

## **Income Tax Search and Seizure: Understanding the gamut of Dumb Documents unearthed in an Income Tax Search and Seizure action**



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### **Introduction:-**

It is seen in the course of practice on the subject that during the course of Search and Seizure actions, voluminous documents are seized which may also include numerous loose papers, diaries, note pads which may contain rough calculations, vague notings, scribbling and jottings etc.

There may be instances where such documents may be also non-speaking so far as that such documents may not decipher with certainty or may be not at all, as the case may be, the following:-

- (i) Whether such document contains some transaction subjected to tax and consequently bears the tax liability.
- (ii) If yes, taxability in whose hands?
- (iii) The year of taxability of such income.
- (iv) The rate and amount of tax

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It is pertinent to mention that a charge of tax can be levied based on such a document only if such document is a speaking one in itself or becomes a speaking one if read in conjunction to some other corroborative evidence found during the course of search or post search investigation.

### **Legal Analysis:-**

The well settled legal position is that a non speaking document without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to be disregarded for the purposes of assessments to be framed pursuant to search and seizure action. From the search and seizure perspective, such non speaking seized documents are referred to as "**Dumb Documents**".

Without prejudice to the above position though subject to distinguished facts and circumstances as may be there in some cases, the revenue wherein dumb documents have been surfaced pursuant to a search and seizure action, cannot seek to bring such document in the tax net by merely pressing into service Section 132(4A) of the act read with Section 292C of the act. Section 132(4A) of the act read with Section 292C creates a deeming fiction on the assessee subjected to search wherein it may be presumed that any such document found during the course of search from the possession or control of person searched shall belong to such person and contents of such documents are true. What has to be noted here is that mere deemed presumption can't bring such a

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document in the tax net. Even otherwise, the presumption as casted by the legislature is a rebuttable one. Nevertheless, even if a deemed presumption is casted on an assessee by virtue of Section 132(4A) of the act read with Section 292C, the taxability shall arise only on passage of assessment orders ( Section 153A and 153C in search cases/proposed u/s 148 by virtue of Finance Bill 2021) and under relevant charging sections (such as Section 68, 69,69A,69B and 69C etc.). Unless and until the contents of such a document and its character and nature per se falls under the category of income to be taxed under the charging Section 68, 69,69A,69B and 69C, the mere deemed presumption u/s Section 132(4A) of the act read with Section 292C shall be of no help.

Having said so, the predominant judicial view is that no arbitrary addition to the income can be made by the Assessing Officer based on the dumb documents, loose papers containing scribbling, rough/vague notings in the absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by the appellant.

It shall not be out to place to mention that the Hon'ble Supreme Court in the case of ***K.P. Varghese v. ITO [1981] 24 CTR (SC) 358/[1981] 131 ITR 597 (SC)*** held that the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material to support the factum of actual receipt.

The Hon'ble High Court of Delhi in case of ***Commissioner of Income-tax, Delhi (Central)-II v. D.K. Gupta [2008] 174 TAXMAN 476 (DELHI)*** upheld the order of the tribunal wherein it was held that Ad-Hoc/ Dumb Documents without any

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corroborative evidence/finding that the alleged documents have materialized into transactions cannot be deemed to be the income of the assessee. The relevant part of the judgement is reproduced herein under:-

*"The tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings/jottings had materialised into transactions giving rise to income not disclosed in the regular books of account.*

*4. Consequently, the tribunal upheld the findings of the Commissioner of Income-tax (Appeals) and agreed with the view taken by the latter that the assessee was liable to tax only on those receipts which had been proved to be income in the hands of the recipient. As a result thereof, the Tribunal found no reason to interfere with the findings recorded by the Commissioner of Income-tax (Appeals) on the ground that the same were based on valid and cogent materials placed on record and also produced before the Assessing Officer during the course of assessment proceedings. The Tribunal also noted that all the evidences, materials, explanations were furnished before the Assessing Officer and it is on the basis of such material that the Commissioner of Income-tax (Appeals) had arrived at the conclusion that no addition was warranted on the basis of the seized diaries.*

*5. We have examined the impugned order in detail and have also heard the counsel for the parties and we find that the issues sought to be raised before us are purely issues of fact. The Tribunal, being the final fact-finding authority, has returned a certain set of facts. We find no perversity in such findings and, consequently, no*

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*question of law, what to speak of a substantial question of law, arises for our consideration.*

*The appeal is dismissed."*

On similar lines, the Hon'ble Delhi ITAT in case of **Ashwini Kumar v. ITO 39 ITD 183 (Delhi)** held that in the case of dumb document, revenue should collect necessary evidence to prove that the figures represent incomes earned by the assessee.

