

CONTROVERSIES IN SEC 269ST/271DA OF INCOME TAX ACT, 1961

Presentation by :

CA. Naveen Khariwal G

Chartered Accountant

**RECOMMENDATIONS OF
BLACK MONEY SIT: BANNING
CASH TRANSACTIONS OF
ABOVE RS 3 LAKH AND OTHERS**



Justice M B Shah (retd) led Special Investigation Team (SIT) on black money has given recommendations to the Supreme Court.

It has recommended that there should be a ban on all the cash transactions over Rs 3 lakh. It is also suggested that restriction shall be placed for cash holding of not more than Rs 15 lakh with individuals to curb undeclared black wealth in the nation's economy.

In its fifth report to the Supreme Court the SIT headed by Justice M B Shah (retd), submitted on methods to curb the flow of black money in the economy.

The panel found that a huge amount of unaccounted and undeclared wealth is stored and used in the form of cash.

After considering the provisions in this regard in various other countries the SIT felt that there is a urgent need to put an upper limit to cash transactions.

SIT recommended that there shall be a total ban on cash transactions above Rs 3 lakh and it be declared illegal and punishable under law.

Rs 15 lakh is suggested as an upper limit of cash holding.

It is suggested that in case any person or industry needs to hold more cash, it may obtain due permission from the area Commissioner of Income Tax.

FM BUDGET SPEECH

Measures for Stimulating Growth

142. After the demonetisation, the preliminary analysis of data received in respect of deposits made by people in old currency presents a revealing picture.

During the period 8th November to 30th December 2016, deposits between Rs. 2 lakh and Rs. 80 lakh were made in about 1.09 crore accounts with an average deposit size of Rs.5.03 lakh.

Deposits of more than 80 lakh were made in 1.48 lakh accounts with average deposit size of Rs. 3.31 crores.

This data mining will help us immensely in expanding the tax net as well as increasing the revenues, which was one of the objectives of demonetisation.

FM BUDGET SPEECH

Measures for Stimulating Growth

143. Madam Speaker, one of the main priorities of our Government is to eliminate the black money component from the economy.

We are committed to make our taxation rates more reasonable, our tax administration more fair and expand the tax base in the country.

This approach will change the colour of money.

**नई दुनिया है, नया दौर है, नयी है उमंग
कुछ थे पहले के तरीके, तो हैं कुछ आज के ढंग
रोशनी आके अंधेरों से जो टकरायी है
काले धन को भी बदलना पड़ा, आज अपना रंग**

FM BUDGET SPEECH

Measures for Stimulating Growth

144. The net tax revenue of 2013-14 was Rs. 11.38 lakh crores.

This grew by 9.4% in 2014-15 and 17% in 2015-16.

As per the RE of 2016-17, we will end the year with a high growth rate of 17% for the second year in a row.

Because of the serious efforts made by the Government, the rate of growth of advance tax in personal income tax in the first three quarters of the current financial is 34.8%.

FM BUDGET SPEECH

Measures for Stimulating Growth

*145. Madam Speaker, the thrust of my tax proposals in this Budget is stimulating growth, relief to middle class, affordable housing, **curbing black money, promoting digital economy,** transparency of political funding and simplification of tax administration.*

FM BUDGET SPEECH

Promoting Digital Economy

162. The Special Investigation Team (SIT) set up by the Government for black money has suggested that no transaction above Rs. 3 lakh should be permitted in cash.

The Government has decided to accept this proposal.

Suitable amendment to the Income-tax Act is in the Finance Bill for enforcing this decision.

FM BUDGET SPEECH

Annex III to Part B of Budget Speech

2.13 It is to provide that no person shall receive payment or aggregate of payments of an amount of three lakh rupees or more from a person in a day, or in respect of a single transaction, or in respect of transactions relating to one event or occasion, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. Such restriction shall not apply to Government, banks or such other persons or class of persons or receipts notified by the Central Government. It is also to provide for a penalty in case of contravention of this provision.

Extensive campaign on digital payments and less-cash economy.



**Digital India -
Surging from Cash to
a Cashless Economy**

Finance Minister used the word digital 25 times during his Budget Speech

MEMORANDUM TO FINANCE BILL

OBJECTIVE OF INSERTION OF SECTION 269ST

Restriction on cash transactions

In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programs.

Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash.

MEMORANDUM TO FINANCE BILL

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST in the Act to provide that no person shall receive an amount of three lakh rupees or more,—

- (a) in aggregate from a person in a day;
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

MEMORANDUM TO FINANCE BILL

It is further to provide that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank.

Further, it is that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the restriction on cash transactions shall not apply.

Transactions of the nature referred to in section 269SS are to be excluded from the scope of the said section.

MEMORANDUM TO FINANCE BILL

It is also proposed to insert new section 271DA in the Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of the proposed section 269ST.

The penalty is proposed to be a sum equal to the amount of such receipt.

The said penalty shall however not be levied if the person proves that there were good and sufficient reasons for such contravention.

It is also proposed that any such penalty shall be levied by the Joint Commissioner.

MEMORANDUM TO FINANCE BILL

It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of one per cent. of sale consideration on cash sale of jewellery exceeding five lakh rupees.

These amendments will take effect from 1st April, 2017.

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 5th April, 2017

PRESS RELEASE

Budget 2017 takes Steps to discourage Cash transactions & curb Black Money

Various legislative steps have been taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by promoting digital economy.

These prominently include placing restriction on cash transaction by introduction of new sections 269ST & 271DA to the Income-tax Act. It has been provided that no person (other than those specified therein) shall receive an amount of two lakh rupees or more,

- (a) in aggregate from a person in a day;
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account.

Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt. However, the said restriction is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank. It has also been decided that the restriction on cash transaction shall not apply to withdrawal of cash from a bank, cooperative bank or a post office savings bank. Necessary notification in this regard is being issued.

It has also been provided that any capital expenditure in cash exceeding rupees ten thousand shall not be eligible for claiming depreciation allowance or investment-linked deduction. Similarly, the limit on revenue expenditure in cash has been reduced from Rs.20,000 to Rs.10,000.

In order to promote digital payments in case of small unorganized businesses, the rate of presumptive taxation has been reduced from 8% to 6% for the amount of turnover realised through cheque/digital mode.

Restriction on receipt of cash donation up to Rs. 2000 has been provided on political parties for availing exemption from Income-tax. Further, it has also mandated that any donation in cash exceeding Rs.2000 to a charitable institution shall not be allowed as a deduction under the Income-tax Act.

(Meenakshi J. Goswami)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT.

Insertion of new section 269ST.
Mode of undertaking transactions.

83. After section 269SS of the Income-tax Act, the following section shall be inserted, namely:—

‘269ST. No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Explanation - For the purposes of this section, -

- “banking company” shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;
- “co-operative bank” shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS.’.

Insertion of new section 271DA.

84. After section 271D of the Income-tax Act, the following section shall be inserted, namely:—

Penalty for failure to comply with provisions of Section 269ST.

“271DA. (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.”

Notes on Clauses

Clause 71 of the Bill seeks to amend section 206C of the Income-tax Act relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

Clause (ii) of sub-section (1D) of the said section provides for tax collection at source at the rate of one per cent. of sale consideration on cash sale of jewellery exceeding five lakh rupees.

It is proposed to omit the said clause in view of restriction on cash transactions as proposed to be provided under section 269ST. The proposed amendment is consequential to the insertion of a new section 269ST in the Income-tax Act.

Clause 83 of the Bill seeks to insert a new section 269ST in the Income-tax Act relating to mode of undertaking transactions.

It is proposed to provide that no person shall receive an amount of three lakh rupees or more, in aggregate from a person in a day; or in respect of a single transaction;

or in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

It is further proposed to provide that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank, any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided family in whose hands such receipts constitutes agricultural income and in respect of transactions of the nature referred to in section 269SS; and such other persons or class of persons or receipts, as may be specified by the Central Government by notification in the Official Gazette.

This amendment will take effect from 1st April, 2017.

Clause 84 of the Bill seeks to insert a new section 271DA of the Income-tax Act relating to penalty for failure to comply with provisions of section 269ST.

It is proposed to provide that if a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt. It is further proposed that the penalty shall not be imposable if such person proves that there were good and sufficient reasons for the contravention. It is also proposed that any such penalty shall be imposed by the Joint Commissioner.

This amendment will take effect from 1st April, 2017.

ANALYSIS OF THE AMENDMENT

The section imposes a total ban on receipt of a sum of Rs.2 lakhs or more otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account when the same is received under either of the following three specified circumstances:

The first clause relates to receipt of Rs. 2 Lakhs or more from a person in a day in aggregate:

One payer; one or many transactions, one day.

The first clause states that a person cannot receive any amount in cash from a single person in a day. The pre-requisites for the applicability of this provision are:

- There is a single payer
- There is a single receiver
- The total amount of cash paid in a day is Rs 2 lacs or more
- The amount is paid in a single day.

For attracting the first clause, it does not matter how many transactions there are between the receiver and the payer. That is to say, if the sum total of all transactions in a day reaches the threshold, the first clause is attracted.

➤ **Meaning of Day**

A legal day commences at 12 o'clock midnight and continues until the same hour the following night [*Prabhu Dayal Sesma v. State of Rajasthan*, AIR 1986 SC 1948].

The restriction is applicable even if the different receipts are in relation to distinct transactions entered into on same day or different days.

