

# SEARCH ASSESSMENT UNDER INCOME TAX ACT, 1961

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# SECTION 153A

1. Where search is initiated or requisition is made after **31.5.2003** the provision 153A to 153D are applicable.

These provisions have the ***overriding effect*** over the provisions of sections 139,147,148,149,151 and 153 of the Act since these provisions are non obstante provisions.

2. The assessment proceedings are ***initiated for six assessment years*** immediately preceding the year in which search u/s 132 is initiated or requisition is made u/s 132A.

The returns filed u/s 153A are to be dealt with in the same manner as if such returns were filed u/s 139 and therefore all consequences would follow i.e. notice u/s 143(2) will have to be issued by AO within the prescribed time as held by the Apex court in the case of ***Hotel Blue Moon (322 ITR 158 SC)*** while interpreting the similar provisions u/s 158BC.

# SECTION 153A

3. The assessment is to be made in respect of *total income* of the assessee of said six years.
4. The *assessment* is to be made in respect of *each assessment year*.
5. If assessment/reassessment in respect of any of the said six years is **pending** on the date of initiation of search/requisition then, **such assessment or reassessment shall abate.**



# SECTION 153A

6. If any *assessment/reassessment* made under these provisions is *annulled* in appeal/any legal proceeding then assessment proceedings abated shall *revive* from the date of receipt of order of such annulment by the CIT. If such order of annulment is set aside then such revival shall cease to have effect.
7. Save as otherwise provided in sec 153B/153C, all other provisions of the Act would apply e.g provisions relating to levy of interest / penalty or provisions relating to deductions/exemptions/appeals etc.
8. The tax chargeable would be rate applicable to the concerned assessment year.
9. The assessment shall not be made by an officer below the rank of ACIT except with prior approval of JCIT.

# SECTION 153B

## **TIME LIMIT UNDER SECTION 153B**

Assessment or  
Re-assessment under  
153A

In case of Search:- within a period of two years from the end of the financial year in which the last of the authorizations was executed

In case of requisition:- within a period of two years from the end of the financial year in which the requisition was executed.

In case reference is made to TPO : within a period of three years from the end of financial year in which last authorization or requisition was executed



# SECTION 153B

## TIME LIMIT UNDER SECTION 153B

Assessment or Re-assessment under 153C

In case of Search:- within a period of two years from the end of the financial year in which the last of the authorizations was executed

Or one year from the end of financial year in which books/ documents were handed over,  
which ever is later.

In case of requisition :- within a period of two years from the end of the financial year in which the last of the requisition was executed

Or one year from the end of financial year in which books/documents were handed over,  
which ever is later.

In case reference is made to TPO : within a period of thirty six months from the end of financial year in which last authorization or requisition was executed

Or twenty four months when the books, documents were handed over,  
Which ever is later.

# SECTION 153B

## EXTENSIONS

<b>Court grants injunction of assessment proceedings.</b>	<b>The period during which the stay is in force.</b>
Special Audit has been directed u/s.142(2A).	The time allowed by the Assessing Officer to furnish the report of such special audit.
Opportunity of being re-heard given u/s.129.	The time taken for reopening the whole or part of the proceedings.
Application is made to Settlement Commission u/s.245C and the same is rejected.	The period commencing from the day when the application is made & ending on the day on which rejection order is received by the CIT.



# SECTION 153B

Application is made to Authority for Advance Rulings u/s.245Q and the same is rejected or ruling is pronounced	The period commencing from the day when the application is made & ending on the day on which rejection order/Advance ruling order is received by the Commissioner.
Annulment of proceeding or order of assessment	The period from date of annulment till date of receipt of order setting aside the order of annulment by the Commissioner
Exchange of information u/s. 90/90A	The period from making reference to the date on which information so requested is received by the Commissioner or One year whichever is less.
Declaration as impermissible avoidance arrangement u/s. 144BA	The period from making reference to the date on which a direction is received by the Assessing Officer.



