

Search Assessment under section 153A & 153C of Income Tax Act

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Search Assessment under Section 153A & 153C

☐ In cases where

❖ search is initiated u/s 132 of the Act or

❖ books of account, other documents or any assets are requisitioned u/s 132A of the Act,

assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases.

☐ These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act.

☐ This was done due to failure of block assessment in its objective of early resolution of search assessments were proving to be highly litigation prone

Search Assessment under Section 153A & 153C

- ❑ Finance Act 2021 introduced new procedure of assessment of Search Case reform the system of assessment or reassessment or re-computation of income escaping assessment s .
- ❑ The salient features of new procedure are as under:-
 - ❖ (i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
 - ❖ (ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

SEARCH UNDER IT ACT

POWER REGARDING DISCOVERY, PRODUCTION OF EVIDENCE, etc. [Sec. 131]

Power of income tax authority while trying a suit:

IT Authority [AO, DCIT / CIT (Appeal) / Pr.CIT /CIT/DRP) - have the powers as are vested in a court under the CPC, 1908, when trying a suit in the matters —

- ❖ (a) Discovery and inspection;
- ❖ (b) Enforcing the attendance of any person (includes officer of a banking company) and examining him on oath;
- ❖ (c) Compelling the production of books of account and other documents; and
- ❖ (d) Issuing commissions

if he has *reason to suspect* that any income has been concealed (or is likely to be concealed), by any person (or class of persons), within his jurisdiction and for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise above powers. (even if no proceedings is pending)

Power to impound or retain books [Sec. 131(3)]

IT Authority [AO, DCIT / CIT (Appeal) / Pr. CIT /CIT/DRP) - [referred in sec. 131(1)or (1A) or (2)]

□ may impound and retain in its custody any books of account or other documents produced before it in any proceedings under this Act.

□ However, an AO or an AD or DD shall not -

- ❖ (a) Impound any books of account or other documents **without recording his reasons for doing so; or**
- ❖ (b) Retain in his custody any such books or documents for a period exceeding *15 days (exclusive of holidays)* without obtaining (prior) approval of the PrCCIT /CIT/PrDG /DG / PrCIT/CIT/Pr Director / Director.

SEARCH AND SEIZURE [Sec. 132]

☐ Who can authorize (i.e., issue search warrants) proceedings u/s 132

- ❖ Sec.132 empowers the
- ❖ Principal Director General or
- ❖ Director General or
- ❖ Principal Director or
- ❖ Director or
- ❖ Principal Chief Commissioner or
- ❖ Chief Commissioner or
- ❖ Principal Commissioner or
- ❖ Commissioner

to authorize proceedings under this section.

☐ Taxpoint:

- ❖ Proceeding means any proceeding in respect of any year, which may be pending on the date on which a search is authorised under this section or
- ❖ which may have been completed on or before such date and includes also all proceedings which may be commenced after such date in respect of any year.

SEARCH AND SEIZURE [Sec. 132] - Circumstances when search can be conducted

Any authority (mentioned above) can direct proceedings u/s 132 against the following person where he has **reason to believe** (in consequence of information in his possession, which is something more than mere rumor or gossip) that:

Person	Circumstances
Any person to whom a summons u/s 131(1) or a notice u/s 142(1) was issued to produce any books of account or other documents	Such person has omitted or failed to do so
Any person to whom a summons or notice as aforesaid has been or might be issued	Such person will fail to do so
Any person is in possession of any money, bullion, jewellery or other valuable article or thing	Such money, bullion, jewellery or other valuable article or thing represents either wholly or partly undisclosed income or undisclosed property

Taxpoint: The reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Search and Seizure [Sec. 132] - Who can conduct search

Income tax authority, having power to initiate search u/s 132, can authorise its subordinate(s) (not below the rank of Income tax officer) to conduct search.

Following subordinates can be authorised -

Authorized Officer who can conduct search	Authorized from
Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Principal Director General or Director General or Principal Director or Director or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Additional Director or Additional Commissioner or Joint Director or Joint Commissioner (on the basis of authorization from above authority and being empowered by the Board)

Search and Seizure [Sec. 132]

Power of authorized officer

- ❑ While conducting search, authorized officer has following powers -
- ❑ a. Enter and search any building, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.
- ❑ b. Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.
- ❑ c. Search any person who -
 - ❖ • has got out of; or
 - ❖ • is about to get into; or
 - ❖ • is in, the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.

Search and Seizure [Sec. 132]

Power of authorized officer

- ☐ **d. Require any person to facilitate the authorised officer:** Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.
- ☐ **e. Seizure:** Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search.
- ☐ **f. Place marks of identification:** Place marks of identification on any books of account or other documents or make extracts or copies therefrom.
- ☐ **g. Make inventory:** Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

Search and Seizure [Sec. 132]

Power of authorized officer

- ☐ h. Examine on oath:
- ❖ Any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing.
- ❖ Any statement made by such person during such examination may thereafter be used as evidence in any proceeding.
- ❖ Examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under Act

Taxpoint

- ☐ No seizure of stock in trade :Bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade.

