

Search Assessments u/s 153A and Section 153C etc – Latest Judicial Developments

Presentation by :

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OBJECT/SCOPE

To deliberate on provisions of and issues from :

- a) Section 153A*
- b) Section 153B*
- c) Section 153C*
- d) Section 132 etc*

Section 153A- Basic Points

- *Applicable to search/requisition initiated/made on/after 1 June 2003*
- *Non Obstante clause to Section 139;147;148;149;151 and section 153*
- *Notice for six assessment years immediately preceding the asst. year corresponding to previous year in which search is made- with six different assessments*
- *As Per explanation, all other provisions to apply ACCORDINGLY*
- *Assessment/reassessment pending on date of initiation of search shall ABATE*

Section 153A- Conditions precedent

- *INITIATION OF SEARCH (EXISTENCE OF WARRANT) (emerging from opening part of section 153A) AND*
- *CONDUCT OF SEARCH (SEARCH FOR HIDDEN ASSETS ETC AT ASSESSEE'S PLACE ETC) (emerging from later part of section 153A)*
- *Indore Bench of ITAT Rajat Telecom ITSS 182/Ind/2007*
- *Latest Delhi Bench of ITAT in Chetan Dass Laxman Dass 21 Nov 2009 – order discuss*

Section 153A- Conditions precedent

- *Case Study:*
- *When warrant & consequential panchnama lies in the name of branch/unit of person/assessee company and not in assessee's name: whether assessment on assesseeu/ 153A valid?*
- *Likewise case of proprietary concern and proprietor etc?*
- *NO refer Special Bench ABN Amro 97 ITD 89*

New Search Assessment provisions

Issue:

Where there is merely warrant of authorization u/s 132 in name of assessee without any panchnama Thereon, whether jurisdiction can be assumed u/s 153A stating searched in initiated...? Connotation of phrase "where search is initiated.."

Mum ITAT in J.M.Trading 20 SOT 489

DHC in S.K.Katyal 308 ITR 168

Indore ITAT in Rajat Tradecom ITSS 182/Ind/2007

Guj HC in Jayanti Lal 177 Taxman 357

(panchnama with search-seizure etc ?)

Section 153A- Conditions precedent

- *Latest All HC in Vandana Verma on Joint Search Warrant and Individual assessments: Held (on 9/11/2009)*
- *In view of the above, in our opinion, the warrant of authorization must be issued individually by the Director/Commissioner at the time of issuing the same. If the same is not issued individually, then assessment cannot be made in an individual capacity as done by the Assessing Officer in the instant case. The warrant was issued jointly, as stated hereinabove, so the assessment will have to be made collectively in the name of both the persons in the status of AOP/BOI. Thus, the Tribunal has rightly held that assessment could not be framed in an individual capacity but it should be framed either as association of persons or as body of individual – ITA 21/2009- 31 DTR 214*

Section 153A- Conditions precedent

- *Case Study:*
- *When principal search warrant/panchnama is not in assessee's name and joint locker warrant/panchnama is there : whether assessment framable u/s 153A:*
 - *No Luck ITAT Mohan case 74 TTJ 848*
 - *DHC Pushpa Rani (no addition on joint locker items seized etc) 289 ITR 328*
 - *Kar HC T.S.Chandershekhar (panchnama –no seizure – no panchnama)*
 - *Delhi ITAT Veena Bhatia etc.... (Dec 2009)*

Section 153A- Abatement Matrix: As on Search Date

Status of Six Years	Scope of 153A Assessment
Year 1: Return filing time available – return not filed	Whether limited to search material?
Year 2: No return filed due date passed	Whether limited to search material?
Year 3: 143(2) pending	Whether limited to search material?
Year 4 &5 : 148 Pending	Whether limited to reasons and search material?
Year 6 : 153A Pending	Whether limited to prior search and current search material?

Section 153A- Abatement Matrix: As on Search Date

- *WHETHER POWER OF REVIEW & CHANGE OF OPINION IS THERE IN SECTION 153A ASSESSMENT (THAT IS, IF EARLIER ASSESSMENT U/S 143(3) COMPLETED, CAN SAME BE REVIEWED WITHOUT THERE BEING ANYTHING NEW ON RECORD?*
- *WHETHER DOCTRINE OF PARTIAL OR FULL MERGER APPLIES IN CASES WHERE APPEALS HAVE BEEN FILED AND DISPOSED OFF VIS A VIS SECTION 153A ASSESSMENT?*
- *WHETHER OLD PROCEDURE/PRIOR TO BLOCK ASSESSMENT, OF HAVING INCRIMINATING MATERIAL FOR YEAR CONCERNED IS APPLICABLE IN PRESENT SCENARIO?*

Section 153A- Abatement Matrix: As on Search Date

- *Delhi Bench of ITAT in Sanjay and Anil Bhatia*

Held even after earlier 143(1) if nothing found being incriminating during search for addition concerned- same cannot be sustained

Orders Dated 1/01/2010

Eg: mere filing of share application forms during search may not empower AO to proceed to investigate during 153A assessment, the said issue.....

