

Search & Seizure Operations Under Income Tax Act – An Overall Review

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PART - A

Introduction of the Subject

In the recent past, the Income-tax Department has been conducting a number of search and seizure under the provisions of section 132 of the Income Tax Act, 1961.

The code of search and seizure operations contained in section 132 of the Income Tax Act. Clauses (a), (b) and (c) of said section 132(1) stipulates the circumstances under which the search and seizure operation can be conducted by the Income Tax Department in case authorized by the authorities like the Director General or Director of Income-tax (Investigation) etc., having information in their possession on the basis of which they have reasons to believe that :

- (a) any persons, to whom summons under section 131 of the Act or notice under section 142 of the Act was issued, to produce or cause to be produced any books of account or other documents, has omitted or failed to be produced or cause to be produced such books of account, documents etc.
- (b) any persons 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 such books of accounts, document etc., or
- (c) any person is in possession of any money, bullion, jewellery or other valuable articles 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 Act (referred to as undisclosed income or property)

It is understood that most of the search and seizure operations are carried out by invoking clause (c) mentioned above. The main reason for conducting search by the Department is to locate possession of money, bullion, jewellery etc. representing wholly or partly income or property, which has not been or would not be disclosed to the department for the purposes of the Act.

Since the aim and object of initiating search and seizure operations is to unearth the undisclosed income or the property or assets, it is learnt that for laying down the Procedures for conducting the search, the department has issued a Search and Seizure Manual in the year 2007 (as revised from the earlier Manual of 1989) but it is noticed that the search and seizure operations in practice are carried out in a manner ignoring the instructions of the department contained in the Department's own Search & Seizure

The authors are members of the Institute. The views expressed herein are their personal views and do not necessarily represent the views of the Regional Council.

Manual as well as relevant provisions of Income Tax Act. Few aspects are discussed hereinafter:-

PART - B

Issues during the course of search and seizure operations :

The following issues usually emerge during the course of Search and Seizure Operation:

1. Surrender During Search & Seizure

It is understood that when the search team processes the search, it works out its expected targets of undisclosed income or property that would be detected as a result of such proposed search and such estimations of the search party tend to become their targets. Even if during the course of search the undisclosed income or property is not found or discovered to that expected extent, the Search Party makes all out efforts to make the assessee surrender such amounts so as to achieve their estimated targets, whether realistic or not and whether such undisclosed income or property is actually detected during search or not. The Search Party tends to create such an environment during the course of search that the assessee, who is usually alone during the course of search without aid of any legal advice, is usually forced to make such inflated surrender as desired by the Search Party. May be such surrender initially fulfills the targets of the Search Party but if such surrender is not supported with credible incriminating documents these are retracted by the assessee later on and even otherwise any such surrender which is not backed up by documentary evidence cannot be used against the assessee during the assessment proceedings.

Realizing such instances, the Board had issued executive instructions on the subject, which are produced below for ready reference:

" To

Dated 10.03.2003

All Chief Commissioners of Income Tax, (Cadre Contra) &
All Directors General of Income Tax Inc.,

Sir,

Sub: Confession of additional Income during the course of search & seizure and survey operation-regarding.

Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are retracted by the concerned assessee while filing returns of income. In these circumstances, such confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus

and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the course of search & seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders.

Yours faithfully,

Sd/-

(S.R. Mahapatra)

Under Secretary (Inv.II)

Although the above Instructions of the Department are very clear on the subject, but in reality these are not adhered to strictly. It is understood that in number of the cases such forced surrenders which are not based on the incriminating material found and suggesting the concealed/undisclosed income are subsequently retracted by the assessee, and not much gainful results are achieved by the Department except the prolonged litigation on these issues. Some effective mechanism may be framed by the Department to have a check on such eventualities to ensure strict compliance of above mentioned instructions already issued by the Department.

