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ORGANISED BY: WIRC OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SUBJECT: Search, Seizure and Survey

DATE & DAY: 30th December, 2017 (Saturday)

TIME: 10:00 am to 11:30 am

VENUE: ICAI Tower, Plot No.C-40, 'G' Block, Near Standard Chartered Bank, Bandra Kurla complex, Bandra (E), Mumbai 400 051

BY CA VIMAL PUNMIYA

Search and Seizure



THOSE WHO PAY TAXES NEVER LOOK BACK.
CA VIMAL PUNMIYA

1. INTRODUCTION

"Search", as the word itself suggests, means to 'chase, explore, inquest or scrutinize'. It does not mean to look into something that has already been disclosed, but to unveil what exists but has not been divulged as yet. "Seizure", means taking away the property of a person against his will or without his consent. Section 132 of the Act refers to the power of search and seizure. Section 132 does not confer any arbitrary authority upon the revenue officers. Since by the exercise of the power, a serious invasion is caused upon the rights, privacy and freedom of the taxpayer, it must be exercised strictly in accordance with the law and only for the purposes for which it is legally authorized. *Search invades the privacy of a citizen.*

2. COMPARATIVE ANALYSIS OF SEARCH AND SURVEY

Sr.N o.	Basis	Search	Survey
1.	Reason of action	The prescribed authority has reason to believe..... [Section 132]	Survey is a normal procedure. It is done so as to encourage that the assessee is having proper records of cash, stock

			and transactions.
2.	Relevant Section	Section 132	Section 133A
3.	Procedure for assessment of undisclosed income followed by authorities	Assessment under section 153A to 153D	Current year income shall be included in regular assessment. Income of old years in the relevant assessment under section 147.
4.	Tax Rate	Tax Rates of relevant assessment years	Tax Rates of relevant assessment years
5.	Power to seize books of accounts and other documents	Available	Available
6.	Power to seize assets	Available	Not Available
7.	Power to break open the locks	Available	Not Available
8.	Power to enter	Any building, vessel, place, vehicle or crafts wherever the search team suspects	Only business place can be surveyed. Other places where the books of accounts, cash, stock etc. are kept, can be surveyed.
9.	Power to pass restrain order	Available	Not available
10.	Power of personal search	Available	Not available
11.	Presence of witness	Search is conducted in the presence of two respectable witnesses of the colony. Panchnama is prepared at the conclusion of the search.	There is no such procedure in case of survey.
12.	Examination on oath	Allowed	Allowed
13.	Timing	No timing prescribed	Business premises can be surveyed during the hours at which such place is open for conduct of business. Other place can be surveyed after sunrise and before sunset. Time restriction is on entrance only any not on exit.

14.	Four presumptions	Yes [they are prescribed in section 132(4A)]	Yes [They are prescribed in section 292C]
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3. WHEN CAN A SEARCH BE CONDUCTED?

OR

WHAT IS THE BASIS FOR CONDUCTING SEARCH AND SEIZURE?

Where the prescribed authority, in consequence of information in his possession, has reason to believe that:

Section
132(1)(a)

Any person to whom a notice u/s 142(1)/131(1) was issued to produce books of accounts or other documents has omitted/ failed to produce such books of accounts or other documents.

Section
132(1)(b)

An person to whom a notice under section 142(1)/ 131(1) is issued, is not likely or will not produce such books of accounts or other documents.

Section
132(1)(c)

Any person in possession of any money, bullion, jewellery or other valuable article or thing which has not been or would not be disclosed under this Act.

Then:

- The DGIT/CCIT/DIT/CIT may authorize Addl. DIT/Addl.CIT/JDIT/DDIT/DCIT/ ADIT/ACIT/ ITO, or
- The Addl.DIT/Addl.CIT/JDIT/JCIT may authorize any DDIT/DCIT/ADIT/ACIT/ITO to exercise the powers as laid down in the law.

In all the above case, warrant of authorization has to be issued in Form No.45.

Reason to believe

- **Mahesh Kumar Agarwal v. Dy. Director of Income Tax &Ors. (2003) 260 ITR 67 (Cal).**

“Reason to suspect” that petitioner is having undisclosed assets and there is likelihood that same would not be disclosed is not equal to “reason to believe” that petitioner is in possession of undisclosed assets and intends to evade tax. Therefore, search and seizure carried out on the basis of “reason to suspect” is not valid because “reason to believe” is mandatory requirement of law for search and seizure.

The assessing officer is required to prove his basis of belief for conducting such search and seizure.

- **Mamchand& Co. vs. Commissioner of Income Tax[76 ITR 217 High Court of Calcutta]**

On basis of information received that large scale tax evasion had taken place which involved falsification of books of account, forged false documents, creation of artificial losses through fictitious back dated transactions, ante date transactions to neutralize true quantum of profit and a written complaint that assessee in collusion with others had also divested earned

profits to avoid tax liabilities, Commissioner issued warrants of authorization under section 132(1)(b) with recorded reasons of his order – On strength of warrants, authorized officers conducted search at offices premises of assessee in presence of witnesses – Whether information received by Commissioner was such that a reasonable person could form kind of belief which would justify investigation and search under section 132(1)(b) – Held, yes – Whether it was not necessary to state reasons in warrant, nor was it necessary to specify documents or books of account, etc., which would be subject-matter of search and seizure – Held, yes

At the time of issue of search warrants, the assessee must be in possession of the property to be searched and seized.

• **Commissioner of Income Tax vs. Ramesh Chandar [93 ITR 450 High Court of Punjab and Haryana]**

Whether, therefore, since at time when search warrants were issued and when they were executed, 'RC' was not in possession of currency notes and account books, but in fact Police authorities were in possession of same, search warrants were illegal – Held, yes – Whether, in such circumstances, income-tax authorities were to be directed to return money and documents seized from police station to police authorities – Held, yes

4. WHO IS AUTHORIZED TO ISSUE AN ORDER OF SEARCH AND SEIZURE?

- i. Director General of Income Tax ; or
- ii. Director of Income Tax; or
- iii. Chief Commissioner of Income Tax; or
- iv. Commissioner of Income Tax; or
- v. Additional Director or Additional Commissioner, or Such Joint Commissioner or Joint Director of Income Tax as may be empowered by the Board.



Income Tax Raid

5. WHAT IS THE DIFFERENCE BETWEEN 'ACTUAL SEIZURE', 'DEEMED SEIZURE' AND 'PROHIBITORY ORDER'?

Provision	Actual Seizure	Deemed Seizure	Prohibitory Order
Relevant Section	It is effected under main-body of the section 132(1)	It is effected under section proviso to section 132(1)	It is effected under section 132(3)
Reasons of exercising power	It is general power. Actual seizure of any books of accounts, documents, money, bullion, jewellery, valuable article or thing is possible. However, it has been in judicial	It is effected where it is not possible or practicable to seize any valuable article or thing due to volume, weight or any other physical characteristics of the asset or its dangerous nature.	It is effected where it is not practicable to seize any books of accounts, documents, money, bullion, jewellery, valuable article or thing, due to reasons other than those mentioned in case of deemed seizure.

	rulings that those assets which are already disclosed cannot be seized.		
Assets/ documents in relation to which the power is exercisable.	This power is exercisable in relation to any books of accounts, documents, money, bullion, jewellery, valuable article or thing.	This power can be exercised in respect of 'any valuable article or thing'.	This power can be exercised in relation to any books of accounts, documents, money, bullion, jewellery, valuable article or thing.
Stock in trade	This power cannot be exercised in relation to bullion, jewellery or other valuable article or thing being stock in trade of business.	This power cannot be exercised in relation to bullion, jewellery or other valuable article or thing, being stock in trade of the business.	This power can be exercised.
Time limit	Section 132(8) provides the time limit for retention of the books of accounts and other documents. However, this section does not apply to money, bullion, jewellery, valuable article or thing. It may be noted that such assets shall be dealt as per section 132B.		Section 132(8A) provides the time limit according to which the prohibitory order shall not be effective for more than 60 days from the date of order. This time limit is in relation to any books of accounts, documents, bullion, jewellery, money, valuable article or thing. Section 132B is not applicable as there is no seizure/ deemed seizure of bullion, jewellery, money, valuable article or thing.

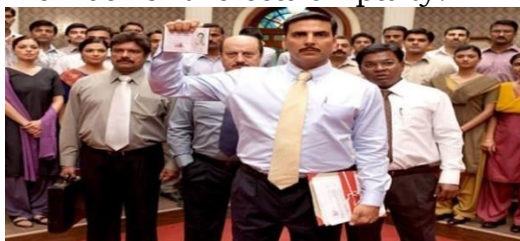


6. **POWERS OF AUTHORIZED OFFICER**

- i. To 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, jewellery or other valuable article or thing are kept.
- ii. To break open the lock of any door, box, locker, safe, almirah or other receptacle, if the keys are not available.
- iii. To search any person who has got out of, or is about to get into, or is in the searched building, place, vessel, vehicle, aircraft if he has reason to suspect that the assessee has secreted any books of accounts, documents, money, bullion, jewellery, valuable article or thing.
- iv. To seize any books of accounts, documents, money, bullion, jewellery, valuable article or thing.
- v. To place marks of identification on books of accounts or other documents.
- vi. To make or cause to be made copies or extracts from books of accounts or other documents.
- vii. To make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.
- viii. To administer on oath and record statements.
- ix. To require any person who is found to be in possession or control of any books of accounts or other documents maintained in the form of electronic record, to afford the authorized officer the necessary facility to inspect such books of accounts and other documents.

7. **RIGHTS AND DUTIES OF THE PERSON SEARCHED**

Sr.No.	Rights	Duties
1.	To see the warrant of authorization.	To allow free and unhindered ingress.
2.	To verify the identity of each member of the search party.	To place signatures on search warrant and statements.



3.	To take personal search of all members of the search party before the start of the search and on conclusion of the search.	To identify all receptacles in which assets or books of accounts and documents are kept and to handover keys of such receptacles.
4.	To insist on personal search of ladies being taken only by a lady, with strict regard to decency.	To identify and explain the ownership of the assets or books of accounts and other documents found in the premises.
5.	To have atleast two respectable and independent residents of the locality as witnesses.	To identify/ give the introduction of every individual in the premises.
6.	To take medical assistance and meals.	Not to allow or encourage the entry of any unauthorized person.
7.	To inspect the seals placed on various receptacles sealed in the course of search and subsequently at the time of reopening.	Not to remove any article without the notice of officer.

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

Disclosure of the material or the information to the person against whom the action is taken u/s 132(1) is not mandatory, because such disclosure might affect or hamper the investigation. Only the High Courts and the Supreme Court have the jurisdiction to call for and look into the reasons recorded to decide whether the issue of the search warrant was called for.

Dr. Pratap Singh vs. Director of Enforcement [1985 22 Taxman 80 Supreme court]

As regards the contention that the said material on which the officer had reasons to believe to move in the matter, must have been disclosed to the appellants, when an officer of the Enforcement Department proposes to act under section 37, undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded.

Southern Herbals Ltd. Vs. Director of Income Tax [1994 207 ITR 55 Karnataka High Court]

Disclosure of the materials or the information to the persons against whom the action under section 132(1) is taken is not mandatory, because the very disclosure would affect or hamper the investigation. Further, many a time, the source of information could easily be inferred from the said material and it is not in the interest of the public to reveal the source through which the authority received the information relevant to the action under section 132(1). Information would have been collected by the promise of confidentiality; even otherwise, to avoid embarrassment to the persons conveying the information,

the source cannot be revealed. When investigation is in progress and in the meanwhile, persons against whom action is proposed come to know of the material on which the investigation is based, there is every likelihood of further manipulative devices being adopted by such persons to give a different orientation to the relevant facts. The persons to give a different orientation to the relevant facts. The person against whom the action is to be taken will be given all the relevant facts and materials on which further action is proposed after investigation is completed. 'Search and seizure' is only an initial step in the enquiry to be held regarding tax evasion. At this stage, its purpose is to get hold of evidence bearing on the tax liability of a person, which the said person is suspected to have been withholding from the assessing authority and to get hold of the assets representing income believed to be undisclosed income. The stage for disclosure of the materials is reached only when the revenue resolves to proceed to make an appropriate order imposing tax liability or penalty, etc. and at that stage, all relevant materials from which the liability of the taxpayer is sought to be inferred shall have to be disclosed. At the initial stage of search and seizure, it is sufficient if the revenue places the material before the Court to examine whether the said material on which search and seizure is ordered, was relevant to the exercise of the power under section 132(1); the material placed for the Court's perusal cannot be disclosed to the petitioner.

