

INCOME TAX AUTHORITIES

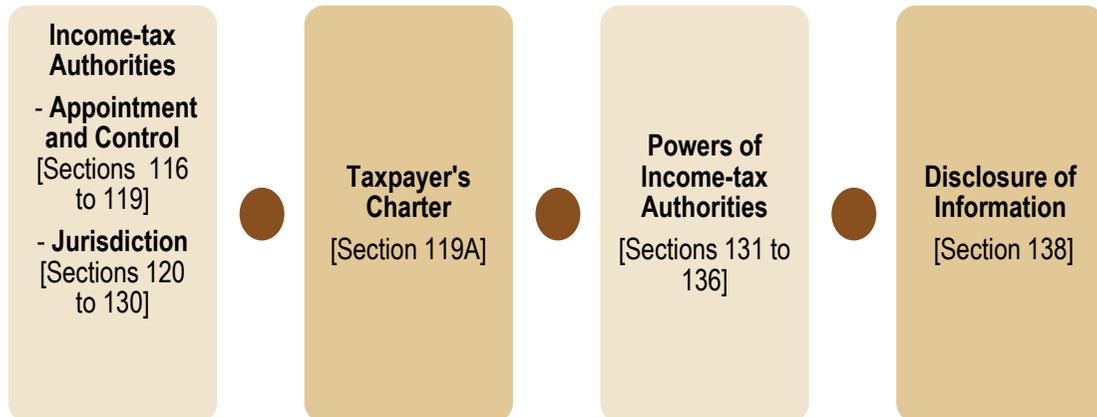


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the various income-tax authorities and comprehend the provisions of law relating to their appointment, control and jurisdiction;
- ❑ **appreciate** the powers of income-tax authorities under the Income-tax Act, 1961;
- ❑ **examine** the provisions relating to survey, search and seizure and the related powers of various income-tax authorities;
- ❑ **analyse and apply** such provisions to address related issues.

CHAPTER OVERVIEW



14.1 APPOINTMENT AND CONTROL [SECTIONS 116 TO 119A]

(1) **Income-tax Authorities [Section 116]**

The following are the classes of income-tax authorities-

Income-tax Authorities	
1.	<p>Central Board of Direct Taxes (CBDT) or Board-</p> <ul style="list-style-type: none"> - A statutory body constituted under the Central Board of Revenue Act, 1963. It comprises of Chairman & Members. - It functions under the jurisdiction of the Ministry of Finance. - It is the highest executive authority, exercises control and supervision over all officers of the Income-tax Department. - It is authorised to exercise certain powers conferred upon it by the Income-tax Act, 1961. - The CBDT frames rules as empowered u/s 295 subject to the control and approval of the Central Government for the proper administration of Act.

	Authority with nomenclature “Director”	Authority with nomenclature “Commissioner”
2.	Principal Directors-General of Income-tax (PDGIT)	Principal Chief Commissioners of Income-tax (PCCIT)
3.	Directors-General of Income-tax (DGIT)	Chief Commissioners of Income-tax (CCIT)
4.	Principal Directors of Income-tax (PDIT)	Principal Commissioners of Income-tax (PCIT)
5.	Directors of Income-tax (DIT)	Commissioner of Income-tax (CIT) or Commissioner of Income-tax (Appeals) [CIT(A)]
6.	Additional Directors of Income-tax (Add. DIT)	Additional Commissioners of Income-tax (Add. CIT) or Additional Commissioners of Income-tax (Appeals) [Add. CIT(A)]
7.	Joint Directors of Income-tax (JDIT)	Joint Commissioners of Income-tax (JCIT) <i>or Joint Commissioners of Income-tax (Appeals)</i>
8.	Deputy Directors of Income-tax (DDIT)	Deputy Commissioners of Income-tax (DCIT) or Deputy Commissioners of Income-tax (Appeals) [DCIT(A)]
9.	Assistant Directors of Income-tax (ADIT)	Assistant Commissioners of Income-tax (ACIT)
10.	Income-tax Officers (ITOs)	
11.	Tax Recovery Officers (TROs)	
12.	Inspectors of Income-tax	

Note - As per section 2(7A), “Assessing Officer” means -

- ACIT or DCIT or ADIT or DDIT; or
- ITO who is vested with the relevant jurisdiction by virtue of directions or orders issued by CBDT; and
- the Add. CIT or Add. DIT or JCIT or JDIT who is directed to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer.

(2) **Appointment and Control of Income-tax Authorities [Sections 117 & 118]**

- (i) Section 117 empowers the Central Government to appoint such persons as it thinks fit to be income-tax authorities.

- (ii) It may also authorise the Board or a Principal Director General or Director General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.
- (iii) An income-tax authority authorised by the CBDT may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.
- (iv) Section 118 authorises the CBDT to also direct, by way of notification, that any income-tax authority or authorities shall be subordinate to such other income-tax authority or authorities, as may be specified.

(3) Instruction to Subordinate Authorities [Section 119]

- (i) The CBDT has been empowered under section 119 to issue orders, instructions and directions to its subordinates for the proper administration of the Act.
- (ii) It is obligatory for the various authorities and all other persons employed in the execution of the Act to observe and follow such orders, instructions and directions of the CBDT. 
- (iii) The CBDT, however, is not empowered to issue orders, instructions or directions in such a way as to –
 - (1) require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
 - (2) interfere with the discretion of the **Joint Commissioner (Appeals) or Commissioner (Appeals)** in the exercise of his appellate functions.
- (iv) The CBDT may, if it considers necessary or expedient to do so, for the purpose of proper and effective management of the work of assessment and collection of revenue, issue general or special orders from time to time in respect of any class of incomes or class of cases setting forth directions and instructions not being prejudicial to the assessee.
- (v) In appropriate cases, the CBDT may relax the provisions of sections 139, 143, 144, 147, 148, 154, 155, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 234F, 270A, 271C, 271CA and 273.

The following table gives a brief glimpse of what these sections relate to –

Section	Particulars of section
139	Filing of Return of income
143	Scrutiny Assessment of income
144	Best Judgment Assessment of income
147	Income escaping assessment
148	Issue of notice where income has escaped assessment
154	Rectification of mistake apparent on record
155	Other amendments relating to assessment of income
201(1A)	Interest for non-deduction of tax or non-payment of tax after deduction by such person/principal officer/company, as the case may be.
210	Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.
211	Installments of advance tax and due dates
234A	Interest for default in furnishing return of income
234B	Interest for default in payment of advance tax
234C	Interest for deferment of advance tax
234E	Fee for failure to deliver the statement of deduction of tax at source under section 200(3) and for failure to deliver the statement of collection of tax at source under section 206C(3) within the prescribed time.
234F	Fee for default in furnishing return of income under section 139(1)
270A	Penalty for underreporting and misreporting of income
271C	Penalty for failure to deduct tax at source
271CA	Penalty for failure to collect tax at source
273	Penalty for false estimate of, or failure to pay, advance tax

- (vi) The CBDT is empowered to authorise any income-tax authority [not being a Joint Commissioner (Appeals) or a Commissioner(Appeals)] by general or special order to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”.

