Assessments in Case of Search & Seizure

Presentation by Mayank Mohanka, FCA
Guest Faculty, NALSAR University

Search & Seizure

Search, according to normal dictionary meaning, means to look out, to seek or to find something the presence of which is suspected etc. Seize means to take possession of goods, contrary to the wishes of the owner or to take forcible possession.

Search & Seizure-from Income Tax perspective:

- Search operations are exploratory exercises on the basis of information with the income tax department to find hidden income and wealth in cases of tax payers, who have not disclosed their true financial state of affairs in discharge of their tax obligations.

- Seizure implies taking possession of assets, which have not been disclosed to the Income-tax Department and of accounts/documents, papers which contain details of unaccounted wealth/income not disclosed to the income tax authorities.

- Thus, search and seizure is a very powerful weapon in the armoury of income tax department to unearth any concealed income or valuables and to check the tendencies of tax evasion thereby mitigating the generation of black money.

Search Authorisation u/s 132

Who can authorize (i.e., issue search warrants) proceedings u/s 132

- **Sec.132** empowers the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to authorize proceedings under this section.
- **Tax point:** Proceeding means any proceeding in respect of any year, which may be pending on the date on which a search is authorized under this section or which may have been completed on or before such date and includes also all proceedings which may be commenced after such date in respect of any year.

Who Can Conduct Search?

Who can conduct search Income tax authority, having power to initiate search u/s 132, can authorize its subordinate(s) (not below the rank of Income tax officer) to conduct search. Following subordinates can be authorized

Authorized Officer who can conduct search	Authorized from
Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Principal Director General or Director General or Principal Director or Director or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Additional Director or Additional Commissioner or Joint Director or Joint Commissioner (on the basis of authorization from above authority and being empowered by the Board)

Practical Illustration

Who can authorize (i.e., issue search warrants) proceedings u/s 132

The premises of the assessee were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.

Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorisation include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are empowered by the CBDT to do so.

However, a Joint Commissioner can issue warrant of authorisation only if he has been specifically empowered to do so by the CBDT. Therefore, only if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good. If the Joint Commissioner has been duly empowered by the CBDT, then the contention raised by the assessee would not be valid.

Reason to Believe u/s 132

Reason to believe' pre-requisite for Authorisation: Such authorisation could take place if the authorising officer has r**eason to believe, on the basis of information in his possession:**

(a) that the person to whom a summons under section 131(1) or notice under section 142(1) was issued to produce or cause to produced, any books of account or other documents has omitted or failed to do so; or

(b) that a person to whom a summons or a notice aforesaid has been or might be issued, will not or would not produce or caused to be produced, any books of account or other documents which will be useful or relevant to any proceeding under the Income-tax Act, 1961; or

(c) that a person is in possession of any valuable articles or things, including money, bullion or Jewellery etc. representing either wholly or partly income or property which has not been disclosed or would not be disclosed by such person concerned for income-tax purposes.

- However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Practical Illustration on Meaning of Information

Examine whether the information regarding possession of unexplained assets and income received from the Central Bureau of Investigation, a Government agency, can constitute "information" for action under section 132. Discuss.

As per section 132(1)(c), authorisation for search and seizure can take place if the authority, in consequence of information in his possession, has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing and these assets represent, either wholly or partly, income or property which has not been, or would not be disclosed by such person for the purposes of this Act. In the absence of such information, a search cannot be validly authorised.

The Apex Court in **UOl v Ajit Jain [2003] 260 ITR 80** has held that mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute "information" within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.

Powers of Authorised Officer

Power of Authorized Officer: While conducting search, authorized officer has following powers –

1. Enter and search any building, etc.: Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.

2. Break open the lock of any door, etc.: Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.

3. Search person: Search any person who –

- **has got out of; or**
- **is about to get into; or**
- **is in, the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.**

4. Require any person to facilitate the authorised officer: Require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.

5. Seizure: Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search.

6. Place marks of identification: Place marks of identification on any books of account or other documents or make extracts or copies therefrom.

