



Implications of cash transactions under various provisions of the Income-tax Act

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Provisions dealing with cash transactions

- Section 35AD – disallows capital expenditure in excess of Rs. 10,000 incurred in cash by a person carrying on a specified business for acquisition of any land, goodwill or financial instrument
- Section 40A(3) – disallows expenditure incurred in respect of which payment or aggregate of payments made to a person in a day exceed Rs. 10,000 otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft. This is subject to exceptions in Rule 6DD.
- In respect of cash payments made for plying, hiring or leasing goods carriages, the threshold limit for payments otherwise than by a specified mode is Rs. 35,000 instead of Rs. 10,000.
- S. 40A(3A) deems earlier allowed expenditure as business income, if such expenditure is incurred in a particular year but the payment is made in any subsequent year exceeding Rs. 10,000 otherwise than by a specified mode.

Provisions dealing with cash transactions

- Section 40A(4) provides that if payment is made or tendered in a specified mode, then no person shall be allowed to raise, in any suit or other proceeding, a plea based on ground that the payment was not made or tendered in cash or in any other manner.
- Second proviso to S. 43(1) – S. 43(1) defines original cost to mean actual cost of asset as reduced by portion of cost as met directly or indirectly by any other person or authority. FA, 2017 has inserted a second proviso to exclude expenditure incurred in acquisition of any asset or part thereof from actual cost of asset, if the payment in respect of such expenditure is made to a person in a day, exceeding Rs. 10,000 otherwise than by a specified mode.
- Payments in respect of past expenditure – The language of the second proviso is “where the assessee ***incurs*** any expenditure in respect of which payments or aggregate payments made..... exceed ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost.”

Provisions dealing with cash transactions

- The Memorandum, while explaining the amendment under the heading "E. Promoting Digital Economy", (after referring to the disallowance in respect of revenue expenditure paid in cash), it has stated: *"in order to discourage cash transactions even for capital expenditure, it is proposed to amend the provisions of section 43 ... to provide that where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment or aggregate of payments made ... exceeds ... such expenditure shall be ignored ..."*.
- It is quite clear from the observations in the Memorandum that, although, the Legislature was aware of the practice of disallowance of cash payments in respect of revenue expenditure, with a view to implement the policy relating to cashless economy, presently, it is thought also to extend the disallowance provision to capital expenditure.

Provisions dealing with cash transactions

- As stated above, the language employed in the amendment is "incurs", signifying present tense and implying that it would apply to any expenditure which is incurred after the amendment is made effective, as per one view. As per the other view, it may also mean that both the event of incurring the expenditure and the payment thereof should be after the date on which the amendment is made effective. As per yet another review, it may mean that the expenditure may be incurred in past, that is, prior to the effective date of amendment, but, if the payment is made after the effective date of amendment, the provision would apply.
- Having regard to the provision, its language and the desire to be prospective, it appears that the first view or second view is preferable. The other view would require reworking of the actual cost in respect of the past and to what extent it should be done or not may be difficult as well as impractical.
- *Whether Rule 6DD applies?* - There is no provision in the newly inserted proviso to exclude certain payment made under certain circumstances like Rule 6DD. Therefore, in absence of specific provision, any payment made otherwise than permissible mode would

Provisions dealing with cash transactions

- **Amendment in Explanation 13 of Section 43(1)**
- *Explanation 13* of section 43(1) provides that if the deduction under section 35AD is allowed in respect of any capital asset, the actual cost of such asset would be treated as 'nil'.
- New proviso is inserted to *Explanation 13* of section 43(1) to provide for re-computation of actual cost of asset, if deduction under section 35AD is withdrawn.
- The amendments are effective from 1-4-2018 and apply to the assessment year 2018-19 and subsequent assessment years.
- *Background of section 35AD(7B)* - As per the provisions of section 35AD (7B), if the deduction claimed in earlier year(s) is withdrawn on non-fulfilment of certain conditions specified in sub-section (7A) thereof, the total amount of deduction claimed and allowed in earlier year(s) would be considered as deemed business income. However, such income is reduced by the depreciation that would have been allowed in past in accordance with the provision of section 32 of the Act.

Provisions dealing with cash transactions

- *Effect of amendment* - As discussed above, while considering the actual cost of asset, deduction claimed under section 35AD in the respect of the capital asset is excluded.
- However, in view of newly inserted proviso to *Explanation 13* of section 43(1), if the deduction claimed under section 35AD in respect of capital asset is withdrawn, such capital expenditure as reduced by depreciation calculated at the rate in force [that would have been allowable if such asset would have been used for the purposes of business on the date of acquisition] would be considered as actual cost of asset.
- **Concessional rate of tax for presumptive business income in certain cases [Section 44AD]**
- Section 44AD provides for computation of business profit on presumptive basis in case of eligible assessee carrying out eligible business. Accordingly, such profit would be computed @ 8% or more of the total turnover or gross receipts.
- **Amendment**

Provisions dealing with cash transactions

- In order to promote digital transactions and to encourage small unorganised business to accept digital payments, Finance Act, 2017 has inserted new proviso to sub-section (1) of section 44AD to provide that the business profit would be computed @ 6% (instead of 8%) of the total turnover or gross receipts received during the previous year or before due date of filing of return under section 139 (1) in the permissible mode as under:
 - by an account payee cheque; or
 - an account payee bank draft; or
 - use of electronic clearing system through a bank account.
- However, the existing rate of 8% for computation of business profit would continue to apply in respect of the total turnover or gross receipts received in any other mode.
- Accordingly, there would be two rates for computation of business profit on presumptive basis,

Text of section 269SS

■ CHAPTER XX-B

■ REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR] REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

■ Mode of taking or accepting certain loans, deposits and specified sum.

■ **269SS.** No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

- (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- (b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

Text of section 269SS ...

