

TAXATION OF UNEXPLAINED INVESTMENTS / CREDITS U/S 115BBE

Section 68 – Cash Credits:

- Any sum credited in the books of assessee and
- The Assessee offers no explanation or
- Explanation offered is not satisfactory
- Then, such credit may be charged to income tax as income of that year u/s. 68

Provisions of Section 68:

Section 68 applies not only to cash transaction but also to amounts received by cheque or draft:

- The words used are “Any sum credited in the books of assessee maintained”
- The sum of money is not restricted to cash transactions only.
- Head note to Sec.68 refers to cash credits is not sufficient to support the view.
- Sec.68 is unambiguous & the sum referred in the section would include “the sum of money by whatever mode received”

Source of Source also to be explained:

- Where the assessee is a company (not a company where public are substantially interested) & sum credited consists of share application money, share capital, share premium or any amount
- In addition to explanation offered by assessee-company, “explanation about nature & source also to be offered by the person in whose name such sum is recorded in the books of assessee”
- Such explanation should be found to be satisfactory in the opinion of AO.

Finance Act 2022 has inserted the following proviso u/s. 68 (applicable w.e.f. AY 2023-24):

- If the sum credited consists of “**loan or borrowing**”
- In addition to explanation offered by assessee, “explanation about nature & source to be explained by the person in whose name such sum is recorded in the books of assessee”
- Such explanation should be found to be satisfactory in the opinion of AO

Section 69 – Unexplained Investments:

- In any F.Y., the assessee had made investments which are not disclosed in the books, if any maintained
- No explanation about the nature & source or
- Explanation offered is not satisfactory
- Then, value of such investments shall be deemed to be income of that year u/s. 69

Section 69A – Unexplained Money, etc:

- In any F.Y., the assessee is found to be the owner of Money / Bullion / Jewellery / other valuable article
- Not recorded in Books of accounts, if any maintained and
- No explanation about nature or source of such acquisition or
- Explanation offered is not satisfactory
- Such money etc., may be deemed to be income of that year u/s. 69A.

Section 69B – Investments, etc., not fully disclosed in Books:

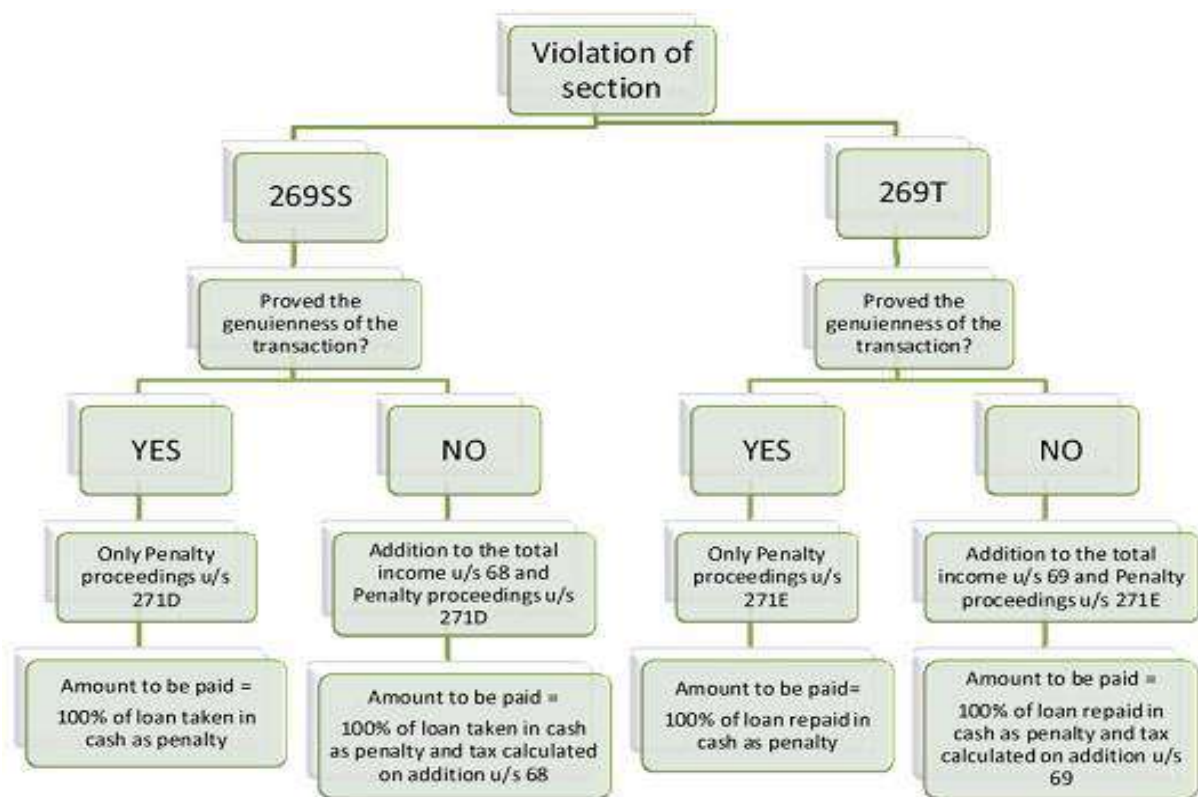
- The assessee had made investments or found to be the owner of Money / Bullion / Jewellery / other valuable article
- The A.O finds amount expended exceeds the amount recorded in Books maintained
- No explanation about such excess amount or
- Explanation offered is not satisfactory
- Such excess may be deemed to be income of that year u/s. 69B.

