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"Anatomization of the provisions of Section 153C"

Executive Summary

This article covers the trail of changes made in section 153C from time to time and stand taken by the judiciary on the imperative issues. The section 153C was introduced by Finance Act, 2003 with effect from 01/06/2003. It replaced the provisions relating to block assessment contained in Chapter-XIVB and introduced the new procedure for making assessment u/s 153C which is now a part of Chapter-XIV "Procedure for Assessment". The section 153C provides that where search is conducted on a person and undisclosed assets/documents indicating undisclosed income are found as belonging to or pertains to "other person" other than,"searched person", than in that case, proceedings u/s 153C would be undertaken against the "other person". The assessment of income of "such other person" will be made in the manner provided u/s 153A. In this article, all the major issues which are in litigation during operation of section 153C are briefly discussed keeping in view the judgements of various courts and are super-scripted with each and every issue discussed below.

1. **Section 153C starts with non-obstante clause relating to normal assessment procedure covered by section 139, 147, 148, 149,151 and 153 in respect of searches made after 31st May, 2003. The issue to be dealt is whether assessing officer is justified in initiating the "re-assessment proceedings under section 147" of the I.T. Act, 1961 based on material seized from the "searched party", which ought to have been framed u/s 153C.**

Once the section 153C is triggered, it is mandatory for the Assessing Officer to issue notice calling upon the assessee to file returns for the six assessment years prior to the year in which the search on took place. If the interpretation as per the doctrine of harmonious construction is accepted, it will mean that during pendency of assessment proceedings under Section 153C, separate

proceedings under Section 148 may be initiated for making assessment of escaped income, discovered otherwise, than during the course of search. However, the doctrine of harmonious construction cannot be made applicable in the case of assessment under section 153C. It is a settled position that once proceedings under Section 153C are initiated, then no parallel proceedings under Section 143(3)/147 can be made. Thus, once the conditions as mentioned in the said section are satisfied, then the only route available with AO is to make assessment under section 153C not under section 147. Therefore, if the AO has reopened proceedings under section 147 instead of section 153C, in that case the assessment made under 147 will be annulled. The same view has been taken by the various courts in the favour of the assessee.¹

¹[2015] 64 taxmann.com 15) G. KOTESWARA RAO AND OTHERS VERSUS DCIT

¹2020 (4) TMI 289 - ITAT DELHI - M/S. SAURASHTRA COLOR TONES PVT. LTD. V. ITO

¹[2015] 61 taxmann.com 50 (Pune - Trib.) ACIT VERSUS SHRI RADHESHYAM B. AGRAWAL

¹2018 (11) TMI 1736 - ITAT DELHI - SH. GIRISH CHANDRA SHARMA VERSUS ITO

¹[2011] 16 taxmann.com 373 (Amritsar) ITO VERSUS ARUN KUMAR KAPOOR

¹[2014] 42 taxmann.com 376 (Chhattisgarh) ACIT v. Sunil Kumar Jain

¹2016 (7) TMI 258 - ITAT DELHI- RAJAT SHUBRA CHATTERJI VERSUS ACIT

¹[2014] 45 taxmann.com 468 (Rajasthan) Mukesh Modi v. DCIT

¹2012 (9) TMI 1109 - ITAT AMRITSAR- ITO vs. SURINDER SINGH

¹[2012] 26 taxmann.com 185 (Agra) ACIT - 6, JHANSI VERSUS VIDIT KUMAR AGARWAL

2. Satisfaction is of utmost Importance in the case of assessment made under section 153C

There is no separate requirement of recording of satisfaction for initiating proceedings u/s 153A, as no search u/s 132(1) can be initiated without a satisfaction note by "conducting officer" of the "searched person". However, in the case of assessment of "other person" u/s 153C, the **satisfaction** is of supreme importance. Therefore, one satisfaction is to be recorded by the AO of the "searched person" that the books of accounts/documents belongs to/relates to "another person" and the second satisfaction is to be recorded by the AO of "other person" that the books of accounts/assets have bearing on the total income of other person. Whether a single satisfaction or a dual satisfaction is required to initiate proceedings under section 153C? However, **single satisfaction note** will serve the purpose where the **AO of "person searched" and "other person" is same,**

Two separate satisfactions are obligatory in the case where the AO of "searched person" and the AO of "other person as referred in section 153C is different.

- a) As per the provisions of Section 132(4A)(i), read with 292C, the presumption in case of searched person, is that the documents belong to such person from

whose possession, the documents were seized. Therefore, the first step is that AO of the searched person is required to record satisfaction that asset/documents did not belong/relates to the “searched person” and relates to “other person “.

- b) That even the CBDT also issued a circular no. 24/2015 explaining the requirement of "recording of satisfaction" by the Assessing Officer before issuing notice under section 153BD/153C of the Act. It is observed that when proceedings are proposed to be initiated under section 153C of the Act against the "other person", it must be preceded by a satisfaction note by the Assessing Officer of the “searched person”. It is further observed that the AO of "searched person" will record satisfaction that the seized documents belong/relates to "other person".
- c) Thereafter and on being satisfied that the books of accounts or documents or assets so seized or requisitioned shall be handed over by the Assessing Officer of “searched person”, to the Assessing Officer having jurisdiction over such “other person”. That the aforesaid requirements before issuing notice under section 153C of the Act are held to be mandatory by many courts in catena of decisions.
- d) The Assessing Officer of the “searched person” simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, the same is for administrative convenience and the failure by the AO of the searched person to make a note in the file of the searched person, will not vitiate the proceedings u/s 153C.^{2A}
- e) The AO (having jurisdiction) will again record a separate satisfaction^{2B} that "assets/documents" seized or requisitioned have a bearing on the determination of the “total income” of such “other person”. Then only, the AO (having jurisdiction) can proceed u/s 153C against such other person in the manner provided u/s153A.

^{2A}[2020] 115 taxmann.com 105 (SC) Super Malls (P.) Ltd. v. PCIT

^{2B}[2015] 64 taxmann.com 309 (Delhi) - PCIT VERSUS NIKKI DRUGS & CHEMICALS PVT. LTD.