# SECTION 153B

- The proviso further states that where the time limit available with the assessing officer is **less than 60 days** after exclusion of the aforesaid period, the time limit would be **extended upto 60 days**.
- For e.g. where the assessment is getting time-barred on 30/6/2006 and an order of injunction is made on 15/6/2006 staying the assessment proceedings and is vacated on 25/6/2006, the assessing officer would get a period of 60 days commencing from 26/6/2006 even though the stay was only for a period of 10 days.

# SECTION 153B(2)

- The authorization referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed –
  - a) In the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued;
  - b) In the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorized Officer.



# SECTION 153B

- If the AO having jurisdiction over the searched person is satisfied that any money, bullion, jewellery or any other valuable article or thing or books of account or documents seized or requisitioned belong to other person(s), then such AO shall hand over the same to the AO having jurisdiction over the other person and thereafter such AO shall proceed to assess the other person in accordance with the provisions of sec 153C.
- As per the proviso to section 153C, the abatement shall be with reference to the date of receiving the books of account / documents / assets seized / requisitioned.

# SECTION 153B

- Sub section (2) of section 153C empowers the AO to make assessment in respect of the financial year in which search is conducted or requisition is made where books of account/documents/assets seized or requisitioned have been handed over to the AO having jurisdiction over the other person after the due date for furnishing return of income for the year in which search is conducted/requisition is made if in respect of such year (a) no return has been filed and notice u/s 142(1) has not been issued, or (b) return has been filed but notice u/s 143(2) has not been served and period specified u/s 143(2) has expired, or (iii) assessment or reassessment, if any, has been made. If these conditions are not satisfied, assessment for this will have to be made as per normal provisions.



## The salient features of the new scheme

- The new scheme provides for separate assessment in respect of each of the six assessment years,
- Under the new scheme, the entire assessment for six years stand reopened and the AO is vested with the powers to assess the total income of each year
- Under the new scheme, only one stream of assessment .
- The new scheme provides assessment as per the provisions of sections 142 to 145 i.e. on the basis of material or evidence on the record either furnished by assessee or gathered in the course of search or by the AO otherwise.

## The salient features of the new scheme

- There is no provision under the new section 153A for assessing the total income of the person searched in respect of the previous year in which search is conducted. However u/s 153C, such assessment is permissible. This anomaly of one year has been sought to be amended in the proposed DTC, wherein it is proposed to cover seven preceding years.
- Under the new scheme, assessment of the person other than the person searched is permissible only if the assets or books of account or documents etc. seized or requisitioned belong to the other person. Thus, the criterion for assessing the income of third person has been changed.
- Now, under the new scheme the assessee would be entitled to revise its return as per the provisions of section 139(5) of the Act while under the earlier scheme, such right was not available.



## The salient features of the new scheme

- Period of limitation under the new scheme would run from the end of the Financial Year in which the last of the authorizations or requisition was executed.
- Under the new scheme, all the provisions for levy of interest/ penalty would be applicable as per the Explanation to Sec 153A.
- Under the new scheme, three more situations have been provided in the Explanation to Sec 153B for excluding the time stated therein for the purpose of computing the limitation period.

## The salient features of the new scheme

- Under the new scheme, assessment cannot be made by an officer below the rank of ACIT except with the approval of JCIT. That means, now even an I.T.O can make the assessment after such approval.
- The new scheme, normal rate of tax is to be applied. Other provisions of the Act are applicable except otherwise provided under the schemes itself.



## THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT:

- Whether assessment / reassessment mandatory
- Whether assessment u/s 153A is mandatory even where no incriminating material is found in the course of search u/s 132 or requisition made u/s 132A.
- What issues could be examined in 153A assessment / reassessment
- Whether additions can be made only in respect of the undisclosed income on the basis of material found in the course of search.

## THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- *All Cargo Global Logistics Ltd. & Ors. vs. Dy. CIT (2012) 137 ITD 287 (Mum) (SB)*
  - i. *With this, we proceed to literally interpret the provision in s. 153A as it exists and read it alongside the provision contained in s. 132(1).*
  - ii. *The word used is “shall” and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years.*
  - iii. *We may add that we have not held that the assessment can be made only for those years in respect of which books or assets etc. are found. We have come to the clear finding that assessment / Reassessment for all six years will have to be made. The real*



*question is the scope of reassessment which is not pending, for which we have read provisions of s.132(1) and s. 153A together. Thus the total income under reassessment may be the same as in the original assessment or may be higher than that, depending upon the materials which are uncovered in the course of search. We are also of the view that issue of notice for six years and computing a reassessment for these years even if no material is found in the course of search for some years does not amount to harassment etc. and even if it does so, the same has to be ignored in view of the clear statutory provision.*

*iv. We find that second proviso to s. 153A uses the words “pending on the date of initiation of search” and provides that assessment so pending shall abate. The provision does not use the words “completed assessment”.*

*v. “Thus, analysis of various scenarios regarding completed assessments does not fall within the ambit of the question posed to us. Therefore, this question may have to be decided by the Division Benches in the respective cases depending on the facts of the case”.*

vi. The final conclusion of the Mumbai ITAT Special Bench in case of ***ALL CARGO GLOBAL LOGISTICS LTD Vs. DCIT*** (Supra)

*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*

- 1. books of account, other documents, found in the course of search but not produced in the course of original assessment, and*
- 2. undisclosed income or property discovered in the course of search.*



- **CIT vs. Anil Kumar Bhatia (Delhi)(High Court)**

- “1. Whether the Income Tax Appellate Tribunal was right in holding that the Assessing officer had wrongly **invoked Section 153A** of the Income Tax Act, 1961?

- The first question which we have to consider is whether the Tribunal was right in holding that no addition can be made for agricultural income, gifts received and unexplained deposits as stated in the chart set out in Para 10 (supra) on the ground that in respect of these additions, no material was found during the search carried out under Section 132 and also on the ground that for all the years under consideration, the returns filed by the assessee before the search had been processed under Section 143(1)(a) of the Act.

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- *Under the provisions of Section 153A, as we have already noticed, the Assessing Office is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessment Officer is empowered to assess or reassess the “total income” of the aforesaid years.*
- *Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the ‘total income’ of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.*
- *If such an order is already in existence, having obviously been passed prior to the initiation of the search / requisition, the Assessing Officer is empowered to reopen those proceeding sand reassess the total income, taking note of the undisclosed income, if any, unearthed during the search.*



- *The position thus emerging is that where assessment or reassessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income.*

- *If it is not in dispute that the document was found in the course of the search of the assessee, then Section 153A is triggered. Once the Section is triggered, it appears mandatory for the Assessing Officer to issue notices under Section 153A calling upon the assessee to file returns for the six assessment years prior to the year in which the search took place.*
- *“We are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We, therefore, express no opinion as to whether Section 153A can be invoked even in such a situation. That question is therefore left open.*



- ***ACIT vs. M/s. Pratibha Industries Ltd. (Mum.)(Trib.)***
- Three possible circumstances emerge on the date of initiation of search u/s 132(1): (a) proceedings are pending; (b) proceedings are not pending but some incriminating material is found in the course of search, indicating undisclosed income and/or assets and (c) proceedings are not pending and no incriminating material has been found. Circumstance (a) is answered by the Act itself, that is, since the proceedings are still pending, all those pending proceedings are abated and the AO gets a free hand to make the assessment. Circumstance (b) has been answered in **Anil Bhatia** to hold that while there is no question of any abatement since no proceedings are pending, the AO is entitled to reopen the assessment (*without having to comply with the strict conditions of s. 147, 148 and 151*) and bring the undisclosed income to tax. Also, in **All Cargo Global**

- **Logistics Ltd** 137 ITD 287 (Mum)(SB) it was held that in the case of a non-abated assessment, an assessment u/s 153A has to be made on the basis of incriminating material. Circumstance (c) has been kept open and left unanswered. Circumstance (c) has to be answered to say that even where there is/are no pending proceedings and no incriminating material has to be found, the AO is still required to pass an order u/s 153A though the assessed income will have to be the same as the originally assessed income as there was no incriminating material. Accordingly, the assessee's argument that when there is no incriminating material or assets, then there is no jurisdiction to proceed u/s 153A is not acceptable. S. 153A contains a non-obstante clause and is triggered automatically whenever a search is undertaken. The fact that no incriminating material was found has no bearing on the applicability of s. 153A;



- The Finance Act 2012, has inserted third proviso to section 153A(1) of the Act, empowering the Central Government to make rule in respect of the Assessment Year except in cases where any assessment or reassessment has abated, 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.
- Post search enquiries – Whether separate proceedings to be taken u/s. 148.

