

# **INSIGHT ON SEARCH** **ASSESSMENTS**

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**We have to discuss legal provision of Search Assessment's in 3 parts-**

1. Assessment in the case where search operations conducted u/s 132 or requisitions made u/s 132A on or before 31<sup>st</sup> March 2021.
2. Assessment in the case where search operation conducted u/s 132 or requisitions made u/s 132A on or after 1<sup>st</sup> April 2021 but before 1<sup>st</sup> September 2024.
3. Assessment in case where search operation conducted u/s 132 or requisitions made u/s 132A on or after 1<sup>st</sup> September 2024.

**1. Legal Provision of Search Assessment where search operations or requisitions made on or before 31<sup>st</sup> March 2021, but after 31<sup>st</sup> May 2003.**

**Section 153A - Assessment in case of search or requisition.**

1. 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—
  - a. 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 and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
  - b. assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

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

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- a. the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- b. the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- c. the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account. 5

2. If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

- i. save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- ii. in an 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.



## **Legal Provision of Search Assessment**

### **Issuance of Notice for Furnishing Notice u/s 153A of the Act**

As per Section 153A(1)(a), in case of person where a search is initiated u/s 132 or a requisition was made u/s 132A of the Act after 31st May 2003, AO shall issues a notice upon such person requiring him to furnish a ROI within such time for 6 AY immediately preceding the AY relevant to the PY in which such search is conducted or requisition is made.

### **Some Important Points Regarding Issuance of Notice**

- In respect of the search initiated on or after 01.04.2017, the assessment year covered u/s 153A are extended to 10 years instead of 6 assessment year subjected to following conditions stipulated in the Fourth Proviso to Section 153A(1) of the Act:
  - a. The AO has in his possession Books of Accounts or other document or evidence which reveal income, represented in the form of asset which has escaped assessment, amounting to or is likely to amount to Rs. 50 Lakh or more in one year or in aggregate in relevant AY's.
  - b. The income referred to in clause (a) or part thereof has escaped assessment for such year or years AND
  - c. The Search u/s 132 of the Act is initiated or requisition /s 132A is made on or after 01.04.2017.

Issuance of notice is condition precedent for making assessment u/s 153A of the Act. If no notice was issued or the notice issued is proved to be invalid, then the assessment proceeding would also be treated as void-ab-initio.

- Provision of Section 282 shall be applicable on notice issued under section 153A(1)(a) of the Act, and accordingly service of notice can be made through registered post or speed post.
- Section 153A(1)(a) use the words “issue of notice” therefore it implies that, there is need to issue six separate notices, for all the six AY’s.
- Income related to search year should be assessed u/s 143(3) or 144 of the Act, therefore there is no requirement to issue notice u/s 153A(1)(a) of the Act.
- AO by following the principal of natural justice, should provide reasonable time to assessee to file the ROI. As far as reasonable time is concerned , it may be from 15 days to 30 days.

## **Some Important Points Regarding Filing of ROI in Response to Notice issued u/s 153A(1)(a)**

- On receipt of notice u/s 153A(1)(a), the assessee should file ROI of six years within such time as allowed by AO. If assessee thinks that no modification is required in return already filed for the concerned year, then he may file a letter stating that such return filed earlier should be treated as return filed in response to the notice u/s 153A(1)(a) of the Act.
- Provision of Section 153A(1)(a) provides that all the provision of the Income Tax Act shall apply as if such return is filed u/s 139 of the Act.
- As per the provision of section 153A(1)(a) of the Act, a return filled in response to notice issued thereon shall be treated as return filed u/s 139 of the Act, therefore all the provision of assessment shall also be applicable in the case of search assessment. In view of above discussion and as per the judgement of Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal [2019] 417 ITR 325 it was held that Service of notice u/s 143(2) is mandatory even in case of Search Assessment.



## Some Important Points Regarding Abetment of Pending Assessment or Reassessment

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- As per second proviso to section 153A(1) of the Act, the assessment or reassessment, if any relating to AY falling within the period of 6 AY's or 10 AY's referred to in section 153A(1) of the Act pending on the date of initiation of the search u/s 132 of the Act or making of requisition u/s 132A of the Act, as the case may be, shall abate.
- As per the provision of Section 153A(2) of the Act, if any proceeding initiated or any order of assessment or reassessment made u/s 153A(1) has been annulled in any appeal or other legal proceeding, then, notwithstanding anything contained in section 153A(1) or section 153 of the Act, the assessment or reassessment relating to any AY abated earlier shall stand revived with effect from the date of receipt of the order of such annulment by the PCIT or CIT.

### SECTION 153D

No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA.

- **GURVINDER SINGH DUGGAL (ITAT Delhi)(ITA 860/Del/2021 to ITA 863/Del/2021)**

It is pertinent to mention here that erroneous draft assessment order sent for approval of Ld. JCIT and was duly approved u/s 153D of the Act by him in a mechanical manner.

