
SECTION 153C: LIMITATION, COMPUTATION AND SATISFACTION

Pursuant to search carried out u/s 132 of the Income-Tax Act, 1961 (“**the Act**”), search assessments are undertaken for six assessment years (in short “**Six AYs**”) preceeding the year of search and for additional assessment years (referred to as “**Relevant AYs**”) beyond Six AYs but not beyond 10 AYs from end of AY relevant to search year. In case of a searched person, such assessment is made u/s 153A and in case of a non-searched person, whose books of account/ documents are found during search (referred to as “**other person**”), assessment is made u/s 153C of the Act [relevant for searches conducted upto 31.03.2021].

Recently, interesting issues came up before the Delhi High Court regarding the manner of determination of Six AYs and Relevant AYs in case of non-searched/ other person u/s 153C.

Facts and background:

Pursuant to search in case of certain group on 18th October, 2019, IT Department, alleging incriminating material having been found, issued notices u/s 153C to a number of assesseees. For that purpose, IT Department determined AYs to be re-opened by taking previous year 2019-20, i.e., the year of search, as the base year and accordingly, reopened assessments for 10 preceeding AYs 2010-11 to 2019-20. IT Department also initiated proceedings for the search year, thereby, undertaking assessments for 11 AYs.

These notices issued u/s 153C came to be challenged in writ petition before the Delhi High Court as being invalid/ barred by limitation on the following four broad grounds:

- a. In case of other person covered u/s 153C, the date/ year of handover of seized material to the jurisdictional Assessing Officer (“**AO**”) of such non-searched/ other person (and not the date/ year of search) must be taken as the base year for determination of Six AYs/ Relevant AYs;
- b. Revenue is permitted to reopen upto a maximum of 10 AYs, including the year of search/ year of handing over of seized material, reckoned from the end of the AY in which search was conducted or the material is handed over, and not 11 AYs;
- c. Period of limitation for initiating reassessment proceedings for AYs 2010-11 and 2011-12 stood expired prior to the insertion of 4th proviso to section 153A by the Finance Act, 2017 w.e.f. from 1st April 2017 and consequently, reopening for the said years is not permissible;
- d. Mandatory conditions provided in 4th proviso to section 153A are required to be satisfied prior to invocation of jurisdiction to reopen Relevant AYs u/s 153C.

Decision of the High Court:

The Delhi High Court in the batch of the matters titled as **PCIT vs. Ojjus Medicare Pvt. Ltd:** 2024: DHC: 2629-DB adjudicated the aforesaid issues by holding as under:

- a. As per legal fiction contained in first proviso to section 153C, date of receipt of seized books/ material by the jurisdictional AO of the other person is the commencement date for determination of Six AYs/ Relevant AYs. In holding so, the High Court followed the decision of the Supreme Court in *CIT vs. Jasjit Singh: 2023 SCC Online SC 1265* and *ITO vs. Vikram Sujit Kumar Bhatia: 2023 SCC Online SC 370*.
- b. Taking note of the language employed in Explanation (1) to section 153A, the Court held that 10 years period have to be reckoned “*from the end of the assessment year*” [i.e., in case of searched person from end of the assessment year of search and in case of other person from end of the assessment year of handover of seized books/ material]. The High Court observed that decision in *A.R. Safiullah: WP (MD) No. 4327/2021* expounds the correct legal position.
- c. AO is required to record reasons/ satisfaction regarding satisfaction of jurisdictional preconditions stated in 4th proviso to section 153A, viz. the escaped income is represented in the form of an identified asset which is likely to exceed INR 50 Lakhs; the satisfaction should be based on the assessment of material gathered during search and should be reflective of fair assessment of the quantum of income likely to have escaped assessment.

Importantly, the satisfaction cannot be based on mere ipse-dixit/ speculation/ conjecture, and the reasons in support of the satisfaction should ex-facie borne out from the satisfaction note itself. The qualifying criteria for satisfaction of precondition of INR 50 Lakhs as provided in 4th proviso has to be met cumulatively or in aggregate for all the Relevant 4 AYs.

- d. Amendment brought in by the Finance Act, 2017 w.e.f. 1st April 2017 has retroactive application since: (a) 4th proviso is applicable to all searches conducted between 1st April 2017 to 31st March 2021; and (b) sections 153A/ 153C supersedes the provisions for reassessment otherwise appearing in the Act.

VA Comments:

Simply put, the Delhi High Court held that: (a) for other (non-searched) person, date of handover of seized material is the trigger point for computing period of Six AYs and/ or block of 10 years; and (b) law only permits AO to reopen maximum of 10 years, including the year of search/ handing over documents, and not 11 years as contended by the Revenue.

Illustratively, the AYs for which notices u/s 153C could be issued are tabulated below:

FY of handed over	Corresponding AY	Preceding Six AYs	Block of 10 AYs
2019-20	2020-21	2014-15 to 2019-20	2011-12 to 2020-21
2020-21	2021-22	2015-16 to 2020-21	2012-13 to 2021-22
2021-22	2022-23	2016-17 to 2021-22	2013-14 to 2022-23
2022-23	2023-24	2017-18 to 2022-23	2014-15 to 2023-24
2023-24	2024-25	2018-19 to 2023-24	2015-16 to 2024-25

Further, important principles laid down by the High Court regarding the manner of recording satisfaction u/s 153C are that satisfaction note of AO should be self-sufficient and should contain reasons in support of satisfaction of preconditions for invocation of section 153C and also extended period in terms of 4th proviso to section 153A.

Thus, AO must speak his mind through the satisfaction note, which shall be the fundamental document for testing the validity of assumption of jurisdiction by the AO; such reasons/ satisfaction cannot be improved subsequently.

For any details and clarifications, please feel free to write to:

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