

DIAMOND JUBILEE ALL INDIA CONFERENCE

Day & Date : Wednesday and Thursday, 24th & 25th December 2008
Venue : Sri Satya Sai Nigamagamam,
 Srinagar Colony, Hyderabad.
Delegate Fee : Rs. 1250/- For Members
 Rs. 1500/- For Non-Members
 (on first come first served basis)

* Full details of the programme will be given in the December Month's News Letter

SEARCH AND SEIZURE UPDATE

by CA Hari Agarwal, FCA

1. **Revision-Erroneous and prejudicial order-** Computation of undisclosed income- Income disclosed by the assessee in the returns for two assessment years on which he had paid advance tax did not partake the character of undisclosed income which could be subject matter of assessment under s. 158BC even through the said returns were filed beyond the prescribed time and were invalid returns and, therefore the order passed by the AO not including the said income in the undisclosed income in the block assessment is not erroneous or prejudicial to the interest of the Revenue, and the CIT had no jurisdiction to invoke s . 263.
-B. Rajashekharan Nair vs. Asstt. CIT (Coch) 9 DTR 368 (2008).
2. **No additions on the basis of entries recorded by the third parties-** Computation of undisclosed income- since there is no material found from the possession of the assessee revealing payment of interest out of undisclosed sources, no addition could be made in the block assessment of assessee on the basis of entries recorded by a third party, there being neither any corroborative evidence nor the procedure prescribed under s. 158BD having been undergone.
-Manvinder Bawa vs. Dy. CIT (Del 'B') 9 DTR 372 (2008).
3. **Surrender of income-** Alleged bogus sales-Revenue having not accepted the terms of surrender in toto. Tribunal was justified in deleting the addition made on the basis of surrender-No substantial question of law arose out of the order of the Tribunal.
-CIT vs. Smt. Sudarshan Gupta through L/H (P&H) 10 DTR 184 (2008).
4. **Explanation of Cash Seized-** Computation of undisclosed income-Both CIT(A) and Tribunal having concurrently found, on consideration of material on record that assessee had failed to explain the cash seized from him during search at airport and same constituted his undisclosed income liable to be assessed in block assessment, no interference was called for-No substantial question of law arose.
-Harish Dargan vs. CIT (Del) 217 CTR 633 (2008).
5. **Recording of Satisfaction -** Proceedings under s. 158BD-Mandatory requirement of recording of satisfaction to the effect that undisclosed income belonged to the assessee (other than the person searched) being patently lacking, there was no valid assumption of jurisdiction and block assessment under s. 158BD was invalid.
-New Delhi Auto Finance (P) Ltd. vs. Jt. CIT (Del) 217 CTR 628 (2008).
6. **-Computation of undisclosed income-- Amarjeet Singh Chadha vs. Asstt. CIT (Del 'H') 10 DTR 345 (2008).**
 - (i) Although the assessee has failed to discharge his onus in regard to loan as contemplated under s. 68, the amount of loan cannot be treated as undisclosed income in the block assessment as the credit or the bank account in which the impugned loan was credited was not found or seized in the course of search proceedings under s. 132.
 - (ii) -Although the gift said to have been received by the assessee was to be treated as non-genuine, the amount cannot be treated as undisclosed income under Chapter XIV-B as no evidence was found in the course of search regarding the gift which could be said to be incriminating in nature.
 - (iii) -Assessee having not explained the nature and source of the cheques received by his minor children, impugned amount is rightly treated as undisclosed income of assessee.
 - (iv) -Foreign remittance credited in assessee's bank account cannot be included in undisclosed income in the block assessment as the bank account in which the amount was credited was not found during the search.
 - (v) -Unexplained credit in the name of the assessee in the books of a company rightly treated as undisclosed income of the assessee.
 - (vi) -In view of the fact that the jewellery found during the search was such which could belong to a lady only, the statement made by the assessee at that time of search that it belonged to his wife has to be accepted and the unexplained source of acquisition of excess jewellery, if any, could not be taxed in the hands of the assessee-AO is directed to retain the addition of Rs.50,000 only as the assessee has admitted that his undisclosed investment in the jewellery is about Rs.50,000.

Article