

FOR DEPARTMENTAL USE ONLY

# SURVEY MANUAL 2019



FOR DEPARTMENTAL USE ONLY

# **SURVEY MANUAL 2019**



FOR DEPARTMENTAL USE ONLY

# **SURVEY MANUAL 2019**

*Prepared by*  
**Investigation-III Branch, Investigation Division,  
Central Board of Direct Taxes  
Ministry of Finance, Government of India  
New Delhi-110001**

*Issued by*  
**Directorate of Income-Tax (PR, P&P), Income Tax Department  
6<sup>th</sup> Floor, Mayur Bhawan, Connaught Circus, New Delhi-110001**

## ***Survey Manual 2019***

**© Income-tax Department, New Delhi  
For Departmental Use Only**

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the copyright owners.

### **DISCLAIMER**

The statements in this Manual should not be construed as the final authority about any provision of law. For the same, the actual text of a provision of law or a judgment or Circular etc., which are quoted in this book, may be referred to. Every care is taken to avoid mistakes. However, if there is any, the same may be brought to the notice of Investigation-III branch of Central Board of Direct Taxes.



### **DIRECTORATE OF INCOME-TAX (PR, P&P)**

6<sup>th</sup> Floor, Mayur Bhawan, Connaught Circus  
New Delhi – 110001

Ph: 011-23413403, 23413317, 23411267

E-mail: delhi.ddit.pp@incometax.gov.in

[www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)



@IncomeTaxIndia

*Publishing Consultancy*

### **EXCEL INDIA PUBLISHERS**



91 A, Ground Floor, Pratik Market, Munirka  
New Delhi-110 067

Tel: +91-11-2671 1755/ 2755/ 3755/ 5755

Fax: +91-11-2671 6755

Cell: 9899127755, 9999609755, 9910757755

E-mail: [publishing@grouppexcelindia.com](mailto:publishing@grouppexcelindia.com)

[www.grouppexcelindia.com](http://www.grouppexcelindia.com)

*Designed, Typeset and Printed by*

Excel Printing Universe, New Delhi-110 067

E-mail: [printing@grouppexcelindia.com](mailto:printing@grouppexcelindia.com)



सत्यमेव जयते

**P. C. MODY**

Chairman, CBDT &

Special Secretary to the Government of India



## PREFACE

\*\*\*\*\*

भारत सरकार

GOVERNMENT OF INDIA

(वित्त मंत्रालय/राजस्व विभाग)

Ministry of Finance/Department of Revenue

केन्द्रीय प्रत्यक्ष कर बोर्ड

Central Board of Direct Taxes

नार्थ ब्लॉक, नई दिल्ली - 110001

North Block, New Delhi - 110001

E-mail : chairmancbdt@nic.in

Tele : 23092648 & Telefax : 23092544


Survey is an important tool for collection of information by the Income Tax Department. For effective implementation of the legal provisions of Survey, Board issues instructions and guidelines from time to time. While exercising the powers under Survey, the officers of the Department should take due care so that not only the operation is successful in achieving its objective but their action should be strictly in accordance with the law. In this regard, the department organizes training programs and issues directions from time to time to improve knowledge, skills and attitude of the officers and staff. However, compilation of relevant guidelines etc in a single publication gives departmental officers a sustainable reference material for seeking guidance from time to time.

Survey Manual was last published in 2007 and there was a need to update the same. I am happy that the committee constituted in 2017 under the Chairmanship of Shri S. K. Gupta, DGIT (Investigation), Rajasthan, Jaipur, has accomplished the task quickly. The Manual analyses some of the important points to be followed during the course of Survey. Although it is not exhaustive, it is indicative of important provisions of law and procedures. Old chapters have been revised and several new chapters like Survey as a tool for recovery of Income Tax, Survey on organizations carrying on charitable purposes, Survey by I&CI wing, Survey for verification of TDS and TCS, Work in ITBA relating to Survey, Do's & don'ts and rights and duties of the persons present in Survey premises, Case laws on Survey and Assessment in Survey cases have been added keeping in mind the new experiences and changes in law. Seventy case laws, including those delivered in 2019, have been included. Care has been taken to include procedural aspects and the chapters have been written from practical point of view.

I congratulate Shri S. K. Gupta, DGIT (Investigation), Chairman of the committee, along with other members of the committee, namely, Shri R. K. Paliwal, Principal DIT (Inv.), Bhopal, Shri Shishir Jha, Principal CIT-2, Guwahati and Shri S. K. Singh, CIT (Inv.), CBDT, New Delhi. I also place my appreciation for the officers who made contribution to the Manual, namely, Shri Satish Sharma, CIT (Exemption), Mumbai, Shri Ranjan Kumar, DIT (I&CI), Jaipur, Shri O. P. Yadav, PCIT, Jabalpur, Shri Syamal Datta, Director (Investigation - III), CBDT, New Delhi, Shri T. Shankar, Addl. CIT, Range-I, Ahmedabad, Shri Sushil Kulhari, DDIT (Inv.), Jaipur, and Shri Rajesh Dhingra, DDIT (Systems), New Delhi, for writing new chapters and revising old ones. I hope that this Manual will be put to best use by all in the Department.

Date: 22.05.2019

Place: New Delhi.

  
(P. C. Mody)



# Contents

---

<b>1. Introduction</b>	<b>1</b>
<b>2. Survey under Section 133A(1) of I.T. Act, 1961</b>	<b>7</b>
<b>3. Survey under Section 133A of I.T. Act, 1961, as a tool for Recovery of Income-tax</b>	<b>43</b>
<b>4. Survey on Charitable Organizations under Section 133A(1) of I.T. Act, 1961</b>	<b>49</b>
<b>5. Survey by I&amp;CI Wing under Section 133A(1) of I.T. Act, 1961</b>	<b>57</b>
<b>6. Survey under Section 133A(2A) of I.T. Act, 1961 for Verification of TDS and TCS</b>	<b>65</b>
<b>7. Survey for Verification of Ostentatious Expenditure under Section 133A(5) of I.T. Act, 1961</b>	<b>75</b>
<b>8. Important Findings of a System Study Done by the Vigilance Directorate Regarding Survey</b>	<b>83</b>
<b>9. Frequently Asked Questions (FAQs) Regarding Survey</b>	<b>87</b>
<b>10. Actions to be Taken in ITBA Relating to Survey under Section 133A of I.T. Act, 1961</b>	<b>91</b>
<b>11. Guidelines, Dos &amp; Don'ts and Rights and Duties of Persons Present in Survey Premises</b>	<b>95</b>
<b>12. Assessment in Survey Cases</b>	<b>99</b>
<b>13. Case Laws on Survey</b>	<b>115</b>
<b>14. Appendix—Compilation of Forms, Circulars, Instructions and Guidelines</b>	<b>131</b>
<b>Annexure–I</b>	<b>133</b>
<b>Annexure–II</b>	<b>135</b>
<b>Annexure–III</b>	<b>137</b>
<b>Annexure–IV</b>	<b>139</b>

<b>Annexure-V</b>	141
<b>Annexure-VI</b>	143
<b>Annexure-VII</b>	145
<b>Annexure-VIII</b>	147
<b>Annexure-IX</b>	149
<b>Monthly Survey Report</b>	150
<b>Annexure-X</b>	152
<b>Annexure-XI</b>	153
<b>Annexure-XII</b>	157
<b>Annexure-XIII</b>	159
<b>Annexure-XIV</b>	161
<b>Annexure-XV</b>	163
<b>Annexure-XVI</b>	165
<b>Annexure-XVII</b>	167
<b>Annexure-XVIII</b>	171
<b>Annexure-XIX</b>	175
<b>Annexure-XX</b>	183
<b>Annexure-A</b>	194
<b>Annexure-B</b>	196
<b>Annexure-C</b>	198
<b>Annexure-D</b>	200
<b>Annexure-XXI</b>	201

# Introduction

---

## HIGHLIGHTS

- *Need for survey in tax administration*
  - *The law of survey under Income-tax Act, 1961*
  - *Categories of survey*
  - *Survey u/s 133A(1)–Survey for verification, survey for recovery of tax, survey on charitable trusts, survey by I&CI wing*
  - *Survey u/s 133A(2A)–Survey to verify TDS/TCS compliance*
  - *Survey u/s 133A(5)–Survey for verifying ostentatious expenditure*
- 

**1.** Survey operation constitutes an extremely important tool for gathering information relating to financial transactions of various persons, which are subsequently utilized in the assessment and other proceedings under the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). Survey action also enables the department to check the veracity of various statements filed by such persons before the Income-tax authorities. Information collected through survey operations sometimes also leads to identification of new assesseees and stop-filers. This helps in detecting tax evasion in different ways including wrong claim of deduction or exemptions by charitable trusts, detecting evidence of ostentatious expenditure on any occasion, detecting failure to deduct tax at source by persons responsible for doing so or failure to pay to the Government the tax deducted at source by the deductors and failure to furnish returns and statements by persons who are statutorily obliged to do so. Further, survey is used as a tool to find out assets for recovery of tax, penalty etc.

## Need for Survey in Tax Administration

**2.** The Income-tax Department is entrusted with the responsibility of fair and effective administration of the Act, some other direct tax enactments and The Prohibition of Benami Property Transactions Act, 1988. The provisions of the Act empower the Assessing Officers to scrutinize returns and statements filed

in order to determine the real income of the assessee and to collect proper taxes. Powers have also been conferred on the Assessing Officer to deal with assessee who fail to comply with the statutory requirements or who evade tax or payment of tax. Thus, examination of books of account and verification of the facts presented by the assessee are important parts of the primary job of Assessing Officers. The provisions of Section 133A were introduced by the Finance Act, 1964, and were amended from time to time. Broadly, four types of surveys are envisaged u/s 133A viz., survey for verification of various issues, tax recovery survey etc. u/s 133A (1), TDS/TCS survey u/s 133A (2A) and survey for verification of ostentatious expenditure u/s 133A (5).

## **The Law of Survey under Income-tax Act, 1961 (as in 2018)**

### **3. Power of Survey**

**133A.** (1) *Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—*

- a. any place within the limits of the area assigned to him, or*
- b. any place occupied by any person in respect of whom he exercises jurisdiction, or*
- c. any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,*

*at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose—*

- i. to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,*
- ii. to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and*
- iii. to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.*

**Explanation—***For the purposes of this sub-section, a place where a business or profession or activity for charitable purpose is carried on shall also include any other place, whether any business or profession or activity for charitable*

*purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or activity for charitable purpose are or is kept.*

*(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.*

*(2A) Without prejudice to the provisions of sub-section (1), an income-tax authority acting under this sub-section may for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions under sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII, as the case may be, enter, after sunrise and before sunset, any office, or any other place where business or profession is carried on, within the limits of the area assigned to him, or any place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept and require the deductor or the collector or any other person who may at that time and place be attending in any manner to such work,—*

- i. to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and*
- ii. to furnish such information as he may require in relation to such matter.*

*(3) An income-tax authority acting under this section may,—*

- i. if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,*
- ia. impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:*

**Provided** *that such income-tax authority shall not—*

- a. impound any books of account or other documents except after recording his reasons for so doing; or*
- b. retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director*

*General or the Principal Commissioner or the Commissioner or the Principal Director or the Director therefor, as the case may be,*

- ii. *make an inventory of any cash, stock or other valuable article or thing checked or verified by him,*
- iii. *record the statement of any person which may be useful for, or relevant to, any proceeding under this Act:*

**Provided** *that no action under clause (ia) or clause (ii) shall be taken by an income-tax authority acting under sub-section (2A).*

*(4) An income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any cash, stock or other valuable article or thing.*

*(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.*

*(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under sub-section (1) of section 131 for enforcing compliance with the requirement made:*

**Provided** *that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.*

**Explanation**—*In this section,—*

- a. *“income-tax authority” means a Principal Commissioner or Commissioner, a Joint Commissioner, a Principal Director or Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer, and for the purposes of*

*clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax;*

- b. *“proceeding” means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.*

## **Categories of Survey**

**4.** The survey actions under the Income-tax Act, 1961 are carried out under section 133A of the Act. The Income-tax authorities are authorised to visit places of business or charitable activity to make such on-the-spot verification and enquiries, as may be required. Survey actions are also carried out for the specific purpose of recovery of taxes, verifying TDS and TCS compliances, making enquiries about ostentatious expenditure on occasions such as marriages, festivals, other events etc. Thus, surveys can broadly be categorized as:

- Survey u/s 133A(1)—Survey for verification, survey for recovery of tax, survey on charitable trusts, survey by I & CI wing
- Survey u/s 133A (2A)—Survey for TDS/TCS compliances
- Survey u/s 133A (5)—Survey for verification of ostentatious expenditure

### **Survey u/s 133A (1)—Survey for Verification, Survey for Recovery of Tax, Survey on Charitable Trusts, Survey by I&CI Wing**

**5.** Survey u/s 133A (1) is carried out in the case of an assessee in the business premises or premises from which profession is carried on or an activity for charitable purpose is carried on. This provision empowers the Income-tax Authorities to inspect books of account and other documents, verify cash and stock, impound books of account and other documents under certain conditions, take statements and collect such information as may be required for any proceedings under the Act. This provision is also used to verify undervaluation or suppression of closing stock, suppression of sales, inflation of purchases and other expenses. Further, it is used to obtain information of latest income or debtors and other assets to enforce recovery of unpaid taxes. While carrying out survey action for verification of various issues, any violation of TDS/TCS provisions is also looked into for suitable action. Further, if during survey any information/document is found which shows that in the case of outstanding taxes, the assessee is trying to alienate or dispose off any assets, suitable action can be taken to prevent such alienation/disposal of assets. It may be kept in mind that the department is one and so, if

information or evidence is found during survey which may be useful for some other authority in the department, the same should not be left and, instead, may be shared with the concerned counterpart at the earliest.

### **Survey u/s 133A(2A)—Survey to Verify TDS/TCS Compliance**

**6.** Survey u/s 133A(2A) is carried out in respect of a deductor/collector in the business premises or premises from where profession is carried out as well as offices including government offices for verifying whether proper tax has been deducted or collected in respect of payments such as salaries, interest payments, payments made to contractors as well as other payments, which are subject to TDS/TCS as per the Act. This sub-section empowers the Income-tax Authorities to inspect books of account and other documents and collect such information as may be required for any proceedings under the Income-tax Act for the purpose of verifying that tax has been deducted or collected at source and paid to the government account in accordance with the provisions under sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII. The jurisdiction to conduct the survey and the place where such survey can be conducted under sub-section (2A) are different from other surveys conducted under sub-section (1) and (5) of Section 133A. As provided in Proviso below sub-section (3) of Section 133A, during survey u/s 133A (2A), books of accounts and documents cannot be impounded and inventory of cash, stock or other valuables cannot be done.

### **Survey u/s 133A(5)—Survey for Verifying Ostentatious Expenditure**

**7.** Section 133A(5) empowers the prescribed Income-tax authorities to collect information and evidence regarding the expenditure incurred by a person in connection with functions, ceremonies and events like marriages, birthdays, anniversaries, etc. with the objective to verify whether tax has been correctly paid on the money spent in such occasions at the time when such income was taxable.

# Survey under Section 133A(1) of I.T. Act, 1961

---

## HIGHLIGHTS

- *Income-tax Authorities empowered to carry out survey*
- *Places where survey can be carried out*
- *Powers of Income-tax authority acting u/s 133A(1)*
- *Obligations of persons whose premise is surveyed*
- *Hours of Survey*
- *Pre-survey work*
  - *Selection of the case for survey*
  - *Preparation of Survey*
  - *Conducting the Survey*
  - *Preparatory note and authorization for survey*
  - *Entry into the premise*
  - *Things to be done immediately after entering the premise*
  - *Recording of preliminary statement*
  - *Verification of cash*
  - *Conversion of survey into search*
  - *Verification of stock*
  - *Common defects in stock taking*
  - *Other aspects relating to stock*
  - *Handling of digital evidence*
  - *Basic guidelines for the survey party*
  - *Access to the data storage devices, password protections*

- *Retrieval of deleted files*
  - *Remote storage of data*
  - *Modus of impounding of the devices and their authentication*
  - *Precautions to be taken for retaining the integrity of the retrieved data*
  - *Other aspects to be seen during survey*
  - *Recording of final statement*
  - *Preparation of inventory and impounding of books, etc.*
  - *Carrying out post-survey work*
  - *Report on Surveys conducted*
  - *Register of surveys*
  - *Investigation Manual in ITBA*
- 

### **Income-tax Authorities Empowered to Carry Out Survey**

**1.** The Income-tax Authorities empowered to carry out survey u/s 133A (1) have been enumerated in the Explanation (a) at the end of the section. These authorities are Principal Commissioner, Commissioner, Joint Commissioner, Principal Director, Director, Joint Director, Deputy Director or Assistant Director or an Assessing Officer or a Tax Recovery Officer. In addition, the Inspector of Income-tax, may exercise the powers only u/s133A(1)(i), 133A(3) (i)and 133A(5).

### **Places where Survey can be Carried Out**

**2.** For conducting a survey u/s 133A(1), an income-tax authority is empowered to enter any of the following places at which a business or a profession is carried on or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose:

- a. any place within the limits of the area assigned to him; or
- b. any place occupied by any person in respect of whom he exercises jurisdiction; or
- c. any place in respect of which he is authorised, for the purposes of section 133A, by such Income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place.

**3.** Survey can also be carried out at any place other than those mentioned above specifically at a place where the person carrying on the business or profession or an activity for charitable purpose states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or charitable activity is/ are kept.

**4. Powers of Income-tax Authority Acting u/s 133A(1)**

- a. To require any proprietor, trustee, employee or any other person who may at the time and place of survey attending to in any manner, or helping in, the carrying of business or profession or such activity for charitable purpose:
  - i. To afford him the necessary facility to inspect books of account or other documents as he may require and which may be available at the place of survey.
  - ii. To afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found in the place surveyed
  - iii. To afford him the necessary facility to furnish information as to any matter which may be useful for, or relevant to, any proceeding under the Income-tax Act.
- b. To impound and retain in his custody for such period as he thinks fit any books of account or any other documents inspected by him. The books of account or other documents can be impounded only after recording the reasons for doing so. The impounded books of account or other documents cannot be retained in his custody for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director of Income-tax, as the case may be.
- c. To place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies there from.
- d. To make inventory of cash, stock or other valuable article or thing checked or verified by him.
- e. To record the statement of any person that may be useful for or relevant to any proceeding under the Income-tax Act.

**5.** Section 133A(6) empowers the Income-tax authority conducting the survey to exercise the powers u/s 131(1), if the person covered by the proceedings u/s 133A either refuses or evades to afford facilities for the aforesaid actions to the Income-tax authority or to furnish any information or to have his statement recorded. Non-compliance with the summons u/s 131(1) of the Act invites penal action u/s 272A(1)(c) of the Act without prejudice to any other action which can also be taken under Code of Civil Procedure, 1908.

**6.** The Income-tax authority carrying out a survey u/s 133A(1) is specifically prohibited from removing or causing to be removed from the place of survey any cash, stock or other valuable article or thing.

### **Obligations of Person(s) whose Premises is Surveyed**

**7.** During the course of survey, the proprietor, trustee, partner, employee or any other person attending to, or helping in, the carrying on of the business or profession or such activity for charitable purpose is required to:

- a. afford to the income-tax authority conducting the survey, necessary facility to inspect such books of account and other documents as he may require and which are available at that place. As the definition of “document” include “*an electronic record*”, it is also the duty of such person to allow inspection of electronic records which is defined in Information Technology Act, as data, record, data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated micro-film;
- b. afford necessary facility to check or verify the cash or stock or other valuable article or thing which are found at that place;
- c. furnish to the Income-tax authority conducting survey such information as may be required on any matter which may be useful for, or relevant to, any proceeding under the Income-tax Act; and
- d. offer all clarifications as may be required by the Income-tax authority.

### **Hours of Survey**

**8.** An Income-tax authority may enter any place of business or profession or place of activity for charitable purpose, referred to above, only during the hours at which such place is open for the conduct of business or profession or activities of charitable purposes. Thus, in case of some bar or night club etc which is open during night, it may not be appropriate to conduct survey during day time. If the business establishment/office is closed on account of holidays declared by government or by market association then on those days the survey team should not make an entry into such premises to start any

fresh survey operation. Once entry into the premises is made, survey can continue even after sunset or the business or office hours.

**9.** In the case of any other place (other than the business premises) where the books of account or documents or cash, stock or other valuable articles or things relating to the business or profession or activity for charitable purpose are stated to be kept, the Income-tax authority may enter such place only after sunrise and before sunset. For example, if the business of assessee is running a restaurant, where the business is carried on after sunset also, the team can enter the restaurant even after sunset, but if the books of accounts are kept in some other place, then, the team can enter such other place only after sunrise and before sunset.

## **Pre-survey Work**

### **Selection of the Case for Survey**

**10.** Selection of a good case is the most important aspect for conducting a successful survey operation. Maximum care should therefore be taken in selecting good cases for survey. It is not possible to lay down any general criteria for selection of cases for survey.

**11.** For selecting a case, any one or more of the following sources of information may be tapped:

- a. Income-tax departmental database, which includes data from Directorate of I & CI database, AIR database, Income-tax databases from ITBA, etc.
- b. Statistical reports available in the offices of Range heads, PCsIT & CCsIT; Information regarding assessee's claiming deductions under Chapter VIA, statistics of advance tax paid, assessee's claiming losses regularly from the Income-tax database.
- c. Case Records: Assessee's case records with the Department consisting of ITRs and submissions filed in the past are also very important source of information. It will be useful to examine the case records before selecting a case for survey. Some of the suggested indicators are very low net profit rate, huge creditors, abnormal fall in gross profit rate, low household withdrawals, multiple loan accounts, etc.
- d. The advantage of departmental data is cross study of the returns which are into the same nature of business/trade. The Assessing Officers can make the general observation in a particular business/trade such as purchase cost, normal gross profit, nature of the expenses involved etc., and look for abnormalities/deviations in a particular case. To find the necessary evidences on this observed abnormality/deviation, a survey can be conducted.

- e. As per the standard practice, closing stock should be physically inventoried and suitable value should be adopted. Then the gross profit would be balancing figure for a trading account. But in common practice, the businessman will make the closing stock as balancing figure by adopting the previous year's gross profit. In this practice, we can observe a constant gross profit every year. Hence, the cases which show constant gross profit can be concluded as the cases suitable for the survey operations. The possibility of finding excess/deficit of closing stock is very high in this kind of cases.
- f. In the businesses such as hotels, jewellery, the sales or purchase happen largely through cash transactions. Due to the cash transactions, the possibility of suppression of the turnover is more. To gather the necessary evidences for such suppression of turnovers from the place of the business, by gathering the necessary evidences as primary documents, conducting the survey operation is the right course of action.
- g. Internet: Surfing of trade related websites on internet gives useful information on various business organisations at one place making it easier to compare these with each other.
- h. Trade journals and Magazines: Such publications sometimes give financial performance and other information which may not be available in departmental records.
- i. Other Govt. departments & agencies: STRs, CTRs and other information received from Financial Intelligence Unit-India (FIU-IND) is important. CRS data and intelligence received from foreign countries are also very important. Database of other Government departments and agencies such as ROC, GST etc. as well as orders issued by them provide useful information and may constitute strong evidence.
- j. Other sources: Market information, Tax Evasion Petitions, etc.

**12.** It is not always possible to get specific information about tax evasion of a particular assessee. Therefore, some general guidelines are outlined for selecting cases for survey. The guidelines given below are only broad general indicators:

- a. Survey operation may be undertaken during, and as an aid to, on-going assessment proceedings where the assessee is recalcitrant in giving details called for or there are reasons to suspect tax evasion from the records.
- b. High declared turnover with no commensurate income may be an indication for selecting a case. In cases of such assessee, frequent large expenses on advertisements, commission, disproportionately high

sundry creditors or very old huge amount of sundry creditors etc. may be some other indications for selection.

- c. Another way of selecting a case would be to first select a particular sector which is doing very well in the economy at the relevant time and then find out a case from that sector showing poor results by studying the records.
- d. In cases where no stock register is maintained or where detailed break-up of closing stock is not given or auditors have made some qualification on stock maintenance.
- e. Detailed scrutiny and analysis of profit and loss account and balance sheet of the short-listed cases for survey is necessary as these may show “odd” or “peculiar features” in assessee’s case and quantum involved in each of such area.
- f. For carrying out detailed analysis of profit and loss account and balance sheet, one may use different ‘financial ratios’ to narrow down to assessee’s “suspected areas”. For detailed write-up on ‘financial ratios’, the book titled ‘Techniques of Investigation’ published by Directorate of Income-tax (RSP & PR) may be referred to.
- g. As far as possible, survey may be carried out during peak season of the assessee’s business. During or just before starting of the peak season, possibility of finding difference in stock and finding evidences of unexplained investment in stock is likely to be high. Conversely, survey carried out during lean season may not give satisfactory results.
- h. Unconventional/ new lines of businesses/ profession where assessee are not filing returns regularly.

## **Preparation of Survey**

**13.** Secrecy is extremely important. The information about the person to be surveyed should be kept confidential. If any discussion with other officers/ authority in the matter is necessary, it should be done in general terms without revealing the identity of the person.

**14.** For ascertaining proper details, confidential information regarding the premises/ businesses/ sister concerns, security aspects etc should be obtained by a secret visit to the premises where surveys are to be conducted, which will be helpful in estimating the requirement of manpower. Further, such visit makes the officer familiar with the surroundings and other concerns operating from the same premises. In fact, visit by posing as a customer is helpful in finding out the way assessee is carrying out actual business and the manner in which a transaction at different stages is being recorded. Many times, the businesses will have multiple premises spread over different market areas in a

city or different cities even. In few markets/ places, weekly holiday is observed in staggered manner. Similarly, the key persons of management or accounts may also have staggered timings. In the pre-survey exercise these are also to be considered to make sure that all the business premises are open at the time of purposed entry by the Department and the key persons are also available in the premises.

**15.** It is also advisable to find out the role played by different partners/ directors in the business before carrying out survey. The identification of “main” and trusted employees in the business or charitable activity is also essential as they provide vital information of business during survey. Information about the time when the premises generally open for business should be gathered before conducting the survey. The striking time should be fixed so that it ensures presence of the main persons in the premises.

**16.** It is vital for conducting big survey operations that information about the residential addresses of partners, directors and main employees of the business concern is kept ready for such circumstances where some records are kept at the residential premises or there is a possible requirement of converting the survey into a search. This information will ensure speedy action and reduce possibility of shifting/destruction of incriminating evidence.

**17.** Manpower requirement may be worked out on the basis of the number of premises to be covered, number of entry/exit doors, size of the premises (number of floors and rooms), quantity of stock to be valued, etc. For ascertaining the number of premises to be covered, case records should be perused carefully, assessee’s website (if any) should be browsed, telephone directory grouping, social media accounts should be seen and all advertisements should be scrutinised meticulously. Proper reconnaissance work must be carried out and correctness of the address of the premises to be surveyed should be ensured. Similarly, before going for survey in sensitive areas adequate security personnel should be taken.

**18.** After drawing the estimate of total manpower required, survey teams should be formed. Preferably, each team should have a minimum of two officers. The number of support staff will vary according to the requirements and availability of manpower. For larger premises, more than two officers may be required for effective control. Depending on requirements, specific roles to the members in survey team may be assigned, such as taking details of bank accounts, inventory of stock and its valuation, browsing through the accounts, documents, etc. If possible, the provision of reserve team for covering some more premises/ on-the-spot enquiry, shall be kept. Further, while organizing a survey, arrangements for refreshments for the members of survey teams should be made so that acceptance of assessee’s hospitality is completely avoided.

**19.** It would be desirable to prepare a brief for each survey team for ensuring effective and meaningful work during survey. The survey team may also be given a GPS coordinator location Pin/ location map of the premises to be surveyed for ensuring simultaneous strike by all the teams. The team leaders should also be given the list of all premises being covered during survey for effective co-ordination. They may also be given the cell phone numbers of other survey team leaders to help them co-ordinate with each other. The team leaders may be briefed about the issues expected to be found/investigated at their premises. They may also be briefed about “problem areas” discovered during study of assessee’s financial statements.

**20.** Every team should be provided with a survey kit which may contain:

- a. Authorisation of survey duly signed and sealed by competent authority. The format of order authorising an Inspector to conduct survey is annexed at **Annexure-I**. In case of authorisation to an officer not having jurisdiction over the case, his name and designation should be mentioned in the authorisation.
- b. A brief along with list of team members, with address of premises to be covered by him and mobile numbers of the team leader.
- c. Stationery items like pins, U-pins, stapler, punch, poker, tags, white thread, adhesive tape, sealing lac, candle, match box, metal seal, Blank papers, Blank folders etc
- d. Inventory forms for “books of account found”, “cash found” and “stock found”
- e. Blank summons forms
- f. List of main questions to be asked during preliminary statement (**Annexure-II**)
- g. List of main questions to be asked during final statement
- h. Form of ‘Record of Survey proceedings’ (**Annexure-V**).
- i. The officers called for Survey action should carry their Seal and Stamp.

**21.** Vehicle arrangements for each team should be made and time of departure from office for each team should be determined in advance to ensure all teams strike simultaneously. If considered necessary, local police should be requisitioned, especially in sensitive cases.

## **Conducting Survey**

### **Preparatory Note and Authorisation for Survey**

**22.** The procedure laid down u/s 133A of the Act regarding survey must be followed. Generally officers of the rank of Deputy/Assistant Commissioner or Income-tax Officers carry out survey under the direct supervision of

Joint/ Addl. Commissioner of the Range, in consultation with the Principal Commissioner/Commissioner of Income-tax. Inspectors of Income-tax are normally authorised for carrying out such surveys which involve only verification of books of account for ascertaining the entry of certain transaction by a business concern. The Officer proposing to conduct a survey should prepare a "Preparatory Note" for conducting the survey and obtain the approval of the jurisdictional Joint/Additional Commissioner of Income-tax. This has been reiterated in the guideline issued by the Board vide letter F. No. 299/105/2014-Dir (Inv. III)/241 dated 9.8.2017

**23.** Board has directed vide letter F. No. 299/105/2014-Dir (Inv. III)/241 dated 10.7.2017.

*"Income-tax authorities approving search/ survey shall mention following words in the authorization letter,*

*"This authorization shall not confer any authority to collect payment of any tax in any manner including cheque in respect of any income even if disclosed by a person in statement during action under this authorization".*

**24.** Survey module in ITBA has been rolled out. Accordingly, survey conducted must be uploaded on ITBA in accordance with the instructions in this regard issued by the department from time to time.

**25.** The conduct of a survey has two aspects. First, the actual conduct of survey at business/professional premises or places of activity for charitable purpose; and second, coordinating the survey operations from the control room in the office. Within two hours of commencement of the survey operation, the jurisdictional Principal Commissioner/ Commissioner of Income-tax should be informed about the commencement. The need for co-ordination of survey from the control room generally arises during survey conducted along with the search or in cases of survey operations where a large number of premises are covered.

**26.** The income-tax authority authorising or conducting a survey should be clear about the objective of the survey, i.e., the brief may contain the objective of the survey, focus area of verification, expected documents/records and relevant special provision of Act and Rules and other applicable law, if considered necessary. The team should be fully familiar with the relevant provisions of the Income-tax Act and Income-tax Rules. The income-tax authority authorising, supervising or conducting the survey should prepare contingency plans for any alternative action if the particular person or the particular accounts or documents are not available at the premises or for any other eventuality.

## **Entry into the Premises**

**27.** The members of the survey team should carry with them their valid Identity Cards. The first task of the survey operation is successfully getting

entry into the business premises or place of activity for charitable purpose. Since strangers are common and are expected to visit business premises or place of activity for charitable purpose, getting entry into business premises or place of activity for charitable purposes should normally not pose problem for any survey team. However, sometimes the survey team may find it difficult to enter into business premises or place of activity for charitable purpose having restricted entry either due to their exclusiveness or because of some illegal nature of business being carried on. For example, gaining access to a gambling club will be more difficult as compared to normal business premises or place of activity for charitable purpose. The information of possible difficulty in getting entry into business premises or place of activity for charitable purpose could be ascertained during pre-survey decoy visits. For obtaining access into premises which are difficult to enter, taking help of other government agencies, such as the local police, may also be considered.

**28.** Before obtaining entry, all entry and exit points should be secured. After obtaining entry, as far as possible, it should be ensured that the assessee does not pass on the information of the survey to his other premises at least during the initial hours. This will ensure that the evidence will not be shifted/destroyed at other premises in case the other survey teams do not maintain simultaneous strike time for some reason. As far as possible, the survey team should not stop the assessee from carrying on his normal business.

### **Things to be Done Immediately after Entering the Premises**

**29.** The survey authorisation should be shown to the person present at the premises on behalf of the assessee and his signature with date, time, his full name and role there should be obtained by the team leader. Departmental Identity Cards of the team members must also be shown. It is advisable that the team members may wear their Identity Cards around their neck after entering the premises and keep the same there till conclusion of the survey. Before recording the preliminary statement, the assessee may be asked to afford inspection of all books of account and documents which may be taken under their control by survey team to prevent any destruction/manipulation. Similarly, access to the computer should be restricted to prevent any tampering. Guidelines on handling of computer hardware and software are given below.

**30.** If survey is conducted on a retail commercial establishment, the cash counter should be under close observation of the survey team to prevent destruction of 'current accounts'. It is often experienced that many assessees regularly destroy details of their unaccounted transactions. In such cases, survey team may get the details only for the previous few days. Therefore, cash counter is the most likely place where survey team may find recent

records of unaccounted transactions. Similarly, main person's table and his cupboards should be identified and he should be asked to make available the documents, etc. kept therein for inspection. Further, addresses of other premises like godowns should be immediately found out from the main person or employees. If any premise has not been covered in the survey, the control room/Range head should be immediately informed, who may take decision on covering such premise, if the need for the same is felt.

**31.** The control room/ Range head should be informed about entry and commencement of survey operations. The jurisdictional Principal Commissioner or Principal Director of Income-tax should be informed about the survey and subsequent developments.

### **Recording of Preliminary Statement**

**32.** After obtaining information and taking the actions mentioned above, the team leader may proceed with recording of preliminary statement. Recording of preliminary statement should commence preferably within half an hour of strike time. A format of the suggestive questions which may be asked in the preliminary statement is given as per **Annexure-II**. It may be mentioned that the questions given are only indicative and not exhaustive and may not be applicable to all types of surveys and situations. The statement is recorded u/s 133A(3)(iii) of the Act. This section does not empower any authority to administer oath, therefore, oath should not be administered by the Income-tax authority while recording such statement. If the person either refuses to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded, the income-tax authority shall have all the powers u/s 131(1) of the Act for enforcing compliance with the requirement made. In such condition, statement u/s 131(1) of the Act may also be recorded after administering him oath.

### **Verification of Cash**

**33.** Details of cash lying at the business premises should be ascertained through the preliminary statement. It is necessary that discrepancies found during survey should be confronted to the assessee on the day of survey itself. This will prevent possible manipulation at the later stage. On the date of survey, the assessee is also most likely to offer truthful explanation for the discrepancies. For finding discrepancy in assessee's books as on the date of survey, actual cash and stock found will have to be compared with the cash

and stock balance shown in the books. Verification of cash by the authorised officer calls for the following steps:

- i. Take charge of cash books, including main/subsidiary and rough/fair cash books as well as slips relating to cash transactions which are yet to be entered in such books.
- ii. Count the cash found and prepare the statement of same and get the signature of the person present on the statement so prepared.
- iii. Get the cash book updated till the time of preparation of cash inventory. This updation should not be done in the real books of account maintained as registers or on a computer. The updation should be made on a separate sheet to be signed by the assessee as well as the survey team. This will prevent the assessee to tamper with the books of accounts, especially when they are maintained on computer and also prevent the charge of tampering of books of account by the survey team.
- iv. Check payments and receipts with reference to the vouchers or other evidence.
- v. Ascertain the difference between the cash found and cash as per the cash book and obtain an explanation or reconciliation for the difference, if any, which should be signed by the person present.
- vi. In few cases during the survey, the cash found in the business premises may be nil. And the general tendency is not to make inventory for cash in this kind of cases. However, to avoid afterwards any allegations of cash missing during the survey operation, it is suggested that a nil inventory may be prepared and in the statement also it should be brought clearly that no cash was found found in the premises during the survey operation.

### **Conversion of Survey into Search**

**34.** Proceedings under section 133A and 132 are independent of each other. The object and scope of action under each of these sections is well defined. A survey can lead to a search only when on the basis of information collected in survey, any of the conditions laid down in clause (a), (b) or (c) of section 132(1) is/are satisfied. A survey u/s 133A can be converted into search action u/s 132 of the Income-tax Act, 1961, mainly under following situations:

- When any vital information related to undisclosed income is found during course of survey.
- When huge unaccounted cash or other valuable assets are found (see CBDT's letter F. No. 414/16/2014-IT (Inv. I) dated 30.9.2014)

- For non-compliance during survey, summons u/s 131(1)(i) of the I.T. Act can be issued. If the assessee is not complying even with the Summons, action u/s 132 can be taken, if considered necessary.

For instance, if the income-tax authority comes to know that some account books, documents, cash, valuable articles or things, etc., are lying in some place other than the place where business or profession is carried on but the assessee hides or misleads about the same, action can be taken under section 132 because unless the assessee makes a statement to the above effect, the department shall not be in a position to enter such other place under section 133A. In such a situation, the department cannot rest contented with the idea of taking penal action. Rather it should move fast for taking action under section 132 lest the assessee removes such account books, etc. from there to another secret place.

**35.** Where considerable amount of unaccounted cash is found, the survey can be converted into search. The CBDT has directed vide letter F. No. 414/16/2014-IT (Inv. I) dated 30.9.2014 that whenever undisclosed cash and other valuables of amount equal to or exceeding to Rs. 15 lakh (in Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Pune, Bangalore & Hyderabad) or equal to or exceeding to Rs. 10 lakh (in other places) is found during a survey, the PDIT(Inv.) concerned having territorial jurisdiction over the surveyed premises may be intimated compulsorily at the earliest possible to examine the facts for taking recourse to section 132(1) of the Act (refer to **Annexure-XII** of this manual for this letter). Such conversion of a survey operation into a search operation will have implications not only of cash seizure but also of covering the residential premises of partners/directors/trustees of the business concern or charitable trust. If it is considered necessary to convert a survey operation into a search operation, a Satisfaction note should be prepared by the jurisdictional Additional/Joint Commissioner, in consultation with the jurisdictional Principal Commissioner or Commissioner of Income-tax, and sent to the PDIT(Inv.) concerned. On the basis of this note, if he is satisfied, after recording satisfaction, he may issue a warrant of authorisation for search.

## **Verification of Stock**

**36.** The Income-tax authority conducting the survey should find out the precise nature of business or charitable activity carried on by the person at whose premises the survey is being conducted and also collect information about the nature of stock, types of Stock Register(s) and other documents being used for maintenance of stock. He should also find out whether under any law or rules applicable to the business or charitable activity, it is obligatory for the assessee to maintain a stock register or any other document for stock.

The survey team should obtain and examine the statements filed with the GST Authorities, wherever GST is applicable. These statements/returns filed with the GST Authorities would be of great help in finding out whether the assessee has been concealing the sales or inflating the purchases. A study of these statements/returns would be of great help if discrepancy is found in the closing stock actually found as compared with closing stock as per books. The survey team should also obtain, from the assessee as well as from the bank (as soon as possible) statement of stocks submitted to the bank as hypothecation for obtaining loan/overdraft limit.

**37.** The effectiveness of survey pertaining to the stock difference depends on how the gross profit ratio is adopted. To make sure right gross profit is adopted, the variety of goods available, their cost of purchase, their selling price should be carefully analysed and weighted average covering both quantum and variety should be adopted to arrive at the correct value of gross profit. If the business has any practice of offering discount, which should be evident from the sales bills, these discounts offered shall also be given due consideration to arrive the correct value of gross profit. For valuation of stock, purchase price code if available should be immediately obtained. Many business concerns dealing in retail, print purchase price code along with the sale price. This helps them in valuing the stock at cost price and more importantly, ascertaining the extent of bargaining they can afford to do with the customer without incurring loss on a particular item. Once purchase code is obtained, the valuation of closing stock at cost price can be done. Timely start of the work of valuation of closing stock is necessary as, if the stock is huge, valuation would be time-taking and physically tiring. As far as possible, the stock valuation should be done at cost either from codes or purchase bills. If this is not possible at all, the inventory can be valued at sale value and by adopting an appropriate method, the cost price can be worked out backwards. The survey team should draw a trading account as on the date of survey.

**38.** If the detailed inventory/stock registers are maintained by assessee, then the book value of stock can directly be found from them. If the same is not being done, then the trading account till the date of survey needs to be drawn to find the value of book stock. For drawing trading account as on the date of survey, the figure of opening stock is normally available with the survey team from the last year's return (if filed). The detailed inventory showing closing stock valuation as on 31<sup>st</sup> of last Financial Year should be insisted for this purpose; maintaining such detailed inventory and its valuation is necessary even at the time of audit. The total purchases and sales from 1st April of the year to the date of the survey should be obtained from the assessee's accountant who is entrusted with the task of updating accounts. Gross profit margin can be estimated on the basis of sale and purchase prices

at random but adequate sample of items for same period or by any other appropriate method. On the basis of such Gross Profit and figure of sales/purchase and opening stock, the book value of stock as on the date of survey can be determined.

**39.** The value of stock as per books so obtained by above method should be compared with the value of total closing stock found on physical valuation done by the survey team. The discrepancy found should be confronted to the assessee who should be asked to explain or reconcile the same.