The first clause relates to receipt of Rs. 2 Lakhs or more from a person in a day in aggregate

Q : Seller - P: Customer

Situation - 1

If Mr. Q receives certain sum of money amounting to Rs. 2 Lakhs or more from Mr. P in a single day, this would obviously be hit by section 269ST as the cash payment exceeds the specified limit.

Situation – 2

The Mischief of section 269ST would also be attracted if payments from Mr. P are received in different installments in a single day. In such cases, whether the specified limit has been exceeded or not will be determined on the basis of aggregate. For example, if Mr. Q received payments from Mr. P on a single day in 4 equal installments of Rs. 50000/- each, the aggregate will reach the specified limit of Rs. 2 Lakhs and hence, would be hit by section 269ST.

Situation – 3

If Mr. Q issues 4 cash bills of Rs. 50,000/-, Rs. 75000/-, 45,000/- and Rs. 60,000/- on different dates to Mr. P but receives payment from Mr. P in one day for all 4 bills even then sec. 269ST r.w.s Sec. 271DA is attracted.

Situation – 4

Prior to 31.03.2017, eight bills were raised by Mr. Q on Mr. P say Rs. 50,000/- Rs. 70,000/- etc, all bills raised are below Rs. 2 Lakhs. For this Mr. Q received the payment on different dates after 31.03.2017. Is it a payment received in respect of one transaction/several transactions???

View – 1

One view is each bill is a transaction. Therefore provisions of Sec.269ST r.w.s Sec. 271DA does not apply.

View – 2

The other view is having been given on credit, **realisation of credit** is one transaction. If that is so, provisions of Sec.269ST r.w.s Sec. 271DA applies. This is extreme view.

Situation – 5

There will be no violation of section 269ST if payments are received from different persons in a single day and none of such payments exceed the specified limit of Rs. 2 Lakhs. For example, in a single day Mr. Q received payments from four different persons namely P, R, S and T and all these payments are within the specified limits, then even though in aggregate total receipts exceeded the limit of Rs. 2 Lakhs, the section would not be attracted.

The first clause relates to receipt of Rs. 2 Lakhs or more from a person in a day in aggregate

ILLUSTRATION – 1

<u>CUSTOMER</u>	<u>SELLERS</u>			
Sharath	Dhruv Kumar	Shiv Kumar	Vinay	Beeresh
Bill 1	3,00,000	70,000	1,70,000	1,10,000
Bill 2	-	1,30,000	15,000	15,000
Bill 3	-	-	-	95,000
TOTAL	3,00,000	2,00,000	1,85,000	2,20,000
PENALTY APPLICABILITY	YES	YES	No	YES
PENALTY AMOUNT	3,00,000	2,00,000	NIL	2,20,000

The first clause relates to receipt of Rs. 2 Lakhs or more from a person in a day in aggregate

Cash Receipt from Sale of Honda Jazz Car [Assuming Sale Value Rs. 7,00,000/-]

ILLUSTRATION - 2

PARTICULARS	DHRUV KUMAR	SHIV KUMAR	VINAY
SITUATION	I	II	III
Cash Receipts	7,00,000	3,50,000	1,90,000
Non-cash Receipts	-	3,50,000	5,10,000
TOTAL	7,00,000	7,00,000	7,00,000
PENALTY APPLICABILITY	YES	YES	NO
PENALTY AMOUNT	7,00,000	3,50,000	NIL

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

One payer, one transaction, one or several days

The second clause operates so as to ignore the number of days over which a transaction is spread. If there is a single transaction, and the payment in respect thereof is scattered over several days, then the section is attracted if the aggregate of the amounts reaches the threshold. Hence, the pre-requisites for the section are:

- There is a single payer / multiple payers
- There is a single receiver
- There is a transaction to which the payments relate
- The total amount of cash paid, whether in one day or multiple days, adds to Rs 2 lakhs or more

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

SITUATION -1

What is a one single transaction???

View – 1

The intent of the law is anti-avoidance. If the parties are so splitting their payments, such that one transaction is given effect to over multiple days, merely to get rid of the section, the section will defeat such an intent.

To illustrate, if Mr. Q **receives** a sum of Rs. 6.4 Lakhs from Mr. P in respect of a single transaction (e.g Sale of Goods in cash in Single Bill), in four installments of Rs. 1.6 Lakhs each, on different dates, then obviously it will not fall under first clause as aggregate is out of question being payments received on different dates but is covered by second clause.

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

But if such payments are received in respect of a single transaction say for a **single sale bill**, such receipts would fall under this category of prohibited transactions even though none of these receipts was of Rs. 2 Lakhs or more.

View – 2

Is the intent of the lawmaker to aggregate several transactions, which are naturally segregated???

However, where there is an invoice, which is payable in 12 monthly installments, can one argue that all the 12 installments relate to a single transaction, and therefore, need to be aggregated???

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

Situation - 2

PREVENTS CIRCUMVENTING THE LIMIT BY SPLITTING IT OVER SEVERAL DAYS

This is a very important condition which prevents circumventing the limit by splitting it over several days.

In this connection, it is important to compare these provisions with those of section 40A(3) of the Act wherein no such condition is imposed even after certain amendments in the Finance Bill, 2017.

Therefore, it is a general practice to make payments of Rs 19000 or so (i.e. below Rs 20000) on several days in relation to a single transaction so as to remain outside the purview of section 40A(3).

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

Situation - 3

RESTRICTION APPLIES TO TRANSACTION ALREADY EFFECTED BEFORE 01-04-2017

Suppose, “Q” has sold goods of Rs. 3.5 lakhs to “P” in March, 2017 against which “P” has not made any payment till 31-3-2017.

It appears that this transaction is covered by section 269ST and “Q” cannot receive Rs. 2 lakhs or more by impermissible modes.

Suppose “P” has already paid Rs. 1.5 lakhs in cheque up to 31-3-2017. In this situation, “Q” can receive a sum of less than Rs. 2,00,000 by cash from “P” after 31-3-2017.

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

Situation - 4

AGREEMENT TRANSACTION

Agreement entered into for any transaction may be covered under provision if amount received in cash is Rs.2 Lakhs or more in agreement period whether in a day or days or year or years.

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

Situation - 5

RECEIPT FROM DIFFERENT PERSONS IN RESPECT OF SAME TRANSACTION

The said clause does not refer to “from a person”.

Hence, even if the receipt is from different persons, so long as it is in respect of a single transaction, the recipient ought not receive Rs. 2 lakhs or more.

To illustrate, suppose “Q” has sold goods to “P” for Rs. 2.5 Lakhs.

If “R” offers to make payment of Rs. 2.5 Lakhs to “Q” on behalf of “P”, then this payment would also be covered by the restriction.

The second clause relates to receipt of Rs. 2 Lakhs or more in respect of a single transaction:

ILLUSTRATION - 3

DATES	CUSTOMER	SELLER			
		Dhruv Kumar	Shiv Kumar	Vinay	Beeresh
03.04.2017	Invoice Value	6,00,000	6,00,000	6,00,000	6,00,000
07.04.2017	Chq Payment - 1	2,00,000	2,00,000	2,00,000	2,00,000
13.04.2017	RTGS / NEFT	2,00,000	-	50,000	
09.04.2017	Credit Card Payment	75,000	1,00,000	1,20,000	1,50,000
24.04.2017	Chq Payment - 2	75,000	70,000	30,000	1,50,000
25.04.2017	Cash Payment	50,000	2,30,000	2,00,000	1,00,000
	TOTAL	6,00,000	6,00,000	6,00,000	6,00,000
	TOTAL NON_CASH	5,50,000	3,70,000	4,00,000	5,00,000
	TOTAL CASH	50,000	2,30,000	2,00,000	1,00,000
	PENALTY APPLICABILITY	NO	YES	YES	NO
	PENALTY AMT	NIL	2,30,000	2,00,000	NIL

The third clause relates to receipt of Rs. 2 Lakhs or more in relation to one event or occasion from a person:

The event may lead to several transactions between two persons.

All these transactions, resulting into receipt by a single person from a single person, will be added together, even if these are spread over several days.

- So the prerequisites of the clause are:
- There is a single payer
- There is a single receiver
- There is one single event or occasion to which the transactions relate
- These transactions may be spread over one or several days
- The total amount of cash paid, whether in one day or multiple days, adds to Rs 2 lakhs or more

The third clause relates to receipt of Rs. 2 Lakhs or more in relation to one event or occasion from a person:

It seeks to cover all receipts from a person in relation to transactions relating to one event or occasion **such as reimbursement, cash gifts on the occasion of marriage, birthday, anniversary or the like, payments made in respect of catering, decoration etc. in marriage, travel expenses, payments of rent etc to name a few.**

There may be several transactions spread over several days, but all these pertain to a single event or occasion.

But with the introduction of section 269ST ban has been imposed on **cash gifts received even from relatives** to the tune of more than Rs. 2 Lakhs in respect of single event or occasion like marriage etc.

What is meant by event or occasion or what all events and occasions are covered have not been explained in the Section.

However, since the two words are used together, they impart meaning to each other.

The word event may mean several things.

However, in context, particularly because of its usage along with the other word – occasion – the word means a single happening or occasion, which normally leads to bunching together of several transactions. For example, a wedding is an event.

EVENTS LEADING TO MARRIAGE

Various rituals / customs in a typical south Indian marriage

Haldi

Nischithartham

Sangeeth

Reception

Kankana Puja

Varapuja

Muhurtham

Whether all are different events or forming part of one event being “marriage”

GIFTS RECEIVED ON MARRIAGE

INTERPRETATION - 1

As per section 13(2) of General Clauses Act “*words in the singular shall include the plural, and vice versa*”.

