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MAJOR CHANGES IN SECTION 148 PROVISIONS BY THE FINANCE ACT,2021.

Through Finance Act,2021 which got the assent of the **President of India on 28th March 2021** a sea change was brought in the provisions of section 148 w.e.f 1st April,2021.

1.SAILENET FEATURES OF SECTION 148 (OLD PROVSIONS) AND NEW PROVSIONS OF SECTION 148 R.W.S 148A.

Some salient features of the section 148 (Old Provisions applicable up to 31/03/2021) and that of new provisions of section 148 r.w.s 148A applicable with effect from 1st April,2021 are as under:

Old Provisions of Section 148 (Applicable up to 31/03/2021)	New Provisions of section 148 r.w.s 148 (Applicable from 1st April,2021)
Basic Criteria: AO has Reason to Believe that income of the Assessee has escaped assessment.	Basic Criteria: AO has valid information that income of the Assessee has escaped Assessment.
Time Limit: Up to 6 Assessment Years provided Income escaped is Rs1.00 Lakhs or More. For Foreign Asset – Time limit was 16 years.	Time Limit: Up to 3 Assessment Years. Up to 10 Assessment Year where documentary evidences are available with AO that Income in the form of Asset has escaped assessment Rs.50.00 lacs or more.
Enquiry by AO: NA.	Enquiry by AO: (Sec 148A). Yes. Where AO thinks fit with previous Prior approval of Higher Authority.
Opportunity of Hearing for Enquiry: NA.	Opportunity of Hearing for Enquiry: Yes.
Passing of Order after Enquiry:	Passing of Order after Enquiry:

NA.	Yes. (u/s 148A) . With approval of Higher Authority.
Enclosing Order with Notice issued u/s 148: NA.	Enclosing order with notice issued u/s 148. Yes. Order passed u/s 148A shall be handed over along with notice u/s 148.

1.1.INTENTION/OBJECT OF THE LEGISLATURE FOR BRINING CHANGES IN SECTION 148 W.E.F 1ST APRIL 2021:

(i).To avoid litigations caused under the old provisions of section 148;

(ii).Information collected from statement of financial transaction filed **u/s 285BA** and information received from different law agencies made available to the assessee **u/s 285BB (w.e.f 1st June 2020) annually** , act as the basis on fulfillment of ‘ **risk management criteria** ‘ set by the CBDT. Flagging of the information has to be done by the **Computer System**.

2.Whether in case the time limit of issuing notice u/s 148 under old provisions has expired on or before 1st April,2021 , can it be reopened under the new time limit of 10 years ?:

NO. Proviso to Section 149(1)(b).

(EX: For AY 2013-14 , six assessment years was expired on AY 2019-20. It can **not be reopened** in the extended period of 10 years).

(EX: For AY 2014-15 , six assessment years was expired on AY 2020-21. It can **not be reopened** in the extended period of 10 years).

(EX: For AY 2015-16 , six assessment years was not expired on AY 2020-21. It can can not be reopened under the clause of **3 Years** but can be **reopened** in the extended period of **10 years** provided Income Escaped is **Rs.50.00** Lacs or more).

(EX: For AY 2018-19 , **3 assessment years** was not expired on **AY 2020-21**. It can be reopened under the clause of 3 Years).

3. Whether the period of 16 Years in the case of Foreign Assets which has not been expired 31/03/2021 , can those cases be reopened after 1st April,2021 under the Old Provisions of Section 148 (that is 16 Years) ?

No. Sixteen Years was no more under the new provisions of section 148 w.e.f 1st April,2021. Seems to be merged with 10 years.

Reopening on account of Foreign Assets can be done by the clause of 10 years provided income escaped amount is Rs.50.00 Lacs or More.

(EX: For AY 2010-11 , Ten assessment years was expired on AY 2020-21. It may not be reopened after 1st April , 2021 on account of Foreign Assets).

(EX: For AY 2011-12 , Ten Assessment Years was not expired as on 1st April,2021 , it may be reopened under the New Provisions provided income escaped is Rs.50.00 Lacs or more).

4. VALIDITY OF NOTICES ISSUED U/S 148 (OLD PROVISIONS) AFTER 31/03/2021 – CONSIDERING THE EXTENDED DATE BY ISSUING NOTIFICATIONS:

SEQUENCE OF EVENTS:

For a better understanding of the matter , it shall be worthwhile to mention the relevant sequence of events which are useful for understanding the subject under consideration.

Event No.1: The Taxation and Other Laws (Relaxation of certain provisions) Ordinance,2020.

