

BHUTA
SHAH
& CO
LLP

CHARTERED
ACCOUNTANTS

Survey & Search and Seizure Proceedings

Under the Income Tax Act, 1961

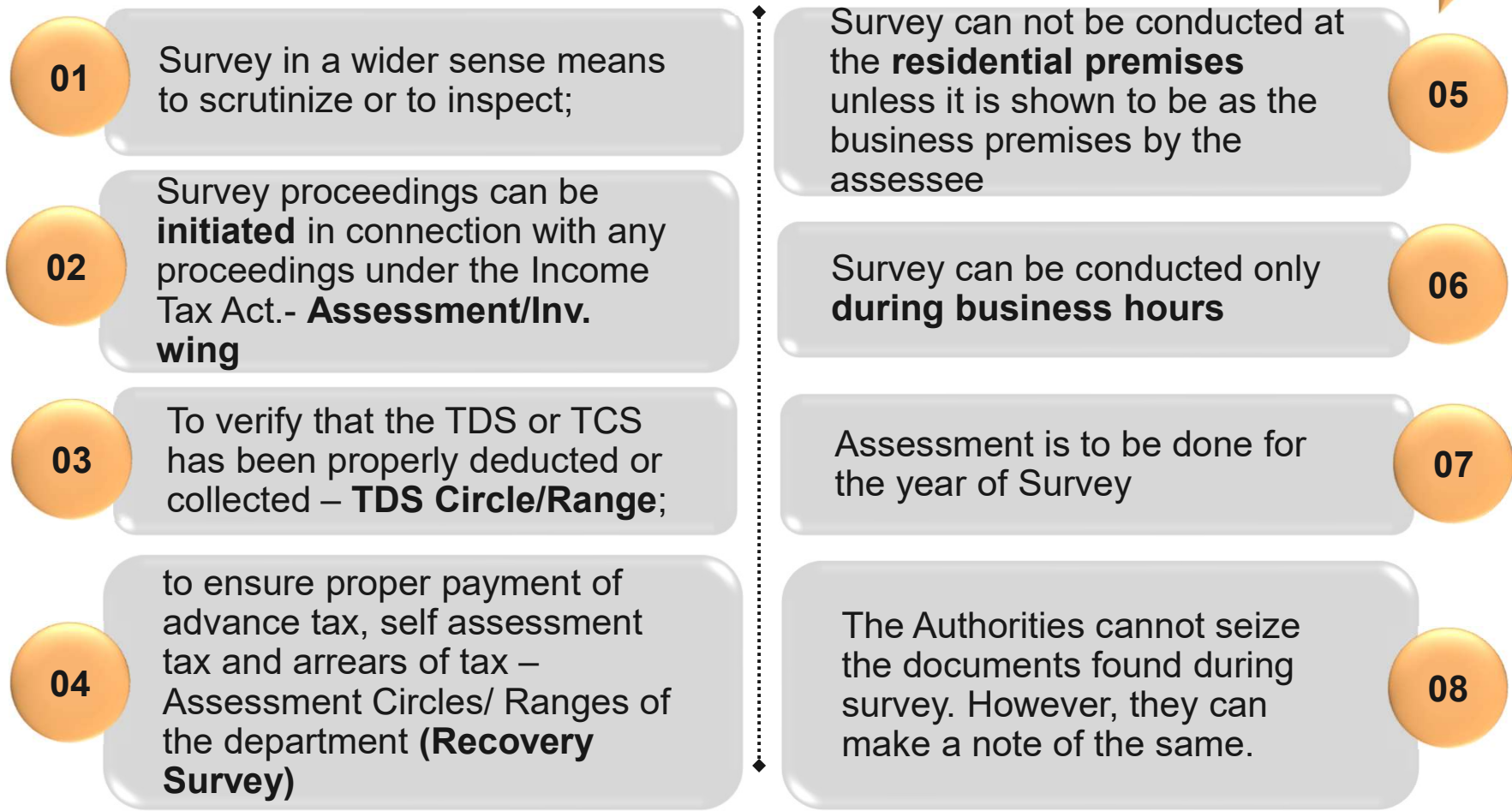
-Shailesh Bhuta
*Managing Partner of
M/s. Bhuta Shah & Co LLP*

Survey V/s. Search



What is Survey?

Survey u/s. 133A



What is Search?

Search and Seizure u/s. 132

Search operations are **exploratory exercises** on the basis of info. with the Income-tax department to find **hidden income in case of taxpayers**, who have not disclosed their true financial state of affairs.

Seizure implies taking possession of assets, which have not been disclosed to the income tax department and of accounts/documents, papers which contains details of unaccounted income



Thus search and seizure is a very powerful weapon of income tax department to unearth any concealed income or valuables and to check tax evasion thereby mitigating the generation of black money.

Features distinguishing search and survey

Search u/s. 132

01

Authorities can **enter** and **search** any place including your residential premises, vehicle, or any other place

02

Authorities can exercise the **power of Seizure** to seize not only Books of Accounts but also money, bullion, jewellery etc

03

Statements under search proceedings are recorded on Oath

04

Compulsory assessment is to be done for previous **6 years**

Survey u/s. 133A

01

Authorities can **enter** only those places which are deemed to be your place of business or profession

02

Authorities can only **impound** your Books of Accounts i.e., no power of Seizure

03

Statements can be recorded by the authorities (Not on Oath)

04

Assessment is to be done only for **survey year**.

Conversion of Survey into Search

If during the survey any undisclosed cash or other valuables are found, the survey proceedings can be converted to search proceedings, wherever necessary.

If survey is conducted by the **Inv. Wing** and is required to be converted into search - obtain necessary search warrant from **PDIT (Investigation)** after preparing **satisfaction note**

if survey is carried out by **Assessment Circle/Range** and if it is considered necessary to convert it into a search operation - a **satisfaction note** is to be prepared approval from **PDIT (Investigation)** concerned is required

Conversion of a survey operation into a search action will have implications not only for seizure of cash/valuables but it will lead to extension of few powers of the Income Tax Authorities.

Provisions of Section 132



When Search is Possible? – Section 132 (1)

Income Tax Authorities based on information in his/her possession has a reason to believe that* any person/corporate/business group

Condition (a),(b)

To whom **summons** are issued, to produce or caused to be produced any BOA's or other documents*



Has Omitted or failed to produce or cause to be produced; **OR**

Will not or would not produce or cause to be produced

*BOA or other documents, which will be useful for, or relevant to any proceeding under this Act

Condition (c)

Is in **possession** of any money, bullion, jewellery or other valuable article or thing and such things*