7. Make inventory: Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

8. Examine on oath: Examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing. Any statement made by such person during such examination may thereafter be used as evidence in any proceeding.

The examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under Act.

Points worth Consideration

Important Points worth Consideration

♦ **No seizure of stock in trade [Fourth Proviso to Section 132(1)]**

- Bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade.

♦ **Extension of jurisdictional area**

- Where any building, place, vessel, vehicle or aircraft is within the area of jurisdiction of any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such authority has no jurisdiction over such person; and
- Such authority has reason to believe that any delay in getting the authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue,
- – then it shall be competent for him to exercise the above powers.

♦ **Handing over of seized assets to the Assessing Officer having jurisdiction:**

- Any asset or document so seized shall be handed over to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed. Thereafter, such Assessing Officer exercises all other powers.

Extension of Authorisation

♦ **Extension of Authorisation [Sec. 132(1A)]**

- Where a search for any books of account, other document, money, bullion, jewellery or other valuable article or thing is authorized; and
- Other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in consequence of information in his possession, has reason to suspect that such document or asset is kept in any other building, place, vessel, vehicle or air craft not mentioned in the authorization,
- then such other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner can authorize the officer to search such other building, place, vessel, vehicle or air craft.

Deemed Seizure

♦ **Deemed or Constructive Seizure [Second Proviso to Sec. 132(1)]**

Conditions

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to reason of its –

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to reason of its being of a dangerous nature.

Procedure

The authorised officer may serve an order on –

- **the owner; or**
- **the person who is in immediate possession or control of any valuable article or things,**

– that he shall not remove, part with or otherwise deal with such article or thing without the prior permission of such authorised officer.

Effect

- **Such action of the authorised officer shall be deemed to be seizure of such article or thing.**

Notes

a) No such order can be passed for any article or thing, being stock-in-trade.

b) Though such order can also be passed for reasons other than those mentioned above, but in that case, the order shall not be deemed to be seizure of such article or things and it shall not be in force for a period exceeding 60 days from the date of the order [Sec. 132(3) & (8A)]

Provisional Attachment

♦ **Provisional Attachment**

1. During the course of the search or seizure; or

2. Within a period of 60 days from the date on which the last of the authorisations for search was executed, the authorised officer may attach provisionally any property belonging to the assessee and for the said purpose, the provisions of the Second Schedule shall, mutatis mutandis, apply.

Such attachment shall be subject to following conditions:

a) The authorised officer is satisfied that for the purpose of protecting the interest of revenue, it is necessary to do so.

b) The reasons for such provisional attachment should be recorded in writing

c) Previous approval (in writing) of the Principal Director General or Director General or the Principal Director or Director has taken.

- Every provisional attachment shall cease to have effect after the expiry of 6 months from the date of such order.
- The authorised officer may make a reference to a Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of 60 days from the date of receipt of such reference.

Time Limit for Retention for Books of Accounts

♦ **Time limit for Retention [Sec. 132(8)]**

- The books of account or other documents seized or deemed seized shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment u/s 153A/147

Exceptions

- The Impounded Material can be retained for more than 30 days on fulfilment of the following conditions

  1. The reasons for retaining the same are recorded in writing; and

  2. The (prior) approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention is obtained.

Other Provisions

Right to Make Copies or Take Extract [Sec. 132(9)]

The person from whose custody books of account or other documents are seized may make copies thereof or take extracts therefrom. Such right can be exercised in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.

Power of the Board to pass an order [Sec. 132(10)]

- Where a person is legally entitled to the books of account or other documents seized;
- Such person objects for any reason to the approval given by the authorities; and
- Such person makes an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents. then the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

Rebuttable Presumption u/s 132(4A)

Rebuttable Presumption in case of search [Sec. 132(4A)]

- Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are, or is found in the possession or control of any person in the course of search, it may be presumed that –
- Such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person;
- The contents of such books of account and other documents are true;
- The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person, are in that person's handwriting; and
- In the case of a document stamped, executed or attested, it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested

Application of Seized or Requisitioned Assets

Application of Seized or Requisitioned Assets

The seized assets may be adjusted with:

1. The amount of any existing liability under –

    i) The Income-tax Act, 1961;

    ii) The Wealth-tax Act, 1957 (now abolished);

► The existing liability does not include advance tax payable.

