

**Issues u/s 269ST & 271DA
of
the Income Tax Act, 1961**

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Baroda Branch of WIRC of ICAI**

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Memorandum explaining the Provisions of Finance Bill 2017

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 programmes. **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 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.

- 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. Further, it is proposed 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 proposed restriction on cash transactions shall not apply. Transactions of the nature referred to in section 269SS are proposed to be excluded from the scope of the said section.

- 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.

- 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.

[Clauses 71, 83 & 84]

Notes on Clauses

Finance Bill 2017

- 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.

Finance Act, 2017

- Limit of Rs.3.00 lacs as proposed in the Bill is reduced to Rs.2.00 lacs in the Finance Act.
- Hon'ble FM while delivering his Budget speech, made a reference to SIT on Black Money and its recommendations with a view to promote digital economy.
- Special Investigation Team headed by Justice M B Shah in its 5th SIT Report has suggested the following amongst other recommendations:

- **Cash transactions** : The SIT has felt that large amount of unaccounted wealth is stored and used in form of cash. Having considered the provisions which exist in this regard in various countries and also having considered various reports and observations of courts regarding cash transactions the SIT felt that there is a **need to put an upper limit to cash transactions**. Thus, the SIT has recommended that there should be a **total ban on cash transactions above Rs. 3.00 lacs** and an Act be framed to declare such transactions as illegal and punishable under law.

- **Cash holding** : The SIT has further felt that, given the fact of unaccounted wealth being held in cash which are further confirmed by huge cash recoveries in numerous enforcement actions by law enforcement agencies from time to time, the above limit of cash transaction can only succeed if there is a limitation on cash holding, as suggested in its previous reports. **SIT has suggested an upper limit of Rs. 15 lakhs on cash holding.** Further, stating that in case any person or industry requires holding more cash, it may obtain necessary permission from the Commissioner of Income tax of the area.

- **CBDT through a press release dated 05/04/2017 clarified that**

“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, co-operative bank or a post office savings bank. Necessary notification in this regard is being issued.”

Notification No. 28/2017 has since been issued.

S. 269ST : Mode of undertaking transactions.

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,-

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

S.271DA: Penalty for failure to comply with provisions of section 269ST.

(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.

- **S.2(28C): "Joint Commissioner"** means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117

- “**Person**” means Person as defined u/s 2(31) so as to include individual, HUF, AOP, BOI, Company, Firm, Local Authority and every artificial juridical person not falling under other abovestated categories.
- “**two lakh rupees or more**” covers a transaction of Rs.2.00 lakh. Only transaction of upto Rs.1,99,999/- does not get hit by the section.
- Apparently only transactions in INR are covered.

- All kinds of receipts are covered whether capital or revenue, taxable or exempt, loan or gift.
- Receipt which is otherwise specifically exempt from tax under some other provision is also covered.
- Receipt which is taxed as income is also covered.

- **Clause (a)** : No person shall **receive an amount** of two lakh rupees or more **in aggregate** from **a person in a day** otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.
- Both payer and receiver are a single Person.
- Total of the amount in the hands of the recipient should not exceed Rs.2.00 lakhs in a single day irrespective of Nos. of transactions.

- Legal Day commences at 12 o'clock midnight and continues until the same hour the following night - **Eerati Laxman vs State of AP (2009) 3 SCC 337**

- Poser: A single bill of Rs.5.00 lacs raised by a CA is settled by his client in a single day by paying 4 installments of Rs.1.25 lacs each. Would he be covered by clause (a)?
- Suppose 5 bills of Rs.1.00 lac each are raised by a CA on a particular client are settled by his client in a single day, would clause (a) apply?
- Suppose the client pays only Rs.50,000 but at 4 different times in a day. Would he be covered?

- Each day a Bill of Rs.1,90,000/- settled in cash on the same day is permissible with the same person. However, if the balance remains o/s and settled subsequently in a day or over a period of many days, the same is not permissible.
- Receipt of more than Rs.2.00 lakhs in aggregate from different persons is also permissible.

- Clause (b): No person shall receive an amount of **two lakh rupees or more in respect of a single transaction** otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.
- Only the transaction is to be seen. Recipient is single person but payer could be single or multiple persons and payment could be in a single day or spread over many days.

- **Poser:** 10 separate bills of Rs.50,000 each raised by a CA on a particular client prior to 31/03/2017 are settled in cash by his client by paying Rs.1.00 lakh each on 5 different days in June 2017. Would this transaction be covered by clause (b)? (each bill a separate transaction or realization of outstanding balance is a single transaction)

- Artificial splitting of a single transaction into multiple paper transactions to avoid this provision may not be possible.
- One transaction with multiple or series of deferred payments is covered under this clause.
- A house is sold to 5 persons and one Assessee received Rs.1,90,000/- in cash from 5 different persons towards sale of house. Would clause (b) apply? Suppose, there are 5 co-owners and each receives 1.90 lacs?