**40.** It may also be found as to whether the assessee has credit facilities with any bank, and if so, whether he has furnished any stock statement to the bank for the previous month/quarter. It should be checked whether the quantity of stock reported to the bank tallies with the stock shown in the stock register. If the two figures do not tally, the person whose premises is being surveyed should be asked to explain or reconcile the difference.

**41.** The authority conducting the survey should ascertain whether the stock found also includes items on which the date or month of manufacture is required to be stamped under any statutory enactment, order or rule. In case the stock found comprise such items, suitable sample checks and comparisons of the stamped dates with the entries made in the stock register and other documents like purchase bills could be useful. This may give a clue as to whether there are any purchases/sales outside the books.

**42.** At times, survey teams come across stocks kept in the assessee's premises without corresponding bill. The most common explanation offered for such practice is that such stock is received on approval basis and as such, neither paid for nor accounted in stock book. This explanation should be fully verified and cross-checked through the documents such as e-way bills, etc. as are applicable. Where information is received that the assessee has kept stock at another business premise(s), a separate authorisation may be obtained for conducting survey at such other premises also.

**43.** The books of account, if incomplete, must be updated on the basis of purchase and sale vouchers. Care should be taken to include consignment sales and consignment purchases till the date of survey. Preferably, only assessee's accountant should update the accounts. It would be better if the accounts are updated by the Accountant on a separate sheet and not in the system to guard against any mischief by the accountant as he could delete important files. Also by updating on the separate sheet, the assessee would not be able to make any allegation that the survey team has tampered with the accounts. Therefore, before recording the preliminary statement, presence

of the assessee's accountant may be ensured. He should be put on the job of updating the books of account, whether maintained manually or on computer.

**44.** When valuation of stock is under progress, the officers may go through the books, documents and loose papers found and offered for inspection at the premises. The important documents and loose papers may be segregated for enquiry with the main person at a later stage.

**45.** For detecting suppression in sales or inflation in purchases, one should compare original documents (such as sale bills, purchase invoices or noting found in slips or diaries) with finalised accounts. The survey team should try to understand production cycle and try to get primary record for yield scrap generation.

**46.** For detecting any irregularities in the books or suppression of production, it is necessary to first understand the entire process followed by the assessee. One may have to sit down with employees to understand how transactions are recorded by each of them at different stages. Once the process is understood, it would be possible to find deviations. There may be a pattern of deviations from the established practice of maintaining records. For some of the deviations, the assessee may have genuine explanations to offer. However, some deviations may lead to detection of concealment.

**47.** In cases of manufacturing concerns, the raw material issue register and register of finished goods maintained as per the applicable GST Rules can be scrutinised. If the quantity of raw material and of finished goods found on physical verification does not tally with the figures as per the registers, the person present should be asked to explain or reconcile the difference. The survey team should study the manufacturing production cycle and should try to obtain primary records of manufacturing maintained internally by the production department. The details of scrap generated and how it is accounted for, may also be obtained because this also can give a clue to actual yield. The details of sales of scrap, quantity wise and closing stock of scrap can also be taken. The closing stock of scrap as per physical verification and as per books should also be taken.

### **Common Defects in Stock Taking**

**48.** Some common defects in stock taking have been observed. Following care may be taken to prevent such defects/deficiencies from taking place at the time of stock-taking.

- a. The stock inventory should indicate the name of the assessee, the address of the assessee, the address of the business premises/godowns where the stock is found and date of stock taking.

- b. It should contain the name of the person/employees who assisted in taking stock inventory.
- c. Name of the Income-tax official(s) who assisted in taking stock inventory may also be mentioned.
- d. The Inventories should be got certified by the assessee or the person in charge and should also be countersigned by the officials who took the inventory.
- e. Maximum possible details of the items such as their descriptions, quantity, make, size, weight, volume, length, etc. should be mentioned in the stock sheets.
- f. The fact whether the goods were in good quality or were bad/defective/rotten/ damaged should also be recorded.
- g. Uniformity and consistency in inventory format prepared by different teams in the same premise and in respect of similar stock should be ensured as far as possible
- h. As far as possible the stock as per books should be worked out during the course of survey itself and not left to be done in the office.
- i. Stock may be found in different stages of production. The stage of production should be suitably recorded.

### **Other Aspects Relating to Stock**

**49.** Recording of a Statement, relating to verification of stock is very useful. Some relevant questions that may be put before the assessee are as under:

- Q.1. Please identify yourself?
- Q.2. What is the system of stock taking followed by assessee-continuous, annual, or both?
- Q.3. When was the physical stock last taken by the business entity?
- Q.4. When was the inventory list / stock register last updated?
- Q.5. Where are the worksheets of actual physical verification of stock last taken?
- Q.6. Whether any stock has arrived before purchase is recorded?
- Q.7. Whether any stock has been lifted before sale is recorded?
- Q.8. Is there any stock sent or recorded as sample for approval? Please furnish corroborative evidences.

- Q.9. Has any stock been received from or sent for job work?
- Q.10. Whether any stock has been held by assessee as consignee?
- Q.11. Whether any stock is lying with assessee's consignee?
- Q.12. Is there any stock in transit? Please furnish corroborative evidence.
- Q.13. Please provide details of key loan stock.
- Q.14. Are any stock lying in other premises/godowns?
- Q.15. Whether stock of anybody else is available here?
- Q.16. Do you have anything to add or alter to any of the statements made above?

**50.** It is possible that during the course of survey of a manufacturing unit, one may come across goods lying in different stages of production. There may be various methods for determining the value of stock lying in each stage of production. It must be ensured that the method of valuation of opening stock and closing stock should be the same.

**51.** In the course of survey u/s 133A of the Act, if on physical verification the stock found tallies with the book record or the difference is explained, then no consequences follow. The survey team should focus on taking the physical verification of closing stock in terms of quantity as well as value. The quantity-wise inventory of various items is very important because the difference of stock in terms of quantity clearly shows that books of account are not properly and regularly made. Normally two broad situations arise on account of stock difference:

- a. Stock Excess:** In case excess stock is found (as compared to book records), it may represent unexplained expenditure either of the year under survey or of past years. In some cases it also indicates suppression of Gross Profit.
- b. Stock Shortage:** As regards shortage of stock as compared to book records, the quantum of income which is unrecorded would depend on facts and circumstances of the case. The shortage would normally represent undisclosed sales or bogus purchases. To follow up this lead, the trade creditors may be scrutinized minutely.

**52.** There are numerous possibilities as far as effect of excess/shortage of stock on the computation of income is concerned. All relevant facts relating to sale, purchase, stock production, etc. need to be scrutinised thoroughly to reach to a proper conclusion.

## **Verification of Claims of Depreciation and Exemptions**

**53.** At times, survey is also conducted for verifying depreciation claims made by the assessee. For verifying depreciation claims, very existence of asset needs to be ascertained during survey. If the asset is not in existence, obviously, assessee's depreciation claim is bogus. However, surveys carried out to examine when the asset was '*put to use for the purposes of business*' require careful preparation. In this category of cases, assets are either bought after the closure of financial year, or, even if the assets are bought in the earlier year, they are put to use in the subsequent year. In such circumstances, assessee's depreciation claim to the extent of earlier year's claim is false. When there is a reason to suspect that assessee is claiming wrong depreciation year after year, survey should be preferably conducted in the first fortnight of April so that any assessee intending to make false depreciation claim does not get time to 'manufacture' evidence in support of his assertion that the '*asset was put to use*' before closure of the year. Certain documents should be examined during survey to decide assessee's depreciation claim. These documents are useful even in cases in which bogus depreciation claim is made on non-existing asset which is claimed to be leased out. The assessee is in receipt of lease rental and this lease rental income is nullified against equivalent or higher amount of depreciation claim.

**54.** List of the documents which may require closer scrutiny during survey is given as under:

- i. Permission from authority to install machinery, if applicable (for example, installation of boiler requires permission from 'Inspector of Boiler')
- ii. Asset sale invoice (is the seller a reputed concern or is there any reason to suspect and carry out further investigations? Does he have capacity to sell the asset which he is supposed to have sold?)
- iii. Asset delivery challan
- iv. Transporter's bill/ E-way Bill
- v. Receipt for payment of octroi/entry tax, as the case may be
- vi. Electricity bills to see any abnormal increase in electricity consumption suggesting any manufacturing activity involving new assets.
- vii. Manufacturer's installation certificate.
- viii. Any internal manufacturing reports/ records evidencing manufacture.
- ix. Assessee's bank statement to examine how payment for the asset is made.

**55.** If the depreciation claim is found to be false, statements of all the concerned persons should be recorded on the date of survey itself to make the case stronger. It may be mentioned that all such documents can be asked to be submitted during assessment proceedings also. However, survey action can be more effective in most of the cases because of its surprise element and its inherent advantage to conclude most of the issues on the date of survey itself. In the assessment proceedings, gathering all the above documents and recording of statements of all concerned persons may take months. Even after that, the issue may not reach its logical conclusion. Secondly, survey can also prevent fabrication of evidence, which is otherwise possible in the long drawn assessment proceedings.

### **Deductions and Exemptions**

**56.** Deductions and exemptions reduce assessee's taxable income. There are many sections in chapter-VIA of the Income-tax Act under which deduction is claimed. Similarly, section 10 of the Income-tax Act exempts certain income. For claiming deduction or exemption, assessee needs to fulfil certain mandatory conditions as provided in that particular section under which deduction/exemption is claimed. For example, section 80-IA provides that deduction will not be available on income of eligible undertaking, if the eligible undertaking uses old machinery for carrying out manufacture. Similarly, for claiming exemption on Capital Gain arising out of sale of agricultural land, it is necessary that the agricultural land sold should be situated beyond 8 kms from the municipal limits of town having population of 10,000 or more.

**57.** Following issues may be considered before undertaking survey specifically carried out to unearth false claim of deduction or exemption–

- i. Relevant section should be studied first to find the mandatory conditions provided in the section. During survey, it should be ascertained as to whether or not the assessee fulfils these mandatory conditions.
- ii. If the assessee does not fulfil these conditions, such facts should be brought on record by collecting documentary evidence specially the primary records and other correlative evidences which are relevant to prove the existence of any condition necessary to be qualified for making claim of exemption. For example, in the cases of false deduction u/s 80IA, it was found, in a particular case, that manufacturing activity was not carried out in the unit eligible for claiming deduction. In such a case, electricity bills showing little electricity consumption, telephone bills showing nominal telephone bills, insignificant expenses on security etc. were relevant evidence along with the recording of the statement of the concerned persons. To cite another example, in certain cases

of deduction, one of the mandatory condition is the employment of minimum number of persons; in such cases, the attendance register, wage payment receipts, statement of supervisor, statement of co-worker(s), etc. can be useful evidences.

- iii. In some cases, business expenditure of eligible unit (to claim deduction) is debited in the accounts of ineligible unit. By this manipulation, profit (and consequently deduction of the eligible unit) is increased whereas taxable profit of ineligible unit is reduced. To detect such manipulation, account books of the eligible unit should be thoroughly examined to ascertain as to whether such manipulation is resorted to by the assessee or not.
- iv. Depending on a situation, it may be necessary to carry out enquiries with the Government agencies concerned or third parties and record the statement of relevant persons or obtain letters from such persons on the date of survey itself.

## **Handling of Digital Evidence**

**58.** When a search team enters any premises with computers, they have to take control of the computers. Take control of power supply of the computer. Please ensure that computers are not switched off abruptly. Switching off a computer would entail loss of volatile data. Additionally, it would involve the need to invoke passwords to log in and initiate programs. The assessee would get an opportunity to prevent crucial programs from loading. The systems that are already switched on should be examined thoroughly. If the suspect system is a server, disconnect the router and other telecommunication links. If a client, disconnect the network cable and telecommunication links. This ensures that nobody can access the computer remotely. If at entry, the computer systems are not operational, then identify the key persons who are in charge of computers. Only a person from the search team should key in entries including passwords which shall be given by the assessee. The surrounding of the computers can sometimes prove very crucial. The search party should carefully look for: Computer Print outs in room, on table, in drawers, in dustbins, etc. Passwords on note pads, diaries, stickers, in the wallets used by the persons using the system, etc., Manuals and reference books pertaining to customized software.

**59. Collect Passwords:** There may be many kinds of password in computer to get access to that computer or to the files such as:

- BIOS password/Log in password
- Password for Excel, RAR, Word files etc.

- Password for Tally application and any other customized software
- Password for email accounts: get username and password for all important accounts.
- Password for cloud storage or Online Accounting Software: If there are any web-based accounting software or cloud storage which are present then relevant username and passwords

**60. Securing Mail Boxes and Cloud Storage:** Acquire the user id and password of email account of the assessee and other important persons of the business concern, if there is any, and change the password immediately to secure the mail box and cloud storage. The changed passwords should be noted down at a secured place for further analysis of emails. Try to download the mail and other web-based storage contents as early as possible because it is easy to access these data from anywhere using the user id and password. Identify the Software Used for accounting. Identify the software's which are being used by the assessee for billing and accounting. Collect information such as vendor of the customized software, database used by the software and user id and passwords.

**61. Pen Drives and other Removable Devices:** Removable Media like Pen drives and other USB devices can be easily hidden because of their size. Officer in charge should take control of the pen drives and other removable devices, since these devices are susceptible to immediate physical destruction.

**62. Mobile Phones:** All Key Persons Mobile Devices should be taken in to control and ensure that there is no scope for deletion of data in the Mobile Devices. Mobile Phones should be thoroughly examined for the details of business transactions (day to day reporting by employees through SMS or other message clients), details of investments (Notes, Messages, Photos etc.), Bank accounts details (Message from Banks) etc. Take two complete backups of the computer on CDs, DVDs etc., 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 assessee's computer is obtained. This will help recover even deleted files. It would be advisable therefore to copy the entire hard disk including the empty sectors, as the computer continues to store deleted files unless specifically overwritten. To ensure the evidentiary integrity of the original evidence, the computer forensics process always begins with the creation of a perfect "bitstream" copy or "image" of the original storage device. All analysis has to be performed on the bitstream copy instead of the original. For analyzing and evaluation purpose a working copy of the image should be taken. The actual search occurs on the department's computer, not on the searched party's computer. Normally it would be sufficient to seal and seize the hard disks alone. However, in case of certain unique hardware

environment, it may be necessary to seal and seize the computer itself. The decision to seal the computer should be taken in the premises based on the evidence and circumstances available. While sealing the hard disk, seal one of the copies also. Then the computer or the hard disk etc., can be seized. The sealing must be done such that nobody can access the computer subsequently without breaking the seal. Adequate care should be taken when seizing hard disks to protect it from static electricity, magnetic fields, shock and moisture. The hard disk should be packed in bubble wraps. All removable media at the site should be examined and if necessary seized. Mention clearly in panchanama that back up of data has been made in duplicate. Merely gathering electronic evidence is not sufficient. Efforts have to be made to corroborate the contents therein with other corroboratory evidences. Detailed statements of the persons in control of computers/ electronic devices (including system administrator) have to be recorded. In statements information regarding the hardware, operating systems, softwares used for accounting, various users and their roles and passwords should be extracted.

**63.** Investigation directorates generally have panel of digital evidence experts for assisting in search and survey operations. Services of these experts may be hired by officers outside Investigation directorates also.

**64.** Following contents from “**Digital Evidence Investigation Manual**” published by the Board in the year 2014 are also important in the matter of handling of digital evidences:

- i. Legal Aspects:** The Income-tax Act, 1961 takes cognizance of digital evidence. The definition of the ‘document’ under the Act now includes an electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000. As per section 2(1)(t) of Information Technology Act, 2000, the electronic record means data, record or data generated, image or sound record, received or sent in an electronic form or microfilm or computer generated micro fiche, is a document. Thus, the Act empowers the Authorised Officer to require any person who, in the course of survey, 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 him the necessary facilities to inspect such books of account or other documents.
- ii. Digital Devices:** Computers and mobile phones are the principal digital devices. There are, however, a number of other audio, video, communication 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 a survey are:

- a. Computers, either standalone or networked;
- b. Laptops and notebooks, which are mobile computers;
- c. Palmtops, which are extremely small but powerful devices with considerable memory capacity and communication facilities;
- d. Data storage devices like, CDs, DVDs, pen drives, hard disks; and
- e. Electronic diaries and cell phones, etc.

**64.1** These devices may vary in looks and appearance and may be of different sizes and shapes. While the standalone desktop computers are easy to identify, it requires some close observation and investigation 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 network places' in the Control Panel will reveal this information.

**64.2** While impounding the digital evidences a proper certification u/s 65B of Indian Evidence Act is to be drawn during the survey proceedings to ensure the admissibility of electronic records as evidence. A separate chain of custody should also be mentioned to establish clearly the custodian of the operating systems.

**64.3** Each Commissionerate may have empanelled forensic experts for the analysis of the digital data. During the survey, for impounding the digital evidences and for the subsequent forensic analysis, these experts' help can be taken.

**64.4** The officers should be properly trained for the tally data mining and in operation of various accounting packages. This exposure to various accounting packages will be useful in the survey premises for proper data extraction and analysis.

### **Basic Guidelines for the Survey Party**

**65.** Para-2 (vi) of guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed) emphasised that focus of survey should be kept on gathering relevant evidences during survey and not merely obtaining disclosure without supporting evidences."

**66.** These guidelines for the survey party are only indicative in nature. The basic purpose of these guidelines is to ensure that the person in respect of whom survey is being conducted or the person in control of the computer systems at the time of survey is not able to tamper with data stored digitally in computers or other such devices. The survey party 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, care may be taken with respect to handling of digital devices, and the following are suggested.

- a. The data in computer, laptops and other electronic devices can be very easily and promptly altered/ manipulated. The mobile phones and other electronic devices also can be used to operate remote devices as well as for data storage. These can be operated innocuously without being noticed. Hence, they should be allowed to be operated only after they are examined and image taken, if required.
- b. Take steps to prevent access to remote location devices as well as access of devices at premises from remote location.
- c. Look for storage devices such as pen drives, CDs, DVDs, etc.
- d. Identify the key persons in charge of the systems.
- e. Make an exhaustive inventory of systems and peripherals.
- f. Make a list of hard disks to be impounded or for taking image
- g. Obtain print outs of important documents after the image is taken and get them authenticated.
- h. Record the statements of authorised personnel about user levels, access passwords, operating system, accounting package modifications, encryption algorithms used, etc. and other relevant issues.
- i. Not to allow any unauthorised inputs or keystrokes even by the members of the survey team.
- j. Not to allow any person, even from the survey team, not conversant with computers, to deal with them in any manner.

### **Access to the Data Storage Devices, Password Protections**

**67.** 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. The person concerned is legally bound to reveal the passwords and other information required for accessing such data. In case he refuses to do so, in view of provisions of section 133A(6), provisions of Section 131 can be invoked and such fact may be recorded in the form of a statement on oath. If the password is not revealed and adequate facility of inspection is not afforded, it is better to look for other options such as impounding of such device or calling of 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 de-crypt it. 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 to restrict access to network contents and possible manipulation of data.

## **Retrieval of Deleted Files**

**68.** Most of the times, if the files are deleted from the Recycle Bin 'permanently', still it is possible to retrieve the files in certain circumstances through bit-by-bit mapping of the hard disk of the computer. Utilities/software is available in market, which could be used to restore and read such files. 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 disc drive for such deleted files which may contain information about unaccounted transactions.

## **Remote Storage of Data**

**69.** 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 soft-wares 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 in some cases free. Some of the popular hosts offering off-site online backup solutions are asigra.ds3, data vaulting, e-vault, live-vault, drivehq.com, storage.eweek.com, Amazon Cloud and Google Drive. These days, storage in clouds is very 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 Impounding the Devices and their Authentication**

**70.** The decision regarding impounding should be based on the same considerations as are applicable to impounding of books of account and other documents. The decision whether to impound only the hard disk or the entire computer should be taken keeping in view the hardware environment and other technical factors. If it is decided to impound the hard disk, two complete back-ups of the computer-hard disc on CDs, DVDs, etc. maybe made at the earliest. 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. In case the system contains volatile data, specialised software should be used to capture data resident in the memory. The memory chips used in phones, digital diary etc. can also be copied on to computers for recovery of files.

### **Precautions to be Taken for Retaining the Integrity of the Retrieved Data**

**71.** The Authorised Officer and his team should impound the devices containing the digital evidence or make their images in such manner that the integrity of data in original cannot be questioned. It is very important that the digital forensic image of digital device is made and hash value report for the same is generated and signed by the assessee or his representative present there. As far as possible, two copies of the forensic digital image should be made for the department and only one copy should be used for further examination. Where original device is being impounded, a forensic image of the same may also be given to the assessee, besides the copies for the department to act upon. 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.

### **Other Aspects to be Seen During Survey**

**72.** Other aspects to be seen during the course of survey would be cash credits, long pending trade credits, long pending un-cleared consignment transactions, claims of depreciation, deductions under Chapter VIA, claims

of exempt income, etc. The survey team should also look for violation of TDS provisions, if any, and report the same to the TDS Wing. For verifying claims of depreciation, deductions under Chapter VI-A and Exemptions under section 10 during surveys, specific strategies are to be adopted. The income-tax authority conducting survey should at all times be vigilant and look for any books of account, papers, diaries and other documents, etc. containing suspicious entries. Where rubber stamps are found in the premises, impression thereof should be taken and the person present should be asked to authenticate the same and obtain reasons as to what is the connection of the assessee with those stamps and why they are lying with them. Further, the statements of persons handling primary records and important functions, which may be relevant in understanding the process, records, and statements such as those of accountants, production manager, store manager, etc. can be helpful in determining the final income.

### **Collection of Cheque/ Draft etc. as Payment of Taxes on the Basis of Income Declared during Survey**

**73.** Board has directed vide letter F. No. 299/105/2014-IT (Inv. III) dated 162 dated 10.7.2017 (copy enclosed) that *“no Income-tax authority shall collect payment of tax, interest, penalty etc of any nature in any manner including cheque under any circumstance during search/ survey/ other investigation and they will restrict themselves only to the actions permitted under the law. If assessee wants to pay any tax against past income disclosed in statement u/s 132(4)/133A or advance tax on current income, search/ survey officials shall not accept such cheques and, instead, guide or advise the assessee to deposit the cheque(s) in bank. It will be the responsibility of the authorized officer conducting survey/ search to ensure that this is followed and they will be held accountable for lapse. Any deviation in this regard shall be viewed seriously.”*

### **Recording of Final Statement**

**74.** Final statement should be recorded of a person who has direct knowledge of the business. If such a person is not available, the statement should be recorded of any other responsible person. During recording of final statement following issues should be covered:

- Documentary evidence regarding assessee having kept his stock somewhere else.
- Documentary evidence regarding assessee keeping someone else's stock in his premises.
- Identification of defective goods and its valuation.

- Quantification of purchase returns and sales returns in the year along with documentary evidence.
- Confirmation of stock valuation method followed by the assessee.
- Confirmation of assessee not having any objection to the value of stock taken and method of valuation followed by the Department during survey.
- If the assessee voluntarily declares certain concealed income, declaration should have following elements:
  - Statement that it is an additional income over and above regular income.
  - Assessment year for which it is offered.
  - Income-head under which it is offered.
  - Transaction/manner in which such income is earned and the documents on the basis of which such income is offered for tax and the quantification on which it has been arrived.

**75.** A statement can be recorded by the competent income-tax authority conducting the survey, but not by the authorised Inspector. While recording the statement, the following points should also be kept in mind:

- i. No threat/ promise/ inducement should be used
- ii. The statement should preferably be recorded in the language known to the deponent. The Income-tax authority should read over and explain the statement to the deponent if the statement could not be recorded in the language known to the deponent.
- iii. Conjectures and surmises should be avoided in the statement.
- iv. Additional income disclosed by the assessee should be based only on evidence gathered during the course of survey such as documents evidences and entries therein, excess cash, stock or other valuables. This has been reiterated by the Board several times as mentioned in letter F. No. 286/98/2013-IT (Inv. II) dated 18<sup>th</sup> December 2014 (Refer to the **Annexure–XIII** of this manual).
- v. It is settled position of law that any statement obtained under promise, inducement or threat or compulsion has no evidentiary value. Any promise to waive penalty or not to re-open assessments for earlier years should not be made.

### **Preparation of Inventory and Impounding of Books, etc.**

**76.** If books of account and other documents are found, the income-tax authority conducting the survey should examine them and then decide

whether these would be useful in the assessment or other proceedings and accordingly take a decision for impounding of the books, documents, etc. If considered necessary, the Range head may be consulted.

**77.** Para-2(vii) of guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed) stated, *“Proviso (a) to Section 133A(3)(ia) provides that reason for impounding books of accounts and other documents found in course of survey should be recorded. Similarly, it should be reported in preliminary survey report as to which of the inventorised books of account or other documents have not been impounded and the reason for not impounding those. Such non-impounding shall be examined by the Joint/ Additional Directors/Commissioners of Income-tax and, if necessary, he may direct for issuing summons u/s 131 calling for such books of accounts and other documents for impounding u/s 131(3).”* This is a new guideline issued by the CBDT in pursuance of system study by the Directorate of Income-tax (Vigilance) and has to be followed by the officer conducting the survey.

**78.** Detailed inventory of the relevant books/documents and valuables found at the premises should be prepared. This has been reiterated and emphasised in the guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed). The marks of identification should bear full signature of the authorised officer with date and office seal. The pages of the documents impounded should be serially numbered and mentioned in the inventory. The blank pages should be cancelled and numbered. While preparing the inventory of the books/documents found which needs to be produced for the verification on a later date, marks of identification are placed on that. Normally, the marks of identification would be the signature of the authorized officer/Inspector of Income-tax. The sample of such marks of identification should also be brought on to the record clearly and should be placed on the survey folder after due attestation by the party. This will ensure that in future the party will not resort to any mischief.

**79.** For impounding the books of account and inventorising the same, the prescribed procedure should be scrupulously followed. Reasons for impounding should be properly recorded. The order impounding books of account and documents should be prepared and duly served on the assessee. Where the books of account are not fully updated, the authorised officer should also impound all primary documents on the basis of which entries were made to complete them, so as to prevent fabrication of evidence at a later stage.

**80.** All extracts taken should be properly authenticated. While impounding loose papers, they should be arranged in bundles in a folder or stitched on the

left hand top. Each paper should be numbered, signed by the assessee and by the authorised officer. However, where the number of papers is large, the pages can be numbered and sealed with lac on a side. In the inventory, it may be mentioned that a particular bundle of papers contains specific number of pages.

**81.** For ensuring timely completion of survey, the team leader may plan the work properly so that the time gaps during which officials are waiting for directions can be avoided.

**82.** A record of survey proceedings should be prepared at the time of conclusion of survey. A format for the same may be seen at **Annexure-V**.

### **Carrying out Post-survey Work**

**83.** After completion of survey, a preliminary report should be sent within 48 hours in the format given at **Annexure-VII** [see guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed)]. Where the survey is conducted by the officers working in the charge of Principal Commissioner of Income-tax, it must be ensured that the copies of the survey report are sent to the Principal Commissioner of Income-tax/ Principal Director of Income-tax(Inv.)and the Range Addl./Joint Commissioner of Income-tax. Where the survey is conducted by the Directorate of Income-tax (Inv), copies of the survey report should be forwarded by the authority conducting the survey (through the Joint/Addl. Director in-charge of the Investigation Unit) to the jurisdictional Principal Commissioner and the Range Additional/Joint Commissioner under intimation to the Principal Director of Income-tax (Investigation) within 48 hours of the conclusion of the survey.

**84.** Immediately after the survey, the AO should ensure that all necessary entries are made in the survey registers, impounding material registers. This will ensure that the due course of action will continue even if there is change of any incumbent. Normally, when the annual scrutiny guidelines are issued, the survey cases fall under compulsory scrutiny category. Immediately, after such guidelines the survey cases needs to be entered into the scrutiny registers. Similarly, the survey findings may lead to initiation of reassessment proceedings. These cases also should be entered into the corresponding registers to ensure proper follow up action.

**85.** If after preliminary examination of impounded records, their retention is considered necessary, an application seeking permission for retention of impounded books of account should be immediately forwarded to the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the

Commissioner or the Principal Director or the Director, giving reasons for the same and retention must be obtained within the time prescribed, i.e. within 15 working days.

**86.** After completing above mentioned procedural work, the Assessing Officer may carefully go through the recorded statement, impounded material and documents for the following purposes:

- Identifying weak areas of the recorded statement which could be exploited by the assessee as an escape route to avoid tax liability. Such escape routes can be plugged by conducting further investigation and by recording statements of the persons concerned.
- Third party enquiries or recording of statements etc., wherever required, should be done. Identifying areas which should be further strengthened by carrying out further investigation.

### **Submission of Final Report**

**87.** Board has directed in the guidelines issued vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed) that survey conducting authority will submit final report within 60 days from date of completion of survey (where the survey is otherwise than in consequence of a search) to PCIT/PDIT through JDIT/JCIT/ Addl. CIT/ Addl. DIT in the format given in **Annexure-VIII**. In this report he will bring out persons whose income has been detected, their PAN and where assessed, date of survey, assets and income detected, indicate Assessment Years in which such incomes are assessable, modus operandi detected, copies of inventory and statements, copies of approvals taken, whether assessment or reassessment proceeding should be taken against any assessee etc. Board's guideline dated 9.8.2017 read, *"It is found that in many cases the final survey reports are not prepared in time or sent by the Income-tax authorities conducting survey. As a result, the outcome of survey action is either not reported or not acted upon for assessment. To ensure that proper action is taken and outcome of survey is reported, all Income-tax authorities, conducting survey u/s 133A, shall submit "Final Survey Report" within 60 (sixty) days of conducting the survey to the Range/Unit head along with a copy to the jurisdictional Assessing Officer (if survey is conducted by an Income-tax Authority other than jurisdictional Assessing Officer) with the following details upon which the Range/Unit head shall examine correctness and send it to the DGIT/CCIT through Principal DIT (Inv)/ Principal CIT:*

- a. Name of the case and PAN
- b. Date of survey

- c. *Amount of undisclosed income detected during survey (in Rs. lakh)*
- d. *Nature of concealment detected including modus operandi and evidences gathered (in brief)*
- e. *Whether the three points for manual selection of survey cases for compulsory scrutiny, as contained in Board's Instruction issued every year in the matter of selection of cases for compulsory scrutiny, are fulfilled in the case.*

**88.** Photocopies of most important evidences may be made part of report and enclosed with the final report in support of analysis and comments made in the report.

**89.** It may be emphasized that for ensuring success, time is the key factor in post-survey investigation. The necessary post-survey investigation must be carried out quickly to prevent the assessee from resorting to any possible fabrication of evidence which will nullify the result of a successful survey.

**90.** If the survey is conducted by the Investigation wing of the department independent to any search and seizure action, a final survey report may also be sent by the conducting ADIT / DDIT (Inv.) to the concerned Assessing Officer (with a copy of the same to the concerned Principal Commissioner of Income-tax and range head) through the Addl./Joint Director of Income-tax (Inv.) preferably within two months from the conclusion of the survey incorporating the gist of all the evidences gathered during survey and post survey investigation and the possible tax implications thereof. The survey cases are generally selected for complete scrutiny as per the instructions of the Board, therefore, the Assessing Officer should study such survey report before finalising the assessment proceedings.

**91. Selection of Survey Case for Scrutiny:** The final survey report should contain comments regarding fulfilment of the conditions on which cases can be manually selected for scrutiny as per Board's guidelines in this regard for the relevant year. Guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed) read, *"Instruction for 'Compulsory manual selection of cases for scrutiny' issued by the Board contains direction to compulsorily select all "assessments pertaining to survey u/s 133A excluding those cases where books of accounts and other documents were not impounded and returned income (excluding any disclosure made during the survey) is not less than the returned income of preceding assessment year. However, where assessee retracts the disclosure made during the survey, such cases will not be covered by this exclusion". It has been found by the Directorate General of Income-tax (Vigilance) that in 94.2% of the sample cases of survey examined during the system study, no scrutiny proceeding was initiated on the ground that there was no impounding*

of books or documents. In this context, it may be noted that as per the said Instruction, exclusion of survey cases from scrutiny requires fulfilment of three conditions, namely,

- a. "books of accounts and other documents were not impounded"
- b. "returned income (excluding any disclosure made during the survey) is not less than the returned income of preceding assessment year"; and
- c. assessee has not retracted the disclosure made during the survey.

Accordingly, it is emphasized that the requirement of fulfilment of all three conditions is a conjoint one and hence survey cases cannot be excluded from selection for the reason at (a) alone. The final survey report must contain a finding as to the fulfilment of the above three points in the case."

## **Monthly Report on Surveys Conducted**

**92.** A monthly report on surveys carried out under the jurisdiction of each PCCIT (CCA) /DGIT (Inv) is to be furnished to CBDT, the format of which is annexed at **Annexure-IX** [see guidelines issued by the Board vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (copy enclosed)]

**93.** Survey registers should be maintained by each ward / circle / investigation unit as mention in Para no. 25 to 28 of Chapter-3 of this Manual.

## **Register of Surveys**

**94.** Registers should be maintained in each circle/ward/investigation unit wherein entries should be made immediately after the conclusion of the survey. The format of this register is at **Annexure-X**. Entries in this register should be reviewed by the A.O. every month while sending the monthly report on survey in the prescribed proforma.

**95.** This register should be scrutinised by the Additional Commissioner/ Principal Commissioner in the course of Investigation of the work of the Assessing Officer to see whether the survey provisions have been effectively and properly put to use and that findings during the survey have been duly followed-up.

**96.** Similar registers should be maintained by the Deputy Director/Assistant Director in respect of surveys conducted under his direction. Information relating to such survey should normally be passed on to the Assessing Officer promptly. The date on which the information is so passed on should be noted in the remarks column.

**97.** The Director/ Additional Director should periodically scrutinize the registers to see that necessary follow-up action has been promptly taken.

**Investigation Module in ITBA (with Special Reference to Survey)**

**98.** Investigation Module of ITBA provides the functionalities for officers of Investigation Wing for processing of TEP, STRs, Other Information, recording/ conducting proceedings in a search and/or survey operation and generating Investigation Report, Appraisal Report and Survey Report. Similar functionalities are provided for officers of Assessment Charges for their relevant role under the I. T. Act along with facility to view the reports uploaded by the officers of Investigation Wing and to initiate relevant assessment proceedings u/s 147, 153A, 153C, etc. Apart from the other functionalities, the other things available in Investigation Module are: Recording entire details relating to a Search and/or Survey operation including group details, premises covered, persons covered, assets found and seized, documents seized/ impounded, admission of undisclosed income, restraints u/s 132(3), estimation of concealed income and generating Two Hourly Report, Preliminary Search/ Survey Report, Appraisal Report and Survey Report along with entire process of approval of the said reports; The pendency for initiating consequential assessment proceedings u/s 153A/ 153C/ 147/ 143(3) shall be automatically created once the Assessment Module is fully operational. Facilities to seek extension of retention, generate intimation letter for release/ extension of retention for books/documents seized/ impounded; to transfer Books/ Documents, generate transfer memo; for centralisation of cases and for Adjustment and release of Cash and Other Assets are also available in this module in ITBA. The Investigation Module in ITBA may undergo changes from time to time and hence the officers should refer to the ITBA Investigation User Manual at the time of its use. A separate chapter on this is included in this Manual.

**99.** Board has directed vide letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 (**Annexure–XVII**) that *“While handing over charge, the officers must prepare “Handing over Note” especially in respect of survey cases undertaken in the charge which should contain brief details of the surveys conducted in which scrutiny assessments including re-assessment proceedings are pending or to be initiated”*.

# Survey under Section 133A of I.T. Act, 1961, as a Tool for Recovery of Income-tax

---

## HIGHLIGHTS

- *Introduction*
  - *Case Law*
  - *Relevance of Survey for Recovery*
  - *Planning of Survey for Recovery*
  - *Conduct of survey for recovery*
- 

**1. Introduction:** The power of survey u/s 133A of the Act was made available to Tax Recovery Officers w.e.f. 1.6.2003 vide the Finance Act, 2003, by amending Explanation (a) to sub-section (6) of Sec. 133A. This was with the objective of strengthening the power of TROs for better result in recovery of outstanding taxes. The power of survey is provided to Income-tax authorities basically to enable them collect information and evidence for the purposes of the Act, out of which recovery of tax is one main purpose. Earlier, TROs had to request the Assessing Officers (AOs) to conduct survey and remain dependent on him for outcome. Extension of power of survey to TROs is therefore a significant enabler towards recovery of taxes.

**1.1 Case Law Relevant to Survey u/s 133A of the Income-tax Act, 1961 for Recovery of Taxes:** No prior notice of any kind is necessary to make surveys. Whether, where petitioner was in default of a large sum as arrear of tax and it was considered necessary to carry out survey with a view to ascertain nature of assets held by or under control of petitioner, allegation

of petitioner that survey was vitiated by mala fides was liable to be rejected-Held, yes. Whether after having entered business premises of assessee during business hours no further limitation is imposed by section 133A(2) regarding period for which income-tax authority may remain in that premises, and, therefore, survey may continue till it is completed notwithstanding fact that survey would spill over beyond business hours-Held, yes. Whether TRO has power to attach promissory notes, found in course of survey, pursuant to a certificate for recovery of tax dues from assessee-Held, Yes—**N.K. Mohnot vs. Dy. CIT [1995] 215 ITR 275, 83 Taxman 238 (Mad.).**

**2. Relevance of Survey for Recovery:** As mentioned earlier, purpose of survey is to collect information. Like assessment, Income-tax authorities require information for collection and recovery of tax too. They require information about all the assets as well as sources of income from which taxes can be collected. The AOs have access to the current returns but the TROs do not. TROs are supposed to be provided by AOs with the list of assets, copy of balance sheet etc. as at the time of drawing certificate. These are sometimes not provided. Even if provided, they do not contain complete details. Further, these lose much of its relevance and utility with the passage of time. So TRO is handicapped due to lack of current and detailed information about assets and sources of income. On the other hand, the AOs may have current returns true, but, firstly, these returns merely have P&L A/c. and Balance sheet and schedules. In case of bank accounts complete details like name of bank and branch, A/c. No. and nature of a/c. are available in few cases. Complete details of other assets like address of debtors, identification no. etc. of land is generally not available with returns. Secondly, these returns too were prepared several months/years back and the facts about assets written there might have changed by this time. But what the AO or TRO requires for attachment or similar actions for recovery of taxes is information about current assets existing on the day on which he wants to take the action. It is only survey which can give such information about recovery of taxes. It is in this perspective that survey u/s 133A of the Act is of paramount importance to the AO as well as TRO.

### **3. Planning of Survey for Recovery**

**3.1** In a survey for recovery, focus has to be on collecting any type of information which can help in taking action under the provisions of the Act for recovery. Therefore, the survey team has to be briefed (if not led by TRO/

AO himself) about the types of papers (and entries in papers) on which to concentrate. Ideally the survey for recovery should be led by TRO/AO himself as this will provide several advantages, viz.:-

- i. To check, verify inventories/ cash/ stock and other valuable articles/ things.
- ii. To impound books of a/cs. and other documents if necessary (which may be particularly useful when these are voluminous and survey team is unable to finish inspection of these during survey)
- iii. To extend survey to “other places” like residence, chamber of authorized representative/ accountant etc. (which pre-requires taking of statement)
- iv. To take statement (which the Inspectors are not authorized to take) and thus obtain replies to questions on different findings in books of a/cs. or other documents.
- v. To issue summons u/s131 in the situations mentioned in Sec. 133A (6).

**3.2** AO/TRO does not have power to seize cash/valuables during survey. But TRO has the power to seize cash/valuables under Second Schedule and AO has the power to do the same under Sec. 226(5) read with Second and Third Schedules. But such survey and seizure are two separate operations. If seizure under Second Schedule (by TRO) or seizure under Sec. 226(5) (By TRO/AO) is done during survey u/s 133A, it will not be treated as separate operation and it runs the risk of being considered as contravention of Sec. 133A (4). Therefore, at the stage of planning, this aspect should be taken care of. Either the TRO may go for survey u/s 133A and simultaneously issue warrant in ITCP-2 to his Inspector to attach (by seizure) cash and valuables or AO may go for survey u/s 133A and TRO may go for attachment of cash and valuables. Of course, operation u/s 226 (5) requires approval from CIT/CCIT. Therefore, in some situations, conducting survey by A.O. and attachment by TRO or survey by TRO and attachment by Inspector is better than 226(5). Also, if in some case AO/TRO needs to gain access to the “other places” including residence or Chartered Accountant’s place, AO/TRO should plan that after entering the premise, he will record answer to question on place where such cash etc. are kept. If he gets the reply that these are kept in some other place, such reply only will give AO/TRO access to such place because of Explanation to Sec. 133A(1).

## **4. Conduct of Survey for Recovery**

**4.1** At the time of survey, all general procedures like spreading out in the premise, taking control of telephones, disallowing exit of staff/proprietor, stopping removal/destruction of documents must be followed.

**4.2** Control of cash, valuables, NSC, F.D. etc. should be taken as fast as possible. If cash is found, TRO should make the seizure under Schedule-II. The bottom-line is that cash should not be and cannot be seized during survey operation. So, adequate application of mind should be made at planning stage itself so as to avoid any legal complication.

**4.3** All types of books of accounts and other papers including loose sheets, letters, cheque books, small diaries etc. should be gathered from all places including brief cases at a central place in the survey-spot.

**4.4** These are to be sorted into different groups, e.g. books of accounts. Bank documents, sales bills, bills submitted, loan papers, investment documents, tax files, subscription and membership folder, telephone bills, electricity and other bills, rent receipts etc.

**4.5** From the current sale bills, name and address of the buyers may be noted. Later, correspondence may be made with them to know amount receivable by assessee and the same may be attached.

