2

CHAPTER

SECTION 153A - AN OVERVIEW

2.1 INTRODUCTION

There were no special provisions governing search assessments till the insertion of Chapter XIVB, popularly known as 'Block Assessment Scheme', by the Finance Act, 1995. This scheme was given up after 31-5-2003. Sections 153A to section 153D govern search assessments w.e.f. 1-6-2003. In interpreting issues arising out of the current scheme of assessments in search cases, often reference is made to the provisions of the block assessment scheme and the decisions on those provisions.

2.2 BLOCK ASSESSMENT AND ASSESSMENT U/S 153A

(*i*) The following were the essential features of the Block Assessment Scheme:

- The block period comprised of 10 assessment years (changed to six assessment years by the Finance Act, 2001) preceding the previous year in which the search was conducted u/s 132 or requisition made u/s 132A.
- The block period included broken period of the previous year in which the search was conducted or requisition made from the first April up to the date of search.
- A single return was to be filed for the entire block period.
- The block return filed could not be revised.
- The scheme provided for taxation of only 'undisclosed income' as specifically defined. The scheme aimed at making two assessments—one for 'undisclosed income' for the block period and the other for regular income for each of the assessment years comprised in the block period separately. The scheme, therefore, recognised duality of assessments.
- Issue of notices u/s 142(1) and u/s 143(2) was necessary before completing the block assessment.

- Estimate was permissible because rejection of books u/s 145 was specifically contemplated under the scheme.
- Undisclosed income was taxed at a flat rate of 60% plus interest as specified in section 158BFA.
- Penalty was not imposable u/s 158BFA if the return was filed in response to notice u/s 158BC, tax was paid, and if no appeal was preferred against that part of income shown in the return.

(*ii*) Broad features of the current scheme of search assessments contained in sections 153A, 153B, 153C and 153D are outlined below:

- The proceedings under the scheme cover six assessment years preceding the previous year relevant to assessment year in which the search is conducted u/s 132 or requisition is made u/s 132A.
- It does not cover the previous year comprised in the year of search. The assessment for the search year is covered under the regular category. The search year assessment, however, is required to be completed, as provided u/s 153B(1)(*b*), along with the assessments for the six assessment years covered u/s 153A.
- The assessment for the year of search is done by applying normal provisions of section 142(1)/143(3).
- There is no specific provision for issue of notice u/s 143(2) or section 142(1) or application of section 145 or for filing of revised return.
- 'Undisclosed income' is not defined in sections 153A or u/s 153C. It is defined in section 271AAA/271AAB for the purpose of levy of penalty.
- Total income is separately 'assessed or reassessed' for each of the six assessment years preceding the previous year in which the search is conducted. The assessment includes both undisclosed income and regular income of the searched party depending on the nature of the proceeding.
- Tax is levied at the normal rate as applicable for each of the relevant assessment years.
- No immunity is provided from levy of penalty on 'undisclosed income' of the specified previous years. The provisions of section 271AAA or section 271AAB only provide concessional treatment in the matter of penalty for 'specified previous years' subject to the satisfaction of certain conditions. For the remaining assessment years, the provisions of *Explanation 5A* to section 271(1)(*c*) are applicable. However, with effect from 1-4-2017,

i.e., assessment year 2017-18, and subsequent assessment years, section 270A governs imposition of penalty in search cases for the assessment years other than the specified previous years. Therefore, *Explanation 5A* to section 271(1)(*c*) is no more applicable for such non-specified previous years.

2.3 SEARCH - MEANING OF

The word 'search' is not defined in the IT Act. In the case of *Raghu Raj Pratap Singh* v. *Asstt. CIT* [2009] 179 Taxman 73 (Allahabad), it was held as under:

> "The simple meaning of the word 'search' is to explore all over in trying to find something; to examine closely; to examine for hidden articles; to scrutinize; to probe; to put to test; to make an examination, etc., to look or hunt; a thorough examination, etc. In normal course, what the authorised officer is to do, is to find out, detect and unearth the concealed income or wealth for which purpose the warrant of authorisation has been issued."

