

*Survey, Search & Seizure*  
*Under*  
*Income Tax Act, 1961*

*Presented by :*

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## **Topics for Discussion**

- ☐ Pre Survey & Search precautions.
- ☐ Sailable features of survey proceedings.
- ☐ Salient features of Search & Seizure proceedings

# *Pre Survey & Search precautions*

## *Pre Survey & Search Precautions*

### Avoid

- ❑ To keep Books of accounts at any place other than Registered Office.
- ❑ To share common premises, however if assesses share common premises then the MAP should be affixed at some common visible place identifying the assignment of particular area to particular assessee, since it could lead to Multiple Operations.
- ❑ To Keep Personal documents of workers and employees in business premises.
- ❑ To do Backdating and editing in books of Accounts. In case practices like backdating or editing are followed then confirm from computer software vendor that such practices are not detectible.



## *Pre Survey & Search Precautions*

### Ensure

- ☐ **Computer hard disk does not contain any irrelevant data.**
- ☐ **That Books of accounts are properly updated.**
- ☐ **That person in-charge of business have proper acquaintance of business affairs.**
- ☐ **That stock register are maintained and kept updated.**
- ☐ **That if no stock registers are maintained then inventory verification list is prepared at regular dates**
- ☐ **That physical cash available and cash in books of account matches.**

## *Pre Survey & Search Precautions*

### Ensure

- ❑ Assessment particulars of Directors in case of company, partners in case of firms ,members in case of AOP and trustees in case of trust should be readily available.
- ❑ Registered value of property in name of every relevant person should be known.
- ❑ Where records are maintained at various levels for cross verification, they should be in reconciliation up to date for e.g. records maintained at Gate, Security Guard, Stores Keeper etc.

*Salient features*  
of  
*Survey Proceedings*



# *Topics for discussions*

- ☐ Authorized Officers/ Authorizations
- ☐ Jurisdiction of the Survey Authority
- ☐ Restriction of entry into the place of business or profession/other places
- ☐ Powers of Survey Team vis a vis Obligations of tax payer during survey
- ☐ Other Powers of survey team
- ☐ Impounding and retention of Books of Accounts
- ☐ Recording of Statements – some checks
- ☐ Other Miscellaneous provisions
- ☐ Invocation of S.131(1)
- ☐ Presumption.
- ☐ Conversion of survey in to search.



# WHO CAN CONDUCT SURVEY – Authorised/ Authorising Officer (Expln.to sec.133A)

## **I. Authorized / Authorizing**

- Director /Commissioner
- Additional Director / Additional Commissioner.
- Joint Director/ Joint commissioner
- Deputy Director / Deputy Commissioner.
- Assistant Director / Assistant Commissioner.
- Assessing officer
- Tax Recovery Officer
- Inspector of Income Tax (For certain Specific cases only)

# *Authorizations in some cases*

## *Proviso to S.133A(6) .....*

- ❑ No survey can be conducted, Without Prior approval of the Joint or Additional Commissioner or Joint or Additional Director, by
  - Deputy Director / Commissioner of Income Tax
  - Assistant Director / Commissioner of Income Tax
  - Assessing Officer
  - Tax Recovery Officer
  - Inspector of Income Tax, to a limited extent

**Note :** No prior notice is required to be effected for survey.

**N.K. Mohanty vs. DCIT [1995] 215 ITR 275 (Mad.)**

## *Jurisdiction for conducting Survey S. 133A (1)*

An Income Tax Authority may enter :

- ☐ Any **place** falling in his jurisdictional area.
- ☐ Any **place** occupied by any assessee falling in his jurisdiction.
- ☐ Any **place** in respect of which he is authorized for the purpose of this section by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place.

**Where the business or profession is carried on by the assessee not necessarily to be the principal place only, for this purpose the ' place ' shall also include any other place where the books of accounts or other documents or any part of the cash or stock or other valuable article is kept.**



## *Contd...*

- ❑ Survey is possible even to enquire about tax deducted at source : Reckitt and Colman of India Ltd. vs. ACIT [2001] 251 ITR 306 (Cal).
- ❑ Residential premises can also be covered if some business/professional work/document is being done / kept there.
- ❑ Business or residential premises of third parties, including a Chartered Accountant, a pleader, or Income Tax Practitioner, of whom the assessee may be a client, are not places which could be entered into for the purpose of section 133A. **(Circular no. 7- D dt 3/5/1967)**

**Note : Survey team has no power to break open any locked premises as power to break open any lock is not conferred u/s 133A as against specific provisions contained u/s 132.** 12



## **Restriction of entry S. 133A(2)..**

- ❑ The Income tax authority for conducting the survey, may enter at any **place of business or profession** only during the **business hours** of such place, however survey may continue after office hours : **Mohnot (N.K.) vs. DCIT, [1995] 215 ITR 0275 (Mad)****
- ❑ In respect of **other place**, wherein the books of accounts, other documents, cash etc. **has been stated to be kept** the survey party can enter **only after sunrise and before sunset**.**
- ❑ The restriction is only in respect of entry in to the place of business or profession and not related to the exit.**

