

# **Bogus Billing – Taxation, Penalty & Prosecution**

**Speaker : CA Anish Thacker**

**24 June 2023**

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# Overview



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# I-T Dept raids insurance agents' premises over alleged tax evasion

By Rashmi Rajput, ET Bureau • Last Updated: Dec 01, 2022, 12:16 AM IST

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### Synopsis

The Directorate General of GST Intelligence (DGGI) has been investigating these companies for allegedly floating shell companies to pay high commissions and accounting for the payments under other heads to reduce the tax outgo. The Mumbai unit of the DGGI had conducted inspections on some companies and summoned their executives, as ET reported on November 12 citing people in the know.



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## Income Tax investigation against insurers widens to banks

By Rashmi Rajput & Shilpy Sinha, ET Bureau • Last Updated: Apr 19, 2023, 03:20 PM IST

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**Synopsis**  
Initially, the I-T department was probing more than 20 insurance firms and about 500 entities linked to their sales agents. But the line of investigation has now shifted to the banks after the probe allegedly revealed voluminous transactions demanding further explanation



**IANSHINDI** The income tax (I-T) department last week sent notices to two large private

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The Income Tax Department on Wednesday searched premises linked to several commission agents of insurance companies over alleged tax evasion, sources in the know told ET.

The action comes after goods & services tax authorities informed the insurance regulator about alleged malpractices by

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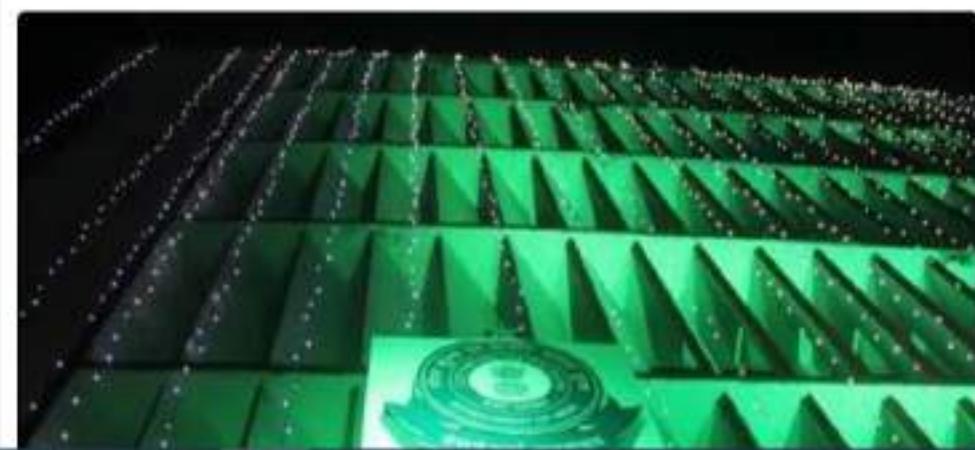
## 16 insurance firms caught evading GST worth ₹824 crore: Govt

By Rajeev Jayaswal

Sep 30, 2022 09:04 PM IST



The insurance companies availed input tax credit on the basis of invoices issued by intermediaries for providing services such as advertising, marketing, and brand activation. But no such services were provided, the finance ministry said



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## What are bogus bills?

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Law Lexicon (4<sup>th</sup> Edition) defines 'bogus' as *“Spurious; not genuine; sham; as, a bogus claim; a bogus government; bogus cheque. Fake or counterfeit.”*

Accordingly, bogus bills refer to fake or counterfeit bills or bills representing bogus or sham claim with respect to goods or services mentioned thereon.

## What are bogus bills? (Contd.)

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Explanatory Memorandum to Finance Bill, 2020 (in relation to introduction of section 271AAD:

*“In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.”*



## Why bogus bills?

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Claim for expenditure to be set-off against income

Avail input tax credit without receipt of goods/service

Reduce GST liability

To increase turnover for higher valuation

Siphoning of money

Money Laundering

To avail export refund & other benefits

Encashment of accumulated ITC

## Bogus bill vs. Inflated/ Deflated bills

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Bogus bills are different from inflated/ deflated bills where the value of goods/ services supplied is different from the value mentioned on the bill.

Value may be either quantitative or monetary or both.

While bogus bills are usually issued to enable movement of money, inflated/ deflated bills are usually issued to enable movement of goods.

# Modus Operandi

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- ▶ Issue of invoices without supply of goods or services where payment of tax is made by way of ITC which is not available to the issuer of invoice.
  - ▶ Here, there is no receipt of goods or credit by the issuer of invoice. He merely issues invoices and shows payment of tax.
  - ▶ Results in actual loss of revenue where the buyer of the invoice avails inadmissible credit which is used for payment of tax.
- ▶ Invoice is issued to one person and the goods are diverted to some other person.
  - ▶ The person who purchases invoices may utilize the credit for payment of taxes at the time of export of goods and claim refund of the said tax paid, resulting in loss of revenue.
- ▶ Routing of invoices through a series of shell /dummy companies and transfer of input tax credit from one company to another in a circular fashion to increase the turnover.
  - ▶ Violates Rule 16 which provides that to avail credit, the buyer should have a tax invoice and should have received the goods/ services.
  - ▶ Intention is to defraud the revenue and banking system.



