Income Tax Raid Procedure:

The term "Raid in Indian Income Tax Law" is incredulous and any unexpected encounter with IT sleuths generally leads to chaos and vacuity. If you are likely to experience such action it is better to familiarise with the subject, so that, the situation can be faced with confidence and serenity. Income Tax Raid is conducted with the sole objective to unearth tax avoidance. It is the process which authorizes IT department to search any residential / business premises, vehicles and bank lockers etc. and seize the accounts, stocks and valuables.

To face the situation efficiently, it is extremely important to understand some nitty-gritty of I.T. law on the subject. Lack of knowledge leads to panic and all the discomfort. The knowledge of your legal rights and responsibilities always protects you.

Your Rights

1. When Income Tax Search Party visits, you can check their search warrant and also note the date, address and authorization etc.. You can also ask for the identification of each member of the raid team and note down their name and designation.
2. You have the right to personally search every member of raid team to avoid any planting of evidence.
3. Women can be checked only by lady members of raid team.
4. Women may not come forward if their religious belief do not allow them to appear in public.
5. In case of any health related emergency you have the right to call a doctor of your choice. You also have the right to have your meals at proper time.
6. Children can go to school and after clearance.
7. In case of difficulty in seizure of jewellary or other valuable articles (except stock in trade) the department may leave such items after necessary sealing etc. in the custody of assessee. Jewellery up to a specified limit (e.g. 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family) is generally accepted. If it is a survey and not a search (the warrant will specify that), the raid team does not have the powers to seize or take away any valuables. They can only take away documents, files etc.
8. Whatever is being seized, make sure they are being properly listed and

described. Please also have two of your neighbors stand witness to the same.

9. If any valuables do not belong to you, make that known upfront and also provide the name, address and other details of the owner.

10. The raids can only start between sunrise and sunset.

11. You can place your own seal on the package in which seized stuff is stored.

12. You are also entitled to a copy of panchanama.

13. You can also call your C.A or lawyer. He may not have the right to explain things on your behalf but he will ensure the raid team acts within their limits.

Your Responsibilities

1. You should allow free and unhindered ingress into the premises.

2. You should identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles.

3. You should identify and explain the ownership of the assets, books of account and documents found in the premises.

4. You should identify every individual in the premises and to explain their relationships to the person being searched. You should not mislead them by impersonation. It is an offence punishable u/s 416 of the IPC.

5. You should not allow or encourage the entry of any unauthorized person into the premises

6. You should not remove any article from its place without the notice or knowledge of raid team. If you destroy any document with the intention of preventing the same from being produced or used as evidence before the court or public servant, you shall be punishable with imprisonment or fine or both, in accordance with section 204 of the IPC.

7. You should answer all queries truthfully and to the best of your knowledge. You should not allow any third party to either interfere or prompt while your statement is being recorded by the officer. In doing so, you should keep in mind that –

a. If you refuse to answer a question on a subject relevant to the search operation, you shall be punishable with imprisonment or fine or both, u/s 179 of the IPC.

b. Being legally bound by an oath or affirmation to state the truth, if you make a false statement, you shall be punishable by imprisonment or fine or both u/s 181 of the IPC.

c. Similarly, if you provide evidence which is false and which you know or believes to be false, you shall be liable to be punished u/s 191 of the IPC.

8. You should affix your signature on the recorded statement, inventories and the panchanama.

9. You should ensure that peace is maintained throughout the duration of the search and to cooperate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.

10. Cooperation should also be extended even after the search action is over, so as to enable the authorized officer to complete necessary follow-up investigations.

Options of Assessee After the Raid –

1. If you feel that the action of the department is unfair, you can file a writ petition before the High Court challenging the raid.

2. Another option is to challenge the assessment before the Commissioner of Income Tax (Appeal).

Law After the Raid

The Department will issue notice to assessee to furnish a return of income for six previous years preceding previous year in which search is initiated. As per section 147, action for the assessment can be taken within six years from end of assessment year. So at any time, assessment for preceding seven years can be reopened. However, the preceding seventh year is omitted u/s 153A. It has been held in case of Ramballah Gupta v. Asst. CIT (288 ITR 347) (MP) that when search takes place, the action for such year can be taken u/s 147 and for other years u/s 153A. Assessment or reassessment for past six years will have to be completed by AO within twenty months from the end of the financial year in which last of the authorization has been executed. The assessment of search year shall have to be completed as per above time limit. This time limit can be extended in case of special audit, stay of court etc. There is no time limit for issue of notice for past six years; only time limit for completion of assessment.

If any books of accounts, documents, assets found or seized belong to any other person, the concerned AO shall proceed against other person as provided u/s 153A and 153B. The assessment u/s 153C should also be completed with twenty one months from the end of the financial year when the search was conducted like assessment u/s 153A.

The provision of section 234A and 234B or levy of interest shall be applicable. The penalty for concealment can be escaped if disclosure is made in the statement during search for the years for which the due date for filing return of income has not expired in respect of search initiated before 01.06.2007. When source of income declared u/s 132(4) is not questioned in the statement, the immunity cannot be denied on the ground that assessee did not indicate the source of deriving undisclosed income. (CIT v. Radha

Krishan (278 ITR 454) (All).