Hence A day, A person also includes multiple days and multiple persons

So, if cash or kind gifts are received from multiple persons for one event or occasion, still 269ST shall be attracted to invite prohibition if amount is 2 lakhs or more [269ST(c)], because “a person” includes plurality also.

This could bring in purview gifts received on marriage functions and also Golak receipts of Mandir.

INTERPRETATION – 1 (continued.....)

Gifts received on marriage is tax free. But marriage is one occasion and a person cannot receive on his / her marriage even say Rs. 200 from 1000 people as it will amount to Rs. 2,00,000/- [200 X 1000].

In the example you can change any combination of figures the multiplication of which comes to Rs. 2,00,000/-.

Also it does not have restriction of days because the per day is linked to per person.

INTERPRETATION - 2

‘269ST. No person shall receive an amount of two lakh rupees or more -

(c) in respect of transactions relating to one event or occasion from a person

That means any amount of gifts can be received by the bride or bride groom from **a person (i.e from a singular person)** below Rs. 2 Lakhs on occasion of marriage.

In respect of transactions relating to one event or occasion from a person : IN CASE OF MARRIAGE OF BEERESH

ILLUSTRATION -4

SITUATION	1	2	3
CASH GIFT FROM SHIVA KUMAR	1,40,000	2,05,000	1,00,000
CASH GIFT FROM DHRUV KUMAR	1,55,000	1,05,000	55,000
CASH GIFT FROM VINAY	1,05,000	90,000	2,45,000
TOTAL CASH GIFTS	4,00,000	4,00,000	4,00,000
PENALTY APPLICABILITY	NO	YES	YES
PENALTY AMT	NIL	2,05,000	2,45,000

GENERAL MEANING OF EVENT

The term “event” has been defined as follows:

“Something that occurs in a certain place during a particular interval of time” (Random House Compact Unabridged Dictionary, 2nd Edn.)

GENERAL MEANING OF OCCASION

The term “occasion” has been explained as follows:

(a) “A special or important time, event, ceremony, celebration, etc.”(Random House Compact Unabridged Dictionary, 2nd Edn.)

(b) “An opportunity; the time at which something happens; a particular time marked by some occurrence or by its special character [section 56 of Indian Contract Act] “[Legal Glossary published by the Government of India (1992 Edition)]

Legal meaning of the term Event

The legal meaning of the expression “event” is

“Eventus est qui ex causa sequitur; et dicitur eventus quia ex causis evenit”.

An event is that which follows from the cause, and is called an “event” because it eventuates from causes.

However, it does not seem that the intent of the law is to use the word event in a legal sense.

The context is making of commercial transactions and therefore, the word should be understood in commercial sense.

Meaning of the term event for the purpose of section 269ST ???

Does the term “Event” in section 269ST means an accounting event???

That is to say, every such event which is required to be accounted for will be termed as an “Event”.

For example, each lease payment in a lease transaction may be called an “Event” as separate invoice is required to be raised. Similarly, each EMI for which a separate invoice is raised will be an “Event”.

Further, the word “event” or “occasion” in the law are vague and may cause a lot of confusion.

The intent behind the provision is that people may not split their payments into various tranches and avoid the provision.

Food for thought

Does the extended scope of the offence of the section is, therefore, anti-avoidance, and not to extend the scope of the provision to smaller value transactions which otherwise are not hit by the section???

Transactions pertaining to one event or one occasion - Controversies

Example – 1

For example, if a person sells goods of Rs 2,30,000, for which the payment of Rs 2 lakhs is made by cheque immediately. Subsequently, a payment of Rs 30000 is made in cash.

Can it be argued that Rs 30000 pertains to a single event, viz., the sale, and therefore, the section is attracted? One must read the section with its opening words, which talk about receiving an amount of Rs 2 lakhs or more in cash.

Therefore, the transaction or series of transactions must pertain to receipt of Rs 2 lakhs or more in the aggregate.

In addition, the transactions must be so interrelated or integrated that they effectively form part of the same event, but are segregated merely to avoid the section.

Transactions pertaining to one event or one occasion - Controversies

Example – 2

Another example – a person sells goods of Rs 2.40 lakhs. The terms of payment provide for payment in 4 installments of Rs 60000 each over 4 months.

The buyer pays the price in cash. Is it a contravention of the section?

Here the underlying issue is the meaning of the term transaction. The transaction, of course, is the making of the payment.

Is it possible to argue that the transactions pertain to one event or one occasion?

The underlying commercial terms of the transaction provided for 4 payments spread over 4 months. Each payment is an event and whether it can be argued that the sale is an event, and the payments are simply transactions that follow from that event.

Transactions pertaining to one event or one occasion - Controversies

Example – 3

Further example – assume that a lender has given a loan of Rs 3 lacs.

EMIs amount to Rs 15000 per month and are payable over 24 months.

Can it be argued that all the EMIs must be aggregated together, because they pertain to the same event, which is giving of the loan?

Transactions pertaining to one event or one occasion - Controversies

Example – 4

Say for example, if salary/wages is paid in cash to supervisor/consultant every month such that yearly aggregate exceeds threshold limit of Rs. 2 lakhs, tax authorities may argue that such receipt is covered by section 269ST since payment of salary constitutes one event or occasion even though payments might have been disbursed monthly and raise a demand notice.

Lacuna in section 269ST(c) of Income Tax Act

- i) when the transactions are not related with a single event or occasion, an entity may prepare many bills of less than Rs. 2 lakhs and may receive a big amount in cash (complying with per day per entity limit).
- ii) In clause (c) of Section 269ST of Income Tax Act the words **“from a person”** have been used. Due to this now the language has become that “No person shall receive an amount of Two lakh rupees or more in respect of transactions relating to one event or occasion from a person”. In cases where there are more than one transaction and they are related with one event or occasion, the entity will fall in clause (c) and in such a situation, separate limit will become available for different persons in a joint transaction.

For example, if for a marriage there are 3 different bills of Rs. 1 lakh each (total Rs. 3 lakhs), and all the three bills are in the name of three different persons

say one bill (garden on rent for marriage reception) of Rs. 1 lakh is in the name of the person who is being married,

second bill (for tent house services) of Rs. 1 lakh is in the name of father of the person who is being married and

the third bill (for decoration) of Rs. 1 lakh is in the name of the mother of that person who is being married,

then in such a situation entire Rs. 3 lakhs can be paid in cash i.e., Rs. 1 lakh by the person being married, Rs. 1 lakh by the father and balance Rs. 1 lakh by the mother.

Even if all the bills are in the joint names of three persons then also the payments can be made in the above manner.

Note : It is not possible that any of the above bill is received from two persons e.g bill of garden on rent for marriage reception say of Rs 2 Lakh cannot be received in cash say partly Rs 1 Lakh from father and partly Rs 1 lakh from son because in respect of clause (b) “in respect of a single transaction” of section 269ST the payment by multiple persons (over limit) is not possible because the word “**from a person**” has not been used there in Section 269ST(b)

ISSUES

ISSUE - 1

RESTRICTION IS ONLY ON THE PERSON RECEIVING MONEY AND NOT ON THE PERSON PAYING MONEY :

- The restriction U/s. 269ST is only on receipt of money and not on payment of money.
- Therefore, penalty U/s. 271DA on violation of these provisions shall be leviable only on the person receiving money and not on the person paying the money.

ISSUE – 2

RESTRICTION IS APPLICABLE ON ALL THE ENTITIES :

- The restriction U/s. 269ST is applicable on all the entities (except those which have been exempted specifically as per the proviso).
- In the section the word “Person” has been used for both payer and the receiver.
- As per section 2(31), the word person is defined in inclusive manner to include individuals, HUFs, companies, firms, AOPs, BOIs, local authorities and other artificial juridical persons.

ISSUE – 2 (Contd..)

Sec. 2(31) "person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

ISSUE – 3

RESTRICTION IS ONLY ON RECEIPT OF MONEY AND NOT ON ANYTHING IN KIND :

INTERPRETATION - 1

- Through this section the restriction is put **only on receipt of money and not on anything in kind**. This can be logically inferred from the background and purpose of introducing these provisions in the Memorandum Explaining Clauses of the Finance Bill itself.

The heading given there is “Restriction on cash transactions”.

- The relevant description given is that “Black money is generally transacted in cash and large amount of unaccounted wealth is **stored and used in form of cash**. In order to achieve the **mission of the Government to move towards a less cash economy** to reduce generation and circulation of black money, it is proposed to insert section 269ST”

Budget Speech of Finance Minister on Finance Bill 2017 also says”.

“It is proposed to provide that no person shall **receive payment** or **aggregate of payments** of an amount of three lakh rupees or more (Amendment to Finance Act 2017 reduced this limit from Rs 3 Lakh to Rs 2 Lakh)

Further penalty U/s. 271DA what will be the levied for contravention of Section 269ST.

Section 271DA starts with “If a person receives any **sum** in contravention of the provisions of section 269ST.....”.

Therefore, logically it can be inferred from those provisions that section 269ST is **in respect of money only**.

Similar type of restrictive provisions are contained in Section 269SS also. It has been specifically mentioned there that they are applicable only in respect of “Sum of money” and not otherwise.

RESTRICTION IS ON RECEIPT OF MONEY AND IN KIND :

INTERPRETATION - 2

1. The word “Amount” is used and not a word “Sum”. The word amount is of wide connotation and covers both cash and kind whereas the word sum covers only sum of money. The restriction is on receipt of amount. The term “amount” has been explained as follows :

- (a) “1. Aggregate sum;
2. Quantity;
3. To come up to, resulting;
4. Equaling in effect.”

