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## Chapter – VI Aggregation of Income

- Section 68 – Unexplained credits in the assessee's books of accounts.
- Section 69 – Unexplained investment made by the assessee and not recorded in his books.
- Section 69A – Acquisition of tangible movable assets not recorded in books.
- Section 69B – Expenditure for acquisition of movable assets or making investments is found to be more than that recorded in books.
- Section 69C – Expenditure during previous year not accounted for.
- Section 69D – Amount borrowed or repaid on a hundi otherwise than through an account payee cheque.

# Synopsis

- General features
- Relevant head of income
- Explanation and satisfaction
- Interplay between various sections
- Books of account
- Rejection of books

# Synopsis

- Section 115BBE
- Section 271AAC and 271AAB(1A)
- Peculiar features of each section

# GENERAL FEATURES

## General features

- ❁ PLACEMENT OF SECTIONS IN CHAPTER VI
- ❁ RULE OF EVIDENCE : 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 - A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 SC & CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC)

## General features

- **MAY** : Indicates discretion - CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570 SC
- Sections 68 to 69C use 'may' and section 69D uses 'shall'
- Sections 68 to 69D v. presumptive taxation sections like section 44AD : Operate independently - ITO vs. Devi Singh Solanki [2006] 99 TTJ [Jp] 890 Contra : 94 TTJ 252
- Voluntary v. Addition by AO – see sections 115BBE and 271AAC

# HEAD OF INCOME



## Relevant head of income

1. Income representing additions can be assessed as income from business or other sources depending upon the facts of each case : CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC)
2. If the 'source' is not known, the deemed income may not fall even under the head "Income from other sources" and the deductions that are applicable to incomes under any heads will not be attracted.

## Relevant head of income

### • Relevant head of income

- 1) The additions made in this chapter do not belong to any particular head under Sec 14 but are charged to tax as income (not falling in particular head as such) as held by the Bombay High Court in the case of Fakir Mohamed Haji Hasan (2002) 120 Taxman 11.

**EXPLANATION  
ABOUT NATURE AND  
SOURCE**

# Explanation and satisfaction

- Explanation v. human probability : Durga Prasad More 82 ITR 540 SC and Sumati Dayal 214 ITR 801 SC
- Explanation being satisfactory is a question of fact : Mohankala 291 ITR 278 SC
- Satisfaction – reasoned order is necessary : Godrej & Boyce Manufacturing 394 ITR 449 SC and Maxopp Investments Ltd. 402 ITR 640 SC

# Explanation and satisfaction

## • Explanation v. Need to issue summons

- AO to take atleast minimum pain of issuing notice : Gobi Textiles Ltd. [2008] 170 Taxman 142 (Mad.)

- Particularly when assessee requests for such issue :  
GHAZIABAD FOOTWEAR (P.) LTD. v. DCIT (2005) 142  
TAXMAN 18 (DELHI)

- Orissa Corpn. (P) Ltd. (1986) 159 ITR 78 (SC)

- Issue summons as well as pursue : Divine Leasing & Finance Ltd (2007) 158 Taxman 440 (Delhi)

# Explanation and satisfaction

## • Explanation v. Confirmation from parties

- Assessee could not be treated unequally between those traders who had appeared before AO and supported assessee's claim and other five traders to whom summons of the assessing authority could not be served : Anis Ahmad and Sons v. CIT [2008] 297 ITR 441 (SC)

- Lender not appearing due to illness is an acceptable reason - Smt. Sandhya Verma 114 TTJ (Del) 933

- There is nothing wrong if confirmations are prepared by assessee and got signed to prove the identity : A-One Housing Complex Ltd. 110 ITD 361 (Delhi)

# Explanation and satisfaction

- CIT V. P. MOHANAKALA [2007] 291 ITR 278 (SC) :Even after rejecting the explanation given by the assessee if found unacceptable, the crucial aspect whether on the facts and circumstances of the case it should be inferred that the sums credited in the books of the assessee constituted income of the previous year must receive the consideration of the authorities provided the assessee rebut the evidence and the inference drawn to reject the explanation offered as unsatisfactory

# Trinity of factors – Identity, genuineness and creditworthiness

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Sreelekha Banerjee v. CIT</b>	<p>In order to prove that the transaction is not hit by Section 68, the assessee has to establish:</p> <ul style="list-style-type: none"><li>• <b>the identity of creditor</b></li><li>• <b>the creditworthiness of the creditor</b></li><li>• <b>the genuineness of the transaction</b></li></ul> <p>Only when these three ingredients are established, prima facie the onus shifts on the Department.</p>	<b>[1963] 49 ITR 112 [SC]</b>



# Trinity of factors – Identity, genuineness and creditworthiness

- The assessee is not required thereafter to prove the genuineness of the transactions as between its creditors and that of the creditors' source of income, i.e., the sub-creditors : Nemi Chand Kothari vs CIT & Anr. (2003) 264 ITR 254 Gau

