INTRICACIES OF SECTION 69, 69A AND 69B OF THE INCOME-TAX ACT, 1961

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"The concept of tax avoidance is as old as taxing statue"

Taxation is a crucial source of income for the exchequers. Tax collection flourishes government treasury to fund infrastructure development and social welfare measures. However, taxes are perceived as cost for the taxpayers. The hunt and exploitation of loopholes and gaps in taxing statues is well-known reality. With wisdom accumulated over a period of time, the legislature has installed various tools to plug the loopholes and provide strict penal consequences for tax avoidance.

The High Courts have upheld the legislative power of the Parliament to enact a law dealing with measures for prevention of tax evasion. [1]Section 68 to section 69D are some of the anti-avoidance provisions enacted under the Income-tax Act, 1961 ('the ITA') to deal with income from undisclosed sources. At the outset, it would be important to understand the scope and interplay of different provisions of Section 68 to 69D of the ITA. If the taxpayer has earned income from undisclosed sources, credited to books of accounts, such income would be taxable under section 68. If the income is not credited to books of accounts, but invested and not recorded, it would be taxable under section 69. If the unreported income is not invested but such income is represented by money or jewellery or other valuable article, it would be taxable under section 69A. If the books of accounts reflect investment or money or valuable articles, however, the actual amount invested or expended is higher than the amount reflected in books of account, the excess of actual investment over the amount reported in books of accounts would be taxable under section 69B. If the taxpayer has incurred any expenditure and the taxpayer fails to provide explanation regarding nature and source of such expenditure to the satisfaction of assessing officer, such expenditure would be deemed to be income taxable under section 69C. 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 taxable under section 69D.

This article captures nuances and intricacies of Section 69, 69A and 69B.

[1]Ashoka Sharan v. CIT [1994] 209 ITR 679 (Patna)

Comparative analysis of Section 69, 69A and 69B of the ITA			
Particulars	**Section 69**	**Section 69A**	**Section 69B**
Tax subject	Unexplained investments	Unexplained money, etc.	Amount of investments, etc., not fully disclosed in books of account
Taxable in year	Year of investment	Year in which the taxpayer is found to be owner of money, etc.	Year of investment or year in which the taxpayer is found to be owner of money, etc.
Opportunity of being heard	Mandatory		
Rate of tax	60% of taxable income[2]+ surcharge @ 25% + cess @ 3% = 77.25%		
Claim of deduction / set-off	No deduction of expenditure or allowance or set-off of loss is allowed		
Penalty (other than penalty leviable for specified previous years in search cases)[3]	10% of taxes payable[4]. However, no penalty if taxpayer voluntarily includes the income in his return and pays advance tax		

Section 69 to 69B of the IT Act create a deeming fiction. Section 69 of the ITA deals with taxation of unexplained investments. Where the taxpayer has made investments which are not recorded in the books of account, if any, and the taxpayer fails to offer an explanation about the nature and source of the investments to the satisfaction of the assessing officer, then such investment would be taxed under section 69 of the ITA, as income of the taxpayer in the year of investment.

Similarly, section 69A deals with taxation of unexplained money, jewellery, bullion, valuable articles, etc. The deeming provisions of section 69A will come into play if the taxpayer is found to be the owner of the valuable articles and the taxpayer fails to furnish explanation regarding nature and source of such valuables to the satisfaction of revenue. If the taxpayer is found to be in possession of valuable articles, then the presumption under Section 110 of the Evidence Act, 1872, is that he is the owner of such assets. This presumption is rebuttable and the onus is on the taxpayer to prove that he is not the owner of the money or valuable items found in his possession. [5]If the taxpayer proves so, then mere possession of such items by the taxpayer (without ownership) would not be sufficient to trigger rigors of section 69A.Further, mere loose slips can neither prove possession nor ownership of any valuable article mentioned in the slip and hence, it cannot form base for taxation under section 69A[6].

