

Assessment of Search Cases (sec. 153A to 153C) Technical Aspects & Recommendations



Rajan Iyer



HIGHLIGHTS



Sections covered:

- a) 132 (relevant part)
- b) 153A
- c) 153B
- d) 153C

Recent developments

Relevant Issues

Judicial Prouncements

SECTION 132



SECTION 132 - SEARCH & SEIZURE

Relevant points for discussion

1. APPRAISAL REPORT- Internal document

Conducting Directorate (Inv) prepares an appraisal report and forwards it to the A.O.

The Appraisal Report contains indicative details such as:

- Findings of search for premises covered u/s 132 and 133A of the Act,
- Inventory of books of accounts/documents etc., found / seized. Analysis of seized/impounded materials etc., analysis of computer data backup, core documents if any.
- Inventory of assets found and seized
- Deciphering of incriminating material seized.
- Details of undisclosed income, assets.
- Summary of important statements recorded.

The appraisal report shall also suggest the A.O. line of investigation, possibility of launching prosecution proceedings against the assessee and suggestions to the A.O. to duly consider the findings for tax evasion elaborated in the report while framing the assessment orders u/s 153A of the Act.

2. PEAK CREDIT THEORY

Meaning : If the assessee does not have any explanation for every credit or debit entry then one of the most common defenses which an assessee may take is that, entries should be so arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the 'peak' of the credits should be treated as unexplained.

Summary

- ✓ Applied when there are unexplained credit and debit entries
- ✓ Can be extended to cases where the credit appears not in the same account but in accounts of different person.
- ✓ The basic idea behind the peak credit theory is to avoid double addition and to bring only the actual income of the assessee to suffer tax, where there are large number of unexplained credit and debit entries.

SECTION 153A



SECTION 153A – SALIENT FEATURES

- ❑ Non-obstante clause- Overrides sections 139, 147, 148, 149, 151 and 153
- ❑ AO shall **issue notice** to the person searched to file Return of Income for six Assessment Years (**and for the relevant assessment year or years***) immediately preceding the year in which the search is conducted.
- ❑ AO to assess/ reassess total income for six assessment years (**and for the relevant assessment year or years***)
- ❑ Assessment/ reassessment in relation to any assessment year
 - falling within the period of such six assessment years, (**and for the relevant assessment year or years***)
 - pending on the date of initiation of search shall abate
- ❑ Sec. 153A contemplates issue of notice for 6 years (**and for the relevant assessment year or years***) preceding the search but not for the year of search or requisition and thus no return is required to be filed for the year of search u/s 153A. Only regular return u/s139 is to be filed.

* Inserted by Finance Act, 2017, i.e. 1-4-2017

SECTION 153A – SALIENT FEATURES

❑ EXPLANATION TO SEC. 153A

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, sec. 153B and sec. 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

❑ **Rule 112F - Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the A.Y**

The aforesaid rule was introduced with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted u/s 132 or requisition made u/s 132A and cash or other assets **are seized during the election period**, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

OTHER RELEVANT POINTS OF DISCUSSION.

- No time limit prescribed for issue of notice u/s 153A.
- Section mentions about issue not service of notice.
- Section 153A speaks of the prescribed time and prescribed particulars, the rules & forms are yet to be prescribed.

Ques. When the commencement and conclusion of search falls in two different financial year, which six assessment years are covered in notice under section 153A?

e.g. If the search is commenced as on 25th March, 2018 and concluded on 30th April, 2018.

RECENT DEVELOPMENTS – Section 153(A)

- Notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year if—
 - (i) Income which has escaped assessment amounts to or is likely to amount to **fifty lakh rupees** or more in one year or in aggregate in the relevant four assessment years (falling beyond the sixth year);
 - (ii) such income escaping assessment is represented in the form of asset;
 - (iii) the income escaping assessment or part thereof relates to such year or years.

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. ’.

- It is also proposed to consequentially amend section 153C to provide a reference to the relevant assessment year or years as referred to in section 153A.
- **These amendments will take effect from 1st April, 2017.**

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ISSUES
SECTION
153A



ISSUES – SECTION 153A

1. Whether pre-conditions of sec. 153A/132 are to be complied mandatorily?

Held in:

Jindal Stainless Ltd. v ACIT , ITA Nos. 3480 & 3481 (Del) 2006- 122 TTJ 902

The prerequisite condition for application of section 153A is that assessment under this section can be made against a person in case of whom a search is initiated u/s 132; non-fulfillment of conditions laid down in sections 153A is a jurisdictional defect which cannot be cured.

