ITA 1961

# S. 68–69D

## &

## 115BBE

Unexplained Credits

Investments · Money

Expenditures · Hundi

# UNDERSTANDING THE UNEXPLAINED INCOME PROVISIONS

Statutory Framework • Onus of Proof • Jurisprudence on Books of Accounts

Special Corporate & Business Transactions under Sections 68 to 69D

Income-tax Act, 1961 — with ITA 2025 Comparison

*Income Tax Act, 1961 | Finance Act, 2012, 2016, 2022 | ITA 2025 Comparison*

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# Framework & Importance of Sections 68–69D

# Overview: Sections 68–69D of the Income-tax Act, 1961

- **Purpose:** Form a rigorous statutory code dealing with unexplained credits, investments, money, expenditure, and other unaccounted transactions.

**Policy Goal:** Empower revenue authority to prevent tax evasion by bringing undisclosed cash flow directly into the tax net under severe punitive regimes.

**Sections Covered:** Sec 68 (Unexplained Credits) | Sec 69 (Investments) | Sec 69A (Money/Assets) | Sec 69B (Under-disclosed Assets) | Sec 69C (Expenditure) | Sec 69D (Hundi)

**Punitive Consequence:** Sec 115BBE levies flat 60% tax + 25% surcharge = effective 78% (incl. cess). No deductions or loss set-off permitted.

**Legislative History:** The rate was raised from 30% to 60% by the Taxation Laws (Second Amendment) Act, 2016 w.e.f. AY 2018-19, following demonetisation.

# Section 115BBE — Punitive Tax Rate at a Glance

| Base Tax Rate | Mandatory Surcharge | Effective Rate |
|---|---|---|
| **60%** | **25%** | **≈78%** |
| (raised from 30% w.e.f. AY 2018-19) | on tax amount | incl. education cess |

**Absolute Bar on Set-off of Losses:** No deduction in respect of any expenditure, allowance, or set-off of any loss is permitted against income computed under Sections 68–69D.

**Finance Act, 2017 Reinforcement:** Statutory bar made completely absolute — no room for reducing tax liability through business losses or standard exemptions.

**⚡ 115BBE is NOT a charging provision. It is a rate provision that operates only AFTER a valid addition is made under Secs 68–69D.**

# Section Map: Sections 68 to 69D — At a Glance

## Sec 68

**Unexplained Cash Credits**

Sum credited in books unexplained. Covers loans, share capital, gifts.

## Sec 69

**Unexplained Investments**

Investments not recorded in books or source unexplained.

## Sec 69A

**Unexplained Money/Assets**

Cash, bullion, jewellery not recorded in books.

## Sec 69B

**Under-disclosed Investments**

Investment recorded but actual cost higher than declared value.

## Sec 69C

**Unexplained Expenditure**

Expenditure incurred from untraceable source.

## Sec 69D

**Hundi Transactions**

Amounts borrowed/repaid via Hundi other than a/c payee cheque.

# Section 68 — Meaning, Three Test and Onus of Proof & Shifting of Burden

# SECTION 68 | Statutory Text & Pre-Requisites

**Statutory Text:** *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 is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

**PRE-REQUISITE 1**

### Books of Account

Existence of books of account maintained by the assessee is a sine qua non. No addition under Section 68 can be made if no books of account exist. A bank pass book is NOT a book of account.

**PRE-REQUISITE 2**

### Sum Found Credited

There must be a credit entry of a sum in the books.

**PRE-REQUISITE 3**

### No Satisfactory Explanation

Assessee must explain the nature and source. Absence of satisfactory explanation empowers the AO to treat the credit as income.

*CBI v. V.C. Shukla (1998) 3 SCC 410 (SC) | Smt. Shanta Devi v. CIT [1998] 171 ITR 532 (P&H) | Daya Chand v. CIT (2000) 250 ITR 327 (Del)*

# Section 68 — Jurisprudence on Books of Accounts

# Books of Accounts — Condition Precedent for Section 68

- **Three Co-existing Elements:**

    (i) Existence of books of account;

    (ii) Sum found credited therein;

    (iii) Absence of satisfactory explanation of nature and source.

**Strict Definition (CBI v. V.C. Shukla [1998] 3 SCC 410 SC):** A "book" is a collection of sheets fastened/bound together to form a material whole. Loose sheets, slips, or scraps CANNOT be construed as a book — cannot bring case within Sec 68.

**Statutory Extension u/s 2(12A):** "Books or books of account" include ledgers, day books, cash books, account books and other records, whether written or as digital printouts on floppies, discs, tapes, or electromagnetic storage devices.

**Bank Passbook is NOT a Book of Account:** CIT v. Bhaichand H. Gandhi [1982] 141 ITR 67 (Bom.) — Bank passbook/statement is not a book of account maintained by the assessee. Also affirmed in CIT v. Taj Borewells [2007] 291 ITR 232 (Mad.).

# Books of Accounts — Ownership & Rejection Principles

✓ Assessee

**Smt. Shanta Devi v. CIT [1998] 171 ITR 532 (P&H)**

Books must belong strictly to the assessee himself and not to any third party to attract Sec 68.

✓ Assessee

**Daya Chand v. CIT [(2000) 250 ITR 327 (DEL)]**

A piece of paper impounded during search cannot be construed as a "book". Sum must be credited in structured books maintained for the previous year.

## CONSISTENCY RULE — Acceptance vs. Rejection of Books

**Acceptance Rule:** If AO accepts books as correct for trading turnover, credits therein as regular sales/advances CANNOT simultaneously be treated as unexplained credits under Sec 68.

**Rejection Rule:** If books are fully rejected under Sec 145(3), the AO CANNOT rely on isolated entries in those same books to make a Sec 68 addition.

✓ Assessee

**CIT v. Dulla Ram, Labour Contractor [2014] (P&H)**

Books rejected entirely — AO cannot place selective reliance on isolated entry to sustain Sec 68 addition.

✓ Assessee

**ACIT v. Shri S. Moorthy [ITA 3091/CHNY/2019]**

Post Sec 145(3) rejection and profit estimation by net profit rate — no separate additions under Secs 68, 69, or 69C.

