The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Kozhikode Branch of SIRC e-newsletter

English Monthly | For private circulation only

Volume-III | Issue-3 | March, 2022 | Pages : 10

INDEX

Article

Critical Analysis of Section 68 of Income Tax Act, 1961 and it's Allied Case Laws 2

Activities - March, 2022 5

Upcoming Programmes - May, 2022 10

Editorial Board

Editor : CA. SANTHOSH PAI G

Sub Editor : CA. SURYA NARAYANAN

Disclaimer:
The Kozhikode branch of SIRC of ICAI is not in any way responsible for the result of any action taken on the basis of the articles and advertisement, if any, published in the e-Newsletter. The views and opinions expressed or implied in the branch e-Newsletter are those of the authors and do not necessarily reflect those of Kozhikode Branch of SIRC of ICAI.

Critical Analysis of Section 68 of Income Tax Act, 1961 and it's Allied Case Laws

I. INTRODUCTION:

CA. Pushp Kumar Sahu

Why Section 68 was introduced under Income Tax Act, 1961.

There was a great need and importance for introducing the provisions of section 68 under the income tax act, 1961 to safeguard and protect the interest of revenue, as assesse was engaged in harmful tax practices to evade tax in the form of fake cash credit entries in the books of account, after introduction of this section many amendments have been taken place from time to time to enhance its applicability and to curb the menace and unearthing of Black Money , Accommodation Entries, Cash Credit Entries etc.

Assesse used to hide its Income or supress income by diverting its cash receipts and showing it as "Unsecured Loan" or in any other form in the books of accounts, thereby avoiding payment of tax on business receipts. It is a tax evasion device or tool used by large number of assesses across the nation to evade tax and thereby resulting in tax revenue loss to the Government of India.

To curb such malpractices and tax evasion tactics, section 68 came into light with timely amendments in it.

II. SECTION 68.

[60]*Where any sum is found credited in the books*[61]*of an assessee maintained for any previous year, and the assessee offers no explanation*[61] about the nature and source thereof or the explanation offered by him is not, in the opinion of the [62]*[Assessing] Officer, satisfactory, the sum so credited may*[61] be charged to income-tax as the income of the *assessee of that previous year :*

[63]***[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.]*

Let us understand this section critically and in easy way;

1. **Applicability**

This Section is only applicable and can only be invoked when assesse is maintaining books of account and there is any sum which is found credited in the books of an assesse maintained for any previous year and assesse offers no explanation with regard to such cash credits or explanation offered by assesse was not satisfactory, then assesse will be held guilty under this section and thereby as a result, provisions of this section will trigger. All credit entries appearing in the books of accounts of the assesse are covered under this section. **Reliance can be placed Smt. Shanta Devi Vs. CIT [1988] 171 ITR 532 (Punjab & Harayana High Court). In the abovementioned Case Law, it was held that on perusal of section 68 of the act shows that in relation to the expression 'Books' the emphasis is on the word ' assesse' meaning thereby that such books have to be the books of the assesse himself and not of any other assesse.**

2. **Onus to prove**

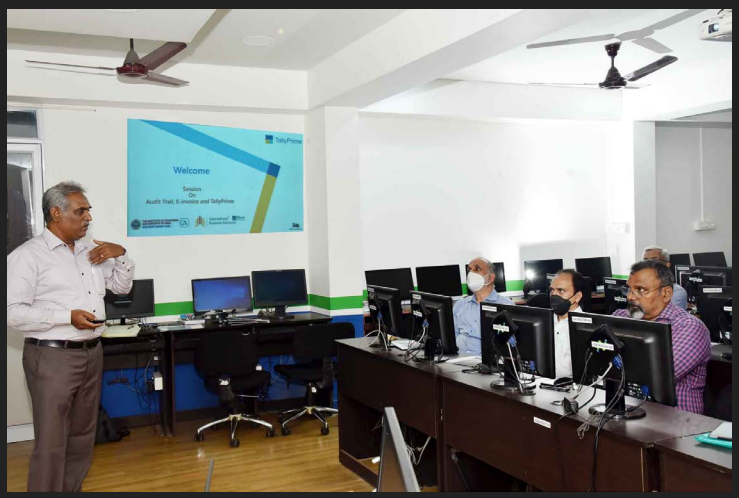
The burden lies on the assesse to prove that any sum which is found credited in books was a genuine transaction; nature and source of such entry should be proved by assesse, otherwise it would be treated as income of the assesse. But Assesse was not required to prove "Source of Source", means assesse was not required to prove the source of income of the person from whom he has received the amount. The only thing which assesse was required to do is to prove the genuineness of the transactions as well as the creditworthiness of the person providing credit along with documentary evidences, it is not the business of the assesse to find out the source of money of the person providing loan or any other credit in any form. Once assesse furnishes sufficient documents and explanations, it is on the onus of department to verify the same and act accordingly.

