

# Search Assessment

u/s 153A, 153B, 153C, 153D

of Income Tax Act, 1961

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Amendments made  
by  
Finance Act, 2017

# Amendments in Section 153A

Contd...

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years\* referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and of the relevant assessment year or years\*:

**Provided that** the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years\*:

\*w.e.f. 01-04-2017

## Amendments in Section 153A....

***Provided further*** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years **and for the relevant assessment year or years\*** referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

***Provided also that*** the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made **and for the relevant assessment year or years\***.

**\*w.e.f. 01-04-2017**

# Amendments in Section 153A....

## Fourth Proviso inserted w.e.f 01-04-2017

*“Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—*

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;*
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and*
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.*

***Explanation 1.**—For the purposes of this sub-section, the expression “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*

***Explanation 2.**—For the purposes of the fourth proviso, “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.’”*

# Amendments in Section 153A...

**Brief:** To protect the interest of the revenue in cases where **tangible evidence(s)** are found during a **search or seizure operation** (including 132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A relating to search assessments is amended to provide that notice under the said section can be issued upto 10<sup>th</sup> AY (beyond the 6<sup>th</sup> AY already provided) if:

- (i) the **AO has in his possession** books of accounts or other documents or **evidence** which reveal that the income which has **escaped assessment amounts** to or is likely to amount to **Rs.50 lakh or more** in one year or in aggregate in the relevant 4 AYs (falling beyond the 6<sup>th</sup> AY);
- (ii) **such income escaping assessment is represented in the form of asset** (including immovable property being land/building/both, shares & securities, loans & advances, deposits in bank account);
- (iii) **the income escaping assessment or part thereof relates to such year(s).**

Amended provisions of section 153A shall apply where search u/s 132 is initiated or requisition u/s 132A is made on or after the 1st day of April, 2017

# Amendments in Section 153B

- (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—
- (a) in respect of each assessment year falling within six assessment years and for the relevant assessment year or years\* referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;
- (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

**Provided that** in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

# Amendments in Section 153B....

## Second & Third Proviso substituted

[w.e.f. 01-04-2017]

*Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018,—*

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words “twenty-one months”, the words “eighteen months” had been substituted;*
- (ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:*

*Provided also that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,—*

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted;*



## Amendments in Section 153B....

*(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:*

***Provided also that*** in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment shall be extended by twelve months:

***Provided also that*** in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment in case of such other person shall be extended by twelve months.'

## Amendments in Section 153B....

**Brief:** Sub-section (1) is amended to provide that for search and seizure cases conducted in the FY 2018-19, the time limit for making an assessment order u/s 153A shall be **reduced from existing twenty-one months to eighteen months** from the end of the financial year in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed.

Further, for search and seizure cases conducted in the FY 2019-20 and onwards, the said time limit shall be further **reduced to twelve months** 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.

# Amendments in Section 153B....

## Proviso to sub-section (3)

[w.r.e.f. 01-06-2016]

*“Provided that where a notice under section 153A or section 153C has been issued prior to the 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation, such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016.”*

## Proviso to Explanation to sub-section (3)

[w.r.e.f. 01-04-2017]

*“Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.”*

## Amendments in Section 153B....

**Brief:** A proviso to the Explanation is inserted to provide that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section 245HA shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

# Amendments in Section 153C

*(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned 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 six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and** for the relevant assessment year or years referred to in sub-section (1) of section 153A.*

***\*[w.e.f. 01-04-2017]***

## Amendments in Section 153C....

*Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:*

*Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.*

*\*[w.e.f. 01-04-2017]*

*Provisions related to*  
*Assessments after Search/*  
*Requisition*

## Section 153A - Assessment in case of search/ requisition

- ❑ In case of search or requisition on or after 01-06-2003, the AO is required to assess the income of assessee in respect of –
  - the 6 assessment years preceding the relevant AY and/ or
  - the relevant AY(s) (AY beyond 6<sup>th</sup> AY & upto 10<sup>th</sup> AY) provided the conditions specified in 4<sup>th</sup> proviso are fulfilled. **[Scope of Sec. 153A extended by Finance Act, 2017 in respect of search/ requisition after 01-04-2017]**

