

POST SEARCH ASSESSMENT - LEGAL AND PRACTICAL ISSUES

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Introduction:-

Since the enforcement of the Income Tax Act, 1961 there was no separate procedure for assessment of search cases. However a provisional order u/s 132(5) was passed for release of seized assets. Thereafter, with effect from 1st June 1995 scheme of block assessments in section 158BC and 158BD as per chapter XIVB was introduced. The main object of introducing block assessment scheme was early finalisation of search assessment and reduction in multiplicity of proceedings. In this scheme, the assessment was to be made on the basis of seized documents only. There was no scope for disturbing regular assessments. Although there were some analogies and differences of opinion in some of the provisions of the scheme. However, within the span of about eight years most of the analogies and disputes were settled by various judgements of honourable Courts and Tribunals but after settling of most of the issues, the government of India withdrew this scheme in respect of searches made from 1st June 2003 and inserted new sections viz Section 153A, 153B, 153C and 153D in chapter XIV for post search assessment purpose.

What is Post Search Assessment :-

To unearth black money and undisclosed wealth, search and seizure operation as well as survey operation is conducted on the assessee by the income tax department. During course of search and seizure operation u/s 132(1), various books of account, documents, valuables like jewellery, cash etc. are found or seized. Thereafter, on the basis of such documents and valuables as well as other information, an appraisal report is made by the ADIT or DDIT who sends the same to the assessing officer for assessment purpose. All the files of group after the search and seizure operation are normally centralised to central circle under the jurisdiction of a particular assessing officer for assessment purpose. Thereafter, on the basis of seized material and appraisal report and other information the assessment of six years preceding the search year are made. The assessment of the cases where the books of account and the documents are requisitioned by the ADIT and DDIT are also made for six years. Such assessments are called post search assessment made u/s 153A. However, in case of year of search, the assessment is made u/s 142 (1) of the Income tax Act 1961.

Appraisal Report: –

Since the appraisal report plays an important role in passing the post search assessment order, it is essential to know about appraisal report in context of post search assessment.

An appraisal report is a report which contains the investigation proceedings of the assessee whereas assessment order is an order passed by the assessing officer for the purpose of determination of liability.

The time limit for the completion of the appraisal report is two months from the last date of panchnama. Thereafter, the concerned officer sends the appraisal report along with the seized material to the assessing officer who starts the assessment proceedings.

Issue of Notice:-

For the purpose of assessment, notice u/s 153A/C is issued for the purpose of submission of return of income. Such notices are issued for six assessment years preceding the financial year in which search was conducted. The time limit for issue of notice u/s 153A and 153C is not mentioned in the act. However, the AO should issue the notice within such period from conclusion of search operation so that sufficient time is left for assessment. For example, suppose the assessment was getting time barred in December 2011 and the assessing officer issued notice only on 1st November 2011 for furnishing of return and hence after furnishing of return very little time is left for assessment. Such assessment for sake of natural justice can be treated as null and void by the appellate authorities.

Section 153A:-

Notice u/s 153A can be issued to the assessee in whose name warrant is executed or requisition is made. For example, suppose a search and seizure operation was made in the group of X on 3rd November 2011 and warrant was executed in the name of MR X. The AO will issue notice u/s 153A on Mr. X in respect of six assessment years 2006-2007 to 2011-2012 only for furnishing of returns and assessment will be made for these 6 years only under this section.

Section 153C:-

Notice u/s 153C can be issued on those persons to whom the books, documents and other valuable found during search operation belongs and further such documents or books should be incriminating in nature. For example, in course of a search operation made in the group of X some incriminating documents belonging to A are found. The notice u/s 153C shall also be issued to A.

Return of Income:-

The assessee shall file six returns of income in pursuance to notice u/s 153A and notice u/s 153 C within date specified in such notice. The return of income in respect of the year of search is to be filed as per provisions of sec 139.

Time limit for furnishing of Return:-

The time limit for furnishing of return is specified in the said notice as per discretion of AO. Normally, this period varies between 15 days to 45 days.

Extension of Time:-

Section 153A does not speak specifically about the extension of time to be granted for filling of return u/s 153A. However, with reference to clause 14 of The General

Clause Act, 1897 which states that where any power is conferred that unless a different intention appear, that power may be exercised from time to time.

Revised Return:-

The return filed in pursuance to notice u/s 153 A can be revised.

Specific Return Form:-

There is no specific form for furnishings of such returns .Such returns are to be furnished as per procedure applicable for original returns furnished by assessee. However, a letter can also be filed by the assessee for treating the original return of income duly filed in pursuance of notice u/s 153A of income tax act, 1961. But it is always preferable to furnish returns and not the letters.

Time limit for Assessment u/s 153A:-

The time limit for completion of assessment u/s 153A is 21 months from the end of financial year in which the search was initiated.

Abatement of Assessment Proceedings:-

As soon as the search is initiated u/s 132(1), all the pending assessments are abated as per provisions of Sec 153A. Whether assessment u/s 153A is mandatory or not , there is difference of opinion, one view is that the assessment under the above provision is mandatory in all the cases even if no incriminating material is found in course of section 133(2). The following judgments of tribunal support these views.

