



DEMONETIZATION CASH DEPOSIT APPEALS - CASH DEPOSIT ADDITIONS UNDER SECTION 68 AND 69A



24-04-2020

Presented by

CA Paras Dawar

Mob - 9711107317

Email - paras@parasdawar.com

ISSUES TO BE DISCUSSED

- CBDT'S instructions on handling cash deposit cases during demonetisation
- Scope of cash deposit additions under section 68
 - What would constitute 'found credited' ?
 - Section 68 additions in the absence of book ?
 - Addition of any other previous in current PY ?
 - Should strict rules of identity/creditworthiness/genuineness apply to cash deposit cases
 - Can cash sales be added under section 68
 - Can cash received from debtors be added under section 68
 - Cash deposited out of previous withdrawals
 - Presumptive tax cases
- Scope of cash deposit additions under section 68
 - What constitutes 'FOUND TO BE OWNER'
 - Section 69A addition in case books maintained
- Peak cash theory
- Opening Cash in hand not considered
- Applicability of section 115BBE
- Interest u/s 234B & C on enhanced tax
- Cash received after 08/11/2016
- Suggestive Grounds of Appeal

**CBDT'S INSTRUCTION ON HANDLING
CASH DEPOSIT CASES DURING
DEMONETISATION**

Cash deposit out of opening balance / earlier income or savings

Instruction No. 3/2017 – dt. 21-02-2017

- Individual with no business – Cash Deposit < Rs. 2.5 Lakhs - No further verification is required
- Individual with no business above 70 years – Cash Deposit < Rs. 5 Lakhs - No further verification is required
- **Books maintained - No further verification is required**
Cash deposit out of opening balance < Cash balance as at 31-03-16 in ITR for AY
2016-17
- N.A. in case of AO has reason to believe that cash balance as on 31-03-2016 has been increased by **revising the return or backdating transactions** in the books of account

Cash deposit out of withdrawals from bank

Instruction No. 3/2017 – dt. 21-02-2017

- The date and amount of cash withdrawals and cash deposits in the bank account may be matched.
- The AO should take a balanced view in analyzing the time gap from the point of view of normal human behavior and specific circumstances of the case.

Cash deposit out of cash sales

Instruction No. 3/2017 – dt. 21-02-2017

- AO may seek relevant information e.g. monthly sales summary (with breakup of cash sales and credit sales), relevant stock register entries, bank statement etc. to identify cases with **preliminary suspicion of back-dating of cash sales** or **fictitious sales**.

- Some indicators for suspicion of back dating of cash sales :
 - i. **Abnormal jump in the cash sales** during the period Nov to Dec 2016 as compared to earlier history.
 - ii. **Abnormal jump in percentage of cash sales** to **unidentifiable persons** as compared to earlier history.
 - iii. **More than one deposit of specified bank notes** in the bank account late in the demonetization period.
 - iv. **Non-availability of stock** or attempts to **inflate stock by introducing fictitious purchases**.
 - v. **Transfer of deposited cash** to another account/entity which is **not in line with earlier history**

ISSUES TO BE DISCUSSED

Scope of section 68

- 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



ISSUE:

What is CREDITED ?

Credited ?