^{2B}[2014] 52 taxmann.com 220 (Delhi) - PEPSI FOODS PVT. LTD. VERSUS ACIT

^{2B}[2014] 43 taxmann.com 446 (SC)- M/S CALCUTTA KNITWAER

Satisfaction in the case where the AO of the “searched person” and the “other person” is same:

Where Assessing Officer of “other person” and Assessing Officer of “searched person” is same and satisfaction note recorded by Assessing Officer clearly states that documents seized belongs/relates to “other person” and not searched person. In such a case, assessment made under section 153C based on one satisfaction note^{3A} prepared by the Assessing Officer is lawful. Therefore, the earlier arguments that two separate satisfactions by the same AO is also required are of no relevance^{3C}. This even as observed and held by the Delhi High Court in the case of Ganpati Fincap, in case the Assessing

Officer of the searched person and the other person is the same, there need not be two separate satisfaction notes recorded by the Assessing Officer of the searched person, where he is also the Assessing Officer of the other person.

Conclusion

Two separate satisfactions are required in the case where *the* AO of the “searched person” and AO of “other person” are different. The first satisfaction is required by the AO of “searched person” that asset/documents does not belong/relates to the “searched person” and relates to “other person “. The second satisfaction is to be recorded by the AO of “other person” that "assets/documents" seized or requisitioned have a bearing on the determination of the “total income” of such “other person”. The satisfaction note of AO of “other person” should not be identical with the satisfaction note of the AO of “searched person”. Where Satisfaction notes are identically worded carbon copy^{3B} in which no reasons were recorded for identical conclusion that seized documents mentioned therein did not belong to searched person but to “other person”, proceeding initiated under section 153C are not valid .Whereas one satisfaction will serve the purpose where *the* AO of the “searched person” and AO of “other person” is same.

^{3A}[2020] 115 taxmann.com 105 (SC) M/S SUPER MALLS PRIVATE LIMITED V. PCIT

^{3A}[2017] 395 ITR 692 Ganpati Fincap Service Pvt. Ltd. v. CIT

^{3B}[2018] 91 taxmann.com 252 (SC) ITO v. Canyon Financial Services Ltd.

^{3C}[2017] 82 taxmann.com 357 PCIT v. Instronics Ltd.

^{3C}[2018] 97 taxmann.com 682 ITAT MUMBAI - M/S. SKYLARK BUILD VERSUS ACIT

^{3C}[2015] 58 taxmann.com 293 PCIT VERSUS AAKASH AROGYA MANDIR PVT. LTD.

^{3C}[2015] 60 taxmann.com 484 CIT VERSUS M/S MECHMEN, BHOPAL

^{3C}2017 (11) TMI 909 - ITAT DELHI - ADARSH KUMAR VERSUS DCIT

3. Time frame within which the AO of “other person” can record satisfaction in order to invoke provisions of s.153C

There is no time limit prescribed in section 153C for recording of satisfaction. However the CBDT by relying upon the judgement of Apex Court in the case of **M/s Calcutta Knitwear[2014] 43 taxmann.com 446 (SC)** has issued a circular no. 24/2015 dated 31/12/2015, specifying the period when the AO can record the satisfaction in the case of person other than searched person, which is as given below:-

- (a) At the time of or along with the initiation of proceedings against the searched person u/s 158BC of the Act, or
- (b) In the course of the assessment proceedings under section 158BC of the Act; or

(c) Immediately after the assessment proceedings are completed u/s 158BC of the Act of the searched person."⁴

Section 158BC = Section 153A (as per amendment made by F.A.2003w.e.f. 01/06/2003)

Section 158BD = Section 153C (as per amendment made by F.A.2003w.e.f. 01/06/2003)

Conclusion

From the above, it is a settled position that the satisfaction in case of "other person" can be recorded at any time as mentioned in supra. The assessment order cannot be set aside on mere ground that satisfaction notes were recorded after assessment framed in case of searched person.⁴ The satisfaction in case of "**other person**" cannot be recorded prior to initiating proceedings u/s 153A **in case of "searched person"**. The satisfaction note prepared before initiation of proceedings u/s 153A is without jurisdiction and is therefore unjustifiable in the eyes of law.^{4A}

⁴[2017] 84 taxmann.com 298 (SC) Bipinchandra Chimanlal Doshi v. CIT-II

⁴[2014] 43 taxmann.com 446 (SC) CIT-III v. Calcutta Knitweaves

^{4A}2020 (1) TMI 85 - ITAT DELHI- M/S SPLENDOR LANDBASE LIMITED VERSUS ACIT

4. No Action under section 153C can be taken where the seized documents were not in the name of the assessee.

The proceedings u/s 153C can be initiated where the AO of the searched person satisfied that the documents do not belong/relates to the searched person. However, if the 'assessee searched' during the course of recording the statement identify and categorically clarify the nature of transaction and the person to whom such relates, in that case the proceedings u/s 153C is valid even if the seized documents were not in the name of the assessee. The satisfaction drawn on the basis of standalone statement of the person searched u/s 132(4) without any documentary evidence cannot take the

shape of books of accounts or documents as mentioned in section 153C(1)(b). There can be a situation that incriminating documents were found and statement of "searched person" was recorded that the said documents relate to "other person". However, the searched person retracted the same within the reasonable time. Now the question is whether the AO of other person can make addition in the hands of the assessee based on documents and retracted statements of searched person. The additions in such case will not sustain on the reasoning of the lack of satisfaction. The very first step in the case of assessment u/s 153C is to draw satisfaction that the documents so seized do not belong to the searched person.^{5A}