✓ Assessee

**ITO v. M/s M.A. Builders Pvt. Ltd. [ITA 564/LKW/2011]**

After book rejection, court approved estimating profit at 10% of gross receipts. Treating entire receipts as taxable income rejected.

# Explanation – Legal Position

# Section 68 — The Trinity Test (Initial Onus on Taxpayer)

## TEST 1

### IDENTITY of the Creditor

- Establish creditor is a real, identifiable person/entity

PAN, address proof, Aadhaar, formal confirmations

Income-tax returns, incorporation records (for companies)

Verifiable documentary trail is mandatory

## TEST 2

### GENUINENESS of Transaction

- Transaction must be real and contemporaneously supported

Banking channels (a/c-payee cheques)

Loan/share subscription agreements

TDS deducted and deposited; corresponding creditor entries

## TEST 3

### CREDITWORTHINESS of Creditor

- Creditor must have actual financial capacity to advance funds

ITR, audited financials, bank statements

Capital account, net-worth credentials

Known legitimate source for the funds advanced

# Section 68 — Landmark Cases: Initial Onus Discharged (Assessee Wins)

✓ Assessee

**CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78 (SC)**

Assessee provided names, addresses, and TINs of corporate creditors. Revenue failed to pursue notices u/s 131. SC: Assessee fully discharged its burden; addition uncalled for.

✓ Assessee

**CIT-1 v. Apex Therm Packaging (P.) Ltd. [2014] 42 taxmann.com 473 (Gujarat)**

PAN, ITR, balance sheet, P&L, confirmations of lenders furnished. AO cannot sustain addition on unsecured loans.

✓ Assessee

**CIT v. Gangeshwari Metal (P.) Ltd. [2014] 361 ITR 10 (Delhi)**

Share application money with comprehensive docs (names, addresses, confirmations, bank statements). Receipt held genuine; no addition under Sec 68.

✓ Assessee

**CIT v. Flex Plastic & Packaging (P.) Ltd. [2007] 211 CTR 607 (Delhi)**

Unsecured loan from finance concern; bank statements showing sufficient funds + full particulars of sole proprietor. Addition unjustified.

✗ Revenue

**PCIT v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC)**

Revenue Wins: Received substantial share capital/premium but FAILED to establish creditworthiness of investor companies. SC: AO justified in making additions under Sec 68.

# Shifting of Onus to the Assessing Officer

Once the assessee establishes Identity + Genuineness + Creditworthiness → Onus shifts to AO to bring independent evidence. Mere suspicion, conjecture, or surmise is insufficient.

✓ Assessee

**CIT-II v. Kamdhenu Steel & Alloys Ltd. [2012] 19 taxmann.com 26 (Delhi)**

Onus is not static. Identity and credits proven via PAN, bank a/cs, a/c-payee channels → onus shifts to Revenue to disprove.

✓ Assessee

**CIT-IV v. Dwarkadhish Investment (P.) Ltd. [2010] 330 ITR 298 (Delhi)/ PCIT v. K.R. Pulp and Papers Ltd. [2025] 175 taxmann.com 278 (Delhi)**

PAN + a/c-payee cheques → onus shifts to Revenue. Mere inability to locate creditors at address does NOT automatically invoke Sec 68.

✗ Revenue

**CIT, Delhi-V v. N.R. Portfolio (P.) Ltd. [2013] 29 taxmann.com 291 (Delhi) — Revenue Wins**

Court considered cumulative effect: large time gaps in allotment, non-appearance under Sec 131 summons, absence of core business operations, massive cash movements. Held: Transaction lacks genuine commercial credibility. Sec 68 addition justified despite initial documentation.

# Section 68 Onus of Proof: Key Operational Situation

- <u>Related party transactions:</u> Unsecured loans/premium received from group companies or directors require deep scrutiny. Assessees must substantiate with detailed financial trails.
- In this case, the onus is high.
  - ➢ Shantananda Steels (P.) Ltd. v. Income-tax Officer, Corporate Ward 6(2) Chennai [2020] 116 taxmann.com 335 (Chennai - Trib.)
  - ➢ Income-tax Officer v. Sai Everest Building & Developers [2022] 142 taxmann.com 383 (Mumbai - Trib.)

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# Creditworthiness

# The "Source of Source" Doctrine — Legislative Background

- **Pre-Finance Act 2012:** Income under Secs 68–69D taxed at normal rates. Assessee only need to satisfy only the condition of source.

**Finance Act 2012 (w.e.f. AY 2013-14):** Proviso to Sec 68 introduced for private/closely held companies: Share capital, share premium, share application money — the investor-person ALSO must explain the nature and source of funds in their own hands.

**Finance Act 2022 (w.e.f. AY 2023-24):** Scope expanded further: Assessee must explain the source of funds in the lender/depositor's hands for any unsecured loans, borrowings, or corporate deposits.

**Exemptions:** The "source of source" requirement does NOT apply where the creditor is a Venture Capital Fund (VCF) or Venture Capital Company regulated by SEBI or a Non-resident.

**Non-Retrospective Application:** Established by multiple courts — the provisos apply only from their prospective effect assessment years and carry no retrospective effect.

However, the source of source doctrine may have limited application to loan/borrowing/share capital and not be applicable to other transactions like business transactions, forfeiture against property etc.

# "Source of Source" — Key Case Law

## Share Capital — Finance Act 2012 (AY 2013-14 onwards)

✗ Revenue

**DCIT v. R.K. Shah Projects (P.) Ltd. [2023] 149 taxmann.com 101 (Surat-Trib.)**

For AY 2013-14, private company must prove source-of-source of share premium received from existing directors. Proviso applicable.

✓ Assessee

**Adhoi Vyapar (P.) Ltd. v. ITO [2022] 134 taxmann.com 95 (Mumbai-Trib.)**

Source-of-source proviso is strictly prospective from AY 2013-14. No retrospective effect for earlier years.

## Loans & Deposits — Finance Act 2022 (AY 2023-24 onwards)

✓ Assessee

**Sheela Overseas Pvt. Ltd. v. Pr. CIT [ITA No. 546/2023 (Delhi HC)]**

2022 amendment for unsecured loans cannot be applied retrospectively to AY 2015-16. Prospective application only.