■ (c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

■ is twenty thousand rupees or more:

■ **Provided** that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company²⁴ as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (e) 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, notify²⁵ in this behalf in the Official Gazette:

Text of section 269SS ...

- **Provided further** that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.
- *Explanation.*—For the purposes of this section,—
 - (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;
 - (ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;
 - (iii) "loan or deposit"²⁶ means loan or deposit of money;
 - (iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether

Text of section 269T

- **Mode of repayment of certain loans or deposits**
- **269T.** No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it ³⁰[or any specified advance received by it] otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit ³⁰[or paid the specified advance.] ³¹[or by use of electronic clearing system through a bank account] if—
 - (a) the amount of the loan or deposit ³²[or specified advance] together with the interest, if any, payable thereon, or
 - (b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,

Text of section 269T ...

- (c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,
- is twenty thousand rupees or more:
- **Provided** that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :
- **Provided further** that nothing contained in this section shall apply to repayment of any loan or deposit ³⁴[or specified advance] taken or accepted from—
 - (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;

Text of section 269T ...

- (iv) any Government company³⁵ as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (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.
- **Explanation.**—For the purposes of this section,—
 - (i) "banking company" shall have the meaning assigned to it in clause (j) of the *Explanation* to section 269SS;
 - (ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
 - (iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;
 - (iv) "specified advance" means any sum of money in the nature of

Text of section 271D

- **Penalty for failure to comply with the provisions of section 269SS.**
- **271D.** ⁷⁸[(1)] If a person takes or accepts any loan or deposit ⁷⁹[or specified sum] in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit ⁷⁹[or specified sum] so taken or accepted.
- (2) Any penalty imposable under sub-section (1) shall be imposed by the ⁸¹[Joint] Commissioner.

Text of section 271E

- **Penalty for failure to comply with the provisions of section 269T.**
- **271E.** ⁸³[(1)] If a person repays any ⁸⁴[loan or] deposit ⁸⁵[or specified advance] referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the ⁸⁴[loan or] deposit ⁸⁵[or specified advance] so repaid.
- (2) Any penalty imposable under sub-section (1) shall be imposed by the ⁸⁷[Joint] Commissioner.

What the Explanatory Memorandum states

- Recognises the menace of black money
- Recognises that black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash
- Aims to move towards less cash economy
- Intends to reduce generation and circulation of black money
- Chapter Heading : Requirement as to mode of acceptance, payment or repayment in certain cases to counteract evasion of tax
- Marginal Heading: 'Mode of undertaking certain transactions'

Synopsis

- 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, Section 269ST has been inserted, with effect from 1-4-2017, to provide for restriction on undertaking cash transactions. It provides that 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. ("permissible modes")

Synopsis

- The aforesaid restriction shall not apply to the following:
 - (a) Government,
 - (b) any banking company,
 - (c) post office savings bank or co-operative bank,
 - (d) transactions of the nature referred to in section 269SS;
 - (e) such other persons or class of persons or receipts, as may be specified by the Central Government by notification in the Official Gazette.

- For the aforesaid purposes,
 - (a) banking company shall have the meaning assigned to it in *Explanation (i)* to section 269SS.
 - (b) co-operative bank shall have the meaning assigned to it in *Explanation (ii)* to section 269SS.

Synopsis ...

- *Explanations (i)/(ii)* 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;
 - (ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);"

Text of section 269ST

- **Mode of undertaking transactions.**

- **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;*

Text of section 269ST

- (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.*
- *Vide Notification NO. SO 1057(E) [NO.28/2017 (F.NO.370142/10/2017-TPL)], DATED 5-4-2017 it has been notified that receipt by any person from banking company, post office savings bank, co-operative bank is not covered by this section.*

Text of section 269ST

■ *Vide Notification* **NOTIFICATION NO. SO 2065(E) [NO.57/2017 (F.NO.370142/10/2017-TPL)], DATED 3-7-2017, it has been notified that w.e.f. 1.4.2017, the provisions of S. 269ST shall not apply to the following -.**

- (a) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
- (b) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);
- (c) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);
- (d) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;
- (e) receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

Text of section 269ST

■ Subsequently after introducing this section, various representations were sent by non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the limit of Rs 2 lakh shall apply to one instalment of loan repayment or for the whole amount of such repayment.

■ In this context, *CBDT has vide its Circular No. 22/2017 dated 3rd July, 2017 clarified that* if you are repaying the loan to NBFCs or HFCs, then the one instalment of loan repayment shall constitute a single transaction. And so if the single loan instalment amount is less than Rs 2 lakhs, it can be paid in cash. All the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of Rs 2 lakh limit.

S. 269ST – Analysis of clauses

- No **person** shall receive an amount of Rs. 2,00,000 or more

Clause	Qua	Irrespective of
(a) in aggregate from a person in a day	No. of persons – 1 No. of days – 1	Number of transactions
(b) in respect of a single transaction,	No. of transactions - 1	Number of persons Number of days
(c) in respect of transactions relating to one event or occasion from a person	No. of persons – 1 No. of event / occasion - 1	Number of days Number of transactions

Restriction on cash transactions ...

- The restriction is on the recipient and not on the payer.
- The Notes on Clauses mention that the restriction under section 269ST shall not apply to *"any receipt from sale of agricultural produce by any person being an individual or HUF in whose hands such receipts constitute agricultural income"*. No such exception is found in the text of the provision.