The evident reason for the same is that the approval has been granted by Ld. JCIT as a mechanical ritual and no cognizance of facts, figures & assessment records of the case was taken by Ld. JCIT while granting said approval. **In case any cognizance of facts of the case would have been taken by Ld. AO, the apparent error would have been identified.**

### **SEPARATE SATISFACTION NOTE**

- Commissioner of Income-tax (Appeals) vs Sunil Kumar Sharma [2024] 165 taxmann.com 846 (SC) (SLP (CIVIL) DIARY NO(S). 21526 OF 2024)
- Commissioner of Income-tax vs Sinhgad Technical Education Society [2015] 63 taxmann.com 14/235 Taxman 163 (Bombay)

### **APPROVAL – WITHOUT APPLICATION OF MIND**

- Shreelekha Damani vs. DCIT 173 TTJ 332(Mum.) (BOMBAY HC)
- ACIT, Circle-1 (2) Vs. Serajuddin and Co. the Hon'ble Supreme Court in SLP (Civil) Dairy No. 44989/2023
- Acit, New Delhi vs M/S. Janak Raj Gupta & Co., New Delhi on 15 December, 2023 (ITAT DELHI)

### **APPROVAL – CONSOLIDATED**

- ACIT vs Anuj Bansal (ITA No.1484/Del./2021)(ITAT DELHI)(AY 15 – 16)

## **2. Legal Provision of Search Assessment where search operations or requisitions made on or after 1st April 2021**

### **Income escaping assessment [Substitution of Section 147 w.e.f. 1st day of April 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)

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.

**Issue of Notice where Income has escaped assessment [Substitution of Section 148 w.e.f. 1st day of April 2021]**

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:

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.



Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

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 in the case of the assessee on or after the 1st day of April, 2021; 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 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 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 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.

**Conducting Inquiry, Providing Opportunity before issue of Notice u/s 148 [New Section 148A inserted after section 148 w.e.f. 1<sup>st</sup> day of April 2021]**

The Assessing Officer shall, before issuing any notice under section 148, —

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish reply as per clause (b) expires

Provided that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
- (b) 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 in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under 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.

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



## **Time Limit for Notice [Substitution of Section 149 w.e.f. 1st day of April 2021]**

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(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 accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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:

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 31<sup>st</sup> day of March, 2021:

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 is less than seven days, such remaining period shall be extended to seven days and the period of limitation in sub-section (1) shall be deemed to be extended accordingly.

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

### **New Procedure for Search Assessment's**

- As per the new provision of section 148 of the Act, now AO can issue notice u/s 148 of the Act for making assessment or reassessment u/s 147 of the act, only if he has information which suggest that 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. However as per the explanation 2 to section 148, AO is not required to have information in the case if search is initiated u/s 132 or requisition is made u/s 132A upon assessee. Which means AO can issue notice u/s 148 of the Act in search case even if he has no information that income has escaped assessment.
- As per the provision of Section 149 of the Act, AO can issue notice u/s 148 for 3 assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated.
- However, if AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year, than AO can issue notice u/s 148 for 10 assessment year immediately preceding the assessment year relevant to the previous year in which the search is initiated.

**As per section 148 of the Act, AO has to obtain prior approval of specified authority u/s 151 of the Act, before issuing notice to assessee, which is as follows:**

Period for which notice u/s 148 to be issued	Authority
For 3 Years	Principal Commissioner or Principal Director or Commissioner or Director
Beyond 3 Years & Upto 10 Years	Principal Chief Commissioner or Principal Director General [Where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General]



## **Legal Aspects of Search Assessment**

According to my experience of handling the search case, following are the illustrative list of challenges faced by professional during handling the assessment of search cases:-

1. Use of Incriminating Evidence.
2. Seizure and release of Jewellery.
3. Rejection of Books of Account.
4. Suppression of Sales.
5. Bogus Purchase.
6. Noting on Loose Papers – Evidentiary Value
7. New Claim of deduction in Proceeding u/s 153A of the Act

## **USE OF INCRIMINATING EVIDENCE**

The expression “incriminating evidence” is not defined in the Act. It refers to an act of manipulation of accounts by a taxpayer by creating evidence in his favour or by excluding certain evidence against him so as to reduce his tax liability. Incriminating evidence by its very nature is secreted and is usually unearthed in the course of search.

### **Legal Issues**

There is a non-ending debate over the issue whether assessment under section 153A is mandatory even where no incriminating material is found during the search operation u/s 132 of the Act or requisition made u/s 132A of the Act or whether assessment u/s 153A of the Act cannot be initiated if undisclosed income is not found at the time of the search ?

As of now, we cant answer this question in the form of ‘Yes” or ‘No’ for the reason that there is no clarification by the CBDT nor there is any Supreme Court decision on that issue. Various High Courts has given judgement in the favour of Assessee as well as in the favour of Revenue.