✓ Assessee

**ACIT v. Filatax India Ltd. [ITA Nos. 4635/Del/2024 (ITAT Delhi)]**

2022 amendment does not apply to AY 2013-14. VCF/VCC regulated by SEBI explicitly exempt from "source of source" requirement.

⚠ **Litigation Strategy:** Always check the relevant Assessment Year against the amendment dates. The Finance Act 2012 proviso applies from AY 2013-14. The Finance Act 2022 proviso applies from AY 2023-24. Arguing retrospective application by the Revenue is a strong ground of appeal.

## Section 68: Meager Income

- **Capacity v. Profitability**
  - Creditworthiness is established by the capacity to advance funds, which is evidenced by the "Net Worth" and liquidity of the creditor, not merely current taxable income or reserves.
  - Once an assessee produces ITR acknowledgments, PAN, and audited balance sheets, the initial onus is discharged. The Revenue cannot disregard documentary proof simply because the reported income is nominal.
  - Addition under Section 68 of the Act cannot be sustained where creditors possess sufficient reserves and payments are made therefrom, even if their income levels are low.
    - ***Commissioner of Income Tax-9 Erstwhile CIT-VI vs. Vrindavan Farms (P) Ltd. ITA No. 71/2015 [Delhi High Court]***
    - ***ITO, Ward- 20(3), New Delhi Vs. RMP Holding (P) Ltd., New Delhi ITA No. 6017/Del/2018 [ITAT Delhi]***

# Peak Credit & Telescoping Concepts

# Telescoping — Avoiding Double Taxation of Undisclosed Income

**Definition: The concept of telescoping involves tracing source of credit to other income or credits**

✓ Assessee

**Principal Commissioner of Income-tax vs. Agson Global (P.) Ltd. [2022] 441 ITR 550 (Delhi)**

Money received in the form of share capital was routing back of money alleged to be bogus purchases and thus could not be considered as unexplained.

✓ Assessee

**Manjeet Kaur Duggal vs. Income-tax Officer [2025] 175 taxmann.com 202 (Delhi)**

In case of exemption of capital gain arising from alleged penny stock, where the AO sought to treat the entire receipt as income escaping assessment, the Hon'ble Court reduced the amount of credit to gain amount, impliedly accepting that credit to the extent of cost was return of investment.

Cash credits were out of the undisclosed income taxed in earlier years.

- **Anantharam Veerasinghaiah & Co. v.s CIT, (1980) 3 SCR 618**
- **Principal Commissioner of Income tax (Central)-2 v. Heritage Beverages (P.) Ltd. [2024] 166 taxmann.com 217 (Delhi)**
- **Principal Commissioner of Income tax-Central-1 v. Surya Agrotech Infrastructure Ltd. [2025] 174 taxmann.com 1182 (Delhi)**

# Peak Credit — Definition, Conditions & Case Law

- **Definition:** An equitable judicial mechanism to avoid taxing the same undisclosed funds multiple times when an account has alternating deposits and withdrawals (rotating funds in a closed loop).
- **Condition — Factual Foundation:** To claim peak credit, the assessee must explicitly own ALL credit and debit entries in the bank account/books. Partial ownership disqualifies the claim.
- **Condition — Squared-Up Accounts Only:** Peak credit can only be applied to squared-up accounts where funds are shown to rotate in a closed loop.
    - **Bhaiyalal Shyam Behari v. CIT [(2005) 276 ITR 38 (All)]:** Plea of peak credit requires the taxpayer to own all cash credit entries. Benefit cannot be extended if entries are un-owned or attributed to third parties.
    - **CIT v. D.K. Garg [(2017) 250 Taxman 104 (Del.)]:** Assessee must explicitly explain exact source of all deposits AND the destination of all subsequent payments. If primary onus not discharged, AO fully justified in denying peak credit. **(Not applicable to accommodation entry providers – However, commission income can be added.)**
- **Where all the credits are not owned up, like in case of an accommodation entry provider, the entire credits also need not be added and only addition is to be restricted to commission income**. **[Refer: PCIT v. Third Generation Traders Private Limited ITA No. 137/2025 – Delhi High Court]**

# Genuineness - Illustrations

# The Genuineness Checklist

| Transaction Type | Evidence Required to Establish "Genuineness" (Substance of Transaction) |
|---|---|
| **Unsecured Loan** | • **Loan Agreement:** Executed on stamp paper detailing interest rates, repayment tenure, and collateral requirements.<br>• **Interest Payment Trail:** TDS challans (Form 16A) and continuous bank statements demonstrating periodic payout of interest.<br>• **Repayment History:** Proof of subsequent principal repayment through normal banking channels to rule out sham transactions. |
| **Share Capital/Premium** | • **Allotment Records:** ROC filings (Form PAS-3), minutes of Board Meeting approving allocation, and physical/demat share certificates.<br>• **Corporate Authorization:** Valid valuation report justifying share premium and formal allotment resolutions.<br>• **Utilization Proof:** Bank statements showing funds remained in company accounts for genuine business use (proving no immediate round-tripping).<br>• **DCIT v. Shendra Advisory Services P. Ltd. [2025] 176 taxmann.com 719 (SC):** AO treated share premium as unexplained credit due to violation of Sec 78(2) of Companies Act, 1956. SC held: Income-tax Act does not stipulate that non-compliance with another Act turns capital receipt into revenue. Addition under Sec 68 invalid.<br>• **Indowestern Commodities & Energy Trade v. ITO [ITA No.5027/DEL/2025 (ITAT Delhi)]:** Minor infractions under Companies Act cannot form basis for Sec 68 addition when identity, genuineness, creditworthiness are unchallenged. Company law penalties apply independently under that statute. |

# The Genuineness Checklist

| Transaction Type | Evidence Required to Establish "Genuineness" (Substance of Transaction) |
|---|---|
| **Gifts** | • **Registered Gift Deed:** Executed gift deed confirming natural love, affection, and voluntary nature with no reciprocal consideration.<br>• **Occasion & Proximity:** Practical evidence of relationship (family tree) and matching occasions (marriage, major milestone invites).<br>• **Irrevocable Transfer:** Absolute exit of funds from the donor's capital account without any trace of cash returning to them. |
| **Sales** | • Detailing critical defense parameters such as *Stock & Purchase Match (inventory reconciliation)*, *Statutory Reporting (GSTR-1, GSTR-3B alignment)*, and *Historical Sales Parity* (especially vital for cash-sales/demonetization defenses). |
| **Share Application** | • Board Resolution authorizing the share application, Share Application Form, and immediate banking channel trail (no cash routing).<br>• **Statutory & Regulatory Alignment:** Timely filing of Form PAS-3 (Return of Allotment) with the ROC, allotment of shares within 60 days (as per Companies Act), and maintained money in separate bank account (not to be utilized before allotment). |

# Gifts Under Section 68 — Heightened Burden of Proof

Gifts attract a HEAVIER burden of proof than ordinary commercial credits. Identity + Capacity is insufficient — Personal relationship, reciprocity, and real motivation must also be established.

