



# **Filing of Writ Petition against order u/s. 148A**

CA. Ashish Goyal  
Advocate

# Source of New Reassessment

- TOLA
- Not. No. 20 & 38 of 2021
- Section 147-151 – FA 2021
- Section 147-151 – FA 2022
- Instruction dt. 11.05.22, 01.08.22, 22.08.22
- Case laws

# **Now 3 set of proceedings**

- 01.07.2021 to 31.03.2022
- 01.04.2022 onwards
- 01.04.2021 to 30.06.2021 - Notice u/s. 148 (deemed 148A)



**01.07.2021 TO 31.03.2022**

# **01.07.2021 to 31.03.2022**

- Notice u/s. 148A(b) with approval
- Reply (7 to 30 days or extended time)
- Order u/s. 148A(d) – with Approval
- Approval
- Notice u/s. 148



# **01.07.2021 to 31.03.2022**

- In following cases, 148A not applicable
- Hence, direct notice u/s. 148 with approval:
  - Search & seizure cases

# 01.07.2021 to 31.03.2022

A.Y.	Time Limit
2019-20	Within 3 years
2018-19	Within 3 years
2017-18	Beyond 3 years *
2016-17	Beyond 3 years *
2015-16	Beyond 3 years *
2014-15	Beyond 3 years * #
2013-14	Beyond 3 years * #

\* Section 149(1)(b)

- asset

- 50 lakhs

# Proviso to section 149(1)



# 01.07.2021 to 31.03.2022

- Information

- Flagged
- C& AG

- Asset includes

- immovable property, being land or building or both,
- Shares and securities
- Loans and advances
- Deposits in bank





**01.04.2022 ONWARDS**

# 01.04.2022 onwards

- Notice u/s. 148A(b) ~~with approval~~
- Reply (7 to 30 days or extended time)
- Order u/s. 148A(d) – with Approval
- ~~Approval~~
- Notice u/s. 148

# 01.04.2022 onwards

- In following cases, 148A not applicable
- Hence, direct notice u/s. 148 with approval:
  - Search & seizure cases
  - Faceless information u/s. 135A r/w. 133, 133C etc.

# 01.04.2022 onwards

A.Y.	Time Limit
2020-21	Within 3 years
2019-20	Within 3 years
2018-19	Within 3 years *
2017-18	Beyond 3 years *
2016-17	Beyond 3 years *
2015-16	Beyond 3 years *
2014-15	Beyond 3 years * #
2013-14	Beyond 3 years * #

- \* Section 149(1)(b)
  - asset, **expenditure, entries in books of account**
  - 50 lakhs
- # Proviso to section 149(1)

# 01.04.2022 onwards

- Information
  - Information ~~flagged~~ as per risk management strategy
  - C& AG
  - Information u/s. 90/ 90A
  - Faceless Information u/s. 135A
  - Action in consequence of order of Tribunal/ Court
- Asset includes
  - immovable property, being land or building or both,
  - Shares and securities
  - Loans and advances
  - Deposits in bank



**01.04.2021 TO 30.06.2021**

# 01.04.2021 to 30.06.2021

- Initiation – in Light of SC Judgment
  - Initial notice issued between 01.04.2021 to 30.06.2021 u/s. 148 – condition “reason to believe”
  - Fresh notice u/s. 148A(b) to be issued upto 02.06.2022 – with “*information and material*”
  - Assessee to reply within 2 weeks thereafter.
  - Pass order u/s. 148A(d) – 31.07.2022.
  - All defenses u/s. 149 and all rights under Finance Act, 2021 shall be available.

# 01.04.2021 to 30.06.2021

A.Y.	Without TOLA	Applying TOLA
2019-20	Within 3 years	Within 3 years
2018-19	Within 3 years	Within 3 years
2017-18	Beyond 3 years *	Within 3 years
2016-17	Beyond 3 years *	Within 3 years
2015-16	Beyond 3 years *	Beyond 3 years *
2014-15	Beyond 3 years *	Beyond 3 years *
2013-14	Beyond 3 years *	Beyond 3 years *



Constitutionality – 149(1)(b) vs Not. No. 20 & 38/ 2021 & Inst. No. 1 of 2022.



Constitutionality – 149(1) proviso vs Not. No. 20 & 38/ 2021 & Inst. No. 1 of 2022.

