

ASSESSMENT OF SEARCH CASES U/S. 153A & 153C TECHNICAL ASPECT AND RECENT DEVELOPMENTS

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SECTION 153A

- ✓ Inserted by the Finance Act, 2003, with effect from 1st June, 2003. It provides the procedure for completion of assessment where a search is initiated u/s. 132 or books of account, or other documents or any assets are requisitioned u/s. 132A after May 31, 2003.
- ✓ The Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted u/s. 132 or requisition was made u/s. 132A.
- ✓ The Assessing Officer shall assess or reassess the total income of each of these six assessment years.
- ✓ Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s. 132 or requisition u/s. 132A, as the case may be, shall abate.
- ✓ The appeal, revision or rectification proceedings pending on the date of initiation of the search u/s. 132 or requisition u/s. 132A shall not abate. If any proceedings are annulled, the assessment or reassessment which has abated, shall stand revived.

SECTION 153B

- ✓ Provides the time limit for completion of search assessments.
- ✓ The Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years u/s. 153A and assessment year relevant to the previous year in which search is conducted or requisition is made, within a period of two years from the end of the financial year in which the last of the authorizations for search u/s. 132 or for requisition u/s. 132A was executed.
- ✓ The time limit for assessment or reassessment u/s. 153C is same as above or one year from end of the financial year in which books of accounts or documents or asset requisitioned are handed over to the Assessing Officer having jurisdiction over such other person, whichever is later.
- ✓ This section also provides certain exclusions while computing the period of limitation for completion of assessment or reassessment.
- ✓ If after exclusion, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, is less than sixty days, such remaining period shall be extended to sixty days.

SECTION 153C

- ✓ Where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the person referred to in section 153A, then the same shall be handed over to the Assessing Officer having jurisdiction over such other person; and
- ✓ *that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. (Substituted w.e.f. 1.10.2014)*
- ✓ Following points emerge:-
 - Assessing Officer issuing notice u/s. 153C has to place his satisfaction.
 - Such satisfaction should be expressive and a speaking one.
 - Assessing Officer should demonstrate that the seized books of accounts/documents/assets have any impact on determination of total income of such other person.
 - Satisfaction shall be given for each assessment year of such other person proposed u/s 153C.

SECTION 153C

RECORDING OF SATISFACTION NOTE U/S 158BD/153C

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- ✓ The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.
- ✓ The Hon'ble Supreme Court in the case of *M/s Calcutta Knitweaves in its detailed judgment in Civil Appeal No. 3958 of 2014* has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:
 - a. at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
 - b. in the course of the assessment proceedings under section 158BC of the Act; or
 - c. immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."
- ✓ The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

SECTION 153C

- ❖ The Hon'ble Ahmedabad Tribunal in the case of Dr. Mansukh Kanjibhai Shah v. ACIT (129 ITD 376) has held that once the warrant of authorization or requisition is issued and search is conducted & Panchanama is drawn, all the relevant six assessment years would get reopened irrespective of any incriminating material is found or not in respect of any particular assessment year falling within the relevant six assessment years.
- ❖ The Hon'ble Ahmedabad Tribunal in the case of DCIT, CC-1(1) v/s. Meghmani Industries Ltd. [CO Nos. 314, 315 & 316/Ahd/2008 in ITA 3400, 3401 & 3402/Ahd/2008 dt. 6/1/2009] has been held that where there are no pending assessments as on the date of the search then the completed assessment shall rule the field and the income assessed thereunder cannot be disturbed.
- ❖ Further, what tantamount to pending assessment has been dealt with by the Hon'ble Jodhpur Bench of ITAT in Suncity Alloys as under—
 - ✓ “That pending assessments within the meaning of section 153A(1) shall be:
 - a. Where return is filed in accordance with section 139, same is neither processed u/s.143(1) nor any 143(2) is issued for the same;
 - b. Where section 143(2) notice has been issued and assessment thereon is still pending on search date;”

SECTION 153C

- ❖ The Mumbai Tribunal in the case of Guruprerana Enterprises v. ACIT (57 DTR 465) has held that only the assessments pending before the Assessing Officer for completion shall abate u/s. 153A and the issues decided in the assessment can not be reconsidered and readjudicated unless there is some fresh material found during the course of search in relation to such points.
- ❖ The Pune Tribunal in the case of Sinhgad Technical Education Society v. ACIT (140 TTJ 233) has held that for the purpose of attracting section 153C, the document seized must not only be a 'speaking one' but also prima facie 'incriminating one'. The documents cannot be said 'incriminating one' merely because it contains the notings of entries which are already recorded in books of accounts or is subjected to scrutiny of Assessing Officer in the past in regular assessment u/s. 143(3).