- Creditworthiness v. Source of source

## Source of source

- ❁ Source of source need not be proved
- Tolaram Daga v CIT (1996) 59 ITR 632(Assam);
- CIT v Daulat Tam Rawatmull (1973) 87 ITR 349 (SC)
- Rohini Builders v Deputy CIT (2001) 117 Taxman-Mag 25 (Ahd)
- Subash Dall Mill v ACIT (2002) 257 ITR 115
- MANGILAL AGARWAL (LATE) 300 ITR 372 (Raj)

# Explanation by way of Intangible addition

- Explanation v. Intangible addition : Ananthram Veersinghaiah 123 ITR 457 SC
- Intangible addition v. Explanation 2 to section 271(1)(c) or section 270A(4)

**INTERPLAY  
BETWEEN VARIOUS  
SECTIONS**

## Interplay between various sections

- Sections 68 and 69D use 'previous year' whereas other sections use 'financial year'
- Section 69 uses 'financial year immediately preceding the assessment year', sections 69A to 69C mere use 'financial year'
- Sections 68 to 69C use 'may' whereas section 69D uses 'shall'
- Section 68 uses 'may be charged to income tax', sections 69 to 69C' use 'may be deemed to be the income of the assessee'

# Interplay between section 69 and 69A

Provisions of Section 69	Provisions of Section 69A	Case Law
Unexplained investment made in the relevant financial year may be deemed to be income of the assessee.	Unexplained money etc., may be deemed to be income of the assessee, if the assessee found to be owner thereof in the financial year.	
The investment made may be movable or immovable property.	Relates only with regard to movable property.	

# Interplay between section 68 and 69B

Provisions of Section 68	Provisions of Section 69B	Case Law
Unexplained credit recorded in the previous year may be charged to income tax.	Unexplained investment made by the assessee, in the financial year, found to be more than that was recorded in the books may be deemed to be income.	

# Interplay between section 69 and 69B

Provisions of Section 69	Provisions of Section 69A	Case Law
Unexplained investment made by the assessee, in the financial year, not recorded in the books may be deemed to be income.	Unexplained investment made by the assessee, in the financial year, found to be more than that was recorded in the books may be deemed to be income.	



# Interplay between section 69A and 69B

Provisions of Section 69A	Provisions of Section 69B	Case Law
Assessee should be proved to be owner.	Assessee need not be proved to be owner.	
Relates only with regard to movable property.	The investment made may be movable or immovable property.	
Relates to unexplained Investment not recorded in books.	Relates to investment found to be more than that was recorded in the books	
No need to maintain books	In the absence of books, this section cannot be invoked	

# Interplay between section 68 and 69C

Provisions of Section 68	Provisions of Section 69C	Case Law
Relates unexplained credit recorded in books	Relates to unexplained expenditure whether or not recorded in books.	

# Interplay between section 69/69A and 69C

Provisions of Section 69/69A	Provisions of Section 69C	Case Law
Relates unexplained investments not recorded in books	Related to unexplained expenditure whether or not recorded in books.	

# Interplay between section 69B and 69C

Provisions of Section 69B	Provisions of Section 69C	Case Law
Relates unexplained investment found to be more than that was recorded in the books	Related to unexplained expenditure whether or not recorded in books.	

# Interplay between section 68 and 69A

Provisions of Section 68	Provisions of Section 69A	Case Law
Ownership need not be proved. It only deals with the amount recorded in the books of accounts.	Ownership of the money etc., has to be proved. In case of cash assessee should be in possession of cash, and such money etc., is not recorded in the books of the assessee.	<b>Yadu Hari Dalmia Vs CIT (1980) 126 ITR 48 (Delhi)</b>

# Interplay between section 68 and 69

Provisions of Section 68	Provisions of Section 69	Case Law
The income from undisclosed source, if credited in the books of accounts maintained by the assessee is liable u/s 68	If such income, though invested, is not recorded in the assessee's books, then assessee is liable u/s 69	Laxmi Narain Gupta Vs CIT (1980) 124 ITR 94
Where firm's books show credit in partners names for which there is no satisfactory explanation, section 68 is applicable for firm's assessment.	Where the addition is justified in the hands of partner, provision of section 69 should be applied	CIT Vs Shiv Shakhi Timbers (1998) 229 itr 505

# Interplay between section 68 and 69

Provisions of Section 68	Provisions of Section 69	Case Law
Unexplained investment is treated as income only of the previous year, for which it is accounted in the books	Question of treating as the income of the previous year according to books does not arise.	Lamix Narain Gupta Vs CIT (1980) 124 ITR 94

# Interplay between section 68 and 69

Provisions of Section 68	Provisions of Section 69	Case Law
<p>When an amount is credited in the business books, it can be considered as business income. If the explanation offered by the assessee is satisfactory, such unexplained income is available for set off.</p>	<p>The corresponding deductions, which are applicable to the incomes under any of the heads of income under section 14, will not be attracted in the case of deemed incomes which are covered under the provisions of sections 69, 69A, 69B and 69C in view of the scheme of those provisions.</p>	<p><b>S. Kuppuswami Mudaliar v. CIT [1964] 51 ITR 757 - ITO v. Smt. Sundari Chimandas [2008] 115 ITD (BN)</b></p>

