

POWER TO CALL FOR INFORMATION AND CONDUCT SURVEY AND ISSUE SUMMONS

SECTION 116: INCOME TAX AUTHORITIES

- (a) **Central Board of Direct Taxes.**
- (b) Directors General of Income-tax or Principal Director General of Income-tax or **Chief Commissioner of Income-tax or Principal Chief Commissioner of Income-tax.**
- (c) Directors of Income-tax or Principal Director of Income-tax or **Commissioners of Income-tax or CIT(A) or Principal Commissioner of Income-tax.**
- (cc) Additional Directors of Income-tax or **Additional Commissioners of Income-tax.**
- (cca) Joint Directors of Income tax or **Joint Commissioners of Income tax.**
- (d) Deputy Directors of Income-tax or Assistant Directors of Income-tax or **Deputy Commissioner of Income-tax or Assistant Commissioners of Income-tax.**
- (e) **Income-tax Officers.**
- (f) Tax Recovery Officers.
- (g) Inspectors of Income-tax.

Note:

In the entire Income tax Act, any reference to any income tax authority specified in column (1) of Table below shall be substituted by income tax authority specified in column (2) of table below:

S. No.	(1)	(2)
1.	Commissioner	Principal Commissioner or Commissioner
2.	Director	Principal Director or Director
3.	Chief Commissioner	Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General
4.	Director General	Principal Director General or Director General

SUMMONS UNDER SECTION 131

(1) The Income tax authorities and Dispute Resolution Panel have the powers vested in a Civil Court while dealing with the 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 and documents; and
- (d) issuing commissions i.e. appointing experts to give report.

These powers can be exercised even if no proceedings with respect to such person is pending before him or any income tax authority.

(2) Income tax authorities (not below AC) notified by CBDT, shall have the powers referred in clause (1) above, for making an inquiry or investigation of any person in relation DTAA or TIEA, even if no proceedings are pending against such person before any income tax authority.

(3) Income-tax authorities or DRP under this section are empowered to impound and retain it in their custody, any books of account or other documents produced before them. [Not beyond 15 days without approval of Chief CIT/CIT]

REQUISITION UNDER SECTION 133: POWER TO CALL FOR INFORMATION

The A.O. or the CIT(A) may require

- any assessee to furnish a statement of names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage or annuity together with the particulars of all such payments.
- any dealer, broker or agent or director of a stock or commodity exchange to furnish a statement of the names and addresses of all persons who have purchased or sold shares or commodities.
- any person, including a banking company or any officer thereof, to furnish information or furnish statement of accounts giving information on various matters which will be useful for or relevant to any INQUIRY OR proceedings under the Act. [Section 133(6)]

Note: REQUISITION under section 133(6) can be made even if no proceeding is pending against the assessee. However, requisition can be made for making an inquiry, in a case where no proceeding is pending, by any A.O., only with the prior approval of CIT. No prior approval is required where inquiry is to be made by the Joint Director or Deputy Director or Assistant Director.

Note: For the purpose of DTAA or TIEA, notified Income tax authorities may exercise all the powers under this section, even if no proceedings are pending against such person before any income tax authority.

SECTION 133B: POWER TO COLLECT INFORMATION

An income-tax authority may for the purpose of collecting any information **enter any building or place at which a business or profession is carried** on, and require any proprietor, employees or any other person to **furnish the prescribed information**.

Notes:

1. The income-tax authority may enter any place of business or profession **only during the working hours.**
2. The income tax authority shall **not remove any books of account or other documents or any cash, stock or other valuable article.**

SECTION 133C: POWER TO CALL FOR INFORMATION BY PRESCRIBED INCOME-TAX AUTHORITY

- (1) For the **purposes of verification of information in its possession** relating to any person, the prescribed income-tax authority may issue a notice requiring him to furnish information or documents verified in the manner specified, on or before the specified date, which may be useful for any inquiry or proceeding under this Act.
- (2) Where any information or document has been received in response to notice, the prescribed income-tax authority may process such information or document **in accordance with the scheme notified under section 135A.**

Note: This power can be exercised even if no proceeding are pending.

SECTION 133A: POWER OF SURVEY

Notwithstanding anything contained in any other provision of the Income-tax Act, an income-tax authority may enter any building or place at which a **business or profession or an activity for charitable purpose** is carried on, and require any proprietor, **trustee**, employee or any other person to -

- (i) afford him the necessary **facility to inspect such books of account or other documents,**
- (ii) afford him the necessary **facility to check or verify the cash, stock or other valuable articles,** and
- (iii) furnish such information as he may require.

Notes:

1. For the purposes of this section, a place where a **business or profession or activity for charitable purpose** is carried on shall also include any other place, in which the person carrying on the **business / profession / activity for charitable purpose** states that any of his books of account or other valuable articles etc. are kept.
2. An income-tax authority may **enter** any place of business or profession referred to above **only during the hours at which such place is open for conduct of business or profession and in case of any other place, only after sunrise and before sunset.**

- 3. An income-tax authority acting under this section may, -**
 - i. place marks of identification on the books of account or other documents inspected by him and make copies therefrom,
 - ii. impound and retain in his custody any books of account or other documents inspected by him after recording his reasons for doing so; [not beyond 15 day without approval of Chief CIT/ CIT]
 - iii. make an inventory of any cash, stock or other valuable article or thing checked or verified by him,
 - iv. record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.
- 4. An income-tax authority acting shall not remove any stock or other valuable article or thing. However, it can impound books and other documents.**
- 5. In connection with any function, ceremony or event, where, having regard to the nature and scale of expenditure incurred by an assessee, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee or any other person, to furnish requisite information and may record statements of the assessee or any other person.**
- 6. If a person does not co-operate in the survey then the income-tax authority shall issue summons under section 131 for enforcing compliance with the requirement made.** [Non-compliance with summon under section 131(1) results in authorization of search and seizure on the assessee].

SECTION 133A(2A): TDS / TCS SURVEY

1. Income tax authorities are empowered to conduct survey for the purpose of verifying whether TDS / TCS has been deducted/ collected and paid.
2. The Income tax Authorities can enter the premises to conduct **survey after the sunrise but before sunset**. They can enter the premises for which they have jurisdiction.
3. The Income tax authorities can inspect books and documents during survey and ask for various documents and information.
4. **However, in TDS/ TCS survey, the Income tax authorities cannot impound the books of account and document. They cannot make inventory of cash, valuables, stock, etc.**
5. **Further, TDS/ TCS survey cannot be conducted on a charitable institution.**

WHO CAN CONDUCT SURVEY

Survey can be done by an Income tax authority only with prior approval of Principal Director General or Director General or Principal Chief Commissioner or Commissioner.

SURVEY ON CHARITABLE INSTITUTIONS

An income-tax authority may now enter any place where an activity for charitable purpose is carried on, whether such place be the principal place of such activity for charitable purpose or not.

Following issues should be noted:

- The amendment extends the power of survey to places connected with activity for charitable purpose. Hence, the **survey cannot be conducted on the places where an activity for religious purpose is carried on**. In other words, temples, mosques, churches, gurudwara, derasar, etc., cannot be surveyed even after the amendment.
- The income-tax authority may enter such place **only after sunrise and before sunset**.
- If the books of account are lying at the residence or office of the trustee or at the residence of the accountant, then even these places could be surveyed under section 133A.
- **TDS/TCS survey cannot be conducted on a charitable institution.**