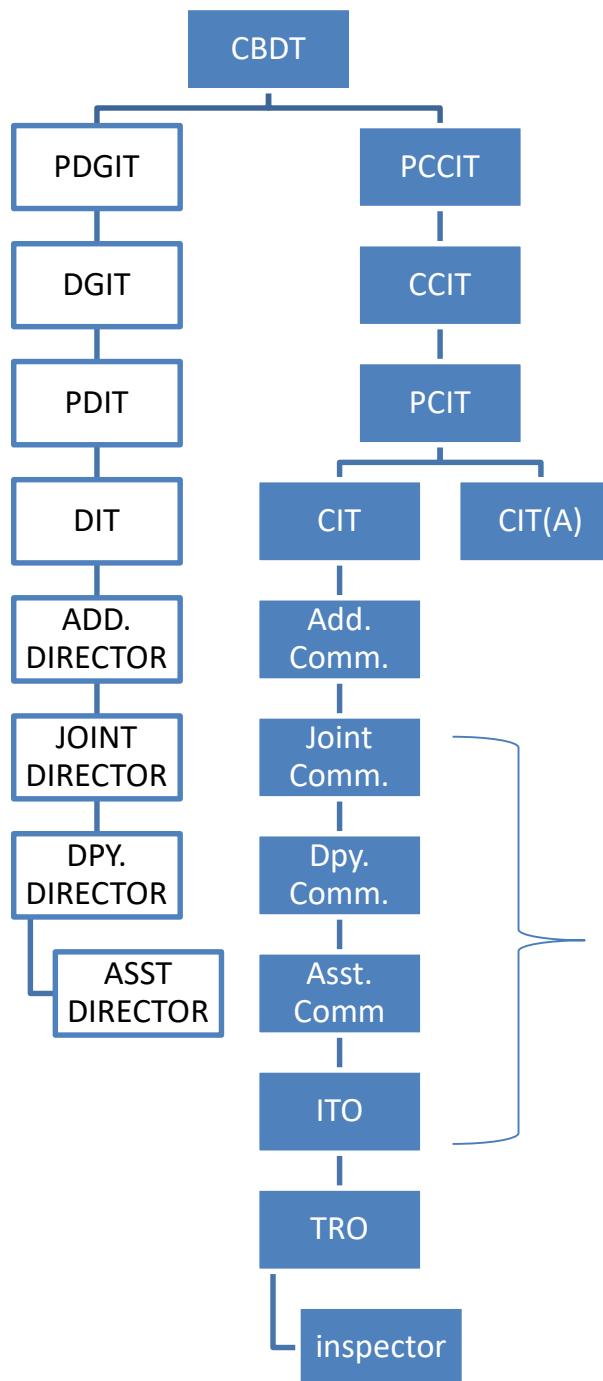


INCOME TAX AUTHORITIES: CHAPTER 16

Important Sections-

Section	Particular
116	Classes of Income Tax Authorities
2(7A)	Definition of AO
117	Appointment by CG of ITA
119	Instruction to Subordinate Authorities
119A	Tax Payer's Charter
124	Jurisdiction of AO
127	Power to Transfer cases
129	Change of incumbent of an office
130	Faceless jurisdiction of income-tax authorities
131	Power regarding discovery, production of evidence, etc.
132(1)	When can a search be conducted
132(3)	Prohibitory Order
132(8A)	Can last max upto 60 days from date of order
132(9B)	Provisional attachment of property
132(9D)	Reference to Valuation Officer
132A	Powers to requisition books of account, etc
132B	Application of seized or requisitioned assets
133	Power to call information
133A	Power of survey
133B	Power to collect certain information
133C	Power to call for information by prescribed income-tax authority
134	Power to inspect registers of companies
135A	Faceless collection of information
138	Disclosure of information respecting assessees

INCOME TAX AUTHORITIES: CHAPTER 16



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Section 117

- Primarily CG appoints ITA
- It **may** authorise CBDT/PDGIT/DGIT/PCCIT/CCIT/PDIT/DIT/PCIT/CIT to appoint below the rank of Asst. Commissioner or Dpy. Commissioner.
- ITA authorised by CBDT may appoint executive staff.

Section 119

CBDT is empowered

- To issue order/instructions/circulars to subordinates for proper administration.
- Issue general or special order for any class of case/ income stating directions not prejudicial to the assessee. (*Only if CBDT is of opinion that it is necessary in the public interest so to do and it will be published and circulated in the prescribed manner for general information*)
- Relax certain provisions of section 139, 234A etc.
- To authorise ITA **[not CIT(A)]** by **general/special order to admit an application to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified, if CBDT considers desirable or expedient so to do for avoiding genuine hardship.**

CBDT **shall not pass** any order/instruction/directions –

- to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner
- to interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate functions

Section 124

Jurisdiction of AOs

AO has jurisdiction over an area and shall have jurisdiction over-

any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area

OR where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area

AND in respect of any other person residing within the area

INCOME TAX AUTHORITIES: CHAPTER 16

Question of AO's jurisdiction – to be decided by PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT

Question is one relating to areas within the jurisdiction of different PDGIT/ DGIT/ PCCIT/CCIT/ PCIT/CIT - They shall decide mutually, if no agreement then by CBDT or by such PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT as Board specify in Official Gazette.

