



**Reassessment & Search Assessments  
under the Income Tax Act, 1961**

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# OVERVIEW OF SECTION 147

- ❖ **Section 147 (1):** If Assessing Officer has **reason to believe** that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also **any other income** chargeable to tax which has **escaped assessment** which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned

- **CIT vs Sun Engineering Works Pvt Ltd, 198 ITR 297 (SC)**

# OVERVIEW OF SECTION 147

- ❖ **Second proviso:** The time limit of four years not applicable in a case where any income in relation to any asset including financial interest in any entity located outside India, chargeable to tax, has escaped assessment for any assessment year
- ❖ **Third proviso:** The Assessing Officer shall not assess or reassess matters which are the subject matters of any appeal, reference or revision

# OVERVIEW OF SECTION 147

- ❖ **Explanation 1:** Production of books of account or other evidence from which the Assessing Officer with due diligence could have discovered material evidence will not necessarily amount to disclosure
- ❖ **Explanation 2: Situations in which it shall be deemed that the income chargeable to tax has escaped assessment:**
  - Where no return of income has been furnished by the assessee or the representative assessee
  - A return of income has been furnished but no assessment has been made & it is noticed by the AO that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief
  - Assessee failed to furnish a report in respect of any international transaction as required u/s 92E

# OVERVIEW OF SECTION 147

- ❖ Where an assessment has been made, but income chargeable to tax has been under assessed or assessed at a too low rate or such income has been made the subject of excessive relief or excessive loss/depreciation allowance or any other allowance under the Act has been computed
- ❖ Where a person is found to have, any asset including financial interest in any entity located outside India
- ❖ Based on information or document received from the prescribed income tax authority, AO notices that the income of the assessee exceeds maximum amount not chargeable to tax or assessee has understated the income/ claimed excessive loss, deduction, allowance or relief in the return. **W.e.f. 01.06.2016**

# OVERVIEW OF SECTION 147

- ❖ **Explanation 3:** AO may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148

*[Inserted by Finance (No. 2) Act, 2009 w.r.e.f 01.04.1989]*

# Prerequisites for Reassessment – Reason to Believe

- ❖ The expression ‘reason to believe’ does not mean a purely subjective satisfaction on the part of Assessing Officer. The belief must be held in good faith, it cannot merely be a pretence
- ❖ Reason to believe must be based upon reasonable ground and not on mere suspicion, gossip or rumour
- ❖ The existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief
- ❖ Non-existence of reason to believe renders the proceedings invalid & without jurisdiction
  - Ganga Saran v ITO, 130 ITR 1 (SC);
  - S Narayanappa v CIT 63 ITR 219 (SC);
  - Sheo Nath Singh vs. Appellate ACIT & Ors, 82 ITR 147 (SC)
  - Chhugamal Rajpal vs. S P Chaliha & Ors, 79 ITR 603 (SC)
- ❖ Formation of belief is not a judicial decision but an administrative decision

# Prerequisites for Reassessment – Reason to Believe

- ❖ The ITO must have reasons to believe that by reason of the omission or failure on the part of the assessee to make a return of his income for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits and gains chargeable to income-tax have escaped assessment for that year, or have been under assessed, or assessed at too low a rate, or have been made the subject-matter of excessive relief under the Act, or excessive loss or depreciation allowance have been computed. The formation of the required opinion by the ITO is a condition precedent. Without formation of such an opinion he will not have jurisdiction to initiate proceedings under s. 34(1)(a). **The fulfilment of this condition is not a mere formality but it is mandatory.** The failure to fulfil that condition would vitiate the entire proceedings. **Johri Lal (HUF) vs. CIT, 88 ITR 439 (SC)**

# Prerequisites for Reassessment – Reason to Believe

- ❖ Notice under section 148 of the Act to be served on the assessee
- ❖ The Assessing Officer before making the assessment, reassessment or re-computation under section 147, shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income
- ❖ **Notice issued by a wrong assessing officer invalid** – Notice to be issued by the assessing officer having jurisdiction over the assessee at the time of issue of requisite notice
  - **CIT vs. Shaporji Pallonji Mistry, 44 ITR 891 (SC)**
- ❖ **Proper Notice** - It is not sufficient if the notice under section 148 of the Act is sent in the correct format. It is important that the contents of the notice are accurate and complies with the conditions prescribed by the provisions of law. **The non-applicable words are required to be struck off.**

