

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

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Introduction

- ❑ From income tax point of view, in common parlance search is referred to as 'RAID'. However, there is no such term as raid anywhere in income tax law.
- ❑ Search, according to normal dictionary meaning, means to look out, to seek or to find something the presence of which is suspected etc.
- ❑ Search means “not looking for something which is produced or Open but which is hidden, concealed or not obvious”.
- ❑ The word has varied meanings and it should be given the general meanings 'to look for' or 'to seek' which are well known meaning attributable to the word in the context of section 132.

Legislative Developments in relation to Search Provisions

- ❑ Originally Income Tax Act, 1922 did not possess any power of search and seizure. It was only after the second world war, necessity of this provision was felt to tax the vast profits made by war profiteers. Thus, Section 37(2) was introduced by Finance Act 1956 to grant powers of search & seizure to the Income tax Authorities.
- ❑ The same powers and provisions as listed in section 37(2) of the Income Tax Act, 1922 were originally embodied in section 132 of the Income Tax Act, 1961.
- ❑ Later on Hon'ble Assam High Court struck down the provision of section 37(2) of Income Tax Act, 1922 as being violative of Articles 14 and 19(1)(g) of the Constitution.
- ❑ Then Finance Act, 1964 introduced completely new elaborately provision. The substitution of the section resulted into enlargement of powers of CIT and authorized officers whereby for the first time an order u/s 132 (1) could be issued only if "reason to believe" existed that books of account or documents were not produced by the person concerned in response to statutory notices issued or are not be produced even if summons were to be issued

Provision of Search & Seizure

Search and seizure – Section 132(1)

Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or
- B.** Such Additional Director or Additional Commissioner or 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;
 - iii.** 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;

- iv. 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;
- v. 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;
- vi. Place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- vii. 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 Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such Principal Chief Commissioner or Chief Commissioner or Principal 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 Principal Chief Commissioner or Chief Commissioner or Principal 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 authorisation 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.

Person Authorized to issue search warrant u/s 132(1)

Authorizing Officer

1. Principal Director General or Director General of Income Tax
2. Principal Director or Director of Income Tax
3. Principal Chief Commissioner or Chief Commissioner of Income Tax
4. Principal Commissioner or Commissioner of Income Tax
5. Addl. Director or Addl. Commissioner of Income Tax
6. Joint Director or Joint Commissioner of Income Tax

In consequence of information in his possession and has reason to believe that

- Any person has omitted or failed to produced books of account or any other documents as required by summon issued u/s 133(1) or notice issued u/s 142(1) of the Act.
- Any person to whom summon u/s 133(1) or notice u/s 142(1) has been or might be issued will not produced books of account or other document which will be useful under this Act.
- 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 under this Act.

Analysis of Provision of Section 132(1)

For authorising action under section 132, the conditions precedent are :

- (i) The information in the possession of the named authority; and
- (ii) In consequence of which he may have reason to believe that the person concerned is in possession of money, bullion, etc., which represents, either wholly or partly, income which has not been or would not be disclosed for the purpose of the Act.

If either of these conditions are missing or has not been adhered to, then power under section 132 cannot be invoked. Thus, **the basis of exercise of power under section 132(1) has to be formation of belief and the belief has to be formed on the basis of receipt of information by the authorising officer that the person is in possession of money, etc., which represents undisclosed income.**

Information', in consequence of which the Authorizing Officer, as the case may be, has to form his belief **is not only to be authentic but capable of giving rise to the inference that a person is in possession of money, etc.,** which has not been or would not be disclosed for the purpose of the Act. In other words, it must necessarily be linked with the ingredients mentioned in the section. For better understanding we must understand the meaning of word "information" used in section 132(1) of Income Tax Act, 1961

Meaning of “Information” as Required u/s 132(1)

What is a ‘information’?

‘Information’ is not defined in the Act. Therefore, it will be relevant to consider first, the dictionary meaning of ‘information’ and later to see how this word has been considered by the courts. In Shorter Oxford Dictionary, “information” is defined as a statement of fact employed as an argument to justify or condemn some act. In Chambers Twentieth Century Dictionary, “information” has been defined as “intelligence given, knowledge, an accusation given to a Magistrate or a court”. Courts have considered the meaning and scope of “information” in the context of different taxing statutes.

