

APPLICABILITY OF
SECTIONS 68,69A & 115BBE
OF THE ACT
IN THE CASES OF
CASH DEPOSITS
BY THE ASSESSES
AFTER DEMONETIZATION

Section 115BBE

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).

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.**

Scope of Section 68

- Considering objects and purpose of Section 68 of the Act and also its language Assessing Officers can invoke provisions of Section 68 in two type of transactions represented by credit entries i.e.
 - (i) entries received by the assessee from other persons in the form of loan, share capital or gift and
 - (ii) entries representing the income which has been claimed by the assessee as not taxable.

Onus on the Assessee

- In the cases the amount has been received from another person in the form of loan, share capital or gift, the assessee is required to prove his identity, creditworthiness and genuineness of the transaction.
- In case credit entry is claimed to be not taxable, assessee has to prove the nature and source of receipt thereof.

Case Law

- There are large number of cases. Reference can be made to following Supreme Court decisions:
 - A. Govindarajulu Mudaliar vs. CIT (1958) 34 ITR 807 (SC)
 - CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)
 - Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)

A. Govindarajulu Mudaliar vs. CIT (1958) 34 ITR 807 (SC)

- In the facts of the above case the amounts were credited in the books of the partnership firm as capital introduced by the partner and the Appellant explained that Rs.80,000/- was received by him as gift and amount of Rs.42,000/- was from business of another partnership firm wherein he claimed to be real partner whereas name was of different partner as benamidar. His both the explanations were rejected. It was held that it was open to the ITO to hold that the income must be concealed income.

CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC)

- In the facts of above case a property was purchased by the assessee for an amount of Rs.2,00,000/-. It was claimed by the assessee that income from the property was not his income, but was of a trust created by the wife for the benefit of herself and her children and property was purchased by him on behalf of trust. Deed for settlement of trust was executed subsequently. All the Authorities did not believed the story as source of the money invested by the wife could not be proved. Accordingly, income was held taxable in the hands of assessee.

Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC)

In the facts of the above case the assessee had claimed winnings from horse races whereas she had neither gone in horse races in earlier years nor it was possible to have so many winnings simultaneously in three different cities namely, Bangalore, Madras and Hyderabad. Held that:-

- issue in regard to taxability of an amount represented by credit entry as deemed income has to be considered in the light of facts of the case and in this regard surrounding circumstances and human probabilities have also to be taken into consideration to find out the reality.
- sum found credited in the books of the assessee for any previous year can be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is not satisfactory. While considering the explanation of the assessee the Department cannot, however, act unreasonably.

Section 69A

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.

Applicability of Section 115BBE

- Neither the provisions of section 68 nor of section 69A of the Act can be applied in respect of cash deposits which have been duly recorded in the books of account and have already been considered as income in the return of income filed by the assessee.
- Similarly provisions of section 69, 69B, 69C or 69D are also not applicable.
- In case provisions of above sections are not applicable, the issue for applicability of section 115BBE of the Act will also not arise.

Cash deposits made by the Assesses

- carrying on the business and maintaining Books of account;
- carrying on the business but income is assessable on presumptive basis.
- Who are individuals not carrying on the business.

Cash Deposits made on account of

- Sale proceeds,
- Cash balances available, and
- Recovery from debtors

Contentions to be taken in Appeals

- (a) Provisions of Section 68 are not applicable since there are proper entries in the books of account on account of sale, cash balance or debtors.
- (b) Income has already been shown in the Profit & Loss Account by way of sale either in the year ended 31.03.2017 or earlier years and same has duly been declared in the return(s) of income. Therefore, there is no question of considering the deemed income in terms of Section 68 of the Act. It will result in double addition.
- (c) Books of account can not be rejected on account of cash deposits, which have duly entered in the books and has been considered in determination of profit.

Contentions to be taken in Appeals

- (d) Provisions of Section 69A are applicable only when there is no entry in the books of account in respect of money, jewellery, etc. found in possession of the assessee. In the circumstances since the assessee has already made the accounting entry in the books in respect of cash deposited by him provisions of above Section are not applicable.
- (e) In case the assessee has given necessary evidence on the basis of its books of account, stock register and other relevant record that the amount deposited by him was sale proceeds or out of cash balance or recovery from debtors, evidence in support of which has also been given, the assessee will be deemed to have discharged his obligation and thereafter onus will be on the Department to prove that amount was representing undisclosed income of the assessee.

