

22

STANDING COMMITTEE ON
FINANCE
(1995-96)

TENTH LOK SABHA

MINISTRY OF FINANCE

SURVEY, SEARCH AND SEIZURE OPERATIONS
BY THE INCOME-TAX DEPARTMENT

(Action taken by the Government on the recommendations contained in the
Eighth Report of the Standing Committee on Finance on Survey, Search and
Seizure Operations by the Income-tax Department)

TWENTY-SECOND REPORT



Lc
328-3657R
N5.22

LOK SABHA SECRETARIAT
NEW DELHI

March, 1996/Phalguna, 1917 (Saka)

**TWENTY-SECOND REPORT
STANDING COMMITTEE ON FINANCE
(1995-96)**

(TENTH LOK SABHA)

MINISTRY OF FINANCE

**SURVEY, SEARCH AND SEIZURE OPERATIONS
BY THE INCOME-TAX DEPARTMENT**

**(Action taken by the Government on the recommendations contained in the
Eighth Report of the Standing Committee on Finance on Survey, Search and
Seizure Operations by the Income-tax Department)**



*Presented to Lok Sabha on 12 March, 1996
Laid in Rajya Sabha on 12 March, 1996*

**LOK SABHA SECRETARIAT
NEW DELHI**

March, 1996/Phalgun, 1917 (Saka)

C.F. No. 22

Price: Rs. 12.00

1c
328.3657 R
N5.22

MANAGEMENT BUREAU
Central Govt. Publications
Reg. No. AC. 94315 (S)
Date 3/6/96

© 1996 BY LOK SABHA SECRETARIAT

Published under Rule 382 of the Rules of Procedure and Conduct of Business in
Lok Sabha (Eighth Edition) and Printed by the Manager, Government of India Press,
Photo Litho Unit, Minto Road, New Delhi-110002.

**CORRIGENDA
TO
22ND REPORT OF THE STANDING COMMITTEE ON FINANCE**

<i>Page</i>	<i>Line</i>	<i>For</i>	<i>Read</i>
3	16	is no the basis	is on the basis
7	19	inhibition	inhibition
7	14 from bottom	been of would	been or would
8	1	by assessing officer	by an assessing officer
8	7 from bottom	it cannot can be	it cannot be
9	7 from bottom	and one the	and once the
9	5 from bottom	and copy of	and a copy of
11	21	even an estimate	even as estimate
12	22	valuable	valuables
12	28	Assessing Officers	Assessing Officer
12	29	siezure	seizure
12	2 from bottom	launching	launching of
20	5	New Assesses	New Assessee
20	bottom right		Add C.C.I.T. ----
21	3 from bottom		Delete 0.00% Add 0.00% below 7.70%

C.F. No. 22

Price: 1

© 1996

**Published under Rule 22 of the Rules of Procedure and Conduct of Business in
Lok Sabha (Eighth Edition) and Printed by the Manager, Government of India Press,
Photo Litho Unit, Minto Road, New Delhi-110002.**

CONTENTS

		PAGES
COMPOSITION OF THE COMMITTEE		(iii)
INTRODUCTION		(v)
CHAPTER I Report		1
CHAPTER II Recommendations/Observations which have been accepted by the Government.		4
CHAPTER III Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies.		11
CHAPTER IV Recommendation/Observation in respect of which reply of the Government has not been accepted by the Committee.		15
CHAPTER V Recommendation/Observation in respect of which final reply of Government is still awaited.		16
MINUTES OF THE SITTING HELD ON 6 MARCH, 1996		17
 ANNEXURE		
Letter dated 25 August, 1995 from Central Board of Direct Taxes to Chief Commissioners of Income-tax regarding conducting of surveys in small towns and rural areas to identify potential assessees		18
 APPENDIX		
Analysis of action taken by Government on the recommendations contained in the Eighth Report of the Standing Committee on Finance (Tenth Lok Sabha)		21

**COMPOSITION OF THE STANDING COMMITTEE ON FINANCE
(1995-96)**

◎ Smt. Maragatham Chandrasekhar -- Chairperson

MEMBERS

LOK SABHA

- *2. Shri Magunta Subbaramma Reddy
- 3. Prof. K.V. Thomas
- 4. Dr. K.V.R. Chowdary
- 5. Shri Chhitubhai Gamit
- 6. Shri Prithviraj D. Chavan
- 7. Shri S.B. Sidnal
- 8. Shri P.C. Chacko
- 9. Shri Prakash V. Patil
- 10. Shri Mahendra Kumar Singh Thakur
- 11. Shri B. Akber Pasha
- 12. Shri Satyapal Singh Yadav
- 13. Shri Sushil Chandra Varma
- 14. Shri Jeewan Sharma
- 15. Shri Chetan P.S. Chauhan
- 16. Shri Dileepbhai Sanghani
- 17. Shri Manabendra Shah
- 18. Shri Sartaj Singh Chhatwal
- 19. Shri Harin Pathak
- 20. Shri Nirmal Kanti Chatterjee
- 21. Prof. Susanta Chakraborty
- 22. Shri T.J. Anjalose
- 23. Shri Srikanta Jena
- 24. Shri Bhogendra Jha
- 25. Shri George Fernandes
- 26. Shri Abdul Ghafoor
- 27. Shri Kadambur M.R. Janardhanan

