

# **SEMINAR ON SEARCH & SEIZURE AND SURVEY**

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### **Survey under Income Tax, 1961**

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#### **What is the meaning of term Survey?**

The expression 'survey' has not been defined anywhere in the Income Act, 1961. As such the reference to its meaning has to be taken from the general parlance of this expression. The provision of 'survey' as contained u/s. 133A of the Act was not on the statute in the initial Income Tax Act, 1961. However subsequently the provision were inserted vide Finance Act, 1964 w.e.f 01/04/1964 and thereafter subsequent amendment were made.

#### **Power of Survey.**

Survey means to inspect or in a wider sense to scrutinize. The object of a survey is to find out, gather information, verify and collate information so as to apprehend a tax dodger or a tax evader. Survey is basically a surprise inspection carried out by the officers of the Income-tax department to verify co-related information, check the cash balance with the books, verify the position of stocks as compared to the position thereof in the books etc.

The Power of Survey emerges from the provision of section 133A of the Income-tax Act, and the sections starts with the words "Notwithstanding anything contained in any other provision of this Act". Accordingly the provisions are independent and to the exclusion of the other provision of the Income-tax Act.

#### **Who can Survey**

The powers of survey can be exercised by an Income-tax authority – meaning

- i. a Commissioner,
- ii. a Joint Commissioner,
- iii. a Director,
- iv. a Joint Director,
- v. an Assistant Director
- vi. a Deputy Director
- vii. an Assessing Officer,
- viii. a Tax Recovery Officer
- ix. an Inspector of Income-tax (for limited purpose).
- x. a Transfer Pricing Officer (for the purpose of determining the Arm's Length Price).
- xi. a TDS officer.

## **What are the powers of the Income-tax authority**

An income-tax authority may enter:

- a) any place 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 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.

## **Where can a survey be conducted**

The powers of the income-tax authority extend only to an entry to a business premises or place of profession. It is not necessary that the place which the survey is carried on is a principal place of business.

Business premises would also include a place wherefrom business need not be carried on by the assessee if books of account, documents, cash stock, valuable article or thing is kept.

## **Business Premises**

Sub-section (1) of Section 133A provides that survey can be conducted only at a place where business or profession is carried on, though, it is not necessary that such place should be the principal place of business. The words 'at which the business or profession is carried on' in sub-section (1) does not mean only those places where the buying or selling activities are carried on, but also includes places where other activities are carried on, like premises where goods are manufactured, processed or stored, etc. Further, it also includes places where activities which helps in carrying on business or profession are carried on, for example, factory, workshop or even godown, are places at which it can said that the business or profession is carried on.

Sometimes it may happen that the same premises may be put to use for business as well as residential purpose. An Income-Tax authority is entitled to enter such premises for the purpose of survey and the survey operation can extend to whole of the premises.

## **Survey at Residential Premises**

Normally, the power of survey does not confer a right to make survey of residential premises.

If during the course of survey the income tax authority finds that some books of account or documents or the stocks are not available at the place of business and the assessee makes a statement that these are available at his residence, the income tax authority will assume jurisdiction to enter the residence for the purpose of inspecting such books of account, documents or the stock of the business. Similarly, if any discrepancy is found in cash and the assessee states that the same is kept at the residence, the authority concerned will be authorised to go to the residence and to check the same. In view of this, the assessee should

avoid the keeping of stocks at his residence or the cash balance of the business at his residence so that it may not be required from him to state that these are kept at his residence. No businessman would desire to allow anybody to enter his house. It is therefore, required to be planned that the records, stocks cash or other valuables pertaining to the business not be kept at the residence or be removed from the place of residence if they are kept there, so that the unwanted guest may not enter the residence for encroaching upon the assessee's privacy.

### **Survey at CA's Office & third party**

Reference is invited to Circular No.7D dated 3-5-1967 which states that the place where entry can be made under section 133A 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 practitioner of whom the assessee may be a client are not places which may be entered into for the purposes of section 133A.

But if in course of survey, client states that his books of account/documents and records are kept in office of his chartered accountant/lawyer/tax practitioner; then the income-tax authority has power to enter business premises/ office of chartered accountant/lawyer/tax practitioner to conduct survey under section 133A in connection with survey of premises of their client [176 Taxman 293 (ORI.) U.K. Mahapatra & Co. vs. Income-tax Officer].

