

“SEARCH & SEIZURE”

By

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POWERS RELATED TO SEARCH & SUVERY

Section 131(1A)	Summons	Power to issue commissions and enforce an individual's attendance, discovery, and inspection of any property. It also allows the section to examine the assessee on oath and produce the necessary books of accounts and documents.
Section 132	Search & Seizure	Empowers income tax authorities to carry out a search and seizure of books of accounts, documents, cash, jewellery etc.
Section 132A	Requisition	Empowers certain income tax authorities to requisition books of accounts, documents etc.
Section 133A	Survey	A 'survey' can be conducted on the premises of the taxpayer only during the business hours. During a 'survey', tax authorities can verify books of account, documents, stock, and place identification marks, but cannot seize any of them.



POSSIBLE CAUSES OF SEARCH & SOURCE

Type	Source
Information Based	<ul style="list-style-type: none">• Finance Intelligence Units• INSIGHT Portal• Other Departments
Complaint Based	<ul style="list-style-type: none">• Informants/ Professional Trainer• Tax Evasion Petition
Bogus Transactions	<ul style="list-style-type: none">• Bogus Purchases/ Expenses• Bogus Sales• Bogus Loans Taken/ Given• Bogus Capital Gain
Bogus Deductions	<ul style="list-style-type: none">• Bogus Donations• Bogus CSR Expenditure
Third Party Information	<ul style="list-style-type: none">• Information gathered during search of third party or associates



What is the distinction between income tax search/income tax raid and income tax survey?

Income tax search and income tax raid is one the same thing. Income tax Survey is another tool in the hand of the authorities for making investigation under the Income-tax Act. Income tax survey is comparatively milder action and can be undertaken only at business premises and no seizure of assets is permitted in the case of survey



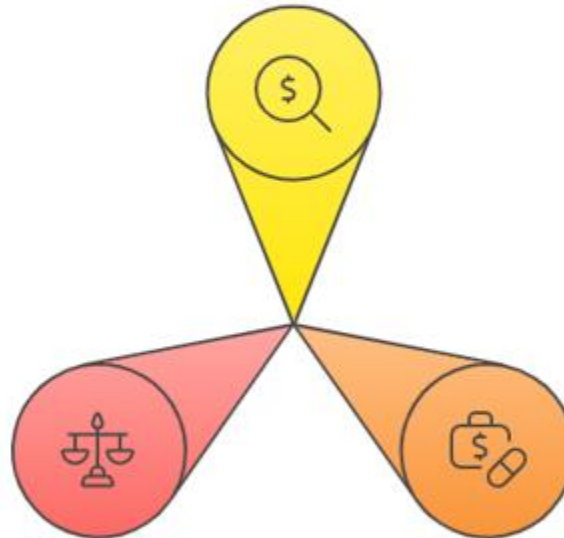
INTERNAL ENQUIRY BEFORE INITIATING SEARCH ACTION as per INSTR. NO. 7 OF 2003

Credible evidence

Searches should be carried out only in cases where there is credible evidence to indicate substantial unaccounted income/assets in relation to the tax normally paid by the assessee.

Professionals of excellence

Tax payers who are professionals of excellence should not be searched without there being compelling evidence and confirmation of substantial tax evasion.

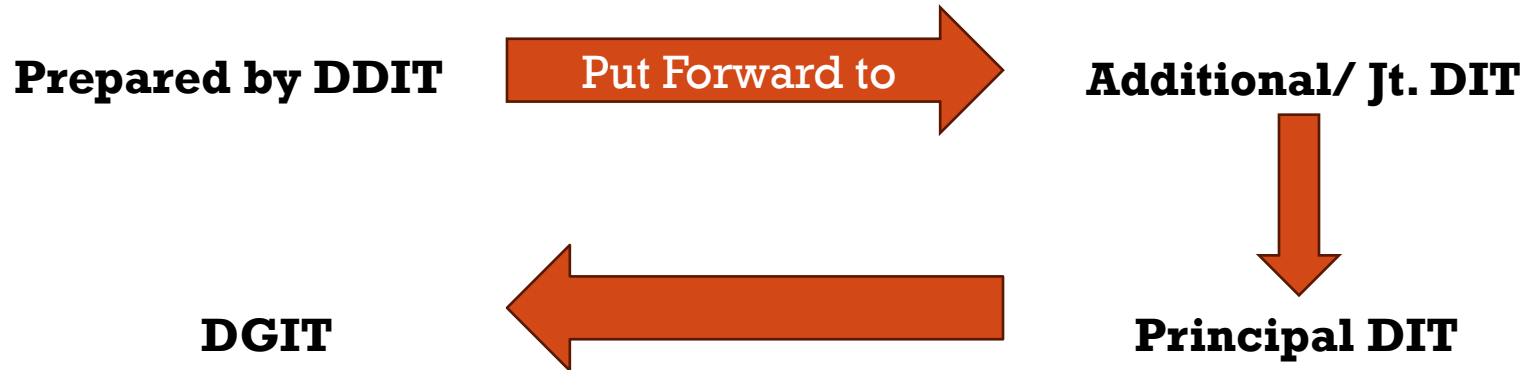


Hidden assets

Search operation will also be mounted when there is evidence of hidden unaccounted assets arising out of a conspiracy to cause public harm, terrorism, smuggling, narcotics, fraud, gangsterism, fake currency, fake stamp papers and such other manifestations.



APPROVAL/ AUTHORISATION OF SEARCH CASES



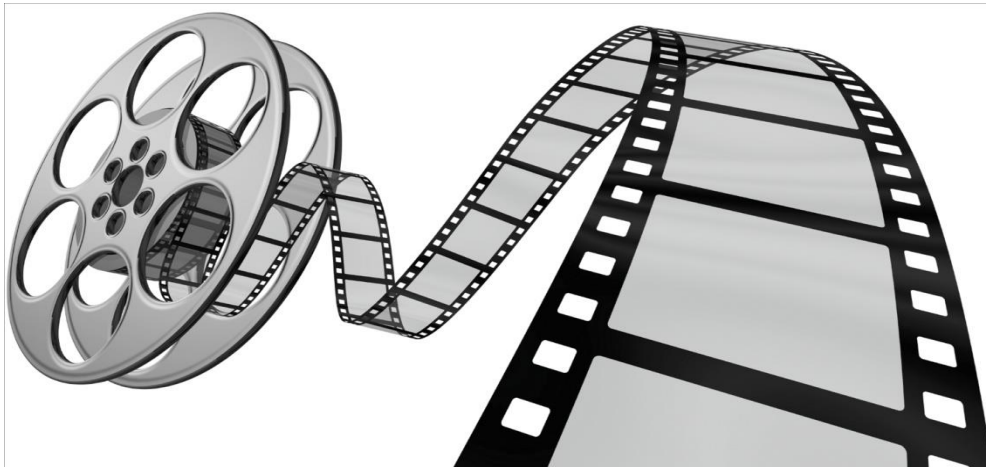
Note: PDGIT/ DGIT/ PDIT/ DIT/ PCCIT/ CCIT/ PCIT/ CIT/ Addi. DIT/ CIT/ Jt. DIT/ Jt. CIT are empowered by CBDT to issue authorization u/s 132 (1).



