

New re-assessment provisions under income-tax - Law and Practice

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Karnataka State Chartered Accountants Association



Introduction



Introduction

- ▶ The provision for assessment of income escaping assessment was initially part of Income Tax Act, 1922 and after various amendments from time to time, the same has been in present form, before being substituted by new provisions in Finance Act, 2021, which was again amended by the Finance Act, 2022 and 2023
- ▶ The earlier provisions relating to reassessment in the Income Tax Act, 1961 provided that if the Assessing Officer ('AO') has "reason to believe" that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or re-compute the total income for such year.
- ▶ The Memorandum explaining Finance Bill, 2021, mentions the intention of Parliament to introduce new provisions for reassessment.
 - ▶ Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the ITA (statement of financial transaction or reportable account).
 - ▶ Information is also received from other law enforcement agencies.

Thus, new provision introduced to reopen the assessment in such situations on the basis of the information so collected.

- ▶ Ashish Agarwal [(138 taxmann.com 64)(SC)]:
"7. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as the Department and the same being in public interest....."
- ▶ Divya Capital One Private Limited [445 ITR 436 dated 12 May 2022 (Delhi HC)]:
"7. New re-assessment scheme (vide amended Sections 147 to 151) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business.
.....
16. A progressive as well as futuristic scheme of re-assessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result."

Reassessment Procedure



Reassessment Procedure

Sr. No.	Particulars	Old Regime (applicable for notice issued up to 31 March 2021)	New Regime (as introduced by FA, 2021)
1	Section 147	<ul style="list-style-type: none"> ▶ <u>Reason to believe</u> ▶ Income chargeable to tax has escaped assessment for any assessment year ▶ Assess or re-assess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings ▶ 1st Proviso – Where assessment has taken place under section 143(3) – no proceedings after 4 years unless income escapes assessment due to failure on part of the assessee to make return or to disclose fully and truly all material facts necessary to assessment for that year. ▶ 2nd Proviso – AO can assess/ re-assess income other than the income involving matter subjected to any appeal/ reference/ revision 	<ul style="list-style-type: none"> ▶ Income chargeable to tax has escaped assessment for any assessment year ▶ Assess or re-assess such income or re-compute the loss ▶ Extended the scope to also include any information requiring action in consequence of a tribunal/court order.

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2022
2.1	Primary reason for assuming jurisdiction for reassessment	<ul style="list-style-type: none"> ▶ Reason to believe that income has escaped assessment 	<p>The AO has information which suggests that income has escaped assessment. The scope of the information is as follows (Exp. 1 to sec. 148):</p> <ul style="list-style-type: none"> ▶ Any information flagged in accordance with the risk management strategy (RMS) ▶ Final Audit objection raised by C&AG 	<p>The Finance Act 2022 has increased the scope of the information as follows (Exp. 1 to sec. 148):</p> <ul style="list-style-type: none"> ▶ Removed the reference to the word 'flagged' and now entire RMS data base may become basis for reopening. ▶ Extended the scope to also include 'any audit objections' as against only "Final objection by C&AG" i.e. This means that any kind of audit objection (whether internal audit objection, revenue audit objection, objections by C&AG, etc.) raised could be used to reopen the assessment on the ground that it is not in accordance with the provisions of the Act. ▶ Extended the scope to also include any information received from a foreign jurisdiction under an agreement entered into under Section 90 or section 90A

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2022
2.1	Primary reason for assuming jurisdiction for reassessment (Contd.)			<ul style="list-style-type: none"> ▶ Extended the scope to also include information received under a scheme notified under section 135A (Dealing with information collected by tax authority electronically under different provisions . The scheme yet to be notified) ▶ Extended the scope to also include any information requiring action in consequence of a tribunal/court order.

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2022
2.2	Primary reason for assuming jurisdiction for reassessment (Contd.)		<p>Explanation 2 to section 148:</p> <p>Cases where AO is deemed to have information suggesting escapement of income <u>for 3 years preceding</u>:</p> <ul style="list-style-type: none"> ▶ Search under section 132 on or after 1 April 2021 ▶ Requestion under section 132A on or after 1 April 2021 ▶ Survey under section 133A ▶ AO (with prior approval of PCIT/ CIT) is satisfied that any money, bullion, jewellery, other valuable article or thing, books of account or documents seized or requisitioned in case of any other person on or after the 1 April 2021, belongs to the assessee. 	<ul style="list-style-type: none"> ▶ Deeming fiction for 3 years deleted. ▶ Reference to Expenditure Survey [section 133A(5)] removed.

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2022
3	Procedure up to issuance of notice under section 148	<p>Step 1: Obtain approval from JCIT/PCIT/ CCIT/CIT (as the case may be)</p> <p>Step 2: Formally record reasons to believe that the income has escaped assessment</p> <ul style="list-style-type: none"> ▶ The reasons must be recorded in detail and not based on borrowed satisfaction. ▶ Change of opinion cannot be basis of reopening. ▶ The fresh information (i.e. tangible material) available with the assessing officer should reasonably indicate evasion of tax. 	<p>Step 1: Conduct an inquiry with a prior approval of the authority under section 151</p> <p>Step 2: Issue of SCN granting taxpayer an opportunity of being heard after approval of the authority under section 151</p>	Finance Act 2022 now provides that no prior approval of the authority under section 151 would be required prior to issuing SCN to provide the assessee an opportunity of being heard.

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2022
3	Procedure up to issuance of notice under section 148 (Contd.)	<p>Step 3: Issue a notice under 148</p> <p>[Refer GKN Driveshafts (India) Ltd (259 ITR 19) (SC)]</p> <p>[Refer Asian Paints (296 ITR 90)]</p>	<p>Step 3: Consider the reply of the Assessee and decide if the case is fit for reopening by passing an order with prior approval of the authority under section 151.</p> <p>Step 4: Issue of notice under 148 with prior approval of the authority under section 151.</p> <p>► It is pertinent to note in the above procedure, there is no remedy available with Taxpayer in the ITA to contest the order under section 148A(d) of ITA. Thus, the Taxpayer has an option to file writ against the said order before High Court.</p>	<p>Finance Act 2022, provides that no separate approval would be required to issue notice under section 148 if a speaking order is passed by the AO holding that the case is fit for reassessment [2nd proviso to section 148]</p> <p>If notice is issued at pre selection stage then separate approval under Section 151 for issue of notice under Section 148 is not required.</p>

Procedure under section 148A is mandatory and assessee to be provided all information and material relied upon by the AO - Ashish Agarwal [(138 taxmann.com 64)(SC)]

Conduct of enquiry under section 148A(a) has not been made mandatory but it is discretionary and has been vested with Assessing Officer as provision uses its expression 'if required' - Champa Impex (P.) Ltd. [158 taxmann.com 629 (Calcutta HC) dated 17 January 2024] – AY 2016-17

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)	New Regime (as introduced by FA, 2021)	Amendments by FA, 2023
4	Issue of notice under section 148	<ul style="list-style-type: none"> ▶ Before making the assessment/ reassessment/ recomputation, the AO shall serve a notice to the assessee requiring him to furnish a return of income within the time specified therein. ▶ Such return shall be treated as a return of income filed under section 139 . ▶ AO shall record reasons before issuing the notice. ▶ Obtain sanction under section 151 of the Act. 	<ul style="list-style-type: none"> ▶ Before making the assessment/ reassessment/ recomputation and after complying to the provisions of section 148A , AO shall along with the order under section 148A(d) , serve a notice to the assessee requiring him to furnish a return of income within the time specified therein. ▶ No notice shall be issued unless there is information present with the AO which suggests that income chargeable to tax has escaped assessment. ▶ Prior approval to of the authority under section 151 to be obtained unless the AO has obtained approval prior to passing of order under section 148A(d) . 	<ul style="list-style-type: none"> ▶ Return of income to be filed within 3 months from the end of the month in which the notice under section 148A is issued or such further period as allowed by the AO on application made to him. ▶ Where return of income has been furnished beyond the specified period, it shall not be deemed to be a return of income under section 139 .

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)		New Regime (as introduced by FA, 2021)		Amendments by FA, 2022
5	Period of limitation for initiating proceedings	Up to 4 years		Upto 3 years		
		After 4 years but up to 6 years	<ul style="list-style-type: none"> ▶ Where income escaping assessment exceeds Rs. 1,00,000 ▶ Where income has been assessed under section 143(3) , income escapes assessment due failure of Assessee to file return of income or disclose fully all material facts during assessment 	Beyond 3 years but up to 10 years	Where income chargeable to tax escaping assessment amounts to or is likely to amount to Rs. 50,00,000 or more represented in form of an asset for the year .	<p>If the aggregate value of investments in assets/expenditure incurred in multiple years exceeds Rs. 50,00,000, then reassessment notice are required to be issued for all such years thereby including it in 10 years limit.</p> <p>Expansion of scope to also include:</p> <ul style="list-style-type: none"> a) Expenditure in relation to transaction; b) Expenditure in relation to an event or occasion; c) an entry or entries in books of accounts <p>Deletion of the phrase 'for the year'</p>
		Up to 16 years	Income in relation to any asset (including any financial interest) located outside India and chargeable to tax, has escaped assessment (only in case of resident).			

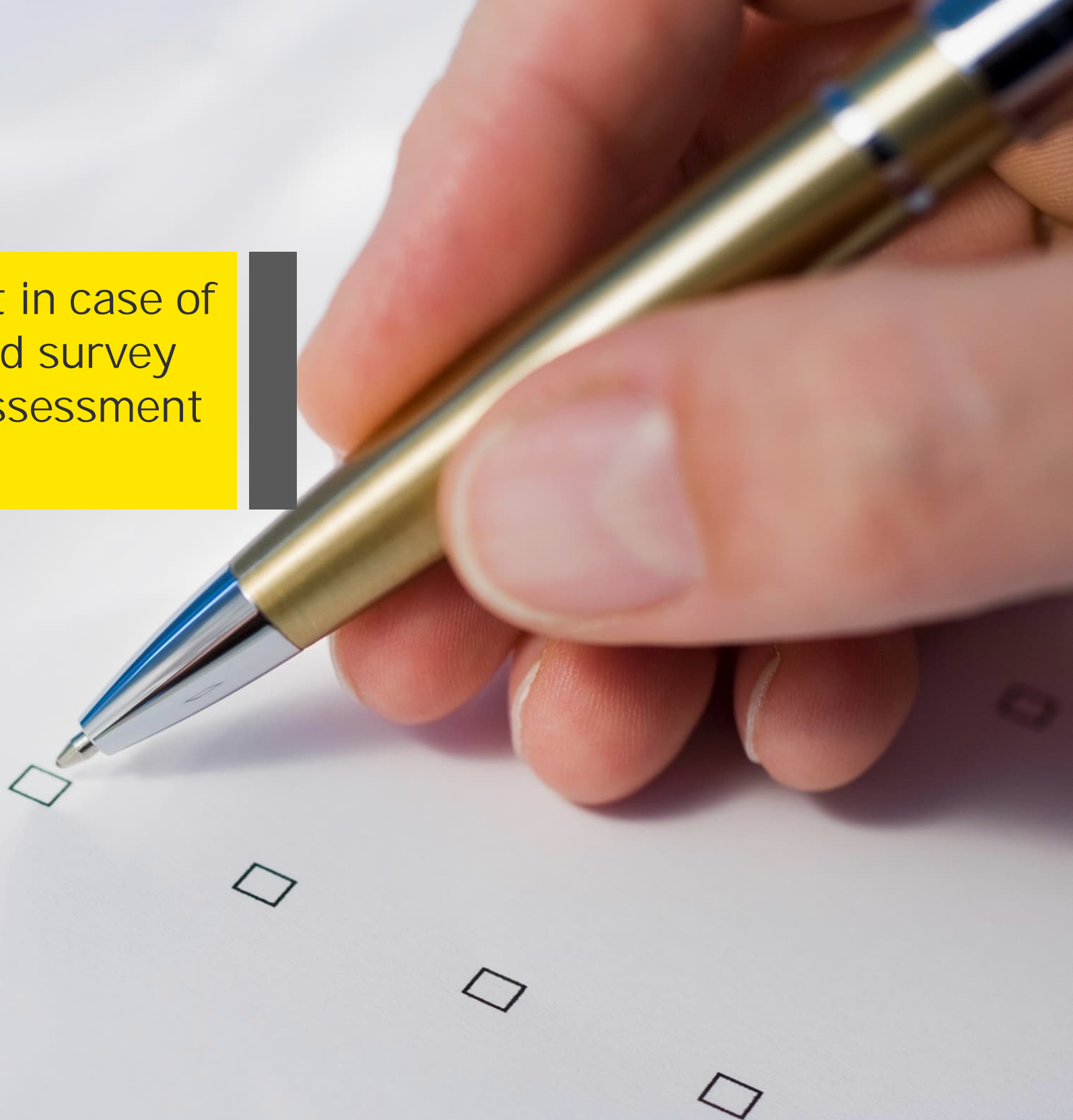
Reassessment Procedure (Contd.)

Sr. No.	Particulars	New Regime (as introduced by FA, 2021)	Amendments by FA, 2023
5	Period of limitation for initiating proceedings (Contd.)	▶ 1 st Proviso to section 149 - No notice can be issued in case of AYs prior to AY 2021-22 if the notice under sections 148/ 153A/ 153C at the time on account of it being time barred in terms of section 149(1)(b)/ 153A/ 153 as they stood before commencement of Finance Act, 2021.	

Reassessment Procedure (Contd.)

