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INCOME TAX SEARCH AND SEIZURE: CONTROVERSY IN COMPUTING PERIOD OF LIMITATION TO FRAME SEARCH ASSESSMENTS

Introduction:-

The period of limitation for completion of assessment u/s 153A of the Income Tax Act' 1961 for the searches conducted on or before 31 stDay of March'2021 is governed by the provisions of Section 153B of the act. Eventhough the Section 153A of the Income Tax Act' 1961 has been made non applicable for the searches initiated onor after the 1 stDay of April'2021, the issue is still having vide ramifications for the searches conducted on orbefore 31 stDay of March'2021.

For the sake of brevity, the relevant extract provisions of Section 153B of the act are reproduced herein below:-

"Time limit for completion of assessment under section 153A.

153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order fassessment or reassessment,—

(a) in respect of each assessment year falling within six assessment years [and for the relevant assessment yearor years] referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months fromthe end of the financial year in which the last of the authorisations for search under section 132 or forrequisition under section 132A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section132 or requisition is made under section 132A, with in a period of twenty-one months from the end of the financialyear in which the **last of the authorisations** for search under section 132 or for requisition under section 132 Awas

(2) The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have beenexecuted,—

(a) in the case of search, **on the conclusion of search as recorded in the last panchnama** drawn in relation toany person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or otherdocuments or assets by the Authorised Officer.

The perusal of the relevant part of Section 153B of the act divulges that:-

(a) in respect of each assessment year falling within six assessment years and for the relevant assessment yearor years] referred to in clause (b) of sub-section (1) of section 153A

And

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132,

The Assessing Officer shall make an order of assessment or reassessment within a period of twenty-one months(*) from the end of the financial year in which **last of the authorization for search was executed.**

By virtue of deeming provision in shape of 153B (2) of act, it is laid down in the statute that **last of the authorization shall be deemed to be executed on the conclusion of search as recorded in the last panchnama**.

- The period of 21 months have been further reduced to 18 months and 12 months , if search is executed duringFinancial Year commencing on the 1 stDay of April'2018 and 1 stDay of April'2019 respectively.

Issue and Analysis:-

The law as contained in Section 153B(1) and 153B(2) , particularily the interpretation of the term used "lastauthorization" , "conclusion of search" and "last panchnama" and its connected interplay has drawn variedconflicting interpretations and controversy thereby having an important bearing on the period of limitation withinwhich the assessments u/s 153A of the act have to be framed pursuant to a search action u/s 132 of the act. Theconflict primarily arises when the execution of authorizations or panchnama falls in two different financial years.

A matrix is hereby prepared putting forth illustrative different scenario(s) in a search action:-

Scenario I: Single warrant of authorization issued dated 09-03-2020 in case of Mr. X

Under this scenario, there can be sub-classifications as under:-

Scenario I(a): Single warrant of authorization issued dated 09-03-2020 in case of Mr. X. The searchcommenced on on 09-03-2020 and search temporary concluded on 10-03-2020 with a prohibitory order (PO) inrespect of an almirah u/s 132(3) of the act. 1 stPanchnama drawn on 10-03-2020 showing search as temporaryconcluded due to PO. The first panchnama also recorded inventory of items seized.

On 02-04-2020, the PO was operated under the same warrant of authorization dated 09-03-2020, with no seizureon account of operation of PO. 2nd Panchnama drawn on 02-04-2020 showing search as concluded. Thesecond panchnama recorded no seizure.

In this scenario, the question arises so far as for the purposes of calculation of limitation u/s 153B, whichpanchanam should be taken into consideration the 1 stone or the 2 ndone since no seizure has been made in the2 ndpanchnama and a plea may be raised by the person searched citing judicial precedents that the PO has beenmade only for extension of time limitation by shifting the year.

Scenario I(b): Single warrant of authorization issued dated 09-03-2020 in case of Mr. X. The searchcommenced on on 09-03-2020 and search temporary concluded on 10-03-2020 with a prohibitory order (PO) inrespect of an almirah u/s 132(3) of the act. 1 stPanchnama drawn on 10-03-2020 showing search as temporaryconcluded due to PO. The first panchnama also recorded inventory of items seized.

