NAGPUR ICAI

Two Days National Conference on Direct Taxes

Section 68 to 69C

Burden of Proof, Evidentiary Standard and Litigation Strategy

CA Piyush Bafna

Chartered Accountant & Advocate | Piyush Bafna & Associates, Pune

Session overview

PART I	Burden of Proof & Evidentiary Standard
PART II	Section-wise Discussion
PART III	Litigation Strategies
PART IV	Sections 68–69D under the Income-tax Act, 2025

PART I

Burden of Proof & Evidentiary Standard

Which fact must be proved, by whom, and with what evidence?

Burden of proof, onus and evidentiary standard

Three distinct questions

Concept	Question it answers	Practical meaning
Burden of proof	Who must establish a particular fact?	The legal responsibility for proving that fact, including the consequence if it remains unproved.
Onus	Who must at a relevant stage produce evidence, counter evidence or answer the existing record?	An evidential responsibility that can move between the parties as the record changes.
Evidentiary standard	How persuasive is the evidence as a whole, in its surrounding circumstances?	The degree of persuasion required before a fact can be accepted.

The burden of proving: but which fact?

Begin with the statutory ingredient. Then identify the required explanation.

Provision	Foundation for invocation	Assessee's explanation
Section 68	A credit in the assessee's books for the relevant previous year.	**Nature and source**, including applicable provisos.
Section 69	Investment made by the assessee in the relevant financial year, unrecorded in books, if any.	**Nature and source** of the investment.
Section 69A	Ownership of specified money / asset in the relevant year, unrecorded in books, if any.	**Nature and source** of acquisition.
Section 69B	Actual expenditure on the specified investment / acquisition exceeds the recorded amount.	Explanation of the **excess**.
Section 69C	Expenditure actually incurred by the assessee in the relevant financial year.	**Source** of the expenditure or relevant part.

Revenue to establish Foundational Facts based on assessee's own books, admissions, other evidence or an applicable presumption.

How the onus moves: the initial explanation

Nagpur manufacturer: ₹30 lakh loan from Mr K on 10 September 2024. FY 2024–25 / AY 2025–26.

Stage	Additional fact	Who must now establish what?	Point to remember
A. Credit	The books show ₹30 lakh received from Mr K.	**Assessee:** Explain the nature and source.	The claim of "unsecured loan" requires proof.
B. Documents	PAN, signed confirmation, loan agreement and RTGS evidence are filed.	**Assessee:** Capacity and funding source still need substantiation.	Bank movement and a real person do not settle genuineness.
C. Low income	Mr K's earlier ITR shows ₹4.8 lakh income. How could he lend ₹30 lakh?	**Assessee / creditor:** Show the funds available on the advance date.	Taxable income and lending capacity are different enquiries.
D. Source	A ₹40 lakh plot sale is supported by ownership records, registered deed, signed explanation and prior bank receipt. Funds remained available.	**AO**: Verify this source. Repeating the low-income objection does not answer it.	The explanation now addresses identity, capacity, source and the transaction.

How the onus moves: a specific contradiction

Nagpur manufacturer: ₹30 lakh loan from Mr K on 10 September 2024. FY 2024–25 / AY 2025–26.

Stage	Additional fact	Who must now establish what?	Point to remember
E. Notice returned	Notice to Mr K returns “left”.	**Assessee**: Give current details. AO: Investigate the discrepancy.	Non-service differs from non-existence, denial or lack of means.
F. Direct response	Updated KYC proves a move. Mr K confirms the loan and plot-sale source directly to the AO.	**AO**: Evaluate the response and verify the records.	The address objection has been answered.
G. Remitter differs	Bank verification shows “N Trading” paid ₹40 lakh. The deed names Mr P as buyer.	**Assessee / creditor**: Explain the identity of the actual payer.	Refiling PAN does not answer the remitter mismatch.
H. Names align	Bank records show N Trading is Mr P’s proprietorship. PAN, UTR and buyer confirmation match the sale.	**AO**: Verify and address the reconciliation.	A business name may explain the apparent contradiction.

How the onus moves: capacity versus genuineness

Nagpur manufacturer: ₹30 lakh loan from Mr K on 10 September 2024. FY 2024–25 / AY 2025–26.

Stage	Additional fact	Who must now establish what?	Point to remember
I. General report	The broker arranged entries for others. The report identifies no loan involving this company.	**AO**: Link the adverse information to this transaction.	Report can prompt enquiry. It is not the transaction-specific answer.
J. Specific material	A disclosed broker statement and dated cash sheet name the company, Mr K and ₹30 lakh cash against the bank credit.	**Assessee**: Answer the allegation. AO: Establish reliability and allow an effective challenge, including appropriate cross-examination.	A creditor with genuine funds may still provide an accommodation entry.
K. Repeated proof	The company files the plot deed and lender's bank statement again.	**Assessee**: The alleged cash exchange remains unanswered.	Proof of capacity may not prove genuineness.
L. Repayment	Bank repayment, interest and TDS records are produced.	**AO**: Give corroboration due weight. Assessee: Still answer cash-for-credit evidence.	Later repayment does not conclusively authenticate the original receipt.

Section 292C: What it provides

Presumptions about assets, books and documents under the Income-tax Act, 1961

- **Trigger.** Books, documents, money, bullion, jewellery or other valuable items found in a person's possession or control during a section 132 search or section 133A survey. Section 132A requisitions are also covered.
- **Belongingness.** The material may be presumed to belong to that person.
- **Truth of contents.** The contents of the books and documents may be presumed true.
- **Signature and execution.** The attributed handwriting/signature and due stamping, execution or attestation may be presumed, as specified in the section.
- **Effect.** These presumptions may operate in any proceeding under the Act. They are discretionary and rebuttable.

Once invoked, the presumption calls for evidence that rebuts the presumed fact.

Statutory basis: Income-tax Act, 1961, section 292C(1)–(2).

Section 292C: how the onus shifts

Presumptions affect proof. Their statutory foundations still matter.

- **Foundation first.** Identify the person and possession or control, and the qualifying search, survey or requisition.
- **Defined scope.** Belongingness, truth of contents and specified matters of handwriting, signature and execution may be presumed.
- **Discretionary and rebuttable.** “May presume” permits a presumption. It does not make the presumed fact conclusive.
- **Effect on onus.** Once properly invoked, the presumption calls for a specific rebuttal. Mere denial may be insufficient.
- **Link to sections 68–69C.** A presumed fact can support an addition. The applicable section’s statutory conditions must still be met.

Ask: Which fact is presumed, against whom, and what evidence rebuts it?

