

# **Income-Tax Survey: Pays To Know Your Rights**

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In a civilised society, every person ought to have a right to privacy but the provisions of survey as well as search are serious invasion upon the rights, freedom and privacy of the taxpayers. However, the constitutional validity of these provisions were upheld for the reason that they are necessary for unearthing concealment of income and gathering evidence to prove the same.

### ***Why survey?***

There is a shift in the assessment procedure and now the returns to income filed are accepted without any scrutiny by following the philosophy of "file, smile and go". The department has gradually realised that scrutiny of books of account in laboratory conditions (in the rooms of the assessing officer) does not yield many results, We are heading for the time when either surveys conducted in the past would lead to the selection of cases for scrutiny or selection of a case for scrutiny will prompt surveys.

Surveys are considered necessary to generate sufficient information about concealment of income and to gather requisite evidence for taking any concrete action for assessment.

### ***Who can survey?***

The authorities who are empowered to conduct survey are CIT, Addl/Joint CIT, Director, Addl/Joint/Asst Director, Assessing Officer and to a limited extent Inspector, if so authorised by anyone of the authorities listed above.

### **Rights of the person surveyed**

The person surveyed has a right to verify the identity of the person, who comes for survey, He can resist any attempt by the survey officer, to take away stock, cash, valuables, etc. as they do not have any such power'- He has a right to get a receipt for books of account, documents, etc. impounded during a survey.

### **Powers of survey authority**

The Income Tax authority, after entering the premises for survey is empowered (i) to inspect the books of account or other documents found in the place of survey;

- (ii) to place marks of identification on the books of account or other documents .so inspected by him;
- (iii) to make or cause to be made extracts or copies from account books, documents, etc.;
- (iv) to check or to verify the cash, stock or other valuable articles or things found in the place of survey;
- (v) to make an inventory of such cash, stock, etc;
- (vi) to record statement of any person found in the survey premises;
- (vii) to impound books of account w,e,f. 1.6.2002.

However, the above powers are subject to limitations An Inspector does not have the right in respect of items (d), (e), (f) and (g) mentioned above. The I-T authority has no power to seize cash, stock, other valuables, etc. found in the premises surveyed.

### ***Duties of the person surveyed***

The assessee or his employee or any other person at the time and place of survey attending or helping in carrying on the business should afford necessary facilities (i) to inspect the books of account or other documents (whether maintained in a written form or on computer in view of Sec. 2(12A) inserted w.e.f. 1.6.2001); (ii) to check and verify the stock, cash and other valuable articles; (iii) to furnish such information as required by the survey officer; (iv) to answer questions which the Survey Officer puts to

him while recording his statement in the course of survey.

*Which premises could be surveyed?*

An I-T authority, empowered to survey, can enter any place within the limit of their territorial jurisdiction or any place occupied by an assessee over whom he has jurisdiction or any place in respect of which he is authorised by any other authority having jurisdiction over the assessee.

The authority can enter a building or place where business or profession is carried on and in case the books of account, documents, cash, stock or other valuable articles or things relating to his profession or business are kept in some other place, such as the accounts office, god own, warehouse, etc.

The authority has no power to enter the residential premises except in cases where the assessee himself states that the cash, stock, valuables, etc. are kept at such residence

### **Time of survey**

*The survey authority can enter and survey during the normal working hours of the business or profession. However, if the account books, cash, stock etc., are kept at place(s) other than the place of business, then the survey authority can enter such premises only after sunrise and before sunset. In case the business is carried out after sunset, the survey authority is empowered to conduct the survey.*

If the premises to be surveyed are found locked, the survey authority has no power to compel the person concerned to open or break open or to seal it. Entry can only be made when the premises are open and that too during the working hours as specified above.

### ***Survey to collect information about expenditure u/s 133A(5)***

The department has been empowered to collect information from any person, who has made substantial expenditure on any marriage, function ceremonies or events. The information can be gathered not only from the person concerned but also from other persons who in the opinion of the authority are likely to possess information in respect of the expenditure incurred. This information may be collected at any time after such function, ceremony or event.

### **Converting a survey into search**

This is unusual but certainly done. If during the survey operation, information comes in the possession of the department which leads to formation of a reasonable belief that the conditions for authorising action u/s 132(1) exist, the department has a right to take action u/s 132.

### ***Caution consultants***

The relationship between a consultant and a client is one of highest confidence and trust. A consultant should certainly help his client come out of a mess and determine the legitimate tax required to be offered for taxation. However, he should not get emotionally involved and must know what to do; else he may well be trapped into a surveyor search at his own place while endeavoring to save his client.