Person

- **Person**
- Section 2(31) includes natural, legal and fictional persons as well.
- Person acting in dual capacities (YES)
 - (i) individual capacity;
 - (ii) representative capacity
- Trustee to beneficiary (YES)
- Trustee to several beneficiaries making payment to a third party
 - (i) as per beneficiaries direction
 - (ii) as per terms of trust deed
- Received from an agent
 - Representing recipient – receipt from own agent is receipt from self. Section 269ST is not attracted
 - Representing payer – receipt from agent of a payer is like receipt from payer, section 269ST is attracted

Person

- Received through an agent
 - When your agent receives from a third party on your behalf, it tantamounts to receipt by you and s. 269ST is attracted
 - Subsequent payment by an agent to you is not a receipt
- If a person who holds a Power of Attorney of another person, pays Rs. 1,50,000 in cash in his own capacity and another Rs.1,50,000 in cash on behalf of the person who has issued the POA, will the recipient be liable to penalty for receipt of Rs. 3,00,000 in cash?
 - (a) *Rule 6DD(k) provides that no disallowance under section 40A(3) shall be made 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;*
 - (b) *applying the aforesaid principle, payment made in capacity of holder of POA is different from the payment made in his own capacity. Therefore, section 269ST does not apply as the cash paid in each circumstance does not exceed the limit of Rs. 2,00,000.*

Receive

■ Receive

- (a) The section applies if a person "receives" an amount. The term receipt has been judicially explained as follows:
 - "The word "receive" has been interpreted:
 - "To receive means to get by a transfer, as to receive a gift, to receive a letter, to receive money."
 - *Ballentine's Law Dictionary, 1093.*
 - *Webster's New International Dictionary (2d ed.), 2076, gives the following definition:*
 - "To come into possession of, get, acquire, or the like, from any source outside of oneself."
 - In other words, to "receive" seems to imply the taking into actual possession of some object which may be real or personal property.
 - As a matter of fact, the results obtained in the statutes, using the words "received" and "transferred," are identical."

■ In re McCullough's Estate, 193 Wash. 145, 74 P.2d 877 (1928)

Jagdish T Punjabi

May 19, 2018

29

Receive ...

- (b) "To receive means to get by a transfer, as, to receive a gift, to receive a letter, or to receive money and involves an actual receipt."
- (The *Major Law Lexicon* by P. Ramanatha Aiyar, 4th Edn., Vol. 5; *College Law Dictionaries* by Dr. Avtar Singh, 2nd Edn.)
- (d) "Property is "received" when it is within the power of its receiver to appropriate it, even though some definitive understood and determined act is still to be done. *Taxon Oil & Land Co. of Texas v. U. S., C.C.A.Tex., 115 F.2d 647, 650.*"
- (Permanent Edition of *Words & Phrases*)
- (e) "The 'receipt' of income refers to the first occasion when the recipient gets the money under his own control."
- [*Keshav Mills Ltd. v. CIT* [1953] 23 ITR 230 (SC)]

Jagdish T Punjabi

May 19, 2018

30

Amount

■ Amount

- (a) The restriction is on receipt of amount. The term "amount" has been explained as follows:
 - "1. Aggregate sum; 2. Quantity; 3. To come up to, resulting; 4. Equalling in effect."
[*Legal Glossary* published by the Government of India (1992 Edition)]
 - (b) "Aggregate sum; quantity; to come up to; resulting; equalling 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; equalling 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.)

■ Jagdish T Punjabi Explanatory Memorandum refers to cash ~~May 19, 2018~~ suggesting that ³¹

Amount

■ Sum v. Amount

H H Sri Rama Verma v. CIT [(1991) 187 ITR 308 (SC)] - "Any sums paid" contemplates payment of an amount of money

■ No TDS on payments in kind –

- (a) Chief Accounts Officer BBMP [TS-596-HC-2015(Kar)]
- (b) Red Chillies Entertainment Pvt. Ltd. [TS-336-ITAT-2016(Mum)]
- (c) CIT v. Hindustan Lever Ltd. [2013 – TIOL – 878 – HC – Kar – IT]
- (d) Contra : Kanchanganga Sea Foods Ltd. v. CIT [325 ITR 540 (SC)]

Charitable Trusts / Search & Seizure

■ Charitable Trusts

- Section 269ST applies to all persons, including charitable and religious trusts.

■ Search & seizure

- It is not necessary that the restriction 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.

Receipts otherwise than by a specified form

■ Receipts otherwise than by a specified form

- Section 269ST refers to receipts otherwise than by a specified form. On a literal reading, it would cover receipts pursuant to -
 - (a) takeover of business;
 - (b) demergers;
 - (c) amalgamations;
 - (d) conversion of sole proprietor firms into partnership firm;
 - (e) conversion of loans into equity shares.
- This is because in all the above transactions, the transferee does not receive money by way of specified instruments. It appears that such literal reading is not warranted.

Receipts otherwise than by a specified form

- The Explanatory Memorandum refers to restrictions on cash transaction. Obviously, there is no cash transaction in the aforesaid cases.
- The Explanatory Memorandum also refers to a "less cash economy to reduce generation and circulation of black money". It is obvious that the aforesaid transactions do not result in generation and circulation of black money.
- It is now a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction, Vide: Luke Inland Revenue Commissioner. The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. [*K.P. Varghese v. ITO* [1981] 7 Taxman 13 (SC)]

Receipts otherwise than by a specified form

- In view of the above, to avoid absurd consequences, the section should be regarded as applicable to cash transactions and not the transactions in aforesaid forms.
- In *CIT v. Bakhear Ahamed Co.* [1996] 221 ITR 574 (Mad), the assessee borrowed certain amount by account payee cheque, but the repayments were made only by account payee crossed demand drafts. The ITO treated it as income of the assessee under section 69D. On the ground that section 69D covers only account payee cheque. On a reference the Court observed as follows :
- . . . the two differences between the cheque and draft are not really germane to the object with which section 69D was enacted, viz., the unearthing of black money and preventing its proliferation.