**Power of Survey team, vis a vis,**  
**Obligation of tax payer, S.133A(1)**

- i. Power to inspect books of accounts or other documents **available at such place.** ( Power is also available with Inspector of Income Tax )
- ii. Check or verify the cash, stock or other valuable or thing **found therein**
- iii. May require to furnish any information as may be useful for **any proceedings under the Act**

## **Other Powers of Survey Team S.133A(3)**

- i. Place marks of identification on books of accounts & can make extracts & copies there from. ( **This power is also available with Inspector of Income Tax also**)
- ii. Make inventory of cash, stock, valuables, article or thing.  
(**Section 133A(4) specially prohibits the removal of cash, stock other valuable article or thing w.e.f. 01/06/2002 ).**)
- iii. Record statement – Not on oath U/s 133A [ **Paul Mathews & Sons vs. CIT, [2003] 263 ITR 101(Ker)**], however statement can be recorded on Oath, only under circumstances where S. 133A(6) is invoked : **United Chemical Agency vs. R.K. Singh, ITO [1974] 097 ITR 0014 (All)**



## *Impounding and retention of Books of Accounts U/s 133A(3)(ia)*

- i. Impound and retain books of accounts only after recording reasons w.e.f. 01/06/2002: **Mrs. Rumena Rahman vs. Union of India [2004] 265 ITR 0016- (Gau.)**
- ii. Permission from CCIT or DGIT is required in case Period of retention of books or documents exceeds 10 days, exclusive of holidays (w.e.f. 01-06-2003), where permission for retention should be granted judiciously, there should be justification as to non cooperation by the assessee: **Raj and Raj Investments vs. Income-tax Officer [2007] 293 ITR 0057- (Kar)**

Note: The Law is silent as to allowing any opportunity to the assessee to object the impounding of books of accounts.



# *Recording of Statements – Some checks*

## *U/s 133A(3)(iii)*

- ❑ As per latest circular of **CBDT No. 286/2/03- IT (Inv) dt. 10/3/03- no Confessional statement to be elicited.**
- ❑ No provision under the Law to seek copy of statement from revenue at the time of recording the same, however in case of statement being used against assessee, he may ask for its copy by relying on principles of natural justice and equity.
- ❑ Other Provisions of CPC applicable, in case, the officers invoke section 131.
- ❑ Statement recorded during survey do not have any evidentiary value.

**Case : Commissioner of Income-tax Vs. S. Khader Khan Son [2008] 300 ITR 157 (Mad.)**

## **Precaution while making any statement.**

- ☐ Is there any evidence found during survey that could lead to an inference of concealment ?
- ☐ Is there any discrepancy between the stock in hand and the stock as per books ?
- ☐ Is it advisable to admit discrepancies in the stock?
- ☐ Are the provisions of sales tax and excise duty along with provisions like dis-allowance u/s. 40-A(3), 269-SS, 269-T etc have been kept in mind before making any confession statement ?

## **Precaution while making any statement.**

- ☐ Is it safer to disclose income under the head "other sources" or "business" ?
- ☐ Would it be desirable to declare the entire amount as current year's income or spread over income for many years as any spread over may result in liability to interest and penalty for concealment ?
- ☐ Is it possible to capitalise the disclosed amount ?



## *Precaution while making any statement.*

- ❑ Care should be taken to ensure that the disclosure takes care to covers the discrepancies found during the survey and also those that may be unearthed at a later stage.
- ❑ Before making retraction the assessee must prove beyond doubt the circumstances for such retraction are bonafide & are not after thoughts.  
**Case: DCIT vs. Bhogilal Mulchand (2005) 3 SOT 211 (Ahd.)**



## *Removal is prohibited, S.133A(4).*

An income tax authority acting under this section **shall, on no account, remove or caused to be removed** from the place wherein he has entered, **any cash, stock or any other valuable article or thing.**

## **Lavish and ostensible spending -Sec. 133A(5)**

- ☐ If the income tax authority is of view, of any lavish expending on any function or ceremony.
- ☐ It can call for the information from the assessee or from any other person who is likely to be in possession of the information with respect to the expenditure incurred.
- ☐ However, cannot call for such information before or at the time of such function, ceremony or event and as such the power prescribed under this sub-section can be exercised only when the said function, ceremony or event is over.

**Note: All the powers given in this section are available with Inspector also.**

***In case of non-cooperation, S. 131(1) can  
be invoked Sec. 133A(6)***

- ❑ Where during the course of survey assessee does not.**
  - Affords the facility to inspect books of accounts**
  - Afford facility to check or verify cash, stock etc.**
  - Furnish any information or to have his statement recorded.**
  
- ❑ The Income tax authority shall have all powers u/s 131(1) to enforce compliance.**



## *Contd...*

- ❑ For the purpose of this sub-section, the Income Tax Authority has been empowered to record the statement of the assessee or such other person. It is to be specifically noted that the statement thus recorded may be used as evidence in any proceedings under the Act.

**Note:** The legislative intention behind the introduction of the above provisions on the statute was to curb the use of blatant tax evaded money in ostentatious wedding ceremonies and other social functions (press released dated 03/06/89)



## ***Presumption as to ownership. S. 292 C***

**Section 292C** of the Income Tax Act, 1961 states the presumption regarding the assets, documents and books found from the premises of the assessee that: [ **Inserted by Finance Act, 2008, w.r.e.f. 1/06/2002**].

