



**Implementation of the Judgement of the Hon'ble Supreme Court dated 04.05.2022 - Union of India v. Ashish Agarwal**

Honorable Supreme Court, vide its judgment dated 4th May 2022 (2022 SCC Online SC 543), in the case of **Union of India Vs. Ashish Agrawal** has adjudicated on the validity of the reassessment notices issued by the AOs under the un-amended section 147/148 during the period 1st April 2021 to 30th June 2021, within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain provisions) Act, 2020 [TOLA].

The extended reassessment notices were issued by AO under the provisions of S 148 of IT act, 1961 following the procedures prescribed under various sections 147-151, as they existed prior to their amendment by Finance Act 2021. With effect from 01st April 2021, the old law substituted with the new sections 147-151.

Honorable Supreme Court held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under S 148A(b) of the new law and has directed the AO to follow the procedures with respect to such notices. It has also held that all the defences available to assesseees under S 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.

In order to implement the aforesaid judgment of Honorable Supreme Court in uniform manner, the Central Board of Direct Taxes (CBDT) in terms of its Income Tax Instruction No. 01/2022 dated 11th May 2022 in exercise of its power under section 119 of the Income Tax Act, 1961 has issued its directions for implementation of the SC judgment.

#### 1. Scope of the Judgement

CBDT clarified that the Supreme Court's decision will apply to all cases where extended reassessment notices have been issued irrespective of the fact whether such notices have been challenged or not.



2. Operation of the new S 149 of the Act to identify cases where fresh notice u/s 148 of the Act can be issued.

<b>Assessment Year</b>	<b>Clarification</b>
AY 2013-14, 2014-15 & 2015-16	Fresh notice u/s 148 can be issued only in cases where the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to Rs. 50 lakh or more for that year.
AY 2016-17 & 2017-18	Fresh notice u/s 148 can be issued in all cases irrespective of any monetary limit.

3. AO is required to provide the information and material relied upon within **30 days**, ie by 2nd June 2022 in all the cases where issue of notice is permitted. (ie information and material may not be provided for AY 2013-14, 14-15, 15-16 if income escaping assessment is less than 50 lakhs)

4. Procedure required to be followed by the AO

- The respective impugned section 148 notices issued to the respective assessee shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b).
- The respective AOs shall within 30 days provide to the assessee the information and material relied upon by the Revenue so that the assessee can reply to the notices within **2 weeks** thereafter. The aforesaid 2 weeks' time shall be counted from the last date of communication of information and material by the AO.
- In case of a request by the assessee for allowing more time to file reply to the show cause notice, AO may allow such request on merit.
- After receiving the reply, the AO shall decide on the basis of submission made by the assessee along with material on record as to whether or not it is fit case to issue a notice u/s 148. Thereafter within 1 month from the end of the month in which the reply is received by the AOs, an order u/s 148A(d) is required to be passed by the AOs after obtaining approval of specified authorities of the new law. In case of no reply by the assessee, the order u/s 148A(d) is required to be passed within 1 month from the end of the month in which time or extended time allowed to furnish a reply expires.
- If it is fit case to issue a notice u/s 148, the AO shall serve on the assessee a notice u/s 148 along with a copy of order passed u/s 148A(d) after obtaining approval of the specified authority u/s 151 of the new law.
- If it is not a fit case to issue a notice u/s 148, the order passed u/s 148A(d) to that effect shall be served on the assessee.