



**SEARCH, SEIZURE AND ASSESSMENT
PROCEEDINGS UNDER INCOME TAX ACT, 1961**

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Authorized officer to issue order for Search and Seizure

- a) The Director General of Income Tax, or
- b) The Director of Income Tax, or
- c) The Chief Commissioner of Income Tax, or
- d) The Commissioner of Income Tax, or
- e) Additional director or additional commissioner, or such Joint Director or Joint Commissioner of Income Tax as may be empowered by the Board.



Circumstances in which Search and Seizure can be conducted

- **132(1)(a)**
 - A person to whom a **summon u/s 131(1) or a notice u/s 142(1)** has been served to produce books of accounts or other documents has **failed or omitted to produce** or cause to be produced the said books of accounts or other documents, or,
- **132(1)(b)**
 - A person to whom a **summon u/s 131(1) or a notice u/s 142(1)** has **been or might be issued is not likely to produce** or caused to be produced any books of account or other document which will be useful for or relevant to any proceedings under the Act; or
- **132(1) (c)**
 - A person is in **possession of money, bullion, jewellery or other valuable article or thing** and such property **represents wholly or partly** income or property which **has not been disclosed or would not be disclosed.**

What are the powers of the officer to whom authority is given for search and seizure?

- **Enter and Search** any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of accounts, other documents, money, bullion, jewelry or other valuable article or thing are kept.
- **Break open** the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available.
- **Search any person** who
 - (a) has got out of, or
 - (b) is about to get into, or
 - (c) 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, jewelry or other valuable article or thing.

What are the powers of the officer to whom authority is given for search and seizure?

- 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 records, to afford the necessary facility to the authorized officer to **inspect all such books of account or other documents.**
- Seize any such books of account, other documents, money, bullion, jewelry or other valuable article or thing found as a result of such search. However, **w.e.f. 1-6-2003**, the authorized officer shall have **no powers to seize** any bullion, jewelry or other valuable article or thing being stock-in-trade of the business found as a result of search. **He shall make a note or inventory of such stock-in- trade of business.**
- Place **marks of identification** on any books of account or other documents or make or cause to be made extracts or copies therefrom.
- Make a **note or an inventory** of any such money, bullion, jewelry or other valuable article or thing.

Can search be authorized by authority other than jurisdictional authority?



Additional powers of the Authorized Officer

1. Deemed Seizure 132(1)
2. Restraint Order 132(3) with explanation and section 132(8A)
3. Power to requisition service of a police officer or officer of the Central Government sec 132(2)
4. Examination of any person on oath sec 132(4) with explanation
5. Presumption of ownership of books of accounts and assets and its truthfulness sec 132 (4A)
 - Section 292C - Presumption extended to regular provision
Amendment made in the budget
1. Retention of books of account and other documents 132(8)
2. Copies of extract of books of account and documents sec 132(9)
3. Handling over of seized books and assets to assessing officer sec 132(9A)

Powers, Procedures followed by the Authorized Officer with regards to ***Requisition of Books of Accounts***

- Requisition of books of account, etc taken into custody under any other law - ***Section 132A, Rule 112D***
- When such power be invoked
 - Requisition of books of account taken into custody under any other law
 - Belief that such books or documents will not be produced on return from the custody of the other authority
 - Assets taken into custody under any other law

Application of seized assets

- Application of seized or requisitioned assets - **Sec 132B**
- The assets seized shall be dealt with in the following manner
 - Seized assets may be applied towards existing and future liability
-132B(1)(i)
 - Release of seized asset after meeting existing liabilities in certain cases
132B(1)(ii)
 - Money seized may be applied for discharging the liabilities (sec **132B(1)(ii)**)
 - Assets other than money may also be applied to discharge liabilities
132B (1)(iii)
 - return of excess assets seized **section 132B(3)**
 - Interest to be paid at the rate of 1/2% p.m. or part of the month non seized money - **section 132B(4)**
 - Anil Kedia v. Settlement Commissioner of Income-tax and Wealth-tax (2012) 341 ITR 613 (Mad.)(High Court)

Certain Key Points:

