SECTION 69B – AMOUNT OF INVESTMENTS, ETC., NOT FULLY DISCLOSED IN BOOKS OF ACCOUNT

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Bare Act summary

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.

Essential conditions under section 69B

The provisions of section 69B is a deeming fiction. It can be invoked only when the following three conditions are satisfied :

(1) If it is found that the assessee has made investment or the assessee is found to be the owner of any bullion, jewellery, or other valuable article, and

(2) If it is found that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in that behalf in the books of account maintained by the assessee, and

(3) Either the assessee offers no explanation about such extra amount or the explanation offered by him is not satisfactory.

The above conditions are cumulative. If all these circumstances exist, the excess amount may be deemed to be the income of the assessee for the financial year in which the said investment was made or in which the assessee became the owner.

Rejection of account is not a mandatory condition

Sections 69 and 69B, of the Income-tax Act, make it clear that if the amount is not recorded in the books of account, even then it can be explained. But if the explanations are not satisfactory, then the amount can be held to be undisclosed income and not otherwise. However, the statement made in the books of account shall not alone be sufficient evidence.

Burden of proof

As per the provisions of section 69B, addition can be made under the section on the basis of sufficient material on record or some reasonable inference can be drawn that the petitioner has invested more amount than shown in the account books.

The burden is on the Revenue to prove that the real investment exceeded the investment shown in the account books of the assessee.

In K. P. Verghese v. ITO [1981] 131 ITR 597 (SC), it was held that the burden to prove that the consideration for the transfer of a capital asset has been understated by the assessee, or that the full value of the consideration in respect of the transfer has been shown at a lesser figure than what have been received by the assessee, is on the Department.

In the case of Smt. Amar Kumari Surana v. CIT [1997] 226 ITR 344 (Raj) the hon'ble High Court (vide para 10) has observed as under :

> "10. It is true that merely on the basis of fair market value no addition can be made under section 69B of the Act, 1961, but on the basis of sufficient material on record some reasonable inference can be drawn that petitioner has invested more amount than shown in account books, then only the addition under section 69B can be made. The burden is on the Revenue to prove that real investment exceeds the investment shown in account books of the assessee."

The hon'ble Delhi High Court in the case of CIT v. Smt. Suraj Devi [2010] 328 ITR 604 (Delhi) held as under :

> "It is settled law that the primary burden of proof to prove understatement or concealment of income is on the Revenue and it is only when such burden is discharged that it would be permissible to rely upon the valuation given by the DVO. In any event, the opinion of a DVO, per se is not an information and cannot be relied upon without the books of account being rejected which has not been done in the present case . . .
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> Moreover, in the present case, no evidence much less incriminating evidence was found as a result of the search to suggest that the assessee had made any payment over and above the consideration mentioned in the registered purchase deed. A reading of the Assessing Officer's order does not disclose that the assessee had made any admission in her alleged statement under section 132(4). In fact, no such statement has been produced. It is also pertinent to mention that no adjustment on account of

> sale consideration has been made by the Revenue in the case of the seller. Consequently, no substantial question of law arises in the present appeal which, being bereft of merit, is dismissed."

The hon'ble High Court of Delhi in the case of CIT v. Dinesh Jain HUF reported in [2013] 352 ITR 629 (Delhi) held :

> "Section 69B in terms requires that the Assessing Officer has to first 'find' that the assessee has 'expended' an amount which he has not fully recorded in his books of account. It is only then that the burden shifts to the assessee to furnish a satisfactory explanation. Till the initial burden is discharged by the Assessing Officer, the section remains dormant."

For the purposes of section 69B it is the burden of the Assessing Officer to first prove that there was understatement of the consideration (investment) in the books of account. Once that undervaluation is established as a matter of fact, the Assessing Officer, in the absence of any satisfactory explanation from the assessee as to the source of the undisclosed portion of the investment, can proceed to adopt some dependable or reliable yardstick with which to measure the extent of understatement of the investment. One such yardstick can be the fair-market value of the property determined in accordance with the Wealth-tax Act.