The Mumbai ITAT in case of **S.P. Goyal v. Dy. CIT [2002] 82 ITD 85 (Mum.) (TM)** held as under:

*"..... loose papers cannot be termed as books of an assessee maintained for any previous year. Loose sheet of paper torn out of a diary could not be construed as books for the purpose of section 68. Addition could not be made simply on the basis of certain nothings on loose sheets of a diary without any corroborative evidence in the form of extra cash, jewellery or investment outside the books. The loose papers appear to be part of a 1992 diary. However, these loose papers consist of pages torn out from March, April, November and December. There is no closing balances or opening balances and there is no reconciliation of these entries. Therefore, it cannot be termed as books maintained by the assessee during the previous year. . . . The loose paper in itself has got no intrinsic value. ...When it is a mere entry on a loose sheet of paper and if the assessee claims that it was only a planning, not supported by actual cash, then there has to be circumstantial evidences to support that this entry really represent cash of Rs. 60 lakhs. There is no such evidence found by the Revenue in the form of extra cash, jewellery or investment outside the books."*

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The Mumbai ITAT in case of **D.A. Patel v. Dy. CIT [2000] 72 ITD 340 (Mum.)** held that simply because a sheet of paper was found during the search at the premises of an assessee, he could not be saddled with a tax liability unless it could conceivably be related to the assessee in some reasonable manner.

On the similar lines, the Mumbai ITAT in case of **Amarjit Singh Bakshi (HUF) v. Asstt. CIT [2003] 86 ITD 13 (Delhi) (TM)** held that any noting in the loose sheet is no evidence by itself. An entry in the books of account maintained in the regular course of business is relevant for purposes of considering the nature and impact of a transaction, but nothings on slips of paper or loose sheets of paper cannot fall in this category. Nothings on loose sheets of paper are required to be supported/corroborated by other evidence which may include the statement of a person, who admittedly is a party to the nothings. It was further observed in that case that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the IT Act, but the broad principles of law of evidence do apply to such proceedings.

The Hyderabad bench of ITAT in case of **Nagarjuna Construction Co. Ltd. v. Dy. CIT [2012] 23 taxmann.com 239** held as under:-

*".....The basis for addition is only note book/loose slips. These note books/loose slips are unsigned documents. The Assessing Officer has not established nexus between the note book loose slips with accrual actual/receipt of interest. The note book/loose slips seized found during the course of search is a dumb document having no evidentiary value, no addition can be made in the absence of corroborative material. If there is circumstantial evidence in the form of promissory notes, loan agreement and*

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*bank entries, the addition is to be made on that basis to the extent of material available. The assessee is not expected to explain the loose papers found as there is no evidence other than note book/loose slips regarding accrual of interest. It is held no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has carried on money lending business. Nothing on the note book/diary/loose sheets are required to be supported/corroborated by other evidence and are also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. In the instant case, undoubtedly no statement from the parties whose names found in the note book/loose slips has been brought to the notice and as such entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search is not possible."*

The Hon'ble MP high Court in case of ***CIT v. C.L. Khatri [2005] 147 Taxman 652*** held that on the basis of loose slip not bearing any date and also not stating as to which period they related, no estimate of household expenses could be made for a particular year. In the absence of any other evidence, the estimate of household expenses in a particular year with reference to income of later year or future year was arbitrary and illogical. The Tribunal was held to be justified in deleting the additions.

The Calcutta Bench of ITAT in case of ***T.S. Venkatesan v. Asstt. CIT [2000] 74 ITD 298 (Cal.)*** held that in the absence of corroborative evidence, addition of undisclosed income could

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not be made simply on the basis of entries on loose papers recovered from the residence of a third party and certain general statements of said party.

