

*Presentation on
Search and Survey under
Income Tax Act, 1961*

*By Bharat Agarwal
(Managing Partner)
Acelegal*

Statutory Warning

*“The information contained in this presentation are real and have direct connection with people who are alive and... with some who are dead. All or any resemblance to any person or event is deliberate and with ulterior motive to shock your conscience. **The speaker apologize in advance for being rough, rude and insulting.** Please attend at your discretion.....and peril.*

*No complaints
will be entertained.”*





Satisfaction
Note

Warrant of
Authorisation

Panchanama

Penalty
Proceedings



Statement
Recorded
u/s. 132(4)

Assessment
by AO

Appraisal
Report

Post Search
enquiry

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Summon issued
but
omitted/failed to
produce

No benefit of
issuing summon..
Will not appear

In possession of
money jewellery,
bullion or other
valuable article /
thing



Visa Comtrade Ltd. 338 ITR 343
(Orissa)

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Search Action u/s. 132



FORM NO. 43
(See rule 112)

Warrant of authorisation under section 132 of the Income-tax Act, 1961, and rule 112(1) of the Income-tax Rules, 1962

To
The Deputy Director,
The Deputy Commissioner,
The Assistant Director,
The Assistant Commissioner,
The Income-tax Officer,

Whereas information has been laid before me and on the consideration thereof I have **reason to believe** that -
a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, was issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer, _____ to _____ (name of the person) on _____ (date) to produce, or cause to be produced, books of account or other documents specified in the relevant summons or notice and he has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice;

a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, has been issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax Officer, _____ to _____ (name of the person) on _____ (date) to produce, or cause to be produced, books of account or other documents specified in the relevant summons or notice and he **will not produce or cause to be produced**, such books of account or other documents as required by such summons or notice;

If a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, is issued to _____ (name of the person) to produce, or cause to be produced, books of account or other documents which **will be useful for, or relevant to, proceedings** under the Indian Income-tax Act, 1922, or under the Income-tax Act, 1961, he **would not produce, or cause to be produced**, such books of account or other documents as required by such summons or notice;

Whereas I have **reason to suspect** that such books or account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found in _____ (specify particulars of the building/place/venue/vehicle/aircraft). This is to authorise and require you

(name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner or the Income-tax Officer)-

- to enter and search the said building/place/venue/vehicle/aircraft;
- to search **any person** who has got out of, or is about to get into, or is in the building/place/venue/vehicle/aircraft if you have **reason to suspect** that such person has received about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- to place **identification marks** on such books of account and documents as may be found in the course of the search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents;
- to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof.

- to make a note or an inventory of any such money, bullion, jewellery, or other valuable article or thing;
- to convey such books of account, documents, money, bullion, jewellery or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the exercise of the Income-tax Act, 1961; and
- to exercise all other powers and perform all other functions under section 132 of the Income-tax Act, 1961, and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government, or of India, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act, 1961.

30/4/11

(Signature of Director,
Chief Commissioner of Income-tax or
Deputy Director,
Deputy Commissioner of Income-tax)

