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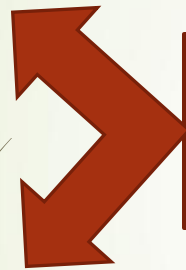
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POWER OF SURVEY

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Specific
survey



SEC 133 A



SEC 133 B

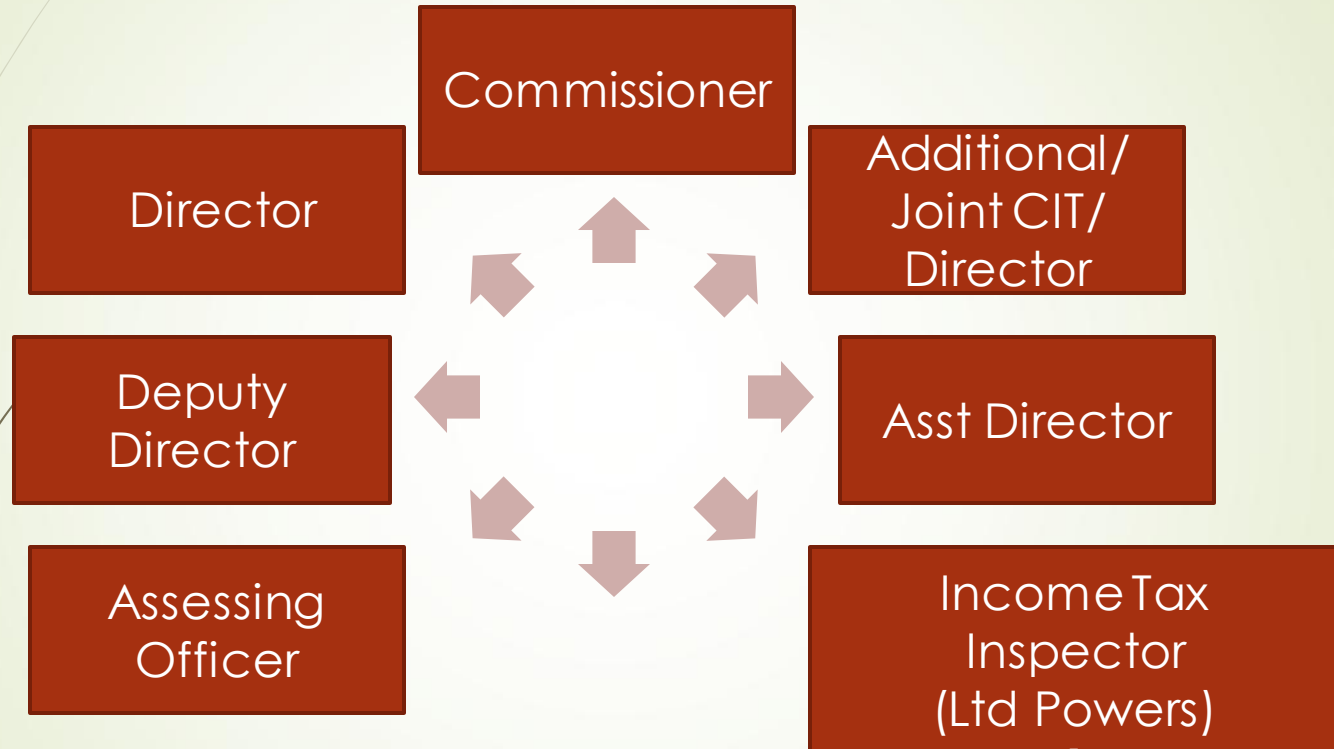
Power to
collect certain
information

General
Survey

Information
reg Exp on
wedding
/functions
Sec.133A(5)

AUTHORITIES EMPOWERED TO CONDUCT SURVERY U/S 133 A

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The authorities can **enter into the business premises after sunrise before sunset** and **during working hours** of business of assessee

POWERS OF IT OFFICIALS IN CASE OF SURVEY

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- i. To inspect **books of account or other documents which may be available at the place of survey** and place marks of identification and make extracts and copies there from. **Documents include an electronic record maintained in Computer, Disk, Floppy etc. [sec. 2(22A)]**
- ii. To verify **cash, stock or other valuable articles** or things and make its inventory
- iii. To impound and retain in custody books of account or other documents for a period **NOT exceeding 15 days** (exclusive of holidays) without obtaining the approval of the Pr. CCIT or CCIT or prescribed authority. **(w.e.f. 1.10.2014).**
- iv. **To verify compliance of TDS/TCS provisions [section 133A(2A) w.e.f. 1.10.2014]**
- v. **To carry survey even at a place where any activity for charitable purpose is carried on [section 133A(1) w.e.f. 1.4.2017]**
- vi. **To obtain such information which may be useful** or relevant for I.T. proceedings, which might have been finalised or which may be pending or may be initiated after the date of survey.

