

“SEARCH & SEIZURE”

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(Central Council Member, 2025-2029)
BCOM, FCA. DISA



POSSIBLE CAUSES OF SEARCH & SOURCE

Type	Source
Information Based	<ul style="list-style-type: none">• Finance Intelligence Units• INSIGHT Portal• Other Departments
Complaint Based	<ul style="list-style-type: none">• Informants/ Professional Trainer• Tax Evasion Petition
Bogus Transactions	<ul style="list-style-type: none">• Bogus Purchases/ Expenses• Bogus Sales• Bogus Loans Taken/ Given• Bogus Capital Gain
Bogus Deductions	<ul style="list-style-type: none">• Bogus Donations• Bogus CSR Expenditure
Third Party Information	<ul style="list-style-type: none">• Information gathered during search of third party or associates

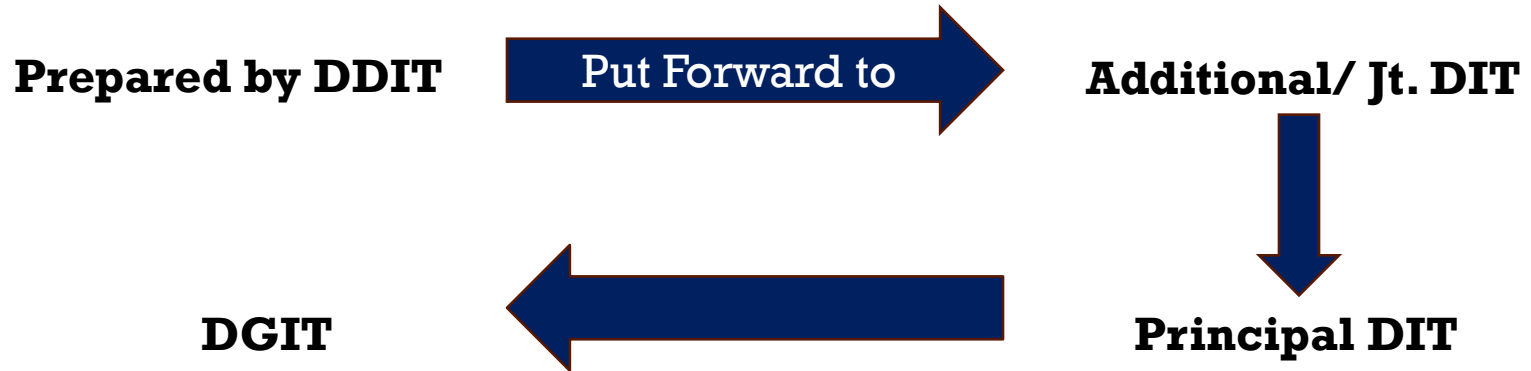


What is the distinction between income tax search/income tax raid and income tax survey?

Income tax search and income tax raid is one the same thing. Income tax Survey is another tool in the hand of the authorities for making investigation under the Income-tax Act. Income tax survey is comparatively milder action and can be undertaken only at business premises and no seizure of assets is permitted in the case of survey



APPROVAL/ AUTHORISATION OF SEARCH CASES



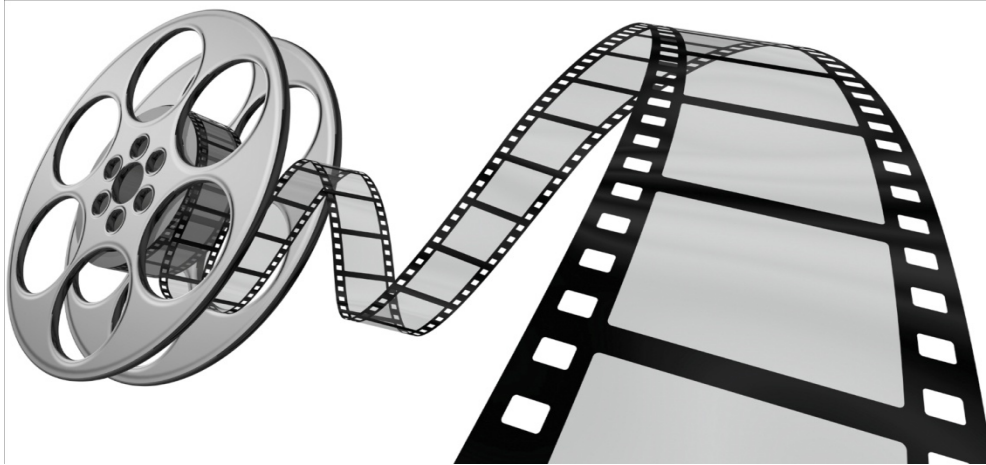
Note: PDGIT/ DGIT/ PDIT/ DIT/ PCCIT/ CCIT/ PCIT/ CIT/ Addi. DIT/ CIT/ Jt. DIT/ Jt. CIT are empowered by CBDT to issue authorization u/s 132 (1).



SEARCH PROCESS



A SHORT MOVIE TO BE PLAYED



Please click the above hyperlink !



