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SEARCH AND SEIZURE UNDER THE INCOME TAX ACT, 2025

Powers of Search and Seizure - Section 247 *[132 of IT Act, 1961]*

When can Search be conducted and Who can Authorise Search

A search can be authorised by a Principal Director General / Director General / Principal Director / Director / Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner. A search can be authorised by these authorities if they have reason to believe based on information in their possession that:

- ✓ any person to whom a summon u/s.131(1) or a notice u/s.142(1) under the Income Tax Act, 1961 or a summon u/s.246(1) or a notice u/s.268(1) of the Income Tax Act, 2025 has been issued to produce or cause to be produced any books of account or other documents or any information in electronic form or on a computer system has omitted or failed to produce or cause to be produced the same.

- ✓ any person to whom a summon u/s.131(1) or a notice u/s.142(1) under the Income Tax Act, 1961 or a summon u/s.246(1) or a notice u/s.268(1) of the Income Tax Act, 2025 has been issued to produce or cause to be produced any books of account or other documents or any information in electronic form or on a computer system will not or would not produce the same.

- ✓ any person is in possession of any asset or information in relation to any asset and such assets represent wholly or partly income or property which has not been or would not be disclosed for the purposes of the Income Tax Act, 1961 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 **[BMA]** or the Income Tax Act, 2025

The authorities mentioned above may authorise any Joint Director or Joint Commissioner or Assistant Director or Assistant Commissioner or Income Tax Officer to conduct the search. Such authorised Joint Director or Joint Commissioner may authorise any Assistant Director or Assistant Commissioner or Income Tax Officer to conduct the search. **The warrant of authorisation in these cases for searching a person has to be in Form No.82.** *[Form No.45 under IT Rules, 1962]*

The powers exercisable by these authorities in the course of a search are as follows:

- ➢ Enter and search any building, place, vessel, vehicle or aircraft where he has reasons to suspect that such assets, books of account or other documents, or such information in electronic form or an a computer system are kept

- Break open the lock of any door, box, locker, safe, almirah, or other receptacle or override the access code to any computer systems for exercising the power mentioned above where the keys or the access to such building, place etc or the access code to such computer system are not available

- Search any person who has got out of or is about to get in or get out or is in the place etc being searched

- Require any person in possession or control of books of account or other documents in electronic form or on a computer system to afford the necessary facility (including access code, by whatever name called) to inspect the same

- Seize any such books of account, other documents, computer systems or asset other than stock in trade found in the searched premises. This power can also be constructively exercised (constructive seizure).

- Place marks of identification on books of account or other documents found or otherwise to make extracts or copies therefrom and also from computer system

- Make an inventory or note of any such asset and stock in trade of the business found as a result of search

- To place under prohibitory order any valuable article or thing other than stock in trade or any books of account, other documents, asset, bank locker, bank account or computer system found in the possession of any person if it is not practicable to seize the same. Such prohibitory order cannot be in force for a period exceeding 60 days from the date of such order

- To examine on oath any person found in possession or control of any books of account or other documents, or asset or any information in electronic form or a computer system or having to access to such computer system or any person who is present in the premises or being searched.

It may be noted that where any building, place, vessel, vehicle or aircraft referred to above is within the area of jurisdiction of any PCCIT, CCIT, PCIT or CIT but such PCCIT, CCIT, PCIT or CIT has no jurisdiction over the persons who can be searched sub-section (2) *[First proviso to section 132(1) of IT Act, 1961]* provides that irrespective of the fact that he has no jurisdiction such PCCIT, CCIT, PCIT or CIT shall be competent to exercise the powers if he has reason to believe that any delay in getting the authorization from the PCCIT, CCIT, PCIT or CIT having jurisdiction over such person may be prejudicial to the interest of the revenue. **The warrant of authorization in these cases i.e. where the PCCIT, CCIT, PCIT or CIT has jurisdiction over the building, place, vessel, vehicle or aircraft but not the person, will be Form No.83** *[Form No.45A under IT Rules, 1962]***.**

While the search u/s.247(1) *[132(1) of IT Act, 1961]* is based on a reason to believe, a search under the provisions of section 247(3) *[132(1A) of IT Act, 1961]* can be made based on reason to suspect by the PCCIT or CCIT or PCIT or CIT. The reason to suspect should be that any books of account, other documents, or any information in electronic form or on a computer system, or asset in respect of which search is

authorized is kept in a place not mentioned in the authorization u/s.247(1) *[132(1) of IT Act, 1961]*. In such cases the PCCIT or CCIT or PCIT or CIT may, irrespective of anything contained in section 241 *[section 120 of IT Act, 1961]* (i.e. jurisdiction of income tax authority) authorize the said officer to take action and exercise the powers. **The warrant of authorization in these cases i.e where search is based on reason to suspect any other location not covered under authorization u/s.247(1) [132(1) of IT Act, 1961], will be in Form No.84** *[Form No.45B under IT Rules, 1962]*

In the case of ***Anil Jain v PDGIT (Inv) [2023] 456 ITR 274 (Mad)***, the Hon'ble Madras High Court has held that there is no provision for an officer to search an individual outside of their jurisdiction and, thus, where petitioner was an assessee on file of Deputy Commissioner, Chennai, warrant of authorization in regard to search conducted in name of petitioner by Deputy Director, Bengaluru was to be declared as illegal and contrary to law

The Hon'ble High Court after taking note of the provisions of sections 132 and 120 of the Income Tax Act, 1961 held as under:

1. *The proviso to section 132 enables the conduct of simultaneous search action in multiple locations. The proviso goes on to say that such intervention by a non-jurisdictional officer can only be upon his recording 'reasons to believe' that delay in obtaining authorization from the officer holding jurisdiction would be prejudicial to the interests of the revenue and that such reasons be reduced in writing to form part of the records. The above proviso seeks to operate notwithstanding that such non- jurisdictional officer has no jurisdiction under section 120 over the assessee concerned.*

2. *Likewise, section 132(1A) of the Act relates to a situation where the officials have received information in the course of the search proceedings in regard to additional locations not covered under the main warrant of authorization, to which the search must be extended. This sub-section also uses the phrase 'notwithstanding anything contained in Section 120' indicating that such authorization can be issued even to an officer who is not a jurisdictional officer of the assessee concerned. This sub-section also applies only qua location / place of search.*

3. *Reference was also drawn to the relevant rules, specifically Rule 112 of the Income Tax Rules, 1962 which referred to two form namely:*

    a) Form 45 being the form of warrant in regard to the person being searched

    b) Form 45A in respect of the place falling under the jurisdiction of the person issuing the warrant, though not the person.

It was categorically stated that there was no statutory Form envisaged for search of a person, not by the jurisdictional officer.

Constructive Seizure – Section 247(4)

Where it is not possible or practicable to take physical possession of any valuable article or thing other than stock in trade of the business and remove it to a safe place

(i) due to its volume, weight or other physical characteristics or
(ii) Due to its being of a dangerous nature

The authorized officer may serve an order stating not to remove, part with or otherwise deal with except with his previous permission, on the owner or the person who is in immediate possession or control thereof of the valuable article or thing. Such action of the authorized officer shall be deemed to be seizure of such valuable article or thing.

The authorised officer may where it is not practicable to seize any books of account, other documents, asset, bank locker, bank account or computer system, for reasons other than those mentioned above, serve an order stating not to remove, part with or otherwise deal with except with his previous permission, on the owner or the person who is in immediate possession or control thereof of the books of account, other documents, asset, bank locker, bank account or computer system. However, serving such an order shall not be deemed to be seizure of such books of account, other documents, asset, bank locker, bank account or computer system. Further such order shall not be in force for a period exceeding 60 days from the date of the order.

Stock in Trade

Bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search

- shall not be seized
- but the authorised officer shall make a note or inventory of such stock-in-trade of the business;
- constructive seizure also cannot be made

Who can assist in a Search? – Section 247(5) *[132(2) of IT Act, 1961]*

The authorised officer may requisition the services of the following persons to assist him in the course of search for all or any of the above mentioned purposes:

(i) Any police officer or any officer of the Central Government or of both or

(ii) Any person or entity as may be approved by the PCIT or CCIT or PDGIT or DGIT in accordance with the procedure as may be prescribed in this regard.

Examination of person on oath – Section 247(6) *[132(4) of IT Act, 1961]*

- The authorised officer may, during the course of the search or seizure, **examine on oath any person who is found to be in possession or control of any books of account or other documents or asset or any information in electronic form or on a computer system or having access to such computer system or any other person who is present in the premises or is being searched** and any statement made by such person during such examination may thereafter be used in evidence in any proceeding

- **the examination of any person** under this sub-section may be not merely in respect of any books of account or other documents or any information in electronic form or on a computer system or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the IT Act, 1961 or IT Act, 2025

- In ***CCIT v State of Bihar [2012] 205 Taxman 232 (Patna)*** it has been held that interrogation in search and seizure cases may continue for days if required, but it has to be in keeping with the basic human rights and dignity of an individual.