Rajat Tradecom India Pvt. Ltd. v. DCIT, 120ITD 301Appeal No. IT (SS) A No: 182 & 183/Ind./2007 –Indore ITAT -Before invoking the provision of section 153A it would be necessary to comply with the provisions contained u/s 132(1); the mere issue of warrant of authorization without there being search of the premises mentioned in the warrant of authorization would be meaningless and would not serve the purpose of section 132. therefore, actual search shall have to be carried out necessarily before proceeding u/s 153A

Similar decision held in:

[2010] 5 taxmann.com 59 (Ahd. - ITAT) ITA No. 2878 to 2880/Ahd/2007 Dr. Manshukh Kanjibhai Shah vs. ACIT,

J.M.Trading [2008] 20 SOT 489, DHC in S.K.Katyal 308 ITR 168

ISSUES – SECTION 153A

2. Whether proceedings may be continued without giving notice u/s 153A

Held that:

continuation of assessment proceeding after initiation of search without giving any notice u/s 153A and passing impugned final order of assessment was held to be illegal, arbitrary and wholly without jurisdiction

[2007] 162 TAXMAN 429 (JHAR.) Abhay Kumar Shroff v.CIT

3. Applicability of provisions of sec. 143 (2)

The ITAT Mumbai in the case of Sumanlata Bansal vs. the Assistant Commissioner of Income Tax, Central Circle 8 Mumbai, ITA nos. 525 to 530 relating to the assessment years 1999-2000 to 2005-2006 held that issue of notice under section 143(2) is not mandatory before making an assessment under section 153A of the Income Tax Act.

Ashok Chaddha vs Income Tax Officer (Delhi HC)

No specific notice was required under section 143(2) of the Act when the notice in the present case as required under Section 153 (A) (1) (a) of the Act was already given.

ISSUES - SECTION 153A

Alternative views

ACIT v. M/s G.M Infrastructure ITA.No.133/Ind/2008 ITAT Indore:

Provisions of sec. 143(2) have to be applied in its fullest scope i.r.o assessment or reassessment made u/s 153A.

CIT vs. Pawan Gupta & Ors.[2009] 223 CTR 487(Del)

It is mandatory u/s 153A/153C to issue and Serve notice u/s 143(2) after return u/s 153A is Filed and for non service of same, assessment u/s 153A can be annulled

4. Return filed u/s 153A is the original return.

A return filed under Section 153A takes the place of the original return under Section 139, for the purposes of all other provisions of the Act. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est.

Delhi High Court in the case of Principal Commissioner of Income-tax-19 Vs Neeraj Jindal [2017] 393 ITR 1 (Delhi)

MEANING OF PENDING U/S 153A

Pending assessment to abate : An assessment can be said to be “pending” only if the AO is statutorily required to do something further. If a section 143(2) notice has been issued, the assessment is pending. However, the assessment in respect of a return processed u/s 143(1) is not “pending” because the AO is not required to do anything further about such a return.

Anil P. Khimani v. DCIT [2010] 7 ITATINDIA 758(Mum. ITAT) ,ITA No.2855/Mum/2008

Further held in same case:

The power given by the Proviso to “assess” income for six assessment years has to be confined to the undisclosed income unearthed during search and cannot include items which are disclosed in the original assessment proceedings.

JUDICIAL PRONOUNCEMENTS

1. The Hon'ble Mumbai Special Bench in the case of **All Cargo Global Logistics Ltd. v/s .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

2. Return of Income just filed by the assessee – return yet to be processed u/s. 143(1) – Time limit for issue of notice u/s. 143(2) not expired.

Since return filed is even pending to be processed, the return would be treated as pending before the AO. Consequently, AO would have authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s.143(3).

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.

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. Consequently, AO would have authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s.143(3).

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.

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

Since, no assessment would be pending there would be no abatement of any proceedings Accordingly, the scope of assessment u/s. 153A would be restricted to incriminating material found during the course of search.

