



# POST DEMONETIZATION TAXATION ISSUES

*- Adv. Devendra H. Jain*

# BACKGROUND OF DEMONITIZATION

- Demonetization was announced by the Prime Minister on 08/11/2016. The Prime Minister declared that use of all Rs. 500 and Rs.1000 bank notes would be invalid post midnight of 08/11/2016.
- Demonetization resulted in cash deposits in large magnitude. General Public was allowed to deposit the demonetised bank notes between the period 09/11/2016 to 30/12/2016.
- For Indians abroad during the specified period deposit of demonetized notes were permitted upto 31/03/2017 at the offices Reserve Bank of India.

# CASH DEPOSIT IN BANK ACCOUNT.

## **Taxing provisions:**

Section 68 - Cash credit

Section 69 - Unexplained Investments

Section 69A - Unexplained Money etc.

Section 69B - Investments etc. not fully disclosed



# **SECTION 68- CASH CREDIT**



# INGREDIENTS OF SECTION 68:

1. Any sum found credited in the **books of an assessee**
  2. Assessee offers no explanation about the nature & source thereof, or
  3. Explanation offered is not satisfactory in the opinion of the A.O.
- **Consequences:**  
the sum so credited may be charged as income of the assessee **for that P.Y. (year in which it is found credited)**

## ONUS LIES ON ASSESSEE TO PROVE THE FOLLOWING:

- a) The identity of the creditor is established;
- b) The capacity/creditworthiness of the creditor is beyond doubt;
- c) The transaction is genuine.

Once an assessee proves the identity, creditworthiness and genuineness of the creditor, the onus shifts on the A.O.

# A.O. TO CONDUCT PROPER ENQUIRIES BEFORE MAKING ANY ADDITION...

- CIT Vs. United Commercial and Industrial Co. (Pvt.) Ltd. (1991) 187 ITR 596 (Cal)
- CIT vs. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Cal)
- Korlay Trading Co.,. Ltd. (1998) 232 ITR 820 (Cal).
- Kamal Motors v. CIT [2003] 131 Taxman 155 (Raj.).
- CIT v. R.S. Rathore [1995] 212 ITR 390 (Raj.),
- **Life Insurance Corporation of India vs. CIT (1996) 219 ITR 410 (SC)**
- CIT vs. Metachem Industries (2000) 245 ITR 160 (MP)
- CIT vs. Oasis Hospitalities Pvt. Ltd., 333 ITR 119 (Delhi)(2011).

# SOURCE OF SOURCE NEED NOT BE PROVED BY THE ASSESSEE:

- DCIT v Rohini Builders (2002) 256 ITR 360 (Guj)
- Hastimal v. CIT 49 ITR 273 (Mad.)
- Tolaram Daga v. CIT 59 ITR 632 (Assam)
- Nemichand kothari v. CIT 264 ITR 254 (Gau.)
- Murlidhar Lahorimal v. CIT 280 ITR 512 (Guj.)

*Exception: Proviso to Section 68*





# **SECTION 69- UNEXPLAINED INVESTMENTS**

# INGREDIENTS OF SECTION 69

- There should have been investments made by assessee
- Such Investments are not recorded in books of accounts(if any)
- assessee offers no explanation about the nature and source of the investments, OR
- explanation offered by him is not satisfactory, in the opinion of the Assessing Officer.

## **Consequences:**

the value of the investments may be deemed to be the income of the assessee of such financial year **(year in which investment are made)**



**SECTION 69A-  
UNEXPLAINED MONEY, ETC.**

# INGREDIENTS OF SEC. 69A

- Assessee found to be owner of **any money, bullion, jewellery or other valuable article,**
- Such assets are not recorded in books of accounts(if any)
- The assessee offers no explanation about the nature and source of acquisition OR
- Explanation offered is not Satisfactory in the opinion of AO

## **Consequences:**

the value of the such asset may be deemed to be the income of the assessee of such financial.



The background of the slide is a soft-focus image of numerous banknotes of various denominations and colors (including yellow, green, and red) scattered across the surface. The text is centered over this background.

**SECTION 69B-  
AMOUNT OF INVESTMENTS,  
ETC. NOT FULLY DISCLOSED  
IN BOOKS OF ACCOUNTS**



# INGREDIENTS OF SEC. 69B

- This section is similar to Section 69 & Section 69A.
- As per this section, if assessee is found to be owner of any investment, bullion, jewellery or other valuable article in excess of what has been disclosed in Books of Accounts, then such excess value of the specified assets will be deemed as income of the assessee



**SECTION 69C-  
UNEXPLAINED EXPENDITURE,  
ETC.**

# INGREDIENTS OF SECTION 69C

- Assessee has incurred expenditure
- Assessee offers no explanation about the source of such expenditure (Or part thereof), OR
- Explanation offered by him is not satisfactory in the opinion of AO

## **Consequences:**

Such unexplained expenditure shall be deemed to be income of assessee.

