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SEARCH AND SEIZURE MANUAL - 2007

(VOLUME-I)

DIRECTORATE OF INCOME-TAX
(Public Relations, Printing, Publications and Official Language)
INCOME-TAX DEPARTMENT
NEW DELHI-110 001

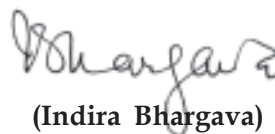
FOREWORD

It is very satisfying to note that our country is emerging as a major economic power. With sustained buoyancy in gross domestic product and consequent increase in income in different sectors, the country is marching ahead and has become a cynosure in the comity of nations. The technological changes brought about use of digital devices for the maintenance and upkeep of accounts and correspondingly changed modus operandi of evasion of tax. The Income Tax Department is faced with a formidable challenge in achieving its Mission: To promote compliance with Direct Tax Laws through quality tax payer service and firm administration/compliance. The search and seizure operations provide a useful tool for collecting the evidence against tax evasion and recover taxes from concealed income. Under the circumstances, there is an urgent need to keep the Search & Seizure Manual updated.

The Search & Seizure Manual which was first brought out in the year 1985 and subsequently revised in the year 1989 required to be upgraded and rewritten in view of technological changes and instructions/circulars issued by CBDT from time to time. Accordingly, a committee with Shri D.P. Panta as the convener and Shri G. Muthuramakrishnan and Shri S.S.N. Moorthy as its members, was constituted to rewrite the Search and Seizure Manual. This committee was split into three sub-committees which worked as working groups for the purpose. The result is the new Search and Seizure Manual which is rich in its content. The members of the committee and other officers associated with rewriting this Manual have done an excellent job and deserve appreciation.

Chapter-IV dealing with Air Intelligence Unit and Chapter-V dealing with digital evidence and related issues are new additions to the Manual. All other chapters have been fully rewritten and rearranged. The Manual refers to the applicable law and the relevant circular/instruction of the Board and would be a useful reference point.

I hope, this Manual will be very useful and relevant for the officers and officials of the Department and they will achieve excellence in their endeavours to use search as a tool of investigation and a means to detect tax evasion.



(Indira Bhargava)

Chairman

Central Board of Direct Taxes

New Delhi
May 30, 2007

PREFACE

I sincerely thank Shri D.P. Panta, CCIT, Kanpur and other members of the Committee and sub-committee for the great job rendered by them in rewriting Search and Seizure Manual.

We have come a long way since the first Search and Seizure Manual was published . Times have changed. The economic scenario has changed. India has changed. In our battle against tax evasion, new frontiers have opened up. Globalization and technology are impacting Indian society in a big way.

This has thrown up new challenges for the taxman. We have to meet these challenges.

With changing times, our response and reflexes have also to change. New strategies have to be evolved, in harmony with law and procedure, fairplay remaining central to all our efforts.

This Manual is an effort in this direction.

Hope, this will prove to be your friend, philosopher and guide.



Prasanna K. Misra

Member (Inv.)

Central Board of Direct Taxes

New Delhi
May 30, 2007

ACKNOWLEDGMENTS

A Committee was formed on October 30, 2006 to write a new comprehensive manual of 'search and seizure'. After a few meetings, it became clear that extensive research work was needed for writing the new manual. At times, the progress seemed to have been halted and it looked almost impossible to bring it out in time. But the inspiration provided by Smt. Indira Bhargava, Chairperson, CBDT, who had initiated this work as Member (Inv.), was always there to add new vigour to our efforts. The committee is grateful for her constant support.

This manual is not the result of the efforts of the committee members alone. A number of officers of the department have helped in collecting material for the manual. The Committee wishes to place on record special appreciation of the contribution of Smt. Neena Nigam, CIT (Appeals) and Sri S.M. Nigam, CIT (Appeals) whose tireless work has made it possible to bring out the manual in time. Thanks are due to Sri S.S. Kalyan, DDIT (Inv.) who helped in locating relevant circulars, instructions etc. on the subject. The Committee also thanks Smt. Vinita Chopra, DIT(Inv.), Sri T.K. Shah, DIT(Inv.) and Sri Rajendra, DIT (Inv.) for their contribution.

We are sure that this Manual will help the officers of the department in doing the work of search and seizure effectively. We have only the following message for them.

*"Errors, like straw, on the surface flow,
One who seeks for pearls, must dive below."*

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CONTENTS

	Abbreviations	
Chapter I	Introduction	1-7
	Overview of the legal provisions	1
	Organisation of the Manual	6
Chapter II	Identification and preparation of cases for search	8-39
	Gathering of information	8
	External sources of information	9
	Internal sources of information	18
	Processing of information	24
	Preparation of warrant of authorisation	28
	Setting up of Control Room	32
Chapter III	Conduct of search and seizure operations	40-91
	Requisition of Police officers	41
	Entry into the premises	42
	Witnesses to the search	46
	Showing of warrant of authorisation	49
	Initial statement of the occupants of the premises	50
	Searching the premises	55
	Seizure of books of accounts, money etc.	57
	Inventorisation of stock-in -trade	70
	Deemed seizure	75
	Order u/s 132(3)	75
	Statement u/s 132(4)	77
	Search of Bank lockers	83
	Preparation of Panchnama	86
	Suspension or conclusion of search	89
	Handing over of seized material to the Custodian	90
	Submission of the report by the search team	91
Chapter IV	Air Intelligence Units	92-95
	Inquiries by the AIU	92
	Execution of the warrant of authorisation	93
	Action at the destination airport	94
Chapter V	Digital evidence	96-103
	Basic concepts	96
	Basic guidelines for the search team	98
	Password protection	99
	Seizure of the data storage devices	100
	Integrity of the retrieved data	103

Search and Seizure Manual

Chapter VI	Post search actions and proceedings	104-142
	Preparation of check list	104
	Personal deposit account	106
	Strong room	110
	Submission of reports	114
	Seized books of accounts and documents	116
	Appraisal report	119
	Centralisation of search cases	123
	Application of seized assets	126
	Release of seized assets	132
	Intimation to other enforcement agencies	133
	Publicity	134
Chapter VII	Requisition of Books of account, other documents or assets taken into custody by any officer or authority	143-148
	Procedure for requisition and delivery	145
Chapter VIII	Secret Service Fund	149-150
	Maintenance of accounts	149
	Control of expenditure	149
Chapter IX	Reward to informants and departmental personnel	151-171
	Reward to informants	151
	Basis for reward	153
	Types of reward	155
	Processing grant of rewards	160
	Reward to departmental officers and staff	162
	Reward scheme of 1985	162
	Reward scheme of 2007	167
Chapter X	Penalties and prosecutions in search cases	172-182
	Offences during search	172
	Pre-search offences other than under Direct tax enactments	176
	Pre-search offences under IT Act	180
Chapter XI	Registers and reports of search related activities	183-190
	Registers	183
	Reports	187

ABBREVIATIONS

ACIT	Assistant Commissioner of Income tax
ADIT	Assistant Director of Income tax
Addl.	Additional
AIR	Annual Information Return
AIS	Assessee Information System
AIU	Air Intelligence Unit
AO	Assessing Officer
AOP	Association of Persons
AST	Assessment Information System
ATM	Automatic Teller Machine
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CCIT	Chief Commissioner of Income tax
CD	Compact Disc
CEIB	Central Economic Intelligence Bureau
CIB	Central Information Bureau
CISF	Central Industrial Security Force
CIT	Commissioner of Income tax
CIT(A)	Commissioner of Income tax (Appeals)
CPU	Central Processing Unit
DAT	Digital Audio Tape (Drive)
DCIT	Deputy Commissioner of Income tax
DDIT	Deputy Director of Income tax
DGIT	Director General of Income tax
FDR	Fixed Deposit Receipt
INV.	Investigation
I-POD	Apple's iPod player.
IPC	Indian Penal Code

Search and Seizure Manual

ITAT	Income Tax Appellate Tribunal
ITD	Income Tax Departmental Applications
ITO	Income tax Officer
IVP	Indira Vikas Patra
JCIT	Joint Commissioner of Income tax
JDIT	Joint Director of Income tax
KVP	Kisan Vikas Patra
LAN	Local Area Network
NCB	Narcotics Control Bureau
NSDL	National Securities Depository Ltd.
OS	Operating System
PDA	Personal Deposit Account
RAM	Random Access Memory
RBI	Reserve Bank of India
REIC	Regional Economic Intelligence Committee
SSF	Secret Service Fund
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TEP	Tax Evasion Petition
USB	Universal Serial Bus
ZAO	Zonal Accounts Officer

CHAPTER - I

INTRODUCTION

Overview of the legal provisions

1.1 Section 132 of the Income Tax Act, 1961 empowers certain income-tax authorities to authorise, in the circumstances mentioned therein, certain other income-tax authorities to-

- (i) enter and search a building, place, vessel, vehicle or aircraft or any person who has got out of, or is about to get into, or is in, the said building, place, vessel, vehicle or aircraft;
- (ii) seize books of accounts, documents, money, bullion, jewellery and other valuable article or thing found as a result of the search; and
- (iii) take certain other actions¹.

1.2 Powers of a similar nature are also available to certain wealth-tax authorities under section 37A of the Wealth Tax Act, 1957.

1.3 The power to requisition books of account, other documents and assets taken into custody by any officer or authority under any other law for the time being in force is also available to certain income-tax authorities. This power is available under section 132A of the Income Tax Act, 1961. Similar powers are given to certain wealth-tax authorities under section 37B of the Wealth Tax Act, 1957.

1.4 Section 132B of the Income Tax Act, 1961 deals with application of seized/requisitioned assets. Section 37C of the Wealth Tax Act, 1957 pertains to application of retained assets.

1.5 The aforesaid provisions, along with Rules 112, 112A, 112B, 112C and 112D of the Income Tax Rules, 1962/Rules 10 and 10A of the Wealth Tax Rules, 1958 lay down the law and procedure for authorising and conducting searches, making requisitions, effecting seizures, performing certain other search related functions, retaining seized/requisitioned books of account and other documents and dealing with seized/requisitioned/retained assets. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure apply, so far as may be, to search and seizure under the Income Tax Act, 1961 and the Wealth Tax Act, 1957.

1.6 These provisions enable income/wealth-tax authorities to get hold of-

1 See sub-sections (1) and (1A) of section 132.

- (i) evidence bearing on the tax liability of a person which he may be withholding from the department; and
- (ii) assets representing income believed to be undisclosed and to apply so much of these assets as may be necessary to discharge his tax liabilities, including the tax liabilities arising out of the assessments made following the search.

1.7 The focus of this and the following chapters is on the procedures relating to the searches under the Income Tax Act, 1961. This will, so far as may be, also apply to searches under the Wealth Tax Act, 1957.

Income-tax authorities competent to authorise search

1.8 The authorities competent to authorise a search and seizure action have been indicated in section 132. This section also enumerates the income-tax authorities that can be authorised to take such actions (called 'authorised officer')². It is not necessary that the authorised officer should be an officer working under the direct control or supervision of the authority authorising search.

1.9 The first proviso to section 132(1) takes care of a situation where any building, place or aircraft to be searched is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 132. In such a situation the said Chief Commissioner or Commissioner is competent to exercise the powers under section 132(1) in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue.

1.10 In the circumstances referred to in section 132(1A), a Chief Commissioner or a Commissioner can authorise search in a case even if it does not fall in his jurisdiction. This can be done where a Chief Commissioner or a Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by any other competent income-tax authority to take action under clauses (i) to (v) of sub-section (1) of section 132 are, or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under section 132(1). In the aforesaid circumstances, such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said

2. See Table appearing in Chapter II for a list of such authorities.

officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

1.11 Every authorisation for carrying out search, seizure, etc. is required to be issued in writing in the prescribed form under the signature of the officer issuing the same. It should also bear his seal.³

Circumstances in which a search can be authorised

1.12 An income-tax authority competent to authorise actions under section 132(1) can do so only if he, in consequence of information in his possession, has reason to believe that any one or more of the circumstances referred to in clauses (a), (b) and (c) of sub-section (1) of section 132 exist(s) in a case.

1.13 The powers conferred on the income-tax authorities by section 132 are not unfettered and do not confer any arbitrary authority upon them. The following points also merit a brief mention here:

- (1) The power under section 132 must be exercised strictly in accordance with law and only for the purposes for which the law authorises it.
- (2) Board's guidelines on the subject are also germane to authorisation of searches.⁴
- (3) It is not necessary that certain proceedings must be pending before action under 132 is taken.

Actions which the Authorised Officer is competent to take under sub-section (1) of section 132

- 1.14 Under section 132(1), the Authorised Officer has the power to-
- (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that books of account or other documents, referred to in clause (a) or clause (b) of sub-section (1) of section 132 or money, bullion, jewellery or other valuable articles or things referred to in clause (c) of sub-section (1) of section 132 are kept;
 - (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers referred to at (i) above where the keys thereof are not available;
 - (iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the

³ See sub-rules (2) and (2A) of Rule 112.

⁴ See Board's Instruction No. 7 of 2003 (F.No. 286/77/2003-IT (Inv. II) dated 30.07.2003. (Annexure 79 in Appendix V)

authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

- (iv) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;
- (v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing (other than stock-in-trade of the business) found as a result of such search;
- (vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom; and
- (vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

Certain other powers of the Authorised Officer under section 132

1.15 Some other powers available to the authorised officer are-

- (1) He may, where it is not possible or practicable to take physical possession of any valuable article or thing (other than stock-in-trade of the business) and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with his previous permission. His action is deemed to be seizure of such valuable article or thing.⁵
- (2) He can requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) of section 132. It shall be the duty of every such officer to comply with such requisition.⁶
- (3) He may, where it is not practicable to seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of search, for reasons other than

⁵ See the second and third proviso to section 132(1).

⁶ See section 132(2).

those mentioned in the second proviso to sub-section (1) of section 132, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with his previous permission. He may take such steps as may be necessary for ensuring compliance in this regard.⁷

- (4) He 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, jewellery or other valuable article or thing. This can be done under section 132(4). He can also examine a person in exercise of the powers available to him under section 131(1A). This can be done before he takes action under clauses (i) to (v) of section 132(1).

Presumptions in respect of books of account, other documents, money, bullion, jewellery or other valuable article or thing found in the course of a search

1.16 Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing is found in the possession or control of any person in the course of a search, presumptions referred to in section 132(4A) follow. These presumptions are that:

- (i) such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) the contents of such books of account and other documents are true; and
- (iii) 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.

1.17 In view of section 292C, inserted by the Finance Act, 2007, this presumption will apply to any proceedings under the Act.

Retention of seized books of account, other documents and application of seized/requisitioned assets

1.18 The following points merit a brief mention here:

- (1) The person, from whose custody any books of account or other

⁷ See section 132(3).

documents are seized, is entitled to make copies thereof, or take extracts therefrom.

- (2) Where the authorised officer has no jurisdiction over the person in whose case the search was conducted, he is required to hand over the seized books of account, other documents and assets to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed.
- (3) The seized books of account or other documents cannot be retained by the authorised officer (Assessing Officer, after the authorised officer has handed over the same to him) for a period exceeding thirty days from the date of the order of assessment under section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director General or Director for such retention is obtained. The Chief Commissioner, Commissioner, Director General or Director cannot authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922, or the Income Tax Act, 1961 in respect of the years for which the books of account or other documents are relevant are completed. If the person legally entitled to the seized books of account or other documents objects for any reason to the approval given by the Chief Commissioner, Commissioner, Director General or Director, he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents. The Board may, after giving the applicant an opportunity of being heard, pass such orders, as it thinks fit.
- (4) The seized/requisitioned assets may be applied to recover the amounts of liability referred to in section 132B. If any assets or proceeds thereof remain after the said liabilities are discharged, the same are required to be forthwith made over or paid to the person(s) from whose custody the assets were seized. In certain situations, Central Government is also required to pay interest to the said person(s).⁸

Organisation of the Manual

1.19 This Manual has been divided into eleven chapters and six appendices. Each appendix has a separate index. The first chapter is

8 See section 132B(4).

introductory in nature. Most of the points referred to therein, especially those relating to procedures have been further elaborated in the following chapters.

1.20 The following points relating to the expressions used in, and the arrangement and scheme of, this manual merit a brief mention:

- (1) Unless otherwise mentioned or the context otherwise requires-
 - (i) the sections and the rules referred to in this Manual are those of the Income Tax Act, 1961 and the Income Tax Rules, 1962 respectively;
 - (ii) the word 'Act' used in the Manual refers to the Income Tax Act, 1961;
 - (iii) the word 'Rule' used in the Manual refers to the Income Tax Rules, 1962
- (2) The following pattern has been used in this Manual for referring to clauses, sub-sections and sections of the Income Tax Act, 1961 and other statutory enactments and clauses, sub-rules and rules of the Income Tax Rules, 1962 and other rules:
 "section/rule 999(11)(ab)"
 where,
 999 = Set of numeric characters denoting section/rule;
 (11) = Set of numeric characters denoting sub-section/sub- rule,
 and
 (ab) = Set of alphabetic characters denoting clause.
 [For example, clause (a) of sub-section (1) of section 132 is referred to as section 132(1)(a)]
- (3) The expression 'Investigation Wing' has been used in this Manual for the special organisational unit of the Income Tax Department that performs jobs like identification of cases for search under section 132, planning and organising search operations, conduct of search operations, requisition of books of account, other documents and assets under section 132A and certain post-search work. It comprises a number of Directorates General of Income Tax (Investigation), Directorates of Income Tax (Investigation) and investigation units, spread all over the country.
- (4) For the sake of convenience, the term 'premises' has been used in this Manual to denote a building, place, vessel, vehicle or aircraft where a search can be/is being conducted.
- (5) A list of the abbreviations used in the Manual appears at page (ii).

CHAPTER - II

IDENTIFICATION AND PREPARATION OF CASES FOR SEARCH

2.1 As explained in Chapter-I, a search can be authorised in a case only if the income-tax authority competent to do so has, in consequence of information in his possession, reason to believe that one or more of the conditions mentioned in clauses (a), (b) and (c) of sub-section (1) of section 132 of the Act is/are fulfilled. Board's guidelines on the subject are also germane to the process of identification of cases for search.⁹

2.2 Under the existing organisational arrangement, searches are ordinarily authorised by the Director of Income Tax (Investigation) with the prior administrative approval of the Director General of Income Tax (Investigation).¹⁰ A consequential search can also be authorised by an empowered Joint Director of Income Tax (Investigation) to ensure expeditious and effective action during the course of a search.

2.3 Identification and preparation of cases for search should be done carefully, strictly adhering to the statutory requirements and the Board's instructions on the subject. It involves the following main steps:

- (1) Gathering of information from various sources
- (2) Processing of information
- (3) Preparation of satisfaction note and warrant of authorisation
- (4) Preparation for conduct of search

Gathering of information

Sources of information

2.4 Information relating to a person's economic activities reaches the income-tax authorities from a variety of sources. These can broadly be grouped under the following heads:

- (1) External sources of information
- (2) Internal sources of information

2.5 Some examples of external sources of information are:

9 See Board's Instruction No. 7 of 2003 (F.No. 286/77/2003-IT (Inv. II) dated 30.07.2003. (Annexure 79 in Appendix V).

10 See Board's letters F.No. 286/77/2003-IT (Inv. II) dated 12.08.2005 (Annexure 83 in Appendix V) and F.No. 289/10/2001-IT (Inv. II) dated 07.03.2001. (Annexure 75 in Appendix V) See also Board's Instruction No. 7 of 2003 (F.No. 286/77/2003-IT (Inv. II) dated 30.07.2003. (Annexure 79 in Appendix V).

- (1) Informants
- (2) Information received on telephone, including anonymous telephonic tips
- (3) Government agencies and bodies, especially those dealing with economic offences and violations
- (4) Newspapers, magazines, journals, publications, studies and other print and audio-visual media
- (5) Internet, especially web sites of trade and industry associations and bodies, regulatory authorities and web-sites containing economic information on various types of business, profession, etc.
- (6) Information gathered by the Air Intelligence Units
- (7) Surveillance

2.6 Some examples of internal sources of information are:

- (1) Records of taxpayers and others maintained in Income Tax Offices
- (2) Records of Tax Evasion Petitions (TEPs)
- (3) Dossiers of cases maintained by the Directorate of Income Tax (Investigation) and its units
- (4) Records of searches, surveys, etc. conducted by income-tax authorities
- (5) Information contained in Annual Information Returns (AIR) and other information collected by the Central Information Branch (CIB)
- (6) Records of Banking Cash Transaction Tax (BCTT) and Securities Transaction Tax (STT)
- (7) Computerised data bases containing information on tax payers and others maintained by the Income Tax Department

2.7 It needs to be mentioned here that while information collected from one single source may not always be sufficient, it can nevertheless provide useful inputs, which, in combination with information gathered from other sources, provide a sound basis for proper identification of potential cases for search. It is also advisable that instead of confining himself to only one source of information, the investigating authority should gather information from as many sources as possible.

External sources of information

Informants

2.8 An informant is a person who approaches an income-tax authority,

usually in person, with information about tax evasion or other tax violations by a person. However, the question of considering his information for search would arise only if the conditions laid down in one or more of clauses (a), (b) and (c) of sub-section (1) of section 132 is/ are satisfied.

2.9 Where an informant approaches an income-tax authority or an official of the Income Tax Department with information relevant to clauses (a) or (b) or (c) of section 132(1), such authority should proceed as under:

- (1) Where the informant approaches an authority or official, not being an authority of the Investigation Unit of the rank of ADIT/DDIT (Investigation) or above, he should explain to the informant that the matter can be dealt with only by the appropriate authorities of the Investigation wing. He should advise the informant not to reveal his identity and that of the person against whom he intends to furnish information. He should direct the informant to the concerned Joint/Additional DIT (Investigation). However, if the said authority is not available or if for some valid reason it is not convenient for the informant to approach him, he may be advised to contact the concerned ADIT/DDIT (Investigation).
- (2) Where the informant approaches the DGIT (Investigation) or the DIT (Investigation), he should ordinarily direct him to the concerned Joint/Additional DIT (Investigation), or as the case may be ADIT/DDIT (Investigation), without going into the details of the information intended to be furnished by the informant. However, in exceptional circumstances, he may devise a suitable procedure for dealing with the matter.
- (3) Where the informant approaches the ADIT/DDIT (Investigation), he should direct him to the Joint/Additional DIT (Investigation). However if the said authority is not available or if for some valid reason it is not convenient for the informant to approach him, the ADIT/DDIT (Investigation) may deal with the matter himself and bring the matter to the notice of the Joint/Additional DIT (Investigation) as early as possible.
- (4) Where the informant approaches the Joint/Additional DIT (Investigation), he should deal with the matter himself.

Preliminary examination of the information and discussion with the informant

2.10 The Joint/Additional DIT (Investigation) or, as the case may be, the ADIT/DDIT (Investigation) should carefully go through the information

and have a preliminary discussion with the informant.¹¹ The purpose of the preliminary examination is to *prima facie* assess the utility, relevance and potential of the information for search. While there can be no precise and comprehensive guidelines in this regard, some factors that can help in deciding whether the matter calls for a detailed examination are, in brief, as under:

- (1) Nature of information-whether the same is specific, precise and to the point and whether the informant has any evidence in support of the information/allegations;
- (2) Informant's primary motive in furnishing the information;
- (3) Informant's behaviour and demeanour during his face-to-face interaction with the investigating authority as this can give a clue whether he is in the habit of exaggerating things, whether he is trustworthy, etc.;
- (4) Informant's relationship, if any, with the person against whom information has been furnished;
- (5) Nature and extent of the informant's access to the information regarding the economic activities of the person against whom information is being furnished;
- (6) Nature and extent of the informant's knowledge about the modus operandi for tax evasion adopted by the person against whom information is being furnished;
- (7) Nature and extent of the informant's knowledge about the place(s) where the person against whom information has been furnished carries on business or profession or other economic activity and financial transactions and place(s) where he keeps his books of account, documents, computer systems, money, bullion, jewellery or other valuable articles or things, especially those representing or relating to his undisclosed income or property;
- (8) Nature and extent of the informant's knowledge about the associates, trusted employees, etc. of the person against whom

¹¹ The authority competent to obtain information, evidence or documents from an informant will maintain record of each informant giving in brief his antecedents, the details of cases in which he had furnished information and the extent to which information had been found reliable. In case it is found that the antecedents of the informant, the nature of the information furnished by him in the past and his conduct justify ignoring the information, evidence and documents furnished by him, the case should be referred by such authority to the CBDT and if approved by the Board, it would be open to such authority not to take cognizance of the information furnished by such an informant. See paragraph 17 of Guidelines for Grant of Rewards to Informants, 1993 (F.No.292/14/93-I.T. (INV-III) dated 30-11-1993) (Annexure 69 in Appendix V)

information has been furnished and concerns like, firms, companies, etc. with which he is directly or indirectly associated;

- (9) The period to which the information relates; and
- (10) Informant's level of understanding of economic information and financial transactions.

2.11 If on the basis of the preliminary examination, it is found that-

- (i) the information is totally inaccurate or extremely vague or has absolutely no worth, no cognizance thereof need be taken;
- (ii) the information, though inadequate, is not without potential, the information may be retained and the informant may be advised to collect more information, especially on the points that may be identified by the investigating authority; and
- (iii) the information is useful and relevant, it may be retained and the investigating authority should proceed to make a detailed examination of the information and the informant.

2.12 The investigating authority should maintain proper record of the preliminary examination.

Detailed Examination of the information and informant

2.13 Detailed examination should ordinarily be done by the ADIT/DDIT (Investigation). However, in exceptional circumstances the Joint/Additional DIT (Investigation) can himself do this.

2.14 The investigating authority should take following steps in this regard:

- (1) The informant should be given a secret code number.¹² The same should be entered in the Register of Informants.¹³ He should be advised that during subsequent interactions with the Department he must use his secret code number only.
- (2) The informant should be asked to fill in the declaration form in the prescribed proforma.¹⁴ He should be asked to affix his left hand thumb impression at the appropriate place in the declaration form. His recent passport size photograph, at his option, may also be affixed on the declaration form. Also, other identification marks such as his height, colour of his hair and eyes, other distinguishing physical features, ration card number, PAN, etc.

12 See paragraph 10 of Guidelines for Grant of Rewards to Informants, 1993 (F.No.292/14/93-I.T.(INV-III) dated. 30.11.1993 (Annexure 69 in Appendix V)

13 See Annexure 2 in Appendix-I for the format of the Register of Informants

14 See Annexure 31 in Appendix -III for the format of the proforma for declaration.

may be noted. This will help in identifying him at subsequent stages, like when a reward is to be paid to him.

- (3) The informant's contact telephone number, if any, should be obtained so that he can be contacted when needed. Care should, however, be taken to ensure that no discussion about the information furnished by him or any matter relating to the case to which the information pertains takes place over phone.
- (4) Though reward payable to an informant cannot be assigned, the names of his legal heirs should be kept on record for any eventuality.
- (5) All personal information of the informant should be kept confidential in the personal custody of the authority making the detailed examination and when he is transferred out, in the personal custody of his successor-in-office.
- (6) No assurance for reward should be given to the informant. It should be made clear to him that reward is paid only if an informant's information leads to levy and collection of extra taxes, such taxes are directly attributable to his information and other relevant conditions are fulfilled.
- (7) The informant should be asked to give all evidence in his possession in support of the information furnished by him.
- (8) The investigating authority should examine the informant on oath and record his statement. The following points relating to such examination merit a mention here:
 - (a) The informant should be told that if he makes a false statement or a statement which he either knows or believes to be false or does not believe to be true, he will be liable for prosecution under section 181 IPC, carrying punishment for a term which may extend to three years and with fine. This fact may be clearly incorporated in the preamble to the statement.
 - (b) As far as possible, the statement should be recorded in the form of questions and answers and in the language in which the informant gave the statement.
 - (c) The informant should be asked as to how he was able to acquire the information. He should also be specifically asked about his relationship, if any with the person against whom information has been furnished.
 - (d) Specific queries should be made to elicit information on matters like, (i) nature and extent of the economic activities

of the person against whom information has been furnished; (ii) addresses and locations of his offices, factory, work-place, godowns, bank, bank lockers, etc; (iii) modus operandi for tax evasion; (iv) place(s) where the person keeps his books of account, documents, computer systems, stock, money, valuables, etc, especially those representing or relating to his undisclosed income or property; (v) special features of the person's premises and related issues like, number of floors, rooms, suites, secret chambers, lockers, vaults, telephones, mobile phones, intercom systems, closed circuit cameras, Access Control Systems, vehicles, guards, servants and dogs; (vi) nature and types of computer systems and other digital devices being used by the person or his employees, associates, agents, etc.; and (vii) names and addresses of the person's trusted employees and associates, especially those handling matters relating to his undisclosed income or properties.

- (e) The points made in Chapter-III regarding examination on oath of persons will also, so far as may be, apply here.

Information received on telephone, including anonymous telephonic tips

2.15 Whenever any information is received on phone, the authority receiving the information should, as far as possible, himself deal with it, since, otherwise, the efficacy of the information may be lost due to time lag. The information received by authorities like DGIT (Investigation) may be passed on without delay to the concerned DIT (Investigation) for appropriate action. The authority receiving the information should maintain a record of the same and also of the action, if any taken. The points made at paragraphs (2.9) to (2.14) above regarding informants will apply, so far as may be, to information received on telephones. It is also advisable to gather the following information:

- (1) The identity of the person furnishing the information, if he is willing to disclose the same and the phone number from which the information is furnished¹⁵
- (2) Any other details that would authenticate the information furnished and help in assessing its credibility.

Government agencies, bodies, etc., especially those dealing with economic offences and violations

2.16 Some forms in which economic information relevant to identification

¹⁵ It is advisable to have the facility of display of caller identification on all the phones of the authorities of the investigation wing.

of cases for search may flow from various Government agencies, bodies, etc. to the Income Tax Department are:

- (1) *References made or information passed on by bodies like, Financial Intelligence Unit (FIU) of the Ministry of Finance and the Central Economic Intelligence Bureau:* These high powered bodies have been set up with the objective of co-ordination between the work of various economic and other enforcement agencies of the Government and sharing of information between them. Information/references flowing from these agencies, bodies, etc. are generally received by the DGIT (Investigation) either directly or through the Board. While FIU references are generally received through the Board, CEIB references may be received by the DGIT (Investigation) either directly or through the Board or through the Convener of the REIC. The DGIT (Investigation) should maintain a record of such references. He should pass on the reference/information to the DIT (Investigation) for appropriate action. The DGIT (Investigation) should monitor the progress of investigations in such cases. On receipt of the information/reference, the DIT (Investigation) should have the matter thoroughly investigated by the concerned Investigation unit headed by the Joint/Additional DIT (Investigation). Where the Board/CEIB/FIU also calls for a report, the DGIT (Investigation) should send the same in time after obtaining a report from the DIT (Investigation). The DIT (Investigation), Joint/Additional DIT (Investigation) and the ADIT/DDIT (Investigation) should maintain a record of the receipt and processing of the reference/information in their respective offices and the outcome of the investigation. Cases having potential for a successful search should be identified and action taken accordingly.
- (2) *Information received through the Regional Economic Intelligence Committee (REIC):* The REICs have been set up in different parts of the country to ensure operational co-ordination between different economic enforcement agencies in the region, gather general economic intelligence on trade and industry and facilitate exchange of information on important cases processed or booked by them. The REICs comprise all officers of the Department of Revenue of the rank of Commissioners and above under the CBEC and CBDT who have administrative responsibility for enforcement of tax laws, heads of related agencies of Central and State Governments, local heads of banks, etc. in the region. Periodical meetings are held in which the information processed by different agencies are exchanged. Wherever the representative/Nodal Officer of the Income Tax Department in the REIC receives any

information having search potential from the other participating agencies, the same should be passed on to the DIT (Investigation) for appropriate action.

- (3) *Information received from other Government agencies directly:* It is likely that information is received directly from other Government Departments/enforcement agencies in the course of any intrusive or other action initiated or taken by them. In such cases, wherever required, prompt action must be taken either under section 132 or 132A. However, where the concerned agency is unable to seize money, bullion, valuables or documents, etc. found as a result of the action taken by it due to any legal constraints or otherwise, action under section 132 would be preferable.

Newspapers, magazines, journals, publications, studies and other print and audio-visual media

2.17 A detailed procedure for compiling and utilising the information appearing in newspapers, magazines, etc. appears at paragraphs (10.1) to (10.4) of Manual of Office Procedure Volume-III.¹⁶

Internet

2.18 Since connection to internet is prohibited on personal computers which are on Departmental network due to the risk of hacking, virus, etc., it is advisable that in the region of each DGIT (Investigation) some personal computers, not connected to the Departmental network, are dedicated for the purpose of viewing and compiling information relating to different business groups, industries and even specific cases from the websites on the internet. Such information should be periodically reviewed by an officer designated for the purpose to evaluate their usefulness for possible search action.

Air Intelligence Unit

2.19 A discussion on Air Intelligence Unit appears in Chapter IV.

Surveillance

2.20 Surveillance means to keep secret and close watch over places or persons or objects. It is a form of discreet observation of the activities and places of the target group. Before finally selecting a case for search, the target group should, as far as possible, be subjected to surveillance for a reasonable period of time. The target of surveillance should not only be the person against whom search is being considered but also his business associates, trusted employees, etc. The purpose of surveillance

¹⁶ See paragraphs 10.1 to 10.4 of Chapter 4 of Office Procedure Manual Volume III (Edition 2003)(Annexure 98 in Appendix V).

is to gather further information about the economic activities, modus operandi of tax violations, books of account, documents, computer systems, money, other valuables, premises, secret chambers, bank lockers, godowns, etc., especially those representing or relating to their undisclosed income or property of the target group. Some examples where surveillance may lead to acquisition of vital information of a person's activities are (a) possible detection of movements and holding of cash in cases such as builders and land developers, sweet shops, jewellery, timber merchants, etc. where huge cash transactions usually take place; (b) identification of *benami* bank accounts where huge cash deposits are made; (c) ascertaining the movements and places of availability of different persons of the target group; and (d) identification of the vehicles, etc. of the target group.

Types of Surveillance

2.21 Surveillance could be kept either through static watch or mobile watch on foot or vehicle depending upon the object of surveillance. The former type of surveillance will be useful for collecting information relating to the target premises and movement of persons in and around therein like the access control systems/close circuit cameras/intercom systems installed in the premises, number of guards and watchdogs, persons who frequent the premises, the usual timings of movements of the persons targeted for observation, etc. Mobile watch on foot may be useful in locating places frequented by the target person on foot while the mobile watch through vehicles is useful in detecting the movements of vehicles, places frequented by the target person by vehicles. While on either type of surveillance care should be taken to ensure the following:

- (1) The target premises/person(s) should be identified to the persons detailed for surveillance. This may be done by physically showing the target to the watchers; showing photographs of the target; giving personal description of the target person like, the person's sex, approximate height, weight, age, colour and style of his/her hair, colour of his/her eyes and his/her any other physical characteristics or mannerisms. In cases of premises, the photographs, physical description, location and the like may be provided to the watchers.
- (2) The vehicle to be used for surveillance should be of common make and colour, but sturdy enough to follow without trouble. Multiple cars should be available to prevent the risk of losing trail of the target person.
- (3) The driver of the vehicle should be competent and reliable. Where possible, the investigating officer may himself drive.

- (4) The watchers/drivers/vehicles should be frequently interchanged to avoid detection.
 - (5) The watchers/drivers should wear such type of clothes as do not attract attention. Where necessary, they may wear double colour sweaters, sunglasses, etc. They should, however, avoid artificial disguises like, false moustaches as these can be easily detected.
 - (6) The watchers must carry with them writing paper and pencil, reliable wrist watch, loose change and currency of small denomination.
 - (7) As far as possible physical signaling should be avoided and short communications in coded language may be made through mobile phones.
 - (8) While watching a parked vehicle, the observers should engage themselves in some unobtrusive activity to avoid suspicion.
 - (9) The persons engaged in surveillance should have the knowledge of the topography of the area and should carry roadmap of the localities, cell phones, etc.
 - (10) The persons doing surveillance should know the local language.
- 2.22 In suitable cases photography/videography, voice recording, etc. may also be used. The watchers should submit a detailed report to the investigating officer about their observations during the surveillance.

Internal sources of information

Records of taxpayers and others maintained in Income Tax Offices

2.23 Information collected from records of taxpayers and others maintained in Income Tax Offices can be useful for identifying potential cases for search and also for developing an already identified case. Some examples of such records are:

- (1) Assessment records of the assessee containing documents like, returns of income and wealth and other documents filed, either *suo moto* or in response to a notice issued by the Assessing Officer; information, if any collected by the Assessing Officer from third-party sources; tax audit reports; assessee's claims and contentions in the course of the assessment/apellate proceedings; various points relating to or arising from the assessment/post assessment proceedings, etc.
- (2) Records of deduction of tax at source containing economic information about the persons deducting the tax and also those in respect of whom, tax is deducted.

- (3) Record of Form No. 60 (Form of declaration to be filed by a person who does not have a permanent account number and who enters into any transaction specified in rule 114B) and Form No. 61 (Form of declaration by a person having only agricultural income and who enters into any transaction specified in rule 114B)
- (4) Record of Form No. 45D (Information to be furnished to the income-tax authority under section 133B)
- (5) Record of Form No. 52A (Statement in respect of production of cinematograph film furnished by the producers under section 285B)

2.24 While there can be no comprehensive guidelines for the types of cases that should be looked into for identifying cases for search, careful examination of the records of the following types of cases (which are only illustrative and not exhaustive) could be useful:

- (1) Cases in which ex-parte assessments under section 144 were frequently made.
- (2) Cases where summons under section 131 or a notice under section 142(1) failed to evoke any response from the assessee or where furnishing of information or production of books of accounts or documents in response to the summons/notice was unreasonably delayed.
- (3) Cases where returns of income were unduly delayed year-after-year.
- (4) Cases where the assessee was statutorily required to get his books of accounts audited but such audit was either not made or was unreasonably delayed.
- (5) Cases where information like quantitative details of stock, production, sales, etc. were required to be maintained/furnished but were not so maintained/furnished.
- (6) Cases where unreasonably high expenses, suspected to be non-genuine, inflated or illegal were claimed.
- (7) Cases where the Balance Sheets show disproportionately large sundry credits, *hundi* loans, cash credits, etc.
- (8) Cases where there are abnormally low withdrawals for personal/household expenses compared to the personal expenses, investments that the assessee may reasonably be expected to have made.

- (9) Cases where substantial concealment of income was detected in assessment; cases where substantial amount of penalty under section 271(1)(c) was levied or prosecution for tax evasion launched.
- (10) Cases where proceedings under the Act resulted in the detection of serious tax-violations or other infractions of economic laws.
- (11) Cases where sales or purchases or expenses claimed are not verifiable and the assessee is believed to be underreporting his income.
- (12) Cases where analysis of disclosed financial data reveals financial results or ratios, much below the average results shown by others engaged in economic activities of a similar nature.
- (13) Cases where the assessee is dealing in products like jewellery, sweets, etc. for which customers generally do not insist on cash memo/vouchers and the assessee is believed to be underreporting his income.
- (14) Cases where share capital or share premium is brought, which is not commensurate with the nature and extent of the assessee's business activities.
- (15) Cases in which deductions under Chapter VIA or exemptions are claimed and there are reasons to suspect that the claims are not genuine or are highly inflated.
- (16) Cases where the person is not assessed to tax and the nature and extent of transactions reflected in Form No. 60/61 *prima facie* suggest that his total income has been grossly understated.
- (17) Cases where information about the nature and extent of economic activities reflected in Form No.45D *prima facie* suggests that the person's true income is far in excess of that reported in the return of income.

2.25 It needs to be mentioned here that the features of the types mentioned above alone may not always be sufficient to identify a case for search. The information gathered in such cases can, however, provide useful inputs, which, in combination with information gathered from other sources, provide a sound basis for selecting cases for search. Secondly, as far as possible and if found safe, study of case records should be done to strengthen the basis for search in cases, which have already been so identified on the basis of information gathered from other sources.

Records of Tax Evasion Petitions

2.26 Tax Evasion Petitions (TEPs)¹⁷ may also contain vital information-leads for identification and preparation of cases for search. It may be useful to pay special attention to the following types of tax evasion petitions, containing specific information with regard to-

- (i) the modus operandi of concealment of income;
- (ii) undisclosed investments made in movable and immovable properties;
- (iii) cash credits, alleged to be not genuine;
- (iv) *benami* business;
- (v) bank accounts in fictitious names or in the name of a person who is not its real owner;
- (vi) unexplained transactions in a bank account;
- (vii) transactions not disclosed in the regular or disclosed books of account;
- (viii) inflated or illegal or non-genuine expenses; and
- (ix) secret godowns, bank lockers, etc.

Dossier of cases maintained by the Directorate of Income Tax (Investigation)

2.27 The DIT (Investigation) should periodically review the dossiers maintained by the Investigation units, which are generally of the following two types:

- (1) Selected cases of various industries, lines of business, etc. suspected to be indulging in large-scale tax evasion
- (2) Cases where information about tax evasion has been received from various sources but it has been decided to wait for further information before deciding on further course of action.

Search and survey conducted by the Income Tax Department

2.28 In some situations, the records of searches or surveys conducted by the Income Tax Department in the past may provide vital information-leads for identification of cases for search. Some such situations are:

¹⁷ Board's letters F.No.414/60/97-IT (Inv.I) dated 17.01.2000 and 19.04.2005 lay down the procedure for dealing with Tax Evasion Petitions. Revised procedure of handling and monitoring of TEPs, operational with effect from 01.04.2007 has been given in Board's letter F.No.414/60/97-IT (Inv.I) dated 21.02.2007.

- (1) Search conducted by the Income Tax Department in a case may lead to such information against another person as is relevant to the conditions referred to in one or more of the clauses (a), (b) and (c) of the sub-section (1) of section 132.
- (2) Search conducted by the Income Tax Department in the case of a person may lead to such information about his other premises, bank lockers, etc. as would necessitate and justify a search of those places or premises.
- (3) Survey under sub-section (1) or sub-section (5) of section 133A conducted in the case of a person may lead to such information against him or another person as is relevant to the conditions referred to in one or more of the clauses (a), (b) and (c) of the sub-section (1) of section 132.

2.29 Where any information of the nature referred to at S.No. (1) or (2) above comes to the notice of any member of a search team in the course of a search, he should immediately communicate the same to the Authorised Officer, appointed as the leader of the team. The leader of the search team, or any other member of the team, if the leader is not readily available, should immediately pass on the information to the Control Room. He should also make a mention of this fact in the report that he is submit on the conclusion of the search. The officer-in-charge of the Control Room should immediately report the matter to the concerned Joint/Additional Director of Income Tax (Investigation) to facilitate further appropriate action in the matter.