^{5A}[2017] 83 taxmann.com 161 (Bombay)- CIT v. **Lavanya Land (P.) Ltd**

^{5A}2019] 103 taxmann.com 9 (SC)- PCIT v. **Krutika Land (P.) Ltd**

^{5A}(2018) 98 taxmann.com 468 (SC)- PCIT versus **Vinita Chaurasia**

^{5A}[2016] 70 taxmann.com 95 (Delhi) CIT v. **Harjeev Aggarwal**

5. Satisfaction should not be arrived at casual manner. It should be based upon cogent material

Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. The presumption as to asset, books of accounts, etc. is governed by section 292C(1)(i) belong or belongs to the person from whom said were found during the course of search u/s 132 or survey u/s 133A. In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction' and the **same interpretation has been given by various courts.**⁵

⁵[2019]109 taxmann.com 202 (Gujarat) PCIT v. **Himanshu Chandulal Patel (Para 20,21)**

⁵[2011] 10 taxmann.com 191 (Delhi)- CIT v. **Raj Pal Bhatia**

⁵[2008] 170 Taxman 164 (Rajasthan)- CIT v. **Smt. Chitra Devi Soni**

⁵[2015] 54 taxmann.com 295 (Delhi - Trib.)- DCIT v. **Qualitron Commodities (P.) Ltd**

⁵[2019]112 taxmann.com 163 (Karnataka) PCIT v. **Star PVG Exports**

6. **The statement recorded u/s 133A cannot be taken as a base for recording the satisfaction for proceedings u/s 153C:**

The main plank of revenue's submission was that the disclosure made in his statement under section 133A was sufficient to be construed as incriminating material qua all the assessment years, for which could be re-opened by invoking section 153C. The statement was in fact not under section 132(4) but under section 133A. There is a difference between a statement made during a survey under section 133A and that made during the course of search under section 132(4). Section 132(4) states that the authorized officer may, during the course of search and seizure, "examine on oath any person who is found to be in possession or control of any books of account, documents, monies, bullion, jewellery..."and that any statement made during such examination may be used thereafter in evidence in any proceeding under the Act. On the other hand, section 133A does not talk of the recording of any statement on oath. Under section 133A(3)(iii), the Income-tax Authority acting under the said provision could "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act." Therefore, there is a considerable difference in the nature of the statement recorded under section 132(4) and that recorded under section 133A(3)(iii)^{5B}. Therefore in the case of survey if documents related to earlier years are found then in that case the recourse available with the AO is to complete the assessment u/s 147 and not u/s 153C.

^{5B}[2016] 72 taxmann.com 63 Kottakkal Wood Complex v. DCIT

7. **Scope of completed versus abated assessment.**

The assessment under section 153C can be broadly divided in two categories, one is in respect of "**competed assessment**" made under section 143(3)/147/153A/153C and will also cover those years for which period for issue of notice u/s 143(2) has been expired"andonly "processing of return u/s 143(1) has been made". The second category"**Unabated Assessment**" is related to the years for which assessment is pending and the notice under section 143(2) or 148 has been issued. The said years for which notice has been issued but assessment is yet to be made will abate and assessment will be framed under section 153C. Theassessmentof search year will be completed in the normal manner under section 143(3). The time period for completion of assessment for all the year is same as per provision of section 153B.

Assessment related to unabated Assessment Years

The pending assessments in lieu of notice issued U/s 143(2) or U/s 148 respectively, shall abate. The criteria to check the years which will abate will be premeditated from the year preceding the year when the relevant material is handed over to the AO of "other person" by the AO of "searched person". The same is as per first proviso to section 153C. The assessment U/s 153C shall be framed for each assessment year which is covered in period of 6 year or extended period. **The AO will make assessment on the basis of the incriminating documents as found from the premises of searched**

person and can also make addition by considering other issues as noticed in return or on the basis of information on the basis of which the reasons recorded u/s 148 as the case may be.

^{6A}Scope of Assessment u/s 153C where the assessment for the same year was earlier completed u/s 143(3)/147/153A/153C: -

The AO of other person must record satisfaction for each year separately keeping in mind the incriminating material as found from the person searched for each assessment year. The issues once decided in the assessment cannot be reconsidered and re-adjudicated, unless there is some fresh material related to other person is found during the search in relation to such points. This argument also gets strength from the amendment as made by finance act 2014. "If, such Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. This amendment will take effect from 1st October, 2014". **Furthermore, the same interpretation has been given by various courts that completed assessments can be interfered with by Assessing Officer while making assessment under section 153A/153C only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment.**

^{6A}[2014] 49 taxmann.com 172 (Bombay) CIT v. Murli Agro Products Ltd.

Scope of Assessment framed u/s 153C in the case of un-abated assessments and no assessment being made earlier:

The issue that no addition u/s 153A/153C can be made in respect of unabated assessments where no incriminating material has been found is yet to pass the test of judiciary. There are pronouncements of various high courts on same issue in which there is finding that addition cannot be made without incriminating documents on record^{6C}. However, on the contrary, there are judgements by various courts^{6B} in which it had been held that addition under section 153A/153C can be made even without incriminating material on record for the concerned assessment year. The issue is debatable as there is no Supreme Court ruling concluding the issue that invocation of section 153A/153C to re-open concluded assessments in absence of incriminating material found during search qua each assessment year. The Supreme Court in the case of **Principal Commissioner of Income-tax, Central IT, New Delhi v. Meeta Gutgutia** has only dismissed the SLP. The mere dismissal of the appeal against High Court ruling is not binding on all the courts as per Article 141 of the constitution. However, the Apex Court has granted the SLP in **PCIT v. Dhananjay International Ltd., PCIT v. Gahoi Foods (P) Ltd. and PCIT vs. Devi Dass Garg** filed by the revenue.^{6D} Therefore, it is the Apex court to decide the fate of such cases in which addition was made without any incriminating material found during the course of search.