Which has not been disclosed

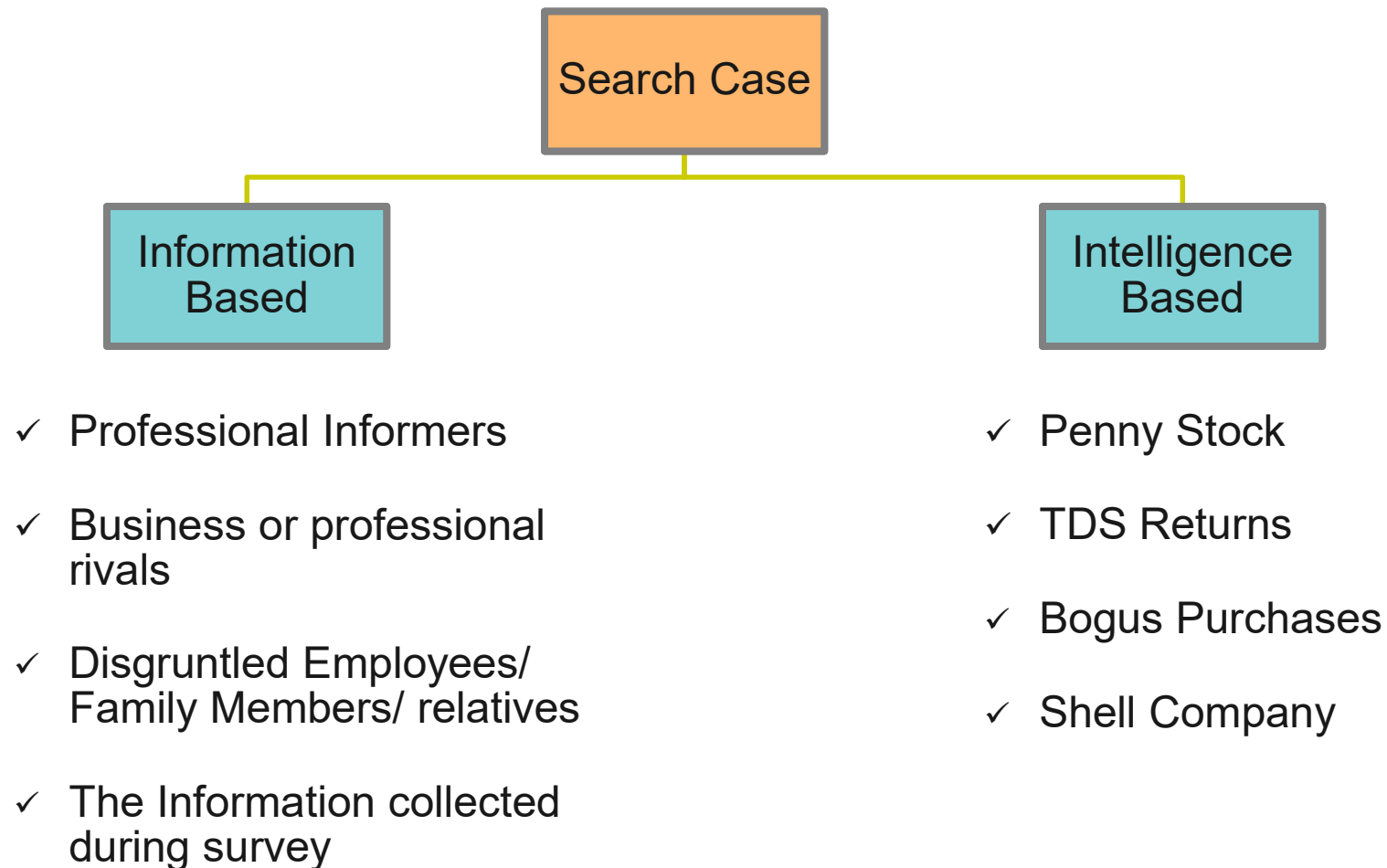
Would not be disclosed

*hereinafter in this section referred to as the undisclosed income or property

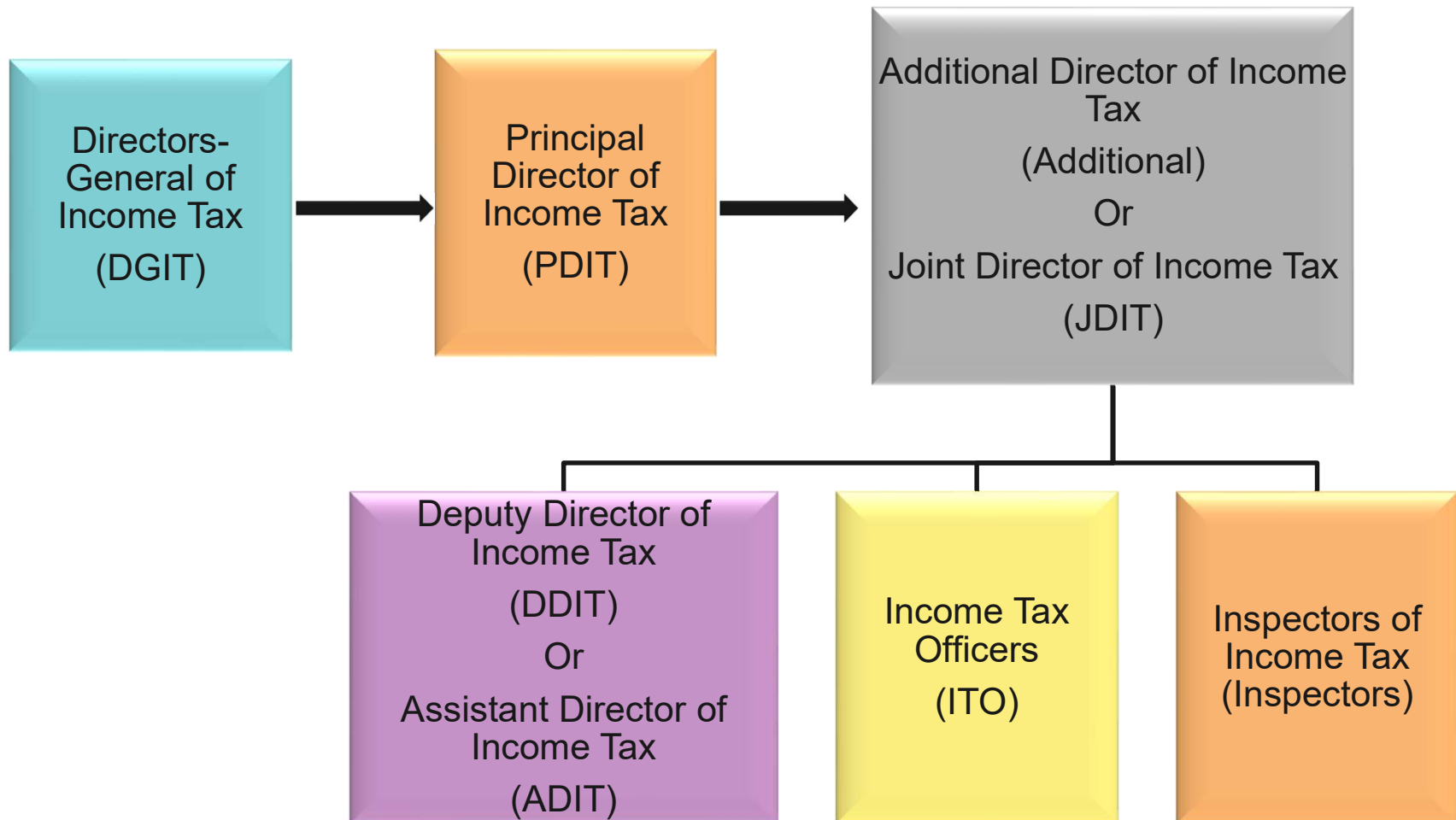
*** Reason to believe shall not be disclosed to any person, any authority or the tribunal**

How case is developed???