2.30 It is, however, possible that the information of the nature referred to above is found as a result of the search but the search team fails to report the same to the Control Room either on account of inaction or because of its failure to appreciate its significance. The Joint/Additional Director of Income Tax (Investigation) should, therefore, look for such information on the basis of the material, evidence, etc. found as a result of search, even if no specific report in this regard reaches him from a search team or the Control Room.

Information in Annual Information Returns (AIR) and other information collected by the Central Information Branch (CIB)

2.31 Annual Information Returns, containing the details of specified financial transactions are required to be furnished to the prescribed income-tax authority in Form No. 61A under the provisions of section 285BA, read with Rule 114E. Under Rule 114E(3), the prescribed authority is the Commissioner of Income Tax (CIB). NSDL is the agency to receive the returns on behalf of the CIT (CIB). The CIT (CIB) also collects information relating to specified expenditure, investments, etc. from

various sources identified by the Board. The DGIT (Investigation) should ensure that there is operational co-ordination between the CIT (CIB) and DIT (Investigation) so that information having potential for search is passed on to the latter.

Records of Banking Cash Transaction Tax (BCTT) and Securities Transaction Tax (STT)

2.32 Certain income-tax authorities have been authorised by the Board to exercise the powers and perform the functions of an Assessing Officer in relation to the Securities Transaction Tax and Banking Cash Transaction Tax. So far as BCTT is concerned, the Board intimates the list of branches of scheduled bank situated within the jurisdiction of each DGIT (Investigation) in which the BCTT collected is over certain amount. The DGITs (Investigation) are required to investigate unusually large cash withdrawals from the said branches in a minimum intrusive manner. For this purpose, the details of accounts from which cash withdrawal was made should be ascertained after giving prior intimation to the branch. Once the list is obtained the DGITs (Investigation) should short list cases for further examination after excluding cases which may not require investigation such as Public Sector Undertakings, Government Departments, corporates requiring large cash for disbursing wages, salaries, etc. every month. Thereafter a few cases as appropriate should be picked up for further scrutiny/verification/investigation. The DIT(Investigation) should make a review of such cases periodically for identifying those with search potential.

Computerised data bases containing information on tax payers and others maintained by the Income Tax Department

2.33 The officers of the investigation wing of the rank of Additional/Joint DIT (Investigation) and above have been empowered to view assessee-information contained in the AST module under ITD application software¹⁸ in respect of all cases processed on AST all over the country. It would be advisable for the empowered officers to use the said data base for identification of cases for search as also for verifying the assessee-information like jurisdiction, details of returned income, tax payments made, prosecution details, etc. in a case already identified for a search.

Maintenance of record of information gathered

2.34 Information collected from various sources should be placed on a file marked as secret and kept in the personal custody of the ADIT/DDIT (Investigation). For the purposes of identification, a number should

18 See DIT(Systems) AST Instruction No. 53 in F.No. SW/3/9/2001/03-DIT(S) dated 14/12/2006.

be assigned to this file, which should begin with the prefix 'C-1'. Information collected through open enquiries, investigation and reconnaissance should be placed in another file, which should as far as possible have the same number but beginning with the prefix 'C-2'.

Processing of information

Analysis of information

2.35 The information collected from different sources should be compared to identify the contradictions/similarities. The contradictions must be resolved by resorting to further verification of facts. The information should also be used to infer about the applicability of one or more of the conditions laid down in section 132(1) for recording satisfaction by the competent authority.

Reconnaissance

2.36 Having placed the information collected from various sources in a secret file as above, the DDIT/ADIT (Investigation) should proceed to undertake reconnaissance. Reconnaissance is a survey of the locality carried out discreetly for identifying premises and ascertaining strategic features thereof before embarking on the search operation. The reconnaissance also involves surveillance and under-cover work in the shape of trailing, watching, shadowing, etc. As far as possible, reconnaissance should be conducted without the help of informer. While there can be no precise or comprehensive guidelines on the methodology of reconnaissance and its nature and scope may vary from case to case and locality to locality, some points that could be useful in doing so are briefly enumerated below:

- (1) It would be useful to gather the following information relating to the location of the premises proposed to be searched:
 - (i) complete postal address of the premises, specifying, *inter alia*, the latest municipal number, old municipal number, if any, name of the building, street, locality, etc.;
 - (ii) any identifiable prominent landmark;
 - (iii) route maps giving the geographical location of the premises to be searched;
 - (iv) distance from assembly point;
 - (v) approximate time needed for moving from the assembly point to the premises;
 - (vi) possible status of traffic with reference to the strike time;

- (vii) kind of locality and neighbourhood to decide about the security arrangements; and
 - (viii) distance of the premises from the nearest police station.
- (2) Information should be collected about the salient features of the premises proposed to be searched like,
- (i) the size of the premises for deciding the man power requirement;
 - (ii) out-houses, servant quarters, garages, cellars, secret chambers, guard dogs, access control systems, manual security, closed circuit cameras, etc.; and
 - (iii) possible entries and exits to the premises
- (3) It may also be useful to gather other information like,
- (i) office/factory hours and weekly holidays in respect of business premises; and
 - (ii) time at which the occupants are generally available in the premises

Preparation of Satisfaction note and warrant of authorisation

2.37 A satisfaction note is a detailed written record setting out the information in possession of the authority competent to authorise a search; drawing a firm conclusion that, in consequence of such information, the said authority has reason to believe that one or more of the conditions laid down in clauses (a), (b) and (c) of section 132(1) is/are fulfilled. It should be a speaking and well-reasoned note wherein the nexus between the information and the inferences drawn therefrom are clearly brought out. It is essential that the competent authority records specifically which of the above clauses is/are applicable in a given case. The satisfaction note should also contain the following information:

- (1) name(s) and address(es) of the person(s) in respect of whom action under section 132 is contemplated;
- (2) information collected both from internal and external sources on the basis of which search is proposed;
- (3) evidence, oral or documentary in support of information;
- (4) results of secret enquiries, surveillance, etc.; and
- (5) particulars of the premises proposed to be searched.

2.38 The “satisfaction note” should ordinarily be initiated by the ADIT (Investigation)/DDIT (Investigation). It should be put up to the DIT

(Investigation) through the Joint/Additional DIT (Investigation), along with the detailed comments of the latter. The note must be recorded in the secret file, already prepared for this purpose, containing material like, the secret information collected from various sources, statement(s), if any of the informant(s), references to tax evasion petition(s), if any, surveillance reports and information relating to assessment(s), returns of income, wealth, etc., where available.

2.39 The DIT (Investigation) should carefully examine the note put up before him and the information gathered by the authorities below. He may also discuss the case with them. Where necessary, he may direct them to gather more information, evidence, material, etc.. He may also identify the points on which any further examination, analysis, collection of information or evidence, etc. are called for. He should approve the proposal only if he is fully satisfied that the conditions for authorising search under section 132 are fulfilled and that action under section 132 (search) is fully justified. He may also take into account other relevant factors before taking a decision in the matter. There should, however, be no reluctance or fear, on the part of the Investigation wing to deal with high profile areas.¹⁹

2.40 The satisfaction note must show application of mind by DIT (Investigation). He should record his satisfaction in the form of a self-contained note bringing out the nexus between the information on record and his belief about the existence of one or more of the conditions laid down in clauses (a), (b) and (c) of section 132(1). He should thereafter put up the matter before the DGIT (Investigation) and seek his administrative approval. The DGIT (Investigation) should apply his mind to the proposal of the authorities below. He should accord administrative approval if he is satisfied that the conditions for authorising search under section 132 are fulfilled and that action under section 132 (search) is fully justified. The DIT (Investigation) should issue warrant(s) of authorisation for search under section 132 only after the DGIT (Investigation) has accorded administrative approval for the proposed action. Where the case proposed to be searched is a sensitive one, the DGIT (Investigation) should bring the matter to the notice of the Member (Investigation), CBDT before the proposed action is taken.

Warrant of Authorisation

2.41 A warrant of authorisation is a direction from the authority competent to authorise search to officers named therein to exercise the powers and perform the functions of the authorised officers under section 132.

19 See Board's letter F.No. 289/24/2005-IT (Inv. II) dated the 27th December, 2005. (Annexure 85 in Appendix V)

Income-tax authorities competent to authorise search and other related actions under section 132 and the income-tax authorities that can be authorised

2.42 Column No. (2) of the following Table enumerates the income-tax authorities competent to authorise certain other income tax authorities to take actions under section 132(1). The designations of the income-tax authorities that can be authorised to take such actions (called 'authorised officer') appear at the corresponding lines of Column No. (3).

Table

(1)	(2)	(3)
S. No.	Income-tax authorities competent to authorise the authorities referred to in column (3) to carry out search and take certain other related actions	Income-tax authorities who can be authorised by the authorities referred to in column (2) to carry out search and take certain other related actions
1. 2. 3. 4.	Director General of Income Tax Director of Income Tax Chief Commissioner of Income Tax Commissioner of Income Tax	(1) Joint Director of Income Tax (2) Joint Commissioner of Income Tax, (3) Assistant Director of Income Tax, (4) Deputy Director of Income Tax, (5) Assistant Commissioner of Income Tax, (6) Deputy Commissioner of Income Tax, (7) Income-tax Officer
5	Such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board	(1) Assistant Director of Income Tax, (2) Deputy Director of Income Tax, (3) Assistant Commissioner of Income Tax, (4) Deputy Commissioner of Income Tax, (5) Income-tax Officer

2.43 As discussed in Chapter I, in the circumstances referred to in sub-section (1A) of section 132, a Chief Commissioner of Income Tax or a Commissioner of Income Tax can authorise search in a case even if it does not fall in his jurisdiction.

2.44 As per the provisions of sub-rules (2) and (2A) of Rule 112, every authorisation for carrying out search, seizure, etc. is required to be issued in writing in the prescribed form under the signature of the officer issuing the same. It should also bear his seal.

2.45 It is not necessary that the authorised officer should be posted under the authority issuing the search warrant. It is also not necessary that all of them should be present at the time of execution of warrant.

Forms of authorisation

2.46 Rule 112 prescribes the following forms of warrant of authorisation:

- (1) *Form No. 45*: Authorisation under section 132(1) (other than an authorisation under the first proviso thereto) issued by the authority referred to therein viz., DGIT, DIT, empowered Additional DIT/Joint DIT, or CCIT, CIT, empowered Additional CIT/Joint CIT having jurisdiction over the person in respect of whom search is being authorised. (Rule 112(2)(a))
- (2) *Form No. 45A*: Authorisation under the first proviso to section 132(1) issued by CCIT/CIT where any building, place, vessel, vehicle or aircraft is in his jurisdiction but the person in respect of whom search is being authorised is not in his jurisdiction. (Rule 112(2)(b))
- (3) *Form No. 45B*: Authorisation under section 132(1A) issued by the CCIT/CIT in the circumstances mentioned therein. (Rule 112(2)(c))
- (4) *Form No. 45C*: Authorisation under section 132A(1) issued by DGIT/DIT/CCIT/CIT for requisition of books of account, documents and assets already in the custody of any officer or authority under any other law for the time being in force. (Rule 112D)

Preparation of warrant of authorisation

2.47 The following precautions are necessary while preparing/signing the warrant of authorisation:

- (1) The correct name and status (such as HUF, Firm, etc.) of the person/persons in respect of whom search action is being contemplated must be clearly mentioned. Similarly, the correct address of the person/premises being searched must be clearly mentioned.
- (2) When more than one adult member of the family reside in one residential premises, warrant of authorisation issued in the name of any one of them would suffice. Seizure of any books of account, documents and assets found within the premises on the basis of such a warrant of authorisation would be valid even if any other adult member not named in the warrant claims to be owner thereof. While executing a search warrant, the officer authorised therein can search receptacles, almirahs, boxes and vehicles within the said premises where he has reason to suspect that books of accounts, documents or valuable articles are kept. All persons who have got out of or are about to get into or are in the said premises can also be searched if the authorised officer has reason

to suspect that they have secreted about their person, books of account, documents or valuable articles and things, etc, and if the same are found from the person, they can also be seized.

- (3) Where any guest is staying in the same premises and things, articles, etc., are found in his possession which may have no relevance to the person whose premises are being searched, it would be safer to proceed against him or effect seizure of any thing belonging to him on the basis of a separate warrant of authorisation in his name.
- (4) Where the residences occupied by any partner of a firm or a director of a company is to be searched, the warrant(s) of authorisation should specify the relationship of the person in question, with that firm or company and in the column meant for describing the premises, the particulars of his residence should be given. A similar procedure should be followed in respect of employees, authorised representative, etc. of the main person(s) in whose case(s) the search is being conducted.
- (5) While preparing the search warrant(s) of authorisation for business premises, the name of the person occupying the premises and doing business therein, i.e. firm, company or proprietor, as the case may be, should be given. Separate warrants of authorisation may be issued in the name of each company and firm operating from the same business premises or only one warrant of authorisation may be issued giving names of the concerns occupying the common premises. Both the procedures are followed. Wherever it is apprehended that any assets belonging to the individual partners or directors are also likely to be recovered from the business premises, it is advisable to insert the names of the partners and directors in the same warrant of authorisation.
- (6) In case of bank lockers, etc. the name(s) of the person(s) to whom the lockers belong/who has or have hired the locker should be written at the appropriate place in the warrant of authorisation. The details of the locker(s) held/hired by them should be given alongwith the name of the branch of the bank in the column/space meant for describing the place.

2.48 Each search warrant should be entered in the Register of Authorisation to be maintained by the concerned DDIT/ADIT (Investigation). Each warrant should bear the corresponding number of this Register. Before execution of the warrant of authorisation, the checklist given in Appendix-IV may be prepared by the Joint/Additional Director (Investigation).

Preparations for conduct of search

2.49 Some main steps in planning and preparing for search operations are:

- (1) Fixing the date of search and strike time;
- (2) Mobilisation of manpower;
- (3) Setting up of Control Room, nomination of Custodian for performing the functions referred to in sub-rules (11), (12) and (13) of Rule 112;
- (4) Formation of search teams and nomination of leaders of the teams so formed;
- (5) Preparation of brief for the authorised officers;
- (6) Preparation of search packets or kitbags;
- (7) Security arrangements;
- (8) Arrangement for transport;
- (9) Co-ordination with other Directorates of Income Tax (Investigation)/Investigation Units, where required;
- (10) Identification of valuers for valuing bullion, jewellery, other valuable articles and things, etc.;
- (11) Sealing of envelope containing the warrant of authorisation; and
- (12) Selection of assembly point(s)

Fixing the date of search and strike time

2.50 The Joint/ Additional DIT (Investigation) should carefully select the date of the proposed search and strike time, in consultation with the DIT (Investigation). Some points that could be useful in taking a decision in the matter are, in brief, as under:

- (1) As far as possible search should not be organised on a public holiday, festival days, weekly holidays observed in the office, shop, factory, etc. of the person(s) proposed to be searched.
- (2) Specific information about the presence or possible movement of cash, bullion, jewellery or other valuable articles or things on a specific day or time, should be taken into account while fixing the date of search and strike time.
- (3) There is no prohibition in law in entering the premises, whether residential or business, before or after sunset for the purpose of search.

- (4) Availability of the main persons proposed to be searched should be ascertained.
- (5) Family functions like, marriages and occasions like, death in the family may be taken note of.
- (6) Strike time should generally be the time at which the main person(s) are likely to be available in the premises to be searched.

Mobilisation of manpower

2.51 Man power is mainly needed for the following work:

- (1) Manning the Control Room
- (2) Participation in search work
- (3) For carrying out surveys connected with the search
- (4) For miscellaneous jobs like, verifications of bank accounts, lockers and other information detected as a result of search
- (5) Performing the functions of the Custodian referred to in sub-rules (11), (12) and (13) of Rule 112
- (6) Reserve manpower

2.52 The Joint/Additional DIT (Investigation) should determine the requirement of manpower keeping in view the jobs mentioned above. Factors like, the size of the premises, number of exits and entries to be guarded, type of locality, number of occupants of the premises and the volume of work involved in the operation should also be taken into account for assessing the manpower requirement. Where residential premises are to be searched or where personal search of any lady/ladies present in any premises may be required, it should be ensured that there is adequate representation of lady officials in the search team. Care should be taken to keep some manpower in reserve for any unforeseen event and for covering additional premises detected during the course of search.

2.53 The manpower needed for the job may be drawn from the Investigation wing and other Income Tax offices in the CCIT's region. The Board has instructed the CCIT (CCA)s to ensure that manpower requirements of the Investigation wing for conduct of searches are fully met. The DIT (Investigation) should maintain a list of persons of the CCIT's region who are suitable for search work. They should be deployed for search work by rotation.

2.54 The Joint/Additional (Investigation) should submit requisitions for manpower to the concerned CITs, indicating, the number of officers required, names and designations of officers, if identified in advance by the Investigation unit, reporting instructions (like, reporting date, time,

place and the person to whom the persons detailed for the job should report) and other instructions/points, if any. The officers detailed for the job should be advised to, (i) bring their identity cards and office stamps without fail; and (ii) not to carry more than the minimum cash with them and not to wear any expensive jewellery, except for such jewellery like *mangalsutra*, or wedding ring. When there is likelihood of any official being deputed outside the headquarters, sufficient indication may be given in the requisition without mentioning the final destination.

Setting up of Control Room

2.55 If the search operation(s) is/are being conducted at the premises situated in one city only, a Control Room should be set-up, preferably in a building of the local Income Tax Office. However, where the premises being searched are spread over more than one city, the main Control Room should be set up in the city where the main or most of the premises being searched are situate. In addition to this, the Joint/Additional DIT (Investigation) may, in consultation with the DIT (Investigation), also consider the feasibility of setting up branch Control Rooms at other cities where other premises being searched are situate. As far as possible the Joint/Additional DIT (Investigation) himself should head the Control Room team. However, if the situation so demands, any other officer, not below the rank of an Assistant Director of Income Tax can be nominated as the officer-in-charge of the main Control Room. Officer(s) not below the rank of ITO may head the branch control rooms. The number of other officers in the Control Room(s) can be decided keeping in view the volume of work.

2.56 The officers manning the Control Room help in monitoring and co-ordination of search operations and related activities. They also act as communication-links between the search teams and income-tax authorities like, the Joint/Additional DIT (Investigation) and DIT (Investigation), other authorities and enforcement agencies. The main functions of the Control Room are as follows:

- (1) Handling of matters relating to handing over of sealed envelopes containing warrant of authorisation and other relevant papers and material to the leaders of search teams.
- (2) Marking attendance of the officials detailed for search job and identifying persons who failed to report to duty.
- (3) Assisting the concerned Additional/Joint Director of Income Tax (Investigation) in briefing the officers detailed for search work.
- (4) Co-ordination and assistance in movement of search teams from the assembly point to the premises to be searched.
- (5) Maintenance of record of the time at which various search teams

left the assembly point for the premises to be searched; gained entry into the premises to be searched; commenced search; and suspended/concluded search operations.

- (6) Looking after arrangements for food, refreshment, drinking water, medicines, etc. for the members of search teams and other personnel detailed for search and related activities.
- (7) Attending to messages received from search teams, interacting with leaders/Authorised Officers of search teams, passing on messages to the concerned Joint/Additional Director and other competent authorities and agencies and communicating messages, instructions, etc. to search teams.
- (8) Maintenance of record of all important activities and events relating to search and other related operations.
- (9) Maintenance of record of important messages received from search teams and others and the response given to them by, or through the Control Room.
- (10) Making arrangement for additional manpower, police personnel, valuer(s), etc. and their deployment, if and when necessary.
- (11) Co-ordination with other enforcement agencies and organisations in matters arising out of, relating to or relevant to, the search.
- (12) Considering telephonic or other reports of search teams for concluding or suspending search operations and communicating the decision taken by the concerned Joint/Additional Director of Income Tax (Investigation) to search teams.
- (13) Ensuring that soon after commencement of search, case records of the person(s) in whose cases search(es) are being conducted are obtained from the Assessing Officer(s) and kept in the safe custody of the officer-in-charge of the control room.

Nomination of Custodian

2.57 The Joint/Additional DIT (Investigation) should nominate an officer, not below the rank of an Income Tax Officer (preferably an officer of the Investigation wing) to perform the functions of Custodian referred to in sub-rules (11), (12) and (13) of Rule 112. The custodian should be available in the Control Room. In suitable cases, the same officer can perform the functions of the officer-in-charge of the Control Room and Custodian.

Formation of search teams

2.58 The Joint/Additional DIT (Investigation) should-

- (i) constitute search teams, based on the names appearing in the

warrant(s) of authorisation and commensurate with the size of the premises and other relevant factors²⁰; and

- (ii) for each search team, nominate an Authorised Officer as its leader having regard to considerations like seniority, zeal, aptitude, past performance, etc. of the available officers.

Preparation of brief for the Authorised Officers

2.59 Generally, 'brief' is a note given by the Joint/Additional DIT (Investigation) organising the search, to the search teams. It is not necessary to prepare identical briefs for all search teams. If necessary, different briefs may be prepared for different search teams, keeping in view their specific job requirements, circumstances, etc. The brief, being confidential in nature, should be kept in a sealed envelope. The brief should, *inter alia*, include the following:

- (1) The focus of the search should be clearly spelled out. For example, where the principal motivating factor for authorising a search is specific information pointing to the existence of books of account and documents containing undisclosed transactions or details of unlawful activities, the brief should highlight that aspect of the case.
- (2) It should give salient features of the information available against the person(s) in whose cases the search(es) is/are being conducted, including available information, if any, about the modus operandi adopted by the person(s) concerned for concealment of income or wealth, tax evasion and other tax violations, economic violations, other infractions of law, etc.
- (3) The brief may also contain suggestions, if any, on the strategies to be adopted or processes to be followed while searching the premises.
- (4) It should also give particulars of the person(s) in whose case the search(es) is/are being conducted, his/their family tree(s), etc.
- (5) In suitable cases the brief may also contain information like, the names and addresses of all persons, business concerns, business associates, trusted employees, advisors, etc. of the group of persons in whose cases the searches are being conducted and description of their business or other economic activities, etc.

20 The Board has instructed that officials having acquaintances with computer work should also be taken in search team so that back-up of the data stored in computers can be taken with proper care. (Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002 (Annexure 76 in Appendix V))

- (6) The brief should contain tax details/history of the person(s) in whose cases the searches are being conducted, like information about the total income and wealth disclosed in the returns of income, assessed income and wealth, the books of accounts already produced by the concerned persons, the valuables already disclosed by them, declared assets of the tax payers from the returns of income/wealth filed. This will facilitate proper conduct of search and also help in identifying books of account, documents and assets that are required to be seized.²¹
- (7) If photograph(s) of the main person(s) in whose case(s) the search has been authorised and the premises to be searched are available, the same should be appended to the brief.
- (8) The brief should also contain route map for reaching the premises to be searched, information about the salient physical features of the premises to be searched and such other information gathered as a result of reconnaissance, surveillance, etc. as is likely to be helpful in identifying the premises, conduct of search and precautions required to be taken by search teams.
- (9) The brief should also contain telephone and mobile numbers of the Control Room, officers manning the Control Room, the concerned Joint/Additional DIT (Investigation), DDIT/ADIT (Investigation), DIT (Investigation), police station nearest to the premises to be searched and other local law and order functionaries.
- (10) The brief may also contain information, if available about the place(s) where undisclosed books of account, incriminating documents, unaccounted money and undeclared valuables, stock-in trade, etc. are likely to be found; the likely mode of utilisation of the unaccounted money; likely location of digital devices, storage media, etc. evidencing tax violations and other infractions of law; and likely location of secret chambers, underground cellars, etc.
- (11) The brief may also contain instructions regarding-
 - (i) seizure of books of accounts, documents, cash, bullion, jewellery and other valuable articles and things;
 - (ii) inventorisation of books of accounts, documents, cash, bullion, jewellery and other valuable articles and things found as a result of search;

²¹ See Board's letters F.No.286/247/98/IT(Inv.II) dated 02.02.1999 (Annexure 73 in Appendix V) and F.No. 289/10/2001-IT (Inv.II) dated 07.03.2001 (Annexure 75 in Appendix V).

- (iii) valuation of bullion, jewellery and other valuable articles and things found as a result of search;
- (iv) identification of lockers, godowns, other business places, etc.;
- (v) communication with the Control Room, including telephonic reports;
- (vi) examination and recording of statements under sections 131(1A) and 132(4) and other inquiries;
- (vii) procedure and process for conduct of search;
- (viii) preparation of *panchnama*, search report, etc.;
- (ix) conclusion (including, temporary conclusion) of search operation;
- (x) code of conduct for search team(s); and
- (xi) other relevant points, if any.

2.60 Where circumstances so warrant, there can be oral briefing just before search teams leave the assembly point for the premises to be searched. It should, however, be ensured that names of the persons/premises proposed to be searched are not divulged in such oral briefings. The brief should be issued only with the prior approval of the DIT (Investigation).²²

Preparation of search packets or kit bags

2.61 Search packets containing adequate quantity of following material²³ should be provided to search teams:

- (1) Form for requisitioning witnesses
- (2) *Panchnama* form
- (3) Form of order under section 132(3)
- (4) Form of order under section 132(1) second proviso
- (5) Form of summons under section 131
- (6) Form of authorisation under section 133A (1)
- (7) Format of administering oath or affirmation to persons being examined
- (8) Bags for sealing the seized materials and trunks with locks and cloth pieces
- (9) Sufficient numbers of official brass seal(s)

²² See Board's letter F.No. 286/29/2003-IT(Inv-II) dated 22/05/2003. (Annexure 78 in Appendix V)

²³ See Appendix III for the forms mentioned at S.No. (1) to (7).

- (10) Required stationery and sealing material like, paper, carbon paper, copying pencils, pens, stamp pad, office seals, sealing wax, needles, thread, match box, candles, adhesive tapes, pins, staplers, clips, tags and envelopes
- (11) Markers for writing on CDs, packets, etc.
- (12) Relevant hardware and software tools, storage media and digital devices, etc.
- (13) Form for inventory of books of account and documents found/seized.²⁴
- (14) Form for inventory of cash found/seized.²⁵
- (15) Form for inventory of bullion, jewellery and other valuable articles or things found/seized.²⁶
- (16) Form of checklist to be submitted by the Authorised Officer to the control room/custodian.²⁷
- (17) Form of search report to be submitted by leader of the search team on conclusion of search.²⁸
- (18) Any other pre-printed stationery or pre designed formats.

Official Brass Seal

2.62 Official brass seal constitutes an important part of the search kit. It is used for a variety of purposes like, sealing of packages containing seized bullion, jewellery and other valuable articles or things, sealing bank lockers and other receptacles put under restraint order under section 132(3) and sealing of bunched loose documents to be seized.

2.63 The following points relating to its size, shape and maintenance merit a brief mention:

- (1) The Investigation wing should decide the pattern of seal, its size and shape. Each seal should bear a separate distinctive number.
- (2) There should be a proper record of all the seals in use indicating their movements to avoid any misuse and scope for suspicion.
- (3) One set of seals should be used for a limited period of time. It should thereafter be replaced by a new set of seals. Discarded seals should be destroyed and record thereof maintained.

²⁴ See Annexure 37 in Appendix III.

²⁵ See Annexure 39 in Appendix III.

²⁶ See Annexure 38 in Appendix III.

²⁷ See Annexure 56 in Appendix IV

²⁸ See Annexure 42 in Appendix II

- (4) As and when any seal is issued to a search team, acknowledgement for its receipt should be obtained from the leader of the team.

Security arrangements

2.64 The investigation unit organising the search should make suitable security arrangement in advance. Requisition²⁹ for adequate number of police personnel can be made to the local police head/concerned police authority. However, names, addresses and other details of the persons/premises to be searched should not be disclosed to them. The number of security personnel to be provided to each search team should be worked out keeping in view the size of the premises, locality and other relevant factors. In appropriate cases, requisition can also be made to special police organisations or para-military forces. The Government of India has issued instructions to all State Governments and Government of Union Territories to make available necessary police force for the protection of search teams.³⁰

Arrangement for transport

2.65 Suitable arrangement should be made for transport of the search teams from the assembly point(s) to the premises to be searched and for other related jobs. Where private vehicles are hired, the purpose of hiring and destinations should not be divulged. It is also advisable that the vehicles are discreetly parked so as not to raise any public attention.

Co-ordination with other Directorates of Income-tax (Investigation)/ Investigation Units where required

2.66 Where any search or survey operation is to be carried out with the assistance of other Directorates of Income Tax (Investigation), suitable communication should be sent to them at the appropriate time and suitable co-ordination ensured.

Identification of valuers for valuing bullion, jewellery, other valuable articles and things etc. and computer experts

2.67 The DIT (Investigation) should maintain a panel of registered/approved valuers for the purpose of valuation of bullion, jewellery and other valuable articles and things so that their services can be requisitioned at short notice during the course of search. He should also

²⁹ See Annexure 32 in Appendix III

³⁰ D.O. letter No. 1-11020/42/82-Ad. IX Pt. dated 05/07/1982 of the Finance Minister addressed to all the Chief Ministers and the Secretary (Revenue)'s D.O. letter No. 1/11020/42/82-Ad. IX Pt. dated 24/05/1982 to the Chief Secretaries of the State Governments.

maintain a list of personnel whose services can be requisitioned at short notice for the purposes of handling digital devices and evidence.

Sealing of envelope containing the warrant(s) of authorisation

2.68 The Joint/Additional DIT (Investigation) should ensure that the warrant(s) of authorisation, sufficient copies of the brief for the search team, route map and location map of the premises are securely placed in an envelope and sealed by trusted officials of his unit in his presence. The following information should be incorporated on the top of the sealed envelope:

- (1) Date of search and time of strike
- (2) The place and time at which the sealed envelope should be opened, providing reasonable time for leader of the search team to go through the brief and the route map
- (3) The instruction that the sealed envelope should be opened by the leader of the search team in the presence of at least one other authorised officer/member of the search team and both of them should put their signatures on the envelope acknowledging the fact that it was opened in their presence
- (4) Serial number of the search team and names and designations of the leader and other member(s) of the team
- (5) Telephone and mobile phone number(s) of the Control Room.

Selection of assembly point(s)

2.69 Assembly point is the place where members of the search teams assemble before proceeding to the premises to be searched. The sealed envelope containing the warrant of authorisation, search packets, etc. is handed over to the leaders of the search team at this point. The place selected for assembly should be such as not to arouse suspicion.

Provision of refreshments to search teams and other personnel

2.70 The investigation unit organising the search should make suitable arrangements for providing refreshments to the members of search team(s), other personnel deployed for search related activities. Wherever considered necessary, money should be provided to search teams for meeting any incidental expenses.

CHAPTER - III

CONDUCT OF SEARCH AND SEIZURE OPERATIONS

Movement of the search team from the assembly point to the premises to be searched

3.1 As explained in Chapter II, the Investigation Unit organising the search operation hands over a sealed envelope containing the warrant of authorisation and other confidential papers to the leader of the search team.³¹ The leader should open the sealed envelope in the presence of another member, preferably an Authorised Officer of his team. Both of them should subscribe their signatures with date and time on the sealed envelope in witness of the above fact.

3.2 The leader of the search team should take suitable steps to ensure secrecy of the operation before commencement of the search. These may include the following:

- (1) In case there is some confusion regarding the exact location of the premises to be searched, he should depute a member of the team shortly before the strike time³² to locate and identify the premises³³ to be searched.
- (2) Members of the search team other than the leader of the team, and a small number of such other members as have been identified by him in advance, should switch off their mobile phones while travelling from the assembly point³⁴ to the premises to be searched and during the search operations. This will reduce the possibility of the search team's movements being tracked.
- (3) The leader should ensure that his team reaches the premises to be searched exactly at the strike time. In order to ensure that there is no confusion with regard to time, all the leaders of the various search teams should synchronize their watches, before proceeding from the assembly point to the places to be searched.
- (4) On reaching the locality, the leader should ensure that the members of the team do not actually reach the premises before the strike time. This is to ensure that persons in occupation of the premises do not get any advance information of the search team's arrival.

31 An Authorised Officer is designated as the leader of the search team.

32 Time decided in advance by the Investigation Unit organising the search.

33 For the sake of convenience, the term 'premises' has been used in this Manual to denote a building, place, vessel, vehicle or aircraft where a search can be/is being conducted.

34 The place where the search parties assemble.

On reaching the premises to be searched

3.3 On reaching the premises, the leader should ensure that members of the search team are deployed at every entry and exit points and under the windows. This will ensure that documents, books of account, money, jewellery, other valuable articles or things, assets, etc. are not thrown out of the premises to be searched.

3.4 If intercom systems or telephones are installed at the entrance of the premises, or outside it, or if mobile phones are available with security guards, watchmen, etc. through which interaction with the occupants of the premises is possible, one of the members of the search team should take control of such systems. This is to ensure that the occupants of the premises do not get any advance intimation of the arrival of the search team. Similarly, a member of the search team should also take control of any alarm system, if installed at the entrance of the premises.

3.5 If a closed circuit camera is installed at the entrance of the premises or outside it, movements of the search team should be organised in such a manner that the occupants of the premises do not get any advance intimation of its arrival.

Requisitioning the services of Police officers and other officers

3.6 The Authorised Officer is empowered to requisition³⁵ the services of any police officer or of any officer of the Central Government, or both, to assist him for carrying out search and seizure operations. It is the duty of every such officer to comply with such requisition. Omission to assist a public servant when bound by law to give such assistance is an offence under section 187 of the Indian Penal Code. Ordinarily, requisition of the services of police officers are made centrally by the Investigation Unit organising the search and their services provided to each of the search teams. Once their services have been provided to the search team, they are duty-bound to provide assistance to the Authorised Officer for all or any of the purposes specified in sub-section (1) or (1A) of section 132. However, in case of an emergency where a search team needs more police personnel and requisition of their services through the Investigation unit/Control Room is likely to cause delay, jeopardising the search and seizure operation or physical safety of the members of the search team, the Authorised Officer, preferably the officer appointed as the leader of the search team, should, in exercise of the power vested in him under section 132(2), requisition the services of adequate number of police officers. He should ensure that the matter is also reported to the Control Room as early as possible.

35 The proforma for such requisition appears at Annexure 34 in Appendix III.

Entry into the premises

3.7 A member of the search team should ring the call bell or knock at the door. The Authorised Officer should wait for a reasonable period of time for the occupant of the premises to open the entrance door. The Authorised Officer has the power to demand free ingress into the premises authorised to be searched. If he does so, any person in charge of or in the said premises is legally obliged to allow him free ingress into the premises and afford all reasonable facilities for a search therein.³⁶

3.8 If the Authorised Officer is not allowed entry into the premises despite exercise of the aforesaid powers, he should take the assistance of police officers or other officers of the Central Government available for the purpose to enter and search the premises. In certain situations, entry can also be effected by breaking open any outer or inner door or window of the building or place, whether that of the person to be searched or of any other person. This can, however, be done only if after notification of his authority and purpose and demand of admittance duly made, the Authorised Officer cannot otherwise obtain admittance.³⁷ It should be ensured that this is done in such a manner that there is minimum damage to the property. The power to do so should be exercised with caution.

3.9 If such premises is an apartment in actual occupancy of a woman, who according to custom does not appear in public, the Authorised Officer should before entering the premises give a notice to such woman that she is at liberty to withdraw. Every reasonable facility should be afforded to her for withdrawing. In such a situation if there is a lady member in the search team, it is advisable that she should first enter the room. It is only after this has been done that the apartment should be broken open.

3.10 Though the law does not require that witnesses should be called for securing the entry, it may still be advisable to have witnesses before breaking open any door, window, etc. If possible, two witnesses may be called before securing entry by breaking open the door or windows. However, where the Authorised Officer has reason to believe that any delay in the entry could jeopardise the search, he may secure the entry without the witnesses. The actual search cannot, however, begin without witnesses.

3.11 Wherever entry is obtained by breaking open any door or window, etc. and the process results in any damage to the premises or any part thereof, the leader of the search team or any other Authorised Officer should record a note, specifying the circumstances in which any of the

³⁶ See Rule 112(3).

³⁷ See Rule 112(4).

aforesaid actions was taken and the nature and extent of damage caused to any property. The note should be signed by the leader of the search team, other Authorised Officers, witnesses, if any present and, if possible, the person in occupation or control of the premises. The matter should be reported to the Control Room as early as possible.

Where the premises to be searched is found to be locked

3.12 Where the premises to be searched are found locked, the Authorised Officer should report the same to the Control Room and wait for further instructions. He should, in the meantime, ensure that no one enters the premises. If at all the search team has to leave the premises without entering and searching the same, this should be done only after the premises has been sealed in the presence of at least two witnesses and suitable number of armed guards posted outside the premises. Wherever necessary and possible, one or more members of the search team or any official of the Income Tax Department should be deputed to stay outside the premises, along with the armed guards. In such a situation, the Authorised Officer should also issue an order under section 132 (3).³⁸ A copy of the said order should be pasted on a prominent place near the entrance to the premises, along with a notice to the public in general, warning the members of public to refrain from breaking or tampering with the seal and also informing the person(s) to be searched to contact the Control Room at the specified address and telephone numbers.

3.13 Where it is suspected that the occupant(s) may not return with a view to delaying the search or that any delay in entering the premises may result in consequences adverse to the process or the purpose of the search, the Authorised Officer should, after obtaining instructions from the Control Room, break open any outer door or inner door or window and enter the premises, preferably in the presence of at least two witnesses.

Where a locked premises has occupants inside

3.14 There can be a situation where the premises are locked from outside but there are occupants inside. The Authorised Officer should, when faced with a locked premises, make all efforts to find out whether the premises is occupied. If there are occupants inside a premises locked from outside, it is necessary for the Authorised Officer to ensure that entry into the premises is gained as early as possible, if necessary by breaking open any outer or inner door or window. He should also take all possible steps to ensure that in the meantime, the occupants do not destroy or manipulate any document or books of account or evidence

38 Proforma of the order appears at Annexure 52 in Appendix III.

(including any digital evidence) or throw out of the premises the same or any money, jewellery, other valuable articles or things, etc.

Premises occupied by person(s) other than that/those mentioned in the warrant of authorisation

3.15 Where the Authorised Officer finds that the premises is occupied by person(s) other than that/those mentioned in the warrant of authorisation, he should ascertain through a process of discreet investigations whether the address of the premises he has reached is,

(i) different from the one mentioned in the warrant of authorisation;
or

(ii) the same as mentioned in the warrant of authorisation.

3.16 In case of (i) above, the search-team should immediately proceed to the correct address. However, in case of (ii) above, the Authorised Officer should immediately report the matter to the Control Room and seek its instructions.

3.17 There can be a situation where the person(s) in respect of whom the warrant of authorisation under sub-section (1) or, as the case may be, sub-section (1A) of section 132 was issued, has/have shifted to another place or premises and are no longer available at the premises mentioned in the said warrant of authorisation. In such a case, the matter should be immediately reported to the Control Room. In case, the current address of the said person(s) is available, the Control Room should be informed about the new address, along with the names of the person(s) presently occupying the premises mentioned in the warrant of authorisation. It should also be ascertained through suitable inquiries whether the said premises actually belongs to the said person(s) or whether the present occupants of the premises are in any way connected with them. The outcome of the inquiries should be immediately reported to the Control Room. On receipt of such a report, the officer-in-charge of the Control Room should take such further steps as are required.

3.18 The Authorised Officer cannot take action under section 132(1) where the address of the premises to be searched specified in the warrant of authorisation³⁹ is not correct. He will also not be able to do so if the name(s) of the person(s) mentioned in the warrant of authorisation is/are not correct. The Authorised Officer should, when faced with any such situation, seek Control Room's instructions. In case, the instructions from the Control Room are to withdraw from the premises, the unexecuted warrant of authorisation should be returned to the Control Room, along with a report. The officer-in-charge of the Control Room

39 Issued either under sub-section (1) or the first proviso to sub-section (1) or sub-section (1A) of section 132.

should pass on the information to the concerned Joint/Additional DIT (Investigation) who should, after examining the matter and making suitable inquiries ensure that further appropriate action in accordance with the law is taken⁴⁰.

Warrant of authorisation in the name of a person who is dead

3.19 Where it is found that the warrant of authorisation is in the name of a person who is dead, the matter should be immediately reported to the Control Room. The Authorised Officer should also make suitable inquiries to ascertain the name(s) and address(es) of the legal heir(s) of the deceased and the present occupants of the premises and report the same to the Control Room. On receipt of the information, the officer-in-charge of the Control Room should pass on the same to the concerned Joint/Additional D.I.T. (Investigation), who should, after examining the matter and making such further inquiries as he may deem fit ensure that further appropriate action in accordance with the law is taken⁴¹. In the meantime, if there is no objection from the occupant of the premises, entry can be made but actual search should not begin without a proper warrant of authorisation. The Authorised Officer (preferably, the leader of the team) should, on receipt of the directions from the Control Room, send the unexecuted warrant of authorisation, along with a report to the Control Room.

Premises occupied by only ladies or children

3.20 If a premises is found to be occupied only by ladies or children, it should be ensured that the search takes place only in the presence of lady officers of the team. If such an occupant so requests, the leader of the search team may consider the feasibility of delaying commencement of the search for a reasonable period of time to enable a male member of the household to join the occupants. It should, however, be ensured that the delay does not in any way jeopardise the process and purpose of the search.

Ingress into any vessel, vehicle or aircraft authorised to be searched

3.21 The points made above relating to entry into a building or place will apply, so far as may be, to entry into any vessel, vehicle or aircraft authorised to be searched.

3.22 If ingress into a vessel, vehicle or aircraft authorised to be searched cannot be obtained because it is moving, the Authorised Officer should

40 For example, issuance of a fresh warrant of authorisation with correct name(s) of the person(s) and the address(es) of the premises to be searched.

41 For example, issue of fresh warrant(s) of authorisation by the authority competent to do so.

seek assistance from the appropriate Police or Central Government officers or both to stop the vehicle or vessel or compel the aircraft to stop or land. If entry cannot be obtained into a static vessel, vehicle or aircraft, the Authorised Officer should notify to the commander or the person in control of the vessel, vehicle or aircraft, his authority and purpose and demand admittance to the vessel, vehicle or the aircraft. If despite this, he is unable to obtain admittance, he can make a forced entry by breaking open any outer or inner door or window of any such vehicle, vessel or aircraft, whether that of the person to be searched or of any other person.⁴²

Witnesses to the search

Appointment of witnesses

3.23 Before making a search of a building or a place, the Authorised Officer is required to call upon two or more respectable inhabitants of the locality in which the building or place to be searched is situate to attend and witness the search.⁴³ The term 'locality' has to be understood in its natural meaning. It means immediate vicinity.