- ❑ Such book of account, other documents, money, bullion, jewellery, other valuable article or thing belong or belongs to such person.
- ❑ The contents of such books of account and other documents are true.
- ❑ The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

# *Whether a survey can be converted into search?*

- i. Law prescribes no bar on initiating search proceedings during the course of survey but will depend upon the facts and circumstances prevailing at the time of survey
- ii. The survey ordered at the premises of the petitioners u/s 133A of the Act and conversion of the said operation on the basis of the authority given by the Additional Director are legal : **Vinod Goel & Others vs Union of India and others 252 ITR 029 (P&H)**
- i. Survey authorisation in the name of doctor, then search operation at the residence of doctor and hospital premises belonging to trust is not valid, where no reasons for conversion of survey operation into search operation were given. **Dr. Nalini Mahajan v. Director of Income Tax (Inv.) [2002] 257 ITR 123 (Del.)**

***Salient features***  
**of**  
***Search and Seizure***  
***proceedings***



# **SEARCH - WHEN POSSIBLE**

## **Situation u/s 132(1)**

- a) Non-compliance to summon u/s 131(1) or notice u/s 142(1) as to production of certain Books of Accounts or other documents.  
[Even a slightest non compliance may lead to formation of belief]
- b) Notice has been / would be issued, but such person has not or might not produce Books of accounts in respect of any proceeding under IT Act.  
[Proceeding may be assessment, appellate, revision, penalty, rectification, etc.]
- c) Possession of undisclosed money, bullion, jewellery or other valuable article or thing whether wholly or partly.  
(Search Warrant in such case can be issued in Form No.45)

**Note :** For valid search, any of the situation as enumerated above should persist other wise the entire action could vitate.

**Case :** CIT vs. Smt. Chitra Devi Soni [2008] 170 Taxmann 164 (Raj.) also see L.R. Gupta vs. Union of India [1992] 194 ITR 32 (Del), SLP Pending.

# **SOME STEPS BEFORE SEARCH**

**Now there are certain aspects:-**

- (1) Who can authorize/ who can be authorized
- (2) In consequence of information
- (3) Mandatory Requirement
  - (a) Reason to believe
  - (b) Satisfaction to be recorded
- (4) Planning for the Execution

# **AUTHORIZING OFFICER [U/s 132(1)]**

- (1) Director General of Income Tax
- (2) Director of Income Tax
- (3) Chief Commissioner of Income Tax
- (4) Commissioner of Income Tax
- (5) Joint Director / Joint Commissioner of Income Tax

Note : Jt. Director of Investigation does not have any statutory power to issue authorization u/s 132(1) and therefore the search and seizure operation carried out on the basis of authorization issued by him was invalid and no block assessment could be framed on the basis of said search.

**Case : Capital Power systems Ltd. vs. ACIT [2008] 115 TTJ (Del) 531.**, however Jt Director of Investigation is empowered to authorize consequential search. **Case : Mrs. Aanisa Batool Gilani v ACIT [ 2008 ] 21 SOT 323 (Delhi - ITAT)**



# **AUTHORISED OFFICERS**

- ☐ Joint Commissioner of Income Tax
- ☐ Joint Director of Income Tax
- ☐ Deputy Director of Income Tax
- ☐ Deputy Commissioner of Income Tax
- ☐ Assistant Director of Income Tax
- ☐ Assistant Commissioner of Income Tax
- ☐ Income Tax Officer

## **EXECUTIONS OF AUTHORISATIONS**

<b><u>S.NO.</u></b>	<b><u>PARTICULARS</u></b>	<b><u>FORM NO.</u></b>
1.	Authorizations under S. 132(1) other than proviso thereto by DGIT, DIT, CCIT, CIT, DDIT, DCIT.	45
2.	Authorization under proviso to Section – 132(1) by CCIT or CIT. <i>(will discuss later)</i>	45 A
3.	Authorization under sub – section (1A) of S. 132 by CCIT or CIT. <i>(will discuss later)</i>	45 B

**Note: Every authorization shall be in writing under the signature of the officer issuing the authorization and shall bear his seal.**

## **1st Proviso to sub-section (1) of** **Section 132**

This proviso empowers any Chief CIT or CIT who has jurisdiction over the area in which the search premises are situated but having no jurisdiction over the person to be searched for authorizing the search where he has reason to believe that any delay in getting the authorization from the Chief CIT or CIT having jurisdiction over such person may be prejudicial to the interests of the Revenue (Warrant of Authorization in such case can be issued in Form No.45A).



## **Sub-section (1A) of section 132**

This sub-section empowers the Chief CIT or CIT to authorize an Authorized Officer to exercise the powers as contained in clauses (i) to (v) also in respect of any such premises which are not covered by the Authorization given under sub-section (1) of section 132 (Such warrant of authorization can be given in Form No.45B).

# *Judicial Pronouncements*

- ❑ There should be nexus between information and person searched.

***[Case: Harilal Shah V. CIT (2006) 281 ITR 199 (Gau.)]***

- ❑ Where the Jurisdiction for block assessment is questioned on grounds of validity of a search, The Income Tax Appellate Tribunal is not competent to go into the question of validity of search.

