
**SECTION 148A, INCOME TAX ACT, 1961
AND REOPENING OF ASSESSMENT PROCEEDINGS**

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Overview

- ❖ Introduction.
 - ❖ Section 148A.
 - ❖ The Controversy.
 - ❖ Orders of various High Courts.
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INTRODUCTION

- ❖ The Finance Bill 2021 was presented on 1st February, 2021 and was passed on 24th March 2021.
 - ❖ Finance Act, 2021 brought a major overhaul in the law pertaining reassessment proceedings under the Income-tax. It changed not only the procedure under which reassessment proceedings were held but also changed the structure of litigation that used to arise in any typical reassessment case.
 - ❖ Finance Act, 2021 has majorly changed the provisions relating to income escaping assessment and has introduced a concept of enquiry, hearing prior to issuance of notice u/s. 148. This amendment inserted a new provision i.e. Section 148A in the Income Tax Act, 1961.
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- ❖ The s.148A requires that before issuing notices, AO is required to comply with procedure provided therein. Previously before introduction of s.148A, issuance of notice u/s.148 reason to be recorded by the AO was the requirement under law. However by virtue of 148A an opportunity to the assessee by way of a Show Cause Notice is to be provided.
 - ❖ Section 148A provides that before issuance of notice u/s.148 the Assessing Officer shall conduct enquiries, if required provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Officer shall decide, by passing an order, whether it is a fit case for the issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing an opportunity to the assessee or passing such order obtain the approval of the specified authority.
 - ❖ However, this procedure of enquiry, providing opportunity and passing an order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.
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THE CONTROVERSY

- ❖ The Parliament on 29.9.2021 enacted The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as the Relaxation Act, 2020) whereby under section 3(1) power to relax certain conditions was granted. That, on the basis of these abovementioned delegated powers conferred under the Relaxation Act by the Parliament, The Central Board of Direct Taxes issued Notification No.20/2021 dated 31.3.2021 and Notification No.38/2021 dated 27.4.2021 whereby extended the applicability of section 148, 149, 151 as they stood prior to 31.3.2021 was extended first till 30.4.2021 & thereafter to 30.6.2021.
 - ❖ That relying upon these notifications, the Income Tax Department has issued notices under section 148 during 1.4.2021 to 30.6.2021 and has not followed the due procedure laid down in section 148A which is in effect from 1.4.2021 as per the Finance Act, 2021 w.e.f. 1.4.2021. They have, in these notices, followed the procedure from section 147-152 of the old law.
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- ❖ Justifying their action, the Department relies on the Explanation provided under the Notification issued for extension of time limit for issuance of notice under section 148 to contest that the provision that existed prior to commencement of Finance Act, 2021.

“Explanation- 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 CHALLENGE / THE CONTEST

- ❖ However, it is to be noted that the notice issued by following the earlier provisions are being contested to be bad in law on account of, inter-alia, the following reasons:
 - The Explanation issued under the Notification is beyond the power conferred upon and delegated to the Central Government under the provisions of section 3 of the Taxation Relief Act and is also contrary to the legislative intent behind the provisions of the Taxation Relief Act. At one time two provisions under the same law can not stand. Either earlier provision related to section 147 to 151 will be operative or the new provisions . At one time two acts can not run simultaneously.
 - The Explanation is also contrary to and ultra vires the provisions of sections 147 to 149 of the Act as substituted/introduced vide Finance Act, 2021. Pursuant to coming into force of the new provisions of section 149, the provisions that existed prior there to have been repealed and thus cannot be resorted to and applied by the Department for any proceedings initiated on or after 01.04.2021.
 - In this regard, various writs have been filed before various High Courts to challenge notice u/s 148 issued on or after 01.04.2021 without following the procedure under section 148A.
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Orders of Various High Courts

- ❖ **Sona Processors vs. ITO**, Rajasthan High Court at Jodhpur, while recording the submission of the petitioner's counsel that, submits that after substitution of Section 148 of the Income Tax Act, pursuant to the publication of Finance Act, 2021 in the Official Gazette on 25.03.2021, it is incumbent upon the Assessing Officer to issue notice and conduct inquiry as contemplated under Section 148-A of the Income Tax Act, whereas the impugned notice dated 16.04.2021 (for Assessment Year 2013-14) has been issued without complying with the mandate of Section 148-A of the Income Tax Act., stayed the further proceedings pursuant to impugned notice dtd.16.6.2021.
 - ❖ **TATA Communications Transformation Services Ltd. vs. ACIT 14(1)(2), Mumbai & Ors.** - A Division Bench of Bombay High Court has passed a stay order and restrained the revenue from taking any action based on the notice issued under old provisions of section 148 of the Income-tax Act, 1961 (Act) on and after 1.4.2021.
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- ❖ **Mon Mohan Kohli vs. ACIT** – A Division Bench of Hon’ble Delhi High Court had also passed an interim order in this case having the same controversy as mentioned above.
 - ❖ **Umi Devi Gupta v. Income Tax Officer, Ward-1, Kishangarh, Ajmer** – Hon’ble Rajasthan High Court at Jaipur Bench, while dealing with the same kind of issue at hand, directed the respondents not to proceed further in response to the notice issued to the petitioners under Section 148 of the Income Tax Act, 1961.
 - ❖ **Armada D1 Pte. Ltd. vs. DCIT** - On 3rd June, 2021, a Division Bench of Bombay High Court has stayed the operation of Notice under Section 148 dated 7th April 2021 for Assessment Year 2013-14 due to the reason of not issuing notice under section 148-A which is a precondition for issuing notice under section 148 now as per Finance Act 2021.
 - ❖ **Bagaria Properties & Investment Pvt. Ltd. vs. Union of India** – The Calcutta High Court too stayed the reassessment proceedings under section 148 read with section 148A , notices issued post 31/03/2021 and the notifications of extension of notices , following the ratio of the other HC judgements on similar issues.

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