

# Nangia Andersen LLP

## NEWSFLASH

Reassessment notices issued in terms of the unamended Section 148 be deemed to have been issued under section 148A substituted by the Finance Act, 2021 and be treated as show-cause notices

May 2022

Reassessment notices issued in terms of the unamended Section 148 be deemed to have been issued under section 148A substituted by the Finance Act, 2021 and be treated as show-cause notices



## Background

The Supreme Court (SC) has established its view on the question of validity of reassessment notices issued under the old reassessment regime. To ensure that the Revenue is not made remediless, it has held that the section 148 notices shall be deemed to have been issued under section 148A as substituted by the Finance Act, 2021 and treated to be show-cause notices. Further, the prerequisite of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure.

## Brief Facts and Contentions

- Section 148 of the Income Tax Act, 1961 empowers Revenue to issue notice of reopening past assessments, if there is reason to believe that certain income has escaped assessment. In the quest to reduce litigation, the timeline for reopening assessments has been reduced to three years from six years with effect from April 1, 2021. Besides, introduction of Section 148A lays down certain other requirements before a reassessment notice can be issued.
- Placing reliance on a notification issued under the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020, which relaxed certain procedures in light of Covid-19, the tax department issued reassessment notices until June 2021, as per the unamended provisions.
- These reassessment notices were challenged by the taxpayers before various High Courts. All high courts barring one ruled in favour of taxpayers and quashed all notices on the grounds that the same were bad in law. Aggrieved, the Revenue appealed before the Supreme Court.

## Supreme Court's Judgement

- The SC invoked Article 142 of the Constitution that allows for passing of an order as needed for exercising justice in any cause or matter pending before it. The Court opined that there appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced.
- As the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021, the High Courts could have shown some leeway in this regard. The Court further emphasised that the *Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated.*
- With a view to substitute judgments passed by the High Courts, the Supreme Court has held that *the notices shall be deemed to have been issued under section 148A as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b).* The respective assessing officers shall within thirty days provide to the assessee the information and material relied upon by the Revenue so that the assessee can reply to the notices within two weeks thereafter.
- Further, the requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure.



### Nangia Andersen LLP's Take

*The Court has taken cognizance of the fact that change in law for reassessment has been essentially made for the benefit of taxpayers and income tax department cannot be left remediless due to a bona-fide mistake of extending time limits. Further, a very large number of cases might escape assessment due to quashing of reassessment notices issued on/ after 01<sup>st</sup> April 2021 in terms of the old regime leading to adverse impact for the exchequer. The Court has opined that if these notices issued u/s 148 are quashed at the threshold itself, without giving an opportunity to the Income tax department to examine the cases on merits, it would be denial of fairness to the Revenue.*

*However, to strike balance between the Revenue and the taxpayers, the Court has also directed the department to give sufficient opportunity to taxpayers before proceedings further with these reassessment proceedings. Accordingly, the taxpayers as well as income tax department will have all the remedy, as available under the amended law. Further, the validity of the reassessment proceedings will be tested based on provisions of new law. If the reassessment notices are considered to be valid even under the new amended law, then taxpayers will now need to be ready to file their ITR in response to the reassessment notice and be ready with all the necessary records, documents and explanations for questions expected to be asked by Income tax authorities in relation to these reassessment proceedings.*





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