

# Reopening/Reassessment Under Income Tax Act

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# **Income Escaping Assessment or Reassessment Proceedings**

## Background of Reassessment Assessment proceedings

- ❑ The Finance Act 2024 has again substituted sec 148, 148A, 149 & 151 w.e.f. Sep 1, 2024.
- ❑ The Finance Act 2021 had substituted sections 147 to 151 w.e.f. 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.

## Background of Reassessment Assessment proceedings

### ❑ Pre- Finance Act 2024

- ❑ Under the new provisions applicable from April 1, 2021 before Sep 1, 2024, 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.

### ❑ Post- Finance Act 2024

- ❑ Latest provisions applicable from Sep 1, 2024, the 148 notice can be issued
  - **within 3 years & 3 months** from the end of the relevant assessment year.
  - However, the amount of escaped **income exceeds Rs. 50 lakh**, the notice can be issued **within 5 years & 3 months** 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:** AO is 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)**

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

### Pre – Finance Act 2024

- ❑ Section 148 provide that re-assessment proceedings can be initiated u/s 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
  - i) any information in accordance with **risk management strategy of the Board**
  - ii) any **audit objection** that assessment has not been made in accordance with the provisions of the Act.
  - iii) any information received **under DTAA**
  - iv) any information made available to the Assessing Officer under the scheme notified u/s **135A – Scheme for faceless collection for information**
  - v) any information which requires action **in consequence of the order of a Tribunal or a Court**

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

### Pre – Finance Act 2024

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

- i) a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A.
- ii) a survey is conducted u/s 133A (other than TDS/TCS survey).
- iii) 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.



## Sec 148 : Issue of Notice where income has escaped Assessment

### Pre - Finance Act 2024

- ❑ The AO shall serve on the Assessee a notice, along with a copy of the order passed, if required under clause (d) of Sec 148A, requiring him to furnish within **a period of 3 months form the end of the month in which such notice is issued, or such further period as may be allowed by the AO on the basis of an application made in this regard by the assessee**, a return of Income 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 u/s 139.
- ❑ Provided that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.

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

### Pre – Finance Act 2024

- ❑ 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**

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

### Post – Finance Act 2024

#### New Reassessment Scheme:

- ❑ Section 148 has been completely substituted by Finance Act 2024 w.e.f. 1<sup>st</sup> Sep 2024.
- ❑ Re-assessment proceedings can be initiated u/s 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 S. 148(3)-
  - i) any information in accordance with **risk management strategy of the Board**
  - ii) any **audit objection** that assessment has not been made as per the provisions of the Act.
  - iii) any information received **under DTAA**
  - iv) any information made available to the Assessing Officer under the scheme notified u/s **135A – Scheme for faceless collection for information**
  - v) any information which requires action **in consequence of the order of a Tribunal or a Court.**
  - vi) any information emanating from survey conducted u/ s 133A, on or after Sep 1, 2024**

## Sec 148 : Issue of Notice where income has escaped Assessment

### Post – Finance Act 2024

- ❑ The AO shall serve on the Assessee a notice, along with a copy of the order passed *under sec 148A(3)*, requiring him to furnish within *a period of 3 months form the end of the month in which such notice is issued*, a return of Income 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 u/s 139.
- ❑ *Provided that where the AO has received information under the scheme notified u/s 135A, no notice under this section shall be issued without prior approval of the specified authority.*
- ❑ As per proviso to 148(2) that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.

## S. 148A - Prior to issuance of 148 Notice: Procedure needs to follow by AO

### Post – Finance Act 2024

- ❑ 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(3).
- ❑ The AO, under section 148A, is obliged to
  1. **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.
  2. Pass an order **on the basis of material available** on record and the reply furnished by the assessee, **whether or not it is a fit case for issuance of notice under section 148” with prior approval of specified authority.**
- ❑ *The provisions of this sec shall not apply to income chargeable to tax escaping assessment for any AY in case of an assessee where the AO has received information under the scheme notified u/s 135A.*

Procedure provided in section 148A is not applicable in cases of search, survey or requisition initiated or made on or after 01.04.2021 (*omitted by Finance Act 2024*)

## 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(3) 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 (omitted by Finance Act 2024).**

## Section 149 – Time Limit

### Post-Finance Act 2024

- ❑ Sec 149 has been substituted by Finance Act 2024 w.e.f. 1<sup>st</sup> Sep 2024.
- ❑ **S. 149(1) – Time limit to issue Notice u/s 148-**
  - a. Within **3 years & 3 months** from the end of the relevant AY , if escaped income is < Rs. 50 lakh.
  - b. Within **5 years & 3 months** 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.
- ❑ **S. 149(2) - Time limit to issue Notice u/s 148A-**
  - a. **Within 3 years from the end of the relevant AY, if escaped income is < Rs. 50 lakh.**
  - b. **Within 5 years from the end of the relevant AY, if escaped income is => Rs. 50 lakh**