Section 292C: what the cases teach

Contrasting outcomes show what an effective rebuttal must address.

- **Bare denial can fail.** A repayment agreement supported a section 69 addition when the recorded advance was not effectively rebutted.
  Surendra M. Khandhar v. ACIT [2010] 321 ITR 254 (Bom)
- **Evidence can rebut the record.** Denials by both parties, supported by surrounding facts, sustained deletion of a section 69 addition.
  CIT v. Ved Prakash Choudhary [2008] 305 ITR 245 (Delhi) · Section 132(4A)
- **A third-party paper needs linkage.** A taxpayer's name on a broker's proposal did not cure contradictions or the absence of basic inquiry.
  PCIT v. Vinita Chaurasia [2017] 394 ITR 758 (Delhi)
- **Contents are distinct from inference.** A request for funds did not, by itself, establish that expenditure had actually been incurred.
  Harish Textile Engineers Ltd. v. DCIT [2015] 63 taxmann.com 66 (Bom) · Deduction context

Rebut the particular fact presumed, not merely the proposed addition.

Section 292C: practical assessment strategy

Contest the precise evidentiary step. Give a specific, supported explanation early.

Evidentiary step	Assessment response and supporting records
Possession / control	Identify custody or control. Obtain the seizure / impounding record.
Belongingness	Identify the owner. Support any custody, agency or fiduciary explanation.
Meaning of the entry	Use the full document and connected records to explain codes and context.
Occurrence of transaction	Proposal, liability or completed transaction? Check supporting records.
Relevant person / year	Link the correct assessee and year. Reconcile document and event dates.
Explanation of source	Evidence the specific source. Reconcile amounts, timing and the funds trail.

"**Section 292C may relieve Revenue of proving specified facts in the ordinary manner.** It does not permit Revenue to presume more than the document establishes, ignore a credible rebuttal, or dispense with the requirements of the section under which the addition is made."

Evidentiary standards: more than the standard of proof

Each item of evidence must answer the question for which it is relied upon.

Question	What it examines	Example under sections 68–69C
Can it be considered?	Admissibility, procedure and fairness.	Was adverse material disclosed with an opportunity to answer?
Is it reliable?	Authenticity, authorship, accuracy and context.	Does the spreadsheet record completed transactions or proposals?
What does it prove?	Relevance and probative value.	A bank transfer establishes movement, not necessarily genuineness.
Is the whole record sufficient?	The applicable standard of proof.	Do records and circumstances support a satisfactory source explanation?

- **Onus:** Who must establish what, and what evidence would answer it?
- **Assessee:** Need not eliminate every conceivable suspicion.
- **AO:** Reliable circumstances may suffice without direct proof of every concealed step.

Human probability: the basic principle

How tax authorities assess the credibility of an explanation

- **Meaning.** Assess whether an explanation is believable by reading the evidence in the context of ordinary human conduct and the surrounding circumstances.
- **Method.** Consider the transaction as a whole, including timing, financial capacity, relationships and the parties' conduct. Reasons must emerge from the material on record.
- **Role in sections 68–69C.** Helps assess whether the explanation of a receipt, investment or expenditure is satisfactory. The inference may rest on circumstantial evidence.
- **Sumati Dayal illustration.** Race-club certificates and crossed cheques established receipt. The pattern of wins, conduct and missing expense records undermined the claim that these were her own winnings.

Core question: does the explanation fit the evidence and circumstances of this case?

CIT v. Durga Prasad More [1971] 82 ITR 540 (SC), pp. 545, 547.
Sumati Dayal v. CIT [1995] 214 ITR 801 (SC), paras 7, 10 and 13.

Human probability: the foundation of the inference

The most reasonable inference must come from the evidence, context and explanations.

Principle	Practical illustration and evidentiary consequence
Statutory conditions still matter	69C: A lavish Nagpur wedding is photographed. The groom's family contracted with and paid the resort. Its scale does not prove expenditure incurred by the bride's father.
Connect material to this transaction	68: A broker is named as an entry provider elsewhere. This lender and source are independently verified. A report unconnected with this loan warrants enquiry, not automatic rejection.
Test documents against conduct	69B: The deed records the stated price, but authenticated buyer messages and matching builder entries show additional cash. The deed is not conclusive.
Identify what each document proves	69A: A panchnama shows cash with an employee. Employer records, bank withdrawal and delivery instructions establish company custody. Possession and ultimate ownership differ.

Human probability: the whole evidentiary picture

The most reasonable inference must come from the evidence, context and explanations.

Principle	Practical illustration and evidentiary consequence
Assess the cumulative circumstances	68: Negligible opening funds, unexplained immediate credits, inconsistent source accounts and no supporting records remain unresolved. Their combined effect may justify rejection.
Consider evidence on both sides	69A: Earlier withdrawal, a cancelled property purchase and a cash reconciliation explain money at home. A time gap alone does not answer evidence of continued availability.
Use the actual commercial context	69B: Retention terms, defects, correspondence and contractor books support a long-outstanding balance. “No contractor would wait” does not establish cash settlement.
Circumstantial evidence can suffice	69B: Broker records identify the flat, purchaser and additional price. Builder entries and buyer messages corroborate payment. An eyewitness to handover is not compulsory.

Human probability: fairness and the limits of inference

The most reasonable inference must come from the evidence, context and explanations.

Principle	Practical illustration and evidentiary consequence
Balance of probabilities, not mere possibility	69: Father confirms a gift. His FD proceeds are traced to the seller. A mistyped date is reconciled with bank records. The resolved typo should not defeat coherent funding evidence.
Disclose adverse material and allow an answer	69B: A buyer disputes identification in a builder's statement. Supply the relevant statement and records and address the request for cross-examination. Probability cannot cure an unfair process.
Give reasons addressing the evidence	69C: Parents share the household and the spouse pays school fees from disclosed funds. A "low withdrawals" conclusion must address those facts and identify unexplained expenditure.
Person, amount and year cannot be assumed	69B: Evidence proves extra payment for one flat in FY 2022–23. It does not itself prove payments for every flat, or move the payment to the year of discovery.

PART II

Section-wise Discussion

Section 68: books, identity and genuineness

Books and identity

- **Books is a pre-condition.** No books, despite an obligation or otherwise, is distinct from a credit in actual books.
- **An omitted transaction** does not become a recorded credit merely because books exist. Test other provisions separately.
- **Identity records** PAN and incorporation details identify an entity. Establish the actual creditor and authorised signatory.
- **A name-lender issue** requires evidence of the real party and role. Legal existence alone does not prove a genuine loan.