Section 69C – Unexplained Expenditure:

- In any year, the tax payer has incurred expenditure
- No explanation about source of expenditure or part thereof or
- Explanation offered is not satisfactory
- Such amount covered by expenditure or part thereof may be deemed as income of that year u/s. 69C.
- Such unexplained expenditure shall not be allowed as deduction under any head of income.

Section 69D – Amount borrowed or repaid on hundi:

- Any amount borrowed from / repaid to a person through hundi otherwise than by account-payee cheque.
- Such amt. shall be deemed to be income of the person borrowing / repaying the amount.
- Treated as income for the year in which it was borrowed / repaid.
- If amt borrowed is taxed u/s. 69D, the same cannot be taxed again while repayment.

Analysis of Sec 69D & 269SS/T**Section 115BBE:**

- Introduced in the Finance Act, 2012 dealing with special rate of tax for sec 68 to 69D @30% w.e.f. 01.04.2013.
- Later amended by Taxation Laws (Second Amendment) Act, 2016 dt. 15.12.2016 w.e.f. A.Y. 2017-18:
 - Tax shall be calculated @ 60% on unexplained income u/s. 68 to 69D
 - Further increased by Surcharge @ 25% and Cess
 - No deduction in respect of expenditure / allowance / set off of any loss in computing income u/s. 68 to 69D

Penalty applicable to Income chargeable to tax u/s. 115BBE**Section 271AAC:**

- Penalty @ 10% on tax payable u/s. 115BBE shall be imposed if such income is not reflected in Return of Income w.e.f. A.Y. 2017-18.
- In such a case the burden including penalty will come to 83.25%

Penalty u/s. 271AAA, 271AAB

271AAA @10%	Applicable to cases where Search has been initiated u/s. 132 "On or after 01.06.2007 but before 01.07.2012"
271AAB (1) @10%	Applicable to cases wherein Undisclosed Income found during Search which has been initiated "on or after 01.07.2012 but before 15.12.2016"
271AAB (1A) @30% or 60%	Applicable to cases wherein Undisclosed Income found during Search which has been initiated "on or after 15.12.2016"

Section 271AAB (1A):

- 30% of Undisclosed income, if
 - Assessee admitted undisclosed income
 - Paid tax before specified date
 - Filed ROI by declaring such undisclosed income
- 60% of Undisclosed income in any other case.

Excess stock found during search / survey cannot be treated as deemed income u/s. 69/69B:

- AO found excess stock in business premises during search conducted & made addition u/s. 69/69B towards unexplained investments / investments not fully disclosed in books.
- Assessee stated that excess stock got accumulated out of regular unaccounted business income only & "declared such income in ITR post search".
- ITAT held that provisions of Sec. 115BBE is not applicable on the excess stock surrendered as business income and the same cannot be treated as unexplained income.

- [1. ACIT Vs Shri Anoop Neema- ITA No. 05/Ind/2020
2. Bunt Kumar Vs ACIT – ITA No. 215/Asr/2023
3. Vijay Shriram Gundale Vs ACIT – ITA No. 79/Pun 2023
4. Fathima Jewellers Vs DCIT – ITA No. 66/Chny/2023
5. CIT Vs Bajargan Traders c/o. Kalani & Co – ITA No. 258/2017]

Once penalty u/s 271AAB applied, invoking 115BBE unjustified:

- Assessee filed ROI by including surrendered income accepted during search as penalty proceedings u/s. 271AAB(1)(A) have been initiated.
- Further AO passed order by adding Rs. 5,52,241/- as unexplained jewellery in addition to undisclosed income.
- ITAT held that assessee filed ROI in accordance with penal provisions of sec. 271AAB. “Invoking sec. 115BBE is against the law & also against principle of natural justice”.

[Sandeep Sethi Vs DCIT- ITA No.115/JP/2022]

Additional Income once accepted cannot be later rectified & taxed u/s. 115BBE:

- During a survey operation conducted at the assessee's business premises, an additional income was found. Assessee declared such income in ITR and paid due tax on this amount.
- The AO, in the initial assessment, assessed the surrendered income as normal business income.
- Later, CIT dissatisfied with AO's assessment & passed “revision order u/s. 263 / rectification order u/s. 154” and mentioned that such income to be taxed @ 60% u/s. 115BBE.
- ITAT held that provisions of sec. 115BBE cannot be invoked via rectification / revision order and treated the surrendered income as normal business income.

[1. Yogesh Kumar Vs PCIT- ITA No. 589/Del/2022

2. Anjanee Vijetha Kasturi Vs. ACIT- ITA No. 196/Hyd/2023

3. Sharp Chucks and Machines Pvt. Ltd Vs. DCIT-ITA No. 169/Asr/2023]

ITAT deletes addition made during search & seizure solely on basis of WhatsApp Chat:

- During the course of search and seizure operation, AO made addition u/s. 69C being part salary paid in cash to employees merely on the basis of WhatsApp conversation between two employees.
- AO not offered the opportunity of cross-examination even though specifically requested by the appellant.
- ITAT held that WhatsApp chats standalone basis is not having valid evidence to support the action of AO and hence directed the AO to delete the addition.

