



# A NEW ERA OF ASSESSMENTS

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Hyderabad Branch of SIRC of ICAI  
23th November 2024

# REASSESSMENT FRAMEWORK PRIOR TO 01.04.2021

# Procedure under the erstwhile Re-assessment scheme:

- **Recording of reasons to believe:** Sec. 148(2) required the Assessing Officer (AO) to record 'reasons to believe' demonstrating income has escaped assessment, prior to initiation of re-assessment proceedings.
- Where re-assessment was initiated beyond four assessment years, AO was required to come to conclusion that income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly material facts;
- **Valid sanction under section 151:** Prior to issuance of re-assessment notice under section 148, AO was required to obtain valid sanction of his superiors under section 151;
- **Time limit for issuance of notice:** Sec. 149 provided the time limits for issuance of notice under section 148. Re-assessment notice could have been issued within 4 years, 6 years and / or 16 years from the end of the assessment year depending on the category of case;
- **Issuance of notice under section 148:** After complying with the statutory requirements, AO was required to issue jurisdictional notice under section 148 intimating the assessee about initiation of re-assessment proceedings and directing filing of return of income;

# Procedure under the erstwhile Re-assessment scheme:

- **Filing of Return of Income and seeking reasons:** Upon receipt of notice under Sec. 148, assessee was required to file its return of income for the said year and seek reasons to believe;
- **Furnishing reasons recorded along with other documents:** AO was obliged to provide copy of reasons recorded under section 148(2), along with copies of the sanction under section 151 and documents/ information/ evidence relied upon;
- **Filing of preliminary legal objections:** After receiving reasons as well as other documents, assessee was at liberty to challenge the initiation of such re- assessment proceedings by filing legal objections with the AO;
- **Order disposing-off legal objections:** If legal objections were filed by the assessee, AO, prior to proceeding with the re-assessment, was required to pass a separate speaking order disposing-off the legal objections. If adverse, assessee was at liberty to challenge the same invoking writ jurisdiction of the Hon'ble Jurisdictional High Court;
- **Completion of re-assessment proceedings and passing the assessment order:** After disposing off the legal objections, the AO was required to conduct necessary enquiries and finalize the assessment after taking into account the responses of assessee. Assessment order was required to be passed within the time period provided under section 153 of the Act.

# INTRODUCTION OF TOLA

# Introduction of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020

- Due to the COVID 19 pandemic in 2020 and 2021 and consequent nationwide lockdown, the Government had extended the due dates of various compliances on multiple occasions. The limitation period to issue the notice under the old provision was also extended.

Due dates falling between March 20, 2020 and -	Extended to	Notification
June 29, 2020	June 29, 2020	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]
December 31, 2020	March 31, 2021	Notification S.O. 2033(E) [No. 35/2020], dated June 24, 2020
March 30, 2021	March 31, 2021	Notification S.O. 4805(E) [No. 93/2020], dated December 31, 2020
March 31, 2021	April 30, 2021	Notification S.O. 1432(E) [No. 20/2021], dated March 31, 2021
<b>March 31, 2021</b>	<b>June 30, 2021</b>	<b>Notification S.O. 1703 (E) [No. 38/2021], dated April 27, 2021</b>

# SCHEME OF RE-ASSESSMENT W.E.F 01.04.2021

# Scheme of Re-assessment w.e.f 01.04.2021

## ➤ Comparative analysis of old re-assessment scheme and new re-assessment scheme:

Section 147 (prior to 01.04.2021):

*“ 147(1). If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income ...”*

Section 147 (after 01.04.2021):

*“147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income ... ..”*



# Scheme of Re-assessment w.e.f 01.04.2021

Section 148 (prior to 01.04.2021):

*“148(1). Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income ... ..”*

*(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.”*

Section 148 (after 01.04.2021):

*“148. Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall, subject to the provisions of Section 148A issue a notice to the Assessee, along with a copy of the order passed sub section (3) of section 148A, requiring him to furnish within such period, as may be specified in such notice, ..... ..”*

*Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.”*

# Scheme of Re-assessment w.e.f 01.04.2021

- The legislature vide the Finance Act, 2021 completely revamped the scheme of reassessment by substituting the provisions of sections 147, 148, 149 & 151 and introducing new procedure to be followed before issuance of notice under section 148.
- Sunset clauses were inserted in sections 153A & 153C in respect of assessments to be completed pursuant to search initiated under section 132 & requisition under section 132A on or after 01.04.2021.
- New re-assessment scheme came into effect from 01.04.2021.
- Section 148 has been completely substituted to provide that re-assessment proceedings can be initiated under section 148 when there is “**information**” with the AO “*which suggests that income chargeable to tax has escaped assessment for the relevant year*”.