JUDICIAL PRONOUNCEMENTS

- ❖ In the recent Vishakhapatnam Bench (ITAT) case of *G. Koteswara Rao v. Deputy Commissioner of Income Tax* [2015] 64 taxmann.com 159 dated 29-10-2015, the Tribunal held that in an instance where the assessment is made consequent to search in another case, the Assessing Officer is bound to issue notice under Section 153C and thereafter proceed to assess or reassess total income under section 153A of the Act. The Assessing Officer had, instead of complying with the provisions of Section 153C, proceeded with the reassessment under section 147/148 which is not applicable to search cases
- ❖ Special Leave Petition (SLP) was granted against High Court's ruling that no addition can be made in respect of assessments which have become final if no incriminating material is found during search or during 153A proceeding [*Commissioner of Income Tax II v. Continental Warehousing Corporation (Nhava Sheva) Ltd* [2015] 64 taxmann.com 34 (SC)]
- ❖ Completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment [*Commissioner of Income Tax-II v. Kabul Chawla* [2015] 61 taxmann.com 412 (Delhi)]

JUDICIAL PRONOUNCEMENTS

- ❖ Whether where the notice issued u/s 153C is held to be invalid, the assessment thereon has no legs to stand [*Alliance Mall Developers Co. Pvt. Ltd. vs. ACIT 2015-TIOL-1926-ITAT-MUM*]
- ❖ Where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such assessment years cannot be disturbed under Section 153C of the Act. It is clear that the provisions of Section 153C of the Act cannot be invoked automatically in respect of any assessment year unless there exist incriminating documents for that previous year. [*Trishul Hi-Tech Industries vs. DCIT -2014-TIOL-862-ITAT-KOL*]
- ❖ Whether the documents found during the course of search can be considered as incriminating material to initiate proceedings u/s 153C, even though the assessment u/s 143(1) was completed and attained finality before satisfaction was recorded by AO [*DCIT vs. Royal Cartons Pvt. Ltd. (ITA 472/Coch/2013) - 2015-TIOL-1484-ITAT-COCHIN-TM*]

JUDICIAL PRONOUNCEMENTS

- ❖ It is not open for assessee to seek deduction or claim expenditure which has not been claimed in original assessment, which assessment already stands completed, only because assessment under section 153A in pursuance of search or requisition is required to be made – *Jai Steel (India) v. Asst. CIT 2009 Tax LR 30 (All.)*
- ❖ Assessing Officer has power to reassess returns of assessee not only for undisclosed income found during search operation but also with regard to material available at time of original assessment – *CIT v. Raj Kumar Arora [2014] 52 taxmann.com 172 (All.)*
- ❖ There is no requirement under provisions of Act requiring department to collect information and evidence for each and every year for six previous years in order to initiate proceedings under section 153A – *Sunny Jacob Jewellers & Wedding Centre v. Dy. CIT [2014] 48 taxmann.com 347 (Ker.)*

JUDICIAL PRONOUNCEMENTS

- ❖ The Hon'ble Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. v. DCIT (23 taxmann.com 103) has explained the provisions of section 153A as under:

Scenario	Scope of Section 153A
1 No return of income is filed by the assessee (whether or not time limit to file return of income has expired)	Since no return has been filed, the entire income shall be regarded as undisclosed income. Consequently, AO would have the
	authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3). No requirement to restrict to documents found during the course of search.