**4.6** From all types of documents (e.g. bank pass book, counterfoil of pay-in-slip, record ship of cheque books, cheque leaf, rent receipt, tax paid challans, electricity/telephone bill receipts, page of payment "Schedule" of deed of purchase/sale of immovable property, bill/invoice of purchase of car etc.) try to note down details of all bank accounts (including term loan account, cash credit account, fixed deposit accounts etc. with all banks and branches. Sometimes, only the cheque no. is available. But that too should be noted as account no. can be known with this (subsequently these accounts can be attached).

**4.7** If bank guarantee papers are found these will show as to where the assessee has filed bills which have been discounted by bank (subsequently, AO/TRO may explore whether any amount can be collected by attaching the bill).

**4.8** In the cash book, each page should be verified to find out sources of cash/ cheque received and destination of payments made.

**4.9** If there is loan/cash credit account, AO/TRO should try to get details of assets placed as collateral security (If there is any, he may later explore if anything is available by attachment of these after meeting bank's hypothecation).

**4.10** Small diaries, correspondence folders etc. should be inspected to find out details of investments (so that these can be attached).

**4.11** Copies of documents related to purchase of car/immovable property, share/debenture etc. should be obtained (these details will enable TRO later to attach and sell these as these are necessary for proclamation).

**4.12** Apart from these, even if documents of foreign travel, club expenses, cash memo of expensive items are found, then copies of these should be taken. These will enable TRO to arrest and detain the assessee on the ground that he had the means to pay the taxes but still neglected/refused to pay.

**4.13** At the time of taking statement, question should be asked with the aim of eliciting some such reply which will disclose and own up attachable assets. Read facts of the case, read the law. Then read acts again. You will be in a position to understand which facts should be placed first, which case law would fit best with which fact and how the arguments need to be logically arranged.

**4.14** It is important to keep in mind that once the survey leads to detection for properties for attachments by the TRO, the attachments should be made at the earliest after following the due process and conditions because under Rule 68B of Second Schedule to I. T. Act, 1961, there is time limitation for sale.

**4.15** On identification of assets in survey, they should be sent to valuer without delay. Matter with valuer be pursued for quick valuation considering the time limit of 3 years for auction.

**4.16** If assessee is a company /firm/HUF/AOP/BOI/, then all details of assets of director responsible u/s 179 (1)/partners/karta/member, as the case may be, should be collected.

**4.17** If A.O. conducts the survey, he should prepare a report and give it to the TRO. A.O/TRO should not waste any time in attaching the assets. Immediately after return, they should attach all assets/ take action for arrest and detention. In this way, survey can be used as a very effective tool for recovery of taxes.

# Survey on Charitable Organizations under Section 133A(1) of I.T. Act, 1961

---

## HIGHLIGHTS

- *Legal basis*
  - *Places which can be covered*
  - *Potential Cases*
  - *Important points to be kept in mind during survey action in case of Charitable Trust / Institution*
  - *Issues to be generally kept in mind*
- 

## 1. Legal Basis

In earlier provisions of section 133A of the I.T. Act, the power of survey was restricted to a place where a business or profession was carried on or the place which was used for some business activities or keeping books of Account, documents, etc of such business. As a Trust or an Institution which is involved in activities for charitable purpose does not normally carry out business or professional activities, the power of survey was not applicable to such entities unless they were engaged in some activities of business or profession along with the charitable activities.

In order to enable the Exemption charges to invoke the power of Survey U/s 133A in appropriate cases, by way of Finance Act 2017, Section 133A was amended to extend the power of survey to the premises of charitable Trusts/ Institutions.

**1.1** By way of Finance Act, 2017 w.e.f.01-04-2017, in section 133A of the Income-tax Act, in sub-section (1), the following lines have been substituted—

## Old Lines

*“at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession ...”*

### **The New Amended Lines are as under:**

*“at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose—”;*

**1.2** Further, in the *Explanation*, after the words “business or profession” wherever they occur, the words “or activity for charitable purpose” has been inserted.

The amended explanation is as under:

*“For the purposes of this sub-section, a place where a business or profession [or activity for charitable purpose] is carried on shall also include any other place, whether any business or profession [or activity for charitable purpose] is carried on therein or not, in which the persons carrying on the business or profession [or activity for charitable purpose] state that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession [or activity for charitable purpose] are or is kept.*

Thus, the scope of section 133A(1) has been widened to include any place, at which an activity for charitable purpose is carried on. Moreover, a duty has also been cast upon a Trustee or employees or any other person who is helping in carrying out any of the activity of such trust/ institution for charitable purposes to afford facilities to the Survey team to carry out the survey action.

## **2. Places which can be Covered**

By virtue of the above amendments, now the Income-tax Authorities can enter any of the following premises:

- a. The principal place of activity of the Trust/ institution;
- b. Any other place at which the activities for charitable purposes are carried out;

- c. Any place which is not used for carrying on any charitable activity, but about which any person carrying on activities for charitable purpose states that any Books of Account or documents or cash or stock or any other valuable article relating to such activity are kept at such place.

Therefore, it is clear that almost every place which is used for carrying out any activity for charitable purpose by a trust or institution can now be covered by a Survey Operation.

### 3. Potential Cases

There cannot be any standard rule for identification of potential cases. However, the following cases can be appropriate for prioritizing survey action in the cases of Trusts/ Institutions, depending on other facts and circumstances:

- a. **Cases Suddenly Turned into Non-Filers of Returns:** It has been made mandatory to file Return of Income within the due date prescribed u/s 139(1) of the I.T. Act for claiming exemption u/s 11 or 10(23C) of the I.T. Act. Therefore, a Trust or institution having substantial activities which has not filed return within the due date can be a very good case for survey as such assessee will not be able to claim deduction u/s 11 or 12 and the surplus can be straight away brought to tax.
- b. **Cases with High Establishment Expenses:** The high establishment expenses as compared to the expenditure on real objects can be an indicator of misuse of trust funds as well as application of trust funds for personal purposes of the Trustees.
- c. **Large Corpus Donations Claimed Exempt u/s 11(1)(d):** As a Trust/ Institution is not required to show application of corpus donations, it is a tendency of such trust/institution to take donation to the corpus fund. Therefore, the cases where huge corpus donations received are claimed as exempt u/s 11(1)(d) of the Act can be fit cases for Survey especially those cases where donation is received in cash from large number of donors. For claim of deduction in respect of corpus donation u/s 11(1)(d), the mandatory condition is that the Donor should have given specific direction to treat the same as corpus donation. When the details are asked for during assessment proceedings, sometimes assessees are able to construct these details and submit them. Hence, on-the-spot action such as a Survey can be fruitful in such cases to find the real nature of such donations.
- d. **Cases with Large Capital Expenditure:** Huge capital expenditure incurred in connection with acquisition of capital assets in respect of which the claim is made as application towards the objects of the trust,

can be verified in survey action. In many cases, such capital assets are not used for object of the trust/ institution. In survey action, the actual location of such capital assets and their use can be ascertained. In fact, some instances have come to notice where capital expenditure towards objects has been claimed to be siphon off the trust funds also. Verification of physical capital assets can be helpful for detection of such cases also.

**e. High Risk Cases which may be Generated by System:**

- Non-filers having substantial activities till preceding years.
- High risk cases on the basis of information received from other Agencies such as under FCRA, Black listed entities by other Ministries, entities whose registration is cancelled under other Acts.
- The System can generate details of high risk cases such as cases where donors have claimed large amount of deduction u/s 8-G but the donee Trust/ institution has not filed Return of income.
- Cases in respect of which 80G deduction claimed by Donors is more than the voluntary contributions shown in the Return of Income of the Donee trust/ institution.
- Cases of potential risk with high ratio of cash deposits as voluntary contributions in non-religious trusts, as such case may involve issue of anonymous donation.

**4. Important Points to be Kept in Mind during Survey Action in Case of Charitable Trust/ Institution:** The Income-tax Authorities conducting the survey need to exercise all precautions and look for all incriminating documents and information which is suggested in regular cases of survey also as far as they are applicable in cases of trust/institutions. In addition, the following important points should be specifically kept in mind during survey action in the case of a charitable trust/ institution:

- a. The objects of the trust as mentioned in the trust deed/Memorandum of Association, etc. should be examined by the survey team and compared with the actual activities being carried out by the trust so as to ascertain that the trust activities are not beyond the objects specified in the trust deed / MOA. Any expenditure which is not on the objects, even if it is on charitable activity, is not allowable u/s 11(1)(a) of the I.T. Act.
- b. During the course of survey proceedings the survey team should examine the applicability of the first and second proviso to section 2(15) of the I.T. Act with reference to the limb “**Advancement of any other object of general public utility**”. If it falls under this limb, it is to be examined as to whether the activities involved any trade, commerce

or business, etc. If so, then necessary evidence in this regard may be collected and impounded and respective persons may be examined by recording of their statements.

- c. Many Trusts/Institutions show the corpus donation or certain other donations directly in the balance-sheet of the relevant year without showing the same in the Income and Expenditure Account. Necessary verification should be made by the survey team that such receipts are in the form of **voluntary contributions made with the specific directions in writing to form part of the corpus of the trust** as that only is exempt u/s 11(1)(d) of the I.T. Act. The correspondence made with the donors and/or the details mentioned in the receipts issued by the trust should be examined to verify the claim of the assessee that those are only in the nature of voluntary corpus donation with specific directions.
- d. The survey team should also look into any corpus donation given by a charitable trust/institution to any other charitable trust/ institution as the same is not eligible as application for the donor charitable institution, in view of provisions of Explanation 2 to section 11 of the I.T. Act with effect from A.Y.2018-19.
- e. In the survey proceedings necessary verification of the records maintained by the trust with regard to identity of the donors including details of address, etc. making donations may be examined. If such records are not maintained, then those donations may fall within the definition of Anonymous donations as per the provisions of section 115BBC of the I.T. Act in case of non-religious charitable institutions.
- f. The transactions with Related Persons which are resulting into some direct or indirect benefits have a very serious bearing in Income-tax proceedings. Such transactions may not only result in denying the entire exemptions of the trust but can also lead to cancellation of registration u/s 12AA(4) of the I.T. Act. Therefore, the transactions with the related parties and the misuse of assets of trust/ institution need to be carefully looked into.
- g. All major decisions of charitable trust/ institution are required to be taken by the Trustees and recorded in the Minutes Book. The Minutes Book is, therefore, a very important document. A certified copy of such Minutes Book shall invariably be obtained.
- h. Accumulation of Surplus in a routine manner u/s 11(2) is very common. In various Court decisions it has been held that such accumulation u/s 11(2) has to be for specific purposes. Therefore, copies of resolutions and entries in respect of decisions to accumulate surplus in Minutes Book

and other documents needs to be examined. The persons responsible may also be asked about the process adopted for accumulation and their specific purpose for which the same has been accumulated.

- i. Necessary verifications may be made by the survey team with regard to the nature of receipts declared as voluntary contributions or receipts for carrying out some work, or rendering services. In case the receipts are for rendering of services, applicability of provisions of section 11(4), 11(4A) and proviso to section 2(15) needs to be examined. Further, it is necessary under section 11(4A) of the I.T. Act to maintain separate Books of Account in respect of any activity in the nature of business, trade, etc. even if it is incidental to the main object of the trust/institution, to be eligible for exemption u/s 11 of the I.T. Act in respect of profit from such business. Therefore, in such case, it is also a very important aspect of verification that Books of Account for such activities are separately maintained.
- j. As per the Income-tax provisions, the trust or institution is also required to make TDS on payments made to different persons as per provisions of Chapter XVII of Income-tax Act. The survey team can verify the defaults, if any, in making the TDS as per the said provisions and deposit of the TDS amount in the Government Account.
- k. As per the recent amendment, Explanation 2 to sub-section 1 of section 11 by the Finance Act, 2018 w.e.f. 1-4-2019, the provisions of section 40(a)(ia) and 40A(3) and (3A) have become applicable in the case of trust/institutions also. Thus the survey team may examine the books of account and other records of the trust so as to look into the violations of these provisions.
- l. The newly introduced provisions of Section 269ST, which bar a person to receive an amount of Rs. 2 lacs or more in aggregate from a person in a day; or in respect of a single transaction; or in respect of transactions relating to one event or occasion from a person in cash, are applicable to trusts/ institutions also. The violation of these provisions may be found in cases of trust/ institutions, especially in cases of educational or medical institutions. Therefore, the survey team may specifically look into these violations during the Survey Action. Any such violation may attract penalty u/s 269DA of the I.T. Act.
- m. Whenever clear-cut violations of section 13(1)(c) / 13(1)(d) over a sustained period have been found or evidences which clearly suggest ingenuine nature of activities or activities not being carried on in

accordance with the objects of the trust/ institution, are gathered, such violations shall be separately pointed out in the Survey Report so that the Commissioner of Income-tax can take action of cancellation of registration u/s 12AA(3) or 12AA(4) of the I.T. Act on the basis of such findings, without waiting for assessment proceedings to be completed. In fact, in such cases, the cancellation of registration itself will be helpful in assessments also.

## **5. Issues to be Generally Kept in Mind**

At 4(a) to (m) above, all relevant verifications from the point of view of law have been listed. As taxman, the following however, have to be kept in mind generally:

### **A. General Issues**

- i. The issue of bringing unaccounted funds in the books of account by introduction of bogus donations.
- ii. Usage of funds belonging to charitable purpose for personal effects/ benefits.
- iii. Misuse of corpus donation in religious institution. The corpus donations are directly credited in balance sheet without having proper documentation, register specific directions.
- iv. Violation of provisions under section 13(3) of the act, wherein unreasonably high amounts are debited to specified persons.
- v. Issue of education institution receiving cash in lieu of admissions.
- vi. Receipt of donations in cash above Rs. 2000.
- vii. Non filing of Return of Income despite having huge surplus on which taxes are to be paid.
- viii. Misuse of donations received under section 80G which is then given back to donors in cash.
- ix. Eligibility for exemption, with reference to whether the funds are utilized for objects of the trust.
- x. Fraudulently encasing Government Grants in the name of weaker sections and for special sectors.
- xi. Providing entries for fraudulent CSR expenditure.
- xii. Providing entries for fraudulently showing application of income of one Trust by showing donations to other Trusts.

## **B. Specific Issues**

- i. “Receipt and payments account” as well as “Income and expenditure account” separately as there may be few items which form part of the RPA but not of Income & Expenditure Account and they may need detail investigation w.r.t. source, application and eligibility of outright exemption. Many times AOs may miss out on the investigation of RPA and only concentrate on Income & Expenditure Account.
- ii. In Educational Institutions especially those running professional courses, many a times, the unaccounted donations taken from students are accounted for in the form of donations from pseudonymous persons. A sample cross checking with the persons can reveal such issue.
- iii. Payments at the fag end of the year and especially in last week of March.

# Survey by I&CI Wing under Section 133A(1) of I.T. Act, 1961

**Survey of reporting entities mandated to file statement of financial transactions or reportable accounts (SFT) as provided under section 285BA of Income-tax Act, 1961**

---

## **HIGHLIGHTS**

- Introduction
  - Legal framework
  - Conditions for invoking action under section 133A
  - Selection of cases for conduct of survey
  - Ground work
    - A. *Pre-Survey work:*
      - a. *Identification of the case for survey of sft filers*
      - b. *Getting the requisite approval*
      - c. *During survey*
      - d. *Important action points while conducting the survey:*
    - B. *Post survey work*
- 

## **Introduction**

**1.** In today's ever changing economic scenario and against the backdrop of strong measures taken by the Government of India to tackle the menace of Black money and rein in tax evasion a new system has been devised wherein information relating to high value financial transactions is collected from third party agencies or the Reporting Entities as they are called, dealing in these transactions, through requirement of filing of Statement of Financial

Transactions or Reportable account (SFT). Till recent past the procedural framework for furnishing information with respect to high value financial transactions was known as Annual Information return (AIR). The AIR regime has now been modified into a system of furnishing of SFT and the Intelligence & Criminal Investigation (I&CI) Directorate of the Income-tax Department has been entrusted with the work of intelligence gathering on this front. As per the statutory framework laid down in Section 285BA of the Income-tax Act 1961, these third-party agencies have to furnish the relevant information in both Form 61 and Form 61A. The type of information and quantum limit for furnishing of information is specified separately in the corresponding Income-tax Rules 1962. Thus, it is very important for the Department to ensure that the Reporting entities comply with the statutory requirement and file the data within the prescribed time and format and also do so correctly and adequately. Conduct of Survey or Inspection on the Reporting entities is an effective tool for ensuring compliance and also acts as deterrence for non-filers, apart from the relevant Penalty and Prosecution provisions as already laid down in the Act.

## **Legal Framework**

**2.** Section 285BA of the Act provides for collection of data from third parties. These third parties are known as Reporting Agencies. It is applicable in respect of High Value Transactions registered or recorded during any financial year. Sub-section (1) of 285BA requires certain specified persons to furnish annual information in respect of specified financial transaction registered or recorded by them during the relevant financial year. Under sub-section (2) of 285BA, AIR/SFT has to be furnished within the prescribed time in the prescribed form and manner. Sub-section (3) of section 285BA specifies nature of transactions which can be prescribed by the CBDT for the purpose of reporting in the AIR/SFT. It also provides that Board may prescribe different values for different transactions in respect of different persons having regard to the nature of transactions. The requisite prescription has been made under Rule 114E of the IT Rules. Under Rule 114E(5), the time limit for filing AIR is prescribed as, on or before 31/08 immediately following the financial year in which the transaction is registered or recorded. The time limit for SFT has been prescribed as 31st May of the following year with effect from FY 1/4/2016 and as such the first return under new provision was due by 31/5/2017. In respect of the format, Rule 114E(1) and Rule 114E(4), AIR/SFT is to be furnished in Form no.61A.

## **Conditions for Invoking Action under Section 133A**

**3.** Powers under Section 133A(1) of the Act may be invoked primarily in two scenarios:

- a. Where the Reporting Entity, bound by Section 285BA of the Act to furnish AIR/SFT, fails to do so, even after issue of Notice calling for compliance thereof or
- b. Where the Reporting Entity files the requisite information by way of filing AIR/SFT but is alleged to have done so in an incomplete or inaccurate manner without exercising due diligence.

#### **4. Selection of Cases for Conduct of Survey**

**Ground Work:** Before moving on with the Selection of Cases for carrying out inspection, there are certain prerequisites as laid down below, to be taken care of:

- i. First is identification of the total number of Reporting Entities who are required to file the AIR/SFT within the jurisdiction of DIT (I&CI), which basically means that a Master Database of all the filers is required to be prepared and maintained. In this connection, data may be called for and collected from various agencies like for instance, list of Urban Co-operative Banks can be obtained from Registrar of cooperative society or data related to Sub Registrar Offices can be obtained from the office of IG, Registration or the list of Banking Companies, Credit Card and other Banking Companies could be obtained from Reserve Bank of India or details in respect of stock exchanges, stock brokers, issuers of mutual funds could be obtained from SEBI Mumbai and so on.
- ii. The Reporting Entity-wise Master Database compilation will enable better Compliance Management. In the present SFT system of filing, the reporting entities are required to register themselves on the Income-tax Portal and upload the Statement directly online while in the erstwhile AIR regime the filers had to register on NSDL Portal. Having a Master Database will not only enable the Department to identify non-filers amongst the filers who are registered on either the Income-tax or NSDL portal but also the filers who are outside the system and never registered in any of the portals.
- iii. Once the list of non-filers is identified, Notices u/s 285BA(5) are then to be issued for non-compliance for all the years where information has not been filed with effect from 2005-06. The Penalty and Prosecution Proceedings would thereafter follow depending on the merits of each case.

#### **5. Pre-survey Work**

**5.1 Identification of the Case for Survey of SFT Filers:** From the Compliance data available with the Income-tax Reporting Portal and or the NSDL and also the Master Database, the following category of cases can be zeroed in upon for selection:

- i. Cases where AIR/SFT are not being filed at all by the eligible Reporting entities, whether registered or not,
- ii. In Cases where AIR/SFT are being filed:
  - a. Those Reports where NIL Returns are being filed continuously whereas the market information available about the business activities suggests a very different picture.
  - b. Those where few entries are filed in the Report, whereas again the market information available about the business activities gives a very different picture.
  - c. Those where suddenly Return shows huge entries regarding the transactions in a single year, which appears abnormal.
- iii. The five broad scenarios are elaborated as hereunder:
  - a. The AIR/SFT filer who have not filed any return even though they have reportable transaction. The provisions of the Act/Rules makes it clear that even in cases where there are no reportable transactions, the filer is required to file a Nil return thereby confirming that he does not have any reportable transaction or furnish a Preliminary response to that effect. The Act also casts responsibilities on the AIR/SFT filers to carry out due diligence before furnishing the return of reportable transaction. Further, the return is also to be signed and verified by the person who is authorized to sign the return in accordance with section 140 of the IT Act. Therefore, the AIR/SFT filer is required to carry out proper due diligence, verification and submit accurate information to the Department. In order to identify whether the person has reportable transaction we need to go through the volume of business of such banks, cooperative banks, urban cooperative banks, Post office, Nidhi, NBFC, company or institution issuing bond/debenture/share, Mutual Fund, person authorized under section 2(c) of FEMA or the Sub Registrar Offices dealing with registrations in prime areas which would provide an idea of size and volume of business or transactions or registrations carried out by them. Let us say that a cooperative bank having the business/deposits of Rs. 500 crore is likely to have certain reportable transactions and therefore, such entities could be selected for inspection if they have not filed AIR/SFT.
  - b. Some other filers would have filed AIR/SFT return for certain years and have discontinued filing for subsequent years or previous years. Such cases would show that there is likelihood of some reportable transactions that exists for the previous years or subsequent years and such entities could be selected for inspection. For this purpose,

it is necessary to get the Compliance Data from the Systems for carrying out effective analysis.

- c. There are some entities who file Nil returns regularly on receipt of notice u/s 285BA(5) in order to show the compliance with the provision of the Act. In such cases we need to verify whether the Nil return filed by them is accurate or otherwise. For this purpose say in the case of Bank, we need to carry out background verification through the website of registrar of cooperative societies to identify the size/volume of the business carried out by such entity. The Income & Expenditure Statement and balance sheet could be sourced from such website. This would provide the financial status and from them we would be in a position to identify that the entity is likely to have reportable transactions but have failed to furnish it accurately. Such cases would be selected for inspection.
- d. In some cases we also find entities filing Nil returns for the earlier years and suddenly filing returns with a large number of entries in the subsequent years say an entity which has filed Nil return for the period 2005-06 to 2009-10 and suddenly showed 100 entries for the period 2010-11. This would give an indication that the reporting is not correct.
- e. In some cases AIR/SFT filers do not file the return within the prescribed period or claim that they have filed the same by producing acknowledgment. Sometimes the Reporting Entities would have given the data to the authorized agents but the latter would not have forwarded or uploaded the information on the AIR/SFT portal. Such Cases are to be treated as cases of non-compliance. In some cases the authorized agents also produced an acknowledgment of uploading the data on the AIR/SFT portal but there would have been an error message or communication of not being uploaded properly which would not have been complied subsequently. In such a case the filing is not considered valid and therefore, AIR/SFT filers are liable for penal consequences as non-filer. Such cases should also be taken up for inspection to obtain the correct data.

## **5.2 Getting the Requisite Approval**

- a. The process of inspection of AIR/SFT filer is carried out under the provision of section 133A of the IT Act with due approval of Jt./Addl. DIT (I&CI). The entity selected for inspection should provide necessary facility to inspect the books of account and documents to verify the reportable transactions.

**b. Important Points for Consideration while Seeking Approval are Summarized as under:**

- i. The Officers are expected to gather all the information in a case identified for Survey and prepare a reasonable satisfactory note explaining why a Survey is required in a Particular case and approval is sought from the Joint Director of the Income-tax (I&CI) giving the proposed date and time along with Manpower requirements.
- ii. The JDIT is expected to examine the note and satisfy himself/herself if the case is appropriate for a Survey. Approval of the Note and the Authorisation are given u/s 133A of the Income-tax Act.

**6. Conducting Survey**

**6.1** The Officers are required to execute the Survey Action planned and approved by way of mobilizing the manpower and arranging the requisite logistics.

**6.2** During conduct of Survey at the premises of the eligible Reporting Entities due procedure connected with entry into the premises at the scheduled date and time is to be followed.

**6.3** After entry, it is pertinent that the purpose for the survey action is explained to the concerned officer of the Reporting Entity present at the Survey premises. Say for instance, in case of Bank Inspection, Manager / CEO of the Bank may be duly informed about the requirement of furnishing information under various provisions like AIR / SFT. The proceedings are started after taking the signature of the Manager/ CEO of the Bank on the Authorisation.

**6.4** The first & foremost task after striking the premises for Survey would be to take control of Computers, software, Floppies, hard-discs, pen-drives etc. In case books of accounts or documents are manually maintained, these books (deposits registers, loan registers etc) have to be taken into custody.

**6.5 Important Action Points while Conducting Survey**

After striking the premises, taking control over it and completing the due formalities thereof, the following general action points are to be followed:

- i. Take a Preliminary Statement of the Reporting Entities' concerned Person whereby the following basic questions may be initially posed:
  - a. The filing status of the Statutory AIR/SFT Reports, Financial year wise including date of actual filing.
  - b. Mode and manner of registering or recording the information about the transactions for which the AIR/SFT is to be filed whether manual or computerised

- c. Whether the data is maintained entirely in the Premise covered or some other places as well, say, in the case of Banks whether they are maintaining Data, branch wise or whether the Data is available in the Head Office etc.
- d. The details of the Software being used in case of Computerized maintenance of data and the details of the Software developer and also location of the main server where entire data is stored.
- e. The details of the concerned person in charge of handling the maintenance of documents or books or the technical persons in charge of Software running and maintenance.

**ii. Taking out Data of Reportable Transactions:**

- a. After ascertaining the manner in which the data about financial transactions is fed and stored, the next step for the Inspection team is to get all those transactions which are above the prescribed threshold and make note of such transactions year wise. In other words, the main focus of the team would be to gather and assimilate all data falling beyond the prescribed limits, out of the whole data registered and stored by the Reporting entity.
- b. After all such reportable transactions are gathered, tabulated or extracted from the main database or record center of the Reporting entity, such data should then be compared with the already filed AIR/SFT data. Any discrepancy found in the number of Reportable entries *vis-à-vis* AIR/SFT filed would then constitute as “Unreported entries”. In case where AIR/SFT is found to have been not filed, then the entire list of Reportable transactions collected earlier would qualify as “Unreported entries”.
- c. After comparing extracted data of Reportable transactions with that filed by the Reportable entity in the form of AIR/SFT, all unreported entries should be listed out along with details of such transacting parties viz their names, addresses, transaction value and so on.
- d. In cases where the data is maintained in Manual form, all such documents or records where entries found to be not reported are entered or registered, should be either impounded or extract should be taken duly acknowledged and certified by the authorized person of the Reporting Entity .
- e. In cases with computerized accounts like in the Case of Banks, a forensic back up of their accounts may be taken and data of unreported entries be culled out or the entire data may be taken, left to be analyzed in the Office after following the due process of impounding under the Act. In some cases, where the data

pertaining to Reportable transactions are not readily available owing to the records being maintained elsewhere or the data server being present at a different location, a Summons notice u/s 131 may be issued to the Authorized officer of the filer or other entities to submit the reportable transactions.

## **7. Post-survey Work**

**7.1** Recording of Final Statement is very crucial. The discrepancy detected should eventually be brought to the notice of the Authorized officer of the Filer and Final Statement should be recorded incorporating the entire proceedings and findings of the Survey and taking due admission from the said officer along with commitment to file revised Returns.

**7.2** The Manager / CEO should be amply sensitized about the importance / necessity / obligation of furnishing information under various provisions of the Act and also the consequences of non-furnishing of information.

**7.3** The confirmation of the understanding/awareness of Section 285BA of the I.T. Act must also be covered. The statement should also give a gist of few unreported transactions about individuals, whose names are regularly appearing as Depositors. The discrepancy in reporting the transactions, reasons for non-submission of AIR and assurance to file/revise the AIR along with the date should also be included in the Statement.

**7.4** A Preliminary Survey Report has to be sent within the stipulated period as in normal survey and afterwards the Final Report may be submitted. While sending the Survey Report emphasis would be on highlighting the findings in terms of total number of unreported entries detected and the value thereof as the Inspection Survey relates to the Third Party Reporting Agencies and not the Assessee per se..

**7.5** The data collected during the Survey is the most valuable finding of the survey and such data has to be used for further verification to track non-filers or stop-filers or even those who file the returns.

**7.6** Analysis may show that income shown is not commensurate with the information contained in the data say for instance, it is found that huge property transactions worth crores entered into by Mr. X during, Inspection of a Sub Registrar Office, and Mr. X is found to be filing no returns or showing meager income. The data may thus be analyzed and the entries should be assigned for verification after analysis. Returned Income, the sources of investment for Deposits may be verified at least on test check basis and/or any other criteria after taking approval of the Director.

# Survey under Section 133A(2A) of I. T. Act, 1961 for Verification of TDS and TCS

---

## HIGHLIGHTS

- *Introduction*
  - *Legal provisions for conducting TDS/TCS survey*
  - *Selection of cases for Survey and preparation*
  - *Guidelines for Survey for defaults of tax deducted but not deposited*
  - *Guidelines for TDS/TCS Surveys for Non-deduction/short deduction defaults*
  - *Post survey (Follow up Action) in TDS/TCS cases*
- 

## 1. Introduction

**1.1** Chapter XVII of the I.T. Act, 1961, contains various provisions relating to collection and recovery. Collection by way of TDS and TCS is one of the most important methods of tax collection. The contribution of TDS to overall direct tax collection is substantial and impacts a majority of taxpayers. Tax is deducted at source from various types of payments like salary, interest, commission, rent, contract payments, winnings from lotteries, winnings from horse races, payments for acquisition of land, payments as fees for technical and professional services, etc. Employers have to deduct tax from salary payments. Banks, financial institutions and others, while making payment of interest to depositors or crediting interest in their accounts, have to deduct tax at source. Apart from this, in accordance with Part BB of chapter XVII, tax is required to be collected at source by the seller (collector) of certain

specified goods and services from the buyer/ lessee (collectee/ payee) which is called Tax Collected at Source (TCS). The goods are as specified under section 206C of the Income-tax Act, 1961. The monetary limits and rates at which tax is to be deducted/ collected are also provided in the Act. The persons responsible for deducting/collecting tax at source, have to deposit the tax deducted /collected in the government account within the prescribed time limits.

**1.2** The deductor, after deducting tax in accordance with the provisions of the Act and after depositing the same in the Government Account, is required to file TDS Statements on TRACES within due date. It is on the basis of processing of these TDS Statements, that the deductees get credit of TDS made from them by the deductor. Thus, any default on the part of the deductor will not only affect the revenue collection but can also cause grievance among huge number of deductees, who may not get credit of if the TDS made is not deposited or, even if deposited, proper returns are not filed. Therefore, proper compliance of TDS provisions is extremely important for the department, both from the point of view of collection as well as for providing better services and grievance reduction. The Department is in constant pursuit of creating right kind of awareness and environment for deductors to work in accordance with the law and procedures prescribed. Still there are some people who fail to comply with the provisions of TDS/TCS. Survey is an important and effective tool to improve compliance by such deductors/collectors.

## **2. Legal Provisions for Conducting TDS/ TCS Survey**

**2.1** There were no specific provisions for TDS/ TCS survey in the Income-tax Act till 2014. Verification of TDS/ TCS was earlier done by regular surveys u/s 133A(1) of the Act. Such surveys were very effective in detecting non-deduction or short deduction of tax at source or in identifying cases where deduction was made but tax was not deposited with the government. But the power of TDS/TCS wings to conduct survey u/s 133A(1) to check TDS/ TCS was challenged on several occasions in courts of law. Special provision regarding TDS/TCS survey has been introduced in the Income-tax Act, 1961, by inserting sub-section (2A) in section 133A by the Finance (No. 2) Act, 2014, with effect from 1<sup>st</sup> day of October, 2014, which reads as under:

*“(2A) Without prejudice to the provisions of sub-section (1), an income-tax authority acting under this sub-section may for the purpose of verifying that*

*tax has been deducted or collected at source in accordance with the provisions under sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII, as the case may be, enter, after sunrise and before sunset, any office, or any other place where business or profession is carried on, within the limits of the area assigned to him, or any place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept and require the deductor or the collector or any other person who may at that time and place be attending in any manner to such work,–*

- i. to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and*
- ii. to furnish such information as he may require in relation to such matter.”;*

**2.2** From the plain reading of these Provisions, it is clear that the powers under sub-section (2A) are meant to be utilized for the purpose of verifying whether tax has been deducted or collected at source in accordance with the provisions under sub-headings B or BB of the Chapter XVII of the Act.

**2.3** There are certain limitations on powers of an Income-tax Authority acting under sub-section (2A), prescribed by way of proviso to sub-section (3), which reads as under:

*“Provided that no action under clause (ia) or clause (ii) shall be taken by an income-tax authority acting under sub-section (2A)”.*

It means that an income-tax authority acting under the provisions of sub-section (2A) of section 133A shall not have the powers to:

- a. Impound and retain in his custody any books of account or other documents inspected by him; and
- b. Make an inventory of any cash, stock or other valuable article or thing checked or verified by him.

**2.4** At the same time, these provisions are simpler to execute because unlike survey u/s 133A(1), in the case of survey u/s 133A(2A), approval of Joint Director/ Joint Commissioner of Income-tax, is not required. Moreover, the power of survey u/s 133A(1) is restricted to the place of business or profession, while the power of survey u/s 133A(2A) extends to the office of other categories of deductors also.

**2.5** The following table outlines the key differences between provisions of Section 133A(1) and 133A(2A) of the I.T. Act:

Sl.	Survey u/s 133A(1)	Survey u/s 133A(2A)
1	Power extends to all information /evidence relevant for the purpose of Income-tax Act.	Limited to the purpose of verifying whether the tax has been deducted or collected in accordance with Chapter XVII of the Act.
2	Power to enter any place of business or profession only or a place where activities for charitable purpose is carried on.	<ul style="list-style-type: none"> <li>• Power to enter any premise where business or profession is carried on</li> <li>• Power to enter office of any other deductor also.</li> </ul>
3	Prior approval of Joint Commissioner/ Joint Director of Income-tax is required.	No such approval of Joint Commissioner/ Joint Director of Income-tax is required.
4	Power to impound books of account or other documents.	No power to impound books of account or documents.
5	Power to make inventory of cash/ stock or valuable articles or things.	No such power to make inventory.
6	I.T Authority can enter a place of business or profession or charitable activity during the hours at which such place is open for conduct of business or profession and after sunrise and before sunset in other places.	Same

**2.6** Mainly two types of substantive defaults are committed by the deductors:

- Tax deducted or collected but not deposited;
- Tax not deducted/collected at all or, even if deducted/collected, short deduction or collection of tax

**2.7** Besides, there are a large number of procedural defaults, such as:

- Failure to furnish or late-furnishing of statement u/s 200(3) of the Act;
- Failure to issue or late issue of TDS Certificates;
- Failure to furnish statement of perquisites u/s 191(2C) of the Act;
- Failure to file statements in Form No. 24Q, 26Q, 27Q, 27A, 27EQ and 26B within the prescribed time.

**2.8** The default of tax deducted but not deposited attracts prosecution u/s 276B/276BB of the Act, while default of non-deduction or short deduction attracts penal provisions of section 271C of the Act. It should, therefore be the endeavour of the survey team to make efforts to detect both kind of defaults and gather material which may be useful not only for quantification and penal

interest u/s 201(1A) but also prosecution penalty proceedings u/s 271C of the Act or prosecution proceedings u/s 276B/276BB.

### **3. Selection of Cases for Survey & Preparation for Survey**

**3.1** Some important sources of information for identification of potential cases for TDS/TCS surveys are as under:

- a. Data in respect of defaults in filing TDS statements as generated by TRACES.
- b. The grievances of deductees for non-credit of TDS.
- c. Files of processing of cases for issue of lower deduction certificate u/s 197 wherein the P&L Account and details of TDS payments/compliance is available

**3.2** Few indicators to select cases for potential survey are as under:

- i. Deductors defaulting in filing of statements for multiple quarters;
- ii. Negative growth in TDS payments for no apparent reason;
- iii. The best and time-tested method for selection of case specially that of defaulters of TDS deducted but not deposited, are the non-filers or late filers of TDS statements, in whose case there is a fall in TDS payments also;
- iv. Deductors, in whose case, numerous grievances from deductees are received;
- v. Comparison of head-wise deduction of deductors in the same business;

**3.3** Before survey, it is advisable for the Assessing Officer to have the following information ready in his folder:

- Whether more than one TAN is applied
- Number of branches of the deductor
- Nature of business and payments made by the deductor
- Details of various defaults obtained from CPC.
- TDS statement of the deductor for the last 3 years.
- Information from e-TDS returns filed.

**3.4** In bigger cases, reconnaissance of the premises should also be done to ascertain the computer infrastructure, division handling TDS matter, which may be used for estimating the requirement of manpower for the survey. Authorisation for survey u/s 133A(2A) is at **Annexure–III**.

## 4. Guidelines for Survey for Default of Tax Deducted but not Deposited

**4.1** As stated earlier, TDS surveys are helpful in not only realizing the revenue immediately, but they are also helpful in preventing grievances of deductees. Besides, potential cases for prosecution are also identified. Having identified a case, finding defaults and its quantification in itself is not a big challenge but in such cases the real challenge lies in effecting immediate recovery and processing the case for prosecution.

**4.2** The first aim of survey team should be to quantify the default. The amount of tax deducted but not paid is easily available in the books of accounts. However, a chart showing the amount of tax deducted, date of deduction, due date of payment and the actual date of payment should be prepared. This chart will not only be helpful in precise identification of default of non-payment but also in computation of late payment for levy of interest. If this chart is prepared during the survey itself, then it is possible for the Assessing Officer to issue a show cause notice for passing order u/s 201(1)/(1A) of the Act immediately. Passing such order expeditiously will enable the Assessing Officer to enforce recovery if the deductor does not pay the defaulted amount on its own.

**4.3** Details of bank accounts, debtors, details of associate companies and other assets should be meticulously collected because one major purpose of conducting survey is recovery.

**4.4** As per CBDT's instruction in F.No. 285/90/2013-IT(Inv. V) dated 17.10.2016, in addition to the cases selected on the basis of approved criteria (which are to be processed mandatorily), the CIT (TDS) may consider any other case for prosecution, based on information from sources such as survey/spot verification/ grievance received.

**4.5** Therefore, survey is an important tool for launching prosecution u/s 276B of the Act. Wherever default of tax deducted but not paid is detected, the survey team should keep requirement of these provisions in mind and make effort to gather all possible information and evidence which may be relevant in prosecution proceedings. These details are as under:

- a. Details of TDS statements of the quarters in which defaults have been committed

Form No. and Quarter	Due Date	Date of Filing	Total Tax Payment	Total Tax Paid after Deduction
----------------------	----------	----------------	-------------------	--------------------------------

- b. A chart showing the amount of tax deducted, date of deduction, due date of payment and actual date of payment.

- c. Copies of the TDS statement filed by deductor.
- d. Copies of challans of late deposit of TDS by the deductor.
- e. Certified copies of audit report in Form 3CD, if they show default, along with Balance sheet, Profit & Loss A/c and Annual Reports.
- f. Copies of ledger of deductees in whose case tax deducted has been deposited late.

**4.6** In the case of Company/Firm/AOP/BOI, provisions of section 278B are relevant in deciding the accused and co-accused(s). **Annexure-2** to SOP dated 09.12.2016 on prosecution prescribes certain details to be collected which are relevant for identification of the co-accused partners/directors/members. As far as possible, all these details should be collected during survey itself.

- i. Details of the Company:

Address	Other Address(s), if any	PAN Number	Date of Incorporation	Contact Numbers
---------	--------------------------	------------	-----------------------	-----------------

- ii. Details of Directors (From 1<sup>st</sup> April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential Address	Mobile Number	Whether Active or not	Responsibilities Handled *	Date of Appointment
------	---------------	-----	---------------------	---------------	-----------------------	----------------------------	---------------------

\* In support, copies of relevant resolution or other relevant documents may also be collected.

- iii. Details of person responsible for payment on which TDS is deducted (From 1<sup>st</sup> April of relevant F.Y. till date):

Name and Designation	Date of Birth	PAN	Residential Address	Mobile Number	Designation	Other Responsibilities Handled *	Date of Appointment
----------------------	---------------	-----	---------------------	---------------	-------------	----------------------------------	---------------------

\* In support, copies of relevant resolution or other relevant documents may also be collected.

- iv. Details of every person (including Directors) who was in charge of and was responsible to the company for conduct of business of the company (From 1<sup>st</sup> April of relevant F.Y. till date):

Name and Designation	Date of Birth	PAN	Residential Address	Mobile Number	Designation	Responsibilities Handled *	Date of Appointment
----------------------	---------------	-----	---------------------	---------------	-------------	----------------------------	---------------------

\* In support, copies of relevant resolution or other relevant documents may also be collected.

- v. Duly certified copy of Minutes book showing minutes of the meeting of the Board of Directors.