# Prerequisites for Reassessment – Issue & Service of Notice U/s 148

- ❖ Notice not served to the name of principal officer of assessee-company but issued to company without mentioning “Pvt. Ltd.” as a suffix — not a case of misnomer or misdescription of parties which makes entire proceedings null and void
  - **CIT vs. Jagat Novel Exhibitors Pvt. Ltd., 356 ITR 559 (Del)**
- ❖ **Notice on proper person** – Notice must be addressed to the proper assessee and served on the proper person. A notice issued to the assessee as an individual when the correct status is that of a HUF would be invalid
- ❖ Service of notice u/s 148 is not merely a procedural requirement but a condition precedent to the validity of reassessment
  - **CIT vs. Thayaballi Mulla Jeevaji Kapasi, 66 ITR 147 (SC)**

# Prerequisites for Reassessment – Issue & Service of Notice U/s 148

- ❖ A notice by affixture without reasonable attempts to find the assessee is not a proper notice.
- ❖ The expressions ‘issued’ & ‘served’ are used as interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. In other words, the expression ‘issued’ is used in a limited as well as in a wider sense. The word ‘issued’ under section 4 of the Indian Income-tax (Amendment) Act, 1959, must not be given a limited meaning, i.e., issued means ‘sent’
- ❖ No notice shall be issued after the expiry of time limit u/s 149 of the Act

# Prerequisites for Reassessment – Issue & Service of Notice U/s 148

- ❖ Clear distinction has been made out between 'issue of notice' & 'service of notice'
- ❖ Notice has to be 'served' and mere 'issue' is not sufficient
  - **CIT vs. Vardhaman Estates P Ltd, 287 ITR 368 (Del)**
- ❖ The proceedings completed without service of notice u/s 148 of the Act is bad in law. Jurisdictional aspects cannot be treated as procedural irregularity and it is not curable
  - **ACIT and Another vs. Hotel Blue Moon, 321 ITR 362 (SC)**
- ❖ Issue of second notice does not extend the period of limitation

# Prerequisites for Reassessment – Issue & Service of Notice U/s 148

- ❖ Notice served on dead person is a fundamental infirmity. It cannot be caged as a technical infirmity or mere irregularity and such vital infirmity cannot be cured. Reassessment based on such a notice is not valid in law.
  - **CIT vs. Suresh Chandra Jaiswal, 325 ITR 563 (All)**
- ❖ Where the first notice was withdrawn for technical reason of not mentioning reasons to believe, there was no bar for issuing the second notice.
  - **Chokhani Brother vs JCIT, 367 ITR 230 (All)**
- ❖ Deceased person cannot be assessed under the Act unless a notice is served on the legal representative of the deceased

# Prerequisites for Reassessment – Issue & Service of Notice U/s 148

- ❖ Proper course of action to the assessee after getting notice u/s 148
- ❖ Assessee shall file return & request for reasons recorded for reopening of the assessment
- ❖ Reasons to be furnished to the assessee on request
- ❖ Assessee may raise his objections for reasons recorded
- ❖ The assessing officer shall dispose off the objections through a speaking order
  - **GKN Driveshafts India Ltd vs. ITO, 259 ITR 19 (SC)**
- ❖ The assessing officer not to proceed further in the matter for four weeks from the date of service of the order on objections of the assessee
- ❖ Non-furnishing of reasons recorded - Renders the reassessment proceedings invalid.
  - **CIT vs. Trend Electronics, 379 ITR 456 (Bom.)**

# Prerequisites for Reassessment - Approval for Issue of Notice for Reassessment – Section 151

Time limit from the end of the relevant assessment year	Issue of notice u/s 148 by	Competent authority who has to be satisfied on the reasons recorded by the AO that it is a fit case for issue of notice
Upto 4 Years	Assessing Officer below the rank of Joint Commissioner	Joint Commissioner
After 4 Years	Assessing Officer	Principal Commissioner/ Chief Commissioner/ Chief Commissioner/ Principal Commissioner/Commissioner

# Prerequisites for Reassessment - Time Limit for Issue of Notice U/s 148 - Section 149

Particulars	Time Limit for Reassessment
Issue of notice u/s 148 for reopening of assessments	4 years from the end of the relevant assessment year
In case of income escaping assessment more than Rs.1,00,000/-	6 years from the end of the relevant assessment year
In case of non-residents – Any asset including financial interest in any entity located outside India which has escaped assessment	16 years from the end of the relevant assessment year

## Time Limit for Completion of Reassessment – Section 153(2)

- ❖ No order of assessment, reassessment or re-computation shall be made after expiry of **one year** from the end of the financial year in which the notice was served under section 148 of the Act
- ❖ **Within 9 months from the end of the financial year in which the notice was served under section 148 of the Act. W.e.f. 01.06.2016**

# ISSUES ON REASSESSMENT U/S 147

Whether reason recorded by AO can be supplemented by additional affidavit / orally?