9. Can search be authorized by an authority other than jurisdictional authority?

The Chief Commissioner/Commissioner of Income Tax has the power to authorize a search of any building, place, vessel, vehicle or aircraft of a person which is under his jurisdiction and also in cases where such building, place, vessel, vehicle or aircraft is in his area of jurisdiction but he has no jurisdiction over the persons concerned, if he has reason to believe that any delay in obtaining authorization from the Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue. Such authorization shall be given in Form 45A. Where a search for any books of account or other documents or assets has been authorized by any authority who is competent to do so, and some other Chief Commissioner/Commissioner in consequence of information in his possession has reason to suspect that such books of account or other documents and assets etc, of the assessee are kept in any building, place, vessel or aircraft not specified in the search warrant issued by such authority, he may authorize the Authorised Officer to search such other building, place, vessel, vehicle or aircraft. Such authorization shall be given in Form 45B.

10. Can the services of a police officer be sought during the course of search?

The authorized officer may requisition the services of any police officer or any of the officer of the Central Government or of both to assist him for all or any of the purposes specified above and it will be duty of every such officer to comply with such requirements. [Section 132(2)].



But department does not have power to arrest the assessee. [K.Choyi V/s Syed Abdulla BafakkyThangal 123 ITR 435 (SC)].

11. What are the sources available to the department for locating a person to be searched?

Internal Sources	External Sources
Return filed by assessee Increasing trend of cash credit Receipt of substantial amount of gifts/ lottery winning. Continuous lower household Difference between stocks hypothecated with banks and those disclosed in books Annual Information Return	The department has developed a system of getting information from specified hotels, banks, dealers of vehicles, tent houses, dealers of costly goods custom department, police department, registrars who register the property Dissatisfied employees, rival companies, rival politicians are other sources of information.

12. Examination on oath- Section 132(4)

The Authorised 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.

Shree Ganesh Trading Co. vs. Commissioner of Income Tax [2013 30taxmann.com 170] High Court of Jharkhand

The statement recorded under section 132(4) is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. All the authorities below have merely reached to the conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) and when there is incriminating admission against himself, then it is required to be examined with due care and caution.

R.R.Gavit vs. Smt. Sherbanoo Hasan Daya [1986 28 TAXMAN 349] High Court of Bombay

Whether examination of a person on oath before the search commences, is an examination within the meaning of Section 132(4) – Held, no. Whether a person can be prosecuted for a false statement on oath when records do not indicate that oath was administered – Held, no.



13. Presumptions-Section 132(4A)

Ownership	That the books of accounts, documents, money, bullion, jewellery, valuable article or thing belong to the searched person.
Contents	That the contents of such books and other documents are true.
Handwriting	That the signature and every other part of the books of accounts and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to be signed by that person are so handwritten/ signed by that person.
Stamping, attestation and execution of documents etc.	That, in the case of documents stamped, executed or attested, they were so stamped, executed or attested by the person by whom they purport to have been so executed, attested or stamped.

However, these presumptions are rebuttable, i.e. the assessee can disprove.

14. Retention of books of accounts – Section 132(8)

The books of accounts or other documents seized under section 132(1)/(1A) **shall not be retained by the authorized officer beyond 30 days from the date of order of assessment under section 158BC/153A** unless the reasons are recorded in writing and approval of the CCIT/DGIT/CIT/DIT is obtained.

The CCIT/DGIT/CIT/DIT shall not extend the time **beyond 30 days after completion of all proceedings** under the Act in respect of the years for which such books or other documents are relevant.



15. Objection of the assessee – Section 132(10)

If the assessee objects to the approval given by the CCIT/DGIT/CIT/DIT under section 132(8), he may file an application to the CBDT stating the reasons for objection and requesting for returning the books and other documents. The CBDT may pass appropriate order in such a situation.

16. Power to requisition books of accounts- Section 132A

Where the prescribed authority [DGIT/CCIT/DIT/CIT], in consequence of information in his possession, has reason to believe that –

- (a) **Past non-compliance of notice under section 142(1)/ 131(1):** Any person to whom a notice under section 142(1) or a summon under

section 131(1) was issued to produce any books of accounts or other documents, has omitted /failed to produce such books of accounts or other documents and the said books of accounts or other documents have been taken into custody by any officer or authority under any other law. OR

- (b) **Possible non-compliance of notice under section 142(1)/ 131(1):** Any person to whom above notice/ summon has been issued or will be issued, will not produce such books of accounts or other documents on returning of such books of accounts or other documents by any officer or authority by whom such books etc. have been taken into custody.
- (c) **Past/ Possible non disclosure of certain assets:** Any person has not disclosed or will not disclose any money, bullion, jewellery, valuable article or thing and such has been taken into custody by any other officer or authority.

Then, he may authorize any prescribed authority to exercise power under this section.

Thus, it may be noted that circumstances attracting the provisions of section 132 and section 132A are the same. The only difference one can observe is that in section 132, the books of accounts, documents, money, bullion, jewellery, valuable article or thing but in section 132A, such are in the custody of any other officer or authority. [For eg. Customs Dept, Sales Tax Dept. etc]

17. Application of retained assets – Section 132B

The assets seized under section 132 or requisitioned under section 132A can be utilized for recovery of the following three types of liabilities:

The existing liability under the Income Tax Act, 1961 and Wealth Tax Act, 1957	The liability determined on completion of assessment under section 153A	The amount of liability in respect of which the searched person is in default or deemed to be in default.
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18. Order of utilizing the assets

1. If the money has been seized, the Assessing Officer may apply such money in the discharge of above liabilities.
2. The assets other than money may also be utilized for the discharge of the above liabilities. For this purpose, such asset shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or the TRO under authorization from the CCIT/CIT under section 226. The Assessing Officer or the TRO may recover the liabilities by the sale of such assets. The sale shall be effected in the manner laid down in the Third Schedule.

19. Release of assets

1. **First release:** If the assessee makes an application to the Assessing Officer **within 30 days from the end of the month** in which the asset was seized, for release of asset and the nature and source of

acquisition of such asset is explained to the satisfaction of the Assessing Officer, **the amount of any existing liability of income tax and wealth tax can be recovered out of such explained assets and such explained assets can be released to the person from whose custody the assets were seized.** Prior approval of the CCIT/CIT shall be taken before such release. Further, the release shall be done within a period of 120 days from the date on which the last of the search authorization under section 132 or requisition under section 132A was executed.

2. Final release: Surplus assets remaining after the discharge of the liabilities shall be for with made over or paid to the assessee.

20. Interest payable

The Central Government shall pay simple interest @ 0.50% per month on [the money sized under section 132/13A (-) the amount released to the assessee at the time of first release (+) the proceeds of the assets sold (-) the amount required to meet the above three liabilities]. The interest shall run from the date immediately following the expiry of the period of 120 days as discussed above in first release to the date of completion of assessment under section 153A.

21. Seizure of jewellery

- In the case of wealth tax assessee, gold, jewellery and ornaments found in excess of gross weight disclosed in the wealth tax return only need to be seized.
- In case of person not assessee to wealth tax, gold jewellery and ornaments to the extent of 500gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized. The same is treated as explained and no addition can be made under sec 69. The said guidelines would apply to block assessment.



22. Assessment of income.

The Finance Act, 2003 has changed the method of assessment of income in respect of search & requisition cases and the new method of assessment is made applicable to searches initiated, or requisitions made after 31.05.2003. The new procedure for assessment is laid down in the three sections, viz. Sections 153A, 153B, and 153C, inserted by the Finance Act, 2003 with effect from 01.06.2003. Sections 153A to 153D provide a special scheme for assessment of undisclosed income found in a search initiated under section 32 or a requisition made under section 132A.

23. Section 153A- Assessment in case of search or requisition

- This section overrides the provisions of section 139, 174, 148, 149, 151 and 153.
- The Assessing Officer under section 153A (a) would issue a notice to furnish returns of income for each of immediately six proceeding years within specified time limit. The assessee shall submit returns, in the prescribed form, within the time allowed in the notice. **All the provisions of the Act shall apply as if the returns were required to be furnished under section 139. Thereafter, the Assessing Officer shall assessee or reassess income of the past six assessment years.**
- Therefore, if the search is initiated on 23/08/2014, the assessee can be called upto to file returns for the A. Y 2009-10 to 2014-15. (i.e. previous years 1/4/2008 to 31/3/2014). Thereby the assessee will have to file separate returns for each of the years in the prescribed form within the time limit specified in the notice. Thus, no return is required to be filed under section 153A for the year in which the search is initiated. The regular return under section 139 is to be filed.
- **Abatement of pending assessment:** With regards to the year(s) in respect of which the assessment or re-assessment is pending, as per the second proviso to section 153A (b), the same shall abate. In other words, the assessment or re-assessment shall not be made by regular assessment under section 143(3) or re-assessment under section 147, but it shall be under section 153A(b). If the returns are filed, the Assessing Officer shall re-assess the income under section 153A (b) in respect of the year(s) in respect of which the assessment is complete. Thus, the assessee will have to include the income already assessed earlier or income declared in the returns for which assessments are pending in the respective years while filing returns for the above 6 years for which notice u/s 153A is issued. If no returns are filed, the Assessing Officer shall proceed to make assessment under section 144.

Thus, only assessment/ reassessment pending on that date shall abate and as such, any appeal or revision or rectification, if pending on the date of initiation of search shall not abate.

There is no reference to the pending proceedings such as:

- i. Appellate proceedings***
 - ii. Revision under section 263***
 - iii. Block assessment***
 - iv. Rectification***
 - v. Settlement petition***
 - vi. Penalty proceedings***
- **Revival of abated assessments:** It is further provided that if the order under section 153A is annulled, the abated assessments shall revive with effect from the date on which the CIT receives the order of annulment.
 - **Restoration of abated assessments (i.e. annulment of revival):** The revival will cease to have effect, if subsequently, the order of annulment is set aside. In other words, the abatement will revive.

- The tax rate shall be the rates as applicable to the relevant assessment year.

Separate assessment in respect of each of the six assessment years [proviso 1 to section 153A]

However in view of circular No.10/2012 [F.No.282/22/2012-IT (Inv. V), dated 31.12.2012], it is a relaxation given to the AO to issue notice for assessing income for 6 assessment year immediately preceding the assessment year relevant to the previous year in which search is conducted during the election period if some of that circular condition satisfied.

24. Whether pre-conditions of Section 153A/ 132 are to be applied mandatorily?

Jindal Stainless Ltd. Vs ACIT [Del 122 TTJ 902]

Section 153A provides that in case of a person against whom search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31-5-2003, then notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153, the Assessing Officer shall issue a notice to such a person requiring him to furnish returns of income in respect of six assessment years preceding the assessment year relevant to the previous year in which search was conducted or requisition was made. Thus, the prerequisite of section 153A is that assessment under this section can be made only in a case of a person where a search is initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A after 31-5-2003. The instant case was not a case of requisition as described in section 132A. The prerequisite condition for application of section 153A is that assessment under this section can be made against a person in case of whom a search is initiated under section 132. It was the case of the assessee that since no search had been initiated in its case, resort to section 153A was in violation of law. In both the panchnamas, on the basis of which search under section 132 was conducted in the case of assessee's employee 'S' at his residential premises as well as Jodhpur Branch Office of the assessee, where the person searched was an employee, the name of 'S' had only been written, which clearly showed that search warrant was in the case of 'S' and not in the name of the assessee.

RajatTradecom India Pvt. Ltd. v. DCIT, Appeal No. IT (SS) A No: 182 & 183/Ind./2007 -Indore ITAT

Before invoking the provision of section 153A it would be necessary to comply with the provisions contained under section 132(1); the mere issue of warrant of authorization without there being search of the premises mentioned in the warrant of authorization would be meaningless and would not serve the purpose of section 132. therefore, actual search shall have to be carried out necessarily before proceeding under section 153A

Similar decision held in:

- a) [2010] 5 taxmann.com 59 (Ahd. - ITAT) ITA No. 2878 to 2880/Ahd/2007 Dr. ManshukhKanjibhai Shah vs. ACIT

b) *J.M.Trading [2008] 20 SOT 489, DHC in S.K.Katyal 308 ITR 168*

25. Whether proceedings may be continued without issuing a notice under section 153A ?

Abhay Kumar Shroff vs. Commissioner of Income Tax [162 TAXMAN 429]

While assessment proceedings in respect thereof were pending, on 24-8-2006, various search and seizure operations were carried out at offices and residence of assessee - Thereupon, respondent No. 3 issued notice under section 142(1) to assessee asking him to file his income-tax returns for assessment year 2004-05 and passed assessment order - Assessee's case was that no notice under section 153A was issued to him asking him to file his income-tax return for six assessment years as contemplated in said section and further that assessment proceeding for assessment year 2004-05, which was pending on date of initiation of search and seizure under section 132, had already abated in view of second proviso of section 153A - Assessee, thus contended that continuation of assessment proceeding after initiation of search without giving any notice under section 153A and passing impugned final order of assessment was illegal, arbitrary and wholly without jurisdiction - Whether assessee's case was to be accepted - Held, yes [Circulars and clarifications : Circular No. 7 of 2003, dated 5-9-2003]

26. Whether the search material can be considered in piecemeal?

ACIT vs. Hotel Harbour View [2009 184 TAXMAN 42 Cochin Trib]

All the events leading to the instant case happened before the date of search on 6-8-2003. The materials and details relating to the aborted sale transactions were collected in the course of search. It was on the basis of those materials and particulars that the Assessing Officer had proceeded to make the assessment under section 153A. Therefore, it was a case without any dispute arising as a consequence of the search conducted by the department.