Search and Seizure [Sec. 132]

Power of authorized officer

Extension of jurisdictional area

- ☐ • Where any building, place, vessel, vehicle or aircraft is within the area of jurisdiction of any PrCIT or CCIT or PrCIT or CIT, but such authority has no jurisdiction over such person; and
- ☐ • Such authority has **reason to believe** that any delay in getting the authorisation from the PrCIT or CCIT or PrCIT or CIT having jurisdiction over such person may be prejudicial to the interests of the revenue,
 - **then it shall be competent for him to exercise the above powers.**
- ☐ **Handing over of seized assets to the AO having jurisdiction:** Any asset or document so seized shall be handed over to the AO having jurisdiction over such person **within a period of 60 days from the date on which the last of the authorizations for search was executed.**
- ☐ Thereafter, such AO exercises all other powers.

Search and Seizure [Sec. 132]

Power of authorized officer

Extension of Authorisation [Sec. 132(1A)]

- ☐ Where a search for any books of account, other document, money, bullion, jewellery or other valuable article or thing is authorized; and
- ☐ • Other PrCIT /CCIT/ CIT/Pr.CIT/CIT in consequence of information in his possession, has reason to suspect that such document or asset is kept in any other building, place, vessel, vehicle or air craft not mentioned in the authorization,

then such other PrCIT /CCIT/ CIT/Pr.CIT/CIT can authorize the officer to search such other building, place, vessel, vehicle or air craft.

- ☐ **Taxpoint: The reason to suspect, as recorded by the IT Authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.**

Search and Seizure [Sec. 132]

Power of authorized officer

Deemed or constructive Seizure [Second Proviso to Sec. 132(1)]

- ☐ **Conditions:** Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to reason of its -
 - ❖ • volume, weight or other physical characteristics; or
 - ❖ • being of a dangerous nature.
- ☐ **Procedure :** The authorised officer may serve an order on -
 - ❖ • the owner; or
 - ❖ • the person who is in immediate possession or control of any valuable article or things, that he shall not remove, part with or otherwise deal with such article or thing without the prior permission of such authorised officer & it deemed to be seizure.
- ☐ No such order can be passed for any article or thing, being stock-in-trade.
- ☐ **Deemed** to be seizure of such article or things shall not be in force for exceeding 60 days from the date of the order [Sec. 132(3) & (8A)]

Search and Seizure [Sec. 132]

Power of authorized officer

☐ **Provisional Attachment : Where**

- a. during the course of the search or seizure; or
- b. within a period of 60 days from the date on which the last of the authorisations for search was executed,

the authorised officer may attach provisionally any property belonging to the assessee

☐ **Such attachment shall be subject to following conditions:**

- a) authorised officer is satisfied that – it is necessary for the purpose of protecting the interest of revenue,
- b) reasons for such provisional attachment should be recorded in writing
- c) previous approval (in writing) of the PrDG or DG or Pr. Director or Director has taken.

Search and Seizure [Sec. 132]

Power of authorized officer

Such attachment shall be subject to following conditions: **Contd.**

- Every provisional attachment shall cease to have effect after the expiry of 6 months from the date of such order.
- The authorised officer may make a reference to a Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the property in the manner provided under that section and
- Valuation Officer shall submit a report of the estimate to the said officer within a period of 60 days from the date of receipt of such reference.

Search and Seizure [Sec. 132]

Power of authorized officer

Authorisation and assessment in case of search or requisition [Sec. 292CC]

- ☐ No issue of separate authorisation u/s 132 or make a requisition u/s 132A in the name of each person.
- ☐ Where an authorisation u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an AOP or BOI.
- ☐ Though authorisation u/s 132 or requisition u/s 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.

Search and Seizure [Sec. 132]

Power of authorized officer

Time limit -retention of seized/deemed seized books of a/cs or other documents [Sec. 132(8)]

- ☐ shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment u/s 153A.

Exception

- ☐ It can be retained for more than 30 days on fulfillment of the following conditions -
 - ❖ 1. The reasons for retaining the same are recorded in writing; and
 - ❖ 2. The (prior) approval of the PrCCIT or CCIT, PrCIT or CIT, Pr,DG or DG or Pr. Director or Director for such retention is obtained.