Powers of Authorized Officers

- Enter and search the premises.
- Search Individuals Entering and Leaving the Premises.
- Break or open locks to access restricted areas.
- Inspect books and other documents for information.
- Seek assistance from police where necessary.
- Seize books of accounts, documents, money, etc. from the searched premises.
- Record statements of Individuals.
- Pass a restraint order or prohibitory orders.



Duties of Authorized Officers

- Allow children to go to school.
- Do not threaten, abuse or use indecent language.
- Allow meals, medicines and rest at normal hours.
- Maintain a cool and calm temperament and be alert.
- Leave the premises only after informing the assessee.



Rights of Searched Person

- The assessee can demand to see the search warrant/ authorization. They can refuse entry if it's not properly signed.
- The assessee can refuse the search until two independent witnesses arrive.
- The assessee has the right to a female search conducted by a woman. This must be done with respect and decency.
- Statement recorded can be verified by the assessee before signing the same.
- The assessee can continue normal activities. However, it should not obstruct search operations.



Duties of Searched Person

- Allow free and unhindered entry to the search party.
- See the warrant and sign the same.
- Answer to the question to the best of knowledge.
- Sign the statement recorded, list of inventory seized, panchnama and other related documents.
- Ensure that peace is maintained during the course of search.
- Do not remove any article from its place.
- Do not try to destroy any document during the course of search.





COMMENCEMENT OF SEARCH

See that the warrant is duly signed and stamped

Verify the identity of each member of the search party

Carry out personal search of all members of the search party (to guard against 'Planting')

Insist upon personal search of ladies by ladies only (Especially after Tehelka and SC Judge's issue)



Call Independent & Respectable Witness

At least two known respectable inhabitants having basic knowledge of Income Tax Proceedings



Have two witnesses (Panchas) (Refer Rule 112 (6) and (7)) preferably who would support you even in case of “Retraction” at any later date.

Preferably Two respectable inhabitants of the locality, who will witness the search and remain present at the premises throughout the operation comes to an end.



PRECAUTIONS TO BE TAKEN WITH REFERENCE TO SEARCH WARRANT:

There may be a situation where in the same premises two or more persons have similar names as mentioned in Search Warrant. **e.g.** Search Warrant is issued in the name of Mr. K.J. Sharma living in Flat no. 22 of a building and Income Tax department searched Flat No. 501 of another Mr. K.J. Sharma of the same building. In this case department has no jurisdiction to search Flat no. 501.

There may also be a situation where search warrant is issued for one particular premises and search is conducted at another premises of the same person. Ensure that the address of another premise is also mentioned in the warrant.

When personal assets are destroyed like sofas and beds are torn, floor is dug and walls are broken with mala fide intention and there was no reason to suspect that items broken or destroyed contained any concealed income or assets hidden therein neither on the basis of information received from the informer, nor from any other source, the assessee may take action.





Women can be checked only by lady members of raid team.

Children can go to school after the Search team conducts search of school bags etc.





In case of any health-related emergency, you have the right to call a doctor of your choice. You also have the right to have your meals at proper time.

Ensure that peace is maintained throughout the duration of the search and refrain from making false statement or producing false evidence.



PRECAUTIONS TO BE TAKEN **WHILE EXPLAINING JEWELLERY**

In case of search of a jeweller , bifurcate “Stock in trade” and “Capital Asset”

Refer - Sri Pushpa Ranjan Sahoo v. ACIT (2012) 252 CTR 113/75 DTR 341 (Orissa) (HC)

Wealth tax return (if applicable) disclosing jewellery should be readily available

Explore possibility of producing copies of bills and such other documents to the satisfaction of the search party.

It is always advisable to state that, the jewellery belongs to family as a whole, so as to take maximum benefit of the CBDT Instruction no. 1916.





Jewellery up to a specified limit (e.g. 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family) is generally accepted. In case of a wealth tax assessee, jewellery in excess of the gross weight declared in the wealth tax return only needs to be seized. The inventory of the entire jewellery is taken by the Departmental valuer who accompanies the search team.



PRESUMPTION AS TO OWNERSHIP U/S 132(4A)

Where any books of account, other documents, money, bullion, jewelry or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed

