

**HIGH-PITCHED ASSESSMENTS ARISING
FROM ADDITIONS UNDER SECTIONS 68
TO 69C AND THEIR INTERPLAY WITH
SECTION 115BE OF THE INCOME TAX ACT,
1961**

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WHAT IS A HIGH-PITCHED ASSESSMENT?

- A. The term is not defined in the Income Tax Act, 1961 (the Act).
- B. CBDT in Circular No. 1914 dated 02.12.1993 provided instructions and guidelines for granting stay in High-Pitched assessment.
- C. An Assessment made far beyond Returned Income is considered as a high-pitched assessment.
- D. Relevant cases that accepted the assessments as “high-pitched Assessments”
 - *Dalpatbhai Vasabhai Ukava 108 taxmann.com 265 (Guj.)*
 - *Flipkart India (P.) Ltd vs. ACIT (2017) 396 ITR 551 (Kar.)*
 - *Soul vs. DCIT (323) ITR 305 (Del.)*

REASONS FOR HIGH-PITCHED ASSESSMENTS

- A. Such assessments may arise because of an item that appears in books of accounts or does not appear in the books of accounts.
- B. Such high-pitched assessment can also be irrespective of the returned income and independent of the books of accounts like in case where acquisition of assets not disclosed in the books of accounts is found at the time of search.
- C. *This distinction has now assumed importance in view of the fact that additions under sections 68-69C attract tax @ 77.25%*

SECTION 68 TO 69C OF THE INCOME TAX ACT, 1961

Under these Sections,

- A. Some additions pertain to books of accounts
- B. Some do not pertain to books of accounts

Historical Back Ground:

- A. To fulfill the Election Manifesto of present government, various amendments made like -
- B. Section 269SS of the Act amended by the Finance Act, 2015 effective from 01.06.2015 after which builders cannot received cash for members booking.
- C. Direct Tax Dispute Resolution Scheme, 2016 implemented
- D. The Benami Transaction (Prohibition) Amendment Act, 2016 brought in
- E. Prevention of Money Laundering Act,2002 activated
- F. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 enacted
- G. Section 115BBE introduced by Finance Act, 2012 effective from A.Y. 2012-13 to tax additions made u/s 68, 69, 69A, 69B,69C.at a flat rate @ 30%
- H. Section 115BBE amended by introducing amendment bill on 16.11.2016 made applicable retrospectively from 01.04.2016 to tax @ 60% plus surcharge @ 25%, thereby bringing the effective tax rate to 77.25%.

SECTION 68 OF THE INCOME TAX ACT, 1961

This section applies to any sum found credited in the “books” of an assessee ...

It is necessary to find out what is books of accounts for making addition u/s 68 of the Act.

- A. In *Mukundum AIR 1914 Nagpur 44*, it was held that *Books ordinarily mean collection of sheets of paper or other material; Blank, Written or Printed; Fastened or bound together so as to form material; Holding loose sheet or scraps of paper is not a book as it can easily detached.*
- B. In *V.C. Shukla (1998) 3 SCC 410*, the SC held that *Unbound sheets of paper is not book.*
- C. Further, in *Prathana Construction (P.) Ltd. 118 Taxman 112 (Ahd.)*, *S.P. Goyal 82 ITD 85 (TM) (Mum.)* and *Sharad Chaudhary 55 taxmann.com 324 (Del.)*, various Benches of the Tribunal have held that *Book cannot be considered as collection of some loose papers.*

What if a complete diary, as against, loose papers found?. Whether diary can be considered as books?

- A. **Diary is book maintained by assessee for a previous year as per section 2(12A) of the Act which defines books as "books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device;**
- B. **Therefore, based on the above definition a Diary can be considered as “books”. However the diary must be taken at face value.** The transaction would be taxable but not as “unexplained cash credit” under section 68 of the Act.

WHAT IS BOOK FOR PURPOSE SECTION 68 OF THE INCOME TAX ACT, 1961

The other view:

- A. *In the case of Sheratom Apparels 256 ITR 20 (Bom.), it was held that only books of accounts containing data required to file return of income is considered books of accounts. And thereby data maintained on parallel accounts, though may be accurate, can still be not regarded as “books of accounts”. Section 68, therefore, can not be applied.*
- B. *Further, in Femina Knit Fabs 104 taxmann.com 306 (Chd.), it was held that the Record of all unaccounted income is not considered as books so as to be covered u/s 68 to 69C of the Act.*

Therefore, through various judicial precepts it may be possible to determine what is to be understood as “Books” for the purpose of S. 68 of the Act

WHETHER BANK PASSBOOK CAN BE CONSIDERED AS A BOOK FOR MAKING ADDITION U/S 68 OF THE ACT?