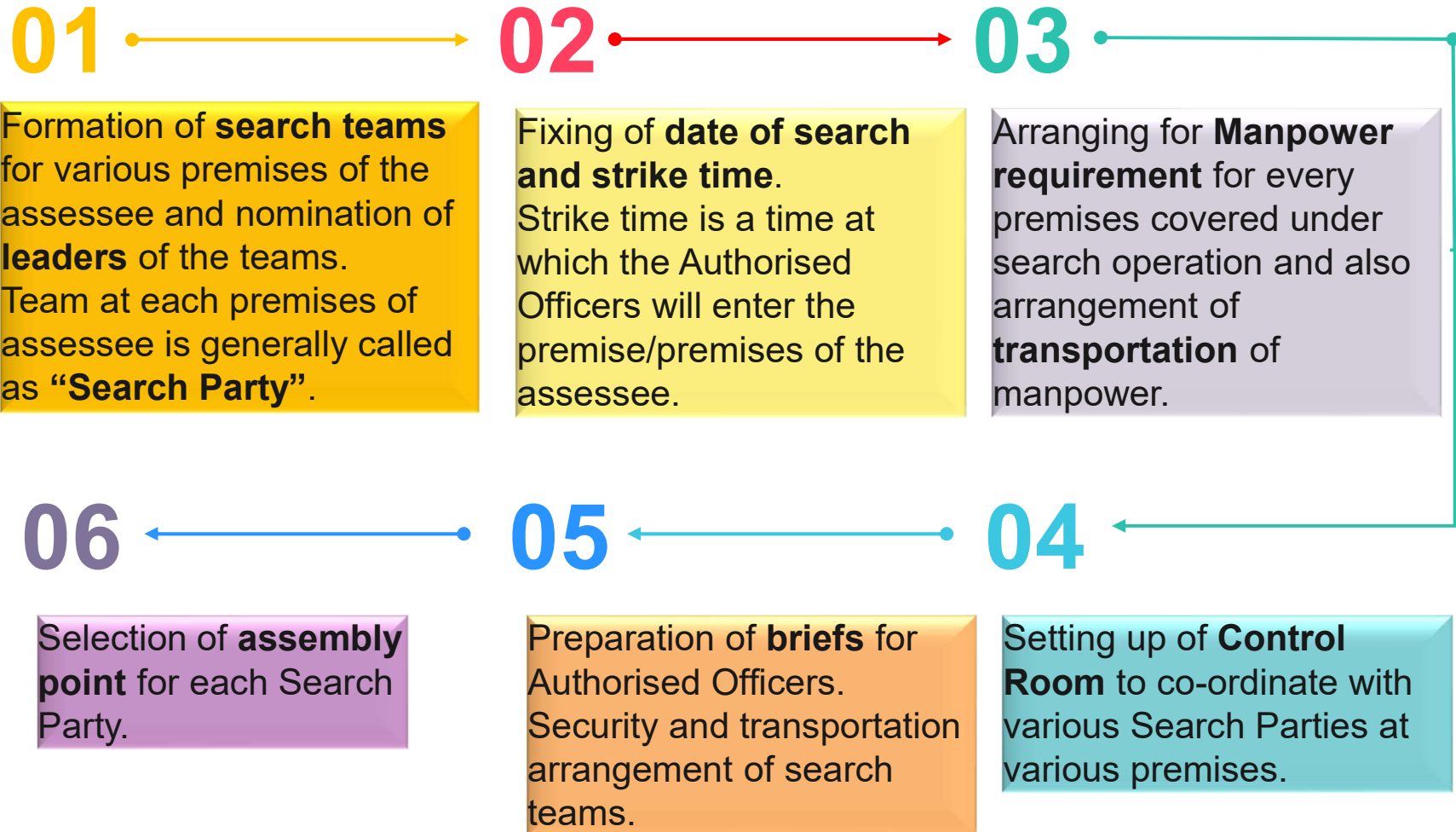
Search case can be developed by the following ways:



Hierarchy of Investigation Wing



Initiation of Search



Initiation of Search



01

Authorization of Search by issuing Search Warrant – Form 45 of IT rules – Copy of Search Warrant will not be provided

Entering into the premises to be searched.

02



03

Conducting search in presence of atleast two witnesses



The Authorized Officers may requisition the services of any

- police officers of the states
- Officers of the Central Government

Powers of Authorized Officer – 132(1)



Enter and search
any building,
place, vehicle or
aircraft



Seize any such
books of accounts,
other documents,
Money, bullion,
jewellery etc.,*



Break open the
lock of any door,
box, locker, safe
or others



Place marks of
identification



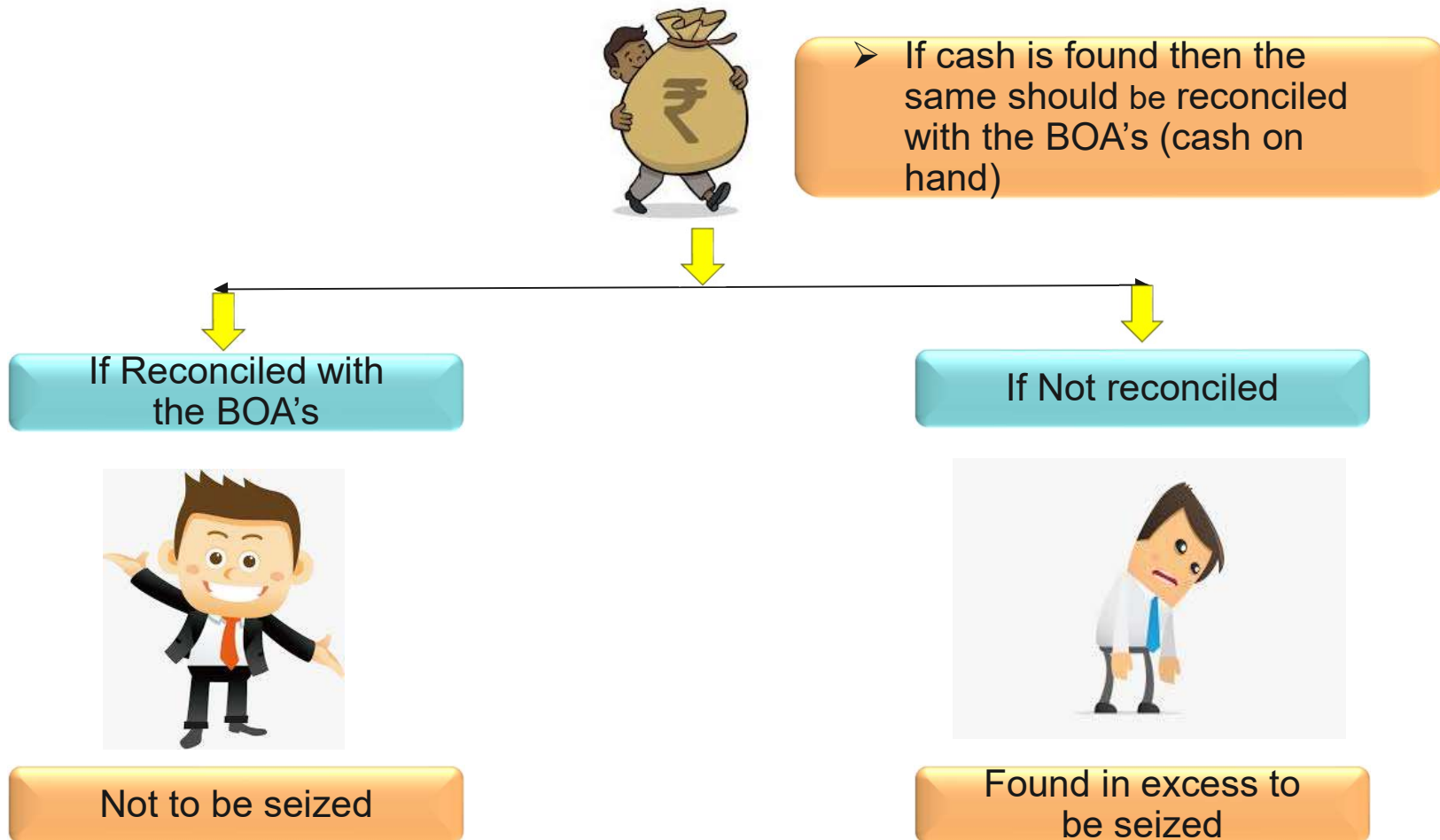
Search any
person who has
got out of, or is
about to get into