Genuineness

- **Nature and context:** loan, capital, gift or trade advance? How did parties connect?
- **Reconcile** agreements, confirmations, dates, bank trail and both books.
- **Contemporaneous evidence:** negotiations, approvals and payment instructions.
- **Journal credits:** prove the underlying obligation or adjustment.
- **Terms and conduct:** disbursement, interest, repayment and enforcement.
- **Interest, TDS and repayment** corroborate. No interest, security or meeting needs context.
- **Trace** circular flows, immediate reversals and back-to-back transfers.
- **Share capital:** subscription, allotment, investor rationale, premium and later conduct.
- **Answer the contradiction.** Capacity and banking movement do not resolve every genuineness issue.

Creditworthiness: capacity for this advance

The right measure

- **Annual taxable income** does not measure all available financial resources.
- **A momentary bank balance** does not answer every question about capacity.
- **Test the advance date** and the particular amount, not only year-end wealth.
- **Separate net worth from liquidity.** Property ownership may not fund a loan.
- **High turnover** does not establish equivalent deployable funds.
- **ITRs and audited accounts** are relevant, but do not prove the specific funding.

The funding enquiry

- **Identify resources:** capital, savings, asset sales, redemptions, loan recovery, inheritance or borrowings.
- **Borrowed funds can be lent.** Verify receipt, availability and onward deployment.
- **A sanctioned limit** does not prove an actual drawdown.
- **Reconcile other outflows.** The same funds cannot finance multiple payments.
- **Test accumulated savings** against financial history, withdrawals and commitments.
- **Later repayment** does not itself establish capacity when the loan originated.

A genuine document may leave the disputed fact unproved

The winning-ticket illustration: what exactly does each document establish?

Evidence	What it could establish	What it does not necessarily establish
Winning ticket presented for payment	Possession of a winning ticket when claiming the prize.	Purchase of that ticket before the race.
Race-club certificate	The club paid against a winning ticket.	How and when the claimant acquired it.
Crossed cheque	Payment through an identifiable banking channel.	The genuineness of the underlying explanation.

There is a difference between genuineness of the document and genuineness of the transaction.

Source of source: how the obligation evolved

The loan amendment is in the Finance Act, 2022, effective from AY 2023–24.

Position	What the explanation must address
Before the loan proviso	Identity, creditworthiness and genuineness already mattered. Courts examined the real funding on the facts. There was no universal prohibition on examining a creditor's source.
Closely held company shares From AY 2013–14	For specified share credits from a resident, the subscriber must also explain the nature and source to the AO's satisfaction, subject to the statutory exception.
Loans / borrowings From AY 2023–24	The named creditor must also offer a satisfactory nature-and-source explanation. The loan proviso is not textually restricted to resident lenders.
What remains fact-dependent	Relevant source evidence, contradictions and reasonable verification. The VCF / VCC exception must be tested on its statutory terms.

Authorities: Orissa Corporation, 159 ITR 78 (SC) | Rohini Builders, 256 ITR 360 (Guj) | NRA Iron & Steel, 412 ITR 161 (SC)

Source of source: a manageable evidence trail

Obtain a specific source explanation and make it capable of verification.

- **Ask a focused question.** “Own funds” is vague. Identify the FD maturity, loan recovery or property sale that funded the advance.
- **Build the initial record.** Name, PAN, current contact, signed confirmation, amount, terms, banking reference and a short source statement.
- **Provide focused supporting records.** Link the stated source receipt to funds available on the loan date and the onward transfer.
- **Use direct production for confidentiality.** Arrange for relevant lender records to reach the AO directly. Identify what the borrower cannot obtain.
- **Request statutory verification.** Make a specific request under sections 131 / 133(6), rather than relying only on inability to compel disclosure.
- **For banks / established NBFCs,** start with identity, sanction, disbursement and loan account. Nature and scale inform further enquiry.
- **Recognise the limit of practical hardship.** Urgency is no general exemption. There is no universal “one further layer and stop” rule.

Section 69: identify the investment before its source

Mr A keeps no books. A Nagpur plot is associated with a ₹60 lakh figure in AY 2025–26.

Variation	Additional facts	Evidentiary consequence
A Proposal only	Unsigned broker proposal. Cancellation and owner confirmation show no concluded purchase or advance.	No investment made by A is established.
B Gift from mother	Registered gift deed. Mother's prior ownership proved. A paid no purchase price. Stamp value is ₹60 lakh.	₹60 lakh is not shown as unexplained purchase money paid by A.
C Full funding proved	Actual FY 2024–25 purchase. Bank loan ₹40 lakh and FD maturity ₹20 lakh are traced to the seller.	Investment exists. Source is explained. No books is not a statutory bar.
D Partial explanation	₹40 lakh loan verified. Seller confirms further ₹20 lakh cash. A cannot explain that source.	The unresolved component is ₹20 lakh, not the accepted ₹40 lakh.
E Earlier investment	MOU, possession and payments establish FY 2022–23 investment. Dispute delayed registration to FY 2024–25.	Registration alone does not shift the investment year.

Before asking "Where did the investment money come from?", establish who invested, what was invested and when.

Section 69A: possession and the capacity in which held

Jewellery worth ₹30 lakh is found in Mr A's exclusive custody and is unrecorded in his books, if any.

Variation	Additional facts	Evidentiary consequence
A. Unexplained custody	No acquisition or custody explanation. No evidence identifies another owner.	Possession may support ownership. Unexplained acquisition may attract section 69A.
B. Repairer's custody	Pre-existing job cards identify the ornaments. Customers confirm entrustment with matching purchase records.	Custody is explained. Finding the goods with A alone does not establish his ownership.
C. Custody contradicted	A produces a customer letter. The customer denies entrustment and the job card conflicts with contemporary records.	The material contradiction needs an answer. The letter alone does not rebut ownership.
D. Proven thief	A prior theft complaint, victim's purchase records and police recovery establish these ornaments were stolen by A.	Wrongful possession does not make A the owner of the stolen ornaments.

Physical possession starts the enquiry. The capacity in which the asset is possessed determines where that enquiry leads.

Section 69A: an assertion, ownership and explanation

Jewellery worth ₹30 lakh is found in Mr A's exclusive custody and is unrecorded in his books, if any.