SEARCH PROCESS



A SHORT MOVIE TO BE PLAYED



Please click the above hyperlink !



Powers of Authorized Officers

Entry and Search

Enter and search the place for relevant items.



Search Persons

Search individuals entering or leaving the premises.



Inventory and Mark

Make inventory and place identification marks on books.



Record Statement

Record statements from individuals involved in the matter.



Restraint Order

Pass a restraint order or prohibitory order.



Break Locks

Break or open locks to access restricted areas.



Inspect Documents

Inspect books and other documents for information.



Police Assistance

Seek assistance from the police when necessary.



Seize Items

Seize books of accounts, documents, money, etc.



Duties of Authorized Officers



Rights of Searched Person

Authorisation Production

The assessee can demand to see the search authorisation. They can refuse entry if it's not produced or properly signed.



Witness Presence

The assessee can refuse the search until two independent witnesses arrive. These witnesses should be from the same locality.



Female Search

The assessee has the right to a female search conducted by a woman. This must be done with respect and decency.



Statement Accuracy

Anyone examined has the right to ensure their statements are recorded correctly. This ensures fair and accurate documentation.



Presence During Search

The assessee doesn't have to be present, but can choose to be present. They have the right to observe the search proceedings.



Officer Identification

The assessee can request proof of identity from the authorised officers. This ensures legitimacy of the search party.



Personal Search

The assessee can insist on personal searches of the raiding party. This can be done before and after the search.



Religious Observance

The assessee and family have the right to religious observance. They cannot be prevented from normal worship.



Daily Activities

The assessee can continue normal daily activities. These activities should not obstruct the search operations.



Duties of Searched Person



Call Independent & Respectable Witness

Never call persons like Peon, Chai Wala, Watchman, etc. who don't have knowledge of Income Tax Proceedings. Always call some respectable & Independent witness who understand basics of Income Tax Proceedings.



Independent Witness

Section 100(4) of the Criminal Procedure Code requires the appointment of independent witnesses.



Code Provisions

Section 132 (13) of the Income Tax Act states that provisions of CrPC shall apply as far as possible.



Understanding Witness

The witness should understand the search proceeding's nature and object; they should be able to read and write.



Locality Considerations

The Supreme Court in case of *Sunder Singh vs. State of UP* has held that since the rickshaw drivers acting as witness weren't from the same locality, Though, the search action was not invalidated but this irregularity has resulted into reduction in weightage of evidences.





COMMENCEMENT OF SEARCH

See that the warrant is duly signed and stamped

Verify the identity of each member of the search party

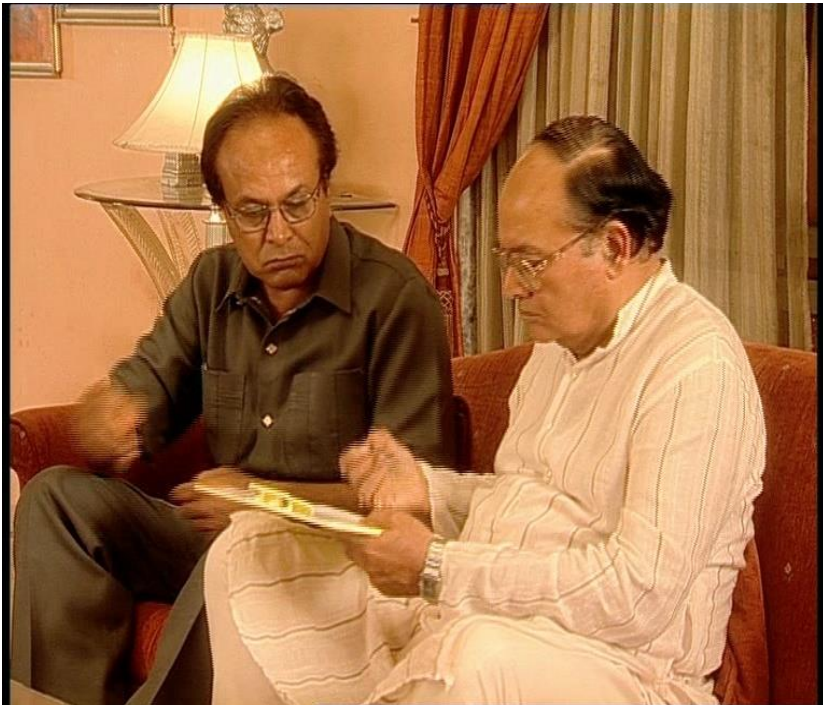
Carry out personal search of all members of the search party (to guard against 'Planting')

Insist upon personal search of ladies by ladies only (Especially after Tehelka and SC Judge's issue)



Call Independent & Respectable Witness

At least two known respectable inhabitants having basic knowledge of Income Tax Proceedings



Have two witnesses (Panchas) (Refer Rule 112 (6) and (7)) preferably who would support you even in case of “Retraction” at any later date.

Preferably Two respectable inhabitants of the locality, who will witness the search and remain present at the premises throughout the operation comes to an end.



PRECAUTIONS TO BE TAKEN WITH REFERENCE TO SEARCH WARRANT:

There may be a situation where in the same premises two or more persons have similar names as mentioned in Search Warrant. e.g. Search Warrant is issued in the name of Mr. K.J. Sharma living in Flat no. 22 of a building and Income Tax department searched Flat No. 501 of another Mr. K.J. Sharma of the same building. In this case department has no jurisdiction to search Flat no. 501.

There may also be a situation where search warrant is issued for one particular premises and search is conducted at another premises of the same person. Ensure that the address of another premise is also mentioned in the warrant.

When personal assets are destroyed like sofas and beds are torn, floor is dug and walls are broken with mala fide intention and there was no reason to suspect that items broken or destroyed contained any concealed income or assets hidden therein neither on the basis of information received from the informer, nor from any other source, the assessee may take action.



DURING THE CONTINUATION OF THE SEARCH

Sr No.	Subject	What to do and why?
1	Be Vigilant	<ul style="list-style-type: none"> • While attending to and serving the large search team be careful and vigilant.
2	Call your Key Personnel	<ul style="list-style-type: none"> • Assessee may seek permission to call his key personnel to assist him during the course of search.
3	Have medicines in Time	<ul style="list-style-type: none"> • Yes
4	Call your Counsel	<ul style="list-style-type: none"> • Assessee may call his legal advisor during the search. <p>However, at initial stage of search, presence of counsel is not allowed since the search action is fact finding exercise (128 ITR Madras HC is against the assessee).</p>



DURING THE CONTINUATION OF THE SEARCH

Sr No.	Subject	What to do and Why ?
5	Co-operate	<ul style="list-style-type: none"> • Fully cooperate with search party and let them do their job
6	Records on Computer	<ul style="list-style-type: none"> • Provide all necessary facilities to inspect and copy records • Call the concerned person
7	Be assertive	<ul style="list-style-type: none"> • Explain the facts and circumstances assertively, but not aggressively • Don't lose patience • If not 100% certain then tell that "we shall reply after accessing data". • Remain calm, cool and pleasant • Do not sign any statement which you have not given
8	Don't react but respond	<ul style="list-style-type: none"> • Be receptive • Keep track of your reactions and even body language • Attack the problem, not the officer



Women can be checked only by lady members of raid team.