Sr. No.	Particulars	Old Regime (applicable up to 31 March 2021)		New Regime (as introduced by FA, 2021)	
		Upto 4 years	JCIT	Up to 3 years	PCIT/PDIT/CIT/DIT
6	Requirement of prior approval under section 151				PCCIT/PDGIT or where there is no PCCIT /PDGIT, CCIT/ DGIT (deletion made by Finance Act, 2023)
		Beyond 4 years	PCCIT/CCIT /PCIT/CIT	Beyond 3 years	Mrs. Chitra Supekar [WP No. 15580 of 2022 dated 15 February 2023 (Bombay HC)] - AY 2018-19 - Sanction after three years has to be by PCCIT and not by PCIT (pre-amendment by Finance Act, 2023)
7	Period of limitation for complete proceedings	12 months (24 months if reference made to TPO)			
8	Can Tax authority reassess items of income not indicated in reasons so recorded	Yes			
9	Is taxpayer required to furnish ROI in response to notice u/s. 148 of the ITA?	Yes (within a period of 3 months from the end of the month in which the notice is issued or such further period as may be allowed on the basis of an application made)			
10	Whether recording of reasons is required?	Yes		No	

Impact of amendment in case of
search, requisition and survey
proceedings with reassessment
[w.e.f 01 April 2022]



Impact of amendment in case of search, requisition and survey proceedings with reassessment [w.e.f 01 April 2022]

Sr. No.	Particulars	Is it part of defined information for reassessment?	Requirement to follow Pre-Notice procedure of section 148A	Requirement of approval to pass order under section 148A(d) [inserted by FA 2022]
1	Information received under section 135A	Yes - by way of specific entry. Hence met in all cases [FA 2022]	No [FA 2022]	No
2	Search under section 132 or requisition under section 132A initiated against the Assessee	Yes - under deeming fiction.	No	No
3	Survey u/s 133A (other than covered above) A. In case of the Assessee B. In case of a third party	Yes - under deeming fiction. Forms part of 'information'	Yes	Yes
4	Survey revealing Information pertaining to extravagant expenses incurred on function, event or occasion received under section 133A(5) A. In case of the Assessee B. In case of a third party	Yes - under deeming fiction. Forms part of 'information'	Yes	Yes

Impact of amendment in case of search, requisition and survey proceedings with reassessment [w.e.f 01 April 2022] (Contd.)

Sr. No.	Particulars	Is it part of defined information for reassessment?	Requirement to follow Pre-Notice procedure of section 148A	Requirement of approval to pass order [inserted by FA 2022]
5	Seizure of money, bullion, etc. in course of Search u/s 132 or Requisition u/s 132A in case of third person pertains to Taxpayer	Yes	No	No
6	Books, documents or evidence seized under section 132 or requisitioned under section 132A in case of third person pertains to Taxpayer	Yes	No	Yes

Impact of amendment in case of search, requisition and survey proceedings with reassessment [w.e.f 01 April 2022] (Contd.)

Decision where no incriminating material is found during the search:

Abhisar Buildwell (P.) Ltd. [149 taxmann.com 399 dated 24 April 2023 (SC)]

- ▶ If a search or requisition is conducted, the AO assumes jurisdiction for block assessment under section 153A . All pending assessments/reassessments will stand abated, meaning they will no longer be valid. If any incriminating material is found during the search, the assessing officer can assess or reassess the total income, taking into consideration the incriminating material and other material available with the assessing officer, including the income declared in the returns.
- ▶ However, if no incriminating material is found during the search, the assessing officer cannot make any additions to the completed/ unabated assessments. The assessing officer can only re-open these assessments under sections 147/ 148 , subject to the fulfilment of the conditions mentioned under those sections.

Revenue had approached the SC with a Miscellaneous Application for clarification vis-a-vis initiation of reassessment proceedings under the prevailing provisions of section 147 to 151 in the cases where proceedings under Sections 153A/153C do not survive. The same was dismissed by the SC which observed that relief sought can be sought in the review petition as it requires detailed consideration at length looking into the importance of the matter. Further, the review petition is to be decided on its own merits in accordance with law which is to be heard and decided in the open court

CONTROVERSIES POST
ASHISH AGGARWAL [(444 ITR
1) (SC)]



Timelines

AY	Old Regime (6 years)	Old Regime (4 years)	New Regime (3 years)	New Regime (10 years)/ (old regime 6 years)
AY 2012-13	31 March 2019	31 March 2017	NA	31 March 2019
AYs 2013-14	31 March 2020	31 March 2018	NA	31 March 2020
AY 2014-15	31 March 2021	31 March 2019	NA	31 March 2021
AY 2015-16	31 March 2022	31 March 2020	NA	31 March 2022
AY 2016-17	31 March 2023	31 March 2021	31 March 2020	31 March 2023
AY 2017-18	31 March 2024	NA	31 March 2021	31 March 2024
AY 2018-19	31 March 2025	NA	31 March 2022	31 March 2025
AY 2019-20	31 March 2026	NA	31 March 2023	31 March 2026
AY 2020-21	31 March 2027	NA	31 March 2024	31 March 2027
AY 2021-22	31 March 2028	NA	31 March 2025	31 March 2028
AY 2022-23	NA	NA	31 March 2026	31 March 2033

TOLA has extended the time limit to issue notice under section 148 under the old law which was due from 20 March 2020 to 31 March 2021 to 30 June 2021.

Union of India vs. Ashish Agarwal [(444 ITR 1) dated 4 May 2022 (SC)]

- ▶ The Apex Court upon hearing the arguments of the Revenue as well as the taxpayers has, at Para 7 of its order, agreed with the views adopted by the various High Courts.
- ▶ However, it has taken cognizance of the fact that approx. 90,000 notices under section 148 have been issued by the Revenue during the impugned period against which approx. 9,000 writs were filed before the various High Courts and that the notices were issued by the Revenue under bonafide mistake.
- ▶ Accordingly, the Supreme Court, to ensure complete justice, has tried to *“strike a balance between the rights of the Revenue as well the respective assessee’ s because of the bonafide belief of the officers of the Revenue in issuing approx. 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.”*
- ▶ It has done so, by modifying the judgments and orders passed by the Allahabad High Court as under whilst also extending its applicability to PAN India for all writs passed/ pending by various High Courts by invoking Article 142 of the Constitution of India:

- “(i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesses can reply to the show-cause notices within two weeks thereafter;*
- (ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.*

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

Union of India vs. Ashish Agarwal [(444 ITR 1) dated 4 May 2022 (SC)] (Contd.)

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);

(iv) All defences which may be available to the assessee including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available."

- ▶ Since, the judgements and orders passed by the Allahabad High Court is modified and its applicability extended, the Supreme Court has consequently set aside all judgements and orders of the other High Courts.
- ▶ Accordingly, the Supreme Court has directed that notices issued under section 148 issued during the impugned period be deemed to be notices under section 148A(b). Further, a one time relief has been provided to the Revenue from compliance required under section 148A(a) but the assessing officers shall be required provide to the assessee the information and material relied upon, within 30 days, so that the assessee can reply to the notices within two weeks thereafter pursuant to which the assessing officer shall pass the order under section 148(d) followed by issuance of notice under section 148, if required.
- ▶ However, all the defences available to the assessee under section 149 (i.e. 2nd proviso to section 149) and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.
- ▶ Procedure laid down in section 148A is mandatory.

CBDT Instruction No. 01/ 2022 dated 11 May 2022

In order to implement the decision of the Apex Court, CBDT, exercising its powers under section 119, has issued a set of instructions which the AOs may take into consideration.

- ▶ In case where the assessment years involved are 2013-14, 2014-15 and 2015-16 and notice under section 148 was not issued – Fresh notice can be issued with the approval of the specified authority only if the case is covered by section 149(1)(b) as amended by the Finance Act, 2021.
- ▶ In case where the assessment years involved are 2016-17 and 2017-18 and notice under section 148 was not issued – Fresh notice can be issued, with the approval of the specified authority, under section 149(1)(a).
- ▶ In case where the assessment years involved are 2013-14, 2014-15 and 2015-16 and income escaping assessment, in that case and that year, amounts to or likely amounts to less than Rs. 50 Lakhs – AOs may not provide the information and material and separate instruction shall be issued regarding procedure for disposing such cases.
- ▶ CBDT has re-iterated the one-time procedure laid down by the Supreme Court and the procedure laid down under section 148A(c) and onwards.

Prior to issuance of the Circular, certain clarification were sought by the Income Tax Gazetted Officer's Association on 6 May and 11 May 2022. These do not have any relevance and bindingness.

CBDT Instruction No. 01/ 2022 dated 11 May 2022 (contd.)

"6.0 Operation of the new section 149 to identify cases where fresh notice under section 148 can be issued:

6.1 With respect of operation of new section 149 , the following may be seen:

- Supreme Court has held that the new law shall operate and all the defences available to assesseees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*
- Sub-section (1) of new section 149 as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under-*
.....
- Supreme Court has 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. Decision of 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 section 149 is to be applied at that point.*

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

- (i) 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 clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*
- (ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 , since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section."*

Revised guidelines for issue of notice under section 148 dated 1 August 2022

- ▶ Before issuing notice under section 148, the assessing officer must observe the procedures laid down under section 148A except in certain categories of cases specified in the proviso to section 148A.
- ▶ If an assessee requests for a personal hearing, the same may be dealt with following the principle of natural justice by giving a reasonable period for compliance of notice specifying the date of hearing.
- ▶ The assessing officer has to consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in section 148A(b) before passing the order under section 148A(d).
- ▶ The assessing officer shall mandatorily pass a speaking order under section 148A(d) irrespective of whether issuance of notice under section 148 is being recommended or not.
- ▶ Once an order under section 148A(d) has been passed, no further approval is required for issuance of notice under section 148 except for cases in which procedure under Section 148A is being applied for implementation of the SC's decision in the case of Ashish Agrawal (supra).
- ▶ In the cases emanating out of Audit objection, AO has to ensure that extant instructions/ guidelines/ SOPs have been duly adhered with.
- ▶ The confidential information such as from FIU, foreign jurisdictions, LEAs etc would be governed by respective guidelines.
- ▶ Information relevant to the case of the assessee's income escaping assessment must be provided and information not relevant to the case of the assessee must be redacted.

Revised guidelines for issue of notice under section 148 dated 1 August 2022 (contd.)

- ▶ As far as possible the assessing officer to make endeavour that at the stage of compliance of provisions under section 148A/ issuance of notice under section 148, all issues even if spread over more than one assessment year may be taken up simultaneously information suggesting escapement of income relating to a particular assessee for more than one AY may be reopened at one go.
- ▶ The Assessing officer, as far as possible, may dispose all such pending matters relating to passing of orders under section 148A(d)/ issuance of notice under section 148 on a continuous basis rather than towards close to time barring date.
- ▶ Guidelines are only indicative and not exhaustive. The assessing officer may take suitable decision on a case-to-case basis for the situations not specifically covered in these guidelines. However, in doing so, he/she shall follow the general principles enunciated in the guidelines.

CBDT Circular No. 19/ 2019 dated 14 August 2019 (DIN Circular)

- ▶ Due to various e-governance initiatives, the Department is moving toward total computerization of its work which has led to a significant improvement in delivery of services and has also brought greater transparency.
- ▶ In order to prevent instances of communications being issued manually without maintaining a proper audit trail, all communication issued by the income-tax authorities relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1 October 2019 shall be bear a Document Identification Number ('DIN').
- ▶ Exceptions:
 - ▶ when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically;
 - ▶ when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties;
 - ▶ when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer;
 - ▶ when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133) is sought to be initiated; or
 - ▶ When the functionality to issue communication is not available in the system.
- ▶ The communication may be issued manually but only after recording reasons in writing and with prior written approval of the CCIT/ DGIT. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration.

CBDT Circular No. 19/ 2019 dated 14 August 2019 (Contd.)

- ▶ The manual communication issued under the exceptional circumstances shall state the fact that the it is issued manually without a DIN and the date of obtaining of the written approval of the CCIT/ DGIT for issue of manual communication in the following format:

" .. This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number dated"

- ▶ Any communication which is not in conformity shall be treated as invalid and shall be deemed to have never been issued.
- ▶ Communication issued manually under the first three exceptions shall have to be regularised within 15 working days of its issuance by:
 - ▶ *uploading the manual communication on the System*
 - ▶ *compulsorily generating the DIN on the System*
 - ▶ *communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System*
- ▶ An intimation of issuance of manual communication due to non-availability of functionality to issue communication in the system shall be sent to the PDGIT(Systems) within seven days from the dale of its issuance.
- ▶ In all assessment proceedings pending as on 14 August 2019 where notices were issued manually, the income-tax authorities shall identify such cases and shall upload the notices in these cases on the system by 31 October 2019.

Judicial developments post SC
decision in case of Ashish
Agarwal (supra)



Nagesh Trading Co. [146 taxmann.com 513 dated 12 October 2022 (Delhi HC) (AY 2017-18)]

- ▶ Assessing Officer pursuant to directions of Supreme Court in case of Ashish Agarwal (supra) issued a notice under section 148A(b) in respect of assessment year 2017-18.
- ▶ Assessee in reply submitted that impugned notice had been wrongly issued as initial notice under unamended section 148 was issued on 31-3-2021 and served vide e-mail on same date.
- ▶ Despite reply of assessee Assessing Officer passed an order under section 148A(d) and issued notice under section 148 on 28-7-2022.
- ▶ The HC held that AO having issued and served notice on 31-3-2021 under section 148 of unamended Act could not have issued another notice under section 148A(b) to assessee.
- ▶ Further, directions given by Supreme Court in case of Ashish Agarwal (supra) were applicable to cases where notices under section 148 had been issued during period 1-4-2021 to 30-6-2021, which was not case in present matter.
- ▶ Accordingly, notice issued under section 148A(b) and order passed under section 148A(d) and notice issued under section 148 dated 28-7-2022 deserved to be quashed.

Salil Gulati [W.P.(C) 12541/2022 dated 31 August 2022 (Delhi HC) (AY 2013-14)]

- ▶ The contention of the learned counsel for the petitioner that the present proceedings is time barred is not correct, as reassessment proceeding was initiated during the time limit extended by TOLA.
- ▶ The impugned notice was quashed by this Court in petitioner's earlier writ petition being W.P.(C) 7582/2021 vide judgment reported as Man Mohan Kohli dated 15 December 2021 as the mandatory procedure of Section 148A was not followed before issuing the said notice. The court also clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021 since the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.
- ▶ The SC in Ashish Aggarwal held that the impugned notices under section 148 issued between 1st April 2021 to 30th June, 2021, will be deemed to have been issued under section 148A and therefore the notice dated 23rd June, 2021, issued to the petitioner stood revived.
- ▶ Since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021 and the income alleged to have escaped assessment is beyond Rs.50 lakhs, the first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case and even without the benefit of Instruction No.01/2022 the impugned notice is within limitation.

SLP was preferred by the assessee [SLP(C) No. 7466/2023 dated 11 April 2023] which has been dismissed by the SC.

