

Technicalities of Section 68 to 69D w.r.t 155BBE and Panel Provisions

[Under Income Tax Act, 1961]

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TAX TREATMENT OF CASH CREDIT



SECTION 68 - INTRODUCTION

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Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Provisos Inserted in Section 68 by the Finance Act, 2012

w.e.f. 01.04.2013

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Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the AO aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10

Provisos Inserted in Section 68 by the Finance Act, 2012

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Analysis of Amendment :-

In case of a assessee being a closely held company (i.e., not being a company in which the public are substantially interested), if any sum found credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such company shall be deemed to be not satisfactory, unless the person, being a resident in whose name such credit is recorded in the books of such company, also offers an explanation about the nature and source of such sum so credited.

Applicability of Amendment :-

Amendment to section 68 by insertion of proviso by the Finance Act, 2012 casting onus on closely held company does not have retrospective effect.

In the case of *CIT vs. Gagandeep Infrastructure Pvt. Ltd, ITA No. 1613 OF 2014 (HC – Bombay)*

Conditions Precedent for Applicability of Section 68

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The sum is found credited in the books of the assessee for any previous year; and

The assessee offers no explanation about the nature of source of that sum; or

The explanation is not, in the opinion of the AO, satisfactory, whether the sum so credited may be in the assessee's name or in the name of the third party.

Prerequisites to Satisfy the AO

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- Delhi High Court in the case of *CIT v. Divine Leasing & Finance Ltd. [2008] 299 ITR 268 (Delhi)* has explained the prerequisites to satisfy the Assessing Officer wherein it was held that:

“In the case of a company the following are the propositions of law under section 68. The assessee has to prima facie prove:

- 1. The identity of the creditor/subscriber;*
- 2. The genuineness of the transaction, namely, whether it has been transmitted through banking channel or other indisputable channels;*
- 3. The creditworthiness or financial strength of the creditor/subscriber;*
- 4. The Assessing Officer is duty bound to investigate into the creditworthiness of the creditor/subscriber, the genuineness of the transaction and the veracity of the repudiation.”*

Meaning of “ Books or Books of Account”



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- In the case of *CBI vs V.C. Shukla (1998) 3 SSC 410 (SC)*, the Hon’ble Supreme Court held that “*Book ordinarily means a collection of sheet of paper or other nateruak, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as book*”.

Also in the case of *S.P. Goyal vs DCIT (2002) 82 ITD 85 (Mum-Trib)*

- As provided by section 2(12A) “books or books of account” include ledger, day books, cash books, account books and other books, whether kept in the written form or as print outs of data stored in floppy, disc, tape or any other form of electro-magnetic data storage device.

Books of Assessee



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There must exist books of accounts before making addition under Section 68. The addition under Section 68 can be made on the basis of unexplained cash credit found in the books of the assessee, hence existence of books of an assessee is a condition precedent before an addition under Section 68 can be made.

- *Smt. Shanta Devi v. CIT [1998] 171 ITR 532 (P&H)*

Books of accounts must be of assessee himself and not of any other person.

- *Daya Chand v. CIT (2000) 250 ITR 327 (DEL)*

Piece of paper impounded at the time of search could not be construed to be a book, assessee's case could not be put with in ken of section 68, to invoke this section, it is a sine qua non that the sum must be credited in assessee's books maintained in the previous year.

Credit of Sum in the Books of Account

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- *Baladin Ram vs. CIT (71 ITR 427) (SC)*

Amount not credited in books of accounts cannot be brought to tax u/s 68.

- *CIT vs. Abdul Haseeb, Prop. M.S.J.B. Silk [2015] 228 Taxman 71 (Mag.)(All.)*

The expression 'any sum is found credited in the books of the assessee' means all entries on the credit side as well as on the debit side in the books of account. The word 'credited' in relation to 'any sum' does not mean an entry only on the credit side but would also include an entry on the debit side as well. The word 'credited' means an entry of a sum in the books of account.

- *CIT vs. Bhaichand H. Gandhi 141 ITR 67 (Bom.)*

Any sum found credited in bank passbook cannot be treated as an unexplained cash credit.

Also held in case of *Smt. Ramilaben B. Patel vs. ITO [2018] 100 taxmann.com 325 (Ahmedabad - Trib.)*

Amitabh Bansal vs ITO [2019] 102 taxmann.com 229 (Delhi - Trib.)

- *Vimal Organics Ltd. v. CIT[2017] 82 taxmann.com 427 (All.)*

Credit entry in books by way of cheque even if not encashed is still an income of the assessee and, accordingly, will attract provisions of cash credit u/s 68 of the Act.

- *Hareshbhai jagmohandas Mehta (HUF) vs ACIT [2014] (28 ITR 561) (Ahmedabad - Trib.)*

Advance receipt of payment for sale of goods made by the assessee is not a cash credit within the meaning of section 68, if the transaction had been explained satisfactorily as a sale.

- *CIT vs Pancham Dass Jain [2006] 156 TAXMAN 507 (ALL.)*

Provisions of section 68 are not attracted to amounts representing purchases made on credit.

Applicability of Section 68 Where Books of account is Rejected

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- *CIT vs K.M.N. Naidu [1996] 221 ITR 451 (MAD.)*

Where ITO rejected account books as defective while determining business income of assessee, on basis of same account books, AO cannot work out peak credit for making additions in respect of unexplained cash credits u/s 68.

