

VOICE OF CA

SURVEY SEARCH & SEIZURE

Under the Income Tax Act, 1961



By
CA Agarwal Sanjay
'Voice of CA'

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From the Desk of the Founder of 'Voice of CA'



CA Agarwal Sanjay
'Voice of CA'

*On behalf of 'Voice of CA', I express an immense pleasure to present the book on **Survey, Search & Seizure under Income Tax Act, 1961**. We have made every effort to compile all the latest developments in the field of Survey, Search & Seizure, which includes the prevalent law, its analysis, gist of significant judicial pronouncements of various courts, Frequent Asked Questions (FAQs), Performa's of Panchnama & various forms and Important Circulars/ Notifications/ Press Notes, in updating the law in this book.*

We hope that this book will be found useful and will help in better understanding of the provisions of Law in respect of Survey, Search & Seizure.

I wish to place on record my sincere and grateful thanks to the 'Team Voice of CA' and its contributors for the contributions made by them in the preparation and printing of this book.

CA Agarwal Sanjay
'Voice of CA'

About the Author

CA Agarwal Sanjay **'Voice of CA'**

CA Sanjay 'Voice of CA' Agarwal, officiating Central Council member, holding the position of Chairman, Direct Tax Committee of ICAI since 2011, is also appointed as Vice Chairman Audit Committee since 2012 & Coordinator of Central Grievance Cell of ICAI namely "E-Sahaayataa".

His main area of expertise is Direct taxation wherein his contributions are in the form of articles & presentations on various topics of direct taxation covering topics of Search and Seizure, Block Assessments, Budget, T.D.S., MAT, HUF, Charitable Trust, Settlement Commission, Penalty, Prosecution, ITAT-Practice & Procedures, Tax Audit, Fringe Benefit Tax, Asst/ Reassessment under Income Tax Act, NGO & Tax Audit, Capital gains, Real Estate taxability, deemed dividend etc. More than 200 Seminars have been attended by him as Speaker in Delhi, Kolkata, Bangalore, Goa, Nagpur, Chandigarh, Amritsar, Jalandhar, Ludhiana, Patiala, Bhatinda, Sonapat, Panipat, Yamunanagar, Hisar, Sirsa, Faridabad, Saharanpur, Gurgaon, Rohtak, Rewari, Bhopal, and Meerut & Muzzafarnagar. He is an eminent personality in the field of Survey Search & seizure and deals at all levels up to Settlement Commission, Mr Agarwal is providing tax consultancy to a number of business organizations, which include multinational and public sector companies.

CA Sanjay 'Voice of CA' Agarwal has also created a platform to interact with Chartered Accountants all over the India, by founding a NGO "**Voice of Chartered Accountants**" (Regd.) to unite the members on single platform. It provides professional updates in the form of latest case laws, news of professional interest, articles, write-ups, presentations etc. to its members.

AN INITIATIVE OF 'VOICE OF CA'

We are a registered NGO formally incorporated on 05/03/2009, working with the objective of professional development of members of our esteemed institute "Institute of Chartered Accountants of India". In all spheres of professional, Social & Political exposure, Voice of CA attempted to share thoughts, news and views concerning CA's (after collecting data from our various reliable sources, deep scrutiny and vision) through email from our forum of www.voiceofca.in. Besides this, issues related to our profession are also brought to the notice of members. More than 30000 members come in to its horizon.

Till date over 1000 mails updating members on recent case laws have been sent, more than 4000 queries have been answered and presentation have been circulated covering various aspects of Income Tax such as Penalty, Search & Seizure, Issues on TDS, Charitable Trust, Assessment & Reassessment, Cash Credits, Deemed Dividend, Representation Before Income Tax Appellate Tribunal & CIT(A), Important aspects of Section 14A, Hindu Undivided Family under the Hindu Law & Income Tax Act, 1961, Amendments in Income Tax. Presentation on topics of Service Tax and Excise Duty, other relevant areas such as An Article on Letter of Credit, Foreign Contribution (Regulation) Act, 2010, FEMA - Rules & Procedures, GST Presentation: Compilation of all the updates of GST since July, 2010, article on Haryana VAT and various other topics, Information on relevant tenders daily news is also circulated through Voice of CA.

The main aims and objectives of this NGO are as follows:

- a. Enabling members to serve their employers, clients and the nation as a whole in a better manner.
- b. To protest the rights of the members against any discrimination and ill recognition.
- c. Represent members in front of regulators and legislators, below mentioned are some of the instances where Voice of CA represented for the benefit of its members:
 1. Representation has been made against RBI proposed decision about limiting the coverage of audit of bank branches.
 2. Representation before the Commissioner of Service Tax- New Delhi, against additional requirement for registration under Service Tax.
 3. Voice has been raised against dilution of identity with "Cost Accountants".

4. Representation has been made in respect of an article in Money Market & Business Standard regarding “Banks don’t want CA’s to appear before DRT”.
5. Representation has been made before Central Board of Direct Taxes for delaying the application of new provisions of Rule 30,31,31A,31AA as brought by Notification no. 31/2009, dated March 25, 2009 along with Circular no. 02/2009, in consequence of which CBDT delayed the applicability of the same for indefinite period vide PRESS RELEASE, New Delhi dated 30th June, 2009.
6. Representation has been made before Hon’ble Union Minister of India, Corporate Affairs, Government of India challenging the Notification no. G.S.R. 888(E) dated 24/12/2008, requiring the same should operate in exception to Form No. 5 as fresh filling of this form involves high financial burden.
7. Representation has been made before various internal authorities such as The President, ICAI, for the benefit of students to remove the infirmities and provide better educational and examination facilities.
8. Representation has been made to ICAI on issues related to:
 - Limit of Tax Audit.
 - Cap on Concurrent Audit.
 - Live Telecast of Council proceedings.
 - Publication of Council decisions.
 - Increase in Fees of CAG audits.
 - Panels for IRDA audits.
- d. Creating better infrastructure facilities like improved libraries, shared workstations etc. for members.
- e. Reduction in steep hike in fees for members for various courses as well as membership fee.
- f. Timely & relevant academic updates is the need of the time & are quite valuable for the members & therefore a strong step need to be taken in this direction so that the same can be made available to the members as per their work requirements.
- g. Post qualification courses which are under-promoted, need to be popularized & equipped with better faculties & facilities with assurance of high professional benefits.
- h. To formulate a comprehensive roadmap to avoid recurrence of any fraud like Satyam Scam.
- i. If a CA in his audit report gives any material qualification regarding financial statements which can have adverse effect on a going concern assumption, such CA’s should not be removed unless & until a clean report is received.

Also some Alternate Dispute Resolution Mechanism should be included.

- j. Role of independent director will be reviewed and there should be atleast one CA in Board of Directors of every company as an independent director by way of amendment in relevant laws.
- k. Distinguish between statutory & tax audit in reference to the responsibility of CA towards stake holders, by advertising in the media and to the public at large, so that our members are not straight away held guilty by the Press/Media without facing a fair trial from members
- l. Promoting dual audit criteria rather than Peer review for better Corporate Governance.
- m. Steps for allotting audits of Listed Companies & all those concerns where public money is at stake, to a CA Firm out of a panel maintained by ICAI, RBI etc. on rotational basis.
- n. Promotion of Micro, Small & Medium CA. firms.
- o. To make the networking more meaningful & having recognition in public sector work.
- p. Conduct research in various fields to develop business modules to help members opting to go in business field.
- q. To identify members in various organizations working on top positions as business ICONs & to bring back them with honour to help younger generations. Create an environment and a platform for interaction with persons of their own fraternity.
- r. To promote quality service and excellence in the profession of Chartered Accountancy and to press members to be proactive to changes and ensures that our members are in pace with the changes.

We wish to bring together all the members, so that we know each other better and join hands and to take our profession to greater heights

TEAM – VOICE OF CA

A full stream of professionals are working at the backdrop of Voice of CA, who is continuously extending their support since inception on the one hand and on the other participated with great enthusiasm at every particular event of importance. On behalf of Voice of CA, I personally express my heartiest gratitude to all those contributors and associated members for providing continuously their valuable contribution and support to us.

However it is difficult to mention the name of each and every contributor and associated member due to memory constraint but still a list of contributors and associated members has been prepared.

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Chapter I

Amendments brought in “Survey & Search Proceedings vide Finance Act - 2011 & 2012”

A. AMENDMENTS MADE VIDE FINANCE ACT, 2011.

Sub section (7) of sec. 92CA amended so as to provide the additional power of survey u/s 133A to the TPO, for the purpose of determining the Arm's Length Price, the amended subsection 92CA (7) reads as under:

“ (7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133 or section 133A.”

Earlier TPO had the power u/s 131, and 133(6) but not u/s 133A.

B. AMENDMENTS MADE VIDE FINANCE ACT, 2012.

a. Section – 292CC [Newly inserted w.e.f. 1st April, 1976]

“(1) Notwithstanding anything contained in this Act,—

- (i) It shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;*
- (ii) Where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.*

(2) *Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition"*

Under the existing provisions of section 132 and section 132A, an authorisation can be issued or a requisition can be made, as the case may be, where the Director General or the Director in consequence of information in his possession has reason to believe that any person is in possession of any money, bullion, jewellery or other valuable article or thing (hereafter referred to as undisclosed income or property), then, he may authorise any Additional Director or Deputy Director, etc. to enter and search any building, place, vehicle, etc. and seize any such books of account, other documents, undisclosed property, etc.

Where a search is initiated under section 132 or requisition is made under section 132A, assessment is to be completed under the provisions of section 153A or section 153C (and if search was prior to 31st May, 2003 under Chapter XIV-B of the Act) or section 143(3), etc.

In a recent **Allahabad High Court** decision **Commissioner of Income-tax (Central) v. Smt. Vandana Verma, INCOME-TAX APPEAL NO. 21 OF 2009**, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorization must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.

In order to curtail and nullify various judicial pronouncements lying that joint panchnamas or search authorization in joint names are invalid, it has been provided by way of clarificatory retrospective amendment that

- Joint panchnama does not refer that it has been issued in the name of AOP or BOI consisting such persons
- Notwithstanding Authorization u/s 132 or Requisition u/s 132A in more than one name, assessment shall be made separately in name of each such persons.

Therefore, the scope of authorization has been widened by making the retrospective amendment w.e.f. 01/04/1976 by inserting a new section 292CC in the Income-tax Act to provide that –

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

Chapter II

Survey Section 133A

(1) **133A. Power of survey.**--(1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter--

- (a) any place within the limits of the area assigned to him, or
- (b) any place occupied by any person in respect of whom he exercises jurisdiction, or
- (c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and 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--

- (i) to afford him the necessary facility to inspect such books of account 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.

Explanation--For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

- (2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.
- (3) An income-tax authority acting under this section may,—
 - (i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,
 - (ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him :
Provided that such income-tax authority shall not—
 - (a) impound any books of account or other documents except after recording his reasons for so doing ; or
 - (b) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be,.
 - (ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,
 - (iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.
- (4) An income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any cash, stock or other valuable article or thing.
- (5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event,

require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, 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 and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

- (6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under sub-section (1) of section 131 for enforcing compliance with the requirement made :

Provided that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.

Explanation--In this section,--

- (a) "income-tax authority" means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer, and for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax ;
- (b) "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

1. Note: FA 1995, w.e.f. 1-7-95.
2. FA (No.2) 1998 w.e.f. 1-10-1998.
3. FA 2002, w.e.f. 1-6-2002
4. FA 2003, w.e.f. 1-6-2003.

MEANING & OBJECTIVE

Q.1 What is the meaning of Term `Survey` ?

Ans. The expression `Survey` has not been defined anywhere in the Income Tax Act, 1961. As such the reference to its meaning has to be taken from the general parlance of this expression. Professionally, the expression has come to be a synonym to section 133A of the Income Tax Act. It means general view of eyes, inspection, verification, etc. of the circumstances, amounts, etc. of a place. It has also been referred in some of the dictionaries to mean comprehensive, extensive and in depth examination.

Q.2 Since when are the provisions of `Survey` on Income Tax Act ?

Ans. The provisions of `Survey` as contained u/s 133A of the Act were not on the statute in the initial Income Tax Act, 1961. However subsequently the provisions were inserted by Finance Act, 1964 w.e.f. 01/04/1964 and thereafter subsequent amendments were made, majorly in 1975, 1989, 1995, 1998, 2002, 2003 and lastly by Finance Act, 2011 w.e.f. 01/06/2011.

Q.3 What is the Legislative Intention & Purpose of enactment of Survey provisions ?

Ans. The purpose of survey under the provisions of Income Tax Act, as gathered from the plain reading of the provisions of section 133A of the Act are inspection of books of accounts, verification of cash, stock and other valuable articles, etc. found at places where either business or profession is carried out.

The observations made by the then Finance Minister behind the enactment of the provisions of section 133A in Finance Act, 1964, during the course of discussion of Finance Bill on the floor of the house are being reproduced as under:

"It is a curious paradox of our situation that while money for worthwhile investments and public purposes is in short supply, there is a great deal of unaccounted money circulating in the economy in search of further undercover gains. What is more important, this social evil inherent in tax evasion gets doubly compounded as it necessitates greater and greater tax burdens on those who are law-abiding. Perhaps, the most important problem that faces us in regard to fiscal reforms is that of devising astute and stringent measures to meet this evil of tax evasion so that it might

be possible to distribute the burden of taxation more justly and evenly between different individuals in the same or similar walks of life. We have thought too exclusively of social justice between different classes or sections of the community and not enough of the injustice inherent in tax evasion as between members of each class or profession and as between the honest taxpayers and the dishonest evader."

Q.4 What are the different kinds of Survey under Income Tax Act,1961?

Ans. Whereas the Income Tax Act has not categorized the kinds of surveys, based on juridical pronouncements, precedents, practical experience of the authors, the surveys could be classified into following categories :-

- a) Specific Survey :- It refers to the surveys conducted at the place of business or profession so as to exercise the powers stated u/s 133A and also based on the materials, gathered by the field formations of the Income Tax Department through TEP, nature of business, industry trends, assessment records, etc.
- b) Door to Door Survey :- Such kind of surveys are generally conducted in respect of a particular area or a particular class of business or profession so as to verify and increase the number of assesses.
- c) Survey so as to verify excessive expenses incurred at functions:- The relevant provisions in this regard are contained u/s 133A(5) of the Act so as to verify the source of the expenses incurred at major ceremonies, social obligations, functions etc. Here the revenue department gathers the information regarding the nature and scale of expenses and verifies the same from the source and the extent of the same not only from the assessee but also from various participants, being service of material provider engaged by the assessee for function, ceremony etc.

Q.5 Who can be subjected to survey by an officer. Is there any limitation to Power to conduct Survey qua assessee.

