

**Supreme Court sets aside High Court orders, reassessment notices issued after 31<sup>st</sup> March 2021 held to be valid – A New Era in Tax Litigation?**

**SBC Tax Alert**

*Brief alert on the judgement of Hon'ble Supreme Court that held that all reassessment notices issued under Section 148 after March 2021 shall be deemed to have been issued under Section 148A, which was introduced in the FA 2021.*

May 2022

# Supreme Court (SC) judgement on reassessment controversy

- Background
- Supreme Court ruling and SBC's take on the ruling
- Annexure – All about S.148 & S.148A
- How can SBC help ?



# Background

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## *Extending of time limit for issuance of notice and the controversy*

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- Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (**TOLA**) enacted and notified in September 2020
- Time for completion of proceedings, issue of notice, letter, intimation etc. under the Income-tax Act, 1961 (**ITA**) falling between 20-03-2020 to 31-12-2020, extended to 31-03-2021

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- Notification No. 20/2021 dated 31-03-2021 and Notification No. 38 dated 27-04-2021 issued.
- Due date for issuance of notices under Section 148 further extended to 30-06-2021

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- Entire code for reassessment proceedings (from Section 147 to Section 151) revamped vide Finance Act 2021 (**FA 2021**)
- These provisions are made effective from 01-04-2021

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- Section 149 substituted – Income escaping assessment to be opened only till expiry of 3 years from the end of relevant AY (10 years in specific cases)
- A show cause notice by department, followed by a reply from the taxpayer and then issuance of notice under Section 148 of the ITA, where deemed necessary was intended

# Background

## *Extending of time limit for issuance of notice and the controversy*

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- Tax department issues around 90,000 notices to various taxpayers (including reopening of assessments that went back more than 3 years) without making any enquiry as per Section 148A and till 30-06-2021

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- Taxpayers filed writ petitions before High Courts on the following main grounds
  - Revamped regime for income escaping assessment not followed
  - Central Government cannot override the provisions of FA 2021 through TOLA and notifications

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- Tax Department contends that the notifications were issued under special powers granted under a law enacted in 2020 to align with needs in wake of Covid-19 pandemic

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- Hon'ble Chhattisgarh High Court had upheld the issue of notice under section 148 whereas Allahabad High Court, Rajasthan High Court and Delhi High Court have quashed the reassessment notice under section 148
- Against the High Court Judgments, revenue filed a SLP before the Hon'ble SC

# **SC Ruling and SBC's take on the ruling**

# SC Ruling

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

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## Observations of SC

- SC, in its first for a tax matter, invoked Article 142 of the Constitution
- New provisions substituted by FA 2021 are remedial and benevolent in nature with a specific aim object to protect the rights and interest of the assessee.
- HCs rightly held that the benefit of new provisions shall be made available even to past AYs if notice is issued on or after 01-04-2021.
- However, revenue cannot be made remediless, and the object and purpose of reassessment proceedings cannot be frustrated.

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## Gist of SC Ruling

- Revenue has issued notice under old provisions under bonafide mistake and should be given leeway.
- Impugned section 148 notices issued shall be deemed to have been issued under section 148A as amended by FA 2021
- Requirement of conducting enquiry 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. AO shall pass order under section 148A(d) appropriately and issue notice under section 148 as amended.

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## Way forward for AO and Taxpayers

- AO to provide information/material relied upon by the Revenue to the taxpayers within 30 days from the date of SC ruling
- Taxpayer to respond to AO within two weeks
- AO to pass order whether the case is fit for income escaping assessment as per 148A(d)
- After following the above procedure, the AO may issue notice under Section 148 under new regime.

# SBC's take on SC ruling

## Back to square one

- For Taxpayers who have battled through till High Courts in getting relief from the reassessment notices

## Invoking Article 142 by SC for first time in a tax matter

- This is the First time; the SC had invoked Article 142 of the Constitution with respect to a Tax matter which gives it extraordinary powers for doing 'complete justice'

## Strict adherence to SC ruling required

- Taxpayers must ensure that way forward for AO and Assessee, as iterated by SC, in the ruling is followed. Where there is any discrepancy, the validity of proceedings may be challenged by the taxpayers.

