

Practical Tips on
Survey, Search & Seizure
under Income Tax Act, 1961

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Amendments proposed
by
Finance Bill, 2017

Proposed Amendments in Section 132

[Search and seizure]

Explanation after fourth proviso to sub-section (1) [w.r.e.f. 01-04-1962]

*“Explanation.—For the removal of doubts, it is hereby declared that the **reason to believe**, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.”*

Explanation in sub-section (1A) [w.r.e.f. 01-04-1962]

*“Explanation.—For the removal of doubts, it is hereby declared that the **reason to suspect**, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.”*

Brief: The 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Similar Explanation proposed to be inserted in Section 132A(1) that the 'reason to believe' shall not be disclosed to any person or any authority or the Appellate Tribunal.

Proposed Amendments in Section 132....

New sub-section (9B) and (9C)

[w.e.f. 01-04-2017]

“(9B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for the reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purpose the provisions of the Second Schedule shall, mutatis mutandis, apply.

(9C) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B).”

Brief: Enabling provisions for provisional attachment of any property by authorized officer during search or within 60 days from the date of last authorization executed by income tax authority with prior approval of Principal Director General or Director General or Principal Director or Director. Further proposed that such provisional attachment shall cease to have effect after the expiry of 6 months from the date of order of such attachment.

Proposed Amendments in Section 132....

New sub-section (9D)

[w.e.f. 01-04-2017]

“(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference.”

Brief: Enabling provisions for reference u/s 142A to Valuation officer for estimation of FMV of any property by authorized officer during search or within 60 days from the date of last authorization executed by income tax authority. The Valuation Officer shall submit the report within 60 days of such reference.

Proposed Amendment in Section 133A [Survey]

[w.e.f. 01-04-2017]

(i) in the long line, for the portion beginning with “at which a business or profession” and ending with “such business or profession—”, the following shall be substituted, namely:—

“at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose—”;

(ii) in the Explanation, after the words “business or profession” wherever they occur, the words “or activity for charitable purpose” shall be inserted

Brief: Extension of the powers to Survey by an Income Tax Authority where any activity for charitable purpose is carried on and also to record statement of trustee, employees, the attending or helping carrying out of charitable activity.

Proposed Amendments in Section 153A

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and of the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:

Proposed Amendments in Section 153A....

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years.

Fourth Proviso proposed to be inserted w.e.f 01-04-2017

“Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;*
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and*
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.*

Explanation 1.—*For the purposes of this sub-section, the expression “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*

Explanation 2.—*For the purposes of the fourth proviso, “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.’”*

Brief: To protect the interest of the revenue in cases where **tangible evidence(s)** are found during a **search or seizure operation** (including 132A cases) and the same is represented in the form of undisclosed investment in any asset, it is proposed that section 153A relating to search assessments be amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year if:

- (i) the **AO has in his possession** books of accounts or other documents or **evidence** which reveal that the income which has **escaped assessment amounts** to or is likely to amount to **fifty lakh rupees or more** in one year or in aggregate in the relevant four assessment years (falling beyond the sixth year);
- (ii) **such income escaping assessment is represented in the form of asset;**
- (iii) **the income escaping assessment or part thereof relates to such year or years.**

Amended provisions of section 153A shall apply where search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017

Proposed Amendments in Section 153B

[w.e.f. 01-04-2017]

(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;*

(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:

Provided that *in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:*

Proposed Amendments in Section 153B....

Second & Third Proviso substituted

[w.e.f. 01-04-2017]

Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018,—

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words “twenty-one months”, the words “eighteen months” had been substituted;*
- (ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen 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 or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:*

Provided also that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,—

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted;*

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve 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 or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment shall be extended by twelve months:

Provided also that in case where during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in section 153C, a reference under sub-section (1) of section 92CA is made, the period available for making an order of assessment or reassessment in case of such other person shall be extended by twelve months.'

Brief: It is proposed to amend sub-section (1) to provide that for search and seizure cases conducted in the FY 2018-19, the time limit for making an assessment order under section 153A shall be **reduced from existing twenty-one months to eighteen 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.

It is further proposed that for search and seizure cases conducted in the FY 2019-20 and onwards, the said time limit shall be further **reduced to twelve months** from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.

Proviso to sub-section (3)

[w.r.e.f. 01-06-2016]

“Provided that where a notice under section 153A or section 153C has been issued prior to the 1st day of June, 2016 and the assessment has not been completed by such date due to exclusion of time referred to in the Explanation, such assessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016.”

Proviso to Explanation to sub-section (3)

[w.r.e.f. 01-04-2017]

“Provided also that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment or reassessment, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.”

Proposed Amendments in Section 153B....

Brief: It is also proposed to insert a proviso to the Explanation to provide that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section for assessment or reassessment shall after the exclusion of the period under sub-section (4) of section 245HA shall not be less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year.

Section 153B in brief

[Time limit for completion of assessment u/s 153A]

Section 153A: Six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and of the relevant assessment year or years and Assessment year relevant to previous year in which search is conducted or requisition is made

Last of the authorisations for search u/s 132 or requisition u/s 132A was executed

before 01-06-2016*	during 01-06-2016 and 31-03-2018*	during FY 2018-19	during FY 2019-20 & onwards
2 Years from the end of Financial Year in which such last authorization was executed	21 Months from the end of Financial Year in which such last authorization was executed	18 Months from the end of Financial Year in which such last authorization was executed	12 Months from the end of Financial Year in which such last authorization was executed

***Note: upto 31-03-2017: AY relevant to previous year in which search is conducted or requisition is made and 6 AYs immediately preceding such AY**

In case of other person referred to in section 153C:

Six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and relevant assessment year or years and assessment year relevant to the previous year in which search is conducted or requisition is made.

Last of the authorisations for search u/s 132 or requisition u/s 132A was executed

before 01-06-2016*	during 01-06-2016 and 31-03-2018*	during FY 2018-19	during FY 2019-20 & onwards
<p>(i) 36 Months from the end of Financial Year in which such last authorization was executed, <u>or</u></p> <p>(ii) 24 Months from the end of F.Y. in which books of accounts handed over to the jurisdictional AO</p> <p>Whichever is later</p>	<p>(i) 21 Months from the end of FY in which such last authorization for search was executed, <u>or</u></p> <p>(ii) 9 Months from the end of F.Y. in which books of accounts handed over to jurisdictional AO</p> <p>Whichever is later</p>	<p>(i) 18 Months from the end of FY in which such last authorization for search was executed, <u>or</u></p> <p>(ii) 12 Months from the end of F.Y. in which books of accounts handed over to jurisdictional AO</p> <p>Whichever is later</p>	<p>(i) 12 Months from the end of FY in which such last authorization for search was executed, <u>or</u></p> <p>(ii) 12 Months from the end of F.Y. in which books of accounts handed over to jurisdictional AO</p> <p>Whichever is later</p>

*Note: upto 31-03-2017: AY relevant to previous year in which search is conducted or requisition is made and 6 AYs immediately preceding such AY

Note:

Where during the course of the proceedings for the assessment or reassessment of total income, a **reference under sub-section (1) of section 92CA is made,**

the period available for making an order of assessment or reassessment shall be extended by twelve months

Proposed Amendments in Section 153C

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person **for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and** for the relevant assessment year or years referred to in sub-section (1) of section 153A.*

***Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:*

***Provided further** that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.*

Amendment proposed in Finance Act, 2016 [Regarding Income Disclosure Scheme, 2016]

Section 197- Removal of Doubts

For the removal of doubts, it is hereby declared that—

- a) Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Scheme.
- b) In cases where any declaration has been made **but** no tax & penalty has been paid within the specified time, the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.
- ~~c) In cases where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme and no declaration in respect of such income is made
 - ~~(i) such income shall be deemed to have accrued, arisen or received, or~~
 - ~~(ii) the value of the asset acquired out of such income shall be deemed to have been acquired or made,~~in the year in which a notice u/s 142, 143(2) or 148 or 153A or 153C of the Income-tax Act is issued by the AO & the provisions of the Income-tax Act shall apply accordingly.~~

Brief: Section 197(c) of the Finance Act, 2016 deleted retrospectively w.e.f. 01/06/2016. However, in case of search & seizure operations including 132A cases similar provisions can be invoked for relevant assessment years prior to six assessment year and upto tenth assessment year where search conducted or requisition made subject to the escaped income of Rs 50 lacs or more represented in the form of assets in one or four years in aggregate.