Receipts otherwise than by a specified form

- . . . Further, even though the casus omissus cannot be readily inferred, it has to be inferred when a literal construction of a particular section leads to manifestly absurd results which could not have been intended by the Legislature.
- . . . In the present case, admittedly the amount repaid represented the amount earlier borrowed and, therefore, it could never be treated as income. Such an absurd conclusion cannot be the intention of the Legislature when it introduced section 69D.
- . . . The different phraseology used in the other above referred to sections, viz., section 40A(3), section 269T and section 269SS by itself will not lead to the conclusion that the Legislature, when it enacted section 69D, deliberately intended to exclude account payee crossed bank drafts.
- Thus, the Court read account payee demand draft in section 69D. Applying the principle, the aforesaid modes of receipts should be read into section 269ST and regarded as permissible modes for the purpose of section 269ST.
- So far as statutory conversion of firm or LLP into companies under section 366 of the Companies Act, 2013 is concerned, it may be argued that there is a statutory vesting not involving "receipt" and hence may not fall within clause 269ST.

Section 40A(3) v. Section 269ST

- **Section 40A(3) vs. Section 269ST**
- The provision may be applicable to the receipt, although, the payer may not be covered by section 40A(3), which provides for disallowance of expenditure in excess of Rs. 10,000.

Irrelevant Considerations

- **Irrelevant considerations**
- Section 269ST will apply even if the receipt is
 - (a) fully disclosed; or
 - (b) a personal receipt and not a business receipt.
 - (c) not a loan or deposit but other type of receipt, say, share application money.
 - from a relative
 - (d) the money received is deposited into the bank on the same day.
- There is no exception on the lines of Rule 6DD.

Take or accept v. Receive

- **Take or accept vs. Receive**
- It is pertinent that section 269ST uses the expression "receive" as against the wider expression "take" or "accept" in section 269SS.
- A person cannot "receive" Rs. 2 lakhs or more. For this purpose does the term "receive" cover an agent or person acting in a fiduciary capacity?
- To illustrate, suppose, "A" an employee is given Rs. 2.5 lakhs by his employer for onwards distribution amongst the workers. Is "A" covered by section 269ST?
- In *Asstt. CIT v. Sahara India* [2006] 100 ITD 93 (Luck. - Trib.), the Court had to decide whether penalty under section 271D for failure to comply with section 269SS was leviable or not. The assessee-firm was working as agent on behalf of various companies and was collecting deposits under various financing or mutual benefit schemes run by such companies. It had received certain cash deposits above Rs. 20,000 from various depositors on behalf of various companies.

Take or accept v. Receive ...

- The contention of the assessee was that it was only an agent and was taking loans and deposits on behalf of its principals and not in its own account and as such the entire deposits collected by the assessee were in fiduciary capacity and hence the same did not belong to the assessee-firm as the assessee-firm was not carrying on any business of para banking in its own account but was carrying the business of an agent on behalf of other companies. The Assessing Officer rejected this contention and levied penalty under section 271D.
- The Court observed as follows:
 - "A close examination of the provisions shows that the prohibition postulated in this provision applies to a person who accepts from another person any loan or deposit otherwise than by an account-payee cheque or account-payee bank draft. The provisions are not absolute. Whereas the first proviso, attached to the section, excludes government, banking companies, post office savings bank; corporations established by a Central or State Governments; the second proviso exempts persons having agricultural income, whose income is not chargeable to Income-tax Act. The category of exemptions is also not exhaustive. By implication there may be certain cases in which the provision may not apply. For example, if a servant or agent accepts the deposits or receives the loan on behalf of his master or principal then such agent or servant cannot be treated to be a person receiving the deposit because such agent or servant is working only in fiduciary capacity or intermediary. The amount is actually deposited on behalf of the

Take or accept v. Receive ...

- master or the principal as the case may be and thus the violation of section 269SS is to be considered in the case of the master or the principal for whom and on whose behalf of the deposit was received. There may be other similar circumstances.
- Thus, applying the above analogy we can say that the liability on account of the violation of section 269SS cannot be fastened on the servant or the agent."

Take or accept v. Receive ...

- Further, the section is applicable only if an amount is "received". A sum could be said to be received when it is transferred and it is within the power of the receiver to appropriate it. In this case, the employee does not have any power to appropriate it.
- Finally, it is a common practice for banks to engage external agencies to transfer money from one location to another. If the other view is accepted as correct, then, all these agencies would be regarded as having contravened section 269ST! Obviously, such an interpretation is not warranted.
- In view of the above, it appears that a sum received by an agent or a person acting in a fiduciary capacity may not be covered by section 269ST.

Receipt by journal entries

- **Receipt by journal entries**
- Whether receipts through journal entries are restricted by section 269ST?
- Section 269ST restricts receipts otherwise than through specified modes. Does this mean that receipts through journal entries say, settlement of debt by book entry are also restricted?
- A similar provision regarding loans and deposits exists in section 269SS/section 269T. In this connection, Courts are divided as to whether receiving loans and repayments through journal entry is hit by section 269SS/section 269T.
- In *CIT v. Triumph International Finance (I) Ltd.* [2012] 22 taxmann.com 138 (Bom.) (followed in *Lodha Builders (P.) Ltd. v. Asstt. CIT* [2014] 163 TTJ 778 (Mum. - Trib.)), it was held that where loan/deposit has been repaid by merely debiting account through journal entries, it must be held that assessee has contravened provisions of section 269T.

Receipt by journal entries ...

