

Assessment and Reassessment of Search Cases



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Introduction

The Finance Act, 2021 has done away with the existing legal framework for Assessment in case of search or requisition (forming part of Chapter XIV of the Income Tax Act, 1961- Procedure for Assessment) viz. Section 153A to 153D of the Income Tax Act, 1961 in respect of search or requisition conducted on or after 1st April, 2021. For searches conducted on or after 1st April, 2021, then forth, assessments shall be framed under Section 147 read with section 148, 148A, 149, 151 of the Income Tax Act, 1961.

Under the newly substituted Section 148, Explanation 2 has been brought into place to cover search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, wherein it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee **for all assessment years, time limit to initiate proceeding u/s 149 of the act has not elapsed on the date of search / survey / requisition.**

Most important to note here is that this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

Section 147

Provisions of Section 147 as substituted by Finance Act, 2021

If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)

Analysis:

After substitution of Section 147 now assessing officer can reassess the escaped assessment based on the **information** available without having any reason to believe that any income chargeable to tax has escaped assessment, after giving proper opportunity u/s 148A, if required. **Thereby, a settled concept of recording reasons to believe that material available on record indicates that certain income has escaped assessment in the hands of the assessee has been done away with and a reformative enquiry proceeding u/s 148A of the act has been introduced with an intent to eradicate conduct of unfruitful assessment proceedings by making prima facie enquiry and deciding whether the same is fit case for initiation of assessment proceeding or not.**

Explanation.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.

Analysis:

This explanation is in line with the earlier regime i.e. Explanation 3 to Section 147 under old regime, relating to assessment of new issue identified during the course of assessment proceeding. In light of **Ranbaxy Laboratories Ltd. Vs. CIT [2011] 336 ITR 136 (Del.)**, **CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 (Bom.)**, **Adhunik Niryat Ispat Ltd. [2011] 63 DTR 212 (Del.)**, it is a settled legal premise that no addition in respect of any issue could be made if additions in respect of original issue for which assessment proceeding u/s 147 of the act was initiated, has been dropped.

Section 148

Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, 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:

Analysis:

Legal issues regarding service of notice upon assessee still persists being date of issuance of notice and date of service of notice upon assessee holds serious legal implications regarding validity of initiation of assessment proceeding under new regime as well. [Refer decision of Hon'ble Delhi High Court in case of Suman Jeet Agarwal vs. ITO W. P. (C.) No. 10 of 2022 dated 27.09.2022 for detailed discussion on service of notice under electronic ecosystem in consonance with faceless assessments.]

Provided that no notice under this section shall be issued unless there is INFORMATION with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section. [Second Proviso inserted vide FA, 2022 i.e. applicable w.e.f. 01.04.2022]

Analysis:

Before issuance of notice u/s 148 of the act, AO is mandatorily required to be in possession of 'Information' suggesting income escaped assessment, as prescribed under Explanation 1 to Section 147. [Not covered being not related to Search / Requisition Cases]

Also, a **prior approval** is required to be obtained from prescribed authority, if no approval is obtained in respect of order to be passed u/s 148A of the act prior to initiation of assessment proceeding. **This implies, in cases where AO is deemed to be in possession of 'Information' suggesting income escaped assessment i.e. search / requisition cases, approval u/s 148 of the act is required. In all other cases, approval obtained u/s 148A(d) of the act would be sufficient.**

Explanation 2.—For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or*
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,*

*the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee ‘**where**’ the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.*

Analysis:

As per Explanation 2 to section 147, as amended by FA, 2022, in following cases, AO shall be deemed to be in possession of 'Information' suggesting income escaped assessment and proceeding u/s 147 of the act can be initiated without conducting newly inserted enquiry proceeding u/s 148A of the act:

- a. **Search conducted u/s 132** of the act on or after 01.04.2021
- b. Books of A/c / other documents / any assets, **requisitioned u/s 132** of the act on or after 01.04.2021
- c. **Survey conducted u/s 133A** of the act on or after 01.04.2021 [*Except Survey conducted u/s 133A(2A) of the act i.e. TDS Survey*]
- d. AO draws satisfaction that assets seized during search / requisition as referred above, belongs to the assessee
- e. AO draws satisfaction that books of a/c / other documents seized during search / requisition as referred above, pertains to the assessee
- f. AO draws satisfaction that information contained in books of a/c / other documents seized during search / requisition as referred above, relates to the assessee

In case of search / requisition relating to person other than assessee i.e. cases referred at S. No. d to f above, both date of search / requisition as well as date of satisfaction is to be drawn on or after 01.04.2021. Otherwise, provisions of 153A / 153C of the act shall be applicable. Also, in such cases, satisfaction note is to be approved by Jurisdictional Pr. CIT / CIT.

Analysis:

Explanation 2 to section 147 has been amended with retrospective amendment to clarify that in case of search / requisition, AO will be assumed to be in possession of Information suggesting income escaped assessment for all assessment years, in respect of which assessment proceeding could be initiated as per time limits prescribed u/s 149 of the act. However, as per provisions inserted originally vide FA, 2021 only allows deeming provision for three assessment years prior to assessment year related to Financial Year in which search / requisition was made.

This retrospective amendment will instigate a debatable issue relating search / requisition made during 01.04.2021 to 31.03.2022 being retrospective amendment of provisions prejudicial to the interest of assessee are not taken positively.

