

SEARCH & SEIZURE UPDATE

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1. **Assessment under s. 153C- Scope-** Where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be disturbed- Items of regular assessment cannot be added back in the proceedings under s. 153C when no incriminating documents were found in respect of the disallowed amounts in the search proceedings.
- **LMJ International Ltd. vs. Dy. CIT (Kol 'E') 14 DTR 540 (2008).**
2. **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 provisions of s. 220(2A) afresh.
- **B.M.Malani vs. CIT & Anr. (SC) 13 DTR 186 (2008).**
3. **Addition on the basis of Loose Sheets-** AO having made addition of profit noted on loose papers merely on the presumption under s. 132(4A) without verifying the handwriting and without making any enquiry or bringing any material on record to substantiate that the assessee had actually earned the said income, same could not be sustained in the absence of seizure of any material showing any matching investment in any movable or immovable property.
- **Asstt. CIT vs. Ashok Kumar Poddar (Kol 'D') 16 DTR 55 (2008).**
4. **Proceedings under s. 158BD-** There being no reference of any seized material relatable to assessee in the note for initiating proceedings under s. 158BD, such proceedings were invalid.
- Proceeding under s. 158BD vis-à-vis limitation- Proceeding under s. 158BD initiated after 19 months of completion of proceedings under s. 158BC cannot be sustained.
5. **Bharat Bhushan Jain vs. Asstt. CIT (Del 'A') 17 DTR 498 (2009).**
5. **Estimating suppressed sales;-** Addition made by AO by estimating suppressed sales on the basis of consumption of electricity having no scientific basis, was rightly deleted by CIT(A)- Further, cash seized from the residence of director of assessee company and declared as his individual income could not be added in the hands of assessee.
- **Dy. CIT vs. Royal Marwar Tobacco Product (P) Ltd. (Ahd 'D') 16 DTR 129 (2008).**
6. **Genuineness of gift-** Assessee having produced an affidavit from the donor, copy of NRI account in the name of donor, certificate affirming gross salary of the donor and copy of the official cheque in the name of the assessee the gift said to have been received by assessee from his brother, an NRI, has to be treated as genuine in the absence of any contrary evidence to refute the same.
- **Dy. CIT vs. Vijay Parkash (HUF) (Asr) 16 DTR 125 (2008).**
7. **Genuineness of share transaction-** In the face of letter of broker giving the details of shares purchased and sold on behalf of the assessee, mentioning therein the commission charged by him as well as proceeds available with him for purchase of shares as well as realization of sale proceeds and crediting the same to the bank account of the assessee and other evidence produced by assessee, CIT(A) was justified in deleting addition under s. 68 made by AO on the ground that long-term capital gains claimed by assessee in transaction of purchase and sale of shares was not genuine.
- **Asstt. CIT vs. Chandresh Kumar Maheshwari (Jd) 16 DTR 114 (2008).**
8. **Statement made by a third party** In the absence of recovery of any material in the course of the search, addition under s. 69A made by the AO in the block assessment taking into consideration statement made by a third party independent of the search cannot be sustained.
- **CIT vs. Concorde Capital Management Co. Ltd. (Del) 25 DTR 97 (2009).** ■

OBITUARY

CA. Aila Sateesh Kumar,

D.O.D. 28 - 1 - 2010.

The Management Committee convey our condolences to the bereaved family