- ❖ The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No additions can be made to those reasons.
  - **Hindustan Lever Ltd., 137 Taxman 479 (Bom.)**
- ❖ Grounds must be recorded before issue of Notice - AO not entitled to record additional reasons.
  - **CIT vs. Living Media India Ltd, 359 ITR 106 (Del)**
- ❖ Material found in post-search enquiries could form a “Reason to Believe” that income had escaped assessment.
  - **Anand Prakash Agrawal & Ors vs. CIT & Ors 367 ITR 526 (All)**
- ❖ Mere disclosure of the belief in the affidavit filed by the Income-tax Officer without setting out any material on the basis of which the belief was arrived at was held not sufficient for properly initiating reassessment proceedings.
  - **ITO v. Madnani Engineering Works Ltd. 118 ITR 1 (SC)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Satisfaction should be of the assessing officer's own and not borrowed satisfaction
- ❖ The officer who issues notice under section 148 and the officer who has recorded the reasons should be same
- ❖ Reassessment solely based on finding of sales-tax authorities that there is suppression of stock was held to be invalid
- ❖ Audit Objection cannot be the basis for reopening of assessment to income tax by the revenue

**- Indian & Eastern Newspaper Society vs. CIT, 119 ITR 996 (SC)**

## ISSUES ON REASSESSMENT U/S 147

- ❖ The expression ‘in the course of proceedings’ is wide in its amplitude, and it will, therefore, be proper to conclude that the information at the time of issuing notice need not be complete and accurate.
- ❖ Anonymous complaint received by the assessing authority was held not sufficient for forming the reasonable belief. Such a complaint might have created a suspicion on which enquiry might have been started. It could not form the basis of a reasonable belief.

## ISSUES ON REASSESSMENT U/S 147

- ❖ The assessee was the chief executive and a very influential person in a company, which paid large sums of money as commission to minor sons of the assessee. Such commission was disallowed in the hands of the company on the ground of extra-commercial considerations. A notice to re-open the assessment of the assessee on the ground that such payments to the minor sons were benami income of the assessee. It was held, on facts, that the disallowance of the payment in the company's assessment could not by itself be the basis for forming the requisite belief that the assessee was the real recipient of the amounts

**- ITO v. Anandilal Goenka, 148 ITR 26 (Cal)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Where the assessee has failed to file, any evidence regarding actual payment of the sales tax liabilities before filing of the return as per the first proviso to section 43B, the ITO has been held justified in forming the belief for reopening the assessment
- ❖ Cash credits were accepted in the original assessment. Subsequent information was received that the creditors were bogus name-lenders. Reassessment proceedings under section 147(a) has been upheld as there was nexus between material and belief
  - **Hanuman Trading Co. v. CIT, 250 ITR 365 (Del)**
  - **Panchugurumurthy v. CIT, 211 ITR 51 (Mad)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ At the initiation stage, the final outcome of the proceedings is not relevant. At the initiation stage, what is required is 'reason to believe', but not the established factum of escapement of tax.
  - **Central Provinces Manganese Ore Co. Ltd. v. ITO, 191 ITR 662 (SC)**
- ❖ Illegality attached to the collected materials not to vitiate the initiation. The courts in India persistently refuse to exclude material evidence solely on the ground that it was obtained by illegal search or seizure. Thus, the materials so collected can form the basis for issuing a notice for reassessment
  - **Thakursidas Banwarilal v. CIT, 232 ITR 846 (Gau)**
- ❖ Reassessment u/s 147(b) pre-supposes an error in the original assessment
  - **CIT vs. Simon Carves Ltd. 105 ITR 212 (SC)**
- ❖ Assessment of income in the wrong hands would not preclude the AO to initiate appropriate proceedings in the hands of a person who is liable to be taxed.
  - **ITO vs. Ch. Atchiaiah, 218 ITR 239 (SC)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Reassessment proceedings cannot be initiated for verification of information available with the authorities or for making certain enquiries
  - **General Electric Co. of India Lt. vs. STO, 33 STC 108 (All)**
  - **Kanhaiyalal Damodar Das vs. CST 73 STC 404 (All)**
- ❖ Merely because the revenue has initiated proceedings u/s 147 the right given to the assessee u/s 139(4) cannot be lost.
  - **Kareemsons Pvt. Ltd. vs. CIT 198 ITR 543 (Ker – FB)**
- ❖ When the initiation of proceedings u/s 147 is itself not permissible, the consent given by the assessee to be assessed at a particular figure would not give jurisdiction to the AO.
  - **CIT vs. Hari Raj Swarup & Sons 138 ITR 462 (All)**