Extract of Explanation 2 originally inserted vide FA, 2021:

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee *‘for the three assessment years immediately preceding the assessment year relevant to the previous year in which’* the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

Approval from Specified Authority u/s 151

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graph TD; A[Approval from Specified Authority u/s 151] --> B[Where three years have not elapsed from the end of relevant AY]; A --> C[Where three years have elapsed from the end of relevant AY];
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Where three years have not elapsed from the end of relevant AY

- Pr. CIT / CIT
- Pr. DIT / DIT

Where three years have elapsed from the end of relevant AY

- Pr. CCIT / CCIT
- Pr. DGIT / DGIT

Section 149: Time Limit for Notice

- (1) No notice under section 148 shall be issued for the relevant assessment year,—
- (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
 - (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—
 - (i) an asset;
 - (ii) expenditure in respect of a transaction or in relation to an event or occasion;*
 - or*
 - (iii) an entry or entries in the books of account,*
which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

.....

Explanation.—For the purposes of clause (b) of this sub-section, "**asset**" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

Clause (ii) and (iii) has been introduced vide FA, 2022.

First Proviso to Section 149

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if *'a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be'*, as they stood immediately before the commencement of the Finance Act, 2021:

Note: Extract in Bold and italics were substituted with retrospective effect to enhance the time limit for issuance of notice u/s 148 of the act beyond 6 years falling within the block to 10 years as specified in section 153A of the act.

Extract of First Proviso to Section 149 originally inserted vide FA, 2021:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if ~~*such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section*~~, as they stood immediately before the commencement of the Finance Act, 2021:

Second Proviso to Section 149

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Note: This proviso is to clarify that no proceeding under new regime is to be initiated in respect of search / requisition made prior to 01.04.2021.

Third Proviso to Section 149, as inserted by FA, 2023

Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section 148, where,—

- (a) a search is initiated under section 132; or
- (b) a search under section 132 for which the last of authorisations is executed; or
- (c) requisition is made under section 132A,

after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Analysis: In case of search / requisition made on or after 15.03.20XX, the limitation period for issuance of notice u/s 148 of the act shall be extended by 15 days, to facilitate transfer of jurisdiction and to provide time to AO to ensure adherence with other legal requirements of the act prior to issuance of notice u/s 148 of the act.

Fourth Proviso to Section 149, as inserted by FA, 2023

Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,—

- (a) a search under section 132 which is initiated; or
- (b) a search under section 132 for which the last of authorisations is executed; or
- (c) a requisition made under section 132A,

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Analysis: In case where information suggesting income escaped assessment has emanated from statement recorded during search / requisition made on or after 15.03.20XX, the limitation period for issuance of notice u/s 148 of the act shall be extended by 15 days, to facilitate transfer of jurisdiction and to provide time to AO to ensure adherence with other legal requirements of the act prior to issuance of notice u/s 148 of the act.

Fifth and Sixth Proviso to Section 149, relating to time period allowed u/s 148A to be excluded from Period of Limitation prescribed u/s 149(1)

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A '**does not exceed seven days**', such remaining period shall be extended to seven days and the period of limitation under this subsection shall be deemed to be extended accordingly.

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

Analysis:

Sub-section (1A) has been inserted vide FA, 2022 to facilitate initiation of assessment proceeding for more than one AY based upon same information suggesting income escaped assessment arising out of either of asset or in relation to expense incurred for an event or occasion executed in more than one AY.

Example: Assessment that can be initiated u/s 148

If a search operation is initiated during FY 2023-24, proceedings would be initiated as under:

- For **AY 2024-25 relevant to FY 2023-24**, assessment proceeding u/s 143(3) of the act can be initiated being the same is year of search.
- For **AY 2021-22 to AY 2023-24 relevant to FY 2020-21 to FY 2022-23** respectively, assessment proceeding u/s 147 of the act can be initiated by issuance of statutory notice u/s 148 of the act being three years from the end of relevant assessment year will not elapse till 31.03.2024. Further, provisions of section 148A of the act is not applicable being in case of search operation conducted u/s 132 of the act, the assessing officer shall be deemed to be in possession of 'information' as prescribed under Explanation 1 to Section 148 of the act, which is pre-condition for initiation of a valid assessment proceeding u/s 147 of the act.

- For **AY 2018-19 and AY 2019-20** relevant to **FY 2017-18 and FY 2018-19** respectively, assessment proceeding u/s 147 of the act can be initiated by issuance of statutory notice u/s 148 of the act for each year independently, only in case where the assessing officer is in possession of documentary evidences indicating income escapement exceeding Rs. 50 Lakh for said assessment year *per se*, represented in the form of assets / expenditure / book entry as discussed earlier, being 3 years have elapsed from the end of said assessment years but 10 years have not elapsed till 31.03.2024 whereas time limit prescribed u/s 153A(1)(b) of the act as applicable prior to 01.04.2021 has not elapsed being said assessment years duly forms part of block of 6 assessment years preceding the assessment year relevant to financial year in which search was initiated. Further, provisions of section 148A of the act will not be applicable in such case, being in case of search operation conducted u/s 132 of the act, the assessing officer shall be deemed to be in possession of 'information' as prescribed under Explanation 1 to Section 148 of the act, which is pre-condition for initiation of a valid assessment proceeding u/s 147 of the act.