Children can go to school after the Search team conducts search of school bags etc.





In case of any health-related emergency, you have the right to call a doctor of your choice. You also have the right to have your meals at proper time.

Ensure that peace is maintained throughout the duration of the search and refrain from making false statement or producing false evidence.



PRECAUTIONS TO BE TAKEN **WHILE EXPLAINING JEWELLERY**

In case of search of a jeweller , bifurcate “Stock in trade” and “Capital Asset”

Refer - Sri Pushpa Ranjan Sahoo v. ACIT (2012) 252 CTR 113/75 DTR 341 (Orissa) (HC)

Wealth tax return (if applicable) disclosing jewellery should be readily available

Explore possibility of producing copies of bills and such other documents to the satisfaction of the search party.

It is always advisable to state that, the jewellery belongs to family as a whole, so as to take maximum benefit of the CBDT Instruction no. 1916.





Jewellery up to a specified limit (e.g. 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family) is generally accepted. In case of a wealth tax assessee, jewellery in excess of the gross weight declared in the wealth tax return only needs to be seized. The inventory of the entire jewellery is taken by the Departmental valuer who accompanies the search team.



PRESUMPTION AS TO OWNERSHIP U/S 132(4A)

Where any books of account, other documents, money, bullion, jewelry 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


such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person



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.



PRESUMPTION IN CASE OF PAPER DOCUMENTS

Section 132 (4A) of IT Act

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. Belongs to such person;
- ii. Contents of such books are true;
- iii. Signature and handwriting of any particular person

Section 292C of IT Act

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. Belongs to such person;
- ii. That the contents of such books are true;
- iii. signature and handwriting of any particular person



PROSECUTION DURING SEARCH PROCEEDINGS

Particulars	Offence	Section
To Identify every Individual during the Search Not to encourage or allow entry of unauthorized personnel in the search premises	Cheating by Impersonation	Section 416 IPC, Section 319 BNS
To prevent Removal or destruction of any document or article with an intention of preventing the same from being produced as evidence	Destruction of document or Electronic Record to prevent its Production as Evidence	Section 204, IPC Section 241, BNS



PROSECUTION DURING SEARCH PROCEEDINGS

Particulars	Offence	Section
To Prevent a person from refusing to answer during recording of statement	Refusing to Answer public Servant authorized to question	Section 179, IPC Section 214, BNS
To prevent a person from giving a false statement	False statement on oath or affirmation to Public Servant or person authorized to administer an oath or affirmation	Section 181, IPC Section 216, BNS
To prevent a person from giving false Evidence	Furnishing False Information	Section 177, IPC Section 212, BNS



EXAMINATION OF ANY PERSON ON OATH - 132(4)

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, jewelry 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: - 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 proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act



EXAMINATION OF ANY PERSON ON OATH - 132(4)

- Such statements are recorded on Oath, evidentiary value is very high
- ***Vide Instruction F. No. 286/2/2003-IT(Inv). II dated 10.03.2003 , CBDT*** has advised search parties not to obtain confessions by adopting coercive means. However , in practice in almost all the cases search parties insist upon getting confessions .
- Authorized officer confronted assessee with the following issues:
 - 1. Cash**
 - 2. Jewellery**
 - 3. Inventory / Stock Valuation**
 - 4. Loose Papers / Diary /Hundies**
 - 5. Mobile Images /Whatsapp Data/ Computer data/Emails**
 - 6. Statements recorded including family members, Key employees, Third Party.**
 - 7. Issue in books of accounts**
- Now the role of Chartered Accountant or Advocate is important



EXAMINATION OF ANY PERSON ON OATH - 132(4)

How to give statements

- Understand the Queries Carefully.
- Take your time to answer, don't answer recklessly (rash manner).
- It is an opportunity explaining several assets found during the search.
- Take the help of books of accounts and take help of key person i.e. CA's / Accountants.
- Take proper pause if you feel tired.
- You can tell to submit details later he will write.
- Note down points.
- Do not speak one word more than what is asked.
- Beware of Benami Law and Prevention of Money Laundering Act (PMLA).

Continuous interrogation/ recording of statement till late night on second day of search is violation of human rights.

- Patna High Court's decision in case of **Chief CIT v. State of Bihar through The Chief Secretary [2012] 205 Taxman 232/ 18 taxmann.com 70 (Patna)**
- Later on CBDT also issued a departmental **instruction no. 289/45/2012-IT dated 13/12/2012 on the same issue.**



PRELIMINARY STATEMENTS

Preliminary Statement is recorded on oath and its evidentiary value is high and it can be used in any proceedings under the Act

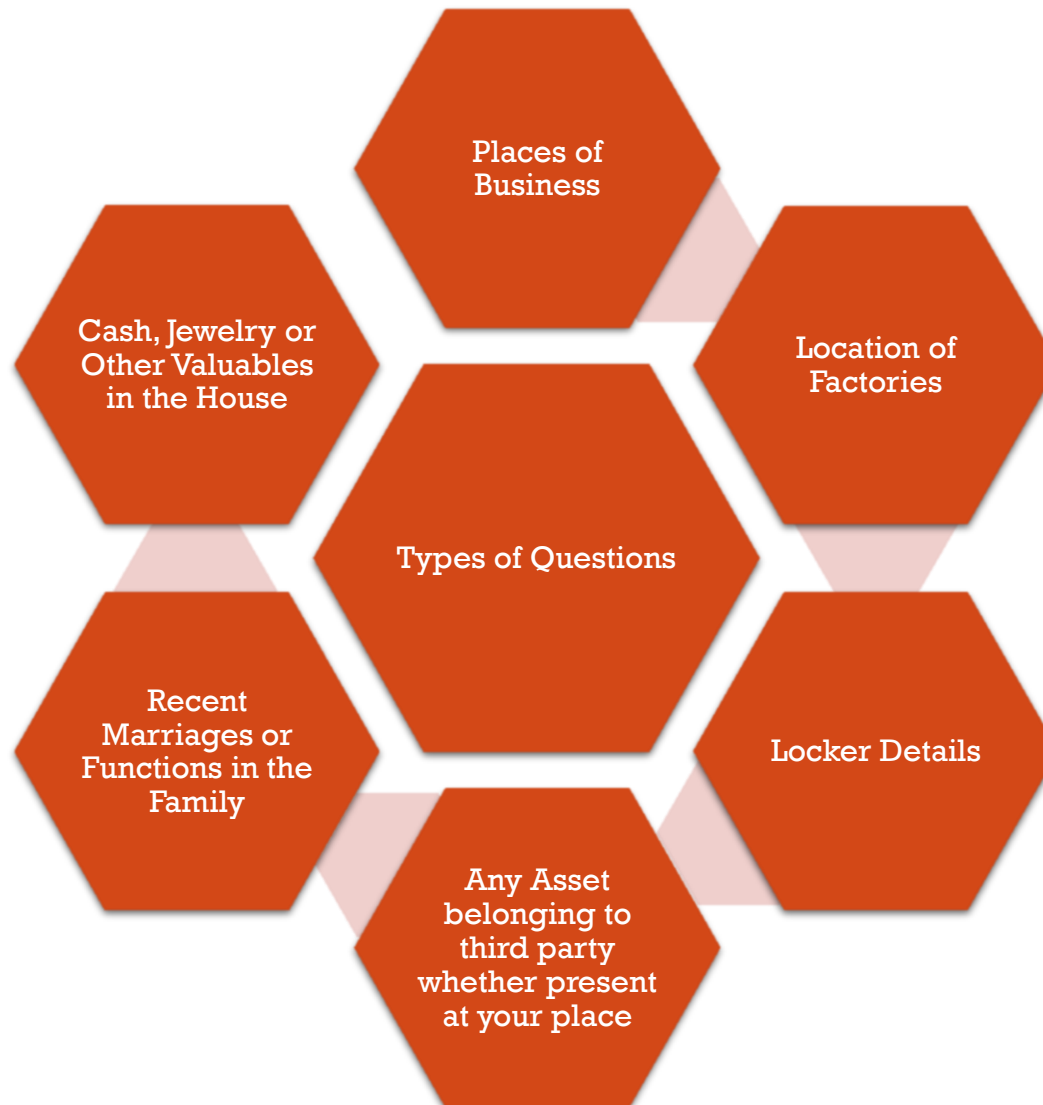
Investigating Officer normally puts question in order to gain support of the “findings” in the search