Section 153A- Abatement Matrix: As on Search Date

Other related cases:

- *Kol ITAT ruling in L.M.J International 119 TTJ 214
(FOLLOWED by Ahd ITAT in Meghmani Organics- & Industries)*
- *Ahd ITAT in Rupesh Patel ITA 2390/Ahd/2007 309 ITR 217 (AT)*
- *Del ITAT in Shyam Lata Kaushik 114 ITD 305*
- *Del ITAT in Shivnath Rai 117 ITD 74*
- *Delhi ITAT Charchit Aggarwal 34 SOT 348*

New Search Assessment provisions: Section 153A

How far criteria of undisclosed income be interpolated in new search assessment scheme of Section 153A and/or section 153C?

Landmark SC rulin in Kelvinator case: Larger Bench 18/01/2010

In context of reopening u/s 148 held:

- a) No review power and change of opinion in section 148 is inbuilt safe guard which is to read in words "reasons to believe" to prevent abuse of power by AO's

- b) Schematic Interpretation applied

Seems can be applied to section 153A/153C
Assessments also...

Section 153A- Abatement Matrix: As on Search Date

- *WHETHER PENDING APPEAL PROCEEDINGS ABATE? IF NOT, WHAT IS THE SCOPE OF SECTION 153A assessment vis a vis pending appeal proceedings?*
- *Refer CBDT Circular explaining Finance Act 2003 : No 7 of 2003 dated 5/9/2003 (clarified appeal; revision and rectification proceedings pending as on search date shall not abate)*

Scope of Section 153A assessment: New Claims

Whether new claims can be made in 153A
Assessment which were earlier
skipped/omitted to be claimed by assessee?

Comparative analysis with Section 147

ITAT Suncity Alloys & Charchit Aggarwal Delhi
ITAT

New Search Assessment provisions: Section 143(2) notice

Whether 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?

DHC in PAWAN GUPTA 223 CTR 487 (matter in context of section 158BC RESERVED by SC in Hotel Blue Moon case on 25/11/2009)

New Search Assessment provisions: Scope of adjudication

How far ITAT can adjudicate on satisfaction recorded u/s 132?

DHC M.B.Lal 279 ITR 298

Del ITAT Special Bench Promain 95 ITD 489

Raj HC in Chitra Devi 313 ITR 174 (applied by Kar HC in T.SChandrashekhar 221 CTR 385)- both cases SLP dismissed by SC

New Search Assessment provisions: Revised Return

Whether return filed u/s 153A can be revised to cure deficiencies (inadvertent etc) in earlier return?

New Search Assessment provisions: Reopening

Whether assessment once framed u/s 153A can be reopened u/s 148 on basis of subsequent audit objections on factual aspect Etc? If yes, whether protection of proviso to Section 147/true and full disclosure shall be applicable or not?

Section 153C- Search Assessment of Other Person

*Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the **Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice** and assess or reassess income of such other person in accordance with the provisions of [section 153A](#) :]*

Implication (if any of missing word in non obstante clause “to the contrary”)

Search Assessment Other Person Section 153C

Issue:

*Whether there is additional requirement for issuance of notice u/s 153C before proceeding u/s 153A as evident from words used "**that Assessing Officer shall proceed against each such other person and issue such other person notice** and assess or reassess income of such other person in accordance with the provisions of [section 153A](#)"*

New Search Assessment provisions: Section 153C

Relevant precedents on above Issue

- a) DHC in Sauraya Industries 306 ITR 189
Held PRINCIPLE OF NATURAL JUSTICE IS
INBUILT U/S 153C
- b) APHC ruling in Mukta Lalitha 226 ITR 23 as
Approved by SC in K.P.Mohammed 300 ITR
302

New Search Assessment provisions: Section 153C vs 158BD

Issue:

Whether SC ruling in Manish Maheshwari given in context of satisfaction recording u/s 158BD is applicable to section 153C in so far as words **“where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in [section 153A](#)”** are Concerned?

When same AO of searched person and other person (Chd ITAT Kishori Lal Balwant Rai & Bang ITAT etc)?