[Legal Glossary published by the government of India (1992 Edition)].

(b) “Aggregate sum; quantity; to come up to; resulting; equaling in effect.”

(College Law Dictionary by Dr. Avtar Singh, 22nd Edn.)

(c) “The substance, or result of a thing; the total or aggregate sum. Quantity; to come up to, resulting; equaling in effect.”
(P.Ramanatha Aiyar’s The Law Lexicon, 3rd Edn., 2012).

(d) “1. The sum, total of two or more quantities or sums; aggregate.

2. The sum of the principal and interest of a loan.

3. Quantity; measure a great amount of resistance.”

(Random House Compact Unabridged Dictionary, 2nd Edn.)

INTERPRETATION - 2

2. If “amount” is interpreted beyond “sum of money” and therefore to encompass “in Kind “receipts, then say if both cash and in kind donations (e.g. food grains) are received by trust from a person in a day, then value of food grain shall also get covered by S. 269ST.
3. Every purchase shall also get covered apart from sale because in purchase one is receiving goods for money. In such a case, purchase of immovable property might also get covered because S.269SS covers only specified sum for sale of immovable property and not purchase of immovable property.

INTERPRETATION - 2

4. Suppose these provisions are stretched to items in kind say movable or immovable properties then there will be various other issues (like for penalty U/s. 271DA what will be the value of such item e.g., actual transaction value or fair market value or stamp duty value etc.) which have not been addressed. E.g, if I borrow from my friend a Honda City Car valued at Rs. 20 lacs, the violation is already done. The fact that I duly return the car in the same condition to my friend does not / can not undo the violation.

INTERPRETATION - 2

5. In Section 269ST the word “Amount” has been used whereas in the Section 271DA, the word “Sum” has been used.

This alternate view appears to have been generated from the wordings of section 56 where the word “Sum” has been used for sum of money. In that section the word sum has been used only for “sum of money” merely because for movable and immovable properties there are different clauses in section 56 itself.

INTERPRETATION - 2

6. As the expression, 'amount' has been used u/s 269ST and the expression 'sum' has been used u/s 271DA, this may create confusion and result in litigation.

Uniform expression being either 'amount' or 'sum of money' may be used at both the places i.e. under section 269ST as well as under section 271DA to avoid confusion and litigation.

ISSUE - 4

RESTRICTION IS ONLY WHEN THE AMOUNT RECEIVED IS Rs. 2 LAKHS OR MORE :

The provisions of this section are not applicable when the receipts are less than Rs. 2 lakhs. They are applicable only when the amount of receipt is of Rs. 2 lakhs or more. This limit is mentioned in many ways like **per day, per transaction, for occasion / event** etc.

Threshold : Amount of Rs. 2 lacs and above shall invite S.269ST.
Hence payments up to Rs. 1,99,999 can be taken.

ISSUE - 5

ALLOWABLE MODES OF RECEIPTS :

- The amount of Rs. 2 Lakhs or beyond this limit can be received only through
 - (a) an account payee bank cheque ; or
 - (b) an account payee bank draft ; or
 - (c) use of electronic clearing system through a bank account (e.g., NEFT, RTGS, Online transfer from one bank account to another etc.).
- The receipt of amount through any other mode e.g., cash, bearer cheque, crossed cheque, self cheque, transfer entry or adjustment entry in books of account etc will contravene / violate the person of 269ST.
- However, the amount under Rs. 2 Lakhs can be received through any mode e.g., cash etc.

Receipt in excess of Rs.2 lakh otherwise than by way of account payee cheque or account payee bank draft or use of electronic clearing system (ECS) through a bank account is not permissible and would attract penal provisions.

It is pertinent to note that debit cards, credit cards, Rupay-card and e-wallets/payTM are being widely used to make payments and these instruments leave an audit trail.

However, technically, they do not fall within the scope of “Electronic Clearing System” as per the meaning of the said term clarified by RBI through its FAQs given at <https://www.rbi.org.in/Scripts/FAQView.aspx?Id=55> and reproduced below –

“Electronic Clearing Service (ECS) is an electronic mode of payment / receipt for transactions that are repetitive and periodic in nature.

ECS is used by institutions for making bulk payment of amounts towards distribution of dividend, interest, salary, pension, etc., or for bulk collection of amounts towards telephone / electricity / water dues, cess / tax collections, loan instalment repayments, periodic investments in mutual funds, insurance premium etc.

Essentially, ECS facilitates bulk transfer of monies from one bank account to many bank accounts or vice versa.

ECS includes transactions processed under National Automated Clearing House (NACH) operated by National Payments Corporation of India (NPCI).”

It is suggested that payment made through banking channels, including debit cards, credit cards and e-wallets, may be permitted under the various provisions of the Income-tax Act, 1961. Alternatively, ECS may be specifically defined in the Income-tax Act, 1961 to include reference to these modes of payment.

What happens if a debtor deposits cash of more than 2 lakhs in a suppliers bank account?????

The Bangalore Bench of ITAT in Sri Renukeswara Rice Mills v. ITO [2005] 93 ITD 263 had held in the context of section 40A(3) held that where the payments are made otherwise than by account payee cheque directly in the bank account of the payee, it meets with the intention of the Legislature and no disallowance can be made under section 40A(3).

Therefore, direct deposit in bank account of payee can be regarded as complying with section 269ST.

“Account payee” v. “Crossed” – Whether hairsplitting required?

In the context of section 269SS r.w.s 271D, it was held that if the cheque or bank draft through which loan is received is ‘Crossed’ but words ‘account payee’ is not written in the crossing but the transaction is otherwise genuine and the bank confirms that these amounts have been deposited in assessee’s account and are as per the banking norms and there was no flaw in the transaction, penalty under section 271D is not imposable for such a trivial violation. In CIT v. Makhija Construction Co. [2002] 123 Taxman 1003 (MP) the Court observed as under:

“...The tribunal has rejected appeal of the revenue mainly on the ground that cheques were crossed and were deposited in the account of assessee firm through banking channel. Consequently and in the result, provisions of section 269SS of the act could not be attracted. A further finding has been recorded that bank also issued a certificate in this regard that all the amounts of six creditors have been shown in the account of Makhija Construction Co., i.e., assessee. Bank has further mentioned that all the six transactions in question were as per the banking norms and there was not flaw in the transaction, whereby the aforesaid amount of Rs. 2,15,000/- was transferred in the account of the assessee. The Tribunal has come to the conclusion that for such minor deviation, no penalty could have been imposed on the assessee as otherwise the transaction appears to be genuine, proper and bona fide.”

ISSUE - 6

EXEMPTION GRANTED IN SECTION 269ST :

The Government (Central Government, State Government etc. and not local authority),

Banking companies,

Post Office Saving Banks and Cooperative Banks have been exempted from these provisions.

Thus, any amount of money can be deposited in cash etc. in the all type of accounts (e.g., saving account, current account, loan accounts etc.) by account holder, borrower etc.

Similarly, any amount of tax, duty etc can be paid to the Central Government, State Government etc. (other than local authority) through cash etc. other modes.

banking company shall have the meaning assigned to it in *Explanation (i)* to section 269SS.

Explanation (i) of section 269SS read as follows:” (i) banking company” means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

co-operative bank shall have the meaning assigned to it in *Explanation (ii)* to section 269SS.

Explanation (ii) of section 269SS read as follows :”co-operative bank” shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);”

As per provision even cash withdrawals from bank accounts amount to amount received. However, CBDT has issued circular to exempt money received from banks from this provision. Therefore, cash received from any banking company, post office savings bank or cooperative bank; will not be subject to restrictions.

The notification is reproduced below :

Notification Income Tax
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION NO. 28/2017

New Delhi, the 5th April, 2017

S.O. 1057(E).In exercise of the powers conferred by clause (iii) of the proviso to section 269ST of the Income tax Act, 1961 (43 of 1961), the Central Government hereby notifies that the provision of section 269ST shall not apply to receipt by any person from an entity referred to in subclause (b) of clause (i) of the proviso to section 269ST.

2. The notification shall be deemed to have come into force with effect from 1st day of April, 2017.

[F.No.370142/10/2017TPL]

DR. T.S. MAPWAL,

Under Secy.

ISSUE - 7

APPLICABLE TO RECEIPTS WHETHER FOR BUSINESS PURPOSE, PERSONAL PURPOSE OR ANY OTHER PURPOSE:

- The restriction is applicable irrespective of purpose of accepting amount i.e., whether business purpose or personal purpose or as a trustee, custodian etc.
- However, these provisions are not applicable to the transactions of receiving money for loan, deposit or for transfer of immovable property because there are already separate provisions restricting receipt of money in cash etc. for these purposes. The limit for accepting money for those purposes in cash etc. is Rs. 20,000/- only.

ISSUE – 8

CHARACTER OF RECEIPT IRRELEVANT

The character of receipt is irrelevant i.e. exempt income / taxable income etc.

In Note no. 83 of notes on clauses, the following amounts/ nature of transactions are proposed to be excluded: –

“Any receipt from sale of agricultural produce by any person being an individual or Hindu Undivided family in whose hands such receipts constitutes agricultural income”

This transaction has been inadvertently omitted from the list of exclusions proposed in section 269ST.

It is suggested that the above highlighted transaction as referred to in notes to clauses be excluded from the operation of section 269ST by suitably amending the proviso to section 269ST.