Cash credit always a liability in the Balance Sheet

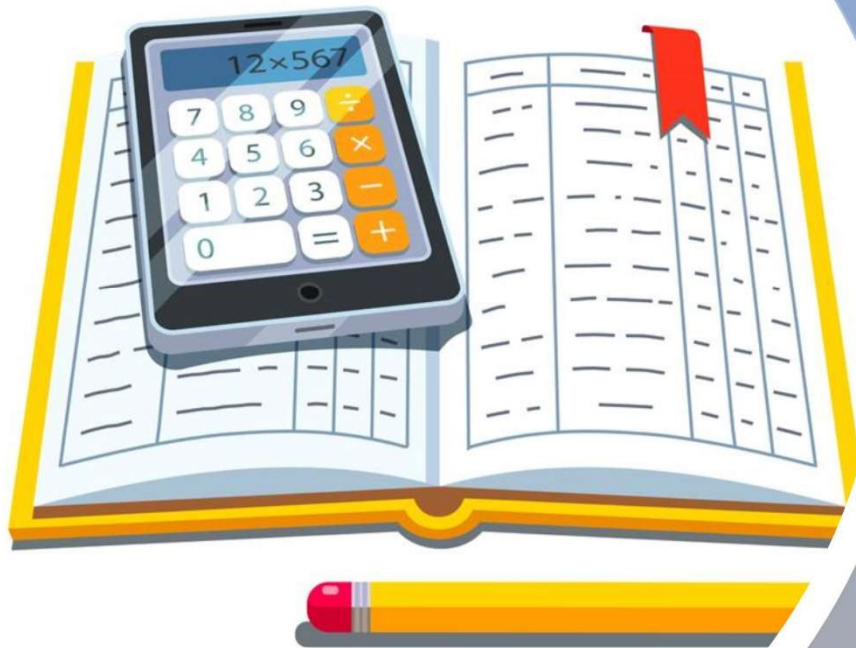
- Delhi ITAT – Racmann Springs (P.) Ltd vs DCIT [1995] 55 ITD 159 (DELHI)
 - The realisations from the sundry debtors cannot be treated as cash credits.
 - **Cash credits always appear as a liability in the balance sheet of the assessee.**
 - Realisation from the sundry debtors would reduce the sundry debtors appearing on the "assets" side of the balance sheet.

- Contrary decision by ITAT Ahmedabad 'SMC' Bench in **S.R. Enterprises vs ITO [2002] 77 TTJ 69 (AHD.)**

- Using above analogy, can we say cash deposited in bank is merely reduction of one asset and increase in the other ?

Scope of section 68

- 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



ISSUE:
BOOKS OF ACCOUNTS

Definition of Books of Accounts

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
- as print-outs of data stored in a floppy, disc, tape or
- any other form of electro-magnetic data storage device;

Assessee not liable to maintain books

Existence of books of accounts – essential for sec. 68 addition

- Gauhati HC – Anand Ram Raitani vs CIT [1997] 223 ITR 544 (Gauhati)
 - The **existence of books of account** is a **condition precedent** for invoking of the power. **Discharging of burden is a subsequent condition.**
 - **If the first point is not fulfilled the question of burden of proof does not arise.**

- Same position in
 - Punjab & Haryana HC – Smt. Shanta Devi v. CIT [1988] 37 Taxman 104 (Punjab & Haryana) : The cash credit entry of which the sum in question form part, was found in the books of account of the partnership firm, which in its own right, is an assessee. Section 68 would not be attracted to the present case.

Assessee not liable to maintain books

Bank passbook as books for making addition ?

CIT v Bhaichand N. Gandhi [1983] 141 ITR 67 (Bom.)

- **Pass book** supplied by the bank to its constituent is only a copy of the constituent's account in the **books maintained by the bank**.
- It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent.
- In view of this, the Tribunal was, with respect, justified in holding that the **pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee**, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived.

Books Rejected, can AO still make section 68 addition ?

Maddi Sudarsanam Oil Mills Co. v. CIT v Bhaichand N. Gandhi [1959] 37 ITR 369 (AP)

- If once the income-tax authorities have rejected the books, they **cannot have it both ways**, namely, adopting a flat rate to compute gross profit as well as **rely on the books for the purposes of adding unexplained cash credits** which were part of the scheme of balancing the accounts.

Malpani House of Stones v. CIT [2017] 88 taxmann.com 546 (Rajasthan)

- Assessee's books of account were rejected and they were assessed on the basis of estimation and while estimating the other income also addition was made under section 69C
- In view of the well settled principle of law that when income is estimated and while assessing the same and **rejecting the books of accounts, it would not be appropriate to rely on the books of accounts for any addition other than estimate made by A.O.**

Assessee liable to maintain books, but books not maintained

- **Bombay HC – Arunkumar J. Muchhala vs CIT [2017] 85 taxmann.com 306 (Bombay)**
 - When Appellant is doing business, then it was incumbent on him to maintain proper books and/ or books of account. It may be in any form.
 - **Therefore, if he had not maintained it, then he can not be allowed to take advantage of his own wrong.**
 - Burden lies on him to show from where he has received the amount and what is its nature.