## **5. Guidelines for TDS/TCS Surveys for other Non-Deduction/ Short Deduction Defaults**

For finding out other defaults, including default of non-deduction/short deduction, survey team may verify the following issues:

- i. Whether tax has been deducted at the appropriate rate and under appropriate section.
- ii. TDS under inappropriate section:
  - a. 192 vs. 194J–Salary paid by coaching institutes or by hospitals to its skilled employees, liable to TDS u/s 192, is often camouflaged as payment to professionals and TDS is made u/s 194J
  - b. 194C vs. 194J–this is the most commonly found type of short-deduction cases. For example, payment to recruitment agencies are often subjected to TDS u/s 194C while it should be u/s 194J
  - c. 194C vs. 194I–instances of this include payment made by corporate customers to hotels pursuant to a fixed rate concessional agreement. Another instance is payment by tenant shops to mall owner where TDS is made u/s 194C while it should be u/s 194I
- iii. Whether the lower deduction certificates u/s 197 of the Act are obtained before deducting tax at lower rate
- iv. Examination of P&L account of current year and last 2 years (may be extended to earlier years also, if defaults are regular/ recurring)
- v. Nature of payments in these years.
- vi. Identification of deduction made under any of the TDS provisions Sec. 192 to 196D.
- vii. Comparison of payments shown in the P&L account and TDS return filed.
- viii. In case of TDS on salary payments, deduction claimed by employees, i.e. NSC deposit, PPF, House rent payment, donation u/s 80G, etc. should be verified. Valuation of perquisites granted to the employees should be examined
- ix. Regarding deduction against interest on securities, in cases of cumulative deposits/ bonds, tax is to be deducted every time interest is credited in the account of the payer and is not to be postponed till its maturity

- x. In respect of TDS against payments to contractors/sub-contractors, tax is to be deducted from (a) adjustable advance payments; (b) gross payments in respect of composite works contract; (c) payments made in pursuance of a contract or sub-contract; (d) payments made for all types of contracts including service contract, transport contract, material contract, advertising contract, broadcasting contract, telecasting contract, labour contract and works contract; (e) payments made to clearing and forwarding agents for carriage of goods; and (f) payments made to courier agencies for carrying documents, letters etc.
- xi. With regard to TDS on rent, tax has also to be deducted in respect of (a) fixed monthly warehousing charges; (b) composite charges paid/payable for use of premises or other services; (c) non-refundable advance, adjustable loan or deposit made; and (d) room rent for hotel accommodation taken on a periodical basis (e) where the annual rent exceeds Rs. 240000/- as per section 194I.

## **6. Post-survey Work in TDS/TCS Cases**

After conclusion of Survey, the Assessing Officer is required to take the following follow-up action:

- a. A preliminary report is to be sent within 48 hours and final report to be sent within 60 days [Ref: Para-2(iv) of Board's direction issued vide F. No. 299/105/2014-Dir (Inv. III)/241 dated 9.8.2017 stipulated that all Income-tax authorities conducting survey u/s 133A shall submit such reports. However, the terms 'undisclosed income detected' will be 'TDS/TCS failure detected' and 'nature of concealment' will be termed as 'nature of TDS/TCS failure'. As regards fulfillment of three conditions of manual scrutiny selection are concerned-'Not applicable' may be written]. But outcome of survey needs to be recorded in the reports.
- b. Show-cause to be issued at the earliest, preferably during the survey, particularly in cases involving defaults of tax deducted/collected but not deposited.
- c. Other TDS ranges must be informed in cases of branch offices which are filing their TDS returns separately to examine similar defaults.
- d. Order u/s 201(1)/201(1A) to be passed immediately after collection of all relevant details and giving reasonable opportunity;

- e. It is important that consequential proceedings under section 201(1) of the Act are initiated as expeditiously as possible and keeping in mind the limitation laid down in section 201(3) of the Act
- f. It may be kept in mind that a claim of direct payment by the payee is governed by proviso to section 201(1) read with Rule 31ACB and Form no. 26A read with Notification no. 11/2016 dated 2.12.2016 of the Board. However, even in such cases the liabilities for interest u/s 201(1A) and penalty u/s 271C remain
- g. Penalty proceedings under relevant section should be initiated
- h. Prosecution proceedings under relevant section should be initiated following the SOP dated 09.12.2016 for prosecution in TDS cases.

# Survey for Verification of Ostentatious Expenditure under Section 133A(5) of I.T. Act, 1961

---

## HIGHLIGHTS

- Introduction
  - Objective
  - Conditions for invoking section 133A(5)
  - Survey after the function and not during the function
  - Income-tax authorities empowered to carry out survey
  - Powers of the Income-tax authority acting u/s 133A(5)
  - Types of functions, ceremonies and events which can be covered u/s 133A(5)
  - Identification and selection of cases for survey u/s 133A(5) and gathering of intelligence
  - Some important points relevant for conducting of survey u/s 133A(5)
  - Some examples of type of information which should be gathered during survey u/s 133A(5)
  - Recording of statement
  - Investigation after collection of information
  - Report on survey under section 133A(5)
  - Supervision and monitoring
-

## **1. Introduction**

Certain income-tax authorities have been empowered u/s 133A(5) of the Act to get complete information about the nature and scale of expenditure, incurred by an assessee in connection with any function, ceremony or event. Sub-section (5) of section 133A provides that “where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the Income-tax authority is of the opinion that it is necessary or expedient to do so, he may at any time after such function, ceremony or event, require the assessee, by whom such expenditure has been incurred or any person who, in the opinion of the Income-tax authority, is likely to possess information as respects the expenditure incurred to furnish such information as he may require as to any matter which may be useful for or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used as evidence in any proceeding under this Act.”

## **2. Objective**

**2.1** This provision is intended to detect ostentatious expenditure made by persons from undisclosed sources. The power is given to the income-tax authorities including an Inspector of income-tax to collect the information after the function, ceremony or event is over. It is not necessary for this purpose that this enquiry be made during the course of or pendency of any proceedings. The objective is to collect evidences on or after the function, ceremony or event is over as it may not be possible to do so effectively after lapse of time.

**2.2** The Board in Circular No.179 dated 30.09.1975 has clarified that the power to collect information and record statements will be “at any time after any function, ceremony, or event and even before the stage of assessment proceedings for the following year for which the information may be relevant”. The Board has further clarified that “the object of this provision is to help in collecting evidence about ostentatious expenditure, immediately after the event to be used at the time of assessment”.

**2.3** Thus, the proceedings under the Act, as referred to in section 133A(5), would normally be the proceedings for the assessment year corresponding to previous year in which the said expenditure is incurred. The main purpose of collecting information or details about the expenditure would be to find whether all the expenditure incurred has been made from disclosed sources or whether the tax payer is using his unaccounted wealth or income for meeting such expenditure.

## **3. Conditions for Invoking Section 133A(5)**

**3.1** Powers under section 133A(5) can be invoked if the income-tax authority, on considering reports about the nature and scale of expenditure

incurred by an assessee in connection with any function, ceremony or event, is of the opinion that it is necessary or expedient for him to invoke the power under section 133A(5).

**3.2** Use of the words ‘having regard to the nature and scale of expenditure’ imply that the income-tax authority will not make such enquiry in each and every case. The income-tax authority will consider the nature and particularly the scale of expenditure on the function, ceremony or event and only if he finds that the nature and scale is substantial enough to provide useful material for the purpose of assessment and penalty proceedings, he may invoke the provisions of sub-section (5) of section 133A.

**3.3** Use of the words ‘is of the opinion that it is necessary or expedient so to do’ implies that the income-tax authority should not recklessly proceed with such enquiry without first considering the necessity or expediency of doing so. If, for example, the nature of the function is such that the evidence is not likely to be destroyed or effaced, he may not proceed with the enquiry by invoking this extraordinary power as in such a case the enquiry may be made even in the ordinary course of assessment proceedings.

#### **4. Survey after the Function and not During the Function**

Collection of information has to be after the function, ceremony or event is over and not before the function. There is no provision for collecting information during the function or the marriage or other ceremony.

#### **5. Income-tax Authorities Empowered to Carry out Survey**

**5.1** The income-tax authorities empowered to carry out a survey under sub-section (5) of section 133A have been enumerated in the Explanation(a) below section 133A(6) of the Income-tax Act, 1961. They are: Principal Commissioner, Commissioner, Joint Commissioner, Principal Director, Director, Joint Director, Assistant Director, Deputy Director, Assessing Officer, Tax Recovery Officer and Inspector of Income-tax. The Finance Act, 2003 has inserted a proviso to section 133A of the Act w.e.f. 1-6-2003 providing that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be. A restriction similar to above has not been placed on any authority acting under sub-section (5) of the section.

**5.2** While all the aforesaid income-tax authorities have the statutory power to conduct survey under section 133A(5) of the Income-tax Act, the Board have issued Instruction No: 1865, dated 14-11-1990 placed at **Annexure–XI** to the effect that such surveys are to be conducted only by the Investigation Wing of the Department. If the Principal Commissioner is of the opinion that powers u/s 133A(5) should be exercised in respect of any particular

function, ceremony or event, he may have the survey conducted through the Investigation Wing. Detailed guidelines on conducting of Survey and corresponding intelligence gathering are also given in above instructions.

## **6. Powers of the Income-tax Authority Acting u/s 133A(5)**

**6.1** The powers of the income-tax authority acting u/s 133A(5) are:

- to require the assessee who has incurred the expenditure or any other person who, in the opinion of the income-tax authority, is likely to possess information about the expenditure incurred, to furnish such information as may be required, which may be useful for, or relevant to, any proceeding under the Income-tax Act;
- to record the statements of the assessee or any other person about the expenditure incurred by the assessee for any function, ceremony or event. Such a statement can be used as evidence in any proceedings under the Act.
- Section 133A(6) empowers the income-tax authority conducting a survey (other than an authorised Inspector) to exercise powers u/s 131(1) of the Income-tax Act for enforcing compliance with the requirement if the person covered by the proceedings u/s 133A either refuses or evades to furnish any information or to have his statement recorded. It would be advisable if mention of section 133A(6) is also made in the summons issued to enforce compliance with the aforesaid requirements. Non-compliance with the summons under section 131(1) of the Income-tax Act, 1961 invites penal action under section 272A(1)(c).

## **7. Types of Functions, Ceremonies and Events which can be Covered u/s 133A(5)**

It is not possible to give an exhaustive list of functions, ceremonies and events which can be covered u/s 133A(5). The 'nature and scale of expenditure' referred to in Section 133A(5) should ordinarily refer to large scale expenditure. However, a list of some such functions, ceremonies and events is given below:

- Marriage and other connected functions and ceremonies,
- Inauguration of new business,
- Inauguration of new house,
- Birthday and other such functions,
- Social parties and gatherings like New Year Eve parties; film premiers/ functions to celebrate launching or success of a film, etc.
- Functions and ceremonies to celebrate festivals and occasions like Diwali, Holi, New Year, Christmas which, inter-alia, involve expenditure on costly gifts.
- Functions for introduction/launching of new commercial products, etc.

## **8. Identification and Selection of Cases for Survey u/s 133A(5) and Gathering of Intelligence**

**8.1** Enquiry can be made from the person by whom the expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess the information on expenditure incurred by the assessee. For example, in the case of a marriage, he may make enquiries from a hotel, a restaurant, its managers, employees, caterers, decorators, printers of invitation cards, persons who attended the ceremony, the jeweller, cloth trader, the tailor and any other person who may give information with regard to the expenditure incurred by the assessee at the time of marriage.

**8.2** For identifying and selecting a case to be covered by survey u/s 133A(5), intelligence/information may be gathered from the following sources (not exhaustive):

- Printing presses primarily engaged in printing of invitation cards
- Prominent hotels and guest houses
- Prominent clubs
- Barat Ghars/Marriage halls
- Caterers
- Decorators
- Tent houses and tent suppliers
- Prominent band agencies
- Musical parties, entertainment parties etc.
- Event managers
- Jewellers
- Internet and Social Media

**8.3** Intelligence from the above sources may also be gathered on advance booking made, amount paid as advance, mode of payment of advance, name and address of the person who has made the booking or on whose behalf the booking has been done and nature and extent of services which were availed. These inquiries should be conducted very discreetly. Such cases should be selected where substantial expenditure is likely to be incurred.

## **9. Some Important Points Relevant to Conducting of Survey u/s 133A(5)**

Some points relevant to conducting of survey u/s 133A(5) are briefly discussed below:

- a. Although intelligence gathering, which would help in identifying a function, ceremony or event to be selected for survey, may precede the

function, ceremony or event, the actual survey, including recording of statements of the assessee and other witnesses, is to be conducted only after the function, ceremony or event is over. The time gap between recordings of statements of various persons should, however, be kept to the minimum and at the same time without inviting any hostilities. The statements should be matched and compared with one another with a view to detecting discrepancies and ascertaining the factual position.

- b. Before undertaking a survey u/s 133A(5), the concerned authority should clearly record his opinion that it is necessary or expedient to collect information with regard to expenditure incurred in connection with the function, ceremony or event selected for the purpose.
- c. If the survey is to be carried out by an Inspector, a proper authorisation, signed and sealed by the competent authority should be issued / obtained.
- d. It should be ensured that the income-tax authorities conducting survey carry their valid identity cards, designation rubber stamp and enough stationery with them.
- e. It should be ensured that sufficient / proper manpower is deployed for the survey.
- f. The income-tax authority authorising or conducting survey should study the assessment and other records of the person and be fully familiar with the relevant provisions of the Income-tax Act and Rules.
- g. When a number of income-tax authorities are simultaneously conducting inquiries from a number of persons or recording their statements, a written brief should be prepared and given to each of the said authorities. This will ensure uniformity of approach in the gathering of information.

## **10. Some Examples of Type of Information which should be Gathered during Survey under Section 133A(5)**

It is not possible to list out all the items of expenditure on which information should be collected in the course of the survey. The types of expenditure in respect of which details may be collected are:

- Invitation/wedding cards.
- Sweets distributed along with invitation cards.
- Stay of guests in hotels, guest houses, clubs, houses taken on hire, Barat ghar/marriage halls.
- Catering and food supplied by the hotels, clubs, caterers, sweets shops etc.
- Illumination, decoration and furniture taken on hire.

- Travelling expenses including air travel, rail travel, engaging of buses, taxies etc..
- Hiring of band.
- Engagement of musical parties, singers, stage artists, etc.
- Photography, including video photography.
- Gifts and presents given to the bride, bridegroom and guests.
- Purchase of jewellery and ornaments.
- Expenses in connection with foreign travel and stay of bride and bridegroom immediately after marriage.

## **11. Recording of Statement**

**11.1** An important part of the survey u/s 133A(5) is recording of a statement. In the statement of the assessee or any other person, recorded immediately after the function, ceremony or event is over, it is necessary to make him commit on the quantum of cash gifts received by him so that the amount admitted is not inflated subsequently for the purpose of explaining the expenditure.

**11.2** The collection of information from another person is relevant for correlating the same with the information supplied by the tax payer. In fact, if the assessee had arranged the function by securing the services of a caterer or hotel or restaurant, the information collected from the caterer should be specific i.e. the number of persons for whom the food was served, the rate charged per person and total payments received before or after the function. This reconciliation or lack of it, has to be explained by the assessee. The authority can record his statement after collecting the information and ask him to explain the difference between the two figures, if any. Similarly, if the assessee has not disclosed expenditure incurred on a particular item, he can be questioned on that aspect.

**11.3** Other points mentioned in the chapter on survey u/s 133A, on recording of statement should also be kept in view.

## **12. Investigation after Collection of Information**

The inquiries conducted and information collected should be followed up by further investigation by collecting evidence from outside agencies which have supplied goods and services in connection with the function, ceremony, or event. After the expenditure incurred on the function, ceremony or event has been quantified, the concerned assessee may be confronted with the same. Requisite inquiry with regard to source of funds for expenditure should also be made from him. A logical conclusion should be drawn with regard to the quantum of expenditure incurred by the assessee and also the source thereof.

### **13. Report on Survey under Section 133A(5)**

**13.1** After completion of the survey, a report should be prepared on the operation and result of the survey. The ADIT (Inv) /DDIT (Inv)conducting/organizing the survey should prepare a self-contained report setting out the following information:

- i. Name and address of the assessee.
- ii. PAN, if allotted and designation of the Assessing Officer.
- iii. Object of the survey, giving nature and date of function, ceremony or event.
- iv. Brief narration of work done and material found during survey.
- v. Details of statements recorded.
- vi. Assessment Year(s) for which the information will be relevant.
- vii. Comments.
- viii. Signature.

**13.2** The Income-tax authority conducting the survey should also enclose such materials as may have been collected in the course of the enquiry with the report. The self-contained report should thereafter be put up to the Principal Director of Income-tax (Inv) through the concerned Joint/Additional Director of Income-tax (Inv). The Principal Director of Income-tax (Inv) should then give his specific recommendation about the assessments to be taken up for scrutiny and should forward the report to the concerned Principal Commissioner under intimation to the Director General of Income-tax (Inv). A monthly report of the surveys carried out u/s 133A(5) should be sent to the Board in the proforma as per **Annexure-IX**.

### **14. Supervision and Monitoring**

Inquiries in connection with survey u/s 133A(5) should be supervised by the Principal Directors of Income-tax (Inv). These cases should be monitored by the Directors General of Income-tax (Inv).

## Important Findings of a System Study Done by the Vigilance Directorate Regarding Survey

**1.** As a measure of preventive vigilance, the Zonal Directorate of Vigilance South, CBDT, Chennai undertook a system study on surveys conducted in Tamil Nadu region to ascertain whether due procedure as per survey manual, Board instructions etc. was being followed. In this regard 69 survey cases, related to three F.Y.s., i.e., FY 2012-13, 2013-14 and 2014-15, pertaining to the charge of one Pr. CIT in Tamil Nadu were identified for system study and the broad findings are as below:

**2. Findings of the Study:** The major shortcomings found in the conduct of surveys can be tabulated as under:

Sl.	Nature of Shortcomings	Percentage
1	Signature of Assessee obtained on Preparatory note itself	19%
2	Preparatory note not available on record	4%
3	Documents evidencing unaccounted income/ assets not impounded despite being found	95.6%
4	Not taken up for scrutiny out of (3)	94.2%
5	Cases where evidence for disclosure is not available on record	80%
6	Expenses adjusted against the unaccounted income disclosed at the time of survey	38%
7	Cases where taxes on disclosure were not collected	13%
8	Evidence for verification as per Preparatory note not available on record	56%
9	Preliminary reports not sent	32%
10	Final reports not sent	100%

**3.** The following observations were made by the Directorate on the general conduct of surveys:

- i. As observed above, in about 95.6% of cases out of the 69 survey cases under study, no incriminating books of account/ documents were impounded despite being available, and in about 94.2% of cases, no scrutiny proceedings were initiated. The cases are not taken up for scrutiny simply on the ground that there is no impounding of books and documents. It was observed that authorities needed to fix responsibility for deciding whether to impound the books of account/ documents or not and if not, the reasons thereof, needs to be made. Study revealed that there are retractions from the quantum of disclosure made during survey/ expenses are adjusted against such disclosures/ tax payments are not made on such disclosures. However, even such cases have not been taken up for scrutiny.
- ii. In respect of surveys related to hospitals where the reasons for survey are unaccounted investment in hospital buildings or unaccounted professional receipts, the basic details of cost of constructions are not obtained. The cases are neither taken up for scrutiny not the properties are referred for valuation.
- iii. In respect of surveys related to jewellery/ textiles business where the reasons for survey are either sales outside books or increase in sundry creditors, no attempt has been made to ascertain the stock difference for earlier periods, and verification of sundry creditors with reference to the original date of credit etc. has not been done.
- iv. In respect of surveys related to real estate business where the reasons for survey are unaccounted investment in land/ construction of buildings or underestimation of cost of purchase or sale of plots, it is seen that in most of the cases, the unaccounted income was offered only in the FY in which survey was conducted even for investments made in earlier years. No attempt has been made to attribute income to the concerned earlier years.

**4.** Based on the above study report, guidance has been issued by the DGIT (Vig.), New Delhi, on the directions of the Chairman, CBDT, detailing the following guidelines, to be strictly followed in conduct of surveys:

It should be mandatory to have Preparatory note with the survey record.

- a. It should be mandatory to get approval from Range Head
- b. Submission of preliminary and final survey reports should be compulsory.

- c. It should be mandatory to inventorise all the incriminating books of account/ documents relevant to the survey issues/ unaccounted income/ assets detected.
  - d. Evidence for issues in survey and or disclosure should be collected.
  - e. Reasons for not impounding the incriminating books of account/ documents should be specifically recorded with emphasis as to why the impounding is not necessary.
  - f. Such decision has to be taken mandatorily with the approval of the Range Head, who should also record his approval in this regard.
  - g. This record relating to decision on impounding or otherwise should be available in the survey folder and should also be conveyed to the Pr. CIT concerned.
  - h. It should be mandatory to furnish final survey report within 2 months analysing the impounded material, identifying the issues, giving major findings thereon and quantifying income, wherever possible.
  - i. Fixing accountability for not taking up survey cases for scrutiny. It may be mandated that Assessing Officer shall take such decisions with the approval of higher authorities as per the existing Instructions of the Board at the relevant time.
- 5.** These guidelines were issued keeping in mind the facts emerging from the inspection and relevant instructions applicable at that time. They will be helpful in avoiding the common and recurrent mistakes.



## Frequently Asked Questions (FAQs) Regarding Survey

1. **Question:** *Can survey u/s 133A be carried out at the residential premises?*

**Answer:** No, except where the residential premise is the place of business/ profession or when the person carrying on the business or profession or charitable activity states that the books of account or other documents, or any part of cash or stocks or other valuable article or thing relating to business or profession are kept in residential premises. However, in the residential premises any jewellery, cash or other valuable article or things which is not relating to business should not be looked into.

2. **Question:** *Can survey u/s 133A be carried out beyond normal hours of business and profession?*

**Answer:** Once entry into the business premises has been made during the hours of business, survey may continue beyond business hours or office hours.

3. **Question:** *Can the shop or office be sealed during survey?*

**Answer:** No. Under section 133A, shop or offices cannot be sealed during survey.

4. **Question:** *Can survey of a place other than the business place be done beyond the normal business hours u/s 133A?*

**Answer:** Yes, but the entry of Survey team in such premises can be done only after sunrise and before sunset. This is applicable to the premises where according to the person carrying on the business or profession any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

5. **Question:** *Can survey of a business place be done if it is found locked?*

**Answer:** An income-tax authority acting under section 133A can enter only if the business place is open. The premises can neither be sealed nor broken into.

**6. Question:** *Can books of account/documents be impounded u/s 133A?*

**Answer:** Yes. Books of account/documents can be impounded u/s 133A after recording reasons for doing so. The impounded books of account can be retained for a period not exceeding 15 days (exclusive of holidays). Thereafter, retention can be done only with the prior approval of the specified authorities.

**7. Question:** *Can cash, stock or any valuable be seized and removed under section 133A?*

**Answer:** No, there is absolute prohibition to seize cash, stock or any valuable articles or things.

**8. Question:** *Can a survey u/s 133A be converted into a search?*

**Answer:** Yes. If conditions laid down in clauses (a), (b) or (c) of section 132(1) are fulfilled and as per the existing instructions by CBDT in this regards.

**9. Question:** *Can books of account/ document be inspected by an Inspector?*

**Answer:** Yes. Under section 133A, authorised inspector can inspect books of account and document.

**10. Question:** *Can an Inspector record statement?*

**Answer:** No. Except for information relating to expenses on any function, ceremony or event [sec.133A (5)], the Inspector cannot record a statement.

**11. Question:** *Who can issue authorisation under section 133A?*

**Answer:** The authorisation u/s 133A can be issued by any of these authorities viz., Principal Commissioner, Addl. Commissioner, a Joint Commissioner, a Principal Director, a Joint/Addl. Director, a Deputy Director or an Assistant Director or an Assessing Officer or a Tax Recovery Officer. However, as per the proviso, below sub-section (6) of section 133A no action under sub-section (1) of section 133A shall be taken by the Assistant Director or Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.

**12. Question:** *Can an Inspector conduct Survey at business premises without an authorisation?*

**Answer:** No. Under Section 133A an Inspector can conduct survey only if he is authorised by the competent authority having jurisdiction.

**13. Question:** *What remedy is open to the assessee against entry by an unauthorised person on the pretext of carrying out survey?*

**Answer:** He may not permit such entry and also take action under the Indian Penal Code for trespass.

**14. Question:** *Can survey be done at the godown?*

**Answer:** Yes, u/s 133A, survey can be done at godown.

**15. Question:** *Can survey be done at branch office?*

**Answer:** Yes. Survey can be done at a branch office under u/s 133A.

**16. Question:** *Can survey be done when assessment is not pending?*

**Answer:** Yes. Power of survey u/s 133A can be exercised irrespective of whether any proceeding is pending or not.

**17. Question:** *Can an inquiry about ceremony or marriage expenses be made while the ceremony is going on?*

**Answer:** No. Section 133A(5) specifically bars the conduct of enquiry during the ceremony/event. Such enquiries are to be conducted only after the ceremony/event is over.

**18. Question:** *Can normal conduct of business be stopped during a survey?*

**Answer:** No. The assessee should be allowed to conduct normal business during a survey.

**19. Question:** *Whose statement can be recorded during survey?*

**Answer:** During Survey, statement of any person which may be useful for or relevant to any proceeding under the Act can be recorded. Thus, statement of proprietor, trustee, partner, director, employee, or member of an AOP/BOI can be recorded. Statement of any other person who may be present at the time and place of survey or is attending to in any manner in the conduct of business or helping in carrying on such business may also be recorded.

**20. Question:** *Can an assessment be re-opened on the basis of survey report?*

**Answer:** Yes, if information gathered during survey u/s 133A is sufficient enough to form a belief that any income chargeable to tax has escaped assessment, then assessment can be re-opened subject to the provisions of sections 149 and 151.

**21. Question:** Can survey be conducted at the premises of any charitable institution?

**Answer:** Yes, survey can be conducted any place where an activity for charitable purpose is carried on. The power of survey u/s 133A(1) of the Act has been extended by the Finance Act, 2017 with effect from 01.04.2017 for survey at such places.

**22. Question:** Can books of account or documents be impounded during a TDS/TCS survey?

**Answer:** No, while acting u/s 133(2A) of the Act for TDS/TCS survey, the income-tax authority cannot impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuables.

**23. Question:** *Can digital devices like computer hard disks, pen drives, etc. be impounded during survey?*

**Answer:** Yes, because documents include electronic record as per Section 2(22AA) of the Act.

# Actions to be Taken in ITBA Relating to Survey under Section 133A of I.T. Act, 1961

**1.** Details of surveys conducted u/s 133A of the Income-tax Act, 1961 should be recorded in Investigation Module of Income-tax Business Application (ITBA). The Module can be used both by the officers posted in Investigation Wing and those posted in assessment charges. The details need to be recorded by the officer conducting the survey (DDIT / DCIT/ ADIT/ ACIT/ ITO). The recording can be started immediately after the survey team arrives at the premises and the authorisation is executed. **Any action prior to initiation of survey, including Preparatory Note, should not be recorded in ITBA and the same will continue in manual form.**

**2.** The Investigation Module of ITBA provides functionalities for recording details of survey proceedings and generation of reports relating thereto, i.e., Preliminary Survey Report and Survey Report. The initial steps for entering Investigation Module of ITBA and creating work item for survey proceedings are as under:

- a. Enter ITBA with URL: <https://itba.incometax.gov.in>
- b. Enter User Name, Password and number reflected on RSA token with four-digit PIN,
- c. Click on 'Investigation' under 'Modules' pane.
- d. Go to following path on Investigation Module Home Page:  
Search and Survey



Recording Details of Search and Survey Cases

- e. After above steps, user will enter the screen named '*Details of search and survey cases*'. Here, the user can initiate work item for a Survey proceeding.

**3.** The steps involved in the process for recording details of survey proceeding and generating relating reports are as under:

- i. Recording basic details of survey including details of main person(s), number of premises covered, etc.
- ii. Generation and submission of Preliminary Survey Report
- iii. Allocation of Survey work item by the Addl. DIT/ Addl. CIT/ JDIT/ JCIT to an officer of the rank of DDIT/ DCIT/ ADIT/ ACIT/ ITO in his charge
- iv. Recording complete details of survey proceedings including
  - a. details of premises covered,
  - b. details of persons covered at each premises,
  - c. details of valuables found at each premises,
  - d. details of documents including books of account impounded at each premises,
  - e. details of statements recorded u/s 133A/ 131
  - f. details of admission of undisclosed income,
  - g. details of estimation of concealed income,
  - h. details of cases requiring action u/s 143(3)/ 147 of the I.T. Act, 1961
- v. Generation of Survey Report
- vi. Approval of Survey Report by the PCIT/ PDIT

**4.** Following are the points to be noted with regard to making recordings in ITBA regarding survey proceedings:

- i. Both Assessment charge officers and Investigation Wing officers need to enter Investigation Module of ITBA to record survey proceedings and view Survey Reports.
- ii. Separate work items should be created for each group covered in survey proceedings in case more than one group is covered in a single operation.
- iii. Separate Preliminary Survey Reports should be submitted for each group covered.
- iv. The screens in Investigation Module of ITBA are common for both search as well as survey proceedings u/s 132/ 132A and 133A respectively. The user needs to select section 133A for each premises for survey operation.

- v. There is facility for attaching important documents including Authorisation u/s 133A, Inventory of stock/ valuables found, Inventory of books of accounts and documents found/ impounded or any other document.
- vi. For surveys conducted by Investigation Wing officers, which are part of a larger search and survey operation, no separate recordings need to be made for surveys u/s 133A and the proceedings relating to surveys need to be covered in screens for search and survey operation and only consolidated reports viz. Two Hourly Report, Preliminary Search Report and Appraisal Report need to be submitted.
- vii. For surveys conducted by Investigation Wing officers, the Preliminary Survey Report (PSR) should be submitted by the DDIT/ ADIT/ ITO (Inv.) to the Addl. DIT/ JDIT (Inv.). The Report is further required to be submitted by the Addl. DIT/ JDIT (Inv.) to the PDIT (Inv.). Once approved by the PDIT (Inv.), the report is accessible to the DGIT and Member (Investigation). The Member (Investigation) and DGIT (Investigation) can view the PSR through the screen '*Region Wise Search/ Survey Details*' and through the screen named '*View/ Download Order/ Letter/ Notice/ Report*'.
- viii. For surveys conducted by Assessment charge officers, the Preliminary Survey Report (PSR) should be submitted by the DCIT/ ACIT/ ITO to the Addl. CIT/ JCIT. The Addl. CIT/ JCIT should submit the Report to the PCIT for approval. Once approved by the PCIT, the report is accessible to the CCIT. The CCIT can view the PSR through the screen named '*View/ Download Order/ Letter/ Notice/ Report*'.
- ix. Wherever an assessee is covered in survey operation who does not have PAN or his PAN is not known to the officer, the officer can start recording details through his name and ITBA would generate a Unique Id for such cases. Whenever such an assessee gets PAN or the officers finds out his PAN, he can replace Unique Id with PAN.
- x. Final Survey Report need to be submitted by the DCIT/ ACIT/DDIT/ ADIT/ ITO and approved by the Addl. CIT/ JCIT/ Addl. DIT/ JDIT and approved by the PDIT/ PCIT. For surveys conducted by Investigation Wing, Final Survey Report will be visible to the Member (Investigation) and DGIT (Investigation) through the screen '*Region Wise Search/ Survey Details*'.
- xi. Once Final Survey Report is approved by the PDIT/ PCIT, automatic pendency is created for the concerned Assessing Officers for initiation of action u/s 143(3)/ 147 of the I. T. Act, 1961 for cases which have been identified for such action. This pendency is visible to the Assessing

Officer in the screen “List of Suggested Cases for assessment/ re-assessment” of Investigation Module of ITBA.

- xii. There is complete workflow in Investigation Module of ITBA for extension of retention of books of account and documents, transfer of impounded books/ documents and release of books/ documents. This workflow includes proposal for retention/ release and its approval by the concerned authority.

**5.** The Directorate of Income-tax (Systems) has issued ITBA Investigation Instruction no. 4 dated 4<sup>th</sup> September, 2017 providing details of procedure for recording search and survey proceedings. A copy of the same is placed as Annexure–XVIII.

**6.** The Directorate of Income-tax (Systems) has issued ITBA Investigation Instruction no. 5 dated 12<sup>th</sup> March, 2018 providing details of procedure for workflows for retention and release of books of account and documents seized/ impounded during search and survey. A copy of the same is placed as Annexure–XIX.

**7.** User Manuals and FAQs on Investigation Module, containing inter-alia details of recording search/ survey proceedings are placed at ITBA Home Page and Investigation Module Home Page of ITBA. The officers conducting surveys are advised to go through the parts relating to search and survey operations. A copy of FAQs relating to search and survey operations, as on date, is placed as Annexure–XX.

**8.** Following are the MIS relating to surveys provided in ITBA:

- i. Register of Surveys u/s 133A of the I.T. Act
- ii. Dashboard–Summary of Surveys u/s 133A
- iii. Region wise Search and Survey Details

# Guidelines, Dos & Don'ts and Rights and Duties of Persons Present in Survey Premises

## 1. Important Guidelines for the Survey Team

Some of the important guidelines are as under:-

- Mandatory to have Preparatory note with the survey record.
- Mandatory to get approval from Range Head
- Submission of preliminary report within 48 hours and final survey reports within 2 months should be compulsory.
- Survey conducting authority will submit final report within 60 days from date of completion of survey (where the survey is otherwise than in consequence of a search) to PCIT/PDIT through JDIT/JCIT/ Addl. CIT/ Addl. DIT. In this report he will bring out persons whose income has been detected, their PAN and where assessed, assets and income detected, indicate Assessment Years in which such incomes are assessable, modus operandi detected, copies of inventory and statements, copies of approvals taken, whether assessment or reassessment proceeding should be taken against the assessee or any other person in respect of whom some incriminating material found and impounded or any actionable information gathered.
- It should be mandatory to inventorise all the incriminating books of accounts/ documents relevant to the survey issues/ unaccounted income/ assets detected.
- Evidence for issues in survey and or disclosure should be collected.
- Reasons for not impounding the incriminating books of accounts / documents should be specifically recorded with emphasis as to why the impounding is not necessary. Such decision has to be taken

mandatorily with the approval of the Range Head, who should also record his approval in this regard.

- This record relating to decision on impounding or otherwise should be available in the survey folder and should also be conveyed to the Pr. CIT concerned.
- To make mandatory to furnish final survey report within 2 months analysing the impounded material, identifying the issues, giving major findings thereon and quantifying income, wherever possible.
- Fixing accountability for not taking up survey cases for scrutiny. It may be mandated that Assessing Officer shall take such decisions with the approval of Addl. CIT.
- Copy of the sworn statement of the assessee as well as the employees of the assessee taken during the course of survey proceedings, will be provided, as and when it is proposed to be used as evidence against the assessee.
- The survey team should focus on gathering evidence and not on obtaining disclosure.
- No approval shall be given by Joint/Additional Directors or Joint/Additional Commissioners of Income-tax without '*Preparatory Note*' in any case and no survey shall be conducted without approval of Joint/Additional Directors or Joint/Additional Commissioners of Income-tax as stipulated in Proviso below Section 133A.
- Monthly survey report must be submitted in time.
- Post-dated cheques should not be collected.

**2. Dos and Don'ts** for quick guidance of the Survey teams are as under:

### **2.1 Dos**

The Income-tax Authorities conducting survey is entitled to do the following acts:

- To enter the place of business during business hours and in other places only after sunrise and before sunset.
- To enter the place, other than business premises, if the person conducting such business states that his cash, stock, records and books of account relating to business are lying there.
- To place marks of identification on the books of account.
- To take extracts from such books of account and documents or records.
- To make an inventory of any cash, stocks and other valuables checked by him.

- To record the statement of any person.
- To collect information regarding nature and scale of expenditure incurred in connection with personal functions and events like birthday, marriages etc.
- To impound or retain in his custody books of account or other documents inspected by him after recording his reasons for doing so.
- To focus on gathering of evidence.
- To take copy of digital evidence using forensic software/ write block.
- To follow the Standard Operating Procedure presented by the CBDT vide F. No. 286/55/2015-IT (Inv. II) attached as **Annexure-XV**

## 2.2 Don'ts

The Income-tax Authorities conducting survey should refrain from doing the following acts:

- Not to remove or seize cash, stock-in-trade and other valuable article or thing etc. found during the course of the survey.
- Not to harass and resort to coercion and related tactics.
- Not to exert pressure on the assessee to declare and surrender.
- Not to give any inducement or promise to assessee for making a disclosure of income
- Not to collect post dated cheque for tax applicable to amount of declaration. [**Annexure-XVI**]
- Not to act in a manner which are against the provisions of law or travel beyond his jurisdiction.
- Not to interrupt incoming telephone calls or not to deny usage of telephone etc.
- Not to physically search person or the persons present at the place of survey and not to stop ingress or exit of any person inside the place at the time of survey.
- Do not prohibit persons from taking meals, rest and medical facility whenever required.
- Not to break lock of any cupboard or room.
- Do not seal the business premises.
- Do not stop the business or the normal activities.
- Not to administer oath for recording statement u/s 133A of I.T. Act

### **3. The Rights and Duties of the Assessee being Surveyed are as Under**

#### **3.1 Rights of Person Present in the Premises**

- To verify the identity of the officials intending to carry out the survey.
- To verify the authorization, to check that the name and address of the premises and the names of the authorised IT Authorities are correctly mentioned.
- To consult and be defended by a legal practitioner of his choice as per article 22(1) of the Constitution. The counsel may also be present during survey proceedings [*Nandini Satpati vs. P.L. Dani* AIR 1978 SC 1025]. But he cannot interfere in the proceedings.

#### **3.2 Duties of Person Present in the Premises**

The assessee should provide the Income-tax Authority following facilities:

- Facility to inspect books of account and documents including those on digital devices, facility to inspect cash, stock and other valuable articles. It is the duty of the assessee to permit the officers and the authorised persons to allow them to do their job so that there arises no occasion to breaking lock of any cupboard or room.
- To furnish such information as may be required in any other matter, which may be useful in proceedings of the Income-tax Act.
- Offer clarifications that may be necessary.

# Assessment in Survey Cases

---

## HIGHLIGHTS

- Objectives of survey
  - To examine whether income has been concealed and, if yes, to assess or reassess income to collect correct tax
  - To examine whether there is any failure which attract penalty proceedings or prosecution under any of the direct tax laws and, if yes, to initiate penalty proceedings and prosecution
  - To examine whether action under any other statute like Prohibition of Benami Property Transaction Act is required to be taken by any other authority within the department or outside and, if yes, forward the information for necessary action
- How to identify the years for which assessment/ reassessment/ penalty/ prosecution proceedings are to be initiated
  - Receipts
  - Expenses
  - Income
  - Illustration
- Range head must involve himself in assessment and other proceedings after survey
- How to proceed after assessment proceedings are initiated with findings of survey
  - Study of preparatory note
  - Identification of action points from survey reports
  - Finding out modus operandi

- o *Scrutiny of books of accounts and documents impounded with reference to final survey report & statements recorded*
  - o *Verification of additional income disclosed*
  - o *Action on retraction of Disclosure*
  - o *Case laws on retraction of disclosure made during survey*
  - *Passing of speaking assessment order*
  - *Post-assessment steps*
  - *Implications for earlier assessment year(s) or other assessees*
  - *Other implications including penalty and prosecution*
  - *Sharing information with other authorities*
  - *Mention in charge-handing over note*
- 

**1. Objectives of Survey:** Survey gives access to places of business and profession and also other places (which may include places of residence and places of third parties) which is normally not possible. After access, survey also allows to gather all evidences in the form of books of accounts and other documents, make a list of them and examine them. Such evidences may also be removed from the place and brought to the office of survey-conducting Income-tax authority. These can be retained for a period during which further examination can be done. Valuables cannot be seized or removed from the place, but their list or inventories can be made which also serve as evidence. Further, statement of the person present at the place can be taken on all relevant issues and answers recorded-which too help in determining income earned and tax liability. These evidences are collected with a definite purpose of checking whether tax is correctly paid on income earned. The power of survey is an intrusive one and, to a large extent, like search & seizure. Therefore, it is exercised only in very limited number of cases and with prior approval of Joint/Additional CIT or Joint/Additional DIT only (except when it is TDS survey). While as per Proviso to Section 133A(6), survey under Section 133A(1), i.e., survey other than TDS survey u/s 133A(2A) can be done with prior approval of Joint/Additional CIT or Joint/Additional DIT only, even TDS survey u/s 133A(2A) should not be done without approval of Joint/Additional CIT or Joint/Additional DIT. Board has reiterated so in F.No. 299/105/2014–Dir (Inv. III) dated 9.8.2017 (Annexure–XVII). So, it is extremely important that evidences collected in course of survey are utilized properly and taken to their logical conclusion. Otherwise there is risk of being termed as misuse of power and lapse in action. So, the objectives of survey are:

- To examine whether income has been concealed and, if yes, to assess or reassess income to collect correct tax
- To examine whether there is any failure which attract penalty proceedings or prosecution under any of the direct tax laws and, if yes, to initiate penalty proceedings and prosecution
- To examine whether action under any other statute like Black Money Act and Prohibition of Benami Property Transaction Act is required to be taken by any other authority within the department or outside and, if yes, forward the information for necessary action

**2. How to Identify the Years for which Assessment/ Reassessment/ Penalty/ Prosecution Proceedings are to be Initiated:** Board's letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 requires the survey-conducting officer to submit preliminary survey report within 48 hours and final survey report within 60 days of concluding the survey. These reports will go to jurisdictional Assessing Officer (AO). During survey, evidences may be found which are related to different Financial Years. As Income-tax is charged on the basis of Assessment Year which is the Financial Year immediately following the Financial Year in which income was earned. There may be some evidences having effect on multiple years, i.e., indicative of income in more than one year. The first job of the survey conducting authority—who will have to prepare preliminary and final survey reports—is to segregate these evidences financial year-wise on the basis of dates of transactions recorded in various documents.

