ADDITION U/S 68 AND 69 WITH SPECIAL REFERENCE TO DEPOSIT DURING DEMONETIZATION PERIOD

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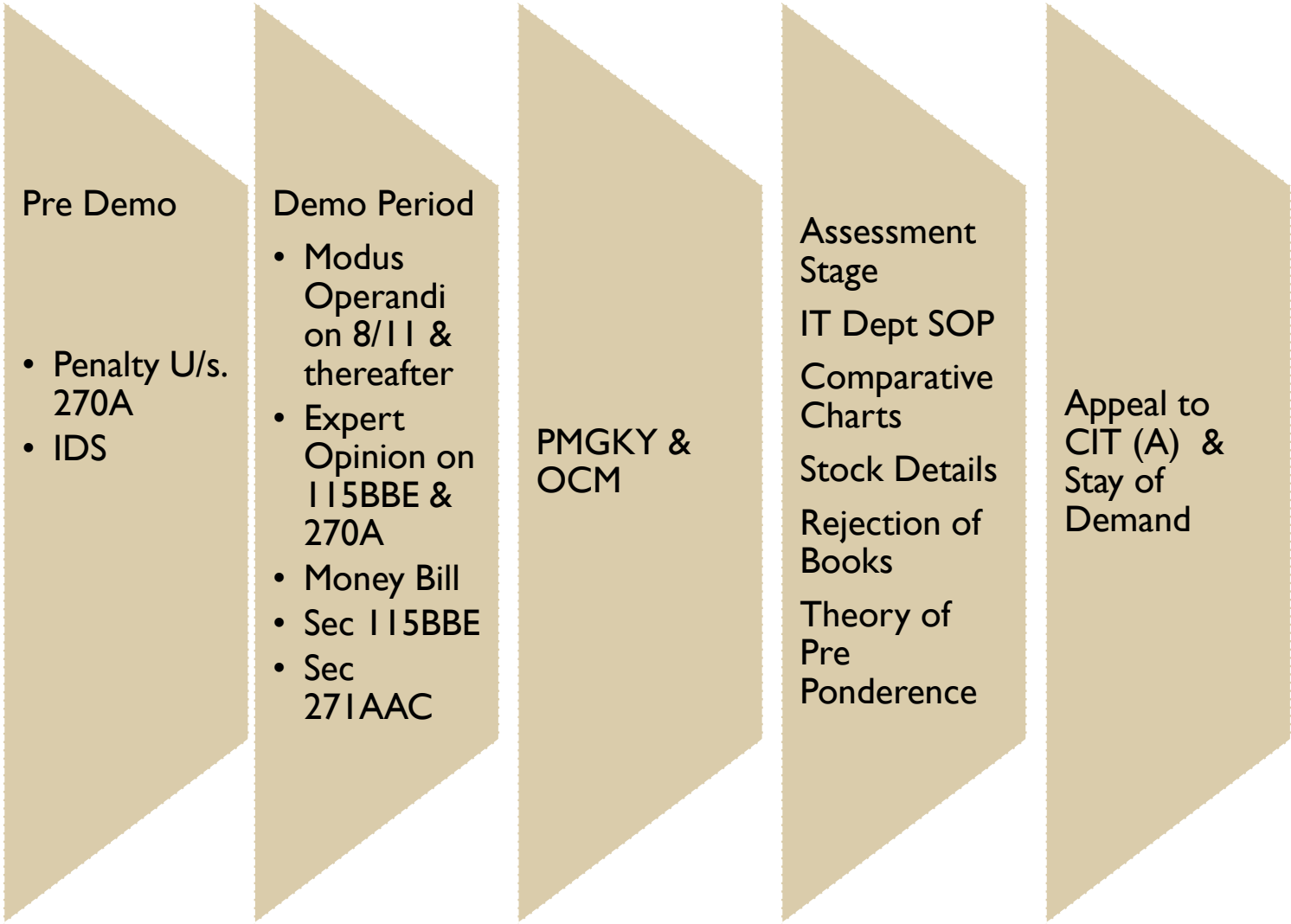
STAGES OF DEMONETIZATION



ADDITION U/S. 68 & 69 FOR DEMO PERIOD & APPEAL TO CIT(A) & STAY OF DEMAND

NO ADDITION	GP ADDITION	ADDITION U/S. 68/69
NO APPEAL	APPEAL OR NOT	APPEAL
NO STAY	PENALTY 270 AA	HIGH PITCHED & STAY

APPLICABILITY OF SECTION 68:

- ✓ Any sum found credited in the books of accounts **maintained** by the assessee.

