

OVERVIEW OF SECTIONS 68, 69,
69A, 69B & 69C.
(Unexplained Deemed Income)
INTRICACISE IN CASES RELATED
TO FAKE INVOICES OR BOGUS
PURCHASES.

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(Sec. 68 to 69D)

- a) Section 68 : Unexplained Cash Credit :** - If unexplained sums are found in Assessee's books, or if the explanation provided is not satisfactory, the amount can be considered as deemed income.
- b) Section 69: Unexplained Investment:** - This relates to unrecorded investments where no satisfactory explanation is given to the AO.
- c) Section 69A: Unexplained Money:** - This covers ownership of unrecorded valuable articles, like Jewellery, where the source is not satisfactorily explained.
- d) Section 69B: Amount of Investment not fully disclosed:** - Here, the AO may find that the amount invested is greater than the required source of income.
- e) Section 69C: Unexplained Expenditure:** This section targets unexplained expenditures that may be considered as the deemed income of the assessee.
- f) Section 69D (Amount taken or re-paid on Hundi)**

Section 115BBE :- As per section 115BBE, the tax rate for the income added under section 68 to 69D, would be 60%, surcharge of 25%, Education cess 3%, 271AAC penalty of 6%. Overall made it 83.25%.

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271AAD [PENALTY FOR FALSE ENTRY, ETC., IN BOOKS OF ACCOUNT

(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer [or [the Joint Commissioner (Appeals) or the Commissioner (Appeals)]] may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer [or [the Joint Commissioner (Appeals) or the Commissioner (Appeals)]] may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, “false entry” includes use or intention to use—

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.]

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Section 68 : - Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

[**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

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.

[**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.

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Case laws on section 68

Case laws on Year of Charge: -

Delhi High Court in the case of Usha Stud 301 ITR 384: -

carried forward cash credit balances can only be examined in the year in which they are firstly/freshly introduced

Rajasthan HC in the case of CIT Vs. Parmeshwar Bohra 301 ITR 404

If the sum is credited in the books of account in AY 2001-2002, the same cannot be taxed in any other assessment year other than AY 2001- 2002

ACIT Vs. Promotors and builders Pvt. Ltd (All.) 57 taxmann.com 21: -

section 68 would be attracted in the year in which the cash credit has been credited in the books of the assessee and not in any other year.

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Case laws on sec. 68

Amount credited on the first day of the starting of the business: - Irrelevant whether the business has been started or not case of **Ashok Timber Industries (Cal. HC) 125 ITR 336 and Success Tours and Travells (Cal. HC) (2017) 247 taxmann 109.**

i) However For Partnership firm and Artificial person it has been decided by All. HC in the case of CIT Vs. Lal Manohar (2017) 88 Taxmann.com 260 :- That during the first year of business, specially in the first day of starting of business the section could not be invoked since no business is proved to be conducted by the assessee to earn undisclosed cash credit.

ii) In case of firm, once a partner having accepted that he advanced certain sum to the firm: No addition in hands of firm (investment can be examined in hands of partner as per section 69 etc):) Mad HC in Taj Browellers 291 ITR 232

Case laws on sec. 68

“Any Sum” meaning

Any sum must be read in the wider manner, means any sum found credited in the books of accounts for PY and was unexplained. Thus any amount other than found to be credited in the books of account cannot be estimated and charged to tax under section 68 (**D.C. Rastogi Vs. CIT (Del.) (359 ITR 513)**)

Whether Cash Credit Means Only Cash Credit: -

No, it may include any credit whether from supplier or from any other, not supported with the evidence regarding nature and source of transaction may be termed as cash credit and addition could be made under section 68 (**Smt. Rekha Krishna Raj Vs. CIT) (Karn. HC) (215 taxmann 159), SLP in this case has been dismissed by the SC in 2017.**)

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Case laws on sec. 68

Power of AO: – The use of word “may” and not “shall” indicates that the Assessing officer has discretion to treat the particular cash credit, investment or expenditure as income of the Assessee depending on the facts and circumstances.