Accordingly, the CBDT issued Circular No. 11/2024 dated 1.10.2024, to deal with the applications for condonation of delay in filing returns claiming refund and returns claiming carry forward of loss and set off thereof containing comprehensive guidelines on the conditions for condonation and the procedures to be followed for deciding such matters:

- (1) **Monetary Limits:** The Income-tax Authorities have vested with the powers of acceptance/rejection of such applications/claims upto certain threshold monetary limits:

Quantum of claim	Income-tax authority with whom powers of acceptance/rejection is vested
Where the claim is upto ₹ 1 crore for any one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 1 crore but upto ₹ 3 crores for any one A.Y.	CCIT
Where the claim is above ₹ 3 crores for any one A.Y.	Principal CCIT

- (2) **Condonation of delay in verifying the return:** The Commissioner of Income-tax, Central Processing Centre (CPC), Bengaluru shall be vested with the powers for acceptance/rejection of petitions under section 119(2)(b) of the Act seeking condonation of delay in verifying the return of income by sending the ITR-Y to centralized processing Cell (CPC), Bengaluru within the prescribed time limit.
- (3) **Period for which application can be made:** No condonation application for claim of refund/loss shall be entertained beyond five years from the end of the assessment year for which such application/claim is made.

A condonation application should be disposed of within six months from the end of the month in which the application is received by the competent authority, as far as possible.

Note: However, for the application filed before 1.10.2024, time period upto which application can be made is six years from the end of the assessment year.

- (4) **In case of updated return u/s 139(9A):** In view of the amendment in Section 139(9A) vide Finance Act, 2024, the powers of acceptance/rejection of the application within the monetary limits delegated to the authorities in case of such claims will be subject to following conditions:

- *At the time of considering the case under Section 119(2)(b), it shall be ensured that assessee was prevented by reasonable cause from filing the return of income within the due date and that the case is of genuine hardship on merits.*
 - *The authorities dealing with the case shall be empowered to direct the jurisdictional Assessing Officer to make necessary inquiries in accordance with the provisions of the Act to ensure that the application is dealt on merits in accordance with law.*
- (5) **Refund consequent to Court order:** *In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of five or six years, as the case may be, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year, whichever is later.*
- (6) **Application claiming additional amount of refund:** *A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Principal CCIT/CCIT/Principal CIT/CIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:*
- (a) *The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.*
 - (b) *No interest will be admissible on belated claim of refunds.*
 - (c) *The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.*
- (vii) The CBDT is empowered to relax the requirements specified in Chapter IV or Chapter VI-A, by general or special order, where the assessee failed to comply with such requirements for claiming deduction due to circumstances beyond the control of the assessee and such requirements were complied with before completion of the assessment for that year. Every order issued under this clause shall, however, be laid before each House of Parliament by the Central Government.

(4) **Taxpayer's Charter [Section 119A]**

The CBDT shall adopt and declare a taxpayer's charter and issue orders, directions, instructions and guidelines to other Income tax authorities for the administration of such Charter.

Taxpayer's Charter

Income-tax department is committed to

1. **Provide fair, courteous, and reasonable treatment:** The Department shall provide prompt, courteous, and professional assistance in all dealings with the taxpayer.
2. **Treat taxpayer as honest:** The Department shall treat every taxpayer as honest unless there is a reason to believe otherwise.
3. **Provide mechanism for appeal and review:** The Department shall provide fair and impartial appeal and review mechanism.
4. **Provide complete and accurate information:** The Department shall provide accurate information for fulfilling compliance obligations under the law.
5. **Provide timely decisions:** The Department shall take decision in every income-tax proceeding within the time prescribed under law.
6. **Collect the correct amount of tax:** The Department shall collect only the amount due as per the law.
7. **Respect privacy of taxpayer:** The Department will follow due process of law and be no more intrusive than necessary in any inquiry, examination, or enforcement action.
8. **Maintain confidentiality:** The Department shall not disclose any information provided by taxpayer to the department unless authorized by law.
9. **Hold its authorities accountable:** The Department shall hold its authorities accountable for their actions.
10. **Enable representative of choice:** The Department shall allow every taxpayer to choose an authorized representative of his choice.
11. **Provide mechanism to lodge complaint:** The Department shall provide mechanism for lodging a complaint and prompt disposal thereof.
12. **Provide a fair & just system:** The Department shall provide a fair and impartial system and resolve the tax **issues** in a time-bound manner.

13. **Publish service standards and report periodically:** The Department shall publish standards for service delivery in a periodic manner.
14. **Reduce cost of compliance:** The Department shall duly take into account the cost of compliance when **administering** tax legislation.

Income-tax department expects taxpayers to:

1. **Be honest and compliant:** Taxpayer is expected to honestly disclose full information and fulfil his **compliance** obligations.
2. **Be informed:** Taxpayer is expected to be aware of his compliance obligations under tax law and seek help of department if needed.
3. **Keep accurate records:** Taxpayer is expected to keep accurate records required as per law.
4. **Know what the representative does on his behalf:** Taxpayer is expected to know what information and submissions are made by his authorised representative.
5. **Respond in time:** Taxpayer is expected to make submissions as per tax law in timely manner.
6. **Pay in time:** Taxpayer is expected to pay amount due as per law in a timely manner.



14.2 JURISDICTION

(1) **Jurisdiction of income-tax authorities [Section 120]**

- (i) **Income-tax authorities to exercise powers in accordance with CBDT directions [Section 120(1)]:** The income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or assigned to, such authorities in accordance with the directions issued by the CBDT for the exercise of such powers and performance of the functions by all or any of those authorities. Jurisdiction
- (ii) **Deemed directions under section 120(1) by CBDT [Explanation to section 120(1)]:** Any income-tax authority, being an authority higher in rank, may exercise the powers and perform the functions of the income-tax authority lower in rank, if so directed by the CBDT. Such direction issued by the CBDT shall be deemed to be a direction issued under the said section 120(1).
- (iii) **CBDT may authorize income-tax authorities to exercise powers/perform functions:** The directions of the Board may authorise any other income-tax authority

to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(iv) **Criteria for issue of directions [Section 120(3)]:** In issuing such directions, the Board may have regard to the following criteria:

- (a) Territorial area.
- (b) Persons or classes of persons.
- (c) Incomes or classes of incomes.
- (d) Cases or classes of cases.

(v) **CBDT authorisation assigning functions [Section 120(4)]:** The CBDT may authorise any Principal Director General or Director General or Principal Director or Director of Income-tax to perform such functions of any other income-tax authority as may be assigned to him. Such authorisation may be through a general or special order.

The CBDT can empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing to the effect that the powers and functions conferred on or assigned to the Assessing Officer under this Act in respect of any specified area or person or class of person or persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or Additional Director or a Joint Commissioner or Joint Director.

The CBDT or any other authority authorised in this behalf can confer jurisdiction with more than one income-tax authority in relation to any case.

(2) **Jurisdiction of Assessing Officers [Section 124]**

(i) **Persons in respect of whom Assessing Officer has jurisdiction:** Where the Assessing Officer has been vested with jurisdiction over any area within the limits of such area, he shall have jurisdiction:

- (a) in respect of any person carrying on business or profession within that area or in respect of a person whose business or profession is carried on in more than one place, if his principal place of business is in that area and
- (b) in respect of any other person residing within the area.

(ii) **Income-tax Authorities higher in rank to determine question of Assessing Officer's jurisdiction:** Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be

determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioner.

In case the question relates to an area within the jurisdiction of different Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioner then the question shall be determined by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioner concerned or if they are not in agreement, then the same shall be determined by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may specify by way of notification in the Official Gazette.