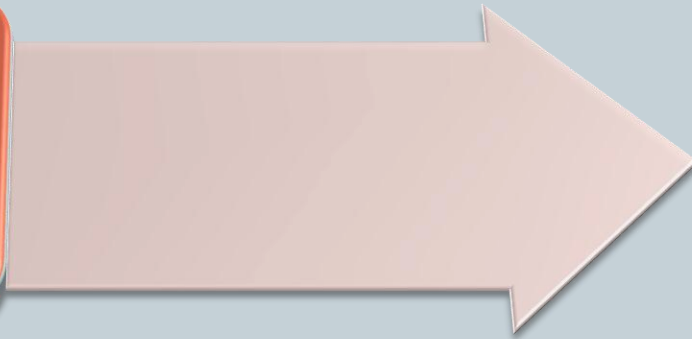
- *CIT vs Dulla Ram, Labour Contractor, Kotkapura [2014] 42 taxmann.com 349 (P&H)*

where books of account are rejected in their entirety, Assessing Officer cannot rely upon any entry in those books of account for making an addition to assessee's taxable income under section 68.

Year of Charge

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Year of
applicability
of Section
68



Year of credit of any
sum in the Books of
Accounts of the
Assessee

- *CIT vs Lakshman Swaroop Gupta & Brothers 100 ITR 222 (Raj.)*
If the sum is credited in the books of account in AY 1962-1963, the same cannot be taxed in any other assessment year other than AY 1962-1963.
- *CIT vs Usha Stud [2009] 301 ITR 384(Delhi)*
Carried forward cash credit balances can only be examined in the year in which they are firstly/freshly introduced.

Onus to Proof the Genuineness of Transaction

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- It is clear mandate of section 68 that the initial burden of explaining the sum found credited in the books lies on the assessee. Hon'ble Delhi High Court in the case of *CIT vs. Oasis Hospitalities Pvt. Ltd. [2011] 333 ITR 119* held that "The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are:

- Identity of creditors
- Capacity of creditors to advance money
- Genuineness of transaction

Also held in the case of *PCIT vs Hi-Tech Residency (P.) Ltd. [2018] 96 taxmann.com 403 (SC)*

- Where the nature and source of receipt whether it to be money or other property, can not be satisfactorily explained by the assessee, it is open to the revenue to hold that it is income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. *Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC)*.

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- *CIT vs Kamdhenu Steel & Alloys Ltd. [2012] 19 taxmann.com 26 (Delhi)*

Once assessee has prima facie discharged its burden of proving identity of shareholders, genuineness of transaction and creditworthiness of shareholders, revenue cannot invoke section 68 without any additional material to support such a move.

- *ITO vs Computer Home Information Plus Pvt. Ltd., ITA No. 5680/Del/2016*

No addition can be made u/s 68 where no cash is deposited prior to date of the issue of cheques to assessee company.

- *Poonjabhai Vanmali & sons v. ITO (1989) 33 TTJ (Ahd.) 91*

Once the assessee has discharge his liability to prove the genuineness of transaction than onus of proof shifts to the AO.

- *ACIT vs Rakesh Agarwal 2012 TaxPub(DT) 1555 (Kol-Trib)*

Genuineness of transaction could not be doubted merely on guess, surmises and conjecture, more so when advancing of loan is duly supported by documnets including confermation from lander company.

Onus to Proof the Genuineness of Share Capital Transaction

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- In the case of *PCIT vs NRA Iron & Steel (P.) Ltd. [2019] 412 ITR 161*, Hon'ble Supreme Court laid down the following principal for proving the genuineness of share capital transaction :-
 1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment, to the satisfaction of the AO, so as to discharge the primary onus.
 2. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.
 3. **The AO is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.**
 4. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

Also held by Hon'ble Delhi High Court in the case of *PCIT vs NDR Promoters (P.) Ltd. [2019] 410 ITR 379*.

Onus to Proof the Genuineness of Share Capital Transaction

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- In the case of *DCIT vs M/s Gladiolus Property & Inv. Pvt. Ltd. 2019 TaxPub(DT) 4030*, ITAT – Mumbai disallow the addition made by AO on the ground that assessee fails to discharge the burden to substantiate the creditworthiness of shares investors and genuineness of transaction.

Hon'ble ITAT distinguished the judgement of Hon'ble Supreme Court in the case of [NRA Steels & Iron](#) by holding that “in the case of NRA Steels & Iron, Ld. AO had issued summons to as many as 19 investors entities, but nobody appeared on behalf of the investors. Further, Ld. AO enquired and investigated the identity, creditworthiness and the genuineness of the transaction. However, the facts on record nowhere established that such further inquiries/ investigation have subsequently been conducted by AO in the present case.

Also held in the case of *ITO vs Ambika MetalChem Impex P. Ltd. , ITA No. 1676/Mum/2017 & ACIT vs Prayag Polytech P. Ltd., ITA No. 5970/Del/2017.*

- *Navodaya Castle (P.) Ltd. vs CIT [2015] 56 taxmann.com 18 (SC)*

Certificate of incorporation and PAN are not sufficient for purpose of identification of subscriber company when there is material to show that subscriber was a paper company and not a genuine investor.

Judicial Gems before NRA Steels & Iron Judgement

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- *PCIT vs Adamine Construction (P.) Ltd. [2019] 107 taxmann.com 85 (SC)*

Addition made u/s 68 in respect of share application money received by assessee on ground that assessee had brought on record sufficient documentary evidence to prove identity and creditworthiness of share applicants is to be deleted.

Also held in the case of *PCIT vs E Smart Systems (P.) Ltd. [2019] 105 taxmann.com 159 (SC)*

- *DCIT vs Orient News Prints Ltd. [2018] 100 taxmann.com 69 (SC)*

Where in order to prove genuineness of share transactions, assessee brought on record all relevant facts such as names, address and PAN of share applicants, it was thereupon duty of AO to obtain separate confirmation from concerned parties if required, and, where he failed to do so, it could not be a ground to reopen assessment.

- *PCIT vs Himachal Fibers Ltd. [2018] 98 taxmann.com 173 (SC)*

Addition made u/s 68 in respect of share application money received by by holding that identity of share applicants was clearly revealed but Assessing Officer did not conduct any further enquiry except resting his conclusions on surmises is to be deleted.