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 Account.
- To use residential address as place/address for business.

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.

Pre Survey & Search Precautions

Ensure:

- That physical cash available and cash in books of account matches.
- 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 e.g. records maintained at Gate, Security Guard, Stores Keeper etc.
- 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.

Survey

Powers of Survey Team

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

The Income Tax Authorities may enter

- any place within the limits of area assigned to him, or
- any place occupied by any person in respect of whom he exercises jurisdiction, or
- any place in respect of which he is authorised,

at which a business or profession is carried on and require any proprietor, employee or any other person attending or helping in carrying on such business or profession- to afford him necessary facility:

- i. to inspect books of accounts or other documents available at such place.
- 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

Restriction of entry – Sec. 133A(2)...

- ❑ An Income tax authority **may enter** any place of business or profession* referred in s.s (1) only during the hours at which such place is open for the conduct of business or profession.
- ❑ 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**, survey may continue after office hours and even after sun set.

Verifying the TDS/ TCS - Section 133A(2A)

(inserted by Finance (No. 2) Act, 2014 w.e.f. 01-10-2014)

- ❑ An income-tax authority for the purpose of verifying that tax has been deducted or collected at source in accordance with provisions of Chapter XVII-B or Chapter XVII-BB,
- ❑ may enter, **after sunrise and before sunset**,
- ❑ any office, or any other place where business or profession is carried on, within the limits of area assigned to him or
- ❑ any place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept, and
- ❑ require the deductor or collector or any other person who may at that time and place be attending in any manner to such work,—
 - (i) to afford him the necessary facility to inspect such books of account or other documents, and
 - (ii) to furnish such information as he may require in relation to such matter.
- ❑ However, he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable **(Proviso to Clause 3 of Sub-section 3 of section 133A)**

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

- i. To place marks of identification on the books of account & can make extracts & copies there from.
- ii. impound and retain any books of account or other documents inspected by him after recording his reasons for so doing **but not for a period exceeding 15 days** (exclusive of holidays) without obtaining the approval of the Pr. CCIT/ CCIT/ Pr. DGIT/ DGIT/ Pr. CIT/ CIT/ Pr. DIT/ DIT, as the case may be. ***[as amended by the Finance (No. 2) Act, 2014 w.e.f. 01-10-2014]***

Bawa Gurmukh Singh & Co. v. ITO [2011] 12 taxmann.com 91 (P & H), CIT-II vs ML Outsourcing Services (P.) Ltd. [2014] 51 taxmann.com 453 (Delhi), Raj and Raj Investments vs. Income-tax Officer [2007] 293 ITR 0057- (Kar)
- iii. To make an inventory of cash, stock or other valuable article or thing verified
- iv. To record the statement of any person*

No power to remove cash and other valuable things, Sec. 133A(4)

An income-tax authority acting under this section shall, on no account, from the place wherein he has entered, any cash, stock or 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.
- Power prescribed be exercised only when the said function, ceremony or event is over.

Powers of Income Tax Authority in case of non-cooperation by assessee- Sec. 133A(6)

- ❑ Where during the course of survey assessee does not-
 - Afford 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 with the requirement made.

- ❑ 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.

Issues- Survey at Premises of Third Party

- Survey conducted at the business premises of assessee may extend to premises of third party for limited purposes. **Circular no. 7- D dt 3/5/1967 vis a vis Expl. to S. 133A(1)**
- Income-tax authority cannot assume any power to enter office of CA to conduct survey u/s 133A in connection with survey of assessee UNLESS the assessee has stated that the records are kept in their office. **U. K. Mahapatra & Co. vs Income Tax Officer [2009] 308 ITR 133 (Ori.) [Affirmed by Apex Court in [2010] 186 Taxman 181 (SC)]**

Other Issues.....

➤ **Whether prior notice is required to conduct survey?**

No prior notice is required to be effected for survey. **N.K. Mohnot vs Dy. CIT [1995] 215 ITR 275 (Mad.)**

➤ **Survey is possible even to enquire about tax deducted at source. Reckitt and Colman of India Ltd. vs. ACIT [2001] 251 ITR 306 (Cal)**

➤ **Whether survey team has power to seal the business premises?**

No, the business premises of assessee cannot be sealed off either under section 133A or section 132. **Shyam Jewellers vs Chief Commissioner (Administration) [1992] 196 ITR 243 (All)**

Statement u/s 133A

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 ?
- Is it safer to disclose income under the head "other sources" or "business" ?

Precaution while making any statement.

- ❑ 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 capitalize the disclosed amount ?
- ❑ Whether a survey would result in reopening of assessment of earlier years?
- ❑ 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 bona fide & are not after thoughts.

Case: DCIT vs. Bhogilal Moolchand (2005) 3 SOT 211 (Ahd.)

u/s 133A(3)(iii)

- As per 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.

Admissions of undisclosed Income under Coercion/Pressure During Search/Survey
– The Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence. **[Letter [F.NO.286/98/2013-IT (INV.II)], Dated 18-12-2014]**

Whether any person can be examined on Oath while recording statement u/s 133A?

- Under survey, AO cannot record statement on oath, though he can record the statement of any person which may be useful for or relevant to any proceedings under the Act.
- Such statement is only an information and has no evidentiary value to be used only for corroboration purposes for taking a decision on an issue either in favour or against an assessee.
- Statement can be recorded on Oath, only under circumstances where S. 133A(6) is invoked i.e. Sec. 131(1) **[United Chemical Agency vs. R.K. Singh, ITO [1974] 097 ITR 0014 (All)]**
- AO can not make the addition solely on the basis of statement made by the assessee during survey

Statement during the survey operation is not on oath.....

Sanjeev Agrawal v. Income Tax Settlement Commissioner, [2015] 56 taxmann.com 214 (Allahabad) (SLP dismissed by the Apex Court, SLP No. 15181/2015)

- A statement made voluntarily by the petitioner u/s 133A can form the basis of assessment. **The mere fact that the petitioner retracts his statement could not make his statement unacceptable.**
- The burden lay upon the petitioner to establish that the statement made by him at the time of survey was wrong and in fact there was no additional income.
- No doubt, sections 132(4) & 133A are distinct and different.
- U/s 133A there is no provision to administer oath and to take a sworn statement. But it does not mean that a statement u/s 133A can be retracted at the whim and fancy of the assessee. In the light of the aforesaid, the assertions made by the petitioner cannot be accepted.