Touchstone Holdings (P.) Ltd. [142 taxmann.com 336 dated 9 September 2022 (Delhi HC) (AY 2013-14)]

- ▶ During a survey conducted by the Investigation Wing at premises of assessee and its group companies, it was noticed that its group companies were engaged in unaccounted cash transactions and provided bogus share capital and share premium to other companies. AO on perusal of investigation report concluded that transfer of shares carried out by assessee was of inconsistent value and required examination.
- ▶ Notice under section 148 was initially issued on 30 June 2021.
- ▶ The Supreme Court in case of Ashish Aggarwal (supra) declared that the reassessment notices issued between 1 April 2021 to 30 June 2021 shall be deemed as a notice issued under section 148A and permitted Revenue to complete the said proceedings.
- ▶ Order under section 148A(d) and notice under section 148 were passed on 20 July 2022 for AY 2013-14 whose validity was challenged by the assessee by way of writ on the ground that they are time-barred in light of the 1st proviso to section 149.
- ▶ Dismissing the writ, the HC held that since initial reopening notice in instant case was issued on 29 June 2021 under the unamended section 148, same will be deemed to be issued under section 148A and first proviso to section 149 would not be attracted. Furthermore, income alleged to have escaped being more than Rs. 50 lakhs, section 149(1)(b) was satisfied and impugned reopening notice would not be time barred.

Rajeev Bansal [147 taxmann.com 549 dated 22 February 2023 (Allahabad HC) (AYs 2013-14 to 2017-18)]

- ▶ The HC held that there is no specific clause in the Finance Act, 2021 to save the provisions of the TOLA granting extensions in the time limit under the unamended Act, or the notifications issued thereunder on or before 31.3.2021.
- ▶ The SC's observations, in the Ashish Agarwal case, cannot be interpreted as granting extensions under the unamended Section 149 by applying TOLA, 2020 to reassessment notices for past assessment years that were not issued before March 31, 2021. These notices cannot be considered "extended reassessment notices" and allowed to travel back in time to their original date of issuance. Instead, the amended section 149 should be applied as interpreted by the revenue in Para 6.1 of the CBDT Instructions dated 11 May 2022.
- ▶ The reassessment proceedings initiated with notices under Section 148 issued between April 1, 2021, and June 30, 2021, cannot benefit from the relaxation or extension provided under the TOLA. Moreover, the time limit specified in Section 149(1)(b) (as amended from April 1, 2021) cannot be extended by such relaxation granted from March 30, 2020, onwards to the revenue.
- ▶ In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, the benefit of TOLA 2020 will not be available to the revenue. In other words, the relaxation law under TOLA 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act 2021.
- ▶ Further, it also observed that CBDT attempted to overreach the SC's ruling through Instruction No. 1/2022 dated May 11, 2022 and therefore held Clause 6.1 (third bullet) and Clause 6.2 (i) and (ii) of the Instruction to be lacking binding force for being in teeth of the SC ruling in Ashish Agarwal.

Department has filed an SLP before the SC against the decision of the Allahabad HC. The SC on 13 April 2023 has issued notice and has granted stay on the operation of the decision.

Keenara Industries (P.) Ltd. [147 taxmann.com 585 dated 7 February 2023 (Gujarat HC) (AYs 2013-14 and 2014-15)]

- ▶ Common issue for consideration before the HCs was whether the reassessment notices, revived by virtue of the SC decision in case of Ashish Agarwal (supra) for AYs 2013-14 and 2014-15 were barred by limitation.
- ▶ The HCs held that reassessment notices so revived pursuant to SC ruling in Ashish Agarwal's case being issued beyond the limitation period are barred by limitation.
- ▶ The HCs also held that the CBDT Instruction to the extent it provided guidance to tax authority to consider the time limit under new reassessment regime after taking into consideration the extension provided under Relaxation Act is not consistent with the correct interpretation of law and the SC ruling in Ashish Agarwal's case.
- ▶ It was also held that in view of the fact recorded by the SC that about 90,000 reassessment notices were issued after 01 April 2021, which were the subject matter of more than 9,000 petitions/ appeals and further permitting the revenue to deal with about 90,000 notices, with clear directions to make the said decision applicable to PAN India and the submission of petitioners that the decision in the case of Ashish Agarwal (supra) would be applicable only to the cases where such notices have been challenged before different High Courts are not acceptable.
- ▶ Decision of the Delhi HC distinguished on the basis that HC's observation that the SC in Ashish Aggarwal (supra) has held that the impugned notices issued between 1 April 2021 to 30 June 2021 are legal and valid notice issued within the permissible time limits is misplaced. Therefore, 1st proviso to section 149 applies.

Department has filed an SLP before the SC against the decision of the Gujarat HC. The SC on 17 May 2023 has issued notice and has granted stay on the operation of the decision.

New India Assurance Company Ltd. [158 taxmann.com 367 (Bombay HC) dated 15 January 2024] (AY 2013-14)

- ▶ Allowing the writ, the HC dismissed the Revenue's reliance on CBDT's Instruction No.1 of 2022, stressing that neither TOLA nor the decision in case of Ashish Agarwal supported the idea that notices issued after 31 March 2021 could travel back to the original date holding as under:
 - ▶ Provisions of the Limitation Act, 1963 do not apply to the provisions of the Income Tax Act, 1961 especially in view of the specific period provided for in the provisions as well as TOLA;
 - ▶ The HC categorically rejected the argument that notices issued post 31 March 2021 should relate back, emphasizing that such contentions were previously rejected in Tata Communications [443 ITR 49 (Bombay HC4)] and Mon Mohan Kohli [441 ITR 207 (Delhi HC)] which have been approved by SC in Ashish Agarwal (supra);
 - ▶ For AY 2013-14, the 6-year period expired on 31 March 2021 as extended by TOLA;
 - ▶ Powers conferred under Article 142 of the Constitution of India, being curative in nature and even with the width of its amplitude, cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. Article 142 cannot be used to supplant substantive law applicable to a case or cause and it will not be used to build a new edifice where none existed earlier by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Accordingly, Department cannot argue that all notices issued should be read to be issued under Section 148A to prevent the Revenue getting remediless;
 - ▶ Validity of a notice under Section 148 must be evaluated based on the legal framework existing on the date of issuance. while invoking powers under Article 142, consciously and categorically granted liberty to assesseees to raise all defences available to the assessee, including the defences under Section 149 . This specific and express directions cannot be set at naught;

New India Assurance Company Ltd. [158 taxmann.com 367 (Bombay HC) dated 15 January 2024] (AY 2013-14) (Contd.)

- ▶ Decision in case of Ashish Agarwal (supra) did not disturb earlier findings. Instead, it directed Assessing Officers to adhere to the procedure under Section 148A. Crucially, the court asserted that TOLA has no application to notices issued after 31 March 2021;
- ▶ Distinguishing the decision in case of Touchstone Holdings (supra), the court observed that HC held the initial notice under section 148 dated 29 June 2021 to be within limitation but did not provide any findings on the validity or otherwise of the notice issued after May 2022 pursuant to the SC decision. Moreover, in that case, petitioner did not argue that for AY 2013-14 the time limit would have expired even under TOLA on 31 March 2021;
- ▶ The court invoked the binding nature of court declarations, citing Ganesh Dass Khanna [WP(C) No.11527 of 2022 dated 10 November 2023 (Delhi HC)] and Group M Media India P. Ltd. [388 ITR 594 (Bombay HC)] to hold that declarations of Board's instructions as ultra vires are binding on all authorities administering the Act.
- ▶ Further, drawing from Hindustan Aeronautics Ltd. [243 ITR 808 (SC)], the court reinforced that circulars and instructions are binding only on the Revenue and not on assesseees or the courts.

Followed in Arati Marketing (P.) Ltd. [159 taxmann.com 322 (Calcutta HC) dated 09 February 2024] (AY 2013-14 and 2014-15) and Godrej Industries Ltd. 160 taxmann.com 13 (Bombay HC dated 28 February 2024] (AY 2014-15)

Harinder Singh Bedi [147 taxmann.com 197 dated 27 October 2022 (Madhya Pradesh HC)] – AY 2014-15

- ▶ Assessee had filed instant writ petition challenging show cause notice issued to him under unamended section 148, order passed under section 148A(d) and consequential notice passed under section 148 against him wherein it argued that the Department had misinterpreted decision of the SC in case of Ashish Agarwal which has never condoned the delay in taking up assessment proceedings by the authorities and therefore, proceedings for AY 2014-15 are time barred. Further, it was also contended that Instruction No. 1 of 2022 has illegally extending limitation for continuing reassessment proceedings in a colourable exercise of power.
- ▶ The HC dismissed the writ by holding that assessee was having a remedy to challenge order/notice by way of filing an appeal and ground raised by him with respect to jurisdiction of authorities could always be considered by authorities. Even otherwise, a writ petition against a show cause notice is not maintainable and therefore, impugned orders/notices cannot be interfered with.

Kankanala Ravindra Reddy [295 Taxman 652 (Telangana HC) dated 14 September 2023] – AY 2016-17

- ▶ The jurisdictional Assessing Officer passed an order under section 148A(d) and issued a notice under section 148.
- ▶ The assessee filed a writ before the HC contending that reassessment was required to be done in a faceless manner, rather than being assessed by the jurisdictional officer as was provided under section 144B and in accordance with the scheme enacted by the Central Government under section 151A.
- ▶ The assessee's argument hinged on the fact that CBDT in exercise of powers conferred under section 151A (introduced vide the Finance Act, 2021) introduced the 'E-assessment of Income Escaping Assessment Scheme, 2022' vide notification dated 29 March 2022, which emphasized on a faceless approach and automated allocation (as defined under 'Faceless Jurisdiction of Income-tax Authorities Scheme, 2022' issued in terms of section 130 as amended by the Finance Act, 2021).
- ▶ The Department argued that the notices in question were issued before the amendments came into effect. They maintained that the CBDT's notification did not explicitly specify whether the notices should follow the old or new provisions. Additionally, they asserted that both the jurisdictional assessing officer and units under the National Faceless Assessment Centre ('NFAC') possessed concurrent jurisdiction, as per the Act. Therefore, the issuance of notices by the JAO was within their jurisdiction.

Kankanala Ravindra Reddy [295 Taxman 652 (Telangana HC) dated 14 September 2023] – AY 2016-17 (Contd.)

- ▶ Allowing the writ, the HC held that after introduction of the scheme it becomes mandatory for the revenue to conduct/initiate proceedings pertaining to reassessment under sections 147, 148 & 148A in a faceless manner. In the instant case, order under section 148A(d) and the notices under section 148 were issued after the scheme was introduced.
- ▶ Further, the Supreme Court in Ashish Agarwal (supra) while exercising its power under Article 142 of the Constitution of India has also not relaxed the applicability of the Finance Act, 2021 rather, it has very clearly and unambiguously held that the notices issued under the erstwhile provisions shall be treated as a notice under section 148A(b) and the Department was directed to proceed further from that stage in terms of the amended provisions of law.

In view of office memorandum dated 20-2-2023 being F No. 370153/7/2023-TPL, issuance of notice under section 148 by Jurisdictional Assessing Officer (JAO) instead of National Faceless Assessment Center is justifiable and sustainable in law as issuance of notice under section 148 did not fall under ambit of section 144B - Triton Overseas (P.) Ltd. [156 taxmann.com 318 (Calcutta) dated 13 September 2023] – AY 2019-20

JUDICIAL DEVELOPMENTS



**Decisions where impugned
transaction was not of
assessee**



Decisions where impugned transaction was not of assessee

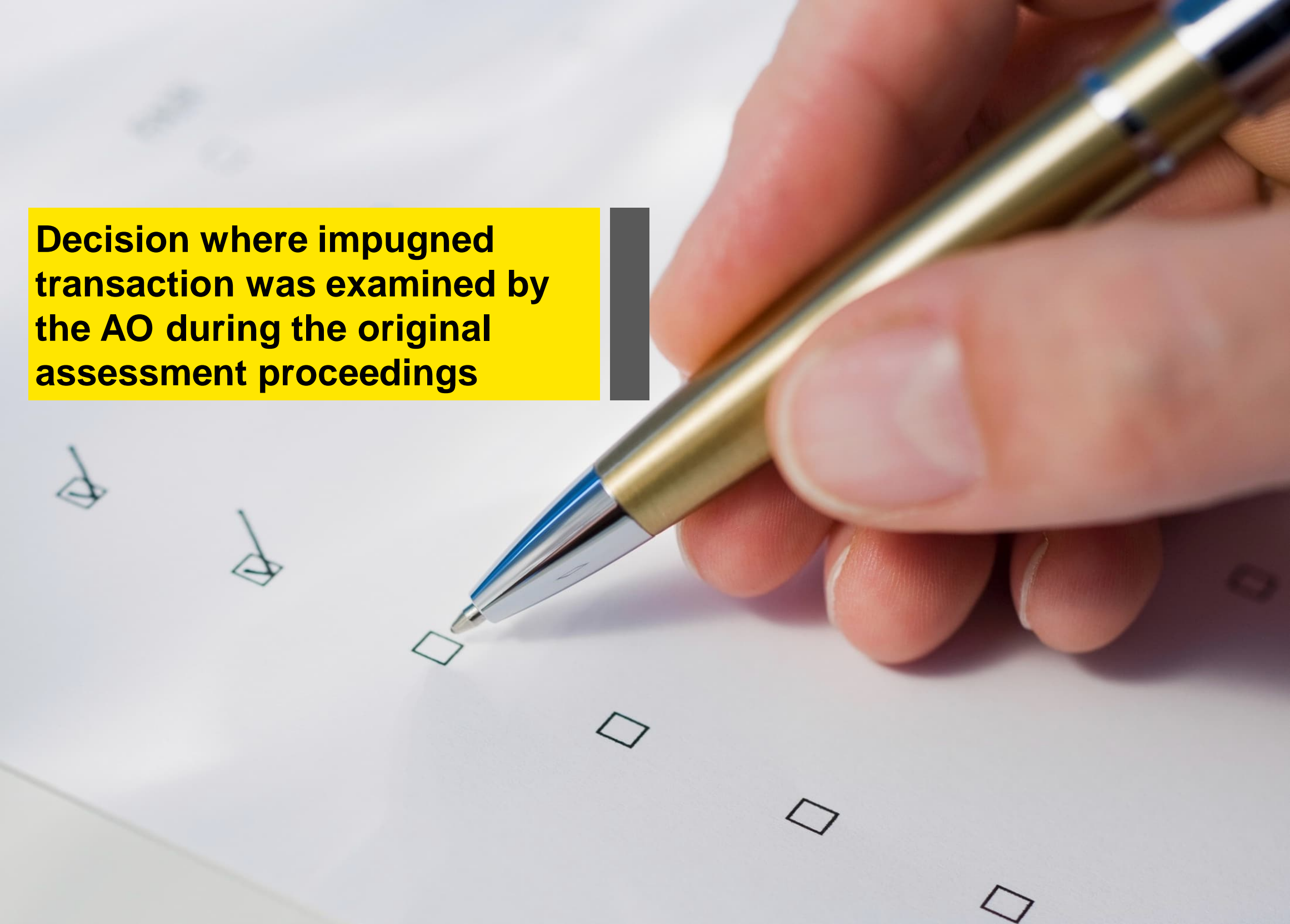
GDR Finance & Leasing Pvt. Ltd. [W.P.(C) 11952/2022 dated 21 December 2022 (Delhi HC)] – AY 2015-16

- ▶ Where assessing officer re-opened the proceedings of an assessee alleging receipt of accommodation entries from an entity when in fact no transaction took place with said entity, the notice under section 148 and the order under section 148A(d) were bad in law and liable to be quashed.