### **Conduct of Survey when business premises are locked**

There is no provision in Section 133A enabling the surveying authority to break open any door or lock or windows to obtain ingress. Entry can be made only if the premises are open and that too during the normal business hours of the assessee.

### **Timing of Survey**

Sub-section (2) of section 133A states that an income-tax authority may enter any place of business referred to in sub-section (1) 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, like residence, third party's premises etc. only after sunrise and before sunset.

Here also, once the entry has been made before sunset, the survey can be continued till any time beyond sunset. [Madras High Court in N.K.Mohnot v. Deputy CIT-15 ITR 275, 128 CTR 247, 83 Taxman 238].

### **Statement recorded in survey**

It is frequently seen that the income-tax authority conducting a survey normally does not leave unless a confessional statement is recorded. Such statement is given by the assessee many a times to get rid of the officer and to bring an end to the proceedings. Later on the assessee files a declaration that the statement is taken under undue pressure and the facts stated therein are incorrect. As such the statement is retracted.

During survey u/s 133A conducted by the income tax authorities, it is ritual to record survey statement of the assessee at the time of survey. When the survey statement is recorded, the assessee is, without any doubt, is under tremendous psychological pressure and often without any assistance of competent persons or professionals. Therefore, most of the statements are one sided and often recorded as it suits to officer and signed by the assessee.

Later when assessee reexamination every issue raised during survey u/s 133A with his chartered accountant, often the statement given u/s 133A comes as a bottleneck to actually declare correct position of business. Thus, a question comes up whether the statement recorded u/s 133A is the last word or assessee can actually change the statement u/s 133A without any legal repercussion.

#### *S.C Dismisses SLP on issue of Survey Statement*

Readers will be happy to note that the issue regarding the importance of statement u/s 133A was considered by Madras High Court in CIT vs S. Kader Khan 300 ITR 157 (MAD.)/[2008] 214 CTR 589 (MAD.) in which the exact issue before High Court of Madras was :

“whether the materials collected and the statement elicited during the survey operation under section 133A of the Act had any evidentiary value”

Madras High Court had held in that case that the statement, obtained under section 133A would not automatically bind upon the assesses .The department filed SLP in Supreme Court which was dismissed vide its order dated 20/09/2012.

#### *Madras High Court on Survey Statement U/s 133A*

The brief facts are that a survey was conducted on assessee on 24th July 2001 and during that survey assessee under statement u/s 133A offered to show additional income Rs. 20,00,000 for Asst Yr 2001-02 and Rs 30,00,000 for Asst Yr 2002-03.

However, the said statement was retracted by the assessee through its letter dated August 3, 2001, stating that the partner Asif Khan, from whom a statement was recorded during the survey operation under section 133A, was new to the management and he could not answer the enquiries made and as such, he agreed to an ad hoc addition, which could never be achieved by the business owing to the severe competition and to the legislation by the Government prohibiting smoking in public places. The assessee, thus, contended that the statement of Asif Khan recorded under section 133A has no evidentiary value.

The A.O did not agree with the assessee and did not accept the books produced during the scrutiny assessment stating that certain entries are made subsequent to survey.

Both CIT(A) and Tribunal, however held in favour of the assessee.

The department appealed before Madras High court and one of the ground out of three was “whether the materials collected and the statement elicited during the survey operation under section 133A of the Act had any evidentiary value”

The High Court held on the issue of evidentiary value of statement recorded during survey proceeding as under :

the following principles can be culled out:

- i. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in Pulkngode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 ;
- ii. In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews and Sons v. CIT [2003] 263 ITR 101 (Ker.);
- iii. The expression “such other materials or Information as are available with the Assessing Officer” contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide CIT v. G. K. Senniappan [2006] 284 ITR 220 (Mad.) ;
- iv. The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S. Ajit Kumar [2008] 300 ITR 152 (Mad.);
- v. Finally, the word “may” used in section 133A(3)(iii) of the Act, viz., “record the statement of any person which may be useful for, or relevant to, any proceeding under this Act”, as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement, obtained under section 133A would not automatically bind upon the assesses we do not see any reason to interfere with the order of the Tribunal.