Therefore, it was very necessary on the part of the revenue to make out a case on the basis of the searched materials so that it could argue that the assessee was liable for capital gains tax. By the time of search, it was clear that the agreement to sell was not reached to its logical conclusion; the agreement was rescinded and part of the money received from the vendee was returned; the subject property was let out to another third party; and the whole transaction was aborted.

In view of that, the Assessing Officer should not have read the events in a piecemeal manner and stopped on 31-3-1999 instead of reading it in a logical and a continuous manner from the beginning to the end. If he would have read the episode as a whole, he would know that there was no actual transfer of any capital asset from the assessee to MAPL. In order to make a case of capital gains tax, the Assessing Officer was cutting the chain of events into two parts; one part upto 31-3-1999 and the other part after 31-3-1999. That approach adopted by the Assessing Officer was against law. When the Assessing Officer was relying on the materials collected in the course of search for making an assessment, he should have read the materials in a

wholesome and continuous manner, which ultimately would lead to a lawful conclusion. Therefore, the order of the Assessing Officer was without the support of law.

27.

SECTION 153B – TIME LIMIT

- This section overrides Section 153.
- It provides that the orders of assessment/ reassessment under section 153A for the past six assessment years shall be passed within a period of 2 years from the end of the financial year in which the last of the authorizations of search under section 132 or requisition under section 132A was executed.
- It further provides that the order for assessment for the previous year in which search is initiated or requisition is made (In short, Search year) shall also be passed within a period of 2 years from the end of the financial year in which the last day of authorizations of search under section 132 or requisition under section 132A was executed.

Extra 1 year in case of reference

to Transfer Pricing Officer

If, during the course of assessment/ reassessment proceedings, the AO has made reference to the TPO under section 92CA, the time limit for completion of assessment/ reassessment shall be 3 years instead of 2 years.

The following points should also be noted:

- (a) The expression ‘execution of authorization’ shall mean:
- i. In the case of a search under section 132 – the conclusion of search as recorded in the last panchnama.
 - ii. In case of a requisition made under section 132 – the actual receipt of books of accounts, other documents or assets from other officer or authority.

While computing such time limit, there shall be certain exclusions as discussed below:

- Change in incumbent
- Stay order
- Audit direction under section 142A
- Settlement proceedings
- AAR proceedings
- Exchange of information
- Restoration of abated assessments [i.e. annulment of revival] – the period commencing from the date of annulment of order under section 153A to the date on which the CIT receives the order setting aside such annulment.
- Reference to Valuation officer: After substituted section 142A AO can make a reference to the valuation officer to estimate the value of fair market value even he is satisfied about the correctness or completeness of the accounts of assessee.

Valuation officer will submit his report within 6 months. And this period i.e. from the date of reference to the Valuation officer to the date of receipt of the report by the Assessing officer shall be excluded while computing such time limit.

28. SECTION 153C – ASSESSMENT OF OTHER PERSONS/[THIRD PARTY ASSESSMENT]

Section 153C provides that where the assessing officer is satisfied that any money, bullion, or other valuable articles or thing or books of accounts or documents seized belongs to the person other than the person who has been searched, then the books of accounts or documents or assets seized shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed against each such person and issue such other person notice and assess or reassess income in accordance with the provisions of Section 153A of the Act **if he 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 the relevant assessment year or years.** [After amendment vide finance bill (no.2) 214, w.e.f. 1/10/2014). Before, this amendment satisfaction of Assessing officer of other person is not required he has to issue notice and assess or reassess income.

After amended provision, AO of person searched & AO of other person both will record Satisfaction. Satisfaction is different from recording of reason u/s 147 & 148.

The objective of Section 153C is to cover such persons against whom no search is initiated but assets, books of accounts, or documents belonging to such person/s is/are found from a person against whom search of requisition is initiated. The intention of Section 153C is to widen the scope of post search assessments which otherwise would be applicable only to those persons against whom search or requisition is initiated.

29. Whether 153C would apply when the seized material does not belong to the third party but the transaction entered into in the seized document belongs to the third party?

P. Shriniwas Naik [306 ITR 411 Bangalore Tribunal]

In this case, search was conducted at the premises of 'R' in the course of which certain books were seized. One of the books showed that assessee had advanced a loan to 'R'. On that basis, section 153C was invoked and assessment was made in the hands of assessee. Held that sec 153C could not be invoked as books seized did not belong to assessee.

30. Whether search actions under section 153C would be valid where the AO does not record his satisfaction in respect of undisclosed income?

Ingram Micro (India) Exports Private Limited vs. DIT [ITAT Mumbai 21.12.2012]

There is no- satisfaction recorded by AO before initiating proceedings under section 153C. In spite of giving sufficiently adequate time to the Revenue for production of the necessary records and considering the fact that AO refused to allow inspection to assessee as recorded by the bench on 20.04.2011, we have no option than to take an adverse view that no satisfaction was recorded by AO before issuance of notice under section 153C. The Revenue has not been able to show any satisfaction recorded either in the case of searched person or in the case of assessee and consequently in view of the principles laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (Supra), a notice issued under section 153C r.w.s. 153A is liable to be held as invalid. Thus, the consequential assessments passed under section 153C r.w.s. 144C are annulled on account of the invalidity of the notices under section 153C. Assessee's additional grounds are accordingly allowed in all the impugned assessment years. Since assessee's additional ground is allowed on the preliminary issue of jurisdiction, there is no need for adjudicating the issues on merit in any of the assessment years. Accordingly, the other grounds raised are considered academic and hence, not adjudicated.

31. SECTION 153D- PRIOR APPROVAL OF JCIT

If the AO is below the rank of the JCIT, the order of assessment shall be passed with the prior approval of JCIT.

32. SECTION 234A AND 234B

The provisions of section 234A and 234B for levy of interest on the demand raised under the above proceedings will apply. Therefore, the assessee who is subjected to assessment or reassessment u/s 153A, 153B and 153C will have to pay interest for the delay in filing the return of income and short fall in payment of advance tax at the applicable rates for each of the above six years.

33. SECTION 271(1)(c)

With regards to the provisions of section 271 for the levy of penalty for concealment of income will also apply and penalty will range between 100% to 300% of tax which can also be levied.

34. SECTION 271AAA

Where search has been initiated u/s 132 on or after the 1st day of June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any payable by him, a sum computed at the rate of 10% of the undisclosed income of the specified previous year.

Penalty u/s 271AAA shall not be levied in the following case (section 271AAA(2)): Where the assessee,

- i. In the course of the search, in a statement u/s 132(4), admits the undisclosed income and specifies the manner in which such income has been derived.
- ii. substantiates the manner in which the undisclosed income was derived, and
- iii. pays the tax, together with interest, if any, in respect of the undisclosed incomes.

The provision covers the cases of search which have been initiated under section 132 on or after 1st day of June, 2007. This penalty is applicable upto 1st day of July, 2012. A new section 271AAB has been proposed hereinafter.

35. SECTION 271AAB

Section 271AAB, which is related to the penalty imposable on the undisclosed income, found during the course of search initiated under Section 132 of the Income tax Act, 1961 which pertains to a specified previous year. The provisions in this respect are still there in the form of Section 271AAA. But it is proposed to insert a new and stringent Section 271AAB, which will be applicable in the cases where search has been initiated on or after 1st July, 2012.

36. Sec 271AAA Vs. Sec 271AAB

TIME OF DISCLOSURE OF UNDISCLOSED INCOME BY THE ASSESSEE	PENALTY U/S 271AAA	PENALTY U/S 271AAB
At any time during the course of Search	NIL	10% of the un-disclosed income.
Between any time from the -date of termination of search to date of Return Filing	10% of the un-disclosed income.	20% of the un-disclosed income.
At any time after the Return Filing Date	20% of the undisclosed income.	Min 30% -Max 90% of the undisclosed income as per the discretion of Income-Tax Officer

37. SECTION : 276 CC

Wilful failure to furnish the return of income in due time attracts section 276CC which provides for prosecution for a term of minimum 3 months and maximum 3 years plus fine. This provision is applicable when the assessments are made u/s 153A, 153B and 153C

38. SECTION : 246A

The Finance Act, 2003 has amended section 246A so that the assessee can file an appeal to the CIT (A) against the order of assessment or re-assessment under the above section. Further an appeal to the ITA Tribunal can also be filed against the order of CIT (A). Also appeals to High Court on substantial question of law can also be filed.

39. WHAT ARE THE RIGHTS OF AN ASSESSEE DURING THE CONDUCT OF SEARCH?

a. What remedy does the assessee have in case of misbehaviour of the officers?

Misbehaviour may lead to some injury, damage or harm to the interest of the assessee or his reputation or it may only hurt his feelings and

sentiments, religious or otherwise, Depending on facts, the action will lie by way of challenge of the proceedings under article 226 if the search is done in an irregular and illegal manner. If it is a case of misbehaviour leading to hurt of sentiments and feelings, the best course would be to lodge a complaint with the Director or Commissioner concerned or with the Director General or Chief Commissioner concerned or with the Member (Investigation), In extreme cases, the action may lie in TORTS. There, of course, it will have to be established that it was covered by the immunity of sovereign act.

b. *What remedies' does the assessee have where during search the assets are destroyed like sofas and beds' are torn, floor is dug and walls are broken?*

No remedy lies against such actions if they are done bona fide and in good faith in carrying out the object of the search. Action may lie only if these acts are done mala fide and there was no reason to suspect that items broken or destroyed contained any concealed income or assets hidden therein. Neither on the basis of information received from the informer, nor from any other source.

c. *Can the assessee contract superior officer when search is in progress to explain the difficulties being faced?*

Yes, but the superior may not interfere with the judicial discretion of the authorised officer, He may take administrative action and such corrective measures as may relieve the assessee of avoidable harassment and to make the search operation less painful.

d. *Whether can a legal advisor be present? If, yes, he do when search is in progress?*

Yes, he can be present.

e. *What remedy is available to a person whose cash has been seized from the possession of his employee who was carrying it in connection with business?*

Such a person should immediately lodge his claim before the authorised officer who has seized the cash and produce necessary evidence to explain the source. If the proceedings under section 132(5) have already been commenced, he should lodge his claim under section 132(7). In case he does not succeed there also, he may file an appeal under section 132(11) before the Commissioner.

f. *What remedy lies with regard to seizure of cash whose sources are also explained?*

Efforts should first be made to prevent the seizure because once the seizure is made, Department may like to pass an order. If the cash is wrongly seized, or for that matter, any asset is wrongly seized, the authorised officer should pass an order under section 154 to release such an asset. Provisions of section 132(i) empower seizure of only such assets, which represent fully or partly undisclosed income. Therefore, seizure of any assets, which does

not satisfy the basic condition, involves an illegality in the act of seizure, which should be corrected by the officer as if he has committed mistake of fact and/or of law apparent from record. Since this kind of seizure would be without jurisdiction, it will be a fit case for filing a writ petition under article 226 of the Constitution.

g. Can assessee ask for identity card of officers?

Yes. Sometimes the authorised officers or the person accompanying them do not possess the identity card. As an alternative, they should carry and produce some other documents to prove their identity, e.g, a certificate attesting their signatures, The certificate should be issued by a senior officer in charge of the search or by an immediate superior. In a case where there is no proof of identity, the assessee would be within his right to refuse the ingress.

h. Can assessee ask for a copy of warrant?

No. Warrant of authorisation is meant and addressed to the authorised officer and it has to be executed by him. It is an instrument to arm him with the authority to search. After execution of the warrant, it is to be returned to the issuing authority. The assessee is, however, entitled to go through the warrant. In fact, the authorised officer is duty bound to produce it and in evidence of production thereof, he may obtain the signatures of the assessee or his representative along with the signatures of two witnesses.

The assessee should inspect it carefully to see that: (a) it is not blank; (b) irrelevant portions are struck off, etc. If these defects are found, he should bring them on record by filing a letter before the authorised officer. If the warrant is blank and the name and address is not correctly recorded, he may as well not allow the ingress. In case of other defects, question of challenging the validity under article 226 may be considered.

i. Can the authorised officer refuse permission to the assessee or any other person to be present on his behalf during search?

No. Sub-rule (8) of rule 112 provides that the occupant of the building, place, vessel, vehicle or aircraft which is searched, as also the person in charge of such vessel, etc., or any other person on his behalf, shall be permitted to attend during the search and a copy of seizure memo prepared under sub rule (7) shall be delivered to the occupant or to such other person.

j. Can the authorised officer enter and search any building belonging to the assessee once the warrant of authorisation is issued against him?