***[Case: Promain Ltd. V. DCIT (2006) 281 ITR (AT) 107 (Del.) SB]***

- ❑ Assessee being co-owners of a building JRT given on lease to JST and warrant being issue in the name of “Partners of JRT/JST”, there was no search on assesses and therefore, notices served on them under S. 158BC could not be substantiated.

***[Case : Jayantilal Damjibhai Soni & Directors of (Invs.) & Anr. [2008] 219 CTR (Guj) 26. ]***

# *Judicial Pronouncements*

- ❑ Warrant in the name of more than one person is valid.

Case : Anjuga Chit Funds P. Ltd. Vs. DCIT [ 2008] 304 ITR (A.T.)0374 (ITAT – Chen.)

- ❑ The search proceedings while appeals from assessments were pending were legal.

Case : Smt. Nandita Acharjee Vs. Union of India [2008] 302 ITR 0075 (Gau.)

- ❑ Search should be a continuous process, unless there is a valid explanation for the time gap.

Case : Commissioner of Income-tax Vs. Sarb Consulate Marine Products P. Ltd. [ 2007] 294 ITR 0444 (Del.)

- ❑ Provisions relating to search and seizure do not violate the fundamental rights under Article 19 & Article 14 of Constitution of India.

Case : Pooranmal vs Director of Inspection (Investigation.) (1974) 93 ITR 505 (SC)



# *Judicial Pronouncements*

- ❑ Mere information from CBI that cash was found from in possession of an individual cannot justify a search.

**Case : Union of India v. Ajit Jain (2003) 260 ITR 80 (SC)**

- ❑ Allegation that Income Tax Authorities had taken a bribe would not invalidate the search.

**Case : Kamal Khosla vs. Director of Income Tax: SLP (c.) Nos. 12242-43: [2003] 264 ITR 140 (St.) SLP rejected, (2003) 264 ITR 140 (St.)**

- ❑ If there is no search warrant in the name of the firm, no search can be conducted on the firm on the basis of search warrant in the name of partner.

**Case : K.R. Modi & Co. Vs. DDIT (Inv.) (2005) 272 ITR 587 (Cal.)**

- ❑ Close relationship is a valid ground for authorization.

**Case : Lajpat Rai vs. CIT [1995] 215 ITR 608 (All.)**

# *Rights and Duties*

- ☐ Income Tax Department.
- ☐ Assesses
- ☐ Chartered Accountants

# **Income Tax Department - Rights**

- ❑ **Enter and search** any building, place, vehicle, or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery and other valuable articles are kept. [S.132(1)(i).]
- ❑ **Break open** the lock of any door, locker, safe, Almirah or other receptacle for exercising the powers conferred under (a) supra where the keys thereof are not available. [Section 132(1)(ii)]
- ❑ **Search any person** who has gone out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing. [Section 132(1)(ia)]



# *Income Tax Department - Rights*

**Require any person** who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000 **to afford the authorized officer the necessary facility to inspect such books of account or other documents.** [Section 132(1)(iib)]

Note: Person defaulting u/s 132(1)(iib) shall be liable to rigorous imprisonment for a term which may extend to two years and shall also be liable to fine. [S. 275B].

# *Income Tax Department - Rights*

- ❑ **Seize** any such books of account, other documents, money, bullion, jewellery, or other valuable article or thing found as a result of such search (however, from June 1, 2003, any bullion, Jewellery or other valuable article or thing being stock - in – trade of the business found as a result of search shall not be seized but the authorized officer shall make a note or inventory of such stock in trade of the business. [Section 132(1)(iii)]
- ❑ **Place marks of identification** on any books or other documents or make or cause to be made extracts or copies there from. [ Section 132 (1)(iv) ].
- ❑ **Make a note or an inventory** of such money, bullion, jewellery or other valuable article of thing. [ Section 132 (1)(v) ].

# **Income Tax Department - Rights**

## **❑ DEEMED SEIZURE second proviso to clause (1) of section 132.**

Where it is not possible or practicable to take physical possession of any valuable article or thing **due to its volume, weight or other physical characteristics or due to its being of dangerous nature**, the authorized officer may serve an order on the owner ( or the person who is in immediate possession thereof ) that he shall not remove, part with or otherwise deal with it, except with the previous permission of the authorized officer.

## **❑ Police Assistance [Section 132(2)]**

The Authorized officer may requisition the services of any police officer or any officer of the Central Government or both to assist him for the purposes of clause 1 and clause 1A of section 132 and it shall be the duty of every such officer to comply with such requisition.

**Note : (a) Provision of deemed seizure shall not apply in case of stock in trade.**

**(b) Person defaulting in second proviso to clause (1) of section 132. shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine also. [ S.275A]**



# *Income Tax Department - Rights*

- ❑ Restraint order, Section 132(3) : Where it is not practicable to seize any material for any reason other than those as specified in second proviso to S. 132(1) then in such a case the AO may serve an order on the specified person, that such person shall not remove, part with or otherwise deal with it except with the prior permission of the authorized officer.
- ❑ Limitation of Section 132(3), Section 132(8A) : An order u/s 132(3) shall be valid up to sixty days from the date of the order.
- ❑ Examination on Oath, Section 132(4) : The Authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

**Note : (a) Person defaulting in section 132(3). shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine also. [ S.275A]**

# *Income Tax Department - Rights*

- ❑ **Hon'ble Gujarat High Court in Kailashben Manharlal Choshi v. CIT [2008] 14 DTR 257** has held that statement recorded at odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission.
- ❑ Letter written by partner of assessee firm to department admitting undisclosed income higher than that disclosed in statement under S. 132(4) with certain conditions and further stating that a revised return shall be filed accordingly is not a statement under S. 132(4) nor a revised return and cannot be used as a basis for making assessment.

