

Chapter VI
Unexplained
credit, assets,
expenditure,
investments
under
Income Tax Act
2025 updated by
Finance Bill 2026

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Contents

- Section 101 to 107 of new income tax act 2025(Section 68 to 69D of ITA 1961)
- Tax rate – section 195 (old ITA 1961 section 115BBE)
- Penalty ITA 1961 u/s 271AAC, penalty u/s 439
- Immunity/waiver section 440 of ITA 2025

Comparative Sections

Income Tax Act 1961	Income Tax Act 2025
Sections 68: Cash credits.	Sections 102 : Unexplained credits
69: Unexplained investments.	103: Unexplained investment.
69A: Unexplained money, bullion, jewellery, etc	104: Unexplained asset.
69B: Amount of investments, etc., not fully disclosed in books of account.	104: Unexplained asset.
69C: Unexplained expenditure	105 : Unexplained expenditure.
69D : Amount borrowed or repaid on hundi.	106: Amount borrowed or repaid through negotiable instrument, <i>hundi</i>, etc.
115BBE [Tax Rate] – 60%	195 [Tax Rate] Tax Rate under section 195 reduced from 60% to 30% by F.B. 2026
271AAC [Penalty] - 10%	439 [Penalty- Mis Reporting of Income] Earlier penalty under sec 443 but Finance Bill omitted this penalty section and covered under 43
	440 Waiver of penalty and immunity from prosecution on payment of 120% of tax within 30 days and no appeal

Major Changes

Heading of section 68 changed from “cash credit” to “**Unexplained credits**”.

The Word May replaced by Shall in all the sections. In other words A.O has no discretion but to treat such credit/expense/assets as undisclosed income and tax as higher rate u/s 195

However, A.O opinion/satisfaction will remain subject to judicial scrutiny.

In section 103 the word owner as well as **belonging to** assessee added so as to include not only legal owner but beneficial owner also.

Definition of assets also become wide **to include virtual digital assets**

Unexplained credits. Section 102(68 of ITA 1961)

- Any sum found **credited** in the books of **assessee(not someone else.)**
- No explanation offered by the assessee about source and nature of credit
- Explanation offered is not satisfactory in the opinion of AO
- AO has to brought out some deficiency in the explanation such as factual mistake or contrary evidence.

(1) Where any sum is found **credited** in the books of **an assessee** maintained for any tax year, and—

(a) the **assessee offers no explanation** about the **nature and source** of such credit; or

(b) the **explanation offered** about the nature and source of such credit by assessee is **not satisfactory** in the opinion of the Assessing Officer,

then, the sum so credited **shall** be charged to income-tax as income of the assessee of that tax year.

Deemed unsatisfactory explanation – section 102(2) [1st proviso to s-68]

EXPLANATION OFFERED BY ASSESSEE DEEMED TO BE UNSATISFACTORY UNLESS:

- Credit of loan or borrowing from a person in the books of assessee
- Explanation offered by assessee about nature and source
- Explanation also offered about nature and source by the loan creditor. i.e source of source
- **such explanation offered by loan creditor in the opinion of AO satisfactory.**

For the purposes of sub-section (1), where the sum so credited consists of **loan or borrowing or any such amount**, by whatever name called, the explanation offered by such assessee shall be **deemed to be not satisfactory**, unless,—

(a) the **person in whose name such credit** is recorded in the books of such assessee **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 has been **found to be satisfactory**.

Credit of share application money, share capital, share premium in the books of closely held company s-102(3) [2nd proviso s-68]

- share application money, share capital, share premium or any such amount credited in the books of closely held company
- Company offered explanation
- Explanation offered by the applicant about nature and source .i.e source of source
- such explanation offered by share applicant is satisfactory in the opinion of AO

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, the 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 has been found to be satisfactory.

Non – applicability of s-102
(2)& (3)[3rd proviso s-68]

- S-102(2) – loan , borrowings
- S-102(3) - share application money, share capital, share premium
- source of source not required where loan, , borrowings share application money, share capital, share premium etc by venture capital fund or a venture capital company

Nothing contained in sub-section (2) or (3) shall apply if the person, in whose name the sum referred to in those sub-sections is recorded, is a venture capital fund or a venture capital company as referred to in Schedule V (Table: Sl. No. 6).

A venture capital fund is a pool of money collected from investors and used to invest in start-ups or small companies.

A venture capital company is the firm that manages this fund and decides where to invest.

NATURE & SOURCE OF CREDIT

- Identity, creditworthiness, genuineness of transaction
 - Source of source in few cases
 - The core battle will now be over proving the complete satisfaction of AO about (identity, creditworthiness, genuineness, and source of source where applicable).
 - Any deficiency will directly result in an addition as income because AO has no discretion.
- Identity of loan creditor/ payer/share applicant etc.
 - Nature of credit: loan , borrowings, advance against supply of goods or service, share application money, refund of earlier advance or loan , exempt income, taxable income already offered in ITR , refundable deposit
 - Source: collection from customers, other person from whom amount received of accrued credit

Burden of proof

- Burden on the assessee to provide evidence about identity (pan, GST no, Aadhar card, passport, voter card, genuiness of transaction and credit worthiness
- Once assessee has discharged burden by way of evidence onus shifted to revenue to bring contrary evidence.
- Burden to be discharged with positive material
- Only statutory approval is not sufficient,
- in the private placement of shares higher onus on assessee.