(iii) Time limit for calling in question jurisdiction of the Assessing Officer:

S. No.	Case	Time Limit
(a)	Where a return of Income has been filed under section 139(1)	One month from the date of service of notice under section 142(1) or 143(2) or completion of assessment, whichever is earlier.
(b)	Where no return of income has been filed	Time allowed by notice under section 142(1) or 148 for filing return of income or by notice under the first proviso to section 144 to show cause why the best judgement assessment should not be made, whichever is earlier.
(c)	Where search is initiated under section 132 or books of accounts or other documents or any assets are requisitioned under section 132A	One month from the date on which notice was served under section 153A(1) or 153C(2) ¹¹ or completion of assessment, whichever is earlier.

(iv) Assessing Officer may refer matter for determination: Where the assessee questions the jurisdiction of an Assessing Officer, then, the Assessing Officer shall, if not satisfied with the correctness of the claim refer the matter for determination under (ii) above before the assessment is made.

¹¹ These provisions (i.e., sections 153A and 153C) were applicable in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021..

- (v) **Jurisdictional Powers of Assessing Officer:** Every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the direction or order issued under section 120(1) and 120(2).

(3) **Power to transfer cases [Section 127]**

- (i) **Authorities empowered to transfer cases from one Assessing Officer to another:**
The power to transfer a case from one Assessing Officer to another subordinate Assessing Officer or Officers is vested with the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax. However, this power can be exercised only after giving the assessee a reasonable opportunity of being heard and after recording reasons for doing so, wherever possible.
- Transfer of case from one AO to another AO**
- (ii) **Mutual agreement between higher authorities to transfer cases:** There may be situations where the Assessing Officer(s) from whom the case is transferred and the Assessing Officer to whom the case is transferred do not fall under the control of the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax. In such cases, the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax from whose jurisdiction the case is transferred shall pass an order, if such concerned higher authorities mutually agree for such transfer.
- If the higher authorities are not in agreement about the transfer, then, the CBDT or any such authority authorized by the Board may pass the order.
- (iii) **No requirement of giving opportunity to be heard in certain cases:** If the case is transferred between Assessing Officers within the same city or locality or place, then, it is not necessary to give the assessee an opportunity of being heard.
- (iv) **Re-issue of notice not required:** The transfer of a case may be made at any stage of the proceedings and it is not necessary to re-issue any notice already issued.

- (v) **Meaning of 'Case':** For the purpose of section 120 and section 127, "case" in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.
- (4) **Change of Income-tax Authority [Section 129]**
- (i) **Stage from which the succeeding Income-tax authority would continue:** In cases where an income-tax authority succeeds another income-tax authority, who ceases to exercise jurisdiction, then, the succeeding income-tax authority may continue the proceedings from the stage at which the proceedings was left by his predecessor.
- (ii) **Opportunity to be reheard:** The assessee concerned may demand that before continuance of proceedings as in (i) above, the previous proceedings or any part thereof be reopened or be reheard before passing of any assessment order against him.
- (5) **Faceless jurisdiction of income-tax authorities [Section 130]**
- (i) Section 130(1) empowered the Central Government to notify scheme for faceless jurisdiction of income-tax authorities. The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of—
- (a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or
- (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or
- (c) exercise of power to transfer cases under section 127; or
- (d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,
- so as to impart greater efficiency, transparency and accountability by—
- (i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
- (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
- (iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or

persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

- (ii) Every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- (iii) Accordingly, the Central Government has, vide Notification No. 15/2022 dated 28.03.2022 issued the Faceless Jurisdiction of Income-tax Authorities Scheme, 2022, which provides that the
 - (a) exercise of all or any of the powers and performance of all or any of the functions conferred on or as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120; or
 - (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in
 - section 144B with reference to making faceless assessment of total income or loss of assessee;
 - the Faceless Appeal Scheme, 2021 with reference to the disposal of appeals
 - the Faceless Penalty Scheme, 2021 with reference to imposition of penalty under Chapter XXI of the Act
 - the e-Verification Scheme, 2021, with reference to -
 - the calling of information under section 133,
 - collecting certain information under section 133B or
 - calling for information by prescribed authority under section 133C or
 - exercise of power to inspect register of companies under section 134, or
 - exercise of power of Assessing Officer under section 135;
 - the e-advance rulings Scheme, 2022 with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.



14.3 POWERS OF INCOME TAX AUTHORITIES [SECTIONS 131 TO 136]

Powers of Income-tax Authorities [Sections 131 to 136]
<ul style="list-style-type: none"> • Power regarding discovery, production of evidence, etc [Section 131] • Search and seizure [Section 132] • Powers to requisition books of account, etc [Section 132A] • Application of seized or requisitioned assets [Section 132B] • Power to call for information [Section 133] • Power of survey [Section 133A] • Power to collect certain information [Section 133B] • Power to call for information by prescribed income-tax authority [Section 133C] • Power to inspect registers of companies [Section 134] • Power of certain income-tax authorities [Section 135]

(1) Powers regarding discovery, production of evidence etc. [Section 131]

(i) Income-tax Authorities to have powers vested in a Civil Court in certain matters

[Section 131(1)]: The Assessing Officer, Joint Commissioner, Joint Commissioner (Appeals), Commissioner (Appeals), the Principal Chief

Have powers vested with in a Civil Court

Commissioner or Chief Commissioner, Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in section 144C have the powers vested in a Civil Court under the Code of Civil Procedure, 1908, 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.

The powers aforementioned are normally those exercisable by a Court when it is trying a suit. While exercising these powers, the authorities act in a quasi-judicial capacity and ought to conform to the principles of judicial procedure.

(ii) Powers under section 131(1) to be exercised in certain cases, even if no proceeding is pending [Section 131(1A)/(2)]:

(a) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in section 132(1), before he takes action under the said sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in section 131(1) on the income-tax authorities referred to therein, even if no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

Powers can be exercised even in a case where no proceedings are pending

(b) For facilitating quick collection of information on request from tax authorities outside India, income-tax authorities (not below the rank of Assistant Commissioner of Income-tax), as may be notified by the Board, to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons.

(iii) Power to impound or retain books of account [Section 131(3)]: The income-tax authority is vested with the power to impound or retain in its custody for such period as it may think fit, any books of account or other documents produced before it in any proceeding under this Act.

The powers are unrestricted in the case of all the authorities except the Assessing Officer or an Assistant Director or Deputy Director, whose powers are subjected to two restrictions;

(a) he must record his reasons for impounding books of account or other documents; and

AO/AD/DD can retain books for > 15 days with prior approval

- (b) if he desires to retain in his custody any such books or documents **for a period exceeding 15 days (excluding holidays)**, he must obtain the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director, as the case may be, for the purpose.

(2) Search and Seizure [Section 132]: Under this section, wide powers of search and seizure are conferred on the income-tax authorities.

- (I) **Authorities empowered to issue authorisation [Section 132(1)]:** Search and seizure can be authorised by Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. However, the said operations can be authorised by Additional Director or Additional Commissioner or Joint Director or Joint Commissioner if they are empowered by the Board.

The authorities mentioned above (Authorising officer) shall authorise their subordinates (Authorised officer) specified below to conduct the search and seizure operations:

Authorising Officer	Authorised Officer
A Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner	Joint Director, Joint Commissioner, Additional Director or Additional Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer.
Additional Director or Additional Commissioner, Joint Director or Joint Commissioner (If empowered by the Board)	Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer.