Also refer: Dr. Dinesh Jain v. Income Tax Office, [2014] 45 taxmann.com 442 (Bombay) (SLP dismissed by the Apex Court, SLP No.17393/2014)

Issue- Section 133A does not empower any ITO to examine any person on oath

- In case of **CIT v. S. Khader Khan Son [2008] 300 ITR 157 (Mad.) affirmed by Supreme Court [2012] 25 taxmann.com 413**
- The High Court observed that the statement recorded during the survey under section 133A does not have evidentiary value.
- ***There was difference between the statement recorded under sections 132(4) and 133A.***
- A reference was made to the decision of the Supreme Court in the case of ***Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC).***

The Court concluded as follows —

- (i) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, *vide* decision of the apex court in ***Pullangode Rubber Produce Co. Ltd. [1973] 91 ITR 18***
- (ii) In contradistinction to the power u/s 133A, section 132(4) enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded u/s 133A is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law *vide* ***Paul Mathews and Sons v. CIT [2003] 263 ITR 101 (Ker.) (SLP dismissed by the Apex Court, SLP No. 19328/2004)***

The Court concluded as follows.....

- (iii) The expression 'such other materials or information as are available with the Assessing Officer' contained in section 158BB, would include the materials gathered during the survey operation under section 133A, ***vide CIT v. G.K. Senniappan [2006] 284 ITR 220 (Mad.) [SLP dismissed, SLP No. 14138/2006];***
- (iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, ***vide CIT v. S. Ajit Kumar [2008] 300 ITR 152 (Mad.);***
- (v) Finally, the word 'may' used in section 133A(3)(iii) viz., 'record the statement of any person which may be useful for, or relevant to, any proceeding under this Act', as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself. From the above, it becomes absolutely clear that the addition cannot be made merely on the basis of statement which has no evidentiary value. This is further clarified by the Board itself that no efforts should be made to extract the surrender without corroborating evidence.

Also Refer:

- **CIT vs. Dhingra Metal Works (Delhi) [2011] 196 Taxman 488/ [2010] 328 ITR 384]**
- **CIT vs Dhingra Metal Works [2011] 196 Taxman 488 (Delhi)**
- **CIT v. Hotel Samrat [2010] 323 ITR 353 (Ker.)**
- **Paul Mathews & Sons vs. CIT, [2003] 263 ITR 101(Ker)**
- **CIT V P. Balasubramanian [2013] 33 taxmann.com 130 (Madras)**
- **Unitex Products Ltd. vs ITO - 2008 22 SOT 429 [ITAT- Mumbai]**
- **DCIT vs M/s Premsons [2010] 130 TTJ 159 (ITAT- Mumbai)**
- **Asst. CIT V Maya Trading Co. [2013] 34 taxmann.com 144 (ITAT- Agra)**

Issues....

Issue- Admission is substantial evidence of a fact.....

Navdeep Dhingra v.CIT, [2015] 56 taxmann.com 75 (Punjab & Haryana)

- An admission is substantial evidence of a fact, within the special knowledge of an assessee and if not retracted immediately or within reasonable time is substantive evidence of a fact and may be read against an assessee.

Kottakkal wood complex v. DCIT in High Court of Kerala [2016] 72 taxmann.com 63 (Kerala)

- An assessment entirely based upon a statement recorded u/s 133A of the Act would be unsustainable, however, where maker of the statement himself re-affirms the statement and nothing is produced by the assessee to show that contents of statement were incorrect, assessments can not be held as illegal.

Issue- Evidentiary value of statement recorded in the survey

Sanjeev Kumar v. ITO [2014] 50 taxmann.com 114 (Chandigarh - Trib.)

- No addition would be sustained if assessee retracted from the statement recorded during the survey by stating that statement was recorded under coercion and additional evidences in support of assessee claims were not accepted by the department.

Also See: ACIT Vs. Ajoy Bakli, I.T.A No. 312/Kol/2013, Date of Pronouncement: 06.05.2015, ITAT - Kolkata

Assessment vis a vis Material collected during Survey.

- ❑ Documents found during survey has no evidentiary value unless and until proved by some cogent material and the books of account. **CIT vs Diplast Plastics Limited [2010] 186 Taxman 317 / 327 ITR 399 (P & H)**
- ❑ Merely on the basis that at the time of survey, some differences were found in stock did not mean that there would be an automatic addition on account of differences. Such differences are always subject to explanation and reconciliation. **Chawla Brothers (P.) Ltd. v. Asstt. CIT [2011] 43 SOT 651 (Mum.)**
- ❑ Where survey authority alleged excess stock by weighing stock on basis of cartons and not on basis of standard weights, addition made in income of assessee was not justified since the surveying authority never requested the assessee to provide them with proper weighing facility. **Smt. Kailash Devi Prop. V. ITO [2016] 68 taxmann.com 288 (Amritsar - Trib.)**

Assessment vis a vis Material collected during Survey.....

- ❑ Addition made to assessee's income on basis of admission during survey without any supportive material is not sustainable. **B. Ramakrishnaiah vs. ITO [2010] 39 SOT 379 (HYD.)/ Ashok Manilal Thakkar vs ACIT – [2005] 97 ITD 361 (AHD.)**
- ❑ As the VDIS 1997 certificate issued by the department is valid and subsisting, it is not open to the revenue to contend that there was no jewellery which could be sold by the assessee on 20/1/1999. **CIT vs Uttamchand Jain (BHC) [2010] 320 ITR 554 (Bom)**
- ❑ In block assessment, material found during survey u/s 133A can be used only if it has some relation with the material seized during search, otherwise not. **GMS Technologies Ltd v Dy. CIT. (2005) 93 TTJ 218 (ITAT – Del.)**

Other Issues.....

- Statement cannot be asked to be ignored after voluntary surrender by the assessee. **Dr. S.S. Gulati vs DCIT I.T.A. No.671 of 2009 [P&H HC]**
- In case of subsequent retraction of statement, the onus is on assessee and mere denial would not lead to a valid retraction in law. **ITO vs Devji Premji Pujara & Sons [2013] 34 taxmann.com 96 (Mumbai - Trib.)**
- Admission is important piece of evidence but cannot be said to be conclusive. **CIT vs Dhingra Metal Works [2011] 196 Taxman 488 (Delhi)**
- Whether Revenue is entitled to use material collected during illegal survey? Illegality does not vitiate evidence collected during survey. **CIT vs Kamal and Company [2009] 308 ITR 129 (Raj.)**

Other Issues.....

- ❑ No addition to income on the basis of disclosure could be made where the assessee had retracted certain income after disclosing it and no material had been found to prove this income during the survey. Ashok Manilal Thakkar vs ACIT – 279 ITR 143 [ITAT–AHM] Also see DCIT v. Unique Art Age – 29 ITR (Trib.) 547 [ITAT-Jaipur]
- ❑ No reliance could be placed upon a statement regarding surrender of loss by the assessee, which was retracted soon after a survey under s.133A of the Income Tax Act 1961 was carried out. Further, the statements recorded by the Inspector and the ITO, without reading and explaining them to the assessee before obtaining his signature, were invalid. ITO vs Vardhman Industries - 99 TTJ 509 [ITAT - Jodhpur]/ Kailash Chand L/H of Late Mangilal vs ITO - 113 TTJ 488 [ITAT-Jodhpur]

Other Issues.....

➤ Whether a survey can be converted into search?

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.

- **Vinod Goel & Others vs Union of India and others [2001] 252 ITR 029 (P&H)**
- **Dr. Nalini Mahajan v. Director of Income Tax (Inv.) [2002] 252 ITR 123 (Del.)**
- **ACIT v Mangaram Chaudhary (HUF) [2010] 123 ITD 359 (HYD.)**

➤ Audited books of account could not be totally disregarded on the basis of documents, information etc., found in course of survey. **Davis Langdon & Seah Consulting India (P.) Ltd. V Dy. CIT [2013] 33 taxmann.com 264 (Bangalore - Trib.)**

➤ Reassessment proceedings not valid subsequent to assessment u/s 143(3) in furtherance to survey u/s 133A. **CIT vs Vardhman Industries [2014] 42 taxmann.com 494 (Rajasthan)**

Other Issues.....

