

# 360 degree on Search and seizure From statements to Block Assessments

**Organized by Institute of Chartered Accountants of India  
(Direct Taxes Committee of the ICAI )**



**By  
Adv. Mahesh Agrawal**

# Objectives of Search Action

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Rampant Tax Evasion

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Detect undisclosed Income

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Measure of deterrence on society in order to curb black money

# Powers related to Search and Survey

## Section 131

- Summons

## Section 132

Search and  
Seizure

## Section 132A

Requisition

## Section 133A

Survey

# Identification of Cases

Target of Investigation wing

Complaint Based

- TEPS (Tax Evasion Petition)
- Informer / Professional Informer

Information Based

- Finance Intelligent Units ( FIU)
- Air information (Insight Portal)
- Other departments

Bogus Purchase

- Construction Material, Cotton, etc.

Political Donation /  
Bogus Deductions

- Various types of donation including political donation

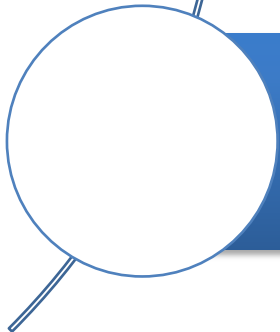




When Authorities use the said power it is a violation of Right to Privacy



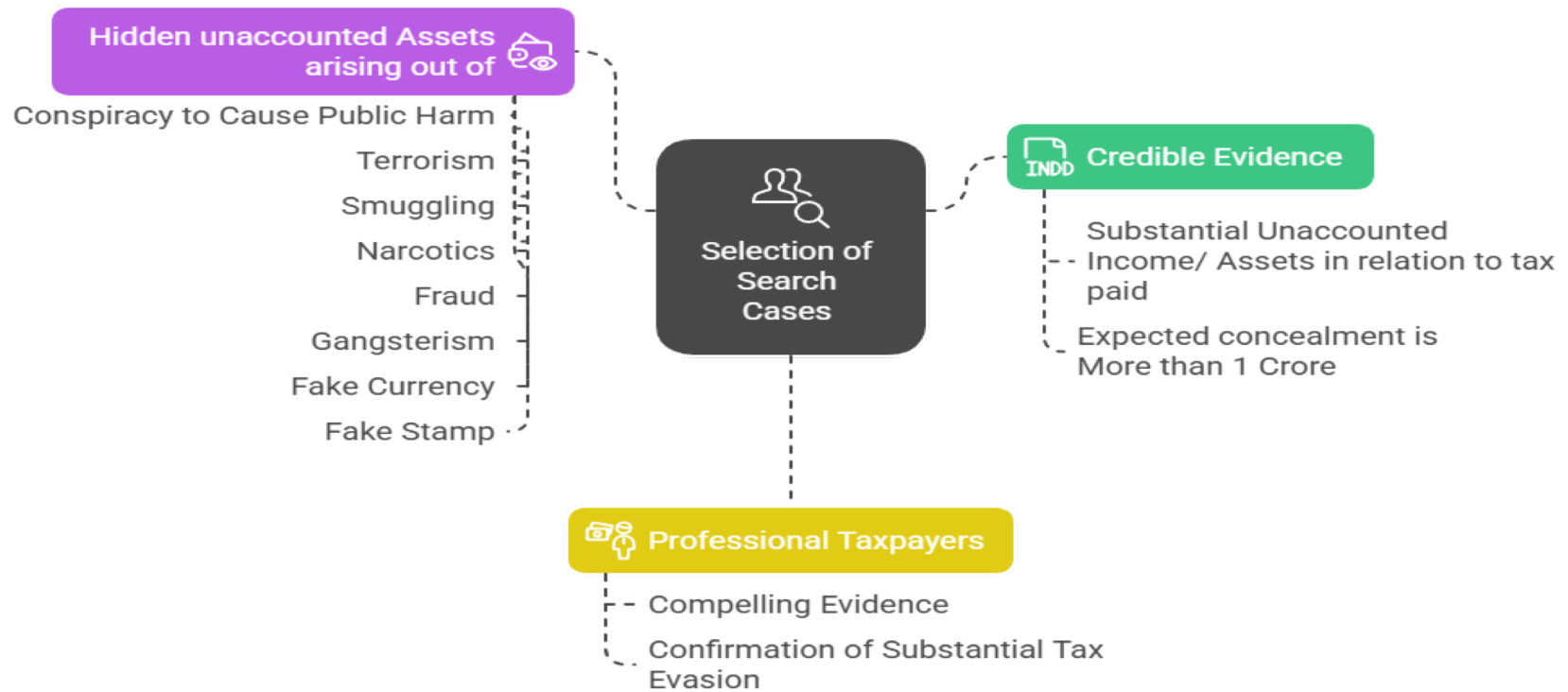
There must be certain checks and balances while exercising such powers



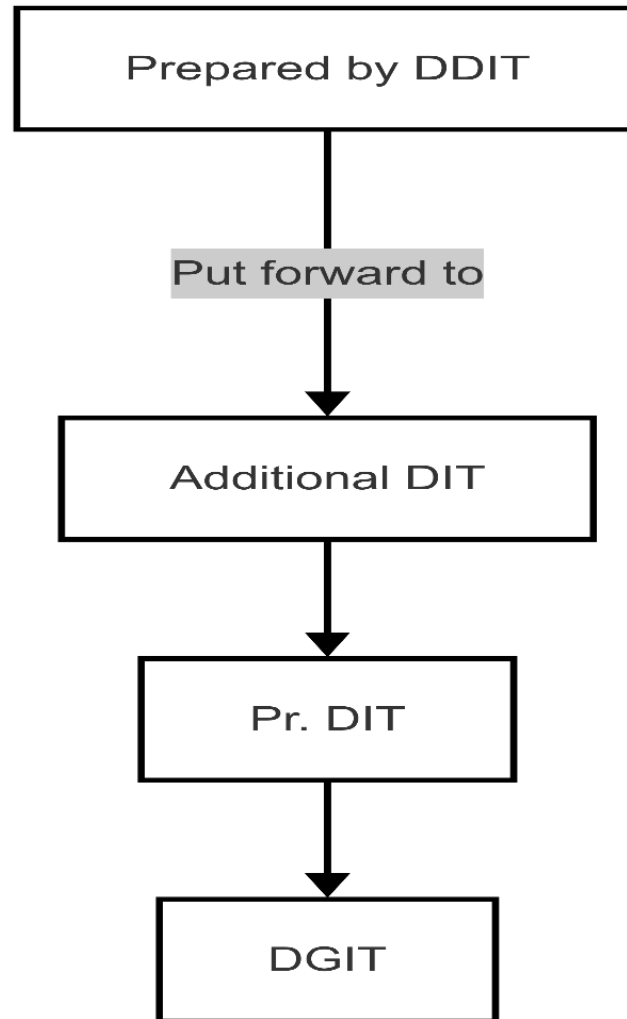
They Regularly issue certain instructions before identifying the cases for search

# Pre search enquiry Instr. No. 7 of 2003

## Guidelines for Selection of Search Cases



# Approval of Search Cases



# Validity of Search Action

# Provisions of Section 132(1)

Director General ...to Joint Director in consequence of information in his possession has reason to believe

## 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

Income-tax  
Officer vs.  
Seth Brothers  
[1969] 74 ITR  
836 (SC)

**Principle:**

As the power of search entails a serious intrusion on the taxpayer's rights and privacy, it must be exercised strictly within legal bounds and for its intended purpose. If challenged, the officer must justify the action; if driven by malice or collateral intent, it is liable to be struck down by the court.

Pooran Mal v.  
Director of  
Inspection  
[1974] 93 ITR  
505 (SC)

**Principle:**

In this case, the petitioner challenged the search and seizure operation on the grounds that there was no valid reason to believe that undisclosed income existed.

**“Reason to believe” of the tax authority must be based on real and credible information**, and the courts will not interfere if the belief is genuine and founded on material.

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

Principle:

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.

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

Principle:

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

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Commissioner  
of Income-tax  
vs. Dr. Nandlal  
Tahiliani[1988]  
39 TAXMANN  
127 (ALL)

**Principle:**

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.

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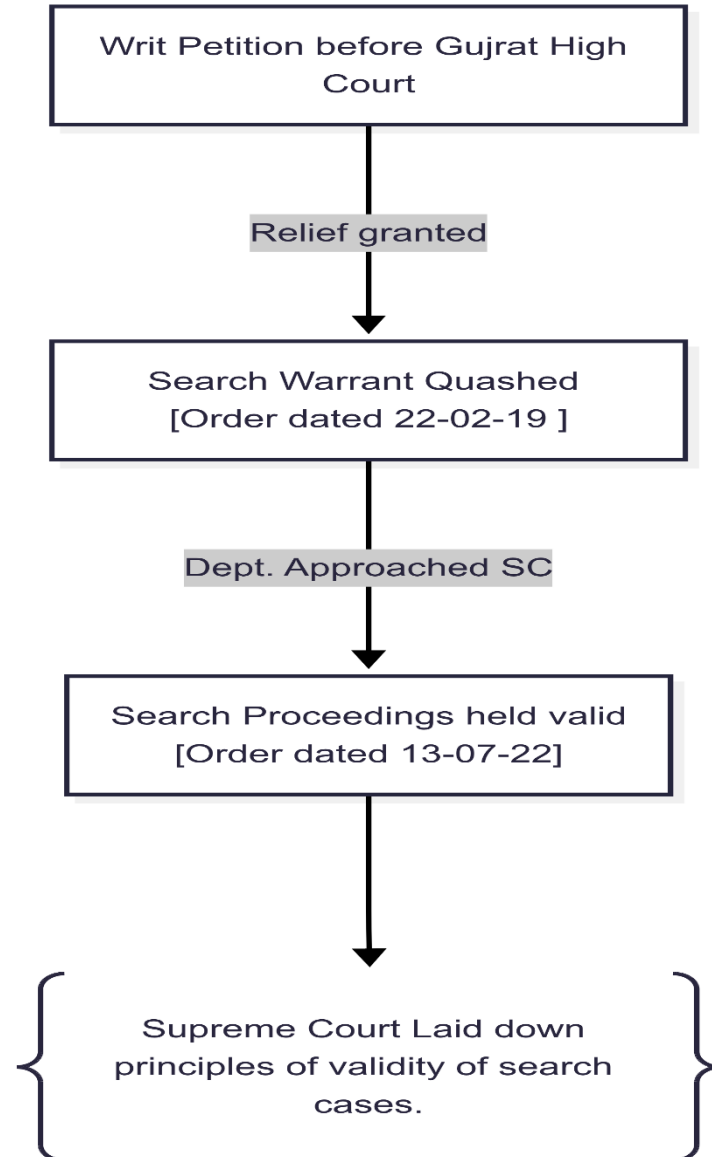
S.R. Batliboi &  
Co. vs.  
Department of  
Income-tax  
(Investigation)[  
2009] 181  
Taxman 9  
(Delhi)

**Principle:**

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.



