



CASH CREDITS-
Section 68 of the I. Tax Act

CA AGARWAL SANJAY 'VOICE OF CA'

CA SIDHARTH JAIN

TEAM - VOICE OF CA

SCOPE

- Section 68 of the Act – substantive provisions
- Features of Section 68
- Theory of Onus
- Emphasis on Section 68, qua Share Capital



Section 68 of the Act – substantive provisions (post amendment by FA 2012)

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”



Section 68 of the Act – substantive provisions (post amendment by FA 2012)

Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.



Section 68 of the Act – Features

- Any sum
- found credited in the books of an assessee maintained for any previous year
- assessee offers no explanation
- nature and source
- OR the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory,
- may be charged to income-tax
- as the income of the assessee of that previous year.



Any sum

Any Sum: -

- Scope Qua Section 2[24]
CIT vs. Ganpatrai Gajanand (108 ITR 403)(Ori)
- Substantive / procedural Section
- Deeming Fiction
CIT v/s Ganpatri Gajanand 108 ITR 403 (Orissa)
- Credit entries or only cash?
- Loans and borrowing?



Any Sum.....contd

“A bare reading of section 68 shows that the expression used in the section 68 is ‘any sum’ and it does not say that credit should be only in the nature of cash receipt. The credit shall also include both loans and trade creditors and also other receipts, be that of cash or kind.”

Davinder Singh v/s ACIT 101 TTJ (Asr-ITAT) 505



Found credited in the books of an assessee maintained for any previous year

- **Where amounts not credited in books of accounts?**

Held that amount not credited in books of accounts cannot be brought to tax u/s 68. Baladin Ram vs. CIT (71 ITR 427) (SC)

- **Meaning of books of accounts-sec.2[12A]**

refer to books of original entry, wherein accounts are updated/entries made in routine basis regularly. Also refer CBI v. V. C. Shukla [1998] 3 SCC 410

- **Credits of earlier years, not surfacing in current year, are outside the scope of section 68.**

- **Credits on first day of the previous year, can well be examined u/s 68.**

- **Credits on first day of new business of firm, can only be examined in the hands of the partners.**

- **Credits in pass book provided by bank.** Pass book is not books of account. CIT vs. Bhaichand H Gandhi (141 ITR 67)(Bom)-adverse view of ITAT Delhi in 314 ITR [AT]001

- **Maintenance of books of account is a condition precedent for application of section 68-86** ITD 626 (Del.Trib) DCIT v/s Finlay Corporation Ltd.



Nature and Source

Capital or Revenue

Source/Creditworthiness

Can source of Source be examined?

Explanation not Satisfactory

While judging reasonableness, Department to look into surrounding circumstances to know the facts – matter to be considered by applying test of human probabilities – Sumati Dayal vs. CIT (214 ITR 801)(SC)

AO to follow principle of Natural Justice, in case, he has some adverse material in his possession, and thereafter to confront the same to the assessee for his rebuttal.

Provisions of Sec 68 are Discretionary

Use of Expression “may”

J.P.Sethi V/s ITO 33 TTJ (Pune – ITAT) 576



Theory of Onus

- Shifting Onus or Static Onus.

Onus U/s 68, is a shifting onus

- Primary Onus on whom?

Primarily on assessee to prove: -

Identity

Genuineness

Credit-worthiness

- Primary Onus when Discharged
(discussed in detail under share Capital)

- Secondary Onus on Revenue



Theory of Onus.....Summary

Assessee to Discharge Primary Onus

Onus Thereafter Shifts on Revenue

On adverse finding Onus again Shifts to Assessee



Emphasis on Section 68, qua Share Capital

Provision Applicable to Share Capital

The words “any sum found credited in the books” in section 68 has a wide scope and gives the assessing officer powers to inquire in nature and source of amount irrespective of nature given by the assessee; **this would also cover share application money account – Sophia Finance Ltd (205 ITR 98) (Del HC)**



Journey of Judicial Cases [Delhi HC and SC]

192 ITR 287 [DEL-HC] CIT V. STELLAR INVESTMENT LTD., even if it be assumed that the subscribers to the increased share capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company.

