

1

CHAPTER

Introduction

As we are aware that the Income-Tax Department may take recourse to the provisions of sections 132 and 133A and to verify whether the Income-tax Returns filed/to be filed by an assessee are inconsistent with the books, documents, cash, stocks or other assets in physical possession of with the assessee.

Survey operations constitute an extremely important tool for gathering information relating to financial transactions and about various persons, which are subsequently utilized in the assessment and other proceedings under the Income-tax Act, 1961 (hereinafter referred to as “the Act”). Surveys also enable the department to check the veracity of the statements filed by such persons before the income-tax authorities. Information collected through surveys may also lead to identification of new assesseees and stopfilers. Survey also helps in detecting tax evasion, failure to deduct tax at source by persons responsible for doing so, failure to pay to the Government the tax deducted at source by deductors and failure to furnish returns and statements by persons who are statutorily obliged to do so.

Survey in a wider sense means to scrutinize or to inspect. The power of survey under the Act has been provided under sections 133A and 133B. The provisions contained in section 133A are independent and to the exclusion of the other provisions of the Act since the wording of the section starts with ‘Notwithstanding anything contained in any other provisions of the Act’.

Meaning of the word ‘Survey’

The word ‘survey’ is not defined by the Act. According to Concise Oxford Dictionary, the expression “Survey” means general view, casting of eyes or mind over something, 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.

ACCORDING TO ADVANCED LAW LEXICON – P RAMANATHA AIYAR

“It may mean to inspect, or take a view of; to view with attention;

to view with a scrutinizing eye; to examine with reference to condition, situation and value; to measures, as land; and many others, "Survey" as a noun may mean an attentive or particular view or examination, with the design to ascertain the condition, quantity or value."

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

Legislative Intention & Purpose of enactment of Survey provisions

Purpose of survey under the provisions of Income Tax Act, as gathered from the plain reading of the provisions of section 133A of the Act are inspection of books of accounts, verification of cash, stock and other valuable articles, etc. found at places where either business or profession is carried out.

The observations made by the then Finance Minister behind the enactment of the provisions of section 133A in Finance Act, 1964, during the course of discussion of Finance Bill on the floor of the house are being reproduced as under:—

"It is a curious paradox of our situation that while money for worthwhile investments and public purposes is in short supply, there is a great deal of unaccounted money circulating in the economy in search of further undercover gains. What is more important, this social evil inherent in tax evasion gets doubly compounded as it necessitates greater and greater tax burdens on those who are law-abiding. Perhaps, the most important problem that faces us in regard to fiscal reforms is that of devising stout and stringent measures to meet this evil of tax evasion so that it might be possible to distribute the burden of taxation more justly and evenly between different individuals in the same or similar walks of life. We have thought too exclusively of social justice between different classes or sections of the community and not enough of the injustice inherent in tax evasion as between members of each class or profession and as between the honest taxpayers and the dishonest evader."

Need for survey in tax administration

The Income-tax Department is entrusted with the responsibility of fair and effective administration of the Income-tax Act, 1961 and other direct taxes enactments. The provisions of the Act empower the Assessing Officer to scrutinize the returns and the statements filed in order to determine the income and to collect tax. Powers have also been conferred on the Assessing Officer to deal with assessee who fail to comply with the statutory requirements or who evade payment of tax. Thus, examination of books of accounts and verification of the facts presented by the assessee are the primary jobs of the Assessing Officer. In this context, the power of survey serves the following two important purposes:

- (i) Department's determination to reach out and obtain information about the assessee and his income-earning activities; and

- (ii) Meaningful selection of cases for scrutiny by collecting information about various trades and trade practices.

Objects of Survey

The main reason for enacting provisions regarding survey in section 133A is that survey represents a comparatively easy method for detection of evasion of tax. The objectives in conducting survey are to find out—

1. whether the persons carrying on business maintain regular books of account or whether they prepare account books at the end of the year for the purpose of filing the return,
2. whether they make correct entries in those books of account,
3. whether cash in hand and stock-in-trade tally with the entries in the account books,
4. whether there are documents indicating unaccounted purchases and sales etc., and
5. whether there exist other valuable articles or things connected with business which are not disclosed in books of account.

