



THE CHAMBER OF TAX CONSULTANTS

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ISG ON DIRECT TAX MEETING ON 23.04.2018

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DEMONETISATION – Tax and Legal Issues

1. Cash deposit in bank account.

1.1. Section 68 – Cash Credits

Amounts credited in the books of accounts of the assessee, the nature and source whereof is not satisfactorily explained by the assessee. w.e.f. assessment year 2013-14 a proviso is inserted, a closely held company has received share application, share capital, share premium....in such case, source of source is also required to be explained to the satisfaction of the AO.

1.2. Section 69 – Unexplained Investment

Amount of investments made by the assessee, which are not recorded in the books of account, and source whereof is not satisfactorily explained.

1.3. Section 69A – Unexplained Money, etc.

Money and the value of the bullion, jewellery or other valuable article of which assessee is found to be the owner and which is not recorded in his books of account and the assessee offers no explanation about the nature and source of such money, bullion jewellery or other valuable article or the explanation offered by the assessee is not in the opinion of the AO satisfactory.

1.4. Section 69B – Amount of Investment, etc., not fully disclosed in books of account

Amount of investment, bullion, jewellery or other valuable article not fully recorded in the books of account.

1.5. Section 69C – Unexplained expenditure, etc

Amount of expenditure incurred for which source is not explained satisfactorily.

1.6. Section 69D – Amount borrowed or repaid on hundi.

Amount borrowed or repaid on a hundi

2. The Taxation Laws (Second Amendment) Act, 2016

2.1. Amendment to Section 115BBE by

2.1.1. Statement of Objects & Reasons by Finance Minister Arun Jaitley on 26th November, 2016 on The Taxation Laws (Second Amendment):

- Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programs. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage. As a step forward to curb black money, bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as specified bank notes) issued by the Reserve Bank of India have been ceased to be legal tender with effect from the 9th November, 2016.
- Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision

2.1.2. Section 115BBE

(1) Where the total income of an assessee,—

- a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D **and reflected in the Return of Income furnished under section 139**; or*
- b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a), the*

income-tax payable shall be the aggregate of—

- i. the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of **sixty per cent.**; and*

- ii. *the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i). ”*

Tax on income referred to in section 68, 69, 69A, 69B, 69C or 69D whether included in ROI or added by AO – tax rate 60% (from existing 30%)

Further, Finance Act 2017 provides for a surcharge on such income at 25% of tax.

So the effective rate becomes 77.25% (with 3% Education Cess)

2.1.3. Whether applicable for entire F.Y. 2016-17?

Legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.

CIT v. Vatika Township (P.) Ltd.
[2014] 367 ITR 466 (SC).

2.1.4. No set off of any loss against income u/s 68/69/69A/69B/69C.

2.2. AMENDMENTS IN SECTION 271AAB

PENALTY IN CASE OF SEARCH.

BEFORE 15.12.2016	AFTER 15.12.2016
A sum computed @ 10% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4)	A sum computed @ 30% of the undisclosed income of the specified previous year in case assessee admits the undisclosed income in statement u/s 132(4)
A sum computed @ 20% of the undisclosed income of the specified previous year in case assessee does not admit the undisclosed income in statement u/s 132(4) but admits in the ROI	A sum computed @ 60% of the undisclosed income if not covered in the above provisions
A sum computed @ 60% of the undisclosed income if not covered in the provisions of clause (a) & (b)	A sum computed @ 60% of the undisclosed income if not covered in the above provisions

2.3. New Section 271AAC inserted by

Penalty in respect of income u/s 68 to 69D.

Effective from 01.04.2017.

AO can levy penalty for income determined in respect of the specified sections.

