SECTION 69A : UNEXPLAINED MONEY, ETC.

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Bare Act summary

Section 69A of the Income-tax Act states that "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year".

Scope of section 69A

The understanding of section 69A makes it clear that where the money, bullion, jewellery or other valuable article as described under section 69A is not recorded in the books of account, if any, maintained by the assessee from any source of income and the assessee is also unable to offer any explanation about the source of acquisition of such property, and the explanation offered is not satisfactory in the opinion of the Assessing Officer, then, the value of such property would be deemed to be the income of the assessee for such financial year.

Thus, though section 69A gives authority to the Assessing Officer to include the value of such property into the income of the assessee for the said financial year, but at the same time it gives a relief by providing an opportunity to the assessee to explain the source of income or explain the nature and acquisition of such property or convince the officer that the property, though was in his possession, but in fact, did not belong to him or explain that the same has been obtained by utilising accounted income. If the explanations offered are accepted by the Assessing Officer, then that would be the end of the litigation. But in case, the explanation is not accepted, then, the mandate of section 69A would come into operation and the value of such property, namely, bullion, jewellery or other valuable articles would be deemed to be the income of the assessee for such financial year.

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Twin conditions :

Section 69A is governed by the twin conditions. The Calcutta High Court, in the case of *Kantilal Chandulal and Co.* v. *CIT* [1982] 136 ITR 889 (Cal), while interpreting the provisions of section 69A of the Act, had laid down that two conditions need to be fulfilled before section 69A are applied.

The *first condition* for applying section 69A is that the assessee should be found to be owner of any money, bullion, jewellery or other valuable article and,

Secondly, the same should not be found recorded in the books of account, if any, maintained by him.

First Condition : Factors to be considered for ownership

Section 69A cannot be invoked merely on the basis that a person is found in possession of any valuable article but it is only on his being further found to be the owner of such money, bullion, jewellery or other valuable articles that section 69A can be invoked. The same has been held in the case of *ITO* v. *Shri Parvez Mohammed Hussain*, I. T. A. No. 3318/Mum/2013 and I. T. A. No. 819/Mum/2012 the learned Income-tax Appellate Tribunal held that "for invoking the provisions of section 69 of the Act, the assessee should be the owner of any money, bullion, jewellery or any other valuable articles. In this case of the assessee he was not found to be the owner of any money, bullion, jewellery or any other valuable articles in the previous year relevant to the assessment year. Thus, in such a situation invoking of the provisions of section 69 was not justified".

Section 110 of the Evidence Act stipulates that when the question is whether any person is owner of anything of which he in the possession, the onus of proving that he is not the owner is on the person who affirms that he is not the owner. *It is well settled principles of law that unless contrary is established, that title always follows possession. It is true that initial presumption from possession of an article is that the person in possession was the owner of the article in question. However, this presumption is rebuttable*. The rebuttal could be made either by producing direct evidence or by bringing on record circumstances from which it could be inferred that the goods in question did not belong to the person in question and that the person in question was a mere custodian of the goods. What inference should be drawn would depend on the facts and circumstances of cash case.

Judicial Pronouncements

In the case of *Ashok Kumar* v. *CIT* [1986] 160 ITR 497 (MP), the Madhya Pradesh High Court held that "the possession is evidence of

ownership and the strength of the presumption of ownership arising from the fact of possession depends on the nature of property involved. This presumption is one of the strongest in case of cash found in the possession of a person since cash is one of the properties of which title is transferable by mere delivery of possession. In such a situation, unless any cogent explanation is given by the person in the possession of cash to explain his possession and show that someone else was the owner of that amount of money, it is reasonable to assume that the cash belonged to the person from whose possession it was found as its owner". Thus, the assessee's explanation for possession of the cash is rejected by the hon'ble High Court and it is held that the assessee is the owner of the unaccounted cash found in his possession.