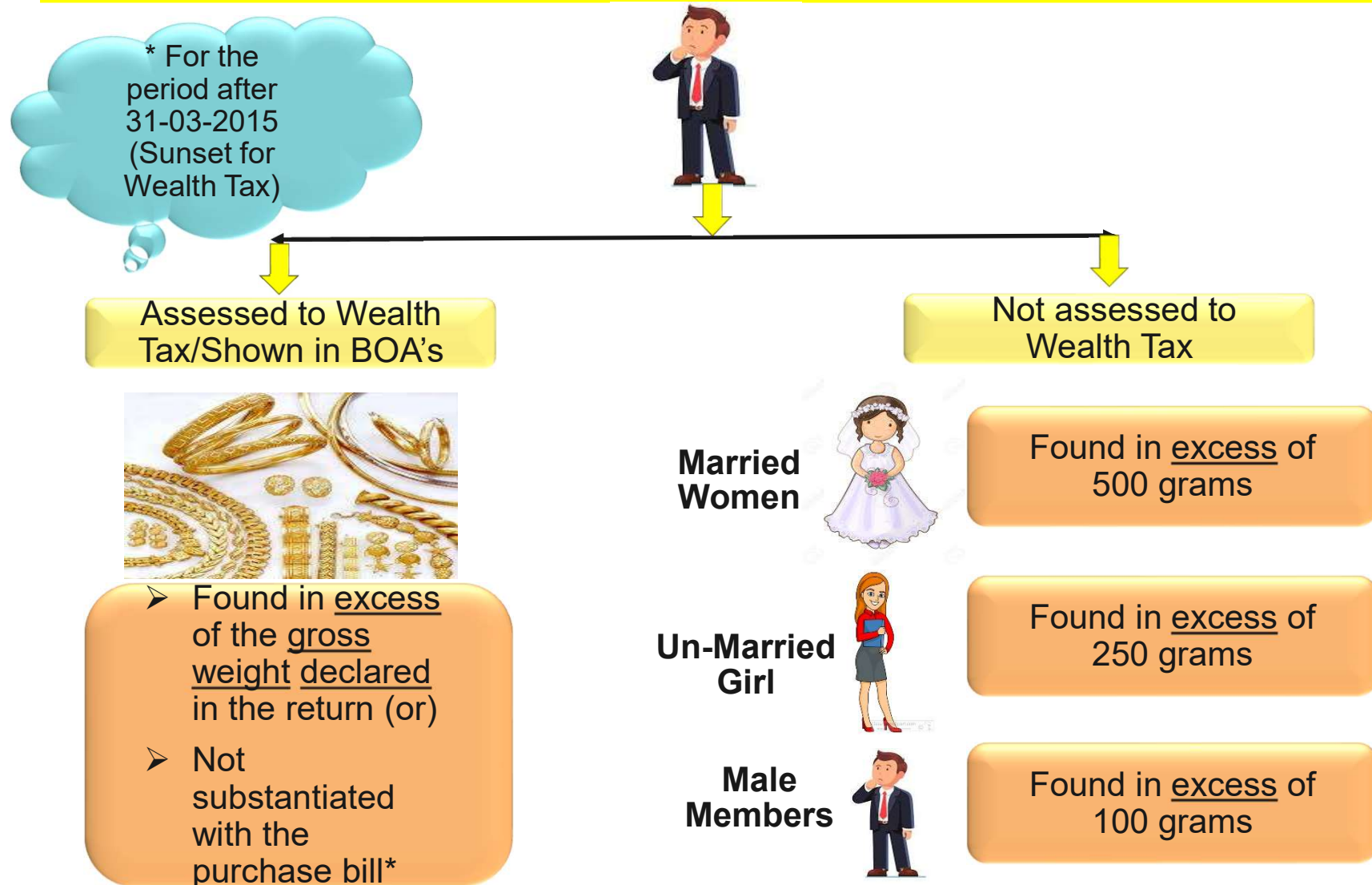
Make a note or an
inventory

*Bullion, jewellery or other valuable article, being stock in trade of the business shall not be seized but the AO shall make an note or inventory of such Stock in trade

