

13th April, 2020**Direct Tax Snippets**

Write-up from the Income Tax Act, 1961

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**Hand-Guide on
'Survey' under the
Income Tax Act,
1961****Introduction**

Survey in a wider sense means to scrutinize or to inspect. The power of survey under the Income tax Act 1961 [hereinafter referred to as the Act] has been provided under Section 133A and Section 133B. The provisions contained in section 133A are independent of the other provisions of the Act since the wordings starts with 'Notwithstanding anything contained in any other provisions of the Act.'

Entry to any premises

In a survey, an IT Authority may enter any building or a place where business or profession is or where any activity of charitable purpose is carried on. However, if the books of accounts or documents or assets relating to the business are kept at some other place, then such other place can also be covered under survey.

No survey can be conducted at the residential premises unless the residence is shown as a business premises by the assessee.

Entry to the place of business by the IT Authority can only be during those hours during which such place is kept open for conducting business. Entry to any other place can only be after sunrise but before sunset.

It is pertinent to note that the restrictions are given under this section only for entry and not for exit, meaning the Authority can exit at any time as he may wish.

Powers of the Authority

Upon entering such a place, the IT authority can:

- Inspect any books of accounts or other documents as required;

- Check or verify the cash, stock or other valuable article or thing which are found;
- Place marks of identification on such books, documents or extract copies therefrom;
- Make an inventory of any cash, stock or valuable article or thing verified by him;
- Impound the books of accounts or other documents in his custody for maximum of 15 days only after recording reasons for doing so. However, he may impound such documents for greater than 15 days after obtaining prior approval from PCCIT/CCIT/PDGIT/DGIT/PCIT/CIT/PDI T/DIT.
- Record statements of any persons which may be useful/relevant to any proceedings under this act.

Please Note: During the Survey, the IT Authority, do not have powers to remove (seize) any cash, stock or valuable article or thing from the place of survey.

Confessions

It is generally seen that, the IT Authority records a confessional statement of the assessee during the course of or at the conclusion of Survey.

But such a statement can be retracted and the assessee can file a declaration to that effect afterwards. Since the statement recorded u/s 133A(3)(iii) is not recorded on oath, it doesn't have any evidentiary value. However, the assessee should have cogent reason to retract the same.

CBDT has also through issued a circular in F.No.286/2/2003-IT[Inv] dt.10/3/2003 directing it's officers that while recording statement during search or survey, no attempt should be made to obtain confession as to undisclosed income, rather there should be focus and concentration on collection of evidence of undisclosed income.

If the IT Authority is of the opinion that it is necessary to do survey at any function, ceremony or event, then, they can survey such a place but only after the conclusion of such function, ceremony or event and they can record the statement of any person or the assessee.

Difference between Survey and Search (Raid)

Search (raid) means "looking for something which is hidden, concealed or not obvious". The word has varied meanings. It also means taking possession of the records, documents etc. for the purpose of inspection. In a search, any premise of the assessee including his residence can be covered. Entry can be made at any time as well during a search.

It includes a thorough inspection of the building, place, vessel, and aircraft and of the person. 'Seizure' means the authority to take possession of records, documents, assets etc. from the possession of the assessee. It is thus an expression which implies a forcible exaction or taking possession from either the owner or one who has possession and who is unwilling to part with possession.