

SEARCH & SEIZURE UPDATE

Compiled by : CA Hari Agarwal

1. **Seizure of records, documents, etc. pertaining to third party** - Department is not entitled to demand unrestricted access to and/ or right to acquire the electronic records present in the laptops belonging to the auditors of the assessee pertaining to third parties unconnected with the person against whom the search and seizure operations under s. 132 have been conducted and where the laptops were seized.
 - **S. R. Batliboi and Co. vs. Director of IT (Investigation) (Del) 224 CTR 369 (2009).**
2. **Household Expenditure:-Computation of undisclosed income**- Amounts received by the assessee from her husband and other family members as found noted on certain papers which itself indicate that these amounts were received towards household expenses could not be treated as income of the assessee, and the assessee having also explained the household expenses with reference to these amounts, gifts and withdrawals from banks, addition on account of undisclosed income was not justified.
 - **Dy. CIT vs. Sunil Gordhandas Mathreja (Mumbai 'F') 13 DTR 137 (2008).**
3. **Inflation of Expenditure- CIT(A) having found that all the payments** made by the assessee were duly recorded in the seized material and the assessee has reconciled his trial balance and that the net profit rate shown by the assessee is consistent with the past results, addition made by AO on account of alleged inflation of expenses cannot be sustained.
 - **Dy. CIT vs. Sunil Gordhandas Mathreja (Mumbai 'F') 13 DTR 137 (2008).**
4. **No addition can be made only on the basis of admission in statement under s. 132(4)**:- No addition can be made only on the basis of admission in statement under s. 132(4) - However any expense deduction or allowance claimed under the Act which is found to be false and admitted so by the assessee can be added as undisclosed income- As the AO has failed to bring out any evidence in support of the addition, there is no other alternative but to delete the additions.
 - **Contech Transport Services (P) Ltd. & Ors. Vs. Asstt. CIT (Mumbai 'H') 19 DTR 191 (2009).**
5. **No addition in block assessment can be made solely on the basis of statements recorded during search**;- No addition in block assessment can be made solely on the basis of statements recorded during search.
 - **Dy. CIT vs. Partap Singh Rajendra Chamola & Co. (Chd 'A') 19 DTR 182 (2009).**
6. **Penalty under s. 271(1)(c)- Validity**- Invalid assessment under ss. 153A or 153C- Assessment on assessee under s. 153A and/or s. 153C r/w s. 153A being itself invalid, penalty imposed on assessee under s. 271(1)(c) in the course of such invalid assessment could not be sustained, even by recourse to Explan. 5 to s. 271(1)(c).
 - **Asstt. CIT vs. Smt. Surinder Kaur (Lucknow 'A') 18 DTR 38 (2009).**
7. **Penalty under s. 271(1)(c)- Applicability of Explan. 5** - Payment of tax- Assessee having offered additional income towards undisclosed investment in various assets following seizure of certain items of jewellery and silver articles and requested the concerned CIT to auction the ornaments seized from him and adjust the proceeds thereof against the tax due from him, conditions for applicability of Explan. 5 to s. 271(1)(c) stand satisfied and no case is made out for imposition of penalty under s. 271(1)(c).
 - **Vinod K. Bhagat vs. Asstt. CIT (Mumbai 'H') 23 DTR 345 (2009).**
8. **Impounding of books, documents, etc.** - Conditions precedent- Reasons recorded by authorized officer not revealing that he inspected/ examined the books before impounding the same, reasons recorded on the next day of survey and the list of books impounded not showing that they belonged to the client of the person subjected to survey, i.e a firm of chartered accountants as was claimed in the reasons recorded, there was a gross violation of s. 133A(3)(ia) in impounding the books.
 - **U.K. Mahapatra & Co. & Ors. vs. ITO & Ors. (Ori) 16 DTR 369 (2008).**

ANNOUNCEMENT

As discussed the SICASA Regional Conference will be held at Hyderabad on 1st & 2nd Feb. 2010.

The details are : **Dates** : 1st & 2nd Feb 2010

Venue : The Venue is Sri Sathya Sai Nigamagam, Srinagar Colony, Hyderabad.

Host : SICASA of Hyderabad Branch of SIRC of ICAI

more details will be intimated to students shortly.