

## 8. SEARCH AND SEIZURE

<p>Hemant Kumar Sindhi &amp; Another v. CIT (2014)</p>	<p>Question: Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?</p> <p>AO View: The High Court observed that section 132B(1)(i) uses the expression "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallized by adjudication; Likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.</p>
<p>Kathiroor Service Co-operative Bank Ltd. v. CIT(CIB) (2014)</p>	<p>Held: Assessee Contention is Not Correct.</p> <p>Question: Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?</p> <p>Held: The Supreme Court held that information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, the assessing authority had not erred in issuing the notices to assesseees requiring them to furnish information regarding account holders with cash transactions or deposits of more than ₹ 1 lakh. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.</p> <p>The Finance Act, 2017 has amended the second proviso to section 133 to provide that the power in respect of an inquiry, in a case where no proceeding is pending, can be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/PCIT/Commissioner.</p>

### Multiple Choice Questions

- 1) When notice is issued to an assessee u/s 153A with respect to search, return should be filed for minimum -----years & maximum -----years preceding the AY
- a) 3,6      b) 6,10      c) 4,6      d) 3,10

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- 2) Time limit for assessment u/s 153A with respect to search if last of authorization for search u/s 132 or for requisition u/s 132A was executed during FY is-----from the end of FY in which last of authorization for search u/s 132 or 132A was executed  
a) 12M    b) 18M    c) 21M    d) 24M
- 3) If any money, any books of accounts belongs to any person other than the person referred to in Sec 153A, then the books of accounts or asset seized shall be handed over to-----  
a) Assessing Officer having jurisdiction over such other person  
b) Person referred to in Sec 153A  
c) Person whose books of accounts were seized  
d) Should be kept by Assessing Officer who seized such things
- 4) Sec 153D provides that assessment of search cases in respect of each AY referred to in Sec 153A shall not be made by an Assessing Officer below the rank of -----  
a) JCIT    b) CIT    c) Additional Director    d) Assistant Commissioner  
Answer : 1) b    2) b    3) a    4) a

### For your Practice - Solved Questions

- P1 A search as per section 132 of the Act was conducted on 02-01-2021 & cash ₹40 Lakhs was seized. The assessee moved an application on 30-01-2021 to release such cash with explanation of the nature and sources thereof, which was turned down by the department. Now, the assessee seeks your advice on whether the department can withhold the explained money? If yes, then to what extent and upto what period?

#### Solution

As per section 132B, where the person concerned makes an application to the AO, within 30 days from the end of the month in which the asset was

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seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the AO, then, the AO may, with the prior approval of the Chief CIT / CIT, release the assets after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. Such asset or portion thereof has to be released within 120 days from the date on which search u/s 132 was completed.

In the present case, since the application was made to the AO on 30.1.2020 i.e., within the 30 days period, the amount of existing liability may be recovered out of the cash seized and the balance cash may be released within 120 days from the date on which search u/s 132 was completed.

Note - As per section 132B, one of the conditions for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the AO. However, in the facts of the question, it has been given that the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the cash cannot be released, since the condition mentioned above is not satisfied.

### Know Your Exams - Unsolved Questions

P1 The Director General of Income Tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income Tax correct? If not, does the Director General of Income Tax have any other power to seize such cash?

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- P2 The premises of Ganesh were subjected to a search u/s 132 of the Act. The search was authorized & warrant was signed by Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.
- P3 Examine whether the information regarding possession of unexplained assets & income received from the Central Bureau of Investigation, a Government agency, can constitute "information" for action u/s 132. Discuss.
- P4 In the course of search operations u/s 132 in the month of July, 2020, a tax payer makes a declaration u/s 132(4) on the earning of income not disclosed in respect of P.Y.20-21. Can that statement save the tax payer from a levy of penalty, if he is yet to file his return of income for A.Y.?
- P5 Cash of ₹25 lacs was seized on 12.9.2020 in a search conducted as per sec 132 of the Act. The assessee moved an application on 27.10.2020 to release such cash after explaining sources thereof, which was turned down by department. The assessee seeks your opinion on, the following issues:  
(i) Can the department withhold the explained money?  
(ii) If yes, then to what extent and upto what period?
- P6 The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched u/s 132 by DDI, Delhi. The search was concluded on 9.8.2020 and following were also seized besides other papers and records:  
i) Papers found in the drawer of an accountant relating to Shri Krishna Ltd.,

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Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.

ii) Jewellery worth ₹5 lacs from the bed room of one of the director, which was claimed by him to be of his married daughter.

iii) Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16.4.2016 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.

You are required to answer on the basis of aforesaid and the provisions of Act, following questions:

- a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?
- b) Whether the contention raised by the director as to jewellery found from his bed-room will be acceptable?
- c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?
- d) Can the company move an application for settlement of case as per Chapter XIX-A of the Act?

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Space for Important Points / Notes