A few Judicial pronouncement will be helpful in examining the meaning of information

- Hon’ble Supreme Court in the case of **CIT vs. A. Raman & Co. (1968) 67 ITR 11** held that “information” means instruction or knowledge derived from an external source concerning facts or particulars.
- In **L.R. Gupta vs. Union of India (1992) 194 ITR 32 (Del)**, relevant to section 132 it is held that the expression “information” must be something more than a mere rumour or gossip or a hunch.

- Hon'ble Supreme Court in the case of **UOI vs. Ajit Jain [2003] 260 ITR 80 (SC)** held that "the intimation simpliciter by the CBI, that the money was found in the possession of the petitioner, which, according to the CBI, was undisclosed, without something more, did not constitute information within the meaning of section 132."
- Hon'ble Allahabad High Court in the case of **Priyanand Prasad Singh vs. ITO AIR 1957 All 760** held that " If the information was already available to the Income Tax Officer when he first made the original assessment, it is not possible to say that the subsequent discovery of escapement of income from assessment is the result of receipt of the same information at the later stage. A mere possibility that the information had escaped his notice when the original assessment was made does not justify a proceeding under section 34 of the Indian income Tax Act, 1922"
- In **Om Prakash Jindal vs. Union of India (1976) 104 ITR 389 (P&H)**, it is observed by the Punjab and Haryana High Court that there are various sources of information and different modes of its collection, collation and processing. It may be writing or oral; but if it is derived from oral communication, it must be placed on record to justify the formation of reasonable belief on its basis.

- Any information received subsequently without any supporting objective fact in the earlier stages would render the warrant and search invalid.
Thanthi Trust vs. ITO (1973) 91 ITR 261 (Mad)
- Estimate being made by an informer cannot tantamount to information.
Dr. Nand Lal Tahiliani vs. CIT [1988] 170 ITR 592 (Allahabad)
- Hon'ble Rajasthan High Court in the case of **Kusum Lata vs. CIT [1989] 180 ITR 365 (Rajasthan)** held that the words 'information in his possession' should be constructed as some valid, definite information in possession and not any imaginary or invalid information.

Issues – Warrant of Authorization

- Issuance of authorization of search and seizure warrant in the absence of information in possession about assessee and without recording satisfaction about not producing relevant books of account is not valid.

Tejram Omparkash vs. DIT(Inv) [2013] 262 CTR 82 (MP)

- Where no cogent basis for arriving at conclusion that assessee was in possession of jewellery which represented his undisclosed income or property was discernible from satisfaction note, impugned search and seizure was to be quashed and all actions taken pursuant to such search and seizure were to be declared illegal

Khem Chend Mukim vs. Pr. DIT [2020] 113 taxman.com 529 (Delhi)

- Where satisfaction in case of assessee was entirely based on a document which neither bore assessee's name nor was it related to him, issue of warrant and subsequent search and seizure proceedings were liable to be quashed.

Rajesh Rajora vs. UOI [2014] 220 Taxman 146 (MP) [SLP dismissed vide SLP (Civil) No. 29358/2013]

Meaning of “Reason to Believe” as Required u/s 132(1)

In order to invoke the provisions of section 132(1) of the Act an important limb which has to be satisfied is ‘Reason to Believe’ that the facts of the case justify the basic conditions stipulated in clause (a), (b) (c) of the subsection. Formation of Belief is an integral part of issuance of search warrant. "Reason to Believe" is the most significant safeguard available to the authorising officer to conduct search. The phrase is made of two words. "Reason" means cause and "Believe" means to accept as true or have faith in it.

The Hon'ble Gujarat High court in **Prabhubhai V. Bastabhai Patel v. Meena 226 ITR 781**, laid down certain guidelines to form an opinion. In brief, they are -

1. The authority must be in possession of such information.
2. The information must exist before forming an opinion.
3. The authorization officer must apply his mind and form an opinion.
4. The opinion must be on the basis of material facts available on record.
5. The opinion is open to judicial review or scrutiny.