# ISSUES ON REASSESSMENT U/S 147

## Reassessment cannot be mere change in opinion

- ❖ The formation of reason to believe and recording of reasons are imperative before the AO can reopen a completed assessment.
- ❖ It is a well-settled principle of law that what cannot be done directly cannot be done indirectly. If the ITO does not possess the power of review, he cannot be permitted to achieve the said object by taking recourse to initiating a proceeding of reassessment or by way of rectification of mistake.
- ❖ A mere change in the opinion would not confer jurisdiction upon the AO to initiate a proceeding under section 147
  - **CIT vs. Kelvinator of India Ltd, 320 ITR 561 (SC) [Affirming full bench decision of the Delhi High Court, 256 ITR 1]**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Reopening on the basis of an opinion formed by the internal auditor of the department, cannot be treated valid because it amounts to change of opinion.  
- **CIT vs. Simbhaoli Sugar Mills Ltd., 333 ITR 470 (Del.)**
- ❖ No Reopening within four years on the basis of any amendment in the law with retrospective effect.  
- **Parixit Industries (P.) Ltd. vs. ACIT, 20 taxmann.com 750 (Guj.)**
- ❖ Reassessment cannot be based on mere difference in estimate. In any event the valuation is always a question of opinion. On the basis of the difference in estimate it cannot be said that the assessee actually invested more than what is declared in the return of income.  
- **Tarawati Devi Agarwal, 162 ITR 606 (Cal)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ The proviso to section 147 contemplates that no action can be taken after the expiry of four years
- ❖ Reopening after 4 years can be made only on the failure of the assessee to furnish all information that was necessary for the purpose of making an assessment
- ❖ Failure to complete the action within four years renders notice is barred by limitation
  - **Charotar Nagrik Sahakari Bank Ltd. (In Liquidation) vs DCIT, 36 Taxmann.com 69 (Guj.)**
- ❖ When the assessment proceedings are pending, the AO cannot have any reason to believe that income for that year has escaped assessment (period for issue of notice u/s 143(2) had not expired)
  - **CIT vs. Qatalys Software Technology, 308 ITR 249 (Mad)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn
  - **Calcutta Discount Co. Ltd. vs. ITO, 41 ITR 191 (SC)**
- ❖ It is well settled that there must be materials to come to the conclusion that there was 'omission or failure to disclose fully and truly all material facts' necessary for the assessment of the year
  - **Indian Oil Corporation vs ITO, 159 ITR 956 (SC)**
- ❖ No reassessment just to make an enquiry or verification
  - **Bhor Industries Ltd. vs. ACIT, 267 ITR 161 (Bom)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Abatement of existing assessment or reassessment proceedings in case of search assessment
- ❖ In cases where the assessments or reassessment proceedings have already been completed and assessment orders have been passed, no bar to reopen the assessment in case of search assessment
- ❖ Where assessment 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

# ISSUES ON REASSESSMENT U/S 147

- ❖ **Principle of Partial Merger:** The principle of partial merger is applicable to the reassessment proceedings under section 147 of the Act. The third proviso to the said section provides that the Assessing Officer may not assess or reassess income, involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. Such matters are left for decisions by above mentioned higher authorities only.

# ISSUES ON REASSESSMENT U/S 147

- ❖ Reassessment not justified if there is no failure to disclose fully and truly all material facts
- ❖ If Law in subsequent A.Y. is different, reopening not proper
  - **Pravin Kumar Bhogilal Shah v. ITO, 66 DTR 236 (Guj.)**
- ❖ Principle of Res Judicata (Estoppel by record) - does not ordinarily apply to tax laws
- ❖ The decision in one Assessment Year is not binding on parties for subsequent AYs
  - **ITO vs Murlidhar Bagwandas, 52 ITR 335 (SC)**

# ISSUES ON REASSESSMENT U/S 147

- ❖ Notice not valid merely because of later decision of the courts when there was no failure to disclose any material facts on part of the assessee
    - **Simplex Concrete Piles (India) Ltd vs DCIT, 262 ITR 605 (Cal)**
  - ❖ **Contrary view** - Reassessment made in order to withdraw the investment allowance allowed earlier was held valid.
    - **Chandi Ram vs. ITO, 225 ITR 611 (Raj)**
  - ❖ Addition made on some other ground without making any addition on the ground based on which reassessment was initiated:
  - ❖ 'assess or reassess such income and also any other income chargeable to tax which has escaped assessment'
  - ❖ 'such income' refers to income escaping assessment. The words 'and also' cannot be read as being in the alternative to but to be read as being conjunctive and cumulative
    - **Ranbaxy Laboratories Ltd vs CIT, 336 ITR 136 (Del)**
    - **CIT vs Jet Airways (I) Ltd, 331 ITR 236 (Bom)**
- [Impliedly overruled by Amendment]*