- (II) **‘Reason to believe’ pre-requisite for authorisation [Section 132(1)]:** Such authorisation could take place if the authorising officer has reason to believe, on the basis of information in his possession:

- (a) that the person to whom a summons under section 131(1) or notice under section 142(1) was issued to produce or cause to produced, any books of account or other documents has omitted or failed to do so; or

Reasons to believe - Pre-requisite for search

Reason not required to be disclosed to any person, authority or ITAT

- (b) that a person to whom a summons or a notice aforesaid has been or might be issued, will not or would not produce or caused to be produced, any books of account or other documents which will be useful or relevant to any proceeding under the Income-tax Act, 1961; or
- (c) that a person is in possession of any valuable articles or things, including money, bullion or jewellery etc. representing either wholly or partly income or property which has not been disclosed or would not be disclosed by such person concerned for income-tax purposes.

However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(III) Powers of Authorised Officer [Section 132(1)]

(A) **Power with reference to search of person:** The authorized officer is empowered to-

- (i) **enter and search any building or place** or vehicle or vessel or aircraft, where he has reason to suspect that such books of account, other documents, money, bullion, jewellery, other valuable article or thing are kept;
- (ii) **break open the locks of any door**, box, safe, almirah or other receptacle, in case keys are not readily available for discharge of duties mentioned above
- (iii) **search any person** who has got out of, or is able to get into, or is in, the building, place, vessel, vehicle or aircraft in respect of which a search has been authorised, if he has reason to suspect that such person has secreted about his person any books of account or other documents, money, bullion, jewellery or other valuable article or thing for which the search is being made.

Power of Search

Power exercisable outside jurisdiction, if delay would be prejudicial to the interests of the revenue: The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has the power to authorise the search of any building, place, vessel, vehicle, aircraft etc., within his territorial jurisdiction and also in cases where he has no jurisdiction over the

persons concerned, if he has reason to believe that any delay in obtaining authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue [First proviso to section 132(1)].

(B) Power with reference to money, jewellery, valuable article or thing: The authorized officer is empowered to

(i) seize money, bullion, jewellery, valuable articles, etc. found as a result of search.

However, any bullion, jewellery or other valuable article or thing, which is in the nature of stock-in-trade of the business, found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.

Power to Seize

Second proviso to section 132(1) provides that 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 authorized 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 authorised officer shall be deemed to be seizure of such valuable article or thing. However, such a deeming seizure would not apply to stock-in-trade of the business.

Deemed Seizure not to apply for Stock-in trade

Further, where it is not practicable to seize any such money, bullion, jewellery or other valuable permission of such authorised officer and such action of the article or thing (for reasons other than those mentioned above), the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance [Section 132(3)]. However, serving of such an order shall not be deemed to be seizure of such valuable article or thing. Such order shall not be in force for a period exceeding 60 days from the date of the order [Section 132(8A)].

- (ii) Make a note or inventory of any such money, bullion, jewellery or other valuable article or thing.

(C) Power with reference to books of account/other documents: The authorized officer is empowered to –

- (i) inspect books of account and other documents.**

The person who is in possession or control of books of account or other documents maintained in the form of electronic records, shall be required to afford the necessary facility to authorised officer to inspect all such books of account or other documents.

“Electronic record” as defined in section 2(1)(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated micro fiche.

- (ii) seize books of account and other documents.**

Where it is not practicable to seize any such books of account and other documents, the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance [Section 132(3)]. However, serving of such an order shall not be deemed to be seizure of such books of account and other documents. Such order shall not be in force for a period exceeding 60 days from the date of the order [Section 132(8A)].

- (iii) place marks of identification on books and other documents.**

- (iv) make or cause to be made extracts or copies from the books or documents.**

Authorisation for search in other place not specified in the warrant:

Where a search for any books of account or other documents or assets has been authorised by any authority who is competent to do so, and the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or things of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant,

he may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft. Accordingly, if a search warrant is issued by the Principal Commissioner or Commissioner of Income-tax, authorising the search of a premises in a particular place specified in the search warrant and the authorised officer finds that the books of account or other documents and/or assets have been secreted in a building or place not specified in the search warrant, he could request the Commissioner to authorise him to search that building or place [Section 132(1A)].

However, the reason to suspect, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal [*Explanation* below to section 132(1A)].

(D) Other powers:

(i) The authorized officer may requisition the service of

- any police officer or any officer of Central Government or of both; or
- any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General in accordance with prescribed procedure,

to assist him in carrying out the search operations and it shall be duty of every such officer or person or entity to comply with such requisition [Section 132(2)].

- (ii) The authorised officer may examine on oath any person who is found to be in possession or control of any books, other documents, money, bullion jewellery etc. However, the examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search but also in respect of all matters relevant for the purposes of any investigation under the Act [Section 132(4)]

Other points relating to books, other documents, money, bullion, jewellery etc. seized:

- (i) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) **may**

make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf [Section 132(9)]

- (ii) The books of account and other documents seized should be returned within a period of 30 days from the date of the order of assessment or reassessment or recomputation under section 143(3) or section 144 or section 147 or under section 153A², unless the reasons for retaining the same are recorded in writing and approved by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Principal Director General or Director General or Principal Director or Director. With the approval, the books or other records can be retained but however the same cannot be retained for a period exceeding 30 days after the assessment proceedings in respect of the years for which the books of account or other documents are relevant are completed [Section 132(8)].
- (iii) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of point (ii) above, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed and thereupon, the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer [Section 132(9A)].

Seized books of account to be returned within 30 days from date of assessment

Handover to other AO within 60 days from the date of last authorisation for search

² Section 153A deals with assessment in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021..

- (iv) If a person, legally entitled to the books of account or other documents seized, objects for any reason to the approval given by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director to extend the period of retention of the same by the Assessing Officer beyond 30 days, he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents. The Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. [Section 132(10)]

(IV) **Rebuttable presumption [Section 132(4A)]:** The law presumes in the course of search and seizure proceedings that

- (a) the books of account or other documents and assets found in the possession of any person belong to such person
- (b) the contents of such books of account and other documents are true
- (c) the signature and every other part of such books of account and other documents are in the handwriting of the persons who can reasonably be assumed to have signed or written the books of account or other documents. In the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

*Rebuttable
Presumption*

It may be noted that this is a rebuttable presumption. On facts and with evidence the assessee may rebut the above presumption and prove that the facts are otherwise.

(V) **Provisional attachment of property [Section 132(9B)]:** For the purpose of protecting the interest of the revenue and safeguarding recovery in search cases, the authorized officer during the course of search or seizure or within a period of **sixty days** from the date on which the last of the authorisations for search was executed is satisfied for reasons to be recorded in writing, it is necessary so to do, he may **with the prior approval** of the Principal Director General or Director General or the Principal Director or Director, by order in writing, **attach provisionally any property belonging to the assessee** .

(VI) **Period of provisional attachment [Section 132(9C)]:** Every provisional attachment made under sub-section (9B) shall cease to have effect **after the expiry of a period of six months** from the date of the order referred to in sub-section (9B).

(VII) **Reference to Valuation Officer or any other person or entity [Section 132(9D)]:** The authorised officer may, during the course of the search or seizure or **within a period of 60 days from the date on which the last of the authorisations for search was executed**, make a reference

- to a Valuation Officer referred to in section 142A,
- any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the prescribed procedure,

who shall estimate the fair market value of the property in the prescribed manner and submit a report of the estimate to the said officer or the Assessing Officer **within a period of 60 days from the date of receipt of such reference**.

Last of authorisation for search

For the purpose of sub-sections (9A), (9B) and (9D) of section 132, the last of authorisation for search shall be deemed to have been executed -

- (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or
- (b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer. [Explanation 1 to section 132].