✗ Revenue

**ACIT v. Dr. Roop [ITA 3794/Del/2009 (ITAT Delhi)]**

Genuineness of gift cannot be determined without examining human probabilities, close relationships, occasion for gift, and mutual reciprocity. Addition upheld.

✗ Revenue

**CIT v. Anil Kumar [2007] 292 ITR 552 (Delhi)**

Failure to demonstrate donor creditworthiness, nature of relationship, and donor's actual financial capacity → gift taxable under Sec 68.

✗ Revenue

**Pandit Vijay Kant Sharma v. CIT [2018] 402 ITR 358 (Allahabad)**

Failure to establish donor creditworthiness and justifiable social/personal occasion for gift → addition under Sec 68 warranted.

✓ Assessee

**CIT v. Ms. Mayawati [2011] 12 taxmann.com 306 (Delhi)**

Gifts cannot be struck down merely due to absence of direct blood relation or because donor took loans — provided donors personally appeared, filed sworn affidavits, established long-standing relationships, proved financial capacity.

✓ Assessee

**Ms. Deepa Pamnani vs. Income-tax Officer [2025] 170 taxmann.com 163 (Mumbai - Trib.)**

LTCG on sale of gifted shares cannot be taxed under Section 68 when the assessee establishes the source of acquisition, transfer of shares, and receipt of sale consideration through proper records.

✓ Assessee

**Chandrabhan Rajpal v. DCIT [ITA 473/Ind/2014 (ITAT Indore)] — Burden Clarified**

Gifts distinguished from commercial credits: while commercial credits shift onus to Revenue once identity and capacity shown, gifts require ALL three ingredients (including relationship/genuineness) to be robustly proven by taxpayer.

# Trade Credits — Section 68 Not Attracted

**Outstanding Liabilities Are Not Cash Credits:** A trade liability in the balance sheet (sundry creditors for goods purchased) represents a legal obligation to pay, not an income receipt. It is not a "sum credited" under Sec 68.

- **Absence of actual cash flow:** Section 68 strictly applies to unexplained "cash credits" representing physical or electronic receipts of funds (e.g., loans, share application capital). In contrast, a trade liability is a mere accounting entry for unpaid materials, involving no active receipt of capital.
- **Consistency of Accepted Purchases:** Once the Assessing Officer accepts the corresponding purchase or expenditure transactions as genuine, they cannot legally dispute the outstanding liability representing the unpaid portion. Disputing the liability violates basic tenets of consistency.
- **Application of Section 41(1) vs. 68**: Should an outstanding liability cease to exist or be written off, the statutory mechanism to tax it is under Section 41(1) (Remission/Cessation of Liability) at regular tax rates, not under the penalizing provisions of Section 68/115BBE.
- **CIT v. Pancham Dass Jain [2006] 156 Taxman 507 (Allahabad HC):** Where AO accepted raw purchases, sales, and trading results, outstanding trade credits representing credit purchases CANNOT be treated as unexplained cash credits under Sec 68.
- **ITO Delhi vs. Swati Housing & Construction (P.) Ltd. [2019] 112 taxmann.com 371 (Delhi - Trib.):** Where purchases made from sundry creditors had been duly accounted for and were part of trading account and neither debit side nor credit side of trading results had been disturbed nor books of account had been rejected, then no addition on account of sundry creditors could be made.

# Sales/Business Transactions — Section 68 Not Attracted

- Addition under Section 68 of the Act is not justified where the sales have been duly recorded in the books of accounts and the corresponding income has already been offered to tax.
  - **CIT vs. Kailash Jewellery House ITA No. 613/2010 [Delhi High Court];**
  - **PCIT v. N.K. Industries Ltd [2025] 175 taxmann.com 619 (Gujarat High Court)**
  - **PCIT -Central Ludhiana vs. Garg Acrylics Ltd. [2025] 174 taxmann.com 726 (Delhi)**

- When books of accounts not rejected sales cannot be deemed as unexplained.
  - **CIT, Patiala vs. Dulla Ram, Labour Contractor, Kotkapura [2014] 42 taxmann.com 349 (Punjab & Haryana HC)**
  - **Ramcharitar Ram Harihar Prasad v. Commissioner of Income-tax [1953] 23 ITR 301 (Patna HC)**
  - **Elcon Drugs & Formulations Ltd. vs. The Income Tax Officer, Ward 4(2), Jaipur ITA No. 995/JP/2013 [ITAT Jaipur]**

- Where the credit is duly disclosed in books of accounts and offered to tax, albeit at normal rate of tax, the reclassification of such credit from normal income to cash credit does not result in *"income escaping assessment"*.
  - **Gyan Marketing Associates (P.) Ltd. vs. Income-tax Officer [2025] 173 taxmann.com 953 (Delhi)**

# Cash Deposits & Demonetization Jurisprudence

*Income-tax Act, 1961 | Sections 68–69D | Comprehensive Litigation Reference*

# Cash Deposits — From Prior Bank Withdrawals

Key Principle: Deposits made out of documented prior cash withdrawals CANNOT be doubted or treated as unexplained income without evidence showing utilization elsewhere.

✓ Assessee

**Arvind Walia v. ACIT [ITA 440/Del/2022 (ITAT Delhi)]**

Where AO previously accepted cash from cash book comprising bank withdrawals, he erred in rejecting same source during demonetization period on mere suspicion.

✓ Assessee

**CIT v. Kulwant Rai [2007] 291 ITR 36 (Delhi)**

Cash flow statement showing prior bank withdrawals exceeding cash deposited → explanation cannot be rejected on suspicion that funds spent elsewhere unless Revenue proves alternative utilization.