It is also suggested that the benefit of the above exclusion be not restricted only to individual and HUF but also to other assessee's also who are deriving agricultural income only.

However as on date there is no exemption even for sale of agricultural produce.

Thus even if farmer sells produce for Rs 2 Lakh or above he can not receive in cash.

ISSUE - 9

APPLICABLE TO RECEIPTS WHETHER WITH OR WITHOUT CONSIDERATION :

The restriction is applicable irrespective of the fact that whether the receipt is with or without consideration. In case of receipt of money without consideration in contravention of Section 269ST, there will be dual impact, one charge of tax U/s. 56 (in specific cases) as well as levy of penalty U/s. 271DA.

Gift in cash (Even though gift received from relative, according to provision of section 56(2)(vii) of the I.T.Act,1961, is exempted but if the amount of Gift of Rs 2 Lakhs or more is received from relative in cash w.e.f 01.04.2017 assessee has to bear penalty u/s 271DA for contravention of this section 269ST)

ISSUE - 10

PAN NOT RELEVANT

It is irrelevant that the person receiving the cash has a PAN (Permanent Account Number) or not.

ISSUE – 11

SEARCH & SEIZURE

It is not necessary that the restriction of Receipt of Rs 2 Lakhs or more is to be based on the entries in books of account alone.

An entry or record found during search under section 132 or survey under section 133A may also show that the recipient has received more than the specified sum in non-permissible mode.

ISSUE – 12

Exceptions as per Rule 6DD

Some exceptions on the lines of Rule 6DD may be provided in sec 269ST also. Payment of fund amongst relatives, say for household expenses or medical emergencies, is not exempted; money received may have been deposited into the bank the same day and yet it may be considered as a case of default, settlement of debt by book entry or conversion of loan into equity may also stand covered since it does not strictly fall within the specified modes mentioned above.

Cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

6DD. No disallowance under subsection (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under subsection (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :—

(a) where the payment is made to—

(i) the Reserve Bank of India or any banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(ii) the State Bank of India or any subsidiary bank as defined in section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iii) any cooperative bank or land mortgage bank;

(iv) any primary agricultural credit society or any primary credit society as defined under section 56 of the Banking Regulation Act, 1949 (10 of 1949);

(v) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by—
- (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;
 - (vi) a credit card;
 - (vii) a debit card.

Explanation.—For the purposes of this clause and clause (g), the term “bank” means any bank, banking company or society referred to in subclauses (i) to (iv) of clause (a) and includes any bank [not being a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)], whether incorporated or not, which is established outside India;

- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of—
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

- (i) where the payment is made by an assessee by way of salary to his employee after deducting the incometax from salary in accordance with the provisions of section 192 of the Act, and when such employee—
- (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

Explanation.—For the purposes of this clause, the expressions “authorised dealer” or “money changer” means a person authorised as an authorised dealer or a money changer to deal in foreign currency or foreign exchange under any law for the time being in force.]

TRANSACTIONS WHERE SECTION 269ST MAY BECOME APPLICABLE:

- (a) sale proceeds of goods
- (b) proceeds of Services
- (c) sale proceeds of movable properties
- (d) fees, remuneration, salary, dalali, brokerage, contract payments etc.
- (e) Advance against sale of goods/provision of service [except advance against sale of immovable property, being covered by S.269SS]

- (f) recovery of loan given and interest thereon (**not covered presently in Sec. 269SS**)
- (g) donation receipts by trusts etc.
- (h) Advance taken by partner of firm, employees from employer, agents from principal etc. for personal purpose or for purpose of business itself
- (i) Withdrawal of capital / profit by a partner of firm in firm.
- (j) Introduction of capital by partner in firm.
- (k) Issue of Share Capital
- (l) gift in cash or in kind.
- (m) amount received by hospitals, educational institutions etc.

- (n) Transactions of loan or deposit between agriculturists may be exempt u/s 269SS but other transactions between agriculturists are not exempt u/s 269ST.
- (o) Receipt of money from government shall also attract S.269ST because receipt of amount by government only is exempt. Hence vendors registered with government shall have to either keep cash receipt below Rs. 2,00,000 or accept the amount through banking channels.
- (p) Further only receipt by post office saving bank has been excluded from operation of section 269ST. Deposit in Post office saving bank is excluded u/s 269SS. Other receipts and deposits by post office shall be hit by S.269SS and S.269ST.
- (q) Any Person receiving amount of Rs 2 Lakhs or above in cash as **reimbursement** may also be covered under section 269ST. Thus he cannot accept cash of Rs 2 Lakhs or above in cash.

(r) Sale of Depreciable Capital Assets.

(Although amount received against sale of Depreciable capital assets is being reduced from block of assets and only reduced depreciation is allowable and still sale of this depreciable capital Assets can not happen in cash if the amount of sale proceeds is Rs 2 Lakhs or more).

ILLUSTRATIONS ON APPLICABILITY OF 269ST IN VARIOUS SITUATIONS

**APPLICABILITY OF 269ST ON
MARRIAGE OF MISS. RESHMA
15.05.2017 to 18.05.2017**



ALL ARE INVITED

Example – 1

Miss. Reshma receives gifts from various persons on occasion of her marriage aggregating to Rs. 7 Lakhs?

Ans : No penalty will be applicable u/s. 269ST r.w.s 271DA.

Example – 2

On the occasion of marriage of Miss. Reshma her father made payments of Rs. 3.60 Lakhs in cash to following:

- To horse cart – Rs. 60K
- To event manager for party Rs. 2.35 Lakhs
- To band master Rs. 65K

Ans : Penalty will be applicable u/s. 269ST r.w.s 271DA on amount received of Rs. 2.35 Lakhs by event manager.

Example – 3

On the occasion of marriage of Miss. Reshma the event manager receives Rs. 4.25 L on 15.5.2017 in cash:

- Rs. 1.40 Lakhs from **mother** of Miss. Reshma
- Rs. 1.95 Lakhs from **father** of Miss. Reshma
- Rs. 90 Thousand from **brother** of Miss. Reshma

Ans : No penalty will be leviable u/s. 269ST r.w.s. 271DA as payments are received by event manager from 3 different persons.

Example – 4

For marriage of Miss. Reshma the event manager receives Rs. 3.20 Lakhs where father of bride pays Rs. 1.60 Lakhs & groom's father pays Rs. 1.60 Lakhs in cash?

Ans : No penalty will be leviable u/s. 269ST r.w.s. 271DA on the event manager as he has received amount of Rs. 3.20 Lakhs from 2 different persons.

Example – 5

On the occasion of marriage of Miss. Reshma purchases were made from M/s. Navrathan Jewellers Pvt Ltd in cash by her different relatives as under:

- Mother of Miss. Reshma Rs 1.80 Lakhs on 15.5.2017
- Mother of Miss. Reshma Rs. 1.60 Lakhs on 18.5.2017
- Mother-in Law of Miss. Reshma Rs. 2.75 Lakhs on 15.5.17
- Sister of Miss. Reshma Rs. 1.70 Lakhs on 18.5.2017
- Bua of Miss. Reshma Rs. 1.30 lakh on 18.5.2017

Ans : Penalty will be leviable u/s. 269ST r.w.s 271DA on M/s. Navrathan Jewellers Pvt Ltd on the amount received of sales made of Rs. 2.75 Lakhs in cash.

APPLICABILITY OF 269ST ON RECEIPTS/ DONATIONS BY CHARITABLE TRUSTS



Golak or **Guru ki Golak** is the term used to refer to the collection box that is usually laid in front of the Sri Guru Granth Sahib where the congregation deposits their offerings in the form of coins or paper notes before kneeling or bowing to the Guru.

Source : <http://www.sikhiwiki.org/index.php/Golak>

Example – 6

Gurudwara on the occasion of Guru Nanak Jayanthi receives Rs. 5 lakhs from various devotees on opening of Golak?

Ans : No penalty will be leviable u/s. 269ST r.w.s. 271DA as the amount are received from various devotees below Rs. 2 Lakhs.

Example – 7

A charitable trust organises 7 days Satsang of Panditji. It receives following in cash:

- Rs. 10 lakhs as donations from various persons in 7 days
- Rs. 1.50 lakhs each as sponsorship from 5 sponsors

It pays the following to the event manager:

- Rs. 1.25 lakhs per day for tent
- Rs. 1.75 lakhs per day to caterers
- Rs. 80,000 per day for security and sevadar to manpower consultant

Ans : Yes, In hands of receiver for payment made by Trust

APPLICABILITY OF 269ST ON ACCEPTANCE AND REPAYMENTS OF LOANS



Example – 8

Shiv kumar takes cash loan of Rs. 1.75 Lakhs from Dhruv Kumar?

Ans : No penalty will be leviable u/s. 269ST r.w.s. 271DA as there is exclusion of 269SS from 269ST. However penalty is leviable u/s. 269SS in the hands of Shivkumar on acceptance of loan in cash.

Example – 9

Ram makes repayment of loan along with interest of Rs. 2.40 Lakhs in Cash to Shyam?

Ans : Penalty will be leviable u/s. 269ST r.w.s 271DA in the hands of Shyam and Sec. 269T in the hands of Ram.

APPLICABILITY OF 269ST ON AMOUNTS RECEIVED BY HOSPITAL



Example – 10

Mr. Kantilal from California comes to India. On arrival he falls ill & is hospitalised at M/s. Brindavan Nursing Home. His bill is of Rs. 2.35 Lakhs which he wants to pay in 3500 dollars as he doesn't have rupees?

