

# “Mock Search”

(under Income Tax Act, 1961)

Presented By:-

Team – Voice of CA



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



Question &  
Answers??

# SET UP – I

Scene of Income Tax  
Office (Investigation)

Start

**20<sup>th</sup> October , 2015**  
**Office of Director of Income Tax (Inv.)**



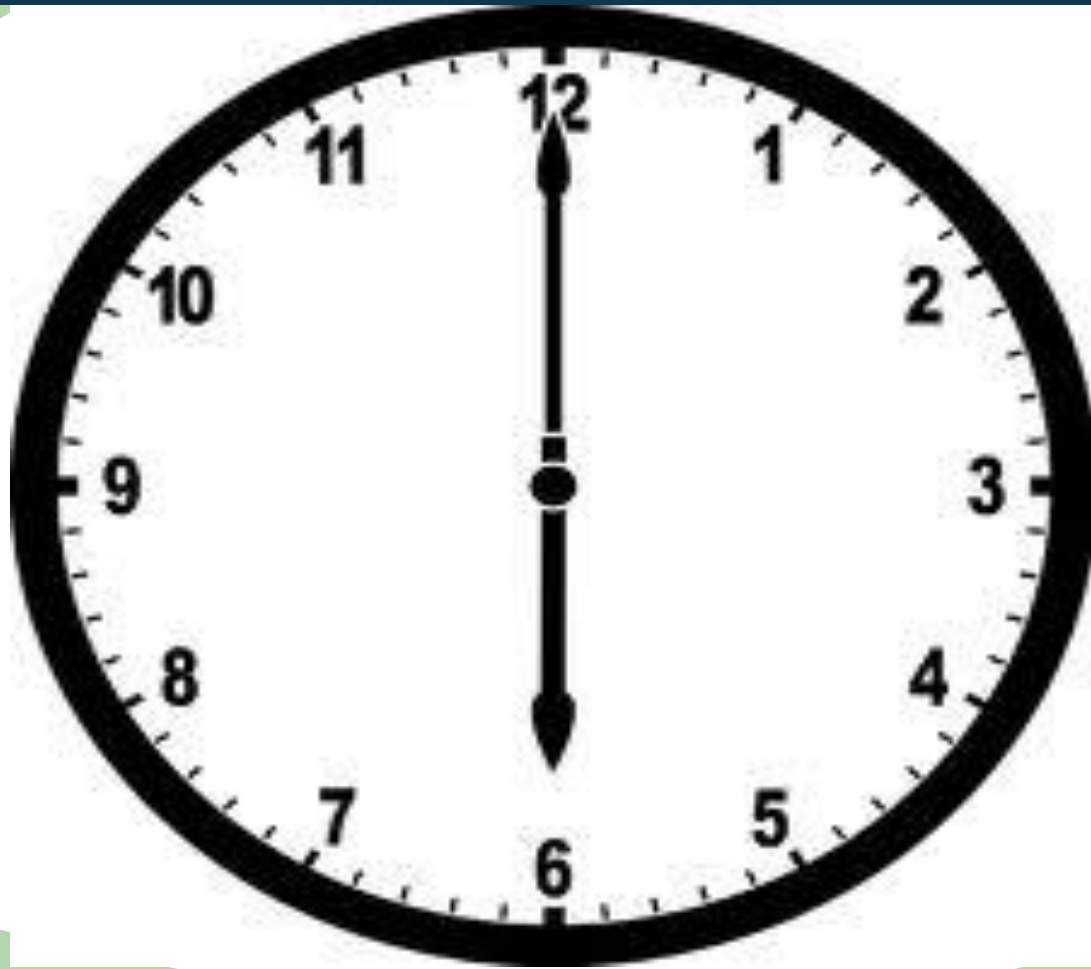
**A.M.**

"After few Days"

Genuineness of complaint  
is being verified

**27<sup>th</sup> November , 2015**

**Office of Dy. Director of Income Tax (Inv.)**



**A.M.**

**27<sup>th</sup> November, 2015 at Tilak Marg**



**A.M.**



# SET UP – I

Scene of Income Tax Office  
(Investigation)



Question &  
Answers??

Satisfaction Note \*\*

Mandatory before Search.

# Circumstances under which search can be carried - Instruction No. 7/2003, dt . 30/07/2003, relating to search and seizure.

