 3 of the TOL Act also stipulated that the provisions, as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated thereunder.
- 2.6 As a result, many revenue authorities owing to the TOL Act continued issuing notices u/s 148 of the IT Act without issuing a show cause notice u/s 148A of the IT Act. However, the extension made in accordance with the TOL Act led to conflict with the Finance Act and determination of questions of law on whether the Government/Executive can make or change law of the land by way of Explanations to Notifications without specific Authority from the Legislature to do so and whether the Government/Executive can impede the implementation of law made by the Legislature.
- 2.7 Approximately 90,000 such reassessment notices under section 148 of the unamended IT Act were issued by the Revenue after 01.04.2021, which were the subject matter of more than 9000 writ petitions before various High Courts across the country and by different judgments and orders, the High Courts set aside the respective reassessment notices issued under section 148 on similar grounds.

### **3.0 OBSERVATIONS OF THE SUPREME COURT**

- 3.1 The Supreme Court concurred with the view of the High Court that the said notices 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. Thus, it held that 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.
- 3.2 However, the Supreme Court observed that 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. SC was of the opinion that the Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It observed 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 of the IT Act instead of the amended IT provisions.
- 3.3 The Apex Court thus modified 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, as under:

(i) The impugned section 148 notices issued to the respective assesseees 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).

(ii) The assessing officer shall, within 30 days from date of the order which is 4<sup>th</sup> May 2022 (i.e within 3<sup>rd</sup> June 2022) provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the show-cause notices within 2 weeks.

(iii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is 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.

(iv) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesseees. Thereafter, the AO may after following the procedure as required under section 148A issue notice under section 148 (as substituted).

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

**3.4** It is also pertinent to note that the said order passed by the Apex Court would be made **applicable on PAN India basis** by way of application of **Article 142 of the Constitution of India**.

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

## 4.0 OUR COMMENTS

The subject judgment is historic and unique in itself, wherein Hon'ble SC has invoked its Constitutional Power under Article 142 by making the same applicable on PAN INDIA basis,

thereby overruling the orders of various High Courts and averting humungous burden of 9,000 appeals and several other possible appeals.

From the taxpayers perspective, where such notices are issued by the tax department pursuant to the SC judgement, they need to ensure that such notices are appropriately tracked and responded to.

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This newsflash provides an overview ruling of the Supreme Court which validated the reassessment notices issued under unamended section 148 of the Income Tax Act between 01 April 2021 to 30 June 2021. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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