

SALES TAX BAR ASSOCIATION, DELHI

OVERVIEW OF REASSESSMENT PROVISIONS IN INCOME TAX IN THE AFTERMATH OF RAJEEV BANSAL JUDGEMENT

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13.11.2024

AMENDMENTS IN REASSESSMENT SCHEME OVER THE YEARS

Amending Act	Effective Date of coming into force	Permissible Time Limit for issue of notice u/s 148 (from end of assessment year)
Income Tax Act, 1961	01.04.1962	<ul style="list-style-type: none"> • 8 years • 6 years • 4 years
Direct Tax Amendment Act, 1987	01.04.1962	<ul style="list-style-type: none"> • 4 years • 7 years • 10 years <p>(All the provisions were substituted)</p>
Finance Act, 2001	01.06.2001	<ul style="list-style-type: none"> • 4 years • 6 years <p>(All the provisions were substituted)</p>

AMENDMENTS IN REASSESSMENT SCHEME OVER THE YEARS

Amending Act	Effective Date of coming into force	Permissible Time Limit for issue of notice u/s 148 (from end of assessment year)
Finance Act, 2012	01.07.2012	<ul style="list-style-type: none"> • 4 years • 6 years • 16 years (16 years condition has been newly inserted, rest were undisturbed)
Finance Act, 2021	01.04.2021	<ul style="list-style-type: none"> • 3 years • 10 years (All the provisions are substituted)
Finance Act, 2024	01.09.2024	<ul style="list-style-type: none"> • 3.3 years • 5.3 years (S. 148, 148A, 149, 151 substituted)

SECTION WISE COMPARISON SINCE 01.04.2021

Section	Before 01.04.2021	After 01.04.2021	After 01.09.2024
147	<p>Reassessment u/s 147 could be completed subject to certain conditions as defined:</p> <ul style="list-style-type: none"> • Assessing officer has to record “Reasons to believe” that the income is escaping assessment • Necessary approval has to be taken • AO has to apply his mind into the information before concluding that the information as received is authentic and has substance. • If assessment u/s 143(3) is completed once, reassessment cannot be done beyond 4 years. 	<p>In case income chargeable to tax has escaped assessment, the AO subject to the provisions of S. 148 to 153 can:</p> <ul style="list-style-type: none"> • Assess or reassess such income • Recompute a loss or depreciation or depreciation allowance or any other allowance or deduction for such assessment year 	No change.

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148

Section	Before 01.04.2021
148	<p>Procedure defined by Apex Court in M/s GKN Driveshafts (India) Ltd. Vs. DCIT (2003) 259 ITR 19</p> <ol style="list-style-type: none">1. AO to record reasons to believe, seek approval from appropriate authority before issuing notice u/s 1482. Assessee is required To to file the return,3. If he so desires, to seek reasons for issuing the notices.4. The assessing officer is bound to furnish reasons within a reasonable time.5. On receipt of reasons, the assessee is entitled to file objections to issuance of notice, and6. The assessing officer is bound to dispose of the same by passing a speaking order.7. The assessee if desires can file a writ challenging the order or can proceed with the assessment. However, the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before the appellate authority.

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148

Section	After 01.04.2021
148	<p data-bbox="466 699 2397 813">AO to issue notice u/s 148 subject to the provisions of S. 148A and after passing an order u/s 148A(d).</p> <p data-bbox="466 890 754 936">Conditions:</p> <ul data-bbox="466 956 2397 1449" style="list-style-type: none"><li data-bbox="466 956 2397 1002">• Assessee to file return of income u/s 148 in the manner and within the time prescribed<li data-bbox="466 1017 1141 1064">• No Notice without approval<li data-bbox="466 1079 1192 1125">• No notice without information<li data-bbox="466 1141 2397 1264">• Information could be any information flagged by the risk management strategy made by the board or any final objection raised by CAG<li data-bbox="466 1279 2397 1449">• In cases of search or survey u/s 132, 132A, 133A (except 2A) on or after 01.04.2021, the AO shall be deemed to have the information which may suggest that income is escaping assessment.