1. Certain ground rules for searches and seizures carried out by the authorities under this and other Acts have been announced (1986) 159 ITR 1 (J) . Challiah Committee recommendations on search and seizure provisions. (Extract in Iyengar book pg. 7383)
2. Instruction No.1916 dated 11.5.1994 guidelines for seizure of jewellery and ornaments in the course of search - Smt Pati Devi vs. ITO (1999) 240 ITR 727 (Kar)

Certain Key Points (Contd.):

3. Stock in trade of business cannot be seized during search and seizures operations conducted on or after 1st June, 2003. (Circular No.7/2003 dated 5.9.2003 (2003) 263 ITR 61 (St.) .There is no provision for sealing of the business premises either under sec. 132 or section 133A. (***Shyam Jewellers vs. Chief Commissioner (Admn. (1992) 196 ITR 234 (All)***)
4. Power under the section 132 cannot be exercised to seize an asset once the asst is completed for purpose of recovery of the tax .
Chogi (K) vs. Syed Abdulla Bafakky Thangal (1980) 123 ITR 435 (SC)

Certain Key Points (Contd.):

5. During search statement should not be extracted,
 - ***F.No.286/2/2003-IT (Inv) dated 10.3.2003.***
 - ***Mumbai ITAT in A.C. Cr. 5(7) vs. L.A. Pandya ITA No. 4417 to 4420/M/97, Bench “H” Dated 31/5/2004.***
 - ***Jagmohan Singh Arora vs. DCIT 101 TTJ 682 (689) (Mum)***
 - ***Vinod Solanki vs. UOI (2009) (233) ELT 157 (SC).***
 - ***CIT vs. O. Abdul Razak (2013) 350 ITR 71 (Ker)***
 - ***In case of survey, CIT vs. S. Khader Khan (2012) 79 DTR 184 (SC)***
5. Presence of chartered accountant or lawyer
 - ***Nandini Satpathi vs. P.L. Dari AIR 1978 SC 1025.***

Certain Key Points (Contd.):

- The assessing officer must have a ***reason to believe*** on the basis of information received, that
 - the person, ***whether or not a notice*** has been served on him,
 - is ***not likely to produce his books***, etc.
 - in such a case, the ***basis is that the person will suppress books of account and other documents which may be useful and relevant to an income tax proceedings.***

Certain Key Points (Contd.):

Is the assessee entitled to a copy of reasons recorded for issuing a search warrant?

- *(SOUTHERN HERBALS LTD v DIT (INVESTIGATIONS) (1994) 207 ITR 55 (KAR).*
- *(Dr. PRATAP SINGH v DIRECTOR OF ENFORCEMENT (1985) 155 ITR 166 (SC)*

Whether the authorizing authority has to prove the basis of belief?

–KUSUM LATA v. CIT (1989) 180 ITR365 (RAJ)

WHETHER TO CHALLENGE SEARCH IN WRIT

- If the assessee believes that search is illegal or irregularity is involved and the condition required u/s. 132 are not fulfilled he can do so by challenging it in writ petition within reasonable time
- Some cases
 - Human Rights
CCIT vs. State of Bihar 71 DTR 268 (Patna)
 - Satisfaction
Space Wood Furnishers Pvt. Ltd. (2012) 340 ITR 393 (Bom)

WHETHER TO CHALLENGE SEARCH IN WRIT

- Strict compliance of the statutory condition required
 - ***Ganga Prasad Maheshwari vs. CIT (1983) 139 ITR 1043***

- The formation of the '**reason to believe**' by the authorize officer must be apparent. The belief so recorded must clearly show whether the belief falls under clause (a), (b) or (c) of sec. 132(1).
 - ***UOI vs. Ajit Jain (2003) 260 ITR 80 (SC)***
 - ***L.R. Gupta vs. UOI (1992) 194 ITR 32 (Del.)***
 - ***Diamond Star 278 ITR 36 (Bom) Affirmed (293 ITR 438 (SC)***
 - ***Against Genom Biotech P. Ltd vs. CIT (2009) 224 CTR 270 (Bom) Information with Dept. that the Petitioner was evading tax.***

PREREQUISITE CONDITIONS [SUB-SECTION (1)]