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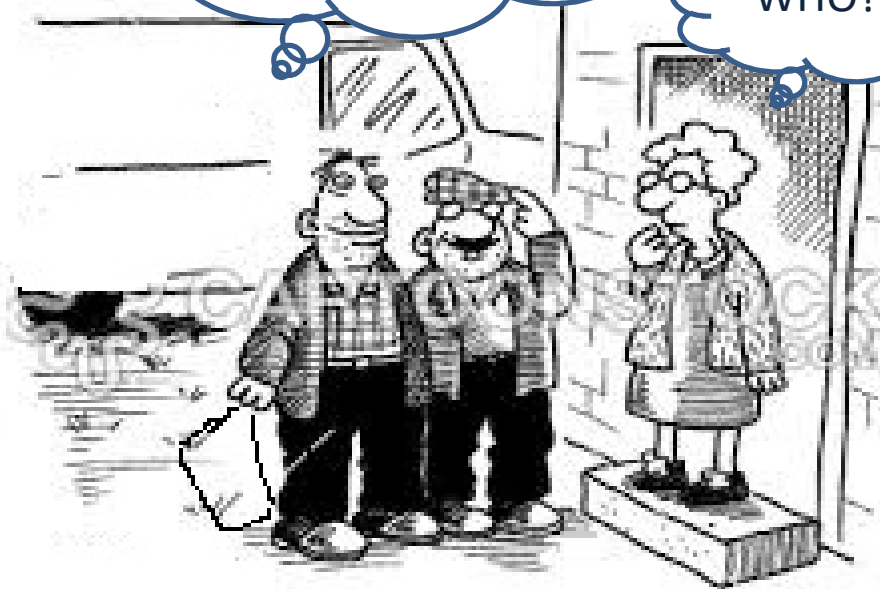
Sibal (H L) vs. CIT [101 ITR 112 (P&H)]

What is the procedure for maintaining confidentiality of warrant?



Income Tax!!!
Having warrant
against "MAN"

WHO???



Is there any restriction
on :
A) Place
B) Time
Of search ?

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Mistaken Identity!!!!

Sorry Sir, I'm not
"MAN"

So What??
Warrant states
your name and
address."!!!!

What is
the
validity of
search in
this case?



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Rights of the Persons searched

- *To insist on personal search of ladies being taken only by lady, with strict regard to decency.*
- *To call a medical practitioner in case of emergency.*
- *To allow the children to go to school, after checking their bags.*
- *To have the facility of having meals, etc., at the normal time.*
- *To have a copy of the panchanama together with all the annexures.*
- *To have a copy of any statement that is used against him by the Department.*
- *To have inspection of the seized books of accounts, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.*

State of Bihar v. Human Rights 205 Taxman 232 (Pat.)

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Preparation of Panchanama

“Love thy
Neighbour”

-Meaning of
“Panchanama”

-Role of
witness



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Party No

PANCHANAMA

(To be prepared in quadruplicate)

A) Warrant in the case of :

B) Warrant to search :
(Details of Ownership
of place of search)

C) (A) and (B) stated to: (A)
be assessed by
(B)

D) Search party consisting of:

Authorized Officers

<u>Name</u>	<u>Full Designation</u>	<u>Name</u>	<u>Full Designation</u>
1. Shri _____	ADFI	3. Shri _____	ITO
2. Shri _____	ITO	4. Miss _____	ITO

Other officials who assisted the authorized officers:

5. Miss _____ Insp	9. Shri _____ Sr. T.A.
6. Shri _____ Insp	10. _____
7. Shri _____ Insp	11. _____
8. Shri _____ Sr. T.A.	12. _____

E) Name and complete address of panchas:

1. Shri _____	2. Shri _____
_____	_____
_____	_____

On being called by Shri _____, ADIT on 15.09.2002 at 8:00 a.m./p.m. we, the above named Panchas, presented ourselves at the above place of search. The Authorized Officer, Shri _____ ADIT showed the warrant of authorization dated _____ issued under section 132 of the Income Tax Act, 1961/57A of the 43rd Act of 1987 in the case of (A) above, in search the place mentioned at (B) above and **with signed by the Director of Income Tax (C), Commissioner of Income-tax-Directy to Shri _____** who was present in the said place at the time and who after reading the said authorization/after the authorization was explained in local language via _____ by Shri/Smt. _____ signed it, in our presence and along with us, in token of having perused the same.