Contentions to be taken in Appeals

- (f) As per instruction no.03/2017 dated 21.02.2017 the Assessing Officer is required to take into consideration the record of the assessee such as stock register, bank statement, sale tax returns, monthly sales summary, possibility of back-dating of cash sales or fictitious sales etc. before arriving at a conclusion in this regard.
- (g) As per aforesaid instructions no addition can be made in respect of cash balance as on 31.03.2016 and record in respect of subsequent transactions such as withdrawal of cash etc. has to be considered before making any addition in respect of cash deposits. In case cash has been received from another person and his PAN has been given by the assessee, reference may be made to the AO of that person and if payment has been confirmed by that person no further question will be raised in this regard.

Contentions to be taken in Appeals

(h)As per aforesaid instructions approval of higher authorities i.e. Addl. Commissioner and Commissioner is also to be sought before closure of verification and taking a view as regards making an addition in the case of the assessee. Therefore, in case necessary approval has not been taken, this contention can also be taken.

Case Law regarding cash sales entered in the books

- **CIT v. Kailash Jewellery House ITA No. 613/2010 decided by Delhi High Court on 09.04.2010**

In the facts of above case cash of Rs.24,58,400/- was deposited in bank account. The Assessing Officer made the addition on the ground that nexus of such deposit was not establish with any source of income. The assessee claimed that it was duly recorded in the books on account of cash sales and was considered in the Profit and Loss Account. The Assessing Officer had verified the stock and cash position as per books and had accepted the same. Complete books of account and cash book was submitted to the Assessing Officer and no discrepancy was pointed out. On this basis CIT(A) deleted the addition. Tribunal also observed that **it is not in dispute that 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. Therefore, cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.** The Hon'ble High Court dismissed the appeal filed by the Department.

Case Law regarding cash sales entered in the books

- **R.B.Jessaram Fetechand (Sugar Dept.) v. CIT (1969) 75 ITR 33 (Bom.)**

In the facts of above case the assessee had shown cash sales of sugar. The **Assessing Officer required address of the buyers**. The Hon'ble High Court in regard to the matter held as under:-

“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**. In our opinion, therefore, the rejection of the results of the assessee's cash book by the Income-tax Officer was not at all justified and the Appellate Assistant Commissioner, therefore, was right in deleting the addition made by the Income-tax Officer. The Tribunal, it appears, has approached the matter on certain surmises and conjectures..... In our opinion, the **assessee's account books are to be accepted, unless, on verification, they disclosed any faults or defects, which cannot be reasonably and satisfactorily explained by the assessee**. All the other transactions, except the cash transactions, which were verifiable, have been verified and scrutinized by the Income-tax Officer and there is nothing wrong whatsoever found with them. 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.”

Case Law regarding cash sales entered in the books

- CIT v. Jaora flour and Foods Pvt. Ltd. (2012) 344 ITR 294 (MP)

During the course of survey two slips were found mentioning about sale of bardana of Rs. 10 Lacs. Cash of Rs. 10 lacs was also found. The assessee entered in the books of account sale of bardana and determined the profit on that basis. The Assessing Officer made addition of Rs. 10 lacs rejecting the explanation of the assessee. It was held that since sale of bardana was duly entered in the books, amount of Rs.10 lacs did not remain unrecorded and it was not unaccounted. It was also noted by the Tribunal that **addition of the same amount again during assessment proceedings amounted to double addition.**

Case Law regarding cash sales entered in the books

- CIT v. Vishal Exports Overseas Ltd., Tax Appeal No. 2471 of 2009 decided by Gujarat High Court on 03.07.2012

Assessee was an exporter and claimed deduction u/s 80HHC of the Act. On the basis of information received by the Assessing Officer from investigation he considered the entry for export of 70 lacs as bogus. He denied benefit u/s 80HHC of the Act. Further, he made addition of Rs. 70 lacs in the income u/s 68 of the Act. It was held that **once the assessee has already included the amount of sale of Rs. 70 lacs in Profit and Loss Account and determined the income on that basis no further addition could be made u/s 68 of the Act as it would tantamount to double taxation of same income.** The Assessing Officer could only reject claim u/s 80HHC of the Act.

