KNOW WHEN TO SAY

TO CASH TRANSACTIONS

CA R.S. KALRA

About the Author

Born in a humble middle-class family in Jalandhar (Punjab) in 1962, Ravinder, an avid academic turned every obstacle into opportunity through sheer hard work, graduated in Bachelors of Commerce from DAV College, Jalandhar. After graduation he stepped into nonetheless a rigorous course of accountancy from Institute of Chartered Accountants of India and simultaneously done his Masters of Commerce from Himachal Pradesh University. All of this did not fulfill his appetite for knowledge he moved on to add another feather in his hat by doing Bachelors of Law.

Kicked off his career as a practicing Chartered Accountant, enlightened and awakened the masses on the taxation matters by writing articles in various leading newspapers and journals.

Climbing the ladder at a steady pace to scale mountainous heights and be at the helm of professional affairs with dignity made an unconditional contribution to the profession being Vice- Chairman of Jalandhar Branch of NIRC of ICAI from 1995-1998, Chairman Jalandhar branch of NIRC of ICAI for the year 2008-2009, Member Regional Tax Advisory Committee of CBDT, New Delhi, Member Direct Tax Committee of ICAI for the Year 2011-2012, Special Invitee Direct Tax Committee of ICAI for the Year 2012-2013,Member Indirect Tax Committee of ICAI for the Year 2013-2014,Member Board of Studies of ICAI of 2014-15,Senate Member of Guru Nanak Dev University, Amritsar from 01.07.2014 to 30.06.2016, Member of Committee on Economic, Commercial Laws & WTO, and Economic Advisory of ICAI for the Year 2017- 2018..At present he is on the panel of authors of Tax Guru.

Date 13/06/2020

CA SANJAY KUMAR AGGARWAL

FOREWORD

I am extremely glad to know that CA R.S. Kalra, is bringing out a book on "Know when to say NO to Cash Transactions". I had the opportunity of meeting CA R.S.Kalra in year 2006 in a Seminar. I have been going through various articles written by CA R.S. Kalra. He possesses a unique skill to explain highly complicated and intricate issues in very simple language exercising economy of words. He is able to put proper focus on the central theme of a complicated tax issue.

Speaking of Experience, CA R.S. Kalra has been practicing Chartered Accountant having an in depth experience of more than 33 years in Direct Taxes. There is no doubt that his vast experience and wisdom will contribute in the better understanding of Income Tax Law.

I have gone through this book. The book has been written in a style which is easy to grasp. The complexities of taxation issues related to cash transactions have been explained in a very simple manner. The proper classification of the vast concept of Income tax has been done in an authoritatively by dividing the book into twelve Chapters. A tax payer as well as tax consultant can easily refer to this book for proper answer to the doubts plaguing his mind. The precautions to be observed by the taxpayers and the pitfalls to be avoided have been very clearly pointed out. The Chapter on BEST OF THE REST contains opinion on taxability of cash transactions which quite often torment many tax payers. I am of the firm view that this book will be of great help not only to the taxpayers but also to the members of professional bodies and the officials of the Income tax Department.

I congratulate CA R.S. Kalra for his commendable endeavor to bring out this wonderful book.

I wish him great success in this venture.

(C.A. Sanjay Kumar Aggarwal)

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T-Testimonial of the book given by CA Sanjay Kumar Aggarwal

CA R.S. Kalra

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1. • Introduction

We were told by history that before advent of cash there was concept of barter system though barter system where there was no currency “no cash” and things were exchanged according to needs and sooner society realized that barter system having its own series of advantages and disadvantages need to be left behind with time and later on various personalities, kings and governments introduced new coins and currency made from time to time making impressions of their choice on such coins. The various stages of evolution of money can be seen in the following table:

DIFFERENT STAGES OF EVOLUTION OF MONEY

1)COMMODITY MONEY OR BARTER SYSTEM	When different commodities were used as a medium of exchange
2)METALIC MONEY	The first coins were made of an alloy of silver and gold. In China, gold coins were first standardized during the Qin dynasty (221-207 BCE)
3)PAPER MONEY	Paper money were first used by the Chinese, who started carrying folding money during the Tang Dynasty (A.D. 618-907)
4)CREDIT MONEY	Credit money is any future monetary claim against an individual that can be used to buy goods and services
5)ELECTRONIC MONEY	Digital currency is a type of currency available in digital form.

It is to be noted that currency in the form of coins was in circulation in our pre-independence period. These coins were left behind after independence and baton was passed onto a new series of coins and currency, its advantages were so overwhelming that disadvantages penetrated into the economy deeply and the crisp and clean notes soon turned into “BLACK MONEY”, many schemes were introduced to dig out black

money and many factors were responsible for widening of its feet in every nook and corner of the system. The question is “Why Black money is so bad”, there is a proverb which goes like, “Thief leaves behind some sort of evidence after theft” but cash is wittier than this thief it does not leave behind any trail of its source of origination, whether it comes from a legal source or not, or whether taxes have been paid on it or not, etc.The thrust of the government is to curb cash transaction practices and to have a cashless Economy.

Cashless Economy is not possible since cash to economy is like what blood is to human body, it will standstill, government can introduce various ways to restrict its usage thus reducing after effects of cash transactions but it cannot pull it out of the system and throw away in an instant. Moving further let us understand what is a Cash Transaction?? In lay man language, a financial transaction with immediate exchange involving physical money and not soft money. For instance I went to a Showroom bought a watch for Rs.50000/- and paid through debit card it is not a cash transaction since it involved payment through banking channel but if I had paid through hard physical money, the cash element has come into picture and thus the transaction is a cash transaction and then the legal consequences follow, that my information will be sent to Income Tax Department or not depending on the size of transaction or whether I will have to give my PAN to seller, etc. which we will see in detail in the upcoming chapters,

FLAWS IN CASH TRANSACTIONS:

BLACK MONEY AND CORRUPTION -- In India, black money is funds earned on the black market, on which income and other taxes have not been paid. Also, the unaccounted money that is concealed from the tax administrator is called black money. The black money is accumulated by the criminals, smugglers, hoarders, tax-evaders and other antisocial elements of the society

IN OTHER WORDS

- Black money is that quantum of income which was not disclosed to government and hence no tax was paid, although the source is legal. Black money becomes white and legal if tax and penalty at the prevalent rate is paid. Corrupt money is the money obtained by bribes. The source is also illegal and it can't become legitimate by paying tax.

IMPACT OF CASHLESS TRANSACTIONS ON CORRUPTION—

- ✓ **No corruption, No Black Money**: Through cashless transactions, details of every transaction is maintained. Payments done by every individual can be easily traced.
- ✓ **No fake Money**: One of biggest advantage would be totally eliminating fake currency.
- ✓ **Ensures Payment of taxes**: As every single penny you own is counted, so it will be difficult to evade taxes.

SOME ADVANTAGES OF CASHLESS TRANSACTIONS-

1. The first and foremost advantage of cashless economy is that an individual does not need to carry cash with him or her everywhere which in turn reduces the chances of theft from wallet, reduces inconvenience due to carrying cash, give freedom from problem of change when transaction is of odd amount, no risk of receiving counterfeit currency and so on.

2. Another benefit of cashless economy is that it is easier to track the black money and illegal transactions because if cash is used directly for doing transactions than it is not easy to track the transactions as the money does not come into the banking system however in case of digital transactions it is easy to track the transaction as all records are there with the banks which result in more transparent transactions which in turn leads to fall in corruption in the economy of the country.

3. Another advantage of cashless economy is that since all transactions will be done through organized channel that is through banks and financial institutions it results in increase in tax revenue for the government as all cash transactions which were done illegally come into banking system which in turn helps the government in tracking all transactions and levying tax on them which in turn can be used by the government for betterment of economy of the country.

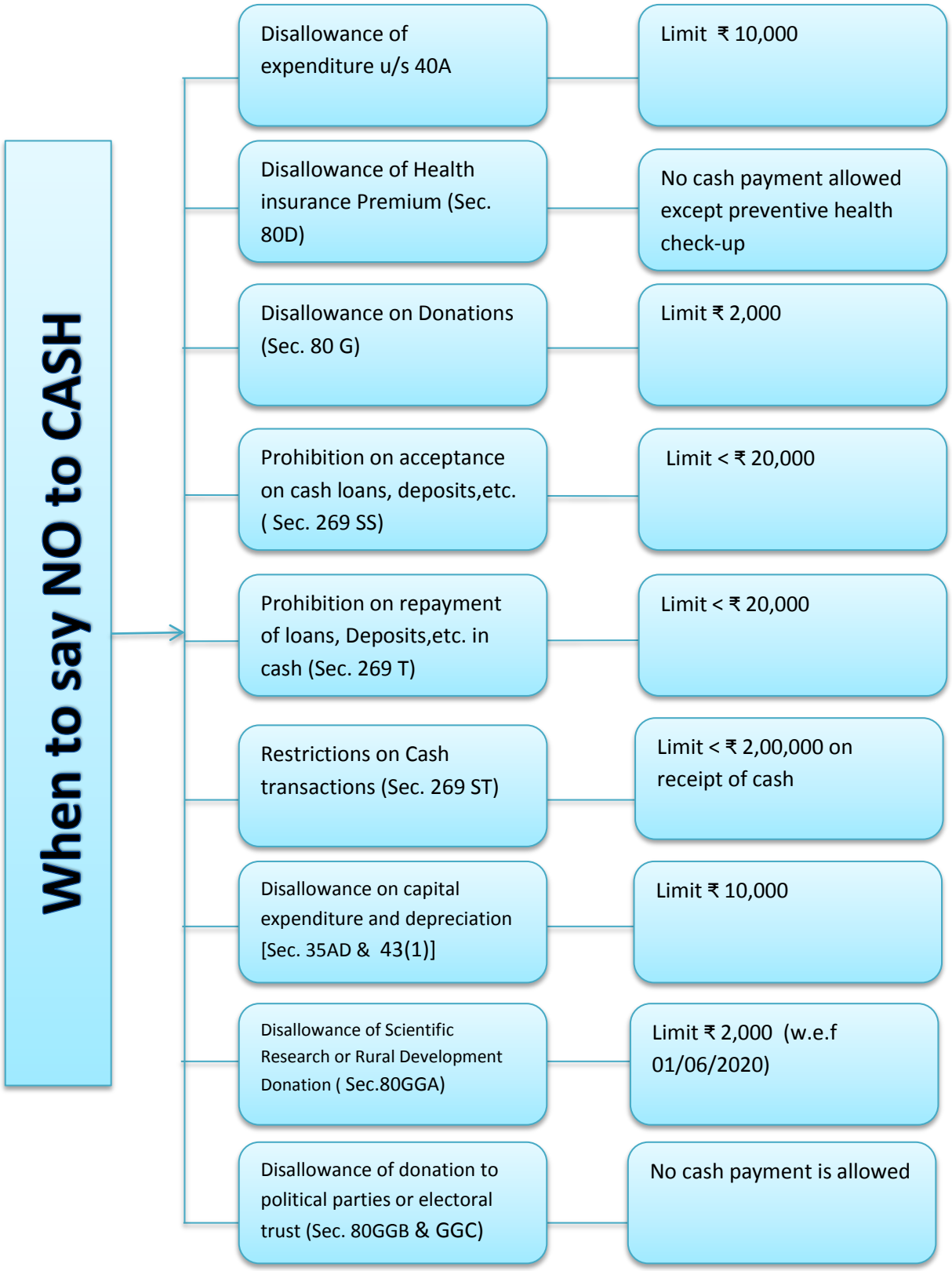
In a bid to curb black money as well as to limit the number and amount of cash transactions, the government has come out with some new provisions and related rules and prohibited some types of cash payments in the Finance Acts. For Example, sec 269ST has been inserted by Finance Act, 2017 which aims to restrict cash transactions of Rs. 2 Lakhs or above. It is irrelevant whether the person receiving the specified sum in cash is assessed to income tax or not. It is also irrelevant as to what is his source of income e.g., salary, rent, business, agricultural income or any exempt income. The restrictions would apply to receipt of fees by educational institutions, hospitals and to donations by temples, etc. It would apply to transactions between two related persons or between such persons - where both the payer and the payee are exempt from payment of tax. **In a lighter vein, it may be stated that even if a husband pays specified amount of cash to his wife for household expenses, the receipt in the hands of the wife would be covered by the impugned restrictive provision**.

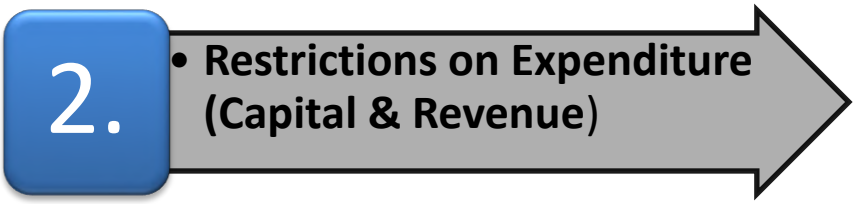
The effects of other restrictions under provisions of income tax act are as follows:

- Restrict cash transactions which results in disallowances of expenses or deduction under chapter VIA of income tax act in computation of taxable income and allowing deduction to provide incentive for better compliance.

- Penalising cash transactions above threshold limit to create effective deterrence.

We can explain the restrictions on cash payment and deductions with the help of the following pictorial representation:


When to say NO to CASH
Disallowance of expenditure u/s 40A
Limit ₹ 10,000
Disallowance of Health insurance Premium (Sec. 80D)
No cash payment allowed except preventive health check-up
Disallowance on Donations (Sec. 80 G)
Limit ₹ 2,000
Prohibition on acceptance on cash loans, deposits,etc. (Sec. 269 SS)
Limit < ₹ 20,000
Prohibition on repayment of loans, Deposits,etc. in cash (Sec. 269 T)
Limit < ₹ 20,000
Restrictions on Cash transactions (Sec. 269 ST)
Limit < ₹ 2,00,000 on receipt of cash
Disallowance on capital expenditure and depreciation [Sec. 35AD & 43(1)]
Limit ₹ 10,000
Disallowance of Scientific Research or Rural Development Donation (Sec.80GGA)
Limit ₹ 2,000 (w.e.f 01/06/2020)
Disallowance of donation to political parties or electoral trust (Sec. 80GGB & GGC)
No cash payment is allowed



Provisions of section 40A(3/3A)

40A*(3) Where the assessee incurs any expenditure in respect of which 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, or use of electronic clearing system through a bank account* [39]***[****or through such other electronic mode as may be prescribed****]****, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.*

(3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account [40]***[****or through such other electronic mode as may be prescribed****]****, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds ten thousand rupees:*

Provided *that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3) and this sub-section 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, or use of electronic clearing system through a bank account* [40]***[****or through such other electronic mode as may be prescribed****]****, exceeds ten thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors :*

Provided further *that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "ten thousand rupees", the words "thirty-five thousand rupees" had been substituted.*

Rule 6DD

[Cases and circumstances in which a payment or aggregate of payments exceeding ten 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 or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6ABBA.]

6DD. *No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (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* [2]***[****account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees****]***

(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 co-operative 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) to (vii) [3]*[***]*

Explanation.—For the purposes of this clause and clause (g), the term "bank" means any bank, banking company or society referred to in sub-clauses (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 income-tax 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) [4]*[***]*

(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.]

Analysis of Section 40A(3) and 40A(3A)

(a) Analysis of sec 40A(3) of the Act.

Where *payment* is made in the year the expenditure is incurred: 100% disallowance of payment if in excess of Rs. 10,000 and not by a/c payee cheque/draft/ECS. [Sec 40A(3)] There are following two conditions for the applicability of this section. If both of these two conditions are satisfied, then the provisions of this section will be applicable.

Condition1.

The assessee incurs any expenditure exceeding Rs.10000/- which is allowable for computing income under the head business or profession.

Condition 2.

The assessee has made payment or aggregate of payments in a day exceeding Rs.10000/- in cash.

If the above two conditions are satisfied, then whole of the expenditure shall be disallowed under this section. In case where payment is made to the transporters for plying, hiring or leasing goods carriages, then amount of Rs.10000/- shall be increased to Rs.35000/ in the above two conditions.

Example: Where expenditure of shop expenses for Bill raised on 11/11/2019 is made on 03/03/2020 by cash amounting to Rs. 30,000**,** then the payment of Rs. 30,000 will not be allowed as a deduction for the PY 2019-20

Payments made on a single day: where the payment or the **aggregate** of payments made to a single person on a single day against one bill exceeds Rs 10,000 then the disallowance of such expenditure will be covered by Sec 40A. Thus for disallowance u/s 40A(3) the amount of the bill raised and the payment or payment(s) made to the person on a single day both exceed Rs 10,000.

Illustrations for Sec 40A(3)

(i) An expenditure of Rs. 40,000 is incurred for purchase of stationary against Bill no 2 from M/s XYZ Ltd on 01/01/20. The assessee makes separate payments of Rs. 15,000, Rs. 16,000 and Rs. 9,000 all by cash, to the person concerned in a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 40,000. Since, the aggregate payment by cash exceeds Rs. 10,000, Rs. 40,000 will not be allowed as a deduction in computing the total income of the taxpayer in accordance with the provisions of the Act.*

(ii) An expenditure of Rs. 30,000 is incurred for purchase of stationary against Bill No 1, 2 & 3from M/s XYZ Ltd on 01/01/20, 28/01/20 & 01/02/20 for Rs 10,000 each**.** The assessee makes separate payments of Rs. 10,000, Rs. 6,000, Rs 5,000 and Rs. 9,000 all by cash at different times, to the person concerned on a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 30,000 however since the payment is on account of three bills, none of which is in excess of Rs 10,000, thus the entire payment will be allowed.*

(iii) An expenditure of Rs. 37,000 is incurred for purchase of stationary against Bill No 1 & 2 from M/s XYZ Ltd on 01/01/20 and 01/02/20 for Rs 28,000 and Rs 9,000 respectively. The assessee makes separate payments of Rs. 15,000, Rs. 13,000 and Rs. 9,000 all by cash, to the person concerned in a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 37,000 however since the payment is on account of two bills, one of which exceeds Rs 10,000, thus only Rs 28,000 will be disallowed*

Example: An expenditure of Rs. 60,000 is incurred freight against Bill no 2 from M/s NITCO Roadways on 01/05/19.The assessee makes separate payments of Rs. 24,000, Rs. 36,000 on 01/09/19 and 01/10/19 respectively. *In this case since the payment made is not in excess of the limit of Rs 35,000 thus it will not be disallowed, however the*

payment made on 01/10/19 shall be disallowed as it exceeds the limit of 35,000. Thus out of expenditure of Rs 60,000 only Rs 24,000 will be allowed as a deduction

(b) Analysis of sec 40A(3A) of the Act.

Where *payment* is made in the subsequent years (after deduction has been claimed in an earlier year): where an expenditure has been allowed as a deduction in an earlier year(on due basis) and if in any subsequent year the payment in respect of such expenditure is in excess of Rs 10,000 and not by an account payee cheque, account payee bank draft or ECS – then the payment shall be deemed to be income under the head business & profession for the previous year in which payment is made.

There are following two conditions for the applicability of this section. If both of these two conditions are satisfied ,then the provisions of this section will be applicable.

Condition 1.

The assessee had claimed deduction in respect of an expenditure exceeding Rs.10000/- in any of the earlier years.

Condition 2.

The assessee has made payment of the liability(condition no.1)in cash in subsequent year and payment is exceeding Rs.10000/-in a day

If both conditions are satisfied, the payment so made shall be deemed to be the business income of the previous year in which payment is made.

