After studying this chapter, you would be able to:

- **identify** the various income-tax authorities and comprehend the provisions of law relating to their appointment, control and jurisdiction.

- **appreciate** the powers of income-tax authorities under the Income-tax Act, 1961.

- **examine** the provisions relating to survey, search and seizure and the related powers of various income-tax authorities; analyse and apply such provisions to address related issues.
16.1 APPOINTMENT AND CONTROL [SECTIONS 116 TO 119]

(1) Classes of Income-tax authorities: The following are the classes of income-tax authorities

(i) The Central Board of Direct Taxes.

(ii) Principal Directors-General of Income-tax or Principal Chief Commissioners of Income-tax.

(iii) Directors-General of Income-tax or Chief Commissioners of Income-tax.

(iv) Principal Directors of Income-tax or Principal Commissioners of Income-tax.

(v) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals).

(vi) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals).

(vii) Joint Directors or Joint Commissioners of Income-tax.

(viii) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax.

(ix) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax.

(x) Income-tax Officers.

(xi) Tax Recovery Officers.

(xii) Inspectors of Income-tax.

(2) Meaning of “Assessing Officer”: In this connection, it may be noted that under section 2(7A), the term ‘Assessing Officer’ means –

(i) the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director; or

(ii) the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under section 120(1) or (2) or any other provision of the Act; and

(iii) the Additional Director or Additional Director or Joint Commissioner or Joint Director who is directed under section 120(4)(b) to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer.

(3) Central Board of Direct Taxes (CBDT): The Central Board of Direct Taxes (CBDT) is a statutory body constituted under the Central Board of Revenue Act, 1963. It consists of a number of members appointed by the Central Government for the performance of such duties, as may be entrusted to the Board from time to time. It is functioning under the jurisdiction of the Ministry of Finance. The CBDT, besides being the highest executive authority, exercises
control and supervision over all officers of the Income-tax Department and is authorised to exercise certain powers conferred upon it by the Income-tax Act, 1961. In particular, it has the powers, subject to the control and approval of the Central Government to make any rules, from time to time for the proper administration of the provisions of the Income-tax Act, 1961.

All the rules under the Act are framed by the CBDT under section 295 and placed before the Parliament. In addition to the general power of making rules and of superintendence, the Board has been given specific powers on several matters.

(4) Appointment and Control of Income-tax Authorities [Sections 117 & 118]

(i) Section 117 empowers the Central Government to appoint such persons as it thinks fit to be income-tax authorities.

(ii) It may also authorise the Board or a Principal Director General or Director General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.

(iii) An income-tax authority authorised by the CBDT may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

(iv) Section 118 authorises the CBDT to also direct, by way of notification, that any Income-tax authority or authorities shall be subordinate to such other income-tax authority or authorities, as may be specified.

(5) Instruction to Subordinate Authorities [Section 119]

(i) The CBDT has been empowered under section 119 to issue instructions and circulars to its subordinates for the proper administration of the Act.

(ii) It is obligatory for the various authorities and all other persons employed in the execution of the Act to observe and follow such orders, instructions and directions of the CBDT.

(iii) The CBDT, however, is not empowered to issue orders, instructions or directions in such a way as to –

   (1) require any income-tax authority to make the assessment of a particular case in a particular manner; or

   (2) interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions.

(iv) The CBDT may, if it considers necessary or expedient to do so, for the purpose of proper and effective management of the work of assessment and collection of revenue, issue general or special orders from time to time in respect of any class of incomes or class of cases setting forth directions and instructions not being prejudicial to the assessee.
(v) In appropriate cases, the CBDT may relax the provisions of sections 115P, 115S, 139, 143, 144, 147, 145, 154, 155, 234A, 234B, 234E, 270A, 271C, 271CA and 273. The CBDT can exercise its powers to remove difficulties in the matter of sections 201(1A), 210, 211 and 234C.

The following table gives a brief glimpse of what these sections relate to—

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### 16.2 JURISDICTION

(1) Jurisdiction of income-tax authorities [Section 120]

(i) The income-tax authorities shall exercise all or any of the powers and perform all or any
of the functions conferred on, or assigned to, such authorities in accordance with the directions issued by the CBDT for the exercise of such powers and performance of the functions by all or any of those authorities [Section 120(1)].

(ii) Any income-tax authority, being an authority higher in rank, may exercise the powers and perform the functions of the income-tax authority lower in rank, if so directed by the CBDT. Such direction issued by the CBDT shall be deemed to be a direction issued under the said section 120(1).

(iii) In issuing such directions the Board may have regard to the following criteria:
   (a) Territorial area.
   (b) Persons or classes of persons.
   (c) Incomes or classes of incomes.
   (d) Cases or classes of cases.

(iv) The CBDT can authorise any Principal Director General or Director General or Principal Director or Director of Income-tax to perform such functions of any other income-tax authority.

(v) The CBDT can empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing to the effect that the powers and functions conferred on or assigned to the Assessing Officer under this Act in respect of any specified area or person or class of person or persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or Additional Director or a Joint Commissioner or Joint Director.