Conclusion

The section 153C clearly mentions that the AO shall proceed against other person and issue notice and assess or reassess the income of other person in accordance with the provision of section 153A. Now in order to decide this issue it is necessary to understand the provisions of section 153A. There are various decisions which were decided in the favour of assessee but the SLP for the same has been granted by the Apex Court^{6D}. Therefore, it is the Apex court to decide the fate of such cases in which addition was made without any incriminating material found. However, by literal interpretation of law, it appears that the addition for such years will survive. Even some High Courts had decided the issue against the assessee^{6B}. "There is nothing in the language of the provisions of section 153A, which would indicate that the assessment under section 153A is to be restricted to incriminating material which is discovered during the search. When the legislature has provided unfettered power to the Assessing Officer then the court cannot impose fetters. Even the memorandum explaining the Finance Act does not use the word "undisclosed" anywhere while explaining the new provisions of Section 153A to 153C. Lastly if deduction not claimed in original return is permitted under section 153C then as to why the contents of audited balance sheet and profit and loss account filed should not be allowed to be verified by the AO by following the same analogy.

^{6B}[2014] 49 taxmann.com 465 *Filatex India Ltd. v. CIT*

^{6B}[2014] 52 taxmann.com 172 (*Allahabad*) *CIT v. Raj Kumar Arora*

^{6B} [2012] 24 taxmann.com 98 *CIT v. Anil Kumar Bhatia*

^{6B}[2012] 25 taxmann.com 227 (*Delhi*) *CIT v. Chetan Das Lachman Das*

^{6C}[2020] 114 taxmann.com 104 (SC) *PCIT v. Caprihans India Ltd*

^{6C}[2017] 84 taxmann.com 290 (SC) *CIT, Pune v. Sinhgad Technical Education Society*

^{6C}[2017] 81 taxmann.com 292 (*Gujarat*) *PCIT v. Saumya Construction (P.) Ltd*

^{6C}[2017] 79 taxmann.com 398 (*Bombay*) *CIT v. Gurinder Singh Bawa*

^{5C}[2018]96 taxmann.com 468 (SC) *PCIT v. Meeta Gutgutia* [javascript:void\(0\);](#) **(SLP dismissed on 02/07/2018, Diary No. 18121/2018)**

^{6C}[2017] 84 taxmann.com 287 (*Delhi*) *PCIT, Delhi-2 v. Best Infrastructure (India) (P.) Ltd.* **(SLP withdrawn on 22/11/2019 due to lower tax effect) (Diary No. 14821/2018)**

^{6C}[2017] 79 taxmann.com 398 (*Bombay*) *CIT v. Gurinder Singh Bawa*

^{6C}[2017] 88 taxmann.com 610 (*Gujarat*)- *HIGH COURT OF GUJARAT- PCIT v. Devangi*

^{6C}[2018] 99 taxmann.com 424 (*Bombay*) *HIGH COURT OF BOMBAY CIT v. SKS Ispat & Power Ltd.*

^{6C}[2017] 88 taxmann.com 611 (*Gujarat*) *HIGH COURT OF GUJARAT PCIT v. Dipak Jashvantlal Panchal*

^{6C}[2017] 84 taxmann.com 57 (*Delhi*) *HIGH COURT OF DELHI Chintels India Ltd. v. DCIT*

^{6C}[2017] 78 taxmann.com 207 (*Karnataka*) *HIGH COURT OF KARNATAKA PCIT v. Smt. Lakshmi Singh*

^{6C}[2017] 78 taxmann.com 274 (*Karnataka*) *HIGH COURT OF KARNATAKA PCIT v. Smt. Sunita Bai*

^{6C} [2017] 81 taxmann.com 83 *HIGH COURT OF DELHI- PCIT v. Ms. Lata Jain*

^{6C}[2015] 58 taxmann.com 78 (*BOMBAY*) *CIT v. Continental Warehousing Corporation Ltd* **[SLP dismissed on 24/04/2018, (Diary No. 32310/2015)]**

^{6C}[2015]61 taxmann.com 412 HIGH COURT OF DELHI CIT v. Kabul Chawla (SLP dismissed on 17/09/2018, (Diary No. 3267/2016) due to lower tax effect)

^{6C}[2017] (2) TMI 1252 Best City Developers India (P) Ltd. [SLP withdrawn on 22/11/2019, (Diary No. 11150/2018) due to lower tax effect]

^{6D}[2020] 117 taxmann.com 118- Supreme Court of India- PCIT v. Gahoi Foods (P) Ltd.(in case of non-abated assessments)

^{6D}[2020] 114 taxmann.com 351 (SC) PCIT v. Dhananjay International Ltd.(in case of non-abated assessments)

^{6D}[2020] 114 taxmann.com 552 (SC) PCIT, Agra v. Devi Dass Garg(in case of completed assessments)

8. The criteria of six/ten years to be counted from which year:-

The assessment in the case of other person is to be made as per the provisions of section 153C. The AO shall proceed against such “other person” and issue notice and assess or re-assess the income of “other person” in accordance with the provisions of the section 153A. The notice u/s 153C is issued after the AO of the other person is satisfied that the books of accounts or documents or assets seized or requisitioned have bearing on the determination of Total Income of such other person.

Position prior to amendment made by Finance Act, 2017

The searches which were conducted before 01/04/2017 will be governed by the earlier provisions of section 153C. Therefore, the period of six years shall be counted from the previous year preceding the year in which satisfaction was recorded. For instance, the satisfaction for initiation of proceedings under section 153C was recorded by the Assessing Officer of other person on 08/09/2010. The notice u/s 153C can be issued for A.Y 2005-06 to A.Y 2010-11. However, the AO has issued the notice u/s 153C for AY 2003-04 and 2004-05 by considering the relevant six assessment years prior to the assessment year relevant to the previous year in which search is conducted (i.e. 28/02/2009). In fact, these two years are beyond the period of six years preceding the financial year in which satisfaction under Section 153C of the Act was recorded. As such the assessment framed u/s 153C for A.Y 2003-04 and 2004-05 is not valid in the eyes of law. The Delhi High court in the case of **RRJ Securities** has affirmed the said position of law and the SLP (Diary No.23182/2016) against the said order was filed by the revenue before the apex court. However, the said issue was not decided as the same was wrongly tagged with Container Corporation of India, which was dismissed vide order (Diary No.33542/2012) dated 24/04/2018. However, in the case of Raj Buildworth (P) Ltd., similar issue was cropped up and SLP of the said case was dismissed by Supreme Court (Diary No.21284/2019) vide order dated 24/10/2019 .