Search and Seizure [Sec. 132]

Power of authorized officer

Time limit for retention [Sec. 132(8)]

Taxpoint

- ☐ **(a) Maximum retention :** The authorized Officer shall not authorise the retention of the books of account and other documents for a period exceeding 30 days after all the proceedings in respect of the years for which the books of account or other documents are relevant, are completed.
- ☐ **(b) Power of the Board to pass an order [Sec. 132(10)]**
 - ❖ • Where a person is legally entitled to the books of account or other documents seized;
 - ❖ • Such person objects for any reason to the approval given by the authorities; and
 - ❖ • Such person makes an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.
 - ❖ - then the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

Search and Seizure [Sec. 132]

Power of authorized officer

Presumption in case of search [Sec. 132(4A)]

- Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are, or is found in the possession or control of any person in the course of search, it may be presumed that -
 - ❖ These are belongs to such person;
 - ❖ The contents of such books of account and other documents are true;
 - ❖ • The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person, are in that person's handwriting; and
 - ❖ • In the case of a document stamped, executed or attested, it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Search and Seizure [Sec. 132]

Power of authorized officer

- ❑ Other Provisions
- ❑ **1. Help from Government officers [Sec. 132(2)]:** It shall be the duty of every police officer or of any officer of the Central Government or of both officer to assist authorised officer to invoke his power.
- ❑ **2. Right to make copies or take extract [Sec. 132(9)]:**
 - ❖ The person from whose custody books of account or other documents are seized may make copies thereof or take extracts therefrom.
 - ❖ Such right can be exercised in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.

Search and Seizure [Sec. 132]

Power of authorized officer

- ❑ **Other Provisions**
- ❑ **3. Power of Board to make rules [Sec 132(14)]:** The Board may make rules in relation to any search or seizure providing the procedure to be followed by the authorised officer –
 - (i) for obtaining ingress (i.e. right to enter) into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
 - (ii) for ensuring safe custody of any books of account or other documents or assets seized.
- ❑ **4. The provisions of the Code of Criminal Procedure, 1973** relating to searches and seizure shall apply, so far as may be, to search and seizure [Sec. 132(13)].



Requisition under section 132A

POWERS TO REQUISITION BOOKS OF ACCOUNT, ASSETS, etc. [Sec. 132A]

Circumstances when power u/s 132A can be invoked

- ☐ Where IT Authority (being PrCIT or CCIT or PrCIT or CIT) in consequence of information in his possession, has **reason to believe** that -
- ☐ (a) Any person to whom a summon u/s 131(1) or a notice u/s 142(1) was issued to produce any books of account or other documents -
 - ❖ Has as omitted or failed to produce such books of account or other documents; and
 - ❖ The said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force
- ☐ (b) Any books of account or other documents will be useful for, or relevant to, any proceeding under this Act and *any person to whom a summon or notice has been issued will not produce such books of account or other documents on its returning by other authority*
- ☐ (c) Any assets taken into custody by any officer or authority under any other law for the time being in force is undisclosed (wholly or partly).

Who can requisition books

Requisitioning Officer who can require books, etc.	Authorized from
Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner

POWERS TO REQUISITION BOOKS OF ACCOUNT, ASSETS, etc. [Sec. 132A]

Power of Requisitioning Officer : The requisitioning officer

- ❖ can make a requisition for delivery of books of account, etc., to such other authority.
- ❖ such other authority shall deliver the books of account, other documents or assets to the requisitioning officer when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

Example: For *instance*, any books of account seized by an officer under Customs Act can be requisitioned by IT Authority to deliver such books of account.

- ❑ On the requisition, other authority delivers books of account, etc. to the requisitioning officer.
- ❑ Such books of account, documents, etc. shall be deemed as seized u/s 132(1).

POWERS TO REQUISITION BOOKS OF ACCOUNT, ASSETS, etc. [Sec. 132A]

Power of Requisitioning Officer :

- ☐ **Taxpoint**
- ☐ • The **reason to believe, as recorded by** the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.
- ☐ • A bank draft when presented for clearing by the customer to the bank cannot be said to have been taken into custody by the bank to attract the applicability of section 132A. Resultantly, the warrant of authorisation requisitioning the same by the competent authority is totally without jurisdiction [***Samta Construction Co. -vs.- Pawan Kumar Sharma***]

APPLICATION OF SEIZED OR REQUISITIONED ASSETS [Sec. 132B]

The seized assets may be adjusted with:

- ☐ (a) The amount of any existing liability under -
 - ❖ (i) The Income-tax Act, 1961;
 - ❖ (ii) The Wealth-tax Act, 1957 (now abolished);The existing liability does not include advance tax payable.
- ☐ (b) The amount of liability determined on completion of the assessment u/s 153A;
- ☐ (c) The amount of liability determined on completion of the assessment of the year relevant to the PY in which search is initiated or requisition is made.
- ☐ It includes penalty levied or interest payable in connection with such assessment) &
- ☐ Amount in respect of which such person is in default or is deemed to be in default or the amount of liability arising on an application made before the Settlement Commission.

Release of Assets [First Proviso to Sec. 132B]

☐ Condition for release of asset

- ❖ the amount of any existing liability may be recovered out of such asset and the remaining portion of the asset may be released to the person from whose custody the assets were seized -

☐ Where the following conditions are satisfied,

- ☐ 1. The person concerned makes an application to the AO within 30 days from the end of the month in which the asset was seized for release of asset;
- ☐ 2. The nature and source of acquisition of such asset is explained to the satisfaction of the AO; and
- ☐ 3. The AO obtains the prior approval of the Pr.CCIT or CCIT or Pr.CIT or CIT.