(vi) The CBDT or any other authority authorised in this behalf can confer jurisdiction with more than one income-tax authority in relation to any case.

(2) Jurisdiction of Assessing Officers [Section 124]

(i) Where 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 business or profession within that area or in respect of a person whose business or profession is carried on in more than one place, if his principal place of business is in that area and
   (b) in respect of any other person residing within the area.

(ii) 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 Commissioners or Principal Commissioner or Commissioner.
In case the question relates to an area within the jurisdiction of different Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioner then the question shall be determined by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner concerned or if they are not in agreement, then the same shall be determined 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 specify by way of notification in the Official Gazette.

(iii) Section 124(3)(a) provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer where such person has made a return of income under section 139(1), after the expiry of one month from the date on which he was served with a notice under section 142(1) or section 143(2) or after the completion of the assessment, whichever is earlier.

(iv) Section 124(3)(b) provides that the jurisdiction of the Assessing Officer shall not be called in question where no return has been made, after the expiry of the time allowed by the notice under section 142(1) or under section 148 for the making of the return or by the notice under section 144, whichever is earlier.

(v) Section 124(3)(c) provides that in cases where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, no person shall be entitled to call into question the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with a notice under section 153A(1) or section 153C(2) or after the completion of the assessment, whichever is earlier.

(vi) Where the assessee questions 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 (ii) above before the assessment is made.

(vii) 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 direction or order issued under section 120(1) and 120(2).

(3) Power to transfer cases [Section 127]

(i) The power to transfer a case from one Assessing Officer to another subordinate Assessing Officer or Officers is vested with the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner of Income-tax. However, this power can be exercised only after giving the assessee a reasonable opportunity of being heard and after recording reasons for doing so, wherever possible.

(ii) There may be situations where the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred do not fall under the control of the same Principal Director General or Director General or Principal Chief Commissioner
or Chief Commissioner or Commissioner or Principal Commissioner of Income-tax. In such cases, the Principal Director General or Director General of Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner of Income-tax from whose jurisdiction the case is transferred shall pass an order, if such concerned higher authorities mutually agree for such transfer.

(iii) If the higher authorities are not in agreement about the transfer, then, the CBDT or any such authority authorized by the Board may pass the order.

(iv) If the case is transferred between Assessing Officers within the same city or locality or place, then, it is not necessary to give the assessee an opportunity of being heard.

(v) The transfer of a case may be made at any stage of the proceedings and it is not necessary to re-issue any notice already issued.

(vi) For the purpose of section 120 and section 127, “case” in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this act which may be commenced after the date of such order or direction in respect of any year.

(4) Change of Income-tax Authority [Section 129]

(i) In cases where an income-tax authority succeeds another income-tax authority, who ceases to exercise jurisdiction, then, the succeeding income-tax authority may continue the proceedings from the stage at which the proceedings was left by his predecessor.

(ii) The assessee concerned may demand that before continuance of proceedings as in (i) above, the previous proceedings or any part thereof be reopened or be reheard before passing of any assessment order against him.

16.3 POWERS OF INCOME TAX AUTHORITIES [SECTIONS 131 TO 136]

(1) Discovery, production of evidence etc. [Section 131]

(i) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), the Principal Chief Commissioner or Chief Commissioner and the Dispute Resolution Panel referred to in section 144C have the powers vested in a Civil Court under the Code of Civil Procedure, 1908 while dealing with the following matters:

(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 documents; and
(d) issuing commissions [Section 131(1)]

The powers aforementioned are normally those exercisable by a Court when it is trying a suit. While exercising these powers, the authorities act in a quasi-judicial capacity and ought to conform to the principles of judicial procedure.

(ii) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in section 132(1), before he takes action under the said sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in section 131(1) on the income-tax authorities referred to therein, even if no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority [Section 131(1A)].

(iii) For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax), as may be notified by the Board, to now have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons [Section 131(2)].

(iv) Further, the said income-tax authority is vested with the power to impound or retain in its custody for such period as it may think fit, any books of account or other documents produced before it in any proceeding under this Act. The powers are unrestricted in the case of all the authorities except the Assessing Officer or an Assistant Director or Deputy Director whose powers are subjected to two restrictions; (i) he must record his reasons for impounding books of account or other documents; and (ii) if he desires to retain in his custody any such books or documents for a period exceeding 15 days (excluding holidays), he must obtain the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Commissioner or Principal Commissioner or Principal Director or Director, as the case may be, for the purpose [Section 131(3)].

(2) Search and Seizure [Section 132]: Under this section, wide powers of search and seizure are conferred on the income-tax authorities. The important points relating to this provision have been briefly summarised below:

The provisions of the Criminal Procedure Code relating to searches and seizure would, as far as possible, apply to the searches and seizures under this Act. Contravention of the orders issued under this section would be punishable with imprisonment and fine under section 275A.

(i) Search and seizure can be authorised by Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner or Principal Director or Director, as the case may be, for the purpose [Section 132].
Additional Commissioner or any such Joint Director or Joint Commissioner as may be empowered by the Board. A Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may authorise any Joint Director, Joint Commissioner, Additional Director or Additional Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer. An Additional Director or Additional Commissioner, Joint Director or Joint Commissioner can authorise Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer.