RAJYA SABHA

- 28. Shri Satish Agarwal
- 29. Shri Krishna Kumar Birla
- 30. Shri Triloki Nath Chaturvedi
- 31. Shri Sanjay Dalmia
- 32. Dr. Biplob Dasgupta
- 33. Shri Gurudas Das Gupta
- 34. Shri K.R. Jayadevappa
- 35. Dr. Shrikant Ramchandra Jichkar
- 36. Shri Chimanbhai Mehta

37. Shri Rajubhai A. Parmar
38. Shri Narendra Pradhan
39. Shri T. Venkatram Reddy
40. Shri Surinder Kumar Singla
41. Shri Mohan Babu
42. Shri V.P. Duraisamy

SECRETARIAT

1. Shri S.N. Mishra	—	<i>Secretary-General</i>
2. Smt. Roli Srivastava	—	<i>Joint Secretary</i>
3. Shri K.L. Narang	—	<i>Deputy Secretary</i>
4. Shri C.S. Joon	—	<i>Under Secretary</i>

- Appointed w.e.f. 22.9.1995 vice Dr. Debiprasad Pal ceased to be a Member and Chairman of the Committee consequent upon his appointment as Minister on 13.9.1995.
- * Expired on 1.12.1995.

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance (1995-96), having been authorised by the Committee to submit the Report on their behalf, present this Twenty Second Report on action taken by Government on the recommendations contained in the Eighth Report of the Committee (Tenth Lok Sabha) on Survey, Search and Seizure Operations by the Income-tax Department.

2. The Eighth Report was presented to Lok Sabha/laid in Rajya Sabha on 10 August, 1994. The Government furnished the replies indicating action taken on all the recommendations on 22 February, 1995. As wide changes were introduced in the Income-tax Act through the Finance Bill, 1995-96 with regard to assessment of search cases, the Ministry of Finance (Department of Revenue—Central Board of Direct Taxes) furnished the updated action taken replies on 4 September, 1995. The draft Report was considered and adopted by the Committee at their sitting held on 6 March, 1996.

3. An analysis of action taken by Government on the recommendations contained in the Eighth Report of the Standing Committee on Finance (Tenth Lok Sabha) is given in the Appendix.

4. For reference facility and convenience, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

New Delhi:
7 March, 1996

17, Phalgun, 1917 (Saka)

MARAGATHAM CHANDRASEKHAR,
Chairperson,
Standing Committee on Finance.

CHAPTER I

REPORT

1.1 This Report of the Standing Committee on Finance deals with the action taken by Government on the recommendations contained in their Eighth Report (Tenth Lok Sabha) on Survey, Search and Seizure Operations by the Income-tax Department which was presented to Lok Sabha on 10 August, 1994.

1.2 Action Taken Notes have been received from the Government in respect of all the thirteen recommendations contained in the Report. These have been categorized as follows:—

- (i) Recommendations/Observations which have been accepted by Government: Sl. Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10 & 13. (Chapter II—Total 10)
- (ii) Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies: Sl. Nos. 5 and 11 (Chapter III—Total 2)
- (iii) Recommendation/Observation in respect of which reply of Government has not been accepted by the Committee: Sl. No. 12 (Chapter IV—Total 1)
- (iv) Recommendation/Observation in respect of which final reply of the Government is still awaited: Nil (Chapter V—Nil)

1.3 The Committee would like to emphasise that greatest importance has to be attached to the implementation of recommendations accepted by Government. The Committee, therefore, trust that Government would take expeditious steps in implementing such recommendations. In case it is not possible to implement the recommendations in letter and spirit for any reason the matter should be reported to the Committee in time with reasons for non-implementation.

1.4 The Committee will now deal with the action taken by Government on some of their recommendations.

Survey Operation in small towns and rural areas

Recommendation (Sl. No. 3 Para No. 1.10)

1.5 With a view to bringing affluent section of the population in small towns and rural areas within the tax net gradually, the Committee recommended as follows:

“In reply to a question regarding conducting of surveys in small towns and rural areas to identify potential assessees, the Department stated in a written note that steps had been taken to bring small towns within the ambit of surveys under Section 133B so that affluent sections of the population in these areas come within the tax net gradually. The Committee recommend that sufficient work force and other infrastructural facilities needed for conducting such surveys in these areas should be placed under the control of the Chief Commissioners concerned so that such areas can contribute significantly towards revenue collections. Specific surveys should also be held for assessing the incomes of the money lenders, transporters, contractors and traders etc., in rural areas, small towns and mofussils.”

1.6 The Ministry of Finance, in their action taken reply have stated as follows:

"In order to implement this recommendation, instructions have been issued to carry out surveys u/s 133B, 133A (1) and 133A (5) to cover these groups within a specific time frame by constituting special squads. A copy of letter dated 25.8.94 containing these instructions is enclosed."

1.7 The Committee note with satisfaction that in order to implement recommendations of the Committee contained in paras 1.8 to 1.11 of their Eighth Report, Government have issued instruction to all Chief Commissioners of Income-tax to undertake surveys by constituting special teams to cover taxable section of the population and to identify potential assessee in small towns and rural areas to bring the affluent section of the population in these areas within the tax net. The Committee would like to be apprised of the progress achieved in the Survey Operations conducted during 1995-96 under the various provisions of the Income-tax Act, 1961 the amount of tax evasion and the number of new assessee detected during the year and the follow-up action taken, within a period of six months of the presentation of the Report.