## Landmark ruling

- SC has taken a liberal view which is a departure from rulings on procedural matters. Taxpayers & advisors would need to look beyond the book in interpreting the tax laws going forward

## Other key areas on which the notices may still be challenged on facts applicable

- Impact of grandfathering provisions for issuance of notice u/s 149 (Time limit as per old regime to be applicable – AY 2013-14 to AY 2017-18 to be impacted)
- AO to satisfy that he has 'information' which suggests there is income escaping assessment.
- Other approvals/procedural lapses can still be challenged for validity



# **Annexure**

## **All about Sections 148 & 148A**

# Section 148 and Section 148A (1/3)

Particulars	Before 01.04.2021		After 01.04.2021	
	S.148		S.148A	S.148
<b>Instances where notice is served</b>	<ul style="list-style-type: none"> <li>Assessing Officer (“AO”) has “Reason to Believe” that any income chargeable to tax has escaped Assessment</li> </ul>		<ul style="list-style-type: none"> <li>AO can initiate the reopening proceedings only if there is information which suggests that the income chargeable to tax has escaped assessment</li> </ul>	
<b>Procedure for issue of notice</b>	<ul style="list-style-type: none"> <li>Record reasons to believe for proceeding the assessment.</li> <li>Obtain prior approval from the competent authority and issue notice.</li> </ul>		<ul style="list-style-type: none"> <li>Before issuing any notice u/s 148, AO, with the prior approval of specified authority, to conduct any enquiry, if required and provide an opportunity of being heard to the assessee by serving notice u/s 148A.</li> </ul>	<ul style="list-style-type: none"> <li>Before making assessment or reassessment or re-computation under section 147, serve a notice u/s 148 subject to provisions of section 148A, requiring him to furnish return of income within specified period.</li> <li>Provide details of approval</li> </ul>
<b>Assessee Response</b>	<ul style="list-style-type: none"> <li>File ROI and request for copy of reasons and approval</li> </ul>		<ul style="list-style-type: none"> <li>Respond to reasons in notice</li> </ul>	<ul style="list-style-type: none"> <li>File ROI in response to notice</li> </ul>

# Section 148 and Section 148A (2/3)

Particulars	Before 01.04.2021		After 01.04.2021		
	S.148		S.148A	S.148	
Time limit for issuance of notice u/s 149	Time limit from end of AY	Situations	<ul style="list-style-type: none"> <li>The notice u/s 148A must be served by the AO before issuing notice u/s 148</li> </ul>	Time limit from end of AY	Situations
	Within 4 years	Income escaping assessment < INR 1lakh		Within 3 years	For any amount of income escaping assessment
	4 years to 6 years	Escaped income is ₹ 1 Lakh or more		Within 10 years	AO has in his possession of books of accounts and documents or evidence which reveal that the income escaped assessment amounts to ₹ 50 Lakhs or more for that year
	4 years up to 16 years	Income escaping assessment relates to any asset located outside India			

# Section 148 and Section 148A (3/3)

Particulars	Before 01.04.2021	After 01.04.2021	
	S.148	S.148A	S.148
<b>Time limit for response to notice</b>	<ul style="list-style-type: none"> <li>As specified by the AO in the notice (normally 30 days)</li> </ul>	<ul style="list-style-type: none"> <li>Not less than 7 days but not more than 30 days or as may be extended by AO based on application made to assessing officer</li> </ul>	<ul style="list-style-type: none"> <li>As specified by AO in notice</li> </ul>
<b>Time limit for Completion of Reassessment, Re-computation, or Assessment</b>	<ul style="list-style-type: none"> <li>Within 12 months from the end of FY in which Notice u/s 148 is served</li> </ul>	NA	<ul style="list-style-type: none"> <li>Within 12 months from the end of FY in which Notice u/s 148 is served</li> </ul>
<b>Competent Authority &amp; time limit for accord approval</b>	<ul style="list-style-type: none"> <li>Before expiry of 4 years - AO can himself give the approval</li> <li>After expiry of 4 years – PCC/CC/PC</li> </ul>	<ul style="list-style-type: none"> <li>Before expiry of 3 years – PC/Principal Director or commissioner or director.</li> <li>After expiry of 3 years – PCC/ PDG/CC/DG</li> </ul>	