Revision when held non sustainable: -

Bom HC case law in the case of **CIT Vs. Nirav Modi**
390 ITR 292 (2017) (Bom.) SLP dismissed in
SC: -

Where AO after making detailed and full enquiries regarding the gifts received by assessee from relative and held the transactions as valid then revisional order passed by CIT to enquire into genuineness of the gift afresh along with the capacity of the donors afresh held not sustainable.

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Case laws on sec. 68

Explanation of Assessee and Satisfaction of AO:

Assessee Offers no Explanation or Explanation given by the Assessee is not satisfactory are two different thing and A.O should form an opinion on the basis of appreciation of facts/ material and other attending circumstances (All are in Favour of revenue)

- (i. **CIT Vs. P. Mohankala (SC) 291 ITR 278,**
- ii.) Dilip & Shroff Vs. JCIT(SC) 291 ITR 519**
- iii.) CIT Vs. Focus Exports P. Ltd. (Del. HC) (ITA No. 218/2012, SLP dismissed in this case as well by SC)**

Amount credited in business books can normally be presumed as business receipt –

When an amount is credited in business books, it is not an unreasonable inference to draw that it is a receipt from business {**Lakhmichand Baijnath v. CIT [1959] 35 ITR 416 (SC).**}

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Case laws on sec. 68

Not necessary for Department to locate source of receipt – Where the assessee has failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the department to locate its exact source – **CIT v. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC)/A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807 (SC).**

Onus is on assessee to discharge that cash creditor is a man of means – The onus is on the assessee to discharge the onus that the cash creditor is a man of means to allow the cash credit. There should be identification of the creditor and he should be a person of means. When the cash creditor is an income-tax assessee, it cannot be said that he is not a man of means – **Kamal Motors v. CIT [2003] 131 Taxman 155 (Raj).**

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Case laws on sec. 68

Deposits from tenants – In regard to deposit from tenants, it is sufficient if the assessee proves the identity of the tenant and the genuineness of transaction under which the deposit is made. It will not be necessary for the assessee to prove the capacity of the tenant to make the deposit/advance – **CIT v.**

Nevendram Ahuja 197 CTR (MP) 462

Gifts – In the case of gifts recorded in the books of the donee, mere identification of the donor and showing the movement of the amount through banking channels is not sufficient to prove the genuineness of the gift. The onus lies on the donee not only to establish the identity of the donor but also the donor's capacity to make such a gift and to prove his relationship with donor. The Tribunal would not be justified in deleting the additions made by the Assessing Officer, especially when the assessee did not appear in person before the Assessing Officer despite being asked to do so – **CIT v. Anil Kumar [2008] 167 Taxman 143 (Delhi).**

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Case laws on sec. 68

Gifts made by a mother to a son do not require any occasion and mother can make a gift to her son at any time – **CIT v. Suresh Kumar Kakar [2010] 324 ITR 231 (Delhi).**

Amount recd through WILL :-

Delhi ITAT in Budh Kishore 87 TTJ 140:

Amount recd through Will cannot be taxed by rejecting the will on conjectures and surmises (that is will is not on stamp paper, there are no witnesses; it merely bears thumb impression etc)

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Case laws on sec. 68

Unsecured Loans : -

Assessee should prove identity, capacity of lenders as well as genuineness of transaction. Where lender is assessed to tax, assessee can avoid addition by filing confirmation with particulars of PAN.

Case Laws: CIT Vs. Orissa Corporation (P) Ltd. (159 ITR 78) (SC)

CIT Vs. Rohini Builders (256 ITR 360) (Guj.)

Metachem 245 ITR 360 (MPHC)

Nem Chand Kothari 264 ITR 254 (Gau)

DHC in Rajokri Farms Pvt Ltd (ITA 410/2008);

Real Time Marketing 221 CTR 716; Diamond Products 177 Taxman 331 Raj HC. Same way also laid down in 219 CTR 571 & 220 CTR 622; P&HHC in 180 Taxman 185; Guj HC in 177 Taxman 35.