- In ***Ram Kotumal Issrani v Directorate of Enforcement in Criminal Writ Petition (Stamp) No.15417 of 2003 – Bom HC*** observed that recording of statement, at unearthly hours, definitely results in deprivation of a person's sleep, a basic human right of an individual and disapproved the same.

Presumptions in a Search - Section 247(7) *[132(4A) of IT Act, 1961]*

The following are the presumptions in a search proceeding:

1. That the books of account or other documents or such information or asset or compueter system belong to the person in whose possession or control they are found

2. That the contents of such books of account or other documents or such information or computer system are true

3. The handwriting is that of the person who can reasonably be assumed to have written the same

4. The signature is that of the person who can reasonably be assumed to have signed the same

5. That all stamped and executed or attested documents have been duly stamped and executed or attested by the person purported to have done the same

6. That exchange of such information in electronic form, or on such computer system purported to be exchanged between any parties is exchanged between the parties thereto

The Supreme Court in ***P.R.Metrani v CIT [2007] 287 ITR 209 (SC)*** had held that the presumptions u/s.132(4A) will not extend to a regular assessment. Subsequently Section 292C has been inserted by the Finance Act 2007 so as to clarify that presumptions provided in section 132(4A) can be made in any proceedings under this Act.

Seizure of Books of Account and Documents

- Where any assets and material are seized, the person from whose custody these have been seized may make copies or extracts of the same in the presence of the authorised officer or any other person empowered by him to be present and at such time and place as may be fixed by the authorised officer. – Section 251(2) *[132(9) of IT Act, 1961]*

- Where the authorised officer does not have jurisdiction over the person other than the person searched the assets and material seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such person within 180 days from the date on which a search is initiated u/s.247 or requisition is made u/s.248 was executed and thereupon the powers exercisable by the authorised officer shall be exercisable by such Assessing Officer. – Section 251(1) *[132(9A) of IT Act, 1961]*

- The authorised officer may retain the assets and material seized or requisitioned upto 1 month from the end of the quarter in which the order of assessment or reassessment or recomputation is made u/s.270(10) or 271 or 279 or 294(1)(c) *[143(3), 144, 147 or 158BC of IT Act, 1961]*. He may retain such assets and material seized or requisitioned beyond the period specified above after recording reasons in writing and obtaining approval from the approving authority – Section 251(3) *[132(8) of IT Act, 1961]*

- An approving authority may not allow retention of the assets and material seized beyond 30 days from the date on which all proceedings under the IT Act, 1961 or IT Act, 2025 in respect of the years for which the assets and materials seized or requisitioned are relevant, are completed.

- A person legally entitled to the assets and material seized and retained with the approval of the approving authority may make an application to the Board stating the reasons for objection to the aforementioned approval and requesting for the return of the assets and materials seized or requisitioned. The Board may after giving an opportunity of being heard, pass such order as it may deem fit

- The Hon'ble Madras High Court in the case of ***Agni Estates and Foundations (P) Ltd v DCIT [2021] 434 ITR 79 (Mad)*** dealt with the procedural timelines set by section 132(9A) which mandates the transfer of seized materials from the Investigation Officer to the Assessing Officer within 60 days post search. The Court found that there was a delay in transferring the seized materials beyond the statutory 60 days period (materials handed over on 20.08.2019 while the stipulated time period ended on 03.11.2018), this procedural lapse did not invalidate the notices issued u/s.153A. The conclusion of the Hon'ble High Court in this regard is as follows:

  32. The provisions of section 153B set out the limitation by when an order of assessment under section 15A is to be passed as being twenty-one months from the end of the month when the last of the authorizations for search under section 132 or for requisition under section 132A was executed. The period set out under section 132(9A) is a measure to enable the respective parties to adhere to the process in an orderly fashion facilitating the completion of the assessment in time. It is relevant to note that there is no time stipulated for the issuance of notice under section 153A and instances are rife when notices are issued long after the seized material is handed over to the AO. The integrity of the assessment process would thus be dependent upon the principles of natural justice being observed and proper sequence of procedure being followed. Time limits set out under section 132 (9A) are not only for the purposes of Section 132 (8) & (9) but also to facilitate reasonable time to the AO to complete the assessment where the identity of the IO and AO is different.

  33. The undisputed position in this case is that the IO and AO are not one and the same. The last of the authorisations in this case is on 4-9-2018 and the seized materials ought to have been handed over, in terms of section 132(9A) on or before 3-11-2018. Admittedly, the handing over has been only on 20-8-2019, more than nine months beyond the stipulated date. Though this constitutes a gross procedural irregularity, it does not, in my considered view, vitiate the notices issued, as assuming a situation where the handover had been within time, the notices might still have been issued only on 1-11-2019. Thus, the jurisdiction assumed cannot be faulted on this score.

- Where the authorised officer for reasons to be recorded in writing is satisfied that for the purpose of protecting the interest of revenue, may with the previous approval of PDGIT / DGIT / PDIT / DIT by an order in writing attach provisionally the property belonging to the assessee, either during the course of search or seizure or within a period of 60 days from the date of execution of the last of the authorisations for search.

- However, the said provisional attachment shall cease to have effect after the expiry of 6 months from the end of the month in which the order of provisional attachment is made, and the rules in this behalf made u/s.413 *[section 222 of IT Act, 1961]* shall *mutatis mutandis*, apply to such provisional attachment.

- The authorised officer u/s.247(9) *[132(9D) of IT Act, 1961]* may during the course of search or seizure or within a period of 60 days from the execution of the last of the authorisations for search make a reference to

  (i) A valuation officer or any person registered as a valuer u/s.514 *[section 287A of IT Act, 1961]* or

  (ii) Any person or entity registered by or under any law in force, as may be approved by the PCCIT / CCIT / PDGIT / DGIT in accordance with Rule 149 of the IT Rules, 2026 *[Rule 13 of IT Rules, 1962]*

  who shall estimate the fair market value of the property in prescribed manner and submit a report of the estimate to the authorised officer or the Assessing Officer within 60 days from the date of such reference.

- The last of the authorisation for search *[Section 261(f)]* referred above, shall be deemed to have been executed

  (a) In the case of search, the date of conclusion of search as recorded in the last panchanama drawn in relation to any person in whose case the warrant of authorisation has been issued or
  (b) In the case of requisition u/s.248 on the date of actual receipt of the books of account or other documents or computer system or assets by the requisitioning officer.

Additional Points

- It has been held in the case of ***S.R.Batliboi & Co v DIT (Inv) [2009] 315 ITR 137 (Delhi)*** that revenue is not entitled to demand an unrestricted access to and / or right to acquire electronic records present in laptops that belong to auditor of assessee and not to the assessee himself including electronic records pertaining to third parties unconnected with assessee.

- The above decision was carried before the Hon'ble Supreme Court in ***DIT(Inv) v S.R.Batliboi & Co [2010] 186 Taxman 350 (SC)*** wherein on consensus of both parties, it was held that an independent agency would be appointed to determine whether the incriminating nature of the material and documents found during the course of search which pertains to the assessee in question and accordingly take copies if necessary

- The Hon'ble Gujarat High Court in ***Maulikkumar Satishbhai Sheth v ITO in Civil Application No.20187 of 2023*** dealt with whether the ITO is entitled to use the seized materials in physical and digital form found during the course of search from the office and residence of the petitioner, which according to him would be incriminating material against any third party. The Hon'ble High Court in dealing with this issue and other consequent issues observed as under:

  (a) As per section 132 the departmental authorities are entitled to seize the materials available during the course of search and were entitled to copy

and have the digital imaging of the date contained in the computers and servers of the searched person who in the instant case is a lawyer

(b) The issue of use of materials seized during the course of search found to be incriminating against a third party, revolves around the doctrine of attorney-client privilege, in which the general rule is that communication between client and attorney cannot be disclosed unless and until it is permitted by the client to do so

(c) The departmental authorities are entitled to use such material if found incriminating so far as it refers to the searched person is concerned.

(d) Considering the provisions of section 126 of the Evidence Act, 1872 [Section 132 of Bharatiya Sakshya Adhiniyam, 2023] which deal with professional communications the Hon'ble High Court concluded that

(i) Where the petitioner is found be in possession of any documents of his clients which according to the department are incriminating prior to the employment of the petitioner in his legal capacity, then no action can be taken against such documents.

(ii) Where it is found by the department that the petitioner has come to the knowledge of fraud or illegal activity, if any, to be committed by the client during the course of his engagement, then the department can take appropriate action u/s.132(4A)

- For an electronic data seized during the course of search to be admitted as an evidence under the Indian Evidence Act, 1872 for making additions in the search assessment, the provisions of section 65B(4) of the Indian Evidence Act, 1972 *[Sections 61 & 63 of Bharatiya Sakshya Adhiniyam, 2023]* have to be complied with

- As per section 65B(4) a certificate from a person occupying responsible official position in relation to the operation of the relevant device should be obtained to admit an electronic record as an evidence.

- A certificate u/s.65B(4) is mandatory and a condition precedent for admissibility of evidence by way of electronic record and that the *non-obstante* language of Section 65B(1) makes it clear that when it comes to information contained in an electronic record, its admissibility is only possible, if all the conditions prescribed in such section are fulfilled, irrespective of whatever has been provided in Section 62 or 65 of the Evidence Act, 1972 [Sections 57 to 60 of Bharatiya Sakshya Adhiniyam, 2023, respectively].

Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal and Ors 2020 SCC Online SC 571

- It has been held by the Chennai Bench of the Hon'ble Income Tax Appellate Tribunal in ***DCIT v Johnkumar Trust TS-384-ITAT-2022 (Chny),*** Whatsapp messages are dumb document without any corroborative evidence on record and therefore no addition can be made on the basis of said documents. A similar view has been taken in the case of ***ACIT v Shanker Nebhumal Uttamchandani [2024] 161 taxmann.com 536 (Surat – Trib)***

- It has been held in ***Pooranmal v Director of Inspection (Inv) & Ors [1974] 93 ITR 505 (SC)*** that even assuming that the search and seizure were in contravention of the provisions of section 132 of the IT Act, still the material seized was liable to be used subject to law before the IT authorities against the person from whose custody it was seized and, therefore, no writ of prohibition in restraint of such use could be granted

- The Single Judge of the Madras High Court in the case of ***Vetrivel Minerals v ACIT [2021] 437 ITR 178 (Madras HC)*** after referring to the decision of the Supreme Court in ***Anwar PV*** v ***B.K. Basheer [2014] 10 SCC 473*** has set aside entire assessment order on the ground of non-compliance with provisions of section 65B of the Indian Evidence Act.

- However the Division Bench of the Hon'ble Madras High Court in ***ACIT v Vetrivel Minerals (VV Minerals) [2025] 174 taxmann.com 110 (Mad)*** has held that compliance with section 65B of Evidence Act was not mandatory in assessment proceedings for the following reasons:

    - In ***UOI v Madras Bar Association [2010] 5 taxmann.com 28 (SC)***, the SC noted the difference between courts and tribunals.

    - Courts are governed by detailed statutory procedural rules, in particular, the code of Civil Procedure and the Evidence Act requiring an elaborate procedure in decision making. Tribunals generally regulate their own procedure applying the provisions of CPC only where it is required and without being restricted by the strict rules of the Evidence Act.

    - When tribunals themselves are not bound by the technical provisions of the law of evidence, then quasi judicial authorities cannot also be bound.

    - When Statutory law does not mandate the applicability of section 65B and where SC has held that income tax authorities are not bound by the Rules of Evidence, Single Judge could not have held that section 65B is applicable.

    - Adverse materials have been seized from the electronic systems and instruments maintained by the assessee / their employees. Too much to expect them to issue certificates in favour of the department which would use the material against them.

- The Hon'ble Supreme Court in ***Addl Director General Adjudication, Directorate of Revenue Intelligence v Suresh Kumar & Co Impex Pvt Ltd & Ors 2025 INSC 1050***, it was held that documents collected from electronic devices need not always be proved by certificate in evidence. In rendering this decision the Hon'ble SC observed as follows:

  "Considering the record of proceedings duly signed by the respondents, including the various statements of the respondents recorded u/s.108 of the Customs Act, 1962 that there was due compliance of section 138C(4) of the Customs Act, 1962. When we say due compliance, the same should not mean that a particular certificate stricto senso in accordance with section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded u/s.108 of Customs Act, 1962 could be said to be due compliance of section 138C(4)"

- In ***Saravana Selvarathnam Retails Pvt Ltd & Ors v CIT(A) & Ors 2024 (2) TMI 1283 – Madras HC*** it was held that this Court is of the considered view that since the respondents had not followed the Digital Evidence Investigation Manual while collecting and preserving the evidences, as per the law laid down by the Hon'ble Apex Court in Commissioner of Customs v IOC 2004 (2) TMI 66 SC, if there is no corroborative evidence and proved in the manner known to law, the digital data collected by the Department in the course of search and seizure and thus, the said search and seizure is against the law and *ab initio* bad

  In rendering this decision the Court noted extensive procedural lapses in imaging, hashing, chain of custody, cloning and documentation set out in the Manual. Many files were corrupted or misplaced. Applying the principle that assessments must be founded on more than bare suspicion, the Court held that where the Department has not complied with the Manual, digital data may be relied upon only if supported by corroborative material and proved in the manner known to law. Mechanical extrapolation from selective data (example given of treating a single day's sale as representative) was held to be speculative and inadequate

- In ***DCIT v Balar Marketing (P) Ltd [2026] 184 taxmann.com 480 (Delhi)***, the Income Tax Appellate Tribunal has held that, although strict rules of the Evidence Act may not in terms govern income-tax assessments, the fundamental principles concerning relevancy, admissibility, probative value, and fairness do apply to quasi-judicial proceedings. Where additions are based exclusively on electronic material, the Revenue must establish the genuineness and integrity of that material. The Board's Digital Evidence Investigation Manual was treated as embodying the required procedure at least in substance. On the record produced, the Panchnama did not record the hash values or complete device particulars; the certificates obtained at the time of backup only certified the cloning process and not the later extraction and use of the alleged incriminating material; and the chain of custody was not maintained beyond the initial handover. The extracted images and chats were therefore left unsupported as reliable electronic evidence, particularly when they were themselves secondary material and were not corroborated by any independent

books, documents, or business discrepancies. On that basis, the electronic material relied upon by the Assessing Officer was held inadmissible for drawing the disputed conclusions.

Similar view was taken in ***Arti Garg v DCIT TS-37-ITAT-2026 (Del)***

Procedure to be followed by the Authorised Officer – Rules made by the Board in relation to Search or Seizure – Rule 148 of IT Rules, 2026 ***[Rule 112 of IT Rules, 1962]***

- **Authorization Forms**

  - ✓ Authorizations for searches must be issued in specific forms namely Form No.82, Form 83 or Form 84 depending upon the authority who is authorising the search.
  - ✓ Every authorisation has to be in writing, under the signature of the officer issuing the authorisation and shall bear his seal.

- **Entry and Search**

  - ✓ Tax officers are permitted to enter any building, place, vessel, vehicle, or aircraft
  - ✓ Authorization must be presented upon demand, and reasonable facilities for the search must be provided.

- **Forced Entry**

  - ✓ If entry is denied in building or place, the authorized officer can forcibly enter by breaking any outer doors or inner door or windows if necessary, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance

- **Special Considerations for Privacy**

  - ✓ If a private space is occupied by a woman who, according to custom, does not appear in public, officers must notify her to withdraw and afford her every reasonable facility for withdrawing before forcibly entering.

- **Vessel, Vehicle, Aircraft Search Specifics**

  - ✓ For moving or inaccessible vessels, vehicles, or aircraft, officers may stop them or compel them to land for the search. The same privacy considerations apply as with buildings.

- **Inspection and Opening of Containers**

  - ✓ Authorised officer may require the owner, or the person who has the immediate possession, or control, of any box, locker, safe, almirah or any other receptacle or access code to such computer system situate in such building, place, vessel, vehicle or aircraft, to open the same and

allow access to inspect or examine its contents or any information stored therein.

- ✓ can force them open if keys or access code are unavailable or compliance is refused.

- **Control Over Valuables and Documents**

  - ✓ For items that cannot be physically seized (like documents or high-value items), officers may issue a restriction order preventing their transfer or disposal without permission.

- **Personal Search Protocol**

  - ✓ Personal searches must be conducted with respect, and in the case of women, searches must be performed by another woman.

- **Witness Involvement**

  - ✓ Searches must be witnessed by two or more inhabitants of the locality. These witnesses must sign off on the inventory list of seized items and the statement made u/s.247(6) by any person, but are not required to testify about the search in legal proceedings unless summoned.

- **Search Documentation**

  - ✓ A comprehensive list of all assets seized and material seized and their locations must be prepared, and signed by the witnesses. Copies of this list are given to the person in charge of the searched premises and sent to relevant tax authorities.

- **Seizure and Custody of Items**

  - ✓ Packaging of Seized Items: All assets seized and material seized except money and books of account or documents which are in physical form, during a search must be placed in one or more packages.

  - ✓ Documentation and Identification:

    (i) Each package must be accurately listed with detailed descriptions of the contents.

    (ii) Every package is to be marked with an identification mark.

    (iii) The package must be bear the seal of the authorized Officer

- ✓ Involvement of the Occupant:

  The occupant of the premises, or the person in charge of the vessel, vehicle, or aircraft that was searched, or their representative, is allowed to place their own seal or signature on the packages, adding an additional layer of security and accountability.

- ✓ Record Keeping:

  (i) A copy of the list detailing the contents of each sealed package is to be given to the occupant of the premises or the person from whose charge the items were seized.

  (ii) Another copy of this list must be sent to the Office of any income tax authority not below the rank of the ITO (referred to as custodian)

- ➢ **Custodian Duties**

  (i) The custodian is responsible for the safekeeping of seized items.