Example: Where expenditure of shop expense for Bill raised on 01/05/2018 is made on 3/05/2019 by cash amounting to Rs 30,000, then the expenditure of Rs 30,000 was due in PY 2018-19 and would have been claimed as a deduction in that year assuming that the assessee follows mercantile system of accounting, in this case for the PY 2019-20 we cannot 'disallow' the payment since it is not allowable in that year, thus it will be treated as income of PY 2019-20

Illustration: A Ltd. purchases goods on credit from a relative of a director on June 20, 2018 for Rs. 50,000(market value: Rs 42,000). The amount is paid by a crossed cheque on June 25, 2018.

- Out of the payment of Rs. 50,000 Rs. 8,000 (being the excess payment to a relative) shall be disallowed under section 40A (2). As the payment is made by a crossed cheque and the remaining amount exceeds Rs. 10,000, 100% of the balance (i.e., Rs. 42,000) shall be disallowed under section 40A(3).

1. Purchase of stock-in-trade, whether expenditure to be covered by section 40A(3)**.-** In Attar Singh Gurumukh Singh, etc. v. ITO(1991) 191 ITR 667(SC), Supreme Court held that the word 'expenditure' has got its wide import. The expenditure for purchasing stock-in-trade is one of the outgoings. The value of the stock-in-trade has to be taken into account while determining the gross profit under section 28 as per the principles of commercial accounting. The payment made for purchasing stock-in-trade would also be covered by the word expenditure and such payment can be disallowed if they are made in cash in a sum exceeding the amount specified in section 40A(3). Rule 6DD also contemplates payments made for stock-in-trade and raw material.

2. Disallowance under section 40A(3) not attracted where books of accounts are rejected.- In ITO v. Sadhwani Brothers (2012) 44 (II) ITCL 371 (Jp 'B'- Trib) : (2011) 142 TTJ (Jp 'B'- Trib) 26, it was held that since the books of accounts were rejected therefore, provisions of section 40A(3) were not applicable.

3. Plan to apply flat rate of profit to avoid disallowance.- As observed in New Narayan Builder v. ITO (1992) 43 TTJ (Ahd-Trib) 508, the restriction contained in section 40A(3) relating to allowability of any expenditure would come into play and when such expenditure is otherwise treated as allowable under section 30 to 37. If the income of the assessee is determined by applying flat profit rate, the question of considering the allowability of different items expenses claimed by the assessee does not arise at all. This also affirmed by Ahmedabad Bench of Tribunal in Hynop Food & Oil Industries (P) Ltd v. CIT (1994) 48 ITD 202(Ahd-Trib). But in ITO v, D.D hazare (1994) 48 ITD 595 (Bom-Trib), it was held that where profit are estimated rejecting books of account, it does not bar disallowance under section 40A(3). According to CIT v. Padam Chand Bhansali (2004) 85 TTJ (Jod-Trib) 215, no addition can be made where income has to be computed by applying net profit rate

4. Advance payment is not out of ambit of expenditure.- According to Vijay Kumar Ajit Kumar v. CIT (1991) 55 Taxman 388 (All), merely because a payment in excess of prescribed limit is made prior to delivery of goods, it cannot be argued that it constitutes an advance and not expenditure so as to invoke provisions of section 40A(3).
Mr. X has given an advance to Mr. Y of Rs. 2,50,000 in cash on 15.03.2020 for supply of goods. The goods are supplied on 29.05.2020 for Rs. 2,50,000, and the advance is adjusted. Section 40A (3) will be attracted and Rs. 2,50,000 will be disallowed is Assessment Year 2021-22. Further, it is to be noted that in A.Y. 2020-21 Mr. Y has received Rs. 2,50,000 in cash in contravention of Sec 269ST. He shall be subject to penalty u/s 271DA of the Act.

5. Plan to avoid purchase of fish or fish product from any middleman.-Circular No. 10/2008, dt 5-12-2008, provides as under:

a. The expression 'fish or fish products used in rule 6DD(e)(iii) would include other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc..
b. The producers' of 'fish or fish products for the purpose of rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.
It is further clarified that the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called

In Orchid Marine v. ITO 2014 TaxPub(DTI 4022 (Coch-Trib), on facts of the case, since the fish was admittedly purchased from a person other than fisherman or producer, the exact role of that middle man has to be examined in view of Circular No. 10/2008, dt. 5-12-2008.

Where assessee purchased fish from fishermen or headman of fishermen which fell under exceptional circumstances as prescribed in rule 6DD(e), Tribunal was justified in holding that section 40A(3) was not attracted to facts of the case.- Vide CIT v. Blue Water Foods & Exports (P.) Ltd. 2015 TaxPub(DT) 1630 (Karn-HC).

Thus one should plan to purchase fish or fish product from producer himself instead of any middleman.

During the year ended 31/03/20, Geojit Marine Products Ltd. has made payment in cash to the tune of ` 60,000 on a single day to local fishermen, who regularly supply to them lobsters and crabs. Will such cash payments be hit by the provisions of section 40A(3) of the Income -tax Act, 1961? Will your answer be different, if such cash payments are made to a hawker who supplies lobsters and crabs?
CIRCULAR NO. 10/2008:'fish or fish products' would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster, etc.'.
The 'producers' of 'fish or fish products' would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, and then sells to traders, exporters, etc.
Circular No 6/2006: dt 06/10/2006 –exemption will not be given if (recipient) is not a producer of the goods.

6. Section 40A(3) will not hit if purchase from single person and value of each invoice is less than Rs 10000

If purchase is effected from a single person by way of several bills/invoices and if value of each bill/invoice is less than Rs. 10,000 then payments made to settle each bill/invoice

would not be hit by provisions of section 40A(3), as each bill/invoice has to be considered as a separate contract Sec 40A(3) or 40A(3A) is in nature of permanent disallowance and it applies qua each expenditure. Therefore, for each expenditure one has to look at the payment or aggregate payment made in a day. For two different expenditure, if the payment is made to same person and if the payment is made in cash does not exceed the limit as prescribed qua each expenditure though cumulatively it exceeds, then no disallowance can be made. IN THE ITAT COCHIN BENCH Raja & Co. v. Deputy Commissioner of Income-tax, Central Circle, Trichur IT APPEAL NO. 534 (COCH.) OF 2011

Example: Mr. A purchases certain goods from Y Ltd. on credit on June 11, 2018 for Rs. 8,000, on June 29, 2018 for Rs. 7,000 and on July 10 2018 for Rs 9,000. The total payment of Rs. 24,000 is made by a crossed cheque on August 1, 2018.

Though the amount of payment exceeds Rs. 10,000, nothing shall be disallowed. To attract disallowance, the amount of bill as well as the amount of payment should be more than Rs. 10,000.

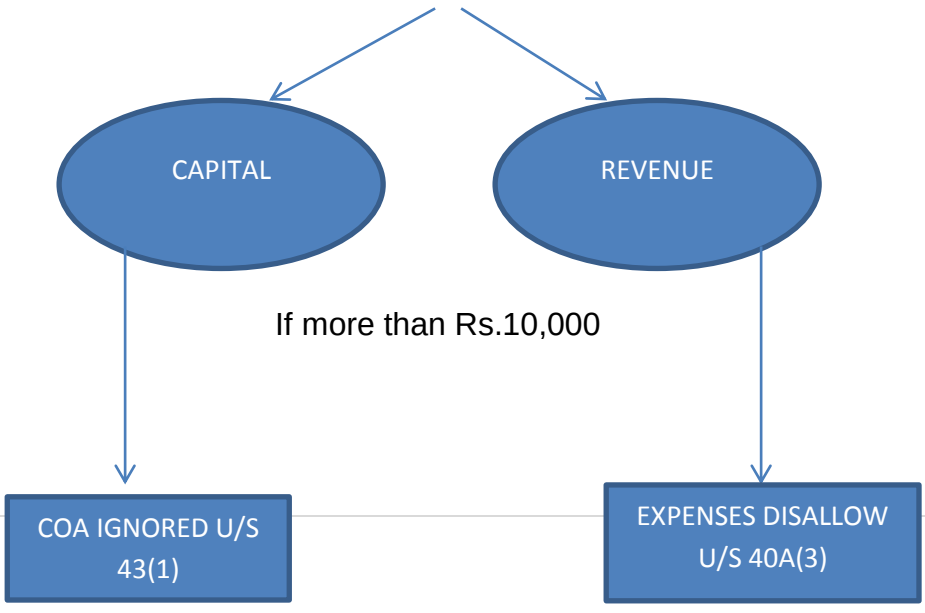
Disallowance of Depreciation where cash payment exceeding Rs. 10,000 is made for purchase of asset (**Amendment to section 43(1)**)

• Clause (1) of section 43 defines "actual cost" for the purposes of claiming depreciation

• The cost in acquisition of any asset or part thereof in respect of which 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 an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost

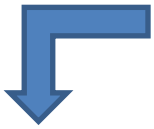
Certain Consequences because of amendment:

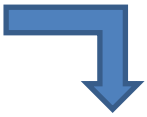
1. Asset or part thereof: Part may be in the nature of



2. Land is Non Depreciable asset hence this amendment will not trigger whatsoever.
3. What if the depreciable asset which was purchased in cash enters the block of the asset and only this asset remains and others are sold then, will Depreciation still be available on WDV of asset sold as asset bought in Cash still exists in block as per sec 50 of Act ?
4. What If payment is outstanding at the end of the year ?

For Example: Mr.Joel has bought a Machinery from Mr.Jack worth Rs.30,000 by making cash payment on 20th Nov 2017.





Prior to Amendment

- ✓ Full Amount of Rs.30,000 will be considered as Cost of the Acquisition.
- ✓ Accordingly Depreciation was allowed on the cost of the acquisition paid in Cash

Post Amendment

- ✓ In this case the payment in a single day exceeding Rs.10,000/- for the acquisition of the Machinery in cash, Hence such payment shall not be considered as the cost of acquisition.
- ✓ Accordingly no depreciation will be available on such amount paid in cash .
- ✓ Further, such amount will not be considered as the cost of acquisition, when the asset is subsequently sold

EXAMPLE 1: Assessee purchases plant and machinery of Rs. 3,50,000 on 1.04.2020 and pays the entire amount in cash.

- Since payment of Rs. 3,50,000/- is made by cash, it shall not be considered as part of actual cost of plant and machinery. The actual cost of plant and machinery shall be taken to be NIL and NIL shall be added to WDV of Block of assets.
  Note: As per section 269ST, the seller of machinery is liable to pay penalty of Rs. 3,50,000 for accepting cash of Rs.2,00,000 or more. The Penalty shall be under section 271DA.

EXAMPLE 2: Suppose in Example 1, assessee makes payments as under:

DATES	MODE OF PAYMENT	AMOUNT	TAX TREATMENT
1.04.2020	Cash	Rs. 2,500 x 10 times = Rs. 25,000	Payment made on 1.04.2020 of Rs. 25,000 shall not be considered for determining actual cost since aggregate payments in cash in a day exceeds Rs. 10,000.
3.04.2020 TO 12.04.2020	Cash	Rs. 10,000 every day x 10 days = Rs. 1,00,000	Payment of Rs. 1,00,000 made by cash from 3.04.2020 to 12.04.2020 shall be considered for determining actual cost since aggregate payments in a day do not exceed Rs. 10,000
22.04.2020	Cheque	Rs. 2,25,000	Payment of Rs. 2,25,000 shall be added to WDV of Block of assets.

Therefore Rs. 3,25,000/- shall be considered as actual cost and Rs. 3,25,000/- shall be added to WDV of Block of assets.

Note: 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.

Whether payments in respect of past expenditure to be included in cost?

The language of the second proviso is “where the assessee incurs any expenditure in respect of which payments or aggregate payments made to a person in a day exceed ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost.”

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.

Actual cost of asset in case of withdrawal of deduction in terms of section 35AD(7B) r/w 43(1):

Disallowance of Cash Payments under Section 35AD & Restrictions on Claim of Depreciation of Disallowed Capital Expenditure

As per the provisions of section 35AD investment linked deduction is available in respect of capital expenditure laid out for certain specified businesses. An amendment is has been made to curb the incurring of any expenditure in cash on such expenditure which is eligible for deduction under section 35AD and accordingly an expenditure of above Rs. 10,000/- in aggregate made to a person in a day shall not qualify for deduction under the provisions of the said section. It is to be noted that under the existing provisions of the Act revenue expenditure incurred in cash exceeding Rs. 10,000 is disallowed under section 40(A)(3) except in specific circumstances referred in Rule 6DD of Income Tax Rules, 1962. In order to discourage cash transactions even for capital expenditure ,the Act has been amended to clause (f) of Section 35AD(8) of Act whereby any capital expenditure in respect of which aggregate payment made to a person in a day otherwise then by account payee cheque, draft or ECS through bank account exceeding Rs. 10,000/- , same shall be disallowed. Furthermore, as per the provisions of section 35AD(7B) if any asset, in respect of which deduction has been allowed earlier, is put to use for the purpose other than the specified business, then the expenditure allowed as reduced by depreciation calculated in terms of section 32, shall be added back to the income of the assessee in the year in which the asset is so used for purpose other than specified business. There was no clarity as to what would be the actual cost of such asset for the purpose of section 43. Accordingly, a proviso is being sought to be inserted to

Explanation 13 in the section 43 in lines with the provisions of section 35AD(7B)which will provide that the actual cost of such asset shall be the actual cost to the assessee, as reduced by depreciation that would have been allowable if the asset had been used for such purpose (i.e for other than the specified business) since the date of its acquisition.

The above provisions can be summarized in the following manner:

- Capital Expenditure is required to be incurred in respect of which aggregate payment made to a person in a day otherwise then by account payee cheque, draft or ECS through bank account exceeding Rs. 10,000

- It is now provided that the Actual cost where deduction was allowed under section 35AD This proviso will revive the actual cost if section 35AD(7B) is revoked and thereby previous deduction are withdrawn.

- Capital asset in respect of which deduction allowed under 35AD is deemed to be the income of the assessee as per 35AD(7B)

- The actual Cost of the asset to the assessee shall be the actual cost as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purpose of business

Applicabilty of disallowance u/s 40A of the Act in case assessee opts for presumptive taxation u/s 44AD.

Sec 40A relates to disallowance related to excess payment of related party, cash payment to a person in excess of Rs. 10,000 in a day, payment to unapproved fund, mark to market losses etc. The comparison of sec 44AD and 40A is very interesting and different from sec 43B and sec 40. Sec 40A overrides all the other provisions of PGBP.

The section begins with —The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act relating to the computation of income under the head —Profits and gains of business or profession‖. The non-obstante clause of this section seems to override provisions of sec 44AD. However, the Panaji Tribunal in case of Good Luck Kinetic v. ITO (2015) 58 relating to disallowance u/s 43B have considered two points:

i) Amplitude of non-obstante clause

ii) Payment to crown i.e statutory dues

The provisions of sec 40A are not related to statutory dues and such other dues. It just imposes restrictions on payments and disallows amount which is not paid as per the provisions of the Act. It is also to be noted that provisions of sec 40A of the Act are with

regard to allowability of expenditure which has been actually incurred and claimed by the assessee from sec 30 to 38 of the Act. Therefore, if the assessee declares income as per the provisions of sec 44AD of the Act, no disallowance shall be made u/s 40A of the Act.

Example : If any person opting for **sec 44AD** has made cash purchases worth Rs. 15,000 no disallowance can be made u/s 40A(3), even if the cash payment to a person exceeds Rs. 10,000 in a day. Cash payment to transporter in excess of Rs. 35,000 in a day shall not be disallowed.

Similarly, disallowance u/s 40A for excess payment to relatives cannot be made. No addition u/s 41 can be made.

Disclosures in Tax Audit Report

S. No. 21(d) – Disallowance / deemed income u/s 40A(3)/ 40A(3A)

Cash expenditure limit per person per day is Rs. 10000/-.

The Tax Auditor should obtain a list of all the cash payments exceeding Rs.10,000/- per person per day (Rs.35,000 in case of plying, hiring or leasing goods carriages) made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should be verified by the tax auditor with the books of account in order to ascertain whether the conditions for specific exemption granted under clauses of Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause.

In case expenditure is incurred in earlier previous years, but payment is made in the previous year under tax audit, then also the limits discussed above needs to be verified and payments made in excess of the limits would be deemed to be income of current previous year u/s 40A(3A) and is to be reported in clause 21(d)(B).

PARTICULARS OF AMOUNT INADMISSIBLE U/S 40A(3)

S NO.	DATE OF PAYMENT	NATURE OF PAYMENT	MODE OF PAYMENT	AMOUNT OF DISALLOWANCE/ DEEMED INCOME	NAME OF THE PAYEE	PAN OF THE PAYEE

Reporting has to be done on the basis of the certificate of the assessee, the fact shall be reported as an observation in clause (3) of form no.3CA and clause (5) of Form No.3CD as the case may be

Recommended Disclosure: In respect of payments by cheque/draft for the expenses covered under this clause, we have to state that it is not possible for us to verify whether the payments in excess of Rs 10,000/35,000 have been made otherwise than by account payee cheque / bank draft since the necessary evidence is not in the possession of the assessee. However the assessee has certified that all such payments relating to expenditure covered u/s 40A(3) / (3A) of the Act read with Rule 6DD, were made either by account payee cheques drawn on a bank or by account payee bank drafts.

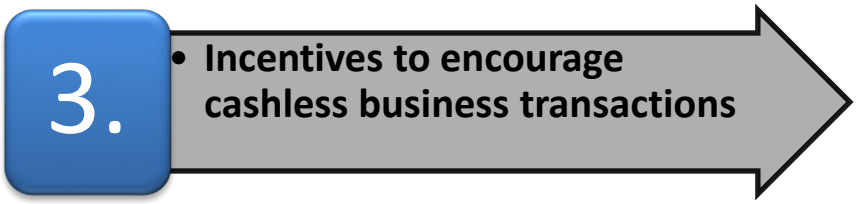
Example: Assessee makes cash payment of Rs.13,000/- to Mr. Arjun for purchase of goods on 01.06.2020. Payment is made for following purchases:

Purchases Date	Amount	Accounted in
15/09/2019	7000	F.Y.s2019-20
01/06/2020	6000	F.Y.2020-21

What is the amount of disallowance? Whether reporting required?

Invoices for purchase amount to Rs. 7,000 and Rs. 6,000, both of which are below Rs.10,000. The expenditure of Rs. 7,000 would have been allowed in P.Y. 2019-20. For two different expenditure, if the payment is made to same person and if the payment is made in cash does not exceed the limit as prescribed qua each expenditure though cumulatively it exceeds, then no disallowance can be made as held in ITAT COCHIN BENCH Raja & Co. v. Deputy Commissioner of Income-tax, Central Circle, Trichur IT APPEAL NO. 534 (COCH.) OF 2011.

Therefore, no amount shall be disallowed u/s 40A(3) and no amount shall be deemed as income u/s 40A(3A). There is no requirement to report this in Form 3CD



A.Presumptive Rate of Income:

The presumptive rate of income would be 8% of total turnover or gross receipts.

However, Proviso to sub-section (1) provides that the presumptive rate of 6% of total turnover or gross receipts will be applicable in respect of amount which is received

- By and account payee cheque or
- By an account payee bank draft
- By use of electronic clearing system through a bank account OR through such other electronic mode as may be prescribed.

During the previous year or before the due date of filing of return under section 139(1) in respect of the previous year.

However the assessee can declare in his return an amount higher than presumptive income so calculated, claimed to have been actually earned by him.

- ✓ **Other Electronic Prescribed by CBDT**: The Central Board of Direct Taxes has prescribed **other electronic modes** to provide for the followings as an acceptable electronic mode of payments-

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer), and

(h) BHIM (Bharat Interface for Money) Aadhaar Pay".