The Explanation 5 to section 271(1)(c) is not applicable in case of search initiated on or after 01.07.2007. So deeming provision of concealment shall no longer apply in new searches. In order to get immunity, only requirement is that assessee should disclose additional income in the original income field. The condition is that this return of income should have been filed before due date of filing return of income.

Other Provisions

1. The authorized officer can not seize stock in trade of a business. However, restriction on seizure of stock in trade applies only to valuables and not cash.

2. Power to arrest assessee is not entrusted to the department.
3. The department cannot withdraw cash from bank a/c or encash fixed deposits without assessment as a result of search operations.
4. Section 133A does not permit sealing of business premises.
5. It has been instructed by CBDT vide letter dated 10.03.2003 that while recording statement during the course of search and seizures and survey operations, no attempt should be made to obtain confession as to the undisclosed income. It has been advised that there should be focus and concentration on collection of evidence for undisclosed income.

Assets which cannot be seized –

1. Immovable assets
2. Stock held in business
3. Assets disclosed in Income Tax and Wealth Tax returns
4. Assets appearing in books of account
5. Cash for which explanation can be given
6. Jewellary mentioned in wealth tax return
7. Gold up to 500 gm per married lady, 250 gm per unmarried woman and 100 gm per male member of the family.
8. Jewellary as per the status of the family if so appear to the investigating officer.

Assets which can be seized –

1. Unaccounted cash, jewellary, gold, bullion, lockers, promissory notes, cheques, drafts.
2. Books of accounts, chits, diaries, etc.
3. Computer hard disks and other data storage devices
4. Documents of property, title deeds, etc.

Steps to Prevent Raid

(i) Compliance with Summon and Notices u/s 131(1), 142(1) and other relevant sections.
(ii) The Summons or notice calls for the books of account or other documents to be produced before the authorized officer as soon as earlier.
(iii) One should not keep any unaccounted or undisclosed money, property or income popularly known as Black Money.
(iv) All unaccounted income should be declared. If such a disclosure is made before its detection by the Income Tax Department, the chances of being trapped in a tax raid are minimized.
(v) It is always better to make a full disclosure of one's income, whether taxable fully or partially exempt, in the Income Tax Return filed.

What leads to Income Tax Raids, Search and Seizures

With a view to focus on high revenue yielding cases and to make the optimum use of manpower, the Board has decided that officers deployed in the Investigation Wing should restructure their activities. They should adhere to the following guidelines:
(i) Searches should be carried out only in cases where there is credible evidence to indicate substantial unaccounted income/assets in relation to the tax normally paid by the assessee or where the expected concealment is more than Rs. 1 crore;
(ii) Search operation will also be mounted when there is evidence of hidden unaccounted assets arising out of a conspiracy to cause public harm, terrorism, smuggling, narcotics, fraud, gangsterism, fake currency, fake stamp papers and such other manifestations;
(iii) Tax payers who are professionals of excellence should not be searched without there being compelling evidence and confirmation of substantial tax evasion.

Henceforth, search operations shall be authorized only by the concerned DGIT (Inv.), who will be accountable for the action initiated by the officers working under him. He should also ensure that all the work relating to search and seizure, like post-search inquiries, preparation of appraisal report and handing over of seized books of account, etc., should be completed by the Investigation Wing within a period of 60 days from the date on which the last of the authorizations for search was executed.
(Instruction : No. 7/2003, dated 30-07-2003.)

Search Authorisation –

Section 132(1) of the Income Tax Act can be invoked by the Commissioner of Income Tax or Chief Commissioner or Director General or Director or any other authorized Additional or Joint Director or Commissioner if he has "in consequence of information in his possession" "has reason to believe…". Generally the specified authorities proceed to search a person etc. not on mere whims & fancies but only on the basis of some valid and just information and after duly satisfying itself that the conditions precedent prescribed under sub-section (1) of section 132 are satisfied. None-the-less, there are good number of cases wherein an action to search is taken not in accordance with law, may be on the basis of mere rumor or suspicion. The close scrutiny of sub-section (1) of section 132 shows that the authorities specified therein have been empowered to issue a warrant of authorization of search in respect of any person on the basis of Information in their possession they have reason to believe that any such person.

(a) has failed to comply, or

(b) a person to whom such of notice, if issued would fail to comply; or

(c) any person who is in possession of any money bullion, jewellery or other valuable article or thing and such money bullion jewellery etc. represents either wholly or partly income or property which has either not been or would not be disclosed for the purpose of the Income Tax Act referred to in the section as undisclosed income or property.

The warrant of authorisation can only be issued to certain specified authorities who alone for the purpose of making search and seizure can enter and search any building etc where he has reason to suspect that such books of accounts money jewellery etc., are kept, or break open the lock of any door etc, where the keys thereof are not available; or search any person, who has got out of or is about to get into or is in the building, place etc. if the authorised officer has reason to suspect that such a person has secreted about his person or any such books of accounts etc. etc. or seize any such books of accounts etc. etc. place mark of identification etc. and make a note or any inventory of such money.

The code laid down in the Income Tax Act for search and seizure confers vast powers to the authorities. However, the powers have been judicially approved and held to be constitutionally valid on grounds of flagrant tax evasion and huge flow of unaccounted money in the system. While these are valid points one cannot equally deny the fact that these activities of search and seizure are infringement on persons liberty, that being so it desirable that such powers be sparingly used and when used every possible regulation adhered to.