



## **Incriminating material available for one AY would not justify proceedings for the entire block of six/ ten years u/s 153A or 153C**

**By: Vivek Jalan**

**Team Tax Connect**

Section 153A and 153C of The Income Tax Act 1961 were in force till 31-3-2021. The trigger for section 153C is the discovery of incriminating materials in the course of a search [by the AO of the search party – AO1] that pertain or belong to a third party and which may have a bearing on the determination of the total income of such third party for the six-assessment year period or the relevant assessment years.

"Incriminating material" includes any record, item, or information that, when discovered during a search or requisition which directly indicates and/or effectuates a direct link or causal nexus to undisclosed income or assets, which is inconsistent with the assessed person's declared returns. Such material may be in the form of documents demonstrating mismatches between actual and declared asset values (land, jewellery, cash, deposits, etc.); records evidencing off-books or concealed transactions; or any other credible data indicative of concealment of real income. Scribbles, rough notings or loose papers without a demonstrated nexus to undisclosed income cannot be straightaway classified as incriminating material. Furthermore, the Hon'ble ITAT disallowed additions based solely on third-party statements when the same was uncorroborated by any such seized documents or assets found during the assessee's own search.

There is vital distinction between the object, intention as well as the express language of section 153A and section 153C. Under section 153A at the time of search or requisition the AO will issue the notice. However, section 153C requires the satisfaction of two conditions prior to issue the notice viz., Recording of satisfaction by the AO of the search entities (AO-1) that some of the incriminating material belong to the third party as well as recording of satisfaction by the AO of the third party [non-search person – AO-2] that the incriminating materials have a bearing on the determination of the total income of the third party.

**However, the question is whether the incriminating material available for one AY would justify proceedings for the entire block of six/ ten years.** Such a notion is erroneous. The assumption of the Department is not unsustainable, that the moment any material is recovered in the course of a search or on the basis of a requisition made, they become empowered in law to assess or reassess all the six AYs' years immediately preceding the assessment correlatable to the search year or the "relevant assessment year as defined in terms of Explanation 1 of Section 153A.

On this issue the Hon'ble Supreme Court held in the case of *Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society* [2017 (8) TMI 1298]. The Assessment Years before the Hon'ble Supreme Court were Assessment Years 2000-01, 2001-02, 2002-03 and 2003-04. In the satisfaction note before the Hon'ble Supreme Court, the material referred to therein was for Assessment Year 2004-05 onwards. It is in this light that the Hon'ble Supreme Court held that the Notice under Section 153C could not be issued for the Assessment Years 2000-01, 2001-02, 2002-03, 2003-04. The same was also held in the case of **Ashok Khandelwal Versus Union of India & Ors. [2025 (8) TMI 546 - BOMBAY HIGH COURT]**

## BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant, M.B.A (International Trade) & a qualified L.LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Conveynor of The Indirect Tax Core Group of The Confederation of Indian Industries – EAC(ER). He is the Chairperson of The National Fiscal Affairs & Taxation Committee of The Bengal Chamber of Commerce and Industry. He is a Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 20 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **Income Tax Bill 2025 with Commentary**
- **Union Budget 2025 Edition**
- **Income Tax Section Wise Commentary and Analysis of Recent Developments**
- **GST APPELLATE TRIBUNAL (GSTAT)**
- **TAX PLEADING & PRACTICE JOURNAL – OCTOBER 2023**
- **GST PLEADING & PRACTICE – SEPTEMBER 2023**
- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
- **COMMENTARY ON UNION BUDGET 2022 – Feb 2022**
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- COMMENTARY ON UNION BUDGET 2020 – Feb 2020
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- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY

He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.