- **Same position in**
 - **Punjab & Haryana HC – Sudhir Kumar Sharma (HUF) v. CIT [2014] 46 taxmann.com 340 (Punjab & Haryana)** : Various amounts in cash were deposited in the bank account of the assessee and the onus was upon the assessee to explain the nature and source of the said cash deposits.

Bank Passbook also Books of Accounts ?

- **Del ITAT - Jenna Goel v. Dy. CIT [IT Appeal Nos. 937 and 98 (Delhi) of 2012]**
 - In view of this, even if the assessee **does not maintain any books of accounts** but the **amount is deposited in the bank account** of the assessee, which remains unexplained the **addition could be correctly made under section 68** of the act.
 - Further looking at the **definition of the 'books or books of accounts'** it is **apparent that passbook is a daybook** which is kept in the return form or as a printout of data stored in a floppy. Therefore, after the introduction of the definition of the books or books of account under section 2 (12A) of the act, the **passbook can also be considered as books or books of account**.
 - There is no distinction who writes it, but it is record of the transactions entered into by the assessee with the bank.
 - The provisions of **section 68** of the income tax act also **does not make any distinction about who maintains the books of account**, the only requirement is that the books should be of an assessee. There is no requirement that the books of account should be maintained by the assessee himself.
- **Same position upheld by by Del ITAT in 2020 in the case of - Jagdish Prasad Sharma vs ITO [2020] 115 taxmann.com 162 (Delhi - Trib.)**

Scope of section 68

- 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

ISSUE:

PREVIOUS YEAR

Previous Year

➤ Section 3

For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year :

➤ Delhi HC – CIT vs Usha Stud Agricultural Farms Ltd. [2009] 183 Taxman 277 (Delhi)

- Since it is a finding of fact recorded by the CIT(A) that this **credit balance** appearing in the accounts of the assessee, **does not pertain to the year under consideration**, under these circumstances, the Assessing Officer was **not justified** in making the impugned **addition under section 68** of the Act.

- This will be the defence where Opening Balances of cash-in-hand is deposited in the bank accounts

Scope of section 68

- 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

ISSUE:

NATURE AND SOURCE OF CASH CREDIT

SHOULD STRICT RULES OF

- IDENTITY
- CREDITWORTHINESS AND
- GENUINENESS

APPLY TO CASH DEPOSITED ON ACCOUNT OF
CASH SALES

Requirement to give PAN – Rule 114B

Nature of Payment	Condition
Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash exceeding Rs. 50,000
Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash exceeding Rs. 50,000
Sale or purchase of any immovable property.	Amount exceeding Rs. 10,00,000
Any other sale or purchase of goods or services of any other nature	Amount exceeding Rs. 2,00,000 per transaction

Whether liable to maintain complete details of buyers ?

Bombay High Court – R.B. Jessaram Fatehchand (Sugar Deptt.) v. CIT [1970] 75 ITR 33 (Bombay HC)

- **Not bound to maintain name and address of buyers in cash sale**
In the case of a cash transaction where **delivery of goods is taken against cash payment**, it is **hardly necessary** for the seller to bother about **the name and address of the purchaser**.
- As to the cash transactions also, the **quantity** of sugar sold **has not been disputed**. The **rates** at which sugar was sold were **not** such as would **excite suspicion** by reason of being lower than the prevailing market rates. The names of the customers are also entered in respect of the transaction.
- All that is not done is that the addresses are not entered and on enquiry the assessee was unable to supply the addresses.

Whether liable to maintain complete details of buyers ?

Bombay High Court – R.B. Jessaram Fatehchand (Sugar Deptt.) v. CIT [1970] 75 ITR 33 (Bombay HC)

-there was **no necessity whatsoever for the assessee to have maintained the addresses of cash customers**, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions.

