

# CASH DEPOSIT DURING DEMONETISATION – ADDITIONS UNDER INCOME TAX ASSESSMENT



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Presented by

CA Paras Dawar  
Mob - 9711107317

Email - [paras@parasdawar.com](mailto:paras@parasdawar.com)

# ISSUES

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- Cash deposit additions under section 68 , 69A
- Cash Sale recorded in books, added under section 68
- Presumptive tax cases
- Peak cash theory
- Cash deposited out of withdrawals
- Opening Cash in hand not considered
- Cash received from debtors, added u/s 68
- No books maintained, cash deposited added us 69A
- Applicability of section 115BBE
- Interest u/s 234B & C on enhanced tax
- Cash received after 8/11/2016
- Remedy available

**CBDT'S INSTRUCTION ON HANDLING  
CASH DEPOSIT CASES DURING  
DEMONETISATION**

# Cash deposit out of opening balance / earlier income or savings

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## Instruction No. 3/2017 – dt. 21-02-2017

- Individual with no business – Cash Deposit < Rs. 2.5 Lakhs - No further verification is required
- Individual with no business above 70 years – Cash Deposit < Rs. 5 Lakhs - No further verification is required
- **Books maintained - No further verification is required**  
Cash deposit out of opening balance < Cash balance as at 31-03-16 in ITR for AY  
2016-17
- N.A. in case of AO has reason to believe that cash balance as on 31-03-2016 has been increased by **revising the return or backdating transactions** in the books of account

# Cash deposit out of withdrawals from bank

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## Instruction No. 3/2017 – dt. 21-02-2017

- The date and amount of cash withdrawals and cash deposits in the bank account may be matched.
- The AO should take a balanced view in analyzing the time gap from the point of view of normal human behavior and specific circumstances of the case.

# Cash deposit out of cash sales

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## Instruction No. 3/2017 – dt. 21-02-2017

- AO may seek relevant information e.g. monthly sales summary (with breakup of cash sales and credit sales), relevant stock register entries, bank statement etc. to identify cases with **preliminary suspicion of back-dating of cash sales** or **fictitious sales**.
  
- Some indicators for suspicion of back dating of cash sales :
  - i. **Abnormal jump in the cash sales** during the period Nov to Dec 2016 as compared to earlier history.
  - ii. **Abnormal jump in percentage of cash sales** to **unidentifiable persons** as compared to earlier history.
  - iii. **More than one deposit of specified bank notes** in the bank account late in the demonetization period.
  - iv. **Non-availability of stock** or attempts to **inflate stock by introducing fictitious purchases**.
  - v. **Transfer of deposited cash** to another account/entity which is **not in line with earlier history**

# ISSUES TO BE DISCUSSED

# Requirement to give PAN – Rule 114B

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<b>Nature of Payment</b>	<b>Condition</b>
Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash exceeding Rs. 50,000
Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash exceeding Rs. 50,000
Sale or purchase of any immovable property.	Amount exceeding Rs. 10,00,000
Any other sale or purchase of goods or services of any other nature	Amount exceeding Rs. 2,00,000



# Scope of section 68

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- 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



# Cash Sales

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## Delhi High Court – CIT vs KAILASH JEWELLERY HOUSE (ITA 613/2010)

- AO had doubted the cash sales as bogus and had made additions.
- It is not in dispute that the **sum of Rs 24,58,400/- was credited in the sale account** and had been **duly included in the profit** disclosed by the assessee in its return.
- It is in these circumstances that the Tribunal observed that the **cash sales could not be treated as undisclosed income** and **no addition could be made once again** in respect of the same.

# Cash Sales

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## Bombay High Court – R.B. Jessaram Fatehchand (Sugar Deptt.) v. CIT [1970] 75 ITR 33 (Bombay HC)

### ➤ Not bound to maintain name and address of buyers in cash sale

In the case of a cash transaction where **delivery of goods is taken against cash payment**, it is **hardly necessary** for the seller to bother about **the name and address of the purchaser**.

➤ As to the cash transactions also, the **quantity** of sugar sold **has not been disputed**. The **rates** at which sugar was sold were **not** such as would **excite suspicion** by reason of being lower than the prevailing market rates. The names of the customers are also entered in respect of the transaction.