Issue Related to Share Capital

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- *V. R. Global Energy (P.) Ltd. Vs. ITO [2018] 96 taxmann.com 647 (Madras)*

Conversion of pre existing liabilities into share capital and share premium could not be treated as unexplained cash credit u/s 68.

- *PCIT vs Chain House International (P.) Ltd. [2018] 98 taxmann.com 47 (MP)*

Once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium.

Also in the case of *CIT vs Anshika Consultants (P.) Ltd. [2015] 62 taxmann.com 192 (Delhi)*

- *PCIT vs Kurele Paper Mills (P.) Ltd. [2017] 81 taxmann.com 82 (Delhi)*

Where no incriminating evidence relating to share capital issued was found during course of search, AO was not justified in invoking section 68 for purposes of making additions on account of share capital.

- *CIT vs Empire Buildtech (P.) Ltd. [2014] 43 taxmann.com 269 (Delhi)*

Addition can be made only for amount which pertained to those subscribers/investors to share capital whose particulars could not be verified and who did not respond to notices issued by AO.

- *Hotel Queen Road (P.) Ltd. vs ITO [2012] 25 taxmann.com 425 (Delhi - Trib.)*
Where assessee could not prove the genuineness of transaction of receiving the share application money and ultimately in the subsequent year, such application money was written back by assessee, such share application money shall be added to income of assessee u/s 68.
- *Rick Lunsford Trade & Investment Ltd. vs CIT [2017] 77 taxmann.com 110 (SC)*
Addition under section 68 would be justified only to the extent of unexplained part of share capital and not whole of it, as assessee had partly produced evidence in respect of credit entries in books, accounted for as share capital.

- *ITO v. Vital Communication Ltd., I.T.A. No. 2448/Del/2007*

Where share were issued against the share of other company under the swapping arrangements, hence no fresh amount of money was brought into assessee's books by way of cash/cheque/draft, therefore, section 68 cannot be invoked.

- *CIT vs K.C. Pipes (P.) Ltd. (2016) 386 ITR 532 (P&H)*

If shareholders had acquired money illegally, assessee could not be held liable.

Credit in Capital Account on Account of Gift

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- *ACIT vs Dr. Roop, ITA No. 3794/Del/2009*

The genuineness of the gift transaction cannot be determined without looking into the aspects of human probabilities, relationship of the donor and donee, the occasion for making the gift and existence of reciprocity and if the assessee fails to establish any of these facts, the amount shown so received can be treated as assessee's income from undisclosed source representing the assessee's own money.

- *CIT v. Anil Kumar [2007] 292 ITR 552 (Delhi)*

Where donee fails to prove the creditworthiness of donor, the kind of relationship had with donee and the financial capacity of donors for giving gifts to donee, then such gift shall be taxable as income of donee u/s 68.

- *CIT v. Ms. Mayawati [2011] 12 taxmann.com 306(Delhi)*

When all the donors who had made gifts to the assessee had appeared before the Department and submitted affidavits on oath confirming the gifts made by them, citing their old relations with the assessee and proved their capacity to make the gifts, said gifts could not be treated as non-genuine simply because there was no occasion for making the gifts or there was no blood relation between the donor and the donee or that the gifts were made by the donors by taking loans.

- *ACIT vs Manoj Kumar Sekhri (2004) 86 TTJ 510 (Asr – Trib)*

When foreign gift was received by the assessee through cheque then the relevant date for assessable would be that when such cheque is accepted and not when it is deposited or encashed.

- *Chandrabhan Rajpal v. DCIT, I.T.A. No. 473/Ind/2014*

Onus to prove the genuineness is heavier on the assessee in case of gift as compared to the case of credit. If identity of the creditor was known and creditworthiness of the creditor was established, then onus was shifted to the revenue to show that credit was not genuine. But, in the case of gift all the three ingredients, i.e., identity, creditworthiness and genuineness were necessary to be established by the assessee and merely by giving evidence of identity and creditworthiness of donor, genuineness could not be taken to be established automatically.

- *Pandit Vijay Kant Sharma vs CIT [2018] 402 ITR 358 (Allahabad)*

Where assessee has failed in establishing the creditworthiness of the donors and occasion for making the gift, then such gift shall be taxable as unexplained income of assessee u/s 68.

Accommodation Entries

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- *Jalaram Enterprises (P.) Ltd. vs ITO [2019] 104 taxmann.com 134 (Bombay)*

Where impugned sums related to bogus accommodation entries were already verified and assessed in previous assessment year, AO could not reopen assessment in current assessment year on the basis of such accommodation entries.

- *CIT vs A.L. Lalpuria Construction (P.) Ltd. [2013] 32 taxmann.com 384 (Rajasthan)*

Addition on account of accommodation entry cannot be made on basis of uncontroverted oral statement of third party.

Also in the case of *DCIT vs Brij Bhushan Singal (HUF) 2015 TaxPub(DT) 1009 (Delhi – Trib)*

Section 68 : Partnership Firm

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- *Smt. Shanta Devi vs CIT (1988) 171 ITR 532 (P&H)*

Where Account books of partnership firm cannot be considered to be assessee-partner's own book of account and cash credit found therein cannot be charged to tax as assessee-partner's income u/s 68.

Also in the case of *Anand Ram Raitani vs CIT 1997 Tax LR 322 (Gau)*

- *Indo – European Machinery Company vs CIT (1995) 28 ITR 493(Pun.)*

Credit entry stands in bank accounts of a partner would not give the presumption that it represents undisclosed income of firm and could not be treated as the income of the firm u/s 68.

