SECTION 69C : UNEXPLAINED EXPENDITURE, ETC.

Amit Kumar Gupta[1]

Bare Act summary

Section 69C of the Income-tax Act states that "Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year".

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

Section 69C was introduced vide Taxation Laws Amendment Act, 1975 with effect from April 1, 1976, on the basis of recommendation made by the Select Committee, as found in the report submitted in 1973. The section is introduced with an intention to cover the whole expenses which are not deductible while computing the income and are required to be added as income from undisclosed sources. Such expenditure would cover expenditure at the time of marriage, furnishing of a house, household expenditure and gifts etc. Thus, where an assessee has incurred any expenditure and he is unable to offer any explanation about the source of such expenditure or part thereof or if the explanation which he had offered, is not satisfactory in the opinion of the Assessing Officer then the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for the financial year under consideration. Also, as per the proviso, once such expenditure is treated as unexplained expenditure which is deemed to be the income of the assessee, the same shall not be allowed as a deduction under any head of income.

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Essential conditions

The language of section 69C of the Act stipulates two conditions necessary for deeming the expenditure incurred by the assessee to be his income for the said year :

(i) where no explanation is offered ;

(ii) where the explanation offered is not found to be satisfactory.

Thus, in case where the above two conditions are satisfied, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

Provisions of section 69C are not obligatory in nature

The use of the word "may" in the provisions of section 69C makes the deeming provision discretionary and not mandatory. In other words, even if no explanation is offered or it is found to be unsatisfactory, it is not mandatory to treat such unexplained expenditure to be the income of the assessee.

This position is well settled in law vide *CIT* v. *Smt. P. K. Noorjahan* [1999] 237 ITR 570 (SC) ; AIR 1999 SC 1600 which lays down that the provisions of section 69A of the Act which are pari materia to section 69C of the Act are not mandatory inasmuch as the Legislature had used the word "may" in the provision. Therefore, the Assessing Officer has full discretion to add or not to add any such expenditure or any part thereof in the income of the assessee for the financial year in question even if no explanation has been offered or, if offered, is not found to be satisfactory, provided the discretion is exercised in a judicious manner.

Also in the case of *Pr. CIT* v. *Late Rama Shankar Yadav*, 2017, the hon'ble Allahabad High Court held that the assessee could not submit the explanation within the time allowed owing to his death and the heirs were unable to explain the same as they had no knowledge of the business of their deceased father. The assessee and his heirs were prevented for sufficient good cause from submitting the explanation to justify the expenditure or its source.

One cannot lose sight of the fact that in situations where the proprietor of the business dies and his heirs are not in business or are not connected with the business of the deceased they may not be in a position to furnish any explanation about the business. There may be cases where they may be living and serving outside and are totally unconnected with the business of the deceased. Therefore, it is to meet such type of contingency that the Legislature, in its wisdom, has conferred a discretionary jurisdiction upon the Assessing Officer to add or not to add such unexplained expenditure in the income of the deceased, even if there is no explanation.

The peculiar facts and circumstances of the above case is the most appropriate case where such a discretion ought to have been exercised by the assessing authority in favour of the assessee by not adding the unexplained expenditure in the income of the assessee inasmuch as the assessee could not furnish the explanation for reasons beyond his control.

The question raised above was answered in favour of the assessee and against the Department and it was held that as section 69C of the Act is not mandatory in nature, the assessing authority has full discretion either to add or not to add the unexplained expenditure in the income of the assessee based upon sound judicial principles and, therefore, the Tribunal was not in any error of law in affirming the order of the Commissioner of Income-tax (Appeals) by which the addition under section 69C of the Act has been confined to only 5 per cent. of the expenditure.

Scope of section 69C

The scope of section 69C is fairly explained by the Andhra Pradesh High Court in the case of *P. Ram Gopal Varma* v. *Deputy CIT (Assessment)* [2013] 357 ITR 493 (AP). It is held that a plain reading of section 69C of the Act, makes it quite clear that it creates a new liability or at least impairs an existing right (of claiming a deduction) that an assessee had prior to its insertion in the statute. We say this because section 69C of the Act, without the proviso, merely states that if an assessee has incurred expenditure and the assessee has no explanation about the source of such expenditure, then that expenditure would be the deemed income of the assessee for the relevant financial year. As the section stands, the assessee can justify the expenditure, regardless of the source of funds, and claim the expenditure to be legitimate for a deduction. In other words, without giving a satisfactory explanation about the source of the expenditure, the assessee can still explain the expenditure and claim a deduction thereon.