- Addition made on basis of unsigned draft agreement to sell not sustainable in absence of any investigation. **CIT vs AKME Projects Ltd.[2014] 42 taxmann.com 379 (Delhi)**
- Surrendered income can be taxed as deemed income without setting off of the losses u/s 70 & 71 **Liberty Plywood (P.) Ltd. v. Asst. CIT [2013] 29 taxmann.com 268 (Chandigarh - Trib.) & Kim Pharma (P.) Ltd. [2013] 258 CTR 454 (P&H)**
- A bogus expenditure claimed subsequent to date of survey to offset the revenue effect of additional income declared during survey is not allowed. **H. Gouthamchand Jain v. ITO [2016] 71 taxmann.com 98 (Chennai - Trib.)**
- The provision of section 271AAA of the Act can be attracted only where search has been conducted u/s 132 of the Act and not in case of survey u/s 133A. **DCIT Vs. M/s. Sam India Abhimanyu Housing, I.T.A. No. 1257/Del/2015, Date of order: 05.02.2016, ITAT- Delhi**

Power of the AO to select case for scrutiny Assessment- where during survey, assurance given to assessee that his return of income would not be selected for scrutiny assessment...

Ajay vs. Dy. CIT, [2014] 42 taxmann.com 210, (Bom)

- In brief, a survey was conducted at premises of a businessman dealing in gold & jewellery. An assurance has been given by survey party to him that no further action would be taken against him (*in view of Instructions issued by CBDT Circular No. F. No. 225/93/2009/ITA-II*) and his return of income would not be taken-up for scrutiny and based on such assurance, petitioner had signed said statement. However, his case was selected for scrutiny.
- The AO is empowered to select a particular case for scrutiny assessment in view of clause (g) of guidelines given by impugned circular, for selection of cases for income tax scrutiny .

Penalty on income surrendered during survey....

- Under Explanation 1 to section 271(1)(c), Voluntary disclosure of concealed income does not absolve assessee of section 271(1)(c) penalty if the assessee fails to offer an explanation which is bona fide and proves that all the material facts have been disclosed. **MAK Data P. Ltd. versus CIT, SLP(Civil) No. 18389 of 2013, Date of Order : 30.10.2013, Supreme Court of India.**
- Where assessee had not offered any satisfactory explanation regarding surrendered amount being not bona fide and it was also not borne out in any contentions raised before lower authorities, additions so made after adjusting expenditure were justified **[Raj Hans Towers (P.) Ltd. v. CIT [2015] 56 taxmann.com 67 (Delhi)**

Penalty on income surrendered during survey....

- Penalty could not be imposed u/s 271(1)(c), if surrendered income shown in income-tax return. **CIT vs SAS Pharmaceuticals [2011] 11 taxmann.com 207 (Delhi) & Jt. CIT vs Signature [2004] 85 TTJ 117 (ITAT – Del.)**
- No penalty levy u/s 271(1)(c), if surrendered income shown in return filed in response to the notice issued u/s 148. **Vipul Life Sciences Ltd. v. Dy. CIT[2015] 57 taxmann.com 25 (Mumbai - Trib.)**
- Penalty notice to be issued during the course of proceedings. **Prem Tailor vs ITO [2014] 41 taxmann.com 116 (Punjab & Haryana)**

Penalty proceedings u/s 271(1)(c) not valid where notice issued after closure of survey proceedings and before commencement of assessment proceedings, assessee could not be prosecuted qua concealment of income.

Penalty u/s 271(1)(c) in case of income computed on presumption at the time of survey operation.....

M. A. Quddus v. ITO [2015] 53 taxmann.com 226 (Andhra Pradesh)

- In case, survey did not result in recovery of any specific amount and figures were arrived at by way of presumptive computation, there being no intention to evade tax, no penalty was to be levied u/s 271(1)(c).

Press Release Note dated 03/06/1989

- ❑ The Government will launch a drive against ostentatious wedding ceremonies and other social functions which often involve blatant use of tax-evaded money. According to Revenue Secretary, Dr. Nitish Sengupta, such ostentation is inconsistent with the egalitarian values of Indian society.
- ❑ Section 133A of the Income-tax Act, 1961, authorizes Income-tax Officers to make surveys of marriage ceremonies and other ostentatious social functions and to detect use of unaccounted money. So far, this provision has not been sufficiently used to make a visible impact on the curbing of wasteful expenditure.

Search & Seizure
Proceedings

Salient features of Search
& 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 Account 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 account 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 otherwise the entire action could vitiate. *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 Dismissed.*

Certain aspects of Search

- ❑ In Consequence of Information.
- ❑ Mandatory requirement.
 - Reason to believe.
 - Satisfaction to be recorded.

Authorizing Officer [u/s 132(I)]

- (1) Director General of Income Tax
- (2) Director of Income Tax
- (3) Chief Commissioner of Income Tax
- (4) Commissioner of Income Tax
- (5) Additional Director / Addl. Commissioner of Income-tax (inserted by Finance(No. 2) Act,2009, w.r.e.f 1-6-1994)
[The amendment has been inserted to supersede the Delhi High Court judgment in CIT v Pawan Kumar Garg(2009) 178 Taxman 491 [2011] 334 ITR 240 & Sunil Dua v CIT (2008) 170 Taxman 401.]
- (6) Joint Director / Joint Commissioner of Income Tax (by Finance No. 2 Act, 2009, w.r.e.f 1-10-1998)

Authorised Officers

- Additional Director of Income-tax (inserted by Finance(No. 2) Act,2009, w.r.e.f 1-6-1994)
- Additional Commissioner of Income-tax (inserted by Finance(No. 2) Act,2009, w.r.e.f 1-6-1994)
- 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 Authorizations

S.NO.	PARTICULARS	FORM NO.
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
4.	Authorisation under sub section (1) of section 132 A of the Income Tax Act, 1961 for requisitioning books of accounts etc.	45C

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

Authorization or requisition by Common order – S. 292CC - Newly Inserted w.e.f. 1st April, 1976

- 1) Notwithstanding anything contained in this Act,—
 - (i) it shall not be necessary to issue an Authorization u/s 132 or make a requisition u/s 132A separately in the name of each person;
 - (ii) where an authorization u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization or requisition **shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.**
- 2) Notwithstanding that an authorization u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the **assessment or reassessment shall be made separately in the name of each of the persons** mentioned in such authorization or requisition.

Explanation.....

In a Allahabad High Court decision **CIT v. Smt. Vandana Verma, [2011] 330 ITR 533**, it has been held that in search cases arising on the basis of warrant of authorization u/s 132, **warrant of authorization must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity**. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.

- ❑ In order to curtail and nullify various judicial pronouncements lying that joint panchnamas or search authorization in joint names are invalid, it has been provided by way of clarificatory retrospective amendment that
- ❑ Joint panchnama does not refer that it has been issued in the name of AOP or BOI consisting such persons
- ❑ Notwithstanding Authorization or Requisition u/s 132 or 132A in more than one name, assessment shall be made separately in name each of such persons.
- ❑ Therefore the scope of authorization has been widened by proposing the retrospective amendment w.e.f. 01/04/1976 by inserting a new section 292CC in the Income-tax Act.

Explanation

It is now provided that –

- ❑ It shall not be necessary to issue an authorization u/s 132 or make a requisition under section 132A separately in the name of each person;
- ❑ where an authorization u/s 132 has been issued or a requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons;
- ❑ notwithstanding that an authorization u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization or requisition.