POWERS OF IT OFFICIALS DURING SURVEY

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- vii. To record statement of any person which may be useful or relevant to I.T. proceedings [**NOT ON OATH**] **CIT v. S. Kader Khan Son 300 ITR 157 (Mad.) Affirmed by SC 352 ITR 480 (SC)**
- viii. Having regard to nature and scale of expenditure incurred by assessee in connection with **any function, ceremony or event**, the I.T. authority may call for relevant information. They can record statement of the assessee or any other person, but these powers can be exercised only after the performance of function, ceremony or event. [Refer **sec. 133A(5)**].

W.e.f. 1.4.2020, a survey u/s 133A(1), in case where the information has been received from prescribed authority, can be conducted after obtaining the approval of the Joint Director or JCIT. In any other case, the approval of the Director or the Commissioner is required.

The Inspector has power only in respect of (i) Books and (viii) Wedding/function exp etc. above. Thus If an inspector records statement or prepares cash or stock inventories, he acts beyond his power and it is illegal - ITO v. Jewells Emporium 48 ITD 164 (Indore Trib.).

POWERS OF IT OFFICIALS IN CASE OF SURVEY

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During a Survey, an officer “CANNOT”

Remove or Seize
Cash or Stock

Remove or Seize
other Valuable
articles or things

Record a
Statement on
Oath

Survey can be converted in Search on finding huge cash etc. but after obtaining proper Search Warrant.

For this, department must demonstrate from any material that assessee failed to co-operate or there was a suspicion that income had been concealed by assessee warranting resort to process of search and seizure. In the absence of above, survey cannot be converted into search -**Pawan Kumar Goel v. Union of India [2019] 107 taxmann.com 21 (P&H)/[2019] 265 Taxman 25 (P&H).**

PLACES WHERE SURVEY CAN BE CONDUCTED

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Where IT authorities have the jurisdiction

Where the business or profession is carried on.

Where any charitable activity is carried on.

Place is situated in area assigned or IT Authorities exercises jurisdiction in respect of any person occupying such place

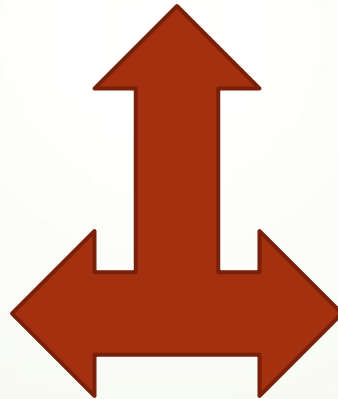
Thus if a person is assessed by an income tax authority different from the territorial jurisdiction, survey can be carried out by both his A.O. and also by his territorial jurisdiction income tax authorities or if they so authorise. The above places, may be Head Office or Branch Offices of the person. If the place is LOCKED, Survey cannot be carried.

OBLIGATION OF PERSON ATTENDING SURVEY

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To afford necessary facilities to inspect such books of account or other documents as the I.T. authorities conducting the survey may require and WHICH MAY BE AVAILABLE AT SUCH PLACE.

To afford necessary facility to check or verify the Cash, Stock or other valuable articles or things, which may be found at the place of survey, and



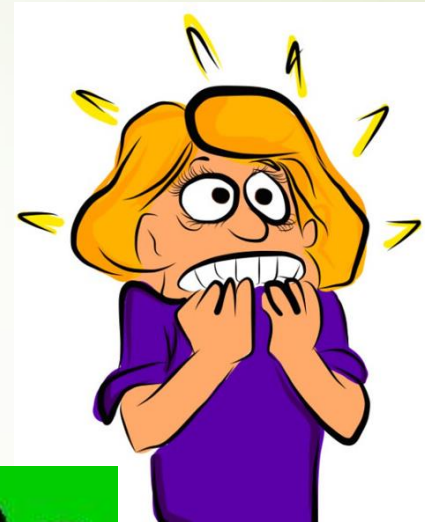
To furnish such information as may be required by such authority in relation to any matter which may be useful for, or relevant to, any proceeding under the Income-tax Act.

REMEDIAL ACTIONS IN VARIOUS SITUATIONS

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Situation 1:

Abuse of power of survey by the I.T. authorities, and if signature of the assessee is obtained without allowing him to read the contents or forced disclosure is taken



DISCREPANCIES

What to Do

Stock is found less or more than reflected in the books of account

Huge CASH and incriminating documents are found

Disclosure on account of INFLATED EXPENSES in Survey but at the time of filing the Return does not take into account such disclosure

REMEDIAL ACTIONS IN VARIOUS SITUATIONS

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No officer has power u/s 133A to administer oath and take a sworn statement, Confession obtained u/s 133A has NO evidentiary value

Sec. 133A or Sec. 132 nowhere provides for SEALING of the business premises

BEWARE

there is no express prohibition in IT Act prohibiting presence of Counsel or CA during interrogation and as such during survey proceedings legal advisors may be called upon to be present

I.T. Officials may go to assessee's business place as DECOY CUSTOMERS and the bill may be obtained to subsequently verify with the books of account maintained by the assessee