Correct facts must be stated or time may be sought

Any discrepancy found later during the course of search or under section 132(4) puts a heavy obligation on the person whose statement is recorded to justify such discrepancy



PRELIMINARY STATEMENT – TYPE OF QUESTIONS



ITEMS WHICH CAN BE SEIZED

Unaccounted cash, jewellery, gold, bullion, lockers, promissory notes, cheques, drafts

Books of accounts, chits, diaries etc

Computer Hard Disks and other data storage devices

Documents of property, title deeds etc



1

Signature of Party
(with name and position)



ITEMS WHICH CANNOT BE SEIZED

Stock held in business

Items disclosed in Income Tax and Wealth tax Returns

Items appearing in books of accounts

Cash for which explanation can be given

Jewellery mentioned in wealth tax return

Gold up to 500 Gm per married woman, 250Gm per unmarried woman and 100Gm per male member of the family

Jewellery as per the status of the family if so appear to the satisfaction of investigating officer



PROVISIONAL ATTACHMENT – Sec 132(9B) & (9C)

Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed

he authorized officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do

he may with the previous approval of the authorized officer, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, *mutatis mutandis*, apply

Every provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order



PROHIBITORY ORDER [SECTION 132(3)]

Where its not practicable to 'seize' any :-

- books of accounts/ others documents,

- money, bullion, jewellery,

- other valuable article or things.

order served on person in possession of above; and

such person is directed not to part or otherwise deal with same.



Is a Prohibitory order issued under subsection (3) of Section 132 of the Act in respect of Current Account of the searched person without any material showing that amount deposited therein is undisclosed income sustainable in law?

Ans: No

Refer:

**M/s Visa Comtrade Limited vs. Union of India and Others
[2011] 201 Taxman 413 (Orissa)/[2011] 338 ITR 343
(Orissa)/[2011] 243 CTR 348 (Orissa)**



SPECIMEN- PANCHNAMA



A **panchnama** is prepared in which an account of the entire proceedings is recorded, and all the statements recorded and inventories prepared during the search are appended to it. The panchnama is to be signed by the authorized officer, the person in whose case the search is being conducted and the witnesses to the search.

D. D. I. T.'s Copy

S. S. - 5

PANCHNAMA

[To be prepared in quintuplicate]

Party No.

- [A] Warrant in the case of :
 [B] Warrant to search :
 [Details & Ownership
 of place of search]
 Telephone Numbers.
 [C] (A) and (B) stated to : (A) (B)
 be assessed by
 [D] Search party consisting of :

Authorised Officers

Name

Full Designation

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

Other officials who assisted the authorised officers

- 6.
- 7.
- 8.
- 9.
- 10.

- [E] Name and complete address of Panchas :

- 1.
- 2.

On being called by Shri. _____ on _____ at _____
 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 of mentioned at (b) above and duly signed and sealed by the Director of Income-Tax (Inv.) Mumbai, New Delhi/
 Commissioner of Income-Tax Mumbai City / Central Mumbai / Joint Director of Income-Tax (Inv.) Unit -
 Mumbai / Joint Commissioner of Income Tax _____ Range, Mumbai to
 Shri/Smt. _____ who was present in the said place the time and who after
 reading the said authorisation/after the authorisation was explained in local language viz. _____ by
 Shri/Smt. _____ signed it in our presence and along with us, in token of having
 per used 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 that
 date and found them to be intact/tampered with as narrated in the enclosures.

SPECIMEN- LIST OF INVENTORY



Date of Search/Survey _____

LIST/INVENTORY OF JEWELLERY ETC., FOUND/SEIZED

List of Bullion (Primary gold, silver etc.) / gold ornaments and jewellery / silver articles found / seized in the case of M/s. / Shri / Smt. _____

at _____

Specific place where found : _____

item claimed to be belonging to : _____

[illegible]

Signature of Panchas.

Signature of Authorised Officers.

Signature of Party.

1.

1.

2.

2.

Note: 1. Seperate lists to be prepared for items found at different places or claimed to be belonging to different persons.

DO'S

1. Panchnama- Copy must be obtained immediately.
2. Inventory- Copy must be obtained.
3. Copies of documents seized- Make application to furnish copies
4. Copies of statements – make application to furnish copies
5. Factual Error – Valuing Stock – Inventory etc. - Write immediately to the concerned officials who have conducted the search operation
6. Goods of perishable nature if kept under prohibitory order- ask to release or sell- if loss is occurred the department is responsible
7. In case of Seizure of cash- Ask adjustment against tax liability
8. Disposal of assets seized- release of assets or sell by the tax department

DO'S

9. Damages- File petition for loss due to action of the Tax officials

10. Retraction- within reasonable time before the same officials who have taken the statements. If required copy to higher authorities

11. If any valuable or document of 3rd party is seized ask the party concern to make an application for release and claiming the ownership.

12. If any documents or a statement of 3rd party is proposed to be used against you, ask for the copies such documents or statements and further request for opportunity to cross examine them.