# Laljibhai Kanjibhai Mandalia Case



# Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.) [2019] 105 taxmann.com 260 (Gujrat)

## Key Facts

### Loan Advancement

A ₹10 crore loan was advanced, it was secured by a registered mortgage over property owned by associated concern of borrower company

### Director Service

The petitioner briefly served as a director of the borrower company.

### Loan Repayment

The company repaid the entire principal and interest on the loan.

### Search Warrant

Officials claimed the warrant rested on "reason to believe" that the loan was a sham.

Made with  Napkin

# Laljibhai Kanjibhai Mandalia vs. PCIT(Inv.) [2019] 105 taxmann.com 260 (Gujrat)



## CIT vs. Laljibhai Kanjibhai Mandalia [2022] 140 taxmann.com 282 (SC)

Administrative Character	<ul style="list-style-type: none"><li>• The formation of opinion and reasons to be recorded is an administrative action.</li></ul>
Honest and Bona Fide opinion	<ul style="list-style-type: none"><li>• The opinion formed by the officer must be bona fide and based on information. It cannot be merely pretense.</li></ul>
Reasonable Belief	<ul style="list-style-type: none"><li>• The authority must have information in its possession on the basis of which a reasonable belief can be founded that ingredients of 132 are satisfied</li></ul>
High Court Review	<ul style="list-style-type: none"><li>• Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof.</li></ul>

# CIT vs. Laljibhai Kanjibhai Mandalia [2022] 140 taxmann.com 282 (SC)

Scope of Review	<ul style="list-style-type: none"><li>• The Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretense and that no extraneous or irrelevant material has been considered.</li></ul>
Satisfaction Note	<ul style="list-style-type: none"><li>• Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order.</li></ul>
Adequacy of Reasons	<ul style="list-style-type: none"><li>• The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue.</li></ul>
Judicial Restraint	<ul style="list-style-type: none"><li>• The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof.</li></ul>

# Jurisdiction of Investigation Wing

- PAN India jurisdiction is vested with the Investigation Wing of the Income Tax Department.
- Clients are advised to file Income Tax Returns (ITRs) based on the principal place of business and the residential address of the directors/partners.
- Over time, several cases have been centralized back following search actions under Section 127 of the Income Tax Act.
- Reference may be made to *Kamal Nath (Former Chief Minister of Madhya Pradesh) vs. Principal Commissioner of Income Tax*, Calcutta High Court, dated 06.01.2023.



# Search Process

# Powers of Authorized Officers





# Duties of Authorized Officers

Allow schoolgoing children to attend school.



Do not threaten, abuse, or use indecent language.



Avoid using the items of personal use.



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

## Authorisation Production

The assessee can demand to see the search authorisation. They can refuse entry if it's not produced or properly signed.



## Witness Presence

The assessee can refuse the search until two independent witnesses arrive. These witnesses should be from the same locality.



## Female Search

The assessee has the right to a female search conducted by a woman. This must be done with respect and decency.



## Statement Accuracy

Anyone examined has the right to ensure their statements are recorded correctly. This ensures fair and accurate documentation.



## Presence During Search

The assessee doesn't have to be present, but can choose to be present. They have the right to observe the search proceedings.



## Officer Identification

The assessee can request proof of identity from the authorised officers. This ensures legitimacy of the search party.



## Personal Search

The assessee can insist on personal searches of the raiding party. This can be done before and after the search.



## Religious Observance

The assessee and family have the right to religious observance. They cannot be prevented from normal worship.



## Daily Activities

The assessee can continue normal daily activities. These activities should not obstruct the search operations.

# Call Independent & Respectable Witness

## Do Not Call

- Peon
- Chai Wala
- Watchman
- Any person who does not understand the basics of Income tax proceedings

# Call Independent & Respectable Witness

## Rule 112 (6)



### Building/Place Search

Call upon respectable inhabitants of the locality to witness the search.

### Vessel/Vehicle/Aircraft Search

Call upon any respectable persons to witness the search and issue a written order if necessary.

# Call Independent & Respectable Witness



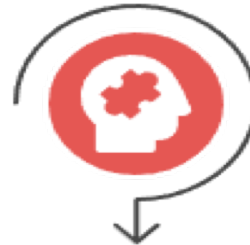
## Independent Witness

Section 100(4) of the Criminal Procedure Code requires the appointment of independent witnesses.



## Code Provisions

Section 132 (13) of the Income Tax Act states that provisions of CrPC shall apply as far as possible.



## Understanding Witness

The witness should understand the search proceeding's nature and object; they should be able to read and write.



## Locality Considerations

The Supreme Court in case of *Sunder Singh vs. State of UP* has held that since the rickshaw drivers acting as witness weren't from the same locality, Though, the search action was not invalidated but this irregularity has resulted into reduction in weightage of evidences.

# Duties of Searched Person



# Preliminary Statements

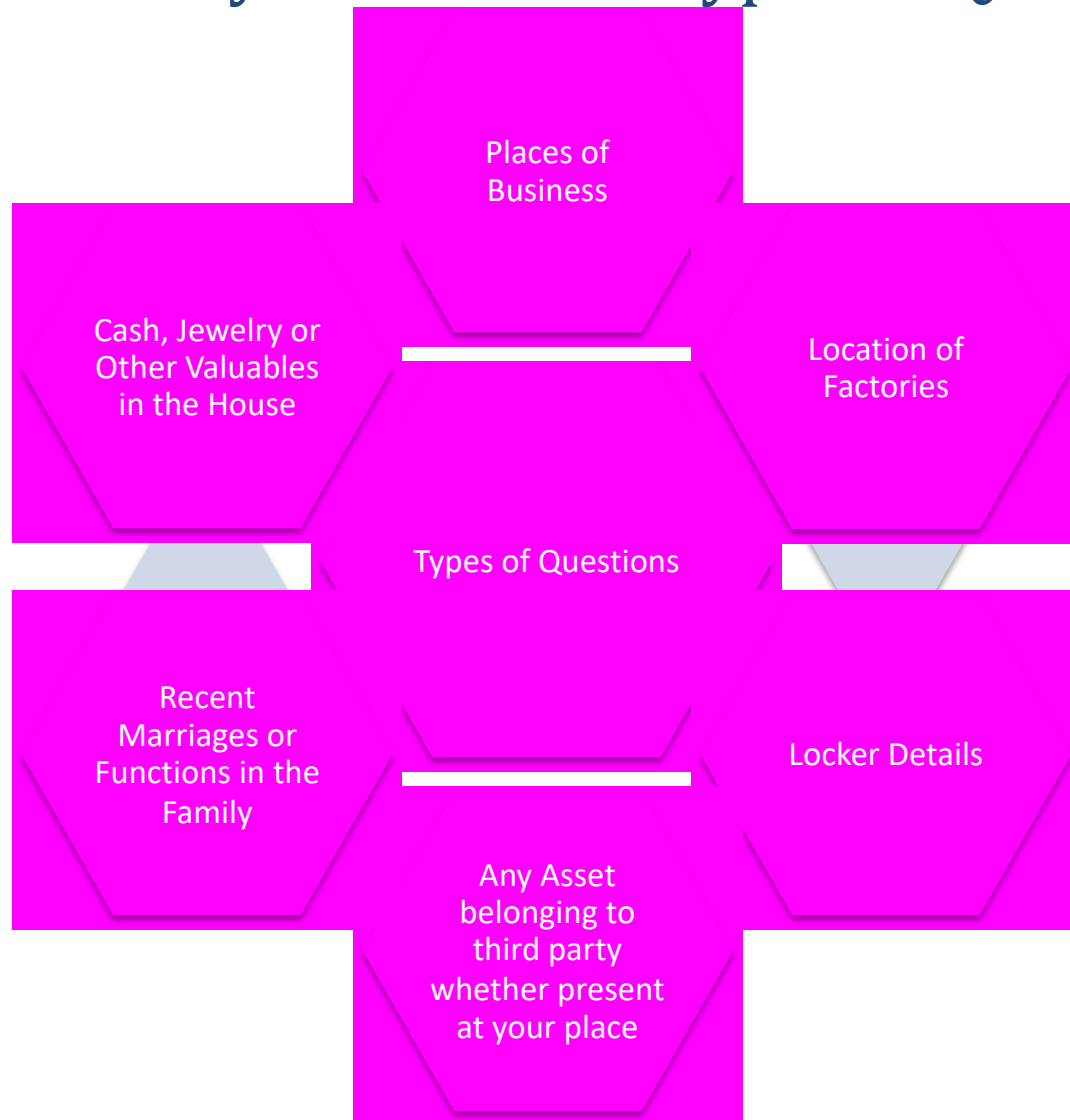
Preliminary Statement is recorded on oath and its evidentiary value is high and it can be used in any proceedings under the Act

Investigating Officer normally puts question in order to gain support of the “findings” in the search

Correct facts must be stated or time may be sought

Any discrepancy found later during the course of search or under section 132(4) puts a heavy obligation on the person whose statement is recorded to justify such discrepancy