Thus, under section 132(1), the income-tax authorities listed above are empowered to authorise other income-tax authorities to conduct search and seizure operations.

The authorities empowered to issue authorization are:

(1) Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner;

(2) Principal Director or Director or Principal Commissioner or Commissioner; and

(3) Such Additional Director or Additional Commissioner, Joint Director or Joint Commissioner as are empowered by the CBDT to do so.

(ii) Such authorisation could take place if the authority believes, on the basis of information in his possession:

(a) that the person to whom a summons under section 131(1) or notice under section 142(1) was issued to produce or cause to produce books of account or other documents has omitted or failed to do so; or

(b) that a person to whom a summons or a notice has been or might be issued, does not or would not produce any books of account or other documents called for or which will be useful or relevant to any proceeding under the Income-tax Act, 1961; or

(c) that a person who is in possession of any valuable articles or things, including money, bullion or jewellery etc. (which has not been disclosed or would not be disclosed by the person concerned for income-tax purposes).

However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(iii) Such an authorisation can empower the authorised officer to enter any building or place or vehicle, vessel or aircraft where he has reasons to suspect that such books of account, documents, articles including money, jewellery, valuables etc. are kept and in case they are found, he may seize them, place marks of identification on them or make a note or inventory thereof for the purpose. However, any bullion, jewellery or other valuable article or thing, which is in the nature of stock-in-trade of the business, found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business. The person who is in possession or control of books of account
or other documents maintained in the form of electronic records, shall be required to afford the necessary facility to authorised officer to inspect all such books of account or other documents.

Electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfile.

In the discharge of such a duty, he is authorised to break open the locks in case keys are not readily available. However, the books of account and other documents seized should be returned within a period of 30 days from the date of the order of assessment under section 153A or section 158BC(c), unless the reasons for retaining the same are recorded and approved by the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner or Principal Director General or Director General or Principal Director or Director. The books or other records cannot be retained for a period exceeding 30 days after the assessment proceedings for the relevant year are over. The persons from whose custody any books of account or other documents have been seized may make copies thereof or take extracts therefrom.

(iv) The Authorised Officer is empowered to search any person in or about the building or place in respect of which a search has been authorised, if he has reason to suspect that any article for which the search is being made is concealed about his person. This Authorised Officer is also entitled to search any person who has got out of or is able to get into or is in the building, place, vessel, vehicle or aircraft in respect of which a search has been authorised, if he has reason to suspect that such person has secreted about his person any books of account or other documents, money, bullion, jewellery or other valuable articles for which the search is being made.

However, the reason to suspect, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(v) The Commissioner or Principal Commissioner of Income-tax has the power to authorise the search of any building, place, vessel, vehicle, aircraft etc., within his territorial jurisdiction and also in cases where he has no jurisdiction over the persons concerned, if he has reason to believe that any delay in obtaining authorisation from the Commissioner or Principal Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue.

(vi) Where a search for any books of account or other documents or assets has been authorised by any authority who is competent to do so, and the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has reason to suspect that such books of account or the documents of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, he may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft. Accordingly, if a search warrant is issued by the Principal Commissioner or Commissioner of Income-tax, authorising the search of a premises in a particular place specified in the search warrant and the Authorised Officer finds that the books of account
or other documents and/or assets have been secreted in a building or place not specified in the search warrant, he could request the local Commissioner to authorise him to search that building or place.

(vii) Now there is a rebuttable presumption to the effect that the books of account or other documents and assets found in the possession of any person in the course of a search belong to such person and also that the contents of such books of account and other documents are true and that the signature and every other part of such books of account and other documents are in hand-writing of the persons who can reasonably be assumed to have signed or written the books of account or other documents.

(viii) 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 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. This is called a restraint order. However, such a deeming seizure would not apply to stock-in-trade of the business.

(ix) 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 (viii) above] 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. However, serving of such an order shall not be deemed to be seizure of such valuable article or thing.

(x) The examination of any person 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 under the Act.

(xi) An order as mention under point (ix), shall not be in force for a period exceeding 60 days from the date of the order [Section 132(8A)].

(xii) 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 authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf [Section 132(9)].

(xiii) Where the authorized officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of point (ii) above, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under that sub-section shall be handed over by the authorized officer to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date of which the last of the authorizations
for search was executed and thereupon the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer [Section 132(9A)].

(xiv) For the purpose of protecting the interest of the revenue and safeguarding recovery in search cases, the authorized officer during the course of search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed is satisfied for reasons to be recorded in writing, it is necessary so to do, he may with the prior approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee [Section 132(9B)]

(xv) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B). [Section 132(9C)]

(xvi) The authorized officer may, during the course of the search or seizure or within a period of 60 days from the date on which the last of the authorisations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of 60 days from the date of receipt of such reference. [Section 132(9D)]

For the purpose of subsection (9A)/(9B)/(9D) of section 132 authorisation is deemed to have been executed on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued. [Section 153B(2)]

(xvii) If a person, legally entitled to the books of account or other documents seized, objects for any reason to the approval given by the Principal Chief Commissioner or Chief Commissioner, Commissioner or Principal Commissioner, Principal Director General or Director General or Principal Director or Director to extend the period of retention of the same by the Assessing Officer beyond 30days, 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 [Section 132(10)].