13. In response to summons, attend and answer the questions- If you don't know the answer verify and reply.

14. Discuss with consultant – way forward.

15. Cooperate with proceedings

DON'TS

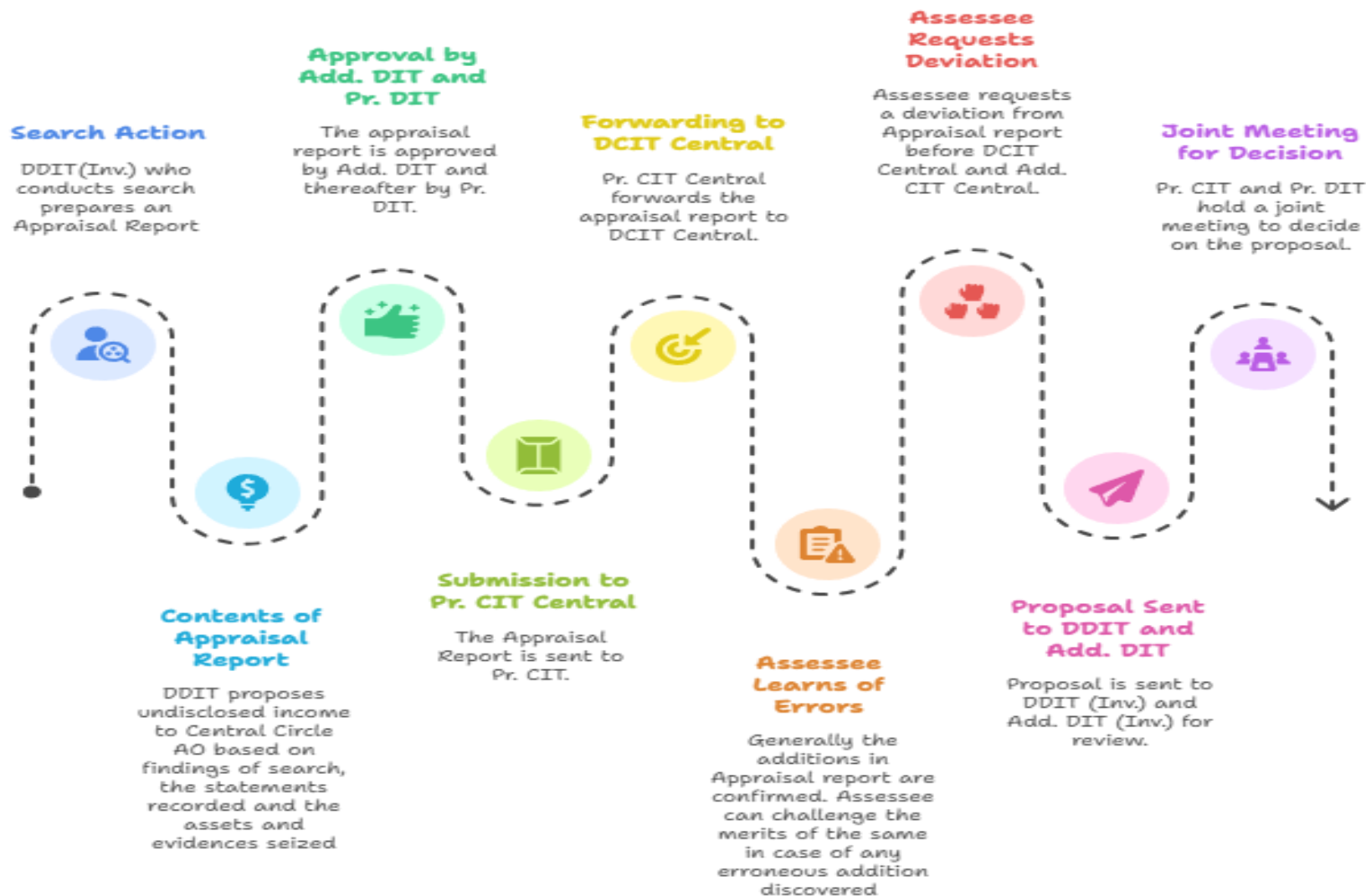
1. Removing valuables, books, documents, chits, notings, diaries, etc put under prohibitory order

2. Mislead on facts

3. Try to destroy the books, documents, chits, notings, diaries, etc



APPRAISAL REPORT [Internal Confidential Report]



POST SEARCH ANALYSIS



VALIDITY OF SEARCH

Section 132(1)(a)

Non compliance to
summon u/s. 131(1) or
a notice u/s. 142(1) to
produce certain books
or other documents.

Section 132(1)(b)

Notice has been issued
/ would be issued, but
such person has not /
might not produce
document in respect of
any proceedings under
Act

Section 132(1)(C)

Possession of
undisclosed money,
bullion, jewelry or
other valuable thing

- **Authority must have information**
- **Reason to believe and not suspect**
- **It must be information and not rumor or gossip or hunch**
- **Information must exist prior to authorization**
- **Reason to believe must have reasonable bearing/ connection to information substantiated by a “Satisfaction Note”**



Pramod Swarup Agarwal vs. PDIT (Inv.) [Writ Tax No. 30 and 31 of 2025) (Allahabad High Court)

Key findings of the Hon'ble Allahabad High Court:

“There is no information in the satisfaction note which could be the basis for a belief as envisaged under section 132 that if petitioners were to be issued summons or notice, they would not produce or cause to be produced any books of account or any other documents which will be useful for or relevant to any proceedings under the Act.

No prudent person on a reading of the satisfaction note in the light of requirements of law contained in section 132(1)(b) can arrive at a conclusion that such information and reason to believe formed by the competent authority... had any relation whatsoever to clause (b)

The entire search operations based on such satisfaction note and warrant of authorization are illegal. The information and reason to believe based thereon so far as the petitioners are concerned are a mere pretence.



Income Tax Officer vs. Seth Brothers [1969] 74 ITR 836 (SC)

As the power of search entails a serious intrusion on the taxpayer's rights and privacy, it must be exercised strictly within legal bounds and for its intended purpose. If challenged, the officer must justify the action; if driven by malice or collateral intent, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied, the proceeding is liable to be quashed. But where power is exercised bona-fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the officer will not vitiate the exercise of the power (In favour of revenue).

Pooran Mal v. Director of Inspection [1974] 93 ITR 505 (SC)

In this case, the petitioner challenged the search and seizure operation on the grounds that there was no valid reason to believe that undisclosed income existed.

“Reason to believe” of the tax authority must be based on real and credible information, and the courts will not interfere if the belief is genuine and founded on material (In favour of revenue).



CIT v. Vindhya Metal Corporation [1997] 224 ITR 614 (SC)

The search was challenged on the grounds that the "reason to believe" for conducting the search was not properly recorded.

The Supreme Court held that the courts cannot question the sufficiency of the "reason to believe" as long as the belief was formed in good faith and based on relevant information. Good faith and relevance of the information is key; the sufficiency of the information cannot be questioned (In favour of assessee).

