

BLOCK ASSESSMENT & PENALTY

What is search:-Search is authorized inspection of the premises, vehicle, office, building, aircraft, or any other possession of the owner/person.

What is Seizure:-Seizure is forceful possession of assets under the statute, which owner is unwilling to part with it.

Presearch preparation:-

Satisfactory note:-“Reason to believe” as per sec. 132(1)-Informers, Revenue intelligence.

1.Issue of Warrant:-No blank warrant can be issued.

One of the important provisions of the Constitution of India is Article 265, which provides that **“no tax shall be levied or collected except authority of law”**. Articles 226/ 227 of the Constitution of India provides that the citizens can approach the High Court when their fundamental rights are violated or when powers are exercised in a manner not authorized by the law. Search and seizure is an invasion into the privacy of the individual. A house, hut, home or castle of a person is his /her personal property and no one has a right to enter and disturb the peace without prior permission of the person in occupation. In **R. K. Garg v. UOI (1981) 133 ITR 239 (SC) (255)**, the constitutional Bench observed that *“Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc”*.

2.What is the Object of search?:-

S.132 elaborates the circumstances under which a search and seizure action can be undertaken.

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As per the section 132, a search and seizure action can be undertaken against any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed or would not be disclosed for the purpose of this Act (i.e to unearth undisclosed income or property)

The search and seizure action can also be taken when there is failure to produce books of accounts, documents etc. in respect of summons issued or notice issued under section 143(2)

3. Can survey be converted in to search?

3.1. Under normal circumstances, "no". However, in exceptional cases, "yes".

4. Search and seizures: New ground rules (1986) 159 ITR 1-4 (Journal). New Ground rules for search and seizure, framed in the year 1986, prescribes the guidelines to be followed in the course of a search and seizure.

2. In the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500gms per married lady, 250gms per unmarried lady and 100 gms per male member of the family, need not be seized as per instructions no:-1916 of 11-5-1994.

In this article we will deal with the following points for our discussion:-

1. Notice for the return of income
2. Block Return of income
3. Computation of income for Block years.
4. Presumption and assumptions
5. Payment of taxes and interest for Block years.

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6. Filling of Block return.
7. Procedure and assessment of Block returns.

General procedure for assessment u/s 153A to u/s 153C:-

1. Any search after 31-5-2003
2. Under new scheme total income of an assessee will be determined and not only undisclosed income.
3. Regular tax will be paid u/s 140A
4. Return for immediate six previous years to be filed along with return for seventh year in which search has taken place.
5. A.O. issue notice for all the years.
6. Return for six/seven years to be filed within time frame provided in notice.
7. Fresh return for all six years to be filed.
8. Pending proceedings will get abated.
9. Interest u/s 234A and u/s 234B leviable.
10. Assessment will be completed within two years from the end of the financial year in which last authorization issued.
11. Penalty under the statute will be applicable.
12. Appeal can be filed against the Block assessment u/s 246A.
13. Order passed u/s 153A r.w.s.143(3) can be rectified, reassessed.
14. Application to settlement commission is possible.
15. Prosecution u/s 276CC possible.

Practical guide or check lists after search and seizure and survey FOR ACTION TO BE TAKEN AS Do's and don'ts.

ACTION TO BE FOLLOWED AS (Do's):-

1. Panchanama-Copy must be obtained immediately.
2. Inventory-Copy must be obtained.
3. Copies of documents seized-Make application to furnish the copies seized.

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4. Copies of statements-Make application to furnish copies.
5. Factual error-Valuing stock-Inventory etc- Write immediately to the concerned Officials who have conducted the search or seizure.
6. Goods of Perishable in nature if kept under prohibitory order- Ask to release or sell -If loss is occurred the department is responsible.
7. Adjustment of cash-Ask adjust against tax liability.
8. Disposal of assets seized-Release of assets or sell by the tax department.
9. Damages- File petition for loss due to action of the tax Officials.
10. Retraction- Within reasonable time before the same Officials who have taken the statement. If required copy to higher authorities.
11. If any valuable or documents of third party is seized-Ask the party concerned to make an application for release and claiming the ownership.
12. If any documents or statement is proposed to be used against me, ask for the copies and opportunity for cross examination of the parties who have given statements.
13. Discuss with consultant possibility of approaching Settlement Commission advantages and disadvantages.
14. Co-operate with proceedings

ACTIONS NOT TO BE TAKEN UP Don'ts:-

1. Goods put under prohibitory order cannot be removed.
2. Never mislead on facts.
3. Don't try to destroy the documents or books.