However, with the insertion of the proviso, it is made clear that the deemed income (where the source of the expenditure is not explained) cannot be allowed as a deduction under any head of income. In other words, even if the assessee can justify the expenditure, but cannot explain its source, the proviso effectively disentitles him from claiming a deduction on the deemed income under any head of income.

The distinction, therefore, between the section and the proviso is that the section deals with the inability of the assessee to explain the source of the expenditure and, therefore, deems that expended amount his income for the relevant financial year. This, nevertheless, leaves a window open for the assessee to justify the expenditure and thereafter claim a deduction thereon. However, with the insertion of the proviso, that window has been closed

and even if an explanation for the expenditure is forthcoming, it will not benefit the assessee and the expenditure would nevertheless be taxable as a part of the total income. To this extent, the existing right of the assessee to explain and justify the expenditure has been taken away with the insertion of the proviso and has made the assessee open to a liability.

The proviso to section 69C was inserted from 1st day of April, 1999, and will, accordingly, apply in relation to the assessment year 1999-2000 and subsequent years.

Under the earlier provisions, where an expenditure incurred by the tax-payer in respect of which he either offers no explanation regarding the source of such expenditure or where explanation offered is found unsatis-factory, the expenditure is treated as "income" under section 69C. There was no corresponding provision for disallowance of such expenditure.

This used to enable the taxpayer charged to tax under section 69C to claim the expenditure as deduction under section 37 defeating the very objective of the section.

Thus, section 69C of the Income-tax Act has been amended according to which unexplained expenditure deemed as income cannot be allowed as a deduction under any head of income.

The Central Board of Direct Taxes Circulars

In relation to section 69C of the Act, the Central Board of Direct Taxes (for short "the CBDT") issued Circular No. 204, dated July 24, 1976 (see [1977] 110 ITR (St.) 21, 31), to the following effect :

Unexplained expenditure to be treated as income for financial year in which expenditure incurred.—The new section 69C provides that where an assessee incurs in any financial year an expenditure about the source of which he offers no explanation or the explanation offered by him is found to be not satisfactory, the amount covered by such expenditure shall be treated as income of the assessee for the financial year in which such expenditure is incurred. The provision is only clarificatory. Accordingly, although it comes into force with effect from April 1, 1976, the principle will apply not only in relation to assessments for the assessment year 1976-77 and subsequent years but also to assessments for earlier assessment years.

Burden to proof

Primary onus

The phraseology in section 69 goes to show that before invoking the same, it must be conclusively established by evidence or material that the

amount spent is an expenditure, that the expenditure is incurred only by the assessee and that the same is not deductible while computing the income under any head under the Act. Thus, the primary onus is on the Revenue.

The Gujarat High Court, in *Krishna Textiles* v. *CIT* [2009] 310 ITR 227 (Guj), has held that under section 69C the onus is on the Revenue to prove that the income really belongs to the assessee.

In the case of *CIT* v. *Lubtec India Ltd.* [2009] 311 ITR 175 (Delhi), the hon'ble High Court has held that "what is postulated in section 69C is that, first of all, the assessee must have incurred that expenditure and thereafter, if any explanation offered by the assessee about the source of such expenditure is not found satisfactory by the Assessing Officer, the amount may be added to his income. In the present case, there is nothing to show that the expenditure was in fact incurred by the assessee. The assessee had denied having incurred the expenditure and had contended that it did not have that kind of money. The Tribunal noted that the Assessing Officer had not made any enquiry whatsoever to find out whether such expenditure was directly incurred by the assessee. Since a part of the expenditure related to advertisement in a newspaper, it could have been easily verified by the Assessing Officer, but he did not do so. There is no fault in the view taken by the Tribunal that there is nothing on record to show that the expenditure was actually incurred by the assessee nor did the Assessing Officer take any action to find out whether the expenditure was directly incurred or not".

