

# SURVEY, SEARCH AND SEIZURE

by Shri Hari Agarwal, FCA

- 1. Addition on account of Alleged unaccounted sales** - In absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged unaccounted sales, the finding of the Tribunal that only the GP on the said amount can be brought to tax does not call for any interference.  
- **CIT vs. Gumbachhan Singh J. Juneja (Guj) 215 CTR 509 (2008)**
- 2. Higher Consideration** - Question whether any higher consideration than the one mentioned in the sale deed did pass from the assessee to the seller is a pure question of fact and the Department having failed to show that any relevant material has been ignored or misread by the CIT (A) or the Tribunal, while deleting the addition made by AO such questions, are required to be answered against the Revenue and in favour of the assessee.  
- **CIT vs. Bhanwarlal Murwatiya (Raj) 215 CTR 489 (2008)**
- 3. Penalty under s. 271 (l) (c) - Concealment** - Assessed income 'nil' after adjustment of brought forward losses  
- No penalty under s. 271 (l) (c) could be levied where assessed income was 'nil' after adjustment of brought forward losses.  
- **ITO vs. Wimco Seedlings Ltd. (Del 'H') 114 TTJ 986 (2008)**
- 4. Search and seizure - Assessment under s. 153A** - Scope of s. 153A - There is no requirement for an assessment made under s. 153A being based on any material seized in the course of search.  
- **Ms. Shyam Lata Kaushik vs. Asstt. CIT (Del 'G')**

**114 TTJ 940 (2008)**

5. **Marriage Expenses:-** Only on the basis of statement of assessee's grandmother that a sum of Rs. 6 to 7 lacs was spent on assessee's marriage by the maternal uncle of assessee who has adopted the assessee, no addition could be made in block assessment in the hands of assessee.  
- **Prabal Lakhotia us.Asstt. CIT (Jd) 114 TTJ 938 (2008)**
6. **Penalty under s. 271(l) (c) -** Concealment - Assessee claiming exemption by way of revised return - Mere filing of revised return based on bona fide belief that assessee was entitled to exemption in respect of value of car won in a slogan contest supported by the decision of Tribunal and the judgment of High Court cannot constitute either concealment of income or furnishing inaccurate particulars of income so as to attract penalty under s. 271 (l) (c).  
- **Vikram Chadha vs. ITO (Asr) 115 TTJ 123(2008)**
7. **Seizure of Cash:-** Cash seized from assessee - Evidence of withdrawal of amount from bank a few days prior to search - Reasonable explanation - Amount not assessable as undisclosed income  
- **Mansukhlal Ratanlal Jain (Chopra) v. Union of India (MP) 300 ITR 98(2008)**
8. **Notice U/s 158BD:-** Chapter XIV-B should not be exercised in a mechanical manner - Notice under section 158BD vague indicating non - application of mind - Notice not valid.  
- **New Delhi Auto Finance P. Ltd. v. Joint CIT (Delhi) 300 ITR 83 (2008)**
9. **S. 132 - Search and seizure - Bank accounts - Restraint order on bank - Withdrawal of money from bank accounts of assessee by Department in shape of fixed deposits - Not proper - Writ petition - Challenging search - High Court - Dismissal - Appeal to Supreme Court - Direction only for completing assessments within permissible time**  
- **K. C. C. Software Ltd. v. Director of Income - Tax (Investigation) (SC) 298 ITR 1(2008)**
10. **Cash credit -** Share application money - If the share application money is received by the assessee company from alleged 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 it cannot be regarded as undisclosed income of assessee company.  
- **CIT vs. Lovely Exports (P) Ltd. (SC) 216 CTR 195 (2008)**
11. **Presumption that goods seized belong to assessee -** Scope of - Income from undisclosed sources - Seizure of primary gold and gold ornaments by customs authority - CEGAT finding assessee not owner of gold and released gold from confiscation - Assessing authority failing to establish ownership - Presumption of ownership cannot be drawn on possession - Necessity of nexus between conclusion and primary facts-Value of gold not taxable in hands of assessee.  
- **Mangilal Agarwal (Late) v. Asst. CIT (Raj) 300 ITR 372 (2008)**

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We would like to inform the members, the CPE Credit Requirements for the rolling period of three years starting from the calendar year 2008 as given below:

#### CPE Credit Requirements for members of the Institute

1. All the members who are holding Certificate of Practice (except those members who are residing abroad), unless exempted, are required to:
- Complete at least **90** CPE credit hours in each rolling three-year period of which 60 CPE credit hours should be of structured learning.
  - Complete minimum **20** CPE credit hours of structured learning in each year.
2. All the members who are not holding Certificate of Practice or are residing abroad (whether holding Certificate of Practice or not), unless exempted, are required to:
- Complete at least **45** CPE credit hours of structured/unstructured learning in each rolling three-year period
  - Complete minimum **10** CPE credit hours of structured/unstructured learning in each year.

New Delhi  
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Secretary  
CPE Committee