Permission for assistance of a lawyer and abolition of cash Reward System

Recommendation (Sl. No. 11 Para 2.13)

1.8 To eliminate the possibility of use of any force or duress, the Committee had recommended that the assessee whose premises were being searched should be permitted to have the assistance of a lawyer, by way of his presence only. The lawyer should not be allowed to speak or instruct the assessee when his statement was to be recorded. If the statement on oath was contrary to or inconsistent with the facts found as a result of the search, the penal consequences under the Act or under any other law should be initiated and pursued.

1.9 In their reply, the Ministry of Finance have stated that the recommendation of the Committee has been noted. The law, however, does not require that a lawyer should be allowed during search and seizure operation

1.10 The Committee reiterate their recommendation that the assessee whose premises are being searched should be permitted to have assistance of a lawyer by way of his presence only.

Safeguards for seized assets and payment of compensation for any damage to the property during search.

Recommendation (Sl. No. 12, Para No. 2.14)

1.11 The Committee had suggested that proper safeguards should be taken regarding seized assets to ensure that they did not deteriorate, change in character or shape while in custody of the Income-tax Deptt. The time limit set for return of books of accounts and documents, etc. to the assessee should also be strictly observed. Any damage caused to the property of the assessee in course of the search, where no incriminating evidence had been found, should be made good by the Department.

1.12 The Ministry of Finance (Dept. of Revenue) in their action taken reply have stated as follows:—

The I.T. Act provides that no books of account and other documents can be retained for a period exceeding 30 days after all the proceedings under the I.T. Act in respect of the years for which the books of account or other documents are relevant are completed. Thus books of account and other documents seized during the course of search are released immediately after completion of all the proceedings. It is another matter that this process may take unduly long time due to dilatory tactics adopted by assessee in such cases. It may also be mentioned that the assessee do request for and they are given photocopies of books and documents soon after seizure. The Department also takes adequate steps to keep the seized assets in safe custody. These are normally kept in strong rooms of the Department or with banks etc. As far as damage to the property is concerned, the Department may not be held liable for any damages caused in course of the search, since search and seizure is a sovereign function of the State and any action so taken is on the basis of a *bona-fide* belief. Any malafide action, if so held by the Court, may be dealt with as per the order of the Court".

1.13 In their reply on the recommendation of the Committee for payment of compensation to the assessee for any damage caused to his property during search, the Ministry of Finance (Dept. of Revenue) have stated that Department may not be held liable for any damages caused in course of the search, since search and seizure is a sovereign function of the State and any action so taken is on the basis of a *bona-fide* belief. Any malafide action, if so held by the Court, may be dealt with as per the order of the Court.

1.14 The Committee are not satisfied with the reply furnished by the Ministry. It is the considered opinion of the Committee that power of search and seizure granted to the Department is an extraordinary power to be used only in exceptional circumstances observing all norms for maintaining fairness to the assessee.

The Committee are also given to understand that any malafide action, if so held by the Court, may be dealt with as per the order of the Court. The Committee in their earlier Report have recommended the payment of compensation for any damage caused to the property of the assessee during the course of search only in the event 'where no incriminating evidence has been found'. The Committee are not in favour of an assessee going to a Court of law against the Department for proving 'malafide action' and seeking compensation for damage caused to his property during search. In the interest of justice and fairness to the assessee as also to avoid wastage of energy and loss of valuable time in legal battles, the Committee reiterate their recommendation that "any damage caused to the property of the assessee in the course of search, 'where no incriminating evidence has been found' should be made good by the Department". Justice and equity also demand that a specific provision may be incorporated in the Income-tax Act on this matter so that assessee need not have to knock at the doors of the Court for justice.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation (Sl. No. 1, Para 1.8)

The Committee were, however, unable to reach any conclusion regarding the efficacy and usefulness of these surveys, since the number of new assessees added / detected were not only as a result of surveys but, as stated by the Ministry, these figures also included accretions as a result of presumptive tax scheme, verification of information by the Central Information Branches etc. It was not clear from the reply of the Ministry whether these figures also included the normal increase in the number of assessees due to voluntary filing of tax returns.

Reply of the Government

The Committee's comments have been noted. Surveys have substantially helped the Department in increasing the number of tax payers. But for these surveys, the number of new assessees voluntarily filing the returns, would have been much smaller. However, in view of the recommendation, the existing proforma for reporting on surveys and new assessees has been modified to disclose separately the returns received on account of surveys.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286 / 122A 93-IT (Inv.II) Dated 21 February, 1995.]

Recommendation (Sl. No. 2, Para 1.9)

The Committee regret to note that statistics regarding the number of new assessees discovered as a result of surveys is not separately available. In view of the position explained, the Committee are inclined to believe that there is little correlation between the number of surveys conducted and the new assessees added. The Committee are surprised to note that such information is not being compiled and are at a loss to understand how in the absence of this data, the effectiveness of surveys is being monitored. The Committee note that inspite of wide powers available to the Income-tax Department under Sections 133A(1), 133A(5) and 133B of the Income-tax Act, 1961, these surveys have not fulfilled the targetted objectives. It appears that the Department has laid more emphasis on completion of quantitative targets for conducting surveys than on the qualitative aspect and results of such surveys. The Committee recommend that the information collected through surveys should be suitably classified and utilised in checking cases of tax evasion as well as bringing new assessees to the tax net. In their view, there are a number of "hard to tax" groups comprising of traders, manufacturers, contractors, transport operators, professionals and other groups, who do not maintain proper accounts, making it difficult for the Department to impose tax on them. The Committee recommend that the Income-tax Department should carry out comprehensive surveys to see that they are taxed properly.