For this purpose, a new Rule 6ABBA with the heading '**Other electronic modes'** is introduced in the Income Tax Rules, 1962. This rule has been given a retrospective effect

and will come into force from 01- 09-2019 even though the notification was issued on 29-01-2020.

This proviso to sub-section (1) has been inserted w.e.f. 01/04/2017 to promote digital transactions. The government has offered incentive to the seller for accepting payment by banking channels or digital means by allowing lower rate of income. This was particularly necessary to encourage digital transactions after demonetization.

Assessee accepting payment through account payee cheque/ account payee draft or ECS through bank or other electronic mode can declare income at 6 % of turnover/ sales or gross receipts. However, the payment must be received before the due date of filing of return.

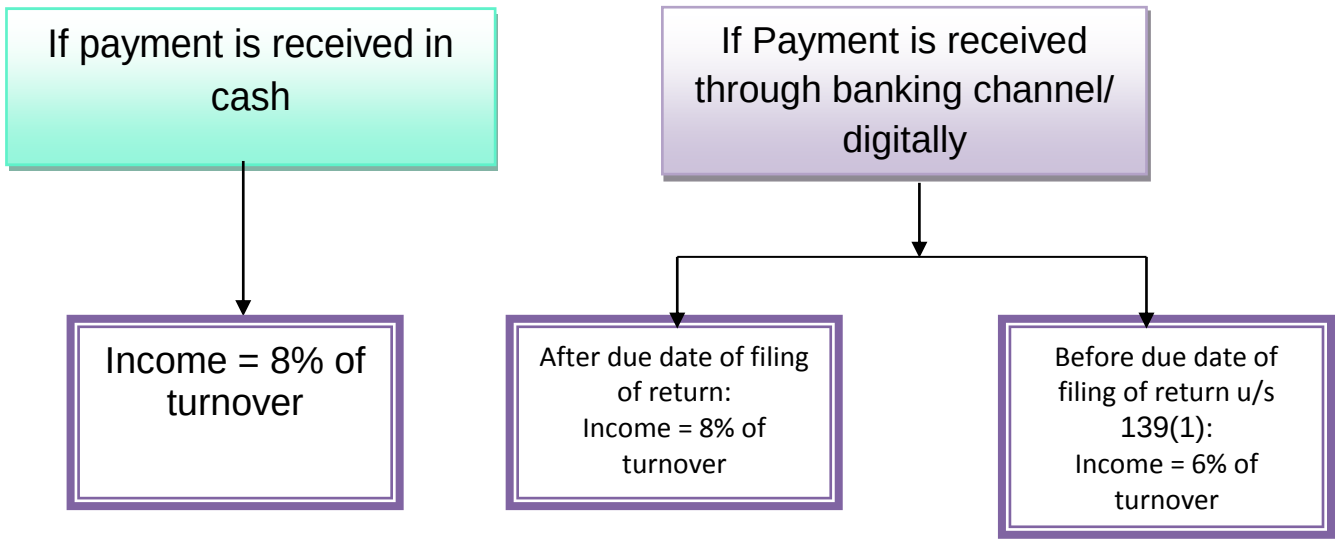
Example: Mr. Arshdeep Singh, an individual carrying business of laptops has a Turnover of Rs. 80 Lakhs during the F.Y. 19-20. He has received the payments as

Rs.60 Lakh in cash
Rs.10 Lakh by account payee cheque during the previous year
Rs. 4 Lakh by ECS through bank account upto 31st July 2019
Rs. 6 Lakh has not been received yet.

Now, since the TO is below Rs.2 Cr, he has the option of availing benefits of section 44AD. Mr. Arshdeep Singh can exercise this option and declare income as

8% of Rs.66,00,000 (60 Lakh + 6 Lakh)	5,28,000
6% of Rs. 14 Lakh (10 Lakh + 4 Lakh)	84,000
Total income from PGBP	6,12,000

Computation of Income under Section 44AD



Benefit of the reduction of deemed profit rate under Section 44AD of the Income-tax Act to taxpayers who will accept digital payments

Section 44AD of the income tax Act, 1961 provides that if taxpayer is engaged in the any eligible business and having a turnover of Rs. 2 crores or less ,its profits are deemed to be 8 per cent of the total turnover or gross receipts.

in order to achieve the government's mission of moving towards a cash-less economy and to provide incentive small traders/businesses to proactively accept payments by digital means, it has been decided to reduce the existing rate of deemed profit of 8 per cent under Section 44AD of the Act to 6 per cent in respect of the amount of total turnover or gross receipts received through banking channels digital means.

However, the existing rate of deemed profit of 8 per cent referred to in Section 44AD of the Act, shall continue to apply in respect of the total turnover or gross receipts received in cash.

The benefit to traders and small businesses is explained in following different scenarios considering FY 2020-21:

Particular	100% Cash Turnover	80% Digital Turnover	100% Digital Turnover
Total Turnover	1.90 Crore	1.90 Crore	1.90 Crore
Cash Turnover	1.90 Crore	38 Lakh	NIL
Digital Turnover	NIL	1.52 Crore	1.90 Crore
Profit on Cash Turnover @ 8%	15.20 Lakh	3.04 Lakh	NIL
Profit on Digital Turnover @ 6%	NIL	9.12 lakh	11.40 Lakh
Total Profit	15.20 Lakh	12.16 Lakh	11.40 Lakh
Tax Payable under New Regime	201240	122928	107120
Tax Saving	NIL	78312	94120

From the above table, it is clear that if an assessee makes his transactions in cash on a turnover of Rs. 1.90 crore, then his income under the presumptive scheme will be presumed to be Rs. 15.20 Lakh at the rate of 8 per cent of turnover, his total Tax Liability under new tax regime will be Rs. 201240. However, if an assessee shifts to 100 percent digital transactions and his profit will be presumed to be Rs. 11.40 Lakh at the rate of 6 per cent of turnover, his total Tax Liability under new tax regime will be Rs.107120. It is to be noted that by adopting digital system i.e. non-cash system. He will save income tax of Rs.94120.00

Lower Rate of Income in Different Scenarios

As per the proviso to 44AD(1), income can be declared as 6% of the turnover if the payment is received digitally or through banking channel before the due date of return filing u/s 139(1). However, many a times due date for return filing is extended or sometimes it may happen that assessee files his return after due date or he has filed return earlier than the due date. We shall discuss here whether the assessee can claim 6% of turnover as his income under these scenarios.

Case 1- Due date of return filing is extended

The due date of return filing u/s 139(1) is extended by the Income Tax Department due to different reasons such as natural calamities, pandemic, technical glitches etc. The extended date becomes the due date u/s 139(1) of the Act for that assessment year. Therefore, any payment received through banking channel/ digitally up to the extended due date u/s 139(1) of the Act shall be eligible for claiming 6% of turnover as income.

Example: Suppose the due date for filing return u/s 139(1) for the A.Y. 2019-20 has been extended to August 31, 2019. An eligible assessee who has received payment through account payee cheque, account payee draft, ECS through banking channel or other prescribed modes up to 31/08/2020 shall be eligible for declaring profits at the rate of 6% of turnover.

Case 2- If the assessee files his return after the due date of return.

The proviso to sec 44AD(1) of the Act requires payment to be received up to due date of return filing. Any payment received even digitally/ through banking channel after the due date of return filing shall not be eligible for lower rate of income i.e 8% of turnover or higher shall be assumed as income.

Example: Suppose the due date for filing return u/s 139(1) for the A.Y. 2019-20 is July 31, 2019 and the assessee files his return on Dec 26, 2019. Whether receipts through banking channel/ digitally up to Dec 26, 2019 will be eligible for claiming 6% of turnover as profits?

The receipts through banking channel/ digitally up to July 31, 2019 shall be eligible for claiming 6% of turnover as profits. The payments received after the due date i.e 31/07/2019 shall not be eligible for lower rates and these payments received after the due date of filing return will not be given the benefit of 6% of turnover .

Case 3- If the assessee files his return before the due date of return.

When the assessee files his return before the due date u/s 139(1) of the Act, he would have considered the facts on the date of filing of return and not assumed the facts beyond that date. The receipts through banking channel/ digitally up to date of return filing are considered for lower rate of income and the amount not received yet shall be considered for 8% of turnover as profits. The interesting issue here is what about the payments received through banking channel/ digitally after the date of return filing but before the due date of return filing. Whether these will be considered for 8 % of turnover or 6% of turnover as profits? If 6% is to be considered whether the return can be revised? Let us understand this with help of an example.

Example: Mr. Raj has a turnover of Rs. 80 Lakh for the A.Y. 2019-20. The due date of return filing is July 31, 2019. He files his return on May 15, 2019. He has received the following payments by account payee cheque:

Up to 31/03/2019 –	Rs. 50,00,000
Up to 15/05/2019 –	Rs. 15,00,000
From 16/05/2019 to 31/07/2019	Rs. 10,00,000
Received after 31/07/2019	Rs. 5,00,000

Mr. Raj has filed return on 15/05/2019. Till that date, payments to the extent of Rs.65,00,000 has been received by account payee cheque. Mr. Raj can declare progits from business as:

6% of Rs. 65,00,000	= Rs. 3,90,000
8% of Rs. 15,00,000 (80L – 65L)	= Rs. 1,20,000
Total profits	= Rs. 5,10,000

Mr. Raj has received Rs. 10,00,000 after date of return filing but before due date of return filing. Mr. Raj can can not claim 6% of Rs. 10,00,000 as profits by revising the return. There is no doubt that the return can be revised u/s 139(5) before the end of assessment year or up to completion of assessment whichever is earlier. But as per the provisions of sec 44AD of the Act, the income claimed by Mr.Raj in his income tax return will be final and subsequently by revising return ,the same cannot be reduced.

The assessee has to maintain complete records about the receipts from customers, whether they are received in cash or through banking channel/ digitally and whether they are received up to due date of return filing or not. Further, the record maintenance is for two financial years. Maintenance of all these records is a cumbersome task for a small

business person. It is also against the basic object of presumptive taxation which is to make the taxation system simple, easy and hassle-free for small taxpayers. There is a need to create a balance between the object of less-cash economy and creating 'ease of doing' business environment.

B. Combined Study of Section 44AB with Section 44AD

Currently, businesses having turnover of more than one crore rupees are required to get their books of accounts audited by an accountant. In order to reduce the compliance burden on small retailers, traders, shopkeepers who comprise the MSME sector, the Finance Act 2020 has raised the limit of audit by five times the turnover threshold for audit from the existing Rs. 1 crore to Rs. 5 crores. It is also to be noted that this amendment is applicable for F.Y. 2019-20 i.e for the A.Y. 2020-21

Further, in order to boost less cash economy, it has been provided that the increased limit for mandatory tax audit shall apply only to those businesses which carry out less than 5% of their business transactions in cash. But in this connection, following points are to be noted

1. This threshold limit for the applicability of mandatory tax audits is applicable to business entity only and limit for a professional assessee shall continue to be at Rs. 50 lacs even if he receives entire consideration in non-cash mode.

2. It is not provided that who will certify the margin of transactions in cash mode of 5 percent. It appears that the assessee is himself requiring declaring the percentage of receipt in cash mode and non-cash mode.

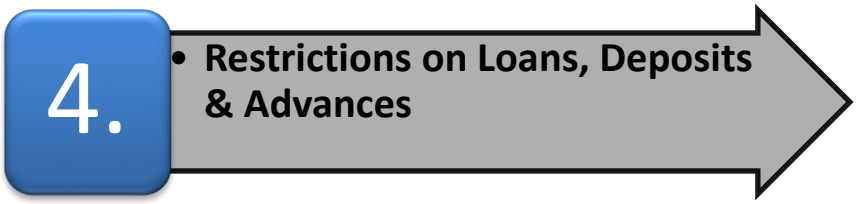
3. The provision to increase the turnover limit for a mandatory tax audit is amended to benefit the MSME sector.

4. The amendment is carried out only in section 44AB. No amendment is made in section 44AD and thus the turnover limit of Rs. 2 crores shall continue. Suppose an assessee is having a turnover of 180 lacs for the financial year 2020-21 and all the transactions of business are by non-cash modes. The net profit of the assessee is Rs.7 lacs which is less than 6% of turnover of the assessee. Now as per the provisions of sec 44AD, the assessee is required to maintain books of account and get them audited u/s 44AB of the Act.

5. The term 'aggregate of all receipts and aggregate of all payments' is very wide and covers not only the receipts and payments on account of turnover or sales but all other business transactions. Capital introduction, receipt and repayment of a loan, etc., partners' drawings, payment of freights, etc. Even payment of taxes made in cash will come within the purview of cash transactions.

It can be better understood with the help of following table.

Turnover	Cash Payments ≤ 5%	Cash Receipts ≤ 5%	Net Profit	Audit u/s 44AB
6 crores	Yes	Yes	6%	Yes
4.5 crores	Yes	Yes	7%	No
3 crores	Yes	No	5%	Yes
1.8 crores	Yes	Yes	6%	Yes
1.5 crores	Yes	Yes	5%	Yes



Provisions of Section 269SS

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* [68] ***[****or through such other electronic mode as may be prescribed****]****, 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

(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 company 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, notify in this behalf in the Official Gazette:

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" 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 or not the transfer takes place.

Penalty for failure to comply with the provisions of section 269SS U/S 271D.

[(1)] If a person takes or accepts any loan or deposit 77[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 77[or specified sum] so taken or accepted.

(2) Any penalty imposable under sub-section (1) shall be imposed by the 79[Joint] Commissioner.

Analysis of Sec.269SS of the Act

This section was introduced in the Act with the objective that Unaccounted cash found in the course of searches carried out by the Income-tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits and taxpayers are also able to get confirmatory letters from such persons in support of their explanation. With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS.

Provision:

No person shall take or accept from any other person, any loan or deposit or any specified sum[1] , otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if

- the amount of such loan or deposit[2] or specified sum or the aggregate of the loan or deposit or specified sum is twenty thousand rupees or more or
- On the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum accepted earlier by such person from the depositor is

remaining unpaid (whether repayment has fallen due or not) is Rs.20,000/- or more or

- The aggregate amount of loan or deposit or sum specified along with the amount loan or deposit or sum specified taken earlier which is outstanding on the date on which loan or deposit is to be taken is Rs. 20,000/- or more.

Exemption from Sec 269SS:

This section applies to all the persons i.e. individual, HUF, Company, Partnership firm, AOP/BOI, Local authority, Co-operative society, Trust, AJP.

The provisions of this section are not applicable in cases

1. Where the following persons are either recipient or payer:

a) 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 company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ; 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, notify in this behalf in the Official Gazette : {Notified by F. No.414/104/84-IT (INV)- Housing Development Finance Corporation Limited, Bombay, in respect of its Home Savings Plan Scheme, Loan Linked Deposit Scheme and Certificate of Deposit Scheme, including Cumulative Interest Scheme}

2. Where the payer of loan or deposit and the recipient are both having agricultural income and neither of them has any income chargeable to tax under the Act.

Example (a) Where X had accepted a loan from XYZ on 1st of June 19 by crossed cheque for Rs 19,000. on 15th April 2020 X takes another loan from XYZ for Rs 2000 in cash (the earlier loan remaining unpaid on the date)
Then since the combined loan outstanding (20,000 + 2,000) = 21,000 is more than or equal to 20,000 the provisions of Sec 269SS will be attracted if the new loan on 15th April is taken in cash.
Example (b) Where X had accepted a loan from XYZ on 1st of June 19 by crossed cheque for Rs 19,000. He had repaid 3,000 in cash on 3rd Aug 2019. On 15th April 2020 X takes another loan from XYZ for Rs 2000 in cash (the earlier loan remaining unpaid on the date)
Then since the combined loan outstanding(19,000 – 3,000 + 2,000) = 18,000 is not more than or equal to 20,000 the provisions of Sec 269SS will not be attracted even if the new loan on 15th April is taken in cash
Example (c) If X accepts a loan of Rs 10,000 in cash from Y and a deposit of Rs 15,000 in cash from Z ...*then there is no violation of the provisions of Sec 269SS as the amount does not more than or equal to 20,000 from one person*

Example (d) if X takes a loan of Rs 12,000 in cash from Y on 12th of Dec 2019 and accepts a further loan of Rs 9,000 from Y by Account payee cheque, Since the new loan is by a mode of prescribed *there is no violation of the provisions of Sec* 269SS

Example:

Mr. Rohit had borrowed a loan of Rs. 14,000 from Mr. X as on 01.09.2018 in form of account payee cheque and the same is still payable as on 20.12.2019 amounting to Rs 18,000 (Including interest). Also he has borrowed Rs. 7,000 as Deposit in cash as on 20.12.2019, whether there is any contravention to section 269SS?

As per Section 269SS (b), as on the date of taking or accepting loan or deposit or specified sum, if there is any loan or deposit or specified sum accepted earlier is remaining unpaid then the same should be considered for Rs 20,000/- limit. In the instant case, as the amount exceeds 20,000/- (18000 + 7,000 = 25,000/-) there is a contravention

Penalty for failure to comply with section 269SS:

As per Section 271D of the Income tax act, 1961 if a person fails to comply with Section 269SS then the Joint Commissioner shall charge a sum by way of penalty equal to the amount of the loan or deposit or specified sumso taken or accepted.

Meaning of specified sum

The term 'Specified sum' was added by Finance Act, 2015 w.e.f 01.06.2015 by amending the provisions of section 269SS and 269T of the Act, which means any sum of money receivable, whether as advance or otherwise in relation to transfer of immovable property irrespective of whether or not the transfer has taken place. It is without any doubt that the applicability of Section 269SS of the Act is not limited to only cash transactions relating to immovable properties which have been held as capital asset but also to those immovable properties which are not capital asset, thus, definition of 'transfer' as specified in Section 2(47) cannot be said to be considered for the purposes of Section 269SS. Here, the expression 'transfer' will have to be understood as under the Transfer of Property Act, 1882. Also, the term 'Immovable Property' has not been defined anywhere. It does not matter whether immovable property is capital asset or stock in trade or whether it is rural agricultural land or urban land. It could be any land or any property. However, as per the second proviso to Section 269SS, where both the depositor as well as the receiver are having agricultural income and are not in receipt of any other taxable income, Section 269SS will have no application.

Normally, as per the provisions of Section 269SS, a person cannot receive advances for sale of immovable property of Rs. 20,000 or more in cash. Any person who is found to have received advance cash of Rs. 20,000 or more in respect of consideration for sale of property would be liable to penalty under section 271D of the Act. However, the question that arises here is whether this position would continue to apply even where the sale

consideration paid as cash advance has been subjected to TDS under Section194-IA of the Act.

The proviso to sec provides "***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."* It specifies that acceptance of deposit/ loan /specified sum shall not attract provisions of sec 269SS where both the parties are agriculturists and both have income below basic exemption limit

Example: Mr. Lal Singh purchased an agriculture land for Rs. 1,80,000 in cash from Mr. Nijjar Singh. Both of them are agriculturists and none of them have income exceeding the basic exemption limit. Whether sec 269SS be applicable on them and whether penalty u/s 271D will be imposed on them?

Whether the answer will remain same if the land is other than agriculture land?

Whether the answer will remain same if land is purchased for Rs. 5,00,000?

Answer: Sec 269SS deals with receipt of specified sum. Explanation to the section provides the meaning of specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place." It covers not only advance related to immoveable property, but also money received at time of transfer of property.

However, as both Mr. Lal Singh and Mr. Nijjar Singh are agriculturists and both have income below basic exemption limit, sec 269SS shall not be applicable on them. Mr. Nijjar Singh have received 'specified sum' other than account payee cheque/ draft or ECS. But this will not amount to violation of sec 269SS and hence, penalty u/s 271D shall not be imposed.