3.24 Where a vessel, vehicle or aircraft is to be searched, two or more respectable persons are required to be called upon to attend and witness the search. The requirement of the witnesses being from the same locality would be inapplicable here.⁴⁴

3.25 The Authorised Officer should issue an order in writing to the persons selected to attend and witness the search⁴⁵. Non-compliance with the Authorised Officer's said order entails prosecution under section 187 of the Indian Penal Code.

Selection of witnesses by the Authorised Officer

3.26 While selecting witnesses the Authorised Officer should keep in view the following points:

- (1) The person selected as a witness should not have a bad reputation.
- (2) The person selected as a witness should be sufficiently educated to understand the process of search.
- (3) A friend or a relative or an employee of the person whose premises are being searched should not be appointed as a witness.
- (4) The person selected as a witness should be major and a citizen of India.
- (5) The witness should not be a business rival or a disgruntled

42 See Rule 112(4A).

43 See Rule 112(6).

44 *ibid.*

45 Proforma of the order appears at Annexure 35 in Appendix III.

employee or a person hostile to the person(s) in whose case the search is being carried out or the person who is in the occupation or control of the premises being searched.

- (6) The person selected as a witness should be free from any such physical or mental infirmities as would affect his functioning as a witness.
- (7) The legal advisor or consultant of the person(s), whose premises are being searched, should not be appointed as a witness.
- (8) Religious sentiments of the person(s) whose premises are being searched or who are in the occupation or control of the premises being searched should be kept in view while selecting witnesses.
- (9) No person with a criminal record should be appointed as a witness.
- (10) An employee of the Income Tax Department should not be selected as a witness.

3.27 Even though witnesses are to be selected by the Authorised Officer, if the person in whose case the search is to be conducted or the person in occupation and control such premises raises any objection against selection of a particular person as a witness, the Authorised Officer should take such objection into account before taking a final decision.

Duties of a Witness

3.28 The main duties of a witness to the search are, in brief, as under:

- (1) He should read and understand the warrant of authorisation.
- (2) He should witness the search carefully right from its commencement to its closure. His role as an independent and impartial witness demands that he carefully observes whether-
 - (i) the search and seizure operations are being carried out in an orderly manner and in accordance with the law, without any interference and tampering or destruction of any evidence or valuables;
 - (ii) statements on oath of persons are being recorded properly, without any undue influence or coercion;
 - (iii) personal search of a female occupant is being taken only by female members of the search team with a strict regard to decency;
 - (iv) facts relating to the search and seizure are being recorded correctly and accurately in the *panchnama*, inventories and all other relevant documents; and

- (v) in case of continuance of a search on a subsequent date, the seals are intact at the time of entry and are being broken in his presence for re-entry to continue the search.
- (3) He should not leave the premises without the permission of the Authorised Officer. Refusal by a witness to stay till the end of the search constitutes an offence under section 187 of the Indian Penal Code.
- (4) He should affix his signature on all packets containing seized bullion, jewellery, etc. and documents and statements like, body of the warrant of authorisation, copy of the Taxpayers' Charter containing the rights and the duties of the persons being searched, inventories of books of account, documents and valuables, *panchnama* and its various annexures.
- (5) He should attend as a witness under the Act, only if and when summoned⁴⁶.

3.29 If a witness raises any objection or makes any point relating to the process or procedure of search or any matter related thereto, the leader of the search team should consider and decide the same.

3.30 If a witness turns hostile, the Authorised Officer should record his statement. He should be specifically asked to explain his conduct. The services of a hostile witness should be dispensed with. If because of one or more witnesses turning hostile, the number of witnesses becomes less than two, other respectable persons of the locality may be appointed as witnesses. If a hostile witness refuses to give or to sign a statement, this fact may be recorded in the presence of other witnesses and their signatures obtained on the note so recorded. This should be appended to the report that the leader of the search team is required to submit to the Joint/Additional DIT (Investigation). The matter should also be telephonically reported to the Control Room as early as possible.

3.31 If any witness refuses to sign the *panchnama* or any other document, which he is required to sign, during or at the end of the search, his statement on oath should be recorded. He should be specifically asked about the reason for such refusal. The leader of the search team or any other Authorised Officer should prepare a note describing the circumstances in which the witness refused to sign the *panchnama*. All the members of the search team and the remaining witnesses should sign the note, which should be made a part of the *panchnama*. All such developments should be reported to the Control Room as early as possible.

46 See Rule 112(7), which provides that no person witnessing a search shall be required to attend as a witness to the search in any proceedings under the Act unless specifically summoned.

3.32 In suitable cases, where the conduct of a person appointed as a witness is found to be in violation of the provisions of section 187 of the Indian Penal Code, the matter should be reported to the Control Room for exploring the possibility of launching prosecution against him.

Showing of warrant of authorisation

3.33 As soon as members of the search team enter the premises to be searched, they should identify themselves to the person in respect of whom the warrant of authorisation has been issued or the person in occupation or control of such premises. They should show the warrant of authorisation to the aforesaid person and obtain, on the body of the warrant of authorisation, his signature as well as the signatures of the witnesses to the search. The person in whose case the search is being conducted or the person in occupation or in charge of the premises and the witnesses are entitled to see the warrant of authorisation and read the same. It is, however, not necessary to provide copies of warrant of authorisation to them.⁴⁷

3.34 In case any person refuses to sign on the body of the warrant of authorisation, the Authorised Officer should record a note to this effect. This should be signed by the Authorised Officer and the witnesses and annexed to the *panchnama*.

3.35 In addition to the warrant of authorisation, the following should also be shown to the person in-charge of or in occupation of premises and the witnesses to the search:

- (1) valid official identity cards of the leader and members of the search team; and
- (2) the Taxpayer's Charter indicating rights and duties of the persons to be searched.⁴⁸

Their signatures should be obtained on both the parts of the Charter, that is, the rights of the person to be searched and duties of the person to be searched, in the following format⁴⁹:

Party's signature

Date:

Witness 1

Time:

Witness 2

The Authorised Officer should retain this document after countersigning it.

⁴⁷ See Board's Instruction No. 530, dated 22.03.1973 (Annexure 59 in Appendix V)

⁴⁸ The Charter was issued vide letter F.No. 289/10/2001-IT(Inv. II) dated 7.3.2001 (Annexure 75 in Appendix V).

⁴⁹ See Board's letter F.No. 289/10/2001-IT(Inv. II) dated 7.3.2001 (Annexure 75 in Appendix V).

Report to the Control Room on entering the premises

3.36 After gaining entry into the premises to be searched, the Authorised Officer should report to the Control Room, the time at which the search team gained entry into the premises and the telephone numbers of the premises. Other significant developments, if any should also be reported to the Control Room. The officer-in-charge of the Control Room should ensure that soon after commencement of search, case records of the person(s) in whose case(s) search(es) are being conducted are obtained from the Assessing Officer(s) and kept in his safe custody in the control room. As far as possible, no member of a search team should either directly or over telephone contact any member of another team searching another premises. All such communications should be made through the Control Room. Search team's interaction with the Control Room should not be confined only to the initial report. The leader of the search team should interact with the Control Room at regular intervals and also report to it all important events and developments. If no message is received for long from a search team, the officer in charge of Control Room should get in touch with the leader of the team to ascertain the progress of the search and other significant developments.

Offer of personal search by the members of the search team

3.37 The members of the search team should offer themselves for search by the person whose premises, is being searched or, as the case may be, the person in-charge of or in occupation of premises. This should be done in the presence of the witnesses. Personal search of lady members of the search team should be allowed to be made only by a lady present in, or occupying, the premises with a strict regard to decency. As mentioned in Chapter-II, it is advisable that members of the search team do not carry more than the minimum cash with them and except for such jewellery like *mangalsutra*, or wedding ring, the members of the search team should not wear other expensive jewellery.

Initial Statements of the occupants of the premises

3.38 Before commencement of search, the Authorised Officer should record statements of all adult occupants of the premises. If the number of occupants is very large (like, in an office or a factory), initial statements, which in the opinion of the Authorised Officer, are likely to be useful for search proceedings or any other proceedings under the Act, may be recorded. It will be useful to record such statements in a pre-designed proforma⁵⁰ so that no relevant point is missed. The Authorised Officer

50 The Investigation Unit organising the search should, depending upon the facts and the circumstances of the case in which search is being conducted and other relevant factors, design a suitable proforma in advance and provide the same to the leader(s) of the search team(s).

may, if so considered necessary by him, also ask supplementary questions while recording initial statements. While there can be no specific and comprehensive guidelines for the types of questions that may be asked while recording initial statements, specific queries pertaining to the following areas could be useful:

- (1) Nature of business or profession and the names, addresses and Permanent Account Number of all business/professional concerns (including, sister concerns) of the person in whose case the search is being conducted.
- (2) Names, addresses and Permanent Account Number of all the partners/Directors/members of the partnership firms/companies/ Association of Persons in which the person in whose case the search is being conducted is a partner/Director/member.
- (3) Complete details of fixed deposits, bank accounts, demat account, post office accounts, other deposits, loans and advances given, share holdings, investments made in mutual funds, etc., vehicles, insurance policies, cash, jewellery, bullion and other valuable articles or things, whether held singly or jointly or in any other name.
- (4) Complete details of bank lockers, other lockers, safe deposit vaults, etc. hired/standing either in the name of the person in whose case the search is being conducted or that of any of the member of his family, either singly or jointly or in the name of any other person for or on behalf of any of the aforesaid persons and present whereabouts of the person(s) who are authorised to operate the said locker(s), vault(s), etc.
- (5) Information about the books of account and documents being maintained, whether manually or on computer.
- (6) Existence of any secret chamber or locker in the premises.
- (7) Number of keys of bank lockers, other lockers and vaults, etc., issued by the bank or any other concern and whether all such keys are available in the premises.
- (8) Place(s) where books of account, documents, money, bullion, jewellery, other valuable articles or things, bank/other locker keys, computer systems, etc. of the person are kept.
- (9) Computers, other digital devices and data storage media in the premises and the names, addresses, telephone numbers and present whereabouts of the persons (including computer professional/Data Entry Operator, if any hired) who usually handle them.

3.39 The Authorised Officer should record initial statements in exercise of the powers available to him under section 131 (1A). This is so as a statement under section 132 (4) can be recorded only during the course of search and that too of a person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing.

3.40 The points made elsewhere in this chapter on recording of statement under section 132 (4) should also be kept in view while recording initial statements under section 131 (1A).

3.41 Where information gathered as a result of the initial statement(s) is of such a nature as would necessitate an immediate follow-up action, the same should be communicated to the Control Room immediately. Some such situations (which are only illustrative) are:

- (1) Information gathered that points to the existence of any bank locker, other locker, vault, etc., outside the premises authorised to be searched and the leader of the team does not know whether a separate authorisation for its search has been issued or not.⁵¹
- (2) Person(s) authorised to operate an identified bank locker, other locker, vault, etc. is/are not present at the premises.⁵²
- (3) Key of an identified bank locker, other locker, vault, etc. is not available at the premises, which is being searched.⁵³
- (4) Relevant books of account, documents, computer systems, digital devices, money, bullion, jewellery, any other valuable article or thing, etc. is/are kept at some other premises and the leader of the search team does not know whether a separate authorisation for its search has been issued or not.⁵⁴
- (5) Information gathered points to the existence of other premises of the person(s) in whose case search is being conducted and the leader of the team does not know whether a separate authorisation for its search has been issued or not.

51 All relevant information gathered like, name of the bank/other concern that gave the locker, vault, etc. on hire, branch name, branch address, locker number, etc. should be communicated to the Control Room.

52 Information gathered about his present whereabouts should also be gathered and communicated to the Control Room.

53 Information, if any gathered about the other premises where the keys are kept and the name(s) of the person(s) in possession of the same should also be communicated to the Control Room.

54 All the information gathered like, address, telephone number(s), etc. of other premises, name(s) of the person(s) in occupation/control of the premises/owners of the premises/person(s) who has the custody of the things lying in the premises and his/their relationship with the person in respect of whom the search has been authorised, should be communicated to the Control Room.

Other steps to be taken by the leader of the search team and its other members

3.42 The leader of the search team and all its members should work as a well-knit team. Wherever necessary, instructions should be obtained from the Control Room. Some steps, which should be taken for orderly and proper conduct of search operations, are listed below.

- (1) The leader of the search team should ensure that there is optimum utilisation of the available manpower and that the search is conducted in an efficient, fair and orderly manner. In case the manpower provided is found to be inadequate, he should report the matter to the Control Room, specifying the additional manpower needed. It is significant to mention in this connection that under section 132 (2), the Authorised Officer has the power to requisition the services of any police officer or of any officer of the Central Government, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) of section 132. However, the officers so requisitioned, even if they are from the Income Tax Department, cannot exercise the powers or perform the functions of an Authorised Officer. Care should, therefore, be taken to ensure that such persons do not exercise the powers or perform the functions of an Authorised Officer, unless they have actually been named as Authorised Officers in the warrant of authorisation issued by the authority competent to do so.
- (2) It should be ensured that money, assets, documents, etc., are not thrown or taken out of the premises or are not destroyed or damaged in any manner by any occupant of the premises being searched.
- (3) Where the premises being searched has telephones, mobile phones, intercom systems, telex systems, FAX, public address systems or computer systems with or without Internet or network facility, etc., it should be ensured that there is no such communication through them between any person occupying the premises and any other person inside or outside the premises as would jeopardise the purpose and conduct of the search. If the premises have several telephones, it would be advisable that only one or two telephone is allowed to work and one or two members of the search team are deployed there to attend the telephones. All incoming calls should be intercepted. Outgoing calls should be discouraged unless there are emergency calls. Special care in this regard is necessary as mobile phones can be used for sending SMS or MMS, computer systems for sending e-mail messages

and certain types of remote devices for manipulating data stored in computer systems without being noticed. The leader of the search team or any other member of the team, so directed by him, should take over the control of all such systems.

- (4) The occupants of the premises should be requested to lock all cupboards, boxes, etc., and hand over all the keys to the leader of the search team.
- (5) No outsider should ordinarily be allowed to enter the premises during the course of the search. This should be relaxed only in exceptional situations, like when a medical practitioner is required to attend to someone present inside the premises.
- (6) Where the premises being searched is an office, only those employees who are likely to be of use in explaining or producing the books of account, documents, computer systems, etc., should be allowed to remain in the premises. If, on the request of the person whose premises is being searched, or the person in-charge of or in occupation of premises, some or all employees are allowed to stay back in the premises to attend to office work, it should be ensured that their presence does not in any way hinder or jeopardise the process or purpose of the search.
- (7) Children should not be prevented from going to school. However, their school bags should be searched and, if considered necessary, their personal search taken to ensure that they do not carry any such books of account, document, locker or safe vault keys, digital devices, digital storage devices, jewellery, bullion or other valuables articles or things, etc. as would be relevant to the search operation. Similarly, servants may also be allowed to get in after taking their personal search.
- (8) Movements of servants, drivers, other employees, etc. should be restricted to the minimum and if the Authorised Officer allows them to leave the premises, their personal search may be taken before they leave.
- (9) The occupant or person in-charge of the building, place, vessel, vehicle or aircraft, or any other person acting on his behalf, should be permitted to be present throughout the search. However, their legal/tax advisors are not entitled to be present during the search.
- (10) No food or refreshment should be accepted from any occupant of the premises being searched, as it would be improper to accept any such hospitality. Secondly, there is also a risk of the members of the search team being drugged.

Searching the premises

3.43 The occupants of the premises may be requested to occupy one or two rooms and the remaining rooms should be locked. One or two members of the search team should be asked to remain present in the rooms where the occupants are asked to stay, till these rooms are searched. It is advisable that these rooms are searched as early as possible so that the occupants could remain there undisturbed.

3.44 Depending upon the manpower available, search may be conducted either room-by-room or simultaneously in more than one room. Care should be taken that the assets and documents found in different rooms are not mixed up. It may be a good idea to draw a rough map of the house giving numbers to various rooms. It will then be easy to record which room was occupied by which person.

3.45 The entire premises (including, innocuous looking things or places like, waste paper baskets, kitchen lofts and toilets) should be thoroughly searched. Care should be taken to ensure that the search takes place in the presence of the person in-charge of the premises and witnesses and that the process of the search is not only fair and transparent but also appears to be so.

3.46 Many a time incriminating documents, books of account, money, jewellery, bullion and other valuable articles or things may be kept in secret safes, hidden vaults or other places, not easily visible. It should be the endeavour of the search team to detect all such documents, assets, etc. While there can be no specific and comprehensive guidelines for their detection, some points that may be useful in doing so are listed below:

- (1) There can be secret safes, vaults and storage units behind big pictures, idols and paintings.
- (2) Big boxes and other storage units meant for provisions may in fact contain things like, keys of bank lockers and safety vaults, pen drives, unaccounted money, jewellery, bullion, other valuable articles or things or books of account and documents.
- (3) Idols of deities may some time be used for concealing money, valuables (like, precious stones), keys of bank lockers and safety vaults, pen drives, other digital devices, etc.
- (4) Thick walls may have hidden built-in safes or vaults.
- (5) There can be secret hiding places inside the walls, below the floors, in toilets, bedrooms and kitchen and inside electrical boards.

- (6) Sometimes it is found that idols are made of precious metals such as gold and silver, though their appearance may be deceptive. However, care should be taken while testing them so as not to damage it. The search team should also be sensitive to the religious sentiments of the persons.
- (7) Vehicles of the person in whose case the search is being conducted, or the person in occupation or control of the premises, parked in the premises or garages or outside the building, may in fact contain keys of bank lockers and safety vaults, unaccounted money, jewellery, bullion, other valuable articles or things or books of account and documents.
- (8) This is the age of technology and sensitive data may be stored in electronic or digital devices. One has to look for computers, CDs, pen drives, DAT drives, zip drive, external hard disk, I-pod, high-end mobile phones, electronic diaries, etc. Retrieving data from these devices is the work of an expert.

3.47 Where necessary, metal detectors and other gadgets should be used for detecting hidden valuables.

3.48 The Authorised Officer is empowered to break open the lock of any door, box, locker, safe, almirah or other receptacle when the keys thereof are not available. In such circumstances, he should first demand the keys from the owner, occupier, or the person in-charge and allow reasonable time and opportunity for their production. Only after the Authorised Officer has satisfied himself that the keys are not available despite all reasonable efforts, he should break open the locks. Where a locksmith is called for this purpose, his full name, address, time of arrival and departure, along with the sum of money paid for his services should be noted down.

3.49 It should be ensured that the process of detection of secret places for concealing valuables and documents, etc. or breaking open the lock of any door, box, locker, safe, almirah or other receptacle when the keys thereof are not available is done in such a manner that there is minimum damage to property. The power to do so should be exercised with caution. Wherever any lock is broken up or the search process results in any damage to the premises or any part thereof or any moveable property or article or thing found in the premises, the leader of the search team or any other Authorised Officer should record a note, specifying the circumstances in which any of the aforesaid actions was taken and the nature and extent of damage to any property or article or thing that was caused. The note should be signed by the Authorised Officer, witnesses to the search and the person in occupation or control of the premises.

The matter should also be reported to the Control Room as early as possible.

Personal search

3.50 The Authorised Officer has the power to search any person who has got out of, or is about to get into, or is inside the building, place, vessel, vehicle or aircraft. He may do so if he has reason to suspect that such person has secreted about his person, any books of account, other documents, money, bullion, jewellery or other valuable article or thing.

3.51 Personal search should, however, not be carried out in an indiscriminate and routine manner. When such a search involves a female, it should be carried out only by another female with a strict regard to decency.

3.52 A list of all things found as a result of personal search should be prepared. The Authorised Officer, person searched and the witnesses should sign this list.

Seizure of books of account, documents, money, valuables, etc.

3.53 The warrant of authorisation issued by the competent authority authorises the Authorised Officer to seize any such books of accounts, other documents, money, bullion, jewellery or other valuable article or thing found as a result of a search, as have been referred to in section 132(1). While it is not necessary for the Authorised Officer to record reasons before making a seizure, the power to do so should be exercised with care and caution. Efforts should be made to avoid indiscriminate seizures causing avoidable harassment to taxpayers⁵⁵. While it is for the Authorised Officer to decide whether any books of account, documents, money, bullion, jewellery, other valuable article or thing should be seized or not, in suitable cases, the leader of the search team should seek guidance from the Control Room. The officers manning the Control Room and authorities like, Joint/Additional DIT (Investigation) are aware of the things found in other related premises and are better placed to take a holistic view of the matter.

3.54 The category of books of accounts, other documents, money, bullion, jewellery or other valuable articles or things seized should strictly come within the ambit of the clauses either (a) or (b) or (c) of section 132 (1). For this it is necessary that the search team is provided with clear information regarding the books of accounts already produced by the concerned persons and the valuables already disclosed by them. The

55 See Board's letters F.No.286/247/98/IT(Inv.II) dated 02.02.1999 (Annexure 73 in Appendix V) and F.No. 289/10/2001-IT (Inv.II) dated 07.03.2001 (Annexure 75 in Appendix V)

search team should also equip itself with full information regarding the declared assets of the tax payers from the returns of income/wealth filed, so that only undisclosed assets are seized for the purposes of quantification of concealed income and appropriation of taxes due on such income. Seizure of assets already reflected in the records filed with the department should be avoided.⁵⁶

3.55 In case, assets disclosed in the regular books of accounts have been seized, these can be released subject, of course, to recovery action liable against any existing tax liability. However, in cases where the seized assets will have specific evidentiary value in prosecution, the assets should not be released till the completion of prosecution proceedings.⁵⁷

3.56 Some useful points relating to the decision-making process for seizure of books of account, other documents, money, bullion, jewellery and other valuable articles or things found in the course of search, inventorisation of the books of account, documents, money and valuables, etc. seized and those not seized are briefly discussed below.

Books of accounts and other documents found in the course of search, their inventorisation and seizure

3.57 It is necessary to record the exact place within the premises from where the books of accounts and other documents were found as it may be relevant to establish their ownership and other related issues in the appropriate proceedings. Marks of identification in the form of the Authorised Officer's signatures with date and seal should be placed on the documents and books of account found in the course of search. Pages of the documents should be numbered consecutively. Blank pages should be cancelled and numbered.

3.58 All books of accounts and documents that point to, or contain entries relating to, any undisclosed income or transaction of any person, should be seized. Where such books of account and documents are found and seized, it would also be necessary to seize the books of account and documents maintained in the regular course of business or profession or any other economic activity, even if these do not point to, or contain any record of, any undisclosed income or transaction. It would be necessary to compare the incriminating books of account and other documents with the regular books of accounts and other documents for establishing concealment or underreporting of income or any other tax violation. Where the search results in the detection of any document pointing to

56 See Board's letters F.No.286/247/98/IT(Inv.II) dated 02.02.1999 (Annexure 73 in Appendix V) and F.No. 289/10/2001-IT (Inv.II) dated 07.03.2001 (Annexure 75 in Appendix V)

57 See *ibid.*

the commission of any other economic offence or violation, the matter should be immediately reported to the Control Room and their guidance sought. Where the books of account are not fully written up, the Authorised Officer should also look into, and wherever necessary, seize all primary documents so as to prevent fabrication of evidence at a later stage.

3.59 Statements recorded under section 132 (4) or section 131 (1A) and the explanations offered by the (a) person to whom the books of accounts and documents belong, (b) person in occupation or control of the premises, (c) person who wrote the books of accounts and documents or dealt with them (like the accountant of the owner of the business or profession) or (d) other persons related in some way to the aforesaid persons (like, the computer professional, or data entry operator hired by the owner of the business or profession, patients of a medical practitioner and customer of the owner's business or profession) may also help in deciding whether the books of account and documents should be seized or not.

3.60 All extracts taken should be properly authenticated. Loose papers seized should be serially numbered, arranged in bundles in a folder or stitched securely and sealed. If rubber or other seals are found in the premises, their impressions should be taken on a blank sheet of paper. This paper should also mention the place in the premises where the seals were found. Three sets of such papers should be generated. Each of them should be signed by the Authorised Officer, witnesses to the search and the person found to be in possession or control of the seals. This will serve the purpose of inventory of the seals found.

3.61 Separate inventories should be made of the books of account and documents found and seized and those found but not seized.⁵⁸

Digital evidence found in the course of the search and seizure⁵⁹

3.62 If during a search, the search team comes across computers or any other digital device, the authorised officer should immediately contact the Control Room and requisition the services of a technical person to assist him in handling the devices, recovering the data stored therein and other related jobs. As far as possible, the authorised officer or any member of the search team not fully conversant with computer systems and digital devices, should not attempt to handle the systems on his own or with the sole assistance of the person in occupation or control of the premises or any of his associates, employee or agent, as mishandling of the system can corrupt or destroy the data. Also, there is always the

58 Proforma of inventories appears at Annexure 37 in Appendix III.

59 A detailed discussion on handling of digital evidence appears in Chapter V.

risk of an unscrupulous affected person or his employee or associate deliberately corrupting or manipulating the data, if he gets a chance to do so. The Authorised Officer should take further appropriate action only on the Control Room's advice or instructions.

3.63 As far as possible, the Control Room should select a technical person of the Central Government for the job. This is so as the Authorised Officer can requisition the services of such an officer in exercise of the powers conferred on him under section 132(2). Secondly, the level of his integrity, accountability and commitment to the Government job is expected to be more than those of experts from private organisations. The Board has instructed that officials having acquaintances with computer work should be taken in search team so that back up of the data stored in computers can be taken with proper care.⁶⁰

Money (Cash - Indian currency) found in the Course of search, its inventorisation and seizure

3.64 Indian currency found in the course of search should be carefully counted. Wherever necessary, 'note counting machines' can be used for this purpose. Counterfeit Indian currency detected as a result of search should be segregated and counted. Information about the same should be immediately passed on to the Control Room. On receipt of the information, the officer-in-charge of the Control Room should pass on the same to the concerned Joint/Additional Director of Income Tax (Investigation), who should take appropriate action in accordance with law and wherever necessary, send an intimation to other concerned enforcement agencies. Inventories⁶¹ of money found in the course of the search should be prepared. Separate inventories should be prepared for the money found and seized, money found but not seized and the counterfeit Indian currency found and further action taken in respect of the same. Inventories of money should contain details like the denomination of the notes, the number of notes and their value. All these details should be recorded both in words and figures. If there are stamps on stapled bundles of notes, these should also be recorded in the inventory. Where bank slips are found, these should be treated as documents.

3.65 Money found in the course of search can be seized only if it represents undisclosed income or property of any person. While it is not mandatory for the authorised officer to conclusively establish the identity of the person to whom the money belongs or make a detailed investigation on any matter regarding its nature and source, especially

60 See Board's letter F.No. 286/57/2002-IT(Inv. II), dated the 3rd July, 2002. (Annexure 76 in Appendix V)

61 Proforma of inventories appears at Annexure 39 in Appendix III.

in situations where conflicting claims are made or evasive replies given to him, it is necessary that before taking a decision whether to seize the money or not, he at least makes a preliminary examination in the matter. While there can be no comprehensive and precise guidelines for such an examination and its nature and extent would vary from case to case, some points, which may be useful for taking a decision in the matter, are briefly mentioned below:

- (1) The amount of cash found should be compared with the cash balance appearing in the Cash Book, if any maintained by the person. If the Cash Book has not been written up to date, efforts should be made to quantify the explained cash, as on the date of the search with the help of such receipts, vouchers or other documents found in the course of the search as were required to be entered in the books of account but have not been so entered or such other genuine evidence as may be found by, or produced before, the authorised officer.
- (2) Where it is claimed that the cash found does not belong to the person in whose case search is being conducted but to any other person, the Authorised Officer should make suitable preliminary inquiries in the matter. He should also consider the explanation offered by the persons concerned or such other evidence as may be found in the course of search or as may be produced before him. He should also report the matter to the control room.
- (3) Where it is claimed that the cash book or any record relating to the said cash or any transactions relating thereto are maintained in the form of electronic record or that the information about the same is available in any computer systems or any data storage devices like CDs, floppies, pen drive, etc., the Authorised Officer should immediately report the matter to the Control Room and request them to provide services of an expert so as to enable him to access or retrieve the data. The points made at paragraphs (3.62) and (3.63) on digital evidence should also be kept in view.

Foreign currency, etc. found in the course of the search, their inventorisation and seizure

3.66 Foreign currency or cheques or travellers cheques, etc. found as a result of search should be carefully counted. Pointed inquiries relating, *inter alia*, to the nature of possession, ownership and source of acquisition should be made from the person in whose possession or control these are found. His statement on oath should also be recorded. Where the said person claims that the foreign currency, traveller's cheques, etc. do not belong to him but to some other person, suitable inquiries in the matter should be made. The matter should also be immediately reported

to the Control Room and their instructions or advice obtained for further course of action to be adopted. On receipt of the information, the officer-in-charge of the Control Room should pass on the same to the concerned Joint/ Additional DIT (Investigation), who should take appropriate action in accordance with the law and wherever necessary, send an intimation to other concerned enforcement agencies.

Promissory notes found in the course of search, their inventorisation and seizure

3.67 A promissory note payable to order or to bearer is a negotiable instrument within the meaning of Negotiable Instruments Act, 1881. It is a document in the nature of asset and falls in the category of 'other valuable articles or things' referred to in section 132 of the Act.⁶²

3.68 Inventories of all promissory notes found in the course of the search should be prepared. Separate inventories, containing full details, should be prepared for the promissory notes found in the course of search but not seized and those found and seized. Wherever necessary, photo copies of the promissory notes duly certified to be a true copy by the assessee/ the person from whose custody the promissory notes were seized should be obtained by the Authorised Officer.

3.69 Promissory notes should be seized only if these are not reflected in the books of account maintained in the regular course of business or profession or financial activities of the concerned person(s) or represent unexplained or undisclosed transaction of any person. Their indiscriminate seizure should be avoided.

3.70 Seizure of undischarged promissory notes can at times, result in the debts becoming barred by time and bad. Promissory notes, which have been seized in the course of search and are likely to become time barred, may be returned on the assessee's depositing an amount equivalent to the value of the promissory notes, if the assessee can be persuaded to do so. In a case where the assessee refuses to deposit an equivalent amount, no useful purpose would ordinarily be served by retaining the promissory notes. On the other hand, it can involve the department in litigation if the amount due under promissory notes becomes irrecoverable because of the Department's failure to return it to the assessee. It may be advisable to take the following steps in such situations:

- (1) A photostat copy of promissory note, duly certified to be a true copy by the assessee/the person from whose custody the promissory notes were seized should be obtained and retained by the Authorised Officer.

62 See Board's Instruction No. 177 dated 4.6.1970, (Annexure 57 in Appendix V) which also refers to its earlier letter F.No. 15/156/65-IT(Inv) dated 28.10.1965.

- (2) An order under section 132(3) should be passed directing the person in possession of the promissory notes not to part with the said notes unless an equivalent amount is deposited with the Assessing Officer. It is significant to mention in this connection that an order merely restraining the lender from parting with the promissory notes, would be ineffective as the lender can realise the debt by issuing a receipt discharging the debtor from any further liability. This is a possibility, which should be kept in mind while dealing with such cases. It would also be advisable to qualify the order under section 132(3) with a proviso that the lender may part with the promissory notes only on the condition that the borrower pays the money to the Income Tax Department and not to the lender. Since, section 132(3) empowers the Authorised Officer to take necessary steps to ensure compliance of an order under that section, he can also issue an order to the borrower not to pay the amount under the promissory note to the lender, but to the Income Tax Department.⁶³

3.71 In suitable cases promissory notes themselves can be seized, order under section 132(3) passed and the assessee asked to provide replacement in terms of money for the promissory notes before returning the same to him.⁶⁴

Jewellery found in the course of the search, its inventorisation and seizure

3.72 If any jewellery is found in the course of search, the authorised officer should contact the Control Room for sending an approved valuer for its valuation.

3.73 It is necessary to record the exact place from where the jewellery was found as this fact could be relevant for establishing its ownership and other related issues. The approved valuer nominated by the control room should be asked to record full description of each item of jewellery, its gross and net weights, basis of valuation, value and other relevant details in the form of an inventory. This exercise should be carried out in the presence of the person(s) in whose possession or control, the jewellery items were found, witnesses to the search and the authorised officer. In case, the assessee or the person who was found to be in possession or control of the jewellery or any other person on his behalf produces any report of its valuation, the same should not be shown to the approved valuer. If for some reason it becomes necessary to show

63 See Board's Instruction No. 177 dated 4.6.1970 ,(Annexure 57 in Appendix V) and Instruction No. 226 dated 6.10.1970.(Annexure 58 in Appendix V)

64 *ibid.*

the same to him⁶⁵, this should be done only after he has made the valuation. This should minimise the possibility of any bias on the part of the approved valuer in its inventorisation and valuation.

3.74 Where it is claimed that any item of the jewellery found does not belong to the person in whose case the search is being conducted or to the person found to be in possession or control of the same but to some other person, the Authorised Officer should make suitable preliminary inquiries in the matter. He should also consider the explanation offered by the person(s) concerned or other evidence found in the course of the search or produced before him. He should report the matter, along with his conclusions or recommendations to the Control Room. The officer-in-charge of the Control Room should pass on the information to the concerned Joint/Additional Director of Income Tax (Investigation) who should take further appropriate action in accordance with the law.

3.75 Any jewellery or ornament found in the course of search can be seized only if it represents undisclosed income or property of any person. While it is not mandatory for the Authorised Officer to conclusively establish the identity of the person to whom the jewellery or ornaments belong or who made investments for their acquisition or make a detailed investigation on any matter relating to the source of investment or nature of possession, especially in situations where conflicting claims are made or evasive replies given to him, it is necessary that before taking a decision whether to seize the jewellery or ornaments or not, he at least makes a preliminary examination in the matter. He should, for example, try to find out the nature of possession and the source of acquisition of the jewellery and ornaments; ascertain whether the investments made in the same have been reported in the income-tax return of the owner/concerned person/investor or declared under any scheme of voluntary disclosure of income; whether the investments made are explained; whether the same are reflected in the books of account, if any maintained in the regular course of business or profession or financial activities and whether the same have been declared in the wealth-tax returns, if any filed. The Board's following guidelines⁶⁶ regarding seizure of jewellery should also be strictly adhered to:

- (1) In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.

65 For example, where it is found that the value determined by the assessee's valuer, as shown in the Valuation Report filed or produced by him or any other concerned person is substantially higher than that determined by the approved valuer hired/nominated by the Investigation unit/Authorised Officer.

66 Board's Instruction No. 1916 dated 11.05.1994 (Annexure 70 in Appendix V)

- (2) In the case of a person not assessed to wealth-tax, gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per unmarried lady and 100 grams per male member of the family, need not be seized.
- (3) The Authorised Officer may, having regard to the status of the family and the custom and practices of the community to which the family belongs, and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income Tax/Commissioner authorising the search at the time of furnishing the search report.

3.76 In all cases, detailed inventories of the jewellery and ornaments found in the course of the search must be prepared⁶⁷. It would be advisable to prepare separate inventories for jewellery (a) found and seized; (b) found but not seized; (c) jewellery found on the person of an individual and seized; and (d) jewellery found on the person of an individual but not seized.⁶⁸

3.77 The inventories should give full description of each item of jewellery indicating, *inter alia*, its gross and net weights, basis of valuation, value and the place and the circumstances in which it was found.

3.78 The procedure for seizure of bullion jewellery and other valuable articles or things, as given in sub rule (10) of rule 112 of the Rules should also be strictly adhered to. This has been briefly discussed elsewhere in this chapter.

Bullion found in the course of search

3.79 If any gold, bullion or silver is found in the course of search, the Authorised Officer should contact the Control Room for sending an approved valuer for its valuation. His report should be obtained in the form prescribed in the Wealth Tax Rules in quadruplicate.⁶⁹ It is necessary to record the exact place from where the bullion was found as this fact could be relevant for establishing its ownership and other related issues.

3.80 Bullion found in the course of the search should be inventorised, irrespective of the fact whether it is seized or not. Separate inventories should be prepared of the items found and seized and those found but not seized.

3.81 Where bullion with foreign marking is found, the Authorised Officer should immediately report the matter to the Control Room. On receipt

⁶⁷ Board's Instruction No. 1916 dated 11.05.1994 (Annexure 70 in Appendix V)

⁶⁸ Proforma of the inventories appears at Annexure 38 in Appendix III.

⁶⁹ The form appears at Annexure 38 in Appendix III.

of the information, the officer-in-charge of the Control Room should pass on the same to the concerned Joint/Additional Director of Income Tax (Investigation), who should take appropriate action in accordance with the law and wherever necessary, send an intimation to other concerned enforcement agencies.

3.82 The points made elsewhere in this chapter on valuation, inventorisation and examination for ascertaining the nature of possession and the source of acquisition of jewellery and ornaments will, so far as may be, also apply to bullion found as a result of search. The procedure for seizure of bullion or jewellery or other valuable articles or things as given in sub- rule (10) of 112 should be strictly followed. This has been briefly discussed elsewhere in this chapter.

Fixed Deposit Receipts (FDRs) found in the course of the search, their inventorisation and seizure

3.83 Where any Fixed Deposit Receipt (FDR) or Term Deposit Receipt or receipt of a similar nature, whether issued by a bank or any other body or institution is found in the course of a search, the Authorised Officer should make a preliminary examination to identify the person(s) in whose names the FDR, Term Deposit Receipts, etc. stand and the person(s) who made investments on the same. Other relevant information should also be gathered.

3.84 A Fixed Deposit Receipt (FDR) or a receipt of a similar nature found in the course of search can be seized only if it represents undisclosed income or property of a person. It is, therefore, necessary that before taking a decision whether to seize the FDR, Term deposit receipt, etc. or not, the authorised officer makes at least a preliminary examination in the matter. He should, for example, ascertain whether the investments made in and the income earned on the FDR, Term Deposit Receipt, etc. have been reported in the income-tax return of the owner/ concerned person/investor; whether the investment made on the FDR, Term Deposit Receipt, etc. is fully explained and whether the same is reflected in the books of account, if any maintained in the regular course of business or profession or financial activities.

3.85 In case a FDR or receipt of a similar nature is seized, marks of identification should not be placed on the instrument itself but a piece of paper should be attached to the FDR and marks of identification placed thereon. The points made elsewhere in this chapter above on valuation, inventorisation and examination for ascertaining the nature of possession and the source of acquisition of jewellery and ornaments will, so far as may be, also apply to FDRs or receipts of a similar nature found as a result of search. Where it is decided to seize a FDR, an order under section 132 (3) should also be served on the assessee/person from

whose possession and control, the FDR was found as well as the Manager of the branch of the bank, or as the case may be the body or the person that issued the FDR, to guard against any possibility of the issuance of duplicate receipts. However since with effect from 01.06.2002, an order issued under section 132(3) by an authorised officer remains in force for a maximum period of sixty days from the date of issue, it is advisable that if its retention continues after the expiry of the said period, the Manager/person-in-charge of the Bank or the body or institution that issued the FDR, Term Deposit Receipt, etc., is informed that the retention is continuing in accordance with the law.

3.86 Inventories of FDRs, etc. found in the course of the search should be prepared. Separate inventories should be prepared of the FDRs found but not seized and those found and seized. The inventories should give all relevant details of each FDR like, the name(s) of the holder(s), the date of issue, the date of maturity, the distinctive number of the FDR, face value of the FDR, amount payable on maturity, rate of interest and the name and address of the banker, or, as the case may be, the body that issued the FDR. Wherever necessary, a photo copy of the FDR should be obtained by the authorised officer. The point made at serial no. 6 of paragraph (3.118) may also be kept in view.

Antiquities or Art Treasure found in the course of search and their inventorisation

3.87 Where in the course of search, an article is found which, *prima facie*, appears to be an antiquity or of such an artistic or aesthetic value as worthy of being declared an 'art treasure' in terms of section 2 of the Antiquity and Art Treasures Act, 1972, the Authorised Officer should make suitable preliminary inquiries from the person who is in possession or control of the same about its ownership, nature of possession, source from which and the date on which it was acquired; whether it has been registered with a registering officer appointed under the Antiquity and Art Treasures Act, 1972 and report the matter to Control Room. The officer-in-charge of control room should in turn pass on the information to the concerned Joint/Additional DIT (Investigation), who should take further appropriate steps in accordance with the law and communicate suitable advice to the authorised officer. Some such steps are, in brief, as under:

- (1) The matter should be immediately brought to the notice of the Superintending Archaeologist and his advice sought whether the article is an antiquity or worthy of declaration as an art treasure.⁷⁰
- (2) In case, the article found is in the opinion of the Superintending

⁷⁰ See Board's Instruction No. 994 dated 31.7.1976. (Annexure 61 in Appendix V)

Archaeologist, an antiquity or an art treasure, he should be requested to value the same or get it valued.

- (3) A report should be made (in duplicate) as early as possible to the Director of Income Tax (Investigation), giving full particulars of the article, the advice received from the Superintending Archaeologist and the article's approximate market value as given by the latter and/or the valuer.⁷¹
- (4) The article should not be released to the assessee or the person who was in control or possession of the same or otherwise disposed of till the receipt of the instructions of the Director of Income Tax (Investigation).⁷²
- (5) Inventory of the things found should be prepared carefully, wherever necessary in consultation with the competent authority under the said Act or any expert detailed by him for the job.

3.88 In view of the provisions of the Antiquity and Art Treasures Act, 1972, the income-tax authorities cannot undertake any sale/auction of an antiquity or art treasure. When the Government compulsorily acquires an antiquity or art treasure, the compensation amount will be dealt with, in accordance with the provisions of the section 132/132B of the Act. If the Director General, Archaeological Survey of India advises that the Government is not interested in acquiring an antiquity, it is permissible to sell the same, where necessary, through a licensed dealer.⁷³

3.89 Where any article found in the course of search is neither an antiquity nor an art treasure within the meaning of the Antiquity and Art Treasures Act, 1972 but is nevertheless a work of art of significant monetary value, the authorised officer should seek the Control Room's assistance for obtaining the services of a valuer for its valuation.

3.90 Care should be taken to ensure that the antiquity or art treasure or, as the case may be, valuable work or art found as a result of search is not in any way damaged or disfigured and no marking is made on the same for identification or for any other purpose. Depending upon the size, shape, etc. of the article or thing, a suitable methodology for its identification/placing marks of identification should be adopted. This should preferably be done in consultation with an expert. For example, in certain situations, it may be possible to attach a white sheet of paper to the article and obtain thereon, the signatures of witnesses, person(s) found to be in possession or control of the article or thing and the authorised officer.