## S.153A: Assessment- Search or requisition

- Computation
  - *Gopal Lal Bhadruga & Ors v. Dy. Commissioner of Income tax (2012) 77 DTR 146 (AP)(High Court)*
- Computation of undisclosed income- Assessing Officer can take into consideration material other than what was available during the search and seizure operation for making an assessment of the undisclosed income of the assessee. (S.153C, 158BI )
  - *Gopal Lal Bhadruga & Ors. v. Dy. CIT (2012) 253 CTR 80 (AP) (High Court)*



# THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- Issues relating to loss
  - *Hon'ble Mumbai Tribunal in BDA Ltd. v, Dy. CIT 65 ITD 501*
- Whether material found for part period could be used for all the years
  - *Dr. M.K.E. Menon (2001) 248 ITR 310 (Bom)*
  - *Haji Mohd. 90 ITR 271 (SC)*
- Whether additions are permissible in all the six assessment years specified in section 153A of the Act on the basis of incriminating material found in the course of search relating to only one year or for a certain period
  - *Hon'ble Supreme Court in CST v. H.M. Esufali H.M. Abdulali [1973] 90 ITR 271 (SC)*

## THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- Whether additions are permissible in all the six assessment years specified in section 153A of the Act on the basis of incriminating material found in the course of search relating to only one year or for a certain period
  - *Hon'ble Supreme Court in the case of State of Kerela-vs- C Vellukutty 60 ITR 239 (SC)*
  - *CIT-vs- Mahesh Chand 199 ITR 247 (All.)*



## THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- Whether addition can be made on the matters already concluded ?
- Whether assessment proceedings can be said to be pending after issuance of intimation u/s 143(1) of the Act: Abatement of assessment – some issues:
  - *Rajesh Jhaveri Stock Brokers –V- CIT 291 ITR 500 SC*

## Whether Assessment/Re-assessment can be said to be pending in the following cases

- Where notice u/s 142(1)/148 has been issued but no return has been filed by the assessee or return is filed but no intimation u/s. 143(1) is received.
- Where return has been filed but no action has been taken by the AO and the time specified in section 143(2) has not expired;
- Where intimation u/s 143(1) has been issued and the time for issuing the notice u/s 143(2) is still available;
- Where notice u/s 143(2) has been issued but the assessment/reassessment is not yet made and limitation u/s 153 has not expired.
  - *Abhey Kumar Shroff-vs-CIT 290 ITR 114 (Jharkhand).*
- There may be situation where assessment is pending with the AO to make fresh asst in pursuance to the direction of appellate authority/ revisional authority
  - *Guruprena Enterprises vs. Asst. CIT ITA Nos. 255 & 256/M/2010, Bench "G" dt. 7/1/2011*



- **M/s. Rescuwear Corporation (Settlement Commission)**
- U/s 245A(b), as amended by the Finance Act 2007 w.e.f. 1.6.2007, “pendency of proceedings for assessment” before the AO for one or more assessment years is a necessary condition for invoking the jurisdiction of the Settlement Commission. Held in that context by Five Member Bench of the ITSC that:
  - (a) For the year for which returns have been filed but have neither been processed u/s 143(1) of the Act nor notices have been issue u/s. 143(2) of the Act, the proceeding for assessment can be said to be “pending”;

- (b) Even for the years for which returns have been processed u/s 143(1) of the Act but now no time is left for issue of notices u/s 143(2) of the Act, the proceeding for the assessment years can be said to be “pending”;
- (c) The term “date of conclusion of proceeding” under clause (iv) of 245A (b) means that the proceedings for assessment can be said to be pending before the AO in respect of those assessment years only for which the AO can still take action/initiate the proceeding under the Act;
- (d) If in a composite application for several years, proceeding for certain assessment year are pending but are not pending for other years, the application can be admitted for those years for which proceedings are pending and held as “invalid” for other years. The whole application cannot be treated as ‘invalid’.



# THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- Issue of Notice u/s.153A :Whether separate notice for all the years
- Whether deductions, etc. could be claimed for first time in return of income filed in pursuance to notice issued u/s.153A
  - *Hon'ble Supreme Court in CIT v. Sun Engineering Co. P. Ltd. 198 ITR 297 (SC)*
- Special procedure for assessment-Abatement of pending assessment- New claim for deduction- Claim made for first time before Commissioner (Appeals).Commissioner can entertain the claim.(S. 132)
  - *Dy. CIT v. Eversmile Construction Co. (P) Ltd. (2012) 65 DTR 39/ 143 TTJ 322(Mum.)(Trib.)*
  - *National Thermal Power Co Ltd v. CIT (1998)229 ITR 383 (SC),*
  - *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

# THE CONTROVERSIAL ISSUES WHICH ARE EMERGING RELATING TO FILING OF RETURN AND ASSESSMENT

- Whether The return filed in pursuance to notice under sec 153A can be revised?
- **Notice u/s.143(2) - whether mandatory**
  - *Narendra Singh v. ITO (2011) 138 TTJ 615 (Agra)*



# Assumption of jurisdiction u/s

## 153C

- The precondition for invoking jurisdiction for issue of notice u/s. 153C is that the AO must “*record of satisfaction*” as to the seized material belongs the assessee
  - *Manish Maheshwari (2007) 289 ITR 341 (SC),*
  - *Lal Balwant Rai (2007) 17 SOT 380( Chand.)*
  - *Manoj Aggarwal vs. Dy. CIT ,(2008) 113 ITD 377 (Del.) (SB)*
  - *Jindal stainless Ltd 120 ITD301[Del.]*

# Time limit for issuance of notice u/s. 153C

- There is no time limit for issuance of notice u/s. 153C
- **Limitation**
  - the first proviso to section 153B
  - the Third proviso to section 153B
  - Panchanama
  - Nandlal Gandhi 115 ITD 1 (Mum)(TM)
  - CIT-vs- Sandhya P Naik 253 ITR 534 (Bom)
  - *DCIT vs. Adolf Patric Pinto 100 ITD 191 (Mum) (para 15-19)*
    - *Approved by Bom H.C. in ITA No. 856 of 2008 dt. 5/9/2008*
    - *Dept. SLP dismissed SLP (C) No. 26625 of 2009 (2010) 322 ITR 3 (St) (SC)*



# Time limit for issuance of notice u/s. 153C

- Limitation
  - *Mr. Shahrukh Khan vs. ACIT* 104 ITD 221 (Mum)
  - *CIT vs. S.K. Katyal (2009)* 308 ITR 168 (Del.)

# Applicability of other provisions

- **S.153A: Assessment- Search or requisition— Addition deleted of earlier year- Addition made in earlier proceeding for same assessment year was deleted in appeal hence the proceedings cannot be revived and added over again in A.Y .**
  - The additions made in the earlier proceedings for the same assessment years which have been already deleted in appeal cannot be revived and added over again in the assessment year u/s 153A. The scheme of the Act does not permit matters that have become final between the assessee and the IT authorities to be reopened and re-agitated except by process known to law.(AY 2001-02 & 2002-03)
  - *ACIT v. Uttara S. Shorewala(Mrs) (2012) 147 TTJ 716/74 DTR 11 (Mum.)(Trib.)*
  - *UTARA S.Shorewala(Mrs ) v. ACIT (2012) 147 TTJ 716/74 DTR 11(Mum.)(Trib.)*



# • Year of Taxability

- Unlike block assessment, the issue of year of taxability would take importance under the new provision, as was the case under the old provision prior to insertion of block assessment.
- The onus of proving that the income, which is assessed in year 1 relates to year 2, would be on the assessee challenging the assessment.
- This would increase litigation and it may happen that in some cases, the department may suffer as the income may go tax free for the reason of not assessing the same in the correct assessment year.