such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person

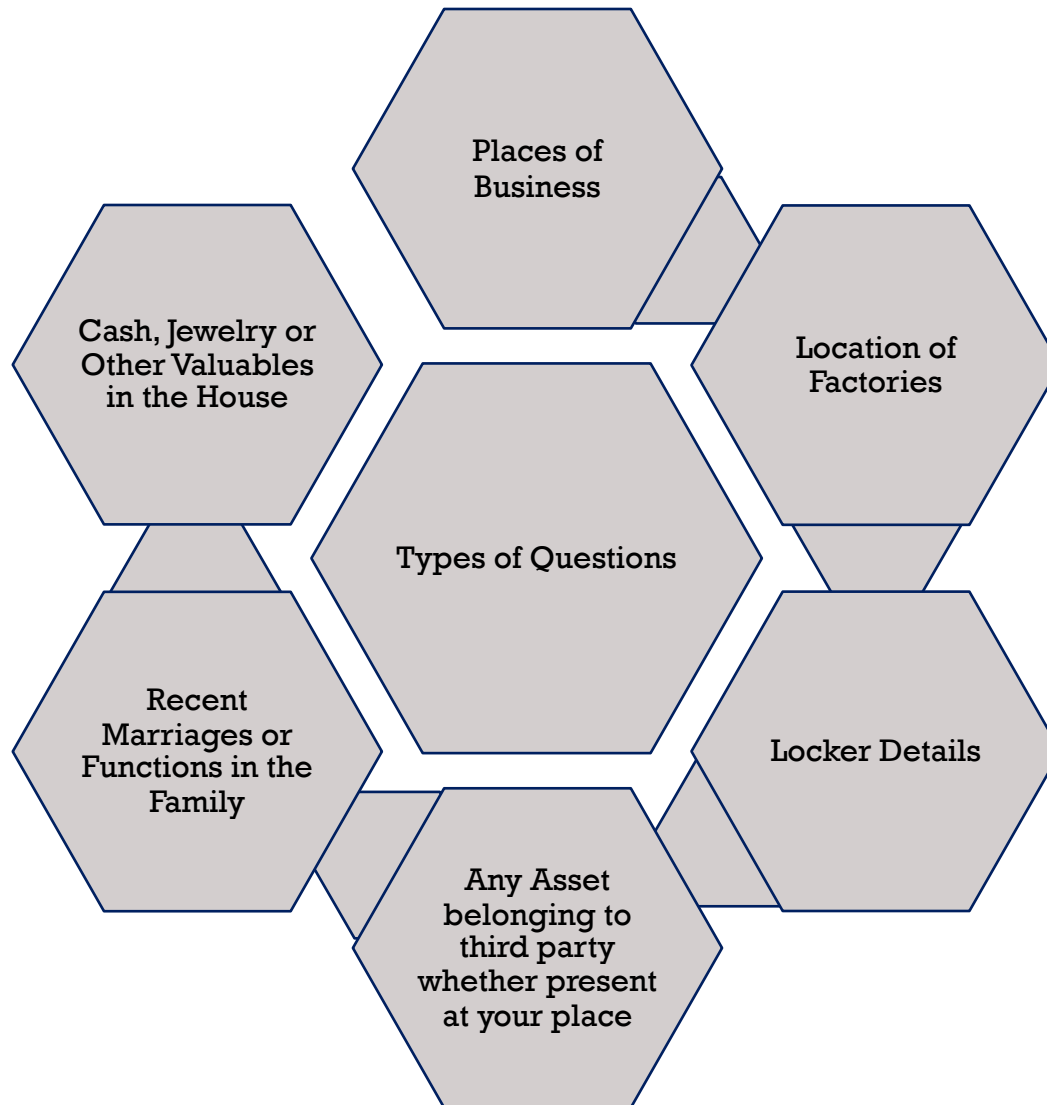
the contents of such books of account and other documents are true

the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting,

and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.



PRELIMINARY STATEMENT – TYPE OF QUESTIONS



ITEMS 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



A collection of approximately ten open jewelry boxes, mostly in red and blue, are scattered on a patterned rug. The boxes contain various pieces of jewelry, including gold necklaces, earrings, and rings. Some boxes are empty, showing the interior lining. The jewelry is displayed in a way that highlights its design and craftsmanship.

Date of Search/Survey _____

List of Bullion (Primary gold, silver etc.) / gold ornaments and jewellery / silver articles found / seized in the case of M/s. / Shri / Smt. _____

Specific place where found :

item claimed to be belonging to : _____

[illegible]

Signature of Party.

1.

2.

Vishnu Agarwal & Co. Chartered Accountants

ITEMS WHICH CANNOT BE SEIZED

Stock held in business

Items disclosed in Income Tax and Wealth tax Returns

Items appearing in books of accounts

Cash for which explanation can be given

Jewellery mentioned in wealth tax return

Gold up to 500 Gm per married woman, 250Gm per unmarried woman and 100Gm per male member of the family

Jewellery as per the status of the family if so appear to the satisfaction of investigating officer



PROHIBITORY ORDER [SECTION 132(3)]

Where its not practicable to 'seize' any :-

- books of accounts/ others documents,

- money, bullion, jewellery,

- other valuable article or things.

order served on person in possession of above; and

such person is directed not to part or otherwise deal with same.



Is a Prohibitory order issued under subsection (3) of Section 132 of the Act in respect of Current Account of the searched person without any material showing that amount deposited therein is undisclosed income sustainable in law?

Ans: No

Refer:

**M/s Visa Comtrade Limited vs. Union of India and Others
[2011] 201 Taxman 413 (Orissa)/[2011] 338 ITR 343
(Orissa)/[2011] 243 CTR 348 (Orissa)**



SPECIMEN- PANCHNAMA



A **panchnama** is prepared in which an account of the entire proceedings is recorded, and all the statements recorded and inventories prepared during the search are appended to it. The panchnama is to be signed by the authorized officer, the person in whose case the search is being conducted and the witnesses to the search.