  (ii) The Custodian may deposit for safe custody of all or any of the packages in the strong room maintained by the Officer of the DGIT or where strong room facility is not available, in safe deposit lockers hired by DGIT / PDIT / DIT / CCIT / PCIT / CIT in SBI or any of its subsidiaries or any other nationalised bank

  (iii) The strong room shall be operated jointly by 2 officers nominated by the DGIT

  (iv) Where money is deposited with the custodian, he may credit or remit the money with the nearest branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any authorised bank in the PD account of the DGIT / PDIT / DIT / CCIT / PCIT / CIT in the branch of RBI or SBI or of its subsidiaries or any authorised bank at the place where the office of such authority is situate.

- ➢ **Opening Sealed Packages**

  - ✓ **Requisition of Sealed Packages**

    If there is a need to open a sealed package for any reason related to the purposes of the Income Tax Act, the authorized officer (who is not the Custodian of the seized items) must formally request the package from the Custodian.

  - ✓ **Delivery of Packages**

    Upon receiving the request, the Custodian must deliver the specified package or packages to the authorized officer.

- ✓ **Opening of Packages**

  (i) The authorized officer can break the seals of the package.

  (ii) The package must be opened in the presence of two reputable witnesses.

  (iii) The person from whom the contents were seized must be given reasonable notice to be present during the opening.

- ✓ **Repackaging and Custody**

  (i) After opening, any or all contents of the original package must be transferred to a new package or packages.

  (ii) The new packages must be sealed according to the specified methods in sub-rule (17) or (18)

  (iii) The person from whose custody the items were seized may be present throughout this process until resealing is complete.

  (iv) The resealed packages are either delivered back to the person or returned to the Custodian, as appropriate.

Application of Seized or Requisitioned Assets – Section 250 *[Section 132B of IT Act, 1961]*

Section 250 provides for application of seized or requisitioned assets. Under this section, the same may be dealt with in the following manner.

1. **Use of Assets:** Assets seized u/s.247 *[132 of IT Act, 1961]* or requisitioned u/s.248 *[132A of IT Act, 1961]* can be used to settle existing tax liabilities including interest payable and penalties determined under several acts (like IT Act, 1961, BMA etc.). This covers taxes assessed upto the tax year in which the search is initiated or requisition was made as also the amount of liability arising on an application made before the IBS

2. **Release of Assets**: If the person from whom assets were seized requests their release and explains their origin satisfactorily within 30 days from the end of the month in which the asset was seized, these assets may be used to recover any existing liability, and remaining portion may be released after obtaining prior approval of PCCIT / CCIT / PCIT / CIT. This release should happen within 120 days from the execution of the last authorization for search or requisition.

3. **Application of Money**: If the seized assets include money, it can be used directly to pay off the taxes and liabilities. If there are assets other than money, they may be sold (considered as if seized directly by tax authorities), and the proceeds used to settle the debts. The TRO is empowered to sell the assets in the manner laid as may be prescribed.

4. **Other Recovery Modes:** The section also clarifies that these measures do not restrict the recovery of debts by any other mode laid down in the Act.

5. **Returning Excess Assets:** After all liabilities are settled, any remaining assets or money should be forthwith returned to the persons from whom they were seized.

6. **Interest Payment:** The Government must pay interest (at a rate of 0.5% per month or part thereof) on the amount by which the seized money and proceeds from sold assets exceed the tax liabilities, starting from 120 days after the last search authorization u/s.247 or requisition u/s.248 to the day the assessment or reassessment or recomputation is completed.

Reference shall be drawn to the following decisions where it has been held as to when the retention by Department can be held to be without jurisdiction:

- ✓ ***Shreemati Devi v CIT [2016] 97 CCH 0049 AllHC***
- ✓ ***Rajiv Rai v ACIT [2016] 97 CCH 0051 ChenHC***

Reference is also drawn to the decision of the Delhi High Court in ***Sushila Devi v CIT [2016] 97 CCH 0032 DelHC*** where the refusal of revenue to release jewellery was held to constitute deprivation of property without lawful authority and contrary to Article 300-A of Constitution of India

Rights and Duties of Persons Searched

Rights of the person searched

- ❖ To see the warrant of authorisation duly signed and sealed by the issuing authority

- ❖ To verify the identity of each member of the search party

- ❖ To make personal search of all members of the search party before the start of the search and on conclusion of the search

- ❖ To insist on personal search of ladies being taken only by a lady, with strict regard to decency

- ❖ To have at least two respectable and independent residents of the locality as witnesses

- ❖ A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.

- ❖ To call a medical practitioner in case of emergency

- ❖ To allow the children to go to school, after checking their bags

- ❖ To have the facility to having meals, etc., at the normal time

- To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals

- To ensure that the facts stated by him have been so recorded correctly, as per section 247(6) *[132(4) of IT Act, 1961]*

- To have a copy of the panchanama together with all the annexures

- To have a copy of any statement recorded from him or from any other person that are used against him by the Department

- To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.

- To see the warrant of authorisation and put signature on the same

Duties of the person searched

- To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorised officer

- To identify and explain the ownership of the assets, books of account and documents found in the premises

- To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable u/s.416 of the Indian Penal Code *[Section 319 of Bharatiya Nyaya Sanhita, 2023].*

- Not to remove any article from its place without notice or knowledge of the authorised officer. If he secrets or destroys any document with the intention of preventing the same from being produced or used as evidence before the Court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code *[Section 241 of Bharatiya Nyaya Sanhita, 2023]*

- To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt, while his statement is being recorded by the authorised officer. In doing so, he should keep in mind that

    (i) If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, u/s.179 of the Indian Penal Code *[Section 214 of Bharatiya Nyaya Sanhita, 2023]*

    (ii) Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or

fine or both u/s.181 of the Indian Penal Code *[Section 216 of Bharatiya Nyaya Sanhita, 2023]*.

(iii) Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished u/s.191 of the Indian Penal Code *[Section 227 of Bharatiya Nyaya Sanhita, 2023]*

- To affix his signature on the recorded statement, inventories and the panchnama

- To ensure that peace is maintained throughout the duration of the search, and to co-operate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner

- Similar co-operation should be extended even after the search action is over, so as to enable the authorised officer to complete necessary follow-up investigation at the earliest

Post Search Investigation

Post-search investigation will be undertaken by the authorised officer before he finalises his report on the search. This report becomes the basis for further action to be taken by the Assessing Officer.

The statements made may have to be carefully analysed and retraction where justified has to be made at the earliest opportunity by writing to the search officers, the Assessing Officer and the Commissioner, who has authorised the search. Allegation of compulsion or any explanation for the statement at too late a stage may not carry conviction.

At the same time where admission is corroborated or is otherwise proved, allegation of compulsion or coercion could hardly serve any purpose. There is usually indiscriminate seizure of all materials, letters, papers, etc. Every document found would require explanation as it is usually examined with a high degree of suspicion that it may relate to unrecorded transactions.

Data may have to be classified and reconciled with extreme care. Even where concealment is found, such reconciliation will help to reduce liability to a large extent, because on any lack of correlation, the tax department is likely to make an estimate of the income where the precise concealment cannot be quantified. Preparation of a cash flow statement would be of great help.

BLOCK ASSESSMENT UNDER THE INCOME TAX ACT, 2025

Searches and requisitions of the Income Tax Department are important means of unearthing black money. Chapter XVI-B dealing with "Special Procedure for Assessment of Search Cases" is largely self-contained. The undisclosed income is to be computed with reference to the block period and on the basis of evidence found as a result of search or requisition and such other materials or information as are available with the Assessing Officer.

Block Period Defined

The term "Block Period" is defined in section 301(a) *[Section 158B(a) of IT Act, 1961]* to mean the aggregate of the period comprising 6 tax years preceding the tax year in which the **search was initiated u/s.247** or any requisition was made u/s.248 *[Sections 132 & 132A of IT Act, 1961]* and the period from the 1st April of the tax year in which the search was initiated or requisition was made upto the date of execution of the last of the authorisations for such search or requisition.

The definition of "Block Period" *under the old law of the IT Act, 1961* was based on the year in which the **search was conducted** and the end period was only upto the date of commencement of the search or requisition whereas under the new block assessment of the IT Act, 1961 and IT Act, 2025, the block period is based on the year in which the **search is initiated** and it also ends on the date on which the last of the authorisations for such search or requisition is executed and not on the date of commencement of search or requisition as it was under the old law.

This definition under the IT Act, 2025 indicates that the block period should be a period of six tax years plus the broken period of the tax year in which the search was initiated or as the case may be, the requisition was made upto the date of execution of the last of the authorisations for such search or requisition.

The Bangalore Bench of the Tribunal in ***Microland Ltd. v ACIT (1998) 67 ITD 446 (Bang)(AT)*** has held that where in any case the assessee has come into existence only within a period of 10 years the block period should be construed to contain as many previous years as possible but not exceeding 10. Of course it will also include a part of the year, in the previous year of search or requisition. This decision was rendered under the old law prior to the amendment of the definition of the term block period by the Finance Act, 2001 in respect of searches or requisitions initiated before 01.06.2001, where the block period consisted of ten previous years instead of the six previous years.

