

**POWER REGARDING DISCOVERY, PRODUCTION
OF EVIDENCE, ETC.**

AMIT KUMAR GUPTA¹

Bare Act

131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

- (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.

(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that 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 any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to

1. B.Com (H), LL.M, FCA, Advocate (Delhi High Court).

in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) or sub-section (2) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not—

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefor, as the case may be.

Bare Act summary

Section 131 of the Income-tax Act empowers the income-tax authorities to conduct inquiries. It provides powers to summon persons/witnesses, examine them under oath, compel production of books of account and documents, and issue commissions. The power of enforcing attendance of a person under this section is the same as available under the Code of Civil Procedure. If summons are issued and served on a person for personal attendance under section 131, it is binding on him to attend in person and not be represented by a lawyer or an authorized representative. It empowers the tax authorities to demand the production of the necessary books of account and/or any other related documents.

From a perusal of section 131(1) of the Income-tax Act, we are of the opinion, that the power of the Income-tax Officer under that section is co-extensive with that of a court trying a suit under section 30 of the Civil Procedure Code, read with rules 12, 14 and 15 of Order 11 of the Code :—

Section 30 of Code—Power to order discovery and the like.—Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party,— (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding

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and return of documents or other material objects producible as evidence ;
(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
(c) order any fact to be proved by affidavit.

Rule 12 Order XI of Code of Civil Procedure, 1908 “Application for discovery of documents”

Any party may, without filing any affidavit, apply to the court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :

Provided that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Rule 14 Order XI of Code of Civil Procedure 1908 “Production of documents.”

It shall be lawful for the court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the court shall think right ; and the court may deal with such documents, when produced, in such manner as shall appear just.

Rule 15 Order XI of Code of Civil Procedure 1908 “Inspection of documents referred to in pleadings or affidavits.”

Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document or who has entered any document in any list annexed to his pleadings or produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof ; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the court shall deem sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court shall think fit.

Rule 19 of Order XVI of the Civil Procedure Code

—No witness to be ordered to attend in person unless resident within certain limits—No one shall be ordered to attend in person to give evidence unless he resides—(a) within the local limits of the court's ordinary original jurisdiction, or (b) without such limits but at a place less than one hundred or where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the court is situated less than five hundred kilometres distance from the court-house :

Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

The alternative remedy, such a commission under section 131 of the Income-tax Act read with rules 1 to 8 of Order XXVI of the Code of Civil Procedure, may at the request of the assessee, be issued to the Assessing Officer having jurisdiction over the place where the witness carries on the business or resides.

Scope of section 131

The understanding of section 131 makes it clear that the tax authorities are empowered to issue summons and also have the right to enforce any individual or person can be brought in for questioning, under oath. For the purposes of this Act, officers will have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

- (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.

Section 131 is comprised of two complementary sub-sections relating to two different classes of officers. Whereas section 131(1) empowers the jurisdictional officer, viz., the Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in section 144C(15)(a) to issue summons, section 131(1A) empowers the officers of the Investigation Wing, viz., Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or

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Deputy Director, or the authorised officer referred to in section 132(1). Another point of distinction is that powers under section 131(1) can be exercised by the Assessing Officer only when any proceedings are pending before him in relation to that assessee. Whereas power under section 131(1A) can be exercised notwithstanding that no proceeding is pending before the investigation officers. In other words, section 131(1A) can also be invoked for the purposes of a preliminary inquiry before carrying out the search operations.

The power under section 131(1A) cannot be said to be the independent power in itself but is the power for the purpose of making enquiry and investigation relating to any income which has been concealed or is likely to be concealed by any person or class of persons, equipping him with the powers regarding discovery, production or evidence, etc., as provided under section 131(1).

In order to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A of the Income-tax Act, 1961, section 131 was amended and new sub-section (2) was inserted. The new sub-section provides that for the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

Further section 131(3) of the 1961 Act was amended to empower the aforesaid authority, as notified by the Board to impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not—

(a) impound any books of account or other documents without recording his reasons for so doing, or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner

or Commissioner or Principal Director or Director therefore, as the case may be.