No, he can enter and search only such building in relation to which the warrant of authorisation is specifically issued.

k. Can the assessee call his relatives to assist him during the course of search?

Yes, he can do so but the authorised officer may carry out their personal search before allowing them entry. However, he may order such persons who may be creating obstruction in the proper and smooth conduct of the

search, to leave the premises or he may not grant the permission if he apprehends any obstruction in the smooth conduct of the search proceedings.

l. Can an authorised officer prevent the assessee from receiving or making telephone calls and telex messages?

No, unless he believes that such permission will defeat the very object of the search and that the assessee may use his messages to fabricate false evidence, remove the assets, or make other manipulation.

m. Is it advisable to give answer to every question by saying, 'I do not remember because of the confused state of my mind created due to the sudden raid'?

It is neither advisable nor in the interest of the assessee to deliberately answer every question by repeating "I do not remember" or "I do not know". He may lose the opportunity of explaining several items of assets, which he can otherwise do. Besides, he may run the risk of prosecution in case on the basis of contemporaneous evidence recovered subsequently during the search it appears that the facts were within the knowledge of the assessee, which he declined to disclose. It would be on the other hand, advisable to take the help of the books of account and other documents and give all possible information, which is readily available. However, in genuine cases where it is not practicable to remember certain facts with certainty or minute details of transactions particularly those of several past years, the assessee may only explain their nature, if possible and add that he would be able to furnish the details and explanations after looking into record. A statement made on the spot in support of his explanation has greater evidentiary value.

n. What remedy is available to a genuine depositor of the money when the search takes place against a person with whom the deposit is made, e.g., with a car dealer with whom initial deposit of money is made for booking the car or with a moneylender with whom the ornament or jewellery may be pawned as security for loan?

Proceedings with the presumption that the deposit is genuine and the assessee against whom the search proceedings are taken, is able to establish its genuineness during the course of the search itself, any seizure or restraint of the deposit would be ab initio void, It is also well settled that even the restraint under section 132(3) can be made only after the authorised officer is satisfied that the asset, in question, wholly or partly, is concealed income or wealth.

Therefore, any seizure of a genuine or disclosed amount will be 'without jurisdiction and, in any case, illegal. Therefore, the assessee and/or the depositor can always approach the authorised officer either during the course of search itself with the necessary evidence and claim that no seizure is called for or they can approach the authorised officer even after seizure; but within 15 days of the time limit prescribed under section 132(9A) to release the amount wrongly seized by rectifying the order of seizure under section 154. Release should be made in the presence of two witnesses.

If the time limit of 15 days has expired and the seized assets have been handed over to the Assessing Officer, the assessee and/or the depositor can file writ under Article 226 on the ground that the seizure was without jurisdiction or, in any case, illegal, and that no further proceedings under section 132(5) can be taken in respect of such assets. The depositor can also approach the Assessing Officer during the course of proceedings under section 132(5) as a "concerned person", and put his claim for release of the amount or at best, to proceed against him under section 132(7). If he does not succeed there, he can file an appeal Commissioner, where he will be entitled to raise all the grounds, including the question of validity of the search and seizure and claim the release of the assets.

Answer to present question should not be mixed with the answer to the earlier question wherein it is said that no disclosure can be made by a third party during the course of search. The distinguishing factor is that while in the present question, the seizure being of disclosed asset itself is illegal and without jurisdiction, in the earlier question the seizure is valid and the question is as to who can make the disclosure and in which proceedings?

o. Can the assessee be arrested during the course of search?

No, the authorised officer does not have the power to arrest an assessee for an offence under the Income-tax Act or other Direct Tax Laws while acting under section 132. However, in case of offences like destruction of documents, attack on the search party, an authorised officer can lodge a complaint with the police and the appropriate police authority may take cognizance of the offence and order an arrest.

DUTIES OF ASSESSEE

p. Is the assessee expected to retain his bills for each item purchased?

No, neither that is required nor practicable, particularly in relation to items of smaller value. It is, however, essential that there should be adequate withdrawal to cover the acquisition of the articles during the year or over the years as the case may be. Even under the CCS (CCA) Rules, a Government servant is supposed to intimate acquisition of movable assets only if the value exceeds Rs. 5,000. However, in case of valuable articles and things, it is advisable to keep the bills.

q. What documents are necessary to be maintained in relation to the imported items?

If the imported items are brought by the assessee from abroad, he should maintain its purchase voucher as well as the customs receipt. In case of smaller items which are covered by the exemption limit or as may be prevalent at the relevant time, no such formality is necessary. However, if these items are gifted by the friends visiting from abroad, it may be necessary to keep the details of their visiting from abroad, it may be necessary to keep the details of their visits and a letter from them evidencing the fact of gift as well as the payment of the customs duty supported by the customs receipt unless they were minor items covered under exemption limit. In case the imported items are purchased from some other persons in India, it may be necessary to keep the customs duty receipt

evidencing the payment made by the original purchaser and also in a letter or a sale memo evidencing the sale.

r. What evidence is needed to prove the wedding gifts?

Now under the Dowry Act, it is essential to prepare a list of gifts of various articles received at the time of marriage. This is to be signed by both the sides and copies are to be exchanged. If this is done, it would be an useful evidence in favour of the assessee. In other cases, one may follow the routine of maintaining a list, to the extent possible, showing names of donors, amounts or articles gifted. In the case of costly gifts, the donors may be examined as to their source, etc.

POINTS TO REMEMBER

1. The assessment officer is bound to issue notice for all the assessment years including the assessment years for which nothing is found and nothing is likely to be assessee as additional income over and above the income already disclosed by the assessee. Thus, in this case, even though there cannot be any assessment, the Assessing officer is bound to pass an order of assessment or reassessment as the case may be.
2. The assessing officer would be in a position to make a fresh assessment even though an assessment or reassessment has been made and which is not likely to be disturbed on account of the search.
3. Section 132 has been amended with effect from 1/6/03 to provide that any bullion, jewellery, or other valuable article or thing being stock in trade shall not be seized or put under prohibitory orders in search proceedings.
4. The assessing officer would be in a position to make an assessment even in respect of time- barred assessment. In other words, he would get fresh limitation period in respect of those assessment years.
5. It is to be noted that any income of any assessment year can be assessed only once. This principle being accepted and disputed has to be kept in mind for common assessment years. For Instance a search is carried on March 15, 2007 and concluded, lets assume on July 10, 2007. In that case, the specified period would be assessment years 2002-03 to 2007-08 and 1-4-2007 to 8-7-2007. Thus, the common assessment years are 2002-03 to 2005-06.

Judicial Position in our Courts

Sr.No.	Case Laws	Observations
1.	<i>Kamal Khosla vs. Director of Income Tax [2002 123 TAXMAN 1102 Delhi]</i>	<i>It was further argued that the Inspector of Income-tax Department had acted in an illegal manner in demanding the sum of Rs. 2,80,000. Without in any way reflecting upon the merits of this accusation, even though transcripts of some tape recorded conversation had been produced, these events even if they were assumed to be correct, would not directly affect the legal propriety of the</i>

		<p><i>search and seizure under section 132. The latter proceedings would not be invalidated because of a subsequent illegal action. As regards the cash, it could not be said that the department did not give adequate opportunity to the petitioners to prove that the said sum was legitimately accounted for. At the present stage, it was not possible for the Court to arrive at the conclusion that the stand adopted by the petitioners was unimpeachable. It was, thus, not possible at this stage to grant the relief claimed by exercising the extraordinary powers under article 226.</i></p>
2.	<p>Dr. C Balakrishnan Nair vs. Commissioner of Income Tax [1999 103 TAXMAN 242 Ker]</p>	<p><i>During search on 27-10-1995 of residential premises of petitioners, certain documents, books of account, etc., were seized, put in an almirah, sealed and prohibitory order was served on petitioners - Search was provisionally discontinued and a second search was conducted on 10-11-1995 - Officer-in-Charge of search illegally took away number of documents without knowledge and permission of petitioners on day of first search and brought back on day of second search - Seized documents and records were retained by ADI who planned and executed search operation for more than 15 days - Whether in absence of any satisfactory explanation as to why books of account and documents were not practicable to be seized on 27-10-1995 itself, dumping of same in almirah and sealing it violated mandatory requirements of section 132(3) and rule 112(4C) of the Income-tax Rules - Held, yes - Whether in absence of convincing reason for not resuming search immediately, second search was illegal which invaded rights and freedom of petitioners for a period more than required - Held, yes - Whether ADI who planned and executed search operation could not be ITO having jurisdiction over petitioner and, therefore, detention of seized records by ADI for more than 15 days clearly violated provisions of sections 132(8) and 132(9A) - Held, yes - Whether Officer-in-Charge of search by taking seized records personally without consent or knowledge of petitioners had arbitrarily exercised his power amounting to malice in law - Held, yes - Whether in view of serious lapses and violation of provisions of the Income-tax Rules/Act and constitutional guarantee of petitioners, whole search proceeding required to be declared void - Held, yes</i></p>
3.	Ajit Jain Vs Union	<p><i>Where the CIT had authorised a search merely on</i></p>

	of India 242 ITR 302	<i>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.</i>
4.	Ram Kumar Dhanuka v Union of India 252 ITR 205	<i>Non-residents are not immune from the reach of powers of search and seizure.</i>
5.	Kushi Ram v Hashim, AIR 1959 SC 542.	<i>Just because cash was initially seized by the police, there could not be action under section 482 of the Criminal Procedure Code, 1973, when the cash seized had meanwhile become the subject matter of an other search.</i>
6.	Alleppey Financial Services V ADIT 236 ITR 562.	<i>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</i>
7.	Bapurao v ADI 247 ITR 98 followed Sardar Parduman Singh v Union of India 166 ITR 115.	<i>Immovable property cannot be seized</i>

A BRIEF NOTE ON CONCEPTS RELATED TO SEARCH & SEIZURE ON MONEY

1. Whether book result can be disturbed in case of Assessment relating to search & seizure?

Book result cannot be disturbed except to the extent that some document are found showing that entries in books are wrong or 'ON MONEY' found to be received by the assessee on the basis of seized material.

Reliance can be placed on the following cases :

- a) Udhiram vs. ITO [88 Taxman 191]
- b) Jaya Setty vs. ACIT [69 ITD 336]
- c) ITO vs. Jayant Saree House [82 Taxman 191]

2. Whether the entire On Money received would be taxed as Income or not? If not, what is the basis for taxing the On Money?

No, the entire On money received / found would not be subject to tax. The only method to work out the correct element of profit from the 'On Money' receipts would be to take a percentage thereof at the rate of gross profit / net profit annually disclosed by the assessee or by other similarly placed businessman. In the case of assessee's engaged in construction business, only 6% to 15% (Depending upon case to case) of the 'On Money' receipts would be brought to tax as income from on money receipts.

Reliance can be placed in the following case decided by the Mumbai ITAT :

- i. Mrs.Mehroo N Irani V/s ACIT ITA No.1180 (BOM) of 1989, 26.2.91, [1994 75 TAXMAN 123
- ii. WALL Street Construction Ltd. V/s ACIT ITA No.1759/Bom/1995 dt. 7.8.95
- iii. M/s Kanakia Builders &ors. V/s ACIT ITA (SS) No.14 to 31/Mum/96 dt. 21.11.97

3. Whether the judgement passed in the case of Commr. of Sales Tax v/s. H. M. Esufalli's, H. M. Abdulali reported in 90 ITR 271 (SC.) relating to Estimation of profit in case of search cases is a good law and whether the decision in the said case is binding on all assessees?

No, in the said case the Apex Court had upheld the estimation of sale out side books of Accounts. This decision cannot be applied universally as the facts of the said case were that no material was furnished before officer and it was an Exparte assessment and further this was the case of sales tax. Reliance can be placed on the following judgements :

- a. State of Kerala vs, Vellukutty [60 ITR 239 SC]
- b. ChetandasGulabchand vs. CIT [49 ITR 95
- c. CIT vs. Ranichera Tea Co. Ltd. [207 ITR 979]
- d. Calcutta Co. Ltd vs. CIT [37 ITR 1 SC]

BUSINESS EXPENDITURE

4. What would be the tax treatment in the case of On money received by a Builder, following Project completion method of accounting?

In the case of Builder following Project completion method of accounting, the On money component would be taxed as his business income in the year when the Project is completed. If the Assessee is liable to tax in the year of handing over possession then the On money component would also be taxed as his business in the year when the possession is handed over.

5. Whether the expenditure incurred On payments made to Government Officials is an allowable expenditure?

Upto 31.3.2000 any expenditure incurred towards payments to Government Officials were treated as allowable expenditure. However the law is amended from 1.4.2000 and now the same are treated as not an allowable expenditure. However routine expenses at Govt. offices to get the legal work done can be treated as speed money and may be allowed as exp. of routine nature.

6. Whether amount paid for security charges are allowed , as deduction?

Yes, Amount paid as security charges are distinguishable from amount paid as protection money to extortionists. Therefore legal and genuine business expenditures are allowed whereas illegal, unlawful and expenditures incurred against public policy are not allowed in

view of the amended provisions of section 37(1) of Income-tax Act from 1.4.2000.

