

Special Procedure for Assessment of Search Cases

Suggestions-Chapter XVI-B : Clauses 292-301

of Income Tax Bill, 2025

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Search is a power to gather information was bestowed in 1956. The assessment and reassessment based on search gathered information were being processed since then under reopening provisions of section 34 of 1922 Act corresponding to section 147 of 1961 Act alike on information coming to possession of Assessing Officer by search and seizure subsequent to regular assessment or no assessment.

As an alternate but different procedure to assess or reassess search found undisclosed income was attempted in 1995 by inserting a Chapter "Special procedure for assessments in search cases" under 1961 Act as undisclosed escaped income only but of a block period of searched person on alike information coming to possession of Assessing Officer by search and seizure of a block period of 6-10 plus years subsequent to regular assessment or no assessment. Both the procedures provide are aimed for preventing evasion of tax to assess or reassess income undisclosed and escaped assessment.

Search assessments and reassessments provisions oscillate since 1995 till now, 2025, like a pendulum, from one extreme to another extreme in an attempt at finding out an equilibrium, i.e., the state of rest and certainty. There is lot of confusion and uncertainty about how the matter be processed and still far away from equilibrium reach. The first pulled Search special assessment pendulum in 1995 with mystical theory of a separate additional assessment of search found undisclosed income of a block period and at a special higher rate has a discard of found unfit and

reintroduction of 2003 reformed pendule with year-wise single orders of undisclosed and regular income but of the block period and at normal rate of tax. The pendulum was adorned to equilibrium state in 2021 by subsuming brought back search assessments with normal assessment provision of escaped and regular assessment. The Finance Act (No. 2) Act, 2024 pendule back with a broad vision of rationalization, simplification, initiates to fill up gaps by Finance Bill, 2025, but struck back to 1995 discarded wisdom by the Finance Act, 2025 with quandary of abating pending assessment and hinging constitutional conformity.

Special Procedure for assessment of search case proposed in clauses 292 to 301 of the Income tax Bill, 2025 is based on the then inserted section 158BA by Finance (No.2) Act, 2024 aiming to rationalise, cost effective, efficient, and meaningful and to amortise delayed administrative action which staggered search assessments, extending the search assessment process for up to ten years. This is time-consuming process which escalates the litigation cost for the taxpayer as well as for the department. For the duration of such period, legal position, on an issue may undergo change, leading to different additions in different years, on the same issue. Moreover, since such a long duration is involved, there is a possibility of change of opinion with respect to the line of enquiry. Further, due to such staggered assessments, coordinated investigation is not feasible in search cases.

In quick succession the 2024 edifice of consolidated single order was crumbled and finally dropped by the Finance Act, 2025 relegating to the assessment or reassessment restricted to total undisclosed income alone as was contemplated in 1995 scheme but retaining the abatement of pending assessments of 2024 and 2021 schemes; and keeping alive the provisions of making normal separate assessment and reassessment of regular income.

Both procedures provide different but seemingly discriminative to each other, are suggestive of a revisit and drop on the following amongst other reasons:

1. Clause 292 of the Income Tax Bill, 2025 is reproduction of section 158BA by Finance (No.2) Act, 2024. It tends to make a consolidated assessment order- i) of total income, of disclosed and undisclosed, of six plus years abating all assessment pending before AO or in appeal (or because of notice to file return of all the years, even concluded assessments) on the date of search initiation, and is susceptible of tax at sixty percent on entire income disclosed and undisclosed, without taking into consideration of relief in appeal or revision and adjustment of tax paid therein, ii) of searched person primarily but also of other person in whose case though no search is initiated but on the basis of information gathered in case of a searched person, Assessing Officer is satisfied that undisclosed income belongs, pertains or relates to such other person; iii) of income without allowing set off of losses of intervening years. Based inserted section 158BA by Finance (No.2) Act, 2024 is finally dropped by the Finance Act, 2025 relegating to the assessment or reassessment restricted instead to total undisclosed income i.e., declared by the assessee (searched and other person) and determined by Assessing Officer as undisclosed income on information and material found in a search, seizure and/or requisition.
2. Assuming that finally approved scheme by Finance Act, 2025 is adopted as the proposal of the 2025 Bill, that also require reconsideration revisit and drop in view of the following amongst other misgivings:

i) Resurrection of 1995 Scheme

a) that is discarded

Finance Act, 2025 amendments result in resurrection of 1995 block assessment scheme that provided assessment of only undisclosed income of block period. The 1995 scheme was dropped in 2003 with the following statement in the Memorandum explaining the provisions of Finance Bill, 2003:

