

Reopening of Assessments – Timelines and Writ Remedies

24 July 2021

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Amendments by the Finance Act, 2021 – An overview

Amendments by the Finance Act, 2021

Sections	Finance Act, 2021
Section 147 – Income escaping assessment	Substituted
Section 148 – Issuance of notice where income has escaped assessment	Substituted
Section 148A – Conducting inquiry, providing opportunity before issue of notice under section 148	Newly inserted
Section 149 – Time limit for notice under section 148	Substituted
Section 151 – Sanction for issue of notice	Substituted

- Reason to believe removed / but a decision needed before issuance of notice
- Information which suggests that income has escaped assessment – sine qua non (risk management / CAG)
- Deemed escapement – some dilutions / some additions
- GKN codified but inverted to culminate with notice u/s 148
- Approvals needed 4 times
- New time limits for reopening of assessment
- Four years criteria not relevant
- Sanction criteria are amended
- No separate search assessment for searches after April 1, 2021



Section 149 - Time limit for notice

Time limits under new section 149(1)

- **On or after 1 April 2021, notice under section 148**
 - In accordance with the new section 149(1)
 - Applicable even for AY 2021–22 or earlier AYs
- **Time limit for the issuance of a notice:**
 - Up to three years from the end of the relevant AY
 - Up to ten years from the end of the relevant AY on satisfaction of conditions in the new section 149(1)(b)

Time limit for notice

“149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer 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 or is likely to amount to fifty lakh rupees or more for that year:

Provided

Explanation —For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.”

(emphasis supplied)

The first proviso to new section 149(1)

- AY 2021-22 or earlier –time limit of old section 149(1)(b) maintained
- Curtails the time limit for AY 2021–22 or earlier AYs for new 149(1)(b) cases
- Does not extend the time limit under section 149(1)(a) from three to six years

Time limit for notice

“149. (1)...

(a)

(b)

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

...”

(emphasis supplied)

The other provisos to new section 149(1)

- Where search or requisition is initiated or made on or before 31st March 2021, the time limitation as per section 149 shall not apply to such cases.
- Time or extended time allowed to the assessee in providing an opportunity of being heard as per section 148A(b) or periods of stay or injunction of proceedings under section 148A, shall be excluded
- If after excluding such period, time available to the Assessing Officer for passing an order under Section 148A(d), is less than 7 days, the remaining time shall be extended to 7 days

“Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

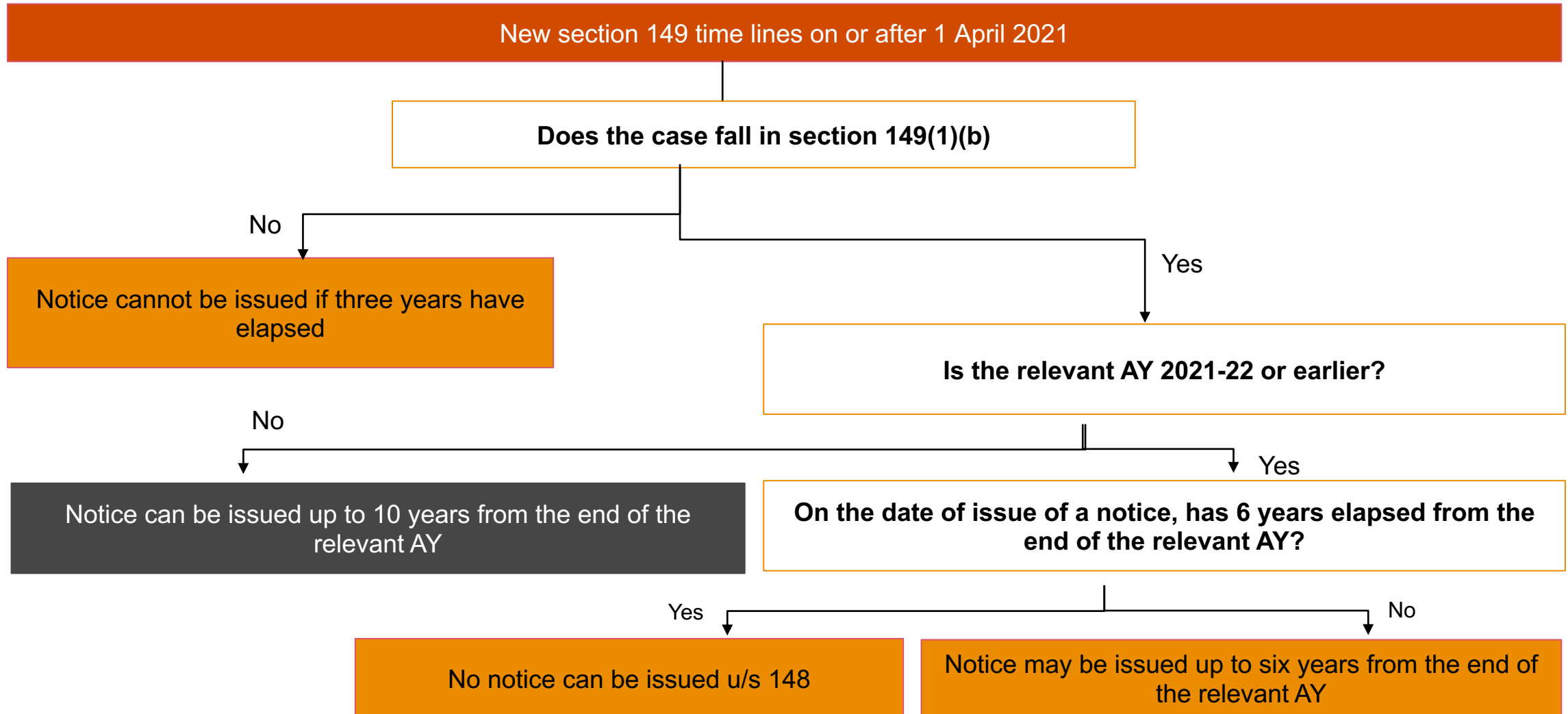
Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.”

Example: Notice for AY 2016-17

- **On or after 1 April 2021, for AY 2016–17, the following time limit should apply:**
 - On or before 31 March 2020
 - On or before 31 March 2023, if the conditions in the new section 149(1)(b) are satisfied
 - Under clause (b), Notice could be issued by 31 March 2027, but the proviso curtails the time limit to six years
- For AY 2016–17, a notice cannot be issued after 31 March 2023

New timelines - summary



“

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA)

TOLA and notifications thereunder

- Section 2(1)(b) - 'specified Act' to include the Income-tax Act, 1961
- Section 3(1) - empowers the Government to extend the time limit under the specified Acts for various actions
- Period covered: from 20 March 2020 to 31 December 2020 (further extended by notifications)
- **Notifications:**
 - Notification no. 93/2020 dated 31 December 2020
 - Notification no. 20/2021 dated 31 March 2021
 - Notification no. 38/2021 dated 27 April 2021

Example: Effect of TOLA and notifications thereunder on notice for AY 2016-17

- **For AY 2016–17, the following time limit should apply:**
 - On or before 31 March 2020
 - Effect of the TOLA and the notifications issued thereunder:
Time limit for issuance of notice extended to 30 June 2021
 - On or before 31 March 2023, if the conditions in the new section 149(1)(b) are satisfied
 - A notice could be issued by 31 March 2027, but the proviso curtails the time limit to six years



Explanation in the notifications

- Explanation to paragraph A(a) of Notification no 20/ 2021 dated 31 March 2021, Explanation to paragraph A(b) of Notification no 38/2021 dated 27 April 2021:
 - Jurisdictional challenge?

“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.”