Three important phrases emerge in relation with the exercise of powers under section 131(1A) that seize our attention in the present discussion. These are :

- (1) Before he takes action under clauses (i) to (v) of section 132 ;
- (2) Has reason to suspect that income has been concealed ; and
- (3) Notwithstanding that no proceedings with respect to such person or class of persons are pending.

From a plain reading of the provision as aforesaid and the Explanatory Memorandum, the intent and the purpose of the Legislature is clearly evident. The said provision enables the officers of the Investigation Wing to exercise the powers as mentioned before search and seizure action under section 132(1), clauses (i) to (v) are applied. However, a recent trend is that even after conclusion of the search, the authorized officers keep summoning the person searched under section 131(1A) to conduct a "post-search inquiry".

Indian Banks or branches of foreign banks not to be required to produce books, etc., maintained outside India – In the Department circular No. 8 – D(LXXVI-22), dated May 13, 1958, the Board advised that the banks cannot be compelled to produce information which is not available in the taxable territories.

Judicial Pronouncements

Neesa Leisure Ltd. v. Union of India [2011] 338 ITR 460 (Guj).

Issuance of notices under section 131(1A), post search would not in any manner render the proceedings under section 132 invalid, if they were otherwise initiated pursuant to a valid authorization issued after recording satisfaction on the basis of material available on record.

Hotel Mount View v. CIT [2006] 280 ITR 51 (Cal).

Section 131(1)(d) vests the Assessing Officer with all the powers under the CPC for issuing commission but such power cannot be equated with the power under section 55A. A valuation report obtained under section 131 cannot be relied upon for the purpose of holding that the assessee had failed to disclose his income truly and correctly.

Sham Sunder Khanna v. CIT [2016] 386 ITR 461, 465 (P&H).

The assessee having failed to discharge primary onus of proving the genuineness of the trading transactions, no right accrues in his favour on

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account of nonsummoning of the witness under section 131 by the Assessing Officer.

Chowkchand Balabux v. CIT [1961] 41 ITR 465 (Assam).

The value of a recorded statement of a witness is, therefore, not affected by the omission on the part of the recording authority to administer an oath. The material furnished by the statement of a person is good material, although that statement is not made by the person on any oath or affirmation.

Sheo Narain Duli Chand v. CIT [1969] 72 ITR 766, 768 (All).

There is no presumption that witnesses appearing for an assessee come forward to give false evidence to oblige the assessee. At the same time, if an assessee had not maintained any books of account, or the requisitioned document was not in his possession, he could hardly be blamed for non-production and contravention of the requisition.

Peerless General Finance and Investment Co. Ltd. v. Assessing Officer [2001] 248 ITR 113, 126 (All).

Section 131 is a machinery provision and must be interpreted in a manner which makes the provision workable and practicable.

Prakash V. Sanghvi v. Mr. Ramesh G., DDIT (Inv.) [2013] 40 taxmann.com 16/2019 Taxman 131 (Mag) (Karn)

Assessing Officer/Commissioner does not have authority and jurisdiction to open his camp office in residence of the assessee and call the assessee's attendance in connection with proceedings under Income-tax Act.

Naval Kishore Khaitan v. Pr. CIT [2020] 428 ITR 62 (AP)

In the considered opinion of this court, the impugned summons to the extent of asking the assessee to be present for unlimited period till the time he obtains permission from the Assistant Commissioner, is highly unreasonable. Though there is no infirmity in asking the petitioner to be present for enquiry, this court does not find any justification on the part of the Assistant Commissioner in asking the assessee to be present for unlimited period.

Smt. Amiya Bala Paul v. CIT [2003] 262 ITR 407 (SC).

The power of the Assessing Officer under section 131(1) and section 133(6) is distinct from and does not include the power to refer a matter to the Valuation Officer under section 55A.

SLP dismissed in *ITO v. Sky View Consultants (P.) Ltd.* [2018] 406 ITR (St.)39 (SC)

Where Income-tax Officer had not been authorized to exercise his powers under section 131(1A), reports submitted by him could not have formed valid basis for reopening assessment.