D. D. I.. T.'s Copy

S. S. - 5

PANCHNAMA

[To be prepared in quintuplicate] Party No.

- [A] Warrant in the case of :
 [B] Warrant to search :
 [Details & Ownership
 of place of search]
 Telephone Numbers.
 [C] (A) and (B) stated to : (A) (B)
 be assessed by
 [D] Search party consisting of :

Authorised Officers

Name

Full Designation

- 1.
- 2.
- 3.
- 4.
- 5.

Other officials who assisted the authorised officers

- 6.
- 7.
- 8.
- 9.
- 10.

[E] Name and complete address of Panchas :

- 1.
- 2.

On being called by Shri. _____ on _____ at _____
 a.m./p.m. we, the above named panchas, presented ourselves at the above place of search. The authorised Officer, Shri _____
 showed the warrant of authorisation dated _____
 issued under Section 132 of the Income-Tax Act 1961/37A of the W.T. Act, 1957 in the case of (A) above to search the
 place of mentioned at (b) above and duly signed and sealed by the Director of Income-Tax (Inv.) Mumbai, New Delhi/
 Commissioner of Income-Tax Mumbai City / Central Mumbai / Joint Director of Income-Tax (Inv.) Unit -
 Mumbai / Joint Commissioner of Income Tax _____ Range, Mumbai to
 Shri/Smt. _____ who was present in the said place the time and who after
 reading the said authorisation/after the authorisation was explained in local language viz. _____ by
 Shri/Smt. _____ signed it in our presence and along with us, in token of having
 per used the same.

2. As today's search was in continuance of the proceedings on _____ we along with the aforesaid
 authorised officers before the commencement of proceedings today inspected the seals which had been placed on that
 date and found them to be intact/tampered with as narrated in the enclosures.

DO'S

1. Panchnama- Copy must be obtained immediately.
2. Inventory- Copy must be obtained.
3. Copies of documents seized- Make application to furnish copies
4. Copies of statements – make application to furnish copies
5. Factual Error – Valuing Stock – Inventory etc. - Write immediately to the concerned officials who have conducted the search operation
6. Goods of perishable nature if kept under prohibitory order- ask to release or sell- if loss is occurred the department is responsible
7. In case of Seizure of cash- Ask adjustment against tax liability
8. Disposal of assets seized- release of assets or sell by the tax department



DO'S

9. Damages- File petition for loss due to action of the Tax officials

10. Retraction- within reasonable time before the same officials who have taken the statements. If required copy to higher authorities

11. If any valuable or document of 3rd party is seized ask the party concern to make an application for release and claiming the ownership.

12. If any documents or a statement of 3rd party is proposed to be used against you, ask for the copies such documents or statements and further request for opportunity to cross examine them.

13. In response to summons, attend and answer the questions- If you don't know the answer verify and reply.

14. Discuss with consultant – way forward.

15. Cooperate with proceedings



DONT'S

1. Removing valuables, books, documents, chits, notings, diaries, etc put under prohibitory order .

2. Mislead on facts .

3. Try to destroy the books, documents, chits, notings, diaries, etc



APPRAISAL REPORT [Internal Confidential Report]

1. DDIT (Inv.) who conducts search prepares Appraisal Report
2. DDIT proposes undisclosed Income to Central Circle A.O. based on finding of search, statements recorded and evidence seized.
3. The appraisal report is approved by Add. DIT & thereafter by PDIT
4. The appraisal report is sent to Pr. CIT (Central)
5. Pr. CIT (Central) forwards the appraisal report to DCIT Central.
6. Generally, addition in appraisal report are confirmed. **However**, assessee can challenge the same in case of erroneous additions discovered.
7. Assessee requests a deviation from Appraisal report before DCIT Central and Add. CIT Central
8. Proposal is sent to DDIT (Inv.) and Add. DIT (Inv.) for review.
9. Pr. CIT & Pr. DIT hold joint meeting to decide on the proposal.



POST SEARCH ANALYSIS



VALIDITY OF SEARCH

Section 132(1)(a)

Non compliance to
summon u/s. 131(1) or
a notice u/s. 142(1) to
produce certain books
or other documents.

Section 132(1)(b)

Notice has been issued
/ would be issued, but
such person has not /
might not produce
document in respect of
any proceedings under
Act

Section 132(1)(C)

Possession of
undisclosed money,
bullion, jewelry or
other valuable thing

- **Authority must have information**
- **Reason to believe and not suspect**
- **It must be information and not rumor or gossip or hunch**
- **Information must exist prior to authorization**
- **Reason to believe must have reasonable bearing/ connection to information substantiated by a “Satisfaction Note”**



Pramod Swarup Agarwal vs. PDIT (Inv.) [Writ Tax No. 30 and 31 of 2025) (Allahabad High Court)

Key findings of the Hon'ble Allahabad High Court:

“There is no information in the satisfaction note which could be the basis for a belief as envisaged under section 132 that if petitioners were to be issued summons or notice, they would not produce or cause to be produced any books of account or any other documents which will be useful for or relevant to any proceedings under the Act.

