

Understanding IT Search And Seizure Process

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The powers for search and seizure are resorted to by the Income Tax Department when there is evidence of undisclosed documents or assets which have not been and would not be disclosed in ordinary course. The procedure and powers relating to search are described in section 132 of the IT Act 1961. Duly authorised officers of the Department have authority to search residential premises, business premises, vehicles, bank lockers etc., and to seize the books of accounts, stocks, valuables etc. They can also, under section 132A, requisition books of accounts, valuables etc., seized by other departments of the Government of India for investigations under IT Act.

Pre-Search exercise

- (a) Identifying a particular case for search, operation starts from gathering necessary information to justify a search. The sources are informers, other government departments, newspapers, magazines and internal information such as non-compliance of notices/summons.
- (b) Informers are the main source and they are given recovery based ad-valorema awards. The most effective informers are disgruntled employees, partners, directors, family members and business rivals.
- (c) Before striking at a target by way of a search, the investigation wing does gather the following information:
 - (i) Nature of business and modus-operandi of concealment.
 - (ii) Particulars of benami business and investment.
 - (iii) Exact location from which incriminating documents and valuables are likely to be recovered and form of it.
 - (iv) Number of floors, rooms, concealed chambers.
 - (v) Details of bank accounts and lockers.

Rights of the search party

- (i) To enter and search any building, place, vessel, vehicle or aircraft mentioned in the search warrant.
- (ii) To requisition the services of any police officer or of any officer of the Government to assist it in the search and seizure action including obtaining ingress into any building etc. where the same cannot be peacefully obtained, or stopping of any moving vehicle, vessel or aircraft.
- (iii) Breaking open of any outer or inner door or window of any building, place, furniture etc.
- (iv) To call upon two or more respectable persons to witness the search.
- (v) To break open the lock of any door box, locker; safe, almirah or other receptacle where the keys thereof are not made available within a reasonable time on demand thereof
- (vi) To search any incoming and outgoing person where there is reason to suspect that such person has secreted about his person any books of account, valuable, etc.
- (vii) To refuse permission to leave the premises on being asked by the owner or occupied:
- (viii) To serve a prohibitory order on the person, including a banker; in control and/or possession of the books of account, articles or thing' etc.
- (ix) To place marks of Identification on any books of account or other documents or to make extracts or copies therefrom.
- (x) To make inventory of any undisclosed money, bullion, jewellery or other valuable article or thing found, whether seized or not.

- (xi) To examine and to record the statement of the person concerned or any other person in the premises under section 132(4) at the time of the search.
- (xii) To call for the assistance of technical experts like valuers, etc.
- (xiii) To seize any book of account (including data in electronics mode), documents, undisclosed money, bullion, jewellery etc., found as a result of the search.

Rights of the person searched

- (a) To insist on seeing the warrant of authorisation and official identification of each member of the search party.
- (b) To have atleast two independent and respectable residents of the locality as witnesses.
- (c) To conduct a personal search of all members of the party before the start of the search and after the conclusion of the search.
- (d) To insist on a personal search of females by another female only with strict regard to decency.
- (e) To demand the presence of an authorized representative at the time of the search. However, the absence of the authorised representative would not prevent the search party from proceeding with the search. The consultant can remain present during the search and seizure proceeding; but he cannot obstruct or interfere in the conduct of the proceeding; in any manner.: While recording of the statements, he cannot suggest any answers or prompt. His role should be pro-active but passive with a view to assist the search party to correlate with Income Tax and/or Wealth Tax Returns, Balance Sheet etc.
- (f) To have a copy of the 'panchanama' together with all the annexures.
- (g) To put his own seal on the packages containing the seized assets.
- (h) Woman having the occupancy of an apartment to be searched, has the right to withdraw before the search party enters, if; according to custom, she does not appear in public.
- (i) To seek medical help if necessary.
- (j) To have children permitted to go to school after necessary checks.
- (k) To inspect the seals placed on various receptacles sealed in course of search.
- (l) To have the facilities of having meals, etc. during the normal time.
- (m) To insist that the person will subject himself to the examination by the search party only after taking proper rest, in a case where the search has continued till the early hours of the next day.
- (n) To object to the regularity in the conduct of the search, if any, and to record such objections in writing.
- (o) To have a copy of any statement, seized document, books, loose papers etc., before it is used against him in any assessment or prosecution proceeding;.

Retraction of confession, surrender etc., made in recorded statement.

- (a) Ideally, one should avoid retractions. But if it has to be made, it should be made promptly and be made by an affidavit. It is also advisable to explain attendant circumstances.
- (b) Retraction from confession, surrender made u/s 132(4) during search proceeding; or even u/s 131 has been upheld in the undernoted decision: (1) 91 ITR 18 (S.C) Mangode Rubber Produce Co. Ltd Vs. State of Kerala.
 - (ii) 88 ITR 293 Kishan Lal Shiv Chand Rai Vs. CIT (PNH)

Power of arrest

It has been held that the I-T authorities, during the course of Search have no power to arrest or to detain a person in their custody. (L.R Gupta Vs. UOI 194 ITR 32 Del.).