Whenever there is some incriminating material found during a survey, the income-tax authority immediately issue a summons under section 131 of the Act and records statement since a statement recorded by this process is on oath and has the force of law. However for the exercise of a power under section 131(1), the Assistant Director, Deputy Director, Assessing Officer, Tax recovery Officer or the Inspector of Income-tax needs to take the approval of the Director or Joint Commissioner as the case may be.

### **Copies of statements recorded during survey.**

It is settled law that copy of only that material which is being used against the assessee is to be provided. Accordingly even though the statement of the assessee is recorded during the course of survey, no copy is provided to him and it is for the assessee to then apply to this concerned officer for the same who would provide the copy in case he intends to use it against the assessee.

### **Conversion to Search.**

There are times when the income-tax authority may during the course of a survey find huge unaccounted cash or stocks. There may be sufficient material which would warrant seizure. Since he does not have the power to seize, the income-tax authority then informs his counterpart being the Investigation wing who come with a search warrant and take over the proceedings from there. The survey then ends and search begins.

### **Whether business premises can be sealed**

In *Shyam Jewellers & Anr v. Chief Commissioner (Admn) U.P. & Ors.* (1992) 196 ITR 243, Allahabad High Court observed that a business place cannot be sealed during the course of survey. The Court held that sealing of business place during survey or even in course of search under Section 132 is not permitted in view of the fundamental right to practice any profession or carry on any trade or business bestowed under Article 300A of Constitution of India and is also violation of Article 19(1)(g) relating to the fundamental rights of a citizen.

### **Stoppage of business**

The authorities cannot stop the business or the normal activities of a person. The authorities do not have power to interrupt the ordinary business or peaceful life of citizen. They should use the power given to them strictly within the four corners of large power. Since the powers vested are large, even a millimeter departure there from is not allowed *Dr. Vijay Pahwa VS DCIT* [250 ITR 354 (Cal), 129 CTR 64, 84 Taxmann 416].

### **Chits / Slips found during survey**

When there chits /slips found during the survey the issue comes up is if these chits/slips belong to the assessee. Second can these chits/ slips can be called as documents. Third is the figures in these chits / slips without any narrations or details represents income the assessee. These issues are answered in para 23 & 24 of 39 ITD 1 83 (Delhi) in the case of *Ashwani Kumar vs ITO*.

If the slips/chits can be called as documents is also an issue. Document has been defined in section 3(18) of the General clauses Act to include any matter written, expressed or described upon any substance by means of letters figures or marks or by more than one of those means which is intended to be used or which may be used for the purposes or

recording that matter. If the slips/chits do not indicate whether the figures refers to quantities of money or quantities of goods and if so which side represents receipts and which side represents outgoing. Where there is no narration the chits can be called, as dumb documents without indicating any meaning cannot be treated as document.

### **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.

### **Failure to co-operate.**

If any person fails to co-operate with the income-tax authority or does not afford facility to inspect the books of account or other documents, or to check or verify the cash, stock, etc, then such income-tax authority can invoke the powers u/s 131(1) of the Act and enforce compliance.

### **Presence of an Advocate, Chartered Accountant or an Authorized Representative.**

An Advocate, Chartered Accountant or an Authorised Representative can be permitted to be present during a survey. In fact his presence can be of great assistance to the income-tax authority since he is in the full knowledge of most of the affairs of the assessee. However this does not constitute a right because except for affording assistance, the authorized representative has no role to play. He is in reality a silent spectator to the process and in case of any interference by him could make him leave the premises.

### **Consequences of a confessional statement.**

Very often it is seen that in a survey, the income-tax authority determine the closing stock by estimating gross profit. The normal practice is to take the Opening stock, add to it the purchases up to the date of survey, deduct sales as recorded in the books of account and the average estimated gross profit. This working generally leads to an incorrect result and thus excess stock is worked out as compared to what is physically found. The assessee makes a declaration and then afterwards realizes the folly and files a retraction. The reasons for the difference could be many such as:-

- i. The rate of GP has been taken to be a lower figure than the one which can be proved from the records.
- ii. Certain purchases for which the deliveries were received have not been debited but since the bills were not received and therefore purchases to that extent are understated.
- iii. Certain sales have been made but the goods have not yet been delivered. Therefore, these items were included in stock as well as sales;
- iv. Certain materials were received either for job work or on returnable basis and therefore did not belong to the assessee;
- v. The physical stock taken by the department was not correct.