- On the other hand, the High Court/Tribunal has held as follows:
- (a) ***CIT v. Worldwide Township Projects Ltd.* [2014] 48 taxmann.com 118 (Delhi)**
- Object of section 269SS is to prevent transaction in currency; it is not intended to affect cases where a debt or a liability arises on account of book entries.
- (b) ***Asstt. CIT v. Vardaan Fashion* [2015] 60 taxmann.com 407 (Delhi - Trib.)**
- Where there was no monetary transaction between assessee and creditor, rather by mere journal entry liability was created, it could not be said that loan or deposit accepted by assessee from creditor was in violation of section 269SS.
- (c) ***Asstt. CIT v. Gujarat Ambuja Proteins Ltd.* [2004] 3 SOT 811 (Ahd. - Trib.)**
- Further, as mentioned above the objective of the section is to discourage "cash receipts" and not "journal entries". Hence, it may be argued that receipts through journal entries are not covered by section 269ST. However, such receipts may result in protracted litigation.

Receipt not pursuant to a transaction

- **Receipt not pursuant to a 'transaction'**
- This restriction applies even if the receipt is not pursuant to a "transaction". On this basis, a person cannot receive gift exceeding Rs. 2 lakh although a gift may not be a transaction.
- On a literal interpretation, it also applies to donations received by temples. So far as receipts in donations boxes of temples are concerned, generally speaking, it would be virtually impossible for the temple to ascertain whether a particular person has given Rs. 2 lakh or more on a single day. It may be contended by revenue that the trust has received an amount of Rs. 2 lakh or more from a person in a day. However, based on facts, the Trust may be able to counter it. Further, since this is a penal provision, it has to be strictly construed and the onus of proving a violation is on the officer who alleges that the receipt is from a person and that also in a day.

Cash withdrawal from bank

■ Cash withdrawal from bank

- On a literal reading, cash withdrawal of Rs. 2 lakh or more from a bank is also covered by section 269ST. It appears that such literal view does not reflect the correct interpretation:
 - (a) In common parlance, a person "withdraws" money from the bank and not "receives" money from the bank. In the absence of receipt, section 269ST cannot apply.
 - (b) To avoid absurd consequences, the section should not be regarded as applicable to cash withdrawals from bank.
- A consequence of receipt in excess of Rs. 2 lakh is exposure to penalty under section 271DA. Obviously, a person cannot be penalized for withdrawing his own money from the bank.

Bonafide situations

■ *Bona fide situations*

- Suppose, "B" has in the past issued cheque which has bounced. "A" therefore does not trust him anymore. In such an event, if "B" is willing to pay cash, should "A" accept the cash or not? On a literal reading, "A" would be violating the provision of 269ST. However, if "A" is able to establish that there are "good and sufficient reasons" for the violation, he may not be penalized under section 271DA.

Scope of restrictions under s. 269ST

■ Scope of restrictions under section 269ST

- As mentioned above, section 269ST provides for restriction in three situations. Each of these are discussed in the subsequent paragraphs.
- *Restriction relating to aggregate receipt in a day (Situation 1)* : A person shall not receive an amount of Rs. 2 lakhs or more in aggregate from a person in a day by impermissible modes
- DAY
- The receipts should not exceed the limit in a "day". A legal day commences at 12 o'clock midnight and continues until the same hour the following night [see *Prabhu Dayal Sesma v. State of Rajasthan*, AIR 1986 SC 1948].

Scope of restrictions under s. 269ST

- The restriction is applicable even if the different receipts are in relation to distinct transactions entered into on same day or different days. To illustrate, "A" sells to "B" product "C" for Rs. 1.0 lakh and subsequently, during the same day or another day sells product "D" for Rs.1.5 lakh. The aggregate of receipts from "B" on a single day against both transactions cannot exceed Rs. 2 lakh.

Meaning of Transaction

- As per Oxford dictionary – <https://en.oxforddictionaries.com>
- “1. An instance of buying or selling something: a business deal.”
- As per Cambridge dictionary – <http://dictionary.cambridge.org>:
- “an occasion when somebody buys or sells something, or when money is exchanged or the activity of buying or selling something: a business transaction each transaction at the foreign exchange counter seems to take forever. We need to monitor the transaction of smaller deals.

Meaning of Transaction

- As per Black’s Law Dictionary – 6th Edition
 - “Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair: An act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. Miles v. Starks, tex.Civ.App., 590 S. W.2d 223, 227. It may involve selling, leasing, borrowing, mortgaging or lending. Something which has taken place whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other; in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than “contract” Hoffman Machinery Corporation v. Ebenstein, 150 Kan. 790, 96 P. 2d 661, 663

Meaning of Transaction

- As per P. Ramanatha Aiyar's – Advanced Law Lexicon 3rd Edition
 - “A `transaction', in the ordinary sense of the word, is some business or dealing which is carried on, or transacted between two or more persons. Chamnoo Mahto v. Jang Bahadur Singh, AIR 1957 Pat 293, 297. [Indian Evidence Act (1 of 1872), S. 13(a)].
 - The word `transaction' cannot be read narrowly to mean as synonymous to the word `contract'. In one contract there may be many business transactions. Baldeo Kumar v. Managing Director, AIR 1997 MP 147, 153, para 15.
 - Transaction includes any agreement, arrangement or understanding whether or not legally enforceable, and a series of transactions - Finance Act, 1996 (c. 36), Shed. 20 para 25(1) (Stroud, 6th Edition, 20000

Meaning of Transaction

- Clause (b) refers to a single transaction and clause (c) refers to multiple transactions. Clause (a) does not refer to a transaction at all.
- Whether inference has to be drawn from Section 92F(v), which defines the expression “transaction”?
- Rule 10A(d) defines transaction as including a number of closely linked transactions
- Use of expression “transactions of the nature referred to in Section 269SS” suggests that the `act of receiving money' by way of `loan or deposit' is in the nature of transaction.