[2]Section 115BBE
[3]In case of search cases, the penalty for specified previous years will be levied as per section 271AAB. For non-specified previous years, penalty will be levied as per section 271AAC.
[4]Section 271AAC – applicable from AY 2017-18.
[5]Chuhadmal Takanmal v. CIT [1987] 166 ITR 12 (Mad HC) affirmed by Supreme Court in Chuharmal v. CIT [1988] 172 ITR 250 (SC)
[6]CIT v. Ravi Kumar [2007] 294 ITR 78 (P&H HC)

Section 69B deals with the scenario where the amount invested/expended on making investments or on acquiring bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the taxpayer for any source of income. If the taxpayer fails to provide satisfactory explanation regarding such excess amount, then it would be taxable under section 69B of the ITA. Let's say, Mr. A has bought a property for Rs. 1 Cr. However, the books of accounts of Mr. A reflects its cost at Rs. 75 lakhs only. The difference of Rs. 25 lakhs would be deemed to be income taxable under section 69B of the ITA.

Common features of Section 69, 69A and 69B[7] of the ITA

- **The specified sections are deeming provisions**

  The phraseology of specified sections creates a deeming fiction. Section 69 and 69A operate on presumption that if a person makes an investment in a particular financial year or is found to be the owner of any money, bullion, jewellery or other valuable article, then the amount so invested must represent either his current income or his savings from past income or receipt by loan or otherwise from some other person. If such person fails to explain the source of investment or money or valuable article, the reasonable conclusion can be a presumption that such investment or money or valuable articles are financed from unreported income. Basis on the same presumption, section 69B of the ITA deems excess of amount expended in investment or owning money, valuable articles, etc. and the amount recorded in this behalf in the books of account, as income of the taxpayer.

- **Onus of proof and opportunity of being heard**

  Identification of unexplained or undisclosed investment or money, bullion or valuable items would not automatically result into addition under the specified sections. The specified provisions clearly articulate the onus of proof and applicability of principles of natural justice.

  The initial onus lies upon the revenue to raise a *prima facie* doubt on the basis of credible material. The onus, thereafter, shifts to the taxpayer to prove that the transaction is genuine and if the taxpayer is unable to offer a credible explanation, the Assessing Officer may legitimately raise an inference against the taxpayer. If, however, the taxpayer furnishes all relevant facts within his knowledge and offers a credible explanation, the onus reverts to the revenue to prove that these facts are not correct[8].

  The rigors of specified sections would apply, only after granting an opportunity of being heard to the taxpayers. The taxpayer is allowed to explain the nature and source of the unexplained or undisclosed investment or money, bullion or valuable items. The assessing officer is obliged to apply independent mind to the explanation furnished by the taxpayer. The assessing officer is bound to examine all documents including cash flow statements, and evidence on merits. Whether the explanation of the taxpayer should be accepted or not, is question of fact. If the taxpayer fails to furnish explanation regarding nature and source of such investment or money, bullion or valuable items, to the satisfaction of the assessing officer, such investment or money, bullion or valuable items would be taxed under the specified provisions.

  In case of cash gift/loan where the borrower/donee has not recorded the transaction in his books of accounts (if any), then practically, the nature and source of gift/loan are to be justified by proving identity and creditworthiness of the lender/donor and the genuineness of the transaction. If the asset is bought by the taxpayer, then the taxpayer needs to substantiate the source of funds used for purchasing that asset. In all these cases, the genuineness of transaction may be verified by the assessing officer by looking into the aspect of human probabilities and surrounding circumstances.

[7]Section 69, 69A and 69B are collectively referred as 'Specified sections'
[8]CIT v. Jawaharlal Oswal [2016] 382 ITR 453 (P&H HC)

- **Year of taxability**

The unexplained or undisclosed investment or money or valuable items could be result of undisclosed income of the current year or past years. Hence, where such undisclosed income is identified, question arises regarding year of taxability of such income. The undisclosed / unexplained investment under section 69 and 69B would be deemed to be income of the year in which the investment is made. On the other hand, the undisclosed / unexplained money, bullion or valuable items under section 69A and 69B would be deemed to be income of the year in which the taxpayer is found to be owner of such money or valuable items.