SLP dismissed in *Liberty Marine Syndicate (P.) Ltd. v. Pr. CIT* [2017] 393 ITR (St.) 76 (SC)

Section 131(1A) does not require that a notice be given to the assessee before carrying out search proceedings under section 132.

Cases depicting the power of income-tax authorities as per Code of Civil Procedure

Dinshaw Darabshaw Shroff v. CIT [1943] 11 ITR 172 (Bom).

Section 131 gives powers of court of law to the income-tax authority, though they are not strictly judicial authorities. Therefore, the Assessing Officer acts in a quasi-judicial capacity. The Assessing Officer must follow the basic principles conforming to the judicial procedure.

Jagannath Prasad v. State of U. P. [1963] 14 STC 536, 545 (SC)

The concept of quasi-judicial act implies that the act is not wholly judicial ; it describes only a duty cast on the executive body or authority to conform to the norms of judicial procedure in performing some acts in exercise of its executive power.

V. Datchinamurthy v. Asst. Director of Inspection [1984] 149 ITR 341, 353 (Mad).

Powers of the Income-tax Officer to direct appearance of witnesses or production of books by them or through their authorised representatives have been laid down in section 131 of the Act and are co-terminous with the powers of a civil court under the Code of Civil Procedure,1908. A witness has, therefore, no right to be represented merely by a lawyer or an authorised representative.

Personal appearance is of the utmost importance when it comes to the witness. In saying so, it has been very clearly stated in the law that the witness cannot be represented by an authorized representative and he or she himself or herself need to be present in person at the court.

CF. Abdul Rajak Haji Mohammed v. Union of India [1986] 26 Taxman 234 (Bom)

A person who is appearing in compliance with a summons is entitled to have his advocate present during the course of his such appearance. But

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such advocate cannot be permitted to participate in the interrogation and to raise objections to the questions asked by the authority concerned. The Supreme Court has ruled that a person is not entitled to the presence of his lawyer when he is questioned during the investigation under the provisions of section 40 of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and section 108 of the Customs Act, 1962 (52 of 1962). The above Bombay decision is no more good law in view of SC decision.

Cases in which Summons cannot be issued

Barium Chemicals Ltd. v. A. J. Rana [1972] AIR 1972 SC 59

An omnibus order to produce all the documents relating to the assessee in custody of a court or third person, although some of them may not have the remotest bearing on matters covered by the Act, goes to show that there was no due application of mind by the authority concerned and such an order could not be passed or supported. Moreover, the Assessing officer must have some knowledge of the contents of the documents to be able to judge whether they are required for any purpose of the Act.

Jamnadas Madhavji and Co. v. ITO [1986] 162 ITR 331 (Bom).

A summons issued with a view to investigate whether the completed assessment should be reopened under section 147 is liable to be quashed if no proceeding was pending at the time of issuing such summons.

Sumermal Jain v. Deputy CIT [2014] 360 ITR 553 (Cal).

The power under section 131(1A) is only an enabling power regarding discovery, production of evidence, etc., before entering into the actual exercise of search and seizure under section 132. Such a power under section 131(1A) cannot be exercised for the purpose of reopening of the assessment under section 147.

New Central Jute Mills Co. Ltd. v. Dwijendralal Brahmachari [1973] 90 ITR 467, 472 (Cal).

If an Assessing Officer issues a summons not for the purpose of the Income -tax Act but solely for the purpose of facilitating investigation by any other department or agency, the issue will be mala fide. In this case, the petitioner, New Central Jute Mills Ltd., challenged, under article 226 of the Constitution, the summons dated 6th June, 1969, issued by the Income-tax Officer under section 131 of the Income-tax Act, 1961. Counsel for the petitioner contended firstly, that as all assessments for the period prior to the date of seizure had been completed before the impugned summons had been issued, there was no necessity for the Income-tax Officer to look to the said documents for the purposes of the Income-tax

Act. Therefore, the Income-tax Officer had acted without jurisdiction in issuing the said summons. It was urged that the Income-tax Officer had utilized his power under section 131 of the Act not for purposes of the Income-tax Act, 1961, but for ulterior purposes, namely, to facilitate the investigation by the Company Law Board, which had been prevented by the orders of this court.