Transaction

- *Restriction on receipt in respect of a single transaction (Situation 2)* - A person cannot receive Rs. 2 lakh or more in respect of a single transaction by impermissible modes.
- **TRANSACTION**
- For the purposes of section 2(xxiv) of the Gift-tax Act, 1958, it has been held that the term transaction refers to a bilateral transaction but not to a unilateral transaction. [*Dr. A. R. Shukla v. CGT* [1969] 74 ITR 167 (Guj.); *CGT v. Jer Mavis Lubimoff* [1978] 114 ITR 90 (Bom.), *CGT v. Ebrahim Haji Usuf Botawala* [1980] 122 ITR 62 (Bom.)]. Hence, a gift may not be covered under this limb.
- Even if the receipt by impermissible modes is not made in a day and is made over a number of days, it would still be a tainted receipt. To illustrate, suppose "A" has sold goods worth Rs. 2.5 lakhs to "B" who has paid in cash as follows:
 - April 2017 Rs. 1.00lakh
 - May 2017 Rs. 0.50 lakh
- If subsequently "B" approaches "A" for making further payment in cash, "A" cannot accept any amount in excess of Rs. 49,999.
- Since the aggregate of receipts over a period has to be considered, the recipient will have to maintain proper records.

Transaction ...

- It appears that the restriction applies to transaction already effected before 1-4-2017. Suppose, "A" has sold goods of Rs. 2.5 lakhs to "B" in March, 2017 against which "B" has not made any payment till 31-3-2017. It appears that this transaction is covered by section 269ST and "A" cannot receive Rs. 2 lakhs or more by impermissible modes.
- Further, suppose "B" has already paid Rs. 1.5 lakhs in cheque up to 31-3-2017. In this situation, it is not clear whether "A" can receive a sum of Rs. 50,000 or more from "B" after 31-3-2017.
- 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 "A" has sold goods to "B". If "C" offers to make payment to "A" on behalf of "B", then this payment would also be covered by the restriction.

Meaning of Transaction ...

- Same person buying goodies from different units of Big Bazaar
- Series of sales in a rate contract
- Series of sales under an agreement for sale at a prevailing rate
- Bi partite and tripartite transactions – are they to be construed as single transaction or multiple transactions
- Is wedding a transaction? Marriage is a contract under Mohammedan Law !!
- In the case of a medical treatment, what is a transaction –
 - Each treatment
 - Each visit
 - Each day of hospitalization
 - Each surgery
 - Each round

Restriction in respect of transaction relating to one event or occasion from a person

- *Restriction in respect of transactions relating to one event or occasion from a person (Situation 3)*
- This restriction refers to transactions in plural. Hence, even if there are multiple transactions, relating to one event or occasion from a person they would be covered under the restriction.
- 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.)
- Occasion:
 - The term "occasion" has been explained as follows:
 - (a) "A special or important time, event, ceremony, celebration, etc."
 - (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)]

Restriction in respect of transaction relating to one event or occasion from a person ...

- To illustrate, suppose, "A" is the event manager in respect of a marriage in "B" family. Suppose, "B" has agreed to hold multiple functions on the occasion of marriage. It may be argued that each function is a separate event or occasion.
- However, if in respect of the same function, suppose "B" has to be make payment to say, decorator, caterer and music party, and if all payments are routed through "A", the aggregate should not exceed Rs. 2 lakhs otherwise than by permissible modes.
- Receipts by banking company, post office saving bank or co-operative bank are not covered. Hence, the aforesaid banks may accept cash deposit of Rs. 2 lakh or more

Transaction of the nature referred to in section 269SS

- **Transaction of the nature referred to in section 269SS**
- Any transaction of a nature referred to in section 269SS is not covered. Section 269SS prohibits a person from taking or accepting any loan or deposit of Rs. 20,000 or more. However, no such exception is made in respect of transactions referred to in section 269T. Hence, in case of cash of repayment of loan or deposit, the borrower could be penalized under section 269T and the recipient could be penalized under section 269ST.

Penalty for failure to comply with provisions of section 269ST [Section 271DA]

- **Penalty for failure to comply with provisions of section 269ST [Section 271DA]**
- Section 271DA provides for levy of penalty. 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. However, penalty shall not be imposable if such person proves that there were good and sufficient reasons for the contravention. Penalty under this section shall be imposed by the Joint Commissioner.

Text of section 271DA

- **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.*

Penalty in respect of "cash" receipts [Section 271DA]

■ Penalty in respect of "cash" receipts [Section 271DA]

- Section 271DA has been inserted with effect from 1-4-2017 to provide for penalty for failure to comply with provisions of section 269ST.
- Essentially, the said section provides as follows:
 - (a) 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.
 - (b) Any such penalty shall be imposed by the Joint Commissioner.
 - (c) The penalty shall not be imposable if such person proves that there were "good and sufficient" reasons for the contravention.

`sum' in s. 271DA v. `amount' in s. 269ST

- Section 271DA states that if a person receives any "sum" as against section 269ST using the expression "amount". At the same time, subsequently, in section 271DA it is provided that the penalty shall be equal to "the amount" of the receipt. This suggests that the term "sum" and "amount" have been used interchangeably.
- Alternatively, irrespective of how wide an interpretation is laid upon the word `amount' for the purpose of section 269ST, statute provides for penalty under s. 271DA only in a case where the receipt is by way of a `sum' i.e. money. Section 271DA does not provide for penalty for receipt by way of other forms of `amount'.

Liabe

■ Liabe

- Section 271DA provides that a person contravening section 269ST shall be "liable to pay" a sum equal to the amount of the receipt. The term "liable to" has been judicially explained as follows:
 - (a) It is true that ordinarily, the word 'liable' denotes: (1) 'legally subject or amenable to', (2) 'Exposed or subject to or likely to suffer from (something prejudicial)', (3) 'Subject to the possibility of (doing or undergoing something undesirable)' (See Shorter Oxford Dictionary). According to Webster's New World Dictionary, also, the word 'liable' denotes 'something external which may be fall us'.
 - Accordingly, the word 'liable' occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words 'shall be'.
 - [Superintendent and Remembrancer of Legal Affairs to Government of *West Bengal*

Liabe ...