2. Penalty Provisions of Section 271 AAA ignored.

On most of the occasions the Search Party imposes the surrender on the assessee convincing them that the surrender made during current year, as well as in the immediately earlier year, will not attract penalty if tax is paid on the amount of surrendered income. However, there has been amendment in the provisions of penalty u/s 271(1)(c) in respect of cases where search has been initiated u/s 132 of the Income Tax Act on or after 01.06.2007 and the penalty is exempt u/s 271AAA of the Income Tax Act only if the following conditions are satisfied:-

“(2) Nothing contained in such section (1) shall apply if the assessee,-

- (i) in the course of the search, in a statement under subsection (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived.*
- (ii) substantiates the manner in which the undisclosed income was derived; and*
- (iii) pays the tax, together with interest, if any, in respect of the undisclosed income.”*

By way of such representation by the Search Party to the assessee, in many cases surrenders are forced upon them and the assessee without understanding correct legal position and rigours of Section 271-AAA suffers at the time of assessment. Such practice needs to be curtailed and the Search Party should be fair enough to apprise the assessee about the implications of provisions of section 271-AAA of the Income Tax Act and take the surrender after due

compliance of the provisions of that section and not simply with a purpose to achieve their targets of surrender.

3. Witnesses to the search

It is understood that it is laid down in the Instructions that a witness should witness the search carefully right since commencement to its closure. Witness should observe that search & seizure operations are being carried out in an orderly manner and in accordance with law and without violation of principles of natural justice. The witness should also observe that the statements are recorded properly without any undue influence or coercion and the facts of the proceedings of the search are correctly recorded in the Panchnama. However, it is observed that in real practice the witnesses are made to sit in a corner of a premises and not allowed to actually witness of the search operations. Such tendency does not match with real spirit of role of the witnesses. Normally it is observed that witnesses are mere formality as they themselves are not conversant with legal position of the procedures prescribed under Income Tax Act and guidelines laid down by the Department. It is desirable to allow professionals to observe and assist the search proceedings so as to ensure that the same is carried out in accordance with law and prescribed guidelines.

4. Seizure of Assets.

It is trite law laid down u/s 132(1) of the Income Tax Act and also as per Departmental guidelines laid down in the Search & Seizure Manual that only those items of money, bullion, jewellery, etc. should be seized which are part of the assets which are not disclosed or would not be disclosed to the Department. However in many cases, the search party seizes even those assets which are duly appearing in the books of account or appearing in the wealth tax returns. Although such assets seized, which are otherwise part of the accounted for assets, are entitled to be released u/s 132B(1) of I.T.Act by the Assessing Officer but the action of the Search Party puts undue and avoidable harassment to the assessee and assessee has to undergo cumbersome procedure for its release. In case of violation of such prescribed guidelines, appropriate action is desirable against the authority responsible for the same.

5. Irresponsible seizure of books of account, documents etc.

Under the provisions of law as well as per Departmental Instructions, only those books of account, documents, etc. are liable for seizure which contain the transactions of undisclosed income. However, it has become a practice to seize all the computers of the assessee including the main server, whereas the cloned copy of Hard Disk should be made available with the assessee, before its seizure, so that the day to day business is not hampered and business interest of the assessee is not adversely effected.

6. Cash Balance as per Cash Book-not to be seized

As per the provisions of Section 132(1) of the Income Tax Act as well as per the Departmental Guidelines, the cash

balance found at the time of search which is duly recorded in the cash book is not liable for seizure. In case the cash book is not complete and certain entries of expenses and receipts are pending to be incorporated in the cash book, the Search Party should work out the cash balance after taking into account those pending entries of receipts and payments and the cash balance so arrived as per books should not be seized. It should be ensured that the proper opportunity should be afforded to the assessee and seizure of cash, if any, should be made only after allowing assessee to compile the records without interfering in the search procedure otherwise. It is understood that such procedure which is laid down in the Search Manual is not followed. On the other hand at the time of search, the cash balance found is usually seized ignoring the basic guidelines that the accounted for cash is not liable for seizure. Although the assessee can approach the Assessing Officer to release such accounted for cash u/s 132 (B)(1) of the Income Tax Act, but these petitions are usually not disposed off. Also such seized cash is not entitled to be adjusted against Advance tax of the year of search, which adds to the misery of the assessee.

