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SEARCH AND SEIZURE

SECTION 132: SEARCH AND SEIZURE

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

Director General or Director or Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered by the Board.

2. ***WHEN CAN SEARCH & SEIZURE BE AUTHORISED***

Such authorisation could take place if the authority on the basis of information in his possession, has **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 omitted or 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 which will be useful or relevant to any proceeding under the Income-tax Act; 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.

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

(a) The Director General or Director or Chief CIT or CIT may authorise any A.O. or

(b) the Joint Director or Joint Commissioner empowered by CBDT, may authorise any A.O.:

[the officer so authorised is referred as Authorised Officer]

to

(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 found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.** ***[Section 132(1)(iib)]***

(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.

Provided ***that bullion, jewellery or other valuable article or thing, being stock in trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.***

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom.

(vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

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 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 the previous permission of such authorised Officer and such action of the authorised Officer shall be deemed to be seizure of such valuable article or thing. **[Second Proviso to section 132(1)]**

Note 1A: ***Nothing contained in Note 1 above [i.e. second Proviso to section 132(1)] shall apply in case of any article or thing, being stock-in-trade of the business.*** **[Third Proviso to section 132(1)]**

Note 2: ***Section 132(3):*** ***Order of Restraint*** The authorised officer may, 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 the Second Proviso to section 132(1), 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 previous permission of authorised officer. The Explanation to section 132(3) provides that serving of an order as aforesaid shall not be deemed to be a seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing. ***The Finance Act, 2002 provides that such an order under section 132(3) shall not be in force for a period exceeding 60 days from the date of order and under no circumstances a prohibitory order passed under section 132(3) shall remain in force beyond a period of 60 days from the date of order.*** For example, the authorised officer had doubt whether the jewellery in possession of assessee's brother belonged to the assessee or not, then he can

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[*] Section 275B has been inserted by Finance Act, 2002 in the Chapter of Prosecutions. Section 275B provides that if a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under section 132(1)(iib), fails to afford such facility to the authorised officer, then he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

pass a restraint order under section 132(3) on assessee’s brother. Within 60 days of the date of order he can ask the assessee’s brother to handover jewellery to him and in case he does not do so, the order of restraint will come to an end.

4. ***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 -

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person.

(ii) That the contents of such books of account and documents are true and

(iii) That the signature and every other part of such books of account and other 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 it was duly stamped, executed or attested by the person by whom it purports to have been so executed or attested.

5. ***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 by the authorised officer for a period exceeding 30 days from the date of the order of assessment or reassessment under ***section 153A*** unless the reasons for retaining the same are recorded by him in writing and approval of Chief Commissioner or Commissioner for such retention is obtained. However, the Chief Commissioner or Commissioner shall not authorise the retention of books of account and other documents for a period exceeding 30 days after all proceedings are completed in respect of the years for which such books of accounts and other documents are relevant (i.e. proceedings of penalties etc.).

6. ***Section 132(9A):*** ***Where the authorised officer has no jurisdiction over the person searched by him, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which search was completed and thereupon the powers exercisable by the authorised officer shall be exercisable by such Assessing Officer.***