- For **AY 2014-15 to AY 2017-18 relevant to FY 2013-14 to FY 2016-17** respectively, assessment proceeding u/s 147 of the act can be initiated by issuance of statutory notice u/s 148 of the act for each year independently, only in case where the assessing officer is in possession of documentary evidences indicating income escapement exceeding Rs. 50 Lakh for said assessment year *per se*, **represented in the form of assets only** as discussed above, being 3 years have elapsed from the end of said assessment years but 10 years have not elapsed till 31.03.2024 whereas time limit prescribed u/s 153A(1)(b) read with Explanation 1 of the act as applicable prior to 01.04.2021 has not elapsed. As, irrespective of the fact that said assessment years is not part of block of 6 assessment years preceding the assessment year relevant to financial year in which search was initiated, said assessment years are duly included in definition of 'relevant assessment years' defined under Explanation 1 to Section 153A of the act. Pertinently, said assessment years are beyond 6 years preceding the assessment year relevant to financial year in which search was initiated but is within 10 years from such assessment year and if and only if, the assessing officer is in possession of information indicating escapement of income exceeding Rs. 50 Lakh represented in form of assets specifically for any of the said assessment years, *per se*, the assessment proceeding u/s 147 of the act could be initiated. Further, provisions of section 148A of the act will not be applicable in such case, being in case of search operation conducted u/s 132 of the act, the assessing officer shall be deemed to be in possession of 'information' as prescribed under Explanation 1 to Section 148 of the act, which is pre-condition for initiation of a valid assessment proceeding u/s 147 of the act.

Tabular Representation of Example

S. No.	FY	AY	Final Remark
1	2012-13	2013-14	Proceeding cannot be initiated being time barred by provisions of first proviso to section 148 read with provisions of section 153A(1)(b) of the act.
2	2013-14	2014-15	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in form of asset being 3 years from the end of relevant AY elapsed but 10 years have not elapsed and said assessment year is not part of block of 6 years but part of relevant assessment years.

S. No.	FY	AY	Final Remark
3	2014-15	2015-16	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in form of asset being 3 years from the end of relevant AY elapsed but 10 years have not elapsed and said assessment year is not part of block of 6 years but part of relevant assessment years.
4	2015-16	2016-17	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in form of asset being 3 years from the end of relevant AY elapsed but 10 years have not elapsed and said assessment year is not part of block of 6 years but part of relevant assessment years.

S. No.	FY	AY	Final Remark
5	2016-17	2017-18	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in form of asset being 3 years from the end of relevant AY elapsed but 10 years have not elapsed and said assessment year is not part of block of 6 years but part of relevant assessment years.
6	2017-18	2018-19	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in either of three forms being 3 years from the end of relevant AY elapsed but 10 years have not elapsed.
7	2018-19	2019-20	Proceeding u/s 149(1)(b) can be initiated if income escaped exceed Rs. 50 Lakh and it is represented in either of three forms being 3 years from the end of relevant AY elapsed but 10 years have not elapsed.

S. No.	FY	AY	Final Remark
8	2019-20	2020-21	Proceeding u/s 149(1)(a) can be initiated being 3 years from the end of relevant AY not elapsed.
9	2020-21	2021-22	Proceeding u/s 149(1)(a) can be initiated being 3 years from the end of relevant AY not elapsed.
10	2021-22	2022-23	Proceeding u/s 149(1)(a) can be initiated being 3 years from the end of relevant AY not elapsed.
11	2022-23	2023-24	Proceeding u/s 149(1)(a) can be initiated being 3 years from the end of relevant AY not elapsed.
12	2023-24	2025-25	Search Year

Example: Related to amendment by FA, 2023

For example, a search is initiated on 16-03-2024 (or where the search is initiated before 15-03-2024, but the last warrant was executed on 20-03-2024), and it revealed the acquisition of undisclosed assets during the financial year 2016-17 relevant to the assessment year 2017-18. The escaped income involved in such assets is above Rs. 50 lakhs. The time period for the issue of notice under Section 148 shall expire on 31-03-2024. As per the amended law, such notice can be issued on or before 15-04-2024.

Where a search or requisition was initiated or made on or before 31-03-2021, the assessment or reassessment or re-computation shall be continued as per the existing provision of Section 153A, 153B, 153C and 153D, and the aforesaid time limitation shall not apply to such cases.

Time Limits

To complete the assessment

Where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A, on or after the 01-04-2021, the assessment in such cases shall be made within the limitation period provided under Section 153, i.e., within 12 months from the end of the financial year in which notice was served.

Where the search or requisition is made on or before 31-03-2021, the assessment in such cases shall be made within the limitation period provided under Section 153B, i.e., within 12 months from the end of the financial year in which last of the authorisations for search/requisition was executed.

Where a search or requisition is made between 01-04-2020 and 31-03-2021, the assessment for the assessment year 2021-22 should be completed on or before 30-09-2022

Time Limits

To complete the assessment

Date of search	Limitation period
On or after 01-04-2021	Within 12 months from the end of the financial year in which notice was served
Between 01-04-2020 and 31-03-2021	On or before 30-09-2022
Before 01-04-2019 and 31-03-2020	Within 12 months from the end of the financial year in which last of the authorisation for search/requisition was executed

The time-limit (original time-limit or revised time-limit in consequence of search or requisition) shall be extended by 12 months when a reference is made to the transfer pricing officer (TPO).

Time Limits

Extension of time-limit for pending assessment if search is initiated

The time limit to complete the assessment or reassessment shall be extended by 12 months in the following cases:

1. When a search is initiated under Section 132 or a requisition is made under Section 132A against the assessee and on said date, the assessment or reassessment of any year is pending.
2. When any money, bullion, jewellery or other valuable article or thing is seized or requisitioned from a person belongs to the assessee, and on the date of initiation of search or making of requisition against said person, the assessment or reassessment of assessee for any year is pending.
3. When any books of account or documents seized or requisitioned from a person pertains to, or any information contained therein relates to the assessee, and on the date of initiation of search or making of requisition against said person, the assessment or reassessment of assessee for any year is pending.

