

Chapter 8 : Search & Seizure

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| Sec 133A Power of Survey | |

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Space for Important Points / Notes

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| Search & Seizure | | |
|-----------------------------------|---|---------|
| IMPORTANT | NOT SO IMPORTANT | OMITTED |
| 131 Power of Discovery | 132A Requisition | 130 |
| 132 Search | 133 Power to call info | 130A |
| 132B Application of Seized Assets | 134 Power to Inspect Register | 137 |
| 133A Survey | 135 Power of CCIT/DGIT | |
| 153A/C Assessment | 136 Proceeding shall be Judicial proceeding | |
| 153B Time limit to complete ass. | 138 Other power | |
| 292C } Presumptions | | |
| 292CC } | | |

Sources of Information to Department

- 1) CASS 2) Assessment 3) Info from other authorities 4) TRACES 5) SFT

Sec 285BA Specified Financial Transaction(SFT)

Sec 285BA(1) - Any person, being—

- a) an assessee; or
- b) the prescribed person in the case of an office of Government; or
- c) a local authority or other public body or association; or
- d) the Registrar / Sub-Registrar appointed u/s 6 of Registration Act, 1908; or
- e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 ; or
- f) the Post Master General as referred to in clause (j) of sec 2 of the Indian Post Office Act, 1898; or
- g) the Collector referred to in clause (g) of sec 3 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (30 of 2013) ; or
- h) the recognised stock exchange referred to in clause (f) of sec 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ; or
- i) an officer of the Reserve Bank of India, constituted u/s 3 of the Reserve Bank of India Act, 1934 ; or
- j) a depository referred to in clause (e) of sub-sec (1) of sec 2 of the

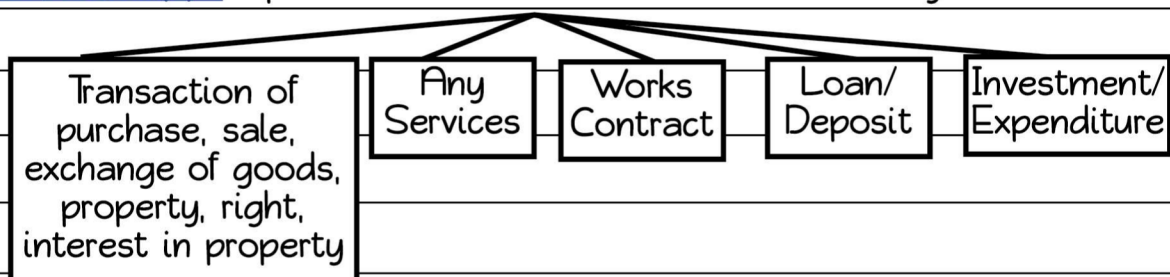
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Depositories Act, 1996 ; or

- k) a prescribed reporting financial institution; or
- l) person, other than those referred to in clauses (a) to (k), as may be prescribed,

who is responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed, under any law for the time being in force, shall furnish a statement in respect of such specified financial transaction or such reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of this Act, to the income-tax authority or such other authority or agency as may be prescribed.

Sec 285BA(3) - "specified financial transaction" means any—



which may be prescribed.

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction. **Prescribed - aggregate value is not less than 50,000**

Sec 285BA(4) - Where the prescribed income-tax authority considers that the statement furnished under sub-sec (1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of 30 from the date of such intimation or within such further period which, on an application made in this behalf, the said income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of thirty days or, as the case may be, the

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further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the provisions of this Act shall apply as if such person had furnished inaccurate information in the statement.

Sec 285BA(5) - Where a person who is required to furnish a statement under sub-sec (1) has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding 30 days from the date of service of such notice and he shall furnish the statement within the time specified in the notice.

Sec 285BA(6) - If any person, having furnished a statement under sub-sec (1), or in pursuance of a notice issued under sub-sec (5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall within a period of ten days inform the income-tax authority or other authority or agency referred to in sub-sec (1), the inaccuracy in such statement and furnish the correct information in such manner as may be prescribed.

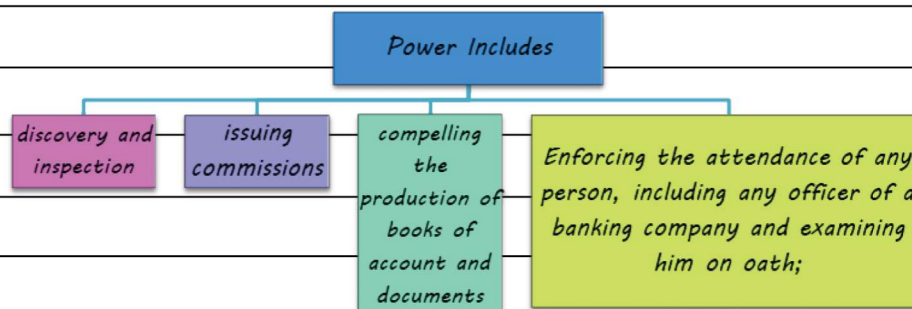
Sec 131(1) Discovery, Production of Evidence

The AO, Deputy Commissioner (Appeals), Joint Commissioner, CIT (A), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-sec (15) of sec 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of following matters:—

- a) discovery and inspection;
- b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- c) compelling the production of books of account & other documents; and

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d) issuing commissions.



Non Compliance to attract Penalty of ₹10k for each such failure u/s 272A(1)(C)

While exercising these powers, the authorities act in a quasi-judicial capacity & ought to conform to the principles of judicial procedure Section can be used when: Before he takes action for search, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in sec 131(1) . Authority have powers u/s 131(1) for making an inquiry or investigation in respect of any person to an agreement for exchange of information u/s 90 or 90A, (DTAA) even if no proceeding is pending before it or any other income-tax authority w.r.t the concerned person or class of persons [Sec 131(2)].

| Sec.135 Power of Authority | Sec.134 Power to inspect company's register |
|---|---|
| PDGIT/DIT/CCIT/CIT/JC | AO/DC/JC/CIT(A)/any person subordinate |
| ↓ | to him may inspect & if necessary take |
| shall be competent to make enquiry under this Act | copies of any register of |
| ↓ | > Member |
| They shall have all powers of AO | > Debenture Holder |
| | > Mortgage (Charge Register) of company or entry in such register |

Sec 131(2) Calling Information u/s 90 & 90A

For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in sec 90 / 90A, it shall be competent for any income-tax authority not below the rank of Assistant CIT, as may be notified by the Board

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in this behalf, to exercise the powers conferred under sub-sec (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

Sec 131(3) Impounding of Books & Documents

The Income-tax authorities, the Dispute Resolution Panel referred to in section 144C and the income tax authority notified by CBDT u/s 131(2), may impound and retain it in its custody for such period as it thinks fit, any books of account or other documents produced before it in any proceedings under the Act. However, the AO shall not:

- i) impound any books of account or other documents without recording his reasons for doing so or
- ii) retain in his custody any such books of accounts for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Chief CIT or CIT, as the case may be.

Sec 136 Proceeding shall be Judicial Proceeding

Proceeding before ITA shall be Judicial Proceeding & every ITA shall deemed to have power of Civil Court for the purpose of Sec 195

Sec 292C Presumption as to assets, books of account, etc.

where BOA + Document + Assets is found in the possession of Assessee/any person in search u/s 132 or Survey u/s 133A



It may be presumed that

- a) It belongs to Assessee
- b) Content of the Books + Document are true
- c) Signature, or any part of the book, handwriting belongs to Assessee