The decision of the Supreme Court in *Chuharmal* v. *CIT* [1988] 172 ITR 250 (SC), in this case 565 foreign-make watches were found by the Customs authorities from the bedroom of the assessee and the assessee did not produce any evidence and was not able to discharge the onus to prove that the ownership of wrist-watches in question did not belong to him. In view of the above facts, the hon'ble Supreme Court held that the watches belonged to the assessee and that value of the watches will be assessed as income under section 69A of the Act. The Supreme Court further held that the expression "income" used in section 69A of the Income-tax Act, 1961 had a wide meaning which meant anything which came in or resulted in gain. Thus, it has been concluded that the assessee must be having undisclosed income which he had invested in purchasing of the wrist-watches, which were seized from his bedroom and, hence, he was held to be the owner of the wrist watches and the value of the same is deemed to be his income by virtue of section 69A of the Act.

In the case of *Addl. CIT* v. *S. Pichaimanickam Chettiar* [1984] 147 ITR 251 (Mad), the assessee, when examined by the Income-tax Officer, disowned ownership of the gold. He, however, did not disclose the name of the true owner of the gold, which was in his possession. The hon'ble Madras High Court has held that "Except relying on section 110 of the Evidence Act, the Revenue has not produced any other material to indicate that the gold should belong to the assessee. Also, the assessee has been convicted here only as a carrier by the Chief Presidency Magistrate and not as the owner of the gold. The Chief Presidency Magistrate has specifically observed that the actual owners of the goods or financial magnates are underground. Therefore, merely on the basis of section 110 of the Evidence Act, the value of the gold cannot be added to the income of the assessee. Merely, because the assessee has kept silent and has not disclosed the

name of the owners of the gold, he cannot be assessed under section 69A of the Income-tax Act".

The decision of the Punjab and Haryana High Court in the case of *CIT* v. *Jawahar Lal Oswal* [2016] 382 ITR 453 (P&H) wherein it was held that suspicion and doubt may be the starting point of an investigation but cannot, at the final stage of assessment, take the place of relevant facts, particularly where a deeming provision is sought to be invoked. The principle that governs a deeming provision is that the initial onus lies upon the Revenue to raise a prima facie doubt on the basis of credible material. The onus, thereafter, shifts to the assessee to prove that the gift is genuine and if the assessee is unable to proffer a credible explanation, the Assessing Officer may legitimately raise an inference against the assessee. If, however, the assessee furnishes all relevant facts within his knowledge and offers a credible explanation, the onus reverts to the Revenue to prove that these facts are not correct. The Revenue cannot draw an inference based upon suspicion or doubt or perceptions of culpability or on the quantum of the amount involved. Any ambiguity or ifs and buts in the material collected by the Assessing Officer must necessarily be read in favour of the assessee, particularly when the question is one of taxation under a deeming provision. Thus, neither suspicion, doubt or the quantum shall determine the exercise of jurisdiction by the Assessing Officer. The above exposition shall not be misconstrued to restrict the power of the Revenue to raise an inference as to the efficacy of material produced by or before the Assessing Officer. Therefore, where donor appeared before the Assessing Officer and admitted the gift and had bank account from where demand drafts were prepared, the gift cannot be treated as non-genuine merely because a question may legitimately arise that such a large amount could not be given as a gift on the marriage of the assessee's daughter as this question is speculative and cannot form the basis of raising an inference against the assessee.

In view of the above, the addition confirmed by the learned Commissioner of Income-tax (Appeals) be directed to be deleted.

The hon'ble Madras High Court had, in the case of *CIT* v. *Vignesh Kumar Jewellers* [2011] 330 ITR 209 (Mad), held that "the Assessing Officer made addition on account of unexplained jewellery, etc., and unaccounted sales merely on the basis of the report of the Directorate of Revenue Intelligence. Those findings were reversed by the Tribunal. The Assessing Officer has not made any independent enquiry and also there is no corroborating evidence to support the case of the Revenue. It is also observed that even the assessee, whose statement was recorded by the Central

Excise, has not been examined by the Assessing Officer. Further, the assessee was not provided an opportunity to cross-examine the findings. Thus in view of the above circumstances, we are of the view that both the authorities are correct in deleting the additions made by the Assessing Officer. The findings given by the authorities are based on valid materials and evidence and it is a question of fact and not perverse. Further, the Revenue has not produced any material evidence to take a contrary view that of the Tribunal. Hence, the addition stands deleted.