2. ~~As today's search was in continuation of the proceeding on _____ we, along with _____ with the aforesaid authorized officers, before the commencement of proceeding today inspected the seals which had been placed on that date and found them to be intact/ tampered with as narrated in the enclosure _____ The search today was started after revoking the prohibition under w/s. 132 (3) of the I.T. Act 1961 dated _____~~
3. The above mentioned search party offered themselves for personal search before commencing the search which has ~~been~~ declined.
4. A search of the above mentioned place was carried out by the said party in our presence in an orderly manner without hurting the sentiments of any of the occupants of the premises nothing untoward/~~the event~~ ~~unusual~~ in the enclosure, happened in the course of the search.
5. In the course of the search:
 - a) **The following were found/seized:**
 - i) Books of account and documents as per annexure, marks of identification were placed on these and specimen of the marks and the page where these have been placed are shown in the inventory prepared via, Annexure A (Sr. No.1 to 27)
 - ii) The other valuable articles or things (including money)as per annexure M (Sr.No.1 to 17) _____ (separate inventories of jewellery, ornaments, silverware etc. were prepared for items found in different place or claimed to be belonging to different persons)
 - b) **The following were found and seized:**
 - i) Books of account and documents as per Annexure 'A' (Sr No.1to27) 2 Sheets)
 - ii) Bullion i.e. gold, silver etc. as per annexure 'B'
 - iii) Cash as per annexure 'C' (_____ sheets)
 - iv) Jewellery, ornaments etc., which have been inventorised separately for each place from where recorded, as per annexure 'J' (_____ sheets)
 - v) Silver articles and silverware as per annexure 'S' (_____ sheets)
 - vi) Other valuable, tacker Keys, F.D.Rs per annexure 'O' (_____ sheets)
6. In the course of the search, the authorized officer Shri _____ ADIT recorded the statement(s) of Shri _____ on solemn-affirmation /oath in our presence. No coercion, threat, inducement, promise, or other under influence was brought to bear on the above deponent. The statement was read over/~~explained~~ in

local language viz _____ to the deponent who signed the statement in token of having understood its contents and of agreeing that it had been correctly recorded.

7. The following other important persons were present in the place of search and either took an active part in or helped the search proceedings.

	Name	Relationship
1.	-	-
2.	-	-

8. The search commenced on 15.09.2009 at 8.00 a.m./p.m. The proceedings were closed on 15.09.09 at 11:45 a.m./p.m. as finally concluded/as temporarily concluded for the day to be recommended subsequently for which purpose seals were placed on the entire place/on _____ in our premises.

9. An order under section 132(C) of the IT Act 1961 in respect of the ~~search premises~~ _____ was served on Shri/Smt _____ by the said authorized officer.

10. Before leaving the above mentioned place of search the entire search party again offered themselves for personal search was taken/~~taken~~. The above panchanama has been read by us/~~explained to us~~ in local language _____ by Shri _____ and it is certified that it has been correctly recorded.

Signature of the Panchas with date

1. Signed 15-09 _____
Signature of the
Authorized
Officer
Name: _____/15/09/09
Design: Income Tax Officer (Inv)
Unit-I, _____

Date: 15.9.09

Seal:

2. Signed _____
Signature of the
Receiving the copy of
the panchanama
Name: _____
Position in/ signed
relationship to 'A': Employee