There can be possibility that the search was conducted before 01/04/2017 and the satisfaction was recorded after 01/04/2017. In that case, the period of six years will be reckoned from the date of recording of satisfaction.⁷

⁷[2020] 113 taxmann.com 601 (SC) PCIT v. Raj Buildworth (P.) Ltd

⁷[2017] 79 taxmann.com 115 (SC) CIT v. RRJ Securities Ltd (Para 24)

⁷2016 (2) TMI 277 –CIT VERSUS RL ALLIED INDUSTRIES

Position after amendment made by Finance Act, 2017

As per amendment made by Finance Act, 2017 with effect from 01/04/2017, the period of six/ten years as referred in section 153C shall be reckoned from the date of search and not from the date of recording of satisfaction. This amendment in effect states that the block period for the "searched person" as well as the "other person" would be the same six/ten AYs immediately preceding the year of search. The Finance Act 2017 has inserted the limb that "six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisitions is made" and as such the period for 'searched person' and 'other person' will be same. This amendment is prospective in nature and cannot be applied to searches made before 01/04/2017. This view has been confirmed by the judiciary also.^{7A}

^{7A} [2017] 85 taxmann.com 269 (Delhi) PCIT VERSUS SARWAR AGENCY PVT. LTD

9. The amendment to section 153A by Finance Act, 2017, which extended limitation for re-opening assessment to 10 years be restored for proceedings which were barred by limitation

The Reason for amendment made in section 153A/153C as made by Finance Act 2017 due to "The existing provisions of clause (c) of the section 197 of the Income disclosure Scheme 2016. The said clause was omitted by finance act 2017 w.r.e.f.01-06-2016 and in order to protect the interest of the revenue, the Finance Act, 2017 has made amendment in section 153A to empower an assessing officer to issue notice to an assessee in whose case tangible evidence(s) is/are found during search or seizure or in requisition, which is represented in form of undisclosed investment in any asset, pertaining to an assessment year beyond 6 assessment years but not beyond ten assessment years (referred as "relevant assessment years"), to furnish return of income in respect of relevant assessment years. The finance act 2017 has extended the period beyond 6 assessment years by making amendment in clauses (a) and (b). Therefore, it is obligatory to know the portrayal of word "relevant assessment year" which have been explained by inserting the explanation 1 to section 153A by Finance Act 2017 which read as under: -

Explanation 1

For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten

assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

The above explanation is being interpreted by considering an illustration, that the search was conducted on the assessee on 24.05.2017. In that case the years to be covered under section 153A will be A.Y. 2009-10 to A.Y. 2017-18. As the language emphasizes 10 years from end of the assessment year relevant to the previous year in which search is conducted. Therefore, the year of search shall be included together with for scheming period of 10 years. In practice it has been spotted that the AO are issuing the notice for A.Y. 2008-09 by interpreting the ten years preceding the assessment year relevant to the previous year in which search is conducted. The same is not correct and the assessment framed under section 153A for A.Y. 2008-09 will become lethal as the notice issued for A.Y 2008-09 is non jurisdictional.

Legality of assessment framed U/s 153A for the years in respect of which limitation had already expired before the date the amendment became effective.

The period of six years has been extended to nine years by finance act 2017 (as explained in Para 1), therefore scepticism is raised that what will be the fate for those assessment years in respect of which limitation had already expired/ lapsed before the date the amendment became effective. For instance, the search is conducted on 24.05.2017 and the AO has issued the notice under section 153A on 10.04.2018 for A.Y. 2009-10 to A.Y. 2017-18. The question then was, whether the AO can make an assessment under the amended provision for those year when the period prescribed for issue of notice for such assessment had before the amended Act came into force expired? Indisputably the period for issue of notice of assessment under the unamended section 153A had expired, as it then stood, and there was no provision for extending the period beyond 6 years preceding the year in which search was concluded. The power to issue notice U/s 153A for A.Y. 2009-10 to 2011-12 expired on 01-4-2017 under the unamended provision of Section 153A. The AO commenced a proceeding under section 153A for A.Y. 2009-10 to A.Y. 2011-12 on 24.05.2017, by applying amended section and not otherwise. The assessment made under section 153A for A.Y. 2009-10 and A.Y. 2010-11 can be challenged in the court on the ground that the subsequent amendment cannot seek to enhance or extend limitation for reopening assessment for those assessment years in respect of which limitation had already expired/ lapsed before the date the amendment became effective. The subject assessment years i.e. A.Y 2009-10 and 2010-11 could not have been reopened beyond 31/03/2017 even in terms of provisions of section 149.

a) **Rule of Strict Construction**

Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. **Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality.**

- b) The application of the amended Act is subject to the principle that, unless otherwise provided, if the right to act under the earlier statute has come to an end, it could not be revived by the subsequent amendment which extended the period of limitation. The right to issue a notice under the earlier Act came to an end before the new Act came into force. There was undoubtedly no determinable point of time between the expiry of the earlier Act and the commencement of the new Act; but that would not, affect the application of rule of strict construction.
- c) Once the period of limitation ends, by virtue of the provisions of the Act, it is not open to the revenue, to revisit such issues that are final. Therefore, matters that attain finality under existing law due to bar of limitation cannot be reopened for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment made in section 153A by finance act 2017 cannot be used to re-open those matters that attain finality.
- d) On a proper construction of the provisions of section 153A and keeping in view the fourth proviso to section 153A, the effect of its operation i.e. 01-4-2017, cannot be given retrospective effect for assessments which have already become final due to bar of limitation prior to 1-4-2017. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot, in the absence of clear contrary intendment expressed therein, be given greater retrospectively than is expressly mentioned so as to enable the authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Therefore, amendment to section 153A by Finance Act, 2017, which extended limitation for reopening assessment to 9 years, could not be resorted for reopening proceedings concluded before amendment became effective. This same view has been held by various courts^{7B} while explaining the extended limitation for initiation of assessment proceedings under section 149 and section 150 of Income Tax Act 1961.

