

SEARCH & SEIZURE UPDATE

by CA Hari Agarwal, FCA

1. Penalty under ss. 271(1)(a), 271(1)(c) and 273(2)(a)- Immunity under amnesty scheme-

Disclosure of income after search by way of revised returns-In view of findings of fact of the Tribunal based on appreciation of evidence on record to the effect that the declaration made by the assessee was voluntary before detection by the Department because the Department was not in a position to point out any concrete material to establish concealment, it was justified in canceling the penalties under ss. 271(1)(a), 271(1)(c) and 273(2)(a) by extending immunity under the amnesty scheme and the factum of mere filing of revised returns on a number of occasions cannot show that returns were not voluntary.

-CIT vs. C.A. Taktawala (GUJ) 14 DTR 34 (2008).

2. Penalty under s. 271(1)(c)- Concealment-

Addition on the basis of statements during survey retracted later-Partner of the assessee firm having retracted from his original statement disclosing additional income and the Revenue having not brought out any evidence on record to contradict the submission made by him in the retraction letter, and there being no corroborative evidence which could directly lead to declaration of said

income, penalty under s. 271(1)(c) is not leviable, though the addition has been sustained in second round on revision by CIT.

-ITO vs. A.C. Exports (Mumbai 'B') 13 DTR 98 (2008).

3. Retraction of Statement -

Addition on the basis of retracted statement under s. 132(4) - Statement recorded at odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission and therefore addition on the basis of retracted statement under s. 132(4) was not called for in the facts and circumstances of the case.

- Kailashben Manharlal Chokshi vs. CIT (Guj) 220 CTR 138 (2008).

4. Purchase consideration-

Both assessee and alleged payees having denied to have advanced or received any amount as shown to have changed hands as per the MoU found during search, no addition could be made in block assessment in the absence of any further corroborative facts, the presumption under s. 132(4A) being a rebuttable one- No substantial question of law arose out of order of Tribunal deleting the addition.

Article

IT IS THE TRUE NATURE OF MANKIND TO LEARN FROM MISTAKES, NOT FROM EXAMPLE.

-CIT vs. Ved Prakash Choudhary (Del) 218 CTR 99 (2008).

- 5. Unexplained investment in property-** Without rejecting the books of account of the assessee, the addition made towards cost of construction on the basis of DVO's report cannot be sustained.

-Lavkush Vatika (P) Ltd. vs. Asstt. CIT (Lucknow 'B') 12 DTR 24 (2008).

- 6. Investment in benami properties-** Once it is proved that a benami transaction has taken place, the IT authorities would be well within their jurisdiction to ask the person who has financed such transactions to explain the source of his funds, and make addition towards unexplained investment if he fails to give any valid explanation.

-Sham Sunder Aggarwal vs. Asstt. CIT (HP) 11 DTR 352 (2008).

- 7. Proceedings under s.158BD-Time Limit-** Proceedings under s. 158BD have to be initiated within reasonable time after completion of proceedings under

s.158BC -Proceedings under s. 158BD initiated beyond six years of conclusion of proceedings under s. 158BC are barred by time even though there is satisfactory explanation for the delay.

- Saroj Nursing Home vs. Asstt. CIT (Lucknow 'A') 11 DTR 385 (2008).

- 8. Proceedings under s.158BD-** Successor of the AO who made assessment under s. 158BC of the person searched can validly record a satisfaction for initiating proceedings under s. 158BD.

- Saroj Nursing Home vs. Asstt. CIT (Lucknow 'A') 11 DTR 385 (2008).

- 9. Excess stock found during survey-** AO having accepted the figure of sales which was arrived at in the books of account even as rejected after duly accounting for the alleged excess stock found during survey, no addition under s. 69 could be made towards such excess stock.

-CIT vs. Mehta Gwar Gum & Co. (Raj) 12 DTR 219 (2008).