2. The amount of liability determined on completion of the assessment u/s 153A;

3. The amount of liability determined on completion of the assessment of the year relevant to the previous year in which search is initiated or requisition is made; (including any penalty levied or interest payable in connection with such assessment); and

4. The amount in respect of which such person is in default or is deemed to be in default or the amount of liability arising on an application made before the Settlement Commission.

Practical Illustration

Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?

Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)

Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C.

Practical Illustration

Section 132B(1)(i) uses the expression “the amount of any existing liability” and “the amount of the liability determined”. The words “existing liability” postulates a liability that is crystallized by adjudication; Likewise, “a liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. It is not the ipse dixit of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material.

Only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted.

Release of Seized Assets

Release of Asset (Section 132B)

Conditions for release of asset

Where the following conditions are satisfied, the amount of any existing liability may be recovered out of such asset and the remaining portion of the asset may be released to the person from whose custody the assets were seized –

1. The person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized for release of asset;

2. The nature and source of acquisition of such asset is explained to the satisfaction of the Assessing Officer; and

3. The Assessing Officer obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Order of Assets for Discharging Liability

♦ **Order of assets to be applied for discharging liability**

The above liability shall be discharged by applying the seized asset in the following order –

a) Money;

b) Asset other than money (as laid down in the Third Schedule).

It is to be noted that the assessee shall be discharged of the liability to the extent of the money and asset so applied. However, Assessing Officer shall not be precluded from the recovery of above liabilities by any other mode.

♦ **Discharge of excess money**

- After discharging all liabilities if any assets or proceeds thereof left, then it shall be returned to the persons from whose custody such assets were seized.

♦ **Interest payable to the assessee**

- Where the aggregate amount of money (either seized or realized through sale of assets) seized exceeds the aggregate of the amount required to meet the liabilities, Government shall pay simple interest at the rate of ½% p.m. The interest shall be payable from the date immediately following the expiry of the period of 120 days (from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed) to the date of completion of the assessment u/s 153A.

Time limit for release of asset

- Asset or any portion thereof shall be released within a period of 120 days from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.
- No seized asset shall be retained by the Department during pendency of appeal filed by Revenue [Naresh Kumar Kohali -vs.- CIT (P&H)]

Practical Illustration

Cash of Rs. 25 lacs was seized on 12.9.2021 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2021 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:

(i) Can the department withhold the explained money?

(ii) If yes, then to what extent and up to what period?

The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. 'Existing liability', however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within 30 days from the end of the month in which search was conducted, the department may retain only the amount of existing liability, if any, and the balance may have to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

Power of Survey [Section 133A]

Power of Survey [Section 133A]

133A. (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—

(*a*) any place within the limits of the area assigned to him, or

(*b*) any place occupied by any person in respect of whom he exercises jurisdiction, or

(*c*) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose—

(*i*) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(*ii*) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and

(*iii*) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation.—For the purposes of this sub-section, a place where a business or profession or activity for charitable purpose is carried on shall also include any other place, whether any business or profession or activity for charitable purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or activity for charitable purpose are or is kept.