Whether liable to maintain complete details of buyers ?

Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)

➤ **Not liable to maintain address of cash buyers**

It is but natural that if a customer makes cash purchase and lifts the goods, there is **no duty cast upon the seller to insist for the address of the purchaser..**

Scope of section 68

- 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

ISSUE:

**CAN CASH DEPOSITED ON ACCOUNT OF
CASH SALE BE ADDED UNDER SECTION
68 ?**

Cash Sales

Delhi High Court – CIT vs KAILASH JEWELLERY HOUSE (ITA 613/2010)

- AO had doubted the cash sales as bogus and had made additions.
- It is not in dispute that the sum of Rs 24,58,400/- was credited in the sale account and had been duly included in the profit disclosed by the assessee in its return.
- It is in these circumstances that the Tribunal observed that the cash sales could not be treated as undisclosed income and no addition could be made **once again** in respect of the same.

Cash Sales

Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)

➤ **Sales can be in cash**

There is no law which prohibits a trader or a manufacturer in making cash sales

➤ **Stock available, cash sales cant be doubted**

We find that so long as the **availability of stock is there** and there is nothing adverse against the cash memos issued by the assessee, such cash **sales cannot be doubted**

➤ **Not liable to maintain address of cash buyers**

It is but natural that if a customer makes cash purchase and lifts the goods, there is **no duty cast upon the seller to insist for the address of the purchaser..**

Cash Sales

Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)

➤ No section 68 addition on cash sale

...It is only when such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition.

Cash Sales

Gujarat High Court – CIT vs VISHAL EXPORTS OVERSEAS LIMITED TAX (APPEAL No.2471 of 2009)

- The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had **already offered sales realisation** and such **income is accepted by the Assessing Officer** to be the income of the assessee, **addition of the same amount once again under section 68** of the Act would tantamount to **double taxation** of the same income.
- We do not find any reason to interfere with the Tribunal's order

Cash Sales

Madhya Pradesh High Court – CIT vs Jaora Flour and Foods (P) Ltd., [2012] 344 ITR 294

- Held that the assessee's explanation had been accepted that **cash** of Rs. 10 lakhs found during the course of survey **were on account of realization from above sale of bardana of Rs. 10 lakhs.**
- Held that the Tribunal had found that the **sale of bardana was entered in the books of account** subsequently and, thereafter, the **profit and loss accounts were drawn up and the computation of income was based on the profit as per the profit and loss accounts** and, therefore, the **computation of income included the alleged unaccounted sale of bardana** also. In that background, the Tribunal was justified in deleting the addition.

Cash Sales

Delhi ITAT – M/s Singhal Exim Pvt.Ltd., Vs. ITO (ITA No.6520/Del/2018)

- **If accepted trading results, accepted books too**
Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.
- **No law prohibits cash sale**
Moreover, at the relevant time, there was **no law which prohibited receipt of sale consideration in cash.**
- **No section 68 on recovery from debtors**
Section 68 would also **not be applicable** in respect of **recovery of sales consideration.** Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied.

Cash Sales

**Ahmedabad ITAT – ITO vs Shri Pavankumar Bhagatram Sharma
(ITA.No.1652/Ahd/2011)**

Cash deposit was out of sale

- The Id.CIT(A) has rightly observed that total **amount appearing as a deposit in the account was not cash credits, rather sale proceeds of the assessee.**
- **Turnover** of the assessee is to be **computed** on the basis of all these details and at the most, **an estimated net profit can be computed as an income of the assessee.**
- Accordingly, the Id.CIT(A) has confirmed an addition of Rs.3,50,208/-. We do not find any error in the detailed reasoning of the Id.CIT(A), and accordingly, the appeal of the Revenue is dismissed. For dismissal of this appeal, we do not require the presence of the assessee.