7. Expenditure incurred in business outside books of accounts can be added as undisclosed income.

Yes, expenditure incurred outside books of Accounts can be added as undisclosed income but again deduction of expenditure will be allowed hence finally taxable income will be NIL.

Reliance can be placed on the following judgements :

- a. S.F. Wadia vs. ITO [19 ITD 306] Ahd
- b. MK Mathivathanam vs. ITO [31 ITD 114] Mad
- c. Nishat Housing Dev (P) Ltd vs. ACIT [52 ITD 103] Pat
- d. CIT vs. Piard Singh [127 ITR 90] SC
- e. CIT vs. RB Rungta & Co. [50 ITR 233] Bom
- f. CIT v/s Pranal Kesurdas. 49 ITR 31 (Bom)

8. Assessee owning vast Agricultural Lands and same reflected in accounts and regular assessment completed. Whether roving enquiries be made questioning the details of Agricultural land and income thereof?

Under search assessment roving enquiries can be made in respect of completed assessments, which is likely to be disturbed on account of search , if some false documents are found during the course of search.

ADDITIONS ON SURMISES AND PRESUMPTIONS

9. Whether additions under search assessment can be made on the basis of presumptions, Assumptions, Surmises and conjectures etc.?

No. Additions under search assessment can be made only with regard to as such as cash, jewellery unexplained investments valuable and no additions can be made on the basis of presumptions, assumptions, surmises and conjectures etc

Reliance can be placed on the following decided case laws :

- a. KP Varghese [131 ITR 597 SC] – When there is no material found, addition on surmises is unjustified in search assessment
- b. Kasat Textiles Pvt. Ltd. Vs. ACIT [66 ITD 510 Pune] – Information in a persons books of accounts unless proved wrong should be accepted.
- c. ACIT vs. Shailesh Shah [63 ITD 153 Bom] – Addition on the basis of suspicion cannot be sustained.
- d. Shri Bhagwandas Raheja vs. ACIT [IT (SS) A No. 118/Mum/96] – Vague information found in search cannot be used against the assessee.

10. During the course of search valuable documents / Agreements standing in the names of children, who are major and assessee to tax are found whether, additions can be made in the hands of Assessee?

No

- 11. If during the course of search some papers are found describing household expenditure for 2 months. Based on the said loose paper whether the A.O. can make addition for the entire year?**

No. Assessing Officer cannot read something extra and on presumptions make addition. If the papers are found for two months, then additions at the most can be made for 2 months and not for the entire year.

- 12. If an assessee has many group concerns and bank account and the cash credits are rotated by the assessee through his different bank accounts. Whether the addition can be made of the all the credits appearing in different bank accounts?**

No. In such a case the Peak Theory should be followed by the department, by calculating the Peak credit available to assessee on a particular date and only addition of the Peak credit can be made.

- 13. In case of search conducted at the site office of the Builder and the supervisor gives a statement that the rate of flat per sq. ft. is Rs. 4,500/- and the Builder gives the statement that the rate of flat per sq. ft. is Rs. 1,500/-. Then whether the statement given by the Supervisor supercedes the statement of the Builder and whether the same can be relied upon?**

No. In case of search no third party statement can be relied upon unless there is corroborative evidence.

MISCELLANEOUS

- 14. On whom search notice can be served?**

If during the course of search the search authorities find valuables such as jewellery, investments, cash of a third person, then search warrant can be taken out at the said third party too.

- 15. An assessee had offered for tax undisclosed income of say Rs. 50 lacs and unexplained valuable to the extent of say Rs. 25 lacs are found from his premises. The Assessing Officer made addition of both undisclosed income and unexplained investment to the income of Assessee. Whether he is correct in doing so?**

No. Assessing Officer cannot make addition of both source of earning income as well as the investment thereof. In the given case since the investments are less than income, only addition on account of income and not investment would be sustained.

- 16. If the premises of an assessee is searched and till date of search he has not filed any return of income. Whether such an assessee can file his return of income thereafter?**

Yes. Once an assessee is searched and it is found that no return of income is filed by him before search. His income for the past 06 years

would be treated as part of search assessment and tax on the same would be charged at the rates as applied in the relevant assessment.

17. At the time of search if the books of account of the assessee are not complete. Whether the same can be completed?

Yes. During the course of search an assessee can complete his incomplete books of account and explain to the search authorities in respect of any discrepancies found.

18. During the course of search if an assessee makes a voluntary declaration in order to put an end to seamless litigation and to buy peace and if the Assessing Officer does not accept the same in its totality. Whether the declaration is binding on the assessee?

No. The declaration made by assessee amounts to an offer and if the same is not accepted in its true spirit and in its totality the same is not binding on the Assessee. Reliance in this regard can be placed in the following case laws :

- i) Kishore Meswani Vs. 3rd Additional ITO, BSD(S) Wd ITA No. 7162/Bom/90.
- ii) Puspa Vihar, Bombay Vs. ACIT, Circle 36(2)Mumbai ITA No. 1822/Bom/90.

19. If the case of Assessee is complicated and the Assessing Officer lacks understanding. In such situations what is the remedy available to an assessee?

If the case of assessee is complicated and Assessing Officer lacks understanding, assessee can request Assessing Officer to appoint a neutral Chartered Account, u/s 142(2A) for special audit who will audit the books of the assessee and the income of the assessee can be justly and easily quantified.

20. During the course of search assessment whether an assessee can make a waiver petition to the Commissioner of Income-tax u/s 273 A or 273 A (4) of the Income Tax Act, 1961?

Yes.

21. During the course of pendency of search assessment whether an assessee can approach settlement commission for settlement of his case which involves complexities?

Yes. But one has to wait for 120 days to complete from the date of search or receipt of Assessment order, but after 31-5-2007 it will not be possible to go to settlement Commission in case of Search cases.

22. Jewellery belonging to woman found at the time of search for which there is no documentary proofs of purchase. Whether

the same would be treated for the purpose of search Assessment?

Income Tax Department has come out with number of circulars that a married woman should not be questioned on jewellery acquisition upto 500 grams and an unmarried Lady upto 250 gms. male members upto 100 gms. Therefore if jewellery found to this extent then Authorised officers can not seize that Jewellery and no addition can be made in Search Assessment. This view is confirmed by ITAT in number of cases.

23. *If an assessee has jewellery or other valuables which was purchased 06 years prior to the date of search and has proof of purchase of the same, or holding the same then, whether the Income-tax Department can make addition in respect of the said jewellery or other valuables to the total income of the appellant?*

No. Income-tax Department cannot question the Assessee in respect of transactions prior to 06 Assessment years.

24. *Pass book maintained by an assessee, whether constitutes books of Account?*

Yes.

25. *What are the precautions to be taken by an Assessee to avoid complications during search?*

The following are few suggestions / tips :

- a) Regularise the books
- b) Regularise the jewellery held i.e. physical quantity of jewellery should tally with the jewellery declared. Particularly of diamond jewellery and weight of gold & silver ornaments or articles.
- c) Since the tax rates are very low, it is advisable to pay tax and keep white money instead of holding black money in tension.

Such precautions would help an assessee in a great way. Presently an assessee is required to pay maximum Income tax @ 33%, Wealth tax @ 1% only on few items, Gift tax, Estate duty are abolished and expenditure tax is not applicable to individuals. Therefore with such great reliefs it is advisable that an assessee complies with the provisions of law and pays proper tax regularly to lead carefree life and particularly when cases are selected under scrutiny by computer only @ 2% of returns filed.

It is worthwhile to mention that in earlier years Income tax was @ 97.75%, wealth tax as @ 13%, Estate duty was @ 85%, Gift tax was @ 85%, Expenditure tax was @ 30% and many many other taxes at very high rates and over and above that there was 100% scrutiny of returns filed.

26. *Assessee is Builder/ Developer / Contractor and following project completion basis of accounting whether after search*

department can change his system of accounting, particularly in view of AS7 and power of AO u/s 145(2).

No. If assessee is following particular system of accounting which is recognised by law and accepted by department then assessing officer cannot change that system.

Reliance can be placed on the following judgements :

- i) Calcutta Co. Ltd. V/s CIT 37 ITR 37 (SC)
- ii) Shree Nirmal Commercial V/s CIT 193 ITR 694 (Bom)
- iii) CIT v/s Dempo Ltd. 171 CTR 203 (Bom)
- iv) CIT v/s Kay Arts 107 ITR 119 (Bom)
- v) Shapoorji Pallonji & Co. CTO 49 ITD 479 (Bom)
- vi) Malad Shopping Center V/s ITO 17 TTJ 125 (Bom)
- vii) United Com. Bank V/s CIT AIR 2000 SC 94 (SC)
- viii) (1956) AC 85(PC)

27. Assessee have filed return showing profit and accepted by Department, after search action Assessee filed returns in response to notice by AO declaring losses while completing Assessment AO compute losses but refused to allowed to be c/f in view of the fact that search & seizure provisions are for the benefit of Revenue and not for Assessee.

In view of the provisions of Chapter VI of IT Act, if returns are filed in accordance with law and Assessee by AO then loss has to be allowed to be c/f. Reliance can be placed on the following judgement :

- i) Vinod Tayal V/s ITO 36 ITD 625 (Del)
- ii) Calcutta Co. Ltd. V/s CIT 37 ITR 1 (SC)
- iii) CIT v/s Poddar Cement p Ltd 226 ITR 62 (SC)
- iv) Burdwan Wholesale Consumer Co-Op Soc Ltd. V/s CIT 191 ITR 570 (Cal)
- v) CIT v/s Indian Rare Earth 181 ITR 22 (Bom)
- vi) Himmat Singka Motor Works Ltd. V/s CIT 200 ITR 749 (Cal)
- vii) Smt. Margaret Rose Rendem V/s ITO 22 TTJ 82
- viii) CIT v/s Standard Motor Products of India Ltd. 142 ITR 877 (Mad)
- ix) State Bank Of Hyderabad v/s CIT 171 ITR 232 (AP)
- x) CIT v/s Rangnath Bangur 149 ITR 487 (Raj.)

28. During the course of search it was found that Assessee has received certain amounts due to Arbitration Award for earlier years but Assessee have shown as income in the year when received and accepted by Department. If Assessee follow mercantile system of accounting whether while completing the search assessment AO can take that amount in earlier years for which it pertains.

No. A.O. cannot take that amount in earlier years because amount is due to Assessee only due to Arbitration Award and that is the subsequent event ie after date of search.

Reliance can be placed on the following judgements :

- i) G Gopinathan V/s CIT 193 ITR 496

- ii) BPR Construction V/s CIT 192 ITR 534 (Ori)
- iii) CIT v/s Gajapathy Naidu 53 ITR 114 (SC)
- iv) K Sadashiva Krishnarao V/s CIT 144 ITR 270
- v) P Mariappa Coundet V/s CIT 232 ITR 2(SC)

29. Can the matter be referred to the valuation officer for valuation of property etc?

By virtue of Amendment in the Finance Act No.2, 2004, a new section is inserted which is Section 142A, wherein the Assessing Officer is given powers to refer the matter in search cases to the Valuation Officer. Hence, after 08.07.2004, the AO can refer the matter to the valuation officer to value property, etc.

MODEL QUESTIONS WHICH MAY BE ASKED DURING THE COURSE OF SEARCH OPERATIONS

1. What are the sources of your income?

The sources of income should be stated irrespective of whether the income there from is taxable or not. The answer be given with regard to the sources as exist on the date of recording of the statement including the source which might have come into existence after the last return was filed. If any such source is not disclosed and evidence is gathered during the search about its existence, it may lead to an allegation of attempt to evade taxes. However, one is not obliged to disclose sources of income not belonging to him, i.e., those belonging to the members of his family members. But the answer should be comprehensive enough so as to cover income earned in different capacities, e.g., as a proprietor of a concern, partner of a firm, member of an association of persons, member of a HUF or a director of a company and so on.



2. Are you assessed to Income-tax and/or Wealth-tax?

If one is assessee to tax, he should straightway give his Permanent Account Number. Where one is not assessee to tax, he may state so. If the return of income has already been filed but the assessment has not been made, the fact may be stated accordingly. Every person who is liable to tax is supposed to apply for and obtain a Permanent Account Number. This is obligatory. Any breach of this action is liable to penalty. Therefore, if a person has not done so, he may do so forthwith.

3. What are the properties owned by you?

This is a factual information which has to be given with regard to the immovable properties owned by the assessee himself. Certain properties may be in the name of his wife or children or other relatives. If he himself is not the owner of such properties and does not have any interest in them, ..he need not mention the same.

Properties owned by his wife may be her *STRIDHAN* and may have nothing to do with the ownership of the assessee. Such properties need not be disclosed in reply to this question, unless specifically asked for about them.