**Case : CCIT & ANR. Vs. Pampapathi [2008] 218 CTR (Kar.) 590.**



# ***Income Tax Department - Rights***

## **Presumptions regarding ownership and contents, Section 132(4A) :**

- ❑ May presume that any books of account, other documents or valuable article or thing shall be presumed to be belonging to the person in whose possession or control these are found during the course of search. And the contents of such books of accounts and documents shall also be presumed to be correct.
- ❑ May presume that the signature and every other part of such books and other documents which purports to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in handwriting of, any particular person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

**Note : However such presumption are rebuttable and have limited application.**



## Cases

❑ The presumption u/s 132(4A) is not available to authorities while framing the regular assessment yet material seized can be used as a piece of evidence in any other proceedings under the Act, all contentions are left open—

**[Case : *P.R. Metrani V. CIT*[2006] 157 Taxman 325\287 ITR 209(SC)]**

**Remedy even if surrender made:-** Additions on the basis of statement made u/s 132(4), nothing on records to show that there exist positive evidence found during search in support of such an statement . Addition not justified till there exists any conclusive evidence on records in support of statement.

**[Case: *Asstt. CIT Janak Raj Chauhan* [2006] 102 TTJ (Asr.) 316]**

# Cases

- ❑ Both assessee and alleged payees having denied to have advanced or received any amount as shown to have changed hands as per the MOU found during search, no addition could be made in block assessment in the absence of any further corroborative facts, the presumptions u/s. 132(4A) being a rebuttable one ; no substantial question of Law arouse out of order of Tribunal Deleting the addition.

**Case Law : Commissioner of Income Tax vs. Ved Prakash Choudhary [2008] 218 CTR (Del.) 99**

# *Income Tax Department - Duties*

- ❑ To allow the school going children to attend the school after checking their school bags for any incriminating material etc.
- ❑ To allow the assessee and other occupants of the premises to take their meals and medicines at the normal time and also allowing the old members of the family to take rest at their normal hours.
- ❑ Not to threaten, abuse or use any indecent language against the person searched.
- ❑ Not to get provoked and maintain a cool and calm temperament and to be alert.
- ❑ To avoid using the items of personal use of the assessee like Bed, TV etc. and also avoiding making the private calls from the assessee's telephone.
- ❑ Leave the premises only after informing the assessee.
- ❑ Decline the assessee's offer of food or refreshment politely in order to avoid any possible drugging.



# **Income Tax Officials – Post**

## **Search Duties**

### **Time limit for retention of seized books of accounts, Section 132(8)**

- ❑ That the books of account or other documents found during search shall be retained by the authorized officer only up to 30 days from the completion of assessment under section 153A, however retention for a period exceeding 30 days can be made only if reasons are recorded in writing and the approval of the CCIT, CIT, DGIT, DIT is obtained.
- ❑ Moreover, retention beyond 30 days will not be approved in cases where all the proceedings under the Income Tax Act in respect of years for which the BOA are relevant are completed.
- ❑ However assessee on legal entitlement may make application to board objecting the approval for retention granted by CCIT, CIT, DGIT, DIT along with the reasons for such objections [ Section 132(10)] .

# *Income Tax Officials – Post Search Duties*

- ❑ Where the Authorised officer is not the assessing officer, S132(9A).

The Authorised officer shall handover all material found as result of search to the Assessing officer having jurisdiction over the person searched within a period of 60 days from the date on which last of authorizations of search was executed.

Explanation 1 to section 132(14) : that for the purpose of section 9A “execution of authorization for search shall have the same meaning as assigned in Expl. 2 to S. 158 BE” which is as under “that in the case of search : on the conclusion of the search as recorded in last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued”.

- Not to retain seized assets in absence of liability. [ *Asha Devi and Another v. CIT and Another*, (2007) 291 ITR 496 (Delhi)]

# *Assesseees - Rights*

- ❑ To insist on personal search of ladies being taken only by a lady, with strict regard to decency.
- ❑ A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.
- ❑ To call a medical practitioner in case of emergency.
- ❑ To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
- ❑ Every person who is examined u/s 132(4) has a right to ensure that the facts so stated by him have been recorded correctly.
- ❑ To have a copy of the panchanama together with all the annexures.
- ❑ To have a copy of any statement that is used against him by the Department.



## *Assesseees – Post Search Rights*

- ❑ The person from whose custody any books of account or other document are seized may make copies thereof, or take extracts therefrom in the presence of any of the authorized officers or any other person empowered by him. [ S. 132(9)]

# *Assessee's - Duties*

- ❑ To allow free and unhindered ingress into the premises.
- ❑ To see the warrant of authorization and put signature on the same.
- ❑ To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorized officer.
- ❑ To identify and explain the ownership of the assets, books of account and documents found in the premises.
- ❑ Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code.