Ans. Only a place at which either a business or a profession is carried out, could be subjected to survey. Further more any other place of such an assessee (including his residence and the office of his counsel) may also be subjected to survey in case the assessee subjected to

survey states that any of his books of accounts or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

Thus it can be safely said that survey can not be conducted generally as those places where neither any business nor any profession is carried out nor any documents, books, stock, cash etc. of any business or profession is kept.

POWERS

Q.6 Who is empowered to conduct Survey?

Ans. As per section 133A(1), the power to conduct a survey has been entrusted upon an Income Tax Authority. The expression Income Tax Authority has, however, been defined by explanation (a) to section 133A(6). As such the expression engulfs the following rank of Income Tax Authorities: -

1. Commissioner
2. Joint Commissioner
3. Director
4. Joint Director
5. Asstt. Director or Deputy Director
6. Assessing Officer
7. TRO
8. Inspector of Income Tax

Amendments made vide Finance Budget 2011 to Sub section (7) of sec. 92CA amended so as to provide the additional power of survey u/s 133A to the TPO, for the purpose of determining the Arm's Length Price.

It is pertinent to mention here that the Finance Act,2003 have enlarged the scope of the expression 'Income Tax Authority' by including the TRO within its ambit. It seems the Legislature has brought the above amendment to resolve the disputes pending before various appellate authorities and also to confer the power of survey to the TRO in respect of the assessee falling within his territorial jurisdiction for the purpose of obtaining facts not voluntarily provided and to help him in realization of tax arrears.

Further No survey can be conducted, Without Prior approval of the Joint or Additional Commissioner or Joint or Additional Director, by

1. Assistant Director of Income Tax.
2. Deputy Director of Income Tax.

3. Assessing Officer.
4. Tax Recovery Officer.
5. Income Tax Officer.
6. Inspector of Income Tax, to a limited extent.

Proviso to sub-section (6) to section 133A specifically stipulates that no survey can be conducted by an ADIT, DDIT, an AO, a TRO and ITO without obtaining an approval of the JDIT or JCIT. It follows from the above proviso that no approval is required in case the CIT or DIT or JCIT or JDIT is himself conducting the survey. However, in law, no format has been prescribed for obtaining such an authorization as against Form 45 in case of seeking an authorization for a search. Furthermore, the assessee can now ask the ADIT, DDIT, AO etc. for showing such an authorization from the superior authority as this is in complete consonance with the principles of natural justice.

It is to pertinent to mention here that this proviso has been inserted only w.e.f. 01/06/2003 by Finance Act, 2003.

Q.7 Is any prior approval required from CIT (Admn) or CCIT before conducting Survey?

Ans. It may be noted that NO prior approval from CIT(Admn) or CCIT is required before conducting Survey. However as per CBDT's Chairman's message no. 49/May 27,2011 titled Transparency in Survey operations, it has been directed by the Board Chairman that Survey teams visiting taxpayer's premises under the provisions of section 133A of the Income tax Act will, before the commencement of survey proceedings, provide to the taxpayer the names, designations & contact numbers of their CCIT, CIT and Addl/Joint Commissioner of Income Tax on which, as a proof of implementation of above directions, signature of the taxpayer surveyed would be obtained. The said proforma, duly signed by the taxpayer, would be submitted back to the CIT, to be preserved as permanent record.

Q.8 What are the powers of a survey team?

Ans. A conjoint reading of section 133A(1) & 133A(3), the specified authority, competent to conduct survey, can exercise the following powers: -

- a) To enter the place other than the business premises, if the assessee states that the cash, stocks, records and books of account relating to the business are lying there.
- b) To impound books of accounts and other documents found and inspected during survey with effect from 1st June, 2002, after recording reasons and also to place marks of identification on the books of account. Further to take copies, extracts from such books of account and documents or records
- c) To enter the place of business during the business hours and in other places, only after sunrise and before sunset.
- d) To make an inventory of any cash, stocks and other valuables checked by him.
- e) To record the statement of any person.
- f) To collect information regarding nature and quantum of expenditure incurred in connection with personal functions and events like a wedding ceremony and any other functions.
- g) To discover, and production of evidence etc., under section 131(1), once there is non-cooperation of the assessee.

However it may be noted that only some of the above powers are exercisable by an Income Tax

Q.9 Are there any restrictions on powers of an Income Tax Inspector during Survey?

Ans. It may be noted here that all the powers of a survey team are not available to an Income Tax Inspector in so far as he can only inspect the Books of Accounts and other documents found at premises under survey, place marks of identification on them (which has been **inspected by him**), make or cause to be made copies thereof or exercise all powers available u/s 133A(5).

As such an Inspector of Income Tax can not check, verify, make an inventory of cash, stock, etc. and also can not record the statement of any person during the course of survey.

Q.10 Is there any bar on initiation and completion of survey? Can survey continue beyond business hours & in wee hours?

Ans. Legally there is no bar on completion of a survey and as long as a survey has been validly initiated it can continue even beyond business hours and even in wee hours.

Regarding the initiation of survey, the relevant provisions are contained u/s 133A(2) of the Act which postulates that for the purpose of survey and Income Tax Authority may enter any place of business or profession only during such hours for which such place is open for business or profession as the case may be.

Also the Initiation of survey at places where survey can be conducted in accordance with the provisions of first explanation to Sec. 133A(1) of the Act, Sec. 133A(2) specifically postulates that at such other places survey can be conducted only after sunrise and before sunset.

In this regard, one may wish to refer to Judgment of Hon'ble Madras High Court in N.K.Mohnot Vs DCIT (215 ITR 275). While, it is generally and conventionally followed that strike time at premises under survey must be before sunset, even by the revenue, considering the fact that various business forms and assessee's, these days are open 24*7 for the purpose of business, the authors are of the opinion that survey could be initiated on them even after sunset.

Q.11 Are there any do's & don't prescribed for conducting Survey?

Ans. Legally no guidelines or Do's and Don't have been prescribed either for the survey team or for the assessee. However based on fairness and some internal references, following could be said to be some of the suggestive do's and don'ts to be followed/adhered to by the survey team: -

Dos

- a) Take control of the computer systems and their power supply to prevent deliberate switching off of the system.
- b) Take control of mobile phones, electronic diaries, etc. The advanced mobile phones can be used to operate remote devices as well as for data storage. These can be operated innocuously without being noticed.
- c) Identify the key person's in-charge of the systems.
- d) Make an exhaustive inventory of systems and peripherals.

- e) Make a list of hard disks to be impounded.
- f) Make a list of important folders / files to be copied. Generally the entire disc will be copied and data retrieval will be done only with the help of the copy of the disc but if it is found that there are some important files in the system, making a note of these files may be useful later.
- g) Record the statements of authorized personnel about user levels, access passwords, operating system, accounting package modifications, encryption algorithms used, etc. and other relevant issues.

Don'ts

- a) Do not allow removal by the assessee of any material such as CDs, DVDs, floppy disks or drives from the premises.
- b) Do not allow any personnel of the assessee to access or operate the system.
- c) Do not switch off any computer that is working as this will cause loss of volatile data in the memory of the computer, which may be of crucial importance. Additionally, it would involve the need to invoke passwords to re-login and initiate programs. The assessee might get an opportunity to prevent crucial programs from loading.
- d) Do not allow any unauthorized inputs or keystrokes even by the members of the survey team.
- e) Do not allow remote operations.

Q.12 What are the places where Survey can be conducted?

Ans. As per the provisions of the Act, survey can only be conducted at a place where wither a business or profession is carried out or such other place where the assessee being subjected to survey states that his books of accounts, other valuable material, documents, stock, cash etc are being kept.

Q.13 Whether residential premises of an assessee be subjected to Survey?

Ans. Generally Survey can be conducted only at a place where either

business or profession is being carried out. However as discussed in earlier answer, only that part of residential premises may be subjected to survey where the assessee states that his books of account, other documents, cash, stock and other valuables related to business or profession are kept.

Q.14 Whether premises of third parties, being professionals, such as CA's, Advocates, Tax practitioners, etc. be subjected to simultaneous Survey?

Ans. Generally premises of the professional as stated above are not subjected to survey unless and until either the reasons are so strong so as to establish a valid nexus of tax evasion between the assessee and the said counsel OR the assessee states that his books of accounts and other documents are lying at the premises of the said professional.

One may like to refer to Hon'ble Orissa High Court judgement in (2009) 308 ITR 133 in U.K. Mahapatra and Company Vs. ITO, wherein the revenue had conducted a survey at the premises of the counsel of the assessee disregarding completely the procedural and other legal aspects of conducting a survey, which action, was duly quashed upon a Writ, by the Hon'ble High court.

Q.15 Whether Survey team can enter into a locked premises?

Ans. Since the power to break open and make a forced entry, as specifically provided in case of 'Search' (Sec. 132(1)(ii)) has not been entrusted upon u/s 133A(1) or (3), a survey team can not enter into a locked premises.

Q.16 Whether stock in trade, cash in hand & other valuables could be seized during Survey. If not, can it be put under restraint? Please explain the powers in this regard, deeply?

Ans. As per the provisions of section 133A(3) of the Act, neither stock in trade, nor cash and other valuable so found during the course of survey could be seized or put under restraint. However, incase the cash is found to be in excess of books of accounts and such excess is beyond a particular limit being followed by the revenue internally, the survey can be converted into a search.

The survey team, however during the course of survey, can merely check, verify and inventorise the cash, stock or other valuable

articles found at premises under survey.

Q.17 Whether books of accounts can be impounded during the course of Survey? If yes, please refer the relevant provisions?

Ans. The books of accounts and other documents so found during the course of survey can be impounded by virtue of the specific provisions contained u/s 133A(3)(ia). It may however be noted that only those books of accounts and other documents could be impounded which have been inspected by an income tax authority and not others.

Q.18 Whether books of accounts so impounded could be retained perpetually or there is some statutory limitation to it? If yes, please highlight.

Ans. The books of accounts and other documents so found during the course of survey cannot be impounded perpetually since there is express bar contained in clause (b) of section 133A(3)(ia). It has been provided that the books of accounts so impounded cannot be retained in his custody for a period exceeding 10 days (exclusive of holidays) with our obtaining approval (and not prior approval) of DGIT/CCIT as the case may be.

Q.19 Is any opportunity, required to be offered to an assessee while an order extending period of retention of books is being passed?

Ans. The relevant provisions relating to impounding of Books of Accounts and other documents impounded during the course of survey are contained u/s 133A(3)(ia) of the Act.

So far as the Act is concerned, it is silent as to whether any opportunity of hearing is required to be given while passing the order extending the retention in custody of impounded books and other documents.

However, until recently Hon'ble Orrisa High Court in (2009) 308 ITR 133 in U.K. Mahapatra and Company Vs. ITO held that it would be in conformity with the principles of natural justice, if the assessee is given an opportunity of being heard.

Q.20 Whether statement can be recorded on oath during the course of Survey? If yes, how and under which provisions?

Ans. The provisions relating to recording of statement during the course of survey and of examining the assessee such that the said statement may be useful for, or relevant to, any proceeding (completed, pending or future – widest meaning) are contained u/s 133A(3) (iii) of the Act. Also, in case the assessee does not cooperates with the survey team by either refusing or evading to get his statement so recorded, the Income Tax Authority shall have all powers as contemplated u/s 131(1) of the Act relating to discovery, production, etc. of evidence (refer Sec. 133A(6)). Refer United Chemical Agency Vs ITO (1974) 097 ITR 0014 (Allahabad-HC).

Therefore, while summarizing it could be said that the statement of an assessee (Co-operative added by authors) can not be recorded on oath, the statement of an evasive and/or non-co-operative assessee could be recorded on oath by resorting to provisions of Sec. 133A(6) read with Sec. 131(1) of the Act.

Q.21 What is the binding nature of a statement made during the course of Survey? Does it carry any evidentiary value? Is there any difference between statement recorded during Survey and during search?

Ans. As discussed in answer 21 supra, the statement recorded during the course of survey (u/s 133A(3)) is not on oath and it can be held to have any evidentiary or binding value as long as there are no incriminating material in the possession of the revenue. In this regard, for better legal understanding, one may refer to Paul Mathews & Sons Vs. CIT (2003 263 ITR 101 (Kerala)).

The statement recorded during survey and the one recorded during search both stand on different footing in so far as there is a legally binding presumption in respect of a statement recorded u/s 132(4) which is specifically stated to be of evidentiary value. In contra distinction, the statement recorded during survey has no evidentiary value but only corroborative value, [CIT Vs Hotel Samrat (323 ITR 353 (Kerala – HC))].

Q.22 Is there any bar or prohibition or restriction on revenue authorities for enticing, forcing or seeking disclosures during Survey?

Ans. Since survey is not only a mode of verification (spot) of information but also of augmenting tax collection, it had come to be regarded as a tool of obtaining confessional statements and thrust would be on

taking hefty disclosures backed by cheques (and ironically, not by incriminating material), which disclosures would later on fall upon due to retraction.

In order to put an end to all such confessional statements, 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.

Q.23 Can an assessee seek copy of statement recorded during the course of Survey?

Ans. As discussed in earlier questions neither the statement recorded during survey has any evidentiary value no any confessionals statements could be elicited by revenue authorities. None-the-less in case a statement is recorded during survey, there are no provisions under the Act which would permit an assessee to seek copy thereof from the revenue at the time of recording of same. However keeping in mind the Principles of Natural Justice, in case it is being used against the assessee, he may ask for its copy.

Q.24 Can business premises be sealed or an assessee be asked to close down business during course of survey?

Ans. The business premises of an assessee can not be sealed or for that matter he can't be asked to close down the business since it would tantamount to Infringement of Fundamental Right and violative of Articles 14 and 19 of The Constitution of India. The issue was examined by Allahabad High Court in case of Shyam Jewellers vs. CCIT (196 ITR 246) wherein it has been held that there is no provision of sealing of business either under section 133A or 132 or any other provisions of the Income Tax Act.

Q.25 What are the powers of survey in respect of the expenditure incurred in connection with any function, ceremony or event?

Ans. The provisions to this effect are contained u/s 133A(5). The following important points may be noted :-

- (i) An opinion is to be formed by an Income Tax Authority having regard to the nature and scale of expenditure being incurred by an assessee in respect of any function ceremony etc.
- (ii) The Income Tax Authority can call for the information from the assessee or from any other person who according to him is likely to be in possession of the information with respect to the expenditure incurred.
- (iii) The Income Tax Authority cannot call for such information before or at the time of such function, ceremony or event and as such the power prescribed under this sub-section can be exercised only after the said function, ceremony or event is over.

- (iv) For the purpose of this sub-section, the Income Tax Authority has been empowered to record the statement of the assessee or such other person. It is to be specifically noted that the statement thus recorded may be used as evidence in any proceedings under this Act.
- (v) The legislative intention behind the introduction of the above provisions on the statute was to curb the use of blatant tax evaded money in ostentatious wedding ceremonies and other social functions (press released dated 03/06/89).
- (vi) For an indepth understanding of the Legislative intention, Purpose, Methods, kinds of ceremonies covered, etc one may refer to CBDT Instruction number 1865 dated 14/11/1990 titled Guidelines for conducting survey operations u/s. 133A(5) of the Income tax Act - regarding..

