

Income Tax Search and Seizure: Controversy in computing the period of limitation to frame search assessments



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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 31st Day of March'2021 is governed by the provisions of Section 153B of the act. Even though the Section 153A of the Income Tax Act'1961 has been made non applicable for the searches initiated on or after the 1st Day of April'2021, the issue is still having wide ramifications for the searches conducted on or before 31st Day 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 of assessment or reassessment,—*

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

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

.....
(2) The authorisation referred to in clause (a) and clause (b) of 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 any 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 other documents 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 year or 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.**

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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 during Financial Year commencing on the 1st Day of April'2018 and 1st Day of April'2019 respectively.

Issue and Analysis:-

The law as contained in Section 153B(1) and 153B(2) , particularly the interpretation of the term used "last authorization" , "conclusion of search" and "last panchnama" and its connected interplay has drawn varied conflicting interpretations and controversy thereby having an important bearing on the period of limitation within which the assessments u/s 153A of the act have to be framed pursuant to a search action u/s 132 of the act. The conflict 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 search commenced on on 09-03-2020 and search temporary concluded on 10-03-2020 with a prohibitory order (PO) in respect of an almirah u/s 132(3) of the act. 1st Panchnama drawn on 10-03-2020 showing search as temporary concluded due to PO. The first panchnama also recorded inventory of items seized.

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

In this scenario, the question arises so far as for the purposes of calculation of limitation u/s 153B, which panchanam should be taken into consideration the 1st one or the 2nd one since no seizure has been made in the 2nd panchnama and a plea may be raised by the person searched citing judicial precedents that the PO has been made 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 search commenced on on 09-03-2020 and search temporary concluded on 10-03-2020 with a prohibitory order (PO) in respect of an almirah u/s 132(3) of the act. 1st Panchnama drawn on 10-03-2020 showing search as temporary concluded 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 on account of operation of PO in shape of jewellery. 2nd Panchnama drawn on 02-04-2020 showing search as concluded. 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, why should date of 1st panchnama should only be considered ignoring the 2nd panchnama by relying on the decision of the Hon'ble Karnataka High Court in case of ***C. Ramaiah Reddy v. Asstt. CIT [2012] 20 taxmann.com 781/[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 dated 15-3-2020 in case of Mr. X.

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

Scenario II(a):

<u>Date of authorization</u>	<u>Date of search</u>	<u>Date of Panchnama</u>
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

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 panchnama of last authorization should be considered i.e. panchnama dated 15-03-2020. 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.

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Scenario II(b):

<u>Date of authorization</u>	<u>Date of search</u>	<u>Date of Panchnama</u>
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.

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

Therefore, undoubtedly these scenario as discussed above suggests that the issue of calculation of limitation period 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 to frame the assessment within 21 months from the date from the end of the financial year in which the last of the authorizations was executed as per Section 132 of the Act. The authorization mentioned in Section 153B is deemed to have been executed when the last *panchnama* is drawn

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in relation to any person in whose case the warrant 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 132 of the Act, does not define the said word. It, however, prescribes the format in which the *panchnama* is required to 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 the following observations:

'These provisions demonstrate that a search and seizure under the said Act has to be carried out in the presence of at least two respectable inhabitants of the locality where the search and seizure is conducted. These respectable inhabitants are witnesses to the search and seizure and are known as panchas. The documentation of what they witness is known as the panchnama. The word panchnama, refers to a written document. Its type is usually determined by the word which is combined with it as a suffix. Examples being, nikah-nama (the written muslim marriage contract), hiba-nama (gift deed, the word 'hiba' meaning - gift), wasiyat-nama (written will) and so on. So a panchnama is a written record of what the panch has witnessed. In Mohan Lal v. Emperor: AIR 1941 Bombay 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 and which are seen and heard by them." Again, in The State of Maharashtra v. Kacharadas D. Bhalgar (1978) 80 Bom LR 396, a panchnama was stated to be

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a memorandum of what happens in the presence of the *panchas* as seen 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 is nothing but a document recording what has happened in the presence of the witnesses (*panchas*). A *panchnama* may document the search proceedings, with or without any seizure. A *panchnama* may also document the return of 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 it would not be a *panchnama* relating to a search and, consequently, it would not be a *panchnama* of the type which 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 with clause 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 any person 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) of the 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:-

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"132(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of 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 this sub-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 of the order."

