

- 1. Computation of undisclosed income vis-à-vis set off of brought forward losses-** Sec. 158BB(4) r/w Expln. (a) mandates that only brought forward losses of the past years under Chapter VI and unabsorbed depreciation under s. 32(2) are to be excluded while aggregating the total income or loss of each previous year in the block period, and set off of the loss suffered in any of the previous years in the block period against the income assessed in other previous years in the block period is not prohibited- Settlement Commission erred in disallowing set off of inter se losses and depreciation accruing in a previous year in the block period against the income returned/assessed in any other previous year in the block period- Impugned judgment of the High Court as well as the decision of the Settlement Commission are set aside and the matter is remitted to the Settlement Commission for fresh computation of undisclosed income under s. 158BB.

- E.K. Lingamurthy & Anr. vs. Settlement Commission (IT & WT) & Anr. (SC) 19 DTR 99 (2009).
- 2. Validity of warrant of Authorisation-** Seizure of cash and silver by police- There being no allegation of mala fide against Director of IT (Inv.) and material on record revealing that he was in possession of information from which he had reason to believe that money and silver seized by police from the assessee represented wholly or partly assets which have not or would not have been disclosed for purposes of income-tax, warrant of requisition issued by him was valid- Belief required under s. 132A is subjective and not open to objective test.

- Krishnagopal vs. Director of It (Inv.) Anr. (MP) 19 DTR 14 (2009).
- 3. Penalty under s. 158BFA(2)- Discretionary or mandatory-** From a plain reading of s. 158BFA(2) it does not appear that in all cases where undisclosed income is determined by the AO under cl. (c) of s. 158BC, the imposition of penalty shall follow as a natural consequence thereof- A discretion is vested with the AO to levy penalty in respect of undisclosed income- It cannot be inferred that the absence of the circumstances enumerated in the proviso to s. 158BFA(2) will attract penalty automatically- Also, there is no presumption that imposition of penalty is automatic for any failure or violation in respect of cases other than those covered by s. 273B- In the instant case, the CIT(A) and the Tribunal have concurrently found that the difference between the undisclosed income shown in the return is the result of the estimation of the opening capital prior to the block period and that the capital possessed by the assessee prior to the block period as revealed by the ledger and the material seized during search could not be treated as undisclosed income of the first assessment year in the block period- Thus, no substantial question of law arises from the order of the Tribunal upholding the order of the CIT(A) deleting the levy of penalty under s. 158BFA(2).

- CIT vs. Satyendra Kumar Dosi (Raj) 18 DTR 236 (2009).
- 4. Limitation under s. 158BE-** Search of assessee's office and business premises conducted on 12th Dec., 1995, same concluded on that very day, cash seized,

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prohibitory order passed and Panchnama drawn was the last Panchnama evidencing conclusion of search for purposes of limitation under s. 158BE- Panchnamas drawn on further searches conducted on 19th Jan., 1996, 7th Feb., 1996, and 12th Feb., 1996 on which dates no seizure took place, could not be said to be Panchnamas in execution of search for purposes of computing limitation for block assessment- Tribunal was therefore, legally justified in examining the correctness of the last Panchnama dt. 12th Feb., 1996, and then also justified in computing limitation for block assessment qua Panchnama dt. 12th Dec., 1995 and holding the block assessment as barred by limitation- Tribunal was further justified in rejecting rectification application filed by Revenue under s. 254(2).

- CIT & Anr. vs. T.S. Chandrashekar Through LRs (Kar) 17 DTR 194 (2009).

5. **Release of assets seized-** Application of assessee not responded to by CIT- Assets having been seized more than ten years back, CIT direct to decide the application of assessee for release of assets within a period of two months by a speaking order

Held: Considering the short grievances made by the petitioner, interest of justice would be met in case CIT is directed to consider the application submitted by the petitioner for release of the seized assets in the raid in the question, and decide the same by a speaking order in accordance to law. In case the proceedings have come to an end, under law petitioner is entitled to release of assets, CIT may pass appropriate orders in accordance to the statutory provision in this regard. However, if for any reason whatsoever CIT comes to the conclusion that the prayer made by the petitioner and the relief claimed for cannot be granted, it shall be incumbent upon CIT to record reasons thereof and communicate the decision to the petitioner within a reasonable period. Needless to emphasize that in case decision is already taken to the petitioner. Accordingly, this petition is disposed of with direction to CIT to take action as indicated hereinabove within a period of two months from the date of receipt of certified copy of this order.

- Rajesh Asrani vs. CIT & Anr. (MP) 17 DTR 333 (2009).

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