4. What are the properties owned by your wife and children?

In reply to this question the assessee may give the particulars of the properties owned by his wife and children to the extent the same are within his knowledge. Normally, one is supposed to know the particulars of such properties but the possibility to the contrary cannot be ruled out specially when they may be living separately.

5. (In case of ownership of property) What are particulars of purchaser acquisition and sources of investment therein?



The assessee may state the date and mode of acquisition and sources of payment which may include payments made by him by cheques or cash out of his savings or any other source which may be stated. New property might have been acquired out of sale of an existing one, it may be an ancestral property or one received on partition or by

way of gift. As to the sources, the answer would vary from case to case. While giving these answers, one should always anticipate further enquiries for adducing necessary evidence in support of his explanation. Sometimes, it may be possible to produce evidence on the spot, sometimes it may not be possible to do so. In the latter case, one may always state that he would produce necessary evidence subsequently. Law does not provide for seizure of any immovable property.

6. (Where cash is found) What is the source of money recovered from your possession / custody during search?

The assessee should state the sources of amounts recovered from his possession and custody and not those recovered from the possession or custody of different persons. For example, he may say "out of total amount of Rs. 1 lakh, Rs. 50,000 is recovered from my possession, or from my bedroom and the balance of Rs. 25,000 is recovered from the possession of my wife or from her suitcase or almirah as the case may be and Rs. 25,000 from the saving books of my children. He should then explain the source of Rs. 50,000 and add that the balance is Stridhan of his wife. In case, the money recovered from his possession belongs to the shop/office, he may state the fact. If the money recovered represents the sale proceeds of any property or realisation of LIC policy or recovery of a debt advanced to some other person or advance received in connection with some business transaction or if it is withdrawal from the bank or if it is sale proceeds of any ornaments or if it is a temporary loan from any friend or

relation or business associate, the fact may be stated accordingly. Where the assessee does not remember the exact amount, with regard to the different sources, he may state the sources and add that necessary particulars and evidence will be furnished in due course.

In case, the money represents deposit made by any other person for the safe custody of the assessee, the assessee may state so and if then evidence is available on the spot by way of correspondence or an envelope or box bearing the name of the depositor in which the money was kept separately, this evidence may be brought on record in the assessee's reply.

If the money represents sale proceeds of agricultural produce, the fact may be stated along with the particulars regarding the agricultural holdings.

There is a possibility that the money represents savings of the ladies and children who might have received cash gifts on various ceremonial occasions, festivals or from foreign friends which is exempt from gift tax. If gift is received outside India, these facts may be stated.

7. What are the sources for the acquisition of the jewellery recovered during the course of search?

As in the case of cash, so in the case of jewellery, the assessee must bring out the particulars of the quantum recovered from the custody of different persons. He may also state separately as to what extent the jewellery is owned and declared in wealth-tax assessment by each member of the family. If it is not possible to give the exact particulars of quantum on the spot, the names of the owners may be given with the promise that further particulars will be supplied. The other owners who are present may also make a similar statement, if they are also not aware of the exact particulars.

In case of wealth-tax assessee, the wealth-tax returns may be produced along with the valuer's report. In other cases, the date of marriage, status of the parents and parents-in-law who might have gifted the jewellery and ornaments at the time of their marriage, may be stated. Similarly, if the jewellery is received by way of gift on other ceremonial occasions or otherwise, the relevant facts may also be stated.

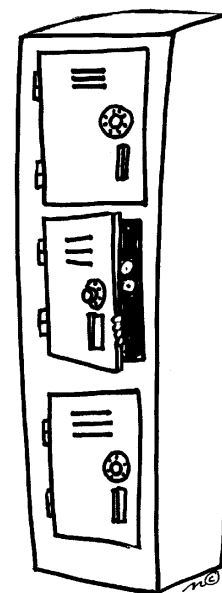
If the jewellery belonging to somebody else is deposited with the assessee for the safe custody, the fact may be stated and necessary evidence which may be available on the spot, should be produced. If not, it may be promised to be produced in due course.

Note: In case of unaccounted cash as well as jewellery which the assessee may not be in a position to explain, the safest course of action is to avail the benefit of sub-section (5) of section 132.

In the case of cash and jewellery, normally, it is difficult to establish the year of acquisition. Therefore, it is always possible to declare the same under section 132(5) as income of the current year and Interest and penalty etc can be avoided.

8. Do you own any locker, separately or jointly with others?

The information has to be given about the ownership of the lockers as on the date of search. It is not advisable to state that one does not remember personal ownership of lockers as there is always a possibility of tracing the locker keys or receipts showing payment of locker fees or the entries of payment of such fees in the books of account, during the course of search or post-search investigation.

**9. What are the contents of the locker?**

One is not supposed to remember all the items lying in locker. Therefore, it would be plausible to give broad description of the contents and add that the full particulars may be ascertained only after opening the locker. Where, however, one can possibly remember, it is always advisable to give the exact particulars in advance as it would inspire confidence about his credibility and may be treated as a gesture of co-operation. At the same time one has to be ready to answer further questions regarding the nature and source of acquisition.

10. How much is the cash kept at home?

[It was not possible to ask this question prior to the amendment of section 132(4) by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989 but now it may be possible to ask this question after commencement of the search but even before any recovery is made.)

One may give exact or estimated amount if one so remembers. Otherwise, it will be safe to suggest that he is not in a position to do so. Whatever, the amount of recovery, one has to be ready to explain the source.

11. In case of recovery of share certificate on blank transfers who is the owner of the shares and what is the source of investment thereof?

If the investment in the shares by the assessee is not out of unaccounted sources, there would be no difficulty in answering the question. However, the difficulty would arise if the situation is otherwise. In such circumstances it is always better to make a clean breast and declare the amount undersub-section (5) of section 132. However, this can be done only in respect of current year's acquisition or in respect of those for which it is not possible to pin-point the year of acquisition.

12. Do you maintain regular books of account?

There may be numerous answers to this question depending on the facts and circumstances of each case. The individual assessee may not be maintaining books of account for their personal cases. However, the position may be different in case of professionals as it is mandatory to do so under section 44AA according to which every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as notified by the Board shall keep and maintain such books of account if his income exceeds Rs. 25,000 or if his total sales turnover or gross receipts as the case may be exceed Rs. 2,50,000 in any one of the three years immediately preceding the previous year, and in the case of a newly set up business if the income is likely to exceed Rs. 25,000 or his total sales turnover or gross profit is likely to exceed Rs. 2,50,000 during the previous year.

Under Rule 6F of Income-tax Rules, 1962, it is prescribed that every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or after notified professionals (including film artists) should keep and maintain the following books of account and other documents:

- a) Cash book
- b) Journal, if the accounts are made according to the mercantile system of accounting
- c) Ledger
- d) Carbon copies of bills, whether numbered or otherwise serially numbered, wherever such bills are issued by the person and carbon copies or counterfoils of machine numbered, or otherwise serially numbered receipts issued by him.
- e) Bills and receipts need not be kept for sums not exceeding Rs. 25.
- f) Original bills wherever issued to the person and receipts in respect of expenditure incurred by the person or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs. 50, payment vouchers prepared and signed by the person :

Provided that the requirement as to preparation and signing of payment vouchers shall not apply in a case where the cash book maintained by the person contains adequate particulars in respect of expenditure incurred by him.

13. (In case where the books are not maintained) Why do you not maintain regular books of account?

Considering the magnitude of income and turnover, it may not be economical to maintain the books of account or considering the nature of business or profession, it may not be practicable to keep all sorts of vouchers or receipts or registers.

Non-maintenance of regular books may also be due to the fact that even though the prescribed books are not maintained, there is a reliable

contemporaneous record maintained for the income and expenditure wherefrom the taxable income can be properly ascertained.

Non-maintenance may also be due to the nature of the profession being such which involves numerous items of receipts and expenditure that it may not be practicable to keep record of each and every transaction but in overall account is contemporaneously maintained during ordinary course of business which may be reliable enough.

Non-maintenance can also be for the reason that all the transactions of receipts as well as payment are routed through the bank account and up-to-date bank record is available on the basis of which income can be properly deduced at any point of time.

Non-maintenance can also be partial, viz., the accounts had been written up to certain date only in a regular manner but due to the leaving of the employment by the accountant or due to his sickness or due to his absence otherwise, it could not be possible to keep them up-to-date, yet necessary particulars are available along with the subsidiary record on the basis of which it may be possible to bring the regular books of account up-to-date.

There may be several other situations and answer to the query, therefore, has to be given in a manner which inspires the confidence and all the available material should be produced to establish the credibility and to efface possible allegation, if any, of deliberately not maintaining the books with the intention to conceal the income.

14. Give the particulars of your bank account, bank deposits and other investments made in your own name, in the names of your wife, children, other members of family and benamidars?

This answer has to be given with regard to the assets belonging to the assessee himself as on the date of recording of the statement unless the information is asked for as on any particular date. Here again, the assessee has to make distinction between the assets belonging to himself and those belonging to others. Where the assessee has made investments out of his own sources in the names of his wife and children, he may be better advised to give the particulars of all such assets and state that though they are in the names of wife and children, they, in fact, belong to him. But, in respect of the assets which are stridhan of his wife or belong to other lady members of his family, one is not supposed to know all the particulars or obliged to make a statement in relation thereto.

15. What is the extent of your monthly or annual personal expenditure and the source of meeting them?

Answer to this question will depend on the facts and circumstances of each case. In any case the personal expenditure should be sufficiently backed by the previous withdrawals and should be suffice to maintain the standard of living of the assessee. In the case of a joint living, the withdrawals made by different assesseees may be pooled together. The authorised officer may question about details of expenditure head wise, e.g., on education of children, marriages, pay of servants, drivers, gardeners, expenditure on petrol, acquisition of jewellery and

ornaments, gifts made if any., payment of life insurance premium on self and others, deposits under various saving schemes and so on. Therefore one has to be ready to cover and correlate to the extent possible all such expenses and outgoings with the withdrawals made during the year from his own account or that of his wife, children, etc. Withdrawals may, be from his account with the bank or firm, companies, etc. While showing the withdrawals from the companies, one has to take care of the provisions of section 2(22) (e) of the Income-tax Act.

16. (At the office, shop or godown) What is the cash balance as per cash book?

Wherever cash book is written up-to-date, there would be no difficulty but, where it is otherwise, vouchers may be produced on the basis of which it may be possible to work out the latest cash balance.

17. What is the stock in hand as per stock register or as per books of account?

If the balances are struck up-to-date in the stock register, the answer may be given without any difficulty. In a case where no up-to-date stock register is maintained, it may be updated with the help of vouchers but where no stock register is kept at all, stock may have to be worked out with the help of inventory which may have been filed with the Assessing Officer along with the earlier return, and by adding purchases and subtracting sales and making further Adjustment on the basis of the gross profit earned during previous year or on the basis of the rate of gross profit applied in the assessment as the case may be.

18. (Where duplicate sets of books of account are found) State the circumstances in which you have maintained duplicate sets of account books?

Normally, maintenance of duplicate sets of books of account gives rise to a suspicion for an attempt to evade taxes. This may also lead to prosecution under Explanation to section 276C(1) of the Income-tax Act, 1961. Therefore, in all those cases where there is any difference in the income likely to be worked out on the basis of duplicate set, it would always be advisable to make a clean breast of the facts and declare the income under sub-section (5) of section 132.

19. (Where certain loose slips, note book, diaries are found containing transactions not recorded in the regular books of account) Please explain the nature of transactions recorded in the said documents and state whether they are accounted for in the regular books of account?

In this case also the answer would be on the same lines as is suggested in a case where duplicate set of books of account are found and one may avail of the facility provided in section 132 (5). However, it may be possible for the assessee to get away with it where he is in a

position to explain satisfactorily that the so-called entries in the loose papers, diaries, or note books have no connection with and cannot be related to the business of the assessee and that the books of account regularly maintained by him reflected the correct state of affairs and that no concealment of income or evasion of tax can be proved on the basis of the said documents.

Note: In case the duplicate books of account or the loose papers, diaries and notebooks containing the unaccounted transactions relate to earlier previous years for which the returns have already been filed, or have become due, it may not be possible to make declaration under sub-section (5) of section 132. In respect of such documents, the assessee may have to undergo the usual process of interrogation. To the extent possible, attempt should be made to explain the correctness of his books of account maintained in the ordinary course of business. Department would try to establish the concealment on the basis of such documents. Therefore, one has to be more careful in such circumstances.

20. (Where foreign exchange is recovered) Please state the circumstances which you came to possess the foreign exchange and explain the source of its acquisition?

Answer to this may depend upon whether the assessee has himself visited foreign country and declared the foreign exchange. It might have been required from others who might have recently visited a foreign country. In case, no one can possess any foreign exchange as discussed earlier and must be surrendered to the authorised dealer i.e. to the scheduled banks, within specified time. There may be circumstances where the assessee has had genuine intention of making such a surrender but he could not do so to some reasonable cause which may be stated.