- (i) AO has in his possession** books of accounts/ other documents/ **evidence** which reveal that income which has **escaped assessment amounts** to or is likely to amount to **Rs.50 lakh or more** in one year or in aggregate in the relevant 4 AYs (falling beyond the 6<sup>th</sup> AY);
- (ii) such income escaping assessment is represented in the form of asset** (including immovable property being land/building/both, shares & securities, loans & advances, deposits in bank account);
- (iii) the income escaping assessment or part thereof relates to such year(s).**



## Section 153A.....

- ❑ The assessment or reassessment, if any, in respect of such 6 assessment years and relevant assessment year(s), pending on the date of search/requisition **shall abate**. [2<sup>nd</sup> Proviso]
- ❑ If any proceeding initiated u/s 153A or any order made u/s 153A(1) has been annulled in appeal/ any other legal proceeding, then, the abated assessment/ reassessment as per second proviso shall stand revived w.e.f. the date of receipt of the order of such annulment by the Pr.CIT or CIT. [Sub-section (2)]
- ❑ All other provisions of this Act shall apply to the assessment made under this section, except as otherwise provided in Section 153A, section 153B and section 153C. [Clause (i) of Explanation]
- ❑ The tax shall be chargeable at the rate or rates as applicable to such assessment year. [Clause (ii) of Explanation]

## Section 153A.....

- ❑ The Central Government may specify the class/ classes of cases in which the **AO shall not be required to issue notice** for assessment years specified in sub-section (1) **[3<sup>rd</sup> Proviso]**

### Rule 112F has been prescribed in this regard w.e.f 01-07-2012

- where, as a result of a search/ requisition, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of such money, bullion, jewellery, etc.; and
- where, such search/ requisition is made in the **territorial area of an assembly or Parliamentary constituency** in respect of which a notification has been issued u/s 30 r.w.s. 56 of Representation of the People Act, 1951, **or** where the assets so seized/ requisitioned are connected in any manner to the ongoing election in an assembly or Parliamentary constituency

This rule shall not be applicable to cases where such search or requisition has taken place **after the hours of poll** so notified. **Further**, this rule shall not be applicable to cases where any assessment/ reassessment has abated under second proviso to sec. 153A and where any assessment/ reassessment has abated u/s 153C.

## Section 153C - Assessment of income of any other person

- ❑ Where the Assessing Officer is satisfied that,—
  - (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
  - (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A,
- ❑ Such books of account/ documents/ assets shall be handed over to AO having jurisdiction over such other person
- ❑ That AO shall proceed against each such other person & issue notice and assess/reassess the income of the other person in accordance with the provisions of section 153A, if, that AO is satisfied that such material have a bearing on the determination of the total income of such other person *for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :*

## Section 153C....

- ❑ In case of such other person, the reference to the date of initiation of the search or making of requisition shall be construed as reference to the **date of receiving of such books of account or documents or assets by the jurisdictional AO.** [1st Proviso]
- ❑ The Central Government may specify the class/ classes of cases in which the **AO shall not be required to issue notice** for assessment years specified in sub-section (1). [2<sup>nd</sup> Proviso]

## Section 153C....

- ❑ Where books of account or documents or assets seized or requisitioned has or have been received by the jurisdictional AO of other person **after the due date for furnishing the return of income** for the assessment year relevant to the previous year in which search is conducted or requisition is made and in respect of such assessment year—
  - (a) no return of income has been furnished by such other person and no notice u/s 142(1) has been issued to him, or
  - (b) a return of income has been furnished by such other person but no notice u/s 143(2) has been served and limitation of serving the notice u/s 143(2) has expired, or
  - (c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the jurisdictional AO of other person, such AO shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

## Section 153B in brief

### [Time limit for completion of assessment u/s 153A]

**Section 153A:** 6 AYs immediately preceding the AY relevant to previous year in which search is conducted or requisition is made and relevant AY (s) (i.e. beyond 6<sup>th</sup> AY & upto 10<sup>th</sup> AY) and AY relevant to previous year in which search is conducted/requisition is made

**Last of the authorisations for search u/s 132 or requisition u/s 132A was executed**

**before 01-06-2016\***

**during 01-06-2016 and  
31-03-2018\***

**during FY 2018-19**

**during FY 2019-20  
& onwards**

**2 Years**

from the end of FY in  
which such last  
authorization was  
executed

**21 Months**

from the end of FY in  
which such last  
authorization was  
executed

**18 Months**

from the end of FY  
in which such last  
authorization was  
executed

**12 Months**

from the end of FY  
in which such last  
authorization was  
executed

**\*Note: upto 31-03-2017 – AY relevant to previous year in which search is conducted or requisition is made and 6 AYs immediately preceding such AY**

**In case of other person referred to in section 153C:**

**Contd...**

6 AYs immediately preceding the AY relevant to previous year in which search is conducted or requisition is made and relevant AY (s) (i.e. beyond 6<sup>th</sup> AY & upto 10<sup>th</sup> AY) and AY relevant to previous year in which search is conducted/ requisition is made.

