

7. Rationalization of provisions relating to assessment and reassessment [Clauses 35, 36, 44, 45, 46, 47, 48, 49 and 73]

| Clause | Relevant Section | Applicable W.E.F. | Brief of Amendment |
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| 48 & 72 | 153 and 263 | WEF 01.04.2022 AY. 2022-23 | <p>In Section 153 of the Income-Tax Act, after sub-section (5), the following sub-section shall be inserted, namely:—</p> <p>“(5A) Where the <i>Transfer Pricing Officer</i> gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or re-computation, in conformity with such order of the Transfer Pricing Officer, <u>within two months</u> from the end of the month in which such order of the Transfer Pricing Officer is received by him.”</p> <p>Section 263 of the Act contains the provision for <u>revision of order</u> which is erroneous in so far as it is prejudicial to the interests of revenue.</p> <p>As per provisions of section 92CA, if the Assessing Officer considers it necessary or expedient, he may, with the approval of the Principal Commissioner or Commissioner refer the computation of arm’s length price (ALP or specified domestic transaction entered into by an assessee, to the Transfer Pricing Officer (TPO). The TPO passes an order determining the ALP in an international transaction or specified domestic transaction under the provisions of section 92CA and send it to the Assessing Officer for final income determination. However, it is not clear as to who has the power under section 263 to revise the order of the TPO passed under section 92CA.</p> <p>Therefore, it is proposed to amend the provisions of section 263 of the Act so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO ..</p> |
| 35 | 132(8) | 01.04.2022 AY 2022-23 | In order to amend the scope of Section 132(8), and to make the provisions of that section also applicable to assessment or reassessment or re-computation under sub- section (3) of 143 or section 144 or section 147, as the case may be, a reference to these sections have been made under |
| 36 | 132B(1) & 132(4) | 01.04.2022 AY 2022-23 | In order to amend the scope of Section 132B, and to make the provisions of that section also applicable to assessment or reassessment or re-computation under sub- section (3) of 143 or section 144 or section 147, as the case may be, a reference has been made to the expression completion of the assessment or reassessment or re-computation. |
| 44 | 148 | w.e.f. 01.04.2022 | <p>Presently, before issuance of a notice under Section 148 of the Act, the AO is required to obtain prior approval of the specified authority to issue such notice.</p> <p>It is proposed that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.</p> <p>This way a second administrative approval is sought to be dispensed with.</p> |
| 44 | 148 | W.e.f. 01.04.2022 | <p>The aforesaid Explanation referred to two cases where the information with the Assessing Officer would suggests that the income chargeable to tax has escaped assessment.</p> <p>This list is sought to be expanded by including following cases also within the ambit of income chargeable to tax which has escaped assessment:</p> <p>“(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or</p> <p>(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or</p> <p>(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or</p> <p>(v) any information which requires action in consequence of the order of a Tribunal or a Court.</p> <p>Further, in existing cl(i) the reference to expression “flagged would be omitted.</p> |