The Gujarat High Court in the case of *CIT* v. *Manoj Indravadan Chokshi* held that the Assessing Officer's action of making addition on account of all deposits made in the bank accounts of the appellant is without any justification and bordering to the point of high-pitch assessment.

During the course of assessment proceedings as well as before the undersigned the appellant has produced its cashbook showing daily cash balances. From this statement it is observed that the appellant was having maximum cash balance of Rs. 7,95,165 on August 26, 2008. Considering that whatever income the appellant earned is being ploughed back into his business and he could have at the most earned income to the extent of the maximum cash balance as per his cash book, accordingly maximum addition is restricted to the peak of cash balance during the year.

Under the circumstances, addition of Rs. 7,95,160 on account of unaccounted income is being confirmed and the assessee gets relief of Rs. 31,75,604.

***Shri Rajesh Dhalla* v. *Asst. CIT* New Delhi, 2015, ITAT Delhi**.

In this case the assessee (i.e., Rajesh Dhalla) is a director of a company (D-Mines Trading Co. Pvt. Ltd), which is engaged in the manufacture and sale of jewellery. That when the jewellery was seized by the Sales Tax Department, the company came forward and claimed ownership of the said jewellery as evident from the proceedings before the Sales Tax Authorities and the filing of the writ petition before the hon'ble Jammu and Kashmir High Court, wherein company D-Mines Trading Co. Pvt. Ltd. was the petitioner. On the direction of the hon'ble High Court, the company had furnished the bank guarantee and also paid the penalty amount imposed by the Sales tax authorities, for the release of the jewellery seized. When the company had claimed ownership of the jewellery, mere possession of the same by the assessee (Rajesh Dhalla) at the time of its seizure by Sales tax authorities is immaterial to determine the ownership of jewellery. To determine the ownership of jewellery, necessarily the books of account of the company, of which Rajesh Dhalla was a director, also needs to be examined.

It is a fact that the Assessing Officer has not verified as to whether the company, D Mines Trading Co. Pvt. Ltd., had recorded in its books of account the transaction effected. Taking into account the facts of the matter, we are of the view that the issue is to be examined afresh by the Assessing Officer, for the limited purpose, to verify as to whether, the jewellery seized is recorded in the books of account of D-Mines Trading Co. Pvt. Ltd. If the seized jewellery is recorded in the books of account of the company, necessarily the assessee's (i.e., Rajesh Dhalla) explanation that he is not the owner of the jewellery cannot be said to be false and, therefore, addition under section 69A of the Act is not warranted in his hands—decided in favour of the assessee (Rajesh Dhalla) for statistical purposes.

Second Condition : Amount should not be recorded in the books of assessee

Explanation in the light of Judicial Pronouncements

In the case of *Teena Bethala* v. *ITO* 2019, the ITAT Bangalore held that cash deposits are recorded in the books of account and are reportedly made on the receipt from a creditor. Further, the PAN and address of the creditor as well as ledger account copies of the creditor in the assessee's books of account have also been filed before the Assessing Officer. In these circumstances, it is evident that the Assessing Officer has not made out a case calling for an addition under section 69A of the Act. Probably, an addition under section 68 of the Act could have been considered ; but then that is not the case of the Assessing Officer.

***Krishan Kumar* v. *ITO* 2018 (Punjab and Haryana High Court)**

In this case, the assessee filed an income-tax return showing the gross receipts of Rs. 9 lakhs, but he had made a cash deposit of more than Rs. 37 lakhs in the savings bank account. The assessee explained the source of cash deposits in bank account by taking a stand that the actual sales in his business was of Rs. 29 lakhs but the same is wrongly mentioned as Rs 9 lakhs in the income-tax return. The details of the purchases and VAT return copy was not provided by the assessee on the excuse that the same are not available. However, the Assessing Officer obtained the copy of the VAT return from the Sales Tax Office in which the sales are mentioned amounting to Rs. 9,65,170. In addition to the above discrepancy, the assessee had informed the Assessing Officer that he is not maintaining books of account, but as per the records filed with Sales Tax Department, the assessee had filed trading and profit and loss account and the balance-sheet along with the VAT return. Thus, from the above, it can be concluded that

the appellant had withheld the material information available with him. In view of the above facts, the Punjab and Haryana High Court held that the appellant has not been able to dispute the findings of facts, much less to prove perversity. Therefore, no substantial question of law is involved and the appeal of the assessee is dismissed.