Ans : No penalty will be leviable u/s. 269ST r.w.s 271DA in the hands of hospital M/s. Brindavan Nursing Home as the amount received is in US Dollars and not in INR.

APPLICABILITY OF 269ST ON SALE PROCEEDS RECEIVED ON SALE OF CAR AND LAND



Example – 11.1

Rishi sells the following to Pushparaj:

- Car for Rs. 1.50 Lakhs on 10.5.2017
- Land for Rs. 1.85 Lakhs on 12.5.2017

Pushpraj makes the payment in cash as follows:

- Rs. 85000 on 11.5.2017
- Rs. 1.20 Lakh on 14.5.2017
- Rs. 1.30 Lakhs on 16.5.2017

Ans : No penalty will be leviable u/s. 269ST r.w.s 271DA as Rishi has received cash on different dates below Rs. 2 Lakhs from Pushparaj in respect of different transactions.

Example – 11.2

Would it make difference if total payment is made on 19.5.2017?

Ans : Yes penalty will be leviable u/s. 269ST r.w.s 271DA as amount received by Rishi from Pushparaj will be more than Rs. 2 lakhs.

APPLICABILITY OF 269ST ON SALE OF GOODS



Example – 12

Mr. P. Nitin Kumar receives cash payment of Rs. 2.90 Lakhs from Rakshit Pvt Ltd. On 30th May 2017 for the following:

- Rs. 2.20 Lakhs part payment for invoice no. 6. dt. 17.5.2017 of Rs. 4 Lakhs
- Rs. 40 K part payment for invoice no. 9 dt. 21.5.2017 of Rs. 2.75 Lakhs
- Rs. 30K part payment for invoice no. 11 dt 28.5.2017 of Rs. 1.25 Lakhs

Implications are:

- 271DA penalty on Mr. P. Nitin Kumar for Rs. 2.90 Lakhs
- Mr. P. Nitin Kumar to report Rs. 2.2 Lakhs in AIR in Form 61A.
- Rakshit Pvt Ltd expense of Rs. 2.90 Lakhs would be disallowed u/s 40A(3)

APPLICABILITY OF 269ST ON RECEIPT OF SHARE CAPITAL IN CASH

RECEIPT OF SHARE OF CAPITAL IN INSTALLMENTS

- CASH
 - SHARE APPLICATION AND ALLOTMENT
- SHARE APPLICATION AND ALLOTMENT
 - EQUITY SHARE CAPITAL
 - CASH
- CASH
 - SHARE APPLICATION AND ALLOTMENT
- SHARE FIRST CALL
 - EQUITY SHARE CAPITAL
- CASH
 - SHARE FIRST CALL
- SHARE SECOND AND FINAL CALL
 - EQUITY SHARE CAPITAL
- CASH
 - SHARE SECOND AND FINAL CALL



Example – 13

M/s. Rakshit Pvt. Ltd receives Rs. 5 lakhs each from its 2 subscribers on incorporation in cash.

Ans : Yes penalty will be leviable u/s. 269ST r.w.s 271DA as M/s. Rakshit Pvt Ltd received Rs. 5 Lakhs from 2 subscribers in cash.

APPLICABILITY OF 269ST ON RECEIPT OF PARTNERSHIP FIRM IN CASH



Partnership Firm

Example – 14

Mr. P. Nitin Kumar introduces Rs. 5 Lakhs capital in partnership firm M/s. NKR and Co?

Ans : Yes penalty will be leviable u/s. 269ST r.w.s 271DA as Mr. P. Nitin Kumar introduces Rs. 5 Lakhs in M/s. NKR & Co.

Example – 15

Mr. P.Nitin Kumar partner withdraws the following in cash from NKR and Co. during FY 2017-18 relevant to assessment year 2018-19:

- Rs. 2.16 Lakhs remuneration Rs. 18K p.m.
- Rs. 48000 being interest on 31.3.2017
- Rs. 5 Lakhs on different dates, being profit

Ans : S. 40A(3) will be attracted in the hands of the firm for remuneration and interest paid to partner in excess of Rs. 10,000/- and

269ST will be attracted in hands of P.Nitin Kumar for receipt of more than 2 lakhs in the form of remuneration, interest and profit from the firm

APPLICABILITY OF 269ST ON RECEIPT OF RENT BY LAND LORD FROM TENANT IN CASH



Collecting Rent
On Time

Example – 16

NKR & Co, a partnership firm pays to Land Lord Rs. 20,000/- p.m as rent for office use in cash every month for 12 months.

Ans : 40A(3) will be attracted in the hands of NKR & Co
269ST will be attracted in the hands of land lord.

APPLICABILITY OF SEC. 269ST / 271DA TO DIFFERENT BUSINESSES

Cheque Discounting Business

- Shop keeper issues cheque in favour of scattered supplier mainly in silk industries.
- The sarees are manufactured by weaver who comes from remote places.
- Shop keeper issues cheque to those weavers / suppliers which are of simple crossing.
- The weavers bring the cheque to discounters, the cheque discounter in turn takes the signature of the weaver in the back side of the cheque and present in account of discounter and pay to the weaver instantly after collecting necessary charges.

Cheque Discounting Business

e.g. Cheque issued by shop keeper of Rs. 5,00,000/- in favour of supplier / weaver.

Charges collected by discounter is Rs. 2000/- and balance sum of Rs. 4,98,000/- is paid immediately to the supplier / weaver.

Later the cheque discounter will deposit the cheque of Rs. 500000/- in his account which will take around 3 working days to clear.

Now the weaver who received the balance of Rs. 498000/- will be subject to vagaries of section 269ST and consequently penalty u/s. 271DA.

Cheque Discounting Business

- The object of the weaver to discount the cheque is save time and urgent funds requirement.
- Suppose if the weaver present the cheque in his bank account at his place it may take 8 to 10 days to clear the cheque.

CO-OPERATIVE SOCIETIES

Section 269ST affects a person (other than Government, Banking Company, Post Office savings Bank and Co-operative Bank) or a Co-operative Society which is not a Co-operative Bank in the following manner:-

- (1) Deposits and loans from others, amounting to Rs. 20,000/- or more, shall not be accepted in cash. [Sec.269SS]**
- (2) Loan repayment from loanees amounting to Rs. 2 lakhs or more shall not be accepted in cash.[Sec.269ST]**
- (3) Deposits accepted from depositors shall not be repaid in cash if the amount is Rs.20,000/- and more. [Sec.269T]**

(4) Loans availed by the Society shall not be **repaid in cash if the amount is Rs.20,000/- and more. [Sec.269T]**

(5) Deposit with other institutions shall not be **withdrawn if the amount is Rs.2,00,000/- and more. [Sec.269ST].**

Government, Ministry of Finance, by notification No.S.O.1057(E) dated 05-04-2017 has exempted withdrawals from the deposits with Government, Banking Company, Post Office savings Bank and a Co-operative Bank from this provision.

As far as all other transactions are concerned the liability of adherence to the provisions of section 269ST is on the recipient of the amount if it is Rs.2 lakhs and above.

A co-operative society is liable for penalty for the violation of the provisions of sec. 269ST only in a case where the transaction involves acceptance, not payment, of money.

Restrictions imposed by Section 269SS and 269ST are not applicable in the case of Co-operative Banks [State Cooperative Banks, Central Co-operative Banks and Urban Co-operative Banks (Primary Co-operative Banks)].

These entities shall receive any amount of any nature in cash without any limit prescribed in the said Sections. Besides, by virtue of Government notification No. S.O.1057 (E) dated 5-4-2017, receipts in the nature of *withdrawal of deposits* from the Co-operative Banks by other persons are also not restricted by the provisions of these Sections.

Similarly, repayment made by any person towards loans taken from Co-operative Banks are exempted from the provision of Section 269T and therefore such repayments need not be made by account payee cheque or draft or electronic clearing system or by crediting the amount to the Savings Bank account or current account even if the amount is Rs.20,000/- or more.

There are various decisions to the effect that Section 269SS and 269T are not applicable to Co-operative Societies as transactions of Co-operative Societies are only with members which cannot be treated as transaction “by a person with another person”. For that reason, Section 269ST may not be applicable to Co-operative societies.

Some of the decisions in the subject matter are quoted below:-

“In view of the transaction took place between the assessee and its member, the strict provisions of the sec.269SS/269T cannot be applied.”

Income Tax Appellate Tribunal – Hyderabad

The Citizen Co-Op. Society Ltd., vs. Assessing officer – on 19 October, 1997

“The repayments of the deposits were made to the Members of the Society and it is obvious that the assessee Society entertained a bona fide belief that no contravention of any provisions of Income-tax Act is being made while making the repayments of loans/deposits in cash.”

Income Tax Appellate Tribunal – Pune

**Muslim Urban Co-Op. Credit Society vs. Jt. Commissioner of
Income tax, Sangli- on 25 March, 2004**

“According to us, these observations of the Tribunal are good enough to show that the view of the assessee society that its members being not any separate/distinct persons as contemplated in section 269T, the deposits repaid to them were not covered by the said provisions was a possible or conceivable view and the belief entertained by it on the basis of such view was a bona-fide belief.

As such, considering all the facts and circumstances of the case, we are of the view the assessee society had entertained bona-fide belief that the deposits repaid by it to its members were not covered by the provisions of section 269T and this bona-fide belief coupled with the fact that the deposits were genuine and were also accepted and repaid in the regular course of business constitutes a reasonable cause for its failure to comply with the requirements of section 269T.