Section 68 : Partnership Firm

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- *CIT vs. Taj Borewells [2007] 291 ITR 232 (Madras)*

Where it was first year of assessment of assessee-firm, no books of account were maintained, and assessee's explanation was that amount added under section 68 represented capital contribution of partners, addition of said amount in assessee's hands as unexplained income was not justified.

- *Rollon Containers vs ITO [2012] 23 taxmann.com 164 (Hyd.)*

Where any sum credited in partner's capital account and partners are income tax assessee and had given plausible explanation for source of investment, then such sum cannot be treated as unexplained income u/s 68.

Section 68 : Partnership Firm

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- *ACIT vs. Megh Malhar Developers (2012) 134 ITD 437 (Ahd'D – Trib)*

Where assessee firm had furnished sufficient evidence to explain the source of funds introduced by partners, and revenue had not placed any material controverting the same, addition u/s 68 in assessment of firm was not justified.

- *ITO vs Sushobhit Transport, I.T. A. No. 867 /AHD/2006*

Where partner failed to explain the source of their capital contribution in the firm that addition cannot be made in the hands of firm.

- *ITO vs Super Chemicals Distributors (2005) 1 SOT 102 (Delhi – Trib)*

Where capital was introduced by the partner in the assessee-firm from out of the gifted money, the addition u/s 68 could not be made in view of the gift being genuine.

Telescoping of Intangible Additions

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- *CIT vs Ram Sanehi Gian Chand (1972) 86 ITR 724 (P&H)*

Where the additions were made to the assessee's income in the previous year as income from undisclosed sources, the assessee was entitled to take advantage of the past intangible addition to explain the source of what was considered by the department as income from undisclosed source.

- *CIT vs Jagatkumar Satishbhai Patel (2014) 45 taxmann.com 441 (Guj.)*

Assessee only received a nominal amount during the year and the remaining amount is the opening balance in the account of the assessee and failed to explain the amount received during the year. Tribunal deleted the entire addition on the ground that the assessee deserves the benefit of telescoping.

No ad hoc addition u/s 68

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- *Sahara India Financial Corpn. Ltd. vs DCIT [2014] 41 taxmann.com 251 (Delhi - Trib.)*

Section 68 contemplates that the satisfaction of AO has to be exercised qua each deposit or cash credit and it does not prescribe any ad hoc or estimated addition, hence ad hoc addition could not be made under section 68.

- *ITO vs Yadhu Contractors & Builders (P) Ltd., ITA No. 218 (Del) of 2005*

Separate addition for cash credit u/s 68 is not required to be made where higher net profit rate was estimated.

Peak Credit Theory in Regard to Section 68

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- *Bhaiyalal Shyam Behari vs CIT (2005) 276 ITR 38 (All)*

For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter the question of peak credit can be raised.

- *CIT vs Vijay Agricultural Industries [2007] 294 ITR 610 (Allahabad)*

Principal of peak credit is not applicable in the case where deposit remained unexplained u/s 68. It could not apply in a case of different depositors where there had been no transaction of deposits and its repayment between partition depositor and assessee.

- *CIT vs D.K. Garg (2017) 250 Taxman 104 (Del.)*

Peak credit can be applied only in the case of squared up accounts. Assessee has to explain with sufficient details, the source of all the deposits in his account as well as the corresponding destination of all payments from the accounts, however, if assessee fails to discharge primary onus of disclosure in this regard then AO is justified in denying the benefit of Peak Credit.

Further, SLP has been granted against High Court Ruling.

- *CIT vs Purushottam Jhawar [2013] 40 taxmann.com 533 (AP)*

When peak credit concept is followed, there is no need to make any separate addition, particularly where assessee had explained sources for repayment.

Important Judicial Pronouncement

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- *Dulari Digital Photo Services (P.) Ltd. vs CIT [2013] 38 taxmann.com 390 (P&H)*

If the source of a particular revenue receipt cannot be pegged down to any particular source, then such income shall be taxable as unexplained income u/s 68.

- *CIT vs. Citizen Urban Co-op. Bank Ltd. [2012] 20 taxmann.com 453 (P&H)*

Unexplained amounts in account of account holder and there was no nexus between account holder and bank, then such amounts cannot be treated as unexplained credits of the assessee bank.

- *Merridian Promoters (P) Ltd. vs DCIT, ITA No. 74/Vizag/2010*

Return of advance collected from customers by account payee cheque on cancellation of booking of flats could not be treated as unexplained cash credit u/s 68.

- *PCIT vs. Bhanuprasad D. Trivedi (HUF) (2018) 95 taxmann.com 19 (SC)*

No addition u/s 68 as unexplained income is warrant on the presumption that the loan amount is not found reflected in the balance sheet of donor.

- *DIT(Exemption) vs Keshav Social & Charitable Foundation [2005] 146 TAXMAN 569 (DELHI)*

Assessee disclosed its donations and submitted the list of Donors. Simply because the complete list of donors were not filed or the donors were not produced, does not necessarily lead to an inference that assessee was trying to introduce unaccounted money by way of donation receipts, therefore, addition made u/s 68 on account of unexplained cash credit is not warrant.

Also held in the case of *CIT vs Uttaranchal Welfare Society [2014] 42 taxmann.com 361 (Allahabad)*

Section 69 : Introduction

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Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Condition to be Fulfilled for Invoking Section 69

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1. The assessee has made investment in the financial year immediately preceding the assessment year.
2. Such investments are not recorded in the books of accounts, if any, maintained by him for any source of income.
3. The assessee does not offer any explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the AO satisfactory.

If the abovesaid conditions are satisfied, the value of such investments may be deemed to be the income of the assessee of such financial year.

Section 68 versus Section 69

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- *Laxmi Narain Gupta vs CIT [1980] 4 Taxman 325 (Pat.)*

Where the income from undisclosed source is credited in the books of account maintained by the assessee, such income is liable to be assessed u/s 68. Whereas if the income from undisclosed sources, though invested, has not been recorded in the assessee's book of account, the same is liable to be assessed u/s 69.