**Last of the authorisations for search u/s 132 or requisition u/s 132A was executed**

<b>before 01-06-2016*</b>	<b>during 01-06-2016 and 31-03-2018*</b>	<b>during FY 2018-19</b>	<b>during FY 2019-20 &amp; onwards</b>
<p>(i) <b>36 Months</b> from the end of FY in which such last authorization was executed, <u>or</u> (ii) <b>24 Months</b> from the end of FY in which books of accounts handed over to the jurisdictional AO Whichever is later</p>	<p>(i) <b>21 Months</b> from the end of FY in which such last authorization for search was executed, <u>or</u> (ii) <b>9 Months</b> from the end of F.Y. in which books of accounts handed over to jurisdictional AO Whichever is later</p>	<p>(i) <b>18 Months</b> from the end of FY in which such last authorization for search was executed, <u>or</u> (ii) <b>12 Months</b> from the end of F.Y. in which books of accounts handed over to jurisdictional AO Whichever is later</p>	<p>(i) <b>12 Months</b> from the end of FY in which such last authorization for search was executed, <u>or</u> (ii) <b>12 Months</b> from the end of F.Y. in which books of accounts handed over to jurisdictional AO Whichever is later</p>

\*Note: upto 31-03-2017- AY relevant to previous year in which search is conducted or requisition is made and 6 AYs immediately preceding such AY

## Section 153B.....

- ❑ Where during the course of the proceedings for the assessment or reassessment of total income, a reference u/s 92CA(1), the period available for making an order of assessment or reassessment shall be extended by twelve months. [4<sup>th</sup> & 5<sup>th</sup> Proviso]
- ❑ Certain period to be excluded from Period of Limitation: In computing the period of limitation under this section—
  - (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
  - (ii) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and—
    - (a) ending with the last date on which the assessee is required to furnish a report of such audit under that sub-section; or
    - (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or



## Section 153B.....

- (iii) the period commencing from the date on which the AO makes a **reference to the Valuation Officer** u/s 142A(1) and ending with the date on which the report of Valuation Officer is received by the AO; or
- (iv) the time taken in re-opening the whole or any part of the proceeding or in giving an opportunity to the assessee of being re-heard under the proviso to section 129; or
- (v) in a case where an **application made before Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it**, the period commencing from the date on which an application is made before Settlement Commission u/s 245C and ending with the date on which the order u/s 245D(1) is received by the Pr.CIT or CIT u/s 245D(2); or
- (vi) the period commencing from the date on which an **application is made before the Authority for Advance Rulings** u/s 245Q (1) and ending with the date on which the order rejecting the application is received by the Pr.CIT or CIT u/s 245R(3); or

## Section 153B.....

- (vii) the period commencing from the date on which an **application is made before the Authority for Advance Rulings** u/s 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by Pr.CIT or CIT u/s 245R(7); or
- (viii) the period commencing from the date of annulment of a proceeding or order of assessment/reassessment referred to in sec.153A(2), till the date of the receipt of the order setting aside the order of such annulment, by the Pr.CIT or CIT; or
- (ix) the period commencing from the date on which a **reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in sec. 90/ 90A** and ending with the date on which the information requested is last received by Pr.CIT or CIT or a period of one year, whichever is less; or
- (x) the period commencing from the date on which a **reference for declaration of an arrangement to be an impermissible avoidance arrangement** is received by the Pr.CIT or CIT u/s 144BA(1) and ending on the date on which a direction u/s 144BA(3)/(6) or an order u/s 144BA (5) is received by AO,

shall be excluded. **[Explanation]**

## Section 153B.....

- ❑ Where immediately after exclusion of aforesaid period, **period available to AO** for making order of assessment or reassessment, as the case may be, **is less than sixty days**, such remaining period shall be **extended to sixty days** and the aforesaid period of limitation shall be deemed to be extended accordingly :
- ❑ Where the **period available to the Transfer Pricing Officer** is extended to sixty days in accordance with Sec.92CA(3A) and the period of limitation available to AO for making order of assessment or reassessment, as the case may be, **is less than sixty days**, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:
- ❑ Where **proceeding before Settlement Commission abates u/s 245HA**, the period available to AO for making order of assessment or reassessment, as the case may be, shall, after the exclusion of the period u/s 245HA(4), be not less than one year; and where such period of limitation **is less than one year**, it shall be deemed to have been extended to one year.