Q.26 Whether the provisions relating to discovery, production of evidence etc. as contained u/s 131 can be invoked during the course of survey operations?

Ans. Yes, where during the course of survey assessee does not.

- Afford the facility to inspect books of accounts.
- Afford facility to check or verify cash, stock etc.
- Furnish any information or have his statement recorded.

The Income tax authority shall have all powers u/s 131(1) to enforce compliance.

Q.27 Whether search and seizure provisions can be invoked during the course of survey or for that matter whether a survey can be converted into a search?

Ans. The law prescribes no bar on initiating search proceedings during the course of survey but it will depend upon the facts and circumstances prevailing at the time of survey. In case any incriminating document or material, which fulfils the conditions u/s 132(1), is found during survey, the provisions of search can be invoked. [Refer Vinod Goel Vs Union of India 252 ITR 029 (P&H)].

Q.28 Whether any precaution is to be observed by the assessee while his statement is being recorded?

Ans. The assessee should as far as may be practicable, try to cooperate with the survey team. While giving the statement, he should not make any assertion, which goes against his interests. This is so because generally the statement recorded during the course of survey is taken a serious note of, by the Assessing Officer at the time of assessment.

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

- i. Whether any evidence of has been found which would lead to an inference of concealment of income.
- ii. Whether there is in fact any discrepancy 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 dis-allowance 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 mount.
- 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.

Q.29 What would be the presumptions regarding assets found in possession of the assessee during survey and the books of accounts or documents impounded from the premises surveyed ?

Ans. Section 292C of the Income Tax Act, 1961 states the presumption regarding the assets found or documents and books impounded from the premises of the assessee that :

- a) Such book of account, other documents, money, bullion, jewellery, other valuable article or thing belong or belongs to such person.
- b) The contents of such books of account and other documents are true.

The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Q.30 Whether a Tax Recovery Officer exercise the powers to conduct survey?

Ans. There was an ambiguity till Finance Act, 2003, which however vide a proviso after sub-section (6) of section 133A and before the Explanation, had clarified that no action under section 133A(1) shall be taken by the Assistant Director or a Deputy Director or a assessing officer or a Tax Recovery Officer or an Inspector of income-tax except with the prior approval of the Joint Director or the Joint Commissioner.

Accordingly, in view of the express inclusion of the TRO in the list of Authorised officers, upon being so validly authorised by JDIT/ Addl DIT or JCIT/ Addl CIT as the case may be, a TRO can exercise the powers to survey.

Q.31 What is the distinction between the provisions contained u/s.133A and u/s.133B?

Ans. The Distinction between the above two sections could well be understood by referring to the table below: -

BASIS	133A	133B
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.	No such provision u/s 133B

Scope of powers	<p>The scope of the survey action includes the following functions</p> <p>a) To impound books of account and other documents subject to conditions prescribed therein.</p> <p>b) To place marks of identification on the books of account or other documents and make extracts or copies there from.</p>	No such provision u/s 133B
Penalty Provisions	Sec 272AA does not gets attracted for default u/s 133A	Penalty for failure to comply with the provisions of Sec 133B may extend to Rs 1,000/- u/s 272AA.
Powers of Income Tax Authority	<p>An income-tax authority acting under this section may,—</p> <p>(i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,</p> <p>(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:</p> <p>Provided that such income-tax authority shall not—</p> <p>(a) impound any books of account or other documents except after recording his reasons for so doing; or</p> <p>(b) retain in his custody any such books of account or other documents for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be,</p> <p>(ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,</p> <p>(iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.</p>	<p>An income-tax authority acting under this section may 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 furnish such information as may be prescribed</p> <p>For the removal of doubts, it is hereby declared that an income-tax authority acting under this section shall, on no account, remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.</p>

Who May Exercise	The powers of survey can be exercised by an Income-tax authority – meaning i. a Commissioner, ii. a Joint Commissioner, iii. a Director, iv. a Joint Director, v. an Assistant Director vi. a Deputy Director vii. an Assessing Officer, viii. a Tax Recovery Officer ix. an Inspector of Income-tax (for clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5) only) .	In this section, “income-tax authority” means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the powers conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or part thereof.
Time/ Period	An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.	An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession.

Q.32 Whether assistance of Tax Consultants be sought during the survey?

Ans. Legally an assessee is not entitled to insist upon the authorities, not to conduct the survey till the arrival of his tax consultant. However, an assessee may require and, if permitted, may call for his Tax Consultant to assist in proper conduct of the 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.

Q.33 If the survey is held to be illegal, can the material collected, could still be used at the time of assessment?

Ans. The income-tax authority is entitled to use the material found in the course of the survey while making assessment for the relevant assessment year(s). However, the tax authorities are required to confront the material so found to the assessee and to seek his comments and explanation thereon. The Supreme Court in the case of Pooran Mal vs. DIT (Inv.) 93 ITR 505 (SC) Held that Materials obtained in search made in contravention of provisions of the Act could still be used against the assessee.

Furthermore, in CIT Vs. Kamal and Company [2009] 308 ITR 129 (Raj.), it has been Held that the Revenue was entitled to use the material collected during the course of illegal survey.

Q.34 Whether upon failure to disclose additional income/ confessional income, it could be said that the said income has 'escaped assessment' and assessee be made subjected to reassessment proceedings?

Ans. In 312 ITR (AT) 177- ITAT Chennai – DCIT vs. Dr. Asha Jaffarey, upon failure to disclose in return, additional income offered during survey, Notice u/s 148 has been held to be valid.

Chapter III

Search

Section 2(21) & Section 132

Section 2(21) “Director General or Director” means a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of section 117, and includes a person appointed under that sub-section to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or 1Deputy Director of Income-tax.

SECTION 132 SEARCH AND SEIZURE—

- (1) Where the Director General or Director or the Chief Commissioner or Commissioner or Additional Director or Additional Commissioner, or Joint Director or Joint Commissioner, in consequence of information in his possession, has reason to believe that--
 - (a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or
 - (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-

tax Act, 1922 (11 of 1922), or under this Act, or

- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then,--

- (a) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorise any *Joint Director, *Joint Commissioner, Assistant Director *or Deputy Director, Assistant Commissioner *or Deputy Commissioner or Income-tax Officer, or
- (b) such *Joint Director or *Joint Commissioner, as the case may be, may authorise any Assistant Director *or Deputy Director, Assistant Commissioner *or Deputy Commissioner or Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to--

- (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause
- (i) where the keys thereof are not available;
- (iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- ** (iib) require any person who is found to be in possession

or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents ;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

[Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120 it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue:]

[Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):]

[Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:]

[Provided also that no authorization shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the board to do so.]

[(1A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director General or Director or any other Chief Commissioner or Commissioner or any such *Joint Director or *Joint Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1) such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120 authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

[Explanation.--For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).]

(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.

[Explanation.--For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

[(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed--

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

(5) to (7) Omitted by Finance Act, 2002, w.e.f 1-6-2002.

(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding ******[thirty days from the date of the order of assessment *******[under section 153A or clause (c) of section 158BC]] unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director-General or Director for such retention is obtained:

Provided that the [Chief Commissioner, Commissioner, Director-General or Director] shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

**[(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.]

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

**[(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.]

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Chief Commissioner, Commissioner, Director-General or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents **and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(11), (11A) and (12) Omitted by Finance Act, 2002, w.e.f. 1-6-2002.

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

(14) The Board may make rules in relation to any search and seizure under

this section in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer--

- (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- (ii) for ensuring safe custody of any books of account or other documents or assets seized.

**[Explanation 1.--For the purposes of sub-section (9A), "execution of an authorisation for search" shall have the same meaning as assigned to it in Explanation 2 to section 158BE]

[Explanation 2.--In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.]

*FA (No.2) 1998, w.e.f. 1-10-1998.

**F.A. No. 2002, w.e.f. 1-6-2002.

***FA 2003, w.e.f. 1-6-2003.

I. SCOPE AND APPLICABILITY OF THE PROVISIONS.

A. Conditions for authorizing search

Section 132 (1) contemplates three situations in which alone the search and Seizure proceedings can be authorized and these situations are as under:

a. Situation one [132 (1) (a)]:

Actual failure to produce the books of account or other documents in pursuance of a summon under section 131 (1) or a notice under 142 (1). (Even a slightest non compliance may lead to formation of belief).

b. Situation two [132 (1) (b)]:

Actual or anticipated failure to produce the books of account or other documents in pursuance of a summon under Section 131 (1) or a notice U/s 142 (1).

The main difference between situation one and situation two lies in the fact that the latter situation also covers an anticipated failure to produce the books of account or other documents and also lays down a condition that these books of account or other documents should be relevant for any proceedings under the Income Tax Act, under this clause a formal notice is not essential, the authorizing officer must have reason to believe that the person, whether or not a notice has been served on him is not likely to produce his books etc. In such a case the person actually suppresses books of account and other documents which may be useful and relevant to an income tax proceedings. *Here the authorizing authority, if challenged has to prove the basis of his belief [Mamchand and Co. V CIT (1970) 76 ITR 217 (Cal) also see Kusum Lata (1989) 180 ITR 365 (Raj).*

c. Situation three {Section 132 (1) (c)}:

Possession of undisclosed assets i.e. money, bullion, jewellery or other valuable article or thing, which have not been or, are not likely to be, disclosed for the purposes of the Income Tax Act. This situation is by far the most important situation in which search and seizure proceedings are initiated.

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

Gems of Judiciary

1. **CIT vs. Smt. Chitra Devi Soni [2008] 170 Taxmann 164 (Raj.) also see L.R. Gupta vs. Union of India [1992] 194 ITR 32 (Del), SLP Dismissed**
For valid search, any of the situation as enumerated above should persist other wise the entire action could vitiate.
2. **Commissioner of Income-tax Vs. S. K. Katyal [2009] 308 ITR 0168 (Del)**. Normally, a search must be continuous. If it cannot be continuous for some plausible reason, the hiatus in the search must be explained. If no cogent or plausible reason is shown for the hiatus in the search, the second or resumed search would be illegal. Merely mentioning in the panchnama that a search has been temporarily suspended does not ipso facto continue the search. It would have to be seen as a fact as to whether the search continued or had concluded. Merely because a panchnama is drawn up on a particular date, it does not mean that a search was conducted and/or concluded on that date. The panchnama must be a record of a search or seizure for it to qualify as the panchnama.

B. Reason to believe.

Search invades the privacy of a citizen. Thus, reason to believe by the authorizing officer must be apparent from the records of the case. The opinion or the belief so recorded should clearly demonstrate that the case falls within any one or more clauses contained in clauses (a), (b) and (c) of sub section (1) of section 132. therefore, a search or seizure cannot be sustained unless it is clearly shown that it was carried out by authority duly authorized, and all the conditions precedent in relation there to existed.

“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. [Mahesh Kumar Agarwal v. Dy. Director of Income Tax & Ors. (2003) 260 ITR 67 (Cal).].

Sources available to department for locating person to be searched.**a. Internal Source of Department.**

- Return filed by the assessee.
- Increasing trend of cash credit.
- Receipt of substantial amount of gifts / lottery winnings.
- The continuous lower household.
- Difference between stocks hypothecated to the banks than disclosed in the books it may also give clue for unaccounted money.
- Annual Information Return (AIR).

b. External source of information.

- 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 registers the property.
- Dissatisfied employee, business rivals, political rivals are another sources of information.

Guidelines relating to search and seizure.

The CBDT has issued certain guidelines vide Instruction No. 7/2003, dt.30/07/2003, relating to search and seizure, gist of which is as under:

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

- (ii) Search operations shall be authorized only by the concerned DGIT (Inv.), who will be accountable for the action initiated by the officers working under him. He should also ensure that all the work relating to search & seizure, like post-search inquiries, preparation of appraisal report and handing over of seized books of account, etc., should be completed by the Investigation Wing within a period of 60 days from the date on which the last of the authorization for search was executed.
- (iii) DGIT (Inv.) is to ensure that officers of competence and proven integrity are taken in the Investigation Wing. The Officers posted in the Investigation Wing will be trained at NADT in a special course for which arrangements will be separately made- Vide Instruction No. 7/2003, dt. 30-7-2003.

Gems of Judiciary

1. It was held in **Kalpana bazar v. CIT (1990) 186 ITR 617 (Ker)** that It is not the mandate of section 132 or any other provision in the Act that the reasonable belief recorded by the designated authority before issuing the warrant of authorization must be disclosed to the assessee but same has been recently distinguished by Allahabad High Court in **M/s M D Overseas Ltd. v DGIT & Others, [2011] 198 TAXMAN 136(AII.)**, where in it has been held that when assessee makes a prima facie case against validity of search, Revenue is obliged to share information relating to 'reasons to believe' for authorizing search except the source of information.
2. **Space wood Furnishers Pvt. Ltd. Director General of Income Tax (Investigations) [2012] 340 ITR 0393 (Bom) / 2011-TIOL-837-HC-MUM-IT.**- High growth and high profit margins, which are the matter of record cannot be the basis for issuing search warrant.
3. **M/s JEET CONSTRUCTION COMPANY Vs ACIT, IT[SS] Appeal No.26 (Del) of 2011,2012-TIOL-11-ITAT-DEL** - Whether when Revenue searches several persons, a combined satisfaction recorded can be said to be legally valid for initiating action under Sec 158BD - YES, rules ITAT
4. **VISA Comtrade Limited v. Union of India [2011] 338 ITR 343 (Ori)**- The belief should not be based on some suspicion or doubt. Where the Department had not cross verified the entries in the current account in question with the regular books of account maintained by the assessee and investigation on whether the money lying with the current account

represented disclosed income or undisclosed income was going on. In such a situation, the seizure of current account in question was untenable.

5. **Anjuga Chit Funds P. Ltd. Vs. DCIT [2008] 304 ITR (A.T.)0374 (ITAT – Chen.** If competent authority has reason to believe that a number of persons are involved in interconnected transactions as reflected in prima facie material available with such authority, there is no prohibition against issuance of common search warrant to those persons.
6. **Union of India v. Ajit Jain (2003) 260 ITR 80 (SC) -** Mere information from CBI that cash was found from in possession of an individual cannot justify a search.
7. **Harilal Shah V. CIT (2006) 281 ITR 199 (Gau.) -** There should be nexus between information and person searched
8. **K.R. Modi & Co. Vs. DDIT (Inv.) (2005) 272 ITR 587 (Cal.) -** If there is no search warrant in the name of the firm, no search can be conducted on the firm on the basis of search warrant in the name of partner.

