








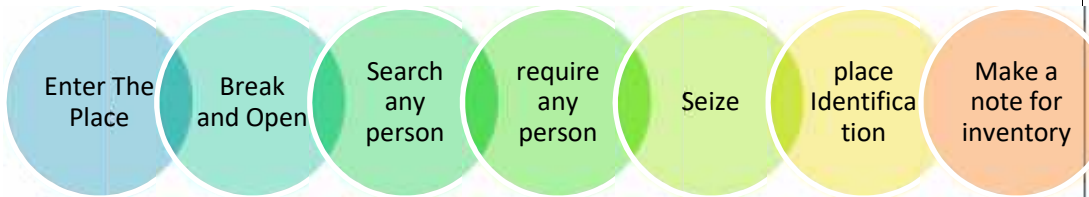
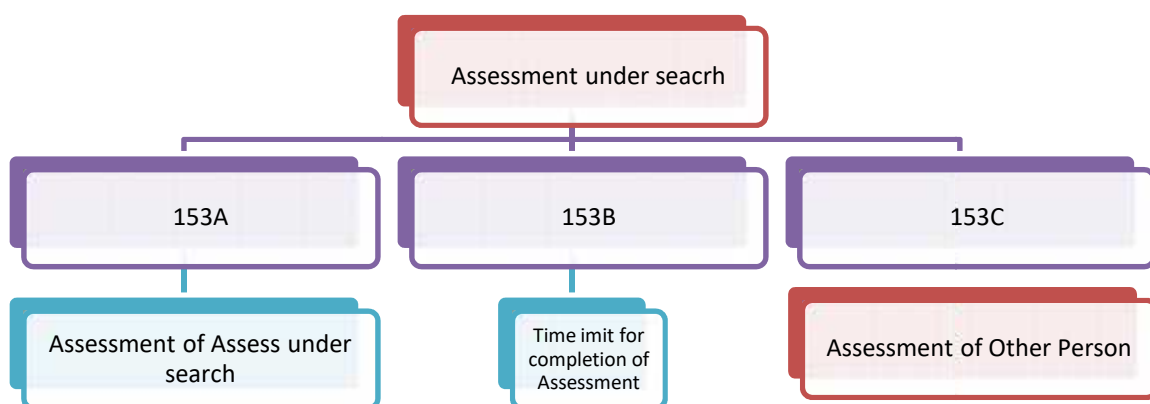






Search and Seizure

133A	Survey	<p>Authority: CIT/DIT/JC/JD/AD/DDIT/ITO/TRO</p> <p>Jurisdiction:</p> <ul style="list-style-type: none"> any place within <u>area assigned</u> to ITA, or any place of whom the ITA exercises jurisdiction, or any place in respect of which he is authorised Any place at which activity for charitable purpose is carried on [not religious]. <p>Time of Survey:</p> <table><tr><td>Business Place [also include other place where books are kept]</td><td>only during the hours at which such place is open for the conduct of business or profession</td></tr><tr><td>Other Place [Including charitable place]</td><td>only after sunrise and before sunset</td></tr><tr><td>Place of function ceremony or event</td><td>Any time after such function or ceremony</td></tr></table> <p>Even CA office can be surveyed if books are kept there. However they cannot obtain the copies of other person[S.R.Batliboi (SC)]</p> <p>Power of person under survey:</p> <ul style="list-style-type: none"> place marks of identification on the books of account extracts or copies therefrom, Impound and retain[Max 15 days without approval] make an inventory of any cash, stock or other valuable article or thing checked or verified by him record the statement of any person which may be useful for, or relevant to, any proceeding under this Act. <p>Romancing Analysis</p> <p>1. They do not have to take statement on oath. However if they refuse to cooperate then statement can be recorded on oath u/s 131.</p> <p>Only books/other document can be impounded. However assets and cash could not be impounded.</p>	Business Place [also include other place where books are kept]	only during the hours at which such place is open for the conduct of business or profession	Other Place [Including charitable place]	only after sunrise and before sunset	Place of function ceremony or event	Any time after such function or ceremony
Business Place [also include other place where books are kept]	only during the hours at which such place is open for the conduct of business or profession							
Other Place [Including charitable place]	only after sunrise and before sunset							
Place of function ceremony or event	Any time after such function or ceremony							
133A[2]	TDS Survey	<p>This survey is done by Income Tax Authorities</p> <p>Time for conduct: after sunrise and before sunset</p> <p>Premises covered: Business premises/place where books are kept/record/documents are kept.</p> <p>Survey party cannot:</p> <p>Impound the book/records/documents</p> <p>Make inventory of cash/stock/other valuables</p>						
133A[5]	Survey of Expenditure	<p>Survey is conducted to collect information in connection with any function, ceremony or event,</p> <p>Can be conducted only after the function or event .</p>						
133B	Power to	ITA for collecting any information enter—						