Variation	Additional facts	Evidentiary consequence
E. Theft merely asserted	A says "I stole them", but gives no particulars or support. The surrounding evidence does not establish theft.	The label does not settle ownership. Evaluate the claim against the record.
F. Prohibited goods	Replace jewellery with smuggled gold. A's purchase and ownership are established, but acquisition funds are unexplained.	Illegality does not itself prevent ownership. Section 69A may apply if all conditions are met.
G. Acquisition explained	A admits ownership and produces the invoice and matching payments from independently established savings.	Acquisition is explained. Omission from books alone does not complete the case for deemed income.

Physical possession starts the enquiry. The capacity in which the asset is possessed determines where that enquiry leads.

Section 69B: what does the higher figure represent?

Mr P records house construction at ₹40 lakh. A ₹70 lakh figure emerges. Proposed addition: ₹30 lakh.

Variation	Additional facts	Evidentiary consequence
A. Market value	A valuer estimates present value at ₹70 lakh, rather than actual historic construction expenditure.	That comparison alone does not establish ₹30 lakh additional outlay.
B. Contractor's cost	Contractor spent ₹70 lakh under a genuine fixed-price ₹40 lakh contract. He bears the overrun and receives no extra from P.	The contractor's cost is not automatically P's investment.
C. Two properties	The ₹70 lakh statement covers P's house ₹40 lakh and his brother's adjoining property ₹30 lakh. Ledgers and receipts agree.	Identify the correct property and payer. The apparent difference disappears.
D. Genuine credit	Billed ₹70 lakh, paid ₹40 lakh. Contractor confirms ₹30 lakh outstanding in his books. No cash settlement evidence.	Examine the liability as an explanation. Under-recording does not prove a cash settlement.

Section 69B: reliability and the source of the excess

Mr P records house construction at ₹40 lakh. A ₹70 lakh figure emerges. Proposed addition: ₹30 lakh.

Variation	Additional facts	Evidentiary consequence
E. Inconsistent witness	The contractor alleges ₹70 lakh receipt, then changes the amount or property. Explanations conflict with the records.	Evaluate reliability and contradictions. Selecting the highest figure does not prove payment.
F. Cash corroborated	Contractor consistently identifies bank ₹40 lakh and cash ₹30 lakh. Contemporary receipts and P's messages support cash. No source is explained.	Additional outlay and unexplained excess are supported. ₹30 lakh may be added, subject to rebuttal.
G. Excess explained	The same extra ₹30 lakh is established, but P traces it to a verified bank loan and available withdrawals. Entries were omitted.	The funding explanation must be considered. An accounting omission is not automatically unexplained income.

Section 69C: budget, actual expenditure and source

Mr A's spreadsheet budgets ₹30 lakh for his daughter's wedding: venue, catering and decoration.

Variation	Additional facts	Evidentiary consequence
A. Event cancelled	Cancellation emails and vendor confirmations show no services, charges or payments.	The spreadsheet is a proposal. Actual expenditure is not established.
B. Actual cost lower	Final bills and confirmations establish ₹18 lakh expenditure, fully traced to explained funds.	Neither the ₹30 lakh budget nor the ₹18 lakh cost supports an unexplained-expenditure addition.
C. Part unexplained	Actual cost remains ₹18 lakh. Explained bank funds cover ₹12 lakh. Vendors prove further ₹6 lakh cash with no explained source.	Potential addition concerns ₹6 lakh, not the budget or the entire cost.

Separate four questions: Did expenditure occur? Who incurred it? How much? From what source?

Section 69C: a changed source or a different person

Mr A's spreadsheet budgets ₹30 lakh for his daughter's wedding: venue, catering and decoration.

Variation	Additional facts	Evidentiary consequence
D. Cash explained	All facts in C remain. Now cash records and bank withdrawals establish ₹6 lakh from available, explained funds.	The cash payment is real, but its source is explained. Cash is not synonymous with unexplained expenditure.
E. Another payer	Groom's father contracted, incurred and paid the expenses on his own account. A did not contract or owe the vendors.	A's daughter's wedding does not establish expenditure incurred by A.
F. Scale alone	Videos show an elaborate event. AO adopts the ₹30 lakh budget without checking final bills, packages, vendors or the actual payer.	The event is proved. Amount and attribution still need a reasoned evidentiary basis.

Separate four questions: Did expenditure occur? Who incurred it? How much? From what source?

PART III

Litigation Strategies

Can the appellate authority change the section?

Distinguish correction of a section from a new factual basis, ingredient or source.

CIT(A)

- **Power is broad, but bounded.** Sections 250 / 251 permit enquiry and enhancement. A new source and prejudice require separate analysis.
- **Correction supported:** Isharati Devi, 298 ITR 313 (All) • Namdev Arora, 389 ITR 434 (P&H).
- **Challenge substitution / lack of notice:** Sekar Jayalakshmi, 150 taxmann.com 120 (Chennai) • Toffee Agricultural Farms, 141 taxmann.com 429 (Delhi).
- **Recent notice ruling:** Chandan Veer Singh Bhullar, 187 taxmann.com 532 (Delhi), 4 June 2026.
- **Ask what changed.** Demand the proposed provision, missing ingredient and opportunity to answer. Section 251(2) applies to enhancement.

ITAT

- **"Thereon" limits the appeal.** Sarika Jain, 407 ITR 254 (All), rejected substitution of section 69A for section 68 on its facts.
- **Scope of remand / new issue:** Karnataka Instrade, 235 Taxman 374, read with Fidelity Business Services, 257 Taxman 266 (Kar).
- **Recent correction upheld:** Clarion Agro Products, ITA 1075/Hyd/2025, 8 July 2026: wrong section 69 label for excess cash did not alter its identified nature.
- **Further adverse authority:** K.J. Prabhakar, 12 ITR (Trib) 603 (Chennai): source failure sustained despite the section objection.
- **Frame the prejudice.** Which new fact or statutory condition was never examined? Is it the same appealed item, or a new case?

Third-party papers, chats and Excel data

The challenge should identify the unsupported evidentiary step.

- **Obtain the whole record.** Request seizure / impounding details, complete pages, native digital data and connected ledgers.
- **Test attribution and meaning.** Who wrote it? Whom does it identify? Which unit, amount, date and transaction? Explain the precise gap.
- **Examine digital reliability.** Ask for provenance, metadata, full conversation and the applicable certificate. A cropped screenshot needs context.
- **Ask for confrontation.** Seek relied-upon statements and effective cross-examination where material. Record requests and refusals.
- **Apply section 292C precisely.** A third-party name is not an automatic presumption against that person. Proven linkage can still make the record relevant.
- **File a supported factual rebuttal.** A denial affidavit should address specific entries and records. Neither a denial nor a missing field is an automatic answer.