Reply of the Government

The comments of the Committee are noted.

As mentioned in reply to 1.8 the statistical proforma regarding surveys and new assessees had been suitably modified with effect from August, 1994. The field authorities have been directed to furnish the information in the revised proforma from August, 1994 and onwards.

In order to ensure proper taxation of the "hard to tax group", it has been decided that these groups will be covered systematically in surveys u/s 133B. It has also been decided that wherever such groups have already been covered and the income declared in returns are not commensurate with the level of business activities, they may be selected for specific surveys u/s 133A(1).

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93- IT (Inv. II) dated 21 February, 1995]

Recommendation (Sl. No.3, Para 1.10)

In reply to a question regarding conducting of surveys in small towns and rural areas to identify potential assessees, the Department stated in a written note that steps had been taken to bring small towns within the ambit of surveys under section 133B so that affluent sections of the population in these areas come within the tax net gradually. The Committee recommend that sufficient work force and other infrastructural facilities needed for conducting such surveys in these areas should be placed under the control of the Chief Commissioners concerned so that such areas can contribute significantly towards revenue collections. Specific surveys should also be held for assessing the incomes of the money lenders, transporters, contractors and traders etc., in rural areas, small towns and mofussils.

Reply of the Government

In order to implement this recommendation, instructions have been issued to carry out surveys u/s 133B, 133A(1) and 133A(5) to cover these groups within a specific time-frame by constituting special squads. A copy of letter dated 25.8.94 containing these instructions is enclosed. (Annexure).

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286 / 122A / 93 - IT (Inv. II) dated 21 February, 1995]

Comments of the Committee

Please see para No. 1.7 of the Chapter I of the Report.

Recommendation (Sl. No. 4. para 1.11)

To make full use of the information collected by the Income-tax Department through such surveys, the Committee recommend that an effective management information system should be introduced for storing, analysing and use of the information collected. Steps should be taken within a definite time frame to computerise the units under Central Information Branches. In view of the Committee, effective coordination among the CIB units will go a long way in the full utilisation and dissemination of information for use by the assessing officers, resulting in higher tax

revenue, by checking of tax evasion and addition in the number of assessees on account of such surveys.

Reply of the Government

Following this recommendation, Ministry is working on a large scale programme of computerisation in the Income-tax Department, including computerisation of the CIB information system. This major gain from computerisation would be that I.T. Department would be able to collate, verify and transmit information to the assessing officer expeditiously.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv. II), dated 21 February, 1995]

Recommendation (Sl. No. 6 para 2.8)

Another irresistible conclusion that the Committee have drawn is that in spite of such extensive powers with the Income-tax Department, the parallel economy has proliferated without any checks. The very need for conducting so many searches and seizures points out to a system of tax collection that is as ineffective as it is archaic. The Committee would, therefore, like to emphasise that a thorough overhaul of the system of direct taxes is needed which should be based more on voluntary compliance. In the view of the Committee, such a system will have to be simple, reasonable and convenient from the assessee's standpoint as well. Efforts should also be made to identify industries which serve as a breeding ground for black money for proper surveillance and remedial measures by way of appropriate legislation and rationalisation of rules relating thereto.

Reply of the Government

During the year 1993-94, the I.T. Department conducted a total of 5026 searches. This is a very small percentage (say 0.04%) of the total number of effective assessees of 117.73 lakhs as on 31.3.94. Moreover, this figure represents the number of warrants executed. The number of groups searched would be much less in number, especially when we consider that on an average 15 to 20 warrants are issued and executed in course of search operation of a group. Therefore, it cannot be said that the number of searches conducted is unusually large.

At the same time, the Board is conscious that the department should progressively use non obtrusive methods to detect concealed income. This will require studies of various segments of economy and efficient information system on computers. The special investigation wing of the I.T. Deptt. carries out studies of different industries in a particular line of business and prepares reports regarding the *modus operandi* adopted by these industries/industrial houses to evade taxes. These studies are circulated for the benefit of the Assessing Officers. The matter regarding computerisation of information system has been dealt with in para 1.11.

Further in order to make the procedure of assessment of search cases simple, efficient and reasonable, a new procedure for assessment of undisclosed income determined as a result of search u/s 132 or requisition u/s 132A, has been brought into the I.T. Act with effect from 1.7.95. Under the new procedure, the undisclosed income detected as a result of any search initiated or requisition made after 30.6.95 shall be

assessed as the income of the block period comprising of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The undisclosed income assessed shall be charged to tax at the rate of sixty per cent and no interest or penalty would be attracted.

While the objective of the Department is to place increasing reliance on voluntary compliance the latter cannot succeed without a built in mechanism for a degree of deterrence in cases of recalcitrant taxpayers. The proportion of taxpayers actual and potential being subjected to the provisions of searches u/s 132 and surveys u/s 133A (1) is extremely small compared to the taxpayer population. The cases are selected for search after due deliberations and painstaking enquiries. The new procedure for search assessments is also designed to simplify the methodology for ascertainment of tax evaded incomes and to reduce prolonged litigation by making the tax structure reasonable and efficient.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M.
No. 286/122A/93-IT (Inv. II) dated 4 September, 1995]

Recommendation (Sl. No. 7. para 2.9)

To deal with persistent and large scale tax evaders, the Committee, however, recommend that searches and seizures should be carried out without inhibition and taken to their logical conclusion promptly. That due care is to be taken while authorising and carrying out such action has also been laid down by the courts in various cases.