**Precaution to be taken before making a statement.**

Before making a confessional statement or any declaration, the assessee should keep the following issues in mind:-

- i. Whether any evidence has been found which would lead to an inference of concealment of income.
- ii. Whether there is in fact any discrepancies between the stock as per books and the stock as per records.
- iii. In case of disclosure of excess stock it may be advisable to admit discrepancies in the stock rather than unaccounted purchases.
- iv. The provisions of sales tax and excise duty besides provisions like disallowance u/s. 40A(3), 269SS, 269T etc should be kept in mind before making any confession.
- v. Whether it would be safer to disclose income under the head "other sources" or "business".
- vi. Would it be desirable to declare the entire amount as current year's income or spread over income for many years since any spread over may result in liability to interest and penalty for concealment.
- vii. Whether it is possible to capitalise the disclosed amount.
- viii. Care should be taken to ensure that the disclosure covers the discrepancies found during the survey and also those that may be unearthed at a later stage.



## **Presumptive taxation.**

There are some provisions of the Act which permit some types of assessee having a restrictive turnover to pay tax on an assumed income. If during the course of a survey of such an assessee it is found that books of account are maintained, the income-tax authority would be very much within his powers to impound such books and thus make the assessee liable to income based on the entries in such books of account.

## **Interest and Penalty.**

It is very important to consider the consequences of a disclosure made during the course of the survey.

If the income detected during the course of survey relates to the current year, then the assessee would be liable only to interest under section 234C if any and there would be no reason to levy a penalty since the return of income was not yet due and hence concealment is not established.

However where the income detected during the course of survey relates to any assessment year for which the return of income has already been filed, it is presumed that the intention of the assessee was to conceal such income and as such the assessee will not be spared from the liability of interest and penalty as per law. *Santram Parmanad Vs. ACIT [2004] (1 SOT 312) (Del.)*

## **Relevant Case laws**

- *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. Assistant Director of IT (Investigation) (1999) 7 DTC 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 peaceful 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 assesseees.

**Some of the Circulars/Press Releases issued by CBDT from time to time in the context of Section 133A are reproduced hereunder :**

1. Insertion of new Section 133A by Finance Act 1964 – Circular No.20D(LXXVI) dated 7.7.1964 (Reported in Sampath Iyengar's Law of Income Tax 9<sup>th</sup> Edition Volume 4 page 4953)

This circular talks about powers of Income Tax Officer to enter place of business or profession during normal working hours and to inspect books of accounts and to exercise powers under sub-sections (1) and (2) of section 131, if necessary, in case of non co-operation from the assessee

The Text of relevant para reads as under:

93. A new section 133A has been inserted with effect from 1-4-1964, by section 31 of the Finance Act, 1964, conferring powers on an income Tax officer (or any income Tax Inspector authorised by him on this behalf) to enter (a) any place within his territorial jurisdiction, where a business or profession is carried on, or (b) any place which is occupied by a person within his jurisdiction and where a business or profession is carried on, for the purpose of inspecting any books of account or other documents which is may be available at such a place, and placing marks of identification thereon or taking extracts from such books and documents. Such place can be entered into by the Income Tax officer or the authorized Inspector of Income Tax, even if it is not the principal place of the business or profession concerned. Entry in such premises is allowed, under this provision, only during the working hours of the business or profession. Further, the removal of any books of account or documents from the place by the Income Tax Officer or the authorised Inspector is expressly barred under this section. The section casts an obligation on any proprietor, employee or other person who may be attending to or helping in carrying on the business or profession to afford the Income Tax Officer or the authorised Inspector of Income Tax, necessary facilities for inspecting the books of account and other documents which may be required by the Income Tax, Officer or the Inspector. If such person refuses to afford facilities to the Income Tax Officer or the authorised Inspector for inspecting the Books of account or documents or evades to do so, the Income Tax Officer (not the Inspector) is empowered to enforce compliance by taking recourse to the powers under sub-section (1) and (2) of section 131 (viz., powers as are

invested in a civil court under the Code of Civil Procedure, 1908 for discovery and inspection, compelling the production of books of account and other documents, enforcing the attendance of any person, issuing commissions; and powers of levying a fine up to Rs.500 on a person intentionally omitting to attend or to produce books of account and documents as required in summons issued to him for the purpose)