# Scheme of Re-assessment w.e.f 01.04.2021

Information which suggests that the income chargeable to tax has escaped assessment – Scope

“**Information**” for the purpose of section 148 has been specifically defined in to **mean**:

- a) any information in accordance with risk management strategy of the Board;
- b) any audit objection that assessment has not been made in accordance with the provisions of the Act;
- c) any information received under DTAA;
- d) any information made available to the Assessing Officer under the scheme notified under section 135A;
- e) any information which requires action in consequence of the order of a Tribunal or a Court
- f) Any information in case of an Assessee emanating from survey under section 133A **after 1<sup>st</sup> day of September 2024.**

# Scheme of Re-assessment w.e.f 01.04.2021

## Audit Objection vs Change of Opinion

Information means instruction/knowledge concerning (a) facts or (b) law.

Audit party does not have judicial supervision over the AO, simple mention of law is important, but an opinion thereon is not. [Indian and Eastern Newspaper Society (1979) 2 Taxman 197 (SC)]

Fact not noticed/overlooked during the original assessment . Larsen and Toubro vs State of Jharkhand C.A. 5390 of 2007.

True and correct legal position brought to notice e.g. un-noticed statutory provision or a later SC ruling reversing the position.

Bringing a fact or law reassessment but no reassessment in case of change of opinion.

# Scheme of Re-assessment w.e.f 01.04.2021

## Important/Key aspects of the new Re-assessment scheme:

- Prior to issuance of notice under section 148, AO is required to follow the procedure prescribed under section 148A and pass an order under section 148A(d). Procedure under section 148A is not required to be followed in search/ survey/ requisition cases.
  
- The AO, under section 148A, is obliged to:
  - a. **Conduct enquiry**, with the prior approval of the specified authority, with respect to information which suggests that income of the assessee has escaped assessment [section 148A(a)];
  
  - b. **Issue a notice upon the assessee to show-cause** why notice under section 148 should not be issued and provide an opportunity of being heard to the assessee [section 148A(b)]. Time period of at least 7 days but not exceeding 30 days to be provided to respond to show cause notice.
  
  - c. Consider the reply of the assessee [section 148A(c)];
  
  - d. “Decide” on the basis of material available on record and the reply furnished by the assessee, by passing “an order” within one month of receipt of assessee's reply whether or not it is a fit case for issuance of notice under section 148, with prior approval of specified authority [section 148A(d)].

# Scheme of Re-assessment w.e.f 01.09.2024

## Important/Key aspects of the new Re-assessment scheme:

- Clause (a) (b) (c) (d) excluded. New section 148A (1) (2) (3) introduced -
- The AO, under section 148A, is obliged to:
  1. Where AO has information of income escaping assessment provide opportunity by serving a SCN alongwith information which suggests income chargeable to tax escaped assessment. **The approval of specified authority not required when issuing SCN.**
  2. On issue off notice the Assessee may furnish a reply.
  3. AO shall basis the material available and the reply filed by Assessee pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under section 148.

# Scheme of Re-assessment w.e.f 01.04.2021

Time-limit for issuance of notice under section 148 - In terms of section 149, notice under section 148 can be issued:

- a. within 3 years from the end of the relevant assessment year;
- b. within 10 years from the end of the relevant assessment year, where, the **AO has in his possession 'books of accounts' or 'other documents' or 'evidence'** which reveal that income chargeable to tax, which has escaped assessment amounts to or is likely to amount to Rs.50 lakhs or more for the said year, and is represented in the form of:
  - an asset;
  - expenditure in respect of a transaction or in relation to an event or occasion; or
  - an entry or entries in the books of account

Time limit prescribed under section 149 of the Act shall exclude:

- the time or extended time allowed to the assessee to respond to show cause notice under section 148A(b); and
- any period during which the proceedings under section 148A are stayed by an order of any Court.

If after excluding the aforesaid period, time available for passing order under section 148A(d) is less than 7 days, the remaining time shall be deemed to be extended to 7 days.