C. Authorizations and Authorized.

I. Who can issue the warrant of authorization

Section 132 (1) refers to the following two kinds of authorities for authorizing the search and for conducting the search:

“Authorising Authority” (who can issue warrant of Authorisation)	may authorize –as “Authorized Officer” (who may be authorized to conduct search)
(i) Director General/Director/ CCIT / CIT / ADIT/ ACIT Jt Director/Jt Commissioner	Joint Director / Joint CIT / Asstt. Director / Deputy Director/ Asstt. Commissioner / Dy. Commissioner/ Asstt.Director / Deputy Director / Asstt.Commissioner / Deputy Commissioner / ITO

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

The Director General or Director or the Chief Commissioner of Income Tax Commissioner may authorize any officer subordinate to him but not below the rank of Income Tax Officer to conduct such search. No authorization shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the board to do so, the section has been suitably amended [fourth proviso to section 132(1)] in order to supersede the Delhi High Court judgment in **CIT v Pawan Kumar Garg(2009) 178 Taxman 491 [2011] 334 ITR 240and Sunil Dua v CIT (2008) 170 Taxman 401**. Similarly, Additional Director or Additional Commissioner or Joint Commissioner or Joint Director who have been empowered by board can authorize any officer subordinate to him but not below the rank of Income Tax Officer to do so.

II. First Proviso to sub-section (1) of section 132

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

III Sub-section (1A) of section 132

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

Note : Non-issuance of warrant of authorisation to assessee and absence of its service upon him shall not vitiates search [Rule 112 s.rule (3) requires only production of warrant not its service]

Gems of Judiciary.

1. **Siksha "O" Anusandhan v. Commissioner of Income-tax [2012] 20 taxmann.com 798 (Orissa)** In absence of a warrant in name of an assessee, search conducted in its premises would not be a valid search as contemplated under section 132
2. **Ramesh Chander & Ors. Vs. CIT & Ors. (1974) 93 ITR 244 (P & H)** No warrant of authorization u/s 132 could be issued where money and documents were taken possession of by a police inspector and the CIT could have no reason to believe within the meaning of sec. 132 when he did not know anything about the person concerned and made no enquiry from the ITO concerned as regards evasion of tax. Further approved by Hon'ble SC in (1986) 58 CTR 129(SC) CIT vs Tarsem Kumar & Anr.
3. **CIT Karnal vs. Rakesh Kumar, Mukesh Kumar [2009] 178 Taxman 224 (Punj. & Har)/ [2009] 313 ITR 305(P & H)-** Any Search warrant issued under section 132 in name of a dead person is invalid and void ab initio
4. **J.M. Trading Corp. V. ACIT, [2008] 20 SOT 489 (Mum.)** - Mere mentioning of name in panchnama does not lead to conclusion that a valid search was conducted against assessee. Further mere search of premises owned by assessee but rented to another concern does not by any implication prove conduct of search as enumerated u/s 132 against assessee.
5. **ACIT vs P. Srinivas Naik (2008) 114 TTJ 0856/(2009) 117 ITD 0201 (Bang.)** Tribunal has no jurisdiction to adjudicate upon the legality of search ; assessee has no reason to challenge the search for the reason that the impugned search was carried out on the business / residential premises of a third party and not on the premises of the assessee.
6. **ACIT vs. Vinod Goel [2008] 111 ITD 70 (ASR)-** Search warrant is issued in the name of a person, place to be searched is to be mentioned therein, but it is not necessary that such place or building must belong to that person in whose name search warrant is issued;
7. **Commissioner of Income-tax Vs. Sarb Consulate Marine Products P. Ltd. [2007] 294 ITR 0444 (Del.)** - Search should be a continuous process, unless there is a valid explanation for the time gap.
8. **P.P. Jewellers (P) Ltd. and Ors. vs ACIT – [2006] 111 TTJ 187 [ITAT – Delhi] see also Jose Cyriac v. Commissioner of Income-tax [2012] 20**

- taxmann.com 738 (Ker.)** - The search at premises of the group concerns was conducted under s.132. In all five search warrants were issued giving correct addresses. The warrants for search were issued in the names of PPJ and PPJ (Pvt.) Ltd. The assessee were carrying business as PPJ (Delhi), PPJ (India) and PPJ (Pvt.) Ltd. The omission of (D) or (India) was only a technical mistake curable under s.292B. The search was valid.
9. **Rajendran Chingaravelu v ACIT[2010] 186 TAXMAN 305 (SC)**
Whether when a bona fide passenger is carrying an unusually large sum, and his claims regarding source and legitimacy have to be verified, some delay and inconvenience is inevitable and, in such a situation, rights of passenger will have to yield to public interest - Held, yes
10. **Hemendra Ranchhoddas Merchant v. Director of Income-tax (Investigation), Mumbai [2012] 20 taxmann.com 219 (Bom.)** - Validity of search proceedings initiated in pursuance of warrant of authorisation issued in name of dissolved firm as well as in name of erstwhile partners of dissolved firm was to be upheld
11. **Naresh Chand Baid v. Assistant Commissioner of Income-tax, Investigation Circle - 21, Raipur [2012] 23 taxmann.com 378 (Chhattisgarh)** Revenue authorities are competent to conduct search in premises of partners of firm when names of all partners are specifically mentioned in warrant of authorization issued in name of partnership firm
12. **Smt. Suman Singhai v. Director of Income-tax (Investigation) [2012] 20 taxmann.com 835 (MP.)** Where based on information in his possession, Dy. Director formed a belief that certain cash and silver, which had been seized by railway police from assessee's employee, represented assessee's income which would not have been disclosed for purpose of income-tax, and requisitioned it, in view of record produced by authorities, warrant of authorization under section 132A was valid.

D. Power of Authorised officer in respect of search and seizure.

Sub clause (i) to (v) of clause (1) of section 132 of Income Tax Act, 1961, prescribes the power of Authorised officers while conducting the search, Which are enumerated as under :

- (a) Enter and search any building, place, vehicle, or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery and other valuable articles are kept. [S. 132 (1)(i)]
- (b) Break open the lock of any door, locker, safe, Almirah or other receptacle for exercising the powers conferred under (a) supra where the keys thereof are not available. [S. 132 (1)(ii)]
- (c) Search any person who has gone out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing. [S. 132 (1)(iia)]
- (d) Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000 to afford the authorized officer the necessary facility to inspect such books of account or other documents. [S. 132 (1) (iib)]
 - * Person defaulting u/s 132(1)(iib) shall be liable to rigorous imprisonment for a term which may extend to two years and shall also be liable to fine [S. 275 B].
- (e) Seize any such books of account, other documents, money, bullion, jewellery, or other valuable article or thing found as a result of such search (however, from June 1, 2003, any bullion, Jewellery or other valuable article or thing being stock - in – trade of the business found as a result of search shall not be seized but the authorized officer shall make a note or inventory of such stock in trade of the business. [S. 132 (1)(iii)]

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

Alleppey Financial Enterprises vs ADIT (Inv.) & Anr., (1999) 236 ITR 562 (Ker.) Gold ornaments pledged by the customer with the assessee as security for loan amount sanctioned by him cannot be seized u.s 132, respondent directed to return the gold ornaments together with the pledged forms].

- (f) Place marks of identification on any books or other documents or make or cause to be made extracts or copies therefrom. [S. 132 (1)(iv)]
- (g) Make a note or an inventory of such money, bullion, jewellery or other valuable article or thing. [S. 132 (1)(v)]

E. DEEMED SEIZURE [second proviso to clause (1) of section 132].

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of dangerous nature, the authorized officer may serve an order on the owner (or the person who is in immediate possession thereof) that he shall not remove, part with or otherwise deal with it, except with the previous permission of the authorized officer and such action of the authorized officer shall be deemed to be seizure of such valuable article or thing [second proviso to section 132(1)]. However from June 1, 2003 the aforesaid provision shall not apply in case of any valuable article or thing being stock in trade of the business. [Inserted vide third proviso to clause (1) of section 132].

Person defaulting in second proviso to clause (1) of section 132 shall be punishable with rigorous imprisonment which may extent to 2 years and shall be liable to fine also. (Section 275A)

F. Police Assistance [Section 132(2)]

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

G. Restraint order [Section 132(3)]

Where it is not practicable to seize any material for any reason other than those as specified in second proviso to S. 132(1) then in such a case the AO may serve an order on the specified person, that such person shall not remove, part or otherwise deal with it except with the prior permission of the authorized officer.

Explanation to this clause also further clears that serving of restraint order as aforesaid under this subsection shall not be deemed to be seizure under clause 132 (1)(iii).

Limitation of section 132(3): An order u/s 132(3) shall be valid upto sixty days from the date of the order. (section 132(8A))

Person defaulting in second proviso to clause (3) of section 132 shall be punishable with rigorous imprisonment which may extend to 2 years and shall be liable to fine also. (Section 275A)

Gems of Judiciary

1. **MAA VAISHNAVI SPONGE LTD. V. DGIT (INVESTIGATION) [2011] 339 ITR 0413 (ORI).** - The issuance of prohibitory orders u/s 132(3) in respect of current bank accounts, savings bank accounts, cash credit accounts, loan accounts, overdraft accounts, recurring deposit accounts, personal accounts or any other accounts duly passed through regular books of account are not valid.
2. **M/s VISA COMTRADE LIMITED Vs UNION OF INDIA AND OTHERS, 2011-TIOL-546-HC-ORISSA-IT** - Prohibitory order issued under subsection (3) of Section 132 of the Act in respect of Current Account in question without forming any belief and/or without any material to conclude that the amount deposited in the said Current Account is either wholly or partly undisclosed income of the petitioner is unsustainable in law.
3. **Rakesh Sarin V. DCIT [2011] 333 ITR 0451 [Mad] see also CIT v. White & White Mineral P. Ltd. SLP dismissed filed by the department [2010] 322 ITR (St) 4.** - Lifting prohibitory order after 60 days does not amount to continuation of search and therefore date of such order should not be taken in to accounts for ascertaining date of execution of last warrant of authorization.

H. 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.

Gems of Judiciary.

1. **Hon'ble Gujarat High Court in Kailashben Manharlal Choshi v. CIT [2008] 14 DTR 257** - That statement recorded at odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission.
2. **CIT v. O. Abdul Razak 2012] 20 taxmann.com 48 (Ker.)** - A self-serving retraction, without anything more cannot dispel statement made under oath under section 132(4).
3. **S K Bahadur v. Union of India through CIT, 2011-TIOL-104-HC-Del-IT**: – No addition can be made in the hands of assessee where the assessee's wife had given a statement on oath and submitted the evidence in the form of wealth tax return filed before the date of search that she owned the properties mentioned in the documents seized.
4. **Asstt. CIT Janak Raj Chauhan [2006] 102 TTJ (Asr.) 316, ACIT vs Janak Raj Chauhan [2006] 102 TTJ 316 ASR** - No additions on the basis of statement made u/s 132(4) without positive evidence found during search in support of such an statement.
5. **CCIT & ANR. Vs. Pampapathi [2009] 310 ITR 0064 (Kar.)**- Letter written by partner of assessee firm to department admitting undisclosed income higher than that disclosed in statement under S. 132(4) with certain conditions and further stating that a revised return shall be filed accordingly is not a statement under S. 132(4) nor a revised return and cannot be used as a basis for making assessment.
6. **Hotel Kiran vs ACIT, 82 ITD 453 [ITAT - Pune]**- A statement was made by the assessee, voluntarily under s. 132(4), that 'on-money' was paid out of the firms suppressed profits. The statement, being clear and unambiguous, and made in the absence of any co-ersion, threat or force, was binding on the assessee even though he subsequently retracted it.
7. **Commissioner of Income Tax Vs. D. K. Gupta – [2009] 308 ITR 230 (Del)** Presumption about noting and jotting in documents is not available u/s 132 (4A), Assessee liable to tax only on receipts proved to be income of assessee.

I. Presumption regarding ownership and contents [Sub-section (4A) of section 132]

This section provides that any books of account, other documents, or valuable articles or things shall be presumed to be belonging to the person in whose possession or control these are found during the course of search and the contents of such books of account and documents shall also be presumed to be correct.

That the signature and every other part of such books and other documents which purports to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in handwriting of, any particular person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Note: However such presumptions are rebuttable and have limited application. The presumption u/s 132(4A) is not available to authorities while framing the regular assessment yet material seized can be used as a piece of evidence in any other proceedings under the Act, all contentions are left open.

Gems of Judiciary

1. **Commissioner of Income Tax V. Ambika Appalam Depot. [2012] 340 ITR 0497 (Mad)** - The presumption with regard to the contents of the seized dairy is valid one and it is available to be raised u/s 132(4).
2. **P.R. Metrani V. CIT[2006] 157 Taxman 325\287 ITR 209(SC)** - The presumption u/s 132(4A) is not available to authorities while framing the regular assessment yet material seized can be used as a piece of evidence in any other proceedings under the Act, all contentions are left open.
3. **Commissioner of Income Tax vs. Ved Prakash Choudhary [2008] 218 CTR (Del.) 99** - Both assessee and alleged payees having denied to have advanced or received any amount as shown to have changed hands as per the MOU found during search, no addition could be made in block assessment in the absence of any further corroborative facts, the presumptions u/s. 132(4A) being a rebuttable one ; no substantial question of Law arose out of order of Tribunal Deleting the addition
4. **Straptex (I) (P) Ltd. vs DCIT, [2003] 79 TTJ 228 (ITAT Mumbai)** - The resumption u/s. 132(4A) was against a person in whose possession the

document had been found and not against any other person. As the presumption u/s. 132(4A) was a rebuttable one and not a conclusive one it could not be applied in the absence of corroborative evidence.

J. Restriction on the power of retention of books of account or other documents found during search [Sub-Section (8) of Section 132]

The books of account or other documents found during search shall not be retained by the Authorized Officer after 30 days from the completion of assessment under section 153A (earlier section 158 BC) except with the approval of the Director General, Director, Chief CIT or CIT, where such approval shall not be granted if all the proceedings under the Income Tax Act in respect of years to which these books of account or other documents pertain are completed.

Section 132(10) provides the assessee a remedy in case of dissatisfaction with the approval granted by the Director General, Director, Chief CIT or CIT for the extended retention of the books of account or other documents as referred above, in such a case assessee make an application to the Board stating therein the reasons for the said objection and the Board may, after giving the applicant an opportunity of being heard, pass the appropriate orders.

K. Copies of extract of books of account and documents sec. 132(9)

The person from whose custody any books of account or documents are seized may make copies or take extracts therefrom in the presence of authorized officer or any person empowered by him in his behalf, at such place and time as the authorized officer may appoint in this behalf.

L. Where the Authorised Officer is not the Assessing Officer of the person searched [Sub-section (9A) of section 132]

Where the Authorised Officer have no jurisdiction over the person searched i.e. where the search has been authorized under first proviso to section 132(1), The Authorised Officer shall handover the books of account, other documents or any assets found as a result of search to the Assessing Officer having jurisdiction over the person searched within a period of 60 days from the date on which the last of the authorisations for search was executed (earlier this period was 15 days from the seizure of such books of account etc.), and thereupon the powers defined under sub-section 8 & sub-section 9 of section 132 shall be excised by such Assessing Officer.