SF Wadia v. *ITO* of the Income-tax Appellate Tribunal Ahmedabad, 1986 : It is held that section 69C envisages fiction of unexplained expenditure, etc., not satisfactorily proved. On perusing the accounts of the contractors, "we find that the payments are made to the contractors and, therefore, debited to personal accounts. Whether these payments are themselves expenditure or not, is required to be first considered".

> "It appears that the assessee makes payments from time to time on account to these contractors who submit their bills regarding labour charges, etc. Subsequently, however, the account is adjusted from time to time on raising the necessary bills or signing the necessary vouchers, etc., on the basis of which appropriate amounts are credited in the accounts of the respective contractors. In the light of these evidence and in the absence of specific finding regarding the amount sought to be added under section 69C being an expenditure only, no addition can be made. Since the case was not processed along this line, assuming for a while that the amounts can be considered as an

expenditure, the same are found to be in respect of expenditure allowable or deductible while computing the income under the head 'business'. It is an admitted position that the amounts paid to the persons under consideration are in respect of jobs carried out by those persons or materials supplied to the assessee. Therefore, even if addition sought to be made for unexplained expenditure on the basis that the same is not recorded in the books of account, then the whole amount in respect of the business expenditure not recorded in the books is required to be deducted while computing the profits under the head 'business'. In the result, the figure required to be added will be nil."

In the case of *CIT* v. *Mantri Share Brokers (P.) Ltd.*, the Rajasthan High Court held that except the statement in the letter, the Assessing Officer has no other material on record to assess the income of Rs. 1,82,00,000. Also, it is a settled proposition of law that merely by relying on the statement, which was given under influence of threat as narrated by Mr. Gupta, without any other material either in the form of cash, bullion, jewellery or document in any other form, the court cannot come to the conclusion that the statement made was supported by some documentary evidence. Thus, the hon'ble High Court held that the Commissioner of Income-tax (Appeals) has rightly observed all the facts as stated hereinabove, and the same was confirmed by the Tribunal. Thus, the issue was answered in favour of the assessee and against the Department.

Pr. CIT v. *Tejua Rohitkumar Kapadia* 2017, Gujarat High Court

In the above case the Assessing Officer had disallowed purchase expenditure of Rs 5.19 crores treating the purchases as bogus. The assessee carried the matter in appeal. The Commissioner of Income-tax (Appeals) allowed the appeal, inter alia, on the ground that all payments were made by the assessee by account-payee cheques. The assessee was, in fact, a trader. All purchases made from M/s. Raj Impex were found to have been sold and sales were also accepted by the Assessing Officer. The Revenue carried the matter in appeal before the Tribunal. The Tribunal dismissed it making the following observations :

"There is no dispute that the purchases made from M/s. Raj Impex were duly supported by bills and all the payments have been made by account-payee cheque and that M/s. Raj Impex have confirmed all the transactions. Also, there is no evidence to draw the conclusion that the entire purchase consideration which the assessee had paid to M/s. Raj Impex had come back to the assessee in cash.

> It is also true that no adverse inference has been drawn so far as the sales made by the assessee is concerned. We also find that the entire purchases made by the assessee from M/s. Raj Impex have been accounted by Raj Impex and have paid the taxes accordingly. Considering the facts in totality well appreciated by the first appellate authority, we do not find any error or infirmity in the findings of the first appellate authority. The ground is accordingly dismissed."

The hon'ble Gujarat High Court held that "It can thus be seen that the appellate authority as well as the Tribunal came to a concurrent conclusion that the purchases already made by the assessee from Raj Impex were duly supported by bills and payments were made by account-payee cheques. Raj Impex also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee, a trader, had also shown sales out of purchases made from Raj Impex, which was also accepted by the Revenue, no question of law arises".

CIT v. *Bholanath Poly Fab Pvt. Ltd.* [2013] 355 ITR 290 (Guj)

In the above case, the hon'ble Gujarat High Court held that, whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus is essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished goods. In that view of the matter, as a natural corollary, not the entire amount was covered under such purchase, but only the profit element embedded therein would be subject to tax. The same view has been taken by this court in the case of *Sanjay Oilcake Industries* v. *CIT* [2009] 316 ITR 274 (Guj). Thus the case is decided against the Revenue.