# Scheme of Re-assessment w.e.f 01.09.2024

Time-limit for issuance of notice under section 148 - In terms of section 149, notice under section 148 can be issued:

- a. within 3 years **3 months** from the end of the relevant assessment year;
- b. within **5 years 3 months** from the end of the relevant assessment year, where, the **AO has in his possession 'books of accounts' or 'other documents' or 'evidence'** related asset or expenditure or transaction or entries which show that income escaping assessment amounts to or is likely to amount to Rs.50 lakhs or more;

Time-limit for issuance of notice under section 148 - In terms of section 149, notice under section 148A can be issued:

- a. within 3 years from the end of the relevant assessment year;
- b. within 5 years from the end of the relevant assessment year, unless income chargeable to tax which has escaped assessment as per the information available with the AO amounts to or is likely to amount to Rs.50 lakhs or more;



## **Scheme of Re-assessment w.e.f 01.04.2021**

**Approval of Specified Authority [section 151]:** For the purposes of section 148 and 148A, “specified authority” shall be:

- a) Where 3 years or less have elapsed from the end of the relevant assessment year, Pr. CIT, Pr. DIT, CIT or DIT;
- b) Where more than 3 years have elapsed from the end of the relevant assessment year, Pr. CCIT, Pr. DGIT, CCIT or DGIT, as applicable.

In cases where re-assessment is initiated on the basis of ‘deemed information’ (i.e., search, requisition and survey cases), no reassessment order shall be passed by an AO below the rank of Jt. CIT except with prior approval of the Addl. CIT/ Addl. DIT or Jt. CIT/ DIT. [Section 148B]

## **Scheme of Re-assessment w.e.f 01.09.2024**

**Approval of Specified Authority [section 151]:** For the purposes of section 148 and 148A, “specified authority” shall be Additional Commissioner/Director or Joint Commissioner/Director as the case may be.

## Comparative analysis of old re-assessment scheme and new re-assessment scheme:

Particulars	Old provisions	New re-assessment scheme
Existence of 'reason to believe' that income has escaped assessment Necessary	Yes	No; requirement of having prescribed ' <b>information</b> ' suggesting escapement of income
Reassessment initiated <u>beyond</u> 4 years/3 years in case where regular assessment concluded under section 143(3) of the Act	Only if failure to disclose full and true material facts by assessee	Permitted in case where likely escapement of income is Rs.50 lakhs or more and represented in prescribed form
Enquiry and opportunity of being heard to assessee <u>before</u> issuance of notice under section 148 of the Act	Not required	Mandatory

## Comparative analysis of old re-assessment scheme and new re-assessment scheme:

Particulars	Old provisions	New re-assessment scheme
Time limit for initiation of re-assessment proceedings	<p>General - 4 years;</p> <p>where income escaping assessment exceeds Rs.1 lakh - 6 years</p> <p>In case of foreign asset (including financial interest) - 16 years</p>	<p>General - 3 years;</p> <p>In cases where likely escapement of income in the form of asset/expense/entry is Rs.50 lakhs or more - 10 years</p> <p>No separate category for foreign asset.</p> <p><b><u>After 01.09.2024</u></b></p> <p>3 years;</p> <p>In cases where likely escapement of income in the form of asset/expense/entry is Rs.50 lakhs or more - 5 years</p> <p>No separate category for foreign asset.</p>

# Action Points

- Seek a copy of sanction and check its validity – mechanical or post facto
- Seek copy of information (e.g. audit objection) and evaluate whether it can be challenged.
- Examine Timelines of Section 148, 149, 153
- Consider whether the questions raised are in connection with the reason for reassessment or it fishing enquiry, change of opinion ??
- Prepare a strong response on the merit of additions proposed.
- Has the Notice/Order been properly served?
- Has the Order considered all the Replies furnished by the assessee?

# Deciding appropriate course of action – Writ v. Appeal

## 1. Violation of natural justice:

- Order passed without serving notices in proper manner
- Order passed without considering replies filed
- Speaking order not passed.
- Order passed without granting PH despite request made
- Notice issued and not sufficient time granted to file response

## 2. Absence of jurisdiction:

- Proceedings initiated without taking necessary approvals.
- Proceedings initiated without fulfilling pre-conditions.
- Order passed without fulfilling necessary ingredients for invoking provision
- Notices issued in a manner not sanctioned by law e.g., notice issued by JAO when it has to be issued via Faceless scheme.

## 3. Barred by limitation:

- Notices issued/Order passed beyond time limit

# JURISPRUDENCE

# Conflict regarding applicability of old re-assessment provisions vis-à-vis new re-assessment provisions for the period 01.04.2021 to 30.06.2021:

- CBDT issued several notifications extending the applicability of old re-assessment provisions from 31.03.2021 till 30.06.2021.
- Finance Act 2021 provided that the new re-assessment scheme shall be effective from 01.04.2021.
- Notices under erstwhile re-assessment scheme was issued to various assessee's after 01.04.2021, without following the provisions of new re-assessment scheme (such as without conducting proceedings under section 148A, etc.);
- Due to the conflict / overlap in two different re-assessment schemes, notices issued under section 148 were challenged before High Courts;