(xviii) 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—

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized. [Section 132(14)].

(xix) For the purpose of this section, the word "proceeding" means any proceeding in respect of any year under 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.

(3) **Power to requisition books of account etc. [Section 132A]**

(i) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner on the basis of information in his possession, has reason to believe that-

(a) any person to whom a summons under section 131(1) or a notice under section 142(1) 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 and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc.

(b) any books of account or other documents will be useful for, or relevant to, any proceeding under this Act and 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, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc.

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, such as, by the Collector of Customs, the Sales-tax Commissioner etc.

then, the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner may authorise any Additional Director, Additional Commissioner, Joint Director Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer (referred to as the requisitioning officer) to require the officer or authority under any other law referred above, as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

**However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.**
Clarificatory provision for non-disclosure of reason to believe or reason to suspect recorded by the Income-tax Authorities

✓ The need for this clarification arose because the Commissioner of Income-tax & Benches of the Income-tax Appellate Tribunal, in the context of appeals before them, started demanding copies of reasons to believe in search, seizure and requisition cases, which the Income Tax Department has not been giving to them on ground of secrecy.

✓ Though there are some decisions wherein it has already been held that search cannot be held invalid on the ground that reasons to believe not disclosed to assessee, the said amendment provides statutory recognition to such decisions so as to avoid any further litigation on the issue. These decisions are:

(i) In M.S. Associates v. Union of India (2005) 272 ITR 502 (Gau), it was observed that revenue authorities are not required to disclose to the person challenging the warrant of authorisation as to what materials were available against him, which had led to the issuance of the warrant. It is required to be disclosed only when the authorities concerned resolve to impose tax or penalties.

(ii) In Genom Biotech (P) Ltd. & Ors. v. Director of IT (Investigation) & Ors. (2009) 180 Taxman 395 (Bom), it was observed that it is not the mandate of section 132 or any other provision in the Act that the reasonable belief recorded by the designated authority before issuing the warrant of authorisation must be disclosed to the assessee.

(iii) On a requisition being made under (i), the officer or authority under any other law referred above, as the case may be, shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(iii) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sections 132(4A) to 132(14) and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under section 132(1) by the requisitioning officer from the custody of the concerned person and for the words "the Authorised Officer" occurring in any of the above mentioned sections, the words "the requisitioning officer" were substituted.]

(4) Application of retained assets [Section 132B]

(i) Section 132B(1), provides for the permissible adjustment of assets seized under section 132 or requisitioned under section 132A.
(ii) “Existing liability” does not include **advance tax payable** in accordance with the provisions of Part C of Chapter XVII of the Income-tax Act, 1961.

(iii) If the assets consist solely of money or partly of money and partly of other assets, the Assessing Officer may apply the money in discharge of the liabilities mentioned above. The assessee shall be discharged to the extent of the money so applied.

(iv) The assets other than money may also be applied for the discharge of such liabilities which still remains undischarged. For this purpose, such assets shall be deemed to be under distraint, as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorization from the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner under section 226(5). The Assessing Officer or the Tax Recovery Officer, as the case may be, may recover the amount of such liabilities by the sale of such assets in the manner laid down in the Third Schedule.

(v) Where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the asset and explains the nature and source of acquisition of seized assets is explained satisfactorily, then, such assets are required to be released within a period of 120 days from the date on which last of the authorisations for search under section 132 is executed after meeting any existing liabilities. The assessee shall be entitled to simple interest at ¼ % per month or part of a month, if the amount of assets seized exceeds the liabilities eventually, for the period immediately following the expiry of 120 days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was
executed to the date of completion of the assessment under section 153A or under Chapter XIV-B.

(5) **Power to call for information [Sections 133]**

The Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may call for following information for the purposes of this Act:

(i) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares;

(ii) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family;

(iii) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;

(iv) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than one thousand rupees, or such higher amount as may be prescribed, together with particulars of all such payments made;

(v) require any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts;

(vi) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), will be useful for, or relevant to, any enquiry or proceeding under this Act:

Under the existing provisions of section 133(6), the prescribed authorities have the power to call for any information from any person which will be useful for or relevant to any proceedings under the Act. Such powers may also be exercised by the Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director. Further, the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority.
below the rank of Principal Director or Director or Commissioner or Principal Commissioner other than the Joint Director or Deputy Director or Assistant Director without the prior approval of the Principal Director or Director or as the case may be, the Commissioner or Principal Commissioner.

For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax) to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

(6) Power of Survey [Section 133A]

(i) An income-tax authority may enter any place:

(a) within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction, or

(c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose. This power may be exercised:

(a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place;

(b) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and

(c) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceeding under the Income-tax Act, 1961 [Section 133A(1)].