Such unexplained expenditure shall not be allowed as a deduction under any head of income.



# IMPACT OF DEMONETIZATION





# **STATUTORY DISCLOSURES**



# DICLOSURES REQUIRED UNDER THE COMPANIES ACT, 2013

- Notification No. G.S.R. 308(E) dated 30th March 2017 issued by MCA required the companies to disclose the Details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016 .
- Notification No. G.S.R. 307(E) dated 30th March 2017 issued by MCA required the auditor to incorporate in its audit report the following :

*“(d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.”*

# DICLOSURES REQUIRED IN ITRs

- Disclosure of cash deposited during the period was required to be made in the ITR forms if the cash deposited was Rs.200,000 or more.

# Rule 114E : Furnishing of Statement of Financial Transaction (inserted w.e.f. 15.11.2016)

Sr No.	Nature and Value of Transaction	Reporting person
i.	Cash deposit during the period 09.11.16 to 30.12.16 aggregating to-	
	(i) Twelve lakh fifty thousand rupees or more, in one or more current account of a person; or	i.) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies;
	(ii) Two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person.	ii.) Post Master General as referred to in clause (j) of Section 2 of the Indian Post Office Act, 1898
ii.	Cash deposits during the period 01.04.16 to 09.11.16 in respect of accounts that are reportable under Sr. No. 12	i.) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies; ii.) Post Master General as referred to in clause (j) of Section 2 of the Indian Post Office Act, 1898 <sub>21</sub>



# **AMENDMENTS IN THE ACT**



# THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

## Statement of Objects & Reasons by Finance Minister Arun Jaitley on 26<sup>th</sup> November, 2016:

- ❑ *Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) issued by the Reserve Bank of India have been ceased to be legal tender with effect from the 9<sup>th</sup> November, 2016.*
  
- ❑ *Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. **The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.***



The background of the slide is a high-angle, slightly blurred photograph of numerous Indian Rupee banknotes scattered across a light-colored surface. The notes are in various denominations and colors, including yellow, green, and red, and are oriented in different directions, creating a sense of abundance and movement.

**SECTION 115BBE-  
TAXATION OF DEEMED  
INCOME U/S. 68-69D**

# TAXATION

## The Taxation Laws (Second Amendment) Act, 2016

- Tax on income referred to in section 68, 69, 69A, 69B, 69C or 69D whether included in ROI or added by AO – tax rate **60%** (from 30%)
- Finance Act 2017 provides for a surcharge on such income at 25% of tax.
- Effective rate becomes 75.00% + Cess( upto AY 2018-19 – 3%)  
from AY 2019-20 – 4%)

# TAXATION

## Amendment to Section 115BBE by *The Taxation Laws (Second Amendment) Act, 2016*

*Whether applicable for entire F.Y. 2016-17?*

- Legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

**-CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466 (SC).**

## ➤ Assurances given by Officials

Immediately after demonetisation, an assurance was given by the Government that cash deposit upto Rs. 2,50,000/- shall not be inquired in the cases of small businessman, housewives, artist, labour, etc. through advertisements and media.

Thereafter, Hon'ble Prime minister on 12/11/2016 made a public announcement that deposit of notes upto Rs. 2,50,000/- made by married woman will not be subject to any sort of inquiries. But, no official circular was issued in this regard.

Representation was made by CTC vide representation dated 14/11/2016 requesting to clarify this issue by way of Circular. No Circular is issued clarifying the same.

Instead we have amendment which does not have any threshold limit. Even small amount of Rs. 50,000/- can be covered u/s 115 BBE.



# SET OFF OF LOSS AGAINST INCOME DEEMED

## U/S. 68-69D

- **Allowed:**  
CIT v. Chensing Ventures [2007] 291 ITR 258  
CIT v. Shilpa Dyeing & Printing Mills (P.) Ltd [2013] 219 Taxman 279(Guj.)
- **Not Allowed:**  
Kim Pharma (P) Ltd v. CIT [2013] 258 CTR 454 (P&H) relying on Fakir Mohmed Haji Hasan v. CIT [2001] 247 ITR 290 (Guj.)
- **CBDT Circular No. 11/2019 dt. 19/06/2019:**  
Para 4 of the said circular CBDT have clarified that assessee is entitled to claim set-off of loss against income determined u/s. 115BBE till AY 2016-17
- **From AY 2017-18- Section 115BBE amended.**  
No set off of loss or allowance against deemed income u/s 68, 69, 69A, 69B or 69C.