# BOOKS OF ACCOUNT



# Rejection of books

- *G.S. Tiwari & Co [2013] 357 ITR 651 (Allahabad): In an appropriate case, Assessing Officer can make addition in respect of both cash credits under section 68 as well as business income estimated by him under section 44AD after rejecting books of account maintained by assessee finding those books as unreliable*
- *Devi Prasad Vishwanath [1969] 72 ITR 194 (SC): There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable.*

## Rejection of books

- Bahubali Neminath Muttin [2016] 388 ITR 608 (Karnataka): where books of account of assessee had been rejected by assessing authority, same books of account could not be relied upon in an addition on account of trade creditors under s. 69B and also for arriving at closing stock
- *Dulla Ram, Labour Contractor [2014] 42 taxmann.com 349 (Punjab & Haryana): 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*

## Books of Account

- Section 68 deals with sum found credited in books whereas section 69/69A deals with investment/cash etc., not recorded in the books account
- Sections 68 uses 'books' and section 69B uses 'books of account'
- Sections 69 and 69A use 'books of account, **if any**'
- Section 68 uses 'books of an assessee maintained for any previous year', sections 69 and 69A use 'books of account, if any, maintained by him for any source of income'

# Books of Account

- Section 69B uses 'the books of account maintained by the assessee for any source of income'. It does not use words 'if any'

## Books of Account

- Section 69B uses 'the books of account maintained by the assessee for any source of income'. It does not use words 'if any'
- In Darshan Enterprise 441 ITR 473 Guj para 4.7 where revenue concedes that existence of books is an implied condition for invocation of section 68
- View confirmed in TAJ BOREWELLS [2007] 291 ITR 232 (Mad)
- **GSNR Rice 90 ITR Tri 114 Chennai : credit must be found in books and diary, notebook of data of deleted entries retrieved from CPC unit found during survey do not constitute books**

# Books of Account

- Indrani Devi 70 ITR Tri 42 Patna : When income is assessed under sec 44AD, there is no addition under sec 68 without books
- ***Mohankala 291 ITR 278 SC : in order that sec 68 is attracted, there has to be credit of amounts in the books maintained by the assessee [this suggests that pass book is not book of accounts]***
- ***a passbook qualifies as books of account after introduction of the definition of books of accounts u/a 2(12A) of the Finance Act 2001 Janak Goel Vs DCIT [2019-TIOL-1637-ITAT-DEL](#)***
- ***Credit in bank account simply or any other raw information available to Assessing Officer can't be loosely called as books of account under section 68. Invocation of section 68 sans valid and proper books of account of assessee is invalid and accordingly addition made by Assessing Officer as sustained by Commissioner(Appeals) based on same was incorrect and had to be reversed - Vinesh Maheswari [2019] 103 taxmann.com 274 (Delhi - Trib )***

## Books of account

1. A dairy or book maintained by the assessee as a memorandum or book is to be treated as books of account : ITO Vs. Chikkalingaiah (2006) 9 SOT 786 (Bang)
2. Bank passbook is not to be treated as a books of account Bhaichand H. Gandhi's case (1983) 141 ITR 67 (Bby)

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Jas Raj Dhoka vs. ITO</b>	A diary having account of assessee's transactions shall be his "books" for the purpose of section 68 of the Act.	<b>[2008] 119 TTJ 685</b>
<b>Goyal (S.P.) Vs DCIT</b>	Loose sheets are not books of accounts and the figures therein could not be lightly inferred to represent unaccounted income, unless there is something more to it. Such inference can be positively made only after identification of the papers and after due verification.	<b>(2004) 267 ITR (AT) 59 (Mum):</b>
<b>A. Govindarajulu Mudaliar v. CIT</b>	Section 68 might not be strictly applicable where the assessee has not maintained any books of account and the bank statement could not be considered as the assessee's books of account.	<b>[1958] 34 ITR 807</b>



# Books of Account

- When there are no books : Jas Raj Dhoka 119 TTJ (Jd) 685 & Anand Ram Raitani 223 ITR 544 (Gau)
- Not applicable to banks - ACIT v. Citizen Urban Co-op Bank Ltd. (ASR. – ITAT) [2008] 175 Taxman (BN) iii
- Not applicable prior to incorporation of a company : Amod Petrochem P. Ltd. [2008] 307 ITR 265 (Guj) HC

# Section 2(12A)

## Definition

## Definition : Section 2(12A)

"books or books of account" includes ledgers, day-books, cash books, account-books and other books, whether kept [in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in] a floppy, disc, tape or any other form of electro-magnetic data storage device;

# Section 115BBE

Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

**Section 115BBE : Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.**

(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).