Issue – Warrant of authorization not valid

- Issuance of authorization of search and seizure warrant in the absence of information in possession about assessee and without recording satisfaction about not producing relevant books of account is not valid. **Tejram Omprakash (HUF) vs Director of Income-tax (Investigation) [2013] 262 CTR 82 (Madhya Pradesh)**
- Where satisfaction in case of assessee was entirely based on a document which neither bore assessee's name nor was it related to him, issue of warrant and subsequent search and seizure proceedings were liable to be quashed. **Rajesh Rajora v. Union of India [2014] 220 Taxman 146 (Madhya Pradesh) (MAG.)(SLP dismissed vide SLP (Civil) No. 29358/2013)**

Issues.....

- Warrant of authorization u/s 132 could not be issued where money & documents were taken in possession by a Police Inspector.

However, he can take possession after requisition u/s 132A if the same is in custody of any other authority under any other law. **Ramesh Chander & Ors. Vs. CIT & Ors. (1974) 93 ITR 244 (P & H)**. Further approved by Hon'ble SC in **CIT vs Tarsem Kumar & Anr. (1986) 58 CTR 129(SC)**

- Banks can be searched in relation to a person against whom the warrant of authorisation has been issued. **Raghu Raj Pratap Singh v. ACIT [2009] 179 Taxman 73 (All.)**
- Search on Partnership Firm is not valid on the basis of search warrant in the name of Partner. **K.R. Modi & Co. Vs. DDIT (Inv.) (2005) 272 ITR 587 (Cal.)**

Issues.....

- Warrant without information is invalid. **Suvidha Association v. Addl. DIT (Inv.) 320 ITR 461(Guj.) 2010**
- Authorization issued in absence of eventualities mentioned in clauses (a) to (c) of section 132(1). **Parma Ram Bhakar v. Dy. CIT [2013] 39 taxmann.com 119 (Jodhpur - Trib.)**
- Single warrant of authorization may be issued u/s 132 for a group of concerns. **Jose Cyriac vs CIT [2011] 336 ITR 241 (Kerala)**
- Assessment orders u/s 153A cannot be passed in the absence of a search authorization. **CIT v. Ramesh D. Patel [2014] 42 taxmann.com 540 (Gujarat)**
- A search action u/s 132(1) has to be 'person specific' and when admittedly the names of the assesseees did not figure in the warrant, the Assessing Officer had committed an apparent error to assess the assesseees. **CIT vs Smt. Umlesh Goel [2016] 74 taxmann.com 37 (Rajasthan)**

Ground Rules for Search

Ground Rules for Search...

The union finance minister, Mr. Vishwanath Pratap Singh announced these ground rules for searches and seizure carried out under the Income Tax Act, The Customs Act, Excise Act, and the Foreign Exchange Regulations Act (FERA).

- ❑ **Competent Authority** : Before execution of search, a search warrant (formal order) is required to be passed by the competent authority.

Information from external sources

- Informers (Prosecution u/s 182 of the IPC if allegation proved false.)
- Newspaper.
- Magazines.
- Publication

Internal sources:

Suo-moto on the basis of records and investigation.

Ground Rules for Search...

- ❑ *Objectives of the Search:* Search & Seizure operation is only possible when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course.
- ❑ *Search Party:* Search party should be constituted of officer of a certain rank at least of ACIT or equivalent. The team should also include two respectable witness of the locality and technical persons like valuer.
- ❑ *Right of the person searched:* discussed later

Ground Rules for Search...

- ❑ **Examination:** Tax authorities examine the person searched on Oath, the statement is liable to be used against him. This statement is admissible as evidence. The purpose is to secure an explanation regarding the documents and evidence before he has an opportunity to concoct an explanation and fabricate evidence. He is not allowed the service of a lawyer at this stage.
- ❑ **Report to the Senior authority:** After the search, the search party has to submit a report to the senior authority like Collector, Comm., so that senior officials could judge the bona fide of the search and to exercise control over searches carried out.
- ❑ **Safeguards:** Sec. 136(2) of the Customs Act provides for deterrent punishment including imprisonment of the customs officer held responsible for vexatious searches. In excise and FERA such searches are punished by fine.

Ground Rules for Search...

- ❑ **Arrests**: Income Tax officers have no power to arrests.
- ❑ **Departmental Proceedings**: Income Tax Officers has to make a summary assessment within 120 days of the seizure and has to calculate the tax, interest and penalty. *[Sec. 132(5), but no such summary assessment required after 01.06.2002]*
- ❑ **Prosecution**: The complaint made by the tax department is treated as a personal criminal complaint as these offences under the Acts are treated as non cognizable.
- ❑ **Publicity**: The Search party will not make any statement to the press. If any, will be made by the head of the department and will be factual in nature.

Rights and Duties

- Income Tax Department
- Assessee
- Chartered Accountants

Income Tax Department - Rights

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 clause (i) where the keys thereof are not available. [**Section 132(1)(ii)**]
- ❑ **Search any person** who has got 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. **[Sec. 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)]**

In **Director General of Income Tax and Anr. vs Diamondstar Exports Ltd and Ors. [2006] 293 ITR 438**, Hon'ble SC has held that Jewellery and ornaments seized during an illegal search were to be returned to the owners as soon as possible, along with the interest at the rate of 8 per cent on the value of the seized items.

Income Tax Department - Rights

- ❑ Place marks of identification on any books of account 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 sec (1) of section 132.

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place 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 Sec. 132(1)/(1A) & 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 Sec. 132(1) shall be punishable with rigorous imprisonment which may extend to 2 years & shall also be liable to fine. [Sec.275A]

Restraint Order –
Sec. 132(3)

Income Tax Department - Rights

- ❑ **Restraint order, Section 132(3)**: Where it is not practicable to seize any material for any reason other than those specified in second proviso to S. 132(1) then in such a case the Authorized officer 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 such officer.

However serving of an order under s.s(3) shall not be deemed to be seizure under clause (iii) of s.sec.(1)

- ❑ **Limitation of Section 132(3), Section 132(8A)**: **W.e.f 01.06.2002** An order u/s 132(3) shall be valid up to 60 days from the date of the order.

The order u/s 132(3) cannot be challenged in writ proceedings.

Note: Person defaulting in Sec. 132(3) shall be punishable with rigorous imprisonment which may extend to 2 years & shall be liable to fine also. [Sec. 275A]

Issues- 132(3)....

- Order u/s 132(3) cannot be passed in respect of bank accounts passed through regular books of account
- without forming any belief and/or without any material to conclude that the amount deposited in the said Account is either wholly or partly undisclosed income of the petitioner.

Maa Vaishnavi Sponge Ltd. vs DGIT (Inv.) [2011] 339 ITR 0413 (Ori.)

M/s Visa Comtrade Limited vs Union Of India And Others [2011] 338 ITR 343 (Ori.)

- Order u/s 132(3) to be issued in name of person in immediate possession/control of relevant material found during the Search. **Mahaan Foods Ltd. vs Dy. CIT [2009] 312 ITR (A.T.) 0075 (ITAT – Del)**

Examination on Oath-
Sec. 132(4)

Income Tax Department - Rights

- ❑ **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.

Issues- 132(4)....