Independent enquiry is must

Pr. CIT v. *Shapoorji Pallonji and Co. Ltd.* [2020] 423 ITR 220 (Bom)

In the above case the hon'ble Bombay High Court held that according to the Tribunal the Assessing Officer had merely relied upon the information received from the Sales Tax Department, Government of Maharashtra without carrying out any independent enquiry. The Tribunal had recorded a finding that the Assessing Officer had failed to show that the purchased materials were bogus and held that there was no justification to doubt the genuineness of the purchases made by the respondent-assessee.

The court was in agreement with the views expressed by the Tribunal. Merely on suspicion based on information received from another authority, the Assessing Officer ought not to have made the additions without car-

rying out independent enquiry and without affording due opportunity to the respondent-assessee to controvert the statements made by the sellers before the other authority.

Saurabh Suryakant Mehta v. *ITO* 2019, Bombay High Court

In the above case, the Assessing Officer reopened the assessment considering the purchases as bogus purchases on the basis of the material collected by the Sales Tax Department, prima facie suggesting that the assessee had indulged in bogus-billing activities without actually carrying out the purchase and sale of the commodity. The Bombay High Court held that the Assessing Officer had examined the material collected by the Sales Tax Department, prima facie suggesting that the assessee had indulged in bogus billing without actually carrying out the purchase and sale of the commodity. It is on this basis that the notice of reopening of assessment was issued earlier and addition of Rs. 2,96,284 was made. There are reasons recorded for issuing the impugned notice.

The Assessing Officer was led to believe that not merely 2.25 per cent. of the total bogus purchase of Rs. 1.31 crores, but the entire amount, was to be added as the undisclosed income of the assessee. With respect to the validity of such a contention of the Assessing Officer, the court had no comment to offer. What cannot be denied here is that the Assessing Officer merely wished to change the nature of the assessment previously made. During the previous reassessment proceedings, the Assessing Officer treated the alleged bogus sales taxed at 2.25 per cent. thereof as the assessee's additional income and passed the order of assessment accordingly. The Assessing Officer believed that taxing 2.25 per cent. of the sales, was an error and instead the entire amount should have been added to the assessee's income.

This would be a mere change of opinion. The Act recognizes the revisional powers of the Commissioner to be exercised where the assessment order is erroneous and prejudicial to the interests of the Revenue. However, the reopening of assessment is an entirely independent and vastly different jurisdiction and cannot be confused with the revisional powers of the higher authority. Thus, the above case was decided in favour of the assessee.

NP Determination

Pr. CIT v. *Chandan Jangid (Prop. Welldone Concept)* [2020] 15 ITR-OL 140 (Bom)

In the above case the Bombay High Court held that the best-judgment assessment under section 144 does not entail that the assessment has to be

made on a high-pitch income by resorting to wild estimate without looking into the records of the assessee or bringing any material or comparable case to justify such a high estimation of profit. In the matter of estimating the profit rate for the purpose of best-judgment assessment, the assessee's past or subsequent history is to be looked into or some comparable case engaged in similar line of business or having similar attributes has to be identified and brought on record and after carrying out some comparable analysis a reasonable net profit rate/GP rate can be applied. Here in this case, no basis has been given for estimating the net profit rate of 20 per cent. albeit from the assessee's own records, it is seen that the net profit rate from the assessment years 2008-09 to 2012-13 have been ranging between 9.30 per cent. to 11.40 per cent. The Tribunal found that the Assessing Officer, while estimating the net profit at 20 per cent., had proceeded on the basis of stock register, delivery challans of goods, work orders, and there was no application of mind for deriving at the figure of 20 per cent. The Tribunal, therefore, found it fit to remand the proceeding to the Assessing Officer as it was not shown as to how the finding regarding non-application of mind by the Assessing Officer is incorrect. The Tribunal has rightly emphasized on the need to scrutinize the relevant aspects while working out the estimation, and not to arrive at the same in a haphazard manner.

The Tribunal, while disposing of the appeal, has not given conclusive findings but has made certain observations to emphasize the need for remand. The Tribunal has made these observations only to emphasize that there are various aspects that the Assessing Officer could have taken into consideration. No substantial question of law arose here.