Burden of proof

It is already settled by various judicial decisions that to make the assessment under section 69A of the Income-tax Act, the assessee must not only be in the possession of the asset but he should also be the owner of the same. Thus, the possession gives rise to a legal presumption of prima facie proof of ownership unless the contrary has been proved. So, here the burden lies on the assessee to prove that he is not the owner of the recovered money, bullion, jewellery, etc. However, if ownership is sought to be attributed to a person other than one in possession, in that event, the burden of proving such fact lies on the Department.

Judicial Pronouncements

***Sukh Ram* v. *Asst. CIT* [2006] 285 ITR 256 (Delhi) :**

In this case, a considerable amount of cash was recovered from the residential premises of the assessee. The Tribunal observed that the cash recovered from the assessee is not recorded or accounted in the books of account of the assessee. Also, though the assessee denied possession of cash initially, he, later, made his statement on record admitting the possession of unaccounted cash. Thus, it is held by the Delhi High Court that the assessee had not been able to rebut the presumption under section 132(4A) of the Income-tax Act. It is settled that when an assessee is found in possession of currency, it is for him to disprove his ownership regarding the possession and not for the Revenue he is the owner thereof. Thus, the additions of the currency possessed by the assessee were confirmed.

***CIT v. K. Chinnathamban* [2007] 292 ITR 682 (SC)**.

In this case, the assessee (K. Chinnathamban) was associated with the firm V. V. Enterprises from the premises of which cash of Rs. 1.18 crores was seized in search by the police officers. The firm V. V. Enterprises was managed by K. Palanisamy who was complying with all the requirements of the assessment proceedings.

But Mr. K. Palanisamy was not able to provide evidence and explain the source of deposit of Rs 1.18 crores. Thus, the Assessing Officer made the addition of the said amount as undisclosed income of the persons in whose names the deposit appeared. Also, it was found by the Assessing Officer that although M/s. V. V. Enterprises is a registered firm, the firm was

having no bank accounts in its name, neither were the partners; hence, there were neither deposits in the name of the firm nor in the name of any of the partners.

In view of the statements of Mr. K. Palanisamy, the Assessing Officer proceeded to make the assessment on protective basis and in the hands of the deposit holders for unexplained deposits. As far as the assessee is concerned, he could not establish the source of the deposit and there was no evidence to support his claim that the amount had been collected from the members of the public.

Thus in view of the above facts the *Supreme Court held* that where the deposit stands in the name of third person and that person is related to the assessee, the proper course of action would be to call upon the person in whose books the deposit appears or in whose names the deposit stands, to explain such deposit.

In that case, the onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various banks. Accordingly, the action of the Department in making the individual assessment was upheld in the hands of the assessee.

In the case of *Subhash Chand Gupta* v. *Deputy CIT* the learned Tribunal held that the assessee could not produce any credible evidence in respect of source of the cash found during the course of search. The assessee explained that the cash is withdrawn earlier by him and kept for meeting contingencies. However, his explanation was not supported by any cogent evidence. The assessee also explains that the cash was declared already in the wealth-tax return. However, in the assessment year under consideration, the assessee had declared cash of Rs. 75,612 in wealth-tax returns ; therefore, there were no evidence filed by the assessee which can explain the source of cash available with him. Therefore, the action of the income-tax authorities is justified in considering it to be unexplained cash and adding it to the income of the assessee.