Madhu Gupta vs. DIT (Inv.) [2013] 30 taxmann.com 92 (Delhi)

A warrant under Section 132(1) can be issued only when the issuing authority possesses credible, tangible information and forms a reasoned belief that the conditions in clauses (a), (b), and (c) are met. **Mere surmise or conjecture is insufficient. There must be a nexus between the information and the belief.** Furthermore, the information must not be in the nature of some surmise or conjecture, but it must have some tangible backing (In favour of assessee).



CIT vs. Dr. Nandlal Tahiliani [1988] 39 Taxmann 127 (ALL)

The complaint lacked specific, credible information to justify action under Section 132. Mere high earnings or lifestyle do not constitute "reasonable belief" of undisclosed income. Such belief must be based on reliable, sufficient material. Unverified complaints cannot warrant intrusive action that infringes personal liberty and damages reputations. Hence, the writ petition was allowed (In favour of assessee).

S.R. Batliboi & Co. vs. Department of Income-tax (Investigation) [2009] 181 Taxman 9 (Delhi)

During a tax search on EMAAR, laptops of two of the employees of their auditors; S.R. Batliboi & Co. were taken by the tax department. They asked for full access to all client data on the laptops vide Summon u/s 131(1A). The Delhi High Court said no, and ordered the laptops to be returned, saying other clients' data must stay private (In favour of assessee).



Laljibhai Kanjibhai Mandalia Case



Writ Petition Filed

Laljibhai Mandalia initiates legal action by filing a petition in the Gujarat High Court.

The High Court grants relief by quashing the search warrant.

Relief Granted



Department Approached SC

The department appeals to the Supreme Court against the High Court's decision.

The Supreme Court validates the search proceedings.

SC Held Search Valid



Principles Laid Down

The Supreme Court establishes principles for the validity of search cases.



Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.)

[2019] 105 taxmann.com 260 (Gujarat)

Key Facts of the Case

Loan Advancement

A ₹10 crore loan was advanced, it was secured by a registered mortgage over property owned by associated concern of borrower company

Director Service


The petitioner briefly served as a director of the borrower company.

Loan Repayment

The company repaid the entire principal and interest on the loan.

Search Warrant

Officials claimed the warrant rested on "reason to believe" that the loan was a sham.

Made with  Napkin



Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.)

[2019] 105 taxmann.com 260 (Gujarat)



**Was the search
warrant validly
issued?**



Failure to Comply to the Notice or Summon Sec 132(1)(a)

No summons or notice was issued, so this clause cannot be invoked



Anticipated Non-Compliance Sec 132(1)(b)

Belief that petitioner would evade notice was based on conjecture, not concrete evidence.



Possession of Undisclosed Assets Sec 132(1)(c)

No evidence of undisclosed assets was found as loan was fully reflected in books and tax returns and receipts were accounted for.



Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.)

[2019] 105 taxmann.com 260 (Gujarat)

Administrative Character	<ul style="list-style-type: none">• The formation of opinion and reasons to be recorded is an administrative action.
Honest and Bona Fide opinion	<ul style="list-style-type: none">• The opinion formed by the officer must be bona fide and based on information. It cannot be merely pretense.
Reasonable Belief	<ul style="list-style-type: none">• The authority must have information in its possession on the basis of which a reasonable belief can be founded that ingredients of 132 are satisfied
High Court Review	<ul style="list-style-type: none">• Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof.



Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.)

[2019] 105 taxmann.com 260 (Gujarat)

Scope of Review	<ul style="list-style-type: none">• The Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretense and that no extraneous or irrelevant material has been considered.
Satisfaction Note	<ul style="list-style-type: none">• Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order.
Adequacy of Reasons	<ul style="list-style-type: none">• The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue.
Judicial Restraint	<ul style="list-style-type: none">• The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof.



RETRACTION OF CONFESSION MADE ON OATH

- No specific form prescribed – Affidavit, Letter, etc.
- To be made at the earliest within reasonable time
- Department may view it adversely
- Ultimately nature of evidences will decide
- Challenging valuation, not retraction
- Challenging calculation, not retraction
- In the absence of any corroborative evidence, A. O. cannot make addition on properly retracted Statement
- Statement given u/s 132(4) is on oath and u/s 133A is not on oath and therefore it is difficult to retract the disclosure made in the statement u/s 132(4) as compared to the disclosure made in the statement made u/s 133A.

Statement recorded at odd hours cannot be considered to be a voluntary

Kailashben Manoharlal Choksi v. CIT [2008] 14 DTR 257 (Guj)

A Retraction, though belated, is valid

CIT vs. Ramanbhai B Patel (Gujarat High Court)

Initial burden to show that confession was voluntary

CIT v. O. Abdul Razak 350 ITR 71 (KER.)



DUMB DOCUMENTS

What are dumb documents

- Numerous loose papers /Excel sheets/Emails
- Diaries
- Note pads
- Whatsapp Chat

What they may contain :

- Rough calculation
- Vague noting
- Scribbling and jottings

Whether Such document can result in income subject to tax ?



DUMB DOCUMENTS

Case 1

10.01.2024 ₹ 10.00=00

15.02.2024 ₹ 250=00

31.05.2024 ₹ 755=80.

Case 2

10.01.2024 - Ram ₹ 1,000=00

15.02.2024 - Shyam ₹ 250=00

31.05.2024 - Arun ₹ 755=80.



DUMB

DOCUMENTS

Case 3

10.01.2024 - Ram ₹ 1000 = 00 Given
15.02.2024 - Shyam ₹ 250 = 00 Recd.
31.05.2024 - Arun ₹ 650 = 00 Recd.


Case 4

10.01.2024 - Ram ₹ 10,000 - Recd.
15.01.2024 - Shyam ₹ 2,000 - Expenses.
20.01.2024 - Hari ₹ 1,00,000 = Loan Given
25.01.2024 - Lucky ₹ 2,00,000 Loan Given.
15.02.2024 - Hari ₹ 1,00,000 - Loan Recd. (Repayment)
15.02.2024 - Hari ₹ 2000 - Int. on loan.



ANALYSIS OF LOOSE PAPERS

Remove Duplication in Loose Papers -

Cash Voucher		25.07.2020
Description of Payment		Amount
MD Abdul - 306		15
Total		15
Amount in Words <u>Fifteen</u>		
		 Signature

Keshav Real Estate LLP					
Parallel Cash book					
Date	part.	Dr.		part.	Cr.
25.07.2020	To Cash Md. Abdul	15,00,000.00			
	Total	15,00,000.00		Total	-



Loose Papers found during course of search to be treated as Dump Document

➤ ACIT vs. Shanker Nebhumal Uttamchandani ITA – 321/SRT/2022 (Surat – Tribunal)

Assessing Officer made addition on basis of a paper found and seized from office premises of assessee allegedly showing some transaction of land – On appeal, CIT(A) found that such paper was not in handwriting of assessee or his family members and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land - Commissioner (Appeals) held that such loose paper was nothing but a dump document which could not be relied upon solely for making huge addition - Whether since Assessing Officer had neither brought any corroborative evidence nor further investigated fact nor referred any corroborative evidence if collected during search action by Investigation Wing, Commissioner (Appeals) was justified in deleting addition

Addition made by AO on account of some undisclosed land transaction on basis of a loose paper found during search at assessee's premises was not justified when said paper was not in handwriting of assessee and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land.