Pr. CIT v. *Gaurangbhai Pramodchandra Upadhyay*, Gujarat High Court

This case deals with addition of interest payment under section 69C on the basis of the documents seized from a third party and levy of penalty under sections 271D and 271E. The documents seized from the third party reflected loan transactions in cash. The hon'ble High Court held that the Tribunal took notice of the fact that such documents were not found or recovered from the possession of the assessee. In such circumstances, no presumption under section 132(4A) as well as under section 292C of the Act, 1961 could be drawn. The Tribunal also took notice of the fact that the Assessing Officer had based his findings on the basis of a statement, but the statement has not been found to be acceptable in view of the conflicting stance.

The Tribunal concurred with the findings recorded by the Commissioner of Income-tax (Appeals) that it is not established that the loans were

obtained and repaid in cash. The Tribunal also took notice of the fact that the quantum proceedings had attained finality. In short, in view of the concurrent findings of fact recorded by the two authorities, there is nothing to substantiate the case of the Revenue that the assessee had obtained the loan in cash and had also repaid it in cash.

In view of the aforesaid findings of fact recorded by the Tribunal, the court was of the view that none of the questions, as proposed by the Revenue, could be termed as substantial questions of law.

This court, in the case of *Pr. CIT* v. *Vaman International Pvt. Ltd.* [2020] 422 ITR 520 (Bom), Income Tax Appeal No. 1940 of 2017, decided on January 29, 2020 held as under :

> "Thus, from the above, it is seen that the Tribunal had recorded a finding of fact that the assessee had filed copies of purchase bills, copies of purchase/sale invoices, challan-cum-tax invoices in respect of the purchases, extracts of stock ledger showing entry/exit of the materials purchased, copies of bank statements to show that payment for such purchases were made through regular banking channels, etc., to establish the genuineness of the purchases. Thereafter, the Tribunal held that the Assessing Officer could not bring on record any material evidence to show that the purchases were bogus. Mere reliance by the Assessing Officer on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition under section 69C of the Act. The Tribunal has also held that if the Assessing Officer had doubted the genuineness of the purchases, it was incumbent upon the Assessing Officer to have caused further enquiries in the matter to ascertain the genuineness or otherwise of the transaction and togive an opportunity to the assessee to examine/cross-examine those two parties vis-a-vis the statements made by them before the Sales Tax Department. Without causing such further enquiries in respect of the purchases, it was not open to the Assessing Officer to make the addition under section 69C of the Act.
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> We are in agreement with the view expressed by the Tribunal. In fact, the Tribunal has only affirmed the finding of the first appellate authority. Thus, there is concurrent finding of fact by the two lower appellate authorities."

In the case of *CIT* v. *Nikunj Eximp Enterprises (P.) Ltd.* [2015] 372 ITR 619 (Bom), an identical fact situation did not interfere with the Tribunal order and held that no substantial question of law arose from such order. It

was held that merely because the suppliers had not appeared before the Assessing Officer, no conclusion could be arrived at that the purchases were not made by the assessee.

Pr. CIT v. *Geetanjali Builders Pvt. Ltd.* 2020, Madras High Court

In the above case, the Commissioner of Income-tax (Appeals) deleted the said addition accepting the assessee's plea that the papers pertaining to the expenses shown were not part of his accounts but were related to the sub-contractors, who had also filed ITRs showing 8 per cent. net profit. The Commissioner of Income-tax (Appeals) also deleted the addition on the ground that the Revenue failed to substantiate that the papers pertained to project other than Shanti Residency and there was reason to believe that when the profit was calculated on the basis of the NP/GP rate then there was nothing to separate the expenses therefrom. But the Madras High Court held that "In view of the findings recorded by the Commissioner of Income-tax (Appeals), which have been affirmed by the learned Tribunal and considering the same on the touchstone and anvil of the arguments advanced by the learned counsel for the appellant/Revenue, we find no reason to differ as no illegality or perversity has been pointed out by the learned counsel for the Revenue in the aforesaid findings of fact, which may warrant interference by this court".