Release of Assets [First Proviso to Sec. 132B]

Time limit for release of asset

- ☐ Asset or any portion thereof shall be released within a period of 120 days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.
- ☐ No seized asset shall be retained by the Department during pendency of appeal filed by Revenue [*Naresh Kumar Kohali -vs.- CIT (P&H)*]

Order of assets to be applied for discharging liability

- ☐ Liability shall be discharged by applying the seized asset in the following order –
- ☐ (a) Money;
- ☐ (b) Asset other than money (as laid down in the Third Schedule).

Note: Assessee shall be discharged of the liability to the extent of the money and asset so applied. However, AO shall not be precluded from the recovery of above liabilities by any other mode.

Release of Assets [First Proviso to Sec. 132B]

☐ Discharge of excess money

- ❖ After discharging all liabilities if any assets or proceeds thereof left, then it shall be returned to the persons from whose custody such assets were seized.

☐ Interest payable to the assessee

- ❖ Where the aggregate amount of money (either seized or realized through sale of assets) seized exceeds the aggregate of the amount required to meet the liabilities, Government shall pay simple interest at the rate of ½% p.m.
- ❖ The interest shall be payable from the date immediately following the expiry of the period of 120 days (from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed) to the date of completion of the assessment u/s 153A.

Powers to call for Information (section 133) -

- ❑ The IT Authority [being AO, DCIT(Appeals), JCIT / CIT (Appeals)] may – require
- ❖ any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;
- ❖ any HUF to furnish him with a return of the names and addresses of the manager and the members of the family;
- ❖ any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is a trustee, guardian or agent, and of their addresses;
- ❖ any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity (not being any annuity taxable under the head “Salaries”) amounting to more than Rs.1000, together with particulars of all such payments made;

Powers to call for Information (section 133) – Contd.

- ❑ The IT Authority [being AO, DCIT(Appeals), JCIT / CIT (Appeals)] may – require
 - ❖ any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons –
 - ❖ a) to whom he or the exchange has paid any sum in connection with the transfer of assets; or
 - ❖ b) on whose behalf or from whom he or the exchange has received any such sum, – together with particulars of all such payments and receipts;
- ❑ any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs, – which will be useful for, or relevant to, any enquiry or proceeding under this Act.

Powers to call for Information (section 133) -

Taxpoint

- ☐ Where no proceeding is pending, the power u/s 133 shall not be exercised by any IT Authority below the rank of Pr. Director or Director or Pr.CIT or CIT, other than the JDIT or DDIT or ADIT, without the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner.
- ☐ It is to be noted that power referred in point (6) above may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.

Powers to call for Information (section 133) -

☐ The IT Authority [being AO, DCIT(Appeals), JCIT / CIT (Appeals)] may –

Taxpoint

- ☐ Where no proceeding is pending, the power u/s 133 shall not be exercised by any income-tax authority below the rank of Pr. Director or Director or PrCIT CIT other than the JD or DD or AD without the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner.
- ☐ It is to be noted that power referred in point (6) above may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.

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Assessment in case of Search and Requisition- Section 153A – Where Search conducted within 31st March 2021.

Assessment in case of Search and Requisition

Section 153A

Where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, the following provision shall be followed:

- Save as otherwise provided in sec. 153A, 153B, 153C and 153D all other provisions shall apply to the assessment made under this section also.

Procedure

Notice

The Assessing Officer shall issue notice to such person requiring him to furnish the return of income:

- in respect of each assessment year falling within 6 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
- 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 6 assessment years but not later than 10 assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Assessment in case of Search and Requisition Section 153A

- 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 ₹ 50 lakh or more in the relevant assessment year or in aggregate in the relevant assessment years;
 - Asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.
 - (b) The income referred above or part thereof has escaped assessment for such year or years; and
 - (c) The search u/s 132 is initiated or requisition u/s 132A is made on or after 01-04-2017

Time limit for furnishing such return

Such return should be furnished in prescribed Form within such time, as may be specified in the notice.

Assessment of income in respect of each assessment year

Assessing Officer shall assess or re-assess the total income of *each* of 6 assessment years and for the relevant assessment year or years.

6.15 ASSESSMENT OF INCOME OF ANY OTHER PERSON [Sec. 153C]

Search Conducted up to 31st March 2021

- Where the Assessing Officer is satisfied that -
- any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or
 - any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,
- a person other than the person against whom such search or requisition is made,
- 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
 - Such Assessing Officer shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of sec. 153A.

6.16 TIME LIMIT FOR COMPLETION OF ASSESSMENT [Sec. 153B]

Assessment Year	Time Limit
1. Each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made	Within a period of 21 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed#.
2. For relevant assessment year or years	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during the financial year 2018-19: Within a period of 18 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed
3. Assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed on or after 01-04-2019: Within a period of 12 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed
# The authorisation shall be deemed to have been executed—	
In the case of search u/s 132	On the conclusion of search as recorded in the last <i>panchnama</i> drawn in relation to any person in whose case the warrant of authorisation has been issued;
In the case of requisition u/s 132A	On the actual receipt of the books of account or other documents or assets by the Authorised Officer.