Reply of the Government

The recommendations of the Committee have been noted. According to provisions of the I.T. Act, a warrant for search action is normally issued at very high level i.e. by the Director of Income-tax (Inv.) or Commissioner of Income-tax only. The warrant can be issued only when he has reason to believe that a person has not or would not produce books or documents if notice/summons is issued to him or that he is in possession of cash, jewellery or other valuable article or things which have not been or would not be wholly or partly disclosed for the purposes of the Act. The authorisation of search is justifiable before the courts and, therefore, adequate precautions are taken before issuance of warrant.

The Central Board of Direct Taxes has been issuing directions from time to time for expeditious disposal of search cases. For taking the searches to their logical end the CBDT has issued instructions for monitoring of search & seizure cases by senior officers of the department such as DCIT and CIT.

In order to bring the search and seizure actions to their logical conclusions promptly and also to curb loss of valuable time in legal battles, a concept of "block period" assessment for search and seizure cases has been brought into force by Finance Act, 1995 w.e.f. 1.7.95. Under the new procedure the total undisclosed income of a person shall be assessed as the income of the block period consisting of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The order of assess-

ment for the block period shall be passed by assessing officer not below the rank of an Assistant Commissioner of Income Tax, within one year from the end of the month in which the last of the search warrants was executed. Further the order of assessment for the block period shall be passed only with the prior approval of the Commissioner of Income Tax. Appeal against such order shall lie before the Income Tax Appellate Tribunal.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93—IT (Inv. II) dated 4 September, 1995]

Recommendation (Sl. No. 8, para 2.10)

In the view of the Committee, large scale evaders should not be given shelter or protection from influential corners, if such search and seizure is intended to be a real deterrent. Search and seizure should also be quickly followed up by summary assessment under section 132 (5) and thereafter by regular assessment and, in appropriate cases by imposing penalties and also by prosecution.

Reply of the Government

The aforesaid matters are being already followed by I.T. Department in such cases. The searches are authorised and conducted objectively as per provisions of the I.T. Act, summary orders u/s 132(5) are passed within 120 days from the date of the seizure and these summary orders are followed up by regular assessments. Recourse to penalty and prosecution is also being taken in appropriate cases as per existing provisions of the law.

Further in order to make searches yield revenue expeditiously and to reduce litigation, the special procedure introduced w.e.f. 1.7.95 provides that the undisclosed income detected as a result of any search initiated or requisition made after 30.6.95 shall be assessed separately as income of the block period consisting of ten previous years prior to the previous year in which the search was conducted and also the period of the current previous year upto the date of search. The time limit for passing order for block period is prescribed to be one year from the end of the month in which the last of the search warrants was executed.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93—IT (Inv. II) dated 4 September, 1995]

Recommendation (Sl. No. 9, Para 2.11)

Since the power to search the premises of a person and to seize his books of accounts, cash, jewellery, bullion undoubtedly amounts to a infraction of the fundamental right of personal liberty and freedom guaranteed by the Constitution of India it should be scrupulously seen that the power is not exercised maliciously or vindictively or for collateral purposes. However, it cannot be denied that in the face of large scale tax evasion and black-money corroding our economy, such power of search and seizure has to continue as a necessary evil. The Committee, therefore, recommend that authorities conducting the search may enter upon the premises only on a proper authorisation to be issued only by the Chief Commissioner himself; after a full application of mind. The Committee, suggest that such power should neither be delegated nor exercised in a routine manner. The officers empowered to conduct the

search must not be below the rank of Deputy Commissioner or Assistant Commissioner. In the conduct of search and seizure, there should be no distinction between an ordinary assessee and a Government official. The premises of revenue officials or persons holding high offices should also be searched in appropriate cases where there is reliable information and evidence on the basis of which a belief can reasonably be formed that the officer has large unaccounted wealth either in his name or benami. The conduct of Government officials who are carrying out searches and seizures should also be kept under watch.

Reply of the Government

The recommendations of the Committee are being practiced in letter and spirit. As provided in the I.T. Act a search and seizure operation is authorised by the DGIT/CCIT, DIT/CIT. The DDIT/DCIT are empowered to issue search warrants but by executive orders, their power has been restricted to issuing consequential search warrants. The searches are authorised only when conditions precedent to such authorisation are satisfied. The I.T. Act empowers Assistant Commissioners and the Income-Tax Officer to carry out searches. The actual conduct of the search is normally monitored by the DDIT (Inv.) from control room.

The searches are not discriminatory in nature. Any person, in respect of whom, the Department has reason to believe that the conditions precedent to authorisation of search are satisfied, may be subjected to search action. While conducting the search action, the officials of Income-Tax Department follow the norms (ground rules) laid down in this regard.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv. II) dated 21 February, 1995]

Recommendation (Sl. No. 10 Para 2.12)

It has often been complained that several methods are used to extract confession, such as direct and indirect intimidation and other unreasonable behaviour. It is often reported that even permission to contact anyone else or leave premises to attend urgent matters is not granted by the searching team. It is also sometimes complained that any person found in the premises at the time of search are kept in detention or confinement and none of them is allowed to leave the premises. In the connection, the Committee recommend that the assessee or the person, who is in the building at the time of search should be asked to make a statement on oath in relation to the assets and documents found in the course of the search. If a statement is made on oath, no effort should be made by the officers in extracting a confessional statement. The Committee also wish to make it clear that the Income-tax authorities have no power of arrest and once the statement on oath has been recorded, permission to leave the premises should not normally be denied. A copy of the statement made on oath and copy of warrant of authorisation, should also be given to the person making the statement.