For example, a search commences on the 18th of March, 2025 and the last of the authorization is executed on the 24th of April, 2025, had the old law under the IT Act, 1961 been in place and assuming that the block period was 6 assessment years, then the block period would comprise of assessment years 2019-20 to 2024-25 plus the broken period from 01.04.2024 to 18.03.2025. However under the new law of the IT Act, 1961 the block period would comprise of 6 assessment years i.e. from assessment year 2019-20 to 2024-25 plus the full financial year 2024-25 and also a part of financial year 2025-26 i.e. from 01.04.2025 to 24.04.2025.

In the above example, under the IT Act, 2025 where a search commences on the 18th of March 2027 and the last of the authorization is executed on the 24th of April, 2027 the block period would comprise of 6 tax years i.e. from tax year 2020-21 to 2025-26 plus the full tax year 2026-27 and also part of tax year 2027-28 i.e. from 01.04.2027 to 24.04.2027

Section 301(d) *[Explanation below section 158B of IT Act, 1961]* states that the last of the authorisations shall be deemed to have been executed –

(a) In the case of search, on the conclusion of search as recorded in the last panchanama drawn in relation to any person in whose case the warrant of authorization has been issued **irrespective of whether or not any seizure is recorded in such panchanama**

(b) In the case of requisition on the actual receipt of books of account or other documents or asset by the Authorised Officer.

Undisclosed Income Defined

The term undisclosed income is defined in section 301(e) *[section 158B(b) of IT Act, 1961]* inclusively and includes any money, bullion, jewellery, virtual digital asset or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, **where such money, bullion, jewellery, virtual digital asset, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, exemption, deduction or allowance claimed under this Act which is found to be incorrect in respect of the block period.** As the definition is not exhaustive but is merely inclusive any income or expenditure that is not disclosed would fall within the scope of undisclosed income. A close look at the definition would show that an income would not be taken as undisclosed if it has been either disclosed or if it would have been disclosed.

The meaning of the term “has not been or would not have been disclosed” is explained in ***Sou Vidya Madanlal Malani v ACIT (2000) 74 ITD 241 (Pune)(AT)*** These words they have held are to be construed harmoniously. Therefore, if so construed the words “has not been” are to be considered in those cases where the disclosure has already been made by the assessee in respect of its income for any assessment year before the date of search and the words “would not have been disclosed” are to be considered in those cases where the returns have not been filed by the assessee before the date of search. Where however a certain income is not required to be disclosed for the purpose of the Act, the question of treating the same as undisclosed income on the ground that the same has not been disclosed should not arise. For example if the assessee does not have taxable income and has no obligation to furnish a return then there is no obligation under the Act for him to disclose any income for the purpose of the Act. Therefore, if the income of the assessee is below the taxable limit even if he has not furnished a return the same cannot be treated as undisclosed income. ***[Pradip C.Patel v DCIT (1997) 58 TTJ (Ahd) 409 (AT)]***

Similarly where the existence of income is known to the revenue merely because the assessee failed for some reason or the other to file a return, it cannot be treated as undisclosed income that came to the knowledge of the Department as a result of search and seizure operation. ***[Smt.Gulakandi Devi Agarwal v CIT (2000) 66 TTJ (Nag) 844 (AT)]*.**

Since the definition refers to entry in the books of account or other documents it is felt that even mere jottings on small bits of paper or chits can be taken into account for finding out the undisclosed income. However in ***Chander Mohan Mehta v ACIT (Inv) (1999) 65 TTJ (Pune) 327(AT)*** and in ***Atul Kumar Jain v DCIT (1999) 64 TTJ (Delhi) 786 (AT)*** it has been held that merely on the basis of loose papers or jottings found during survey showing certain borrowings, addition could not be made to the assessee's income.

The Supreme Court in the case of ***Common Cause v UOI (Sahara Diaries) [2017] 394 ITR 220 (SC)*** has held that entries in loose papers and electronic data which were not regularly kept during the course of business do not have evidentiary value. Following the decision of the Supreme Court in ***Common Cause***, the Karnataka High Court in ***DCIT v Sunil Kumar Sharma [2024] 469 ITR 197 (Kar) [SLP Dismissed in 165 taxmann.com 846 (SC)]*** has held that the action taken by the revenue against the assessee based on material contained in the diaries / loose sheets are contrary to law and set aside the notices issued u/s.153C as void and illegal.

The Bombay High Court in the context of section 68 of the Income Tax Act, in a recent decision in ***PCIT v Buniyad Chemicals Ltd***. ***[TS-227-HC-2025 (BOM)]*** held Section 68 should be interpreted to mean books of an assessee to include the computer in which the business transactions are recorded and from which data was extracted on CD's.

From the above decision of the Bombay High Court one can take a view that even if transactions are recorded in the computer, then the same can be treated as recorded in the books of account and need not be treated as undisclosed income.

The term undisclosed income takes within its sweep, incomes, which are represented by assets or entries and expenditure based on entries in the books of account. Under the old law of the IT Act, 1961 the definition of undisclosed income did not include an expenditure which has not been or would not have been disclosed.

Further under the old law the undisclosed income included any expense, deduction or allowance claimed under the Act which is **found to be false**. However, under the new law of IT Act, 1961 and under the IT Act, 2025 the definition has been modified to state that undisclosed income includes any expense, exemption, deduction or allowance claimed under the Act which is **found to be incorrect** and not one which is found to be false. The old Act excluded exemption while the new Act includes exemptions also for a broader scope. While the old law used the language "false" claims i.e fraud / misrepresentation, the new law uses the language "incorrect" claims which includes errors also.

Assessment of Total Undisclosed Income as a result of Search - Section 292 *[158BA of IT Act, 1961]*

The Block assessment provisions applies in the case of any person where a search is initiated u/s.247 *[132 of IT Act, 1961]* or books of account, other documents or any assets are requisitioned u/s.248 *[132A of IT Act, 1961]*, on or after the 1st day of April, 2026 *[1st day of September, 2024 under the IT Act, 1961]* and the Assessing Officer shall proceed to assess or reassess the total undisclosed income pertaining to the block period as per the provisions of Chapter XIV-B.

If any assessment, reassessment or recomputation of income under the provisions of the Income Tax Act pertaining to any tax year falling within the block period is pending on the date of initiation of the search or making of the requisition, then the same shall abate and shall deemed to have abated on the date of initiation of the search or making of the requisition. However, it may be noted that an assessment shall not abate if the same is pending as per the provisions of Chapter XVI-B i.e. a block assessment pending on the date of initiation of the search or making of the requisition.

If any reference u/s.166(1) *[92CA(1) of IT Act, 1961]* has been made or an order u/s.166(6) *[92CA(3) of IT Act, 1961]* has been passed in a pending assessment or reassessment or recomputation proceeding, then such reference made or order passed shall also abate along with the assessment, reassessment or recomputation.

Under the old law of the IT Act, 1961 the concept of abatement of assessment or reassessment or recomputation or reference u/s.92CA(1) or order u/s.92CA(3) relating to any assessment year in the block period was not there. It was only declared that

(i) the block assessment shall be in addition to the regular assessment of each previous year included in the block period,
(ii) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment,
(iii) the income assessed in the block assessment shall not be included in the regular assessment of any previous year included in the block period.

Under the new law of the IT Act, 1961 and under the IT Act, 2025, where a subsequent search is initiated or requisition is made in respect of a person in whose case an assessment is required to be made under Chapter XVI-B *[Chapter XIV-B of IT Act, 1961]* on the date of initiation of the subsequent search or the making of the requisition then such assessment shall be duly completed and thereafter an assessment in respect of the subsequent search or requisition shall be made. However section 292(4)(c) *[the proviso to section 158BA of the IT Act, 1961]* allows an extended period of 3 months to complete the subsequent assessment from the end of the month in which the assessment in respect of the earlier search was completed where the period for completing the subsequent assessment is less than 3 months.

Under the old law of IT Act, 1961, there was no specific procedure for a subsequent search.

If any proceeding under this Chapter or an order of assessment passed u/s.294(1)(c) *[158BC(1)(c) of IT Act, 1961]* has been annulled in an appeal or any other legal proceeding, then the assessment or reassessment or recomputation or reference or order relating to any tax year in the block period which has abated shall revive from the date of receipt of such order of annulment by the PCIT or the CIT, irrespective of anything contained in Chapter XVI-B or section 286 *[Chapter XIV-B or section 153 of IT Act, 1961]*. However, if such order of annulment is set aside, then the revival shall cease to have effect.

There were no provisions with regard to revival of assessment in respect of any assessment year in the block period since there was no provision for abatement of assessment under the old law.

The total income other than the undisclosed income of the tax year in which the last of the authorisations for a search is executed or requisition is made, the same shall be assessed separately in accordance with the other provisions of the IT Act, 2025. This means that only undisclosed income pertaining to the year in which the last of the authorisations is drawn can be assessed in the block assessment of the block period. If the tax year of initiation of search and the tax year in which the last of the authorisations is executed or made are different tax years it is to be examined whether separate assessment of total income other than undisclosed income applies to both tax years.

