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RIGHTS OF AN ASSESSEE DURING AN INCOME TAX RAID SEARCH AND SURVEYS (RAIDS) - DISCLOSE FULLY TAXABLE OR NONTAXABLE INCOME IN ITR



By : M.S.Yatnatti: Editor and Video Journalist Bangalore : According to the financial experts the search and survey operations conducted by the Income tax department, commonly known as Income tax raids ('raids'), has always been one of the worst nightmares of businessmen, high earners and corporate .Reportedly some reasons for this fear being heavy tax and penalty payments, possible devastating impact on the business, mental harassment faced during such raids etc. Although surveys are not feared as much as search and seizure operations, often it is considered to be a step towards such operations. Most of the fears for such operations are valid and the negative impacts are generally unavoidable, though the impact can be much lesser if the assessee has reasonable knowledge about various aspects relating to the raids. This compilation has tried to summarise some of the significant aspects about raids that assessee should remember in order to lessen the impact of such operations .Search And Seizure ("Search") Procedures :Search operations are carried out by a team of members from investigation wing and usually it takes place in the morning. The search team carries a search warrant with it for verification. The search team usually cover all the business premises of the assessee (in India) and the residential premises of the important and key persons of the assessee like the partners of the assessee firm; directors of the company etc. and can extend upto 2-3 days. It may also cover residential premises of close relatives, friends, business associates etc. One of the most important powers that the Income Tax Department possesses is the power of search and seizure. Tax authorities usually exercise their right to conduct raids on individuals or groups who are suspected of evading tax or who are deemed to be in possession of any property or income belonging to another party that has not been disclosed. While this might seem like a drastic step, it is an act that is upheld by the constitution, and is deemed entirely necessary in cases where the Income Tax Department feels extreme action is needed.Objectives of Income Tax Search and Seizure: The Income Tax Department exercises its right of search and seizure to achieve the following objectives :To ensure that any threat to social security is dealt with effectively .To directly address problems and issues that arise due to evasion and avoidance of tax .To meet the menace of black money head on .To uphold the law laid down by the constitution of India .Income Tax Raids: As per law, if evasion of tax or undisclosed possession of property or valuables is suspected, officers authorised by the Income Tax Department are well within their powers to conduct raids and searches on the following: Any residential property or premise. Any property or premise used for the purpose of conducting business .Any vehicle or automobile. Any lockers held at banks or financial institutions. Any books or ledgers containing account details and transactions. Any stocks, bonds or shares that have been acquired or sold. Any valuable items such as jewellery, gold, and other precious metals.As per Section 1 32A of the Income Tax Act, the authorised officers can also exercise their right to inspect any books of accounts or any items of value that have been seized by any other department belonging to the government. Reasons For Income Tax Raids: The Income Tax Department can conduct raids on individuals or groups for a wide range of reasons. The most pertinent of these are outlined are:Where the department has gathered evidence substantiating that an assessee is in possession of income or assets that have not been disclosed, and where the amount of tax that would be normally paid on such income or assets exceeds Rs 1 crore.Where the department suspects an individual or group of holding assets that have been unaccounted for, and which are deemed to be used for the purpose of smuggling, public disorder, fraud, terrorism etc.Where the department has received verification of lavish expenditure at weddings or marriages.Where the department has gathered evidence relating to the evasion of tax that is based on actual fact rather than rumors or assumptions.Where the department has acquired reports or tax evasions that have been gathered by intelligence departments .Where the department has acquired reports in relation to the confiscation of money by any state or central government law enforcement agency.Where the department has gathered information from 'informers' hired by the law to provide critical data on any individual or organisation suspected of tax evasion.Where the department has gathered data or information that has been put together from the perusal of tax assessment