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Case laws on sec. 68

Assessee is not required to prove source of the source of credit

Land mark SC decision in the case of **CIT Vs. Lovely Exports (P.) (Ltd) 216 CTR 198(SC)** : - It has been held that when assessee has provided all the identity details of the Shareholders including PAN and bank details then it is the duty of the AO to take action against the shareholders and if shareholders brought their money illegally then Assessee could not be held liable for the same.

(SC RULING IN LOVELY EXPORTS PVT LTD. 216 CTR 195)

The decision was followed by allot of courts including Bombay HC in the cases of K.C. Pipes (P & H HC)(386 ITR 532), In CIT Vs. Creative World Telefilms (BOM HC) 15 taxmann.com 183), CIT Vs. Divine Leasing (Del. HC) 299 ITR 268).

Hastimal V. CIT (49 ITR 273)(Mad.) Tolaram Daga V. CIT (59 ITR 632)(Assam) Nemichand Kothari v. CIT (264 ITR 254) (Gau) Murlidhar Lahorimal Vs. CIT(280 ITR 512) (Guj); KASTURBHAI MAYABHAI PVT. LTD ; Delhi - ITA 766,830,882/2009; Raj Kr Aggarwal- All HC etc.

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Case laws on sec. 68

Then Comes **PCIT Vs. NRA Iron and Steel Pvt. Ltd. 412 ITR 161 (2019)(SC)**. : Where SC mentioned that in the case of private placement of shares, where higher onus is required to be placed on the assessee Co. since the information is within the personal knowledge of the assessee. He is under as legal obligation to prove the receipt of share capita/premium to the satisfaction of A.O, failure of which would justify addition for the said amount to the income of the assessee.

The case of Vishwatej Developers Pvt. Ltd. Vs. ACIT (2021) 438 ITR 163 (Mad. HC) : - 316 cr. Foreign funding was brought by assessee as investment, just because all statutory compliances were done did not relieve assessee from the burden of proving identity, genuineness and creditworthiness of the investor to the satisfaction of A.O.

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Case laws on sec. 68

Unclaimed liabilities remaining outstanding for no. of years- whether can be brought to tax u/s 41(1) and section 68 ?:

Refer : - **Perfect paradise Emporium Pvt. Ltd. Vs. ITO (ITAT Delhi)** :- Held that Unclaimed liabilities to creditors, even if fictitious and bogus, cannot be assessed u/s 41(1) in the absence of writeback. The bogus credit can be assessed u/s 68 only in the year the credits were made and not in the year they are found to be not payable.

Identical issue has been decided in the case of **CIT Vs. Bhogilal Ramjibhai Atara in Tax appeal no. 588 of 2013 dated 04/02/2013.**

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Case laws on sec. 68

Previous Withdrawals and Cash Deposit

ACIT Vs Siddratha Bhargava (ITAT Cal.) No. 2508/kol/2017

AO cannot disregard the cash flow shown by the assessee on the basis previous cash withdrawals.

Del. HC in the case of Rajeev Jain Vs. ITO

(2019) 101 taxmann.com 92 (Delhi) :- Previous withdrawals of cash reason for withdrawals not confronted by AO and now after 10 years proofs are asked for.

Case law of Jaya Agrawal Delhi HC (2018) 254 taxman 398) :- Assessee said he withdrew the amount for purchase of property, which later on not fructified and hence re-deposited the cash back (no addition was made)

Another Case law in the case of Dinesh Kumar Jain Vs. PCIT (2018) (407 ITR 65) : Assessee said that he withdrew the amount for construction of the building but he was not able to produce any bills, vouchers or any proof of expenditure, hence re-deposit is not accepted.

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Case laws on sec. 68

Opportunity of Cross Examination as well as confrontation of the material used against the assessee : Bom HC decision in the case of H. R Mehta Vs. ACIT (2016) 387 ITR 561. In this particular case, it has been held that when AO added the Loan amount in the hands of assessee on the basis of the fact that no confirmation letter had been obtained from the persons from whom the loan had been taken and repaid through account payee cheques, the assessee should have confronted with the material used against him and should have provided an opportunity to cross -examine the deponents whose statements were used against assessee.