ITO v. James Joseph O’Gorman [1993] 204 ITR 454, 458 (Cal).

The learned judges observed that the statutory power could not be exercised without application of mind in regard to the question of relevancy of the documents to the lis involved in the matter before the Income-tax Officer just as a civil court could not order discovery, production or inspection of documents unless it was of the opinion that such documents were relevant for the purpose of the issues involved in the suit pending before it. It has been averred in paragraph 10 of the writ petition that in respect of proceedings which were pending similar notices were issued by the Income-tax Officer and those had been duly complied with. Under the circumstances, as very rightly observed by the learned court below, the Income-tax Officer was not entitled to exercise such power as a mere cloak for the purpose of making a fishing investigation and a roving enquiry in order to take proceedings under section 147 of the Act. A Division Bench of this High Court while considering the power of an Income-tax Officer to compel production of documents, and in the scope of such power, it was observed by the learned judges of the Division Bench, the Officer concerned should apply his mind about the necessity of production of the documents and if the Officer did not do so while issuing such notice, then the validity of such notice under section 131 could be challenged by the person aggrieved thereby.

Constitution Bench of the Supreme Court in *M. CT. Muthiah v. CIT* [1956] 29 ITR 390 (SC).

Section 131(1A) uses the expression “reason to suspect”, section 132(1) uses the expression “reason to believe”. Reason to believe stands on a higher footing than reason to suspect. The very fact that notices were issued under section 131(1A) after the search and seizure operation under section 132 of the Act goes to show that there was neither reason to believe nor material before the authorising officer on the basis of which he could issue a warrant under section 132 of the Act. Since the authorised officer has to form an opinion before initiating the search, he will necessarily have to investigate the matter. The notice under section 131(1A) can be issued before search under section 132(1).

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Arjun Singh v. Asst. DIT [2000] 246 ITR 363, 398 (MP).

The power under section 131(1) of the Act, in fact, is exercisable as adjunct to judicial power available during the pendency of judicial proceedings, before him against an assessee, and cannot be exercised merely for obtaining documents/information in the manner of fishing enquiry and/or to ascertain, if any, action, if at all, is to be taken in future or for merely exploring the possibility, if any, of reopening of the concluded assessment. It is found that the said order of the Supreme Court cannot be treated as one under section 131(1A) and respondent No. 1 had no reason to suspect on the basis of the material on record and the allegations which were mentioned in the charge sheet of hawala case falls in the category of hearsay-accusation based on conjectures and surmises, as the Special Court, Delhi, did not find them even prima facie material.

CIT v. Mool Chand Salecha [2002] 256 ITR 730, 744 (Raj).

The Assessing Officer is empowered to ask for the production of the documents, etc., if the said documents etc., are necessary for the purpose of making an assessment under the Act. Therefore, before making an order under section 131(1), there must be application of mind by the Assessing Officer concerned as to the requirement of documents for the purpose of the assessment and there must be evidence that there were materials from which such relevancy of the documents, etc., have been considered by the Assessing Officer before passing the order and necessarily, therefore, it must follow that the order must not be vague.

Cases on the opportunity of being heard

Anis Ahmad and Sons v. CIT (Appeals) [2008] 297 ITR 441 (SC) ; [2008] 167 Taxman 84 (SC)

When summons issued could not be served, the Assessing Officer would not be justified in drawing an adverse inference against the assessee in respect of transactions between the assessee and those traders since the assessee could not be held responsible for the non-appearance of those five traders, and also since the assessee had led satisfactory evidence to show that its business was only that of a commission agent.

CIT v. Biju Patnaik [1991] 190 ITR 396, 397, 399 (Orissa).

Statement recorded under section 131 cannot be used without giving opportunity of rebuttal. While deciding the said appeals, the Income-tax Appellate Tribunal reiterated the findings of the Appellate Assistant Commissioner and held that the assessment orders suffered from legal infirmity, inter alia, on the ground that the assessee was not given an

opportunity to rebut the statements recorded under section 131 of the Income-tax Act and also because of the fact that the Assessing Officer failed to consider the entire evidence on record and did not call upon the assessee to furnish explanation on certain points. The Income-tax Appellate Tribunal, thus, dismissed the appeals of the Department by its order dated November 2, 1970.