## *Assesseees - Duties*

- ❑ To affix his signature on the recorded statement, inventories and the panchanama.
- ❑ To ensure that peace is maintained throughout the duration of the search, and to cooperation with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
- ❑ Similar co-operation should be extended even after the search action is over, so as to enable the authorized officer to complete necessary follow-up investigations at the earliest.



# *Assesseees - Duties*

- ❑ To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- ❑ Not to allow or encourage the entry of any unauthorized person into the premises.
- ❑ Not to remove any article from its place without notice or knowledge of the authorized officer. If he secretes or destroys any document with the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code.
- ❑ Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.

# *Rights & Duties of Chartered Accountants*

- ❑ There is no prohibition in or immunity from covering a CA / AR along with his client at the time of search. The suggested course of action which a CA/AR should preferably recourse in such a situation is as under: -
- ❑ To keep all the files / documents related to such client separately at one place and never keep such documents which are known to the CA / AR as being of undisclosed nature.
- ❑ To store the Computer Data related to such client in a separate and identifiable Computer/folders.

# *Rights & Duties of Chartered Accountants*

- ❑ To ensure that the files / documents / data related to such clients are not found at a place other than as stated to the search party.
- ❑ To make a request to the Authorized Officer for allowing him to contact the Authorizing Authority for explaining his position and make a request for not to carry out search but to carry out survey only.
- \* The courses of action as recommended above are merely of a suggestive nature and don't represent any instructions / guidelines issued by the Department.



# *Other Miscellaneous Sections*

**A new “Miscellaneous” Section 292C Inserted by Finance Act, 2007 w.r.e.f. 01/10/1975 in chapter XXIII.**

**Presumptions :-**

- Any books of accounts, other documents, money, bullion, jewellery or other valuable article or thing are or is found shall be presumed to be belong or belongs to Such person in whose possession or control these are found during the course of search.
- The contents of the books of accounts or other documents so found shall be presumed to be correct and true.
- That the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

*Section 132(4A) allowed to continue on the Statute books even after insertion of new sec. 292C.*

**Sections 132 (5), (6) & (7)**  
**have been deleted**  
**from 1st-June,2002**



**Sub-Section 11, 11A & 12 of**  
**Section 132**  
**deleted w.e.f. 1st June, 2002**

## **CRPC shall apply - Sec 132(13)**

- ❑ *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section(1) or Sub-Section (1A)*

## **Board Can Frame Rules (Sec 132(14))**

- ❑ The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorized officer-
- ❑ (i) for obtaining ingress into (any building, place, vessel, vehicle or aircraft) to be searched where free ingress thereto is not available;
- ❑ (ii) for ensuring safe custody of any books of account or other documents or assets seized.



# *Analysis of Rule 112*

# **Procedure for Search and Seizure**

S.NO.	Rule	Brief
1.	Sub rule (3) & (4A)	Power of the officer to ingress and duty of the person incharge of the place qua ingress by officer
2.	Sub rule (4) & (4A)	Use of Police.
3.	Sub Rule 4(B)	Power of the Officer to break open any box, locker, safe etc.
4.	Sub rule (6) & (7)	Power of calling witness for search and preparation of list of things seized.

## **Procedure for Search and Seizure**

S.NO.	Rule	Brief
5.	Sub rule (8)	Permission to an occupant or any other person on his behalf to attend search.
6.	Sub rule (9)	Delivery of list of things seized to occupant.
7.	Sub rules (10) to (12)	Custody of seized articles.
8.	Sub rule (13)	Opening of Seal.



***Section applicable of Code of  
Criminal Procedure, 1973.***

## *Code of Criminal Procedure, 1973.*

S.No.	Sec.	Brief
1.	S. 37	Public when to assist magistrate and police.
2.	S.38	Aid to person, other than police officer executing warrant.
3.	S.93	When search warrant may be issued.
4.	S.100	Regarding person in charge of closed place to allow search.

## *Code of Criminal Procedure, 1973.*

S.No.	Sec.	Brief
5	S. 102	Power of police officer to seize certain property.
6.	S. 165	Search by Police Officer.
7.	S. 166	When officer in charge of police station may require another to issue search warrant.



# ***Important Instructions* *& Circulars.***

# **Instruction No.11 of 2006, DT. 1st Dec., 2006**

## **Instruction regarding release of cash deposit in the PD Account :-**

- a) That where application filed u/s 132 B(1)(I) for release of seized cash, the cash seized should be released with in time limit provided after adjustment against existing liability.
- b) If the cash is not released under first proviso of S. 132B(1)(I), the amount should be released with in one month of passing the search & seizure order after.
  - adjustment of existing liability determined.
  - if penalty initiated, balance to meet the penalty amount imposable.
- c) If the assessment order passed is a subject matter of appeal before CIT(A) the amount should be released with in one month of passing the order u/s 250 after.
  - adjustment of liability determined at that time.
  - balance to meet the expected amount of penalty imposable
- d) The amount retained to meet out the penalty imposable should be released with in one month of passing the penalty order.
- e) If any cash is seized before issue of this instruction and cash in PD account has not been dealt with or partly dealt, such cash should be released with in one month of this Instruction following the manner indicated there in.