## Section 153D - Prior approval necessary for assessment in cases of search or requisition.

- ❑ The order of assessment/ reassessment as specified u/s 153A or in respect of assessment year relevant to the previous year in which search is conducted/ requisition is made, shall not be made by an AO below the rank of Jt.CIT except with the prior approval of the Jt.CIT.
- ❑ However, the above provisions shall not apply where such order is required to be passed by AO with the prior approval of Pr.CIT or CIT u/s 144BA(12).

**Section 144BA(12):** Where any tax consequences have been determined in the order under the provisions of Chapter X-A [General Anti-Avoidance Rule].

*Undisclosed Income –*  
*Belonging to others*

# Assessment of Undisclosed Income not belonging to assessee

## [Sec. 153C]

- ❑ Where the AO is satisfied that **any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,** a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person.
- ❑ **Satisfaction** must be recorded by the AO that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132.
- ❑ The books of account or other document or assets seized or requisitioned **had been handed over** to the jurisdictional AO.

## Sec. 153C – Assessment of Undisclosed Income not belonging to assessee.....

- ❑ The AO having jurisdiction over such other person shall proceed U/s 153C r.w.s. 153A if that **AO 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 A.Y. or years referred to in Sec. 153A(1).** The satisfaction has to be recorded in writing before issuance of notice to the such other person for such A.Y.(s). [As amended by Finance (no. 2) Act, 2014 w.e.f. 01/10/2014]
- ❑ The time limit for assessment/reassessment shall be
  - 2 years\* from the end of F.Y. in which the last of the authorization for search u/s 132 or for requisition u/s 132A was executed or
  - 1 year\* from the end of the Financial Year in which the books or document or assets seized or requisitioned are handed over u/s 153C to the AO, whichever is later.

*[\*Amended as 21 months and 9 months respectively by Finance Act, 2016 w.e.f. 01-06-2016 ]*

*Issues- Assessment in case of  
search or requisition*



## Issues- Whether addition can be made in respect of an unabated final assessment

*CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd., [2015] 374 ITR 645 (Bombay) [SLP accepted/ granted in CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 235 Taxman 568 (SC)]*

- Held, No
- On initiation of the proceedings u/s 153A, it is only the assessment/ reassessment proceedings that are pending on the date of conducting search u/s 132 or making requisition u/s 132A of the Act stand abated and not the assessments/reassessments already finalised for those assessment years covered u/s 153A of the Act.
- By a circular No. 8 of 2003 dated 18-9-2003 (See 263 ITR (St) 61 at 107) the CBDT has clarified that on initiation of proceedings u/s 153A, the proceedings pending in appeal, revision or rectification proceedings against finalised assessment/ reassessment shall not abate. It is only because, the finalised assessments/reassessments do not abate, the appeal revision or rectification pending against finalised assessment/reassessments would not abate.

- Therefore, the argument of the revenue, that on initiation of proceedings under Section 153A, the assessments/reassessments finalised for the assessment years covered under Section 153A of the Income-tax Act stand abated cannot be accepted.
- Once it is held that the assessment has attained finality, **then the AO while passing the independent assessment order under Section 153A read with Section 143 (3) of the I.T. Act could not have disturbed the assessment / reassessment order which has attained finality, unless the materials gathered in the course of the proceedings under Section 153A of the Income-tax Act establish that the reliefs granted under the finalised assessment/ reassessment were contrary to the facts unearthed during the course of 153A proceedings.**

## Issues - Whether addition can be made in absence of incriminating material .....

**CIT v. Kabul Chawla [2016] 380 ITR 573 (Delhi) [SLP granted by Supreme Court in Civil Appeal No. 6412 of 2016]**

- Where no incriminating material was unearthed during the course of search, no additions could be made to the income already assessed u/s 143(1) of the Act.
- Completed assessments can be interfered with by the AO while making the assessment u/s 153A **only on the basis of** some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

**Also see: CIT V. MGF Automobiles Ltd. [2015] 63 taxmann.com 137 (Delhi) [SLP granted by Supreme Court in Civil Appeal No. 6407 of 2016], CIT Vs. Deepak Kumar Aggarwal [2017] 398 ITR 586, High Court Bombay**

## Issues - Whether addition can be made in absence of incriminating material .....

- **PCIT v. Dipak Jashvantlal Panchal [2017] 397 ITR 153 (Gujarat)**

Under section 153A, the assessment should be connected with something found during search and requisition namely, incriminating material which reveals undisclosed income. As per sub section (1) of section 153A of the Act, in every case where there is a search or requisition, the AO is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition.

