

SEARCH AND SEIZURE

SECTION 132: PROCEDURE OF SEARCH AND SEIZURE

1. WHO CAN AUTHORISE SEARCH & SEIZURE i.e. issue search warrants:

Director General or Director or Chief Commissioner or Commissioner can issue search warrants. Such Additional Director or Additional Commissioner or Joint Director or Joint Commissioner as may be empowered by CBDT, can also issue search warrants.

2. WHEN CAN SEARCH & SEIZURE BE AUTHORISED

The above authorities, on the basis of information in their possession, have reasons to believe that:

- (a) the person to whom a **summon or notice** was issued to produce books of account or other documents under **section 131 or section 142(1)**, **has failed to do so**; or
- (b) a person to whom a **summon or a notice under section 131 or section 142(1) has been or might be issued**, will not or would not, produce any books of account or other documents; or
- (c) a person is in possession of any articles or things, including money bullion or jewellery etc. and these assets represents either wholly or partly the income **which has not been or which would not be disclosed by him**.

The reasons to believe recorded under this section shall not be disclosed to any person or any authority or the Appellate Tribunal.

3. POWERS OF AUTHORISED OFFICER IN COURSE OF SEARCH & SEIZURE:

Following are the powers of authorized officer:

- (i) **enter and search** any building, place, vessel, vehicle or aircraft where he has reasons to suspect that such books of account, money, etc. are kept;
- (ii) **break open the lock** of any door, box, locker, safe, almirah, where the keys thereof are not available.
- (iii) **search any person who has got out of, or is about to get into, or is in, the building, vessel, place, vehicle** or aircraft, if the Authorised Officer has reasons 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.
- (iv) **require any person who is in control of any books of account maintained in the form of electronic record, to provide the password.**

- (v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. **However, stock in trade cannot be seized.**
- (vi) place identification marks or make copies of books of account.
- (vii) make a note/ inventory of money, bullion or any other valuable item.

Note 1: Deemed/ Constructive Seizure: 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 order that it should not be removed, parted with or otherwise dealt with it except with officer's previous permission. Such action shall be **deemed to be seizure of such valuable article or thing**. However, deemed / constructive seizure shall **not be made of any stock in trade** of the business.

Note 2: Section 132(3) [Order of Restraint] - 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 mentioned in Note 1 above, the officer may serve an order on the owner or the person who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with his previous permission. **Such an order shall be in force for a maximum period of 60 days.**

4. A non-jurisdictional CCIT/ CIT may authorize to conduct the search if he has reasons to believe that delay in getting approval from jurisdictional CCIT/ CIT may prejudicial to Revenue's interest. However, such reasons shall not be disclosed to any person/ Authority or Appellate Tribunal.

5. **PRESUMPTIONS IN COURSE OF SEARCH AND SEIZURE:**

Where any books of account, other documents, money, bullion, jewellery and other valuable article is found in the possession or control of any person in course of a search, it may be presumed that –

- (i) such items **belongs to such person**;
- (ii) **contents of such books/ documents are true**; and
- (iii) **signature and every other part of such books/ documents which purport 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 the same was done by the person by whom it purports to have been so executed.

The above presumptions shall also apply in survey under section 133A and requisition under section 132A.

6. **PERIOD OF RETENTION OF BOOKS OF ACCOUNT AND OTHER DOCUMENTS:**

The books of account or other documents seized under section 132 shall not be retained beyond a period exceeding 30 days from the date of the order of assessment or reassessment under section 147 unless the reasons for retaining the same are recorded by him in writing and approval of CCIT/ CIT for such retention is obtained.

7. The Non-jurisdictional Authorised Officer shall hand over the books of account or assets seized to the jurisdictional Assessing Officer within 60 days from completion of search.

AMENDMENT BY FINANCE ACT, 2022 IN SECTION 153

As per section 153(2), in case of a search under section 132, the assessment or reassessment under section 147 shall be completed within 12 months from the end of the Financial Year in which notice under section 148 is served.

Where the Authorised Officer has no jurisdiction over the person searched by him, then the time period of making assessment or reassessment under section 147 shall be **increased by the period commencing from the date on which search is initiated under section 132 and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 are handed over to the Assessing Officer having jurisdiction over the assessee.** This period of extension shall not, however, exceed 180 days.