# Preliminary Statements Types of Question





# Provisions of Section 132(1A)

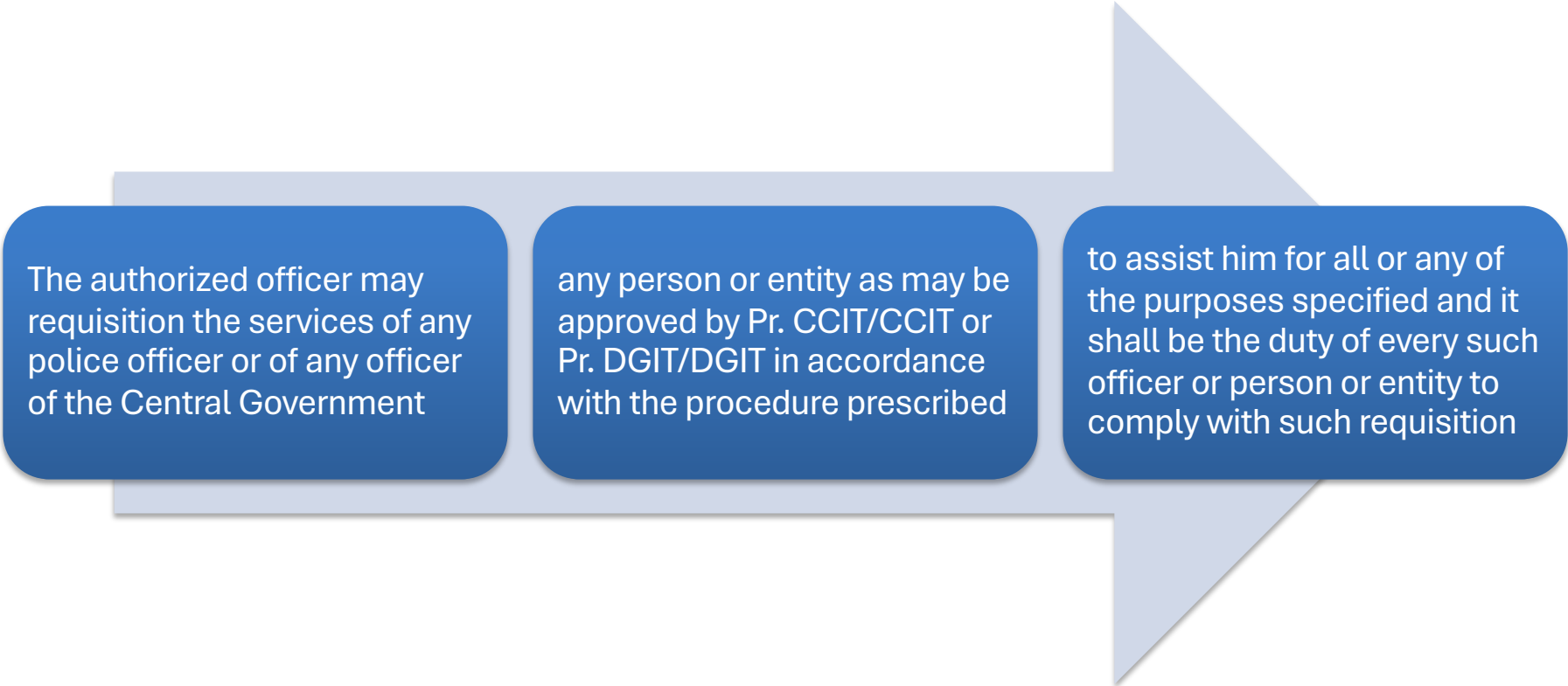
Where any authorizing officer in consequence of information in his possession, has reason to suspect

That any books of account, other documents, money, bullion, jewelry or other valuable article or thing in respect of which an officer has been authorized

To take action under clauses (i) to (v) of sub-section (1) is kept in any building, place, vessel, vehicle or aircraft **not mentioned in the authorization** under sub-section (1)

Such Authorized person may, notwithstanding anything contained in section, authorize the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

# Provisions of Section 132(2)



The authorized officer may requisition the services of any police officer or of any officer of the Central Government

any person or entity as may be approved by Pr. CCIT/CCIT or Pr. DGIT/DGIT in accordance with the procedure prescribed

to assist him for all or any of the purposes specified and it shall be the duty of every such officer or person or entity to comply with such requisition

# Restraint order u/s 132(3)

The Authorized Officer may, when it is not practicable to seize any such assets, for the reason other than those mentioned in Section 132(1)



Serve an order on the owner of the person who is in immediate possession or control thereof that he shall not remove 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 the compliance with this sub-section

Explanation: It is declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of assets under Sub-section 1 of Section 132

An order under Subsection (3) shall not be in force for a period of 60 days from the date of the order

# Examination of any person on Oath-132(4)

The authorized officer may, during the course of the search or seizure

examine on **oath any person** who is found to be in possession or control of any books of account, documents, money, bullion, jewelry or other valuable article or thing

and any statement made by such person during such examination may thereafter **be used in evidence** in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation: - It is hereby declared that the examination of any person under this sub-section 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 connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act

# Examination of any person on Oath-132(4)

- Such statements are recorded on Oath, evidentiary value is very high
- *Vide Instruction F. No. 286/2/2003-IT(Inv). II dated 10.03.2003 , CBDT* has advised search parties not to obtain confessions by adopting coercive means. However , in practice in almost all the cases search parties insist upon getting confessions .
- Authorized officer confronted assessee with the following issues:
  1. Cash
  2. Jewellery
  3. Inventory / Stock Valuation
  4. Loose Papers / Diary /Hundies
  5. Mobile Images /Whatsapp Data/ Computer data/Emails
  6. Statements recorded including family members, Key employees, Third Party.
  7. Issue in books of accounts
- Now the role of Chartered Accountant or Advocate is important

# Examination of any person on Oath-132(4)

## How to give statements

- Understand the Queries Carefully.
- Take your time to answer, don't answer recklessly (rash manner).
- It is an opportunity explaining several assets found during the search.
- Take the help of books of accounts and take help of key person i.e. CA's / Accountants.
- Take proper pause if you feel tired.
- You can tell to submit details later he will write.
- Note down points.
- Do not speak one word more than what is asked.
- Beware of Benami Law and Prevention of Money Laundering Act (PMLA).

*Continuous interrogation/ recording of statement till late night on second day of search is violation of human rights.*

- Patna High Court's decision in case of Chief CIT v. State of Bihar through The Chief Secretary [2012] 205

**Taxman 232/ 18 taxmann.com 70 (Patna)**

- Later on CBDT also issued a departmental instruction no. 289/45/2012-IT dated 13/12/2012 on the same issue.

## *Retraction of Confession made in Statement*

- 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 Refer: **In 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.)**

# Provisional Attachment - Sec 132(9B) & (9C)

Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed

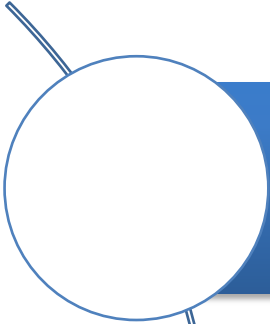
he authorized officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do

he may with the previous approval of the authorized officer, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, *mutatis mutandis*, apply

Every provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order



# Estimation by Valuation Officer - Sec 132(9D)

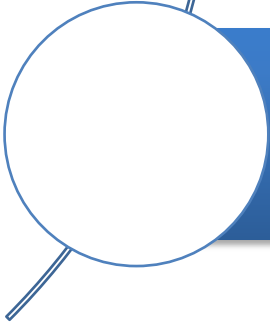


The authorized officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed

make a reference to

A) Valuation Officer

B) 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 specified authority in accordance with Rule 13



who shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorized officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.

# Main Items found during the search

Cash found /seized

Jewellery, Bullion, Diamond Silver-Valuation and Seizure

Original Registry of Immovable Property, BONDS, FD's etc.

Copy of Will or Books of Accounts

Stock in Trade & its valuation

# Prosecution During Search Proceedings

Particulars	Offence	Section
<p>To Identify every Individual during the Search</p> <p>Not to encourage or allow entry of unauthorized personnel in the search premises</p>	<p>Cheating by Impersonation</p>	<p>Section 416 IPC, Section 319 BNS</p>
<p>To prevent Removal or destruction of any document or article with an intention of preventing the same from being produced as evidence</p>	<p>Destruction of document or Electronic Record to prevent its Production as Evidence</p>	<p>Section 204, IPC Section 241, BNS</p>

# Prosecution During Search

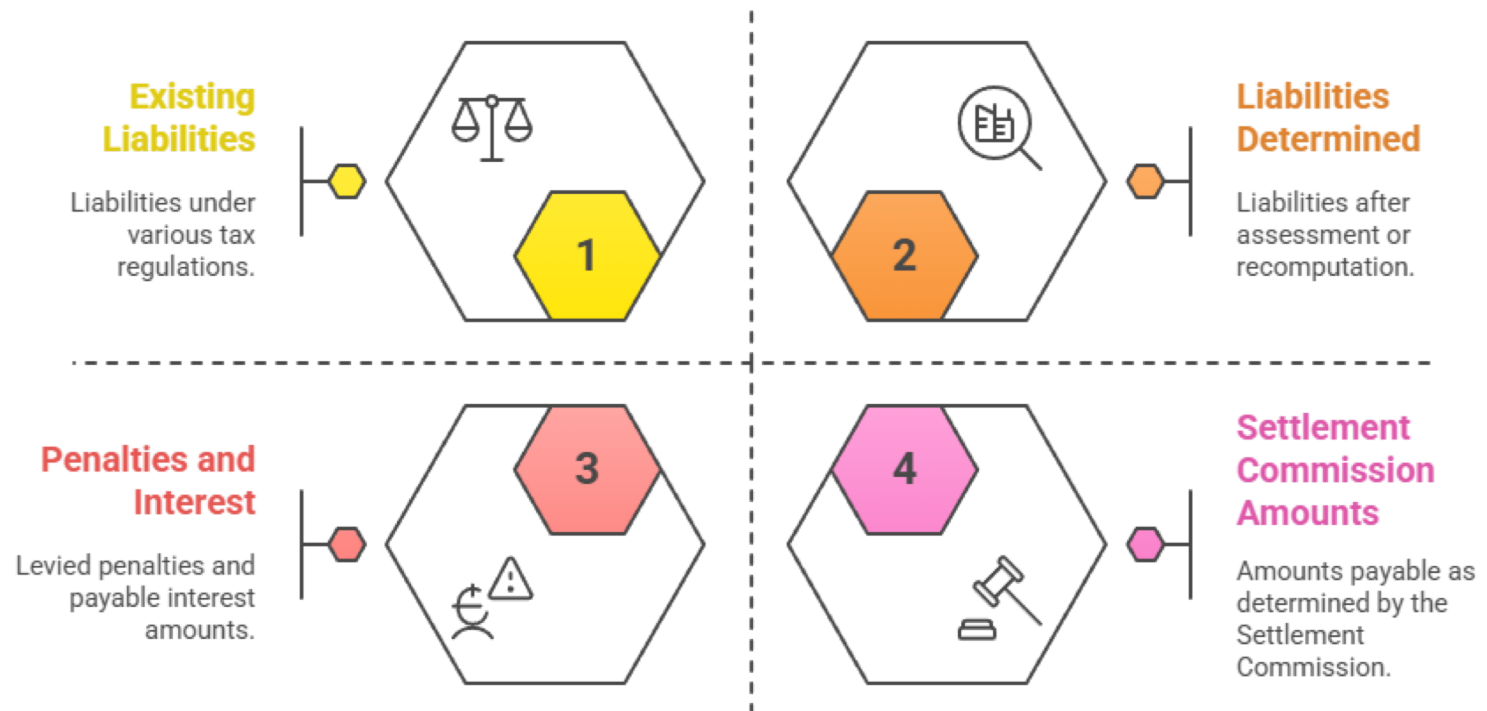
Particulars	Offence	Section
To Prevent a person from refusing to answer during recording of statement	Refusing to Answer public Servant authorized to question	Section 179, IPC Section 214, BNS
To prevent a person from giving a false statement	False statement on oath or affirmation to Public Servant or person authorized to administer an oath or affirmation	Section 181, IPC Section 216, BNS
To prevent a person from giving false Evidence	Furnishing False Information	Section 177, IPC Section 212, BNS

