

Assessment- ***Procedural Aspects & Drafting Tips***

**Presented by:- CA Sanjay Kumar
Agarwal**

Assisted by:- Mr. Kunal Gupta

E-mail id: agarwal.s.ca@gmail.com

Disclaimer

Every effort has been made to avoid any errors or omission in this presentation. In spite of this, errors may creep in. Any mistake, error or discrepancy noted may be brought to our notice which shall be taken care of.

It is notified that presenter will not be liable for any damage or loss, consequent to any action taken on the basis of contents of this presentation.

No part of this presentation may be reproduced or copied in any form or by any means without the prior written permission of the presenter.

Legal Provision of Search Assessment

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 :

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.

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 issue 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-intio.
- 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 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. However we should file electronic returns if assessee is liable to file e-return.
- 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 Abatement of Pending Assessment or Reassessment

- 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.

Time limit for completion of assessment under section

Assessment Year's	Search Conducted before 01.04.2018	Search Conducted in FY 2018-19	Search Conducted after 01.04.2019
For 6 Assessment Year [Section 153B(1)(a)]	21 Month from the end of FY in which last Authorizations was executed.	18 Month from the end of FY in which last Authorizations was executed.	12 Month from the end of FY in which last Authorizations was executed.
For AY relevant to PY in which search is conducted [Section 153B(1)(b)]	21 Month from the end of FY in which last Authorizations was executed.	18 Month from the end of FY in which last Authorizations was executed.	12 Month from the end of FY in which last Authorizations was executed.
Assessment of other person referred to in Section 153C	<p>a.21 Month from the end of FY in which last Authorizations was executed.</p> <p>b.9 Months from the end of FY in which books of accounts or assets are handed over to AO having Jurisdiction u/s 153C.</p> <p>Whichever is Earlier</p>	<p>a.18 Month from the end of FY in which last Authorizations was executed.</p> <p>b.9 Months from the end of FY in which books of accounts or assets are handed over to AO having Jurisdiction u/s 153C</p> <p>Whichever is Earlier</p>	<p>a.12 Month from the end of FY in which last Authorizations was executed.</p> <p>b.9 Months from the end of FY in which books of accounts or assets are handed over to AO having Jurisdiction u/s 153C .</p> <p>Whichever is Earlier</p>

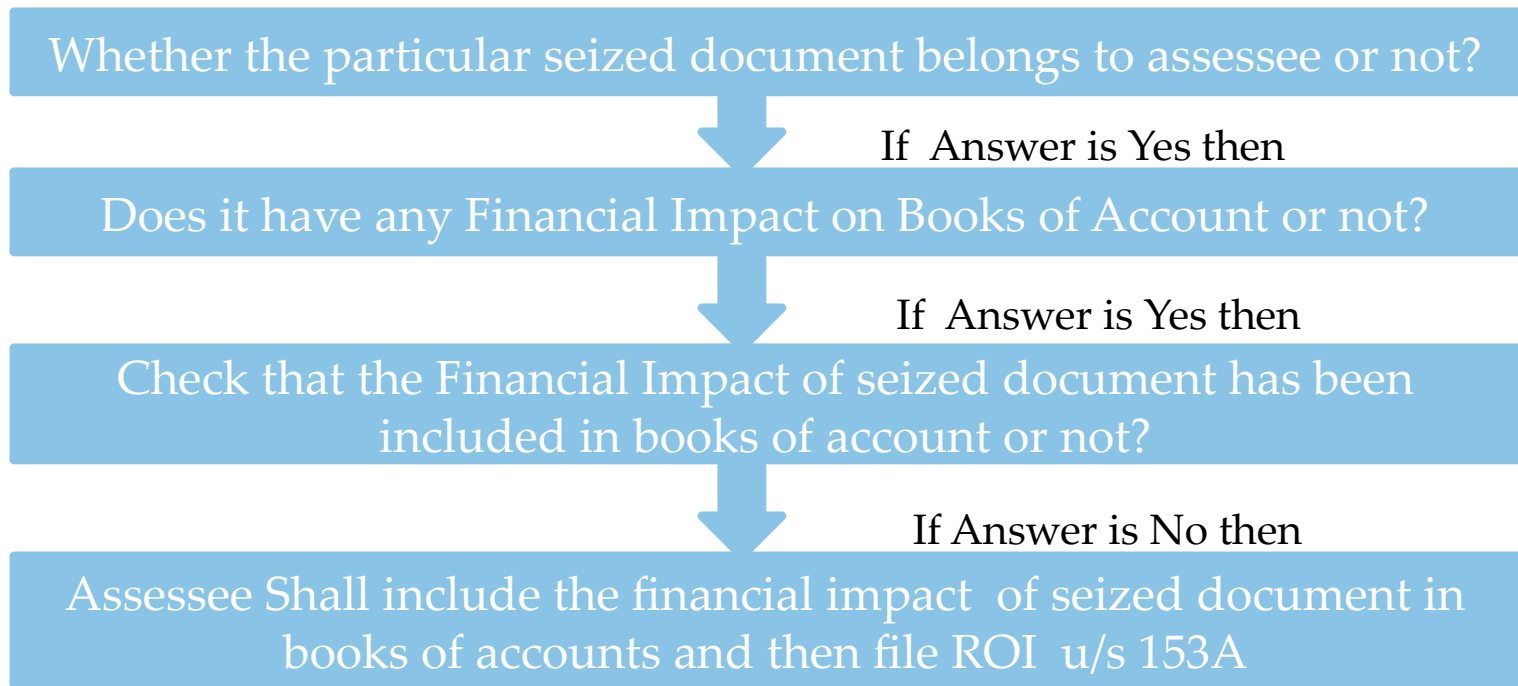
Note – In a case where reference is made u/s 92CA(1) to TPO, time limit mention in above table shall be extended by 12 Months