- Clause (c) : 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** otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

- Here, the receiver is single and so also the payer.
- But payment transactions could be multiple.
- All must relate to one **event or occasion**.
- All transactions spread over days but relating to one event/occasion would be bunched together and treated as one single transaction.

- “Event” and “Occasion”, both are not defined under the Act.
- Oxford Dictionary defines ‘event’ as “A thing that happens or takes place, especially one of importance. A planned public or social occasion”.
- Oxford Dictionary defines ‘occasion’ as “A particular event, or the time at which it takes place. A special or noteworthy event, ceremony, or celebration”.

- Events/occasions like wedding, birthday, social ceremonies, office opening, anniversary, travel, picnic, religious tours etc are covered.
- Poser: Can a bride on her marriage receive Rs.1,000/- from 250 different guests, spread over a period of 10 days?
- Mr A has grand plans for his son's wedding. He arranges Cocktail, Sangeet, Mahendi, Marriage, Reception and Gruh Pravesh functions on different dates? Would all these functions be treated as different events/occasion?

- Posers: A transaction of sale of Rs.3.00 lacs is settled by paying Rs.2.00 lacs in cheque and one lakh in cash, all on one day? Is it permissible?
- Would there be any difference if the above transaction is as per the agreement between the parties, to be settled in 6 monthly installments of Rs.50,000 each to be paid in cash?
- Can Mr. A receive his monthly salary of Rs.20,000/- in cash every month?

- Can a Caterer raise three different bills of Rs.1.95 lacs each for 3 different functions of the same wedding on three different persons related to the Bride for receipt of cash payment on 3 different dates?
- Can Mr. A receive gift of Rs.5.00 lacs in cash from his father in a single day? Would there be any difference if the amount is paid in Gold?

- A co-operative credit Society accepts Rs.5,00,000 in cash from one of its borrowers towards repayment of loan in cash in a single day. Would provisions of S.269ST get attracted?

- Amount u/s 269ST vs Sum u/s 271DA
- Both Amount and sum cannot be interpreted so as to mean anything other than ‘amount of money’ or ‘sum of money’.
- Can receipt of amount by credit/debit card, e-wallet be treated as payment through Electronic Clearing System?
- Client of a CA deposited Rs.2,50,000/- in his bank account on a single day towards o/s fees, would S.269ST get attracted?

- **Some common transactions:**
- Repayment of loan in cash (S.269T, 269SS & 269ST)
- Sale of moveable properties including depreciable asset in cash
- Transactions between Firm and Partners (304 ITR 172, Raj) & (354 ITR 9, Mad)
- Transactions between HUF and Members
- Receipt of Share Capital in cash

Some Anomalies

- “transactions relating to one event or occasion” should be appropriately explained or modified. (Accounting or commercial event or social event)
- Exceptions in line with Rule 6DD may be inserted.
- Definition of ECS should be modified or clarifications regarding Credit/Debit card and E-wallet payments should be inserted.

- Agriculturists should be exempted as contemplated in the Bill
- Use of 'Amount' in S. 269ST and 'Sum' in 271DA can create unwanted confusion which can be avoided by amending either of the sections.

Penalty u/s 271DA

- ‘Good and Sufficient Reasons’ vs ‘Reasonable Cause’.
- Penalty u/s 221
- At present penalty u/s 271D/E is generally deleted by the Courts if the underlying transaction is genuine, parties are identifiable, transaction is duly reflected in the books and there is no allegation of tax evasion/black money adjustment / malafide. The same grounds can also support an Assessee who challenges the levy of penalty u/s 271DA.

- Memorandum explaining the provisions of Finance Bill, 1984 (146 ITR ST. 157,162) explained that the insertion/ amendment to the sections was aimed to curb/counter menace of falsely explaining away in the course of search, unaccounted cash or deposits as representing loan/deposit taken or accepted from any other person by the taxpayers and also to curb the practice of bringing in unaccounted income in the form of such loans and deposits into the books of account. Hon'ble Supreme Court in the case of Kum. A.B. Shanthi (255 ITR 258) while upholding the constitutional validity inter alia duly reckoned the aforesaid object and further held that genuine and bonafide transactions should not be penalized.

- Time limit for initiation and levy is not prescribed. However, penalty has to be levied within a period of 6 months from the end of the month in which the action of imposition of penalty is initiated.
- Penalty order u/s 271DA is an appealable order u/s 246A(1)(q).
- Since the person penalized is an Assessee as defined u/s 2(7) of the Act, appeal by him is maintainable.

Thank You