## Section 151 – Approval from Specified Authority

### Pre- Finance Act 2024

- ❑ 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 151 – Approval from Specified Authority

### **Post - Finance Act 2024**

- For the purposes of section 148 and 148A, the AO is required get prior permission from the specified authority.
- Specified Authority shall be the Additional Commissioner or the Additional Director or the Joint Commissioner or the Joint Director, as the case may be.

## 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.

**Pre- Finance Act 2024**

❑ **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)**

**(omitted by Finance Act 2024)**

## S. 149(1A)

### ❑ Section 149(1A):

- ❑ 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.

**(omitted by Finance Act 2024)**

## Comparison – Pre vs Post Finance Act'24

| Sr No. | Particulars                                   | Before 01/09/2024  | On or after 01/09/24  |
|--------|---|--|---|
| 1      | Procedure to be followed u/s 148A             | <ol style="list-style-type: none"> <li>Conduct Enquiry,</li> <li>Issue SCN,</li> <li>Consider reply of assessee,</li> <li>Pass order u/s 148A(d)</li> </ol>  | <ol style="list-style-type: none"> <li>Issue SCN,</li> <li>Reply filed by assessee,</li> <li>Pass order u/s 148A(3)</li> </ol>  |
| 2      | Time limit for passing Order u/s 148A         | Within a month from end of the month in which reply is received from assessee or where no reply is furnished by the assessee then within a month from end of the month in which SCN is issued.   | No time limit.<br>However, there is time limit to issued Notice u/s 148 and Notice u/s 148 is to be issued along with Order u/s 148(3).   |
| 3      | Sec 148A -Not applicable                      | <ol style="list-style-type: none"> <li>Search u/s 132 or Requisition u/s 132A,</li> <li>b. Money, Bullion, Jewelry or other Valuable Article seized in search in case of any other person belongs to the assessee,</li> <li>Books of accounts seized in case of any other person belongs to the assessee,</li> <li>d. AO received information u/s 135A.</li> </ol> | AO received information u/s 135A.   |
| 4      | Time Limit to issue Notice u/s 148A (Sec 149) | No time limit to issue Notice u/s 148A.  | <ol style="list-style-type: none"> <li>within 3 years from the End of relevant AY, if escaped Income is below 50 lakhs,</li> <li>b. within 5 years, if escaped income is 50 lakh or above.</li> </ol> |

## Comparison – Pre vs Post Finance Act'24

| Sr No. | Particulars   | Before 01/09/2024  | On or after 01/09/24   |
|--------|---|--|--|
| 5      | Sec 148-<br>Information                                       | <ul style="list-style-type: none"> <li>i) Information under Risk mgmt strategy,</li> <li>ii) Audit objections,</li> <li>iii) DTAA information,</li> <li>iv) Information u/s 135A,</li> <li>v) Tribunal or court order</li> </ul> | <ul style="list-style-type: none"> <li>i) Information under Risk mgmt strategy,</li> <li>ii) Audit objections,</li> <li>iii) DTAA information,</li> <li>iv) Information u/s 135A,</li> <li>v) Tribunal or court order,</li> <li>vi) Survey u/s 133A</li> </ul> |
| 6      | Prior approval of specified authority to issue Notice u/s 148 | In all cases except where order u/s 148A(d) was passed with prior approval of specified authority  | Information received u/s 135A by AO prior approval of specified authority will be required by issued Notice u/s 148.   |
| 7      | Time Limit to issue Notice u/s 148 (Sec 149)                  | <ul style="list-style-type: none"> <li>a. within 3 years from the End of relevant AY, if escaped Income is below 50 lakhs,</li> <li>b. within 10 years, if escaped income is 50 lakh or above.</li> </ul>                        | <ul style="list-style-type: none"> <li>a. within 3 years &amp; 3 months from the End of relevant AY, if escaped Income is below 50 lakhs,</li> <li>b. within 5 years &amp; 3 months, if escaped income is 50 lakh or above.</li> </ul>                         |
| 8      | Sec 151- Specified authority                                  | <ul style="list-style-type: none"> <li>i) if 3 years or less than 3 years have escaped, PCIT/PDIT/CIT/DIT,</li> <li>ii) more than 3 years, PCCIT/PDGIT/CCIT/DGIT</li> </ul>  | Add. CIT/Add. DIT/Jt. CIT/Jt. DIT  |