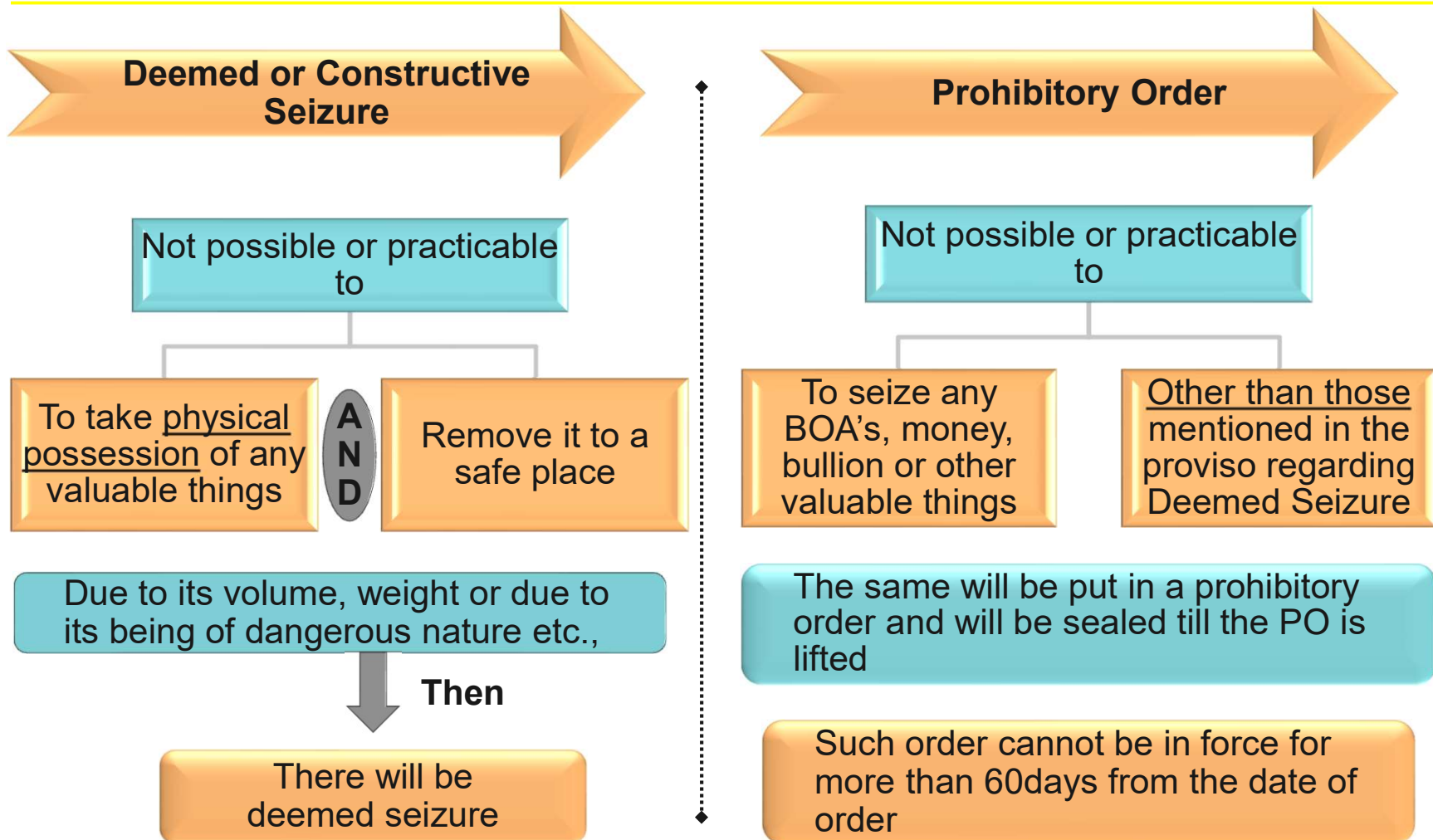
Seizure of Cash found during search



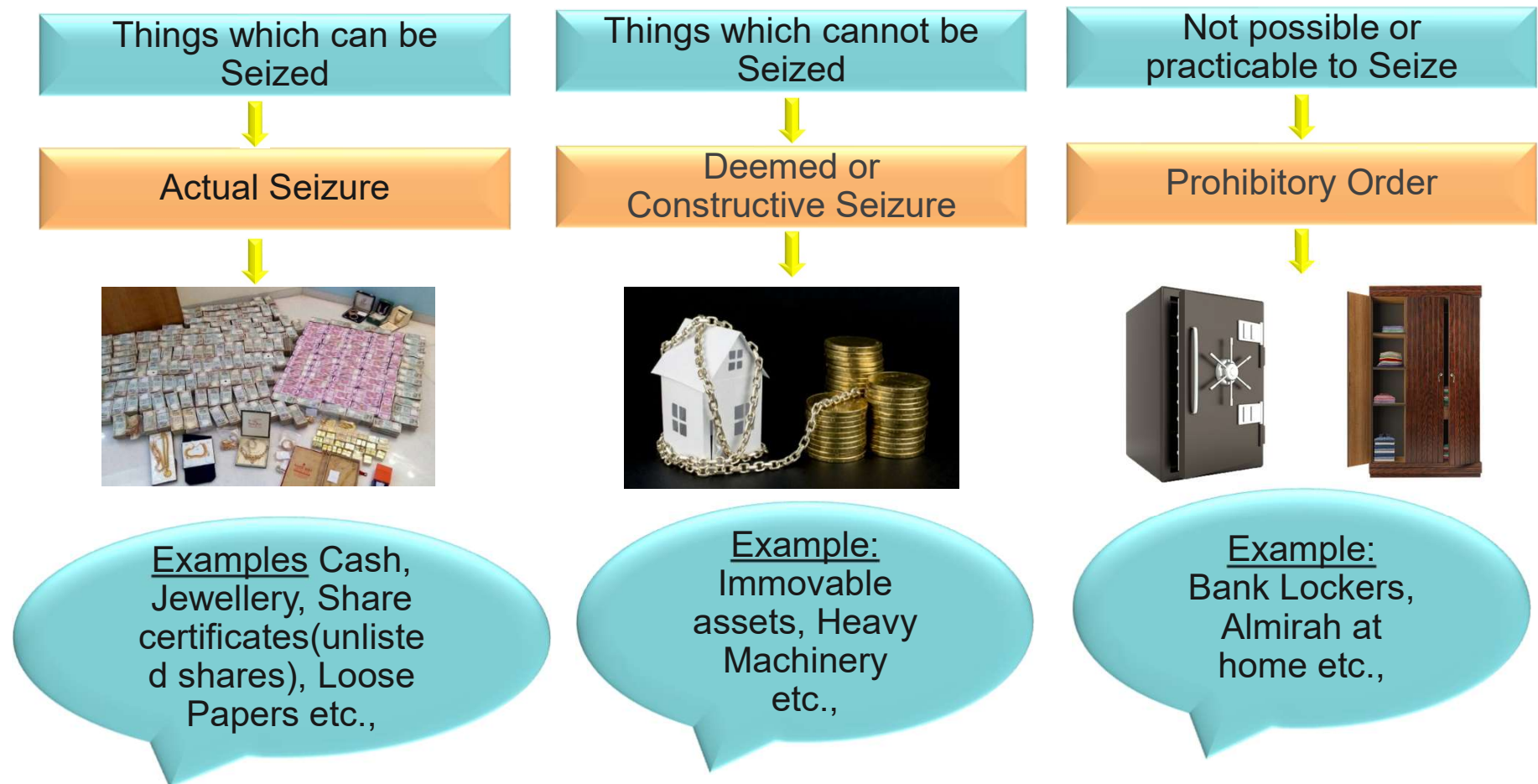
Guidelines for Seizure of Jewellery and ornaments – Circular No. 1916 dated 11-05-1994



Deemed or Constructive Seizure and Prohibitory order (PO)/ Order of restraint



Deemed or Constructive Seizure



Presumption in course of Search – 132(4A)

Search is initiated
against Mr. A



AND

During that search, if
anything is found from the
premise of Mr. A

Then It will be presumed that

01



Such document
belongs to 'Mr. A'

02



The **contents** of
such documents
are true; and

03



The **signature and every**
part of such document
which purport to be in the
handwriting of any
particular person is in that
person's handwriting.

Panchanama and Statement



Panchanama

- Contains the name and address of the person searched
- Usually recorded at the conclusion of the Search
- It is accompanied by "Annexures"- Details of assets found and seized
- The person searched is entitled to obtain a copy of the panchanama



Record of Statement

- During and after the search u/s 132.
- Since these are Quasi-judicial proceedings the statements have evidentiary value and are binding on the person
- Unless the same is retracted on the valid grounds.

Attaching of property – 132(9B) & (9C)



Where during
the course of
search or
seizure

Or within a
period of 60
days*, the AO,
for reasons to be
recorded in
writing

For the purpose
of protecting the
interest of the
revenue

He may with the
previous
approval, by
order in writing

Attach
provisionally any
property
belonging to the
assessee

* From the date on which the last of the authorizations
for search was executed

132(9C) - Every provisional attachment shall cease to have effect after the expiry of 6 months from the date of the order passed

Further, the Authorized officer may make a reference to the **valuation officer** to estimate the FMV of the Property.

Applicability of provisions related to Benami Act

Since 2018, the Benami Prohibition Unit (BPU) within each Investigation Directorate has been created throughout the country to deal with benami properties found during the course of search.