May replaced by shall in new section 102 & other section

Effect:use of the word “may”, which in statutory interpretation generally confers a discretionary power. Even if the explanation offered is not satisfactory the (AO) was not automatically required to make the addition u/s 68. The AO could consider other facts and circumstances, before deciding whether to treat the amount as income. This discretion allowed helpful in justice where lack of evidence after long time.

Now legislature try to remove AO judicial discretion but since no substantial changes in law the same may be interpreted as may because ultimately it the AO whose satisfaction required.

Further not satisfaction of explanation offered to AO is subject to judicial review by higher appellate authority, it must be based on facts.

Preponderance of probability while rejecting explanation offered

Assessee must ensure their explanation supported by relevant facts must be accepted as satisfactory because any failure leads to an automatic addition.

*Ministry's response
before the Select
Committee*

The Ministry explained that the intent is to “rationalise” the provision by removing post-finding discretion. The AO already has discretion at the stage of evaluating whether the explanation is satisfactory.

Once it is found unsatisfactory, the AO should have no further discretion but to make the addition. but sometime difficult to prove source of source after a long time when case reopened after a long time due death of creditor or loss of documents etc.

The Ministry also noted that section 68 is one of the most litigated provisions, with established judicial criteria for evaluating explanations. The amendment aims to close the “may vs shall” interpretational gap often debated before appellate forums

Unexplained investment. S-103

- **investment** has been made by the assessee but not recorded in the books of account
- AO finds that investment made by the assessee recorded at less amount in the books of account
- assessee offers no explanation about the nature and source of such investment,
- explanation offered is not satisfactory in the opinion of AO.
- Unrecorded investment shall be deemed to be the income

Where in any tax year, any investment has been made by the assessee which is not recorded in the books of account, if any, maintained by such assessee for any source of income, or, the Assessing Officer finds that the amount of such investment exceeds the amount recorded in such books of account and—

(a) the assessee offers no explanation about the **nature and source** of such investment, or such excess amount, as the case may be; or

(b) the explanation offered about the nature and source of such investment by the assessee, is not satisfactory in the opinion of the Assessing Officer,

then, the value of such investment, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of that tax year.

Unexplained asset. S-104

- Assets owned by or belonging to the assessee but not recorded in the books of account
- Assets owned by or belonging to the assessee but recorded in the books of account at amount less than cost of acquisition
- assessee offers no explanation about the nature and source of such investment,
- explanation offered is not satisfactory in the opinion of AO.
- Value of unrecorded or less recorded amount shall be deemed income.

(1) Where in any tax year, any asset has been found to be **owned** by or **belonging to** the assessee which is **not recorded in the books of account**, if any, maintained by such assessee for any source of income, or the Assessing Officer finds that the **amount expended in acquiring such asset exceeds the amount recorded in such books of account** and—

(a) the assessee offers no explanation about the **nature and source of acquisition** of such asset, or such excess amount, as the case may be; or

(b) the explanation offered about the nature and source of acquisition of such asset by the assessee, is **not satisfactory** in the opinion of the Assessing Officer,

then, the value of such asset, or such excess amount, as the case may be, shall be deemed to be the income of the assessee of the tax year in which such asset has been found to be owned by, or belonging to, the assessee.

(2) For the purposes of this section, **“asset” includes** money, bullion, jewellery, **virtual digital asset or other valuable article.**

Unexplained expenditure. S-105

expenditure has been incurred by the assessee

assessee offers no explanation about source of such expenditure

Explanation offered about source of such expenditure is not satisfactory in the opinion of AO

such expenditure or shall be deemed to be the income

such expenditure shall not be allowed as a deduction under this Act.

(1) Where any **expenditure has been incurred** by the assessee in any tax year, and—

(a) the assessee **offers no explanation** about the **source of such expenditure** or part thereof; or

(b) the explanation offered about the source of such expenditure by the assessee is **not satisfactory** in the opinion of the Assessing Officer, then, the amount covered by such expenditure or part thereof, shall be deemed to be the income of the assessee for that tax year.

(2) Irrespective of any other provision of this Act, the **amount deemed as income** in sub-section (1) **shall not be allowed as a deduction under this Act.** [Proviso to section 69C of ITA 1961 inserted by FA NO.2 1998 w.e.f 1-4-1999.]

Amount borrowed or repaid through non- a/c payee negotiable instrument, *hundi*, etc
S-106

Borrowing or repaid (interest paid) by the assessee other than A/C payee or other specified banking mode

no need to offer any explanation, such **Borrowing or repayment** shall be deemed to be the income **under this Act**.

(1) Where any amount (including interest thereof) is borrowed or repaid through a negotiable instrument or on a hundi, **otherwise than an account payee cheque**, or through any mode as specified by the Board in this behalf, the amount so borrowed or repaid (including **interest paid** on the borrowed amount) shall be deemed to be the income of the person borrowing or repaying, as the case may be, for the tax year in which the amount was borrowed or repaid.