2.4 SEARCH INITIATED - CONNOTATION

Initiation of search sets in motion the process of assessment. Initiation of search is *sine qua non* for issuance of a notice u/s 153A calling for the returns of income. Therefore, the meaning of the word 'initiated' assumes importance. The dictionary meaning of the word is 'to organize, an introductory step or action, a first move, beginning, and start'. It is the first step in an action. Mere signing of a warrant does not amount to initiation of search so as to trigger the provisions of section 153A. The actual conduct of search is the requirement. It is a sound rule of interpretation that while assigning a meaning to an expression used in a statute, the context in which the expression is used has to be kept in mind. Thus, although the expression 'search initiated', means 'search taken' or 'search commenced' or 'making beginning of the search', making a beginning does not amount to actual conduct of search which is essential to commence the proceedings for the assessment u/s 153A. An important decision which deals with these issues is *CIT* v. *Wipro Finance Ltd.* [2009] 176 Taxman 233 (Kar).

Initiation and conduct of search are the twin requirements for issuing the notice u/s 153A. Both the expressions should be read conjointly, for there could be a case where a search warrant is signed but no search is conducted. There could be a time lag between recording satisfaction, signing the warrant and conducting the search.

There might be a case where a warrant is issued in joint names, but no search is conducted against one of the persons mentioned in the warrant. In such a case, no proceedings u/s 153A can be initiated against the person who has not been subjected to search. [ref: *Bansilal B. Raisoni & Sons* v. *ACIT* [2019] 101 taxmann.com 20 (Bombay)].

2.5 UNDISCLOSED INCOME

The term 'undisclosed income' is not defined in section 153A. The term was defined in section 153BC for the purpose of the block assessment. Block assessment u/s 153BC was limited to only undisclosed income. In the absence of a similar restrictive definition of 'undisclosed income' in section 153A, in a search case, the Assessing Officer has to now assess regular as well as undisclosed income based on incriminating evidence in respect of abated assessment years. The term 'undisclosed income' is defined in section 271AAA/271AAB for the purpose of penalty. That definition, however, cannot be imported for the purpose of assessment u/s 153A.

2.6 *NON OBSTANTE* CLAUSE

Section 153A starts with a *non obstante* clause. The section reads as under:

> "Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall issue notice to such person 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 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;"

The above clause takes within its sweep the provisions of sections 139, 147, 148, 149, 151 and 153 of the Income Tax Act. A *non obstante* clause has two parts—the *non obstante* clause and the enacting part. The purpose of enacting a *non obstante* clause is that in case of *a conflict* between the two parts, the enacting part will have full sway in spite of the contrary provisions contained in the *non obstante* clause. Therefore, the object and purpose of the enacting part have to be first ascertained and then assistance of the *non obstante* clause has to be taken to nullify the effect of any contrary provision contained in the clause.

The enacting part of section 153A has three stipulations—(*i*) to issue notice calling for the returns of income for six assessment years (*ii*) to assess or reassess total income of each of the six assessment years and (*iii*) not to proceed with any pending assessment or reassessment as on the date of initiation of search as the same would abate. Since some of the provisions contained in the enacting part may come into conflict with the provisions contained in the *non obstante* clause, these impediments are removed by means of the *non obstante* clause. Thus, by enacting the *non obstante* clause in the section, the formalities of issuing notice u/s 139, application of the provisions of section 147, 148, 149 or 151 for reopening a case for

escaped assessment, taking of approval from the concerned authorities for reopening the assessment and the time limit for completion of regular assessment have been done away with. Thus, assumption of jurisdiction by the Assessing Officer u/s 153A has been made simple and easy.

Section 153A is a self-contained code for search assessments. The section states that on initiation of search, the Assessing Officer can issue a notice calling for the returns of income for six assessment years preceding the previous year in which the search has taken place. The *non obstante* clause obviates the need to comply with the requirements of the regular provisions.