No prudent person on a reading of the satisfaction note in the light of requirements of law contained in section 132(1)(b) can arrive at a conclusion that such information and reason to believe formed by the competent authority... had any relation whatsoever to clause (b)

The entire search operations based on such satisfaction note and warrant of authorization are illegal. The information and reason to believe based thereon so far as the petitioners are concerned are a mere pretence.



CIT v. Vindhya Metal Corporation [1997] 224 ITR 614 (SC)

The search was challenged on the grounds that the "reason to believe" for conducting the search was not properly recorded.

The Supreme Court held that the courts cannot question the sufficiency of the "reason to believe" as long as the belief was formed in good faith and based on relevant information. Good faith and relevance of the information is key; the sufficiency of the information cannot be questioned (In favour of assessee).

Madhu Gupta vs. DIT (Inv.) [2013] 30 taxmann.com 92 (Delhi)

A warrant under Section 132(1) can be issued only when the issuing authority possesses credible, tangible information and forms a reasoned belief that the conditions in clauses (a), (b), and (c) are met. **Mere surmise or conjecture is insufficient. There must be a nexus between the information and the belief.** Furthermore, the information must not be in the nature of some surmise or conjecture, but it must have some tangible backing (In favour of assessee).



CIT vs. Dr. Nandlal Tahiliani [1988] 39 Taxmann 127 (ALL)

The complaint lacked specific, credible information to justify action under Section 132. Mere high earnings or lifestyle do not constitute "reasonable belief" of undisclosed income. Such belief must be based on reliable, sufficient material. Unverified complaints cannot warrant intrusive action that infringes personal liberty and damages reputations. Hence, the writ petition was allowed (In favour of assessee).

S.R. Batliboi & Co. vs. Department of Income-tax (Investigation) [2009] 181 Taxman 9 (Delhi)

During a tax search on EMAAR, laptops of two of the employees of their auditors; S.R. Batliboi & Co. were taken by the tax department. They asked for full access to all client data on the laptops vide Summon u/s 131(1A). The Delhi High Court said no, and ordered the laptops to be returned, saying other clients' data must stay private (In favour of assessee).



RETRACTION OF CONFESSION MADE ON OATH

- No specific form prescribed – Affidavit, Letter, etc.
- To be made at the earliest within reasonable time
- Department may view it adversely
- Ultimately nature of evidences will decide
- Challenging valuation, not retraction
- Challenging calculation, not retraction
- In the absence of any corroborative evidence, A. O. cannot make addition on properly retracted Statement
- Statement given u/s 132(4) is on oath and u/s 133A is not on oath and therefore it is difficult to retract the disclosure made in the statement u/s 132(4) as compared to the disclosure made in the statement made u/s 133A.

Statement recorded at odd hours cannot be considered to be a voluntary

Kailashben Manoharlal Choksi v. CIT [2008] 14 DTR 257 (Guj)

A Retraction, though belated, is valid

CIT vs. Ramanbhai B Patel (Gujarat High Court)

Initial burden to show that confession was voluntary

CIT v. O. Abdul Razak 350 ITR 71 (KER.)



DUMB DOCUMENTS

What are dumb documents

- Numerous loose papers /Excel sheets/Emails
- Diaries
- Note pads
- Whatsapp Chat

What they may contain :

- Rough calculation
- Vague noting
- Scribbling and jottings

Whether Such document can result in income subject to tax ?



DUMB DOCUMENTS

Case 1

10.01.2024 ₹ 10.00=00

15.02.2024 ₹ 250=00

31.05.2024 ₹ 755=80.

Case 2

10.01.2024 - Ram ₹ 1,000=00

15.02.2024 - Shyam ₹ 250=00

31.05.2024 - Arun ₹ 755=80.



DUMB DOCUMENTS

Case 3

10.01.2024 - Ram ₹ 1000 = 00 Given

15.02.2024 - Shyam ₹ 250 = 00 Recd.

31.05.2024 - Arun ₹ 650 = 00 Recd.

Case 4

10.01.2024 - Ram ₹ 10,000 - Recd.

15.01.2024 - Shyam ₹ 2,000 - Expenses.

20.01.2024 - Hari ₹ 1,00,000 = Loan Given

25.01.2024 - Lucky ₹ 2,00,000 Loan Given.

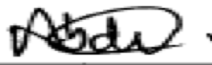
15.02.2024 - Hari ₹ 1,00,000 - Loan Recd. (Repayment)

15.02.2024 - Hari ₹ 2000 - Int. on loan.



ANALYSIS OF LOOSE PAPERS

Remove Duplication in Loose Papers -

Cash Voucher		25.07.2020
Description of Payment	Amount	
MD Abdul - 306	15	
Total	15	
Amount in Words <u>Fifteen</u>		
		 Signature

Keshav Real Estate LLP					
Parallel Cash book					
Date	part.	Dr.		part.	Cr.
25.07.2020	To Cash Md. Abdul	15,00,000.00			
	Total	15,00,000.00		Total	-

ANALYSIS OF LOOSE PAPERS (Contd.)