# Section 115BBE

- Is section 115BBE automatic fall out of invocation of sections 68 etc.?
- Section 115BBE when additions are made on rule of evidence de hors section 68 etc. – Eg where there are no books of account



# Section 115BBE v. suo motu offer

- Voluntary offer of income under sec 68 etc in ROI and appropriate column head in ROI indicating as IOS
- Form does not override the Act - Tulsyan NEC Ltd. [2011] 196 Taxman 181 (SC)
- Parameters of section 68 etc., are not met when offered suo motu
- ROI under section 139 v. ROI under section 142(1)(i) and section 148

# Section 115BBE v. suo motu offer

- Direct Proceedings under section 148 and voluntary offer of income in return under section 148
- Proceedings u/s 148A and voluntary offer of income in return under section 148 – limited role of AO under section 148A(d)

## Section 115BBE(1)(a) v. (b)

- Clause (a) will subsume into clause (b), if there is an assessment.
  
- However, are parameters of section 68 etc met?
  - 1) AO accepts offer without questions
  - 2) AO accepts offer after questions
  - 3) Limited scrutiny

# Section 115BBE

- Section 115BBE v. section 115BBC
- Bar of deduction towards expenditure
- Bar of deduction towards allowance – current v. brought forward
- Bar of deduction towards set off of loss – current v. brought forward

# Section 271AAC

Penalty in respect of  
certain income

## 271AAC : Penalty in respect of certain income.

(1) The Assessing Officer [*or the Commissioner (Appeals)*] 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

- Subsection 1 applies where the ‘income determined’ includes incomes referred to in section 68 etc.
- Section 115BBE(1)(b) uses ‘determined by AO’
- Proviso to section 271AAC(1) is not needed as there cannot be suo motu offer of income referred to in section 68 etc., in ROI

# Section 271AAC v. 271AAB

- Section 271AAC(1) does not override section 271AAB
- Section 271AAB(1A) provides for 60%/30% penalty in respect of undisclosed income of the specified previous year
- For addition under section 68 etc.
  - a) section 271AAB(1A) applies in respect of additions for specified previous year
  - b) Section 271AAC(1) applies in respect of additions for other year

# Section 68

Cash credits

## Section – 68 : Cash credits

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 [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

**Provided that** where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

**Provided further** 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 Assessing Officer aforesaid has been found to be satisfactory:

**Provided also** that nothing contained in the first proviso [or second 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.

# Peculiar features of section 68

- General
- Meaning of 'sum'
- Factors to prove and standard of proof
- Loan or borrowing
- Share capital
- Partners' capital
- Section 68 in the first year or on first day of a PY



## Peculiar features of section 68

- Cash credit explained as sale proceeds or deposits
- Cash credit explained as excessive cash drawals
- Telescoping
- Will the subsequent repayment with or without interest absolve the assessee?
- Is it necessary to prove that the credit represents untaxed money of assessee?

# General

- The section only gives statutory recognition to the principle that cash credits which are not statutorily explained might be assessed as income : CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78/25 Taxman 80F (SC)

## General

- Cash credits without books : Addition may be made de hors section 68 - DCIT v. Smt. Phoolwati Devi [ITA No. 520/Delhi/2005, dt. 4-1-2008] (New Delhi – ITAT) [2009] 177 Taxman (BN) ii (Part 1)
- Though section 68 might not be strictly applicable where assessee maintains no books of account, on the basis of A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 SC, 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 - Manoj Aggarwal 113 ITD 377 (Delhi) (SB)

# Sum

- Section applies only to a sum of money
- **Sum v. Amount** – *HH Sri Rama Verma v. CIT (1991) 187 ITR 308 SC*
- Section heading – Cash credits

## Sum

- Not applicable in respect of carried forward balances - Shri Vardhman Overseas Ltd. [2008] 24 SOT 393 (Delhi) & Bansi Lal Gupta [2008] 113 TTJ (Asr) 898 [see also 301 ITR 384 (Delhi HC) and 301 ITR 404 (Raj)]
- Allotment of shares in lieu of goodwill and without any monetary consideration : Zexus Air Services Pvt Ltd [2021-TIOL-1225-ITAT-DEL](#)
- Issuance of shares at a premium by the assessee company to other companies in exchange for their shares by showing adjustments in its books does not attract section 68 : [TS-634-ITAT-2020\(Kol\)](#)

## Sum

- When the cash did not pass at any stage and since neither the respective parties received any cash nor paid any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise : Jatia Investment Co.
- In respect of group company's shares acquired by assessee on 'credit' holding that the credit entries regarding outstanding dues were between group companies without the involvement of cash/sum at any stage and thus not covered u/s. 68: Abhijeet Enterprise Ltd [[TS-189-ITAT-2019\(Kol\)](#)]

## Any sum credited – Contra view

- Expression ‘any sum’ used in section 68 does not say that credit should be only in nature of cash receipt
- It covers all credits, including loan, receipts and any other amount of similar nature , be that of cash or kind
- It covers all credits whether in name of assessee’s capital account or in name of a third party

# Factors to prove

• Divine Leasing and Finance Ltd. [2008] 299 ITR 268 (Delhi) HC – Relevant factors

- (1) the identity of the creditor/subscriber;
- (2) genuineness of the transaction, namely, whether it is transmitted through banking or other indisputable channels;
- (3) the creditworthiness or financial strength of the creditor/subscriber;
- (4) if relevant details of the address/PAN identity of creditor/subscriber are furnished along with copies of the shareholders register, share application forms, share transfer register, etc., it constitutes acceptable proof or acceptable explanation by the assessee.
- (5) AO is not justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;
- (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the AO take such repudiation at face value and construe it, without more, against the assessee; and
- (7) AO is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation.