It was introduced on 31st March 2020 for providing relaxations in various compliances under several Acts including ‘ The Income Tax Act,1961’. It was introduced due to corona virus pandemic.

Event No.2: The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act,2020 . In Short ‘Relaxation Act,2020’.

The ‘Relaxation Act,2020’ was passed to replace the **ordinance** which was received the assent of the President of India on **29th Sept 2020**.

The ‘Relaxation Act,2020’ provides for extension of various time limits for completion or compliance of actions under the Specified Acts. ‘Specified Acts’

means various Acts like (VSVS Act,2020, Wealth Tax Act,1957 etc) including ‘ Income Tax Act,1961’.

Event No.3: CBDT Notification No: S.O 966 “(E)” (Notification No:10/2021, Dated 27/02/2021):

As per the **CBDT Notification No:10/2021 dated 27/02/2021** under the power conferred to the Central Government , under the Relaxation Act,2020 , various time line was extended. The relevant portion of the said Notification , which is crucial for the issue under consideration reads as under:

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and the completion of any action, as referred to in clause **(a) of sub-section (1) of section 3** of the said Act, relates to passing of any order—

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(b) for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action **under section 153 or section 153B thereof, —**

(i) expires on the **31st day of March, 2021** due to its extension by the said notification, such time limit shall stand extended to the **30th day of April, 2021;**

(ii) is not covered under (i) and expires on **31st day of March, 2021**, such time limit shall stand extended to the **30th day of September, 2021;**

Remarks to Event No.3:

From the above it is clear that the time limit for completion the action which inter alia included the **reassessment proceedings** was due to expire on **31st**

March,2021 was extended to **30th April,2021** by **CBDT Notification No.10/2021 dated 27/02/2021.**

Event No.4: CBDT Notification No: S.O 1432 “(E)” (Notification No:20/2021, Dated 31/03/2021):

As per the **CBDT Notification No:20/2021 dated 31/03/2021** under the power conferred to the Central Government , under the **Relaxation Act,2020** , the time limit for issuing notice u/s 148 was extended. The relevant portion of the said Notification , which is crucial for the issue under consideration reads as under:

(A).where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as 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 passing of an order under sub-section (13) of section 144C or **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 time-limit, 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.**

Remarks to Event No.4:

4.1.Vide Notification No.20/2021 dated 31/03/2021 , the date of completion of the assessment / reassessment proceedings was extended to **30th April,2021**.In other words , it may be stated that the said Notification clarified that the reassessment order , which were earlier to be passed on **31st March 2021** can now be passed up to **30th April,2021**.

4.2. Further Vide Notification **No.20/2021 dated 31/03/2021**, the notice u/s 148 which were to be issued on or before **31st March,2021** can now be issued on or before **30th April,2021**. It was explicitly clarified that the reassessment mechanism as per the law as stood on **31/03/2021** shall be applicable to notices issued **u/s 148 after 31/03/2021**. This was done by the Government as per the Power conferred to it **u/s 3(1) of the Relaxation Act,2020**.

Event No.5: CBDT Notification No: S.O 1703 “(E)” (Notification No:38/2021, Dated 27/04/2021):

As per the **CBDT Notification No:38/2021 dated 27/04/2021** under the power conferred to the Central Government , under the **Relaxation Act,2020** , the time limit for issuing notice u/s 148 was **further** extended. The relevant portion of the said Notification , which is crucial for the issue under consideration reads as under:

(A).where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as 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 said Act, relates to passing of any order for **assessment or reassessment under the Income-tax Act**, and the time limit for completion of such action under **section 153** or section 153B thereof, 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;**

(b).the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income-tax Act or **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.**

Remarks to Event No.5:

5.1.Vide Notification **No.38/2021 dated 27/04/2021** , the Govt. once again shifted the date of completion of the assessment/reassessment proceedings was extended to **30th June,2021**.In other words , it may be stated that the said Notification clarified that the assessment/reassessment order , which were earlier to be passed on **30th April, 2021** can now be passed up to **30th June,2021**.

4.2.Futher Vide Notification No.38/2021 dated 27/04/2021, the notice u/s 148 which were to be issued on or before **30th April,2021** can now be issued on or before **30th June,2021**. It was explicitly clarified that the reassessment mechanism as per the law as stood on **31/03/2021** shall be applicable to notices issued **u/s 148 up to 30th June ,2021**.This was done by the Government as per the Power conferred to it **u/s 3(1) of the Relaxation Act,2020**.