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148

Section	After 01.09.2024
148	<p data-bbox="453 671 2384 776">AO to issue notice u/s 148 subject to the provisions of S. 148A along with copy of order passed u/s 148A(3).</p> <p data-bbox="453 843 715 887">Conditions:</p> <ul data-bbox="453 905 2384 1464" style="list-style-type: none"><li data-bbox="453 905 2384 1002">• Assessee to file return of income within the time prescribed not exceeding 3 months from the end of the month in which notice is issued.<li data-bbox="453 1017 1791 1064">• If filed beyond the time, return will be treated as not filed<li data-bbox="453 1079 1123 1118">• No notice without information<li data-bbox="453 1133 2155 1179">• If information received under scheme 135A, no notice to be issued without approval<li data-bbox="453 1195 2384 1410">• Information could be any information flagged by the risk management strategy made by the board, audit objection in an assessment, any information u/s 90 or 90A, any info u/s 135A, any information which requires an action in consequence of the order of the tribunal.<li data-bbox="453 1426 1969 1464">• Any information in case of a survey u/s 133A on or after 01.09.24

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148A

Section	Before 01.04.2021
148A	N/A

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148A

Section	After 01.04.2021
148A	<p>The procedure as laid out by the apex court in GKN Drive Shafts was codified in terms of S. 148A</p> <ul style="list-style-type: none">• AO to have information which may suggest income is escaping assessment• AO to issue notice u/s 148A(b) by providing information in his possession• Assessee to file reply (minimum 7 days) in the time allowed or extended• AO to form opinion on the basis of information and the reply filed and pass an order u/s 148A(d)

SECTION WISE COMPARISON SINCE 01.04.2021

Section 148A

Section	After 01.09.2024
148A	<p>The procedure of 148(A) has been amended from the 4 sub clause(s) (a), (b), (c), (d) to sub section (1), (2), (3) and (4).</p> <ul style="list-style-type: none">• AO to have information which may suggest income is escaping assessment• Assessee to file reply within the time specified in the notice (no minimum 7 days)• AO to form opinion on the basis of information and the reply filed and pass an order u/s 148A(3)• 148A not to apply where information received u/s 135(A) and notice can be issued just by seeking approval. Meaning thereby, Notice u/s 148 can be issues without 148A.

SECTION WISE COMPARISON SINCE 01.04.2021

Section	Before 01.04.2021	After 01.04.2021	After 01.09.2024
149	<p>Limitation of time for issue of notice under different conditions:</p> <ul style="list-style-type: none"> - 4 years - 6 years - 16 years 	<p>Limitation of time and quantum of income escaping assessment for issue of notice under different conditions:</p> <ul style="list-style-type: none"> - 3 years < 50 Lacks - 10 years > 50 Lacks - (The limitations have been subjected to 4 provisos in 2021/22 and 6 provisos in 2023) 	<p>Limitation of time and quantum of income escaping assessment for issue of notice under different conditions: (Only time is changed and quantum is not disturbed)</p> <ul style="list-style-type: none"> - 3.3 years < 50 Lacks - 5.3 years > 50 Lacks

SECTION WISE COMPARISON SINCE 01.04.2021

Section	Before 01.04.2021	After 01.04.2021	After 01.09.2024
151	<p>Appropriate Authority for sanction of notice</p> <ul style="list-style-type: none"> - Within 4 years – Not below JCIT unless satisfied by AO - Beyond 4 years (upto 6 yrs) – Pr.CCIT, CCIT, Pr.CIT, CIT 	<p>Appropriate Authority for sanction of notice</p> <ul style="list-style-type: none"> - Within 3 years– Pr. CIT, Pr. DIT, CIT, DIT - Beyond 3 years (upto 10 yrs or as the case may be) – Pr. CCIT, Pr. DG, GCC, DG 	<p>Appropriate Authority for sanction of notice</p> <ul style="list-style-type: none"> - Adl. CIT, Adl DIT, JCIT, JDIT - All other conditions are removed w.e.f 01.09.24