(ii) This power may be exercised in respect of any place with which the assessee is connected, whether or not such place is the principal place of business or profession or
activity for charitable purpose. It will also include any other place, whether any business or profession or activity for charitable purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other valuable article or thing relating to his business or profession or activity for charitable purpose are kept [Explanation to section 133A(1)].

(iii) The income-tax authority may enter any place of business or profession mentioned above only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset [Section 133A(2)].

(iv) Under section 133A(3), the income-tax authority exercising this power of survey may:

(a) place marks of identification, if he finds it necessary, on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom;

(b) impound and retain in his custody for such period as he thinks fit any book of account or other documents inspected by him after recording reasons for doing so.

However, the income tax authority cannot retain in his custody such books of account etc. for a period exceeding 15 days (excluding holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be.

(c) make an inventory of any cash, stock or valuable article or thing checked or verified by him; and

(d) record the statements of any person which may be useful for or relevant to any proceedings under the Income-tax Act, 1961.

However, the income-tax authority cannot remove or cause to be removed from the place where he has entered, any cash, stock or other valuable article or thing [Section 133A(4)].

(v) Section 133A(2A) provides that an income-tax authority may, for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter-

(a) any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or

(b) any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

(vi) The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax
authority may require the deductor or the collector or any other person who may at the
time and place of survey be attending to such work,—

(a) to afford him the necessary facility to inspect such books of account or other
documents as he may require and which may be available at such place, and

(b) to furnish such information as he may require in relation to such matter.

(vii) An income-tax authority may -

(a) place marks of identification on the books of account or other documents inspected
by him and take extracts and copies thereof;

(b) record the statement of any person which may be useful for, or relevant to, any
proceeding under the Act.

However, while acting under sub-section (2A), the income-tax authority shall not impound
and retain in his custody, any books of account or documents inspected by him or make
an inventory of any cash, stock or other valuable articles or thing checked or verified by
him.

(viii) The income-tax authorities would also have the power to collect information and record
the statements of any of the persons concerned at any time after any function, ceremony
or event even before the stage of commencement of assessment proceedings for the
following year for which the information may be relevant, if they are of the opinion that
having due regard to the nature, scale and extent of the expenditure incurred, it is
necessary to do so. This provision is intended to help in collecting evidence about
ostentatious expenditure immediately after the event to be used at the time of the
assessment [Section 133A(5)].

(ix) If any person who is required to provide facility to the income-tax authority to inspect the
books of account or the other documents or to check or verify any cash, stock or other
valuable articles or to furnish any information or to have his statement recorded, either
refuses or evades do so, the income-tax authority would be entitled to use all the powers
vested in it under section 131(1) for enforcing proper compliance with the requirements.
However, no action under sub-section (1) shall be taken by the Assistant Director or a
Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of
Income-tax except with the prior approval of the Joint Director or the Joint Commissioner,
as the case may be [Section 133A(6)].

(x) For the purpose of this section, “proceeding” means any proceeding under this Act in
respect of any year which may be pending on the date on which the powers under this
section are exercised or which may have been completed on or before such date and
includes also all proceedings under this Act which may be commenced after such date in
respects of any year.

(7) Power to collect certain information [Section 133B]

(i) Under this section, an income-tax authority may enter any building or place (at which a business or profession is carried on) within its jurisdiction or any building or place (at which a business or profession is carried on) which is occupied by any person in respect of whom the said authority exercises jurisdiction for the purpose of collecting any information which may be useful for or relevant for the purposes of the Act. It is not necessary that such a place should be the principal place of the business or profession.

(ii) The authority may require any proprietor, employee or any other person who may at the time and place be attending in any manner to or helping in carrying on such business or profession to furnish such information as may be prescribed.

(iii) An income-tax authority may enter any place of business or profession referred to above only during the hours at which such place is open for business.

(iv) Such authority shall on no account remove or cause to be removed from the building or place wherein he has entered any books of account or other valuable articles or things.

(v) In this section, income-tax authority means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the power conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or any part thereof.

(8) Prescribed income-tax authorities empowered to call for information [Section 133C]

(i) Section 133C enables the prescribed income-tax authority to verify the information in its possession relating to any person.

(ii) Under this section, for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him,

- on or before a date to be therein specified,
- to furnish information or documents,
- verified in the manner specified therein
- which may be useful for, or relevant to, any inquiry or proceeding under the Act.

(iii) The prescribed income-tax authority may process such information or documents received from the assessee and make available the outcome of such processing to the Assessing Officer.
(iv) **The CBDT may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer**

(v) The term "proceeding" means any proceeding under the Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date. The term “proceeding” also includes all proceedings under the Income-tax Act, 1961 which may be commenced after such date in respect of any year.

(9) **Power to inspect registers of companies [Section 134]**: The Assessing Officer, the Joint Commissioner or the Commissioner (Appeals), or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, the Joint Commissioner or the Commissioner (Appeals), as the case may be, may inspect and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

(10) **Other powers [Sections 135 and 136]**: The Principal Director General or Director General or Principal Director or Director, the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner and the Joint Commissioner are competent to make any enquiry under this act and for all purposes they shall have the powers vested in an Assessing Officer in relation to the making of enquiries.