The answer would remain same even if the land is other than agriculture land because the exemption provided is not related to type of property. Rather, the exemption is for the agriculturists. Therefore, sec 269SS will not be applicable in this case.

If the consideration for the land is Rs. 5,00,000 the answer will still remain same. However, in this case sec 269ST will be applicable. Sec 269ST provides that

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

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

Sec 269ST is not applicable on the transactions which are covered by sec 269SS. The transaction between two agriculturists who are having income below taxable limit is not covered by sec 269SS and hence sec 269ST shall be applicable on it.

As cash received by Mr. Nijjar singh exceeds Rs. 2,00,000, provisions of sec 269ST are violated. Penalty amounting to Rs. 5,00,000 shall be imposed u/s 271DA.

BEST OF THE REST

- Issue- Whether Share application money to be considered as loan or deposit or not

Section 269SS has been inserted obviously with a view to prevent transactions in black money and to ensure that payments of Rs. 20,000 and above, are traceable to transactions through a bank. Share application money partakes the character of a deposit, since it is repayable in specie on refusal to allot shares and is repayable if recalled by the applicant, before allotment of shares and the conclusion of the contract. Bhalotia Engineering Works (P.) Ltd. v.CIT [2005] 275 ITR 399 (Jhar.)

The High Court of Delhi in Director of Income-tax (Exemption) v. Alarippu [2000] 244 ITR 358 has observed that Deposit means that which is placed anywhere, as in any one's hands for safe-keeping, something entrusted to the care of another. The essence of deposit is that there must be a liability to return it to the party by whom or on whose behalf has been made on fulfillment of certain conditions. A loan, on the other hand, is granting temporary use of money, or temporary accommodation.

Thus, in CIT vs I.P. India (P.) Ltd.[2011] 16 taxmann.com 407 (Delhi), DHC held that if these tests are applied the receipt of share application monies from the three private limited companies for allotment of shares in the assessee-company cannot be treated as receipt of loan or deposit. ♦

Other decisions wherein it has been held that Share application monies received in cash would not amount either to a 'loan' or 'deposit' are VLS Foods (P.) Ltd.Vs Addl. CIT [2010]128 TTJ 1 (Delhi- Trib.) (UO)

Once the share application money received by the assessee was treated as undisclosed income, penalty proceedings could not have been initiated under section 269SS read with section 271D of the Income-tax Act, 1961. CIT vs R. P. Singh and Co. Pvt. Ltd. [2012] 340 ITR 0217 (Del)

- Mr . X paid Rs. 10,50,00,000 to Mr. Z, a civil contractor after retention of Rs. 12,00,000 to be released after expiry of warranty period. Whether the above transaction attracts reporting in Form 3CD for Mr. X. If Yes, then under which clause of Form 3CD.

Would your answer be same in case the contractor i.e. Mr. Z deposits money with Mr X and this money is refunded by Mr. X to him on expiry of warranty period?

Retentions from contractor's bills as 'Security Deposit' - Whether 'deposit' As per Para 39(c) of AS-7 'Construction Contracts aforesaid amounts as 'retentions'. Thus, it is not really correct to call these security deposits. They are 'retentions'. So, withholding amounts out of contractor's bills and releasing them after warranty period does not attract clause 31(a) and/or clause 31(d) of Form 3CD. As the money is not "received"

However, if contractor deposits money with assessee and this money is refunded by assessee to him on expiry of warranty period - clause 31(a) and/or 31(b) will attracted as the amount is received.

- Mr. Mohan, Partner in M/s GSM & Associates contributed to the firm otherwise than by cheque. Whether Mr. Mohan can contribute to the firm otherwise than by cheque?

Repayment or receipt of amount to partners: If a partner introduces capital in cash in the firm or withdraws the same to the tune of Rs 20,000 or in excess of Rs 20,000, then Provisions of section 269SS or 269T shall not be attracted as the introduction of capital or withdrawal from firm cannot be called as loans or deposits. Amount paid by firm to partners or vice versa - is payment to self and does not take the character of loan or deposits in general law. Provisions of section 269SS are not applicable to such facts (CIT v. Lokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj.) Shrepak Enterprises vs. Dy. CIT 64 ITD 300 (Ahd – Trib) 82 TTJ 549

- Mr Ramesh & Co. received a loan vide cheque which is Crossed but not an Account Payee cheque. Will there be any penalty u/s 271D?

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 271 D is not imposable for such a trivial violation. CIT v. Makhija Construction Co. [2002) 123 Taxman 1003 (MP).
Although a distinction exists between "crossed" and "account payee", hair-splitting on this is not warranted at least in section 269SS/269T context but is so warranted in section 40 A(3) context

- Whether direct deposit of cash in closely held company's bank account by the director is "loan" or "deposit" under section 269SS?

When direct deposit of cash is made in closely held company's bank account there would be no contravention of section 269SS. In Mangala Builders Pvt. Ltd. v. Addl CIT [ITA Nos. 1900 & 1901/Bang/2004-order dated 17-4-2006], this issue was considered by ITAT. The Tribunal held that although the appellant-company and its Directors are two different legal entities, the appellant is a closely held company whose affairs are managed by the Directors. Since it was short of funds and to see that cheques issued by it are cleared, it had to keep sufficient balance in Bank. At that point of time, the Director out of his personal funds, deposited the sum in the bank account of the appellant company.

Though this can be considered as receiving the sum from Director, it cannot be considered as taking a loan or accepting the deposits in its true sense(for the purposes of section 269SS). The appellant, being closely held company and the affairs being managed by the Director, broadly speaking, they are one and the same. At this point of crisis, the appellant can bank upon only its Directors.
The Bangalore Bench of ITAT in Sri Renukeswara Rice Mills v.ITO(93 ITD 263) had held in the context of section 40A(3) 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). Applying the same principle, it can be opined that when direct deposit of cash is made in (closely held) company's bank account there would be no contravention of section 269SS.

- Issue- Whether penalty is leviable on cash loan taken by partners from firm or not

In CIT v. R.M. Chidambaram Pillai [1977] 106 ITR 292(SC),it has been held that partnership is only a collective of separate persons and not a legal person in itself. Thus, there cannot be a contract of service in strict law between a firm and one of its partners.

Thus, relying on the above principle, various courts have held that In case of a partnership firm, there is no separate identity of partner and firm and, therefore, where a partner took loan in cash from firm, there was no violation of section 269SS so as to invoke penal provisions of section 271D. CIT vs V. Sivakumar [2013] 32 taxmann.com 62 (Madras), CIT vsLokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj.), Shrepak Enterprises vs DCIT [1998] 64 ITD 300 (Ahd.- Trib.)

Capital contribution in cash of a partner in the partnership firm does not attract provisions of Section 269SS even if the amount is returned on non-approval of Government for constitution of partnership firm. Bhikhabhai Dhanjibhai Patel v. Asstt. CIT [2010] 127 TTJ 479 (AHD.- ITAT) 11

- Issue- Applicability of section 269SS in case of Loan or deposit received/ repaid by way of journal entries

A plain reading of the Section 269SS of the Act indicates that it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the Section is clearly restricted to transactions involving acceptance of money and is not intended to affect cases where a debt or a liability arises on account of book entries. The only object of this section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to Section 269SS of the Act which defines loan or deposit to mean "loan or deposit of money". The liability recorded in the books of accounts by way of journal entries, i.e. crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of Section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money Commissioner of Income-tax, (Central) IV v. Adinath Builders (P.) Ltd [2019] 102 taxmann.com 57 (SC) HC held that receipt of any advance or loan by way of journal entries is in breach of section 269SS. But SC held that journal entries constitute a recognized mode of recording of transactions and in absence of any adverse finding by authorities that journal entries were made with a view to achieve purpose outside normal business operations or there was any involvement of money, there was a reasonable cause for not complying with section 269SS and penalty under section 271D was not to be imposed. The provisions of Section 269SS of the Act does not get attracted merely for transfer of amount to a loan account in the form of book entry. CIT Vs. Worldwide Township Projects Ltd., [2014] 367 ITR 433 (Delhi) θ Contrary view has been taken by High Court of Bombay in CIT vs Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bombay) wherein held that repayment of loan/deposit by merely debiting account through journal entries contravenes provisions of Section 269T.

CIT vs Noida Toll Bridge Co. Ltd. (2003) 262 ITR 260 (Del) Where the transaction is by an account payee cheque, no payment on account is made in cash by the assessee or on its behalf, no loan has been accepted by the assessee in cash, and the payment of Rs. 4.85 crore has been made through IL&FS, which holds more than 30% of the paid up capital of the assessee by journal entries by crediting the account of IL&FS, the Hon'ble Delhi High Court observed that provisions of section 269SS are not attracted. Neither the assessee nor IL&FS had made any payment in cash.

DCIT vs Forging Ltd. [2012] 25 taxmann.com 156 (Delhi-ITAT) Facts: The consideration for land is paid to farmers through an agent and the agent's account was credited by way of journal entries. The amount was paid in cash by agent to the farmers. Held: The term 'loan or deposit' has been defined to mean loan or deposit of money. The assessee has not accepted any deposit from 'D' by way of money in cash. It has credited the account of 'D' by way of journal entries in respect of purchase consideration paid on its behalf by 'D' through 'J'. Thus the section is not applicable.

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.

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.

- Issue- Amount received from sister concern to meet exigencies of situation amounts to borrowing of loan or receipt of deposit?

Temporary accommodation provided to one sister concern by another sister concern does not amount to transaction of loan or deposit and, therefore, it is outside purview of section 269SS. CIT vs Sree Krishna Promoters & Builders[2011] 16 taxmann.com 138 (Kar.)

Amount received from a sister concern to tide over financial crisis in several installments, each of which was below Rs. 20,000/-, cannot be treated as loan under section 269SS, where the assesse is running in losses and doing job work only for that sister concern. CIT vs Bangalore Leather & Leather Crafts Ltd. [2012] 19 taxmann.com 21 (Kar.)

Disclosures in Tax Audit Report

Disclosures in Tax Audit Report in Form 3CD - Clause 31 – Section 269SS

FORM 3 CD - Clause 31 (a) * Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year :—

i. name, address and permanent account number (if available with the assessee) of the lender or depositor;
ii. amount of loan or deposit taken or accepted;
iii. whether the loan or deposit was squared up during the previous year;

iv. maximum amount outstanding in the account at any time during the previous year;

v. whether the loan or deposit was taken or accepted by cheque or bank draft or use of ECS through bank account

vi. In case loan or deposit was taken or accepted by cheque or bank draft, whether the same was taken or accepted by account payee cheque or account payee bank draft.

CLAUSE 31(a)

PARTICULARS OF EACH LOAN OR DEPOSIT IN AN AMOUNT EXCEEDING LIMIT SPECIFIED IN SECTION 269SS TAKEN/ACCEPTED DURING THE YEAR

NAME, ADDRESS AND PAN OF THE LENDER/ DEPOSITER	AMOUNT OF LOAN/ DEPOSIT TAKEN/ ACCEPTED	WHETHER LOAN OR DEPOSIT TAKEN /ACCEPTED BY A CHEQUE OR BANK DRAFT OR USE OF ELECTRONIC CLEARING SYSTEM THROUGH A BANK ACCOUNT	IN CASE LOAN OR DEPOSIT WAS TAKEN OR ACCEPTED BY CHEQUE OR BANK DRAFT, WHETHER THE SAME WAS TAKEN OR ACCEPTED BY AN ACCOUNT PAYEE CHEQUE OR AN ACCOUNT PAYEE BANK DRAFT	WHETHER THE LOAN OR DEPOSIT WAS SQUARED UP DURING THE PREVIOUS YEAR	MAXIMUM AMOUNT OUTSTANDING IN THE ACCOUNT AT ANY TIME DURING THE PREVIOUS YEAR

❖ Security deposits against contracts etc. will be covered by the definition of deposit and therefore, such information will have to be given.

❖ The amount retained by the contractee against performance of contract will not be covered as loans/deposits for reporting as amount is not received.

❖ Not applicable to loan or deposit taken or accepted from or by Government, Bank Company, Cooperative Bank

Form 3CD Clause 31(b) Details of any specified sum taken or accepted in an amount exceeding limit specified in section 269SS

The auditor needs to take care of that not only advance but any sum received in relation to transfer of immovable property (including payment received at the time of sale) is covered under this clause.

Provisions 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 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 or paid the specified advance, or by use of electronic clearing system through a bank account* [71]***[****or through such other electronic mode as may be prescribed****]*** *if—*

(a) the amount of the loan or deposit 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, or

(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 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;

(iv) any Government company 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 (i) 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 advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

The No person will not repay any loan or advance or specified sum, otherwise than by account payee cheque or draft if the draft drawn in the name of the person who has made the loan or deposit if

a. amount of loan or deposit together with the interest is 20,000 or more. or

b. the aggregate of deposits with the above, either in his own name or jointly with any other person, together with the interest is 20,000 or more.

Penalty for failure to comply with the provisions of section 269T U/S 271E

(1) If a person repays any 83[loan or] deposit 84[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 loan or deposit or specified advance so repaid.

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

Applicability:

This section applies to all the persons i.e. individual, HUF, Company (including branch of the banking company), Partnership firm, AOP/BOI, Local authority, Co-operative society, Trust, AJP.

Provision:

The repayment, by any person, of any loan or deposit[3] or specified advance [4], made with it, should not be done in any mode apart from account payee cheque or account payee bank draft drawn in the name of the person or by use of electronic clearing system through a bank account who has made the loan or deposit, if:

1. The amount of loan or deposit or specified advance along with any interest, if any payable on such loans or deposit is Rs. 20,000 or more or

2. As on the date of repayment, if there exists any other loan or deposits held by the person either in his own name or jointly with any other person, the aggregate amount of such loans or deposit together with interest, if any payable on such loans or depositis Rs. 20,000 or more or

3. In case of specified advances received by such person either in his own name or jointly with any other person, the aggregate of such specified advances along with any interest payable on such specified advances is Rs. 20,000 or more

The repayment made by a branch of a banking company or co-operative bank, of such loan / deposit, can also be made by crediting the amount to the savings bank account or to the current bank account held with the branch.

Cases where the above provisions do not apply:

The provisions of this section does not apply to in case the loan / deposit has been taken / made by the following persons:

- Government;

- any banking company, post office savings bank or cooperative bank;
- any corporation established by a Central, State or Provincial Act;
- any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;
- 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.

Example. XYZ Ltd. had deposited of Rs. 18,500 from Mr. Arshdeep. During the previous year 2017-18, such deposit has become due for repayment (Interest payable Rs. 3100). XYZ Ltd repaid such amount by way of bearer cheque.

The provision of section 269T shall be made applicable if amount to be repaid (together with interest) exceeds Rs. 20,000. In this case,XYZ Ltd. had repaid Rs. 21,600 otherwise than by account cheque or draft or ECS, there is a clear violation of provisions of section 269T.

Example. XYZ Ltd had accepted deposited of Rs. 12000 from Mr. Singh on 01-05-2015 for a period of two year (Rate of interest 12% p.a. payable annually). It further accepted deposit of Rs. 15,000 (Rate of interest 10% p.a payable annually). Date of second deposit was 01-06-2016. On 01-05-2017, XYZ Ltd repaid Rs.16,800 (together with interest) towards first deposit in cash. XYZ Ltd also repaid Rs. 16,500 (together with interest) toward first deposit in cash. XYZ Ltd. also repaid Rs. 16,500 towards second deposit on 03-05-2017 in cash.

Does your answer differ in point no. (b) Above, if second deposit of Rs. 15,000 was in a joint name of Mr. & Mrs. Singh

The provision of the section 269T shall be made applicable if aggregate amount of deposits held by a person together with interest exceeds Rs.20,000 . Therefore, at the time of repayment of first deposit in cash, there is a violation of provision of section 269T since aggregate deposits together with interest exceeded Rs. 20,000.

However, there is no violation of section 269T by XYZ Ltd. at the time of repayment of second deposit in cash since neither the amount of deposit with interest nor the aggregate amount deposit held by Mr. Singh on that date together with interest exceeds the threshold limit of Rs. 20,000.

The answer will not differ because the law mentioned under section 269Tis applicable even if deposits are held in joint name with other person.

Example(i) Mr. A, an individual, has deposited Rs.15,000 on 1st May, 2019 for 48 months by bearer cheque and another Rs.15,000 on 30th June, 2019 in cash to purchase a new certificate of 48 months tenure.

(ii) Mr. A has applied for premature withdrawal against both the certificates and the company has paid him Rs.16,500, by a bearer cheque, against principal and interest on 23rd March, 2020, due against his first certificate (purchased in 2019) and Rs.15,500 in cash on 25th March, 2020, against the second certificate.

Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time alongwith interest, under different schemes run by it.
Following transactions were noted from their books of account:

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held jointly with Mrs. A, wife of Mr. A, while repaying back in cash or bearer cheque?

i There is no violation of section 269SS at the time of acceptance of the first deposit of Rs.15,000 on 1.5.2019, since it is not in excess of the threshold limit of Rs.20,000.
However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2019, since as on that date, there is already an outstanding deposit of Rs.15,000 and another cash deposit of Rs.15,000 would take the aggregate to Rs.30,000, which exceeds the threshold limit of Rs.20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.
ii. In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2020, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than Rs.20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T. However, the second repayment of Rs.15,500 on 25th March, 2020 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of Rs.20,000. The provisions of section 269T will be attracted even if the certificate is being held by Mr. A in joint name with his wife.

Penalty for failure to comply with section 269T:

As per Section 271E of the Income tax act, 1961 if a person fails to comply with Section 269T then the Joint Commissioner shall charge a sum by way of penalty equal to the amount of the loan or deposit or specified sum so repaid.

Example:

Mr. A holds the following accounts with ABC Ltd, a banking company:

Account 1: FD of Rs. 10,000; interest payable Rs. 1,250

Account 2: FD of Rs. 8,750 interest payable Rs. 1,120

ABC Ltd repays the amount of FD along with the applicable interest payable on such FD to Mr. A, in a mode other than account payee cheque or account payee bank draft. Will there be any contravention of the provisions of section 269T?

On a plain understanding of the section, one would assume that since only Rs. 11,250 is being paid to Mr. A,

Disclosures in Tax Audit Report

Form 3CD Clause 31(c) Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year.

For the purposes of section 269T "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. • In the case of company assessee loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. • In the case of non-company assessee loan or deposit is defined to mean loan or deposit of any nature. This distinction will have to be kept in mind while giving information under this sub-clause.

CLAUSE 31 (C)

PARTICULARS OF EACH REPAYMENT OF LOAN OR DEPOSIT OR SPECIFIED ADVANCE IN AN AMOUNT EXCEEDING LIMIT SPECIFIED IN SECTION 269T REPAID DURING THE YEAR

NAME, ADDRESS AND PAN OF THE PAYEE	AMOUNT OF REPAYMENT	MAXIMUM AMOUNT OUTSTANDING IN THE ACCOUNT AT ANY TIME DURING THE PREVIOUS YEAR	WHETHER THE REPAYMENT WAS MADE BY CHEQUE OR BANK DRAFT OR USE OF ELECTRONIC CLEARING SYSTEM THROUGH A BANK ACCOUNT	IN CASE THE REPAYMENT WAS MADE BY CHEQUE OR BANK DRAFT, WHETHER THE SAME WAS REPAID OTHERWISE THAN BY AN ACCOUNT PAYEE CHEQUE OR AN ACCOUNT PAYEE BANK DRAFT

Form 3CD Clause 31(d) Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year.

Form 3CD Clause 31(e) Particulars of repayment of loan/deposit or any specified advance in an amt. exceeding the limit specified in section 269T received by cheque / bank draft which is not an account payee cheque / account payee cheque / bank draft during the PY.