# OTHER TAX IMPLICATIONS

•The following would also be other implications of deemed income u/s. 68-69D:

(1) no deduction in respect of any expenditure,

(2) no deduction in respect of any allowance,

(3) no set-off of any losses,

against such deemed income

-Section 115BBE(2)

## NOTIFICATION F.NO. 225/391/2017 DATED 24-11-2017

- CBDT issues directions for scrutiny assessment in case of revised ITRs filed post demonetization
- Revision of Income-tax return (ITR) is allowed only if any omission or wrong statement is noticed therein by the assessee. Such omission or wrong statement may have occurred due to a bonafide and inadvertent error or a mistake on part of assessee.
- However, post demonetization period, it was found that some of the assesseees tried to build an explanation for cash deposits in their bank accounts by manipulating their books of accounts and filing revised or belated ITRs.
- Filing revised or belated ITRs just to build an explanation for cash deposits in bank account becomes questionable and, therefore, the transaction disclosed in it which are over and above the original return are liable to be taxed under anti-abuse provisions of the Income-tax Act.



# **JUDICIAL PRECEDENTS**



# IMPACT OF DEMONETIZATION

❖ Onus is on assessee to prove positively the source and nature of an amount received by him in accounting year, and if he fails to discharge that onus, income-tax authorities are entitled to draw an inference that amount received was of an income nature.

❖ Where assessee not having satisfactorily proved source and nature of amount which he encased on demonetization, revenue authorities were perfectly justified in drawing an inference that said sum was of an income nature.

-*Chunilal Rastogi vs. CIT [1955] 28 ITR 341 (Pat.)*

-*Anil Kumar Singh vs. CIT [1972] 84 ITR 307 (Cal.)*

-*M. L. Tewary vs. CIT [1955] 27 ITR 630 (PAT.)*

# IMPACT OF DEMONETIZATION

## Cash in hand in books:

❖ Where amount en-cashed on demonetization was part of cash balance in the books of account, AO can not disbelieve a part of such cash balance as being not of specified denominations, when the books are not rejected.

*-Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288(SC).*

## Affidavit of payers:

❖ When assessee submitted books of account showing relevant entries showing payment being made to them which resulted in cash in its books and also submitted affidavits of payers, Revenue authorities can not hold that it was not possible that all payments after a particular date were being made in multiples of Rs. 1000. No addition can be sustained based on pure surmise.

*- Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC).*

# IMPACT OF DEMONETIZATION

## *Ad hoc Bifurcation of cash between different denominations:*

❖ Where there was sufficient balance on date of deposit, Assessing Officer can not make additions of part of amount for want of details of receipts of some of high denomination notes. There was no justification for adding a portion of amount tendered by assessee for encashment of high denomination notes as income of assessee from undisclosed sources for alleged failure of assessee to furnish source of acquisition of amount in such notes.

-Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay)

-Lakshmi Rice Mills vs. CIT [1974] 97 ITR 258 (Pat.)

# IMPACT OF DEMONETIZATION

## *Cash in hand - denomination of notes*

❖ It was possible that even in a cash balance of a very large amount there may be no high denomination notes at all. Equally it was possible that even , in a cash balance of a small amount almost the entire cash balance may be made up only of high denomination notes.

❖ When both the possibilities were there, it could not be said that those or any of them represented the income of the assessee from some undisclosed source.

*-Gur Prasad Hari Das vs. CIT [1963] 47 ITR 634 (All.)*



# IMPACT OF DEMONETIZATION

*Logical to keep cash in high denomination notes:*

❖ If the cash balance of the assessee-company was steadily increasing it would not be at all unreasonable to accept the explanation given by the assessee-company that, **for the sake of convenience, the cash balance was being kept in high denomination currency notes.**

❖ High denomination currency notes could be stored more easily and, at the time of accounting, they would have facilitated counting. Since the balance was increasing steadily, the assessee might not have felt it necessary to keep the balance in currency notes of low denomination .

❖ Such an explanation by assessee is not an unreasonable explanation.

**- *Kanpur Steel Co. Ltd. v. CIT [1957] 32 ITR 56 (ALL.)***

# IMPACT OF DEMONETIZATION

## No books: Cash from past savings:

❖ Where the assessee did not maintain and hence did not produce any Home Chest Account though it was his case that the high denomination notes were savings from his personal allowance, there was no warrant for drawing an adverse inference.

❖ Assessee produced details of withdrawals for past 7 years, and claimed the amount encashed on demonetization as to be out of savings from such withdrawals, such an explanation can not be rejected by AO.

