

# **Search Assessments u/s 153A and Section 153C etc – Latest Judicial Developments**

Presentation by :

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# OBJECT/SCOPE

*To deliberate on provisions of and issues from :*

- a) Section 153A*
- b) Section 153B*
- c) Section 153C*
- d) Section 132 etc*

# Section 153C- Search Assessment of Other Person

*Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the **Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in [section 153A](#)**, then the books of account or documents or assets seized or requisitioned **shall be handed over** to the Assessing Officer having jurisdiction over such other person and **that Assessing Officer shall proceed against each such other person and issue such other person notice** and assess or reassess income of such other person in accordance with the provisions of [section 153A](#) :]*

*Implication (if any of missing word in non obstante clause “to the contrary”)*

# Section 153C- Search Assessment of Other Person

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*Issue No 1:*

*Whether there is additional requirement for issuance of notice u/s 153C before proceeding u/s 153A as evident from words used "that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of [section 153A](#)"*

# Section 153C- Search Assessment of Other Person

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Relevant precedents on Issue No 1:

- a) DHC in Sauraya Industries 306 ITR 189  
Held PRINCIPLE OF NATURAL JUSTICE IS  
INBUILT U/S 153C
- b) APHC ruling in Mukta Lalitha 226 ITR 23 as  
Approved by SC in K.P.Mohammed 300 ITR  
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# Section 153C- Search Assessment of Other Person

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*Issue No 2:*

*Whether SC ruling in Manish Maheshwari given in context of satisfaction recording u/s 158BD is applicable to section 153C in so far as words “**where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in [section 153A](#)” are Concerned?***

# Section 153C- Search Assessment of Other Person

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Relevant precedents on Issue No 2:

a) Held Yes in

- a) Delhi ITAT ruling in Jindal Stainless Steel ITA 3480/3481 of 2006- 122 TTJ 902
- b) Luck ITAT ruling in Surender Kumar 18 DTR 38

# Section 153C- Search Assessment of Other Person

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*Issue No 3:*

*Whether communication of satisfaction in body of notice as held in context of 158BD by precedents thereunder, is applicable to section 153C also?*

*Delhi ITAT in NITS Softtech 8 DTR 269*

*DHC in New Delhi Auto Finance 4 DTR 318/300 ITR*

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# Section 153C- Search Assessment of Other Person

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*Issue No 4:*

*In case where there is direct search on assessee u/s 132 and other sister concerns also, whether for material found at third party premises separate assessment/processing u/s 153C is required?*

- BHC in 248 ITR 194*
- Agra Adverse ITAT 110 ITD 421 (CONTRA 91 TTJ 633)*
- 95 TTJ 489 (TM)*

# Section 153C- Search Assessment of Other Person

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*Issue No 5*

*What is connotation of word document belongs to person other than searched person that is whether it connotes casual relationship or definite Relationship.*

*Ahd ITAT in Meghmani Organics ITA 2938/Ahd/2008  
Bang ITAT in P.Srinivasa Naik 114 TTJ 856 (TERM BELONGING INVOLVES SOMETHING MORE THAN CASUAL ASSOCIATION & INVOLVES NOTION OF CONTINUITY)*

# Section 153C- Search Assessment of Other Person

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*Issue No 5*

*Whether statement of searched party directly implicating “other person” is document belonging to “other person” vis a vis section 153C?*

*In no, and section 153C is not attracted, can section 147 be resorted? (analyze with reference to non obstante clause in section 153C)*

# Section 153C- Search Assessment of Other Person

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*Issue No 5*

*Whether on basis of laptop data of CA  
incriminating to CA Client, whether action u/s 153C  
or section 147 is possible?*

# Section 153C- Search Assessment of Other Person

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*Issue No 6*

*Where there is merely warrant of authorization u/s 132 in name of assessee without any panchnama Thereon, whether jurisdiction can be assumed u/s 153A stating searched in initiated...? Connotation of phrase "where search is initiated.."*