In that view of the matter, we find no justification in the action of the learned CIT (A) confirming the penalty imposed U/s 271E and reversing his impugned order, we direct the A.O. to cancel the said penalty.”

Income Tax Appellate Tribunal – Mumbai

**Salgaon Sanmitra Sahakari vs. Assessing Officer- on 21
December, 2010**

Impact of the section 269ST on NBFCs?

In context of NBFCs, section 269ST would impact the transactions of the following nature, where cash is being used for giving effect to the same

- Receipt of down payment
- Acceptance of security deposit
- Sale of second hand repossessed motor vehicles
- Refurbishment expenses
- Recovery of loan / interest

Where the quantum of the aforesaid transactions exceeds Rs.2lakhs, the same would be required to be given effect, through banking channels.

Hence the transactions which have been given effect to till date in cash terms, the same will not be possible after this section is enforced.

Further to illustrate, for e.g. where a particular transaction of sale of repossessed asset has been given affect to by an NBFC, and a single invoice of Rs 5,00,000 has been raised by them on the buyer.

Generally there is an upfront receipt of cash on the event of sale and if the cash received happens to be Rs. 2 lakhs or more then the same will fall under the net of the section.

INTERPLAY BETWEEN SECTIONS 269ST, 269SS AND 269T

Particulars	269SS	269T	269ST
Scope of the section	loans, deposits and specified sum	loans or deposits	Any payment
Burden of the section is On	Person taking or accepting	Person repaying	Person receiving any payment
Monetary threshold for the Section	20000	20000	200000

Particulars	269SS	269T	269ST
Exceptions	<p>This section does not apply to :</p> <ul style="list-style-type: none"> (i) Government; (ii) any banking company, post office savings bank or cooperative bank; (iii) any corporation established by a Central, State or Provincial Act; 	<p>This section does not apply to :</p> <ul style="list-style-type: none"> (i) Government; (ii) any banking company, post office savings bank or co-operative bank; (iii) Any corporation established by a Central, State or Provincial Act; 	<p>This section does not apply to:</p> <ul style="list-style-type: none"> (i) any receipt by— <ul style="list-style-type: none"> (a) Government; (b) any banking company, post office savings bank or co-operative bank; (ii) transactions of the nature referred to in section 269SS;

	269SS	269T	269ST
	<p>(iv) any Government company</p> <p>(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.</p>	<p>(iv) any Government company</p> <p>(v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette</p>	<p>(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.</p>
Penalty	271D	271E	271DA

Does it cover cash received by borrowers also?

On a plain reading of the section it appears that all kind of receipts are covered by the section, therefore it appears cash received by the borrowers also gets covered.

However when we look at the exclusion part of the section, it states that the provision of the section is not applicable to transaction of nature referred in section 269SS.

While section 269SS is applicable in situations where a person receives cash as loan or deposit. Consequently a borrower is not covered by the section 269ST.

Are provisions of section 269ST and 269T mutually exclusive?

The provisions of the section 269ST and 269T are mutually exclusive. Section 269T imposes obligation on the borrower and is restricted to loan and deposits while section 269ST imposes obligation on the recipient and covers all kinds of receipts whether loan, deposits or otherwise. To illustrate, let us take an example:

Case	Violation u/s 269ST	Violation u/s 269T	Consequence
Borrower repays Rs. 50,000 in cash	No	Yes	Penalty under section 271E on the borrower.
Borrower repays Rs. 2,10,000 in cash	Yes	Yes	Penalty under section 271E on the borrower. Penalty under section 271DA on the recipient.

Does the section cover loan repayment also?

Section 269ST states that no person shall receive an amount of Rs. 2 lacs or more:

- from a single person in a day in cash or
- in respect of a single transaction or
- in respect of multiple transactions relating to the same event from a single person.

So, if a company receives any amount in cash whether it is loan repayment or otherwise through a mode other than prescribed, the section will very well apply.

OTHER MEASURES

Apart from the proposed restriction by section 269ST, a recipient of cash is required to comply with several other provisions of the Act. e.g.

- He has to obtain the Permanent Account Number (PAN) of the payer or Form no. 60 from him if the sum exceeds the various limits specified according to the nature of the transactions entered into. [Rule 114B]
- He has to verify the accuracy of the PAN [Rule 114C].
- He has to furnish a statement containing particulars of Form No. 60 [Rule 114D].
- He has to furnish a statement of the Specified Financial Transactions (SFT) in Form No. 61A [Rule 114E].

[Requirement to furnish Permanent Account number by collectee.

206CC. (1) Notwithstanding anything contained in any other provisions of this Act,

any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector),

failing which tax shall be collected at the higher of the following rates, namely:—

- (i) at twice the rate specified in the relevant provision of this Act; or
- (ii) at the rate of five per cent.

- (2) No declaration under sub-section (1A) of section 206C shall be valid unless the person furnishes his Permanent Account Number in such declaration.
- (3) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).
- (4) No certificate under sub-section (9) of section 206C shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.
- (5) The collectee shall furnish his Permanent Account Number to the collector and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

- (6) Where the Permanent Account Number provided to the collector is invalid or does not belong to the collectee, it shall be deemed that the collectee has not furnished his Permanent Account Number to the collector and the provisions of sub-section (1) shall apply accordingly.
- (7) The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.]

Section 271DA

“271DA. (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.”

- Penalty will be levied at 100% of amount of transaction.
- The exception requires a “good and sufficient reason”.
- The proviso reads as follows Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.
- Normally the criteria used in penalty provisions is “reasonable cause”
- Also this penalty section does not have cover of section 273B which reads states that, in case the assessee is able to show a “reasonable cause” for the said failure, there will be no penalty.
- There is a significant difference between the words “reasonable cause” vis-a-vis “ good and sufficient reasons”
- It is possible that a particular cause may very well be a reasonable cause but not a “good and sufficient reasons”

A. Legislative background:

Earlier, provisions of sections 269SS and 269T of the I.T. Act, 1961 were introduced in the Act to prohibit acceptance and repayment of loans/deposits/specified sums in cash in excess of Rs. 19999/- with the intention to check the introduction of black money.

The CBDT in the circular No. 387 dt.6/9/1984 ITR (St) expressed the said intention of the legislature.

With this legislative intention in mind, courts used to cancel the penalty levied u/s 271D/271E for contravention of provisions of section 269SS/269T as the case may be, by observing that the acceptance/repayment of loan in the cash being genuine and *bona fide*, there is mere technical breach or venial violation of the provision of section 269SS/ 269T of the I.T. Act 1961 and hence penalty under section 271D/271E may not be imposed.

Hon. Supreme Court's in the case of **Hindustan Steel Ltd V/s State of Orisa reported in 83 ITR 26** held that, an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of it's obligation.

The penalty will not also be imposed merely because of it is lawful to do so.

Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of authority to be exercised judicially and on a consideration of all relevant circumstances.

Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or when there is breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

Bombay High Court in CIT vs. Triumph International Finance
(345 ITR 270)

It is not established that there is a deliberate and intentional violation of the provisions by the assessee in order to hide any income or to evade any payment of tax.

Even if the assessee has technically contravened provisions of section 269T, in absence of finding to effect that repayment of loan/deposit was not a bona fide transaction and was made with view to evade tax, no penalty under section 271E could be imposed for contravening provisions of section 269T.

To summarize, even if there is technical violation of provisions of Section 269SS and Section 269T, as per settled judicial principles, no penalty u/s 271D or 271E is leviable if,

- The transaction under question is genuine
- The transaction is duly recorded in books of the parties to the transaction
- Identity and confirmation of parties to the transaction is on record
- No black money/tax evasion/*malafide* intention is involved in the transaction

Courts while taking the liberal view as above, generally refers to the legislative intent behind the introduction of S. 269SS/ 269T which was to prevent proliferation of black/unaccounted money deposited with banks and other persons by introducing the system of repayment through A/c payee cheques and drafts and thus to ensure that the identity of payee is established..... [CBDT circular No. 387 dt.6/9/1984 ITR (St)].

Thus, if entire transactions of the loans and the acceptance or repayments thereof are shown in the regular books of accounts and assessee was acting in a bonafide belief coupled with genuineness of the transactions, **it constitutes a reasonable cause within the meaning of section 273B of the I.T. Act so as to come out of the rigors of penal provisions of section 271D and 271E.**

A.1) This view is fortified by following judgments:

I. The jurisdictional ITAT Pune in the case of *Muslim Urban co-op Credit Society ltd (2005) 96 ITD 83 (Pune)*, has held that “the facts and circumstances of the instant case clearly indicated that there was a reasonable cause and therefore, no penalty was leviable.

It is settled law that reasonable cause can be a cause which prevents a man of average intelligence and ordinary prudence acting under normal circumstances without negligence or inaction or want of bona fide.

In the instant case, the department had not impeached that the transaction are not genuine. Similarly, no transaction was noticed outside the books of accounts.

The repayments of deposits were made to the members of the society and it was obvious that the assessee society entertained a bonafide belief that no contravention of any provisions of the Act was being made while the repayments of loans/deposits in cash.

In the circumstances, no penalty under sections 269T read with section 271E could be imposed.”

II. The Hon. Mumbai Tribunal in case of ***Karnataka Ginning And pressing factory v/s Jt CIT (77 ITD 478)*** has held that when the genuineness of the borrowings were not doubted by A.O and A.O was satisfied with the assessee's explanation regarding the nature & source of the amount, the transactions of deposits does not fall within the mischief of section 269SS.