## UOI vs. Ashish Aggarwal :

The Hon'ble Supreme Court vide order dated 04.05.2022 in the case of **UOI vs. Ashish Aggarwal**, held that:

- Notices under section 148 notices issued to the assesseees which were issued under erstwhile law, shall be deemed to have been issued under section 148A of the IT Act and construed or treated to be show cause notices in terms of section 148A(b).
- AO shall, within thirty days from 04.05.2022 provide to the respective assesseees information and material relied upon by him;
- Assesseees can reply to the show cause notices within two weeks thereafter;
- Requirement of conducting any enquiry under section 148A(a) is hereby dispensed with as a onetime measure;
- AO shall pass orders in terms of section 148A(d), and after following the procedure as required under section 148A may issue notice under new section 148;
- Defenses which may be available to the assesseees including those available under new section 149 and all rights and contentions which may be available to the assesseees shall continue to be available.



## **Conflict regarding applicability of old re-assessment provisions vis-à-vis new re-assessment provisions for the period 01.04.2021 to 30.06.2021:**

The CBDT issued a notification for the implementation of the judgment of the SC in Ashish Agarwal. The instruction clarified that the judgement will apply to all cases where extended reassessment notices have been issued irrespective of the fact whether these notices have been challenged or not.

Further Para 6.1 stated that the reassessment notices will travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point in time.

The tax authorities considering the replies filed by the Assessee passed orders under section 148A(d). Subsequently notices under section 148 of the new regime were to be issued to the Assessee by the AO between July 22 to September 22 for AY 2013-14, 2014-15, 2015-16, 2016-17, 2017-18.

This gave rise to the second round of litigation.

## UOI vs Rajeev Bansal:

Issues before SC

In light the above background, the following issues were raised before the SC.

Whether TOLA and notifications issued under it will also apply to reassessment notices issued after 1 April 2021.

Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid ?

Decision of Supreme Court –

In its judgement, the SC has discussed the scheme of assessment/ reassessment, legislative process of amendment by substitution, purpose Sec 3 (1) of TOLA, interplay between TOLA and the Act, significance of non-obstante wordings in section 3(1) of TOLA, scope of jurisdiction of Article 142 of the Constitution and interpretation / application of the SC decision in Ashish Agarwal.

## UOI vs Rajeev Bansal:

Issues covered by the SC decision –

- TOLA will continue to apply to the Act after 1 April 2021 where any action or proceedings specified under the substituted provisions of the Act is completed between 20 March 2020 and 31 March 2021.
- TOLA vs Section 149 – Section 3(1) of TOLA overrides section 149 of the Act only to the extent of relaxing time limit for issuance of a reassessment notice under section 148.
- TOLA vs Section 151 – TOLA extended the time limit for granting sanction by the authority specified under Section 151. Where TOLA applies to Section 151 of the new regime i.e. the time limit of three years from the end AY falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151 (1) is required to grant approval to extend time till 30 June 2021.
- The SC has brought much needed clarity to the reassessment process during the transitional periods by interpreting the applicability of TOLA. It has discussed the interplay between Section 148 and 148A offering a balanced interpretation. It has also given clarity to the scope of Ashish Agarwal judgement of SC. However, SC decision has not dealt with the validity of notices u/s 148A/148 issued by jurisdictional AO, without DIN post notification dt. 29 March 2022.

# SECTION 143 ASSESSMENTS

## **Section 143 (1) - Processing of Return**

### **When return shall be processed?**

- ROI is furnished under Section 139 or
- In response to a notice issued under Section 142(1)

### **Time limit for issuance of intimation**

- Within 9 months from the end of the FY in which the ROI is furnished.

### **Adjustments that can be made**

- Arithmetical error
- Incorrect claim which is apparent from the return
- Disallowance of loss if the ROI of preceding year is filed belatedly.
- Disallowance of expenditure/addition of income in audit report not considered in ROI
- Disallowance of deduction if the return is filed belatedly

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## Section 143 (3) Scrutiny Assessments

### Time limit for completion of assessment

Outer time limit for Notice u/s 143(2) - 3 months from the end of the FY in which Return is filed.

1.AY 2016-17 & 2017-18:  
21 months from the end of the AY

1.AY 2018-19:  
2.18 months from the end of the AY

1.AY 2019-20:  
2.12 months from the end of the AY

1.AY 2020-21:  
2.18 months from the ends of the AY

1.AY 2021-22:  
2.9 months from the end of the AY

1.AY 2022-23 and after:  
2.12 months from the end of the AY

1. Updated Return - 12 months from the end of the FY in which ROI is filed
2. Reference to TPO and assessment pending as on the date of search - Time limit stands extended by 12 months

**THANK YOU**

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