7. Accounted for Jewellery:

The jewellery found at the time of search which is duly appearing in the Account books, Balance Sheet or Wealth Tax Return etc. are not liable for seizure as per law as well as per Departmental Instructions. However such items of jewellery found are normally seized or even after the verification of the jewellery items with books of account, they are put under restraint and sealed. This results into avoidable mental harassment to the assessee. Even if the seized jewellery is part of declared assets, the assessee is usually asked to furnish bank guarantee or payment of tax equal to the value of jewellery seized, for release of such jewellery. Under the scheme of law, the Investigation Wing does not seem to have any power to release such seized jewellery and the ladies of the family of the assessee have to wait for long periods for the release of jewellery, which happens only after the seized documents and report of the Investigation Wing reaches the Assessing Officer (after centralization of his cases). Further when the limitation period of such Bank Guarantee lapses, it is a cumbersome process for the assessee to enable the Assessing Officer to communicate to the bankers about non-requirement of bank guarantee after validity of guarantee expires, since the Govt. Banks do not release the bank guarantee issued in favour of Government Department unless such no-objection is obtained from such concerned Govt. Office. In the process, the security furnished by the assessee for obtaining such bank guarantee remains struck with the bankers for long periods.

8. General

It will be desirable and in the interest of the Department also if in charge of Search Operation in each individual premises searched is familiar with guidelines laid down in Search Manual, so that no hardship is caused to the assessee subjected to search.

PART - C

Post Search Investigations:

The following issues are noticed regarding post search investigations:

a) Exhaustive & unwarranted Verifications:

It is noticed that after the search and seizure operations, the Investigation Wing resorts to extensive post-search verifications by way of issue of numerous summons under Section 131 of the Income Tax Act, whether such verifications have any direct co-relation with the party so searched or not. It is seen that the scope of such post-search verification is extended to such a large extent that even the items not related to the assessee so searched are enquired into. For instance, if such transactions of party searched are to be cross-verified from the other party, the Investigation Wing usually does not restrict to such verifications but will start probing into other affairs of such other third party which may have no co-relation with such verification, whatsoever. This extended scope of post search verifications seem to be against the spirit of the Departmental Instructions laid down in the Search Manual.

b) Register of Inspection of seized documents

It is understood that it is laid down in the Departmental Instructions in the Search Manual that a register should be maintained by the Search Officer for allowing the inspection of the seized document to the assessee. This may be to ensure that the Investigation Department allows the inspection of the seized documents within 15 days of their application. However, such registers do not seem to be maintained in most of the cases. The department may formulate some mechanism to ensure that these Departmental guidelines are adhered to by the Investigation Wing, failing which some effective measures may be enforced in this regard.

c) Operation of sealed lockers

It is understood that it is laid down in the Search Manual that sealed locker should be operated upon within 7 days of their sealing and in case the lockers which remain sealed for more than 7 days, the information of the same should be sent to the DGIT, (Inv). However, such procedure does not seem to be complied with in most of the cases and the Investigation Wing does not seem to be serious to follow these guidelines, with nobody to ensure its compliance. Some mechanism may be laid down to enforce Departmental guidelines on the Investigation Wing.

d) Issue of restraint order u/s 132(3) of the Income Tax Act

It is understood that it is laid down in the Departmental Instructions that restraint orders u/s 132(3) of the Income Tax Act should be revoked within one month of their invoking. However these time limits do not seem to be adhered to and in the normal course the restraint orders u/s 132(3) are vacated on dates nearing 60 days from their

invoking. It is understood that such procedure is adopted mainly to influence assessee to make surrenders as per the targets of the Investigation Wing. This seems to be against the spirit of Departmental instructions and some mechanism may be laid down to have check on Investigation Wing to curtail such practices.

e) Centralization of cases

It is understood that DI (Inv.) should initiate the process of centralization of cases within one month of the date of search and the said process should be completed within two months from the date of initiation of search and such time limit has to be followed strictly. However, such limits do not seem to be adhered to in most of the cases and there does not seem to be any mechanism for compliance of these guidelines. Further the cases so centralized should be decentralized and sent to regular charges after the assessments are completed in Central Circles and first appeals are disposed off. However in many cases, this practice is not adopted and cases remain in Central Circles over number of years even if no action remains pending pertaining to search periods.

f) Appraisal Reports

It is understood that the Appraisal Report should be finalized within two months from the date of search and the seized material should be handed over by the Investigation Department to the Assessing Officer within one week of the said report. However such guide-lines do not seem to be adhered to. It is understood that DGIT (Inv.) should not extend the time limit for finalization of appraisal report beyond 120 days in a routine manner and any such extension, if allowed, should be reported to Member (Inv.) CBDT after recording the reason for the same. However such time limits do not seem to be complied with in most of the cases and mechanism to ensure the compliance of these guidelines should be enforced.

