F. No.286/6/2008-IT (Inv.II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Room No.254, North Block
New Delhi, the 21st January, 2009

To,
All Chief Commissioners of Income Tax (CCA)
All Chief Commissioners of Income Tax (Central)
All Directors General of Income Tax (Inv/Intell.)

Sir/Madam,

Sub: - Search and Seizure Cases- Release of Seized Assets other than Cash-Regarding.

Reference is invited to Board's Instruction No.11/2006 in F. No.F. No.286/138/2006-IT (Inv. II) dated 1.12.2006 wherein certain issues relating to the release of cash deposits in the PD Accounts were dealt with. In respect of release of seized assets, other than cash, there is need to modify the existing instructions for redressal of public grievances.

2. In this regard, Board had issued directions vide F.No.286/217/98-IT (Inv.II) dated 02.02.1999 and F.No.286/97/ 2003-IT (Inv.II) dated 03.03.2004. In supersession of all instructions on the subject of release of seized assets, other than cash, the following instruction is hereby issued. In this instruction hereinafter reference to seized assets may be construed as reference to seized assets, other than cash.

3. (*a*) Where the nature and source of acquisition of seized assets is explained by the assessee to the satisfaction of the assessing officer, such seized assets should be released subject to recovery of outstanding arrear demand and fulfilment of other requirements contained in sub-section (1) of Section 132B of the Income Tax Act (hereinafter called the 'Act').

(*b*) Where the seized asset are not released under sub-section (1) of section 132B of the Act, such seized assets should be released within one month of passing of the last search and seizure assessment orders u/s 153A/153C, 143 (3), 148 or 158BC/158BD of the Act. The seized assets should be released only with the prior approval of Commissioner of Income Tax or Chief Commissioner of Income. However, no approval should be given for release of:

(*i*) that part of the seized assets, the value of which is sufficient to adjust any existing liability and the amount of liability determined on completion of the search and seizure assessments; and also

(*ii*) that part of seized assets which is sufficient to meet the expected liability on account of the penalty imposable in cases where penalty proceeding connected with search assessments have been initiated.

(*c*) Whereas assessee is in appeal against search assessment orders and the penalty has not been imposed up to the date of the order of the CIT (Appeals), the position regarding the seized assets lying with the department should be reviewed at the time of giving effect to the order of the CIT (Appeals). Only that part of the seized assets should be retained which is sufficient to meet the demand outstanding against the assessee for any assessment year (including non-search assessment years) after giving effect to order of the CIT (A) and the expected amount of penalty imposable on the search assessments as revised after appeal effect. The remaining seized assets should be released within one month after giving effect to appeal order u/s 250 of the Act.

(*d*) The seized assets can also be released, at any time, with the approval of the Commissioner of Income Tax or Chief Commissioner of Income Tax provided:

(*i*) the assessee unconditionally accepts the ownership and the valuation of the seized assets determined at the time of search and seizure operation; and

(*ii*) makes a written request to release the seized assets and provides unconditional and irrevocable bank guarantee to the extent of the value of seized assets.

(*e*) The Board is also aware of the fact that some assessees have great attachment to the seized assets and are willing to exchange such seized assets for an equivalent amount of cash. The replacement of seized assets with cash also makes it easier for the Department to adjust this cash against tax liability. Hence, it has been decided that the seized assets can also be released at any time, with the approval of the CIT or CCIT provided that:

(*i*) the assessee accepts unconditionally the ownership of the seized assets and also the valuation of the seized assets, determined at the time of search and seizure operation;

(*ii*) makes a request in writing requesting release of seized assets against equivalent amount of cash to be provided by him

(*iii*) pays to the CIT a draft of an amount equal to the value of the seized assets and

(*iv*) Agrees in writing that the amount may be deposited in the PD account and may be used for adjustment against tax liability in accordance with the provisions of section 132B of the Act.
Such amount should be deposited in the P.D. account and dealt in the manner laid out in Board Instruction No.11/2006.

(*f*) Notwithstanding anything contained in above paragraphs, (except in para 3 (a) above) where the valuation or the ownership of any particular seized assets is disputed or where the specific items of seized assets have evidentiary value in prosecution proceedings, such assessment or penalty or prosecution proceedings, whichever is later.

4. All DGsIT/CCsIT/CsIT should review the status of seized assets lying with the department in view of the guidelines mentioned above. It may be noted that any violation in this regard shall be viewed seriously by the Board.

5. This Instruction may be brought to the knowledge of all Income-Tax Authorities working in your Region.

Yours faithfully

Sd/-
(Aarsi Prasad)
21/01/2009
Under Secretary (IV.II & III)