### Role of 'Incriminating Material' from the eyes of Revenue Authority

- i. Literal Interpretation must be given to the provision of section 153A - As per the proviso to section 153A, the AO shall assess or reassess the six assessment years preceding the PY in which the search is initiated or requisition is made. The use of the word 'shall' connotes that the assessment/reassessment is mandatory and will have to be made irrespective of the fact whether any material/document, etc., is found in the course of search action; the section nowhere requires that notice can be issued only when there is material found or seized during the course of search.
- ii. The Legislature has purposely used the words 'total income' instead of the term 'undisclosed income' – Word “Total Income “ is used in Proviso to section 153A(1) of the Act instead of term “undisclosed income”. Further, the scope and effect of sections 153A, 153B, 153C and 158-B1 have been explained elaborately by the Departmental Circular No. 7 of 2003, dated September 5, 2003, which states that the AO shall assess or reassess the total income of each of the 6 AY's. Thus, it is submitted by the department that the provision of section 153A requires the AO to issue notice in all cases where a search is conducted under section 132 requiring the affected person to furnish return of income in respect of six assessment years immediately preceding the relevant previous year.

Revenue Authority also placed reliance on the Following Judgment

**a. CIT vs Chetan Das Lachman Das [2012] 211 Taxman 61 (Delhi)** - “there is no condition in this section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or information available with the Assessing Officer which can be related to the evidence found”

### **Role of 'Incriminating Material' from the eyes of Assessee**

- i. The word shall used in section 153A is merely directory and not mandatory – The word 'shall' used in section 153A is merely directory and not mandatory. Therefore, the AO is not mandatorily required to initiate proceedings in every case where a search is initiated, but is required to issue notice only when there is incriminating material or undisclosed income found in the course of search proceeding.
- ii. The interpretation by the Tribunal of section 153A renders the provision of section 153A unconstitutional - If two interpretations of a statutory provision are possible, the one which renders it constitutionally valid should be preferred to the one which renders it invalid. If the interpretation given by the revenue authorities is relied upon then it would mean that the department can merely initiate a search action on a person and then reopen the assessment of that person for 6 years, even though no material indicating undisclosed income has been found at the time of the search.

In selecting different interpretations, the Courts must adopt the interpretation which is just, reasonable and sensible rather than that one which is none of those things.<sup>25</sup> If in the course of a search, nothing incriminating is found, an honest citizen will be unduly harassed by facing automatic reopening of the concluded assessments merely because there was search action against him.



Assessee also placed reliance on the Following Judgment

**CIT vs Kabul Chawla [2015] 234 Taxman 300 (Delhi)** - “Completed assessments can be interfered with by Assessing Officer while making assessment under section 153A only on basis of some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment” Also held in the case of PCIT vs Kurele Paper Mills (P.) Ltd. [2017] 81taxmann.com 82 (Delhi).

### **13. New Claim of deduction in Proceeding u/s 153A of the Act.**

Whether assessee can claim new deduction in the return filed u/s 153A subsequent to search operation?

Hon'ble Bombay High Court in the case of CIT vs B.G. Shirke Construction Technology Pvt. Ltd. [2017] 246 Taxman 300 held that a return filed in response to notice u/s 153A(1) is a return furnished in response to section 139. Therefore, the provision of the Act which would be applicable to a return filed in the regular course u/s 139(1) shall apply to a return filed u/s 153A of the Act.

### 3. Special Procedure for Assessment of Search Cases

#### Chapter XIV-B

##### **A) Meaning of "block period"**

means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was initiated under section 132 or any requisition was made under section 132A and also includes the period starting from the 1st day of April of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition;

**(b) Meaning of "undisclosed income"**

Undisclosed income includes any money, bullion, jewellery, virtual digital asset or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, virtual digital asset valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, exemption, deduction or allowance claimed under this Act which is found to be incorrect, in respect of the block period.



*Explanation.*—For the purposes of this Chapter, the last of the authorisations shall be deemed to have been executed,—

- (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;
- (b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

# Assessment of total undisclosed income as a result of search [Section 158BA]

## **(1) Assessment or reassessment of the total undisclosed income of the block period [Section 158BA(1)]**

Notwithstanding anything in any other provisions of this Act, where **on or after the 1.9.2024**, a search is initiated under section 132, or books of account, other documents or any assets are requisitioned under section 132A, in the case of any person, then, the Assessing Officer shall proceed **to assess or reassess the total undisclosed income of the block period** in accordance with the provisions of this Chapter.

**(2) Existing assessment or reassessment or recomputation under the provisions of this Act, other than this Chapter shall abate [Section 158BA(2)]**

The assessment or reassessment or recomputation under the provisions of this Act **other than this Chapter**, if any, pertaining to **any assessment year falling in the block period, *pending on the date of initiation of the search*** under section 132, or making of requisition under section 132A, as the case may be, **shall abate** and shall be deemed to have abated on the date of initiation of search or making of requisition.

**(3) Reference under section 92CA(1) if already made, or an order under section 92CA(3) if already passed shall also abate [Section 158BA(3)]**

Where during the course of any pending proceeding for the assessment or reassessment or recomputation under the provisions of this Act, **other than this Chapter**, a reference under section 92CA(1) has been made, or an order under section 92CA(3) has been passed, such assessment or reassessment or recomputation, along with such reference made or order passed, as the case may be, shall also abate and shall be deemed to have abated on the date of initiation of search or making of requisition.