The relevant date for assessment under section 69A would be the date on which the taxpayer is physically found to be in possession of the money, etc., and not the date on which the finding about ownership is recorded. Such a finding, whenever recorded, would refer back to the date of recovery. For instance, if a theft is committed on a particular date but a finding relating to this is given subsequently, may be after one or two years, the commission of the offence of theft would relate back to the date on which it had been committed, and it would not be connected with the date of the finding arrived at in this context[9].

- **Discretionary power conferred to the assessing officer**

The specified sections grant discretionary power to tax the undisclosed / unexplained investment / money or bullion or valuable items, if, the explanation falls short to the satisfaction of assessing officer. The assessing officer is not obliged to treat investment or money, valuable article etc. as income in every case where the explanation offered by the taxpayer is found to be not satisfactory. The assessing officer can exercise his discretionary power to tax the income, basis on the circumstantial evidence surrounding each case. The tax officer must exercise his discretion in a judicious manner[10].

- **Relevance of books of accounts**

Section 69 and 69A target unexplained investments and unexplained money, bullion or valuable items, which are not recorded in books of accounts, if any, maintained by the tax payers. Thus, maintenance of books of accounts is not a relevant factor for Section 69 and 69A of the ITA. Section 69 and 69A would apply, irrespective of the fact, whether the taxpayer maintains books of account or not, to the extent such investment or money, bullion or valuable items, are not recorded. No necessity of rejection of books of accounts to tax under section 69 or 69A of the ITA. [11]However, section 69B stands on different footing. Section 69B compares the value recorded in books of accounts for such investment or money, bullion or valuable items, with the actual amount invested or expended. Accordingly, if the investment or money, bullion, or valuable items are not recorded in books of accounts, section 69 and 69A would apply. However, if the investment or money, bullion or valuable items are recorded at an amount lower than the actual amount invested or expended, such excess of actual amount invested or expended would be taxable under section 69B of the ITA.

[9]Patoa Brothers v. CIT [1982] 133 ITR 672 (Gau.)
[10]CIT v. Smt. P.K. Noorjahan [1999] 237 ITR 570 (SC)
[11]Unit Construction Co. Ltd. v. JCIT [2003] 260 ITR 189 (Calcutta)

- **Quantum of addition**

No additions under specified sections can be made basis on surmises or conjectures but on concrete material[12]. Section 142A of the ITA empowers the assessing officer to make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment. The assessing officer, may after grating opportunity of being heard to the taxpayer, may take such value for the purpose of addition under specified section. Assessing officer can make reference to the Valuation Officer even if, he is satisfied about the correctness or completeness of the accounts of the taxpayer. However, mere difference in the valuation report and value reported in books of account will not be conclusive evidence of undisclosed investment or money, bullion or other valuable items.

Section 69 creates a charge against amount invested for acquisition of investment and not against fair market value. Fair market value of the investment or valuable items cannot be equated with the cost. Determination of fair market value is not equivalent to determination of investment i.e. what is actually spent by the taxpayer in a year of acquisition[13.]

- **Other Aspects**

It is settled principle that same income cannot be taxed twice in the hands of same taxpayer. Basis that, many times, the taxpayers also argue that the source of money, valuable article etc. is the intangible additions made in the preceding years and hence, addition under specified sections should be dropped. The undisclosed / unexplained investment or money, bullion or valuable items is representation of intangible additions made during the assessment proceedings of preceding previous years.

However, the taxpayer needs to establish that he has not earned any secret profits during the relevant year and that the asset has come from the intangible additions made in the preceding year. The secret profits or undisclosed income of an taxpayer earned in an earlier assessment year may constitute a fund, even though concealed, from which the taxpayer may draw subsequently for meeting expenditure or introducing amounts in his account books. The mere availability of such a fund cannot, in all cases, imply that the taxpayer has not earned further secret profits during the relevant assessment year[14]. Assessment proceedings initiated or made for the preceding previous years would not automatically safeguard the taxpayers from the clutches of specified sections[15].