➤ All that is not done is that the addresses are not entered and on enquiry the assessee was unable to supply the addresses.

➤ .....there was no necessity whatsoever for the assessee to have maintained the addresses of cash customers, the failure to maintain the same or to supply them as and

# Cash Sales

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## Bombay High Court – R.B. Jessaram Fatehchand (Sugar Deptt.) v. CIT [1970] 75 ITR 33 (Bombay HC)

- .....there was **no necessity whatsoever for the assessee to have maintained the addresses of cash customers**, the failure to maintain the same or to supply them as and when called for cannot be regarded as a circumstance giving rise to a suspicion with regard to the genuineness of the transactions.

# Cash Sales

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## Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)

- **Sales can be in cash**  
There is no law which prohibits a trader or a manufacturer in making cash sales
- **Stock available, cash sales cant be doubted**  
We find that so long as the **availability of stock is there** and there is nothing adverse against the cash memos issued by the assessee, such cash **sales cannot be doubted**
- **Not liable to maintain address of cash buyers**  
It is but natural that if a customer makes cash purchase and lifts the goods, there is **no duty cast upon the seller to insist for the address of the purchaser..**

# Cash Sales

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**Kishore Jeram Bhai Khaniya, Vs Income Tax Officer (ITAT Delhi) (ITA No. 1220/Del/2011)**

➤ **No section 68 addition on cash sale**

...It is only when such a sum is not proved that the Assessing Officer proceeds to make addition u/s 68 of the Act. We are dealing with a situation in which the assessee has himself offered the amount of cash sales as his income by duly including it in his total sales. Once a particular amount is already offered for taxation, the same cannot be again considered u/s 68 of the Act. In fact, such addition has resulted into double addition.

# Cash Sales

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## Gujarat High Court – CIT vs VISHAL EXPORTS OVERSEAS LIMITED TAX (APPEAL No.2471 of 2009)

- The Tribunal however, upheld the deletion of Rs.70 lakhs under section 68 of the Act observing that when the assessee had **already offered sales realisation** and such **income is accepted by the Assessing Officer** to be the income of the assessee, **addition of the same amount once again under section 68** of the Act would tantamount to **double taxation** of the same income.
- We do not find any reason to interfere with the Tribunal's order

# Cash Sales

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## Madhya Pradesh High Court – CIT vs Jaora Flour and Foods (P) Ltd., [2012] 344 ITR 294

- Held that the assessee's explanation had been accepted that **cash** of Rs. 10 lakhs found during the course of survey **were on account of realization from above sale of bardana of Rs. 10 lakhs.**
- Held that the Tribunal had found that the **sale of bardana was entered in the books of account** subsequently and, thereafter, the **profit and loss accounts were drawn up and the computation of income was based on the profit as per the profit and loss accounts** and, therefore, the **computation of income included the alleged unaccounted sale of bardana** also. In that background, the Tribunal was justified in deleting the addition.



# Cash Sales

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## Delhi ITAT – M/s Singhal Exim Pvt.Ltd., Vs. ITO (ITA No.6520/Del/2018)

- **If accepted trading results, accepted books too**  
**Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales.** Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.
- **No law prohibits cash sale**  
Moreover, at the relevant time, there was **no law which prohibited receipt of sale consideration in cash.**
- **No section 68 on recovery from debtors**  
Section 68 would also **not be applicable** in respect of **recovery of sales consideration.** Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied.

# Cash Sales

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Ahemdabad ITAT – ITO vs Shri Pavankumar Bhagatram Sharma  
(ITA.No.1652/Ahd/2011)

## Cash deposit was out of sale

- The Id.CIT(A) has rightly observed that total **amount appearing as a deposit in the account was not cash credits, rather sale proceeds of the assessee.**
- **Turnover** of the assessee is to be **computed** on the basis of all these details and at the most, **an estimated net profit can be computed as an income of the assessee.**
- Accordingly, the Id.CIT(A) has confirmed an addition of Rs.3,50,208/-. We do not find any error in the detailed reasoning of the Id.CIT(A), and accordingly, the appeal of the Revenue is dismissed. For dismissal of this appeal, we do not require the presence of the assessee.