Taxpoint

- In case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be
 - a. The period as referred above; or
 - b. 18 months, in the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during F.Y. 2018-19 (12 months: in the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed on or after 01-04-2019) from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person,
 - whichever is later. [Proviso to sec. 153B]
- Wherever reference has been given to Transfer Pricing Officer u/s 92CA, time limit in all cases shall be increased by 12 months.

Prior approval necessary for assessment in cases of search or requisition [Sec. 153D]

No order of assessment or reassessment (in case of search or requisition) shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the prior approval of the Joint Commissioner.

However, assessment or reassessment order may be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner u/s 144BA.

Search Assessment – Amendment by Finance Act 2021

New provisions of Assessment of Income escaping assessment – In case Search

New scheme of re-assessments are contained in the following provisions:

- ❖ **(a) Section 147: Assessment of income escaping assessment;**
- ❖ **(b) Section 148: Issue of notice for re-assessment;**
- ❖ **(c) Section 148A: Procedure to be followed before issuing a notice for re-assessment;**
- ❖ **(d) Section 149: Time limit for issuing a notice for re-assessment;**
- ❖ **(e) Section 150: Assessment in pursuance of an order on appeal, etc. (no amendment has been proposed);**
- ❖ **(f) Section 151: Specified Authorities for authorising the issue of notice for re-assessment;**
- ❖ **(g) Section 151A: Faceless assessment of income escaping assessment; and**
- ❖ **(h) Section 153: Time limit for completion of assessment or re-assessment.**

Assessment under Search – New Section 147

- ❑ AO to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant AY).
- ❑ Before such assessment or reassessment or re-computation,
 - ❖ a notice is required to be issued under section 148 of the Act,
 - ❖ which can be issued only when there is information with the AO which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant AY.
 - ❖ Prior approval of specified authority is also required to be obtained before issuance of such notice by the AO.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ❖ Any information which has been flagged in the case of the assessee for the relevant AY in accordance with the risk management strategy (RMS) formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment.
- ❖ The information for the relevant AY shall be flagged as per the 'Risk Management Strategy (RMS)' formulated by the CBDT.
- ❖ Flagging of “information” would largely be done by the computer-based system on basis of pre-defined algorithms which may not be made public.
- ❖ Which 'information' can be flagged.: Whether it should be collected from the third parties only or it can be due to the retrospective amendment in the law or court rulings.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

❖ Oxford Dictionary-, 'Information' means facts told, heard or discovered about somebody/something. The Law Lexicon: the term 'information' as the act or process of informing, communication or reception of knowledge.

□ The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment.

□ CIT v. A. Raman & Co. [1968] 67ITR11 (SC): the expression 'information' means 'instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment'.

□ Maharaj Kumar Kamal Singh v. CIT [1959] 35 ITR 1 (SC): the word 'information' includes information as to the true and correct state of the law and so would cover information as to relevant judicial decisions.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

- ❑ **Conclusions: the expression 'information' shall** mean the particulars obtained from the third parties or due to change in the facts or subsequent court's rulings or the correct interpretation of a provision given by the Board for Advance Ruling. Based on such particulars, the re-assessment can be initiated by the AO provided such information is flagged in the RMS by the CBDT.
- ❑ **Final objection raised by the C and AG of India to the effect that the assessment** in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT?

❑ *Final Objection raised by CAG*

❖ **FIS Global Business Solutions India (P.) Ltd [2019] 104 taxmann.com 169 (SC)** dismissed an SLP against the decision of the Delhi High Court that the audit objection being only information, reassessment notice based on said audit objection is not sustainable.

❖ Since the audit report merely gives an opinion and does not give any new or fresh material before the AO, the reopening of assessment merely on basis of audit objection could not be sustained.

WHEN DOES INFORMATION SUGGEST THAT INCOME HAS EXCAPED ASSESSEMENT?

Which information can be flagged by CBDT? Final Objection raised by CAG

❑ Reassessment u/s 147 based solely on audit party's remarks would be invalid under law. **CIT v. Metturre Chemicals & Industrial Corporation Ltd [2000] 242 ITR 119.**

❑ Audit party's view regarding interpretation of legal provisions would not constitute a reason for issue of notice .The AO must satisfied himself about correctness of the audit report before issue of notice u/s 148. **Duncan Services Lte v. ITO [1992] 198 ITR 264 (Delhi), Transworld International Inc v. CIT [2005] 142 Taxman 35 , Vijay Ramesh Gupta v. CIT [2013] 215 Taxman 465 (Guj) , Cadila Healthcare Ltd v. CIT [2013] 355 ITR 393 9Guj0, Vodafone West Ltd v. CIT [2013] 37 taxman.com 158(Guj), Jagal Jagannath Parikh v. CIT [2013] 215 Taxman 444 (Guj).**