On 02-04-2020, the PO was operated under the same warrant of authorization dated 09-03-2020, with seizure onaccount of operation of PO in shape of jewellery. 2nd Panchnama drawn on 02-04-2020 showing search asconcluded. The second panchnama recorded seizure of jewellery.

In this scenario, also the question arises so far as for the purposes of calculation of limitation u/s 153B, whyshould date of 1 stpanchnama should only be considered ignoring the 2 ndpanchnama by relying on the decisionof the Hon'ble Karnataka High Court in case of **C. Ramaiah Reddy v. Asstt. CIT [2012] 20 taxmann.com781/[2011] 339 ITR 210.** The same is discussed in the latter part of this article.

Scenario II: Multiple warrants warrant of authorization issued dated 09-03-2020 and second warrant dated15-3-2020 in case of Mr. X.

Under this scenario, there can be sub-classifications as under:-

Scenario II(a):

In this scenario, the question arises so far as for the purposes of calculation of limitation u/s 153B, which authorization and panchanam should be taken into consideration. As per the mere reading of Section 153A(1) read with 153(2), the last

Date of authorization	Date of search	Date of Panchnama
09-03-2020 on Mr. X at his residence	(I) 09-03-2020 till 10-03-2020 (at his residence) as temporary concluded due to PO on bank locker and PO on almirah at his residence.	10-03-2020 stating search as temporary concluded with seizure inventory with mention of PO on bank locker and PO on almirah at his residence.
Same as above	(ii) PO on almirah operated on 10-04-2020 **with certain seizure thereon.**	10-04-2020 stating search as concluded with seizure inventory from almirah at his residence.
15-03-2020 on Mr. X at his bank locker	(i) Search on 15-03-2020 certain seizure thereon.	15-03-2020 stating search as concluded with seizure inventory

panchnama of last authorization should be considered i.e. panchnama dated 15-032020 . But if such an interpretation is applied, the provisions of the scheme of law can be rendered as otiose since effective seizure has been made by virtue of execution of 1st Authorization in shape of 2nd panchnama dated 10-04-2020. There are numerous judicial decisions in favour of this proposition as discussed in the latter part of this article.

In this scenario also the question arises so far as for the purposes of calculation of limitation u/s 153B, as to whythe period of limitation should not be reckoned from 10-04-2020 when the search have been stretched till 10-04-2020.

Scenario II(b):

Date of authorization	Date of search	Date of Panchnama
09-03-2020 on Mr. X at his residence	(I) 09-03-2020 till 10-03-2020 (at his residence) as temporary concluded due to PO on bank locker and PO on almirah at his residence.	10-03-2020 stating search as temporary concluded with seizure inventory with mention of PO on bank locker and PO on almirah at his residence.
Same as above	(ii) PO on almirah operated on 10-04-2020 **with no seizure thereon.**	10-04-2020 stating search as concluded with no seizure from almirah at his residence.
15-03-2020 on Mr. X at his bank locker	(I) Search on 15-03-2020 with certain seizure thereon.	15-03-2020 stating search as concluded with seizure.

Therefore, undoubtedly these scenario as discussed above suggests that the issue of calculation of limitationperiod for framing assessments can be a challenging one owing to conflicting judicial decisions and interpretations which is discussed in this article at relevant places.

Going further into the discussion, the provisions of Section 153B(1) of the act requires the Assessing Officer toframe the assessment within 21 months from the date from the end of the financial year in which the last of theauthorizations was executed as per Section 132 of the Act. The authorization mentioned in Section 153B isdeemed to have been executed when the last panchnama is drawn in relation to any person in whose case thewarrant of authorization has been issued. This is in terms of Section 153B (2) (a) of the Act.

The word 'panchnama' is not defined in the Act. Even the Code of Criminal Procedure, 1973, the provisions of which relating to search and seizure have been made applicable to the searches and seizures under Section 132of the Act, does not define the said word. It, however, prescribes the format in which the panchnama is requiredto be drawn up.

