

Implication of Sec 132(4A) regarding presumption of ownership of valuable article found in possession of the person searched:

Sec 132(4A) of the Income Tax Act: 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 a search, it may be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person.

Does that mean that the power of the AO, to presume, that the valuable article belongs to the person searched, is absolute?

In Shorter Oxford English Dictionary, it is mentioned that, in law 'presume' means 'to take as proved until evidence to the contrary is forthcoming'. Therefore, it is clear that the onus is on the person searched to rebut the presumption and prove it otherwise.

In *Chuharmal vs CIT* ((1988) 70 CTR (SC) 88), Hon SC held that where a person is found to be in possession of anything, the onus of proving that he was not the owner lies on such person.

Thus the burden to prove will be shifted to the department only when an assessee has proven beyond doubt that the presumptions framed against him are incorrect.