Issues - Whether addition can be made in absence of  
incriminating material .....

- **PCIT v. Meeta Gutgutia [2018] 257 Taxman 441 (SC)** In absence of incriminating material found during search qua each such earlier assessment year, Invocation of section 153A proceedings to re-open concluded assessments of earlier assessment years is not justified

## Issues- addition on the basis of document seized was both undated and unsigned

**CIT v. Vivek Aggarwal [2015] 56 taxmann.com 7 (Delhi)**

- Where AO made addition to assessee's income on basis of a document seized in course of search, in view of fact that document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of AO, impugned order of Tribunal deleting addition was to be confirmed.

# Issues - Addition on the basis report of DVO

*Sushil Kumar Gupta v. Asst. CIT [2015] 56 taxmann.com 295 (Delhi - Trib.)*

- Where District Valuation Officer indicated higher investment in residential unit than investment shown by assessee, addition as undisclosed investment only on that basis was not justified

# Issues - Related to section 153A

- **CIT v. Ramesh D Patel (2014) 362 ITR 492 (Gujarat)** The provisions of section 124 clearly concern the territorial jurisdiction of the Assessing officer and have no relevance in so far as the inherent jurisdiction for passing an order of assessment under section 153A is concerned, when no search authorization under section 132 was issued or requisition under section 132A of the Act was made. In the absence of search authorization, the Tribunal was justified in holding that the assessment orders under section 153A could not be passed.

## **Section 124 – Jurisdiction of Assessing Officers.**

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(c) where an action has been taken u/s 132 or 132A, after the expiry of one month from the date on which he was served with a notice u/s 153A(1) or 153C(2) or after the completion of the assessment, whichever is earlier.



# Issues - Related to section 153A

- **PCIT v. Index Securities (P.) Ltd. [2017] 86 taxmann.com 84 (Delhi)**  
Where trial balance and balance sheet seized from other person did not belong to assessee or relate to relevant assessment years and further, they could not be said to be incriminating, assumption of jurisdiction under section 153C was not justified.
- **Shrikant Mohta Vs CIT [2018] 257 Taxman 43 (Calcutta)** After initiation of search operations, it is no longer necessary for assessee to file his regular return by due date notwithstanding the mandate of Section 139(1). The obligation to file the return remained suspended, in view of the clear opening words of Section 153A(1) till such time that a notice was issued to him under clause (a) of such sub-section. Similarly, the operation of Section 139(3) qua the time available for filing a return in order to avail of the benefit of carrying forward any loss stands extended till a return is called for u/s 153A(1)(a) and loss can be carried forward.

## Issues- Related to section 153B of the Act....

- **Naresh Chand Agarwal v. Union of India [2014] 47 taxmann.com 77 (Allahabad)** Where in course of appellate proceedings, Tribunal remanded matter back for disposal afresh, in view of first proviso to section 153B(1), limitation for reassessment was one year, and, therefore, impugned notice issued u/s 143(2) after expiry of said period was to be quashed being barred by limitation.

## Issues- extension provided under proviso to section 153B is restricted ..?

- **CIT v. Ulike Promoters (P.) Ltd [2012] 19 taxmann.com 8 (Delhi)**  
Benefit of period of 60 days in terms of proviso to Explanation to section 153B for completing assessment under section 153A can be availed by Assessing Officer any number of times whenever situation for it occurs.

## Issues- Assessment order severed on assessee within time provided u/s 153B..?

**Shanti Lal Godawat v. Asst. CIT [2009] 126 TTJ 135 (JODH.)**

- Assessment order is not only to be passed but it is also to be served to assessee within period of limitation provided under section 153B.