INFORMATION IN CASE OF CERMONIES

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- i. **Name, Address & PAN** of parents of bride/groom & other family members
- ii. **Name, address and Occupation** of the bride/groom
- iii. **Occupation** of the bride/groom
- iv. Address of the **place where the marriage reception and other functions prior to and subsequent to marriage were hosted** indicating the rent paid and
- v. **Number of invitees for various functions**
- vi. Names and address of the **decorators** engaged along with the charges paid to them
- vii. Names and address of the **florists** engaged for the function as well as the service charge paid to them
- viii. Names and address of the **caterers** engaged to serve food and refreshments to the guests in marriage reception and the cost incurred



INFORMATION IN CASE OF CERMONIES

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- x. Name and address of the **printer who printed the wedding cards / Invites** for the occasion and the cost incurred
- xi. Name and address of the **car rental agency** engaged for the wedding unction. The **No. of cars hired**, the **No.** of days for which the cars were hired, and the **total amount paid for hiring such cars**
- xii. The amount incurred for **pre-marriage expenses** indicating the heads of such expenses. Particulars of **presents made to the newly weds both on the occasion of engagement as well as wedding** should be indicated
- xiii. Details of **expenses incurred on account of Furniture, Jewellery, Bridal make-up, other gifts/presentations, audio-videography**, engagement ceremony and other customary expenditure. The copy of bills in support of the submissions is also required to be enclosed
- xiv. Copy of **bank statements reflecting payments or withdrawal for marriage expenses**
- xv. Copy of **last Income-tax return filed along with Balance Sheet and Profit and Loss Account** and copy of **last Wealth-tax Return** along with copy of computation and xerox of **Valuation Report of Jewellery** etc

HOW TO HANDLE I.T. SEARCH?

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WHEN SEARCH CAN BE ORDERED

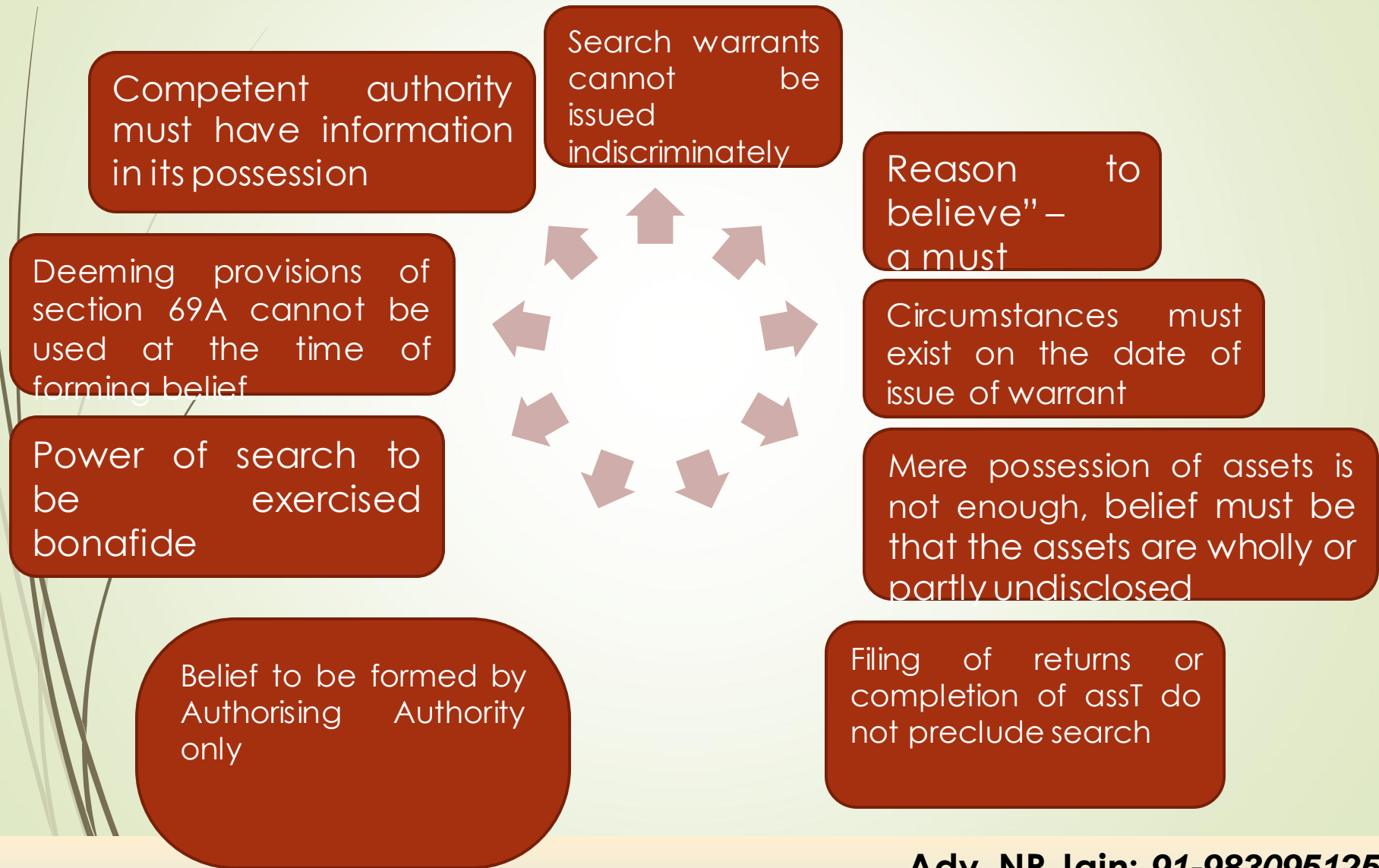
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As per section 132(1), an I.T. search can be ordered by a competent Authority who in consequence of information in his possession, **has reason to believe** that -