Can assessee question AO's jurisdiction? [section 124(3)]

Yes, but within the time limits-

Where return is filed under section 139(1)	Within 1 month from service of notice u/s 142(1) or 143(2) OR Completion of assessment, Whichever is earlier
Where no return is filed	Within time allowed in notice u/s 142(1)/ 148/144
Where search is initiated or requisition is made	Within 1 month from service of notice u/s 153A(1) or 153C(2) OR Completion of assessment, Whichever is earlier

>>AO if not satisfied with correctness of claim of assessee, shall refer the matter to PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT for determination.

Section 127

Power to transfer cases

Who has the power?

PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT to transfer case from one AO to another subordinate after giving reasonable opportunity of being heard after recording reason to do so, wherever possible.

When no opportunity of being heard shall be given?

When the transfer happens in the same city, locality or place.

Reissue of notice required?

No

Section 129

Change of incumbent of an office

- In such case the proceedings will begin from where it was left by predecessor
- Assessee may demand rehearing or reopening of previous proceeding or part of it.

POWERS OF INCOME TAX AUTHORITIES {SECTION 131 TO SECTION 136}

Section 131

Power regarding discovery, production of evidence, etc.

INCOME TAX AUTHORITIES: CHAPTER 16

AO/JC/CIT(A)/PCCIT/CCIT/PCIT/CIT/ DRP have power vested with Civil Court . (section 131(1))

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

>> Above powers may be exercised even if no proceeding is pending in following **two cases** –

- Authorised or Authorising officer has reason to suspect any income is concealed or likely to be concealed. (section 131(1A))
- For facilitating information in relation to an agreement for exchange of information u/s 90 or 90A to tax authorities outside India. (section 131(2))

>> Section 131(3) – There is no restriction on time period for retaining books EXCEPT 2 RESTRICTIONS FOR AO/ASST. DIRECTOR/DEPUTY DIRECTOR.

1. Record reason of retaining
2. Max period 15 days, beyond that, prior approval of PDGIT/DGIT/PCCIT/CCIT/PDIT/DIT/PCIT/ CIT required

Section 132

Search and Seizure

Authorising Officer	Authorised Officer
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	Joint Director, Joint Commissioner, Additional Director or Additional Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer.
Additional Director or Additional Commissioner, Joint Director or Joint Commissioner (If empowered by the Board)	Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer.

- Authorisation is necessary for search and it could take place if the officer has ***reason to believe basis the information in his possession-***
 - (a) any person to whom a summons u/s 131(1) or 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, or
 - (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act

INCOME TAX AUTHORITIES: CHAPTER 16

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes the Act

→ Reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

POWERS OF AUTHORISED OFFICERS

- (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
(even if Authorised officer has no jurisdiction, power shall be exercisable if delay would be prejudicial to revenue).
- (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys are not available;
- (iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (iv) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record to afford the authorised officer the necessary facility to inspect such books of account or other documents;
- (v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search BUT NOT STOCK IN TRADE(though he can make inventory of the same)
- (vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- (vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing

>> **Deemed seizure** - where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its

- volume,
- weight or
- other physical characteristics or
- due to its being of a dangerous nature,

the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer. NOT APPLICABLE On STOCK In TRADE

>> **Prohibitory Order** [section 132(3)] if seizure does not happen, besides the reason mentioned above, an order shall be served restraining a person to not deal with the money/bullion etc except with the previous permission of such officer. Max time period :: 60 days from date of order

>> **Rebuttable Presumptions** [section 132(3)]

INCOME TAX AUTHORITIES: CHAPTER 16

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

>> when the BOA, documents etc seized shall be returned? [section 132(8)]

These shall not be retained by the authorised officer for a period exceeding **thirty days from the date of the order of assessment under section 153A** unless the reasons for retaining the same are recorded by him in writing and the approval of the PDGIT/DGIT/PCCIT/CCIT/PDIT/DIT/PCIT/ CIT for such retention is obtained.

>Provided PDGIT/DGIT/PCCIT/CCIT/PDIT/DIT/PCIT/ CIT cannot authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Act in respect of the years for which the books of account or other documents are relevant are completed.

>Person legally entitled to such books/documents on such approval given, 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 [sub section 10]

>> Books/ Assets seized to be handed over by Authorised officer having no jurisdiction over the person to Assessing Officer having jurisdiction over the person – within a period of sixty days from the date on which the last of the authorisations for search was executed [Section 132(9A)]

>> Provisional Attachment of Property [Section 132(9B)]

- Any time during search or within a period of sixty days from the date on which the last of the authorisations for search was executed,
- authorised officer with reasons in recording & satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do
- with the previous approval of the PDGIT/DGIT/PDIT/DIT
- Every attachment will cease to have effect after the expiry of six months from date of order of provisional attachment. [sub section 9C]

>> Reference to Valuation Officer [Section 132(9D)]

- Reference can be made any time during the search or within a period of sixty days from the date on which the last of the authorisations for search was executed.
- Valuation officer shall submit the report within a period of sixty days from the date of receipt of such reference.