- In case of a company loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. However, in the case of non-company assessee loan or deposit is defined to mean loan or deposit of any nature.

BEST OF THE REST

- **Whether Penalty u/s 271D be imposed where deposits are not genuine and considered as income u/s 68**

Sec 68 is applicable where any sum is credited in the books maintained by the assessee and no explanation is offered or the explanation offered is not satisfactory. The amount so credited may be charged to income tax and tax is payable at the rate specified in sec 115BBE.

The issue is where the deposit/ loan has already been considered as income u/s 68, whether penalty u/s 271D for violation of sec 269SS can be imposed?

This issue has been considered at various judicial forums and judgments given are as

- In case of CIT v. Shyam Corporation [(2013) 35 taxmann.com 519 (Gujarat)] it was held that once booking of advance received by constructor had been assessed as undisclosed

income under section 68, same could not be considered as deposit for levy of penalty under sections 271D and 271E

- In case of Director of Income-tax (Exemptions), Chennai Young Men Christian Association [(2014) 49 taxmann.com 72 (Madras)], it was held that once certain amount was subjected to tax under section 68, question of treating it as transaction in violation of section 269SS or section 269T did not arise as it stood mutually excluded.
- In case of ITO v. Smt. Gurmeet Kaur [(2012) 27 taxmann.com 173 (Jodh.)] it was held that once AO had made addition under section 68 treating deposits received in cash as non-genuine, then no penalty could be imposed under section 271D

Once the revenue has taken a stand that deposits are non-genuine then penalty under section 271D cannot be imposed. Penalty is a civil liability and some satisfaction is required for imposing such penalty.

➢ Whether sec 269SS applicable on Trading Transactions such as Advance for Supply of goods

Advance received for supply of goods in future are not in nature of loans/ or deposits. They are generally provided to facilitate the production of goods by manufacturer or to provide some kind of security. Following judgments has been given on this issue

- Where the assessee had received an advance towards future supply of goods, such advance cannot fall under section 269SS, so as to require the transactions to be by account payee cheque. It was so held in CIT v. Kailash Chandra Deepak Kumar [(2009) 317 ITR 351 (All.)] holding that penalty under section 271D cannot be applied.

- Section 271D is confined to loan or deposit and not to other trading transactions. In CIT v. Indore Plastics Pvt. Ltd. [(2003) 262 ITR 163 (MP)], the assessee company received moneys from its promoter to the extent of about Rs. 2 lakhs. Since it was received in cash, penalty of an equal amount was levied. The Tribunal found that the receipt was neither a deposit nor a loan, but merely an adjustment of amount, which he owed to the company, so that the receipt did not fall within the meaning of loan or deposit under section 269SS of the Act. The finding was challenged by seeking reference to High Court under section 256(2) of the Act, but the High Court agreed with the Tribunal that there was no question of law involved in the finding of the Tribunal.

➢ Transaction with Sister Concerns

Sec 269SS and 269T was introduced to curb generation of black money. During search and surveys, assessees generally give reason that they have borrowed money/ received deposits from relatives and friends. Sec 269SS and 269T aims to not allow these assessees to escape by giving false explanations. However, in sister concerns where the transaction is recorded in books of both the parties and transaction is for genuine reason, the penalty u/s 271D and 271E may not be imposed. Judicial Pronouncements on this issue are as under:

- In CIT v. Maheswari Nirman Udyog [(2008) 302 ITR 201 (Raj.)], it was held that where payments were made in cash to sister concern, so as to enable them to meet their immediate cash needs, the explanation being reasonable was held to have been rightly accepted.
- Where the transactions are between two sister concerns both within the family and the fund transfers were for purposes of business with the transaction accounted for in the books, the requirement of reasonable cause was held to be satisfied in such circumstances in CIT v. Sunil Kumar Goel [(2009) 315 ITR 163 (Punj. & Har.)].
- Transactions as between sister companies do not attract penalty in CIT v. Lakshmi Trust Co. [(2008) 303 ITR 99 (Mad.)]
- In case of Canara Housing Development Co. vs ACIT (13 Feb, 2009), action was initiated under section 271E against a housing development firm and a penalty of Rs. 14.72 crores was levied, the penalty being equal to the amount paid to sister institutions by cash to enable them to discharge their liability to contractors. It was argued that the transactions were inter-firm transactions tied up with common business interest with a common partner and the payments were for immediate use on the same date. Karnataka High Court had held that in such cases, there was reasonable cause, when the payments were otherwise genuine and were made to assessees with PAN numbers as decided in an unreported case of the jurisdictional High Court in H. S. Ananthasubbaraya in I.T.A. No. 453 of 2003 dated 9th March, 2004. The decision of the Tribunal in such a case of group company transactions in Muthoot M. George Bankers v. ACIT [(1993) 46 ITD 10 (Cochin)] was also relied upon.

➢ Transactions between mutual association and its members and transactions between firm and its partners

- It cannot apply to transactions between a mutual association and its members as was decided in Muslim Urban Co-operative Credit Society Ltd. v. JCIT [(2005) 278 ITR (AT) 246 (Pune)].
- It was held inapplicable to a transaction between a firm and its partners as was canvassed, but it was found to be necessary to decide the issue as the explanation was even otherwise acceptable in CIT v. Lokhpat Film Exchange (Cinema) [(2008) 304 ITR 172 (Raj.)].
- There cannot be two legally different parties as between a firm and partners as was decided in a different context in CIT v. R. M. Chidambaram Pillai [(1977) 106 ITR 292 (SC)].

➢ Is balance in current account a deposit?

`Loan' and `Deposit' are not identical in meaning but it is true that both in the case of loan and in the case of deposit, there is a relationship of debtor and creditor between the parties giving money and the parties receiving money. In the case of deposit, the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposited the money. The benefit normally being earnings of interest from a party who

customarily accepts deposits. The deposit could also be for safe keeping or as a security for the performance of an obligation undertaken by the depositors. In the case of loan, however, it is the borrower at whose instance or for whose needs money is advanced. Borrowing is primarily for the benefit of the borrower although the person who lends the money may also stand to gain thereby by earning interests on the amount lent. Ordinarily, though not always, in the case of a deposit, it is the depositor who is the prime mover while in the case of a loan, it is the borrower who is the prime mover.

In case of Kans Raj & Sons v. ITO [(2005) 92 TTJ 931 (Asr.)]it was held that 'Loan' and `deposit' are not identical in meaning and cannot be inter-changed. Some loans may be deposits and some deposits may be loans but all loans are not deposits and vice versa. Where the assessee, without stating the complete particulars of the deposit and without giving any particulars as to why he was accepting those deposits and as to why those depositors were making those deposits with the assessee and how those deposits were to be returned / repaid by the assessee to the depositors, had called those deposits in the nature of current accounts:

Held that unless the assessee had given/supplied the complete details to the AO at the time of assessment or at the time of penalty proceedings, while giving his explanation, it was difficult to hold that those depositors were having any current account with the assessee or the deposits with the assessee-firm made by the depositors were not covered within the meaning of loan or deposit as provided in section 269SS. Hence, the amount of deposits by the depositors with the assessee were deposits within the meaning of section 269SS and the assessee had violated the provisions of section 269SS.

➢ Does book adjustment of funds violate S. 269T

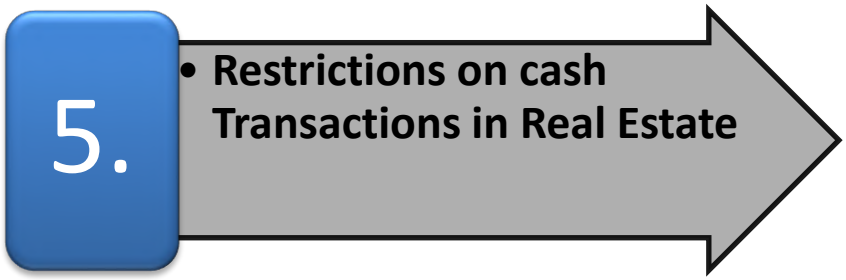
- Making book adjustment of funds by assessee firm with sister concern without making payment of cash, could not said to be violation or contravention of section 269SS and section 269T – Gururaj Mini Roller Flour Mills v. Addl. CIT [(2015) 370 ITR 50 (AP & Telangana)]
- Object of section 269SS is to prevent transaction in currency; it is not intended to affect cases where a debt or a liability arises on account of book entries –CIT v. Worldwide Township Projects Ltd. [(2014) 367 ITR 433 (Delhi)] Ambit of section 269SS is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The assessee showed PACL as a sundry creditor in its books. PACL purchased lands on behalf of the assessee. PACL made payments to land owners through demand drafts. The AO concluded that transaction disclosed by the assessee amounted to a loan to the assessee and that no funds had passed through bank accounts of the assessee for acquisition of lands. Held that there was no infringement of section 269SS and penalty proceedings were to be quashed.

- 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 was accepted by assessee from creditor was in violation of section 269SS – ACIT v. Vardaan Fashion [(2015) 38 ITR (Trib.) 247 (Delhi)] The AO noticed that the assessee had accepted loan or deposit otherwise than by account payee cheque or account payee draft and accordingly, levied penalty under section 271D. It Was observed that there was no monetary transaction between the assessee and the creditors. The monetary transaction had taken place between the creditors and some third party which were all by account payee cheques. In books of the assessee also, there was only a journal entry by debiting account of some other party and crediting to account of creditor. Held that since there was no monetary transaction between the assessee and the creditor, it could not be said that the assessee accepted loan or deposit from creditor in violation of section 269SS; hence penalty levied u/s 271D was to be cancelled.
- Where transactions by way of journal entries are aimed at extinguishment of mutual liabilities between assessee and sister concerns of group, penalty is not leviable under sections 271D / 271E – Lodha Builders (P.) Ltd. v. ACIT [(2014) 34 ITR (Trib.) 157 (Mum.)] Receiving loans and repayments through journal entries is hit by relevant provisions of section 269SS/269T. However, completing `empty formalities' of payments and repayments by issuing / receiving cheque to swap / square up transactions, is not intention of provisions of section 269SS / 269T when transactions are otherwise bonafide or genuine. Where impugned journal entries in respective books were done with view to raise funds from sister concerns, to assign receivable among sister concerns, to adjust or transfer balances, to consolidate debts and to correct clerical errors, etc., and it was not case of revenue that any of impugned transactions was aimed at non-commercial reasons and outside normal business operations, though there was violation of provisions of Ss. 269SS/T, penalty was not leviable.

➢ Whether reopening of assessment under section 147 of the Act could be made for violation of provisions of Section 269SS of the Act?

It is to be noted that the penalty proceedings under section 271D/271E of the Act are completely independent of the assessment proceedings. However, the assessing officer cannot come up after 4/6 years with a speculation that assessee might have dealt in cash transactions which need to be verified. Hon'ble High Court of Gujarat with one such discrete issue in the case of Deep Recycling Industries vs. DCIT Special Civil Application No. 3611/2013 dt. 02.08.2016 wherein the assessing officer has reopened the assessment for two reasons, one of which was acceptance of the loan without disclosing the mode of acceptance in the audit report and its repayment. The reasons were recorded stating that the entries of acceptance of loan needs to be scrutinized in detail. The assessing officer has not recorded any finding that income chargeable to tax has escaped assessment which is the prime requirement to reopen the assessment and has rather referred to the imposition of possible penalty under section 271D. As it is held by

series of judgments of various courts that reopening of assessment cannot be made for mere fishing or rowing inquiries on mere suspicion, the matter was decided in favour of the assessee. The assessing officer has to have a belief that income chargeable to tax has escaped assessment, for which there must be some tangible material having a live link with it. Although no specific time period has been provided in the Act for initiating penalty proceedings under section 271D/271E of the Act, it is possible to say that one may receive show cause notice for imposing penalty even after the expiration of 6 years of the relevant assessment year in which transaction in violation of Section 269SS/269T of the Act was carried out. However, following the decision of Gujarat High Court as above, where the scrutiny of acceptance/repayment of loan/deposit/advance is to be made through the strenuous mode of reopening of assessments under section 147 of the Act, it cannot be done without having an independent reason to believe followed by supporting tangible material that the assessee has contravened the provisions of Section 269SS/269T of the Act.



Stakes in transactions in immovable properties are quite high and so are the tax implications. It is not only perceived but an open secret in India that sale transactions of immovable properties are undervalued leading to leakage of tax revenue causing losses to the Government and unaccounted money is not good for the health of the society in general. Therefore, the restlessness on the part of Government to plug such leakage and attempts by assessees and tax professionals to avoid hardships to genuine assessees. The provisions of Sec 50C,sec 43CA and sec 56(2)(x) of the Income Tax Act, 1961 specifically dealing with transactions in immovable properties have been inserted in the Act. As per the provisions of these sections, if any immovable property is sold below the stamp duty value (or circle rate) then such case will fall under Section 50C, Section 43CA, Section 56(2)(x) and double taxation shall apply on the difference in the stamp duty value and transfer price in the hands of seller and buyer. In the existing framework of the Income Tax Act, for the same income or rather the deeming income, both the seller and the buyer of land and/or building, are being taxed and as such the pressing of service of such deeming fiction of taxation both in the hands of the seller and/or buyer of land and/or building is resulting in "Double Taxation".

Under the provisions contained in Section 50C and sec43CA, in case of transfer of a capital asset/stock in trade being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. These provisions have further been ammended to provide relief to the seller who has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement. The government has amended the provisions of section 50C/43CA so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

Taxability in the hand of Seller

If the immovable property is considered as a capital asset-

As per Section 50C, if a capital asset, being land or building or both, is transferred for a consideration below the stamp duty value, then such stamp duty value shall be the

deemed value of the consideration for the purpose of calculating capital gain under Section 48. The original consideration paid for the transfer shall not be considered for the purpose of capital gain in the hands of the seller.

However, if the date of an agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset is different then the stamp duty value as on date of agreement may be taken for the purpose of computing full value of consideration. **Provided that the amount of consideration or a part thereof has been received by way of an account payee cheque or account payee draft or use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed*, on or before the date of the agreement for transfer.**

Finance Act 2020 (applicable from A.Y. 2021-22) has amended the applicability of Section 50C only in those cases where the stamp duty value exceeds one hundred and ten percent (earlier 105%) of the consideration so received or accrued for the transfer of capital asset, being land or building or both.

If the immovable property is considered an asset other than capital asset such as stock in trade-

As per section 43CA, if an asset (other than a capital asset), being land or building or both, is sold below the stamp duty value then such stamp duty value shall be deemed value of the consideration and used for the purpose of computing profit and gains from transfer of such assets.

Finance Act 2020 (applicable from A.Y. 2021-22) has amended the applicability of Section 43CA only in those cases where the stamp duty value exceeds one hundred and ten percent (earlier 105%) of the consideration so received or accrued for the transfer of an asset (other than a capital asset), being land or building or both.

Also, if the date of an agreement fixing the amount of consideration and the date of registration for the transfer of an asset is different then the stamp duty value as on date of agreement may be taken for the purpose of computing full value of consideration

Provided that the amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed* on or before the date of agreement for transfer of the asset.

Reference to the valuation officer (available to the seller in both option mentioned above)

Where assessee claims before any Assessing Officer that the stamp duty value exceeds the fair market value of the property as on the date of transfer and such stamp duty value

has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the asset to a Valuation Officer.

- If the value assessed by Valuation officer is lower than the stamp duty value, the assessed value shall be considered as the deemed sale price.
- If the value assessed by Valuation officer is higher than the stamp duty value, the stamp duty value remains deemed sale price.

So, if the reference is made to the Valuation officer then it may be possible that the stamp duty value may decrease but it cannot be increased on the basis of the valuation officer.

Taxability in the hand of buyer

As per Section 56(2)(x), if any person receives an immovable property for a consideration which is less than stamp duty value of the property and such excess is more than:-

- the amount of fifty thousand rupees and
- the amount equal to ten percent (earlier 5%) of the consideration

then stamp duty value of such property as exceeds such consideration shall be taxable as income in the hands of buyer and chargeable under the head Income from Other Sources.

Section 56(2)(x) shall not apply to any property received:-

- from any relative; or
- on the occasion of the marriage of the individual; or
- under a will or by way of inheritance

Where the date of an agreement fixing the value of the consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed*, on or before the date of the agreement for transfer of such immovable property:

Note:- Similar option of referencing to valuation officer (as available under Section 50CA) is also available to the assessee.

Original consideration	SDV on date of Agreement 01/04/20	SDV on date of Registration 10/06/20	Full Value of Consideration	Taxable Income in case of buyer u/s 56(2)(x)	Reason
70,00,000 (Rs. 5 Lakh received by A/c payee cheque on 01/04/20)	80,00,000	90,00,000	80,00,000	10,00,000	SDV > 110% of consideration and amount received by A/c Payee cheque on date of Registration
70,00,000	75,00,000	75,00,000	70,00,000	Nil	SDV < 110% of consideration
70,00,000 (Rs. 5 Lakh received by A/c payee cheque on 01/04/20)	75,00,000	90,00,000	70,00,000	Nil	Amount received by A/c Payee cheque on date of Registration and SDV on date of registration<110 % of consideration
70,00,000 (Rs. 5 Lakh received in cash on 01/04/20)	75,00,000	90,00,000	90,00,000	20,00,000	Amount received in cash on date of registration. Hence SDV on date of transfer applicable.

BEST OF THE REST

Adoption of Stamp Duty Value where token money is received in Cash but subsequent payments are received by cheque/ bank draft/ ECS

Second Proviso to Sec 50C(1) and Sub-section (4) of section 43CA state that the option to adopt stamp duty value on date of agreement shall apply only when the consideration or part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of asset. Let us consider a case where the assessee may have entered into an agreement for transfer of immovable property on 11.11.2019 and on that date received a sum of Rs 15,000/- in cash towards part of consideration under the said agreement as token money and one week later received further sum of Rs. 9,85,000 by cheque under the same agreement. Can the benefit of sub-section (3) be denied on the ground that the conditions prescribed by sub-section (4) are not satisfied? It appears that the Court in such case may take a liberal view and hold that if it is otherwise evident that the assessee is entitled to benefit of sub-section (3) the same may not be denied only on the ground that the initial amount was received by cash. Possibly the assessee may have to explain the reason for receiving the amount by cash. The intention of prescribing that the consideration should be received by account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed appears to ensure that the assessee is getting the benefit only in genuine cases and therefore if the assessing authority is convinced that the assessee's case is bonafide it may hold that the benefit should not be denied only for the reason that token money was received by cash.

Maximum cash amount that can be received for transfer of immovable property:

Sec 269SS restricts payment of specified sum of Rs. 20,000 or more by any mode other than account payee cheque/ account payee bank draft/ or ECS. As per explanation 'specified sum' means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. The payment should be for transfer of immoveable property. It is irrelevant that whether the amount is paid as advance for purchase of property or at the time of transfer of property. Therefore, for any transfer of immovable property, cash of only Rs. 19,999 can be received. Any amount received by seller in excess of Rs. 19,999 will lead to penalty u/s 271D. However, if the transaction is between two agriculturists who are having income below the basic exemption limit, the seller can receive up to Rs. 1,99,999 in cash i.e sec 269SS is not applicable in their case, but the provisions sec 269ST of the Act shall be applicable.

Where there is decrease in stamp duty value on date of registration as compared to stamp duty value on the date of agreement

In case stamp duty value as on date of registration has decreased from the stamp duty value as on date of agreement, it would be beneficial to the assessee to adopt the stamp duty value as on date of registration. The word used in this section 43CA, 50C and 56(2)(x) is "may".