SECTION WISE COMPARISON SINCE 01.04.2021

Section	Before 01.04.2021	After 01.04.2021	After 01.09.2024
151A	N/A	<ul style="list-style-type: none">- Introduced by TOLA w.e.f 01.11.2020- Amended by FA 2021- All proceedings including proceeding u/s 148A to be under faceless scheme- Scheme introduced w.e.f 29.03.2022	- No Change

IMPORTANT ISSUES ARISING IN REASSESSMENT AFTER 01.04.2021

A. Direct issues

1. Assessment proceeding u/s 147 of the act
2. Procedure of initiation of proceedings – Section 148 / 148A
3. Limitation u/s 149 – Time and Quantum of Income escaping assessment
4. Approval u/s 151

B. Additional Issues

1. Document Identification Number (DIN)
2. Proceedings u/s 151A
3. Completion of Assessment u/s 153

ASSESSMENT PROCEEDING U/S 147 OF THE ACT

Assessment proceeding u/s 147 of the act

- **M/s GKN Drive shafts**
- **M/s Angelantoni Test Technologies SRL Vs. ACIT, Circle Int Tax I(I)(I), Delhi & Ors. - W.P.(C) 15928/2023 & CM APPL. 64160-64161/2023, Delhi High Court** – Reason to believe still remains the primary condition to be satisfied
- **New Delhi Television Ltd. Vs. DCIT [CIVIL APPEAL NO. 1008 OF 2020; dated: 3rd April, 2020 Supreme Court] (AY : 2008-09)**
 - The court held that the assessee had disclosed all primary facts before the AO and it was not required to give any further assistance to the AO by disclosure of other facts. It was for the AO at this stage to decide what inference should be drawn from the facts of the case.
 - The hon'ble court relied on the decision in case of Calcutta Discount Co. Ltd. Vs Income Tax Officer, Companies District-I Calcutta and Anr [(1961) 41 ITR 191(SC)], wherein it was held that non-disclosure of other facts which may be termed as secondary facts is not necessary.

PROCEDURE OF INITIATION OF PROCEEDINGS – SECTION 148 / 148A

Procedure of initiation of proceedings – Section 148 / 148A

- Mon Mohan Kohli Vs. ACIT & Anr. W.P.(C) 6176/2021, DEL
- Suman Jeet Agarwal Vs. Income Tax Officer. WP(C) 10/2022, DEL
- Union of India & Ors. Vs. Ashish Agarwal. Civil Appeal NO. 3005/2022, Hon'ble Supreme Court
- Board circular dated 11th May 2022
- M/s Divya Capital One Pvt. Ltd. Vs. ACIT, Circle 7(I), Delhi & Anr. W.P.(C) 7406/2022, Hon'ble Delhi High Court.
- M/s Angelantoni Test Technologies SRL Vs. ACIT, Circle Int Tax 1(I)(I), Delhi & Ors. - W.P.(C) 15928/2023 & CM APPL. 64160-64161/2023, Hon'ble Delhi High Court

LIMITATION U/S 149 – TIME AND QUANTUM OF INCOME ESCAPING ASSESSMENT

Limitation u/s 149 – Time and Quantum of income escaping assessment

- Ganesh Das Khanna Vs. ITO & Anr. W.P. (C) 11527/2022, DEL (S. 149)
- Twylight Infrastructure Pvt. Ltd. Vs. ITO Ward 25(3), Delhi & Ors. W.P. (C) 16524/2022, Hon'ble Delhi High Court (S. 149 and S. 151)
- Manju Somani Vs. Income Tax Officer, Ward (Re-Reassessment) WP(C) 7364/2024, 23/07/2024

APPROVAL FROM APPROPRIATE AUTHORITY U/S 151

Approval from appropriate authority u/s 151

- Twilight Infrastructure Pvt. Ltd. Vs. ITO Ward 25(3), Delhi & Ors.
W.P. (C) 16524/2022, Hon'ble Delhi High Court

DOCUMENT IDENTIFICATION NUMBER (DIN)