The Hon'ble Delhi High Court in case of **CIT v. S.K. Katyal [2009] 308 ITR 168/177 Taxman 380** made thefollowing observations:

'These provisions demonstrate that a search and seizure under the said Act has to be carried out in the presenceof at least two respectable inhabitants of the locality where the search and seizure is conducted. Theserespectable inhabitants are witnesses to the search and seizure and are known as panchas. The documentationof what they witness is known as the panchnama. The word panchnama, refers to a written document. Its type isusually determined by the word which is combined with it as a suffix. Examples being, nikah-nama (the writtenmuslim marriage contract), hiba-nama (gift deed, the word 'hiba' meaning – gift), wasiyat-nama (written will) andso on. So a panchnama is a written record of what the panch has witnessed. In Mohan Lal v. Emperor: AIR 1941Bombay 149, it was observed that the panchnama is merely a record of what a panch sees...

Similarly, the Gujarat High Court in the case of **Valibhai Omarji v. The State AIR 1963 Guj** 145 noted that :

"(a) panchnama is essentially a document recording certain things which occur in the presence of Panchas andwhich are seen and heard by them." Again, in The State of Maharashtra v. Kacharadas D. Bhalgar (1978) 80Bom LR 396, a panchnama was stated to be a memorandum of what happens in the presence of the panchas asseen by them and of what they heard.

We have examined the meaning of the word "panchnama" in some detail because it is used in Explanation 2(a)to Section 158BE of the said Act although it has not been defined in the Act. A panchnama, as we have seen isnothing but a document recording what has happened in the presence of the witnesses (panchas). A panchnamamay document the search proceedings, with or without any seizure. A panchnama may also document the returnof the seized articles or the removal of seals. But, the panchnama that is mentioned in Explanation 2(a) to Section 158BE is a panchnama which documents the conclusion of a search. Clearly, if a panchnama does not,from the facts recorded therein, reveal that a search was at all carried out on the day to which it relates, then itwould not be a panchnama relating to a search and, consequently, it would not be a panchnama of the typewhich finds mention in the said Explanation 2(a) to Section 158 BE."

At this juncture, it is pertinent to mention here is that Explanation 2(a) to Section 158BE is in pari materia withclause 2(a) of Section 153B which reads as under:-

Explanation 2. —For the removal of doubts, it is hereby declared that the authorisation referred to in sub-

section(1) shall be deemed to have been executed,—
(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to anyperson in whose case the warrant of authorisation has been issued;
To understand the gamut of the discussion, let us also understand the purpose of prohibitory order u/s 132(3) ofthe act read with Section 132(8A) of the act along with legal intent. The provisions of Section 132(3) and 132(8A)are reproduced herein under:-
"132(3) The authorised officer may, where it is not practicable to seize any such books of account, otherdocuments, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned inthe second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possessionor control thereof that he shall not remove, part with or otherwise deal with it except with the previous permissionof such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.
Explanation.
—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under thissub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion,jewellery or other valuable article or thing under clause (iii) of sub-section (1)."
"132(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date ofthe order."
Therefore, by virtue of Section 132(3) of the act a discretion is vested with the authorised officer to provideswhere it is not practicable to seize any books of account, other documents, money, bullion jewellery or othervaluable article or thing for reasons other than those mentioned in the second proviso to sub-section (1) ofSection 132 of the act, then he can serve an order on the owner or the person, who is in immediate possessionor control thereof directing him not to remove or part with, except with the previous permission of such officer andsuch officer has been vested with the power to enforce compliance with the order. The
Explanation
to sub-section(3) makes it clear the serving of an order aforesaid shall not be deemed to be a seizure of such books of account,other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1) ofthe Act. Such an order is known as a restraint order or prohibitory order(PO) in common parlance. Therefore, thesaid provisions makes out a distinction between a seizure order and a restraint order. Sub-section (8A) of section132 of the Act makes it clear that an order under sub-section (3) shall not be in force for a period exceeding 60days from the date of the order. From the tenor of the language used in the said proviso, it is clear that the saidrestraint order seizes to be operating on the expiry of 60 days from the date of the said order. No express orderrequiring the withdrawal or cancellation of the said order is required to be passed under the Act. It ceases to existautomatically on expiry of 60 days prescribed.
Now the question arises, as to which authorization and panchnama should be reckoned for calculation of thelimitation period u/s 153B of the act.
Let us took the illustrative Scenario II(a), which is again reproduced below:-