# Issues – Related to Unexplained Money

- **Commissioner of Income-tax v. Radico Khaitan Ltd., [2017] 83 taxmann.com 375 (Delhi)** In case, Revenue failed to establish any linkage between material seized from assessee's premises and those from premises of the party through which illegal bribe payments made to various officials and politicians, no addition could be made to assessee's income in respect of payments so made.
- **Pradeep Amrutlal Runwal v. Tax Recovery Officer [2014] 47 taxmann.com 293 (Pune - Trib.)** Assessing officer made addition in assessee's income on the basis of noting in loose papers found during search proceedings in case of third party against name of assessee as there was no evidence to suggest that payments were made to assessee, additions so made were not justified.

## *Issues on Satisfaction u/s 153C*

- ❑ **Shettys Pharmaceuticals & Biologicals Ltd. v. Dy CIT [2014] 47 taxmann.com 85 (ITAT-Hyd.)**, In case no satisfaction recorded by AO of searched person, initiation of proceeding against other person u/s 153C would be bad.
- ❑ **CIT v. Gopi Apartment [2014] 46 taxmann.com 280 (Allahabad)**, To initiate proceeding against such 'other person', recording of satisfaction is required and mandatory even the AO of both 'searched person' and 'other person' is same.
- ❑ **Senate V. DCIT [2016] 68 taxmann.com 223 (Bang.-Trib.)** Unless revenue establishes that the assessee is owner of seized documents, provisions of sec. 153C cannot be invoked. Merely because there is a reference to name of assessee in seized documents, it does not mean that assessee is owner of those documents, there should be something in satisfaction note recorded by AO to indicate that searched person had disclaimed those documents and these documents did not belong to searched person but to other third person.

## *Issues on Satisfaction u/s 153C*

- **Tanvir Collections (P.) Ltd. v. Asst. CIT [2015] 54 taxmann.com 379 (Delhi - Trib.)** Where AO of 'B', 'P' and 'MB' did not record any satisfaction that some money, bullion, jewellery or books of account or other documents found from these persons belonged to assessee, initiation of proceedings u/s 153C on assessee was void ab initio.
- **ITO v. Canyon Financial Services Ltd, [2018] 91 taxmann.com 252 (SC).** Satisfaction notes recorded by AO of assessee and AO of searched person were identically worded and no reason was recorded how satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of searched person. It was held that in above circumstances, proceeding initiated against assessee under section 153C was unjustified.
- **CIT v. Smt. Soudha Gafoor, [2018] 408 ITR 246(Kerela).** Where the undisclosed income belongs to third party and where the AO of the person against whom search is conducted u/s 132 and such other person is the same, non recording of satisfaction as provided u/s 158BD would not invalidate the assessment against such other person.

## *Issues on Satisfaction u/s 153C*

- **Tanvir Collections (P.) Ltd. v. Asst. CIT [2015] 54 taxmann.com 379 (Delhi - Trib.)** Where AO of 'B', 'P' and 'MB' did not record any satisfaction that some money, bullion, jewellery or books of account or other documents found from these persons belonged to assessee, initiation of proceedings u/s 153C on assessee was void ab initio.
- **CIT Vs Arpit Land (P.) Ltd. [2017] 393 ITR 276 (Bombay)** Non-satisfaction of the condition precedent, viz., the seized document must belong to the respondent-assessee is a jurisdictional issue and non-satisfaction thereof would make the entire proceedings taken thereunder null and void.



# Issues- Recording of satisfaction note u/s 158BD/153C

## ❑ CIT vs M/s. Calcutta Knitwears, [2014] 362 ITR 673 (SC)

For the purpose of Section 158BD, a satisfaction note is *sine qua non* and must be prepared by the AO before he transmits the records to the other AO who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:

- (a) at the time of or along with the initiation of proceedings against the searched person u/s 158BC;
- (b) along with the assessment proceedings u/s 158BC; and
- (c) immediately after the assessment proceedings are completed u/s 158BC of the searched person.

## Issues - Recording of satisfaction note u/s 158BD/153C.....

- ❑ In light of the guidelines laid down by the Apex Court in M/s Calcutta Knitwears and other similar judicial pronouncements, the CBDT vide Circular No. 24/2015 dated 31-12-2015 has clarified that the provisions of Section 153C are substantially similar/ pari-materia to the provisions of Sec 158BD and therefore, the guidelines of Apex Court shall apply in respect of assessment of income of other than searched person.
- ❑ The pending litigation with regard to Recording of satisfaction note u/s 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the apex court
- ❑ The CBDT has further clarified that even if the AO of searched person and the Other person is one and the same, then also he is required to record his satisfaction.