01

Once the Inv. Wing is prime facie satisfied about the applicability of the **Benami Transactions (Prohibition) Act, 1988**,

02

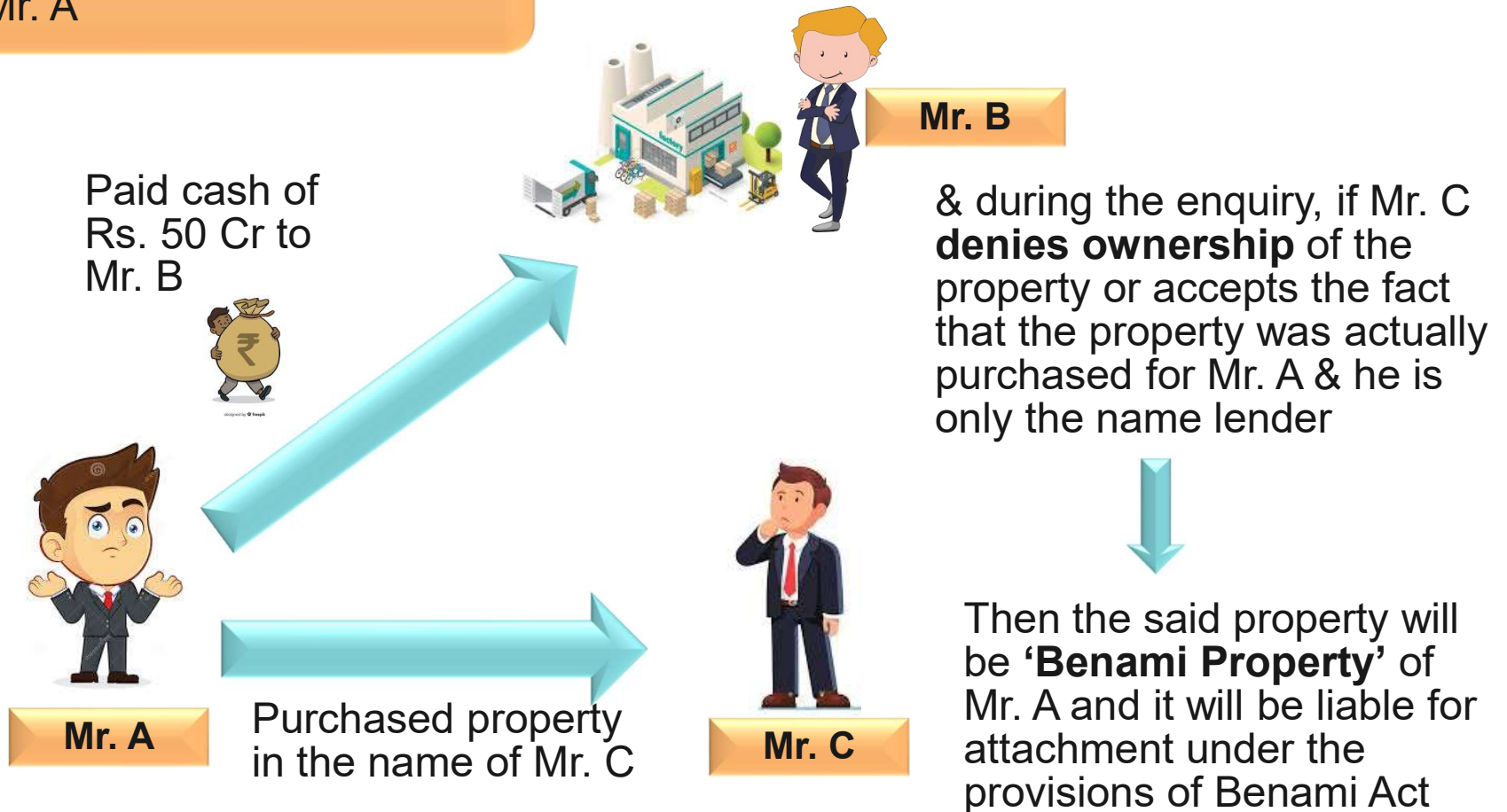
a **reference** is made to the **concerned BPU** either during the course of search or after the conclusion of search.

03

The BPU then examines the evidence so found and then proceeds further in holding the transaction to be a benami transaction and **provisionally attaching** the benami property under the Act

Example of Benami Transaction

If the search is initiated on Mr. A and it is found that Mr. A



What can be held as a Benami Property

Leg - 1

Property transferred to or held by **Benamidar**;
Consideration paid by **beneficial owner**; and
Property held for immediate or future benefit of Beneficial owner

Leg - 2

Transaction is carried out by the benamidar, who is fictitious

Leg - 3

Where the owner of the property denies the ownership

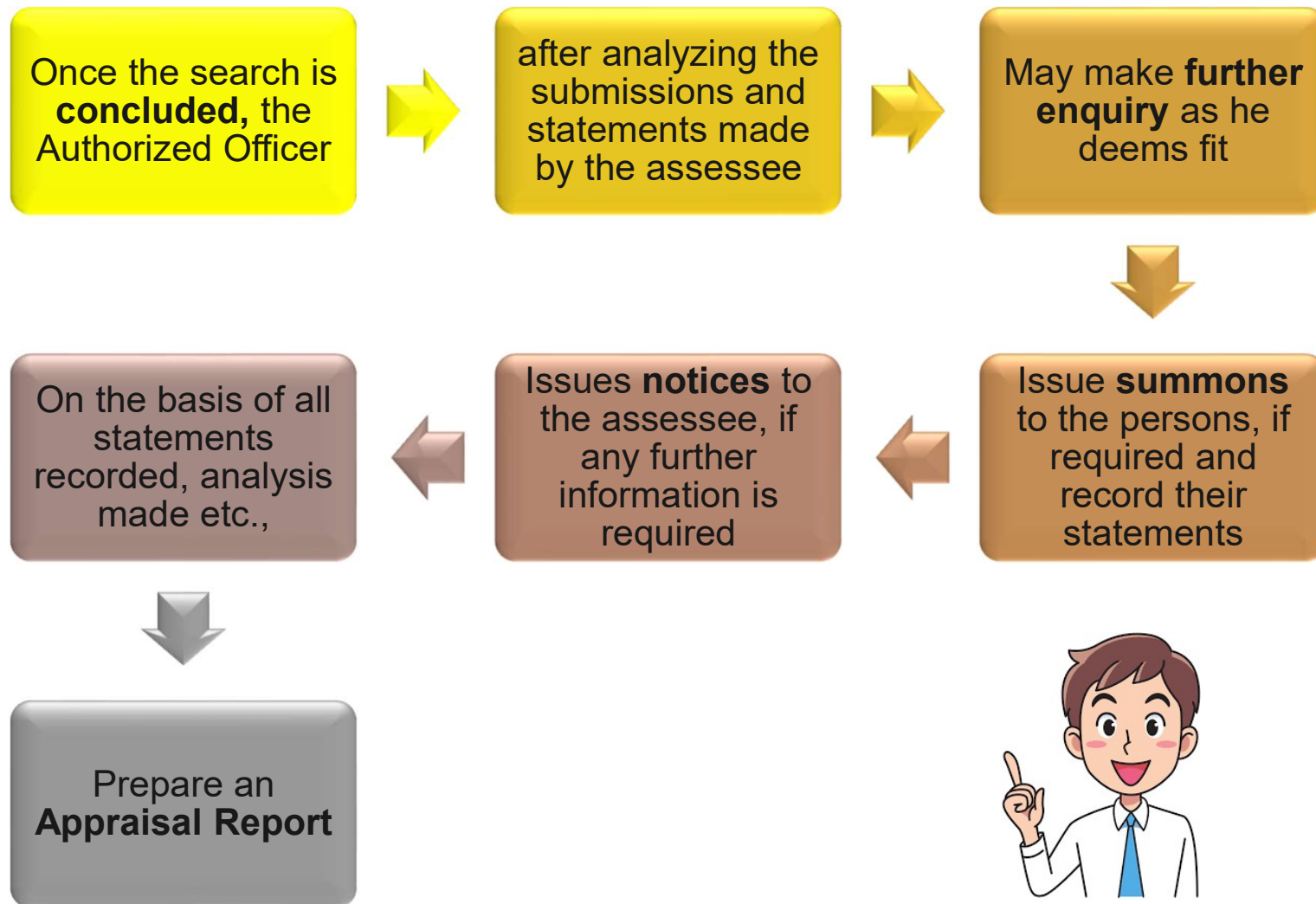
Leg - 4

Where the person providing the consideration is not traceable or is fictitious

Post Search Proceedings



Post Search



Contents of Appraisal Report



Appraisal report

Allegations before mounting search operation

Parties Covered under Search

Finding of Search Proceedings

Assessment Years Involved

Amount of undisclosed income and assets

Recommendations of assessments to be carried out in respect of searched parties u/s. 153A and 153C

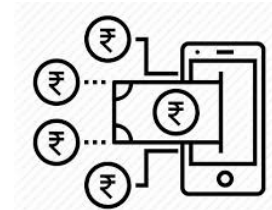
Appraisal report should be completed by the investigation wing within a period of 60/90/120 days from the date on which the last of the authorisations of search was executed

Points of Consideration



Points of Consideration

Source & Application of Income



Source of Income is to be taxed and not application of Income

However, when source of income is not known, application of income is taxed.