files and records that have passed through the process of verification .Where the department has gathered information received from any party with an intimate relation with the assessee in question such as a member of the assessee's family, a business partner, an employee etc. This information is subject to independent questioning on the part of the Income Tax department.Where the department has gathered evidence of the manipulation or 'cooking' of any of the following: Books or ledgers showing accounting details and transactions.Any documentation or records.Any invoices.Any vouchers.Any bills.Where the department has gathered evidence suggesting that the assessee is in possession of or has maintained duplicates or copies of his or her books of accounts.Where the department has gathered evidence of the possession of substantial amounts of income held with the following: The assessee.At banks or financial institutions.At the residence of the assessee.At any business property.At lockers held in banks or financial institutions.At the residence of any member of the assessee's family.At the residence of any business partner of the assessee.At the residence of any employee of the assessee.Where the department has gathered evidence linking the arrival of a person at any of the airports in India with the possession of substantial sums of money, gold, incriminating documents etc.Where the department has gathered evidence showing assessee earning low salary or income to be in possession of vast sums of money.Where the department has acquired information or data that contradicts any facts that have been recorded.Where the department has gathered evidence of any business transactions, transfers or activity that has been deemed suspicious, including travel from one location to another, whether within India or abroad.Where the department has gathered credible information pointing to illegal and suspicious business activities from the following portals: Magazines.Social media and other internet web pages.Newspapers.News on the television.News on the radio.Where the department has gathered credible information, data and evidence from other governmental departments.Where the department has gathered information showing that the following items are not accounted for in the books of account or balance sheets of the assessee: Cash.Assets.Jewellery.Bank balances.Investments.Shares.Where the department has gathered evidence linking that assess to the illegal purchase or investment in and of any property or real estate.Where the department has gathered evidence of any hawala activities and transactions that have taken place within the functioning of any business.Where the department has gathered evidence of the assessee making investments in benami or 'non titled' property.Where the department has gathered evidence of undisclosed sums of money and investments held with banks under the name of the assessee or any of his or her family members, business associates, relatives etc.Where the department has gathered evidence of any undisclosed share investments, demat or forex accounts under the name of the assessee or any of his or her family members, business associates, relatives etc.Where the department has gathered evidence of any undisclosed amounts that have been omitted or have been withheld during the time of declaration of turnover with regards to the following: Excise duty authorities.Value Added Tax.Service Tax.Central Sales Tax.Sales Tax.Where the department has gathered evidence of the purchase or acquisition of massive amounts of assets or machines from organisations that are found to be illegal or that do not exist.Where the department has gathered evidence of a large amount of sundry creditors every year, despite of the non-existence of any such organisation, company or individual.Where the department has gathered evidence of any discrepancies or anomalies in the submission of stock quantities, inventory, sales production etc.Where the department has gathered evidence of any discrepancies or anomalies with regards to the personal accounts of the assessee in question, wherein the accounts show large amounts of loans or cash appearing consistently and on a continuous basis every year.Where the department has gathered evidence of any regular improper or illegal contact with a judicial member such as a lawyer or a judge as per Section 144 of the Income Tax Act.Where the department has gathered evidence of the non-filing of income tax returns by the assessee for a single year or multiple years.Where the department has gathered evidence of persons or individuals in possession of many Permanent Account Numbers (PAN), who file income tax returns from different locations around the country, and who declare large sums of income.Any other reason that may be deemed valid or confidential by the Income Tax Authorities, or in specific cases dealing with evasion of tax across state borders.

