

VALIDITY OF NOTICES ISSUED U/S 148 (OLD REGIME) FOR THE PERIOD STARTING FROM 01/04/2021 TO 30/06/2021

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ADVOCATE, GUJARAT HIGH COURT



(A) Background:-

The Finance Act 2021 is introduced w.e.f. 01/04/2021, by which the scheme of re-assessment is significantly changed. It requires the Revenue to follow the provisions of newly inserted section 148A. The new Scheme of re-opening u/s 148 r.w.s. 148A is as under:-

- (a) AO shall conduct inquiry regarding any income escaping assessment. [s.148A(a)]
- (b) Then AO may issue a show cause notice as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment [s.148A(b)]
- (c) AO shall consider reply by the assessee and thereafter pass an order deciding whether or not it is a fit case for issuing notice u/s 148 [s.148(c) and (d)]
- (d) Thereafter AO may require assessee to file a return of income u/s 148.
- (e) S.149 also alters the time limit for initiating reassessment proceedings.

Accordingly the old regime of s.148 got replaced by new regime of section 148 r.w.s. 148A with effect from 01/04/2021.

- The Central Government introduced Ordinance No. 2 of 2020 dated 31/03/2020 titled Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. Its purpose was to extend time limits of various proceedings which were expiring after 20/03/2020, due to the inconvenience caused by the pandemic of Corona. The aforesaid Ordinance was succeeded by The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (hereinafter referred to as "The Enabling Act") which received assent of The President on 29/09/2020 and it was enforced with retrospective effect from 31/03/2020. S.3(1) of The Enabling Act reads as under:-

"3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of

December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

- (a) *completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act;”*

Thereafter Notification dated 31/03/2021 was issued exercising powers u/s 3(1) of The Enabling Act. It specifically dealt with issuance of notice u/s 148 and time limit u/s 149. It permitted Revenue to invoke section 148 as it existed as on 31/03/2021 (prior to its replacement) and suppressed the effect of newly inserted section 148A. It extended the operation of old regime u/s 148 till 30/04/2021. Thereafter Notification dated 27/04/2021 was issued and it further extended the old regime (suppressing the newly inserted s.148A) till 30/06/2021. Accordingly, Revenue has issued various notices to re-assesses u/s 148 (old regime) during the period starting from 01/04/2021 to 30/06/2021. The issue is whether such Notifications

extending the operation of old regime of section 148 are valid or not and consequently all such notices are valid or not.

(B) Judgments of Various High Courts:-

- (1) Chhatisgarh High Court in Palak Khatusja v. Union of India, W.P.(T) NOS. 147 to 149 of 2021. (judgment dated 23/08/2021):-

The Hon'ble High Court opined that the notifications dated 31/03/2021 and 27/04/2021 were issued by exercising the powers conferred by section 3(1) of The Enabling Act. Accordingly they validly extend the regime of the old provisions of section 148 till 30/06/2021. By effect of such notifications, the individual identity of section 148, which was prevailing prior to amendment and insertion of section 148A was insulated and saved uptill 30/06/2021.

Above judgment is followed by Hon'ble Chhatisgarh High Court in various other cases.

- (2) Allahabad High Court in Ashok Kumar Agarwal v/s Union of India & Ors., Writ Tax No. 524 of 2021, (judgment dated 30/09/2021):-

Once the new regime is introduced with effect from 01/04/ 2021, the earlier provisions cannot survive,

except for things done or already undertaken to be done or things expressly saved to be done. The Finance Act 2021 substitutes the old section 148 by the new scheme of reassessment with effect from 01/04/2021. In absence of any saving clause, the revenue authorities can initiate the reassessment proceedings after 01/04/2021 only as per the provisions of section 148A. Neither The Enabling Act nor The Finance Act 2021 provides for savings of the earlier scheme or any power to delegate the saving of the earlier scheme. Plainly, The Enabling Act provides only for the extension of time limits. Since none of the subject re-assessment proceedings were initiated under the earlier scheme, it cannot be extended by the provisions of The Enabling Act. The Enabling Act cannot overwrite The Finance Act 2021. The Enabling Act only protects certain proceedings from being time barred. It cannot be given any wider meaning. Accordingly it cannot protect the expiry of the old regime. Accordingly, after 01/04/2021, The Enabling Act applies to the new regime of reassessment. The delegated authority (Central Government or CBDT) could not have issued notifications to supersede the principal authority of parliament (ie. The Finance Act, 2021). Accordingly,

the notifications do not apply to reassessment proceedings initiated after 01/04/2021. The view taken by the Honorable Chhattisgarh High Court upholding the notifications is an incorrect view. A delegated legislation cannot overreach an Act of the principal legislature. Accordingly, all the petitions are allowed and all the notices for reopening of assessment are quashed.

- (3) Hon'ble Rajasthan High Court in Bpip Infra Private Limited v/s ITO in S.B. Civil Writ Petition No. 13297/2021:-

It opined that the view taken by the Hon'ble Allahabad High Court is correct and the view taken by the Hon'ble Chhattisgarh High Court is incorrect. Accordingly it followed the view of the Hon'ble Allahabad High Court and quashed all the notices issued under section 148.

- (4) Gujarat High Court:-

The issue is pending adjudication in various matters before Hon'ble Gujarat High Court, including SCA No.13368 of 2021. The Hon'ble Gujarat High Court has stayed the operation of re-assessment proceedings.