1. Information' must not be imaginary or invalid
 - *Kusum Lata vs CIT [1989] 180 ITR 365 (Raj.)*.
1. There must be 'reason to believe', and not 'reason to suspect'
 - *VISA Comtrade Ltd. v. Union of India[2011] 201 Taxman 413 (Ori.)*.
1. 'Information' must have rational connection with 'belief about undisclosed income'
 - *Dr. Nand Lal Tahiliani v. CIT[1988] 170 ITR 592 (All.)*.
1. Estimate of informer cannot tantamount to information
 - *Dr. Nand Lal Tahiliani v. CIT[1988] 170 ITR 592 (All.)*.
1. Belief must be *bona fide*
 - *Kusum Lata vs CIT [1989] 180 ITR 365 (Raj.)*.
1. Standard of living cannot form the basis
 - *Dr. Nand Lal Tahiliani v. CIT[1988] 170 ITR 592 (All.)*.

PREREQUISITE CONDITIONS [SUB-SECTION (1)]

7. Belief must not be based on anonymous information
 - *Pawan Solvent & Chemicals v. CIT [1987] 166 ITR 67 (Pat.)*.
7. Anonymous information cannot always be ignored
 - *Narayan R. Bandekar v. Second ITO [1989] 177 ITR 207 (Bom.)*
7. Justification must exist
 - *Ganga Prasad Maheshwari v. CIT [1983] 139 ITR 1043 (All.)*.
7. Belief must relate to non-disclosure of income
 - *Gulab & Co.v.Supdt of Central Excise (Preventive) [1975] 98 ITR 581 (Mad.)*.
7. Mere doubt cannot be the basis
 - *L.R. Gupta v. Union of India[1991] 59 Taxman 305 (Delhi)*
7. Bias
 - *Union of India v. Vipin Kumar Jain [2003] 260 ITR 1 (SC)*.

PREREQUISITE CONDITIONS [SUB-SECTION (1)]

13. Mere intimation from CBI or Police will not suffice

- *Ajit Jain v. Union of India [2000] 242 ITR 302 (Delhi) affirmed by SC in Union of India v. Ajit Jain [2003] 260 ITR 80 (SC).*

13. In case of flourishing business

- *Mahesh Kumar Agarwal v. Dy. Director of Income-tax [2003] 260 ITR 67 (Cal).*

13. Whether CAG's Report constitutes 'information' under section 132(1)

- *MS. Associates v. Union of India [2005] 275 ITR 502/147 Taxman 172 (Gauhati).*
- **Contra** : *Sikkim Subba Associates v. Union of India [2005] 147 Taxman 250/276 ITR 456 (Sikkim).*

Judicial principles for exercise of powers

- The principles regarding the scope of powers under section 132 as emerging from various judgments are as follows :-
 - The authority must be in possession of the information and must form an opinion that there is reason to believe that the article or property has not been or would not be disclosed for the purposes of the Act.
 - The information must be something more than mere rumour or gossip or hunch.
 - The information must exist before the opinion is formed.

Judicial principles for exercise of powers

- The authorised person must actively apply his mind to the information in his possession and shall form opinion whether there is reason to believe or not. The opinion must be formed on the basis of the material available at that time.
- The opinion must be based on the material which is available and it should not be formed on the basis of extraneous or irrelevant material.
- The formation of opinion shall have rational connection and bearing to the reasons for such opinion. The formation of opinion should be based on active application of mind and be *bona fide* and not be accentuated by *mala fide*, bias or based on extraneous or irrelevant material. The belief must be *bona fide* and cogently supported. The Courts have further held that the existence or otherwise of the condition precedent is open to judicial scrutiny

Judicial principles for exercise of powers

- The Courts would examine whether the authorised person had material before it on which he could form the opinion whether there is rational connection between the information possessed and the opinion formed. However, the Court would not sit in appeal over the opinion formed by the authorised person if the authorised person had information in his possession and the opinion formed is on the basis of such material. The Court would not examine whether the material possessed was sufficient to form an opinion.
- The Court cannot go into the question of aptness or sufficiency of the grounds upon which the subjective satisfaction is based
- If the belief is *bona fide* and is cogently supported, the Court will not interfere with or sit in appeal over it -**Prabhubhai Vastabhai Patel v R.P.Meena [1997] 226 ITR 781 (Guj.)**.