# Power to Requisition-Section 132A

- Generally applicable when other agencies (e.g., Police, Airport Authority, Railways, or Government Departments) recover cash, jewelry, or other valuable items during any action
- The concerned agency informs the Income Tax Investigation Wing.
- A summon is issued, and an enquiry is conducted under section 131(1A) regarding the source of the assets.
- A report is forwarded to the Principal Director of Income Tax (Investigation) for a decision on release or seizure of assets.
- Assessment is carried out by the Central Circle based on the appraisal report.
- A Satisfaction Note is prepared as per the preconditions specified under section 132(1)(a)/(b)/(c).

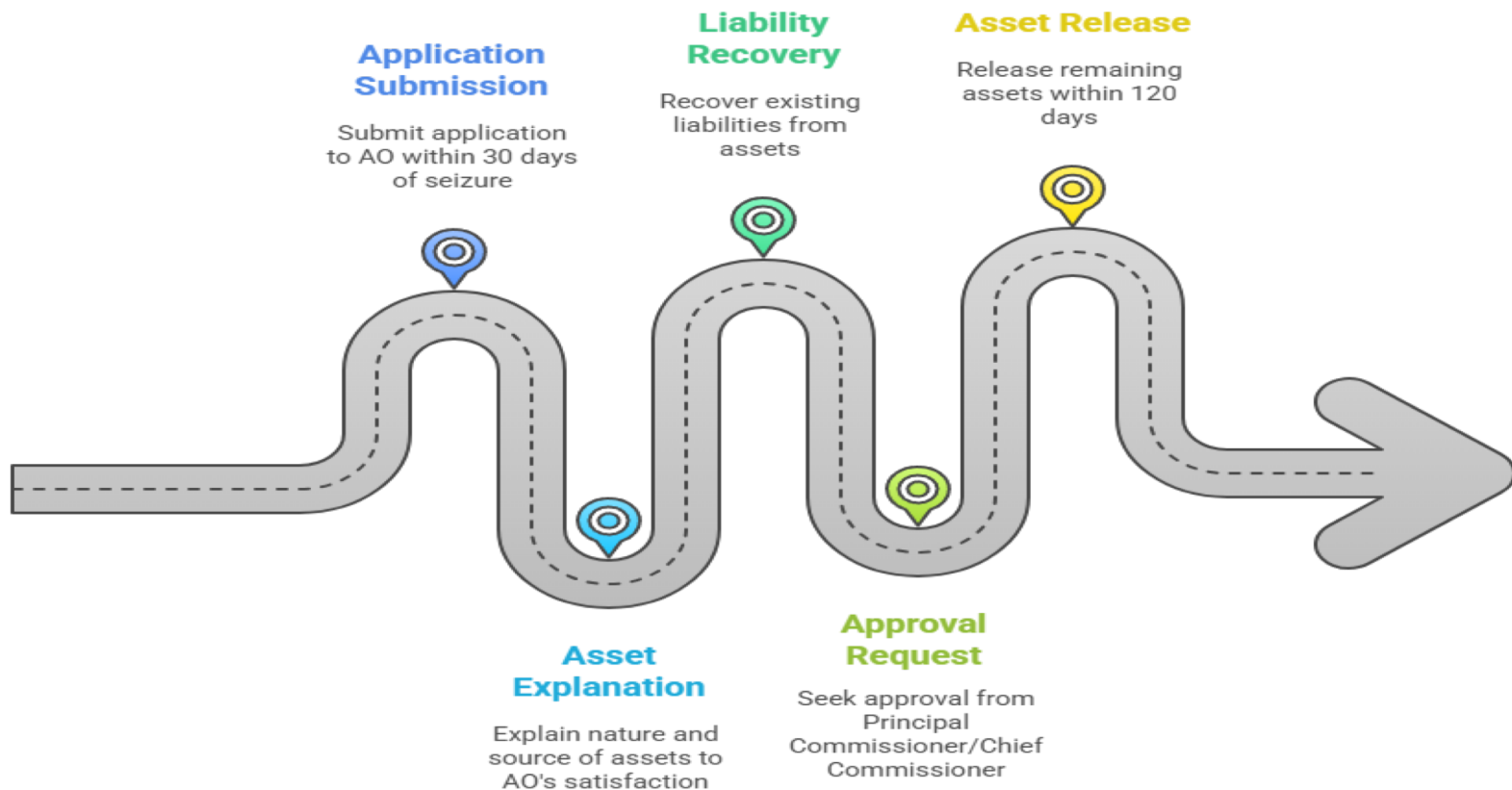
# Application of Seized Assets-Section 132B

## Utilization of Assets Seized



# Application of Seized Assets-Section 132B

## Asset Release Process



# Presence of Counsel During Search

- Generally not allowed by search team

(If team of Investigation wing willing than only, No law or Instruction can help us )

- Investigation team do collection of evidences and recording of statement u/s 132 of the Act after filing of appraisal report at central circle, then only we can represent at assessment level.



## Search/Survey at CA's Office Circular No. 7-D - 03.05.1967

*"It would be improper for an Income-tax Officer or an Inspector, authorized by him in this behalf, to enter the office of a chartered accountant for the purpose of inspecting the books of his client."*

*Hon'ble Supreme Court in the case of ITO VS. U. K. Mahapatra & Co. (2010) 186 Taxman 181 (SC) affirmed the decision of High Court of Orissa (2009) 308 ITR 133 (Orissa), wherein, it held that-*


*"The pre-condition for conducting survey under section 133A in the premises of a chartered accountant, lawyer, tax practitioner in connection with survey of the business place of their client is that the **client**, in course of survey, must state that his books of account/documents and records are kept in the office of his chartered accountant/lawyer/tax practitioner. "*

*Unless this pre-condition is fulfilled, the income-tax authority does not assume any power to enter the business premises/office of the chartered accountant/lawyer/tax practitioner to conduct survey under section 133A in connection with survey of the premises of their client.*

# 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.

# Presumption In case of Papers Documents

## Section 132 (4A) of IT Act

Where any books of account, other documents, money, bullion, jewellery 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—

- (i) belongs to such person;
- (ii) contents of such books are true;
- (iii) signature and handwriting of any particular person

## Section 292C of IT Act

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132~~[or survey under section 133A]~~, it may, in any proceeding under this Act, be presumed

- (i) belongs to such person;
- (ii) that the contents of such books are true;
- (iii) signature and handwriting of any particular person]

# 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 ?

# Important Cases related to Additions based on Dumb Documents

- CBI VS VC Shukla others vs union of india (2017) SC
- Common course & others vs union of India ( 2017) SC popularity known as Sahara diaries.
- CIT vs. Kantilla Prabhudas Patel (2008) 296 ITR 568 (MP)
- CIT vs. Vatika Landbase (P) ltd. (2016) 383 ITR 320 (Del)
- CIT vs. Vivek Agrawal (2015) 231 Taxman 392 (Del)
- CIT vs. Atam Valves (P) Ltd. (2011) 332 ITR 468 (P&H)
- CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del.)
- CIT vs. Ved Prakash Choudhary (2008) 305 ITR 245 (Del)
- CIT v/s Kulwant Rai (2007) 291 ITR 26 (Del).
- ACIT vs. Satyapal (2007) 295 ITR (AT) 352 (Jab.)
- Atul Kumar Jain (1999) 64 TTJ 786 (Delhi) vs. DCIT
- K.P. Varghese vs. ITO ernakulam and another (1981) TMI Supreme Court
- Pr. CIT Control -1 vs. Ajanta foot care (India) P ltd (2017) Kolkata High Court

# Dumb Document

लिया जी :	360000
महाराजजी :	450000
लुनालजी :	500000
मोहन जी :	757000
अग्रवाल जी :	50000
<hr/>	
2157000	
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आगत माह २०२१	

## 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>		
		<u>Abdul</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	-