- 1) **Rajat Tradecom India 120 ITD 48 (Indore).**
- 2) **Shivnath Rai Harnarain (India) Limited Vs. DCIT 117 TTJ 480.**
- 3) **Shyam Lata Kaushik Vs. ACIT 114 ITD 305.**

The other view is that completed assessment should not be abated because the second proviso to sec 153A speaks about assessment and reassessment pending on the date of initiation of search shall abate. It does not provide that completed assessment should be abated. The reliance is placed in decision of **CIT vs Smt. Shaila Aggarwal 204 taxman 276 (All.)**, **Meghmani Organics Ltd. vs. DCIT 129 TTJ 255 (Ahd)**, **Charchit Aggarwal vs. Asstt. Commissioner of Income Tax 129 TTJ 438 (Del)**, and **Helios Food Additives Pvt. Ltd. vs. DCIT in ITA No. 3900, and 3901/2009**. Further if no incriminating material is found during the course of search and seizure in respect of an issue no addition can be made in assessment u/s 153A/C. In support of this contention, reliance can be made in decision of **LMJ international Ltd Vs DCIT 119 TTJ 214 (Kol)**.

Recently, Special Bench, Bombay ITAT has passed a landmark judgment in **All Cargo Global Logistics Ltd vs. DCIT (ITA no. 5018 to 5022 & 5059/M/10)** as under

- A) 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;
- B) 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.

Assessment of other Personal U/S 153C:-

The assessment of other persons who are not covered under section 153A but are related to persons covered under section 153A can also be made by assessing officer. There are certain conditions for making assessment on such persons as per provision of section 153C -

1. The AO must be satisfied that any money, bullion, jewellery and other valuable article things or books of accounts or documents seized or requisitioned belong to such other persons. In this connection, it has been held **in Singhed Technical Education Society Vs. ACIT (IT AN 114 to 117/PN/10)** that for initiation of proceedings u/s 153C the documents seized must belong to third person and should be incriminatory in nature.
2. Such books of accounts or documents or assets seized or requisitioned should be handed over to the AO having jurisdiction over such persons.
3. Thereafter, AO shall issue notice to such other persons as per provisions of section 153C and shall make the assessment.

Whether Section 153C would apply where books seized don't belong to third party :—

This is a major controversy in respect of proceedings u/s 153 C of the Income Tax Act. The word belonging is very important in section 153 C. The notice u/s 153 C should not be issued unless the seized document belong to the person on whom such notice is being issued. The AO cannot assume jurisdiction/s153C where books of accounts seized during course of search doesn't belong to third party. This view is supported by the decision of Bangalore bench in the case of **P Shrinivas Naik 306 ITR 411.**

Time Limit for Assessment U/s 153C:-

The time limit for completion of assessment u/s 153C is 24 months as per clause A or clause B of this section or 12 months from the end of financial year in which books

of account or documents or assets seized or requisitioned are handed over to the AO having jurisdiction, whichever is later.

Prior Approval :-

For passing order u/s 153 A and C , prior approval of Joint Commissioner or Addl. Commissioner is required .It should not be routine approval. The joint/addl. Commissioner should apply his mind before giving his approval. The assessing officer should mention in body of the order that permission of the joint/addl. commissioner has been obtained.

Practical guidelines for post search Assessment-

There is difference in handling scrutiny assessment and post search assessment. Handling of post search assessment requires special skill and experience. Through this article I have tried to give some practical guidelines to the authorised representatives so that they can handle the post search assessment smoothly and properly. Some of guidelines are enumerated below:-

To Obtain list of centralised cases:-

As soon as an A/R is empowered to represent post search assessment after the search and seizure operation comes to an end, he should try to collect the list of cases centralised if his client does not have such list with him. It is not necessary that all such cases which have been centralised will be assessed u/s 153 A or C but such cases can be selected for scrutiny.

Preliminary requirement for return:-

The assessee should keep the computation of income , Profit and loss account and balance sheet , Acknowledgement of Return of income ready as soon the search proceeding is over for all the past assessment years so that fresh returns for all the previous assessment years can be furnished within specified due date mentioned in the notice issued by A.O..

Preparation of return:-

The assessee should prepare the return of income even before he receives notice u/s 153 A or C because generally he has to furnish large number of returns and if he starts the preparation after receiving the notice u/s 153 A or C it may be difficult for him to furnish all the returns within due dates..

Preparation Of Supporting Documents for assessment proceeding:-

After furnishing of return, the assessee should get supporting documents ready for assessment such as documents in support of claim under chapter VI A such as LIP receipts, NSC Xeroxes, 80G certificates, TDS certificates, Salary certificates, commission certificates, loan confirmations and various other evidences.

Order U/s 127:-

The assessee should check that order u/s 127 has duly been passed .Order u/s 127 is an order passed by a commissioner of income tax in respect of transfer of jurisdiction from one assessing officer to another assessing officer under different CIT charge. If the assessing officer has issued notice prior to order u/s 127 such notice shall be null and void.

Verification of Bank Accounts during assessment proceedings:-

All the bank accounts of the group which are found during the course of search operation are examined by the assessing officers to find out whether such bank accounts are duly reflected in the regular books of account of the respective account holder of the group. During the course of search and seizure prohibitory order is imposed on such bank accounts and such prohibitory order is withdrawn only after verifying that such bank accounts are duly recorded in the regular books of accounts. For verification purpose various necessary documents such as Profit & Loss A/C, Balance Sheet, Computation of Income, Acknowledgment of Return of Income, Last Page of bank Statement, Bank Reconciliation Statement if any are furnished before the ADIT or the DDIT. So the assessee should keep the duplicate of all such documents furnished before DDIT so that at the time of assessment, he can furnish the same to AO immediately.

Conclusion:--

Although the recent decision of ITAT special bench (Bombay) in All Cargo Global Logistics Ltd VS DCIT (ITA no. 5018 to 5022 & 5059/M/10) has put some light on the issue of abatement of assessment u/s 153A but still there is a lot of controversies, which are yet to be settled in respect of assessment U/S 153 A. there are also major controversies in respect of assessment u/s 153 C related to belonging of seized material. You can download the decision of ITAT special bench Bombay from my website www.incometaxparaskochar.com.