## Standard of proof

- 1) Moneys received in cash or even demand drafts v. , the transaction is by cheque
- 2) The standard of proof in former is much more rigorous and stringent than the latter
- 3) Where the date and source of the investment cannot be manipulated.

Divine Leasing and Finance Ltd. [2008] 299 ITR 268  
(Delhi) HC

# Gifts - Factors

- ❖ Establish the identity of the person making the gift
- ❖ Establish his capacity to make a gift
- ❖ Establish that it has actually been received as a gift from the donor
- ❖ Mere showing the movement of the gift amount through banking channels is not sufficient  
Sajan Das and Sons v CIT [2003] 264 itr 435 [DEL]
- ❖ Absence of blood relationship or close relationship between the donor and the donee is not relevant Padam Sing Chouhan, 215 CTR 303 (Raj.)

# Foreign Gifts

- Mohankala 291 ITR 278 SC
- Gifts by NRI donors de hors of any occasion and relation with assessee donee in large sums are to be treated as bogus where mere bank statements of NRIs without any corroborative proof of their creditworthiness were produced - Rajeev Tandon (2007) 109 TTJ (Del) 261
- Once assessee discharges his burden of proving the relevant facts, then motivation for making the gift is irrelevant Murlidhar Lahorimal [2006] 280 ITR 512 Guj.

# Loan or borrowing

- First Proviso by FA 2022 – where the lender has to give satisfactory explanation about the nature and source
- Applies to all lenders – both resident and non resident
- Loan or borrowing or any such amount, by whatever name called
- ‘Any such amount’ v. ‘Any amount’ v. ‘Any other amount’
- Use of ‘by whatever name called’ is qualified by ‘such’

## Loan or borrowing

- Loan or borrowing does not include debenture : M.M. Aqua Technologies Ltd 436 ITR 582 SC wrt section to 43B – Explanation 3C
- Subsequent amendment to Explanation 3C by FA 2022 where ‘debenture or any other instrument’ are added to ‘loan or borrowing’
- If the 1<sup>st</sup> Proviso is not attracted, section 68 may fail, however, the addition may still be sustained on first principles.
- However, in such case, section 115BBE may not apply

## Share capital

- It is enough to prove existence of shareholder and creditworthiness need not be proved : Steller Investment Ltd. (2001) 251 ITR 263 SC
- Additional burden on the Revenue to show that even if the applicant does not have means to make the investment, the investment made by the applicant actually emanated from the coffers of the assessee : Value capital services P. Ltd [2008] 307 ITR 334 (Delhi) HC
- Second Proviso - Implications

# Partners' capital

- Onus on firm to give explanation regarding identity and source of such deposits and if the explanation is disbelieved, then it is to be added as an income under section 68 in the hands of the firm

- Similarly, if an assessee, who is a partner in the partnership firm, has made investments which are not recorded in the books of account maintained by him for any source of income and the explanation given by the partner or individual regarding source of deposits is disbelieved, then such deposit which is investment can be brought to tax as income from undisclosed sources under section 69 in the hands of partner.

- There is no double taxation

- JAGMOHAN RAM RAM CHANDRA 141 TAXMAN-TAX REPORTS 574 (Allahabad)

- V.PRABHAKARAN, REGAL TITLE WORKS CAPJ VOLUME 15 PART 6 46*

- Contra : Rameshwar Dass Suresh Pal Cheeka [2007] 163 Taxman 270 (Punj & Har), **India Rice Mills v. CIT 218 ITR 508 & Surendra Mahan Seth 221 ITR 239**

## Section 68 – In the first year

- Not applicable in the first year : GHAZIABAD FOOTWEAR (P.) LTD. 142 TAXMAN 18 (DELHI) & Bharat Engg. & Construction Co., (1972) 83 ITR 187 (SC) & TAJ BOREWELLS [2007] 291 ITR 232 (Mad)
- *Lal Mohar 409 ITR 95 All [slp dismissed in 409 ITR st 2]*
- ***Bharat Engineering & Construction Company 83 ITR 187,***
- ***Roshan Di Hatti 107 ITR 938 SC.***



## Section 68 : when found credited on first day

- When found credited on first day : CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78 SC