(VIII) **Rules providing for procedure to be followed by Authorised Officer [Section 132(14)]:** The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

- (a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

- (b) for ensuring safe custody of any books of account or other documents or assets seized.

Rule 112 states the procedure to be followed by authorised officer while exercising the power of search and seizure under section 132.

- (IX) **Meaning of 'Proceeding' [Explanation 2 below Section 132]:** For the purpose of this section, the word "proceeding" means any proceeding in respect of any year under this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.
- (X) **Applicability of CrPC:** The provisions of the Criminal Procedure Code relating to searches and seizure would, as far as possible, apply to the searches and seizures under this Act. Contravention of the orders issued under this section would be punishable with imprisonment upto 2 years and fine under section 275A.
- (XI) **Penal provisions on undisclosed income found during of search [Section 271AAB(1A)]:**

Penalty where search is initiated on or after 15.12.2016:

Section 271AAB(1A) provides for penalty in cases where search has been initiated on or after 15th December, 2016, being the date on which the Taxation Laws (Second Amendment) Act, 2016 received the assent of the President. Accordingly, under section 271AAB, the following would be the rate of penalty on undisclosed income in each of the following circumstances:

Penalty

	Circumstance	Rate of penalty
(1)	(2)	(3)
(i)	If undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and <ul style="list-style-type: none"> - the assessee explains the manner in which such income was derived, - pays the tax, together with interest if any, in respect of the undisclosed income, and - furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on 	30%

	which the period specified in the notice issued under section 148 or 153A expires, as the case may be).	
(ii)	In all other cases	60%

Meaning of certain terms:

Term	Meaning
Undisclosed income	<p>(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-</p> <p>(a) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or</p> <p>(b) otherwise not been disclosed to the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner before the date of search; or</p> <p>(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.</p>
Specified previous year	<p>the previous year</p> <ul style="list-style-type: none"> - which has ended before the date of search, but the date of furnishing the return of income under section 139(1) for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or - in which search was conducted.
Specified date	the due date of furnishing of return of income under section 139(1) or the date on which the period specified in the notice issued under section 148 or under section 153A, as the case may be, for furnishing of return of income expires, as the case may be.

Other points:

- (a) Penalty may be levied by the Assessing Officer or Commissioner (Appeals).
- (b) No penalty under section 270A is leviable in respect of such undisclosed income.
- (c) An order imposing penalty under section 271AAB would be appealable under section 246A before the Commissioner (Appeals).
- (d) Section 274 providing for the procedure for imposing penalties and section 275 providing for a bar of limitation for imposing penalties, shall, to the extent relevant apply to penalty under section 271AAB.

(3) Power to requisition books of account etc. [Section 132A]

- (i) **Requirement of “reasons to believe” for requisition of books of account [Section 132A(1)]:** Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner (authorising officer) on the basis of information in his possession, has reason to believe that-

**Requisition of books of
A/c**

- (a) any person to whom a summons under section 131(1) or a notice under section 142(1) was issued to produce, or cause to be produced, any books of account or other documents 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 and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or
- (b) any books of account or other documents will be useful for, or relevant to, any proceeding under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or
- (c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of this Act by any

person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force then, the authorising officer may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer (referred to as the requisitioning officer) to require the officer or authority under any other law referred above, as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Clarificatory provision for non-disclosure of reason to believe or reason to suspect recorded by the Income-tax Authorities

- ✓ The need for this clarification arose because the Commissioner of Income-tax (Appeals) & Benches of the Income-tax Appellate Tribunal, in the context of appeals before them, started demanding copies of reasons to believe in search, seizure and requisition cases, which the Income Tax Department has not been giving to them on ground of secrecy.
- ✓ Though there are some decisions wherein it has already been held that search cannot be held invalid on the ground that reasons to believe not disclosed to assessee, the said amendment provides statutory recognition to such decisions so as to avoid any further litigation on the issue. These decisions are:
 - (i) In *M.S. Associates v. Union of India* (2005) 275 ITR 502 (Gau), it was observed that revenue authorities are not required to disclose to the person challenging the warrant of authorisation as to what materials were available against him, which had led to the issuance of the warrant. It is required to be disclosed only when the authorities concerned resolve to impose tax or penalties.
 - (ii) In *Genom Biotech (P) Ltd. & Ors. v. Director of IT (Investigation) & Ors.* (2009) 180 Taxman 395 (Bom), it was observed that it is not the mandate of section 132 or any other provision in the Act that the reasonable belief recorded by the designated authority before issuing the warrant of authorisation must be disclosed to the assessee.

- (ii) **Delivery of books of accounts to the Requisition Officer [Section 132A(2)]:** On a requisition being made under (i), the officer or authority under any other law referred

above, as the case may be, shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

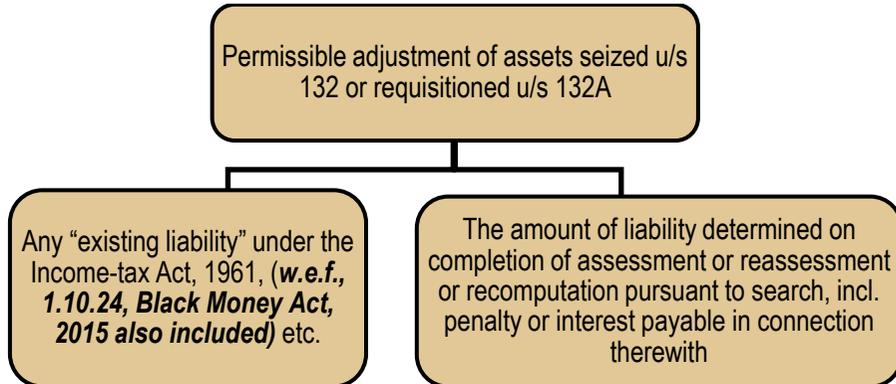
- (iii) **Certain provisions relating to search to apply in case of requisition also [Section 132A(3)]:** Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sections 132(4A) to 132(14) and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under section 132(1) by the requisitioning officer from the custody of the concerned person.

(4) **Presumption with regard to assets, books of account [Section 278D]**

- (i) **Presumption with regard to books of account and other documents in search cases -** Section 278D provides that in case where, during the course of any search made u/s 132, any money, bullion, jewellery or other valuable articles or things or any books of account or other documents had been found in the possession or control of any person and such assets or books of account or other documents are tendered by the prosecution in evidence against such person and/or against any person who is convicted of an offence u/s 278, the provisions of section 132(4A) would apply, in relation to all such books of account and other documents. Accordingly, it would be presumed that such books of account or other documents and assets belong to the person in whose control or possession they were found, at the time of search and also that the contents of such books of account and other documents are true.
- (ii) **Presumption with regard to books of account and documents in case of requisition -** Similarly, in cases where any books of accounts or other documents and assets are taken into custody from the possession or control of any person by the officer or authority specified in section 132A(1)(a) or (c) and these are delivered to the requisitioning officer under section 132A(2), it would be presumed that the presumption similar to the one mentioned earlier would operate in these cases as well.
- (iii) **Presumption rebuttable -** It would be for assessee to rebut the presumption wherever necessary by producing cogent and reliable evidence.

(5) Application of seized or requisitioned assets [Section 132B]**(i) Permissible adjustment of assets seized or requisitioned [Section 132B(1)(i)]:**

The permissible adjustment of assets seized under section 132 or requisitioned under section 132A are shown below:



Note - "Existing liability" does **not** include **advance tax payable** in accordance with the provisions of Part C of Chapter XVII of the Income-tax Act, 1961.