Reply of the Government

I.T. officials, carrying out search and seizure operations, follow the norms (ground rules) set out in this regard. However, the DsGIT and DsIT (Inv.) have been directed

to ensure that the authorised officers do not harass or coerce the assessee to make a confessional statement. If any aberration comes to notice, action is taken against the concerned official(s).

It is admitted that Income-Tax authorities do not have the power to arrest a person. However, the person searched has to remain in the premises till his statement is recorded. As noted by the Committee, his statement is to be recorded on oath in relation to the assets and documents found in course of the search. Hence, the statement can be recorded only after physical search of the premises is completed. This would mean that the person concerned would have to remain in the premises till the physical search is complete and his statement has been recorded.

The Department makes a copy of the statement available to the person searched when it is being used against him. As far as the copy of the warrant is concerned, it need not be given to the person present in the premises in view of the decision of various High Courts. Warrant is an authorisation to officials of the I.T. Department to make a search, and not a notice to the assessee. However, its contents are incorporated in the Panchnama, which is made available to the assessee whose premises are searched.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv. II) dated 21 February, 1995]

Recommendation (Sl. No. 13, Para 2.15)

In the view of the Committee, the Income-Tax Department should evolve a dependable information system and for this, it should work in tandem with other agencies such as banks, financial institutions and State Revenue Authorities so that search and seizures are restricted to cases of large scale tax evasion only.

Reply of the Government

Over a period of time, the I.T. Department has been feeling a need for proper information system for preparing adequate data bank. The matter has been taken up with banking authorities for furnishing requisite information. The Department is also working on computerisation of its information system.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv. II) dated 21 February, 1995]

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

Recommendation (Sl. No. 5 Para 2.7)

As per information furnished by the Ministry of Finance the number of searches made and concealed income surrendered during the last four years is as follows:—

Financial year	No. of searches carried out	Amount of concealed income surrendered (Rs. in lakhs)
1990-91	5474	32800.76
1991-92	3468	18835.43
1992-93	4777	50105.12
1993-94	5026	44882.87

when asked to state the amount of tax collected due to search and seizures during the same period, the Ministry stated that final tax liability of an assessee is determined on finalisation of appeals at different levels, viz. the Commissioner of Income-tax (Appeals), the I.T.A.T. the High Court and the Supreme Court. Hence, it was not possible to ascertain the extent of tax collected, which is directly relatable to search and seizure.

In this connection, the Committee are unhappy to note that as in the case of surveys, not even an estimate is available regarding the tax collected which is attributable to searches and seizures. Notwithstanding the administrative difficulties involved which the Committee fully appreciate, they are of the view that proper and suitable methods must be evolved to collect such data by means of a proper Management Information system, which would also equip the Department with the required data for proper decision making.

In this regard, the Committee are of the view that suitable computerisation of operations is indispensable. The Comptroller and Auditor General of India in his report on Revenue Receipts and Direct Taxes for the year ended 31 March, 1993 has also pointed out that out of a total number of 16509 search cases during a five year period (1988-89 to 1992-93) examined, orders under Section 132(5) were passed only in 11358 cases and the fate of the remaining 5151 cases was not known. The Report has also pointed out that large variations were noticed in the income estimated in interim orders passed under section 132(5) determining tax liability, appraisal reports of investigation wing which conducts the searches, and income finally determined in regular assessment suggesting that either the estimates were wild or the assessments were not being carefully framed. Out of the total 10,358 cases where final

assessment was completed during the five year period, 6636 assessments indicated some concealed income and in the rest of 3712 cases, no concealed income was detected or established. Another important revelation is that the Department initiated prosecution proceedings in less than three per cent of cases assigned to investigation circles and only in a negligible number of cases could convictions be obtained. The report further stated that even in cases where tax demand was raised, recovery was not being vigorously pursued.

All the above deficiencies clearly indicate the need for a critical review of the system to make searches and seizure serve fully the purpose that they are designed for.

Reply of the Government

It is true that data regarding gains to revenue from search and seizure operations is not maintained separately. This may not be feasible in the present manual system as the cases go through various stages of assessment and appeal over a long period of time. This can be done if the whole data is kept on computers & updated from time to time. The Ministry of Finance is working on a large scale programme of computerisation in the Income-tax Department. This would include management of data regarding search and seizure, consequential assessments and actual gains to revenue due to search and seizure operations.

With regard to observations of C&AG that in a number of cases 132(5) orders were not passed, it is clarified that order u/s 132(5) need not be passed in respect of each warrant executed. The law requires an order u/s 132(5) only in such cases where cash, jewellery or valuable etc., has been seized. Thus, such an order would not be there where no such seizure is made. No order u/s 132(5) can be pending since they have to be statutorily completed within 120 days from the date of seizure and no such case has come to the notice of the Board. The appraisal report as well as order passed u/s 132(5) are only interim measures. The appraisal report evaluates the evidence found in the search and indicates the line of investigation to be taken up by the Assessing Officers. The order u/s 132(5) is a summary order passed within 120 days from the date of seizure, estimating the undisclosed income and tax liability of the person searched on the basis of *prima-facie* examination of the seized materials. This order is passed mainly to ensure that the seized assets are retained only to the extent required for collection of taxes and the surplus may not remain with the I.T. Deptt. beyond 120 days of the seizure. In contrast, an assessment order determines the total income of the assessee on the basis of the return of income, the material found in the course of search, and any explanation and further evidence furnished by the assessee. The assessment order is passed after detailed investigation and after giving due opportunity to the assessee to explain his position. Thus, this order is in the nature of a quasi-judicial order, fastening a fixed tax liability on the assessee. Hence, there may be variations between the income determined in the regular assessment *vis-a-vis* the income summarily estimated in the appraisal report and in order u/s 132(5).