Examples:

- 1) During the search conducted at the premises of Mr. A, following are found;
 - Details of **On-money received** – Rs. 50 Cr (Diaries found)
 - Cash paid for **accommodation entries** taken in the books of accounts – Rs. 30 Cr (Notings Found)

In this Scenario, the Income-tax department **will tax income of Rs. 50 Cr.** Accommodation entry taken of Rs. 30 Cr is mere application of income out of Rs. 50Cr and will not be taxed.

- 2) If during the course of search only notings of accommodation Entry of Rs. 30 CR is found then income-tax dept. will tax Rs. 30 Cr (Since the source is not known)

Points of Consideration

Tax treatment of **undisclosed income** is similar to that of **disclosed income**

Examples:

During the course of Search action, notice of on-money received amounting to Rs. 50 Cr in FY 2016-17 is found. If the Company is following percentage completion method of accounting and the completion percentage of the project is as mentioned below –



Accordingly, the on-money of Rs. 50 Cr will be taxed following the same percentage of completion.

FY	% of Completion
2016-17	30%
2017-18	70%
2018-19	100%

FY	% of offer based on % of Completion	Amount (in Cr)
2016-17	30%	15
2017-18	70% (- 30% offered in 2016-17)	20
2018-19	100% (-70% cumulatively offered)	15
	Total	50

Points of Consideration

Extrapolation of Income

Extrapolate means to extend the application of (a method or conclusion) to an unknown situation by assuming that existing trends will continue or similar methods will be applicable.

Examples:

- 1) Project – A comprising of 5 commercial shops was completed and sold by M/s. XYZ Pvt. Ltd. During the course of search action, notings of cash component (40% cash) being received on sale of 2 shops were found. The income-tax department will therefore extrapolate the sale proceeds of remaining 3 shops also even if no notings of cash component is found in case of these shops.
- 2) Cash notings were found for drawings during the course of search at the premises of Mr. A for 3 years then the income-tax department will extrapolate the cash drawings for the remaining years to be assessed.
- 3) Notings are found of Cash sales in case of trader A for 2 years, then there will be extrapolation of sales for remaining years as well.

Points of Consideration

Other Important Points

- When and how to offer the undisclosed income unearth during the course of search assessment.
- Telescoping of Income in case of an individual entity or entire group.
- Year of taxability – i.e., Income pertaining to a relevant year can only be taxed in that year
- Allowability of expenses against undisclosed income.
- References can be made to other departments/authorities.



Search Assessments



Search assessment

After 2016 – Assessment can be done for the following years

Search Year

- Year in which search is concluded
- **Example:** If Search is concluded on 10-02-2020 then Search Year will be AY 2020-21

6 AY's preceding Search Year

- From AY 2014-15 to AY 2019-20

4 AY's preceding 6 AY as mentioned above

- From AY 2013-14 to AY 2010-11
- If income in the form of assets exceeds 50 Lakhs in single or aggregate relevant assessment Years

Compulsory assessment

Invoking provisions of Black Money Act, 2015(BMA)

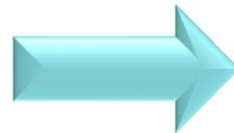
Likely the name of the Act suggests, the BMA applies only to '**Undisclosed Foreign Income and assets**' (i.e., outside the territory of India) and thus is a separate mechanism to regulate the issue of foreign income and assets which have escaped the Indian Tax net.

If search is initiated against Mr. A and it is found that **he owns a undisclosed property** in foreign country or has earned **undisclosed foreign income**



Mr. A

Resident of India



Provisions of '**Black Money Act**' can be invoked



Also assessment of income **can be done for 16 AY's** in Section 147 of the Income Tax Act

Post search assessment

Section 153A : Assessment in case of search

Return of Income

Assessee is required to file return of income for each year within prescribed time as per notice declaring additional income post search

01



Assessment

02

Assessing officer shall assess or reassess total income of assessee for each year separately.



Assessment Order

Pass assessment order determining total income of the assessee for each year separately

03



Search assessment

Section 153B : Time Limit for completion of assessment u/s 153A

If last authorization for search was executed	Time limit to pass order (From the end of FY in which last authorization is executed)	Example	Extension due to COVID - 19
Between 01-04-2018 and 31-03-2019	Search assessment is to be concluded within 18 months	Last warrant is executed in FY 2018-19, then time limit: 30-09-2020	Period of 18 months is extended to 21 months Time limit extended to 31-12-2020
After 1 st April 2019	Search assessment is to be concluded within 12 months	Last warrant is executed in FY 2019-20, then time limit: 31-03-2021	Period of 12 months is extended to 18 months Time limit extended to 30-09-2021
#Where the reference is made to Transfer Pricing Officer u/s. 92CA, the above time limit shall be extended by further 12 Months			

