

# **Powers - Search & Seizure, Survey: Comparative Analysis**

**IT Act, 1961 vs IT Act, 2025**

# Examination Powers

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
When summons can be issued	Under Sec.131(1A) - Only before taking action under Sec.132(1).	Sec.246(2)(c) – Before and <b>during the course</b> of search, to examine a person suspected to be concealing income
Examination on oath	Under Sec.132(4) during search for persons in possession.	Sec.247(6): Examination of <b>any person</b> in possession or control of books or document or asset or <b>any info in electronic form</b> or computer system or <b>any person present</b> or is being searched.
Authorised officers list	Explicit list includes Deputy Director.	Deputy Director omitted by name but covered via definition of Assistant Director (Sec.2(15)).

**Impact / Summary:** 2025 Act widens timing and scope of summons and oath-examination; broader reach over persons present during search and also the person being searched.

# Inclusion of Electronic/Digital Records

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Trigger for search	Sec.132(1): Reason to believe based on information and failure to produce books/ documents.	Sec.247(1): Reason to believe includes failure to produce books/documents or information in electronic form or on a computer system.
Definition references	Books or books of account includes electronic forms after FA 2022 [Sec.2(12A)] and document includes electronic record [Sec.2(22AA)].	Explicitly mentions information in electronic form and computer systems; broader textual scope.

**Impact / Summary:** 2025 Act expands triggers to include non-production of electronic information or data on computer systems.

# Search— Scope & Powers

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Circumstances for search	Failure to produce books/documents or likely non-production. Sec.132(1)).	Expanded to failure to produce books or documents or any information in electronic form or on a computer system. [Sec.247(1)].
Powers during search	Seize books/documents; extract prints/photocopies.	Require access codes; override access codes; seize computer systems and electronic information; make extracts/copies.

**Impact / Summary:** 2025 Act gives clear authority to access and extract digital data including overriding access controls where necessary.

# Case Law on Books of Account

Aspect	Income-tax Act, 1961
LKS Gold House (Madras HC)	Madras HC held amendment clarifying inclusion of electronic records is clarificatory ; electronic data on pen drives/cloud falls within 'books of account'.
GSNR Rice Industries (Chennai Tribunal)	Held data retrieved from CPU not necessarily 'books of account'; definition covers regular books maintained for business.
Sheraton Apparels (Bombay HC)	Held 'books of account' are those maintained for credible filing and computation of income.

**Impact / Summary:** Judicial interpretations (as provided) clarify -books of account, electronic records and CPU.

# Shift from Physical Space to Digital Space

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Historical scope	Search and survey mainly focused on physical premises and tangible documents.	2025 Act explicitly extends to computer systems, virtual space and digital assets.
Operational implication	Physical seizure, manual copies, lockers.	Cloning/imaging of drives, access to cloud/servers, seizure of virtual digital assets.

**Impact / Summary:** 2025 Act incorporates provisions to capture digital transactions and online-held assets.

## Definition - Computer System

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Definition	No separate definition in original 1961 Act (documents/ electronic records included via FA 2022 amendments).	Sec.261(e) of 2025 Act defines 'computer system' to mean computers, computer networks, computer resources, communication devices, digital or electronic data storage devices, and includes remote server or cloud server or virtual digital space.
<b>Impact / Summary:</b> Explicit statutory definition in 2025 Act removes ambiguity and includes cloud & remote servers.		

# Definition — Virtual Digital Space & Assets

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Virtual digital space	Not separately covered under 1961 Act.	Sec.261(j): Includes email servers, social media, online investment/trading accounts, websites, remote servers, cloud servers, digital app platforms and similar spaces.
Asset	money, bullion, jewellery, valuable article or thing	Sec.261(b): 'Asset' expressly includes virtual digital assets such as cryptocurrencies and NFTs.

**Impact / Summary:** 2025 Act brings email, social media, wallets and crypto-assets within search scope; raises privacy and procedural concerns.

# Inclusion of Black Money Act

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Scope	Undisclosed income/ property not disclosed under Income-tax Act warranted search [Sec.132(1)(c)].	2025 Act extends coverage to undisclosed income/property not disclosed under Black Money (Undisclosed Foreign Income and Assets) Act, 2015 [Sec.247(1)(b)].
Effect	Focus on domestic undisclosed income/assets.	Also covers undisclosed foreign income/assets under Black Money Act.

**Impact / Summary: 2025 Act expands subject-matter of search to include undisclosed foreign income/assets under Black Money Act.**

# Information in relation to assets — Expansion to information holders

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
scope	Search when person in possession of specified assets representing undisclosed income/property.	2025 Act expands to any person in possession of information related to specified assets (not only physical possession).
Practical effect	Focus on holders of assets.	Broader reach to information holders - data custodians, intermediaries may be subject to search/examination.