6.SECTION 3 OF ‘ THE TAXATION AND OTHER LAWS (RELAXATION & AMENDMENT OF CERTAIN PROVISIONS) ACT,2020. (In Short ‘RELAXATION ACT,2020’):

From the above discussions , it is now clear that the above notifications has been issued by the **CBDT under section 3(1) of the ‘Relaxation Act,2020’**. For a better understanding of the matter section 3(1) of the ‘Relaxation Act,2020’ reproduced as under:

6.1.Section **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

- (b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act.

6.2.REMARKS RELATING TO SECTION 3(1) OF THE ‘RELAXATION ACT,2020’:

6.2.1.From the aforesaid, it can be clearly stated that as per the provisions of the Relaxation Act, 2020 specific powers has been confirmed to **relax** the rigors of the various provisions of the specified Act including the Income Tax Act, 1961.

6.2.2.Hence read in this context when the time limit is extended (relaxed) from time to time as per the Relaxation Act,2020 there remains **no iota of doubt** that the Government has the **power** to do it.

6.2.3.The situation of issuing notice after 31/03/2021 under the old provisions of section 148 is however absolutely different. This is giving **birth** to a situation in which when specific provisions has been passed and made Finance Act, 2021, can it be said that the Relaxation Act,2020 gives power to it to **temporality suspend** the new provisions sections 148 r.w.s 148A applicable from 1st April,2021.

6.2.4.This appears not in conformity of the **objectives** of the Relaxation Act,2020. The provisions of section 3(1) of the Relaxation Act,2020 gives specific power to the Government to relax the **rigors of the timelines** of some of the sections including the reassessment, but **does not says** that a new provision of section 148 r.w.s 148A which has been discussed in the parliament and made an Act with the assent of the President, **will not continue from 1st April,2021** .

7.PERSONAL OPINION OF THE SPEAKER:

7.1.The object of the Parliament for introducing ‘ Relaxation Act,2020’ was to provide relaxation regarding compliance, extension of time, reduction of interest, waiver of penalty etc. given under ‘Specified Act’ including the ‘I.Tax Act,2021’ but its **object** was not to suspend the operation of the Finance

Act,2021 w.e.f 1st April,2021 relating to new provisions of section 148 r.w.s 148A , hence looking from this angle it can be concluded that by using section 3(1) of the ‘Relaxation Act,2020’ the old provisions of section 148 can not be extended **beyond 31st March ,2021.**

7.2.Also the provisions and the languages used under the ‘Relaxation Act,2020’ are plain, clear, specific and there is no ambiguity hence applying ‘ **Cardinal Rule of Interpretation**’ , it can be held that provisions of section 3(1) of the ‘Relaxation Act,2021’ can **not be applied** so as to **suspend the operation of the Finance Act,2021** from 1st April,2021 relating to new provisions of section 148 r.w.s 148A.

7.3.It is also suggested an Explanation may be added in the Finance Act,2021 with respect to sections 148 r.w.s 148A with the wording that application of old provisions of Section 148 as applicable up to 31st March,2021 has been extended to 30th June, 2021 which was the **object** of the ‘**Relaxation Act,2020**’.

7.4.Even after operation of Finance Act,2021 w.e.f 1st April,2021 regarding new provisions of sec148 r.w.s 148A , notices issued under the old provisions of section 148 **on or after 1st April,2021 up to 30th June,2021** , whether legally **valid or not** is a debatable issue.

Writ Petitions are being filed before the **Bombay High Court** and Calcutta High Court which are as under:

(i).Sahil International Vs. ACIT .W.P (L) No.14687 of 2021.Date 09/07/2021.**(Bom.HC).**

(ii).Armada D1 Pte Ltd Vs. DCIT . W.P (L) No.11766 of 2021.Date 03/06/2021.**(Bom.HC).**

(iii).Tata Communications Transformation Services Ltd Vs. ACIT . W.P No. 1334of 2021.Date 05/07/2021.**(Bom.HC)**

(iv).Bagaria Properties & Investments Pvt. Ltd Vs. UOI . WPO/244/2021.Date 15/07/2021 . (For AY 2014-15 & AY 2015-16).**(Cal.HC).**

7.5. In any case where notices u/s 148 are being used under old provisions for **AY 2014-15** after 30th June, 2021 such notices may not valid because of not issued within extended time (30th June 2021).