	Collect Information	<p>✎ any building or place within the limits of the area assigned to such authority ; or</p> <p>✎ any building or place occupied by any person in respect of whom he exercises jurisdiction</p> <p>at which a business or profession is carried on, whether such place be the principal place or not of such business.</p> <p>Time: only during the hours at which such place is open for the conduct of business or profession</p> <p>For the removal of doubts, it is hereby declared that an ITA acting under this section shall, on no account, remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing</p>
132	Search	<p>Reasons:</p> <ol style="list-style-type: none"> 1. There exist past/ possible non compliance of notice u/s 142(1) or 131(1). 2. There exist Past/ possible non disclosure of money bullion jewellery or other valuable article. <p>Authority: CCIT/DGIT/CIT/DIT/JCIT(if Authorised by CBDT)/JDIT</p> <p>Power:</p>  <p>Deemed Seizure/ Constructive seizure: <i>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 not to deal with the product unless approval is taken</i></p>



153A	Notice of Assessment	✎ AO shall send notice to furnish ROI of all Years preceding 6AY, such return filled shall be deemed to be ROI filled u/s 139[1]
------	----------------------	--

		<p> Such Assessment or reassessment shall be made for 6AY.</p> <p> Any Assessment pending[143/144/147 as on the date of Sending the notice shall Abate. But Appeal/ Revision/Rectification can Continue.</p> <p> once the return is filled u/s 153A AO shall serve a notice u/s 143(2) within 6 month from the end of FY in which such return is filled [Hotel Blue Moon (2010)[SC]</p> <p> Sec.153B: Time Limit to Complete: 21 M/33M [If Reference to TPO] from the end of Fy in Which search is completed.</p>						
153C	Assessment of other person	<p>✦ AO shall handover the Book, Info etc belongs to Assessee he do not exercise jurisdiction then he shall handover all such material to AO having Jurisdiction.</p> <p>✦ As per Manish Maheshwari (2007)(SC) The satisfaction shall be recorded in writing. Even if the AO of person searched and that of other person is same [Cir.24/2015].</p> <p>✦ Sec.153B Time Limit to complete Assessment: 9 M/21M [If Reference to TPO] from the end of Fy in Which search is completed.</p>						
Remedies against 153A/153C		<p>Remedies against 153A/153C:</p> <p>a) Appeal to CIT(A) u/s 246A</p> <p>b) Rectification u/s 154</p>						
Penalty		<table><tr><td colspan="2">Penalty u/s 271AAB. For undisclosed Income/Assets-Conducted after 15/12/2016</td></tr><tr><td>If undisclosed income is admitted during the course of search in the statement furnished under section 132(4).</td><td>30%</td></tr><tr><td>Otherwise</td><td>60%</td></tr></table>	Penalty u/s 271AAB. For undisclosed Income/Assets-Conducted after 15/12/2016		If undisclosed income is admitted during the course of search in the statement furnished under section 132(4).	30%	Otherwise	60%
Penalty u/s 271AAB. For undisclosed Income/Assets-Conducted after 15/12/2016								
If undisclosed income is admitted during the course of search in the statement furnished under section 132(4).	30%							
Otherwise	60%							

Relevant case Law

Case Laws	
<i>UOI v Ajit Jain [2003]</i>	<p>Question: Whether Information given by CBI constitute Information for the purpose of Search?</p> <p>Held: That mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute “information” within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.</p>
<i>Hemant Kumar Sindhi & Another v. CIT (2014)</i>	<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</p>

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.**

Held: Assessee Contention is Not Correct.

**Kathiroom
Service Co-
operative
Bank Ltd. v.
CIT (CIB)
(2014)**

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?

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 assessees 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.

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/Principal Commissioner/Commissioner.