(ii) Manner of application of assets seized [Section 132B(1)(ii)/(iii)]: If the assets consist solely of money or partly of money and partly of other assets, the Assessing Officer may apply the money in discharge of the liabilities mentioned above. The assessee shall be discharged of such liability to the extent of the money so applied.

Application of asset seized

The assets other than money may also be applied for the discharge of such liabilities which still remains undischarged. For this purpose, such assets shall be deemed to be under distraint, as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under section 226(5). The Assessing Officer or the Tax Recovery Officer, as the case may be, may recover the amount of such liabilities by the sale of such assets in the manner laid down in the Third Schedule. Any assets or proceeds thereof which remain after the liabilities referred above are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(iii) Release of seized asset [Proviso to section 132B(1)(i) and section 132B(4)]: Where the person concerned makes an application to the Assessing Officer **within 30**

days from the end of the month in which the asset was seized, for release of the asset and explains the nature and source of acquisition of seized assets to the satisfaction of the Assessing Officer, then, such assets are required to be released within a period of 120 days from the date on which last of the authorisations for search under section 132 or requisition under section 132A was executed after meeting any existing liabilities, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

- (iv) **Entitled to interest on the amount of assets seized exceeds the liabilities:** The assessee shall be entitled to simple interest at $\frac{1}{2}$ % per month or part of a month, if the amount of assets seized exceeds the liabilities eventually, for the period immediately following the expiry of 120 days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment or reassessment or recomputation.

(6) Power to call for information [Sections 133]

- (i) **Details of information to be furnished by different persons:** The Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals)] may call for following information from the following persons for the purposes of this Act-

S. No.	Person	Information to be furnished
(1)	Firm	The names and addresses of the partners of the firm and their respective shares.
(2)	Hindu undivided family	The names and addresses of the manager and the members of the family.
(3)	A trustee, guardian or agent	The names of the persons for or of whom he is trustee, guardian or agent, and of their addresses.
(4)	Any assessee	A statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than ₹ 1,000, or such higher amount as may be prescribed, together with particulars of all such payments made.
(5)	Any dealer, broker	A statement of the names and addresses of all

	or agent or any person concerned in the management of a stock or commodity exchange	persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts.
(6)	Any person, including a banking company or any officer thereof	Information in relation to such points or matters, or statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals)], will be useful for, or relevant to, any enquiry or proceeding under this Act.

- (ii) **Exercise of power by the Income-tax authorities u/s. 133(6):** Although section 133 empowers only the Assessing Officer, Joint Commissioner, the Joint Commissioner (Appeals) or and Commissioner of Income tax (Appeals) to call for any information from any person which will be useful for or relevant to any proceedings under the Act as mentioned in point (6) of (i) above, such powers may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.
- Power to call
for
information**
- (iii) **Exercise of power of inquiry where no proceeding pending:** The power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner without the prior approval of the Principal Director or Director or as the case may be, the Principal Commissioner or Commissioner. However, the Joint Director or Deputy Director or Assistant Director can exercise such power without prior approval from PDIT, DIT, PCIT or CIT.
- (iv) **Exercise of power to call for information under section 90 or 90A:** For facilitating quick collection of information on request from tax authorities outside India, notified

income-tax authorities (not below the rank of Assistant Commissioner of Income-tax) to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

(7) **Power of Survey [Section 133A]**

(i) **Power to enter a place within jurisdiction to inspect books of account, to verify cash, stock etc. [Section 133A(1)]:** An income-tax authority may enter any place:

- (a) within the limits of the area assigned to him, or
- (b) occupied by any person in respect of whom he exercises jurisdiction, or
- (c) in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose. This power may be exercised:

- (a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place;
- (b) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and
- (c) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceeding under the Income-tax Act, 1961.

Power of survey

This power may be exercised in respect of any place with which the assessee is connected, whether or not such place is the principal place of business or profession or activity for charitable purpose. It will also include any other place, whether any business or profession or activity for charitable purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other valuable article or thing relating to his business or profession or activity for charitable purpose are kept.

- (ii) **Permitted time for conduct of survey [Section 133A(2)]:** The income-tax authority

**Business place
- during office
hours**

may enter any place of business or profession mentioned above only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset.

For example, if a place is open for business from 11 a.m. to 11 p.m. an income tax authority may enter at 10 p.m. for survey operations. The survey can, however, continue beyond 11 p.m.

- (iii) **Exercise of power of survey for verification of TDS/TCS [Section 133A(2A)]:** An income-tax authority may, for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter-

- (a) any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or
- (b) any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

**After sunrise
before sunset**

- (a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

(b) to furnish such information as he may require in relation to such matter.

**(iv) Permissible and impermissible acts while conducting survey [Section 133A(3)]:
An income-tax authority may -**

(a) place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof;

(b) impound and retain in his custody for such period as he thinks fit any book of account or other documents inspected by him after recording reasons for doing so.

**Cannot retain for
>15 days without
approval of higher
authorities.**

However, the income tax authority cannot retain in his custody such books of account etc. for a period exceeding 15 days (excluding holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be.

(c) make an inventory of any cash, stock or valuable article or thing checked or verified by him; and

(d) record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, while acting under sub-section (2A), the income-tax authority shall not impound and retain in his custody, any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable articles or thing checked or verified by him.

Any income-tax authority cannot remove or cause to be removed from the place where he has entered, any cash, stock or other valuable article or thing [Section 133A(4)].

**Income-tax Authority cannot
remove cash, stock or other
valuable thing**

(v) Power to collect information and record statements in connection with any function, ceremony or event [Section 133A(5)]: The income-tax authorities would also have the power to collect information and record the statements of any of the persons concerned at any time after any function, ceremony or event but even before the stage of commencement of assessment proceedings for the following year for which the information may be relevant, if they are of the opinion that having due regard to the nature, scale and extent of the expenditure incurred, it is necessary or expedient to do so. This provision is intended to help in collecting evidence about ostentatious expenditure incurred for any

function, etc., immediately after the event which may be used at the time of the assessment.

- (vi) **Power to enforce compliance [Section 133A(6)]:** If any person who is required to provide facility to the income-tax authority to inspect the books of account or the other documents or to check or verify any cash, stock or other valuable articles or to furnish any information or to have his statement recorded, either refuses or evades do so, the income-tax authority would be entitled to use all the powers vested in it under section 131(1) for enforcing proper compliance with the requirements.
- (vii) **Meaning of 'proceeding' [Clause (b) of Explanation to Section 133A]:** For the purpose of this section, "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.
- (viii) **Meaning of "Income tax authority" and restriction to exercise the power under this section [Clause (a) of Explanation to section 133A]:**

"Income tax authority", for the purpose of this section, means –

- (i) a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or Deputy Director or an Assessing Officer or a Tax Recovery Officer; and
- (ii) includes an inspector of Income tax (only for the purpose of inspection of books of account or other documents, placing marks of identification on such books of account or other documents inspected by him and making or causing to be made extracts or copies therefrom and recording statements from any person in connection with any ceremony, function or event mentioned in section 133A(5) above).

who is subordinate to the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner, as may be specified by the Board.

All income-tax authorities have to take approval from Principal Director General or the Director General or Principal Chief Commissioner or the Chief Commissioner in all cases of survey.