*Mum ITAT in J.M.Trading 20 SOT 489*

*DHC in S.K.Katyal 308 ITR 168*

*Indore ITAT in Rajat Tradecom ITSS 182/Ind/2007*

*Guj HC in Jayanti Lal 177 Taxman 357*

# Section 153C- Search Assessment of Other Person

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*Issue No 7*

*Whether it is mandatory u/s 153A/153C to issue and Serve notice u/s 143(2) after return u/s 153A is Filed and for non service of same, assessment u/s 153A can be annulled?*

*DHC in PAWAN GUPTA 223 CTR 487*

# Section 153C- Search Assessment of Other Person

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*Issue No 8*

*Whether for non processing of certain incriminating information as found u/s 132 in original 153A Assessment, subsequently reopening u/s 148 be made to cover the escaped material?*

# Section 153C- Search Assessment of Other Person

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*Issue No 9*

*Assessment pursuant to warrant of authorisation issued by JDIT (Inv)/ADIT (Inv) is bad in law?*

*DHC in Capital Power and Pawan Kumar 222 CTR 36/47*

*P&HHC in Vinod 252 ITR 29*

*All HC in Raghu Partap 307 ITR 450*

*SC in Chand Vhurasia – Latest Development-  
revenue's SLP notice issued*

*Finance No 2 Bill 2009 Amendment - Retrospective*



# Section 153C- Search Assessment of Other Person

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*Issue No 10*

*How far ITAT can adjudicate in satisfaction recorded u/s 132?*

*DHC M.B.Lal 279 ITR 298*

*Del ITAT Special Bench Promain 95 ITD 489*

*Raj HC in Chitra Devi 313 ITR 174 (applied by Kar HC in T.SChandrashekhar 221 CTR 385)- SLP dismissed by SC*

# Section 153C- Search Assessment of Other Person

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*Issue No 11*

*How far earlier regular assessments issues can be tinkered dehors the search material, that is, whether change of opinion is allowed merely because search is conducted on already accepted claims?*

*Kol ITAT ruling in L.M.J International 119 TTJ 214 (FOLLOWED by Ahd ITAT in Meghmani Organics-supra)*

*Ahd ITAT in Rupesh Patel ITA 2390/Ahd/2007 309 ITR 217 (AT)*

*Del ITAT in Shyam Lata Kaushik 114 ITD 305*

*Del ITAT in Shivnath Rai 117 ITD 74*

# Section 153C- Search Assessment of Other Person

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*Issue No 11*

*How far criteria of undisclosed income be interpolated in new search assessment scheme of Section 153A and/or section 153C?*

# Section 153C- Search Assessment of Other Person

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## *Issue No 12*

How assessment of open year can be made that is whether same needs to be made WITHIN time limit of section 153B?

Further whether regarding other person, open Year, proceedings as per section 153C is required?

# Section 153C- Search Assessment of Other Person

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## *Issue No 13*

Whether new claims can be made in 153A Assessment which were earlier skipped/ommitted to be claimed by assessee?

Comparative analysis with Section 147

# Section 153C- Search Assessment of Other Person

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*Issue No 14*

*Connotation of word hand over u/s 153C – vis a vis scheme of law; section 153B TIME Limit etc (where same AO is proposed to be there)*

# Section 153C- Search Assessment of Other Person

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*Issue No 15*

*Time limitation u/s 153B :*

- a) Bank locker search – empty – whether considerable for time limitation – DHC in S.K.Katyal; D.D.Sales/Mangla Marbles 221 CTR 718/305 ITR 254 etc*

# Section 153C- Search Assessment of Other Person

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*Latest DHC ruling in S.R.Batliboi (Laptop of CA  
Seized) WRIT PETITION NO 9479/2007*

*Latest BHC in Geoman Biotech (cross border tax  
evasion)*



Thank You

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