^{7B}[2002] 122 Taxman 426/254 ITR 772 (SC) K. M. Sharma v. ITO

^{7B}[2018]100 taxmann.com 324 Brahm Datt v.ACIT

^{7B}[1964] 53 ITR 231 (SC)S.S. Gadgil v. Lal & Co

^{7B}[2012] 21 taxmann.com 535(Delhi)C.B. Richards Ellis Moritius Ltd. v. Asstt. DIT

^{7B}[1976] 103 ITR 123 (SC) Govinddas v. ITO

<https://www.taxmann.com/fileopen.aspx?id=10101000000078804&source=link>

^{7B}[1961] 42 ITR 589 (SC)CIT v. Scindia Steam Navigation Co. Ltd.

^{7B}[2014] 49 taxmann.com 249 CIT v. Vatika Township (P.) Ltd.(para 18)

- e) However, the department can argue that the same ratio can't be made applicable to the assessment A.Y. 2011-12 as the period of limitation u/s 149 has not expired as on date of amendment, i.e. 1st April 2017. The limitation period for issue of notice u/s 148 was getting barred on 31/03/2018 and reopening was legitimate on the date of amendment, i.e. 01st April, 2017. Moreover, if the provisions of section 153A are applied, then the matter was barred by limitation for A.Y. 2011-12 also. Therefore, it is very difficult to conclude that the A.Y. 2011-12 can be challenged on the ground of limitation or not.

Conclusion

From the above discussion, it can be stated that assessment proceedings framed u/s 153A can be challenged in the court on the ground that subsequent amendment cannot seek to enhance or extend limitation for opening assessment for those years in respect of which limitation has already been expired on the date when amendment became effective. Moreover, the said issue is full of litigation and yet to pass the test of judiciary.

10. Sunset litigation related to words “belongs to” by introducing words “relate to” by Finance Act, 2015

The expression 'belongs to' should not be confused with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of the property although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchaser's, premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a photo copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In order to end the litigation regarding the word "belongs to or belong to a person", an amendment was made by Finance Act, 2015. The word “**belongs to or belong to a person**” was substituted with the word “**pertains to or pertain, or any information contained therein, relates to other person**”. It is pertinent to mention here that the said amendment is prospective and is applicable for the searches conducted after 01/06/2015 and as such the old

provisions of "**belongs to or belong to a person**" shall prevail in case of search made before 01/06/2015.

Position before amendment made by Finance Act, 2015

The searches which were conducted prior to 01/06/2015 will be governed by the provisions of section 153C of the Income Tax Act as amended by Finance Act, 2014. As per the provisions of section 153C (as amended by Finance Act, 2014), where 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". **It was held by various courts that the photocopies in the possession of searched person does not necessarily means and imply that they "belong" to the person who hold the originals.** Possession of documents and possession of photocopies of documents are two separate things. While the searched person may be the owner of the photocopies of the documents and the original documents may be owned by other person. Courts had given judgements in the favour of assessee by stating that, until and unless the AO did not record any satisfaction that some money, bullion, jewellery or books of account or other documents found from the searched person **belonged** to other person, initiation of proceedings under section 153C on assessee was void ab initio.⁸

⁸[2017] 79 taxmann.com 115 (SC) SUPREME COURT OF INDIA- CIT v. RRJ Securities Ltd

⁸[2014] 50 taxmann.com 299 PepsiCo India Holdings (P.) Ltd. vs. ACIT

⁸[2013] 214 Taxman 558 Kamlesh Bhai Dharamshi Bhai Patel v. CIT (para 5)

⁸[2017] 86 taxmann.com 84 (Delhi) PCIT (Central) – 2 v. Index Securities (P.) Ltd.

⁸[2015] 54 taxmann.com 379 (Delhi - Trib.)- Tanvir Collections (P.) Ltd. v. ACIT

⁸[2017] 81 taxmann.com 260 ARN Infrastructure Ltd. V. ACIT

⁸[2015] 53 taxmann.com 400 (Delhi - Trib.)- Natural Products Bio Tech Ltd. v. DCIT

⁸[2018] 99 taxmann.com 426 CIT vs. Renu Construction (P) Ltd.

⁸[2018] 89 taxmann.com 10 ACIT v. Pepsi Foods India (P) Ltd

⁸[2019] 110 taxmann.com 28 (Delhi) - THE PCIT vs. DREAMCITY BUILDWELL PVT. LTD

Position after amendment made by Finance Act, 2015

In order to end the litigation Finance Act, 2015 made an amendment and substituted the word "belongs or belong to the person" with the words "pertains or pertain to, or any information contained therein, relates to other person". This amendment makes good all the disputes which had arisen due to non-clarity of the words used in the earlier provision. Now even if books of

accounts or incriminating documents do not belong to person other than searched person, but if they pertain to "other person" and have bearing on the Total Income of other person, AO can initiate proceedings u/s 153C on such other person.

Furthermore, the amendment made by Finance Act, 2015 is prospective in nature, i.e. it applies to the searches made on or after 01/06/2015. Below given are few of the judgements which support the following view.^{8A}

^{8A}[2019] 106 taxmann.com 137 Anil Kumar Gopikishan Agrawal v. ACIT

^{8A}[2020] 116 taxmann.com 618 Mukesh Manekchand Sheth v. ACIT

11. Applicability of Provisions of Section 143(2) vis-a-vis Section 153C

Every clause of a section should be construed with reference to the context and other clauses thereof, so that; the construction to be put on a particular provision makes a consistent enactment of the whole statute. The section 153A starts with non obstante clause and it is pertinent to mention that section 139 is one of the sections which is covered in the notwithstanding clause. The notice under section 143(2) is required to be issued when return has been furnished under section 139 or in response to notice under section 142(1). In the case of section 153A, the section 139 has specifically been kept aside. The words "so far as may be" in clause (a) of sub section (1) of Section 153A could not be interpreted that the issue of notice under Section 143(2) was mandatory in case of assessment under Section 153A. The use of the words, "so far as may be" cannot be stretched to the extent of mandatory issue of notice under Section 143(2). It is noted, a specific notice is required to be issued under Clause (a) of sub-section (1) of Section 153A calling upon the persons searched or requisitioned to file return. That being so notice under Section 143(2) could not be contemplated compulsory for assessment under Section 153A. The same view has been affirmed by various courts⁹.