## Onus to establish genuineness

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In civil cases, the initial burden is a prima facie one in that, where the explanation is prima facie credible, the burden will shift to the other party. What decides the issue is preponderance of probability.

In criminal cases, the requirement is that the evidence led by the prosecution should prove the prosecution's case beyond reasonable doubt, which means that there should be a higher degree of probability, but at the same time, it does not mean "prove beyond a shadow of doubt"

The court may classify the burden as between initial burden and the burden which may shift.

Where the statute places the burden of proof in income-tax cases on the taxpayer, it is to be understood, that it is only the initial burden. Accordingly, where an addition is made with no further attempt on the part of the assessing officer, the same will not be justified.

## Onus to establish genuineness (Contd.)

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Where 'A' claims deduction, onus is on 'A' to prove that the invoice is not bogus.

Where, 'A' discharges the prima facie responsibility, the onus shifts.

Incase of goods, a bill is established to be bogus if no delivery challan or transport/ lorry receipts can be produced, absence of stock with seller, stock with seller is different from the goods mentioned on the invoice, etc.

Incase of services and because of intangibility, it is tricky to establish whether or not a bill is bogus. Some indicative factors include qualification and capabilities of the services provider, communication and correspondence over e-mail/ whatsapp, nature of expenses incurred, etc.

## Onus to establish genuineness (Contd.)

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**Roshan Di Hatti [107 ITR 938 (SC)] and Kale Khan Mohammad Hanif [50 ITR 1 (SC)]** - The onus of proving the source of a sum of money found to have been received by an assessee is on him. Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source.



## Are these 'bogus bills'?

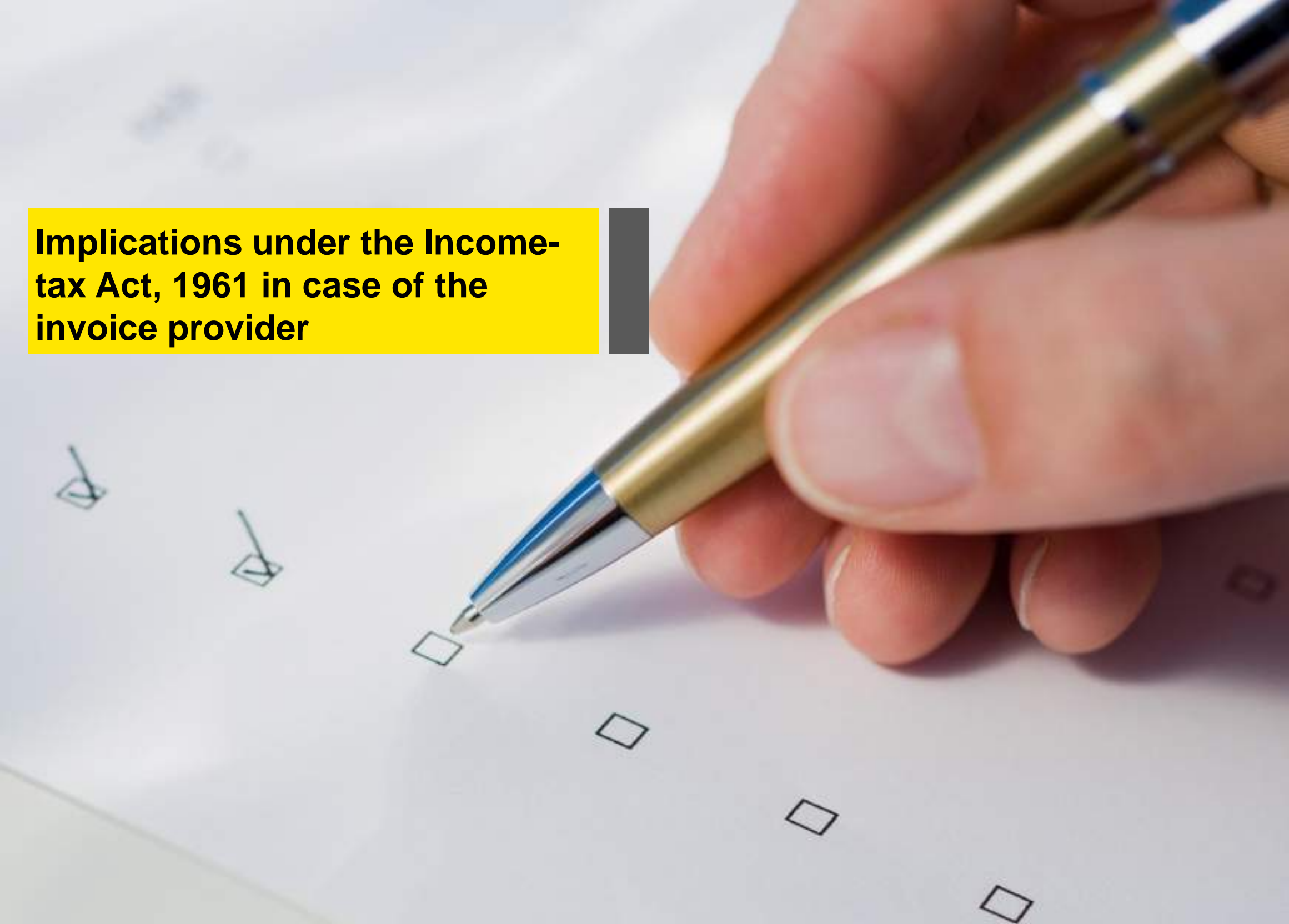
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Bills where the actual goods or services supplied differ from the goods or services mentioned in the bill.