**2.1 Analysis of Impounded Documents for Preparation of Survey Report:** Conducting officer will have to sit with the evidences of every year individually and note down what were the receipts and expenses.

**2.1.1 Receipts:** After noting down receipts, he needs to note down sources from which received, date of receipt and nature of receipt. This exercise will show him whether this receipt is liable to be treated as taxable income or exempt income. If it is clearly a taxable income of that year, it will be reported in survey reports accordingly. Report should be made giving comments with reference to identification marks of impounded or inventoried documents so that AO can easily relate to these. If it is apparently found as exempt income, the officer will have to report it accordingly but should not make conclusive remark or omit it from report due to his feeling that it is exempt because it is the AO and not survey-conducting authority who is authorised to decide this issue in the form of assessment order. He should note his findings and leave it to the Assessing Officer to take final decision because there may be instances where assessee has deliberately shown it as exempt income while it is not. There may also be evidences which apparently show it as income

of some other person. Nevertheless, reporting officer should not omit these from his report. Instead, he should include these in his report with his findings and comments and leave it to the Assessing Officer for taking final decision because it is also known fact that in many cases assessee show their own income as that of other people in order to avoid lawful tax liability.

**2.1.2 Expenses:** After examining and reporting about receipts, the reporting officer should make list of expenses or outgo. As we know, there are three types of expenses, viz., revenue expenditure, capital expenditure and personal expenditure. If these are revenue expenses related to some receipt, the reporting officer should list them against such receipts so that net income can be computed out of that receipt (receipt minus expenditure). If it is capital expenditure (like purchase of property) or personal expenditure (like bank investment or foreign travel or family maintenance drawings), the same may be noted with appropriate comments and suggestions because, under various provision of Income-tax Act, 1961, like Section 69, 69C etc, unexplained expenditure or investment etc are liable to be assessed as income. Even if the assessee explains such expenses, still the survey-conducting officer should not omit this from his report because he must remember that his job is not to take final decision about taxability of income on any issue whatsoever, but he is merely facilitating decision by the Assessing Officer by reporting whatever was found in survey. Even if the Assessing Officer himself is doing the survey, then too he should follow this because he has dual role—one of survey conducting authority and the other as Assessing Officer. Further, he may not remain in AO's chair when the assessment is done. The officer should make his report chapter-wise separately for different years.

**2.1.3 Income:** Next, he should take up the returns filed for different years and examine everything there, e.g., entries in return, computation sheet, profit & loss account, balance sheet, capital account, notes on accounts, schedules etc as to what receipt, expenditure and income have been shown there and then compare item by item with the income that he found in course of survey. Accordingly, he should record his findings and comments. This very exercise will tentatively reveal whether there was any concealment of income or evasion of tax by any assessee. In course of survey at the premise of one assessee, evidence may be found of evasion by one or more other assessee. It is based on such finding that the reporting officer should make his suggestions about assessment and re-assessment of different years in the light of Sections 147, 148, 149, 153 etc. Normally, he should report about those assessment years for which action can be taken u/s 148 or 143(3) [except search-related cases where proceedings u/s 153A/153C are to be taken].

Therefore, if he finds any evidence of income in relation to any asset located outside India [as mentioned in Section 149(1)(c)] he should report even if the income is up to 16 years old.

**2.2 Illustration:** So, if survey is conducted on, say, 23<sup>rd</sup> August, 2019, notice u/s 148 can normally be issued for back years up to AY 2013-14 and if there is evidence of income in relation to any asset located outside India then up to AY 2003-04.

**2.2.1** Out of these years, return up to AY 2016-17 might have been already assessed or, if not assessed, limitation date for issue of notice u/s 143(2) has already expired and, so, notice u/s 148 is to be issued if there is any escapement of income. So, AO will sit with the evidences segregated by reporting officer and his comments and see whether there is any escapement of income and whether notice u/s 148 is to be issued.

**2.2.2** Income for AY 2017-18 might not have been assessed yet as the time-barring date is 31.12.2019. Return for AY 2017-18 may be already selected for scrutiny or not. If selected but scrutiny assessment not yet completed as on date of survey, the evidences found in course of survey and report of survey-conducting authority will have to be utilized for the purpose of ongoing scrutiny assessment proceeding. So, AO will sit with the evidences segregated by reporting officer and his comments and decide whether any further explanation is required to be called for from assessee, whether any further enquiry is required to be done, whether any new hearing is required, whether any particular transaction needs to be verified from the books of accounts. Accordingly, he will proceed. If not selected, it will have to be selected for scrutiny if time limit for notice u/s 143(2) is still there. Otherwise, the same needs to be selected for scrutiny u/s 148.

**2.2.3** Return for AY 2018-19 was already due as on date of survey and it might have either been filed or not filed. If filed but not yet selected for scrutiny, Assessing Officer (AO) will have to select this manually for scrutiny assessment proceeding in accordance with Board's instruction issued every year on manual selection of returns for scrutiny assessment proceeding if the conditions therein are fulfilled. These guidelines prescribe that all assessments pertaining to survey u/s 133A are required to be selected for scrutiny by issue of notice u/s 143(2), excluding the cases in which:-

- i. Books of accounts and other documents were not impounded;
- ii. Returned income (excluding any disclosure made during the survey) is not less than the returned income of preceding assessment year; and
- iii. Disclosure made, if any, during the survey has not been retracted

This means that all three conditions are required to be fulfilled. Subject to the instructions for 'Compulsory manual selection of cases for scrutiny' issued by the Board, assessments in cases, where surveys have been conducted, (where such cases do not come within the ambit of provisions of section 153A or 153C) are required to be made u/s 143(3) of the Act. Para-2(ix) of Board's letter F. No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017 require that the survey-conducting authority shall report whether such conditions for selection for scrutiny have been fulfilled or not. If return is not filed as on date of survey, AO may issue notice u/s 139 calling for the return as the due date is already over.

**2.2.4** There may be some important transactions of FY 2019-20 (up to date of survey) also in the report of survey-conducting authority. AO should keep these papers in a separate file to compare when return is filed. He should also make comments and suggestions about initiation of penalty proceedings for non-filing of return/ non-maintenance of books of accounts/ failure to audit books of accounts or similar offences. In course of all these examinations for deciding whether any income has been concealed, the reporting officer will have to examine whether any penalty proceeding (which are not essentially connected with assessment proceeding) is required to be initiated. If yes, he must include these in his report for AO.

**2.3** So, reporting officer's responsibility is to ensure that all documents and information found in course of survey are properly examined and reported in preliminary/final survey report. After this, the ultimate responsibility lies with AO. He will have to see these again and come to conclusion whether reporting officer's reports are correct. AOs must remember that he cannot merely say that he did not initiate proceeding or take action because reporting officer did not suggest so in his survey report. It is the AO will be responsible for failure in this regard. There are time limitations for initiating assessment/ reassessment/penalty proceedings or prosecution. If such examination indicates requirement, return is to be selected for scrutiny with competent authority's approval and subsequent responsibility will be to follow law and procedure of scrutiny assessment. For penalty proceedings or prosecution also required notices will have to be issued

**3. Range head must Involve Himself in Assessment and other Proceedings after Survey:** In cases of search assessment, approval u/s 153D is mandatory for passing order u/s 153A or 143(3). In cases of survey assessment, approval is required for manual selection for scrutiny u/s 143(3) as per Board's guidelines in this regard. While there is no provision analogous to Section 153D for survey assessments, nevertheless it is relevant

and necessary to invoke Section 144A in such cases. Under section 144A the Joint/ Additional CIT of the Range on his own motion or on a reference made to him by the Assessing Officer, can call for and examine the record of assessment proceeding and issue direction regarding the assessment. It is the responsibility of Range head to make sure that the result of survey is not compromised or diluted in assessment because it is he who gave approval for survey on the ground that he felt there to be income concealment and tax evasion. So, in addition to AO's responsibility, it is the responsibility of Range head to make sure that AO does the survey well, examines all impounded and other records well, writes the reports well and timely, initiates assessment/ reassessment proceedings of all required years, does the assessment/ reassessment correctly taking all evidences and making all investigations properly and, finally, initiates all penalty and prosecution proceedings as may be required.

**4. How to Proceed after Assessment Proceedings are Initiated with Findings of Survey:** In this manner, now the AO will have assessment or reassessment proceedings for several years at his hand. These will have to be essentially completed as per law and procedure for scrutiny assessments—with more similarity with assessment in search cases. This is because, like AO refers to appraisal report in search assessment cases, AO is to refer to the final survey report in survey assessment cases. Like AO referring to seized materials in search assessment cases, AO is to refer to impounded materials in survey assessment cases. Like AO makes a lot of post-search investigations and correspondence, AO has to make similar post-survey investigations and correspondence in survey assessment cases also. Like AO does in search assessment cases, AO is required to issue detailed show cause notice and give opportunity to the assessee before making addition based on any evidence in survey assessment cases also.

**4.1 Study of Preparatory Note:** Assessing Officer should go through the 'Preparatory note' based on which the approval for survey was accorded by Joint Commissioner or Additional Commissioner under proviso to sub-section (6) of section 133A. The note is useful in ascertaining information regarding the purpose for which the survey was conducted. The issues for which survey was proposed and approved may give first points of investigation and examination during assessment and other proceedings. The note is to be kept in personal custody of the Assessing Officer, as it contains the approval of the competent authority. In a case where survey is conducted by the Investigation Directorate, a copy of the 'Preparatory note' is supposed to be annexed with the survey report. However, if the same has not been annexed with the report

by the Investigation Directorate, Assessing Officer may obtain at the time of assessment proceedings a copy of the note from the income-tax authority who conducted the survey.

**4.2 Identification of Action Points from Survey Reports:** Board's letter vide F.No. 299/105/2014/-Dir (Inv. III)/241 dated 9.8.2017, a preliminary report of survey is required to be submitted within 48 hours of the survey in the prescribed format and a final report within 60 days. The reports, inter alia, contain useful information relating to cash found and status of cash balance as per cash book, stock found and status of stock as per cash book, status of maintenance of books of accounts on the date of survey and other points. The books of accounts and documents, which were found and inventoried but not impounded, are required to be examined during the assessment proceedings. These reports also contain information regarding evidences of tax evasion found assessment year-wise, books of account and documents impounded, documents having tax implication allowed to be retained with the assessee, statements recorded during survey and further follow-up investigation proposed. Based on survey reports the Assessing Officer is required to:-

- Check, whether books of accounts and documents impounded, as per the inventory mentioned in survey report, are in his custody and approval for retention has been taken;
- Take note of the evidences allowed to be retained with tax payer and the books of accounts and summon these if required to be produced;
- Take note of the discrepancies of cash, stock and other valuable found and the status of maintenance of books of accounts and seek explanation;
- Take note of evidences of tax evasion found assessment year wise;
- Go through the statements recorded to ascertain, whether the conclusion in respect of each evidence is arrived correctly or further investigation is required to be made
- Whether all the evidences impounded have been confronted and, if not, prepare questionnaire to confront assessee or related parties;
- Check whether evidences which were confronted during the survey, but no satisfactory explanation was given, have been impounded. If not, whether they have been inventoried? If inventoried, it may be considered whether summoning them and impounding u/s 131 of the Act is required.

- Check whether any undisclosed income has been admitted. If so, whether the evidences have been impounded. If not, efforts should be made to impound the same u/s 131(3) of the Act because disclosure may be retracted at later stage. Note down the issues on which further investigation is proposed.
- The Assessing Officer is required to go through the impounded material and statements recorded as per the report to check, whether:-
  - any further statement has been recorded on the material impounded during the survey;
  - any statement has been recorded on the additional material impounded;

**4.3 Finding out Modus Operandi:** Finding out modus operandi will help the Assessing officer understand sequence of acts by the assessee or his associates for tax evasion. Once this sequence is clear to Assessing Officer, he will be able to see what were the questions that should have been asked in course of statement but not asked, what were the possible sources of information that have not been harnessed yet and what are the missing links in the investigation. With such understanding and finding, Assessing Officer will be very clear as to which further questions he should ask, whom to ask, what further documents he requires and where these will be available and, finally, how to close the investigation. In other words, he will have clear vision of the finished product, viz., assessment order, like any creative artist. The roadmap will be clear before him and his actions will not be haphazard. If all these can be mentioned along with supporting evidences, the assessment orders will be strong and stand test of appeal.

**4.4 Scrutiny of Books of Accounts and Documents Impounded with Reference to Final Survey Report & Statements Recorded:** The final survey report is not conclusive or binding on AO. It is persuasive and at best a report of survey-conducting authority about the findings and his comments based on such findings. Assessing Officer cannot simply finalize assessment solely as suggested in survey report. Disclosure of additional income made during the survey or estimation of undisclosed income made in the final survey report is not binding or conclusive. Assessing Officer is required to take into consideration the evidences found and impounded, statements recorded, finding recorded in the final survey report and the outcome of further investigation carried out by him in respect of issues identified based on records of survey. The statements recorded u/s 133A(3)(iii) during the survey are very important in finalization of the assessment or reassessment in

survey cases. The sub-section (6) of section 133A in this regard provides that *“If a person under this section is required to afford facility to the income-tax authority to inspect the books of accounts or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuse or evade to do so, the income-tax authority shall have all the powers under sub-section (1) of section 131 for enforcing compliance with the requirement made.”* While taking statement, the survey conducting income-tax authority should confront the assessee regarding any of the evidence of evasion of income found during survey, such as evidence of–

- i. suppression of sale or revenue;
- ii. non-genuine purchase or inflation of purchase;
- iii. inflation of expenses or non-genuine expense;
- iv. violation of provisions such as section 40(a), 40a(ia), 40A (3) or 43(1) or any other provision regarding deduction allowable under Chapter-IV of the Act
- v. undisclosed stock, cash or other valuable articles or thing;
- vi. undisclosed investment;
- vii. violation of provisions of section 269SS, 269ST and 269T of the act;
- viii. wrong or excess claim of deduction under any of the provisions of Chapter-III or Chapter-VIA of the Act;
- ix. suppression of income or inflation of loss

**4.5** During statements, the assessee might have responded to specific question regarding any evidence and may have also admitted undisclosed income. It is necessary for the Assessing Officer to go through the statement recorded to ascertain whether the impounded evidences had been confronted. If yes, whether reply given by the assessee is acceptable or further investigation is required to be made. In a case where evidences impounded are not confronted or evasive replies have been given by the assessee, Assessing Officer is required to confront assessee with such evidences during the assessment proceedings after verification and investigation and record the findings of investigation in assessment order. Assessing Officer should also conduct third party enquiries or recording of statements etc wherever required.

**4.6 Verification of Additional Income Disclosed:** During survey if the assessee discloses additional income, he should be asked the reason or head/source of income for which he wanted to disclose. Also, the survey conducting authority should study inventoried or impounded documents deeply so that

he can ask source of it or understand whether it was disclosed earlier or concealed. The questions in the statement should be asked based on these findings. Then the disclosure will not be without basis and assessee will find it difficult to retract it. In a case where an additional income has been disclosed during the survey, the assessing officer based on the evidences gathered is required to verify whether:-

- the income has been correctly disclosed in conformity with the evidences found;
- the income has been disclosed for the assessment year to which evidence pertains;
- the disclosed income is included in the return of income or reduced by claiming bogus expenses;
- the income has been disclosed under the proper provisions of the Act. This is important because AO will have to take consequential rates of tax, e.g., if the undisclosed income is chargeable to tax u/s 68, 69, 69B, 69C or 69D, then the tax has to be computed as per provisions of section 115BBE @60% without allowing any deduction against such income and even the set off of loss is not allowable with effect from 1-04-2017 against such income.

Assessing Officer has to ensure that the undisclosed income has been assessed in the assessment year to which evidence pertains, in the case of the person to whom such income pertains, expenses claimed to reduce the disclosed income are properly verified and tax has been charged in accordance with relevant provisions of the Act.

**4.7 Action on Retraction of Disclosure:** It has been noticed in several cases that the additional income disclosed in the statement recorded during the survey is retracted, fully or partly, after the survey. In a case where the disclosure of additional income is based on evidences impounded, chance of retraction is very less. Disclosure of additional income indicates that either the survey has not been properly carried out or the evidence found during the survey has not been properly probed or the evidences found during the survey have not been impounded due to disclosure of additional income made. It raises a pertinent question as to why assessee should make disclosure. In such situation, assessee may retract the disclosure of income at subsequent stage. Disclosure of additional income, without any threat, inducement or coercion indicates that there are evidences of undisclosed income and the assessee makes disclosure of additional income to circumvent further investigation into such evidences, which may not be in conformity with evidences available at the premises or even may have been impounded or may have been identified for impounding.

**4.7.1 Case Laws on Retraction of Disclosure Made During Survey:**

As discussed earlier, the Board has made it clear that the disclosure of additional income must be based on the evidence. In a case where the disclosure was made based on the evidence and subsequently retracted by fabricating books of accounts or evidences, the Assessing Officer may take help of case laws mentioned below for making the addition of undisclosed income admitted:-

- i. The Bombay High Court in the case of *Shri Rameshchandra and Co. vs. CIT* (1987) 168 ITR 375 (Bom) held, that *"Where an assessee has made a statement of facts, he can have no grievance if the taxing authority taxes him in accordance with that statement. If he can have no grievance, he can file no appeal. Therefore, it is imperative, if the assessee's case is that his statement has been wrongly recorded or that he made it under a mistaken belief of fact or law, that he should make an application for rectification to the authority which passed the order based upon the statement."*
- ii. The Supreme Court held in the case of *Narayan Bhagwantrao Gosavi Balajiwalale vs. Gopal Vinayak Gosavi*, AIR 1960 SC 100, 1960 1 SCR 773, *"An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous."*
- iii. The Supreme Court in the case of *Dewan Bahadur Seth Das Mohta vs the union of India & others* 1955 AIR, 1 1955 SCR (1) 773 held, *"unless and until the petitioner can establish that his consent was improperly procured and that he is not bound thereby he cannot complain that any of his fundamental rights has been contravened for which he can claim relief under Article 32 of the Constitution. Article 32 of the Constitution is not intended for relief against the voluntary actions of a person."*
- iv. The ITAT, Mumbai in the case of *ACIT vs. Expresso Investment* (2006) 8 SOT 287 (Mum.) hel, *"by its declaration and acts the assessee intentionally caused/made the departmental authorities to believe the declaration made by the assessee to be true and induced them to act upon such belief. In our view it is not open to the assessee to change the stand it has already taken and thus cause the situation in his favour by inducing the department not to investigate or enquire into the matter on the seize documents. It is not open to the assessee to turn around on the said declaration. This is based on maxim, alleganscontria non estaudiendus (a person alleging contradictory facts should not be heard)."*

- v. The Supreme Court held in *Surjit Singh Chhabra vs. UOI* (1997) 1 SCC 508, 509, *“The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So, there is no need to call panch witnesses for examination and cross-examination by the petitioner.”*
- vi. The Kerala High Court held in *V. Kunhambu & Sons vs. CIT* (1996) 219 ITR 235 (Ker.), *“the assessment has been made based on the statement of the assessee. Since no case has been made out that the statement was made under a mistaken belief of fact or law, and as has been held above, the statement being a voluntary one, there is no scope for the assessee to challenge the correctness of the assessment as has been done in this case.”*
- vii. The ITAT, Bangalore in the case of *Carpenters Classic (Exim) Pvt. Ltd. vs. DCIT 108 TTJ 760* held, *“time gap between statement and retraction of statement is one of the important points to be taken into account to decide as to whether the statement was given under mistaken belief of either fact or law. However when assessee retracted statement made Under Section 132(4) after three and a half months of disclosure and there was not an iota of evidence to support retraction then AO was justified in not accepting assessee’s retraction. In the instant case, the assessee has not retracted the disclosure before the DDIT but has not included the undisclosed income while filing return on 13.4.99. Disclosure was admitted wide letter dated 22.1.99. Thus, the time gap is too large and hence the learned CIT(A) was justified in determining undisclosed income on the basis of letter filed by assessee.”*
- viii. The ITAT, Ahmedabad, in the case of *DCIT vs. Bhogilal Mulchand Kandoi* (2005) 98 TTJ Ahd 108, held *“The retraction of the statement is made after three and half months. If the above statement was extracted under coercion and/or threat, what prevented the assessee to retract the statement soon after the conclusion of the search. Moreover, except the allegations in the affidavit, there is no direct or circumstantial evidence brought on record by the assesses to prove that the statement was taken under coercion or threat. Several loose papers were found at the time of search which prove the sale outside the books, Shri K 6 Kandoi himself in his statement has admitted the unrecorded sale. These evidences corroborate the genuineness of the statement given at the time of search. No iota of evidence is given by the assesses in support of retraction.”*

**5. Passing of Speaking Assessment Order:** The Assessing Officer is required to pass speaking order incorporating findings and evidences gathered during and after survey. It is better to incorporate scanned copies of relevant part of the evidences in relevant part of the assessment order. In a case where the above option is not found feasible, the photocopies of evidences may be made part of the assessment order by enclosing them as annexure to the assessment order. This will ensure proper understanding of the fact at appellate stage and ensure that evidences lying in assessment records are not tempered at latter stage. As it is likely that AO will be required to discuss large number of evidences and outcome of investigation, it will be better if paragraphs and sub-paragraphs are made properly with respect to particular facts. One fact should go to one paragraph. If the discussion on one issue is intended to be made in several parts, then sub-paragraphing under same paragraph should be done. It should be kind of story-telling–unfolding in the sequence of events. It is good style to narrate facts, then narrate law on the matter and then stitch the facts with the law detailing how the facts fitted into the law to justify the conclusion of the AO. This helps the reader in understanding the assessment or penalty order better. The Assessing officer, while drafting of the assessment order, should ensure that such penalty proceedings as are required to be initiated during assessment proceedings (like concealment penalty proceeding) have been initiated under relevant provisions of the Act.

**6. Post-assessment Steps:** The income assessed in the assessment order shall not be final unless the additions/ disallowances made in the assessment order are upheld at the highest level of appeal or not contested in the appeal. Assessing Officer should take follow-up actions relevant to finality of assessment, such as:

- Impounded material (which has been used in the assessment order) should be retained till the assessment reaches finality and penalty and prosecution proceeding, if initiated, are concluded;
- Remedial action in other cases in own ward/circle, if required, has been initiated;
- Intimation of evasion of tax in case of other assesseees have been forwarded to jurisdictional AOs;
- Intimation about violation of provisions of section 40(a)(i) and 40(a)(ia) has been forwarded to the concerned AOs;
- Intimation about violation of provisions of section 269SS, 269ST and 269T, if any, has been forwarded to the Range head

## **7. Implications for Earlier Assessment Year(s) or other Assessee**

The Assessing Officer is required to go through each evidence or statement to:

- Check whether answer to any question or evidence indicates evasion of tax for earlier assessment years. If yes, to take remedial action to bring escaped income to tax;
- Check whether remedial action in the case of any other assessee in his jurisdiction is required to be taken based on the evidence gathered. If so, take remedial action:
- Check whether evidence in respect of evasion of income is found in respect of a person, who is assessed with some other Assessing Officer. If so, to send intimation along with copy of relevant evidence.

**8. Other Implications Including Penalty and Prosecution:** As discussed earlier, survey may also result in detection of evidence regarding violation of provisions of section 269SS or section 269T or Section 269ST. In such cases, it is the duty of the Assessing Officer making to refer such cases to Range head for initiating penalty u/s 271D/271DA/271E, as the case may be. There may be failure to file return or maintain books of accounts or get those audited which will make them liable to penalty proceedings. AO must initiate these proceedings too. The Assessing Officer has to ensure that penalties initiated in the assessment are finalized within the time limit prescribed under section 275A of the Act. Similarly, where violation of section 40(a)(i) or 40(a)(ia) is noticed, AO is required to send intimation to the jurisdictional AO of International Taxation or TDS charge to take action under relevant provisions of the Act. The survey assessment in which returned income has been enhanced based on the evidences impounded during the survey, are potential cases for launching of prosecutions under section 276C(1) and 276 C(2) and other relevant provisions of the Act. The Assessing Officer is required to identify such case for further follow-up in accordance with the instructions of the Board in this regard.

**9. Sharing Information with other Authorities:** Sharing relevant information with other authorities within the department for action under Benami prohibition Act or Black Money Act is also important task for the survey-conducting authority and AO so that they can take action under relevant statutes. Sharing important findings with other agencies at inter-organizational forum like REIC is also important. So, survey-conducting authority, AO as well as their supervisory authorities have to think responsibly about all relevant actions under relevant laws by themselves and other authorities.

**10. Mention in Charge Handing over Note:** In a case where the jurisdictional officer has to hand over charge to his successor due to transfer or any other reason, he is required to prepare, “Handing over Note” especially in respect of survey cases undertaken in the charge. This note should contain brief details of the surveys conducted in which scrutiny assessments including re-assessment proceedings are pending or to be initiated [Reference: Board’s letter F.No. 299/105/2014/-Dir (Inv. III)/ 241 dated 9.8.2017].

## Case Laws on Survey

**1.1** Some case laws relevant to survey are given below. But before reading such case laws, it is important to know how much binding are such case laws. In view of this, before the case laws on survey, Article 141, two judgments of the Supreme Court and one judgment of Bombay High Court are given.

**1.2 Article 141 of Constitution of India—“Law declared by Supreme Court to be binding on all courts—***The law declared by the Supreme Court shall be binding on all courts within the territory of India.”*

**1.3** The Supreme Court held in **East India Commercial Co. Ltd. vs. Collector of Customs AIR 1962 SC 1893**, “We therefore, hold that the law declared by the highest court in the state is binding on authorities or Tribunals under its superintendence and they cannot ignore it.”

**1.4 In Baradakanta Mishra vs. Bhimsen Dixit AIR 1972 SC 2466** the Supreme Court held that it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should confirm to the law laid down by it.

**1.5** The Bombay High Court held in **CIT vs. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom)**, “We are aware that the practice is not uniform among the High Courts, but nevertheless we are of the opinion that it is a desirable one. Unless the judgment of another High Court dealing with an identical or comparable provision can be regarded as per incuriam it should be ordinarily followed”. (a decision of a court is per incuriam when it is given without its attention having been drawn to the relevant authorities or statutes).

### Case Laws on Survey

*Subject—After commencement of survey, how long can it continue:*

**1.** Where petitioner was in default of a large sum as arrear of tax and it was considered necessary to carry out survey with a view to ascertain nature of assets held by or under control of petitioner, allegation of petitioner that survey was vitiated by mala fides was liable to be rejected. After having entered business premises of assessee during business hours no further limitation is

imposed by section 133A(2) regarding period for which income-tax authority may remain in that premises, and, therefore, survey may continue till it is completed notwithstanding fact that survey would spill over beyond business hours. TRO has power to attach promissory notes, found in course of survey, pursuant to a certificate for recovery of tax dues from assessee—**N.K. Mohnat vs. DCIT (1995) 83 Taxman 238 (Madras)/[1995] 215 ITR 275 (Madras)/[1995] 128 CTR 247 (Madras)**

*Subject—Under what circumstances summons can be served during survey:*

**2.** Whether serving of summons on date of survey itself for production of accounts when there was no obstruction by person concerned, and seizure of books would be without any authority. Whether summons can be served under section 131(1) only in cases of obstruction or when some sort of hindrance is put up—**Dr. Vijay Pahwa vs. Samir Mukhopadhyay, DCIT (1996) 84 Taxman 416 (Calcutta)/[2001] 250 ITR 354 (Calcutta)/[1995] 129 CTR 64 (Calcutta)**

*Subject—Conversion of survey into search:*

**3.** Where during survey conducted under section 133A, department found huge cash and incriminating documents and director of assessee-company failed to provide explanation with regard to cash and dubious entries in seized documents, survey could be converted into search under section 132 after due approval of competent authority—**Rich Udyog Network Ltd vs. CCIT-[2015] 63 taxmann.com 88 (Allahabad)/[2015] 235 Taxman 313 (Allahabad)/[2016] 386 ITR 136 (Allahabad)/[2016] 288 CTR 590 (Allahabad)**

**4.** If during the survey operation, information comes to the department which leads to formation of a reasonable belief that the conditions authorizing action u/s 132(1) exist, the department has right to take action u/s 132—**Vinod Goel, Advocate & ors. vs. Union of India & Ors. (P&H HC) 252 ITR 29 [2001]**

*Subject—Whether a person other than the one who gave statement u/s 133A can be given copies of statement given by other persons—*

**5.** Assessee-company represented by one of its directors, who had not given a statement during survey, could not be allowed to seek copies of statements given by other persons as it would hamper investigation by department—**Advantage Strategic Consulting (P.) Ltd. vs. UOI [2017] 82 taxmann.com 97 (Madras)**

*Subject—Can a sworn statement be taken during survey and how good evidence is the statement taken in course of survey u/s 133A:*

**6.** Statement recorded under section 133A on oath during survey could not be relied as evidence—**Unique Art Age vs. ACIT-[2014] 50 taxmann.com 194 (Jaipur-Trib.)/[2014] 29 ITR(T) 547 (Jaipur-Trib.)/[2015] 152 ITD 600 (Jaipur-Trib.)**

**7.** Section 133A does not empower any ITO to examine any person on oath; so statement recorded under section 133A has no evidentiary value and any admission made during such statement cannot be made basis of addition—**CIT vs. S. Khader Khan-25 taxmann.com 413 (SC)/[2012] 210 Taxman 248 (SC)/[2013] 352 ITR 480 (SC)/[2012] 254 CTR 228 (SC)**

**8.** Section 133A does not empower any ITO to examine any person on oath and, statement recorded under section 133A has evidentiary value—**Paul Mathews & Sons vs. CIT-(2003) 129 Taxman 416 (Kerala)/[2003] 263 ITR 101 (Kerala)/[2003] 181 CTR 207 (Kerala)**

**9.** Statement recorded under section 133A(3)(iii), though cannot be treated as independent evidence like evidence recorded under section 132(4), but has corroboratory value in assessment and statement recorded under the said provision can be even relied on by the assessee. The decision of the Kerala High Court in Paul Mathews & Sons vs. CIT [2003] 263 ITR 101 that the statement recorded under the above provision does not have evidentiary value, does not lay down the correct law—**CIT vs. Hotel Samrat-[2010] 323 ITR 353 (Kerala)**

*Subject—Whether material collected in course of a survey that is illegal, can be utilized for making additions in assessment proceeding:*

**10.** The Supreme Court, in the cases of *Dr. Partap Singh vs. Director of Enforcement* [1985] 155 ITR 166 /22 Taxman 30 and *Pooran Mal vs. Director of Inspection (Inv.)* [1974] 93 ITR 505, has held that the material collected during the course of illegal search can be made use of. If the ratio of those judgments is applied, then it becomes clear that even in the case of illegal survey, material collected can be used for additions. While delivering the judgments, the Supreme Court was cautious about the fact that material collected was coming out from illegal search and yet material collected was allowed to be used by the Assessing Officer—**CIT vs. Kamal & Co-(2008) 168 Taxman 246 (Rajasthan)/ [2009] 308 ITR 129 (Rajasthan)/[2007] 213 CTR 200 (Rajasthan)**

*Subject-Addition cannot be made by Assessing Officer only on the basis of disclosure made in statement made during survey u/s 133A without corroborative evidence:*

**11.** An admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made the admission to show that it is incorrect. The word ‘may’ used in section 133A(3)(iii), viz., ‘record the statement of any person which may be useful for, or relevant to, any proceeding under this Act’, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by themselves. The statement obtained under section 133A would not be automatically binding upon the assessee. Section 133A does not empower any ITO to examine any person on oath. In contradistinction to the power under section 133A, section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A is not given an evidentiary value. The statement obtained under section 133A would not automatically bind the assessee. Therefore, admission made during such statement cannot be made the basis of any addition—**CIT vs. S. Khader Khan Son (Affirmed in (2012) 25 taxman.com 413 (SC))**

**12.** Assessing Officer cannot make additions to income of assessee company only on basis of sworn statement of its managing director recorded under section 131 during course of survey under section 133A without support of any corroborative evidence. *CBDT Circular in F.No. 286/98/2013-IT (Inv. II) dated 18-12-2014* has emphasized on its officers to focus on gathering evidences during search/survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion/under influence—**ITO vs. Toms Enterprises-ITAT, Cochin [2019] 103 taxmann.com 289**

**13.** Where no material supportive of statement made in course of survey proceedings was found or collected, Tribunal was justified in directing division of assessee’s income included in assessment—**PCIT vs. IIBS Infonet (P) Ltd [2017] 88 taxmann.com 643 (Delhi)/[2017] 394 ITR 538 (Delhi)**

**14.** Assessment made entirely relying on statement of a person recorded during survey conducted would be unsustainable. However, where maker of statement himself had re-affirmed statement and nothing had been produced by assessee to show that contents of statement were incorrect, assessments could not be held to be illegal—**Kottakkal Wood Complex vs. DCIT [2016] 72 taxmann.com 63 (Kerala)/[2016] 386 ITR 433 (Kerala)/[2017] 297 CTR 323 (Kerala)**

**15.** Addition made purely on basis of statement made during course of survey under section 133A which was later on retracted by assessee was to be deleted. A survey under section 133A was conducted on branch office of the assessee-firm. During the survey, the partners of the assessee admitted that

commission charges paid to Litaka were bogus and not genuine and no services were even rendered by the Litaka and the payments were only book entries. Accordingly, the Assessing Officer made addition of said commission in hands of the assessee. Held that section 133A does not empower any authority to examine any person on oath, any such statement has no evidentiary value and any admission made during such statement cannot by itself, be made the basis for addition unless the Assessing Officer has corroborative material in hand to make such addition. The Assessing Officer has made addition purely on the basis of statement made during the course of survey under section 133A, which was later on retracted by the assessee, therefore, any addition made on the basis of these statements is without any basis and liable to be deleted as there is no corroborative materials on record—**D.S. Agencies & Associates vs. Addl. CIT [2017] 82taxmann.com252 (Mumbai-Trib.)/[2015] 44 ITR (T) 46 (Mumbai-Trib)**

**16.** Where assessee offered a summary disclosure of an amount due to pressure of proceedings during search operations which were adversely affecting business and no incriminating material was discovered as a result of search operations and sole basis of additions was disclosure which was involuntary, additions were not justified—**Basant Bansal vs. ACIT [2015] 63 taxmann.com 199 (Jaipur-Trib.)/[2015] 171 TTJ 603 (Jaipur-Trib.)**

**17.** Where Assessing officer, while making addition in hands of assessee-firm as well as its partner, solely relied upon statement of partner recorded at time of survey which was subsequently retracted, addition made by Assessing Officer were to be deleted—**CIT vs. M.P. Scrap Traders-[2015] 60 taxmann.com 205 (Gujarat)/[2015] 372 ITR 507 (Gujarat)**

**18.** Where loose paper found in survey showed receipts in hands of assessee, and assessee admitted same as his undisclosed income but in assessment reverted back from said admission, since he could not furnish evidence to justify his stand, said receipts are to be treated as undisclosed income of assessee—**Dr. Dinesh Jain vs. ITO-[2014] 45 taxmann.com 442 (Bombay)/[2014] 226 Taxman 27 (Bombay)/[2014] 363 ITR 210 (Bombay)/[2014] 272 CTR 73 (Bombay)**

**19.** Where assessee retracted from surrender as same was obtained through intimidation and forged documents and no additional evidence was allowed to produce, addition would not be sustained—**Sanjeev Kumar vs. ITO [2014] 50 taxmann.com 114 (Chandigarh-Trib.)/[2014] 31 ITR(T) 680 (Chandigarh-Trib.)/[2015] 152 ITD 596 (Chandigarh-Trib.)**

**20.** Where apart from statement under section 133A(3)(iii), revenue had not brought anything on record in support of its conclusion that assessee

had undisclosed income, addition made by Assessing Officer could not be sustained—**Mahesh Ohri vs. ACIT [2013] 35 taxmann.com 301 (Delhi-Trib.)/[2013] 23 ITR(T) 522 (Delhi-Trib.)/[2013] 59 SOT 16 (Delhi-Trib.)(URO)/[2013] 154 TTJ 33 (Delhi-Trib.)(UO)**

**21.** Addition can be made on basis of assessee's statement in survey, only if it is supported by relevant material to substantiate same—**CIT vs. P. Balasubramanian-[2013] 33 taxmann.com 130 (Madras)/[2013] 215 Taxman 288 (Madras)/[2013] 354 ITR 116 (Madras)**

**22.** Merely on the basis of statement having been recorded during survey, no addition can be made unless the same can be corroborated by any material either found during course of survey or subsequently brought on record by department while framing assessment—**Ravinder Kumar vs. DCIT [2009] 33 SOT 251 (Delhi)**

*Subject-Validity of impounding in survey:*

**23.** Assessee-society was engaged in siphoning off funds by way of advancing loans to shell companies without any equivalent collateral securities, a warrant of authorization was issued under section 132. Thereupon, order was passed under section 133A(3)(ia) whereby documents and books of account belonging to assessee were seized. On writ, High Court held that since warrant of authorisation was based on definite information and discreet verification, it was to be regarded as adequate and order passed under section 133A(3)(ia) was also in consonance with provisions of Act. SLP filed against decision of High Court dismissed—**Adarsh Credit Co-operative Society Ltd. vs. Joint Director of Income-tax (Inv.) [2019] 102 taxmann.com 291 (SC)/[2019] 261 Taxman 345 (SC)**

*Subject-Use of evidence found during consequential survey for search assessment:*

**24.** Material or evidence found/collected in a survey which has been simultaneously made at premises of a connected person, can be utilized while making block assessment in respect of an assessee under section 158BB, read with section 158BH; it would fall under words 'and such other materials or information as are available with Assessing Officer and relatable to such evidence' occurring in section 158BB—**CIT vs. S. Ajit Kumar [2018] 93 taxmann.com 294 (SC)/[2018] 255 Taxman 286 (SC)/[2018] 404 ITR 526 (SC)/[2018] 302 CTR 177 (SC)**

*Subject-Initiation of reassessment proceeding in consequence of survey:*

**25.** Where facts of survey were unavailable at the time of assessment and additional amount offered to tax at survey was not mentioned in return of

income, notice issued for reassessment beyond period of four years was valid—**Alapatt Jewels vs. ACIT-35 taxmann.com 457 (Kerala)/[2013] 217 Taxman 89 (Kerala)(MAG.)/[2013] 257 CTR 352 (Kerala)**

**26.** Assessee, engaged in trading in shares through his broker, claimed trading loss. Information was received from Principal Director of Income-tax (Investigation) that assessee had received bogus loss through his broker by client code modification (CCM). On basis of above said information, reassessment notice was issued against assessee. It was noted that Director of Income-tax (Investigation) referred to a survey report in respect of CCM regarding dissemination of beneficiary clients who had taken bogus losses and that instant assessee was one of them. There were several details regarding instant assessee pertaining to alleged sham transactions between assessee and his broker which showed that within a period of about nine months, there were 74 modifications and it was necessary to ascertain whether these were inadvertent errors or were deliberate adjustments/shifts from broker's other clients, as a result whereof assessee derived benefits. Initiation of impugned reassessment proceedings under sections 148 against assessee was justified—**Rakesh Gupta vs. CIT-[2018] 93 taxmann.com 271 (Punjab & Haryana)/[2018] 405 ITR 213 (Punjab & Haryana)**

**27.** Assessee was engaged in business of cheque discounting and shroff. Assessing Officer reopened assessment finding huge cash deposits in bank. Being satisfied after sample verification of depositors, he passed reassessment order. Thereafter survey was carried out. Assessing Officer by placing reliance upon survey sought to reopen assessment. Where Assessing Officer had himself stated that it was business of assessee to receive cash and issue cheques in lieu thereof for which it charged commission, in absence of any material to show that cash in question travelled back to assessee, such amount could not be said to be undisclosed income of assessee, and, thus, Assessing Officer could not have formed belief that income chargeable to tax had escaped assessment. Where during earlier assessment, all primary facts were before Assessing Officer and he thought it fit to examine certain transactions and on being satisfied about genuineness thereof had accepted return as filed by assessee, subsequently on basis of very same transactions recorded in cash book, assessment could not be reopened merely by placing reliance upon survey carried out by Investigation Wing under section 133A during course of which no fresh material had come to light—**Shree Sidhnath Enterprise vs. ACIT-[2016] 71 taxmann.com 55 (Gujarat)/[2016] 240 Taxman 631 (Gujarat)/[2016] 387 ITR 644 (Gujarat)/[2017] 293 CTR 535 (Gujarat)**

**28.** Where Assessing Officer on basis of documents impounded during survey, passed an assessment order under section 143(3), he could not

initiate reassessment proceedings subsequently by merely taking a view that in terms of entries recorded on a loose paper impounded during survey, certain income chargeable to tax had escaped assessment—**CIT vs. Vardhman Industries-[2014] 42 taxmann.com 494 (Rajasthan)/[2014] 224 Taxman 68 (Rajasthan)(MAG.)/[2014] 363 ITR 625 (Rajasthan)**

**29.** Even where based on assurance of survey party that return of income would not be taken-up for scrutiny, petitioner disclosed additional income, Assessing Officer was still empowered to select it for scrutiny assessment—**Ajay vs. DCIT-[2014] 42 taxmann.com 210 (Bombay)/[2014] 224 Taxman 63 (Bombay)(MAG.)/[2014] 270 CTR 588 (Bombay)**

*Subject-Assessment in survey cases:*

**30.** Unexplained investments of assessee-partner found during search could not be telescoped against unaccounted profit of partnership firm without giving valid reasons. Where the Tribunal confirmed order of Commissioner (Appeals) allowing telescoping of unexplained investment of assessee-partner against unaccounted profit of partnership firm without giving any valid reason, Tribunal's order was held to be not sustainable—**CIT vs. Promy Kuriakose-[2017] 79 taxmann.com 405 (Kerala)/[2016] 386 ITR 597 (Kerala)/[2017] 293 CTR 440 (Kerala)**