- Penalty at 10% of the tax covered u/s. 115BBE – Surcharge not included for penalty
- No Penalty where :
- Income is included in the Return of Income furnished u/s. 139 and
- Tax as per section 115BBE is paid on or **before the end of the relevant previous year**
- Section 271AAB and 271AAC are mutually exclusive
- No Penalty u/s. 270A for the same income
- Provisions of section 274 and 275 to apply as applicable
- Income offered in Return u/s. 139 and Tax paid before the end of the financial year – Tax 60% + 15% + 2.25% = 77.25%
- Income offered in Return but not covered by Advance Tax - 60% + 15% + 2.25% = 77.25% + Penalty 6% = 83.25%
- Income not offered in Return but assessed by AO - 60% + 15% + 2.25% = 77.25% + Penalty 6% = 83.25%

2.4. Restrictions on Cash Transactions and related penalties.

2.4.1. Incentive for cashless small businesses.

In respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub- section (1) of section 139 in respect of that previous year, the presumptive income shall be 6% of such turnover.

Effectively:

6% for turnover through banking channels and

8% for balance turnover.

Effective from AY 2017-18

2.4.2. Cashless economy

New section 269ST inserted w.e.f 01-04-2017.

- No person shall receive an amount of Rs. two lakh or more-
(a) in aggregate from a person in a day; or

- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person

Otherwise than by A/c Payee cheque or an account payee bank draft or ECS

- Section not applicable to :
 - any receipt by Government / Banking company / post office savings bank or co-operative bank
 - Transactions covered by 269SS
 - Notified persons or notified receipts
 - withdrawal from banks, cooperative bank and post office savings bank (as per press release dated 5th April 2017).

2.4.3. TCS

- In view of introduction of section 269ST, TCS on cash sales of jewellery exceeding Rs. 5 lacs or other goods exceeding Rs. 2 lacs has been Removed.
- TCS on sale of motor vehicle of the value exceeding Rs. 10 lacs continues.
- Effective *from AY 2018-19*

2.4.4. Penalty for contravention of provisions of section 269ST – 271DA

- Penalty equal to the amount of receipt.
- Penalty to be imposed by the Joint Commissioner.
- No penalty if such person proves that there were good & sufficient reasons for contravention.
- 273B – reasonable clause not to apply to 271DA.

2.4.5. Rule 114E **Furnishing of statement of financial transaction**

Sr No.	Nature and Value of Transaction	Class of Person(reporting person)
i.	Cash deposit during the period 09.11.16 to 30.12.16 aggregating to-	
	(i) Twelve lakh fifty thousand rupees or more, in one or more current account of a person; or	i.) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies;

	(ii) Two lakh fifty thousand rupees or more, in one or more accounts (other than a current account) of a person.	ii.) Post Master General as referred to in clause (j) of Section 2 of the Indian Post Office Act, 1898
ii.	Cash deposits during the period 01.04.16 to 09.11.16 in respect of accounts that are reportable as above	i.) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies; ii.) Post Master General as referred to in clause (j) of Section 2 of the Indian Post Office Act, 1898

2.4.6. Notification F.no. 225/391/2017 dated 24-11-2017

CBDT issues directions for scrutiny assessment in case of revised ITRs filed post demonetisation

Revision of Income-tax return (ITR) is allowed only if any omission or wrong statement is noticed therein by the assessee. Such omission or wrong statement may have occurred due to a bonafide and inadvertent error or a mistake on part of assessee.

However, post demonetisation period, it was found that some of the assesseees tried to build an explanation for cash deposits in their bank accounts by manipulating their books of accounts and filing revised or belated ITRs.

Filing revised or belated ITRs just to build an explanation for cash deposits in bank account becomes questionable and, therefore, the transaction disclosed in it which are over and above the original return are liable to be taxed under anti-abuse provisions of the Income-tax Act.

2.4.7. AOs directed to take care of following issues:

- The claim of enhanced sales may be compared with Central Excise/VAT returns,
- Parties to whom additional sales made have claimed must have identity, creditworthiness and transaction must be genuine.
- Omission or wrong statement in the original return must be pointed out by the auditor in case the accounts had been subjected to tax audit.
- Source of cash in hands of the person who made payments to the assessee has to be verified carefully.
- Any manipulated receipts or sale is liable to be taxed as cash credit under section 68 and not merely on net profit basis.
- Unaccounted income so assessed in scrutiny assessment is liable to be taxed at higher rate without any set-off of losses, exp., etc., under section 115BBE