JUDICIAL PRONOUNCEMENTS

Scenario	Scope of Section 153A
<p>2 Return of Income filed by the assessee – return yet to be processed u/s. 143(1)</p>	<p>Since return filed is even pending to be processed, the return would be treated as pending before the AO.</p> <p>Consequently, AO would have authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3).</p>
<p>3 Return of Income filed by the assessee – return processed and intimation issued u/s. 143(1) – Time limit for issue of notice u/s. 143(2) not expired.</p>	<p>Since intimation is not akin to assessment and time limit for notice u/s. 143(2) has not expired, even though return has been processed, it will be case where return has not attained finality.</p> <p>Consequently, AO would have authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3).</p>

JUDICIAL PRONOUNCEMENTS

Scenario	Scope of Section 153A
4 Return of Income filed by the assessee. Intimation passed or not u/s. 143(1) and time limit for issue of notice u/s. 143(2) has expired	<p>Return of Income of the assessee shall be treated as having being accepted and attained finality. AO loses jurisdiction to verify the return of income</p> <p>Since, no assessment would be pending there would be no abatement of any proceedings.</p> <p>Accordingly, the scope of assessment u/s. 153A would be restricted to incriminating material found during the course of search.</p>
5 Notice u/s. 143(2) issued and assessment pending u/s. 143(3)	<p>Pending regular assessment proceedings would abate and would converge / merge in proceedings u/s. 153A.</p> <p>Accordingly the scope of assessment under section 153A would cover the pending return filed as well and would not be restricted to incriminating material found during the course of search.</p>

JUDICIAL PRONOUNCEMENTS

Scenario	Scope of Section 153A
6 Assessment completed	<p>u/s. 143(3) Since regular assessment proceedings have been completed and are not pending, there would be no abatement of proceedings.</p> <p>AO loses jurisdiction to review the completed assessment.</p> <p>Accordingly, the scope of assessment u/s. 153A would be restricted to incriminating material found during the course of search.</p>

JUDICIAL PRONOUNCEMENTS

Scenario	Scope of Section 153A
<p>7 Proceedings u/s. 147 pending where:</p> <p>(a) Assessment originally completed u/s. 143(3);</p> <p>Or</p>	<p>Pending assessment / reassessment proceedings u/s. 147 would abate and would converge / merge in proceedings u/s. 153A</p> <p>Accordingly, the powers of the AO, in both the cases, shall extent to:</p>
<p>(b) No assessment earlier completed u/s. 143(3)</p>	<p>(a) Assess income that could validly be assessed in the pending proceedings u/s. 147, and</p> <p>(b) income to be assessed on the basis of incriminating material found in the course of search.</p>

❖ The final conclusion of the Mumbai ITAT Special Bench in the case of All Cargo Global Logistics Ltd. v. DCIT (supra), on the issue is as under:

- a) In assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately;
- b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means – (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) undisclosed income or property discovered in the course of search.

- ❖ The Hon'ble Delhi High Court in the case of CIT v. Anil Kumar Bhatia (211 Taxman 453) has held that even if assessment order had already been passed in respect of all or any of those six assessment years, either u/s. 143(1)(a) or u/s. 143(3) prior to intimation of search / requisition, still Assessing Officer is empowered to reopen those proceedings u/s. 153A without any fetters and reassess total income taking note of undisclosed income, if any, unearthed during search.
- ❖ The Delhi Tribunal in the case of Sanjay Aggarwal v. DCIT (47 taxmann.com 210) has after considering the decision of the All Cargo Global Logistics Ltd. and Anil Kumar Bhatia (supra) has held as under:
 - ✓ In view of provisions of section 153A, in respect of assessment years for which original assessments have already been completed on date of search, total income shall be determined by restricting additions only to those which flow from incriminating material found during course of search;
 - ✓ so far as assessments pending on date of search are concerned, those assessments would abate in terms of second proviso to section 153A(1) and total income shall be computed afresh uninfluenced by fact whether or not there is any incriminating material found in course of search.

- ❖ In relation to section 153A r.w.s. 263, the Bombay High Court in the case of CIT v. Murli Agro Products Ltd. (49 taxmann.com 172) has held that where there was nothing on record to suggest that any material was unearthed during search or during proceedings initiated under section 153A showing that certain relief in form of deduction was wrongly allowed to assessee, Commissioner could not invoke jurisdiction under section 263 on ground that assessment order passed under section 153A, read with section 143(3) was erroneous or prejudicial to interest of revenue.
- ❖ Also, the Karnataka High Court in the case of Canara Housing Development Co. v. DCIT (49 taxmann.com 98) has held that once proceedings under section 153A is initiated, pursuant to search, order of assessment in respect of six years stands reopened and, therefore, in absence of any valid assessment order in existence, revisional proceedings under section 263 cannot be initiated in such a case.

THANK YOU