- ✓ Assessee offers no explanation about such credit,

- ✓ Explanation of the assessee is not found satisfactory by AO.

As per language of section, Maintenance of books of accounts is **MUST** for invoking of section 68. There may be situation where the assessee was required to maintain books of accounts as per section 44AA but NO books of accounts was maintained then provision of section 68 can-not be invoked.

APPLICABILITY OF SECTION 69A:

- Assessee is found to be owner of any money, Bullion, Jewellery, valuable etc.
- Such Money etc. is **not recorded** in the books of accounts, If any maintained by him for any source of income, **AND**
- Assessee offers no explanation or explanation is found not satisfactory by AO

As per language of section, Section 69A can be invoked only when the assessee has not recorded such money in the books of accounts **and** offers no explanation or unsatisfactory explanation. Both the condition given in point no 2 and 3 are cumulative and satisfaction of either of condition does not automatically triggers rigours of section 69A.

ANALYSIS OF ADDITION MADE UNDER DIFFERENT SITUATIONS:

1. BOOKS OF ACCOUNTS MAINTAINED AND ADDITION MADE U/S 69A FOR UNSATISFACTORY EXPLANATION:

- Assessee explained the AO that the amount deposited is from Cash Sales or Receipt from Debtors but AO not accepted.

- Fair Chances of Addition getting deleted in Appeal.

2. BOOK OF ACCOUNTS NOT MAINTAINED AND ADDITION MADE U/S 68 FOR UNSATISFACTORY EXPLANATION:

- ***Such Addition not acceptable in the eyes of law.***
- ***But Addition can be made u/s. 69A.***

Case Laws :

(i) Smt. Teena Bethala v/s ITO
(ITA No 1383/Bang/2019) Dated 28/08/2019

(ii) DCIT Vs. Karthik Construction Co. in ITA No. 2292/Mum/2016 Dated 23.02.2018, Ld. ITAT – Mumbai Branch.

3. WHETHER PASSBOOK IS BOOKS OF ACCOUNTS:

No

Case Laws:

(i) Sri Girish V. Yalakkishettar vs. The Income Tax officer (ITA No. 354/ Bang/ 2019) (Dtd. 27.01.2020) (SMC) (Bangalore)

(ii) Thomas Eapen vs. Income Tax officer, Ward – 5, Alappuzha [2020] 113 Taxmann.com 268 (Cochin – Trib)

4. INORDINATE DELAY IN DEPOSIT OF CASH FROM WITHDRAWALS IE. 5-6 MONTHS FROM WITHDRAWALS FROM BANK:

Gordhan, Delhi vs. DCIT dated 19/10/2019 honorable ***Delhi Tribunal*** held that –

"No addition can be made u/s 68 on the sole reason that there is a time gap of 5 months between the date of withdrawals from bank account and redeposit the same in the bank account , Unless the AO demonstrate that the amount in question has been used by the assessee for any other purpose.

Relevant similar case laws –

(i) Neeta Breja vs. ITO (ITA No. 524/ D/ 17/ 25-11-2019) (Delhi ITAT)

(ii) Moongipa Investment Ltd. vs. ITO (2016) (Tax Appeal No. 1106 of 2006 dated 07/06/2016) (Guj)

5. REGULAR CASH SALE CONVERTED AS UNEXPLAINED CASH CREDIT:

Addition were made on the basis of deviation in ratio as set out in various SOP issued by CBDT.

Case laws –

(i) ***Agons Global P Ltd V/S Acit (Appeal No 3741 To 3746/Del/2019 the Ld. Delhi ITAT*** held that –

"mere addition made on this ground that there is deviation in ratio is not proper. When the assesse had regular cash sale and deposit of cash in bank accounts and if nothing incrementing is found contrary then addition u/s 68 of such cash sale would tantamount to double taxation."

(ii) ***Dewas Soya Ltd, Ujjain V/S Income Tax (Appeal No 336/Ind/2012 the Ld. Indore Bench*** held that –

"The claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act."

5. REGULAR CASH SALE CONVERTED AS UNEXPLAINED CASH CREDIT:

Case laws –

(iii) ***CIT vs Devi Prasad Vishwnath Prasad (1969) 72ITR194 (SC)*** honorable Apex court held that –

"It is for the assessee to prove that even if the cash credit represents income, it is income from a source, which has already been taxed". The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."