2.7 MEANING OF WORDS 'PENDING' AND 'ABATE'

As per the second *proviso* to section 153A(1), only the pending assessment proceedings including proceedings for the relevant assessment year as on the date of initiation of search shall abate. A legal proceeding is considered 'pending' as soon as it commences until it is concluded. A pending proceeding u/s 153A refers to a proceeding pending before the Assessing Officer but not before any other authority. Therefore, the proceedings pending in appeal and revision do not abate.

In the case of *CIT* v. *Smt. Shaila Agarwal* [2011] 16 taxmann.com 232/ [2012] 204 Taxman 276 (Allahabad), the meaning of the word 'pending' and 'abate' came in for interpretation. The High Court observed that the word 'pending' occurring in the second *proviso* to section 153A of the Act is significant. It is qualified by the words 'on the date of initiation of the search'. Therefore, only such assessments or reassessments as are pending are liable to abate. It does not say that wherever appeal against such assessment or reassessment is pending, the same along with the assessment or reassessment proceedings is liable to abate. The High Court observed that abatement of a proceeding has serious consequences. If a wide interpretation is placed, it will efface all the consequential proceedings such as appeal and penalty proceedings arising thereafter which is not the intention of the provision. The High Court held as under:

> "The word 'abatement' is referable to something, which is pending alive, or is subject to deduction. Abatement refers to suspension or termination of the proceedings either of the main action, or the proceedings ancillary or collateral to it. The word is commonly used in the legislations, which provide for abatement of action/suit; abatement of legacies; abatement of nuisance; and all actions for such nature, which have the pendency or continuance. The proceedings, which have already terminated are not liable for abatement unless statute expressly provides for such consequence thereof."

2.8 WHAT WILL ABATE AND WHAT WILL NOT ABATE?

(*a*) Assessments which have been completed as on the date of initiation of search do not abate.

(*b*) Proceedings do not abate, in a case, as per the judicial precedents, where the time limit for issuance of notice u/s 143(2) has expired and no scrutiny assessment is possible.

(*c*) Assessments or reassessments which are pending as on the date of initiation of search abate as per the second *proviso* to section 153A(1). This includes the assessment where hearing is in progress.

(*d*) Assessment for the year in which search is conducted is not covered under the second *proviso* to section 153A(1). It does not abate. This includes the broken period from the first April to the date of search. The part period of the previous year up to the date of search is included in the entire previous year.

In *Chintels India Ltd.* v. *Dy. CIT* [2017] 84 taxmann.com 57/249 Taxman 630 (Delhi), it has been held that when no notice u/s 143(2) was issued to the assessee within the stipulated period, the said return became final and no scrutiny proceeding could take place. In other words, it was a concluded assessment.

The returns of income which do not abate will retain their legal character as valid returns. However, these returns cannot form the basis of assessments after the search. The returns filed in response to the notice u/s 153A take their place for the purpose of assessments u/s 153A and the Assessing Officer is required to compute the total income of the six assessment years taking into account the income already returned and evidence found during the search. This is the reason why the *proviso* uses the words 'assess or reassess'.

It may be noted that the Act only lays down abatement of pending assessment proceedings on initiation of search. The following proceedings, which might be pending as on the date of initiation of search, do not abate:

(*a*) Appellate proceedings

(*b*) Revision proceedings before the CIT under section 263 or u/s 264

(*c*) Block assessment proceedings pending as on the date of search

(*d*) Rectification proceedings

(*e*) Settlement petition filed prior to the date of initiation of search

(*f*) Penalty proceedings initiated prior to the date of initiation of search.

In this regard, reference may be made to the Board's Circular No. 7 of 2003 dated 5-9-2003 reported in 263 ITR 107, the relevant part of which is reproduced overleaf:

"The Assessing Officer shall assess or reassess the total income of each of these six assessment years. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s 132 or requisition u/s 132A, as the case may be, shall abate. It is clarified that the appeal, revision or rectification proceedings pending on the date of initiation of search u/s 132 or requisition shall not abate. Save as otherwise provided in the proposed section 153A, section 153B and section 153C, all other provisions of this Act shall apply to the assessment or reassessment made u/s 153A. It is also clarified that assessment or reassessment made u/s 153A shall be subject to interest, penalty and prosecution, if applicable. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year." (Para 65).