21. (Where imported articles are found) Please state the nature and source of acquisition of imported articles?

One may produce the voucher and receipt showing payment of customs duty. Difficulty may arise where assessee is not in possession of evidence for payment of price or the customs duty and where the goods have been acquired or the customs duty has been paid out of unaccounted money. So long as there are adequate withdrawals from bank the acquisition and payment of customs duty, there may be no liability under the act but the problem may arise where the authorised officer might intimate the customs authorities who may come on the scene.

There may be several situations. The assessee or his friends and relations might have brought the imported goods from a foreign country during their foreign visits and may be covered by exemption limits. If the assessee acquired them out of money received as loan or a gift outside India, it may be possible for him to get that way with this transaction by producing the necessary evidence on the spot or by a promise to do so on a future date. However, he should take care of the provisions of section 8 of the FERA.

There may be another situation where the assessee has acquired imported items from some other person in this country and made the payment to the other person for the price of the article as well as the amount of import duty contained therein. If the assessee is able to produce the evidence to this effect, he may be found technically guilty of possession of an article on which the import/customs duty is not paid (if that be the case) but he may get away with the liability under the Income-tax Act?

22. In case of unaccounted machinery being found either in the assessee doctor's dispensary or in the factory premises or where unaccounted assets like air-conditioners, etc. are found at the shop or residence). What are the particulars of the acquisition of asset & and source of investment therein?

There may be many situations: the assets might belong to some other concern, they might have been taken on lease from leasing company or from some other concern who may not have been in a position to exploit them commercially. In these circumstances, there will be no difficulty in giving the necessary particulars. However, there may be a situation where though the delivery has been taken, the payment is yet to be made as the bill is yet to be received. It may be possible to give the necessary particulars with a promise to produce the evidence on a future date. However, in all those cases where it is not possible to explain the source of acquisition it may be advisable to resort to the benefit under sub-section (5) of section 132 till acquisition is shown in current year.

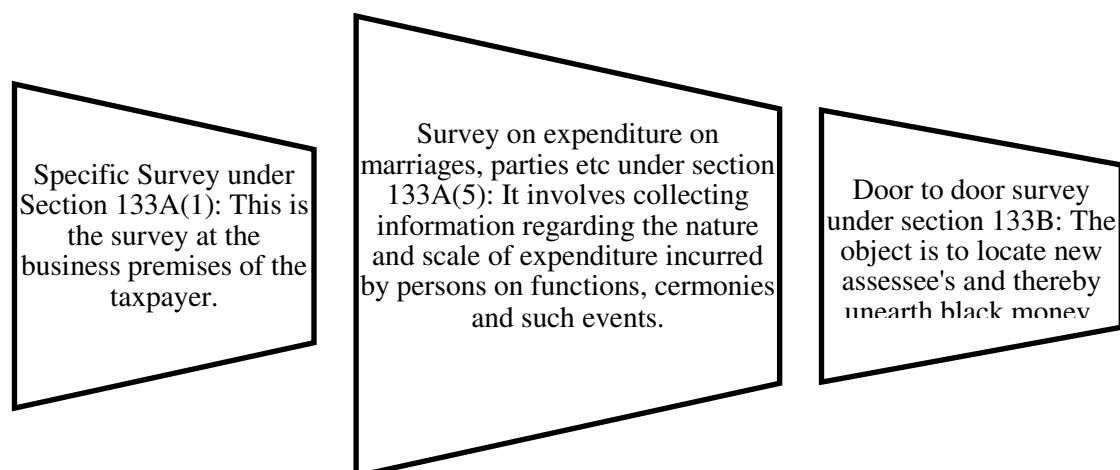
Survey

1. Meaning of Survey

Survey has not been defined in the IT Act, 1961. According to the Concise Oxford Dictionary, the expression Survey means general view, casting of eyes or mind over something, inspection or investigation of the condition, amount etc of something, account given of this result etc.

In short, it means collection of data or information in context with the Income tax Act.

2. TYPES OF SURVEY



3. WHO CAN SURVEY ?



4. POWERS OF CONDUCTING SURVEY

JURISDICTION REGARDING SURVEY

An income tax authority may enter:

- (a) Any place within the limits of the area assigned to him (**area wise jurisdiction**), or
- (b) Any place occupied by any person in respect of whom he exercises jurisdiction (**assessee wise jurisdiction**); or
- (c) Any place in respect of which he is authorized by such income tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place. (**delegated/ conferred jurisdiction**)

For example:

Mr. Z is an assessee having businesses at two places viz. one located in Andheri (Mumbai) and another at Borivali (Mumbai).

The jurisdiction of departmental authorities is as under:

Mr. A	Mr. B
[Income Tax Authority]	[Another Income Tax Authority]
Area wise jurisdiction over Andheri	Area wise jurisdiction over Borivali

Assessee wise jurisdiction over Mr. Z because Mr.Z is submitting his return of income to the office of Mr.A.	
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Mr. B conducts a survey at the Borivali office of Mr.Z. While conducting the survey, Mr. B comes to know that Mr.Z is also having business in Andheri office. Mr. B feels the need of conducting survey in Andheri office which is in jurisdiction of Mr.A. In this case, Mr.B can obtain authority from Mr. A and conduct survey.

5. DUTIES OF ASSESSEE

An income tax authority can require any proprietor, 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 to:

- (i) To afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,
- (ii) To afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and
- (iii) To furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

If the concerned person refuses or evades to do so, the income tax authorities can exercise powers under section 131.

6. POWERS OF INCOME TAX AUTHORITIES

Power during the course of survey

- i. To enter the place of business during business hours which would mean such hours of business at which such place is open for the conduct of business or profession and other places only after sunrise and before sunset.
- ii. To enter any other place, other than business premises, if the assessee states that his cash book, records and other books of accounts related to business are kept at such other place of business.
- iii. To place marks of identification of the books of accounts.
- iv. To take extracts from the books of accounts or other records and documents.
- v. To record the statement of any person, which may be useful for or relevant to any proceedings under the Act.
- vi. To make an inventory of any cash, stock or other valuable article or thing checked or verified by him.
- vii. To call upon the proprietor, employee or other person to furnish information relevant to any proceedings under the Act.
- viii. Apparently, no powers seems to have been granted to an income-tax authority cannot take a personal search of a person during survey.
- ix. Income-tax authority can impound books or documents inspected by him after recoding reasons for the same. Such impounded books can be retained in his custody for 10 days (If books retain between periods of 1.6.2003 to 30.09.2014. w.e.f. 1/10/2014 period is increased to 15 days.) after which he is required to take the approval of the Chief Commissioner of Director General.
- x. Where accounts are maintained on a computer, the income-tax authority would be within his powers to take a backup of the same

on a CD, floppy etc. Besides this copies of incriminating ledger accounts are also printed out and the assessee is asked to put marks of identification under his signature so that later on the evidence can be used against him.

- xi. No power has been granted for seizure of cash, stock or other valuable article or thing during survey.

7. LIMITATIONS ON POWERS OF AUTHORITIES

- (a) The authorities have the power to collect information and record the statements regarding expenses incurred by any person in connection with any function, ceremony or event, if they are of the opinion that having due regard to the nature and scale of the expenditure incurred, it is necessary to do so. However, powers under this section cannot be exercised so long as the function, ceremony or event is going on.
- (b) An authority acting under section 133A cannot remove (in simple words seize) any cash, stock, article or thing. (Books of accounts and other documents can be impounded)

Shyam Jewellers vs. Chief Commissioner [196 ITR 243]

Whether business premises of assessee cannot be sealed off either under section 133A or section 132 - Held, yes - Whether when there was no information before Chief Commissioner at time of passing authorization order that assessee was in possession of undisclosed money, bullion, jewellery or other valuable article, such a vague and general order could not be treated as an authorization order in law and no proceedings on basis of such an order could have taken place - Held, yes - Whether, consequently, initiation of search proceedings and passing of assessment order under section 132(5) were invalid and liable to be quashed - Held, yes

8. Where Can a Survey be conducted?

The powers of the income-tax authority extend only to an entry to a business premises or place of profession. It is not necessary that the place which the survey is carried on is a principal place of business. Business premises would also include a place where from business need not be carried on by the assessee if books of account, documents, cash stock, valuable article or thing is kept.

9. When can a survey be conducted?

The survey action has to be initiated during the business working hours i.e. during the hours at which such place is open for conduct of business and in case of any other place, say after the sunrise and before the sunset, but once properly initiated, it can carry on through the night. There is no time limit provided for concluding or exit from the business premises [N. K.

Mohnot v. CIT 215 ITR 275 (Mad)]

10. Survey at residential premises

It may be noted that a survey can also be carried out at a residential premises in case the same is shown as the business address. If the books of account, stock or cash of business is stated to be kept at the residence, or

the business address for Sales tax purpose is shown as the residence, an income-tax authority can conduct a survey at such residential premises.

11. Survey by TDS Officers

In recent times the TDS Officers have also embarked upon the survey trail in as much as they verify the details of payments made and check whether tax has been properly deducted and paid by the assessee.

ITO TDS having jurisdiction in respect of TDS functions of a branch of the assessee, conduct survey u/s 133A, the same was held to be valid. *Peerless General Finance and Investment & Anr. V/s AO & ors. (2001) 248 IOTR 113 (All HC)*.

Therefore, to give express power of survey by Income Tax authorities for TDS compliance & verification new Sub-section (2A) to section 133 w.e.f. 1st October, 2014 was inserted. However, in said survey, the Income Tax authorities cannot impound any books of account or any document nor make an inventory of cash , stock or other valuable article or thing.

12. Powers of an Inspector of Income-tax

A question arises whether the inspector of the Income Tax can be authorized to carry on a survey action. In the case of **Income-tax Officer Vs. Jewels Emporium [1974 SOT 939 (Ind.)]** it was held that the Inspector, even if authorized, cannot exercise any other power u/s. 133A and any act beyond the specified powers would be illegal.

Thus, an inspector of Income tax can carry out survey only if he is authorized by any Income Tax authority and the Inspector, on being so authorized, can exercise only following powers:

- a) To inspect books of accounts and other documents,
- b) To place marks of identification on books of accounts or documents examined,
- c) To make extracts or copies of books of accounts or documents,
- d) To seek information regarding expenses as specified in sub-section (5) of section 133A.

**Powers of
Inspector
of Income-Tax**

Harshad L. Thakker v. Assistant Commissioner of Intax, Circle-18(2)[2005] 3 SOT 277 (MUM.)

It was held that an Income-tax Inspector is not an income-tax authority for purpose of recording statement of any person in course of survey proceedings under section 133A of the Act. However the assessee would still be liable to explain discrepancy in stock inventory prepared in course of survey even though statement recorded was non est because incriminating material found in course of illegal search is an admissible evidence.

Kamal & Co. v. Assistant Commissioner of Income-tax [1998] 62 TTJ (JP.) 527/[1999] 104 TAXMAN 79 (JP.) (MAG.)

It was held that an Inspector is not empowered to record statement or to prepare stock inventory at time of survey and, therefore, additions made on basis of survey made by Inspector must be deleted

Income-tax Officer v. Jewels Emporium [1994] 48 ITD 164 (Indore)

It was held that by recording of a statement of firm's partner on oath and preparing inventory of stock during survey operations under section 133A, the Inspector of Income-tax has acted beyond the purview of his powers which was illegal

13. Enquiry relating to expenditure

An income-tax authority under 133A(5) is empowered to record a statement of any person who in his opinion is likely to possess information relating to the nature and scale of expenditure incurred by an assessee in connection with a function, ceremony or event. The term “incurred” shows that such an inquiry can be conducted only after the function, ceremony or event is over. However spot enquiries are often undertaken after the function though it is not unknown that very many times Inspectors of the Income-tax department are present during weddings. They are authorized to record the statement of any person such as the manager of the hotel, the caterer; the card printer etc. and such statement may be used in evidence in any proceeding under the Act. The powers u/s 133A(5) are different from the powers u/s 133B.

14. Failure to co-operate.

If any person fails to co-operate with the income-tax authority or does not afford facility to inspect the books of account or other documents, or to check or verify the cash, stock, etc, then such income-tax authority can invoke the powers u/s 131(1) of the Act and enforce compliance.

15. Presence of an Advocate, Chartered Accountant or an Authorized Representative.

An Advocate, Chartered Accountant or an Authorised Representative can be permitted to be present during a survey. In fact his presence can be of great assistance to the income-tax authority since he is in the full knowledge of most of the affairs of the assessee. However this does not constitute a right because except for affording assistance, the authorized representative has

no role to play. He is in reality a silent spectator to the process and in case of any interference by him could make him leave the premises.

16. Can an Advocate or a Chartered Accountant be surveyed?

Tax professional stand in a fiduciary capacity vis-à-vis their clients and as such he is not to be visited by an income-tax authority. This stood clarified by the **CBDT vide Circular dated 3/5/1967**. However in view of Explanation to S. 133A(1), w.e.f. 1-7-1995, if the books of account, documents, or any part of the cash or stock or any other valuable article or thing of an assessee is stated by be kept in any place other than the place of business or profession, the income-tax authority can survey such a place, but same may be for a limited purpose for obtaining information relating only in respect of that assessee.