Date of authorization	Date of search	Date of Panchnama
09-03-2020 on Mr. X at his residence	(I) 09-03-2020 till 10-03-2020 (at his residence) as temporary concluded due to PO on bank locker and PO on almirah at his residence.	10-03-2020 stating search as temporary concluded with seizure inventory with mention of PO on bank locker and PO on almirah at his residence.
Same as above	(ii) PO on almirah operated on 10-04-2020 **with certain seizure thereon.**	10-04-2020 stating search as concluded with seizure inventory from almirah at his residence.
15-03-2020 on Mr. X at his bank locker	(i) Search on 15-03-2020 certain seizure thereon.	15-03-2020 stating search as concluded with seizure inventory

As per the mere reading of Section 153A(1) read with 153(2), the last panchnama of last authorization should beconsidered i.e. panchnama dated 15-03-2020. But if such an interpretation is applied, the provisions of thescheme of law can be rendered as otiose since effective seizure has been made by virtue of execution of 1st Authorization in shape of 2 ndpanchnama dated 10-04-2020.

In this scenario, if a mere vague reading is given to the provisions of Section 153B(1) read with Section 153B(2)of the act, one may say that the date of limitation shall be reckoned from the date of last authorization's lastpanchnama i.e. 15-03-2020 thereby the order u/s 153A has to be passed on or before 31 thMarch'2021 (since incase of search conducted on or after 1 stApril'2019, assessments have to be completed within 9 months for theend the year in which search is completed) .

In support of this vague interpretation, it can be said that whileconstruing taxation laws, more particularly relating to limitation, a strict and literal interpretation has to be made.This was so held in the case of **K.M. Sharma v. ITO [2002] 174 CTR (SC) 210: [2002] 254 1TR 772 (SC)** in thefollowing words :

"The provisions of a fiscal statute, more particularly one regulating the period of limitation, must receive a strictconstruction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoidexposure to risk of litigation of litigants for an indefinite period on future unforeseen events. Proceedings whichhad attained finality under existing law due to bar of limitation cannot be held to be open for revival unless theamended provision is clearly given retrospective operation so as to allow upsetting of proceedings which hadalready concluded and attained finality."

Further in support of such a vague and limited interpretation, it can also be argued that when there is a conflictbetween law and equity, it is the law which has to prevail, in accordance with the latin maxim "dura lex sed lex",which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant oroverride it. **[Raghunath Rai Bareja v. Punjab National Bank [2007] 2 SCC 230].**

However if a liberal and more logical interpretation has to be given to Section 153B(1) read with Section 153B(2)of the act, it has to be seen that the legislature consciously mentioned to give last of the Panchnama as thestarting point of limitation. Therefore, Section 153B(2) of the act makes it clear that the time for completion ofSearch Assessment is the conclusion of search/drawing of last Panchnama, which will be relevant and not thedates of issuance of various authorizations. The linkage is withdrawing of last of Panchnama and not to issuanceof authorizations. The aforesaid was also made clear by the Memorandum Explaining the amendment in [1998]231 ITR (St) 202 which reads as under which was given in respect of Explanation 2(a) to Section 158BE is in parimateria with clause 2(a) of Section 153B which reads as under:

"Clause 48 seeks to amend s. 158BE of the IT Act relating to limit for completion of block assessment.

The proposed amendment seeks to renumber the existing Explanation of sub-s. (2) of s. 158BE and to insert anew Expln. 2 thereafter to provide that the execution of an authorization for search under s. 132 or for requisitionunder s. 132A will mean the date of conclusion of the search in respect of the authorization as recorded in thelast anchhama in the case of a person in whose case the warrant has been issued. In the case of requisitionunder s. 132A, the execution of an authorization will mean the date when the authorized officer receives books, documents or assets.

The amendment proposed is of a clarificatory nature.

The proposed amendment will take effect from 1st July, 1995."