Rights Of An Assessee During An Income Tax Raid: An assessee who has been suspected of tax evasion or concealment of undisclosed property can exercise the following rights as per law in the event of a raid conducted by the income tax authorities:The authorised officers conducting the raid are duty bound to allow or permit two individuals from the local area to stand as independent witnesses.If assessee under suspicion are children, they must be permitted to leave for school, although their bags may be checked by the income tax officers.Any income tax raid can only commence at sunrise and must end at sunset.Any income tax raid can last only for a maximum of 48 hours.The assessee can exercise his or her right to inspect the search warrant as well as confirm the identity of the authorised income tax officer present.The assessee under suspicion can also insist that only authorised female tax officers shall be allowed to search the female family members of the assessee.The assessee is required to provide a statement at the time the raid is being carried out, or after the raid has been concluded. Should he or she not provide a statement, it will be considered as an act of silence, and could have an adverse effect on proceedings.The assessee can exercise his or her right to inspect and search the authorised income tax officers to ensure that no planting or tampering of evidence takes place.The assessee has the right to seal and stamp any packages that have been confiscated by the raid, and has the right to receive a witness copy of the same.If the assessee is a woman, who as per custom does not make public appearances, then she can exercise her right to not appear before the search party consisting of authorised income tax officers.The assessee can exercise his or her right to avail of a medical assistance should the need arise.The assessee can also exercise his or her right to eat meals at standard meal times.Procedure For Those Assessee Who Feel They Have Been Wrongly Raided:If an assessee feels that he or she has been unfairly placed under suspicion and has been wrongly raided by the income tax department, he or she can challenge the raid carried out by filing a writ petition with the High Court.If an assessee feels that he or she has been unfairly placed under suspicion and has been wrongly raided by the income tax department, he or she can challenge or appeal against the raid or assessment made by the authorities before the Commissioner of Income Tax (Appeals).After the Income Tax Department has conducted seizure of all documentation or undisclosed property under suspicion, it can re-conduct assessment for the six years prior to the conclusion of the raid for any reason it deems fit.Tips To Keep In Mind To Prevent An Income Tax Raid:In order for an assessee to prevent the Income Tax Department from conducting a tax raid, the following tips are recommended:Ensure that all taxable or nontaxable income as well as wealth is fully disclosed when filing income tax returns.Ensure that complete compliance is followed when issued with a summons by an assessing officer.Ensure that proper information is collected with regards to the declaration of any income or wealth that is exempt from tax.Ensure that any evidence in the form of bills, vouchers or any other documents are maintained should the need to present them as proof of purchase arise.Ensure that registers are preserved and maintained stating the contents of bank lockers to provide to income tax authorities should they request it.Ensure that the identity of the officers conducting the raid is checked and confirmed before the commencement of any raid

Difference between Judicial and Quasi-Judicial Function:There are three organs of State – the Legislature, the Executive and the Judiciary. The function of the legislature is to enact the law; the executive is to administer the law and the judiciary is to interpret the law and to declare what the law is.But as observed by the Supreme Court in *Jayantilal Amratlal v. F. N. Rana*, it is not necessary that legislative functions are exclusively performed by the legislature, executive functions by the executive and judicial functions by judiciary. The executive/administration also performs a judicial function, and act as a quasi-judicial authority. **WHAT IS A QUASI-JUDICIAL FUNCTION?** :The word 'quasi' means 'not exactly.' An authority is described as 'quasi-judicial' when it has some attributes of judicial functions, but not all.A quasi-judicial decision may involve (1) and (2) above, but does not necessarily involve (3) and never involves (4). The place of (4) is taken by administrative action, the character of which is determined the individual authority in their official capacity. For instance, a statute may empower a Minister to take certain actions if certain facts are proved, and it may give him an absolute discretion whether or not to take action.In such a case, the minister must consider the representations of parties and ascertain the facts – to that extent the decision contains a judicial element. But, the facts once ascertained, his decision does not depend on any legal or statutory direction, because he is free within the statutory boundaries to take any administrative action as he may think fit: that is to say that the matter is not finally disposed of by the process of (4).The element of discretionary power is necessarily present in all authorities and all decisions, whether quasi-judicial, judicial or purely administrative. The