or

Bills where the actual goods or services are supplied or provided to one party but the bill is raised on another party.

**Implications under the Income-tax Act, 1961 in case of the invoice provider**



## Some decided cases on bogus transactions

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- ▶ Where assessee, a share broker, earned commission on providing accommodation entries to its customers, it was only said commission which could be added to assessee's taxable income and not entire amount representing value of transaction [**Gold Star Finvest (P.) Ltd. (33 taxmann.com 129) (Mumbai ITAT)**]
- ▶ Where no material was found in search proceedings to establish that all 24 companies documents relating to which were found during search were dummy and assessee had managed and controlled their affairs and moreover revenue had failed to prove that assessee earned commission income on alleged accommodation entries, alleged commission provided by said companies could not be assessed in hands of assessee. [**Sagar Mal Nahta (82 taxmann.com 344) (Kolkata ITAT)**]
- ▶ In case of assessee, engaged in providing accommodation entries to entry seekers on commission basis, gross amount received had to be taken into consideration for computing monetary limit of Rs. 40 lakhs as specified under section 44AB and not commission income earned by him. [**Mukesh Choksi (103 taxmann.com 25) (Mumbai ITAT)**]



## Does section 68 apply to bogus billing transactions?

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Where assessee accepted cash from customers/beneficiaries and in lieu thereof issued them cheques of slightly lower amount after charging its commission, provisions of section 68 were not applicable and, thus, entire amount of cash received from customers/beneficiaries could not be added to assessee's taxable income. Section 68 would come into play when any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the Assessing Officer satisfactory. Where, it has been the consistent stand of the assessee that its business centered around customers/beneficiaries making deposits in cash amounts and in lieu thereof taking cheques for amounts slightly lesser than the quantum of deposits, the difference representing the commission realized by the assessee. **[Alag Securities (P.) Ltd. (117 taxmann.com 292) (Bombay HC)]**

## Section 79A

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- ▶ Inserted by the Finance Act, 2022.
- ▶ Where addition of undisclosed income is made pursuant to a search, requisition or survey (other than TDS survey) – brought forward loss and unabsorbed depreciation shall not be allowed to be set-off against such undisclosed income.
- ▶ Undisclosed income means:
  - ▶ Income wholly or partly represented in form of money, bullion, jewellery or other valuable article or thing or entry in the books of accounts or other documents or transactions found in the course of search, requisition or survey (other than TDS survey) which:
    - ▶ was not recorded on or before the date of the action; or
    - ▶ not disclosed to PCCIT/ CCIT/ PCIT/ CIT before the date of the action
  - ▶ Income wholly or partly represented in form of an entry in respect of an expense recorded in the books of accounts or other documents maintained in the normal course and which is found to be false and which would not have been found unless of search, requisition or survey action.

## Section 79A (Contd.)

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Explanatory Memorandum to the Finance Bill, 2022:

*“2. It is noticed that in some cases, assessee claim set off of losses or unabsorbed depreciation, against undisclosed income corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings. Currently there is no provision in the Act to disallow such set-off and no distinction is made between undisclosed income which was detected owing to search & seizure or survey or requisition proceedings and income assessed in scrutiny assessment in the regular course of assessment though for incomes falling in section 68, section 69, section 69B etc., such restriction is there.*

*3. Allowing the adjustment of undisclosed income detected as a result of search or requisition or survey against the loss or unabsorbed depreciation is resulting in short levy of tax. The provision of non-adjustment of loss or unabsorbed depreciation against undisclosed income detected as a result of search or requisition or survey would help in ensuring that proper tax is paid on income detected due to a search or survey and also result in increased deterrence against tax evasion.”*