Refence could also be made to the case laws of SC in the case of Andaman Timber, CIT Vs. Independent Media Pvt Ltd. (Del HC) 25 taxmann.com 276, Shri Krishna Educational trust Vs ITO (Mad. HC) 351 ITR 178

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Case laws on sec. 68

Delhi HC in the case of PCIT Vs. TOPLINE BUILDTECH PVT. LTD.

(I.T.A. 928 OF 2018) reporting date 29.05.2024

Held That the assessee-company proved the identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. The decisions relied upon by the Ld. D.R. do not support the case of the Revenue. In view of the above discussion and evidence and material on record, we do not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 5 crores. This issue is decided in favour of the assessee company.”

WAA MALL LLP V/S DEPUTY CIT (Mum ITAT) ITA No. 3729/Mum/2023 dated 14.05.2024

We find that the AO has neither brought any material on record nor made any investigation/ enquiry to disprove the facts and documents furnished by the lenders and the assessee in support of the genuineness of the unsecured loan transactions.

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Case laws on sec. 68

Case of Accommodation Entry Provider :- An Accommodation entry provider are the persons who accept cash from assessee and provide cheque or bank entry through own account or through other account in lieu of commission then the addition of whole of the amount other than commission is not justified.

Concept of Peak credit could be adopted if assessee provides all the details of the credits and relevant transfers to the persons having nexus with the credits.

Case laws related to the same are:

CIT Vs. D. K. Garg (Del. HC) (404 ITR 757) (SLP Granted in this case as well)

PCIT Vs. Alag Securities (Bom HC) (2020)(425 ITR 658)

Bhaiyalal Bihari Vs. CIT (All. HC) (276 ITR 36) - Peak credit.

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Case laws on sec. 68

No Double Taxation : -

Once certain amount was subject to tax in certain, the question of treating it as transaction in violation of section 269SS or 269T did not arise as it stood mutually **excluded (DIT Vs. Young Men Christian Welfare society (2014) (Mad HC) (49 taxmann.com 72)**

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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.

Cases in which additions were confirmed u/s 69:-

- 1) Failed to explain the identity of the donor or the creditworthiness or the genuineness of the transactions then the investment made to the extent of the unexplained part would be added u/s 69 of I.T Act

Case laws: - i) Mrs. Kumari Kanagam Vs. CIT(2013) (30 taxmann.com 217 (Mad.) ii) R. Mani Vs. ITO (2015)(373 ITR 226)(Mad) iii) Rajesh Trade Link Pvt. Ltd. Vs. DCIT (2013). 37 taxmann.com 392 (Guj.) iv) Amita Kochar Vs. ACIT (2016)(389 ITR 345) (pat)

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section 69: - Case Laws

- 2) Import or purchase of goods undervaluing them clearly

Jagjit Pal Singh Anand Vs. CIT (2011) 10 tax mann.com 259(Del.)

- 3) Where documents revealed that purchase price of the property is higher than the actual price of transaction.

- i) **Bela Juneja vs, CIT (2012) 20 taxmann.com 392 (Del.)**
- ii) **Joginder lal vs. CIT (2015) 56 taxmann.com 150 (P & H)**
- iii) **CIT Vs. Karan Khandelwal (2013) 33 taxmann.com 532 (Del.)**

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section 69: - Case Laws

4) Addition made toward shortage of stock found during investigation.

i) CIT Vs. H. Dassapa & Sons (2012)(20 Taxmann.com 494 (Karn.))

ii) Dhanush General Stores Vs. CIT (2012)(20 taxmann.com 853)(Chattisgarh)

5) Addition of Diff. of closing stock as per books of accounts and as higher stock statement provided to the bank. { **Smt. Shakuntala Thukral (2014)(366 ITR 644)(P & H)** }

6) Assessee purchased goods and sales made out of it as well, but purchasers were not traceable. Profits element embedded in it would be subjected to tax and not the whole amount.