The reasons for non-detection of concealment in 35% of the cases and launching prosecution in only negligible number of cases may be many. In the case of a search,

concealment may be noted only in the hands of a few members of the group. Even then, penalty and prosecution would not lie if the assessee makes a valid disclosure u/s 132(4) and pays tax. Where a declaration u/s 132(4) of the I.T. Act has been made and the income, so declared, is also reflected in the return filed subsequent to the search, there will be little or no scope for further addition or detection of concealment by the Assessing Officer. As a result, the assessee would gain immunity from imposition of penalty for concealment in accordance with the provisions of Explanation 5 to Section 271(1)(c) of the I.T. Act. Consequentially the assessee would also gain immunity from prosecution. Accordingly, the percentage of prosecutions launched to the searches conducted is bound to be low. As far as conviction is concerned, the matter falls within the jurisdiction of the Courts. The experience of the I.T. Department in this regard is that due to heavy work load, the courts are unable to dispose of the complaints expeditiously.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv.II) dated 21 February, 1995]

Recommendation (Sl. No. 11 para 2.13)

To eliminate the possibility of use of any force or duress, the Committee recommend that the assessee whose premises are being searched should be permitted to have the assistance of a lawyer, by way of his presence only. The lawyer should not be allowed to speak or instruct the assessee when his statement is recorded. If the statement on oath is contrary to or inconsistent with the facts found as a result of the search, the penal consequences under the Act or under any other law should be initiated and pursued. The Committee also recommend that the system of giving cash rewards on the basis of search should be given up forthwith and indirect incentives by way of promotions, increments and other forms of benefits etc. should be brought in vogue.

Reply of the Government

The recommendation of the Committee regarding presence of lawyer during search has been noted. The law, however, does not require that a lawyer should be allowed during search & seizure operation.

The observation that the system of giving cash rewards on the basis of search should be given up forthwith, is based on frequent complaints that the authorised officers extract confessional statements and make unwarranted seizures for the purpose of getting a reward. In this connection, it is clarified that such rewards are granted on the basis of the additional income offered by the assessee in his return and additional tax collected as a consequence of a search action. Even if a person is "forced" to make a disclosure, he is free to withdraw the same. Such disclosure has no meaning unless and until the additional income is included in the return(s) and the same is brought to tax after the search action.

It is noteworthy that five eminent Members of the Committee have recorded a note of dissent specifically with regard to this particular recommendation. They have stated that the overzealousness of the officials can be avoided if reward is re-

lated to the 'net tax amount' and not to the declaration of the income/wealth at the time of search & seizure. This, in fact, is being done at present.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes O.M. No. 286/122A/93-IT (Inv. II) dated 21 February, 1995]

Comments of the Committee

Please see para No. 1.10 of the Chapter I of the Report.

CHAPTER IV

RECOMMENDATION/OBSERVATION IN RESPECT OF WHICH REPLY OF THE GOVERNMENT HAS NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Sl. No. 12 Para 2.14)

The Committee suggest that proper safeguards should be taken regarding seized assets to ensure that they do not deteriorate, change in character or shape while in custody of the Income-tax Department. The time-limit set for return of books of accounts and documents, etc. to the assessee should also be strictly observed. Any damage caused to the property of the assessee in course of the search, where no incriminating evidence has been found, should be made good by the Department.

Action Taken

The I.T. Act provides that no books of account and other documents can be retained for a period exceeding 30 days after all the proceedings under the I.T. Act in respect of the years for which the books of account or other documents are relevant are completed. Thus books of account and other documents seized during the course of search are released immediately after completion of all the proceedings. It is another matter that this process may take unduly long time due to dilatory tactics adopted by assessees in such cases. It may also be mentioned that the assessee do request for and they are given photocopies of books and documents soon after seizure.

The department also takes adequate steps to keep the seized assets in safe custody. These are normally kept in strong rooms of the department or with banks etc.

As far as damage to the property is concerned, the Department may not be held liable for any damages caused in course of the search, since search and seizure is a sovereign function of the State and any action so taken is on the basis of a bonafide belief.

Any malafide action, if so held by the Court, may be dealt with as per the order of the Court.

[Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, O.M. No. 286/122A/93-IT (Inv.II), Dated 21 February, 1995]

Comments of the Committee

Please see Para No. 1.14 of the Chapter I of the Report.

CHAPTER V

/

RECOMMENDATION/OBSERVATION IN RESPECT OF WHICH FINAL REPLY OF THE GOVERNMENT IS STILL AWAITED

-NIL-

NEW DELHI;
7 March, 1996

17 Phalgun, 1917 (Saka)

MARAGATHAM CHANDRASEKHAR,
Chairperson,
Standing Committee on Finance.

**MINUTES OF THE SITTING OF THE STANDING COMMITTEE ON
FINANCE**

The Committee sat on Wednesday, 6 March, 1996 from 1500 hrs. to 1600 hrs.