2. Circular No.7-D (LXIII-7), dated 3-5-1967 (Reported on page 2059 Vol 2 of Taxmann Direct Tax Circulars 2002)

This circular lays emphasis on the fact that only the place of business/profession of the assessee, whether principal place or not, can be subject to survey under section 133A. Business and/or residential premises of third parties or residential premises of assessee cannot be entered into for conducting survey.

The place which an Income Tax Officer or an Inspector, authorised by him in this behalf may enter under the provisions of Section 133A, must be either a place within the limits of the area under the jurisdiction of the Income Tax Officer or any place occupied by any person in respect of whom the Income Tax Officer exercises jurisdiction, at which a business or profession is carried on. The provisions of section 133A make it clear that, in either case, the place must be one where the business or profession of an assessee is carried on, although it is not necessary that it should be the principal place of business or profession. The place where entry can be made under the section, must not be place where the assessee does not carry on business. Business or residential premises of third parties, including a chartered accountant, a pleader or Income-Tax practitioner, of whom the assessee may be client are not places which could be entered into for the purpose of section 133A. It would be improper for an Income Tax Officer or an Inspector, authorized by him in this behalf, to enter the office of chartered accountant for the purpose of inspecting the books of his Client. It is also necessary that the place entered should be the business premises and not residential premises of the assessee and the entry should be during business or office hours. It may, however be noted that the above restrictions do not apply to cases of search and seizure specifically authorised under section 132 by the Commissioner of Income Tax/Director of Inspection, which will be governed by the provisions of that section.

3. Circular No.179 dated 30-9-1975 - Taxation Laws (Amendment) Act, 1975 – Amendment of section 133A (102 ITR 9 Statues)

This circular talk about the power of survey assigned also to Inspecting Assistant Commissioner and Assistant Director of Inspection. It also states that scope of Section 133A is widened because cash, stock and other valuable are also made subject to inspection and making inventory and power to record statement of persons concerned is also provided under the substituted section. It further says that Inspector of Income Tax can exercise powers of survey only with the permission of Income Tax Officer.

The Text of relevant para reads as under:

14. The Amending Act has substituted a new section for the existing section 133A with a view to enlarging the scope and powers of survey available to the Income Tax authorities. The main changes made in this behalf are as follows:

1. At present, the powers of survey are vested in the Income Tax Officers or the Inspectors of Income Tax authorised by them in this behalf. These powers will now be available to Inspecting Assistant Commissioners and the Asstt. Directors of Inspection as well.
  2. Under the existing law, the power of Income Tax authorities is limited to the inspection of the books of account and other documents available at the place of business or profession of the assessee, placing of marks of identification thereon and taking of extracts therefrom. Under the amendment the inspecting Assistant Commissioner, the Asstt. Director of Inspection and the Income Tax officer will have further power to check or verify the cash, stocks or other valuables found in the premises where the business or profession is carried on and also to require the proprietor, employee, etc., to furnish information which may be useful for or relevant to any proceeding under the act.
  3. At present, the income-tax authorities have the power to enter only a place where business is carried on. Such entry can be made during the hours at which such place is open for the conduct of business or profession. Under the amendment, the Income Tax authorities will also have the power to enter any other place in which the person carrying on business or profession states that any of his books of account or other documents or any part of his cash or stocks or other valuable articles or things relating to his business or profession are kept. The entry to such other place will, however, be made only after sunrise and before sunset.
  4. The Inspecting Assistant Commissioner, the Asstt. Director of Inspection and the Income Tax Officer will now have the power to make an inventory of any cash, stocks or other valuable articles or things checked or verified by them and also to record the statement of any person which may be useful for or relevant to any proceeding under the Act
  5. The Income Tax authorities will also have the power to collect information and record statements of persons concerned any time after any function, ceremony or event even before the stage of assessment proceedings for the following year for which the information may be relevant, if they are of the opinion, that having regard to the nature, scale or extent of the expenditure incurred, it is necessary to do so.
15. It may be noted that while the Inspecting Assistant Commissioner, the Asstt. Director of Inspection and the Income Tax Officer will have all the powers under the new provision, the Inspector of Income Tax has not been vested with the new powers referred to in items (2) and (4) of the preceding paragraph. Further, the Inspector of Income Tax can exercise the powers of survey vested in him only if he is authorised by the Income Tax Officer to do so.
4. Circular No. 551, dated 23-1-1990 - Direct Tax Laws (Amendment) Act, 1987 – 183 ITR (st) 7 - Amendment of clause (a) of Explanation to section 133A