C. Sampath Kumar v. Enforcement Officer, Enforcement Directorate [1998] AIR 1998 SC 16, 17

Administration of caution not to be constructed as use of "pressure". A constitution Bench of this court opined that such a course was desirable and observed that the giving of the statement in writing under the signature of the maker safeguards the interest of the maker as well as the department and eliminates the possibility of making a complaint subsequently that the statement was not correctly recorded by the authorities. There is no presumption that such a statement is always "involuntary".

Cases on the impounding of the books

K. Jayaraman v. ITO [1988] 172 ITR 447 (Mad).

The Income-tax Department has no jurisdiction to decide the genuineness of a Will, and, therefore, there will be no justification for impounding it. A Xerox copy could be taken and the original returned to the petitioner on his furnishing an undertaking that he will produce the original Will as and when called upon to do so.

Avinash Bhosale v. Union of India [2010] 322 ITR 381 (Bom).

Document under section 131(3) does not include a passport. If by an interpretative process the apex court has held that even a court cannot impound a passport, then it would be highly inappropriate to interpret the term "documents" used in section 131(3) so as to enable the executive authorities to impound the passport.

Amal Kumar Ghatak v. ITO [1971] 79 ITR 452 (Cal).

The power conferred under section 131 cannot be taken away or whittled down because of the limitations imposed by the proviso to section 142(1). The authority is empowered, under section 131, to call for books or documents of a period earlier than three previous years.

Munnalal Murlidhar v. CIT [1971] 79 ITR 540 (All).

When books and documents necessary and material in connection with a pending assessment or proceeding are in the custody of a person other than the assessee, or of a lawful authority, e.g., court, police, etc., it is the

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duty of the authority, before taking any adverse action against the assessee, to assist the assessee, when he requires his assistance, by exercising his powers under section 131 and, thus, enable the assessee to have access to the books and documents, which are necessary in connection with the assessment or proceeding so pending.

Kanodia Brothers v. S. S. Seth, ITO [1960] 39 ITR 228 (All).

In recording reasons for impounding of books, etc. section 131(3)(a) is a mandatory requirement. The language used in section 131(3) makes it clear that provisions for recording of reasons are of mandatory nature and not merely of a directory nature and would not amount to a mere irregularity. The main sub-section (3) empowers the authorities enumerated in sub-section (1) and (1A), to impound and retain in their custody for such period as they think fit any books of account or other documents produced before them in any proceeding under the Act. Income-tax Officers shall not impound any books of account or other documents until he has recorded his reasons for doing so. Where the exercise of the power itself is prohibited unless the reasons are recorded, the provision has to be held to be a mandatory one where the power must not be exercised without complying with the requirement of recording reasons ; and, if exercised, the exercise of that power could be invalid and against law. In this case, ab initio the retention was invalid because he had illegally impounded the books of account and other documents.

Ramji Das Om Prakash v. ITO [1970] 77 ITR 1010 (Punj).

It is not necessary for the Assessing Officer or the Assistant Director to communicate such reasons to the assessee.

Lila Textile v. Asst. CIT [2000] 245 ITR 826, 827 (Raj).

Where the reasons for impounding the documents were not recorded and the approval of the higher authority was not sought for, there was a flagrant violation of clauses (a) and (b) of the proviso to section 131(3) and the order of impounding the documents was liable to be quashed and the document was to be released.

CIT v. Oriental Rubber Works [1984] 145 ITR 477 (SC).

Although section 131(3) does not, on the face of it, provide that either the reasons recorded under clause (a) of the proviso to that section 131(3) or the order of approval obtained under clause (b) of that proviso has to be communicated to the person concerned. In view of the law laid down by the Supreme Court with reference to section 132(8) and 132(10), expedi-

tious communication of the recorded reasons and the order of approval has to be held implicit even under section 131(3).

CIT v. Subha and Prabha Builders Ltd. [2012] 342 ITR 14 (Karn).