2.4.8. Operation Clean Money launched on 31-1-17

Purpose

- Strengthening Data Collection Mechanism
- Focused Enforcement Actions
 - Banks were required to file information by way of Statement of Financial Transactions (SFT)
 - Deposit in current a/c. exceeding 12.50 Lakhs
 - Deposit in other accounts exceeding 2.50 Lakhs
 - In Preliminary Assessment about 17.92 Lakh persons were identified for verification purpose

Online verification of Cash Transactions was required giving details about the source of cash deposits

- Major Sources of Cash Deposits
 - Cash Sales
 - Cash out of earlier Income or Savings
 - Other Cash Receipts
 - Cash out of receipts exempt from tax
 - Cash withdrawn out of bank account
 - Loan Repayment in cash
 - Others

Enforcement Actions taken including searches and surveys

- Modus Operandi identified like
 - Cash Deposits by bullion traders & Jewellers
 - Cash deposits by petrol pumps
 - Cash deposits by Traders –backdating of sales
 - Contractors and Real Estate developers
 - Government Employees
 - Irregularities by Co. Op. Banks and Societies
 - Cash deposits through shell companies

OCM Status Report

- Excessive cash sales but no business income in the earlier years
- Excessive cash sales as compared last year turnover
- Excessive cash sales considering the nature and size of business
- Cash claimed to have been received from unidentified person either for sales / loans / repayment of loans/ gifts
- Implication of section 269SS/ 269T/ 56 etc.
- Cash claimed to be received as donation from unidentified persons
- Anonymous Donation

- Cash received from identified persons but without PAN
- Cash claimed out of earlier year income or savings but no Return is filed for earlier years
- Cases where Revised Returns were filed for earlier year showing higher incomes
- Cash claimed out of earlier year but not sufficient cash available as on 31-3-2016.

3. Some Precedents

CASE 1

- Onus is on assessee to prove positively source and nature of an amount received by him in accounting year, and if he fails to discharge that onus, income-tax authorities are entitled to draw an inference that amount received was of an income nature.
- Where assessee not having satisfactorily proved source and nature of amount which he encashed on demonetisation, revenue authorities were perfectly justified in drawing an inference that said sum was of an income nature.

Chunilal Rastogi vs. CIT [1955] 28 ITR 341 (Pat.)
Anil Kumar Singh vs. CIT [1972] 84 ITR 307 (Cal.)
M. L. Tewary vs. CIT [1955] 27 ITR 630 (PAT.)

CASE 2

- Where amount encashed on demonetisation was part of cash balance in the books of account, AO cannot disbelieve a part of such cash balance as being not of specified denominations, when the books are not rejected.

Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288(SC).

CASE 3

- When assessee submitted books of account showing relevant entries showing payment being made to them which resulted in cash in its books and also submitted affidavits of payers, Revenue authorities cannot hold that it was not possible that all payments after a particular date were being made in multiples of Rs. 1000. No addition can be sustained based on pure surmise.

Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC).

CASE 4

- Where there was sufficient balance on date of deposit, Assessing Officer cannot make additions of part of amount for want of details of receipts of some of high denomination notes. There was no justification for adding a portion of amount tendered by assessee for encashment of high denomination notes as income of assessee from undisclosed sources for alleged failure of assessee to furnish source of acquisition of amount in such notes.

Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay)

Lakshmi Rice Mills vs. CIT [1974] 97 ITR 258 (Pat.)

CASE 5

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

Gur Prasad Hari Das vs. CIT [1963] 47 ITR 634 (All.)

CASE 6

- If the cash balance of the assessee-company was steadily increasing it would not be at all unreasonable to accept the explanation given by the assessee-company that, for the sake of convenience, the cash balance was being kept in high denomination currency notes. High denomination currency notes could be stored more easily and, at the time of accounting, they would have facilitated counting. Since the balance was increasing steadily, the assessee might not have felt it necessary to keep the balance in currency notes of low denomination.
- Such an explanation by assessee is not an unreasonable explanation.

Kanpur Steel Co. Ltd. v. CIT [1957] 32 ITR 56 (ALL.)

CASE 7

- Where the assessee did not maintain and hence did not produce any Home Chest Account though it was his case that the high denomination notes were savings from his personal allowance, there was no warrant for drawing an adverse inference.