5. Notice u/s. 143(2) issued and assessment pending u/s. 143(3)

Pending regular assessment proceedings would abate and would converge / merge in proceedings u/s. 153A.

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

JUDICIAL PRONOUNCEMENTS

Scenario

Scope of Section 153A

6. Assessment u/s. 143(3) completed.

Since regular assessment proceedings have been completed & are not pending, there would be no abatement of proceedings.

AO loses jurisdiction to review the completed assessment. Accordingly, the scope of assessment u/s.153A would be restricted to incriminating material found during the course of search.

7. Proceedings u/s. 147 pending where:
(a) Assessment originally completed u/s. 143(3);
OR
(b) No assessment earlier completed u/s. 143(3)

Pending assessment/reassessment proceedings u/s.147 would abate and would converge / merge in proceedings u/s. 153A

Accordingly, the powers of the AO, in both the cases, shall extent to:

(a) Assess income that could validly be assessed in the pending proceedings u/s. 147, and

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:

- 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;
 - 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.
2. 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 .

SECTION 153B



SECTION 153B

Time limit for completion of assessment u/s 153A/153C:

- **153(A): In case of person searched:**
- (a) 21 months* from the end of the financial year in which last of the authorization for search u/s 132 or requisition u/s 132A was executed.
Similar time limit shall apply in respect of the year of search also.
- **153(C): In case of any other person:**
As provided in (a) supra or 9 months from the end of the f.y in which B/O/A or documents or assets seized/requisitioned are handed over to the AO having jurisdiction over such person; whichever is later.

***18 months from 1st day of April, 2018 (FY 2018-19)**

***12 months from 1st day of April, 2019 (FY 2019-20)**

Eg. For AY 2017-18 (FY 2016-17) – Dec 2018 (21 months)

For AY 2018-19 (FY 2017-18) – Oct 2019 (18 months)

For AY 2019-20 (FY 2018-19) – March 2020 (12 months)

- If it involves TP (transfer pricing), than time limit increases by one year.
- The period of limitation of 21/ 18/ 12 months to start from the last panchnama drawn.

SECTION 153B

- This section also provides certain exclusions while computing the period of limitation for completion of assessment or reassessment.(eg: application made before settlement commission, application made before AAR, .)
- 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 153 D

No AO below the rank of JCIT can pass the Order except with the prior approval of JCIT

RELEVANT
ISSUES
SECTION
153B

ISSUES– SECTION 153B

1. Last authorization or last panchnama?

CIT Vs Sh. Anil Minda ITA No.582, 527,593,605,618,772 of 2009 authorization referred to in sub Section (1) would be that authorization which is executed on the conclusion of search as recorded in the last panchnama. Therefore, by this deeming provision, even an authorization which may not be otherwise the last authorization would become last authorization, if that is executed and if the panchnama in respect thereto is drawn last.

2. [2009] 308 ITR 116(Del) CIT vs. Deepak Aggarwal

- last panchnama to be taken into consideration for the purpose of reckoning the limitation period.
- revocation order for the purpose of continuing the search did not amount to execution of a search when no asset is seized under that order and there is only revocation of the prohibitory order passed earlier.

SECTION 153C



SECTION 153C

- Where the AO is satisfied that any money, bullion, jewellery or other valuable article documents seized belongs to a person other than the person referred to u/s 153A, the same shall be handed over to the AO having jurisdiction over such other person; and
- that AO shall proceed against each such other person, issue notice and assess or reassess the income of the other person in accordance with the provisions of section 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 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.
- Following points emerge:-
 - Both the Assessing Officer i.e. the AO of the original assessee and AO 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

RELEVANT
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SECTION
153C

ISSUES – SECTION 153C

1. Reasons to be recorded to reach at the satisfaction

Supreme Court in Amity Hotels (P) Ltd. 272 ITR 75, held that :
the reasons must be recorded by the Assessing Officer having jurisdiction over the assessee who had been searched before issuing the notice u/s 158 BD of the Act. The aforesaid view has been reiterated by this Court in the case of CIT Vs. Karan Engg. P. Ltd. and Janki Exports International Vs. UOI, 193 CTR 730.

