

DON'T PANIC, IF INCOME TAX DEPARTMENT RAIDS YOU

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SEARCH

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

To face the situation efficiently, it is extremely important to understand some of the nitty-gritty's of I.T. law on the subject. Lack of knowledge on the subject leads to panic and all the discomfort. The knowledge of your legal rights and responsibilities always protects you.

2) **YOUR RIGHTS :**

- a) To see the warrant of authorisation duly signed and sealed by the issuing authority.
- b) To verify the identity of each member of the search party before the start of the search and on conclusion of the search.
- c) To insist on personal search of ladies being taken only by a lady, with strict regard to decency.
- d) To have at least two respectable and independent residents of the locality as witnesses.
- e) A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.
- f) To call a medical practitioner in case of emergency.
- g) To allow the children to go to school, after checking their bags.
- h) To have the facility of having meals, etc., at the normal time.
- i) To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.

- j) Every person who is examined under section 132(4) has a right to ensure that the facts so stated by him have been recorded correctly.
- k) To have a copy of the panchanama together with all the annexures.
- l) To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.

3) **YOUR RESPONSIBILITIES :**

- a) To allow free and unhindered ingress into the premises.
- b) To see the warrant of authorisation and put signature on the same.
- c) To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorised officer.
- d) To identify and explain the ownership of the assets, books of account and documents found in the premises.
- e) To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by impersonation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- f) Not to allow or encourage the entry of any unauthorised person into the premises.
- g) Not to remove any article from its place without notice or knowledge of the authorised officer. If he secretes or destroys any document with the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code.
- h) To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt while his statement is being recorded by the authorised officer. In doing so, he should keep in mind that –
- i) If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, under section 179 of the Indian Penal Code.

- j) Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.
- k) Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code.
- l) To affix his signature on the recorded statement, inventories and the panchanama.
- m) To ensure that peace is maintained throughout the duration of the search, and to co-operate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
- n) Similar co-operation should be extended even after the search action is over, so as to enable the authorised officer to complete necessary follow-up investigations at the earliest.

4) **OTHER PROVISIONS :**

- a) The authorized officer cannot seize stock in trade of a business. However, restriction on seizure of stock in trade applies only to valuables and not cash.
- b) Power to arrest assessee is not entrusted to the department.
- c) Section 133A does not permit sealing of business premises.
- d) It has been instructed by CBDT vide letter dated 10.03.2003 that while recording statement during the course of search and seizures and survey operations, no attempt should be made to obtain confession as to the undisclosed income. It has been advised that there should be focus and concentration on collection of evidence for undisclosed income.

5) **a) ASSETS WHICH CANNOT BE SEIZED :**

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

b) ASSETS WHICH CAN BE SEIZED :

- ↪ Unaccounted cash, jewellery, gold, bullion, lockers, promissory notes, cheques, drafts.
- ↪ Books of accounts, chits, diaries, etc.
- ↪ Computer hard disks and other data storage devices
- ↪ Documents of property, title deeds, etc.

6) WHAT LEADS TO INCOME TAX RAIDS, SEARCH AND SEIZURES :

With a view to focus on high revenue yielding cases and to make the optimum use of manpower, the Board has decided that officers deployed in the Investigation Wing should restructure their activities. They should adhere to the following guidelines:

- (a) Searches should be carried out only in cases where there is credible evidence to indicate substantial unaccounted income/assets in relation to the tax normally paid by the assessee or where the expected concealment is more than Rs. 1 crore;
- (b) Search operation will also be mounted when there is evidence of hidden unaccounted assets arising out of a conspiracy to cause public harm, terrorism, smuggling, narcotics, fraud, gangsterism, fake currency, fake stamp papers and such other manifestations;
- (c) Tax payers who are professionals of excellence should not be searched without there being compelling evidence and confirmation of substantial tax evasion.

Henceforth, search operations shall be authorized only by the concerned DGIT (Inv.), who will be accountable for the action initiated by the officers working under him. He should also ensure that all the work relating to search and seizure, like post-search inquiries, preparation of appraisal report and handing over of seized books of account, etc., should be completed by the Investigation Wing within a period of 60 days from the date on which the last of the authorizations for search was executed.

(Instruction: No. 7/2003, dated 30-07-2003.)

SURVEY

Search / Raid shouldn't be confused with Income Tax Survey.