(iv) ***Smt. Harshila Chordia vs ITO (2008) 298 ITR 349*** wherein it was held that –

"Addition u/s 68 could not be made in respect of the amount which was found to be cash receipts from the customers against which delivery of goods was made to them"

5. REGULAR CASH SALE CONVERTED AS UNEXPLAINED CASH CREDIT:

Case laws –

(v) ***ITO vs. Surana Traders, (2005)93 TTJ 875: (2005)92 ITD 212 hon'ble Mumbai ITAT*** held that –

" So merely because for the reasons that the purchaser parties were not traceable, the assessee could not be penalized. In the sales documents, the assessee has made available all necessary details, i.e. the total weight sold as well as the rate per kilogram. Undisputedly, the assessee has maintained complete books of accounts along with day to day and kilogram to kilogram stock register. These were produced before the A 0 by the assessee. The assessee also submitted stock tally sheet along with the audited accounts. The audit report of the assessee also bears ample testimony in favour of the assessee. The factum of the assessee having maintained stock register and quantitative details have been mentioned by the A 0 in the assessment order. No mistake were pointed out by the AO in these records maintained by the assessee—-Since the purchases have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as hawala transaction. It is the burden of the department to prove the correctness of such additions. When, in such like cases, a quantitative tally is furnished, even if purchases are not available no addition is called for."

CASE STUDY

Particulars	PY 2015-16	PY 2016-17
Total Sales	12,83,37,333	16,98,96,925
Cash Sales	1,99,95,787	3,13,82,203
Cash Sales between 01/04 & 08/11	1,87,86,778	3,11,59,875
Total Cash Deposit	1,99,00,000	3,17,50,000
Total Cash Deposit upto 08/11	1,85,50,000	18,50,000
Total Cash Depo between 08/11 & 31/12	12,00,000	2,99,00,000

Arguments of Both Sides

- Assessee

- Total Sales & Cash Sales both inreases
- Diwali Period Difference
- VAT Return is Lab Test
- Stock details are adequately given

- Assessing Officer

- Sharp Increase in Cash Deposits in Demo Period.
- Cash Sales not evenly distributed
- Sales less than 2 Lakh to avoid 206C
- Qt of Stock not given

6. CASH IS DIRECTLY DEPOSITED IN THE BANK ACCOUNT OF THE ASSESEE IN ANOTHER CITY BY DEBTORS OR CASH SALE BY MEDICAL STORES, MILK SELLERS, PETROL PUMPS ETC ON WRONG INTERPRETATION OF NOTIFICATION:

Ministry of Finance passed a notification dated 08/11/2016 wherein the Central Government declared that the specified bank notes shall not be ceased to be legal tender, with effect from the 9th November, 2016 until the 11th November, 2016 for specified categories of persons. Further, vide notification dated 24th November, 2016, the Government further extended the time of limit of accepting old 500 and 1000 currency notes in all the exempted categories of persons.