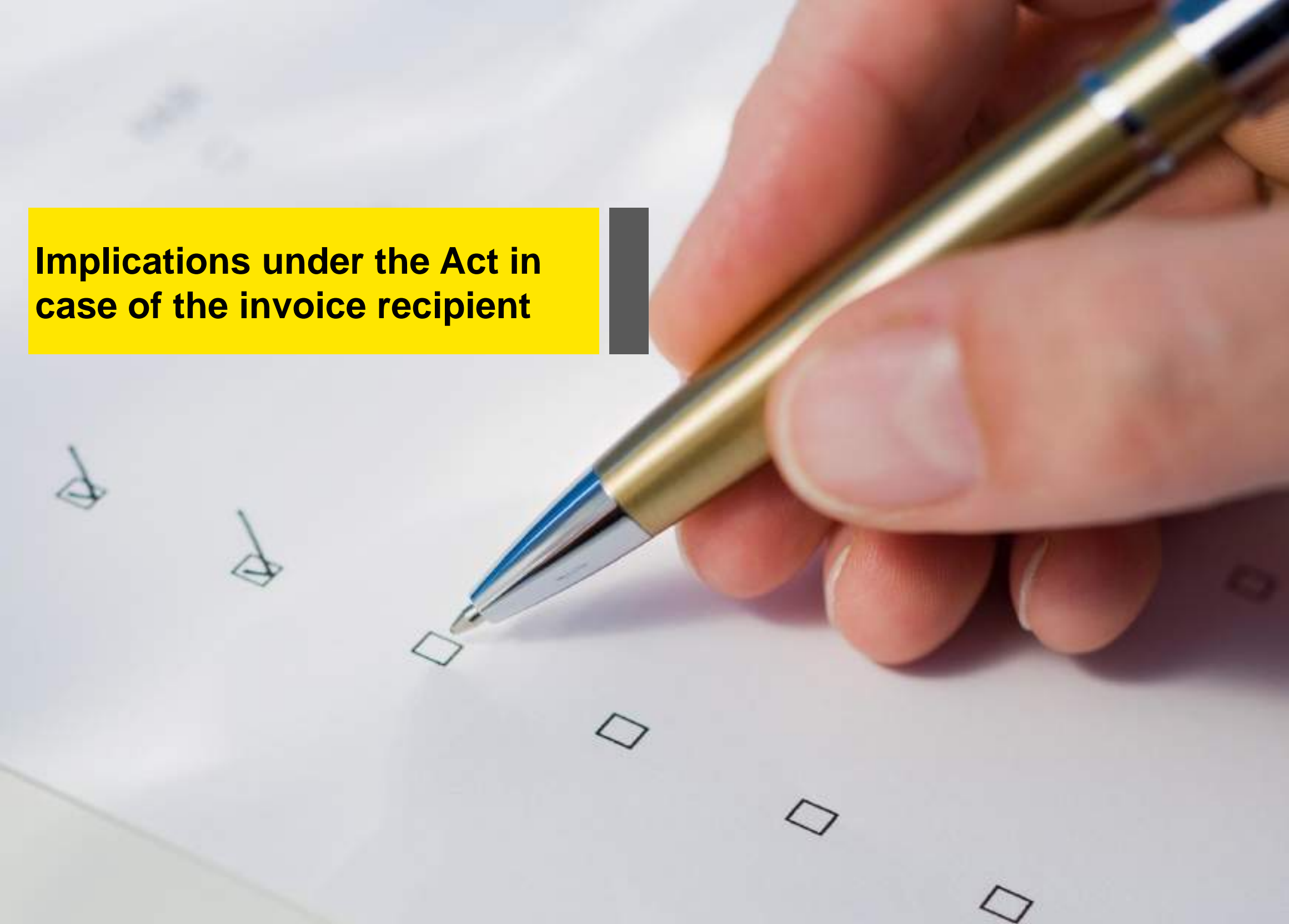


## Section 79A (Contd.)

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Though the losses and unabsorbed depreciation are not available for set-off against the undisclosed income, such losses and unabsorbed depreciation should be allowed to be carried forward for adjustment against income under normal provisions of the Act in the subsequent years. While for losses, the prohibition is for brought forward loss or otherwise, the prohibition for set off as regards depreciation is limited to unabsorbed depreciation. There being no bar to current depreciation, the same should be available for set off against incomes mentioned in section 79A.

**Implications under the Act in  
case of the invoice recipient**



## Addition of gross profits (in case of bogus purchases)

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- ▶ In plain words, 'bogus purchases' are entries made in the books of account for purchases made, where in fact, no purchases have been made by the purchaser of goods.
- ▶ Bogus purchases invariably also gives rise to bogus sales as well in most of the cases. The term 'bogus purchase' and 'bogus sales' implies recording of book entries for purchases and sales without there being actual movement of goods either at the time of recording of purchases or sales.
- ▶ The term 'bogus purchases' is often confused with unproved purchases. In unproved purchases, goods/material is actually received by the buyer. The buyer in such cases procures goods from grey market. The invoice for goods procured is received from a different person other than from whom goods are purchased.
- ▶ The income that is embedded in transactions of bogus purchases has to be taxed in the hands of the beneficiaries. The approach of the judiciary by and large on the issue has crystalized. The various High Courts/Income-tax Tribunals of the country have estimated the income embedded in transactions of bogus purchases as a percentage of amount of such purchases (Nil to 10-15% of the amount of bogus purchases depending upon the facts and circumstances of each case).