New Search Assessment provisions: Section 153C vs 158BD

Relevant precedents on above Issue:

a) Held Yes in

- a) Delhi ITAT ruling in Jindal Stainless Steel ITA 3480/3481 of 2006- 122 TTJ 902
- b) Luck ITAT ruling in Surender Kumar 18 DTR 38
- c) Delhi ITAT Deepa Bhatia (Dec 2009)

New Search Assessment provisions: Section 153C vs 158BD

Issue :

Whether communication of satisfaction in body of notice as held in context of 158BD by precedents thereunder, is applicable to section 153C also?

Delhi ITAT in NITS Softtech 8 DTR 269

DHC in New Delhi Auto Finance 4 DTR 318/300 ITR

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Latest Delhi ITAT in Deepa Bhatia case

New Search Assessment provisions: Section 153C

Issue:

In case where there is direct search on assessee u/s 132 and other sister concerns also, whether for material found at third party premises separate assessment/processing u/s 153C is required?

- ❑ *BHC in 248 ITR 194*
- ❑ *Agra Adverse ITAT 110 ITD 421 (CONTRA 91 TTJ 633)*
- ❑ *95 TTJ 489 (TM)*
- ❑ *Delhi ITAT Manvinder Bawa and Kalpana Minda*

New Search Assessment provisions: Section 153C

Issue : Degree of Belongingness

What is connotation of word document belongs to person other than searched person that is whether it connotes casual relationship or definite Relationship. (incriminating and financial character must?)

*Ahd ITAT in Meghmani Organics ITA 2938/Ahd/2008
Bang ITAT in P.Srinivasa Naik 114 TTJ 856 (TERM BELONGING INVOLVES SOMETHING MORE THAN CASUAL ASSOCIATION & INVOLVES NOTION OF CONTINUITY)*

New Search Assessment provisions: Section 153C

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New Search Assessment provisions: Section 153C

Held in Meghmani Organics: ITA 2938/2008/Ahd
If a person makes some jottings/notes etc for his Own purpose and which has no nexus to hold that It belongs to other person and also does not contain a material which reveals any income Therein, cannot be used so as to initiate action u/s 153C of the Act...If the assessee has engaged the services of a professional & if the professional maintains his own record for the purpose of rendering his services, these documents cannot be said to be belonging to such other person...

New Search Assessment provisions: Section 153C

Held: in P. Srinivasa Naik 24 SOT 10

The term belonging, implied some thing more than the idea of casual connection. It involves the Notion of continuity and indicates one more or less Intimate connection with the person over a period Of time.

New Search Assessment provisions: Section 153C

Issue : Character of Document

What is connotation of “document” as mentioned in section 153C is concerned in so far as “incriminating” character is concerned?

New Search Assessment provisions: Section 153C

Issue : Character of Document : Whether following cognizable u/s 153C?

- a) Bank Pass Book
- b) At Lender's Place : Mortgaged DEED's etc
- c) Lender's Confirmation at Borrower's place
- d) At Holding co place: Subsidiary co final accounts ETC

New Search Assessment provisions: Section 153C

Issue:

Whether statement of searched party directly implicating “other person” is document belonging to “other person” vis a vis section 153C?

If no, and section 153C is not attracted, can section 147 be resorted? (analyze with reference To non obstante clause in section 153C)

New Search Assessment provisions

Issue

Whether on basis of laptop data of CA incriminating to CA Client, whether action u/s 153C or section 147 is possible?

New Search Assessment provisions

Issue

Assessment pursuant to warrant of authorisation issued by JDIT (Inv)/ADIT (Inv) is bad in law?

DHC in Capital Power and Pawan Kumar 222 CTR
36/47 (sc liberty to revenue to re-approach HC under review)

P&HHC in Vinod 252 ITR 29

All HC in Raghu Partap 307 ITR 450

SC in Chand Vhurasia – Latest Development-
revenue's SLP notice issued

Law retrospectively amended finance no 2 act, 2009 in
revenue's favor- NEW NOTIFICATION ISSUED IN OCT 2009

New Search Assessment provisions: Section 153C

Issue:

How assessment of open year can be made that is whether same needs to be made WITHIN time limit of section 153B?

Further whether regarding other person, open Year, proceedings as per section 153C is required?