- **Interplay of Section 68 and Section 69**

It is important to understand interplay of section 68 and 69 of the ITA. Section 68of the ITA[16] deals with taxation of cash credits including share application money, share capital, share premium or any such amount credited in books of accounts of a closely held company[17], or loan or borrowing. If the recipient of the fund, fails to provide explanation regarding nature and source of such transactions to the satisfaction of the assessing officer, it would be taxable under section 68 in the hands of the borrower / investee company. However, such share application money, share capital, share premium or loan or borrowing would constitute 'investment' in the hands of lender or shareholder. If such investment is not recorded in the books of accounts of the lender or shareholder, any failure on the part of the lender or shareholders to explain nature and source of the investment would again be taxed under section 69 of the ITA. Hence, it may lead to double taxable.

[12]Victoria Foods (P.) Ltd. v. DCIT [2010] 3 ITR(T) 35 (Delhi)
[13]CIT v. Roshan Lal Seth [1989] 178 ITR 660 (Punjab & Haryana)
[14]Anantharam Veerasinghaiah& Co. v. CIT [1980] 123 ITR 457 (SC)
[15]Smt. Kamala Devi Jhawar v. CIT [1978] 115 ITR 401 (Calcutta)
[16]As amended by Finance Act, 2022
[17]Company not being a company in which the public are substantially interested

- **Interplay of Section 69B and Section 56(2)(x)**

  Section 56(2)(x) levies tax on the taxpayer, if he has *inter-alia* received immovable property without consideration or at a price lower than its stamp duty valuation, and the difference between stamp duty valuation and the consideration exceeds Rs. 50,000. Where the taxpayer has invested in immovable property at a cost lower than its stamp duty valuation and the difference is voluntarily offered to tax under section 56(2)(x) of the ITA, can it be again taxed under section 69B? Normally income under section 56(2)(x) would be taxable at slab rates in case of individual or HUF taxpayer or at rate of 22%/ 30% in case of companies / firms. Does it give an arbitrage to offer income under section 56(2)(x) at lower rate of tax and come clean? Can the department go into tax avoidance (substantiated by proof) and tax the difference under section 69B?

  In such scenario, further a question arises whether the department invoke section 69B in each case, wherever the stamp duty valuation is higher than the actual cost reported in books of accounts?

  Here, it would be relevant to observe that section 56(2)(x) takes stamp duty valuation as basis for taxation, whereas no such reference to stamp duty valuation is available under section 69B. The fact that the cost of immovable property reported in books of accounts is lower than the stamp duty valuation, would not be the sole criteria to trigger taxability under section 69B of the ITA. The legal fiction created under section 50C cannot be extended to tax income under section 69B. In order to invoke Section 69B, the revenue has to prove that the taxpayer had paid over and above, what had been recorded as purchase consideration of the land in the instrument, i.e., the sale deed.[18] Further, in absence of any proof of unreported income, the department cannot invoke section 69B and disregard the income offered under section 56(2)(x) of the ITA.

- **Difference between value of stock as per books and statement furnished with bank for loan / overdraft facilities**

  Business avails overdraft / loan facilities from bank with hypothecation of stock and debtors. The borrower is required to furnish monthly statement of stock and debtors. It is well-known malpractice to inflate value of stock to avail higher credit. Interestingly, such practice can land the borrower into trouble with tax department.

  The difference in the value of stock reflected in books of accounts and statement furnished with bank could be taxable under section 69B. However, the judiciary seems to be divided on this subject. Few courts[19] have held that the practice of inflating value of stock to avail higher loan cannot be appreciated by tribunals or courts. Accordingly, such difference would be taxable under section 69B.

  On the contrary, the Courts[20] held that the difference between stock statement and the books of accounts would not be cogent ground to reject method followed by the taxpayer for ascertainment of income. The tribunal accepted practice of preparation of bank stock declaration at market value and preparation of books of accounts at cost. The Tribunal rejected department's plea for treating such difference as undisclosed income, which was upheld by the High Court[21].

  Practically, onus would be on the taxpayer to prove mistake in the stock statement and reconcile the same with the book of accounts or justify the difference through reconciliation. Difference in stock quantity may weaken the taxpayer's case.