- i. **any person to whom a summon u/s 131(1) of the I.T. Act or a notice u/s 142(1) 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 summon or notice,** or
- ii. **any person to whom a summon 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 proceedings under the I.T. Act, or
- iii. **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.**

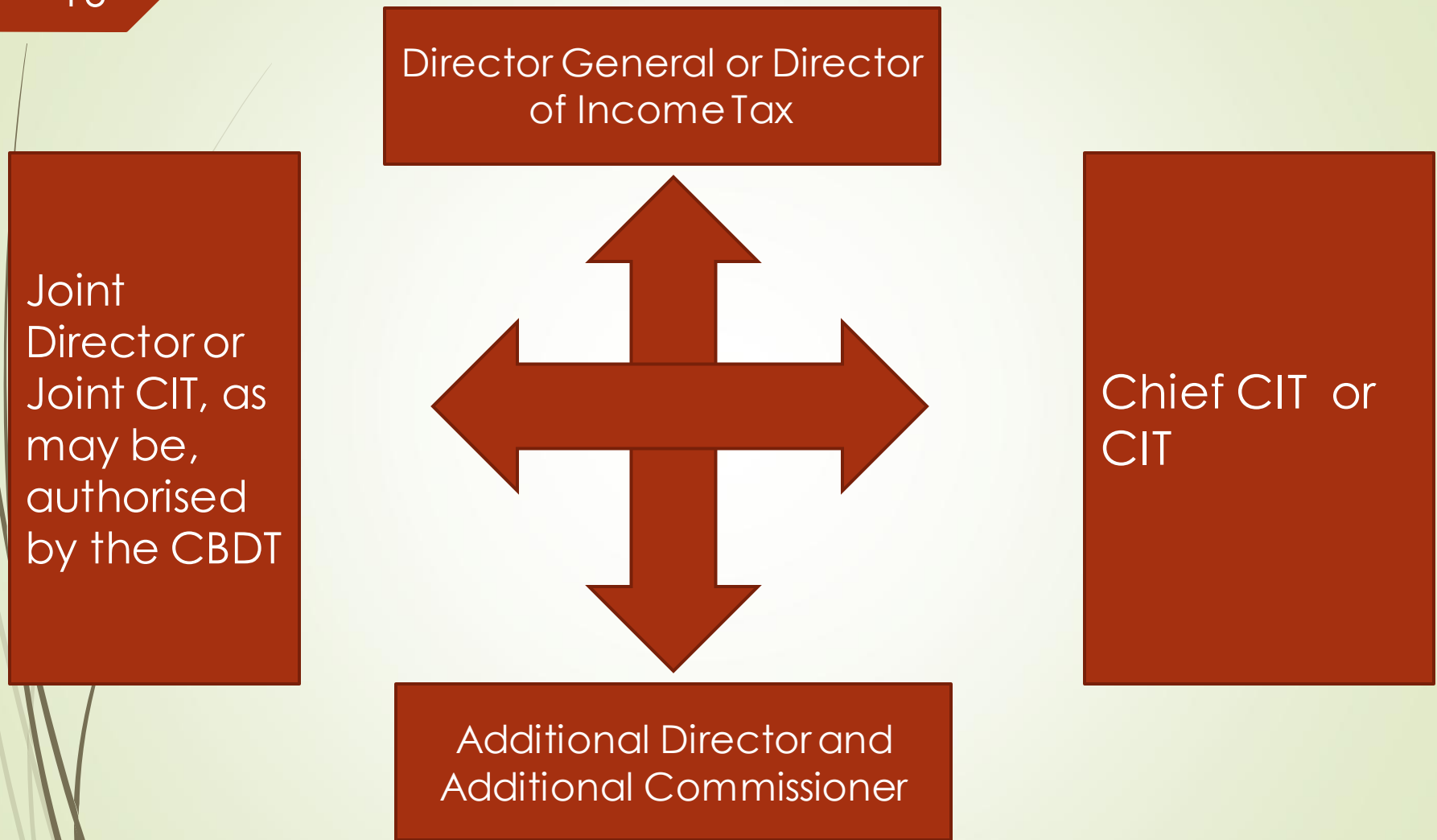
WHEN CAN SEARCH BE ORDERED

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WHO CAN ISSUE SEARCH WARRANT?