# **Instruction No. – 7 dated 30-07-2003**

## **Matters related to Search & Seizure**

- ❑ Board has directed to follow guidelines to the officers deployed in the investigation with a view to focus on high revenue yield.
- i. Searches should be carried only in cases where there is credible evidence to indicate substantial unaccounted income/assets ie expected concealment is more than Rs. 1 crore.
- ii. Search operation will also be mounted in case of hidden unaccounted assets because of public harm terrorism smuggling narcotics fraud fake currency and such other manifestation.
- iii. Professional taxpayers should not be searched untill compelling evidence exist.
- iv. Search operation shall be authorized only by the concerned DGIT (Inv.). He shall be ensure that work related to search & Seizure should be completed within a period of sixty days.
- v. DGs IT (Inv.) are requested to ensure that officer of competence and proven integrity are taken in the investigation.
- vi. DGs IT (Inv.) are required to ensure strict compliance of the above guidelines/instruction.



# **Instruction no. 286/247/98 IT(Inv. –** **II)2nd Feb., 1999**

Release of assets disclosed in regular books of accounts maintained by assessee.

1. Such Seized assets could be released subject of course to recovery action by the department against existing arrears.
2. In case of seizure of perishable goods and jewellery could be use for personal use – If unconditional irrevocable bank guarantee to the full extent of the value of the seized assets is given, the asserts could be released to that extent. The valuation shall be done by the Income Tax Department and the guarantee should be clear and unequivocal.
3. The bank guarantee should be valid till the relevant assessment proceedings are complete and taxes are collected.
4. If the seized assets have specific evidentiary value in prosecution the assets will not be released till the completion of prosecution proceedings.

*Instruction No. 1916, dated 11/05/1994, Guidelines for seizure of jewellery and ornaments in the course of search.*

- a) In the case of wealth tax assessee, gold jewellery and ornaments found in excess of gross weight declared in the wealth tax return only need be seized.
- b) In the of person not assessed to wealth tax gold jewellery and ornaments to the extent of 500gms per married lady, 250 gm per unmarried lady, and 100gms per male member of the family need not be seized.
- c) That the authorized officer may having regard to the status of the family and the customs and the practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure this should be reported to the Director of Income Tax / Commissioner authorizing the search at the time of furnishing the search report.
- d) In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.



**INSTRUCTION NO. 1497 DT. 13TH JANUARY, 1983,**  
**SEARCH AND SEIZURE-OPENING OF LOCKERS**

- To ensure that the information about lockers is available early, the authorized officers should soon after entering the premises, record the parties' statement and get him/her committed about the number of lockers, contents thereof and source of acquisition. The lockers would be opened as early as possible, but in any case within a week.
- It has been decided that where the lockers sealed cannot be opened within the period of 7 days, the reasons for the delay should be intimated to the Director General (Investigation). The information about the lockers which remained sealed for more than a week as on 30th Nov., 1982 should be sent to the Director General (Investigation)/Board so as to reach not later than 31st Jan, 1983. The report for subsequent months should reach the Director General (Investigation) by the 15th of the following months. These instructions may please be brought to the notice of all concerned.



## Circular F.No.7/16/69-IT(Inv.), dated 4-6-1970

- *How to deal Promissory notes found during search.*

Photostat copy of the promissory note should be retained or a copy certified by the assessee to be a true copy, in addition to obtaining a Photostat or certified copy of the promissory notes an order under section 132(3) should be passed directing the person in possession of the promissory notes not to part with the said notes unless an equivalent amount is deposited with the Income-tax Officer.

- However through **Circular No.226-CBDT'S letter F.No. 7/16//69-I.T. (Inv.), dated 6-10-1970, board has stated that** merely restraining the lender from parting with the promissory notes would be ineffective as the lender can realize the debts by issuing a receipt discharging the debtor from any further liability. The best way to pass the order would be to qualify the order with the proviso that the lender may part with the promissory notes only on the condition that the borrower pays the money to the Income-tax Department and not to the lender, he can also issue an order to the borrower not to pay the amounts under the pronote to the lender but to the Income-tax Department.
- In suitable cases, promissory notes themselves can be seized, order under section 132(3) passed and the provision to second proviso to section 132(5) invoked to get a replacement in terms of money for the promissory notes before returning these to the assessee.

**Instruction No.994-CBDT F.No. 286 / 37 /**  
**76-IT (Inv.), dated 31-7-1976**

- **An article is placed under a prohibitory order/seized, which, prima facie, appears to be an antiquity or of such an artistic or aesthetic value** as worthy of being declared an “art treasure” in terms of section 2 of the Antiquities and Art Treasures Act, 1972, it should be immediately brought to the notice of the Superintending Archaeologist of the area (list of Superintending Archaeologists annexed) and his advice sought whether the article is an antiquity or worthy of declaration as an art treasure. Thereafter, a report should be made (in duplicate) as early as possible to the Director of Inspection (Inv.) giving full particulars of the article, the advice received from the Superintending Archaeologist, along with its approximate market value as given by the latter and/or a valuer. The article should not be released to the assessee or otherwise disposed of till the receipt of the Director of Inspection’s instruction
- It may be carefully noted that in view of the provisions of the Antiquities and Art Treasures Act, the Income-tax Authorities cannot undertake any sale / auction of antiquities. When an antiquity or art treasure is compulsorily acquired by the Government, the compensation amount will be dealt with in accordance with the provisions of section 132 / 132B of the Income-tax Act. If the Director General, Archaeological Survey of India advises that the Government are not interested in acquiring an antiquity, it will have to be sold, where necessary, through a licensed dealer.