# Important Judicial Pronouncement

w.r.t

Old s. 147



## Important Judicial Pronouncement - Change of opinion

- ❑ **Review of an assessment** in the guise of Re-assessment proceedings was barred, being an in built 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  
**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)**

**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)**)

### 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.

## Imp Judicial Pronouncement – Rejection of objection without assigning reasons

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

- ❑ The AO initiated reassessment proceedings. The assessee raised various objections to proposed reassessment proceedings. The AO rejected the objections filed by the assessee.
- ❑ It was held that *where assessee raised objections to reopening of assessment, in view of fact that AO rejected those objections without elucidating and dealing with contentions and issues raised in objection letter, impugned order was to be set aside and, matter was to be remanded back for disposal afresh.*

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

- ❑ It was held that *since reassessment order was passed without disposing of assessee's objections to reopening of assessment and without passing a speaking order, same was unjustified.*

## 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.*

### **Aquatic Remedies (P.) Ltd [2018] 406 ITR 545 (Bom HC) & also confirmed by the Apex Court**

- ❑ The AO issued a notice u/s 148 seeking to re-open the assessment. The assessee had challenged the issuance of the re-opening notice on the ground that sanction for issuing of the notice had to be obtained from the Add. Commissioner u/s 151(2) while the sanction in this case was obtained from the Commissioner in breach of section 151.
- ❑ It was held that **“It is undisputed position that in terms of S. 151(2), the sanctioning/permission to issue notice u/s 148 has to be issued by the Add. Commissioner. The AO has not sought the approval of the Designated Officer but of the Commissioner”.**
- ❑ **Since in terms of section 151(2), sanction to issue notice u/s 148 has to be issued by Add. Commissioner, reopening of assessment with approval of Commissioner was unsustainable.**





# **Supreme Court on Reassessment controversy**



## Supreme Court in Ashish Agarwal

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 [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

- ❑ 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?

## The Term “Information”- Sec 148A

- ❑ **Divya Capital One Private Limited**, [W.P.(C) NO. 7406 of 2022 of dated 12-5-2022] **Delhi HC**, has stated that the “new re-assessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the FA, 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 SC in GKN Driveshafts (India) Ltd. v. ITO, (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings u/s 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” - Sec 148A

- ❑ **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 :

*Pursuant to a survey conducted in a hospital various documents like 'employee confidentiality agreement', 'revised guidelines for practice of medicine at hospital and joining reports were seized which pointed towards existence of an employer-employee relationship between assessee-doctor and hospital.*

*The AO on the basis of the documents concluded that -*

- (i) employer-employee relationship was established*
- (ii) assessee were to be construed as employees and not full time/visiting consultants and*
- (iii) the income returned by them for AY 2018-19 had to be assessed under the head 'salary' and not 'professional income'*

**It was held that “*there was no hesitation in holding that the 'information' in possession of the revenue does not, in light of the settled legal position discussed above,, lead to the conclusion that there has been escapement of tax*”.**

❑ **Santosh Khunteta [2024] 163 taxmann.com 416 (Delhi - Trib.) :**

It was held that

*-Assessing Officer issued on assessee a reopening notice under section 148 on ground that he had received information from Investigation Wing through letter by email dated 30-3-2017 that certain income had escaped assessment*

*-Since as on date of issuance of notice Assessing Officer was not having any information, material or evidence in his possession so as to form a reason to believe that any income of assessee for subject assessment year had escaped assessment as information had been received on 30-3-2017, i.e., after issuance of notice under section 148 on 29-3-2017.*

*- Reassessment proceedings were erroneous - Held, yes [Para 7] [In favour of assessee].”*

## Recent Case Laws on Section 148/148A

### ❑ Spirit Global Construction (P.) Ltd. [2024] 164 taxmann.com 632 (SC)-

- *Assessment was sought to be reopened in case of assessee on ground that Assessing Officer had received information from investigation wing that assessee had raised a loan from KG Group, through TTPL and POCPL, which were dubious entities.*
- *However, there was no reference to how Assessing Officer had, at that juncture, formed a view that they were dubious entities, **Tribunal rightly held that Assessing Officer had proceeded in a mechanical manner, without independent application of mind.***

### ❑ Hexaware Technologies Ltd. [2024] 464 ITR 430 (Bombay)

- ***“Where AO issued a reopening notice dated 25-5-2022 on several grounds for assessment years 2013-14 to 2015-16, since time limit to issue notice under section 148 had already expired on 1-4-2021 for assessment years 2013-2014 and 2014-2015 and for assessment year 2015-2016, erstwhile time limit of six years expired on 31-3-2022, impugned notice under issued section 148 was barred by limitation”***
- *There is no question of concurrent jurisdiction of JAO and FAO for issuance of reopening notice under section 148 or even for passing assessment or reassessment order and it is only FAO which could issue notice under section 148 and not JAO.*