- *DCIT vs Finlay Corporation Ltd. [2003] 86 ITD 626 (DELHI)*

Section 68 cannot be invoked where no books of accounts is maintained, because maintenance of books of account is a condition precedent for applicability of section 68. However maintenance of books of account is not a condition precedent for application of section 69, therefore addition can be made u/s 69.

Burden of Proof u/s 69

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- *Chandra Krishna vs CIT [1980] 122 ITR 823 (All)*

The initial burden for proving the nature and source of the unrecorded investments is on the assessee. On failure to explain and prove the same, the AO would be justified in treating the amount as unexplained investment u/s 69.

- *S. Madhavi vs ACIT, ITA No. 1936/Hyd/2011*

When assessee has explained her source of property purchased by producing evidences in the form of confirmation, it is duty of the revenue to make enquiry and ascertain whether assessee's claim is correct or not and thus, without conducting any enquiry, assessee's claim could not be rejected merely on doubts and suspicion.

Important Judicial Pronouncement

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- *CIT vs S.M. Omer (1993) 201 ITR 508 (Cal.)*

Where assessee fails to explain the nature and source of investments or the explanation offered is unsatisfactory in the opinion of AO, then addition could be made u/s 69.

Also in the case of *Unit Construction Co. Ltd. vs JCIT (2003) 260 ITR 189 (cal.)*

- *CIT vs R.S Rathore (1995) 212 ITR 390 (Raj.)*

Each and every cash credit entry has to be explained and proved by the assessee. AO is entitled to examine each and every individual entry and if no explanation has been offered in respect of a particular entry, he will be justified in coming to the conclusion that the said investment is unexplained. Thus, it is not the totality of the credit entries which are to be allowed or to be disallowed.

- *CIT vs Smt. P.K. Noorjehan (1997) 1 SSC 198 (SC)*

According to the language used in section 69, the applicability of its provisions depends upon the discretion of the AO. Section 69 states the wordings “*may be deemed to be the income of the assessee*”. Therefore even in case of rejection of the explanation of the assessee, the Tribunal can in the circumstances of a case refuse to make an addition of the value of investment to the income of assessee.

Also held in the case of *CIT vs Moghul Durbar (1995) 516 ITR 301 (AP)*

- *Anil Kumar Jain vs ITO, ITA No. 84/Jodh/2013*

Provision of section 69 are attracted only when the assessee has not recorded any investment in his books of account maintained by him. However, if assessee has duly recorded the deposits made into bank in his books of accounts, then no addition can be made u/s 69.

- *CIT vs Dilbagh Rai Arora [2019] 104 taxmann.com 371 (All)*

Merely because during search, assessee surrendered an amount in stipulation that details of same would be given in due course of time, but no such assets were ever found/identified by authorities, no addition could be made to assessee's income.

- *CIT vs Indrajit Singh Suri (2013) 215 Taxman 581 (Guj.)*

Addition made by AO on account of unaccounted investment with certain parties is not justified without giving assessee an opportunity to cross examine those parties with whom unaccounted investment is made.

- *CIT vs Amritha Cyber Park (P.) Ltd. [2019] 263 Taxman 546 (Kerala)*

Where AO made addition to assessee's income under section 69 in respect of advance rent received, since source was clear and there was proper explanation for amount in question in books of account, impugned addition was to be deleted.

Section 69A : Introduction

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Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

Section 69A : In wake of Demonetization

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It is section 69A which would be mainly invoked in the assessment year 2017-18 in respect of money found in possession of an assessee and he fails to explain the source thereof to satisfaction of the AO. As huge cash has been deposited during the demonetization period i.e. during 8-11-2016 to 30-12-2016, the AO would be empowered to ask the source of such cash and if the person depositing cash fails to explain the nature and source of such deposit, the AO may invoke section 69A and make addition on account thereof. Thus tax u/s 115BBE would be levied on such unexplained money deemed to be the income of the assessee. In addition to tax, penalty u/s 271AAC may also be levied.

Conditions Precedent for Applicability of Section 69A

48

Section 69A comes into play only when the following conditions are satisfied:

1. In any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article.
2. Such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income.
3. The assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the AO, satisfactory.

If the aforesaid three condition are satisfied, then the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

Meaning of 'income' in Section 69A

49

- *Chuharmal vs CIT (1988) 172 ITR 250 (SC)*

The expression 'income' as stood under section 69A has wide meaning and means anything which comes in or results in gain.

- *Mahendra D. Jain vs ITO & Ors. (2008) 173 Taxman 336 (Bom)*

Once the value of the gold is treated as deemed income of assessee u/s 69A, said income cannot obviously be treated as business income of the assessee. The expression 'income' as used in section 69A refers to anything which came in or resulted in gain

Burden of Proof u/s 69A

50

- *Pooja Ajmani vs ITO [2019] 106 taxmann.com 65 (Delhi - Trib.)*

Where assessee failed to discharge his burden of proof that LTCG arising from sale of share is genuine, addition made u/s 69A is justified.

- *CIT vs Arun Kumar Jain (1995) 54 ITD 724 (Delhi – Trib)*

It is well settled principal of law that where the assessee claims to have received gifts, the onus is upon him to prove the identity of the donor, his creditworthiness and the genuineness of the gift.

- *M. Sundaram vs ACIT [2007] 161 TAXMAN 54 (MAD.)*

Where assessee fails to prove the source of money receipts and has also failed to prove that money does not belong to him, addition made u/s 69A is well within the limit of law.

- *CIT vs Arun Kumar Jain (1995) 54 ITD 724 (Delhi – Trib)*

It is well settled principal of law that where the assessee claims to have received gifts, the onus is upon him to prove the identity of the donor, his creditworthiness and the genuineness of the gift.