## **Addition of gross profits (in case of bogus purchases) (Contd.)**

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- ▶ **Smt. Kiran Navin Doshi [ITA No. 2601/Mum./2016 dated 18 January 2017]** - The Tribunal upheld the CIT(A) order wherein instead of disallowance of total purchase amount expenditure under section 69C, an estimated 12.5% of bogus purchase amount being the profit element embedded in such purchase was held justified. The CIT(A) in this case held that the goods purchased were recorded in books of account of the assessee and were also sold and the profit earned on sale thereof was offered to tax in view of which the total amount of purchase cannot be disallowed.
- ▶ **Belmarks Metal Works [ITA No. 5198/Del./2018 dated 5 March 2020]** - The Tribunal upheld the addition to the extent of profit element embedded in bogus purchases and deleted the balance addition. The Tribunal held that the source of purchases made was not outside the books of account and corresponding sales were not disputed. The assessing officer has not rejected books of account. Therefore, there was suppression of gross profit on purchases.

## Addition of gross profits (in case of bogus purchases) (Contd.)

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- ▶ **N.K. Industries Ltd. [72 taxmann.com 289 (Gujarat HC)]** - Entire purchases shown on basis of fictitious invoices was debited in trading account and disallowed by the assessing officer. Tribunal came to a categorical finding that there were purchases from bogus suppliers but restricted addition to 25% of the bogus purchases and made an addition of total purchases. On appeal by the assessee, the HC held as under:

*"6. The Tribunal in the case of Vijay Proteins Ltd. (supra) has observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25% of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s. Indian Woollen Carpet Factory (supra) or Vijay Proteins Ltd. (supra). In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs. 2,92,93,288/- and taxing only 25% of these bogus claim goes against the principles of Sections 68 and 69C of the Income-tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs. 2,92,93,288/- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs. 73,23,322/-."*

**Assessee's SLP has been dismissed by the SC in 250 Taxman 22.**



## Instances where addition was deleted

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- ▶ However, in case the assessing officer has not made any independent inquiry and has made the addition on the basis of third party report, total addition has been deleted by the judicial authorities.
  - ▶ **Shapoorji Pallonji and Co. Ltd. [288 Taxman 661 (SC)]** - merely on suspicion based on information received from sales tax authority, assessing officer could not make addition on account of bogus purchases without carrying out independent enquiry and affording opportunity to Assessee to convert statements made by seller.
  - ▶ **Odeon Builders (P.) Ltd. [418 ITR 315 (SC)]** - when the initial onus of substantiating purchases through documentation including purchase bills, transportation bills, confirmed copy of account of the suppliers, the fact of payment through bank and furnishing of copies of VAT return and income tax returns of the suppliers, had been discharged by the assessee, the assessing officer could not make addition without further scrutiny.
  - ▶ **Nikunj Eximp Enterprises (P.) Ltd. [372 ITR 619 (Bombay HC)]** - merely because the suppliers had not appeared before the assessing officer or CIT (Appeals), it could not be concluded that the purchases were not made
  - ▶ **Vaman International (P.) Ltd. [422 ITR 520 (Bombay HC)]** - mere reliance by the assessing officer on the statement of two persons made before the sale tax department to cross examine whom opportunity was not provided to the assessee was not sufficient to make the addition. Further, referring to the judgment of **Krishna Textiles [310 ITR 227 (Gujarat HC)]** it held that the onus was on the revenue to prove that the income belongs to the assessee.

## Instances where addition was deleted (Contd.)

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- ▶ **Nitin Ramdeoji Lohia [145 taxmann.com 546 (Bombay HC)]** - Where assessing officer made addition by disallowing expenses on purchases on ground that an information was received from sales tax department that assessee was beneficiary of accommodation entries on account of bogus purchases, since Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, impugned addition made on account of bogus purchases to be deleted

## Section 69C

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- ▶ Creates deeming income fiction in respect of any expenditure or part thereof incurred by an assessee who fails to provide satisfactory explanation with regards to the same.
- ▶ Unexplained expenditure deemed to be income shall not be allowed as a deduction under any head of income.

## Section 69C (Contd.)

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The use of the word 'may' in the section makes the deeming provision discretionary and not mandatory. In other words, even if no explanation is offered or it is found to be unsatisfactory, it is not mandatory to treat such unexplained expenditure to be the income of the assessee.