courts of law also exercise discretion. A quasi-judicial function stands midway between a judicial function and an administrative function. A quasi-judicial decision is nearer the administrative decision in terms of its discretionary element and nearer the judicial decision in terms of procedure and objectivity of its end-product.Characteristics no (1) and (2) may also vary in quasi-judicial decisions. In many cases, the authority may decide a matter NOT BETWEEN TWO OR MORE CONTESTING PARTIES BUT BETWEEN ITSELF AND ANOTHER PARTY, e.g. an authority effecting compulsory acquisition of land. Here the authority itself is one of the parties and yet it decides the matter. It does not represent its case to any court or authority. Also, there may be cases in which NO EVIDENCE IS REQUIRED TO BE TAKEN AND YET THE AUTHORITY HAS TO DETERMINE THE QUESTIONS OF FACT after hearing the parties, e.g. ratemaking or price-fixing. Finally, even after ascertainment of facts, unlike a regular court, A QUASI-JUDICIAL AUTHORITY DOES NOT FEEL BOUND TO APPLY THE LAW TO THE FACTS SO ASCERTAINED, and the decision can be arrived at according to other considerations (such as public policy or administrative discretion) which are unknown to an ordinary court of law.**DISTINCTION BETWEEN JUDICIAL AND QUASI-JUDICIAL FUNCTIONS:**A quasi-judicial function differs from a purely judicial function in the following respects (a) A quasi-judicial authority has some of the trappings of a court, but not all of them; nevertheless there is an obligation to act judicially.(b) A dispute between two parties is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function.(c) A court is bound by the rules of evidence and procedure while a quasi-judicial authority is not.(d) While a court is bound by precedents, a quasi-judicial authority is not.(e) A court cannot



be a judge in its own cause (except in contempt cases), while an administrative authority vested with quasi-judicial powers may be a party to the controversy but can still decide it. IN DECIDING CASES, COURTS APPLY PRE-EXISTING LAW WHEREAS ADMINISTRATIVE AUTHORITIES EXERCISE DISCRETION. However, in order to maximize the scope of our rights as citizens, we need to understand where the limits of those discretions lie. This excellent Bombay High Court judgment in 2009 draws some much-needed lines as to the due procedures to be followed by quasi-judicial authorities. If they go wrong in such matters, we may challenge them in High Court – and that is the power of a citizen. **EXCERPTS FROM BOMBAY HIGH COURT JUDGMENT ON WRIT PETITION NO. 4101 OF 2007** [Smt. Savitri Chandrakesh Pal. V/s. State of Maharashtra & others] "14. This Court, having seen the mode and manner of decision making process and the procedure adopted for deciding the appeals, revisions, review and/or stay applications, this Court was compelled to pass the order dated 4th September 2008 directing the State Government to place on record the PROCEDURE, NORMALLY, FOLLOWED AND ADOPTED BY ALL THE DEPARTMENTS OF THE STATE GOVERNMENT OF MAHARASHTRA while hearing and deciding quasi-judicial proceedings. 15. The State Government, after the aforesaid order dated 4th September, 2008, appeared through Shri V.A.Gangal, Special Counsel and informed that a committee has been constituted consisting of the Chief Secretary, Law and Judiciary with the officers of General Administration Department with Shri V.A.Gangal, Advocate and Special Counsel for the State of Maharashtra, to streamline the procedure of hearing and deciding quasi-judicial proceedings by the officers of the State of Maharashtra including the Hon'ble Ministers of the respective departments. On the suggestion of this Court, Mr. Anand Grover, who was appointed as Amicus Curie to assist this Court, was also included in the said committee. 16. The aforesaid committee was granted time to submit their report. The said committee submitted its report on 7th January, 2009 whereunder the guidelines were framed and the procedure was laid down prescribing the mode and manner of hearing the revisions, appeals, review applications including application for interim reliefs by the State Government and its functionaries so as to streamline the decision making process. The said report was accepted by this Court by consent of the parties. **PROCEDURAL GUIDELINES FOR QUASI-JUDICIAL AUTHORITY:** 17. This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribes the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.: (1) Memo of appeal or revision, review and or any application shall specifically mention under which enactment and/or under what provisions of law the said appeal/review/ revision or application is filed. (2) The appellant/ applicant shall give a synopsis of concise dates and events along with the memo of appeal or revision. (3) The appeal, revision and/or application shall be filed within a period stipulated under the law governing the subject from the receipt of the order/ decision which is impugned in the above matter. In the event of delay, it should only be entertained along with application for condonation of delay. (4) At the time of presentation of the appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and/or advocate. (5) The application shall be accompanied by sufficient copies for every opponents/ respondents and also supply 2 extra copies for the authorities. (6) For issuance of summons to the opponents/ respondents, court fees/ postal stamps of sufficient amount shall be affixed on the