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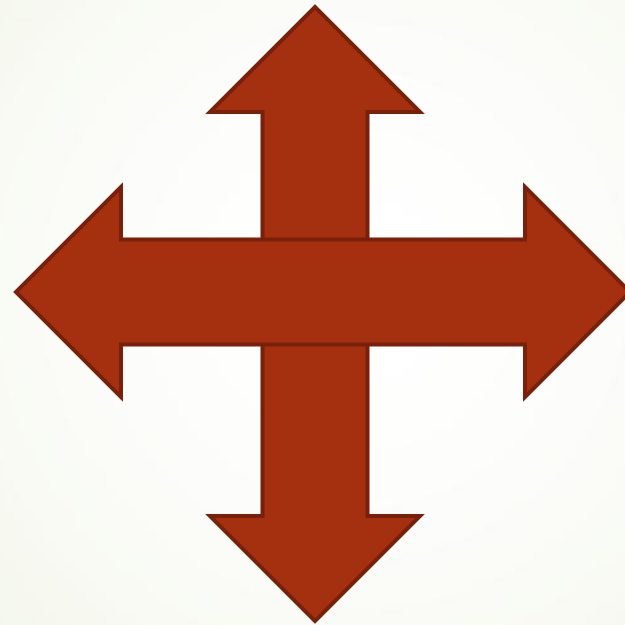


SEARCH WARRANT

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Single Search warrant can be issued for search against a group of persons or for two or more individuals

Multiple premises of a person CANNOT be searched on a single search warrant



Where search warrant is issued in name of a person, other member residing in the same premises may also be searched

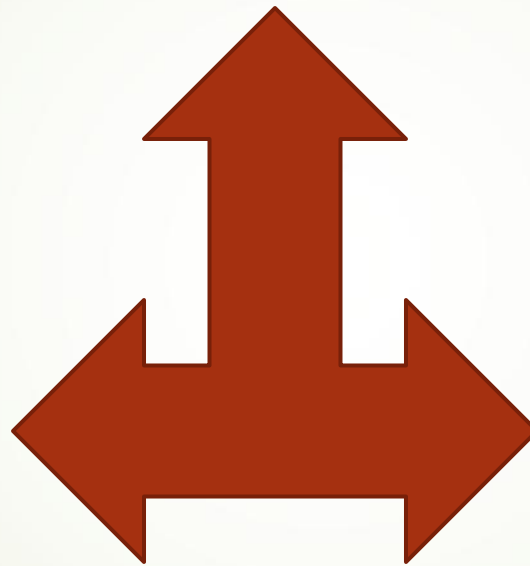
Search warrant cannot be issued on a person whose locker key is found with another person on whom search is carried out, if no other evidence is found indicating any financial transactions or undisclosed income of such person

SEARCH WARRANT

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Search warrant is required to be shown and not required to be served

Search warrant may be issued in name of minor, legal heir of deceased person or a non-resident living in India or an employee of the person searched



Issue of a blank search warrant is NOT legal

RIGHTS OF ASSESSEE

¹⁹ As per the ground rules framed for search and seizure by following are the **Rights of the person to be searched:**

1. To **see the warrant of authorisation duly signed and sealed** by the issuing authority
2. To **verify the identity of each member of search party**
3. To have at least **2 respectable and independent residents of the locality as witnesses**
4. To have **personal search of all members of the party before the start of the search and after conclusion of the search.**
5. To insist on a **personal search of a female by another female** only with strict regard to decency.
6. To have a **copy of the Panchnama together with all the annexures**
7. To **put his own seals on the packages containing the seized assets**
8. Women having the occupancy of an apartment to be searched, have **right to withdraw before the search party enters, if according to custom, they do not appear in public**
9. To **call a medical practitioner, if he or any family member is not well**
10. To **have his children permitted to go to school after the examination of their bags**

OTHER RIGHTS OF ASSESSEE (Contd.)

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1. To **inspect the seals placed on various receptacles sealed in course of search** and subsequently when re-opened by continuation of the search
2. To **have the facilities of having meals** etc. at the normal time
3. To **have a copy of any statement before it is used against him** in an assessment or prosecution proceeding
4. To **have inspection of the books of account etc. seized or to take Xerox/ extracts therefrom** in the presence of any of the Authorised Officers or any other person empowered by him.
5. Income Tax authorities have **NO POWER OF ARREST.**
6. To **object by way of filing a petition to the approval given by the CIT for Retention of Books and Documents beyond 180 days from the date of seizure. PLUS.....**

