

Landmark Judgements of Supreme Court on Section 131(1A) [: Empower the officers of the Investigation Wing (also to include officers authorized to carry out search operations i.e ‘authorised officers’), to exercise the powers mentioned in the Section 131(1)]

Where Income-tax Officer had not been authorized to exercise his powers under section 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment; SLP dismissed

Discovery, production of evidence, power regarding (Sub-section (1A)) - High Court by impugned order held that where Income-tax Officer had not been authorized to exercise his powers under section 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment. Special Leave Petition against said impugned order was to be dismissed. [In favour of assessee] (Related Assessment year : 2009-10) - *[ITO, Delhi v. Sky View Consultants (P) Ltd. (2018) 257 Taxman 250 : 96 taxmann.com 424 (SC)]*

SLP dismissed against High Court’s ruling that provisions of section 131(1A) do not require that a notice is required to be given to assessee before carrying out search proceedings under section 132 - Writ Petition is not maintainable

The assessee was engaged in export of iron ore. A search was carried out in assessee’s premises for relevant years and, thereupon, a notice was issued under section 153A requiring the assessee to furnish return of income for assessment years covered within the block. The assessee filed a writ petition contending that since no notice was issued under section 131(1A), search and seizure conducted by department itself under section 132 was illegal and thus, pursuant thereof notice issued under section 153A also did not have any sanctity. The assessee also submitted that in absence of any reason which led the authority to resort to the provision of section 132, the notice under section 153A was not tenable in the eye of law. Dismissing the petition the Court held that, there is no requirement of issuance of notice under section 131(1A) of the Act before proceeding with the provision of section 132 as the whole purpose of conducting search and seizure will vanish if assessee knows the fact that search is going to be conducted under section 132 making the proceeding a futile exercise. It was further held that, where there is alternate remedy available, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. The High Court also observed that search and seizure was well within the knowledge of the assessee, but the jurisdiction was not challenged fairly for a period of more than two years and it is only after the notice under section 153A was issued, this Writ Petition has been filed on the basis of above reasons. On the basis of above reasons, the writ petition filed by the assessee was dismissed. Special Leave Petition filed against impugned order was to be dismissed. [In favour of revenue] (Related Assessment Years 2009-10 to 2014-15) - *[Liberty Marine Syndicate (P) Ltd. v. PCIT, Cuttack (2017) 245 Taxman 269 : 77 taxmann.com 150 (SC)]*