**(4) Assessment under this Chapter required to be made to be completed where a subsequent search is initiated or requisition is made [Section 158BA(4)]**

Where any assessment **under the provisions of this Chapter is required to be made** in the case of an assessee in whose case a subsequent search is initiated, or a requisition is made, such assessment shall be duly completed, and thereafter, the assessment in respect of such subsequent search or requisition shall be made under the provisions of this Chapter:

**Provided** that in a case where the period of completing the assessment in respect of subsequent search is less than three months such period shall be extended to three months from the end of the month in which the assessment in respect of the earlier search was completed.

**(5) Revival of abated assessment or abated reference under section 92CA(1) or abated order under section 92CA(3), if assessment under section 158BC(1)(c) is annulled [Section 158BA(5)]**

If any proceeding initiated under this Chapter or any order of assessment or reassessment made under section 158BC(1)(c) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything in this Chapter or section 153, *the assessment or reassessment or recomputation or reference or order relating to any assessment year* which has abated under sub-section (2) or sub-section (3), shall revive with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

**Provided** that such revival shall cease to have effect, if such order of annulment is set aside.

**(6) Total income (other than undisclosed income) of the previous year of execution of search/requisition to be assessed separately as per the normal provisions [Section 158BA(6)]**

The total income (other than undisclosed income) of the assessment year relevant to the previous year in which the last of the authorisations for a search is executed or a requisition is made, shall be assessed separately in accordance with the other provisions of this Act.

**(7) Total undisclosed income of the block period to be charged to tax, at the rate specified in section 113 [Section 158BA(7)]**

The [total undisclosed income]relating to the block period shall be charged to tax, at the rate specified in section 113, as income of the block period irrespective of the previous year or years to which such income relates.

**Tax in the case of block assessment of search cases [Section 113]**

The total *undisclosed* income of the block period, determined under section 158BC, shall be chargeable to tax at the rate of 60%:]

**Provided** that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any Central Act.



## **1. Computation of total undisclosed income of block period** **[Section 158BB]**

### **[(1) Total undisclosed Income of the block period [Section 158BB(1)]**

The total undisclosed income referred to in section 158BA(1) of the block period shall be the aggregate of the following, namely:--

- (a) undisclosed income declared in the return furnished under section 158BC;
- (b) undisclosed income determined by the Assessing Officer under section 158BB(2).

(1A) The following income shall not be included in the total undisclosed income of the block period, namely:—

- (a) the total income determined under section 143(1) or assessed under section 143 or section 144 or section 147 or section 153A or section 153C or assessed earlier under section 158BC(1)(c) or section 245D(4), prior to the date of initiation of the search or the date of requisition, in respect of any of the previous year comprising the block period;
- (b) the total income declared in the return of income filed under section 139 or in response to a notice under section 142(1), prior to the date of initiation of the search or the date of requisition, in respect of any of the previous year comprising the block period, and not covered under clause (a);

- (c) the income computed by the assessee, in respect of—
  - (i) a previous year, where such previous year has ended and the due date for furnishing the return for such year has not expired prior to the date of initiation of the search or the date of requisition, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course before the date of initiation of search or the date of requisition;
  - (ii) the period commencing from the 1st day of April of the previous year in which the search is initiated or requisition is made and ending on the day immediately preceding the date of initiation of search or requisition, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course for such period on or before the day immediately preceding the date of initiation of search or the date of requisition;

(iii) the period commencing from the date of initiation of the search or the date of requisition and ending on the date of the execution of the last of the authorisations for search or requisition, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course for such period on or before the date of the execution of the last of the authorizations:

Provided that where the Assessing Officer is of the opinion that any part of the income as computed by the assessee under this clause is undisclosed, he may recompute such income;

(d) the total income referred to in

section 115A(5)(Relating to Dividend, Royalty & FTS in case of foreign companies, if TDS has been made) or

section 115G (Relating to Investment Income or LTCG of non-residents if TDS has been made) or

section 194P(1) (Relating to Specified Senior Citizens having pension income etc. if TDS has been made)



**Last of the authorization of search or requisition [Explanation under section 158B]**

For the purposes of this Chapter, the last of the authorisations shall be deemed to have been executed,—

- (a) in the case of search -- on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;*
- (b) in the case of requisition under section 132A -- on the actual receipt of the books of account or other documents or assets by the Authorised Officer.*

**(2) Determination of undisclosed income by the Assessing Officer [Section 158BB(2)]**

The undisclosed income falling within the block period, shall be computed in accordance with the provisions of this Act, on the basis of evidence found as a result of search or survey or requisition of books of account or other documents and any other material or information as are either available with the Assessing Officer or come to his notice during the course of proceedings under this Chapter.