***Charanjit Singh* v. *CBDT* [2016] 388 ITR 469 (P&H)**

In this case, the addition of Rs. 1.20 crores was made to the total income of the assessee. Aggrieved by the same, the assessee filed revision petition before the Commissioner of Income-tax. It is recorded by the Commissioner of Income-tax that the assessee has been provided sufficient opportunity to provide address of Pritam Singh and thereafter was also asked to produce Pritam Singh for recording his statement but the assessee failed to discharge his liability. The money was received by the assessee in his bank account but was withdrawn in cash whereafter there was no trace of the said amount. The learned Commissioner of Income-tax also observed that

if the transaction would have been so transparent, the money should have been returned by cheque in the same manner as it was received but this was not the case. The assessee was also asked to provide the original MOU and compromise deeds and other such documents in relation to the above transaction. However, again he had expressed his inability to produce the documents.

Thus, in view of the above the hon'ble High Court held that the assessee had failed to produce the sufficient material before the Assessing Officer as well as the Commissioner of Income-tax in revisional proceedings. The factual matrix is required to be established by producing material evidence regarding the claims made by the assessee before the assessing authority and the revisional authority. Also, the learned counsel for the assessee was unable to give any one good or sufficient reason which prevented him to produce material evidence in support of his version either before the Assessing Officer or Commissioner of Income-tax. Thus, in such a situation, in the absence of any material on record which could substantiate the claim of the petitioner, there is no justification to entertain this petition under article 226 of the Constitution of India as there is no jurisdictional error in the order of the assessing authority or the Commissioner of Income-tax. Thus, the case is decided against the assessee.

Addition of jewellery

In the case of *Vibhu Aggarwal* v. *Deputy CIT* (2018), I. T. A. No. 1540/Del/2015, the hon'ble Income-tax Appellate Tribunal Delhi held that in this case a search-and-seizure operation was conducted at the business premises of M/s. Best Group and in the residential premises of the directors on March 28, 2011 under section 132 of the Income-tax Act. After that the assessee was called for an explanation during the assessment proceedings to explain the source of all the items of jewellery found during the course of search. The assessee explained that the jewellery belongs to his parents, their HUF, the assessee's family members and his HUF. Also, most of the jewellery items are inherited from his grandparents and received as gifts on various occasions such as marriage, birth and birthdays of his children, marriage anniversary, etc. He further explained that he did not file the wealth-tax returns as his net wealth did not exceed the minimum limit prescribed under the wealth-tax from period to period, that none of his family members were assessed to wealth-tax. The Assessing Officer completed the assessment by making an addition of Rs. 40,73,373 on account of unexplained investment in jewellery. The total jewellery which was found during the course of search was 2531.5 grams, out of which the Assessing Officer has given the assessee the benefit of 950 grams, as per the Central

Board of Direct Taxes Instruction No. 1916 on account of the assessee's wife and two children. Aggrieved with the additions, the assessee filed an appeal with Commissioner of Income-tax (Appeals), who allowed the benefit of an additional 600 grams of jewellery on account of the parents of the assessee, holding that the same was allowable as per the Central Board of Direct Taxes Instruction No. 1916, but confirmed the addition of jewellery weighing 1050 grams of gold as unexplained. The learned Tribunal held that the Commissioner of Income-tax (Appeals) upheld the addition of the Assessing Officer without appreciating the fact that the assessee belongs to a wealthy family where gifted jewellery is possessed by all the family members, the assessee has been married for the past 18 years, and also had two children, the jewellery was gifted to, or inherited by, the assessee and his wife from their parents and grandparents and other relatives at the time of their marriage, and also on various occasions after that, such as birth of children, marriage anniversaries etc. Also, some jewellery was purchased by the assessee's wife out of the cash gifts received by her from the relatives on various occasions. The learned Income-tax Appellate Tribunal also referred here the relevant para of Central Board of Direct Taxes Instruction No. 1916, dated May 11, 1994 which stipulates as under :

> "The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure."

Thus, the learned Tribunal in view of the various High Court judgments and the above instruction of the Central Board of Direct Taxes cancelled the order of the Assessing Officer and Commissioner of Income-tax (Appeals) and deleted the addition of gold jewellery weighing 1050 grams.