*-Sri Sri Nilkantha Narayan Singh vs. CIT [1951] 20 ITR 8 (Pat.)*

- *Pass book supplied by the bank is not books maintained by the assessee and hence addition can not be made u/s 68 in respect of credits in such pass book.*

**CIT v. Bhaichand N. Gandhi [1982] 141 ITR 67 (Bom.)**

**Smt. Manasi Mahendra Pitkar v. ITO [2016] 160 ITD 605 (Mumbai - Trib.)**

- Where in respect of huge amount of cash deposited in bank, assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of said cash credits, Assessing Officer was justified in adding said amount to assessee's taxable income under section 68.

**Sudhir Kumar Sharma (HUF) v. CIT [2014] 46 taxmann.com 340 (Punjab & Haryana)**

# BOOKS NOT MAINTAINED

Though section 68 of the Act may not be strictly applicable since the assessee was not maintaining any books of account and the bank statement cannot be considered as the assessee's books of account, on the basis of the judgment of the Supreme Court in the case of *A. Govindarajulu Mudaliar v. CIT* [1958] [34 ITR 807](#), it is the onus of the assessee to explain the cash received by him and if there is no explanation or acceptable evidence to prove the nature and source of the receipt, the amount may be added as the assessee's income on general principles and it is not necessary to invoke section 68, nor is it necessary for the income-tax authorities to point out the source of the monies received. Even if section 68 is not applicable, the cash deposit in the bank can be asked to be explained by the assessee under section 69 or section 69B of Act.

[*Manoj Aggarwal v. DCIT* [2008] 113 ITD 377 (DELHI) (SB)]



# AMOUNT SEIZED AFTER THE CUT OFF DATE ?

## **Whether 'money' for the purpose of Section 69A?**

- *The expression 'money' has different shades of meaning. In the context of income-tax provisions, it can only be a currency token, bank notes or other circulating medium in general use, which has the representative value. Therefore, the currency notes on the day when they were found to be in possession of the assessee should have had the representative value, namely, it could be tendered as a money, which has intrinsic value. When, the RBI refused to exchange the high denomination notes when they were tendered for exchange, they were only scrap of paper and they could not be used as circulating medium in general use as the representative value and, therefore, it could not be said that the assessee was in possession of unexplained money.*
- **CIT vs. Andhra Pradesh Yarn Combines (P.) Ltd. [2006] 282 ITR 490 (Karnataka).**

## LAKHMICHAND BAIJNATH V. CIT [1959] 35 ITR 416 (SC).

- Amount credited in business books can **normally be presumed as business receipt.**
- When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business,
- if the explanation given by the assessee as to how the amounts came to be received is rejected by all the income-tax authorities as untenable



# **PENAL PROVISIONS**



# **SECTION 271AAC**



# SECTION 271AAC

➤ Penalty is leviable if:

A) The total Income determined of the Assessee includes any income referred to in Section 68, 69, 69A, 69B, 69C & 69D

And

B)

i) The said Income has not been included in the Return of Income furnished u/s 139

Or

ii) Tax on the said Income is not paid on or before the end of the relevant previous year in accordance with provisions of section 115BBE (1) (i)

➤ Amount of penalty - 10% of tax payable as per provisions of section 115 BBE (1)(i) .

# SECTION 271AAC

- No penalty u/s 270A due to under reporting of income shall be imposed in respect of the income on which penalty can be levied u/s 271 AAC.
- Penalty imposable u/s 271 AAB due to search being conducted u/s 132, simultaneous penalty can be levied u/s 271 AAC.
- Provisions of Section 274, dealing with 'Procedure for levy of penalty' and section 275, dealing with Bar of limitation for imposing penalty are applicable
- Order levying penalty u/s 271 AAC is appealable before C.I.T. (A), because 271 AAC is covered under chapter XXI which is covered u/s 246 A(1) (q).
- *Section 273A : Power to reduce or waive penalty, etc., in certain cases Section 270A is covered, however section 271AAC is not covered.*



# **SECTION 271AAB**

## AMENDMENT IN SECTION 271AAB

<b>BEFORE 15.12.2016</b>	<b>AFTER 15.12.2016</b>
<b>A sum computed @ 10% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4)</b>	<b>A sum computed @ 30% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4)</b>
<b>A sum computed @ 20% of the undisclosed income of the specified previous year in case assessee does not admit the undisclosed income in statement u/s 132(4) but admits in the ROI</b>	
<b>A sum computed @ 60% of the undisclosed income if not covered in the provisions of clause (a) &amp; (b)</b>	<b>A sum computed @ 60% of the undisclosed income if not covered in the above provisions</b>



Thank  
you



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