**(3) Evidence relating to any international transaction or specified domestic transaction referred to in section 92CA pertaining to certain period not to be considered for the purpose of determining the total undisclosed income for the block period [Section 158BB(3)]**

Where any income required to be determined as a result of search or requisition of books of account or other documents and any other material or information as are either available with the Assessing Officer or come to his notice during the course of proceedings under this Chapter, or determined on the basis of entries relating to such income or transactions as recorded in books of account and other documents maintained in the normal course on or before the date of the execution of the last of the authorisations, **relates to any international transaction or specified domestic transaction referred to in section 92CA**, pertaining to the period beginning from the 1st day of April of the previous year in which last of the authorisations was executed and ending with the date on which last of the authorisations was executed, such income shall not be considered for the purposes of determining the total undisclosed income of the block period and such income shall be considered in the assessment made under the other provisions of this Act.

**(4) Certain provisions to be considered for the purposes of determination of undisclosed income [Section 158BB(4)]**

For the purposes of determination of undisclosed income,—

- (a) of a firm --** such income assessed for each of the previous years falling within the block period shall be the income determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called to any partner not being a working partner;
- (b)** the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to "financial year" in those sections shall be construed as references to the relevant previous year falling in the block period;
- (c)** the provisions of section 92CA shall, so far as may be, apply and references to "previous year" in that section shall be construed as reference to the relevant previous year falling in the block period excluding the period referred to in section 158BB(3).



**[(5) Tax to be charged on the total undisclosed income [Section 158BB(5)]**

The tax referred to in section 158BA(7) shall be charged on the total undisclosed income determined in the manner specified in section 158BB(1) .

**(6) Brought forward losses from the previous year (prior to the first previous year comprising the block period) or unabsorbed depreciation not be set off against undisclosed income but to be carried forward [Section 158BB(7)]**

For the purposes of assessment under this Chapter, losses brought forward from the previous year (prior to the first previous year comprising the block period) under Chapter VI or unabsorbed depreciation under section 32(2) shall not be set off against the undisclosed income determined in the block assessment under this Chapter but may be carried forward for being set off in the previous year subsequent to the assessment year in which the block period ends, for the remaining period, taking into account the block period and such assessment year, and in accordance with the provisions of this Act.

## Procedure for block assessment [Section 158BC]

(1) Where any search has been initiated under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then the following procedure will be followed:—

**(a)(i) Assessing Officer to issue notice for furnishing return of income [Section 158BC(1)(a)]**

The Assessing Officer shall, in respect of search initiated, or books of account or other documents or any assets requisitioned, on or after the 1.9.2024, issue a notice to such person, requiring him to furnish within such period, **not exceeding a period of 60 days**, as may be specified in the notice, a return in the Form No. ITR-B and verified in the manner, as may be prescribed, setting forth his undisclosed income, for the block period: (see Rules 12AE)

Such return shall be considered as if it was a return furnished under the provisions of section 139 and notice under section 143(2) shall thereafter be issued. [**First proviso**]

Any return of income, required to be furnished by an assessee under this section and **furnished beyond the period** allowed in the notice **shall not be deemed to be a return** under section 139. [**Second proviso**]

No notice under section 148 is required to be issued for the purpose of proceeding under this Chapter. [**Third proviso**]

A person who has furnished a return under this clause **shall not be entitled to furnish a revised return.** [**Fourth proviso**]

The time allowed for furnishing a return under this clause may be extended by a further period of thirty days, where—

- (i) in respect of a previous year immediately preceding the previous year in which the search is initiated or requisition is made, the due date for furnishing the return has not expired prior to the date of initiation of such search or requisition;
- (ii) the assessee was liable for audit under section 44AB for such previous year;
- (iii) the accounts (maintained in normal course) of such previous year have not been audited on the date of issuance of such notice; **and**
- (iv) the assessee requests in writing for extension of time for furnishing such return to get such accounts audited; **[Fifth Proviso]**



**(ii) Prior approval required for issue of notice under Section 158BC(1) [Section 158BC(3)]**

The Assessing Officer, before issuance of notice under section 158BC(1)(a) above, shall take prior approval of the Additional Commissioner or the Additional Director or the Joint Commissioner or the Joint Director, as the case may be.

**(b) Assessing Officer to determine the total income in the manner laid down to section 158BB and other provisions of sections 142 to 145B so far as may be apply [Section 158BC(1)(b)]**

The Assessing Officer shall proceed to determine the **total undisclosed income** of the block period in the manner laid down in section 158BB and the provisions of section 142, section 143(2) and 143(3), section 144, section 145, section 145A and section 145B shall, so far as may be, apply;

**(c) Assessing Officer to pass order of assessment or reassessment of block period and determine the tax payable [Section 158BC(1)(c)]**

The Assessing Officer, on determination of the **total undisclosed income** of the block period in accordance with this Chapter, shall pass an order of assessment or reassessment and determine the tax payable by him on the basis of such assessment or reassessment:

Nothing in the provisions of section 144C shall apply in respect of such order: [**First proviso**]

**(d) Seized assets to be dealt with in accordance to provisions of section 132B [Section 158BC(1)(d)]**

The assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B.

**(2) Provisions of section 143(1) not applicable [Section 158BC(2)]**

The provisions of section 143(1) shall not apply to the return furnished under this section.