In the case of *Ashok Chaddha* v. *ITO* [2011] 337 ITR 399 (Delhi), the hon'ble Delhi High Court held that the additions made by income-tax authorities are arbitrary as the same are not based on any cogent basis or evidence and that before initiating the addition the income-tax authorities should consider the fact that the assessee is married for more than 25-30 years. Also, the jewellery under consideration is not very substantial. The assessee is correct in his submission that it is a normal custom for woman to receive jewellery in the form of "streedhan" or on other occasions such as child birth etc. Collecting jewellery of 906.9 grams by a woman who is in married life of 25-30 years is not abnormal. Furthermore, there was no valid evidence or proper yardstick which has been adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other jewellery as "unexplained". The action of the Assessing Officer

would have been different if the quantum and value of the jewellery found was substantial.

The hon'ble Delhi High Court, therefore, held that the findings of the Tribunal are totally perverse and far from the realities of life. Thus, in view of the facts of the case, the question is answered in favour of the assessee and against the Revenue thereby deleting the aforesaid addition of Rs. 3,87,364.

***Sushila Devi* v. *CIT* [2017] 10 ITR-OL 429 (Delhi High Court) in Writ Petition No. 7620**

In this case, the jurisdictional High Court held that the income-tax authority's rationale or justification is entirely insubstantial. The assessee submits that she got married in mid 1960s and her daughters were born in 1967. Her submission that the gold jewellery in question was acquired by her over a long period of time through gifts made by relatives and other family members is in accordance with prevailing customs and habits. The assessee was of the age of 70 when these proceedings were started. Thus, the assessee's explanation is justified and reasonable. The refusal of the income-tax authorities to release the jewellery constitutes deprivation of property without lawful authority and is contrary to article 300A of the Constitution of India. Thus, the hon'ble High Court issued a direction to the income-tax authority to release the jewellery within two weeks time and intimate to the assessee the time and place where she can receive the same.

***CIT* v. *Ravi Kumar* [2007] 294 ITR 78 (P&H)**

In this case, the assessee was not found to be the owner of any valuable thing or article but some loose slips mentioned the possession of jewellery. The assessee had duly explained that the slips were rough calculations, which was not rebutted by any material evidence. Neither, the possession nor the ownership of any jewellery mentioned in the slips was proved by income-tax authorities. In view thereof, the contention of the Assessing Officer in applying section 69A of the Act is not right and the additions stood deleted. Accordingly, the case was decided against the Revenue and in favour of the assessee.

Application of section 69A and section 68

Section 69A of the Income-tax Act deals with unexplained money, bullion or jewellery, etc., of which the assessee is found to be the owner and in possession thereof. However, section 68 deals with any amount shown in the books of account of the assessee. Thus, the material difference between sections 68 and 69A is that section 68 does not require that the amount to

be owned by the assessee as long as it is recorded in the books, whereas section 69A deals with money, etc., owned by the assessee and found in his possession. Therefore, the ownership is one of the considerations when the matter comes under section 69A.

***CIT* v. *Kesarwani Sheetalaya* [2019] 418 ITR 369 Allahabad (High Court)**. In this case the actual cash with the assessee-firm was only Rs. 27,39,932 whereas in the audited balance-sheet, the amount was shown as Rs. 64,70,642. Thus, the difference of Rs. 37,30,710 was considered as unexplained income by the Assessing Officer and the same was added. The learned Tribunal held that it is neither a case under section 68 or section 69A, nor a case where money is not recorded in the books of account of assessee ; in the present case, cash in hand in the books of account was found to be more than the actual cash found during the course of search. At the most, authorities could have presumed that the assessee has spent the differential amount in question , but that would attract addition under any of the above section, i.e., 68 or 69A.

Acceptance or non-acceptance of explanation is a question of fact or law

In a case, where the explanation offered by the assessee in respect of the additions made is accepted by the Assessing Officer, that would be a finding of fact as the Assessing Officer is satisfied that the explanation is satisfactory and there are no reason to reject it, but in a case where the explanation is not accepted, the question which remain would be whether the Assessing Officer is justified in not accepting the explanation offered by the assessee or whether he has rejected the explanation of the assessee on some legal footing.