New Search Assessment provisions: Section 153C

Issue:

*Connotation of word **hand over** u/s 153C – vis a vis scheme of law; section 153B TIME Limit etc (where same AO is proposed to be there)*

New Search Assessment provisions

Issue:

Time limitation u/s 153B :

- a) Bank locker search – empty – whether considerable for time limitation – DHC in S.K.Katyal; D.D.Sales/Mangla Marbles 221 CTR 718/305 ITR 254 etc*

New Search Assessment provisions

Issue:

Whether u/s 153C notices can be issued for Those years only for which incriminating assets/documents etc is found?

Issue:

Latest Jodhpur Bench Shanti Lal Godawat 126 TTJ 135 – dispatching of section 153A orders with time Limitation must....serious implications

New Search Assessment provisions: Section 153A etc

In a case where a document pertaining to sale Transaction recording two rates (lower recorded in Books and a higher one), revenue rejecting u/s 153A r/w 145 book results, estimated higher turnover and profits for seven years including open Year? Whether correct? Held No Delhi Bench of ITAT in chetan dass laxmand Dass (20/11/2009 Order) distinguished SC Eusufali 90 ITR 271 (All HC Dr Mehrota and DHC Anand Kumar Deepak Kumar APPLIED 294 ITR 497)

New Search Assessment provisions: Section 153D etc

Whether on basis of SC ruling in Sahara case given in context of section 142(2A) it can be contended That hearing opportunity is to be given to assessee Before giving of approval and not giving the same, is whether irregularity or illegality?

New Search Assessment provisions: Section 153D etc

Whether on basis of SC ruling in Sahara case given in context of section 142(2A) it can be contended That hearing opportunity is to be given to assessee Before giving of approval and not giving the same, is whether irregularity or illegality?

Presumption Section 292C

Delhi Bench of ITAT in Vatika case 121 TTJ 208: Presumption raised u/s 292C is limited to the correctness of document found at search/survey and has not been extended to presume the amount therein as income of the assessee. (APPLIED IN ANSAL'S CASE BY DELHI ITAT)

Deeming presumption u/s 292C is rebuttable and has to be applied considering totality of surrounding Facts Kol Bench of ITAT in Nirmal Fashions 123 TTJ 180

Presumption Section 292C

Bombay High Court Surendera M Khandar: 224
CTR 409

In context of factual position where a document was from premises in control of assessee, and Assessee did not denied the existence of the Sized document at any stage and admittedly signatures were there in the document of parties known to the assessee and only contention was that transaction did not materialized, for which no evidence was filed (eg affidavit of parties etc) Held unexplained investment rightly inferred and taxed

Section 271AAA Search Assessment and Concealment Penalty

Section 271AAA: Salient features:

Non obstante clause (over-rides) whole act

- a) For search initiated after 1/6/2007
- b) Discretion? To AO for penalty @10% of "undisclosed income"
- c) For specified previous year : a) previous year in which search is conducted and for which b) neither ROI due date not expired nor ROI furnished
- d) Section 271(1)(c) do not apply to 271AAA(1) cases
- e) Immunity inter-alia when MANNER OF EARNING substantiated 271AAA(2)(ii)

Section 271(1)(C) Expl 5A Search Assessment and Concealment Penalty

Salient features:

- a) For search initiated after 1/6/2007
- b) Where assessee is found to be the owner of valuable article/any income based on documents etc and claims the same to be income of "any previous year" ended before date of search
- c) Where ROI for above has been filed w/o considering the aforesaid income and where Due date for ROI has expired but no ROI filed
- d) Then DEEMED CONCEALMENT OF INCOME shall be there

Section 271(1)(C) Expl 5A Search Assessment and Concealment Penalty

Other cases:

- a) Ahd Bench Third Member 121 ITD 159: Kirit Dhayabhaipatel (return u/s 153A income-section 271(1)(c)penalty attracted)
- b) Chennai Bench of ITAT in M.N.Rajaraman Per Shamim Yahaya ITA 617-621/2007 Adverse
- c) Bang Bench Fav in 120 TTJ 361 S.Kumar & K.Natrajan in 33 SOT 92 (host of issues)

Other interesting cases

Document has to be read as a whole and not in piecemeal manner (eg if sales are taken as per seized document then expenses written on the face of it have also to be taken as true and deduction allowed).....

Delhi Bench of ITAT Ansal's case etc...

Other interesting cases

Only NP can be added in respect of unrecorded Sales and not GROSS RECEIPTS (EVEN IF ILLEGAL BUSINESS?)

and further how Far unexplained investment can be estimated for doing Unaccounted business?
(credit purchases, paid from sales realization etc)

Other interesting cases

Whether reopening can be made for years for which earlier assessment stands completed u/s 153A but quashed for illegal search warrant etc..?

Thank You

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