Power of Survey [Section 133A]

Restrictions on Income-tax Authority

An income-tax authority shall not –

1. Impound any books of account or other documents without recording his reasons for doing so; or

2. Retain in his custody any books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director thereof, as the case may be;

3. Remove or cause to be removed any cash, stock or other valuable article or thing. d) The place of business or profession cannot be sealed under survey – [Shyam Jewellers -vs.- CIT (All)]

Power of Survey [Section 133A]

Effect of non co-operation or non-compliance

- If a person does not co-operate or comply during survey, the income-tax authority shall have all the powers u/s 131(1) for enforcing compliance with the requirement made.
- Inspector) may, for the purpose of collecting any information, which may be useful for, or relevant to the purposes of this Act:
- a) Enter into —Any building or place within the limits of the area assigned to such authority; or Any building or place occupied by any person in respect of whom he exercises jurisdiction, – where a business or profession is carried on.
- b) Require any proprietor, employee or any other person who may at that time and place be attending or helping in such business or profession to furnish such information as may be prescribed

♦ **Time for Entrance**

- An Income-tax authority may enter into such place only during the hours at which such place is open for the conduct of business or profession.

Power of Survey [Section 133A]

Survey of Certain expenditure [Sec. 133A(5)]

1. The income tax authority (including Inspector), having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, is of the opinion that it is necessary or expedient to do so, he may, at any time after such function, ceremony or event, require –

Assessee, who incurred such expenditure; or

Any person, who is likely to possess information in respect of such expenditure,

– to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

He may record the statements of the assessee or any other person in this regard and such recorded statement may thereafter be used as evidence in any proceeding under this Act.

Assessments pursuant to Search & Survey

With effect from **1.4.2021**, the existing legislative provisions contained in section 153A and 153C relating to assessments pursuant to search and seizure & survey, have been made inoperative and such search/survey related assessments have been subsumed in income escaping assessments u/s 147.

A deeming fiction has been inserted in the Finance Act 2021 to provide that in search u/s 132, survey u/s 133A and requisition u/s 132A cases, initiated on or after 1.4.2021, the assessing officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the six/ten assessment years immediately preceding the assessment year relevant to the previous year in which such search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Instances of Subsuming of Search/Survey Assessments in Income Escaping Assessments

Explanation 2 to Section 148, provides the undermentioned 4 scenarios of 'Deemed Information' with the AO, wherein AO is not required to do preliminary enquiry and issue Notice u/s 148A. These 4 instances are:

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after 01.04.2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, [other than under sub-section (2A) or sub- section (5)]* of that section, on or after 01.04.2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, Jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after 01.04.2021, pertains or pertain to, or any information contained therein, relates to the assessee

* Omitted by Finance Act 2022, w.e.f. 1.4.2022.

Limitation Period for Issuing of Notice u/s 148 for Search/Survey Cases

Date of Search	Limitation Period
On or after 1.4.2021	Notice u/s 148 can be issued up to 10 previous assessment years subject to fulfilment of conditions of section 149(1)(b).
Before 1.4.2021	Notice u/s 148 can be issued up to 6 previous assessment years without there being any need to fulfilment of conditions of section 149(1)(b).

Limitation Period for Completion of Search/Survey Assessments

Date of Search	Limitation Period
On or after 1.4.2021	Within 12 months from the end of the financial year in which notice was served.
Between 1.4.2020 and 31.3.2021	On or before 30.9.2022
Before 1.4.2019 and 31.3.2020	Within 12 months from the end of the financial year in which last of authorisations for search/requisition was executed

Legal Jurisprudence in Search/Survey Cases

The legal jurisprudence in respect of the scope of unabated/concluded assessments under s.153A/153C of the Act, being confined to the incriminating evidence found during the search, is well-settled and established now. The Hon'ble High Courts and even the Hon'ble Supreme Court in a plethora of judgements have held that the additions/disallowances u/s 153A/153C of the Act towards unabated assessments (already concluded assessments or where statutory time period for issuing of notice u/s 143(2) has elapsed on the date of search), are permissible only where incriminating materials are found in search showing unaccounted income.

On the conspectus of a plethora of undermentioned judgments of different Hon'ble High Courts, and even the Hon'ble Supreme Court, the position of law as existing currently is loud and clear that additions/disallowances under s.153A/153C of the Act towards unabated assessments are permissible only where incriminating materials are found in search showing unaccounted income.