Survey operations are of assistance in detecting new assesseees and to verify, in a broad way, the correctness of returns of existing assesseees.

Survey operations are carried on in business premises only and that too during business hours and do not involve seizure of books of account, cash, stock or other valuable article or thing. It only involves preparation of factual report of what is seen by survey officers in business premises and such factual report is of assistance in making final assessment. In respect of surveys undertaken for check of accounts, cash and stock, it is not uncommon for the survey officers to note that no books are maintained or those books which are maintained are incomplete.

There are cash and stock differences or that there is no timely record of the transactions. This would constitute valuable information for them to reject the accounts which may be produced at the time of hearing. Unless a taxpayer is able to show that there are primary records from which reliable accounts could be written, there is vulnerability on the part of the taxpayers.

The object of survey is not the same as that of search or seizure under section 132 of the Act. This section empowers the income-tax authority to enter only a place at which a business or profession is carried on by the assessee, he cannot enter the residential premises of the assessee or the premises of the lawyer or the chartered accountant of the assessee. [*Board Circular No. 7-D (LXIII) of 1967, dated 03.05.1967*].

The survey is conducted by the Income-tax Department to achieve the following objects:—

➤ **TO COLLECT INFORMATION RELEVANT TO THE ASSESSMENT/RE-ASSESSMENT**

Survey is an important weapon in the armoury of the Income Tax Department to call and collect information of various kinds as may be found relevant for making proper assessments/re-assessment. In other words, by conducting surveys, income-tax authorities independently gather information relating to financial transactions of various classes of persons as may be useful for, or relevant to, any proceedings under the Income-tax Act.

- Surveys also enable the department to check the veracity of the statements filed by such persons before the income-tax authorities. Information collected through surveys may lead to discovery of new assesseees and stop-filers.
- Survey is mainly conducted with the object of broadening the tax base by discovering new assesseees, to gather information about possible tax evasions by assesseees.
- Spot checking of available cash and stock and to verify in a surprise and systematic manner, whether or not the books of account are maintained properly, regularly and correctly and on day to day basis and whether or not all the transactions are regularly recorded etc.
- It also helps in detecting tax violations like, under-reporting of income in returns of filers, failure to deduct tax at source by persons responsible for doing so, failure to pay the tax deducted at source by deductors and failure to furnish returns and statements by persons who were statutorily obliged to do so.
- **TO CONDUCT A SURPRISE INSPECTION IN ORDER TO ENSURE THE PROPER AND CORRECT MAINTENANCE OF BOOKS OF ACCOUNTS**

It is conducted to find out whether—

- (a) regular books of account are maintained
- (b) correct entries are made in books of account
- (c) cash and stock tally with entries in books of account
- (d) there is any document indicating unaccounted purchases and sales, etc.
- (e) there exist other valuable article/things not disclosed

Circumstances

- Unlike searches, where 'reason to believe' of one of the conditions under Section 132(1)(a) to (c) is must, no such restriction is placed on conduct of surveys. It can be undertaken at the discretion of the Department if it is in need of information.
- Person surveyed need not be a taxpayer and pendency of any proceeding is also not necessary.

Person against whom survey is conducted need not be a taxpayer

The person concerned need not be a taxpayer. A survey can be conducted as a consequence of survey conducted and/or in continuation to the survey at other place, with whom the person had transactions in his business or otherwise.

Survey can be carried out without presence of owner

If business premises is open, Survey can be carried out without presence of owner.

Even survey can be done when assessment is not pending

Power of survey under section 133A can be exercised at any stage irrespective of whether any proceeding is pending or not. The power can be exercised even in respect of proceeding which may be commenced after conduct of the survey operations.

Whether police can accompany the survey party?