The error committed by the Income-tax authorities in the present case is to jump the first step in the process of applying section 69B that of proving understatement of the investment and reply about the measure of understatement. If anything, the language employed in section 69B is in stricter terms than the erstwhile section 52(2). It does not even authorize the adoption of any yardstick to measure the precise extent of understatement. There can therefore be no compromise in the application of the section. It would seem to require the Assessing Officer even to show the exact extent of understatement of the investment ; it does not even give the Assessing Officer the option of applying any reasonable yardstick to measure the precise extent of understatement of the investment once the fact of understatement is proved. It appears that the Assessing Officer is not only required to prove understatement of the purchase price, but also to show the precise extent of the understatement. There is no authority given by the section to adopt some reasonable yardstick to measure the extent of understatement. But since it may not be possible in all cases to prove the precise or exact amount of undisclosed investment, it is perhaps reasonable to permit the Assessing Officer to rely on some acceptable basis of ascertaining the market value of the property to assess the undisclosed investment. Whether the basis adopted by the Assessing Officer is acceptable or not may depend on the facts and circumstances of the particular case. That question may, however, arise only when actual understatement is first proved by the Assessing Officer. It is only

to this extent that the rigour of the burden placed on the Assessing Officer may be relaxed in cases where there is evidence to show understatement of the investment, but evidence to show the precise extent thereof is lacking.

Since the entire case has proceeded on the assumption that there was understatement of the investment, without a finding that the assessee invested more than what was recorded in the books of account, the decision of the Income-tax authorities cannot be approved. Section 69B was wrongly invoked. The order of the Tribunal is approved ; the substantial question of law is answered in the negative, in favour of the assessee and against the Commissioner of Income-tax.

In case of Unit Construction Co. Ltd. v. Joint CIT [2003] 260 ITR 189 (Cal), in this case the counsel for the assessee argued that there are materials to show that the explanation was satisfactory. Also, nowhere Income-tax Officer recorded his observation that either the books of account are not reliable or that he was not satisfied with the explanation given. Therefore, according to him, the books of account as produced were required to be accepted. – In fact, the Assessing Officer has not rejected the books of account. He has not specifically observed that the books of account are not reliable. But he has pointed out that a sum of Rs. 2,68,986 was spent during the year for building construction. This was admitted by the representative of the assessee. The details of purchase, etc., were not produced before the Assessing Officer. Before the appellate authority, it was pointed out that the bills and other materials were available with the assessee. Admittedly, these are not reflected in the books of account. On the other hand, the representative of the assessee had admitted the spending of Rs. 2,68,986 whereas an amount of Rs. 8,31,225 was shown to have been spent in the books of account. Thus, when there is an admission that a further sum of Rs. 2,68,986 was spent apart from Rs. 8,31,225, then the cost of construction would come to about Rs. 11,00,211. The Tribunal had accepted Rs.10,67,638 as assessed by the valuer. Thus, the principle that has been raised by learned counsel for the assessee cannot be attracted in the facts and circumstances of the case.

R. S. Bedi, M. S. Bedi, H. S. Bedi v. Asst. CIT, Delhi High Court

As regards the probative value of the report of a DVO, the settled legal position appears to be that in the absence of there being material with the Assessing Officer to arrive to a conclusion that the assessee had paid extra consideration for the purchase of property over and above what is stated in the sale deed, an addition under section 69B of the Act “solely on the basis of the report of the Valuation Officer” cannot be sustained.

Section 50C deeming provisions cannot be used for invoking section 69B

In the case of Harley Street Pharmaceuticals Ltd., it has been held that section 50C is applicable only for computation of capital gains in real estate transaction in respect of the seller, not the purchaser. Legal fiction cannot be extended any further and must be limited to the area for which it is created. Section 50C creates a legal fiction for taxing capital gains in the hands of the seller and it cannot be extended for taxing the difference between apparent consideration and valuation done by stamp valuation authorities as undisclosed investment under section 69.

In the case of CIT v. Chandni Buchar [2010] 323 ITR 510 (P&H), the Punjab and Haryana High Court held that "From a plain reading of section 50C of the Act, it emerges out that the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of land or building or both, shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of transfer. It nowhere provides that the valuation done by the State Government for the purpose of stamp duty, etc., would ipso facto take the place of the actual consideration as being passed on to the seller by the purchaser in the absence of any other evidence. The Assessing Officer is required to bring positive evidence on record indicating the fact that the assessee has paid anything more than the one disclosed in the purchase deed. The Department has taken an argument in the grounds of appeal that the Assessing Officer should be directed to make a reference to the Valuation Officer under section 142A of the Act. It also raised a plea that the Assessing Officer has wrongly made a reference to section 50C while making the addition; in fact, the addition is made under section 69B on account of unexplained investment in the property. It is the Assessing Officer who himself ought to have collected the evidence indicating the fact that the assessee has paid more money than the one disclosed in the purchase deed. The Income-tax Appellate Tribunal, while sitting in the second appeal, is not supposed to give directions on the appeal of the Revenue that a reference to the Valuation Officer is to be made in order to substantiate the addition.