## *Instruction No: 1180 Date of Issue: 1/6/1978*

### **1)Release of assets held as disclosed - order u/s.132(5):**

Assets seized at the time of search as being undisclosed, are sufficiently explained as are duly disclosed for the purposes of the I.T. Act. Such seized assets may be retained and adjusted against the existing tax liabilities and the balance should be released to the person from whom the seizure was made, unless he gives his consent in writing to its retention for adjustment against the liability which may be determined on completion of the regular assessment or reassessment. It is clarified that the assets held as disclosed should not be retained against the liabilities determined under clauses (ii) and (iia) of section 132(5).



## **Instruction No: 1180 Date of Issue: 1/6/1978**

### **2) Title deeds of immovable properties.**

A title deed of immovable property can be retained under sub-section(8), but its retention itself will not confer any special right on the Department unless simultaneous action is taken by exercising the powers of provisional attachment of the property in question u/s.281 B of the I.T.Act. The ITOs may therefore have to take appropriate action for protecting the interests of the revenue in such cases on the basis of the seized documents, with the prior approval of the Commissioner.

### **3) Tax liabilities in a firms case.**

In the case of a registered firm, taxes are charged not only in the hands of the firm but also in the hands of the partners. The amount of tax on the estimated undisclosed income of the firm will, therefore be borne in the case of a registered firm, by the firm as also by its partners. Hence while calculating the tax on the amount of undisclosed income u/s.132(5)(ii), besides the tax if any on the undisclosed income in the hands of the firm proportionate tax on the share of undisclosed income in the hands of the partners should also be taken into account. The existing liability as per section 132(5)(iii) will be that of the firm alone and not of the partners.

## *Instruction No: 1180 Date of Issue: 1/6/1978*

### **4. Release of seized valuable assets under second proviso to section 132(5)**

- Under the second proviso to sec.132(5) the ITO may with the previous approval of the CIT release seized assets, if the assessee has paid or made satisfactory arrangements for payment of tax, interest, and penalty liabilities referred to in clauses (ii) & (iia) and (iii) of sec.132(5). A question has been raised as to whether an offer of security of immovable property by way of deposit of title deeds constitutes satisfactory arrangements for payment of the amount due under the Act. The Ministry of law have advised that by merely offering immovable property as security for payment, it cannot be said that satisfactory arrangements for the payment of the amount are made by the person concerned under the second proviso to sec.132(5).



# Circular No. 1590, dated 21-12-1984 F.No. 287 / 25 / 83-IT (Inv. II)

## Treatment of unaccounted stocks restrained / seized in benami / fictitious names.

Where assets in the form of unaccounted stocks have been restrained / seized by the Department apparently held in the benami names. and, the bank accounts might have also been discovered which were operated in the names of fictitious persons. It has been decided that the following course of action should be adopted in all such cases:-

1. The Income-tax Officer having territorial jurisdiction at the address declared should issue a notice under section 139(2) in the name of a person who is declared as an owner of the said assets.
2. As the said person is not likely to be available at this address, the notice should be served by affixing a copy of the notice on the Notice Board of the Income-tax Officer and a copy of the banker as also to the person, such as Port Trust authorities, customs authorities, warehouse-keepers, etc., in whose custody the assets are lying at present.
3. In such cases, only the value of the investments should be taken as the income of the assessee by invoking the provisions of section 68,69, etc., and no ad hoc addition should be made.

It may also be noted that assessments in the hands of benamies are of protective nature and appropriate action may continue to be taken.



## *Voluntary Discloser*

- ❑ Voluntary Discloser made under scheme Prior to the date of Search
  - Not Disqualified.

Case: *Rakesh Tapadia V. DCIT (2007) 293*  
*ITR 0420 ITAT (Coc.)*

***Practical Tips for handling***  
***Search, Seizure and Post***  
***Search proceedings***

## *Tips .....*

- ❑ Systematically arrange and make analysis of all the seized documents.
- ❑ Sort the documents assessee wise, assessment year wise and premises wise.
- ❑ Sort the documents having financial relevance and financially irrelevant.
- ❑ If the documents are financially relevant, ascertain how they are explainable vis a vis books of accounts or other details available with the Income Tax Department or are found / seized from the premises searched or surveyed.



## *Tips .....*

- ❑ See if the explanation is available about all the records available with the Income tax department.
- ❑ Offer Peak Credits as undisclosed income, if any.
- ❑ Return of income u/s 153A should be filed judiciously after consideration of records and material lying with income tax department.
- ❑ Where any undisclosed income is offered in the return filed u/s 153A then the expenditure incurred to earn that income may also be claimed.
- ❑ File returns under protest if required notices are not properly issued & challenge the validity of proceedings at the time of Assessments itself.

**THANK YOU!!!**

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