Date: 15.9.09

ANNEXURE - A

Date of Search/Survey 15.09.2009

LIST/INVENTORY OF A/C BOOKS ETC. FOUND/SEIZED

List of books of accounts document etc found/seized in the case of M/s _____

Sr. No	DESCRIPTION	Total Pages	Write n Page	Period Written for		Pages on which Identification marks placed
				From	To	
1	Delivery Challan Book	94	94	15.11.08	21.11.08	1&94
2	Delivery Challan Book	92	92	18.09.09	08.04.09	1&92
3	-----do-----	98	98	21.11.08	27.11.08	1&98
4	-----do-----	25	25	04.10.08	12.04.09	1&25
5	-----do-----	4	4	16.12.08	12.12.08	1&4
6	-----do-----	70	70	05.11.08	12.11.08	1&70
7	-----do-----	88	88	03.11.08	05.11.08	1&88
8	-----do-----	17	17	12.12.07	20.12.07	1&17
9	-----do-----	100	100	12.11.08	16.12.08	1&100
10	-----do-----	26	26	27.10.08	03.11.08	1&26
11	-----do-----	82	82	01.09.08	06.09.08	1&82
12	-----do-----	25	25	02.04.08	29.07.08	1&25
13	-----do-----	34	34	31.02.09	04.09.09	1&34
14	-----do-----	89	89	12.10.08	27.10.08	1&89
15	-----do-----	97	97	13.10.08	17.10.08	1&97
16	-----do-----	83	83	03.07.09	21.08.09	1&83
17	-----do-----	74	74	20.09.08	25.09.08	1&74
18	-----do-----	92	92	12.04.08	17.11.08	1&92
19	-----do-----	102	102	29.04.09	03.07.09	1&102
20	-----do-----	89	89	04.10.08	07.10.08	1&89
21	-----do-----	84	84	02.10.08	13.10.08	1&84
22	-----do-----	94	94	27.11.08	16.01.09	1&94
23	-----do-----	68	68	08.09.08	20.09.08	1&68
24	-----do-----	102	102	20.04.09	29.04.09	1&102
25	Loose Paper file	143	143	-----	-----	1&143
26	-----do-----	135	135	-----	-----	1&135
27	-----do-----	230	230	-----	-----	1&230

SEIZURE ALLOWED

- *Books of accounts*
- *Documents*
- *Cash*
- *Jewellery (Conditions)*
- *FDR's (Not FD's) - Different*
- *Share certificates, NSC's, Hundies, Title Deeds.*

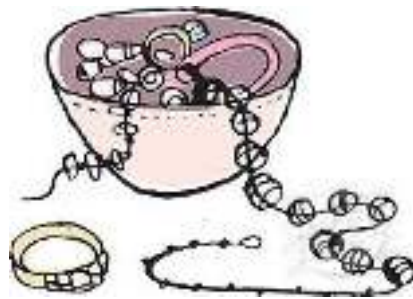


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SEIZURE NOT ALLOWED

- *Immovable assets*
- *Stock –in-trade (Jewellery)*
- *Disclosed assets in books of accounts*
- *Explained cash*
- *Some amount of Jewellery*



Whether
regular books
of accounts can
be seized???

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SEIZURE OF AUDITORS DATA



S R Boltibai & Co. v. DIT (Inv.)(2009) 181 Taxman 19 (Del)

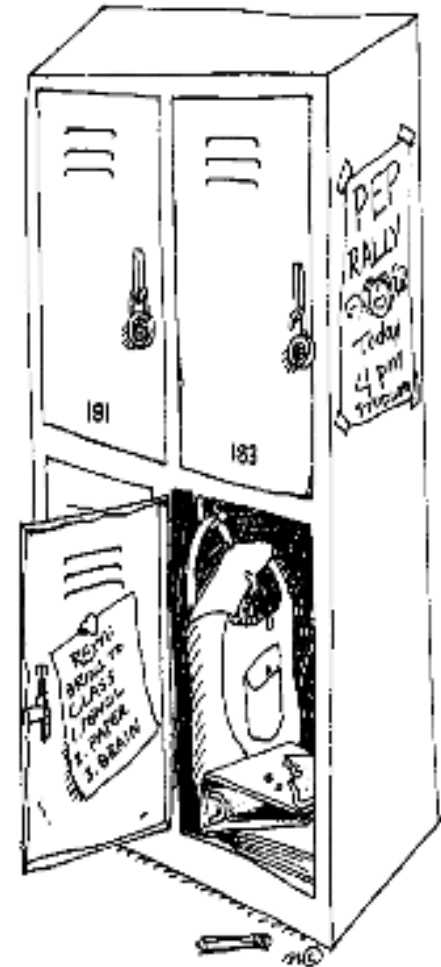
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Prohibition u/s. 132(3)

Don't have enough space in my cabin.. Will seal the almirah and will release after surrender.