application form/ memo of appeal or revision as the case may be. (7) In addition to service through the authority, appellant/ applicant may separately send the additional copies to each of the opponents/ respondents by registered post acknowledgement due and may file affidavit of service along with evidence of despatch. The postal and acknowledgment alone should be treated as evidence of service in the event of service through postal authority. (8) In the event of an urgency of obtaining an interim relief like stay, injunction/ other interim order or direction or status-quo etc, a specific case of urgency should be made out in the application, which the authority may entertain subject to the brief reasons recorded. The said order shall also be communicated immediately to all the effected persons. The proof of timely despatch of the Registered A.D.s and all the acknowledgments shall be separately maintained. (9) If there is real urgency, the concerned authority may grant ex parte interim/ ad-interim relief for the reasons to be recorded for a particular period only within which time the service on the concerned opponents/ respondents shall be effected. Appellant/ applicant should file affidavit of service, if such party requires early hearing or continuation for interim relief or of an appeal, revision or review. (10) The competent authority shall also communicate the next date of hearing to all the parties along with time and place and shall, as far as possible, adhere to the said date and time of hearing. (11) The concerned official in every department should be asked to remain present at the time of hearing and assist the concerned authority in the matter. (12) Reasonable sufficient time be provided between the date of receipt of notice and the actual date of hearing. If any party is unable to remain present at the time of hearing for a sufficient cause, one further opportunity should be given to such party for hearing. (13) The authority hearing quasi-judicial matters shall duly fix a date, time and venue for such hearing. Such authority shall refrain from interacting with third party during the course of hearing either in person or on phone and shall not do any act which would tend to affect or prejudice fair hearing. (14) A speaking order shall be passed by the authority hearing the matter as early as possible after the hearing is concluded and, as far as possible, within a period of four to eight weeks from the conclusion of the hearing, on the basis of the record before it as well as the submissions made at the hearing. The order must contain reasons in support of the order. (15) The authority shall not receive information or documents after the hearing is concluded and/or shall not pass the speaking order on the basis of such documents and/or information unless such material is brought to the notice of the parties to the proceedings following rules of natural justice. (16) The order passed by the quasi-judicial authority on the hearing shall be forthwith communicated to all the parties by Registered A.D. (17) No application or request or prayer from the political worker, Member of Legislative Assembly, Member of Parliament or third party shall be entertained in the quasi-judicial proceedings unless such person is a party respondent or intervenor in the proceedings. (18) The order pronounced shall be communicated to the parties immediately. (19) Record of hearing shall be meticulously maintained in a separate Roznama. (20) The notings of concerned officials/ law assistants to assist the authority shall include only content of facts and legal provisions along with case laws, if any. (21) The notings made by the law officials/ concerned officials shall not be in the form of order. 18. In addition to the above guidelines, the quasi-judicial authorities shall also follow the parameters laid down by this Court in the case of Lokmanya Nagar Priyadarshini v. State of Maharashtra, 2007 (1) Bom.C.R. 929, which read as under: **PARAMETERS:** "(a) While considering the stay application, the authority concerned should at least briefly set out case of the applicant/ appellant, as the case may be. (b) While granting the ex parte order, it should be granted for a shorted duration with short notice to the opponent(s). (c) If ex parte stay is to be granted, then the authority passing the order should specify the reasons in short for grant of ex parte order. (d) The Authority passing the order should, (i) record its findings as to whether or not a prima facie case is made out with short reasons in support of the finding; (ii) record its finding as to in whose favour balance of convenience lies, and (iii) record its finding whether non-grant of interim relief would cause any prejudice to the person seeking interim relief. (e) The ingredients at (d) (i) to (iii) should be discussed and positive finding should be recorded while granting or refusing to grant interim relief." 19. The aforesaid procedural guidelines shall also be applicable to all quasi-judicial authorities in respect of hearing of appeals, revisions, review applications/ interlocutory applications, where there are no specific rules prescribed for hearing under a specific law like Maharashtra Co-operative Societies Act, Bombay Tenancy and Agricultural Lands Act, etc. Grateful acknowledgement: I have derived lots of matter from the many websites: <https://www.bankbazaar.com/tax/income-tax-search-and-seizure.html> and others

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