

SURAT BRANCH OF WIRC OF ICAI



E-NEWSLETTER

JANUARY

2021

**SURAT BRANCH OF WIRC OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**



Dear Professional Collogues,

I wish you all are doing great. at the outset, wishes for a very Happy, Prosperous and Joyful New Year to all of you and family members! Last few months have been very much hectic all the members in the industry as well as in practice have put together tremendous effort for executing their bestowed duty as finance professional. Many of has face difficulties attending various due dates, as it is part and parcel of every activity but we have also learnt alongside the importance of time management as well as work planning. Moving forward, the rollout of COVID Vaccine has surely brought positive hope in social as well as economic aspect of the nation.

Another milestone that I would like to convey through this message is that our Surat branch of WIRC of ICAI as shifted to its own building this month. It has been only possible with tremendous support of our branch managing committee members and fellow members of the Surat Branch. Surat branch of WIRC of ICAI has remain active during this pandemic also and have continuously organized virtual CPE sessions covering various professional topics and further virtual event was too organized on the occasion of 72nd Republic Day for hosting our national flag and remembering our core duties as a citizen of this nation and brave hearts of our country. In the next month finance bill for financial year 2021-22 will be presented in the lower house, and we all look forward that government shall bring reformative measures to revive our economy and take to more greater heights. With the rollout of massive vaccination campaign by the government of India world is now looking at India as the new manufacturing hub of the world.

In this January 2021 edition of e – Newsletter various topics have been covered for quick reference for our members. Last but not the least I would like to encourage every member to head high in this new year and remember that our profession plays an essential role in economic development of the country as various stakeholders put reliance on financial information prepared by our respected member of the institute.

CA. Ishwar Jivani



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- * CA. Ishwar Jivani – **Chairman**
- * CA. Naveen Jain – **Vice-Chairman**
- * CA. Pooja Murarka - **Secretary**
- * CA. Rahul Agarwal – **Treasurer**
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- * CA IP Pradeep Kabra - MCM
- * CA. Arun Narang - MCM

* **Ex-Officio (Council Members):**

- * CA. Jay Chhaira - (CCM)
- * CA. Balkishan Agarwal -(RCM)

* **Co-opted Members:**

- * CA Manoj Jain
- * CA Chayan Agrawal
- * CA Joni Jain
- * CA Ashwin Bhauwala

* **Ex-Officio (Council Members):**

- * CA. Jay Chhaira - (CCM)
- * CA. Balkishan Agarwal -(RCM)

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EDITORIAL MESSAGE:-

Dear Professional Colleague,

New year brings new opportunities and challenges. We have witnessed various amendments being introduced in the Budget for next financial year. Hence, we request professional brethren to contribute to newsletter on various topics of their interest, amendments, etc.

You may write to us at surat@icai.org

Stay healthy, wealthy and safe....

CA IP Pradeep Kabra



IBBI circular Guiding Ips for record's tutelage.

Records that need to be retained should not be deleted and must remain accessible for the period of time during which the integrity, authenticity and reliability of – and often the context for – the retained records must remain inviolate.

The IBBI circular provides clarity on:

- 1. The period of record retention: Specifying the start point and end point for retention of records and*
- 2. The mode of retention: By distinguishing between the mode of retention of electronically generated records and physical records, the Board has ward off major logistical challenge for IRPs/RP*

Retention management is not about IT backups or 'archiving', or disaster recovery programs. These activities are focused more on the ability to recover data and records.

The Insolvency and Bankruptcy Code, 2016 (Code) read with various Regulations require an insolvency professional (IP) to maintain several records in relation to the assignments conducted by him under the Code

Code Provisions and Regulation related to Records maintenance and submissions.

What it states

*The IBBI (Insolvency Professionals) Regulations, 2016
Regulation 7(2)(g)*

The registration granted to an IP shall be subject to the condition that he maintains records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment.

*The IBBI (Insolvency Professionals) Regulations, 2016
First Schedule Clause 19*

IP must provide all records as may be required by the Board or the insolvency professional agency (IPA) with which he is enrolled.

The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017

The Board may conduct inspection, inter alia, to ensure that the records are being

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Code Provisions and Regulation related to Records maintenance and submissions.	What it states
Regulation 3(4)(a)	Maintained by an IP in the manner required under the relevant regulations.
The Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017 Regulation 4(2) and 8 (2)	It empowers the Inspecting Authority / Investigating Authority to direct the IP to submit records, as may be required, and it is his duty to produce such records in his custody or control before such Authority
The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 Regulation 39A	It mandates the interim resolution professional (IRP) and the resolution professional (RP) to preserve a physical as well as an electronic copy of the records relating to the corporate insolvency resolution process (CIRP) of the corporate debtor (CD), as per the record retention schedule as communicated by the Board in consultation with IPAs

Keeping in view the above provisions and in consultation with the IPAs, the Board directs retention of records under regulation 39A of the CIRP Regulations as under:

(i) An IP shall preserve :-

1.	Electronic Copy	Physical Records	Minimum 8 Years	from the date of completion of the CIRP Or
		Electronic Records	Minimum 8 Years	
2.	Physical Copy	Physical Records	Minimum 3 Years	the conclusion of any proceeding relating to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later.