Therefore, by virtue of Section 132(3) of the act a discretion is vested with the authorised officer to provides where it is not practicable to seize any books of account, other documents, money, bullion jewellery or other valuable article or thing for reasons other than those mentioned in the second proviso to sub-section (1) of Section 132 of the act, then he can serve an order on the owner or the person, who is in immediate possession or control thereof directing him not to remove or part with, except with the previous permission of such officer and such 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) of the Act. Such an order is known as a restraint order or prohibitory order(PO) in common parlance. Therefore, the said provisions

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makes out a distinction between a seizure order and a restraint order. Sub-section (8A) of section 132 of the Act makes it clear that an order under sub-section (3) shall not be in force for a period exceeding 60 days from the date of the order. From the tenor of the language used in the said proviso, it is clear that the said restraint order ceases to be operating on the expiry of 60 days from the date of the said order. No express order requiring the withdrawal or cancellation of the said order is required to be passed under the Act. It ceases to exist automatically on expiry of 60 days prescribed.

Now the question arises, as to which authorization and panchnama should be reckoned for calculation of the limitation period u/s 153B of the act.

Let us take the illustrative Scenario II(a), which is again reproduced below:-

<u>Date of authorization</u>	<u>Date of search</u>	<u>Date of Panchnama</u>
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 be considered i.e.

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panchnama dated 15-03-2020. 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.

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 last panchnama i.e. 15-03-2020 thereby the order u/s 153A has to be passed on or before 31th March'2021 (since in case of search conducted on or after 1st April'2019, assessments have to be completed within 9 months for the end the year in which search is completed) . In support of this vague interpretation, it can be said that while construing 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 the following words :

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

Further in support of such a vague and limited interpretation, it can also be argued that when there is a conflict between 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 or override it. **[Raghunath Rai Bareja v. Punjab National Bank [2007] 2 SCC 230]**.

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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 the starting point of limitation. Therefore, Section 153B(2) of the act makes it clear that the time for completion of Search Assessment is the conclusion of search/drawing of last Panchnama, which will be relevant and not the dates of issuance of various authorizations. The linkage is withdrawing of last of Panchnama and not to issuance of 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 pari materia 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 a new Expln. 2 thereafter to provide that the execution of an authorization for search under s. 132 or for requisition under s. 132A will mean the date of conclusion of the search in respect of the authorization as recorded in the last Panchnama in the case of a person in whose case the warrant has been issued. In the case of requisition under 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 Section 153B(1) read with Section 153B(2) of the act so far as the date of limitation to be reckoned from the date of last authorization's last panchnama i.e. 15-03-2020, the very purpose of Section 153B(2) would become

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redundant. This is due to the reason that the linkage of time/limitation of the completion of search in the context of Search Assessments should be logical and rational. It is rational for the reason that unless the search has been completed, obtaining all the material, custody of relevant material and overall picture, the AO cannot frame assessments. 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 is under *disability* to initiate assessment. The issuance of authorization, execution of said authorization by drawing last Panchnama and making available complete search material to the AO is utmost importance so as to enable him to frame the assessment. Framing of search assessment is *sequential* and unless the first stage of collecting material is completed the next stage of framing block assessment cannot begin or time to frame assessment begin to run. **Since the search assessment is a continuous and homogenous process, what is to be looked at is not a particular authorization (which will not lead to obtaining complete material for block assessment) but all authorization(s) together as common and determining the limitation from the conclusion 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 panchnama is drawn out of all authorizations, neither the search is concluded nor all material can be made available to the AO.

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

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The Supreme Court in the case of *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu legislative Assembly, Madras* AIR 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 importance in this context. By the decision of this Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the Courts must assume that such a state of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flow therefrom, and give effect to the same.

*The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provision. The law laid down in this regard in *East End Dwellings Co. 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 in *M. 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 to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council* that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless, prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it; one must 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 fiction must be given its full effect when the conditions precedent therefore are satisfied and not otherwise. In the case of *Mancheri Puthusseri Ahmed v . Kuthiravattam Estate Receiver* [1996] 6 SCC 185, it was held as under :

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"Rule of construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legal fiction the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond 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 through S.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 clear and capable of one meaning and while giving effect to literal interpretation, one has not to see the consequences it would lead to. However, in the present case, application of this very rule is conditioned by the Explanation contained in the same provision, and, therefore, Section 153B(1) is to be read in accordance with the intention expressed in Section 153B(2). Moreover, Section 153B(2) categorically states that authorization referred to in Section 153B(1) shall be deemed to have been executed, in the case of search, on the conclusion such as recorded in the last Panchnama drawn in relation to any person in whose case, warrant of authorization was issued. By this deeming provision, authorization referred to in Section 153B(1) would be that authorization which is executed on the conclusion of search as recorded in the last Panchnama.