- Statement recorded at odd hours cannot be considered to be a voluntary statement. **Kailashben Manharlal Choshi v. CIT [2008] 14 DTR 257 (Guj.) & Shree Ganesh Trading Co.v CIT [2013] 30 taxmann.com 170 (Jharkhand)**
- A self-serving retraction, without anything more cannot dispel statement made under oath u/s 132(4). **CIT v. O. Abdul Razak 2012] 20 taxmann.com 48 (Ker.)**
- Additions made on the basis of Statement u/s 132(4) during the course of search proceedings is not justified where the Statement was retracted during the assessment proceedings and proper explanation and submissions were made to substantiate the retraction. **CIT Vs. Sunil Aggarwal, [2015] 379 ITR 367 (Delhi) Delhi High Court**
- All Persons present at the place of assesses during the course of search is not automatically covered by action under section 132. **CIT vs. Latika v. Waman [2005] 1 SOT 535(Mum.)**
- Its held that if statements recorded during search were corroborated by materials, there was no justification to reject statements. **CIT vs Kuwer Fibers (P.) Ltd [2017] 77 taxmann.com 345 (HC - Delhi)**

Issues- 132(4)....

- Mere voluntary disclosure of undisclosed income by assessee cannot form basis of addition if no evidence is detected in search. Fact that retraction of statement is late is irrelevant. **Chetnaben J Shah vs. ITO (Gujarat High Court) ITA No. 1437 of 2007 Date of Order 14-07-2016**
- Addition can be made only if any conclusive evidence exists on records **S K Bahadur v. Union of India through CIT, 2011-TIOL-104-HC-Del-IT & Asstt. CIT Janak Raj Chauhan [2006] 102 TTJ (Asr.) 316]**
- AO to collect more evidences if statement is not found correct. **CIT v. Ravindra Kumar Jain [2011] 12 taxmann.com 257 (Jharkhand)**
- Statements recorded during search is relevant UNLESS it is proved incorrect. **Bhagirath Aggarwal v CIT [2013] 31 taxmann.com 274 (Delhi)**
- Clear & Unambiguous Statement is binding. **Hotel Kiran vs ACIT, 82 ITD 453 [ITAT - Pune]**

*Presumptions regarding
ownership and control –
Section 132(4A)*

Presumptions regarding ownership and control – Section 132(4A)

- ❑ 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 true.

- ❑ that the signature and every other part of such books and other documents which purports 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, executed or attested by the person by whom it purports to have been so executed or attested.

Note: However such presumption is rebuttable and not a conclusive one, thus, have limited application.

Presumptions regarding ownership and control...

- ❑ The presumption with regard to the contents of the seized dairy is valid one and it is available to be raised u/s 132(4). **CIT vs Ambika Appalam Depot. [2012] 340 ITR 0497 (Mad).**
- ❑ Presumption u/s. 132(4A) was a rebuttable one and not a conclusive one it could not be applied in the absence of corroborative evidence **CIT vs. Ved Prakash Choudhary [2008] 218 CTR (Del.) 99 & Straptex (I) (P) Ltd. vs DCIT [2003] 79 TTJ 228 (ITAT Mumbai)**
- ❑ Presumption about noting and jotting in documents is not available u/s 132 (4A), Assessee liable to tax only on receipts proved to be income of assessee. **CIT vs D. K. Gupta [2009] 308 ITR 230 (Del.)**

Presumptions regarding ownership and control...

❑ *Biru Mal Pyare Lal vs ACIT - 74 TTJ 150 [ITAT – Chd.]*

The requirement of proving the genuineness of the cash credits appearing in the seized books of accounts cannot be set aside by the provisions of section 132(4A)

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

Presumption u/s 132(4A) is available only in regard to proceedings for search and seizure and for purpose of retaining assets u/s 132(5) and their application u/s 132B, and it is not available for any other proceeding except where it is provided that presumption under section 132(4A) would be available.

Income Tax Department - Duties

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.

Income Tax Department - Duties

- ✓ 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.

Assessee - Rights

Assessee - Rights

- ✓ To see the warrant of authorisation duly signed and sealed by the issuing authority.
- ✓ To make personal search of all members of the search party before the start of the search and on conclusion of the search.
- ✓ To verify the identity of each member of the search party.
- ✓ To insist on personal search of ladies being taken only by a lady, with strict regard to decency.
- ✓ To have at least two respectable and independent residents of the locality.

Assesseees - Rights

- ✓ 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 annexure.
- ✓ To have a **copy of any statement that is used against him** by the Department.

Assessee - Duties

Assessee - 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.

If the assessee 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.

Assessee - 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.
- ✓ 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.

Assessee- Duties

- ✓ **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.

Presence of Counsel

Presence of Counsel?

- ❑ The Counsel is entitled to advise and discuss the matter with client.
- ❑ The Counsel cannot obstruct the conduct of proceedings in any manner.
- ❑ Counsel cannot interfere in the recording of the statement.
- ❑ The counsel cannot suggest any answer. A person has a right of a counsel to appear in an enquiry or investigation. [*K.T. Advani v. State [1986] 60 Comp Cas. 603(Del.)*]

- ❑ In central Excise and customs matters, Court has held that it is advisable to permit presence of lawyers during interrogation, though they cannot be allowed active participation. [*Abdul Razak Haji Mohd. V. UOI [1986] 26 Taxmann 234 (Bom.), Anil G. Merchant v. Director of Revenue Intelligence [1987] 12 ECR 183 (Mad.)*]

Suggestions for 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 & identifiable Computer/folders.
- ✓ 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.

Practical Tips for handling
Search, Seizure & 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.

Important Instructions & Circulars

- Instruction regarding release of cash deposit in the PD Account – Instruction No. 11 of 2006, DT. 1st Dec., 2006
- Instruction No.– 7 dated 30-07-2003 Matters related to Search & Seizure
- Instruction no. 286/247/98_IT (Inv. –II) 2nd Feb., 1999 Release of assets disclosed in regular books of accounts maintained by assessee.
- Instruction No. 1916, dated 11/05/1994, Guidelines for seizure of jewellery and ornaments in the course of search.
- Instruction No. 1497 dt 13th January, 1983 – Opening of Lockers
- Circular F.No.7/16/69-IT(Inv.), dated 4-6-1970 - How to deal Promissory notes found during search.

Important Instructions & Circulars.....

- Instruction No. 994- CBDT F. No. 286 /37 /76-IT (Inv.), dated 31-7-1976
- Instruction No: 1180 Date of Issue: 1/6/1978 (to the extent applicable in current laws)
 - 1) Release of assets held as disclosed - order u/s.132(5):
 - 2) Title deeds of immovable properties.
 - 3) Tax liabilities in a firms case.
 - 4) Release of seized valuable assets under second proviso to section 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.

Presumption u/s 292C

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 in possession or control of any person in the course of a search or survey operation **[Inserted by Finance Act, 2008, w.r.e.f. 1/06/2002]** that:

- ❑ 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.

Presumption as to ownership. S. 292 C

- ❑ The signature and every other part of such books of account 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 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.

- ❑ *Surendra M. Khandhar vs ACIT & Ors. (2009) 224 CTR (Bom.) 409*
Assessee having failed to rebut the presumption u/s 292C , addition u/s 69 on the basis of documents seized from the possession of the assessee was rightly made by AO & sustained by the tribunal.

Presumption as to ownership. S. 292 C

- *Hemant Kumar Ghosh v. Asst. [2015] 59 taxmann.com 271 (Patna)*

Where during search and seizure, investments were found in name of assessee, presumption could only be that they formed part of unaccounted income of assessee and mere fact of producing affidavit of close relatives would not be sufficient explanation

Penalty Provisions where
search has been initiated

New Section 271AAB inserted w.e.f. 1st July, 2012 by Finance Act, 2012

S. No.	Particular	Quantum of penalty
1.	If additional income <u>is admitted during course of search</u>	Penalty would be 10% of Undisclosed Income.
2.	If additional income <u>is not admitted during course of search but is disclosed in return of</u> income filed after search	Penalty would be 20% of Undisclosed Income.
3.	<u>Other cases</u> (i.e. where the additional income is not admitted during course of search nor is disclosed in return of income filed after search)	Penalty would vary between 30% to 90%* of undisclosed income.