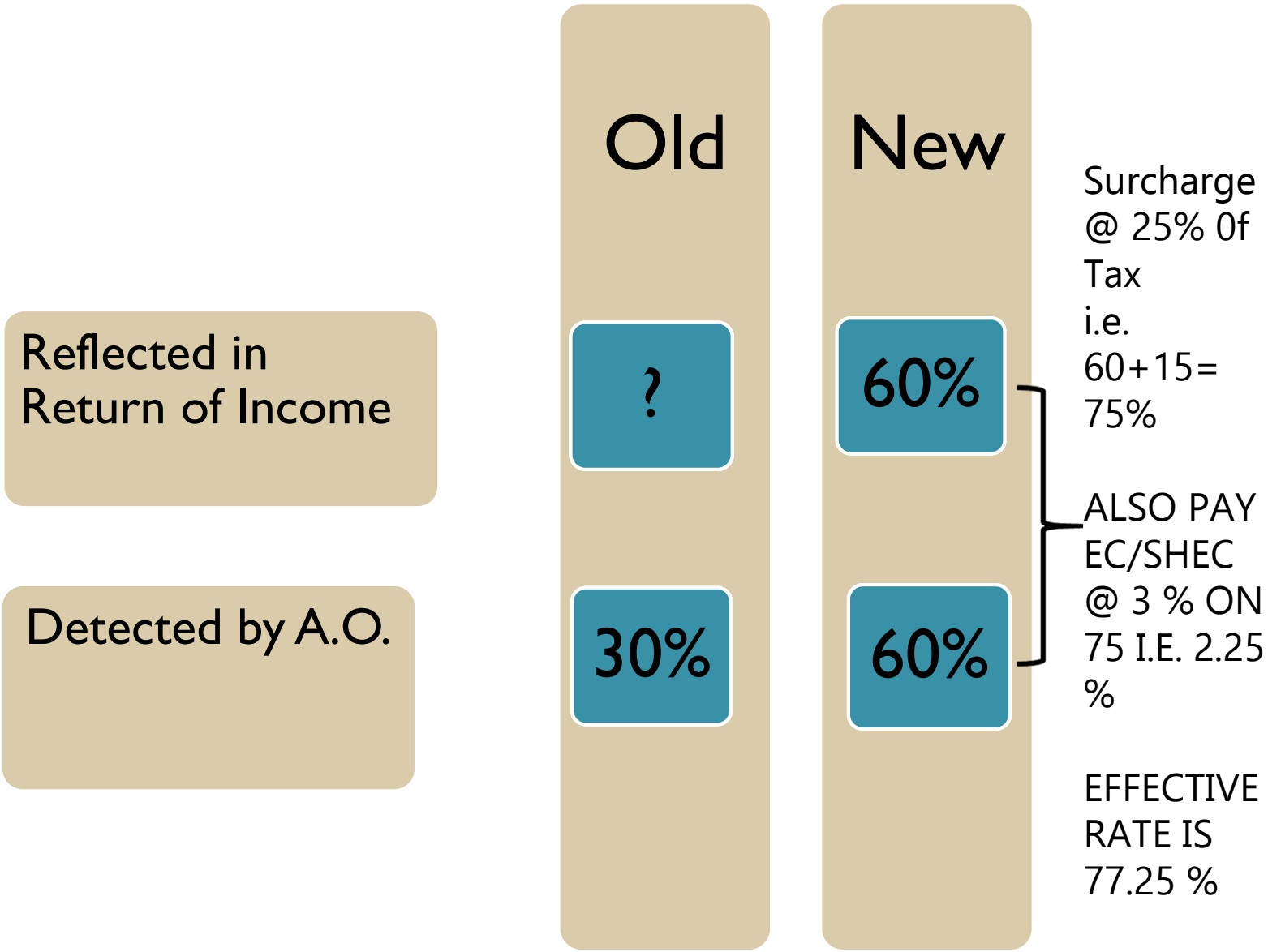
7. LATE RETURN FILED FOR A.Y. 2015-16 AND A.Y. 2016-17 AND CASH DEPOSITS MADE OUT OF THE CASH ON HAND BALANCE:

Return of income for A.Y. 2015-16 and A.Y. 2016-17 were filed after the date of demonetization as belated returns and the cash deposits were claimed to have been made out of said cash balances disclosed in the returns.

Case Laws:

TS-8479-ITAT-2019 (Delhi)-O

SEC. 115BBE : TAX ON UNDISCLOSED INCOME



SEC.271AAC :- UNDISCLOSED INCOME DETERMINED BY A.O.

68 & 69 by A.O. → 10% of tax i.e.6%

Present Scenario

1. Mumbai ITAT Bench F (17/01/2020) :

High Pitched Assessment CBDT Instruction no 96 dated 21/08/1969 r/w instruction no 1914 dated 02/12/1993 : Stay of Demand

2. Madras HC : Salem Sree Ramavilas Chit Company (04/02/2020) : Comparative of PY 2015-16 & PY 2016-17 almost same, AO Cant make Addition

Present Scenario

- Guj HC : Dhaneshbhai Parshottamdas Soni (24/02/2020) : Sec 115BBE Retrospective is debatable. Stay can be granted till further hearing on 16/03/2020.

Stay of Demand

1. Instruction 1914 dated 21/03/1996
2. Office Memorandum 29/02/2016 (15%) & 31/07/2017 (20%)
3. Pr CIT v/s. LG Electronics Civil Appeal no 6850/2018(SC) Dated 20/07/2018 Give Sufficient reasons for no stay.
4. Bhupendra Murji Shah 2157/2018 (Bom) Dated 11/09/2018 (Stay is Right)
5. Dalpansinh U Vasava SCA 9825/2019 Dated 26/04/2019 (Guj) There can be Deviation from the Circular Etc.

THANK YOU

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