

## **Income Tax Authorities**

Income Tax Act, 1961 provides for the administrative and judicial authorities for administration of this Act. The Direct Tax Laws Act, 1987 has brought far-reaching changes in the organizational structure. The implementation of the Act lies in the hands of these authorities.

### *Administrative [ Income Tax Authorities ][ Sec. 116 ]*

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),
  
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),
  
- (cc) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),
- (cca) Joint Directors of Income-tax or Joint Commissioners of Income-tax.
- (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income-tax (Appeals),
  
- (e) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,
- (f) Income-tax Officers,
  
- (g) Tax Recovery Officers,
  
- (h) Inspectors of Income-tax.

What is Jurisdiction of income-tax authorities?

Section 120 and 124 of Income Tax Act 1961 deals with Jurisdiction of income-tax authorities

Section 120. (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities

(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :-

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

(d) cases or classes of cases.

(4) Without prejudice to the provisions of sub-sections (1) and (2), the Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein,-

(a) authorise Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;

(b) empower the [Principal Director General or] Director General or 14[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner to issue orders in writing that the powers and functions conferred on, or as the case may

be, assigned to, the Assessing Officer by or under this Act in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed by an Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director, and, where any order is made under this clause, references in any other provision of this Act, or in any rule made there under to the Assessing Officer shall be deemed to be references to such Additional Commissioner or Additional Director or Joint Commissioner or Joint Director by whom the powers and functions are to be exercised or performed under such order, and any provision of this Act requiring approval or sanction of the Joint Commissioner shall not apply.

(5) The directions and orders referred to in sub-sections (1) and (2) may, wherever considered necessary or appropriate for the proper management of the work, require two or more Assessing Officers (whether or not of the same class) to exercise and perform, concurrently, the powers and functions in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases; and, where such powers and functions are exercised and performed concurrently by the Assessing Officers of different classes, any authority lower in rank amongst them shall exercise the powers and perform the functions as any higher authority amongst them may direct, and, further, references in any other provision of this Act or in any rule made thereunder to the Assessing Officer shall be deemed to be references to such higher authority and any provision of this Act requiring approval or sanction of any such authority shall not apply.

(6) Notwithstanding anything contained in any direction or order issued under this section, or in section 124, the Board may, by notification in the Official Gazette, direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule made thereunder by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation to the said person or class of persons shall be such authority as may be specified in the notification.

Section 124 of Income Tax Act "Jurisdiction of Assessing Officers"

Section 124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the [Principal Director General or] Director General or the [Principal Chief Commissioner or] Chief Commissioner or the [Principal Commissioner or] Commissioner; or where the question is one relating to areas within the jurisdiction of different [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners, by the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners concerned or, if they are not in agreement, by the Board or by such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120.

Refer to case laws:

Commissioner Of Income Tax ... vs S.S. Ahluwalia on 14 March, 2014

In The High Court Of Judicature At ... vs The Income Tax Officer on 27 November, 2014

Madras High Court

Commissioner Of Income-Tax, ... vs A. Raman & Company 1968 AIR 49, 1969 SCR (1) 10

## **What is Power regarding discovery, production of evidence, etc?**

### **Section 131 of Income Tax Act 1961**

Power regarding discovery, production of evidence, etc is defined under section 131 of Income Tax Act 1961.

Section 131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), 17[Principal Chief Commissioner or] Chief Commissioner or 17[Principal Commissioner or] Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for

the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

## **What is Search and seizure?**

### **Search and seizure is defined under section 132 of Income Tax Act 1961. Provisions under this Section is**

Section 132. 20(1) Where the 21[Principal Director General or] Director General or 21[Principal Director or] Director or the 21[Principal Chief Commissioner or] Chief Commissioner or 21[Principal Commissioner or] Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession, has reason to believe that-

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or

cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

(d) then,-

(A) the [Principal Director General or] Director General or [Principal Director or] Director or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

(B) such Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy

Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to-

- (f) (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- (g) (ia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (h) (iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;
- (i) (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:



(j) Provided that 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;

(k) (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(l) (v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], but such [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this subsection in all cases where he has reason to believe that any delay in getting the authorisation from the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue :

(m) Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is

in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

(n) Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:

(o) Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

(p) [(1A) Where any 25[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the 25[Principal Director General or] Director General or [Principal Director or] Director or any other 25[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under

any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.]

- (q) (2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.
- (r) (3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.
- (s) Explanation.-For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).
- (t) (4) 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, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used

in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

Explanation.-For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

- (u) (4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-
  - (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
  - (v) (ii) that the contents of such books of account and other documents are true ; and
  - (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.
- (w) 8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding

thirty days from the date of the order of assessment under section 153A or clause (c) of section 158BC unless the reasons for retaining the same are recorded by him in writing and the approval of the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director for such retention is obtained :

(x) Provided that the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(y) (8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or

other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the 29[Principal Chief Commissioner or] Chief Commissioner, 29[Principal Commissioner or] Commissioner, 29[Principal Director General or] Director General or 29[Principal Director or] Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(11) [\*\*\*]

(11A) [\*\*\*]

(12) [\*\*\*]

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

30(14) The Board may make rules in relation to any search or seizure under this section ; in particular, and without prejudice to the generality of the foregoing

power, such rules may provide for the procedure to be followed by the authorised officer-

- (z) (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available ;
- (ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.-For the purposes of sub-section (9A), "execution of an authorisation for search" shall have the same meaning as assigned to it in Explanation 2 to section 158BE.

Explanation 2.-In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section 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.