## Contd. ---- Analysis of Loose Papers

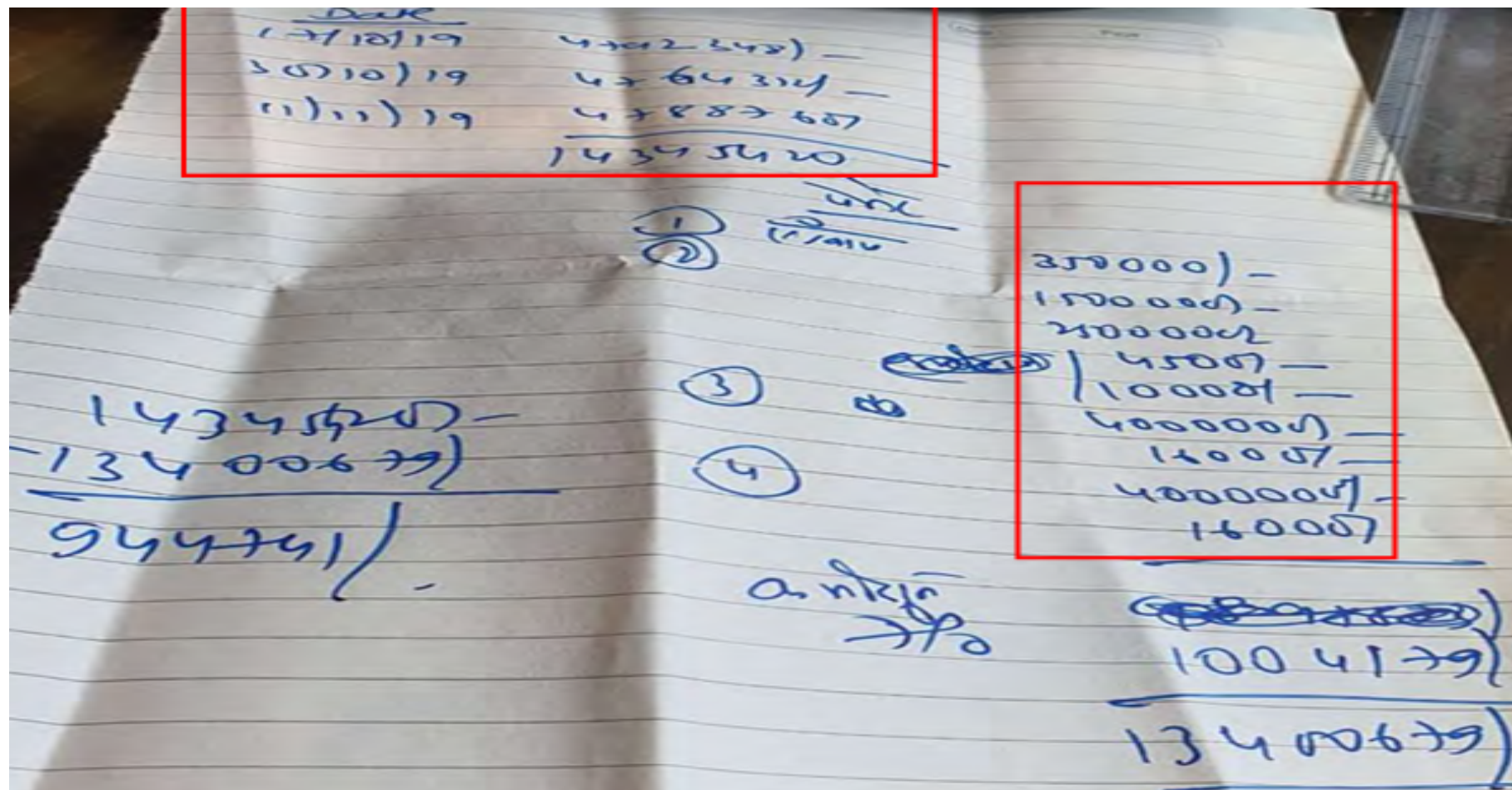
### Decoding of Whats-App Chat Found from Mobile





## Contd...--- Analysis of Loose Papers

### Incriminating Paper - Example



# Admissibility of E-Evidence found During the 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 the 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 a Admissible Evidence”

## Supreme Court Judgement;

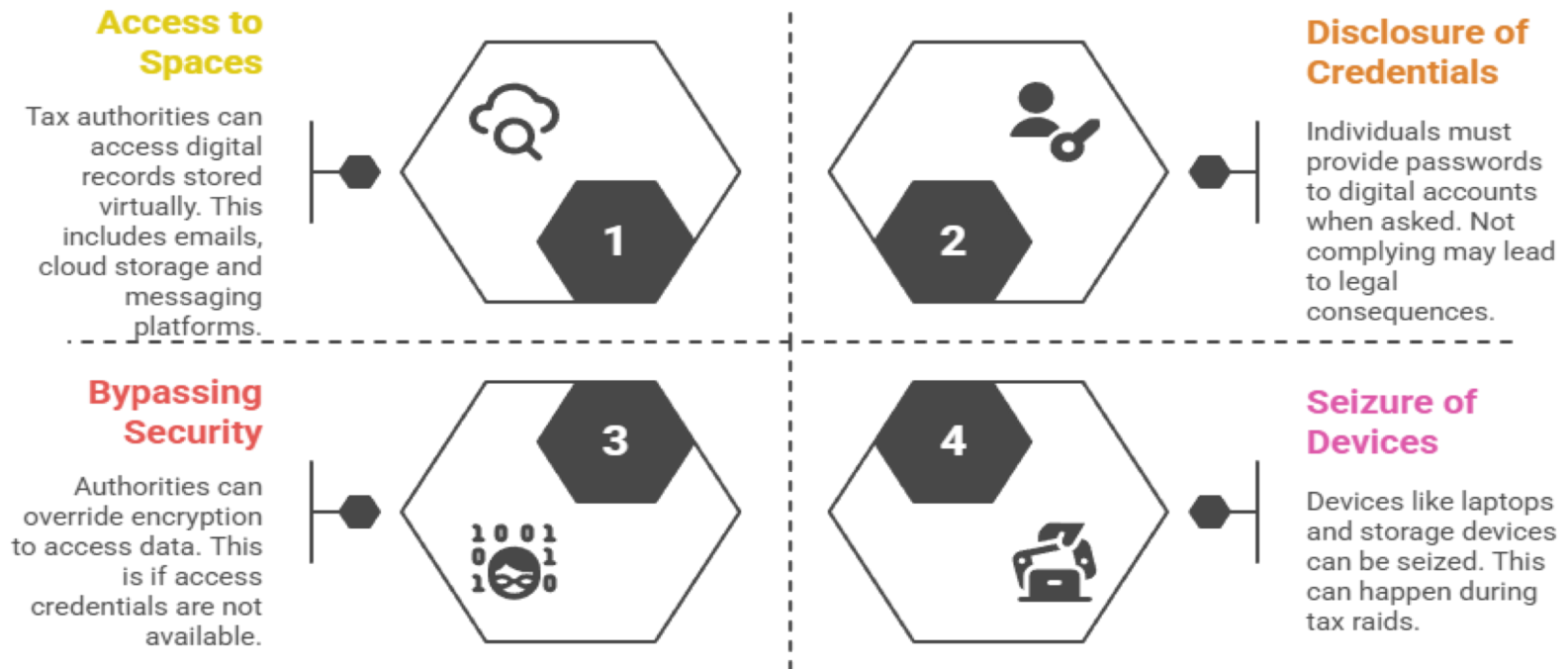
1. Anwar PV V B.K. Basheer [2014] 10 SCC 473
2. Arjun Pandit Rao Khatkar V Kailash Khushan rao Gorantylal [2020]7 SCC 1
3. Ambalal Sarabhai Enterprises ltd. V KS Infra space LLP limited and another S C court 6<sup>th</sup> Jan.2020

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.

# Virtual Digital Space

## Clause 247 of Income Tax Bill 2025



# Summons u/s 131 vis a vis CPC [Rule 19. Order XVI]

Who is considered a witness under the CPC?

Anyone summoned to give evidence.

When are witnesses required to attend in person?

Only if they reside within the local jurisdiction of the Court.

What if they live outside the local jurisdiction?

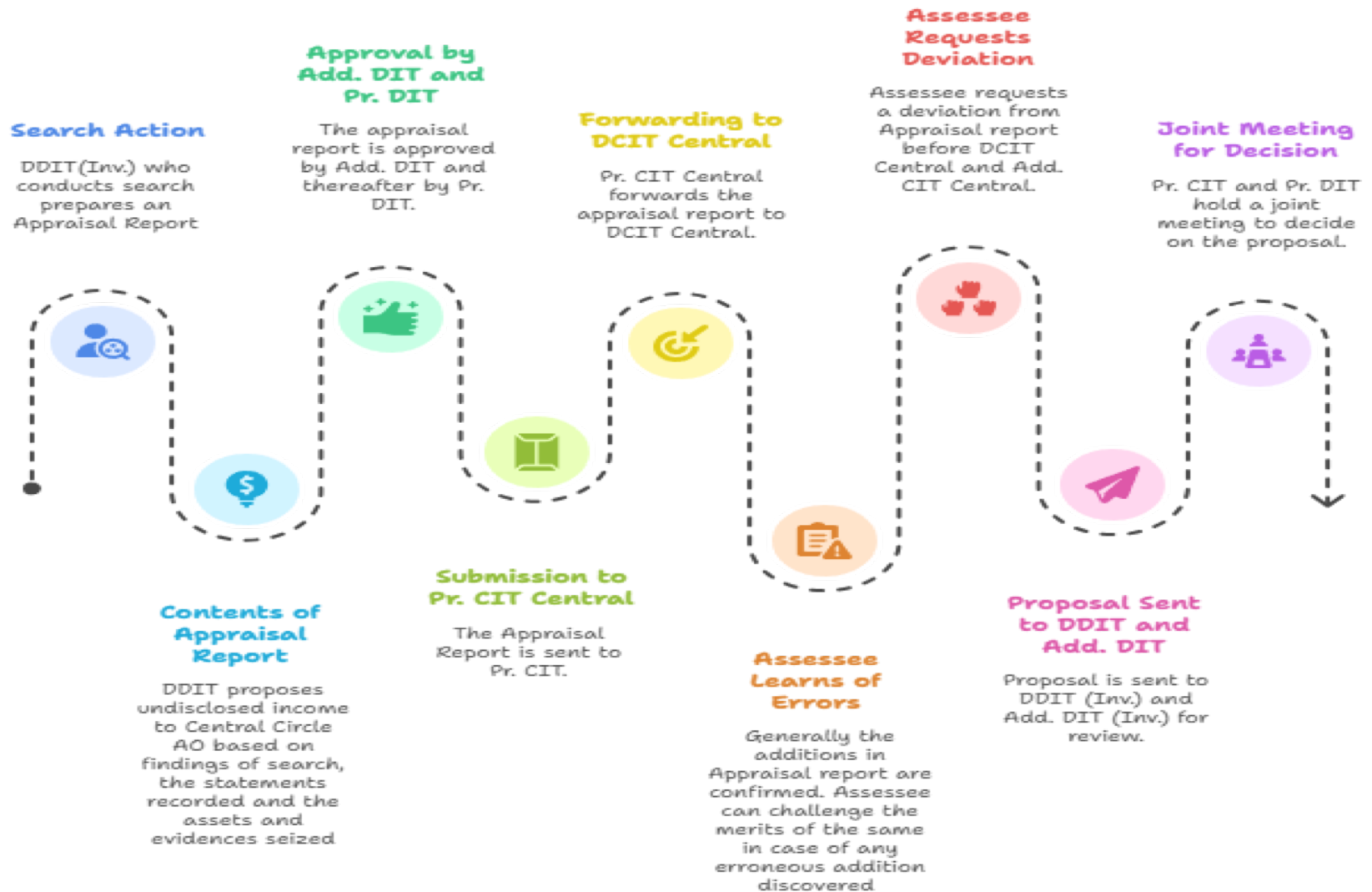
They can be summoned if they live less than 500 km away and there is adequate public transport.