## Issues - Recording of satisfaction note u/s 158BD/153C.....

- ❑ **Tapan Kumar Dutta Vs CIT [2018] 302 CTR 102 (SC)** Although section 158BD does not speak of 'recording of reasons' as postulated in section 148, but since proceedings under section 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the Assessing Officer in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings under section 158BD.

# Issue – Conclusive Satisfaction by AO for issuing notice u/s 153C

- **Pepsi Foods (P.) Ltd. v. ACIT (2014) 52 taxmann.com220 (Delhi)**  
Before a notice under section 153C could be issued , Assessing Officer is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person. The mere use of word ‘satisfaction’ in order or note, would not meet requirement of concept of satisfaction as used in section 153C.

# Issues – Related to Section 153C.....

- ❑ **ITO v. Phadnis Clinic (P.) Ltd. [2015] 59 taxmann.com 101 (Pune - Trib.)** In order to invoice provisions of section 153C, there is no requirement that AO should be satisfied that documents found on person searched must also be shown to reflect conclusively any undisclosed income of other person.
- ❑ **Satyam Food Specialities (P.) Ltd. v. Dy. CIT [2015] 57 taxmann.com 194 (Jaipur - Trib.)** Where searched person does not deny belonging of document found in course of search but AO of such person records a satisfaction that documents searched belong to assessee (another person), provisions of section 153C do not get attracted.
- ❑ **G. Koteswara Rao V. DCIT [2015] 64 taxmann.com 159 (Visakhapatnam- Trib.)** In case of an assessment made on assessee consequent to search in another case, an AO is bound to issue notice u/s 153C and thereafter proceed to assess income u/s 153A and if the AO instead of complying with provisions of section 153C proceeded with reassessment u/s 147/148 which are not applicable to search cases, the assessment order passed u/s 143(3), read with section 147 would be considered illegal, arbitrary and without any jurisdiction.

# Issues – Related to Section 153C.....

- **Micra India (P.) Ltd. V. CIT [2015] 57 taxmann.com 163 (Delhi)**  
Where assessee-company had amalgamated with transferee-company, notice under section 153C ought to have sent to latter, and since such notice had not been issued to transferee-company, assessment made in hands of assessee-company was a nullity.
- **Dr. William Britto v. CIT [2015] 56 taxmann.com 170 (Panaji - Trib.)**  
Order passed u/s 153C could be revised u/s 263 - Starting date of limitation would be computed from end of financial year in which section 153C order was passed and not from when return was processed u/s 143(1).
- **Dy. CIT v. Qualitron Commodities (P.) Ltd. [2015] 54 taxmann.com 295 (Delhi - Trib.)**  
Whether where there was no incriminating material belonging to assessee found during course of search and assessment was not pending or abated to justify assessment framed against assessee, proceedings under section 153C were not valid - Held, yes

# Issues – Related to Section 153C.....

- **CIT Vs. Veerprabhu Marketing Ltd. [2016] 73 taxmann.com 149 (Calcutta)**  
Incriminating material which may be found during search/survey/requisition is a pre-requisite before power could have been exercised u/s 153C read with section 153A.  
**Also see CIT V. IBC Knowledge Park (P.) Ltd. [2016] 69 taxmann.com 108 (Karnataka), CIT V. RRJ Securities Ltd. [2015] 62 taxmann.com 391 (Delhi)**
- **Shailesh S. Patel Vs ITO [2018] 97 taxmann.com 570 (Ahmedabad - Trib.)** AO of the assessee (person other than searched person) cannot be compelled to pursue remedy necessarily u/s 153C in exclusion to remedy available to the AO u/s 147.

# Issues – Related to Section 153C.....

- **CIT v. M/s. Lavanya Land Pvt. Ltd. [2017] 83 taxmann.com 161 (Bombay)**

It is clear that before issuing notice u/s. 153C, the primary condition has to be fulfilled and which is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken u/s 153C of the Act.

- **In the High Court of Delhi, CIT v. Renu Constructions Pvt Ltd. [Appeal No. 499 and others]**

Even prior to 1st June 2015 at the stage of initiation of proceedings under Section 153C of the Act, it is sufficient if the seized document 'pertained to' the other person and it is not necessary to show that the seized material 'belonged to' the other person.



