ISSUES IN SURVEY, SEARCH & SEIZURE & APPEALS

by Shri Hari Agarwal, FCA

1. **Undisclosed income-** Bills drawn in assessee's name found during search of assessee's associate concern showing purchases made by assessee having not been accounted for in the books of account, assessee's mere oral statement that the bills did not belong to him would not render addition of unexplained investment by AO in block assessment invalid.

   -Dasari Sri Sailendra Kumar vs. Dy. CIT 111 TTJ (Visakha) 101 2007

2. **Seizure of material :** Material evidencing undisclosed income in survey proceedings having been seized in search proceedings, the AO cannot be said to have based block assessment only on the basis of material collected during survey so as to render such block assessment invalid on that count.

   - Dy. CIT vs. All Saints Christian, Educational Society 111 TTJ (Visakha) 09 2007

3. **Surcharge-** Law applicable-Proviso to section 113 inserted w. e. f. 1-6-2002-Search on 30-11-2001-Surcharge could not be levied

   -CIT v. NARMADA GINNING AND PRESSING FACTORY (No.2) 294 ITR (MP) 409 2007

4. **S. 132-Search and seizure-Fishing trawlers -** No seizure by reason of volume or weight-Restraint order only of deemed seizure under section 132(1) and not under section 132(3)-Restraint order in respect of fishing trawlers under section 132(3)-Does not amount to seizure

   -CIT v. SARB CONSULATE MARINE PRODUCTS P. LTD.

5. **S. 158BC-Block assessment-Limitation-** Three fishing trawlers belonging to assessee subject to restraint order-No search or seizure taking place in respect of assessee for more than one year and ten months-Subsequent search and panchnama drawn up when no restraint order in existence-Search and panchnama merely to extend period of limitation and not in accordance with law - Period of limitation runs from date of last restraint order - Block assessment barred by limitation.

   -CIT v. SARB CONSULATE MARINE PRODUCTS P. LTD. 294 ITR (Delhi) 444 2007

6. **Applicability of section 158BB (1)(ca) -** Provision brought on statute in financial year 2002-03 w.r.e.f. 1-7-1995-Assessments completed before date of amendment- Income below taxable limit-Income not taxable irrespective of whether disclosed after or before search and seizure

   -CIT v. DR. SANGEETAVERMA 294 ITR (MP) 334 2007

7. **S. 158BB (1) (ca)** Section 158BB (1)(ca) inserted retrospectively w.e.f. 1-7-1995 by Finance Act, 2002-Assessment and appeal concluded before date of amendment-Effect-Credit given by Commissioner

   (Appeals) on assumption that amount represented income below taxable limit for which it was not necessary to file return-Not illegal-Provisions of section 158BB (1) (ca) cannot be invoked by Department to deny benefit available to assessee

   -CIT v. PANKAJ KUMAR JAIN 294 ITR (MP) 331 2007

8. **Cash seized from third, party:** Cash seized from third, party admitted by assessee to be his undisclosed income-Block assessment in his hands-Valid

   -SMT. RATPALKAUR v. ASST. CIT (INV.) 294 ITR (Bom) 273 2007

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