Cash Sales

Delhi ITAT – ITO Vs. Shri Pankaj Aggarwal [ITA No. 7091/Del/2014]

Only margin to be added if cash deposit was from cash sales

- There is no dispute that there were frequent deposits and withdrawal from the bank accounts. There is also no dispute in so far as the business of the assessee is concerned.
- Considering the nature of business of the assessee it can be safely concluded that the **cash deposited by the assessee were out of his cash sales.**
- In our considered opinion **only margin of profit should be added on such cash deposit,** therefore, we do not find any error or infirmity in the finding of the Ld. CIT(A).

Cash Sales

Delhi ITAT – Racmann Springs (P.) Ltd vs DCIT [1995] 55 ITD 159 (DELHI)

➤ **Cash credit always a liability**

The realisations from the sundry debtors cannot be treated as cash credits. **Cash credits always appear as a liability in the balance sheet of the assessee.** Realisation from the sundry debtors would reduce the sundry debtors appearing on the "assets" side of the balance sheet.

➤ **Entire cash sale can not be added, add only margin**

Even **assuming** that it represents **undisclosed sales**, the **whole** of the said amount **cannot** be **included** in the **total income** of the **assessee**.

Only the net profit element in the alleged **undisclosed sales** of Rs. 15,59,845 **can be included** in the total income of the assessee.

Cash Sales

Delhi ITAT – Racmann Springs (P.) Ltd vs DCIT [1995] 55 ITD 159 (DELHI)

➤ **Unrecorded sale, added under PGBP and not sec. 68**

Even assuming that some amount is to be added in the total income of the assessee towards the profit element embedded in the alleged unaccounted sales, it **can only be assessed under the head "Income from business"** and **not as "Income from other sources"** as has been done by the Assessing Officer.

Cash Sales

Chandigarh ITAT – Famina Knit Fabs vs ACIT [2019] 176 ITD 246

➤ **Recovery from debtor, added under PGBP and not sec. 68**

It follows that the **debtors were generated from the sales made by the assessee during the course of carrying on the business** of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the **debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/ss. 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee.**

Burden of Proof

- Initial Burden on the assessee
- Subsequent to discharge of initial burden by the assessee, onus shifts onto the AO

Summary

Very difficult to make addition under section 68 if –

- Stock existed. Not proved any backdating
- Books accepted. GP accepted
- Proper invoice was issued
- VAT properly charged and paid
- VAT returns proper, not revised post demonetization

ISSUE:

**CASH DEPOSIT OUT OF PREVIOUS
CASH WITHDRAWALS**

Cash deposit of previous cash withdrawals

- **Onus on assessee –**
Only liable to explain why kept cash in hand

- **Burden of Proof**
The higher the time period between withdrawal and deposit, the higher the burden to prove genuineness

Cash deposit of previous cash withdrawals

P&H HC – Shiv Charan Dass vs CIT (1980 126 ITR 263 P H)

- In October, 1951, the HUF declared the sum of Rs. 20,000 under the Voluntary Disclosure Scheme. Partition took place and amount handed to a lady.
- After her death, the amount was deposited in names of two unmarried daughters of the assessee in equal shares, namely, Miss Sudarshan Kumari and Miss Satya Mehta. The deposits were made on 29th October, 1956,
- If the amount of Rs. 20,000 disclosed under the disclosure scheme had been found to be deposited or utilised by the assessee or the HUF in some-other manner, in that case, a legitimate inference could be drawn that the amount in dispute was from undisclosed sources as the amount so disclosed in the disclosure scheme had been found to be otherwise utilised by the assessee or by the HUF but the finding on this aspect of the case is otherwise.

Cash deposit of previous cash withdrawals

Delhi HC – CIT vs Kulwant rai in 291 ITR 36

- It has been held by the Tribunal that in the instant case, the **withdrawals** shown by the assessee **are far in excess** of the **cash found** during the course of search proceedings.
- **No material has been relied upon by the Assessing Officer or Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly**, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted.

Cash deposit of previous cash withdrawals

Delhi ITAT – ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi)

- **Merely because there was a time gap** between withdrawal of cash and cash deposits **explanation** of the assessee **could not be rejected** and addition on account of cash deposit could not be made particularly **when** there **was no finding recorded** by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, **there was any other purposes** it is used by the assessee of these amounts.