CIT Vs. Bholanath Poly Fab (P.)(Ltd.) (Guj.)(355 ITR 290)

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section 69: - Case Laws

Cases in which additions were deleted: -

- 1) Where AO rejected assessee's books of account and applied G.P rate on suppressed sales, he could not make separate addition on account of unexplained investment, undisclosed income etc. **{(CIT Vs. Bahubali Neminath Muttin 72 taxmann.com 139(Karn.))}**

- 2) Since the assessee has duly discharged his onus by filing substantial documentary evidences including gift deeds, copy of bank accounts, IT returns, sworn affidavits indicating financial status and also establishing their old relations thus tribunal is justified in deleting the **additions (CIT Vs. Ms. Mayawati (Del) (2011)(338 ITR 563)**

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section 69: - Case Laws

- 3)** Where a diary recovered during search at assessee's premises revealed a list of persons and various amounts mentioned against their names, said amount should not be treated as assessee's unexplained investment, where affidavits of the aforesaid persons were not examined by the AO. **{(2012)19 taxmann.com 61 (chattigarh)}**
- 4)** It is only when, on the basis of material available on record, AO forms an opinion that provisions of sec. 69,69A or 69B would apply to assessee's case, AO can invoke section 142A. **{Me and Mummy Hospital Vs. CIT 45 taxmann.com 248 (Guj.)} & {(Goodluck Mobile Pvt. Ltd. Vs. ACIT (2013)(259 ITR 306)} {CIT VS. ABHINAV MITTAL (351 ITR 20)}**

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section 69: - Case Laws

5) Making addition merely on the basis of documents seized without any cogent evidence that excess money has been transferred to the assessee was not sustainable.

i) CIT Vs. Dolphin brothers (MP)(356 ITR 420)

ii) CIT VS. PREM PRAKASH NAGPAL (DEL.) (40 taxmann.com 353)

iii) CIT VS. Gian Gupta (Del.)(2014)(369 ITR 428)

6) Where A.O while making addition on account of “on Money” received by assessee on sale of land to a builder group, relied upon the statement of the director of builder group and did not allow the assessee an opportunity of cross-examination, there being violation of principle of natural justice, hence impugned addition was to be deleted. { **CIT Vs. Smt. Sunita Dhadda, (2018) 100 taxmann.com 525(Raj.) SLP dismissed in this case**}

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section 69: - Case Laws

- 7) **In Mad HC in N Swamy 241 ITR 363 , Chennai ITAT in Omega Estates and Chd ITAT in Dr. R.L.Narang**, it was held that The burden of showing that the assessee had undisclosed income is on the revenue. That burden cannot be said to be discharged by merely referring to the statement given by the assessee to a third party in connection with a transaction which was not directly related to the assessment and making that the sole foundation for a finding that the assessee had deliberately suppressed his income.
- 8) **In ITO vs. Mrs. Deepali Sehgal (ITAT Delhi), ITA No. 5660/Del/2012**, merely because there was a time gap between withdrawal of cash and its further deposit to the bank account, the amount cannot be treated as income from undisclosed sources u/s 69 of the Act in the hands of the assessee. Hence, the addition made by AO without any legal and justified reason was rightly deleted by the CIT (A).

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Section 69A

69A UNEXPLAINED MONEY, ETC.

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.

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Section 69A Case Laws: -

- 1) Possession of cash is evidence of ownership – Where cash was found in possession of assessee-politician during search and his claim that it belonged to a political party was denied by President and Treasurer of said party, addition of such cash to assessee's income was rightly sustained by tribunal – **Sukh Ram v. Asstt. CIT [2006] 285 ITR 256 (Delhi).**

- 2) Ownership is one of the Considerations – The material difference between Section 68 and 69A is that Section 68 does not require that the amount is to be owned by the Assessee. It only deals with any amount shown in the books of accounts of the assessee whereas Section 69A deals with money, etc., owned by the assessee and found in his possession. – **Durga Kamal Rice Mills v. CIT [2003] 130 Taxman 553 (Cal.).**