"*Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1)* ***may*** *be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement."*

Further the Ahmedabad Bench of ITAT in case of Dharamshibhai Somani v. ACIT has made the following observations which are to the effect that the amendment is optional to the assessee – "The amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception, but the real estate market is now traversing through a difficult phase and there can be situations in which there is a fall in the stamp duty valuation rates with the passage of time. Such a situation has actually arisen in many places in the country, such as in Gurgaon, New Delhi and even in Dehradun and some other places. It is therefore possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word `may' being construed as mandatory in application, but then one cannot be oblivious to the fact that this proviso states that "the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer (emphasis supplied)" making it clearly optional to the assessee and that in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in a higher tax burden on the tax payers"

Therefore, it is not mandatory for assessee to adopt stamp duty value as on date of agreement even if payment is by specified mode. The law has given option to the assessee and has not made it mandatory to take value as on date of agreement. It may be concluded that the assessee can take lower of the stamp duty values as assessable value, provided it is not lower than the actual consideration.

Applicability of Stamp Duty Value on the Date of Agreement, when Earnest Money is Received by Book Adjustments

The provisions of sec 50C and sec 43CA clearly provide that if an assessee intends to adopt stamp duty value as on date of agreement, amount of consideration should be received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement. The payment by book adjustment or journal entry is not as per the specified modes. Therefore, where the consideration on or before date of agreement is received by book adjustment, the benefit of adoption of stamp duty value on date of agreement cannot be availed. In case where the seller of the property receives another property in consideration and payment is not received by account payee cheque/ account payee bank draft/ ECS, the benefit of adoption of stamp duty value on date of agreement u/s 50C, 43CA and 56(2)(x) of the Act shall not be available.

PROVISIONS OF SECTION 80 D

Deduction in respect of health insurance premia.

80D. *(1) In computing the total income of an assessee, being an individual or a Hindu undivided family, there shall be deducted such sum, as specified in sub-section (2) or sub-section (3), payment of which is made by any mode as specified in sub-section (2B), in the previous year out of his income chargeable to tax.*

(2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:—

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contribution made to the Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf or any payment made on account of preventive health check-up of the assessee or his family as does not exceed in the aggregate twenty-five thousand rupees; and

(b) the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee or any payment made on account of preventive health check-up of the parent or parents of the assessee as does not exceed in the aggregate twenty-five thousand rupees;

(c) the whole of the amount paid on account of medical expenditure incurred on the health of the assessee or any member of his family as does not exceed in the aggregate [76][fifty] thousand rupees; and

(d) the whole of the amount paid on account of medical expenditure incurred on the health of any parent of the assessee, as does not exceed in the aggregate [76][fifty] thousand rupees:

Provided *that the amount referred to in clause (c) or clause (d) is paid in respect of a [77][***] senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person:*

Provided further *that the aggregate of the sum specified under clause (a) and clause (c) or the aggregate of the sum specified under clause (b) and clause (d) shall not exceed [78][fifty] thousand rupees.]*

Explanation.—For the purposes of clause (a), "family" means the spouse and dependant children of the assessee.

(2A) Where the amounts referred to in clauses (a) and (b) of sub-section (2) are paid on account of preventive health check-up, the deduction for such amounts shall be allowed to the extent it does not exceed in the aggregate five thousand rupees.

(2B) For the purposes of deduction under sub-section (1), the payment shall be made by—

(i) any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(ii) any mode other than cash in all other cases not falling under clause (i).

(3) Where the assessee is a Hindu undivided family, the sum referred to in sub-section (1), shall be the aggregate of the following, namely:—

(a) whole of the amount paid to effect or to keep in force an insurance on the health of any member of that Hindu undivided family as does not exceed in the aggregate twenty-five thousand rupees; and

(b) the whole of the amount paid on account of medical expenditure incurred on the health of any member of the Hindu undivided family as does not exceed in the aggregate [78][fifty] thousand rupees:

Provided *that the amount referred to in clause (b) is paid in respect of a [79][***] senior citizen and no amount has been paid to effect or to keep in force an insurance on the health of such person:*

Provided further *that the aggregate of the sum specified under clause (a) and clause (b) shall not exceed [78][fifty] thousand rupees.*

(4) Where the sum specified in clause (a) or clause (b) of sub-section (2) or clause (a) of sub-section (3) is paid to effect or keep in force an insurance on the health of any person specified therein, and who is a senior citizen, [80][***] the provisions of this section shall have effect as if for the words "twenty-five thousand rupees", the words "[81][fifty] thousand rupees" had been substituted.

Explanation.—[***]

[82][(4A) Where the amount specified in clause (a) or clause (b) of sub-section (2) or clause (a) of sub-section (3) is paid in lump sum in the previous year to effect or to keep in force an insurance on the health of any person specified therein for more than a year, then, subject to the provisions of this section, there shall be allowed for each of the relevant previous year, a deduction equal to the appropriate fraction of the amount.

Explanation.—For the purposes of this sub-section,—

(i) "appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of relevant previous years;

(ii) "relevant previous year" means the previous year beginning with the previous year in which such amount is paid and the subsequent previous year or years during which the insurance shall have effect or be in force.]

(5) The insurance referred to in this section shall be in accordance with a scheme made in this behalf by—

(a) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government in this behalf; or

(b) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

Explanation.—For the purposes of this section,—

(i) "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year;

(ii) [83][***]

Analysis of Section 80D

In case of an Individual

(a) **Deduction in respect of insurance premium paid for family**: A deduction to the extent of ₹ 25,000 is allowed in respect of the following payments-

(1) premium paid to effect or keep in force an insurance on the health of self, spouse and dependant children or

(2) any contribution made to the Central Government Health Scheme or

(3) such other health scheme as may be notified by the Central Government. Contributory Health Service Scheme of the Department of Atomic Energy has been notified by the Central Government.

(b) **Deduction in respect of insurance premium for parents:** A further deduction up to ₹ 25,000 is allowable to effect or to keep in force an insurance on the health of parents of the assessee. There is no difference that parents are dependent or not.

Quantum of deduction in case of senior citizen: An increased deduction of

₹ 50,000 (instead of ₹ 25,000) shall be allowed in case any of the persons mentioned above is a|senior citizen| /.e., an individual resident in India of the age of 60 years or more at any time during the relevant previous year.

(c) **Deduction in respect of payment towards preventive health check-up:**

Section 80D provides that deduction to the extent of **₹ 5,000** shall be allowed in respect payment made on account of preventive health check-up of self, spouse, dependant children or parents made during the previous year. However, the said deduction of ₹ 5,000 is within the overall limit of ₹ 25,000 or 50,000), specified in (a) and (b) above.

(d) **Deduction for medical expenditure incurred on senior citizens**: As a welfare measure towards i.e., person of the age of 60 years or more and resident in India, who are unable to get health insurance coverage, deduction of upto would be allowed in respect of any payment made on account of medical expenditure in respect of a such person(s), if no payment has been made to keep in force an insurance on the health of such person(s)

Though medical expenditure is not defined anywhere in the Act, but going by the motive, medical expenditure should cover every medical expense whether or not these expenditure are covered under any health insurance policy. Therefore, you can say that expenses such as consultation fees, medicines, hearing aids and so on can be claimed as deduction."

'Senior citizen' means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

(e**) Mode of payment**: For claiming such deduction under section 80D, the payment can be made:

(1) by any mode, including cash, in respect of any sum paid on account of preventive health check-up;

(2) **by any mode other than cash, in all other cases.**

It is to be noted that only cash payment can be made in cash for preventive health checkup. No other cash payment is being allowed to avail deduction u/s 80D of the Act. It is further to be noted that no cash payment is allowed even in case of medical expenditure incurred for senior citizen.

In case of a HUF

Deduction under section 80D is allowable in respect of premium paid to insure the health of any member of the family. The maximum deduction available to a HUF would be ₹25,000 and in case any member is a senior citizen, ₹ 50,000.

Further, the amount paid on account of medical expenditure incurred on the health of any member(s) of a family who is a would qualify for deduction subject to a maximum of 50,000) provided no amount has been paid to effect or keep in force any insurance on the health of such person(s).

Other conditions

The other conditions to be fulfilled are that such premium should be paid by any mode, other than cash, in the previous year out of his income chargeable to tax. Further, the medical insurance should be in accordance with a scheme made in this behalf by -

(a) the General Insurance Corporation of India and approved by the Central Government in this behalf; or

(b) any other insurer and approved by the Insurance Regulatory and Development

Deduction where premium for health insurance is paid in lump sum [Section 80D(4A)]

(a) Appropriate fraction of lump sum premium allowable as deduction: In a case where mediclaim premium is paid in lumpsum for more than one year by:

(1) an individual, to effect or keep in force an insurance on his health or health of his spouse, dependent children or parents; or

(2) a HUF, to effect or keep in force an insurance on the health of any member of the family, then, the deduction allowable under this section for each of the relevant previous year would be equal to the appropriate fraction of such lump sum payment.

(b) Meaning of certain terms

Term	Meaning
Appropriate fraction	‘ Appropriate fraction’ means the fraction, the numerator of which is one and the denominator of which is the total number of relevant previous years.
Relevant previous year	: The previous year in which such lump sum amount is paid; and the subsequent previous year(s) during which the insurance would be in force.

Example:

Rohan is aged 45 years, and his father is aged 75 years. Rohan has taken a medical cover for himself and his father for which he pays insurance premium of Rs 30,000 and Rs 35,000 respectively. What would be the maximum amount he can claim by way of a deduction under Section 80D?
Ans: Rohan can claim up to Rs 25,000, for the premium paid on his policy.

As for the policy taken for his father, who is a senior citizen, Rohan can claim up to Rs.50,000. In the given case, the deduction is Rs 25,000 and Rs 35,000. Therefore, the

	Deduction for individuals				Deduction for HUF	
Nature of Amount spent	**Family Member***		**Parents**		**For any member**	
	Age below 60 years	**Age above 60 years**	**Age below 60 years**	**Age above 60 years**	**Age below 60 years**	**Age above 60 years**
Medical Insurance	25,000	50,000	25,000	50,000	25,000	50,000
CGHS	25,000	25,000	-	-	-	-
Health Check-up	5,000	5,000	5,000	5,000	-	-
Medical Expenditure**	-	50,000	-	50,000	-	50,000
Maximum Deduction	**25,000**	**50,000**	**25,000**	**50,000**	**25,000**	**50,000**

total deduction that he can claim for the year is Rs 60,000

Deduction **in respect of insurance premium** is allowable from Gross Total Income of a tax payer who is an Individual (may be resident/non-resident)/Indian citizen or foreign citizen) or a HUf (may be resident/non-resident) If

- ✓ Payment made out of income chargeable to tax
- ✓ **Payment should be made any mode other than cash (exception is payment for preventive health check-up)**

*Family members includes individual, his/her spouse and dependent children.

*Parents may be dependent or not. But it does not include father-in-law / mother-in-law.

*.In case **any** of the persons specified above (i.e. husband, wife, father, mother) is a senior citizen (i.e. 60 years or more) and Mediclaim Insurance premium is paid for such senior citizen, deduction amount is Rs. 50,000. If father is of 62 years and mother is of 58 years, the benefit of senior citizen will be available.

* In case a non-resident is of age 60years or above, he shall not get benefit of enhanced deduction of Rs. 50,000.But if father is a non- resident senior citizen and mother is a resident senior citizen, the benefit of Rs.50000/-will be allowed. Any of two must be a resident senior citizen.

* The aggregate payment on account of preventive health check-up of self, spouse, dependent children, father and mother cannot exceed Rs. 5,000.

** Medical Expenditure is allowed if no amount has been paid towards health insurance of such person

Example: Mr. A(aged 45 years) incurs the following expenditure for family (spouse and dependent children) and parents- father (64 years) and mother (58 years), during the P.Y. 2019-20

	Medical Insurance Premium	Preventive health check up	Medical Expenditure
For Mr. A and family	Rs. 23,000		Rs.5,000
For Father of Mr. A	-	Rs.6,000	Rs.45,000
For Mother of Mr. A	Rs. 8,000	-	Rs.6,500

All the above payments are by cheque

Medical expenditure is deductible only if it is incurred on the health of a senior citizen and who has not taken health insurance. Consequently Rs. 5,000 and Rs. 6,500 are not deductible. Preventive Health check-up can be allowed up to Rs. 5,000. Amount of deduction allowable u/s 80D is as under

	Medical Insurance	Preventive Health Check Up	Medical Expenditure	Total
Mr. A and family	Rs. 23,000		-	Rs.23,000
Parents	Rs.8,000	Rs.5,000	Rs.45,000	Rs. 50,000
Total				Rs.73,000

Can you get deduction u/s 80D of Mediclaim policy for Overseas Journey?

Deduction for policy for overseas travel can be taken. There is nothing in the provision u/s 80D which prohibits claim of deduction u/s 80D for medical insurance for overseas journey. The only requirement, as given in section 80D(5) is that the insurance companies issuing such overseas insurance should be one of these

(5) The insurance referred to in this section shall be in accordance with a scheme made in this behalf by

(a) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government in this behalf; or

(b) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999).

Section 80GGA –

Donations for scientific research or rural development

An Assessee (other than an assessee whose Gross Total Income includes income chargeable under the head "**profits and gains of business or profession**") is entitled to deduction in respect of certain donations for scientific, social or statistical research or rural development programme or for carrying out an eligible project or National Urban Poverty Eradication Fund. Such donation can be given in cash, or by cheque or draft. However, no deduction is allowed in respect of cash transaction/contribution exceeding Rs.10,000 (Rs. 2,000 w.e.f 01/06/2020)

Section 80GGB –

Donations by Indian company to political parties / electoral trust

Any sum contributed by an Indian company to any political party or an electoral trust is not allowed as deduction while computing taxable income in respect of any sum contributed by way of cash.

Section 80GGC –

Section 80GGC of the Act provides for the benefit of those who make donations to political parties. There are certain conditions and criteria which have to be followed by the individual for the said benefits. Section 80GGC specifies the deduction under the Income Tax Act which is allowed from the total gross income of specified assessees for the contributions made to a political party or an electoral trust. This entire amount is eligible for tax deduction provided that it is not deposited in cash, but rather by other means.

Analysis of sec 80GGC of the Act

- The objective of the Section was mainly to allow for transparency in the electoral funding and therefore, trying to make it corruption-free. Moreover, it also encourages more voluntary contributions towards the political parties by taxpayers.
- The tax deductions are made only to specified assessees
- The deduction falls under the Chapter VI-A deductions, which implies that the total amount which can stand for the tax deduction cannot be more than the total taxable income.

What is the eligibility criteria u/s 80GGC?

- Section 80GGC can be claimed by any person except any local authority or artificial juridical persons who are wholly or partly funded by the government. The following groups are specified under the Section 80GGC to make the political contribution- an individual, a Hindu Undivided Family (HUF), a firm, an AOP or BOI and an Artificial Juridical Person. The last candidate in the list should not be funded by the government.
- The tax deduction benefits can also be availed by making donations to multiple political parties rather than only one.
- Deduction limit- While the entire contribution is eligible for the deduction, it should be made sure that the mode for the donation should never be in cash.

Difference between Section 80GGC and 80GGB

- Section 80GGC and Section 80GGB are very similar in their actions enforcing tax deduction benefits. However, the basic difference is to distinguish the donor types.

SECTION 80GGC	SECTION 80GGB
Only specified taxpayers can claim the benefits.	Companies are eligible to claim benefits. As per the Section 80GGB of the Income Tax Act 1961, any Indian company that contributes any sum to a political party or an electoral trust registered in India can claim for a deduction for the amount contributed by it.

PROVISIONS OF SECTION 80JJAA

80JJAA. *(1) Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.*

(2) No deduction under sub-section (1) shall be allowed,—

(a) if the business is formed by splitting up, or the reconstruction, of an existing business:

Provided *that nothing contained in this clause shall apply in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B;*

(b) if the business is acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation;

(c) unless the assessee furnishes alongwith the return of income the report of the accountant, as defined in the Explanation to section 288 giving such particulars in the report as may be prescribed.

Explanation.—For the purposes of this section,—

(i) "additional employee cost" means the total emoluments paid or payable to additional employees employed during the previous year:

Provided *that in the case of an existing business, the additional employee cost shall be nil, if—*

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

*(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [90]**[**or through such other electronic mode as may be prescribed**]**:*

Provided further *that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost;*

(ii) "additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include—

(a) an employee whose total emoluments are more than twenty-five thousand rupees per month; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the

provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952); or

(c) an employee employed for a period of less than two hundred and forty days during the previous year; or

(d) an employee who does not participate in the recognised provident fund:

***Provided** that in the case of an assessee who is engaged in the business of manufacturing of apparel or footwear or leather products, the provisions of sub-clause (c) shall have effect as if for the words "two hundred and forty days", the words "one hundred and fifty days" had been substituted:*

***Provided further** that where an employee is employed during the previous year for a period of less than two hundred and forty days or one hundred and fifty days, as the case may be, but is employed for a period of two hundred and forty days or one hundred and fifty days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly;*

(iii) "emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(3) The provisions of this section, as they stood immediately prior to their amendment by the Finance Act, 2016, shall apply to an assessee eligible to claim any deduction for any assessment year commencing on or before the 1st day of April, 2016.

(i) Quantum and period of deduction:

Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, a deduction of an amount equal to 30% of additional employee cost incurred in the course of such business in the previous year, would be allowed for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(ii) Eligibility Criteria

The deduction would be allowed only subject to fullfilment of the following conditions:

The business should not be formed by splitting up, or the reconstruction, of an existing business

The business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation

The report of the accountant in Form 10DA, giving the prescribed particulars, has to be furnished along with ROI

(i) Definitions of Specific terms used

Additional employee cost :Total emoluments paid or payable to additional employees employed during the previous year.

In the case of an existing business

The additional employee cost shall be Nil, if—

(a) there is no increase in the number of employees from the total

number of employees employed as on the last day of the preceding

year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by

use of electronic clearing system through a bank account or through any other prescribed electronic mode.

In the first year of a new business

The emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost.

Additional employee:

An employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year.

Exclusions from the definition

a) an employee whose total emoluments are more than ₹25,000 per month; or

b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or

c) an employee employed for a period of less than 240 days during the previous year. In case of an assessee engaged in the business of manufacturing of apparel or footwear or leather products, an employee employed for a period of less than 150 days during the previous year, or

d) an employee who does not participate in the recognised provident fund.

Note — If an employee is employed during the previous year for less than 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year. Accordingly, the employer would be entitled to deduction of 30% of additional employee cost of such employees in the succeeding year.

Emoluments :

any sum paid or payable to an employee in lieu of his employment by whatever name called.

Exclusions from the definition:

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and

(b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

EXAMPLE:

Mr. R has commenced the business of manufacture of Electric lamps on 1.4.2019. He employed 350 new employees during the P.Y.2019-20, the details of whom are as follows

	No. of employees	Date of employment	Regular/Casual	Total monthly emoluments per Employee (₹)
i.	75	1.4.2019	regular	24,000
ii.	125	1.5.2019	regular	26,000
iii.	50	1.8.2019	casual	25,500
iv.	100	1.9.2019	regular	24,000

The regular employees participate in recognized provident fund while the casual employees do not. Compute the deduction, if any, available to Mr. R for A.Y.2020-21, if the profits and gains derived from manufacture of computers that year is ₹75 lakhs and his total turnover is Rs. 2.16 crores.

What would be your answer if Mr. R has commenced the business of manufacture of footwear/ apparel/ leather on 1.4.2019?

SOLUTION

Mr. R is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2020-21, as his total turnover from business exceeds ₹ 1 crore and he has employed "additional **employees" during the P.Y.2019-20.**

If Mr. R is engaged in the business of manufacture of electric lamps

Additional employee cost = ₹24,000 x 12 x 75 [See Working Note below] = ₹ 2,16,00,000

Deduction under section 80JJAA = 30% of ₹ 2,16,00,000 = ₹ 64,80,000.

