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IT RAIDS: D.K.SHIVAKUMAR HAS AN OPPORTUNITY TO DEFEND HIMSELF WITH DOCUMENTS AND CHALLENGE IT RAIDS IN THE HIGH COURT



By : M.S.Yatnatti: Editor and Video Journalist Bengaluru : Reportedly the nearly 75hour income-tax raids on premises owned by Karnataka's minister D K Shivakumar and his associates ended on Saturday morning. While taxmen are estimating the seizure amount and estimated amount of tax evasion D K ShivaKumar said: "I haven't violated the law. I'll answer all queries with documents. "The income tax department will have to collate the panchanamas recorded at the 60-plus locations and prepare an appraisal report. It will be handed over to the assessment officer who will then determine lapses in declaration of income and the magnitude of evasion. D K Shivakumar will be given an opportunity to present his argument and challenge the raids in the high court if there are any shortcomings on the part of income-tax officials according to I-T department sources .

The Income Tax department has brought out new guidelines to award secret informers providing actionable clue about "untraceable" assesses who owe huge taxes and money to government including in TDS and self assessment tax category. The department last week issued a set of new instructions to all its offices in the country stating any person who provides credible inputs against a declared defaulter would be rewarded a 10 per cent booty of tax realised from such an entity, but upto a maximum limit of Rs 15 lakh. The informant, whose identity would be kept secret except in cases where law requires, will just have to give inputs "supported by facts and documents". Indian income tax procedure is mainly based on Self Assessment System. Search operations are carried out by a team from investigation wing. It takes place between sunrise and sunset. The search team usually cover all the business premises of the taxpayer (in India) and the residential premises of the key persons of the assessee like the directors of the company, partners of the assessee firm, etc. This raid can extend upto 2 to 3 days. It may also cover residential premises of friends, close relatives, business associates, etc. of the assessee..The Income Tax officials on a raid (Search or Survey being the technical terms) carry a list of rights and duties for the person who is being searched and these are indicative about the Dos and Donts. As an I-T official, some of the dos and donts from rules perspective: Ask for the warrant and read it carefully to ensure that the officials are searching the right place. Arrange for 2 witnesses from your neighbourhood to observe the proceedings. Cooperate with the officials by answering all questions honestly. If you dont know the answer, say so. But if you do know, dont act smart or try to be funny by misleading them or get unnecessarily confrontational. Avoid communicating with outsiders especially media. If you aren't hiding anything, you shouldn't have anything to worry about. But if you are, it is better to come clean at the outset.

Remember that these are civil proceedings and not criminal proceedings and you aren't assumed to be guilty of tax evasion just because your home/office was searched. However, any mischief by hiding evidences or preventing the officials from doing their duty would be a punishable offence.The rules and regulations pertaining to income tax raid or search and seizure by the Income Tax Department was first framed by provisions related to search and seizure made in the Income Tax Act, 1956. In this article, we review the concept of search and seizure according to the Income Tax Act, 1961.The officers of the income tax department are authorized to issue order for search and seizure under the Income Tax Act.They are The Director of Income Tax The Chief Commissioner of Income Tax or The Commissioner of Income Tax or Any such Joint Director or Joint Commissioner of Income Tax as may be empowered by the Board.The Director General or Director or the Chief Commissioner or Commissioner or Joint Commissioner or Joint Director who have been authorized by the Board can authorize any officer subordinate to him not below the rank of Income Tax Officer to perform a search. The officer so authorized is referred as Authorized Officer and the authorization is done by offering a search warrant in Form 45.When Income Tax Raid can be Conducted:Under the Income Tax Act, an income tax raid can be conducted when the Officer has in his/her possession any information through which he has motive to believe that:A person to whom a summon with reference to Section 131(1) or a notice with reference to Section 142(1) has been served to produce books of accounts or other documents has been unsuccessful or omitted to produce or cause to be produced the said books of accounts or additional documents;A person to whom a summon is issued with reference to Section 131(1) or a notice with reference to Section 142(1) has been or may be issued is not possible to produce or caused to be produced any books of account or other document that will be useful for or related to any proceedings under the Act;A person is in control of money, bullion, jewellery or other valuable article or thing and such property represents totally or partly income or property that has not been disclosed or will not be disclosed.Hence, an Authorised Officer would have sufficient cause to conduct a search if a person has not properly produced book of accounts with response to notices or / summons and/or the Officer has probably cause to believe the person is in possession of undisclosed income or property.

Powers of the Authorised Officer While Conducting Search:The following are the powers given to an Authorised Officer while conducting a search and seizure operation:Enter plus search any building, place, vessel, vehicle or aircraft where he has motive to suspect that such books of accounts, other documents, money, bullion, jewellery or other valuable article or thing are reserved.Break open the lock of any door, box, locker, safe, almira or other receptacle for exercising the powers conferred by clause (i) above where the keys thereof are not accessible.Search any person who (a) has got out of, or (b) is about to get into, or (c) is in the building, place, vessel, vehicle or aircraft, if the sanctioned officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other precious article or thing.Necessitate any person who is established to be in possession or control of any books of account or other documents maintained in the form of electronic records, to afford the compulsory facility to the authorized officer to examine all such books of account or other documents.Seize any such books of account, other documents, money, bullion, jewellery or other precious article or thing found as a result of such search. Nevertheless, , the authorized officer will have no powers to seize any bullion, jewellery or other precious article or thing being stock-in-trade of the business encountered as a result of search. He will make a note or inventory of such stock-in- trade of business.Place marks of identification on any books of account or other documents or make or reason to be made extracts or copies there from.Make a note or an inventory of any such money, bullion, jewellery or other precious article or thing.

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 assesseees 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 132A 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 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 assesseees 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 Assesses 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. However, the raid details are completely personal details, and revealing it may be infringement upon personal privacy, and it also do not serve any public interest hence is liable not to be disclosed.

To prevent IT raid, One should file the Income Tax return honestly and Avoid high-value transaction because IT department receives information about a high-value transaction from bank & financial institution. The transactions that are considered as high-value transactions are Property purchases of above 30 lakhs. Above Rs. 10 Lakh Car or Consumer durables purchase. Deposits above Rs. 10 lakhs in a saving account. Purchase of stock above Rs. 1 lakh. Above Rs. 2 lakh Credit card expense. Mutual fund investments above Rs. 2 lakhs. Share purchase of a single company above Rs 1 lakh. Rs. 2 lakh or above Jewelry purchase. Don't sell the property for a lesser amount than Government Valuation. Don't introduce fresh capital over Rs. 10 lakhs. If the department has given notice or summons, one should comply with notices or summons to prevent an Income tax raid. Preserve documentary evidence and other important receipts for any high-value transaction with detail about the source of income. Get updated about IT rules & statutory provisions of the IT Law. 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 websites

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