Depending upon the facts of each case, if the court presumes some facts or rejects a particular factual aspect, and then it records a finding in relation to acceptance of the facts and thereafter proceeds to decide, then the question of presumption or the inference to be drawn on the strength of the facts would be a question of law. However, if in a given case, the circumstances show that only one inference can be drawn by the authority/officer/court but the said officer/authority/court draws an inference which is not permissible under the law, then such findings would be perverse and the appellate court is entitled to set aside the said findings and record its own findings. But in a case where the findings recorded by the Tribunal cannot be shown to be perverse nor argued and proved to be so, the said findings would not be open to interference by the appellate court.

In the case of *Sri Paduchuri Jeevan Prashant* v. *ITO* 2016, the jurisdictional Income-tax Appellate Tribunal held that "In the given case the addition under section 69A is not correct as per the provisions. As in this case, the sale of shares is evident not only by the bank's statement but also by debit in the Demat account maintained by M/s. Karvy Share Broking Pvt. Ltd. and also the sale proceeds are received in normal course through banking channel. So, the receipt of money from the broker cannot be held to be 'unexplained'. There is no allegation that the assessee has paid the consideration in cash and received in cheque. In the absence of any evidence to the contrary, the sale proceeds cannot be taken as 'unexplained credits'. With reference to the purchases, off-market transactions cannot be doubted. This is the principle which was laid down in *Rajendrakumar Toshnival* case, which was upheld by the hon'ble Bombay High Court. At best, the Assessing Officer could have doubted the purchase on that date since cash payments were made, but cannot doubt the purchases as such and transfer to Demat account and sale thereof. Therefore, the sale proceeds cannot be brought to tax under section 69A. Thus, the action of the Assessing Officer in considering the sale proceeds received through banking channels cannot be treated as 'unexplained money' under section 69A. Therefore, the addition made by the Assessing Officer stood deleted."

Taxability

As per section 115BBE, income-tax shall be calculated at 60 per cent. where the total income of the assessee includes the following income :

(a) 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) Which is determined by the Assessing Officer and includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under clause (a).

Such tax rate of 60 per cent. will be further increased by 25 per cent. surcharge, 10 per cent. penalty, i.e., the final tax rate comes out to be 83.25 per cent. (including cess). Such 10 per cent. penalty shall not be levied when the income under sections 68, 69, etc., has been included in the return of income and tax has been paid on or before the end of relevant previous year.

No deduction in respect of any expenditure or allowance [or set off of any loss] shall be allowed to the assessee in computing his income referred to in clause (a) of sub-section (1) of section 115BBE.

Memorandum Explaining Finance Bill, 2012

Under the existing provisions of the Income-tax Act, certain unexplained amounts are deemed as income under sections 68, 69, 69A, 69B, 69C and 69D of the Act and are subject to tax as per the tax rate applicable to the assessee. In case of individuals, HUF, etc., no tax is levied up to the basic exemption limit. Therefore, in these cases, no tax can be levied on these deemed income, if the amount of such deemed income is less than the amount of basic exemption limit and even if it is higher, it is levied at the lower slab rate. In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68, 69, 69A, 69B, 69C or 69D, at the rate of 30 per cent. (at present 60 per cent.) (plus surcharge and cess as applicable). It is also proposed to provide that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections.

Under existing provision of Income-tax Act, the assessee, being individual or HUF, is not liable to tax up to the basic exemption limit but as per the newly inserted section 115BBE (by Finance Bill 2012), the Assessing officer can require the assessee to explain sources of the amount credited in books of account, and individuals or HUFs are liable to tax even if the amount does not exceed basic exemption limit provided in the Income-tax Act. The additions are taxed at the rate of 30 per cent. (at present 60 per cent.) plus surcharge and cess, if applicable, instead of being taxed under normal tax-rate slabs.

