

Search Assessments – Back to square one!

Short Summary

Assessment of search cases under the Income-tax Act, 1961 has been subject matter of continuous litigation. In order to reduce the litigation, the law makers have tried to change the procedure for assessment of search cases, number of times. This article highlights the history of procedure of assessment of search cases in India under the Income-tax Act, 1961.

Introduction

When you are finished changing, you are finished.

- Benjamin Franklin

The procedure for search assessments has undergone changes on several occasions under the history of domestic tax law in India. It keeps on changing.

The history of the basic procedure in relation to assessment of search cases is very long and major changes dates back to the year 1995. Thus, we need to understand different procedure of assessments governing the search cases, at different point of time in the law.

The Finance Bill 2021 proposes to introduce a new procedure for reassessment. The new procedure for re-assessment would also be applicable to assessments arising out of search cases. However, the new re-assessment procedure would be applicable to assessment/ reassessments undertaken pursuant to search with certain exceptions. Let us see the history of the procedure pertaining to search assessments and few of interesting facts.

Search u/s 132

Typically, a search is carried u/s 132 of the Act, following a set guideline – wherein the authorised officers have information in their possession with respect to certain undisclosed income.

History of assessment procedure in case of search cases

Procedure for assessment of search cases under the special provisions of Section 153A/ Section 153C, in case search is initiated after 1st June 2003

Currently (*before the amendment proposed by Finance Bill 2021*), assessments in case of search cases were governed by the special provisions of Section 153A/ 153C of the Income-tax Act, 1961 ('Act'). Interestingly, Section 153A/ 153C, have been in the statute for almost 18 years!

Typically, under section 153A of the Act, the tax officer is required to issue notice to the tax payer. The said notice is issued for filing return in respect of 6 assessment years preceding the assessment year of search and also the relevant assessment year of search as well. The tax officer also would assess/ reassess total income of all these assessment years. However, assessment / reassessment, which are pending on the date of search, shall abate. In order to issue the notice, tax officer is required to have in his possession books of account or other document or evidence which reveal that the income in form of asset, has escaped assessment. Section 153C of the Act deal with a situation, wherein the tax officer is satisfied that the article/ thing seized belongs to a person other than the person on whom search has taken place.

It may be noted that the Finance Bill 2021, proposes to restrict the special provision of Section 153A of the Act for searches initiated till 31st March 2021. Consequently the procedure for assessment of search cases under the special provisions of Section 153A, would be applicable only in case search is initiated between **1 June 2003 and 31st March 2021**.

Suitable amendment accordingly, is proposed to be made in Section 153A of the Act. This will imply, that in case search is initiated, say before 31st March 2021 or on 31st March 2021 and if the search continues in April 2021, then also the old provisions of Section 153A would be applicable, as search was initiated before 31st March 2021.

Some of interesting facts about assessment/ reassessment in search cases

Interestingly, the assessment/ reassessment in search cases u/s 153A/ 153C of the Act were brought in, because the earlier system of block assessment in search cases failed to achieve objective of early dispute resolution. This was categorically mentioned in memorandum to the Finance Bill 2003. Also, it was mentioned that block assessment had resulted into two parallel assessments, leading to multiple proceedings!

But we are now in 2021, and finance bill 2021 now proposes to apply a new procedure in place of section 153A / section 153C.

The memorandum to the Finance Bill 2021, categorically states that experience with the procedure u/s 153A of the Act is similar to that of block assessment is highly litigation-prone. So, now we are going back to square one, more than 30 years back, when the search cases were governed by the provisions of section 147 of the Act, of course, now, we have a new procedure introduced by the Finance Bill 2021. Both block assessment as well as assessment u/s 153A have seen “n” number of tax litigations in India.

Section 153A/ section 153C of the Act were introduced, way back in 2003 in place of block assessment which were earlier conducted u/s 158BA/ 158BC/ 158BD of the Act.

Procedure for assessment of search cases under the provisions of Section 158BA, in case search is initiated between 30th June 1995 and 31st May 2003

Finance Act 2003 had brought in section 153A/ 153C to replace the procedure of block assessment followed earlier in search cases. In case the search was initiated before 31st May 2003, there was the concept of block assessment, wherein the provisions of Section 158BA/ 158BC/ 158BD were applicable. The block assessment provided for a single assessment of undisclosed income of a block period of six years. The concept of block assessment was in the statute for a span of around 8 years !