[Designers Point (India) P. Ltd Vs ACIT – ITA No. 2517/Del/2022]

Additional Income cannot be treated as unexplained expenditure u/s. 69C to invoke Sec. 115BBE:

- Certain loose sheets found & seized during search and seizure operation conducted, which represents cash payments around Rs. 5 Crores.
- Assessee accepted & declared such additional income under the head “Business & Profession” in ITR.
- AO rejected the arguments of assessee & treated the amount as unexplained expenditure u/s. 69C and brought to tax u/s. 115BBE.
- ITAT held that “AO should not have treated it as unexplained expenditure without making any further enquiry to disprove the evidence” & directed the AO to tax such income under normal provisions.

[Devender Rao Gaurkanti Vs. ACIT- ITA No. 439/Hyd/2022]

No Addition u/s. 68 if sales properly recorded in Books:

- Assessee made cash deposits after announcement of demonetization which were opening cash balance & cash sales.
- The AO on one hand accepted the books, on the other hand treated the sales as bogus.
- The Tribunal concluded that any addition by treating sales as bogus without rejecting books is unjust, unfair & bad in law.

[ACIT Vs Shri Nitin Sankhla- ITA No.98/RPR/2020]

Addition of presumptive income as undisclosed income u/s. 68 is not tenable:

- The Assessee has not filed ROI for the A.Y. 2015-16, but as per Form 26AS the assessee is in receipt of income u/s. 194J.
- AO issued notice u/s. 148, later the assessee filed the return by computing income u/s. 44AD @ 8%
- AO was not satisfied with the explanations & offering of income u/s. 44AD, made addition as undisclosed income u/s. 68.
- ITAT held that adopting provisions of sec.44AD is permissible & addition as undisclosed income is not tenable and directed the AO to delete the addition.

[Mehjabeen Masood Khan Vs ITO- ITA No.766/MUM/2023]

[CIT v/s Surinder Pal Anand, Surinder Pal Anand – ITA No.156/PUN/2010]

No Addition u/s. 68 if depositors are proved:

- AO added Rs. 25 Lakhs as unexplained cash credits u/s. 68 by concluding that cash was deposited by a company to the bank account of assessee.
- Assessee proved that such money was interest bearing loan and received from that company through proper banking channel.
- ITAT held that the assessee has proved the identity of the creditor & genuineness of the transaction. Hence deleted the addition made u/s. 68.

[Poddar Realtors Vs ITO- ITA No.265/Kol/2023]

Section 68 inapplicable in the absence of maintenance of books of accounts:

- The AO made addition of Rs.7,37,948/- u/s. 68 on account of cash deposited into bank account of the assessee who is an agriculturist.
- The assessee held that cash deposited were from agricultural income & opening bal. of cash and the ROI is not filed as the TI is below the statutory limit.
- Assessee confirmed that as an agriculturist he had not maintained books of accounts.
- The ITAT held that mere possession of passbook cannot be treated as books of accounts & addition u/s. 68 is unsustainable.

[Sh. Satbir Singh Bhullar Vs ITO- ITA No.258/Asr/2022]

ITAT deletes addition of cash deposits during demonetization period:

- During the demonetization period, the assessee made cash deposits to bank account which were already reflected in P&L as cash sales.
- The Assessee contended that it had consistently maintained branch-wise cash books, details of sales, stock registers, filed VAT returns and had provided a summary of cash availability & turnover.
- The AO passed the order to treat such deposits as unexplained cash credits u/s. 68.
- The ITAT held that assessee has provided substantial information & such addition would amount to double taxation once as sales & again as unexplained credit and hence the addition deleted.

[1. DCIT Vs M/s. Kundan Jewellers P.Ltd- ITA No.1035/Mum/2022

2. ACIT Vs Himachal Fibres Limited- ITA No. 927/Del/2023]

No Addition u/s. 68 if genuineness, identity & creditworthiness of creditors proved:

- AO treated unsecured loans as unexplained credits u/s. 68 and passed order u/s. 143(2).
- Assessee submitted bank statements, ledgers, PAN, Confirmation from lenders and other necessary documentary evidences.
- ITAT held that loans were clearly visible in bank statements and assessee proved the genuineness, identity & creditworthiness of the transaction, directed the AO to delete the addition.

[1. Vachitra Builders P.Ltd Vs ITO- ITA No. 8148/DEL/2019

2. DCIT Vs Shri Jayesh R. Thakkar – ITA No. 3407/Ahd/2015]

Addition u/s. 68 merely based on suspicion without cogent evidence:

- Assessee claimed exemption u/s. 10(38) on Long Term Capital Gains from sale of equity shares for the A.Y. 2014-15. (Not in effect now)
- AO held that assessee with the help of brokers, entry operators worked out an arrangement in which share prices were rigged and sold at a higher price to arrive at tax free LTCG u/s. 10(38).
- Thus, AO made entire sale proceeds as unexplained taxable income u/s. 68.
- ITAT held that addition by AO merely on the basis of suspicion is unsustainable.