Case Law regarding cash sales entered in the books

- M/s Singhal Exim Pvt. Ltd. v. ITO ITA No. 6520/Del/2018 decided by ITAT Delhi on 12.04.2019

Assessee was importing mobile phones from China. Most of the time it was making sales of the goods when in transit by way of high sea sales. During the year total turn-over was Rs.62.91 crores out of which high sea sales were of Rs.59.11 crores. Sale consideration for high sea sales was received in cash. The assessee was having meager finances and was purchasing the goods on credit and was making the payment after the sale. The Assessing Officer with a view to verify the transactions of high sea sales issued notices to the buyers which were returned by postal authorities with remarks "left or not exist". The Assessing Officer on this basis made addition of Rs.59.11 crores u/s 68. **Held by the Tribunal that Section 68 was not applicable. Goods have been duly imported there have been custom clearances for the same. There were agreements for sale of the goods on high sea basis. Once the goods have been sold, the buyer became the debtor and any receipt of money from him is the realization of such debt. Therefore, Section 68 cannot be applied.**

Case Law regarding cash deposited in bank against cash balance

- **CIT v. Kulwant Rai (2007)291 ITR 36 (DEL)**

In the facts of above case cash balance of Rs.3,76,800/- was found in the bed room of the assessee during the course of search on 14.02.2001. The Assessing Officer made addition in the assessment of Rs. 2.5 lacs. The assessee submitted cash flow and had shown that entire cash was out of withdrawals made from the bank from time to time and sum of Rs.2 lacs was withdrawn on 04.12.2000. It was held that **since the Assessing Officer has not been able to show that cash withdrawn were utilized for some other purpose, addition could not be made in respect of cash available with the assessee.** Accordingly, addition was deleted by ITAT and confirmed by High Court.

Case Law regarding cash deposited in bank against cash balance

- **DCIT v. Smt. Veena Awasthi ITA No. 215/ LKW/2016 decided by ITAT Lucknow Bench on 30.11.2018**

There were aggregate deposits in bank accounts of the assessee and her minor son amounting to Rs.1,35,61,000/-. The Assessing Officer made the addition on the ground that there were very frequent withdrawals from bank and also deposits in the bank which are full of suspicious features and cannot be relied upon as evidence. CIT(A) after fully examining the facts accepted the contention of the assessee that all the transactions were fully reflected in the bank account and are verifiable. Tribunal in appeal filed by the department held that documentary evidences furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, assessee had sufficient availability of cash which is also not disputed by the Revenue. **Entire transaction of withdrawals and deposits are duly reflected in the bank account of the assessee and are verifiable from relevant records.**

Case Law regarding cash deposited in bank against cash balance

- Neeta Breja v. ITO ITA No. 524/Del/2017 decided by ITAT Delhi on 25.11.2019

In the facts of above case the assessee has deposited aggregate amount of Rs. 26,75,100 in the bank account. The Assessing Officer made addition for the same considering unexplained cash deposits. ITAT relying upon decision of Delhi High Court in the case of Kulwant Rai held that 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 deposits could not be made in the absence of any finding that cash withdrawn was used for any other purpose.**

Case Law regarding cash deposited in bank against cash balance

- Kavita Chandra v. CIT(Appeals) (2017) 398 ITR 641 (P&H)- Against

In the facts of above case the Assessing Officer has made an addition of Rs.14,20,212/-. During the year 33 withdrawals were made out of which only two withdrawals were of Rs. 2 lacs each others were of small amounts. CIT(A) and Tribunal confirmed the addition. High Court also dismissed the appeal of the assessee in the facts of the case wherein, **withdrawals were re-deposited after gap of 2-3 months, which were not probable.**

Cash deposited by assesses carrying on the business and assessable on presumptive basis.

- In case his total receipts from the business including the cash deposit in the bank is within the prescribed limit and he had filed his return of income declaring the income at the prescribed rates it is to be presumed that receipts are from business of the assessee.
 - CIT v. Surinder Pal Anand (2011) 242 CTR 61(P&H).
 - Thomas Eapen v. ITO, ITA NO. 451/Coch./2019 decided on 19.11.2019 by Cochin Bench.