Time Limits

Time taken in handing over of records to AO seized during search

The period (not exceeding 180 days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized or requisitioned, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee:

- a) in whose case such search is initiated, or such requisition is made;
- b) to whom any money, bullion, jewellery, or other valuable article or thing seized or requisitioned belongs to; or
- c) to whom any books of account or documents seized or requisitioned pertains or pertains to, or any information contained therein, relates to.

Thus, the time consumed from the date of initiation of the search/requisition and ending with the date of handing over of books of account, valuables, etc., to the Assessing Officer will be excluded from the limitation for completing the assessment in search cases.

Satisfaction / Approval in Search / Survey Case

In case where:

- Search conducted u/s 132, or
- Requisition made u/s 132A, or
- where asset or material pertaining to assessee from search or

For 3 AY prior to AY relevant to PY in which search is initiated or requisition is made:

- No enquiry proceeding is to be conducted u/s 148A [*Proviso to 148 r.w.s. Explanation 2 to 148*]
- It is mandatory for AO to issue notice u/s 148 being deemed to be in possession of information. [*Proviso to 148 r.w.s. Explanation 2 to 148*]
- As such, AO is required to obtain prior approval from specified authority based on mandatory provisions of 148.

For AY beyond 3 AY but not exceeding 10 AY prior to AY relevant to PY in which search is initiated or requisition is made where likely income escaped exceed 50 Lakh in a year per se:

- No enquiry proceeding is to be conducted u/s 148A [*First proviso to Section 148A*]
- Notice u/s 148 is to be issued only in case AO is in possession of any incriminating material indicating aforesaid escaped assessment
- AO had to mandatorily draw an satisfaction based on such material and shall obtain prior approval from specified authority based on such satisfaction.

Satisfaction / Approval in Search / Survey Case

In cases where survey operation has been conducted u/s 133A except in case of survey related to TDS u/s 133A(2A)

For 3 AY prior to AY relevant to PY in which survey is initiated:

- Enquiry proceeding is to be conducted u/s 148A *[Survey case not included in Proviso to section 148A]*
- After concluding enquiry proceeding, if AO concludes that case is fit for issuance of notice u/s 148, AO had to mandatorily draw an satisfaction based on material available and shall obtain prior approval from specified authority based on such satisfaction.

Note: Impliedly no satisfaction is required to be drawn prior to issuance of notice u/s 148 but due to mandatory provision to obtain prior approval, a deemed satisfaction is to be drawn up by the AO and shall be sent to specified authorities for prior approval in each and every case but basis of satisfaction will be different on case to case basis.

For AY beyond 3 AY but not exceeding 10 AY prior to AY relevant to PY in which search is initiated or requisition is made where likely income escaped exceed 50 Lakh in a year per se:

- Enquiry proceeding is to be conducted u/s 148A wherever AO is in possession of any incriminating material indicating aforesaid escaped assessment. *[Survey case not included in Proviso to section 148A]*
- After concluding enquiry proceeding, if AO concludes that case is fit for issuance of notice u/s 148, AO had to mandatorily draw an satisfaction based on material available and shall obtain prior approval from specified authority based on such satisfaction.

Satisfaction / Approval in Search / Survey Case

In cases where survey operation has been conducted u/s 133A except in case of survey related to TDS u/s 133A(2A)

In other view, in case of survey, it is opined that compulsorily three year notice u/s 148 of the act is to be issued and mandatory provisions of section 148A is not to be followed. However, we beg to differ since the exception of not adhering to the procedure provided in section 148A is not applicable to survey cases whereas Section 148 shall be made applicable only after compliance with the provision of section 148A.

Technical Issues in Block Assessments

1. **Jurisdictional Issues**: Determining the proper jurisdiction for conducting block assessment can be complex, particularly in cases involving multiple entities or search operations. The jurisdictional issue was addressed by the Supreme Court in the case of Principal Commissioner of Income Tax vs. NRA Iron & Steel Pvt. Ltd. (2019) 264 Taxman 1 (SC). The court held that the jurisdiction for block assessment would lie with the Assessing Officer of the searched person, except in cases where the searched person is a partner or a member of an association of persons. In such cases, the jurisdiction would be with the Assessing Officer of the searched entity.
2. **Determination of Undisclosed Income**: Block assessment involves assessing undisclosed income for a specific period based on evidence found during a search or seizure operation. Determining the quantum of undisclosed income can be challenging, especially when proper documentation or evidence is lacking. The burden of proving undisclosed income rests with the tax authorities, as highlighted by the Supreme Court in the case of Pr. CIT vs. Abhisar Buildwell [2023] 149 Taxmann.com 399 (SC) and CIT vs. Kabul Chawla (2016) 380 ITR 573 (SC).
3. **Valuation of Assets**: Valuing assets, such as cash, immovable property, jewelry, shares, etc., is crucial in block assessment. Determining the fair market value of such assets or calculating the undisclosed income derived from them can be complex. Expert valuation methods, such as registered valuers or registered merchant bankers, may be required to arrive at a fair valuation.