[Abhishek Doshi Vs ACIT- ITA No. 3122/MUM/2022]

Addition u/s. 68 unjustified as Trade payable duly explained:

- The AO has made addition towards trade payables u/s. 68 as there is an increase in Trade Payables compared to previous year.
- The Assessee received funds from one company and paid the same to other companies through banking channels which were properly accounted in the books.
- The ITAT held that additions u/s. 68 is unjustified and liable to be deleted, hence quashed the order passed by AO.

[ITO Vs Shri Mahalakshmi Metal- ITA No. 179/Chny/2020]

Addition u/s. 68 unsustainable as revenue failed to discharge its onus:

- Assessee admitted loan of Rs.16.47 lacs which was received through banking channel & filed address of lender along with confirmation letter.

- There were cash deposits in lender's bank account & immediately thereafter cheque was issued in favour of assessee.
- AO held that assessee's own undisclosed cash brought in the guise of loan & also it is not possible for a company with turnover of Rs.3.95 lacs to advance huge loan, hence added as income of the assessee.
- ITAT held assessee discharged its primary onus, further onus was on the revenue to make further enquiry & turnover alone cannot be considered as source of loan
- Addition u/s. 68 couldn't be sustained.

[Sasi Enterprises Vs DCIT- ITA No. 843/Chny/2018]

Addition u/s. 69 unjustified on Late demonetisation cash deposit

- AO made addition of Rs. 35 Lakhs u/s. 69 due to delay in depositing cash during demonetisation.
- Assessee submitted cash flows from FY 2011-12 to 2016-17 & month-wise cash deposits.
- ITAT found that AO & CIT failed to adequately respond to these submissions and the assessee is a farmer with no other significant sources of income.
- ITAT concluded that "delay in deposit cannot be a valid basis for addition" and directed the AO to delete such addition.

[Rajkumar Vs ACIT- ITA No. 378/DEL/2021]

Addition u/s. 69 untenable as source of investment duly explained

- The AO has made the entire credits in bank account as unexplained investment u/s. 69
- The Assessee engaged in the business of real estate & no other substantial income and the credits in bank account represents gross receipts of the assessee.
- The ITAT concluded that addition u/s. 69 towards unexplained investment untenable as source of investment stands sufficiently explained.

[DCIT Vs Sukhbir Shokeen- ITA No. 1477/DEL/2020]

No Addition u/s. 69 in case of investments out of past savings:

- The AO has made addition u/s. 69 on account of credit of Rs. 10 Lakhs reflected in the bank a/c of assessee.
- The Assessee was staying in a village and she had never been in a taxpayer category

- Assessee held that whatever saved from agricultural activity and husband's salary throughout life had been deposited.
- The ITAT concluded that she had not made any unexplained investment and investments out of past savings or loans taken from relatives cannot be made as addition u/s. 69.

[Anjali Roy Vs ITO- ITA No. 516/KOL/2022]

Addition u/s. 69C unsustainable as nature and source explained:

- During the course of search, AO found refund documents wherein the trust has paid excess salary to employees by cheque and received back such excess in cash.
- Office assistant of the trust stated that such refund money has been spent for day-to-day expenses.
- AO rejected arguments of the assessee and made additions towards refund money as unexplained expenditure u/s. 69C since expenditure incurred outside the books.
- ITAT stated that source of money and nature of expenditure is very clear, hence the question of making additions towards refund money as unexplained expenditure u/s. 69C does not arise.

[Jeppiaar Educational Trust Vs ACIT- ITA No. 480,481,482&483/Chny/2023]

Addition made u/s. 69A due to non-filing of ROI

- AO added cash deposits of Rs. 10,00,000/- to the income of Assessee as unexplained money u/s. 69A due to non-filing of ROI for the A.Y. 2017-18.
- The firm was dissolved on 31.03.2003 itself. But due to inadvertent mistake PAN of Partnership firm still exists in Bank Account after necessary application was made to change the PAN.
- Assessee was carrying on business in the same name as a proprietorship concern & the deposits were duly declared in its ROI.
- The AO rejected the contention of Assessee that cash deposits were made out of cash withdrawals from same bank account.
- The Assessee appealed against the order passed by AO.
- Looking into the facts that order passed against the non-existing entity & also rejecting the responses of assessee, the ITAT directed the AO to delete the impugned addition.

[M/s. Kishan Singh & Associates Vs ITO- ITA No.1688/DEL/2021]

Calculating Tax u/s. 115BBE the sums which are not taxable under Sections 68 to 69D:

- The AO has taxed u/s. 115BBE the delayed deposits of employee's contribution to PF & ESI to the total income of assessee.
- The Assessee appealed & contended that Sec. 115BBE applies only when sections 68 to 69A are invoked.
- The ITAT directed the AO to delete the addition as the case does not come under the mandate of Sec. 115BBE.

[M/s. Apcer Life Sciences India P. Ltd Vs. NFAC Delhi- ITA No. 2882/Mum/2022]

115BBE Amendment cannot be applied to search conducted prior to effective date (01.04.2017)

- Assessee treated excess stock found during search conducted on 16.08.2016 as "Business Income" and paid tax at normal rates.
- AO treated such stock as "Unexplained Investments" u/s. 69B and applied amended provisions of sec. 115BBE tax @ 60%
- ITAT held that addition made by AO by invoking sec 115BBE is unsustainable as it came into force only on 01.04.2017 & allowed the appeal.