**[Rama Shankar Yadav (85 taxmann.com 173 (Allahabad HC)]**

## Section 69C – Some Case Laws

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- ▶ Where income had been offered on presumptive taxation basis under section 44AD, provisions of section 69C could not be applied to make addition in respect of unexplained expenditure. [**Nand Lal Popli (71 taxmann.com 246) (Chandigarh ITAT)**]
- ▶ Where assessee-proprietor, engaged in resale of industrial goods, made payments through banking channels towards certain purchases and furnished evidences in form of delivery challans, purchase bills etc. relating to same, Tribunal was justified in holding that assessee had discharged initial burden or onus of providing details of parties and, thus, case did not fall within ambit of section 69C [**Jagdish Thakkar 145 taxmann.com 414 (Bombay HC)**]
- ▶ Stock discrepancy inferred on the basis of estimate of an input/output ratio with nothing to substantiate the estimate, the order of the Tribunal deleting the addition was upheld. [**Ceramic Industries (396 ITR 50) (Bombay HC)**]



## Section 69C – Some Case Laws (Contd.)

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- ▶ The inference of unexplained expenditure is always a matter of fact. Where a claim for export relief was made, but it was found that there was no actual export, the claim cannot be accepted merely on the basis of some vouchers and challans of customs clearance as was found in respect of alleged export of precious stones, which were not verified by the valuer, with no convincing explanation as to the details of supplier except for a statement by power of attorney on behalf of supplier, the High Court found that the order of the Tribunal in reversing the order of the Commissioner (Appeal) was perverse. [**Bright Future Gems (392 ITR 580) (Rajasthan HC)**]
- ▶ Where an addition was made on the basis of statements of two persons, whose testimony was found to be unreliable in another case, the relief granted by the Tribunal in this case, where there was no independent cross-examination offered to the assessee, the addition is not justified. [**Videocon International Ltd. (378 ITR 606 (Bombay HC))**]
- ▶ Though the addition was based upon a statement made by Director before central excise authorities, where the statement has been explained by the assessee, section 69C could not have application. [**Arora Alloys Ltd. {12 ITR(T) 263} (Chandigarh ITAT)**]

## Section 69C – Some Case Laws (Contd.)

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- ▶ Where an assessee claimed to have sold shares at seventy times its cost without any explanation of the abnormal increase and where the sale itself could not be proved by the assessee as the sellers of shares to him were not traceable, the sale price recorded notwithstanding the existence of bank accounts of purchases not having been proved conclusively, the entire transaction has to be inferred to be sham, so as to justify the addition in the light of sections 68 and 69C. [**Pawan Kumar Malhotra {2 ITR(T) 250} (Delhi ITAT)**]

## Section 115BBE

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- ▶ In case, if the returned or the assessed income includes income taxable under section 68 (Unexplained Cash Credits), 69 (Unexplained Investments), 69A (Unexplained money, etc.), 69B (Amount of investments, etc., not fully disclosed in the books of account), 69C (Unexplained expenditure, etc.) or 69D (Amount borrowed or repaid on Hundi), then such income shall be taxable @60%.
  - ▶ Further increased by surcharge of 25% and Health & Education Cess of 4%.
  - ▶ Effective Rate – 78%
- ▶ No deduction in respect of any expenditure, allowance or set-off of loss shall be allowed against such income.

## Section 115BBE (Contd.)

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- ▶ Section 115BBE had prohibited allowance of deductions as it stood prior to the amendment with effect from 1 April 2017. The provision was amended with effect from 1 April 2017 and has been made to expressly provide that no set-off of any loss shall be allowable in respect of income under sections 68 or 69 or 69A or 69B or 69C or 69D. The intention of the Legislature is to avoid unnecessary litigation and to expressly provide that no set-off of any loss shall be allowable in respect of income under the above sections. In the present case, assessee held entitled to set-off of carried forward unabsorbed depreciation against income assessed under section 68 for AY 2013-14 [**Vijaya Hospitality & Resorts Ltd. (419 ITR 322) (Kerala HC)**].
- ▶ **Circular No. 11/2019 [F.NO.225/45/2019-ITA.II] dated 19 June 2019:**

*“Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 1-4-2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.”*

## Section 37

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- ▶ Provides for disallowance of capital and personal expenditure while computing profits and gains from business or profession.
- ▶ Explanation 1 – expenditure incurred for the any purpose which is an offence or prohibited by law shall not be deemed to have been incurred for business or profession purposes.
  - ▶ Explanation 3 - "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law“ includes and shall be deemed to have always included expenditure:
    - ▶ for any purpose which is an offence under or which is prohibited by any law in India or outside India; or
    - ▶ to provide any benefit or perquisite, to a person whether or not carrying on a business or exercising a profession and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline governing the conduct of such person; or
    - ▶ to compound an offence in India or outside India.