- (i) (a) Searches should be carried out only in cases where there is credible evidence to indicate substantial unaccounted income/ assets in relation to the tax normally paid by the assessee or where the expected concealment is more than Rs.1 crore.
  
- (b) Search operation will also be mounted when there is evidence of hidden unaccounted fraud, gangsterism, fake currency, fake stamp papers and such other manifestations;
  
- (c) Taxpayers who are professionals of excellence should not be searched without there being compelling evidence and confirmation of substantial tax evasion.

# Circumstances under which search can be carried.....

## Contd.....

- (ii) Search to be authorized only by the concerned official, who will be accountable for the action initiated by the officers working under him. He should also ensure that all the work relating to search & seizure, like post-search inquiries, preparation of appraisal report and handing over of seized books of account, etc., should be completed by the Investigation Wing within a period of 60 days from the date on which the last of the authorization for search was executed.



Executions of  
Authorizations

# Executions of Authorizations

<u>S.NO.</u>	<u>PARTICULARS</u>	<u>FORM NO.</u>
1.	Authorizations under sec 132(1) other than proviso thereto by DGIT, DIT, CCIT, CIT, DDIT, DCIT.	<u>Form 45**</u>
2.	Authorization under proviso to Section - 132(1) by CCIT or CIT.	<u>Form 45 A**</u>
3.	Authorization under sub - section (1A) of S. 132 by CCIT or CIT.	<u>Form 45 B**</u>
4.	Authorisation under sub section (1) of section 132 A of the Income Tax Act, 1961 for requisitioning books of accounts etc.	<u>Form 45C**</u>

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

Do's / Don'ts & Rights / Duties –

Income Tax Officials



# Do's- Income Tax Officials

- To **show the authorization** immediately on entry, to any adult member in the premises and take his signature along with date and time.
- To show their **Identity Cards** and offer themselves for personal search and recording the fact of the personal search separately.
- To ensure that all the **exit points** of the premises are fully covered to prevent any possibility of throwing away of any material etc.

# Do's- Income Tax Officials

- To immediately take **control of all the telephones** including Mobile Phones, Fax Machines.
- To conduct the search in the presence of at least 2 **witnesses**. (Rule 112 (6) of Income Tax Rules, 1962 )
- **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.

# Don't- Income Tax Officials

- To avoid using the items of personal use of the assessee like Bed, T.V. etc. and also avoiding making the private calls from the assessee's telephone.
- To decline the assessee's offer of food or refreshment politely in order to avoid any possible drugging.
- Not to leave the premises without informing the assessee.



Rights and Duties of  
Income Tax Officials



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**]

# 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)**: An order u/s 132(3) shall be valid up to 60 days from the date of the order.

**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.

# 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.

# Income Tax Department

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## 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**.

Do's / Don'ts & Rights /  
Duties - Assessee.



# Assessee's - Rights

- ✓ To see the warrant of authorisation duly signed and sealed by the issuing authority.
- ✓ 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.

# Assessee's - 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.

# Assessee's - Rights

- ✓ 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's - Duties

- ✓ To allow **free and unhindered ingress** into the premises.
- ✓ To **see the warrant of authorization and put signature** on the same.
- ✓ To **identify all receptacles** in which assets or books of account and documents are kept and to **hand over keys** to such receptacles to the authorized officer.
- ✓ To **identify and explain the ownership** of the assets, books of account and documents found in the premises.

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's - 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.

# Assessee's - Duties

- ✓ To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- ✓ Not to allow or encourage the entry of any unauthorized person into the premises.

# Assessee's - Duties

- ✓ **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.

Duties of Investigation  
Officers & Assessee during  
Search



# Duties of Investigation Officers while conducting search

- To give to the assessee or occupant of the premises **an opportunity for handing over the keys** of any room / receptacle and duly recording the fact of the non availability of the keys before restoring to break open the locks.
- 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.

# Duties of Assessee during Search

- To **identify and explain the ownership** of the assets, books of account and documents found in the premises.
- Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished u/s 191 of the Indian Penal Code.
- To **affix his signature** on the recorded statement, inventories and the Panchanama.

# Duties of Assessee during Search


- To **identify every individual in the premises and to explain their relationship** to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- **Not to 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.

# Duties of Assessee during Search

- Not to allow or encourage the entry of any unauthorized person into the premises.
- 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.
- To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
- To have a copy of the Panchanama together with all the annexure.