Validity of satisfaction note

- Validity of satisfaction note cannot be subject matter to be decided by ITAT.
- Illegality of search can be decided by High Court / Supreme Court in writ jurisdiction.
 - *Dr. Pratap Singh vs. Director of Enforcement* (1985) 155 ITR 166 (SC)
 - *Promain Ltd vs. DCIT* 281 ITR (AT) 107 (Del) (SB)
- Validity of search: Irregularity during search does not make the search illegal
 - *CIT vs. Tarsem Kumar* (1986) 161 ITR 505 (SC)
 - *ITO vs. Seth Brothers* (1969) 74 ITR (SC)
 - *CIT vs. Dr.Nandlal Tahilani vs. CIT* (1988)172 ITR 627(SC)

Can material obtained during illegal search be utilized for the purpose of an ordinary assessment?

- The materials obtained during a search or seizure illegally or irregularly conducted can nevertheless be utilized for the purpose of an ordinary assessment.
 - *POORANMAL v DIRECTOR OF INSPECTION (INVESTIGATION), INCOME TAX (1974) 97 ITR 505 (SC)*

JUDICIAL POSITION IN OUR COURTS

- Search does not get invalidated on allegation of bribery as affirmed in ***Kamal Khosla v Director of Income Tax (Investigation) 258 ITR 43***
- In case where the search officers dump documents and articles in particular place and seal it, so that they could examine whether they could seize it or not at their leisure, they **may not be within their rights** as held in ***Dr. C. Balakrishnan Nair v CIT 237 ITR 70***
- Where the CIT had authorized a search merely on an intimation from CBI without any effort to ascertain the correctness of the allegation of money or other assets or primary verification the court held the search was invalid, ***Ajit Jain Vs Union of India 242 ITR 302***

JUDICIAL POSITION IN OUR COURTS

- In ***Ram Kumar Dhanuka v Union of India 252 ITR 205***, the court has held that non-residents are not immune from the reach of powers of search and seizure.
- Power to arrest denied in ***L.R.Gupta v Union of India 194 ITR 32***
- It would **not be correct for the search officers to seize assets not belonging to the assessee** where there was explanation as to the ownership of such assessee as held in ***Alleppey Financial Services V ADIT 236 ITR 562***
- Immovable property cannot be seized held in ***Bapurao v ADI 247 ITR 98***, followed ***Sardar Parduman Singh v Union of India 166 ITR 115***

CONSTITUTIONAL VALIDITY

- Provisions are constitutionally valid
 - *Pooran Mal v. Director of Inspection (Investigation)* [1974] 93 ITR 505 (SC);
 - *Bhupendra Ratilal Thakkar v. CIT* [1976] 102 ITR 531 (SC).
- Search and seizure vs. Human rights protection
 - *Chief CIT v. State of Bihar Through The Chief Secretary* [2012] 205 Taxman 232 (Patna).
- Interrogation till late night amounts to “torture” & violation of “human rights”- Officers are held liable for to pay compensation from their salary.
 - *CCIT v. State of Bihar , Through Chief Secretary (Rajendra Singh)* (2012) 205 Taxman 232/ 71 DTR 268/ 250 CTR 304r (Patna)(High Court)

SCOPE OF POWERS

- **Search & Seizure vs. Public inconvenience**
 - *Rajendran Chingaravelu v. R.K. Mishra, Additional Commissioner of Income-tax(2010) 320 ITR 1 (SC)*
- **No prior notice is necessary**
 - *Lit Light & Co. v. CIT [1982] 136 ITR 513 (All.); V.K. Jain v. Union of India [1975] 98 ITR 469 (Delhi).*
- **Officers have the right to use reasonable means to remove obstructions or resistance**
 - *Matajog Dobey/Nand Ram Agarwala v. H.C. Bhari [1955] 28 ITR 941 (SC).*
- **An error of judgment in seizing a document or long duration of search are not relevant**
 - *Pooran Mal v. Director of Inspection (Investigation) [1974] 93 ITR 505 (SC).*

SEARCH WARRANT [SUB-SECTION (1)]