(8) Power to collect certain information [Section 133B]

- (i) Under this section, an income-tax authority may enter
- any building or place within its jurisdiction or

- any building or place which is occupied by any person in respect of whom the said authority exercises jurisdiction

at which a business or profession is carried on for the purpose of collecting any information which may be useful for or relevant for the purposes of the Act. It is not necessary that such a place should be the principal place of the business or profession.

- (ii) The authority may require any proprietor, employee or any other person who may at the time and place be attending in any manner to or helping in carrying on such business or profession to furnish such information as may be prescribed.
- (iii) 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 business.
- (iv) Such authority shall on no account remove or cause to be removed from the building or place wherein he has entered any books of account or other valuable articles or things.
- (v) `In this section, 'income-tax authority' means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the power conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or any part thereof.
- (vi) **Penalty under section 272AA for failure to furnish the prescribed information:** Fail to furnish the prescribed information as required as per section 133B would attract penalty of upto ₹ 1000 under section 272AA. Such penalty is imposable by the joint Commissioner or Assistant Director or Deputy Director or the Assessing Officer after giving the person an opportunity of being heard in the matter.

Income tax authority can enter only during business hours. He cannot remove any books of account or other valuable article.

(9) Prescribed income-tax authorities empowered to call for information [Section 133C]

- (i) Section 133C enables the prescribed income-tax authority to verify the information in its possession relating to any person, which may be useful for or relevant to any inquiry or proceedings under this Act.

- (ii) Under this section, for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him,
- on or before a date to be therein specified,
 - to furnish information or documents,
 - verified in the manner specified therein
 - which may be useful for, or relevant to, any inquiry or proceeding under the Act.
- (iii) The prescribed income-tax authority may process and utilise such information and document in accordance with the provisions of section 135A empowering the Central Government to make a scheme for faceless collection of information.

The Central Government has, vide *Notification No. 137/2021 dated 13.12.2021* made e-Verification Scheme, 2021 as empowered under section 135A.

The prescribed income-tax authority under section 133C shall be an income-tax authority not below the rank of Assistant Commissioner of Income-tax who has been authorised by the CBDT to act as such authority for the purposes of the section.

- (iv) The term “proceeding” means any proceeding under the Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date. The term “proceeding” also includes all proceedings under the Income-tax Act, 1961 which may be commenced after such date in respect of any year.

Meaning of Proceeding

- (10) **Power to inspect registers of companies [Section 134]**: The Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals), or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, may inspect and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.
- (11) **Other powers [Sections 135 and 136]**: The Principal Director General or Director General or Principal Director or Director, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Joint Commissioner are competent to make any enquiry under this act and for all purposes they shall have the powers vested in an Assessing Officer in relation to the making of enquiries.

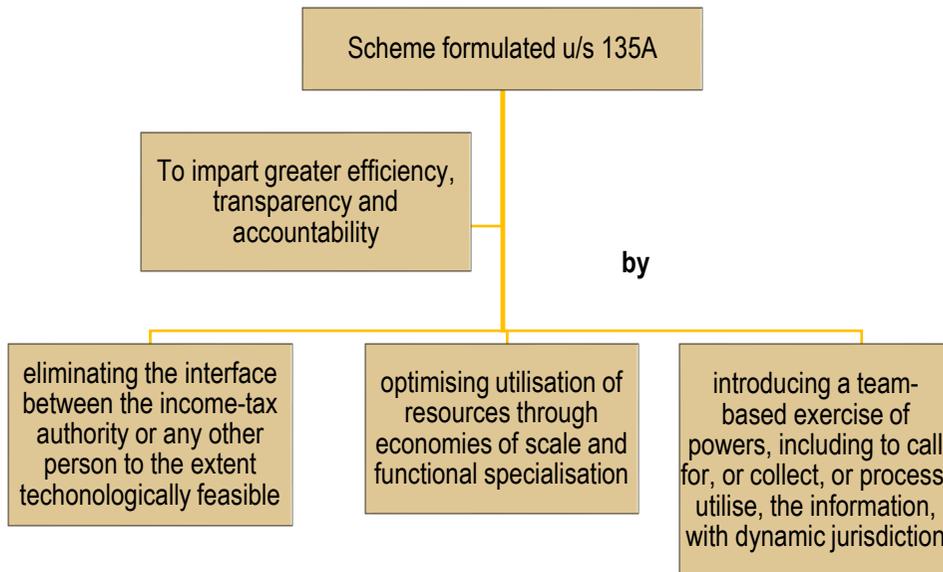
If the Investigating officer is denied entry into the premises, the said Officer shall have all the powers vested in him under sections 131(1) and (2). All the proceedings before Income-tax authorities are judicial proceedings for purposes of section 196 of the Indian Penal Code, 1860, and fall within the meaning of sections 193 and 228 of the Code.

An income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 of the Criminal Procedure Code, 1973.

(12) Faceless collection of information [Section 135A]:

- (i) Section 135A provides for faceless collection of information.
- (ii) Section 135A(1) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the following purposes –

- calling for information u/s 133
- collecting certain information u/s 133B
- calling for information by prescribed income-tax authority u/s 133C
- exercise of power to inspect register of companies u/s 134
- exercise of power of Assessing Officer u/s 135



- (iii) For the purpose of giving effect to the scheme, section 135A(2) empowers the Central Government to direct, by notification in the Official Gazette, that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with specified exceptions, modifications and adaptations.
- (iv) Section 135A(3) requires that every notification to be laid before each House of Parliament, as soon as may be after notification is issued.

Accordingly, the Central Government has, vide Notification No. 137/2021 dated 13.12.2021 made e-Verification Scheme, 2021³.

(13) Disclosure of information respecting assessee [Section 138]

- (i) Under section 138(1)(a), the CBDT, or any other income-tax authority specified by it by a general or special order, may furnish or cause to be furnished, any information received or obtained by any income-tax authority, in the performance of his functions under the Act which may be necessary for the purpose of enabling any officer, or authority or body performing any function:
 - (a) under any law relating to the imposition of any tax, duty or cess or to dealings in foreign exchange
 - (b) under any other law as the Central Government may notify in the Official Gazette in the public interest.

As per section 138(1)(b), if a person makes an application in accordance with Rule 113 of the Income-tax Rules, 1962 to the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner of Income-tax in the prescribed form for obtaining any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under the Income-tax Act, 1961, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, may, if he is satisfied that it is in the public interest, furnish or cause to be furnished the information asked for. His decision in this regard cannot be called in question in any court of law.

- (ii) Nevertheless, section 138(2) empowers the Central Government to direct, having regard to practice and usage customary or otherwise, and any other relevant factors, that no information or documents shall be furnished or produced by a public servant in respect of such matters relating to a particular class of assessee or except to certain authorities which may be specified.

³ To know the scheme in detail, please refer - <https://incometaxindia.gov.in/communications/notification/notification-137-2021.pdf>.

For instance, in exercise of the powers conferred by section 138(2), the Central Government having regard to all the relevant factors, has directed, vide *Notification No.56/2016 dated 6.7.2016*, that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Income Declaration Scheme, 2016', contained in Chapter IX of the Finance Act, 2016.