(g) No comparison of finally assessed income with the high-pitched Appraisal Reports:

It is understood that although it is laid down in the Executive Instructions that undisclosed income proposed in the Appraisal Report of the Search Wing should be compared with the finally assessed income and with the ultimate recoveries of taxes on account of search and seizure operations. It is understood that as per Instructions the Investigation Wing and Assessment Wing should compare the estimates of appraisal reports with the assessed income and minutes of their meetings should be recorded. But it seems that in practice such comparisons are not actually made. It will be an eye-opener for the Ministry of Finance if data is collected for comparison of the suggested concealed income of the Investigation Wing in their Appraisal Reports with the finally assessed income. It is presumed that in most of the cases concealed income worked out in the Appraisal Reports runs into hundreds of crores whereas infact finally assessed income in these cases are few crores and the

estimates made in the Appraisal Report range sometimes more than 20 to 50 times of the finally assessed income. In view of such unauthentic appraisal reports, it becomes difficult for the Assessing Officer to do justice, with the assessments framed by them. Such unchecked attitude of the Investigation Wing should be curbed and some mechanism should be formulated to have a check on framing such high pitched Appraisal Reports and periodical review of such Appraisal Reports should be made with reference to finally assessed income and suitable records be maintained for the same.

(h) Non-Accountability of Investigation Department:

It is understood that there is no accountability of the Investigation Department carrying out the search operations in exceeding their jurisdiction and powers and also acting in gross violation of the provisions of laws as well as the Instructions contained in Search Manual of the Department. It is noticed that even if the Search Party makes illegal seizures of the disclosed assets or property or their actions make the assessee suffer in the business affairs, by way of putting excessive restraint orders u/s 132(3) of the Income Tax Act, no action is prescribed against the Department under Law of Torts. There is scope of unfair use of protection provided under Section 293 of the Income Tax Act. This is clear from the reported case of Hon'ble Delhi High Court in the case of Prem Kumar & Sons, HUF vs Union of India, 280 ITR 152(Delhi). In this case, the search party had seized the capital gain units acquired by the assessee to claim exemption u/s 54 EC of the Income Tax Act. During the course of search the assessee had explained to the search party that these Capital Gain Units were duly disclosed much prior to the date of search and these were acquired out of the sale proceeds of the property for which capital gain was duly disclosed in its Income tax return prior to the date of search. However, such Capital Gain Units were seized and after long litigation these were released to the assessee which was much beyond the period of their maturity of three years. The rate of interest allowed on such Capital Gain Units was much lower than the prevailing rate applicable on FDRs in the Bank during that period. The assessee filed a suit for the damages against the Department for compensation towards loss of interest due to the illegal and unwarranted seizure of these Capital Gain Units by the Department. However, the Hon'ble Delhi High Court came to the rescue of the Department under section 293 of the Income Tax Act and dismissed the suit of damages filed by the assessee. It is felt that the unfair use of protection under Section 293 of I.T.Act is a not healthy tradition in a democratic society and some mechanism may be involved to curb such illegal seizures or other unauthorized actions of the Investigation Wing.

PART - D

SOME PRACTICAL SUGGESTIONS - (To dilute rigours of Search & Seizure Operations.)

It is felt that many of the problems arise in the hands of the assesseees during Search & Seizure Proceedings for their not being so organized, whether they possess some concealed income/property or not. It is presumed that in case the following points are kept in mind and put into practice, the rigours of Search and Seizure operations can be curtailed. These points are discussed as under :

1. Documentary Evidence of Possession of Jewellery

After the increase in exemption limits of Wealth-tax, impact of Wealth Tax is confined to a few assesseees and most of the assesseees have stopped filing their wealth-tax returns from the assessment 1993-94 onwards. In view of this, even if the jewellery is acquired out of explainable sources, the same may not apparently form part of the assets disclosed to the department in the Wealth Tax Return or otherwise. At the time of any action, the department tends to seize such explainable jewellery on the assurance that the same shall be released after explanations are furnished to prove that the same does not represent undisclosed income or property. To avoid such eventuality, the following steps are suggested.