V.C. Shukla (1998) 3 SCC 410 | Common Cause, 394 ITR 220 (SC) | Andaman Timber, 62 taxmann.com 3 (SC)

The WhatsApp message: “₹25 lakh received”

The message continues: “Balance pending.” What does the complete record establish?

Evidence	What it could establish	What remains unresolved
Authenticated message	The builder sent an acknowledgement. Its truth and meaning still require context.	Cash or bank? Recorded or extra consideration? Which transaction?
Cropped screenshot	The words in that selected extract.	Context in the preceding and subsequent conversation.

Change only the surrounding context

Changed surrounding context	Evidentiary effect
The preceding message gives the UTR of a recorded bank payment. The builder’s ledger credits it.	The acknowledgement confirms an accounted transaction.
The complete chat distinguishes an extra payment from the recorded bank payment, with reliable corroboration.	The acknowledgement may help prove additional consideration.

Non-residents: section 5(2) and the treaty enquiry

- **Trigger.** An NRI faces alleged on-money for Indian property or an unexplained Indian bank deposit. Test the receipt / source facts separately.
- **Domestic law.** Section 5(2) covers income received or deemed received in India, or accruing / arising or deemed to accrue / arise in India.
- **Treaty layer.** India–UAE Article 22 can allocate "other income" to residence, subject to its terms, exceptions and treaty entitlement.
- **Rajeev Suresh Ghai.** 192 ITD 348 (Mumbai): long-standing UAE resident, no Indian economic activity. Investment was an application of income.
- **Vijaykumar Kanaiyalal Matta.** 153 taxmann.com 148 (Mumbai): the India–Oman Article 24 argument succeeded on the facts.

Non-residents: limits and assessment-stage strategy

Plead treaty entitlement distinctly and preserve the factual defence.

- **Prove residence and eligibility.** TRC under section 90(4), Form 10F where applicable, stay details and overseas employment / business records.
- **Read the actual treaty.** Some “other income” articles preserve source-state taxation. Examine PE / fixed-base and effective-connection conditions.
- **Identify the Indian nexus.** Indian business, cash generation, receipt or another applicable charging rule may change the conclusion.
- **Trace the funds.** Relevant foreign bank statements, salary records, NRE remittances and the actual investment / deposit trail.
- **Argue in sequence.** Section 5(2), the treaty, and the addition’s factual merits. Deny an alleged payment where appropriate and test the witness.
- **Use a separate legal ground.** Do not bury the treaty issue within the source explanation. Ghai and Matta are fact-specific Tribunal authorities.

Agricultural receipts: prove the activity and realisation

Local crop evidence is valuable. Neither land ownership nor an average yield answers everything.

Authority	What the record teaches
Sanjay Deokisan Lakhotiya **ITA 168/NAG/2025, 24 September 2025**	Nagpur ITAT deleted the addition. General orange-yield assumptions did not answer the detailed cultivation and sale evidence.
Balasaheb Pundlikrao Ghormode **Nagpur SMC, 18 September 2024**	Agricultural savings: reconcile cultivation, realisations and available surplus. Verify the original order before citing its holding.
Patnala Srinivas **Telangana HC, ITTA 127/2008, 2 January 2025**	Addition sustained. Official records showed plots and no crop cultivation.
Kasturi Devi **ITA 7/AGR/2025: current status**	The adverse ex parte order of 26 November 2025 was recalled on 18 September 2026 (MA 33/AGR/2026). Do not cite it as subsisting.

- **Build the chain:** 7/12 and 8A, crop / acreage / yield, APMC patti, sale bills, buyer confirmations, trader bank credits and cultivation costs.
- **Address the real gap.** Ask the AO to evaluate the whole record. A material missing link may still matter.

Bogus purchases: full addition or the profit element?

The relief depends on what is proved about goods, sales and the expenditure source.

- **Mohommad Haji Adam & Co.** 103 taxmann.com 459 (Bom): matched, accepted sales supported a GP-based approach. It is not a universal cap on every addition.
- **Pinaki D. Panani.** 2020 (1) TMI 700 (Bom): accepted material consumption and completed works supported profit estimation on the facts.
- **Kanak Impex (India) Ltd.** 474 ITR 175 / 172 taxmann.com 283 (Bom): failure of proof defeated the Tribunal's estimation approach. Distinguish the record.
- **Prove receipt and use.** Stock register, transport / e-way bills, GRNs, quantitative tally and linkage to accepted sales or completed work.
- **Answer section 69C directly.** Trace the actual expenditure source. Banking entries do not, by themselves, prove receipt of goods.
- **Prepare the fallback early.** Compare GP on disputed and genuine purchases. Place the primary evidence before the AO.

Section 44AD: presumptive income and unexplained sums

Business nexus and the existence of books are separate questions.

What the decisions support

- **Surinder Pal Anand** 192 Taxman 264 / 242 CTR 61 (P&H): business-linked deposits within accepted receipts did not require separate proof of every entry on those facts.
- **Girish V. Yalakkishettar** 115 taxmann.com 489 (Bangalore): examine the accepted presumptive-business explanation and the bank deposit reconciliation.
- **Section 68 needs books.** A passbook alone is not the assessee's books. If books actually exist, examine the credit and its character.

Precautions to be taken

- **Reconcile deposits** with turnover, opening cash, withdrawals, redeposits and other explained sources. Avoid double counting.
- **Separate non-business sums:** loans, gifts, capital receipts and investments need their own explanation.
- **Presumptive taxation** does not dispense with the independent conditions of sections 69–69C.
- **State the precise defence.** Accepted business receipts, no qualifying book credit, explained source, or absence of another statutory ingredient?

AY 2017–18: the disputed section 115BBE rate

A live conflict of authority. Present the 30% argument with its contrary view.

The competing authorities

- **Favourable:** S.M.I.L.E. Microfinance, Madras HC, 19 November 2024, WP(MD) 2078/2020.
- **Deepak Maratha,** Rajasthan HC, 27 May 2026, DBCWP 3625/2020: prospective application from FY 2017–18.
- **Nagpur ITAT:** Vimal Pramodkumar Mishra, ITA 54/NAG/2026, followed the favourable approach.
- **Contrary Decision:** Maruthi Babu Rao, 430 ITR 504 (Ker): enhanced rate applicable to AY 2017–18.