2.9 STATUS OF PENDING ASSESSMENT IN RESPECT OF EARLIER SEARCH

A situation may arise where a search is conducted before finalisation of earlier search proceedings u/s 153A. If both the searches fall in the same previous year, there may not be any difficulty. Problem would arise when the initiation of the two searches falls in two different previous years. As per the second *proviso* to section 153A, all pending assessments as on the date of initiation of search abate. Does it mean that the pending assessments u/s 153A arising out of the earlier search would abate? The answer to this is in the negative for the following reasons:

(*i*) The *proviso* under sub-section (1) to section 153A contemplates abatement of pending proceedings. It cannot be said that all the proceedings initiated in relation to the earlier search abate in consequence to the second and subsequent search. The words 'pending proceeding under sub-section (1)' are significant. The pending proceeding under sub-section (1) would differ in respect of the two searches. Thus, the second search would have no effect on the pending proceeding of the first search where proceedings have already been initiated.

(*ii*) However, since there cannot be two assessments for the same year, the Assessing Officer would have to merge the undisclosed income shown in both the returns into one assessment while completing the assessment.

(*iii*) In respect of the left out assessment year, since it does not abate being connected with an earlier search, the Assessing Officer would complete the assessment u/s 153A/143(3) for that assessment year separately.

2.10 PROCESSING OF RETURN - WHETHER AMOUNTS TO ABATEMENT?

Broadly, the concept of assessment includes all proceedings starting with filing of return, issue of notice and ending with the determination of tax payable. Processing of a return u/s 143(1) refers to computation of total income or loss after making certain specified adjustments. An intimation is sent to the assessee after processing the return. The intimation is amenable to rectification u/s 154 and appeal u/s 246.

The question is whether issue of an intimation would result in termination of the proceeding or could it be treated as a pending proceeding which would abate. On this, opinions differ. One view is that till the processing of the return and issue of intimation, the proceeding is pending to abate. The other view is that if after processing, the due date for issuing notice u/s 143(2) has not expired, the proceeding is pending to abate. After expiry of this period, the Assessing Officer can commence scrutiny proceedings but since it will be treated as a concluded assessment, he can make use of incriminating evidence, if any, found in the course of search for completing the assessment.

2.11 SCOPE OF FIRST TWO *PROVISOS* U/S 153A(1)

The *provisos* to section 153A(1) read together would mean that only a distinction has been made between a completed assessment and a pending assessment as on the date of initiation of search. Unless the pending assessments/reassessments abate, it would not be possible to frame a single assessment as otherwise it would give rise to two assessments which is not intended by the scheme of assessment u/s 153A. Further, the search may result in discovery of incriminating evidence for all the six years. If the assessment is limited to abated years only, such information cannot be utilised for other years. This would defeat the very purpose of search u/s 132. The concept of abatement of pending assessments should be read in this light. But there is no warrant to limit the assessment proceedings to abated years only. It has been held in a majority of decisions that in the case of an abated assessment, the jurisdiction of the Assessing Officer is wide enough to include income arising out of scrutiny of books as also incriminating evidence found in the course of search. In the case of concluded assessments, however, the addition should be limited to incriminating evidence only. It may be further stated that even if no incriminating evidence is found, the Assessing Officer shall have to complete the assessments for the concluded years as per the provisions of section 153A at 'Nil'. This is because the searched party is required to file the returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or the requisition is made.

Another view is that the first *proviso* stipulates that the assessment or reassessment is required to be made of 'total income' for all the six assessment years. In doing so, no restriction is placed on the powers of the Assessing Officer to complete the assessments. He is required to compute the total income in accordance with section 5 of the Income Tax Act. As per the second *proviso*, pending assessments abate only to avoid multiple proceedings. Therefore, there is no conflict between the first *proviso* and the second *proviso*.

