

ISSUES IN SURVEY, SEARCH & SEIZURE AND APPEALS

by Shri Hari Agarwal, FCA

DEPUTY CIT (Bom) 300 ITR 216 (2008)

- 1. Difference between sections 133A and 132 (4)** - Statement in survey operations - Not conclusive piece of evidence - Statement by partner in survey operations regarding undisclosed income of firm- Subsequent retraction of statement by firm - Amount disclosed by partner not assessable as income of firm.
- CIT v. S. KHADERKHAN SON 300 ITR (Mad) 157 (2008)
- 2. Computation of Cost of Construction** - cost of construction of bungalow and interior decoration through builder known to Revenue even before search - No material found during search in respect of amount said to be paid to builder in cash over and above Cheque payment - Material found in survey in premises of builder - Excludible in block assessment of assessee.
- CIT v. S. AJIT KUMAR 300 ITR (Mad) 152 (2008)
- 3. S. 139 vis-à-vis - Sec 158BC** - Appeal to Commissioner (Appeals) - Competency of appeal - Search and seizure - Block assessment - Delay in filing return under section 158BC - Levy of interest under section 158BFA - Difference between sections 139 and 158BC - Appeal against levy of interest - Maintainable only if assessment is challenged.
- SK. MUNEEER SK. MANNU CHOUDHARY vs.

- 4. Addition on the basis of statement under s. 132 (4)** - There being no spectre of evidence regarding undisclosed income, addition made only on the basis of statement of managing partner of assessee under s. 132 (4), given in a state of confusion and later retracted, could not be sustained either in part or as a whole.
- Dy. CIT vs. Pramukh Builders (Ahd 'B') (TM) 115 TTJ 330 (2008)
- 5. Penalty under s. 271 (1) (c) - Concealment** - Income voluntarily surrendered by assessee - There being no material with the AO at the time when income was voluntarily surrendered by assessee to establish that such income was concealed income of assessee or in respect of which assessee had furnished inaccurate particulars of income, penalty under s. 271(1) (c) could not be imposed.
- Santosh Narain Kapoor vs. Dy. CIT (Lucknow 'N') 115 TTJ 402 (2008)
- 6. Power of Tribunal to examine validity of search** -

EXPERIENCE IS THE NAME EVERYONE GIVES TO THEIR MISTAKES.

Tribunal has no jurisdiction to adjudicate upon the legality of the search - Assessee has no right to challenge the search also for the reason that the impugned search was carried out on the business/residential premises of a third party and not on the premises of the assessee.

- **P. Srinivas Naik vs. Asstt. CIT (Bang 'B') 114 TTJ 856 (2008)**

7. **Block assessment - Limitation under s. 158BE** - In pursuance of common search warrant in the name of assessee, one J and others, Panchnama in the name of assessee having been drawn on 17th Sept., 1998, block assessment made on assessee on 28th Nov., 2000, was barred by limitation under s. 158BE and Revenue could not extend the limitation on the basis of Panchnama dt. 13th Nov., 1998, prepared in the

name of J in which the assessee's name appeared only as one of the Panchas.

- **Dy. CIT vs. Raju Lalchand Sud (Mumbai 'C') 114 TTJ 767 (2008)**

8. **Proceedings under s. 153C - Validity** - Action under s. 153C can be taken against a person only if valuable or books of account or documents belonging to that person are seized in the course of a search carried out in the case of some other person - Action under s. 153A r/w s. 153C could not be initiated against the assessee on the basis of seizure of books of account and documents from a third party which contained the transactions relating to group concerns of that party and which do not belong to the assessee.

- **P. Srinivas Naik vs. Asstt. CIT (Bang 'B') 114 TTJ 856 (2008)**

ICAI - ANNOUNCEMENTS

LAST PROFESSIONAL EDUCATION [EXAMINATION-II] EXTENDED TO MAY 2009

Bos/Ancmnet/PE-II/227

May 30, 2008

As you may be aware, originally it was decided to hold the Professional Education (Examination-II) upto to May, 2008. However, the Council of the Institute has decided to hold two more Professional Education (Examination-II) in November, 2008 and May, 2009 as well, in order to mitigate the hardship being faced by the following categories of students:

- i. Candidates who were exempted from passing the Professional Education (Examination-I) under proviso to sub-regulation (1) of Regulation 25B and are registered as candidates for the Professional Education (Course-II) and have also fulfilled the eligibility requirements.
- ii. Candidates who are registered for Professional Education (Course-II) after passing Professional Education (Examination-I) / Foundation Examination / Entrance Examination as the case may be and have not yet exhausted five consecutive attempts (after having been eligible for admission to the said examination).

Eligible candidates are, therefore, advised to avail the opportunity without fail.

Candidates who are registered for Professional Education (Course-II) but have not yet fulfilled their respective eligibility conditions are, however, advised to submit the prescribed number of test papers before July 1, 2008 and January 1, 2009 and become eligible for appearing in the November, 2008 and May, 2009 Professional Education (Examination-II), respectively.

Additional Director of Studies (SG)

ALL PROFESSIONAL EDUCATION (COURSE-II) STUDENTS ELIGIBLE TO APPEAR IN FINAL EXAMINATION DURING LAST TWELVE MONTHS OF ARTICLED TRAINING

Bos/Ancmnet/Final/227

May 30, 2008

With a view to mitigate the hardship being faced by a category of students who have passed Professional Education (Examination-II) and have opted for registration under Final (New) Syllabus and also to bring such students at par with the students who have passed Professional Education (Examination-II) and have opted for the Final (Old) Syllabus, the Council of the Institute has resolved to permit, all students who have passed Professional Education (Examination-II), irrespective of whether they have been registered under Final (Old) syllabus or (New) syllabus, to appear in the final examination, provided they have completed the practical training as is required for admission as member or are serving the last twelve months of articulated training on the first day of the month in which the final examination is scheduled to be held and complied with other eligibility conditions(s).

Additional Director of Studies (SG)