ISSUE:

**COMPULSORY ADDITION OF CASH
DEPOSITED UNDER SECTION 68/69A
R/W 115BBE ?**

Compulsory application of section 115BBE

Jodhpur ITAT – Lovish Singhal vs ITO (ITA No. 143/Jodh/2018)

- As per judicial pronouncements cited by the Id. AR and also the decision of Hon'ble Rajasthan high court in the case of Bajrang Traders in Income Tax Appeal No. 258/2017 dated 12/09/2017 I observe that the Hon'ble High Court in respect of excess stock found during the course of survey and surrender made thereof was found to be taxable under the head 'business and profession'.
- Similarly in respect of **excess cash found out of sale of goods in which the assessee was dealing was also found to be taxable as business income.**
- Applying the proposition of law laid down in the judicial pronouncements as discussed above, I hold that the **lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act. Thus, there is no justification for taxing such income U/s 115BBE of the Act.**

Scope of section 69A

- Where in any financial year
- the assessee is found to be the owner of
- any money, bullion, jewelry or other valuable article **and**
- such money, bullion, jeweler 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, jeweler 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, jeweler or other valuable article may be deemed to be the income of the assessee for such financial year.

ISSUE:

NOT RECORDED IN BOOKS

Recorded in Books of Accounts

➤ Bangalore ITAT - Smt. Teena Bethala v. ITO (ITA No 1383/Bang/2019)

- AO can resort to making an **addition under section 69A** of the Act only in respect of such monies / assets / articles or things which are **not recorded in the assessee's books of account**.
- In the case on hand, the **cash deposits are recorded in the books** of account and are reportedly made on the receipt from a creditor.

➤ ITAT Mum - ITO v. Pukhraj N. Jain [2005] 95 ITD 281 (Mum.)

- For making an addition under section 69A,...., **it is also a pre-requisite that such asset/valuable article 'is not recorded in the books of account' maintained by the assessee (if any)**.

Other issues

- Opening cash in hand added under section 68 or 69A
- Real income theory – T. Jayachandran case [2018] 302 CTR 95 (SC)
- Peak cash credit
- Presumptive tax cases
- Automatic applicability of section 115BBE ?
- Interest u/s 234B & 234C on account of enhanced tax after application of section 115BBE
- Cash received after 8/11/2016
- Remedy available

Suggested Grounds of Appeal for Section 68 Addition

1. Based on the facts and circumstances of the case and in law, the Learned AO has erred in adding cash deposit of Rs. 78,50,000/- under section 68 of the Act.
2. Without prejudice above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding cash deposit of Rs. 78,50,000/- under section 68 of the Act in the absence of cash deposits being any sum 'CREDITED'.
3. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding cash deposit of Rs. 78,50,000/- under section 68 of the Act since the same were voluntarily disclosed and were not 'FOUND' credited in appellant's books.
4. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding cash deposit of Rs. 78,50,000/- under section 68 of the Act by alleging it as unexplained cash of the appellant without appreciating that appellant had already offered to tax sales income represented by such cash deposited resulting in double taxation.
5. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO erred in adding entire cash deposit representing cash sale of Rs. 78,50,000/- under section 68 of the Act instead of profit element on such sale.

Suggested Grounds of Appeal for Section 68 Addition

6. Without prejudice to ground above, based on the facts and circumstances of the case and in law, the Learned AO erred in making addition of cash deposit of Rs. 78,50,000/- under section 68 of the Act in complete disregard of principle of 'real income'.
6. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has mechanically charged tax at special rate provided under section 115BBE of the Act without recording any reason.
7. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in determining tax liability as per section 115BBE of the Act in the case of the appellant in respect of income which has already been included in the Return of Income without appreciating that the income which has already been declared in return cannot be deemed to be undisclosed income as per Section 68/69A of the Act and therefore Section 115BBE is not applicable in this case.
8. Based on the facts and circumstances of the case and in law, the Learned AO has erred in levying interest under 234B of the Act while determining demand payable by the Appellant without appreciating that the appellant could not be expected to pay advance tax on income chargeable on special rate under section 115BBE of the Act for the amount under reference and in any case charging the interest without recording proper satisfaction in this regard is illegal and unjustified and also result in demand even more than the amount of addition.