Section 69B cannot be invoked on the basis of assumptions

The purpose of section 69B of the Act is to tax the amount that has been actually expended by the assessee in making investment in an asset which is over and above the amount stated in the books of account maintained by the assessee. So however, section 69B of the Act requires determination of "amount expended on making such investments" which "exceeds the amount recorded in this behalf in the books of account maintained". Thus, it is quite clear that before the rigours of section 69B of the Act get triggered, it is required to be established that an assessee has made investments in acquisition of a property over and above the amounts stated in the books of account. Hence,

section 69B cannot be invoked by the Revenue authorities on the basis of assumptions.

In the case of Dy. CIT v. Riar Builders 2017, the Income-tax Appellate Tribunal, Amritsar it is held that "section 69B cannot be invoked on the assumption that there was understatement of the investment, without a finding that the assessee invested more than what was recorded in the books of account. No action is called for in a case of transaction consequential to the transaction mentioned in the agreement seized. There is no evidence of unaccounted investment by the assessee".

In the case of Amarjit Singh Bakshi (HUF) v. Asst. CIT 2003, the Income-tax Appellate Tribunal Delhi in this case a loose sheet, purporting to be an agreement, partly written in pencil and partly in pen, was found during search of the premises of "N". The said document revealed that agricultural land "was sold by 'N' to assessee (ASB) for a consideration much higher than that declared by assessee. The Assessing Officer, in regular assessment of assessee, i.e., Amarjit Singh Bakshi (HUF) on protective basis, made addition of the difference and in block assessment of Amarjit Singh Bakshi (individual), of Rs 6.8 crores as undisclosed investment. It was held that the addition was not justified. Notings on loose sheet of papers are required to be supported/ corroborated by other evidence and which may include the statement of a person, who admittedly is a party to the notings. Such a document could not be said to be an 'agreement' nor a 'dumb document'. "N" having changed his stand and retracted his statement at various levels, his testimony could not be said to be reliable. Further, the document in question was not recovered from the possession of the assessee, who was not given any opportunity to cross-examine "N". In the absence of any reliable evidence, no addition could be made.

The ITO v. Jainessh Real Estate Pvt. Ltd, 2015, the Income-tax Appellate Tribunal, Mumbai, in this case the Assessing Officer did not have any clinching evidence to suggest that the assessee has paid any consideration for purchase of property over and above the stated consideration. The reference made by the Assessing Officer to the value determined by the stamp valuation authority for the purposes of payment of stamp duty cannot be taken as an evidence to demonstrate that assessee has actually paid any consideration over and above the stated consideration. The reference by the Assessing Officer to valuation contemplated by the lender, i. e., HDFC Ltd. is also of no consequence vis-à-vis the controversy before us, inasmuch as the valuation by HDFC Ltd. is for its own purpose of examining the feasibility of lending money to the assessee for acquisition of the said property. Furthermore, a valuation report, by its very nature, is only an estimation of value, and, at best can be a source for further enquiries but the valuation report by itself cannot be construed as an evidence which establishes understatement of purchase consideration. DVO's

estimation of fair-market value cannot be accepted as a conclusive evidence for establishing that any additional consideration over and above the stated consideration has passed between a buyer and seller

Vishuprasad S. Agrawal, Dist. Navsari v. ITO : In this case the Assessing Officer had adopted a belief that the assessees have made investments over and above the amount so disclosed in the sale deed based on stamp-duty valuation, which authorizes the valuation authorities to charge stamp duty on registering the transfer of plots. It is held that valuation made for the purpose of stamp duty is an estimated opinion. It can be a corroborative evidence to assist the Assessing Officer, but it cannot be conclusive piece of evidence demonstrating the unexplained investment made by the assessee for purchase of land. Solely on the basis of such estimated opinion, the addition cannot be made. From perusal of record, we find that, apart from this estimated opinion, the Assessing Officer was not in possession of any other evidence. As far as reference made under section 50C of the Act is concerned, we are of the view that section 50C is a deeming provision, which authorizes the Assessing Officer to replace the sale consideration with regard to the full value of consideration disclosed by the assessee for the purpose of computing the capital gain. In that situation, the Assessing Officer would replace the sale consideration disclosed by the assessee by an amount on which stamp duty was paid by the assessee. Therefore, this section is of no help while determining the unexplained investment of the assessee.