*Note: Penalty of 60% is leviable w.e.f. 01-04-2017 as Amended by Finance Act, 2016

Penalty on undisclosed income found during the course of search (w.e.f. 01/07/2012)

Particulars	Provisions of Penalty under Section 271AAA	Provisions of penalty under Section 271AAB
Period to which provisions shall apply.	Where search has been initiated between 01/07/2007 to 30/06/2012	where search has been initiated <u>on or after the 01-07-2012</u>
Rate of penalty	10% of the undisclosed income of the specified previous year.	Differential rates under different circumstances i.e. 10%, 20%, & 30 % to 90%* of the undisclosed income of the specified previous year.

***Note: Amended by Finance Act, 2016 to 60%w.e.f. 01-04-2017**

Penalty on undisclosed income.....

Particulars	Provisions of Penalty under Section 271AAA	Provisions of penalty under Section 271AAB
Circumstances under which penalty leviable.	<p>In all circumstances <u>except</u></p> <ul style="list-style-type: none"> • Where assessee in its statement recorded u/s 132(4) admits undisclosed income • Specifies and substantiates the manner in which such income has been derived • pays the tax, together with interest, if any, in respect of the undisclosed income. <p><u>Therefore penalty is NIL</u></p>	<p>Different circumstances are as under :</p> <p>a. <u>Penalty @ 10%</u></p> <ul style="list-style-type: none"> • Where assessee in its statement recorded u/s 132(4) admits undisclosed income • Specifies and substantiates the manner in which such income has been derived • pays the tax, together with interest and <u>furnishes the return of income</u> for the specified previous declaring such undisclosed income therein; • <u>on or before the specified date i.e. due date of return of income (139(1) or 153A as the case may be)</u>

Penalty on undisclosed income.....

Particulars	Provisions of Penalty under Section 271AAA	Provisions of penalty under Section 271AAB
Circumstances under which penalty leviable.		<p>b. <u>Penalty @ 20%</u></p> <ul style="list-style-type: none"> • Where assessee in its statement recorded u/s 132(4) does not admits undisclosed income • on or before the specified date i.e. ((139(1) or 153A as the case may be) <ul style="list-style-type: none"> ➤ declares such income in the return of income furnished for the specified previous year; and ➤ pays the tax, together with interest, if any, in respect of the undisclosed income.

Penalty on undisclosed income.....

Particulars	Provisions of Penalty under Section 271AAA	Provisions of penalty under Section 271AAB
Circumstances under which penalty leviable.		<p><u>c. Penalty @ 30% to 90%</u></p> <p>In cases not covered by the provisions of clauses (a) & (b) above.</p> <p>Note: Penalty of 60% is leviable w.e.f 01-04-2017 as Amended by Finance Act, 2016</p>
Applicability of Penalty u/s 271(1)(c).	Not applicable in respect of the undisclosed income referred to in sub-section (1).	<p>No Change, same as earlier</p> <p>Note: w.e.f. 01-04-2017, Penalty u/s 270A (penalty for underreporting or mis-reporting of income) also not leviable [Amended by Finance Act, 2016]</p>
Applicability of provisions of S. 274 and 275	Sections 274 & 275 shall, so far as may be, apply in relation to the penalty referred to in this section.	No Change same as earlier.

Issues...

- In terms of sec. 271AAA, AO has discretionary power to initiate penalty proceedings and, therefore, revisional order u/s 263 cannot be passed for directing the AO to initiate penalty proceedings. **Amarjeet Dhall v. CIT [2014] 46 taxmann.com 168 (Chandigarh - Trib.)**
- Penalty u/s 271AAA could not be levied on surrendered amount, if at the time of statement recorded u/s 132(4) no question was asked for the manner of earning income and income was assessed at returned income after considering the surrendered amount. **Sunil Kumar Bansal Vs. DCIT [2015] 62 taxmann.com 78 (Chandigarh - Trib.)**
- If the assessee admits the undisclosed income and specifies the manner in which such income has been derived, penalty u/s 271AAA cannot be imposed. **DCIT vs Nirmal Kumar Agarwal - [2016] 75 taxmann.com 266 (Jaipur - Trib.)**

Gems of Judiciary

Issues- Reasons to Believe

- Sec. 132 speaks of reason to believe and not reason to suspect or reason to doubt. **VISA Comtrade Limited v. Union of India [2011] 338 ITR 343 (Ori)**
- Reasons to believe need not be disclosed to the Assessee UNLESS the Validity of the Search has been challenged. **Kalpana bazar v. CIT (1990) 186 ITR 617 (Ker) &**
- The assessee is not entitled to be informed about the information/material/ reasons to believe for authorizing search before the question of their relevancy was decided by the Court. **Southern Herbals Ltd. v DIT (Inv.) (1994) 207 ITR 55(Karn.) & Dr. Pratap Singh v Dir. Of Enforcement (1985) 155 ITR 166 (SC)]**

Note: The retrospective amendments proposed in Section 132 regarding non-disclosure of 'reason to believe' or 'reason to suspect' will nullify the judicial pronouncements.

Issues- Reasons to Believe....

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- Authorities to have sufficient material to reasonably believe that action is required to be taken under provisions of Sec. 132(1). **Doctors X'Ray & Pathology Institute (P.) Ltd. VS. Director of Investigation, Kanpur [2010] 186 Taxman 480 (All.)**
- Information received regarding evasion of tax by making fake or exaggerated bills or that undisclosed income is received – Valid Reasons to Believe. **Genom Biotech.) Ltd vs. DIT (Invs.) [2009]180Taxman 395(Bom.)**
- High Court cannot go into question as to whether material available before authority concerned was adequate to prompt him to believe that a search was necessary. **Dr. P.G. Viswanathan v Director of Income-tax (Investigation) [2013] 30 taxmann.com 33 (Madras)**

Issues- Satisfaction Note

- Satisfaction note in search matters plays vital role in establishing that the search was in accordance with the provisions of Income Tax. **Spacewood Furnishers Pvt. Ltd. Director General of Income Tax (Inv.) [2012] 340 ITR 0393 (Bom.)** and reasons recorded before issuing warrant of authorisation need not be communicated to person against whom warrant is issued at that stage. **DGIT (I) v. Spacewood Furnishers (P.) Ltd [2015] 57 taxmann.com 292 (SC)**
- Combined satisfaction recorded can be said to be legally valid for initiating Search where several persons are searched. **M/s Jeet Construction Company vs ACIT IT[SS] Appeal No.26 (Del.) of 2011 [2012-TIOL-11-ITAT-Del]**

Issues- Validity of Search

- Clerical or Technical mistakes in the Panchnama cannot make the search invalid under law. **P.P. Jewellers (P) Ltd. and Ors. vs ACIT – [2006] 111 TTJ 187 [ITAT – Delhi] & MDLR Resorts (P.) Ltd. vs CIT [2014] 221 Taxman 83 (Delhi)(MAG.)**
- Allegation of Acceptance of Bribe by Income Tax Official would not invalidate search. **Kamal Khosla vs. Director of Income Tax: SLP (c.) Nos. 12242-43: [2003] 264 ITR 140 (St.) SLP rejected, (2003) 264 ITR 140 (St.)**
- Initiation of search on the basis of 'likelihood' of documents being found in respect of assessee is not justified. **Madhu Gupta v Director of Income-tax (Investigation) [2013] 30 taxmann.com 92 (Delhi)**
- If the assessment order which is based on the search operations is under challenge, the validity of the search proceedings can also be gone into by the Commissioner of Income Tax (Appeals). **Ess Dee Aluminium Ltd.& ETC Vs. Dy.DIT (Inv.) & Ors, Special Leave to Appeal (C) 15734-15735/2016, Date of judgement: 17-11-2016**

Issues- Validity of Search.....