Income Tax Rates and Penalties



Income Tax rates and Penalty

Income Tax Rates

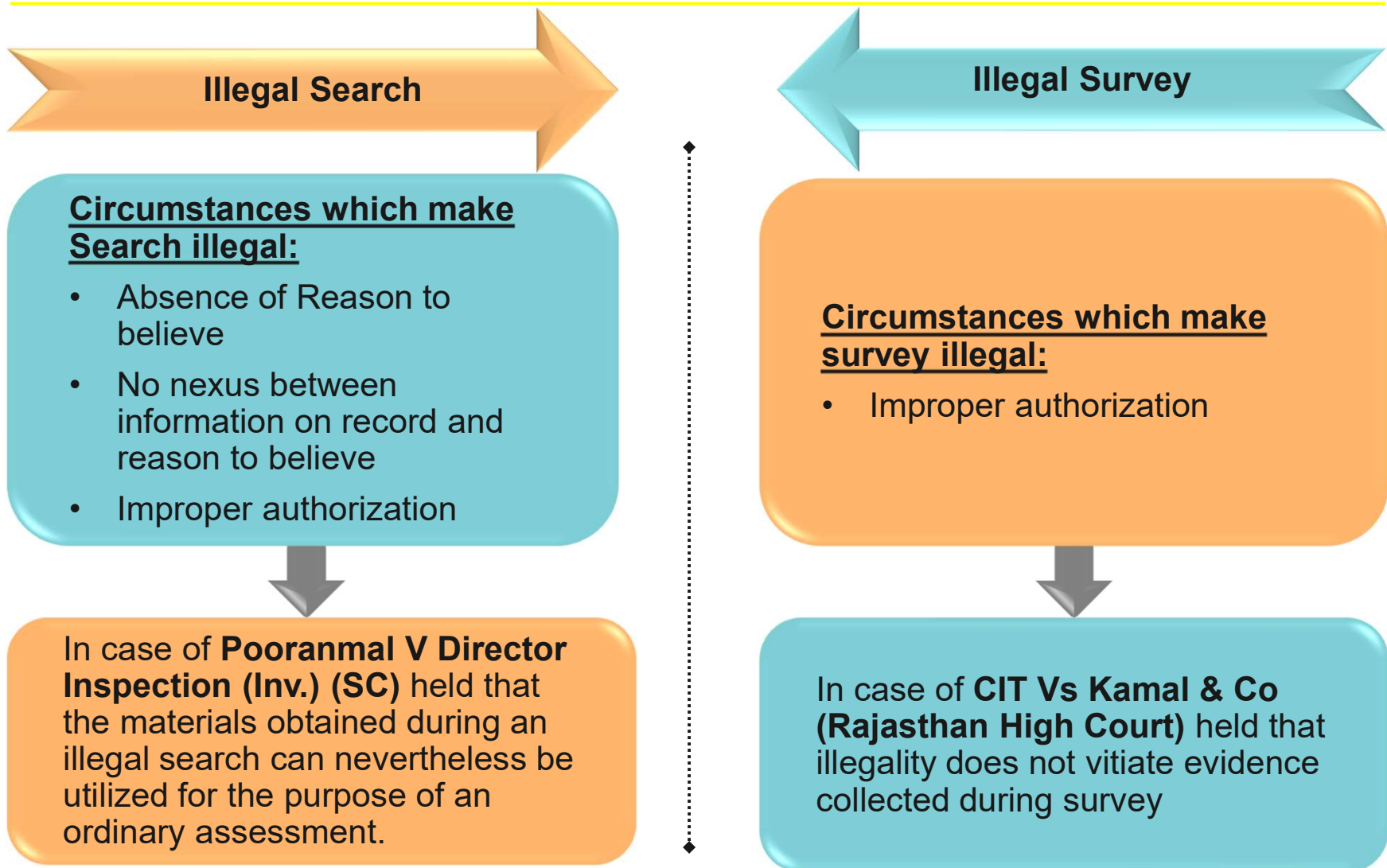
Particulars	AY 2017-18 onwards	Up to AY 2016-17
Source of Income Disclosed	30%	30%
Penalty on above Undisclosed Income	200% of tax evaded (Section 270A)	100%-300% of tax evaded Section 271(1)(c)
Source of Income not disclosed	60%	30%
Penalty on above Undisclosed Income	10% of tax evaded (Section 271AAC)	100%-300% of tax evaded Section 271(1)(c)

***Note:** There are separate provisions under the Act governing penalty for the “Specified year” as mentioned below;

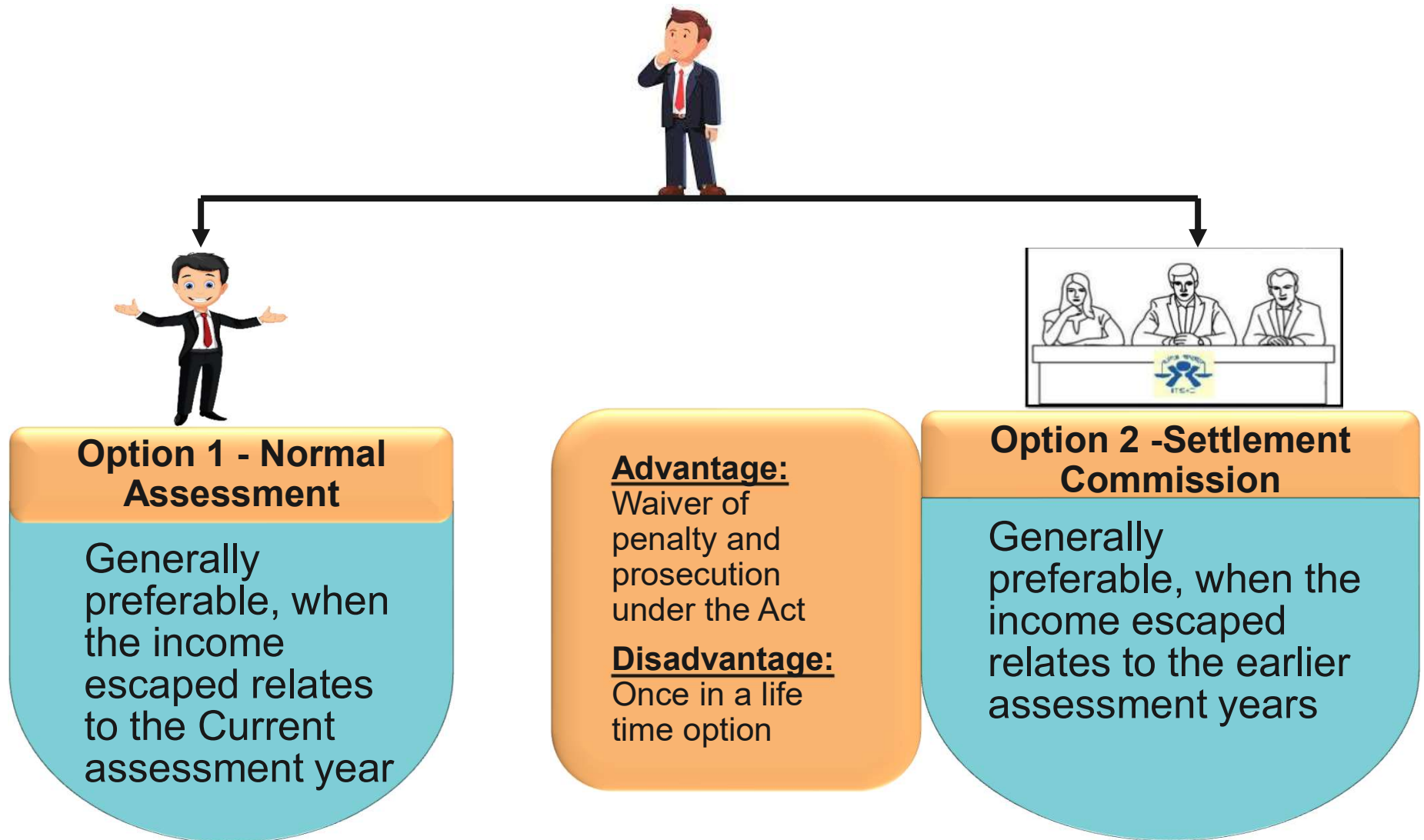
Specified Year means:

- which has ended before the date of search but due date for filing return of income under section 139(1) of the Act has not expired and the assessee has not furnished its return of income before the date of search, or
- in which search is conducted

Illegal Survey & Search



Options available to the Assessee



Pre-requisite condition for validity of Settlement Application

Ajmera Housing Corporation Vs CIT (SC)



➤ Facts of the Case:

Particulars	Amount	Particulars	Amount
Original Offer	1.94 Cr	Further Offer – After 245D(1) order	2.76 Cr
Revised Offer	11.41 Cr	Income finally settled in 245D(4) order	42.58 Cr

- The disclosure of “**full and true**” particulars of undisclosed income and “**the manner**” in which such income has been derived are pre-requisites for a valid application u/s. 245C (1) before settlement commission.
- The scheme of settlement **does not contemplate revision of the income** so disclosed in the application.
- The High court, having come to conclusion that the assessee had not made a full and true disclosure of undisclosed income, was wrong in treating the application as maintainable.

Co-ordinates



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Thank You

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