Cash is deposited by an individual who is not carrying on the business

- Section 68 will not be applicable since the assessee is not maintaining books of account.
- Section 69A of the Act also cannot be said to be applicable as the department has not found him to be the owner of money, jewellery etc. He has himself deposited the amount in bank account. There is also no question of recording the same in books as no books are maintained.

Recent decisions

Kanpur Organics Pvt. Ltd

Vs.

Dy. CIT

Lucknow Bench of ITAT

ITA.675/LKW/2018 dated 10/01/2020

Assessment year 2016-17

Addition of Rs.1.51 crores on account of unrecorded sales stated during search, under section 69A which was subsequently entered in Books and return was filed accordingly. Additional ground was raised before ITAT for applicability of sections 69A and 115BBE. Contention accepted by ITAT and held that addition could not be made under section 69A for unrecorded sales, which were duly recorded by the assessee and income determined accordingly.

Recent decisions

SALEM SREE RAMAVILAS CHIT CO. Pvt. LIMITED

vs.

DEPUTY COMMISSIONER OF INCOME TAX

HIGH COURT OF MADRAS

W.P.No.1732 of 2020 decided on Feb 4, 2020

(2020) 107 CCH 0322 ChenHC

Assessment year 2017-18

Writ filed against order of assessment challenging addition of account of cash deposit in bank of 67 lacs under section 69A and applying section 115BBE. Assessee explained that deposits were out of cash balances and collections made from debtors. HC set aside the order and remanded the matter to examine the details submitted.

Recent decisions

SMT. ASHA GANDHI vs. INCOME TAX OFFICER

ITAT CHANDIGARH BENCH 'SMC'

***ITA No. 1224/CHD/2018 decided on Aug 29, 2019
(2019) 75 ITR (Trib) 0036 / (2019) 201 TTJ 0900 (Chd)***

Assessment year 2014-15

cash deposits of 5,65,000 in bank - assessed under section 68 read with section 115BBE - assessee explained that income was from BOUTIQUE and had been shown in books and profit of Rs.4,98,000/- in the profit and loss account was shown as income.

Hon'ble Bench observed that amount reflected in the cash book was the basis of deposit- explanation offered consistently has never been examined - **The arbitrary wilful reluctance to look into the facts cannot be upheld** – set aside to AO with the direction to examine the claim.

Recent decisions

SHRI VINOD BHANDARI vs PR. CIT, ACIT-2 (1), DCIT-2(1), INDORE

ITAT Indore Bench decided on 20 March 2020

ITA No.350/Ind/2017, ITA No.66/Ind/2017, ITA No.57/Ind/2019-

Assessment year 2012-13

Assessee, who was a doctor by profession, surrendered an amount of Rs.7 crores on account of short term loans given by him to various persons. He entered the amount in books. Subsequently recovered in cash and deposited in bank account. He included the amounts in his income returned. The AO made further addition of Rs. 7.34 crores being amount of loans and interest thereon realised and deposited in bank account under section 68 of the Act.

Held that Ld. A.O merely on the basis of surmises and conjectures have taken this view. He ignored the fact that the assessee has surrendered ₹ 7 crores as unaccounted income during the year. it can be inferred that if there are two funds one which is already taxed and other has not and there was remittances during the accounting year for certain sum, the source of which is not indicated then the presumption is that the remittances should have been from the fund which has already suffered tax. It is noteworthy that the Ld. A.O has not rejected the books of accounts.

Rate of Tax as per Section 115BBE

- Section 115BBE of the Act was amended vide Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01.04.2017 to provide that:-

Rate of tax of 60% on income referred therein and surcharge thereon is leviable at 25% along with education cess @ 4%.

- Section 271AAC was also simultaneously inserted to provide penalty in a case where provisions of Section 115BBE are applicable @ 10% of the tax payable under above section.
- On the basis of above the assessee is liable to pay 77.4% as tax plus 10% thereof as penalty.
- Assessing Officer have also levied interest under Sections 234B and 234C of the Act.

Whether amendment in rate is retrospective

- Section 115BBE of the Act was amended vide Taxation Laws (Second Amendment) Act, 2016 w.e.f. 01.04.2017 to provide rate of tax of 60%.
- Issue is whether amendment in rate is retrospective and can be applied to income / cash deposits made prior to amendment.
- Writ has been filed in Gujarat High Court and notice thereon has been issued.
- We have to wait for the out come of the writ.