[18]ITO v. Harley Street Pharmaceuticals Ltd. [2010] 6 ITR(T) 182 (Ahmedabad - ITAT)
[19]Dhansiram Agarwalla v. CIT [1993] 201 ITR 192 (Gauhati)
[20]India Motor Parts and Accessories (P.) Ltd. v. CIT [1966] 60 ITR 531 (Mad.)
[21]CIT v. Prem Singh & Co. [1987] 163 ITR 434 (Delhi)

- **Head of income and deduction of expenditure**

The applicability of head of income for undisclosed income has been a subject matter of litigation and the judicial view is divided on this issue. The Gujarat High Court in Fakir Mohmed Haji Hasan v. CIT [2001] 247 ITR 290 (Guj) (HC) held that once income is taxed under section 68 to 69D, it will be a headless income. However, when the taxpayer justifies the nature and source of undisclosed income, the deeming provisions of section 68 to 69D cannot be triggered and hence the income will be taxed under the particular head under which that source of income falls. Where excess stock is found in the course of search and survey, some courts[22] have held that investment in excess stock cannot be assessed under section 69B and it has to be treated as business income. Resultantly, the high rate of tax and the bar on deduction of expenditure and set-off of loss is not applicable to such addition on account of excess stock. The Courts[23], in some cases, have also held that the income surrendered in the course of search is arising out of the taxpayer's regular business only and hence has to be assessed as business income.

Vide Finance Act 2022, a new section 79A has been introduced to deny set-off of loss and unabsorbed depreciation ('UAD') against undisclosed income found in the course of search or requisition or survey. Henceforth, though the taxpayer is able to prove the source of undisclosed income found in the course of search, he will not be able to set-off losses and UAD against such undisclosed income. However, if the taxpayer is able to prove the source of undisclosed income, then the taxpayer could still claim deduction of expenditure against the undisclosed income found in the course of search and offer it to tax as per normal rates.

Going forward, the availability of deduction of expenditure/allowance and set-off of loss and UAD is tabulated and summarized below:

Particulars	**Undisclosed income taxable under the specified sections**	**Undisclosed income found in the course of search, survey, requisition and the sources identifiable**
Deduction of expenditure and allowance	Disallowed	Allowed
Set-off of loss and UAD	Disallowed	Disallowed
Rate of tax	Section 115BBE	Applicable rates

[23]CIT vs. Bajargan Traders [ITA No. 258 of 2017 – Rajasthan HC], Chokshi Hiralal Maganlal v. DCIT [2011] 9 taxmann.com 300 (Ahbd-Trib), ACIT v. Sanjay Bairathi Gems Ltd [2017] 84 taxmann.com 138 (Jaipur-Trib), DCIT vs Ram Narayan Birla (ITA No. 482/JPR/2015 for AY 2011-12 dated 30 September 2019)

[24]Oberoi Motors vs ACIT [ITA No. 3512/Del/2018]

- **Taxation of Virtual Digital Asset**

Finance Act, 2022 created stir for investors / traders of crypto currencies and non-fungible tokens ('NFTs'). Section 115BBH, introduced vide Finance Act, 2022, is a self-contained code for taxation of virtual digital assets ('VDAs') and imposes tax at the rate of 30%.Where the taxpayer is found to be owner of the VDAs and he fails to substantiate the nature and source of such VDAs to the satisfaction of assessing officer, question arises regarding taxability of such VDAs under section 69 or 69A. Whether the VDAs could be equated with money, jewellery, bullion or other valuable items or it should attract section 69 in the capacity of investment? Given that the section 115BBH begins with non-obstante clause and code in itself, could it be taxed under section 115BBH? However, the provisions of section 115BBH are applicable, on the transfer of VDAs. Hence, it could be argued that provisions of section 115BBH may not apply on identification of undisclosed / unexplained VDAs. If such undisclosed investment / money or bullion, etc. are to be taxed under specified sections, whether cost of acquisition of such VDAs would be available as deduction at the time of transfer under section 115BBH?