Time limit 60 days

Cannot be stretched indiscriminately



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Time limit for passing assessment order in case of Prohibitory order?????

- Orders in favour of assessee:
- CIT Vs. Mrs. Sandhya P. Naik, 253 ITR 534 (Bom) ;
- CIT Vs. Plastica Enterprises, 180 Taxman 293 (Bom.)
- A. Rakesh Kumar Jain Prop. Supreme Computers v. JCIT 2012 (12) TMI 164 – Madras High Court
- C. Ramaiah Reddy v. ACIT2010 (9) TMI 862 - Karnataka High Court

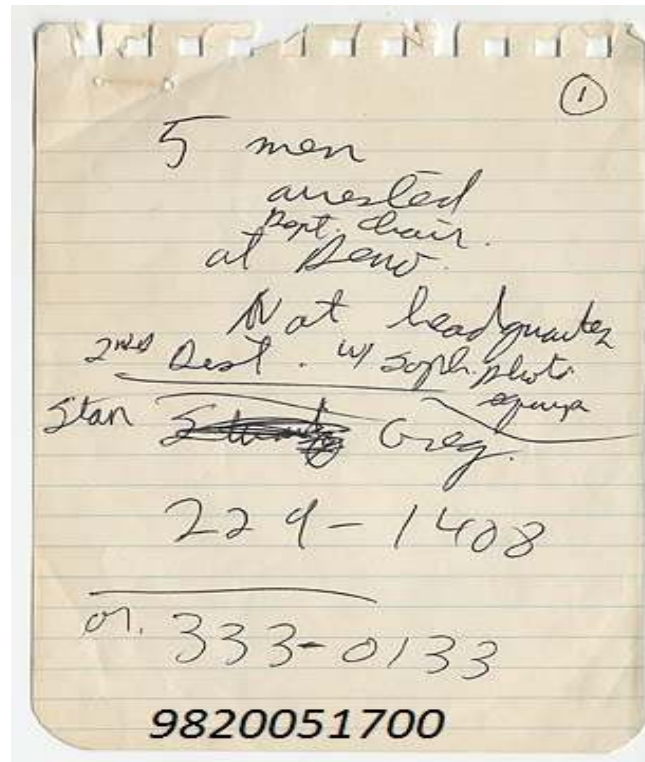
- Orders against assessee :
- M.B. Lal v. CIT [2005] 279 ITR 298 (Delhi);
- CIT v. Dr. C. Balakrishnan Nair [2006] 282 ITR 158 (Ker.)

CBDT Instruction no. 1916 dated 11/5/1994
jewellery and ornaments to the extent of 500 gms per married lady, 250
gms per unmarried lady and 100 gms per male member of the family
not to be seized



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Presumption as to assets, Books of accounts etc. S.132(4A) vs. S.292C



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**Presumption is rebuttable
but must be supported by corroborative
evidence**

- CIT v. M/ Babu Mohan Lal Arya Smarak Educational Trust And Others 2013 (11) TMI 664 – Allahabad High Court.
- Asstt. Commissioner of Income Tax Versus M/s. Metro Construction Company 2013 (7) TMI 687 - ITAT MUMBAI

Whether surrender of income necessary ??



"Let me see you look me in the eye and reduce that and ensure that no penalty is levied"

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Buy What??

