

SEARCH & SEIZURE UPDATEE

by CA Hari Agarwal, FCA

1. **Interest under ss. 234B and 234C- Waiver or reduction-** Adjustment of seized cash- In the absence of seizure of any cash belonging to assessee (HUF) during the search operation, and cash seized during search having been treated by the Department to be adjusted against assessee's individual tax liability, assessee's case was not covered under Notification No. 400/234/95-IT (B), dt. 23rd May, 2006 for purposes of waiver of interest under sec. 234B and 234C.
-Epari Sadasiva Rao vs. Chief CIT & Ors. (Ori)12 DTR 161 (2008).
2. **Opportunity of being heard-** AO having relied on the statement of a third party and the material gathered by the Dy. Director of IT (Inv.) against the assessee without providing any copy thereof to the latter, action of the AO is clearly violative of principles of natural justice and consequently, the assessment proceedings are vitiated and the assessment order cannot be sustained.
-ITO vs. Mrs. Naveen Khana (Del 'B')12 DTR 222 (2008).
3. **Limitation under s. 158BE-** Special audit under s. 142 (2A) made on the recommendation of Addl. Director of IT without any application of mind by AO being without jurisdiction, extended period of limitation under s.158BE was not available and therefore block assessment was barred by limitation.
-Rajendra C. Singh vs. Jt. CIT (Mumbai 'B') 117 TTJ 885(2008).
4. **Reassessment- Validity-** Assessment under s. 143(a)- Notice under s. 148 issued within four years from the end of relevant assessment under s. 143(1)(a) after recording definite, specific and relevant reasons on the basis of material gathered during survey was valid.
-Naresh K. Pahuja vs. CIT (Mumbai 'J')12 DTR 436(2008).
5. **Validity vis-à-vis search warrant in the name of a dead person-** Search warrant being issued in the name of a dead person and Panchnama also prepared in the name of dead person, the search and the authorisation were invalid and void ab initio, so also block assessment under s. 158BC r/w s. 144 in pursuance thereof.
-CIT vs. Rakesh kumar, Mukesh Kumar L/H of Late Mohar Singh (P&H) 219 CTR 494 (2008).
6. **S. 69- Silver bullion seized during search-** Assessee's sons confirming that they inherited it from maternal grandmother- No evidence that it belonged to assessee- Assessment in hands of assessee- Not justified.
-Kanhaiyalal Agarwal v. Asst. CIT (Agra) 307 ITR 318 (2008).
7. **Seizure of assets and documents under other law-** Condition precedent for making block assessment- Valid requisition and physical handing over of seized assets and documents to Assessing officer- Documents and assets seized by police but not handed over to Department- Block assessment made on basis of photocopies of documents taken while in custody of police- Without jurisdiction.
- Asst. CIT v. Sonu Verma [SB] (Amritsar) 305 ITR 406 (2008).
8. **Unexplained investments- principles of natural justice** Addition on account of purchase of house property based on statements recorded during inquiry-Neither copies of statement nor material collected during enquiry disclosed to assessee-Tribunal finding that principles of natural justice had not been followed-Justified.
-CIT v. Rajesh Kumar (Delhi) 306 ITR 27 (2008).
9. **Authorisation under s. 132(1)-Validity -** Assessee being a non-trading corporation, possession of money, bullion, jewellery or other valuable article or thing was ruled out there being no summons or notice which the assessee failed to respond, none of the conditions prescribed under s. 132(1) were satisfied and therefore warrant of authorisation is quashed, so also consequent notice under s. 158BC.
-Suvidha Association vs. L.R. Meena, Addl. Director of IT (Investigation) & Ors. (Guj) 9 DTR 209 (2008) ■