This circular draws attention to the fact that now Deputy Commissioner & Assistant Director can also authorise an Inspector to conduct survey.

The Text of relevant para reads as under:

9.12 The Amending Act, 1987 has amended clause (a) of the Explanation to provide that instead of only the Income Tax Officer, any income tax authority mentioned in the section can authorise the Inspector of Income Tax to conduct the survey.

5. Circular No. 717, dt.14-8-1995 - Finance Act, 1995 - 215 ITR 70 statutes, 127 CTR (st) 21 -Authorisation for conducting survey

This circular explains the difficulty faced in conducting survey and hence certain other Income Tax authorities are empowered for conducting survey in order to accentuate operational efficiency.

The Text of relevant para reads as under:

42.1 Section 133A of the Income Tax Act, 1961, empowers an income-tax authority to conduct survey. The term 'income-tax authority' for the purpose of conducting survey has been defined in the Explanation appearing at the end of section 133A, to mean a Deputy Commissioner, an Assistant Director or an Assessing and for some specific purpose, if authorised, an Inspector of Income Tax. The powers of these authorities are restricted to their territorial jurisdiction resulting in operational difficulties whenever any of the specified authorities is not available for conducting a survey on the basis of any unexpected information from any external source warranting immediate action. Secondly, in the case of big assessee, service of a number of officers may be required. Therefore, in order to accentuate operational efficiency of the department as also to cover large premises, the existing law has been amended to provide that the Deputy Director, the Director and the Commissioner will also have powers to conduct survey and an officer having jurisdiction over an assessee or within the limits of his territorial jurisdiction can authorise any other officer to conduct survey.

42.2 This amendment takes effect from 1-7-1995.

6. Press Release dated 3.6.1989—Income Tax Officers authorised under Section 133A to make surveys of marriage ceremonies and other ostentatious social functions to detect use of unaccounted money

Government will launch a drive against ostentatious wedding ceremonies and other social functions, which often involve blatant use of tax-evaded money. According to Revenue Secretary, Dr. Manish Sengupta, such ostentation is inconsistent with the egalitarian values of Indian Society.

Section 133A of the Act, authorises Income Tax Officers to make surveys of marriage ceremonies and other ostentatious social functions and to detect use of unaccounted money. So far, this provision has not been sufficiently used to make a visible impact on the curbing of wasteful expenditure.

The CBDT vide instruction dated 10<sup>th</sup> March 2003 - Instructing officers to focus and concentrate on collecting of evidence of income which is not disclosed or is not likely to be disclosed rather than record an unsubstantiated statement vide no F No. 286/2/2003/IT ( Inv)

To  
All Chief Commissioner of Income Tax &  
All Directors General of Income Tax

Subject: Confession of additional Income During the course of search and seizure and survey operations

Instances have been come to the notice of the Board where assessee have claimed what they have been forced to confess the undisclosed income during the course of the search, seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesses while filing returns of income. In these circumstances, confessions during the search, seizure and survey operations do not serve any useful purpose. It is therefore, advised that there should be focus and concentration on collection of evidence of income which lead to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Similarly, while recording statement during the search, seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidence/materials gathered during the course of search, seizure and survey operations or thereafter while framing the relevant assesment orders.

Yours faithfully,  
Sd/-  
(S.R. Mahapatra)  
Under Secretary (Inv. II)