If the Investigating officer is denied entry into the premises, the Assessing Officer shall have all the powers vested in him under sections 131(1) and (2). All the proceedings before Income-tax authorities are judicial proceedings for purposes of section 196 of the Indian Penal Code, 1860, and fall within the meaning of sections 193 and 228 of the Code.

An income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 of the Criminal Procedure Code, 1973.

(11) **Disclosure of information respecting assessee [Section 138]**

(i) Under section 138(1)(a), the CBDT, or any other income-tax authority specified by it by a general or special order, may furnish or cause to be furnished, any information received or obtained by any income-tax authority, in the performance of his functions under the Act which may be necessary for the purpose of enabling any officer, or authority or body performing any function:

(a) under any law relating to the imposition of any tax, duty or cess or to dealings in foreign exchange

(b) under any other law as the Central Government may notify in the Official Gazette in the public interest.
As per section 138(1)(b), if a person makes an application in accordance with Rule 113 of the Income-tax Rules, 1962 to the Principal Chief Commissioner or Chief Commissioner or the Commissioner or Principal Commissioner of Income-tax in the prescribed form for obtaining any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under the Income-tax Act, 1961, the Principal Chief Commissioner or Chief Commissioner or Commissioner or Principal Commissioner, may, if he is satisfied that it is in the public interest, furnish or cause to be furnished the information asked for. His decision in this regard cannot be called in question in any court of law. Nevertheless, section 138(2) empowers the Central Government to direct, having regard to practice and usage customary or otherwise, and any other relevant factors, that no information or documents shall be furnished or produced by a public servant in respect of such matters relating to a particular class of assessees or except to certain authorities which may be specified.

(ii) For instance, in exercise of the powers conferred by section 138(2), the Central Government having regard to all the relevant factors, has directed, vide Notification No.56/2016 dated 6.7.2016, that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under ‘the Income Declaration Scheme, 2016’, contained in Chapter IX of the Finance Act, 2016.

(iii) It may be observed that, under section 138, the Principal Commissioner or Commissioner can make a disclosure on the basis of an application made to him; he cannot volunteer to give the information.
Question 1

Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year 2017-18 on 31st July, 2017, last date for filing the same, he found it extremely difficult to do the same due to network problems and ultimately he became successful in making e-filing of his return only at 1 a.m. on 1st August, 2017. The return contained a claim for carry forward of business loss of ₹1 lakh. This circumstance was recorded in a letter delivered to the office of the Deputy Commissioner of Income Tax on 1st August, 2017 during normal office hours. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.

Discuss whether the CBDT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

Answer

Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

The facts of the case are similar to the case of Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

Applying the rationale of the above court ruling to the case on hand, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of ₹1 lakh, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Question 2

Examine the correctness of the statement “the jurisdiction of an Assessing Officer cannot be objected by the assessee”.

Answer

According to section 124(3), the assessee can raise a question as to the jurisdiction of an Assessing Officer within the prescribed time limit as under:
(i) **where a return has been filed** under section 139(1) then, within one month from the date of service of notice under section 142(1) or section 143(2) or before the completion of assessment, whichever is earlier.

(ii) **where no return has been filed**, then, within the expiry of time allowed by the notice under section 142(1) or section 148 for filing the return or within the time allowed in show cause notice issued seeking as to why a best judgment assessment under section 144 should not be made, whichever is earlier.

(iii) where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, within one month from the date on which he was served with a notice under section 153A(1) or 153C(2) or before the completion of assessment, whichever is earlier.

Where the assessee calls in question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the assessment is made.

Therefore, in view of the above provisions, the statement that “the jurisdiction of an Assessing Officer cannot be objected by the assessee” is not correct.

**Question 3**

*The Director General of Income Tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹ 50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income Tax correct? If not, does the Director General of Income Tax have any other power to seize such cash?*

**Answer**

The powers under section 131(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions. Thus, the power of seizure of unaccounted cash is not one of the powers conferred on the Director General under section 131(1A).

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section...
132(1) and authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash.

**Question 4**

The premises of Ganesh were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.

**Answer**

Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorization include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are empowered by the CBDT to do so.

However, a Joint Commissioner can issue warrant of authorization only if he has been specifically empowered to do so by the CBDT. Therefore, only if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good.

**Question 5**

Examine whether the information regarding possession of unexplained assets and income received from the Central Bureau of Investigation, a Government agency, can constitute “information” for action under section 132. Discuss.

**Answer**

As per section 132(1)(c), authorization for search and seizure can take place if the authority, in consequence of information in his possession, has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing and these assets represent, either wholly or partly, income or property which has not been, or would not be disclosed by such person for the purposes of this Act. In the absence of such information, a search cannot be validly authorized.

The Apex Court in *UOI v Ajit Jain* [2003] 260 ITR 80 has held that mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute “information” within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.

**Question 6**

In the course of search operations under section 132 in the month of July, 2017, a tax payer makes a declaration under section 132(4) on the earning of income not disclosed in respect of
P.Y.2016-17. Can that statement save the tax payer from a levy of penalty, if he is yet to file his return of income for A.Y.2017-18?