# INTEREST

- The issue arises as to charging of interest. Suitable amendments have been made in sections 234A, 234B and 234C of the Act.
- As per the provisions of section 234A, where the return of income is filed belatedly in pursuance of notice issued u/s.153A, interest would be charged and the same is mandatory. Therefore, it seems that return would have to be filed irrespective of whether the copies of seized material is given or not.
- As per provision of section 234B, if first assessment for a particular assessment year is u/s.153A of the Act, then the same shall be treated as assessment for charge of interest u/s.234B and hence, the interest shall be charged on the demand raised as per the assessment framed u/s.153A of the Act. Where the original assessment is completed, the interest u/s.234B would be charged on the demand raised in the original assessment for the period upto the framing of the assessment u/s.153A and thereafter, on the demand outstanding as per the amount added by way of assessment made u/s.153A.



# APPEAL



# APPEAL

- The issue relates to the fees for filing of appeal to CIT(A) and more particularly to ITAT.
- After understanding the provisions relating to interest, etc., the assessment-framed u/s.153A would be inclusive of the amount assessed in the original assessment.
- Now take an example – original assessment was completed on assessed income of Rs.10 lakhs. The addition made by way of 153A assessment is say Rs.10,000/- only, which is required to be agitated. What will be the appeal fees in such a case? The provisions relating to filing fees refer to assessed income and hence, even though the addition contested is only Rs.10,000/-, the appeal fees may be related to the assessed income of Rs.10,10,000/- as per the assessment made u/s.143(3) r.w.s. 153A of the Act and not merely Rs.10,000/-. Thus, unless the constitution validity is challenged, it may be difficult to come out of the provisions based upon assessed income.
- The cost of filing fees increases for the assessee for the reason that under the scheme of block assessment, there was only one order and one appeal was to be preferred.
- Under new provision, separate assessment year is to be framed and hence, separate fees will have to be paid for each of the assessment year where the assessee wants to prefer appeal.



# PENALTY



# PENALTY

## Explanation 5

- Applicable only in case of search action
- Prior to deletion, the provision contained for levy of penalty in search cases where assets are found and which are acquired out of undisclosed income
- Immunity is provided from levy of penalty upon fulfillment of certain conditions



- Explanation 5 – Immunity if-
  - income or transaction resulting in income is recorded in the books of account before the date of search action; or
  - such income is disclosed to the Chief Commissioner or Commissioner before the date of search action; or
  - in the search action, **disclosure** is made in statement recorded u/s.132(4) and specifying therein the **manner of earning** the income disclosed and also pays **tax together with interest** in respect of such income.

- Third condition consists of 3 parts-
  - Disclosure made in statement recorded u/s.132(4);
    - Recording of statement only by authorized officer as per 132(4)
    - Disclosure thus only in statement u/s.132(4) & not otherwise
    - Disclosure by way of letter or statement u/s.131 - immunity may not be available



- Manner of earning the income to be disclosed;
  - To be specified in the statement recorded & not later
  - If not specified or where no such question asked - immunity still available
    - CIT v. Mahendra C. Shah [2008] 299 ITR 305 (Guj);
    - CIT v. E.V. Balashanmugham [2006] 286 ITR 626 (Mad);
    - CIT v. Nem Kumar Jain [2006] 151 Taxman 187 (All);
    - CIT v. Radha Kishan Goel [2005] 278 ITR 454 (All);
    - Gulabrai V. Gandhi v. ACIT [2003] 84 ITD 370 (Mum)
    - Also refer – Indus Engg. Co. v. ACIT (Inv) 184 Taxman 269 (Bom)

- Payment of tax with interest in respect of income disclosed.
  - Payment of interest suggests can be paid later
    - CIT v. Mahendra C. Shah [2008] 299 ITR 305 (Guj)
  
- Immunity available for which income ?
  - Undisclosed income earned in year of search or
  - Earlier year if due date for filing return has not expired on date of search action



- Issue is whether immunity still available for earlier years also
  - CIT v. Kanhaiyalal Saruparia [2008] 299 ITR 19 (Raj)
  - CIT v. S.D.V. Chandru [2004] 266 ITR 175 (Mad)
  - CIT v. Chhabra Emporium [2003] 264 ITR 249 (Del)
  - ACIT v. Rupesh Bholidas Patel (2008) 16 DTR 369 (Ahd) – Not available followed in ACIT v. Kirit D. Patel 121 ITD 159 (Ahd)(TM)
- Dy. CIT vs. Gopal Shyam & Bros. ITA No. 707, 708, 278, 279 & 280/Mum/2010.