- (a) One should get the jewellery valued from an approved valuer, say as on 31st March 2009. The valuer should be requested to keep individual items of jewellery in plastic pouches/bags and serial numbers be affixed on these pouches/bags, so that they tally with serial numbers of these items mentioned in the valuation report, for easy reference and identification of different items of jewellery. Preferably the photographs of jewellery items may also be kept alongwith the respective items of jewellery for easy cross-reference.
- (b) File the wealth-tax return for the assessment year 2009-2010 including the said jewellery, even if total wealth is below taxable limit.
- (c) Prepare a statement explaining the source of acquisition of such jewellery and attach it with the Wealth Tax Return so filed.
- (d) Keep a copy of the Wealth-tax computation, acknowledgement of filing of return alongwith the copy of valuation report and statement showing sources of acquisition of such jewellery at a place where such jewellery is kept. If such jewellery is kept in a locker, copy of the said documents should be kept in the locker along with the jewellery and if the jewellery is kept in the house, then copy of these papers should be kept at the house. If part of jewellery is kept in locker and part of it at the house, then one copy each of those documents should be kept at both the places. This will help in ready verification of the disclosure of jewellery at the time of any such action and its seizure can be avoided.

Regarding jewellery it may be noted that as per the CBDT Instruction No. 286/63/93-IT (Inv.) II, dated May 11, 1994, relating to guidelines for seizure of jewellery and ornaments

in the course of search, the Board has specified that in case of a person(s) not assessed to Wealth Tax, gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member to the family need not be seized. On the basis of the above guidelines for seizure of jewellery and ornaments in the course of search and permitting retention of certain amount of jewellery by members of family are also relevant with reference to the deeming provisions of section 69A of the Income Tax Act . Such guidelines may be kept in view regarding explanation of Jewellery

2. Ownership Documents of Immovable properties

All the immovable properties, whether these are liable to wealth-tax or not, may be disclosed in the computation of wealth to be filed with the department. Separate statements showing the source of investment of these properties may also be drawn and filed along with the Wealth Tax return. In the alternative, the Statement of Affairs may be attached to the Wealth Tax return including these properties. The copy of computation, copy of acknowledgement of filing of Wealth-tax Return and the statement of source of investment should be annexed to and should always be kept along with such title documents of the property. This will help the person in tendering the explanation readily at the time of any action and the seizure of property documents may be avoided.

3. Movable Assets like FDRs, Shares, NSCs etc.

Although movable assets like FDRs, Shares, NSCs etc. are not liable to wealth-tax, these may also be reflected as exempted assets in the computation of wealth-tax to be filed. Further, a statement should be drawn showing the source of investment of such assets. In the alternative Statement of Affairs may be attached to the Wealth Tax return including these assets. These statements along with the copy of Wealth-tax Return and copy of acknowledgement of its filing. should be annexed and kept along with the original documents of such investments like FDRs, NSCs, etc. All this will come very handy in explaining the source of acquisition of these assets and will establish the disclosure of such assets to the department prior to the action of search. This will help the assessee in avoiding their seizure.

4. Why Filing of Wealth Tax Return preferred.

In case one does not wish to file the wealth tax return, details of assets and investments may be disclosed in the Balance sheet or, Statement of Affairs to be filed alongwith Income Tax returns, so that the assets and properties are duly disclosed to the department.

This may look convenient but in practice may not be very effective. These days the Income Tax returns are usually filed without annexures and therefore filing of the Income-

tax return does not contain details of declaration of such assets. In view of this, the Search Party may tend to raise objections about the verification of the fact of disclosure of such assets from the Income tax return. Keeping this in view, filing of wealth tax return may be preferred, which will help in disclosure of individual items of assets/properties, as discussed above.