The preponderant judicial view is that in respect of abated assessment years, the Assessing Officer's jurisdiction is wide enough to assess the normal income as usual and income arising out of incriminating evidence found as a result of the search. The Assessing Officer is required to make a single assessment on the basis of both. In respect of the concluded assessment years, the Assessing Officer will have restricted jurisdiction. He can frame the assessment only by utilising the incriminating evidence found during the search.

2.12 CONNOTATION OF 'SO FAR AS MAY BE'

Section 153A states that the provisions of the Act shall apply *'so far as may be'* as if the return filed in response to the notice u/s 153A is a return furnished u/s 139. The expression 'so far as may be' means 'to the extent possible'. It cannot be construed as absolute or total abandonment of the basic principles. The normal provisions of the Act as followed in case of a return u/s 139 should be followed to the extent possible. In other words, all the provisions apply to the extent they are not inconsistent with the special provisions of section 153A.

2.13 'ALL OTHER PROVISIONS OF THE ACT SHALL APPLY' - MEANING OF

In *Explanation* (*i*) to section 153A, it has been stipulated that save as otherwise provided in this section, section 153B and section 153C, all other provisions of the Act shall apply to the assessment made u/s 153A. This indicates that the provisions of sections 153C and 153B will have supremacy as these govern specific situations. For instance, section 153B governs the time limit for completion of assessments in search cases which is not the same as provided under the normal provisions. Therefore, when *Explanation* (*i*) states that all other provisions shall apply, it means that instead of repeating all such provisions in this section for completion of assessment, it makes an overall reference to the same so long as they are not inconsistent with the provisions of sections 153A, 153B and 153D. An example will make the import of the provisions clear. Where in a case the assessee does not file the return in response to notice u/s 153A, it does not mean that the matter

ends there and no assessment can be framed. The Assessing Officer can take recourse to the provisions of section 142(1) calling for the books of account and other details. If the assessee does not comply with the notice, the Assessing Officer can complete the assessment u/s 144 on the basis of the material found in the course of search and evidence collected by him. Therefore, the other provisions of the Act which are not inconsistent with the sections mentioned in *Explanation (i*) to section 153A shall apply for making the assessment. A word of caution here is warranted. A claim of deduction or allowance should be compliant to the normal provisions of the Act with regard to the stipulations contained therein.

Explanation (*i*) to section 153A is couched in clear terms without any limitation as to its operation except those contained therein. The stipulations of this *Explanation* coupled with the provisions of section 153A(1)(*b*) which state that the Assessing Officer shall assess or reassess the *total income* of all the six assessment years covered u/s 153A convey an impression that the searched party would be entitled to claim all the incentives and deductions under the Act. This may cover the abated assessment years as also the concluded assessment years as the word 'assess' or 'reassess' indicates the same. Thus, there cannot be any unequal treatment in the matter of allowing eligible benefits and deductions under the Act. There could be two situations in this regard. First, where a rightful claim could not be made because of ignorance of law or for other *bona fid*e reasons. In such cases, there could possibly be no debate that the claim has to be allowed. The second, where an assessee takes advantage of the search by making a new claim. The assessee is entitled to all rightful claims such as benefit of set off of brought forward losses, unabsorbed depreciation, deductions and exemptions including deductions under Chapter VIA, depreciation on assets declared in the search, MAT credit, etc.

A contrary view is that the search assessments are not for the benefit of the assessee—a view central to reassessment u/s 147. It is argued that if the Assessing Officer is precluded from making any addition in respect of concluded assessment years in the absence of incriminating evidence, logically, he cannot allow a deduction which was not claimed in the unabated return where the assessment is concluded.

The issue has not attained finality, for there has been no decision yet by the Apex Court on the matter.

2.14 ASSESS OR REASSESS - MEANING

In *Jai Steel (India)* v. *Asstt. CIT* [2013] 36 taxmann.com 523/219 Taxman 223 (Rajasthan), the meaning of the expression 'assess or reassess' was explained as overleaf:

"The words 'assess' and 'reassess' have been used at more than one place in the section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and reassess has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the search or requisition of documents."