# Duties of Assessee during Search

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



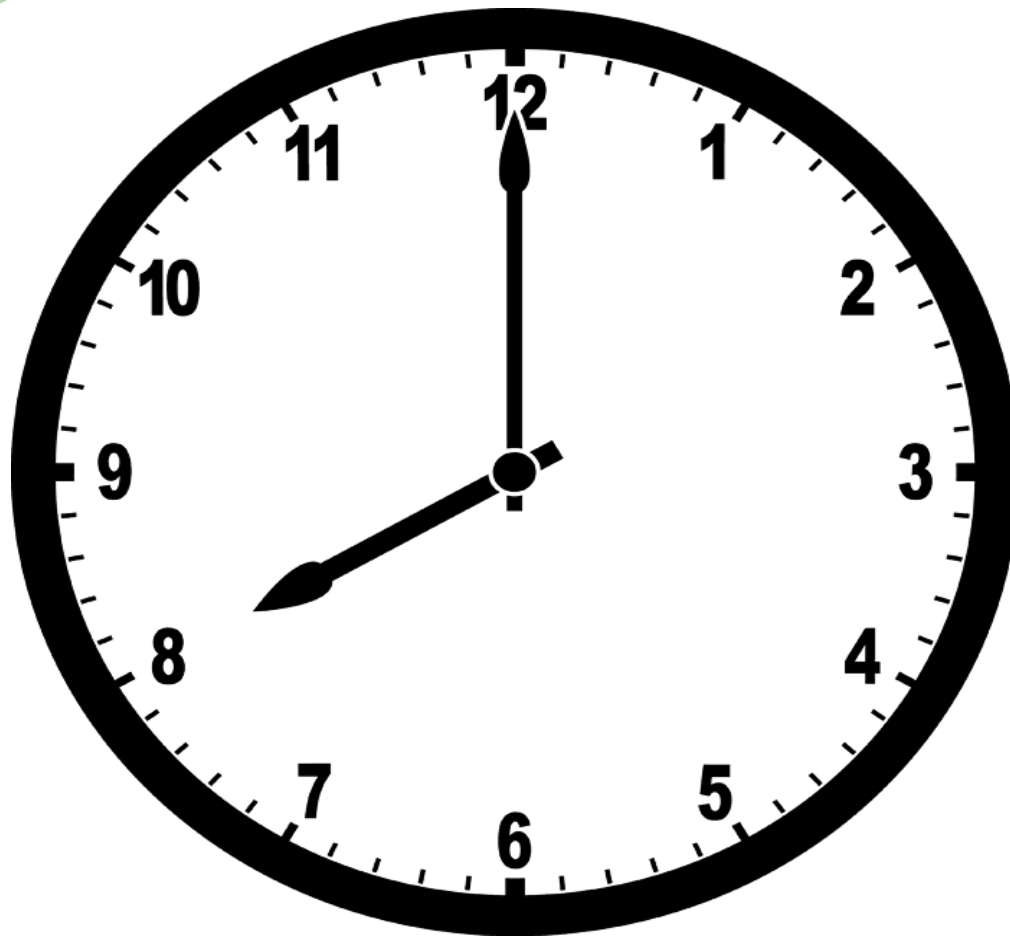
Question &  
Answers??

# SET UP – II

## Scene of Residence

27<sup>th</sup> November, 2015

Search team enters residence



**A.M.**



# Search Warrant

Form 45\*\* (for Residence)

# Witness Form\*\*

# 27<sup>th</sup> November, 2015 - Search Starts



**A.M.**

28<sup>th</sup> November, 2015

Search at Residence concluded



**A.M.**

# SET UP – II

Scene of Residence

End



Question &  
Answers??

Model Preliminary

Statement u/s 132(4)\*\*

# Panchnama

Performa of Panchnama\*\*



Preparation of Annexure  
& Panchnama.

ANNEXURE-A\*\*

ANNEXURE-C\*\*

ANNEXURE-J\*\*

ANNEXURE-O\*\*

Restraint Order u/s 132(3)\*\*

\*Note : Instruction No. 1916\*\* , dated 11-05-1994 - Specifies for Guidelines for seizure of jewellery and ornaments in the course of search



Question &  
Answers??

# SET UP - III

Scene of Office of Tax  
Consultant

Start

27<sup>th</sup> November, 2015

Survey at Office of Tax Consultant



**P.M.**

# SET UP - III

Scene of Office of Tax  
Consultant

End



Question &  
Answers??