7.6. In any case where notices u/s 148 are being used under old provisions of section 148 for **AY 2015-16** on wards **after 30th June, 2021** such notices be may valid because the issuance of notice u/s 148 was not expired as on 31/03/2021 and can be covered under the new provisions of extended period of 10 years provided income escaped is Rs.50.00 Lacs or more),

8. ‘NOTIFCATION ‘ AND ‘CIRCULAR’ ISSUED BY ‘CBDT’:

8.1. DIFFERENCE BETWEEN ‘ NOTIFICATION’ AND ‘CIRCULARS’:

Notification	Circular
A notification refers to a public notification that lets the public to know about the laws that are being enacted and how they are going to affect the Public at large.	A Circular is an internal memo that provides clarification about certain aspects of law and its implementation.
A notification is issued by CBDT u/s 295 with consultation of Central Govt. may or may not applicable to whole of India , may or may not applicable to certain category of Public.	A Circular is issued by CBDT u/s 119 for its subordinates and officers without consultation of Central Govt and binding to all revenue authorities not the PUBLIC.
Notification being Law is binding to Courts including Public.	Circulars being internal memo is not binding to the Courts including the Public.
Notification is issued for implementation of law.	Circulars can not be issued so as to deviate the law.
Notification is published in the Official Gazette of India.	Circulars can not be published in the Official Gazette of India.

8.2.CBDT CAN NOT ISSUE CIRCULARS OR NOTIFICATIONS DEVIATING THE LAW PASSED BY THE PARLIAMENT:

CBDT has no power to issue Circulars u/s 119 deviating the Law enacted by the Parliament.

S.V.Gopal Rao Vs. CIT (2004) 270 ITR 433 (AP.HC). (Affirmed by SC in Civil Appeal Nos:4901 of 2010 , dated 13/07/2017.)

Durga Dass Devki Nandan Vs. ITO (2011) 12 taxmann.com 156 (HP.HC)

CBDT has no power to issue circular for putting a condition for grant of a benefit which is otherwise available under the Act.

PCIT Vs. Gee Square Export (2018) 100 taxmann.com 461 (Bom.HC) (SLP dismissed by SC reported in (2018) 100 taxmann.com 462).

CBDT has no power to collect tax by issuing Circular without amending relevant provisions of the Act by using Notification.

Noida Power Co. Ltd Vs. UOI (2018) 97 taxmann.com 531 (All.HC)

CBDT has no power to issue Circular directing AO to do assessment in a particular manner and can not direct CIT(A) to dispose of a case in a particular manner.

Chamber of Tax Consultants Vs. CBDT (2019) 104 taxmann.com 397 (Bom.HC)

8.3.PRESSS RELEASE , CBDT CIRCULAR No:12 of 2021 , NOTIFICATION NOS. 74 & 75 , ALL ARE DATED 25/06/2021.

8.3.1. Press Release was issued covering 18 points .

8.3.2.Circular No:12 of 2021 was issued for 12 points.

8.3.3.Reason for not covering all points (relating to date of extension of Assessment Order) because CBDT Circulars can not deviate Law and CBDT Circulars can not harm Assessee's. **[Covered in the Notification Nos.74 of 2021).**

8.3.4.Reason for not covering all points (relating to date of extension of VSVS Act-2020) because VSVS ACT,2020 is a separate Act and there was no provision for issuance of ‘Circulars’. [**Covered in the Notification Nos.75 of 2021**).

9. Conclusion:

9.1.Notices issued under old provisions of section 148 after 31 March 2021 (From 1st April 2021 to 30th June 2021) are covered by the Notification Nos. 20 of 2021 , dated 31st March 2021 and Notification Nos.38 of 2021,dated 27th April 2021 seems to be valid notices for **AY 2014-15**, however can be challenged under the ground of **deviation** of the ‘**Object**’ of the ‘**Relaxation Act,2020**’.

9.2.Notices issued under old provisions of section 148 for **AY 2014-15** after 30th June 2021 may not be valid as it is not covered under the extended time limit.

9.3.Notices issued under old provisions of section 148 after 31 March 2021 for the **AY 2015-16** and on wards may **not be held valid** as period for issuing notices as on **31/03/2021** was not expired , hence can be covered under the new provisions of **10 years** provided escaped income is Rs.50.00 Lakhs or more than Rs.50.00 Lacs.

9.4.Also issuing notices u/s 148 under the old provisions after 31/03/2021 for AY 2015-16 may not be held as valid because notices are being issued not using the information as per the **risk criteria** set by the ‘CBDT’ which was the intention of new provision of section 148 r.w.s 148A w.e.f 1st April,2021.

The End.

Pls. be in touch.

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