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Section 69A Case Laws: -

- 3) The assessee was found to be in possession of loose slips and not any valuable article or things. Neither the possession nor the ownership of any jewelry mentioned in the slips was proved. Therefore, the Tribunal had rightly held that the provisions of section 69A of the Act were not applicable. The Tribunal also held that if the assessee failed to explain the contents of the slips, it was for the Revenue to prove on the basis of material on record that they represented transactions of sales or stock in trade before making any addition on this score. The assessee had duly explained that these were rough calculations and the assessee's explanation had not been rebutted by any material evidence. **{CIT VS. RAVI KUMAR (294 ITR 78)}**
(PH)

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Section 69A Case Laws:

4) Case of Kanpur Organics Pvt. Ltd. Vs. Dy. CIT (2020) 78 ITR 120 (Lucknow ITAT)

Tribunal held that the addition under section 69A could have been made only if no explanation regarding the source of such income was offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. The assessee had given a complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and the Assessing Officer also did not object to the explanation. Therefore, the addition could not be made under section 69A and if the addition could not be made under section 69A, the provisions of section 115BBE were not applicable.

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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

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Section 69B Case Laws:

1) **In CIT v. Daya Chand Jain Vaidya 98 ITR 280(All.)**, the Allahabad Court shifted the onus on to the department saying that if the assessee's explanation that the investments were, in fact, held by his wife and sons is not sustainable, then the department has to prove with material evidences that the investments were owned only by the assessee himself. Having said this, it is noteworthy that sec.69B per se uses the phrases like "is found to be the owner of any bullion, jewelry or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewelry or other valuable article....." (as opposed to the word 'reasons to believe') which is very conclusive that there is no room for any taxation based on a mere suspicion.

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Section 69B Case Laws:

2) In Smt. Amar Kumari Surana v. CIT [1996] 89 Taxman 544 (Raj.), it was held that the burden is on the revenue to prove that real investment exceeded the investment shown in account books of the assessee. Merely on the basis of fair market value no addition can be made under section 69B, but if on the basis of sufficient material on record some reasonable inference can be drawn that the assessee has invested more amount in purchase of plot than that shown in account books, then only the addition under section 69B can be made.

3) Section 50C provisions cannot be applied for section 69B addition – Gayatri Enterprise Vs ITO (Gujarat High Court) (2020)(420 ITR 15 / 192 DTR 192)

4) ACIT Vs. Shri Jayantilal T. Jariwala (ITAT Ahmedabad) : Mere valuation report not sufficient to conclude unexplained investment by Assessee.

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5) **DCIT Vs M/s Riar Builders Pvt. Ltd. (ITAT Amritsar)** : - Section 69B cannot be invoked on mere assumption that there was understatement of investment.

SECTION 69C UNEXPLAINED EXPENDITURE, ETC.

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.

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Section 69C Case Laws:

CASE LAWS

1) The Jaipur Bench of ITAT ruling in Nisraj Real Estate (31 DTR 456-)

held that unverified purchases made by assessee could not be treated as unexplained expense u/s 69C and no addition can be made thereof u/s 69C proviso there under – as once sales were made by assessee, purchases were obviously made.

2) CIT v. C.L. Khatri 147 Taxman 652 (MP).

Estimation of household expenditure in a particular year cannot be made on the basis of income of subsequent years.

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Section 69C Case Laws:

3) CIT v. Aar Pee Apartments Pvt. Ltd. [2009] 319 ITR 276/[2010] 188 Taxman 39 (Delhi).

Invocation of Powers under Section 142A – For purpose of getting himself satisfied about purported unexplained expenditure under section 69C, powers under section 142A could not be invoked by Assessing Officer.

4) Bhatia Diamonds Pvt. Ltd. Vs ITO (ITAT Delhi)

Addition u/s 69C on basis of statement of third party without providing opportunity of cross-examination to assessee was invalid.

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Section 69C Case Laws:

5) For some bogus purchases Entire purchases can't be added to income – **Sonal Parekh Vs ITO (ITAT Ahmedabad)**

6) Addition of bogus share capital u/s 68 and bogus purchases u/s 69 cannot be made in absence of incriminating material with AO –

Agson Global Pvt. Ltd Vs ACIT (ITAT Delhi)

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BOGUS PURCHASE

Sources of Information: -

- a) Search, survey action, scrutiny assessments conducted by the department on such accommodation entry providers or any of the beneficiaries.
- b) GST or other Department by passing over of information.
- c) Wrong / mismatch in inquiry conducted by notice issued u/s. 133(6) of the Act.