The Hon'ble Punjab and Haryana High Court in case of **CIT v. Atam Valves (P.) Ltd. [2009] 184 Taxman 6 (Punj. & Har.)** dismissed the Revenue's Appeal and held that no substantial question of law arose out of the Order of the Tribunal. In this case, a survey was conducted u/s. 133A and certain incriminating documents were found including a 'Slip Pad' containing payment of wages to various persons. The slips were written by Manoj Jain, an employee of the assessee, who was confronted with the slips, apart from questioning of the Director. It was held by the Tribunal that even though explanation of the assessee that the loose papers did not relate to payment of wages during the year in question may not be accepted, in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the A.O. It was observed by the Tribunal (as quoted):-

*"Now the question is regarding estimating the income on the basis of these loose slips. In our opinion, the Assessing Officer is not justified in estimating the sales on the basis of loose slips without substantiating that the assessee has actually made the sales to that extent of estimation made by the Assessing Officer and having no iota of evidence in the form of sale bills or bank account or movable and immovable property which represent earning of unaccounted income by the assessee. As such, the Id. CIT (A) to that extent is justified in holding that estimation of sales on the basis of loose slips represented payment of wages is not possible."*

In case of **T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.)**, the Bangalore Bench of ITAT held that in absence of

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any external evidence, addition cannot be resorted to only on the basis of loose papers. The department had not brought on record any evidence to prove conclusively that the seized documents contained details of secreted profits which were chargeable to tax. No doubt, the seized papers contained statement in figures of what appeared to be the financial results of certain unnamed transactions but there was nothing either in law or in logic to warrant the conclusion that the figures denoted secreted profits which were chargeable to tax. The details of distribution contained in the seized papers did not by themselves present a preponderance of probabilities so as to support department's case that what was distributed was taxable income.

In ***Dy. CIT v. Kroralal Aggarwal [1994] 50 TTJ (Jab.) 393*** a diary seized during search contained certain jottings. The Tribunal held that the jottings in diary neither represented books of account nor any document and, therefore, presumption under section 132(4A) was not available and the addition made on the basis of the said jottings was deleted.

In the case of ***M.V. Mathew v. ITO [1993] 46 TTJ 353 (Coch.)*** unaccounted sum found noted in a diary and the assessee claimed that the same represented deposits from certain parties. The parties denied having deposited the amount. The Assessing Officer treated the amount as advance made by the assessee and addition on that account was made. In the absence of clinching evidence to show that the impugned sum was advanced the amount was treated as deposited and the addition made was deleted.

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In ***ITO v. W.D. Estate (P.) Ltd. [1993] 46 TTJ (Bom.) 143***, the Assessing Officer made addition on the basis of a file, a table diary belonging to a disgruntled employee found during search at his premises. This showed sales and sale amounts allegedly received as "on" money by the assessee. However, there was absolutely no evidence to show that the assessee in fact received "no" money payments. The assessee contended that such additions were based on hearsay evidence.

Recently the Delhi ITAT in case of ***Shri Neeraj Goel Vs. ACIT in ITA No. 5951/Del./2017 vide order dated 21/03/2018*** held that addition on account of alleged interest income is not sustainable in the eyes of law, because the document does not mention the name of the assessee, does not bear the signature of the assessee, not in the handwriting of the assessee, documents has imply jottings of certain figures and does not indicate whether it is an investment or deposit or loan, hence, the said seized document is dumb/bald and even otherwise, the same was never found either in the possession or control of the assessee. Therefore, on this basis, I delete the addition in dispute and accordingly reverse the orders of the authorities below.

The Mumbai ITAT in case of ***ITO Vs Kranti Impex Pvt. Ltd. in ITA No. 1229/Mum/2013 vide order dated 28/02/2018*** held that since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it,

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the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted. Hence, we are of the view that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law.