✓ Assessee

**ACIT v. Baldev Raj Charla [2009] 121 TTJ 366 (Delhi)**

Sufficient cash withdrawals preceding deposits established → explanation cannot be discarded merely due to time gap between withdrawal and re-deposit.

✓ Assessee

**Baljit Singh v. ITO [2019] 108 taxmann.com 123 (Chandigarh-Trib.)**

Funds withdrawn for property purchase; transaction failed; re-deposited 4 months later. Sec 68 addition ordered to be completely deleted.

## Cash Deposits from Regular Business Turnover

✓ Assessee

**Ayesha Steels (P.) Ltd. v. ITO [2025] 175 taxmann.com 1084 (Delhi-Trib.)**

Demonetization deposits by scrap dealer deleted — substantiated with solid cash sales records; no defects in sales registers.

✓ Assessee

**TamilNadu State Marketing Corp. v. ACIT [2025] 170 taxmann.com 641 (Chennai-Trib.)**

Wholesale/retail liquor vendor: SBN deposits from standard daily business sales in books — no additions sustainable.

✓ Assessee

**ITO v. MOBI TRADELINK [ITA No.3520/Del/2024]**

Cash deposited during demonetization forming part of regular business turnover backed by stock records, sales registers → not unexplained.

# Sum of Money – Excludes other assets

# Section 68 Not Applicable to receipts other than “sum of money”

- Section 68 of the Act is attracted if any “sum” is found credited in the books of the assessee. The meaning of term “sum” used in section 68 should be understood in the manner in which the legislature has intended to use it.

- **Sum here means “a sum of money” and not anything else. The connotation “sum” cannot be used for anything else than the sum of money itself. Therefore, in order to get hit by the rigors of section 68 of the Act, a “sum” has to be found as credited in the books of account and any asset other than the money itself would not trigger the provisions of section 68 of the Act at all.**

- Section 68 not applicable If the credit does not involve the receipt of money like receipt of shares, conversion of liabilities into shares, write back of liabilities. **[Ref. H.H. Sri Rama Verma v. Commissioner of Income-tax [1991] 57 Taxman 149 (SC); V.R. Global Energy (P.) Ltd. ITO [2018] 96 taxmann.com 647/258 Taxman 5/407 ITR 145 (Mad HC.)]**

# Jurisdictional Changes & Appellate Alterations

# Appellate Authorities Cannot Change Statutory Provision

**Core Rule:** The foundational basis or statutory provision under which an addition is made CANNOT be mechanically substituted during appellate proceedings. A fresh formal Show Cause Notice (SCN) is mandatory — required by principles of natural justice.

✓ Assessee

**Smt. Sarika Jain v. CIT [2017] 84 taxmann.com 64 (Allahabad)**

Entire dispute was about gift under Sec 68. Tribunal held no Sec 68 addition → wrongly shifted basis and sustained addition under Sec 69A. Held: completely unjustified without SCN.

✓ Assessee

**Smt. Sekar Jayalakshmi v. ITO [2023] 150 taxmann.com 120 (Chennai-Trib.)**

CIT(A) not legally empowered to change underlying provision from Sec 68 to Sec 69A regarding item for which primary assessment was concluded under a different limb.

✓ Assessee

**Barkha Kishore Kumar Agarwal v. ACIT [ITA 1873, 1874 & 1875/Mum/2025 (ITAT Mumbai)]**

CIT(A) cannot mechanically change basis of a tax addition from Sec 68 to Sec 69A without providing a clear, unambiguous opportunity or fresh Show Cause Notice to the assessee to rebut the alternate provision.

⚖ **Appellate Litigation Principle:** Any attempt by an appellate authority (CIT(A) or ITAT) to sustain a tax addition by switching the section of law without a fresh SCN is a fundamental violation of natural justice and constitutes a jurisdictional error, warranting deletion of the addition.

# Section 69 — Unexplained Investments

# Section 69 — Statutory Conditions & Key Features

**Condition 1:** Assessee has made investment in the financial year immediately preceding the assessment year

**Condition 2:** Such investments are NOT recorded in the books of accounts (if any) maintained by the assessee for any source of income.

**Condition 3:** Assessee does not offer any explanation about nature and source of investments, or the explanation is unsatisfactory in the AO's opinion.

- **Key Distinction from Sec 68 and 69B:** Maintenance of books of account is NOT a condition precedent for Sec 69, unlike Sec 68 and 69B. (DCIT v. Finlay Corporation Ltd. [2003] 86 ITD 626 (Delhi))
- **Sec 68 vs Sec 69 (Laxmi Narain Gupta v. CIT [1980] 4 Taxman 325 (Pat.)):** Income from undisclosed source credited in books → Sec 68 applies. Income from undisclosed sources invested but NOT recorded in books → Sec 69 applies.
- By virtue of the condition of no books of accounts, Section 69 may not be attracted during regular assessment, the said section generally gets attracted on information received from third parties like registrar authority, seller or search/survey cases.
- The addition will be made only in the year of investment and not in the year in which it is found that the assessee had made investment.
- Benefit of telescoping of undisclosed income can be considered as explanation for unrecorded investment. **[Refer: CIT vs Ram Sanehi Gian Chand [(1972) 86 ITR 724 (P&H)]. If investment is telescoped to undisclosed business income, the assessee can avoid higher tax and consequences under Section 115BBE.**

# Section 69A — Unexplained Money, Bullion & Assets

# Section 69A — Conditions & Scope

1 **Ownership:** Taxpayer is "found to be the owner" of money, bullion, jewellery, or other valuable article.

2 **Unrecorded:** Such assets are NOT recorded in the books of account (if any) maintained by the taxpayer. (Similar to Section 69 and applies where 68 or 69B not applicable).

3 **Unexplained Source:** Taxpayer offers no explanation about nature and source, or explanation offered is unsatisfactory to AO, the money and the value of the assets will deemed be the income of the assessee for such FY.

- Unexplained credit in bank account can be considered as unexplained money u/s 69A
- If source of acquisition is explained, the value of asset cannot be deemed as unexplained money u/s 69A.
- If the source of acquisition is proved to be from income (unexplained/explained) of earlier years, which cannot be reopened, section 69A cannot be applied in the year of finding.