Therefore, in the aforementioned Scenario II(a), if a mere vague reading is given to the provisions of Section153B(1) read with Section 153B(2) of the act so far as the date of limitation to be reckoned from the date of lastauthorization's last panchnama i.e. 15-03-2020,the very purpose of Section 153B(2) would become redundant.This is due to the reason that the linkage of time/limitation of the completion of search in the context of SearchAssessments should be logical and rational. It is rational for the reason that unless the search has beencompleted, obtaining all the material, custody of relevant material and overall picture, the AO cannot frameassessments. Therefore, it is only when all material is made available to the AO (on completion of last search)that the limitation would run against the AO and it surely cannot run from a date anterior to the same as he isunder disability to initiate assessment. The issuance of authorization, execution of said authorization by drawinglast Panchnama and making available complete search material to the AO is utmost importance so as to enablehim to frame the assessment. Framing of search assessment is sequential and unless the first stage of

collectingmaterial is completed the next stage of framing block assessment cannot begin or time to frame assessmentbegin to run. **Since the search assessment is a continuous and homogenous process, what is to belooked at is not a particular authorization (which will not lead to obtaining complete material for blockassessment) but all authorization(s) together as common and determining the limitation from theconclusion of search by drawing of last of Panchnama on any of the authorizations.**

The logic in support of the above view is that in the context of search assessments is that till the last panchnamais drawn out of all authorizations, neither the search is concluded nor all material can be made available to theAO.

If a harmonious reading is given to Section 153B(1) in conjunction with deeming Section 153B(2) of the act, it willbe utmost logical to interpret that the period of limitation should be reckoned from the conclusion of lastpanchnama arising out of all authorizations taken together. This is because of the fact that the deeming section153B(2) has been incorporated in the statute to give intended meaning to Section 153A of the act whichotherwise may or may not lead to the intended interpretation.

The Supreme Court in the case of G. Viswanathan v. Hon'ble Speaker. Tamil Nadu legislative Assembly, MadrasAIR 1996 SC 1060 held as under :

"The scope of the legal fiction enacted in the Expln. (a) to para 2(1) of the Tenth Schedule assumes importancein this context. By the decision of this Court it is fairly well settled that a deeming provision is an admission of thenon-existence of the fact deemed. The legislature is competent to enact a deeming provision for the purpose ofassuming the existence of a fact which does not even exist. It means that the Courts must assume that such astate of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flowtherefrom, and give effect to the same.

The deeming provision may be intended to enlarge the meaning of a particular word or to include matters whichotherwise may or may not fall within the main provision. The law laid down in this regard in East End DwellingsCo. Ltd. case [1952] AC 109 : [1951] 2 All. ER 587 has been followed by this Court in a number of cases,beginning from State of Bombay 1953 Cri LJ 1049 and ending with a recent decision of a three Judge Bench inM. Venugopal [1994] ILLJ 597 SC. N.P. Singh, J., speaking for the Bench stated the law thus at p. 329 :

"The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and Courts have toproceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is oftenreminded of what was said by Lord Asquith in the case of East End Dwellings Co. Ltd. v. Finsbury BoroughCouncil that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless, prohibitedfrom doing so, also imagine as real the consequences and incidents which inevitably have flowed from it; onemust not permit his "imagination to boggle" when it comes to the inevitably corollaries of that state of affairs'."

The apex Court in the case of Ashok Leyland Ltd. v . State of Tamil Nadu [2004] 3 SCC 1 held that legal fictionmust be given its full effect when the conditions precedent therefore are satisfied and not otherwise. In the caseof Mancheri Puthusseri Ahmed v . Kuthiravattam Estate Receiver [1996] 6 SCC 185, it was held as under :

"Rule of construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legalfiction the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is toassume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to thefiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, orbeyond the language of the section by which it is created. It cannot also be extended by importing another fiction.In this connection we may profitably refer to two decisions of this Court.

In the case of CIT v . Shakuntala [1961] 43 ITR 352 (SC) a three Judge Bench of this Court speaking throughS.K. Das, J., made the following pertinent observation in para 8 of the report :

The question here is one of interpretation only and that interpretation must be based on the terms of the section.The fiction enacted by the legislature must be restricted by the plain terms of the statute."