The Mumbai ITAT in case of ***ACIT V Layer Exports P. Ltd. [2017] 184 TTJ 469 (MUM)*** held that additions are to be made on basis of tangible evidence and not solely on basis of estimations and extrapolation theory. Additions could not be sustained merely on the basis of rough notings made on a few loose sheets of papers unless the AO brought on record some independent and corroborative materials to prove irrefutably that the notings revealed either unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. Additions could not be made simply on the basis of rough scribbles made by some unidentified person on a few loose sheets of paper. Since the seized papers were undated, had no acceptable narration and did not bear the signature of the assessee or any other party, they were in the nature of dumb documents having no evidentiary

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value and could not be taken as the sole basis for determination of undisclosed income of the assessee, thus, no addition can be made by AO on grossly inadequate material or rather no material at all and as such deserved to be deleted.

The Hon'ble in case of ***PCIT V. Umesh Ishrani [2019] 108 taxmann.com 437 (Bombay)*** held that since the tribunal concluded that entries reflected in loose papers were not corroborated with any other evidence on record , therefore the Tribunal was justified in deleting impugned additions made by revenue.

Further reliance can also be placed on the following decisions with regard to the addition is concerned which is based on dumb documents:-

- *Asstt. CIT v. Dr. Kamla Prasad Singh [2010] 3 ITR (TRIB.) 533 (Pat.);*
- *Pioneer Publicity Corpn. v. Dy. CIT [2000] 67 TTJ (Delhi) 471;*
- *CIT v. Girish Chaudhary [2007] 163 Taxman 608/[2008] 296 ITR 619 (Delhi);*
- *Asstt. CIT v. Sri Radheshyam Poddar [1992] 41 ITD 449 (Cal.);*
- *S.K. Gupta v. CIT [1999] 63 TTJ (Delhi) 532;*
- *Satnam Singh Chhabra v. Dy. CIT [2002] 74 TTJ (Lucknow) 976;*
- *CIT v. S.M. Aggarwal [2007] 162 Taxman 3/293 ITR 43 (Delhi);*
- *Pankaj Dahyabhai Patel (Huf) v. Asstt. CIT [1999] 63 TTJ 790 (Ahd.);*
- *N.K. Malhan v. Dy. CIT [2005] 91 TTJ (Delhi) 938;*

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- *Pr. CIT v. Ajanta Footcare (India)(P.) Ltd. [2017] 84 taxmann.com 109 (Cal.);*
- *Dy. CIT v. C. Krishna Yadav [2011] 12 taxmann.com 4/[2011] 46 SOT 250 (Hyd.) (URO);*
- *Harish Textile Engineers Ltd. v. Dy. CIT [2015] 63 taxmann.com 66/379 ITR 160/[2016] 236 Taxman 420(Bom.)(HC);*
- *CIT v. Jai Pal Aggarwal [2012] 28 taxmann.com 269/[2013] 212 Taxman 1 (Delhi)*

Therefore the well settled legal position is that a non speaking document referred to as a "Dumb Document" without any corroborative material, evidence on record and finding that such document has materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by such assessee, has to be disregarded for the purposes of assessments to be framed u/s 153A and 153C of the act.

The aforementioned legal position also gathers support from the judgement of the Hon'ble Supreme Court in case of ***CBI v. V.C. Shukla 1998 taxmann.com 2155 (SC)*** popularly known as **Jain Hawala Case** wherein it was held that any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. In this case it was held that entries in Jain Notebooks held on facts admissible under Section 34, but file containing loose sheets of papers are not "book" and hence entries therein not admissible under Section 34. Further it was also held in this case that entries in books of account shall not alone be sufficient evidence to charge any person with liability. Entries even if relevant are only corroborative evidence.

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Independent evidence as to trustworthiness of those entries is necessary to fasten the liability. In view of these facts it was held by the Honourable Supreme Court that entries made in the Jain Hawala diaries are under Section 34, but truthfulness thereof not proved by any independent evidence. It was also held in this case that "books" ordinarily mean a collection of sheets of paper or other material, blank, written, printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as "book" for they can be easily detached and replaced. The Supreme Court further went on to state that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness fix a liability upon a person.

