

## **Unexplained cash and jewellery seized from partners couldn't be adjusted against tax liability of the firm**

**Summary – The High Court of Bombay in a recent case of Sumer Builders, (the Assessee) held that where unexplained cash and jewellery seized from partners of assessee-firm cannot be automatically adjusted against tax-liability of firm**

### **Facts**

- The assessee was a registered partnership firm engaged in the business of construction activities. During search and seizure against the firm. Certain unexplained cash and jewellery were found and seized from the residence of the partners. With respect to the unexplained jewellery found and seized, pay orders aggregating to Rs. 95 lakhs were forwarded by the partners in lieu of the release of jewellery. However, as far as the cash was concerned, the claim was that it belonged to the Firm.
- The department noted that the return of income was filed by the firm disclosing certain income. Thereafter, the scrutiny was undertaken and the income was assessed. The Assessing Officer refused to give credit of Rs. 1.52 crore and raised the demand which included interest under section 234B and 234C.
- On appeal, the Commissioner (Appeals) did not accept the claim of the assessee.
- On second appeal, the Tribunal held that the unexplained cash and jewellery were seized from the partners of the firm and same was to be adjusted against the tax liability of any of the partners in the first place and if any cash remains surplus it was either to be refunded or adjusted against the tax liability of the co-assessee if so requested or consented. Further, the Tribunal held that the cash and jewellery were seized from the partners of the assessee firm and it cannot be automatically adjusted against the tax liability of the firm.
- On appeal to the High Court :

### **Held**

- In the given facts and circumstances, the Tribunal as well as the Commissioner and the Assessing Officer did not uphold the contention of the assessee-firm and the adjustment as claimed. Since the order is based essentially on the facts and circumstances of the instant case, no substantial question of law being raised.