2. Belongs to assessee?

Meghmani Organics Ltd. vs DCIT 129 TTJ 255

- The prerequisite for initiating proceedings u/s. 153C of the Act is that any money, bullion, jewellery or other valuable articles or things or documents seized or requisitioned belong to a person other than person in whose case warrant of authorizations is issued u/s. 132(1) of the Act. Since none of the documents belongs to the assessee, though they may be referable to the work of the assessee the same cannot be considered as "belonging to the assessee
- Similar decisions in: LMJ International Ltd. vs DCIT 119 TTJ 214

ISSUES – SECTION 153C

3. Where no material seized other than statement recorded-whether 153C/158BD can be invoked?

Held no

CIT VS. Late Sh. Raj Pal Bhatia, ITA 276 OF 2009, Date of decision 29.11.2010, DELHI (HC):

- no Assessment u/s 158BD can be invoked merely on the basis of Statement of a person in whose premises search was conducted as the statement is not in the nature of document which was found during search.
- Therefore, it cannot be said that the statement was, seized "during the search and thus, would not qualify the expression “document” having been seized during the search. In such a scenario, proper course of action was reassessment u/s 147 read with section 148 of the Act.

In the case of Smt. Chitra Devi Vs. CIT 77 TTJ 430 decided by Jodhpur Bench of ITAT, reported in, it is held that statement recorded u/s 132 (4) of the Act during the search is no evidence as contemplated u/s 158BD of the Act and on that basis no valid proceedings in Chapter XIV-B of the Act could be initiated. aaaaaa

ISSUES – SECTION 153C

4. Whether notice u/s 153C is valid if papers found during the search proceedings gave reference about the other person.?

No.

[2010] 231 CTR 474(GUJ.) Vijaybhai N. Chandrani v. ACIT

Condition precedent for issuing notice u/s 153C and assessing or reassessing income of **‘such other person’** is that money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person; where admittedly documents in question, namely, three loose papers recovered during search proceedings did not belong to petitioner, though there was a reference to petitioner therein, issue of notice to petitioner u/s 153C was not valid

PENALTY
U/S 271AAB

PENALTY U/S 271AAB

	Undisclosed Income	Penalty u/s 271AAB
A	01.07.12 to 15/12/16 Admitted in the course of search in a statement u/s 132(4) duly specifying the manner thereof.	10%
	After 15.12.2016	30%
B	01.07.12 to 15/12/16 Declared in the course of filing return of income.	20%
	After 15.12.2016	30%
C	01.07.12 to 15/12/16 Other than (A) & (B) above.	*30%-90% *60% -w.e.f 1-4-2017
	After 15.12.2016	60%

No penalty u/s 271 (1)(c) shall be imposed in respect of the undisclosed income that has been subjected to penalty u/s 271AAB.

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JUDICIAL
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MENTS

JUDICIAL PRONOUNCEMENTS

Case laws on ‘Incriminating material’

Though the majority of the judicial precedents, indicates that the Assessing Officer, while framing assessment under section 153A of the Act cannot make the addition/disallowance de-hors any ‘incriminating’ material, yet the said view has always been challenged by the Revenue on one count or the other and thus, the said controversy is yet to be settled by the Hon’ble Supreme Court.

1. CIT v. Kabul Chawla [T S-494-HC-2015(DEL)]

The legal position relating to assessment under section 153A of the Act has been examined in great detail by the Hon’ble Delhi High Court in the case of Kabul Chawla (supra) and the following principles thereof has, after analyzing host of decisions, been succinctly laid down by the Hon’ble Court:

“Summary of the legal position

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

JUDICIAL PRONOUNCEMENTS

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs “in which both the disclosed and the undisclosed income would be brought to tax”.
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment “can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material.”

JUDICIAL PRONOUNCEMENTS

- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.”

JUDICIAL PRONOUNCEMENTS

2. Smt. Dayawanti Gupta v. CIT [TS-5978-HC-2016(DELHI)-O]

In the case of Dayawanti Gupta (supra), the Hon'ble Delhi High Court, after considering the decision of Kabul Chawla (supra), held that, in the facts of the case, the statement recorded under section 132(4) of the Act during the course of search proceedings, in the absence of any other material, would in itself constitute 'incriminating' material giving leeway to the Assessing Officer to make addition/disallowance.