Suggested Grounds of Appeal for Section 69A Addition

1. Based on the facts and circumstances of the case and in law, the Learned AO has erred in adding sale of Rs. 60,00,000/- under section 69A of the Act.
2. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding sale of Rs. 60,00,000/- under section 69A of the Act without appreciating that appellant had already offered to tax the said sales income in its profit and loss account resulting in double taxation.
3. Without prejudice to above, based on the facts and circumstances of the case and in law, Learned AO has erred in applying section 69A of the Act for adding sale of Rs. 60,00,000/- as the said sale was duly 'RECORDED IN BOOKS OF ACCOUNTS'.
4. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding an amount of Rs. 60,00,000 on the allegation of bogus sale by applying section 69A of the Act since provisions of section 69A are applicable when an assessee is 'FOUND TO BE OWNER' of an asset and there is no 'FINDING' by the Ld. AO that appellant is 'OWNER' of any unexplained money speculated to be routed through alleged sale.
5. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in adding entire amount of Rs. 60,00,000 on the allegation of bogus sale instead of profit element on such sale.

Suggested Grounds of Appeal for Section 69A Addition

6. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO erred in making addition of Rs. 60,00,000/- under section 69A of the Act in complete disregard of principle of 'real income'.
7. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has mechanically charged tax at special rate provided under section 115BBE of the Act without recording any reason.
8. Without prejudice to above, based on the facts and circumstances of the case and in law, the Learned AO has erred in determining tax liability as per section 115BBE of the Act in the case of the appellant in respect of income which has already been included in the Return of Income without appreciating that the income which has already been declared in return cannot be deemed to be undisclosed income as per Section 68/69A of the Act and therefore Section 115BBE is not applicable in this case.
6. Based on the facts and circumstances of the case and in law, the Learned AO has erred in levying interest under 234B of the Act while determining demand payable by the Appellant without appreciating that the appellant could not be expected to pay advance tax on income chargeable on special rate under section 115BBE of the Act for the amount under reference and in any case charging the interest without recording proper satisfaction in this regard is illegal and unjustified and also result in demand even more than the amount of addition.

Additional Ground Before CIT(A)

- Sub-section 5 of Section 250 gives power to the CIT(A) to allow the appellant to raise additional ground if he is satisfied that the omission of that ground was not willful or unreasonable.
- Additional grounds means grounds which are not specified in Form no. 35.
- Letter in writing giving reasons why grounds not taken in Memo to Appeal
-
- Opportunity to the AO to give his comments on the additional ground.

Additional Ground Before CIT(A)

- Jute Corporation of India [187 ITR 688 (SC)] - CIT(A) has ample power to admit additional ground not raised before the ITO if he is satisfied that ground raised was bona fide and the same could not be raised earlier for good reasons.
- Also, National Thermal Power Co. Ltd. v CIT 229 ITR 383(SC)
- A claim for a deduction can only be made by an assessee before an Assessing Officer and by way of filing a revised return **Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC)**.
- The SC however only limited the power of an Assessing Authority to entertain a claim for a deduction otherwise than by filing a revised return. It did not impinge on the power of an Appellate Tribunal.
- The Tribunal therefore would be correct in confirming the action of a CIT(A) who entertained a claim not made before the AO
 - Jai Parabolic Springs [306 ITR 42 (Delhi HC)]
 - Pruthvi Brokers and Shareholders (P) Ltd [349 ITR 336 (Bombay HC)]

Questions ???



THANK YOU



CA Paras Dawar

Daver Karnatak & Associates

Chartered Accountants

F.C.A, L.L.B., B. Com. (Hons.), Diploma in International Taxation (ICAI)

206-207, Harisadan, 4637/20, Ansari Road, Daryaganj, New Delhi – 110002

Mob : +91-9711107317 | Office : +91-11-43561815 | paras@parasdawar.com