- A. There are contrary judgements on this issue like in the case of *Bhaichand Gandhi 141 ITR 67(Bom.)* wherein it was held that the Bank passbook is not books of accounts of the assessee.
- B. However, in the case of *Sudhirkumar Sharma 46 taxmann.com 340 (P&H)* and *Arunkumar J. Muchhala 399 ITR 256 (Bom.)*, the courts have ruled saying that Bank passbook is books of accounts for making addition u/s 68.

However, even if a Bank passbook is not considered as books for the purposes of s.68 of the Act, yet it can be considered as evidence for making addition u/s 69 of the Act.

IF BOOKS OF ACCOUNTS ARE REJECTED THEN CAN THE SAME BOOKS BE RELIED FOR MAKING ADDITION?

In the case of *Banwarilal Bansidhar* 229 ITR 229 (All.) {re section 40A(3)} and *Aggarwal Engg. Co.* 302 ITR 246 (P&H) {re section 68} it is held that once the books are rejected then the same cannot be relied for making any other addition on the basis of the very books. However, in the case of *Kale Khan Mohammad Hanif vs. CIT* 50 ITR 1 (SC) and *Devi Prasad Vishwanath* 72 ITR 194 (SC), the Supreme Court has held that Rejection of books of accounts cannot mean that the same have become worthless; both additions can be made. In the case of *G.S. Tiwari & Co.* (2014) 357 ITR 651, the Allahabad HC has held that Double addition after rejection of books of accounts is permissible.

CAN ASSESSEE ASK FOR TELESCOPING FOR ADDITION ON ACCOUNT OF REJECTION OF BOOKS OF ACCOUNTS AGAINST ADDITION U/S 68?

A. Subject to factual foundation an Assessee can ask for telescoping of two additions;

1. On account of rejection of books of accounts;
2. On account of unexplained cash credit u/s 68.

B. This has been held in the judgments of :

1. KSM Guruswami Nadar & Sons 149 ITR 127 (Mad.)
2. Jagatkumar Satishbhai Patel 45 taxmann.com 441(Guj.)
3. Kunal Motors 180 CTR 166(Raj.)

Contra Jhaverilal Bihari Lal & Co. 160 ITR 634(Patna)

TRANSACTION DURING DEMONETISATION PERIOD

A. Can huge cash in hand lead to rejection of books of accounts?

Ans.: No.

1. *Kulwant Rai 291 ITR 36(Del.)*
2. *Associated Transport (P.) Ltd. 212 ITR 417(Kol.)*
3. *Baldev Raj Charla 121 TTJ 366 (Del.- Trib.)*

B. Can Cash deposited during demonetization period be accepted in part by the AO without doubting and rejecting the cash book?

1. In the cases of *Mehta Parikh & Co. 30 ITR 181(SC)* and *Lalchand Bhagat Ambica Ram 37 ITR 288 (SC)*, the SC held that if no defects are found in the books then full cash deposited is to be considered as genuine. AO cannot hold that only part cash deposit is genuine.
2. Further, in case of *Sreelekha Banerjee 49 ITR 112 (SC)*, it was held that if assessee fails to substantiate correctness of the books of accounts to justify cash deposited during demonetization period, then the full addition is justified.

CAN SALES CREDITED IN P&L A/C BE ADDED U/S 68 OF THE ACT?

- A.** Sales Cannot be added u/s 68 of the Act as assessee has already offered the same as income under the head sales. This has been held in the cases of:
1. *Vishal Export Overseas Ltd. Tax Appeal No. 2479 of 2009*
 2. *Harshila Choradia 298 ITR 349(Raj.)*
 3. *Deviprasad Vishwanath 72 ITR 194(SC) (on principle of no double addition)*
- B.** But an amount received in advance against sales which is to be offered as income at a future date can be added u/s 68 of the Act.
1. *Omland Realty 86 taxmann.com 226 (Guj.)*

IS IT NECESSARY TO MAINTAIN DETAILS LIKE NAME, ADDRESS, PAN OF SALES PARTIES?