H. Tarun Goel, Sh. Arun Goel, M/s. Pink City Reality P. Ltd. v. ITO [2020] 77 ITR (Trib) 133 (Jaipur), the Income-tax Appellate Tribunal Jaipur on perusal of the statements of Shri Madan Mohan Gupta as per directions of the Bench to the Department as well as statements of Shri Shankar Lal Saini and Shri Kanhiya Lal Saini, found that nothing incriminating has been stated in the statement of Shri Madan Mohan Gupta as well as in the statement of Saini brothers about the cash payment by the assessees in respect of the land purchased by them. Therefore, even if the seized material along with the statements of Shri Madan Mohan Gupta and Saini brothers are taken into consideration nothing has come out to be regarded as any incriminating material or fact to reveal any cash payments by the assessees for purchase of lands in question.

The addition made by the Assessing Officer is solely on his own presumption of payment of cash without any tangible material or evidence in support of his decision. When the seized material found from Shri Madan Mohan Gupta as well as other material gathered during post-search inquiry has not established any direct or proxy connection with the transaction of purchase of land by the assessees then the assumption and presumption of the Assessing Officer that the assessee might have paid cash over and above the consideration shown in the sale deeds is only surmises and conjectures.

We note that the Assessing Officer of the Saini brothers and father, while framing the assessment under section 144 read with section 147 of the Act dated March 18, 2015, accepted the sale consideration as recorded in the sale deeds for the purpose of assessing the capital gain. The Assessing Officer, however, made additions on account of unexplained investment by them on account of cash payment reflected in the seized material.

The Assessing Officer has not disturbed the sale consideration received by Saini brothers and father in respect of sale of land to the assessees. The said finding of the Assessing Officer in case of Saini brothers and father demolished the case of the Assessing Officer of presuming the payment of cash by the assessees for purchasing the land from Saini family members. Accordingly, when the transaction of sale of land and sale consideration is accepted by the Assessing Officer of the Saini family members as recorded in the sale deeds then the addition made by the Assessing Officer on account of cash payment by the assessees under section 69B of the Act has no legs to stand in the absence of any incriminating material, but the said addition is merely based on assumption of the Assessing Officer.

Gayatri Enterprise v. ITO [2020] 420 ITR 15 (Guj), in this case the hon'ble court answers the issue whether a presumption could have been drawn about the excess amount alleged to have been made by the appellant-assessee at the time of the purchase of the land having regard to the stamp valuation of property per section 50C. It was held by the hon'ble court that section 50C of the Income-tax Act cannot be applied for the purpose of making addition under section 69B of the Act. It is settled law that section 50C will apply to the seller of the property and not to the purchaser of the property. Section 50C of the Act does not seem to have been invoked by the authority below for the purpose of adding the income under section 69B of the Act. At the most, the principle of law, as discernible from section 50C, could be said to have been indirectly applied for the purpose of taking the income under section 69B of the Act.

There is nothing on record to indicate as to what was the price of the land at the relevant time. Even otherwise, the same was a pure question of fact. Apart from the fact that the price of the land was different than the one recited in the sale deed unless it is established on record by the Department that, as a matter of fact, the consideration as alleged by the Department did pass to the seller from the purchaser, it cannot be said that the Department had any right to make any additions.

Section 69B of the Act does not permit an inference to be drawn from the circumstances surrounding the transaction that the purchaser of the property must have paid more than what was actually recorded in his books of account for the simple reason that such an inference could be very subjective and could involve the dangerous consequence of a notional or fictional income being

brought to tax contrary to the strict provisions of article 265 of the Constitution of India which must be “taxes on income other than agricultural income”. There could not have been any presumption for the purpose of making addition under section 69B of the Act.

In the case of Shri Durai Pugazhenthi v. Asst. CIT 2020 the Income-tax Appellate Tribunal Chennai, it was held that it is not known how one could establish the agricultural income. In this country agriculture is an unorganized sector. Expecting evidence from the agriculturist for their agriculture income is something impossible. So long as the agriculture activity in this country is unorganized and is sold in the unregulated market, no one could establish the agriculture income. Moreover, the investment was only Rs.22.50 lakhs.

In the present economic scenario prevailing in our country even a small agricultural labour would earn Rs. 500 to Rs. 1,000 in a day. A person employed in a hair-cutting shop or in a roadside restaurant earns Rs.1,000 to Rs. 2,000 per day. This economic factor cannot be doubted by anyone in this country. Taking into consideration the economic situation prevailing in the country, this Tribunal was of the considered opinion that there is no justification for making addition of Rs. 22.50 lakhs. Accordingly, the orders of both the lower authorities were set aside and the addition of Rs. 22.50 lakhs was deleted – appeal filed by the assessee stands allowed.

