

Survey Under Income Tax Act, 1961

Author : CA A. K. Jain

Survey has not been defined in the Income Tax Act. According to Concise Oxford Dictionary, The expression "survey" means general view, casting of eyes or mind over somethings, inspection or investigation of the condition, amount, etc. of something, account given of result of this etc.

According to Chambers 20th Century Dictionary, the meaning of the word 'survey' is to view comprehensively and extensively, to examine in detail, to examine the structure of a building, to obtain by measurements data for mapping, to perceive, collection of data, an organisation or body of men for that purpose.

In short the term 'survey' in context of the Income Tax Act means collection of data or information for the purposes of the Act.

Objects of Survey

Survey is an important weapon in the armoury of the Income Tax Department to call for information of various kinds as may be found necessary for making proper assessments. Survey is mainly conducted with the object of broadening the tax base by discovering new assessees, to gather information about possible tax evasions by assessees, spot checking of available cash and stock and to verify in a surprise and systematic manner, whether or not accounts are maintained properly and on day to day basis etc.

Types of Survey

Survey may be of three types -

- Specific Survey under section 133A(1) - This is the survey of the business premises of a taxpayer.
- Specific Survey under section 133A(1) - This is the survey of the business premises of a taxpayer.
- Survey of Expenditure on Marriages, Parties etc. under section 133A(5) - In involves collecting information regarding the nature and scale of expenditure incurred by a person on functions, ceremonies and events such as Marriages, Birthday Parties etc.
- Door to Door Survey under section 133B - The object of survey is to locate new assessees and thereby unearth black money. Persons who have been avoiding from coming into the tax net are brought into the mainstream, through a shop to shop or house to house survey.

Authorities competent to make survey

Authorities competent to make survey are Commissioner, Joint Commissioner, Director, Joint Director, Assistant Director, Deputy Director, Assessing Officer and Inspectors of Income Tax.

Powers of Income Tax Authority regarding survey

The Income Tax Authorities have been conferred the following powers under section 133A(3) -

- To enter the place of business during business hours and in other places only after sunrise and before sunset.
- To enter the place of business during business hours and in other places only after sunrise and before sunset.
- To enter the place, other than business premises, if the assessee states that his cash, stocks, records and books of account relating to business are lying there.
- To place marks of identification on the books of accounts.
- To take extracts from such books of accounts and documents or records.
- To make an inventory of any cash, stocks and other valuables checked by him.
- To record the statement of any person.
- To collect information regarding nature and scale of expenditure incurred in connection with personal functions and events like birthday, marriages etc.
- To impound or retain in his custody books of accounts or other documents inspected by him after recording his reasons for doing so. It is further provided that such books of account or other documents shall not be retained for more than fifteen days without obtaining the approval of the Chief Commissioner of Income Tax or Director General or Commissioner or Director therefore. [As per amendment made by Finance Act, 2002 w.e.f 1-6-2002]

Restrictions on Income Tax Authority impound

- An Income Tax Authority can only enter a building or place where a business or profession is carried on.
- An Income Tax Authority can only enter a building or place where a business or profession is carried on.
- Survey at premises where business or profession is carried on shall normally commence during the business hours. It may however continue even after normal business hours. At any other place it shall commence after sunrise and before sunset..
- The Income Tax Authority cannot impound or retain cash, stock or other valuable articles of the assessee.
- Premises cannot be sealed during Survey [Shyam Jewellers vs. Chief Commissioner Administration (1992) 196 ITR 243 (All).]

Rights of Person Present in the Premises

- To verify the identity of the officials intending to carry out the survey.
- If the survey is proposed to be carried out by an Inspector of Income Tax, to verify the authorization and to check that the name and address of the premises and the name of the inspector are correctly mentioned.
- To ascertain that the officer who has authorised the survey has jurisdiction over the case or over the premises.
- To consult and be defended by a legal practitioner of his choice as per article 22(1) of the Constitution. The counsel may also be present during survey proceedings [Nandini Satpati vs. P.L. Dasi AIR 1978 SC 1025].