Right of presence

Right to leave the spot of search

Right to worship

Right to have his statement
recorded properly

DUTIES OF ASSESSEE

The Duties of the person against whom search is conducted

1. To **allow free and unhindered entrance into the premises**
2. To **identify all receptacles in which assets or books of account and documents are kept and to hand over keys** to the Authorised Officer
3. To identify and **explain the ownership of the assets, books of account and documents** found in the premises
4. To **identify every individual in the premises** and to **explain their relationship**
5. **Not to allow or encourage the entry of any unauthorised person** into the premises
6. **Not to remove any article from place of investigation** without notice or knowledge of the Authorised Officer
7. To **ensure that peace is maintained throughout the duration of the search,** and **to co-operate with the Investigating Officers** in all respects so that the search action is concluded at the earliest
8. **Co-operation should be extended even after the search action is over,** so as to enable the Authorised Officer to complete necessary follow-up investigation at the earliest

POWERS OF AUTHORIZED OFFICER

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1. To **enter and search** building, place, vessel or vehicle or aircraft where there is reason to suspect that books of account, documents, money, bullion, jewellery or other valuable articles or things are kept
2. To **break open locks** of any door, box, locker, safe, almirah or other receptacle if keys are not available
3. To **search any person**, who has got out of, or is about to get into, or is in the place of search
4. To **seize books of account, documents or assets**, but **STOCK in trade cannot be seized on or after 1.6.2003. However, it can be inventorised**
5. **Require any person to afford the Authorised Officer the necessary facility to inspect such books of account or other documents found to be in his possession.**
6. To **place marks of identification** on any books of accounts or other documents or make extracts or copies therefrom
7. To **make a note or an inventory of assets seized**. Where it is not practicable to remove assets.

Where it is found that suspected books or assets are kept in any place not mentioned in the authorisation, the Authority issuing the Authorisation for search or Chief CIT or CIT may also authorise search in respect of such other place.

Prohibitory Orders u/s 132(3)

Where it is not practicable to remove assets, the Authorised Officer may **serve prohibitory orders** on the person in control directing not to remove or part with or to deal with it without his permission. **W.e.f. 1.6.2003, prohibitory order CANNOT be issued for stock in trade. However, they can be inventorised.**

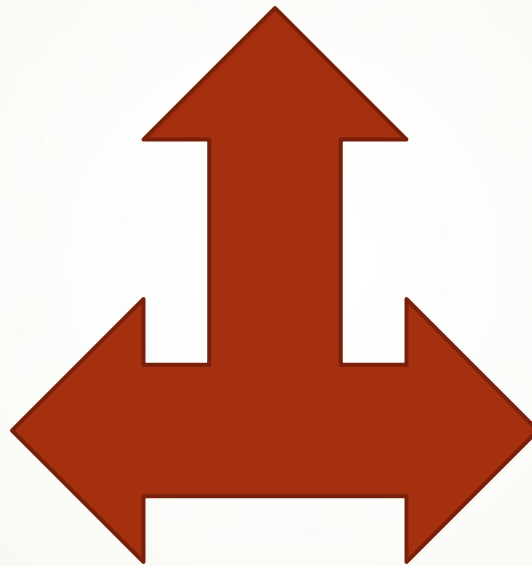
Operation of regular bank accounts of the assessee cannot be restrained during pendency of search proceedings by issuing a prohibition order u/s 132(3) of the I.T. Act- Maa Vaishnavi Sponge Ltd. vs. DGIT (Investigation) & Ors. [2011] 339 ITR 0413 (Orissa)

PRESUMPTIONS DURING SEARCH

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The apparent position about signatures, handwriting, attestation of accounts and documents are real