# ISSUES ON REASSESSMENT U/S 147

- ❖ **Contrary View** Once the proceedings have been initiated on a valid notice, it becomes the duty of the AO to levy tax on the entire income (including 'any other income') which may have escaped assessment and comes to his notice during the course of the proceedings
  - **N Govindaraju vs. ITO &Anr., 280 CTR 316 (Kar)**
- ❖ When a notice for reassessment is issued by the assessing officer under section 148, the jurisdiction of the Commissioner of Income Tax to revise the order of assessment is not taken away
  - **CIT vs Gulam Rasool, 225 ITR 904 (MP)**
- ❖ Where jurisdiction under section 263 ought to be exercised with reference to an issue which was covered by original date of assessment under section 143(3) and it did not form part of re-assessment, limitation must necessarily begin to run from order under section 143(3)
  - **Louis Berger Group Inc. vs. ADIT, 152 ITD 587 (Hyd.)**

# Writ Petition against Notices for Reassessments – Permitted?

- ❖ Existence of Alternative Remedy, Court will not ordinarily entertain Writ Petition - Writ Not Maintainable
  - ❖ When a statutory forum is created by law for redressal of grievances, a writ petition under Article 226 of the Constitution should not be entertained ignoring the statutory dispensation.
  - ❖ Where an assessee had only questioned the correctness or otherwise of the notices issued, reassessment orders passed and consequential demand notices issued thereon, the writ court ought not to have entertained the writ petition filed by the assessee
- **CIT & Ors. vs. Chhabil Dass Agarwal, 357 ITR 357 (SC)**

# OVERVIEW OF SECTION 153A

- ❖ **Section 153A(1)**: Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 Assessing Officer shall -
- ❖ In case of a person where search is initiated u/s 132 or
- ❖ Books of account, other documents or any assets are requisitioned u/s 132A
- ❖ Issue notice requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the previous year in which search is conducted or requisition is made
- ❖ For assessment or reassessment of the total income of said six assessment years
- ❖ The provisions of the Act shall apply to the said return as if such return were a return required to be furnished under section 139

# OVERVIEW OF SECTION 153A

- ❖ **Proviso 2:** That assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate.
- ❖ **Section 153A(2):** The abated proceedings shall revive, if the proceedings initiated or any order of assessment or reassessment made u/s 153A(1) has been annulled in appeal or any other legal proceeding
- ❖ No revival if such order of annulment is set aside
- ❖ **Explanation 1:** Save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- ▶ **Explanation 2:** 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.

# OVERVIEW OF SECTION 153C

- ❖ **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-
- ❖ 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 AO having jurisdiction over such other person
- ❖ That AO shall proceed against such other person and issue notice and assess or reassess the income of the other person, if he 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

# OVERVIEW OF SECTION 153C

- ❖ **First Proviso:** The reference to the date of initiation of the search u/s 132 or requisition u/s 132A in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person
- ❖ **Second Proviso:** Central Government may specify the class of cases in respect of such other person, in which AO shall not require to issue notice to assess or reassess total income for six assessment years except in cases where any assessment or reassessment has abated

## Section 153B: Time Limit for Completion of Assessment in Search Cases

- ❖ **In case of person searched:** 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.
- ❖ **In case of any other person:** 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 or 9 months from the end of the financial year in which books of account or documents or assets seized/requisitioned are handed over to the AO having jurisdiction over such person; **whichever is later.**
- ❖ **In case of requisition:** 21 months of requisition under section 132A was executed

## Section 153B: Time Limit for Completion of Assessment in Search Cases

- ❖ Period of stay
- ❖ Period covered between the issue of direction u/s 142(2A) & the day furnishing the audit report
- ❖ Time in giving an opportunity of being heard u/s 129
- ❖ Period between the date of application u/s 245C & date on which order u.s 245D(1) is recd. by the CIT
- ❖ Period between making the application u/s 245Q to AAR & the date of receipt of order of rejection of appl./ receipt of pronouncement of the AAR by the CIT u/s 245R
- ❖ Period commencing from the date of annulment of proceeding or order section 153A(2) till the date of receipt of the order setting aside the order of such annulment, by the Commissioner.
- ❖ Whether assessment order not only to be passed but also to be served within the limits prescribed u/s 153B?
  - Held yes. **Shanti Lal Godawat vs. ACIT, 126 TTJ 135 (Jodh.)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Valid search is a sine qua non-for initiating the proceedings under section 153A
- ❖ Satisfaction must be recorded by the authorizing officer before issue of warrant
- ❖ The appellate authority has to examine whether the authority had before him materials to form an opinion
- ❖ The authorization needs to be proved when the legality of the search is challenged by the assessee
  - **Mamchand & Co. v. CIT, 76 ITR 217 (Cal)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ If the action of the officer issuing the authorization or of the designated officer is challenged, the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the Court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed.
- ❖ Search u/s 132 conducted not on the basis of any prior information or material inducing any belief but purely on the suspicion and therefore, the action u/s 132 is bad in law. Consequent assessment u/s 153A null and void-ab-initio.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Records of the authority who has authorized the search to be examined to ensure that the said authority has concluded that there are reasons to believe to conduct a search
- ❖ The fact that search has been conducted would not justify issuance of notice under section 153A. If it is only during a valid search when certain incriminating materials are detected, notice could be issued.
- ❖ It is settled position of law that unless the incriminating material leading to an inference of undisclosed income is found, invocation of section 153A is not possible.

