

Income-Tax Survey: 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.

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 after recording his reason for so doing.

. The I-T authority has no power to seize cash, stock, other valuables, etc. found in the premises surveyed.

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, residential premises etc.

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.