Smt. Maragatham Chandrasekhar — *Chairperson*

Lok Sabha

2. Dr. K.V.R. Chowdary
3. Shri Prithviraj D. Chvan
4. Shri S.B. Sidnal
5. Shri P.C. Chacko
6. Shri B. Akber Pasha
7. Shri Sushil Chandra Varma
8. Shri Jeewan Sharma
9. Shri Harin Pathak
10. Shri Nirmal Kanti Chatterjee
11. Prof. Susanta Chakraborty
12. Shri Bhogendra Jha
13. Shri George Fernandes
14. Shri Kadambur M.R. Janardhanan

Rajya Sabha

15. Shri Satish Agarwal
16. Dr. Shrikant Ramchandra Jichkar
17. Shri Rajubhai A. Parmar
18. Shri T. Venkatram Reddy

SECRETARIAT

1. Smt. Roli Srivastava — *Joint Secretary*
2. Shri K.L. Narang — *Deputy Secretary*
3. Shri C.S. Joon — *Under Secretary*

2. The Committee considered their draft Report on action taken by Government on the recommendations contained in Eighth Report of the Standing Committee on Finance on Survey, Search and Seizure Operations by the Income-Tax Department and adopted it.

3. The Committee authorised the Chairperson to finalise and present the Report to both the Houses of Parliament.

The Committee then adjourned.

F.No: 414/99/93-IT(Inv.I)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

• • •

New Delhi, the 25th August, 1994

To,

All Chief Commissioners of Income-Tax.

**Subject:—*Standing Committee on Finance-
Recommendations on surveys.***

• • •

Sir,

The Standing Committee on Finance (1994-95), 10th Lok Sabha, have examined the survey, search and seizure operations undertaken by the Income-tax Department. They have forwarded their 8th Report in August, 1994. The report has made valuable conclusions/recommendations in the matter. In this regard I am directed to enclose copies of Paras 1.8, 1.9, 1.10 and 1.11 of the report regarding Survey Operations.

2. To give effect to the recommendations contained in para 1.9 it has been decided to revise the statistical report on "“survey and new assessees”. This is done to obtain information separately on new assessees under the Presumptive Tax Scheme, detected on account of surveys and others. A revised proforma is enclosed. It is requested that the information for August, 1994 and subsequent months may be furnished in the revised proforma. The report for August, 1994 is due on 5.9.1994.

3. Para 1.9 also contains recommendation regarding "Hard to Tax" Group, comprising of traders, manufacturers, contractors, transport operators, professionals and other groups who do not maintain proper accounts. It has been decided that:—

- (i) These groups should be fully covered under section 133B in a systematic manner, if some of these assessees have not been covered already, the work of surveys under section 133B in this regard may be completed by 31.12.1994.
- (ii) The returns of these assessees may be examined *prima-facie* and whenever income declared in returns is not commensurate with the level of business activity, the cases may be considered for specific surveys under section 133A(1) in consultation with the D.C.I.T.

4. In para 1.10 the Committee has recommended that steps should be taken to identify potential assessees in small towns and rural areas so that affluent section of the population in these areas come within the tax net. In this connection, it has been decided that:—

- (i) These areas may be covered under section 133B by 30.3.1995 by constituting special squads.
- (ii) Surveys under section 133A(1) may also be conducted on selective basis in consultation with the DCIT for ascertaining the correct income of comparatively affluent sections of the population.

5. The details of the programme in this regard may kindly be intimated to the Board by 30.9.1994 by way of a separate D.O. letter to the Member (Investigation).

Yours faithfully,

Sd/-

(K.K. VYAWAHARE)
Under Secretary (Inv.I)

Encl : Revised proforma regarding survey and new assessees.

Copy to All Directors General of Income-Tax (Inv.), for information.

Sd/-

(K.K. VYAWAHARE)
(Under Secretary Inv.I)

REVISED PROFORMA

Due on 5th of the
following month

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX REPORT ON SURVEY & NEW ASSESSEES FOR THE MONTH OF _____

Sl. No.	Head	During the month	Upto the end of the month	Corresponding period of last year
---------	------	------------------------	---------------------------------	---

SURVEYS

1. No. of premises surveyed u/s 133A(1).
2. No. of premises surveyed u/s 133B.
3. New Assesseees
Chalans paid under presumptive tax scheme.
4. Returns received on account of surveys.
5. Others
6. Total (3+4+5)
7. Out of 6, assesseees who have filed returns of taxable income below one lakh.
8. Out of 6, assesseees who have filed returns of taxable income of Rs. 1 lakh or above.
9. No. of New Wealth tax assesseees who have filed returns.

APPENDIX

(*Vide Para 4 of the Introduction*)

Analysis of the Action Taken by Government on the Recommendations contained in the Eighth Report of the Standing Committee on Finance (Tenth Lok Sabha) on "Survey, Search and Seizure Operations by the Income-tax Department".

	Total	% of Total
1. Total number of recommendations	13	
2. Recommendations/Observations which have been accepted by the Government (<i>Vide Recommendations at Sl. Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10 and 13</i>)	10	76.92%
3. Recommendations/Observations which the Committee do not desire to pursue in view of the Government's replies (<i>Vide Recommendations at Sl. Nos. 5 and 11</i>)	2	15.38%
4. Recommendation/Observation in respect of which reply of Government has not been accepted by the Committee (<i>Vide Recommendation at Sl. No. 12</i>)	1	7.70%
5. Recommendation/Observation in respect of which final reply of Government is still awaited (<i>Vide Recommendation at Sl. No. Nil</i>)	0	0.00%