Notice u/s 153A:-

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1. Notwithstanding anything contain in sec. 139,147,148,149,151, and 153 in the case of a person where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A after 31-5-2003
 - a. Issue notice to such person to furnish with in such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause(b).
 - b. Assess or reassess six assessment years immediately preceding the assessment year relevant to the previous year In which such search is conducted-any pending assessment will get **Abated**.
 - c. No direction for pending proceedings such as 1)Appeals 2) Revision 3) Rectification 4) settlement petition 5) penalty proceedings.
 - d. If any proceeding initiated or any order of assessment or reassessment made under sub section(1) has been annulled in appeal or any other legal proceedings, shall stand revived with effect from the date of receipt of the order of such annulment.
 - e. Save as otherwise all the provisions of the statute will be applicable other than sec. 153B and sec. 153C.
 - f. The tax chargeable will be at the rate prevailing in that year.
 - g. No time frame prescribed for submission of return.
 - h. No extension of time for filling of return.
 - i. Return of income will be in prescribed form.
 - j. Return filed u/s 153A can be revised.
 - k. Return of loss, new claims, new deduction, can also be filed.
 - l. Return filed u/s 153A includes already disclosed income as well as undisclosed income for the year.
 - i. Income under different heads.
 - ii. All the provisions of statute applicable.

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- iii. Set off and carry forward of loss available.
- iv. Gross total income includes disclosed income u/s 139(1) and undisclosed income.
- v. Income presumption will also apply.
- vi. All capital gains section applicable.
- vii. DTAA will also apply.
- viii. Deduction under chapter VIA available.
- m. If there is no compliance, AO can complete assessment u/s 144.

Section:-153B:-

1. U/s 153B the assessment for the six assessment years and also of the previous year during which the search is conducted is required to be completed within a period of two years from end of the financial year in which last of the authorization of the search was executed.
2. Two years time limit can be extended for special cases of audit u/s 142(2A).
3. In case of notice u/s 153C, the period of limitation for making assessment or reassessment shall be the period as referred above or one year from the end of the financial year in which books of account, document, assets seized, handed over to the A.O. whichever is later.
4. The time limit can be extended for matters in settlement commission or Advance ruling.

Notice u/s 153C:-

1. If during the course of the search it is notice that any books of accounts, documents, assets, etc, found or seized belong to any person other than the assesses searched, the A.O. shall transfer the same to the officer who has jurisdiction over such other person.

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2. Proceedings will be conducted as per provision of sec. 153A and sec.153B

Notice u/s 143(2) and u/s 142(1):-

1. Notice u/s 143(2) along with notice u/s 142(1) will be issued after notice u/s 153A is issued for asking searched person to submit the requisite details and documents in support of his return of income.

APPROVAL U/S 153D:-

No order of assessment or reassessment shall be passed by an A.O. below the rank of JCIT in respect of each assessment years, except with the prior approval of the Joint Commissioner.

Interest u/s 234A and u/s 234B

1. Interest will be charged for any delay in filling of block return and for short fall in payment of advance tax at the applicable rate for each of six assessment year.

Penalty u/s 271(1)(c):-

1. Penalty u/s 271(1)(c) is applicable for each of the assessment years.

a. Explanation:-5 to sec. 271(1)(c) provides opportunity to assessee to declare undisclosed income earned during the current year in which search has taken place, and return of income is yet to be filed.

b. To show the manner in which undisclosed income earned and has to pay tax on it.

Penalty u/s 271AAA:-

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1. Finance Act, 2007 has introduced new section 271AAA w.e.f.1-4-2007 to effect that penalty in respect of undisclosed income would now be 10% of the undisclosed income, where the assessee has made disclosure u/s 132(4) during the course of search.
2. Give specific method in which the said income is earned, and also pay tax on the same.

Prosecution u/s 276CC

1. Provisions of sec.276CC will be applicable even in respect of assessments made u/s 153A, 153B, and 153C.
 - a. For removal of books of account, documents, bullion, jewellery, money, or other valuable articles or thing without permission.
 - b. Willful attempt to evade tax liability.

21.1. Natural Justice - Right of cross examination - Is integral part of natural justice

Ayaaunhan Noorkhan v. State of Maharstra & Ors AIR 2013 SC 58