The proviso to section 131(3) indicates the limits of the exercise of power and those limits are up to the outer limit of fifteen days (exclusive of holidays). The outer limit cannot be crossed without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director therefore, as the case may be, and for relevant reasons and for a reasonable period and not for an indefinite period. The reasonable period that can constitute an outer limit of fifteen days should take its colour from the normal period of fifteen days fixed as the outer limit and, therefore, can supplement the normal fifteen-day period by a few more days and not by a few more months or years.

Issue of notice under section 131 during the survey

There is no notice that can be issued during the course of conducting the survey under section 133A, except the survey under section 133A(6), and this too can only be issued under undeniable circumstances. The issuing of the notice under section 131 depends on the behaviour of the assessee. Notice under section 131 can be issued if the assessee has not co-operated with the survey team during the course of the survey. On the other hand, if the assessee has offered or helped the survey team with all the necessary materials while conducting the survey, then there is no way that it can be issued. Further, it cannot be issued even for the recording of the survey. Additionally, there is no notice under section 131 that can be issued once the survey has been completed. In other words, it would mean that it can be issued only when the proceeding is ongoing or pending.

Most of the times, when it comes to actually have the notices issued in practice, the Assessing Officer or the authorizing office mainly issues the notice under section 131 and that too during the course of the survey. The main outcome of issuing it is that they want the assessee to be called once the survey has been completed. Since the notice under section 131 cannot be used once the survey has been completed (and there is no proceeding that is pending), the practice of issuing the notice under section 131 after the survey is completed is not tenable in law. There have also been a number of court decisions that mention that the notice under section 131 should not be issued during the course of conducting or proceeding with

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the survey till the survey team receives the relevant co-operation from the assessee.

Penalty for non-compliance with the summons

As per section 272A(1)(c), if any person to whom a summons is issued under section 131(1) either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time, he shall pay, by way of penalty, a sum of ten thousand rupees for each such default or failure. As per section 131(1), the power regarding discovery, production of evidence, etc can be exercised only when any proceedings are pending before the income-tax authorities. However, as per section 131(1A), this power can be exercised even if no proceedings are pending before the income-tax authorities. Section 272A(1)(c) provides penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspection, etc. under section 131(1) of the Income-tax Act. However, no penalty has been prescribed for non-compliance with section 131(1A) of the Income-tax Act. But as per *Young Indian v. Addl. DIT (Inv.)* (ITAT Delhi) it clearly implies that the powers of section 131(1A) are derived from the powers of section 131 and, hence, the same penalty under section 272A(1)(c) shall be levied as for the non-compliance with summons under section 131(1A). It is improbable that the legislation would have no intention to levy any penalty in case of non-compliance under section 131(1A) which would in effect leave that section without any penal provision. In view of the above case law, the penalty of Rs. 10,000 under section 272A(1)(c) for non-compliance with summons under section 131(1A) is also justified.

In view of section 273B (penalty not to be imposed in certain cases), notwithstanding anything contained in section 272(1)(c), no penalty shall be imposable on the person or the assessee for any failure referred to in the said provision, if the person or assessee proves that there was reasonable cause for the said failure.

ITO v. Luxmi Prasad Goenka [1977] 110 ITR 674, 679 (Cal).

Failure to comply with the summons does not authorise the Assessing Officer to make a best-judgment assessment.

Conclusions

Notice under section 131 is a very potent power. The assessee as well as the income-tax authorities should be well aware of its scope, power, misuse and consequences. The income-tax authority may use this section as a

weapon in their hands but at the same time the various courts has also imposed certain limitations on it.

The conferring of the various powers should in no way mean that there are illogical and irrelevant usages made of the same. Also, misuse needs to be kept in check with the intention of avoiding duplication or even triplication at times, which is most of the times unnecessary and uncalled for. Additionally, this also serves as a botheration when it comes to the taxpayers or the assessee and unnecessary inconvenience to them. When it comes to the using of powers entitled to the authorities they need to be used with utmost care and guidance and ensuring that there is the proper logical path to the same for the issue of the relevant notices. Also, the guidelines that have been laid down need to be followed for ensuring, there is no discrepancy.