⁹[2012] 20 taxmann.com 387 (Delhi) Ashok Chaddha v. ITO (Para No.7)

⁹[2017] 81 taxmann.com 347 (P & H) Tarsem Singla v. DCIT (Para No. 9)

⁹[2018] (6) TMI 1462 - ITAT DELHIRoshan Lal Verma v. DCIT (Para No. 9).

12. Whether issue decided with Settlement Commission can be considered by AO by issuing fresh notice 153C/153A/148

Where income of assessee was subject-matter of settlement before Settlement Commission and the order u/s 245D(4) has been passed by the settlement commission, thereafter, the AO has no jurisdiction to re-open the assessment proceedings. Where once an order u/s 245D(4) has been

passed, in that case, assessment for that year stands concluded. The same is as per section 245-I of the Act, which bears the heading "Order of settlement to be conclusive", postulates that every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in that Chapter, be reopened in any proceeding under the Act or under any other law for the time being in force. **However, the proceeding can be reopened in the manner as provided under section 245D(6) of the Act, which says that every order passed under section 245D(4) of the Act shall provide for the terms of settlement, including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.** Therefore, the only ground on which an order of settlement made under section 245D(4) of the Act can be reopened is that if it is subsequently found by the Settlement Commission that the order under section 245D(4) of the Act had been obtained by fraud or misrepresentation of facts. Therefore, once an order has been passed under section 245D(4) of the Act by the Settlement Commission, the assessment for the year stands concluded and the Assessing Officer thereafter has no jurisdiction to reopen the assessment.¹⁰ Similarly, If the assessee had not raised any fresh claim during entire Settlement proceedings till settlement order was passed by Commission, it could not urge the same in revision application u/s 264.

¹⁰[2019] 108 taxmann.com 50 Komalkant Faikirchand Sharma vs. DCIT

^{10A}[2019] 103 taxmann.com 301 Mandhana Industries Ltd. vs. PCIT

[2018] 89 taxmann.com 46 Shree Ganpati Synthetics (P.) Ltd. v. ACIT

¹⁰[2014] 46 taxmann.com 14 Omaxe Ltd. vs. DCIT

¹⁰[2012] 20 taxmann.com 164 (Cuttack) Jammula Shyam Sundar Rao (HUF) v. ACIT

¹⁰[2012] 25 taxmann.com 190 (Delhi) Omaxe Ltd. v. ACIT

¹⁰[2011] 13 taxmann.com 29 (Allahabad) CIT, Lucknow v. Smt. Diksha Singh

¹⁰[2010] 187 Taxman 198 (Allahabad) Smt. Neeru Agarwal v. Union of India

¹⁰[2000] 108 TAXMAN 127 (CAL.) Parag Nivesh (P.) Ltd. v. DCIT

¹⁰[1993] 68 Taxman 59 (SC) Jyotendrasinhji v. S.I. Tripathi

13. **New claim made by filing a return u/s 153A/153C in case of Abated Assessment:**

The taxpayer is required to file the return considering the provisions of the section 153A/153C relating to assessment year falling within the period of six

assessment years or for the relevant assessment year or years as referred in section 153A/153C. However, where the taxpayer's assessment is pending, due the notice already issued under section 143(2) or under section 148 of the Act and assessment is not completed up to date of search, in these circumstances the assessments pending on the date of search shall get abate in view of the second proviso to section 153A of the said Act. Therefore, once assessment gets abated, then the assessment for such years will be made u/s 153A/153C. It is open for the AO to complete the assessment by verifying the contents of the original return as well as the income un-earthed out of the incriminating documents. Consequently, it is open for both the parties, i.e. the assessee as well as revenue to make claims for allowance or to make disallowance, as the case may be, etc. Taxpayer can lodge a new claim for deduction etc. which remained to be claimed in his earlier/regular return of income. This is so because assessment was never made in the case of the assessee in such a situation.

- a) It is fortified that once the assessment gets abated, the original return which had been filed loses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return. In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of the Act and the provisions of the said Act shall apply to the same accordingly and all legitimate claims would be open to the assessee to raise in the return of income filed under section 153A(1).
- b) Therefore it can be concluded that once assessment gets abated as per the second proviso to section 153A, it is open for the assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income, because assessment was never made/finalised in the case of the assessee in such a situation." The second proviso to section 153A(1) of Income Tax Act, 1961 is reproduced below:-

"Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate".

The views as given in the aforementioned paragraphs had been affirmed in the following judgements:-

[2020] 115 taxmann.com 165 (Bombay) PCIT, Central-2 v. JSW Steel Ltd

[2017] 79 taxmann.com 306 (Bombay) CIT-I, Pune v. B. G. Shirke Construction Technology (P.) Ltd

14. New claim made by filing a return u/s 153A/153C in case of non-abated assessment but incriminating documents were found for that year

The legal position, for the concluded assessment years which have not been abated by virtue of second proviso to Section 153A(1) of the act, assessments u/s 153A has to be essentially based on the documents unearthed during the course of search and seizure operations. In these circumstances, the assessment under section 153A/153C is made by considering the incriminating material. Therefore, if any claim which was not made in original return can be made in the return filed to notice under section 153A/153C. The following arguments should be taken care while calming fresh claim if not allowed by the AO during assessment.

a) The fresh claim can be made in the return of income filed under section 153A/153C. The arguments get support from the explanation to section 153A which states that "save as otherwise provided in section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section". Therefore, the explanation itself makes compulsory that all the provisions of the Act shall apply and as such, a fresh claim should be allowable even if the same is claimed in the return of income filed in response to notice u/s 153A.