71 See Board's Instruction No. 994 dated 31.7.1976. (Annexure 61 in Appendix V)

72 *ibid*

73 *ibid*

3.91 The points made elsewhere in this chapter on valuation, inventorisation and examination for ascertaining the nature of possession and the source of acquisition of jewellery and ornaments will, so far as may be, also apply here. Where a seizure of any such article is to be made, the procedure for seizure of bullion or jewellery or other valuable articles or things as given in sub-rule (10) of 112 of the Rules should also be strictly followed. However, in case the competent authority under the Antiquity and Art Treasures Act, 1972, seizes or takes possession of articles or things found in the course of search, this fact should be duly recorded in a note. The note should be signed by the Authorised Officer, person from whose custody the said article or thing was found, witnesses to the search and if possible, the competent authority under the said Act who made the seizure. This, along with the inventory showing description, quantity and value of the article or thing should be annexed to the *panchnama*.

Wild animals, animal articles, trophies etc. or protected plants referred to in the Wild Life (Protection) Act, 1972 found in the course of search

3.92 During the course of search, the authorised officer may find a live wild animal in captivity or articles or trophies (whether cured or uncured) of wild animals that under the Wild Life (Protection) Act, 1972 are treated as the property of the Government. As provided in the Wild Life (Protection) Act, 1972, no person shall, without the written permission of the competent authority- (i) acquire or keep in his possession, custody or control, or (ii) transfer to any person, whether by way of gift, sale or otherwise, or (iii) destroy or damage such Government property. The Wild Life (Protection) Act, 1972 also prohibits dealing in animal articles without license. Certain Government authorities have been vested with the power of entry, search, seizure and detention if they have reasonable grounds for believing that any person has committed an offence under the aforesaid Act. Certain contraventions of Wild Life (Protection) Act, 1972 invite punishment in the form of imprisonment and fine.

3.93 The Wild Life (Protection) Act, 1972 also enumerates certain protected plants. Permission/license from the competent authority is required for their cultivation or possession.

3.94 Where in the course of search any wild animal or thing is found that *prima facie* appears to be a property of the kind referred to above, the Authorised Officer should make suitable preliminary inquiries from the person who is in possession or control of the same about its ownership, nature of possession, source from which and the date on which it was acquired; whether it has been registered with a registering officer appointed under the Wild Life (Protection) Act, 1972. He should report the matter to Control Room. The officer-in-charge of control room should

in turn pass on the information to the concerned Joint/Additional DIT (Investigation), who should take further appropriate steps in accordance with the law and communicate suitable advice to the authorised officer. Some such steps are, in brief, as under:

- (1) The matter should be immediately reported to the competent authority under the Wild Life (Protection) Act, 1972 and his advice sought whether the thing is a property of the type referred to above and if so, how to deal with the same.
- (2) In case, the live animal, article or thing found is in the opinion of the said authority, a property of the type referred to above, he should be requested to value the same or get it valued.
- (3) The thing should not be either seized or released to the assessee or the person who was in control or possession of the same or otherwise disposed off till the receipt of the advice of the competent authority under the said Act. In case, inspite of best efforts it is not possible to get the advice of Competent Authority under Wild Life (Protection) Act, 1972 in time, prohibitory orders under section 132(3) may be issued in respect of these things.
- (4) Inventory of articles, things, etc. found should be prepared carefully, preferably in consultation with the competent authority under the said Act or any expert detailed by him for the job.

3.95 The points made in this Chapter regarding valuation, inventorisation and examination for ascertaining the nature of possession and the source of acquisition of jewellery and ornaments will, so far as may be, also apply here. Where a seizure of any such article or thing is to be made, after getting a clearance from the competent authority under the aforesaid Act, the procedure for seizure of bullion or jewellery or other valuable articles or things as given in sub-rule (10) of 112 of the Rules should also be strictly followed. A brief discussion on the same appears elsewhere in this chapter. However, in case the competent authority under the aforesaid Act seizes things found in the course of search, this fact should be duly recorded in a note. The note should be signed by the Authorised Officer, person from whose custody the said article or thing was found, witnesses to the search and if possible, the competent authority under the said Act who made the seizure. This, along with the inventory showing description, quantity and value of the article or thing should be annexed to the *panchnama*.

Stock-in-trade of the business found in the course of search and its inventorisation

3.96 Stock-in-trade of the business found in the course of the search should be carefully quantified, valued and inventorised. This exercise

should be undertaken carefully, in a systematic manner and in the presence of the person in whose case the search is being conducted or the person who is found to be in possession or control of the stock. Wherever necessary, Control Room's assistance should be sought for quantification and valuation of stock or any related matter.⁷⁴

3.97 The person(s) whose premises is being searched and the person who is found to be in possession or control of the stock should be given an opportunity to offer their explanation about the stock found, its quantity and value. Specific queries in this regard should also be made while recording their statements under section 132(4). Where the person maintains a stock register, the stock found should be compared with the entries made in the register. Wherever necessary, purchase and sale vouchers and other documents should also be examined. Depending upon the facts and circumstances of the case, suitable methodology for verification of stock should be adopted. If the person(s) concerned raise any objection on the methodology or the computation for quantification of stock, the same should be carefully considered, disposed off and also clearly recorded in a note, which should be appended to the inventory. This would eliminate the possibility of the person(s) concerned claiming in the assessment or appeal or any other post-search proceedings that the methodology or the computation made by the authorised officer was erroneous and that during the search they were not given any opportunity to object to the same. If no such objection is made, the fact should also be recorded in a note, which should also be signed by the person concerned and the witnesses.

3.98 The objective of the Authorised Officer should be to find out whether the stock found in the course of the search stands explained with reference to the books of account and other records maintained on a regular basis. If the stock found is in excess or deficient with reference to such books or records, the person concerned should be asked to explain the discrepancy.

3.99 With effect from 01.06.2003, any bullion, jewellery or other valuable article or thing, found as a result of a search, which is stock-in-trade of the business cannot be seized. It can also not be subjected to deemed seizure under the second proviso to section 132 (1). The Authorised Officer is, however, entitled to make a note or inventory of such stock-in-trade of the business.

74 Such assistance would, for example be needed in a case where bullion, jewellery or other valuable article or thing, found as a result of a search is stock-in-trade of the business and services of an approved valuer would be required for their valuation.

Keys found in the course of search, their inventorisation and seizure

3.100 If any key is found in the course of search, the Authorised Officer should make suitable inquiries to identify and locate the lock/locker/vault/any other receptacles to which it pertains. This exercise is important, as there is always a possibility that the key is that of a bank locker or a receptacle. Any delay in detecting, locating and searching such a locker or receptacle, etc., can adversely affect the purpose and process of search.

3.101 Where any key found pertains to a bank locker or any other locker or vault or a receptacle, not inside the premises being searched, the control room should be informed about the same immediately. All efforts should be made to get information about bank lockers, other locker, etc. soon after entry into the premises, in the course of initial statements of the persons concerned. As soon as any relevant information is received, all efforts should be made to obtain the keys of such lockers. These should be seized. This is so because a separate warrant of authorisation is needed for search of bank lockers, other lockers outside the premises, etc. It is, therefore, necessary that the control room is informed as early as possible about the existence of bank lockers, other lockers, etc. and keys thereof so that the appropriate authority can take a decision in the matter and prevent operation of the bank locker, other lockers, etc. in the mean time.

3.102 Each key seized should be separately tagged and marks of identification placed thereon together with the signatures of the person concerned and the witnesses.

3.103 Inventory of all keys found and seized in the course of search should be carefully prepared. This should contain details like, the place at which the key was found and its number and other details⁷⁵, if any appearing on the key. Where the bank locker or other receptacles to which the key found pertains has been identified, full particulars like, bank locker number, name of the bank and branch, particulars of receptacles and its location, etc., should be recorded. The name of the person in whose name the locker/receptacle stands should also be mentioned. In case it is not admitted that the key pertains to a bank locker, the number alone should be mentioned without any reference to any bank locker.⁷⁶

Lavish fittings, decoration item and furnishing, etc. found in the course of the search and their inventorisation

3.104 Where in the course of search, the Authorised Officer comes across

⁷⁵ This will facilitate identification of the key at later stages. Also see Board's Instruction No. 1576 -F.No.286/99/84-IT (Inv.II) dated 09.11.1984.(Annexure 64 in Appendix V)

⁷⁶ *ibid*

any lavish fittings, decoration items and furnishings etc., he should inspect them and make suitable preliminary inquiries to find out about their ownership, cost/value and the date and source of acquisition. If he has reasons to suspect that these represent expenses/investments incurred out of the undisclosed income of any person, he should prepare an inventory of all such items. The inventory should give details like, the description/name of the article, number or other details, if any appearing on the article and its value and the basis of valuation. Wherever considered necessary, he should get them valued by a valuer. He can seek the Control Room's assistance for identification and nomination of valuer. Wherever necessary, these fittings, furnishings, etc. should also be photographed.

Plants and machinery and other movable properties found in the course of the search and their inventorisation

3.105 Where costly plants and machinery or other movable properties are found in the course of search and there are reasons to suspect that these have either been under-valued or represent expenses/investments made out of undisclosed income of any person, suitable steps for their inventorisation and valuation should be taken. The other points made in this chapter regarding lavish fittings, furnishings, etc. will, so far as may be, also apply here.

Statutory Procedure for seizure of bullion, jewellery or other valuable articles or things

3.106 The procedure for seizure of bullion, jewellery or other valuable articles or things has been given in Rule 112 (10). The Authorised Officer should ensure strict compliance with the said rule. Some steps that the Authorised Officer should take in this regard, are briefly given below:

- (1) The bullion, jewellery and other valuable articles and things found and seized during the course of the search, should be carefully and securely placed in packages.
- (2) As already mentioned, detailed inventories of the bullion, jewellery, and other articles or things should be prepared.
- (3) The contents of each of the packages should be clearly and carefully recorded and suitable cross-references to the inventories of the seized assets, etc. given.
- (4) All the said packages should be serially numbered.
- (5) Each such package should bear an identification mark and the seal of the authorised officer or any other income tax authority, not below the rank of an Income Tax Officer. The occupant of the building, place, vessel, vehicle or aircraft, including the person

in-charge of such vessel, vehicle or aircraft searched or any other person in his behalf should also be permitted to place his seal on the packages.

- (6) Signatures of the Authorised Officer, witnesses to the search and the person(s) whose premises, vessel, vehicle, etc. is being searched or who is/are found to be in control of the same should also be obtained on each of the said packages and the list thereof.

3.107 A copy of the list prepared should be delivered to the person in whose case the search was conducted or the occupant of the premises, vessel, etc.⁷⁷ A copy of the same should also be forwarded to the Chief Commissioner or Commissioner and the officer who issued the warrant of authorisation.

Documents and other things attempted to be thrown out or destroyed or removed by the occupant of the premises

3.108 There can be a situation where before the commencement of the search or in the course of the search, an occupant of the premises throws out or attempts to throw out any books of accounts or documents or money, bullion, jewellery or any other valuable article or thing or key(s) to avoid its detection by the search team. The leader of the search team should take all precautions to foil any such attempt. The person(s) responsible for the incident should be asked to explain the reason for such a behavior and his/their statement(s) on oath recorded. Such persons can also be prosecuted for an offence under section 186 of the Indian Penal Code for obstructing a Government servant on duty. The things which were attempted to be thrown out or were actually thrown out and subsequently recovered by the search team, should form a part of a separate inventory.

3.109 Where a person runs away with any books of account or other documents or any other thing, the Authorised Officer should make all attempts to catch hold of such a person and bring him back, if necessary, by taking the assistance of other members of the search team or any police officer or officers of the Central Government. A complaint to the police should be lodged for recovery of the property and documents that he took away and for such other actions as may be considered necessary in accordance with the law.

3.110 Where any person is in possession of books of account or documents or money, bullion, jewellery or other valuable articles or things offers any resistance in handing over the same to the Authorised Officer, he can, if necessary seek the assistance of the available police

⁷⁷ It is generally given as an annexure to the *panchnama*.

officers or Central Government officers. Such an act also makes that person liable for prosecution under section 183 of the Indian Penal Code.

3.111 All such incidents should be reported to the Control Room. Wherever necessary, the Authorised Officer should seek, through the Control room, assistance or guidance of the concerned Additional/Joint Director of Income Tax (Investigation). The Authorised Officer should also prepare a detailed note on such incidents. This should be signed by the witnesses to the search, the Authorised Officer and wherever possible, the person(s) involved in the incident.

Deemed Seizure

3.112 The second proviso to sub-section (1) of section 132 of the Act provides for deemed seizure. This applies to a situation where-

- (i) a valuable article or thing is found as a result of search;
- (ii) the said valuable article or thing falls within the ambit of clause (c) of sub section (1) of section 132, that is, it represents either wholly or partly undisclosed income or property; and
- (iii) the said valuable article or thing is liable to be seized but it is not possible or practicable to get physical possession of the same and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature.

3.113 In such a case, The Authorised Officer has the power to serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with his previous permission. Such action of the Authorised Officer is deemed to be seizure of such valuable article or thing. With effect from 01.06.2003, stock-in-trade of business cannot be subjected to deemed seizure.⁷⁸ Contravention of an order under second proviso to section 132(1) entails prosecution under section 275A.

3.114 It is significant to mention that deemed seizure is different from restraint or prohibitory order under section 132 (3). The basis and the conditions governing the two are different. Also, a restraint order under section 132 (3) is not a seizure.

Restraint or prohibitory order under section 132(3)

3.115 The Authorised Officer has the power to issue an order under section 132 (3) where it is not practicable to seize any books of accounts, other documents, money, bullion, jewellery or other valuable article or thing found in the course of search. This power can be invoked for the reasons other than those mentioned in the second proviso to section

⁷⁸ See Finance Act, 2003

132(1). This is not deemed to be a seizure. Contravention of an order under section 132(3) entails prosecution under section 275A.

3.116 An order under section 132(3) can be issued only in respect of such books of accounts, other documents, money bullion, jewellery or other valuable articles or things as fall within the ambit of section 132(1). It, therefore, follows that an asset, which does not represent any undisclosed income or property of a person, can neither be seized nor subjected to an order under section 132(3).

3.117 With effect from 01.06.2002, an order issued under section 132(3) by an Authorised Officer will remain in force for a maximum period of sixty days from the date of issue. The Board has issued instruction to the effect that search and seizure work should be completed as early as possible and restraint order under section 132(3) should be lifted within one month from the date of passing such order(s).⁷⁹

3.118 Some situations in which an order under section 132(3) can be issued are as under:

- (1) Where a warrant of authorisation for search of a bank locker has been obtained following its detection during a search, but it is not possible to search the locker immediately. In such a situation, an order under section 132(3) should be issued and served on the Bank Manager and the hirer of the bank locker and the locker itself should be sealed. The Board have issued administrative instructions that search of such a locker should be completed within seven days⁸⁰.
- (2) Where a search remained inconclusive on the day of its initiation and its further continuation is required to be postponed for a subsequent day on account of some valid reason.
- (3) Where verification and valuation of stock could not be completed and is required to be postponed for a subsequent day on account of some valid reason.
- (4) Where it is not practicable to seize any books of account or other documents or assets because some special arrangements are required to be made for carrying or storing it.
- (5) Where any Fixed Deposit Receipt or a Term deposit Receipt or any other valuable article or a thing of a similar nature is found and seized, it is also advisable to issue an order under section

79 See Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002 (Annexure 76 in Appendix-V).

80 See Board's Instruction No. 1576 dated 09.11.1984. (Annexure 64 in Appendix-V)

132 (3) and serve the same on the assessee/person in whose possession and control, the FDRs were found and the Manager of the branch of the bank, or as the case may be the body or the person that issued the FDR or receipt of a similar nature to guard against any possibility of the issuance of duplicate receipts. While doing so, the point made at S.No. (6) below may also be kept in view. However, since with effect from 01.06.2002, an order issued under section 132(3) by an Authorised Officer remains in force for a maximum period of sixty days from the date of issue, it is advisable that if the retention continues after the expiry of the said period, the Manager/person-in-charge of the Bank or the body or institution that issued the FDR, Term Deposit Receipt, etc. is informed that the retention of the seized FDR is continuing in accordance with the law.

- (6) The question whether an order under section 132(3) can be served on a bank prohibiting it from removing, parting with or otherwise dealing with the money in an account standing in the name of an assessee, whose premises has been searched, has been considered in the Board's Instruction No. 1108 dated 06.10.1977. As stated in this letter, the Authorised Officer should, wherever an order under section 132(3) is warranted, serve the order on the bank concerned, and endorse a copy to the assessee. He should simultaneously also serve an order under section 132(3) on the assessee, endorsing a copy to the bank. Such a course will preclude avoidable controversies about "ownership", "control", etc. of the assets, which are sought to be covered by the prohibitory order. Wherever the facts of the case justify, the powers available under section 281B may also be resorted to, without prejudice to the action taken under section 132(3).⁸¹

Statement under section 132 (4)

3.119 Section 132 (4) empowers the Authorised Officer to examine on oath, during the course of search and seizure operation, any person who is found to be in possession or control of any books of account, other documents, money, bullion, jewellery or other valuable article or thing. Such examination may not be limited to the contents of the books of account, or other documents or the nature of assets found during the search. It can extend to all matters relevant to any investigation connected with any proceeding under the Act. Any statement made by such person during such examination may also be used in evidence in any proceeding under the Act.

81 See Board's Instruction No. 1108 dated 06.10.1977 (Annexure 62 in Appendix V)

3.120 The Authorised Officer has the power to record statements both under section 131(1A) and under section 132(4). While the Authorised Officer can record a statement under section 131(1A) before he takes action under clauses (i) to (v) of sub-section (1) of section 132, he can record a statement under section 132(4) only during the course of the search. Secondly, under section 132(4), the Authorised Officer can examine a person and record his statement only if he (the person) is found to be in possession or control of any books of account, other documents, money, bullion, jewellery or other valuable article or thing.

3.121 One of the purposes of on-the-spot examination on oath is to elicit truth before a person whose statement is sought to be recorded, has an opportunity to concoct an explanation or fabricate evidence. The statement also gives the person searched an opportunity to offer his or her explanation on the books of account, documents, evidence and assets found as a result of the search. It is, therefore, necessary that statements under section 132(4) of all the persons referred to therein are recorded in the course of search. Also, as stated in the Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002⁸², statements under section 132(4) should be carefully recorded to collect and marshal the facts and evidence because it is the earliest opportunity to do so.

3.122 Statement under section 132 (4) is a statement on oath. It is not only for fact finding but also for further investigation to find out the undisclosed income, investments, etc. of the person making the statement or any person connected with him. Only an Authorised Officer is competent to record a statement under section 132(4). Before recording a statement, the Authorised Officer should administer an oath to the person making the statement or bind him by an affirmation. It is upto the person whether he binds himself by an oath or affirmation to state the truth. Refusal to do so invites punishment under section 178 of the Indian Penal Code⁸³. Such a refusal may also enable the department to draw an adverse inference against the person. Refusal to take an oath should be separately recorded in a note and signatures of the witnesses and the Authorised Officer obtained on the same.

3.123 Recording of a statement without administering an oath may not get the approval of Courts in prosecution proceedings. In case the person to be examined is below twelve years of age and the Authorised Officer is of the opinion that though such person understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, there is no necessity to administer an oath to him or her. In any such case the absence of an oath or affirmation does not render

82 See Annexure 76 in Appendix V.

83 See Annexure 105 in Appendix VI.

inadmissible any evidence given by such person nor affect his obligation to state the truth⁸⁴. The Authorised Officer, should before recording the statement, also warn the person that he is bound to state the truth and the consequences of making a false statement.

3.124 The statement should start with the particulars for uniquely identifying the person making the statement. These would include information like, his/her name, his/her father's name, age, nationality and local and permanent addresses. Tax related information like, whether the person is assessed to tax and if so, his Permanent Account Number and the assessment unit/Range and the charge where he is assessed to tax should also be ascertained and recorded. It may also be useful to obtain and record information about his relationship with the person in whose case the search is being conducted.

3.125 While there can be no specific and comprehensive guidelines for the types of questions that may asked while recording a statement under section 132(4), specific queries pertaining to the following areas could be useful:

- (1) Questions on the points mentioned at S.No. (1) to (5) of paragraph (3.38) above [which deals with recording of initial statement under section 131(1A)] may be asked, if not already raised and answered while recording initial statement.
- (2) In case there is any significant mismatch or variation between the initial statement of a person and the information or evidence, etc. gathered as a result of the search, the person should be confronted with the same and his response recorded.
- (3) Where any money or bullion or jewellery or ornaments or any other valuable article or thing is found as a result of the search, specific and pointed queries should be made from the person making the statement on matters like, its ownership, date and manner of acquisition, amount of investment and the nature of possession and the source of acquisition. He may also be specifically asked whether he/she has any evidence to substantiate his/her claim.
- (4) In suitable cases, the person making the statement may also be asked to explain the nature of the documents and books of account, including those maintained in the form of electronic record referred to in section 132(1)(iib) and other digital evidence, found as a result of the search and the entries made therein. Specific and pointed queries may be made if it is found that any

84 See the proviso to section 4 of the Oaths Act, 1969 reproduced in Annexure 107 in Appendix VI.

such books of account or other documents point to any undisclosed income or unexplained transaction of any person. Wherever necessary, the relevant books of account or documents may be shown to the person while recording his statement and pointed queries raised. Documents shown to the person at the time of recording of his statement should be properly identified and the fact mentioned in the statement.

- (5) Where foreign currency, traveller's cheques, etc in foreign currency or counterfeit Indian currency are found, mode and nature of their possession and source of acquisition should be enquired into.
- (6) In suitable cases, specific queries on the stock-in-trade found as a result of the search, its quantity, value and entries relating thereto recorded in the books of account should be made. Where the quantity of stock found as a result of the search or its value does not match with the entries in the books of account or other relevant documents, the person making the statement should be confronted with the same and pointed queries in this regard made.
- (7) During the course of search, following situations may be encountered:
 - (i) the information or evidence gathered as a result of search, points to any undisclosed income or asset or transaction of a person, other than the person in whose case the search is being conducted, or
 - (ii) any claim to this effect is made by such person, or
 - (iii) the person making the statement refers to any transaction with, or any thing said to have been done or stated or written by, any other person.

In such a situation, specific and pointed queries should be made to elicit all the relevant information for establishing the identity, and address of such other person; and details of the transactions, etc. This information should be passed on to the Control Room as early as possible. On receipt of any such information, the officer-in-charge of the Control Room should pass on the same to the Joint/Additional Director (Investigation) who should, decide about further action, if any required to be taken (e.g. examination of such other person before he could be contacted by the first person).

3.126 Some points that should be kept in view while recording a person's statement are as under:

- (1) Examination under section 132(4) should be made only by the Authorised Officer. The statement should, as far as possible, be in question-answer form. Care should be taken to write down the questions and answers legibly on a paper of a reasonably good quality and thickness.
- (2) The persons whose statements are to be recorded should not be allowed to brief one another or to compare notes.
- (3) Where a person declines to answer any question on the ground of ill health, nervousness, or shock or fatigue or mental tension, he should be given some time to take rest before resuming questioning. If need be, a medical practitioner may be called for examination. All certificates issued by the medical practitioner should be made parts of the *panchnama*.
- (4) As far as possible the statement of a person should be taken and recorded in the language that he understands and the exact words used by him should be recorded.
- (5) Queries should be raised in a clear, specific and unambiguous manner so that there is absolutely no room for doubt. This would also eliminate the possibility of the person successfully claiming in any post-search proceedings, including appeals against the assessment that he did not understand the question properly.
- (6) No police officer should be allowed to remain in the room where any person is being examined under section 132(4). This is to ensure that the person making the statement does not subsequently take a plea that his statement was recorded under coercion or pressure or any undue influence.
- (7) The Authorised Officer should not ask the person making the statement to disclose or surrender any undisclosed or unreported income or exert any pressure or influence on him to do so. He should not make any attempt to obtain confession as to the undisclosed income. The Board views this adversely.⁸⁵ However, if the person making the statement voluntarily discloses any undisclosed income, financial transactions, etc., the Authorised Officer should ask him to give all the relevant details, including the manner in which such income was derived and the year to which it pertains. He should also make suitable efforts to gather supporting evidence in this regard. Any confession made by a person, which is not based upon any credible evidence, will not

⁸⁵ See Board's letter F.No. 286/2/2003-IT(Inv.II) dated 10.03.2003.(Annexure 77 in Appendix-V)

serve any useful purpose if that person subsequently retracts it. The focus and concentration of the search team should be on collection of evidence regarding undisclosed and disclosed income and transactions.⁸⁶ It has been, *inter alia*, stated in the Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002⁸⁷ that disclosure of undisclosed income in statement under section 132(4) without proper evidence in support thereof shall be adversely viewed. The Board also desired in the said letter that in telex report, details of evidence in support of disclosure, if any under section 132(4) should be clearly spelled out.

- (8) Refusal to answer a question constitutes an offence punishable under section 179 of the IPC. If a person refuses to answer a question, he may be informed about its consequences. If he still does not answer, the fact should be clearly recorded in the statement.

3.127 Each page of the statement should be signed at the bottom by the deponent, authorised officer and the witnesses. If the deponent is illiterate his left hand thumb impression should be obtained. In certain situations it may be advisable to obtain the left hand thumb impression of a literate person also⁸⁸, in addition to his signature. In obtaining thumb impression, care should be taken to use good quality stamp pad and to apply ink evenly so that the impression is clear and shows the ridges prominently and there is no difficulty in reading the impression by a finger print expert. The last page of the statement should contain an endorsement that the deponent has read and understood the statement and that the statement was given with out any coercion or undue influence. The name of the person whose thumb impression has been obtained should be legibly written just below the impression. The statement should be read out to the deponent. If the statement has been recorded in a language, which he does not understand or where the person making the statement is illiterate, it should be read over and explained to him in the language he understands. A certificate to this effect should also be recorded.

3.128 Where a person after giving the statement refuses to sign it, the Authorised Officer should record this fact in the statement and obtain the signatures of the witnesses. Refusal to sign the statement is an offence punishable under section 180 of the IPC.

86 See Board's letter F.No. 286/2/2003-IT(Inv.II) dated 10.03.2003.(Annexure 77 in Appendix-V)

87 See Annexure 76 in Appendix-V.

88 For example, a person with injured hands or a semi literate person whose two signatures, obtained at two different points of time are likely to vary or where it is suspected that the deponent, though literate is deliberately trying to put signature, which is different from his usual signature.

3.129 Copy of the statement should not be given to the deponent on the spot. In case any such person makes a request for providing him a copy of the statement subsequently, a decision may be taken in accordance with the Board's letter F.No. 286/57/2002-IT(Inv. II) dated the 3rd July, 2002⁸⁹, which *inter alia* provides that copies of statement(s) should be allowed within fifteen days from the date of receipt of application in this regard.

Search of bank lockers, other lockers/vaults, etc. outside the premises

3.130 In a case where advance information is available about a bank locker, other locker, etc. of a person and the authority competent to authorise search is satisfied that the statutory conditions laid down in section 132(1) justifying its search are fulfilled, he will issue a warrant of authorisation. The locker can then be searched in pursuance of such warrant of authorisation.

3.131 There can, however, be cases where there is no advance information about the existence of any bank locker and a search is in the process of being conducted on certain premises. In such a situation, the Authorised Officer should ascertain whether the person concerned has hired any bank locker, other locker/vault, etc. In the initial statement of such persons, specific and pointed queries regarding hiring of bank lockers, other lockers, etc. should be made. If he gives information about his bank lockers or the existence of a bank locker is detected by any other means, keys thereof should be obtained. The information collected should be communicated immediately to the control room. A separate warrant of authorisation is needed for searching a bank locker or other locker, etc. If more than one locker is detected, separate warrant of authorisation will be needed for each of them. Till such time as warrants of authorisation for lockers are issued, the control room in-charge should take requisite steps to prevent their operation and removal of assets or documents kept therein.

3.132 Wherever necessary, a member of the search team or any other officer of the Department may visit the bank, where the person in whose case the search is being conducted or his family members have, or are suspected to have hired lockers, vaults, etc.. He should request the Manager/person-in-charge of the lockers, vaults, etc. to produce the locker/vault register. He should go through the said register/ ledger to ascertain whether there are lockers in the names of the person in whose case search is being conducted or any of his family members or whether there is any locker hired by them in any other name. This could be done by checking the addresses shown in the register/ledger with the person's address as well as by checking the lockers in the names of members of

89 See Annexure 76 in Appendix-V.

family, partners, employees, servants and associates. If the bank manager declines to give the register, his statement should be recorded wherein he should be asked to give complete details of all the records in respect of the persons identified by the Authorised Officer.

3.133 If following the warrant of authorisation for searching a bank locker, it is not possible to search the same immediately, an order under section 132(3) should be issued and served on the Bank Manager and the person(s) in whose name it has been hired.

3.134 The search team should ascertain the last date on which the locker was operated as also the details of locker rent paid and FDRs, etc., kept by the person with the bank.

3.135 Where keys of locker, vault, etc. are not available, arrangement may be made with the company supplying the vault for breaking open the locker. This should be done in accordance with the law. The points made in this chapter regarding breaking open of locks of any door, box, locker, safe, almirah or other receptacle inside the premises, will, so far as may be, apply here.

3.136 While intimation for searching a locker should be given to the person in whose name the locker stands, his presence is not mandatory and the search can take place in the presence of the bank manager and two independent witnesses.

3.137 Inventories of the contents of locker should be prepared in the same manner as in the case of search of any other premises. The decision with regard to seizure of its contents will be governed by the same considerations as in the search of any other premises.

Signatures on the various inventories, lists, statements etc., prepared in the course of the search

3.138 All the inventories and lists referred to in the preceding paragraphs should be prepared in triplicate. All the copies of inventories, lists, etc. should be signed by the following:

- (1) Authorised Officer
- (2) The person in whose case the search was conducted
- (3) The person in-charge, or in control, of the building, place, vessel, vehicle or aircraft searched, where such person is different from the one referred to at S.No. (2) above. However, where the person referred to at S.No. (2) above is not available at the premises, signatures of the person referred to at S.No. (3) will be sufficient.
- (4) Witnesses to the search

3.139 One copy of the inventory and the list should be provided to the

person referred to at (2) above, or where he is not present in the premises searched, to the person referred to at S.No. (3) above. These are generally given to the aforesaid persons, along with the *panchnama*. This should be done on the conclusion or as the case may be, temporary conclusion of the search.

3.140 All statements recorded in the course of the search should be prepared in triplicate and signed by the following:

- (1) Authorised Officer who recorded the statement
- (2) The person who made the statement
- (3) Witnesses to the search

3.141 Copy of the statement should not be given to the deponent during the search or at its conclusion. The procedure explained in paragraph (3.129) may be followed.

Temporary conclusion of search for continuation on a subsequent date

3.142 As far as possible search of premises, once started should continue till it is concluded. However, where because of any unavoidable and compelling reason, it is not possible to do so and it is considered necessary, in consultation with the Control Room, to temporarily conclude the search for the day and continue the same on a subsequent day, the Authorised Officer should take the following steps:

- (1) The premises should be properly sealed in the presence of at least two witnesses and placed under armed police guards along with some responsible persons of the Income Tax Department. In a case where only a part of the premises could not be searched, the decision whether to seal the entire premises or only that portion which is yet to be searched should be taken after a careful consideration of all the relevant factors, if possible in consultation with the Control Room. As far as possible only that portion of the premises should be sealed, which is yet to be searched so that minimum inconvenience is caused to its occupants.
- (2) The Authorised Officer should issue an order under section 132(3) and serve the same on the person-in-charge of the premises or, as the case may be, of that part of the premises which has been sealed. Where the premises sealed are one where search could not commence because it was found to be locked, without any occupant, the procedure explained at paragraphs (3.12) and (3.13) above may be followed.
- (3) A *panchnama* should be prepared even if the search is temporarily concluded. This should clearly indicate that the search was

temporarily concluded and not finally concluded. If search has been concluded in respect of a part of the premises, this fact should also be clearly recorded in the *panchnama*.

- (4) It is not necessary that seizure of books of account, documents, bullion, other valuable articles or things, etc. should be made only on conclusion of the search. Seizure can also be made even if the search has been suspended and is to continue on a subsequent day. Where search of a part of the premises has been concluded, inventories of the books of account, documents, bullion, jewellery, other valuable articles or things, etc. found as a result of the search and seizures made should be prepared in the usual manner.
- (5) On the subsequent day when the search is to be resumed, the seals should be opened in the presence of witnesses. As far as possible the same persons who witnessed the search on the day it was suspended should be called upon to witness its continuation. However, if they are not available, the authorised officer should select two or more other respectable inhabitants of the locality in which the building or place to be searched is situate to attend and witness the search. The Authorised Officer should issue an order in writing to the persons selected to attend and witness continuation of the search, even if they are the same persons who witnessed the search on the day it was suspended.
- (6) Where on continuation of the search earlier suspended, any seal is found to be broken or tampered with, the matter should be immediately reported to the Control Room. A complaint to the police should also be lodged immediately. Contravention of an order under section 132(3) also entails prosecution under section 275 A.
- (7) The search may resume after the aforesaid actions have been taken.

Preparation of Panchnama

3.143 At the end of the search or when it is temporarily concluded, a *panchnama* is required to be prepared. The Investigation unit organising the search provides the form of such *panchnama*⁹⁰ to search teams. This is a document of considerable evidentiary value and should be prepared with due care and caution. When the search is resumed on a subsequent day, the *panchnama* prepared on the subsequent day should refer to the immediately preceding *panchnama* and also to the fact that all the seals

90 The form of *panchnama* appears at Annexure 36 in Appendix III.

were inspected by the Authorised Officer, the person in-charge of the premises and the witnesses and that they were found intact.

3.144 The *panchnama* should mention all significant events in the search in the same sequence in which they occurred. It also gives various details like, the name(s) of the person(s) in respect of whom the warrant of authorisation was issued; names and designations of the Authorised Officers and other officials who assisted the Authorised Officers; names and addresses of the witnesses to the search, date(s) and time of the commencement and conclusion/temporary conclusion of the search; references to the orders under section 132(3) and the second proviso to section 132(1) issued and served on the persons concerned; names of the persons who were examined on oath or solemn affirmation; list of the books of account, other documents, money, bullion, jewellery and other valuable articles or things found but not seized and those found and seized. A specimen of the official brass seal used should also be put on the *panchnama*. Even where nothing is found or seized in the course of a search, a *panchnama* should be prepared in the usual manner.

3.145 The following should also be appended to the *panchnama* and made a part thereof⁹¹ :

- (1) List/Inventory of all books of account and documents found and seized
- (2) List/Inventory of all books of account and documents found but not seized (A mention should be made of the marks of identification made)
- (3) Lists/Inventories of bullion, jewellery, ornaments and gold and silver articles, etc. found and seized
- (4) Lists/Inventories of bullion, jewellery, ornaments and gold and silver articles, etc. found but not seized
- (5) Lists/Inventories of other valuable articles or things found and seized
- (6) Lists/Inventories of other valuable articles or things found but not seized

91 While the *panchnama* contains a list of persons who were examined on oath, copies of their statements recorded under section 131(1A) or section 132(4) should not be appended to the *panchnama*. As explained earlier, no copy of the statement should be given to the deponent or the person in whose case the search was conducted at any time during or on conclusion of the search. In case any such person makes a request for providing him a copy of the statement, he may be informed that a copy will be provided to him if and when any part of the statement is proposed to be used against him in any proceedings.

- (7) Lists/Inventories of cash found, with break-up of cash seized and cash not seized
- (8) Lists/inventories of counterfeit Indian currency found and further action taken in respect of the same
- (9) Lists/inventories of computers, hard disk, CDs, floppies, pen drives, etc. found as a result of search and seized
- (10) Lists/inventories of computers, hard disk, CDs, floppies, pen drives, etc. found as a result of search but not seized
- (11) List/inventory of rubber and other seals found (in the form of their impressions taken in a bank sheet of paper), indicating the seal(s) that were seized and those not seized
- (12) List of key(s) found, indicating the key(s) that were seized and those not seized
- (13) Lists of persons who were examined under sections 131(1A) and 132(4)
- (14) List of orders under section 132(3) and the second proviso to section 132(1) issued, clearly indicating the date of issuance of the order, the person on whom the order was served and the date and time of service
- (15) In case, personal search was taken of any person under section 132(1)(ii)(a), (i) inventory or the list of all the things found but not seized; and (ii) inventory or the list of all the things found and taken possession of
- (16) Notes, if any recorded on all important events/facts referred to in the *panchnama*.

Signatures on the *panchnama* prepared in the course of the search

3.146 *Panchnama* should be prepared in triplicate. It should be signed by the following:

- (1) Authorised Officer
- (2) The person in whose case the search was conducted
- (3) The person in-charge, or in control, of the building, place, vessel, vehicle or aircraft searched, where such person is different from the one referred to at S.No.(2) above. However, where the person referred to at S.No. (2) above is not available at the premises, signatures of the person referred to at S.No. (3) will be sufficient.
- (4) Witnesses to the search

3.147 One copy of the *panchnama* (along with its annexures referred to at paragraph (3.145) above) should be provided to the person referred to at (2) above, or where he is not present in the premises searched, to the person referred to at S.No. (3) above. This should be done on the conclusion or as the case may be, temporary conclusion of the search.

Conclusion of search

3.148 Some main steps that should be taken before concluding the search or temporarily concluding the same for being carried on a subsequent day are, in brief, as under:

- (1) A copy of the *panchnama* along with all its annexures should be provided to the person in whose case the search was conducted or, as the case may be, the person in-charge of the building, place, vessel, vehicle or aircraft searched, where such person is different from the former and acknowledgement for the same obtained on the original copy of the *panchnama*.
- (2) In case, personal search of any person has been taken under section 132(1)(ii)(a) of the Act, a copy of the inventory or the list of all the things taken possession of, should be given to such person and acknowledgement thereof obtained on the original copy of the inventory/list. A copy of this list is also required to be forwarded to the concerned Chief Commissioner of Income Tax or the Commissioner of Income Tax or where the authorisation is issued by any officer other than the Chief Commissioner or Commissioner, also to that officer⁹².
- (3) The members of the search team should offer themselves for search by the person whose premises, is being searched or, as the case may be, the person in-charge of or in occupation of premises. This should be done in the presence of the witnesses. Search of lady members of the search team should be allowed to be made only by a lady present in, or occupying, the premises with a strict regard to decency. The fact that personal search of the members of the search team was offered both before the commencement of the search and on its temporary conclusion or, as the case may be, conclusion should be recorded in the *panchnama*, along with the fact whether such personal search was taken or declined.
- (4) The leader of the search team should ensure that none of the things brought by the team and required to be taken back by it, like kit bags, stationery, forms, brass seal and mobile phones is left behind.

92 See Rule 112(9).

- (5) No search should be suspended or concluded without getting a clearance for doing so from the Control Room. The officer manning the control room should obtain instructions in the matter from the concerned Additional/Joint Director and communicate the same to the search team.

Transport and safe custody of the seized materials

3.149 The seized books of account, other documents and valuables should, as far as possible, be transported to the control room for being handed over to the Custodian, under police protection. Some members of the search team, including an Authorised Officer must accompany the seized books of accounts, other documents and assets, which are being transported.

Handing over of the seized books of account, etc. and seized money to the custodian

3.150 The Authorised Officer, nominated as the leader of the search team, should hand over the books of account, other documents and the sealed package(s) containing the bullion, jewellery and other valuable articles or things, seized as a result of the search to the custodian. Any money seized in the course of the search should also be deposited with him. All the copies of the *panchnama* (other than the copy handed over to the person in whose the case the search was conducted/the person in-charge or control of the premises searched), along with all its annexures should also be handed over to him. All other documents, not appended to the *panchnama*, like statements recorded under sections 131(1A) and 132(4) should also be handed over to the custodian. Search report referred to at paragraph (3.150) should also be handed over to the Custodian. As provided in rule 112(11), the custodian can be an income-tax authority, not below the rank of the Income-tax Officer. A Deputy or Assistant Director of Income Tax (Investigation) should ordinarily perform these functions. He should be present in the control room to coordinate search operations and receive seized material, *panchnamas*, search report, etc., from Authorised Officer(s). He should ensure that sufficient number of other officials is available in the control room to assist him in the performance of this function.

Steps required to be taken by the custodian for the safe custody of seized books of account and other documents and packages containing bullion, jewellery and other valuable articles or things

3.151 The custodian should take suitable steps for the safe custody of the books of account, other documents, including computer, hard disk, digital devices, storage media, etc. and the packages containing bullion,

jewellery and other valuable articles or things conveyed to him by the Authorised Officer.⁹³

Submission of report by the search team

3.152 The leader of the search team should submit a report⁹⁴, addressed to the Additional/Joint Director of Income Tax (Investigation) in-charge of the search. The report should mention all salient features of the search and seizure operation, including, the problems, if any, faced by the search team; extent of damage, if any, caused to the premises searched and the reasons thereof; demeanour of the occupants of the premises; any untoward incident which took place during the search; details of significant information given to the control room; intimation, if any given to other Government agencies; any significant feature of the seized books of account, other documents, digital evidence, etc found as a result of the search; highlights of statements recorded under section 132(4) and 131(1A) of the Act; and any other relevant information that the leader of the search team wishes to make. All such notes recorded in the course of search, as have not been annexed to the panchnama or made a part thereof, should also be attached to the search report.

93 A detailed discussion on the steps required to be taken by the custodian in this regard appears in Chapter VI relating to post search work.

94 Form of report appears at Annexure 42 in Appendix III.

CHAPTER - IV

AIR INTELLIGENCE UNITS

Origin and expansion of the Air Intelligence Units

4.1 Air Intelligence units function within the Directorates of Income Tax (Investigation). The presence of its members at airports facilitates quick capturing and processing of economic information generated in and around such airports. Initially, an Air Intelligence Unit (AIU) was set up at the Chennai Airport in the early 1990s. Subsequently, AIUs were set up in Mumbai, Delhi, Kolkata, Hyderabad and Bangalore airports.

4.2 While the information gathered and processed by an AIU can provide useful inputs for a variety of tax enforcement activities, like search, survey and other tax investigations, the focus of this chapter is on gathering and processing of information by the unit for identifying potential cases for search.

Coordination with Other Agencies

4.3 The AIU should have close co-ordination with other enforcement and investigation agencies like, the Customs, Central Industrial Security Forces (CISF) manning airport security, Enforcement Directorate, Directorate of Revenue Intelligence, Airport administration and the police. It will not only help in getting useful information with respect to domestic passengers but also in respect of international travellers.