“

Section 148A - Conducting inquiry,
providing opportunity before issue of
notice under section 148

Section 148A

- The Finance Act, 2021, inserted section 148A with effect from 1 April 2021
- **Before issuing a notice under section 148, the Assessing Officer should**
 - conduct enquiry with the prior approval of specified authority
 - provide an opportunity of being heard to the assessee - serving a show cause notice
 - consider the reply of the assessee filed in response to the show cause notice
 - pass an order, deciding if it is a fit case to issue a notice under section 148
 - prior approval of specified authority
- The above procedure will not apply in search cases



Applicability of section 148A

- **Notice on or after 1 April 2021**
 - In compliance with the procedures of section 148A
 - Applicable even for AY 2021–22 or earlier AYs



Section 151 - Sanction for issue of notice

Section 151

- The Finance Act, 2021, substituted section 151 w.e.f. 1 April 2021
- **On or after 1 April 2021, the specified authorities for section 148 and section 148A:**
 - if three or less than three years have elapsed from the end of the relevant AY -
 - Principal Commissioner, Principal Director, Commissioner or Director
 - more than three years have elapsed from the end of the relevant AY –
 - Principal Chief Commissioner, Principal Director General
 - when there is no Principal Chief Commissioner or Principal Director General - Chief Commissioner or Director General

Applicability of section 151

- Notice on or after 1 April 2021
 - Sanctioning authority as per new section 151
 - Applicable even for AY 2021–22 or earlier AYs



Summary and Way forward

Assessment Year wise summary of reassessment provisions

Assessment Year	Time limit for issuance of notice under section 148 of the Act (as amended by FA, 2021)		Procedure that should be followed for issuance of notice under section 148
	Under section 149(1)(a) [3 years from the end of the AY]	Under section 149(1)(b) [6 years* from the end of the AY]	
AY 2012-13	Time barred: 31 March 2016	Time barred: 31 March 2019	New procedure as provided under section 148A read with section 151 of the Act (as amended by FA, 2021)
AY 2013-14 & AY 2014-15	AY 2013-14: Time barred - 31 March 2017 AY 2013-14: Time barred - 31 March 2018	30 June 2021 on account of extension by TOLA (Original time limit: AY 2013-14 – 31 March 2020** AY 2014-15 – 31 March 2021)	
AY 2015-16	Time barred: 31 March 2019	31 March 2022	
AY 2016-17 & AY 2017-18	30 June 2021 on account of extension by TOLA (Original time limit: AY 2016-17 – 31 March 2020** AY 2017-18 – 31 March 2021)	AY 2016-17: 31 March 2023 AY 2017-18: 31 March 2024	
AY 2018-19 to AY 2021-22	AY 2018-19: 31 March 2022 AY 2019-20: 31 March 2023 AY 2020-21: 31 March 2024 AY 2021-22: 31 March 2025	AY 2018-19: 31 March 2025 AY 2019-20: 31 March 2026 AY 2020-21: 31 March 2027 AY 2021-22: 31 March 2028	

* The time limit of 10 years prescribed under section 149(1)(b) is restricted to 6 years based on the first proviso to the said section (as amended by FA, 2021)

TOLA - Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

**However, it may be argued that notification no 20/2021 dated of 31 March 2021 has a restrictive language which may not allow the issuance of a notice after 31 March 2021

Scenarios under which Writ remedy could be explored



Notice issued beyond time and new procedure not followed

Grounds on which Writ could be filed:

- Notice issued beyond the time limit prescribed under section 149 of the Act (as amended by FA, 2021)
- Mandatory procedure as laid down under the new law not followed i.e.,
 - Show cause notice and consequent order under section 148A of the Act not issued;
 - Sanctions not obtained from the 'prescribed authority' as per section 151 of the Act (as amended by FA, 2021).