Total expenditure allowable u/s 37(1) =Rs. 2,16,00,000

Total deduction allowable u/s 80JJAA= Rs. 64,80,000

Working Note:

Number of additional employees

Particulars		No. of workmen
	Total number of employees employed during the year	350
LESS:	Casual employees employed on 1.8.2019 who do not participate in recognized provident fund	50
	Regular employees employed on 1.5.2019, since their total monthly emoluments exceed ₹25,000	125
	Regular employees employed on 1.9.2019 since they have been employed for less than 240 days in the P.Y.2019-20	100
	Number of "additional employees"	75

Notes -

- Since casual employees do not participate in recognized provident fund, they do not qualify as additional employees. Further, 125 regular employees employed on 1.5.2019 also do not qualify as additional employees since their monthly emoluments exceed ₹25,000. Also, 100 regular employees employed on 1.9.2019 do not qualify as additional employees for the P.Y.2019-20, since they are employed for less than 240 days in that year.

  Therefore, only 75 employees employed on 1.4.2019 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2019-20 is deemed to be the additional employee cost.
- As regards 100 regular employees employed on 1.9.2019, they would be treated as additional employees for previous year 2020-21, if they continue to be employees in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA in the hands of Mr. R for the A.Y. 2021-22

If Mr. R is engaged in the business of manufacture of footwear/ apparel/ leather

If Mr. R is engaged in the business of manufacture of footwear, then, he would be entitled to deduction under section 80JJAA in respect of employee cost of regular employees employed on 1.9.2019, since they have been employed for more than 150 days in the previous year 2019-20.

Additional employee cost = ₹ 2,16,00,000 + ₹ 24,000 x 7 x 100 = ₹3,84,00,000

Deduction under section 80JJAA = 30% of ₹ 3,84,00,000 = ₹ 1,15,20,000

Total expenditure allowable u/s 37(1) =Rs. 3,84,00,000

Total deduction allowable u/s 80JJAA= Rs. 1,15,20,000

BEST OF THE REST

- **Whether the deduction under section 80-JJAA is in addition to deduction u/s 37(1)?**

Ans. Yes, deduction u/s 80-JJAA is in excess of deduction u/s 37(1). Hence, total deduction of additional employee salary expense come to 130%

- **Rk ltd. appoints 15 additional employees out of which 5 employees do not participate in Recognised Provident Fund. Whether Rk ltd. is eligible to claim deduction of All Employees?**

Ans. Rk ltd can claim deduction in respect of 10 employees subject to other conditions, as 5 do not participate in Recognised Provident Fund.

- **For how many years, we can claim deduction under this section.**

Ans. Deduction under this section can be claimed for 3 consecutive years.

- **Is deduction u/s 80-JJAA specific with any state or area?**

Ans. This deduction is not area specific deduction. This deduction is available to all assessee provided all conditions specified in this section are satisfied.

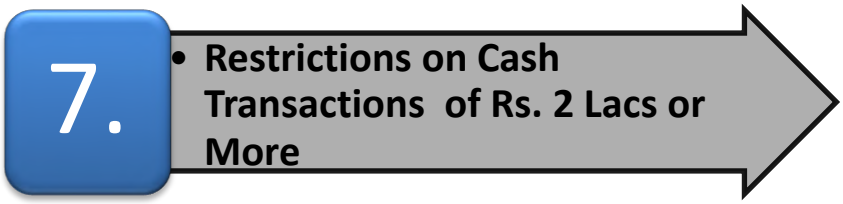
- **Which components of salary are included in the term "Emoluments" used in this section?**

Ans. Any sum paid or payable to employees by whatever name is included in Emoluments but does not include the following:

  - ✓ Employer's Contribution to statutory funds
  - ✓ Lump sum payment at the time of termination or voluntary retirement or superannuation such as gratuity, leave encashment etc.

- **Is there any maximum limit or threshold limit upto which deduction can be claimed under section 80-JJAA ?**

Ans. The deduction under section 80-JJAA is 30% of additional employees cost. There is no threshold as such given in the section.



Provisions of Section 269ST

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 [69] ***[****or through such other electronic mode as may be prescribed****]****:*

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.

The Central Board of Direct Taxes has prescribed **other electronic modes** to provide for the followings as an acceptable electronic mode of payments-

(a) Credit Card;

(b) Debit Card;

(c) Net Banking;

(d) IMPS (Immediate Payment Service);

(e) UPI (Unified Payment Interface);

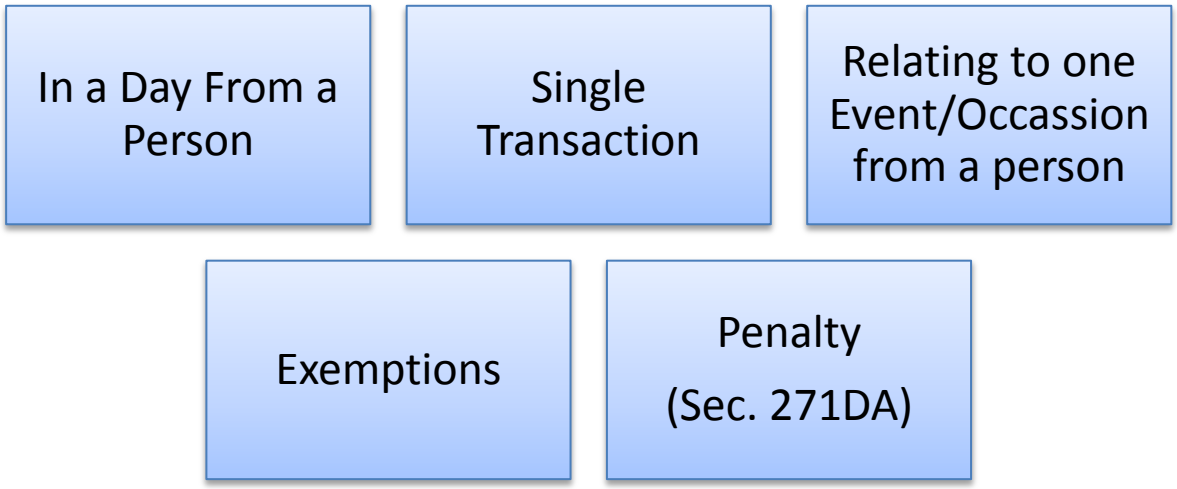
(f) RTGS (Real Time Gross Settlement);

(g) NEFT (National Electronic Funds Transfer), and

(h) BHIM (Bharat Interface for Money) Aadhaar Pay".

For this purpose, a new Rule 6ABBA with the heading '**Other electronic modes'** is introduced in the Income Tax Rules, 1962. This rule has been given a retrospective effect and will come into force from 01- 09-2019 even though the notification was issued on 29-01-2020.

The above section was inserted in the Income Tax Act, 1961 by the Finance Act, 2017. The government has aimed to curb generation of black money, to move towards less cash economy and promote digital economy. The government has attempted to target and penalize receiver instead of payer. It is applicable whether the recipient person is a seller of goods or provider of service transferor of capital assets or any other person. Further, section begins with words 'no person' which means this section is applicable to all whether individual, company, firm, trust or association of persons. This section is applicable to residents and non residents.We shall divide the section into 5 parts to understand it in a better way:



A. No person shall receive an amount of two lakh rupees or more in aggregate from a person in a day

The first clause of the section has restricted any person, to not receive an amount of Rs. 2 Lakh or more 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. Here purpose of the payment is irrelevant. The main focus is '**from a person'** and '**in a day'.**

Now a question arises what is a meaning of a day. A legal day commences at 12 o' clock midnight and continues until the same hour the following night. {Prabhu Dayal Sesma vs 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. This section will be violated if following four pre-requisites are fulfilled:

i) There is single payer

ii) There is a single receiver.

iii) The payment is in single day.

iv) The amount received by the person in cash is Rs. 2 Lakhs or above.

The payment may be towards two separate invoices of different dates and each invoice below Rs. 2 Lakh, but the person cannot receive Rs. 2,00,000 or more in cash from a person in aggregate in a single day. We shall understand this with the help of following examples:

Example 1: ABC & Co. issued invoice of Rs. 1,60,000 to Mr. Bhushan on 15/04/2020 and another invoice of Rs. 1,25,000 on 16/04/2020. Can ABC & Co receive the payment of Rs.2,85,000 in cash/ bearer cheque on 17/04/2020?

No, as the aggregate of both the invoices exceeds Rs. 2,00,000; ABC & Co. cannot receive the whole amount in cash/ bearer cheque. Only amount upto Rs. 1,99,999 can be received in cash/ bearer cheque in single day.

Example: ABC & Co. issued following invoices and received following payments:

Customer	**X**	**Y**	**Z**
Bill No. 001	**2,50,000**	**1,50,000**	**1,10,000**
Bill No. 002	**-**	**30,000**	**65,000**
Bill No. 003	**-**	**-**	**45,000**
Total	**2,50,000**	**1,80,000**	**2,20,000**
Total receipts in a single day	**2,50,000**	**1,80,000**	**2,20,000**
Whether sec 269ST violated	**Yes**	**No**	**Yes**
Penalty Amount	**2,50,000**	**Nil**	**2,20,000**

Example 2 Suppose in above example, Rs 1,80,000 is received in cash from Mr. Bhushan and balance Rs. 1,05,000 is received from Mrs. Bhushan (Mr. Bhushan' wife) on 17/04/2020. Is there any violation of law?

There is no violation of law in this case. ABC & Co. can receive the amount in cash from 2 different persons as the first limb restricts receiving cash of Rs. 2 lakh or more from 'a person' in a day.

B. In respect of a single transaction

This part of the section restricts receipt of Rs. 2,00,000 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. Here the major focus is on '**single transaction'.** The number of installments or parts in which payment is made is irrelevant. Further, here word 'a person' is not used. Therefore, the recipient cannot receive Rs.2,00,000 or more in cash in a single transaction even if different persons are making payment. However, if the each of invoice amounts are below Rs. 2 Lakh, this provision may not be contravened. The pre-requisites for section to be violated are:

i) Single Receiver

ii) The cash payment relating to a particular transaction is Rs. 2,00,000 or more.

If the parties try to split their payments, such that one transaction is given effect to over multiple days like making payments of Rs. 10,000 on different dates in respect of a single transaction, 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.

Example 3 M/s Lotus Chemicals issued invoice of Rs. 7,50,000 to their customer on 19/12/2019. The customer intends to make payment in cash in 10 weekly installments of Rs. 75,000 each. Whether M/s Lotus Chemicals can accept the above proposal?

M/s Lotus Chemicals cannot accept the above proposal as the cash receipts (though on different dates) are towards a single transaction and exceeds Rs. 2 Lakh.

Example 4 Mr. Gupta bought car of Rs. 3,50,000 on 15/03/2020. The car seller receives Rs. 1,80,000 from Mr. Gupta and Rs. 1,70,000 from his son. Whether Sec 269ST has been violated?

The car seller has violated the section as the total cash receipt relating to a particular transaction (sale of car in this case) exceeds Rs. 2,00,000. It is immaterial that the none of the payer has paid Rs. 2 Lakh or above. The recipient can receive upto Rs.1,99,999 in cash and balance through account payee cheque/ draft or ECS.

Example 5: M/s ABC & Co. sold a machinery for Rs. 6,00,000 to 3 different persons X, Y and Z

	X	Y	Z
Sale Amount	6,00,000	6,00,000	6,00,000
Cash Receipt on 13/10/2019	2,50,000	1,90,000	–
Cash Receipt on 20/10/2019	–	1,90,000	1,50,000
Receipt by account payee cheque	3,00,000	2,20,000	2,00,000
Receipt by RTGS	50,000	-	2,50,000
Total cash Receipts	2,50,000	3,80,000	1,50,000
Whether Sec 269ST violated	Yes	Yes	No
Penalty u/s 271DA on M/s ABC & Co.	2,50,000	3,80,000	Nil

CBDT vide **Circular 22/2017 dated 3rd July, 2017** has clarified that for loan repayment to NBFC/HFC, each installment of repayment shall constitute as a single transaction and all the installments paid for loan shall not be aggregated for the purpose of Sec 269ST. In other words, repayment of loan to NBFC/HFC can be in cash if each installment is less than Rs. 2,00,000. However, other transactions related to NBFC/ HFC will still be covered by this section like cash receipt of down payment at time of sale/ financing of any goods or receipt from sale of repossessed goods etc.

C. In respect of transactions relating to one event or occasion from a person

This clause attempts to target transactions scattered over different days but relating to a single event or occasion. Here major focus is **'one event or occasion'** and **'a person'.** Pre-requisites for attraction of this section shall be:

i) Single Receiver

ii) Single Payer

iii) Cash payment relating to single event/ occasion is Rs. 2 Lakhs or more.

From the above it is interesting to note that 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 became 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 fell in clause (c) and in such a situation, separate limit will became available for different persons in a joint transaction.

For example, if for a marriage there are 3 different bills of Rs. 1 lakhs 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 lakhs is in the name of the person who is being married, second bill (given tent house services) is in the name of father of that person for Rs. 1 lakhs and the third bill (for decoration) is in the name of the mother of that person for Rs. 1 lakhs. Then in such a situation entire Rs. 3 lakhs can be paid in cash etc. mode i.e., Rs. 1 lakh by the person being married, Rs. 1 lakhs by the father and Rs. 1 lakhs by the mother. Even if all the bills are in the joint names of three persons then also the payment can be made in the above manner.

The definition of the words 'event' or 'occasion' has not been given in section 269ST. Further, no clarification has been given by the CBDT through any circular etc. Similarly, no direct judicial decisions are presently available on the scope of the above words. Therefore, lot of confusion has got created regarding the meaning and scope of the above two words. The dictionary meaning of the word 'event' is 'something that happens at a given place and time'. Similarly, the dictionary meaning of the word 'Occasion' is 'a time when something happens, or a case of it happening'. 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. 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.

It seeks to cover all receipts from a person in relation to transactions relating to one event or occasion such as reimbursement, marriage, birthday, anniversary, functions by religious bodies like *satsangs, dharam samelans,* exhibitions or the like. This may include payments made in respect of catering, decoration, tents, pandal, sound, rent of resort etc. To illustrate, marriage is an event and there may be several functions relating to it like ring ceremony, haldi ceremony, bangle ceremony, *shagun,* wedding party, reception etc. All these functions are related to a single event. Therefore, the limit of Rs. 2 Lakh will be for the entire marriage and not for each function.

Example 6 Mr. Puneet receives following gifts on his marriage:

S.No.	Particulars	Whether Sec 269ST Violated	Reasons
1	Receives *shagun* of Rs.1,000 each in cash from 220 persons	No	None of the person gifted Rs.2 Lakh or more in cash.
2	Receives *shagun* of Rs.1,11,000 from his uncle on the marriage day and Rs.1,51,000 on the day of reception.	Yes	As the total cash receipt from a personrelating to occasion'marriage' exceeds Rs. 2 Lakh
3	His uncle gifted Rs. 1,70,000 to him and Rs. 81,000 to his mother in cash	No	No person has received Rs.2 Lakh or more in cash.

In case of 2nd and 3rd limb of sec 269ST the word 'transaction' has been used

(*b*) in respect of a single **transaction**; or

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

However, 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 2nd and 3rd limb of sec 269ST of the Act.

Following the above judgments, gift is a unilateral act and not a transaction. Therefore, in the above table, in case 2, where *shagun* of Rs.1,11,000 is received from his uncle on the marriage day and Rs.1,51,000 on the day of reception, there may not be violation of sec 269ST. However, the first limb i.e. in aggregate from a person in a day shall continue to apply in case of gifts.

Example 7 M/s Tania Event Managers arranged a marriage function in February 2020.

Date	Particulars	Case 1	Case-2	Case-3	Case-4
22/02/2020	Invoice for 'Ring Ceremony'	1,80,000	70,000	1,80,000	1,80,000
23/02/2020	Invoice for catering on 'Marriage Day'	1,90,000	60,000	1,90,000	1,90,000
23/02/2020	Invoice for decoration on 'Marriage Day'	45,000	45,000	45,000	45,000
	Total of Invoices	4,15,000	1,75,000	4,15,000	4,15,000
01/03/2020	Received cash from Bride's father	1,75,000	1,75,000	1,75,000	1,75,000
03/03/2020	Received cash from Bride's father	60,000	-	-	25,000
04/03/2020	Received cash from Bride's brother	-	-	65,000	-
05/03/2020	Received payment by credit card/ account payee cheque	1,80,000	-	1,75,000	2,15,000
	Total cash payments	**2,35,000**	**1,75,000**	**2,40,000**	**2,00,000**
	From Bride's father	2,35,000	1,75,000	1,75,000	2,00,000
	From Bride's brother	-	-	65,000	-
	Violation of sec 269ST	Yes	No	No	Yes
	Penalty u/s 271DA	**2,35,000**	**Nil**	**Nil**	**2,00,000**

Summary of Sec 269ST

CLAUSES	Conditions	Irrespective of
a) in aggregate from a person in a day	Number of persons- 1 Number of Days-1	Number of transactions
b) in respect of a single transaction	Number of transactions- 1	Number of persons Number of days
c) in respect of transactions relating to one event or occasion from a person	Number of persons-1 Number of event/occasion-1	Number of days Number of transactions

D. Exemptions: The above provisions are not applicable in the following cases

Receipt by Government;

Receipt by any banking company, post office savings bank or co-operative bank

Transactions of the nature referred to in section 269SS i.e. acceptance of loans/ deposits/ specified advance.

Persons/ receipts notified by government:

- Receipts (cash withdrawals) by any person from bank, cooperative bank or post office savings bank
- Receipt by business correspondent on behalf of banking company or cooperative bank as per RBI guidelines.
- Receipt by white label ATM operator from retail outlet sources on behalf of banking company or cooperative bank.
- Receipt from an agent by an issuer of prepaid payment instruments.
- Receipt by company/ institution issuing credit cards against bills raised in respect of one or more credit cards.
- Receipt exempt u/s 10(17A) i.e. any award from state/central government

E. Penalty u/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.

If any person violates sec 269ST, then penalty shall be levied @ 100% of such receipt.

Example: If any person issues invoice for Rs. 5,00,000 and receives Rs. 3,00,000 in cash and Rs. 2,00,000 by cheque. Then penalty of Rs. 3,00,000 shall be levied.

Section 271DA has been inserted w.e.f. 1.4.2017 to provide for penalty for failure to comply with provisions of section 269ST. Essentially, the 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. Section 271DA states that if a person receives any "sum" as against section 269ST using the expression "any 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

It is to be noted that the penalty shall not be imposable if such person proves that there were "good and sufficient" reasons for the contravention The words "good and sufficient reasons" only mean "appropriate" or "suitable" or "satisfactory" or "fit" and "enough" or "adequate" reasons for cancelling the registration. 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.

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. Hence, a view may be taken that depending on the facts, the penalty proceedings under section 271DA should commence within a reasonable period after the contravention of section 269ST.

Appeal against an order passed under section 271DA

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.:

Order under s. 271DA is an order under Chapter XXI. However, unless the recipient is an assessee, he cannot file an appeal against the penalty order u/s 246A of the Act. 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 the following reasons :

(a) Section 246A 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

There is no express prohibition against an appeal against an order under section 271DA. Applying the aforesaid principles of interpretation of `an appeal provision’, section 246A(1) has to be liberally construed and even if there is any doubt, it should be resolved in favor of the person on whom penalty is imposed. Accordingly, an appeal against the penalty order under section 271DA should be allowed

BEST OF THE REST

- **Whether Sec 269ST applies to receipt of exempt income?**

  Yes, Sec 269ST applies to all types of receipts whether exempt or taxable except the receipts specifically notified by government. Therefore, section shall also apply to receipt of payment by farmers.

