

SEARCH & SEIZURE UPDATE

Compiled by : CA Hari Agarwal

1. **Levy of surcharge-** In view of the fact that the proviso to s.113 was introduced by the Finance Act, 2002 w.e.f. 1st June, 2002, i.e. with prospective effect, and having regard to the principles of law that the taxing statute should be constructed strictly and, ordinarily, should not be held to have any retrospective effect, the question as to whether the said proviso is clarificatory and/or curative in nature and retrospective is referred to be considered by a Larger Bench.
- **CIT vs. Vatika Township (P) Ltd (SC) 17 DTR 353 (2009).**
2. **Cost of Construction-** Practical experience shows that determination of value of the house property by a valuer is generally a matter of estimate based to some extent on guess and despite utmost bona fide the estimate of the value of the house is bound to vary- Difference between cost of construction shown by the assessee and as determined by AO being less than 15 per cent same is to be ignored for purposes of addition, more so when the construction was spread over a period of seven years.
- **Bimla Singh vs. CIT (Pat) 18 DTR 283 (2009).**
3. **Cash Credit- Genuineness-** In view of some peculiar features of the case which belied documentary evidence, loans could not be held to be genuine- Firstly, the loan of Rs.10 lacs did not carry any interest even though the money remained with the assessee for a period of about three and a half year- Accepting that creditors were relatives of assessee, they were agriculturists, and could not afford to spare such large sums for such long period without any interest- Secondly, in all the cases, the issue of drafts in favour of the assessee from the bank accounts of the creditors is preceded by an equivalent or almost equivalent amount of cash deposit in the bank accounts of the creditors- In view of huge time gap between the dates of bills of sale of agricultural procedure and the actual deposit of the cash, the claim that the cash represented sale proceeds of agriculture cannot be accepted- Thirdly, the cash deposit includes even the commission payable for the drafts- Fourthly, the close proximity between the dates of the cash deposit and the issue of the drafts, in some cases both are on the same date, throws considerable doubt on the veracity of the assessee's claim that the monies actually belonged to the creditors- Creditors accounts did not also exhibit banking habits- Fact that the loans were repaid does not advance the case of the assessee- In the circumstances, addition can be made de hors s.68 if the explanation of assessee is not satisfactory .
- **Dy. Cit vs. Smt. Phoolwati Devi (Del 'F') 19 DTR 115 (2009).**
4. **Addition on the basis of dump papers-** Addition towards unexplained investment on the basis of retracted admission of assessee's partner and two dumb papers found during search, without any supporting material, was rightly deleted by the CIT (A)
- **Asstt. CIT vs. Ravi Agricultural Industries (Agra) (TM) 20 DTR 379 (2009).**
5. **Addition on the basis of statement recorded during survey-** Addition made solely on the basis of statement of assessee recorded during survey surrendering an income of Rs. 25 lacs without any supporting material, which surrender was successfully retracted by assessee by annexing footnotes to the return, could not be sustained- No inventory was made during survey, no site of assessee civil contractor was visited, no discrepancy was pointed out by AO, trading results of the relevant assessment year were better than that of immediately preceding year, accounts of assessee were audited and purchases were verifiable- Such addition was also in violation of CBDT Instructions F.No. 286/2/2003/IT (Inv.), dt.10th March, 2003 which was available on the date of survey- Only a single question was put to the assessee- Contention of Revenue that the assessee, by making the said statement, pre-empted the Department from carrying on investigations does not hold water in the facts and circumstances of the case.
- **Satish Builders vs. Asstt. CIT (Del 'C') 23 DTR 171 (2009).**
6. **Validity of search warrant-** Search warrant having been issued in the name of assessee's husband, proceedings under s. 158BC could not have been initiated against the assessee- In respect of the bank lockers, the Panchnama is in the names of husband and the assessee for the simple reason that the bank lockers were in joint names of husband and wife- If during the search of assessee's husband, some incriminating material was found against the assessee, the proper course was to proceed against the assessee under s. 158BD- Search under s. 132 is person specific and not premises specific- Contention of the Revenue that as the premises searched belonged to the assessee, proceedings against her under s. 158BC were valid, could not be accepted.
- **Smt. Nasreen Yusuf Dhanani vs. Asstt. CIT (Mumbai 'A') 17DTR 267 (2009).**