- Assessee produced details of withdrawals for past 7 years, and claimed the amount encashed on demonetisation as to be out of savings from such withdrawals, such an explanation cannot be rejected by AO.

Sri Sri Nilkantha Narayan Singh vs. CIT [1951] 20 ITR 8 (Pat.)

CASE 8

Amount seized after the cut off date ?

Whether 'money' for the purpose of Section 69A?

- The expression 'money' has different shades of meaning. In the context of income-tax provisions, it can only be a currency token, bank notes or other circulating medium in general use, which has the representative value. Therefore, the currency notes on the day when they were found to be in possession of the assessee should have had the representative value, namely, it could be tendered as money, which has intrinsic value. When, the RBI refused to exchange the high denomination notes when they were tendered for exchange, they were only scrap of paper and they could not be used as circulating medium in general use as the representative value and, therefore, it could not be said that the assessee was in possession of unexplained money.

CIT vs. Andhra Pradesh Yarn Combines (P.) Ltd. [2006] 282 ITR 490 (Karnataka).

CASE 9

- Pass book supplied by the bank is not books maintained by the assessee and hence addition cannot be made u/s 68 in respect of credits in such pass book.

CIT v. Bhaichand N. Gandhi [1982] 141 ITR 67 (Bom.)

Smt. Manasi Mahendra Pitkar v. ITO [2016] 160 ITD 605 (Mumbai - Trib.)

CASE 10

- Where in respect of huge amount of cash deposited in bank, assessee failed to give list of persons who advanced cash to him along with their confirmation in respect of said cash credits, Assessing Officer was justified in adding said amount to assessee's taxable income under section 68.

Sudhir Kumar Sharma (HUF) v. CIT [2014] 46 taxmann.com 340 (Punjab & Haryana)

CASE 11

- **In Arunkumar J. Muchhala v. CIT [2017] 399 ITR 256, Bombay High Court distinguished the decision in CIT v. Bhaichand N. Gandhi [1982] 141 ITR 67 (Bom.)** by observing that non-production of the document is different from not maintaining the Books of Account. In that case, whenever a direction was given to produce the same in any form, it was replied by the Appellant that he wants time to prepare. Many opportunities were given by the Assessing Officer for the production of relevant documents including books of account in the form of ledger, balance sheet, etc. However, such documents were never produced. In that background Court followed the ratio in **Sudhir Kumar Sharma (HUF) v. CIT [2014] 46 taxmann.com 340 (Punjab & Haryana)**, discussed as above.

CASE 12

Books not maintained.

- Though section 68 of the Act may not be strictly applicable since the assessee was not maintaining any books of account and the bank statement cannot be considered as the assessee's books of account, on the basis of the judgment of the Supreme Court in the case of *A. Govindarajulu Mudaliar v. CIT* [1958] [34 ITR 807](#), it is the onus of the assessee to explain the cash received by him and if there is no explanation or acceptable evidence to prove the nature and source of the receipt, the amount may be added as the assessee's income on general principles and it is not necessary to invoke section 68, nor is it necessary for the income-tax authorities to point out the source of the monies received. Even if section 68 is not applicable, the cash deposit in the bank can be asked to be explained by the assessee under section 69 or section 69B of Act.

[Manoj Aggarwal v. DCIT [2008] 113 ITD 377 (DELHI) (SB)]

CASE 12

Cash as per Books of accounts – Cash not deposited in the banks – Whether the same can be claimed as Business Loss

- Section 5 of Specified Bank Notes (Cessation of Liabilities) Act, 2017, a person cannot hold, receive or transfer SBNs on and after 31st December, 2016.

- Embezzlement by Agent holding power of attorney to operate assessee's bank account – Loss due to embezzlement held allowable as Business Loss

Badri Das Daga Vs. CIT 34 ITR 10 (SC)

- Loss can be allowed on ordinary commercial principles of accounting even though it may not be covered under any specific section u/s. 30 to 43A

CIT vs. S.N.A.S.A. Annamalai Chettiar 86 ITR 607 (SC)