- *M. Sundaram vs ACIT [2007] 161 TAXMAN 54 (MAD.)*

Where assessee fails to prove the source of money receipts and has also failed to prove that money does not belong to him, addition made u/s 69A is well within the limit of law.

Important Judicial Pronouncement

52

- *Sri. Kavitha Jewellers vs DCIT [2019] 104 taxmann.com 445 (Madras)*

Where excess jewellery found during search proceedings belonged to partners of assessee-jewellery firm, no addition was to be made in hands of firm treating same as firm's undisclosed income.

- *CIT vs Jagdishprasad Mohanlal Joshi [2018] 99 taxmann.com 287 (Bombay)*

Without any corroborative evidence, addition made u/s 69A on the basis of confessional statement made by third party under Maharashtra Central Organised Crime Act, 1999, cannot be sustained.

SLP against high court ruling has been dismissed.

- *PCIT vs Basetteppa B Badami [2018] 93 taxmann.com 66 (Karnataka)*

Where closing balance of cash in hand for preceding year was sufficient to explain cash deposited in bank in subsequent year, no addition could be made as unexplained money u/s 69A.

- *Abhay Kumar Bharamgouda Patil vs ACIT [2018] 96 taxmann.com 377 (Panaji - Trib.)*

Addition under section 69A could not be made in hands of assessee merely on basis of entries in diary impounded during survey of a society doing banking business showing receipts of certain undisclosed money from various depositors including assessee.

- *PCIT vs Pradip Jayantilal Karia [2018] 94 taxmann.com 323 (Gujarat)*

Where assessee made disclosure in statement recorded u/s 132(4) for and on behalf of all family members, entire addition in course of assessment could not be made in hands of assessee only u/s 69A.

Section 69B : Introduction

54

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Conditions Precedent for Applicability of Section 69B

55

Section 69A comes into play only when the following conditions are satisfied:

1. It must be established that in any financial year the assessee had made investments or is found to be the owner of any bullion, jewellery or other valuable article.
2. The AO must establish that the amount expended on making such investment or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income.
3. The assessee offers no explanation about such excess or the explanation offered by him is in the opinion of the AO not satisfactory.

The conditions in section 69B are cumulative and if all these circumstance exist, the excess amount may be deemed to be the income of the assesses for the financial year in which the said investments is made or the assessee became the owner.

In the case of *Roshan Alias Rakesh G. shah vs. CIT (1995) TTJ 267 (Ahd – Trib)*

Onus to Prove the Circumstances Enabling invocation of Section 69B

56

- *Smt. Amar Kumari vs CIT [1979] 2 Taxman 462 (Raj.)*

The onus of proving the existance of the circumstances which enable the AO to invoke the provision of Section 69B is on the revenue. The AO should not act arbitrarily. The AO should have material evidance before invoking the provision of section 69B.

- *CIT v. Agile Properties (P) Ltd. (2014) 107 DTR 0201 (Del-HC)*

Addition made u/s 69B can be made only on the basis of positive material or evidence mere reliance upon the report of the Valuation Officer expressing his opinion as to true Value would be inadequate material for AO to constitute evidence in the absence of positive evidence. No addition under section 69B can be made simply on the basis of difference of opinion as to the market value of the asset.

Also held in the case of *CIT vs Western Estates (1994) 209 ITR 343 (Cal)*

Onus to Prove the Circumstances Enabling invocation of Section 69B

57

- *Joginder Lal vs CIT [2015] 56 taxmann.com 150 (P&H)*

Where revenue has discharged its onus of providing that sale consideration reflected in the sale deed is incorrect and the true value of the transaction disclosed in the statements by the vendors remain unrebutted, amount of difference of sale consideration is rightly treated as unexplained investment in property u/s 69B.

Also held in the case of *Classic Electricals Ltd. Vs ACIT (2014) 161 TTJ 397 (Mum. – Trib)*

- *DCIT vs Vallabhbai Purshottambhai Surani (2012) 54 SOT 556 (Ahd. – Trib)*

AO cannot make addition u/s 69B as he held failed to bring on record any material to justify his addition.

Important Judicial Pronouncement

58

- *PCIT vs Dharmaja Infrastructure [2019] 107 taxmann.com 281 (Gujarat)*

Since there is no material on record to show that assessee had in fact made investments over and above that recorded in books of account, Provisions of section 50C could not be applied for making addition under section 69B.

- *CIT vs Mantri Share Brokers (P.) Ltd. [2018] 96 taxmann.com 279 (Rajasthan)*

No section 69B addition in hands of assessee merely on basis of statement of director when there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence.

SLP against High Court ruling has been dismissed.

Important Judicial Pronouncement

59

- *CIT vs Smt. S.Jayalakshmi Ammal [2016] 74 taxmann.com 35 (Madras)*

Where addition of undisclosed income u/s 69B is made on basis of mere statement given by his son under section 132(4) which is not corroborated by any material evidence, neither such statement would be a conclusive evidence, nor any addition can be made.

- *CIT vs Vrundvan Roller Floor Mill [2016] 72 taxmann.com 250 (Gujarat)*

Where inflated statement was furnished to banking authorities for availing of higher credit, difference of stock shown in books of account and in statement furnished to banking authorities could not be treated as undisclosed investment.

- *CIT vs Bahubali Neminath Muttin [2016] 72 taxmann.com 139 (Karnataka)*

Where AO rejected assessee's books of account and applied gross profit rate on suppressed sales, he could not make separate addition on account of unexplained investment u/s 69B.

Section 69C : Introduction

60

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

Conditions Precedent for Applicability of Section 69C

61

The following are the conditions precedent for invoking section 69C:

1. In any financial year an assessee has incurred any expenditure.
2. Assessee offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory.