## Recent Case Laws on Section 148/148A

### ❑ Keenara Industries (P.) Ltd. [2023] 147 taxmann.com 585 (Gujarat HC):

- *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].*

## Recent Case Laws on Section 148/148A

### ❑ Bhavesh Maganlal Dharod [2023] 155 taxmann.com 335 (Bombay HC) -

- *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

### ❑ AVS Infrabuild (P.) Ltd [2023] 154 taxmann.com 429 (Delhi HC)-

- *Assessing Officer passed an order under section 148A(d) on assessee "X" and subsequently assessee "X" received a notice under section 148 which was in name of a different entity "Y" 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.***



## Recent Case Laws on Section 148/148A

### ❑ Tirupati Trading Corporation [2023] 157 taxmann.com 249 (Delhi HC):

- *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.*

## Recent Case Laws on Section 148/148A

### ❑ **SUPREME COURT OF INDIA in case of M/s. Atlanta Capital (P.) Ltd.-**

- *In appellate proceedings, Tribunal noted that notice under section 148 was not issued at correct address because address given in notice was not last known address of assessee.*
- *Tribunal further opined that mere fact that assessee had participated in reassessment proceedings despite not having been issued or served with notice under section 148 in accordance with law would not constitute a waiver of said jurisdictional requirement. Thus, Tribunal set aside reassessment order .*
- *High Court upheld Tribunal's order.*
- **On SLP, revenue stated that this petition be dismissed on ground of low tax effect as being covered by Circular No. 17 of 2019 dated 8-8-2019 issued by Department of Revenue, Ministry of Finance.**
- **Whether in view of statement so made, this Special Leave Petition was to be dismissed - Held, yes [Para 2] [In favour of assessee]**

## Recent Case Laws on Section 148/148A

### ❑ Banas Finance Ltd [2024] 160 taxmann.com 559 (Bombay)-

- *Where pursuant to a search and seizure operation in case of a group company, assessee received a notice issued under section 148A(b), in which it was alleged that as per information uploaded on INSITE Portal, assessee had carried out transactions in penny script and booked fictitious losses.*
- *However, assessee gave evidence that information was incorrect and in fact it had made a profit,*
- *Since Assessing Officer had not reflected on information submitted by assessee and passed orders, impugned order under section 148A(d) and notice under section 148 were to be quashed and set aside.*

## Recent Case Laws on Section 148/148A

### ❑ Swapna Manuel [2024] 160 taxmann.com 166 (Madras) High Court of Madras-

- *Upon receipt of notice under section 148, assessee has two options, first is to file a revised return of income and request for reasons for re-opening assessment and second is to inform Assessing Officer that original return of income should be treated as return in response to notice under section 148.*
- *Where assessee had not resorted to either option, assessee was not entitled to challenge reassessment proceedings on ground that reasons for re-assessment were not provided.*

## Recent Case Laws on Section 148/148A

### ❑ GRS Hotel (P.) Ltd. [2024] 160 taxmann.com 125 (Allahabad) HIGH COURT OF ALLAHABAD

- *Assessee, a private limited company, was engaged in business of developing and managing hotels, motels, resorts, restaurants, cafes and other similar activities.*
- *AO, noticing transaction made in respect of purchase of property, had issued a notice u/s 148A(b) was issued to assessee.*
- *In absence of reply from side of petitioner, AO passed an order u/s 148A(d) and, consequently, a notice u/s 148 was also issued.*
- ***It was observed that impugned notice was not issued on registered email address of assessee-company.***
- ***Therefore,, impugned notice u/s 148A(b) and consequential order passed u/s 148A (d) sent to secondary email address were liable to be quashed and set-aside - [Paras 20, 22 and 26] [In favour of assessee]***

## Recent Case Laws on Section 148/148A

### ❑ Ahmedabad District Co-op Milk Producers Union Ltd. (P.) Ltd. [2024] taxmann.com 577 (Bombay HC)-

- *AO issued SCN u/s 148A on 17-3-2021 along with details of information on basis of which Assessing Officer believed that income chargeable to tax had escaped assessment. Notice mandated to file reply on or before 24-3-2022. Time was sought on behalf of assessee till 8- 4-2022 through online portal.*
- *However, Assessing Officer passed impugned order under section 148A(d) on 30-3-2022 without granting time to assessee to file reply to notice under section 148A(b).*
- *Assessing Officer thereafter issued notice under section 148 on 31-3-2022 seeking reopening of assessment for assessment year 2018-19.*
- *Whether impugned notice issued u/s 148 and order passed u/s 148A(d) were to be quashed and set aside and matter was to be remanded back to Assessing Officer so as to grant an opportunity of hearing to assessee to file a reply as provided under section 148A(b) - Held, yes [Paras 5 and 6] [In favour of assessee].*