■ Liabe ...

- (b) The word 'liable' used in the section gives discretion to the Court with regard to the imposition of fine. The Court may either choose to impose fine or may dispense with imposition of fine.
- [*ITO v. Lakshmi Enterprises* [1990] 52 Taxman 450 (AP)].
- (c) Also see *ITO v. Rajendera Trading Co.* [1994] 48 ITD 210 (Chd. - Trib.) (SMC)

Penalty is not automatic

- Penalty is not automatic [*Hindustan Steel Ltd. v. State of Orissa* [1972] 83 ITR 26 (SC)]. The aforesaid aspects may have to be borne in mind by the Joint Commissioner before imposition of penalty under section 271DA.

Good and sufficient reasons

- **Good and sufficient reasons**
- The words "good and sufficient reasons" only mean "appropriate" or "suitable" or "satisfactory" or "fit" and "enough" or "adequate" reasons for cancelling the registration [*DCST v. Imperial Trading Company* (1990) 76 STC 183 (Ker)¹]. A similar meaning may apply in section 271DA.
- Whether the reason is good and sufficient or not has to be seen from the perspective of the recipient [*Maharaja Shri Devi Singh Ji of Jodhpur v. WTO* [1985] 14 ITD 445 (JP. - Trib.)(TM)²]. To illustrate, if the payer's cheque has been returned unpaid due to insufficient funds, the recipient may not be inclined to again take a cheque from him and may not want to even wait for a wire transfer or draft from the payer. In such circumstances, if he accepts cash in lieu of his debt, it may be possible to argue that there were good and sufficient reasons for receiving cash.

Contravention

- Section 271DA applies if there is a "contravention". For the purposes of section 7 of the Essential Commodities Act, 1955, the Courts have interpreted the expression "contravention" as follows:
- (a) "A person can be said to contravene a provision if *mens rea* is established, except in cases where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. [*Nathulal v. State of Madhya Pradesh*, AIR 1966 SC 43, 1966 CriLJ 71]
- (b) ... before an accused person can be held to be guilty for having contravened any provision of the Licensing Order, it must be established that he had the necessary *mens rea*. If on the other hand, it is found that the contravention was 'unknowingly and unintentionally', he cannot be held guilty for contravention of and such provision. [*Mewalal Kapildeo Prasad v. State of Bihar* (1978) 26 BLJR 367]

Contravention ...

- (c) Mr. Joshi has, no doubt, pointed out that the meaning of the word 'contravene' in the Oxford English Dictionary is given as "to go counter to; to transgress, infringe (a law, provision, etc.); to act in defiance or disregard of" and hence, the word is wide enough to include non-compliance. But the question is whether in the context in which the words are used, the words imply an offence of contravention within the meaning of section 7 of the Essential Commodities Act. [*State of Maharashtra v. Hansraj Debar*, (1971) 39 BomLR 712]"
- The aforesaid interpretation could be relevant in the context of section 271DA.

Time limit for commencement of penalty proceeding

- It appears that there is no express time limit for initiation of penalty proceedings. Now, Courts have held that where there is no period of limitation, the power must be exercised in reasonable time. Thus, in *State of Gujarat v. Patil Raghav Natha*, AIR 1969 SC 1297¹, it was observed as follows:
 - "The question arises whether the Commissioner can revise an Order made under s. 65 at any time. It is true that there is no period of limitation prescribed under s. 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the Order which is being revised."
- Also see:
 - (a) *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim*, (1997) 6 SCC 713
 - (b) *State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd.*, (2007) 11 SCC 363
 - (c) *Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale*, (2009) 9 SCC

Time limit for commencement of penalty proceeding

- In *CIT v. NHK Japan Broadcasting Corporation* [2008] 172 Taxman 230 (Delhi), the Court prescribed a time limit of three years from the end of the financial year, for the purposes of section 201.
- Hence, a view may be taken that depending on facts, the penalty proceedings under section 271DA should commence within a reasonable period after the contravention under section 271ST.

Time limit for imposing penalty

- Section 275(1)(c) reads as follows:

- "No order imposing a penalty under this Chapter shall be passed —

... in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

- In this connection, the following observations in CBDT Circular dealing with initiation of penalty proceedings under section 271D/271E are relevant:

- "The Hon'ble Kerala High Court in the case of *Grihalaxmi Vision v. Addl. Commissioner of Income Tax, Range 1, Kozhikode*, vide its order dated 8.7.15 in ITA Nos. 83 & 86 of 2014, observed that, "Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer.

Time limit for imposing penalty ...

- The statement in the assessment order that the proceedings under Section 271D and F are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply."

- The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed u/s 275(1)(c) of the Act."

Time limit for commencement of penalty proceeding

■ Penalty proceedings/order

- Some of general principles as mentioned below would be applicable to penalty proceedings/order under section 271DA:
- (a) a penal provision must be strictly construed (*Dilip Kumar Sharma v. State of Madhya Pradesh*, AIR 1976 SC 133);
- (b) a case should be held to fall within a penal statute only if it comes within the reasonable interpretation of the statute (*Dilip Kumar Sharma v. State of Madhya Pradesh*, AIR 1976 SC 133);
- (c) if two constructions are possible upon the language of the statute, the Court must choose the one which exempts the subject from penalty rather than the one which imposes penalty [*CIT v. Vegetable Products Ltd.* [1973] 88 ITR 192 (SC); *Tolaram Relumal v. The State of Bombay*, AIR 1954 SC 496].
- (d) penal action cannot be taken on the basis of intendment, and the general purpose or object of law [*Assistant Commissioner v. Velliappa Textiles Ltd.*, AIR 2004

Time limit for commencement of penalty proceeding

■ Penalty proceedings/order

- (e) a penal statute generally presupposes *mens rea* element [*People's Union For Civil Liberties v. UOI*, AIR 2004 SC 456];
- (f) penalty will not ordinarily be imposed unless the party concerned, either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation [*Hindustan Steel Ltd. v. State of Orissa* [1972] 83 ITR 26 (SC)];
- (g) penalty will not be imposed merely because it is lawful to do so [*Hindustan Steel Ltd. v. State of Orissa* [1972] 83 ITR 26 (SC)];
- (h) even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute [*Hindustan Steel Ltd. v. State of Orissa* [1972] 83 ITR 26 (SC)];

Section 273A(4)

- **Section 273A(4)**

- Section 273A(4) gives power to the Commissioner to reduce or waive any penalty payable by an assessee, subject to satisfaction of the conditions specified in it. This power includes the power to reduce or waive the penalty under section 271DA.

