

8. SEARCH AND SEIZURE

then,—

A) the Principal Director General / Director General / Principal Director / Director / the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner, as the case may be, may authorise any Additional Director / Additional Commissioner / Joint Director, Joint Commissioner, Assistant Director / Deputy Director, Assistant Commissioner / Deputy Commissioner / Income-tax Officer, or

B) such Additional Director / Additional Commissioner / Joint Director, / Joint Commissioner, as the case may be, may authorise any Assistant Director / Deputy Director, Assistant Commissioner / Deputy Commissioner / Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—



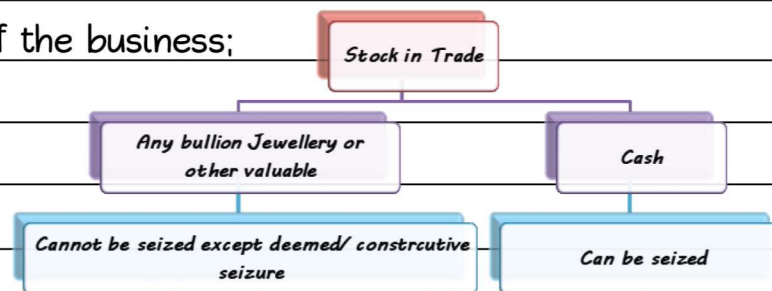
- i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- iiia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- iiib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information

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Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;

- iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;



- iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

- v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article / thing under clause (iii)

Provided also that nothing contained in the above mentioned proviso shall apply in case of any valuable article/thing, being stock-in-trade of business.

Provided also that no authorisation shall be issued by the Additional

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Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

Explanation - It is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Sec 132(1A) - Where any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Principal Director General or Director General or Principal Director or Director or any other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

Explanation - It is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Sec 132(2) - The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him

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for all or any of the purposes specified u/s 132(1) / 132(1A) and it shall be the duty of every such officer to comply with such requisition.

Sec 132(3) - The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation - It is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

Sec 132(4) - The authorised 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, jewellery 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, 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, or under this Act.

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Sec 132(4A) - 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) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- ii) that contents of such books of account & other documents are true; and that the signature and every other part of such books of account and
- iii) 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.

Sec 132(8) - The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding thirty days from the date of the order of assessment u/s 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention is obtained.

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director shall not authorise the retention of the books of account and other documents for a period exceeding 30 days after all the proceedings under the Indian Income-tax Act, 1922, or this Act in respect of the years for which the books of account or other documents are relevant are completed.

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Sec 132(8A) - An order u/s 132(3) shall not be in force for a period exceeding 60 days from the date of the order.

Sec 132(9) - The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

Sec 132(9A) - Where the authorised officer has no jurisdiction over the person referred to in clause (a) / (b) / (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sec 132A & 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the AO having jurisdiction over such person within a period of 60 days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer u/s 132(8) / (9) shall be exercisable by such Assessing Officer.

Sec 132(9B) - Where, during the course of the search or seizure or within a period of 60 days from the date on which the last of the authorisations for search was executed, the authorised 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 Principal Director General or Director General or the Principal Director or Director, 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.

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Sec 132(9C) - Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of 6m from the date of the order referred to in sub-section (9B).

Sec 132(9D) - The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of 60 days from the date of receipt of such reference.

Sec 132(10) - If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

Sec 132(13) - The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

Sec 132(14) - The Board may make rules in relation to any search or seizure under this section; in particular, & without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

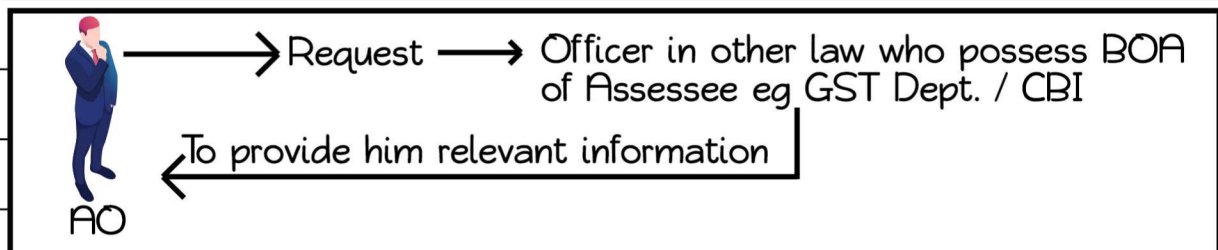
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- i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1 - For the purposes of sub-sections (9A), (9B) and (9D), with respect to "execution of an authorisation for search", the provisions of sub-section (2) of section 153B shall apply.

Explanation 2 - In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922, or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

Sec. 132A Powers to requisition books of account, etc.



Sec 132A(1) - Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—

- a) any person to whom a summons u/s 37(1) of the Indian Income-tax Act, 1922, or u/s 131(1) of this Act, or a notice u/s 22(4) of the Indian Income-tax Act, 1922, or u/s 142(1) of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other