Decoding of Whats-App Chat Found from Mobile



Loose Papers found during course of search to be treated as Dump Document

➤ ACIT vs. Shanker Nebhumal Uttamchandani ITA – 321/SRT/2022 (Surat – Tribunal)

Assessing Officer made addition on basis of a paper found and seized from office premises of assessee allegedly showing some transaction of land – On appeal, CIT(A) found that such paper was not in handwriting of assessee or his family members and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land - Commissioner (Appeals) held that such loose paper was nothing but a dump document which could not be relied upon solely for making huge addition - Whether since Assessing Officer had neither brought any corroborative evidence nor further investigated fact nor referred any corroborative evidence if collected during search action by Investigation Wing, Commissioner (Appeals) was justified in deleting addition

Addition made by AO on account of some undisclosed land transaction on basis of a loose paper found during search at assessee's premises was not justified when said paper was not in handwriting of assessee and there was no direct evidence found or brought on record that assessee had ever purchased or sold any land.



Electronic material without Corroborative Evidence to be treated as Dump Document

➤ Rucha Consultancy LLP vs. DCIT, CC-6(1) ITA – 4996 & 5706/MUM/2024 (Mumbai - Trib.)

Where additions were made under sections 69A and 69C respectively on basis of a WhatsApp image found in phone of assessee's personal assistant, which neither bore assessee's name nor was corroborated by independent evidence, and no physical cash was found with assessee, said document was to be treated as a dumb document and impugned additions were to be deleted.

Whether, where addition was made under section 69C on basis of image found in employee's mobile phone showing alleged cash disbursements, but said image did not contain assessee's name & was disowned by assessee, and no corroborative material was brought on record, such image was to be treated as a dumb document and addition was liable to be deleted.



Electronic material without Corroborative Evidence to be treated as Dump Document

➤ DCIT vs. Gordhanbhai L. Talavia, ITA – 1554/SRT/2017 (Surat-Trib.)

Pursuant to search and seizure operation at residential premises of assessee, certain loose papers were found and seized wherein figure of Rs. 4.49 crore was mentioned against name of assessee. Accordingly, a show cause notice was issued to assessee. Assessing Officer recorded that assessee failed to furnish details and in absence of any details, made addition of Rs. 4.49 crores. However, it was found that addition was merely based on dump documents found during search. Assessing Officer had not conducted any separate or independent evidence to bring corroborative evidence to connect entry in seized material with assessee. Whether therefore, in absence of any corroborative evidence, no contrary presumption could be drawn against assessee on a mere figure on loose papers and thus, there was no infirmity or illegality in order passed by Commissioner(Appeals) in deleting addition - Held, yes.



Loose Papers are irrelevant as evidence not admissible

➤ Common Cause v. Union of India, (2017) 394 ITR 220 SC

During raids on two business groups, various incriminating materials such as loose sheets, computer prints, hard disks, and pen drives indicating alleged money transactions were seized. However, there was no evidence to establish that these documents and electronic records were maintained regularly in the course of business. The Court held that such materials lacked evidentiary value and could not be relied upon to initiate criminal proceedings, including the registration of an FIR or investigation against high-ranking public officials. It was further held that the seized materials were irrelevant and legally inadmissible under Section 34 of the Indian Evidence Act.



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CBI vs VC Shukla others vs Union of India (2017) SC**

“The hon'ble Supreme Court stated that the loose sheets of papers are not books and they are also not admissible in evidence u/s. 34 of the Evidence Act. For the purposes of determining the evidentiary value of the entries relevant to S 34, there should prevail "independent evidence", to show that the entries (being only "corroborative evidence") represent honest and real transactions and that monies were paid in accordance with those entries.”

- **CIT vs. Kantilla Prabhudas Patel (2008) 296 ITR 568 (MP)**

“Where addition was made on ground that in search made in premises of assessee a number of documents were found which had disclosed certain hawala transactions in which assessee had earned income which he had not disclosed in his return for block period but Tribunal had deleted addition matter lay strictly in the realm of facts and did not give rise to any question of law with scope of section 260A.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs. Atam Valves (P) Ltd. (2011) 332 ITR 468 (P&H)**

“Pursuant to a survey conducted at premises of assessee certain incriminating documents were found including a 'slip pad' containing payment of wages to various persons - Assessee explained that said slips did not represent payment of wages during year-in-question but were for earlier year - However, Assessing Officer did not accept said explanation and estimated sales on basis of abovesaid loose slips and, accordingly, made addition - On further appeal, Tribunal held that Assessing Officer was not justified in estimating sales on basis of loose slips without substantiating that assessee had actually made sales to that extent of estimation - It held that Assessing Officer had no iota of evidence in form of sale bills or bank account or movable and immovable property which could represent earning of unaccounted income by assessee - It therefore deleted addition made on basis of estimation of sales - Whether Tribunal was justified in deleting addition - Held, yes”

- **CIT vs. Ved Prakash Choudhary (2008) 305 ITR 245 (Del)**

“The Hon'ble Jurisdictional High Court has again pressed on the issue of corroborative evidence, in spite of a MOU being found at the search premise indicating transaction of on money by the assessee.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs. Vivek Agrawal (2015) 231 Taxman 392 (Del)**

“In the present case too there was no material at all for the revenue to conclude that the transaction relating to the properties was undervalued. For the above reasons we find no merit in the appeals. They are consequently dismissed.”