- Benefit of telescoping of undisclosed income. **[Refer: DCIT vs Anil Kumar, Hon'ble Delhi ITAT, [1997] 58 TTJ 340 (Delhi)]**
- If telescoping through business income, such business income to be taxed at normal rate of tax thereby avoiding implication of Section 115BBE.

# Landmark: D.N. Singh v. CIT [2023] — Supreme Court Analysis

Context: Transport contractor misappropriated bulk bitumen. AO added market value as "unexplained valuable article" under Sec 69A.

**Issue 1: Who is an "Owner" under Section 69A?**

SC Held: Transport contractor is merely a bailee under contract of bailment. Title and ownership never transfer to a carrier. Even if carrier criminally misappropriated cargo, their legal status is closer to a thief. Straining "owner" in Sec 69A to include a thief or defaulting bailee is legally impermissible. Ownership requires bundle of rights (enjoy, alienate, bequeath, use as security).

**Issue 2: What is a "Valuable Article"?**

SC Applied ejusdem generis + noscitur a sociis: "Other valuable article" sits alongside money, bullion, jewellery. Hence limited to intrinsically high-priced, precious, and easily concealable luxury assets. Ordinary industrial commodities like bulk bitumen (₹5/kg industrial residual byproduct) do NOT qualify merely because aggregate quantity adds up to a large monetary value.

**Result: SC set aside addition under Sec 69A. Two-pronged test (ownership + valuable article) both failed.**

Significance: This SC ruling defines the outer limits of Sec 69A — it cannot be stretched to cover every commercially valuable commodity or goods-in-transit scenario.

**Circular No. 20 of 1964- Dated 7-7-1964 - Intent of Section 69A -** Amendment is enacted not to subject lower middle-class people to taxation by taxing gold or jewellery inherited from forefathers, but provision is mandated for 'big assessees' who convert their black money and unaccounted wealth into gold jewellery and gold vessels and claim it to be heirloom.

# Section 69A — "Source of Source" Proviso of Sec 68 Not Applicable

Context: The source-of-source provisos inserted into Sec 68 by the Finance Act 2012 (share capital/premium) and Finance Act 2022 (loans/deposits) are confined to specified credits found IN THE BOOKS OF ACCOUNT — a pre-condition Sec 69A does not carry.

## Sec 68 — Source of Source IS Required

For share capital, premium, loans and deposits CREDITED IN BOOKS, the proviso obliges the assessee to prove the identity, genuineness and creditworthiness of the creditor AND the source from which the creditor obtained the funds — i.e. the "source of source".

## Sec 69A — Source of Source NOT Required

Sec 69A carries NO comparable proviso. The assessee found to be the owner of money/bullion/jewellery/valuable article need only explain its OWN nature and source — there is no statutory obligation to further trace the source from which that source itself was acquired.

**Result: The heightened "source of source" burden is a special creature of the Sec 68 provisos (FA 2012 & FA 2022) and cannot be read into Sec 69A, which requires only nature and source of the asset itself.**

**Benami Proceedings — Yoosaf N.A. v. Initiating Officer (BPU) [2026] 186 taxmann.com 645 (SAFEMA, New Delhi):** Cash of Rs. 50.13 lakh with unexplained source was held to be unaccounted (benami) property despite the possessor admitting ownership and offering to declare it as income — mere disclosure of a sum without proving its actual source cannot cure the absence of source-proof, reinforcing why Sec 69A already demands genuine proof of source at the first level itself.

# Section 69B — Amount Not Fully Disclosed in Books

# Section 69B — Conditions, DVO Reference & Case Law

**Conditions (Cumulative):** (1) Investment/asset is made/owned; (2) Amount expended EXCEEDS amount recorded in books; (3) Assessee offers no satisfactory explanation for the excess. Only the EXCESS is deemed income — not the entire investment.

## Onus of Proof (On Revenue)

✓ Assessee

**Smt. Amar Kumari v. CIT [1979] 2 Taxman 462 (Raj.)**

Onus of proving circumstances enabling invocation of Sec 69B is on Revenue. AO should not act arbitrarily — material evidence required before invoking Sec 69B.

✓ Assessee

**CIT v. Agile Properties (P) Ltd. (2014) 107 DTR 0201 (Delhi HC)**

No automatic invocation of Section 142A - Sec 69B addition can be made only on basis of positive material or evidence. Mere DVO opinion as to true value is inadequate without positive evidence of cash component.

✗ Revenue

**Joginder Lal v. CIT [2015] 56 taxmann.com 150 (P&H)**

Revenue discharged onus — sale consideration in deed incorrect and vendors' statements on true value unrebutted. Difference rightly treated as unexplained investment u/s 69B.

## DVO Reference — Key Limits

✓ Assessee

**Sargam Cinema v. CIT (2010) 328 ITR 513 (SC)**

AO CANNOT refer property to DVO to estimate value for Sec 69/69B addition without first pointing out specific defects and formally rejecting books under Sec 145.

✓ Assessee

**CIT v. Naresh Khattar (HUF) (2003) 261 ITR 664 (Delhi HC)**

Under Sec 69B, initial burden is strictly on Revenue to prove with direct, positive evidence that actual consideration exceeded recorded amount. Cannot force taxpayer to prove a negative.

✓ Assessee

**PCIT v. Bajargan Traders DB ITA 247/2016 (Rajasthan HC)**

Excess business stock discovered during search — must be treated as unrecorded business income, NOT as separate unexplained investment u/s 69/69B. Avoids 78% rate under Sec 115BBE.

# Section 69C — Unexplained Expenditure

# Section 69C — Structure, Nuances & Critical Rules

- **Core Principle:** Section 69C does NOT penalize spending money — it penalizes spending money FROM AN UNTRACEABLE SOURCE. Focus is strictly on the genesis of funds used to make the payment.

**Condition 1 — Actual Incurrence:** Sec 69C begins: "Where in any financial year an assessee has incurred any expenditure". Revenue MUST prove expenditure was actually incurred — presumptive/hypothetical expenditure cannot be created by AO.

