

TAX FLASH NEWS

13 May 2022

CBDT instruction for the implementation of the Supreme Court's decision on reassessment proceedings

Executive Summary

On 4 May 2022, the Supreme Court¹ pronounced a decision dealing with the validity of the reassessment notices issued by the Assessing Officers (AOs) during the period beginning on 1 April 2021, and ending on 30 June 2021, i.e., within the time extended by the Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act 2020 (TOLA) and various notifications issued thereunder (extended reassessment notices). These extended reassessment notices were issued by the AOs under the provision of Section 148 of the Income-tax Act, 1961 (the Act) following the procedure prescribed under various provisions pertaining to reassessment, namely Sections 147 to 151, as they existed prior to their amendment by the Finance Act, 2021 (old law). With effect from 1 April 2021, the old law has been substituted with new Sections 147-151 (new law).

The Supreme Court has held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under Section 148A(b) of the new law and has directed AOs to follow the procedure with respect to such notices. It was held that all the defenses available to taxpayers under Section 149 of the new law and whatever rights are available to the AO under the new law should continue to be available.

On 11 May 2022, the Central Board of Direct Taxes (CBDT) has issued an Instruction² providing directions for implementation of the decision of the Supreme Court. CBDT clarified that the decision is applicable to all the cases where extended reassessment notices have been issued. This is irrespective of the fact whether such notices were challenged or not.

CBDT Instruction

Operation of the new Section 149 to identify the cases where a fresh notice under Section 148 can be issued:

- The Supreme Court held that the new law shall operate and all the defences available to taxpayers and whatever rights available to the AO under the new law shall continue to be available.
- The Supreme Court upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. The decision of the Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new reassessment provisions are to be applied at that point.

Based on the above, the extended reassessment notices are to be dealt with as under:

- For AY 2013-14, AY 2014-15 and AY 2015-16, fresh notice under Section 148 can be issued in these cases, with the approval of the specified authority, only if the case falls under Section 149(1)(b)³ as amended by the Finance Act, 2021.
- For AY 2016-17 and AY 2017-18, fresh notice under Section 148 can be issued in these cases, with the approval of the specified authority, under new Section 149(1)(a), since they are within the period of three years from the end of the relevant assessment year.

Cases where the AO is required to provide the information and material relied upon within 30 days:

The Supreme Court directed that the information and material are required to be provided in all cases within

³No notice under Section 148 shall be issued for the relevant assessment year 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

¹ Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64 (SC)

² CBDT Instruction No. 01/2022, dated 11 May 2022

30 days. However, it was observed that notices could not be issued in the case of AY 2013-14, AY 2014-15 and AY 2015-16 if the income escaping assessment, in that case for that year, is less than INR 50 lakh.

Hence, in order to reduce the compliance burden of taxpayers, it is clarified that information and material may not be provided in such cases. Separate instruction shall be issued regarding the procedure for disposing such cases.

Procedure required to be followed by the AOs to comply with the Supreme Court decision:

- The extended reassessment notices are deemed to be show-cause notices under new reassessment provisions of Section 148A(b) in accordance with the decision of the Supreme Court. Therefore, all requirements of new law prior to that show cause notice shall be deemed to have been complied with. The AO shall exclude cases as per the above-prescribed clarification.
- Within 30 days, i.e., by 2 June 2022, the AO shall provide to the taxpayers the information and material relied upon for the issuance of extended reassessment notices.
- The taxpayer has two weeks to reply 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 in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of the last communication of information and material by the AO to the taxpayer.
- In view of the observation of the Supreme Court that all the defences of the new law are available to the taxpayer, if the taxpayer makes a request by making an application that more time be given to him to file a reply to the show-cause notice, then such a request shall be considered by the AO on merit and time may be extended by the AO as provided in clause (b) of new Section 148A of the Act.
- After receiving the reply, the AO shall decide on the basis of material available on record including the reply of the taxpayer, whether or not it is a fit case to issue a notice under Section 148. The AO is required to pass an order under clause (d) of Section 148A to that effect, with the prior approval of the specified authority. This order is required to be passed within one month from the end of the month in which the reply is received by him from the taxpayer. In case no such reply is furnished by the taxpayer, then the order is required to be passed within one month from the end of the month, in which time or extended time allowed to furnish a reply expires.
- If it is a fit case to issue a notice under Section 148, the AO shall serve on the taxpayer a notice under Section 148 after obtaining the approval of the

specified authority under Section 151 of the new law. The copy of the order passed under clause (d) of Section 148A shall also be served with the notice under Section 148.

- If it is not a fit case to issue a notice under Section 148, the order passed under clause (d) of Section 148A to that effect shall be served on the taxpayer.

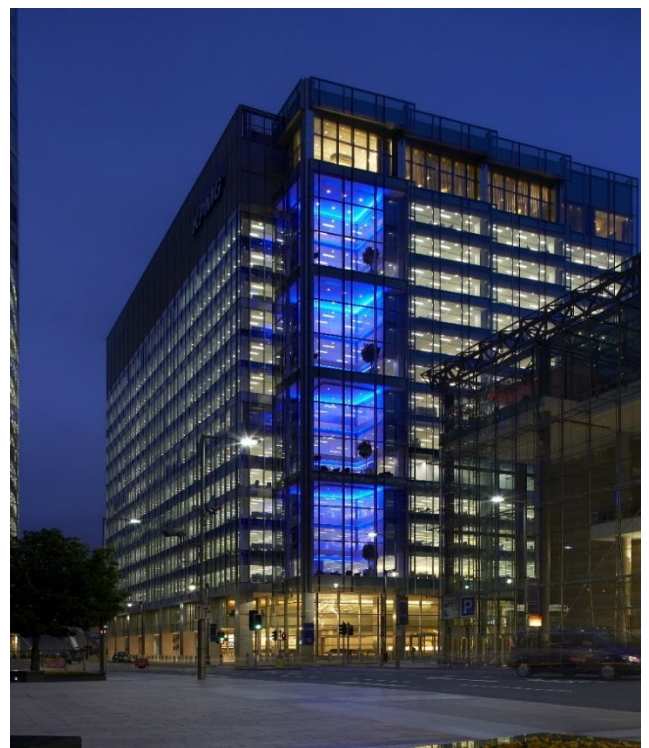
Our comments

CBDT has prescribed a uniform procedure to be adopted for implementing the Supreme Court decision, where extended reassessment notices were issued.

CBDT has clarified that the decision is applicable to all the cases where extended reassessment notices were issued. This is irrespective of the fact whether such notices were challenged or not.

The instruction clearly states that for AY 2013-14, AY 2014-15 and AY 2015-16, fresh notice under Section 148 can be issued only if 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 is more than INR 50 lakh. In order to reduce the compliance burden of taxpayers, it is clarified that information and material may not be provided in cases where income escaping assessment is less than INR 50 lakh. Separate instruction is expected for disposing such cases.

It is important to note that the taxpayer can make a request for more time to file a reply to the show-cause notice issued by the AO. Such a request shall be considered by the AO on merit and time may be extended by the AO. This will help taxpayers to get sufficient time to justify their cases.



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