Income-tax Authorities mentioned under the Income-tax Act, 1961 have to discharge their duties by passing different types of Assessment/reassessment/Appellate orders, enquiries, TEP, Search & Seizure and Survey operations, Revisionary orders under section 263/264 etc. Except under section 132(2) of the Act, there is no where mention of the services of Police Officer. Section 132(2) is reproduced as follows:—

“The authorized officer may requisition the services of any police officer or of any officer of the Central Govt. or of both, to assist him for all or any of the purposes specified under section 132(1) or section 132(1A) and it shall be the duty of every such officer to comply with such requisition.”

Under section 133A of the Act, there is no mention of the services/assistance of the police while conducting surveys. Thus taking services of the Police for the purposes of survey is optional otherwise until & unless there is law and order problem.

Precautions to be taken before the conduct of survey

The assessee—

- (i) should avoid keeping large cash and stock balances.
- (ii) should avoid keeping books of account at any place other than the Registered Office and more particularly should not keep the accounts and other related papers, cash, stocks etc., relating the business, at the residence.
- (iii) should avoid keeping cash, stock, books of account of different firms at one place. But if it is unavoidable, the place of keeping belongings of one firm should be clearly identifiable or there should be a visible demarcation of the place or the belongings of different firms.
- (iv) should normally keep the books of account updated and in any case, at least the primary books.

- (v) should keep stock registers maintained and updated.
- (vi) should keep track of unbilled goods, cash receipts, goods received without bills and of cash expenditure.
- (vii) should avoid back-dating and correction/editing in the books of account.
- (viii) the computer hard disk should not contain any irrelevant data.

Care to be taken by assessee during survey operation

During the course of survey operation, the assessee must take care in respect of the following:—

- (i) He must cooperate with the income-tax authorities.
- (ii) If certain discrepancies are found during course of survey operations, the assessee should try to reconcile the same as far as possible.
- (iii) He should see that cash lying in his office tallies with cash in hand as per books. In case, it does not tally, he should reconcile the same or should give suitable reply.
- (iv) He should see that stock is taken properly otherwise, he should immediately object the stock taking method. At the end of stock taking, he should see that valuation of stock is properly made. Over-valuation of stock and under-valuation of stock will be treated as his undisclosed income. If the stock has not been properly valued, either he should protest immediately and should request the officer for re-stock taking.
- (v) If more than one business is carried on in a single premises, identification of stock, cash and other valuables in respect of such business is of paramount importance.
- (vi) He should furnish necessary documents required by the survey team.
- (vii) He should inform his tax consultant about survey operation.

What does the Survey Party generally look out for ?

- Loose Papers including diaries, note books/pads
- Any Documents containing financial data
- E-mails, including provisional financial data, MIS Reports, etc.
- Account books
- Discrepancy in Cash
- Discrepancy in Stock
- Production and/or Sales Records
- Investments
- Expenditure, such as commission, etc.

Post-survey steps to be taken by assessee

- (i) The assessee should immediately write down the contents of his

statement immediately after survey operation is over and should meet his consultant.

- (ii) He should go to the Income Tax Department with his Tax Consultant to meet with Income Tax Authorities and should ensure them that he will fully co-operate them and he should also seek their co-operation.
- (iii) He should also request for obtaining Photostat copies of the impounded documents as well as the print out or the copy of the CD or pen drive immediately.
- (iv) He should furnish all the documents and details required by the officer during post survey proceeding.