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As per SOP, reasons for suspecting the transactions of the assessee as Bogus Purchase

- a) turnover is very high and profit margin is comparatively very low which is not conducive to run business set up for such large turnover.
- b) where turnover is either constant from year to year but profit margin is on a reducing trend
- c) creditors for purchases are standing in the balance sheet for substantially long time, modes of payment for purchases are in cash,
- d) Examination of vouchers of purchases reveal scanty or doubtful details (like old phone numbers) about the seller,
- e) The sellers are not the regular dealers with the assessee,

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As per SOP, reasons for suspecting the transactions of the assessee as Bogus Purchase

f) The purchase vouchers as such do not inspire confidence as emanating from the seller (like seller from South not mentioning any regional language on its vouchers),

g) Mode of transportation not clear from the vouchers or the books,

h) Bank details for payment through RTGS or through banking channels is not provided on the vouchers.

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While deciding the cases related to Bogus purchases approaches adopted by Income tax department in Assessment and Appeals:

- 1) **Entire Amount** : - It was discovered that the sales were fictitious and the documentation for the purchases was deemed unreliable. Consequently, it was determined that the entire amount of such purchases is be considered bogus and added to the total.

- 2) **G.P Rate**: - where the authenticity of the assessee's sales is not questioned and complete documentation is provided for the purchases, the purchases are identified as fraudulent purchase

- 3) when the sales of the assessee were not doubted, the CIT(A), ITAT, and HCs instructed to tax only a specific percentage of the bogus purchases or apply a higher gross profit rate to these so-called fraudulent purchases.

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Case Laws related to Bogus purchase

1) Commissioner of Income-tax v. Nikunj Eximp Enterprises (P.) Ltd. [2015] 372 ITR 0619 (Bom)

Decision : - i) Entire Addition was deleted

ii) Details filled by assessee

a. letter of confirmation of seven suppliers,

b. copies of bank statement reflecting the entries of payment through account payee cheques to suppliers,

c. copies of invoices for purchase and d. detail of stock inventory.

iii) Sales was not doubted

iv) Merely because the suppliers had not appeared before the Assessing Officer or CIT (Appeals), it could not be concluded that the purchases were not made.

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Case Laws related to Bogus purchase

2) Principal Commissioner of Income-tax v. Vaman International (P.) Ltd. [2020] 422 ITR 0520 (Bom)

Decision: - i) Entire Addition was deleted
ii) Lack of opportunity to cross examine two persons on the basis of whose statement's addition was made.

3) Deputy Commissioner of Income-tax v. Rajeev G. Kalathil [2014] 51 taxmann.com 514/[2015] 67 SOT 0052 (Mumbai)

Decision: - i) Sales were accepted.
ii) Held that only profit element embedded as per previous history of assessee i.e. 5% to 8% in the purchases could be added and not the entire purchase amount deleted the balance addition.
iii) High Court in revenue's appeal declined to interfere in the order of the ITAT and upheld the attribution of 5% profit on such alleged bogus purchase

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Case Laws related to Bogus purchase

4) Commissioner of Income-tax Act v. Odeon Builders (P.) Ltd. [2019] 110 taxmann.com 64/418 ITR 315/266 Taxman 461 (SC)

Decision: - i) Entire Additions were deleted
ii) The disallowance made by the AO solely by relying on third party information gathered by Investigation Wing.
iii) AO has also not provided copy of such statement to the assessee was not justified.

5) Smt. Kiran Navin Doshi v. Income-tax Officer [ITA Appeal No. 2601 (Mum. ITAT) 2016, dated 18-1-2017]

Decision: - Tribunal upheld the CIT (Appeals) order wherein instead of disallowance of total purchase amount expenditure under section 69C of the Act. An estimation of profit @ 12.5% of such bogus purchase amount being the profit element embedded in such purchase was held justified.