Under the 1922 Act, where a large amount of cash was found credited on the very first day of the accounting year, and considering the extent of the business, it was not possible that the assessee earned a profit of that amount in one day, the amount could not be assessed as the income of the year [from that business] on the first day on which it was credited in the books. Under this section, even in such a case, the unexplained cash credit might be assessed as the income of the accounting year for which the books are maintained

## Cash credit explained as 'sale proceeds'

- Mere sale entries in the books of account were not good enough - Gurshant Rotary Compressor Ltd. [2008] 119 TTJ (Del) (TM) 577
- Explanation acceptable when
  - (i) transaction entered into by assessee was duly supported by purchase bill, contract note, delivery and transaction of shares in her name which were also reflected in balance-sheet as on 31-3-2001 and on 31-3-2002;
  - (ii) amount of sale proceeds of shares was received by assessee through demand draft in her favour; and
  - (iii) assessee had disclosed sale of shares and receipt thereof in her return of income and had claimed exemption under section 54EC - Km. Saumya Agrawal v. ITO, [2008] 174 Taxman (Magazine) 60 (ITAT – Agra)

## Cash credit explained as 'deposit'

- Lease deposit – Deposit is different from loan from 3<sup>rd</sup> party and in case of lease deposit, it is enough to prove genuineness of loan and there is no need to prove the financial capacity of lessee : Nevendram Ahuja 197 CTR 462 MP.
- Deposit in respect of cancelled bookings - Babu Lal Jain [2008] 116 TTJ (Jab) (TM) 741

## Excessive cash drawals

- Depreciation being non cash need to be considered for determining the cash drawals from the business - R. GANESH 144 TAXMAN 918 [MAD.]

# Telescoping

- ◉ Where there are many credits, all treated as non-genuine, withdrawal from one account should be treated as available for credit in another.
- ◉ Setting off withdrawals against later credits to arrive at the peak credit is a permissible exercise, if the accounts are conceded as the assessee's own accounts in different names.
- ◉ Similarly, additions for low gross profits can be given credit for investments with similar set offs between additions
- ◉ Both these practices are recognized in precedents under Income-tax law.
- ◉ Telescoping is recognised in *Anantharam Veerasinghaiah & Co. v. CIT* [1980] 123 ITR 457 [SC].
- ◉ The system of limiting addition to peak credit in the case of cash credits has also been in vogue. The principle behind both the concessions is that the overall addition cannot amount to an income beyond what is possible.

# Will the subsequent repayment with or without interest absolve the assessee?

- Yes

- a) *Neotech Nutrients Pvt Ltd Vs ACIT 2020-TIOL-1632-ITAT-DEL*
- b) *Rohini Builders 256 ITR 360 Guj*
- c) *Ras Concepts Pvt. Ltd. 95 ITR Tri 46 Ahd.*

- No

# Is it necessary to prove that the credit represents untaxed money of assessee?

- If the taxed money is circulated back, there is no sin : Agson Global (P.) Ltd. - [2022] 134 taxmann.com 256 (Delhi), 441 ITR 550

- No

Section 69  
and  
Section 69A



**Section 69****Section 69A****Unexplained investments****Unexplained money, etc.,**

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.

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.

# Conditions for invoking Sec.69

• AO has to establish

- 1) that there were investments made by the assessee;
- 2) that such investments were not recorded in the books of account maintained by the assessee; and
- 3) that such investments had been made in the financial year immediately preceding the assessment year in question.

USHAKANT N. PATEL 282 ITR 361 [GUJ.] & Smt. V. Prema [2007] 292 ITR 151 (Madras HC)

# Section 69B

Amount of investments, etc., not fully  
disclosed in books of account.

**Section 69B : Amount of investments, etc., not fully disclosed in books of account.**

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.

## Section 69 v. section 69A

- Sections 69 refers to FY immediately preceding AY and section 69A refers to any FY
- Section 69 requires that assessee 'has made investments' whereas section 69A requires that the assessee 'is found to be owner of money etc.
- Section 69 refers to 'investments' whereas section 69A refers to 'money, bullion, jewellery or other valuable article
- Note that there is no mention about 'thing' after 'article' unlike in 132(1), 148 etc.
- Cryptos, NFTs, other intangible things may be out

# Investments

- Meaning of investments
- Are assets used in the business ‘investments’?

Money, bullion, jewellery or other valuable article

- Meaning of 'money'
- Foreign currency, crypto etc
- **'Money, bullion, jewellery, article or thing' does not include immovable property in the context of section 132(1) : L.R. Gupta 194 ITR 32 Delhi**

# Money

- 1) The expression 'money' has different shades of meaning.
- 2) 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.
- 3) Therefore, the currency notes on the day when it was 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.

*ANDHRA PRADESH YARN COMBINES  
PRIVATE LIMITED, BANGALORE [2006] [60]  
[KAR. L.J.] 214 [HC] [DB] (BANG.)*



# Money

- 1) There is no presumption that moneys lying in a joint account with a bank, vis a vis third parties other than bank, belong to only one of them or both of them equally and it will be a question of fact in each case as to who is the real owner of amounts lying in a joint account – Pravin Ramkrishna Upganlawar (2005) 143 Taxman 76 (ITAT Nagpur).