- \* Section 149(1)(b)
- asset
  - 50 lakhs





# 01.04.2021 to 30.06.2021

- Information

- Flagged
- C& AG

- Asset includes

- immovable property, being land or building or both,
- Shares and securities
- Loans and advances
- Deposits in bank



# **UNTOLD CONTROVERSIES**



**01.04.2021 to 30.06.2021**

- The Unexplained mystery
- UOI vs Ashish Agrawal (SC)

# Controversies in Ashish Ag.

- **Para 9**

- **9.** There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assesseees.

# Controversies in Ashish Ag.

- **Para 7**

- **7.** Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.
- Probably order should have ended here.

# Controversies in Ashish Ag.

- **Para 8**

- ..... The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated
- Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A

# Controversies in Ashish Ag.

- **Para 8-10**

- ....., subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. (para 8)
- ....., All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021.

# Controversies in Ashish Ag.

- **Para 10** - In view of the above and for the reasons stated above, the present Appeals are **ALLOWED IN PART.**
- **Para 11** - The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under section 148 of the Act are set aside (Sic) and shall be governed by the present order and shall stand modified to the aforesaid extent.



# Controversies in Ashish Ag.

- The present order is passed in exercise of powers under Article 142 of the .....
- Article 142 vs Article 265, 300A, 14, 19 etc.

# Controversies in Ashish Ag.

- **What if this order is Reviewed ???**
- “reason to believe”  
or
- “information in possession suggesting escapement”

# AY 13-14 and AY 14-15

## 149(1) – proviso

*Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1<sup>st</sup> day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C as the case may be, as they stood immediately before the commencement of Finance At, 2021.”*

# Meaning of said proviso

A notice u/s. 148 cannot be issued at any time (under new provisions), if a notice could not have been issued u/s. 148/ 153A/ 153C at that time, on account of being beyond the time limit (Time limit under old section 148(1)(b)/ 153A/ 153C).

Here there is no mention of TOLA.

# Two Interim Orders

- SS Commotrade P Ltd. (Cal. )(SJ)
  - WPA 19111 of 2022 – AY 2014-15
- Kulwant Singh (P & H)
  - CWP 18032 of 2022 (O & M) - AY 2013-14

# **Instruction No. I of 2022**

- **Ultra-virus**
- **Not binding on assessee.**

## **50 lakhs and section 149 (IA)**

- Say, a search took place on 27.08.2022.
  - Undisclosed income for AY 2017-18 is Rs. 40 lakhs and
  - for AY 2016-17 is Rs. 30 lakhs.
- 
- Whether reopening can be done?

# **149 – 3<sup>rd</sup> Proviso**

- Say, notice u/s. 148A(b) issued on 20.03.22 for AY 2018-19.
- Time to file reply given upto 30.03.22.
- 148A(d) passed on 08.04.22.
- Is reopening within 3 years or after 3 years ?



## **I 49 – 3<sup>rd</sup> Proviso**

- What if, in last example, assessee replied on 26.03.22.
- Is reopening within 3 years or after 3 years ?

# **149 – 3<sup>rd</sup> & 4<sup>th</sup> Proviso**

- Say, notice u/s. 148A(b) issued on 26.03.22 for AY 2018-19.
- Time to file reply given upto 02.04.22.
- 148A(d) passed on 08.04.22.
- Is reopening within 3 years or after 3 years ?



# **RECENT CASE LAWS**

# Two cases not related to new section 148A

- S.R. Cold Storage (All.) – Dt. 11.08.22 – WP 723 of 2022
  - Deposits in bank – not such deposit – basis of reopening false – error in system of department - Reopening quashed.
  - 50 lakhs cost proposed.

# Two cases not related to new section 148A

- **Tata Capital Financial Services LTd. (Bom.) – WP 546 of 2022 – Dt. 15.02.22**
  - Alongwith reasons, copy of letter for approval with comments of approval be granted.
  - If any document referred in reasons, copy of same be provided
  - Personal hearing shall be provided.
  - Citation of judgments relied on, shall be provided in notice.

# Natural Justice

- Nabco Products P Ltd. - WVP 997 of 2022 – (All.)
  - Reply of assessee admittedly not considered.  
*“prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assesseees who pay revenue to the government, but also may develop a perception amongst people/ assessee that it is difficult to get justice from the authorities ...”*
- *System of accountability to be developed. Rs. 50000 cost. Remanded for fresh adjudication.*
- *Inst. Dt 22.08.22*

# Natural Justice

- Agrawal Petroleum Co - WP 11047 of 2022 (MP) – dt. 30.06.22
  - Reply of assessee not considered
  - Remanded back for fresh adjudication.