The expression “execution of an authorization for search” has been defined in Explanation 1 to section 132 (However, reference of section 158BE only has been made in this Explanation and there is no reference of new assessment section 153A).

M. CRPC shall apply – [Section 132 (13)]

The provision of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to search and seizure under sub – section (1) or sub – section (1A).

N. Board can make rules [Section 132(14)]

The Board may make rules in relation to any search or seizure under this section; in particulars, and without prejudice to the generality of the foregoing power. Such rules may provide for the procedure to be followed by the authorized officer-

- For obtaining ingress in to (any building, place, vessel, vehicle, or aircraft) to be searched where free ingress thereto is not available.
- For ensuring safe custody of any books of account or other documents or assets seized.

O. A new “Miscellaneous” Section 292C Inserted by Finance Act, 2007 in chapter XXIII.

Presumptions :-

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

This provision will take effect retrospectively from 1.10.1975.

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

S.No	Remarks	Section 132(4A)	Section 292C
1.	Chapter no. & Chapter Heading	XIIIC “Power of Income Tax authorities” (including the power of search & seizure u/s 132 & requisition u/s 132A)	XXIII “Miscellaneous”
2.	Scope	Courts have held it to be not for framing assessment & its limited utility to be for making provisional estimate of liability for tax, penalty etc. Under the erstwhile sec. 132(5) of the Act.	“ in any proceedings under the Act” still to face judicial scrutiny

P. Section – 292CC [Newly inserted w.e.f. 1st April, 1976] Inserted by Finance Act, 2012 in chapter XXIII.

(1) Notwithstanding anything contained in this Act,—

- (i) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;
- (ii) where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition

In a recent Allahabad High Court decision Commissioner of Income-tax (Central) v. Smt. Vandana Verma, INCOME-TAX APPEAL NO. 21 OF 2009, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorization must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.

- In order to curtail and nullify various judicial pronouncements lying that joint panchnamas or search authorization in joint names are invalid, it has been provided by way of clarificatory retrospective amendment that
- Joint panchnama does not refers that it has been issued in the name of AOP or BOI consisting such persons
- Notwithstanding Authorization u/s 132 or Requisition u/s 132A in more than one name, assessment shall be made separately in name of each such persons.

Therefore the scope of authorization has been widened by making the retrospective amendment w.e.f. 01/04/1976 by inserting a new section 292CC in the Income-tax Act to provide that –

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

II. Other Relevant Concepts

A. Ground Rules for searches and seizure carried out by the authorities under this and other Acts :

The Union Finance Minister, Mr. Vishwanath Pratap Singh, announced the ground rules for searches and seizures carried out under the Income-tax Act, the Customs Act, Excise Act and the Foreign Exchange Regulation Act (FERA).

1. **Competent authority** – Authorization for a search can only be ordered by a competent officer after considering the information he has in his possession provided he has reasons to believe that a search is justified. Before the issue of a search warrant, a formal order is required to be passed by the competent authority.

Information may come from external sources like informers, other government departments or newspapers, magazines and publications. In the case of an informer, it is generally made clear to him that he is liable to be prosecuted under section 182 of the IPC if his allegations are proved false. Internal sources comprise cases developed suo motu on the basis of records and investigation and intelligence gathered by the intelligence wing of the department.

2. **Objectives of the search.** – A search is necessary to secure evidence which is not likely to be made available by issue of summons or by visiting, in ordinary course, the premises concerned. Tax authorities have powers to summon persons and documents. Tax authorities have to resort to search and seizure when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course.
3. **Search party.** – Search party has to be led by an officer of a certain rank in case of major searches. The party must be led by an officer of at least the rank of Assistant Collector or equivalent. The team must include two respectable witnesses of the locality and technical persons like valuers, etc.
4. **Rights of the person to be searched:**
 - a) To see the warrant of authorization duly signed and sealed by the issuing authority.

- b) Verify the identity of each member of the search party.
- c) To have at least two respectable and independent residents of the locality as witnesses.
- d) To have personal search of all members of the party before the start of the search and after conclusion of the search.
- e) To insist on a personal search of females by another female only with strict regard to decency.
- f) To have a copy of the panchanama together with all the annexure.
- g) To put his own seals on the packages containing the seized.
- h) Woman having the occupancy of an apartment, etc., to be searched has right to withdraw before the search party enters, if, according to custom, she does not appear in public.
- i) To call medical practitioner if he is not well.
- j) To have his children permitted to go to school, after the examination of their bags.
- k) To inspect the seals placed on various receptacles sealed in course of searches and subsequently reopened by continuation of searches.
- l) To have the facilities of having meals, etc., at the normal time.
- m) To have a copy of any statement before it is used against him in an assessment or prosecution proceedings.
- n) To have inspection of the books of account, etc., seized or to take extracts therefrom in the presence of any of the authorized officers or any other person empowered by him.

5. Examination - Tax authorities thereafter examine the person searched. In the case of income tax, the person has to take an oath. In the case of other Acts, it is made clear to him that proceedings are judicial and he is bound to tell the truth. It is also explained to him that the statement is liable to be used against him. This examination is deemed as a judicial proceeding and this statement is admissible as evidence. The purpose of this examination is to secure the explanation of the person regarding the documents and properties before he has an opportunity to conduct an explanation and fabricate evidence. He is not allowed the services of a lawyer at this stage.

6. **Report to the senior authority-** After the search, the party has to submit a report to the senior authority like Collector, Commissioner, etc. The outcome of search is given to enable the senior officer to judge the bona fide of the search and to exercise control over searches carried out.
7. **Safeguards-Section 136(2)** of the Customs Act provides for deterrent punishment including imprisonment of the Customs Officer held responsible for vexatious searches. In the cases of Excise and FERA, vexatious searches are punishable by a fine.
8. **Arrests-** The power of arrest vests with the Customs, Central Excise and enforcement officers. Income-tax Officers have no powers of arrests. Arrests are generally resorted to in cases where the detected offence is of a serious nature and the case appears to be fit for criminal prosecution. Persons are generally not arrested when the intention is only to have departmental proceedings. Persons are arrested when there is a gravity of offence, evidence of personal culpability, a strong prima facie case and a likelihood of person tampering with the evidence by remaining at large or absconding.
9. **Departmental Proceedings-** Under the Income-tax Act, the Income-tax Officer concerned must make a summary assessment within 120 days of the seizure estimating the undisclosed income and calculating the amount of tax on income so estimated along with the interest and penalty payable. Thereafter, he retains in his custody only such assets as are, in his opinion, sufficient to satisfy the aggregate amount of tax, penalty and interest due.

Books of account and documents seized cannot be retained for more than 180 days except for specially recorded reasons and with the approval of the Commissioner. Law specifically provides that the person concerned may make copies of the documents concerned.

In the case of the Customs Act, the period for retaining the contraband cannot be extended beyond one year. The adjudicating officer can impose penalties up to five times the duty of customs evaded, or three times the duty of excise evaded, or five times the foreign exchange involved. Penalty in the case of income tax can be up to 200% of tax evaded. The contraband goods can be absolutely confiscated or allowed to be redeemed on payment of fine. No imprisonment can be awarded by an adjudicating officer.

Instructions are being issued that the time-limit of completing search cases will be strictly adhered to in future and no undue extension will be given.

10. Prosecution- Apart from departmental proceedings, the law provides for criminal prosecution in certain cases. The complaint made by the tax department is treated as a personal criminal complaint as these offences under the Acts are treated as non-cognizable.

The chief offences on which prosecutions are launched are customs and excise duties or income-tax evasion, and in the case of FERA, contravention of the provisions of the Act.

In the case of offences by companies, every person who was in charge at the time when the offence was committed and was responsible for the conduct of business of the company as well as the company itself, are liable to be prosecuted provided that the offence was committed with the knowledge of such person or that he did not exercise all due diligence to prevent the commission of such offence.

11. Publicity.-The raiding party will not make any statement to the press. Statement to the press, if any, will be made by the head of the department and will be factual in nature. It may be necessary in some cases to give out a press note especially where distorted versions have been released to the press by other parties.

[Source: The Economic Times, dated April 18, 1986]

B. Taxpayers' Charter (1994) 208 ITR (St.) 5-7

Every taxpayer is entitled to expect the Income-tax Department :

To be fair

- In deciding tax matters, by providing a right to be heard and by being objective and impartial.
- In collecting the taxes that are legitimately due.
- To provide quality service
- by settling tax affairs promptly
- by keeping personal and private information furnished to the Department confidential.

- by being courteous to the taxpayers

To assist him

- in understanding the rights and duties under the tax law
- in availing of the benefits and concessions due to him
- in getting information and assistance at the enquiry counters

And in return, the Income-tax Department expects the taxpayer

- to extend co-operation to tax officials in the matter of assessment and collection
- to voluntarily disclose his correct income and pay the taxes due
- to discharge his statutory obligations in time
- to provide true and complete information

Charter of duties of persons searched

Duties of the person searched

- To allow free and unhindered ingress into the premises.
- To see the warrant of authorization and put signature on the same.
- To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorized officer.
- To identify and explain the ownership of the assets, books of account and documents found in the premises.
- To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- Not to allow or encourage the entry of any unauthorized person into the premises.
- Not to remove any article from its place without notice or knowledge of the authorized officer. If he secretes or destroys any document with

the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code.

- To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt while his statement is being recorded by the authorized officer. In doing so, he should keep in mind that –
 - (i) If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, under section 179 of the Indian Penal Code.
- 1. Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.
- 2. Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code.
 - To affix his signature on the recorded statement, inventories and the panchanama.
 - To ensure that peace is maintained throughout the duration of the search, and to cooperation with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
 - Similar co-operation should be extended even after the search action is over, so as to enable the authorized officer to complete necessary follow-up investigations at the earliest.

C. DO's & Dont's

a) DO's

- i. To show the authorization, immediately on entry, to any adult member

- the in premises and taking his signature alongwith date and time.
- ii. To show their Identity Cards and offer themselves for personal search and recording the fact of the personal search separately.
 - iii. To ensure that all the exit points of the premises are fully covered to prevent any possibility of throwing away of any material etc.
 - iv. To immediately take control of all the telephones including Mobile Phones, Fax Machines.
 - v. To conduct the search in the presence of atleast 2 Witnesses.
 - vi. To take proper inventory of the seized assets and the books and documents.
 - vii. To give to the assessee or occupant of the premises an opportunity for handing over the keys of any room / receptacle and duly recording the fact of the non availability of the keys before restoring to break open the locks.
 - viii. To allow the school going children to attend the school after checking their school bags for any incriminating material etc.
 - ix. To allow the assessee and other occupants of the premises to take their meals and medicines at the normal time and also allowing the old members of the family to take rest at their normal hours.

b) Dont's

- i. Not to threaten, abuse or use any indecent language against the person searched.
- ii. Not to get provoked and maintaining a cool and calm temperament and to be alert.
- iii. To avoid using the items of personal use of the assessee like Bed, TV etc. and also avoiding making the private calls from the assessee's telephone.
- iv. Not to leave the premises without informing the assessee.
- v. To decline the assessee's offer of food or refreshment politely in order to avoid any possible drugging.

D. Some basic points of advice to assessee.

The assessee should be advised to keep ready certain documents and details at their office and also at the residence. Particularly these are the followings -

- (a) Permanent Account No. of all the family members and business concern of the family.
- (b) Copies of income-tax/wealth-tax returns alongwith the documents submitted with the return.
- (c) Copies of all the latest income/wealth-tax assessment orders.
- (d) Copies of all latest valuation reports of the jewellery declared in the return of wealth of family members. If the assessee is not the wealth-tax assessee individual list of ornaments owned by each member with adequate evidence of source.
- (e) Detail of all bank accounts / lockers.
- (f) Detail of all investments in shares, securities, fixed deposit, etc.

E. Search on legal representative.**Is it legally permissible to conduct a search on a Chartered Accountant / Authorised Representative alongwith his client.**

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

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

* The courses of action as recommended above are merely of a suggestive nature and don't represent any instructions / guidelines issued by the Department.

F. Pre Search and Survey Precautions

Avoid

- i. To keep Books of account at any place other than Registered Office.
- ii. To share common premises, however if assessee share common premises then the MAP should be affixed at some common visible place identifying the assignment of particular area to particular assessee, since it could lead to Multiple Operations.
- iii. Personal documents of workers and employees in business premises.
- iv. Backdating and editing in Books of Account

Ensure

- i. That Books of account of respective assessee only are kept in its Registered premises.
- ii. Computer hard disk does not contain any irrelevant data.
- iii. That Books of account are properly updated.
- iv. That person in-charge of business have proper acquaintance of business affairs.
- v. That stock register are maintained and kept updated.
- vi. That if no stock registers are maintained then inventory verification list is prepared at regular dates
- vii. That physical cash available and cash in books of account matches.

G. Practical tips for handling Search, Seizure and post search proceedings.

- a. Systematically arrange and make analysis of all the seized documents.
- b. Sort the documents assessee wise, assessment year wise and premises wise.

- c. Sort the documents having financial relevance and financially irrelevant.
- d. If the documents are financially relevant, ascertain how they are explainable vis a vis books of account or other details available with the Income Tax Department or are found / seized from the premises searched or surveyed.
- e. See if the explanation is available about all the records available with the Income tax department.
- f. Offer Peak Credits as undisclosed income, if any.
- g. Return of income u/s 153A should be filed judiciously after consideration of records and material lying with income tax department.
- h. Where any undisclosed income is offered in the return filed u/s 153A then the expenditure incurred to earn that income may also be claimed.
- i. File returns under protest if required notices are not properly issued & challenge the validity of proceedings at the time of Assessments itself.

III. IMPORTANT INSTRUCTIONS AND CIRCULARS

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

HOW TO DEAL WITH PROMISSORY NOTES – Department may retain a Photostat copy of the promissory note or a copy certified by the assessee to be a true copy. And in future searches in addition to obtaining a Photostat or certified copy of the promissory notes an order under section 132(3) should be passed directing the person in possession of the promissory notes not to part with the said notes unless an equivalent amount is deposited with the Income-tax Officer.

B. Circular No.226-CBDT'S letter F.No. 7/16//69-I.T. (Inv.), dated 6-10-1970

Vide Board's circular of even number dated the 4th June, 1970 on the above subject, the procedure regarding the seizure of the promissory notes was specified. It has been suggested to the Board that an order merely restraining the lender from parting with the promissory notes would be ineffective as the lender can realise the debts by issuing a receipt discharging the debtor from any further liability. This is a possibility which

has to be kept in mind in dealing with such cases. Therefore order passed u/s 132(3) may be qualified with the proviso that the lender may part with the promissory notes only on the condition that the borrower pays the money to the Income-tax Department and not to the lender.