Legal Jurisprudence in Search/Survey Cases

i) CIT vs. Sinhgad Technical Education Society Civil Appeal No. 11080 of 2017 arising out of Revenue's SLP (C) No. 25257 of 2015;

ii) Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC);

iii) CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del);

iv) Pr. CIT v. Lata Jain 384 ITR 543 (Del);

v) Pr. CIT vs. Mahesh Kumar Gupta 2016-TIOL-2994-HC-Del;

vi) CIT vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom.);

vii) Gurinder Singh Baba 386 ITR 483 (Bom);

viii) Pr.CIT vs. Desai Construction Pvt. Ltd. 387 ITR 552 (Guj.);

ix) Pr. CIT v. Saumya Construction (P) Ltd 387 ITR 529 (Guj.);

x) CIT v. IBC Knowledge Park (P) Ltd. 385 ITR 346 (Kar);

Legal Jurisprudence in Search/Survey Cases

Assistant Commissioner of Income Tax, vs. Ms. Katrina Rosemary Turcotte in ITA No. 3093/Mum/2015

Facts of the Case:

A search and seizure operation was conducted in assessee's case on 24th January 2011, under section 132 of the Income-tax Act, 1961. In pursuance to the search and seizure operation, assessment proceedings were initiated by issuance of notice under section 153A of the Act. In response to the notice issued under section 153A of the Act, the assessee filed her return of income on 31st January 2012, declaring total income of ` 95,82,109. During the assessment proceedings, the Assessing Officer found that during the survey / search operation conducted at the premises of assessee's manager Ms. Sandhya Ramchandra, and assessee's agent Matrix India Entertainment Pvt. Ltd. (in short "*Matrix*") print outs were taken from the computer back–up impounded and seized which were marked as "*Annexure–A, B, C, D & E*" and were provided to the assessee to reconcile with her books of account. the Assessing Officer found that as per Page no. D–59, D–60 of Annexure–D found and seized from the computer of Ms. Sandhya Ramchandra, assessee has received cash payment of ` 30,80,000 for various appearances and shows. The Assessing Officer observed, though the assessee had actually received cash payments for performance, however, she could not provide any details for reconciling these entries. He also observed, as per the seized documents, the cash receipt is to be shared at the ratio of 80% to the assessee and 20% to the agency. The Assessing Officer found that seized documents also mentioned cash expenditure of ` 16,17,100. After reducing the cash expenditure, the net amount payable to the assessee was found to be ` 30,80,000. Accordingly, he added back the amount to the income of the assessee. The assessee challenged the addition before the first appellate authority.

Legal Jurisprudence in Search/Survey Cases

Assistant Commissioner of Income Tax, vs. Ms. Katrina Rosemary Turcotte in ITA No. 3093/Mum/2015

The Hon'ble ITAT Mumbai has held in favour of the assessee Ms Katrina Kaif as under:

"We have heard rival contentions and perused the material available on record. Undisputedly, the Assessing Officer has made the addition of ` 30,80,000 being of the view that as per the document found and seized from the computer of Ms. Sandhya Ramchandra, assessee was supposed to have received cash @ 80% of the amount mentioned therein and 20% has gone to Matrix. Undisputedly, the aforesaid seized documents was not found from the possession of the assessee but from a third party. ***It is also a fact that apart from this seized material, there is no other corroborative material on record to demonstrate that the cash payment mentioned in the seized material was actually made to the assessee.*** *On the contrary, the assessee when was confronted with the seized material had categorically denied of having received the cash payment. Further, an affidavit was also filed on behalf of Matrix India Entertainment Pvt. Ltd., stating that no cash payment was made to the assessee. In fact, Ms. Sandhya Ramchandra, in her statement also could not state anything about cash payment as it was prior to her employment.* ***Thus, in the absence of any other corroborative evidence, except the seized material, which was found from a third party it cannot be presumed that the assessee has received the cash amount of ` 30,80,000.*** *That being the case, we do not find any infirmity in the order of the learned Commissioner (Appeals) in deleting the addition. Ground no.2 is dismissed."*

PPT on Assessments in Search & Seizure Cases

Thank You