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(ii) An IP shall preserve records relating to that period of a CIRP when he acted as IRP or RP, irrespective of the fact that he did not take up the assignment from its commencement or continue the assignment till its conclusion.,

For example :-

An IP 'A' served for three months as RP and then replaced by another IP	The IP 'A' shall preserve records relating to the first three month
Another IP 'B' served till the conclusion of the CIRP	The IP 'B' shall preserve records relating to the balance period of the CIRP.

(iii) An IP shall preserve copies of records relating to or forming the basis of:

- A. his appointment as IRP or RP, including the terms of appointment;
- B. handing over / taking over by him;
- C. admission of CD into CIRP;
- D. public announcement;
- E. the constitution of COC and COC meetings;
- F. claims, verification of claims, and list of creditors;
- G. engagement of professionals, registered valuers, and insolvency professional entity, including work done, reports etc., submitted by them;
- H. information memorandum;
- I. all filings with the AA, Appellate Authority and their orders;
- J. invitation, consideration and approval of resolution plan;
- K. statutory filings with IBBI and IPA;
- L. correspondence during the CIRP;
- M. insolvency resolution process cost;
- N. applications for avoidance transactions or fraudulent trading; and
- O. any other records, which is required to give a complete account of the CIRP.

(iv) An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same. For example, he may store copies of records in electronic form with an **Information Utility**. Notwithstanding the place and manner of storage, the IP shall be **obliged to produce records** as may be required under the Code and the regulations.

**Contributed by:- CA Pradeep Kabra
CA Mamta Kothari**



Decoding power to issue summons under income tax act.

Contributed by CA Jayraj Dhakan

Background

The power to issue summons as enshrined under Civil Procedure Code, 1908 is imported to Income Tax act through provisions of S.131. In this write up we'll try to understand the procedure, technicalities and law on subject. For sake of completeness, some of important provisions were also touched.

A. The type

Apart from power to record statement u/s 132(4) during the search, the power of discovery and inspection, enforcing the attendance of any person, compelling the production of books of account and issuing commissions were made available to income tax authorities. Broadly there are two type of summons which can be issued under income tax act. The purpose and intentions of both are materially different from each other. Before dwelling into issue, let us see bare text sections;

*S131(1) - The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), **when trying a suit in respect of the following matters, namely :—***

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;*
- (c) compelling the production of books of account and other documents; and*
- (d) issuing commissions.*

*(1A) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section, **has reason to suspect that any income has been concealed**, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, **notwithstanding that no proceedings with respect to such person or class of persons are pending before him** or any other income-tax authority.*



B. Condition precedent

The summon u/s 131(1) can only be issued only when competent court (here AO, Appellate Authority or Specified authority. Hereinafter referred as “PA”) can only exercise the power when they are trying suit (here assessment, reassessment, search assessment, revision, rectification, penalty or appellate proceeding are pending before him). It cannot be exercised when prescribed authority is not seized of matter or no proceeding is pending before them. This is essential safeguard provided by legislature.

Further while exercising S.131(1), prescribed authority shall have power of discovery and inspection, enforcing attendance of any person, compelling production of books of account and issuing commissions. In case where it is not possible for PA to inquire/investigate the matter, he may appoint local commissioner who in turn exercise the same. For example, during course of assessment of Mr. A of Surat, to examine genuineness of loan transaction, AO felt it necessary to record statement of depositor Mr. B of Kolkata. In these scenario since it is not feasible for AO to record statement of Mr. B and AO will have to issue commission to income tax authority located at Kolkata to have statement of Mr. B recorded. After conclusion of statement, the outcome will also required to be communicated to AO at Surat.

In sharp contrast to what we've deliberated in preceding para, the power u/s 131(1A) are more draconian or dangerous in nature in so far it does not require pendency of proceeding to exercise the summon power. These makes it unfettered. Further, summon u/s 131(1A) can be issued even on basis of reasons to suspect that income is concealed or likely to be concealed. Even likelihood of concealment of income would lead to issue of summon under these provisions.

These weapon is mostly used in following fashion;

1. When department is in possession of informal information which cannot trigger/processed under provisions of S.147. This used to verify the information received through informal channel. Thereafter, on basis of outcome of same, the information is pushed to stage of reassessment.
2. Record preliminary statement - To begin with historical background, prior to 1975 – before insertion of S.131(1A), authorized officer, before initiating search, used to record statement of search party. The department is defending the action on basis of provision of S.132(4), however, the court have observed that S.132(4) can only be available once search is began. To plug this loophole and to give formal recognition (though act does not contain word preliminary statement) to preliminary statement, S.131(1A) enacted. These statement are used to dig certain preliminary/basic information before search action actually performed. The objective is bind person with respect to certain factual things. In case, if during search, anything found contrary to preliminary statement, the burden heavily lies on shoulder of search person.