When the above two conditions are satisfied, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

In the case of *S.F. Wadia vs ITO (1987) 27 TTJ 537 (Ahd – Trib)*, it was held that condition precedent for invoking section 69C is that amount spent must be an expenditure incurred by the assessee and the same must not be deductible while computing the income under any head.

Important Judicial Pronouncement

62

- *Roshan Associates (P) Ltd. vs ITO (2012) 2012 TaxPub(DT) 2691 (Mum-Trib)*
Since assessee itself had admitted expenditure incurred in cash as additional income because the same was not recorded in regular books of account and no explanation was advanced regarding source of expenditure, subsequently the said unexplained expenditure could not be claimed as deduction against any other income.
- *ACIT v. Aayush ICU & Multispecialty Hospital, ITA No. 2006/Ahd/2012*
If any expenditure which is capital in the nature and give rise to any capital asset on which depreciation is allowed, then, such expenditure is covered under the provision of section 69B and not under the provision of section 69C.
- *Sunil Balasubramaniam Shankar vs ITO [2019] 107 taxmann.com 55 (Madras)*
Since assessee failed to explain the nature of expenses made through credit card, such expenses can be treated as unexplained expenditure as per the provision of section 69C.

- *Manoj Sharma vs ITO [2019] 103 taxmann.com 105 (Delhi - Trib.)*

Where entries in assessee's trading account including quantitative tally of purchases, opening stock, sales and closing stock were found to be correct, no addition on account of unexplained purchases could be made.

- *Pravesh Kejriwal vs ITO [2019] 101 taxmann.com 170 (Kolkata - Trib.)*

Where assessee had claimed expenses towards purchase of machineries from several parties and had filed copies of PAN cards of these parties so as to establish their identity and had also furnished relevant details regarding payments made against bills raised by such parties by way of account payee cheque after deduction of TDS, Assessing Officer was unjustified in making additions under section 69C treating such purchase of machineries to be bogus

Section 69D : Introduction

64

Where any amount is borrowed on a *hundi* from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be :

Provided that, if in any case any amount borrowed on a *hundi* has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount.

Explanation.—For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.

Section 69D : Meaning of Hundi

65

Meaning :-

Hundis are indigenous bills of exchange. They seem like a negotiable instrument though the Negotiable Instruments Act does not include them in the definition of a negotiable instruments .

CIT vs Mahendra Kamaiyalal (HUF) (1993) 202 ITR 701 (Guj.)

Merely, because documents are executed on hundi papers and payment is not made by account payee cheques, documents cannot be termed as hundis when the requirement there of are not satisfied.

CIT vs P.S.T.S. Thiraviarathna Nadar (1991) 187 ITR 37 (SC)

Hundis are document which are written in vernacular language, documents which are written in English are, therefore, not hundies.

How Cash credit disclosed in ITR

66

Income chargeable u/s 115BBE shall be disclosed in Clause 2(b) of Schedule – OS - Income From other Source

| | | | |
|----------|---|---|-------------|
| 2 | Income chargeable at special rates (2a+ 2b+ 2c+ 2d + 2e) | 2 | |
| | a | Income by way of winnings from lotteries, crossword puzzles etc. | 2a |
| | b | Income chargeable u/s 115BBE (bi + bii + biii + biv+ bv + bvi) | 2b |
| | i | Cash credits u/s 68 | bi |
| | ii | Unexplained investments u/s 69 | bii |
| | iii | Unexplained money etc. u/s 69A | biii |
| | iv | Undisclosed investments etc. u/s 69B | biv |
| | v | Unexplained expenditure etc. u/s 69C | bv |
| | vi | Amount borrowed or repaid on hundi u/s 69D | bvi |

How Cash credit disclosed in ITR

Contd...

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Income chargeable u/s 115BBE shall also be reported in Schedule – SI - Income chargeable to tax at special rates

Schedule SI Income chargeable to tax at special rates (please see instructions No. 9 for rate of tax)

| SPECIAL RATE | SI No | Section | <input checked="" type="checkbox"/> | Special rate (%) | Income (i) | Tax thereon (ii) |
|--------------|-------|--|---|--------------------------|---------------------------------|-------------------------|
| | | 1 | 111A (STCG on shares units on which STT paid) | <input type="checkbox"/> | 15 | (3iii of schedule BFLA) |
| | 2 | 115AD (STCG for FIIs on securities where STT not paid) | <input type="checkbox"/> | 30 | (3iv of schedule BFLA) | |
| | 3 | 112 proviso (LTCG on listed securities/ units without indexation) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 4 | 112(1)(c)(iii) (LTCG for non-resident on unlisted securities) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 5 | 115AC (LTCG for non-resident on bonds/GDR) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 6 | 115ACA (LTCG for an employee of specified company on GDR) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 7 | 115AD (LTCG for FIIs on securities) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 8 | 115E (LTCG for non-resident Indian on specified asset) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 9 | 112 (LTCG on others) | <input type="checkbox"/> | 20 | (3viii of schedule BFLA) | |
| | 10 | 112A (LTCG on sale of shares or units on which STT is paid) | <input type="checkbox"/> | 10 | (part of 3vii of schedule BFLA) | |
| | 11 | STCG Chargeable at special rates in India as per DTAA | <input type="checkbox"/> | | (part of 3vi of schedule BFLA) | |
| | 12 | LTCG Chargeable at special rates in India as per DTAA | <input type="checkbox"/> | | (part of 3ix of schedule BFLA) | |
| | 13 | 115BB (Winnings from lotteries, puzzles, races, games etc.) | <input type="checkbox"/> | 30 | (part of 2a of schedule OS) | |
| | 14 | 115BBDA (Dividend income from domestic company exceeding Rs.10 lakh) | <input type="checkbox"/> | 10 | (part of 2d of schedule OS) | |
| | 15 | 115BBE (Income under section 68, 69, 69A, 69B, 69C or 69D) | <input type="checkbox"/> | 60 | (2b of schedule OS) | |
| | 16 | 115BBF (Tax on income from patent) | <input type="checkbox"/> | 10 | (part of 2d of schedule OS) | |
| | 17 | 115BBG (Tax on income from transfer of carbon credits) | <input type="checkbox"/> | 10 | (part of 2d of schedule OS) | |