Points to be Kept in Mind During Search

Assessment

i. On receipt of notice u/s 153A 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.

ii. Assessee should analyze the seized document in following manner:



iii. 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

- iv. Analyze the statement recorded under Section 132(4) of the Act, and if any statement is made under pressure it should be retracted timely before the investigation wing.
- v. 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.
- vi. 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.
- vii. Assessee whenever attend any hearing, it should be mentioned in order sheet with date and signature of assessee as well as AO.
- viii. 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.
- ix. 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.
- x. 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.
- xi. Assessee has to check that no assessment order shall be passed by an AO below the rank of JCIT except with the prior approval of the JCIT. [Section 153D]

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.

Specimen Copy of Letters

1. Explanation of Seized Jewellery.
2. Rejection of Books of Account.
3. Suppression of Sales.
4. Bogus Purchase.
5. Difference in Stock.
6. Difference in Cash.
7. Addition on Account of Gift from Relative.
8. Unsecured Loan.
9. Cash Deposited in Bank Accounts of Family Members.
10. Penny Stock Transaction.

1. 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.²⁵ 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

- a. **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]**¹⁸

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. Ramesh chandra 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.**

Please click on sub link in mail at point no. vi

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.

Please click on sub link in mail at point no. viii

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

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

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 purchases 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.

Please click on sub link in mail at point no. i

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.

Please click on sub link in mail at point no. iv

7. 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.

Please click on sub link in mail at point no. iii

8. Addition on Account of Gift from Relative

During the normal course of business, whenever assessee feels shortage of capital, he takes gifts from relative. While accepting the gift, assessee did not consider the tax implication and simply accepted the gift. During the assessment proceedings, if assessee is claiming any gift to be exempt, then the 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 prove 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.

Please click on sub link in mail at point no. v

9. 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.

Please click on sub link in mail at point no. ix

10. 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.

Please click on sub link in mail at point no. ii

11. Penny Stock Transaction

Penny stock transactions are associated with money laundering activity where typically worthless shares are purchased and held for 12 months or more, enabling the shares to be classified as long-term capital assets, and sold thereafter at fancy rates, claiming the resultant fantastic long-term capital gain as exempt from tax u/s 10(38) of the Income Tax Act upto 31st March, 2018 (Tax @10% w.e.f. 01.04.2018 u/s 112A of the Act).

Attempts are being made by the revenue to tax the sale proceeds as unexplained credit u/s 68 of the Act. But the assessee can discharge his initial onus by providing the documentary evidences like demat account, statement, bank statement, financial statement of company in which investment is made etc.

Please click on sub link in mail at point no. vii

12. 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.

Thank You

**Presented by:- CA Sanjay Kumar
Agarwal**

Assisted by:- Mr. Kunal Gupta

E-mail id: agarwal.s.ca@gmail.com