Thus, when one looks into the matter in this context and find that there was a definite purpose of incorporating Section 153B(2), one has to give an interpretation which sub-serves the purpose and shall not defeat the same.No doubt, in taxing statutes, literal interpretation is to be preferred more particularly when the language is clearand capable of one meaning and while giving effect to literal interpretation, one has not to see the consequencesit would lead to. However, in the present case, application of

this very rule is conditioned by the Explanationcontained in the same provision, and, therefore, Section 153B(1) is to be read in accordance with the intentionexpressed in Section 153B(2). Moreover, Section 153B(2) categorically states that authorization referred to inSection 153B(1) shall be deemed to have been executed, in the case of search, on the conclusion such asrecorded in the last Panchnama drawn in relation to any person in whose case, warrant of authorization wasissued. By this deeming provision, authorization referred to in Section 153B(1) would be that authorization whichis executed on the conclusion of search as recorded in the last Panchnama.

Therefore logically speaking, by this deeming provision, even an authorization which may not be otherwise thelast authorization would become last authorization, if that is executed and if the Panchnama in respect thereto isdrawn last. Therefore, the purport of Section 153B(2) is to count the period of limitation from the date when thelast Panchnama was drawn in respect of any warrant of authorisation, if there were more than one warrants ofauthorization. This interpretation would be in consonance with the intent and purpose of the legislature. If this very contention is not followed the very purpose of incorporating Section 153B(2) would become redundantif mechanically date of limitation is reckoned from the date of last authorization's last panchnama and therebyignoring any subsequent panchama arising out of an earlier authorization.

One can also see it from a different perspective. Search assessment and its timely completion are in furtheranceof search warrants issued under Section 132(1) of the Act. The authorizations themselves are issued by theDirector General on the prima facie satisfaction of undisclosed income for which admittedly as many warrants toachieve the above objective are issued depending upon where all material which would provide evidence ofundisclosed income is located. Hence, at the time of issuance of warrants concern is of obtaining all the materialnecessary for preventing tax evasion, and hence depending on the material found during the search by varioussearch parties one or the other search warrants may be issued prior or subsequent in time which will not makeany difference to the objective of bringing to tax, undisclosed income. Thus keeping in view the objective of thesearch of unearthing of the undisclosed income and preventing tax evasion for which admittedly as many searchwarrants can be issued, any other provisions which does not effectuate aforesaid objective being the primaryobjective has to be read down and interpreted keeping in view the purposive interpretation. Section 153B(2)clearly lays emphasis on the "conclusion of search". The purpose is to collect all relevant material, during search,in order to enable the AO to undertake the exercise of search assessment.It is but logical that any point ofexecution of warrants on the last Panchnama drawn would be starting point of time of limitation because at thatpoint of time the search party has in its custody the complete material and is in a position to evaluate disclosedand undisclosed material/income and not before and only then issue notice for search assessment under Section153A.

The apex Court has opined, time and again, that in a taxation statute where literal interpretation leads to a resultnot intended to sub-serve the object of the legislation another construction in consonance with the object shouldbe adopted. Reliance can be placed on **Keshavji Ravji & Co. v. CIT [1990] 82 CTR (SC) 123 : [1990] 183 1TR1 (SC).**

Therefore, in view of the aforementioned discussion, in case where multiple warrant of authorizationissued leading to search action on different dates thereby drawing of multiple panchnama, it will logicaland rationale to reckon the date of last panchnama drawn on conclusion of search which may be a resultof any authorization whether last or earlier one for computing the period limitation in view of Section153B(1) read with 153B(2) of the act. Any contrary and a narrow view would defeat the very intention ofthe legislation.

Accordingly, I am of the considered opinion that in case of illustrative Scenario II(a), last panchnama drawn on10-04-2020 on conclusion of search (which is arising out of first authorization and not the last authorization),should be reckoned for computing period of limitation as per Section 153A(1) read with 153(2).

The above interpretation also gathers strength from the decision o the Hon'ble Delhi High Court in case of **CIT V.Anil Minda [2010] 235 CTR 1 (Delhi).**

Having said so, next question arises as to what will happen, if the last panchnama doesn't record any seizure.