(2) Where the amount borrowed under sub-section (1) has been deemed to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under that sub-section on repayment of such amount.

Charge of tax of deemed income referred u/s 102 to 106

S-107

Income referred to in sections 102, 103, 104, 105 and 106 shall be charged to tax as per the provisions of section 195.

Section 195(section 115BBE) :

(1) Where the total income of an assessee—

(a) includes any income referred to in section 102 or 103 or 104 or 105 or 106 and reflected in the return of income furnished under section 263; or

(b) **determined by the Assessing Officer** includes any income referred to in any of the said section 102 or 103 or 104 or 105 or 106, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of—

(i) income-tax calculated on the income referred to in clauses (a) and (b), **@ 30%(By FA 2026 w.e.f 01-04-2026** earlier 60%); and

(ii) income-tax with which the assessee would have been chargeable had his total income been reduced by income referred to in clause (i).

(2) Irrespective of anything contained in this Act, **no deduction** in respect of any **expenditure or allowance** or **set off of any loss** shall be allowed to the assessee under any provision of this Act in computing his income referred to in sub-section (1)(a) and (b).

Penalty for mis reporting – 439 (270A of ITA 1961)

Earlier penalty of 10% under section 271AAC(S-443 OF ITA 2025) for deemed income under section 68 to 69D determined by AO but FA 2026 proposed to omit such provision in section 443 and cover in mis reporting if deemed income determined by AO, according provision in section 439 AMENDED by FA 2026.

(10) Irrespective of anything contained in sub-section (8) or (9), where under-reported income is in consequence of any **misreporting** thereof by any person, the **penalty** referred to in sub-section (1) shall be **200% of the tax payable on under-reported income**.

(11) The cases of misreporting of income referred to in sub-section (10) shall be the following:—

(a) **misrepresentation or suppression of facts;**

(b) **failure to record investments** in the books of account;

(c) claim of **expenditure not substantiated by any evidence;**

(d) recording of any **false entry** in the books of account;

(e) **failure to record any receipt in books of account** having a bearing on total income;

(f) **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 and

(g) **Income referred to in section 195(1)(b). Inserted by FA 2026**

“Waiver of penalty and immunity from prosecution.” – 440 (270AA of ITA 1961)

“(1) An assessee may make an application to the AO (FORM 161 under rule 231) to grant waiver of penalty levied under section 439 and immunity from initiation of proceedings under section 478 or 479 on fulfilment of the following conditions: —

- (a) the tax and interest payable as per the order of assessment under section 270(10) or reassessment under section 279, has been paid within the period specified in the notice of demand; i.e 30 days.**
- (b) where penalty has been levied under the circumstances referred to in section 439(11)(a) to (f), additional income-tax amounting to 100% of the amount of tax payable on under-reported income has been paid within the period specified in the notice of demand, in lieu of such penalty; for other than section 102 to 106 deemed income**
- (c) where penalty has been levied under the circumstances referred to in section 439(11)(g), additional income-tax amounting to 120% of the amount of tax payable on under-reported income has been paid within the period specified in the notice of demand, in lieu of such penalty; for section 102 to 106 deemed income and**
- (d) no appeal has been filed against the order of assessment or reassessment and levy of penalty referred to in clause (a), (b) and (c)**

Application for waiver of penalty and immunity from prosecution

- Application in form 161
- Application within 1 month from end of month in which order received.
- Rule 231
- Section 440 (1)(g) and (2)
- AO grant waiver from penalty u/s 439 or immunity from prosecution u/s 478/479

(2) An application referred in sub-section (1) shall be made **within one month from the end of the month in which the order is received** by the assessee, in such form and verified in such manner, as may be prescribed.

(3) The Assessing Officer shall, on fulfilment of the conditions as specified in sub-section (1), and after the expiry of the period of filing appeal as specified in section 358(3)(a), **grant waiver of penalty** under section 439 or immunity from prosecution u/s 478/479 except where any proceeding has been initiated under Chapter XXII.

Time period for passing order : The A.O, shall pass an order accepting or rejecting the application as referred to in sub-section (1) within 3 months from the end of the month of its receipt.

(3) an opportunity of being heard before rejecting application

If application accepted
– order final no appeal
S-440(8)

- No appeal under section 356 or 357 or an application for revision under section 378 shall be admissible against the order referred to in sub-section (1)(a), if an order U/S 440 (5) has been made accepting the application.
- Order rejecting application, then assessment or reassessment order become appealable.

No adverse effect on other years
assessment – circular no 5/2018
dated 16-08-2018 u/s 270AA

Para 2. Apprehensions have been raised that where an assessee makes an application seeking immunity under section 270AA of the Act, and **in the earlier year(s) penalty under section 271(1)(c) of the Act has been initiated on the same issue**, the Income-tax Authority may contend that the assessee has acquiesced on the issue in such earlier year (s), by seeking immunity under section 270AA of the Act and therefore, take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act.

3. In this matter, it is hereby clarified that where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

Thank You

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