

SEARCH & SEIZURE UPDATE

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- 1. Authorization under s. 132(1)** - Power of tribunal to examine validity of search - What is not decided/cannot be decided by the AO cannot be the subject-matter of appeal before the Tribunal - Tribunal cannot therefore examine the validity of search initiated under s. 132(1).
-Asstt. CIT & Anr. vs. Chilka Vyankatesh Sidram & Ors. (Pune 'A') 26 DTR 207 (2009).
- 2. Validity of search** - Allegation of the assesses that the search was carried out only in the case of C head of the family and that the names of other assesses were inserted in the search warrant subsequent to the search not being true, the search warrant cannot be treated a illegal on this account or for the reason that full names of the assessee were not mentioned in the search warrant as all the assessee are living jointly and are well identified - search was not illegal merely because search warrant was shown only to C and not to all the assessee and a common Panchnama was prepared as all the assessee were living in the same premises.
- Asstt. CIT & Anr. vs. Chilka Vyankatesh Sidram & Ors. (Pune 'A') 26 DTR 207 (2009).
- 3. Receipt of on-money on sale of shops vis-à-vis search of assessee's partner's premises** - Assessee firm having admitted the seizure of the document in question from the premises of its partners, which revealed that the firm had received unaccounted consideration in cash on sale of shops apart from the sale consideration shown in the Sale deeds and the firm having not offered any explanation to show that the document did not pertain to the partnership concern, the

impugned amount is chargeable to tax in the hands of the assessee firm - The matter is remanded to the AO only to consider whether the unaccounted money has to be spread over for different assessment years or taxable in its entirety for the asst. yr. 1993-94.

- Fifth Avenue vs. CIT & Anr. (Kar) 26 DTR 18 (2009).

- 4. Receipt of on-money on sale of shops vis-à-vis search of assessee's partner's premises** - Questions whether the amount allegedly paid by the purchasers to the managing partners of the assessee firm could be brought to tax in the hands of the firm, and whether the amount was assessable in asst. yr. 1993-94 or had to be spread over different years remanded to the AO for fresh consideration in accordance with law.
- Fifth Avenue vs. CIT & Anr. (Kar) 26 DTR 18 (2009).
- 5. Assessment under s. 153A - undisclosed investment in power looms** - In view of documentary evidence showing that the sheds were purchased on 22nd October, 1999 coupled with the statement under s. 132(4) recorded at the time of search stating that the power looms were purchased and installed when the sheds were purchased, unexplained investment in purchase of power looms could not be made in Assessment years 2002-03 and 2003-04 which are subject-matter of proceedings under s. 153A.
-Masoomkhan Shabbirkhan Pathan vs. Dy CIT (Mumabi 'G') 26 DTR 252 (2009).
- 6. Undisclosed rental income from hiring of looms** - Addition on account of undisclosed rental income from hiring of power

looms is sustained @ Rs. 894 per power loom per month on the basis of entries found in the seized material, subject to ad hoc deduction of 20 percent of the said rental income for assessee's expenses, in the absence of any evidence of expenses allegedly incurred by the assessee.

-Masoomkhan Shabbirkhan Pathan vs. Dy CIT (Mumbai 'G') 26 DTR 252 (2009).

7. **Penalty under s. 271(1) (c) - Concealment** - Addition under s. 68 - In the absence of any finding or material indicating concealment, penalty under s. 271(1) (c) could not be imposed merely on the basis of addition under s. 68 made in the assessment - Penalty order is also invalid since the AO has not made specific charge whether the assessment has furnished inaccurate particulars of income or concealed

particulars of income.

- Mehanga Ram Sharma vs. ITO (Asst) 26 DTR 386 (2009).

8. **Assessment under s. 153C** - Determination of six assessment years - Documents having been handed over to the AO of assessee on 3rd November, 2006, relevant to the Assessment year being 2007-08, the AO could reopen the assessment for six preceding years i.e. Assessment years 2001-02 to 2006-07 and assessment for Assessment year 1999-2000 was barred by limitation - Matter is however restored to CIT(A) for considering the date when the relevant documents were handed over by the AO of the person searched to the AO of the assessee.

- Vijay M. Vimawal vs. Asstt. CIT (Ahd 'A') 25 DTR 362 (2009).