

# 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 1<sup>st</sup> 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.

# JUDICIAL PRONOUNCEMENTS

- ❑ 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;”

# JUDICIAL PRONOUNCEMENTS

- ❑ 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

- ❑ 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)	<p>Since no return has been filed, the entire income shall be regarded as undisclosed income.</p> <p>Consequently, AO would have the authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3).</p> <p>No requirement to restrict to documents found during the course of search.</p>

# JUDICIAL PRONOUNCEMENTS

Scenario	Scope of Section 153A
2 Return of Income filed by the assessee – return yet to be processed u/s. 143(1)	<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>
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>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 been 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	u/s. 143(3)	<p>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>(b) No assessment earlier completed u/s. 143(3)</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>(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>

# JUDICIAL PRONOUNCEMENTS

- ❑ 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.

## JUDICIAL PRONOUNCEMENTS

- ❑ 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.

# JUDICIAL PRONOUNCEMENTS

- ❑ 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