"The existing provisions of the Chapter XIV-B provide for a single assessment of undisclosed income of a block period, which means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted and also includes the period up to the date of the commencement of such search, and lay down the manner in which such income is to be computed. The main objectives for the introduction of the Chapter XIV-B were avoidance of disputes, early finalisation of search assessments and reduction in multiplicity of proceedings. The idea was to have a cost-effective, efficient and meaningful search assessment procedure. However, the experience on implementation of the special procedure for search assessments (block assessment) contained in Chapter XIV-B, has shown that the new scheme has failed in its objective of early resolution of search assessments."

b) that is viewed as More Drastic

Inserted provisions in Chapter XIV-B by the Finance (No.2) Act, 2024 and resting with the resurrection of 1995 wisdom are also on the similar and more forceful reasons susceptible to be discriminatory, they being more cumbersome, drastic and prejudicial to the assessee as compared to normal assessments and reassessment under sections 143/144/147.

The 1995 Scheme was viewed by the Supreme court in *Manish Maheswari*¹ as drastic in nature; it has draconian consequences; such a proceeding can be initiated only if a raid is conducted and when the provisions are attracted, legal presumptions are raised against the assessee; the burden shifts on the assessee; and audited accounts for a period of ten years may have to be reopened. The presumptions invoked are as per section 278D in prosecution and section 292C in assessments or any proceedings stating 'where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed: i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person; ii) that the contents of such books of account and other documents are true; and iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested'. Similarly where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into

¹ [2007] 159 Taxman 258 (SC)/[2007] 289 ITR 341 (SC): *Manish Maheshwari v. ACIT*

custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.

(ii) **Contrary to charging section**

A single consolidated order of total undisclosed income of block period of six plus years is not permitted within the ken of charging section 4 which provides charge in respect of – i) total income, ii) of a person, iii) of a previous/ tax year and iv) at annual rate of tax in the Central Act, the Annual Finance Act. Special Provision on the contrary provide tax on total undisclosed income, implicate other person besides searched person, provides tax on income six plus years and provides a higher special rate of tax at 60% on the total undisclosed income.

Proviso to section 4 though authorise tax levy of income other than of a previous year but it cannot override the main provisions that is to provide income of a period larger than the previous year income as is authorised in the main provision. Further separate assessment theory of undisclosed income of the block period results in two assessments of a previous year income, which is held to be not permissible by the Supreme Court in *Hotel Blue Moons*².

iii) **Roping in even non incriminating/ Tax years or income**

Six years assessment are opened of searched for assessment or reassessment on mere initiation of search or requisition

² [2010] 321 ITR 362 (SC) / [2010] 188 Taxman 113 (SC): *ACIT v. Hotel Blue Moon*

itself, irrespective of the fact, whether undisclosed income or incriminating material thereof is there in all or any year.

Further, it expands undisclosed income by section 293/revised section 158BB roping in income which yet to accrue arise or received on finalisation of accounts on close of accounting/tax year, as also income yet to be required to declare on assumption that searched/other person assessee would not have declared that as income.

iv) **Abatement of pending assessments quandary**

Abatement of pending assessments was a requirement to making a single consolidated order of undisclosed and regular income as is mooted in the ITA2025 proposal and was by Finance Acts of 2024 and 2003 to avoid two assessments of same income. Now that theory is dropped and a single order of only undisclosed income is adopted the abatement of assessment which was of regular assessments is not befitting, in as much as, it is contrary to the resurrected 1995 scheme. That to assess or reassess only the total undisclosed income that is the aggregate of undisclosed income declared by the assessee on search action or as determined by the AO under the resurrected new scheme would not be feasible once the pending assessments in the regular procedure abate. Those proceedings are a nullity and ceased to be existing. The looped scheme has made no provision of making those assessments afresh or otherwise. The income of the abated assessments goes untaxed. Having specifically abated the provisions of enabling provisions of the corresponding section 158BH would also not be of any saving ground. The abated pending assessments as proposed in absence of any procedure thereof to assess or reassess afresh put one in quandary.

v) **Susceptible constitutionality**

a) **on discrimination**

Proposal of separate assessment or reassessment in search cases may and is not be separate intelligible class. It is nothing but assessment or reassessment of income not disclosed by the assessee or equivalent to income escaped assessment. The adoption of Special Block Assessment Procedure provisions are more cumbersome and drastic denuding certain right to the searched and other person compared to rightly subsumed in 2001 with reopening provision of section 147. Object of both the sections is to assess or reassess the undisclosed income (declared by assessee or determined by Assessing Officer) and both being information based in either case, one cannot put the procedure in two classification, one discriminative over other- i) on information coming to possession of Assessing Officer in general way under sections 142,143, 131; and ii) other on information obtain by search under 132 or requisition under section 132A.