### **Undisclosed income of any other person [Section 158BD]**

Where the Assessing Officer is satisfied that any undisclosed income belongs to or pertains to or 'relates to any person (herein referred to as the "other person"), other than the person (herein referred to as the "specified person" for the purposes of this section) with respect to whom search was initiated under section 132 or requisition was made under section 132A, then any money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents seized or requisitioned or any other material or information relating to the aforesaid undisclosed income shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of this Chapter shall apply accordingly:



Provided that, —

- (a) where there is one specified person relevant to such other person, the block period for such other person shall be the same as that for the specified person; and
- (b) where there is more than one specified persons relevant to such other person, the block period for such other persons shall be the same as that for the specified person in whose case the block period ends on a later date:

Provided further that in case of such other person, for the purposes of abatement under sub-sections (2) and (3) of section 158BA, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A shall be construed as reference to the date on which such money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents, seized or requisitioned or any other material or information relating to the aforesaid undisclosed income were received by the Assessing Office having jurisdiction over such other person.

## Time-limit for completion of block assessment [Section 158BE]

### **(1) Order of block assessment to be passed within 12 months [Section 158BE(1)]**

Notwithstanding the provisions of section 153, the order under section 158BC shall be passed within 12 months **from the end of the quarter** in which the last of the authorisations for search under section 132, or requisition under section 132A, was executed or made, as the case may be:

*Period to be extended by 12 months where reference is made under section 92CA(1) [First Proviso to Section 158BE(1)]*

In a case where search under section 132 was initiated, or requisition under section 132A was made, and during the course of the proceedings for the assessment or reassessment of the **total undisclosed income** of the relevant block period, any reference under section 92CA(1) is made, the period available for making an order of assessment or reassessment in respect of the block period shall be extended by twelve months.

*Order of block assessment to be passed within 13 months if period of furnishing the return is extended by 30 days in pursuance to fifth proviso of section 158BC(1)(a)*  
*[Second Proviso to Section 158BE(1)]*

In a case where in pursuance to fifth proviso of section 158BC(1)(a), the time allowed under the said clause for furnishing return is extended by a further period of thirty days, the provisions of this sub-section shall have effect, as if for the words "twelve months", the words "thirteen months" had been substituted.

**(2) Period (not exceeding 180 days) to be excluded for computing the period of limitation under section 158BE(1) [Section 158BE(2)]**

In computing the period of limitation under section 158BE(1), 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 money or bullion or jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A, as the case may be, **shall be excluded:**

**Provided** that where after exclusion of the period referred to in this sub-section, the period of limitation for making an order of assessment or reassessment, as the case may be, expires before the end of a month, such period shall be extended to the end of such month.



**(3) Period of limitation for completion of assessment or reassessment for the block period in the case of the other person referred to in section 158BD [Section 158BE(3)]**

The period of limitation for completion of assessment or reassessment for the block period in the case of the other person referred to in section 158BD shall be 12 months **from the end of the quarter** in which the notice under section 158BC in pursuance of section 158BD, was issued to such other person:

*Period to be extended by 12 months where reference is made under section 92CA(1) [First Proviso to Section 158BE(3)]*

In case where during the course of the proceedings for the assessment of undisclosed income of the block period in case of other person referred to in section 158BD, a reference under section 92CA(1) is made, the period available for making an order of assessment in respect of the block period in case of such other person shall be extended by 12 months.

*Order of block assessment to be passed within 13 months if period of furnishing the return is extended by 30 days in pursuance to fifth proviso of section 158BC(1)(a) [Second Proviso to Section 158BE(3)]*

In a case where in pursuance to fifth proviso of section 158BC(1)(a), the time allowed under the said clause for furnishing return is extended by a further period of thirty days, the provisions of this sub-section shall have effect, as if for the words "twelve months", the words "thirteen months" had been substituted.

**(4) Exclusion of certain period for computing the period of limitation under section 158BE**  
**[Section 158BE(4)]**

In computing the period of limitation under this section (i.e., section 158BE), the following period shall be excluded,—

[(i) the period commencing on the date on which stay on assessment proceedings was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner; or]

Subs. by Finance Act, 2025 (**w.r.e.f. 1-09-2024**). Prior to subs. clause (i) read as under:

“(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or”

(ii) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of 1 year, whichever is less; or

(iii) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

- (iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited or inventory valued under section 142(2A) and—
  - (a) ending with the last date on which the assessee is required to furnish a report of such audit or inventory valuation under that sub-section; or
  - (b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or
- (v) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
- (vi) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) of section 10, under sub-clause (i) of the first proviso to section 143(3) and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or



- (vii) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to section 143(3) and ending with the date on which the copy of the order under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of section 12AB,(4) as the case may be, is received by the Assessing Officer; or
- (viii) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer; or
- (ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under section 245Q(1) and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under section 245R(3); or
- (x) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under section 245Q(1) and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under section 245R(7):

**Provided** that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in section 158BE(1) or section 158BE(3) available to the Assessing Officer for making an order under clause (c) of section 158BC(1) is less than 60 days, such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly:

**Provided further** that where after extension of the period referred to in the first proviso, the period of limitation for making an order of assessment or reassessment, as the case may be, expires before the end of a month, such period shall be extended to the end of such month.