Inquiries by the AIU

4.4 The AIU may have information in respect of a passenger or a person in the airport by way of a secret tip, information by informer or from inquiries made by other authorities like, the security personnel detailed for checking baggage or personal check of passengers, customs officials and other Air Intelligence Units. In case there is information about any passenger carrying books of account and other documents (including digital devices) containing information about undisclosed income or wealth, undisclosed money, bullion, jewellery or other valuable article or things, preliminary inquiries should be made to ascertain whether any further action is required. The person may be examined on oath under section 131(1A) to gather information like, his name, identity, local address, permanent address, address at the destination city, Permanent Account Number, whether he is assessed to income-tax and if so, the assessment unit where he is assessed to income-tax, nature of his business/profession/occupation, nature of the books of account and other documents in his possession, nature of possession and the source of acquisition of the money, bullion, jewellery or other valuable article

or thing that he is carrying and the purpose for which these are being carried. In case the person says that he is carrying such things for being delivered to any other person, the name, address and telephone number of such other person should also be obtained. If the time available for make inquiries from a departing passenger is short and it is not possible to make further inquiries or take further appropriate action in the matter and the person is travelling within the country, he may be allowed to travel. Information about him and his travel details may also be obtained from the airlines. In suitable cases, the ADIT/DDIT (Investigation) should take suitable steps for making further inquiries. Where necessary, he may also seek the assistance of other income-tax authorities. It is on the basis of these inquiries and gathering of information from the relevant sources that suitable strategy/action required to be taken (like search, survey or open inquiry) can be identified.

Inquiries and identification of strategies/action

4.5 The outcome of the inquiries and the information gathered should be promptly reported to the Joint/Additional Director of Income Tax (Investigation) and his directions sought. If the inquiries made and the information gathered show the existence of one or more of the conditions referred to in clauses (a), (b) and (c) of sub-section (1) of section 132, the ADIT/DDIT (Investigation) may initiate a 'satisfaction note'. This should be put up to the DIT (Investigation) through the Joint/Additional DIT (Investigation). The law and procedure for recording satisfaction note, issuance of warrant of authorisation under section 132, obtaining prior administrative approval of the DGIT (Investigation) and the conduct of search in such cases are the same as in a search in any other case.

Execution of the warrant of authorisation

4.6 Where the competent authority issues a warrant of authorisation under section 132, the same should be executed in accordance with the law. If it is decided to take any other action, like survey, further open inquiries, etc., the same should be done.

Information to AIU/Investigation unit at destination airport

4.7 Where because of the time constraint or other constraints, the Investigation unit is unable to, (i) identify the action required to be taken or (ii) obtain and execute a warrant of authorisation in a situation where the competent authority has taken a decision to do so, before the flight takes off, the information and evidence gathered may be passed on to the AIU of the destination airport or if there is no AIU at the destination airport, to the Joint/Additional DIT (Investigation) or the DIT (Investigation) of that area. As identification of the passenger may be required at the destination airport, passenger's name and seat number,

along with the names of persons travelling with him, if any, should be communicated to the destination AIU. Where the flight has a stop over, the information gathered may also be passed on to the AIU/concerned Investigation unit of that airport as a precautionary measure.

4.8 At times, alerted by the inquiries at the departure point, the passenger may try to shift his baggage containing valuables to another fellow traveller or destroy or tamper with any evidence. In case it is apprehended that any person might destroy, tamper with or remove from his possession any books of account, other documents, money, bullion, jewellery or other valuable article or thing, the appropriate authorities at the airport may be requested to remove the same from his immediate control. In case it is felt that identification of the person might be a problem at the destination airport, the crewmembers may be requested to identify him and help in his identification at the destination airport. Even sending his photograph through mobile phone, appropriate digital/communication technology/internet, crewmembers, etc. may be considered.

4.9 Information, if any gathered, analysed and processed, evidence collected and verifications made after the departure of the flight should be communicated to the AIU of the destination airport/Directorate of Income Tax (Investigation) operating in that area so as to enable the officers there to take further appropriate action in accordance with the law. Speed will be of essence in such cases.

Action at the destination airport

4.10 Where any reliable information useful for or relevant to direct taxes enforcement/investigations is received from any source (including from another AIU) against a passenger alighting from a flight, he should be identified and intercepted. If the income-tax officials at the destination airport are unable to identify him directly, boarding cards and inquiries from crewmembers might help in his identification. The information and evidence, if any provided by the AIU that made the initial inquiries, may be supplemented by making further inquiries and investigations. A search can, however, be conducted only if the authority competent to authorise search is satisfied that the relevant statutory conditions are fulfilled and the case is fit for taking action under section 132.

Inspection of cargo

4.11 The undisclosed books of account, other documents, money, bullion, jewellery or other valuable article or thing may also be sent through unaccompanied cargo. Consignors can send valuables from one destination to another through the airlines, who carry and deliver the same as couriers. There are also various courier agencies, which handle parcels, both domestic and international, using their own aircraft. It

would be necessary therefore for the AIU to monitor the cargo traffic also in liaison with the appropriate authorities like, the customs authorities.

Action at international terminals

4.12 The action required at international departure terminals should be very quick and efficient, especially if the inquiries pertain to a person who is leaving India, as it may not be possible to make further inquiries or initiate any action against him at the destination airport. As soon as the baggage containing books of account, other documents (including digital devices/evidence) believed to be containing information about direct taxes evasion or other direct taxes violations or undisclosed money, valuables, etc. have been identified, suitable inquiries and follow-up action should be taken promptly.

CHAPTER - V

DIGITAL EVIDENCE

Basic concepts

5.1 'Digital evidence' means information of probative value stored or transmitted in digital form⁹⁵. Some examples of digital evidence are, word processing documents, files saved from accounting programs, spreadsheets, databases, the contents of computer memory, computer backups, computer printouts, e-mails, digital photographs, ATM transaction logs, instant message histories, Internet browser histories and digital video or audio files.

5.2 The definition of "electronic record" is given in section 2(1)(t) of Information Technology Act 2000 is as follows:

"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

5.3 The Income Tax Act, 1961 also takes cognisance of such evidence. For example, printouts of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device is included in the definition of 'books or books of account'.⁹⁶ The definition of 'document' under the Act includes an electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000.⁹⁷ The Act empowers the Authorised Officer to require any person who in the course of search is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause section 2(1)(t) of the Information Technology Act, 2000, to afford him the necessary facilities to inspect such books of account or other documents.

General information regarding digital devices

5.4 Computer is the principal digital device. There are, however, a number of other audio, video, communications, and photographic devices, which can also be described as digital devices. Some digital devices that an authorised officer may come across in the course of search are:

- (i) Computers, either stand-alone or networked;
- (ii) Laptops and notebooks, which are mobile computers;

95 The word digital is most commonly used in computing and electronics, especially where information is converted to binary numeric form.

96 See section 2(12A) of the Act.

97 See section 2(22AA) of the Act.

- (iii) Palmtops, which are extremely small but powerful devices with considerable memory capacity and communication facilities;
- (iv) Data storage devices like, floppies, CDs, DVDs, pen drives; and
- (v) Electronic diaries and cell phones, etc.

5.5 These devices may vary in looks and appearance and may be of different sizes and shapes. Unless the search teams are suitably briefed as to their looks and appearances, the different storage media like the memory cards, USB drives etc. may go undetected. Also, many of the storage devices are very small- some even smaller than a matchbox. These can be concealed or thrown out easily, without being detected. It is absolutely necessary that the premises is searched thoroughly and wherever necessary personal search referred to in section 132(1)(ia) is also carried out to unearth all such devices.

5.6 While the stand-alone desktop computers are easy to identify, it requires some inspection to find out whether they are networked. The networking may be through cable links that are visible or through satellite, microwave, terrestrial line or other communication media that can be detected through examination of the Operating System (OS) that is used. For example, when Microsoft Windows is used as the OS, the menu item 'My net work places' in the Control Panel will reveal this information.

5.7 As the digital technology is changing fast, there can be no comprehensive and precise guidelines of a lasting nature even for initial handling of digital devices. The search team should in such situations as far as possible act on the advice of the technical personnel detailed for the job. If during a search, the Authorised Officer comes across computers or any other digital devices, he should immediately contact the Control Room and requisition the services of a technical person to assist him in handling the devices, recovering the data stored therein and other related jobs. Digital evidence is fragile and can be altered, damaged, or destroyed by improper handling. As far as possible, the Authorised Officer or any member of the search team who is not fully conversant with computers and digital devices, should not attempt to handle the systems on his own or with the sole assistance of the person in occupation or control of the premises or any of his associates, employee or agent, as mishandling of the system can corrupt or destroy the data. Also, there is always the risk of an unscrupulous affected person or his employee or associate deliberately corrupting or manipulating the data, if he gets a chance to do so. The authorised officer should take further appropriate action only on the advice or instructions received through the Control Room. However, some points, which may be useful in handling such devices, are briefly given in this chapter to help the Authorised Officer in using the services of a technical expert.

5.8 As far as possible, the Control Room should select a technical person of the Central Government for the job. This is so as the Authorised Officer can requisition the services of such an officer in exercise of the powers conferred on him under section 132(2). Secondly, the level of their integrity, accountability and commitment to the Government job is expected to be more than those of an expert from a private organisation.

5.9 The basic guidelines for the search team are given below. Some information regarding digital evidence and storage devices is provided thereafter. The authorised officer and the officers in the Investigation wing should seek assistance of the technical expert with this background information in mind.

Basic guidelines for the search team

5.10 These guidelines for the search team are only indicative in nature. The basic purpose of these guidelines is to ensure that the person in respect of whom search is being conducted or the person in control of the computer systems at the time of search is not able to tamper with data stored digitally in computers or other such devices. The search team has to act in such a manner that the integrity of the data is maintained and its evidentiary value is not affected. With this end in mind, some do's and don'ts are suggested as follows.

Do's

- (i) Take control over mobile phones, electronic diaries, etc. The advanced mobile phones can be used to operate remote devices as well as for data storage. These can be operated innocuously without being noticed.
- (ii) Take control of the computer systems and their power supply to prevent deliberate switching off of the system.
- (iii) Disconnect any routers, modems or any other wireless LAN devices to prevent remote access. If the search team does not know how to do it, do not allow anyone to access these devices till expert help is available.
- (iv) Search for storage devices such as pen drives, CDs, DVDs, floppy disks, etc.
- (v) Identify the key persons in-charge of the systems.
- (vi) Make an exhaustive inventory of systems and peripherals.
- (vii) Make a list of hard disks to be seized.
- (viii) Make a list of important folders/files to be copied. Generally the entire disc will be copied and data retrieval will be done only with the help of the copy of the disc but if it is found that there are some important files in the system, making a note of these files may be useful later.

- (ix) Obtain print outs (preferably with the help of an expert), if feasible.
- (x) Record the seizure of material in the panchnama meticulously.
- (xi) Record the statements of authorised personnel about user levels, access passwords, operating system, accounting package modifications, encryption algorithms used, etc. and other relevant issues. On technical questions, the Authorised officer may take the help of an expert while recording the statement, though the statement has to be recorded by the Authorised Officer only.

Don'ts

- (i) Do not switch off any computer that is working as this will cause loss of volatile data in the memory of the computer, which may be of crucial importance. Additionally, it would involve the need to invoke passwords to re-login and initiate programs. The assessee might get an opportunity to prevent crucial programs from loading.
- (ii) Do not allow any personnel of the assessee to access or operate the system.
- (iii) Do not allow any unauthorised inputs or keystrokes even by the members of the search team.
- (iv) Do not allow remote operations.
- (v) Do not allow removal of any material such as CDs, DVDs, floppy disks or drives from the premises.
- (vi) Do not allow any person, even from the search team, not conversant with computers to deal with them in any manner.

Access to the Data Storage devices, password protections

5.11 Section 132(1)(iib) empowers the Authorised Officer to require any person found to be in possession or control of any books of accounts or other documents maintained in the form of electronic record to afford him (Authorised Officer) the necessary facility to inspect such books of accounts or other documents. In view of this legal provision, the person concerned is legally bound to tell the password and other information required for accessing such data. In case, he refuses to do so, the fact should be recorded in the form of a statement on oath, in presence of the witnesses. Failure on the part of a person to comply with the provisions of section 132(1)(iib) renders him liable for prosecution under section 275B.

5.12 There may be situations where access to a device is protected by passwords. There could be passwords to access the system or individual files may be password protected or encrypted. There may be different

levels of securities. Primarily it is the work of an expert to break through these passwords. The Authorised Officer should be aware that though it is a painstaking and arduous process, in many cases, such passwords can be cracked by experts. If one comes across files, the contents of which do not make sense, it could be an encrypted file and expert help should be taken to understand or decrypt it.

5.13 To login into a LAN environment the Authorised Officer should know the password of the super user or supervisor. This may be obtained from the person found to be in-charge of the system. It is only after logging into the LAN environment that the authorised officer can have access to its contents. Suitable measures should be taken in consultation with the technical officer provided to the search team to restrict access to network contents and possible manipulation of data.

Retrieval of deleted files

5.14 Restoring the deleted files from the Windows Recycle Bin is a simple task. However, while restoring the files from the Windows Recycle Bin, care should be taken that a file of the same name in the destination folder is not overwritten. But even if the files are deleted from the Recycle Bin itself 'permanently', still, it is possible to retrieve the files in certain circumstances through bit-by-bit mapping of the hard disk of the computer as described below. Utilities/Softwares are available in market, which could be used to restore and read such files.

5.15 Every operating system uses what is known as a file allocation table (FAT) to maintain information about sector-wise storing of files. Every file that is stored in a computer is split into parts and stored in clusters/sectors. It is not necessary for the operating system to store files contiguously. A file may be stored in hundreds of different locations in a hard disk. Whenever necessary the operating system will recover it and present it to the user as one whole. When a file is deleted the FAT simply changes the name of the file and removes it from its table. However, all the data that were in the file continue to remain in the hard disk unless overwritten. Because of this feature, even permanently deleted files can be recovered using commercially available software. It is therefore advisable to examine the contents of the hard disk drive (copy) for such deleted files, which may contain information about unaccounted transactions.

Remote Storage of data

5.16 It is possible to store data in a remote device with the help of Internet. Detection of whether the assessee has been storing data and files in remote storage media/websites will require some detailed probing. The history folder of the web browsers like the Internet

Explorer would contain the list of sites visited. Examination of the details available in this folder may help identify remote storage of files. Similarly e-mail accounts should also be scrutinised. The active files, backup files, log files, configuration files, printer, Cookies, Swap files, hidden files and System files should also be examined to find out the possibility of remote storage as well as locally concealed storage. Within the device or hardware it can reside in various types of files and folders and in software like, accounting packages and enterprise resource packages. Apart from the local storage devices, there are options to store data in websites, which offer the facility for a fee or free. Some of the popular hosts offering off-site online backup solutions are asigra.ds3, data vaulting, e-vault, live-vault, drive hq.com, esnips.com and storage.eweek.com. These days, storage in Google docs is also prevalent. Free e-mail facility of large storage capacity is also offered by many service providers. An important aspect of human psychology is that in cases of important data being stored in such devices, the passwords and other relevant information are written in some diary, note book, etc. and a vigilant person can identify that these are passwords.

Modus of seizure of the devices and their authentication

5.17 The decision regarding seizure should be based on the same considerations as are applicable to seizure of books of account and other documents. The decision whether to seize only the hard disk or the entire computer should be taken keeping in view the hardware environment and other technical factors. As far as possible, this should be done in consultation with the expert detailed for the job by the Control Room.

5.18 If it is decided to seize the hard disk, two complete back-ups of the computer-hard disc on CDs, DVDs, etc. should be made. It would be preferable if the entire hard disk is copied using bit stream copying technology, so that a mirror image of the hard disk of the computer is obtained⁹⁸. It would be advisable to copy the entire hard disk including the empty sectors, as the computer continues to store deleted files unless specifically overwritten. Hash function of the copies should also be obtained.⁹⁹ For cloning,¹⁰⁰ several softwares/utilities are available.

98 This will help recover even deleted files, as explained earlier.

99 "Hash function" means an algorithm- mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input.

100 The operation of creating exact duplicates of one media on another media of the same type is called disk cloning. The duplicate is also referred to as a mirror or a physical sector copy.

5.19 If it is decided to seize the hard disk, or as the case may be the CPU of the computer, the same should be sealed in such a manner that the seized hardware is safe and nobody is able to access it without breaking open the seals. One of the back ups should also be sealed in the manner indicated above. Adequate care should be taken to protect the hard disk/computer from static electricity, magnetic fields, shock, dust and moisture. It should also be ensured that the machine is not mishandled in any manner and that while shifting or moving the machine there are no heavy jerks and the floppy drive is closed with a paper floppy inside it.

5.20 In case the system contains volatile data, specialised software should be used to capture data resident in the memory. Sometimes, if the Computer is on, data in the RAM can also be copied. This is called RAM DUMPING. This can be done using suitable software. At times, passwords could be residing in RAM and could be recovered. The memory chips used in phones, digital diary, etc. can also be copied on to computers for recovery of files.

5.21 The points made above will so far as may be also apply to removable media/storage media found at the premises. Care should also be taken to ensure that floppy diskettes are not pressed hard. In case, data is stored on floppies, it will be advisable to make a copy of the floppies on CD as the floppies may not work later. Seized floppies should be placed in covers before putting them in floppy boxes.

5.22 For proper identification each seized computer, hard disk, floppy, CD, etc. should be given a serial number and marks of identification placed at the appropriate place thereon.

Printout of Data stored digitally

5.23 If possible hard copy (three copies) of the data stored in the computer, floppies, CD, etc. should be taken out. This is highly advisable in the case of floppies as the probability of the data getting lost with the passage of time is very high here. These should be signed by the Authorised Officer, person in whose case the search is being conducted, person in whose control or possession the hardware/storage media is found and the witnesses. One of the hard copies should be given to the person in whose case the search is being conducted, or if such person is not available, to the person in whose possession or control the computer, floppies, CDs, etc. were found.

Precautions to be taken for retaining the integrity of the retrieved data for Assessment/appeal purposes

5.24 The Authorised Officer and his team should seize the devices containing the digital evidence in such manner that the integrity of

data on the original cannot be questioned. As far as possible, only a copy should be used for examination. Where, in exceptional circumstances, it becomes necessary to examine the original data, there should be a clear record of audit trail showing all the processes that were undertaken to examine the data.

5.25 Internationally, hash functions or message digest functions are used to prove the integrity of digital data. According to section 3 of the Information Technology Act, 2000, the authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function, which envelop and transform the initial electronic record into another electronic record.

5.26 The search team may make a message digest of the assessee's hard disk using algorithms like SHA, MD4 or MD5. This would give a hash function. A hash function maps any digital data of whatever length to a binary string of fixed length. This ensures that the integrity of data can be proved at any court of law or other appellate forum. The hash function of the sealed original source and the copies thereof should always be identical. Any variation would indicate that the data has been tampered.

Consequences of mishandling the devices

5.27 Any indiscriminate handling of the system may result in irrecoverable data loss, which may cripple not only the assessee's business but will also result in loss of crucial evidence. It is also possible that the system itself may be rendered unstable unless it is protected by way of disaster recovery. Accidental deleting of files can usually be reversed but it should be remembered that it is not always possible. Certain other acts like the clearing of histories folder or cookies cannot be undone and will put vital clues beyond the reach of the investigator.

CHAPTER - VI

POST-SEARCH ACTIONS AND PROCEEDINGS

Main post-search jobs required to be done in the Investigation Wing

6.1 The main post-search jobs required to be done in the Investigation wing are:

- (1) Preparation of check-list
- (2) Preparation of Action Plan for post-search investigation and obtaining approval from DIT(Inv.).
- (3) Depositing the seized money in the Personal Deposit Account (PDA) of the Commissioner
- (4) Safe custody of the seized assets
- (5) Follow-up actions and completion of pending jobs, like search/operation of bank lockers placed under prohibitory order under section 132(3)
- (6) Submission of search related reports to the Board and other authorities
- (7) Publicity of search and seizure action
- (8) Preparation of appraisal reports and its communication to the Assessing Officer and other authorities
- (9) Handing over of the seized material to the Assessing Officer
- (10) Certain jobs in matters relating to release of seized assets
- (11) Intimations to other enforcement agencies, authorities or departments

Preparation of Check List

6.2 As explained in Chapter-III, after conclusion of search, the leaders of search teams hand over books of account, other documents, sealed package(s) containing bullion, jewellery and other valuable articles or things, seized as a result of search and *panchnama* (with all its annexures) to the custodian. Any money seized in the course of the search is also deposited with him. They also submit a report to the Additional/Joint Director of Income Tax (Investigation) in-charge of the search.

6.3 After the search teams have handed over the *panchnama*, seized material, etc. to the Custodian, the ADIT (Investigation)/DDIT (Investigation) should prepare a check-list containing details of all

pending items of work that need suitable follow up action. He should do so under the guidance of the Joint/Additional DIT (Investigation) for. Some points that the check list should include are as follows:

- (1) List of places where search has not been concluded and is required to be continued
- (2) Details of bank lockers sealed, placed under prohibitory order under section 132(3) and to be searched subsequently
- (3) List of places where books of account, documents, valuables, etc. are kept under prohibitory order under section 132(3) of the Act
- (4) List of places where police guards/security personnel have been posted
- (5) Details of bank accounts, FDRs, demat accounts, etc. which have been placed under prohibitory order under section 132(3)
- (6) List of other pending actions
- (7) List of promissory notes, fixed deposit receipts, *hundies*, etc. requiring special attention as per Board's Instructions¹⁰¹
- (8) Details of cash to be deposited in the Personal Deposit Account
- (9) Details of packages of bullion, jewellery, other valuable articles or things, etc. required to be deposited in the strong room/safe deposit vault of bank
- (10) List of pending jobs, if any relating to matters like, the seized digital devices, digital evidence collected as a result of search, and valuation of jewellery, bullion, other valuable articles or things
- (11) Details of sealed covers, if any containing damaged/mutilated documents or other things
- (12) Particulars of complaints filed with police as a result of any incident during the search and follow-up action required to be taken
- (13) Information useful or relevant to other departments, enforcement agencies, etc. which needs to be communicated to them
- (14) Particulars of other pending actions, follow-up actions, etc required to be taken and the authority that has to take these actions
- (15) List of reports required to be sent to the Board and other authorities

¹⁰¹ See Board's Instructions No.226 dated 06.10.1970 (Annexure 58 in Appendix V) and 177 dated 04.06.1970 (Annexure 57 in Appendix V).

Preparation of Action Plan for post-search investigation and obtaining approval from DIT(Inv.).

After completion of the search the DDIT should prepare a post search Action Plan identifying the post search enquiries that are necessary to finalise the appraisal report in a proper manner. This should include all major activities including hot pursuit enquiries, examination/verification of important seized records, recording of statements of key witnesses/persons and other similar matters: the names and designation of the Members of post search investigation team entrusted for making these enquiries/verifications: and the expected time required for completion of these activities. The plan should be prepared in consultation with Addl. DIT(Inv.) and should be approved by DIT(Inv.) within ten days of completion of search. However, in cases where on account of subsequent developments certain additional enquiries/verifications not mentioned in the Action Plan become necessary, then prior approval of DIT(Inv.) must be taken before such investigation.

Depositing the seized money in the Personal Deposit Account (PDA)**Opening and maintenance of Personal Deposit Account**

6.4 Rule 112(12)(iii) provides that where any money has been deposited with the Custodian, he may credit or remit the same through the nearest branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank for being credited, in the Personal Deposit Account of the Chief Commissioner or Commissioner.¹⁰²

6.5 Personal Deposit Account should be opened only with the approval of the Board¹⁰³. For opening a new Personal Deposit Account, a formal request should be made to the Board. It should be opened only on receipt of the Board's sanction¹⁰⁴. The Board/Department of Revenue sanctions the opening of a Personal Deposit Account of the Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank at the place where the office of the Commissioner is situate.

6.6 Sometimes it may become necessary to retain the seized currency without depositing the same in the Personal Deposit Account to preserve the identity of currency notes from the point of prosecution. For example,

102 (1) The Board has emphasised that the money seized as a result of a search should be deposited in the Personal Deposit Account. See Board's Instruction No. 1745 dated 22.01.1987. ((Annexure 67 in Appendix V). (2) Generally Personal Deposit Account is opened in the name of Commissioner of Income Tax.

103 Board's letter no. 380/5/84-IT(B) dated 31.03.1985 is referred to in Board's Instruction No. 1745 dated 22.01.1987.

104 Board's Instruction No. 1745 dated 22.01.1987. (Annexure 67 in Appendix V)

in a case where currency notes were seized in the course of a search, the assessee claimed to have obtained the cash on a particular date, whereas the currency notes were found to bear the Reserve Bank of India stamp which indicated that the notes were actually issued on a date subsequent to the date claimed by the assessee. In a case of this type, retention of currency notes is necessary to prove the falsity of the assessee's claim as a piece of evidence for launching prosecution. In such cases, the Commissioner may, after consultation with the prosecution counsel, retain the currency in original form and record his reasons for doing so. If retention of currency notes in its original form is found necessary the same may be placed in a package and kept in the safe custody of a bank/treasury as specified in the Rules.¹⁰⁵

6.7 The deposits and withdrawals in the Personal Deposit Account are subject to audit by Zonal Accounts Officer, CBDT. The accounts are also subject to audit by the officers of the Comptroller and Auditor General, once in a year.

Custodian (PDA)

6.8 The Commissioner, who has a Personal Deposit Account, should appoint an officer not below the rank of an ITO to perform the functions of the Custodian (PDA). The main functions of the Custodian (PDA) are, in brief, as follows:

- (1) Maintenance of ledger and Cash Book for the said account.
- (2) Keeping custody of challans by which money was deposited in the PDA and cheque book for the said account
- (3) To get the account audited by the ZAO/C&AG (The deposits and withdrawals in PDA are subject to audit by Zonal Accounts Officer, CBDT who receives a copy of the account every month directly from the Bank. The accounts are subject to audit also by the officers of Comptroller and Auditor General, once in a year.)
- (4) Reconciliation of account (The balances in the monthly statements of PDA received from the Bank and those maintained by the Custodian, should be reconciled every month.)

6.9 The specimen signatures of the Commissioner as well as the Custodian (PDA) are sent to the Bank. As soon as the Commissioner or a Custodian (PDA) is transferred out, the signatures of the new incumbents should be forwarded to the bank.

Deposit of seized cash in the Personal Deposit Account

6.10 The Custodian receiving the seized money from the search teams should ensure that the seized money is credited in the Personal Deposit

105 Board's Instruction No. 806 dated 30.11.1974. (Annexure 60 in Appendix V)

Account of the Commissioner or Chief Commissioner through the nearest branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank. Some steps that he should take in this regard are, in brief, as follows:

- (1) The challan form¹⁰⁶ for depositing the money should be prepared in quadruplicate and the money presented to the bank for deposit. The deposit must be made at the earliest, preferably by the working day immediately following the day on which the search team deposited the money with the custodian. In case of any delay, the reasons therefor should be recorded and brought to the notice of the CIT and DIT (Investigation).
- (2) Three copies of the challan duly stamped are received back from the bank as acknowledgement/receipt for the deposit of the money in the PDA. One copy each of the said challan should be sent to the Assessing Officer and the Chief Commissioner/Commissioner in whose name the PDA stands. One copy should be retained by the DDIT/ADIT (Investigation).
- (3) Where the search team deposits the money with a custodian at a place, which does not have a Commissioner/Chief Commissioner with a PDA, the PDA number and the branch of the bank where the PDA is maintained should be communicated to the said custodian to facilitate remittance. Expenditure, if any, in connection with the transfer of the money should be charged to the contingency expenses.

6.11 The Chief Commissioner/Commissioner maintaining the PDA should ensure the following:

- (1) Entries should be made in the cash book and the ledger maintained in his office. The details of such entries should be communicated to the Assessing Officer and the concerned ADIT/DDIT (Investigation) who should enter such details in their record/copy of challan.
- (2) The page number of the ledger should be indicated in the Commissioner's copy of the challan for further identification.
- (3) The balance in the monthly statements received from the Bank and as per the cash book maintained by him should be reconciled every month.

Search of bank lockers placed under restraint order under section 132(3)

6.12 This has been discussed in Chapter-III.

¹⁰⁶ See Annexure 50 in Appendix III.

Safe custody of seized bullion, jewellery and other valuable articles or things**Maintenance and operation of Strong rooms**

6.13 Bullion, jewellery and other valuable articles or things should be kept in the department's strong room. In places where there is no strong room, the CIT may hire safe deposit lockers in the State Bank of India or any of its subsidiaries or any other nationalised bank, which should be operated jointly by two officers nominated by him.

Strong Room: Physical Features and Security

6.14 The following points relating to the physical features and security of Strong Room merit a brief mention:

- (1) The room to be utilised as a strong room should be selected keeping in view the 'security' aspect. Windows, ventilators, etc. of the room should be adequately secured. Electric wirings and fittings should be kept in proper trim to obviate the danger of an accidental fire due to short circuit, etc. The room should tend itself to being securely locked.¹⁰⁷
- (2) The strong room should have an armed guard round the clock.¹⁰⁸ If necessary, alarm systems including links to the local police station should be considered.
- (3) The strong room should have a safe of reputed design for storage of money and sealed packages of valuables, as also an adequate number of steel cupboards for keeping books of account and other documents. Sufficient number of bags made of very strong material should be available in which the sealed packages containing valuables may be kept before being placed in the safe. There should also be some furniture, preferably of steel, for officers using the strong room. In multi-Commissioner charges it may be desirable to have two strong rooms, one for storage of valuables and the other for books of account and documents. The strong room for valuables may have one or more safes depending upon the requirements.¹⁰⁹
- (4) The strong room should be provided with a double locking system - preferably Godrej type locks, which can be opened by two different keys to be applied one after the another or where

¹⁰⁷ See Board's Instruction No. 1580 dated 17.10.1984 (Annexure 63 in Appendix V) in F.No. 286/26/84-IT (Inv. II) where Board's Instructions F.No. I-11020/34/76-AD. IX dated the 19.06.1978 has been referred to.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

such lock is not available, two different locks may be used; one Custodian having a key of one of the two locks, the other Custodian having one key of the other lock. The room will be opened/closed only by the two Custodians themselves acting together and both of them will continue to remain in the room as long as it is open. The Commissioner should ensure adequate safety of the various keys. Duplicate keys of the strong room, safes and steel cupboards will be placed in a small sealed container to be kept in a bank locker hired in the name of the Commissioner of Income-tax in one of the nationalised banks.¹¹⁰

- (5) As far as possible the room should not have windows or be accessible from the outside. It should be in the inner most recess of the office building. The room should have only one entrance and it should be a double door (grill and a vault).
- (6) Access to the strong room should preferably be through another room leading to it.
- (7) The room should have adequate lighting and exhaust facilities to be operated electrically.
- (8) The electrical connections should be in such a manner that the cable is connected at times of access and at all other times, it is disconnected so as to avoid fire hazards, etc.
- (9) Entry to the strong room should be through a double key system to be kept with two officers, one of whom should be from the Investigation Directorate and the other nominated by the CIT.
- (10) Safes placed in the strong room should be of reputed design with double-locking system.

Control, operation and maintenance of strong rooms

Control and maintenance

6.15 The strong room should be under the immediate charge of the Commissioner. In multi-Commissioner charges it should be placed under the senior most Commissioner in overall charge of the administration. Its day-to-day operation will be the responsibility of the (i) officer of the Investigation Unit, nominated for this purpose by the DIT(Investigation); and (ii) officer attached to the headquarters office of the Commissioner and nominated by him for this purpose. Two such officers, one each from the Investigation Unit and the Commissioner's office, should be designated as 'Custodians' to be jointly responsible for the operation

¹¹⁰ See Board's Instruction No. 1580 dated 17.10.1984 (Annexure 63 in Appendix V) in F.No.286/26/84-IT(Inv. II) where Board's Instructions F.No. I-11020/34/76-AD. IX dated the 19.06.1978 has been referred to.

and maintenance of the strong room(s) including the registers in relation thereto. The Custodians of the Strong Room shall be responsible for the safe custody of books of account or other documents and package or packages containing bullion, jewellery and other valuable articles or things conveyed to them as envisaged in Rule 112.¹¹¹

Strong Room Registers

6.16 The following registers should be maintained to record the operation of each strong room:

Register-I:

6.17 This register contains record of the names of the Custodians and other persons entering the strong room, date and time of the entry and departure along with the purpose of visits. Entries in the register should be made by the Custodians/person(s) concerned under their signatures.

Register-II:

6.18 This register shows full particulars of the money and sealed packages (containing valuables) brought in and/or taken out of the strong room. Entries therein will be made under the dated signatures of the two Custodians and of the person(s) bringing in or taking out the money/packages.

Register-III:

6.19 This register records the movement of books of account and other documents in and out of the strong room. Entries in the register should be made under the dated signatures of the Custodians and the person(s) bringing in or taking out the books of account or documents.¹¹²

Operation of Control Room

6.20 When a sealed package containing seized valuables is brought for storage in the Strong room, the Custodians of the Strong Room should check that the seal(s) on the package is/are intact and the packages bear a tag. In case, the seals are found to be broken, the matter should be reported to the CIT and the DIT(Inv.) and further action taken under their directions. The tag should give details like contents of the package, date and place of seizure and the name of the person from whose custody the seizure was made. The identification tags to be placed on each packages/bag shall be as per specimen given in Appendix-III. The sealed packages should be put in a bag of strong material, which should be

111 See Board's Instruction No. 1580 dated 17.10.1984 (Annexure 63 in Appendix V) in F.No.286/26/84-IT(Inv. II) where Board's Instructions F.No. I-11020/34/76-AD. IX dated the 19.06.1978 has been referred to.

112 *ibid*

sealed and an identification tag securely fixed to the bag so as to identify the package(s) within it fully. Before a package is released from the strong room, the custodians will satisfy themselves that the person seeking delivery thereof is duly authorised to do so. The bag containing the appropriate package should be opened in his presence and the package handed over after obtaining a certificate from the latter that seal(s) on the package and the identification tag thereon, are intact, appropriate entries at each stage being made in the Register No. II.¹¹³

6.21 When a Custodian is transferred out, a complete handing and taking over memo of the money, sealed packages of valuables and books of account and documents stored in the strong room should be drawn up under the signatures of the transferred and the relieving Custodian, the other Custodian witnessing the memo. Copy of the memo should be endorsed to the Commissioner.¹¹⁴

6.22 The Commissioner should personally inspect the strong room and its registers frequently to satisfy himself that the room is being operated in accordance with the guidelines and to reassure himself that no money, valuables or books of account or documents are being unnecessarily retained in the strong room. Results of his inspection should be recorded in the Registers I, II and III, as may be appropriate and a watch kept over compliance of the instructions given. At the time of change in incumbency of the Commissioner, a handing and taking over memo on the pattern outlined above, should be drawn up, the two Custodians witnessing the memo.¹¹⁵

6.23 Each Custodian who is made responsible for operation and maintenance of strong room will furnish security in the form of the Indemnity bond as required under Rule 270 of General Financial Rules and the expenditure involved in the furnishing of security will be borne by the Department, if no special pay is given to the Custodian, otherwise it will be borne by the Government servant himself. The security will be for an amount of Rs. 20,000/-. The security may be in the form of a Fidelity bond issued by any subsidiary company of the General Insurance Corporation.¹¹⁶

6.24 Facility of strong room may not be available at certain places. In such places the following arrangements for safe custody of seized bullion, jewellery and other valuable articles and things should be made:

113 See Board's Instruction No. 1580 dated 17.10.1984 (Annexure 63 in Appendix V) in F.No.286/26/84-IT (Inv. II) where Board's Instructions F.No. I-11020/34/76-AD. IX dated the 19.06.1978 has been referred to.

114 *ibid*

115 *ibid*

116 *ibid*

- (1) In such places bank lockers should be hired from State Bank of India or any of its subsidiaries or any other nationalised bank. These lockers should be operated by two senior officers (not below the rank of I.T.O.) jointly. At the Commissioner's Headquarters one officer may be chosen from Investigation Unit and the other from the Commissioner's office. In other places, two officers may operate the locker jointly. Registers I and II prescribed under the Board's guidelines dated 19th June 1978 should also be maintained with suitable modifications in respect of operation of the locker.¹¹⁷
- (2) Where bank locker is not available, or the available locker is not big enough in size, sealed packages containing valuables prepared in accordance with the Rule 112 (10) should be put in a bag of strong material which should again be sealed and an identification tag should be securely fixed to the bag so as to identify the packages within it fully. This bag may be deposited with any branch of the Reserve Bank of India, or the State Bank of India or any of its subsidiaries, or any nationalised bank or Government Treasury. The deposit should be made in the joint names of two officers of the Income Tax Department, not below the rank of Income Tax Officer. At Commissioner's Headquarters, one such officer should be taken from Investigation Unit and the other from the Commissioner's office. At places other than Commissioner's Headquarters, the bag containing sealed packages may be deposited in joint names of two officers of the Income Tax Department. Register-II, prescribed in above mentioned Board's letter dated 19th June 1978 in respect of strong-room, should be maintained to record deposits and removal of the bag containing sealed packages in/out of the Bank.¹¹⁸
- (3) It should be made clear to the Bank that locker has been hired and/or bag containing sealed packages has been deposited on behalf of the Income Tax Department. Therefore, Commissioner of Income-tax can substitute the names of officers, who are operating the locker or in whose joint names the bag containing sealed packages has been deposited, by other names from time-to-time depending upon the exigencies of the situation like transfer, retirement, etc. of the officers.¹¹⁹
- (4) Whenever any officer who is operating the locker or in whose

117 See Board's Instruction No. 1580 dated 17.10.1984 in F.No. 286/26/84-IT(Inv. II) (Annexure 63 in Appendix-V)

118 *ibid*

119 *ibid*

name the bag containing sealed packages has been deposited leaves the station on transfer, retirement, etc., a complete handing and taking over memo of the sealed packages of valuables kept in the locker/bag should be drawn up under the signatures of the relieved and the relieving officers. Copy of the memo should be endorsed to the Commissioner.¹²⁰

- (5) The instructions contained in paragraph (5) of the Board's letter F. No: I-11020/34/76-AD.IX dated the 19th June, 1978 will apply *mutatis mutandis* to of each locker hired by the Department.¹²¹
- (6) When any asset is ordered to be released by the authority competent to do so, the Assessing Officer should, in consultation with the assessee, fix a suitable date and time for their release. The custodian should then hand over the assets to the Assessing Officer. The Assessing Officer will release them to the assessee in the presence of two witnesses. The packet containing the assets being released should be properly identified to avoid any mishandling and entry to this effect should be made in the appropriate strong room registers.

Submission of reports to the Board, DGIT (Investigation) and other authorities on searches conducted

6.25 The DIT (Investigation) should send the following preliminary reports on search operations¹²²:

S.No.	Report	To be faxed to
1	Two hourly report on commencement of search	(1) Member (Investigation), CBDT (2) DGIT (Investigation)
2	Fax report on conclusion of main search operation	(1) Member (Investigation), CBDT (2) DGIT (Investigation)
3	All subsequent FAX reports i.e. on opening of lockers or sealed premises etc.	(1) CIT (Investigation), CBDT working under the Member (Investigation), CBDT (2) DGIT(Investigation)

6.26 The format of the FAX reports appears at Appendix-II.¹²³ In case the search was authorised by an authority other than the DIT (Investigation), a copy thereof must also be sent to the DIT

¹²⁰ See Board's Instruction No.1580 dated 17.10.1984 in F.No. 286/26/84-IT (Inv. II) (Annexure 63 in Appendix-V)

¹²¹ *ibid*

¹²² Board's letter F.No. NIL dated 22/03/2007 (Annexure 93 in Appendix V)

¹²³ See Board's letter F.No. 286/140/99-IT(Inv.II) dated 13/11/1999 (Annexure 74 in Appendix-V).

(Investigation)¹²⁴. The report should bear a unique and distinct code number. The number should be generated using the following pattern:

XYZ/PQRN/NNN/FY,

where,

- (i) 'XYZ' are alphabetic characters indicating the DGIT's region;
- (ii) 'PQRN' are alpha-numeric characters denoting the investigation unit that conducted the search;
- (iii) 'NNN' are numeric characters denoting the running number assigned to the search of a given premises; and
- (iv) and 'FY' denotes the financial year during which the search was conducted.

6.27 The DIT (Investigation), or if the search was authorised by any other authority, that authority, should send a detailed report to the Member (Investigation) through his supervisory officer¹²⁵ within three days of the completion of search. The report should highlight the points, which came to the notice of the Department during the search operation. Wherever possible the report should also indicate the names and designations of the Assessing Officers and their Range Additional CIT/JCIT and the CIT who will be handling the search case. A copy of the report should also be endorsed to the concerned DIT(Investigation) and the DGIT(Inv) in case the search was authorised by any other authority.

6.28 In the first and subsequent reports regarding the same search, the letters of alphabet starting from A will be successively affixed to the Code number till the searches of all the premises are over. For example, the running number assigned to the 1st, 2nd and 3rd reports should be suffixed by A, B and C and so on.

6.29 It needs to be clarified here that the aforesaid search reports will be sent only by the DIT (Investigation) who authorised the search and not by any other DIT(Investigation) who might have rendered assistance in the conduct of the search of any premises.

6.30 In addition to the above reports, the concerned Additional/Joint DIT (Investigation) who processed the search case should, within thirty days of the date on which the warrant of authorisation was first executed in a case/group, inform the concerned CIT, Additional/Joint CIT and the Assessing Officer about the action that has taken place.¹²⁶

124 See Board's instruction No. 1621 dated 4.6.1985 (Annexure 65 in Appendix V)

125 DGIT (Investigation) where the search was authorised by the DIT(Investigation).

126 See Board's letter F.No. 286/43/2005-IT(Inv.-II) dated the 20th December, 2005. (Annexure 84 in Appendix V)

Seized Books of account and documents**Handing over of the seized books of account and documents to the Assessing Officer**

6.31 As already explained earlier, the authorised officer hands over the seized books of accounts and documents to the custodian. Keeping in view the statutory requirements of section 132(9A), the custodian should handover the seized books of accounts and other documents to the assessing officer having jurisdiction over the person referred to in clauses (a), (b) or (c) of Section 132(1) within a period of sixty days from the date on which the last of the authorisations for search was executed. In the mean time, the books of account and other documents should be made available to the ADIT/DDIT (Investigation) for suitable post-search investigations and preparation of appraisal report(s). After the expiry of the said period of sixty days, the powers exercisable by the Authorised Officer under sub-sections (8) and (9) of section 132(1) are exercisable by the Assessing Officer.