## Section 37

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### ▶ **Apex Laboratories (P.) Ltd. [442 ITR 1 (SC)]**

- ▶ Issue pertained to allowability of expenses incurred towards gifting freebies such as hospitality, conference fees, gold coins, LCD TVs, fridges, laptops, etc. to medical practitioners for creating awareness about the company's product under section 37.
- ▶ Ruling:
  - ▶ Explanation 1 to Section 37(1) operative retrospectively with effect from 1 April 1962 prohibits claim for expenses incurred for 'any purpose which is an offence or which is prohibited by law'.
  - ▶ If acceptance of freebies is punishable as per the Medical Council of India, pharma companies cannot be granted the tax benefit for the same, thereby actively and with full knowledge enabling commission of such act.
  - ▶ Such freebies are technically not 'free' – the cost of supplying such freebies is usually factored into the drug, driving prices up, thus creating a perpetual publicly injurious cycle.
  - ▶ One arm of the law cannot be utilized to defeat the other arm of the law – doing so would be opposed to public policy and bring the law into ridicule.
  - ▶ Agreement between the pharma companies and the medical practitioners in gifting freebies for boosting sales of prescription drugs is also violative of Section 23 of the Contract Act, 1872.
  - ▶ The well-established principle of interpretation of taxing statutes – that they need to be interpreted strictly – cannot sustain when it results in an absurdity contrary to the intentions of the Parliament.

## Penal Implications



## Section 271AAC

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- ▶ Provides for penalty @10% of the tax payable under section 115BBE provided that the incomes taxable under section 68 (Unexplained Cash Credits), 69 (Unexplained Investments), 69A (Unexplained money, etc.), 69B (Amount of investments, etc., not fully disclosed in the books of account), 69C (Unexplained expenditure, etc.) or 69D (Amount borrowed or repaid on Hundi) have been offered to tax in the return of income and tax has been paid on or before the end of the relevant previous year.
  - ▶ Effective rate (inclusive of tax rate under section 115BBE) – 85.8%
  - ▶ Can be imposed by the AO, CIT(A) or JCIT(A)
  - ▶ No penalty will be leviable where penalty has been imposed under section 271AAB (penalty where search is initiated)
  - ▶ Penalty under section 270A shall not be imposed on such amount
  - ▶ Provisions of section 274 and 275 shall apply

## Section 271AAD

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- ▶ Provides for penalty for any false entry or omission of any entry which is relevant for computation of total income, in the books of accounts maintained by such person
  - ▶ False entry includes use and intention to use:
    - ▶ forged or falsified documents or false piece of documentary evidence
    - ▶ Invoice in respect of goods and/ or services without actual supply or receipt of such goods and/ or services
    - ▶ invoice in respect of supply or receipt of goods and/ or services to or from a person who does not exist
  - ▶ Penalty equal to the aggregate amount of such false or omitted entry.
  - ▶ Can be imposed by the AO, CIT(A) or JCIT(A).
  - ▶ The AO, CIT(A) or JCIT(A) can also direct any person who causes another person to make a false entry or omits or causes to omit any entry to pay penalty equal to the aggregate amount of such false or omitted entry.
  - ▶ Section 281B – provisional attachment if penalty likely to exceed Rs. 2 crores

## Section 270A

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- ▶ Provides for penalties for underreporting and misreporting of income by AO, JCIT(A), CIT(A), CIT or PCIT.
- ▶ Penalty:
  - ▶ In case of under-reported income – 50% on such income
  - ▶ In case of misreported income – 200% on such income
- ▶ Misreporting of Income:
  - ▶ misrepresentation or suppression of facts
  - ▶ failure to record investments in the books of account
  - ▶ claim of expenditure not substantiated by any evidence
  - ▶ recording of any false entry in the books of account
  - ▶ failure to record any receipt in books of account having a bearing on total income
  - ▶ failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply
- ▶ Recourse to section 270AA not possible.



## Section 270A (Contd.)

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- ▶ ITAT refers to the provisions of Section 270A and observes that the section gives discretion to the AO to levy or not levy penalty as the Parliament has not used the word 'shall' and by using the word 'may' in Section 270A(1), it conveys the intention of the Parliament that penalty under Section 270A is not mandatory. Notes section 270A(9) can be applied only where there is mens rea as can be deciphered from the instances of misreporting of income as given in sub-section (9) and holds that since AO failed to bring the addition/disallowance under the ken of (a) to (f) of the section 270A(9), the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted. Accordingly, holds that levy of penalty suffers from vice of non-application of mind as well as violates principles of natural justice.

**[Saltwater Studio LLP (ITA No.13/Mum/2023 dated 22 May 2023 (Mumbai ITAT))]**

## Prosecution Provisions



## Section 276C

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- ▶ Provides for punishment in the case of wilful attempt to evade tax, penalty or interest or under-reporting of income by a person who wilfully attempts to evade tax, penalty or interest or under-reports his income.
  
- ▶ Punishment:
  - ▶ Rigorous imprisonment for 6 months to 7 years and with fine where tax sought to be evaded exceeds Rs. 25 lakh.
  - ▶ Rigorous imprisonment for 3 months to 2 years and with fine in other cases.
  - ▶ Rigorous imprisonment for 3 months to 2 years and with fine where the person wilfully attempts to evade the payment of any tax, penalty or interest.
  