# Cash Sales

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## Delhi ITAT – ITO Vs. Shri Pankaj Aggarwal [ITA No. 7091/Del/2014]

### Only margin to be added if cash deposit was from cash sales

- There is no dispute that there were frequent deposits and withdrawal from the bank accounts. There is also no dispute in so far as the business of the assessee is concerned.
- Considering the nature of business of the assessee it can be safely concluded that the **cash deposited by the assessee were out of his cash sales.**
- In our considered opinion **only margin of profit should be added on such cash deposit,** therefore, we do not find any error or infirmity in the finding of the Ld. CIT(A).

# Cash Sales

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## Delhi ITAT – Racmann Springs (P.) Ltd vs DCIT [1995] 55 ITD 159 (DELHI)

➤ **Cash credit always a liability**

The realisations from the sundry debtors cannot be treated as cash credits. **Cash credits always appear as a liability in the balance sheet of the assessee.** Realisation from the sundry debtors would reduce the sundry debtors appearing on the "assets" side of the balance sheet.

➤ **Entire cash sale can not be added, add only margin**

Even **assuming** that it represents **undisclosed sales**, the **whole** of the said amount **cannot** be **included** in the **total income** of the **assessee**.

**Only the net profit element** in the alleged **undisclosed sales** of Rs. 15,59,845 **can be included** in the total income of the assessee.

# Cash Sales

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## Delhi ITAT – Racmann Springs (P.) Ltd vs DCIT [1995] 55 ITD 159 (DELHI)

➤ Unrecorded sale, added under PGBP and not sec. 68

Even assuming that some amount is to be added in the total income of the assessee towards the profit element embedded in the alleged unaccounted sales, it **can only be assessed under the head "Income from business"** and **not as "Income from other sources"** as has been done by the Assessing Officer.

# Cash Sales

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## Chandigarh ITAT – Famina Knit Fabs vs ACIT [2019] 176 ITD 246

➤ Recovery from debtor, added under PGBP and not sec. 68

It follows that the **debtors were generated from the sales made by the assessee during the course of carrying on the business** of the assessee, which was not recorded in the books of the assessee. Though the said income was not recorded in the books of the assessee but the source of the same stood duly explained by the assessee as being from the business of the assessee. Even otherwise no other source of income of the assessee is there on record either disclosed by the assessee or unearthed by the Revenue. The preponderance of probability therefore is that the **debtors were sourced from the business of the assessee. Therefore, there is no question of treating it as deemed income from undisclosed sources u/ss. 69, 69A, 69B and 69C of the Act and the same is held to be in the nature of Business Income of the assessee.**

# Summary

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## Very difficult to make addition under section 68 if –

- Stock existed. Not proved any backdating
- Books accepted. GP accepted
- Proper invoice was issued
- VAT properly charged and paid
- VAT returns proper, not revised post demonetization



# Cash deposit of previous cash withdrawals

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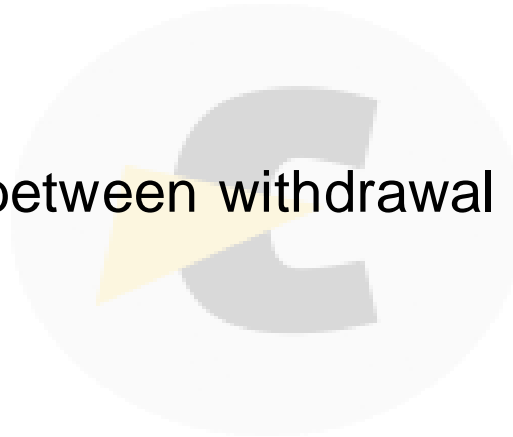
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➤ **Onus on assessee –**

Only liable to explain why kept cash in hand

➤ **Burden of Proof**

The higher the time period between withdrawal and deposit, the higher the burden to prove genuineness





# Cash deposit of previous cash withdrawals

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## P&H HC – Shiv Charan Dass vs CIT (1980 126 ITR 263 P H)