[Samir Shantilal Mehta Vs ACIT- ITA No.42/SRT/2022]

Set off of loss denied to invoke section 115BBE:

- The AO disallowed set off of carry forwarded losses by way of invoking the provisions of section 115BBE. AO did not disallow in the assessment order u/s. 143(3) but added in subsequent proceedings u/s. 154.
- AO did not make any addition u/s. 68 to 69D, therefore there was no question of disallowance of set off of losses.
- The A.Y. involved was 2013-14 & the provisions of denial of set off of losses in respect of income u/s. 68 to 69D introduced vide Finance Act, 2016.
- Based on these grounds, the ITAT Chandigarh directed the AO to allow set off of losses.

[M/s. Mahaluxmi Food Industries Vs. ITO- ITA Nos.711/CHD/2022]

Addition made by using Third party statements without allowing cross examination:

- The AO issued notice u/s. 148 without proper enquiry before issuing notice.
- The Assessee proved the source of cash deposit in his bank account.

- The AO rejected the contention of the assessee and made addition u/s. 68 by not allowing the opportunity of cross-examination of a third person.
- The revenue has not pointed out any defect in the documentary evidence submitted by the assessee.
- The ITAT held that third-party statements cannot be used against the assessee unless and until the opportunity of cross-examination is afforded to the assessee, which was not followed by the revenue and deleted the addition.

[1. Shiv Charan Vs. ITO- ITA No. 6003/Del/2017

2. DCIT Vs. Shri Jayesh R. Thakkar – ITA No. 3407/Ahd/2015]

No Addition u/s. 68 if amount does not appear in books:

- The AO made addition u/s. 68 where no such income was credited in the books of account maintained and audited.
- The Assessee neither earned nor received such interest income during the year and no TDS has been claimed.
- The ITAT held that addition made u/s. 68 is not sustainable, if amount doesn't appear in the books of account.

[Balaji Tirupati Buildcon Ltd., Vs. ITO- ITA No. 7582/Del/2019]

Purchase & Sale of shares through demat account cannot be declared as unexplained income u/s. 68:

- The Assessee submitted that shares purchased and sold through a registered stock broker.
- The shares have entered and exited the demat account of the assessee, further all the transactions have been carried out through proper banking channel.
- The AO did not agree with the submissions and declared the sale value as unexplained income u/s.68.
- The ITAT dismissed the appeal filed by the revenue that AO was not justified in assessing the sale value.

[ITO Vs. Sanjay Mahabir Maheshka - ITA No. 6168,9/Mum/2019]

Purchase reflected in books cannot be treated as unexplained income:

- The AO treated purchase of jewellery as unexplained investment u/s. 69 and sale of shares as unexplained cash credit u/s. 68.
- The Assessee submitted that these transactions were reflected in the books of account and payment was made through proper banking channel.

- The ITAT allowed both the appeals filed by the assessee and set aside the order passed by AO.

[Vimal Kishore Shah Vs. ITO - ITA No. 1498/Mum/2023]

No addition u/s 69 for cash withdrawal & redeposit in unsuccessful property deal:

- The AO made addition of Rs. 2.9 Crores u/s. 69 on the grounds that assessee failed to explain cash deposits & withdrawals.
- Assessee held that deposits comprised transfer from his grandfather's bank account, withdrawal for property purchase & redeposit when property deal failed.
- The ITAT held that the authorities did not take into the evidences presented & treated the addition as unjustified.

[Inderjeet Vs. ITO - ITA No. 2646/Del/2018]

Addition u/s 69C based on dumb documents is unsustainable:

- The AO made addition u/s. 69C based on the documents found during search and seizure in the office premises of the Assessee.
- AO said that all the distilleries of the assessee were contributing certain cash being used as bribe to pay certain public servants/bureaucrats/politicians.
- ITAT held that these documents are only having hearsay value or the documents are dumb which cannot be relied upon and not sustainable in law.

[DCM Shriram Industries Vs. DCIT - ITA No. 374/Del/2015]

Assessment of surrendered income as unexplained u/s. 69 is invalid:

- The AO interpreted the voluntary surrender of Rs. 30 Lakhs during the survey which is spent for construction of building as unexplained income u/s. 69.
- Further levied tax @ 60% u/s. 115BBE.
- Assessee has paid due taxes @ 30% on the voluntarily surrendered amount.
- ITAT held that voluntary surrenders should not be misconstrued without concrete proofs and invocation of this section was inapplicable.

[Jaspreet Singh Mauj Vs. DCIT/ACIT - ITA No. 755/CHD/2022]

ITAT deletes addition u/s. 69B as it cannot be proved that crane purchased from undisclosed income:

- AO made addition u/s. 69B (investments etc., not fully disclosed in books) due to unexplained difference between agreement price and book value.
- Assessee claimed that the exaggerated cost in the agreement aimed to secure a higher banking loan facility.
- ITAT addition u/s. 69B was unjustified, as it could not be proven that purchases were made from undisclosed income.