In my considered opinion, the intention of the legislature in providing for a limitation period is to ensurecertainty and finality to legal proceedings and avoid unnecessary delay exposing the assessee to proceedings forindefinite periods; but also enabling the Department to look into the incriminating materials seized on search. Thedelay should not prejudice the assesssee but the Department should also be given adequate time to settle andconclude the proceedings without prejudice to the revenue. The legislature hence devised a measure by whichthe period

for completion statutorily commences from the last date in which such incriminating materials are
seized; which has to be evidenced by a panchnama. Reliance cannot be, to panchnamas prepared for release ofgoods or resort to some other device of a dummy search being carried out, merely for the purpose of extendingthe period of limitation.

In the decisions of the various High Courts herein below, it is being held that the later panchnamas though drawnup did not result in any seizure of documents or materials and only effected release of those materials againstwhich a restraint order was issued under Section 132(3), can't be reckoned for calculation of the limitationperiod.

CIT v. Sandhya P. Naik [2002] 124 Taxman 384/253 ITR 534 (Bom.), considered Section 158BE(1) (a) whichprovided a limitation period of one year and otherwise was in pari materia. The search conducted in theresidential premises of the assessee continued for some days and concluded on 16.10.1996. The assessmenthad to be completed on or before 31.10.1997; while it was actually completed only on 31.12.1997. TheDepartment contended that there was a restraint order issued under Section 132(3) with respect to the articleskept in a cupboard and there was a panchnama prepared on 13.12.1997; hence the limitation of one yearcommenced only from 31.12.1997. The Division Bench found that the panchnama prepared on 13.12.1997 wasby an officer not authorised under Section 132 and that there was no seizure as such effected. After the search,the prohibitory order passed under Section 132(3) was withdrawn by the authorised officer, on a request made bythe assessee as to the articles contained in the cupboard being of a religious nature and required for thepurposes of a pooja. The Assistant Director of Income Tax, the authorised officer, released the cupboard on26.10.1996 which order was implemented on 13.12.1997 by the Assistant Commissioner of Income-Tax, whoadmittedly was not an authorised officer. There was also no seizure carried out under Section 132 and thepanchnama was only insofar as release of the silver vessels and articles.

A Division Bench considered another instance of search in **[2007] 164 Taxman 299/294 ITR 444 (Delhi) CIT v.Sarb Consulate Marine Products (P.) Ltd**. The assessee who was engaged in fishing on the high seas wassubjected to a search under Section 132 on 06.11.1996, when some documents were seized and a restraintorder issued under Section 132(3) against some fishing vessels/trawlers. The restraint order was extended twiceand on 16.12.1997 there was a notice issued under Section 158BC. The return was filed by the assessee withintime and later a further search was conducted in the fishing vessels/trawlers on 14.09.1998; but without anyseizure having been effected. All the same a panchnama was drawn up. The contention of limitation as raised bythe assessee was met on the ground that the last panchnama as provided for under the Explanation 2 to Section158BE is that prepared on 14.09.1998. The Division Bench found that after the first search and seizure on06.11.1996, there was absolutely no proceedings taken and the search was merely stated to have beencompleted on 14.09.1998, in a letter of the Assistant Director of Income Tax (Investigation). The Court found thatthe same was a dummy search initiated as a mere formality so as to extend the period of limitation. Proceedingswere held to be barred by limitation finding the last panchnama drawn to be, on 06.11.1996 and not on14.09.1998 when a dummy search was carried out for the purpose of extending the period of limitation.

In **CIT v. T.S. Chandrashekar [2009] 221 CTR 385 (Kar)** again considered the issue of limitation on the basis ofthe search conducted. Therein, two authorisations were issued on the same day; one in the morning and theother in the evening at 3.45 p.m.: the former for the search of the business premises and the latter for the searchof residential premises. The Court clearly found that the second authorisation has to be considered as theauthorisation later issued. However, on the question of panchnama, it was found that on 12.12.1995, there wasseizure of certain documents from the business premises and on 13.12.1995, there was seizure of cash madefrom the residential premises. Though there were subsequent searches carried out on 19.01.1996, and 7th &12th of February, 1996, those did not lead to any seizure and the drawing of panchnama was only for carryingout an inventory of the jewellery. In this context, it was found that the document evidencing seizure of cash from the residence of the assessee was the last panchnama for the purpose of computation of limitation. Thesubsequent searches carried out in the next year, could not lead to extension of the limitation period was thefinding.