**31.** During search, unexplained cash was found and seized from bedroom of assessee's sister in assessee's house. It was case of assessee that cash received from bedroom of sister belonged to her who came to stay with him. High Court held that since there was nothing on record to show that sister of assessee was in exclusive possession of bedroom in assessee's house from where cash was seized and further, there was contradiction in statements of assessee and his sister with respect to ownership of actual amount in cash, seized cash would be included as unexplained income in hands of assessee under section 69A. SLP against impugned order dismissed—**Ashokbhai H. Jariwala vs. ACIT [2017] 84 taxmann.com 196 (SC)/[2017] 250 Taxman 14 (SC)**

**32.** A survey was conducted on premises of assessee and certain additions were made in income of assessee. Later, during scrutiny proceeding, it was noticed that a stock statement submitted by assessee to Bank to avail enhanced credit facility showed higher value of stock as compared to stock in statement disclosed to revenue. Assessing Officer added difference in amount of such stocks to income of assessee as undisclosed business income. Where revenue could not detect a discrepancy in stock during survey, a verification made by bank, which was not concerned with assessment, could not be relevant evidence to lawfully presume undisclosed income of assessee—**CIT vs. Shib**

**Sankar Das [2017] 83 taxmann.com 193 (Calcutta)/[2017] 396 ITR 39 (Calcutta)**

**33.** Assessing Officer made additions under section 68 on account of bogus purchases and disallowance of expenses solely on basis of loose papers impounded during survey. Assessee explained entries made in loose papers but Assessing Officer did not accept same on ground that few entries did not tally with assessee's bank account. Commissioner (Appeals), on minute and detailed consideration of impounded loose papers, confirmed certain additions while deleted others, which Tribunal affirmed. Where findings recorded by lower authorities were on minute analysis of loose papers impounded during survey, said order couldn't be said to be either perverse or contrary to evidence on record and, therefore, same couldn't be interfered with—**PCIT vs. Chintan H. Sampat-[2017] 78 taxmann.com 268 (Gujarat)**

**34.** Where Assessing Officer made certain addition to income of assessee on account of excess stock of gold found at its business premises during survey, since assessee failed to prove source of acquisition of said gold, impugned addition was justified—**Radhakrishna Gold Jewellery (P.) Ltd vs. JCIT [2015] 62 taxmann.com 182 (Ahmedabad-Trib.)/[2015] 41 ITR(T) 349 (Ahmedabad-Trib.)**

**35.** During survey, a director of assessee company made a statement about materials and undisclosed income. Assessee did not disclose this income in his returns but declared it at time of survey. However, before Assessing Officer, assessee alleged that surrendered amounts were not voluntary and bona fide and in absence of any evidence or material in relation to surrender, surrender made during survey was also retracted. Where explanation given by assessee, in course of appellate proceedings, that surrender was in respect of a certain portion of receipt which had remained undisclosed or that some part of it were supported by books, was not borne out in any contentions raised by it before lower authorities, both Commissioner (Appeals) and Tribunal were correct in adding back amount after adjusting expenditure indicated—**Raj Hans Towers (P.) Ltd. vs. CIT [2015] 56 taxmann.com 67 (Delhi)/[2015] 230 Taxman 567 (Delhi)/[2015] 373 ITR 9 (Delhi)**

**36.** Assessee was an export house. A survey was conducted wherein statements of some of suppliers were recorded. Assessing Officer made addition by treating purchases as bogus purchases, based on four statements that they were under practice of giving accommodation entries and bills against cash after deducting commissions cash was refunded by parties. Assessee demanded opportunity for cross-examination during assessment proceedings which was denied by Assessing Officer on ground that it was not possible at the end of assessment proceedings. Assessing Officer submitted remand

report and stated that summons issued to four parties for cross-examination, were returned by postal authorities with remark 'Left/No such persons' and accordingly, assessee could not be allowed opportunity for cross examination. When sales and all other quantitative details and figure regarding stock were accepted by Assessing Officer then in absence of any direct evidence showing non-genuineness of purchases, addition would not be sustainable on basis of assumption and conjectures relying on third party statements and that too without affording an opportunity to cross-examine to assessee—**Canon Industries (P) Ltd vs. DCIT-[2015] 59 taxmann.com 65 (Mumbai-Trib.)/[2015] 167 TTJ 82 (Mumbai-Trib.)**

**37.** Without investigation about authenticity of unsigned draft agreement to sell, found during survey, no addition would be sustainable—**CIT vs. AKME Projects Ltd-[2014] 42 taxmann.com 379 (Delhi)/[2014] 221 Taxman 202 (Delhi)(MAG.)**

**38.** Scrutiny assessment completed only on basis of documents found during survey due to non-compliance of notices under section 143(2) and 142(1), cannot be held as invalid on ground that best judgment assessment was called for. Where documents were not impounded during survey, assessee cannot claim that assessment was completed without confronting him with documents relied upon by Assessing Officer—**Subhash Chander vs. ITO-[2013] 35 taxmann.com 320 (Chandigarh-Trib.)/[2014] 61 SOT 57 (Chandigarh-Trib.)(URO)**

**39.** Where assessee at the time of survey conducted under section 133A stated that cash in question represented its unaccounted money and lower authorities during assessment proceedings did not accept assessee's altogether different explanation made with respect to said cash and added same to its income, no question of law arose for consideration—**Zafarulla I Malek Sevalia vs. DCIT [2013] 33 taxmann.com 348 (Gujarat)/[2013] 217 Taxman 36 (Gujarat)**

**40.** Where survey was conducted in case of assessee, he was required to explain entries written on loose papers at time of survey itself and, therefore, where he explained said entries in appellate proceedings and obtained some relief, Tribunal was justified in remanding matter back to Assessing Officer for disposal afresh—**Manoharlal Kalra vs. CIT-42 taxmann.com 362 (Uttarakhand)/[2014] 222 Taxman 132 (Uttarakhand)(MAG)**

**41.** Where assessee was able to show that admission made during survey by surrendering income on excess stock was incorrect, on basis of seized material itself, addition was unjustified—**ACIT vs. Maya Trading Co-[2013] 34 taxmann.com 144 (Agra-Trib.)/[2013] 143 ITD 176 (Agra-Trib.)**

**42.** Though an admission made during survey is extremely important piece of evidence, it cannot be said to be conclusive and it is open to person, who has made admission, to show that it is incorrect. During survey operation at business premises of assessee-firm, revenue noticed some discrepancies in stock. As partner of assessee was not able to explain difference in stock at that time, he offered certain income for assessment. Subsequently, assessee submitted that said statement about stock was incorrect, and that impugned discrepancy had been reconciled. Consequently, assessee withdrew offer of additional income for assessment. Assessing Officer did not accept assessee's plea and assessed income as per statement given by partner. Whether as assessee had been able to explain discrepancy in stock found during course of survey, Assessing Officer could not have made said addition solely on basis of statement made by partner on behalf of assessee—**CIT vs. Dhingra Metal Works [2011] 196 Taxman 488 (Delhi)/[2010] 328 ITR 384 (Delhi)**

**43.** Reports and facts collected at the time of survey are always subject to explanation and reconciliation by assessee which can be explained either at time of survey or after survey before Assessing Officer at time of assessment. Therefore, merely on the basis that at time of survey, some differences were found in stock that does not mean that there will be an automatic addition on account of differences. Assessee was engaged in business of trading and manufacturing of edible oil. A survey was conducted at business premises of assessee. Pursuant to survey proceedings, revenue authorities made certain addition to assessee's taxable income on account of variation in closing stock. In view of the fact that assessee had reconciled differences with reasons and revenue authorities did not point out anything contrary that how reconciliation done by assessee was incorrect, impugned addition made by authorities below was to be deleted—**Chawla Brothers (P) Ltd vs. ACIT [2010] 6 taxmann.com 22 (Mumbai)/[2011] 43 SOT 651 (Mumbai)**

*Subject—Whether assessment can be made u/s 158BC or 153C in a case of survey—*

**44.** From record it was found that it was a case of only survey under section 133A and there was no search. Where was no search in terms of section 132, block assessment invoking provisions of section 158BC did not arise—**Rajkumari Chandak vs. ACIT [2015] 63 taxmann.com 10 (Madras)/[2016] 382 ITR 312 (Madras)**

**45.** There was a search under section 132 in case of some persons wherein no incriminating material was found against assessee. On same date a survey under section 133A was carried out at assessee's business premises and a notice under section 153C was issued. Commissioner (Appeals) dismissed assessee's appeal without addressing assessee's contention that survey under

section 133A could not be made basis for proceedings under section 153C. Since point raised by assessee was a legal issue and went to root of matter and required consideration of entire seized material, matter was to be restored to Commissioner (Appeals) for re-adjudication—**Padamchand Jain & Co vs. ACIT [2015] 64 taxmann.com 211 (Chandigarh-Trib.)**

*Subject-Assessment when statement taken during survey is retracted:*

**46.** During survey, assessee surrendered certain income. He confirmed same by way of declaration after two months. However, two years later, assessee withdrew said declaration. He alleged that surrender was made by him to remove pressure of Income-tax authorities and it did not represent true picture. Further, he submitted that there was no corroborative material available with department in relation to it. In absence of any satisfactory explanation, retraction made by assessee two years after declaration could not be said to be bona fide and, hence, addition on account of surrendered income could not be deleted—**PCIT (Central)-2, Delhi vs. Avinash Kumar Setia-[2017] 81 taxmann.com 476 (Delhi)/[2017] 248 Taxman 106 (Delhi)/[2017] 395 ITR 235 (Delhi)**

**47.** Assessee filed return of his income. Survey operations were carried out at business premises. Assessee offered to return additional income of Rs. 15 lakhs over income declared in regular return. It was found that in immediate aftermath of survey operations, assessee booked Rs. 6 lakhs as commission payment expenditure. Due to claim of said commission expenditure, net income came down. However, no receipts, vouchers, etc., were produced in support of expenditure so claimed. Further, no such expenditure was incurred in past years. Madras High Court held that sudden booking of huge expenditure within a month's time, that too, after survey operations were carried out, would lead to inference that this expenditure was deliberately booked to neutralize additional income offered over and above normal income and impugned expenditure was to be disallowed—**H. Gouthamchand Jain vs. ITO [2016] 74 taxmann.com 87 (Madras)/ [2016] 243 Taxman 198 (Madras)/[2016] 388 ITR 148 (Madras)**

**48.** Where assessee made an admission regarding unaccounted investment during survey and almost after two years, retracted from same on basis that admission was based on coercion and force without giving any reason, same was not acceptable and addition as undisclosed investment was to be upheld—**Navdeep Dhingra vs. CIT [2015] 56 taxmann.com 75 (Punjab & Haryana)/[2015] 232 Taxman 425 (Punjab & Haryana)**

**49.** During survey assessee was unable to provide necessary evidence of genuineness of these debentures and full details of transactions and

surrendered relevant amount. After ten months assessee retracted from its surrender and filed return of income with voluminous details and evidences. Assessing Officer made addition of total income as unexplained cash credit under section 68. It was found that KYC documents were obtained in respect of each and every depositor and same were furnished before Assessing Officer. Since no material was collected during course of survey which could establish that credit was non-genuine, additions made only on basis of surrender made at time of survey was not justified. (CBDT's Instruction F. No. 286/2/2003-IT (Inv. II) dated 10-3-2003 saying that the addition cannot be made only on the basis of surrender made at the time of survey referred)—**DCIT vs. Bansal Credits Ltd [2016] 74 taxmann.com 224 (ITAT, Delhi)**

**50.** Where assessee, in course of survey, admitted that certain amount written on loose papers represented its income, in case of subsequent retraction from said statement, onus on assessee was heavy to show as to what mistake of fact resulted in admission of income and, thus, mere denial, without anything more, would by itself not lead to a valid retraction in law—**ITO vs. Devji Premji Pujara & Sons [2013] 34 taxmann.com 96 (Mumbai-Trib.)/ [2013] 60 SOT 6 (Mumbai-Trib.)(URO)**

*Subject-Taking inventory of stock:*

**51.** On entering premises being surveyed, it is first for surveying authority to require person, attending or helping in carrying on of any business or profession at surveyed premises, to afford necessary facility to check or verify stock found during survey and it is only on such requirement having been expressed by surveying authority, said person can afford such facility to authority. A survey was conducted at assessee's factory. Surveying authority weighed stock on basis of cartons and alleged excess stock. Consequently, Assessing Officer made addition in income of assessee. Assessee objected that weightment was not done in accordance with provisions of Standard of Weights and Measurement Act, 1976. It was surveying authority who arbitrarily never required assessee to provide him with weightment facility and it was not assessee who refused to do and, therefore, addition in income of assessee was not justified—**Smt. Kailash Devi vs. ITO [2016] 68 taxmann.com 288 (ITAT, Amritsar)**

**52.** During survey, physical stock verification and comparison with stock reflected in books of account revealed excess stock. Assessee agreed to computation and closing stock in his statement. Later, on basis of an undated letter to Assessing Officer, assessee claimed that substantial difference in stock was attributable to non-reflection of opening stock in computer generated stock account. Where assessee substantially agreed to computation of closing stock in statement, but later claimed that discrepancy was due to error in

computer generated programme, which was not established, addition on account of excess stock was sustainable—**217 Taxman 42, Vipul Kumar Kirtilal Shah (Gujarat HC) [2017]**.

**53.** Principles regarding valuation of stock were laid down in a few more decisions of the Supreme Court, viz., *Sakthi Trading Co. vs. CIT*, 250 ITR 871 (2001), *Sanjeev Woolen Mills vs. CIT*, 279 ITR 434 (2005), *CIT vs. British Paints India Ltd*, 188 ITR 44 (1990), *A.L.A. Firm vs. CIT*, 189 ITR 285 (1991), *United Commercial Bank*, 240 ITR 355 (1999), *Dynavision Ltd*, 348 ITR 380 (2012), *Hindustan Zinc Ltd*, 291 ITR 391 (2007), *Torrent Cables Ltd.*, 354 ITR 163 (2012), *Gold Mohare Investment Co. Ltd*, 74 ITR 62 (1969); and *Dalmia Investment Co. Ltd*, 52 ITR 567(1964).

Subject-Concealment penalty in survey case—

**54.** Consequent to survey, assessee offered additional amount and included it in its return in response to notice under section 148. There being difference in amount as declared in original return and as filed in response to notice under section 148, Assessing Officer initiated penalty proceedings and levied penalty. Fact that assessee had made purchases and recorded them in its books as well as stock books had not been disputed by Assessing Officer. All relevant facts, material to computation of total income were duly furnished by assessee and no deficiencies in furnishing of such facts were pointed out by revenue authorities. There could be no question of treating assessee as having concealed particulars of income or furnished inaccurate particulars of income. Revenue authorities erred in imposing penalty under section 271(1)(c) on surrendered income—**Vipul Life Sciences Ltd vs. DCIT-[2015] 57 taxmann.com 25 (Mumbai-Trib.)/[2015] 68 SOT 321 (Mumbai-Trib.)(URO)**

**55.** Where before Tribunal it was for the first time assessee contended that disclosure of facts was made under section 133A and not under section 132, issue of levy of penalty was to be remanded to Assessing Officer—**CIT vs. Remi Steel House-[2014] 41 taxmann.com 359 (Gujarat)**

**56.** Where in pursuance of survey, assessee filed its revised return declaring higher taxable income, since it was undisputed that at time of filing original return assessee was aware of concealment, it was to be concluded that there was no compliance with provisions of section 139(5) and, therefore, revised return being non-est, impugned penalty order passed under section 271(1)(c) did not require any interference—**Snita Transport P Ltd vs. ACIT [2014] 42 taxmann.com 54 (Gujarat)/[2014] 221 Taxman 217 (Gujarat)(MAG.)**

**57.** Where penalty notice had been issued not in course of survey proceedings, but after its closure, assessee could not be prosecuted qua concealment of income—**Prem Tailor vs. ITO-41 taxmann.com 116**

**(Punjab & Haryana)/[2014] 223 Taxman 132 (Punjab & Haryana) (MAG)**

*Subject-Retention of books of accounts and other documents impounded in survey u/s 133A:*

**58.** Assessee's case was that ITO conducted survey in its premises under section 133A and impounded certain documents and books of account. Under section 44AB, assessee was required to get books of account audited before filing of return, in absence of which assessee was liable to penalty under section 271B. In such circumstances, assessee filed writ petition contending that retention of books for a long period was not justified. The Punjab & Haryana High Court held that even though officer conducting survey can impound books of account or other documents and retain same beyond 10 days after approval of Chief Commissioner, said power is not an absolute power and it is subject to judicial review like any other discretionary power of an administrative authority. Since books of account and documents had already been retained for more than six months, Assessing Officer was to be directed to release books of account and other documents within 15 days from date of receipt of a copy of this order—**Bawa Gurmukh Singh & Co vs. ITO 200 Taxman 193 (Punjab & Haryana)(MAG.)**

**59.** Pursuant to a survey, conducted at premises of assessee, certain books of account/ documents were impounded. Seized documents had been deposited in High Court and were lying in custody of Deputy Registrar (Judicial) of High Court. It was found from records that survey operation conducted at premises of assessee was carried out without following procedure as laid down in section 133A. In view of the said facts, assessee was entitled to get back impounded books of account/ documents. Therefore, aforesaid officer of High Court was directed to return documents to assessee within two weeks from date of receipt of a copy of this order subject to condition that department would be entitled to take print out of all pages of documents and copies of CD ROM, which may be certified by said Deputy Registrar—**ITO vs. U.K. Mahapatra & Co [2010] 186 Taxman 181 (SC)/[2009] 225 CTR 131 (SC)**

**60.** During survey conducted in premises of assessee-firm, income-tax authorities impounded some documents belonging to assessee. Despite several requests made by assessee for return of those documents, department did not return same even after five months. Continued retention of those documents by department was attributed to non-co-operation on part of assessee or its partner for investigation etc; failure of assessee to file return of income; and that documents belonged to third parties and not to assessee-firm or its partner and, therefore, assessee could not plead any hardship or disadvantage caused to it by continued retention of documents. Since documents were with department,

names, which figure therein could have been recorded in its books and necessary action might be pursued and, therefore, there was no justification for department to plead that there was non-cooperation on part of assessee for investigation etc. If assessee had not offered income to tax, there was sufficient power under Act enabling income-tax authorities to take such necessary action as situation warranted and that could not be achieved by coercive method of retention of such impounded documents. Since assessee was answerable to his clients, who perhaps had parted with documents in favour of assessee for various business transactions, reposing trust in assessee, the department's contention that documents belonged to third parties and not to assessee-firm or its partner, and, therefore, assessee could not plead any hardship or disadvantage caused to it by continued retention of documents could not be sustained. Therefore, defence put up by department was not tenable in law and it should be directed to return documents which they had impounded—**Raj & Raj Investments (2008) 166 Taxman 463 (Karnataka)/[2007] 293 ITR 57 (Karnataka)/[2007] 213 CTR 206 (Karnataka)**

*Jurisdiction to conduct survey and remain present during survey:*

**61.** Where there is a notification under section 120(2) authorizing Assistant Commissioner (TDS) to deal with matters relating to collection and recovery of tax and TDS return is submitted to such Assistant Commissioner (TDS), such Assistant Commissioner (TDS) will have power to call for records under section 131 and to authorise survey under section 133A—**Reckitt Colman of India Ltd vs. ACIT (TDS) (2002) 124 Taxman 496 (Calcutta)/[2001] 252 ITR 550 (Calcutta)/[2002] 172 CTR 499 (Calcutta)**

**62.** Survey was conducted under section 133A by revenue officials at assessee's business premises in presence of Assistant Commissioner who authorised survey. TRO present at spot attached and seized promissory notes in accordance with rule 30 of Second Schedule for collection of arrears of tax. Appellant challenged survey on ground that Assistant Commissioner and TRO were not empowered to be present at spot of survey. He also sought for return of all books and documents along with promissory notes. High Court held that Assistant Commissioner is fully empowered under section 133A to remain present at spot of survey for supervising and doing all that was necessary for purpose of Act. TRO is an Income-tax Officer vested with necessary powers for recovery of arrears of tax in respect of assessee under his jurisdiction and he has necessary power and authority to be present during survey operation. Rule 30 of Second Schedule empowers TRO to pass an order of attachment and to seize negotiable instruments pursuant to order of attachment—**N.K. Mohnat vs. DCIT (1999) 104 Taxman 64 (Madras)/[1999] 240 ITR 562 (Madras)/[2001] 166 CTR 326 (Madras)**

## Appendix—Compilation of Forms, Circulars, Instructions and Guidelines

Annexure–I	Authorization for Survey u/s 133A(1)
Annexure–II	Questionnaire for preliminary statement
Annexure–III	Authorization for Survey u/s 133A(2A)
Annexure–IV	Authorization for Survey u/s 133A(5)
Annexure–V	Record of Survey proceedings
Annexure–VI	Format for preparation of inventory during survey
Annexure–VII	Preliminary Survey Report u/s 133A(1)
Annexure–VIII	Final Survey Report u/s 133A(1)
Annexure–IX	Monthly Report of Surveys u/s 133A
Annexure–X	Register of Surveys u/s 133A
Annexure–XI	Board’s Instruction No. 1865 dated 14.11.1990
Annexure–XII	Conversion of survey operation into a search operation- Board’s letter F. No. 414/16/2014-IT (Inv. I) dated 30.09.2014
Annexure–XIII	Admission of undisclosed income under coercion/pressure during search/survey-Board’s letter F.No.286/98/2013-IT (Inv. II) dated 18.12.2014
Annexure–XIV	Enquiry of investigation in respect of documents/evidence relating to IDS, 2016, found during search/survey action- Board’s Circular No. 32 dated 01.09.2016.

Annexure–XV	SOP on complaints of high-handedness by Income-tax teams and dealing with CCTV cameras during search/survey operations-Board's letter F. No. 286/55/2015-IT (Inv. II) dated January, 2017
Annexure–XVI	Direction for not collecting payment of taxes etc. in any form during search/survey operations-Board's letter F. No. 299/105/2014-IT (Inv. III)/162 dated 10.07.2017
Annexure–XVII	Board's Guidelines regarding conduct of Survey–F. No.299/105/2014-Dir.(Inv. III)/241 dated 9.8.2017
Annexure–XVIII	Launch of ITBA–Investigation Module Phase 3-recording of search/survey operations and creation of relevant reports. ITBA-Investigation Instruction No. 4 from DIT (System), Dated 4.9.2017
Annexure–XIX	Launch of Income-tax Business Application (ITBA)-Investigation Module Phase 4; ITBA Investigation Instruction No. 5 dated 12.3.2018
Annexure–XX	Revised guidelines for sanction of reward to officers & staff of the department-Board's letter F. No.287/79/2005-IT(Inv. II) dated 30.5.2007.
Annexure–XXI	Amendment of reward guidelines issued vide Board's letter F. No.287/79/2005-IT(Inv. II) dated 30.5.2007 to provide that the words, "Principal Chief Commissioners of Income-tax (Cadre Controlling Authority)" may be read in all places where the words "Cadre Controlling Chief Commissioners of Income-tax" appear in the said guidelines.

## ANNEXURE-I

### **Authorisation for Survey u/s 133A(1) of the Income-tax Act, 1961**

In exercise of the powers conferred by Section 133A of the Income-tax Act, 1961 (43 of 1961), I hereby authorize:

1. \*\*
- 2.
- 3.

to enter the premises at .....which is a place within the limits of the area assigned to me/which is the place occupied by Shri/Smt/Km..... in respect of whom I exercise jurisdiction and at which place activities of charitable nature or a business or profession is carried on, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such activities of charitable nature or of such business or profession to afford the said Income-tax Authorities the necessary facility to perform such functions as he/ she/ they are empowered to do u/s 133A of the Income-tax Act, 1961.

**2.** The Income-tax Authorities so authorized, may if he/she/they so deems/ deem necessary, exercise all such powers as are vested in such Income-tax Authorities under the relevant provisions of section 133A of the Income-tax Act, 1961.

**3.** This authorisation shall not confer any authority to collect payment of any tax in any manner including cheque in respect of any income even if disclosed by a person in statement during action under this authorisation. However, this will not prevent the authorised person to collect payment of any outstanding tax.

**4.** The necessary approval has been obtained from the Competent Authority.  
\*\*\*

Place:

Date:

Seal:

\*Principal Commissioner/ Principal Director/ Commissioner/Director  
Joint/Addl. Commissioner/Joint/Addl. Director/Deputy/Asst. Director/  
Assessing Officer/Tax Recovery Officer

\*Signature along with Name of the Income-tax Authority issuing authorization should be mentioned.

\*\*Name of the Income-tax Authorities authorized along with designation should be mentioned.

\*\*\*To be crossed if Authorisation is signed by an Income-Tax Authority being JCIT and above.

## ANNEXURE-II

### Suggested Questionnaire for Preliminary Statement

- Please identify yourself? (It should include name, father's name, age, residential address, etc.)
- Please give details of your business concerns and sister concerns.
- Please give details of your family members and other persons who have interest in your concern.
- What are the sources of your income?
- Please furnish details of income-tax/wealth-tax return furnished by you/ your business concern(s)? (It should include details of PAN and preferably details of filing of assessment year-wise return of income, income declared each year and date of filing of return.)
- Whether the business concern has made any investment during financial year \_\_\_\_\_ or any subsequent financial year in the high value transactions covered under the Annual Information Return? (the provisions of AIR may be explained to the assessee)
- Please furnish details of vehicles owned /used by the business concern
- Please furnish the details of bank accounts of the business concern in the following format.

Sl. No.	Name of the Bank account holder	Type of Account and No.	Name of the Bank and Branch

- Please give details of immovable assets held by the business concern.
- Please give details of movable assets (FDs, term deposits, shares) held by the business concern.
- Details of various business concerns operating from the same premises/ premises at which survey is being conducted (irrespective of the fact whether the deponent is partner/director or not in such concerns). Also give the details of all the other business concerns with address in the control of your or your family members or dependents.

- Do you maintain regular books of account? Where the books of account are kept (with address)?
- Who writes your books of account?
- If the books of account are maintained on computer, what is the software used for the same?
- When was the first back-up of such books of account taken and where the same is kept?
- What is the Password used for writing the books of account?
- What is the cash balance as per cash book in your office/godown?
- How much cash is in hand today in this business premise?
- Is your cash in hand kept elsewhere and if so address?
- What is the stock in hand as per stock register or as per books of account?
- Please state whether any of your stock is kept at someone else's premises? If yes, please mention location, quantity and value.
- Please state whether someone else's stock is kept in your premises? If yes, please mention quantity and value.
- Please identify the stock received without bill or in transit whether inward or outward?
- Please furnish bills against which no stock is received.
- Give details of TAN. If tax has been deducted by the concern, then details of TDS payments to the Central Government
- Give details of GST No. (if applicable)?
- Please give the method of Valuation of Stock?
- Please give the detailed inventory of Closing Stock as on last day 31<sup>st</sup> March. Whether the same was also given to the Auditors for the purpose of Audit?

## ANNEXURE-III

### **Suggested Authorisation for Survey u/s 133A(2A) of Income-tax Act, 1961**

In exercise of the powers conferred by sub-section (2A) of section 133A of the Income-tax Act, 1961 (43 of 1961), I hereby authorize:

1. \*\*
- 2.
- 3.

to enter an office or a premises at ..... which is a place within the limits of the area assigned to me/which is the place occupied by Shri/Smt./Km. .... being the Responsible Person/Principal Officer of ..... (Name & TAN) in respect of whom, I exercise jurisdiction and at which place there is an office carrying on activities which are liable to TDS/TCS or a place at which a business or profession is carried on, and require any principal officer, responsible person, proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, running such office carrying on such activities or, carrying on such business or profession, as the case may be, to afford such authorized officers the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place and to furnish such information as he/she/they may require in relation to verification of T.D.S./T.C.S. in accordance with the provisions under sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII of Income-tax Act, 1961.

**2.** The Income-tax Authorities so authorised, may enter the place of office or the place of business or profession referred to in paragraph-1 above only during the hours which such office or such place is open for conduct of its activities/business/profession, as the case may be, only after sunrise and before sunset.

**3.** The Income-tax Authorities so authorised can exercise such powers as are vested in such Income-tax Authorities under the relevant provisions of section 133A of the Income-tax Act, 1961.

**4.** This authorisation shall not confer any authority to collect payment of any tax in any manner including cheque in respect of any income even if disclosed by a person in statement during action under this authorisation. However, this will not prevent the authorised person to collect payment of any outstanding tax.

Place:	*Commissioner of Income-tax (TDS)/
Date:	Addl./Jt. CIT (TDS)/
Seal:	ACIT/DCIT (TDS)/
	Income-Tax Officer (TDS)

\*Signature along with Name of the Income-tax Authority issuing authorization should be mentioned.

\*\* Name of the Income-tax Authorities authorized along with designation should be mentioned.

## ANNEXURE-IV

### **Authorisation for Survey u/s 133A (5) of Income-Tax Act, 1961.**

Whereas having regard to the nature, and scale of expenditure incurred by Shri/Smt./Km. ....\*..... in connection with.....\*\*.....I am of the opinion that it is necessary and expedient to require Shri/Smt./Km. ....\*, by whom such expenditure has been incurred and any other person who is likely to possess information as respects the expenditure incurred to furnish such information as to any matter which may be useful for, or relevance to, any proceeding under the Income-tax Act, 1961 (43 of 1961) and to have the statements of Shri/Smt./Km. ....\*..... or any other person recorded. Therefore in exercise of the powers conferred under Section 133A of the Income-tax Act, 1961, I hereby authorize:

1. \*\*\*\*
- 2.
- 3.

to exercise the power under Sub-section (5) of Section 133A of the Income-tax Act, 1961. The Income-tax Authorities so authorised, at any time after the said function, ceremony or event, require Shri/Smt./Km. ....\*..... by whom such expenditure has been incurred or any person, who in the opinion of such Income-tax Authorities so authorised, is likely to possess information as respects the expenditure incurred to furnish such information as he/she may require as to any matter which may be useful for, or relevant to, any proceeding under the Income-tax Act, 1961 and may have the statements of Shri/Smt./Km.....\*..... or any other person recorded. Any statement so recorded may thereafter be used in evidence in any proceeding under the Income-tax Act, 1961.

\*\*\*Principal Director/ Director /  
Joint./Addl. Director /  
Asstt./ Deputy Director

Place:

Date:

Seal:

\* Mention the name of the assessee

\*\* Mention the name of the function, ceremony or event

\*\*\*Signature along with Name of the Income-tax Authority issuing authorization should be mentioned.

\*\*\*\* Name of the Income-tax Authorities authorized along with designation should be mentioned.

## ANNEXURE-V

### Record of Survey Proceedings

- A. Authorization in the case of:
- B. PAN/TAN, Address & Telephone Numbers:
- C. Assessed by:
- D. Survey party consisting of following authorised officers and other officials

	Name	Full Designation
1.		
2.		
3.		
4.		

**1.** The authorization for survey under Section 133A of the Income-tax Act, 1961 in the case of (A) above to undertake survey the place mentioned at (B) above was shown and read to Mr/Ms \_\_\_\_\_ who was present at the premise at the time of commencement of survey. After the authorization was explained in local language, it was duly signed by him/her.

**2.** The above mentioned survey party offered themselves for personal search before commencing the survey which was taken/declined.

**3.** Survey of the above mentioned place was carried out by the survey party in an orderly manner without hurting the sentiments of any of the occupants of the premises. Nothing untoward happened in the course of the survey.

**4.** In the course of the survey:

A. The following were found and inventorised\*:

- i. Books of account and documents as per Annexure 'A' ( \_\_\_\_\_ Sheets)
- ii. Stock inventorised as per annexure 'B' ( \_\_\_\_\_ sheets)
- iii. Cash as per annexure 'C' ( \_\_\_\_\_ Sheets)
- iv. Any other item.

B. The following were found and impounded\*:

Books of account and documents as per Annexure 1 (Marks of identification were placed on these and the specimen of the marks and

the pages where these have been placed are shown in the inventory prepared.) (\* **Format for preparation of Inventory enclosed**)

**5.** InthecourseofthesurveytheauthorizedofficerMr./Ms. \_\_\_\_\_ recorded the statements of Mr./Ms. \_\_\_\_\_. No coercion, threat, inducement, promises or other influence was brought to bear on the above deponent. The statement was read over/explained in the local language viz \_\_\_\_\_ to the deponent who signed the statement in token of having understood its contents and of agreeing that it had been correctly recorded.

**6.** Before leaving the above mentioned place of survey the entire party again offered themselves for personal search which was taken/declined. No cash/ other valuables were removed by the survey team from the premise. The above record of survey proceedings has been read by us/explained to us in local language viz. \_\_\_\_\_ by Mr/Ms. \_\_\_\_\_ and is certified that it has been correctly recorded.

Signature of the  
Authorised officer \_\_\_\_\_

Signature of the person  
receiving the copy of the  
Record of survey  
proceedings \_\_\_\_\_

Name:  
Designation

Name:  
Position in/Relationship to 'A'

Date:  
Seal:

Date:

## ANNEXURE–VI

### Format for Preparation of Inventory During Survey

**1.** List/Inventory of books of account, documents, etc. found/impounded during survey carried out on (date of survey) \_\_\_\_\_

List/Inventory of books of account, documents, etc. found/impounded in the case of M/s \_\_\_\_\_ at (address) \_\_\_\_\_

Sl. No.	Description	Total Pages	Written Pages	Period Written for From_ to_	Pages on which Identification Marks Placed	Total Number of Items of Books of Account, Documents, etc on this Page Total up to this Page	Specimen Marks of identification Placed on Various Pages Listed Out

Signature of authorized officer  
(with name and designation)

Signature of the party  
(with name and position)

**2.** List/inventory of jewellery found during survey carried out on (date of survey) \_\_\_\_\_

List of bullion (primary gold/silver, etc.)/gold ornaments and jewellery/silver articles found in the case

of M/s \_\_\_\_\_ at (address) \_\_\_\_\_

S. No.	Description of Articles	No.	Metal	Gross wt.	Estimated net wt.	Value (in Rs)
Total (wherever applicable)						

Signature of authorized officer  
(with name and designation)

Signature of the party  
(with name and position)

**3.** Inventory of cash found during survey carried out on (date of survey) \_\_\_\_\_  
Particulars of cash found in the case  
of M/s \_\_\_\_\_ at (address) \_\_\_\_\_

S. No.	Bundle No./ Dt.	Denomination	No. of Pieces	Amount
Total				

Signature of authorized officer  
(with name and designation)

Signature of the party  
(with name and position)

**4.** List/inventory of other assets found during survey carried out on (date of survey) \_\_\_\_\_

In the case of M/s \_\_\_\_\_ at (address) \_\_\_\_\_

S.No.	Description of Articles	No.	Metal (if Applicable)	Gross wt. (if Applicable)	Estimated Net wt. (if Applicable)	Value (in Rs.)
Total (wherever applicable)						

Signature of authorized officer  
(with name and designation)

Signature of the party  
(with name and position)

**5.** Inventory of stocks found during the course of survey carried out on (date of survey) \_\_\_\_\_

In the case of M/s \_\_\_\_\_ at (address) \_\_\_\_\_  
stock was found as under:

S. No.	Description	Quantity (in Nos./wt.)	Value (in Rs)	Basis of valuation	Remarks

It is verified that the stock has been inventorized by (name of official) \_\_\_\_\_ in the presence of (name of person and his relation with the assessee) \_\_\_\_\_ and has been correctly recorded.

Signature of authorized officer:  
(with name and designation)

Signature and name of the person and his relation with party:

Signature of the party:  
(with name and position)

## ANNEXURE-VII

### Preliminary Survey Report u/s 133A(1)

(To be submitted by authorized officer within 48 hours from conclusion of survey)

1.	Name & address of the assessee	
2.	PAN/ TAN	
3.	Name, address, PAN/TAN& status of other concerns covered in the survey	
4.	Total number and address of all premises where Survey was carried out	
5.	Status of all business/professional concerns covered in survey	
6.	Date of survey, time of entry and time of Conclusion	
7.	Date of approval of survey (Granted by appropriate authority)	
8.	Name & Designation of all members of survey Team	
9.	Man issue/allegations on the basis of which survey was conducted	
10.	Significant survey findings	
	<b>(a) Cash Book</b> (i) Whether Cash Book was maintained up to date of Survey? If not, please mention the last date up to which it was maintained and mention the closing balance? (ii) Quantum of cash found, extent of discrepancy noticed with regard to the Cash Book, explanation given by the person present.	
	<b>(b) Stock Register</b> (i) Whether stock register was maintained up to date of survey? If not, please mention the last date up to which it was maintained, and mention the closing stock? (ii) Value of stock determined at the time of survey, & extent of discrepancy with stock reflected in books.	
	<b>(c) List of books of accounts/ documents seen, details of marks of identification placed thereon-</b> Books of A/c (Signed at Page No.): Signed By: Cash books: Others (specify):	
	<b>(d) Whether trading a/c from 1<sup>st</sup> April till the date of Survey was prepared? If so, Gross Profit determined</b>	
	<b>(e) Whether any other document or evidence discovered during survey which has revenue implication for current year/ earlier years. If so, details thereof?</b>	

	(f) Whether any such document/ evidence in original have been allowed to be retained by the assessee? If so, details thereof?	
	(g) Whether any additional tax is paid or assured as a result of survey?	
11	Persons present at the premises	
12.	Statements recorded on oath- a. Name of the person and relation with the Assessee b. Name of the officer who has recorded the Statement c. Any significant admission in the statement	
13.	(a) Books of accounts/documents impounded in the course of Survey (b) whether reasons were recorded for impounding Books of accounts (c) if not, reason for not impounding the books of accounts/ documents specifically recorded? and prior approval of the range head was taken? (d) Whether reasons were recorded by the Range Head for not impounding the books of accounts.	
14.	Specific follow up investigation / action proposed to be taken	
15.	Any other remarks:- a. whether any infringement of any other laws noticed during Survey. If yes, give details? b. Whether the case has potential for prosecution? If yes, mention the relevant sections?	

Name, Signature and designation of the Income-tax Authority

Column 10 of 'Significant Findings' of survey should also contain:

1. Assessee's modus operandi
2. Concealment of income
3. Incorrect claims of exemptions/deductions
4. Incorrect depreciation claims
5. TDS violation
6. List of books/documents seen, with details and places where identification marks have been placed;
7. Details of cash /stock seen, discrepancies if any noticed; reconciliation or explanation given by the person present;
8. Details of other significant transactions noticed;
9. Any other relevant matter.

## ANNEXURE–VIII

### Final Survey Report

(To be submitted by authorized officer within 2 months from conclusion of survey.)

S. No.	Description	Details
1.	Name and address of the assessee	
2.	PAN/TAN	
3.	Jurisdiction	
4.	Date of start and conclusion of survey	
5.	Authorized officers/inspectors	
6.	Brief note on modus operandi of the assessee's business detected.	
7.	Details of cash in hand as per books and found physically.	
8.	Explanation of the assessee regarding discrepancy, if any.	
9.	Details of stock in hand as per books and found physically.	
10.	Explanation of the assessee regarding discrepancy, if any.	
11.	Details of books of account/documents impounded.	
12.	Have these books/documents been examined? Have the statements recorded regarding these been gone into in detail?	
13.	If yes, are there any implications for any earlier assessment year(s)?	
14.	If yes, have the proceedings u/s 148 been taken. Please mention the date of issuance and service of notice / or the AO having jurisdiction over the case been intimated.	
15.	Are there any implications for any other assessee?	
16.	If yes, whether the concerned AO has been intimated? In case the assessee is assessed in the same jurisdiction, whether action u/s 148 initiated? Please mention briefly about the issue involved.	
17.	What are the discrepancies found/salient facts noticed during survey relating to the financial year, during which survey was carried out?	

	(a) Give a detailed note alongwith modus operandi, evidences gathered and quantification of issue-wise discrepancies noticed during survey for the current F.Y.	
	(b) Detailed note on discrepancies and quantum of concealed income/ excess expenditure detected for earlier A.Ys.	
	(c) Detailed note on discrepancies and quantum of concealed income/ excess expenditure detected for earlier A.Ys for assessees not covered under survey.	
18.	Amount of undisclosed income detected during survey	
19.	Whether centralization of all the cases with one AO is required? If yes, the reasons thereof and as to whether such proposal has been moved to the PCIT.	
20.	Did the assessee make any voluntary disclosure? Has he honoured it by depositing the due taxes?	
21.	Is the disclosure adequate to cover the discrepancies found as per sr. no. 17 above?	
22.	Whether the three points of manual selection of survey cases for compulsory scrutiny, as contained in Board's Instruction issued every year in the matter of selection of cases for compulsory scrutiny, are fulfilled in the case	
23.	Details of aspects to be examined by the AO at the time of making assessment.	
24.	Any other relevant information/detail.	

Name, Signature and designation of the Income-tax Authority

## ANNEXURE-IX

F. No. 299/1/2013-IT (Inv. III)/  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\*\*\*\*\*

ARA Centre (Ground Floor),  
E-2; Jhandewalan Extension, New Delhi-110055  
Dated, 19<sup>th</sup> May, 2017

### Office Memorandum

Sub: Uniformity in survey report format—matter regarding.

It has been observed that different regions are sending monthly survey report in different formats which is causing difficulty in compilation and processing. Further, over the years, requirement has been felt for some additional information about surveys for comparative analysis.

**2.** In view of the above the monthly survey report proforma has been modified w.e.f. April, 2017. All regions are requested **to send the report in the attached format latest by 10<sup>th</sup>** of every succeeding month by email and post/fax. The survey report of April, 2017, if already sent, may be sent afresh in the revised format for uniformity of reports of all months of the year.