# Survey Authorization\*\*



Survey under Income Tax  
Act, 1961\*\*

Impounding Order u/s 133A\*

# Statement of Tax Consultant\*\*




**Survey / Search on Authorized/  
Legal Representative**

# Survey / Search on Authorized/ Legal Representative...

There is no prohibition or immunity from covering a CA / AR along with his client at the time of search. The suggested course of action which a CA/AR should preferably recourse in such a situation is as under: -

- To keep all the files / documents related to such client separately at one place and never keep such documents which are known to the CA / AR as being of undisclosed nature.
- To store the Computer Data related to such client in a separate and identifiable in the Computer.
- 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 Authorised Officer for allowing him to contact the Authorising Authority for explaining his position and make a request for not to carry out search but to carry out survey only.



Question &  
Answers??

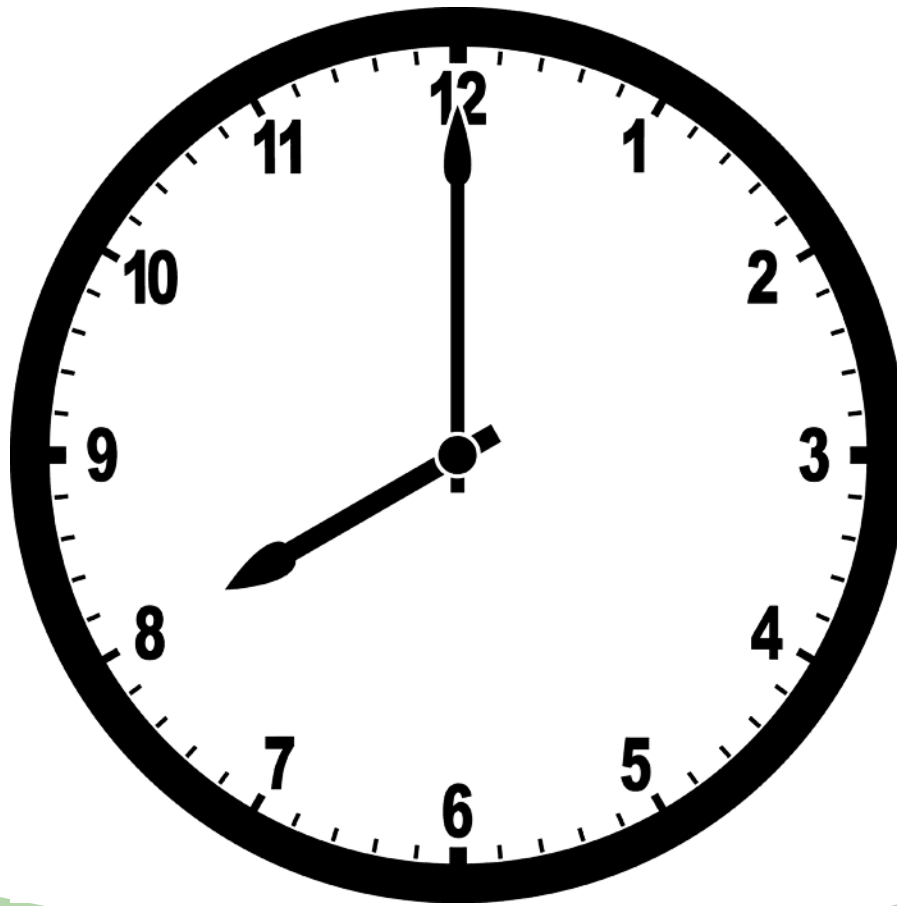
# SET UP - IV

Scene of Business Premises

Start

**27<sup>th</sup> November, 2015**

**Search team reaches business premises &  
waiting outside**

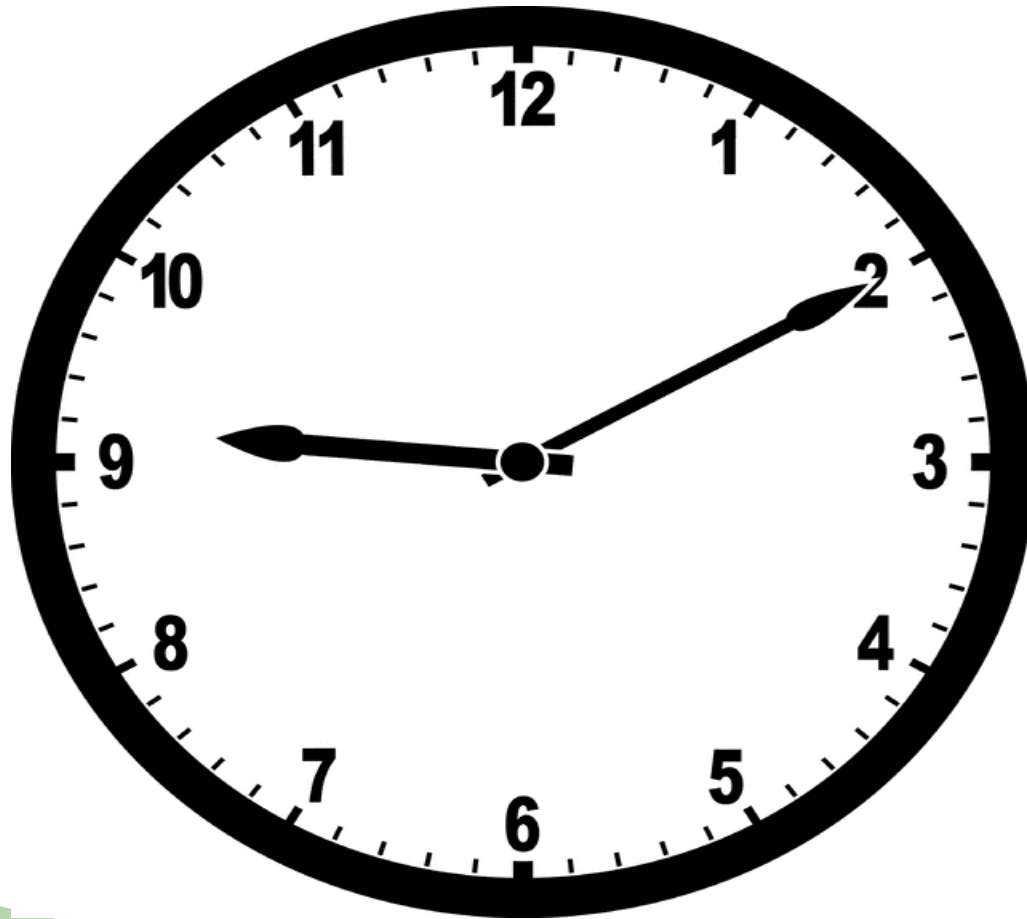


**A.M.**



**27<sup>th</sup> November, 2015**

# **Search team enters Business Premises**



**A.M.**

**28<sup>th</sup> November, 2015**

**Assessee comes at Business Premises**



**A.M.**

Confessional Statement u/s 132(4)\*\*

Penalty on Undisclosed Income  
found During the course of Search  
(w.e.f. 01/07/2012)

# Penalty on Undisclosed Income found During the course of Search (w.e.f. 01/07/2012)

Particulars	Provisions of Penalty u/s 271AAA	Provisions of penalty u/s 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 on or after the 1st day of July, 2012
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.

# 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
Circumstances under which penalty leviable.	<p>In all circumstances <u>except</u></p> <ul style="list-style-type: none"> <li>• Where assessee in its statement recorded u/s 132(4) admits undisclosed income</li> <li>• Specifies and substantiates the manner in which such income has been derived</li> <li>• pays the tax, together with interest, if any, in respect of the undisclosed income.</li> </ul> <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"> <li>• Where assessee in its statement recorded u/s 132(4) admits undisclosed income</li> <li>• Specifies and substantiates the manner in which such income has been derived</li> <li>• pays the tax, together with interest and <u>furnishes the return of income</u> for the specified previous declaring such undisclosed income therein;</li> <li>• <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></li> </ul>