Technical Issues in Block Assessments

4. **Assessment of Jointly Held Assets or Investments**: Assessing jointly held assets or investments in block assessment presents challenges. Determining the proportionate share of income or liability attributable to each party can be complex, particularly in the absence of proper documentation or agreements regarding income sharing. The Supreme Court, in the case of ACIT vs. DLF Ltd. (2013) 354 ITR 487 (SC), held that undisclosed income cannot be assessed on an entity merely based on the fact that it is jointly held with a person whose income is being assessed.

5. **Procedural Compliance**: Block assessment involves adherence to specific procedural requirements, including the issuance of notices, timelines for completing assessments, recording reasons, and providing an opportunity for the taxpayer to be heard. Any deviation or non-compliance with procedural requirements can lead to legal challenges and potential invalidation of the assessment. Ensuring strict adherence to procedural requirements is crucial to avoid any procedural infirmities.

Apart from the above technical issues, there are practical challenges in conducting block assessment, such as the voluminous nature of data, coordinating with various stakeholders, and managing the timeline for completing assessments within the specified period.

Certain Practical issues in search cases

- There should be nexus between information and person searched. **Harilal Shah V. CIT (2006) 281 ITR 199 (Gau.)**
- Assets in the possession of assessee engaged in money lending business, belonging to third person cannot be seized. **Alleppey Financial Enterprises vs ADIT (Inv.) & Anr., (1999) 236 ITR 562 (Ker.)**
- Disclosure subsequent to seizure of incriminating material is not voluntary. **Shardadevi P. Jhunjhunwala v CIT [2010] 1 taxmann.com 92 (Bom.)**
- Action taken in public interest does not amounts to interference with public freedom. **Rajendran Chingaravelu v ACIT [2010] 186 Taxman 305 (SC)**
- Gold jewellery acquired by assessee through gifts by relatives and family members over a period of four decades is justified as per prevailing customs. **Sushila Devi v. CIT [2016] 76 taxmann.com 163 (Delhi)**

Certain Practical issues in search cases

- Documentary evidences to prevail over Oral Evidence. **CIT vs Omprakash K. Jain [2009] 178 Taxman 179 (Bom.) & First Global Stock broking (P) Ltd. v. ACIT 15 TTJ 173 (ITAT-Mum.)**
- Can the Auditors be forced to part with information of clients not related to search found in their laptops? **The Apex Court in DIT (Inv.) vs S.R. Batliboi & Co. [2010] 186 Taxman 350 (SC) superseded the judgment of Hon'ble DHC in S R Batliboi & Co Vs DIT (Inv.) (2009) 315 ITR 137(Delhi)**
- Place of search need not belong to the searched person. **ACIT vs. Vinod Goel [2008] 111 ITD 70 (ASR)**
- Remedy even if surrender made in case no incriminating material found. **ACIT vs Janak Raj Chauhan [2006] 102 TTJ 316 ASR] & M. Narayanan & Bros. v. Asstt. CIT [2011] 13 taxmann.com 49 (Mad.)**

Certain Practical issues in search cases

- In case no material is found with regard to assessee's ownership of asset found in search, deeming provision in view of Explanation 5 to sec. 271(1)(c) could not be applied to presume deeming concealment so as to levy penalty. **ITO v. V.R. Rathish [2014] 46 taxmann.com 213 (Cochin - Trib.)**
- Search proceedings to be quashed where on very similar grounds, the search operations has been quashed in other case. **Dipen Laljibhai Mandalia v. Director General of Income-tax [2013] 217 Taxman 66 (Gujarat)(MAG.)**
- Civil court has no jurisdiction for search and seizure proceedings u/s 132. **Rakesh Kumar Agarwal v. Bansal Commodities [2013] 39 taxmann.com 136 (Delhi)**
- Where clear and cogent reasons had been assigned for re-transfer of assessments from one place to another, objections would be untenable. **Kwantum Papers Ltd. v. Union of India [2015] 57 taxmann.com 60 (P&H)**
- Merely because key to a locker of assessee was found during search and seizure operation conducted upon assessee's relative, Search warrant could not be issued in respect of assessee's locker. **Ameeta Mehra Vs Additional Director of Income-tax (Inv) [2017] 395 ITR 185 (Delhi)**

Evidences and Practical tips to explain source of cash

Here are some common types of evidence and practical tips that can help you establish the legitimacy of the cash

- **Bank Statements**: Provide bank statements that show cash deposits and withdrawals, especially if the cash has been sourced from previous withdrawals or received as payments from legitimate sources. This can demonstrate a clear trail of funds
- **Income Documents**: Provide income documents such as salary slips, payment receipts, invoices, or contracts that show a legitimate source of income. These documents should indicate the amounts received in cash and the nature of the transactions.
- **Business Records**: If the cash is related to a business activity, maintain detailed records of sales, purchases, and expenses. These records should include cash receipts, invoices, bills, and other relevant documents that can account for the cash transactions.
- **Cash Flow Analysis**: Prepare a cash flow statement that demonstrates the inflow and outflow of cash over a specific period. This can help establish a clear picture of the funds' origin, their usage, and the time frame involved.

Evidences and Practical tips to explain source of cash

- **Gift Deeds and Affidavits**: If the cash is received as a gift, ensure that there is a legally executed gift deed or affidavit that clearly states the source of the gift, the relationship between the parties, and any applicable tax implications.
- **Loan Agreements**: If the cash is borrowed from a financial institution or an individual, maintain proper loan agreements or promissory notes that outline the terms of the loan, including repayment schedules, interest rates, and any collateral provided.
- **Sale Agreements and Property Documents**: If the cash is derived from the sale of property or assets, provide sale agreements, property documents, and registration details to establish the legality of the transaction.
- **Affidavits from Witnesses**: In certain cases, it may be helpful to obtain affidavits from individuals who can verify the source and age of the cash. These witnesses should be reliable and have direct knowledge of the transactions.