Matter to be considered :

• Where an assessee is not liable to file the income-tax return but is called for an explanation in respect of any item falling under section 68, 69, 69A, 69B, 69C or 69D which the assessee is not able to give, then the Assessing Officer may assess such income under the above sections and consequently charge tax under section 115BBE, even though, otherwise, the total income is below taxable limit.

Judicial pronouncements

Whether the surrendered amount can be taxed under section 115BBE read with section 69A of the Act or to be taxed as a regular business receipt ?

In the case of *Kanpur Organics Pvt. Ltd.* v. *Deputy CIT* 2020, the assessee has clearly stated that the figures noted in the diary represented sales unrecorded in the books of account and these figures related to the period April 2015 to August 2015.

Thus, in the above case it was held that the addition under section 69A could have been made only if there was no explanation offered or the explanation offered by the assessee was not satisfactory in the opinion of the Assessing Officer. In the present case, the assessee had given complete explanation regarding the source of entries recorded in the diary, which were explained to be part of unrecorded sales and the Assessing Officer also did not object to the said explanation. Therefore, addition cannot be made under section 69A of the Act and if the addition cannot be made thereunder, section 115BBE will not be applicable.

In the case of *Shri Rajesh Kumar Bajaj* v. *Asst. CIT* Income-tax Appellate Tribunal, Indore, I. T. A. No. 16/Ind/2019, it was held that section 115BBE of the Act was inserted with effect from April 1, 2013 indicating that only if the income falls under sections 68 to 69D, as discussed above, which does not necessarily be income from business but from any head of income, i.e., the income defined in section 2(24) of the Act for which the assessee is unable to offer any explanation, then such higher rate of tax, i.e., 60 per cent. is to be levied under section 115BBE of the Act.

Thus, in the above case, though the alleged surrendered income is a business income but since the assessee, being an individual having no limitation of earning income from sources other than for the object of business and also having not offered any explanation in the statement given during the course of survey which stands unrebutted, the alleged unexplained/ undisclosed income is liable to be taxed as income falling under sections 68 to 69D of the Act as applicable to the type of income and has been rightly taxed by learned Assessing Officer applying the higher rate of tax provided in section 115BBE of the Act. Thus, the case was decided against the assessee.

Penalties

Section 271AAC of the Income-tax Act – Penalty in respect of certain income (with effect from April 1, 2017)

1. The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE :

Provided that no penalty shall be levied in respect of income referred to in section 68, 69, 69A, 69B, 69C or 69D to the extent such income has

been included by the assessee in the return of income furnished under section 139 and the tax in accordance with clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under section 270A (Penalty for under-reporting and misreporting of income) shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) Sections 274 (Procedure) and 275 (Bar of limitation for imposing penalties) shall, as far as may be, apply in relation to the penalty referred to in this section.

Imposition of penalty under section 271(1)(c)

In the case of *Ravina And Associates Pvt. Ltd.* and *Ravina Khurana* v. *Deputy CIT*, New Delhi, the learned Tribunal held that "Assessing Officer is required to specify as to under which limb of section 271(1)(c) of the Act, the penalty proceedings have been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. But here in this case, the Assessing Officer has not specified so. In the circumstances and facts of the case, the penalty proceedings so initiated by the Assessing Officer are bad in law and, accordingly, the penalties so initiated are ordered to be cancelled and the orders of the learned Commissioner of Income-tax (Appeals) are reversed. Thus, the legal ground raised is decided in favour of the assessee and is allowed".

Unexplained Investment in the phase of e-assessment

The Government of India has introduced e-Governance for conduct of assessment proceedings electronically. It is a laudable step taken by the Income-tax Department to pave way for an objective assessment without human interaction. At the same time, such proceedings can lead to erroneous assessment if officers are not able to understand the transactions and statement of accounts of an assessee without a personal hearing. The assessee should have to be, therefore, at least called for an explanation in writing before proceeding to conclude that the amount collected by the assessee is unusual. In our view, the assessment proceeding under the changed scenario would require proper determination of facts by proper exchange and flow of correspondence between the petitioner and the respondent-Assessing Officer.