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

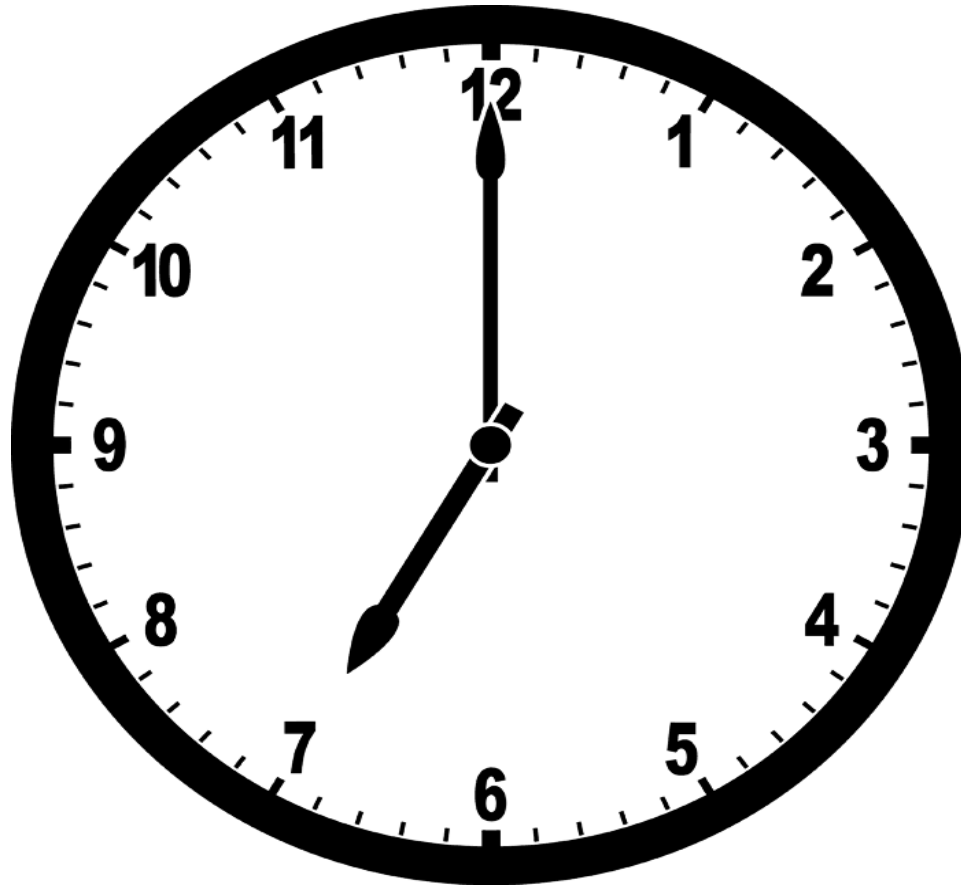
# Penalty on Undisclosed Income found During the course of Search (w.e.f. 01/07/2012)

Particulars	Provisions of Penalty under Section 271AAA	Provisions of penalty under Section 271AAB
Circumstances under which penalty leviable.		c. <u>Penalty @ 30% to 90%</u> In cases not covered by the provisions of clauses (a) and (b) above.
Applicability of Penalty u/s 271(1)(c).	Not applicable in respect of the undisclosed income referred to in sub-section (1).	No Change, same as earlier
Applicability of provisions of Sec. 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.



**28<sup>th</sup> November, 2015**

**Search at Business Premises concluded**



**A.M.**

# SET UP - IV

Scene of Business Premises

End



Question &  
Answers??

# SET UP – V

Scene of Operation of Locker at  
Lena Dena Vault

Start

**28<sup>th</sup> November, 2015**  
**Lena Dena Vault**



**A.M.**

# SET UP – V

Scene of Operation of Locker at  
Lena Dena Vault

End



Question &  
Answers??



Practical Tips for handling  
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-à-vis books of account 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.

# *Narrator*

CA Sidharth Jain

# *Directorial Board*

- Deepika Agarwal
- CA D N Bhardwaj
- CA Jyoti Kaur
- CA Anil Jain
- CA Apoorva Bhardwaj

# Artists

- **CA A.K. Srivastava**
- **CA M. Ganesan**
- **CA Adhir Samal**
- **CA Anil Singhal**
- **CA Monika Aggarwal**
- **CA Jayant Bothra**
- **CA Vijay Gupta**
- **Abhishek Garg**
- **Keshav Goyal**
- **Pulkit Dalmia**
- **Ravneet Kaur**
- **CA Vijay Kumar Gupta**
- **CA Mukesh Jain**
- **CA Karan Aggarwal**
- **Parasram Sharma**
- **Rajesh Gupta**
- **Ramkumar Sharma**
- **Neha Agarwal**
- **Lakshay Gupta**
- **Kunal Gupta**
- **Nupur Chauhan**
- **Ravneet Kaur**
- **Aman Nagpal**

Thank You...!!

*Presented By:-*

*Team – Voice of CA*