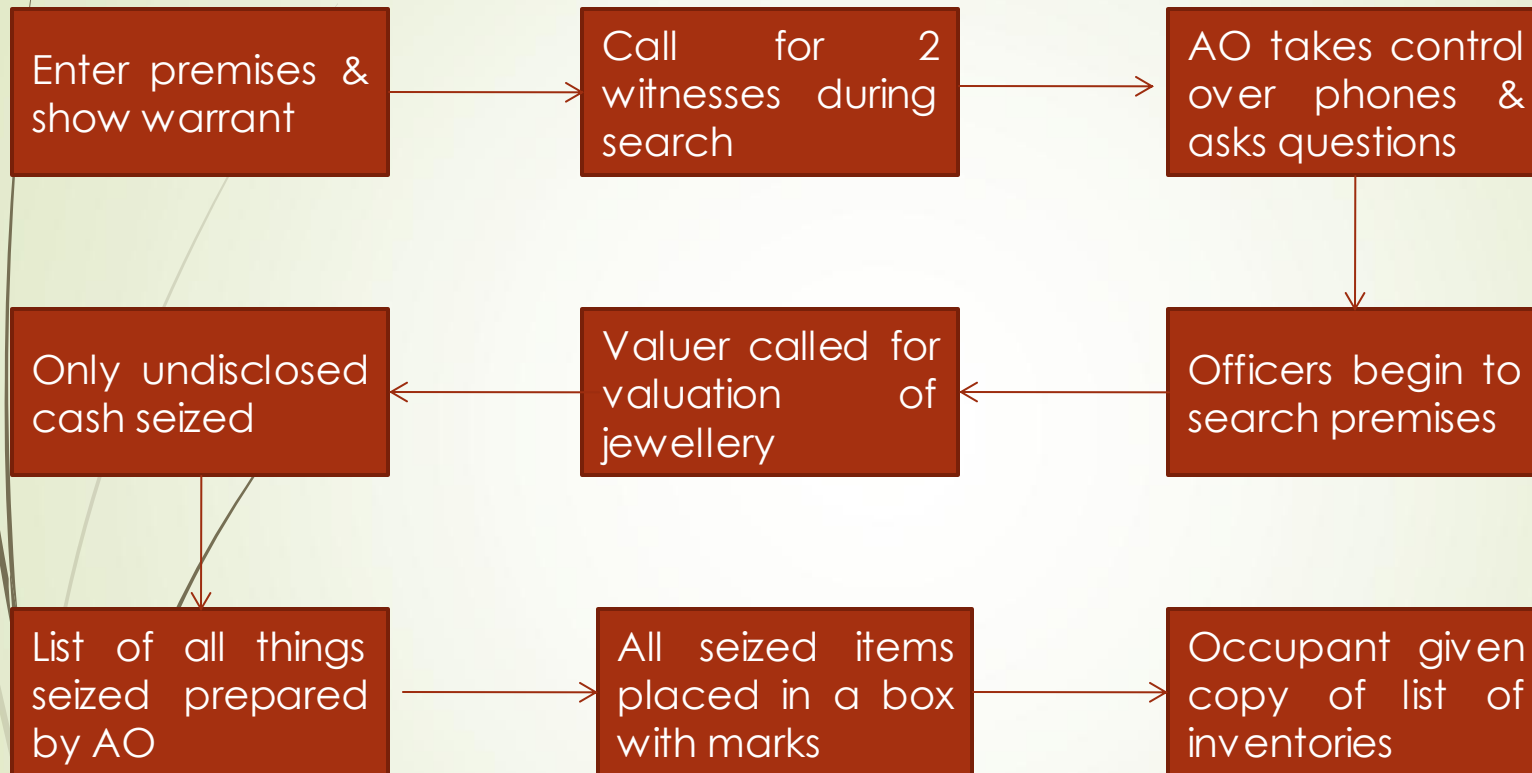
Account books and documents found in course of search are true



Books of account and assets belong to the person in possession or control of whom, they are found

PROCEDURE FOR SEARCH

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CBDT INST Re NON-SEIZURE OF JEWELLERY

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CBDT guidelines reg. seizure of jewellery and ornaments in search operations vide **Instruction No. 1916 dated 11.5.1994**

- i. In the case of a **WT assessee**, gold **jewellery and ornaments found in excess of the gross weight declared in the WT Return only need be seized.**
- ii. In the case of a person not assessed to WT, gold jewellery and ornaments to the extent of **500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member** of the family, need not be seized
- iii. The Authorised Officer may, **having regard to the status of the family and the custom and 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/CIT authorising the search at the time of furnishing the search report.
- iv. In **all cases, a detailed inventory of the jewellery and ornaments found must be prepared** to be used for assessment purposes

Suggestion : In case the assessee has not filed his/her wealth tax return he can furnish other evidences in support of his claim that the jewellery has been acquired from disclosed sources

SEIZURE OF JEWELLERY

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Whether jewellery, which are worn by the ladies, can be taken out and seized? YES. Some items may be spared on basis of Sentimental attachment

Whether Jewellery inherited from parents or spouse or received as gift in marriage can be seized? NO, if properly explained

Whether jewellery, found in course of search belonging to relative or friend can be seized? NO, If explained

If valuation of jewellery found made by Departmental valuer is exorbitant? Objection to be recorded and letter to DIT

In the course of a search certain gold, diamond, jewellery and other ornaments were seized. The High Court quashed the search proceeding.

HOW LONG SEIZED BOOKS CAN BE RETAINED?

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As per Sec. 132(8) w.e.f. 1.6.2002, **the books of account and other documents seized can be retained by the department for a period of 30 days from the date of order u/s 153A**
(earlier it was 180 days from date of seizure).

Where the same are required to be retained for further period, **the reasons for the same are to be recorded and approval of CCIT or CIT to be obtained.**

COPIES OF BOOKS OF ACCOUNTS MAY BE OBTAINED

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As per **Sec. 132(9)** the person from whose custody, books of account or other documents are seized under **Sec.132 (1) or (1A)**, may make copies thereof, or take extracts therefrom in the presence of the Authorised Officer or any other person empowered by him at such place and time as the Authorised Officer may appoint in this behalf.

The assessee has to make a request in writing for inspection, copying, and for taking abstract, to the Authorised Officer or the Assessing Officer, as the case may be. It is advisable to make application for obtaining copy of seized documents immediately after the search.

The assessee can object to the inspection or copying by the third party, and in that case, the third party cannot inspect or copy the seized records. However, any person authorised by the assessee shall be entitled to inspect or obtain copies.