III. Similarly it is held that in the case of *Addl. CIT Vd Smt. Prahati Baruah (2003) 113 Taxman 74 (Gau)(Mag)*, that the introduction of section 269 SS and 269 T in the statute was to prevent proliferation of black/unaccounted money deposited with banks and other persons by introducing the system of repayment through A/c payee cheques and drafts and thus to ensure that the identity of payee is established.

When the identity is known and genuineness of loan transaction was not in doubt, if any could be set to be a technical default for which no penalty would be leviable.

IV. In the case of *Bhagwati Prasad Bajoriya 183 CTR 484*, the *Hon. Gauhati High* Court has held that the penalty under section 271D was not leviable for the reason that transaction of loan finds place in the books of accounts of the assessee.

V. The Hon. High Court of Jharkhand has held in the case of **Omec Engineers v/s CIT, reported in (2008) 217 CTR (Jharkhand) 144** that:

There being no finding of A.O., CIT (A) or tribunal that the transactions in violation of s. 269SS were not genuine, assessee's return of having been accepted under s 143(3) after scrutiny, there being also no finding that transactions were malafides aimed at disclosing concealed money, imposition of penalty under 271D merely for technical mistake could not be sustained.

B) Issues for consideration:

- Whether favorable judgments’ rendered in context of section 269SS would still be relevant for the purpose of application or otherwise of section 269ST r.w.s. 271DA?**
- What could constitute “good and sufficient reason” and, is it same as “reasonable cause”?**

B.1) Legislative intent behind section 269ST:

The chapter XX-B which contains the sections 269SS/T/ST, is titled as “Requirement as to mode of acceptance, payment or repayment in certain cases to Counteract Evasion of Tax” making legislative intent aptly clear behind introduction of concerned sections.

Press release dt. 05.04.17 clarifies the legislative intent even further behind introduction of s. 269ST in following words:

“Various legislative steps have been taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by **promoting digital economy**.

These prominently include placing restriction on cash transaction by introduction of new sections **269ST & 271DA** to the Income-tax Act.....”

B.2) Reasonable cause vs. Good and sufficient cause:

In view of proviso in section 271DA itself, there is no consequential amendment u/s 273B of the Act which saves from general penalties if the assessee proves that there was reasonable cause for the failure to observe the mandatory provisions of the Act such as S. 269SS, 269T etc.

Section 273B reads as follows:

[Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B , section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, **no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.**

In other words, Finance Act 2017, instead of amending section 273B, inserted a proviso to section 271DA itself to the effect that, no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention of section 269ST.

However, what could constitute good and sufficient reasons for contravention have not been defined.

No definition of good & sufficient reasons.

Perhaps this needs some clarification or suitable amendment in section 271DA so as to bring out clearly what all reasons are covered under this expression of good and sufficient reasons.

The reason is good and sufficient or not has to be seen from the perspective of the recipient.

For Example LIC of India accepts cash or draft in case the payer's cheque has been returned unpaid due to insufficient funds.

B.2.1) Reasonable cause- Meaning:

Azadi Bachao Andolan vs. Union of India [2001] 116 TAXMAN 249 (DELHI)

.....What would constitute reasonable cause cannot be laid down with precision. It would depend upon factual background

Reasonable cause, as applied to human action, is that which would constrain a person of average intelligence and ordinary prudence.

The expression 'reasonable' is not susceptible to a clear and precise definition; for an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space.

It can be described as rational according to the dictates of reason and is not excessive or immoderate.

The word 'reasonable' has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know.

The reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.

‘Reasonable cause’ as defined by The Law Lexicon (3rd Edition):

“as applied to human action, that which would constrain a person of average intelligence and ordinary prudence; probable cause; legal cause.”

B.2.2) Good and sufficient cause – Meaning:

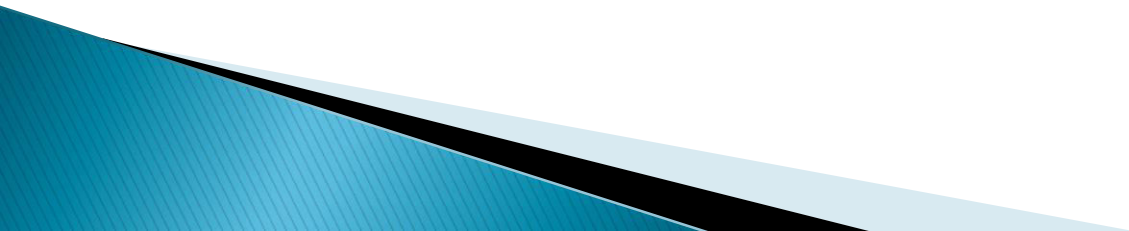
Supreme Court in Arjun Singh v. Mohindra Kumar & Ors., AIR 1964 SC 993

“.....but we might observe that we do not see any material difference between the facts to be established for satisfying the two tests of "good cause" and "sufficient cause". We are unable to conceive of a "good cause" which is not "sufficient" as affording an explanation for non-appearance, nor conversely of a "sufficient cause" which is not a good one and we would add that, either of these is not different from "good and sufficient cause" which is used in this context in other statutes.

If, on the other hand, there is any difference between the two it can only be that the requirement of a "good cause" is complied with on a lesser degree of proof than that of "sufficient cause".

‘Good cause’ as defined by The Law Lexicon (3rd Edition):

“Reason which is found to be adequate or proper and justified by a court or a competent authority dealing with the matter”



‘Sufficient cause’ as defined by The Law Lexicon (3rd Edition):

“The expression ‘sufficient cause’ implies no negligence nor inaction nor want of bonafides on the part of the party”

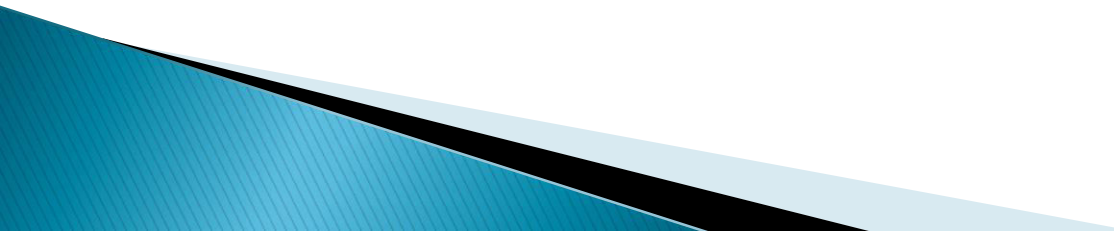
“Sufficient cause means some cause beyond the control of the party and for successfully invoking the aid of the court the claimant must have acted with due care and attention.”

“The expression sufficient cause implies the presence of legal and adequate reason. The word ‘sufficient’ means ‘adequate’, ‘enough’, “as much as may be necessary to answer the purpose intended.” Etc.

With this background, if we compare the two terms specifically in the context of section 269ST and the backdrop in which the said section was introduced,

it appears that even if there is mere technical violation of provisions of section 269ST without any malafide intentions, still without there being any compelling circumstances behind the conscious contravention of section 269ST,

it would not be “Good and Sufficient cause” so as to come out of penal action u/s 271DA. It will not be out of place to mention here that, the casual and routine contraventions will also hamper the new and prominent intent of the Govt. to **promote digital economy.**



No time limit for initiating of penalty proceeding.

There is no time limit mentioned for initiation of penalty proceedings but it should be reasonable after the contravention of such provisions. Section 273A(4) authorizes only Joint Commissioners to reduce or waive any penalty payable by an assessee, subject to satisfaction of the conditions specified in it or where satisfied for the reasonableness of good and sufficient cause for such contravention.

Non Appealability of Penalty imposed by the Joint Commissioner under Section 271DA.

I. Before Tribunal.

Section 253(1)(a) which provides for appeal to the Tribunal against order passed by CIT(A) has not been amended to cover an order under section 271DA. So Penalty Order under Section 271DA is not appealable before Tribunal.

II. Before CIT(A).

Section 246A. (1) Any assessee [or any deductor] aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against —

(q) an order imposing a penalty under Chapter XXI;

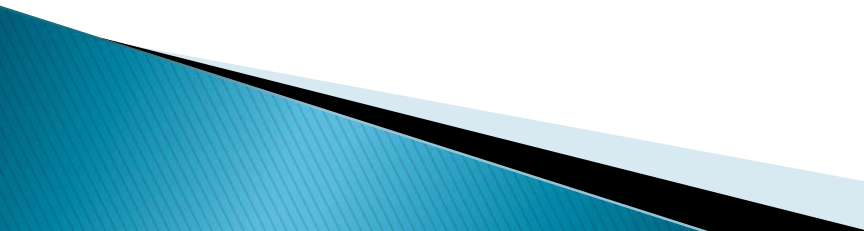
Since, penalty u/s 271DA is an order under Chapter XXI and unless the recipient is an assessee, he cannot file an appeal against the penalty order.

Section 246A does not apply due to the following reasons:

- (a) Section 246 applies to penalty order on a person in his capacity of
- i. Assessee.
 - ii. Deductor .

Here, the person penalized does not receive the penalty order in the capacity of an assessee so the order is not appealable.

It may be that till any further amendment is done or in the absence of prohibition clause for an appeal against an order under section 271DA, the benefit of doubt is given to the assessee and an appeal against pending order under section 271DA may be allowed.



**Every citizen of the country
should be conversant with this
provision.**

Thank You
CA.NAVEEN KHARIWAL . G

Thanks to my computer

Sri. N. Beeresh Kumar