- **Interplay with The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015('the Black Money Act')**

The Black Money Act applies to undisclosed foreign income and undisclosed foreign assets of Indian residents. Now consider a case where the tax officer has made addition under section 69 of ITA on account of unexplained investments outside India not recorded in books of accounts. In such cases, a question arises as to whether the same would also be covered under the Black Money Act. As per section 4(2) of the Black Money Act, any variation made in the income from a source outside India under the ITA in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the ITA, shall not be included in the total undisclosed foreign income under section 4 of the Black Money Act. However, in the above example, variation is made due to some other provision under the ITA i.e. section 69. Hence, section 4(2) would not apply in the instant case. But one should note the provisions of section 4(3) of the Black Money Act. As per section 4(3) of the Black Money Act, the income included in the total undisclosed foreign income and asset under the Black Money Act, shall not form part of the total income under the ITA. The provision in the Black Money Act being a specific legislation to deal with undisclosed foreign income and asset, the same will be applicable in respect of such undisclosed income and asset as against the provision of ITA.

Thus, post 1 July 2015, undisclosed foreign income/assets would be taxable under the Black Money Act and not ITA. But if undisclosed income gets assessed under ITA (for AY 2016-17 onwards) and subsequently proceedings under Black Money Act are initiated, then whether a rectification application under section 154 of ITA or revision petition under section 264 of ITA can be filed by the taxpayer?

- **Interplay with Prohibition of Benami Property Transactions Act, 1988 ('Benami Act')**

Apart from the Black Money Act, it is also relevant to examine the interplay of addition made under section 69/69A/69B with the Benami Act. For instance, if addition is made under section 69 on account of unexplained investment, then whether the same can also be covered under the Benami Act? Here, one can appreciate that the fundamental objective of the Benami law is to catch hold of those assets which are held by a person, who is not the real owner of the asset. In case of assets like money, bullion, jewellery etc, the legal presumption is that possession *is prima facie* proof of ownership. If taxpayer is found to be in possession of the valuable articles, then the presumption is

that he is the owner of such assets, unless he proves otherwise. In such cases, if the taxpayer accepts ownership of the money, bullion, jewellery etc, then the tax officer has the right to proceed under section 69A. But the taxpayer would be absolved from applicability of Benami Law. But, if the taxpayer proves that he is not the owner of the money, bullion, jewellery etc, then section 69A would not be applicable, but he may get covered under the Benami Act. In case of assets like immovable property, shares, bonds, debentures where the beneficial owner is different from the registered owner, the provisions of Benami Act may apply; and the assets would be treated as benami property.

- **Demonetization**

On November 8, 2016, the whole country was in shock when the Prime Minister announced the demonetization of Rs 500 and Rs 1000 currency notes. The citizens were provided a deadline of December 31, 2016, to deposit these currency notes in their bank account. Consequently, there were huge cash deposits during this period throughout the country. The Income Tax Officers have issued notices to many assesses asking them to prove the nature and source of such cash deposits. In many cases, the tax officers have made addition of the unexplained deposits under section 69A (if the taxpayer has not maintained books of account or has not recorded in his books of accounts) or section 68 on the ground that the taxpayer has introduced unaccounted cash in its books of accounts in the wake of demonetization. Typically, the taxpayers have argued that the source of cash deposits is amount received on cash sales during the year or cash savings of past years or cash balance in books of accounts. The important observations of the judicial authorities in these cases are summarized below[24]:

i. If the cash balance in books of accounts is sufficient to cover the cash deposited in bank account and the books of accounts are not rejected, then the tax officer cannot disbelieve a part of such cash balance as being not of specified denominations.

ii. It is possible that even in a cash balance of a very large amount there may be no high denomination notes at all. Equally it is possible that even in a cash balance of a small amount almost the entire cash balance may be made up only of high denomination notes. When both the possibilities were there, it could not be said that those or any of them represented the income of the taxpayer from some undisclosed source.

iii. High denomination currency notes could be stored more easily and, at the time of accounting, they would have facilitated counting. Since the balance was increasing steadily, the taxpayer might not have felt it necessary to keep the balance in currency notes of low denomination. Such an explanation by taxpayer is not an unreasonable explanation.

iv. If there is no substantial increase in sales post demonetization compared to earlier years, it cannot be said that taxpayer has booked non-existing sales in its books post demonetization. The cash sales to cash deposit ratio proves that whatever cash sales was recorded by the taxpayer for the year the same was deposited in its bank account. No substantial downfall or increase in the gross profit and net profit compared to earlier years. Since cash sales are as per the business trend of the taxpayer, no addition can be made under section 69A in respect of the cash deposits during demonetization.