## Latest Decision – Information were not provided as held by Supreme Court

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

- An information was received from Director of Income-tax that a search/survey action under section 132 was conducted upon 'A' group during which it was found that a cash payment of certain amount was paid by the assessee on account of on-money for purchase of a warehouse which remained unexplained. On basis of same, a reopening notice was issued upon assessee.
- No material was supplied to assessee, notwithstanding fact that there was material available with Assessing Officer as could be seen from order passed by Assessing Officer under section 148A(d).
- *Therefore, 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. Accordingly, the petition is allowed and the impugned order passed under section 148A(d) and impugned notice under section 148 are hereby quashed.*

## Latest Decision – Information were not provided as held by Supreme Court

### ❑ Charu Chains & Jewels (P) Ltd. [2023] 456 ITR 352 (Delhi)

- Assessing Officer noticed that there were certain unsecured loan transactions entered into which were in nature of accommodation entries. He reopened assessment and order under section 148A was passed.
- Assessee sought relevant information/material for triggering reassessment from Assessing Officer.
- *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]*



## Latest Decision – Less than 7 days time for 148(b) notice

### ❑ 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.*

## Latest Decision – Less than 7 days time for 148(b) notice

### ❑ 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]*

## Latest Decision – Different reasons under 148A(b) notice and 148A(d) order

- ❑ **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]*

## Latest Decision – Different reasons under 148A(b) notice and 148A(d) order

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

- Assessing Officer on perusal of information received from Investigation Wing noted that assessee sold property in relevant assessment year, however, assessee did not declare any capital gain on said sale in return filed by assessee. He, thus, issued notice under section 148A(b) and later passed order under section 148A(d) holding that income had escaped assessment.
- It was noted description of property was different in notice issued under section 148A(b) and in order passed under section 148A(d) furthermore sale consideration and circle rate in both documents were different.
- *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*

- ❑ **Alankar Apartment (P) Ltd. [WP(C) 2115/ 2023 dated 17 February 2023 (Delhi HC)] – AY 2017-18**
- Assessing Officer alleged that petitioner's work contract tax had increased substantially as compared to previous year, which had not been liquidated, and concluded that differential amount had escaped assessment which would be chargeable to tax.
  - After furnishing relevant documents, assessee petitioner took a stand that such statutory liability had been paid in subsequent assessment year and further contended that he had not claimed deduction of such liability which remained unpaid during assessment year in question and, hence, such dues would not constitute income chargeable to tax which had escaped assessment.
  - *Whether since petitioner had not claimed deduction concerning unpaid statutory liability in assessment year in question, impugned order of Assessing Officer not considering material facts and treating unpaid statutory liability as income escaped assessment had to be set aside and, consequently, matter to be decided de novo after according personal hearing to petitioner - Held, yes [Paras 12 to 14] [Matter remanded]*

## Latest Decision – where 148A(d) passed without considering assessee's reply

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

- Assessee was issued notice under section 148A(b).
- Pursuant to which assessee submitted a reply on income tax portal along with rectification application.
- However, Assessing Officer passed order under section 148A(d) without considering reply of assessee and issued reopening notice. Rectification application was also rejected on similar ground
- Revenue contended that reply of assessee was not reflected in notings maintained in portal
- *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]*

### ❑ Mangalam Publications [2024] 158 taxmann.com 564 (SC)

- Assessee-company was engaged in business of publishing newspapers, weeklies and other periodicals in several languages. It filed its return of income, however, did not file any balance sheet along with return of income on ground that books of account were seized by Income-tax Department in course of search and seizure operations and that those books of account were not yet returned.
- AO initiated reassessment proceeding on basis that increase in capital during relevant year remained unexplained. He made additions to income of assessee in reassessment order.
- *Whether since returns filed by assessee were accompanied by tentative profit and loss account and other details of income like cash flow statements, statements showing source and application of funds reflecting increase in capital and current accounts of partners of assessee which were duly enquired into by Assessing Officer and Assessing Officer had accepted returns submitted by assessee, **it could not be said that assessee had not made full and true disclosure of all material facts necessary for its assessment - Held, yes***



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