INCOME TAX AUTHORITIES: CHAPTER 16

Section 132A

Powers to requisition books of account, etc

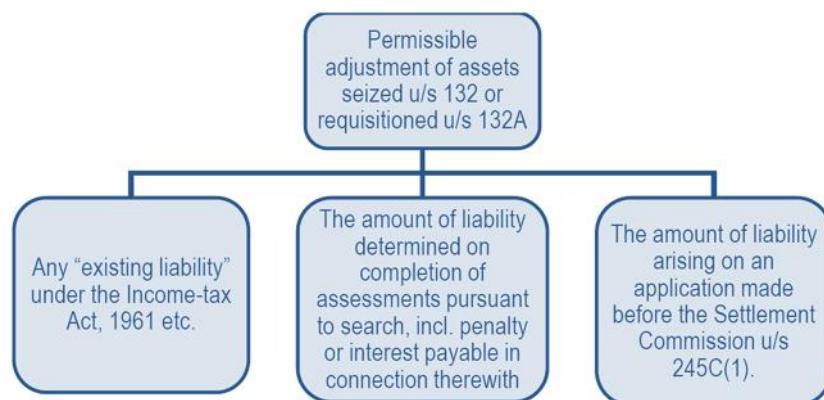
In consequence of information in possession, on the same grounds like of search, PDGIT/DGIT/ PCCIT/ CCIT/ PDIT/ DIT/ PCIT/ CIT may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer [called requisitioning officer] to require the officer/ authority under any other law to deliver such books of account, other documents or assets to the requisitioning officer.

The other officer may return the same on requisition if he is of the opinion that it is no longer necessary to retain the same in his or its custody.

Once the same are delivered to requisitioning officer, provision of section 132(4A) to Section 132(14), shall be applied on such books/assets etc.

Section 132B

Application of seized or requisitioned assets



Note - "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.

> Money seized may be applied for discharging the liabilities [Section 132B(1)(ii)]

> Assets other than money may also be applied to discharge liabilities [Section 132B(1)(iii)] under authorisation of PCCIT/CCIT/PCIT/CIT.

> Release of seized asset after meeting existing liabilities in certain cases [Proviso to section 132B(1)(i)]

- Concerned person can make an application to the AO within 30 days from the end of the month in which asset was seized, for release of asset.
- The nature and source of acquisition of any such asset is explained to the satisfaction of the AO.
- He then after settling the amount of any existing liability may release the asset with the prior approval of the PCCIT/CCIT/PCIT/CIT
- Further, such asset or any portion thereof as is referred to above shall be released within a period of 120 days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed

INCOME TAX AUTHORITIES: CHAPTER 16

>Return of excess assets seized

After adjusting all the liability as shown in flowchart, any excess shall be paid/returned to assessee.

Interest to be paid at the rate of 1 /2% p.m. or part of the month on excess. This interest shall be payable from the expiry of the period of 120 days from the execution of the last of the authorizations for search till the date of completion of assessment under section 153A.

Section 133A

Power of Survey

Where can survey be conducted- A place where 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.

Also, where any books of account or other documents or any part of cash or stock or other valuable article or thing relating to business or profession or activity for charitable purpose are or is kept.

Permitted entry time - 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. No restriction on exit.

Power under survey –

-inspect such books of account or other documents as he may require and which may be available at such place and place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom.

Also, ITA can impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him. Maximum period allowed – 15 days. Beyond 15 days only after approval of PDGIT/DGIT/ PCCIT/ CCIT/ PDIT/ DIT/ PCIT/ CIT.

- check or verify and make inventory of the cash, stock or other valuable article or thing which may be found therein. NO SEIZURE ALLOWED.

-record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

TDS/TCS Survey-

Purpose>> verifying that tax has been deducted or collected at source in accordance with the provisions under Chapter XVII-B or Chapter XVII-BB

Entry time – after sunrise and before sunset

Can verify books and other documents but cannot impound them.

Survey in connection with any function, ceremony or event-

Considering the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the ITA is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Also record the statements of the assessee or any other person and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

INCOME TAX AUTHORITIES: CHAPTER 16

Approval for Survey-

For period 01.04.2020- 31.10.2020

<i>Type of cases</i>	<i>Approval from</i>	<i>Authority empowered to conduct survey</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Where information received from prescribed authority</i>	<i>Joint Director/ Joint Commissioner</i>	<i>Deputy Director, Assistant Director, Assessing Officer, TRO or Inspector of Income-tax</i>
<i>In other cases</i>	<i>Director/ Commissioner</i>	<i>Joint Director, Joint Commissioner, Deputy Director, Assistant Director, Assessing Officer, TRO or Inspector of Income-tax</i>

From 01.11.2020 –

No action under this section shall be taken by an income-tax authority without the approval of the PDGIT/DGIT/PCCIT/CCIT.