| Clause | Relevant Section | Applicable W.E.F. | Brief of Amendment |
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| 44 | 148 | W.e.f. 01.04.2021 Retrospective | In clause (ii), the reference to Section 133A(5) of the Act would be omitted. The said sub-section pertained to incurrence of ostensible expense at functions, ceremonies, etc. |
| | | | Also, in case of search and survey, there was a deemed assumption of escapement of income for the year in which search or survey was conducted and 3 (three) preceding AY's. |
| | | | As per amendment, in Explanation 2 of section 148 the reference to three assessment years preceding the assessment year relevant to the year of search is sought to be omitted. |
| | | | EVEN though , the Memorandum explaining the provisions speaks about prior 3 years reference Only in case of search, the language of the section post amendment also includes reference to survey also .[see page 77, para 3(iii)] |
| 45 | 148A | 01.04.2022 | Section 148A pertains to Conducting inquiry, providing opportunity before issue of notice under section 148. |
| | | | In clause (b) of this section, the reference to prior approval of specified authority before granting an opportunity of being heard is sought to be omitted. |
| 45 | 148A | 01.04.2022 | The proviso to Section 148A lists out cases where no opportunity is required to be provided before issue of notice under section 148. As per amendment a new clause is sought to be added to the list which is as under: |
| | | | <i>(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee</i> |
| 46 | 148B | 01.04.2022 | Prior approval for assessment, reassessment or re-computation in certain cases is envisaged similarly on the lines of Section 153D of the Act which provided that before passing of an order, in respect of an assessment year to which clause (i) or clause (ii) or clause (iii) or clause (iv) of |
| 47 | 149(1) | 01.04.2022 | The section 149 prescribes time limit for issuance of notice under Section 148 of the Act. The clause (b) of the said sub-section provided that |
| | | | No notice under section 148 shall be issued for the relevant assessment year if three years, but not more than ten years , have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset , which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year |
| | | | The above clause is sought to be enlarged by including details of other entries, expenses, disallowance, allowances, etc and the substituted cl is as under: |
| | | | <i>b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—</i> |
| | | | <i>(i) an asset;</i> |
| | | | <i>(ii) expenditure in respect of a transaction or in relation to an event or occasion; or</i> |
| | | | <i>(iii) an entry or entries in the books of account,</i> |
| <i>which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more</i> | | | |
| 47 | 149(1) | 01.04.2021 Retrospective | As per Finance Act 2021 If no notice under Section 148 could have been issued under old Law (owing to time limits under erstwhile section 149), the notice under New Section 148 could not have been issued either. |
| | | | The aforesaid stipulation is sought to be enlarged by including reference to Section 153A as well as Section 153C of the Act in the erstwhile proviso to Section 149(1) (post amendment by FA 2021) by substituting the existing proviso with following proviso: |
| | | | <i>that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.</i> |
| 47 | 149(1A) | 01.04.2022 | The present section is applicable for notice beyond 3 AY's if income recorded in form of the asset which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more. |

| Clause | Relevant Section | Applicable W.E.F. | Brief of Amendment |
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| | | | <p>The proposed sub-Section is as under:</p> <p><i>(1A) Notwithstanding anything contained in subsection (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of subsection (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be."</i></p> <p>Thus, post amendment, even though in a single AY the escaped income is less than 50Lakhs, in-case it is more than 50 Lakh and is spanning over more than 1 AY then notice under Section 148 could be issued for each of such AY during which the escaped income is spanning over.</p> |
| 48 | Clause (xii) to Expl. 1 to Sec. 153 | 01.04.2021 Retrospective effect | <p>The new clause seeks to provide <i>for exclusion of the period of limitation</i> for the purpose of assessment, reassessment or recomputation, <i>(not exceeding one hundred eighty days)</i> commencing from the date on which a search is initiated under section 132 or a requisition is made under</p> <p>This exclusion of time period is not available in cases of Survey Under Section 133A of the Act. It is understood that owing to the above amendment, <i>the time taken by the investigation wing in post search investigation is sought to be excluded.</i></p> <p>These stipulations will also be applicable where the asset seized or requisitioned belonged to or to any books of account or documents seized or requisitioned, pertains or pertain to other person (not subjected to search).</p> |
| 49 | Section 153B(4) | 01.04.2022 | <p>Since the provisions of Section 153B were applicable wrt searches conducted on or before 31/03/2021, a sunset clause by virtue of following sub-section is proposed:</p> <p><i>"(4) Nothing contained in this section shall apply to any search initiated under section 132 or requisition made under section 132A on or after the 1st day of April, 2021 "</i></p> <p><i>[Assessment in case of Searches after 01/04/2021 are governed by provisions of Section 148 of the Act]</i></p> |
| 49 | Clause (xi) to Expl. 1 to Sec. 153B | 01.04.2021 Retrospective effect | <p>The new clause seeks to provide <i>for exclusion of the period of limitation</i> for the purpose of assessment, reassessment or recomputation, <i>(not exceeding one hundred eighty days)</i> commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account, or other documents or money or bullion or jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A, as the case may be.</p> <p>This exclusion of time period is not available in cases of Survey Under Section 133A of the Act. It is understood that owing to the above amendment, <i>the time taken by the investigation wing in post search investigation is sought to be excluded.</i></p> <p>These stipulations will <i>NOT BE</i> applicable where the asset seized or requisitioned belonged to or to any books of account or documents seized or requisitioned, pertains or pertain to other person (not subjected to search).</p> |
| 73 | clause (a) of Expln. | 01.04.2021 With retrospective effect | <p>The Section 271AAB provides for penalty in-case of search conducted. The definition of "specified date" in clause (a) Explanation to section 271AAB <i>to make it also applicable to a notice issued under section 148 in case where search is initiated on or after 1st April, 2021</i> .</p> |