How to plead it

- **Raise a distinct legal ground.** Use the facts already on record. Additional grounds remain subject to appellate rules (NTPC, 229 ITR 383).
- **Check binding precedent.** Vegetable Products, 88 ITR 192, is not permission to disregard jurisdictional authority.
- **Use section 154 only for an apparent mistake.** A debatable rate conflict may fall outside rectification (T.S. Balaram, 82 ITR 50).
- **Address section 271AAC separately.** Test the applicable judgment, period and statutory conditions. Do not assume every penalty automatically falls.

Deletion or remand? Relief should follow the defect

Identify what is missing, why it matters and whether a lawful cure is possible.

Defect	Relief to seek	Reason and qualification
Statutory ingredient / year	Deletion where the invoked provision cannot lawfully apply on established facts.	Identify the missing condition. A wrong label and a genuinely missing ingredient are different defects.
Insufficient evidence	Deletion where the record fails to establish the addition, especially after full enquiry opportunity.	Oppose routine second innings, but do not assume every evidentiary gap legally bars a remand.
Hearing denied	Deletion or a focused remand, depending on the material and prejudice.	Andaman Timber illustrates invalid reliance on untested statements. M. Pirai Choodi supports remedial opportunity on its facts.

- **Lead with** ingredient defects, then evidence defects, then hearing defects.
- **If remand is unavoidable,** seek precise issues, disclosure, opportunity and directions. Oppose an undefined "verify afresh" exercise.

PART IV

Sections 68–69D under the Income-tax Act, 2025

Statutory wording, Committee deliberations and practical implications

The 2025 Act: corresponding provisions

Applicable to tax year 2026–27 beginning on 1 April 2026.

1961 Act	2025 Act	Subject
68	102	Unexplained credits
69 + investment limb of 69B	103	Unrecorded investment / excess investment
69A + asset limb of 69B	104	Unexplained asset / excess acquisition amount
69C	105	Unexplained expenditure
69D	106	Borrowing / repayment through negotiable instruments or hundis

For each provision: compare the enacted text, examine the Committee record, then identify the effect on the defence.

Section 102: the charging condition

Bare-Act comparison: the main provision

Section 68: Cash credits

Where any sum is found credited in the books of an assessee maintained for any **previous year**, and the assessee offers no explanation about the nature and source thereof or the explanation offered **by him is not**, in the opinion of the Assessing Officer, satisfactory, the sum so credited **may** be charged to income-tax as the income of the assessee of that **previous year**:

Section 102: Unexplained credits

(1) Where any sum is found credited in the books of an assessee maintained for any **tax year,** and—

(a) the assessee offers no explanation about the nature and source **of such credit**; or

(b) the explanation offered **about the nature and source of such credit by assessee** is not satisfactory in the opinion of the Assessing Officer,

then, the sum so credited **shall** be charged to income-tax as income of the assessee of that **tax year**.

Section 102: lender’s nature-and-source explanation

Bare-Act comparison: the loan / borrowing condition

Section 68: first proviso

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

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer **aforesaid** has been found to be satisfactory

Section 102(2)

(2) For the purposes of sub-section (1), where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, the explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer has been found to be satisfactory.

Section 102: share credits in a closely held company

Bare-Act comparison: the resident subscriber condition

Section 68: second proviso

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, **any** explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer **aforesaid** has been found to be satisfactory:

Section 102(3)

(3) For the purposes of sub-section (1), where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount, by whatever name called, **the** explanation offered by such assessee company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation, in the opinion of the Assessing Officer has been found to be satisfactory.

Section 102: the statutory exception

Bare-Act comparison: venture capital funds and venture capital companies

Section 68: third proviso

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to **therein** is recorded, is a venture capital fund or a venture capital company as referred to in **clause (23FB) of section 10.**

Section 102(4)

(4) Nothing contained in sub-section (2) or (3) shall apply if the person, in whose name the sum referred to in **those sub-sections** is recorded, is a venture capital fund or a venture capital company as referred to in **Schedule V (Table: Sl. No. 6).**

The exception switches off the special creditor-source conditions. It does not switch off the main enquiry under section 102(1).

Section 102: discretion and the creditor's explanation

Select Committee record: paragraphs 102.4.7, 102.5.1–12 and 102.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Retain "may"; avoid automatic additions where a bona fide explanation has imperfect documents.	"Shall" rationalises the provision. Once the credit is not satisfactorily explained, the AO has no discretion to omit the addition.	Clause accepted. No restoration of "may" recommended. The Committee described the original intent as retained.
Specify who obtains the lender's explanation. Use a rebuttable presumption instead of deeming dissatisfaction.	The Ministry described one further layer, a separate creditor explanation and use of the Insight portal. Deeming was defended as giving certainty.	The deeming provision and creditor-source requirement were retained. No specific procedural formula was enacted.

Section 102: exceptions and the breadth of the proviso

Select Committee record: paragraphs 102.5.13–15 and 102.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Extend the exception to banks, NBFCs, FIIs / FPIs and holding or subsidiary companies.	The Ministry did not accept an expanded statutory list. It explained the VCF treatment and indicated willingness to review the policy suggestion.	Clause accepted without enlarging the exception. A willingness to review is not an enacted exemption.
Delete section 102(2). A borrower cannot always prove a lender's source; "any such amount" may also catch deposits.	Deletion was treated as a policy change. "Any such amount" was defended as preventing unexplained money being introduced under a different label.	The loan / borrowing condition and the wider phrase were retained.

Section 102: practical effect on the assessment file

The evidence must answer the actual credit and the statutory condition.

- **Heading and year.** “Unexplained credits” makes the breadth clearer. Section 68 was already capable of applying to non-cash credits. The period is now the tax year.
- **Conditional mandatory charge.** “Shall” follows the book-credit condition and failure of a satisfactory nature-and-source explanation. It does not establish those facts by itself. Ratio of P.K.Noorjahan may get diluted.
- **Targeted source evidence.** Identify the lender’s immediate funding source and support it with the relevant transaction records. Separate capacity from genuineness.
- **Direct departmental verification.** Offer creditor contact details and request a direct response / use of available departmental data where necessary. Preserve the request and the response.
- **Limits must be argued precisely.** The Ministry’s “one layer” statement supports a focused enquiry. It does not excuse contradictions, circular funding or accommodation-entry evidence.