The total undisclosed income of the block period is chargeable to tax at the rate of 60% which is the rate specified u/s.192 *[113 of IT Act, 1961]*, irrespective of the tax year or years to which such undisclosed income belongs to. Section 192 *[113 of IT Act, 1961]* has prescribed only the rate of tax at 60% and further states that the rate of tax shall be increased by a surcharge if any levied under the Central Act. It can be seen that presently no surcharge has been prescribed by the Central Act.

Mode of Computation of Total Undisclosed Income of Block Period – Section 293 *[158BB of IT Act, 1961]*

While the definition provides some insight of the term undisclosed income, the same is to be read along with the mode of computation prescribed u/s.293 *[158BB of IT Act, 1961]*. It would therefore be better to understand how section 293 *[158BB of IT Act, 1961]* prescribes the manner of computation. Reconciliation may be made between the definition of undisclosed income in section 301(e) *[158B(b) of IT Act, 1961]* and its mode of computation u/s.293 *[158BB of IT Act, 1961]*.

The manner of computation of undisclosed income is provided u/s.293 *[158BB of IT Act, 1961]* and such undisclosed income is to be taxed at the rate of 60% being the rate prescribed u/s.192 *[113 of IT Act, 1961]*

The total undisclosed income of the block period shall be the aggregate of

(a) Undisclosed income declared in the returned furnished u/s.294 *[158BC of IT Act, 1961]*
(b) Undisclosed income determined by the Assessing Officer u/s.293(4) *[158BB(2) of IT Act, 1961]*

Section 293(2) - The exclusions from the total undisclosed income of the block period are

(a) Total income determined or assessed u/s.270(1) or (10) or section 271 or 279 or 294(1)(c) of IT Act, 2025 or u/s.143 or 144 or 147 or 153A or 153C or 158BC or 245D(4) of IT Act, 1961 prior to the date of initiation of search or requisition in respect of any of the tax year falling within the block period

(b) Total income declared in the return of income filed u/s.263 of the IT Act, 2025 or u/s.139 of IT Act, 1961 or in response to notice u/s.268(1) of the IT Act, 2025 or u/s.142(1) prior to the date of initiation of search or requisition in respect of any tax year falling within the block period but not including the assessed income as above

(c) Income computed by the assessee based on the entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course

(i) before the date of initiation of search or requisition in respect of a tax year where such tax year has ended but due date for furnishing the return for such year has not expired prior to the date of initiation of search or requisition

(ii) on or before the day immediately preceding the date of initiation of search or requisition in respect of a period commencing from 01.04 of the tax year in which search is initiated or requisition is made and ending on the day immediately preceding the date of initiation of search or requisition

(iii) on or before the date of execution of the last of the authorisations in respect of a period commencing from the date of initiation of search or requisition and ending on the date of the execution of the last of the authorisation for the search or requisition.

(d) Total income referred to in sections 207(8) or 216 or 393(1) [Table Sl. No.8(iii)] of IT Act, 2025 or sections 115A(5) or 115G or 194P(1) of IT Act, 1961

Section 207(8) / 115A deals with tax on dividends, royalty and technical service fees in the case of foreign companies. Sub-section (5) states that assessee is not required to file ROI if total income includes only income referred to in sub-section (1) and where tax has already been deducted at source

Section 216 / 115G provides that return of income is not required to be filed by non residents where income consisted only of investment income or LTCG or both and where tax has been deducted at source

Section 393(1) [Table Sl. No.8(iii)] / 194P deals with deduction of tax at source in case of specified senior citizen

If the Assessing Officer is of the view that any part of the income as computed by the assessee under sub-section (2)(c) is undisclosed, he may recompute the same.

Material relevant for computing Undisclosed Income – Section 293(4)

The undisclosed income for the block period shall be computed by the Assessing Officer based on the evidence found as a result of search or survey or requisition of books of account or other documents and any other material or information as are either available with the Assessing Officer or comes to his notice during the course of proceedings under Part B i.e. Chapter XVI-B.

This Chapter does not give powers to the revenue to draw a presumption regarding undisclosed income. The revenue cannot make fishing or roving enquiries connected with completed assessments for it is beyond the powers of the Assessing Officer to review completed assessments unless some direct evidence comes to the knowledge of the department as a result of search which indicates clearly the *factum* of undisclosed income. In the following cases it has been held that under Chapter XIV-B of IT Act, 1961 assessments can be made only in respect of undisclosed income and such undisclosed income must come as a result of search or requisition. ***[Sundar Agencies v DCIT (1997) 63 ITD 245 (Mum) (AT), Smt.Sheela Agarwal v DCIT (1999) 106 Taxman 227 (Del)(Mag) (AT), Indore Construction Pvt Ltd v ACIT (1999) 71 ITD 128 (Indore) (AT), Pankaj Dahyabhai Patel (HUF) v ACIT (1999) 63 TTJ (Ahd) 790(AT), Chander Mohan Mehta v ACIT (Inv) (1999) 65 TTJ (Pune) 327(AT), Essem Intra-port Services Pvt Ltd v ACIT (2000) 72 ITD 228 (Hyd) (AT), Kasat Paper & Pulp Ltd v ACIT (2000) 74 ITD 455 (Pune) (AT)].***

Contra *Parakh Foods Limited v DCIT (1998) 64 ITD 396 (Pune)(AT)*

The Tribunal in this case held that material having nexus to seized material may also be used in computing undisclosed income.

Section 293(5) *[158BB(3) of IT Act, 1961]* provides that for the period beginning from the 1st April of the tax year in which the last of the authorisations was executed and ending with the date on which the last of the authorisations was executed, any income which is required to be determined as a result of search or requisition of books of account or other documents and any other material or information available with the Assessing Officer or comes to his notice during the course of block assessment proceedings, or determined on the basis of entries relating to such income or transactions recorded in the books of account and other documents maintained in the normal course on or before the execution of the last of authorisations, relates to any international transaction or specified domestic transaction referred to in section 166 *[92CA of IT Act, 1961]*, then such income shall not be considered for the purpose of

determining the total undisclosed income of the block period and such income shall be considered in the assessment made under other provisions of the Act.

From the above sub-section it is inferred that in respect of the period from the 01.04. of the tax year in which the last of the authorisation is executed or made and upto the date of the last of the authorization executed or made, even if any material is found as a result of search the same would not be included in the block assessment and will be assessed separately under the other provisions of the Act.

Disallowance of salary, Interest, commission, bonus or remuneration to Non-Working Partners

Section 293(6)(a) *[158BB(4)(a) of IT Act, 1961]* provides that in the case of a firm the disclosed income is to be computed before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called to a non-working partner.

Applicability of Sections 102 to 105 *[68 To 69C of IT Act, 1961]*

Section 293(6)(b) *[158BB(4)(b) of IT Act, 1961]* provides that sections 102 to 105 *[68 to 69C of IT Act, 1961]* shall apply to determination of undisclosed income under this part and references to tax years in those sections may be construed as references to the relevant tax years falling within the block period. The Delhi Bench of the Tribunal in *D.K.Gupta v DCIT (1998) 60 TTJ (Del) 587 (AT)* has reiterated the point that the provisions of sections 68 to 69C are applicable to a block assessment.

Applicability of provisions of section 166 *[92CA of IT Act, 1961]*

Section 293(6)(c) *[158BB(4)(c) of IT Act, 1961]* provides that section 166 *[92CA of IT Act, 1961]* shall apply to determination of undisclosed income under this Part and references to tax year in that section may be construed as reference to relevant tax years falling within the block period excluding the period commencing from the 1st day of April of tax year in which the last of authorisations was executed and ending with the date on which the last of the authorisations was executed.

Exclusion of Set off of Brought Forward Losses & Depreciation and Saving

Section 293(8) *[158BB(7) of IT Act, 1961]* provides that the undisclosed income shall be determined in the block assessment without giving effect to set off of losses under Chapter VII or unabsorbed depreciation u/s.33(11) *[Chapter VI or u/s.32(2) of IT Act, 1961]* brought forward from the tax year prior to the first tax year comprised in the block period.

The brought forward losses and unabsorbed depreciation may however be carried forward and set off in the tax year subsequent to the tax year in which the block period ends, for the remaining period, taking into account the block period and such tax year.

The Mumbai Bench of the Tribunal in ***B.D.A.Ltd. v ACIT (1998) 61 TTJ (Mum) 197 (AT)*** has held that the prohibition against setting off the losses against the undisclosed income of the block period applies to losses under Chapter VI and unabsorbed depreciation determined and permitted to be carried forward in the regular assessments. It does not apply to adjustment of loss computed in respect of a particular previous year falling within the block period against the income computed in respect of the other years falling within the block period in respect of sources which have not been disclosed. It also does not apply to the set off of income from an undisclosed source against the losses or unabsorbed depreciation of the same previous year, which have been already determined.

This decision was rendered under the old law of the IT Act, 1961 and presently under the new law of the IT Act, 1961 and under the IT Act, 2025 undisclosed income of the block period alone is determined, and it does not comprise of the disclosed income of the tax years forming part of the block period. Hence the question of setting off of losses or unabsorbed deprecation of the same tax year against income from an undisclosed source does not arise.