- General authorisation will suffice
 - *ITO v. Seth Bros* (1969) 74 ITR 836 (SC)
- Blank warrants are illegal
 - *Jagmohan Mahajan v. CIT* [1976] 103 ITR 579 (Punj. & Har.);
 - *Manmohan Krishan Mahajan v. CIT* [1977] 107 ITR 420 (Punj. & Har.).
- Warrant against group of concern
 - *Jose Cyriac v. CIT* [2011] 336 ITR 241 (Ker.).
- Irrelevant portions in the warrant must be struck out
 - *Dwarka Prosad Agarwalla v. Director of Inspection* [1982] 137 ITR 456 (Cal).

SEARCH WARRANT [SUB-SECTION (1)]

- Non-issuance of warrant of authorization to assessee and absence of its service upon him does not vitiate search. Warrant of authorization can be issued in more than one name
 - *Raghu Raj Pratap Singh v. ACIT [2008] 307 ITR 450 (All.)*.
- If the search warrant is in joint names, an assessment in individual capacity is void
 - *CIT vs. Vandana Verma (Allahabad High Court)*
 - *As the search warrant was issued in the joint names of the assessee and her spouse, it means that the officer had reason to believe that the undisclosed assets and income were held jointly. If so, it is not open for the AO to assess the assessee individually on the basis of the assets and documents seized during the course of search in pursuance to the said warrant but the **assessment ought to have been only in the capacity of AOP or BOI***

Amendment in 292CC

- It **shall not be necessary** to issue an authorization under section 132 or make a requisition under section 132A **separately in the name of each person**;
- Where an authorization under section 132 has been issued or a requisition under section 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 under section 132 has been issued or requisition under section 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.**

292CC

- Authorization in joint names-**In view of section 292CC** with retrospective effect from 1st April, 1976, authorization in joint names was **held to be valid** , and matter was set aside to Commissioner (Appeals) to decide the appeal on merits.(S. 292CC)
 - *CIT v. Devesh Singh (2012) 252 CTR 356 / 76 DTR 403(FB.) (All.) (High Court)*
 - *CIT v. Yogendra Singh ((2012) 252 CTR 356 / 76 DTR 403(FB.) (All.) (High Court)*
- Warrant of authorization which had been issued in the name of **dissolved firm as well as in the name of assessee and his wife cannot be said to be invalid.** (Art 226)
 - *Hemedra Ranchhoddas Merchant v. DIT (2012) 206 Taxman 596 / 71 DTR 361 / 250 CTR 229 (Bom.)(High Court)*

SEIZURE OF ASSETS [SUB-SECTION (1)]

- **Money in custody of other departments cannot be seized**
 - *ITO v. Bafna Textiles* [1987] 164 ITR 281 (SC)
 - *CIT v. Tarsem Kumar* [1986] 161 ITR 505 (SC)
- **Immovable property cannot be seized**
 - *CIT v. M.K. Gabriel Babu* [1991] 188 ITR 464 (Ker.)/
 - *Bapurao v. Asstt Director of Income-tax* [2001] 247 ITR 98 (MP).
- **Assets/money known to the department as existing cannot be seized**
 - *L.R. Gupta v. Union of India* [1991] 59 Taxman 305 (Delhi)
- **Seizure cannot be made after completion of assessment**
 - *K. Choyi v. Syed Abdulla Bafakky Thangal* [1980] 123 ITR 435 (SC).

SEIZURE OF ASSETS [SUB-SECTION (1)]

- **Assets cannot be realised and converted into cash**
 - *Dheer Singh v. Asst. Director or Income-tax [1997] 90 Taxman 392 (All.)*
 - *Smt. Bimla Singh v. Chief CIT 1997 Tax LR 873 (Pat.)*.
- **CHARTERED ACCOUNTANT'S CLIENT RECORDS**
 - *In terms of section 132(1)(iib) revenue is **not entitled to demand an unrestricted access to and; or right to acquire electronic records present in laptops that belong to auditor of assessee and not to assessee himself, including electronic records pertaining to third parties unconnected with assessee***
 - *S.R. Batliboi & Co. v. Department of Income-tax (Inv.) [2009] 315 ITR 137(Delhi)*.