C. Instruction No: 530 Date of Issue: 22/3/1973

In the circumstances normally the search warrant is only required to be produced to the person whose premises are searched and it is not necessary that a copy of the search warrant should be supplied to him. If, however, a writ petition is filed in the High Court challenging the validity of the search and the High Court directs that a copy of the search warrant should be furnished to the person whose premises are searched it should be complied with.

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

If as a result of a search conducted by the Department under section 132 of the Income-tax Act, 1961, an article is placed under a prohibitory order/seized, which, prima facie, appears to be an antiquity or of such an artistic or aesthetic value as worthy of being declared an "art treasure" in terms of section 2 of the Antiquities and Art Treasures Act, 1972, it should be immediately brought to the notice of the Superintending Archaeologist of the area (list of Superintending Archaeologists annexed) and his advice sought whether the article is an antiquity or worthy of declaration as an art treasure. Thereafter, a report should be made (in duplicate) as early as possible to the Director of Inspection (Inv.) giving full particulars of the article, the advice received from the Superintending Archaeologist, along with its approximate market value as given by the latter and/or a valuer. The article should not be released to the assessee or otherwise disposed of till the receipt of the Director of Inspection's instruction

It may be carefully noted that in view of the provisions of the Antiquities and Art Treasures Act, the Income-tax Authorities cannot undertake any sale / auction of antiquities. When an antiquity or art treasure is compulsorily acquired by the Government, the compensation amount will be dealt with in accordance with the provisions of section 132 / 132B of the Income-tax Act. If the Director General, Archaeological Survey of India advises that the Government are not interested in acquiring an antiquity, it will have to be sold, where necessary, through a licensed dealer.

E. Instruction No: 1180 Date of Issue: 1/6/1978

Reference to the valuation cell in search & seizure cases. Some of the search and seizure operations have revealed considerable understatement of the value of immovable properties that the full investment in immovable properties, plant and machinery have not been disclosed by the assessee. Commissioners should get immovable properties etc. valued in appropriate cases wherever there is a reasonable ground for suspecting substantial under valuation / understatement of investment in accordance with the guidelines contained in Instruction No.365.

F. Instruction No.1497 Dt.13th January, 1983, Search and Seizure-Opening of Lockers

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

G. Circular No. 1590, dated 21-12-1984 F.No. 287 / 25 / 83-IT (Inv. II), states treatment of unaccounted stocks restrained / seized in benami / fictitious names.

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

- i. The Income-tax Officer having territorial jurisdiction at the address declared should issue a notice under section 139(2) in the name of a person who is declared as an owner of the said assets.

- ii. As the said person is not likely to be available at this address, the notice should be served by affixing a copy of the notice on the Notice Board of the Income-tax Officer and a copy of the banker as also to the person, such as Port Trust authorities, customs authorities, warehouse-keepers, etc., in whose custody the assets are lying at present.
- iii. In such cases, only the value of the investments should be taken as the income of the assessee by invoking the provisions of section 68,69, etc., and no ad hoc addition should be made.

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

H. CBDT Circular No. 611, dated 30-9-1991

The Assessing Officers, in any proceedings under the direct tax laws, will not make any enquiry with regard to remittances in foreign exchange received under the Remittance in Foreign Exchange (Immunities) Scheme, 1991 or gift of any India Development Bonds from a non-resident Indian/overseas corporate body. There should, therefore, be no apprehension of any prejudice against the persons in receipt of remittances under the scheme or donees of India Development Bonds. There should also be no fear of any harassment by the tax authorities. Where Bonds were issued as per Remittance of Foreign Exchange and Investment in Foreign Exchange Bonds Act, 1991 - Clauses VI and VII of said Act provides immunities to bond holder. No investigation can be allowed to be held pertaining to Indian development Bonds which were received from NRIs/overseas corporate bodies as gift and, thus, no addition could be made in hands of assessee. Commissioner of Income-tax v. Smt. Usha Omer[2011] 16 taxmann.com 377 (All.)

I. F.NO. 286/247/98-IT (INV.-II) 2ND FEB.,1999

To,

All Director Generals of Income tax (Inv.)

All Chief Commissioners of Income tax,

**Sub: Search and Seizure cases – release of seized assets –
Instructions reg.**

Sir,

1. Instances have come to the notice of the Board of seizure of assets, which prima facie, appear to have been disclosed in the regular books of account maintained by the persons subjected to the search action.
2. In such cases of seizure of declared assets, the seized assets could be released subject of course to recovery action by the Department against existing arrears.
3. There are also instances where jewellery or perishable stocks are seized. The searched parties sometimes request for release of jewellery on grounds of need for personal use. The perishable stocks again, if not released, could deteriorate in quality leading to erosion in their value. In such cases, it has been decided that if an unconditional irrevocable bank guarantee to the full extent of the value of the seized assets is given, the assets could be released to that extent. The valuation is to be done by the Income-tax Department and the guarantee should be clear and unequivocal.
4. The bank guarantee should be valid till the relevant assessment proceedings are complete and taxes are collected. The Department should have the option to enforce the guarantee at any point of time.
5. It will also be ensured that in cases where the seized assets will have specific evidentiary value in prosecution the assets will not be released till the completion of prosecution proceedings.

Yours faithfully,

Sd/-

(Kavita Bhatnagar)

Under Secretary to the Govt. of India

**J. NO CONFSSIONAL STATEMENT IN THE COURSE OF
SEARCH, SEIZURE AND SURVEY**

**F.No. 286/2/2003 – IT (Inv)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE & COMPANY AFFAIRS
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
Room No.254/North Block,
New Delhi, the 10th March,2003.**

To

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

Sir,

**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 assesses have claimed that 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 assesses 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 Departments. Similarly, while recording statement during the course of search & seizures and 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 evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

Yours faithfully,

Sd/-

(S.R.Mahapatra)
Under Secretary (Inv.)

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

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

L. Instruction No.2/2004, dated 23-02-2004 by Board in "written submissions in Appeals/writ filed before the High Court.

Board directed that wherever validity of search is challenged by assessee or defended by department:

- a. The statement of written submission by department incorporating there in all relevant facts i.e. satisfaction note, brief outline of steps of enquiry, gist of information already with the department vis a vis stock, bullion, cash and other relevant material etc irrespective of the fact, HC ask for it or not.
- b. Where orders u/s 158 BC, 158 BD, 153A, 153C are quashed by ITAT, on ground that no valid search existed, then CCIT/CIT/DGIT(Inv.), DIT(Inv.) should jointly ensure compliance with direction supra.
- c. The written submission made before HC along with paper book compilation should be forwarded to the Board, wherein SLP is recommended against the order of HC quashing the search.
- d. The Counsels of department should be directed in writing to make the aforesaid submissions, before the Hon'ble High Court, in addition to oral pleadings

Note : No warrant in the name of firm, search & seizure of books of account of firm on basis thereof was invalid. [Case : K.R. Modi & co. v. DDIT (Inv.) (2005) 272 ITR 587 (cal.)]

M. Instruction No.11 of 2006, DT. 1st Dec., 2006

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

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

Chapter IV

Powers to Requisition books of account, etc.

Section 132A

(1) Where the [Director General or Director] or the [Chief Commissioner or Commissioner], in consequence of information in his possession, has reason to believe that

- (a) any person to whom a summons under sub-section (1) of [section 37](#) of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or
- (b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force,

then, the [Director General or Director] or the [Chief Commissioner or Commissioner] may authorise any [Joint Director], [Joint Commissioner], [Assistant Director [or Deputy Director]], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer] (hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

- (2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.
- (3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section and as if for the words the authorised officer occurring in any of the aforesaid sub-sections (4A) to (14), the words the requisitioning officer were substituted.]

Procedure of Requisition.

Rule 112 D of the Income Tax Rules 1962 prescribes the procedure to be adopted for the purpose of section 132A.

1. Sub – rule (1) of 112D the authorization u/s 132 A (1) by the concerned authority shall be in form no. 45C, shall be in writing under the signature of the officer issuing the authorization and shall bear his seal.

2. Sub – rule (2) of rule 112D states that the officer authorized to make a requisition under section 132A(1) shall make the requisition in writing and the requisition shall be accompanied by a copy of the authorization in Form No. 45C.
3. Sub – rule (3) of rule 112D states that the delivering officer or authority shall prepare a list of the books of accounts or other documents delivered to the requisition officer. All the things to be delivered shall be placed in a package or packages which shall be listed with details of such things. Every such package shall bear a Identification mark and seal of the requisitioning officer. A copy of the list prepared shall be delivered to such person and a copy thereof shall also be forwarded by the delivering officer to the requisitioning officer.
4. Sub rule (4) of rule 112 D provides that the provision of -rules (11) to (14) (both inclusive) of rule 112 and of rule 112A, rule 112B and rule 112C shall, so far as may be, apply as if the books of account, other documents and assets delivered to the requisitioning officer under section 132A had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the assessee.

Application of seized or requisitioned assets:

Section – 132B

- (1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:
 - (i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [under section 153A and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the amount of liability determined on completion of the assessment under Chapter XIV-B for the block period, as the case may be] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, may be recovered out of such assets:

Provided that where the person concerned makes an application to the Assessing Officer within thirty 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 any such asset is explained] to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

- (ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;
 - (iii) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (5) of [section 226](#) and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.
- (2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.
- (3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

- (4) (a) The Central Government shall pay simple interest at the rate of [*one-half per cent for every month or part of a month*] on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.
- (b) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment [under section 153A or] under Chapter XIV-B.

Explanation. In this section,

- (i) block period shall have the meaning assigned to it in clause (a) of section 158B;
- (ii) execution of an authorisation for search or requisition shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.]

Explanation regarding application of seized Assets.

- i) Section 132B(1)(i) provides that seized assets may be first applied towards existing liability in any proceedings in Income Tax Act, 1961, Wealth Tax Act, 1957, the Expenditure Act, 1987, the Gift tax Act, 1958 and the Interest Tax Act, 1974.

Proviso to section Section 132B(1)(i) provides that if an assessee makes an application to the AO for release of assets with in thirty days from the end of the month in which the assets were seized, where the nature and source of particular asset is explained to the AO up to his satisfaction, thereupon the particular asset after settling the existing liability may be released to the assessee on proper approval.

Further provided that such asset should be released with in 120 days of last of Authorization for search u/s 132 or requisition u/s 132A.

- ii) Section 132B(1)(ii) further provides that if such assets consists of money or partly of money and partly of other assets, such money may be applied in the discharge of the liabilities as referred above.
- iii) Section 132 (1)(iii) provides that the assets other than money may be applied for discharging the liabilities as referred above.
- (iv)Section 132B(3) provides that remaining assets after meeting the aforesaid liabilities shall be returned to the person from whom custody such assets were seized.
- (v) Section 132(4)(A) provides that , interest shall be paid to the assessee at the rate of 1 ½% p.m. or part thereof on the aggregate sum of a) the money seized u/s 132 or requisition u/s 132A as reduced by the amount of money if any released , and, b) the proceeds of assets sold towards the discharge of existing liability in sec 132B(1)(i) exceeds the aggregate amount required to meet the liabilities referred to in clause 132A(1)(i) .

Such the interest shall be payable from the expiry of the period of 120 days from the execution of the last of the authorizations for search till the date of completion of assessment under section 153A or block assessment.

Gems of Judiciary

1. Mohit Singh V. Assistant Commissioner Of Income-Tax [2012] 20 Taxmann.Com 745 (Delhi).

Where no additional tax liability was found against assessee either in block assessment completed for relevant period or in assessment made for following assessment year, amount seized during search conducted against assessee was to be refunded to him along with interest from date block assessment order was passed till date of payment

Chapter V

Relevant Rules Defining Procedure for Carrying Search and Seizure Proceedings

Section 112, 112A, 112B, 112C & 112D

Under section 132(14), the Board is empowered to make rules in relation to any search or seizure under section 132, such rules may provide for the procedure to be followed by the authorized officer –

- (i) for obtaining ingress in to any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- (ii) for ensuring safe custody of any books of account or other documents or assets seized.

Sub rule (1) to Rule 112, Search and seizure.

- (1) The powers of search and seizure under section 132 shall be exercised in accordance with sub-rules (2) to (14).

Sub rule (2) to Rule 112. Relevant forms for Authorisation.

- (2) (a) The authorisation under sub-section (1) of section 132 (other than an authorisation under the proviso thereto) by the Director General or Director of Inspection or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as is empowered by the Board in this behalf shall be in Form No.45;

- (b) the authorisation under the proviso to sub-section (1) of section 132 by the Chief Commissioner or Commissioner shall be in Form No.45A;
- (c) the authorisation under sub-section (1A) of section 132 by a Chief Commissioner or Commissioner shall be in Form No.45B.

(2A) Every authorisation referred to in sub-rule (2) shall be in writing under the signature of the officer issuing the authorisation and shall bear his seal.

Sub rule (3) to Rule 112, Free ingress to be allowed to searching officers.

- (3) Any person in charge of or in any building, place, vessel, vehicle or aircraft authorised to be searched shall, on demand by the officer authorised to exercise the powers of search and seizure under section 132 (hereinafter referred to as the authorised officer) and on production of the authority, allow him free ingress thereto and afford all reasonable facilities for a search therein.

Sub rule (4) to Rule 112, Course open where free ingress cannot be obtained.

- (4) If ingress into such building or place cannot be so obtained it shall be lawful for the authorized officer executing the authority, with such assistance of police officers or of officers of the Central Government, or of both, as may be required, to enter such building or place and search therein and in order to effect an entrance into such building or place, to break open any outer or inner door or window of any building or place, whether that of the person to be searched or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such building or place is an apartment in actual occupancy of a woman, who according to custom does not appear in public, the authorized officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.

Sub rule (4A) to Rule 112, Ingress in to vessel, vehicle or aircraft.

(4A) If ingress into any vessel, vehicle or aircraft authorized to be searched cannot be obtained because such vessel, vehicle or aircraft is moving or for any other reason, it shall be lawful for the authorized officer with such assistance of police officers or of officers of the Central Government or of both, as may be required, to stop any such vessel or vehicle or, in the case of an aircraft, compel it to stop or land, and search any part of the vessel, vehicle or aircraft; and in order to effect an entrance into such vessel, vehicle or aircraft, to break open any outer or inner door or window of any such vessel, vehicle or aircraft, whether that of the person to be searched or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that if any such vessel, vehicle or aircraft is occupied by a woman, who according to custom does not appear in public, the authorised officer shall, before entering such vessel, vehicle or aircraft, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing.

Sub rule (4B) to Rule 112, Allowing access to searching officer by opening box, locker etc.

(4B) The authorised officer may require any person who is the owner, or has the immediate possession, or control, of any box, locker, safe, almirah or any other receptacle situate in such building, place, vessel, vehicle or aircraft to open the same and allow access to inspect or examine its contents, and where the keys thereof are not available or where such person fails to comply with any such requirement, may cause any action to be taken including the breaking open of such box, locker, safe almirah or other receptacle which the authorised officer may deem necessary for carrying out all or any of the purposes specified in the authority issued under sub-rule (2).