**Condition 2 — Unexplained Source:** Assessee offers no explanation about source of such expenditure, or the explanation offered is unsatisfactory in the AO's opinion – Section is applicable on expenses not recorded in books of accounts, since expense recorded in books of account, source stands explained.

- If expense recorded in books of account is found to be bogus, such expense will be disallowed u/s 37(1) and will be outside the ambit of Section 69C. **[Refer Pr. CIT v. Vaman International Pvt. Ltd. [ITA 1940 of 2017] (Bombay HC)].**
- Benefit of telescoping of undisclosed income can be given for source of unexplained expenditure, and no separate addition of such expense can be made u/s 69C.
- If evidence of both unrecorded income and expense is found, net income is to be brought to tax, by reducing such expenses from income, which will be taxable at normal rate and not under 69C. **[Refer: CIT vs. Indeo Airways (P) Ltd. [2012] 26 taxmann.com 244 (Delhi)]**
- **Proviso — Double Disallowance Trap:** Once unexplained expenditure is deemed income under Sec 69C, it CANNOT be claimed as a deduction under any head of income. E.g. ₹10L unaccounted raw material payment → added to income AND denied as business expense.

However, such proviso will not be applicable if source of expenditure is explained to be unexplained income.

# Bogus Purchases - HC Approach

## Delhi High Court — Entire Bogus Purchase Amount Added

✗ Revenue

**CIT v. La Medica [2001] 250 ITR 575 (Delhi HC)**

Payments routed through a bank account of a non-existent/untraceable party — the ENTIRE sum paid towards such fictitious purchases held assessable as the assessee's undisclosed income; not merely the profit embedded in it.

## Bombay High Court — Only Profit Element Taxable

✓ Assessee

**CIT v. Nikunj Eximp Enterprises (P.) Ltd. [2015] 372 ITR 619 (Bombay HC)**

Even where purchases are from bogus/unverifiable parties, if sales are accepted as genuine and stock movement is undisputed, the entire purchase value cannot be disallowed — only the PROFIT MARGIN embedded in such purchases is liable to tax.

⚠ **Litigation Strategy:** profit-element approach: where the corresponding sales/consumption is undisputed, goods cannot have materialized out of thin air — the Gujarat HC and Bombay HC (Nikunj Eximp.) restrict addition to the embedded profit margin (commonly 6%-12.5%). Reserve the Delhi HC's full-value approach (La Medica) for cases where the purchase transaction itself, not merely the supplier, is shown to be fictitious/non-existent.

# Section 69D — Hundi Transactions

# Section 69D — Strict Liability & Key Features

| | |
|---|---|
| **Trigger 1** | Any amount BORROWED on a Hundi from any person (other than through a/c-payee cheque). |
| **Trigger 2** | Any amount REPAID (including interest) on a Hundi otherwise than through a/c-payee cheque. |
| **Strict Liability** | Unlike Secs 68, 69, 69A — Sec 69D does NOT contain the phrase "no explanation or explanation unsatisfactory". The deeming fiction triggers automatically the moment a Hundi transaction is executed in cash. |
| **Double-Jeopardy Protection (Proviso)** | If amount borrowed on Hundi was already taxed at time of borrowing, the same amount is NOT assessed again when repaid — prevents double taxation of identical pool of funds. |
| **Interest Inclusion** | The Explanation to Sec 69D clarifies that "amount repaid" includes interest paid on the loan. Both principal and interest components are independently taxable. |

# Section 69D — What Is (and Isn't) a Hundi: Key Cases

✓ Assessee

**CIT v. Paranjothi Salt Company (1995) 211 ITR 141 (Mad HC) — Tripartite Test**

A genuine Hundi fundamentally requires a TRIPARTITE structure: drawer, drawee, and payee. If loan transaction is strictly BILATERAL (borrower + lender only), it lacks defining legal characteristics of a Hundi. Sec 69D cannot be invoked on basic bilateral loans merely because AO labels them as Hundis.

✓ Assessee

**CIT v. Dexan Pharmaceuticals Pvt. Ltd. (1995) 214 ITR 576 (AP HC) — Vernacular Language Test**

Hundis are historically written in oriental/vernacular languages and governed by local trade customs. Documents in English with standard commercial clauses (waiver of notice of dishonor) and structured as bilateral promissory notes payable to order are commercial loans, NOT Hundis. Sec 69D applies exclusively to classic Hundis.

✓ Assessee

**ACIT v. Omprakash & Co. [2004] 2 SOT 1 (MUM.) — Seized Diaries**

Parallel diaries/notebooks with coded entries found during search. AO decoded as "Hundi loans" under Sec 69D. HELD: To invoke Sec 69D, an ACTUAL HUNDI INSTRUMENT must be found or proved to exist. Informal notations or ledger records of cash credits in a diary can only be examined under Sec 68 — NOT Sec 69D.

⚠ **Key Litigation Point:** Three tests to defeat a Sec 69D addition: (1) No tripartite structure — transaction is bilateral; (2) Document is in English with standard commercial terms — not a classic Hundi; (3) No physical Hundi instrument found — only diary entries or informal records.

# Section 115BBE — Punitive Tax Regime

# Section 115BBE — Legislative History & Scope

- **Pre-AY 2013-14:** Income assessed under Secs 68–69D was taxed at NORMAL rates applicable to the assessee.

**Finance Act 2012 (AY 2013-14):** Sec 115BBE inserted to discourage practice of explaining unexplained income as business income and claiming deductions. Rate: 30% flat.

**Taxation Laws (2nd Amendment) Act 2016 (AY 2018-19):** Post demonetisation: (1) Rate raised from 30% to 60%; (2) Mandatory surcharge introduced; (3) Absolute bar on deductions, allowances, and loss set-off.

**Nature of Sec 115BBE:** NOT a charging provision. It merely prescribes the RATE at which income already assessed under Secs 68–69D is to be taxed. CBDT Press Release dated 01.12.2016 expressly clarified this.

**Core Appellate Proposition:** Revenue must FIRST establish applicability of Secs 68/69/69A/69B/69C/69D. Unless addition survives under the deeming provision, taxation under Sec 115BBE automatically fails.