Assessment under Search – New Section 147

□ In search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021,

❖ it shall be deemed that the AO has **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 AY relevant to the PY year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

Assessment under Search – New Section 147

Process laid down u/s 148A not applicable

- ❑ Section 148A of the Act proposes that before issuance of notice the AO shall
 - ❖ conduct enquiries,
 - ❖ if required, and provide an opportunity of being heard to the assessee.
 - ❖ after considering his reply, the AO shall decide, by passing an order, whether it is a fit case for issue of notice u/s 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority.
- ❑ However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

Assessment under Search

❑ The time limitation for issuance of notice u/s 148 is proposed to be provided in section 149 of the Act and is as below:

❑ **in normal cases:**

➤ no notice shall be issued if 3 have elapsed from the end of relevant AY. Notice beyond the period of 3 from the end of relevant AY can be taken only in a few specific cases.

❖ **in specific cases:**

➤ where the AO has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to **Rs.50 lakhs or more**, notice can be issued beyond the period of three year but **not beyond the period of 10 years** from the end of the relevant AY.

Example:For Serious Tax Evasion cases, where evidence of concealment of Income is more than Rs. 50 Lacs, notice can be issued beyond 3 years but not beyond 10 years.)

Assessment of Income under Search / requisition-

- ❑ Notice u/s 148 of the Act cannot be issued at any time in a case for the relevant AY 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 prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.
- ❑ Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.

Search initiated / conducted before 31st March 2021

How to Compute Period of Limitation for issue of Notice:

□ Where search or requisition is initiated or made on or before 31st March 2021:

❖ the assessment or reassessment or re-computation shall be continued as per the existing provision of Section 153A, 153B, 153C and 153D, and the aforesaid time limitation shall not apply to such cases.

□ **Clarification :** Notice under new section 148 cannot be issued at any time in a case for the relevant AY 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 of 6 years.

Assessment under Search

- ❑ For the purposes of computing the period of limitation for issue of section 148 notice,
 - ❖ the time or extended time allowed to the assessee in providing opportunity of being heard or
 - ❖ period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded.
- ❑ If after excluding such period, time available to the AO for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

TIME LIMIT FOR COMPLETION OF RE-ASSESSMENT PROCEEDINGS [SECTION 153]

<i>Income escaping assessment belongs to the Assessment year</i>	<i>Time limits if notice can be issued up to 3 years</i>		<i>Time limits if notice can be issued up to 10 years</i>	
	<i>Last date to issue notice</i>	<i>Last date to pass the order</i>	<i>Last date to issue notice</i>	<i>Last date to pass the order</i>
2021-22	31-Mar-25	31-Mar-26	31-Mar-32	31-Mar-33
2020-21	31-Mar-24	31-Mar-25	31-Mar-31	31-Mar-32
2019-20	31-Mar-23	31-Mar-24	31-Mar-30	31-Mar-31
2018-19	31-Mar-22	31-Mar-23	31-Mar-29	31-Mar-30
2017-18*	-	-	31-Mar-28	31-Mar-29

PRIOR APPROVAL OF SPECIFIED AUTHORITIES [SECTION 151]

<i>Time Limit</i>	<i>Specified Authority</i>
If 3 years or less than 3 years have elapsed from the end of the relevant assessment year	Principal Commissioner of Income-tax (PCIT) or Principal Director of Income-tax (PDIT) or Commissioner of Income-tax (CIT) or Director of Income-tax (DIT)
If more than 3 years have elapsed from the end of the relevant assessment year	PCIT or PDIT, or where there is no PCIT or PDIT, CCIT or DGIT

Assessment under Search

□ Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

1. Section 153C

Where the AO of the Searched and Other Person is the Same

Hon'ble Supreme Court in case of M/s Supper Malls Private Ltd vs. Pr CIT, New Nelhi (Civil Appeal NOS.2006-2007 OF 2020 (Arising out of SLP(C) Nos. 8449-50/2017) have observed

- ☐ where the AO of the searched person is different from the AO of the other person, there shall be a satisfaction note by the AO of the searched person and
- ☐ thereafter the AO of the searched person is required to transmit the documents so seized to the AO of the other person.
- ☐ AO of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the AO of the other person and
- ☐ AO is also required to make a note in the file of a searched person that he has done so.

