

SEARCH AND SEIZURE UPDATE

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1. No addition on the basis of DVO Report - In the absence of recovery of any material during the course of search which could lead to the conclusion of undisclosed investment in the property, addition could not be sustained only on the basis of the return filed by the assessee and the report of the DVO-Tribunal having rightly deleted the addition, no substantial question of law arises.

-CIT vs. Ram Gopal Agarwal (Del) 9 DTR 175 (2008).

2. Issues in the case of-Kanhaiyalal Agarwal vs. Asstt. CIT (Agra) (TM) 116 TTJ 849 (2008).

a. Assets belonging to other family members - Assessee having explained that the share certificates found in his son's bedroom which were in the names of various persons other than the family members pertained to the share business carried on by the son, and the latter having confirmed the same, addition in respect of undisclosed investment in said shares cannot be made in the hands of assessee.

b. Receipts from sale of gold ornaments - In view of confirmation of a Dalal that he has sold jewellery belonging to the assessee, the explanation of the assessee that the unaccounted cash seized during search was the sale proceeds of gold ornaments received by him at the time of his marriage cannot be rejected, simply because the particulars of jewellery are not mentioned in the Dharamkanta receipt and, therefore, addition cannot be sustained.

c. Ornaments brought for polishing-In view of the con-sistent stand of the assessee and the confirmation of his son that the ornaments seized from the assessee's shop were brought to the shop by the son only for getting them polished and the same were to be returned back to his customers, addition cannot be sustained in the hands of the assessee.

d. Source for silver bullion - In view of the fact that the assessee's father was carrying on silver business and that he had handed over 240 kgs. of silver bullion to his wife (assessee's mother), before his death, the explanation of the assessee that 240 kgs. silver bullion seized from his residence was gifted by his mother to his two sons has to be accepted and the source of said silver bullion has

to be treated as explained and, therefore, no addition is sustainable on this account.

e. Ornaments belonging to guests- Silver ornaments having been recovered from the bedroom in the assessee's house which was occupied by an outstation guest, and the latter having stated on oath that he was occasionally visiting the city and purchasing silver ornaments for trading purposes and that he was staying at assessee's house on account of business relationship with him, no addition can be made on account of unexplained investment in the said ornaments in the hands of the assessee.

3. Assessment in case of search or requisition

There is no requirement for an assessment made under section 153A being based on any material seized in course of search .

Ms. Shyam Lata Kaushik v. Asstt. CIT (Delhi) 114 ITD 305 (2008).

4. Unexplained Gold bars -Gold bars having been admitted to be unexplained reference to purchase bill was not relevant and AO was justified in valuing the same under s. 69A as on the date of search for purposes of block assessment.

-Talwarsons Jewellers vs. Asstt. CIT (Chd 'B') 118 TTJ 721 (2008).

5. Jewellery received for repairs - In the absence of any material to rebut the claim of assessee as regards jewellery received for repairs and jewellery belonging to assessee's family members, no addition could be made in block assessment in respect of these items.

-Talwarsons Jewellers vs. Asstt. CIT (Chd 'B') 118 TTJ 721 (2008).

6. Loose Diamonds- Purchase of loose diamonds and diamond studded jewellery having been found to be genuine and items having been shown to be properly acquired as per accounts, no addition could be made in block assessment on the basis of valuation by the registered valuer, especially when there are no material to show that diamonds are not the same as are claimed to have been purchased by the assessee from year to year.

-Talwarsons Jewellers vs. Asstt. CIT (Chd 'B') 118 TTJ 721 (2008).

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