## **2. Seizure and release 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.

### **3. Rejection of Books Accounts**

Where the trading results does not depict the true position of profile because the books are not properly maintained, the AO can reject the book results and take recourse to the best judgement assessment to work. Case of bogus sale/purchase fall within this category.

It is an undisputed law of the land that suspicion, however strong cannot take place of evidences and proofs and addition can be made only on the basis of relevant material and concrete evidences and not on the basis of mere surmises, conjectures, suspicion, presumptions or assumptions.

Therefore, the rejection of books of accounts must only be even considered after providing clear and material instances of any error/ misrepresentation that gives rise to any material and quantifiable concealment of income and must be based on some material evidence, and any rejection without clearly specifying the valid reasons for such rejection or any defects in the audited books of accounts as provided by the assessee along with all vouchers/ documents/ additional evidences as required by your good self, is against the natural justice and bad in law, hence it must be quashed.

## **4. Suppression of Sales**

Suppression of sales is a common device resorted to by taxpayers to reduce tax liability. When suppression is detected, the issue of consideration is whether the entire suppressed sales could be adopted as income or only a percentage thereof, being gross profit or net profit, as income.

### **How to compute Income in case of Suppressed Sales?**

There is no uniform method that can be employed to compute income when suppressed sales are included in the turnover. There may be two situation:-

#### **First Situation - Where all the purchases and incidental expenses in respect to suppressed sales are recorded in Books of Accounts.**

In that case, there can be no escape from the addition of the whole amount of Suppression Sales.

#### **Second Situation – Where purchases and incidental expenses in respect to suppressed sales are also not recorded in Books of Account.**

In that case, the burden lies on assessee to prove that there are purchase outside the books and unrecorded expenses. Hon'ble Gujarat High Court in the case of CIT vs Gurubachachhan Singh J Juneja [2008] 171 Taxman 406, held that in the absence of any material on record to show that there was any unexplained investment made by assessee, there could be a presumption of such expenditure. In such event, only gross profit on sales could be brought to tax.

#### **4. Suppression of Sales**

Details to be Furnish to Prove Genuineness of Sale - The assessee can furnish following evidence to make a prima facie case in its favour that the sales are genuine

- Name, address & Pan of the buyer and, broker if any.
- Sale Invoice & Stock Register where goods are issued for sale.
- Bank Statement indicating receipt of sale consideration.
- Bank Account details of Buyer.
- Evidence of Movement of Goods i.e. E-way Bill/ Toll Tax Bills/Consignment Note etc.
- Sales Tax/ GST Registration Details of Buyer.
- Sales Tax/ GST Return of Buyer
- Purchase Invoice for the Goods Sold.
- Tax Audit report wherein quantity details of stock has been verified by Tax Auditor.
- If assessee is a company, furnish company audit report along with audited financial statement.
- Assessment order of earlier year where purchases from same party has been accepted.

Production of the above details would make out a prima facie case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.



## **5. Bogus Purchase**

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The term “Bogus” refers to what is not real or genuine. Bogus purchase to reduce profit is a method in vogue since long but the department has begun to focus its attention on bogus purchase. The method commonly adopted is that the buyer send purchase consideration through the banking channel. The seller in turn remits back the same in cash after deducting its commission.

**Burden of Proof** – In case of bogus purchase burden of proof is very important factor. The fundamental principal is that the burden of proof lies on the person who wishes the authority to believe in existence of a particular fact. Since the assessee debits the expenses on account of purchases in its books, the initial onus would lie on him to prove that the expenditure on account of such purchase is genuine.

**Taxation of Bogus Purchase** - AO may disallow the expenditure claimed on the account of bogus purchase. However Hon’ble Gujarat High Court in the case of CIT vs Bholanath Poly Fab Pvt. Ltd. [2013] 355 ITR 290 observed that the finished goods purchased by the assessee may not be from the parties shown in the accounts but they could be from other sources. It was held that the entire amount of such purchases cannot be added but only profit embedded in such transaction could be added.



## 5. Bogus Purchase

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Details to be Furnish to Prove Genuineness of Purchase - The assessee can furnish following evidence to make a prima facie case in its favour that the purchase are genuine.

- Name, address & Pan of the Seller and, broker if any.
- Purchase Invoice & Stock Register where goods are entered and issued for sale/consumption.
- Bank Statement indicating payment of purchase consideration.
- Bank Account details of Seller.
- Evidence of Movement of Goods i.e. E-way Bill/ Toll Tax Bills/Consignment Note etc.
- Sales Tax/ GST Registration Details of Seller.
- Sales Tax/ GST Return of Seller.
- Sales Invoice for the Goods Purchased.
- Tax Audit report wherein quantity details of stock has been verified by Tax Auditor.
- If assessee is a company, furnish company audit report along with audited financial statement.
- Assessment order of earlier year where purchases from same party has been accepted.

Production of the above details would make out a prima facie case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.