[KVR Infra Vs ACIT – ITA No. 323/MUM/2023]

ITAT deletes addition of cash deposits as unexplained cash credits u/s. 68:

- Assessee is an NRI who has not filed the return of income, deposited cash into bank account. She submitted that such deposits were cash withdrawals from previous years.
- The cash deposits were added as unexplained cash credits u/s. 68 and penalty u/s. 271(i)(c) [100% of Tax evaded] was separately initiated for concealment of income.
- ITAT concluded that there is no reason to make addition in the hands of assessee, as the assessee is able to demonstrate cash withdrawal and availability of cash out of such withdrawal.

[Smt. Madhuvalli Vs ADIT – ITA No. 294/Hyd/2023]

No Addition u/s. 69A if all possible evidences are available with the assessee in support of its claim:

- AO issued notice u/s. 142(1) and another SCN, calling for details of cash deposited into bank account during demonetization period.
- In response to the notices, assessee stated that the source was cash withdrawal from bank and capital withdrawal from LLP where he is a partner and submitted cash book & cash flow statement.
- However, AO rejected the contention of assessee and treated such deposits as unexplained money u/s. 69A.
- ITAT stated that when assessee has all the possible evidences, they cannot be brushed aside based on surmises and guesswork and deleted the addition made by AO.

[1. Hasmukh Kanjibhai Tadhani Vs ITO – ITA No. 19/SRT/2023

2. S. Tulasidoss Nedunselian Vs ACIT – ITA No. 466 & 472/Chny/2020]

ITAT directs AO to accept 50% Demonetized Currency as Sale Proceeds:

- The Appellant is a wholesale distributor of ITC products, deposited specified bank notes of Rs. 1.30 Crores during demonetization period.

- AO initiated scrutiny and contended that appellant should not have accepted demonetized currency after the specified date notified by Govt.
- Since the appellant is a distributor & primarily deals with cash transactions, ITAT directed the AO to accept 50% of cash deposits as sale proceeds and remaining 50% as unexplained money.

[J. Kalappa Naidu Sons Vs ITO– ITA No. 252/Chny/2023]

50 times higher assessment without considering request of petitioner for personal hearing, HC quashed Order:

- Additions were made under sections 68, 69A, 145(3), 36(1)(iii)
- The Assessee made request for personal hearing through video conferencing more than four times.
- Such request has not been granted and the NeAC completed the assessment by rejecting the books and made additions 50 times more to the income under SCN.
- The HC quashed the order, allowing the NeAC to issue fresh notice, directing adherence to proper procedures and the opportunity for a personal hearing.

[Margita Infra Vs National E-Assessment- Centre Delhi– R/Special Civil Application No. 15756 of 2021]

No Addition u/s. 68 in absence of actual receipt of money and for accounting mistake:

- The AO made addition u/s. 68, believing that there was a mismatch between the sum received by assessee and amount confirmed by party.
- Assessee explained that his accountant committed an error by wrongly crediting the same party's ledger instead of crediting another party.
- The explanation given by assessee that it was an accounting error was not accepted by the AO.
- ITAT held that differences in accounts were due to an accounting error and there is no actual receipt of money, hence the question of making addition u/s 68 will not arise.

[Mehboob Amirali Kamdar Vs ITO – ITA No. 1969/Mum/2023]

Addition u/s. 68 based on Retracted Statement unsustainable:

- The Assessee received share application money from a company which is engaged in providing accommodation entries.
- AO found that share application money and premium does not satisfy the test of genuineness, creditworthiness, and identity even though assessee has submitted necessary documents.

- AO failed to make enquiries and relied only on key person's statement which was retracted subsequently.
- ITAT held that addition u/s. 68 merely based on statement of the key person which was retracted subsequently unsustainable as genuineness, identity and creditworthiness proved.

[ITO Vs AMS Trading and Investment Pvt. Ltd., – ITA No. 1863/Mum/2021]

No addition u/s. 69 in the hands of assessee who had not entered into agreement in personal capacity:

- Payment made by shareholder on behalf of the company was treated as unexplained investment based on the collaboration agreement and nature of payments made by assessee.
- The agreement was made between two companies and investigation should have been conducted with two companies.
- The said agreement was signed by the assessee on behalf of the company, not in assessee's personal or individual capacity.
- ITAT concluded that no addition u/s. 69 should have been made in the hands of assessee, as he had not entered into any agreement in his personal capacity and deleted the addition.

[JCIT Vs Ajay Sharma – ITA No. 1257/Del/2022]

Section 68 addition can be made only in the Assessment year of receipt:

- The assessee filed a 'NIL' return of income for the A.Y. 2012-13.
- Subsequently, the AO issued a notice under section 143(2) to scrutinize the accounts. During the assessment, it was revealed that the sum of Rs. 1,00,00,000 had been credited to the assessee's account on April 1, 2011.
- Assessee presented crucial evidence that they had received the money in the financial year 2010-11, which was relevant to the assessment year 2011-12.
- The tribunal examined the evidence and clarified that they had indeed received Rs. 1,00,00,000 via RTGS in the financial year 2010-11, relevant to the assessment year 2011-12.
- The tribunal agreed that the assessee was responsible for explaining the cash credit of its predecessor or amalgamated company in the assessment year 2011-12, not in 2012-13.
- The tribunal allowed the appeal and deleted the addition.