- A.** An assessee is not required to keep details of Name, Address, PAN of sales parties.
1. *R.B. Jesaram Fatehchand 75 ITR 33(Bom)*
- B.** However, without examining the argument of double addition, it is held that if the assessee fails to submit details of genuineness of the sales transaction then addition can be made by invoking section 68.
1. *Self Knitting Works 51 taxmann.com 137(P&H)*
 2. *JMJ Essential Oil Company 415 ITR 17(HP)*
 3. *JMJ Essential Oil Company 113 taxmann.com 463(SC)*
 4. *Champalal Shah 86 taxmann.com 258 (Mum.)*

SECTION 69: UNEXPLAINED INVESTMENT

SECTION 69A: UNEXPLAINED MONEY

- A. Unlike section 68, sections 69 & 69A deal with items not recorded in the books of accounts. If an item is recorded in the books of accounts then sections 69 & 69A are not applicable.
- B. Burden is on the AO to prove that the assessee has made an investment. If it is found that the assessee is in possession of any assets then he has to discharge the burden that he is not the owner of the asset and addition u/s 69 & 69A can be made.
- C. Relevant cases on the above mentioned points:
 1. *Vasanthi Visweswaran 257 ITR 94(Mad)*
 2. *Surendra M. Khandhar 321 ITR 254(Bom.)*
 3. *Jagjit Pal Singh Anand 320 ITR 106(Del.)*
 4. *Chuharmal 172 ITR 250(SC)*

SECTION 69B: AMOUNT OF INVESTMENT NOT RECORDED IN THE BOOKS OF ACCOUNTS

- A. Section 69B is attracted only if it is found that an assessee has invested/spent an amount for an asset/expenditure but entries that are recorded in books of accounts of the assessee show a lesser value and assessee offers no explanation for the difference. The AO must establish the said fact.
1. *Khandelwal Shringi & Co. 398 ITR 420(Raj.)*
 2. *Sadhana Gupta 352 ITR 595(Del.)*
 3. *Gayatri Enterprise 116 taxmann.com 359(Guj.)*
- B. Addition made u/s 50C of the Act in case of the seller does not lead to an addition of the same amount u/s 69B in case of purchaser.
1. *Global Mercantiles (P.) Ltd. 157 ITD 924(Kol.)*
 2. *Harley Street Pharmaceuticals Ltd. 38 SOT 486(Ahd.)*

SECTION 69C : UNEXPLAINED EXPENDITURE

- A. When an Assessee has only incurred the expenditure and he offers no explanation about the source wholly or in part; or the AO is not satisfied by explanation, then only addition u/s 69C of the Act can be made.
- B. Courts have wrongly assumed that bogus purchases or expenditure appearing in the books can be disallowed u/s 69C because Section 69C does not apply to an amount that is recorded in the books of accounts.
- C. This section can be invoked only when assessee fails to offer an explanation .
 1. *Radhika Creation 10 taxmann.com 138(Del.)*
 2. *Sajani Jewellers 71 taxmann.com 90(Guj.)*

SECTION 115BBE

- A. As per the amended Section (amended vide Finance Act, 2016), additions under sec. 68-69C would suffer tax at 60% and no deduction in respect of any expenditure, allowance or set off of any loss will be allowable in computing his income.[Section 115BBE(2)]
- B. There is nothing like a head less income.
 - 1. *D. P. Sandhu 273 ITR 1 (SC)*
 - 2. *Radhe Developers India Ltd. 329 ITR 1(SC)*
 - 3. *Sheth Developers (P.) Ltd. 25 taxmann.com 173(Bom.)*
- C. If the same source has additions under sec. 68-69C and also loss, then it is possible to argue that while computing the income from that “source” the netting off is permitted as section 115BBE(2) restricts the set off which are found under sections 70 (inter source) & 71 (inter head). There is only one computation of total income.
 - 1. *Chensing Ventures 291 ITR 258 (Mad.)*
 - 2. *Shilpa Dying & Printing Mills (P.) Ltd. 39 taxmann.com 3 (Guj.)*

THANK YOU ALL

✕ Stay home & Stay safe.