## **6. Noting on Loose Papers – Evidentiary Value**

**What is a loose paper?** - Loose means detached, free, separate, unattached, unbound, unconnected, unfastened, unlatched, or untied papers. A loose paper may be a single sheet of paper on which certain notings may be recorded. They are not bound. There is no apparent continuity from one loose paper to another unless investigation establishes a continuity between two or more sheets/papers. Loose paper or a single sheet of a paper generally contains record of memorandum, short notes or summary of events or of transactions.

**Whether loose paper/document can be called as a book within the meaning of Section 68 of the Act?** - Book has to be a bound record, maintained by the assessee. Therefore, loose papers/loose sheets or documents will not fall within the meaning and scope of books of the assessee maintained for any previous year. In the case of S.P. Goyal vs DCIT [2002] 82 ITD 85 (Mum.), it was held that if the loose papers seized in the premises of the assessee were examined in the light of the ratio of the Supreme Court in V.C. Shukla's (supra), it was quite clear that these loose papers could not be termed as books of account an assessee maintained for any previous year. The loose papers did not contain closing balances or opening balances and there was no reconciliation of these entries. Therefore, these could not be termed as books maintained by the assessee within the meaning of section 68. Therefore, these could not be termed as books maintained by the assessee within the meaning of section 68. Since loose papers do not fall within the meaning and scope of "books of the assessee maintained for the previous year", the benefit of deeming fiction u/s. 68 cannot be taken by the AO.

## 7. Difference in Stock

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

- i. **Physical stock is more then the stock recorded in books of accounts** – this situation may arise when assessee made out of books purchase. In that case such difference can be taxed as business income or as undisclosed income u/s 69 of the Act depending upon the facts of the case. The primary condition for invoking the provision of section 69 is that the asset should be separately identifiable and it should have independent physical existence of its own.
- ii. **Physical stock is less then the stock recorded in nooks of accounts** – this situation may arise when assessee made sale outside the books. In this case the AO may issue a SCN for rejection of books of account. If assessee prove the fact that it is the only instance where goods were sold out of books and there was no such practice during the whole FY, than AO may apply GP rate on the value of difference of stock. If assessee not able to prove this fact than AO may reject the books of accounts and apply GP rate on the total sale value as computed by applying his judgement.

## **8. Difference in 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 –

- i. **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.
- ii. **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.



## **9. Addition on Account of Gift from Relative**

During the normal course of business, whenever assessee feels shortage of capital , he take gifts from relative . While accepting the gift assessee did not consider the tax implication and simply accept the gift. During the assessment proceeding if assessee is claiming any gift to be exempt then initial onus is upon assessee to prove the genuineness of the gift, otherwise AO can make addition of the gift amount as undisclosed income u/s 68 of the Act.

**Details to be Furnish to Prove Genuineness of Gift -** The assessee can furnish following evidence to make a prima facie case in its favour that the gifts are genuine

- Name, address & Pan of the Donor.
- Bank statement of donor indicating the amount of gift paid.
- Bank statement of donee indicating the amount of gift received.
- Copy of ITR of donor to proved the creditworthiness of donor.
- Affidavit by donor confirming the relationship with donee and that he has given gift to donee.
- Audited Financial Statement of donor along with audit report, if available.

Production of the above details would make out a prima facie case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.



## **10. Unsecured Loan**

During the normal course of business, assessee accept unsecured loan to meet his financial hardship. In search assessment proceeding, AO in his first questionnaire itself ask the details of unsecured loan taken during that particular assessment year.

**Details to be Furnish to Prove Genuineness of Loan** - The assessee can furnish following evidence to make a prima facie case in its favour that the loans are genuine

- Name, address & Pan of the Creditor.
- Bank statement of Creditor indicating the amount of loan given.
- Bank statement of Assessee indicating the amount of loan received.
- Copy of ITR of creditor to proved the creditworthiness.
- Affidavit by creditor confirming he has given loan to assessee.
- Audited Financial Statement of creditor along with audit report, if available.
- Payment proof of interest on loan account.
- TDS return showing the TDS amount deducted on such Interest.

Production of the above details would make out a prima facie case in favour of the assessee and that would eventually shift the burden to the AO to rebut the evidence.

## **11. Cash Deposit in Bank A/c of Family Member**

During the search operation if department came to know that cash were deposited in bank accounts of family member who does not carrying out any business activity. Investigation wing then mentioned about this issue in its appraisal report and direct AO make addition on this account.

Assessee can take plea that family members are separate assessee and are regularly filing their income tax returns for many years. It is important to note that as per provisions of Income Tax law, income should be taxed in the hands of the person to whom it belongs i.e. the owner of the income. In respect of this, as per section 4 read with section 2(31) of the Act, it is no uncertain terms, that the tax shall be charged on the total income of every person. Further, the term 'Person' has been defined in clause 31 of section 2, to include seven categories of persons, all of which are independent and distinct from each other. A literal interpretation of the above provisions leads to the conclusion that only a right person as per the Act, is liable to pay tax on his/her income and no option is available to tax income in the hands of the person other than the one in whose hands it is taxable.

**THANK YOU**

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