- CIT vs. Ramesh Chand Goyal (Calcutta High Court ITA No. 181 OF 2010)
- DCIT vs. Avinasy Ch. Gupta ITA No. 414 & 415/Kol./2009
- ACIT vs. Shri Amadeep Singh ITA No. 33, 34, 35, 36 & 37/Kol/2009





- **Explanation 5A**

- Found to be owner of assets or Income included in books of account
- Return filed before date of search but income (whether recorded in books or not) not disclosed therein OR No return of income filed before date of search action & due date expired
- Deemed to be concealed income even if entries recorded in books of account

- The term reasonable cause is not provided. Hence even delay in filing return of income may attract penalty.
- Analogy of Explanation 4(b) could be made for credit of payment of advance tax / TDS etc. – however no such specific relief provided



- **Section 271AAA**

- Inserted w.e.f. 1-6-2007, thus applicable to search action conducted on or after 1-6-2007
- Penalty at 10% of undisclosed income of specified previous year/s – i.e. year of search or immediate prior year if due date of filing return u/s.139(1) not expired & no return filed (word used AO ‘may’ direct ... assessee ‘shall’ pay)

- **Immunity given from levy of penalty @10% if-**
  - Disclosure is made in statement recorded u/s.132(4) & specifies manner of earning such income
  - Substantiates the manner of earning such income
  - Pays tax with interest on such undisclosed income
- Provision of section 271(1)(c) not to apply in respect of the years covered u/s.271AAA
- Undisclosed income defined – similar to one provided in s.158B(b) & also includes expenses found to be false



- **How to substantiate and till what stage**
  - Since case of undisclosed income, may not have any evidence to substantiate
  - Substantiation may be required only in the course of search action
  - Substantiation only if asked / required by search party while recording statement u/s.132(4)

- Section 271AAB
- Levy of penalty mandatory but quantum varies as under:-
- Penalty @ 10% of UDI if:-
- Accepts in statement under section 132(4)
- Specifies and substantiates the manner in which such income has been derived.
- Pays tax together with interest in respect of UDI and furnishes ROI declaring such UDI on or before specified date, i.e. time provided under section 139(1) / 153A.
- Penalty @ 20% of UDI if:
- But declare such income in ROI furnished for the specified P.Y. and pays tax together with interest in respect of UDI on or before specified date, i.e. time provided under section 139(1) / 153A.



- Penalty @ 30% to 90% of UDI if:
- Neither accept in statement under section 132(4) not declares in ROI

## THIRD PARTY ASSESSMENT - CERTAIN ISSUES

- Whether 153C assessment could be made even if other person has disclosed the transaction, but is undisclosed of the person searched
- *To what extent 'satisfaction' of the assessing officer is required*
  - Supreme Court in *Manish Maheshwari v. ACIT* 289 ITR 341 (SC)
  - Madras Tribunal in *L. Saroja v. ACIT*
- *'belong' or 'belongs to' - what it connotes*
  - Hon'ble Supreme Court in *C.W.T.v.Bishwanath Chatterjee* (1976) 103 ITR 539 (SC)
  - *CWT vs. Harshad Rambhai Patel* (1964) 54 ITR 747, 748 (Guj)
  - *Syed Khaja vs. RaghavendraRao* (1976) 103 ITR 296 (A.P.)
  - *A & FHarvey Ltd. vs. CIT* (1977) 107ITR 341 (Mad)
  - *Singhad Technical Education Society v. ACIT; ITA Nos.114 to 117/PN/10, Pune Bench 'B', order dated 28/4/2011*





THANK  
YOU