- Search warrant issued in name of a dead person is invalid. **CIT vs. Rakesh Kumar, Mukesh Kumar [2009] 178 Taxman 224 (Punj. & Har)/ [2009] 313 ITR 305(P & H) & Hemendra Ranchhoddas Merchant v Director of Income-tax (Investigation [2012] 20 taxmann.com 219 (Bom.)**
- ITAT not competent to decide the validity of Search. **Promain Ltd. V. DCIT (2006) 281 ITR (AT) 107 (Del.) SB]**
- Notice issued u/s 131(1A) & 133(6) subsequent to search would not invalidate search. **Dr. Roop vs CIT, Meerut [2012] 20 taxmann.com 205 (All.) & Neesa Leisure Ltd. V Union of India through Secretary. [2011] 338 ITR 0460 (Guj.)**
- Mere mentioning of name in panchnama does not lead to a valid search. **J.M. Trading Corp. V. ACIT, [2008] 20 SOT 489 (Mum.)**
- Section 131(1A) do not require that before carrying out search proceedings u/s 132, a notice is required to be given to assessee. **Liberty Marine Syndicate (P.) Ltd. vs PCIT- HC OF ORISSA [2017] 77 taxmann.com 52 (Orissa)**

Issues- Continuity & Duration of Search

- Search must be continuous & the second or resumed search would be illegal in the absence of any credible reason. **CIT Vs. S. K. Katyal [2009] 308 ITR 0168 (Del).**
- A search u/s 132 should be continuous and if it is discontinued and thereafter resumed, then there must be a valid explanation for the gap. **CIT vs Sarb Consulate Marine Products P. Ltd. [2007] 294 ITR 0444 (Del.) [SLP dismissed/rejected]**
- If required, search and seizure can continue for days but at same time due regard to human dignity and value cannot be ignored. **Chief CIT v. State of Bihar Through The Chief Secretary [2012] 18 taxmann.com 70 (Pat.)**
- Very foundational facts and materials, not sustained in case of searched person, cannot be permitted to be used in case of person other than searched person for alleged undisclosed income and thereby allowing continuation of such proceedings. **Narvirsinh Parmar v. Asst. CIT [2014] 45 taxmann.com 466 (Gujarat)**

Issues on assets seized during course of search

- If assessee made an application under first proviso to section 132B(1)(i) for release of seized assets, then AO is directed to release the assets seized in search u/s 132 of an assessee within stipulated period of 120 days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed. **Mul Chand Malu (HUF) V. Asstt./ Dy. CIT [2016] 69 taxmann.com 437 (Gauhati) [Also refer Nadim Dilip Bhai Panjvani Vs. ITO [2016] 66 taxmann.com 124 (Guj.)]**
- S. 132B(4)(b)/ 240/ 244A entitles assessee to receive interest on cash appropriated during search even if refund is directed in appeal proceedings. **Chironjilal Sharma HUF Vs. Union of India & others, [2014] 360 ITR 237 (SC)**
- Assessee is entitled to Interest on refund of excess cash seized. **Sitaram vs CIT [2012] 341 ITR 549 (Bom.) Also see Anil Kedia v Settlement Commission of Income Tax & Wealth Tax [2012] 341 ITR 0613 (Mad.)**
- Since there is no outstanding demand of tax and penalty against the petitioner due to be recovered from her, there is no justification for detention of seized assets particularly jewellery, which includes her personal 'Stridhan' for which more than five years have lapsed by now. **Smt. Bhawna Lodha vs DGIT [2013] 31 taxmann.com 116 (Raj.)**

Other Issues

Other Issues...

- There should be nexus between information and person searched. **Harilal Shah V. CIT (2006) 281 ITR 199 (Gau.)**
- Assets in the possession of assessee engaged in money lending business, belonging to third person cannot be seized. **Alleppey Financial Enterprises vs ADIT (Inv.) & Anr., (1999) 236 ITR 562 (Ker.)**
- Disclosure subsequent to seizure of incriminating material is not voluntary. **Shardadevi P. Jhunjhunwala v CIT W. P. No. 428 of 1996 -[2010] 1 taxmann.com 92 (Bom.)**
- Action taken in public interest does not amounts to interference with public freedom. **Rajendran Chingaravelu v ACIT [2010] 186 Taxman 305 (SC)**
- It was held that gold jewellery acquired by assessee through gifts by relatives and family members over a period of four decades is justified as per prevailing customs. **Sushila Devi v. CIT [2016] 76 taxmann.com 163 (HC - Delhi)**

Other Issues....

- Documentary evidences to prevail over Oral Evidence. **CIT vs Omprakash K. Jain [2009] 178 Taxman 179 (Bom.) & First Global Stock broking (P) Ltd. vs ACIT 15 TTJ 173 (ITAT-Mum.)**
- Can the Auditors be forced to part with information of clients not related to search found in their laptops ? **The Apex Court in DIT (Inv.) vs S.R. Batliboi & Co. [2010] 186 Taxman 350 (SC) superseded the judgment of Hon'ble DHC in S R Batliboi & Co Vs DIT (Inv.) (2009) 315 ITR 137(Delhi)**
- Place of search need not belong to the searched person. **ACIT vs. Vinod Goel [2008] 111 ITD 70 (ASR)**
- Remedy even if surrender made in case no incriminating material found. **ACIT vs Janak Raj Chauhan [2006] 102 TTJ 316 ASR] & M. Narayanan & Bros. v. Asstt. CIT [2011] 13 taxmann.com 49 (Mad.)**

Other Issues....

- ❑ In case no material is found with regard to assessee's ownership of asset found in search, deeming provision in view of Explanation 5 to sec. 271(1)(c) could not be applied to presume deeming concealment so as to levy penalty. **ITO v. V.R. Rathish [2014] 46 taxmann.com 213 (Cochin - Trib.)**
- ❑ Search proceedings to be quashed where on very similar grounds, the search operations has been quashed in other case. **Dipen Laljibhai Mandalia vs Director General of Income-tax [2013] 217 Taxman 66 (Gujarat)(MAG.)**
- ❑ Civil court has no jurisdiction for search and seizure proceedings u/s 132. **Rakesh Kumar Agarwal vs Bansal Commodities [2013] 39 taxmann.com 136 (Delhi)**
- ❑ Where clear and cogent reasons had been assigned for re-transfer of assessments from one place to another, objections would be untenable. **Kuantum Papers Ltd.v. Union of India [2015] 57 taxmann.com 60 (P&H)**

Other
Miscellaneous Sections

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)*

*Section applicable of Code of
Criminal Procedure, 1973*

Code of Criminal Procedure, 1973.

S. No.	Section	Brief
1.	37	Public when to assist magistrate and police.
2.	38	Aid to person, other than police officer executing warrant.
3.	93	When search warrant may be issued.
4.	100	Regarding person in charge of closed place to allow search.
5.	102	Power of police officer to seize certain property.
6.	165	Search by Police Officer.
7.	166	When officer in charge of police station may require another to issue search warrant.

THANK YOU!!

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