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Case Laws related to Bogus purchase

6) PCIT Vs. Rishabhdev Tachnocable Ltd. [ITA No.1330 of 2017] – High Court of Bombay

Decision: - Sales genuine – only profit margin embedded to be added – Profit margin to be computed by comparing the G.P. ratio of earlier years and then adding the difference.

7) PCIT Vs. M/s Mohommad Haji Adam & Co. [ITA No. 1004 of 2016] – High Court of Bombay

Decision: - i) Factum of bogus purchase established

ii) Sales accepted, no reason to reject purchases

iii) Purchase cannot be rejected without disturbing the sales

iv) CIT(A) added 10% of purchase amount

v) ITAT : - Tax only on the basis of difference in the GP rates

vi) Assessee cannot be punished since sale price is accepted by the revenue Order of ITAT upheld.

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Case Laws related to Bogus purchase

8) Pooja Paper Trading Co (P.) Ltd. [264 Taxman 260] – High Court of Bombay

Decision: - i) Assessee failed to produce evidence of genuineness of purchase

ii) Dis-allowance could only be of the income/profit attributable to the bogus purchases.

iii) Progressive GP ratio accepted by AO

iv) no defects in books-sales accepted – no addition of bogus purchase – also held in ACIT Vs. Vijay Kumar Goel (670/Del/2013) (Delhi ITAT)

9) PCIT Vs. Jagdish H Patel [ITA No. 410/412 of 2017] – High Court of Gujarat

Decision : - i) If entire purchases to be treated as bogus, then GP would be higher than the total turnover and would give completely distorted figure

ii) When additions are made on the basis of GP rate, limited amount of estimation and gross work is always inbuilt.

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Case Laws related to Bogus purchase

10) CIT Vs. Hi-Lux Automative Pvt. Ltd. (183 Taxman 260) (Delhi HC)

Decision: - i) Reason for disallowance was non compliance/appearance by suppliers

ii) Suppliers – small dealers/ job workers

iii) Enquiry conducted after 6 years, it was not unusual for such small parties to have left in between.

iv) Assessee produced sufficient evidences No adverse inference

v) addition deleted

11) PCIT VS. Tejua Rohitkumar Kapadia (SC)

Decision: - i) Addition made was deleted since the same was made on the basis of third party statement against assessee ii) Sales confirmed and accepted by the department iii) Documentary Evidences provided and so no addition could be allowed.

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Case Laws related to Bogus purchase

12) PCIT Vs. Shapoorji Pallonji & Co. Ltd. [117 taxmann.com 625] – High Court of Bombay

Decision: - i) Addition on the basis of third party statement ii) Cross examination not provided iii) Assessee furnished all the documentary evidences iv) bogus purchases forms a minor fraction of total volume of the assessee company v) Hence addition was deleted.

13) CIT Vs. Sunrise Tooling System (P) Ltd. (361 ITR 206] (Del. HC)

Decision: - i) Addition deleted since Cross examination not provided ii) Books not rejected iii) Sales not doubted iv) Sales has been shown by the seller v) Goods purchased have been utilized.

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Case Laws related to Bogus purchase

14) PCIT Vs. Ui Packs India – [108 taxmann.com 454] – High Court of Bombay

Decision: - i) Cross examination not provided ii) Department accepted the sales iii) Not justified in invoking section 69C iv) If the trading account of the assessee is re-casted on the basis of disallowance of purchase, G.P. rate would be changed v) without rejecting books and invoking the provisions of section 145, GP cannot be changed – **Vardan Fashions Vs. JCIT (1143/Del/2013) (Delhi ITAT)**

15) Cannon Industries Pvt. Ltd. Vs. DCIT 167 TTJ 82] – ITAT Mumbai

Decision: - i) Addition only on the basis of statement recorded in survey ii) Cross examination not provided iii) Sales and quantitative tally not disputed iv) Purchase bills matched with the export sales v) Addition deleted vi) Where books accepted trading results accepted no discrepancy in books no addition of BOGUS SALES.

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THANK YOU !!!

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