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	<i>CIT and Anr v. SV Gopala and Others (2017) 396 ITR 694 (SC)</i>	
	Issue	Decision
	Does the CBDT have the power to amend legislative provisions through a Circular?	The CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular.
2.	<i>Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)</i>	
	Issue	Analysis & Decision
	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	<p>Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C.</p> <p>Section 132B(1)(i) uses the expression "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallized by adjudication; Likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.</p> <p>As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. It is not the <i>ipse dixit</i> of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material.</p> <p>Only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted.</p>

3.	Kathiroom Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243 (SC)	
	Issue	Analysis & Decision
	Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?	<p>The Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person. However, an income-tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner.</p> <p>Note – <i>The power in respect of an inquiry, in a case where no proceeding is pending, can, however, be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner.</i></p>
4.	Regen Powertech Private Limited v. CBDT and Another [2019] 410 ITR 483 (Mad)	
	Issue	Decision
	Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?	<p>In condonation matters “a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted”.</p> <p>Application for condonation of delay should not be rejected by the CBDT if the circumstances causing delay are beyond the control of the assessee. The CBDT should exercise its discretion in a proper manner and condone the delay.</p>

TEST YOUR KNOWLEDGE

Questions

1. *ABC Ltd. regularly files its return of income electronically. While trying to upload return of income for assessment year 2024-25 on 31st October, 2024, ABC Ltd found it extremely difficult to do the same due to network problems and ultimately, became successful in making e-filing of its return only at 1 a.m. on 1st November, 2024. The return contained a claim for carry forward of business loss of ₹ 3.10 crores. This circumstance was recorded in an e-mail addressed to the competent income-tax authority on 1st November, 2024. ABC Ltd. made a request to the Principal Chief Commissioner of Income-tax (CCIT) for condonation of delay in filing return of income.*

Discuss whether the PCCIT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

2. *Examine the correctness of the statement “the jurisdiction of an Assessing Officer cannot be objected by the assessee”.*
3. *The Director General of Income-tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹ 50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income-tax correct? If not, does the Director General of Income-tax have any other power to seize such cash?*
4. *The premises of Ganesh were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.*
5. *Examine whether the information regarding possession of unexplained assets and income received from the Central Bureau of Investigation, a Government agency, can constitute “information” for action under section 132. Discuss.*
6. *Cash of ₹ 25 lacs was seized on 12.9.2024 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2024 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:*

- (i) *Can the department withhold the explained money?*

- (ii) *If yes, then to what extent and upto what period?*
7. *The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 by the DDI, Delhi. The search was concluded on 9.8.2024 and following were also seized besides other papers and records:*
- (i) *Papers found in the drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.*
- (ii) *Jewellery worth ₹ 5 lacs from the bed room of one of the directors, which was claimed by him to be of his married daughter.*
- (iii) *Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16.4.2019 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.*
- You are required to answer on the basis of aforesaid and the provisions of Act, following questions:*
- (a) *What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?*
- (b) *Whether the contention raised by the director as to jewellery found from his bed-room will be acceptable?*
- (c) *What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?*
8. *In the course of search on 25.03.2025, assets were seized. Examine the procedure laid down to deal with such seized assets under the Act.*
9. *A search under section 132 was initiated in the premises of Mr. X on 30.4.2024 and undisclosed money and jewellery belonging to Mr. X was found in his premises. Examine the penal provisions under the Income-tax Act which are attracted in this case, assuming that the undisclosed assets were acquired out of his undisclosed income of previous year 2023-24.*

Answers

1. Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship in any case

or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

The facts of the case are similar to the case of *Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441*, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

The CBDT has, *vide* Circular No. 11/2024 dated 1.10.2024 specified the monetary limits along with following authorities to be approached for this purpose.

Quantum of claim	Concerned Income-tax Authority
Where the claim is upto ₹ 1 crore for one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 1 crore but upto ₹ 3 crores for any one A.Y.	CCIT
Where the claim is above ₹ 3 crores for any one A.Y.	Principal CCIT

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the Principal CCIT has the power to condone the delay in filing the return of income of ABC Ltd. and permit carry forward of business loss of ₹ 3.10 crores, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

2. According to section 124(3), the assessee can raise a question as to the jurisdiction of an Assessing Officer within the prescribed time limit as under:
 - (i) **where a return has been filed** under section 139(1) then, within one month from the date of service of notice under section 142(1) or section 143(2) or before the completion of assessment, whichever is earlier.
 - (ii) **where no return has been filed**, then, within the expiry of time allowed by the notice under section 142(1) or section 148 for filing the return or within the time allowed in show cause notice issued seeking as to why a best judgment assessment under section 144 should not be made, whichever is earlier.

- (iii) where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, within one month from the date on which he was served with a notice under section 153A(1) or 153C(2)⁴ or before the completion of assessment, whichever is earlier.

Where the assessee calls in question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the assessment is made.

Therefore, in view of the above provisions, the statement that “the jurisdiction of an Assessing Officer cannot be objected by the assessee” is not correct.

3. The powers under section 131(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions. Thus, the power of seizure of unaccounted cash is not one of the powers conferred on the Director General under section 131(1A).

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash.

4. Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorisation include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are empowered by the CBDT to do so.

However, a Joint Commissioner can issue warrant of authorisation only if he has been

⁴ Section 153A deals with assessment in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021.

specifically empowered to do so by the CBDT. Therefore, only if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good. If the Joint Commissioner has been duly empowered by the CBDT, then the contention raised by the assessee would not be valid.

5. As per section 132(1)(c), authorisation for search and seizure can take place if the authority, in consequence of information in his possession, has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing and these assets represent, either wholly or partly, income or property which has not been, or would not be disclosed by such person for the purposes of this Act. In the absence of such information, a search cannot be validly authorised.

The Apex Court in *UOI v Ajit Jain [2003] 260 ITR 80* has held that mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute “information” within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.

6. The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. ‘Existing liability’, however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within 30 days from the end of the month in which search was conducted, the department may retain only the amount of existing liability, if any, and the balance may have to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

Note: *It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee’s application for release of the asset, explaining the sources thereof, was turned down by the*

Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.

7.
 - (a) The authorised officer being DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, and therefore, as per section 132(9A), the papers seized relating to this company shall be handed over by him to the Assessing Officer having jurisdiction over Shri Krishna Ltd., Mumbai within a period of 60 days from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.
 - (b) The contention raised by the Director will not be acceptable because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect thereof, it may be presumed that the same belongs to that person.
 - (c) As per section 132(4A), the presumptions in respect of the papers, indicating transactions not recorded in the books but having direct nexus with the business of the company, are that the same belong to the company, contents of such papers are true and the handwriting in which the same are written is/are of the persons(s) whose premises have been searched.
8. Section 132B of the Income-tax Act, 1961 deals with the application of assets seized under section 132. Such assets will be first applied towards the existing liability under the Income-tax Act, 1961, etc. 'Existing liability', however, does not include advance tax payable. Further, the amount of liability determined on completion of assessment or reassessment or recomputation (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, may be recovered out of such assets.

Where the nature and source of acquisition of such seized assets is explained to the satisfaction of the Assessing Officer, the amount of any existing liability mentioned above may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made within 120 days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized.

When the assets consist of solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the assets other than money may also be applied for the discharge of such liabilities if the complete recovery could not be made from the money seized or the money seized was not sufficient.

9. In order to deter the practice of non-disclosure of income, section 271AAB(1A) provides for levy of penalty on undisclosed income found during the course of a search, which relates to specified previous year, i.e. -

- the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished (P.Y. 2023-24).
- the previous year in which search is conducted (P.Y. 2024-25).

Accordingly, under section 271AAB(1A), in respect of searches initiated on or after 15.12.2016,

- penalty@30% would be attracted, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 148 expires, as the case may be).
- In all other cases, penalty @60% of undisclosed income would be attracted.