Even where based on assurance of survey party that return of income would not be taken-up for scrutiny, petitioner disclosed additional income, Assessing Officer was still empowered to select it for scrutiny assessment

A survey, conducted at premises of petitioner, a businessman dealing in gold and jewellery - A statement of petitioner had been recorded in which he had disclosed additional income - An assurance had been given to him by survey party that no further action would be taken against him in view of Instructions issued by CBDT Circular No. F. No. 225/93/2009/ITA-II and his return of income would not be taken-up for scrutiny - Based on such assurance, petitioner had signed said statement - In spite of this, petitioner's case was selected for scrutiny assessment - Whether Assessing Officer was empowered to select a particular case for scrutiny assessment in view of clause (g) of guidelines given by impugned circular, for selection of cases for income tax scrutiny - Held, yes - Whether where Assessing Officer recorded reasons for selection of petitioner's case, sought approval of approving authority, who approved selection and thereafter assigned case for assessment, requisite procedure was followed which was necessary before issuing notices under sections 143(2) and 142(1) - Held, yes [Para 22] [In favour of revenue]. (Related Assessment year : 2010-11) – [*Ajay v. DCIT, Jalgaon* (2014) 224 *Taxman* 63 : 42 *taxmann.com* 210 (Bom.)]

Illegality does not vitiate evidence collected during survey

The action of the Inspector to conduct survey under section 133A was not legal under section 133A of the Act. Though no prohibition had been imposed on the Inspector to conduct such a survey, unless an authority was given under the provisions of section 133A, the survey conducted by the Inspector could not be held to be legal. The inventory stock was prepared by the Inspector during the course of an illegal survey and material was then used by the Assessing Officer for making additions. The Revenue was entitled to use the material collected during the course of illegal survey.— [*CIT v. Kamal and Company* (2009) 308 *ITR* 129 (Raj.)]

Sections dealing with Income-tax survey

| S. No. | Section | Contents |
|--------|--------------|--|
| 1. | 133A(1) | Place on which survey can be conducted |
| 2. | 133A(2) | Timing of survey |
| 3. | 133A(2A) | Survey for verifying the compliance of the provisions of TDS and TCS |
| 4. | 133A(3) | Powers of Income Tax authority regarding survey |
| 5. | 133A(3)(i) | Place marks of identification on the books of accounts or other documents |
| 6. | 133A(3)(ia) | Impounding and retention of books of account |
| 7. | 133A(3)(ii) | Make an inventory of any cash, stock or other valuable article or thing |
| 8. | 133A(3)(iii) | Record the statement of any person which may be useful for, or relevant to, any proceeding under the Act |
| 9. | 133A(4) | Prohibition on removing or causing to be removed from the place surveyed |
| 10. | 133A(5) | Survey of ostentatious expenditure |
| 11. | 133A(6) | Consequences of non-compliance/non-cooperation |
| 12. | 133B | Door to door survey to collect certain information |
| 13. | 292C | Presumption as to assets, books of account, etc. |

Survey Statistics

Surveys under section 133A of Income Tax Act are an important tool for ensuring that businesses are carried out according to the rules and taxes are paid in time, particularly in the micro, small and medium enterprises and unorganized sector. Since 2006, the Income Tax Department has detected under-reporting of income in crores in surveys, and collected due taxes thereon. Table below indicates the number of surveys conducted and underreported income detected over the last few years.

| S. No. | Financial Year | No. of Surveys Conducted | Undisclosed Income Detected (In Rupee Crore) | Undisclosed Income Detected per survey (In Rupee Crore) |
|--------|----------------|--------------------------|--|---|
| 1. | 2006-07 | 6,207 | 2,612.77 | 0.42 |
| 2. | 2007-08 | 6,071 | 3,581.77 | 0.58 |
| 3. | 2008-09 | 5,777 | 3,059.89 | 0.52 |
| 4. | 2009-10 | 4,680 | 4,857.10 | 1.03 |
| 5. | 2010-11 | 3,911 | 5,894.44 | 1.50 |
| 6. | 2011-12 | 3,706 | 6,572.75 | 1.77 |
| 7. | 2012-13 | 4,630 | 19,337.00 | 4.71 |
| 8. | 2013-14 | 5,327 | 90,390.71 | 16.96 |
| 9. | 2014-15 | 5,035 | 12,820.33 | 2.54 |
| 10. | 2015-16 | 4,422 | 9,654.80 | 2.18 |
| 11. | 2016-17 | 12,526 | 13,715.00 | 1.09 |