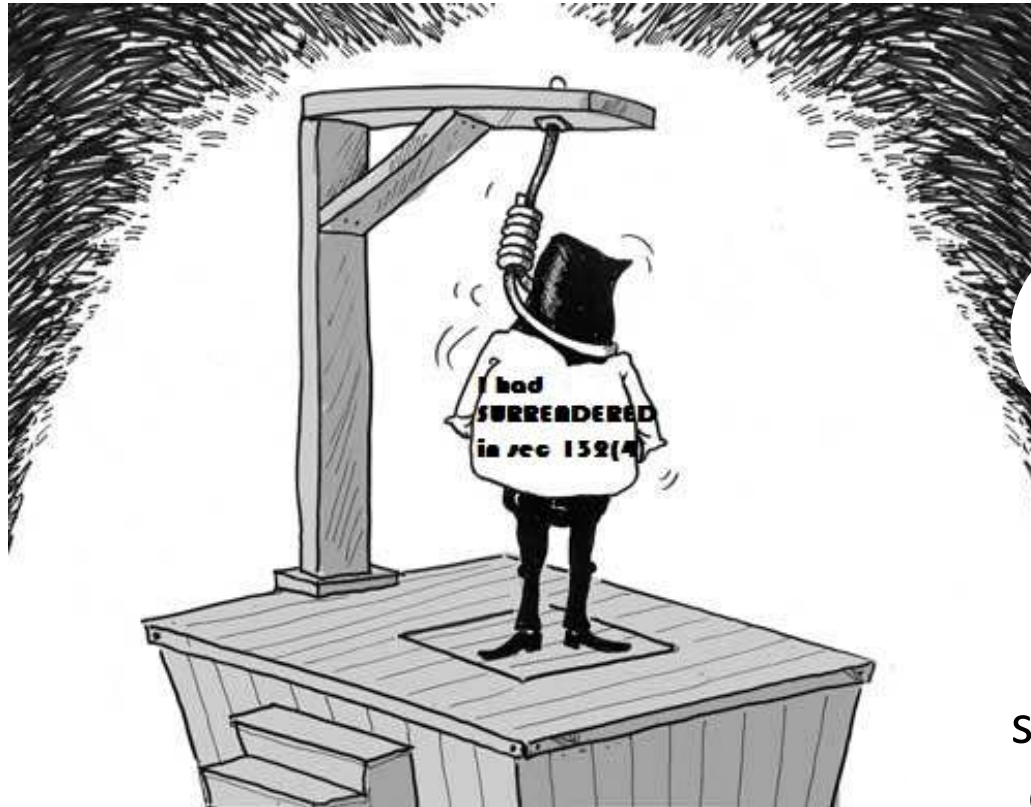


MAK Data (P) Ltd. v. CIT (2013) 38 taxmann.com 448 (SC)

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Effect of surrender

TAX



Penalty

Prosecution

Interest

No sympathy of Court

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Tea Break



Can we retract the surrender?



"I can't find anything wrong with this return.
then why did u surrender????"

CBDT Instruction No.286/2003 dated 10.3.2003

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Retraction allowed by various Courts

- *CIT v. Uttamchand Jain 320 ITR 384 (Bom)*
- *ITO v. Vijay Kumar Kesar (2010) 327 ITR 497 (Chhatt)*
- *Kailashben Manharlal Chokshi v. CIT (2008) 220 CTR 138 (Guj)*
- *Contech Transport Services (P.) Ltd. & Others v. ACIT 19 DTR 191 (Mum-Trib)*
- *CIT v. Omprakash Jain (2010) 322 ITR 362 (Bom)*

Please I need copies of documents seized from premises during search along with copies of Panchanama..
Need to file submission.



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Post Search Inquiry

**Investigation
Wing**



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Appraisal Report



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Relevance of
Appraisal Report for
“Assessee”



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Advantages of Search



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Disadvantages of Search



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Illegality of Search Challenge before Whom?

Appeal



Writ



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Judgments

- CIT v. Smt. Chitra Devi Soni (2009) 313 ITR 174 (Raj.)
- Badri Ram Choudhary v. ACIT (2013) 355 ITR 223 (Raj.)
- CIT v. Dr. A.K. Bansal (2013) 355 ITR 513 (All.)
- Promain Ltd. v. DCIT 281 ITR (AT) 107 (Del.) (SB)
- CIT v. Paras Rice Mills (2009) 313 ITR 182 (P&H)
- Gaya Prasad Pathak v. ACIT (2007) 290 ITR 128 (MP)
- M B Lal v. CIT (2005) 279 ITR 298 (Delhi)
- C. Ramaiah Reddy v. ACIT (2011) 339 ITR 210 (Karn.)
- S. K. Industries P. Ltd. v. DGIT (Inv.) (2007) 290 ITR 359 (Del.)

