

SEARCH AND SEIZURE UPDATE

CA Hari Agarwal, FCA

- 1. Invalid Return and Undisclosed Income:-** A search action was initiated against assessee in consequence to which assessment was framed under section 158BC, read with section 143(3), determining certain undisclosed income for block period- On appeal, Commissioner (Appeals) reduced amount of undisclosed income- Subsequently, Commissioner (Central) having noticed that Assessing Officer while determining undisclosed income for block period, failed to take into account income declared by assessee prior to date of search in respect of assessment years 1997-98 and 1998-99, invoked provisions of section 263 and directed Assessing Officer to include amount so declared in undisclosed income of assessee- On appeal, it was noted that assessee had filed returns for assessment years 1997-98 and 1998-99 declaring certain income and had also paid advance tax but since said returns were filed after expiry of stipulated period, they had been treated as invalid returns- Even though returns filed by the assessee were invalid returns, yet income declared in said returns could not be termed as undisclosed income and thus, it could not be subject-matter of assessment under section 158BC- Therefore, Commissioner (Central) had no jurisdiction to invoke section 263-

-B. Rajashekharan Nair v. Asstt. CIT (Cochin) 115 ITD 368 (2008).
- 2. Validity of Serving of Notice:-** Assessing Officer assumes jurisdiction to complete assessment/reassessment only after service of a legal and valid notice in accordance with law and mere participation of assessee in proceedings cannot validate assessment proceedings - In order that there should be valid service of notice, person on whom service is effected must have a valid authorization given to him in writing to receive such notice and mere implied authority would not be enough - Assessing Officer reopened assessment of assessee after issuing notice under section 148 and passed reassessment order-Assessee's case was that notice under section 148 was not served on him or any of his authorized representative and, therefore, assessment was void ab initio in absence of valid service of notice-revenue's case was that alleged notice under section 148 was served on a person at shop belonging to firm in which assessee was partner -In absence of material on record to show that person allegedly looking after shop was specifically authorized to receive such notice, it could be said that there was no proper service of a valid notice on assessee and, therefore, assessment completed in absence of a valid service was bad in law-

-Anil Kumar Goel v. ITO (Luck.) 115 ITD 245 (2008)
- 3. Assessment under s. 153A-** Scope of s. 153A-There is no requirement for an assessment under s. 153A being based on any material seized in the course of search-Further, AO having not assessed in assessment under s. 153A any income already assessed under s.143(3) or s. 143(3)/147, assumption of jurisdiction under s. 153A was valid.

-Shivnath Rai Harnarain (India) Ltd. vs. Dy. CIT (Del 'D') 9 DTR 466 (2008)
- 4. S.153C-Assessment in search cases-** Seized documents showing loan advanced by assessee-Transactions of assessee not recorded in books of account-No indication of limited interest of ownership of assessee-Books of account not belonging to assessee-Assessment proceedings cannot be initiated.

-P. Srinivas Naik v. Assistant CIT (Bangalore) 306 ITR 411 (2008)
- 5. Rough estimates and estimation for shops for submission to bank to obtain loan-** Difference between estimations and book of account-Assessing Officer drawing inference that assessee received on money-No evidence-Rates of all shops at time of actual sales cannot be same as in rough estimate-Concurrent finding that on basis of rough estimates no addition could be made-No interference.

-CIT v. Maulik Kumar K. Shah (Guj) 307 ITR 137 (2008)
- 6. Interest under s. 220(2)-Waiver or reduction under s. 220(2A)**

-Genuine hardship and circumstances beyond the control of the assessee-Department having not acceded to the request made by the assessee to expeditiously dispose of the seized shares and securities and to appropriate the sale proceeds towards taxes due from him, and the CIT having not considered the question as to whether the default in payment of demand was due to circumstances beyond the control of the assessee in its proper perspective, matter is remitted to CIT to reconsider the matter relating to waiver of interest as per the provision of s.220(2A)afresh.

B.M. Malani vs. CIT & Anr. (SC) 219 CTR 313 (2008) ■