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Therefore logically speaking, by this deeming provision, even an authorization which may not be otherwise the last authorization would become last authorization, if that is executed and if the Panchnama in respect thereto is drawn last. Therefore, the purport of Section 153B(2) is to count the period of limitation from the date when the last Panchnama was drawn in respect of any warrant of authorisation, if there were more than one warrants of authorization. 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 redundant if mechanically date of limitation is reckoned from the date of last authorization's last panchnama and thereby ignoring 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 furtherance of search warrants issued under Section 132(1) of the Act. The authorizations themselves are issued by the Director General on the *prima facie* satisfaction of undisclosed income for which admittedly as many warrants to achieve the above objective are issued depending upon where all material which would provide evidence of undisclosed income is located. Hence, at the time of issuance of warrants concern is of obtaining all the material necessary for preventing tax evasion, and hence depending on the material found during the search by various search parties one or the other search warrants may be issued prior or subsequent in time which will not make any difference to the objective of bringing to tax, undisclosed income. Thus keeping in view the objective of the search of unearthing of the undisclosed income and preventing tax evasion for which admittedly as many search warrants can be issued, any other provisions which does not effectuate aforesaid objective being the primary objective 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

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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 of execution of warrants on the last Panchnama drawn would be starting point of time of limitation because at that point of time the search party has in its custody the complete material and is in a position to evaluate disclosed and undisclosed material/income and not before and only then issue notice for search assessment under Section 153A.

The apex Court has opined, time and again, that in a taxation statute where literal interpretation leads to a result not intended to sub-serve the object of the legislation another construction in consonance with the object should be adopted. Reliance can be placed on ***Keshavji Ravji & Co. v. CIT [1990] 82 CTR (SC) 123 : [1990] 183 1TR 1 (SC).***

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

Accordingly, I am of the considered opinion that in case of illustrative Scenario II(a), last panchnama drawn on 10-04-2020 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 of the Hon'ble Delhi High Court in case of ***CIT V. Anil Minda [2010] 235 CTR 1 (Delhi).***

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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 ensure certainty and finality to legal proceedings and avoid unnecessary delay exposing the assessee to proceedings for indefinite periods; but also enabling the Department to look into the incriminating materials seized on search. The delay should not prejudice the assessee but the Department should also be given adequate time to settle and conclude the proceedings without prejudice to the revenue. The legislature hence devised a measure by which the 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 of goods or resort to some other device of a dummy search being carried out, merely for the purpose of extending the period of limitation.

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

CIT v. Sandhya P. Naik [2002] 124 Taxman 384/253 ITR 534 (Bom.), considered Section 158BE(1)(a) which provided a limitation period of one year and otherwise was *in pari materia*. The search conducted in the residential premises of the assessee continued for some days and concluded on 16.10.1996. The assessment had to be completed on or before 31.10.1997; while it was actually completed only on 31.12.1997. The Department contended that there was a restraint order issued under Section 132(3) with respect to the articles kept in a cupboard and there was a panchnama prepared on 13.12.1997; hence the limitation of one year commenced only from 31.12.1997. The Division Bench

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found that the panchnama prepared on 13.12.1997 was by 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 by the assessee as to the articles contained in the cupboard being of a religious nature and required for the purposes of a pooja. The Assistant Director of Income Tax, the authorised officer, released the cupboard on 26.10.1996 which order was implemented on 13.12.1997 by the Assistant Commissioner of Income-Tax, who admittedly was not an authorised officer. There was also no seizure carried out under Section 132 and the panchnama 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 was subjected to a search under Section 132 on 06.11.1996, when some documents were seized and a restraint order issued under Section 132(3) against some fishing vessels/trawlers. The restraint order was extended twice and on 16.12.1997 there was a notice issued under Section 158BC. The return was filed by the assessee within time and later a further search was conducted in the fishing vessels/trawlers on 14.09.1998; but without any seizure having been effected. All the same a panchnama was drawn up. The contention of limitation as raised by the assessee was met on the ground that the last panchnama as provided for under the Explanation 2 to Section 158BE is that prepared on 14.09.1998. The Division Bench found that after the first search and seizure on 06.11.1996, there was absolutely no proceedings taken and the search was merely stated to have been completed on 14.09.1998, in a letter of the Assistant Director of Income Tax (Investigation). The Court found that the same was a dummy search initiated as a mere formality so as to extend the period of limitation. Proceedings were held to be barred by limitation finding the last panchnama drawn to be, on

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06.11.1996 and not on 14.09.1998 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 of the search conducted. Therein, two authorisations were issued on the same day; one in the morning and the other in the evening at 3.45 p.m.: the former for the search of the business premises and the latter for the search of residential premises. The Court clearly found that the second authorisation has to be considered as the authorisation later issued. However, on the question of panchnama, it was found that on 12.12.1995, there was seizure of certain documents from the business premises and on 13.12.1995, there was seizure of cash made from 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 carrying out 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. The subsequent searches carried out in the next year, could not lead to extension of the limitation period was the finding.