Judicial Pronouncement on bogus purchases

Pr. CIT v. *Vaman International Pvt. Ltd.* [2020] 422 ITR 520 (Bom)

In this case, the Assessing Officer made the addition under section 69C, considering purchases as bogus purchases on the ground that the genuineness of the transaction was not explained or the explanation offered was not satisfactory. But the Tribunal deleted the addition. The hon'ble Bombay High Court held that the Tribunal had returned a finding of fact that the assessee had filed copies of purchase bills, copies of purchase/sale invoices, challan cum tax invoices in respect of the purchases, extracts of stock ledger showing entry/exit of the materials purchased, copies of bank statements to show that payment for such purchases were made through regular banking channels, etc., to establish the genuineness of the purchases.

The Tribunal held that the Assessing Officer could not bring on record any material evidence to show that the purchases were bogus. Mere reliance by the Assessing Officer on information obtained from the Sales Tax Department or the statements of two persons made before the Sales Tax Department would not be sufficient to treat the purchases as bogus and thereafter to make addition under section 69C. The Tribunal has also held that if the Assessing Officer had doubted the genuineness of the purchases,

it was incumbent upon the Assessing Officer to have caused further enquiries to ascertain the genuineness or otherwise of the transaction and to have given an opportunity to the assessee to examine/cross-examine those two parties vis-a-vis the statements made by them before the Sales Tax Department. Without doing so, it was not open to the Assessing Officer to make the addition under section 69C of the Act. Thus, the case has been decided in favour of the assessee.

Commission paid to directors

Pr. CIT v. *Shah Virchand Govanji Jewellers Pvt. Ltd.* [2019] 418 ITR 472 (Guj)

It was held that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. In the present case, the payment of commission made by the assessee-company to its directors has been allowed for five continuous assessment years. Nothing has been pointed out to show that the position has changed in the year under consideration. Under the circumstances, the Tribunal was wholly justified in allowing the ground of appeal. The said ground of appeal, therefore, does not give rise to any question of law, much less a substantial question of law warranting interference.

Addition on account of marriage expenses

The marriage expenses are expenditure in respect of which addition is made under section 69C. However, the Central Board of Direct Taxes has directed the Assessing Officers that for ascertaining the marriage expenses which are beyond normal standards there should be a tangible basis for making such estimate as such an estimate by the income-tax authorities must be satisfactory based on evidence and not be arbitrary.

1. *Ashok Kumar Gupta* v. *ITO,* New Delhi, (ITAT Delhi)

In the above case, the Assessing Officer made an estimate of Rs. 25 lakhs on account of marriage expenditure simply on the ground that the assessee came from an affluent family and had a big stature. Before the learned Commissioner of Income-tax (Appeals) the entire break-up and source of expenditure has been given, which has been accepted at Rs.21,71,130. Once that is so, then there was no point to presume that marriage expenditure would be Rs. 25 lakhs only and, therefore, the balance amount should be confirmed. There is no enquiry or material information on record to remotely suggest that marriage expenses shown

must have been more. Such a reasoning of lower authorities is devoid of any logic and accordingly, the addition of Rs. 3,28,830 was deleted.

2. *Shri Rajat Maheshwari* v. *Deputy CIT* on February 13, 2019, ITAT, The issue in this case is related to the addition of Rs. 12,19,550 under section 69C of the Act for unexplained expenses on marriage. The learned Assessing Officer made this addition on the basis of marriage invitation cards of the assessee ; the marriage was held on February 16, 2004. On the strength of the seized documents which included a list of 1589 invitees, the learned Assessing Officer estimated the expenses at Rs. 16,00,000, which may have been incurred for these number of guests and after giving set off for the marriage expenses shown by the assessee at Rs. 3,80,450 remaining amount of Rs. 12,19,550 was added and the same was confirmed by the learned Commissioner of Income-tax (Appeals) also.