1. Section 153C

Where the AO of the Searched and Other Person is the Same

In case of Ganpati Fincap Services Pvt. Ltd vs Commissioner Of Income Tax Delhi High Court held on dated.5th March 2020 that

- ❑ for the administrative convenience and the failure by the AO of the searched person, after preparing and dispatching the satisfaction note and the documents to the AO of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under Section 153C of the Act against the other person.**

- ❑ At the same time, the satisfaction note by the AO of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the AO of the other person is mandatory.**

1. Section 153C

Where the AO of the Searched and Other Person is the Same

In case of Ganpati Fincap Services Pvt. Ltd vs Commissioner Of Income Tax Delhi High Court held on dated.5th March 2020 that

- ❖ where the AO of the searched person and the other person is the same, it is sufficient by the AO to note in the satisfaction note that the documents seized from the searched person belonged to other person and then requirement of Sec153C of the Act is fulfilled.
- ❖ where the AO of the searched person and the other person is the same, there can be one satisfaction note prepared by the AO, as he himself is the AO of the searched person and also the AO of the other person however he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to other person.
- ❖ The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the AO of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself

2. Whether the Assessee Can Lodge the New Claims, Claim Deductions and claim Reliefs

In Case of JSW Steels Ltd , Hon'ble High Court held that

- ❖ 1. That there was no **specific inhibition or restriction** on the assessee to **make a new claim, deduction, exemption and/or relief which was not claimed in the original assessment**;
- ❖ 2. That under Section 153A of the said Act, **a return filed is deemed to be a return filed under Section 139(1) of the Act**;
- ❖ 3. That the provisions of the said act would apply accordingly.
- ❖ 4. That once **assessment got abated**, the assessee was at liberty to make such **claim/ addition as per normal assessment proceedings** because the assessment got abated and therefore the AO retained original jurisdiction as well as jurisdiction conferred on him under Section 153A of the said Act which was in consequence to search under Section 132 of the said Act.

2. Whether the Assessee Can Lodge the New Claims, Claim Deductions and claim Reliefs

□ **Two crucial aspects noticed while assessing the sec. 153(1) comes out as follows**

❖ **1. “notwithstanding” in sub-section (1)**

The **use of non obstante** clause in sub-section (1) of Sec. 153-A i.e., use of the expression “notwithstanding” is indicative of the **legislative intent that provisions of Section 153-A(1) would have overriding effect over the provisions contained in Sections 139, 147, 148, 149, 151 and 153.**

❖ **2 Return filed in pursuance of the notice under section 153(!) shall be treated as the return filed under section 139(1) of the said act**

To take up the said issue it becomes imp to reproduce the second proviso to the section 153(1) of the income tax act

Provided that assessment or reassessment, if any, relating to any AY falling within the period of six AY 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:

2. Whether the Assessee Can Lodge the New Claims, Claim Deductions and claim Reliefs

❑ Considering the judgement of this court in case of the continental warehousing limited the judgement of this court is produced as follows

❑ From the above discussion and precedence, the scheme of assessment u/s 153A of the Act in case of search, the AO shall issue notice to searched 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 referred to in clause (b) of subsection (1) of section 153A and clause (b) postulates assessment or reassessment of the total income of six years immediately preceding the assessment year relevant to the previous year in which such search is conducted. The first proviso mandates that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso postulates that the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in sub-section (1) is pending on the date of initiation of the search u/s 132 of the Act shall abate. In the present case before us, however, though the second proviso to sub-section (1) of section 153A would not apply in the first three years of this case, yet, as far as the second three year period is concerned (which are pending before us), the assessments

3. Whether Notice Under Section 143(2) Required For Completion of Proceedings Under Section 153A?

- ❑ **Rule 112F** - AO shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the A.Y
- ❑ The aforesaid rule was introduced with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted u/s 132 or requisition made u/s 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any AY other than the AY relevant to the PY in which search is conducted or requisition is made.
- ❑ However judiciary decisions are in existence for and against the issues of notices

3. Whether Notice Under Section 143(2) Required For Completion of Proceedings Under Section 153A?

□ Whether proceedings may be continued without giving notice u/s 153A

Incase of Abhay Kumar Shroff v.CIT [2007] 162 TAXMAN 429 (JHAR.) Held that: continuation of assessment proceeding after initiation of search without giving any notice u/s 153A and passing impugned final order of assessment was held to be illegal, arbitrary and wholly without jurisdiction -

□ 3. Applicability of provisions of sec. 143 (2)

In case of Sumanlata Bansal vs. the ACIT, Central Circle 8 Mumbai, ITA nos. 525 to 530 (ITAT Mumbai) relating to the assessment years 1999-2000 to 2005-2006 held that issue of notice under section 143(2) is not mandatory before making an assessment under section 153A of the Income Tax Act.

□ Incase of Ashok Chaddha vs Income Tax Officer (Delhi HC)

No specific notice was required under section 143(2) of the Act when the notice in the present case as required under Section 153 (A) (1) (a) of the Act was already given.

3. Whether Notice Under Section 143(2) Required For Completion of Proceedings Under Section 153A? – Alternate Views

In case of ACIT v. M/s G.M Infrastructure ITA.No.133/Ind/2008 ITAT Indore:

Provisions of sec. 143(2) have to be applied in its fullest scope i.r.o assessment or reassessment made u/s 153A.