- **CIT vs. Kabul Chawla, reported in 380 ITR 573 (Del)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Validity of search can be questioned before the first appellate authority
- ❖ Issue of notice u/s 143(2) of the Act is a mandatory condition to initiate any assessment proceedings under the law by the assessing officer
- ❖ Jurisdictional aspects are not procedural irregularity and it is not curable
- ❖ Provisions of sec. 143(2) have to be applied in its fullest scope irrespective of assessment or reassessment made u/s 153A.

**- ACIT & Anr vs. Hotel Blue Moon, 321 ITR 362 (SC)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ It is mandatory u/s 153A/153C to issue and serve notice u/s 143(2) after return u/s 153A is filed. Assessment u/s 153A can be annulled for non-service of the notice

- **CIT vs. Pawan Gupta & Ors. 223 CTR 487 (Del)**

- ❖ **Whether the search material be considered in piecemeal?**

The position of law as regards block assessments has been that the assessment u/s 158BC should be made after considering all the materials and that there cannot be a pick and choose method in framing the assessment. The position was found to be the same in respect of an assessment in pursuance of search u/s 153A. Where it was found that the Assessing Officer acted on an agreement for sale ignoring the fact that there were further materials found during the same search, the AO was not justified in relying upon one document ignoring the other documents equally relevant.

- **ACIT v. Hotel Harbour, 2 ITR (Trib) 178 (Cochin)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Whether the time-limit for service of notice u/s 143(2) shall also apply to assessment proceedings contemplated under section 153A?
- ❖ Would it start from end of month in which return is filed in response to notice issued under section 153A/142(1)?
- ❖ In case, no notice has been issued, then, shall it be construed from end of month in which return was filed?  
  
- **Held, yes. DCIT vs. Sushil Kumar Jain, 127 ITD 264 (Ind - ITAT)**
- ❖ Notice u/s 148 in relation to an assessment year other than six assessment years falling within the jurisdiction of s. 153A is valid, submission that in cases of search, s. 148 has no application and no order of reassessment can be passed beyond six years provided in s. 153A is not correct.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Meaning of Pending assessment: An assessment can be said to be “pending” only if the AO is statutorily required to do something further. If notice u/s 143(2) 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.
- ❖ The power given by the proviso to “assess” income for six assessment years has to be confined to the undisclosed income unearthed during search cannot include items which are disclosed in the original assessment proceedings.

**All Cargo Global Logistic Ltd. vs. DCIT, 147 TTJ 513 (Mum. Trib.)**

# ISSUES ON SEARCH ASSESSMENTS - Scenario

## Explaining the Provisions of Section 153A

Scenario	Scope of Section 153A
<p><b>I. No return of income is filed by the assessee (whether or not time limit to file return of income has expired)</b></p>	<p>Since no return has been filed, the entire income shall be regarded as undisclosed income.</p> <p>Consequently, AO would have the authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3). No requirement to restrict to documents found during the course of search.</p>
<p><b>II. Return of Income filed by the assessee – return yet to be processed u/s. 143(1)</b></p>	<p>Since return filed is 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).</p>
<p><b>III. 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.</b></p>	<p>Since intimation is not akin to assessment and time limit for notice u/s. 143(2) has not expired, even though return has been processed, it will be case where return has not attained finality. Consequently, AO would have authority / jurisdiction to assess the entire income, similar to jurisdiction in regular assessment u/s. 143(3).</p>

# ISSUES ON SEARCH ASSESSMENTS - Scenario

## Explaining the Provisions of Section 153A

<p><b>IV. 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</b></p>	<p>Return of Income of the assessee shall be treated as having being 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. 153 A Copyright 2013. strictly private &amp; confidential. Not for circulation. 9 Accordingly, the scope of assessment u/s. 153 A would be restricted to incriminating material found during the course of search.</p>
<p><b>V. Notice u/s. 143(2) issued and assessment pending u/s. 143(3)</b></p>	<p>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 course of search.</p>

# ISSUES ON SEARCH ASSESSMENTS - Scenario

## Explaining the Provisions of Section 153A

<p><b>VI. Assessment u/s. 143(3) completed</b></p>	<p>Since regular assessment proceedings have been completed and 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. 153 A Copyright 2013. strictly private &amp; confidential. Not for circulation. 10 Accordingly, the scope of assessment u/s. 153 A would be restricted to incriminating material found during the course of search.</p>
<p><b>VII. Proceedings u/s. 147 pending where: (a) Assessment originally completed u/s. 143(3); Or (b) No assessment earlier completed u/s. 143(3)</b></p>	<p>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:</p> <p>(a) Assess income that could validly be assessed in the pending proceedings u/s. 147, and</p> <p>(b) income to be assessed on the basis of incriminating material found in the course of search.</p>