[24]Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288(SC), Gur Prasad Hari Das vs. CIT [1963] 47 ITR 634 (All.), Kanpur Steel Co. Ltd. v. CIT [1957] 32 ITR 56 (All.), ITO v. TatipartiSatyanaraya (ITA 76/Viz/2021), Agson Global Pvt Ltd v. ACIT (ITA 3741-3746/Del/2019), DCIT v. Sri Jaya Prakash Babu Valluri (ITA 31/Viz/2021), Smt Uma Agrawal v. ITO (ITA 35/Agr/2021), Nand Kumar Taneja v. ITO (ITA 4958-4959/Del/2018), DCIT v. Veena Awasthi (ITA 215/LKW/2016), ITO v. Mrs. Deepali Sehgal (ITA 5660/Del/2012), Sudhir Bhai PravinkantThaker v. ITO (ITA NO 788/AHD/2012), ITO v. Baburao K Pisal (ITA 6091/Mum/2012)

v. Considering the past history and nature of business of the taxpayer and the pattern of money deposited pre-demonetization and post that event, no additions can be made in respect of the cash deposits during demonetization.

vi. If assesses have genuine sources of income which are received through banking channels, out of which cash has been withdrawn and have been disclosed in the income tax return and in the balance sheet as cash-in-hand, then section 69A cannot be applicable. Once taxpayer has explained that being a senior citizen they have maintained such liquidity of cash out of their own disclosed income with them for certain contingencies, then addition under section 69A cannot be sustained.

vii. There is no law in the country which prevents citizens to frequently withdraw and deposit his own money. Documentary evidence furnished before the Revenue clearly clarifies that on each occasion at the time of deposit in her bank account, taxpayer 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 taxpayer and are verifiable from relevant records.

viii. Merely because there was a time gap between withdrawal of cash from partnership firm account and further deposit into the firm's bank account, the amount cannot be treated as income from undisclosed sources. It is not mandatory under any law of the land that an individual has to keep his/her savings in the bank account only and not as cash in hand.

ix. From the perusal of the bank statements of the bank accounts of the appellant mentioned above, it can be observed that there are sufficient cash withdrawals from these banks, the credit for which has to be given unless and until it is proved that this cash has been utilized for some other purpose. There is no provision in the ITA requiring that cash once withdrawn has to be redeposited immediately if not utilized. It is well within the right of the appellant to keep the cash withdrawn with him according to the day to day requirements of the business and the businessman cannot be forced to redeposit the same in the bank if not utilized, as long as the proper entries of this cash in the books of accounts have been made. The time gap between the withdrawals and deposits is not of much relevance.

x. Merely on the basis of speculation that the amount might have been utilized for any other purpose and was not available with the taxpayer for making the deposits, it is not open to the tax officer to make the addition on the basis that the taxpayer failed to explain the source of deposits.

Conclusion:

After the demonetization in 2016, the Income Tax Department has initiated 'Project Insight' to track taxpayers who are at high risk of tax evasion. The Department is also using the data available with other organizations such as RBI, GST Department, Registrar of Companies, social networking websites, etc. Further, there has been a significant increase in the search and survey proceedings conducted by the Income Tax Department in the last few years. The objective of all these measures is to unearth the concealed income of the assesses and tackle the menace of unaccounted money. If the taxpayer is successful in explaining the nature and source of such income, then the deeming provisions of section 68 to section 69D would not be applicable. But if the taxpayers are unable to explain the nature and source of undisclosed income to the satisfaction of the tax officer, then it may get taxed at the rate of 77.25% (plus applicable penalty) Thus, the taxpayers need to be very cautious while preparing their books of accounts and other documentation so that they can provide proper justification about the nature and source of undisclosed income.

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