# Issues – Related to Section 153C.....

- **Pepsico India Holdings P. Ltd. v. ACIT [2015] 370 ITR 295 (Del)**

For the purpose of initiating proceedings under Section 153C of the Act, the seized documents had to be shown to belong to the other person and not merely pertaining to such other person. The change brought about in this regard in Section 153C of the Act by way of amendment has been given prospective effect from 1st June 2015. The amended provision therefore has no application to the cases on hand.

- **PCIT v. Sarwar Agency (P.) Ltd. [2017] 85 taxmann.com 269 (Delhi)**

As per section 153C(1), for both searched person and other person period of reassessment would be six Assessment years preceding year of search.

# Issues – Related to Section 153C.....

- **DCIT v. National Standard India Ltd. [2017] 85 taxmann.com 87 (Mumbai - Trib.)** In case, loose papers seized from premises of assessee company indicating on money receipt on sale of flats did not make any reference to assessee nor same were in any way found to be related or pertaining to assessee, proceedings under section 153C against assessee on basis of said document were unjustified.

# Issues – Validity of notice under section 153C

- **CIT v. Singhad Technical Education Society [2017] 84 taxmann.com 290 (SC)**

## **settles the legal position in favour of the Assessee**

One of the jurisdictional conditions precedent to the issue of a notice under Section 153C is that ‘money, bullion, jewellery or other valuable article or thing’ or any ‘books of accounts or documents’ must be seized or requisitioned. In the present case, nothing was seized relating to any of the Assessment Years in question and hence the notice under Section 153C and the assessment under Section 153A, read with Section 153C, pursuant thereto are invalid.

# Issues – Related to Section 153D.....

- **Akil Gulamali Somji v. ITO [2012] 20 taxmann.com 380 (Pune-Trib.)** An assessment order under section 153C can be passed by Assessing Officer only after obtaining prior approval under section 154D of Joint Commissioner.
- **Gopal S. Pandith v. CIT [2018] 96 taxmann.com 233 (Karnataka)** There is no requirement of granting an opportunity of hearing to assessee by Joint Commissioner prior to giving approval as per section 153D to order of assessment or reassessment under section 153A.

# Other Issues

- Any material unearthed during search operations or any statement made during course of search by an assessee can be considered as a valuable piece of evidence in order to invoke section 153A. **CIT Vs. St. Francis Clay Decor Tiles [2016] 70 taxmann.com 234 (Kerala)**
- Assessment cannot be made on the basis of letter filed by assessee enhancing the surrendered amount. **CCIT & ANR. V. Pampapathi [2009] 310 ITR 0064 (Kar.)**
- Initiation of reassessment proceedings merely on basis of change of opinion was not sustainable where assessment order is passed after properly analyzing seized material during search & after issuing consolidated questionnaire to all concerned parties. **Mukesh Modi v. Dy. CIT [2014] 45 taxmann.com 468 (Rajasthan)**

# Other Issues....

- In case, neither assessee could foresee accrual of income which had arisen on date of survey, nor Assessing Officer could require assessee to pay advance tax on said income in pursuance of order made under section 210, interest under section 234B could not be levied in respect of same. **Emem Freight Forwarders v. DCIT Mumbai, ITAT MUMBAI BENCH 'E', 80 taxmann.com 294 (Mumbai - Trib.) [2017]**
- Any material or evidence found in a survey which has been simultaneously made at the premises of a connected person can be utilized while making the block assessment in respect of an assessee u/s 158BB read with section 158BH of the Act. This would fall under the words “ and such other materials or information as are available with the assessing officer and relatable to such evidence” occurring in section 158BB of the Act. The assessing officer is justified in considering the adverse material collected or found during the survey or any other method while making the block assessment. **CIT v. S. Ajit Kumar [2018] 404 ITR 526 (SC)**

# Other Issues....

- In case, neither assessee could foresee accrual of income which had arisen on date of survey, nor Assessing Officer could require assessee to pay advance tax on said income in pursuance of order made under section 210, interest under section 234B could not be levied in respect of same. **Emem Freight Forwarders v. DCIT [2017] 80 taxmann.com 294 (Mumbai - Trib.)**
- The fact that the second proviso to s. 158BC(a) prohibits an assessee who is subjected to search from filing a revised return of income does not mean that the assessee is prohibited from raising an additional claim before the appellate authorities. **Alok Textile Industries Ltd. Vs DCIT ITA No.118 OF 2003, Date: 10-07-2018, Bombay HC**

# THANK YOU!!

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