# Natural Justice

- **Studio Virtues (2022) 140 taxmann.com 73 (Guj.)**

Assessee submitted reply with documentary evidence u/s. 148A(b) – AO wrote “reply filed and not acceptable”.

Order u/s. 148A(d) quashed and remanded back for fresh decision.



# Natural Justice

- **Babcock Borsig Ltd. (Cal.) (2022)**  
**141 taxmann.com 85**
  - In 148A(b), AO made reference to search proceedings and statement recorded, based on which proceedings were initiated u/s. 148A(b).
  - AO did not provide same
  - No effective reply could be filed by assessee.
  - Remanded back for fresh adjudication.

# Natural Justice

- First Solar Power India WP(C) 7436 of 2022  
dt. 26.05.22
- Divya Capital One – WP (C) 7406 of 2022  
dt. 12.05.22
  - Contentions of assessee not considered. Hence, matter remanded for fresh adjudication.
  - Significance of issuance of a show cause notice at a stage prior to issuance of reassessment has been lost on the Respondents. Progressive as well as futuristic scheme of reassessment whose intent is laudatory has in its implementation not only been rendered nugatory but also had an unintended opposite result.

# Amount Less than Rs. 50 lacs

- Abdul Majeed (Raj) - WP 7853 of 2022 – Dated 29.06.22
  - Notice issued that deposits in bank is more than Rs. 50 lacs – Assessee explained with proof that deposits less than Rs. 50 lacs – Not disputed by revenue – However, I 48 initiated on ground that deposits more than Rs. 50 lacs.
  - Held, reopening invalid.

# Writ not maintainable

- FTC Overseas (2022) 140 taxmann.com 185 (P & H) –
  - Writ challenging order u/s. 148A(d) and notice u/s. 148A(b) – writ not maintainable as it is intermediary state –
  - By reading of notice, it cannot be axiomatically be held that there is invalid jurisdiction.
  - Same Gian Castings (2022) 140 taxmann.com 318 (P & H) – SLP against same dismissed – 140 taxmann.com 319 (SC)

# Writ not maintainable

- Ramesh Lal kotwani (M.P.) – WP 9266 of 2022 – Dt. 12.05.22
  - Two PAN. Reassessment initiated u/s. 148A. Assessee contended that income already offered in one PAN- Assessee challenged reopening u/s. 148 - High court held that the Id authority has to provide proper opportunity to the petitioner. Petitioner has right to challenge same before the Id AO.

# Writ – Challenging Basis of reopening

- Seema Gupta (2022) 140 taxmann.com 463 (Del.)
  - In order u/s. 148A(d), AO wrongly concluded that assessee has not disclosed sale of property in ITR.
  - Reopening based on change of opinion. AO had already deliberated on same in original assessment
  - Remanded for fresh adjudication.

# Notice less than 7 days

- Mathura Mercantile (MP) – WP 8905 of 2022 - 26.04.22
  - Notice less than 7 day. Assessee did not object to same, and replied within 7 days extensively – Bound by estoppel.
  - Prima-facie opinion required for reopening – “free play in the joints” shall be available
  - Scheme of Income-tax is to ensure maximum collection of tax and is more revenue centric.

# Challenge to Jurisdiction

- 01.04.2021 to 30.06.2021
  - Notice beyond 02.06.22
  - “information and material” not provided
  - Beyond 3 years – 50 lakhs
  - Beyond 3 years - asset
  - Approval
    - within 3 years – CIT
    - Beyond 3 years - CCIT
  - Natural justice
  - Constitutionality – FA 2021 Vs. TOLA



# Challenge to Jurisdiction

- 01.07.2021 to 31.03.2022
  - “information” not provided
  - Not “flagged” information
  - Beyond 3 years – 50 lakhs
  - Beyond 3 years - asset
  - Approval
    - within 3 years – CIT
    - Beyond 3 years - CCIT
  - Natural justice

# Challenge to Jurisdiction

- 01.04.2022 onwards
  - Conditions of initiating jurisdiction not satisfied.
  - Beyond 3 years – 50 lakhs
  - Approval
  - Natural justice

# Some Misc Questions

- **Old Judgments – whether applicable**
  - Mere Change of opinion
  - No fresh information
  - Suspicion, gossip, rumours Vs “information” (like TEP)

# Some Misc Questions

- What is time limit to file writ
- Should we file return, if filing writ
- Stay of proceedings?



**THANK YOU !!!**