3. **Taxability**

Unexplained Cash Credits are chargeable to tax u/s 115BBE of the Income Tax Act, 1961 at the rate of 60% plus surcharge plus Cess that comes to overall 78% that too without deduction of any expenses. The real and main purpose of introducing this provision is to charge the tax at higher rates than the normal rates, so that assesse would avoid concealing and hiding its income. The logic behind increasing tax rate from 30% to 60% was to make sure assesse who is hiding and concealing its income will not be treated at par with other tax payers i.e. both disclosed and un-disclosed income will be taxed at roughly 30%, to penalise the tax evaders, tax rate was increased.

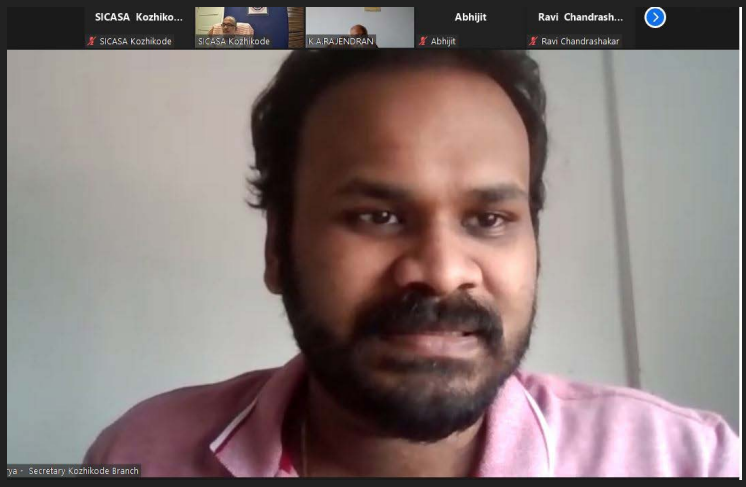
ACTIVITIES - MARCH, 2022

40th Annual Changeover function of Kozhikode Branch of SIRC of ICAI at Hotel Malabar Palace, Kozhikode.
***Inauguration* - Shri. Byjunath K ,**Judicial Member, Kerala State Human Rights Commission**.**
***Guests of Honour* - CA. Rajendra Kumar P.** (Central Council Member, ICAI), **CA. Sripriya K** (Central Council Member, ICAI) **and CA. Satheesan P** (SICASA Chairman, SIRC) **- 06.03.2022**



Tally Workshop
Topic **- Audit Trail and GST E-Invoicing**
Speaker **- Mr. Shanmukha, G M Zonal, Tally - 17.03.2022**

One day seminar *Topic* - Bank Audit
***Inauguration* - Shri. P.K. Vijay Kumar** IRS, DGIT, Retd.
***Speakers* - CA. Raj Mohan R,** Trichur **and CA. Ravindran V,** Salem**- 21.03.2022**



Virtual CPE Meeting on Bank Audit
***Speaker* - CA. Abijit Sanzgiri,** Mumbai **- 26.03.2022**

Seminar on Narcotics in association with Pink protection project Project Vadakara.
***Inauguration* - Smt. Bijula K K ,** Panchayat President, Villyappalli
***Chief Guest* - Sri. A. Srinivas IPS,** Rrral SP, Kozhikode **- 31.03.2022**

awareness programme on Narcotics in association with Pink protection project Project Permba.
***Inauguration* - Smt. Ajitha C,** Panchayat PResident, Ulliyeri
***Chief Guest* - Sri. Aswakumar K. DYSP,** Narcotic Cell **- 31.03.2022**

Upcoming Programmes - May, 2022

May

7
One Day National Seminar of
Corporate Laws & Corporate Governance Committee of ICAI
Topic - CARO & Schedule III Amendment
Speakers -CA. Hemal Shah,
CA. Rengarajan

11 4:00 PM - 5:30 PM
VCM
Topic - FEMA Provisions & related Income Tax Provisions for NRI Taxation
Speaker - CA. Sudha Bushan

14
Seminar
Topic - Accounting Standards for Non Corporate Entities
Speaker - Vinod Balachandran

21
Seminar
Topic - Auditing Standards
Speaker - CA. Chinnasamy Ganesan

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to *icaikoznewsletter@gmail.com* along with name, membership number and mobile number.