Document Identification Number (DIN)

- Circular No. 19/2019, 14.08.2019 – Generation of DIN
- Four Exceptional Circumstances for not issuing document using DIN (and on approval)
 - Technical Difficulties
 - When Officer is outside the office for discharging his office
 - PAN Migration
 - Any other proceeding under the act are initiated which does not allow DIN to be generated
- CIT (International Taxation)-I, New Delhi Vs. Brandix Mauritius Holdings Ltd.
ITA 163/2023, Hon'ble Delhi High Court
- M/s Brandix Mauritius Holdings Ltd. Vs. DCIT, Circle 1(1)(2), Int. Tax.
ITA No. 1542/DEL/2020 (A.Y. 11-12), ITAT Delhi

PROCEEDINGS U/S 151A

Proceedings u/s 151A

- Scheme notified by CBDT vide notification dated 29/03/2022 under section 151A
- Hexaware Technologies Limited Vs. ACIT WP-1778-2023, Bombay High Court
- Abhin Anilkumar Shah Vs. Income Tax Officer (Intl Tax) WPL-16750/2024, Bombay High Court
- Sri Venkataramana Reddy Patloola Vs. DCIT, WP 13353/2024, High Court of Telangana

COMPLETION OF ASSESSMENT U/S 153

RAGHAV ENGINEERS Vs . INCOME TAX OFFICER CIRCLE 61(I) NEW DELHI, W.P.(C) 13736/2024

- The petitioner contends that in case a notice under Section 148A(b) of the Act is issued within the last seven days of expiry of the last assessment year of the period of limitation, the period of limitation for passing an order under Section 153(2) of the Act, effectively, gets extended for more than eleven months. He submits that the Legislature has provided an exclusion as well as extension of the period of limitation to compensate for the time provided to the assessee for filing a reply and to provide at least seven days' time for the Assessing Officer to pass an order and issue a notice under Section 148 of the Act.
- This minor extension to compensate the Assessing Officer for time required for further procedure beyond the period of limitation, results in the notice under section 148 of the Act, which ought to have been issued within the period of three years from the end of the relevant assessing year, being served in most cases in the month of April of the next assessment year. The result is that the Assessing Officer now instead of getting twelve months to complete the assessment gets almost more than twenty-three months to do so.

JUDGEMENT OF RAJIV BANSAL

Important takeaways from the judgement

1. Judgement in the case of Ashish Agarwal shall be applicable to all reassessment notices issued between 01.04.2021 to 30.06.2021
2. All limitation dates falling between 20.03.2020 till 31.03.2021 shall be extended till 30.06.2021 (Read with TOLA)
3. The procedure as amended by the Finance Act 2021 for issue of notice u/s 148 shall be applicable to the notices issued on or after 01.04.2021 since TOLA can only extend the timeline but not the application of the substituted sections of procedure
4. All defences available including the timeline as amended u/s 149 w.e.f 01.04.2021 shall have to be followed for all notices on or after 01.04.2021

JUDGEMENT OF RAJIV BANSAL

Important takeaways from the judgement

6. Provisions of S. 151 (grant of approval) shall be read with the time line u/s 149 of the act for the purpose of applicability till the extended date under TOLA till 30.06.2021
7. Since the cause of limitation of issue of notice u/s 148 (Between 01.04.21 till 30.06.21) was challenged before courts and since Judgement of Ashish Agarwal case is applicable to all cases, the 4th proviso of S.149 will be applicable. Thereby causing the **‘stop of clock’** since the date of notice and the judgement of Ashish Agarwal on 04.05.2022
8. Also since Ashish Agarwal allowed a certain time for the AO's to issue notices including information within a specific time and a certain time for the replies to be filed u/s 148A(c), the stop of clock shall continue till the time allowed u/s 148A(c)

JUDGEMENT OF RAJIV BANSAL

9. The logical effect of the creation of the legal fiction by Ashish Agarwal (supra) is that the time surviving under the Income Tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime.
10. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021.
11. Accordingly, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time limit surviving under the Income Tax Act read with TOLA. This construction gives full effect to the legal fiction created in Ashish Agarwal and enables both the assesses and the Revenue to obtain the benefit of all consequences.