- **CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del.)**

“Where no independent material or evidence had been brought on record by Assessing Officer to establish that notings/jottings recorded on loose sheet of paper seized during search represented an unaccounted transaction and Tribunal held that entries in question belonged to some company, inasmuch as assessee could explain from books of such company that these projects were undertaken by it, and Tribunal held that loose sheet did not represent any expenditure incurred by assessee, deletion of addition based on loose sheet, treating it as unexplained expenditure in assessee's hands was justified [In favour of assessee].”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT vs Kulwant Rai (2007) 291 ITR 26 (Del).**

“The Hon'ble Jurisdictional High Court has confirmed the order passed by the Hon'ble ITAT Delhi wherein it was stated that, assessee had not signed the agreement in question and since the assessee had not signed the agreement, no liability can be attributed qua that agreement towards the assessee since he is not party to the agreement till he had signed the same. The mere fact that this agreement was found in the possession of the assessee does not lead us anywhere.”

- **Asstt. CIT v. Shailesh S. Shah (1997) 63 ITD 153 (Bom.)**

“Three amounts, i.e., income from commission undisclosed investment and interest on undisclosed investment, were added to "assessee's income on basis of loose papers seized from assessee under section 132 proceedings -Assessing Officer neither mentioned any material or evidence to show on what basis figures came to be worked out nor sections 69 and 69D were invoked, nor did he discharge burden to prove that alleged receipts were assessee's income -Whether addition being merely on basis of suspicion, could not be sustained -Held, yes”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **Amar Natvarlal Shah v. Asstt. CIT (1997) 60 ITD 560 (Ahd.)**

“Certain seized loose papers during search revealed that assessee had incurred certain expenditure on tour - Assessee explained that expenditure was incurred by him and one S and his share was duly debited in books of account - Bill was in name of S - Whether in such circumstances addition could be justified - Held, no”

- **Chander Mohan Mehta v. Asstt. CIT (1999) 71 ITD 245 (Pune)**

“Based on loose papers found during survey after search as well as subsequent statement of assessee recorded under section 131, giving nature and details of transactions indicated therein in regard to money-lending business, Assessing Officer made addition of entire borrowings received from certain persons even though confirmation letters were produced by them - Whether since said loose papers did not indicate name of assessee, from list of persons given in loose papers it could not be inferred that either any loan or any advance was given to or received from those persons, and since total amount on those loose sheets indicated a very small amount, those loose papers alone would have to be considered as dumb papers having no evidentiary value and no addition could be sustained - Held, yes.”



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **CIT v. D.K. Gupta (2009) 308 ITR 230 (Del.)**

*“Assessee was a director in a company which was in business of property development and real estate - During a search conducted at business premises of said company, two diaries were seized from assessee - Notings in those diaries included appointments, reminders, noting/jottings, etc. - On being questioned, assessee explained that notings in said diaries were in connection with general property related discussions and had nothing to do with actual transactions - Assessing Officer, however, raised a presumption against him in view of provisions of section 132(4A) and made addition on account of entries recorded in said two diaries - **On appeal, Commissioner (Appeals) deleted addition** - On revenue's appeal, Tribunal held that provisions contained in section 132(4A) did not authorize Assessing Officer to raise such a presumption, particularly when assessee had offered explanation along with documents and evidences and had also furnished an affidavit to that effect - **Tribunal further returned a finding of fact that there was no corroborative or direct evidence to presume that notings/jottings recorded in said two diaries had materialized into transactions giving rise to income which had not been disclosed in regular books of account - Tribunal, therefore, upheld order of Commissioner (Appeals) - Whether findings of facts recorded by Tribunal could be interfered with - Held, no.**”*



IMPORTANT CASE LAWS RELATED TO ADDITION BASED ON DUMB DOCUMENTS

- **ACIT vs. Satyapal (2007) 295 ITR (AT) 352 (Jab.)**
- **Atul Kumar Jain (1999) 64 TTJ 786 (Delhi) vs. DCIT**
- **Pr. CIT Control -1 vs. Ajanta foot care (India) P ltd (2017) Kolkata High
Court**
- **CIT vs. Vatika Landbase (P) ltd. (2016) 383 ITR 320 (Del)**



ADMISSIBILITY OF E-EVIDENCE FOUND DURING SEARCH

Two Types Of Evidences

A. Primary Evidences

B. Secondary Evidences

Electronic evidences are secondary evidences

Electronic Records - Hard disc of computer CD's, Pen drives, VCD, Camera, Word file, Excel files ,Email Communication ,Whatsapp Conversations.

Relevant provision of the evidence act which are applicable in the case of electronic records (Indian Evidence Act, 1872)

Section 65A Special provisions related to electronic record- The Contents of electronic records may be proved in accordance with provision of Section 65 B.

Section 65B Admissibility Of Electronic Records

Subsection (1) (2) (3) (4)

Very Important As Per Section 65 B (4) Need To Certify Who Seized Electronic Records .