Issues – Reason to Believe

- Sec. 132 speaks of reason to believe and not reason to suspect or reason to doubt.
VISA Comtrade Limited v. Union of India [2011] 338 ITR 343 (Ori)
- Authorities to have sufficient material to reasonably believe that action is required to be taken under provisions of Sec. 132(1).
Doctors X'Ray & Pathology Institute (P.) Ltd. VS. Director of Investigation, Kanpur [2010] 186 Taxman 480 (All.)
- The assessee is not entitled to be informed about the information/ material/ reasons to believe for authorizing search before the question of their relevancy was decided by the Court.
Dr. Pratap Singh v Dir. Of Enforcement (1985) 155 ITR 166 (SC) and also in the case of Southern Herbals Ltd. v DIT (Inv.) (1994) 207 ITR 55(Karn.)
- In view of amendment made in section 132A by Finance Act of 2017, 'reason to believe' or 'reason to suspect', as the case may be, is not required to be disclosed to any person or any authority or Appellate Tribunal as recorded by revenue authority under section 132 or section 132A
N.K. Jewellers vs. CIT [2017] 398 ITR 116 (SC)

- High Court cannot go into question as to whether material available before authority concerned was adequate to prompt him to believe that a search was necessary.

Dr. P.G. Viswanathan vs. DIT [2013] 351 ITR 217 (Madras)

- Word 'reason' means cause or justification and the word 'believe' means to accept as true or to have faith in it. Thus, before the Officer has faith or accepts a fact to exist, there must be a justification for it.

Ganga Prasad Maheshwari vs. CIT

- Belief must be honest, based on cogent material and not on anonymous calls or letters. However, anonymous petitions disclosing information which is crucial can be acted upon..

Pawan Solvent & Chemicals vs. CIT [1987] 166 ITR 67 (Patna)

Officer Authorized to Conduct Search u/s 132(1)

| Authorizing Officer u/s 132(1) | Authorized Officer who can conduct search |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">1. Principal Director General or Director General OF Income Tax2. Principal Director or Director of Income Tax3. Principal Chief Commissioner or Chief Commissioner of Income Tax4. Principal Commissioner or Commissioner of Income Tax | <ol style="list-style-type: none">1. Additional Director or Additional Commissioner of Income Tax2. Joint Director of Income Tax3. Joint Commissioner of Income Tax4. Assistant Director of Income Tax5. Deputy Director of Income Tax6. Assistant Commissioner of Income Tax7. Deputy Commissioner of Income Tax8. Income tax officer |
| <ol style="list-style-type: none">1. Additional Director or Additional Commissioner of Income Tax2. Joint Director or Joint Commissioner of Income Tax <p>(On the basis of authorization from above authority and being empowered by the Board)</p> | <ol style="list-style-type: none">1. Assistant Director of Income Tax2. Deputy Director of Income Tax3. Assistant Commissioner of Income Tax4. Deputy Commissioner of Income Tax5. Income tax officer of Income Tax |

Execution of Authorizations

| S. No. | Rule No. | Particular | Form No. (Click on Form No. for PDF Form) |
|--------|-----------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| 1. | 112(2)(a) | Authorizations u/s 132(1) other than proviso thereto by DGIT, DIT, CCIT, CIT, DDIT or DCIT | 45 |
| 2. | 112(2)(b) | Authorization under proviso to Section 132(1) by CCIT or CIT | 45A |
| 3. | 112(2)(c) | Authorization under sub section 132(1A) by CCIT or CIT | 45B |
| 4. | 112D(1) | Authorization under sub section (1) of section 132 A of the Income Tax Act, 1961 for requisitioning books of accounts etc. | 45C |

The Act and the Rules do not require that warrant of authorization should specify the particulars of documents and books of account. A general authorization to search for and seize documents and books of account relevant to or useful for any proceedings will comply with the statutory requirements.

ITO vs. Seth Bros. [1969] [74 ITR 836](#) (SC).

Note: Every authorization shall be in writing under the signature of the officer issuing the authorization and shall bear his seal. **[Rule 112(2A)]**

Authorization/ Requisition by Common Order u/s 292CC

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**.