G4S Secure Solutions (India) Private Limited [W.P.(C) 6625/2022 dated 19 December 2022 (Delhi HC)] –AY 2018-19

- ▶ The Department contended that the assessee was the beneficiary of accommodation entries from M/s. Flash Forge Pvt. Ltd. based on a report generated by the GST authorities. The HC observed that FFPL is alleged to have provided accommodation entries not only includes the petitioner but companies such as BHEL, IOC Ltd., HMT Machine Tools Ltd., Hindustan Shipyard Ltd., Hindustan Aeronautics Ltd., Hindustan Petroleum Corporation Ltd., Godrej and Boyce Manufacturing Company Ltd. and L&T Ltd. and there was no material to suggest, that accommodation entries were provided by FFPL to these companies Accordingly, the HC held that notice under section 148A(b) is to be issued after conducting an independent enquiry as required under Section 148A(a) and not by merely relying upon the information supplied by the GST authorities. Since no prior inquiry has been conducted in terms of section 148A(a) and proceedings were initiated based on incorrect information, the order under section 148A(d) and notice under section 148 were quashed.

Decision where impugned transaction was examined by the AO during the original assessment proceedings



Decision where impugned transaction was examined by the AO during the original assessment proceedings

Azim Premji Trustee Co. (P.) Ltd. [146 taxmann.com 58 dated 28 October 2022 (Karnataka HC)] – AY 2014-15

- ▶ The assessee is a trustee of a private discretionary trust which received gift of shares of Wipro Limited. These transactions were duly disclosed contemporaneously to the stock exchanges and in the audited accounts. During the year, the assessee sold a portion of said shares and disclosed capital gains arising therein in its returns which was accepted by the assessing officer during the course of the original assessment proceedings without treating the gift as taxable income under section 56(2)(vii)(c). Subsequently, the assessee was in receipt of a notice under section 148 alleging that capital gains arising on sale of shares were taxable under section 56(2)(vii)(c).
- ▶ The HC observed that section 149(1)(b) does not apply to the case since the allegation of escapement of income is not based on books of account or other documents or evidence in the possession of the assessing officer. On the contrary, the allegation of escapement of income is based only on the disclosure expressly made by the petitioner-assessee itself of the gift of shares received by it and the very same information was readily available with the Assessing Officer when the original assessment order was passed by him.
- ▶ Accordingly, it is only section 149(1)(a) that was applicable and consequently, the impugned proceedings pursuant to the notice issued beyond the period of limitation (which expired on 31 March 2018) are hopelessly barred by limitation and the impugned proceedings and order deserve to be quashed.
- ▶ Alternatively, if section 149(1)(b) is invocable, even then the right of the revenue to issue a notice and initiate proceedings is limited by the first proviso.
- ▶ Further, since during original assessment, the assessing officer had examined assessee's demat account, which gave full information about gift so received, sale made thereof and market value of said shares and thereafter completed assessment without treating gift of shares as assessee's taxable income under section 56(2)(vii)(c) is indicative of the fact that the assessing officer had complete and full knowledge it cannot be said that the income of the petitioner had escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and consequently, the impugned order deserves to be quashed on this ground also.

Decisions on 'information'



Decisions on 'information'

Divya Capital One Private Limited [445 ITR 0436 dated 12 May 2022 (Delhi HC)]

- ▶ The Department alleged that income amounting to Rs. 1,00,705 crores has escaped assessment. Against the notice under section 148A(b), the assessee objected to its legal validity on the ground that there was no information that suggested that income had escaped assessment whilst requesting the information/documents relied upon.
- ▶ It was further stated that around 99% is stated to be on account of sale of equity share/ equity oriented unit otherwise than by way of actual delivery, sale of options and sale of futures and is not the actual turnover of the assessee.
- ▶ Upon filing the writ, the assessing challenged the order under section 148A(d) and notice under section 148 on the ground that they have been passed without any application of mind and without appreciating the nature of the assessee's business. The HC held as under:
 - ▶ New re-assessment scheme was introduced by with the intent of reducing litigation and to promote ease of doing business.
 - ▶ A progressive as well as futuristic scheme of re-assessment whose intent is laudatory has in its implementation not only been rendered nugatory but has also had an unintended opposite result.
 - ▶ The term "information" in Explanation 1 to section 148 cannot be lightly resorted to so as to re-open assessment. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under section 147. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under section 148 post an order under section 148A(d).
 - ▶ Non-furnishing of information/material stated in the show cause notice issued under section 148A(b) with the assessee is denial of an effective opportunity to file a response/reply.
 - ▶ Assessee has a right to get adequate time in accordance with the Act to submit its reply.

Decisions on 'information' (Contd.)

Excel Commodity And Derivative Pvt. Ltd. [328 CTR 0710 dated 29 August 2022 (Calcutta HC)]

- ▶ The Department alleged that the assessee has done fictitious derivative transactions with M/s. Blueview Tradecom Pvt. Ltd. in relation to which the assessee submitted its detailed reply. In the order under section 148A(d), the assessing officer has indirectly accepted the explanation but alleged that prima facie the assessee has taken accommodation entry by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. Aggrieved, the assessee filed a writ petition [WPO/2298/2022 dated 30 June 2022] which was disposed by a single judge bench which remanded the matter back to the assessing officer holding that the order under section 148A(d) was devoid of reasons.
- ▶ The assessee then approached the division bench which held that the term "information" in Explanation 1 to Section 148 cannot be lightly resorted to so as to reopen assessment and cannot be a ground to give unbridled power to the revenue. Where the assessee had submitted the explanation to the notice along with documents to the satisfaction of the AO who however, proceeded on a fresh ground for alleging that the transaction with another company was an accommodation entry, the order under section 148A(d) is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue since the AO has indirectly accepted the explanation.

Decisions on 'information' (Contd.)

Dr. Mathew Cherian [450 ITR 568 dated 1 September 2022 (Madras HC)] – AY 2018-19

- ▶ During a survey under section 133(2A) in case of Kovai Medical Centre and Hospital, various documents ['employee confidentiality agreement', 'revised guidelines for practice of medicine at KMCH' and joining reports] were found and seized, which according to the Department indicated that the doctors were employed with the hospital and were not visiting consultants. Accordingly, the Department came to a conclusion that (i) employer-employee relationship is established (ii) petitioners are to be construed as employees and not full time/visiting consultants and (iii) the income returned by them has to be assessed under the head 'salary' and not 'professional income'. Accordingly, proceedings under section 148 were initiated in case of the doctors.
- ▶ Against the order under section 148A(d) and notice under seton 148, the assessee preferred a writ where it submitted that none of the documents found are incriminating and that as medical professionals, the assessee is an independent consultants only and not salaried employee.
- ▶ The HC held that not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for reassessment, and it is only such 'information' that suggests escapement and which, based upon the material in the AOs possession, that the officer decides as 'fit' to trigger reassessment, that would qualify. The 'information' in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax and AO must be able to establish proper nexus of information in his possession, with probable escapement from tax. No doubt the term used is 'suggests'. That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.

Decisions on 'information' (Contd.)

Sumathi Janardhana Kurup [160 taxmann.com 40 (Bombay HC) dated 12 February 2024] – AY 2015-16

- ▶ Where Assessing Officer issued to assessee a reopening notice on ground that during search and seizure action in case of a builder firm, it was found that assessee made on-money payment for purchase of a flat, since there was no material on record to indicate that assessee had paid entire amount of flat in cash and more over, only basis on which an allegation was made was a statement of somebody that it received cash from assessee, the order under section 148A(d) and notice under section 148 are liable to be set-aside.

Siemens Financial Services (P.) Ltd. [457 ITR 647 (Bombay HC) dated 25 August 2023] – AY 2016-17:

- ▶ In view of the decision in the case of Dr. Mathew Cherian (supra), whether under an old or a new regime of reassessment, it is a settled position that the issues decided categorically should not be revisited in the guise of reassessment.

Decisions where information not
supplied to the assessee



Decisions where information not supplied to the assessee

Alaknarayan Poosapati Gajapati Raju [145 taxmann.com 551 dated 31 October 2022 (Delhi HC)] – AY 2016-17

- ▶ Where reassessment proceedings in case of assessee were initiated pursuant to a Tax Evasion Petition (TEP) alleging that assessee had entered into significant financial transaction of sale of an immovable property and had received cash and had not shown capital gains, since all material as available with Assessing Officer as 'Information' were not provided to assessee and thereby assessee had no occasion to respond to same, reassessment proceedings were to be set aside and Assessing Officer was to be directed to consider matter afresh.

Kusum Gupta [451 ITR 142 dated 28 September 2022 (Delhi HC)] – AY 2013-14

- ▶ Where assessee was sufficiently informed that initiation of reassessment proceeding was due to fact that Assessing Officer had reasons to believe that assessee had earned bogus LTCG by trading in penny scrip of 'M', however, detailed report of Investigation Wing on suspicious trading activity of 'M' was not provided to assessee, thereby, denying assessee an effective opportunity to answer findings in report, impugned order passed under section 148A(d) and notice issued under section 148 were to be set aside with a direction to the petitioner to file its additional reply, responding to the findings of the Report within two weeks.

Prakashchandra Chhotalal Shah [149 taxmann.com 100 (Gujarat HC) dated 14 February 2023] – AY 2018-19

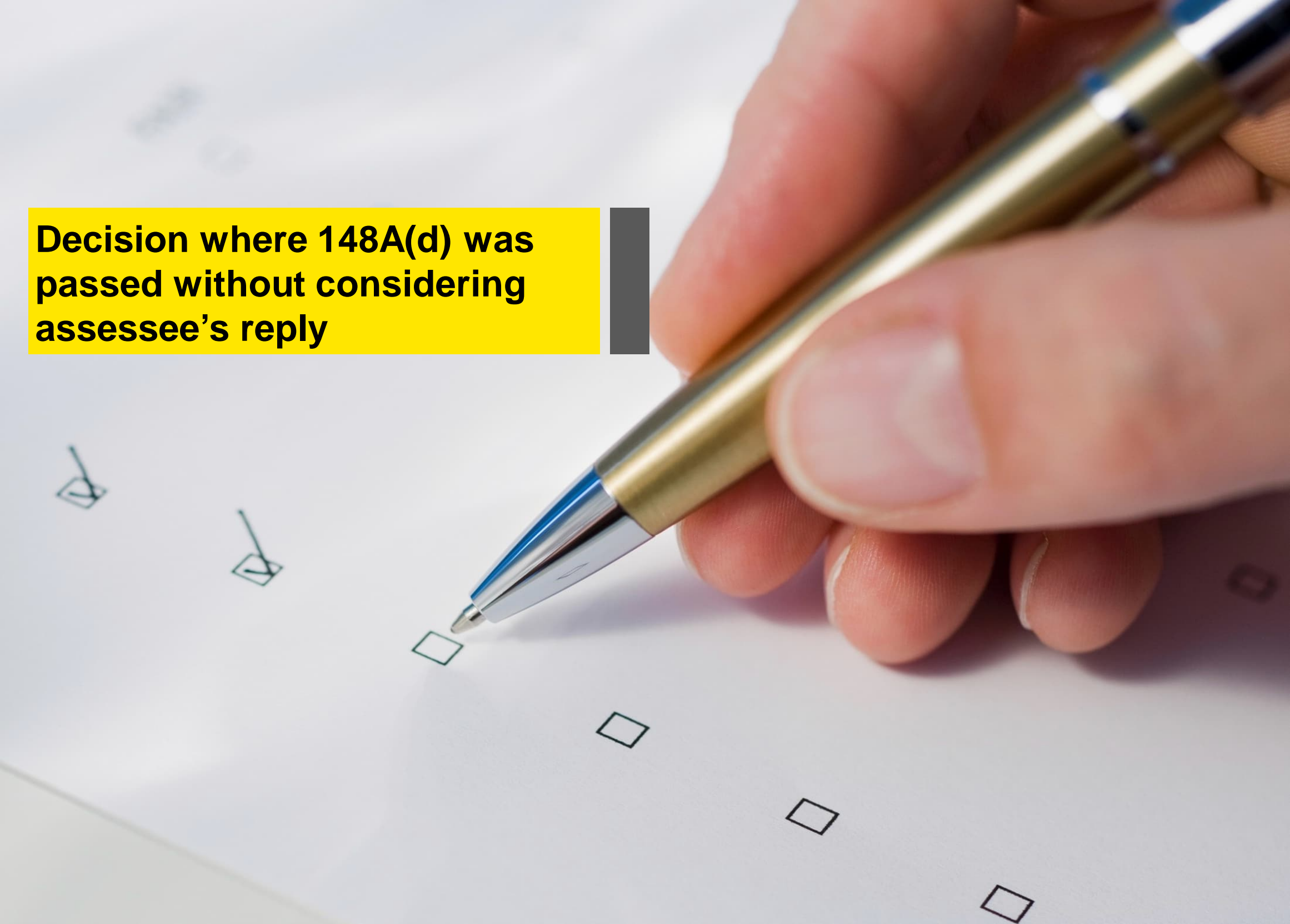
- ▶ Where notice under section 148/148A was issued to assessee indicating that information was flagged on 'Insight Portal' in accordance with Risk Management Strategy formulated by CBDT that assessee had made unaccounted transactions of investment which were not found genuine on basis of corroborative evidence and admission of a party, however, assessee had not been furnished all requisite details including name of party with whom he was said to have transacted, there being violation of principles of natural justice, notice so issued was to be set aside.

