



CVO CA UPDATES

SUPREME COURT DECISION ON SECTION 148 NOTICES

*Union of India v/s Ashish Agarwal
Supreme Court of India
Civil Appeal No. 3005 of 2022 (May 04, 2022)*

❖ **Re-assessment notices issued in terms of unamended Section 148 be deemed to have been issued under Section 148A substituted by Finance Act, 2021 and be treated as show cause notice, thereby reversing decisions of various High Courts on the said subject. The key considerations of Supreme Court decision are summarized as under:**

- Supreme Court invoked its powers under provisions of Article 142 of the Indian Constitution and passed order upholding all re-assessment notices under erstwhile Section 148 of Income Tax Act, 1961 (“the Act”) which were issued after April 1, 2021.
- Decision shall be applicable PAN India to all assessees who have received notices u/s 148 on or after April 1, 2021 as per erstwhile Section 148.
- All notices issued under erstwhile Section 148 shall be deemed to have been issued under Section 148A of the Act. Same shall be treated as show cause notices in terms of Section 148A(b).
- Assessing Officer (“AO”) to have 30 days time from May 4, 2022 to provide the assessee with all information and material relied upon so as to enable them to reply to the notice within 2 weeks.
- Requirement to conduct any enquiry if required with prior approval of specified authority under Section 148A(a) is dispensed with as a one time measure vis-à-vis those notices issued under erstwhile Section 148 from April 1, 2021 till date.
- Upon submission of response AO will have to pass an order under Section 148A(d) whether or not it is a fit case to issue notice under Section 148 by passing an order with prior approval of specified order.
- All defences which may be available to assessee under Section 149 and all rights which may be available under Finance Act 2021 and in law shall continue to be available.

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