- ▶ Wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof includes:
  - ▶ possession or control any books of account or other documents containing a false entry or statement; or
  - ▶ making of any false entry or statement in such books of account or other documents; or
  - ▶ wilfully omission any relevant entry or statement in such books of account or other documents; or
  - ▶ Causing of any other circumstance to exist which will have the effect of enabling the person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

## Section 277A

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- ▶ Provides for prosecution in the case of falsification of books of account or document etc.
- ▶ If any person wilfully and with an intent to enable any other person to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the former either knows to be false or does not believe it to be true, in any books of account or other document relevant to or useful in any proceedings against the former or the latter under the Act, then the former person shall be punishable with rigorous imprisonment for 3 months to 2 years and with fine.

## Section 278

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- ▶ As per section 278 if a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be punished as under:
  - ▶ Rigorous imprisonment for 6 months to 7 years and with fine where tax sought to be evaded exceeds Rs. 25 lakh.
  - ▶ Rigorous imprisonment for 3 months to 2 years and with fine in other cases.

## Section 278A

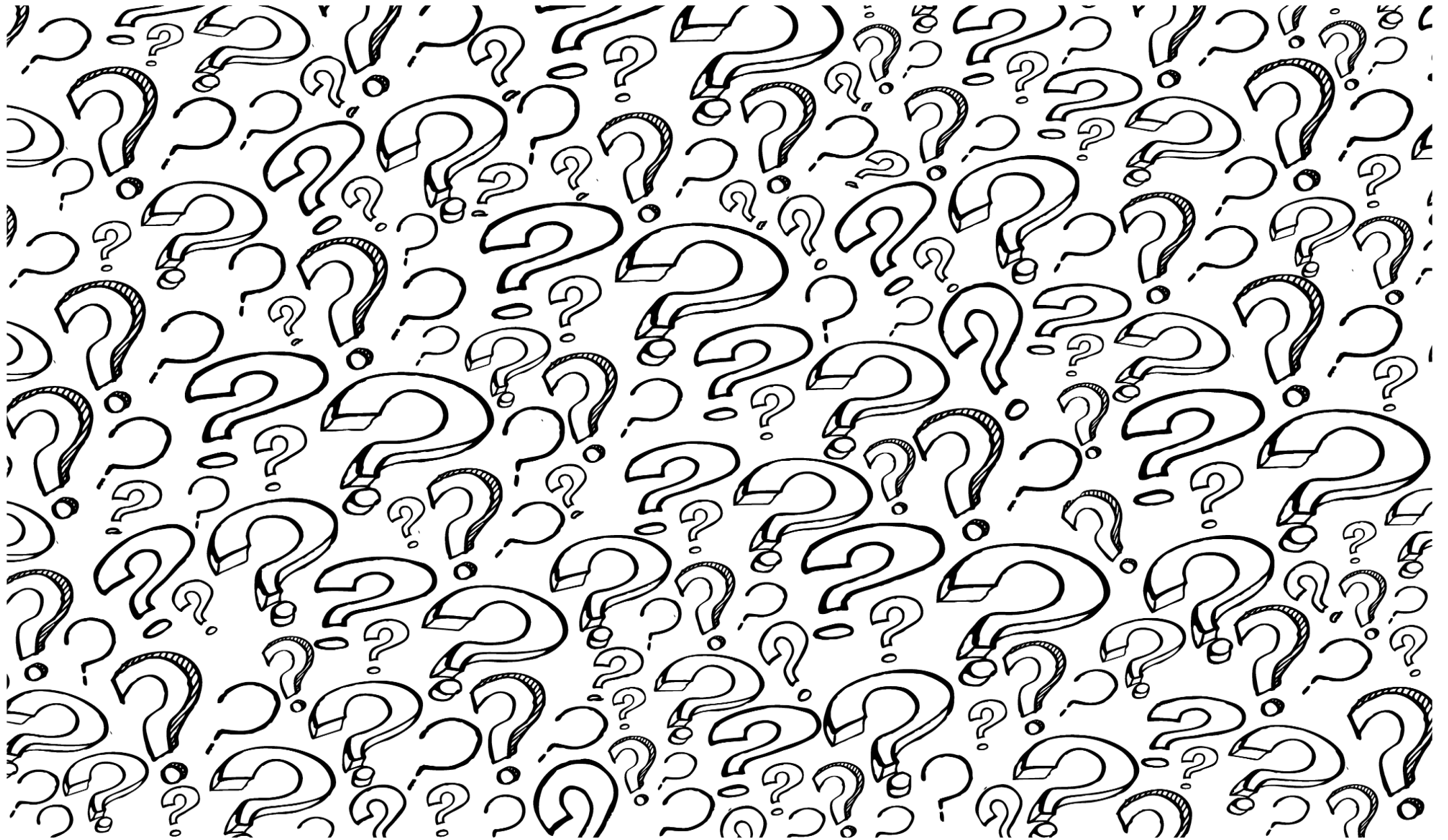
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- ▶ Section 278A provides for prosecution in the case of second or subsequent offence under sections 276B, 276BB 276C(1), 276CC, 277 or 278.
- ▶ As per section 278A, a person shall be punishable with rigorous imprisonment for 6 months to 7 years and with fine.



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# Questions



**Thank You!!**