Section 103: unrecorded investment

Bare-Act comparison: section 69 and the consolidated investment provision

Section 69

Where in the **financial year immediately preceding the assessment year** the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of **the** investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments **may** be deemed to be the income of the assessee of **such financial year.**

Section 103

Where in any **tax year**, any investment has been made by the assessee which is not recorded in the books of account, if any, maintained by such assessee for any source of income, **or, the Assessing Officer finds that the amount of such investment exceeds the amount recorded in such books of account** and—

(a) the assessee offers no explanation about the nature and source of **such** investment, **or such excess amount**, as the case may be; or

(b) the explanation offered about the nature and source of such investment by the assessee, is not satisfactory in the opinion of the Assessing Officer,

then, the value of such investment, **or such excess amount**, as the case may be, **shall** be deemed to be the income of the assessee of **that tax year.**

Section 103: an investment recorded below its amount

Bare-Act comparison: section 69B and the consolidated investment provision

Section 69B

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Section 103

Where in any **tax year**, any investment has been made by the assessee which is not recorded in the books of account, if any, maintained by such assessee for any source of income, **or, the Assessing Officer finds that the amount of such investment exceeds the amount recorded in such books of account** and—

(a) the assessee offers no explanation about the nature and source of **such** investment, **or such excess amount**, as the case may be; or

(b) the explanation offered about the nature and source of such investment by the assessee, is not satisfactory in the opinion of the Assessing Officer,

then, the value of such investment, **or such excess amount**, as the case may be, **shall** be deemed to be the income of the assessee of **that tax year.**

Section 103: what the Committee considered

Select Committee record: discussion of clause 103 and conclusion at paragraph 103.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Curtail discretionary powers, reduce hardship and retain flexibility in deeming income.	No separate specific response to these points recorded.	Clause accepted with the explanation that the original intent was retained. "Shall" remained.
Remove "where the investment is found recorded"; expressly protect the satisfactorily explained part.	No separate specific response to these suggestions recorded.	No express partial-explanation proviso recommended. The redundant recording phrase is absent from the enacted section.
Merge clauses 103, 104 and 105 to avoid disputes over the category of the amount.	Consolidation was considered capable of creating unintended litigation.	Separate provisions retained. Only the investment limb of section 69B is merged into section 103.

Section 103: amount, books and partial explanation

The combination of two provisions does not remove their factual enquiry.

- **Two alternatives.** Identify an investment that is unrecorded, or establish that its amount exceeds the recorded amount. The invoked alternative determines the disputed sum.
- **Books are optional to invocation.** “Books of account, if any” remains. Absence of books does not prevent an investment-source enquiry.
- **Amount requires evidence.** “Amount of such investment” is changed wording. A higher valuation alone should not be presented as statutory proof of a higher investment amount.
- **Part explained, part disputed.** Section 103 has no express equivalent of section 105’s “part thereof”. Segregate proved funding and contest its inclusion with a precise reconciliation.
- **Mandatory consequence remains conditional.** Investment, assessee, tax year and failure of the explanation must still be established before “shall be deemed” operates.

Section 104: ownership, belongingness and the tax year

Bare-Act comparison: section 69A and section 104(1)

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.

Section 104(1)

(1) Where in any **tax year**, any **asset** has been found to be owned by **or belonging to** the assessee which is not recorded in the books of account, if any, maintained by such assessee for any source of income, **or the Assessing Officer finds that the amount expended in acquiring such asset exceeds the amount recorded in such books of account** and—

(a) the assessee offers no explanation about the nature and source of acquisition of such **asset, or such excess amount**, as the case may be; or

(b) the explanation offered about the nature and source of acquisition of such asset by the assessee, is not satisfactory in the opinion of the Assessing Officer,

then, the value of **such asset, or such excess amount**, as the case may be, **shall** be deemed to be the income of the assessee of **the tax year in which such asset has been found to be owned by, or belonging to, the assessee**.

Section 104: acquisition amount and the meaning of asset

Bare-Act comparison: section 69B, section 104(1) extracts and section 104(2)

Section 69B

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Section 104: relevant text

"…or the Assessing Officer finds that the amount expended in acquiring such asset exceeds the amount recorded in such books of account and—"

…

"then, the value of such asset, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of the tax year in which such asset has been found to be owned by, or belonging to, the assessee."

(2) For the purposes of this section, "asset" includes money, bullion, jewellery, virtual digital asset or other valuable article.

Section 104: the debate over the asset's connection

Select Committee record: paragraphs 104.4.5–7, 104.5 and 104.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Delete "or belonging to". The phrase may blur ownership and possession.	It covers an asset legally held by someone else but actually enjoyed by the assessee. Omitting it could permit avoidance.	The phrase was retained. No recommendation to delete it.
Replace "includes" with "means" to create an exhaustive asset definition.	The inclusive definition was deliberate, so that specified categories do not exhaust the section.	The inclusive definition was retained.
Restore the earlier asset wording in light of D.N. Singh and its treatment of "other valuable article".	No separate reply to this case-law point recorded. The Ministry defended inclusive asset coverage.	The earlier wording was not restored. The Committee otherwise described the original intent as retained.

Section 104: drafting changes and retained conditions

Select Committee record: clause 104; recommendation at paragraph 104.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Delete "where the asset is found recorded", which repeats the earlier reference to the books.	The Ministry noted the drafting modification.	Deletion recommended to remove redundancy and improve clarity. The enacted section omits the phrase.
Use "may" and constrain discretionary powers so that individual circumstances receive fair consideration.	No distinct substantive relaxation was accepted in the clause-wise outcome.	"Shall" retained. Clause accepted apart from the identified drafting deletion.
Consolidate clauses 103–105 into one provision.	The Ministry's consolidation response was that it could generate unintended litigation.	Separate investment, asset and expenditure provisions retained. The relevant part of section 69B was merged with section 69A.

Section 104: practical consequences of the new wording

A broader asset description still requires a proven connection with this assessee.

- **"Owned by or belonging to".** Examine legal title and the facts said to establish belongingness. Custody, use or a name in a record should be tested against the actual arrangement.
- **Inclusive "asset" definition.** The old ejusdem generis argument in D.N. Singh cannot simply be transplanted into the new wording. Its application requires fresh construction.
- **Virtual digital assets.** Section 104(2) expressly includes VDAs, defined in section 2(111). VDAs already had specific tax provisions under the 1961 Act.
- **Digital evidence.** Identify who owns the wallet / exchange entitlement and trace acquisition funding. Access to keys or an account is evidence whose capacity and context matter.
- **Year and amount.** Address the year in which the asset is found to be owned / belonging, and distinguish the value of an unrecorded asset from a proved acquisition excess.