Decisions where information not supplied to the assessee

Movish Realtech (P.) Ltd. [152 taxmann.com 666 dated 8 May 2023 (Delhi HC)] – AY 2019-20

- ▶ A search was conducted at 'Oneworld group entities' wherein it was noted that the assessee was a beneficiary of an accommodation entry provided in the form of bogus loans from an entity controlled by an accommodation entry provider based on whose statement the Department zeroed down on the entity which provided loan to the assessee.
- ▶ Assessee contended that the loan was genuine and was repaid in succeeding year and the interest was paid on which tax at source was deducted under section 194A .
- ▶ Further, the AO was obliged to grant personal hearing to the assessee's authorized representative.
- ▶ However, notice under section 148 alongwith order under section 148A(d) was issued on 22 March 2023 aggrieved by which the assessee preferred to file a writ.
- ▶ Allowing the writ, the HC held that based on the records, foundation for triggering reassessment proceedings qua the assessee is the statement of 'R' which, by itself, does not lend any clarity as to whether the AO had underlying material available with him for reaching a conclusion that income chargeable to tax qua the petitioner had escaped assessment.
- ▶ This become clear if the AO had accorded personal hearing to the authorized representative of the assessee.
- ▶ Accordingly, notice under section 148 alongwith order under section 148A(d) were set aside and AO given the liberty to pass a fresh speaking order after according personal hearing to the authorized representative of the assessee after furnishing the material, if any, which is in his possession, but not provided, which, according to him, would trigger the reassessment proceeding against the petitioner. In case fresh material/information is furnished to the petitioner, the petitioner will be given an opportunity to respond to the same.

**Decision where 148A(d) was
passed without considering
assessee's reply**



Decision where 148A(d) was passed without considering assessee's reply

Agricultural Produce Market Committee (WP No. 5460/ 2022 dated 17 October 2022 (Bombay HC))

- ▶ The HC observed that the impugned order passed under section 148A(d) issued without considering the petitioner's reply inasmuch as paragraph 1 of the said order records that the petitioner failed to submit its Explanation. Accordingly, the impugned order was set aside and the Department was at liberty to take further steps in accordance with law and as permissible under the said Act.

Nabco Products (P.) Ltd. [447 ITR 439 dated 3 August 2022 (Allahabad HC)]

- ▶ Where assessee filed reply to notice issued under section 148A(b) but revenue passed order under section 148A(d) without considering reply of assessee on ground that reply of assessee was not reflected in noting maintained in portal, impugned order passed was in gross violation of principles of natural justice and same was to be quashed. Liberty granted to the Department to pass a fresh order under section 148A(d) after affording reasonable opportunity of being heard. Department also directed to take forthwith all required steps to remove shortcomings in the system and to develop a system of accountability of erring officers/employees. Cost of Rs. 50,000 levied and to be paid in two weeks.

Sunrise Associates [WP No. 2860/ 2022 dated 18 October 2022 (Bombay HC)] – AY 2018-19

- ▶ Documents and reply not considered. Accordingly, impugned order set aside and matter remanded for fresh consideration. Assessee to be allowed two weeks time to render further explanation. Assessing officer open to pass the appropriate orders in accordance with law.

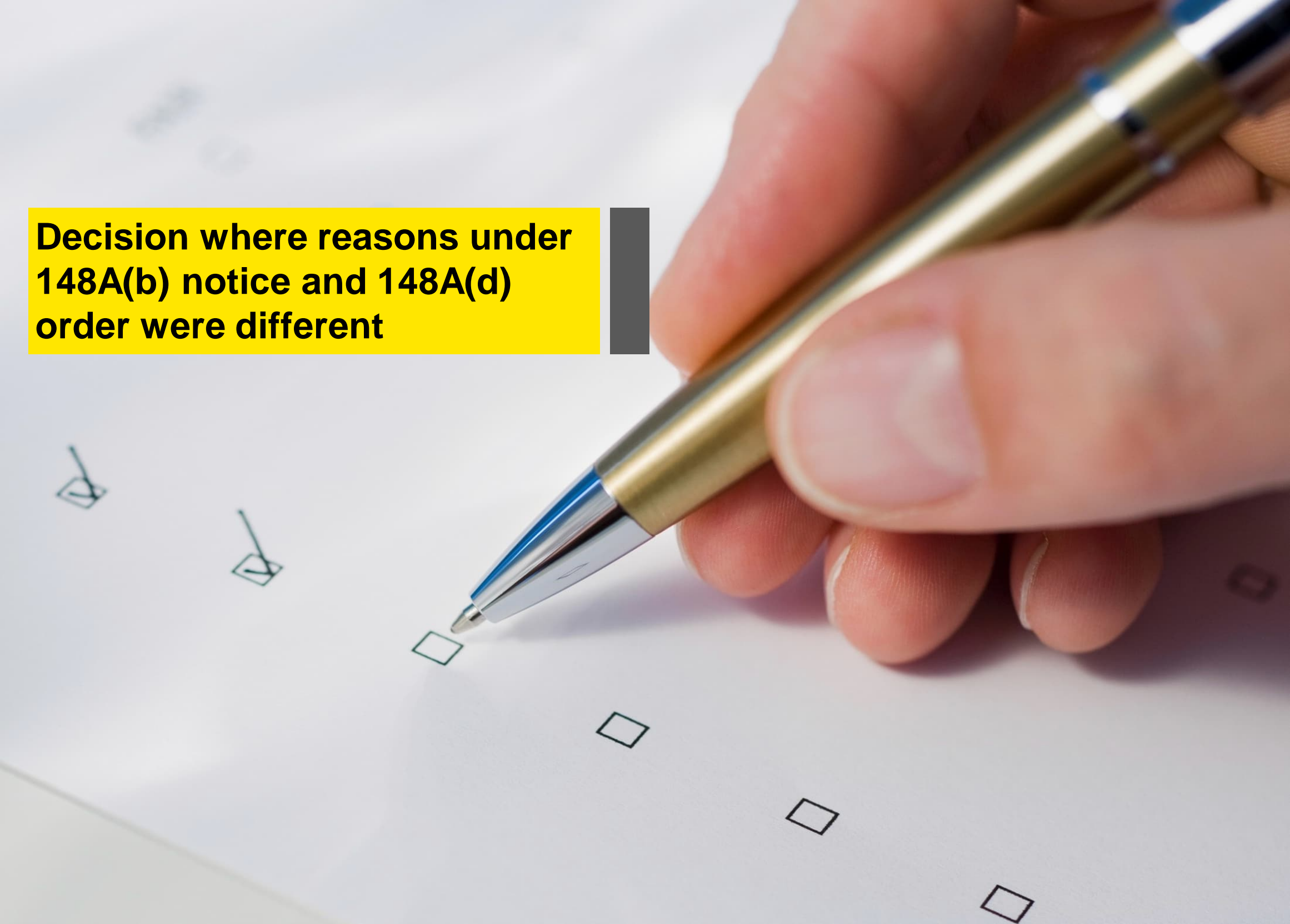
Rishab Garg [WP(C) 1840/ 2023 dated 14 February 2023 (Delhi HC)] – AY 2018-19

- ▶ AO has not dealt with the submission of the assessee. Accordingly, impugned order set aside and assessing officer open to carry out de novo exercise. If the assessing officer were to carry out the exercise afresh, before proceeding further, the assessing officer will furnish the available information/ material and assessee to be allowed at least one week's time to file supplementary reply as well as provide personal hearing.

Alankar Apartment (P) Ltd. [WP(C) 2115/ 2023 dated 17 February 2023 (Delhi HC)] – AY 2017-18

- ▶ Not dealt with the objections raised in a satisfactory manner and not dealt with the evidences furnished. Order u/s 148A(d) and notice u/s 148 quashed and set aside and AO to carry out denovo exercise after proving personal hearing.

**Decision where reasons under
148A(b) notice and 148A(d)
order were different**

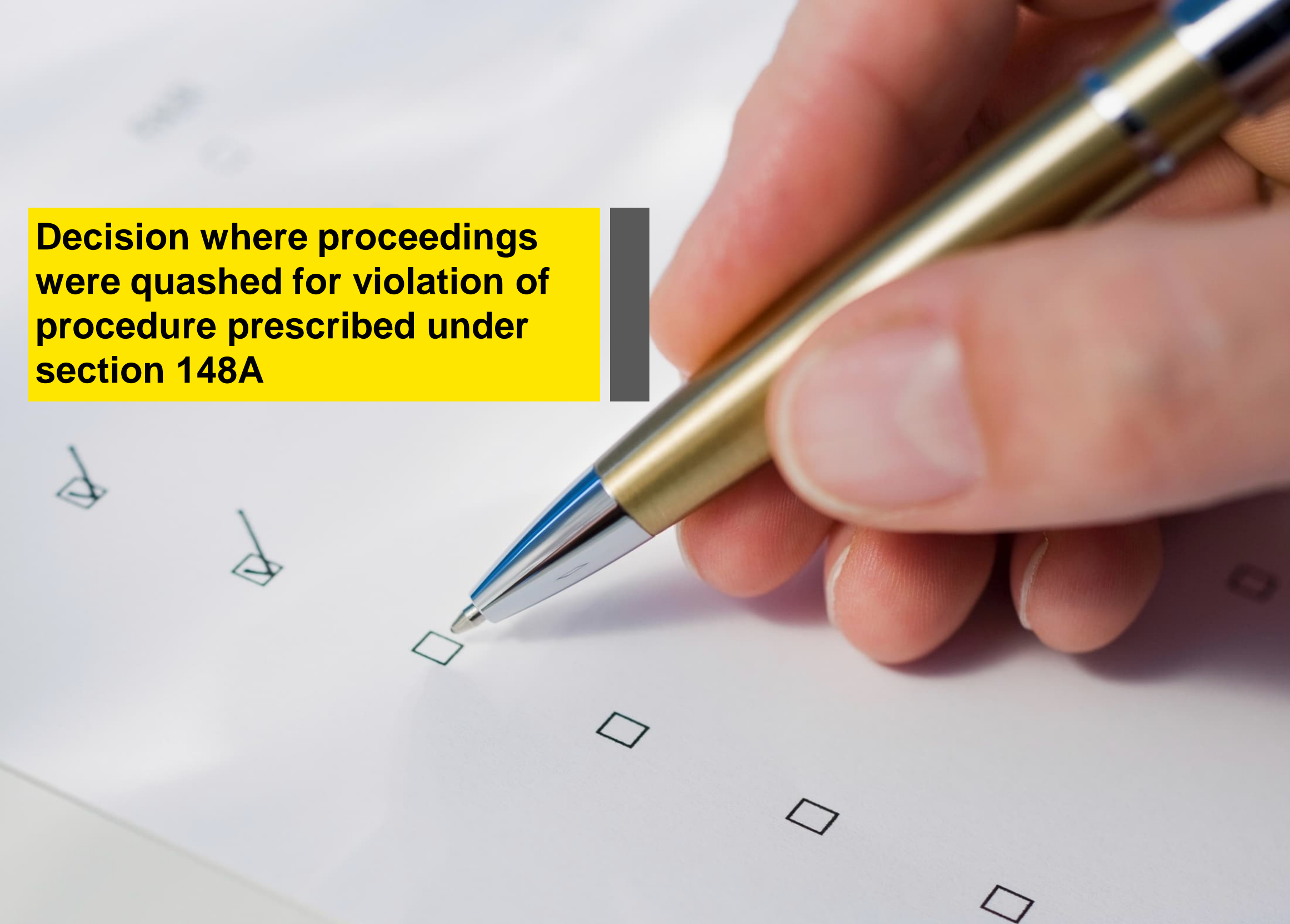


Decision where reasons under 148A(b) notice and 148A(d) order were different

Catchy Prop-Build (P.) Ltd. [448 ITR 671 dated 17 October 2022 (Delhi HC)]– AY 2018-19

- ▶ Where Assessing Officer issued on assessee notice under section 148A(b) seeking to initiate reassessment proceedings on account of some transactions of purchase and sale of shares undertaken by it and thereafter passed order under section 148A(d) holding that company 'M' was not sound so as to make an investment of Rs. 3 crores to purchase shares of company 'B' and so source of investment remained unexplained, as in notice under section 148A(b) assessee was never asked to explain source of funds that were used by 'M' to purchase shares of 'B', impugned notice as well as order were to be quashed. Further, if the foundational allegation is missing in the notice issued under section 148A(b), the same cannot be incorporated by issuing a supplementary notice.
- ▶ Followed in Usha Rani Girdhar [146 taxmann.com 547 dated 25 November 2022 (Delhi HC)] – AY 2017-18

**Decision where proceedings
were quashed for violation of
procedure prescribed under
section 148A**



Decision where proceedings were quashed for violation of procedure prescribed under section 148A

Nambiar Balakrishnan Narendran [WP(C) 18182/ 2022 (Delhi HC) dated 25 November 2022] – AY 2018-19

- ▶ The assessee contended that under the new regime, before issue of notice under section 148, it is incumbent on the assessing officer to serve a show cause notice as contemplated by Section 148A . It was also pointed out that a minimum of seven days is to be given to the petitioner to reply to the same. The learned counsel for the petitioner submits that the notice under section 148A(b) was not actually served on the petitioner prior to the issuance of notice under Section 148 and the same was subsequently served. Before the HC, the Department prayed that it be permitted to issue fresh notice under section 148A and continue with the proceedings in due compliance with the law.
- ▶ However, the HC held that since it is clear that there is no record to suggest that the procedure contemplated under section 148A were followed before issuing notice under section 148 the notice under section 148 was quashed without prejudice to the right of the Department to initiate fresh proceedings in accordance with law.

G4S Secure Solutions (India) Private Limited [W.P.(C) 6625/2022 dated 19 December 2022 (Delhi HC)] –AY 2018-19

- ▶ The HC held that notice under section 148A(b) is to be issued after conducting an independent enquiry as required under Section 148A(a) and not by merely relying upon the information supplied by the GST authorities. Since no prior inquiry has been conducted in terms of section 148A(a) and proceedings were initiated based on incorrect information, the order under section 148A(d) and notice under section 148 were quashed.

Decision where proceedings were quashed for violation of procedure prescribed under section 148A (contd.)