**3.** This is issued with the approval of the Member (Inv.), CBDT.

Encl: Modified format of monthly survey report.

Sd/-  
(Syamal Datta)  
Director  
Investigation III, CBDT  
Tele-Fax: 011-23547587  
E-mail: syamal.datta@nic.in

All Principal Chief Commissioners of Income-tax (CCA)  
All Directors General of Income-tax (Investigation)  
The Director General of Income-tax (I&CI)

## MONTHLY SURVEY REPORT

**Principal CCIT/DGIT (Inv)/DGIT (I&CI) Region:-----Month:-----**

### Part-A: Statistical Report

Nature of Survey	Number of Survey During the Month	Number of Survey up to the Month	Undisclosed Income Detected in Survey during the Month (Rs. in Lakh)	Undisclosed Income Detected in Survey up to the Month (Rs. in Lakh)
TDS/TCS survey				
Recovery Survey				
Survey u/s 133A(5)				
Survey consequential to search & seizure u/s 132				
Other survey				

### Part-B: Qualitative Report on TDS/TCS Surveys

Sl. No.	Name of the Assessee	Date of Survey	Sector <sup>1</sup>	TDS/TCS Evasion Detected (Rs. in Lakh)	Nature of Evasion (in Brief)

### Part-C: Qualitative Report on Recovery Surveys

Sl. No.	Name of the Assessee	Date of Survey	Sector <sup>1</sup>	Assets Found (Rs. in Lakh)	Assets Attached, if any (Rs. in Lakh)	Demand Recovered Due to Survey, if any (Rs. in Lakh)

### Part-D: Qualitative Report on Surveys u/s 133A (5)

Sl. No.	Name of the Assessee	Date of Survey	Sector <sup>1</sup>	Undisclosed Income Detected (Rs. in Lakh)	Expenditure Detected (Rs. in Lakh)	Nature of Evasion in Brief

**Part-E: Qualitative Report on Surveys Consequential to  
Search & Seizure u/s 132**

S. No.	Name of the Assessee	Date of Survey	Sector <sup>1</sup>	Date of Initiation of Search	Name of Group	Undisclosed Income Detected (Rs. in Lakh)	Whether Accommodation Entry Involved	Number of shell Companies Identified, if Any

**Part-F: Qualitative Report On Other Surveys u/s 133A (1)**

Sl. No.	Name of the Assessee	Date of Survey	Sector <sup>1</sup>	Undisclosed Income Detected (Rs. in Lakh)	Whether Accommodation Entry Involved	Number of Shell Companies Identified, if any
1	Nil	Nil	Nil	Nil	Nil	Nil

<sup>1</sup>. Sectors may be mentioned out of the following:

(i) Real estate (ii) Contractors (iii) Manufacturing (iv) Gems & jewellery (v) Mining & Minerals (vi) Healthcare (vii) Education (viii) Cooperative Banks (ix) Cooperative Society (x) Trading (xi) NBFC/Chit Fund etc finance business (xii) Professionals (xiii) Government Departments (xiv) Others

**Part-G: Sectorwise Break-Up**

Sl. No.	Name of the Sector	Surveys Conducted during the Month				Surveys Conducted up to the Month			
		Number	Unaccounted Income Detected	Proceedings Initiated in Consequence of Survey, if any	Tax Paid if any, in Consequence of Survey, if any	Number	Unaccounted Income Detected	Proceedings Initiated in Consequence of Survey, if any	Tax paid, if any in Consequence of Survey, if any
1	Real Estate								
2	Contractor								
3	Manufacturing								
4	Gems & Jewellery								
5	Mining & Minerals								
6	Healthcare								
7	Education								
8	Cooperative Bank								
9	Cooperative Society								
10	Trading								
11	NBFC, Chit Fund, Financiers etc.								
12	Professional								
13	Government departments								
14	Others								

**ANNEXURE-X****Register of Surveys under Section 133A**

Ward/Circle/Unit-

<b>Sl. No.</b>	<b>Date of Survey</b>	<b>Name, PAN of Assessee and Address of Premises Surveyed</b>	<b>Result of Survey in Brief</b>	<b>Relevant Asst. Years</b>	<b>Date on which Survey Report (Preliminary and Final) Sent to the Superior Officer</b>	<b>Revenue Results and Remarks</b>
1	2	3	4	5	6	7

## **ANNEXURE–XI**

### **Instruction No: 1865**

#### **Date of Issue: 14/11/1990**

Sub-section (5) of section 133A of the Income-tax Act, 1961 empowers an Income-tax authority to make enquiries and collect information in respect of expenditure incurred by a person in connection with any function, ceremony or event. The Income-tax authority is empowered to record statements of the person concerned or other persons, who are likely to possess information with regard to the expenditure incurred, after the function, ceremony or event is over.

**1.** In the context of the above, Member(Inv.) has already emphasised the need to make more effective and frequent use of the provisions of section 133A(5). Each Director of Income-tax (Inv) has been directed to conduct 50 such surveys during the year 1990.

**2.** To enable the income-tax authorities to conduct such surveys in a more effective and meaningful manner, it is necessary to lay down certain guidelines which may be of use to the officials conducting such survey. While actual enquiry and conducting of survey would depend upon the facts and circumstances of each case and the ingenuity exhibited by the concerned income-tax official, the guidelines laid down in the succeeding paragraphs would be of assistance.

**3.** It is not possible to give an exhaustive list of functions, ceremonies and events which can be covered under section 133A(5). However, a list of some such functions, ceremonies and events is given below:

1. Marriage and other connected functions and ceremonies.
2. Inauguration of new business.
3. Inaugurations of new houses.
4. Birthday and other such functions.
5. Social parties and gatherings like New Year Eve Parties; film premiers/ functions to celebrate launching or success of a film etc.
6. Functions and ceremonies to celebrate festivals and occasions like Diwali, Holi, New Year, Christmas which, inter alia, involve expenditure on costly gifts.
7. Functions for introduction/launching of new commercial products etc.

**4.** For the purpose of identifying and selecting a case to be covered by survey under section 133A(5), intelligence may be gathered from the following sources:

- i. Printing presses primarily engaged in printing of invitation cards.
- ii. Prominent hotels and guest houses.
- iii. Prominent clubs.
- iv. Barat Ghars/Marriage halls.
- v. Caterers.
- vi. Decorators.
- vii. Tent houses and tent suppliers.
- viii. Prominent band agencies.
- ix. Musical parties, entertainment parties etc.

Intelligence from the above sources may also be gathered with regard to advance booking made, amount of advance paid, mode of payment of advance, name and address of the person who has made the booking or on whose behalf the booking has been done, nature and extent of services to be availed of. It is needless to mention that such an enquiry has to be conducted very discreetly. An attempt should be made to select such cases where substantial expenditure is likely to be incurred.

**5.** Although intelligence gathering, which would help in identifying a function, ceremony or event to be selected for survey, may precede the functions, ceremony or event, the actual survey, including recording of statements of the assessee and other witnesses, is to be conducted only after the function, ceremony or event is over. This would be in accordance with the provisions of section 133A(5). The time gap between recording of statements of various persons should, however, be kept minimum without at the same time inviting any hostilities. The statements should be matched and compared with one another with a view to detecting discrepancies and ascertaining the correct factual position.

**6.** The information, which would help in quantifying expenditure incurred on the function, ceremony or event, may be collected in respect of expenditure on the following items:

- a. Invitation cards.
- b. Sweets etc. distributed along with invitation cards.
- c. Stay of guests in hotels, guest houses, clubs, houses taken on hire, Barat-ghar/marriage halls etc.

- d. Catering and food supplied by the hotels, clubs, caterers, sweets shops etc.
- e. Illumination, decoration and furniture taken on hire.
- f. Travelling expenses including air travel, rail travel, engaging of buses, taxis etc.
- g. Hiring of bank.
- h. Engaging of musical parties, singers, stage artists, qawalis etc.
- i. Photography including video photography.
- j. Gifts and presents given to the bride, bridegroom and guests.
- k. Purchase of jewellery.
- l. Expenses in connection with travelling and stay of bride and bridegroom immediately after marriage.

**7.** In the statement of the assessee, recorded immediately after the function, ceremony or event is over, it is necessary to make him commit on the quantum of cash gifts received by him so that the amount admitted is not inflated subsequently for the purpose of explaining the expenditure.

**8.** The enquiries conducted and information collected should be followed by further investigation by collecting evidence from outside agencies who have supplied goods and services in connection with the function, ceremony or event. This will include collecting of information from the concerned printing press, sweet shop, hotel, club, barat-ghar/marriage hall, decorator, tent supplier, florist, electric shop engaged for illumination work, airlines, taxi and bus operator, photographer, jewellery shop etc. Information regarding the amount finally paid, mode of payment of the amount and the services availed of should be collected along with necessary evidence.

**9.** After the expenditure incurred on the function, ceremony or event has been quantified, the concerned assessee may be confronted with the same. Requisite enquiry with regard to source of funds for expenditure should also be made from him. A logical conclusion should be drawn with regard to the quantum of expenditure incurred by the assessee and also the source thereof.

**10.** It may also be pointed out that Surveys under section 133A(5) are to be conducted only by the Investigation Wing of the Department. If the Commissioner of Income-tax is of the opinion that powers under section 133A(5) should be exercised in respect of any particular function, ceremony or event, he may have the survey conducted through the Investigation Wing.

**11.** Before undertaking a survey under section 133A(5), the Assistant Director of Income-tax (Inv) should clearly record his opinion that it is

necessary or expedient to collect information with regard to expenditure incurred in connection with the function, ceremony or event selected for the purpose. After the completion of survey, a report about the operation and contain the following information:

- i. Name and address of the assessee.
- ii. P A No., if allotted and designation of the Assessing Officer.
- iii. Object of the survey, giving nature and date of function, ceremony or event.
- iv. Brief narration of work done and material found during survey.
- v. Details of statements recorded.
- vi. Assessment Year(s) for which the information will be relevant.
- vii. Comments.

The self-contained report should thereafter be put up to the Director of Income-tax (Inv), through the concerned Deputy Director of Income-tax (Inv). The Director of Income-tax (Inv) should then give his specific recommendation about the assessments to be taken up for scrutiny and should forward the report to the concerned Commissioner of Income-tax under intimation to the Director General of Income-tax (Inv).

**12.** Enquiries in connection with survey under section 133A(5) should be supervised by the Directors of Income-tax (Inv). These cases should be monitored by the Directors General of Income-tax (Inv).

**13.** The Directors General of Income-tax (Inv). should, in appropriate cases, issue press releases giving broad details of the results achieved without mentioning the names of the persons covered in the survey under section 133A(5). No name of any official should be mentioned in any press release.

**14.** As already directed, a quarterly report giving the number of cases covered under section 133A(5) by each Director of Income-tax (Inv). And the names of the cases along with the quantum of expenditure found to be incurred should be furnished by the Directors General of Income-tax (Inv) so as to reach the Board by the 15<sup>th</sup> of the month following the quarter.

Details of noteworthy cases should also be brought to the notice of the Board through separate reports.

## ANNEXURE-XII

F. No. 414/16/2014-IT (Inv. I)  
Government Of India  
Ministry Of Finance  
Department of Revenue  
Central Board of Direct Taxes  
\*\*\*\*\*

Room No. 269, North Block  
New Delhi, Dated 30<sup>th</sup> September, 2014

To,

All Principal Chief Commissioner of Income-tax (CCA),  
All Directors General Of Income-tax (Investigation),  
Principal Chief Commissioners of Income-tax (International Taxation)  
Director General of Income-tax (Intelligence & Criminal Investigation)  
Chief Commissioners of Income-tax (Exemption)

Sub: Detection of Substantial unaccounted cash and other valuables  
during surveys under section 133A of the Income-tax Act,  
1961-regarding.

Madam/ Sir,

Kind reference is invited to the above subject.

**2.** In this regard, I am directed to state that instances have come to the notice of the Board where despite detection of considerable unaccounted cash and other valuables during the course of survey under section 133A of the Income-tax Act, 1961 (the Act), Investigation Directorate concerned was not informed to consider appropriate action as per the provisions of section 132 of the Act.

**3.** In this context, I am directed to invite your attention to paragraph 31 of Chapter III of the Survey Manual, 2007 which reads as follows:-

“Details of cash lying at the business premises should be ascertained through the preliminary statement because in cases of considerable amount of unaccounted cash in hand, the survey can be converted into search. Conversion of a survey operation into a search operation will have implications not only of cash seizure but also covering the residential premises of partners/ directors of the business concern. If it is considered necessary to convert a survey operation into a search operation, a satisfaction note should be prepared by the jurisdictional Additional/ Joint

Commissioner, in consultation with the jurisdictional Commissioner of Income-tax, and sent to the DIT (Inv.) Concerned for issue of warrant of authorization.”

**4.** It may be noted that section 132(1)(c) of the Act states that if any person is in possession of any money, bullion, jewellery or other valuable articles of thing and such money, bullion, jewellery or other valuable articles of thing represents either wholly or partly income of property which has not been, or would not be, disclosed for the purposes of the Act, then the DGIT (Inv.) / DIT (Inv.) concerned is empowered to authorize search and seizure.

**5.** While the issue of converting a survey into search has to be decided after careful consideration of facts and circumstances of case in hand. It is necessary that whenever undisclosed cash and other valuables of amount equal to or exceeding the limit, as given below in the Table, is found during a survey, the DIT (Inv.) concerned having territorial jurisdiction over the surveyed premise may be intimated compulsorily at the earliest possible to examine the facts for taking recourse to section 132(1) of the Act.

<b>Limit for Surveys Conducted in Delhi, Mumbai, Kolkata, Chennai, Ahmadabad, Pune, Banalore &amp; Hyderabad</b>	<b>Limit for Surveys Conducted in Places other than Mentioned in Col. (1)</b>
(1)	(2)
Rs. 15 lakhs	Rs. 10 lakhs

**6.** It is clarified that, where the undisclosed cash and other valuables found during the survey below the limits, prescribed in the above table, suitability of intimating the same to DIT (Inv.) concerned may be examined by the CIT concerned on case to case basis.

**7.** This may be brought to the notice of all officers in your region for strict compliance.

**8.** This issue with the approval of Members (Inv.) and Chairman, CBDT.

Yours faithfully

Sd/-  
(Amit Mohan Mittal)  
Under Secretary (Inv. I)  
Tel: 23095464/ Fax: 23092802

## ANNEXURE–XIII

F. No. 286/98/2013-IT (Inv. II)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\*\*\*\*\*

Room No. 265A, North Block  
New Delhi, the 18<sup>th</sup> December, 2014

To,

All Principal Chief Commissioner of Income-tax  
All Chief Commissioner of Income-tax  
All Directors General Of Income-tax (Investigation),  
Director General of Income-tax (I & CI), New Delhi.

Sub: Admissions of Undisclosed Income under coercion/ pressure  
during Search/ Survey-reg.

Ref: 1. CBDT letter F. No. 286/57/2002-IT (Inv. II) dt. 03-07-2002  
2. CBDT letter F. No. 286/2/2003-IT (Inv. II) dt. 10-03-2003  
3. CBDT letter F. No. 286/98/2013-IT (Inv. II) dt. 09-01-2014

Sir/ Madam,

Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesses were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

**2.** I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during

Search/ Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

**3.** In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/ coercion shall be viewed by the Board adversely.

**4.** These guidelines may be brought to the notice of all concerned in your Region for strict compliance.

**5.** I have been further directed to request you to closely observe/oversee the actions of the officers functioning under you in this regard.

**6.** This issues with approval of the Chairperson, CBDT.

(K. Ravi Ramachandran)  
Director (Inv.)-II, CBDT

Copy to:

1. DIT (Systems)-IV with a request to upload in the official website of Income-tax Department i.e. [incometaxindia.gov.in](http://incometaxindia.gov.in).
2. The Addl. DIT (DBC) with a request to upload in the *irsofficersonline* website.

(K. Ravi Ramachandran)  
Director (Inv.)-II, CBDT

## ANNEXURE–XIV

Circular No.32 of 2016  
F. No. 299/124/2016/IT-(Inv. III)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(Investigation Division)

\*\*\*\*\*

Ground Floor, E-2, ARA Centre,  
Jhandewalan Extn., New Delhi–110 055.

Date: 01/09/2016.

Sub: Enquiry of investigation in respect of document/ evidence relating to Income Declaration Scheme (IDS), 2016 found during the course of Search u/s 132 of Survey action u/s 133A of the Income-tax Act, 1961-regarding:

The Income Declaration Scheme, 2016 (hereinafter referred to as ‘the Scheme’) came into effect on 1st June, 2016. To address doubts and concerns raised by the stakeholders, the Board has issued five sets of FAQs vide Circular Nos. 17, 24, 25, 27 & 29 of 2016. To allay apprehensions relating to the income/ asset declared under the Scheme *vis-à-vis* search and survey action by the Income-tax Department, the following clarification is issued.

**2.** It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already filed a declaration under the Scheme, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.

Sd/-

(Amit Mohan Mittal)  
Under Secretary to the Government of India  
Tel: 011-23519409  
amit.mittal83@nic.in

Copy to:-

1. PS to FM/OSD to FM/OSD to MoS (R).
2. PS to Secretary (Revenue)
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Chief Commissioners/ Director Generals of Income-tax (Inv.)-with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT(Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/Pr. DG. (NADT)/ Pr. DGIT (L&R)/ DGIT (I&CI)
6. CIT (M&TP), CBDT.
7. Web manager for posting on the departmental website.

## ANNEXURE–XV

F. No. 286/55/2015-IT (Inv. II)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\* \* \* \* \*

Room No. 254, North Block  
New Delhi, the January, 2017

To

All Directors General Of Income-tax (Investigation),

Sub: Standard Operating Procedure on complaints of high-handedness  
by Income-tax teams and dealing with CCTV cameras during Search  
& Seizure/ Survey Operations—reg

Sir/ Madam,

Search & Seizure/ Survey actions are one of the most important and potent tools to spread deterrence against tax evasion. The Board has been regularly issuing guidelines to the field authorities on smooth conduction of these actions aiming at collection of credible incriminating evidence of undisclosed income while ensuring minimal harassment to the tax payer persons covered under these actions. However, there have been instances of complaints from assesseees about physical violence by the Income-tax teams during search/ survey operations. Concerns have also been raised on the issue of switching off CCTV cameras installed at the premises covered under these operations by the search/ survey teams.

**2.** Vide Board's various instructions including (F. No. 289/10/2001-IT (Inv-II) dated 07.03.2001), it has been repeatedly emphasized that during search/survey actions, rights of the persons covered must be adhered to. In view of this, it is reiterated that the focus of search/survey actions should be the collection of credible evidence without any threat, coercion, fear, undue influence, inducement, etc. In no case, high-handedness, violence or manhandling, etc. can be taken up by the search/survey teams as a means to serve any of the intended purpose of these operations.

**3.** As regards the switching off CCTV cameras, this is to clarify that while recoding of search/ survey actions may act as a deterrent on any kind of deviation from the above norms of a smooth search/survey action, maintaining the utmost secrecy in search survey actions is the hallmark of success of any such action. Due care must be taken that data of the assessee at the premises is not tampered with in any way. Special attention is invited to the possibility of identification of some other premises connected to the assessee during search/ survey actions where,

it is extremely important that the persons in control of these newly identified premises don't come to know of any action by the department until the same is covered by the department.

**3.1.** In today's time, almost all business establishment and even many individuals, in view of the security concerns and other purposes, install CCTV cameras at their premises. Most of the contemporary CCTV cameras are rather IP-based cameras which connect directly to IP networks, and can pan, tilt & zoom, and many have one way or two-way audio capabilities. They also come with monitoring and management software that may trigger alarms and other such alerts even on remote locations or on mobile phones configured with them when certain events occur. Since it may not be possible for the search/ survey team to technically identify the type & functionalities in the cameras installed at a premises in a short and rushing span of search/ survey actions, the movements of Income-tax team may come under scanner through these CCTV cameras at a distant locations and any person can remotely delete/ tamper with the data stored in the computer/ main server of the assessee, thereby defeating the whole purpose of the collection of raw incriminating data during search/ survey actions.

**3.2.** In view of the above, on or before entering the premises covered under the search/survey action. the authorized officer of search/ survey team should identify the CCTV cameras installed there.

**3.3.** The authorized officer should ensure whether any of such CCTV cameras is/are capable of defeating the aforementioned objectives of search/ survey action. Till then, the CCTV cameras installed at the assessee's premises may be kept switched off.

**3.4.** However, once the authorized officer is satisfied that there is no perceivable threat to the aforementioned objectives of search/survey action. the CCTV cameras installed at the premises of the assessee may be allowed to function.

**4.** The above guideline may be brought to the notice of all concerned for due compliance.

Yours faithfully,

Sd/-

(Neeraj Kumar)

DCIT, OSD (Inv. II), CBDT

Copy for information to:

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. The Director of Income-tax (RSP&PR), Mayur Bhavan, New Delhi for printing in quarterly tax bulleting and for circulations as per mailing list.

Sd/-

(Neeraj Kumar)

DCIT, OSD (Inv. II), CBDT

## ANNEXURE–XVI

F. No. 299/105/2014-IT (Inv. III)/162

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\*\*\*\*\*

ARA Centre (Ground Floor), E-2  
Jhandewalan Extension, New Delhi–110055  
Dated, the 10<sup>th</sup> July, 2017

To,

All Principal Chief Commissioner of Income-tax (CCA),  
All Directors General Of Income-tax (Investigation),  
The Director General of Income-tax (I & CI)

Sub: Direction for not collecting payment of taxes etc. in any form during  
search u/s 132 or survey u/s 133A of Income-tax Act, 1961.

Sir/ Madam,

This is brought to the notice of all concerned that Hon'ble Delhi High Court has passed stricture in its judgment dated 15.05.2017 in the case of Digipro Import & Export Pvt. Ltd. vs. Union of India in W.P. (C) 3070/2017 & CM No. 13393/2017, in a case under Central Excise Act, 1944, against collection of post-dated or undated cheques purportedly given "voluntarily" by assessee as tax payable on income declared voluntarily during "visit to premise".

**1.1** The Court has particularly noted that there was no provision to do so under *Central Excise Act 1944 of Rules or any circular or notification*. It further noted that such an act of collecting payment by undated or post-dated cheques meant, inter alia, that the visiting officials had the power to assess and decide on the spot what was the evaded amount, to collect payment themselves by cheque. The Court has referred to an earlier judgment in the case of Capri Bathaid Private Limited vs. Commissioner of Trade & Taxes 2016 (155) DRJ 526 where it was held "*The tax demand crystallizes only upon an assessment. In any event, even if a dealer volunteers to deposit the disputed tax amount, he should be asked to deposit the said amount in the counter designated for that purpose. There is no question of the members of the search team collecting such payment.*"

**1.2** The Hon'ble High Court has flagged its concern on the issue to the Central Vigilance Commissioner by noting, "*The CVC is probably aware that is a pattern in several Department of the Government which are entrusted with powers*

*of collection of duties and taxes, and vested with search and seizure powers, resorting to such illegal practice of collecting cheques some time undated and some time even cash from persons and entities who may have evaded payment of taxes and duties.”*

**1.3** The CVC, in its letter dated 15.06.2017 to CBDT, has written, *“While handling several other cases relating to Income-tax Department, it has been noticed that similar situations arise in Income-tax Department also when authorized officers conducting searches/ surveys collect post-dated cheques toward future demands of as self-assessment tax/ advance tax.”*

**2.** The matter has received serious attention of the Board. Neither the Income-tax Act, 1961 nor any instruction issued by the Board authorizes any Income-tax authority to collect payment of taxes etc. in any form during search/ survey in respect of income of past period (s) “disclosed” during search/ survey or as advance tax or self assessment tax. What is emphasized (Para-55 and 56 of Survey manual and Para-3.126(7) of search & seizure Manual read with Board’s instruction vide letter nos. 286/2/2003-IT ( Inv.II) dated 10.3.2003 and 286/57/2002-IT(Inv-II) dated 3.7.2002 is collection of evidence even when assessee has admitted concealment of income.

**3.** In view of the above, it is reiterated that no Income-tax authority shall collect payment of tax, interest, penalty etc of any nature in any manner including cheques under any circumstance during search/ survey/ other investigation and they will restrict themselves only to the actions permitted under the law. If assessee wants to pay any tax against past income disclosed in statement u/s 132(4)/ 133A or advance tax on current income, search/ survey officials shall not accept such cheques and, instead, guide or advise the assessee to deposit the cheque(s) in bank.

**4.** Income-tax authorities approving search/survey shall mention following words in the authorization letter,

*“This authorization shall not confer any authority to collect payment of any tax in any manner including cheque in respect of any income even if disclosed by a person in statement during action under this authorization.”*

**5.** It will be the responsibility of the authorized officer conducting survey/search to ensure that this is followed and they will be held accountable for lapse. Any deviation in this regard shall be viewed seriously.

**6.** This may be circulated widely among all officials to the Department.

Sd/-  
(Syamal Datta)  
Director  
Investigation III, CBDT  
Tele-Fax: 011-23547587  
Email: syamal.datta@nic.in

## ANNEXURE–XVII

F. No. 299/105/2014–Dir. (Inv. III)/241

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\*\*\*\*\*

ARA Centre (Ground Floor),  
E–2, Jhandewalan Extension, New Delhi–110055  
Dated, 9<sup>th</sup> August, 2017

To,  
All Principal Chief Commissioners of Income-tax (CCA)  
All Directors General of Income-tax (Investigation)  
The Director General of Income-tax (I&CI)

Sub: Guidelines regarding conduct of survey under Section 133A of  
Income-tax Act, 1961

Sir/Madam,

**1.** The Central Board of Direct Taxes (“Board”) had issued “Survey Manual” in 2007 containing detailed guidelines on survey under Section 133A of Income-tax Act, 1961. The Directorate of Income-tax (Vigilance) has recently conducted a ‘system study’ as a measure of preventive vigilance in pursuance of frequent receipt of complaints with regard to conduct of survey. The findings of the ‘system study’ indicate that the legal provisions contained in the statute and guidelines relating to survey under Section 133A issued by the Board are not being followed properly by the field formations. The Chairman, CBDT, has directed that proper guidelines based on the findings of the study should be issued.

**2.** Survey is an intrusive action and hence it is required to be exercised strictly in accordance with the provisions of the I.T. Act, 1961 and guidelines issued by the Board. In view of the above, the following issues are highlighted reiterating the guidelines already issued in this regard by the Board:

- i. Para–22 of Survey Manual, 2007 states, “*The Officer proposing to conduct a survey should record the reasons for conducting the survey in a ‘Preparatory Note’ and obtain the approval of jurisdictional Joint/ Additional Commissioner of Income-tax*”. No approval shall be given

by Joint/Additional Directors or Joint/Additional Commissioners of Income-tax without 'Preparatory Note' in any case and no survey shall be conducted without approval of Joint/Additional Directors or Joint/Additional Commissioners of Income-tax as stipulated in Proviso below Section 133A.

- ii. Para-63 of Survey Manual, 2007 states, *"After completion of survey, the first work is of sending the survey report. The format of survey report is at Annexure-F. Where the survey is conducted by the officers working in the charge of Commissioner of Income-tax, it must be ensured that the copies of the survey report are sent to the Commissioner of Income-tax/ Director of Income-tax (Inv) and the Range Addl./Joint Commissioner of Income-tax. Where the survey is conducted by the Directorates of Income-tax (Inv), copies of the survey report should be forwarded by the authority conducting the survey (through the Joint/Addl. Director in-charge of the Investigation Unit) to the jurisdictional Commissioner and the Range Addl./Joint Commissioner under intimation to the Director of Income-tax (Investigation) within 48 hours of the conclusion of the survey."* **It is reiterated that such "Preliminary Survey Report" must be submitted in all cases invariably within the time prescribed in the Survey Manual.**
- iii. Para-65 and 66 of Survey Manual, 2007 give details of post-survey investigation procedure. Para-67 requires monthly survey report by DGsIT/CCsIT in prescribed form to be submitted to the Board. The form has been recently revised to capture wider details for carrying out a meaningful analysis. The modified form has been circulated to all Pr. CCsIT/DGsIT (Inv.)/DGIT (I&CI) vide Board's letter no.299/105/2014/Dir (Inv. III) dated 19/05/2017. The guidelines contained in the abovementioned Para-65 to 67 and Board's letter may be scrupulously followed.
- iv. It is found that in many cases the final survey reports are not prepared in time or sent by the Income-tax authorities conducting survey. As a result, the outcome of survey action is either not reported or not acted upon for assessment. To ensure that proper action is taken and outcome of survey is reported, **all Income-tax authorities, conducting survey u/s 133A, shall submit "Final Survey Report" within 60 (sixty) days of conducting the survey to the Range/ Unit head along with a copy to the jurisdictional Assessing Officer (if survey is conducted by an Income-tax Authority other than jurisdictional Assessing Officer) with the following details upon which the Range/Unit head shall examine correctness**

**and send it to the DGIT/CCIT through Principal DIT(Inv.)/ Principal CIT:**

- a. Name of the case and PAN
- b. Date of survey
- c. Amount of undisclosed income detected during survey (in Rs. lakh)
- d. Nature of concealment detected including modus operandi and evidences gathered (in brief)
- e. Whether the three points for manual selection of survey cases for compulsory scrutiny, as contained in Board's Instruction issued every year in the matter of selection of cases for compulsory scrutiny, are fulfilled in the case.

This will enable the DGIT/Pr. CCIT send qualitative report to the Board in a better manner.

- v. Para-58 of Survey Manual, 2007, provides, "*Detailed inventory should be prepared of all the books/documents and valuables found at the premises*". It has been reported that in many cases it is not done. In view of the above, it is reiterated that the above may be scrupulously followed.
- vi. The importance of collecting evidences in support of statement or findings of survey has been emphasized in, inter alia, Para-55 and 56 of Survey Manual, 2007. Para-24 of Survey Manual, 2007, states, "*The Income-tax authority authorizing or conducting a survey should be clear about the objective of the survey, i.e. the type of information proposed to be obtained .....*" Accordingly, focus of survey should be kept on gathering relevant evidences during survey and not merely obtaining disclosure without supporting evidences.
- vii. Proviso (a) to Section 133A(3)(ia) provides that reason for impounding books of accounts and other documents found in course of survey report should be recorded. Similarly, it should be reported in preliminary survey report as to which of the inventorised books of account or other documents have not been impounded and the reason for not impounding those. Such non-impounding shall be examined by the Joint / Additional Directors/Commissioners of Income-tax and, if necessary, he may direct for issuing summons u/s 131 calling for such books of accounts and other documents for impounding u/s 131(3).
- viii. Instruction for 'Compulsory manual selection of cases for scrutiny' issued by the Board contains direction to compulsorily select all "*assessments pertaining to survey u/s 133A excluding those cases where books of*

*accounts and other documents were not impounded and returned income (excluding any disclosure made during the survey) is not less than the returned income of preceding assessment year. However, where assessee retracts the disclosure made during the survey, such cases will not be covered by this exclusion.*” It has been found by the Directorate General of Income-tax (Vigilance) that in 94.2% of the sample cases of survey examined during the system study, no scrutiny proceeding was initiated on the ground that there was no impounding of books or documents. In this context, it may be noted that as per the said Instruction, exclusion of survey cases from scrutiny requires fulfillment of three conditions, namely,

- a. *“books of accounts and other documents were not impounded”*
- b. *“returned income (excluding any disclosure made during the survey) is not less than the returned income of preceding assessment year”; and*
- c. *assessee has not retracted the disclosure made during the survey.”*

Accordingly, it is emphasized that the requirement of fulfillment of all three conditions is a conjoint one and hence survey cases cannot be excluded from selection for the reason at (a) alone. **The final survey report must contain a finding as to the fulfillment of the above three points in the case.**

- ix. While handing over charge, the officers must prepare “Handing over Note” especially in respect of survey cases undertaken in the charge which should contain brief details of the surveys conducted in which scrutiny assessments including re-assessment proceedings are pending or to be initiated.

- 3. This may be circulated to all officers in your region/charge.

Yours faithfully,

Sd/-  
(Syamal Datta)  
Director  
Investigation III, CBDT  
Tele-Fax: 011-23547587  
Email: syamal.datta@nic.in

## ANNEXURE-XVIII

### ITBA-Investigation Instruction No. 4

Directorate of Income-tax (System)  
ARA Center, Ground Floor, E-2, Jhandewalan Extension,  
New Delhi-110055

F. No. System/ITBA/Instruction/Investigation/2016-17

Dated: 4<sup>th</sup> September, 2017

To

All Principal Chief Commissioners of Income-tax/CCsIT (By Name)  
All Principal Director Generals of Income-tax (Investigation), DGsIT (Inv.) (By Name)  
The Director General of Income-tax (I&CI) (By Name)  
All the Chief Commissioners of Income-tax (By Name)  
All Principal Directors of Income-tax (Investigation), DsIT (Inv.) (By Name)  
All Principal Commissioners of Income-tax, CsIT (Administrative) (By Name)  
All Principal Commissioners of Income-tax, CsIT (Admn, CO and TPS) (By Name)

Sub: Launch of Income-tax Business Application (ITBA)–Investigation  
Module Phase 3-Recording of Search and/or Survey Operations  
and creation of relevant reports-Reg.

Madam/Sir,

**1.** This is with reference to the subject mentioned above. Phase 3 of the Investigation Module has been rolled out on 01.09.2017 In this phase, facility has been provided to record all details relating to a search and/or survey operation and generate important reports from System, viz. Two Hourly Report, Preliminary Search Report and Appraisal Report. The following functionalities have been provided in this regard:

**a. Recording basic details of Search and Survey Proceedings and generation of Two Hourly Report:**

Users have been provided with facility to enter basic details relating to a search/ survey operation once the operation is initiated, i.e., after the officers strike at the premises. Here, users can enter details like group name, main persons(s) covered, number of premises covered under search/survey, etc. The users can also enter details of premises covered u/s 132/132A/133A and persons covered each premise at this stage, if they so desire. After all the basic details have been enter, a user can generate Two Hourly Report. The facility to generate Two Hourly Report has been provided to Addl./Joint DIT while DDIT/ADIT/ITO(Inv.) can

also enter basic details. An alert will be sent to all the senior authorities immediately on generation of Two Hourly Report, up to the Member (Investigation), who can view the report by logging into the System.

Upon generation of Two Hourly Report, a work item with a unique Search & Survey ID will be created for one operation covering multiple premises. This work item will be the basis for further record of Search & Survey operation, till the generation of Appraisal Report. Thus, one work item will result into creation of one Appraisal Report. **Therefore, users are advised to ensure that if different Appraisal Reports are intended to be generated later on for different groups/sub-groups belonging to the same/different trade (s), the action on which is initiated on the same day, they must create separate Two Hourly Reports and work items for each such group/sub-group.**

**b. Recording details of findings during search/ survey operation and generation of Preliminary Search Report:**

The users have been provided facility to enter details of findings at each premise covered in a search/ survey operation and generate Preliminary Search Report. These details are to be captured by the DDIT/ADIT/ITO (Investigation) conducting the entire operation. User as have been provided the facility to record the following details in this regard for each premise.

1. Assets found and seized
2. Documents (physical documents and soft data) seized/ impounded
3. Restraints u/s 132(3), if any
4. Statements recorded u/s 132(4)

The users can also enter details regarding admissions made by the assesses before generation of Preliminary Search Report. Multiple Preliminary Search Reports can be generated upon addition of new premises in an operation. Similar to Preliminary Search Report, Preliminary Survey Report can also be generated.

**c. Generation of Appraisal Report/ Survey Report:**

The users have been provided facility to record all important details of a search/ survey operation required for Appraisal Report and creation of pendency for initiating assessment proceedings, including introductory remarks, comments on documents seized, details regarding deposit of cash in PD account, deposit of valuables in strong room, estimated concealed income by each assesses for each year, etc. Once all these details have been recorded, the DDIT/ADIT/ITO (Inv.) conducting the

search can generate draft appraisal report which can be submitted to Addl./Joint DIT(Inv.) for his comments and approval. The Appraisal Report so generated would include all the required details including details of premises and persons covered under different premises, admissions of undisclosed income, estimation of undisclosed income for persons covered u/s 132/ 132A /133A and other persons, persons in whose case actions u/s 153A, 153C, 147 and 143(3) are to be taken, etc. The appraisal report can be finally approved by the PDIT (Inv.) or the DGIT (Inv.), depending upon the decision of the PDIT(Inv.) Once the appraisal report has been approved, the DDITY/ADIT/ITO(Inv.) conducting the search can send the report online to the concerned assessing officers and his seniors. Pendency will be created automatically for initiation of assessment proceedings under the relevant sections for the relevant assessing officers upon approval of the appraisal report once Assessment Module is fully operational, users have also been provided with facility to generate Supplementary Appraisal Report wherever required. Similar to the Appraisal report, functionality to generate Survey Report has been provided to both the Investigation Wing officers and the Assessment officers.

**For detailed procedure of the above functionalities, the users are advised to go through the User Manual and FAQs available on the ITBA Portal.**

## **2. Abatement of assessment proceeding under the second proviso to section 153A of the I.T. Act, 1961:**

An important part of the entire process is abatement of assessment proceeding under the second proviso to section 153A of the I.T. Act, 1961. The pending assessment proceeding for the persons covered u/s 132/132A of the I.T. Act, shall be automatically abated in System (Once Assessment Module is fully operational) upon (i) generation of Two Hourly Report and (ii) Preliminary Search Report(s) as and when details of new persons covered u/s 132/132A are added. And alert will be sent to the relevant users for this purpose. So, users are advised to be very careful while entering details about persons covered under section 132/132A of the I.T. Act.

**3.** The investigation Module under ITBA can be accessed by entering the following URL in the browser: <http://itba.incometax.gov.in>

**The Path for investigation Module is: ITBA Portal→Login→Modules→Investigation**

**4.** Relevant users will need their individual name based department email IDs and RSA tokens. The username and passwords will be communicated on their respective email ID. The log in to the system will be through the

username and password (sent on individual email ID) along with the RSA token over the Taxnet nodes. Users are advised to contact their respective RCC Admin for name based department email ID.

**5.** Users on windows XP system are advised to download the Chrome (version 43) of Firefox (version 36) browser (If unavailable) from **ITBA Portal**→**Download Pre-Requisites** to access the new ITBA application.

**6.** Training material including User Manual, Help Content and Frequently Asked Questions (FAQs) are available on the investigation Module Home Page and On **ITBA Portal-Online Training on ITBA**. Users can refer these for any issue/clarification.

**7.** Users are advised to contact helpdesk in case of any issues in respect of the ITBA.

- a. URL of helpdesk–<http://itbahelpdesk.incometax.net>
- b. Help desk number–0120-2811200
- c. Email ID–helpdesk messaging@incometax.gov.in
- d. Help desk Timings–8.30 A.M.-7.30 P.M. (Monday to Friday)

Yours faithfully,  
(Ramesh Krishnamurthi)  
Addl. DGIT(S)-III, New Delhi

Copy to:

1. The P.P.S to the Chairman, Member (L&C), Member (Inv.), Member (IT), Member (Rev.), Member (A&J) & Members (P&V), CBDT for information.
2. The P.S. to Pr. DGIT(S) for information.
3. The CIT (Investigation), CBDT
4. The Web Manager for [www.irsofficersonline.gov.in](http://www.irsofficersonline.gov.in) website
5. ITBA Portal

(Ramesh Krishnamurthi)  
Addl. DGIT (S)-III, New Delhi

## ANNEXURE–XIX

### **ITBA-Investigation Instruction No. 5**

Directorate of Income-tax (System)

ARA Center, Ground Floor, E-2, Jhandewalan Extension,  
New Delhi–110055

F.No. System/ITBA/Instruction/Investigation/<...>/2017-18 Dated: 12.03.2018

To

All Principal Chief Commissioner of Income-tax/ CCsIT (By Name)

All Principal Director General of Income-tax (Investigation), DGsIT (Inv.) (By Name)

The Director General of Income-tax (I&CI) (By Name)

All the Chief Commissioners of Income-tax (By Name)

All Principal Directors of Income-tax (Investigation), DsIT (Inv.) (By Name)

All Principal Commissioners of Income-tax, CsIT (Administrative) (By Name)

All Principal Commissioners of Income-tax, CsIT (Admn, CO and TPS) (By Name)

Sub: Launch of Income-tax Business Application (ITBA)-Investigation  
Module Phase 4-Reg.

Madam/ Sir,

This is in reference to the subject mentioned above. Phase 4 of the Investigation Module has been rolled out on 12.03.2018.

**2.** The Investigation Module under ITBA can be accessed by entering the following URL in the browser:

<https://itba.incometax.gov.in>

**The path for Investigation module is: ITBA Portal-> Login-> Modules-> Investigation**

**3.** Following functionalities have been added in the fourth phase of Investigation Module:

**a. Retention and Release of Books/Documents Seized/Impounded**

- i. Facility has been provided to Investigation Officer (DDIT/ ADIT/ ITO (Inv.)) and Assessing Officer to request for extension of retention period or release of books/documents which were seized/impounded

during Search/ Survey proceedings. This facility is provided in respect of those books/ documents only which have been entered in ITBA system while recording the details of Search/ Survey proceedings. Refer ITBA-Investigation Instruction No. 4 for details.