CIT vs. Pawan Gupta & Ors.[2009] 223 CTR 487(Del)

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

4. Return filed u/s 153A is the original return - Delhi High Court in the case of Principal Commissioner of Income-tax-19 Vs Neeraj Jindal [2017] 393 ITR 1 (Delhi)

A return filed under Section 153A takes the place of the original return under Section 139, for the purposes of all other provisions of the Act. Once the A.O. accepts the revised return filed under Section 153A, the original return under Section 139 abates and becomes non-est.

5. Whether pre-conditions of sec. 153A/132 are to be complied mandatorily?

☐ **Jindal Stainless Ltd. v ACIT , ITA Nos. 3480 & 3481 (Del) 2006- 122 TTJ 902**

The prerequisite condition for application of section 153A is that assessment under this section can be made against a person in case of whom a search is initiated u/s 132; non-fulfillment of conditions laid down in sec.153A is a jurisdictional defect which cannot be cured.

☐ **Rajat Tradecom India Pvt. Ltd. v. DCIT, 120ITD 301 Appeal No. IT (SS) A No: 182 & 183/Ind./2007 –Indore ITAT –**

Before invoking the provision of sec. 153A it would be necessary to comply with the provisions contained u/s 132(1); the mere issue of warrant of authorization without there being search of the premises mentioned in the warrant of authorization would be meaningless and would not serve the purpose of section 132. therefore, actual search shall have to be carried out necessarily before proceeding u/s 153A

☐ **Similar decision held in: [2010] 5 taxmann.com 59 (Ahd. - ITAT) ITA No. 2878 to 2880/Ahd/2007 Dr. Manshukh Kanjibhai & Shah vs. ACIT, J.M.Trading [2008] 20 SOT 489, DHC in S.K.Katyal 308 ITR 168**

Issues – Section 153C

1. Reasons to be recorded to reach at the satisfaction

Supreme Court in Amity Hotels (P) Ltd. 272 ITR 75, held that :

the reasons must be recorded by the Assessing Officer having jurisdiction over the assessee who had been searched before issuing the notice u/s 158 BD of the Act. The aforesaid view has been reiterated by this Court in the case of **CIT Vs. Karan Engg. P. Ltd. and Janki Exports International Vs. UOI, 193 CTR 730.**

2. Belongs to assessee?

Meghmani Organics Ltd. vs DCIT 129 TTJ 255

- The prerequisite for initiating proceedings u/s. 153C of the Act is that any money, bullion, jewellery or other valuable articles or things or documents seized or requisitioned belong to a person other than person in whose case warrant of authorizations is issued u/s. 132(1) of the Act. Since none of the documents belongs to the assessee, though they may be referable to the work of the assessee the same cannot be considered as "belonging to the assessee"
- **Similar decisions in: LMJ International Ltd. vs DCIT 119 TTJ 214**

3. Where no material seized other than statement recorded- whether 153C / 158BD can be invoked?

Incase of CIT VS. Late Sh. Raj Pal Bhatia, ITA 276 OF 2009, Date of decision 29.11.2010, DELHI (HC):

- no assessment u/s 158BD can be invoked merely on the basis of Statement of a person in whose premises search was conducted as the statement is not in the nature of document which was found during search.
- Therefore, it cannot be said that the statement was, seized "during the search and thus, would not qualify the expression "document" having been seized during the search. In such a scenario, proper course of action was reassessment u/s 147 read with section 148 of the Act.

In the case of Smt. Chitra Devi Vs. CIT 77 TTJ 430 decided by Jodhpur Bench of ITAT, reported in, it is held that statement recorded u/s 132 (4) of the Act during the search is no evidence as contemplated u/s 158BD of the Act and on that basis no valid proceedings in Chapter XIV-B of the Act could be initiated. aaaaaa


Whether notice u/s 153C is valid if papers found during the search proceedings gave reference about the other person.? No.

Vijaybhai N. Chandrani v. ACIT, [2010] 231 CTR 474(GUJ.)

Condition precedent for issuing notice u/s 153C and assessing or reassessing income of 'such other person' is that money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person; where admittedly documents in question, namely, three loose papers recovered during search proceedings did not belong to petitioner, though there was a reference to petitioner therein, issue of notice to petitioner u/s 153C was not valid

5. Whether AO can include the items in assessment proceedings u/s 153A which are corresponding to the original assessment proceedings

- ❑ The ITAT In case of the ANIL P KHIMANI V DICT has given the beautiful judgement and squarely covered this issue that in case of the assessments are completed and return is processed under the section 143(1) of the income tax act the additions made under section 143 read with the section 153A of the act has to be confined only to the material available on the record made during the course of the search and cannot include the terms made during the course of the original assessment proceedings.
- ❑ However if any assessment is pending on the date of the initiation of the search then the assessments pending on the date of the initiation of the search shall abate and this gives the right to both the parties that is the assessee can make the adjustments in the return of income file in response to the notice and also AO can make the adjustments even not confined to the material available on the record.



Q&A