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement					Effect
Part of 19(g)	AY (1)	Within 3 years (2)	Expiration of limitation read with TOLA (3)	Within 6 years (4)	Expiration of limitation read with TOLA for (4) (5)	
	2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable	
19(f)	The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;				All notices for AY 2015-16 issued between 01.04.21 and 30.06.21 will be time barred. Some issue may arise in matters above 50 Lakhs	

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
48	After 1 April 2021, the time limits prescribed under the new regime came into force. The ordinary time limit of four years was reduced to three years. Therefore, in all situations, reassessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year.	All notices for AY 13-14 and 14-15 weather less than or greater than 50 lacks could only be issued upto 30.06.2021
51	Given Section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rupees fifty lakhs.	All notices for AY 2016-17 and 2017-18 if less than 50 lacks could be issued only upto 30.06.2021

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
51	Given Section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rupees fifty lakhs.	For AY 2016-17 and 2017-18, notices could have been issued beyond 3 years only if more than 50 lacks
54	<p>The Revenue accepts that without application of TOLA, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 in the following manner:</p> <ul style="list-style-type: none">• for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively;• and for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively.	Time lines as noted above. (Also refer to Time Limitation sheet at page 32)

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
76	Non-compliance by the assessing officer with the strict time limits prescribed under Section 151 affects their jurisdiction to issue a notice under Section 148..	Notices issued between 01.04.2021 and 30.06.2021 shall be valid if complied with the provisions of amended section of S. 149(1)(b).
77	The time limit for Section 151 of the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021.	Approval u/s 151 shall be constructed with the provisions of S. 149 read with S. 148A(b)
80	Under Section 148A(b), an assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. When this Court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under Section 151 for Section 148A(b).	

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
110	<p>The effect of the creation of the legal fiction in Ashish Agarwal (supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.</p>	

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
III	<p>The clock started ticking for the Revenue only after it received the response of the assessee to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.</p>	

JUDGEMENT OF RAJIV BANSAL

Important Paragraphs and there effects

Para No	Text of the Judgement	Effect
112	<p>Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022.</p>	

LIMITATION OF PROCEEDINGS U/S 149 OF THE INCOME TAX ACT

AY	Last Date of AY	4 years	6 years	3 years	10 years	3.3 years	5.3 years
				< 50 Lacks	> 50 Lacks	< 50 Lacks	> 50 Lacks
		Before 31.03.2021		After 01.04.2021		After 01.09.2024	
13-14	31.03.14	31.03.18	31.03.20	31.03.17	31.03.24 30.06.21	30.06.17	30.06.19
14-15	31.03.15	31.03.19	31.03.21	31.03.18	31.03.25 30.06.21	30.06.18	30.06.20
15-16	31.03.16	31.03.20	31.03.22	31.03.19	31.03.26 31.03.22	30.06.19	30.06.21
16-17	31.03.17	31.03.21	31.03.23	31.03.20	31.03.27 31.03.23	30.06.20	30.06.22
17-18	31.03.18	31.03.22	31.03.24	31.03.21	31.03.28 31.03.24	30.06.21	31.03.24
18-19	31.03.19	31.03.23	31.03.25	31.03.22	31.03.29	30.06.22	31.08.24
19-20	31.03.20	31.03.24	31.03.26	31.03.23	31.03.30	30.06.23	30.06.25
20-21	31.03.21	31.03.25	31.03.27	31.03.24	31.03.31	30.06.24	30.06.26
21-22	31.03.22	31.03.26	31.03.28	31.03.25	31.03.32	30.06.25	30.06.27
22-23	31.03.23	31.03.27	31.03.29	31.03.26	31.03.33	30.06.26	30.06.28
23-24	31.03.24	31.03.28	31.03.30	31.03.27	31.03.34	30.06.27	30.06.29



THANK YOU

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