Section 115BBE :- Taxation of Incomes Referred to in Sections 68 to 69D

68

1. Where the total income of an assessee,—
 - a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or
 - b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),the income-tax payable shall be the aggregate of—
 - i. the amount of income-tax calculated on the income referred to in clause (a) and clause (b), **at the rate of sixty per cent****; and
 - ii. the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]
2. Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

** U/s 115BBE tax rate of 30% has been changed to 60% by THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016 w.e.f from AY 2017-18.

Analysis of Amendments in Section 115BBE by The Taxation Laws (Second Amendment) Act, 2016

69

Reason behind change in Tax Rate from 30% to 60%

Before the amendment in section 115BBE, if any person declare any undisclosed income voluntarily in his return of income, then such income shall be liable to tax @30% u/s 115BBE. Further there was no provision in act to levy the penalty on such disclosure of undisclosed income.

Post demonetization, if any person deposit his undisclosed income in bank account, he can simply use the above lacuna of the provision and pay 30% tax on his unaccounted money without any penalty.

Thus, the above amendment shall have the effect that if any person having cash or deposits in an account maintained by such person after demonetization representing “*undisclosed income*” with respect to which he is not able to establish the source of earning income, would have to suffer the tax liability @ 78% ** of such undisclosed income.

**** Tax @60% along with 25% surcharge and 4% cess i.e.78% of undisclosed income.**

Section 115BBE :- Taxation of Incomes Referred to in Sections 68 to 69D

70

Total tax effect on incomes referred to in section 68 to 69D can be summarized as under:

| Particular | Tax Rate |
|---|------------|
| Unexplained income disclosed in return/detected by AO (A) | 60% |
| <i>Add:</i> Surcharge on it @ 25% of 60% (B) | 15% |
| Total (C) = A+B | 75% |
| <i>Add:</i> Cess @ 4% of 75% (D)** | 3% |
| Total Tax Payable (E) = C+D | 78% |

**Prior to AY 2018-19, Cess rate was 3% instead of 4%.

Section 271AAC :- Penal Consequences Post Invocation of Sections 68 to 69D

71

1. The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

2. No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1)
3. The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Section 271AAC :- Penal Consequences Post Invocation of Sections 68 to 69D

72

1. Quantum of Penalty :- As per section 271AAC, the assessee shall pay penalty @10% of the tax payable u/s 115BBC(1)(i) in addition to tax payable u/s 115BBC. Thus the amount of penalty shall be 6% of the undisclosed income, i.e., 10% of 60%.
2. The proviso to section 271AAC provides that no penalty shall be levied in respect of income referred to in sections 68 to 69D to the extent such income has been included by assessee in the return of income furnished u/s 139 and tax due thereon as per the provision of section 115BBC(1)(i) has been duly paid.
3. The AO is the authority who may levy penalty u/s 271AAC. As the word used is 'may' hence penalty is at discretion of the AO.

Section 271AAC :- Penal Consequences Post Invocation of Sections 68 to 69D

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4. Sub section (2) of section 271AAC provides that no penalty shall be imposed u/s 270A on the account of under reporting or mis reporting of income referred to in sub section (1).
5. Section 271AAC starts with non-obstante clause, thus it can be said that the provision contained in section 271AAC overrides any provision of the Act except section 271AAB, which is related to the levy of penalty in search case. Thus penalty u/s 271AAB may be in addition to penalty u/s 271AAC in search cases.

Total Tax & Penalty Outgo in Respect of Cash Credit

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| S. No. | Particular | Undisclosed Income Declared in Return | Undisclosed Income not Declared in Return |
|--------|---|---------------------------------------|--|
| A | Tax u/s 115BBE | 60% | 60% |
| B | Surcharge @ 25% of A i.e., 15% of undisclosed income | 15% | 15% |
| C | Cess on the above @4% of (A+B) | 3% | 3% |
| D | Penalty @10% of A i.e., 6% of undisclosed income u/s 271AAC | Nil | 6% |
| | Total tax with Penalty (A to D) | 78% | 84% |

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Section 271AAB :- Penalty on Undisclosed Incomes Found in Search Cases

75

1. Quantum of Penalty (if search has been initiated u/s 132 on or after 15th December 2016) :-
 - i. Where assessee admits undisclosed income during search :-

As per section 271AAB(1A)(a), the AO may direct the assessee to pay a sum computed @ 30% of the undisclosed income in addition to tax, if any payable by him, if the assessee –

 - a) Admits the undisclosed income and specified the manner in which such income has been derived, in a statement made u/s 132(4).
 - b) Substantiates the manner in which the undisclosed income was derived
 - c) Furnishes the return of income for the specified previous year and pays the tax, together with interest, if any, in respect of the undisclosed income on or before specified date.

Section 271AAB :- Penalty on Undisclosed Incomes Found in Search Cases

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ii. Where assessee does not admits undisclosed income during search :-

As per section 271AAB(1A)(b), the AO may direct the assessee to pay a sum computed @ 60% of the undisclosed income in addition to tax, if assessee does not admit undisclosed income in his statement made u/s 132(4).

2. No penalty shall be levied u/s 270A or 271(1)(c) on the undisclosed amount on which penalty was already levied u/s 271AAB.



THANK
YOU!

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