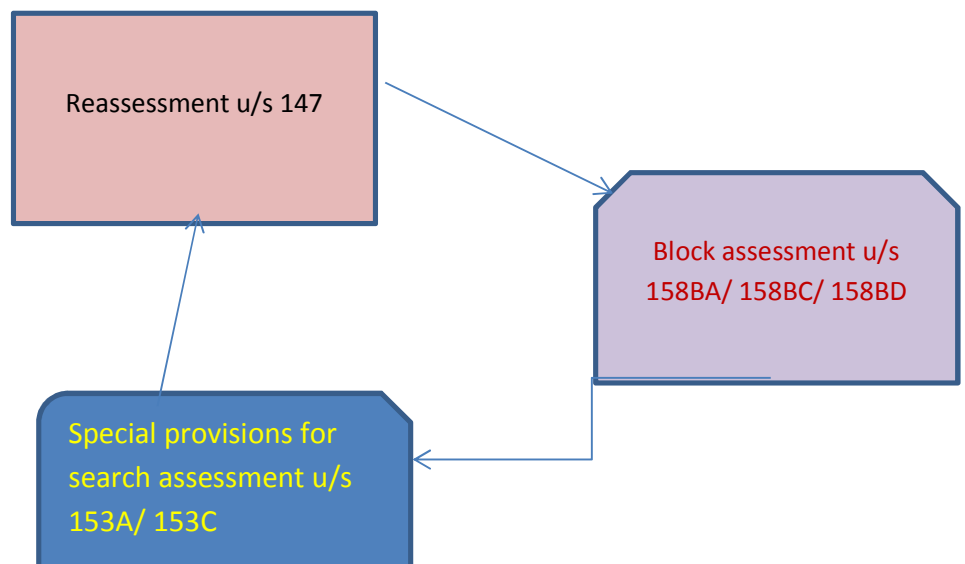
The block period comprised of six assessment years preceding the previous year in which search was conducted and included the period up to commencement of search in the previous year in

which search was conducted. Interestingly, in case search was conducted before 1 June 2001, then in that case the block period comprised of 10 assessment years instead of 6 assessment years upto the date of search (that is assessment year relevant to the previous in which search was conducted was included, similar to the above).

Assessment made u/s 158BA of the Act shall be in addition to the regular assessment in respect of each previous year included in the block period. The detailed procedure of such assessment is given u/s 158BC of the Act, wherein the AO is required to issue notice to the tax payer for furnishing the return setting for the total income including undisclosed income for the block period. The return furnished u/s 158BC of the Act cannot be revised by the tax payer. The AO will undertake the assessment, determine tax payable and pass the relevant order accordingly.

Section 158BD of the Act deal with a situation, wherein the tax officer is satisfied that the article/ thing seized belongs to a person other than the person on whom search has taken place. In such situation, article/things would be handed over to the AO having jurisdiction of such other person and AO will proceed and follow the procedure u/s 158BC of the Act.

Evolution of assessment procedure of search cases



Procedure for assessment of search cases, in case search is initiated before 30th June 1995

The concept of block assessment was introduced by the Finance Act 1995. Prior to introduction of Finance Act, 1995, in case where search is initiated before 30th June 1995, there were no separate section or provisions dealing with the assessment of search cases (Like block assessment u/s 158BA/ 158BC or assessment u/s 153A/ 153C), hence the normal provisions of re-assessment u/s 147 of the Act were applicable, then.

Tried searching on the internet, the Notes on clauses to Finance Act, 1995, but after downloading 1528 pager pdf document from a website, for almost 2 hours, found out that:

Notes on clauses to Finance Act, 1995

In order to make the procedure of assessment search cases effective, it is proposed to introduce new provisions for assessment of undisclosed income detected as a result of search. Under the new provisions, the undisclosed income detected as a result of search initiated after 30th June 1995 shall be assessed separately as income of a block of ten previous years.

Thus, interestingly, 30 years back, it was felt that procedure of assessment of search cases u/s 147 of the Act was not effective and hence, concept of block assessment was introduced u/s 158BA/ 158BC, which later on got replaced to assessments u/s 153A/ 153C of the Act. However, now with experience of continuous litigation both under block assessment u/s 158BA/ 158BC and search assessment u/s 153A/ 153C, it is felt that the old system of assessment of search cases under the normal provisions u/s 147 of the Act would be effective, with minor tweaks and modifications considering the current situation with respect to advancement of technology, collection of information by the department u/s 285BA, namely, statement of financial transaction and the fact that nowadays assessment is mostly information driven.

Let's hope that this bold step of assessment of search cases u/s 147 of the Act would be:

1. More Effective;

2. Less litigious; and
3. Lead to early dispute resolution.