- In October, 1951, the HUF declared the sum of Rs. 20,000 under the Voluntary Disclosure Scheme. Partition took place and amount handed to a lady.
- After her death, the amount was deposited in names of two unmarried daughters of the assessee in equal shares, namely, Miss Sudarshan Kumari and Miss Satya Mehta. The deposits were made on 29th October, 1956,
- If the amount of Rs. 20,000 disclosed under the disclosure scheme had been found to be deposited or utilised by the assessee or the HUF in some-other manner, in that case, a legitimate inference could be drawn that the amount in dispute was from undisclosed sources as the amount so disclosed in the disclosure scheme had been found to be otherwise utilised by the assessee or by the HUF but the finding on this aspect of the case is otherwise.

# Cash deposit of previous cash withdrawals

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## Delhi HC – CIT vs Kulwant rai in 291 ITR 36

- It has been held by the Tribunal that in the instant case, the **withdrawals** shown by the assessee **are far in excess** of the **cash found** during the course of search proceedings.
- **No material has been relied upon by the Assessing Officer or Commissioner of Income-tax (Appeals) to support their view that the entire cash withdrawals must have been spent by the assessee and accordingly**, the Tribunal rightly held that the assessment of Rs. 2.5 lakhs is legally not sustainable under section 158BC of the Act and the same was rightly ordered to be deleted.

# Cash deposit of previous cash withdrawals

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## Delhi ITAT – ACIT vs Baldev Raj Charla 121 TTJ 366 (Delhi)

- **Merely because there was a time gap** between withdrawal of cash and cash deposits **explanation** of the assessee **could not be rejected** and addition on account of cash deposit could not be made particularly **when** there **was no finding recorded** by the assessing officer or the Commissioner that apart from depositing this cash into bank as explained by the assessee, there was any other purposes it is used by the assessee of these amounts.

# Assessee not liable to maintain books

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## Gauhati HC – Anand Ram Raitani vs CIT [1997] 223 ITR 544 (Gauhati)

➤ **Existence of books of accounts – essential for sec. 68 addition**

The **existence of books of account** is a **condition precedent** for invoking of the power. **Discharging of burden is a subsequent condition.**

**If the first point is not fulfilled the question of burden of proof does not arise.**

- Whether where Assessing Officer made addition to assessee's income on account of unexplained cash credit on basis of cash credit found in books of account of a firm in which assessee was a partner, books of account were not books of account as contemplated under section 68 and, hence, section 68 had no application to case - Held, yes

# Assessee not liable to maintain books

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## Bank passbook as books for making addition ?

### CIT v Bhaichand N. Gandhi [1983] 141 ITR 67 (Bom.)

- **Pass book** supplied by the bank to its constituent is only a copy of the constituent's account in the **books maintained by the bank**.
- It is not as if the pass book is maintained by the bank as the agent of the constituent, nor can it be said that the pass book is maintained by the bank under the instructions of the constituent.
- In view of this, the Tribunal was, with respect, justified in holding that the **pass book supplied by the bank to the assessee in the present case could not be regarded as a book of the assessee**, that is, a book maintained by the assessee or under his instructions. In our view, the Tribunal was justified in the conclusions at which it arrived.

# Scope of section 69A

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- 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.

# Other issues under section 69A

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- Opening cash in hand added under section 68 or 69A
- Real income theory – T. Jayachandran case [2018] 302 CTR 95 (SC)
- Peak cash credit
- Presumptive tax cases
- Automatic applicability of section 115BBE ?
- Interest u/s 234B & 234C on account of enhanced tax after application of section 115BBE
- Cash received after 8/11/2016
- Remedy available

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Questions ???





# THANK YOU



**CA Paras Dawar**

**Daver Karnatak & Associates**

***Chartered Accountants***

**F.C.A, L.L.B., B. Com. (Hons.), Diploma in International Taxation (ICAI)**

**206-207, Harisadan, 4637/20, Ansari Road, Daryaganj, New Delhi – 110002**

**Mob : +91-9711107317 | Office : +91-11-43561815 | [paras@parasdawar.com](mailto:paras@parasdawar.com)**