Duties of Person Present in the premises

He should provide the Income Tax Authority following facilities -

- Facility to inspect books of accounts and documents.
- Facility to inspect cash, stock and other valuable articles.
- Facility to inspect books of accounts and documents.
- To furnish such information as may be required in any other matter, which may be useful in proceedings of the Income Tax Act.
- Offer clarifications that may be necessary.

Timing of Survey

The fear in the mind of the assessee that survey can be conducted at any time does not appear in view of the clear provisions regarding timings of the survey in the Act. According to Section 133A (2) the survey at a premise, where business or profession is carried on, shall normally commence during the normal business hours decided by it. A survey once commenced, may continue after the closure of normal business hours. The survey at any other place, where the books of accounts or cash, stock or other valuable articles etc. are kept, can commence between sunrise and sunset. However a survey once commenced may continue after sunset. N.K. Mohnot vs. Dy. CIT (1995) 128 CTR (Mad) 247

Premises which can be surveyed

According to Section 133A(1), clause (a)/(b)/(c), the power of survey extends only in respect of the place of business or profession. The ambit of the words "the place of business", for the purpose of survey has been extended to any other place whether the business is carried on or not at such other place, provided it is reported that the books of account or other articles or things or other documents relating to the business of the assessee are kept there.

Clause (c) of sub section (1) of Section 133 A has been inserted by the Finance Act, 1995 with effect from 1-7-1995 under which an income tax authority is now empowered to enter into any place in respect of which he is authorised for the purposes of Section 133 A by such income tax authority, who is assigned the area within which such place at which a business or profession is carried on, whether such place be the principal place or not of such business or profession.

(i) Survey at residential premises

Ordinarily, the power of survey does not confer a right to make the survey of a residential premises. In case, during the course of survey the income tax authority finds that certain books of accounts or documents or stocks are not available at his residence, the income tax authority will be entitled to enter the residence for the purpose of inspecting such books of account, documents or the stocks of the business. Similarly, if any discrepancy is found in cash and the assessee reports that the same is kept at the residence, there will be every justification for the authority to go to the residence and check the same. In view of this, the assessee should avoid the keeping of stocks at his residence or the cash balance of the of the business of the assessee at his residence so that it may not be required for him to state that these are kept at his residence . The department had issued it's Circular No. 70, dated 3-5-1967, according to which, the place where entry can be made under Section 133 A must not be a place where the assessee does not carry on business. Residential or Office premises of third parties including a Chartered Accountant, a pleader or income tax practioner of whom the assessee may be a client are not places which may be entered into for the purposes of Section 133A.

(ii) Locked Business Premises

There is no provision in the Section 133 A empowering the surveying authority to break any door or lock the window to obtain ingress. Entry can be made only if the premises are open and that too during the hours specified for the purpose.

Consequences of Survey

If any unaccounted cash, stock or other valuable article or thing is found during the survey proceedings, the provisions of clause (c) of sub section (1) of Section 271 are attracted which states as below-

"If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of proceedings under this Act, is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to tax, if any, payable by him, a sum of which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the

concealment of particulars of his income or the furnishing of inaccurate particulars of such income."

When Survey is converted into Search

Proceedings under Section 133A, 133B and 132 are independent of each other. The object and scope of action under each of these actions is well defined. A survey can lead to search only when on the basis of the information collected in survey, conditions laid down in clause (a), (b), (c) of Section 132 (1) are satisfied. Similarly persistent failure on the part of the assessee to show cooperation with the Income Tax Authorities in the matter of survey may also result into income tax raid leading to search and seizure.

According to *Vinod Goel, Advocate & Other vs. Union of India* (2001) 23 DTC 471 (P&H HC) (2001) 252 ITR 29 (P&H), the survey ordered at the premises of the petitioners under section 133A and conversion of the said operation into search operation on the basis of the authorization given by the Additional Director in the list of Directors embodied in Section 132 cannot be declared illegal.