# Huge cash in hand

- 1) The fact that the assessee could not explain as to why he retained so much cash with it for a long time cannot be a ground for rejecting the contention of the assessee for the availability of cash. **ANAND AUTORIDE LTD.** [2006] 99 ITD 227 [AHD.] & **MS.AISHWARYA K RAI vs. DCIT 105 TTJ (Mumbai) (TM) 825** & **CIT vs. Kulwant Rai** (2007) 291 ITR 36 (Delhi)
- 2) Once the availability of cash to the tune of Rs.47,50,000 is accepted, its utilization is also to be accepted as stated by the assessee unless it is proved that this amount was utilized elsewhere. **VISHAL INFRASTRUCTURE LTD vs. ACIT** (2007) 107 TTJ (HYD) 484
- 3) Cash in hand shown by the assessee could not be totally ignored on the presumption that no prudent person would retain cash for the intervening period. **SMT.MANJU DEVI SINGODIA vs. ITO** (2006) 105 TTJ 128 (JD)

# Investments

- ❖ Purchasing shares at a price much lower than market price and the investment having been recorded in the books, no addition could be made under s. 69, there being no allegation that the apparent consideration was not the real consideration : Rupee Finance & Management (P) Ltd. 119 TTJ (Mumbai) 643
- ❖ In the absence of any positive evidence that the assessee had actually paid more than the consideration shown in the respective sale deeds for the purchase of plots, addition under s. 69 could not be made simply on the basis of higher valuation of plots by the DVO or the values adopted by the Sub-Registrar for the purpose of stamp duty - Swami Complex (P) Ltd. [2007] 111 TTJ (Jp) 531
- ❖ When there is no explanation regarding source of funds from which taxes were paid, tax paid is assessable as unexplained investments under section 69 D. J. MEHTA 290 ITR (AT) 238 (Mumbai)

## Valuation Reference – sec 142A

- Section 142A is used for estimation of value including fair market value of any asset, property or investment
- It applies to cases covered by sections 69 and 69A but not to section 69B/C
- Sections 69 and 69A use ‘value’ and not ‘fair market value’ as defined in section 2(22B) - ***Bhagwati Developers Pvt. Ltd. v. Peerless General Finance [CA No. 7445 of 2004]***
- Section 50C/43CA cannot be applied for valuation under sections 69 and 69A nor can its fiction be applied for a purchaser
- Rule 11UA etc., also do not apply to sections 69 and 69A

# Valuation aspects

- CPWD v. State PWD rates
- Self supervision allowance
- Registered valuer v. valuation officer
- Difference not being more than 15%

## Spreading over

- The claim for spreading over of the investment for several years can be granted only if it is proved that the investment is made in several years : Sakthi Tourist Home v. CIT [2009] 308 ITR 228 (Ker) HC

# Stock discrepancies : Book v. bank declaration

## • No addition

1. CIT v. Mehta Gawar Gum & Co. [2008] 173 Taxman 464
2. CIT vs. Laxmi Engineering Industries [2009] 308 ITR 279 (Raj) HC
3. CIT v Relaxo Footwear (2002) 123 Taxman 322
4. CIT v. Veerdip Rollers P. Ltd.: C. C. No. 13575 of 2008 SLP dismissed 307 ITR (Statutes) 3
5. Sudhir Industries v ITO [JODHPUR] [2004] 136 Taxman 110

## • Addition can be made

1. Coimbatore Spinning & Weaving Co.'s case [1974] 95 ITR 375 (Mad)
2. RECON MACHINE TOOLS P. LTD v. CIT 286 ITR 637 (KAR)

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Manoj Aggarwal v. DCIT Central Circle 3,</b>	The cash deposit in the bank can be asked to be explained by the assessee under section 69 or section 69B. In the absence of any clinching evidence to show the nature and source of the monies deposited into the bank account which belonged to the assessee, the Assessing Officer was justified in adding the amount as unexplained income.	<b>[2008] 113 ITD 377 (Delhi) (SB)</b>
<b>CIT v President Industries</b>	Unless there was a finding that investment by way of incurring cost in acquiring goods which had been sold, had been made by the assessee and that had also not been disclosed, only net profits embedded in sales, and not wholesale proceeds itself, would be treated as undisclosed income of the assessee.	<b>(2002) 124 Taxman 654 (Guj)</b>



# Set off

- Deemed income under Sec. 69A cannot be set-off against loss due to confiscation of the very same foreign marked gold bars - Shri Mahendra D. Jain [2009] 25 CAPJ 325

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Jawaharlal Oswal Vs ACIT</b>	The word ‘ is found to be owner’ appearing in this section clearly show that the mere fact that, on a search, certain articles are found in the possession of a person cannot be said to attract the provisions of the section 69A unless it is established that the person is a owner thereof.	<b>(1999) 71 ITD 324 (Chd.)</b>

