

SEARCH & SEIZURE UPDATE

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1. - **Income offered during survey not included in the return-** Assessee having disclosed an income of Rs. 9 lacs during survey and having also paid advance tax thereon accordingly but having not included the said income in her return nor having retracted the said disclosure, AO rightly entertained a reason to believe that income chargeable to tax had escaped assessment, hence proceedings for reassessment were validly initiated- Order of CIT(A) quashing reassessment proceedings on the ground of change of opinion was liable to be set aside- Impugned order of CIT(A) set aside and matter remanded for disposal on merits.
- **Dy. CIT vs. Dr. (Mrs.) Asha Jaffrey (Chennai 'A') 19 DTR 342 (2009).**
2. **Levy of surcharge-** Even without the proviso to s.113 inserted vide Finance Act, 2002, w.e.f. 1st June, 2002, surcharge was leviable on the tax- Proviso to s.113 is clarificatory in nature.
- **CIT vs. Rajiv Bhatara (SC) 19 DTR 225 (2009).**
3. **Alleged forfeiture of earnest money for sale of agricultural land-** Assessee is said to have entered into an agreement for sale of his agricultural land and received Rs.7,00,000/- as earnest money which is claimed to have been forfeited as the vendee could not apply with the terms and conditions of the agreement- In view of the factual position that the said agreement was not written on any stamp paper and the alleged vendee did not have the financial capacity to purchase the said land, the AO, CIT(A) as well as the Tribunal arrived at the conclusion that the said agreement was a bogus document, and treated the aforesaid amount as assessee's, income- Inferences drawn by the Revenue authorities are wholly justified and call for no interference- No question of law arises for determination.
-**Dr. Prem Chand Sharma vs. CIT & Anr. (P&H) 19 DTR 291 (2009).**
4. **Identity of share applicants not being in dispute, no addition in block assessment on account of share application money can be made in the hands of assessee-** If the share application money is received by the assessee company even from the bogus shareholders whose names are given to the AO then the Department is free to proceed to reopen their individual assessments in accordance with law but no addition could be made in the hands of assessee without establishing that the investment emanate from the coffers of assessee.
- **Anu Industries Ltd. Vs. Asstt. CIT (Del 'G') 19 DTR 465 (2009).**
5. **Estimation of profit after rejection of books of account-** AO having estimated the profit by applying a higher net profit rate to total contract receipts after rejecting assessee's books of account by invoking the provisions of s. 145(3), no separate addition can be made on account of cash credit under s. 68 even though the assessee has failed to discharge its onus of proof in explaining the amount shown in the books of account as 'market outstanding'- no substantial question of law arises for consideration.
- **CIT vs. G.K. Contractor (Raj) 19 DTR 305 (2009).**
6. **Assessment under s. 153A-** Absence of search in the case of assessee- There being no search in the case of assessee, no assessment could be made under s. 153A nor under s. 153C without following the procedure prescribed therein.
-**Jindal Stainless td. Vs . Asstt. Cit (Del 'G') 19 DTR 345 (2009).**
7. **Opportunity of being heard-** Assessee having not been given opportunity to cross-examine the person on the basis of whole sole statement addition was made in assessment under s. 153A, the addition is liable to be deleted- Further, assessee having denied under-billing and receipt of extra consideration and having furnished in support comparable sales and details of parties with whom transactions were made, no addition under s. 153A could be made by AO without making any attempt at verification and without bringing any positive material on record.
-**Jindal Stainless td. Vs . Asstt. Cit (Del 'G') 19 DTR 345 (2009).** ■