LEGALITY OF SEARCH

- **General**
 - *Prabhubhai Vastabhai Patel v. R.P. Meena* [1997] 226 ITR 781 (Guj.).
- **Illegality of search cannot vitiate evidence collected**
 - *Dr. Partap Singh v. Director of Enforcement* [1985] 155 ITR 166 (SC).
- **Delayed issue of notice cannot invalidate search**
 - *ITO v. Seth Bros* (1969) 74 ITR 836 (SC)
- **Omission to place identification marks cannot make search *mala fide***
 - *ITO v. Seth Bros* (1969) 74 ITR 836 (SC)

LEGALITY OF SEARCH

- **Associating outsiders cannot render search *mala fide***
 - *Hindustan Metal Works v. C/I* [1968] 68 ITR 798 (All.).
- **Enormity of search party is not a valid objection.**
 - *Subir Roy v. S.K. Chattopadhyay* [1986] 158 ITR 472 (CaL).
- **Search cannot be resumed after a gap of 14 days**
 - *Dr. C. Balakrishnan Nair v. CIT* [1999] 237 ITR 70 (Ker.).

RESTRAINT ORDER [SUB-SECTION (3)]

- **Cancellation of order**
 - *Restraint order cannot be cancelled or renewed from time to time - CITv. Sandhya P. Naik [2002] 253 ITR 534 (Bom.).*
- **Reasons for not effecting seizure must be recorded**
 - *B.K Nowlakha v. Union of India [1991] 192 ITR 436 (Delhi).*
- **'Practicable' means 'for some good and valid reason'**
 - *B.K Nowlakha v. Union of India [1991] 192 ITR 436 (Delhi).*
- **Mere doubt or uncertainty will not suffice**
 - *OmParkash Jindal v. Union of India[1976] 104 ITR 389 (Punj.&Har.);*
 - *Sriram laiswalv. Union of India [1989] 176 ITR 261 (All.)*

EXAMINATION ON OATH [SUB SECTION (4)]



- **Purpose is limited to seeking explanation or information**
 - *R.R. Gavit v. Smt. Sherbanoo Hasan Daya* [1986] 161 ITR 793 (Bom.).
- **Person cannot be restrained from attending to his normal duties, after his statement is recorded**
 - *L.R. Gupta v. Union of India* [1991] 59 Taxman 305 (Delhi).
- **Documents cannot be put in almirah and sealed**
 - *Dr. C Balakrishnan Nair v. CIT* [1999] 237 ITR 70 (Ker.).

PRESUMPTION AS TO OWNERSHIP [SUB-SECTION (4A)]

- Presumption is relevant only for summary adjudication
 - *Pushkar Narain Sarraf v. CIT [1990] 183 ITR 388 (All.)*.
- Presumption is rebuttable
 - *CIT v. S.M.S. Investment Corporation (P) Ltd. [1994] 207 ITR 364 (Raj.)*.
- Presumption is not available for framing assessment
 - *PR. Metrani v. CIT [2006] 157 Taxman 325 (SC)*.
- Section 292C amended to overcome this decision.

RETENTION OF BOOKS BEYOND 30 Days (earlier 180 days) [SUB-SECTION (8)]

- **Reasons for retention must be communicated to aggrieved party**
 - *CIT v. Oriental Rubber Works/Bhikam Chand Sethi/ C.K. Wadhwa/Chandra Nath Banik [1984] 145 ITR 477 (SC).*
- **Approval must be obtained before expiry of time-limit**
 - *Metal Fittings (P.) Ltd. v. Union of India[1983] 141 ITR 758 (Delhi).*
 - *There cannot be a gap of a single day because section 132(8) only allows extension of time and not a fresh retention –Survir Enterprises v. CIT [1986] 157 ITR 206 (Delhi).*

RETENTION OF BOOKS BEYOND 30 Days (earlier 180 days) [SUB-SECTION (8)]