Judicial Background behind Insertion of Section 292CC

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

In order to curtail and nullify the above judicial pronouncement a new section 292CC was inserted by Finance Act, 2012 w.r.e.f. 1st April 1976, through which scope of authorization has been widened. Following are the provision of section 292CC:-

- It is not required to issue authorization/ requisition separately in the name of each person
- Joint authorization/ requisition does not refers that it has been issued in the name of AOP or BOI consisting such persons
- Assessment or reassessment shall be made separately in the name of each person mentioned in authorization/ requisition.

Ground Rules for Search

Ground Rule for Search u/s 132 of Income Tax Act, 1961

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

[(1986) 159 ITR (Journal) 1-4]

➤ **Competent Authority:**

Before execution of search, a search warrant (formal order) is required to be passed by the competent authority on the basis of Information.

Information from external sources

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

Internal sources:

Suo-moto on the basis of records and investigation. The information collected during survey may also form the basis.

➤ **Objectives of Search:**

Search & Seizure operation is only possible when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course.

➤ **Search Party:**

Search party should be constituted of officer of a certain rank at least of ACIT or equivalent. The team should also include two respectable witness of the locality and technical persons like valuer.

➤ **Examination:**

Tax authorities examine the person searched on Oath, the statement is liable to be used against him. This statement is admissible as evidence. The purpose is to secure an explanation regarding the documents and evidence before he has an opportunity to concoct an explanation and fabricate evidence. He is not allowed the service of a lawyer at this stage.

- **Report to the Senior Authority:**
After the search, the search party has to submit a report to the senior authority like Collector, Comm., so that senior officials could judge the bona fide of the search and to exercise control over searches carried out.

- **Arrests:**
Income Tax officers have no power to arrests.

- **Prosecution:**
The complaint made by the tax department is treated as a personal criminal complaint as these offences under the Acts are treated as non cognizable.

- **Publicity:**
The Search party will not make any statement to the press. If any, will be made by the head of the department and will be factual in nature.

Rights & Duties

Rights of Income Tax Department

1. **Enter and Search**: 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. [Section 132(1)(i)]
2. **Break Open**: Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available. [Section 132(1)(ii)]
3. **Search Person**: 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 books of account, other documents, money, bullion, jewellery or other valuable article or thing. [Section 132(1)(ia)]

4. **Require any Person to Facilitate the Authorised Officer:** 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, to afford the authorised officer the necessary facility to inspect such books of account or other documents. **[Section 132(1)(iib)]**

Note: Person defaulting u/s 132(1)(iib) shall be liable to rigorous imprisonment for a term which may extend to two years and shall also be liable to fine. **[Section 275B]**

5. **Seizure:** Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. **[Section 132(1)(iii)]**

Note:

- 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
- Hon'ble SC in the case of **DGIT & Anr. vs. Diamondstar Exports Ltd and Ors. [2006] 293 ITR 438** 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.
- The books of account or other documents seized shall not be retained by the authorised officer for a **period exceeding 30 days from the date of the order of assessment u/s 153A.** However such time limit can be extended but not more than by 30 days after the reason for retaining the same are recorded in writing and prior approval of the PCCIT or CCIT, PCIT or CIT, PDGIT or DGIT or PDIT or DIT for such retention is obtained. **[Section 132(8)]**

6. **Place marks of identification:** Place marks of identification on any books of account or other documents or make extracts or copies there from. [Section 132(1)(iv)]
7. **Make a Note or Inventory:** Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing. [Section 132(1)(iv)]
8. **Deemed Seizure:** 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.** [Second Proviso to Section 132(1)]

Note:

- Provision of deemed seizure shall not apply in case of stock in trade.
- Person defaulting in second proviso to section 132(1) shall be punishable with rigorous imprisonment which may extend to 2 years & shall also be liable to fine. [Sec.275A]
- The books of account or other documents deemed seized shall not be retained by the authorised officer for a **period exceeding 30 days from the date of the order of assessment u/s 153A.** However such time limit can be extended but not more then by 30 days after the reason for retaining the same are recorded in writing and prior approval of the PCCIT or CCIT, PCIT or CIT, PDGIT or DGIT or PDIT or DIT for such retention is obtained.