For example: A search is initiated under section 132 by Assessing Officer in Mumbai on 01.01.2023. Cash & jewellery of ₹ 10 crores and books of account are seized. The jurisdiction of assessee is with Assessing Officer in Delhi. Notice under section 148 is served on the assessee on 15.01.2023. The Assessing Officer in Mumbai hands over the cash, jewellery and books of account to the Assessing Officer in Delhi having jurisdiction over the assessee on:

Case I 15.02.2023

Case II 15.07.2023

Now, as per the amendment in section 153 by Finance Act, 2022, the time period for completion of assessment/ reassessment under section 147 as per section 153(2), which is 31.03.2024 shall be increased as under:

Case I 31.03.2024 + (01.01.2023 to 15.02.2023)
= 16.05.2024

Case II 31.03.2024 + (01.01.2023 to 15.07.2023) restricted to 180 days
= 27.09.2024

8. SECTION 132(9B): PROVISIONAL ATTACHMENT:

During the course of search or within 60 days from completion of search, the Authorised Officer, subject to he being satisfied that for the purpose of protecting the interest of Revenue it is necessary to attach the properties of the assessee, and after recording reasons in writing, can provisionally attach any property belonging to the assessee, after taking previous approval of Director General or Director and by passing an order in writing.

9. SECTION 132(9C):

Such provisional attachment shall cease to be effective after expiry of 6 months from the date of the order so passed.

10. SECTION 132(9D):

The Authorised Officer, may, make a reference to the Valuation Officer referred to in section 142A to estimate the fair market value of the property. The Valuation Officer will submit a report of such estimate within a period of 60 days from the date of receipt of such reference.

SECTION 132A: POWERS OF REQUISITION

- Where a search has already been conducted by any officer/ authority under any other law e.g. FEMA, Excise Act, etc.
- the Director General/ Director/ CCIT/ CIT shall authorize the Assessing Officer
- to make **requisition to the officer/ authority under any other law**
- to deliver books of accounts and assets seized to the Assessing Officer
- as early as possible.
- When these books of account and assets are delivered to Assessing Officer, it shall be **deemed that such books and assets have been seized by Assessing Officer under section 132** and all other provisions of search & seizure shall apply.

SECTION 132B: APPLICATION OF SEIZED ASSETS

The assets seized under section 132 may be dealt with in the following manner, namely: —

- (i) - The amount of existing liability under the Income-tax Act ("existing liability" shall not include advance tax)
- **The amount of liability determined on completion of assessment or reassessment under section 147** and the assessment of the Assessment Year relevant to the previous year in which search is initiated (including any penalty levied or interest payable in connection with such assessment or reassessment)

MAY BE RECOVERED OUT OF SUCH ASSETS

Note: Where the person concerned makes an application to the Assessing Officer within **30 days from the end of the month in which the asset was seized**, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the CCIT/CIT, to the person from whose custody the assets were seized.

For example, out of the cash seized of ₹ 200 Lakhs, the assessee explains to the satisfaction of Assessing Officer that ₹ 50 Lakhs is explained cash and existing income tax liabilities are ₹35 Lakhs, then the Assessing Officer shall release 15 Lakhs after paying the existing liabilities of ₹ 35 Lakhs.

Note: Such asset or any portion thereof as is referred above shall be released **within 120 days from the date on which the search was completed**.

- (ii) The money seized shall first be used for discharging the above liabilities.
- (iii) If money falls short, then assets may be sold for discharging the above liabilities.

SECTION 292CC: AUTHORISATION AND ASSESSMENT IN CASE OF SEARCH

- 1. It is not necessary to issue an authorisation (search warrant) under section 132 separately in the name of each person;**
- 2. Where an authorisation under section 132 has been issued mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.**
- 3. Notwithstanding that an authorisation under section 132 has been issued mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation.**

Illustration:

Commissioner of Income-tax issues search warrant on 10.10.2022 for conducting the search. In the search warrant, the name of Mr. Ram, Mr. Rajesh, Mr. Kumar and Mr. Johny is mentioned together. The four are business associates. In search, unaccounted cash and jewellery is found as under:

| | |
|------------|-----------|
| Mr. Ram | 50 crores |
| Mr. Rajesh | 20 crores |
| Mr. Kumar | 10 crores |
| Mr. Johny | 16 crores |

Assessing Officer makes the assessment under section 147 for Assessment Year 2017-18 to Assessment Year 2022-23 on the four persons individually. Assessee cannot contend that assessment under section 147 should have been made on AOP of these four persons and cannot challenge assessment on this ground. Now, in view of section 292CC the assessments made under section 147 by Assessing Officer are correct.