Evidences and Practical tips to explain source of cash

During the search operation, search party match the physical cash with the cash balance showing in financial statement of assessee and in most of the cases search party found that there were difference in physical cash and cash balance as recorded in books of account. There can be two scenario –

- **Physical cash is more then the cash balance showing in books of accounts** – in a case where cash found was more than the cash recorded in books of accounts then the AO may invoke section 69A of the Act and treat the excess cash as undisclosed income.
- **Physical cash is less then the cash balance showing in nooks of accounts** – in a case where cash found was less than the cash recorded in books of accounts then the AO may invoke section 69C of the Act and treat the difference as unexplained expenditure of assessee.

Evidences and Practical tips to explain source of cash

Practical tips:

- **Maintain Proper Records**: It is crucial to maintain organized and accurate records of all cash transactions, including receipts, invoices, and bank statements. This will help you provide a clear audit trail when required.
- **Consistency in Documentation**: Ensure that all supporting documents align with each other and present a consistent narrative. Any discrepancies or inconsistencies may raise questions about the legitimacy of the cash.

Evidences and Practical tips to explain source of Jewellery

Here are some common types of evidence and practical tips that can help you establish the legitimacy of the jewellery:

- **Purchase Receipts and Invoices**: Provide purchase receipts and invoices for the jewelry in question. These documents should include details such as the date of purchase, the name and address of the seller, a description of the jewelry, and the amount paid. This can establish a clear trail of ownership and demonstrate the legal acquisition of the jewelry.
- **Gift Deeds and Affidavits**: If the jewelry is received as a gift, ensure that there is a legally executed gift deed or affidavit that clearly states the source of the gift, the relationship between the parties, and any applicable tax implications. This can help establish the legitimate transfer of ownership.
- **Inheritance Documents**: If the jewelry has been inherited, provide legal documents such as wills, succession certificates, or probate orders that prove the inheritance and establish your rightful ownership of the jewelry.

Evidences and Practical tips to explain source of Jewellery

- **Valuation Certificates**: Obtain valuation certificates from reputable and registered jewelry appraisers. These certificates should include details such as the description, weight, purity, and estimated value of the jewelry. Valuation certificates can provide independent and expert verification of the authenticity and value of the jewelry.
- **Bank Statements and Payment Records**: Provide bank statements or payment records that show transactions related to the purchase or sale of jewelry. These documents should demonstrate the source of funds used for purchasing the jewelry and any subsequent transactions involving the jewelry.
- **Photographs and Personal Records**: Maintain photographs or personal records that depict the jewelry in your possession over time. These can serve as additional evidence of ownership and age, especially if the jewelry has been in your family for an extended period.

Evidences and Practical tips to explain source of Jewellery

- **Expert Opinions**: If there are unique or antique pieces of jewelry involved, consider seeking expert opinions from reputable gemologists, historians, or antique jewelry specialists. Their assessments can help establish the authenticity, age, and value of the jewelry.
- **Insurance Records**: If the jewelry has been insured, provide copies of insurance policies or certificates that list the jewelry items, their descriptions, and their values. Insurance records can serve as additional evidence of ownership and value.

Evidences and Practical tips to explain source of Jewellery

Board's Instruction No. 1916 dt. 11-05-1994 contains guidelines for seizure of jewellery and ornaments found in the course of search proceeding. While issuing this instruction, the Board has kept in view the sentimental value attached to the possession of the ornaments in the Indian society. Instruction directs that gold jewellery and ornaments to the extent of 500gms. Per Married Lady, 250gms. Per Unmarried Lady and 100gms. Per Male member of family need not to be seized.

Further, this circular is explained by the Hon'ble Ahmedabad I.T.A.T. in case of ACIT vs. Rameshchandra R Patel, [2004] 89 ITD 203 and ITO vs. Manila S Dave, [2001] 117 Taxman 23, wherein it has been explicitly held that though board circular is a guideline for not effecting seizure during the course of search, extended meaning of same shows the intention that the **jewellery to the extent mentioned in such circular should be treated as explained jewellery and gold found to that extent for family members cannot be treated as unexplained in the hand of assessee.**

Evidences and Practical tips to explain source of Jewellery

Practical tips:

- **Organize and Safeguard Documents:** Maintain a well-organized file of all relevant documents, including receipts, invoices, certificates, and photographs. Keep the originals in a safe place and make copies for submission when required.
- **Consult Professionals:** Seek guidance from experienced jewelers, appraisers, or legal professionals specializing in jewelry matters. They can provide advice on documentation requirements and help authenticate the jewelry, especially if it holds significant historical or cultural value.

Evidences and Practical tips to explain source of Property

Here are some common types of evidence and practical tips that can help you establish the legitimacy of the property:

- **Sale Deeds and Conveyance Documents**: Provide the original sale deed or conveyance documents that establish your ownership of the property. These documents should include details such as the property's description, boundaries, previous owners, purchase price, and the date of acquisition.
- **Property Registration and Mutation Records**: Submit the property registration documents and mutation records, which demonstrate the legal transfer of ownership and the update of property records with the appropriate authorities.
- **Encumbrance Certificate**: Obtain an encumbrance certificate from the concerned sub-registrar's office. This document reveals any existing encumbrances, such as mortgages, liens, or legal disputes, on the property.

