

Important Take Aways from the Judgement of Union of India & Ors Vs Ashish Agarwal in Civil Appeal No. 3005 of 2022 pronounced on 04-05-2022

1. 90000 Notices under the unamended law were issued by the Revenue after 1-4-2021
2. The judgements of several high courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act 2021 and as per the substituted sections 147 to 151 of the Act.
3. The revenue ought not to have issued notices under Section 148 after the amendment was enforced on 1/4/2021 and they ought to have been issued under the new law.
4. The respective impugned notices under section 148 shall be deemed to have been issued u/s 148A of the new Act and after following procedure may issue notice u/s 148(as substituted)
5. All defence available to the assessee and the department under section 149 shall continue to be available.

Supreme Court upholds the validity of notices issued under Old Sec 148 after 31st Mar 2021:

Background:

Several High Courts had allowed the writ petitions and had quashed several reassessment notices issued by the Revenue, issued under old section 148 of the Income Tax Act, 1961, on the ground that the same are bad in law in view of the amendment by the Finance Act, 2021 which had amended Income Tax Act by introducing new provisions i.e. sections 147 to 151 w.e.f. 1st April, 2021.

Following is the procedure laid down by the Hon SC in respect of such notices issued under old Sec 148:

1. Such notices 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).
2. The assessing officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter.
3. 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.

Following are the observations of the Hon SC:

1. The judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated.
2. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue
3. The present order is passed in exercise of powers under Article 142 of the Constitution of India with a view not to burden this Court with approximately 9000 appeals.

Note: Article 142 of the Constitution: The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

In view of the above, in my opinion the notices for AY 2012-13/2013-14 and 2014-15 which have been issued under the old law after 1/4/2021 cannot be revived in pursuance of this judgement.

For any notices for Asstt years 2015-16, 2016-17, 2017-18, the same can be validated if the escaped income is more than 50 lacs and is covered under the definition of assets.