Information is information whether come in possession either way. Both have common evidentiary value rather with certain legal presumptions more cumbersome and prejudicial against the searched and other persons. Whether call it escaped income and/or undisclosed income, both are assessed or reassessed on failure on the part of the assessee; both are of same class both should receive at par treatment. Information of income coming to the notice of AO is crucial and bone point in either case. Failure charge should also be at par without any classification albeit reasonable or intelligible, putting one in more drastic, cumbersome or prejudicial procedure, treatment and incident. That kind of classification may not be permissible under article 14 and would be liable to struck down, in the like

manner as in the cases under Income tax (Investigation Commission) Act, 1947.

Besides being, block assessment approach being more venerable than to solve it, is contrary to intended object of cost effective, efficient and meaningful. Lest it not be declared void like the similar provisions of lesser latitude viewed under Taxation of Income (Investigation Commission) Act, 1947 and section 34 of the income tax Act, 1922. being a piece of discriminatory legislation, offended against provisions of article 14 of Constitution and was, thus, void and unenforceable.

b) **More Drastic procedure**

Assessment or reassessment in search cases is nothing but assessment or reassessment of income not disclosed by the assessee as is equivalent to income escaped assessment. The proposed new Block Assessment scheme provisions are more cumbersome and drastic denuding certain right and require be retained subsumed as rightly thought of in 2001 with reopening provision of section 147. Object of both the section 147 and 158BA (cl. 292 of ITA2025) is to assess or reassess the income not disclosed and is on information based in either case, one cannot put the procedure in two classification, one discriminative over other- one on information coming to possession of Assessing Officer in general way under sections 142,143, 131 and other on information obtain by search under 132 or requisition under section 132A. Information is information whether come in possession either way. Both have common evidentiary value and are used in assessment on common principles of evidence; therefore, should receive at par treatment. Information of income coming to the notice of Assessing Officer is crucial and bone point in either case. Failure

charge should also be at par without any classification albeit reasonable or intelligible, putting one in more drastic, cumbersome or prejudicial procedure, treatment and incident, lest it be liable to struck down, in like way the as in the cases under Income tax (Investigation Commission) Act, 1947;³

c) Classification Unintelligible

In a akin case under Investigation Commission Act, 1947 the Supreme Court held that there is no valid classification of persons who are discovered as evaders of income-tax during an investigation conducted under section 5(1) (of 1947 Act) and those who are discovered by the ITO under section 23 (of 1922 Act) to have evaded payment of income-tax as: "Classification means segregation in classes which have a systematic relation, usually found in common properties and characteristics. There is nothing uncommon either in properties or in characteristics between persons who are discovered as evaders of income-tax during an investigation conducted under section 5(1) and those who are discovered by the ITO to have evaded payment of income-tax under section 34. Both these kinds of persons have common properties and have common characteristics and therefore require equal treatment." The Special provisions for assessment of search cases based on the unintelligible classification would smack hostile discrimination in contravention of Article 14 of the constitution.

d) Denies General Remedial Rights

Block period assessment or reassessment, pre assessment remedy of making draft order under section 144C is excluded and is made not available to the assessee. Tax is charged and

³ [1954] 26 ITR 1 (SC): Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri

demand is raised straight way dehors the 144C procedure remedy on assessment or reassessment of block period. It of course but with an appeal provided on assessment or reassessment after raising demand and issuing notice thereof to Commissioner (Appeal) which is a single authority as against Dispute Resolution Panel of three Commissioners, and direct appeal to the Tribunal earlier.

Resurrected special provision shuts out the doors of Dispute Resolution Committee section under 245MA by excluding this order from specified order under Explanation (b) thereof.

e) Implicating Other than Searched Person

Implicates searched person associates as other person, if information and evidence found in case searched person satisfy the AO that income therefrom belongs to or pertains to such other person, and opens also his all six plus preceding years for assessment or reassessment who could also simultaneously be proceeded with under section 147-153 as in whose case no search or requisition took place, but accidentally some income found therein belong to or is related to him on prima facie satisfaction of the AO assessing the searched person. These are like case of other person under special provisions of Investigation Commission Act, 1947 which was held suffer declination and hence void by five Judge Benches in the 3 cases – Suraj Mall Mohta & Co,⁴ Sri Meenakshi Mills Ltd⁵ and M Ct Muthiah.⁶

⁴ [1954] 26 ITR 1 (SC): Suraj Mall Mohta & Co. v. A. V. Visvanatha Sastri

⁵ [1954] 26 ITR 713 (SC): Shree Meenakshi Mills Ltd. v. Sri A.V. Visvanatha Sastri

⁶ [1956] 29 ITR390 (SC) : M Ct Muthiah v. CIT

Information can be obtained and seized on search of a person searched on warrant of authorisation, not of another person. Information of 'other person' is liable to be not seized but returned. It is the protected information of the other person in the light of Supreme court decision in the case Canara Bank⁷ and cannot be used as in the case of a other than the searched person for whose tax purposes it was seized⁸. Nor even it can be passed over to other person or authority without a search warrant for use in making his assessment. There has to be a search warrant in his case also to use it in block assessment.