9. **Police Assistance:** The Authorized officer may requisition the services of any police officer or any officer of the Central Government or both to assist him for the purposes of Sec. 132(1)/(1A) & it shall be the duty of every such officer to comply with such requisition.
10. **Extension of Jurisdictional Area:** Where any building, place, vessel, vehicle or aircraft is within the area of jurisdiction of any PCCIT or CCIT or PCIT or CIT, but such authority has no jurisdiction over such person; and Such authority has reason to believe that any delay in getting the authorisation from the PCCIT or CCIT or PCIT or CIT having jurisdiction over such person may be prejudicial to the interests of the revenue, then it shall be competent for him to exercise the above powers. **[First Proviso to Section 132(1)]**

Note:

- Any asset or document so seized shall be handed over to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed. Thereafter, such Assessing Officer exercises all other powers.

11. **Extension of Authorisation:** Where a search for any books of account, other document, money, bullion, jewellery or other valuable article or thing is authorized and Other PCCIT or CCIT or PCIT or CIT in consequence of information in his possession, has reason to suspect that such document or asset is kept in any other building, place, vessel, vehicle or air craft not mentioned in the authorization, then such other PCCIT or CCIT or PCIT or CIT can authorize the officer to search such other building, place, vessel, vehicle or air craft.

Note: The reason to suspect, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Restraint Order u/s 133(3)

12. **Restraint Order**: Where it is not practicable to seize any material for any reason other than those specified in second proviso to S. 132(1) then in such a case the Authorized officer may serve an order on the specified person, that such person shall not remove, part with or otherwise deal with it except with the prior permission of such officer. [Section 132(3)]

Note:

- 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 section 132(1).
- An order u/s 132(3) shall be valid up to 60 days from the date of the order. [Section 132(8A)]
- Order u/s 132(3) to be issued in name of person in immediate possession/control of relevant material found during the Search. **Mahaan Foods Ltd. vs. DCIT [2009] 312 ITR 075 (ITAT – Del)**
- Order u/s 132(3) cannot be passed in respect of bank accounts passed through regular books of account without forming any belief and/or without any material to conclude that the amount deposited in the said Account is either wholly or partly undisclosed income of the petitioner. **Maa Vaishnavi Sponge Ltd. vs DGIT (Inv.) [2011] 339 ITR 0413 (Ori.) & M/s Visa Comtrade Limited vs. UOI and Others [2011] 338 ITR 343 (Ori.)**

Examination on Oath u/s 133(4)

13. **Examination on Oath:** The Authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act. [**Section 132(4)**]

Some of the important judicial pronouncements on interpretation of statement of assessee recorded in course of search under section 132 or admission of assessee in statement is as under:-

Judicial Pronouncement in Assessee's Favour

- Admission of fact is an extremely important piece of evidence but it can't be said that it is conclusive. It is open to the assessee who made admission to show that it is incorrect and the assessee should be given proper opportunity to show the correct state of affairs.
Pullangode Rubber Produce Co. Ltd. vs. State of Kerala [1973] 91 ITR 18 (SC)

- Merely on the basis of admission of assessee, additions could not be made unless and until some corroborative evidence was found in support of such admission.
Kailashben Manharlal Chokshi vs. CIT [2010] 328 ITR 411 (Gujarat)
- Statement rendered at the time of search may be used as evidence in any proceedings, but that by itself cannot become the sole material to rest the assessment, more so when the assessee sought to withdraw the same by producing material evidence in support of such retraction. It is always open to the person who has made the admission to show that the statement to offer income is incorrect.
M. Narayanan & Bros. vs. ACIT [2011] 339 ITR 192 (Madras)

Judicial Pronouncement in Revenue's Favour

- The assessee had totally failed to discharge the burden of proving that the statement was obtained under coercion or intimidation. Hence, Assessing Officer was justified in assessing the income of assessee on the basis of surrender of undisclosed income made by assessee under section 132(4).
ACIT vs. Hukum Chand Jain [2011] 337 ITR 238 (Chhattisgarh)

➤ Statement which was made by the assessee at the time of search and seizure was under pressure or due to coercion, assessee could have retracted from the same at the earliest. No plausible explanation had been furnished as to why the said statement could not be withdrawn earlier. In such a situation, the authenticity of the statement by virtue of which surrender had been made at the time of search could not held to be bad.