# How can SBC help?

# How can SBC help?

- At SBC, we have a dedicated team to look into the tax controversies providing end to end litigation assistance. Considering the SC has specifically directed for way forward, it would be important for all such taxpayers (who have been issued notices under Section 148 on or after 01-04-2021) to seek a strict compliance and actions according to the SC ruling. We, at SBC can assist you with the following:
  - Peruse the notices and facts applicable to the Taxpayer
  - Analyse the impact of SC ruling as well as the requirements of the fact specific controversy involved
  - Where similar issue is pending before first or second appellate authorities, the taxpayer may take plea before the appellate authorities for setting aside the order for de novo considering with the appropriate procedure as held by SC.
  - All defenses which may be available to the taxpayer under section 149 of the ITA or under FA 2021 and whatever rights available to the AO under FA 2021 are kept open and would continue to be available. Hence a thorough analysis on other technical and factual ground may be needed
  - We shall be happy to assist in advising the taxpayer on approach to be adopted for existing litigations as well as representing before the tax and appellate authorities, as may be required.

# About our Tax Litigation Practice

Our unique and specialised Tax Litigation Advisory Group specializes on providing assistance on tax matters in proceedings before DRP's, CIT(A)'s, Tribunals, High Courts, the Supreme Court and AAR's. With pan-India coverage, our advisors and external litigators are widely recognized and have appeared in a range of matters before the highest judicial forums in the country.

Our Tax Litigation Advisory Group houses experienced professionals and senior advisors who regularly work with eminent external litigators.

## Traditional Avenues



Supreme Court  
10-13 Years



High Court  
7-10 Years



Appellate Tribunal  
5-7 Years



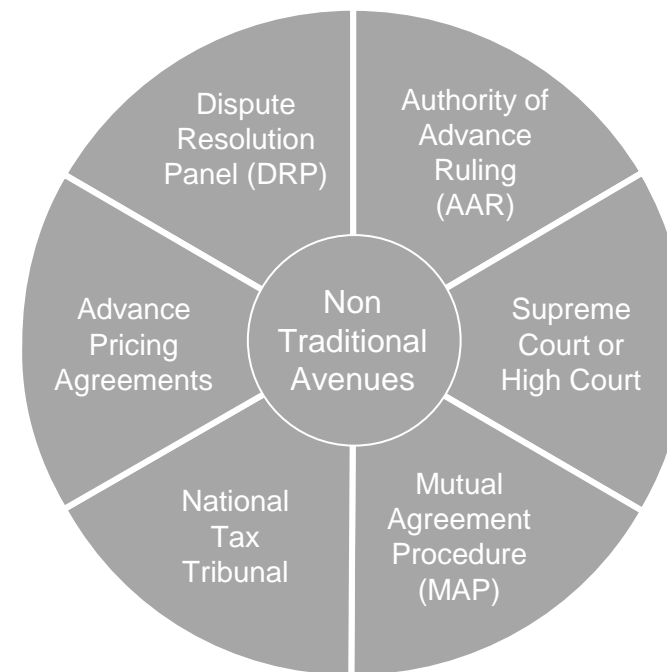
Commissioner (Appeals)  
3-5 Years



Assessing Officer  
1-2 Years

India Tax dispute resolution process

## Non Traditional Avenues



India Tax dispute resolution process

# Thank You



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