[Shaktigarh Textile and Industries Ltd. vs. DCIT – ITA No. 848/KOL/2023]

Addition u/s 69A towards excess jewellery found unsustainable as assessee belonged to wealthy family:

- AO conducted a search and seizure operation under Section 132 of the Income Tax Act, 1961, at the residential premises of the assessee. During the search proceedings, gold jewellery were found.
- The assessee could not explain the source of this jewellery found during the search.
- AO made addition under Section 69A of the Income Tax Act for excess jewellery found during a search operation was unsustainable.
- In its conclusion, the ITAT Delhi referred to a similar case, where it was held that when the Assessing Officer makes an addition under Section 69A due to jewellery found in a search of the assessee, and the assessee belongs to a wealthy family and received jewellery on occasions from relatives, excess jewellery is reasonable. Consequently, no addition under Section 69A is warranted.
- The ITAT Delhi directed that the addition made in this case be deleted.

[Ankit Sharma vs DCIT (ITAT Delhi) - ITA No. 1842/Del/2022]

Gifts received in shape of cash “Shaguns” on various occasions kept in Locker shall not be treated as Unexplained Money u/s 69A of Income Tax Act:

- The assessee, had a locker that was discovered during a survey carried out at “U&I Vaults Pvt. Ltd.”
- During the search, cash was found and seized from locker.
- In the absence of any justification or documentary evidence regarding the source of the cash found in locker, it was treated as unexplained money and added to the total income of the assessee under Section 69A of the Income-tax Act, 1961.
- Aggrieved by the order, the assessee filed an appeal before the CIT(A), who confirmed the addition.
- Thus, the assessee filed a second appeal before the tribunal.
- After reviewing the facts and records, the two-member bench, deleted the amount found in the locker during the survey proceedings and held that gifts received in the form of cash shaguns on various occasions like marriages, birthdays, and anniversaries should not be treated as unexplained money under Section 69 of the Income Tax Act.

[ITAT vs Jasmine Anand & Jaswinder Kaur Anand - ITA Nos. 1145 & 1146/Del/2021]

No addition u/s 69A on the basis of statement recorded during survey if there was no supporting evidence:

- Assessee-firm was in the real estate business as a builder and developer.
- It filed a revised return of income declaring a total income of Rs. 79,89,053.
- Department had earlier carried out survey action under Section 133A in the hands of the assessee.
- During the course of survey, a statement was recorded in which assessee had agreed to surrender a sum of Rs.4.23 crores for taxation over and above regular profit.
- AO noticed that the assessee did not offer the above said amount as mentioned in the statement.
- According to assessee, AO had computed the addition in respect of unsold flats also, which was not in accordance with law. AO did not conduct any independent enquiry with the buyers of flats in order to ascertain the cash payments made by them.
- All the facts cumulatively prove that AO has made the impugned addition without any basis.
- When there was no basis for arriving at the conclusion that assessee had received any on-money, addition was not justified as held by Hon'ble Supreme Court in the case of PCIT vs. Nishant Construction (P) Ltd (2019)

[DCIT Vs Parshwa Associates (ITAT Mumbai) - ITA. No. 2584/Mum/2022]

High share premium not correct test for section 68 addition:

- AO imposed additions on assessee under Section 68 of the Income Tax Act based on charging a high premium.
- The court emphasized the triple test that an assessee needs to satisfy: identity, creditworthiness, and genuineness of the transaction.
- The court criticized the Assessing Officer for focusing on the high premium without conducting further inquiries into the details of cheque payments. The court reiterated that charging a high premium is not the correct test for making additions under Section 68.

[ACIT Vs Montage Enterprises Pvt. Ltd. (Delhi High Court) - ITA 734/2019]

Section 69B requires evidence, not conjectures:

- The AO noticed discrepancies in the sales bills and sale ledger, suggesting improper accounting of sales and made addition under Section 69B of the Income Tax Act.
- However, there was no instance of non-recording of sales by the assessee.
- The ITAT found that the AO's addition was speculative and lacked proper justification.
- The ITAT concluded that the addition was unjustified and ordered its deletion.

[Babusona Mondal Vs DCIT (ITAT Kolkata) - I.T.A. No. 749/KOL/2023]

Addition u/s 69B merely based on statement without corroborative evidence unsustainable:

- The appellant is a Private Limited Company, filed its return of income admitting Nil total income.
- The appellant company had purchased the property from M/s. Premier Roller Flour Mills Ltd., for a consideration of Rs. 24 crores, and the sale deed was executed for Rs. 12 crores only.
- AO concluded that the evidence clearly shows that the appellant company had paid additional consideration of Rs. 12 crores on or before the registration of the property and thus, rejected explanation furnished by the assessee and made additions of Rs. 6.15 crores as unexplained investment u/s. 69B of the Act.
- CIT(A) sustained additions made u/s. 69B of the Act, towards unproved amount paid for purchase of property.
- Being aggrieved, the assessee made an appeal to ITAT
- Thus, ITAT ordered to set aside the order passed by the Id. CIT(A) and direct the Assessing Officer to delete additions.