Notice issued within time but new procedure not followed

Grounds on which Writ could be filed:

- Mandatory procedure as laid down under the new law not followed i.e.,
 - Show cause notice and consequent order under section 148A of the Act not issued;
 - Sanctions not obtained from the 'prescribed authority' as per section 151 of the Act (as amended by FA, 2021).
- **Where time limit to issue fresh notice is not available:** Writ remedy could be explored
- **Where time limit to issue fresh notice is available:** Advisable to adopt traditional route of litigation – to be finalized based on discussion of facts and relevant factors

At what stage should the writ petition be filed? What about the Ordinance to save this situation?

Assessment Year wise implications

Assessment Year	Time limit for issuance of notice under section 148 of the Act (as amended by FA, 2021)			
	Under section 149(1)(a) [3 years from the end of the AY]	Suggestable way forward	Under section 149(1)(b) [6 years* from the end of the AY]	Suggestable way forward
AY 2012-13	Time barred	Writ remedy possible on timelines and procedure	Time barred	Writ remedy possible on timelines and procedure
AY 2013-14 & AY 2014-15	Time barred	Writ remedy possible on timelines and procedure	Available	Writ remedy possible on procedure where notice is issued before 30 June 2021 #
AY 2015-16	Time barred	Writ remedy possible on timelines and procedure	Available	Advisable to adopt traditional route of litigation – to be finalized based on discussion of facts and relevant factors
AY 2016-17 & AY 2017-18	Available	Writ remedy possible on procedure where notice is issued before 30 June 2021#	Available	Advisable to adopt traditional route of litigation – to be finalized based on discussion of facts and relevant factors
AY 2018-19 to AY 2021-22	Available	Advisable to adopt traditional route of litigation – to be finalized based on discussion of facts and relevant factors	Available	Advisable to adopt traditional route of litigation – to be finalized based on discussion of facts and relevant factors

* The time limit of 10 years prescribed under section 149(1)(b) is restricted to 6 years based on the first proviso to the said section (as amended by FA, 2021)

With respect to notices issued on/ after 1 July 2021, Writ remedy possible on timelines and procedure

Current status of Writ challenges before the High Court

Name of Assessee	Assessment Year	High Court	Issue challenged in Writ
Armada D1 Pte. Ltd	2013-14	Bombay	<ul style="list-style-type: none"> • Procedure under the new reassessment provisions not followed.
Skyline Homes	2015-16 2016-17 2017-18	Bombay	
GTL Infrastructure Ltd	Not Available	Bombay	
Hitesh Kishore Sanghavi	Not Available	Bombay	
White Jewels Pvt. Ltd	Not Available	Bombay	
Mon Mohan Kohli	2003-04	Delhi	
Tata Communications Transformation Services Ltd	Not Available	Bombay	<ul style="list-style-type: none"> • Procedure under the new reassessment provisions not followed; and • Explanation to clause (A)(a) of Notification No. 20/ 2021 and Notification No. 30/ 2021 ultra-vires the Act and FA, 2021.
Sahil International	Not Available	Bombay	
Heena Ketan Panditpautra	Not Available	Bombay	
Bagaria Properties And Investments Pvt Ltd	2014-15 2015-16	Calcutta	
Mudra Finance Ltd	Not Available	Delhi	
Pioneer Independent Trust	2014-15	Karnataka	



Writ remedies - Overview

Writ Remedies

- **Common writs filed in the context of Income Tax Act**
 - **Certiorari** – Prayer for quashing of orders when there is an error of jurisdiction or law – generally filed in cases of orders barred by limitation or notices issued without jurisdiction
 - **Mandamus** – Prayer for positive direction - generally filed in cases where a cause of action is to be directed by the Court – Calling for certified copies of assessment documents or in cases of delay in issue of refunds
- Cause of Action to be established
- Extraordinary jurisdiction
- Availability of alternate remedy

Writ Process and Key considerations

Once a WP is filed, the HC would first hear the matter (within a week of filing WP) to determine if there is a prima facie case for admission of the WP.

The HC could stay assessment proceedings (i.e., the AO would not be able to take any further action)

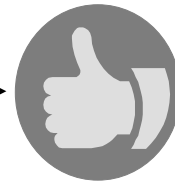
The Revenue would file a counter to our WP, explaining their arguments for dismissal of the WP. We should file a rejoinder to the counter filed by the Revenue.