Answer

Since the search is conducted on or after 15.12.2016, and return is yet to be filed for the P.Y. 2016-17, the penalty would be as follows

(1) penalty@30%, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 153A expires, as the case may be).

(2) penalty@60% in any other case.

Therefore, even if the tax payer furnishes the statement under section 132(4), penalty@30% of undisclosed income of the specified previous year would be attracted under section 271AAB.

Question 7

Cash of ₹ 25 lacs was seized on 12.9.2017 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2017 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:

(i) Can the department withhold the explained money?

(ii) If yes, then to what extent and upto what period?

Answer

The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. ‘Existing liability’, however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within the 30 day period the amount of existing liability may be recovered out of the asset and the balance may be released within 120 days from the date on which the last of the authorizations for search under section 132 was executed.
**Note:** It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee’s application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.

**Question 8**

The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 by the DDI, Delhi. The search was concluded on 9.8.2017 and following were also seized besides other papers and records:

(i) Papers found in the drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.

(ii) Jewellery worth ₹ 5 lacs from the bedroom of one of the director, which was claimed by him to be of his married daughter.

(iii) Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16.4.2013 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.

You are required to answer on the basis of aforesaid and the provisions of Act, following questions:

(a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?

(b) Whether the contention raised by the director as to jewellery found from his bedroom will be acceptable?

(c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?

(d) Can the company move an application for settlement of case as per Chapter XIX-A of the Act?

**Answer**

(a) The authorised officer being DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, and therefore as per section 132(9A), the papers seized relating to this company shall be handed over by him to the Assessing Officer having jurisdiction over Shri Krishna Ltd., Mumbai within a period of 60 days from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.
(b) The contention raised by the Director will not be acceptable because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect thereof, it may be presumed that the same belongs to that person.

(c) As per section 132(4A), the presumptions in respect of the papers, indicating transactions not recorded in the books but having direct nexus with the business of the company, are that the same belong to the company, contents of such papers are true and the handwriting in which the same are written is/are of the persons(s) whose premises have been searched.

(d) As per clause (iiia) in the Explanation to section 245A, the assessee can approach the Settlement Commission at any time after the date of issue of notice under section 153A or section 153C initiating the assessment proceedings. Therefore, an application can be made to the Settlement Commission where search has been initiated under section 132 followed by assessment under section 153A or section 153C.

The proviso to section 245C(1) specifies the monetary limit for making application for settlement of cases, in respect of search cases. Accordingly, the additional amount of income-tax payable on the income disclosed in the application must exceed ₹ 50 lacs so that application for settlement of the case is eligible for admission.

Question 9

In April, 2017, the business premises of Priyanka Ravi were searched under section 132 by the DDI, Delhi. The search was concluded on 30.04.2017 and following assets/documents were found which were not recorded in her books of accounts:

- Jewellery of ₹ 25 Lacs pertaining to P.Y. 2012-13
- Agreement for purchase of land which contains the payment of advance of ₹ 35 Lacs in cash in the P.Y.2011-12
- Shares purchased in the P.Y.2009-10 and in the P.Y.2010-11 totaling to ₹ 40 Lacs.
- Paper containing the payment of ₹ 15 Lacs in the P.Y.2007-08 and ₹ 10 Lacs in P.Y.2006-07 to a contractor for construction of residential house.

Accordingly, Assessing Officer has issued the notice for all the previous years from P.Y.2006-07 to P.Y.2016-17 under section 153A.

However, Miss Priyanka Ravi contented that the Assessing Officer cannot issue the notice under section 153A beyond six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 i.e. notice can be issued upto A.Y.2012-13 (P.Y. 2011-12).

Discuss about the correctness of action of Assessing Officer and the contention of Miss Priyanka Ravi.

Answer

As per the amendment to section 153A(1) by the Finance Act, 2017, issuance of notice and
assessment or reassessment under the said section can also be made for an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls **beyond six assessment years** but **not beyond ten assessment years** from the assessment year relevant to the previous year in which search is conducted or requisition is made, provided that -

(i) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to **fifty lakh rupees or more in one year or in aggregate in the relevant assessment years**;

(ii) such income escaping assessment is represented in the form of asset which **shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances**;

(iii) the income escaping assessment or part thereof relates to such year or years; and

(iv) search under section 132 is initiated or requisition under section 132A is made on or after the 1-4-2017.

In the light of the above amended provision, the Assessing Officer can issue the notice u/s 153A beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus, in the given case, the Assessing Officer can issue notice under section 153A upto A.Y.2008-09 as she,

a. has in his possession, documents or evidence which reveals the escaped assessment amounts to ₹ 55 lacs in aggregate during the relevant four assessment years i.e. from AY 2008-09 to AY 2011-12

b. such income escaping assessment represents in the form of assets which includes ₹ 40 lacs being Shares purchased in P.Y. 2009-10 and P.Y. 2010-11 **plus** ₹ 15 lacs being payment to contractor for construction of residential house in PY 2007-08 (payment of ₹ 10 lacs relevant to PY 2006-07 cannot be included as it is beyond ten assessment years)

c. search was conducted on 30.04.2017 i.e. after 01.04.2017.