Consequences of non compliance / non cooperation

If an assessee who is being surveyed does not cooperate, either in respect of inspection or verification mentioned above in sub section (1) or does not supply or share information with the surveying officer and if the Officer feels that he is deliberately avoiding such an inspection or to answer the question which is material, it is likely that the survey officer may approach his superiors for authorizing a search under section 132. Income Tax Authority may also invoke powers under section 131(1) of the Act and levy penalty Rs. 10,000 for each default or failure under section 272A(1).

Surrender of Amounts during Survey

It is a common experience of the assessee whose premises are being surveyed under section 133A of the Income Tax Act, 1961, that irrespective of whether any apparent discrepancy in cash, stock or books of accounts is found or not, they are asked to make surrender towards concealed income. They do so referring to Sec. 132(4) and Explanation 3 to Section 271(1)(c) assuring him that if he so surrenders he will not be subjected to penalty, etc. But such is not the correct position of law. The immunity granted under Explanation 5 to Section 271 (1) (c) is only for surrender of assets found under Section 132 and not under Section 133A.

The proper course for the assessee under such circumstances is to assure that he will reconcile the discrepancy noticed by the surveying authorities or he will return the amount representing the discrepancy as his income of the current year.

Important Case Laws and References

- **CIT v. Manorajyam (1995) 54 ITD 116 (Coch-Trib)**
It was observed that survey party is not empowered under Section 133 A, to draw inferences and conclusion to support its report in addition to collection of the required information.
- **Sugan Chand Vinod Kumar v. CIT (1989) 175 ITR 273(Raj)**
It was held that where no reasons for impounding the books were recorded under section 131 (3), the impounding would be in contravention of the legal provisions and therefore not justified.
- **Sri Venkateswar Tourist (P) Ltd. v. Assisstant Director of IT (Investigation) (1999) 7DTC 436 (Cal-HC); (1999) 238 ITR 572 (Cal)**
It was observed that the seizure of the documents during the survey was illegal as there was no evidence of non-cooperation by the assessee, therefore, the assessee was entitled to the return of the documents so seized.
- **Dr. Vijay Pahwa v. Dy. CIT (1996) 84 Taxman 416(Cal)**
The Calcutta High Court imposed a personal penalty on the leader of the survey party for arbitrary exercise of power under section 133 A. As summons under Section 131 (1) can be served only in the case of obstruction by the person concerned or when some sort of hinderance is put up by him but in the instant case there was no pending adjudication where the summoning power can be used at all. Further, it can be said that the assessee's books were seized, without any apparent authority. The assessing Officer and authorities do not have any power to interrupt the ordinary peacefull citizens of the country in any manner they like by utilizing the large powers given to them without keeping themselves strictly in the four corners of those large powers.
- **Rajkumar Jain v. Asstt. CIT (1994) 50 ITD 1(All-Trib)**
Survey at the time of functions and ceremonies - The concerned authority on the basis of the information gathered or the statement recorded by him may make addition under section 69C for unexplained expenditure. However in view of the above case,the onus of proving the incurring the above expenditure lies on the assessing officer and no addition can be sustained when made on estimated basis only. The wordings of sub section (5) empower the authority to verify the expenditure of an assessee, therefore it can be inferred that this sub-section does not apply to those who are not assessees.

Important Circulars

- **Circular No. 7-D (LXIII-7), dt. 3-5-1967**
Business and / or residential premises of third parties or residential premises of assessee cannot be entered inot for conducting surveys.

- Circular No. 179, dt. 30-9-1975

Inspector of Income Tax can exercise powers of survey only with the permission of Income Tax Officer.

Author : CA A. K. Jain

Tapuriah Jain & Associates

Chartered Accountants

21, Skipper House, 9, Pusa Road, New Delhi - 110 005

Tele : 91-11-28754012 & 13, Mobile : 91-98-100-46108, E-Mail : caindia@hotmail.com