Procedure for Block Assessment – Section 294 *[158BC of IT Act, 1961]*

The procedure for assessment is predominantly outlined in section 294 *[158BC of IT Act, 1961]*. The section talks of issue of notice and also the manner in which the assessment should be carried out. Where no search or requisition has taken place, no notice u/s.294 *[158BC of IT Act, 1961]* can be issued and no block assessment completed except in cases falling u/s.295 *[158BD of IT Act, 1961]*.

Indore Construction Pvt Ltd v ACIT (1999) 71 ITD 128 (Indore)(AT)
Smt.Jatan Bai Baid v ACIT (1998) 96 Taxman 24 (Nag) (Mag)(AT)
Urmila Chandak v ACIT (1998) 60 TTJ (Mad) 758 (AT)

Issuance of Notice

The starting point for an assessment under this Chapter is the issuance of a notice under this section by the Assessing Officer on the assessee. The Assessing Officer is required to issue a notice requiring the assessee to furnish a return of income, setting forth his undisclosed income for the block period.

The assessee is required to furnish this return of income, if the search has been initiated or requisition made on or after 01.04.2026 *[on or after 01.09.2024 upto 31.03.2026 of IT Act, 1961]*, within the period specified in the notice which may not exceed 60 days.

The time allowed for filing the return of income shall be extended by a further period of 30 days in the following circumstances:

(i) Where the due date for furnishing the return of income has not expired prior to the date of initiation of search or requisition in respect of any tax year immediately preceding the tax year in which the search is initiated or requisition is made.

(ii) Where the assessee was liable for an audit u/s.63 *[44AB of IT Act, 1961]* for such tax year

(iii) Where the accounts maintained in normal course was not audited on the date of issuance of notice u/s.294 *[158BC of IT Act, 1961]* in respect of such tax year

(iv) Where the assessee makes a request in writing for extension of time for furnishing such return in order to get the accounts audited.

Under the old law of the IT Act, 1961, the period allowed for filing the return of income was not less than 15 days and not more than 45 days and in the said return of income the assessee had to disclose his total income including the undisclosed income for the block period.

The Assessing Officer before issuance of a notice u/s.294(1)(a) *[158BC of IT Act, 1961]* requiring the assessee to file a return of income setting forth his undisclosed income for the block period has to take prior approval from the Additional CIT or Additional DIT or JCIT or the JDIT for issuance of such notice while no approval was required to be obtained by the Assessing Officer for issue of notice u/s.158BC under the old law of IT Act, 1961.

The return filed in response to the notice issued u/s.294 *[158BC of IT Act, 1961]* shall be considered as return filed under the provisions of section 263 *[139 of IT Act, 1961]* and notice u/s.270(8) *[143(2) of IT Act, 1961]* shall be issued thereafter. However, if the return of income is filed beyond the period allowed in the notice issued u/s.294 *[158BC of IT Act, 1961]* then the return of income shall not be deemed to be a return u/s.263 *[139 of IT Act, 1961]*. No notice u/s.280 *[148 of IT Act, 1961]* is required to be issued for the purpose of proceeding under this Part. A person who has filed a return in response to a notice issued u/s.294 *[158BC of IT Act, 1961]* shall not be entitled to file a revised return of income.

Application of Other Provisions

Section 294(1)(b) *[158BC(b) of IT Act, 1961]* gives the power to the Assessing Officer to determine the total undisclosed income of the block period. The undisclosed income is to be computed in the manner laid down in section 293 *[158BB of IT Act, 1961]*. The clause also provides that the provisions of sections 268, 270(8), 270(10), 271, 276, 277 & 278 *[142, 143(2), 143(3), 144, 145, 145A & 145B of IT Act, 1961]* shall so far as may be applied to an assessment made under chapter XVI-B *[XIV-B of IT Act, 1961]*. The Assessing Officer therefore will have the power to make enquiries and also to direct a special audit. He will also have the power to call for information, books of accounts and documents and a statement of assets and liabilities subject to the restrictions set out in section 268 *[142(1) of IT Act, 1961]*. Under the old law of IT Act, 1961, the provisions of section 145A and 145B were not included.

The Assessing Officer may further issue a notice u/s.270(8) *[143(2) of IT Act, 1961]* for a scrutiny of the returned undisclosed income and then complete the assessment u/s.294 *[158BC of IT Act, 1961]* read either with sections 270(10) or 271 *[143(3) or*

144 of IT Act, 1961] determining the total undisclosed income and tax payable for the block period.

Though a reference to a TPO can be made by the Assessing Officer or the Assessing Officer can use the order passed by the TPO to determine the total undisclosed income for the block period, the provisions of section 275 *[144C of IT Act, 1961]* shall not apply in respect of such order i.e. the assessee cannot approach the Dispute Resolution Panel since the Assessing Officer will not pass a draft assessment order for the block period. Similarly in the case of non-residents also the assessee cannot approach the Dispute Resolution Panel as no draft assessment order will be passed.

Further as per the new law of IT Act, 1961 and the IT Act, 2025 the provisions of section 143(1) / 270(1) shall not apply to the return of income filed in response to the notice issued u/s.158BC / 294 while the old law of IT Act, 1961 has not specifically excluded the applicability of the provisions of section 143(1).

Determination of Tax Payable

Section 294(1)(c) *[158BC(1)(c) of IT Act, 1961]* provides that the Assessing Officer shall determine the tax payable on the basis of the assessment or reassessment made of the total undisclosed income for the block period. The Assessing Officer must therefore on determining the total undisclosed income of the block period, determine the tax payable as this is an imperative part of an assessment. Sections 143(3) and 144 similar to 158BC(1)(c) of IT Act, 1961 specify that the Assessing Officer shall determine the income and also determine the sum payable by the assessee. In the context of section 143(3) & 144 the Gujarat High Court in ***CIT v Purushottam Das T. Patil (1995) 209 ITR 52 (Guj)*** and the **Calcutta High Court in *Mohendra J. Thacker & Co. v CIT (1983) 139 ITR 793 (Cal)*** have taken the view that both the steps namely determining income and the sum payable may be taken up simultaneously or separately but both will have to be taken and completed before the time limits set out in section 153(1). This decision will also apply to an assessment made under chapter XVI-B *[XIV-B of IT Act, 1961]*. Thus where tax is not determined within the time limit set out in section 296 *[158BE of IT Act, 1961]*, the order of assessment itself may be invalid.

Connected Cases – Section 295 *[158BD of IT Act, 1961]*

While the procedure for a block assessment is set out in section 294 *[158BC of IT Act, 1961]*, section 295 *[158BD of IT Act, 1961]* also stipulates that if the Assessing Officer is satisfied that any undisclosed income belongs to or pertains to or relates to any person (other person) other than the person searched or requisitioned (specified person), then any money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents seized or requisitioned or any other material or information relating to the aforesaid undisclosed income shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer of the other person shall proceed u/s.294 *[158BC of IT Act, 1961]* and the provisions of this Part shall apply accordingly. This means that in the case of the “other person” the procedure that the Assessing Officer will have to adopt will be that set out in section 294 *[158BC of IT Act, 1961]* and that the computation of undisclosed income will have to be in accordance with section 293 *[158BB of IT Act,*

1961] read with the definition of the term undisclosed income in section 301 *[158B of IT Act, 1961]*.

The new law of IT Act, 1961 and the IT Act, 2025 uses the phrases “belongs to”, “pertains to”, “relates to” while the old law of IT Act, 1961 used only the phrase “belongs to” which means under the new law the scope is broadened so that the proceedings u/s.295 *[158BD of IT Act, 1961]* can be initiated even where income might not strictly belong to the other person but is still connected to the other person by any means.

The language used under the old law of the IT Act, 1961 was concerned with the books of account, other documents or assets seized or requisitioned while under the new law of IT Act, 1961 and the IT Act, 2025 instead of using the word “assets” the categories of assets are specified.

Though the new law of IT Act, 1961 and the IT Act, 2025 covers the books of account, other documents or assets seized or requisitioned or any material or information relating to the aforesaid undisclosed income, it has not drawn any specific reference to expenditure

Block period of Other Person

- The block period of the other person will be the same as that of the specified person if there is one specified person.

- If there are more than one specified persons relevant to the other person, then the block period of the specified person in whose case it ends on a later date has to be adopted as the block period of the other person.

- The block period of the other person irrespective of the provisions of section 301(a) shall comprise of the specified year and the period starting from the 1st April of the tax year in which the search was initiated or requisition was made and ending on the date of execution of the last of the authorisations if the undisclosed income of the other person pertains only to the period commencing from the tax year (i.e. the specified year) immediately preceding the year of initiation of search or requisition and ending on the date of the initiation of search or making of requisition.

- The block period of the other person irrespective of the provisions of section 301(a) shall comprise of only one single tax year if the undisclosed income of the other person pertains to a single tax year out of the five years preceding the specified year.

For abatement of assessment proceedings in respect of assessment years in the block period reference to the date of initiation of search or making of requisition is made in the case of a searched person. In the case of the other person, for abatement of assessment proceedings reference is made to the date on which such money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents seized or requisitioned or any other material or information relating

to the aforesaid undisclosed income were received by the Assessing Officer having jurisdiction over such other person.