# ISSUES ON SEARCH ASSESSMENTS

- ❖ The final conclusion of the Mumbai ITAT Special Bench in the case of All Cargo Global Logistics Ltd. v. DCIT (supra), on the issue:
- ❖ 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.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ In respect of assessment years for which original assessments have already been completed on date of search, total income shall be determined by restricting additions only to those which flows from incriminating material found during course of search;
- ❖ Assessments pending on date of search are concerned, those assessments would abate in terms of second proviso to section 153A(1) and total income shall be computed afresh uninfluenced by fact whether or not there is any incriminating material found in course of search.

**- Sanjay Aggarwal v. DCIT, 47 Taxmann.com 210, (Del Trib.)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Where there was nothing on record to suggest that any material was unearthed during search or during proceedings initiated u/s 153A showing that certain relief in form of deduction was wrongly allowed to assessee, Commissioner could not invoke jurisdiction u/s 263 on ground that assessment order passed under section 153A, read with section 143(3) was erroneous or prejudicial to interest of revenue.

## **CIT vs. Murli Agro Products Ltd., 49 Taxmann.com 172 (Bom.)**

- ❖ Once proceedings u/s 153A is initiated, pursuant to search, order of assessment in respect of six years stands reopened and, therefore, in absence of any valid assessment order in existence, revisional proceedings u/s 263 cannot be initiated in such a case.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ 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 under section 132;
- ❖ Non-fulfillment of conditions laid down in sections 153A is a jurisdictional defect which cannot be cured.
  - **Jindal Stainless Ltd. v ACIT, 122 TTJ 902 (Del)**
- ❖ Mere issue of warrant of authorization without conducting search of the premises mentioned in the warrant of authorization would be meaningless & would not serve the purpose of section 132. Therefore, actual search shall have to be carried out necessarily before proceeding u/s 153A.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Whether proceedings can be continued without giving notice u/s 153A?
- ❖ Continuation of assessment proceeding after initiation of search without giving any notice under section 153A and passing impugned final order of assessment was held to be illegal, arbitrary and wholly without jurisdiction.  
**- Abhay Kumar Shroff v. CIT, 162 Taxman 429 (Jhar.)**
- ❖ Two distinguishable categories of persons are treated the same for the purposes of assessing or reassessing their income is ill-founded and the persons mentioned in s. 153A are specifically excluded from s. 153C.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Whether Assessing Officer must record his satisfaction about existence of undisclosed income before proceeding against a person other than one searched?
- ❖ AO must record his satisfaction that some undisclosed income belongs to a person other than the person with respect to whom search was made u/s 132, the books of account, other documents & assets seized or requisitioned are handed over to the AO having jurisdiction over such other person & the AO has proceeded u/s 158BC against such other person

# ISSUES ON SEARCH ASSESSMENTS

- ❖ **Timing of recording Satisfaction Note**
- ❖ Recording Satisfaction note for **Section 158BD** is sine qua non
- ❖ Satisfaction may be recorded at the time of/ along with initiating proceedings u/s 158BC against searched persons
- ❖ In the course of assessment proceedings u/s 158BC
- ❖ Immediately after assessment proceedings are completed u/s 158BC of searched person
- ❖ Section 153C is in pari materia with section 158BD
- ❖ Circular No.24/2015 in F.No.279/Misc/140/2015/ITJ dated 31.12.2015

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, Section 153C would have no application.
- ❖ The satisfaction is required to be preceded by the investigation and not that the investigation to be preceded by the satisfaction
- ❖ Satisfaction may be on the basis of material which is seized not from the noticee but from the other assessee or a person in respect of whom action was taken u/s 132 or 132A
- ❖ The reasons must be recorded by the Assessing Officer having jurisdiction over the assessee who had been searched before issuing the notice u/s 153A of the Act.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Section 158BD/153C authorizes notice to a third party to a search, if documents or assets relating to such third party had been the subject matter of seizure during search and there was satisfaction of the AO having jurisdiction over the searched person as to the ownership of such seized records or assets and prima facie satisfaction of concealment, communicated to the Assessing Officer having jurisdiction over such third party.
  - **Asst. CIT v. M. N. Rajaraman, 5 ITR (Trib) 261 (Chennai)**
- ❖ Where proceedings under section 153C/ 158BD were initiated against the assessee on the basis of the statement recorded during the search operation. No material relating to assessee has been seized except statement recorded, whether section 153C/158BD can be invoked?
- ❖ Statement is neither 'books of accounts' nor 'assets', statement was also not a document which was found during the search. Thus, it cannot be said that the statement was 'seized' during the search. Therefore, initiation of proceedings under sec. 153C/ 158BD against the assessee was illegal