What about air travel?

If air travel is feasible and compensated, they can be mandated to attend in person, regardless of the distance.



# Appraisal Report [Internal Confidential Document]





# Block Assessment

# Block Assessment Scheme

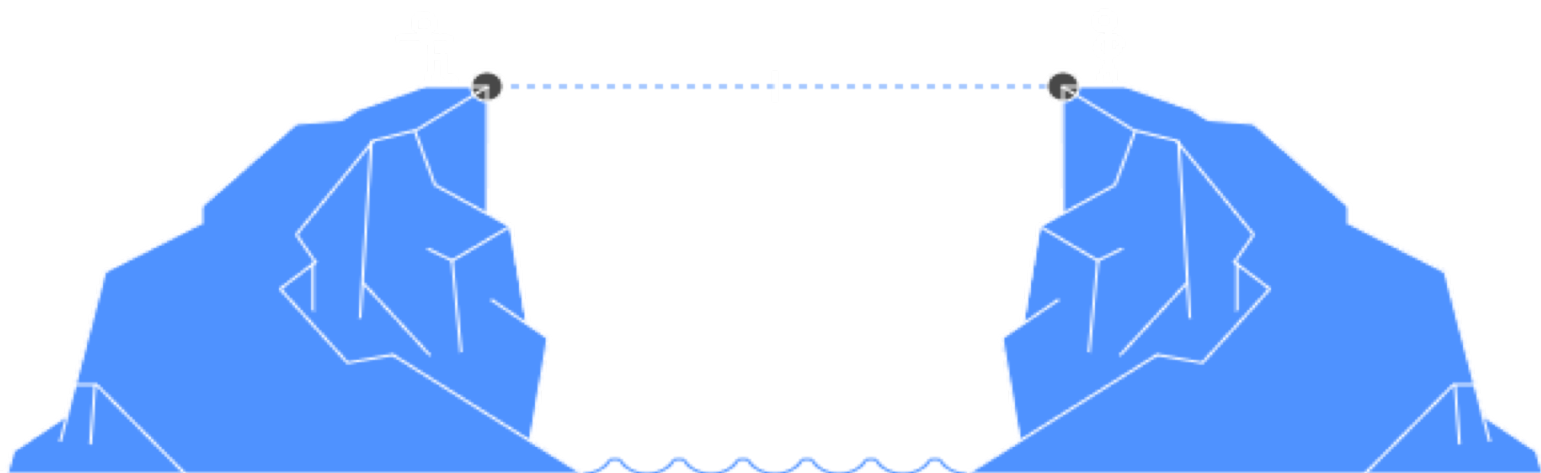
**Search before 01-09-2024**

Re-assessment  
proceedings made u/s  
148

**Block  
Assessment  
Scheme  
introduced**

**Search on or after  
01-09-2024**

Block Assessment  
Scheme as per Chapter  
XIV-B





# Problems in existing regime

(As mentioned in Memorandum to Finance Act 2024)

01.04.2021 to 31.08.2024

Every year only the time-barring year is reopened in the case of the searched assessee.

Searched assessee may be engaged in the search assessment process for almost up to ten years.

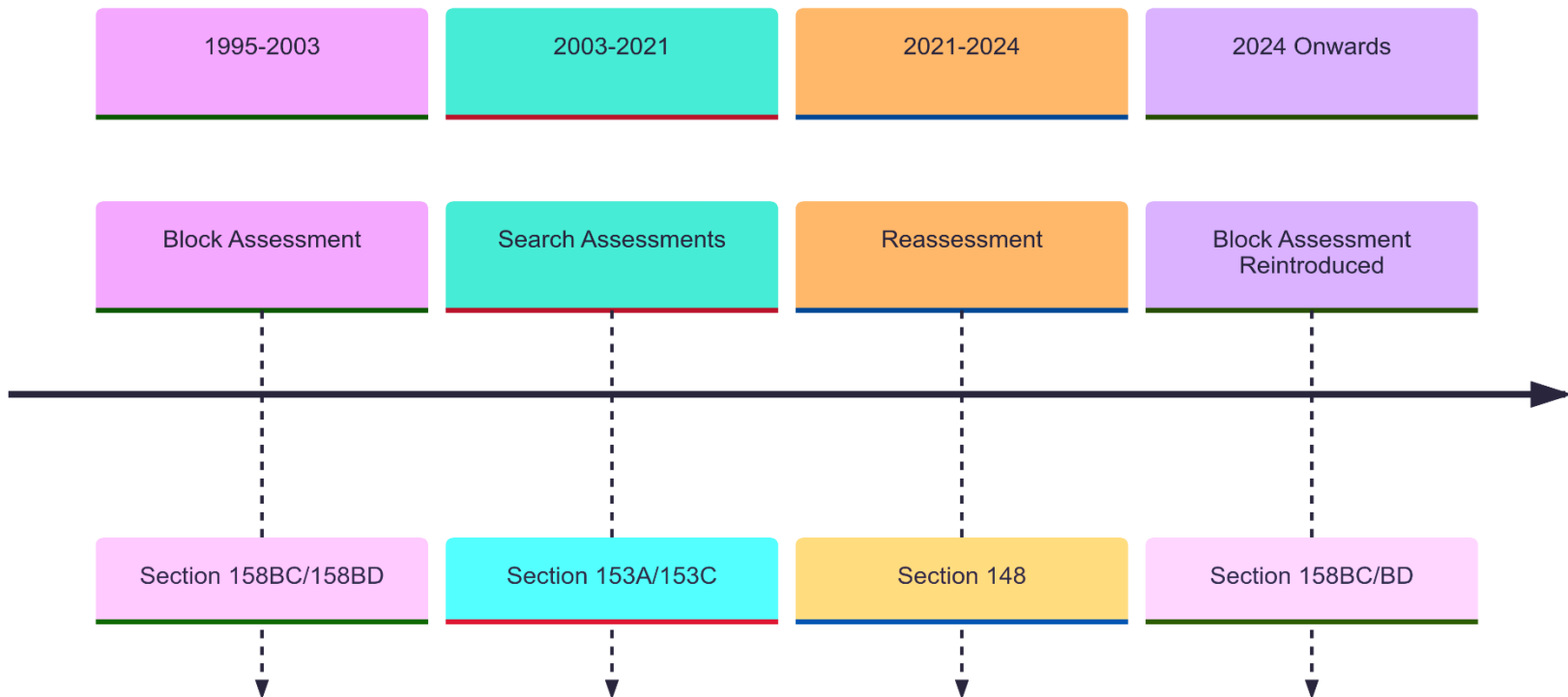
Due to staggered assessments coordinated investigation is not feasible in search cases.