INTEREST CLAIM IN CASE OF SEARCH

On Cash etc. seized: U/S 132B(4) assessee is entitled to interest of 0.5 per cent p.m. from expiry of 120 days from the date on which the last authorization u/s 132 or requisition u/s 132A was executed to the date of assessment.

In case of inordinate delay in granting refund even after assessment department must pay interest from the date of assessment till the date of refund - G.L. Jain v. CIT [2013] 352 ITR 339 (Del.), Sitaram v. CIT 341 ITR 549 (Bom), Bhagwan Prasad Agarwal v. CIT [2006] 282 ITR 189 (All), S.K. Jain v. CIT [2013] 354 ITR 84 (Del.).

In Diamond Star Exports Ltd. v. DIT (Inv.) [2005] 278 ITR 36 (Bom.), wherein the High Court directed the Department to return the seized articles along with interest on the value thereof.

Interest, Adjustment with Advance Tax, Damages etc.

Whether assessee is entitled to Interest on seized jewellery and other ornaments if court quashes proceedings? Yes, if search is Quashed

Whether assessee is entitled to Interest on seized jewellery and other ornaments **if court quashes proceedings?** Dept to return seized Jewellery along with Interest on value thereof - **Diamond Star Exports Ltd. v. DIT (Inv.) [2005] 278 ITR 36 (Bom.)**

SC held in above case in **[2007] 293 ITR 438 (SC)** that the **Department should return the seized articles immediately with cost of Rs.75,000 including interest.**

Assessee cannot adjust/ appropriate the seized cash with advance tax payable w,e,f, 1.6.2013- Expl 2 to sec. 132B

Assessee can claim damages for loss of books that was seized – Banke Behari Agarwal v. UOI 226 ITR 498 (Raj.)

RETRACTION OF STATEMENT

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If the assessee or any other person attending the search **had been forced to give a statement to suit the Department's case or if any pressure or coercion or unfair means was adopted**, the assessee should immediately after the search, **swear an affidavit**, stating all the facts therein. A copy of affidavit and a letter may simultaneously be sent to the CIT, DIT (Inv.), Authorised Officer as also A.O. Allegation of coercion must be proved and mere assertion to that effect is not enough - **Mahesh B. Shah v. Asstt. CIT [1999] 154 CTR 391 (Ker.)**.

Chandigarh Bench in the case of - **Baldev Krishan Kapoor v. Asst. CIT [2000] 245 ITR (AT) 102**: has held that a **Statement made in hospital and that too without a legal aid and retracted later cannot be taken as conclusive. Addition was deleted.**

Despite CBDT Instruction dated 10.3.2003, the search officials are recording Confession of additional income during the course of Survey, search & seizure

RETRACTION OF STATEMENT

Contd....

The statements recorded shall be treated as evidence in the proceedings under the Income Tax Act, as long as statement is not retracted. If the assessee comes forward with a plea that his statement was recorded under threat or coercion, the evidentiary value of the statement suffers a serious dent.

Therefore, where the assessee retracts a statement given u/s 132(4), the A.O. is required to bring material on record which corroborates the statements - CIT v. Naresh Kumar Agarwal [2014] 369 ITR 171 (T & AP).

The A.O. may cross examine the deponent after Affidavit or retraction is filed. If A.O. does not cross examine, the averments are treated to have better evidentiary value

PENALTY PROVISIONS U/S 271AAB(1A)

(search conducted on or after 15th Dec 2016)

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If search has been initiated u/s 132 on or after 15th Dec. 2016, assessee shall pay by way of penalty, a sum @ 30 per cent of the undisclosed income of the specified previous year, if the following conditions are fulfilled:

- i. Assessee in the course of the search, in a statement u/s 132(4), admits the undisclosed income and specifies the manner in which such income has been derived
- ii. substantiates the manner in which the undisclosed income was derived;
- iii. pays the tax together with interest in respect of the undisclosed income within the due date of filing of return of income; and
- iv. furnishes the return of income for the specified previous year declaring such undisclosed income therein within the due date of filing of return of income.

In OTHER CASES, assessee shall be liable to pay penalty @ 60 per cent of undisclosed income of the specified previous year.

Note: **No penalty under the provisions of section 270A and section 271(1)(c)** shall be imposed upon the assessee in respect of the undisclosed income.

PENALTY PROVISIONS U/S 271AAB(1A)

(search conducted before 15th Dec 2016)

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- It was **10% of the undisclosed income**, if the assessee, in the course of search admitted undisclosed income, specified and substantiated the manner in which such income was derived and
- paid the tax and interest on or before the due date of filing of return** u/s 139(1) or section 153A, as the case may be, and
- furnished return of income declaring such undisclosed income therein;**

It was **20% of the undisclosed income**, if the assessee in the course of the search did not admit the undisclosed income, but on or before the due date of filing of return u/s 139(1) or sec. 153A, as the case may be, declared such income in the return of income and paid the tax and interest, if any; and **60% in other cases,**



THANK YOU

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