ADMISSIBILITY OF E-EVIDENCE FOUND DURING SEARCH

Mandatory requirement of section 65B of the Evidence Act has not been complied with in respect of any of the Electronic records relied upon by the department.

“Not an Admissible Evidence”

Supreme Court Judgement;

1. Anwar PV V B.K. Basheer [2014] 10 SCC 473
2. Arjun Pandit Rao Khatkar V Kailash Khushan rao Gorantylal [2020]7 SCC 1
3. Ambalal Sarabhai Enterprises ltd. V KS Infra space LLP limited and another SC 6th Jan. 2020

Whatsapp messages presently there is no final clarity and the position can only be clear when the “Data Protection Bill” is notified.

As of now Supreme Court is not admitted Whatsapp messages as evidence.



DECISIONS RELATED TO NO
ADDITION CAN BE MADE IF NO
INCRIMINATING MATERIAL
FOUND FROM THE SEARCHED
PREMISES



No Incriminating Material found from search premises

- **PCIT vs. Abhisar Buildwell (P.) Ltd**
Civil Appeal No. 6580 of 2021 (SC)

In respect of completed assessments/unabated assessments no addition can be made by Assessing Officer in absence of any incriminating material found during course of search under section 132 or requisition under section 132A.



No Incriminating Material found from search premises

➤ CIT-20 vs. Deepak Kumar Agarwal

IT Appeal Nos. 1169,1178,1709,1780 of 2014 & 131 of 2015, 467 to 470,472,477,483,566,914,1194 & 1197 of 2017 (Bombay HC)

Assessment u/s 153A can be made only on basis of incriminating material found in search u/s 132 and only income related to incriminating documents found during search can be considered in assessment.

“Whether assessment under section 153A can be made only on basis of incriminating material found in search under section 132 - Held, yes. Assessing Officer as a result of search conducted under section 132 on assessee framed assessment of assessee under section 143(3) read with section 153A and made additions under sections 68 and 14A to his income - Tribunal held that additions were made beyond scope of section 153A, as no incriminating material in support of additions made under section 68 and under section 14A was brought on record by revenue – Whether in peculiar facts and circumstances of case, no substantial question of law arose from order of Tribunal - Held, yes”



Relevant judgements related to No Incriminating material found

- **PCIT vs. Welspun India Ltd, IT Appeal No. 3152, 3203, 3245, 3250, 3261 & 3356 of 2018 (Bombay HC)**
- **CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd, IT Appeal No. 523 & 1969 of 2013 (Bombay HC)**
- **PCIT vs. Ahinsa Vinimay (P.) Ltd., SLP (CIVIL) Diary No. 33203 of 2024(SC)**
- **PCIT vs. TDI Infrastructure Ltd., IT Appeal No. 494 and 495 of 2022 (Delhi HC)**
- **PCIT vs. Speciality Paper Ltd., IT Appeal No. 16, 22, 30 of 2019(Bombay HC)**
- **PCIT vs. Salarpuria Properties (P.) Ltd., ITAT NO. 157 OF 2023 (Calcutta HC)**
- **PCIT vs. Rohit Kumar Jain, IT Appeal No. 5 of 2023 (Gauhati HC)**



**263 provisions cannot be invoked if
order is passed after approval of
requisite authority**



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **PCIT vs. Prakhar Developers (P.) Ltd.,
IT Appeal No. 182 of 2023 (Madhya Pradesh HC)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from JCIT

- **Devendra Kumar Gupta vs. PCIT,
ITA – 1890 to 1893/DEL/2024 (Delhi - Trib.)**

An order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263 without giving a finding that prior approval under section 153D was vitiated and was also erroneous so far as prejudicial to interest of revenue.



Provision of Sec. 263 cannot be invoked if the Assessment Order is passed u/s 153A after approval u/s 153D from ACIT

- **Smt. Abha Bansal vs. PCIT,
ITA – 383 to 386/DEL/2021 (Delhi - Trib.)**

Whether an order of assessment passed under section 153A read with section 143(3) after getting an approval of Jt. Commissioner under section 153D could not be revised under section 263.



VIRTUAL DIGITAL SPACE

Clause 247 of Income Tax Bill 2025

Access to Spaces

Tax authorities can access digital records stored virtually. This includes emails, cloud storage and messaging platforms.



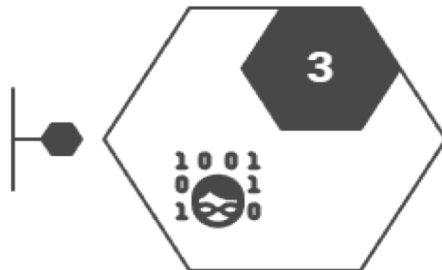
Disclosure of Credentials

Individuals must provide passwords to digital accounts when asked. Not complying may lead to legal consequences.



Bypassing Security

Authorities can override encryption to access data. This is if access credentials are not available.



Seizure of Devices

Devices like laptops and storage devices can be seized. This can happen during tax raids.



Thank You