b) It is pertinent to mention that the section 153A(1)(a) mandates the AO to issue notice to tax payer requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139. Therefore the return filed in response to notice u/s 153A is as good as a return filed u/s 139 and as such the deductions under Part-C of Chapter VI-A, losses and fresh claims cannot be denied if it is claimed in the return filed in response to notice u/s 153A/153C. Few of the cases are mentioned herein under wherein it was held that the taxpayer is entitled to raise a claim of expenses, deduction and carry forward of losses etc. in the return of Income filed u/s 153A/153C of the act.¹¹

c) It is further important to note that the provisions of assessment in the case of search under Section 153A etc. have been inserted by the Finance Act, 2003 w.e.f. 1st June, 2003. These provisions are successor of the special procedure for assessment of search cases under Chapter XIV-B starting with Section 158B. Whereas Chapter XIV-B required the assessment of "undisclosed income" as a result of search, which has been defined in Section 158B(b), Section 153A dealing with assessment in case of search w.e.f. 1st June, 2003 requires the AO to determine "total income" and not "undisclosed income". The total income shall be calculated by keeping in the provisions of the income act 1961. Even the constitution of India in article 265 has stated that that "No tax shall be levied or collected except by the authority of law. The taxing authority cannot collect or retain tax that is not authorized. Any

retention of tax collected, which is not otherwise payable, would be illegal and unconstitutional.

d) There is an old circular 14(XL-35) issued by CBDT dated April 11, 1955, in the said circular, it has been stated by the Board that "Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law."

e) There are catena of Judgments in which it has been held that if the undisclosed income earned is directly from the activities as required in the relevant section under Part-C of Chapter VI-A, the tax payer shall be eligible for deduction under Chapter VI-A. The taxpayer discloses the undisclosed income in the return filed in response to notice u/s 153A/153C and also claims the deduction. The only criteria are that the income should be purely linked with activities as mentioned in relevant section. However, if undisclosed income representing unaccounted cash, investment and are nowhere linked with the activities as mentioned in the relevant section, then in that case the deduction is not to be allowed. The Illustrative list of few of the cases in which the profit based deductions were allowed from undisclosed income.¹²

The list of the case laws in which fresh claim is permitted in the return filed in response to notice U/s 153A/153C in the case of non-abated assessment:-

¹¹[2013] 32 taxmann.com 133 ACIT v. V.N. Devadossa

¹¹[2011] (12) TMI 714 - ITAT PUNE SANJAY NANDLAL VYAS VERSUS ITO, CENTRAL-2, NASHIK

¹¹[2017] 79 taxmann.com 96 PCIT v. Neeraj Jindal

¹¹[2017] 80 taxmann.com 162 (Gujarat) HIGH COURT OF GUJARAT Kirit Dahyabhai Patel v. ACIT

¹¹Splendor Landbase Ltd. V. ACIT, Central Circle-3, New Delhi

¹¹[2018] 95 taxmann.com 224 (Calcutta) Shrikant Mohta v. CIT

¹²[2014] 52 taxmann.com 360 (Pune - Trib.) Naresh T. Wadhvani v. DCIT, Pune

¹²[2014] 44 taxmann.com 242 (Pune - Trib.) Malpani Estates v. ACIT, Pune

¹²[2012] 25 taxmann.com 173 (Bom.) CIT, Central II v. Sheth Developers (P) Ltd

¹²[2015] 62 taxmann.com 18 (Pune - Trib.) ITO v. Gajraj Constructions

However, there are various judgments against the assessee in which it has been held that It is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because an assessment under Section 153A of the Act in pursuance of search or requisition is required to be made. The AO is required to assess or reassess total income of the six years and, out of the six years, if any assessment or reassessment is pending on the date of initiation of the search, the same would abate. The necessary corollary of the second proviso is that the assessment or reassessment proceedings, which 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 such cases, where the assessments already stand completed, the AO can reopen the assessments or reassessments already made without following the provisions of Sections 147, 148 and 151 of the Act and determine the total income of the assessee. It is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because an assessment under Section 153A of the Act in pursuance of search or requisition is required to be made. The illustrative list of the judgements relied upon by the department in which the fresh claim was not permitted keeping in view the second proviso to section 153A.

[2013] 36 taxmann.com 523 (Rajasthan) HIGH COURT OF RAJASTHAN Jai Steel (India), Jodhpur v. ACIT

[2009] 124 TTJ 674 (Jodhpur) Suncity Alloys (P.) Ltd. v. ACIT

[2009] 34 SOT 348 (Delhi) Charchit Agarwal v. ACIT, New Delhi

15. Whether approval of JCIT is mandatory for completing assessment in pursuance of section 153C

Section 153D is a blanket provision which requires prior approval of Joint Commissioner and it is the mandatory requirement to take the approval for the draft assessment order. The Assessing Officer below the rank of Joint Commissioner has to obtain prior approval of the Joint Commissioner before passing the assessment order u/s 153A or 153C. In many cases, it has been observed that the draft assessment orders were submitted before Joint Commissioner on the last day of matter getting barred by period of limitation. The approval granted by the Joint

Commissioner in the given scenario is mechanical and without consideration of relevant issues and therefore, the assessment made by AO u/s 153A/153C on the basis of mechanical approval is to be set aside. Moreover, in the case of Akil Gulamli Somji [2012] 20 taxmann.com 380 (Pune), the AO submitted the draft assessment order and the Joint Commissioner made some changes in the draft which was subsequently incorporated by the AO in the final order. However, after making the necessary changes, the AO did not put the assessment order for approval. In the said case, the assessment framed u/s 153A was null and void. Therefore, a formal approval from Joint Commissioner has to be obtained before passing order u/s 153A/153C.¹³

¹³[2012] 20 taxmann.com 380 (Pune) Akil Gulamli Somji v. ITO

¹³[2013] 37 taxmann.com 7 Amarlal Bajaj v. ACIT

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