**Applicability of Enhanced Rate:** S.M.I.L.E. Microfinance Ltd. v. ACIT (2025) 479 ITR 172 (Mad.) and Jagathesh v. ACIT (2026) 182 taxmann.com 28 (Chennai ITAT): Rate of 30% applicable up to AY 2017-18. Enhanced 60% rate applicable from AY 2018-19 onwards.

- **ACIT vs. Sri Balaji Forgings (P.) Ltd. [2022] 144 taxmann.com 126 (Delhi - Trib.)**
- **Deputy Commissioner of Income-tax vs. Santosh Trust [2025] 178 taxmann.com 31 (Delhi - Trib.)**

# Penalty Landscape: Section 115BBE

- **Section 271AAC:** Acts as the primary penalty provision. A penalty of 10% of the tax payable under Sec 115BBE is leviable on assessed income under Sections 68, 69, 69A, 69B, 69C, or 69D. However, no penalty under Section 271AAC is leviable if the assessee has voluntarily disclosed such income in the return of income and paid the tax due thereon within the prescribed time.
- **Section 270A:** Penalty for under-reporting/misreporting cannot be imposed on the same income covered by Section 271AAC because Section 271AAC(2) specifically bars its application.
- **Section 271AAB:** Applies strictly in search-related cases involving "undisclosed income". In such scenarios, there can be dual applicability of both the penalties i.e., 271AAB and 271AAC.
- **Note:** There are no provisions on penalty under the new law.

# ITA 1961 vs ITA 2025 — Key Changes

# ITA 1961 vs ITA 2025 — Section Mapping

| ITA 1961 | ITA 2025 | Subject Matter |
|---|---|---|
| **Sec 68** | **Sec 102** | Unexplained Credits |
| **Sec 69** | **Sec 103** | Unexplained Investment |
| **Sec 69A** | **Sec 104** | Unexplained Asset |
| **Sec 69B** | **Secs 103 & 104** | Amount Not Fully Disclosed (merged into 103 & 104) |
| **Sec 69C** | **Sec 105** | Unexplained Expenditure |
| **Sec 69D** | **Sec 106** | Amount Borrowed/Repaid through Negotiable Instruments/Hundi |
| **Sec 115BBE** | **Sec 195** | Punitive Tax Rate on Deemed Income reduced to 30%. |

# ITA 2025 — Key Substantive Changes

| | | |
|---|---|---|
| 1 | "May" → "Shall" (Mandatory Addition) | ITA 1961: AO **"may"** charge sum to tax (discretionary). ITA 2025 Sec 102: **"shall"** charge sum to tax (mandatory). Once explanation unsatisfactory, addition becomes AUTOMATIC. Affects Secs 102–105. |
| 2 | Consolidation of Provisions | **Unexplained Assets:** Earlier, Sections 69A (assets not recorded in books) and 69B (assets recorded at a lower value) operated separately; both have now been consolidated under **Section 104**.<br>**Unexplained Investments:** Similarly, Sections 69 (investments not recorded in books) and 69B (investments recorded at a lower value) have been merged into **Section 103** for unexplained investments. |
| 3 | Expansion of Ownership — "Belonging to" | ITA 1961: "owner" of asset. ITA 2025: "owned by or belonging to" the assessee. Ministry clarification: "belonging to" covers beneficial ownership, effective control, enjoyment of asset — even if registered in another person's name. Targets benami structures. |
| 4 | Inclusion of Virtual Digital Assets (VDA) | ITA 1961: Ambiguity whether VDAs qualify as "other valuable article". ITA 2025 Sec 104: VDAs explicitly included in definition of "asset". Ensures unexplained cryptocurrency/digital assets face same scrutiny as traditional assets. |
| 5 | Expansion of Sec 69D — All Bearer Negotiable Instruments | ITA 1961 Sec 69D: Only Hundis targeted. ITA 2025 Sec 106: Expanded to ALL negotiable instruments — promissory notes, bills of exchange, and bearer cheques under Sec 13 of NI Act. Only a/c-payee cheques or CBDT-specified modes are exempt. |

# Quick Reference — Litigation Checklist: Sections 68–69D

| | |
|---|---|
| **Sec 68** | Establish Identity + Genuineness + Creditworthiness (three-pronged test). Books of account must exist. Check AY for "source of source" proviso. Verify consistency rule if books accepted. |
| **Sec 69** | Investment must be UNRECORDED. Books maintenance NOT prerequisite. Discretionary "may" in ITA 1961 (= "shall" in ITA 2025). Challenge if AO/Revenue failed to conduct independent enquiry. |
| **Sec 69A** | Check ownership (bailee/carrier cannot be "owner"). Ejusdem generis — "valuable article" limited to precious, easily concealable luxury assets, not commercial commodities. Unexplained bank deposits covered. |
| **Sec 69B** | Revenue bears initial burden to prove actual cost exceeds recorded cost with DIRECT, POSITIVE evidence. DVO reference alone insufficient. Must reject books under Sec 145 first. Excess stock = business income, not Sec 69B. |
| **Sec 69C** | Revenue must prove expenditure ACTUALLY INCURRED. Source of payment established via banking channels = Sec 69C fails. No DVO reference for Sec 69C. "May" = discretionary. Double disallowance proviso trap. |
| **Sec 69D** | Tripartite structure required. Document in English with commercial terms ≠ Hundi. Physical Hundi instrument must exist — diary entries insufficient. Double jeopardy protection applies to repayment. |

CONCLUSION

# Sections 68–69D remain the most contentious and high-stakes provisions in Indian tax litigation.

1. The three-pronged test (Identity + Genuineness + Creditworthiness) under Sec 68 remains the foundational standard — both for taxpayers and the Revenue.
2. Section 115BBE is consequential, not independent — invalid underlying additions automatically render 115BBE inapplicable.
3. ITA 2025 transforms "may" to "shall" — making additions mandatory once conditions are met, eliminating AO discretion.
4. The "source of source" doctrine, expansion of ownership to "belonging to", inclusion of VDAs, and expansion of Sec 69D to all negotiable instruments signal a more stringent enforcement era.
5. Key defense strategies: books of accounts condition, consistency rule, peak credit, telescoping, non-retrospective application of provisos, natural justice in appellate alterations.

*Income-tax Act, 1961 | Finance Acts 2012, 2016, 2017, 2022 | Income-tax Act, 2025*

# THANK YOU

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