CIT vs. Lekh Raj Dhunna [2012] 344 ITR 352 (P&H)

➤ After lapse of about nine months from date of admission, assessee through an affidavit sought to retract from statement made under section 132(4). It was held that statement recorded under section 132(4) is an evidence by itself and any retraction contrary to that should be supported by strong evidence for demonstrating that earlier evidence recorded was under coercion. Since assessee retracted from his earlier statement without demonstrating any evidence to establish that statement recorded earlier was incorrect, an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated. Therefore, addition made on basis of statement recorded under section 132(4) was to be upheld..

Kantilal C. Shah v. Asstt. CIT [2012] 15 ITR(T) 62 (Ahmedabad)

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

Issues – Examination on Oath

- Mere voluntary disclosure of undisclosed income by assessee cannot form basis of addition if no evidence is detected in search. Fact that retraction of statement late is irrelevant.
Chetnaben J Shah vs. ITO [2016] 288 CTR 579 (Gujarat)
- Examination of a person even before the commencement of search proceeding is not an examination on oath within the meaning of section 132(4).
R.R. Gavit vs Smt. Sherbanoo Hasan Daya [1986] 161 ITR 793 (Bombay)
- Addition can be made only if any conclusive evidence exists on records.
S K Bahadur vs. UOI 2011-TIOL-104 [HC-Del] & ACIT vs. Janak Raj Chauhan [2006] 102 TTJ 316
- AO to collect more evidences if statement is not found correct.
CIT vs. Ravindra Kumar Jain [2011] 12 taxmann.com 257 (Jharkhand)
- Statements recorded during search is relevant unless it is proved incorrect.
Bhagirath Aggarwal v CIT [2013] 31 taxmann.com 274 (Delhi)
- Clear & Unambiguous Statement is binding.
Hotel Kiran vs. ACIT 82 ITD 453 [ITAT – Pune]
- Admission of undisclosed income by assessee is not conclusive if no evidence is found to support the admission. A retraction, even though belated, is valid. CBDT Directive F.No.286/98/2013 IT (INV.II) dated 18/12/2014 prohibits additions on the basis of confession.
CIT vs. Ramanbhai B. Patel Tax Appeal No. 207, 208 & 210 of 2008 (Gujarat High Court)

Presumptions regarding Ownership and Control – Section 132(4A)

14. Presumption regarding Ownership and Control: 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.

Some Important Judicial Pronouncement on Presumptions regarding Ownership and Control

- Any document is found in the course of a search, then by legal fiction a presumption has to be drawn that such document belongs to the person from whose possession or control it was found and the contents of such documents are true.
CIT vs. S.M.S. Investment Corpn. Pvt. Ltd. [1994] 207 ITR 364 (Rajasthan).
- The presumption with regard to the contents of the seized dairy is valid one and it is available to be raised u/s 132(4).
CIT vs. Ambika Appalam Depot. [2012] 340 ITR 0497 (Mad).
- Presumption u/s. 132(4A) was a rebuttable one and not a conclusive one it could not be applied in the absence of corroborative evidence.
CIT vs. Ved Prakash Choudhary [2008] 218 CTR (Del) 99 & Straptex India Pvt. Ltd. vs. DCIT [2003] 79 TTJ 228 (ITAT - Mum)
- Presumption about noting and jotting in documents is not available u/s 132 (4A), Assessee liable to tax only on receipts proved to be income of assessee.
CIT vs D. K. Gupta [2009] 308 ITR 230 (Del.)
- The requirement of proving the genuineness of the cash credits appearing in the seized books of accounts cannot be set aside by the provisions of section 132(4A).
Biru Mal Pyare Lal vs. ACIT 74 TTJ 150 (ITAT – Chd.)

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

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

Presumption as to assets, books of account, etc. [Section - 292C]

1. 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 under section 132 or survey under section 133A, it may, in any proceeding under this Act, 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.
2. Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.

