



JALGAON BRANCH OF WIRC OF

The Institute of Chartered Accountants of India

(SETUP BY AN ACT OF PARLIAMENT)



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INSIDE THIS ISSUE

03 MANAGING COMMITTEE OF JALGAON BRANCH OF
WIRC OF ICAI

04 SECTION 132 (13) AND 131 (1) (A) –
UNEXPLORED PROVISIONS

08 MEMORIES GALORE

12 DISCLAIMER

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SECTION 132(13) AND 131 (1) (A) – UNEXPLORED PROVISIONS



CA Rahul Sharma

Search and Seizure under CRPC and it's reference under Section 132 (13):-

Section 132 (13) of Income Tax Act 1961 make a reference of provisions on Search and Seizure contained under Criminal Procedure Code 1973. Importance of these provisions can be appreciated from the fact that even though the Law complying authority is Quasi Judicial yet observance of these general law provisions have been made mandatory. There are some fundamentals of Justice delivery which are not confined to Courts but applies to all authorities.

Whosoever administer justice must be Un biased this is basic requirement for healthy justice delivery whether it be court or quasi judicial body.

In English law, **natural justice** is technical terminology for the rule against bias (nemo iudex in causa sua) and the right to a fair hearing (audi alteram partem). ... The mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by **natural justice**. There are three rules associated with concept of natural justice. The first one is "**Hearing rule**" which states that the person or party who is affected by the decision made by the panel of expert members should be given a fair opportunity to express his point of view to defend himself. Secondly, "**Bias rule**" generally expresses that panel of expert should be biased free while taking the decision. The decision should be given in a free and fair manner which can fulfil the rule of natural justice. And lastly, "**Reasoned Decision**" which states that order, decision or judgement of the court given by the Presiding authorities with a valid and reasonable ground. **Section 93** of CRPC stipulates When warrant can be issued? It says Firstly When any summon, order or requisition has or would not been complied by the person and Secondly – when any Search and seizure is necessary for inquiry, trial or other proceeding in general. Corresponding provisions in this context have been incorporated in Section 132 (1) (a) ,(b) and (c) under Income Tax Act 1961. Here



in particular search and seizure can be conducted if Section 131 notice has or would not been complied with and in general if existence of unexplained Money, Bullion, Jewellery or thing is suspected. This is to be mentioned here this unlike courts departmental authorities can not initiate search and seizure to support their proceedings as section 132(1) is not inclusive. By issuing search an assessee can not be forced to produce material in his possession which is of incriminating nature. This is violation of Article 20(3) contained under Constitution. **Article 20 (3)**, invokes protection against self-incrimination and gives an accused the right to remain silent over any issue which tends to incriminate him. This protection by the Indian Constitution is also extended to suspects. Article 20 clause 3, has been carefully crafted to protect the accused from further self-incriminating himself only if any statement of his might result in prosecution. For the benefit of the Courts, the Supreme Court has distinguished between the terms “witness” and “furnish evidence”, the former including furnishing statements from one’s own knowledge and the latter referring to simply presenting documents required by the court under which protection under Article 20(3) cannot be sought.

Section 100 of CRPC gives right to free ingress and personal search to the search authority. Further it cast responsibility that if person being searched is woman she should be searched by a woman with strict decency. Besides this search party is required to call upon two witness and prepare list of all things seized. A copy of this list has to be delivered to occupant of place and he shall be permitted to attend search.

As soon as the material is seized this has to be taken before authority issuing search. (As provided under section 101 of the code). Other relevant provisions under the chapter are: - A. Any other person may aid in execution of search warrant (section 38), warrant should be in writing, signed by issuing authority and should possess seal of the authority as well. Warrant shall remain in force until executed or cancelled (Section 70).

Some leading case laws on the subject are as follows :-

In the case of [V. S. Kuttan Pillai v. Ramakrishnan](#), the procedural validity of search warrants was upheld, in which it was held that a search for the premises occupied by the accused did not in any way force him to provide evidence against himself and was thus not in violation of [Article 20\(3\)](#) of the Indian Constitution. In the case of [Matajog Dobey vs. H.C. Bhari](#), the court stated that in cases where statutory provisions have not been complied with, the credibility of evidence in support of the search may be diminished and the evidence provided may be disbelieved unless the defendant gives sufficient reasons for any non-compliance with the provisions. In the case of the [State of Maharashtra](#)



[vs. Tapas D. Neogy](#), it was upheld that 'bank account' is to be ascertained as property under section 102 of the code and the authorities is empowered to seize the operation of such bank account in the event that these properties are specifically related to the commission of the offence for which the investigation is conducted (How ever under Income Tax Act Section 226 take care of it). In the case of the [State of MP vs. Paltan Mallah](#), it was held that the evidence obtained under illegal search is not completely ruled out unless it has caused the accused serious prejudice. The authorities have always been given the discretion to decide whether or not to accept such evidence. In the case of [Modan Singh vs. State of Rajasthan](#), it was held that if the evidence of the prosecuting officer retrieving the missing items is compelling, it is not appropriate to deny the proof of recovery on the basis that seizure witnesses do not accept the version of the authority.

Section 131 (1) (a) – Discovery and Inspection :- One of the essential elements of the rule of law is its procedures. To run a fair trial, equal opportunities shall be given to both parties to access the documents related to the case. In the Civil Procedure Code, 1908, separate chapters are provided so that a fair trial is attainable by both the parties of the suit. After the plaint has been filed by the plaintiff and written statement by the defendant, if the parties feel that proper facts were not disclosed in the suit, either of them can ask for the documents to obtain proper facts of the case. **However, this has been made power of the departmental authorities but when it has been specifically awarded to authorities it must be inherent power of the assessee as well.** Since fundamental principal of justice is to remain unbiased. **Further when it is described as a power of appellate authority/administrative authority – then considering it's borrowing from CPC it should be exercised by assess as well.** This section empowers to serve interrogatories against each other (As it is originally described under CPC) interrogatories. More importantly submission service and reply of interrogatories need more discussion being never discussed and emphasized. Order XI speaks that court (administering department) may deliver interrogatories in writing for examination of any party. Interrogatories not related with the matter in question shall be deemed irrelevant and can not be served. Interrogatories must be served in form 2 of Appendix C of CPC 1908. **If the interrogatory is scandalous, irrelevant or not exhibited bonafide for the purpose of the suit or that the matter inquired into are not sufficiently material at that stage then it can be objected at that stage. This protection is to both parties as same is the intent of CPC.** Interrogatories shall be answered by affidavit within 10 days or extended time. If answer is insufficient or omission to answer is on one part then an order can be made for answer or further answer



or further answer to the party concerned by the justice administering authority. Any party to the suit can apply to the court (Here appellate Authority) for discovery of documents in possession or power of opposite party. Court (Here appellate Authority) can order production of documents under rule 14 to any party. Notice to produce shall be in Form 7 to appendix 'C' of the code with such variation as circumstances may require. Court may on the application of the party objecting notice to produce document, make an order for inspection in such place and in such manner as it think fit.



MEMORIES GALORE

Investor Awareness Programme date 4-8-2025





Financial & Tax Literacy Drive Programme by Lightening the lamp date 5-8-2025





Independence Day celebration



AI Katta on “Learn 77 AI tools for Office Automation to mark 77 years of ICAI” on date 23-8-2025





Shri. Ganesh Utsav





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