Hence, the contention of Miss. Priyanka Ravi that the Assessing Officer cannot issue the notice under section 153A beyond six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 is **incorrect**.

The action of Assessing Officer is **partly correct** as it is possible to him to issue notice beyond six assessment years but not beyond ten assessment years from the assessment year relevant to the previous year in which search is conducted or requisition is made. Thus, he cannot issue the notice under section 153A for the A.Y.2007-08.
Note – It may be noted that as per the amendment to sub-section (1) of section 153A of Finance Act, 2017, the notice can be issued beyond six assessment years in respect of income escaping assessment which is represented in the form of asset which shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances. It means, the list of assets is exhaustive. If the income escaping assessment is in the form of any other assets like jewellery, bullion, etc. then no notice can be issued even if other conditions are fulfilled.

Question 10

In the course of search on 25.03.2018, assets were seized. Examine the procedure laid down to deal with such seized assets under the Act.

Answer

Section 132B of the Income-tax Act, 1961 deals with the application of assets seized under section 132. Such assets will be first applied towards the existing liability under the Income-tax Act, 1961, etc. ‘Existing liability’, however, does not include advance tax payable. Further, the amount of liability determined on completion of search assessment (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, may be recovered out of such assets.

Where the nature and source of acquisition of such seized assets is explained to the satisfaction of the Assessing Officer, the amount of any existing liability mentioned in para 1 above may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made within 120 days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized.

When the assets consist of solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in para 1 above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the assets other than money may also be applied for the discharge of such liabilities if the complete recovery could not be made from the money seized or the money seized was not sufficient.
1. Can the assessee’s application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?

Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)

Facts of the case: Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C. The Assessing Officer dismissed the application on the reasoning that only when the assessment is completed and tax demand is crystallized, can recovery be initiated by the sale of gold bars. The assessee filed a writ contesting the dismissal of application by the Assessing Officer.

High Court’s Observations: The High Court observed that section 132B(1)(i) uses the expression “the amount of any existing liability” and “the amount of the liability determined”. The words “existing liability” postulates a liability that is crystallized by adjudication; Likewise, “a liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. It is not the ipse dixit of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material.

High Court’s Decision: The High Court, accordingly, held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed the writ petition.

2. Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?

Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243 (SC)

Facts of the case: The Assessing Officer, with the prior approval of the Commissioner, issued notice under section 133(6) to the assessee, a co-operative society engaged in banking business, calling for general information regarding details of all persons (whether resident or
non-resident) who had made (a) cash transactions of ₹ 1 lakh and above in any account, and/or (b) time deposits of ₹ 1 lakh or above, for the period of three years between April 1, 2005, and March 31, 2008, expressly stating therein that failure to furnish the information would attract penal consequences.

The assessee objected to the said notice, *inter alia*, on the ground that such notice seeking for information which is unrelated to any existing or pending proceeding against the assessee could not be issued under the provisions of the Act.

**Supreme Court’s Observations:** The Supreme Court observed that the Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person. However, an income-tax authority below the rank of the Director or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Director or the Commissioner.

**Supreme Court’s Decision:** The Supreme Court held that information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, the assessing authority had not erred in issuing the notices to assessee requiring them to furnish information regarding account holders with cash transactions or deposits of more than ₹ 1 lakh. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.

**Note** – The Finance Act, 2017 has amended the second proviso to section 133 to provide that the power in respect of an inquiry, in a case where no proceeding is pending, can be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner.

3. **Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?**

**Sahara Hospitality Ltd. v. CIT (2013) 352 ITR 38 (Bom.)**

**High Court’s Observations:** On this issue, the Bombay High Court observed that the provisions of section 127(1) stipulate, *inter alia*, that the income tax authority mentioned therein *may* give an opportunity of being heard to the assessee, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or officers subordinate to him.

**High Court’s Decision:** The Bombay High Court held that the word “may” used in this section should be read as “shall” and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever it is possible to do so, and thereafter, record the reasons for taking any action under the said section. “Reasonable opportunity” can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The
discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.

4. Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?

_Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 441 (Del.)_

**Facts of the case:** The assessee filed his return of income, which contains a claim for carry forward of losses, a day after the due date. The delay of one day in filing the return of income was due to the fact that the assessee had not reached the Central Revenue Building on time because he was sent from one room to the other and by the time he reached the room where his return was to be accepted, it was already 6.00 p.m. and he was told that the return would not be accepted because the counter had been closed. These circumstances were recorded in the letter along with the return of income delivered to the office of the Deputy Commissioner of Income-tax on the very next day. Later on, the CBDT, by a non-speaking order, rejected the request of the assessee for condonation of delay in filing the return of income under section 119.

**Issue:** The issue under consideration is whether the CBDT has the power under section 119(2)(b) to condone the delay in filing return of income.

**High Court's Decision:** The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return has to be condoned.

**Note** – Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of a loss return is relatable to a claim arising under the category of any other relief available under the Act. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.