Electronic material without Corroborative Evidence to be treated as Dump Document

➤ Rucha Consultancy LLP vs. DCIT, CC-6(1) ITA – 4996 & 5706/MUM/2024 (Mumbai - Trib.)

Where additions were made under sections 69A and 69C respectively on basis of a WhatsApp image found in phone of assessee's personal assistant, which neither bore assessee's name nor was corroborated by independent evidence, and no physical cash was found with assessee, said document was to be treated as a dumb document and impugned additions were to be deleted.

Whether, where addition was made under section 69C on basis of image found in employee's mobile phone showing alleged cash disbursements, but said image did not contain assessee's name & was disowned by assessee, and no corroborative material was brought on record, such image was to be treated as a dumb document and addition was liable to be deleted.



Electronic material without Corroborative Evidence to be treated as Dump Document

➤ DCIT vs. Gordhanbhai L. Talavia, ITA – 1554/SRT/2017 (Surat-Trib.)

Pursuant to search and seizure operation at residential premises of assessee, certain loose papers were found and seized wherein figure of Rs. 4.49 crore was mentioned against name of assessee. Accordingly, a show cause notice was issued to assessee. Assessing Officer recorded that assessee failed to furnish details and in absence of any details, made addition of Rs. 4.49 crores. However, it was found that addition was merely based on dump documents found during search. Assessing Officer had not conducted any separate or independent evidence to bring corroborative evidence to connect entry in seized material with assessee. Whether therefore, in absence of any corroborative evidence, no contrary presumption could be drawn against assessee on a mere figure on loose papers and thus, there was no infirmity or illegality in order passed by Commissioner(Appeals) in deleting addition - Held, yes.



Loose Papers are irrelevant as evidence not admissible

➤ Common Cause v. Union of India, (2017) 394 ITR 220 SC

During raids on two business groups, various incriminating materials such as loose sheets, computer prints, hard disks, and pen drives indicating alleged money transactions were seized. However, there was no evidence to establish that these documents and electronic records were maintained regularly in the course of business. The Court held that such materials lacked evidentiary value and could not be relied upon to initiate criminal proceedings, including the registration of an FIR or investigation against high-ranking public officials. It was further held that the seized materials were irrelevant and legally inadmissible under Section 34 of the Indian Evidence Act.



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CBI vs VC Shukla others vs Union of India (2017) SC**

“The hon'ble Supreme Court stated that the loose sheets of papers are not books and they are also not admissible in evidence u/s. 34 of the Evidence Act. For the purposes of determining the evidentiary value of the entries relevant to S 34, there should prevail "independent evidence", to show that the entries (being only "corroborative evidence") represent honest and real transactions and that monies were paid in accordance with those entries.”

- **CIT vs. Kantilla Prabhudas Patel (2008) 296 ITR 568 (MP)**

“Where addition was made on ground that in search made in premises of assessee a number of documents were found which had disclosed certain hawala transactions in which assessee had earned income which he had not disclosed in his return for block period but Tribunal had deleted addition matter lay strictly in the realm of facts and did not give rise to any question of law with scope of section 260A.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs. Atam Valves (P) Ltd. (2011) 332 ITR 468 (P&H)**

“Pursuant to a survey conducted at premises of assessee certain incriminating documents were found including a 'slip pad' containing payment of wages to various persons - Assessee explained that said slips did not represent payment of wages during year-in-question but were for earlier year - However, Assessing Officer did not accept said explanation and estimated sales on basis of abovesaid loose slips and, accordingly, made addition - On further appeal, Tribunal held that Assessing Officer was not justified in estimating sales on basis of loose slips without substantiating that assessee had actually made sales to that extent of estimation - It held that Assessing Officer had no iota of evidence in form of sale bills or bank account or movable and immovable property which could represent earning of unaccounted income by assessee - It therefore deleted addition made on basis of estimation of sales - Whether Tribunal was justified in deleting addition - Held, yes”

- **CIT vs. Ved Prakash Choudhary (2008) 305 ITR 245 (Del)**

“The Hon'ble Jurisdictional High Court has again pressed on the issue of corroborative evidence, in spite of a MOU being found at the search premise indicating transaction of on money by the assessee.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs. Vivek Agrawal (2015) 231 Taxman 392 (Del)**

“In the present case too there was no material at all for the revenue to conclude that the transaction relating to the properties was undervalued. For the above reasons we find no merit in the appeals. They are consequently dismissed.”

- **CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del.)**

“Where no independent material or evidence had been brought on record by Assessing Officer to establish that notings/jottings recorded on loose sheet of paper seized during search represented an unaccounted transaction and Tribunal held that entries in question belonged to some company, inasmuch as assessee could explain from books of such company that these projects were undertaken by it, and Tribunal held that loose sheet did not represent any expenditure incurred by assessee, deletion of addition based on loose sheet, treating it as unexplained expenditure in assessee's hands was justified [In favour of assessee].”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs Kulwant Rai (2007) 291 ITR 26 (Del).**

“The Hon'ble Jurisdictional High Court has confirmed the order passed by the Hon'ble ITAT Delhi wherein it was stated that, assessee had not signed the agreement in question and since the assessee had not signed the agreement, no liability can be attributed qua that agreement towards the assessee since he is not party to the agreement till he had signed the same. The mere fact that this agreement was found in the possession of the assessee does not lead us anywhere.”

- **Asstt. CIT v. Shailesh S. Shah (1997) 63 ITD 153 (Bom.)**

“Three amounts, i.e., income from commission undisclosed investment and interest on undisclosed investment, were added to "assessee's income on basis of loose papers seized from assessee under section 132 proceedings -Assessing Officer neither mentioned any material or evidence to show on what basis figures came to be worked out nor sections 69 and 69D were invoked, nor did he discharge burden to prove that alleged receipts were assessee's income -Whether addition being merely on basis of suspicion, could not be sustained -Held, yes”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **Amar Natvarlal Shah v. Asstt. CIT (1997) 60 ITD 560 (Ahd.)**

“Certain seized loose papers during search revealed that assessee had incurred certain expenditure on tour - Assessee explained that expenditure was incurred by him and one S and his share was duly debited in books of account - Bill was in name of S - Whether in such circumstances addition could be justified - Held, no”

- **Chander Mohan Mehta v. Asstt. CIT (1999) 71 ITD 245 (Pune)**

“Based on loose papers found during survey after search as well as subsequent statement of assessee recorded under section 131, giving nature and details of transactions indicated therein in regard to money-lending business, Assessing Officer made addition of entire borrowings received from certain persons even though confirmation letters were produced by them - Whether since said loose papers did not indicate name of assessee, from list of persons given in loose papers it could not be inferred that either any loan or any advance was given to or received from those persons, and since total amount on those loose sheets indicated a very small amount, those loose papers alone would have to be considered as dumb papers having no evidentiary value and no addition could be sustained - Held, yes.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT v. D.K. Gupta (2009) 308 ITR 230 (Del.)**