C. Safeguard

Beside the fact that powers are vested only upon officers sufficiently higher rank, the principle of administrative law i.e absence of malafide, application mind are also relevant safeguard.

D. Issuing S.131(1A) summon after conclusion of search

As stated earlier, during search action, S.131(1A) is used to dig certain preliminary information, and thereafter statement u/s 132(4) is recorded. In other words, S.131(1A) precedes the search and exercise of S.131(1A) after conclusion of search can raise eyebrow of anyone. To gather answer we should dwell the judicial precedent. The judiciary is divided on these issue. Instead of making these write-up bulky with precedent, it can be said that preponderance of judicial decisions are in favour of tax payers. However, the probability of reversal thereof can't be ruled out. The stand of department is that once person is subjected to extreme action of searched then there can't be any good reasons for assessee not to join the investigation u/s 131(1A).

E. Consequences for non-compliance

1. Penalty u/s 272A(1)(c) of rupees ten thousand.
2. Can lead to invocation of S.132
3. Attach property
4. Can issue proclamation
5. Issue bailable or non-bailable warrant.

F. Interplay with Article 20 of Constitution

So far evidentiary value of confession made in statement u/s 131, it is useful to refer Article 20(3) of Constitution of India which couched as “*No person accused of any offence shall be compelled to be witness against himself*”. In criminal jurisprudence the evidence are classified into three categories 1. Oral testimony 2. Documentary evidence 3. Material evidence or physical evidence. The bar provided can only operate only in case of testimonial compulsion and, the most of evidence, in income tax, are not in nature of testimonial compulsion and hence protection provided under Article 20(3) can't be available. In addition, the language of article 20(3) suggests that it applies to criminal proceedings, and income tax act essentially being civil law, can't avail escape route of A.20(3).



G. Distance limitation

As per rule 19 of Order XVI of CPC, if witness resides within 500 km, he can be called and beyond that commission can be issued. However, in year 1977 proviso inserted stating that if witness is paid air fair, the summon can be issued to person residing in any part of country.

H. Summon at instance of assessee

As per rule 10 Order 60 CPC, it is duty of AO to enforce attendance of witness. Hence it is incumbent to issue summon u/s 131(1) once written request is made by assessee. It is immaterial whether enquiry go this way or that way. In fact one should make express request that expense in connection therewith will be bear by assessee.

I. Counsel access

Recording of statement are investigative proceeding and counsel access are only available during adjudication process. Accordingly, the counsel access can't be sought as matter of right. However, prescribed authority, sometimes, allowing access to counsel.

Concluding remark

The detailed modalities as to recording of statement in faceless appeal/assessment are yet to be published. The one thing is sure that golden principle sated above can neither be altered nor changed whether proceedings are conducted online or offline mode.



GST UPDATES

CBIC vide notification 01/2021-Central Tax:-

In the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to rule 59, sub rule (6) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both u/s 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to furnish return for every quarter u/s 39(1), shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.”.

Extension of Condonation Scheme to regularize UDINs:

This has reference to the Condonation Scheme to regularize UDINs announced by the ICAI vide its announcement dated 28th December 2020. As per the scheme, the documents signed between 1st Feb.2019 till 31st Dec. 2020 the UDINs can be generated during 1st Jan. 2021 to 31st Jan. 2021. The requests have been received from Practicing Chartered Accountants from different parts of the country for extension of the time limit for compliance with the UDIN requirement under Condonation Scheme as they could not take advantage of the scheme due to various statutory compliances. Further many members were in the impression that the UDINs can be generated till 31st Jan. 2021 for the documents issued from 1st Jan. 2021 till 16th Jan. 2021 also. In view of above, it is being informed to the members that **all the missed UDINs between the period 1st Feb. 2019 to 31st Jan. 2021 can now be generated upto 28th Feb. 2021** and this be taken as extension of the Condonation Scheme announced previously.

However, it may be noted that for all the documents signed from 1st Feb. 2021 onwards, the original guidance for generation of UDIN i.e on the same day or within 15 days will have to be followed.

SURAT BRANCH OF WIRC OF ICAI

ICAI Bhawan, 2nd floor, Saifee Building, Dutch Garden Rd, Near Makkaipul, Nanpura, Surat, Gujarat 395001
Ph.: [0261 247 2932](tel:02612472932), 2461154 & 2464413, +91 9510582383 | E-mail: surat@icai.org | Web: www.icaisurat.org