- **Commissioner cannot grant *ex post facto* approval**
 - *Sampatlal&Sons v. CIT [1984] 150 ITR 191 (MP);*
 - *Hanuman Pershad Ganeriwala v. Director of Inspection [1974] 93 ITR 419 (Delhi).*
- **Books cannot be retained without prior approval**
 - *Nutan Sahkari Avas Samiti Ltd. v. Director of Income-tax (Investigation) [1994] 208 ITR 843 (All.).*
- **Books can be returned pursuant to assessee's undertaking**
 - *Director of Inspection v. K. C. & Co. [1990] 185 ITR 475 (J & K).*

INSPECTION OF RECORDS BY ASSESSEE [SUB-SECTION (9)]

- **Assessee should not be prevented from inspecting and making out copies**
 - The authorised officer has no jurisdiction to refuse the inspection or the making out of copies or taking of extracts from the books of account or other documents to the person from whom they are seized
 - **Ramesh Chander v. CIT [1974] 93 ITR 244 (Punj. & Har.).**

REVENUE AUTHORITY CANNOT REALIZE ASSETS AND CONVERT THEM INTO CASH

- Section **132** does not confer any authority on ITO to realize assets and convert them into cash. Therefore, a revenue official cannot compel bank to encash fixed deposit and make over proceeds to him
 - Windson Electronics (P.) Ltd v. Union of India[2004] 141 Taxman 419 (Cal.).

SURVEY CONVERTED TO SEARCH

- **Conversion of survey** into search without application of mind held to be invalid consequently all proceedings including the impugned assessment order held to be null and void
 - *Badri Ram Choudhary v. ACIT (2012) 67 DTR 107/145 TTJ 7 (Jodhpur)(Trib.)*

POWER TO REQUISITION BOOKS OF ACCOUNT - SECTION 132A

- **MERE UNEXPLAINED POSSESSION OF AMOUNT WILL NOT SUFFICE**
 - Mere unex-plained possession of amount without anything more would not constitute sufficient information leading to an inference that amount is income which would not have been disclosed by person in possession, so as to justify issuance of authorisation for requisitioning such amount
 - *CIT v. Vindhya Metal Corpn. [1997] 91 Taxman 192 (SC).*

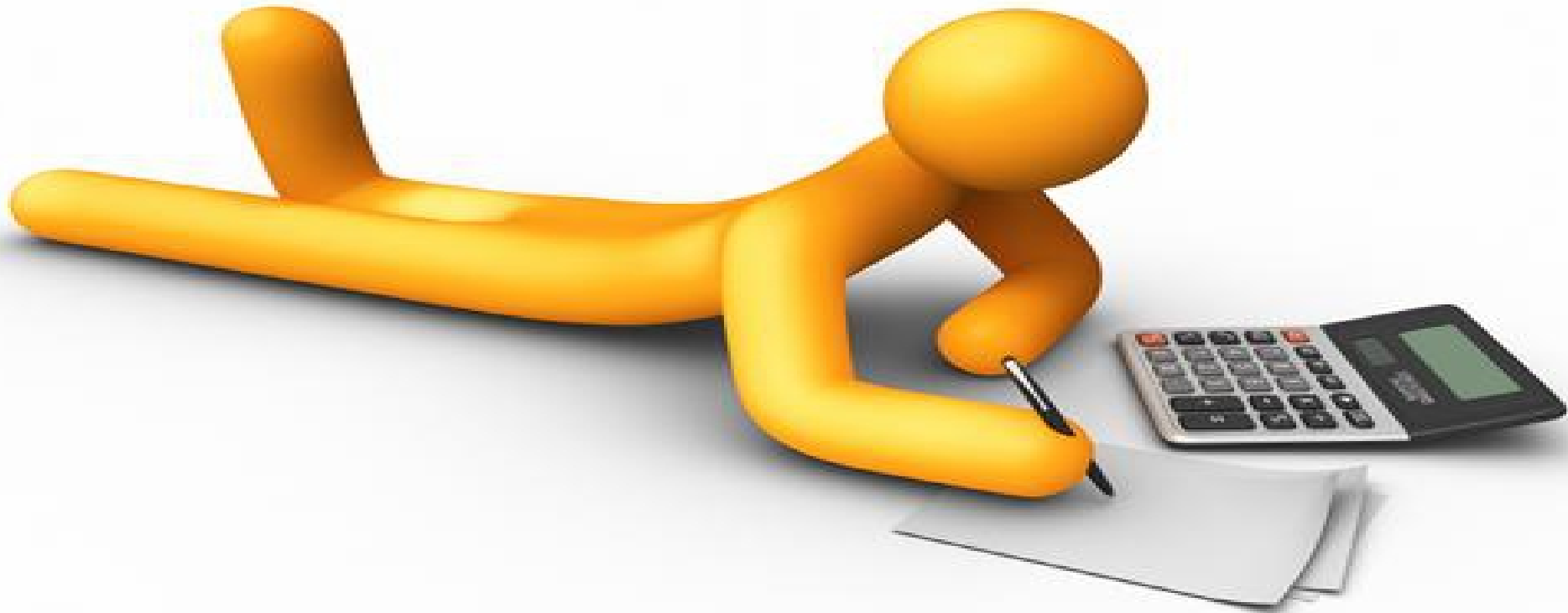
APPLICATION OF RETAINED ASSETS - SECTION 132B