# ISSUES ON SEARCH ASSESSMENTS

- ❖ The statement recorded under Section 132(4) of the Act during the search has 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.  
- **Smt. Chitra Devi vs. CIT 77 TTJ 430 (Jodhpur)**
- ❖ Condition precedent for issuing notice u/s 153C & 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 under section 153C was not valid  
- **Vijaybhai N. Chandrani v. ACIT, 231 CTR 474(Guj.)**
- ❖ The word ‘**belongs to**’ is replaced with the word ‘**relates to**’ by Finance Act, 2015 and decision in Vijaybhai N. Chandrani case has been overruled

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Validity of proceedings on the basis of a joint warrant: Assessment proceedings initiated on the basis of joint Panchnama are null and void ab initio. 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.”
- ❖ Proceedings u/s 153A/153C can be initiated on the basis of the statement of a third party?
- ❖ Revenue had taken into consideration a statement made by a third party independent of the search and since nothing was discovered in the course of the search, the action was contrary to law.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Whether provisions of section 127(2) have to be resorted to while making assessment u/s 153C and in such cases, an opportunity of being heard has to be afforded to assessee before passing an order for transfer of records under section 127?
  - **Held yes. Mrs. Mukta Lalita v. CIT, 98 Taxman 193 (AP)**
  - **Affirmed in K.P. Mohammed Salim v. CIT, 169 Taxman 465 (SC)**
- ❖ Whether the Income Tax Department can inspect the data contained in files/folders in the laptops of the auditors, where that data is relating to clients for proper assessment?
  - **Held yes. DIT(Inv.) vs. S R Batliboi & Co. 186 Taxman 350 (SC)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ **Last authorization or last panchnama?**
- ❖ Authorization referred to in Section 158BE(1)/ 153B(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. Therefore, the purport of this explanation is to count the period of limitation of two years from the date when the last panchnama was drawn in respect of any warrant of authorization, if there were more than one warrants of authorization.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ No order of assessment/ reassessment shall be passed by an AO below the rank of Joint Commissioner in respect of each assessment year except with the prior approval of the Joint Commissioner.
- ❖ Where the search has been conducted on 11.09.2001 but the revenue had sought to proceed against the assessee on the strength of a statement made by a third party on 25.09.2001 and 14.12.2001. As it was manifestly not any part of the sequence of the search, the said statement was held not to be of any consequence.

**- CIT v. Balaji Wire (P.) Ltd. 304 ITR 393 (Delhi)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ The books of account and documents which were seized from the premises of R do not belong to the assessee. It is nowhere stated that all the transactions recorded in these books of account or documents relate to the assessee. No valuable belonging to the assessee was seized during the course of search. The term 'belonging' implies something more than casual association. Therefore, AO was not justified in initiating action under section 153C against the assessee.

**- P. Srinivas Naik vs. ACIT, 117 ITD 201 (Bang.)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Validity of assessment proceedings where search is based on invalid warrant: Any Search warrant issued under section 132 in the name of a dead person is invalid and void ab initio and no valid assessment can be made on strength of such an invalid search warrant.
- ❖ Warrant of authorization for search in the name of assessee corporation and its president. Satisfaction note did not indicate any information in possession of authorized officer for initiating search proceedings. Proceedings held to be invalid.  
  
- **Suvidha Association v. Addl. DIT (Inv.), 320 ITR 461 (Guj.)**

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Where assessee had offered, additional income following search and such income had been accepted in entirety without any attempt to obtain explanation of assessee, penalty u/s 271(1)(c) was not leviable on assessee.

**- CIT vs. Suresh Chand Bansal, 223 CTR 128 (Cal.)**

- ❖ Whether issue decided by the Settlement Commission (ITSC) can be considered by AO in pursuance of s. 153A?

**No.** Once the order was passed by the ITSC u/s 245D(4), the order of the ITSC is conclusive as to the matters stated therein as provided u/s 245-I & the matters covered by the order of the ITSC could not be reopened in any proceeding under the Act or under any law for the time being in force.

# ISSUES ON SEARCH ASSESSMENTS

- ❖ Whether, Settlement Commission can empower income-tax authorities to frame another assessment order, while settling undisclosed income of assessee for period covered by its order?
  - Held, no. **Smt. Neeru Agarwal vs. UOI, 231 CTR 153 (All)**
- ❖ Where income of assessee was subject matter of settlement before Settlement Commission, Assessing Officer could proceed for assessment of same income for same years in pursuance of notice under section 153A /C (158BC/BD)?
  - Held, no. **Parag Nivesh (P.) Ltd. vs. DCIT, 240 ITR 419 (Cal)**



***THANK YOU***

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