Inspection of seized books of accounts and documents by the person searched

6.32 The person searched is entitled to inspect the seized books and documents, take extracts there from and obtain copies thereof. Ordinarily, the need for inspection or taking extracts will not arise if photocopies of the seized books of accounts and documents are provided to the person searched if and when a request for the same is made by him. The ADIT/DDIT(investigation) should ensure that all requests for inspection and providing copies of seized books of account, documents, etc. are promptly attended to and dealt with in accordance with the law.¹²⁷ He should also inform the Assessing Officer about the action taken by him in the matter. If possible, a certificate in this regard may be obtained from person to whom inspection was provided and copies of seized books of account and documents were provided. It needs to be pointed when the seized material reaches the Assessing Officer, he must ensure that the assessee has been provided an inspection of the seized material and copies thereof as requested by him.¹²⁸

Photocopies of the seized books of account and other documents

6.33 The following precautions should be taken while taking photocopies of the seized books of accounts and other documents:

127 Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002 lays down that inspection of seized records should be allowed within fifteen days from the date of receipt of application in this regard. (Annexure 76 in Appendix V)

128 See also Board's letter F.No. 286/161/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

- (1) Only trusted officials of the department should be entrusted with the task of generating photocopies. An officer not below the rank of ITO should be present in the room where photocopies are being generated.
- (2) As far as possible, the persons searched or his authorised representative should not be allowed to be present in the room where photocopies are being generated.
- (3) Care should be taken to ensure that the seized documents are not in any way damaged, mutilated or misplaced.
- (4) A record should be maintained of the names, designations, addresses, etc. of the departmental officers and other persons, if any present in the room where photocopies are being generated.
- (5) If in the process for generating photocopies, the original seal is likely to break or be damaged, it must be ensured that the paper(s)/document(s) to be photocopied are removed from the bundle in the presence of the person from whom it was seized and two independent witnesses¹²⁹. After photocopies have been taken, the bundle should be restored and sealed. A *panchnama* evidencing these events should be prepared. It should be signed by the officer (not below the rank of an ITO) detailed for the job, the person to whom inspection is being allowed and photocopies are being provided and at least two independent witnesses.

Inspection and taking extracts of seized documents, books of accounts, etc.

6.34 The following points should be kept in view while affording inspection of the seized books of accounts and other documents:

- (1) Inspection should be allowed only on a written request of the person from whose custody the books of accounts and other documents were seized, specifying the particular document of which inspection is sought. No inspection of a general nature should be allowed.
- (2) On receipt of the written request, suitable appointment should be given to the person concerned. A letter should be issued to him specifying the date and time of appointment. Some conditions that should be imposed for inspection are:

¹²⁹ A person like, an employee of the Income Tax Department or the person to whom photocopies are being provided, or legal consultant of the said person should not be appointed as a witness. Other points made in Chapter-III regarding selection of witnesses will, so far as may be, also apply here.

- (i) Not more than two authorised persons will be allowed to inspect the documents.
 - (ii) They should bring only black pencil and white paper with them.
 - (iii) Only one document will be inspected at a time.
- (3) The documents, which in the opinion of authority permitting inspection/taking extracts are sensitive should be placed below a glass-sheet and the person should not be allowed to handle the document himself.
 - (4) When extracts are taken, the person concerned should be asked to make a carbon copy of the extracts duly signed by him, which should be retained by the authority allowing inspection.
 - (5) The inspection should be allowed under the personal supervision of ADIT/DDIT(Inv.) or the Assessing Officer, as the case may be. The person concerned should not be left alone with the seized books and documents nor should he be permitted to bring ink or other liquids. He should also not be allowed to smoke because there is a danger of the books of accounts and other documents being defaced or mutilated.
 - (6) Any attempt on the part of the person(s) inspecting the documents to tamper with them should be reported to the Commissioner/DIT(Investigation) concerned.
 - (7) If in taking extracts or allowing inspection, the original seal is likely to break or be damaged, it must be ensured that the paper(s)/document(s) are removed from the bundle in the presence of the person from whom it was seized and two independent witnesses. After inspection/taking or extracts is completed, the bundle should be restored and sealed. A *panchnama* evidencing these events should be prepared. It should be signed by the officer (not below the rank of an ITO) detailed for the job, the person to whom inspection is being allowed and at least two independent witnesses.
 - (8) The concerned ADIT/DDIT(Investigation) should keep a record of these proceedings in his file so that there can be no allegations at a future date about lack of opportunity or delay in affording inspection or providing extracts.

Retention of seized books of account and documents

6.35 The seized books/documents cannot be retained beyond a period of 30 days from the date of the assessment order under section 153A or under section 158BC(c), except with the approval of the Chief Commissioner, Commissioner, Director General or Director. The Chief

Commissioner, Commissioner, Director General or Director can also not authorise retention of books and other documents for a period exceeding thirty days after all the proceedings under the Act in respect of the years for which the books of account or other documents are relevant are completed.¹³⁰ The Assessing Officer should communicate, to the person concerned, the competent authority's order allowing retention of books of account under section 132(8), along with the reasons for retention.

Appraisal Report^{130A}

6.36 The DDIT/ADIT (Investigation) is required to prepare an appraisal report in each search case. This is required to be sent, along with the comments of the Additional/Joint DIT (Investigation) to the Assessing Officer, CIT, Range Joint/Additional CIT, and DIT (Investigation) within a period of two months of execution of the search warrant. This must be done, irrespective of whether some search warrants in a group of cases are executed subsequently. In such circumstances, supplementary reports on the execution of the subsequent warrants of authorisation should be submitted within two months of their execution.¹³¹ In case of likelihood of any delay, the ADIT/DDIT(Inv.) must report the matter to the DGIT(Investigation) through the DIT(Investigation) and seek extension of time for doing so.¹³² Any delay in receipt of the appraisal report must be brought to the notice of the concerned CIT by the Assessing Officer who may pursue the case with the DIT (Investigation).¹³³ The DDIT (Investigation)/ADIT (Investigation) should hand over the seized material to the Assessing Officer (before whom the cases get centralised) within a week of sending the appraisal report.¹³⁴

Main contents of the appraisal report

6.37 The main purpose of preparation of appraisal report is to highlight the relevant facts as well as evidence gathered as a result of search and subsequent investigations. This is also a means for communicating to the

130 See section 132(8).

130A After finalisation of Search & Seizure Manual, 2007 on 30.05.2007, CBDT has issued revised guidelines vide F.No. 286/76/2007-IT(Inv-II) dated 26th September, 2007 and 286/77/2007-IT (Inv-II) dated 13th September, 2007 on improving quality of the Appraisal Report and Security of Seized/impounded Books/documents/electronic storage devices respectively, which are enclosed at the end of this Chapter i.e. Chapter-VI.

131 See Board's letter F.No. 414/69/2004-IT (Inv. I) dated the 17th September, 2004 (Annexure 82 in Appendix V)

132 See Board's letter No. 286/57/2002-IT(Inv.II) dated 03/07/2002. (Annexure 76 in Appendix V)

133 See Board's letter F.No. 286/161/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

134 See ibidi.

assessing officer the basis on which the search was conducted and the significant events that took place during the course of search and post-search investigations. Due care should be taken in preparing appraisal report with objectivity.¹³⁵

6.38 Appraisal report should be based on an examination of the seized material and evidence found as a result of search and post-search investigations and enquiries. Before finalising appraisal report, hot pursuit enquiries should be necessarily completed and their findings mentioned in the appraisal report. The post search investigation should be carried out under the active guidance and close supervision of DIT (Investigation) or where the DIT (Investigation) is not located in the same station, under the guidance and supervision of Joint/Additional DIT (Investigation). Indiscriminate issue of summons under section 131(1A) should be avoided. While sending the appraisal report, the details of summons issued under section 131(1A) in post search inquiries should also be sent.

6.39 While there can be no precise and comprehensive guidelines for preparation of appraisal reports, some points that should appear in an appraisal report are, in brief, as under¹³⁶:

- (1) Name and address of the group/person(s) searched.
- (2) Particulars of other assessee(s) of the group/concerned cases, giving information like, their names and addresses, their relationship with the person(s)/group in respect of whom the search was conducted, status, their PAN and the designation of the Assessing Officer where they are assessed/assessable to income-tax.
- (3) Date of commencement of the search.
- (4) Date(s) of conclusion of search(es), indicating clearly, (i) the date(s) on which the various authorisations for search(es) were executed; (ii) the date(s) on which various *panchnamas* in relation to each of the said authorisations were drawn; (iii) summary of the actions/events mentioned in the said *panchnamas*, like books of account, other documents, valuables, etc. seized; and (iv) prohibitory orders under section 132(3) issued and served.
- (5) Code number of the search operation, as given in the preliminary report sent by the DIT (Investigation) to the Member (Investigation), CBDT.

135 See Board's letter No. 286/57/2002-IT(Inv.II) dated 03/07/2002. (Annexure 76 in Appendix V)

136 See also Board's Instruction No. 1927 dated 21.07.1995 (Annexure 71 in Appendix-V) and letter F.No. 286/154/95-IT(Inv. II) dated 12th March, 1996 (Annexure 72 in Appendix-V)

- (6) Designation(s) of the authority/authorities who issued the warrant(s) of authorisation.
- (7) Names and status of the persons whose names appear in the warrant(s) of authorisation.
- (8) Addresses of the premises searched.
- (9) Details of the books of account, other documents, money, bullion and other valuable articles and things found and seized, found but not seized, with suitable references to their inventories in the *panchnama*.
- (10) Brief history of the case, gist of information/allegations leading to the search.
- (11) List of persons whose statements were recorded under section 131(1A) and 132(4) along with copies of such statements.
- (12) Premises covered under section 133A in connection with the search action.
- (13) Details of post search enquiries and investigations, as also copies of search reports submitted by leaders of search teams. A detailed record of post search inquiries should be maintained and a report thereof along with photocopy of the complete investigation folder should be sent to the assessing officer.
- (14) Details of proceedings affording opportunity of inspection of documents/taking of extracts from books of account and other documents to the person in whose case the search was conducted/ the person from whose custody these were seized.
- (15) Analysis of seized material (including identification of incriminating entries in the books of account, other documents, digitally stored data/evidence, along with analysis thereof).
- (16) A detailed appraisal of the evidence found as a result of search (including, statements of persons recorded) and subsequent investigations in the form of books of account, documents, money, bullion, jewellery and other valuable articles or things for the purposes of assessment, penalty and prosecution. The appraisal report should inter alia contain the main findings/issues emerging from the search action and post search investigation, stating clearly the amount of transaction involved, even if conceal income is not estimated. However, normally the appraisal report should not contain the quantification of undisclosed income.
- (17) List of incriminating books of account and other documents (with core and non-core documents separately demarcated).

- (18) Specific suggestions for further follow-up enquiry/ investigations by the Assessing Officer (Point-wise/Issue-wise).
- (19) List and details of sensitive documents, which need to be kept in the personal custody of the assessing officer.
- (20) Note on prosecution potential, indicating nature of offence and evidence available.
- (21) Details of the properties of the assessee, which could be attached under section 281B in suitable cases.
- (22) While finalising appraisal reports in cases of search, the concerned ADIT/DDIT (Investigation) should ascertain whether any TEP is pending in any case of the group and, if so, incorporate the same in his report.¹³⁷

Forwarding of the appraisal report to the Assessing Officer and other authorities

6.40 The concerned DDIT/ADIT (Investigation) should forward the appraisal report to the Joint/Additional (Investigation) who should forward the same with his detailed comments to the concerned DGIT (Investigation), DIT (Investigation), CIT, Range Additional/Joint CIT and the Assessing Officer. In case any fact or conclusion drawn in the appraisal report is also relevant to the functions assigned to any income-tax authority, other than those named above, relevant information should be passed on to such authority also. The assessee or the person in whose case search was conducted is not entitled to get a copy of the appraisal report.

Scrutiny of the appraisal report by the Assessing Officer and the Range head

6.41 On receipt of the appraisal report and seized material, the Assessing Officer and Range head should jointly scrutinise the same and prepare an examination note to decide:

- (i) Cases where notices under section 153A are required to be issued.
- (ii) Cases where notices under section 153C are required to be issued.
- (iii) Cases where notices under section 148 are required to be issued.
- (iv) Cases where seized material pertains to persons other than those whose cases have been centralised.¹³⁸

6.42 If necessary, confirmation may be obtained from the investigation

¹³⁷ See Board's letter F.No. 414/60/97-IT(Inv.I) dated the 21st February, 2007.

¹³⁸ See Board's letters F.No. 286/161/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

wing for matching the name of entities as appearing in the warrant of authorisation as against the names appearing in the *panchnama* prepared at the time of conclusion of search.^{139/139A}

6.43 If the Assessing Officer is not in agreement with any finding/ conclusions drawn in the Appraisal Report, the matter should be brought to the knowledge of the Range head who should resolve it with the concerned Additional/ Joint DIT (investigation). If considered necessary, the CIT may also resolve the issue with the DIT (Investigation).¹⁴⁰

6.44 Where, in the opinion of the Assessing Officer, any further enquiry by the Investigation Wing is to be carried out in respect of certain third parties, the same should be brought to the knowledge of the CIT, who may, thereafter request the DIT (Investigation) for carrying out such enquiries. The DIT(Investigation) should, thereafter, carry out the necessary enquiries and inform the concerned Assessing Officers of these third parties for taking appropriate action.¹⁴¹

Centralisation of search cases

6.45 All search cases are generally centralised in central circles to facilitate co-ordinated and sustained investigations. However, the DGIT (Investigation)/CCIT (Central) may in exceptional situations take a decision not to centralise a search case in a central charge because of heavy work load in central charges and/or low investigation potential/ low tax impact. If there is no central charge in a region, the concerned DGIT (Investigation) and the concerned CCIT may after suitable deliberations, decide whether to centralise search cases in a central charge of another region or with the Assessing Officer having jurisdiction over core cases of the group or with any other Assessing Officer.

6.46 The DIT (Investigation) should initiate the proposal for centralisation within one month of the date of initiation of search. The process should be completed within two months of the initiation of search.¹⁴² This involves the following main steps:

139 See Board's letters F.No. 286/161/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

139A After finalisation of Search & Seizure Manual, 2007 on 30.05.2007, CBDT has issued revision in guidelines for assessments in search and seizure cases vide F.No. 286/161/2006-IT(Inv-II) dated 24th July, 2007 which is enclosed at the end of this Chapter i.e. Chapter-VI.

140 See Board's letters F.No. 286/161/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

141 *ibid.*

142 See Board's letter F.No. 286/57/2002-IT(Inv.II) dated 3rd July, 2002. (Annexure 76 in Appendix V)

- (1) Soon after the search in a case or a group of cases, the Additional/Joint DIT (Investigation) should submit a proposal for centralisation to the DIT (Investigation), indicating, *inter alia*, the following:
 - (i) names, addresses, status and PAN of the persons/concerns of the group of cases proposed to be centralised;
 - (ii) date(s) of search, survey or other action taken in their cases;
 - (iii) their relationship with the main person(s)/concern(s) of the group;
 - (iv) whether the person/concern is an existing income-tax assessee;
 - (v) the assessment unit where the person is assessed or assessable to tax and the corresponding Range, CIT charge and CCIT/DGIT region;
 - (vi) the likely tax potential of the cases and the complexity of investigations involved;
 - (vii) nature and extent of tax-evasion and other tax violations established or likely to be established;
 - (viii) particulars of the assessment units, Range, CIT charge and CCIT/DGIT region from where the cases are proposed to be transferred out;
 - (ix) particulars of the assessment units, Range, CIT charge and CCIT/DGIT region where the cases are proposed to be centralised; and
 - (x) reasons for suggesting centralisation of the cases.
- (2) The DIT (Investigation) should forward the proposal referred to at S.No. (1) above to the (a) CCIT's/DGIT's and CIT's from whose region and charge the cases are proposed to be transferred out and (b) CCIT's/DGIT's and CIT's in whose region/charge the cases are proposed to be centralised. He should also give his comments/recommendations on the proposal.
- (3) On receipt of the proposal, the concerned CIT's should take a decision in the matter within a reasonable period of time. Where the concerned CITs are not in agreement or where both of them agree not to accept the said proposal, the matter should be referred to the concerned CCITs/DGITs for decision. If they too are not in agreement, the matter should be referred to the Board for decision.

- (4) Once a decision for centralisation has been taken, all follow-up actions should be taken without delay. Some such actions are:
- (i) The transferor CIT should, keeping in view the relevant statutory provisions and the views taken by the Courts in various cases in this regard, pass suitable order under section 127, indicating, *inter alia*, the date from which the order is effective.
 - (ii) After the order referred to at S.No. (i) above has been passed, the transferor Assessing Officer should transfer all the assessment records, records of other proceedings and matters relating to the transferred cases to the transferee Assessing Officer before the date from which the order under section 127 is effective. He should also send a list of all pending (including pending time-barring) actions, proceedings, outstanding demands, etc. to the transferee Assessing Officer.
 - (iii) The appropriate authority should take appropriate action for transfer of PAN.
 - (iv) The transferor CIT should transfer the following to the transferee CIT:
 - (a) In case the transferee CIT has a separate PDA, the transferor CIT should transfer the seized money relating to the case lying in his PDA to that of the transferee CIT.
 - (b) Confidential files relating to search including copies of the appraisal reports, if already received and Control Chart maintained in his office.
 - (c) Other records relating to the case(s) maintained in his office, like matters relating to sections 273A, 264, grievance petitions, TEPs, etc.
 - (v) The CCIT/DGIT from whose region the cases have been transferred to another region should transfer all records of such cases maintained in his office to the CCIT/DGIT in whose region the cases have been centralised.

6.47 It should be ensured that all the above actions are taken promptly. The aforesaid time-limit of two months laid down for the completion of the centralisation process should be strictly adhered to. Search related assessments are required to be completed within the time-limit laid down in the Act and any delay in centralisation may affect the quality of investigation by the Assessing Officer.

Time schedule for certain post-search actions in the Investigation wing

6.48 Following time-schedule should be strictly followed for completing various work from the date of initiation of search¹⁴³:

1	Initiation of proposal for centralisation	One month
2	Completion of centralisation work, including orders under section 127, etc.	Two months
3	Completion of appraisal report	Two months
4	Handing over of appraisal report/seized records with copies of warrant of authorisation to Assessing Officer	Sixty days of the search ¹⁴⁴

Application of seized assets¹⁴⁵

6.49 Section 132 B provides for application of the assets seized under section 132 to recover the following tax liabilities in respect of which the assessee is in default or is deemed to be in default:

- (i) the amount of any existing liability under the Income Tax Act, 1961, Wealth Tax Act, 1957, Expenditure Tax Act, 1987, Gift Tax Act, 1958 and the Interest tax Act, 1974;
- (ii) amount of liability determined on completion of the assessment under section 153A;
- (iii) amount of liability determined on completion of the assessment of the year relevant to the previous year in which search was initiated;
- (iv) amount of liability determined on completion of the assessment under Chapter XIVB for the block period; and
- (v) any penalty levied or interest payable in connection with such assessment.¹⁴⁶

6.50 It is significant to mention that advance tax for the year in which search took place is to be paid by the assessee separately and it cannot be adjusted against the seized assets, including cash.¹⁴⁷

6.51 The CITs should review the amounts lying in their PDAs and ensure

¹⁴³ See Board's letter F.No. 286/57/2002-IT (Inv. II) dated the 3rd July, 2002. (Annexure 76 in Appendix V)

¹⁴⁴ See Board's letter F.No. 286/61/2006-IT (Inv. II) dated 22.12.2006. (Annexure 92 in Appendix V)

¹⁴⁵ See section 132B.

¹⁴⁶ See section 132B(1)(i).

¹⁴⁷ See Board's letter F.No. 286/105/2005-IT(Inv.II) dated 13/07/2006 (Annexure 88 in Appendix-V)

that no amount is retained merely because of the reason that Department is in appeal before the ITAT, High Court and Supreme Court. Also, the amount to be retained on account of expected penalty demand should not exceed the amount of penalty imposable on the basis of the assessment order.¹⁴⁸

Release of explained assets before completion of assessment

6.52 Seized asset(s) can be released to the person from whom custody the same were seized even before the completion of search related assessments if the conditions mentioned in the proviso to section 132B(1)(i) are fulfilled. This can, however, be done only (i) after recovering out of the such assets any existing liability referred to in section 132B(1)(i)] and (ii) with the prior approval of the Chief Commissioner or Commissioner. These conditions are:

- (1) The person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for its release.
- (2) He explains the nature and source of acquisition of the said asset to the satisfaction of the Assessing Officer.

6.53 Release of assets in accordance with the aforesaid provisions is required to be made within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 was executed.

6.54 If the aforesaid conditions are fulfilled the Assessing Officer is required to-

- (i) recover the existing liability referred to in section 132B(1)(i) out of such assets; and
- (ii) release, with the prior approval of the Chief Commissioner or Commissioner the remaining portion, if any, of the assets to the person from whose custody the same were seized.

6.55 On receipt of an application for release of assets under the proviso to section 132B(1)(i), the Assessing Officer should take the following steps:

- (1) He should, after giving the assessee an opportunity of being heard¹⁴⁹, and wherever necessary after obtaining suitable inputs,

¹⁴⁸ See Board's instruction No. 11/2006 F.No. 286/138/2006-IT(Inv.II) dated 01/12/2006 (Annexure 90 in Appendix-V)

¹⁴⁹ See also Board's letter F.No. 286/57/2002-IT(Inv.II) dated the 3rd July, 2002, which *inter alia*, states that assessee should be given sufficient opportunity by the Assessing Officer in support of claim that seized assets are explained.

if any, from the Investigation unit, examination of relevant records and verification of the evidence submitted by the assessee, decide whether the nature and source of such assets is explained or not. Any conclusion drawn in this regard should be based on proper appreciation of facts and evidence and due application of mind.

- (2) If the Assessing Officer comes to the conclusion that the assessee has not explained the nature and source of such assets to his satisfaction, he should communicate his decision to the assessee. This should, *inter alia*, contain the following:
 - (i) points submissions made by the applicant in his application and oral hearing;
 - (ii) Assessing Officer's findings on the points/submissions referred to at S.No. (i) above; and
 - (iii) the points for determination, the decision thereon and the reason for the decision.
- (3) If the Assessing Officer comes to the conclusion that the nature and source of such assets or any part hereof, has been explained to his satisfaction, he should ascertain the amount of existing liability referred to at section 132B(1)(i). This can be recovered out of the said assets. In case the amount of aforesaid liability exceeds the realisable value of the explained assets, no part of the asset can be released. This should be communicated to the assessee.
- (4) If the Assessing Officer finds that the amount of aforesaid liability is less than the realisable value of the explained assets, he should send a comprehensive proposal to the Commissioner (through the Joint/Additional CIT) specifying the assets that are required to be released. The Joint/Additional CIT should examine the proposal and forward the same to the appropriate authority, along with his detailed comments.
- (5) The Commissioner should apply his mind to the proposal and communicate his decision to the Assessing Officer and the range Joint/Additional CIT.
- (6) Based on the outcome of the proposal submitted to the Commissioner, the Assessing Officer should pass an appropriate order and communicate the same to the assessee. Copies of the order should be sent to the CIT, Joint/Additional Commissioner and ADIT/DDIT (Investigation). The order should, *inter alia*, contain the following:

- (i) points/submissions made by the applicant in his application and oral hearing;
 - (ii) Assessing Officer's findings on the points/submissions referred to at S.No. (i) above;
 - (iii) the points for determination, the decision thereon and the reason for the decision;
 - (iv) in case any existing liability referred to in section 132B (1)(i) is being recovered out of the seized asset(s), details of all such liabilities and the computation showing, (a) realisable value of the asset(s); (b) amount of the aforesaid existing liability required to be recovered out of the said asset(s) and (c) remaining portion, if any of the said asset(s) ordered to be released.
- (7) The ADIT/DDIT(Investigation) should place copies of the said order in the relevant files, including the file containing *panchnama* and other documents and reward file. In case the said decision is received prior to finalisation of appraisal report, this fact should be incorporated in the appraisal report to be finalised.
- (8) If on the basis of the said order, the said asset(s) or any part thereof is/are required to be released, suitable steps for releasing the same to the person from whose custody the same was seized should be taken. The procedure for releasing such assets will be the same as in the case of release of any other asset after completion of search related assessment(s).

Recovery of tax liabilities from seized assets on completion of search related assessments and penalty proceedings

6.56 Where on completion of the assessments under section 153A and the assessment for the year relevant to the previous year in which search was initiated or assessment under Chapter-XIVB for the block period, as the case may be and completion of the relevant penalty proceedings, the assessee is found to be in default or is deemed to be in default in respect of the liabilities referred to at section 132B(1)(i), the Assessing Officer may recover the said liabilities out of the seized assets. This should be done in the manner provided in section 132B. This is, in brief, as under:

- (1) First of all, the seized money, if any, should be applied in the discharge of the said liabilities.
- (2) If no money was seized or if the seized money is insufficient for complete discharge of the said liabilities, the other seized assets should be applied for recovery of the remaining liabilities in accordance with the provisions of section 132B(1)(iii).

- (3) Any assets or proceeds thereof which remain after the liabilities referred to in section 132B(1)(i) are discharged, should be forthwith made over or paid to the person from whose custody the assets were seized. This should be done only after obtaining the prior administrative approval of the CIT.
- (4) In the situations referred to in section 132B(4), the Central Government is liable to pay interest calculated on the basis mentioned therein.

6.57 In the matter of application and release of seized assets, the following points should be kept in view.

- (1) The Government is required to pay interest to the assessee in certain situations given in section 132B(4). It is, therefore, advisable that the assets required to be released are released as early as possible. However, while releasing gold, bullion, jewellery, foreign exchange, etc, it should be ensured that prior intimation has been given to the other concerned department(s).
- (2) After the CIT's approval for release of assets has been obtained, the Assessing Officer should, in consultation with the Custodians of the Strong Room, fix a convenient date and time for the release of the assets. This should be communicated to the person from whose custody the assets were seized or if he is dead, to his legal heirs, the concerned ADIT/DDIT (Investigation) and the custodians of the Strong Room.
- (3) The assets should be released to the person from whose custody these were seized or if the said person is dead, to his legal heirs. This should be done in the presence of two independent witnesses. As explained earlier, before a package is released from the strong room, the custodians will satisfy themselves that the person seeking delivery thereof is duly authorised to do so. The bag containing the appropriate package will be opened in the presence of the said person and two independent witnesses. The assets to be released should be handed over after obtaining a certificate from the person to whom these are being released and the witnesses that seal(s) on the package and the identification tag thereon, were intact. A memorandum should be drawn in witness of the proceedings for release of the seized assets. This should give suitable details like, (i) the name(s) and address (es) of the person(s) to whom the assets were handed over and witnesses; (ii) the names and designations of the departmental officers present; (iii) details of assets released; (iv) date and time of release; (v) references to the entries in the *panchanama* and inventories, etc. through which the said assets were seized; and (vi) date(s) and number of the release order(s).

- (4) Where money is to be released, care should be taken to ensure that-
- (i) suitable entries are made by the Custodian (PDA) in the ledger, cash book and other relevant documents;
 - (ii) if the money was for some reason not deposited in the PDA and lying in the Department's safe custody, suitable entries are made in the relevant records before any release; and
 - (iii) where a part of the seized cash is required to be transferred to the Assessing Officer for discharging liabilities referred to in section 132B(1)(i) and another part to the person concerned, separate cheques for the same are issued.
- (5) Where the person from custody the assets were seized requests the Assessing Officer not to sell any of his assets (other than money) in accordance with the provisions of section 132B(1)(iii), the same may be considered by the Assessing Officer if the said person discharges the liabilities referred to in section 132B(1)(i) by making suitable cash payment. If the liability referred to in section 132B(1)(i) stands fully discharged, the Assessing Officer can release the seized assets, with the prior approval of the Commissioner.
- (6) Where seized cash or part thereof was not released under the first proviso to section 132B(1)(i), the amount lying in the Personal Deposit account should be released within one month of passing the search and seizure assessment order after-
- (i) adjusting the seized cash against any existing liability and the amount of liability determined on completion of the search and seizure assessment; and
 - (ii) in cases where penalty proceedings, connected with such assessments, have been initiated, retaining out of the balance an amount to meet the expected liability on account of penalty imposable.¹⁵⁰
- (7) Where assessee is in appeal against the assessment order and penalty has not been imposed up to the date of the order of the CIT (Appeals), the position regarding the amount lying in the Personal Deposit Account should be reviewed at the time of giving effect to the order of the CIT (Appeals). Only such amount thereof should be retained which is sufficient to meet the expected amount of penalty imposable on the assessment as

¹⁵⁰ See Board's Instruction No. 11/2006 (F.No. 286/138/2006-IT (Inv. II) dated 01.12.2006. (Annexure 90 in Appendix-V)

revised in appeal effect. The balance should be released within one month from the order under Section 250, after recovery of any existing demand at that time.¹⁵¹

- (8) The amount, which was retained after the assessment order or the order of the CIT (Appeals) for the amount of penalty imposable, should be released within one month from passing of the penalty order, after recovery of demand arising out of the penalty order and any other demand existing at that time.¹⁵²
- (9) Where assessment was made before issue of the Board's Instruction No. 11/2006 (F.No. 286/138/2006-IT (Inv. II) dated 01.12.2006 and cash in Personal Deposit Account has not yet been dealt with or partly dealt with, all the Assessing Officers should examine such cases and amount lying in the Personal Deposit Account be released within one month from the date of the Board's said instruction, after adjusting against,
 - (i) any existing demand; and
 - (ii) expected amount of penalty, if any, imposable on the basis of assessment order [if no appeal has been filed before CIT(Appeals) or the case has not yet been decided by CIT(Appeals)] or assessment order as revised under Section 250 or, as the case may be, under section 254.¹⁵³
- (10) All Commissioners of Income Tax should review the amounts lying in their Personal Deposit Accounts and should ensure that no amount in their Personal Deposit Account is retained merely because of the reason that Department is in appeal before the ITAT/High Court/Supreme Court. Further, the amount to be retained on account of expected penalty demand should not exceed the amount of penalty imposable on the basis of assessment order (if no appeal has been filed before CIT(Appeals) or the case has not yet been decided by the CIT(Appeals)] or assessment order as revised under Section 250 or, as the case may be, under section 254.¹⁵⁴

Release of assets against bank guarantee

6.58 Where assets are released against suitable bank guarantee, the following points should be kept in view to safeguard the interest of revenue:

151 See Board's Instruction No. 11/2006 (F.No. 286/138/2006-IT (Inv. II) dated 01.12.2006. (Annexure 90 in Appendix-V)

152 See *ibid*.

153 See Board's Instruction No. 11/2006 (F.No. 286/138/2006-IT (Inv. II) dated 01.12.2006. (Annexure 90 in Appendix-V)

154 *ibid*

- (1) The bank guarantee should be unconditional.
- (2) If the bank guarantee furnished by an assessee is for a limited period of time, the appropriate income-tax authority should keep a track so that the same is extended from time- to-time till the relevant assessments have become final and demand has been collected. It would be preferable if the bank guarantee contains a provision for automatic renewal from time-to-time. Its modification as considered necessary can be made in consultation with the Standing Counsel of the Department.
- (3) When seized jewellery is released against such bank guarantee, the same should cover the full extent of jewellery valued at the rate applicable at the time of release.¹⁵⁵

Intimation to other enforcement agencies, authorities, departments

6.59 A search may result in the detection of cases of violations and infractions of law under other statutory enactments/rules. In suitable cases, such violations and infractions should be intimated to the concerned enforcement agencies or departments in the course of search itself. As explained in Chapter-III, where any such violation or infraction of law is detected, the authorised officer should inform the control room to facilitate communication of the information to the concerned agency, authority or department.

6.60 Where the investigation unit detects any violation in the course of post-search investigations or where the same, though detected in the course of search was either not considered serious enough to be communicated to the concerned agency immediately or was for some other reason not so communicated, the ADIT/DDIT (Investigation) should pass on the information to the concerned enforcement agencies, authorities or departments either directly and/or through the Regional Economic Intelligence Committee. This should be done with the prior approval of the Joint/Additional DIT(Inv.) Where such information pertains to a sensitive matter, the manner and mode of communication should be finalised in consultation with the DIT (Investigation). The fact of such communication should also be reported to the Assessing Officer, Range Additional/Joint CIT, CIT and the DIT (Investigation). This may also be mentioned in the appraisal report if such communication has been made before its finalisation.

6.61 Where the Assessing Officer detects any information of the above nature, which has not already been passed on to the concerned

¹⁵⁵ See Board's letter in No. 286/35/2004-IT (Inv.II) dated 06/04/2004 (Annexure 80 in Appendix-V)

enforcement agency, authority or department, he may, in consultation with the ADIT/DDIT (Investigation) and with the prior approval of the CIT, pass on the same to the concerned enforcement agency, authority or department either directly and/or through the Regional Economic Intelligence Committee. Where such information pertains to a sensitive matter, the manner and mode of communication should be finalised in consultation with the DIT (Investigation). The fact of such communication should also be reported to the ADIT/DDIT (Investigation).¹⁵⁶

6.62 The Board's Instruction No. 1588 (F. No. 286/159194-IT (Inv. II) dated 23.11.1984) enumerates certain agencies to whom certain information detected as a result of search should be passed on. In addition to the said agencies, there can be other agencies, authorities or departments also to whom certain types of information detected as a result of search or post-search investigations deserve to be communicated. Deliberations made or decisions taken in the REIC meetings, CEIB's instructions on sharing of information would also be germane to the decision making process in this regard.

Publicity regarding Searches

6.63 The DGIT (Investigation) should give wide publicity to search and seizure cases without naming the persons searched. However, in sensitive cases, Member (Inv.), CBDT should be consulted in advance.¹⁵⁷

6.64 Press notes for publicity of searches should be approved by the DGIT/CCIT except where the press note originates from a city where the DGIT/CCIT are not headquartered. In such a situation, the press note should be approved by the DIT (Investigation) head quartered at the city. Where the DIT (Investigation) is also not headquartered at the city, the press note should be approved by CIT. A copy of the approved note should be sent for information to the DGIT/CCIT. Such publicity is essential to build up the image of the Department. Searches having all India ramification may be communicated to the Board by the DGIT (Investigation) concerned for dissemination through the media centre of the CBDT.¹⁵⁸

156 See also, Board's letter F.No. 286/161/2006-IT(Inv. II) dated 22/12/2006, which, *inter alia*, provides that where the Assessing Officer is of the opinion that the case has implications involving enquiry by other agencies, references to such agencies should be made by the Assessing Officer, after seeking the approval of the CIT. (Annexure 92 in Appendix V).

157 See Board's letter F.No. 286/57/2002-IT(Inv-II) dated 3rd July, 2002. (Annexure 76 in Appendix V)

158 Letter of the Chairperson, CBDT bearing Dy. No. 291/Ch-DT/2006 dated 04/09/2006 (Annexure 89 in Appendix V).

F.NO. 286/76/2007-IT (Inv.II)
GOVERNMENT OF INDIA
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Room No. 254, North Block, New Delhi

Dated: the 26th September, 2007

To,

The Director General of Income Tax (Investigation)

The Director General of Income Tax (Intelligence)

Sir/Madam

**Subject :- Improving quality of the Appraisal Report - Guidelines
- reg.**

Many instances have come to notice that the quality of Appraisal Reports is not up to the mark. In order to make the Appraisal Report an effective guide for the Assessing Officer, the following procedure should be strictly adhered to:

- (i) After completion of the search, the processing DDIT (Inv.)/ADIT(Inv.) should prepare a Post Search Action Plan identifying the enquiries that are necessary to finalize the Appraisal Report. This should include all major activities including hot pursuit enquiries, opening of sealed premises/lockers etc., examination/verification of seized records, identification of "Core Documents" recording of statements of key witnesses/persons and the expected time for completion of these enquiries/actions. The Plan should be prepared in consultation with Addl./Joint DIT(Inv.) and should be approved by DIT (Inv.) as early as possible. However, in cases where on account of subsequent developments, certain additional enquiries/verifications not mentioned in the Action Plan become necessary, then prior approval of the DIT (Inv.) must be taken.
- (ii) (a) After examination of the seized records, the Authorised Officers' Report and information gathered during the searches as well as in post-search investigations, the processing DDIT(Inv.)/ADIT(Inv.) should identify and frame main issues in the Appraisal Report.
(b) The Appraisal Report should discuss each of these issues in detail outlining all evidence (including digital evidence) in respect of the issue(s) so framed mentioning relevant records seized from different premises, the statements

recorded u/s 132(4) or thereafter, the material gathered during post-search enquiries, as also the version of the assesses and the reasons for not accepting or accepting the same. The discussions In respect of each of such Issues should be self-contained, cogent and narrative, duly supported by reference to the seized records and other evidence gathered during the search or thereafter.

- (iii) It is noticed that the persons searched admitted undisclosed income at the time of search but they retract the admission at the time of assessment. In order to prevent this, whenever the person admits any undisclosed income, the details of such amount including corroborative evidences e.g. books of account, documents, investment, expenditure, wrong/excessive claim of deductions, etc. are gathered during the search or post search enquiries. Inadequate disclosure u/s 132 (4) is sometimes employed as a strategy by the assessee to induce a sense of complacency so as to preclude further inquiry into actual amount of concealment. Proper inquiries, therefore, should continue irrespective of disclosure.
- (iv) Search is a tool for deterrence 'against Tax Evasion. Hence, the Appraisal Report must indicate the prosecution potential on the issues on the basis of evidence gathered during Search or Post Search enquiry, clearly mentioning the nature of offence and breach of prosecution provisions under the LT. Act. The processing DDIT(Inv.)/ADIT(Inv.) should initiate file prosecution within a month of sending Appraisal Report in cases u/s 275A, 275B, 277, 277A of the I.T. Act where filing prosecution for violations of the said provisions does not require completion of Assessment Proceedings.
- (v) Whenever during the search or post search enquiry, evidence has been gathered relating to tax evasion by other parties, the Appraisal Report should clearly mention such transactions and evidences gathered relating to such persons and suggest course of action to be taken by the Assessing Officers concerned.
- (vi) If any evidence relating to infraction of other Laws is found during the course of Search or Post Search enquiry, then the same must be mentioned in the Appraisal Report and the processing Addl./Joint DIT(Inv.) should inform the authorities responsible for administration of such laws, immediately after finalisation of the Appraisal Report.
- (vii) If the Appraisal Report mentions that further enquiry is still continuing in a case or in related cases, a time frame for such

collateral enquiry is indicated in the Appraisal Report and a supplementary report, containing the findings and statements etc. are sent to the A.O. concerned within a week of completion of enquiry.

- (viii) After completion of the Appraisal Report the processing Addl. DIT(Inv.)/ JDIT(Inv.) will sum up of the major findings of the search indicating the prosecution potential of the case and the relevant prosecution provisions and put up along with the Appraisal Report before the DIT (Inv.) concerned for approval.
 - (ix) The DIT(Inv.) while granting approval should ensure that all main issues have been properly framed in the Appraisal Report with corroborative evidences, nature of offence detected and provisions of prosecution against such offence and enquiry as per Post Search Action Plan has been completed.
 - (x) The Director General of Income Tax (Inv.) on receipt of the Appraisal Report, should examine the issues raised in Appraisal Report, identification of core documents, admission of undisclosed income and evidences gathered corroborating the admission, Post Search Action Plan and its outcome. He may consider for sending his comments within a month of receipt .of Appraisal Report indicating the short-comings, if any and may direct the DIT (Inv.) in appropriate cases, to conduct further enquiry, if considered necessary.
 - (xi) The DGIT (Inv.) should maintain a register containing the important points of tax evasion, brought out in each Appraisal Report and identify such areas or such other persons involved in similar trade for further monitoring by the Investigation Wing.
 - (xii) The DGIT (Inv.) should not routinely grant extension of time for completion of Appraisal Report. He should ensure its completion within a reasonable time. The cases where Appraisal Report is not finalised within 120 days from the execution of first warrant, he should mention such cases in D.O. letter to the Member (Inv.), along with the reasons.
2. The aforesaid guidelines should be brought to the notice of all the officers of your charge.

Yours faithfully,

Sd/-
(AARSI PRASAD)
Under Secretary (Inv.II & III)

IMMEDIATE

**F.No. 286/77/2007-IT(Inv.II)
GOVERNMENT OF INDIA
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

Room No. 254, North Block, New Delhi

Dated : the 13th September, 2007

To,

All Chief Commissioners of Income Tax (CCA)
All Chief Commissioners of Income Tax (Central)
All Director General of Income Tax (Investigation)
Director General of Income Tax (Intelligence)

Subject :- Security of seized/impounded Books/documents/
electronic storage devices - regarding.

Sir/Madam,

Many instances of tampering of seized materials have been reported in recent times and it is a matter of great concern. In order to prevent the tampering of seized materials, the following procedure should be strictly adhered to during the handling of seized materials :

- (i) All the time of seizure, the Authorized Officer should ensure that all loose pages are properly numbered and sealed, and signatures of witnesses and assessee are taken. The Control Room should check the sealing and page numbering of such loose pages while receiving the seized documents from the Authorized Officer. If there is any discrepancy in numbering of pages or in sealing, it should be brought to the notice of Authorized Officer at that point of time and Authorized Officer takes urgent steps to rectify the mistake.
- (ii) The processing Addl. DIT(inv.) and DDIT(Inv.)/ADIT(Inv.) shall first of all scrutinize the seized materials including electronic storage devices and ascertain the most incriminating documents as "Core Documents". These core documents should be brought to the notice of the DIT (Inv.) concerned and the Addl. DIT (Inv.) shall keep a photocopy of these most incriminating documents for future references. Thereafter, inspection of such incriminating documents will be allowed to the assessee.
- (iii) The "Core Documents" as identified in Para (ii) above should invariably be confronted to the assessee by the processing

DDIT(Inv.)/ADIT (Inv.) during the post search investigation and statement of assessee is recorded, if the same has not been confronted during the search and seizure action and mentioned in the statement on oath.

- (iv) The DDIT (Inv.)/ADIT(Inv.) will investigate the transactions in these core documents in details, gather all evidences to corroborate the transactions or statements and give a finding on these documents which are to be incorporated in the Appraisal Report. The photocopies of these Core-documents should also be annexed with the Appraisal Report along with the corroborating evidences gathered during search or post search enquires.
- (v) The DDIT (Inv.)/ADIT(Inv.) should maintain the prescribed register while allowing inspection of seized documents to the assessee and witnesses during the post search investigation and should keep a close watch during inspection of such incriminating documents/PCs/CDs, etc., so that no tampering is done during inspection of such documents.
- (vi) The DDIT (Inv.)/ADIT(Inv.) should identify these" Core documents" as mentioned in the Appraisal Report, at the time of handing over of the seized materials to the Assessing Officer, so that special care is taken by the Assessing Officer for security of the documents. At the time of taking over the seized records, the Assessing Officer should check all the seized materials and loose sheets with reference to the Panchnama and Appraisal Report. If any discrepancy is noted, it should be brought on record and the CIT is immediately kept informed about the discrepancy.
- (vii) Whenever the A.O. hands over seized documents/books of account to another officer, the Officer shall keep the CIT informed in his handover note about the security of seized documents/books of account so that while granting extension to retain the books, the CIT is aware of the security issues relating to the seized materials. The Officer taking over should follow the procedure, as mentioned in Para (vi) above.
- (viii) Any loss or tampering of seized documents/electronic device is the responsibility of the Officer in whose custody such incident is detected, unless he has pointed out the discrepancy, while taking over such seized documents/CDs/electronic device or otherwise proves that the discrepancy existed prior to take over of such documents. Hence, it is essential that each Officer has to exercise due diligence, while taking over the

seized materials and if any discrepancy is noticed, it should be informed at the time of taking over itself and such discrepancies are urgently reported to the CIT/DIT (Inv.).