5. Avoidable habit of retaining Rough & Loose Papers

It happens with most of us that we note down the rough calculations/or notings on papers which may have some bearing on the actual transactions or may not have such relevance. With the passage of time and human memory being limited, one may not remember the purpose and the relevance of noting down such figures on rough papers or loose sheets. The Search Party, however, expects the assessee to explain all the notings on such loose sheets, rough papers, etc., found during the search even if these were noted down a number of years ago and may have no relevance to financial transactions. As a matter of abundant caution and to make it as a routine of life, it is suggested that such loose sheets or rough papers should be dispensed with on regular basis and not retained after their utilization is over. In case such loose papers, so kept, have any bearing on the financial transactions, these should be properly recorded and proper remarks/reference should be kept on such rough papers about their reference of recording in regular books. A periodical verification of this aspect should be exercised which will be of great help and save a person from unnecessary questioning during the possible action.

6. Retaining of Provisional Balance Sheets

In the normal course, the provisional Balance Sheets are drafted which are finalized after making provisions and also accounting for the actual liabilities on the basis of bills etc. received after drafting of such provisional Balance Sheets. Usually, the accounts department forgets the replacement of final Balance Sheet with the draft provisional balance sheets which continue to be retained in the working papers by way of hard copies and may also remain stored on the computer. With the passage of time, the Accounts Department tend to forget the provisions and accounting for such actual liabilities. In case two or three sets of Balance Sheet are found during the course of search, the same raises suspicion in the mind of the Search Party, although such provisional Balance Sheet and final Balance Sheets may otherwise be explainable. However this leads to unnecessary botheration and explanations which can be avoided by dispensing with the provisional Balance Sheets and only final Balance Sheets are retained. However, it is necessary to reconcile the books of accounts on computer with the finally signed Balance Sheet and also print outs of these final accounts should be taken and kept on record. This will save the accounts department from many hassles during the course of any possible action.

7. Project Reports with Inflated Market Values

Sometimes consultants of the assessee draw Project Report for the purpose of seeking the credit facilities from the Banks or the Financial Institutions and in order to avail higher credit facilities, the values of these assets, investments, etc. are inflated. However in case these values do not reconcile with the values as per books of accounts, it gives room for adverse inference in case of search. It is suggested that in case the values reflected in Project Report are higher, then the suitable notes and explanations must be appended in the project report to disclose that these values reflect the estimated market price and does not represent the cost of acquisition of these assets. This will save the assessee from avoidable adverse inference of undisclosed investments etc.

8. Data on Computers, e-mails, Digital diaries, Pen Drives etc.

Since many details and informations maintained on computers /Digital diaries etc. include, the rough workings, these may be deleted on periodical basis, immediately after the same are not required. Further utmost care may be taken to dispense with the e-mails, which are not required, since the proposals or quotations retained on e-mail may encourage the search party to arrive at the adverse inferences. The electronic data should be reviewed on day to day basis, to avoid any unwanted adverse inference during the course of possible search.

9. Physical Verification of Stock on periodical basis

The physical inventory may be drawn and periodically cross-verified with the regular books of account. It is always better to be up-to-date and be aware of the actual state of affairs of the business. During the course of search operations, their may be thrust of the department on physical verification of stock with the books of account. Such periodical verifications will help the assessee to be up-to-date and readily reconcile the stock position in the eventuality of any such action, which will avoid adverse inference in this regard.

10. Precautions at the time of Recording of Statements

At the time of recording of statement, due precaution may be taken not to make any mis-statement as these statements are recorded on oath and can be used as an evidence against the person making the statement u/s 132(4) of the I.T.Act, during the course of search. In case some aspect is not clearly remembered, then instead of making a wrong statement/commitment, it may be stated in such a case that the concerned aspect shall be verified and explained later. In case the Officer recording the statement puts undue pressure or makes a threat, he should be politely told to record the answers given and should not force the assessee to answer questions in the manner desired by the officer. The assessee

should ensure that the Search Officer records the same statement reflecting the same meaning which is intended to be stated by the assessee. Sometimes the Search Officer records different words in the statement, which are not in commensuration with what is stated by the assessee, which should be ensured not to take place. The better option is that the assessee should request the Search Officer to write the questions and assessee should himself write the answers carefully in his own hand writing. However, in case a statement has not been properly recorded or a person wants to make a clarification or retract from the statement so recorded, he has a legal right of right to do so. The admissions made in the statement recorded under threat or coercion, without any adverse evidence found at the time of search or otherwise, may be retracted and communication of such retraction may be sent, within a reasonable time of recording of such statement.