*“Assessee was a director in a company which was in business of property development and real estate - During a search conducted at business premises of said company, two diaries were seized from assessee - Notings in those diaries included appointments, reminders, noting/jottings, etc. - On being questioned, assessee explained that notings in said diaries were in connection with general property related discussions and had nothing to do with actual transactions - Assessing Officer, however, raised a presumption against him in view of provisions of section 132(4A) and made addition on account of entries recorded in said two diaries - **On appeal, Commissioner (Appeals) deleted addition** - On revenue's appeal, Tribunal held that provisions contained in section 132(4A) did not authorize Assessing Officer to raise such a presumption, particularly when assessee had offered explanation along with documents and evidences and had also furnished an affidavit to that effect - **Tribunal further returned a finding of fact that there was no corroborative or direct evidence to presume that notings/jottings recorded in said two diaries had materialized into transactions giving rise to income which had not been disclosed in regular books of account - Tribunal, therefore, upheld order of Commissioner (Appeals) - Whether findings of facts recorded by Tribunal could be interfered with - Held, no.**”*



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **ACIT vs. Satyapal (2007) 295 ITR (AT) 352 (Jab.)**
- **Atul Kumar Jain (1999) 64 TTJ 786 (Delhi) vs. DCIT**
- **Pr. CIT Control -1 vs. Ajanta foot care (India) P ltd (2017) Kolkata High
Court**
- **CIT vs. Vatika Landbase (P) ltd. (2016) 383 ITR 320 (Del)**



ANALYSIS OF LOOSE PAPERS (Contd.)

Decoding of Whats-App Chat Found from Mobile



ADMISSIBILITY OF E-EVIDENCE FOUND DURING SEARCH

Two Types Of Evidences

A. Primary Evidences

B. Secondary Evidences

Electronic evidences are secondary evidences

Electronic Records - Hard disc of computer CD's, Pen drives, VCD, Camera, Word file, Excel files ,Email Communication ,Whatsapp Conversations.

Relevant provision of the evidence act which are applicable in the case of electronic records (Indian Evidence Act, 1872)

Section 65A Special provisions related to electronic record- The Contents of electronic records may be proved in accordance with provision of Section 65 B.

Section 65B Admissibility Of Electronic Records

Subsection (1) (2) (3) (4)

Very Important As Per Section 65 B (4) Need To Certify Who Seized Electronic Records .



ADMISSIBILITY OF E-EVIDENCE FOUND DURING SEARCH

Mandatory requirement of section 65B of the Evidence Act has not been complied with in respect of any of the Electronic records relied upon by the department.

“Not an Admissible Evidence”

Supreme Court Judgement;

1. Anwar PV V B.K. Basheer [2014] 10 SCC 473
2. Arjun Pandit Rao Khatkar V Kailash Khushan rao Gorantylal [2020]7 SCC 1
3. Ambalal Sarabhai Enterprises ltd. V KS Infra space LLP limited and another SC 6th Jan. 2020

Whatsapp messages presently there is no final clarity and the position can only be clear when the “Data Protection Bill” is notified.

As of now Supreme Court is not admitted Whatsapp messages as evidence.



DECISIONS RELATED TO NO
ADDITION CAN BE MADE IF NO
INCRIMINATING MATERIAL
FOUND FROM THE SEARCHED
PREMISES



No Incriminating Material found from search premises

- **PCIT vs. Abhisar Buildwell (P.) Ltd**
Civil Appeal No. 6580 of 2021 (SC)

In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A.



No Incriminating Material found from search premises

➤ CIT-20 vs. Deepak Kumar Agarwal

IT Appeal Nos. 1169,1178,1709,1780 of 2014 & 131 of 2015, 467 to 470,472,477,483,566,914,1194 & 1197 of 2017 (Bombay HC)

Assessment u/s 153A can be made only on basis of incriminating material found in search u/s 132 and only income related to incriminating documents found during search can be considered in assessment.

“Whether assessment under section 153A can be made only on basis of incriminating material found in search under section 132 - Held, yes. Assessing Officer as a result of search conducted under section 132 on assessee framed assessment of assessee under section 143(3) read with section 153A and made additions under sections 68 and 14A to his income - Tribunal held that additions were made beyond scope of section 153A, as no incriminating material in support of additions made under section 68 and under section 14A was brought on record by revenue – Whether in peculiar facts and circumstances of case, no substantial question of law arose from order of Tribunal - Held, yes”



Relevant judgements related to No Incriminating material found

- **PCIT vs. Welspun India Ltd, IT Appeal No. 3152, 3203, 3245, 3250, 3261 & 3356 of 2018 (Bombay HC)**
- **CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd, IT Appeal No. 523 & 1969 of 2013 (Bombay HC)**
- **PCIT vs. Ahinsa Vinimay (P.) Ltd., SLP (CIVIL) Diary No. 33203 of 2024(SC)**
- **PCIT vs. TDI Infrastructure Ltd., IT Appeal No. 494 and 495 of 2022 (Delhi HC)**
- **PCIT vs. Speciality Paper Ltd., IT Appeal No. 16, 22, 30 of 2019(Bombay HC)**
- **PCIT vs. Salarpuria Properties (P.) Ltd., ITAT NO. 157 OF 2023 (Calcutta HC)**
- **PCIT vs. Rohit Kumar Jain, IT Appeal No. 5 of 2023 (Gauhati HC)**



**263 provisions cannot be invoked if
order is passed after approval of
requisite authority**



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **PCIT vs. Prakhar Developers (P.) Ltd.,
IT Appeal No. 182 of 2023 (Madhya Pradesh HC)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **Devendra Kumar Gupta vs. PCIT,
ITA – 1890 to 1893/DEL/2024 (Delhi - Trib.)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263 without giving a finding that prior approval under section 153D was vitiated and was also erroneous so far as prejudicial to interest of revenue.



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from ACIT

- **Smt. Abha Bansal vs. PCIT,
ITA – 383 to 386/DEL/2021 (Delhi - Trib.)**

Whether an order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.



VIRTUAL DIGITAL SPACE

Clause 247 of Income Tax Bill 2025

Access to Spaces

Tax authorities can access digital records stored virtually. This includes emails, cloud storage and messaging platforms.



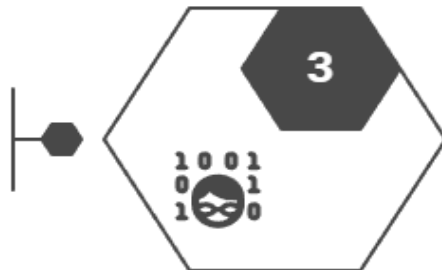
Disclosure of Credentials

Individuals must provide passwords to digital accounts when asked. Not complying may lead to legal consequences.



Bypassing Security

Authorities can override encryption to access data. This is if access credentials are not available.



Seizure of Devices

Devices like laptops and storage devices can be seized. This can happen during tax raids.



Thank You