Section 105: source of expenditure and deduction bar

Bare-Act comparison: section 69C and section 105

Section 69C

Where in any **financial year** an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, **if any**, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, **may** be deemed to be the income of the assessee for **such financial year:**

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction **under any head of income.**

Section 105

(1) Where any expenditure has been incurred by the assessee in any **tax year**, and—

(a) the assessee offers no explanation about the source of such expenditure or part thereof; or

(b) the explanation offered about the source of such expenditure by the assessee is not satisfactory in the opinion of the Assessing Officer,

then, the amount covered by such expenditure or part thereof, **shall** be deemed to be the income of the assessee for **that tax year.**

(2) Irrespective of any other provision of this Act, the amount deemed as income in **sub-section (1)** shall not be allowed as a deduction **under this Act.**

Section 105: banking entries and the source enquiry

Select Committee record: paragraphs 105.5.2–4 and 105.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
Treat expenditure as explained whenever paid from a disclosed bank account or reflected in the books.	Payment through a bank plus an explained source of the credit prevents a clause 105 addition. A doubtful funding credit may instead engage clause 102.	No automatic bank-payment / book-entry safe harbour inserted. Clause accepted.
Restrict the provision to expenditure outside the books.	The Ministry said the source enquiry may concern expenditure recorded in books or outside them.	The proposed restriction was not adopted.
Retain "may", reduce discretionary hardship and merge clauses 103–105.	No distinct substantive relaxation appears in the outcome; consolidation was not accepted.	"Shall" and the separate expenditure provision retained. Original intent described as unchanged.

Section 105: the practical source enquiry

A disclosed payment channel is one fact in the explanation.

What must be established

- **Expenditure actually incurred** by the assessee in the relevant tax year. A budget, estimate or lavish appearance does not itself fix the amount.
- **Business or personal expenditure** can fall within the provision. Deductibility is a separate enquiry.
- **The source of the disputed part** must be isolated. Section 105 expressly retains “part thereof”.

How the defence should be framed

- **Trace the funding credit** as well as the outgoing payment. Where the source is explained, identify that evidence expressly.
- **Identify the correct provision** if Revenue challenges a funding credit. Test section 102’s own ingredients and resist duplicate taxation of the same sum.
- **Explain the liability if unpaid.** A genuine, proved credit arrangement needs evaluation. Do not equate expenditure incurred with an assumed cash settlement.
- **Deduction bar remains.** The amount deemed as income under section 105(1) cannot be deducted under the Act.

Section 106: instruments, repayment and interest

Bare-Act comparison: section 69D and the enacted section 106

Section 69D

Where any amount is borrowed on a hundi from, **or any amount due thereon is repaid to, any person** otherwise than through an account payee cheque **drawn on a bank**, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying **the amount aforesaid** for the previous year in which the amount was borrowed or repaid**, as the case may be:**

Provided that, if in any case any amount borrowed on a hundi has been deemed **under the provisions of this section** to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under **the provisions of this section** on repayment of such amount.

Explanation —For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.

Section 106

(1) Where any amount **(including interest thereof)** is borrowed **or repaid through a negotiable instrument or** on a hundi, otherwise than an account payee cheque, **or through any mode as specified by the Board in this behalf,** the amount so borrowed or repaid **(including interest paid on the borrowed amount)** shall be deemed to be the income of the person borrowing or repaying, **as the case may be, for the tax year in** which the amount was borrowed or repaid.

(2) Where the **amount borrowed under sub-section (1)** has been deemed to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under **that sub-section** on repayment of such amount.

Section 106: what was recommended and what remains

Select Committee record: paragraphs 106.5.1–2 and 106.6

Stakeholder concern / proposal	Department's response	Committee's conclusion
The opening bracket suggests that interest itself is borrowed. Redraft the provision.	The Ministry accepted an inadvertent drafting error and said the interest wording should be placed differently.	Deletion of "including interest thereof" and redrafting recommended. The enacted text still contains the opening bracket.
Use "may" to permit consideration of individual circumstances.	The clause continued the deeming approach while expanding the covered instruments.	No change to "may" recommended. Old section 69D itself already used "shall".
Avoid overlap with the loan / deposit mode restrictions and the corresponding penalty provisions.	The Ministry distinguished the deeming provision from the penalty consequences of violating payment-mode restrictions.	No express exclusion inserted to prevent concurrent operation. Wider instrument coverage was accepted.

Section 106: a different kind of deeming provision

Proving the lender and the source may not answer a prohibited instrument / payment-mode issue.

Substantive changes

- **Beyond a hundi.** The section now expressly extends to a negotiable instrument. Classify the instrument on its actual legal features.
- **The permitted-mode test.** Preserve the instrument, bank trail and applicable Board specification. Do not assume that every banking mode satisfies section 106.
- **No new “may” to “shall” shift.** Section 69D already mandated deeming. This provision must be discussed separately from sections 102–105.

Points to preserve in the defence

- **The drafting gap survives.** Use paragraph 106.6 to explain the intended treatment of interest. The Committee recommendation does not delete enacted words.
- **Borrowing and repayment.** Section 106(2) prevents a second assessment of the same borrowed amount on repayment where it was already deemed income.
- **Interest and penalty need separate analysis.** Do not extend the repayment protection mechanically to interest, or treat relief under one provision as immunity under another.

Changed wording and the use of earlier precedents

The Committee's stated continuity of intent must be read alongside the enacted words.

Issue	What changes in the argument	Practical consequence
"May" becomes "shall" Sections 102–105	P.K. Noorjahan recognised discretion under old section 69. The new wording changes the textual basis of that argument.	For a period governed by the new Act, contest the statutory conditions and the rejection of the explanation with evidence.
Broader asset language Section 104	D.N. Singh interpreted the old ownership and "other valuable article" wording. The new "belonging to" and inclusive asset definition require analysis.	Identify which part of the earlier ratio remains relevant and which depended on wording that has changed.
Committee statements	The Report records concerns, ministerial explanations and recommendations. These are distinct from the law ultimately enacted.	Use the Report as an interpretative aid.

CIT v. P.K. Noorjahan, 237 ITR 570 (SC), para 3 | D.N. Singh v. CIT, 454 ITR 595 (SC)

Questions?

Thank You!

CA Piyush Bafna

Chartered Accountant & Advocate | Piyush Bafna & Associates, Pune

8087234918 | piyush@piyushbafna.com

CA, Bachelor of Law (LLB), ADIT (UK), DIIT (ICAI), Dip.IFRS (ACCA-UK), B. Com

Disclaimer

This presentation is prepared for educational purposes and is based on provisions of the Income-tax Act, 2025 and the Income-tax Act, 1961. It does not constitute professional advice for any specific case or transaction. Practitioners are advised to verify current statutory provisions, rules, and judicial positions before relying on the material. All case law cited is based on decisions available in the public domain.