

ISSUES IN SURVEY, SEARCH & SEIZURE AND APPEALS

by Shri Hari Agarwal, FCA

1. **Bogus Gifts-** In view of categorical findings of the Assessing Officer and the Tribunal that the alleged donor did not have adequate financial capacity to make the gift said to have been received by the assessee's daughter, it cannot be accepted that the gifted amount had actually come from him-Tribunal's findings are pure findings of fact and, therefore the appeal is not maintainable - **Gurbachan Singh Jaggi VS CIT , 214 CTR (P&H) 658.**
2. **Cash vouchers:-** Cash vouchers in connection with construction of a farm house found-Tribunal satisfied with explanation given by assessee and no discrepancies found in accounts-No question of law arises -**CIT Vs.Deepak Seth ,297 ITR Delhi..397.**
3. **Prohibitory order-** Benefit fund-Deposits in name of assessee recovered and cash seized-Writ-if amounts retained by Department assessee would not be in a position to repay genuine depositors-Joint memo by parties-Safeguards in memo totally protect interests of Revenue-Direction to refund cash seized and amounts withdrawn-Parties to abide by clauses contained in joint memo - **D.R.BENEFIT FUND LIMITED Vs. ASSISTANT DIRECTOR OF INCOME-TAX (Investigation) 297 ITR.(MAD) 345**
4. **Penalty U/s.271(1)©-** Concealment-Rejection of claim for deduction U/s.80HHE-Assessee was under the bonafide belief that the services rendered by the assessee company constitute technical services and the assessee was entitled to deduction U/s.80HHE which was also supported by a CBDT clarification by way of Circular No.3, dt.12th February, 2004-There was thus no concealment and rejection of assessee's claim did not attract penalty under section 271(1)©-**CIT Vs.Kamy Software Solutions (P)Ltd-214 CTR (Mad) 403.**
5. **Reassessment-Reason to believe -** Information relating to bogus transaction-Assessing Officer was justified in reopening assessment on the basis of specific information received from Addl. Director of Income-Tax (Investigation) that as per statement of one 'S', during survey conducted at his office premises, the assessee company was involved in bogus loan transactions. -**CIT Vs.Highgain Finvest (P)Ltd.214CTR (Del)441.**
6. **Section 158BB-** Search and seizure-Block assessment-Undisclosed income-No material relating to assessee found during search-Block assessment-Not valid - **CIT Vs.R.M.Patel (HUF) 298 ITR- (Mad) 274.**
7. **Unexplained investment -** Addition on account of unaccounted income invested in constructing kalyana mandapam-Commissioner (Appeals) and Tribunal finding no contribution by assessee towards construction-Finding not controverted and addition deleted-Concurrent finding by both authorities based on valid materials and evidence-No error or legal infirmity in finding so as to warrant interference - **CIT Vs.CHAN BASHA-298 ITR- (Mad)346.**
8. **-Valuation of stock -** Obligatory for assessee to maintain stock register to ascertain actual position of stock-Failure to maintain stock register-Addition made in view of difference in quantification of closing stock and on account of applying low gross profit rate-justified - **SANJAY Vs.CIT-298 ITR (MP) 363.**
9. **Penalty U/s.271D -** Contravention of Section 269SS-Reasonable cause -Assessee, a finance company procuring Rs. 5 lakhs in cash from its director and depositing the same in bank in order to ensure that cheque of Rs.10 lakhs issued by it was not dishonoured, same constituted reasonable cause, hence penalty U/s.271D was not attracted - **Maruti Nandan Finance Cap (P)Ltd Vs.Asstt.CIT -114TTJ (Ahd) 142.**
10. **Estimation of Sales for the Block Period:-** On the basis of undisclosed sales during the period 1st Nov, 1992 to 30th Nov,1992, which was 28 percent of the total sales, Assessing Officer was not justified in making addition by estimating undisclosed sales at 28 percent of total sales over the entire block period de hors any material found during search justifying such estimate.- Asstt. **CIT Vs. Rasna Industries. 114-TTJ (Jd) 283.**