

Supreme Court on Reassessment Controversy – Union of India vs. Ashish Agarwal

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Notices issued under section 148 to assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021- Supreme Court.

Background:

During the outbreak of COVID-19 pandemic, in order to provide sufficient time to comply with various provisions under the Income Tax Act, 1961 ('ITA') and other laws, Central Government ('CG') has enacted Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA, 2020')

Section 3 of TOLA, 2020 states that where the time for completion of proceedings, issue of notice, letter, intimation etc. falls between 20.03.2020 to 31.12.2020, such date is extended to 31.03.2021.

Further, section 3 of TOLA, 2020 has delegate power to CG to specify any other date for extending the time limit specified above.

Subsequently, though the Finance Act, 2021 ('FA 2021'), the concept of reassessment proceedings under section 147 has been reformed by substituting the new provisions for the existing provisions. Substituted section 149 of ITA states that assessment cannot be reopened after the expiry of 3 years from the end of relevant AY and these provisions are made effective from 01.04.2021.

On the other hand, by utilising the powers conferred under section 3 of TOLA, CG has issued a Notification¹ which states that where the time limit for issue of notice under section 149 expires on 31.03.2021, such date is

extended to 30.06.2021 (the date further extended to 30.06.2021). Further, the said notification contains an Explanation which states that

"For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply."

The said Notification tends to extend the time limit for issue notice under erstwhile section 148 for reopening the assessment post 31.03.2021.

Issue Involved:

The issue involved is 'as the old provisions for reassessment has been substituted by Finance Act, 2021 and such old provisions are not applicable on or after 01.04.2021, whether the central government with the delegated power is empowered to issue such Notification extending the time limit for issue of notice even on or after 01.04.2021 under the old provisions?'

In this regard, many assesseees have filed instant writ petitions before various High Courts.

¹No. 20/2021 dated March 31, 2021

The Hon'ble Chhattisgarh High Court² has upheld the issue of notice under section 148 whereas Allahabad High Court³, Rajasthan High Court⁴ and Delhi High Court⁵ have quashed the reassessment notice under section 148. For detailed analysis of HC judgement, please read our article⁶.

Against the High Court Judgment, revenue has filed an SLP before the Hon'ble Supreme Court⁷.

Supreme Court:

Considering the facts of the case and in order to provide justice to the notices issued under *bona fide* belief, Supreme Court (for brevity 'SC') has allowed the SLP with the following remarks:

- Section 147 to section 151 has been substituted by the FA 2021 in order to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.
- New provisions substituted by FA 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee, ***respective High Courts have rightly held that the benefit of new provisions shall be made available even to past assessment years if notice is issued on or after 01.04.2021. We are in complete agreement with the view taken by the various High Courts in holding so.***
- However, in respect of notice issued after 01.04.2021, revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated.

- Revenue has issued notice under old provisions under *bona fide* mistake. Same ought not to have been issued under old provisions and same ought to have been issued under amended provisions.
- 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.
- Hence, some leeway must be shown in that regard which the High Courts could have done so.

Accordingly, the Hon'ble SC has passed the order with the following directions:

- ✚ The respective impugned section 148 notices issued to respective assessees shall be deemed to have been issued under section 148A of the ITA as amended by FA 2021 and AO shall provide information and material to the assessee within 30 days so that assessee can reply within 2 weeks.
- ✚ The requirement of conducting enquiry as specified under section 148A(a) be dispensed with as one time measure vis-à-vis those notices which have been issued under old provisions from 01.04.2021 to till date.
- ✚ Thereafter, AO shall pass order under section 148A(d) appropriately and issue notice under section 148 as amended.
- ✚ All defenses which may be available to the assessee under section 149 or under

² Palak Khatuja [TS-816-HC-2021(CHAT)]

³ Ashok Kumar Agarwal [TS-926-HC-2021(ALL)]

⁴ Bpip Infra Private Limited [TS-1081-HC-2021(RAJ)]

⁵ Mon Mohan Kohli [TS-1110-HC-2021(DEL)] and others.

⁶ [SBS-I-19th-Edition.pdf \(sbsandco.com\)](#)

⁷ UOI v Ashish Agarwal [2022] 138 taxmann.com 64 (SC)

FA 2021, and whatever rights available to the AO under FA 2021 are kept open and continue to be available.

Our Comments:

- Hon'ble SC has given its judgement in order to provide justice to over 90,000 notices issued by the revenue without any technical discussion on the matter.
 - SC has passed the order under Article 142 of the constitution to make the order
 - As AO is required to conduct enquiry under section 148A(a) before issue of notice which may not be possible in present cases, SC has provided one time relief to section 148A(a).
 - Considering the reply submitted by the assessee, AO has to pass order section 148A(d) within the time specified therein.
 - Then, AO has to issue notice under section 148 again within the time limit specified under section 149.
- applicable all over India to reverse the orders passed by various HCs and to pending judgments to reduce the repetitive appeals in over 9,000 cases.
- SC has not held notice can be issued under old provisions after 01.04.2021, but such notices have been deemed to have been issued under amended provisions.
 - As SC held that order is applicable all over India, the question that arises is, whether the above order can be applied against pending cases before first or second appellate authorities for same issue.
 - Considering the legal position, assessee may take plea before the appellate authorities for setting aside the order for de novo considering with the appropriate procedure as held by SC.