In ***CIT v. S.K. Katyal [2009] 177 Taxman 380/308 ITR 168 (Delhi)*** also considered the question of limitation under Section 158BE. The search under Section 132 commenced on 17.11.2000 at 8 a.m. and continued till 7 p.m., when it was temporarily concluded for the day, which was to be commenced subsequently, for which purpose seals were placed in the cash box kept in an almirah. A panchnama was prepared on the conclusion of the 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 Section 132(3). The keys of the almirah and the safe were returned to the assessee for which a panchnama was drawn up. The Department claimed limitation from the date of that particular panchnama; which was found to be unsustainable on the basis of the a fore cited decisions.

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The Hon'ble Delhi High Court in case of ***PCIT V. PPC Business & Products (P.) Ltd. [2017] 84 taxmann.com 10 (Delhi)*** held that merely visiting premises on pretext of concluding search, in which no new material was seized 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 A. 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 a panchnama, the search is completed and the authorisation is implemented and executed. A further search would require a fresh authorisation. However if there is a restraint order against any materials or documents, then the search could be continued even without a fresh authorisation but the search and seizure shall be confined to the materials or documents which are subjected to the restraint order. If a seizure is made from those documents or materials subjected to restraint order on the second search, then there shall be a panchnama drawn up, which would 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 Bench went on to hold that for purposes of limitation, the last panchnama would be that drawn up on the day when the search was completed at the first instance. Hence, the panchnama drawn up later for seizure of the

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materials against which a restraint order was passed would have no bearing, in computation of limitation.

- **The Karnataka High Court in *C. 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 and prohibitory order issued against certain jewellery and books of accounts. On 24.01.1996, the prohibitory order was lifted and the items restrained, released by a panchnama. The assessment order was passed on 28.01.1997, relying on the second panchnama. However, the Division Bench found a distinction on the basis of the expressions used in the Explanation and Section 132(1)(a) and (b). The words "last panchnama" used in the Explanation as distinguished from the words "last of the authorisations" used in the body of the section has a definite connotation insofar as the legislature not contemplating more than one panchnama with respect to a particular search; was the finding. The reasoning seems to be that with respect to a particular authorisation, there could be only one panchnama drawn up, and if at all, a panchnama is drawn up on the basis of a seizure made in 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 the panchnamas". It was also observed that if a restraint order was held to be a permission to carry out any number of searches then, the authorised officer could use it as a 'season ticket' to carry out intermittent searches at his whims and fancies. With all due respect, such an interpretation is contrary to the intent of legislation.

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Conclusion:-

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

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Mr. Mohit Gupta is a Fellow Member of the Institute of Chartered Accountants of India, a commerce graduate from prestigious Ramjas College, Delhi University and an alumni of St. Xavier's School, New Delhi. He is practicing as a Chartered Accountant for more than 15 years and managing the Direct Tax Advisory and Litigation practice of M/s. Dhanesh Gupta & Co., Chartered Accountants, New Delhi a renowned Chartered Accountancy firm in the core domain of direct taxation established in 1978.

His forte is handling Income Tax Search and Seizure matters, matters before the Income Tax Settlement Commission, other direct tax litigation matters and legal representation before various authorities enforcing economic and tax laws incl. under PMLA, SFIO, EOW, DRI, SEBI, CCI, Benami Laws and Black Money etc. As on today, he has wide experience of handling Income Tax Search and Seizure Cases across the country, represented matters before the Income Tax Settlement Commission, ITAT and other appellate tribunals constituted under various economic laws. He has been contributing articles in various professional magazines/journals and addressing various seminars on topics relating to Income Tax Search and Seizure, allied tax matters and economic laws. He has to his credit plethora of well researched articles out of which many have appeared in leading journals. In Addition to the above, Mr. Mohit Gupta is also a Special Auditor of the Income Tax Department and has carried out numerous Special Audits across the country on being appointed by the Income Tax Department which have plugged tax evasions, tax base erosion and other tax manipulative practices and in turn facilitated the Income Tax Department to collect huge tax revenues. Mr. Mohit Gupta has also been appointed as Special Auditor under other economic statutes and by other Investigation Agencies of the Government of India. Mr. Mohit Gupta has also authored the periodical Newsletter on Income Tax Search and Seizure. The said newsletter contained well researched write ups / articles and judicial developments on the matters of Direct Taxation.

Mr. Mohit Gupta is also a renowned author on Direct Tax Subjects. His books received extremely overwhelming responses from the readers including the tax payers, tax administration, tax professionals, corporate houses and academicians. The said books were released by erstwhile Hon'ble Union Finance Minister, Shri. Arun Jaitley, Shri. Arjun Ram Meghwal, Minister of State for Finance and the Chairman of Central Board of Direct Taxes and many other dignitaries.

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