



## Online Certification Course: AICAA - Batch - 5

### Search assessment u/s 153A & 153C

Date: 12.11.2022

Section 153A, 153B and 153C are most important sections for Search assessment.

These sections were introduced by the Finance Act 2003 w.e.f. 01.06.2003.

#### **Sec 131: Power of I.T. Authority**

**I.T. Authority shall have all the powers vested in a civil court under the Code of Civil**

**Procedure, 1908:**

**Discovery & Inspection.**

**Enforcing the attendance of any person & examining such person on oath.**

**Compelling the production of books of & documents.**

**Issuing commission (Summons).**

**IT Authority can impound Books of A/c's for max 15 working days.**

#### **Sec. 133 Power to call for Information**

**I.T. Authority can call information from any person.**

**eg:- Info. from bank relating to any account holder etc.**

**U/s 133(6) AO, CIT(A), CCIT or CIT may require any person to furnish any information. This power cannot be exercise by any authority below the rank of CIT/DIT. if proceeding is not pending without the prior approval of CIT/DIT. This power can be exercise by JD, DD, AD without approval of CIT/DIT.**

Even where no proceeding is pending against a person, the AO can definitely call for information u/s 133(6), which is useful or relevant to any enquiry, with the permission of DIT or CIT.

#### **Sec 133B : Powers to collect information**

**I.T. Authority may enter at any place at which Business / profession is carried on and collect information from there.**

**IT Authority may enter any place of business or profession referred to above only during the hours at which such place is open for business or profession.**

## **Sec 133A : Power to Survey.**

**I.T. Authority may enter any building or place at which Business or profession is carried on or activity of charitable purpose is carried on.**

**Provided that no action under this section shall be taken by an IT Authority without the approval of the PDGIT or the DGIT or the PCCIT or the CCIT.**

**"IT Authority" means—**

- (i) a PCIT or CIT, a PDIT or DIT, a JC or JD, an AD or a DD or an AO, or a TRO; and
- (ii) includes an Inspector, for the purposes of Inspect BOA & Documents, place marks of identification and make copies & extracts therefrom and for survey at any at Function, ceremony or event.

**—who is subordinate to the PDGIT/DGIT (Investigation) or the PCCIT/CCIT(TDS).**

**Upon entering they can do :**

- a. Inspect any Books of A/c's or docs.
- b. Check or verify the cash, stock or other valuable articles.
- c. Place marks of identification on Books of A/c's & docs.
- d. Make an inventory of any cash, stock or other valuable articles.
- e. Impound Books of A/c's [Max 15 working days].
- f. Record the statement of any person.

**If Books of A/c's or assets relating to Business or profession or charitable purpose are kept at same other place, then such other place can also be covered under survey.**

## **Entry Restriction**

- a. Entry to the place of Business or profession can be only during those hours, during which such place kept open for conducting business or profession.
- b. Entry to any other place can be only after sunrise but before sunset.

**Note: Restriction is only for entry, Not for Exit.**

**The I.T. Authority is of the opinion that it is necessary to do survey at any function, ceremony or event then they can survey such place but only after conclusion of such function, ceremony or event & require any person to furnish information as he may require statement given by such person can be record.**

## **Search & Seizure [RAID ]**

### **Sec 132 : Procedure to Search & Seizure**

#### **Who can authorize search [issue search warrants]**

- PCCIT / CCIT / PDGIT / DGIT.

- PCIT / CIT / PDIT / DIT

- Additional CIT / DIT

- J.C. / J.D.

if Empowered by CBDT

#### **When search can be authorised.**

**If I.T. Authority has reason to believe that:**

**Any person to whom Notice u/s 142(1) or summon u/s 131 issued / might be issued to produce Books of A/c's or docs & Assessee failed to produce / will not produce such Books of A/c's or Docs.**

**Any person is in possession of any money, jewellery or any other valuable articles and asset, which has not been disclosed / would not be disclosed for the purposes of I.T. Act.**

**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.**

**Power of Authorised officer in course of search.**

Enter & Search any Building, place, vessel, vehicle or aircraft where he has suspect that Books of A/c's, money etc are kept.

Power to break lock of any door, box, locker etc if keys are not available.

Search any person who has got out of, or is about to get into, or is in, the Building, vessel, place, vehicle etc,

Require any person who is in control of any Books of A/c's maintained in the electronic form, to provide password.

Seized any Books of A/c's, docs., money, bullion, jewellery etc. found under search.

However, stock cannot be seized.

**Notes :**

**Deemed / Constructive Seizure :** where it is not possible / practical to take physical possession of any asset due to volume, weight, nature etc then authorised officer may serve an order on the owner of the person who is in immediate possession thereof, that he shall not remove / deal with / part with such asset without the approval of Authorised officer.

**Prohibitory order / order of restraint :** where it is not practical to take physical possession of any Books of A/c's or other asset for reason other than mentioned in Note-1 above, then authorised officer may serve an order on the owner of the person who is in immediate possession that he shall not remove / deal with / part with /

**Presumption (Assumption) under Search:** where any Books of A/c's, other documents, money, bullion, jewellery etc. found in possession of any person, it may be presumed -  
That such Books of A/c's, docs, money, bullion, other valuable article belongs to such person.

That the content of such Books of A/c's & docs are true.

That the signature & every other part of such Books of A/c's & other docs which purport (seems) to be in the handwriting of any particular person are in that person's handwriting.



## **S.153A: Assessment in case of search or requisition.**

- ☐ Non-obstante clause- Overrides sections 139, 147, 148, 149, 151 and 153
- ☐ AO shall **issue notice** to the person searched to file Return of Income for six Assessment Years (**and for the relevant assessment year or years\***) immediately preceding the year in which the search is conducted.
- ☐ AO to assess/ reassess total income for six assessment years (**and for the relevant assessment year or years\***)
- ☐ Assessment/ reassessment in relation to any assessment year
  - falling within the period of such six assessment years, (**and for the relevant assessment year or years\***)
  - pending on the date of initiation of search shall abate
- ☐ Sec. 153A contemplates issue of notice for 6 years (**and for the relevant assessment year or years\***) preceding the search but not for the year of search or requisition and thus no return is required to be filed for the year of search u/s 153A. Only regular return u/s 139 is to be filed.

\* Inserted by Finance Act, 2017, i.e. 1-4-2017

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### ☐ **EXPLANATION TO SEC. 153A**

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, sec. 153B and sec. 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

- ☐ **Rule 112F** - Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the A.Y

The aforesaid rule was introduced with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted u/s 132 or requisition made u/s 132A and cash or other assets **are seized during the election period**, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

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## **S.153C: Assessment of income of any other person.**

- Where the AO is satisfied that any money, bullion, jewellery or other valuable article documents seized belongs to a person other than the person referred to u/s 153A, the same shall be handed over to the AO having jurisdiction over such other person; and
- that AO shall proceed against each such other person, issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person (**for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and**\*) for the relevant assessment year or years referred to in sub-section (1) of section 153A.
- Following points emerge:-
  - Both the Assessing Officer i.e. the AO of the original assessee and AO issuing notice u/s. 153C has to place his satisfaction.
  - Such satisfaction should be expressive and a speaking one.
  - Assessing Officer should demonstrate that the seized books of accounts/documents/assets have any impact on determination of total income of such other person.
  - Satisfaction shall be given for each assessment year of such other person proposed u/s 153C

\*inserted by Finance Act, 2017 w.e.f. 01-04-2017

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Thanking you,

CMA Kedarnath...