

SEARCH & SEIZURE UPDATE

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1. No protective Assessment in regular Assessment for Income Assessed in Block Assessment- Validity of protective assessment under s.143- Income which was assessed as undisclosed income for the block period cannot be assessed even on protective basis in regular assessment under s. 143 for those years.

-CIT vs. Wipro Finance Ltd. (Kar) 105.

2. Justification for Labour Charges - Computation of undisclosed income-Questions whether labour charges for making gold jewellery should be calculated @ Rs.26 per gm. or @ Rs.23.30 per gm. resorted to the file of AO for examination.

-Talwarsons Jewellers vs. Asstt. CIT (Chd 'B') (TM) 721.

3. Time-limit for completion of Block assessment- A search and seizure action under section 132 was carried out at premises of assessee on 28-7-1997 which continued till 29-7-1997 - A panchnama was prepared stating that only books of account and documents were seized and no seizure was made in respect of jewellery and share certificates - However, prohibitory order under section 132(3) was issued in respect of jewellery and shares - Prohibitory order in respect of jewellery was revoked on 1-8-1997 while prohibitory order in respect of share certificates was revoked on 8-9-1997 - Another panchnama was prepared on 8-9-1997 simply stating that search was completed - Thereupon, in pursuance of return filed by assessee, block assessment under section 158BC was completed on 30-9-1999 - On facts, search was completed on 29-7-1997 when premises of assessee was completely searched and all assets found were inventorised and a panchnama was prepared. Therefore, period of limitation for purpose of section 158BE was to be reckoned from 29-7-1997 and, consequently, block assessment order passed on 30-9-1999 was barred by limitation.

Nandlal M. Gandhi v. Asstt. CIT (Mum.) (TM) 115 ITD 1 (2008).

4. Release of seized assets-Appeal decided in favour of assessee-CIT(A) having granted relief to the assessee to the extent of Rs.67.16 lakh out of addition of Rs.68.14 lakh made

by AO in block assessment which is upheld by the Tribunal and there being no interim order of Tribunal during pendency of appeal, there was no justification for the Department to retain the seized articles any further.

-Raj Jewellers vs. Director of IT (Investigation) 7 Ors. (All) 218 CTR 131 (2008).

5. S.153A- Constitutional Validity - Requisition- Assessment of person searched and of any other person-Constitutional validity-Overlap or similarity of procedure-Immaterial-Principles of natural justice applicable to both procedures as incorporated in provision-No hostile discrimination between the two categories of persons-Provision valid.

-SARAYA INDUSTRIES Ltd. v. UNION OF INDIA (Delhi) 306 ITR 189 (2008).

6. S.153A- Assessment need not be based on materials seized- Assessment under section 153A-Assessment need not be based on materials seized-Accounts can be rejected and best judgment assessment made-Estimate of income should be fair.

-Ms. SHYAM LATA KAUSHIK v. ASSTS. CIT (Delhi) 306 ITR 117 (2008).

7. Notice U/S.158BD- Assessment of third person-Books of account and documents belonging to assessee and his business concerns found from premises-Notice issued under section 158BD-Issue of notice after recording satisfaction of Assessing Officer-Assessee having no case that investment made from explained sources - Assessee not denying that these documents does not belong to him or his business associates-Notice under section 158BD proper.

-ASST. CIT v. VINOD GOEL (Amritsar) 306 ITR 157 (2008).

8. Sale of land at low price-In the absence of any evidence on record, it cannot be presumed that land has been sold by the assessee at a higher price than the consideration shown in the sale deeds, and the rates of property fixed by the Stamp Valuation Authority for registration purposes cannot be applied to arrive at the price for which the property might have been sold and no addition can be made on account of understatement of sale price.

-CIT vs. K.K. Enterprises (RAJ) 13 DTR 289 (2008).