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>JCIT[ASST.],SR-9 v. Anand Autoride LTD.</b>	If the cash is there with the assessee as per the books maintained and there is no other evidence that the same has been utilized elsewhere, no addition on that ground can be made in the hands of an assessee merely because assessee was not able to explain why it was not utilized.	<b>[2006] 99 ITT 227 [AHD.]</b>
<b>Vishal Infrastructure LTD vs. ACIT</b>	Once the availability of cash is accepted, its utilization is also to be accepted as stated by the assessee unless it is proved that this amount was utilized elsewhere. The AO cannot be allowed to presume that a particular amount might have been utilized elsewhere without bringing on record any such utilization.	<b>(2007) 107 TTJ (HYD) 484</b>

## Amount of investment, etc., not fully disclosed in books of accounts – 69B

- 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

## Amount of investment, etc., not fully disclosed in books of accounts – 69B

- 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.

# Section 69C

Unexplained  
expenditure, etc.

## **Section 69C : Unexplained expenditure, etc.**

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 :

# Unexplained expenditure, etc. – Section 69C

- 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.



## Proviso to sec 69C

- It does not apply to sections 69, 69A and 69B
- It does not affect the inter source and inter head set off under chapter VI –CIT v. Chensing Ventures 163 Taxman 175 (Mad.)

# Survey under sec 133A(5)

- Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event,
- IT authority is of the opinion that it is necessary or expedient so to do,
- He may, at any time after such function, ceremony or event,
- Require assessee by whom such expenditure has been incurred or any person who, in the opinion of IT authority, is likely to possess information as respects the expenditure incurred,
- To furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

# Section 69D

Amount borrowed or repaid on  
hundi

**Section 69D : Amount borrowed or repaid  
on hundi.**

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.

# Amount borrowed or repaid on hundi. – 69D

- 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 :

contd.....

# Amount borrowed or repaid on hundi. – 69D

**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.

## **CIT Vs Dexan Pharmaceuticals (P) Ltd, (1995) 214 ITR 576**

It may not be wholly accurate to say that all the instruments which are not in vernacular language cannot be said to be hundis, total contents and effect of the document have to be looked into for finding out as to whether a transaction is or is not on a hundi. It was also layed out that the common denominator to be found out regarding the hundi transaction may be stated as follows:

1. There are always three parties to such a transaction. They are drawer, drawee and payee. The drawer cannot himself be the drawee. If the transaction is bilateral, it is a very strong indication to show that it is not a hundi transaction.



2. Hundi is payable to satisfy a person or order but negotiable without endorsement by the payee.
3. The holder of Hundi is entitled to sue on its basis without any endorsement in his favour.
4. Hundi once accepted by the donee, could be negotiated without endorsement.
5. In case of loss of Hundi, the owner can claim duplicate or triplicate from the drawer and present the same to the drawee for claiming the payment.
6. Hundi is normally in oriental language as per the mercantile custom.

1. The revenue had brought to tax certain sums because these constituted repayments, otherwise than by way of account payee cheques, on certain instruments drawn in English which, according to revenue authorities, constituted hundis.
- However, CIT (Appeals) held that since these documents were drawn in English, these could not be described as hundis.
- The Tribunal affirmed the views of the first appellate authority and even revenue's reference application was rejected by Hon'ble Madras High Court.
- Finally, Hon'ble Supreme Court also dismissed special leave petition filed by the revenue against the order dated 10th December, 1984.

PS.T.S Thiraviarathna Nadar [1991] 187 ITR (St.) 37 SC,

■ In the case of Paranjothi Salt Co. (Supra), their Lordships of Hon'ble Madras High Court observed as follows:

“... The contents of the documents executed by the assessee, though written on hundi papers, show that essential characteristic of a hundi, viz., an unconditional order signed by the maker directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument, is absent. The only circumstance that the documents have been executed on hundi papers will not clothe them with the character of hundis. In this case, the documents, after referring to the receipts of cash, contain a clear and categorical promise to pay those, who made available the amounts, together with interest on and from the date these amounts were repayable. Thus the contents of documents in question do not satisfy the condition of hundis. In this view, irrespective of whether the documents are in English or any other language, they cannot be considered to be Hundis in any case.....”

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Dy. CIT v. Finlay Corporation Ltd. (Delhi)</b>	What is not taxable under section 5(2) cannot be taxed under section 68 or 69. Provisions of section 68 or 69 would be applicable in case of non-resident only with reference to those amounts whose origin of source can be located in India and therefore, provisions of section 68 or 69 have limited application in case of a non-resident.	<b>(2003) 86 ITD 626 (Delhi)</b>

<b>Case Name</b>	<b>Decision</b>	<b>Citation</b>
<b>Tax Tribunal [2006]</b>	It was held that once an assessee is covered under presumptive income provisions like Sec. 44 AD then the other compliances from Sections like 68 and 69 should not be applied.	<b>31 Part 09 of SIRC of The Institute of Chartered Accountants of India 12</b>

Q&A

Thank You