The HC would hear the WP in detail by granting opportunity to Assessee and Revenue to present their case.

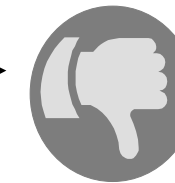
The HC would pass a final Writ order, providing appropriate directions to the lower authorities.

Practical considerations:

- Strategy for approaching the court - Desired outcome / prayer
- Timeline for approaching the court and disposal of writs;
- Cost involved

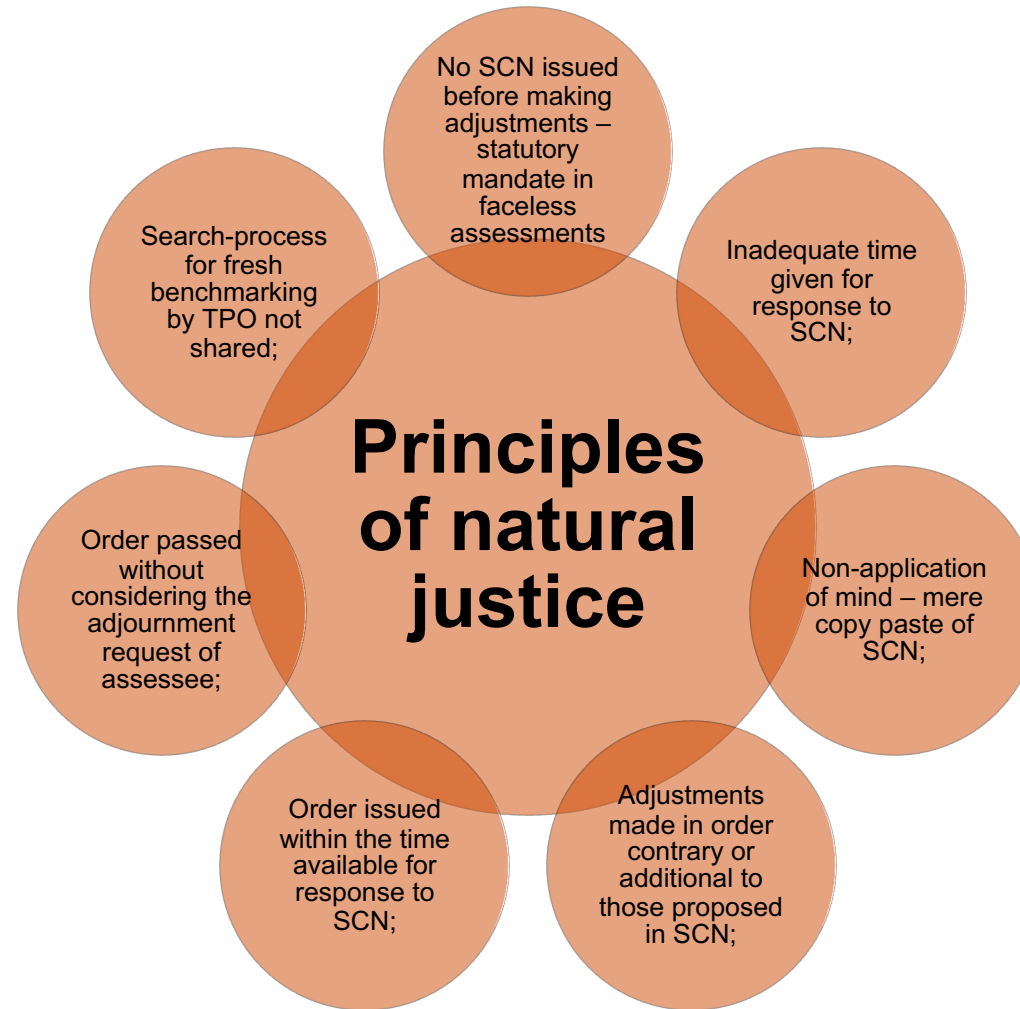


Continue proceedings before lower authority, implementing the order of the HC



File a **writ appeal** before the Division Bench of the High Court/SLP under before SC, depending on the High Court.