Evidences and Practical tips to explain source of Property

- **Property Tax Receipts**: Provide property tax receipts that indicate your payment history and ownership of the property. These receipts can serve as evidence of your legitimate possession and maintenance of the property.
- **Building Approvals and Completion Certificates**: If the property is a constructed building, provide building approvals, commencement certificates, and completion certificates issued by the relevant local authority. These documents establish that the construction was carried out with proper permissions and in compliance with applicable regulations.
- **Possession Letters and Allotment Documents**: If the property is acquired from a housing society or development authority, submit possession letters, allotment documents, and any other relevant records that demonstrate your rightful possession of the property.

Evidences and Practical tips to explain source of Property

- **Mortgage or Loan Agreements**: If the property has been mortgaged or used as collateral for a loan, provide the relevant mortgage or loan agreements, including the details of the lender, loan amount, terms, and repayment schedule.
- **Property Valuation Reports**: Obtain property valuation reports from certified valuers. These reports estimate the current market value of the property, providing an independent assessment of its worth.
- **Photographs and Personal Records**: Maintain photographs or personal records that depict the property over time. These can serve as additional evidence of your possession and usage of the property.

Evidences and Practical tips to explain source of Property

Practical tips:

- **Organize and Safeguard Documents:** Keep all original property-related documents safely in a designated folder or file. Make copies of these documents for submission when required and ensure they are easily accessible.
- **Consult Professionals:** Seek guidance from experienced real estate professionals, lawyers, or property consultants. They can provide advice on the specific documentation requirements and help authenticate the property's legality.

Stay of Demand

If the taxpayer feels that he should not be made liable to pay the tax demand because, in his opinion, the assessment of income is unreasonably high (also termed as 'high pitched assessment') he can approach the assessing officer for stay of demand.

The Assessing Officer has the power to extend the time for payment of tax demand or to allow payment in instalments. The Assessing Officer also has the power to not treat a taxpayer defaulter for non-payment of tax till his appeal is disposed of by the Joint Commissioner (Appeals) or Commissioner (Appeals).

Conditions for Stay of Demand

A. Payment of 20% of disputed demand

If an appeal is filed before the Joint Commissioner (Appeals) or the Commissioner (Appeals), the assessing officer can grant stay of demand till the disposal of appeal by Joint Commissioner (Appeals) or Commissioner (Appeals). The CBDT through its Office Memorandum prescribed that stay of demand can be granted subject to payment of 15% of the demand. Subsequently, the limit has been raised from 15% to 20% through another **Office Memorandum (F. No.404/72/93-ITCC (FTS: 284146) dated 31-7-2017.**

Conditions for Stay of Demand

B. Payment higher than 20%

In the following three cases the AO can insist on a lump sum payment which is higher than 20% of the tax demand:

- (a) if the taxpayer has a past history of tax litigation and the tax assessment on same issues in preceding years has been affirmed in appellate proceedings;
- (b) where the Supreme Court or the jurisdictional High Court has decided same issue in tax department's favour; oR
- (c) the tax demand is based on credible evidence collected in a search or survey operation carried out against the taxpayer.

Conditions for Stay of Demand

B. Payment less than 20%

If the Assessing Officer is of the view that a payment of less than 20% of the disputed tax demand is warranted, the Assessing Officer may refer the matter to the CIT, who shall, based on the relevant facts, decide the quantum of the demand that the taxpayer should pay in lump sum for granting stay of the balance. The CIT may allow payment of less than 20% of the disputed tax if there are favourable ruling in favour of assessee either in his own case [4] or by the Supreme Court or the jurisdictional High Court.

If the Assessing Officer directs the taxpayer to pay 20% of the tax demand and the taxpayer still feels aggrieved, he can file a review petition before the CIT against such directions. Thus, it is possible to obtain a stay, subject to payment of lower than 20% of the total tax demand, if any of the above twin circumstances of past precedents exist

Conditions for Stay of Demand

Instruction No. 96 [F. No. 1/6/69-ITCC] issued by the Central Board of Direct Taxes in connection with the stay of demand in cases of harsh assessments, clarifies as under:

“Stay in cases of harsh assessments- One of the points that came up for consideration in the 8th meeting of the Informal Consultative Committee was that income tax assessments were arbitrarily pitched at high figures and that the collection of disputed demands as a result thereof was also not stayed in spite of the specific provision in the matter in section 220(6) of the Income-tax Act, 1962.”

The then Deputy Prime Minister observed as under:

“...Where the income determined on assessment was substantially higher than the returned income, say, twice the latter amount or more, the collection of the tax in dispute should be held in abeyance till the decision on appeals, provided there were no lapses on the part of the assessee”

The Board desires that the above observations may be brought to the notice of all the Income-tax Officers working under you and the power of stay of recovery in such cases upto the stage of first appeals may be exercised by the Inspecting Assistant Commissioner/Commissioner of Income-tax.”