Centralisation of Cases



- Record reasons
- Opportunity of being heard to the assessee
- Evidence for carrying on centralisation process
- Evidence to be given to assessee to file objection

Global Energy v. CIT 356 ITR 502 (Bom)

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Section 153C : Third Party assessment



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TIPS

- File Applications
- Peak Theory
- Net Profit on Undisclosed sales
- Telescoping
- E-filing or paper return
- Fresh “Claim”
- File written replies with “Acknowledgement No.”



Answers to give if surrender insisted by Search Party



- *You give me assessment order for surrender amount ;*
- *Will check accounts and surrender income in return of income as per law ;*
- *Need immunity from penalty in writing from department.*

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Penalty u/s. 271(1)(c) and 271AAA

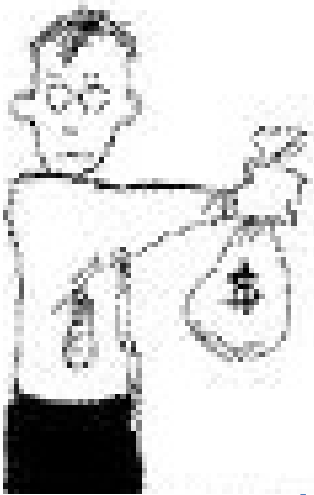


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Whether penalty u/s. 271(1)(c) can be levied even if voluntary surrender made?

MAK Data (P) Ltd. v. CIT (2013) 38 taxmann.com 448 (SC)

- The AO shall not be carried away by the plea of the assessee like “voluntary disclosure”, “buy peace”, “avoid litigation”, “amicable settlement” etc. to explain its conduct;*
- It is trite law that the voluntary disclosure does not free the assessee from the mischief of penal proceedings under section 271(1)(c). The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty;*
- The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection made by the Assessing Officer in the search conducted in the sister concern of the assessee;*



Penalty u/s 271AAA when surrender is made

- Surrender in “Specified Previous Year” (SPY).
- In “SPY”, admit “undisclosed income” in statement recorded u/s. 132(4);
- Substantiate the manner in which income has been derived and
- Pay the tax and interest.



Penalty U/s. 271AAB (w.e.f.1/7/2012)

- Income admitted in search
- Income admitted in return
- Other cases (Addition made)
- 10% of undisclosed Income
- 20% of undisclosed income
- 30% -90%of undisclosed income

“Settlement”

BY ITSC



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Should CA
be present
at the
time of
search???

And you were the witness to his
surrender.

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Evidentiary value of statement in survey?

- *CIT v. S. Khader Khan Son (2012) 210 Taxman 248/79 DTR 184 (SC)*
- *CIT v. M/s. Dhingra Metal Works 328 ITR 384 Delhi High Court*



Survey on CA

Whether CA office can be surveyed?

- If assessee says books with CA.
- Limited action to recover assessee's book only.



- U.K. Mahapatra & Co. v. ITO (2009) 308 ITR 133 (Ori.)

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Difference between “Search” and “Survey”

Search

- By Investigation wing
- At residence also
- Seizure
- Statement u/s. 132(4) evidentiary value
- Assessment for 6 years u/s. 153A

Survey

- Only by jurisdictional officer.
- At Business Premises
- Impounding
- Statement not having evidentiary value
- Assessment Regular scrutiny in year of survey



BHARAT
BABA

LESSONS IN THE 'SCHOOL OF HARD KNOCKS'



... it is better to spend more time THINKING about a case than merely reading the brief.



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