Writ – Faceless Assessment



WP against show-cause notice – PREMATURE.

Writ – Opportunities

Assessment of non-existent person

Order passed on Amalgamating company

AAR

1. Denial of admission by AAR
2. Transfer of cases from AAR to BAR

DRP

1. Final order passed without draft order
2. Scope of power of enhancement

Refunds

1. Adjustment of refunds against stayed outstanding demand for earlier years
2. Delay in granting of refunds

ITAT direction ignored

ITAT order giving specific directions ignored / writ court directed the AO to comply

Transfer Pricing

1. Protecting the APA
2. Challenge to TP reference – Instruction 2 of 2016

Constitutional Validity

1. Constitutional validity of deemed international transaction u/s 92B(2);

Writ – Opportunities and Experience

Reopening of assessments – Old Law

Change of opinion;

No new material brought on record;

No failure on part of assessee in full and true disclosure of material facts – reopening beyond 4 years;

GKN process not being followed

Reopening of assessment – New Law?

3 years limitation period – applicability for the past years

‘Represented in the form of an asset’

Section 148A procedure and time limits

Thank you

“

Annexure

Sections 2 and 3 of the TOLA

Section 2 – Definitions

“2. (1) *In this Act, unless the context otherwise requires,—*

..
(b) *"specified Act" means—*

..
(ii) *the Income-tax Act, 1961;”*

Section 3 - Relaxation of certain provisions of specified Act.

“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; or

...
and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

...”
(emphasis supplied)

Notification no. 20/2021 dated 31 March 2021

“In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020), the Central Government hereby specifies that,—

(A) where the specified Act is the Income-tax Act, ...and, —

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to ...issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the timelimit, specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

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.

...”

(emphasis supplied)

Notification no. 38/2021 dated 27 April 2021

“In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020...., and in partial modification of the notifications ...No. 20/2021 dated the 31st March, 2021, ..., the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, —

(A) where the specified Act is the Income-tax Act, 1961 ...and, —

...;

(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to ...issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 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...”

(emphasis supplied)



Section 148A

Conducting inquiry, providing opportunity before issue of notice under section 148

148A. The Assessing Officer shall, before issuing any notice under section 148, —

- (a) *conduct any enquiry, if required, ..., with respect to the information **which suggests that the income chargeable to tax has escaped assessment**;*
- (b) *provide an opportunity of being heard to the assessee, ..., by serving upon him a notice to show cause within such time, as may be specifiedas 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** in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*
- (c) *consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*
- (d) *decide, on the basis of material available on record including reply of the assessee, **whether or not it is a fit case to issue a notice under section 148, by passing an order**, with the prior approval of specified authority.....:*

Provided that the provisions of **this section shall not apply** in a case where,—

- (a) *a **search** is initiated ... or books ..., other documents or any assets are requisitioned ...on or after the 1st day of April, 2021; or*
- (b) *the Assessing Officer is satisfied, ... any money, bullion, jewellery or other valuable article or thing, seized in a search ... or requisitioned ..., in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (c) *the Assessing Officer is satisfied, ...any books of account or documents, seized in a search ... or requisitioned, in case of any other person on or after the 1st day of April, 2021, pertains ..., relate to, the assessee.*



Example: Effect of TOLA and notifications thereunder on notice for AY 2017-18

- **For AY 2017–18, the following time limit should apply:**
 - On or before 31 March 2021
 - **Effect of the TOLA and the notifications issued thereunder: Time limit for issuance of notice extended to 30 June 2021**
 - On or before 31 March 2024, if the conditions in the section 149(1)(b) are satisfied
 - A notice could be issued by 31 March 2028, but proviso curtails the time limit to six years