In **CIT v. S.K. Katyal [2009] 177 Taxman 380/308 ITR 168 (Delhi)** also considered the question of limitationunder Section 158BE. The search under Section 132 commenced on 17.11.2000 at 8 a.m. and continued till 7p.m., when it was temporarily concluded for the day, which was to be commenced subsequently, for whichpurpose seals were placed in the cash box kept in an almirah. A panchnama was prepared on the conclusion ofthe proceedings, wherein there were certain seizures made. However, there

was no search conducted thereafter.On 03.01.2001, the Income Tax Officer inspected the premises and revoked the restraint order under Section132(3). The keys of the almirah and the safe were returned to the assessee for which a panchnama was drawnup. The Department claimed limitation from the date of that particular panchnama; which was found to beunsustainable on the basis of the a fore cited decisions.

The Hon'ble Delhi High Court in case of **PCIT V. PPC Business & Products (P.) Ltd. [2017] 84 taxmann.com10 (Delhi)** held that merely visiting premises on pretext of concluding search, in which no new material wasseized and drawing a second panchnama on that date would not extend period for completion of assessment.

Further supporting reliance can also be placed on the recent decision of Hon'ble High Court of Kerala in case of **K.V. Padmanabhan V ACIT [2019] 107 taxmann.com 24 (Kerala).**

Though above view though logical in bringing the intent of law , however it is not immune from contrary judgments such as in cases of:-

– Madras High Court in Rakesh Kumar Jain v. Jt. CIT [2013] 31 taxmann.com 312/214 Taxman 39

The High Court of Madras held that when a search is conducted and the search party leaves after drawing up apanchnama, the search is completed and the authorisation is implemented and executed. A further search wouldrequire a fresh authorisation. However if there is a restraint order against any materials or documents, then thesearch could be continued even without a fresh authorisation but the search and seizure shall be confined to thematerials or documents which are subjected to the restraint order. If a seizure is made from those documents ormaterials subjected to restraint order on the second search, then there shall be a panchnama drawn up, whichwould be the last panchnama drawn up for the premises. It was also held that the materials so seized on the basis of that last panchnama could be used for computing the undisclosed income. However, the Division Benchwent on to hold that for purposes of limitation, the last panchanama would be that drawn up on the day when thesearch was completed at the first instance. Hence, the panchnama drawn up later for seizure of the materialsagainst which a restraint order was passed would have no bearing, in computation of limitation.

– The Karnataka High Court in Ramaiah Reddy V ACIT (2011)339 ITR 210 (Kar)

Search was carried out on 05.12.1995 and a panchnama was drawn up on conclusion of search for the day andprohibitory order issued against certain jewellery and books of accounts. On 24.01.1996, the prohibitory orderwas lifted and the items restrained, released by a panchnama. The assessment order was passed on28.01.1997, relying on the second panchnama. However, the Division Bench found a distinction on the basis ofthe expressions used in the Explanation and Section 132(1)(a) and (b). The words "last panchnama" used in theExplanation as distinguished from the words "last of the authorisations" used in the body of the section has adefinite connotation insofar as the legislature not contemplating more than one panchnama with respect to aparticular search; was the finding. The reasoning seems to be that with respect to a particular authorisation, therecould be only one panchnama drawn up, and if at all, a panchnama is drawn up on the basis of a seizure madein pursuance to a restraint order, the limitation cannot stand extended by reason of the second panchnama. The Division Bench observed; to hold otherwise, the Explanation ought to have used the words "last of thepanchnamas". It was also observed that if a restraint order was held to be a permission to carry out any numberof searches then, the authorised officer could use it as a 'season ticket' to carry out intermittent searches at hiswhims and fancies. With all due respect, such an interpretation is contrary to the intent of legislation.

Conclusion:-

To conclude, keeping in view the intention of legislation as envisaged in Section 153B(1) read with 153B(2) of theact coupled with the judicial dictums, the **last panchnama drawn effecting seizure** which may be arising out ofany authorization whether last or otherwise, should be considered for the purposes of computing period oflimitation for framing assessments u/s 153A of the act in case of searches conducted on or before the 31 Day ofMarch'2021.

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