11. Possession of Foreign Currency

Sometimes after return from the foreign tours/trips, one is left with some unspent foreign currency. Although as per guidelines of Reserve Bank of India, one is entitled to keep unspent foreign currency to the extent of 2000 U.S. dollars per person to be used for future trips, yet in case of any search, the Income-tax officials may tend to seize such foreign currency and hand over the same to the Enforcement Directorate for verification. To avoid such inconvenience and avoidable questioning, the unspent foreign currency may preferably be deposited with the bank and holding of such currency in bigger amounts may be avoided. Such foreign currency can always be acquired at the time of the next trip/tour. In case such currency has necessarily to be held, proper documents by way of evidence of acquisition of such currency and evidence of unspent foreign currency should be kept handy at the same place where such currency is kept so that its verification becomes easy and instant and adverse inference is avoided.

12. Possession of IMFL (Indian Made Foreign Liquor) or Foreign Liquor

These days most of the foreign liquor brands are processed/bottled in India. As per the current excise rules, the consumer in Delhi is allowed to keep 18 litres of IMFL or beer (in any proportion) at his residence at a time for bonafide consumption by him and family members or his guests. For higher possession, he should apply to the Excise Department for the permit for which a fee of Rs.2,000/- is charged. The applicant has to be Income tax assessee to be eligible for the said permit for liquor.

It is felt that foreign liquor brands which are processed/bottled in India will be covered under the definition of IMFL (Indian Made Foreign Liquor).

For retaining and possessing the imported liquor, suitable explanation of its acquisition may be retained and co-related with reference to the past foreign trips made by the assessee or his family members since every person is allowed to carry

about two bottles of whisky from abroad, on each trip without payment of custom duty and customs duty is charged if whiskey is carried over such limits. The reference of gifts received of such whisky bottles can be retrained.

However, in case any excess liquor is found during the course of search where IMFL or foreign liquor so found is in excess of prescribed limits, then Income Tax Department may tend to refer the matter to Excise Department, who may confiscate such excessive liquor and also fine upto Rs.500/- appx. per bottle of excess liquor found. These days there is no provision of prosecution under Excise Laws for such excess liquor found which may be a general impression that one may liable for prosecution for such excess liquor found in his possession.

13. Mock Survey/ Suitable Safeguards

It is suggested that we professionals should carry out mock survey like operations in the premises of our clients on regular intervals. This will not only educate the clients and their staff, particularly Accounts Department, about the intricacies of such operations but will also inculcate a discipline in them to be more organized in their financial affairs. Such operation may include the following aspects, which can be enlarged keeping in view the nature of business of client:-

- a) To check all the drawers and go through the papers lying therein.
- b) To check the files and records of all the departments.
- c) To go through the data on computers
- d) To go through the e-mails available on computers
- e) To go through the draft balance sheets, Trial balances, MIS data and reconcile the same.
- f) To ensure hard copies of books of accounts already audited and reconcile with final balance sheets.
- g) To check cash, FDRs, other assets with books of account.
- h) To review the status of inventory & its reconciliation with books
- i) To review statements of inventory filed with bankers for availing credit facilities and reconcile the same with books.
- j) To advise filing of Wealth Tax returns & disclosure of assets to the department.
- k) To educate the client to keep the evidence of disclosure of assets, along with the assets/title deeds etc.
- l) To go through all the agreements to sell/ sale deeds of properties with reference to books of account.
- m) To review the position of jewellery, its valuation/ reconciliation with books/disclosure to department.
- n) Other suitable checks to be made.

Conclusion

We all know that the prevention is better than cure. The foregoing discussion is only a humble attempt in this direction, to help avoid the possibility of unnecessary seizure of assets/properties and to curtail the unnecessary questioning resulting in lesser litigation with the department. Since the discussion has been restricted to practical aspects only, no attempt has been made to refer to the legal pronouncements on the subject. ■