[ARRS Megamall P. Ltd. Vs DCIT (ITAT Chennai) - ITA No.: 311/Chny/2023]

Sections 115BBE not applicable to income not falling under section 69A:

- The Assessee is a resident individual, underwent a search and seizure operation under Section 132 of the Income Tax Act.
- During this operation, a document was found, indicating an amount of Rs. 30.20 crores with the notation "Com Trade."
- Assessee claimed that this amount represented profits from offline commodity trading.
- Consequently, he voluntarily surrendered this amount as income for the assessment year 2017-18 and duly paid the taxes.
- During the assessment proceedings, the Assessing Officer characterized the surrendered income as unexplained money under Section 69A of the Act and applied the higher tax rate prescribed under Section 115BBE
- The Assessee appealed to CIT(A) who ruled in his favour, stating that the income surrendered should not be treated as falling under Section 69A, and hence, the normal tax rate would be applicable
- The ITAT upheld the decision of the Commissioner (Appeals), emphasizing that the income surrendered by Assessee cannot be treated as unexplained money under Section 69A.

[DCIT Vs Tapesh Tyagi (ITAT Delhi) - ITA No. 1344/Del/2021]

Addition u/s 68 towards unexplained cash credit based on presumptions & conjectures unsustainable:

- The assessee is engaged in the business of share trading and also earn commission income.
- AO found that the assessee has not filed the return of income and therefore has a reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act.
- The assessee has earned a profit of Rs.73,586/- and similarly incurred Loss of Rs.42,138/-and after claim of setoff of loss with the short-term capital gains, the net income of Rs.31,448/- was offered for taxation.
- AO observed that there is a no correlation of the price rise and fall of the share price and was not satisfied with the explanations and material information
- Came to a unilateral conclusion that transactions are not genuine and made addition of short-term capital gains as unexplained cash credit u/sec 68 of the Act of Rs.73,586/- and rejected the short term loss earned of Rs.42,138/-.
- ITAI held that the AO has not conducted any independent investigation and made additions on presumptions and conjectures.
- And dismissed the grounds of appeal of the revenue.

[ITO Vs RajendraHastimal Mehta (HUF) (ITAT Mumbai) - ITA No. 2400/Mum/2023]

Addition u/s. 68 purely based on assumption is unsustainable in law:

- The assessee is engaged in the business of reporting and monitoring as agencies as well as deriving income from purchase and sale of share and securities.
- AO reopened the assessment by issuing a notice u/s 148, for assessing the income escaped assessment on account of bogus transaction of purchase and sale of shares.
- In response the assessee filed return declaring the same income as it was declared in the original return of income.
- The AO completed the assessment u/s 147 r.w.s. 144 of the Act, whereby an addition u/s 68 of the Act was made to the tune of Rs. 2,09,239/- being bogus long term capital gains.
- ITAT held that once the assessee has denied the alleged transaction and it is also not found recorded in the books of accounts including the Dmat account of the assessee maintained by the Banks.
- Then the addition made by the AO is purely on the basis of assumption as reported in the communication received from the Investigation Wing
- ITAT ordered to delete the addition.

[Himanshu Botadara Vs ITO (ITAT Indore) - I.T.A. No. 155 & 156/Ind/2023]

Section 68: cash receipts from jewellery sales not unexplained cash credits:

- The assessee is engaged in the trading of gold and jewellery, filed its return for the assessment year 2017-18, admitting a total income of Rs. 15,36,890.
- The ITO, through notices and summonses, sought information from various banks, discovering cash deposits totalling Rs. 48,80,73,000 during demonetization.
- The assessee contended that the source of cash deposits was advances received from customers for a gold scheme, recorded in its books of accounts.
- It claimed a cash balance of Rs. 48,82,75,750 as of the demonetization date, originating from sales declared before the event.
- The ITO treated the total cash receipts as unexplained cash credit under Section 68 of the Act.
- The ITAT meticulously examined the case, emphasizing two key aspects. Firstly, it clarified the distinction between cash credits and cash receipts, asserting that trade advances, subsequently converted into sales, couldn't be assessed under Section 68.
- Secondly, it scrutinized the ITO's rejection of the assessee's explanation regarding the source of cash deposits. The ITAT found that the assessee, through bank statements and cash books, demonstrated substantial cash withdrawals preceding the demonetization period.

[ITO Vs Sahana Jewellery Exports Pvt. Ltd. (ITAT Chennai) - ITA No.999/Chny/2022]

Section 68: Treating Deposit of normal currencies as SBNs during demonetisation period cancelled by ITAT – ITA 1210/CHNY/2023:

- Cash was deposited to the tune of Rs. 26,49,300/- from 09.11.2016 to 31.12.2016 and the ITO treated a sum of Rs. 18,91,407 as unexplained cash credit u.s. 68 after adjusting opening balance, even though the SBNs deposited were below the opening balance in spite of assessee producing documentary evidence being pay-in-slips of the bank with denomination of currencies deposited.
- The ITO had not received reply from the Bank for the notice calling for the details of deposit made by the assessee while passing the order on 28.12.2019. On receipt of the statement of account from Bank by the Department as well as by the assessee, the assessee filed a rectification petition on 06.01.2020, which was not attended to at all.
- The Assessee filed an appeal before CIT (Appeals), who without looking into the statement of account given by the Bank, wherein the deposit SBNs were termed as OHD (Old Higher Denomination), endorsed the order passed by the ITO.
- On appeal by the assessee the ITAT deleted the addition of Rs. 18,91,407/- by considering the statement of account given by the Bank

[Lakshmanan Meenakshi vs. ITO (ITAT Chennai) - ITA 1210/CHNY/2023]