The learned counsel for the assessee contended that the addition is merely an estimate based on the number of guests, which was actually much less. On going through the submission made by the learned counsel for the assessee before the lower authorities as well as the loose papers impounded during the course of search, it was observed by Rajat Maheshwari IT(SS) that a list of tentative invitees were 1589 persons but in the very same set of seized documents there was invoice dated February 18, 2004 for printing of 1000 invitation cards. Further, the proof of payment to the caterers were also part of seized records. The addition made by the learned Assessing Officer seems to be merely an estimate because other than the list of invitees, no other material evidence was unearthed by the search team which could prove that 1589 invitees attended the ceremony. Therefore, in the absence of any other evidence produced by the Revenue authorities, it will not be just to sustain the estimated addition under section 69C of the Act. In the result, the addition of Rs. 12,19,550 under section 69C of the Act stood deleted.

3. In the case of *Hakim Brij Lal Sharma* v. *ITO* 1981, Delhi it was held by the Income-tax Appellate Tribunal that "We have heard the parties and are satisfied that there is absolutely no justification in sustaining any addition on this score. The details of the expenditure claimed and the extent of the proof submitted by the assessee, appears to us to be quite reasonable and adequate and in the absence of any evidence or material brought on record by the Departmental authorities, which would show that the actual expenditure was much more and there are items of expenditure incurred by the assessee and not shown by him, we are unable to sustain any addition".

Addition on account of household expenses

CIT v. *C. L. Khatri* [2006] 282 ITR 97 (MP)

There is absolutely no basis for assuming that the expenditure incurred during a particular month/year should be the expenditure during the previous 10 years also. The monthly household expenditure may depend on various circumstances. One important factor is the earning/income. There may also be sudden variations in the monthly household expenditure, having regard to cost of education, treatment of illness, travelling, etc. Except for such spurts in expenditure, normally household expenditure would depend upon the income. In matters relating to household expenditure, where normally the monthly expenditure tends to depend upon the income, it is not permissible to assess the expenditure during previous years with reference to the expenditure during a later year (when income was more). There can be no hard and fast rule as to the material on which income could be estimated; it can definitely be said that estimating the household expenditure in a particular year, with reference to the income of a future year (that too, 5 to 10 years later) in the absence of any other evidence, would be arbitrary and illogical. In fact, the income of the assessee determined by the Assessing Officer excluding the addition made as unexplained household expenditure, when compared to the amount added as household expenditure, would demonstrate this position.

Shri Kuldeep Singh v. *ITO*, Income-tax Appellate Tribunal Delhi

In this case, the Assessing Officer made disallowance on account of low withdrawals for household expenses. The addition made by the Assessing Officer was based upon only surmises and conjectures and not factual basis. The learned authorised representative has relied upon a number of cases wherein it was held that addition on the basis of estimate without bringing any other fact is not legal. Moreover, we find from paper book page 62 that in the immediately preceding year, the assessee along with his family members had made total withdrawals of Rs. 3,62,868 and assessment of the assessee was completed under section 143(3), copy of which is placed at page 60 and there was no addition made by the Assessing Officer on account of low withdrawals. Though principle of res judicata does not apply to income-tax proceedings and every year is considered a separate year, yet on the basis of consistency, the facts and circumstances of the present year remains the same as the Assessing Officer did not point out any specific circumstances by which he assumed that the assessee had made low withdrawals as against the assumed expenses of Rs. 15 lakhs per annum. However, on the basis of financial position of the assessee, we feel that withdrawals made by him do not match his probable actual

expenditure. The addition made by the Assessing Officer by assuming an annual expenditure of Rs. 15 lakhs is also on the higher side; therefore, the addition made on this account is restricted to Rs. 2,65,784 assuming an annual expenditure of Rs. 6 lakhs; the addition of Rs. 9 lakhs is deleted.

Thus, from the above judicial pronouncements, it is clear that in order to make an addition of alleged unexplained household expenditure, the Assessing Officer has first to record a finding that there were various items of proved undisclosed expenditure during the relevant previous years, the source of which the assessee is unable or unwilling to explain satisfactorily.

Ashok Kumar Gupta v. *ITO,* (New Delhi)

In this case the Assessing Officer has made an addition of Rs. 10 lakhs on estimate basis mainly on the ground that the family of the assessee consisted of wife and four children and, therefore, the household expenditure should be at Rs. 10 lakhs. The assessee submitted before the Commissioner of Income-tax (Appeals) that the household expenditure of the family members is Rs. 7,59,723 and since he was living in joint family set up, contribution by other members should also be taken into account. The Commissioner of Income-tax (Appeals) confirmed this, but estimated the household expenditure at Rs. 1 lakh per month and after giving a benefit of Rs. 7,59,723 as shown by the assessee, confirmed the balance amount at Rs. 4,40,277.