Duties of Income Tax Department

1. To allow the school going children to attend the school after checking their school bags for any incriminating material etc.
2. 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.
3. Not to threaten, abuse or use any indecent language against the person searched.
4. Not to get provoked and maintain a cool and calm temperament and to be alert.
5. 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.
6. Leave the premises only after informing the assessee.
7. Decline the assessee's offer of food or refreshment politely in order to avoid any possible drugging.

Rights of Assessee

1. To **see the warrant of authorisation** duly signed and sealed by the issuing authority.
2. To make **personal search of all members** of the search party before the start of the search and on conclusion of the search.
3. To **verify the identity** of each member of the search party.
4. To insist on **personal search of ladies being taken only by a lady**, with strict regard to decency.
5. To have at least **two respectable and independent residents of the locality**.
6. A **lady** occupying an apartment being searched has a **right to withdraw before the search party** enters, if according to custom, she does not appear in public.
7. To **call a medical practitioner** in case of emergency.
8. To **inspect the seals placed** on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
9. Every person who is examined u/s 132(4) has a right to **ensure that the facts so stated by him have been recorded correctly**.
10. To have a **copy of the panchanama** together with all the annexure.
11. To have a **copy of any statement that is used against him** by the Department.

Duties of Assessee

1. To allow free and unhindered ingress into the premises.
2. To see the warrant of authorization and put signature on the same.
3. 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.
4. To identify and explain the ownership of the assets, books of account and documents found in the premises. To affix his signature on the recorded statement, inventories and the panchanama.
5. 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.
6. 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.
7. 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.

8. Not to allow or encourage the entry of any unauthorized person into the premises.
9. 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.
10. Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.

Presence of Counsel

- The Counsel is entitled to advise and discuss the matter with client.
- The Counsel cannot obstruct the conduct of proceedings in any manner.
- Counsel cannot interfere in the recording of the statement.
- The counsel cannot suggest any answer. A person has a right of a counsel to appear in an enquiry or investigation. **K.T. Advani vs. State [1986] 60 Comp Cas. 603(Del.)**
- In central Excise and customs matters, Court has held that it is advisable to permit presence of lawyers during interrogation, though they cannot be allowed active participation. **[Abdul Razak Haji Mohd. vs. UOI [1986] 26 Taxmann 234 (Bom.), Anil G. Merchant v. Director of Revenue Intelligence [1987] 12 ECR 183 (Mad.)]**

Suggestions for Chartered Accountants...

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

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

Practical Tips for handling
Search, Seizure & Post
Search proceedings

Practical Tips

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

Important Instructions & Circulars

- Instruction regarding release of cash deposit in the PD Account – Instruction No. 11 of 2006, DT. 1st Dec., 2006
- Instruction No.– 7 dated 30-07-2003 Matters related to Search & Seizure
- Instruction no. 286/247/98_IT (Inv. –II) 2nd Feb., 1999 Release of assets disclosed in regular books of accounts maintained by assessee.
- Instruction No. 1916, dated 11/05/1994, Guidelines for seizure of jewellery and ornaments in the course of search & Press Release Dated 01-12-2016, Clarifications with respect to Gold Jewellery under Income Tax Law.
- Instruction No. 1497 dt 13th January, 1983 – Opening of Lockers
- Circular F.No.7/16/69-IT(Inv.), dated 4-6-1970 - How to deal Promissory notes found during search.
- Instruction No. 994- CBDT F. No. 286 /37 /76-IT (Inv.), dated 31-7-1976
- Instruction No: 1180 Date of Issue: 1/6/1978 (to the extent applicable in current laws)
 - 1) Release of assets held as disclosed - order u/s.132(5):
 - 2) Title deeds of immovable properties.
 - 3) Tax liabilities in a firms case.
 - 4) Release of seized valuable assets under second proviso to section 132(5):
- Circular No. 1590, dated 21-12-1984 F.No. 287 / 25 / 83-IT (Inv. II) Treatment of unaccounted stocks restrained / seized in benami / fictitious names.

THANK YOU..!!

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