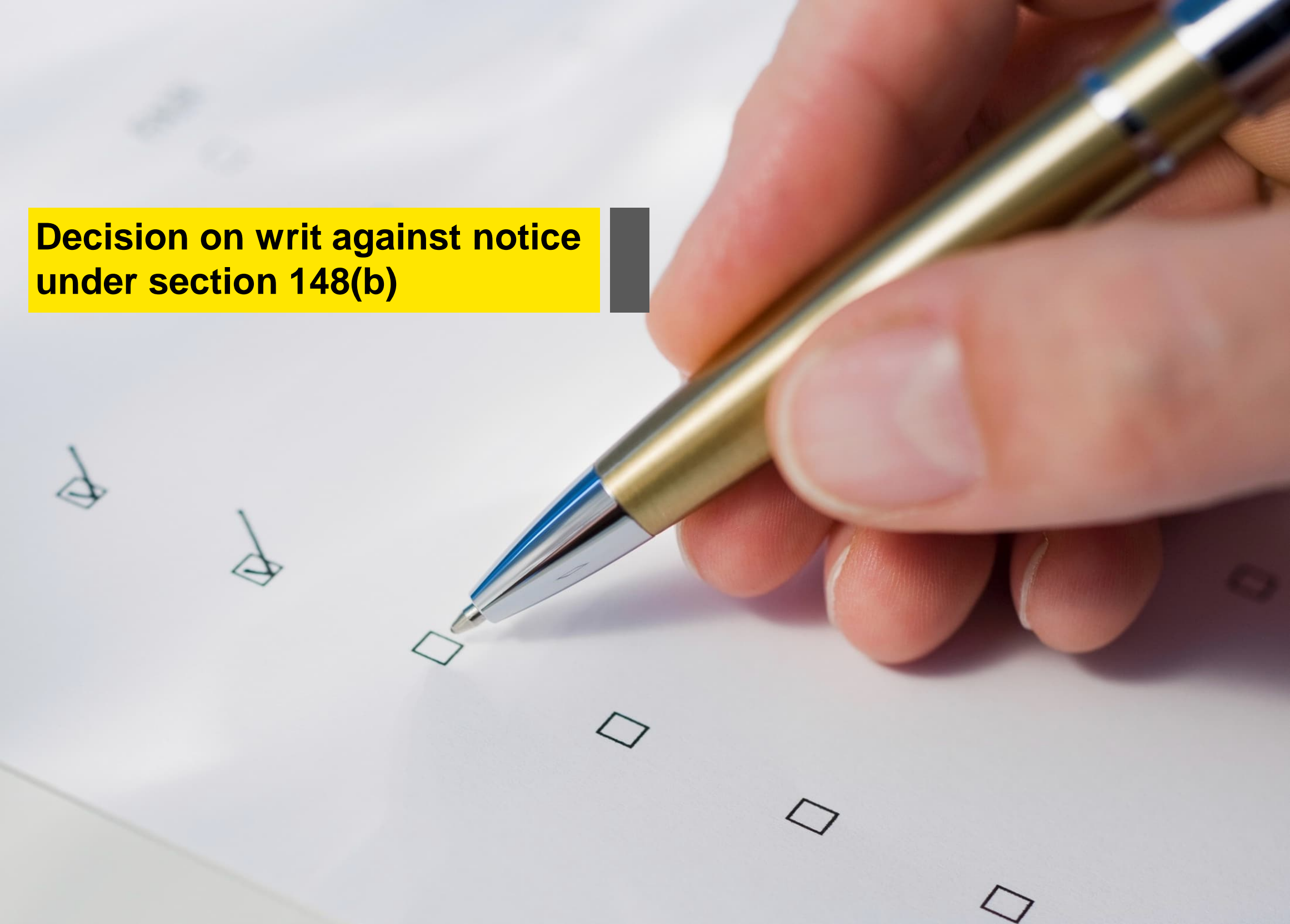
Alkem Laboratories Limited [WP(C) No.8343 of 2022 dated 28 March 2023 (Patna HC)] - AY 2018-19

- ▶ The Department proposed to re-assessee the assessee's income basis information received from 'other income tax authority' that the assessee's income has escaped assessment. Notice under section 148(b) was issued and the only information which was supplied to the assessee was that as per the information received from 'other Income Tax authority' the capital gains of Rs. 2.67 Cr during the year, was not shown properly in the ITR.
- ▶ Against the notice under section 148A(b), the assessee preferred to file a writ which was disposed by the HC who held that section 148A requires conduct of an inquiry and the information, as contemplated under section 148A(a) must contain clear basis and cannot be in abstract for issuing the notice under section 148A(b). Further, reliance was also placed on the decision of the SC in case of Ashish Agarwal (supra) unequivocally held that no notice under section 148 could be issued without following the procedure prescribed under section 148A, which are in the nature of condition precedent for issuance of the reassessment notice.
- ▶ Further, with regards to the Departments' contention that the writ is premature and that the assessee can agitate this issue while responding to notice under section 148, the HC explained that the decision to issue notice for reassessment under section 148 attains finality after passing of order under section 148A(d), which cannot be revisited by the Revenue while exercising jurisdiction under Section 147.
- ▶ Accordingly, considering the nature of information furnished to the assessee, the HC has quashed and set-aside the notice under section 148A(b), order under section 148A(d) and the notice under section 148. However, remits the matter to consider issuance of fresh SCN under section 148A(b).

Stalco Consultancy & Systems (P.) Ltd. [291 Taxman 390 dated 1 November 2022 (Orissa HC)] – AY 2013-14

- ▶ Where Assessing Officer issued on assessee three notices under section 148 dated 31-3-2021, 1-4-2021 and 5-4-2021 seeking to reopen assessment for assessment year 2013-14, as notice dated 31-3-2021 was issued after more than six years from end of assessment year, it deserved to be quashed and other two notices also deserved to be quashed, as they were bad in law for non-compliance with mandatory requirements of prior inquiry by Assessing Officer in terms of section 148A with a direction to the petitioner to file its additional reply, responding to the findings of the Report within two weeks.

**Decision on writ against notice
under section 148(b)**

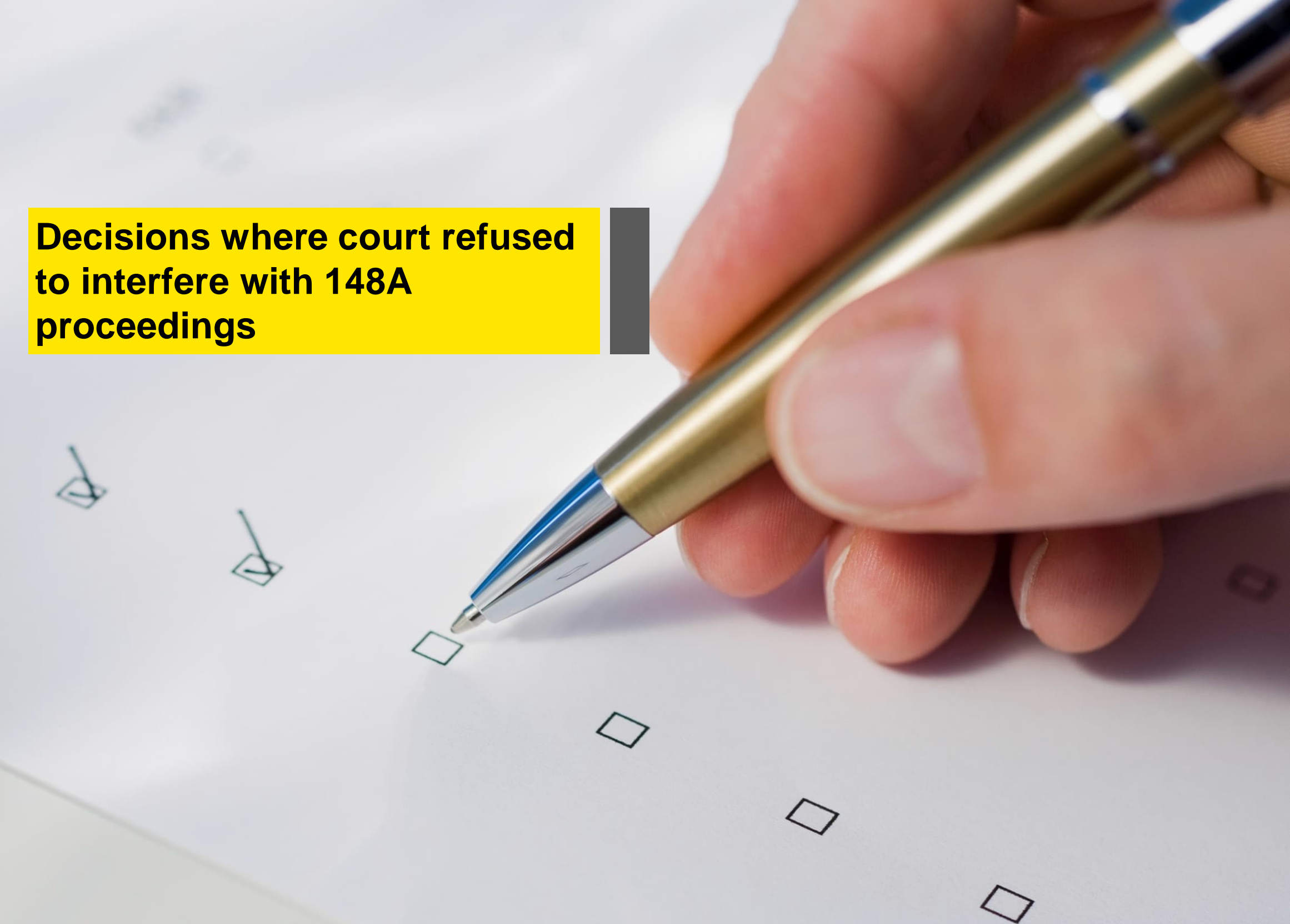


Decision on writ against notice under section 148(b)

North End Foods Marketing (P.) Ltd. [146 taxmann.com 67 dated 23 September 2022 (Delhi HC)] - AY 2013-14

- ▶ The Department alleged that the assessee is involved in High Value Transactions with Mr. Naveen Sharma [Proprietor of M/s Mahamaya Trading Company and M/s Surya Trading Company] who provides accommodation entries through the entities of which the assessee is one of the beneficiaries.
- ▶ A notice under section 133(6) was issued but no reply was received from the assessee pursuant to which the notice under section 148(b) was issued against which the assessee preferred to file a writ.
- ▶ The HC while disposing the writ held that where assessing officer reopened assessment on ground that assessee was found to be a beneficiary of accommodation entries received from an entity, however, assessee contented that transaction with said entity was done in course of business, since there were rival pleas and their determination was pure question of fact which would have to be determined by statutory authorities after appreciation of evidence, writ petition filed by assessee against the notice under section 148A(b), thus, same was not maintainable.

**Decisions where court refused
to interfere with 148A
proceedings**



Decisions where court refused to interfere

Indure (P.) Ltd. [288 Taxman 721 dated 1 August 2022 (SC)] – AY 2013-14

- ▶ SLP dismissed against High Court order that where in view of testimony of one of alleged supplier of assessee-company that he had not carried out any transactions with assessee which were appearing in his bank account a prima facie case of escapement of income was made out and a reopening notice under section 148 was issued, such matter was to be proceeded further and Assessing Officer was to decide matter on merits.

V.S.Dhandapani & Son [148 taxmann.com 483 dated 3 January 2023 (Madras HC)] – AY 2014-15

- ▶ Where assessee-company challenged impugned reopening proceedings initiated against it on ground that department had committed an error in wrongly recording cash deposits as Rs. 169921 lacs instead of Rs. 1699.21 lacs, since matter was at a premature stage, no interference was required qua impugned notice.

Smt. Seema Gupta [146 taxmann.com 289 dated 17 November 2022 (Delhi HC)] – AY 2015-16

- ▶ Where order under section 148A(d) and notice under section 148 were passed in case of assessee on ground that assessee failed to establish genuineness of purchase of shares from a person involved in providing accommodation entries, claim of assessee that Assessing Officer had initiated proceedings on wrong assumption that assessee had claimed LTCG on sale of said shares, being disputed questions of facts, could not be adjudicated by a writ court exercising jurisdiction under article 226 of Constitution.

Smt. Kulwanti Bhatia Charitable Trust Society [155 taxmann.com 653 (Allahabad HC) dated 6 October 2023] – AY 2017-18

- ▶ scope of decision under Section 148A(d) is limited to existence or otherwise of information which suggests that income chargeable to tax has escaped assessment and merits of information referable to Section 148A, thus, remains subject to reassessment proceedings initiated vide notice under Section 148.

Decisions where court refused to interfere (Contd.)