1) INTRODUCTION :

The power of survey under section 133A of the I. T. Act, though not as wide as powers of search, are wide enough to effectively detect evasion of tax on business income earned. No preconditions have been prescribed which need to be satisfied by the Income Tax Authority before exercising the power of survey.

2) WHO CAN CARRY OUT SURVEY :

Any income tax authority having jurisdiction over the assessee can carry out survey. Such jurisdiction may either be because of assessment jurisdiction or because of jurisdiction over the place of business. Even Assessing Officer having charge of TDS circle or a Tax Recovery Officer can carry out survey.

3) WHO CAN AUTHORISE SURVEY :

Income Tax Authority as mentioned above can carry out survey only if approval has been obtained from Joint Commissioner or Joint Director.

4) PREMISES THAT CAN BE SURVEYED :

In exercise of powers of survey, income tax authority can only visit place at which business or profession is carried out, whether principal or otherwise. They can also visit any other place, where the person surveyed states that books of accounts, cash or stock in trade or other valuable or article or thing relating to business or profession is kept.

5) HOURS DURING WHICH SURVEY CAN COMMENCE :

Survey can be carried out and commence, at a place where business or profession is carried on, when it is open for business. The restriction is only as regards when the income tax authority can enter premises to survey. As regards any other place where books, etc are stated to have been kept, income tax authority can enter only after sunrise and before sunset.

6) EXTENT OF POWERS UNDER PROVISIONS OF SURVEY :

An income-tax authority can exercise only following powers during the course of survey:

a) To inspect books of accounts and other documents,

- b) To place marks of identification on books of accounts or documents examined,
- c) To make extracts or copies of books of accounts or documents,
- d) To check, verify and prepare inventory of cash, stock or other valuable article or thing found.

7) **WHETHER BOOKS, CASH, VALUABLES ETC. CAN BE SEIZED OR IMPOUNDED DURING SURVEY :**

Survey party can merely survey and cannot seize cash or valuables. The Finance Act 2002 has given power to the income-tax authority to impound and retain in his custody books of account or other documents inspected by him during survey, after recording his reasons for doing so. However the power to impound is restricted to only books and documents and does not extend to cash, valuables and other assets found.

8) **RECORDING OF STATEMENT :**

The income tax authority may examine on oath any person, which may be useful for the purpose of any proceeding under the Act. A statement on oath may be used as evidence in any proceedings under the Act.

9) **ENQUIRY RELATING TO EXPENDITURE INCURRED ON FUNCTION, CEREMONY OR EVENT, ETC. :**

Sub-section (5) of section 133A provides that an Income Tax Authority may make enquiries as regards expenditure incurred in a function, etc. organised by an assessee. The powers under sub-section (5) are different from other provisions of section 133A. Enquiry can be made and information can be sought not only from the person who has incurred the expense but also from any other person, who in the opinion of the Income-tax Authority is likely to possess the information. For example, in the case of marriage, he may make enquiries from a hotel, a restaurant, caterer, decorators, printers of invitation cards, the jewellers etc., who may give the information with regard to the expenditure incurred at the time of marriage. The power can be exercised only after the event and the officers cannot visit the event itself for survey.

DOS AND DON'TS FOR ASSESSEE'S

- a) Return of income for every year should be filed within the time limit prescribed.
- b) Copies of all returns of income should be properly documented. Though your tax representative may be having and maintaining complete tax records, it is necessary that a copy of income tax and wealth tax returns

filed is kept at office premises and in case of individuals, it should also be maintained at residence for all family members.

- c) Books of accounts are maintained properly and upto date.
- d) You may be called upon to explain any document, loose papers, etc found during search or survey. As such, care should be taken to maintain papers in proper manner.
- e) Investments made should be properly accounted and supporting evidence should be available to substantiate the investment made.
- f) Ornaments belonging to different members of the family should be kept separately. It is advisable to keep lists of the ornaments of each person and also where the ornaments are kept. Valuation report of a jeweller can be obtained. Also, tax records substantiating such ownership should be available at residence.
- g) Statement recorded at the time of search or survey, are very crucial. The person making statement is advised to state truly, correctly, fully and completely. Reply should not be vague or evasive. One should be very cautious and careful while answering the question and the person should not panic.
- h) Further, necessary cooperation should be made with the authorised officers. As per amendment made by the Finance Act, 2002, if a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents maintained in electronic form, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.