17. Statement recorded in survey.

It is frequently seen that the income-tax authority conducting a survey normally does not leave unless a confessional statement is recorded. Such statement is given by the assessee many a times to get rid of the officer and to bring an end to the proceedings. Later on the assessee files a declaration that the statement is taken under undue pressure and the facts stated therein are incorrect. As such the statement is retracted.

A statement recorded under section 133A(3)(iii) is not a statement on oath and hence does not have evidentiary value.

The Kerala High Court in 263 ITR 101 (Ker) in the case of Paul Mathew & sons has held that the Assessing Officer has no jurisdiction to record a statement on oath u/s 133A during the course of survey and such a statement has no evidentiary value since the Officer is not empowered u/s 133A to administer oath. A similar view has been taken by the Cochin Tribunal in 2 SOT 402 in the case of Kurrunen Vehil Financiers P. Ltd. A similar view has been taken by the Cochin Tribunal in 2 SOT 402 in the case o Kurrunen Vehil Financiers P.Ltd.

Accordingly, whenever there is some incriminating material found during a survey, the income-tax authority immediately issue a summons under section 131 of the Act and records a statement since a statement recorded by this process is on oath and has the force of law. However for the exercise of a power under section 131(1), the Assistant Director, Deputy Director, Assessing Officer, Tax recovery Officer or the Inspector of Income-tax needs to take the approval of the Director or Joint Commissioner as the case may be.

In order to avoid such embarrassments, the **CBDT vide instruction dated 10th March 2003**, has instructed the subordinate officers to focus and concentrate on collecting evidence of income which is not disclosed or is not likely to be disclosed rather than record an unsubstantiated statement. The instruction is reproduced hereunder:-

Instruction dated 10th March, 2003 vide No. F No. 286/2/2003/IT (Inv):

“To

All Chief Commissioner of Income Tax (Cadre Contra)&
All Directors General of Income Tax Inc.

Subject: Confession of additional Income during the course of search & seizure and survey operation regarding.

Instances have come to the notice of the Board where assessee have claimed what they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search & seizure survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidence/materials gathered during the course of search/seizure operations or thereafter while framing the relevant assessment orders.

Yours Faithfully,

Sd/-

(S. R. Mahapatra)

Under Secretary (Inv. II)

18. Copies of statements recorded during survey.

It is settled law that copy of only that material which is being used against the assessee is to be provided. Accordingly even though the statement of the assessee is recorded during the course of survey, no copy is provided to him and it is for the assessee to then apply to this concerned officer for the same who would provide the copy in case he intends to use it against the assessee.

Retraction of a statement given during survey.

Harshad L. Thakker v. Assistant Commissioner of Income-tax, Circle-18(2) [2005] 3 SOT 277 (MUM.)

It was held that if assessee can demonstrate that valuation of stock adopted by survey party during survey proceedings under section 133A was wrong with reference to material on record, then addition under section 69 on account of unexplained investment in excess stock could not be justified merely on ground that said addition was offered by assessee during survey proceedings

Income-tax Officer v. B.D. Dal & Oil Ind. [1992] 40 ITD 180 (Jp.)

Where during a survey an assessee himself concedes that the stocks are short and agrees to the extent of shortage, it was held that unless it can be established that such consent or agreement was given or arrived at under threat coercion, undue influence, misrepresentation or wrong understanding

of facts or law, the assessee cannot be allowed to retract from whatever it had stated or agreed to at time of survey.

19. Conversion to Search.

There are times when the income-tax authority may during the course of a survey find huge unaccounted cash or stocks. There may be sufficient material which would warrant seizure. Since he does not have the power to seize, the income-tax authority then informs his counterpart being the Investigation wing who come with a search warrant and take over the proceedings from there. The survey then ends and search begins.

Vinod Goel vs. Union of India [252 ITR 29 Punjab and Haryana HC]

Whether when sufficient number of incriminating documents were recovered during survey of petitioner's premises and concerned officer recorded in warrant his satisfaction that required documents would not be produced in case of summons issued under section 131, on ground of mere presence of some defects in warrant, it could be said that conversion of survey into search and seizure was illegal - Held, no

20. Consequences of a confessional statement.

Very often it is seen that in a survey, the income-tax authority determine the closing stock by estimating gross profit. The normal practice is to take the Opening stock, add to it the purchases up to the date of survey, deduct sales as recorded in the books of account and the average estimated gross profit. This working generally leads to an incorrect result and thus excess stock is worked out as compared to what is physically found. The assessee makes a declaration and then afterwards realizes the folly and files a retraction. The reasons for the difference could be many such as:-

- The rate of GP has been taken to be a lower figure than the one which can be proved from the records.
- Certain purchases for which the deliveries were received have not been debited but since the bills were not received and therefore purchases to that extent are understated.
- Certain sales have been made but the goods have not yet been delivered. Therefore, these items were included in stock as well as sales;
- Certain materials were received either for job work or on returnable basis and therefore did not belong to the assessee;
- The physical stock taken by the department was not correct.

21. Precaution to be taken before making a statement.

Before making a confessional statement or any declaration, the assessee should keep the following issues in mind:-

- i. Whether any evidence has been found which would lead to an inference of concealment of income.
- ii. Whether there are in fact any discrepancies between the stock as and the stock as per books.

- iii. In case of disclosure of excess stock it may be advisable to admit discrepancies in the stock rather than unaccounted purchases.
- iv. The provisions of sales tax and excise duty besides provisions like disallowance u/s. 40-A(3), 269-SS, 269-T etc should be kept in mind before making any confession ?
- v. Whether it would be safer to disclose income under the head "other sources" or "business".
- vi. Would it be desirable to declare the entire amount as current year's income or spread over income for many years since any spread over may result in liability to interest and penalty for concealment.
- vii. Whether it is possible to capitalise the disclosed amount.
- viii. 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.

Power to examine on oath

CIT vs. S. Khadar Khan Son [Supreme Court of India 25 taxmann.com 413]

Whether Section 133A does not empower any ITO to examine any person on oath; so statement recorded under section 133A value and any admission made during such statement cannot be made basis of addition - Held, yes

22. *Presumptive taxation.*

There are some provisions of the Act which permit some types of assessee having a restrictive turnover to pay tax on an assumed income. If during the course of a survey of such an assessee it is found that books of account are maintained, the income-tax authority would be very much within his powers to impound such books and thus make the assessee liable to income based on the entries in such books of account.

23. *Interest and Penalty.*

It is very important to consider the consequences of a disclosure made during the course of the survey. If the income detected during the course of survey relates to the current year, then the assessee would be liable only to interest under section 234C if any and there would be no reason to levy a penalty since the return of income was not yet due and hence concealment is not established.

SantRamParmanadVs. ACIT [2004] (1 SOT 312) (Del.)

However, where the income detected during the course of survey relates to any assessment year for which the return of income has already been filed, it is presumed that the intention of the assessee was to conceal such income and as such the assessee will not be spared from the liability of interest and penalty as per law.

A few Judicial Pronouncements

Survey at premises of Chartered Accountant/ Lawyer/ Tax Practitioner

- **U.K.Mahapatra & Co. vs. Income Tax Officer [2009 308 ITR 133]**

The pre-condition for conducting survey under section 133A in premises of a chartered accountant, lawyer, tax practitioner in connection with survey of business place of client is that client, in the course of survey, must state that his books of accounts/ documents and records are kept in office of his chartered accountant/ lawyer/ tax practitioner; unless this pre-condition is fulfilled, income tax authority cannot assume any power to enter business premises/ office of chartered accountant/ lawyer/ tax practitioner to conduct survey under section 133A in connection with survey of premises of their client.

Opportunity of being heard and cross examination during survey

- **Commissioner of Income Tax vs. Land Development Corporation [2009 316 ITR 328]**

Where during course of survey it was found that depreciation on certain machineries (reactors) was claimed by assessee and on basis of statement of certain witnesses it was found that claim was not correct but assessee was not afforded an opportunity to cross examine such witnesses even though assessee had made such request, matter was to be remanded to Assessing Officer for affording an adequate and proper opportunity to assessee for cross-examination of all those witnesses whose statements were recorded earlier and whose statements had already been supplied to assessee.

Retraction of admission recorded

- **CIT vs. Dhingra Metal Works [2011 196 taxman 488]**

Though an admission made during survey is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person, who made the admission, to show that it is incorrect.

Retention of documents for a longer period

- **U.K.Mahapatra vs. ITO [2009 176 Taxman 293]**

Retention of books of accounts or documents beyond ten days without obtaining any approval either from Director General (Investigation) or from Chief Commissioner is not authorized under law.

Impounding of documents

- **Income Tax Officer vs. Raj and Raj Investments**

Survey - On basis of authorization issued by Joint Commissioner, ITO surveyed premises of assessee and voluminous documents books of account and other incriminating material had been impounded - Against above action assessee filed writ contending that no reasons were assigned for retention of documents impounded Single Judge accepting assessee's contention quashed authorization, impounding order and directed ITO to return documents to assessee by retaining copies thereof authenticated by assessee, liberty was also given to take action in accordance with law- Whether Single Judge was justified- Held-Yes.

The Act does not prescribe any special procedure for assessment of survey cases. Hence, the department shall follow the normal procedure discussed below:

(a) For assessment of undisclosed income of current year:

It shall be considered while finalizing assessment of current year.

Normally, the assessee voluntarily discloses income in the return of income of current year. However, the department may select case for scrutiny under section 143(2).

(b) For assessment of undisclosed income of earlier years:

Action shall be taken under section 147.

**25. POWER TO CALL CERTAIN INFORMATION-
SECTION 133B**

JURISDICTION

Under this section, the prescribed authority can enter:

- a. Any place within the limits of the area assigned to him (areawise)
- b. Any place occupied by any person in respect of whom he exercises jurisdiction (assessee wise)

PLACE AND TIMING

The authority can enter any building or place at which a business or profession is carried on, whether such place is the principal place of business/ profession or not. Such entrance is allowed only during the hours at which such place is open for conduct of business.

POWER OF AUTHORITIES

The authority can require proprietor/ employee/ any other person who may at that time and place be attending in any manner or helping in carrying on such business/ profession, to furnish information in Form No.45D.

RESTRICTIONS ON AUTHORITIES

The authority acting under this section cannot remove or cause to be removed any books of accounts or other documents or valuable articles or things. (Infact the authority does not have any power except to collect information in Form No.45D).

NON COMPLIANCE OF SECTION

It attracts penalty under section 272A (2) – Rs.100/- per day.

26. POWER TO CALL INFORMATION-SECTION 133C

One more right has been given to Income Tax Authority by inserting New Section 133C w.e.f. 1.10.2014. Now, prescribed Income Tax authorities are empower to call for information or documents from any person for the purpose of verification of information in his possession relating to any person, which may be useful for any inquiry or proceedings.

**27. POWER TO INSPECT REGISTERS OF COMPANIES- SECTION
134**

Under this section, the prescribed authority has the power to inspect and if necessary, take or cause to be taken copies, of following registers maintained by a company:

- a. Register of the members

- b. Register of the debenture holders
- c. Register of the mortgagees.

28. DISCLOSURE OF INFORMATION RESPECTING ASSESSEE'S

Normally, income tax department cannot disclose the information received or obtained by it. However, in the following situations, disclosure is allowed:-

1. The CBDT (or any other income tax authority specified by the Board) can furnish information to :
 - a. Any officer, authority or body performing any functions under the law relating to imposition of any tax, duty or cess.
 - b. Any officer, authority or body functioning under FERA/ FEMA.
 - c. Such officer, authority or body performing functioning under any other law as may be notified by the Central Govt.
2. The CCIT/ CIT can furnish information respecting any assessee to a person who makes an application in the prescribed form. However, CCIT/CIT must be satisfied that it is in the interest of the public to do so.

Limited Restriction

The Central Government can direct, by issuing notification, that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee's or expect to such authorities as may be specified in the notification.

29. COMPARATIVE ANALYSIS OF SECTION 133A AND SECTION 133B

BASIS OF COMPARISON	SURVEY UNDER SECTION 133A	SURVEY UNDER SECTION 133B
Which authority/ jurisdiction	Area wise jurisdiction Assessee wise jurisdiction Delegated jurisdiction	Area wise jurisdiction Assessee wise jurisdiction
Place	Only business place can be surveyed. Other place where the books of accounts, cash, stock etc. are kept, can be surveyed.	Only business place.
Timing	Business place can be surveyed during the hours at which such place is open for conduct of business. Other place can be surveyed after sunrise and before sunset. Time	Such hours at which the place is open for conduct of business.

	restriction is on entrance only and not on exit.	
Powers	Comprehensive powers	Limited power to collect information in Form 45D
Examination on oath	Allowed	Not allowed