Addition under section 69B on account of difference between the stock statements furnished to bank and stock reflected in Financial Statements

On perusal of the decisions of the various courts, it can be gathered that courts have laid down that additions cannot be made on account of difference arising in the quantity and value of stock shown in the books of account and the statement furnished to the banking authorities, admittedly to avail of higher credit facilities. The following are the guidelines that have been laid down by courts while dealing with the issues :

> “(a) The stock in quantity and value is inflated on estimate basis in the statement furnished to the banking authorities to avail of higher financial credits ;
>
> (b) The inflated and estimated stock is hypothecated and not pledged ;
>
> (c) No actual physical verification of stock is carried out by the officer of banking authorities during the year or as on the date of valuation of stock ;
>
> (d) The assessee has maintained stock register ;

(e) The assessee's books of account are not found to be defective or non-genuine by Assessing Officer ;

(f) The books of account maintained by the assessee are accepted by the Central Excise and/or Sales Tax Department."

In the case of Pr. CIT v. Janam Steel and Alloys 2018, Gujarat High Court, the facts in this case were that addition of a sum of Rs. 1.59 crores were made by the Assessing Officer on account of discrepancy in the stock, as per the books of account of the assessee and that shown in the bank statements. Upon appeal, Commissioner of Income-tax (Appeals) had given substantial relief retaining only Rs. 19.46 lakhs of such addition, deleting the rest. In further appeal, the Tribunal deleted the remaining amount also, observing, inter alia that there was no difference in the physical stock and the stock shown in the account of the assessee on the date of survey. Sole ground for making the addition in this case was difference between the accounts maintained by the assessee and the stock statement filed with the bank. It was noted that the stock statements filed with the bank pertain to the months of April to August, whereas the survey took place in the month of September. It was also noticed that the tendency to show higher value in the bank statements to enjoy higher cash credit limit. The entire issue is, thus, based on facts duly appreciated by the Commissioner of Income-tax (Appeals) and the Tribunal. Hence, no question of law arises.

In the case of CIT v. Riddhi Steel and Tubes Pvt. Ltd. the Gujarat High Court held that "It is a settled law that only on account of inflated statements furnished to the banking authorities for the purpose of availing of larger credit facilities, no addition can be made if there appears to be a difference between the stock shown in the books of account and the statement furnished to the banking authorities. If, for the purpose of fulfilling the margin requirements of the bank purely on inflated estimate basis, when the stock statement had reflected inflated value of the stock, in the wake of otherwise satisfactory explanation, both for the purpose of value as well as quantity, we find no reason for addition of the inflated stock.

Comparison between section 69 and section 69B

Particulars	Section 69	Section 69B
Bare Act	Where in the financial year immediately preceding the assessment year the assessee has made investments which are	Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other

	not recorded in the books of account, 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.	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.
Trigger Point	Where assessee has made investments not recorded in books	Where assessee's investments are undervalued in his books
Books of account	Maintenance of books of account is not a mandatory condition for invoking the provisions of section 69	Maintenance of books of account is a mandatory condition for invoking the provisions of section 69B
Onus of proof	Burden of proof is on the Assessing Officer to show that the assessee has made the investment	Burden of proof is on the Assessing Officer to show that the assessee has not fully disclosed the investment in the books of account
Year of liability	The tax liability arises in which the investment is made	The tax liability arises in which the investment is made or in the year in which he founded as owner

Summary on section 69 family sections (i. e., 69A, 69B, 69C and 69D)

For invoking sections 69, 69A, 69B, 69C and 69D two conditions are required to be satisfied. They are :

(i) investment/expenditure are not recorded or not fully recorded in the books of account of assessee, and

(ii) the nature and source of acquisition of assets or expenditure are not explained or not explained satisfactorily.

The expression “nature and source” used in these sections should be understood to mean requirement of identification of source and its genuineness. To explain “nature” it would require the assessee to explain what is description of investment or expenditure, period and the manner in which it was done. To explain the source it would require the assessee to explain the corpus or fund from where investment or expenditure has been met and also the head under which the investment or expenditure would fall, such as whether investment/expenditure pertains to business or to acquisition of capital asset or to other source or to agriculture. Where the assessee is able to explain nature and source of investment/expenditure and also, if they are recorded in the books of account then such investment/expenditure will not be treated as deemed income but where investment/expenditure is not recorded in the books of account and/or their nature and source is not explained or not satisfactory explained, deeming provision under these four sections can be invoked by the Assessing Officer and investment/expenditure would be treated as deemed income of the assessee. Thus, for invoking these deeming sections, the first condition has to be necessarily satisfied that they are not recorded in the books of account regularly maintained by the assessee.

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