Time limit for completion of Block Assessment – Section 296 *[158BE of IT Act, 1961]*

Under section 296 *[158BE of IT Act, 1961]* the time limit for completion of block assessment is as follows:

- **In case of a person searched or requisitioned and where search initiated or requisition made is on or after 01.09.2024 but before 31.03.2026 under the IT Act, 1961**

  - ✓ Within **12 months** from the end of the quarter in which the last of the authorisations for search or requisition was executed or made.

  - ✓ Where additional time of 30 days is allowed for filing a return of income in response to the notice issued u/s.158BC, then the time limit for completion of assessment or reassesment for the block period will be **13 months** instead of 12 months

  In case of a person searched or requisitioned and where search initiated or requisition made is on or after 01.04.2026 under the IT Act, 2025

  - ✓ Irrespective of the provisions of section 286 *[section 153 of IT Act, 1961]*, the order u/s.294 shall be passed within 18 months from the end of the quarter in which the search was initiated or requisition was made

- Where a reference u/s.166(1) *[92CA(1) of IT Act, 1961]* is made during the course of the proceedings of the block assessment, the period available for making an order of assessment or reassessment in respect of the block period shall be **extended by 12 months.**

  Exclusion from the period of limitation

- Period not exceeding 180 days commencing from the date of initiation of search or making of requisition and ending on the date on which assets ***[as provided in section 261(b)]*** and material seized or requisitioned ***[as provided in section 261(i)]*** are handed over to the Assessing Officer having jurisdiction over the assessee in whose case the search is initiated or requisition is made, shall be excluded while calculating the period of limitation.

  Section 261(b) – "asset" includes any money, bullion, jewellery, virtual digital asset or other valuable article or thing held in physical or virtual form

  Section 261(i) - "material seized or requisitioned" means books of account or other documents or computer systems, and extracts seized from a person during the course of search under section 247 *or requisitioned under* section 248*, and includes seizure of backup taken from any specialised programs like*

tally software, excel sheets, word files and all electronic records including data and information in electronic form or on the computer system, containing figures and any other relevant noting, and shall be construed to mean as books of account maintained by the said person;

- If after exclusion of such period, the period of limitation for making an order as assessment or reassessment expires before the end of a month, such period shall be extended to the end of such month.

In case of other person referred to in section 295 *[158BD of IT Act, 1961]* and where the search is initiated or requisition is made on or after 01.04.2026

- Within **12 months** from the end of the quarter in which the notice u/s.294 *[158BC of IT Act, 1961]* in pursuance of section 295 *[158BD of IT Act, 1961]* was issued to the other person

- Where a reference u/s.166(1) *[92CA(1) of IT Act, 1961]* is made during the course of the proceedings of the block assessment, the period available for making an order of assessment or reassessment in respect of the block period shall be **extended by 12 months.**

  *Under the IT Act, 1961 where a search was initiated on or after 01.09.2024 but before 31.03.2026, where additional time of 30 days is allowed for filing a return of income in response to the notice issued u/s.158BC, then the time limit for completion of assessment or reassessment for the block period was **13 months** instead of 12 months.*

Further section 296(7) *[158BE(4) of IT Act, 1961]* lists out 10 different periods similar to the period of exclusion granted u/s.286 *[153 of the IT Act, 1961]* which shall be excluded in computing the period of limitation one such being the stay on assessment proceedings granted by a Court. The period of exclusion in case of stay on assessment proceedings commences from the date on which the stay on assessment proceedings was granted by an order or injunction of any Court and ends on the date on which the certified copy of the order vacating the stay was received by the jurisdictional PCIT or CIT.

Where after exclusion of the above period, the period of limitation available to the Assessing Officer is less than 60 days, such remaining period shall be extended to 60 days. Further after exclusion of above period, if the period of limitation expires before the end of a month, such period shall be extended to the end of such month.

Levy of interest and penalty in certain cases – Section 297 *[158BF of IT Act, 1961]*

Section 297 *[158BF of IT Act, 1961]* prescribes that the following interests and penalties are not to be levied on the undisclosed income assessed or reassessed for the block period.

- Interest under sections 423, 424 or 425 *[234A, 234B or 234C of IT Act, 1961]*
- Penalty under section 439 *[270A of IT Act, 1961]*

Under the old law of IT Act, 1961 penalties u/s.271(1)(c), 271A and 271B were excluded, while the new law of IT Act, 1961 refers only to penalty u/s.270A.

Section 298 *[158BFA of IT Act, 1961]* however prescribes that interest and penalty may be levied in certain cases.

Interest is to be levied @ 1.5% per month or part thereof on the tax on undisclosed income determined u/s.294(1)(c) *[158BC(1)(c) of IT Act, 1961]* where a return of income is not filed in response to notice issued u/s.294(1)(a) *[158BC of IT Act, 1961]* or not filed within the period specified in such notice. The interest under this section is to be computed commencing from the day immediately following the expiry of the time specified in the notice and ending on the date of completion of assessment u/s.294(1)(c) *[158BC(1)(c) of IT Act, 1961]*.

Under the old law the interest u/s.158BFA was levied only at 1% and that the same was levied only upto the date of furnishing of the return if a return is not furnished within the time specified in the notice issued u/s.158BC. However under the new law whether a return is not furnished or furnished beyond the time specified in the notice, the interest will run upto the date of completion of assessment.

Penalty is imposable at 50% of the tax so leviable in respect of the undisclosed income determined by the Assessing Officer. This penalty may be levied by an Assessing Officer or a Commissioner (Appeals) in the course of any proceedings under Chapter XIV-B.

The penalty levied under the old law varied from 100% to 300% similar to levy of penalty u/s.271(1)(c)

No order imposing penalty under section 298 *[158BFA of IT Act, 1961]* or under sections 444(1), 450, 451 or 453 *[271AAD or 271D or 271DA or 271E of IT Act, 1961]* shall be made for the block period in respect of a person if,

(a) a return has been furnished u/s.294(1)(a) *[158BC of IT Act, 1961]*
(b) tax on the returned income has been paid or the assessee has offered to adjust the same against seized cash
(c) evidence of tax paid is furnished along with the return
(d) no appeal is filed against the assessment of that part of income which is shown in the ROI

If the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return of income filed by the assessee, then penalty shall be imposed on that portion of the undisclosed income determined by the Assessing Officer which is in excess of the returned income.

Under the old law of IT Act, 1961 no reference was made to non levy of penalty under sections 271D or 271E *[450 or 453 of IT Act, 2025]*.

No penalty shall be levied under this section

- Unless the assessee has been given a reasonable opportunity of being heard

- By the DCIT, ACIT, DDIT or ADIT where the penalty exceeds Rs.2 lakhs except with the prior approval of the Additional or Joint Commissioner or Additional or Joint Director

The penalty is to be imposed within the following time limits

In case of assessment, which is the subject matter of revision u/s.377 *[263 of IT Act, 1961]*	Not later than 6 months from the end of the financial year in which such revision order is passed.
Where the order has been made the subject matter of appeal before the Commissioner of Income Tax (Appeals) u/s.357 or the Income Tax Appellate Tribunal u/s.362	Before the expiry of the financial year in which proceedings in the course of which action for imposition of penalty has been initiated, are completed or 6 months from the end of the financial year in which order of Commissioner of Income Tax (Appeals) or Income Tax Appellate Tribunal is received by the Jurisdictional PCIT or CIT whichever is later
In any other case	Before the expiry of the financial year in which proceedings in the course of which notice for imposition of penalty has been issued, are completed or 6 months from the end of the financial year in which notice for imposition of penalty is issued, whichever is later.

The following periods shall be excluded while computing the period of limitation for passing the penalty order

- The time taken for giving an opportunity to the assessee for rehearing under the proviso to section 244(2) *[129 of IT Act, 1961]*

- Where a stay on the penalty proceeding was granted the period from the date on which the stay was granted by an order or injunction of any Court and ending on the date on which the certified copy of the order vacating the stay was received by the Jurisdictional PCIT or CIT.

Where after exclusion of the above period, the period of limitation available to the Assessing Officer is less than 60 days, such remaining period shall be extended to 60 days. Further after exclusion of above period, if the period of limitation expires before the end of a month, such period shall be extended to the end of such month.

Where the Income Tax Authority who has made the penalty order is not an Assessing Officer himself he shall forward a copy of the said order to the Assessing Officer.

Authority Competent to Make Block Assessment

Section 299 *[158BG of IT Act, 1961]* provides that an assessment under this Chapter is to be made by a Deputy Commissioner or an Assistant Commissioner or a Deputy Director or an Assistant Director of Income Tax with the prior approval of the Additional Commissioner of Additional Director or Joint Commissioner or Joint Director of Income Tax in respect of search or requisition on or after 01.04.2026.

Under the old law of the IT Act, 1961 the approval was required to be obtained from the Joint Commissioner or Joint Director

Application of Other Provisions of the Act

Section 300 *[158BH of IT Act, 1961]* provides that except where it is otherwise provided in this Part, all other provisions of this Act shall apply to assessment made under this Part.