- (ix) On receipt of intimation about any loss or tampering or discrepancy in seized material, the CIT/DIT (Inv.) should promptly decide regarding further course of action on such occurrence.
 - (x) The procedure as laid down above should be followed also for the security of the impounded documents/CDs/electronic device.
2. The aforesaid Guidelines should be brought to the notice of all the Officers of your Region.

Yours faithfully,

Sd/-

(AARSI PRASAD)

Under Secretary (Inv.II & III)

Tel: 23092643

F.No. 286/161/2006-IT (Inv. II)
GOVERNMENT OF INDIA
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 24th July, 2007

To,

All Directors General of Income Tax (Inv.).
All Chief Commissioners of Income Tax (Central)
Chief Commissioners of Income Tax (CCA), Bhopal

Sir/Madam

Subject : Revision in Guidelines for assessments in search and seizure cases- reg.

I am directed to refer to Board's letter F.No.286/161/2006-IT(Inv.II) dated 22nd Dec, 2006 on Guidelines for assessments in search and seizure cases.

2. As per the Para 1.5 of the guidelines for assessment in search and seizure cases, an action note has to be prepared by the Assessing Officer within 90 days of receipt of seized materials. Only after that notices under Section 153A, 153C or 148 of the Act should be issued, as per para 1.8 of the aforesaid guideline. In view of the above time lag between the receipt of seized materials and the issue of notices under Section 153(A), the assessment proceedings get delayed.

3. To overcome this, I am directed to inform the following changes in the aforesaid guidelines:

- i. The Assessing Officer may issue notices under Section 153A immediately after receiving the appraisal report and seized materials and ascertaining the cases where notices under Section 153A of the Income Tax Act 1961 are required to be issued.
- ii. The enquiries, including issue of questionnaire for the prior period, should be conducted without waiting for filing of the return for the assessment year relating to the year of search. .
- iii. A Search Register, as prescribed in para 4.6 of the aforementioned Guideline should be prepared and maintained by the Assessing Officers of the Central Charges instead of Range heads.

4. The aforesaid changes should be brought to the notice of all the officers of your region.

Yours faithfully,

Sd/-
(AARSI PRASAD)
Under Secretary (Inv.II & III)
Tel. 23092643

CHAPTER - VII

**REQUISITION OF BOOKS OF ACCOUNT, OTHER
DOCUMENTS OR ASSETS TAKEN INTO CUSTODY
BY ANY OFFICER OR AUTHORITY**

7.1 There may be cases where any other officer or authority, like Police, Customs or Sales/Trade-tax, has taken into custody books of account, other documents and assets, of a person under any law for the time being in force. These may be useful for, or relevant to, any proceedings under the Act. Section 132A empowers certain income-tax authorities to authorise certain other income-tax authorities to requisition books of account, other documents or assets taken into custody by any other officer or authority under any law for the time being in force. Rule 112D lays down the procedure for requisition and delivery of such books of account, other documents or assets.

7.2 Powers of a similar nature are available to certain wealth-tax authorities under section 37B of the Wealth Tax Act, 1957. Rule 10A of the Wealth Tax Rules lays down the procedure for requisition and delivery of such books of account, documents or assets.

7.3 The focus of this chapter is on the procedure relating to the requisition of books of account, other documents and assets under the Income Tax Act, 1961. This will, so far as may be, also apply to requisitions under the Wealth Tax Act, 1957.

Income-tax authorities competent to authorise requisition of books of account, etc. and the income-tax authorities that can be so authorised

7.4 Column (2) of the following Table enumerates the income-tax authorities that are competent to authorise requisition of books of account, other documents or assets, taken into custody by any officer or authority, under any law for the time being in force. The list of income-tax authorities that can be so authorised (called, the 'requisitioning officer') appears at the corresponding lines of Column (3) of the said Table.

Table

(1)	(2)	(3)
S.No.	Income-tax authorities competent to authorise income-tax authorities referred to in column (3), to requisition books of account, other documents or assets, taken into custody by any officer or authority, under any law for the time being in force	Income-tax authorities who can be authorised by the authorities referred to in column (2), to require the officer or authority, who has taken books of account, other documents or assets into his custody to deliver such books of account, other documents assets, to him

1	Director General of Income Tax	(1) Joint Director of Income Tax
2	Director of Income Tax	(2) Joint Commissioner of Income Tax,
3	Chief Commissioner of Income Tax	(3) Assistant Director of Income Tax,
4	Commissioner of Income Tax	(4) Deputy Director of Income Tax,
		(5) Assistant Commissioner of Income Tax,
		(6) Deputy Commissioner of Income Tax,
		(7) Income-tax Officer

7.5 Under the existing administrative distribution of functions, requisition of books of account, etc. under section 132A(1) are ordinarily authorised by the Director of Income Tax (Investigation) after obtaining administrative approval of the Director General of Income Tax (Investigation).

Circumstances in which power to requisition books of account, etc. under section 132A can be exercised

7.6 An income-tax authority competent to authorise requisition of books of account, etc. under section 132A (hereafter referred to as the 'competent authority') can do so only if he, in consequence of information in his possession, has reason to believe that any one or more of the circumstances referred to in clauses (a), (b) and (c) of section 132A (1) exist(s) in a case.

7.7 The competent authority should issue authorisation for requisition under section 132A(1) in a case only after proper application of mind. If so required, he should get further suitable inquiries or probe conducted, before authorising requisition in a case. An authorisation under section 132A(1) is required to be issued in Form No. 45C as provided in Rule 112D.

Statutory obligation of the officer or authority who has taken books of account, other documents or assets into his custody

7.8 On the Requisitioning Officer making a requisition under section 132A, the officer or authority that has taken books of account, other documents and assets into his custody is required to deliver the same to the requisitioning officer. The said officer or authority is required to do so either forthwith or when he/it is of the opinion that it is no longer necessary to retain the same in his/its custody. The officer or the authority delivering the books of account, other documents or assets to the Requisitioning Officer is called the 'delivering officer or authority'¹⁵⁹.

¹⁵⁹ See Rule 112D

Procedure for requisition and delivery of books of account, other documents and assets¹⁶⁰

7.9 The procedure for requisition and delivery of books of account, other documents and assets is, in brief, as under:

- (1) The Requisitioning Officer should make a written requisition to the delivering officer or authority, calling upon him/it to deliver the books of account, other documents and assets specified in the requisition. A copy of the authorisation in Form No. 45C should accompany the requisition.
- (2) A copy of the aforesaid written requisition along with a copy of the authorisation in Form No. 45C should also be forwarded to the person referred to in clauses (a), (b) or (c) of section 132A(1).
- (3) On such a requisition being made, the said officer or authority is required to deliver such books of account, other documents or assets to the requisitioning officer either forthwith or when he/it is of the opinion that it is no longer necessary to retain the same in his/its custody.
- (4) The delivering officer or authority is required to prepare a list of books of account, other documents and assets to be delivered to the requisitioning officer. In case, any books of account or document has any missing pages, or if there are any partly torn or damaged documents, this fact should be recorded in writing and both the delivering officer/authority and Requisitioning Officer should sign such recording.
- (5) Where the delivering officer/authority is affecting delivery of any bullion, jewellery or other valuable article or thing, such items should be placed in package(s) and each package should contain details of things placed therein.
- (6) Every such package should bear identification mark and seals of Requisitioning officer as well as of Delivering Officer/authority. It is highly advisable that at least one of the marks of identification should be in the form of signatures of the Requisitioning Officer and the delivering officer/authority. The rules permit putting the seal of any other income- tax authority not below the rank of Income tax Officer on behalf of the Requisitioning Officer. The person referred to in clause (a), (b) or (c) of section 132A or any other person on his behalf is also permitted to put his seal on the said package or packages.

¹⁶⁰ See section 132A and Rule 112D.

- (7) A copy of the list prepared is required to be delivered to the-
 - (i) person referred to in clauses (a), (b) or (c) of section 132A(1),
 - (ii) authority that issued the authorisation,
 - (iii) Chief Commissioner or Commissioner even if he did not issue the authorisation.
- (8) The Requisitioning Officer should draw up a memorandum giving record of proceedings indicating, *inter alia*, the various events like, requisition made, books of account, other documents or assets delivered. The format of the memorandum appears at Appendix-III.
- (9) The provisions of sub-rules (11) to (14) of rule 112 and of rules 112A, 112B and 112C, so far as may be, apply to requisition and delivery of books of account, other documents and assets as if-
 - (i) the books of account, other documents and assets delivered to the requisitioning officer under section 132A had been seized by him under section 132(1) from the custody of the person referred to in clause (a) or clause (b) or clause (c) of section 132(1); and
 - (ii) for the words “the authorised officer” occurring in any of the aforesaid sub-rules and rules, the words “the requisitioning officer” were substituted.

Handling of certain enforcement problems/situations

7.10 Some situations/problems that may arise in the enforcement of the provisions of section 132A are briefly discussed below:

- (1) The officer or authority in custody of the books of account, documents or assets may refuse to deliver the same forthwith to the Requisitioning Officer on the ground that it is necessary for him to retain the same in his/its custody. In such a situation, it may be useful for the Requisitioning Officer to take the following steps in addition to such other steps as the circumstances of the case may warrant:
 - (i) He should try to ascertain from the said other officer or authority the approximate time by which he/it would be able to deliver the books of account, documents or assets.
 - (ii) Wherever possible, he should request the said officer or authority to provide to him-
 - (a) certified true copies of the books of account or documents, or the facility to inspect the same and obtain copies thereof; and

- (b) inventory of the assets, indicating, *inter alia*, their quantity and value.
- (2) It may be useful for the Requisitioning Officer to take the following steps in addition to such other steps as the circumstances of the case may warrant, if the said other officer or authority refuses to receive the written requisition or declines to comply with the same:
 - (i) He should explain to the said officer or authority the relevant legal provisions and advise him to comply with the same.
 - (ii) In suitable cases, he should request the Controlling Officer of such officer/authority to intervene.
 - (iii) He should also report the matter to the DIT (Investigation) and the CIT.

Applicability of certain provisions of section 132 and 132B to requisitions

7.11 Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) of section 132 and section 132B apply, so far as may be, as if-

- (a) such books of account, other documents or assets had been seized under section 132 (1) by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c) of section 132A(1); and
- (b) for the words the “authorised officer” occurring in any of the aforesaid sub-sections (4A) to (14) of section 132, the words the “requisitioning officer” were substituted.

7.12 The following powers enjoyed by an Authorised Officer under section 132 are, however, not available to the Requisitioning Officer under section 132A of the Act:

- (1) Under section 132, the Authorised Officer has the power to requisition services of police officers, or of any officer of the Central Government, or both to assist him for carrying out search and seizure operations. It is the duty of every such officer to comply with such requisition. No such power is available to the Requisitioning Officer under section 132A.
- (2) The Authorised Officer has the power to issue a restraint order under section 132(3) where it is not practicable to seize any books of accounts, other documents, money, bullion, jewellery or other valuable article or things found in the course of the search. No such power is available to the Requisitioning Officer under section 132A.

- (3) Section 132(4) empowers the Authorised Officer to examine on oath, during the course of search and seizure operation, any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. No such power is available to the Requisitioning Officer under section 132A.

CHAPTER - VIII

SECRET SERVICE FUND

8.1 Secret service fund is provided to Directorates of Income Tax (Investigation) for incurring expenditure on secret activities essential for, or incidental to, the work of the Investigation wing. It can be utilised for purchase of information and expenses on activities like surveillance and reconnaissance.

Incurring expense out of the funds

8.2 An officer of the Investigation Unit is authorised to incur expenses out of the allotment made to him for secret service expenditure and there is no necessity for sanction in each case before its drawal. He can draw the funds under his own authority as and when he needs and make payments as and when the need arises.

Maintenance of Accounts

8.3 When funds under this head are placed at the disposal of an officer (usually the Director of Income tax (Investigation)) for secret service, he should maintain a contingent register in the prescribed form mentioning the date and amount of each contingent bill, along with details of the progressive expenditure. The officer should also maintain, in the form of a cash book, a record of the receipt of funds and expenses incurred out of the same. The amount drawn on contingent bills will be entered in the cash book on the receipt side, specifying the number and the date of the bill against the entry. The date and amount of each payment, indicating the nature of payment, should be entered on the payment side.

8.4 Vouchers relating to expenditure on purchase of information, etc. should be maintained date-wise so that the same can be traced for subsequent cross-verification with reference to the entries in the cash book. The vouchers should be serially maintained and entered in the cash book in a chronological order. The vouchers should bear the signature of the officer authorising the payment. These should be crossed after payment to avoid duplicate claim being entertained.

Preparation of bills

8.5 The officer to whom funds are allocated may draw bills for such sums as may be necessary. This need not be supported by any voucher.

Control of expenditure

8.6 As per existing instructions¹⁶¹, the Secret Service Funds should be used diligently towards purchase of information, equipment or cultivating

¹⁶¹ F.No. 6/26/2006-IFU(B&A) dated 13th December, 2006 circulated vide Board's letter F.No. 286/1/2007-(Inv II) dated 10-01-2007 (Annexure 91 in Appendix V)

intelligence and informer base, etc. The general control of expenditure incurred against the allotment will be vested in the officer aforesaid who will be responsible to see that accounts are duly maintained and that payments were properly made for the purpose for which the appropriation was made. The Government nominates a Controlling Officer for administrative audit of the expenses incurred out of the funds allocated under this head. He should conduct such audit at least once in every financial year.

8.7 The said Controlling Officer is required to furnish a certificate in the following form. This should be done latest by the 31st August of the year following the year to which the fund relates:

"I hereby certify that the amount actually expended by me or under my Authority for secret service in the year ending the 31st March.....was Rs.....; that the balance in fund on the said 31st March was Rs.....and that this balance was surrendered by short drawing in the first bill presented during the year and I declare that the interests of the public service require that the above payments should be made out of secret service funds and that they were properly so made".

8.8 This certificate is required to be forwarded to Zonal Accounts Officer, CBDT. Unspent balance with the DDOs at the end of financial year is required to be surrendered by short drawal through the first bill in the next year or refunded to the Government.

Audit

8.9 The accounts of the secret service expenses are not subject to scrutiny by any audit authority. However, even though the disposal of the funds is not auditable, still, the purpose for which the funds were utilised is open to inspection by the higher authorities. The officers utilising the allocated fund for incurring expenses like, purchase of information, surveillance expenses, cultivating informer base, intelligence gathering should keep a record of the expenses. For example, where any expenditure is incurred for purchase of information, secret record of details like, the person/persons to whom the said information relates, the date of purchase of information, whether the information was useful and whether any action was taken on the same. If the person giving information is one who intends to claim reward, record of his identity should be kept with appropriate code number so that the payment made from the secret fund is subsequently adjusted against the reward, if any, granted to him. The reference number of the file, where such information is kept, should also be mentioned in the cash book. Bland entries in the cash book like 'purchase of information' or 'reconnaissance expenditure' without any supporting details kept separately by the officer concerned will be irregular.

CHAPTER-IX

REWARD TO INFORMANTS AND DEPARTMENTAL PERSONNEL

9.1 This Chapter briefly discusses the salient features of the schemes formulated by the Income Tax Department for grant of reward to informants and Departmental personnel. The focus of this chapter is on the schemes of reward for search and seizure operations and related activities. Issues relating to reward for other activities or achievements have not been discussed here. The points made in this Chapter are by no means exhaustive. Reference to the appropriate reward guidelines should be made when dealing with a reward matter.

Reward to informants

Guidelines for the grant of reward to informants and their applicability

9.2 Rewards to informants are governed by the guidelines issued by the Board from time-to-time, since 1964. The guidelines have been revised periodically. The exact applicability of any particular guideline or a set of guidelines to a case would depend *inter alia*, upon the date on which the informant furnished the information to the Department. The latest guidelines for grant of reward to informants were issued in 1993, with effect from the 1st December, 1993.¹⁶² Certain procedures laid down in the guidelines of 1993 also apply *mutatis mutandis* to pending cases where information was furnished, prior to 1st December, 1993.

9.3 The guidelines for grant of reward to informants issued from time-to-time in the past and their applicability is as under:-

S. No.	Year of issuance of the guidelines	Applicable to information furnished	
		From	To
1	1964	Information received up to 31.03.1970	
2	1970	01.04.1970	30.06.1973
3	1973	01.07.1973	31.12.1979
4	1980	01.01.1980	30.09.1983
5	1983	01.10.1983	30.11.1987
6	1987	01.12.1987	30.11.1993
7	1993	01.12.1993	Still continuing

9.4 The discussion in this chapter on the scheme of reward for informants

¹⁶² See Annexure 69 in Appendix V.

is with reference to the provisions of the Guidelines for grant of reward to informants issued in the year 1993.

‘Informant’ eligible for reward

9.5 A person is considered to be an informant eligible for reward if he furnishes specific information, documents or other evidence leading to-

- (a) detection of concealed income/wealth/gift/estate in the case of existing taxpayers, provided that, where the information relates to income/wealth/gift/estate of the accounting year during which information is furnished or to income/wealth/gift/estate, the return/statement for which has not yet fallen due on the date of furnishing of the information, the informant will be entitled to a reward only if the facts and circumstances of the case show that such income/wealth/gift/estate would not have been disclosed by the assessee but for the furnishing of the information by the informant;
- (b) detection of undisclosed income/wealth/gift/estate in the case of the person not hitherto assessed if the facts and circumstances of the case show that such income/wealth/gift/estate would not have been disclosed by the assessee but for the furnishing of the information by the informant provided that,
 - (i) the information is furnished after expiry of the time limit prescribed for filing the relevant return of the year to which the information relates and the department has not issued a notice for filing the said return/statement;
 - (ii) where the information relates to income/wealth/gift/estate of the accounting year during which the information is furnished in respect of which the return is not yet due, the informant will be entitled to reward only if the return is not filed on or before the due date whether as originally fixed or as extended by the Assessing officer on application by the assessee; and
- (c) the recovery of taxes, which were otherwise not recoverable.

Categories of informants and their entitlement to reward

9.6 The following Table enumerates the categories of informants and their entitlement to reward under the guidelines:

S. No.	Category of informant	Entitlement to reward under the guidelines
1	A Government Department that furnished information to the Income Tax Department	Ordinarily, no reward is granted to any other Government Department for any information provided by it.

2	A person working in a Government Department, other than the Income Tax Department, who furnished information to a competent income-tax authority	Government servants working in other Departments, not connected with the Income Tax Department, are eligible for reward. The quantum of reward will depend on the information or help given by them if such information had no connection with their duties as Government servants.
3	A person who furnished information to a Government Department, other than the Income Tax Department and that Department passed on the information to the Income Tax Department	The authority competent to grant reward, may grant reward to such informant in accordance with the guidelines if the conditions for grant of reward are satisfied. However, reward as admissible under the existing guidelines may be granted after deducting the reward, if any, the informant might have received or is likely to receive from such other Government Department. The authority competent to grant reward shall disburse the amount of reward to the informant through the Head of the Department of the other Government Department that passed on the information to the Income Tax Department.
4	A person, other than that referred to at S.No. (1) to (3) above who furnished information to the Income Tax Department	The authority competent to grant reward, may grant reward to such informant in accordance with the guidelines if the conditions for grant of reward are satisfied.

Reward to legal heirs of the informant

9.7 Reward is an *ex gratia* payment. It cannot be assigned. However, in suitable cases Board can sanction reward to a deceased informant's legal heirs.

Basis for reward

9.8 A final reward under the guidelines is generally granted only if the information furnished by the informant leads to the levy and actual realisation of extra income-tax, wealth-tax, gift-tax or estate-duty and the various conditions mentioned in the relevant guidelines are fulfilled. It is granted on such extra taxes levied and actually realised as are directly attributable to the information supplied by the informant. The quantum of reward is usually a fraction (in terms of percentage) of such extra taxes, subject to an overall monetary ceiling. However, in certain situations-

- (i) an interim reward can be granted with reference to extra taxes leviable or realisable; and

- (ii) a reward can be granted on an adhoc basis.

9.9 The guidelines also provide for granting of reward in cases where the information leads to recovery of otherwise irrecoverable taxes. The amount of reward granted in such cases is usually a fraction (in terms of percentage) of such taxes, penalty and interest, subject to an overall monetary ceiling.

9.10 Some points germane to the process of determining the eligibility and basis for reward to informants under the Guidelines for grant of reward issued in 1993 are:

- (1) A reward can be granted only to a person who under the guidelines is entitled to the same. The Table appearing at paragraph (9.5) above enumerates the categories of informants and their entitlement to reward under the guidelines.
- (2) The grant of reward is confined to cases where an action is actually taken in pursuance of the information furnished by the informant. It is not extended to cases where voluntary returns admitting additional income/wealth were filed subsequent to the receipt of the information but before any action on the basis of the information was taken.
- (3) The grant and payment of reward is in the absolute discretion of the competent authority. According to the guidelines, no petition or representation against any decision under the guidelines should be entertained.
- (4) Reward should not be granted if the information furnished is vague and is of a general nature.
- (5) Reward should not be granted in respect of any incidental benefits, which may arise to revenue in other cases as a result of the information furnished by the informant.
- (6) Reward is granted only if the extra taxes levied and actually realised or realisable are directly attributable to the information and documents supplied by the informant. Its amount will also depend on the nexus between the information given and the evidence gathered in course of searches/inquiries. No reward is payable to the informant with reference to the extra taxes levied and actually realised in a case, if such extra taxes are not directly attributable to the information furnished by him. For example, where the informant furnished information about the modus operandi relating to a particular business but during the search, material and books of account, other documents, etc., incriminating the person searched, relating to another business were found, extra taxes levied and realised in regard to the

undisclosed income of such other business should not be considered while determining the amount of reward payable to the informant. Similarly, there can be a case where the material and evidence, etc. found in the course of the search, leads to levy and actual realisation of extra taxes but such extra taxes are not directly attributable to the information furnished by the informant. In such cases also, such extra taxes should not be considered for determining the amount of reward payable to the informant.

- (7) The eligibility to reward and its quantification also depends on the following factors:
 - (i) the accuracy of the information given by the informant;
 - (ii) the extent and nature of the help rendered by the informant;
 - (iii) the risk and trouble undertaken and the expense and odium incurred by the informant in securing and furnishing the information and documents;
 - (iv) the quantum of work involved in utilising the information furnished and making the assessment.
 - (v) in cases where the information led to recovery of otherwise irrecoverable taxes, the facility with which such taxes could be recovered as a result of the information.
- (8) Where information is furnished by more than one informant, it should be made clear as to in what ratio the reward, if any payable, will be apportioned between them. The sanction order for granting the reward should also clearly mention the ratio in which the reward will be apportioned between the informants.

Types of reward

9.11 The guidelines provide for the following types of rewards:

- (1) Final reward
- (2) Part of final reward¹⁶³
- (3) Interim reward
- (4) Ad-hoc reward

9.12 The guidelines prescribe monetary ceilings for various types of rewards. These can be waived in certain specified circumstances. Where two or more persons furnish information in a particular case, reward

¹⁶³ This concept was introduced for the first time in the Guidelines for grant of reward issued in the year 1987. It applies only to the cases covered by the guidelines issued in 1987 and 1993 and not to the cases covered by the earlier guidelines.

will be shared by them on the basis determined by the authority competent to grant reward, having regard to the utility of the information furnished by each of them and other relevant factors. Where information is furnished by more than one informant jointly, it should be decided at the time of receiving the information about the ratio in which the reward will be shared by them. No income tax is payable by the informant on any amount received by him as reward.

Final Reward

9.13 The competent authority under the guidelines can grant a reward not exceeding ten percent of extra income tax, wealth tax, gift tax and estate duty levied and actually realised in a case if the said extra taxes are directly attributable to the information furnished by the informant. This is subject to a monetary ceiling of Rs. 5 lakhs¹⁶⁴. This can be relaxed in certain situations with the full Board's approval. Final reward can be granted in a case only after all the proceedings (like assessments and appeals) have become final and extra tax, interest and penalty have actually been levied and realised.

9.14 The following points also govern eligibility and quantification of reward:

- (1) The aforesaid monetary ceiling of Rs. 5 lakhs applies with reference to a group of cases and not in respect of the individual assessee of the group.
- (2) The aforesaid monetary limit of Rs.5 lakhs can be waived in suitable cases after obtaining the approval of the full Board. However, even in such cases the amount of reward shall not exceed ten percent of the extra taxes levied and actually realised.
- (3) In cases where taxes are being paid by the assessee in instalments after the assessments have become final, the authority competent to grant reward may consider disbursement of reward in instalments.
- (4) Any amount paid to the informant in a case by way of interim, *ad hoc* or part of final reward in the past should be deducted from the final reward.
- (5) One of the conditions laid down in the guidelines for grant of reward is that a certificate should be obtained from the Internal Audit regarding accuracy of tax calculations on the basis of which the reward is quantified.

¹⁶⁴ In cases covered by the Guidelines for grant of reward issued in 1993. The monetary ceiling in the earlier guidelines are different and given in the Table in Annexure 97 in Appendix V.

Part of final reward

9.15 The authority competent to grant reward may grant a 'part of final reward' under the guidelines issued in 1987 and 1993 where-

- (a) only some of the assessments relating to a case have become final after decision in appeals, etc. or
- (b) where some of the issues in an assessment have become final after decision in an appeal, etc.

and, the authority competent to grant reward is satisfied that extra taxes attributable to such assessments or such issues, which have been levied and realised, will not be reduced under any proceeding at any time in the future.

9.16 One of the conditions laid down in the guidelines for grant of reward is that a certificate should be obtained from the Internal Audit regarding accuracy of tax calculations on which the quantum of part of final reward is based.

Interim Reward

9.17 Under the guidelines for grant of reward issued in 1987 and 1993, the authority competent to grant reward may grant an interim reward not exceeding five percent of the extra taxes levied or which can reasonably be expected to be levied. This is subject to a ceiling of Rs.1 lakh under 1993 guidelines and Rs. 75,000/- under 1987 guidelines.¹⁶⁵ Reward to an informant can be granted where the competent authority is satisfied that the following conditions are fulfilled:

- (i) The information, evidence or documents given by the informant are likely to lead to substantial gain to Revenue.
- (ii) The assessment made, or to be made on the basis of such information/ evidence or documents is likely to be sustained in appeal.
- (iii) The taxes assessed, or to be assessed, on the basis of the information or evidence or documents furnished by the informant, are likely to be recovered.

9.18 The aforesaid monetary ceiling of one lakh rupees under the reward guidelines of 1993 can be waived in suitable cases with the approval of the full Board. As regards the reward guidelines of 1987, the aforesaid monetary ceiling of seventy five thousand rupees is not applicable to a case where the informant's information helps detect undisclosed assets of more than Rs. 30 lakhs.

¹⁶⁵ The basis of grant of interim reward was somewhat different in the earlier guidelines. See Table in Annexure 97 in Appendix V.

9.19 The situations in which an interim reward may be granted to an informant, may include the following:

- (1) After the search but before filing of returns of income or framing of assessments.
- (2) After the search and filing of search related returns of income but before completion of assessments.
- (3) After completion of search related assessments, but before these have become final after appeals.
- (4) After one or more of the events referred to in (1) to (3) above but before actual realisation of extra taxes attributable to the informant's information.

9.20 The following points are relevant to processing a case for interim reward:

- (1) Where an interim reward is proposed before filing of returns of income or completion of assessments, the proposal/ decision making process may take into account factors like, nature and value of the seized assets, estimated undisclosed income/wealth, based on the seized material, including seized books of account, other documents, etc. and findings of the appraisal report.
- (2) Where an interim reward is proposed after filing of search related returns of income but before completion of assessments, the proposal/decision-making-process may take into account factors like, the undisclosed income shown in such returns of income/wealth, taxes paid on such undisclosed income/wealth, nature and value of the seized assets, estimated undisclosed income/wealth, based on the seized material, including seized books of account, other documents, etc and findings of the appraisal report.
- (3) Where an interim reward is proposed after completion of search related assessments, the proposal/decision-making-process may take into account factors like, the undisclosed income/wealth assessed, variation between the assessed undisclosed income and that shown in the return of income, whether the assessee disputes or is likely to dispute the additions to the total income made in the assessments, extra taxes paid on the returned/assessed undisclosed income/wealth and nature and value of the seized assets.
- (4) Where an interim reward is proposed after any of the events referred to at S.No. (1) to (3) above or at any other stage, it is necessary to evaluate the extent to which the informant's information was useful in detection of undisclosed income/wealth and whether such detection was directly attributable to the said information.

- (5) One of the conditions laid down in the guidelines issued upto the year 1987 was that if the amount of interim reward decided to be paid is twenty five thousand rupees or more, a certificate should be obtained from the Internal Audit regarding accuracy of tax calculations on which the quantum of interim reward is based. However, as per the guidelines issued in 1993, this condition is not applicable to interim or ad-hoc reward where information was furnished by the informant on or after 1-12-1993.
- (6) It is permissible to pay interim reward in more than one installment. However, where the overall monetary ceiling for interim reward is applicable, the same will apply cumulatively.

9.21 The Table appearing in Appendix-V gives certain salient features of determination and quantification of interim and final rewards.

Adhoc Reward

9.22 The competent authority may grant reward on an ad-hoc basis in the following types of cases:

- (a) In cases where information has been furnished in respect of '*hawalawalas*' and the gain to revenue in the case of '*hawalawalas*' is negligible but the revenue gain is substantial in the case of beneficiaries of the '*Hawalas*' and it is not possible without inordinate delay to assess the benefit to revenue in the case of the said beneficiaries.
- (b) In cases involving carry forward of large losses or unabsorbed depreciation if the information furnished helps in reducing the said losses and/or unabsorbed depreciation only and do not result in any immediate gain to revenue.
- (c) Cases where information has been furnished by more than one informant and it is difficult to quantify the extra taxes that could have been realised as a result of the information furnished by each of them.
- (d) In cases where most of the information is already available with the department but the information furnished by the informant has been of some use.
- (e) In cases where the additions are disputed by the assessee and it would take a long time for the assessment to become final and for the tax to be recovered.
- (f) Other cases where the authority competent to grant reward considers it necessary or expedient to pay reward on ad-hoc basis. Such cases will however be referred by the authority competent to grant rewards to the Board for final determination of the basis and quantum of reward.

9.23 One of the conditions laid down in the guidelines for grant of reward issued upto the year 1987, was that if the amount of ad-hoc reward decided to be paid is Rs. 1 lakh or more, a certificate should be obtained from the Internal Audit regarding accuracy of tax calculations on which the quantum of ad-hoc reward is based. However, as per the guidelines issued in 1993, this condition is not applicable to interim or ad-hoc reward where information was furnished by the informant on or after 1-12-1993.

Authorities competent to grant reward

9.24 The following Table lists the authorities competent to grant rewards:

S. No.	Nature of reward	Authority competent to grant reward	Remarks
(1)	(2)	(3)	(4)
1	All rewards not exceeding an aggregate amount of Rs. 1 lakh (including, interim, part of final and adhoc reward, if any paid in the past in that group of cases)	CIT/DIT (Investigation), depending upon the authority to whom the informant furnished the information)	
2	All rewards exceeding an aggregate amount of Rs.1 lakh (including, interim, part of final and adhoc reward, if any paid in the past in that group of cases) but not exceeding Rs.5 lakhs	CIT/DIT (Investigation), depending upon the authority to whom the informant furnished the information), with the prior approval of a committee, headed by the DGIT (Investigation) of the zone and also comprising the jurisdictional CCIT and the concerned CIT/DIT (Investigation), as nominated by the DGIT(Investigation).	In a case where the approval of the Committee referred to at Column (3) is required, the matter shall be referred by the concerned DIT/CIT to the DGIT (Inv.), who shall convene the meeting of the committee and convey its decision to the authority making the reference
3	All rewards exceeding an aggregate amount of Rs.5 lakh (including, interim, part of final and adhoc reward, if any paid in the past in that group of cases)	CIT/DIT (Investigation), depending upon the authority to whom the informant furnished the information), with the prior approval of full Board.	In a case where the approval of full Board is required, the matter shall be referred by the concerned DIT/CIT to the DGIT(Inv.), who shall forward the same Board, along with his comments.

Procedure for processing of reward matters

9.25 The proposal for grant of a reward should generally be prepared by the ADIT (Inv.)/DDIT (Inv.) of the Investigation Unit of the Directorate of Income Tax (Investigation) to whom information was furnished by the informant. It will be the responsibility of the Joint/Additional DIT (Investigation) to ensure that reward proposals are processed and submitted in time. However, information about the extra taxes levied and actually realised in a search case is furnished by the Assessing Officer to the officer of the aforesaid Investigation Unit. While the Assessing Officer does not have access to the information furnished by the informant, the officer of the Investigation Unit does not automatically get information about such extra taxes levied and realised in a case, on the basis of the information directly attributable to the informant. Copies of the assessment and appeal orders also do not come to him in the normal course. This may lead to a situation where information about the extra taxes levied and realised reported by the Assessing Officer (wherever so required under the reward guidelines, after suitable audit checks) to the officer of the Investigation Unit in a case pertains to the revenue gain attributable to the evidence, etc. found as a result of the search. But the revenue gain may not necessarily be directly attributable to the information given by the informant. It is, therefore, necessary that before calling for a revenue gain report from the Assessing Officer, the officer of the Investigation Unit of the Directorate carefully examines the relevant assessment and appellate orders, etc. and identifies the undisclosed income brought to tax, which is directly attributable to the informant's information. He should communicate his findings in this regard to the Assessing Officer and call for the revenue gain report (or the information about the extra taxes levied and actually realised) with suitable audit checks, wherever so required under the reward guidelines, with reference to such items of undisclosed income only as are directly attributable to the informant's information. Where there is a dispute or difference of opinion on any of these issues between the officer of the Directorate of Income-tax (Investigation) and the Assessing Officer, both the points of view should be placed before the authority/committee competent to grant reward, while submitting the reward proposal.

9.26 As explained in Chapter- II, information collected from the informant and other sources are placed on a file marked as secret and kept in the personal custody of the Joint/Additional DIT (Investigation) concerned. This file, as also the file containing personal and identification details of the informant are confidential in nature and not open to audit. Soon after the completion of the search, a file relating to the 'Reward to the Informant' should be opened and kept in the personal custody of DDIT/ADIT (Investigation). This should contain, inter alia, the code number of

the informant, the gist of the information furnished by him and the relevant details relating to the outcome of the search. It should also contain details of money, if any paid to the informant for purchase of information. The matter regarding the reward to the informant should be processed only through this file. This file will be open to audit.¹⁶⁶

9.27 The ADIT/DDIT should, depending upon the outcome of the search and the post-search investigations, inquiries, etc., initiate suitable reward proposal at the appropriate time. Where sanction of reward requires the prior approval of the competent committee referred to in S.No.(2) of the Table appearing at paragraph (9.20) or as the case may be, full Board, suitable proposal should be prepared in the prescribed proforma.¹⁶⁷ The proposal should clearly spell out the basis for recommending reward. Suitable calculation sheets should also accompany it. The proposal should also indicate the monetary ceiling laid down in the guidelines in respect of the type of reward being proposed.

Payment of reward to the informant

9.28 The concerned Joint/Additional DIT (Investigation) should make payment of reward to the informant. If the DIT (Investigation) is available at the place where the reward is being paid, the payment should be made in his presence. This should be done after proper identification of the informant. Entries relating to reward payments should be made in the Reward Register. No certificate should be issued to the informant regarding the payment of reward made to him.

Reward to departmental officers and staff for search and seizure work

9.29 A scheme for granting reward to departmental officers and staff was introduced with effect from the 1st April, 1985.¹⁶⁸ This scheme has been revised by Board's letter F.No.287/79/2005-IT(Inv.) dated 30-05-2007.¹⁶⁹ The salient features of these schemes are given below.

Reward Scheme of 1985

9.30 The Board's letter DOF No. 414/10/83-IT (Inv. I) dated 16.11.1985 contains guidelines in this regard. The scheme provides for grant of reward to departmental officers for their performance in various areas of work, like, assessment, search and seizure and representation before the Income Tax Appellate Tribunal. This chapter discusses salient features of the scheme in so far as it is applicable to reward for search and

¹⁶⁶ See Board's Instruction 1855 dated 05-09-1990 (Annexure 68 in Appendix V).

¹⁶⁷ See Guidelines for Grant of Rewards to Informants, 1993 (F.No.292/14/93-I.T. (Inv.-III) dated 30-11-1993 (Annexure 69 in Appendix V)

¹⁶⁸ See Board's letter D.O.F.No. 414/10/83-IT (Inv.) dated 6-11-1985 (Annexure 66 in Appendix V).

¹⁶⁹ See Annexure 99 in Appendix V

seizure work. This scheme is applicable to cases where search was carried out on or before 31-05-2003.

9.31 Some salient features of the scheme are as under:

- (1) Monetary reward for search work can be granted to the officers and staff of the Investigation Wing and the members of the search team in cases where the value of the assets seized is at least Rs.10 lakhs in non-metropolitan towns and Rs.25 lakhs in metropolitan towns (that is, Delhi, Mumbai, Chennai and Kolkata).
- (2) Grant of reward in a case should be based on the following considerations, if the other conditions mentioned in the Board's said letter dated 16.11.1985 are fulfilled:
 - (i) value of the seizure effected;
 - (ii) magnitude of evasion detected; and
 - (iii) special efforts or ingenuity displayed by the officer concerned
- (3) Where valuables have been seized, the officials entitled to reward would be,
 - (a) all members of the particular search team who have detected and seized valuables; and
 - (b) the Additional DIT (Investigation), Joint DIT (Investigation), DDIT (Investigation), ADIT (Investigation) and Inspectors of the Investigation Wing.

The ratio of disbursement of the reward in such cases shall be at the rate of 40% of the final amount sanctioned to (a) above and balance 60% to (b) above.

- (4) The maximum amount of reward payable to departmental officers, members of staff and informant is ten per cent of the additional income brought to tax. This is the overall monetary limit and in no case can the amount of reward paid to the departmental officers and members of staff under the Board's aforesaid letter and to the informant under the relevant guidelines for grant of reward to informants, exceed the said monetary limit, that is ten percent of the additional income brought to tax.
- (5) Where there are no informers, the entire amount of reward of reward will be payable to the officers and staff. However, where a reward is also payable to informers, the reward payable to officers and staff would be limited to five percent of the additional income brought to tax.
- (6) Where as a result of a search, the assessee himself discloses what was hitherto undisclosed income, excess of income returned over

the income as per the books maintained, if any, shall be treated as additional income brought to tax. Where no books of account are maintained or though books are maintained but the income has not been arrived at, the excess of income returned over the mean of the last three years' returned income shall be treated as additional income brought to tax for purposes of computing the reward.

- (7) The stage of payment of reward for search and seizure work is as under:
- (i) Where the assessment is completed on an agreed basis and the decision is not appealed against, the reward will be payable after the expiry of the period within which appeals could be filed.
 - (ii) Where the case is in appeal, fifty per cent of the reward admissible shall be paid to the eligible officers/staff after the order of the CIT(Appeals) is received.
 - (iii) In all other cases, final reward will be payable after the order of the Income-tax Appellate Tribunal is received.
- (8) Where, consequent upon a search under section 132, an assessment or reassessment has been made under section 158BC or section 158BD, the final reward, at the request of the processing unit of search may, notwithstanding anything contained in clause (ii) or clause (iii), be granted after completion of the assessment or reassessment on the basis of undisclosed income declared in the return filed under section 158BC/BD for the block period, provided that
- (a) the tax on such income has been paid;
 - (b) the quantum of income declared in the return under section 158BC/158BD is not disputed in appeal filed, if any;
 - (c) no application has been made to the Settlement Commission;
 - (d) the processing unit furnishes an undertaking to the effect that no further claim of reward shall be made on the income over and above such income, declared in the return under section 158BC/158BD; and
 - (e) one year has passed from the date of relevant assessment order under section 158BC or 158BD.¹⁷⁰
- (9) Where reward is sanctioned for search and seizure scrutiny

¹⁷⁰ See Board's letter F.No. 287/39/2005-IT (Inv.II)/(Pt.) of April, 2007. The said letter also prescribes a proforma to be used for this purpose.(Annexure 96 in Appendix V)

assessment, the reward shall be shared between the officer and staff of the Investigation wing, authorised officer and Assessing Officer and his staff.

- (10) Only officers up to the rank of Additional Commissioner of Income Tax/Additional Director of Income Tax are eligible for grant of reward. Payment of reward depends upon the contribution made by the officials as a team as well as individually with regard to collection of intelligence, surveillance, effecting seizures, framing of assessments, etc. Due credit will be given to the staff employed in investigation and/or prosecution work resulting in conviction of persons involved.
- (11) Reward to officers and staff under this scheme is exempt from payment of income tax.
- (12) Reward under this scheme is purely an ex-gratia payment and the competent committee's discretion shall be final.
- (13) For searches carried out on or before 31-05-2003, the reward would be governed by the Reward Guidelines of 1985. However, the Committee competent to grant such rewards would be that specified in the para 5 of Revised Guidelines for sanction of reward dated 30-05-2007.

Authority competent to grant reward to officers and members of staff

9.31 The Board's aforesaid letter 16.11.1985, which lays down the scheme for grant of reward to departmental officers and staff, empowers the heads of Department to sanction grant of suitable reward for search and seizure work if the conditions laid down for this purpose in the said letter are fulfilled. However, as provided in the said letter, such cases of grant of reward are required to be examined and approved by a competent committee consisting of the following:

S.No.	Amount of reward	Constitution of the Committee
1	Reward up to Rs.20,000/-	(i) Commissioner of Income Tax concerned (ii) DIT (Investigation) only where search was authorised by him
2	Reward in excess of Rs.20,000/- but not exceeding Rs.1 lakh per assessment	(i) Member (Investigation), CBDT (ii) DGIT (Investigation) (iii) DIT (Investigation) of the zone concerned
3	Reward in excess of Rs.1 lakh per assessment	(i) Chairman, CBDT (ii) Member (Investigation), CBDT (iii) Member (Income Tax), CBDT

The constitution of these Committees stands revised with effect from 01-05-2007 by Revised Guidelines for reward dated 30-05-2007 and is discussed hereafter in this chapter.