- **REVENUE CANNOT RETAIN SEIZED VALUABLES DURING PENDENCY OF APPEAL BEFORE HIGH COURT**
 - *Naresh Kumar Kohli v. CIT [2004] 137 Taxman 438 (Punj. & Har.).*
- **SUB-SECTION 132B(3)**
 - *Rajinder Kumar Verma v. Union of India [2009] 181 Taxman 215 (Punj. & Har.).*
- **INTEREST IS PAYABLE ON 'MONEY' ONLY AND NOT ON OTHER SEIZED ITEMS - 132B(4)(a)**
 - *Puran Mal & Sons v. Union of India [2008] 166 Taxman 452 (Delhi).*

APPLICATION OF RETAINED ASSETS - SECTION 132B

- **Shares used as working capital was seized, interest is not payable on value of such shares.**
 - *Anil Kedia v. Settlement Commissioner of Income-tax and Wealth-tax (2012) 341 ITR 613/250 CTR 322/71 DTR 228 (Mad.)(High Court)*
 - *Director General of Income-tax v. Diamonds tar Exports Ltd. [2006] 156 Taxman 299 (SC).*
- **Cash and other assets- Assets seized from partners cannot be adjusted against advance tax liability of firm.**
 - *Summer Builders v. Dy. CIT (2012) 49 SOT 210 (Mum.)(Trib.)*

POST SEARCH PROCEEDINGS:



POST SEARCH PROCEEDINGS:

- Surrender letter- break up of total income disclosed
- Request to appropriate cash seized towards advance tax
- Lifting of restraint order if any
- Letter for photo copy of all the documents seized.
- File objections immediately if any irregularity or high handedness experienced during search.
- Letter for release of jewelry against bank guarantee

POST SEARCH PROCEEDINGS:

- After search and before receiving the notices for filing returns of income u/s. 153A, assessee usually gets sufficient time which may be utilised for preparing himself for effective representation in asst proceeding.
 1. Filing the pending returns of income.
 2. Organising the books of account and other records relating to earlier six years.
 3. Obtaining the copies of seized records
 4. Filing return of related persons.
 5. Proper accounting treatment and planning of surrendered income in books of a/c's.
 6. Payment of admitted tax relating to surrendered income.
 7. Preparation of explanation in respect of each document.
 8. Retraction of statement.
 9. Third party enquiries.
 10. Appraisal report significance.

Survey

- Approval by JCIT
- Enter only business premises
 - Circular 7D(LXII-7) dt.03-05-1967
 - Chartered accountant premises – U. K. Mahapatra & Co. vs. ITO (2009) 308 ITR 133 (Ori)
- Enter during business hours
 - N. K. Mohnot vs. CIT 215 ITR 275 (Mad)
- Functions like marriages, etc.
 - Press Note dt.03-06-1989
 - ITO vs. Raghu Vir Prasad 101 TTJ 247

Survey

- No power to seize asset, but can impound books of accounts and other documents (obtain approval of Chief Commissioner or Director General within ten days)
- Cannot record statement on oath.
 - Paul Mathew 263 ITR 101 (Ker)
 - *CIT vs. S. Khader Khan (2012) 79 DTR 184 (SC)*
 - Cannot record statement on oath.



THANK
YOU

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