High litigation cost for assessee

Every year you may face different team of officers at central circle

# Provisions timeline

## Timeline for Assessment in Search Cases



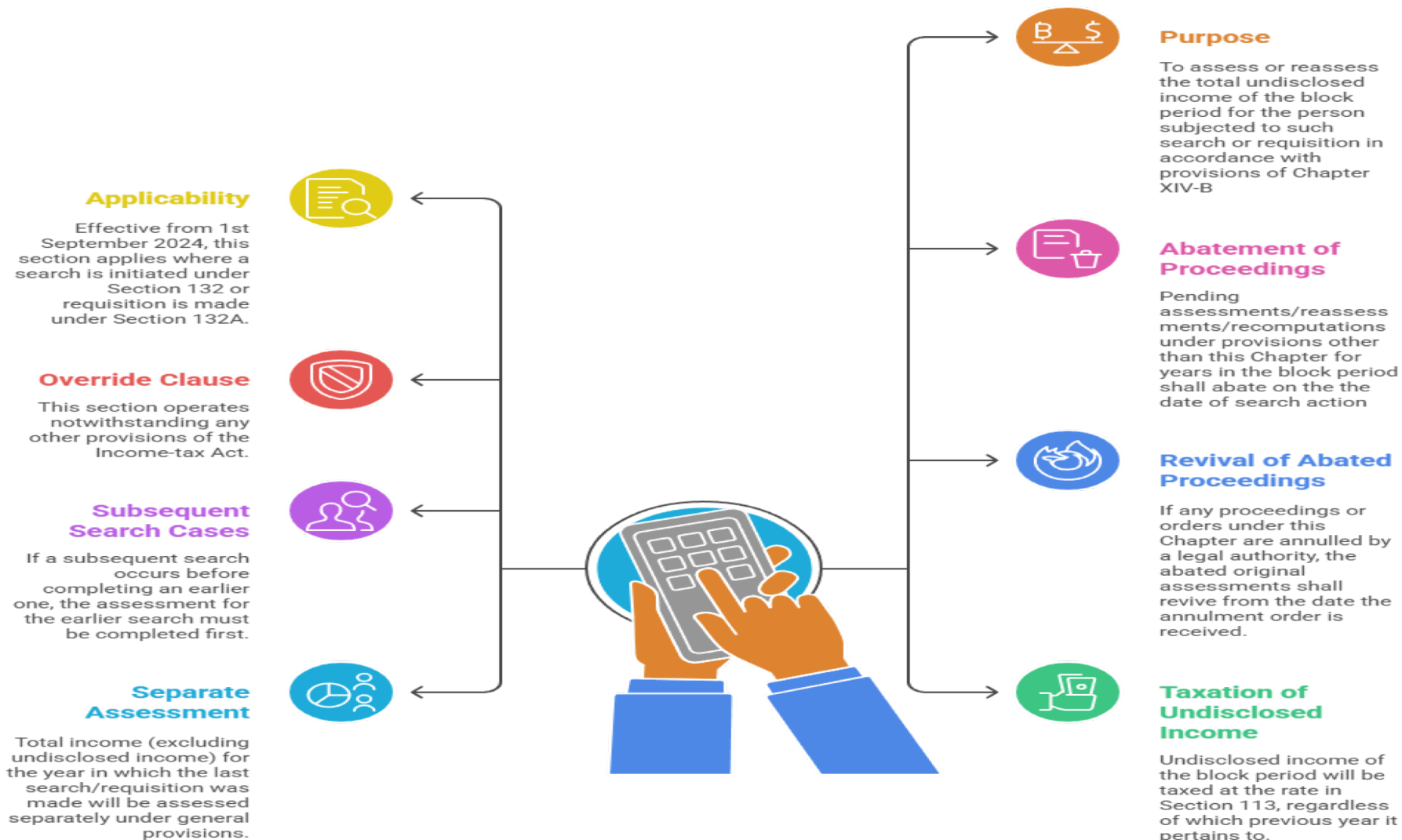
# Undisclosed Income: Old vs. New Law

Old Law {Section 158B(b)} [Applicable from 1995 to 2003]	New Law {Section 158B(b)} [Applicable from 01-09-2024]
<p>Undisclosed income included any money, bullion, jewellery or any other valuable article or thing</p> <p><u>or any income</u> based on entries in books of accounts or other documents or transaction</p> <p>where such money, bullion, jewellery, valuable article, thing, entry in the books of accounts or other documents or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act</p> <p>Or any expense deduction or allowance claimed under the Act found <u>to be false</u></p>	<p>undisclosed income includes any money, bullion, jewellery, or other valuable article or thing, Virtual Digital Asset [Introduced by Finance Act, 2025]</p> <p>or <u>any expenditure or income</u> based on entries in books of account or other documents or transactions,</p> <p>where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act,</p> <p>or any expense, deduction, or allowance claimed under the Act <u>found to be incorrect</u>, in respect of the block period.</p>

# False vs. Incorrect (Meaning of the terms)

- The term "false" implies something that is not real but is made to appear or seem real. It carries a serious connotation, involving deception and a deliberate intent to mislead. As held in CIT vs. M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi), the expression "false" or "falsehood" involves mens rea—a bad mental intention—and does not cover situations where a claim may be legally wrong or technically disallowed without any deceitful intent.
- In contrast, "incorrect" simply denotes something that is inaccurate or not correct. It lacks the element of deliberateness and is a milder term compared to "false." A claim may be incorrect due to an error, misinterpretation, or technical lapse, without any intention to deceive.
- For instance, claiming a fictitious expense knowingly or with a deceitful intent would be classified as a false claim, whereas a deduction disallowed due to a mistaken interpretation of law may be incorrect, but not false.

# Provisions of Section 158BA



# Undisclosed Income Computation: Old law vs. New Law

- The said amendments have a wide impact on the manner of computation of Undisclosed Income
- Under Old law the Hon'ble Apex Court in the case of CIT vs. S Ajit Kumar has held as follows:

*“On a perusal of section 158BB, it is evident that for the purpose of calculating the undisclosed income of the block period, it can be calculated only on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. Section 158BB has prescribed the boundary which has to be followed. No departure from this provision is allowed otherwise it may cause prejudice to the assessee.”*

- The new law has been drafted to essentially nullify the effect of such judgments as now the Ld. AO is empowered to make additions even on the basis of details observed during the course of proceedings also the words “relatable to such evidence have been omitted”

# Undisclosed Income Computation: Old law vs. New Law

## Old Law [Section 158BB(1)]

The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed,

- in accordance with the provisions of this Act
- on the basis of evidence found as a result of search or requisition of books of account or other documents and
- such other materials or information as are

-available with the Assessing Officer and **relatable to such evidence**,

as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined

## New Law [ Section 158BB(2) ]

The **Total income** falling within the block period, -shall be computed

- in accordance with the provisions of this Act,
- on the basis of evidence found as a result of search or survey or requisition of books of account or other documents and
- any other material or information as are either

- available with the Assessing Officer or ~~relatable to such evidence~~

- **come to his notice during the course of proceedings under this Chapter.**

## Computation of Undisclosed Income [Section 158BB(1)]

Sr. No	Particulars	Amount
A.	Undisclosed Income declared in Return of Income u/s 158C	XXX
B.	Undisclosed Income as determined by the AO	XXX
C.	Total Undisclosed Income for the Block Period [A. + B.]	XXX

Section 158BB(7) provides that the losses brought forward from periods before the block period or unabsorbed depreciation cannot be set off against undisclosed income but can be carried forward for set off in subsequent years.

Excludes income which has already been disclosed or assessed (Exclusions provided u/s 158BB (1A))



# Exclusions from Undisclosed Income [158BB(1A)]

Income assessed in the hands of the assessee

- Scrutiny assessment under section 143
- Best judgment assessment under section 144
- Reassessment under section 148
- Search assessment under sections 153A, 153C or 158BC
- Order of the Settlement Commission under section 245D(4)

Income declared in the return of income filed

- Under Section 139
- In response to notice under section 142(1)

Income computed based on entries recorded in the books of account and other documents

- The previous financial year (before the search), if the due date to file the return hasn't passed yet
- From April 1 of the current financial year up to the day before the search or requisition begins.
- From the start of the search or requisition until the last search authorization is carried out.

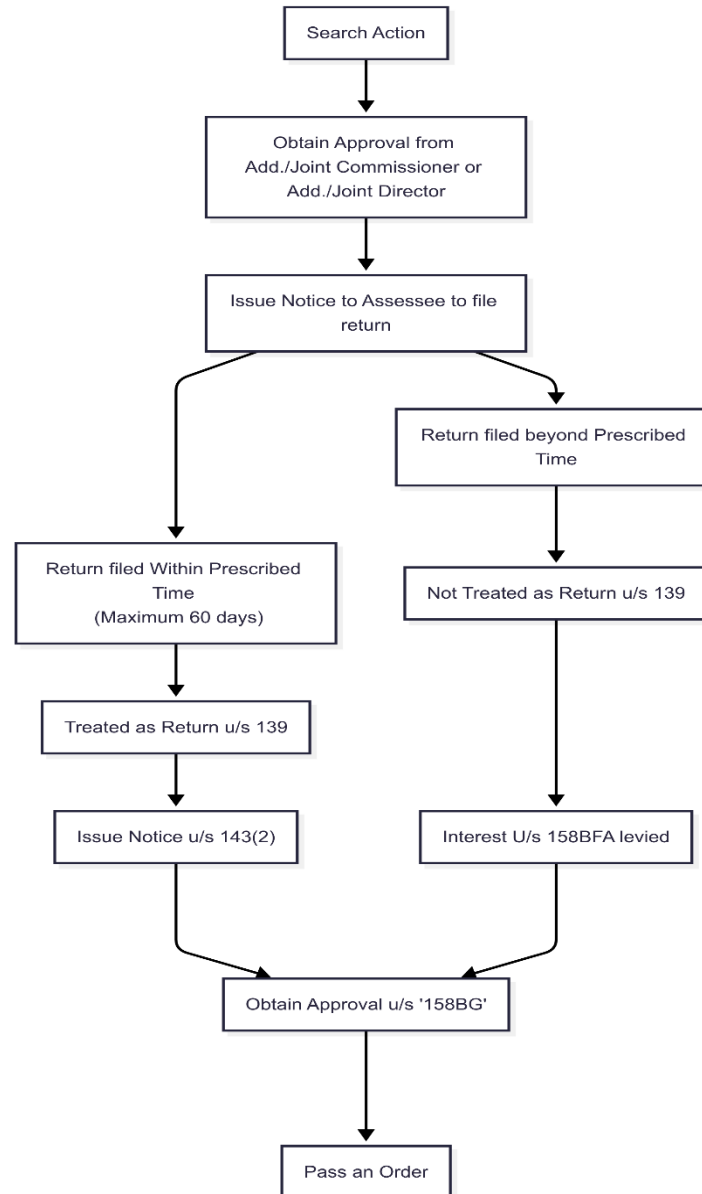
Income where return filing is not mandatory and tax is paid by way of TDS

- Section 115A(5)
- Section 115G
- Section 194P

# Rate of Tax [Section 113 r.w.s 158BF]

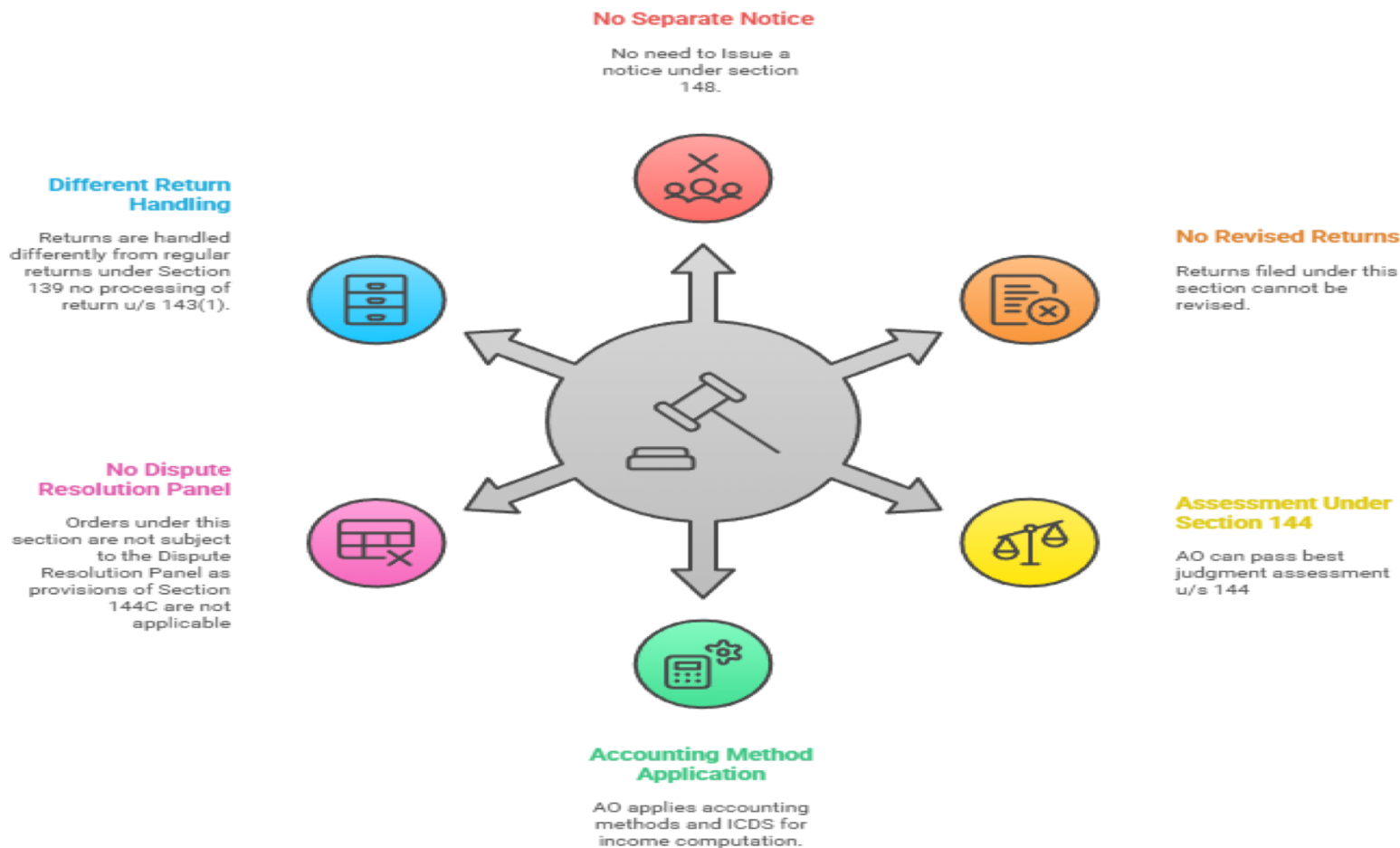
Sr. No	Particulars	Amount
A.	Total Undisclosed Income for the Block Period	XXX
B.	Tax on Total Undisclosed Income @ 60 % [A. X 60 /100] [Section 113]	XXX
C.	Surcharge [Memorandum explaining the provisions of the Finance (No. 2) Bill, 2024 and Section 158BH]	Nil
D.	Health and Education Cess [Not applicable in light of Section 158BH]	Nil
E.	Interest U/s 234A, 234B or 234C [Not Applicable as per Section 158BF]	Nil

