



Income Tax Gazetted Officers' Association

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Date: 06-05-2022

To
The Chairperson,
Central Board of Direct Taxes,
North Block,
New Delhi.

Respected Madam,

Sub.: Clarification in respect of the judgement of Hon'ble Apex Court dated 04-05-2022 in the matter of notices u/s 148 issued between 01-04-2021 to 30-06-2021 under the pre amended provisions – matter regarding

Kindly refer to the above.

In light of the above, we would like to bring the following facts to your kind notice:

1. Our interpretation of the judgement is given as under:
 - a. All the notices issued u/s 148 under the pre amended provision of the Act between 01-04-2021 to 30-06-2021 are to be treated as show cause notice u/s 148A(b) of the Act.
 - b. The AO has to communicate the information, based upon which the notices u/s 148 were issued, to the assessee within 02-06-2022, taking 04-05-2022 as day one.
 - c. The assessee has to reply within 2 weeks from the receipt of such communication from the AO.
 - d. The AO with the approval of the specified authority is to pass the order u/s 148A(d) and issue fresh notice u/s 148 in appropriate cases within one month from the end of the month in which the reply of the assessee is received or the time of 2 weeks is over in case no response is received from the assessee.
 - e. Further, for all AYs up to AY 2017-18, orders u/s 148A(d) is to be passed with prior approval of Principal CCIT.
2. However, we are not certain about the followings:
 - a. Who is going to handle such cases: the FAOs or the JAOs, especially in view of the Gazette Notification vide no. 18/2022/F. No. 370142/16/ 2022-TPL (part-I) dated 29-03-2022?

- b.** Can the AO issue notices i.r.o. cases of AYs 2015-16, 2016-17 and 2017-18 that have escaped income below Rs. 50 lakhs as those will be beyond the 3 year limit as on 01-04-2021 [considering Para 10(iv) of the judgment]?
- c.** Can the AO at all issue notices i.r.o. cases of AYs 2013-14 & 2014-15 which are beyond the 6 year limit as on 01-04-2021? The notices u/s 148 were initially issued as AY 2014-15 was within 6 years and AY 2013-14 had the facility of extension of time allowed due to Covid19 pandemic. Further what happens if the amount of escapement for these two years is below Rs. 50 lakhs [considering Para 10(iv) of the judgment]?
- d.** During the period from 01-04-2021 to 30-06-2021, notices were issued based on information from 4 sources, viz.: (i) from other AOs, (ii) from other agencies, (iii) from investigation wing and (iv) insight portal. Other than the information received from insight portal no other source qualify for the criterion of *flagged in accordance with the risk management strategy*. Will the AO proceed in these cases where information is not *flagged in accordance with the risk management strategy*?
- e.** How will the information/reasons be sent to the assessee, through email or ITBA portal? If through ITBA portal then how to issue the same when one 148 notice has already been issued and nothing is pending in the work list?
- f.** If the communications are to be made through ITBA portal, by what time will the functionality be put in place? [Whatever may be the mode, the ease of working as well as good server speed must be maintained to ensure that the task of sending information to the assessee is completed within 30 days.]
- g.** There are basically 5 types of cases as under:

 - i.** Assessee who filed writ petition before a Court.
 - ii.** Assessee who did not file any petition before any of the High Courts but challenged the validity of the notice before the JAO without relying on any decisions from any of the High Courts.
 - iii.** Assessee who did not file any petition themselves but after the verdicts of different High Courts challenged the validity of the notice before the JAO relying on such decision.
 - iv.** Assessee who have not challenged the issue of the notice at all.
 - v.** Assessee who have not challenged the issue of the notice and filed ITR in response to the notice.

Now, the question is whether the AOs need to send the information and consequently pass order u/s 148A(d) followed by issue of notice u/s 148, in fit cases, to all the assesseees as above or to only to certain segment(s) of the assesseees?

Under these circumstances, we solicit your kind intervention for instructing the concerned authority to issue a clarification at the earliest that answers the above queries in point 2 above and also deal with the issues mentioned under point 1 above. We would also request you to kindly ensure that such clarification is issued immediately. **It may kindly be noted that the counting of 30 days by which the AO has to pass on the information to the assessee has already started from 04-05-2022.** There are many JAOs who have **more than thousand such cases** and if they are to carry out this task then they have to start the process at the earliest.

Considering the timeline set by the Hon'ble Court and the agony of our members posted in Jurisdictional charges, we have prepared this letter in a very hurried manner. So, if we miss out any issue/query or any other pertinent issue/query pointed out by our members later, we may be constrained to request the Board to issue further clarification. Similarly, the concerned authority may also examine the issues independently and should try to cover all relevant queries, if anything missed out on our part.

This is for your kind consideration and necessary action.

Thanking You,

Yours Sincerely,



(Bhaskar Bhattacharya)
Secretary General