

"Draft Reply to Section 148A(b) Notice: Supreme Court Guidelines in Union of India vs. Ashish Agarwal (Old vs. New Tax Regime)"

From, Mr. _____

Dated: _____

To,

The Income Tax Officer

Ref.: PAN No.: _____ DIN: _____ Notice dated
_____/202__ for A.Y. _____

Sir/Madam,

Sub.: Reply to subsequent proceedings with reference to Section 148A(b) in consequence to Hon'ble SC Order dated 04.05.2022

With respect to the above Notice issued, I would like to state as under: Your honour had issued Notice u/s 148, under

Old Regime, dated ____/202__ bearing DIN _____
pertaining to Assessment Year _____.

The said Notice issued under Old Regime was challenged in many High Courts and the Final Ruling was made by the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Ashish Agarwal (Civil Appeal No. 3005/2022, vide order dated 04/05/2022).

Relying on the Directions of the Supreme Court quoted in the said Judgment:

Your honour has construed / treated the said Notice issued u/s 148 dated ____/2021 as the Show-Cause Notice in terms of Section 148A(b) of the Act.

Your honour has also provided me with the information which suggest that income has escaped assessment along with the material which is basis of such

information as embedded in reasons recorded (based on the law applicable before 01.04.2021) to re-open my case before issuing notice u/s 148 of the I.T. Act. Also, the copies of documentary material relied upon is also provided to me.

Lastly, your honour has mentioned that the information and material relied upon, suggests that the income chargeable to tax represented in the form of asset has escaped assessment, which is amounting to or likely to amount to more than Rupees Fifty Lakhs, for the Assessment Year for the purposes of Sections 148 and 148A of the Act. (Kindly make changes as per Notice received)

The Hon'ble CBDT has issued Instruction No. 01/2022, dated 11.5.2022, containing Guidelines for Implementation of SC Judgement in this case. It has been directed in Para 6.2 of the said Instruction, that the impugned Re-assessment Notices are to be dealt with as under:

(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh Notice u/s 148 can be issued in these cases, with the approval of the specified authority, only if the assessing officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of an asset, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more, for that year.

(ii) AY 2016-17, AY 2017-18: Fresh Notice u/s 148 can be issued in these cases, with the approval of the specified authority, since they are within a period of three years from the end of the relevant assessment years.

In view of the above, I say that, your above referred notice dated ____/202__ as well as notice dated ____/202__ (Original 148 Notice), is bad, illegal and void and without jurisdiction. However, under protest and without prejudice, I hereby submit my reply to the Deemed Notice u/s 148A(b) as under:

Basis of forming reason to believe and details of escapement of income: Our Scrutiny was selected on the ground that

Our response to the aforesaid reason is as under:

1. _____
2. _____

I hope the above details fulfill your requirements and are sufficient enough to consider a fit case for dropping the re-opening of case u/s 148. In case you require any further information/clarification in this regard, I shall be glad to furnish the same and for furnishing the same, kindly grant me an opportunity of seven days.

Thanking You,

Yours Faithfully,

Sd/-

Mr. _____

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