# Procedure for determination of Undisclosed Income u/s 158BC



# Procedure for determination of Undisclosed Income

## Implications of Section 158BC



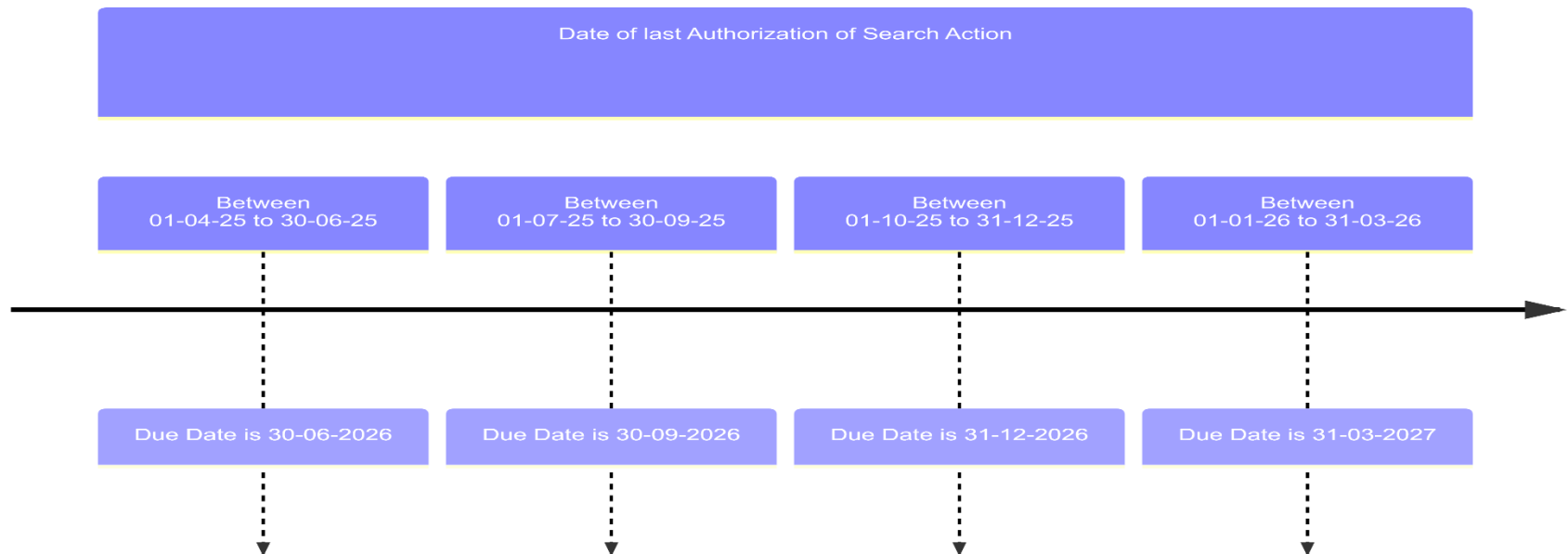
# Undisclosed Income in case of Another Person-158BD

1. No Threshold Limit prescribed for the Section 158BD
2. If Material Found in one year For Example for F.Y 2024-25 even then the assessee is saddled with a burden of assessment of almost 7 years under the block period
3. Recording of Satisfaction is a Sine qua Non for initiation of Proceedings in the present section. [Kindly also refer: Circular No. 24/2015 by CBDT and Calcutta Knitwears (Civil Appeal No. 3958 of 2014) case],
4. Impact of various Judgement to be considered in light of new scheme of block assessment
  - PCIT vs. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)
  - CIT vs. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC)
  - CIT vs. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi)
  - DCIT vs. U. K. Paints (Overseas) Ltd. [2023] 150 taxmann.com 108 (SC)

# Time Limit for Completion of Assessment u/s 158BE

The Finance Act, 2025 changes the time limit for completing the block assessment to twelve months **from the end of the quarter** in which the last of the authorizations for search or requisition is executed.

## Due Date as per Section 158BE



# Levy of interest and penalty in certain cases

## Section 158BFA

Levy of interest for delay in  
filing of return u/s 158BC

Levy of penalty for  
undisclosed income

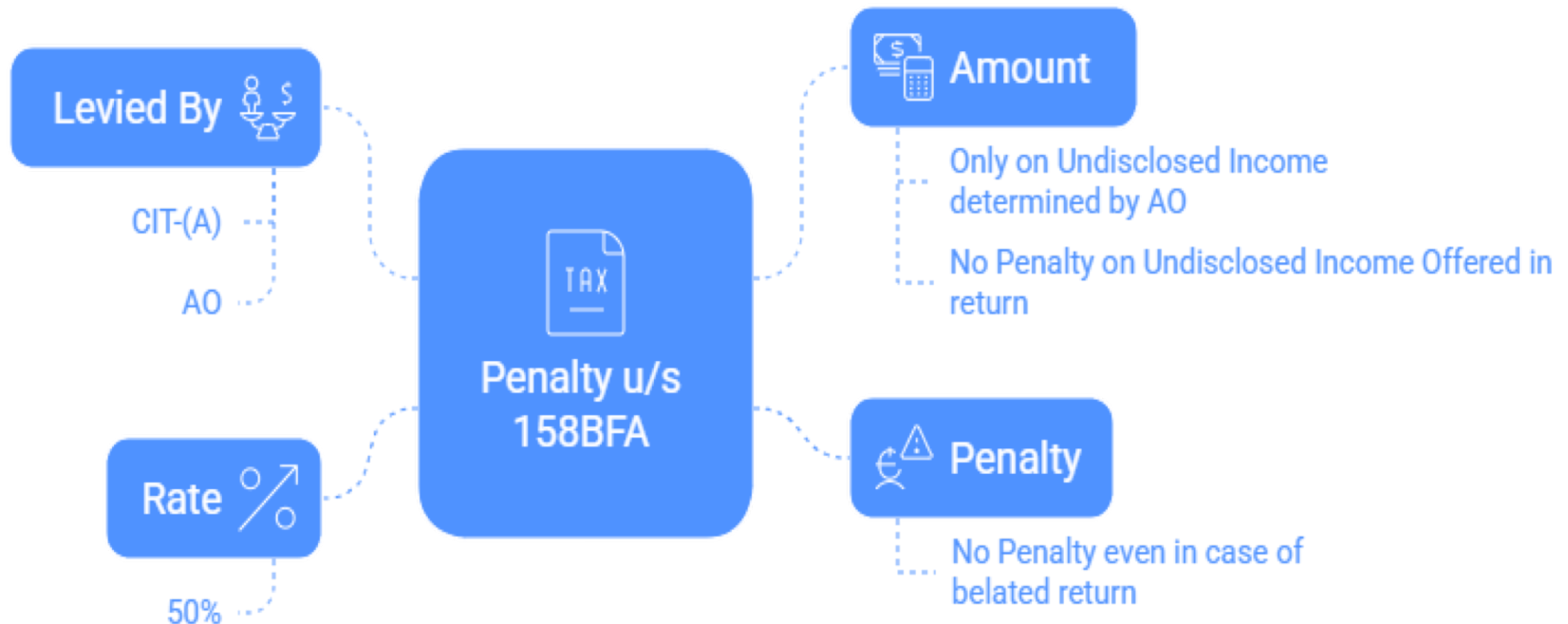
Prescribes the procedure  
and the limitation period to  
levy penalty

# Levy of interest u/s 158BFA

Characteristic	Return not Filed	Return Filed beyond the time limit
Liability	Simple Interest	Simple Interest
Rate	1.5%	1.5%
Amount	Undisclosed Income	Undisclosed Income
Time Period	Day after Due date to assessment Completion	Day after Due date to assessment Completion
Rate Charged	For each month or part thereof	For each Month or part thereof



# Levy of Penalty u/s 158BFA



Made with  Napkin

# Immunity from Levy of Penalty u/s 158BFA

Exemption from Penalty u/s 271AAD or section 271D or section 271DA or section 271E

## Return filed

The assessee has filed a return under Section 158BC.



1



2

## Tax paid

The tax due has been paid, or the seized money has been offered for adjustment against the tax payable.

## Evidence provided

Evidence of tax payment is provided with the return.



3



4

## No appeal filed

No appeal is filed against the assessment of the disclosed income.

However, no immunity shall be available where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return. In such cases, the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of income shown in the return.



Thank You