Appeal

- **Appeal**

- Section 253(1)(a) provides for appeal to the Tribunal against order passed by CIT(A). The said section has not been amended to cover an order under section 271DA.
- *Before CIT(A)*
- Section 246A(1)(q) provides as follows:
 - "(1) Any assessee or any deductor or any collector 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"

Appeal ...

- Now, section 271DA is an order under Chapter XXI. However, unless the recipient is an assessee, he cannot file an appeal against the penalty order. To illustrate, suppose an agriculturist who is not liable to tax, receives the specified amount in respect of transactions other than those which are exempt. In such a case, can the agriculturist be regarded as an assessee within the meaning of section 246A? According to one view, section 246A does not apply on account of following reasons:
 - (a) Section 246 applies to penalty order on a person in his capacity of assessee. Here, the person penalized does not receive the penalty order in his capacity as an assessee. Hence, the order is not appealable.
 - (b) If the term "assessee" was to cover any tax payer then, there was no need to add the terms "tax deductor" or "tax collector" in section 246A. Even, a tax deductor or tax collector could be an assessee; but it was necessary to make a special reference to them only because the expression "assessee" did not cover defaults in other capacities such as "tax deductor" or "tax collector".
 - (c) If there is no appeal against order by CIT(A), by parity of reasoning, there ought not be an appeal against the penalty order by the AO.

Appeal ...

- The other view is that a person who is penalized is an assessee for the purpose of section 271DA:
 - (a) The term 'assessee' has been defined in section 2(7) as "a person by whom any tax or any other sum of money is payable under this Act". The person on whom penalty has been levied under section 271DA is clearly a person by whom a sum of money is payable under the Act. Hence, he is an assessee within the meaning of section 2(7) [Also see *B. Shah Mahmood v. Asstt. Commissioner* [1963] 47 ITR 55 (Mys.) where the Court observed that an employer who neglected to deduct the tax payable by his employee may, nevertheless, file an appeal because he is to be deemed an assessee].

Appeal ...

- (b) The general principles regarding appeal are as follows:
 - (i) It is true that there is no inherent right of appeal to any assessee and that it has to be spelt from the words of the Statute, if any, providing for an appeal. But it is an equally well settled proposition of law that, if there is a provision conferring a right of appeal it should be read in a reasonable, practical and liberal manner. [CIT v. Asoka Engineering Co. [1992] 63 Taxman 510 (SC)1].
 - (ii) The right of appeal is by way of a remedy provided by the statute and should not ordinarily be denied to the assessee unless the law prohibits it. [Patel & Co. v. CIT [1986] 24 Taxman 203 (Guj.)].
 - (iii) A statutory provision conferring a right of appeal should, in case of doubt, be liberally construed. [Durgaprasad Rajaram Adatiya v. CIT [1982] 134 ITR 601 (MP)].



Jagdish T Punjabi

B.Com., B.G.L., FCA.

Attar Singh Gurmuk Singh 191 ITR 667 SC – S. 40A(3)

- Section 40A(3) only empowers the Assessing Officer (AO) to disallow deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft.
- The payment by crossed cheque or crossed bank draft is insisted on to enable the Assessing Authority to ascertain whether the payment was genuine or whether it was out of income from disclosed sources.
- The terms of Section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bonafide transactions are not taken out of the sweep of the section.
- It is open to the assessee to furnish to the satisfaction of the AO the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable or would have caused genuine difficulty to the payee.

Attar Singh Gurmuk Singh 191 ITR 667 SC – S. 40A(3)

- It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule.
- It will be clear from the provisions of section 40A(3) and Rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions – Mudiam Oil Co. v. ITO [1973] 92 ITR 519 (AP).
- If the payment is made by a crossed cheque drawn on a bank or a crossed bank draft, then it will be easier to ascertain, when deduction is claimed, whether the payment was genuine and whether it was out of the income from disclosed sources.
- In interpreting a taxing statute the court cannot be oblivious of the proliferation of black money which is under circulation in our country.
- Any restraint intended to curb the chances and opportunities to use or create black

S. 269SS – 1st Proviso

- Binoy Viswam [TS-217-SC-2017] – Black money menace and corruption weights heavily on Apex Court's mind as a division bench upholds the constitutional validity of S. 139AA of the Income-tax Act, that mandates compulsory quoting of Aadhar Number as a pre-requisite for filing IT returns; SC acknowledges at the very outset that the instant case falls in the basket of "hard cases", makes it clear that a law made by Parliament/Legislature can be struck down only on two grounds, namely –
 - (i) The Parliament / Legislature lacks legislative competence to enact such a law;
 - (ii) It violates fundamental rights enshrined under the Constitution;
- Rejects arguments of the counsels of the Petitioners that the provisions has been 'mandatory' under the Income-tax Act while the same is 'directory' under Aadhaar Act, holds that "It is the prerogative of the Parliament to make a particular provision directory in one statute and mandatory / compulsory in the other." Rejects Shyam Diwan's