The Income-tax Appellate Tribunal held that both the authorities have resorted to estimate only. The assessee had stated that he is living in a joint family set up and the entire expenditure shown for the entire joint family is Rs. 7,59,723. However, the amount of household expenditure at Rs. 7,59,723 appears to be on a lower side looking at the joint family setup. Thus, under the facts and circumstances of the case, an addition of Rs. 3 lakhs over and above the sum of Rs. 7,59,723 disclosed by the assessee was considered sufficient and reasonable. Accordingly, the addition of Rs. 3,00,000 was sustained and the assessee got part relief.

Disallowance on account of unexplained sundry creditors

In the case of *P. M. Abdulla* v. *ITO* [2016] 380 ITR 125 (Karn), the hon'ble Karnataka High Court held that the order of the Income-tax Appellate Tribunal indicates that the sundry creditors reflected in the balance-sheet of the assessee was not proved by him in spite of being granted sufficient opportunity. The order of the Assessing Officer does not indicate that any explanation was called for by the Assessing Officer from the assessee and such explanation was not accepted so as to treat the same as income of the assessee for such financial year. However, it requires to be

noticed from the Tribunal order that after analysing the case law it has been held that section 68 read with section 69C can be invoked in respect of the sundry creditors, which are not proved by the assessee before the Assessing Officer. As such, the court was of the considered view that the principles contained in section 68 as well as section 69C would be squarely applicable to sundry creditors in case of a trader, as obtained in the facts of the present case. In fact, credit purchases are nothing but expenditure and if sundry credits are not proved by the assessee addition can be made by the Assessing Officer by resorting to section 69C. Accordingly, substantial question of law is being answered in favour of the Revenue.

Evidentary value of loose papers

Pr. CIT v. *Sopan Industrial Infrastructure Park* 2019, Gujarat High Court

In the above case the Assessing Officer made addition on account of unexplained cash payment based on loose sheets seized from the premises of a third person and not written by the assessee. As per Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal document in question does not contain any signature and date, and the word "cash" is nowhere mentioned on the seized document. The hon'ble High Court held that "Having regard to the facts as emerging from the record as well as the contents of the seized documents, there is nothing to connect the assessee with the contents thereof. The relied-upon documents have not been seized from the assessee and on the basis of some noting made by a third party, no conclusion could be drawn that the same pertains to the assessee, more so, when the seized documents nowhere refer to the assessee. Having regard to the material on record, this court did not find any infirmity in the concurrent findings of fact recorded by the Tribunal after appreciating the material on record. Thus, no substantial question of law warranting interference arose and the case was decided against the Revenue".

Conclusion

Thus, the statutory provisions contained in section 69C embody a rule of evidence which is quite clear. It follows as a normal rule of presumption and evidence that where an assessee has incurred certain expenditure and is not able to account satisfactorily for the same, an inference can be drawn that the expenditure or the unaccounted part thereof must have been met out of undisclosed income of the previous year. It is a matter entirely in the assessee's knowledge as to how the expenditure was incurred and once it is postulated that expenditure belongs to the assessee then his failure to explain or satisfactorily or explain the same can constitute a reasonable

ground for an inference that the source thereof must be an item taxable under the Act. In the case of *CIT* v. *Bhagwati Developers Private Limited* [2003] 261 ITR 658 (Cal) it is held that "section 69C deals with unexplained source of expenditure. If from documents it appears that there was an expenditure unless its source is satisfactorily explained, the same would also be deemed to be the income of the assessee for such financial year. The question of addition depends on the satisfactory explanation of the source. It cannot be negated simply because the expenditure was actually incurred. On the failure to explain the source of the expenditure, it is liable to be added". The whole history of the introduction of section 69C and the judicial decisions bearing thereupon clearly establish the proposition that this section is only clarificatory and that even otherwise an addition can be made towards income from undisclosed sources in respect, inter alia, of amounts of expenditure which the assessee is found to have actually incurred but not satisfactorily explained.