The amendment brought to Section 153C of the Act, 1961 vide Finance Act, 2015 shall be applicable to searches conducted under Section 132 of the Act, before 01.06.2015, i.e., the date of the amendment [Sec 132 of ITA’61 – Sec 247 of ITA’25]

By: Vivek Jalan

FCA, LL.M (Constitutional Law), LL. B,
MBA (International Trade), B. Com (H)
Team Tax Connect

The purpose of The Income Tax Act is to tax the income generated in India by self-assessment made by the assesses or by bringing the evaders to tax by proceedings under the Act. The amendments to the Act would have to be interpreted inconsonance with this basis principle. This is laid down by recent judgement of The Hon’ble Apex Court in the case of INCOME TAX OFFICER Vs VIKRAM SUJITKUMAR BHATIA [2023-VIL-07-SC-DT] and this judgement can be a precedent to many judgements which may be pronounced in Income Tax Assessment cases in the years to come, especially those under Section 148.

Section 153C allows the revenue department to proceed against a party other than the person who is being searched, if incriminating articles against the “other person” is found during the search. Section 153C initially used the word “belong/belongs to”. So, if any books of accounts or documents which “belong/belongs to” a person other than the person who is being searched is discovered during the search proceedings, Section 153C enabled the department to proceed against the “other person” if the materials indicated undisclosed income or assets. The contention of the revenue that Section 153C is a machinery provision and hence its manifest purpose should be given effect to was sometimes accepted by the Court. However thereafter the words were substituted by “pertains or pertain to”.

In the present case, even though the search under Section 132 was initiated prior to the amendment to Section 153C w.e.f. 01.06.2015, the books of account or documents or assets were seized by the AO of the non-searched person only on 25.04.2017, which is subsequent to the amendment, therefore, when the notice under Section 153C was issued on 04.05.2018, the provision of the law existing as on that date, i.e., the amended Section 153C shall be applicable, was held.

It was held that the object and purpose of Section 153C is to address the persons other than the searched person. If the submission on behalf of the assessees that despite the fact that the incriminating materials have been found in the form of books of account or documents or assets relating to them from the premises of the searched person, still they may not be subjected to the proceedings under Section 153C solely on the ground that the search was conducted prior to the amendment is accepted, in that case, the very object and purpose of the amendment to Section 153C, which is by way of substitution of the words "belongs or belong to" to the words "pertains or pertain to" shall be frustrated. Any interpretation, which may frustrate the very object and purpose of the Act / Statute shall be avoided by the Court and hence this decision.

It seems that now Counsels and tax-practitioners should thus note of this judgement and even look into the merits of the cases when arguing on purely technical grounds.

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

1st Floor, AJ House, Marol Maroshi Rd, Gamdevi, Marol, Andheri East, Mumbai, Maharashtra 400059

Contact Person: Prashant Kumar Jha
Email: prashant.jha@taxconnect.co.in

BENGALURU

Go Spaze, B Narayana Pura, Pura, Mahadevapura, Outer Ring Road, Near HDFC Bank, Karnataka -560016

Contact Person: Tarun Singh Bhadouria
Email: tarun.bhadouria@taxconnect.co.in

DELHI

D-32, Second Floor, Main Vikas Marg, Laxmi Nagar, Delhi – 110092

Contact Person: Poonam Khemka
Email: Poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata – 700001

Contact Person: Sandeep Mandal
Email: Sandeep.mandal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person: Uttam Kumar Singh
Email: uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai

Contact Person: Rohit Sharma
Email: rohit.sharma@taxconnect.co.in

Disclaimer:

This publication is for private circulation only. Views expressed herein are of the Tax Connect team and are based on the information, explanation, and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared based on published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.