Conditions for Stay of Demand

Various case laws with respect to stay of demand by making payment less than 20% :

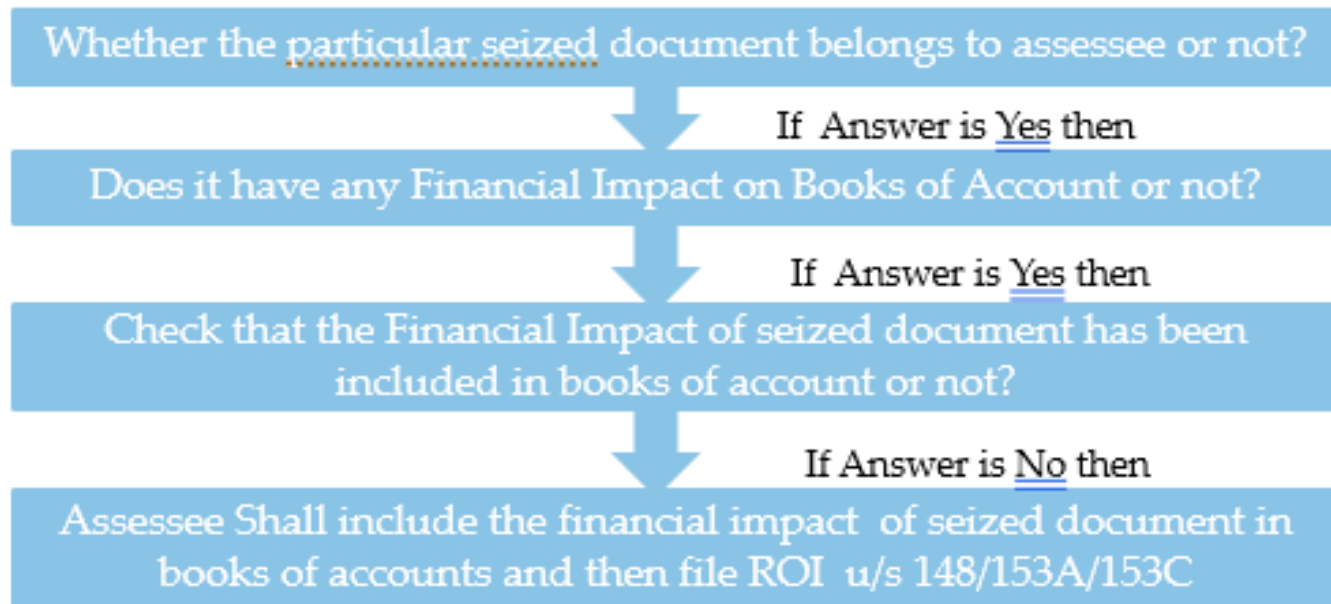
- Principal Commissioner of Income Tax & Ors. Vs M/s LG Electronics India Pvt. Ltd. 303 CTR 649 (SC)
- Samms Juke Box. vs Asstt. CIT: 409 ITR 33(Mad)
- GMV Projects & Systems vs. ACIT & Anr: 305 CTR 680 (Mad)
- Charishma Hotels (P) Ltd. vs. ITO & Ors: 305 CTR 621(Kar)

Practical Tips for handling Search, Seizure & Post Search proceedings

- Systematically arrange and make analysis of all the seized documents.
- Sort the documents assessee wise, assessment year wise and premises wise.
- Sort the documents having financial relevance and financially irrelevant.
- If the documents are financially relevant, ascertain how they are explainable vis a vis books of accounts or other details available with the Income Tax Department or are found / seized from the premises searched or surveyed.
- See if the explanation is available about all the records available with the Income tax department.
- Offer Peak Credits as undisclosed income, if any.
- Return of income u/s 148/153A/153C should be filed judiciously after consideration of records and material lying with income tax department.
- Where any undisclosed income is offered in the return filed u/s 148\ then the expenditure incurred to earn that income may also be claimed.
- File returns under protest if required notices are not properly issued & challenge the validity of proceedings at the time of Assessments itself.

Points to be Kept in Mind During Search Assessment

- On receipt of notice u/s 148 of the Act, assessee should file his return of income within the time limit provided in the notice. If due to some unavoidable reason, assessee is not able to furnish the return, then he should make an application providing sufficient reason before AO to allow the late filing of return.
- Assessee should analyze the seized document in following manner



- Assessee can prepare for assessment proceedings like on what matter department is contemplating to make addition or disallowance in his case on the basis of finding of Investigation wing .

Points to be Kept in Mind During Search Assessment

- Analyze the statement recorded u/s 131 or 132(4) of the Act, and if any statement is made under pressure it should be retracted timely before the investigation wing.
- Assessee should ensure that proper notices u/s 127 for centralization of jurisdiction has been issued by incumbent officer and proper opportunity of being heard has been granted.
- Although it is not possible for the assessee to anticipate the AO's enquiries, yet he should equip himself with all the information on audit report, notes, items of the return and seized document, that may reasonably be expected to be inquired into.
- Assessee whenever attend any hearing, it should be mentioned in order sheet with date and signature of assessee as well as AO.
- Assessee should always give written replies of the information sought by the AO because oral replies are often misunderstood or misrepresented or sometimes treated as never been made.
- Where assessee wants to seek adjournment, the adjournment letter should be speaking one, giving sufficient reasons for adjournment and shall be filed well before the date of hearing, giving the AO no opportunity to reject the application and pass an ex parte order.
- During the assessment proceeding if AO refuse to accept any submission or document, then assessee shall send such submission or document to the office of AO through registered post and keep the receipt of registered post for his record.

Release of Assets seized during search

- In respect of jewellery seized during the search operation, a bank guarantee of value equivalent to the value of jewellery determined by the Registered Valuer during the search can be furnished with AO.
- In respect of cash found and seized during the search operation, a request shall be filed before AO to consider the same as tax paid for specific assessment year, in which it is anticipated that tax liability will arise, and a challan considering the same as tax paid under regular assessment shall be sought.



Thank You...!!!

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