Procedure for processing the reward to Officers and staff

9.32 The JDIT/Additional DIT (Investigation) will be responsible for initiating and processing proposals for grant of reward to officers and staff for search and seizure work. He should ensure that proposals are initiated and submitted to the authority competent to sanction reward promptly. The following points relating to submission of reward proposals and their processing merit a brief mention:

- (1) The Joint/Additional DIT (Investigation) should identify the officers and members of staff entitled to reward. The information about their names would be available in records like, *panchnama*, appraisal report and Control room records.
- (2) The proposal should be prepared in the proforma prescribed for this purpose.¹⁷¹
- (3) If any official entitled to reward has been transferred out after the search operation, his current designation and place of posting should be ascertained.
- (4) The proposal should clearly spell out as to how the various conditions mentioned in the scheme for grant of reward are fulfilled. This can also be reported in a separate note, which should be attached to the proposal/particulars in the prescribed form required to be submitted.
- (5) He should also report whether there was any informant or informants who furnished information in the case and whether he/they are entitled to any reward under the relevant guidelines for the grant of reward to informants.
- (6) In case any informant is entitled to any reward under any guidelines for the grant of reward to informants, proposal for grant of reward to officers and members of staff should be entertained only after reward matter of the informant has been processed.
- (7) The Joint/Additional DIT (Investigation) should forward the proposal to the DIT (Investigation).
- (8) The DIT (Investigation) should,

171 See. Board's letter F.No. 287/39/2005-IT (Inv.II)/(Pt.) of April, 2007 (Annexure 96 in Appendix V). It also prescribes a proforma to be used for the purpose mentioned in the said letter.

- (i) if he is of the opinion that any further information or clarification is required from the Joint/Additional DIT (Investigation), call for such further information or, as the case may be, clarification;
 - (ii) if he is of the opinion that the officers and the members of staff named in the proposal are entitled to a reward but the amount of reward or its allocation amongst various departmental personnel has not been correctly worked out, prepare a fresh proposal and forward the same under his signature to the committee competent to approve grant of reward; and
 - (iii) even if the proposal submitted by the Joint/Additional DIT (Investigation) is in order, prepare a fresh proposal, based on the inputs available in the Joint/Additional DIT (Investigation)'s proposal and forward the same under his signature to the committee competent to approve grant of reward.¹⁷²
- (9) The competent committee should take appropriate decision on the proposal sent by the DIT(Investigation). This may include the following:
- (i) imposition of such conditions as the committee deems fit including the condition that reward approved by the committee should be disbursed only after obtaining vigilance clearance from the concerned authorities in respect of each official;
 - (ii) manner in which the reward granted should be distributed or allocated amongst various officers and member of staff;
 - (iii) time-period within which reward should be disbursed; and
 - (iv) submission of compliance report regarding disbursement of reward or such other matter(s) as may be identified by the committee.

Reward Scheme of 2007

9.33 The scheme of reward to officers and staff has been revised by issue of guidelines dated 30-05-2007.¹⁷³ These are comprehensive guidelines for grant of reward for various types of work like scrutiny

¹⁷² Since officers up to the rank of Additional DIT(Investigation) are entitled to reward, it is desirable that the DIT(Investigation) should prepare a fresh proposal under his signature and not merely forward the proposal sent to him by the Additional/Joint DIT (Investigation).

¹⁷³ See Board's letter F.No. 287/79/2005-IT (Inv.II) dated 30-05-2007 (Annexure 99 in Appendix V)

assessments, search and seizure operations and assessments, surveys u/s133A, representation before ITAT etc. In cases of search and seizure, these guidelines are applicable to all searches conducted on or after 31-05-2003. As far as the searches conducted prior to 31-05-2003 are concerned, the scheme of 1985 will continue to apply except that the Committees for sanction of reward will be as per new guidelines dated 30-05-2007.

9.34 Some of the conditions for grant of reward in search and seizure cases are as follows:

- (i) The minimum tax collected on the undisclosed income detected as a result of search and seizure operation and assessed to tax in the assessments referred to in para 2.1 above should be as under.

S. No.	DIT (Inv.) conducting the search	Tax collected (in Rs. lakh)
1	Delhi and Mumbai	150
2	Ahmadabad, Bangalore, Chennai, Hyderabad, Pune and Kolkata	100
3	Others	75

- (ii) The total amount eligible for reward in a Group of cases would be upto 5% of the tax collected on the undisclosed income detected as a result of search and seizure operation and assessed to tax in the assessments referred to in para 2.1, subject to an overall limit of Rs. 50 lakhs.
- (iii) The total amount eligible for reward in a Group of cases would be upto 5% of the tax collected on the undisclosed income detected as a result of search and seizure operation and assessed to tax in the assessments referred to in para 2.1, subject to an overall limit of Rs. 50 lakhs.
- (iv) The amount on which such tax is collected has achieved finality in the appellate and/or revisionary proceedings.
- (v) The ratio of distribution of reward so sanctioned would be 40% to the team processing the search, 30% to the search teams and 30% to the Assessing Unit which has completed the assessments referred to in para 2.1, subject to the monetary ceiling mentioned in para 5.2 below. The Reward proposal for the Group shall be processed and decided simultaneously for all the three teams - the processing team, the teams participating in the search action, and the Assessment Unit. However, if an officer/official is incidentally part of two or more teams, he would be eligible for reward from only one of the teams. The internal distribution of

reward within the processing team and the search teams would be as under :

Rank	Processing team (%)	Search teams (%)
Additional/Joint CIT	40	-
DCIT/ACIT	30	40
ITO	15	25
ITIs	10	20
Officials below ITI	5	15

- (vi) In case one or more levels was not involved in processing the search case or was not present in the search teams, no reward shall be given to such levels. The ratios for the other levels would, however, remain unchanged.
- (vii) The scheme also provides for the manner in which the reward has to be distributed amongst the officers and staff of the assessment unit.
- (viii) Rewards in respect of cases admitted before the Settlement Commission would be granted only to the processing team and the search teams, subject to the conditions referred to in para 2.3 and 2.4. of the scheme, after the order u/s 245D(4) is passed and taxes paid thereon. However, where the search and seizure assessment orders, referred to in para 2.1 of the scheme are admitted before the Settlement Commission, the Assessment Unit would also be eligible for reward.

Authority competent to sanction reward to officers and members of staff

9.35 It has been decided that with effect from 1st May, 2007, except for reward in special cases mentioned in para 7.1 of the scheme, all cases of Reward to officers/officials shall be decided by Committees consisting of senior officers of the Income Tax Department. In cases of reward in search and seizure cases, the constitution of the Committee is as under,

Nature of Reward proposal	Committee consisting of	Reward case to be processed in the office of
Search and Seizure cases (in respect of cases mentioned in para 2)	<ul style="list-style-type: none"> (i) Director General of Income Tax (Investigation) (Chairman); (ii) Cadre Controlling Chief Commissioner of Income Tax; and (iii) In case of Delhi and Mumbai, the Chief Commissioner of Income Tax (Central) (iv) For other cities, a Chief Commissioner 	Jurisdictional Director General of Income Tax (Investigation).

	<p>of that Region as nominated by the Cadre Controlling Chief Commissioner of Income Tax.</p> <p>(v) Where, in a Region, there is no other Chief Commissioner, the Commissioner of Income Tax under whose jurisdiction the case(s) is assessed would be nominated as the Third Member.</p> <p>In the case of disagreement, majority decision will prevail.</p>	
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Monetary Limits of reward to officers/officials

9.36 The maximum of reward which an officer or an official can be sanctioned by the Committee in a case, or a group of cases, as the case may be, would be as under, subject to an overall limit of Rs 15 lakhs in the entire career of an officer/official :

Sr.No.	Rank of Officer/official	Maximum reward (in Rs.)
1	Addl./Joint CIT	2.00 lakh
2	DCIT/ACIT	1.50 lakh
3	ITO	1.00 lakh
4	ITI	50,000
5	Official below ITI	30,000

Procedure for processing the reward to Officers and staff

9.37 The general procedure for processing the reward proposals given in para 9.32 will be applicable to the proposals under the new scheme also. However, under the new scheme, the reward proposals are to be submitted by the DGIT/CCIT concerned in the check list given in the Guidelines of 2007. Once the proposal is submitted to the Committee, following procedure is to be adopted.

9.38 The Addl./Joint CIT/DIT(Inv.), working in the Headquarters of the Chairman of the respective Committees, shall function as the Member-Secretary of the Committee. The Member-Secretary shall process all reward cases received up to 25th of every month and put up, by the 7th of the following month, for consideration of the Committee. Proposals received after 25th shall be processed in the immediately succeeding month. The Committee, shall, thereupon meet and draw up the Minutes of its decisions and convey the same to the authorities concerned. Objections, if any, to a reward proposal should also form part of the Minutes and communicated to the DGIT/CCIT (from whom the proposal has been received). The Committee shall endorse all Reward sanction orders to Member (Investigation), CBDT for information and record.

Reward shall be disbursed from the office of the Chairman of the Reward Committee within three months of sanction order and after obtaining Vigilance Clearance, in respect of the officers/officials, from the concerned authorities.

Stage of grant of Reward

9.39 Reward to officers/officials under paras 1 to 3 of this Guideline shall be granted as under:

- (a) Where no appeal has been preferred against the assessment orders, reward may be granted after one year from the end of the year in which the relevant assessment order(s) was passed.
- (b) Where the assessment order is a subject matter of appeal, the reward would be sanctioned only after all appeals are finalised.
- (c) Where the case is before the Settlement Commission, the reward shall be payable after the order u/s 245D(4) has been received and the tax thereon has been paid.

CHAPTER - X
PENALTIES AND PROSECUTIONS
IN SEARCH CASES

10.1 This chapter outlines the salient features of the scheme of penalties for infraction of law and prosecutions for offences arising from, or detected as a result of, searches.

10.2 Violations and offences arising from, or detected as a result of, searches can be broadly grouped under the following heads:

- (1) A person's acts of commission and omission during search that constitute violations of law or offences.
- (2) Pre-search acts of commission and omission of a person that constitute violations of law or offences, detected as a result of search.

Acts of commission and omission during search

Under the Income Tax Act, 1961 and Indian Penal Code (IPC)

10.3 Some situations in which a person's conduct during search operations may make him liable for penalty or prosecution are briefly discussed below. In such cases prosecution complaints should be filed in accordance with law by the authority competent to do so. The Additional/Joint DIT (Investigation) organising the search should identify the authority who should file prosecution complaint(s). He may do so after suitable legal consultations.

Refusal to be bound by oath or affirmation

10.4 As explained in Chapter-III, the Authorised Officer acting under section 132(4) or 131(1A), or the other authorities referred to section 131(1A) acting under that section, are statutorily required to administer to the person, whose statement is sought to be recorded, an oath, or bind him by affirmation, to state the truth. A person's refusal to bind himself by an oath (or affirmation) to state the truth when required to do so by a competent public servant renders him liable for prosecution under section 178 of the IPC. If convicted for the offence, he is liable to be punished with simple imprisonment up to a term of six months, or with fine upto one thousand rupees, or with both. Before commencement of the examination the examining authority should ensure that he directs the deponent to bind himself by an oath or affirmation to state the truth. The fact that he so directed the deponent should be clearly recorded as a preamble to the statement. If the deponent refuses to comply with the direction, he should be specifically asked to explain his conduct and also be informed about the consequences of such refusal. If he persists in

refusal, the examining authority should record a statement to that effect. This is important since no prosecution will be possible if the competent public servant does not specifically require the deponent to bind himself by an oath or affirmation. The statement should be signed by the examining authority, the deponent and the witnesses to the search. The fact of the person's aforesaid refusal should be recorded in the form of a note, which should be signed by the authority that recorded the statement and the witnesses to the search. The note should be made a part of the *panchnama*.

Refusal to answer questions

10.5 If a deponent, legally bound to state the truth, refuses to answer any question put to him, he is liable, under section 272A(1)(a), for a penalty of Rs. 10,000/- for each such default. Such refusal also entails prosecution for an offence under section 179 of the IPC. If convicted for the offence, he is liable to be punished with punishment of simple imprisonment upto six months or fine upto Rs. 1000/- or both. It is significant to mention that while the penal provisions of section 272A(1)(a) will be attracted only if the person refuses to answer any question put to him on any matter touching the subject of his assessment, the person will be liable for prosecution for an offence under section 179 IPC if he refuses to answer any question touching any subject on which he is bound to state the truth. The authorised officer/examining authority should, when faced with such a situation, clearly mention the fact of such refusal in the statement being recorded by him. The fact of the person's aforesaid refusal should be recorded in the form of a note, which should be signed by the authority that recorded the statement and the witnesses to the search. The note should be made a part of the *panchnama*.

Refusal to sign statement

10.6 Refusal by a person to sign any statement made by him, when required to do so by an income-tax authority, attracts a penalty of Rs.10,000/- under section 272A(1)(b). He is also liable for prosecution under section 180 of the IPC. The fact of refusal to sign the statement should be recorded in the form of a note, which should be signed by the authority that recorded the statement and the witnesses to the search. The note should be made a part of the *panchnama*.

False statement on oath or affirmation

10.7 False statement on oath or affirmation to a public servant or to a person authorised to administer an oath or affirmation, entails prosecution for the offence mentioned in section 181 of the IPC. An example of a search-related situation, in which the conduct of a person may fall under

this section, is the denial of the existence of a bank locker in his initial statement under section 131(1A), but the subsequent admission as to its existence on detection of locker keys, thereby rendering the initial statement false. In such situations, the Authorised Officer should confront the person with the false statement on oath or affirmation made by him and he should be asked to explain the reasons for his conduct and his response recorded.

Omission to act as a witness

10.8 On being served a requisition to act as a witness, if a person omits to do so, he is punishable, under the provisions of Section 187 of the IPC, with simple imprisonment for a term extending to one month or with fine upto Rs.200/- or with both. It is necessary that the facts and circumstances leading to the refusal should be recorded in a note and it should also be mentioned that the person concerned was made aware of the consequences of refusal to act as a witness.

Giving false evidence in any judicial proceedings

10.9 Whoever intentionally gives false evidence for the purpose of being used in any stage of judicial proceeding is punishable, under the provisions of section 193 of the IPC, with imprisonment of either description for a term extending to seven years and is also liable to fine. It may be stated that, by virtue of the specific provisions of Section 136, the proceedings before the income-tax authorities have been deemed to be judicial proceedings within the meaning of section 193 of the IPC.

Using false evidence as genuine

10.10 In terms of section 196 of the IPC, (i) corruptly using evidence known to be false or (ii) to use as true or genuine any evidence knowing it to be false or fabricated, is punishable like giving or fabricating false evidence

Destroying of evidence

10.11 Under the provisions of section 204 of the IPC, whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence or obliterates or renders illegible the whole or any part of such documents with the intention of preventing the same from being produced or used as evidence, shall be punished with imprisonment of either description or a term which may extend to two years or with fine or with both. This offence may arise when the assessee tries to destroy any document in the course of search or does anything to tamper with the documents, which he is inspecting, after the search. In these cases also, as soon as such incident takes place, the authorised officer or the person allowing inspection should prepare a note and properly authenticate it.

Obstructing public servants in discharge of public functions

10.12 A person who voluntarily obstructs any public servant in the discharge of his public functions is liable for prosecution under section 186 of IPC. This offence is punishable with imprisonment of either description (rigorous or simple) for a term, which may extend to three months or with fine up to Rs.500/-, or with both. Also, under the provisions of section 228 of the IPC, offering insult or causing interruption to any public servant sitting in a judicial proceeding, is an offence which is punishable with simple imprisonment for a term which may extend to six months or with fine which may extent to Rs.1000 or with both. Where any obstruction is caused in the conduct of a search, the authorised officer should make a detailed report giving facts and circumstances of such obstruction and get it signed by the witnesses and other members of the search team. It should also be recorded in the note that the person concerned was made aware of the consequence of such obstruction. The note should be made a part of the *panchnama*.

Contravention of an order under section 132 (3)

10.13 Contravention of an order issued under section 132(3) or under the second proviso to section 132(1) (deemed seizure) is punishable under section 275A, with rigorous imprisonment, which may extend to two years and also with fine. The offence may arise due to actions such as the breaking of the seals placed on the receptacles left in the possession of the assessee and removal of its contents, withdrawal of deposits from a bank account placed under prohibitory order under section 132(3), parting with or otherwise dealing with a valuable article or thing treated as under deemed seizure, etc. The authorised officer should prepare a note mentioning all the relevant facts. The Authorised Officer, other members of the search team and the witnesses should sign this note. The authorised officer should also record a statement of the assessee or the person who was in control or possession of the receptacles' etc. It is necessary to bring out in such complaints the original contents kept inside the receptacles, etc. and the contents removed as a result of breaking up of the seal. Unless an inventory of the contents had been prepared before sealing the receptacles, it would not be possible at the subsequent stage to prove the offence. The person's statement and the note prepared by the Authorised officer should be made part of the *panchnama*. The particulars of the broken seals, cloth or other material used in sealing should be put in a sealed cover signed by the authorised officer, witnesses and the concerned person.

Failure to comply with the provisions of 132(1)(iib)

10.14 Section 132(1)(iib) of the Act empowers an authorised officer to require any person, who is found to be in possession or control of any

books of account or other documents maintained in the form of electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000, to afford necessary facility of inspection of such books of account or documents. Such facility may include the provision of passwords for perusing or taking copies of data, record, information, etc. generated, sent, received or stored in electronic media like computer memory. Under the provisions of section 275B, if the person fails to afford such facility, he shall be punishable with rigorous imprisonment for a term upto two years and shall also be liable to fine. Here again, apart from seizure of such storage media, etc. as may be necessary, the Authorised Officer should record in the form of a note his requirement from the concerned person for providing the necessary facility and the fact of failure on the part of the person to afford such facility. The note should be signed by the Authorised Officer, witnesses and the person who failed to afford the aforesaid facility. It should form a part of the *panchnama*.

Pre-search acts of commissions or omissions constituting violations and infractions of other laws, detected as a result of search

Reporting mechanism

10.15 As mentioned in Chapter-VI, a search may result in the detection of cases of violations and infractions of law under other statutory enactments/rules. Some vital aspects of the reporting mechanism in such cases have been briefly discussed in Chapter-VI.

10.16 The following paragraphs contain a brief discussion on some violations of law, rules, etc. (other than direct tax laws), which if detected as a result of search should be reported to the appropriate enforcement agencies. The discussion is neither comprehensive nor exhaustive. It is only by way of illustration for broad guidance of search teams.

Some examples of offences punishable under the Prevention of Corruption Act, 1988

10.17 Some such examples are:

- (i) a public servant taking gratification other than legal remuneration in respect of an official act;
- (ii) any person taking gratification in order to influence a public servant by corrupt or illegal means;
- (iii) any person taking gratification for exercise of personal influence with a public servant;
- (iv) a public servant obtaining a valuable thing without consideration from any person concerned in proceeding or business transacted by such public servant;

- (v) abetment of any of the above offences;
- (vi) criminal misconduct by a public servant; and
- (vii) attempt to commit an offence specified under section 13(1)(c) or section 13(1)(d) of the Prevention of Corruption Act, 1988.

Some examples of violations of employment related rules by Government employees, employees of public-sector undertakings, etc.

10.18 Some such examples are:

- (i) A person's failure to adhere to employment related instructions, rules, etc., issued by Government or other statutory bodies. This could be in cases of doctors doing private medical practice in violation of their service rules, or similar cases of teachers, engineers, architects, etc.
- (ii) A Government employee carrying on any business or profession either in his own name or in the name of any other person, in violation of the Conduct Rules.

Some examples of offences punishable under the Benami Transactions Prohibition Act, 1988

10.19 Under this Act, a *benami* transaction has been defined to mean any transaction in which properties are acquired by one person for consideration paid or provided by any other person. Under section 3 of the Act, a person who enters into a *benami* transaction, is punishable with rigorous imprisonment for a term, which may extend to three years or with fine or with both. The law provides for certain exceptions in this regard. The offence shall be non-cognizable and bailable.

Some examples of offences punishable under the Arms Act, 1959

10.20 Under the provisions of the Arms Act, 1959, acquisition, possession or the carrying of certain arms is totally prohibited while such acquisitions, etc. in respect of certain other arms is permitted only after obtaining proper licence in this regard. Any violation thereof is punishable.

Some examples of offences punishable under the Antiquities and Art Treasures Act, 1972

10.21 Section 25 of this Antiquities and Art Treasure Act, 1972 provides that if any person, other than the Central Government or any authority or agency authorised under section 3(1) of that Act, exports or attempts to export any antiquities or art treasure, he shall, without prejudice to any confiscation or penalty under the Customs Act, 1972, be punishable with rigorous imprisonment for a term which shall not be less than 6 months but will extend to 3 years and with fine. Similarly,

- (i) if any antiquity is sold either without, or in contravention of the terms of, a licence granted under section 8 of that Act; or
- (ii) if a person sells any antiquities, after revocation of his license, to any person who does not hold a licence; or
- (iii) if a person fails to get the antiquities registered under section 14 of that Act; or
- (iv) if a person fails to intimate the Registering Officer the transfer of ownership of any antiquities,

he shall be punishable with rigorous imprisonment for a term, which may extend to six months, or with fine, or with both. The antiquities shall also be liable to confiscation. A brief discussion on certain aspects of this law and duties of the Authorised Officer when any antiquity or work of art is found as a result of search, appears in Chapter-III. Once the matter has been reported to the appropriate authorities under that Act, they will take a decision on enforcement of suitable sanctions against the offender(s).

Some examples of offences punishable under the Wild Life (Protection) Act, 1972

10.22 The Wild Life (Protection) Act 1972 provides for punishment for various offences under that Act. Chapter-III contains a brief discussion on certain aspects of this law and the duties of the Authorised Officer when any article or thing to which the Wild Life (Protection) Act, 1972 is applicable, is found as a result of search. Once the matter has been reported to the appropriate authorities under this Act, they will take a decision on enforcement of suitable sanctions against the offender(s).

Some examples of offences punishable under the Information Technology Act, 2000

10.23 Under the provision of section 65 of this Act, whoever knowingly or intentionally, conceals, destroys or alters, or causes another person so to do, any computer source code used for a computer, computer programme, computer system or computer net work (where such source code is required to be kept or maintained by law for the time being in force), shall be punishable with rigorous imprisonment for a term upto three years or with fine which may extend to two lakh rupees or with both. For this purpose, computer source code means the listing of programmes, computer commands, design and lay out and programme analysis of computer resource in any form. Similarly, under section 66 of that Act, whoever with intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public, or any person destroys or deletes, or alters any information residing in a computer resource

(such act is called hacking) shall be punishable with imprisonment upto three years, or with fine which may extend to two lakh rupees, or with both. Under section 71 of that Act, any misrepresentation or suppression of material facts from the Controller or Certifying Authority under that Act for obtaining any licence or Digital Signature Certificate also constitutes an offence.

Some examples of violations of law under the Customs Act, 1962

10.24 Some examples of violations under this Act are, illegal import and export of certain goods, smuggling and selling of smuggled goods by a person having knowledge or reason to believe that goods are smuggled goods.

Some examples of violations of law under the Central Excise Act, 1944

10.25 Some violations under section 9 of this Act are:

- (a) contravention of the provisions of section 8 with regard to possession of certain goods;
- (b) evasion of payment of duty payable under that Act;
- (c) removal of any excisable goods in contravention of the provisions of that Act or the relevant rules;
- (d) acquiring possession of or in any way concerning himself in transporting, depositing, keeping, concealing, selling or purchasing, or dealing in any other manner with excisable goods otherwise than in accordance with the provisions of the aforesaid Act;
- (e) contravention in relation to credit of any duty allowed to be utilised towards payment of excise duty for final products; and
- (f) attempt to commit or abetting of commission of any of the above violations of law.

10.26 In terms of section 11AC of the aforesaid Act, where any excise duty has not been levied, or paid, or has been short levied, or short paid or erroneously refunded by reasons of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any other provisions of this Act or rules made there under, with intention to evade payment of duty, the person committing such action shall be liable to penalty equal to the amount of duty.

10.27 Whoever is liable for punishment under the Central Excise Act, 1944 can be arrested by the Central Excise Officers not below the rank of Inspector of Central Excise, with the prior approval of the Commissioner of Central Excise.

Some examples of offences under the Foreign Exchange Management Act, 1999

10.28 In terms of the provisions of section 13 of the Foreign Exchange Management Act, 1999, if any person contravenes

- (i) any provision of the said Act, or
- (ii) any rule, regulation, notification, direction or order issued in exercise of the powers under the said Act, or
- (iii) any condition subject to which an authorisation is issued by the Reserve Bank,

he shall, upon adjudication, be liable to a penalty specified in that section.

Examples of offences punishable under the Prevention of Money-Laundering Act, 2002

10.29 According to section 3 of this Act, whosoever,

- (i) directly or indirectly attempts to indulge, or
- (ii) knowingly assists, or
- (iii) knowingly is a party to, or
- (iv) is actually involved

in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering punishable under that Act.

Pre-search acts of commission and omission of a person relating to the Income Tax Act, 1961 detected as result of search

10.30 The following Table briefly enumerates certain pre-search income-tax violations, which if detected as a result of search should be reported to the appropriate income-tax authorities so that they can consider the feasibility of enforcing suitable civil or criminal sanctions (monetary penalty and prosecution) against tax-offender(s).¹⁷⁴ The following points relating to reporting mechanism in such cases merit a brief mention:

- (1) (i) Where the detected tax violation invites penalty, which can be imposed by the Assessing Officer, or a prosecution, which is required to be initiated by the Assessing Officer, the matter

¹⁷⁴ (1) The list of violations and the points, given in the said Table are neither comprehensive nor exhaustive. These are only by way of illustration for broad guidance of search teams and the Investigation wing officials. (2) Pre-search acts constituting tax violations, offences, etc. which are unlikely to be detected for the first time as a result of search, like failure to comply with the provisions of section 133B (inviting penalty under section 272AA), have not been included in this list.

should be reported to the Assessing Officer, Range Joint/ Additional CIT, CIT and the DIT (Investigation).

- (ii) Where the detected tax violation invites penalty, which can be imposed by any income-tax authority, other than the Assessing Officer or a prosecution, which is required to be initiated by that income-tax authority, the matter should be reported to the said income-tax authority, his supervisory officer, CIT and the DIT (Investigation).
- (2) If tax violations, offences, etc. are noticed by the Authorised Officer in the course of search, he should report the matter to the Control Room. The leader of the search team should also mention this in his report for the Joint/ Additional DIT (Investigation). Reporting to the Assessing Officer, CIT, etc. should be made by the ADIT/DDIT (Investigation), with the prior approval of the Joint/ Additional DIT (Investigation) or by the Joint/ Additional DIT (Investigation).

Table

S. No.	Section of the Income Tax Act, 1961	Nature of sanction	Nature of tax violation/offence
1	271(1)(c)	Penalty	Concealment of particulars of income or furnishing of inaccurate particulars of such income
2	271(1)(d)	Penalty	Concealment of particulars of fringe benefits or furnishing of inaccurate particulars of such fringe benefits
3	271A	Penalty	Failure to maintain or retain books of account, documents, etc.
4	271AA	Penalty	Failure to keep and maintain information and document in respect of international transaction
5	271B	Penalty	Failure to get accounts audited
6	271C	Penalty	Failure to deduct tax at source
7	271CA	Penalty	Failure to collect tax at source
8	271D	Penalty	Failure to comply with the provisions of section 269SS (taking or accepting an loan or deposit in contravention of the provisions of section 269SS)
9	271E	Penalty	Failure to comply with the provisions of section 269T
10	271F	Penalty	Failure to furnish return of income
11	271FA	Penalty	Failure to furnish annual information return

12	271FB	Penalty	Failure to furnish return of fringe benefits
13	271G	Penalty	Failure to furnish information or document under section 92D
14	272A(2)	Penalty	Various violations
15	272B	Penalty	Failure to comply with the provisions of section 139A (PAN related defaults)
16	272BB	Penalty	Failure to comply with the provisions of section 203A
17	272BBB	Penalty	Failure to comply with the provisions of section 206CA
18	276	Prosecution	Removal, concealment, transfer or delivery of property to thwart tax recovery
19	276A	Prosecution	Failure to comply with the provisions of sub-sections (1) and (3) of section 178
20	276AB	Prosecution	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
21	276B	Prosecution	Failure to pay tax to the credit of the Central Government under Chapter XII-D or XVII-B
22	276BB	Prosecution	Failure to pay the tax collected at source
23	276C	Prosecution	Wilful attempt to evade tax, etc. ¹⁷⁵
24	276CC	Prosecution	Failure to furnish returns of income ¹⁷⁶
25	277	Prosecution	False statement in verification, etc.
26	277A	Prosecution	Falsification of books of account or document, etc.
27	278	Prosecution	Abetment of false return, etc.

10.31 The Wealth-tax Act, 1957 contains provisions of similar nature for prosecution, like, wilful attempt to evade tax (Section 35A), failure to produce accounts, records etc. (Section 35C), false statement in verification (Section 35D) and contravention of orders made under sections 37A (1) or 37A(3A).

¹⁷⁵ Concealment of particulars of income or furnishing of inaccurate particulars of such income also invites penalty under section 271(1)(c).

¹⁷⁶ The default also invites penalty under section 271F.

CHAPTER-XI
REGISTERS AND REPORTS OF SEARCH
RELATED ACTIVITIES

11.1 This chapter discusses salient features of reports and registers of various search related activities.

Registers

11.2 The registers that are required to be maintained in different offices in connection with search and seizure operations may be classified as follows:

- (1) Registers to be maintained by Joint/ Additional DIT (investigation)
- (2) Registers to be maintained by ADIT/DDIT(Investigation)
- (3) Registers to be maintained by Custodian of Strong room nominated by DIT(Inv.)
- (4) Registers to be maintained by Assessing Officers dealing with search cases
- (5) Registers to be maintained in the office of the concerned Commissioner of Income tax
- (6) Register to be maintained by the Range Additional CIT/JCIT

Registers to be maintained by the Joint/Additional (Investigation)

11.3 Each Joint/Additional DIT (Investigation) is required to maintain the following registers¹⁷⁷:

- (1) *Register of authorisations issued under section 132 and 132A in proforma No. Addl. DIT/JDIT/S&S/Reg.I (Annexure-1)*: This register should be personally maintained by the Joint/Additional DIT (Investigation). All entries in the register should be made by him in his own handwriting. The register should always remain in his safe custody. Columns No. (1) to (4) of the Register should be entered as soon as the Joint/Additional DIT (Investigation) receives warrant of authorisation. Columns No. (5) and (6) should be filled in soon after the execution of the warrant of authorisation. The 'Remarks' column (Col. No. 7) should, *inter alia*, show the code number allotted by the DIT (Investigation).
- (2) *Register of Informants in proforma No. Addl. IT/JDIT/S&S/Reg.II (Annexure-2)*: This register should be personally maintained by

¹⁷⁷ See Appendix I.

the concerned Joint/ Additional DIT (Investigation). The relevant columns (1) to (5) should be filled in as soon as the first meeting with the informant takes place. Whenever action is taken on the basis of the information, entry should be made in column No.(7).

- (3) *Rewards Register in proforma No. Addl. DIT/JDIT/S&S/Reg.III (Annexure-3)*: Column Nos. (1) to (8) should be filled in soon after the relevant information is available. Columns (9) to (13) should be filled in after obtaining suitable information from the Assessing Officer. The Joint/ Additional DIT (Investigation) should initiate the process of obtaining information from the Assessing Officer. This should be done within a reasonable period of time.
- (4) *Register of Search and Seizure files in proforma No. Addl. DIT/JDIT/S&S/Reg.IV (Annexure-4)*: This register is a chronological record of the searches conducted. The Joint/ Additional DIT (Investigation) should personally maintain this register. He should himself make entries in this register. The register should always remain in his safe custody along with the files containing satisfaction note and warrants executed. Columns of this register should be filled in soon after the relevant information is generated and/or received by the Joint/ Additional DIT (Investigation). The 'Remarks' column (Column No. 7) should, *inter alia*, show the code number allotted by the concerned DIT (Investigation).
- (5) *Register of Dossiers of suspected Tax Evaders in proforma No. Addl. DIT/JDIT/S&S/Reg.V (Annexure-5)*: This register is meant for keeping track of the cases of suspected tax evaders.
- (6) *Register of deposits and withdrawals of packages kept in Strong Room, etc in proforma No. Addl. DIT/JDIT/S&S/Reg.VI (Annexure-6)*: Entries in column No.s (1) to (11) and (14) shall be made separately for each package handed over to the custodian for safe custody. Col. No. (12), (13) and (15) to (18) shall be filled on the date and at the time each package is handed over to the person authorised to receive the said package. The Additional/Joint DIT (Investigation) should verify the entries in this register once in a fortnight and incorporate his remarks in col. no. (19). The DIT(Investigation)/ CIT in-charge of the strong room should inspect the register at least once a month. Action taken on the remarks made in the inspection should be noted in column number (20).

Register to be maintained by the Custodian of the Strong Room nominated by the DIT (Investigation)

11.4 *Strong Room Entries Register in proforma No.JDIT/Additional DIT (Investigation)/S&S/Reg. VII (Annexure- 7)*: Entry in column numbers (1)

to (3) and (5) and (6) shall be made every time the strong room is opened and column numbers (4), (7) and (9) shall be filled in when the strong room was closed. The Additional/Joint (Investigation) and the CIT/DIT (Investigation) should inspect this register every fortnight and every month respectively.

Registers to be maintained by the DDIT/ADIT(Investigation)

11.5 Each DDIT/ADIT (Inv.) shall maintain the following registers:

- (1) *Register of Search and Seizure in proforma No. DDIT/ADIT/S&S/Reg.I (Annexure-8)*: This register is a chronological record of the searches conducted. Entries in Column No.s (1) to (14) should be made within 48 hours of the receipt of the authorised officer's report and completion of the search. It should be signed by DDIT/ADIT (Investigation) as required in col. No. (14). The ADIT/DDIT should check this register at least once in a month and should put his signature along with date in token there of.
- (2) *Register of Prohibitory Orders under section 132 (3) in proforma No. DDIT/ADIT/S&S/Reg.II (Annexure-9)*: Immediately on receipt of authorised officer's report, entries in column numbers (1) to (10) should be made. As soon as the premises/locker has been opened/resealed for periodical checking, etc., entries should be made in column numbers (11) and (12). As soon as a prohibitory order under section 132(3) is lifted, suitable entries should be made in column numbers (14) to (17). The DDIT/ADIT should ensure that no action is pending beyond seven days without sufficient reasons. The Additional/Joint DIT (Investigation)/CIT should put his signatures in column number 18 in token of having inspected the register.
- (3) *Register of Inspection of Seized Documents in proforma No. DDIT/ADIT/S&S/Reg.III (Annexure-10)*: On receipt of an application from the assessee for inspection of seized books of account and documents, entries should be made in column numbers (1) to (4). Thereafter, on the date actual inspection is afforded, suitable entries in column numbers (5) to (13) should be made. This register should be inspected by Additional/Joint DIT (Investigation) once a month to ensure that no application for inspection remains pending beyond a reasonable period of time.
- (4) *Register of Offences Committed During Search in proforma No. DDIT/ADIT/S&S/Reg.IV (Annexure-11)*: This register is meant for keeping a watch on the offences committed during the course of search and to ensure that suitable follow-up-action on the same is taken in accordance with law. The register also gives the up-to-date

status of the cases in Courts so as to monitor their progress. The Additional/Joint DIT (Investigation) should inspect this register at least once a month.

11.6 The Additional/Joint DIT (Investigation) should also maintain suitable registers in which movement of files, records, letters, etc. should be recorded.

Registers to be maintained by the Assessing Officer

11.7 The registers to be maintained by Assessing Officer dealing with a search case are:

- (1) *Register of Inspection of Seized Books and Documents*: This should be maintained in proforma No. DDIT/ADIT/S&S/Reg. III (same as in Annexure-10) in the same manner as it is maintained by DDIT/ADIT (Inv.).
- (2) *Register for retention of books of account and other documents under section 132 (8)*: This should be maintained in proforma No. AO/S&S/Reg.I (Annexure-12). On receipt of a copy of the *panchnama*, the Assessing Officer should make suitable entries in columns number (1) to (3). Entries in columns No. (4) and (5) should be made on completion of the search related assessments. Suitable entries in other columns should be made as soon as the relevant event takes place or the relevant information is generated.
- (3) *Control Chart in proforma No. CIT/S&S/Reg.II in Annexure-14*

Register to be maintained in the office of the Commissioner of Income Tax

11.8 The main registers required to be maintained in the CIT's office are:

- (1) *Register of extension of time granted by the CIT for retention of the seized records*: The register should be maintained in proforma No. CIT/S&S/Reg-I given in Annexure-13. The register should be inspected periodically by the CIT to ensure that it has been properly maintained.
- (2) *Control Chart in proforma No. CIT/S&S/Reg.II in Annexure-14*
- (3) *Ledger and Cash Book for Personal Deposit Account*: This is required to be maintained in the CIT's office if he has a Personal Deposit Account. (Forms No. CIT/S&S/Reg. III and No. CIT/S&S/Reg. IV- Annexures No. 15 and 16 respectively) This has also been discussed in Chapter-VI

Register to be maintained by the Range Joint/Additional CIT

11.9 *Register of search cases of the Range*: The Range Joint/Additional CIT

should maintain this register in Form No. Addl. CIT/JCIT/S&S/Reg.1 in Annexure-17.¹⁷⁸

Reports

Reports to be sent by the Directorate of Income Tax (Investigation)

11.10 The investigation wing authorities are required to compile and submit the reports mentioned in the following Table. Where a report is required to be compiled and submitted by a higher authority, based on the data/information available with a lower authority, that lower authority should also prepare such report and submit the same to the higher authority.

Table

S. No.	Report	Authority required to compile and submit report	Authorities to whom the report is required to be submitted	Frequency/ time-schedule for submission of report	Form (Form No./ Annexure No.) ¹⁷⁹
1	Two-hourly report on commencement of search	DIT (Investigation)	(i) Member (Inv.), CBDT (ii) DGIT (Inv.) (Should be sent by FAX) No need to send post copy	Within two hours of the commencement of search. ¹⁸⁰	S&S/REP-I Annexure-19
2	FAX report on the conclusion of the main search operation	DIT (Investigation)	(i) Member (Inv.), CBDT (ii) DGIT (Inv.) operations. ¹⁸¹	Soon after conclusion of the main search	S&S/REP-II Annexure-20

¹⁷⁸ See Board's letter F.No. 286/57/2002-IT(Inv.II) dated 03-07-2002 (Annexure 76 in Appendix V) and Appendix I

¹⁷⁹ See Appendix II.

¹⁸⁰ Letters No. NIL dated 22-03-2007 and 28-03-2007 of the Director (Inv.II & III), CBDT. (Annexure 93 and 94 in Appendix V)

¹⁸¹ Letters No. NIL dated 22-03-2007 and 28-03-2007 of the Director (Inv.II & III), CBDT. (Annexure 93 and 94 in Appendix V)

3	FAX report on the conclusion of other search operations related to the operation referred to at S.No.(2) above	DIT (Investigation)	(i) Member (Inv.), CBDT (ii)DGIT (Inv.)	Soon after conclusion of the search operations. ¹⁸²	S&S/REP-II Annexure-20 (These reports should bear bold headings like, "SEARCH OF BANK LOCKER")
4	Monthly Progress Report ¹⁸³	DGIT (Investigation)	Board	Fifth day of the month following the month to which the report pertains	S&S/REP-III Annexure-21
5	Annual Report for summary of search and seizure for the Cabinet ¹⁸⁴	DGIT (Investigation)	Board	Fifth day of April of the year following the financial year to which the report pertains	S&S/REP-IV Annexure-22
6	Monthly report on surveys carried out by the Income Tax Department ¹⁸⁵	DGIT (Inv.) ¹⁸⁶	Board Member (Inv.)	Fifth day of the month following the month to which the report pertains	S&S/REP-V Annexure-23
7	Investigation Quarterly Report-I ¹⁸⁷	DGIT (Investigation)	Board	Twentieth day of the month immediately following the	S&S/REP-VII Annexure-25

182 Letters No. NIL dated 22-03-2007 and 28-03-2007 of the Director (Inv.II & III), CBDT. (Annexure 93 and 94 in Appendix V)

183 Board's letter in F.No. 286/67/2006-IT (Inv.II) dated 30th June, 2006 (Annexure 87 in Appendix V)

184 ibid

185 Board's letter F.No. 414/3/2005-IT (Inv.I) dated 04-04-2007 (Annexure 95 in Appendix V) and ibid. (The report was introduced with effect from 01.04.2007.)

186 Similar reports are required to be sent by the CCITs (CCA), DGITs (Exemptions) and the DGIT (International Taxation) for their respective regions.

187 (1) It contains information relating to search functions, appropriation and release of seized assets, reward to informants and departmental officers, etc. (2) See Board's letter F.No.286/67/2006-IT(Inv.II) dated 7th April, 2006. (Annexure 86 in Appendix V)

				last month of the quarter to which the report pertains	
8	Investigation Quarterly Report-II ¹⁸⁸	DGIT (Investigation)	Board	Twentieth day of the month immediately following the last month of the quarter to which the report pertains	S&S/REP-VIII Annexure-26
9	Custodian (PDA)'s report on deposits in Personal Deposit Account of the CIT	CIT/ Custodian (PDA) of CIT	(i) Board (through proper channel) (ii) CCIT (iii) Addl./ JDIT (Inv.) (Delay, if any in deposit of seized money in Personal Deposit Account should be explained in an accompanying note)	Tenth day of the month following the month to which the report pertains	S&S/REP-IX Annexure-27
10	Statement of assets released by the Custodian (Strong Room)	Custodian(s)	(i) CIT incharge of Strong Room (ii) DIT (Inv.)	Every month	S&S/REP-X Annexure-28
11	MIS reports on search related cases	DGIT (Inv.)/CCIT (Central)	Board	Every month	S&S/REP-XI Annexure-29

188 (1) It contains information relating to search assessments, related functions, etc.

(2) See Board's letter F.No.286/67/2006-IT(Inv.II) dated 7th April, 2006. (Annexure 86 in Appendix V)

Online maintenance of search related records, information, etc.

11.11 Even though the maintenance of manual Registers as indicated above has not been discontinued, a facility of keeping information online is available through the ITD Application System of which the Enforcement Information System (EFS) is a part. Detailed write up on these systems is available in the User Information Manuals brought out by the Directorate of Income Tax (Systems).¹⁸⁹

¹⁸⁹ If information is maintained online, there may be no need to maintain manual registers or generate manual reports. However, till the manual registers and reports are officially discontinued, the income-tax authorities are expected to maintain information both manually and also online under the EFS Menu item under ITD Applications System.