Validity of additions made and liability determined

- Section 115BBE not applicable, since section 68 or 69A is not applicable.
- Addition on account of cash deposits can not be made in addition to profit as per P&L A/c without rejecting the books of account.
- If Section 68/69A is applicable profit as P&L A/c is to be re-determined and amount is to be excluded from sales/ turnover.
- Interest u/s 234B and 234C can not be charged.

Notification for demonetization dated 8th Nov.,2016

- **Central Government hereby declares that the specified bank notes shall cease to be legal tender with effect from the 9th November, 2016**
- **value of the specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered**
- **value of specified bank notes tendered may be credited to a third party account, provided specific authorisation**

THE HIGH DENOMINATION BANK NOTES (DEMONETISATION) ACT, 1978

- **3. High denomination bank notes to cease to be legal tender.**—On the expiry of the 16th day of January, 1978, all high denomination bank notes shall, notwithstanding anything contained in section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), **cease to be legal tender in payment or on account at any place.**
- **4. Prohibition of transfer and receipt of high denomination bank notes.**—Save as provided by or under this Act, **no person shall, after the 16th day of January, 1978, transfer to the possession of another person or receive into his possession from another person any high denomination banknote.**

RESERVE BANK OF INDIA ACT, 1934

- **26. Legal tender character of notes.**

- (1) Subject to the provisions of sub-section (2), **every bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein, and shall be guaranteed by the Central Government.**
- (2) On recommendation of the Central Board the Central Government **may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender** save at such office or agency of the Bank and to such extent as may be specified in the notification.

- **34. Liabilities of the Issue Department.**

- (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation.

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017

1. (1) This Act may be called the Specified Bank Notes (Cessation of Liabilities) Act, 2017.
(2) It shall be deemed to have come into force on the 31st day of December, 2016.
2. (1) In this Act, unless the context otherwise requires,—
"appointed day" means the 31st day of December, 2016;
(b) "grace period" means the period to be specified by the Central Government, by notification, during which the specified bank notes can be deposited in accordance with this Act;

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017

3. On and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(E), dated the 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act.

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017

5. On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:

Provided that nothing contained in this section shall prohibit the holding of specified bank notes—

(a) by any person—

(i) up to the expiry of the grace period; or

(ii) after the expiry of the grace period,—

(A) not more than ten notes in total, irrespective of the denomination; or

(B) not more than twenty-five notes for the purposes of study, research or numismatics;

7. Whoever contravenes the provisions of section 5 shall be punishable with fine which may extend to ten thousand rupees or five times the amount of the face value of the specified bank notes involved in the contravention, whichever is higher.

Grace Period

Notification No. :SO4251(E) dated 30.12.2016

- In exercise of the powers conferred by clause (b) of sub-section (1) of section 2, the Central Government hereby specifies, in respect of a citizen of India,-
 - (a) who is a resident in India, the period ending on the 31st day of March, 2017; and
 - (b) who is not resident in India, the period ending on the 30th day of June, 2017,as the grace period.

Definition of Legal and non-legal Tender

- **Legal tender** is a form of money that courts of law are required to recognize as satisfactory payment for any monetary debt. Each jurisdiction determines what is legal tender, but essentially it is anything which when offered ("tendered") in payment of a debt extinguishes the debt. There is no obligation on the creditor to accept the tendered payment, but the act of tendering the payment in legal tender discharges the debt. The creditor is not obligated to give change.
- **Non-Legal Tender-Money:** It is a form of money, which is generally accepted, but legally is not bound to accept it. Such as cheques, bank drafts, bills of exchange, postal orders etc. are not legal tenders and are accepted only at the option of the creditor, lender, or seller. It is also called the optional money because it does not have legal backing and their acceptance is optional.

Conclusion

- There was no illegality in accepting or holding old currency notes upto 30th December, 2016 and depositing the same in bank account.
- Provisions of Section 68/69A and 115BBE are not applicable and no addition can be made in respect of cash deposited, which is already accounted for in the books and considered in determination of taxable income.

Thank You

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