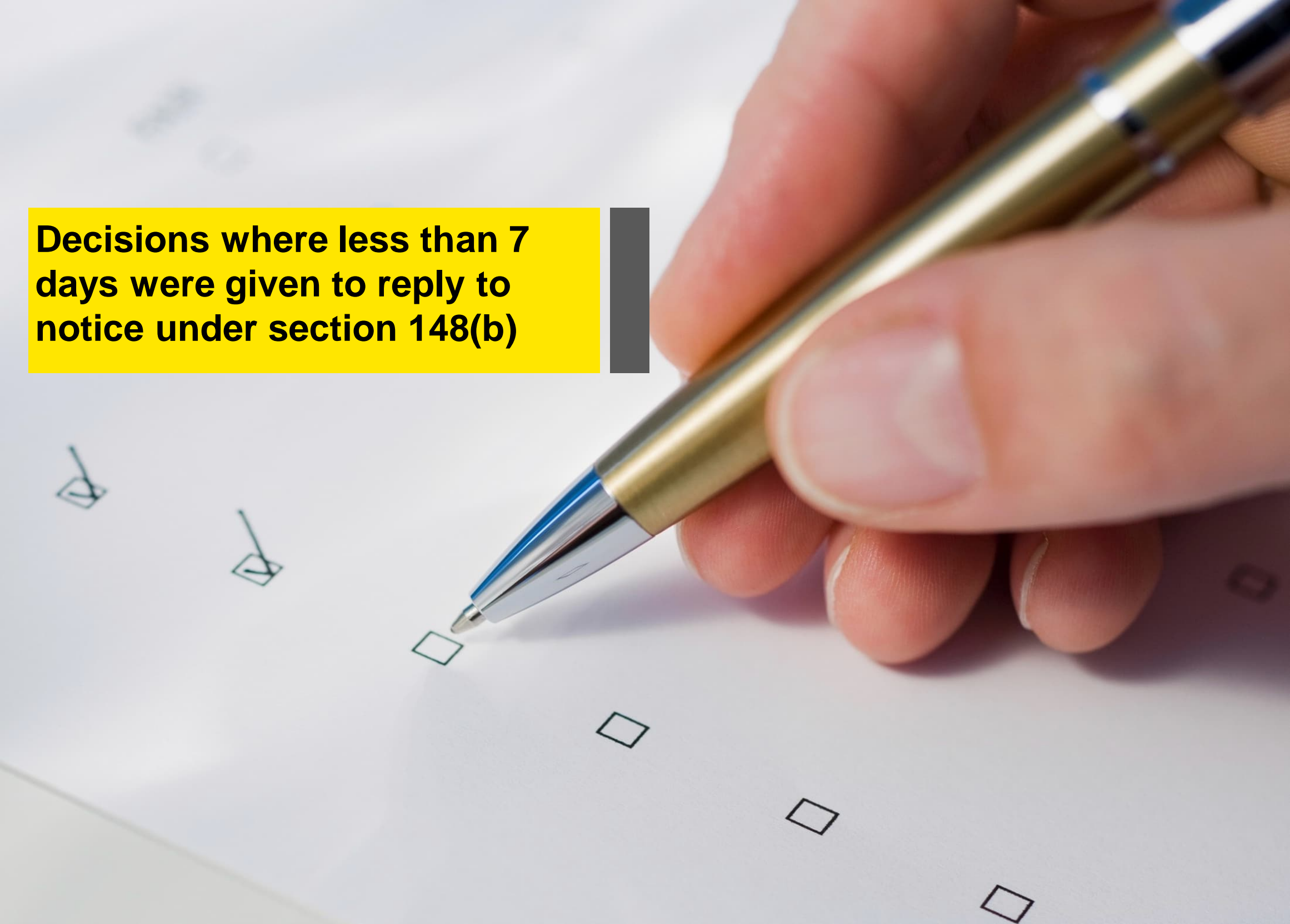
Deepak Kumar Yadav [151 taxmann.com 376 (Allahabad HC) dated 5 May 2023] – AY 2019-20

- ▶ Assessee made various purchases of supari. AO issued a notice to assessee under section 148A(b) basis information available with him from the investigating wing of Director General of GST Intelligence and GST Authorities that certain sellers from whom he bought supari were found availing and utilizing fraudulent ITC on basis of fake tax invoices without receipt of goods, said entities (sellers) did not exist at all at declared principal place of business.
- ▶ Assessee filed its objection and also requested for cross-examination of suppliers and furnishing of material which was declined considering the time-barring nature of the matter.
- ▶ Consequently, notice under section 148 alongwith order under section 148A(d) was issued on 29 March 2023 against which the assessee preferred to file a writ alleging that authority concerned has not examined the petitioner's reply to the notice, on merits, and the order impugned has been passed in a routine and mechanical manner.
- ▶ HC dismissing the writ held that it is only to extent of availability or otherwise of information suggesting that income had escaped assessment that scope of enquiry rests under section 148A(d); correctness or otherwise of information is an aspect to be gone into later at stage of proceedings under section 148 for reassessment.

Anita Gupta [151 taxmann.com 120 (Punjab & Haryana HC) dated 14 March 2023] – AY 2018-19

- ▶ Where assessee had been served notice under section 148A(b) at address given on PAN database which was correct address and had been given seven days to respond, proceedings initiated for reassessment could not be quashed

Decisions where less than 7 days were given to reply to notice under section 148(b)



Decisions where less than 7 days were given to reply to notice under section 148(b)

Samadha Corporation (Partnership Firm) [WP No. 2154/ 2022 (Bombay HC) dated 20 September 2022]

- ▶ Order under section 148A(d) set aside and the Department at liberty to take further steps in accordance with law and as permissible under the Act.

Jindal Forgings [143 taxmann.com 263 dated 11 July 2022 (Jharkhand HC)] – AY 2018-19

- ▶ Order under section 148A(d) and notice under section 148 set aside and quashed . Department at liberty to take further steps in accordance with law and as permissible under the Act.

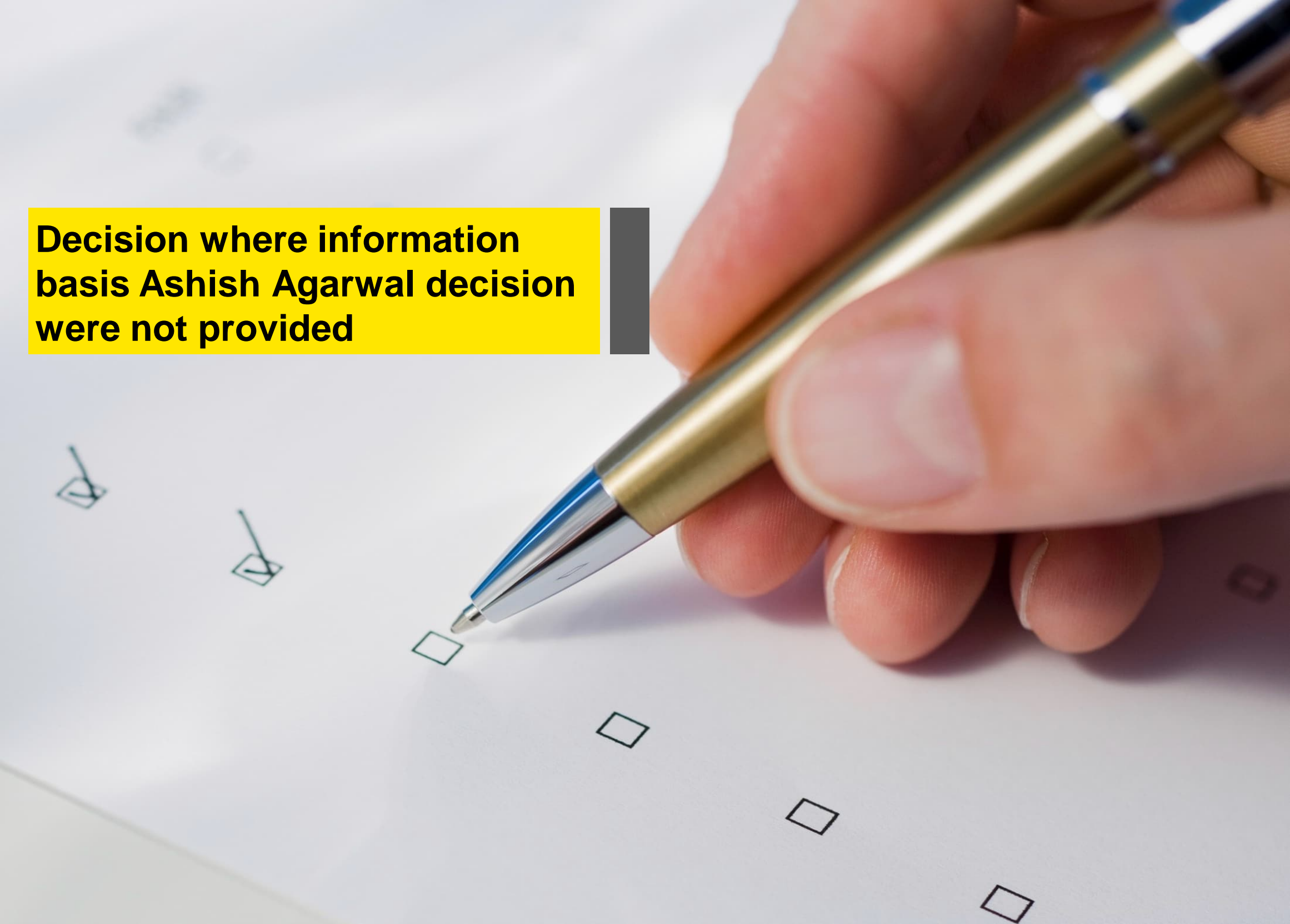
Mukesh J. Ruparel [153 taxmann.com 70 (Bombay HC) dated 25 July 2023] - AY 2016-17

- ▶ Order under section 148A(d) and notices under section 148 and 148(b) set aside and quashed. The HC also takes notice of instances of non-application of mind by the AO – 1. approval of specified authority that has been sent to the assessee is of some other assessee; 2. the AO has failed to specify the quantum of income/assets/ expenditure/ entry which has escaped assessment and 3. factually incorrect statement made in the order that the affidavit of Petitioner's brother that was submitted was not notarized when it was factually a notarized affidavit. No liberty granted to the Department to take further steps in accordance with law and as permissible under the Act.

Raminder Singh [156 taxmann.com 148 (Delhi HC) dated 05 September 2023] – AY 2019-20

- ▶ Where a notice under section 148A(b) was issued upon assessee on 31-3-2023 related to transactions of supplies from two parties and assessee was provided an opportunity to respond to same on or before 10-4-2023, period between 31-3-2023 and 10-4-2023 was required to be excluded by virtue of fifth proviso to section 149(1) and since period of limitation remaining thereafter was less than 7 days, by virtue of sixth proviso to section 149(1), period got extended by 7 days, accordingly, impugned notice under section 148 issued on last date of limitation period i.e. 17-4-2023 was not barred

**Decision where information
basis Ashish Agarwal decision
were not provided**



Decision where information basis Ashish Agarwal decision were not provided

Anurag Gupta [WP No. 10184 of 2022 dated 13 March 2023 (Bombay HC)] – AY 2018-19

- ▶ Order under section 148A(d) and notice under section 148 set aside and quashed . Department at liberty to take further steps in accordance with law and as permissible under the Act after providing the information.

Charu Chains & Jewels (P) Ltd. [WP(C) 17577/ 2022 dated 22 December 2022 (Delhi HC)] – AY 2016-17

- ▶ Matter remitted back to the assessing officer who will furnish the underlying material concerning the petitioner, within three weeks of receipt of the decision. The assessee will have further three weeks to file a response after which the assessing officer will grant personal hearing.

Jindal Exports and Imports (P.) Ltd. [152 taxmann.com 609 (Delhi HC) dated 26 July 2023] – AY 2013-14 and 2014-15

- ▶ Assessee filed writ petitions challenging notices dated 2 June 2022 under section 148A(b) on ground that said notices were mailed to assessee on 8-6-2022 and lost efficacy after 3 June 2022. The HC held that since impugned notices under section 148A(b) having been mailed after 03 June 2022 it is not only in contravention of CBDT Instruction No. 1/2022 dated 11 May 2022 but also violative of provisions of section 282A insofar as name and designation of concerned officer issuing same find no mention in impugned notices. Accordingly, impugned notices under section 148A(b) and order under section 148A(d) were to be set aside. However, Department granted liberty to take further steps in accordance with law.

**Decisions on communication
sent to incorrect address/ e-
mail ID**



Decisions on communication sent to incorrect address/ e-mail ID

Decisions on communication sent to incorrect address/ e-mail ID:

- ▶ Lok Developers Registered Partnership Firm [(2023) 149 taxmann.com 93 dated 15 February 2023 (Bombay HC)] – AY 2015-16 to 2017-18
- ▶ Mrs. Chitra Supekar [WP No. 15580 of 2022 dated 15 February 2023 (Bombay HC)]
- ▶ DSV Solutions Pvt. Ltd. [ITA No. 7597/Mum./2019 dated 9 November 2022 (Mumbai ITAT)]
- ▶ Manas [151 taxmann.com 410 (Madras HC) dated 28 April 2023] – 2019-20

**Decision on approval under
section 151**



Decisions on approval under section 151

Vikas Gupta [(2022) 448 ITR 1 dated 8 September 2022 (Allahabad HC)] – AY 2013-14 to 2015-16

- ▶ An unsigned approval in an electronic record said to be pushed through electronic mode at a particular point of time could not be said to be a valid satisfaction under section 151 for assumption of jurisdiction by Assessing Officer to issue notice to an assessee under section 148. A satisfaction, to be a valid satisfaction under section 151 has to be recorded by the specified authority under his signature on application mind and not mechanically, as also held by the Supreme Court in the case of Chhugamal Rajpal (1 SCC 453).

JM Financial and Investment Consultancy Services Private Limited [WP No.1050 of 2022 dated 4 April 2022 (Bombay HC)] – AY 2015-16

- ▶ In view of TOLA, the Department contented that AY 2015-16 falls under the category within four years as on 31st March 2020 and therefore, approval may be accorded by the Additional CIT. The HC observed that even if the view expressed by the Department is agreed with, it would apply only to cases where the limitation was expiring on 31 March 2020 and since, in case of AY 2015-16, the six years limitation expires on 31 March 2022, therefore, TOLA does not apply. Accordingly, the HC held that though the time to issue notice may have been extended but that would not amount to amending the provisions of Section 151 . Therefore, since four years had expired from the end of the AY, as provided under Section 151(1) , only the PCCIT/ CCIT/ PCIT/ CIT could have accorded the approval and not the Additional CIT.
- ▶ Similar view also taken in the following decisions:
 - ▶ Voltas Limited [(2022) 288 Taxman 506 dated 5 April 2022 (Bombay HC)] – AY 2015-16
 - ▶ SYLVESA Infotech Private Limited [W.P.(C) Nos. 38822 and 38823 of 2021 dated 5 November 2022 (Orissa HC)] – AY 2015-16 and AY 2016-17

Decisions on approval under section 151 (Contd.)

Kartik Sureshchandra Gandhi [WP No. 1812/ 2023 dated 1 August 2023 (Bombay HC)] (AY 2019-20):

- ▶ Assessee received notice dated 27 March 2023 under Section 148A(b) accompanied by a two page note stating details of third party information. The notice mentioned that it was based on insight portal of the department in relation to a donation made by petitioner to a charitable organization.
- ▶ The notice under section 148 was alongwith order under section 148A(d) on 12 April 2023 wherein quantum of alleged income escaping assessment was mentioned as Rs. 5,00,000 instead of the assessee's claim for deduction under section 80G (50%) amounting to Rs. 2,50,000. Aggrieved, the assessee preferred a writ against the same.
- ▶ Further, it was contended that since the sanction under section 151 did not have any digital signature of the sanctioning authority, the document was not valid and consequently, the notice issued, relying on the sanction, is non-est.
- ▶ Further, the sanction had been received from the PCIT but the time limit for the proceedings were intimated to be governed by section 149(1)(b) i.e. for more than 3 years but not more than 10 years.
- ▶ It was contended that the proceedings were initiated within 3 years i.e. under section 149(1)(a) and incase if the proceedings were held to be governed by section 149(1)(b) , then sanction of PCCIT/ PDGIT/CCIT/DGIT ought to have been obtained.
- ▶ Department, on the other hand invoked the plea of alternate remedy and also submitted that no digital signature was required because the approval granted under Section 151 was a system generated document and also contained DIN number.
- ▶ The HC taking cognizance of the afore-mentioned facts allowed the assessee's writ holding that neither the AO nor the PCIT have applied their mind but have simply issued the notice mechanically. The safeguards provided in sections 148 and 151 were lightly treated by the AO and PCIT who appear to have taken the duty imposed on them under these provisions as of little importance.
- ▶ Accordingly, the notice under section 148 was alongwith order under section 148A(d) were quashed and set aside.

