

SEARCH AND SEIZURE UPDATE

by Shri Hari Agarwal, FCA

1. **Validity of service of notice-** Report of Inspector who allegedly served the notice under s. 148 being undated and the lady on whom the notice was served not having been identified by the Inspector, there was no valid service of notice on the assessee as per provisions of s. 282 and order 5. r. 18, CPC, hence CIT (A) was justified in annulling the assessment.

ITO vs. Bedi Enterprises 114 TTJ (Lucknow 'B') 706 (2008)

2. **Retraction of Statement -** Undisclosed income admitted before DDIT -Retraction of admission after three months-Long interval between admission and retraction-No material to, support retraction-Assessment of undisclosed income-Justified.

Carpenters Classics (Exim) P. Ltd V. Deputy CIT 229 ITR (Bangalore) 124 (2008)

3. **S. 158BFA-Block assessment-** Penalty-Revision-Undisclosed income returned by assessee substantially accepted and small addition made-Assessee accepting addition and paying tax with interest, though over a period of time- Assessing Officer levying penalty based on addition made by him-Not erroneous- Commissioner-No ground to interfere in revision.

Habibullah Khanyari v. Deputy CIT 299 ITR (Mumbai) 151 (2008)

4. **S. 271(1)(c) - Penalty-** Concealment of income-Search and seizure-Finding that income had been concealed-Immunity from penalty-Scope of Explanation 5 to section 271(1)(c)-Sufficient if disclosure is made and tax is before completion of assessment-Statement need not specify manner in which income was earned.

CIT v. Mahendra C. Shah 299 ITR (Guj) 305 (2008)

5. **Addition on the basis of statement recorded under s. 132(4)-** Addition on the basis of unretracted statement of assessee under s. 132(4) regarding excess stock was rightly made especially

when the same was further corroborated by the statement of his son, who was working as a manager.

Ravindra D. Trivedi vs. CIT 215 CTR (Raj) 313 (2008)

6. **Penalty under s. 271(1)(c)- Concealment -** Bonafide claim for deduction under ss. 32 and 35AB simultaneously-Assessee entertaining a bone fide belief at the time of filing return that it was entitled to deduction both under ss. 32 and 35AB on technical know-how, penalty under s. 271(l)(c) for concealment or furnishing inaccurate particulars of income could not be imposed on the basis of subsequent decision of Supreme Court to the effect that such double deduction was not allowable against same item.

CIT vs. Carborandum Universal Ltd. 215 CTR (Mad) (2008)

7. **Cash credits-Share application money-** Payments from same bank-Not a case of bogus or benami accounts-Language and type of confirmation same- Confirmations prepared by assessee and got signed by share applicants-Permissible-Notice-Non-compliance-Cannot inferred that onus not discharged.

A-One Housing Complex Ltd. v. ITO 299 ITR (Delhi) 327 (2008)

8. **Income - Addition - Low GP rate -** Assessee having not produced any books of account, stock register, etc. before the AO failed to substantiate his submission that there was a general fall in GP rate in the business of trading of raw rubber, Tribunal was justified in sustaining the GP rate of 11.2 per cent applied by the AO as against 10.09 per cent declared by the assessee.

Anil Bagla vs. CIT 215 CTR (Del) 444 (2008)

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