Sub rule (4C) to Rule 112, Service of prohibition orders.

(4C) The authorised officer may, where it is not practicable to seize the money, bullion, jewellery or other valuable article or thing or any books of account or document, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of the authorised officer, who may take such steps as may be necessary for ensuring compliance with this sub-rule.

Sub rule (5) to Rule 112, Process of search.

- (5) Any person referred to in clause (ia) of sub-section (1) of section 132 may be searched by the authorised officer with such assistance as he may consider necessary. If such person is a woman, the search shall be made by another woman with strict regard to decency.

Sub rule (6) to Rule 112, Calling respectable persons.

- (6) Before making a search, the authorised officer shall,--
- (a) where a building or place is to be searched, call upon two or more respectable inhabitants of the locality in which the building or place to be searched is situate, and
 - (b) where a vessel, vehicle or aircraft is to be searched, call upon any two or more respectable persons to attend and witness the search and may issue an order in writing to them or any of them so to do.

Sub rule (7) to Rule 112, Presence of witness.

- (7) The search shall be made in the presence of the witnesses aforesaid and a list of all things seized in the course of such search and of the places in which they were respectively found shall be prepared by the authorised officer and signed by such witnesses; but no person witnessing a search shall be required to attend as a witness of the search in any proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or the Act unless specially summoned.

Sub rule (8) to Rule 112, Attendance of occupant of building or premises.

- (8) The occupant of the building, place, vessel, vehicle or aircraft searched, including the person in charge of such vessel, vehicle or aircraft, or some person on his behalf, shall be permitted to attend during the search and a copy of the list prepared under sub-rule (7) shall be delivered to such occupant or person. A copy thereof shall be forwarded to the Chief Commissioner or Commissioner and, where the authorisation has been issued by any officer other than the Chief Commissioner or Commissioner, also to that officer.

Sub rule (9) to Rule 112, Listing of things taken possession of.

(9) Where any person is searched under clause (iia) of sub-section (1) of section 132, a list of all things taken possession of shall be prepared and a copy thereof shall be delivered to such person. A copy thereof shall be forwarded to the Chief Commissioner or Commissioner and, where the authorisation has been issued by any officer other than the Chief Commissioner or Commissioner, also to that officer.

Sub rule (10) to Rule 112, Identification mark on packages and copy of list.

(10) The authorised officer shall place or cause to be placed the bullion, jewellery and other valuable articles and things seized during the search in a package or packages which shall be listed with details of the bullion, jewellery and other valuable articles and things placed therein; every such package shall bear an identification mark and the seal of the authorised officer or any other income-tax authority not below the rank of Assessing Officer and the occupant of the building, place, vessel, vehicle or aircraft including the person in charge of such vessel, vehicle or aircraft searched or any other person in his behalf shall also be permitted to place his seal on them. A copy of the list prepared shall be delivered to such occupant or person. A copy shall be forwarded to the Chief Commissioner or Commissioner, and where the authorisation has been issued by any officer other than the Chief Commissioner or Commissioner, also to that officer.

Sub rule (11) to Rule 112, Books and accounts, other documents, monies etc. seized - placed of.

(11) The authorised officer may convey the books of account and other documents, if any, seized by him in the course of the search made by him and the package or packages, if any, referred to in sub-rule (10) to the office of any income-tax authority not below the rank of Assessing Officer (hereinafter referred to as the Custodian). Any money seized in the search referred to above may also be deposited with the Custodian.

Sub rule (12) to Rule 112, Safe custody of assets seized.

(12) (i) The Custodian shall take such steps as he may consider necessary for the safe custody of--
(a) books of account and other documents, and

(b) the package or packages, conveyed to him.

(ii) The Custodian may deposit for safe custody all or any of the packages with any branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or the authorised bank or a Government Treasury.

(iii) Where any money has been deposited with the Custodian, he may credit the money, or remit the money through the nearest branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank for being credited in the personal Deposit Account of the Chief Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank at the place where the office of the Chief Commissioner or Commissioner is situate.

Sub rule (13) to Rule 112, Opening of sealed package.

(13) (i) Whenever any sealed package is required to be opened for any of the purposes of the Act, the authorised officer may, unless he is himself the Custodian, requisition the same from the Custodian and on receipt of the requisition, such package or packages, as the case may be, shall be delivered to him by the Custodian. The authorised officer may break any seal and open such package in the presence of two respectable witnesses after giving a reasonable notice to the person from whose custody the contents were seized to be present.

(ii) Such person shall be permitted to be present till all or any of the contents of such package are placed in a fresh package or packages and sealed in the manner specified in sub-rule (1) or delivered to such person or the Custodian, as the case may be.

Sub rule (14) to Rule 112, Powers of the Officer to whom seized assets handed over.

(14) The Assessing Officer to whom the books of account or other documents or assets have been handed over under sub-section (9A) of section 132 shall have all the powers conferred on the authorised officer under sub-rules (11) and (13).

Rule 112 A, Inquiry under section 132.

- (1) Where any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) are seized, the [Assessing Officer], shall, within fifteen days of the seizure [, and in a case where the assets are handed over to him by the authorised officer under sub-section (9A) of section 132, within fifteen days from the date on which such assets are handed over to him], issue to the person in respect of whom inquiry under sub-section [(5)] of section 132 is to be made requiring him on the date to be specified therein (not being earlier than fifteen days from the date of service of such notice) either to attend at the office of the [Assessing Officer] to explain or to produce or cause to be there produced evidence on which such person may rely for explaining the nature of the possession and the source of the acquisition of the assets.
- (2) The [Assessing Officer] may issue a notice to the person referred to in sub-rule (1) requiring him on a date specified therein to produce or cause to be produced at such time and at such place as the [Assessing Officer] may specify such accounts or documents or evidence as the [Assessing Officer] may require and may from time to time issue further notices requiring production of such further accounts or documents or other evidence as he may require.
- (3) The [Assessing Officer] may examine on oath any other person or make such other inquiry as he may deem fit.
- (4) Before any material gathered in the course of the examination or inquiry under sub-rule (3) is used by the [Assessing Officer] against the person referred to in sub-rule (1), the [Assessing Officer] shall give a reasonable notice to that person to show cause why such material should not be used against him.]

Rule 112B, Release of articles under section 132(5)

Where in pursuance of sub-section [(5)] of section 132 of the Act, the assets or part thereof have to be released, the [Assessing Officer] shall forthwith deliver the same to the person from whose custody they were seized in the presence of two respectable witnesses.]

Rule 112C, Release of remaining assets.

Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) of section 132B are discharged shall be

forthwith made over or paid to the person, from whose custody the assets were seized, in the presence of two respectable witnesses.

Rule 112D, Requisition of books of account, etc.

- (1) The authorisation under sub-section (1) of section 132A by the Director General or Director or the Chief Commissioner or Commissioner shall be in Form No.45C, shall be in writing under the signature of the officer issuing the authorisation and shall bear his seal.
- (2) The officer authorised to make a requisition under sub-section (1) of section 132A (hereinafter referred to as the requisitioning officer) shall make the requisition in writing to the officer or authority referred to in clause (a) or clause (b) or, as the case may be, clause (c) of the said sub-section (hereinafter referred to as the delivering officer or authority) calling upon the delivering officer or authority to deliver the books of account, other documents or assets specified in the requisition to him. The requisition shall be accompanied by a copy of the authorisation in Form No.45C. A copy of the requisition, along with a copy of the authorisation in Form No.45C, shall be forwarded to the person referred to in clause (a) or clause (b) or, as the case may be, clause (c) of sub-section (1) of section 132A.
- (3) The delivering officer or authority shall prepare a list of the books of account or other documents delivered to the requisitioning officer. Before effecting delivery of any bullion, jewellery or other valuable article or thing, the delivering officer or authority shall place or cause to be placed such bullion, jewellery, article or thing in a package or packages which shall be listed with details of such bullion, jewellery, article or thing placed therein. Every such package shall bear an identification mark and seal of the requisitioning officer or of any other income-tax authority not below the rank of Assessing Officer on behalf of the requisitioning officer, and also of the delivering officer or authority. The person referred to in clause (a) or clause (b) or, as the case may be, clause (c) of sub-section (1) of section 132A or any other person on his behalf shall also be permitted to place his seal on the said package or packages. A copy of the list prepared shall be delivered to such person and a copy thereof shall also be forwarded by the delivering officer to the Chief Commissioner or Commissioner and also to the Director General or Director where the authorisation under sub-rule (1) has been issued by him.

- (4) The provisions of sub-rules (11) to (14) (both inclusive) of rule 112 and of rule 112A, rule 112B and rule 112C shall, so far as may be, apply as if the books of account, other documents and assets delivered to the requisitioning officer under section 132A had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or, as the case may be, clause (c) of sub-section (1) of the said section and as if for the words “the authorised officer” occurring in any of the aforesaid sub-rules and rules, the words “the requisitioning officer” were substituted.

Chapter VI

Miscellaneous Question and Answer on Search

Q.1 What is the remedy available to assessee in case of misbehavior of the officers during search?

Ans. Misbehavior 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. About any misbehavior by search team assessee may lodge a complaint with the Director or Commissioner concerned or with the Director General or Chief Commissioner concerned or with the Member (Investigation). Assessee may also contact superior officer during search to explain the difficulties being faced but the superior may not interfere with the judicial discretion of the authorized 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.

Q.2 What remedies available to assessee in case the assets are destroyed like sofas and beds' are torn, floor is dug and walls are broken?

Ans. No remedy available against such actions of search team, 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.

Q.3 What remedy lies with regard to seizure of cash whose sources are also explained?

Ans. 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.

Q.4 Can assessee ask for identity card of officers?

Ans. 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. (Please refer ground rules announced by the then Union Finance Minister, Mr. Vishwanath Pratap Singh)

Q.5 Can assessee ask for a copy of warrant?

Ans. No. 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, Rule 112 s.rule (3) requires only production of warrant not its service Non-issuance of warrant of authorisation to assessee and absence of its service upon him shall not vitiates search see also [Instruction No: 530 Date of Issue: 22/3/1973]. The assessee should inspect the warrant 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.

Q. 6 Can the assessee ask for reasons recorded for carrying search?

Ans. No. 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 v Dir. Of Enforcement (1985) 155 ITR 166 (SC)]

Q. 7 Can the authorised officer refuse permission to the assessee or any other person to be present on his behalf during search?

Ans. 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.

Q. 8 Can the authorised officer enter and search any building belonging to the assessee once the warrant of authorisation is issued against him?

Ans. No, he can enter and search only such building in relation to which the warrant of authorisation is specifically issued, however such building can be searched only after obtaining warrant of authorization.

Q. 9 Can the assessee call his relatives or legal representative to assist him during the course of search?

Ans. 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.

Q. 10 Can an authorised officer prevent the assessee from receiving or making telephone calls and telex messages?

Ans. 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.

Q. 11 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'?

Ans. 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.

Q. 12 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?

Ans. 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. 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.

Q. 13 Whether Search can be conducted on the banker of the assessee?

Ans. That search in a bank cannot be made by pouncing upon ledgers and books of account, bank records or FDRs; only way to make search in bank is to ask officer-in-charge of bank to give details of such accounts, FDRs, etc., which action is nothing but a search under relevant provisions of Act and Rules and cannot be termed as mere collection of information from bank.

Q. 14 Can the assessee be arrested during the course of search?

Ans. 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.

Q. 15 Is the assessee expected to retain his bills for each item purchased?

Ans. 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. 16 What documents are necessary to be maintained in relation to the imported items?

Ans. 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.

Q. 16 What evidence is needed to prove the wedding gifts?

Ans. 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.

Q.17 Whether notice u/s 131(1A) and 133(6) can be issued subsequent to search ?

Ans. In **Dr. Roop v. Commissioner of Income-tax, Meerut [2012] 20 taxmann.com 205 (All.)** see also **Neesa Leisure Ltd. V Union of India through Secretary. [2011] 338 ITR 0460 (Guj)**. It was held that there is no substance in the submission that the notice u/s 131(1A) subsequent to search proceedings shows that the department did not have sufficient material. Notice under section 131(1A) confers power on the authorities as mentioned in section 131(1), if he has reason to suspect that any income has been concealed or is likely to be concealed. It is only an enabling power and does not in any way affect the search and seizure operations carried out under section 132. Section 132 is an independent code in itself. See also **Neesa Leisure Ltd.v. Union of India[2011] 16 taxmann.com 163 (Guj.)**

Q.18 whether additions can be made in the hands of Assessee in respect of valuable documents / Agreements standing in the names of children, who are major and assessed to tax are found, found during search?

Ans. Normally it does not happen.

Q. 19 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?

Ans. 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.

Q. 20 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. 6000/- 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?

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

Q 21 On whom search notice can be served?

Ans. 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.

Q. 22 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?

Ans. 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.

Q. 23 At the time of search if the books of account of the assessee are not complete. Whether the same can be completed?

Ans. 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.

Q. 24 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?

Ans. 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, but the should undertake the consequences of wrong statement in to consideration.

Q. 25 If the case of Assessee affairs are of complicated nature and the Assessing Officer lacks understanding. In such situations what is the remedy available to an assessee?

Ans. 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.

Q. 26 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?

Ans. Yes.

Q. 27 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?

Ans. Income Tax Department has come out with number of circulars that a married woman should not be questioned on jewellery acquiseance 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. [**Instruction No. 1916, dated 11-05-1994**]

Q. 28 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?

Ans. Income-tax Department cannot question the Assessee in respect of transactions prior to 06 Assessment years u/s 153A and notice can also be issued u/s 148 for 7th financial year.

Q. 30 Pass book maintained by an assessee, whether constitutes books of Account?

Ans. Yes.

Q. 31 Can the matter be referred to the valuation officer for valuation of property etc by assessing officer in search cases?

Ans. By, virtue of Amendment by Finance Act No.2, 2004 a new section is inserted which is sec. 142A, wherein the assessing officer is given powers to refer the matter in Search cases to the Valuation Officer hence after 8-7-2004 AO can refer matter to valuation officer to value property etc.

Q. 32 Whether validity of search and seizure proceedings can be challenged during assessment proceedings before Assessing Officer or in appeal before Commissioner or Tribunal

Ans. No, Please see Trilok Singh Dhillon v. Commissioner of Income-tax[2012] 20 taxmann.com. 806 (chhattisgarh).

Chapter VII

Relevant Forms - Forms 45, 45A, 45B & 45C

FORM NO. 45

[See rule 112]

**Warrant of authorisation under section 132 of the Income-tax Act, 1961,
and rule 112(1) of the Income-tax Rules, 1962**

To
The Deputy Director,
The Deputy Commissioner,
The Assistant Director,
The Assistant Commissioner,
The Income-tax Officer,
.....