Decisions on approval under section 151 (Contd.)

Siemens Financial Services (P.) Ltd. [457 ITR 647 (Bombay HC) dated 25 August 2023] – AY 2016-17:

- ▶ TOLA only extends the period of limitation and does not affect the scope of section 151.
- ▶ The AO cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 was amended by the Finance Act, 2021 and the provisions of the amended section would have to be complied with by the AO, with effect from 1 April 2021.
- ▶ The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction was required to be obtained.
- ▶ The present case was related to the AY 2016- 17 and the assessment notice was issued beyond the period of three years which was elapsed on 31 March 2020. Thus, the approval as contemplated in Section 151(ii) would have to be obtained from the above authorities. However, the sanction under section 148A(d) was granted by the PCIT and not the PCCIT. Therefore, the approval was not valid.
- ▶ Department's interpretation of the CBDT Instruction No. 1/ 2022 dated 11 May 2022 was not acceptable. The extended reassessment notices cannot travel back in time to the original date when such notices were to be issued. This is contrary to the decision of the Bombay HC in Tata Communications (supra) where it was held that TOLA does not envisage traveling back of any notice.
- ▶ Even assuming that these notices travel back to the date of the original notice issued on 25 June 2021, even then the approval of the PCCIT should be obtained in terms of section 151(ii) as a period of 3 years from the end of the relevant assessment year ended on 31 March 2020 for AY 2016-17.

Decisions on approval under section 151 (Contd.)

Siemens Financial Services (P.) Ltd. [457 ITR 647 (Bombay HC) dated 25 August 2023] – AY 2016-17 (Contd.):

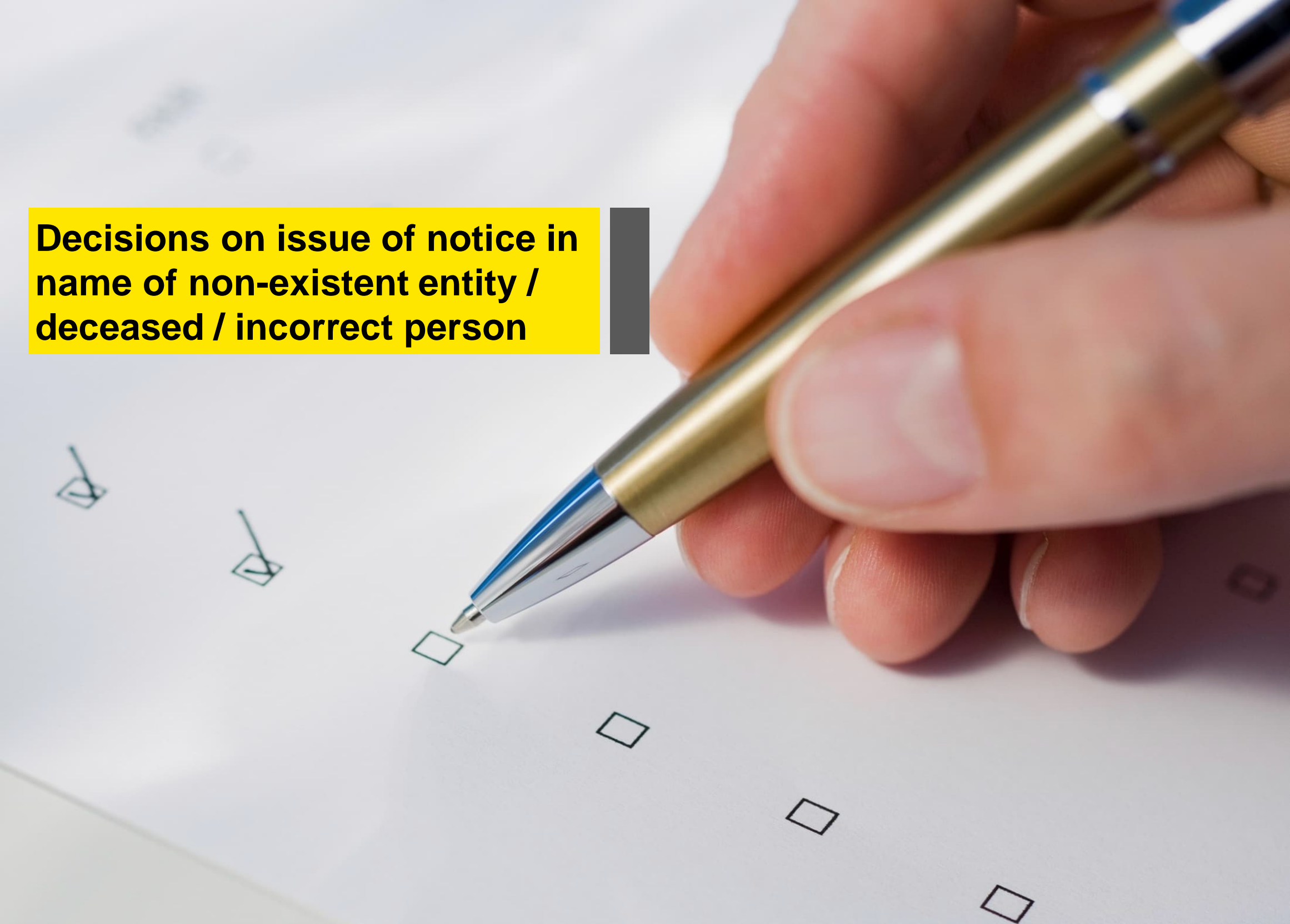
- ▶ CBDT Instruction has wrongly stated that the notices issued under Section 148 for AY 2016-17 are to be considered as having been issued within a period of 3 years from the end of the relevant assessment year and, on that basis, has wrongly mentioned that the approval of the specified authority under Section 151(i) [and not under Section 151(ii)] should be taken.
- ▶ TOLA does not provide that any notice issued under Section 148, after 31 March 2021 will relate back to the original date or the clock is stopped on 31 March 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of TOLA. Reference was made to the decision of the Bombay High Court in the case of Tata Communications.
- ▶ Even the decision of the Supreme Court in the case of Ashish Agarwal does not anywhere indicate the notices that could be issued for eternity like in this case, on 31 July 2022, would be sanctioned by the authority other than the sanctioning authority defined under the Act.

Decisions on approval under section 151 (Contd.)

Bhavesh Maganlal Dharod [155 taxmann.com 335 (Bombay HC) dated 29 September 2023] - AY 2019-20

- ▶ Where PCIT granted sanction under section 151 on basis of form submitted by revenue wherein it was stated that time limit for current proceedings was covered under section 149(1)(b) and quantum of income escaped assessment was four lakhs, since notice under section 148A(b) was issued within three years time limit, the proceedings shall be covered under section 149(1)(a), furthermore no notice could be issued for amount less than Rs. 50 lakhs under section 149(1)(b) and approval could only be granted by PCCIT, thus, grant of approval was made mechanically without application of mind.

**Decisions on issue of notice in
name of non-existent entity /
deceased / incorrect person**



Decisions on issue of notice in name of non-existent entity / deceased / incorrect person

Notice in name of non-existent/ dead person is bad in law:

- ▶ Kamlesh Mavji Ravaria [Writ Petition (L) No. 33885/ 2022 dated 13 December 2022 (Bombay HC)]
- ▶ Sumant Investments (P.) Ltd. [146 taxmann.com 32 dated 28 September 2022 (Delhi HC)] – AY 2014-15
- ▶ Late Smt Madhuben Kantilal Patel Through Legal Heir And Son Kalpeshbhai Kantilal Patel [R/SPECIAL CIVIL APPLICATION NO. 3917 of 2022 dated 10 January 2023 (Gujarat HC)] – AY 2017-18 - [proceedings quashed since 1st notice under section 148 dated 30 June 2021 was issued in name of deceased person]
- ▶ Nishant Daxeshbhai Mehta [152 taxmann.com 95 (Gujarat HC) dated 27 April 2023] – AY 2013-14
- ▶ Pico Capital (P.) Ltd. [150 taxmann.com 488 (Bombay) dated 9 March 2023] – AY 2013-14
- ▶ Prakash Tatoba Toraskar [151 taxmann.com 366 (Bombay HC) dated 10 February 2023]
- ▶ Vijay Garg [146 taxmann.com 231 dated 27 September 2022 (Delhi HC)] – AY 2015-16
- ▶ D. N. Vikraman [150 taxmann.com 86 (Madras HC) dated 24 February 2023] – AY 2016-17
- ▶ Delta Electronics India (P.) Ltd. [459 ITR 26 (Uttarakhand HC) dated 22 September 2023] – AY 2019-20
- ▶ AVS Infrabuild (P.) Ltd. [295 Taxman 458 (Delhi HC) dated 28 July 2023] – AY 2014-15

Decisions on alternate remedy



Decisions on alternate remedy

Anshul Jain [449 ITR 256 dated 2 September 2022 (SC)] - AY 2018-19

- ▶ What is challenged before the High Court was the re-opening notice under section 148A(d) of the Income-tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Red Chilli International Sales [146 taxmann.com 224 dated 3 January 2023 (SC)] – AY 2018-19

- ▶ Where assessee by way of writ petition challenged order passed under section 148A(d) along with notice issued under section 148 on ground that response filed by assessee to notice under section 148A(b) had not been considered, High Court was required to examine in depth jurisdiction pre-condition for issue of notice under section 148 and, thus, observation made by High Court in impugned order that writ petition would not be maintainable in view of alternative remedy was to be set aside.

Harinder Singh Bedi [147 taxmann.com 197 dated 27 October 2022 (Madhya Pradesh HC)] – AY 2014-15

- ▶ Assessee had filed instant writ petition challenging show cause notice issued to him under unamended section 148, order passed under section 148A(d) and consequential notice passed under section 148 against him wherein it argued that the Department had misinterpreted decision of the SC in case of Ashish Agarwal which has never condoned the delay in taking up assessment proceedings by the authorities and therefore, proceedings for AY 2014-15 are time barred. Further, it was also contended that Instruction No. 1 of 2022 has illegally extending limitation for continuing reassessment proceedings in a colourable exercise of power.
- ▶ The HC dismissed the writ by holding that assessee was having a remedy to challenge order/notice by way of filing an appeal and ground raised by him with respect to jurisdiction of authorities could always be considered by authorities. Even otherwise, a writ petition against a show cause notice is not maintainable and therefore, impugned orders/notices cannot be interfered with.

Decisions where reopening was upheld



Decisions where reopening was upheld

Ajay Gupta (HUF) [147 taxmann.com 277 dated 17 November 2022 (Delhi HC)] – AY 2016-17

- ▶ Where a reopening notice was issued on ground that an information was received that assessee was beneficiary of accommodation entry in form of long-term capital gain (LTCG) on sale of shares claimed as exempt under section 10(38), since said transactions of sale and purchase were admitted by assessee and it had not brought on record anything to suggest that reassessment proceedings were being undertaken in arbitrary manner, in light of abovesaid information which formed basis of initiation of inquiry said reopening notice was justified.

Saroj Chandna [448 ITR 28 dated 30 August 2022 (Delhi HC)] – AY 2013-14

- ▶ Where Assessing Officer passed reassessment order making addition on account of an amount received by assessee from a party holding that said transaction had escaped assessment, since assessee elected not to furnish information related to this transaction as required by Assessing Officer in reopening notice, assessee could not contend that she was denied opportunity of hearing and, thus, impugned reassessment order was valid.

Vikas Jain [146 taxmann.com 210 dated 7 October 2022 (Delhi HC)] – AY 2014-15

- ▶ Where Assessing Officer passed order under section 148A(d) on assessee and issued notice under section 148, on ground that report of DDIT (Investigation), Mumbai shared with Assessing Officer suggested that long-term capital gain earned by assessee on sale of shares and claimed as exempt was bogus, since assessee had not placed on record any documents evidencing its purchase of shares i.e. contract note, bank statement and Demat account for relevant period similarly, ITR for assessment year 2012-13, declaring initial purchase of said shares had also not been placed on record order passed under section 148A(d) called for no interference.

Decisions where reopening was upheld (Contd.)

Chandra Bhan [Writ Tax No. 829 of 2023 (Allahabad HC) dated 18 July 2023]

- ▶ HC, notwithstanding the availability of alternative remedy, dismissed assessee's writ petition challenging the re-assessment order on the ground that the notice under Section 148 was issued manually without the Document Identification Number since the assessee participated in the proceedings and the reassessment order was passed only after consideration of his reply. Further, holds that no prejudice is shown to have been caused to the Assessee by issuance of manual notices since he acknowledged receipt of such notice and has also submitted the objections which have been duly adverted to.

Kalicharan Agarwalla [152 taxmann.com 341 (Calcutta HC) dated 16 May 2023] – AY 2019-20

- ▶ During course of search conducted upon assessee, certain material and evidences were gathered which contained coded language reflecting that assessee was involved in taking cash loans on basis of which, a reopening notice was issued upon assessee. Assessee challenged the same by way of writ, which was dismissed by the HC which noted that documents gathered during search were forwarded by investigation wing to relevant authorities and documents were also shared with assessee and therefore, the order under section 148A(d) was passed based on investigation and evidence collected. The HC also held that the findings in impugned order were based on material evidence which could not be scrutinised by a Writ Court in exercise of its writ jurisdiction under article 226. Further, considering nature of huge financial scam, writ petition could not be entertained and PCIT was to be directed to refer the case along with all other involving same broker where similar modus operandi was adopted relating to unaccounted cash loan to Enforcement Directorate (ED).

Thank You!!