The above view further gathers reinforcement from the judgement of the Hon'ble Supreme Court in case of ***Common Cause v. UOI, [2017] 77 taxmann.com 245*** popularly known **Sahara dairies and Aditya Birla dairies case**. In this case, the Hon'ble Supreme Court, following the judgment rendered in case of *V.C. Shukla (supra)*, laid down the following principles:-

(i) Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;

(iii) The meaning of account book would be spiral note book/pad but not loose sheets;

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(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;

(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.

It is pertinent to mention that the aforementioned judgments of the apex court have been rendered not in direct context and interpretation of the Income Tax Act'1961 but still holds good for fastening the liability under the Income Tax Act also as far as the dumb documents are concerned. Relying on the judgment of the apex court in case of *Common Cause v. UOI(supra)*, the Hon'ble Bench of ITAT , Ahmedabad in case of ***Nishant Construction Pvt. Ltd. V ACIT in ITA No. 1502/AHD/2015***, held that in the absence of any corroborative evidence , loose sheet can at the

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most be termed as “dumb document” which did not contain full details about the dates, and its contents were not corroborated by any material and could not be relied upon and made the basis of addition. Reliance can be also placed on the judgment of the Panaji Bench of ITAT in case of *Abhay Kumar Bharamgouda Patil V ACIT [2018] 96 taxmann.com 377 (Panaji - Trib.)* wherein the judgement of the apex court was relied upon.

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## **ABOUT CA. MOHIT GUPTA**

Mr. Mohit Gupta is a Fellow Member of the Institute of Chartered Accountants of India, a commerce graduate from prestigious Ramjas College, Delhi University and an alumni of St. Xavier's School, New Delhi. He is practicing as a Chartered Accountant for more than 15 years and managing the Direct Tax Advisory and Litigation practice of M/s. Dhanesh Gupta & Co., Chartered Accountants, New Delhi a renowned Chartered Accountancy firm in the core domain of direct taxation established in 1978.

His forte is handling Income Tax Search and Seizure matters, matters before the Income Tax Settlement Commission and other direct tax litigation matters. As on today, he has wide experience of handling Income Tax Search and Seizure Cases, representing matters before the Income Tax Settlement Commission, ITAT and other appellate tribunals. He has been contributing articles in various professional magazines/journals and addressing various seminars on topics relating to Income Tax Search and Seizure, Income Tax Settlement Commission and other allied tax matters. He has to his credit plethora of well researched articles out of which many have appeared in leading journals. In Addition to the above, Mr. Mohit Gupta is a Special Auditor of the Income Tax Department and has carried out numerous Special Audits across the country on being appointed by the Income Tax Department which have plugged tax evasions, tax base erosion and other tax manipulative practices and in turn facilitated the Income Tax Department to collect huge tax revenues. Mr. Mohit Gupta has also been appointed as Special Auditor under other tax statutes and by other Investigation Agencies of the Government of India. Mr. Mohit Gupta, authored the periodical Newsletter on Income Tax Search and Seizure. The said newsletter contained well researched write ups / articles and judicial developments on the matters of Direct Taxation. The newsletter was circulated both electronically and otherwise.

Recently, in the year 2016, Mr. Mohit Gupta have authored two

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comprehensive books on the Income Declaration Scheme'2016, titled as "Law Relating to Income Declaration Scheme'2016". His books provided at one place the entire gamut of the Law relating the Income Declaration Scheme '2016 and set to rest all the queries that arose before, during and after the course of making the declaration under the Income Declaration Scheme'2016. The books received an extremely overwhelming response from the readers including the proposed tax payers, tax administration, tax professionals, corporate houses and academicians. The said books were released by erstwhile Hon'ble Union Finance Minister, Shri. Arun Jaitley, Shri.Arjun Ram Meghwal, Minister of State for Finance and the Chairman of Central Board of Direct Taxes and many other dignitaries. He is about to release two comprehensive books on Income Tax Search and Seizure in few months time depending upon the normalization of the COVID situation. The release of the books have been kept on hold due to current COVID position. The first book is an in depth commentary on the Law relating to Income Tax Search and Seizure , while the second book is relating to addressal of controversial issues arising during search and seizure action, assessment and settlement commission thereupon as the case may be.

Due to his continuous desire to always rise on the learning curve, he always have a quest and quench to read more, learn more and perform even more.

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