Whereas information has been laid before me and on the consideration thereof I have reason to believe that— a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922.or under sub-section (1) of section 142 of the Income-tax Act, 1961, was issued by the Deputy Commissioner/the Assistant Commissioner/ the Income-tax Officer,.....to.....[name of the person] on [date] to produce, or cause to be produced, books of account or other documents specified in the relevant summons or notice and he has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons

or notice; a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section(1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section(1) of section 142 of the Income-tax Act, 1961, has been issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer, to.....[name of the person] on [date] to produce, or cause to be produced, books of account or other documents specified in the relevant summons or notice and he will not produce or cause to be produced, such books of account or other documents as required by such summons or notice; if a summons under sub-section(1) of section 37of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1)of section 142 of the Income-tax Act, 1961, is issued to [name of the person] to produce, or cause to be produced, books of account or other documents which will be useful for, or relevant to, proceedings under the Indian Income-tax Act, 1922, or under the Income-tax Act, 1961, he would not produce, or cause to be produced, such books of account or other documents as required by such summons or notice; Sarvashri/Shri/Shrimati are/is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922, or the Income-tax Act, 1961;

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found in (specify particulars of the building/place/vessel/vehicle/ aircraft);

This is to authorise and require you [name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner or the Income-tax Officer]–

- (a) to enter and search the said building/place/vessel/vehicle/aircraft;
- (b) to search any person who has got out of, or is about to get into, or is in the building/ place/ vessel/vehicle/aircraft if you have reason to

suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

- (c) to place identification marks on such books of account and documents as may be found in the course of the search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- (d) to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents;
- (e) to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;
- (f) to make a note or an inventory of any such money, bullion, jewellery, or other valuable article or thing;
- (g) to convey such books of account, documents, money, bullion, jewellery or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the execution of the Income-tax Act, 1961; and
- (h) to exercise all other powers and perform all other functions under section 132 of the Income-tax Act, 1961, and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government, or of both, to assist you for all or any of the purposes specified in sub-section

(1) of section 132 of the Income-tax Act, 1961.

(SEAL) Director-General or Director
Chief Commissioner or Commissioner of Income-tax

Deputy Director
Deputy Commissioner of Income-tax

FORM NO. 45A
[see rule 112(2)(b)]

Warrant of authorisation under the proviso to sub-section (1) of section 132 of the Income-tax Act, 1961

To

The Deputy Director,
The Deputy Commissioner,
The Assistant Director,
The Assistant Commissioner,
The Income-tax Officer,
.....

Whereas information has been laid before me and on the consideration thereof I have reason to believe that—

a summons under sub-section(1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section

(1)of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian

Income-tax Act, 1922, or under sub-(1) of section 142 of the Income-tax Act, 1961, was issued by the

Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer

to[name of the person] on.....[date] to produce, or cause to be produced,

books of account or other documents specified in the relevant summons or notice and he has

omitted or failed to produce, or cause to be produced, such books of account or other documents as

required by such summons or notice;

a summons under sub-section(1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section

(1) of section 131 of the Income-tax Act, 1961 or a notice under sub-section (4) of section 22 of the

Indian Income-tax Act, 1922, or under sub-section(1)of section 142 of the Income-tax Act, 1961, has-been

issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax

Officer,.....to.....[name of the person] on

..... [date] to produce, or cause to be produced, books of account or other documents

specified in the relevant summons or notice and he will not produce or cause to be produced, such books

of account or other documents as required by such summons or notice;

if a summons under sub-section (f) of section 37 of the Indian Income-tax Act, 1922, or under sub-section

(1)of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of

the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, is

issued to.....[name of the person] to produce, or cause to be pro-duced,

books of account or other documents which will be useful for, or relevant to, proceedings under

the Indian Income-tax Act, 1922, or under the Income-tax Act, 1961, he would not produce, or cause to

be produced, such books of account or other documents as required by such summons or notice;

Sarvashri/Shri/Shrimati.....are/ in possession of any money, bullion, jewellery or other valuable

article or thing and such money, bullion, jewellery or other valuable article or thing represents either

wholly or partly income or property which has not been, or would not be, disclosed for the purposes of

the Indian Income-tax Act, 1922, or the Income-tax Act, 1961 ;

And whereas I have reason to suspect that such books of account, other documents, money, bullion,

jewellery or other valuable article or thing have been kept and are to be found in

..... (specify particulars of the building/ place/vessel/vehicle/ aircraft)

which is within the area of my jurisdiction ;

And whereas I have reason to believe that any delay in getting an authorisation under sub- section (1) of

section 132 from the Chief Commissioner or Commissioner having jurisdiction over Sarvashri/Shri/

Shrimati..... may be prejudicial to the interests of the revenue;

This is to authorise and require you

.....

.....

.....

[name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the

Assistant Commissioner or the Income-tax Officer]

- (a) to enter and search the said building/ place/ vessel/ vehicle/ aircraft;
- (b) to search any person who has got out of, or is about to get into, or is in, the building/ place/ vessel/ vehicle/ aircraft if you have reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

- (c) to place identification marks on such books of account and documents as may be found in the course of the search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- (d) to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents;
- (e) to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;
- (f) on to make a note or an inventory of any such money, bullion, jewellery, or other valuable article or thing;
- (g) to convey such books of account, documents, money, bullion, jewellery, or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the execution of the Income-tax Act, 1961 : and
- (h) to exercise all other powers and perform all other functions under section 132 of the Income-tax Act, 1961 and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government, or of both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act. 1961.

(SEAL)

**Chief commissioner or
Commissioner of Income-tax**

FORM NO, 45B
[See rule 112(2)(c)]

Warrant of authorisation under sub-section (1A) of section 132 of the Income-tax Act, 1961

To

The Deputy Director,
The Deputy Commissioner,
The Assistant Director,
The Assistant Commissioner,
The Income-tax Officer,
.....

Whereas information has been laid before me and on the consideration thereof I have reason to suspect

that the books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which [name and designation of authorised officer] has been authorised by the Director-General or Director/Chief Commissioner or Commissioner of Income-tax/Deputy Director/Deputy Commissioner of Income-tax..... to take action under clauses (i) to (v) of sub-section (1) of section 132 are or is kept in [specify particulars of the building/place/vessel/vehicle/aircraft]

And whereas the building/place/vessel/vehicle/aircraft specified above has/have not been mentioned in the authorisation under sub-section(1) of section 132 by the Director General or Director/Chief Commissioner or Commissioner of Income-tax/Deputy Director/Deputy Commissioner] of Income-tax; This is to authorise and require you [name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director

or of the Assistant Commissioner of the Income-tax Officer]—

- (a) to enter and search the said building/place/vessel/vehicle/aircraft;
- (b) to search any person who has got out of, or is about to get into, or is in, the building/ place/ vessel/vehicle/aircraft, if you have reason to

suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

- (c) to place identification marks on such books of account and documents as may be found in the course of search and as you may consider relevant to, or useful for, proceedings under the Indian Income-tax Act, 1922, or under the Income-tax Act, 1961, and to make a list thereof together with particulars of the identification marks:
- (d) to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents;
- (e) to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;
- (f) to make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing;
- (g) to convey such books of account, documents, money, bullion, jewellery or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the execution of the Income-tax Act, 1961 ; and
- (h) to exercise all other powers and perform all other functions under section 132 of the Income-tax

Act, 1961, and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government or of

both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act, 1961.

(SEAL.)

**Chief Commissioner or
Commissioner of Income-tax**

FORM NO. 45C
[see rule 112D(1)]

**Warrant of authorisation under sub-section (1) of section 132A of the
Income-tax Act, 1961**

To

The Deputy Director,
The Deputy Commissioner,
The Assistant Director,
The Assistant Commissioner,
The Income-tax Officer,
.....

Whereas information has been laid before me and on the consideration thereof I have reason to believe

that—

a summons under Sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, was issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer

..... [name of the person] to produce, or cause to be produced, books of account or other documents specified in the relevant sum-mons or notice and he has omitted or failed to produce or cause to be produced, such books of account or other documents as required by such summons or notice, and the said books of account or other documents have been taken into custody by

..... [name and designation of the officer or authority] certain books of account or other documents which will be useful for, or relevant to, proceedings under the Indian Income-tax Act, 1922 or under the Income-tax Act, 1961, have been taken into custody by

..... [name and designation of officer or authority] and Sarvashri/Shri/Shrimati.....

[name of the person] to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section

22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, has been or might be issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer, will not. or would not, produce or cause to be produced, such books of account or other documents on their return by the said officer/authority; the assets taken into custody by..... [name and designation of the officer or authority] represent either wholly or partly income or property which has not been or would not have been, dis-closed for the purposes of the Indian Income-tax Act, 1922, or the Income-tax Act, 1961, by [name of the person] from whose possession or control such assets have been taken into custody by the officer/ authority aforesaid; This is to authorise you [name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner or the Income-tax Officer]-to require the said officer or authority to deliver to you the books of account, other documents or assets as aforesaid

(SEAL)

**Director-General or Director
Chief Commissioner or Commissioner of Income-tax**

PERFORMA OF A BLANK PANCHNAMA

PARTY NO.

PANCHNAMA

(To be prepared in quadruplicate)

- A. Warrant in the case of

- B. Warrant to search
(Details & Ownership
of place of search)
Telephone Number

- C. (A) and (B) stated to be
assessed by

- D. Search Party consisting of

AUTHORIZED OFFICER	NAME	FULL DESIGNATION
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

OTHER OFFICIALS WHO ASSISTED THE AUTHORISED OFFICERS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

E. Name and complete address of Panchas :

- 1.
- 2.

1. On being called by Shri.....on.....a.....a.m./p.m.: we, the above named Panchas, presented ourselves at the above place of search. The authorised Officer Shri.....showed the warrant of authorisation dated.....issued under section 132 of the Income-tax Act, 1961/37A of the W.T.Act,1957 in the case of (A) above, to search the place mentioned at (B) above and duly signed and sealed by the Director of Inspection (Inv.),New Delhi/Commissioner of Income-tax, New Delhi/Deputy Director of Inspection (Investigation),New Delhi/ Inspecting Assistant Commissioner of Income-tax Range.....,New Delhi to Shri/Smt.....who was present in the said place at the time and who after reading the said authorisation/after the authorisation was explained in local language, viz,.....by Shri/Smt.....signed in, in our presence and along with us, in token of having perused the same.
2. As today's search was in continuance of the proceedings on we, along with the aforesaid authorised officers, before the commencement of proceedings today, inspected the seals which had been placed on the date and found them to be intact/tampered with as narrated in the enclosure.
3. The above-mentioned search party offered themselves for personal

search before commencing the search, which was taken/declined.

4. A search of the above-mentioned place was carried out by the said party in our presence in an orderly manner without hurting the sentiments of any of the occupants of the premises. Nothing untoward/the events narrated in the enclosure, happened in the course of search.
5. In the course of the search :-
 - (a) The following were found and seized :
 - (i) Books of account and documents as per Annexure A.....(sheets)
 - (ii) Bullion, i.e.gold,silver,etc.,as per Annexure B.....(sheets)
 - (iii) Cash as per Annexure C.....(sheets)
 - (iv) Jewellery, ornaments, etc., which have been inventorised separately for each place from where recovered, as per Annexure J.....(sheets).
 - (v) Silver articles and silverware as per Annexure S.....(sheets)
 - (vi) Other values, locker keys, FDs.,etc., as per Annexure O.....(sheets)
 - (b) The following were found but not seized :-
 - (i) Books of account and documents as per Annexure.....Marks of identification were placed on these and specimen of the marks and the pages where these have been place are shown in the inventory prepared, viz, Annexure.....
 - (ii) The other valuable articles or things (including money)as per Annexure..... (Separate inventories of jewellery, ornaments, silverware, etc., where prepared for items found in different places or claimed to be belonging to different persons.)
6. In the course of the search, the authorised officer Shri.....recorded the statement(s) of Shri..... on solemn affirmation/oath, in our presence. No coercion threat, inducement, promise or other undue influence was brought to bear on the above deponent. The statement was read over/explained in the local language, viz,....to the deponent who signed the statement in token of having understood its contents

and of agreeing that it had been correctly recorded.

The deponent has made a statement under Explanation 5 to section 271(1)(c) of the I.T.Act/18(1) of the W.T.Act about unaccounted assets and income of Rs.....

7. The following other important persons were present in the place of search and either took an active part in or helped the search proceedings:

NAME	RELATIONSHIP
------	--------------

8. The search commenced on.....at.....a.m./p.m. The proceedings were closed on.....at.....a.m./p.m. as finally concluded/as temporarily concluded for the day to be commenced subsequently for which purpose seals were placed on the entire place/on in our presence.

9. An order under section 132(3) of the I.T.Act, 1961 in respect of the sealed premises/.....was served on Shri/ Smt.....by the said authorised officer.

10. An order under second proviso to section 132(1) was served on Shri/Smt.....by the said Authorised Officer.(Annexure N)

11. Before leaving the above-mentioned place of search, the entire search party again offered themselves for personal search which was taken/declined. The above panchnama has been read by us/ explained to us to local language.....by Shri/Smt..... and it is certified that it has been correctly recorded.

Signature of the panchas with dates :

- 1.
- 2.

Signature of the
Authorised officer

.....
.....

Signature of the person receiving
copy of Panchnama.....

.....
.....

Name:

Name:

Designation:

Position in relationship "A":

Date:

Date:

Seal:

Chapter VIII

Relevant Provisions of the Criminal Procedure Code, 1973

<u>Section</u>	<u>Subject</u>
47	Search of Place entered by person sought to be arrested.
51	Search of arrested person.
52	Power to seize offensive weapons.
53	Examination of accused by medical Practitioner at the request of Police Officer.
54	Examination of arrested person by medical practitioner at the request of the arrested person.
70	Form of warrant of arrest and duration.
72	Warrants to whom directed.
73	Warrant may be directed to any person.
74	Warrant directed to police officer.
78	Warrant forwarded for execution outside jurisdiction.
79	Warrant directed to police officer for execution outside jurisdiction.
88	Power to take bond for appearance.

- 91 Summons to produce document or other thing.
- 92 Procedure as to letters and telegrams.
- 93 When search-warrant may be issued.
- 94 Search of place suspected to contain stolen property, forged documents etc.
- 95 Power to declare certain publications forfeited and to issue search-warrants for the same.
- 96 Application to High Court to set aside declaration of forfeiture.
- 97 Search for persons wrongfully confined.
- 98 Power to compel restoration of abducted females.
- 99 Direction, etc., of Search-Warrants.
- 100 Persons in charge of closed place to allow search.
- 101 Disposal of things found in search beyond jurisdiction.
- 102 Power of police officer to seize certain property.
- 103 Magistrate may direct search in his presence.
- 104 Power to impound document, etc., produced.
- 105 Reciprocal arrangements regarding processes.
- 165 Search by police officer.
- 195 Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
- 223 What persons may be charged jointly.

Voice of Chartered Accountants (Regd.) (NGO)

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