

## Search and Seizure Update

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**1.Ownership of Documents:-**Search in residential premises occupied by assessee and his father-Seizure of documents-Assessee's father accepting ownership of documents-Addition to income of assessee based on documents –Not valid.

- **CIT v. Shiv Prakash Aggarwal (Delhi) 306 ITR 324 (2008)**

**2.Addition on the basis of material seized from a third party-** Court had directed the sale of movable assets of the assessee for a consideration of Rs.1 crore to PST, a proprietary concern of one S- Three letters seized from T, father of S, revealed that the consideration for the sale of the movable assets was raised to Rs. 1.50 crores by the parties- Assessee contended that the said letters were not signed by its chief executive and were forged documents- However, AO presumed the seized letters to be genuine and made the impugned addition of Rs.50 lacs without issuing summons to the concerned person or making him available for cross- examination- Not justified- No corroborative evidence was found by the AO- AO without issuing summons to the person concerned or making him available for cross-examination on the basis of the said letter could not make addition- Tribunal appears to have summarily dismissed the alternative contention of the assessee that neither the assessee nor the Special Officer have received the additional money and the addition, if any, was required to be consideration in the hands of the beneficial owner- Accordingly, the order passed by the Tribunal upholding the addition is set aside and the matter is remanded back to the AO to consider the matter afresh.

- **Bangodaya Cotton Mills Ltd. vs. CIT (Cal) 21 DTR 200 (2009).**

**3.Assessment under s.153A – Validity vis-à-vis Form of return –** Form for filing return under s.153A being the same as prescribed under s.139, contention on behalf of assessee that assessment under s.153A is invalid because no form is prescribed for filing return there under is not acceptable.

**4.Text of seized document:-** .Text of seized document clearly describing that the sum mentioned therein was received by the assessee as “unsecured interest-free loan” and there being no material on record to suggest that the said figure in any way represented the income of assessee or that the source stated in the said document was in any way false or incorrect, CIT(A) was justified in deleting the addition made by AO on the basis of said document – Sec.292C does not help the Revenue, rather, it supports that case of assessee – Unless some evidence or material is brought on record by the Revenue to show that what is stated in the seized document is not correct state of affairs. The state of affairs stated in the seized document has to be presumed to be true as mandated by s.292C

**- ACIT vs VATIKA GREENFIELD (P) LTD (Del) 121 TTJ 208 (2009).**

**5.Source of source cannot be examined:-** Tribunal found that creditor R has been regularly assessed to income-tax and copies of his return for the relevant year were filed before the AO along with his confirmation- R also appeared before the AO and furnished all the information and details required by him- R admitted having advanced the impugned amount to the assessee and he also filed bank statements pertaining to his proprietary concerns indicating that the money was advanced to the assessee through bank drafts- It was explained that the impugned amount was received by the said concerns from PT towards repayment of loan given earlier- AO is not permitted to examine the source of the source once the assessee is able to establish that the transaction with his creditor is genuine and the identity and creditworthiness of the creditor have been established- Therefore, addition could not be made merely because PT was not traceable- Addition rightly deleted by Tribunal.

**- CIT vs. Diamond Products Ltd. (Del) 21 DTR 9 (2009).**

**6.Bogus purchases-** Department having accepted purchases made by assessee, could not have assumed that the assessee had inflated purchases and made addition- Alleged investigation carried on by the Inspector was not part of the report which the Inspector had prepared for perusal of AO- Statement of A, which was made basis of addition, was not even put to the assessee and evidence regarding operations of T, brother of A collected by Investigation Wing, was not even available to the AO- Addition was rightly deleted and no substantial question of law arose out of concurrent findings of CIT (A) and the Tribunal which do not suffer from any infirmity.

**-CIT vs. J.M.D. Computers & Communications (P) Ltd (Del) 20 DTR 317 (2009).**