The aforesaid decision of Dayawanti Gupta, perhaps appears to be a sword for the Revenue to counter the principles laid down in the decision of Kabul Chawla (supra).

3. PCIT v. Meeta Gutgutia: [T S-199-HC-2017(DEL)]

Recently, the Delhi High Court in the case of Meeta Gutgutia (supra) had an occasion to deal with the above decision of Dayawanti Gupta. The Delhi High Court after considering the entire gamut of the facts of the case held that the decision of the Court in the case of Dayawanti Gupta (supra) proceeded on the peculiar facts of the said case and the said decision in no way dilutes the dictum laid down in the case of Kabul Chawla (supra). The said position has been reiterated by the Hon'ble Delhi High Court recently in the case of Pr. CIT v. Best Infrastructure (India) Pvt Ltd [TS-5668-HC-2017(DELHI)-O].

JUDICIAL PRONOUNCEMENTS

Conclusion

The controversy qua scope of addition/disallowance under section 153A of the Act being restricted to the ‘incriminating’ material’ as answered by the Hon’ble Delhi High Court in the case of Kabul Chawla (supra), which according to the Revenue was disturbed by the Dayawanti Gupta (supra), has been reconciled and reiterated in the case of Meeta Gutgutia (supra). The decision of Kabul Chawla (supra), though, has been challenged by the Revenue before the Supreme Court and the same is pending adjudication, but since there is no stay of operation by the Supreme Court, the said decision of Kabul Chawla (supra) would continue to hold the field till the time controversy is put to rest by the Supreme Court.

JUDICIAL PRONOUNCEMENTS

Other Case laws

1. 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.
2. 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.
3. **Regency Mahavir Properties v. Assistant Commissioner of Income-tax, Cen Cir. 1, Thane [2018] 89 taxmann.com 444 (Mumbai – Trib.)** Section 69, read with section 153A, of the Income-tax Act, 1961 – Unexplained investment (On money) Assessment years 2007-08 and 2010-11 – Whether no addition under section 69 can be made in case of assessee on basis of documents being found from premises of the third party where neither name of assessee was mentioned nor any document found evidencing fact that assessee had paid any cash as on-money to said party – Held, yes [Paras 12 and 13] [In favour of assessee]

JUDICIAL PRONOUNCEMENTS

Other Case laws

3. Does AO has the right to assess total income.

Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra), wherein considering the judgment of the Special Bench of the Mumbai Tribunal in the case of All Cargo Global Logistics 137 ITD 287(SB) (Mum), considered this issue that, once assessment has attained finality, then the assessing officer while passing independent assessment order under section 153A/143(3) of the Act could not disturb the assessment order which has attained finality unless the material gathered in the course of search under section 132/153A of the Act established that the finality attained in the assessment were contrary to the facts unearthed during the course of search.

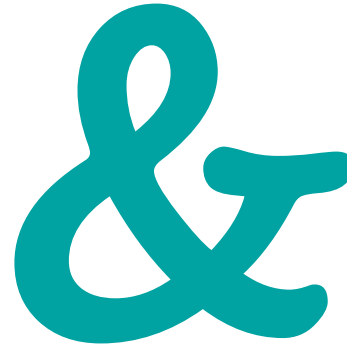
PRactical Tips for Post Search Proceedings

- Systematically arrange and make analysis of all the seized documents.
- Sort the documents assessee wise, assessment year wise and premises wise.
- Sort the documents having financial relevance and financially irrelevant.
- If the documents are financially relevant, ascertain how they are explainable vis-a-vis books of accounts or other details available with the Income Tax Department or are found / seized from the premises searched or surveyed.
- See if the explanation is available about all the records available with the Income tax department.
- Offer Peak Credits as undisclosed income, if any.
- Return of income u/s153A should be filed judiciously after consideration of records and material lying with income tax department.
- Where any undisclosed income is offered in the return filed u/s153A then the expenditure incurred to earn that income may also be claimed.
- File returns under protest if required notices are not properly issued & challenge the validity of proceedings at the time of Assessments itself.

Questions and answers



Questions



Answers



Thank
You

Presenter details:

Rajan Iyer