**Impact / Summary: 2025 Act widens scope to include persons holding relevant information, increasing reach beyond physical possessors.**

# Impracticable Seizure -Bank Accounts vs Lockers

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Bank accounts	Section 132(3): Where it is not practicable to seize books, documents, money, bullion, jewellery, valuable article or thing	2025 Act explicitly also includes bank accounts, lockers and computer system under Sec.247(4) where seizure is not practicable.
Bank lockers	Lockers treated as possession of assessee; direct seizure possible under Sec.132(1)(iii).	2025 Act explicitly recognises impracticable seizure provisions for lockers, accounts and computer system; provides clarity in statute.

**Impact / Summary: 2025 Act codifies practice; prohibitory order issued for bank accounts and lockers.**

# Impracticable Seizure -Case Insight & Practical Consequence

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Judicial position	Kerala HC in ITO v. M. Shajahan: monies in bank are impracticable to seize; prohibitory order effective; lockers' contents are in possession of customer and seizable.	2025 Act mirrors judicial position and makes explicit statutory provision for bank accounts and lockers under Sec.247(4).
Practical consequence	Deductors and banks were previously addressed by orders/copies; uncertainty existed.	Now statutory clarity reduces procedural ambiguity for officers and banks.

**Impact / Summary: Explicit statutory inclusion aligns practice with law and reduces operational ambiguity.**

# Presumption of Exchange via Electronic Devices

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Presumptions	Sec.132(4A) & Sec.292C: Presumptions as to ownership/contents of books/documents found.	2025 Act: Sec.247(7)(e) & Sec.524: Extends presumptions to electronic records, data and communications.
Burden on assessee	Onus to explain nature/source of seized material.	Onus extended to explain electronic exchange/communications and digital records.

**Impact / Summary: 2025 Act imports presumption framework to digital communications, increasing evidentiary weight of seized electronic material.**

# Time-limit for Handing Over Seized Items

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Handing over to jurisdictional AO	Sec.132(9A): Seized material to be handed over within 60 days.	Sec.251(1): Time limit extended to 180 days under 2025 Act.
Rationale/Effect	Earlier handover aimed at prompt assessment handling.	Longer period allows digital forensics, verification and cross-jurisdictional coordination.

**Impact / Summary:** Extension to 180 days provides authorities time for comprehensive digital analysis; impacts timelines for assessments.

## Recording of Statements during Survey – Legal Provision

Aspect	Income-tax Act, 1961	Income-tax Act, 2025
Relevant Section	Section 133A(3)(iii)	Section 253(5)(b)
Nature of Power	Authority may record statement of any person, not on oath.	Authority may record statement of any person on oath.
Purpose	To collect information useful or relevant to any proceeding.	Same purpose, but statements carry evidentiary value.
Legal Status	Statements not admissible as evidence (not on oath).	Statements on oath admissible as evidence.
Comparison	Limited evidentiary value under survey.	Rationalised for parity with Sections 131 & 132(4).

**Impact / Summary:** The 2025 Act strengthens evidentiary value of survey statements by enabling recording on oath, reducing procedural disputes.

# Concerns and Clarifications

Issues	Concerns	Clarifications
Risk of Coercion	Recording on oath may lead to coercive or undue pressure.	Oath adds only evidentiary formality; process unchanged.
Prejudice to Taxpayer	May disadvantage assessee if used as evidence.	On oath ensures admissibility without altering process.
Existing Safeguards	Section 133A(6) read with 131 already allows oath statements.	Clause 253(5)(b) rationalises the framework and clarifies power.

**Impact / Summary: Technical enhancement ensuring admissibility, not a new coercive power.**

# Judicial and Legal Validation

Issues	Concerns	Clarifications
Judicial Precedent	CIT v. S. Kader Khan Son (352 ITR 480, SC): statements not on oath lack evidentiary value.	Amendment introduced to overcome judicial limitation.
Judicial Consequence	Survey statements had no evidentiary force.	Statements on oath now have statutory validity.
Legal Opinion (Dept. of Legal Affairs)	Not applicable earlier.	Confirmed Clause 253(5)(b) consistent with legal principles.
Policy Outcome	Ambiguity led to litigation.	Legal clarity and constitutional compliance achieved.

**Impact / Summary:** Post-Kader Khan, the income-tax Act, 2025 legitimises survey statements, ensuring admissibility and policy coherence.

# Digital Transformation in Powers of Survey

Aspect	Income-tax Act, 1961 (Section 133A)	Income-tax Bill, 2025 (Section 253)	Digital Impact
Access to Records	Limited to physical inspection of books and documents.	Includes right to inspect information in electronic form or computer systems	Ensures comprehensive access to digital information.
Data Verification	Manual verification of physical records.	Real-time verification of e-records and databases.	Speeds up compliance and improves accuracy.
Impounding power	Any books of account or other document.	Books or document or computer system	Enhances investigating capabilities.

**Impact / Summary:** The 2025 Act transforms the survey powers for the digital age—authorizing access to electronic data, computer systems, and cloud records. It enables faster, tech-driven verification and strengthens digital compliance and accountability.

# Thank You

Your attention is deeply appreciated