CIT v/s Sophia Finance Ltd. (205 ITR 98) [DEL-HC]

If the shareholders are identified and it is established that they have invested money in the purchase of shares, then the amount received by the company would be regarded as a capital receipt and to that extent the observations in CIT v. Stellar Investment Ltd. are correct; but the observations in that case to the effect that even if the subscribers to the capital were not genuine, “under no circumstance could the amount of share capital be regarded as undisclosed income of the [company]“, are not correct and AO is entitled to make appropriate enquiry.



Journey of Judicial Cases [Delhi HC and SC].....Contd

283 ITR 190 CIT V/S DOLPHIN CANPACK LTD.

An Income-tax Officer is indeed entitled to examine the truthfulness of the explanation. In cases where the credit entry relates to the issue of share capital, the Income-tax Officer is also entitled to examine whether the alleged shareholders do in fact exist or not.

299 ITR 268 [DEL HC] CIT V/S DIVINE LEASING LTD.

Where the amounts are shown as share capital, u/s 68 in order to discharge Burden of proof, Assessee must prove identity of shareholder, genuineness of transaction and credit-worthiness of shareholder. No adverse inference if shareholders fail to respond to notice by Assessing Officer. It is within duty of Assessing Officer to investigate credit-worthiness of shareholders



Journey of Judicial Cases [Delhi HC and SC].....Contd

CIT V/S LOVELY EXPORTS LTD.

“Can the amount of share money be regarded as undisclosed income under section 68 of the Income-tax Act, 1961 ?

We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.” : CIT v. Lovely Exports P. Ltd. : S. L. P. (Civil) No. 1153 of 2008. dtd 11.01.2008



Journey of Judicial Cases [Delhi HC and SC].....Contd

LAW AFTER LOVELY EXPORTS

307 ITR 334 [DEL.HC]CIT V. VALUE CAPITAL SERVICES P. LTD.

The additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee.

327 ITR 560 [DEL HC] CIT V/S ORBITAL COMMUNICATION P. LTD.

Mere Failure to produce share capital creditor is not material wherein the assessee had discharged its onus.



LAW AFTER LOVELY EXPORTS

**Latest Delhi HC in CIT v/s Oasis Hospitality P. Ltd.
333 ITR 119**

**Onus theory explained, extent of documents
admissible for discharge of onus, laid out: -**

The initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove (i) the identity of the shareholder, (ii) the genuineness of the transaction, and (c) the creditworthiness of the shareholders. In case the investor/shareholder is an individual, some documents will have to be filed or the shareholder will have to be produced before the Assessing Officer to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc., can be furnished.

contd.....



Latest Delhi HC in CIT v/s Oasis Hospitality P. Ltd. 333 ITR 119contd

“When the money is received by cheque and is transmitted through banking or other indisputable channels, the genuineness of the transaction would be proved. Other documents showing the genuineness of the transaction could be copies of the shareholders register, share application forms, share transfer register, etc. As far as the creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinise the same and in case he nurtures any doubt about the veracity of these documents, to probe the matter further. However, to discredit the documents produced by the assessee on the aspects, there have to be some cogent reasons and materials for the Assessing Officer and he cannot go into the realm of suspicion.”



SOURCE OF SOURCE:- Can AO ask the same

264 ITR 254 [GAUHATI HC] NEMI CHAND KOTHARI V. CIT

A person may have funds from any source and an assessee, on such information received, may take a loan from such a person. **It is not the business of the assessee to find out whether the source or sources from which the creditor had agreed to advance the amounts were genuine or not.** If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep it in the bank, the said amount cannot be treated as income of the assessee from undisclosed sources.

Also refer 330 ITR 298 [DEL-HC] CIT V. DWARKADHISH CAPITAL P. LTD. & 103 ITR 344 [PAT-HC] SAROGI CREDIT CORPORATION V. CIT

HERE one may note the amendments brought in by Finance Act 2012 to section 68, wherein in case of cash credits of the nature of share capital, share application, share premium, etc, the onus shall not be discharged unless and until the person in whose name such credit has been recorded, explains to the satisfaction of the AO, the source of such credit too.

THANK YOU !!!

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