Information and data of income is personal and private, protected right of privacy as fundamental right as viewed by a nine judges Bench judgment of the Supreme Court of K S Puttuswamy case in 2017. If it not his search sought information, it would be generally sought information which could be at best used for reopening his case under general provisions of section 147/148 and not be subjected to block assessment thereon.⁹

It is also illogical that the rigours which apply to the Search of a particular notified person can be flagrantly ignored so far as the other person is concerned in whose case the Department acts as a post office, viz., it sends the seized material to the concerned Assessing Officer.

⁷ AIR 2005 SC 186: District Registrar & Collector, Hyderabad v. Canara Bank;

⁸ [1992] 92 DTC 6187(FC): Crestbrook Forest Industries Ltd. v Her Majesty the Queen

⁹ [2009] 181 Taxman 9 / [2009] 315 ITR 137 (Del): S.R. Batliboi & Co. v. Department of Income-tax (Investigation); [2006] 284 ITR 220 (Mad): CIT v. G.K. Senniappan; [2008] 168 Taxman 150 (P&H): CIT v. Ravi Kumar; [2001] 250 ITR 141(Del): CIT v. Ravi Kant Jain.

vi) Indiscriminate Higher charge

a) Tax Rate

Tax rate of 60% is to be charged on undisclosed income of the block period is double as against Maximum Marginal Rate of 30% charged in assessment and reassessments as per general provision under the Annual Finance Act on not the different class of persons.

b) Interest charge

Interest on delayed furnishing of return of block period is subjected to charge till the date of assessment even when the return is not prohibited but can be furnished belatedly under section 158BC; it being against interest charge up to the date of furnishing the return under general provisions of the Act.

3. Conclusion

- i) Special Proposal is resurrection of discarded 1995 Scheme which was dropped as unfit and was viewed by the Apex court as More Drastic prejudicial to searched and other person
- (ii) Proposal is contrary to charging section provision seem to be contrary to charging section provide tax on total undisclosed income, implicate other person besides searched person, provides tax on income six plus years and provides a higher special rate of tax at 60% on the total undisclosed income. The Assessments or reassessments in both reopening provisions and search special procedure, being made on failure of assessment of undisclosed income in regular procedure; both are the result of information of undisclosed income detected on incriminating material coming to the possession of Assessing Officer on inquiry, search, requisition, survey or third-party information/complaints; and therefore, both are of the

same class if seen with the object of preventing evasion of tax and to bring home the true and full income to tax.

- iii) Provisions of abatement of pending assessments is a misfit, a quandary with no purpose and is more to complicate and confuse.
- iv) Susceptible of discrimination, unintelligible classification, more drastic prejudicial provision and denies general remedial rights. Special provision smacks of hostile discrimination amongst the equals violating article 14 of the Constitution, as also right of privacy under Article 21 in cases of other person without authority of law.
- v) Roping in even non incriminating tax years and or income
- vi) Implicating Other than Searched Person for no fault of theirs and who in case are subject of reopening provisions.
- vii) Provides charge of indiscriminate higher tax and Interest

4. Suggestions

In view of the above I suggest as under:

- a) Chapter XVI-B Special Procedure for assessment of search cases be dropped
- b) Searched person being persons not of different class, should be dealt with alike, preferably under reopening provisions of section 147 to 153 as these were there since inception of search in 1956 until 1995, subsumed in 2021 and remained until 2024.
- c) The fear expressed of delayed action and implementation procedural difficulties of the field staff and consequent change of opinion with respect to the line of enquiry and coordinated investigation being not

feasible due to such staggered assessments, should not allow the discrimination in procedure or law amongst equals, persons of same class.

- d) To resolve the problem delayed inaction, a time limit, instead be provided to issue the notice under section 148 from receipt of information on search initiation for consolidated period of 3-6 years reopening the assessment. Alongside, a time limit for completion of assessment as ending 12 months from issue of notice. It would also solve the stated problems i.e., a) For the duration of such period, legal position on an issue may undergo change, leading to different additions in different years, on the same issue, b) Moreover, since such a long duration is involved, there is a possibility of change of opinion with respect to the line of enquiry; and c) due to such staggered assessments, coordinated investigation is not feasible in search cases.
- e) Charge of income tax on annual income is inherent and prime, consolidated assessment of block period of six years is an exception, contrary to law, the absence of which should not be taken as refuse for bringing discriminative separate block assessment of undisclosed income.