- ii. The following is the path to navigate to this facility in ITBA.  
Investigation Module >> Menu >> Search and Survey >> Details of Seized/Impounded Books/Documents
- iii. Investigation Officer/ Assessing Officer will need to enter/ select the S&S (Search & Survey)ID/ Survey ID for initiating the request. Based on the S&S ID/ Survey ID, the premises covered under search/ survey proceedings will be listed. User will select the Premises ID and system will display the list of books/documents seized/ impounded for that premises. User will select the books/ documents which are to be released or for which extension of retention is required and initiate the proposal.
- iv. Approval by the concerned PDIT (Inv)/ PCIT through proper channel will be required in case of extension of retention period or in case of release of books/ documents to assessee **before completion of the retention period/ extended retention period**. PDIT (Inv)/ PCIT will have the provision to approve or reject the request on their own or to seek approval from DGIT(Inv.)/ CCIT as the case may be.

However, in case of release of books/ documents to assessee after the retention period is over, no approval shall be required. The books/ documents can be released by DDIT/ ADIT/ ITO (Inv.)/ Assessing Officer themselves in such cases by generating the intimation letter to assessee for release of books/ documents.

- v. For cases where approval is required, upon initiation, the work item will be created and listed in the worklist of the DDIT/ ADIT/ ITO (Inv.)/ Assessing officer who has initiated the request. User will need to enter the 'Retention granted upto' date in case of extension of retention period. User will then submit the request to PDIT (Inv)/ PCIT through Addl./ Joint DIT(Inv.)/ Range Head as the case may be.
- vi. PDIT (Inv)/ PCIT will select the decision (Approve/ Reject) in respect of the books/documents specified in the proposal. In case any of the books/ documents are marked as Rejected, PDIT (Inv)/ PCIT will need to enter the reasons for rejection. PDIT (Inv)/ PCIT will then confirm the decision and the workflow will be sent back

to the DDIT/ ADIT/ ITO (Inv.)/ Assessing Officer for generation of intimation letter to assessee and closure of workflow.

**Note:** In case PDIT (Inv.)/ PCIT have submitted the proposal for approval by DGIT (Inv.)/ CCIT, then the decision will be taken and confirmed by the DGIT (Inv.)/ CCIT. Upon confirmation, the workflow will be sent back to the DDIT/ ADIT/ ITO (Inv.)/ Assessing Officer for generation of intimation letter to assessee and closure of workflow.

**b. Transfer of Books/Documents Seized/Impounded**

- i. Facility has been provided to Investigation Officer (DDIT/ ADIT/ ITO (Inv.)/ Assessing Officer to transfer books/documents which were seized/impounded during Search/ Survey proceedings to any other concerned Assessing Officer. This facility is provided in respect of those books/ documents only which have been entered in ITBA system while recording the details of Search/ Survey proceedings. Refer ITBA-Investigation Instruction No. 4 for details.
- ii. The following is the path to navigate to this facility in ITBA.  
Investigation Module >> Menu >> Search and Survey >> Transfer of Seized/Impounded Books/Documents
- iii. DDIT/ ADIT/ ITO (Inv.)/ Assessing Officer will need to enter/ select the S&S ID/ Survey ID for initiating the request. Based on the S&S ID/ Survey ID, the premises covered under search/ survey will be listed. User will select the Premises ID and system will display the list of books/documents seized/ impounded for that premises. User will select the books/documents which are to be transferred and initiate the proposal.
- iv. In case of transfer of books/ documents to any AO (jurisdictional or non-jurisdictional) by concerned DDIT/ ADIT/ ITO (Inv.), no approval shall be required. The books/ documents can be transferred by DDIT/ ADIT/ ITO (Inv.) in such case by generating the transfer memo.
- v. Approval by the concerned PCIT through proper channel will be required in case books/documents are to be transferred to any non-jurisdictional AO by the AO (jurisdictional or non-jurisdictional) in whose possession the seized/ impounded books/ documents are currently lying. PCIT will have the provision to approve or reject the request.

If the seized/ impounded books/ documents are being transferred by any AO to the jurisdictional AO, then in such case, no approval will be required.

- vi. For cases where approval is required, upon initiation, the work item will be created and listed in the worklist of the Assessing officer who has initiated the request. User will submit the request to PCIT through Range Head.
- vii. PCIT will select the decision (Approve/ Reject) in respect of each book/ document specified in the proposal. In case any of the books/ documents are marked as Rejected, PCIT will need to enter the reasons for rejection. PCIT will then confirm the decision and the workflow will be sent back to the Assessing Officer for generation of transfer memo.
- viii. In all cases (approval or no approval), after the generation of transfer memo, work item shall be sent to destination AO for entering date of taking over of books/documents and closure of workflow.

**c. Adjustment/Release of Cash**

- i. Facility has been provided to jurisdictional Assessing Officer to initiate the release of cash seized during Search and Survey proceedings. This facility is provided in respect of such cash only which has been entered in ITBA system while recording the details of Search and Survey proceedings. Refer ITBA-Investigation Instruction No. 4 for details.
- ii. The following is the path to navigate to this facility in ITBA.  
**Investigation Module >> Menu >> Search and Survey >> Adjustment/Release of Cash**
- iii. Assessing Officer will need to enter the PAN. Details of PD accounts in which the seized cash in respect of the PAN is lying will be displayed. AO will need to select the entry of deposit corresponding to the PAN for initiating the request of adjustment/release of cash. AO will enter other relevant details and click on Initiate.
- iv. On click of initiate, pendency will be created in the worklist of AO.
  - a. **If appraisal report has not been prepared in respect of the selected case**, work item will be sent from AO to relevant DDIT/ ADIT/ ITO (Inv.) based on the S&S ID. DDIT/ ADIT/ ITO (Inv.) will submit the work item along with their comments to PDIT (Inv.) through Addl. DIT/ JDIT (Inv.). The PDIT (Inv.) will provide the comments and will send the work item to the concerned PCIT for further action.

- b. **If appraisal report has already been prepared in respect of the selected case**, work item will be submitted by AO to the concerned PCIT through Range Head.
- v. Approval of the concerned PCIT through proper channel will be required. PCIT will have the provision to enter the amount approved for release/ adjustment and generate the letter. PCIT may enter '0' and generate letter, in case no amount to be released/ adjusted.
- vi. The work item will then be forwarded to the AO for entering date of release, generation of intimation letter to assessee and closure of workflow. Entry for release/ adjustment will be updated in the relevant PD Account.

**d. Adjustment/Release of Assets (Other than Cash)**

- i. Facility has been provided to jurisdictional Assessing Officer to initiate the release of assets seized during Search and Survey proceedings. This facility is provided in respect of those assets only which have been entered in ITBA system while recording the details of Search and Survey proceedings. Refer ITBA-Investigation Instruction No. 4 for details.

- ii. The following is the path to navigate to this facility in ITBA.

**Investigation Module >> Menu >> Search and Survey >> Adjustment/Release of Assets (Other than Cash)**

- iii. Assessing Officer will need to enter the PAN. Details of strong room in which the seized assets in respect of the PAN are lying will be displayed. AO will need to select the entry of deposit corresponding to the PAN for initiating the request of adjustment/release. AO will enter other relevant details and click on Initiate.
- iv. On click of initiate, pendency will be created in the worklist of AO.
  - a. **If appraisal report has not been prepared in respect of the selected case**, work item will be sent from AO to relevant DDIT/ ADIT/ ITO (Inv.) based on the S&S ID. DDIT/ ADIT/ ITO (Inv.) will submit the work item along with their comments to PDIT (Inv.) through Addl. DIT/ JDIT (Inv.). The PDIT (Inv.) will provide the comments and will send the work item to the concerned PCIT for further action.
  - b. **If appraisal report has already been prepared in respect of the selected case**, work item will be submitted by AO to the concerned PCIT through Range Head.

- v. Approval by the concerned PCIT through proper channel will be required. PCIT will have the provision to enter the amount approved for release/ adjustment for each asset and generate the letter. PCIT may enter '0' and generate letter, in case no amount to be released/ adjusted.
- vi. The work item will be then forwarded to the AO. AO will have provision to send the work item to Custodian of strong room if the assets are lying in the strong room.
- vii. Once the assets are released/ adjusted by the custodian, workflow will be forwarded to Assessing Officer.
- viii. In case assets are already lying with the AO/ upon receipt of workflow from custodian, AO will enter date of release/ adjustment, generate intimation letter to assessee and close the workflow. Entry for adjustment/ release of the assets will be updated in the relevant strong room.

**e. Centralization of Cases**

- i. Facility has been provided to DDIT/ ADIT/ ITO (Inv.) to request for centralization of cases relating to any Search/ Survey proceedings. This facility is provided in respect of cases relating to those Search/ Survey Proceedings only which have been entered in ITBA system. Refer ITBA-Investigation Instruction No. 4 for details.
- ii. The following is the path to navigate to this facility in ITBA.

**Investigation Module >> Menu >> Search and Survey >> Initiate Centralization**

- iii. The process will facilitate the DDIT/ ADIT/ ITO (Inv.) to select PANs and proposed jurisdiction for centralization. User will initiate the request for centralization of cases, which will be reviewed by Addl. DIT/JDIT. After review, Addl. DIT/ JDIT will forward the proposal to the PDIT(Inv.). If the cases are to be centralized in multiple PCIT/CIT charges, then separate proposal should be sent for each charge.
- iv. PDIT(Inv.) will have the provision to recommend or not recommend any case and forward the proposal for approval by DGIT (Inv.).
- v. DGIT (Inv.) will have the facility to approve or reject proposal in any case. DGIT (Inv.) will also have the provision to edit/change the proposed jurisdiction for centralization of cases.
- vi. After approval, DGIT (Inv) will send the work item to the CCIT (Central)/ PCIT(Central)/ any other DGIT(Inv.) (as per the user

selected in proposed jurisdiction) for further action. CCIT (Central)/ selected DGIT(Inv.) (if selected) will forward the work item to concerned PCIT (Central) in respect of the approved centralization requests.

- vii. PCIT (Central) will send the request to PCIT (Jurisdictional) for initiating the process of PAN Transfer in order to centralize the cases with the central jurisdiction. In case PANs involved in the proposal belong to different jurisdiction, separate request for PAN transfer will be sent to each PCIT (Jurisdictional).

Once the PCIT (Jurisdictional) accepts the proposal, the PAN transfer order will need to be passed in PAN module. If PCIT (Jurisdictional) rejects the proposal, reasons recorded for rejection will be shown in the work item of PCIT (Central) in Centralization Details.

**Note:** For detailed procedure of PAN transfer, users are advised to go through the User Manual and FAQs of PAN module, available on the ITBA portal.

- viii. Once all the cases are centralized i.e. PAN transfer is done/ rejected by PCIT (Jurisdictional), PCIT (Central) will need to close the Centralization workflow.

**f. De-Centralization of Cases: For Decentralization of Cases, Users are Required to use the PAN Transfer Functionality Available in PAN Module**

For detailed procedure of the above functionalities, the users are advised to go through the User Manual and FAQs available on the ITBA portal.

**4.** Relevant users will need their individual name based department email IDs and RSA tokens. The username and passwords will be communicated on their respective email ID. The log in to the system will be through the username and password (sent on individual email ID) along with the RSA token over the Taxnet nodes. Users are advised to contact their respective RCC Admin for name based department email ID.

**5.** Training material including user manual, help content and frequently asked questions (FAQs) are available on the Investigation Module Home Page and on **ITBA Portal-> Online Training on ITBA**. Users can refer these in case of any issues.

**6.** Users are advised to contact helpdesk in case of any issues in respect of the ITBA.

- (a) URL of helpdesk- <http://itbahelpdesk.incometax.net>
- (b) Help desk number-0120-2811200
- (c) Email ID- [itba.helpdesk@incometax.gov.in](mailto:itba.helpdesk@incometax.gov.in)
- (d) Help desk Timings-8.30 A.M.-7.30 P.M. (Monday to Friday)

**7.** This is issued with the approval of Pr. DGIT (S)

Yours sincerely,

(Ramesh Krishnamurthi)  
Addl. DGIT(S)-III, New Delhi

Copy to:

1. The P.PS to Member (L&C), Member (Inv.), Member (IT), Member (Rev.), Member(A&J) & Member (Admn.), CBDT for information.
2. The P.S. to Pr. DGIT(S) for information.
3. The CIT (investigation), CBDT
4. The Web Manager, for [www.irsofficersonline.gov.in](http://www.irsofficersonline.gov.in) website
5. ITBA Portal

(Ramesh Krishnamurthi)  
Addl. DGIT(S)-III, New Delhi

## ANNEXURE-XX

F. No. 287/79/2005-IT (Inv. II)  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

\*\*\*\*\*

Room No. 265-A, North Block  
New Delhi, dated, 30<sup>th</sup> May, 2007

To,

All Chief Commissioners of Income-tax  
All Directors General of Income-tax

Sub: Revised Guidelines for sanction of Reward to officers and staff of  
the Income-tax Department-reg.

Sir/Madam,

The Board has considered the existing scheme of reward to officers and staff of the Income-tax Department and has revised the existing Guideline for grant of such rewards, which is elaborated as under.

### **1. Reward to Assessing Officers for Scrutiny Assessments u/s 143/147 of the IT Act (other than those covered under paras 2 and 3 below)**

**1.1.** Assessments u/s 143(3)/147 are made by Assessing Officers of the rank of Deputy/Assistant Commissioners of Income-tax and Income-tax Officers. In some stations, assessments are also made by the Additional/Joint Commissioners of Income-tax. Quality assessments, both on factual and legal issues, not only raise the efficiency level for effective tax administration, but also act as a deterrent for tax evasion, thereby raising the cost of such evasion. Accordingly, it is considered necessary to recognize the efforts of such Assessing Officers who, through investigative skills, hard work and dedication, make substantial additions in the course of assessment proceedings which stand the test of appeal and generate additional revenue for the Government. It has, accordingly, been decided that cases in which substantial additions in assessments u/s 143(3)/147 of the IT Act have been made, would be eligible for reward under the following conditions:

- i. The addition is based on original enquiry/investigation carried out by the Assessing Officer and is not based merely on the additions made on similar issues in earlier assessment years without any additional input/investigation.
- ii. Where additions are made on the basis of information/report/order received from any other authority, including Tax Evasion Petitions received from various sources, to qualify for reward, the additions should have been made after further enquiry/ investigation by the Assessing Officer, and not merely on the basis of the information/report/order so received.
- iii. The addition made is not in consequence of or to give effect to an order of the Supreme Court or a High Court in any other case or to give effect to any retrospective amendment of law.
- iv. The addition(s) referred to in clauses (i) and (ii) is/are sustained, whether totally or partially, in the appellate proceedings or revisionary proceedings.
- v. Tax on the additions sustained at the appellate stages and/or due to revisionary proceedings has been collected.
- vi. The additions do not result only in reduction of losses; and
- vii. The minimum tax effect of the additions referred to in clauses (i) and (ii) in a particular assessment year is as under:

<b>Sr. No.</b>	<b>City where the case has been Assessed</b>	<b>Corporate Cases (in Rs. Lakh)</b>	<b>Non-corporate Cases (in Rs. Lakh)</b>
1	Delhi and Mumbai	60	40
2	Ahmadabad, Bangalore, Chennai, Hyderabad, Kolkata and Pune	45	30
3	Other cities	30	20

**1.2.** The Assessing Unit would be eligible for reward in respect of the cases fulfilling the conditions referred to in para 1.1 above, up to 2% of the tax collected, subject to an overall limit of Rs. 50 lakhs and the ceilings prescribed in para 5.2 below. The internal distribution of reward within the Assessing Unit would be as under:

- i. Assessing Officer: 80%
- ii. ITIs: 15%
- iii. Officials below ITI: 5%

**1.3.** In situations where levels at (ii) or (iii) above have not made any contribution in the case, no reward shall be granted to them. The Additional/

Joint CIT (Range Head) shall also be eligible for reward, but only in respect of the qualifying cases in which directions u/s 144A of the IT Act have been given by him specifically on the issues referred to in para 1.1 and has also made significant contribution in the process of investigation and quality of order. In such cases, the Additional/ Joint CIT (Range Head) would be eligible for reward up to 30% while the Assessing Officer's share would be 50%.

**1.4.** The above guideline shall apply in respect of assessments made u/ s 143(3)/147 in financial year 2006-07 and subsequent years. All earlier cases will be dealt by the Reward Guidelines of 1985. However, the Committee competent to grant reward in such earlier cases would be that specified in Para 5 below.

## **2. Reward for Search and Seizure Operations/ Assessments**

**2.1.** For search and seizure cases, (a) the team processing the search and seizure operation, (b) the teams participating in the search and seizure action; and (c) the assessment unit doing the search and seizure assessment, would be eligible for reward. The basis for reward in Search and Seizure cases would be the 'Group' in respect of which the search and seizure action and survey action (carried out along with the search) is undertaken and by combining all the assessment years of that Group covered u/s 153A/153C of the IT Act, including the Assessment Year pertaining to the year in which search was carried out. The Reward proposal for the Group shall be processed and decided simultaneously for all the three teams-the processing team, the team participating in the search action, and the Assessment Unit.

**2.2.** For searches carried out on or before 31st May 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 para 5 below.

**2.3.** For searches carried out after 31st May 2003, Reward would be governed by the following conditions:

- 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.

<b>Sl. No.</b>	<b>DIT(Inv.) Conducting the Search</b>	<b>Tax Collected (in Rs. Lakh)</b>
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 up to 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 amount on which such tax is collected has achieved finality in the appellate and/or revisionary proceedings.

**2.4.** 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:

<b>Rank</b>	<b>Processing Team (%)</b>	<b>Search Teams (%)</b>
Additional/Joint CIT	40	-
DCIT/ACIT	30	40
ITO	15	25
it is	10	20
Officials below ITI	5	15

**2.5.** 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.

**2.6.** Reward to the Assessing Unit shall be distributed in accordance with the ratio and principles laid down in para 1.2 and 1.3 above. However, before granting reward to the Assessment Unit, the Committee should examine the original/special contribution made by the Assessing Officer and his team. After such examination, the Committee can consider reducing the ratio of the Assessment Unit and decide the quantum of reward accordingly. Further, the admissibility of reward to the jurisdictional Addl./Joint Commissioner of Income-tax, under whom the assessment is made, should be examined by the Committee, having regard to his special contribution made in such cases and thereafter the Committee can decide upon the percentage, otherwise earmarked for the Assessing Officer, which can be disbursed to the jurisdictional Addl./ Joint Commissioner of Income-tax, subject to a maximum of 30%.

**2.7.** 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., 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, are admitted before the Settlement Commission, the Assessment Unit would also be eligible for reward

### **3. Reward for undertaking Surveys u/s 133A of the IT Act**

**3.1.** Surveys carried out u/s 133A of the IT Act have been serving as an important instrument to detect tax evasion. It has accordingly been decided that officers and officials who have carried out surveys u/s 133A of the IT Act and who have completed the assessments of such cases would be eligible for reward as under:

- i. Minimum tax collected on the undisclosed income detected as a result of the survey in a Group of cases should be as under:
  - a. For cases of Delhi and Mumbai-Rs.100 lakhs
  - b. For Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata and Pune-Rs.75 lakhs.
  - c. Other places-Rs. 50 lakhs.
- ii. (Assessment u/s 143(3)/147 under the IT Act for the relevant assessment years should have been completed and the undisclosed income, determined at the time of survey, should have been charged to tax.
- iii. Tax on the undisclosed income detected has been paid.
- iv. The undisclosed income detected during the course of survey and assessed to tax has achieved finality in the appellate proceedings and/or revisionary proceedings.

**3.2.** The total amount eligible for reward in a group of cases would be up to 5% of the total tax collected on the undisclosed income detected and assessed as a result of the survey in the Group, subject to an overall limit of Rs. 50 lakh. The ratio of distribution of reward so sanctioned would be 40% to the team processing the survey, 30% to the survey teams and 30% to the Assessing Unit which has completed the assessments referred to in clause (ii) to para 3.1, subject to the monetary ceilings mentioned in para 5.2 below. 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 within the processing team and the survey teams would be as under:

<b>Rank</b>	<b>Processing Team (%)</b>	<b>Survey Teams (%)</b>
Additional/Joint CIT	40	-
DCIT/ACIT/ITO	30	45
ITI	20	35
Officials below ITI	10	20

**3.3.** Reward to the Assessing Unit of 30% shall be distributed in accordance with the ratio and principles laid down in para 1.2 and 1.3 above. However, before granting reward to the Assessment Unit, the Committee should examine the original/special contribution made by the Assessing Officer and his team. After such examination, the Committee can consider reducing the ratio of the Assessment Unit and decide the quantum of reward accordingly. Further, the admissibility of reward to the jurisdictional Addl./Joint Commissioner of Income-tax, under whom the assessment is made, should be examined by the Committee, having regard to his special contribution made in such cases and thereafter the Committee can decide upon the percentage, otherwise earmarked for the Assessing Officer, which can be disbursed to the jurisdictional Addl./Joint Commissioner of Income-tax, subject to a maximum of 30%.

**3.4.** For Surveys u/s 133 A carried out by the Investigation wing (other than those carried out along with the search and seizure action), the eligibility criterion and other conditions as mentioned in paras 3.1 to 3.3 above would apply.

**3.5.** Rewards in respect of cases admitted before the Settlement Commission would be granted only to the processing team and the survey teams, subject to the conditions referred to in para 3.1 and 3.2., after the order u/s 245D(4) is passed and taxes paid thereon. However, where the assessment orders, referred to in para 3.1, are admitted before the Settlement Commission, the Assessment Unit would also be eligible for reward

**3.6.** These guidelines shall apply to all surveys u/s 133A carried out on or after 1st April 2006.

## **4. Reward for best cases in Tribunal**

**4.1.** Additional/Joint CIT(DR) would be eligible for reward for outstanding representation made before the Tribunal leading to the upholding of the Department's case by the Tribunal. To be eligible for reward, the minimum tax effect of the amount upheld by the Tribunal should be as per the limits mentioned in clause (vii) of para 1.1. The amount eligible for reward would be up to 1% of the tax effect on the income upheld by the Tribunal, subject to the monetary ceiling mentioned in para 5.2 below. However, the Reward to the Departmental Representatives would be admissible only in cases where

special contribution has been made by them, which has to be certified by the CCIT sending the proposal.

**4.2.** This Guideline shall apply to all cases represented before the Tribunal on or after 1st April, 2006. For the earlier period, the Reward Guidelines, 1985 shall apply. However, the Committee competent to grant Rewards for the earlier period would be that specified in para 5 below.

## 5. Committee for Sanctioning Reward

**5.1.** It has been decided that with effect from 1st May, 2007, and subject to para 7.1 below, all cases of Reward to officers/officials shall be decided by Committees consisting of senior officers of the Income-tax Department as under, which shall receive the Reward proposals from the DGIT/CCIT concerned in the check lists as per **Annexure A to D** enclosed.

S. No	Nature of Reward Proposal	Committee Consisting of	Reward Case to be Processed in the Office of
1.	Scrutiny cases (in respect of cases mentioned in para 1), other than those assessed in Central Charges	i. Cadre Controlling Chief Commissioner (Chairman); ii. (the Director General of Income-tax (Inv.); and iii. Chief Commissioner under whose jurisdiction the case is assessed or (if the Cadre Controlling Chief Commissioner is also the jurisdictional Chief Commissioner of Income-tax) a Chief Commissioner of that Region as nominated by the Cadre Controlling Chief Commissioner. 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. In the case of disagreement, majority decision will prevail.	Jurisdictional Cadre Controlling Chief Commissioner of Income-tax.
2.	Scrutiny cases in Central Charges (in respect of cases mentioned in para 1)	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) or, in case of other Regions, a Chief Commissioner of that Region as nominated	Jurisdictional Director General of Income-tax (Investigation) or, in case of Delhi and Mumbai, the Chief Commissioner of Income-tax (Central).

		by the Cadre Controlling Chief Commissioner of Income-tax. 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. In the case of disagreement, majority decision will prevail.	
3.	Search and Seizure cases(in respect of cases mentioned in para 2)	<ul style="list-style-type: none"> <li>i. Director General of Income-tax(Investigation) (Chairman);</li> <li>ii. Cadre Controlling Chief Commissioner of Income-tax; and</li> <li>iii. In case of Delhi and Mumbai, the Chief Commissioner of Income-tax (Central) while for other cities, a Chief Commissioner of that Region as nominated by the Cadre Controlling Chief Commissioner of Income-tax. 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. In the case of disagreement, majority decision will prevail.</li> </ul>	Jurisdictional Director General of Income-tax (Investigation).
4.	Surveys carried out by Commissionerates (in respect to cases mentioned in para 3)	<ul style="list-style-type: none"> <li>i. Cadre Controlling Chief Commissioner (Chairman);</li> <li>ii. (the Director General of Income-tax (Inv.);and</li> <li>iii. Chief Commissioner under whose jurisdiction the case is assessed or a Chief Commissioner of that Regionas nominated by the Cadre Controlling Chief Commissioner (if the Cadre Controlling Chief Commissioner is also the jurisdictional Chief Commissioner of Income-tax). 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. In the case of disagreement, majority decision will prevail.</li> </ul>	Jurisdictional Cadre Controlling Chief Commissioner of Income-tax.

5.	Surveys carried out by Investigation wing (in respect of cases mentioned in para 3)	<ul style="list-style-type: none"> <li>i. Director General of Income-tax (Investigation) (Chairman);</li> <li>ii. Cadre Controlling Chief Commissioner of Income-tax; and</li> <li>iii. the Chief Commissioner of Income-tax under whose jurisdiction the case is assessed, or a Chief Commissioner of that Region as nominated by the Cadre Controlling Chief Commissioner of Income-tax (if the Cadre Controlling Chief Commissioner/DGIT (Inv.) is also the jurisdictional Chief Commissioner of Income-tax). 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. In the case of disagreement, majority decision will prevail.</li> </ul>	Jurisdictional Director General of Income-tax (Investigation) concerned.
6.	Best cases in Tribunal (in respect of cases mentioned in para 4)	<ul style="list-style-type: none"> <li>i. Cadre Controlling Chief Commissioner (Chairman);</li> <li>ii. The Director General of Income-tax (Inv.); and</li> <li>iii. Chief Commissioner under whose jurisdiction the Departmental Representative is working or a Chief Commissioner of that Region as nominated by the Cadre Controlling Chief Commissioner (if the Cadre Controlling Chief Commissioner is the supervisory authority of the Departmental Representative). 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. In the case of disagreement, majority decision will prevail.</li> </ul>	Jurisdictional Cadre Controlling Chief Commissioner of Income-tax concerned.

**5.2.** 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 ₹ 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

**5.3.** For the purposes of processing the reward proposals, 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 upto 25<sup>th</sup> of every month and put up by the 7<sup>th</sup> of the following month, for consideration of the Committee. Proposals received after 25<sup>th</sup> shall be processed in the immediately succeeding month. The Committee, shall, thereupon meet and draw up a 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.

**5.4.** The Reward so sanctioned would be exempt from Income-tax. It will be purely an ex-gratia payment and cannot be claimed as a matter of right. The reward to the officer/official shall be disbursed only on an undertaking given by the officer/official (to whom it is sanctioned) that the decision of the Committee would not be agitated or challenged before any authority or Court of law.

## 6. Stage of Grant of Reward

**6.1.** Reward to officers/officials under paras 1 to 3 of this Guideline shall be granted as under:

- 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.
- Where the assessment order is a subject matter of appeal, the reward would be sanctioned only after all appeals are finalised.
- 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.

## **7. Matters to be Decided by the Board**

**7.1.** Normally, all reward matters for officers/officials shall be decided by the Committees referred to in para 5 above. However, Committees may send proposal to Member (Inv.) for grant of reward, in respect of work done on or after 1st April, 2006, in special cases (such as TDS cases, recovery cases, intelligence gathering, orders passed by Transfer Pricing Officers, etc.) involving outstanding work done by an officer/ official in a case or a group of cases which is not covered by the above Guidelines, but deserves to be recognized by way of a monetary reward. Such proposals shall be decided by the Member (Inv.), CBDT. Further, Member (Inv.), CBDT shall have residual powers for grant of rewards.

Sd/-

(D. Srinivas)

Director, Government of India

Tele-fax: 2309 2616

Copy to:

1. Chairman, CBDT
2. All Members, CBDT
3. All Joint Secretaries/Commissioners of Income-tax in CBDT
4. All Directors/Dy. Secretaries/Under Secretaries in CBDT
5. Guard File

## ANNEXURE-A

### **Check List for Reward in Scrutiny Cases (Referred to in Para 1 of Revised Reward Guidelines): to be Submitted by the Jurisdictional CCIT/DGIT to the Reward Committee**

Designation of the jurisdictional CCIT/DGIT proposing the reward:

Designation of the Chairman of the Reward Committee to whom the proposal is submitted:

Date of submission of the proposal:

#### Details of the Reward Proposal

<b>S. No.</b>	<b>Details of Proposal</b>	<b>Remarks</b>
<b>A.</b>	<b>Details of the Case</b>	
1	Name of the case	
2	Assessment Year	
3	Status of the case (corporate/non-corporate)	
4	Section under which order is passed	
5	Returned income	
6	Assessed Income	
7	Date of order	
8	City where the case has been assessed	
<b>B.</b>	<b>Nature of Additions Made</b>	
9	Brief note on original enquiry/investigation done by the Assessing Officer and the additions made (use separate sheet)	
10	Whether additions on similar issues have been made in earlier assessment years? if so, details thereof	
11	Whether additions are based on any information/report/order received from any other person/authority? If so, details thereof.	
12	Whether additions made are in consequence of or give effect to any court order in any other case or to give effect to any retrospective amendment of law?	
13	Whether additions have resulted only in reduction of losses?	
<b>C.</b>	<b>Appellate/ Revisionary Proceedings</b>	
14	Whether revisionary proceedings are pending? If yes, date of finalization of the proceeding.	
15	Whether first appeal has been filed? (a) If not, has one year from the month of assessment order expired? (b) If yes, has the first appeal been finalized?	

16	If answer to 15(b) above is yes, has second appeal been preferred (either by Department or by the assessee)	
17	Date of order of ITAT	
18	Whether further appeal filed before High Court/Supreme Court	
19	Date of order of High Court/Supreme Court	
20	Income determined after giving effect to appeal/revision orders	
<b>D.</b>	<b>Tax Effect of Addition</b>	
21	Tax effect of the additions qualifying for reward after finalization of all appellate/revisory proceedings	
22	(a) Amount of taxes paid out of (21) above (attach audit certificate) (b) Whether 22(a) is above the amount specified in para 1.1(vii) of the Revised Guideline)	
<b>E.</b>	<b>Quantum of Reward Proposed</b>	
23	2% of the amount referred to in (22) above (restricted to Rs. 50 lakhs)	
24	Amount out of (23) above proposed for reward. Give justification if amount equals that in (23) above.	
<b>G.</b>	<b>Distribution of Reward (Refer Paras 1.2 and 1.3 of the Revised Guidelines)</b>	
25	Whether Range Head qualifies for reward under para 1.3 of the Revised Guideline? If yes, briefly mention his contribution.	
26	Whether the ITIs working under the Assessing Officer qualify for reward? If yes, briefly mention their contribution.	
27	Whether the officials (other than ITIs) working under the Assessing Officer qualify for reward? If yes, briefly mention their contribution.	
28	(In view of 24-27 above), quantum of Reward, out of (24) above, proposed* for: (a) Range Head (b) Assessing Officer(c) ITIs (d) officials other than ITIs* <b>restricted to amounts specified in para 5.2 of the Revised Guideline</b>	
<b>H.</b>	<b>Officers/ Officials Proposed for Reward</b>	
29	Name and designation of Range Head	
30	Name and Designation of the Assessing Officer	
31	Name(s) of the it is	
32	Name(s) of officials, other than it is	
<b>I.</b>	<b>Any other Remark which the CCIT/DGIT(Inv.) may Like to give</b>	

Certified that the above information is correct as per records

(Signature, Name and Designation of the  
jurisdictional CCIT/DGIT proposing the reward)

## ANNEXURE-B

### **Check List for Reward in Search and Seizure Cases (Referred to in Para 2 of Revised Reward Guidelines): to be Submitted by the Jurisdictional DGIT (Inv.) to the Reward Committee**

Designation of the jurisdictional DGIT (Inv.) proposing the reward:

Designation of the Chairman of the Reward Committee to whom the proposal is submitted:

Date of submission of the proposal:

#### Details of the Reward Proposal

<b>S. No.</b>	<b>Details of Proposal</b>	<b>Remarks</b>
<b>A.</b>	<b>Details of the Case</b>	
1	Name of the Group searched	
2	Assessment Years involved	
3	Date of search	
4	Section under which orders have been passed	
5	Date of order(s) under Section 153A/153C/143(3)	
6	DIT(Inv.) conducting the search	
<b>B.</b>	<b>Undisclosed Income Detected</b>	
7	Income assessed/re-assessed under sections 153A/153C/143(3)(use separate sheet)	
8	Amount of undisclosed income in (7) above which is relatable to the search and seizure operation	
9	Tax effect of amount referred to in (8) above	
<b>C.</b>	<b>Appellate/ Revisionary/ Settlement Commission Proceedings</b>	
10	Whether revisionary proceedings are pending? If yes, date of finalization of the proceeding.	
11	Whether first appeal has been filed? (a) If not, has one year from the month of assessment order expired? (b) If yes, has the first appeal been finalized?	
12	If answer to 11(b) is yes, has second appeal/ further appeal to Courts been preferred (either by Department or by the assessee)	
13	Date of order(s) of appeals referred to in (12) above	
14	Date of order, if any u/s 245D (4) by the Settlement Commission	
<b>D.</b>	<b>Tax Effect of Addition</b>	
14A	Tax effect of the amount referred to in (9) above sustained in appellate/ revisionary proceedings; or Tax payable determined by the Settlement Commission u/s 254D(4)	

15	(a) Amount of taxes paid out of (14A) above (attach audit certificate) (b) Whether 15(a) is above the amount specified in para 2.3(i) of the Revised Guideline?	
<b>E.</b>	<b>Quantum of Reward Proposed</b>	
16	5% of the amount referred to in (15) above (restricted to Rs. 50lakhs)	
17	Amount out of (16) above proposed for reward. Give justification if amount equals that in (16) above.	
<b>G.</b>	<b>Distribution of Reward (Refer Paras 3.2 to 3.5 of the Revised Guidelines)</b>	
18	Amount of reward proposed for the team processing the search	
19	Internal Distribution of reward proposed* for the processing team (also mention name and designation): (a) Addl./Jt. CIT:(b) DCIT/ACIT/ ITO: (c) ITIs: (d) officials other than ITIs* <b>restricted to amounts specified in para 5.2 of the Revised Guideline</b>	
19A	Amount of reward proposed for the teams conducting the search (internal distribution to be worked out by O/o Chairman of the Reward Committee after sanction of reward)	
20	Amount of reward proposed for the Assessing Unit	
21	Internal distribution of reward proposed* for the Assessing Unit (also mention name and designation): (a) Range Head (b) Assessing Officer(c) ITIs (d)officials other than ITIs* <b>restricted to amounts specified in para 5.2 of the Revised Guideline</b>	
<b>H.</b>	<b>Any other remarks which the DGIT (Inv.) may like to give:</b>	

Certified that the above information is correct as per records

(Signature, Name and Designation of the  
Jurisdictional DGIT (Inv.) recommending the reward)

## ANNEXURE–C

### **Check List for Reward in Survey Cases (Referred to in Para 3 of Revised Reward Guidelines): to be Submitted by the Jurisdictional CCIT/DGIT to the Reward Committee**

Designation of the jurisdictional CCIT/ DGIT (Inv.) proposing the reward:

Designation of the Chairman of the Reward Committee to whom the proposal is submitted:

Date of submission of the proposal:

#### Details of the Reward Proposal

<b>S. No.</b>	<b>Details of Proposal</b>	<b>Remarks</b>
<b>A.</b>	<b>Details of the Case</b>	
1	Name of the Group surveyed	
2	Assessment Years involved	
3	Date of survey	
4	Section under which orders have been passed	
5	Date of order(s)	
6	City where the main case(s) of the Group is/are assessed	
<b>B.</b>	<b>Undisclosed Income Detected</b>	
7	Income assessed/re-assessed under sections 143(3)/147 (use separate sheet)	
8	Amount of undisclosed income in (7) above which is relatable to the survey operation	
9	Tax effect of amount referred to in (8) above	
<b>C.</b>	<b>Appellate/ Revisionary/ Settlement Commission proceedings</b>	
10	Whether revisionary proceedings are pending? If yes, date of finalization of the proceeding.	
11	Whether first appeal has been filed? (a) If not, has one year from the month of assessment order expired? (b) If yes, has the first appeal been finalized?	
12	If answer to 11(b) is yes, has second appeal/further appeal to Courts been preferred (either by Department or by the assessee)	
13	Date of order(s) of appeals referred to in (12) above	
14	Date of order, if any u/s 245D(4) by the Settlement Commission	
<b>D.</b>	<b>Tax Effect of Addition</b>	
14A	Tax effect of the amount referred to in (9) above sustained in appellate/revisionary proceedings; or Tax payable determined by the Settlement Commission u/s 254D(4)	

15	(a) Amount of taxes paid out of (14A) above (attach audit certificate) (b) Whether 15(a) is above the amount specified in para 3.1(i) of the Revised Guideline?	
<b>E.</b>	<b>Quantum of Reward Proposed</b>	
16	5% of the amount referred to in (15) above (restricted to Rs. 50 lakhs)	
17	Amount out of (16) above proposed for reward. Give justification if amount equals that in (16) above.	
<b>G.</b>	<b>Distribution of reward (refer paras 2.4 to 2.7 of the Revised Guidelines)</b>	
18	Amount of reward proposed for the team processing the Survey	
19	Internal Distribution of reward proposed* for the processing team (also mention name and designation):(c) Addl./Jt. DIT(Inv.):(d) DDIT/ADIT(Inv.):(e) ITO(Inv.):(f) ITIs:(g) officials other than ITIs* <b>restricted to amounts specified in para 5.2 of the Revised Guideline</b>	
19A	Amount of reward proposed for the teams conducting the survey (Internal distribution to be worked out by DGIT (Inv.) after sanction of reward)	
20	Amount of reward proposed for the Assessing Unit	
21	Internal distribution of reward proposed* for the Assessing Unit (also mention name and designation): (a) Range Head(b) Assessing Officer (c) ITIs (d)officials other than ITIs <b>*restricted to amounts specified in para 5.2 of the Revised Guideline</b>	
<b>H.</b>	<b>Any other remarks which the CCIT/DGIT(Inv.) may like to give</b>	

Certified that the above information is correct as per records

(Signature, Name and Designation of the  
Jurisdictional CCIT/DGIT(Inv.) recommending the reward)

## ANNEXURE-D

### **Check List for Reward in Survey Cases (Referred to in Para 4 of Revised Reward Guidelines): to be Submitted by the Jurisdictional CCIT/ DGIT to the Reward Committee**

Designation of the jurisdictional CCIT proposing the reward:

Designation of the Chairman of the Reward Committee to whom the proposal is submitted:

Date of submission of the proposal:

#### Details of the Reward Proposal

<b>S. No.</b>	<b>Details of Proposal</b>	<b>Remarks</b>
1	Name of the case	
2	Assessment Year(s)	
3	Status of the case (corporate/non-corporate)	
4	Section under which assessment order was originally passed	
5	Income upheld in second appeal	
6	Break-up of income upheld by ITAT (a) Income sustained in first appeal: (b) Income deleted in first appeal:	
7	Tax effect of the Income upheld in second appeal	
8	Date of order of ITAT	
9	Special contribution made by the DR, esp. in respect of 6(b) above (use separate sheet)	
10	Name and Designation of the DR	
11	Whether taxes have been paid (Attach Audit certificate)	
12	1% of the tax effect of the amount upheld in ITAT attributable to the special efforts made by the DR	
13	Amount of reward proposed (restricted to amounts specified in para 5.2); give justification if amount equals that at (12) above	
<b>14</b>	<b>Any other remarks which the CCIT may like to give</b>	

Certified that the above information is correct as per records

(Signature, Name and Designation of the  
Jurisdictional CCIT proposing the reward)

## ANNEXURE-XXI

F. No. 292/24/2017/Dir (Inv. III)/250

Government of India / भारत सरकार

Ministry of Finance/ वित्त मंत्रालय

Department of Revenue/ राजस्व विभाग

Central Board of Direct Taxes/ केंद्रीय प्रत्यक्ष कर बोर्ड

\*\*\*\*\*

ARA Centre, Ground Floor

E-2; Jhandewalan Extension, New Delhi-110002

Dated, 14<sup>th</sup> August, 2017

### Office Memorandum

Sub: Amendment of “Revised Guidelines for sanction of reward to officers and staff of the Income-tax Department” issued vide Board’s F. No. 287/79/2005-IT (Inv. II) dated 30.5.2007

Kindly refer to the above.

**2.** In several places of the above guidelines it is mentioned that “Cadre Controlling Chief Commissioners of Income-tax” will be Chairman/Member of the Reward Committee. Reference has been received by the Board stating that the cadre controlling authority is now the Principal Chief Commissioners of Income-tax and consequently the above needs revision.

**3.** The above has been examined in the Board and accepted. Accordingly, the words, “Principal Chief Commissioners of Income-tax (Cadre Controlling Authority)” may be read in all places where the words “Cadre Controlling Chief Commissioners of Income-tax” appear in the said guidelines.

**4.** This is issued with the approval of Member (Inv), CBDT.

Sd/-

(Syamal Datta)

Director

Investigation III, CBDT

Tele-Fax: 011-23547587

E-mail: syamal.datta@nic.in

To

All Principal Chief Commissioners of Income-tax (CCA)

All Director Generals of Income-tax (Investigation)





**DIRECTORATE OF INCOME-TAX (PR, P&P)**  
(Printing & Publications Wing)

---

2nd Floor, Hans Bhawan, B.S.Z. Marg,  
New Delhi-110002

Ph.: 011-23379993, 23370668, Fax: 011-23370668