- **Whether Sec 269ST applies to receipt of payment for personal purpose?**

Yes, Sec 269ST applies to payments for personal purpose. There is no difference whether the receipt is for personal or business purpose or whether it is a revenue or capital receipt.

- **What is the maximum amount of cash memo that can be issued?**

Cash Memo can be issued up to Rs 1,99,999 (including taxes). Any cash memo above that will lead to contravention of this section. But the assessee has to follow the limits to issue cash memo under other laws.

- **Can my customer deposit Rs. 2,00,000 or above in cash directly to my bank account?**

No, the customer cannot deposit Rs. 2,00,000 or above in cash directly to bank account because the section allows receipt of Rs. 2 Lakh or above only by account payee cheque/ draft or electronic clearing system through bank account.

However, as per The Bangalore Bench of ITAT in Sri Renukeswara Rice Mills v. ITO [2005] 93 ITD 263, it had held in the context of section 40A(3) 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 may be regarded as complying with section 269ST.

- **Will this section apply to introduction of capital by a partner to the firm?**

Yes, This transaction is related to the receipt by the firm from its partner. The provisions of Section 269ST are very well applicable to this also. It is so because the provisions of Section 269ST are applicable to each and every receipt irrespective of its nature and irrespective of relation between the parties.

It is applicable (i) whether the receipt is for business purpose or for personal purpose (ii) whether the receipt is with or without consideration (iii) whether the receipt is of capital or revenue nature.

However, there is some ambiguity here. On this issue there are two school of thoughts for the applicability of sec 269ST.The first school of thought states that whether the introduction of capital by the partner each and every time is a separate transaction or part of the same transaction. If we follow first school of thought that introduction of capital by the partner each and every time is a separate transaction, a partner can introduce up to Rs. 1,99,999 for any number of times in cash. If the latter school of thought is accepted, then the partner can introduce up to Rs. 1,99,999 in cash once in entire tenure of firm.

- **. Will this section apply to introduction of capital by a sole proprietor?**

No, this section will not apply to introduction of capital by a sole proprietor as the proprietor and his business concern are one and same person.

- **Mr. Bajaj borrowed Rs. 4,00,000 in cash from Mr. Akash. Later he repaid Rs. 2,50,000 in cash. State the applicability of Sec 269SS, 269T and 269ST?.**

  Mr. Bajaj has violated sec 269SS by accepting cash loan of Rs. 20,000 or more and penalty shall be levied u/s 271D on borrower (Mr. Bajaj). However Sec 269ST shall not be applicable even if amount exceeding Rs. 2,00,000 has been received from a person in a day as transactions covered by 269SS are out of ambit of Sec 269ST.

Regarding repayment of Rs. 2,50,000 in cash, Sec 269T has been violated by Mr. Bajaj as loan has been repaid in cash exceeding Rs. 20,000 and penalty shall be levied u/s 271E on the person who is making repayment (Mr. Bajaj).

Sec 269ST has been violated by Mr. Akash as he has accepted cash of Rs. 2,50,000 from a person in a day. Penalty u/s 271DA shall be levied on recipient (Mr. Akash).

- **Will sec 269ST be applied on cash gifts, even if such cash gifts have been taxed u/s 56(2)(x)?**

Yes, sec 269ST will be applied on cash gifts irrespective of the fact that whether such gifts have been taxed or not. A person cannot accept a cash gift of more than Rs. 1,99,999. However, a person can receive different cash gifts of Rs. 1,99,999 or less from a person, provided the gifts do not form part of a single transaction and not related to single event/ occasion.

- **X was hospitalized in DAC Hospital. The bill amount for treatment, testing charges, room rent and other charges was Rs. 4,45,000. What is the maximum amount hospital can receive in cash?**

The hospital can receive up to Rs. 1,99,999 in cash and balance through modes allowed u/s 269ST. The reason being, the treatment of a patient is a single transaction and hence covered by clause (b). Even if separate invoices are issued for treatment, testing charges and other charges, then also it will be covered by clause (c) as curing/ treatment is a single event/ occasion. All the distinct transactions are related to this event.

- **A person bought a car for Rs. 4,00,000 in an exchange offer. His old car was valued for Rs.2,50,000 and he gave Rs. 1,50,000 in cash? Whether sec 269ST contravened?**

No, the section has not been contravened as the section applies only to cash component in the transaction.Therefore, section has to be applied net of exchange value. This is evident from the objective behind the insertion of section 269STwhich was explained by CBDT circular No.dated 15.02.2018 in para 77 as under

"77.1 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.

77.2 In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, a new section 269ST has been inserted in the Income-tax Act."

It is evident that receipts in kind are not the intention of the law and can not be regarded as receipt of amount within the meaning of section 269ST.

- **One of the doubtful debtors, who was not clearing his dues suddenly camp up and offered to settle his account and pay Rs. 3,00,000 in cash. Whether money can be accepted in cash?**

As per sec 269ST, cash of Rs. 3,00,000 from a person in a day cannot be accepted.

However, as per sec 271DA penalty may not be imposed if the recipient proves that there were good & sufficient reasons for the contravention. In this case, if the person has

documentary proofs and evidences that the debtor was not clearing his dues and in past he was unable to recover the amount, penalty may not be imposed.

- **Whether the provisions of sec 269ST are applicable in the case of payment received from an agent?**

To resolve this issue, we need to know whether the agent is representing recipient or representing the payer. In case, the agent is representing recipient, receipt from own agent is receipt from self. Section 269ST is not attracted. In case, the agent is representing the payer, receipt from agent of a payer is like receipt from payer. In this case provisions of section 269ST are attracted.

Now a question arises whether the provisions of sec 269ST are applicable in the case of payment received through an agent. In this connection it is to be noted that when your agent receives from a third party on your behalf, it tantamounts to receipt by you and sec 269ST is attracted and subsequent payment by agent to you is not a receipt and hence sec 269ST is not applicable.

Example: If a person who holds a Power of Attorney ('PoA') 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 the 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/-.

- **The provisions of Section 269ST will not apply to any receipt by Banking Company. In recent Payment Banking Licenses issued by RBI, the Banks are permitted to appoint agents who received cash from customers for deposition in Bank Accounts. Whether cash received by agents of Payment Banks will trigger Section 269ST.**

A4. It is pertinent to note that Section 269ST has specifically excluded any banking company, post office savings bank or co-operative bank from the applicability of S. 269ST.

Cash received by agents on behalf of the bank would partake the character of cash received by the bank since the agent represents his principal. It would be deemed that the payment was received by the banking company and hence section 269ST would not be applicable.

Conclusion: S.269ST would not apply to an agent receiving money on behalf of his principal being a banking company.

What is the difference between word 'sum' and 'amount'

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 *or through such other electronic mode as may be prescribed*

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:

From the study of above two sections, it is to be noted that the expression used in section in sec 269ST is "amount" and the word used in sec 271DA is "sum". Now a question arises what is the difference between the word "amount" and "sum". To resolve this issue, firstly we need to know the meaning of the words "amount" and "sum".

Meaning of 'Amount'

- As per Black's Law Dictionary – Sixth Edition:

The whole effect, substance, quantity, import, result, or significance.

The sum of principal and interest.

- As per P Ramanatha Aiyar's - Advanced Law Lexicon 3rd Edition:

"The substance, or result of a thing; the total or aggregate sum. Quantity; to come upto, resulting; equaling in effect."

- As per oxford dictionary - https://en.oxforddictionaries.com :

"A quantity of something, especially the total of a thing or things in number, size, value, or extent."

- As per Cambridge Dictionary http://dictionary.cambridge.org: "A collection or mass, especially of something that cannot be counted:"

Meaning of 'sum'

As per Black's Law Dictionary – Sixth Edition: "The sense in which the term is most commonly used is "money"; a quantity of money or currency ; any amount indefinitely, a sum, or a large sum. U .S. v. Van Auken, 96 U.S. 366, 368, 24 L.Ed. 852."

As per P Ramanatha Aiyar's - Advanced Law Lexicon 3rd Edition When used with reference to values, "sum" imports a sum of money. (See also 27 LJ Ex. 31; 7Ex. 58) A quantity or amount of money. [S.57(a)(1), T.P. Act (4 of 1882); S. 48(b), Indian Partnership Act (9 of 1932)]

- As per oxford dictionary - https://en.oxforddictionaries.com : " 1. A particular amount of money. 2. The total amount resulting from the addition of two or more numbers, amounts, or items. 3. An arithmetical problem, especially at an elementary level.
- As per Cambridge Dictionary http://dictionary.cambridge.org: "an amount of money: the whole number or amount when two or more numbers or amounts have been added together:"

From the above definitions it is to be noted that the word "Sum" means "sum of money". The word "Amount" may include cash and kind. However it can be logically interpreted that per the Memorandum Explaining Clauses of the Finance Bill 2017 restriction under section 269 ST is put only on receipt of money and not on anything in kind .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, Finance Bill 2017 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 **i**s in respect of money only**.**

- **.At the time of selling of immovable property, old furniture, geyser, AC, fridge etc are also sold to the buyer by way of an agreement separate from the sale deed. These assets are sold for total consideration of Rs. 2,50,000/- and cash is received. Whether 269ST would be violated?**

Yes, this cash receipt would be in violation of Section 269ST and penalty under section 271DA would be levied. However, if these items are sold cumulatively with the sale deed of immovable property and no separate agreement is made for these items, then in such cases, Section 269SS would come into play and the limit of Rs. 20,000 would apply as against the limit of Rs. 2,00,000/-.

Disallowance u/s 40A(3) vs Restrictions on cash u/s 269ST

Example: Five separate invoices of Rs. 60,000 each were issued to a customer. The customer intends to make cash payment in installments of Rs. 10,000 each on daily basis. State the applicability of Sec 269ST and 40A(3)?

As per sec 40A(3), if any payment is made by an assessee to a person in a day above Rs.10,000, other than by account payee cheque/ draft or ECS through bank account, then expenditure shall be disallowed i.e the expenditure shall not be allowed as deduction. For this reason, generally cash payments by debtors to any person are made up to Rs.10,000 only per day. But this restriction applies only to a person who is making payment for business purposes (or for any expenditure by a charitable/ religious trust). If any expenditure is incurred by assessee for personal purpose, then he can make payment above Rs. 10,000 in cash in a day. Further, this does not bind the recipient i.e. shopkeeper to accept only up to Rs. 10,000 per day from any customer. He can accept up to Rs. 1,99,999 in a day from any customer as per the provisions of sec 269ST of the Act.

As per sec 269ST, Rs 2 Lakh or more cannot be respected by any mode other than account payee cheque/ draft/ ECS in respect of a single transaction. In this case the recipient can accept up to Rs. 1,99,999 per day from the customer as each invoice is less than Rs. 2 Lakh. However, the customer has to examine the applicability and impact of sec 40A (3)

The provisions of second circumstance of sec 269ST of the Act envisage that no single transaction should exceed the specified limit. Although each of such receipts on daily basis are within the prohibited limit and not covered by the first circumstance, such receipts would fall under the prohibited category as they pertain to a single transaction**.** 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 sec 269ST. Therefore, it is a general practice to make payments of Rs 10000 or less on several days in relation to a single transaction so as to remain outside the purview of section 40A(3). But in case of a buyer who is also a

trader the provisions of sec 40A(3) shall be applicable and any payment above Rs. 10,000 in cash to a person in a day shall be disallowed. But if a trader issues invoices of Rs. 2,00,000 or more, the aggregate payments which can be received against these invoices is Rs. 1,99,999.

The above provisions of sec 40A(3) and sec 269ST are very well explained in the following table.

Invoice Date	Invoice Amount	Maximum Daily Cash Payment by Buyer Sec 40A(3)	Aggregate Maximum cash which can be Received by seller against this Invoice (sec 269ST)	Balance By Cheque/ Draft/ ECS
01/04/2020	Rs 2,90,000	Rs. 10,000	Rs. 1,99,999	Rs. 90,001
15/04/2020	Rs. 1,70,000	Rs. 10,000	Rs. 1,70,000	Nil

Disclosures in Tax Audit Report

S. No. 31(ba) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST(i.e, 200000 for AY 2018-19, 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, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account

S. No. 31(bb) - Particulars of each receipt in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/- for AY 2018-19), 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 occasions from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year

CLAUSE 31 (bb)

Particulars Of Each Receipt Made In An Amount Exceeding Limit Specified In Section 269t In Aggregate To A Person In A Day Or In Respect Of A Single Transaction Or In Respect Of Transactions Relating To One Event Or Occasion To A Perason Otherwise Than By A Cheque Or Bank Draft Or Use Of Electronic Clearing System Through A Bank Account During The Previous Year

NAME OF THE PAYER	ADDRESS OF THE PAYER	PAN	AMOUNT OF RECEIPT

S. No. 31(bc) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (i.e, Rs. 200000/- for AY 2018-19, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion to a person, during the previous year, where such payment is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account

Sub clause (ba) and (bb) were for receipt of money in contravention of s. 269ST. This clause is for reporting of PAYMENT of money in contravention of s. 269ST. There is no penalty on the assessee u/s 271DA for payment, as the same is only on the receiver, yet this information is sought by the department to take appropriate action on the receiver. However, if the payment is related to expenditure, then the same will also be mentioned in clause 21(d) i.e. disallowance u/s 40A(3) or 40A(3A)

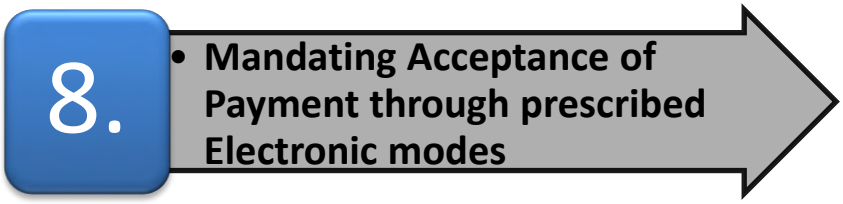
CLAUSE 31 (bc)

Particulars Of Each Payment Made In An Amount Exceeding Limit Specified In Section 269t In Aggregate To A Person In A Day Or In Respect Of A Single Transaction Or In Respect Of Transactions Relating To One Event Or Occasion To A Perason Otherwise Than By A Cheque Or Bank Draft Or Use Of Electronic Clearing System Through A Bank Account During The Previous Year

NAME, ADDRESS AND PAN (IF AVAILABLE) OF THE PAYEE	NAME OF TRANSACTION	AMOUNT OF RECEIPT	DATE OF RECEIPT

S. No. 31(bd) - Particulars of each payment in an amount exceeding the limit specified in section 269ST (Rs.2,00,000/- for AY 2018-19), in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, paid by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year

- The note under sub-clauses 31(ba), (bb), (bc) and (bd) does not specifically refer to receipt by or payment to Government. Considering the provisions of the section, particulars of the payments made to the government need not be included under sub-clauses (bc) and (bd) and a suitable note may be given to the effect that details of payments made to Government have not been included in the particulars.
- Section 269ST does not distinguish between receipt on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses
- The tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts or payments, as the case may be, otherwise than by the modes specified in this section received/made in respect of a single transaction and verify if the aggregate amount exceeds the limits specified in section 269ST



INTRODUCTION

The Indian Government launched the Digital India campaign to make available government services to citizens electronically by online infrastructure improvement and also by enhancing internet connectivity. It also aims to empower the country digitally in the domain of technology. Prime Minister Narendra Modi launched this campaign on 1st July 2015.

For this very reason The government of India has introduced many new changes in the existing system of Indian Economy and the introduction of section 269SU in The Finance (No. 2) Act, 2019 which required every person with a business turnover, sales or gross receipts exceeding Rs. 50 crores to mandatorily provide facilities for accepting payments through prescribed electronic modes is one of the most effective measure to promoted digitalisation in a developing country like India.

Now the first question to be addressed is what are the prescribed electronic methods of payment The CBDT vide its **Notification [No.105/2019/F. No. 370142/35/2019-TPL]** dated **30th December 2019** has prescribed such electronic modes, which needs to be provided from 1 January 2020.

The first option is payment through *Debit Card* powered by RuPay followed by Unified Payments Interface *(UPI) (BHIM-UPI)*; and Unified Payments Interface Quick Response Code (UPI QR Code) *(BHIM-UPI QR Code).*

The next question would be the meaning of turnover in this provision In the statement issued by ICAI on the **companies (Auditors' Report) Order 2016** the word '**turnover**' has been defined as under-

"The term 'turnover' for the purposes of this clause may be interpreted to mean the aggregate amount for which sales are affected or services rendered by an enterprises"

Unless the CBDT clarifies its stand on this matter, it would be **appropriate to ignore the amount of GST** while calculating the gross turnover or gross receipts.

APPLICABILITY OF THE PROVISIONS OF SECTION 269SU

The **applicability of the provisions of section 269SU** to those business entities who do not receive payments from retail customers was always in question. This is because it is not practical to receive payments from customers by B2B enterprises since they are distant and large customers who prefer to make payment by banking channels like NEFT/RTGS rather than by debit cards or BHIM/UPI which are primarily meant for payment modes by individual and retail customers. Further, there are restrictions on amount and number of transactions on cards and UPI and other prescribed modes of payments.

Since section 269SU did not provide any exemption for any entities rather was made applicable to all, it was unnecessarily increasing the cost of compliances for B2B entities. Those entities had to compulsorily comply with the provisions of section 269SU without any purposeful use since violation of section 269SU attracts a penalty of Rs 5,000 for each day of default. Many businesses were forced to install such payment facilities, even though such facilities were never supposed to be used for such businesses, considering the nature of business or customer base.

It has also stated that this clarification is based on the representations that have been received by it, stating that the requirement of the mandatory facility for payments through the prescribed electronic modes is generally applicable in B2C (Business to Consumer) businesses, which directly deal with retail customers. Moreover, since the prescribed electronic modes have a maximum payment limit per transaction or per day they are not so relevant to B2B (Business to Business) businesses, which generally receive large payments through other electronic modes of payment such as NEFT or RTGS.

Mandating such businesses to provide the facility for accepting payments through prescribed electronic modes would cause administrative inconvenience and impose additional costs, the CBDT clarification added.

EXEMPTION

From the above clarification, it must be borne in mind that the exemption from applicability of provisions of section 269SU is not a blanket one but conditional.
Exception from the applicability of installation of prescribed modes of payments from section 269SU is available in the following cases-

1. The exception is applicable only to a specified person having only B2B transactions.

2. At least 95% of the aggregate of all amounts received during the previous year, including the amount received for sales, turnover or gross receipts, are by other than cash.

If both the conditions are satisfied then only the B2B businesses are exempt from the applicability of section 269SU.

B2B are those enterprises which have no transaction with retail customers/consumers. The receipt of the 95 per cent threshold is not limited to receipt from sales or turnover only. It covers all the receipts of the entity like receipt of loans, credits, capital contribution in the firm, etc. However, the restriction is limited to receipts in cash only and does not cover payments in cash. Further, in case, a B2B entity also carries on retail business, then it has to implement and install the prescribed mode of payments. However, this condition does not mean that there is a ban on cash transactions completely.

Recently, CBDT has notified other electronic modes of payments under the Income Tax Act, 1961 vide Notification No. 08/2020 dated 29.01.2020 and inserted new Rule 6ABBA to prescribe for other electronic modes of payments as prescribed for certain sections of the Act as per amendments introduced by the Finance Act, 2019.

Circular No. 12/2020 clarified that the provisions of section 269SU of the Act shall not be applicable to a specified person having only B2B transactions (i.e. no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by other than cash.

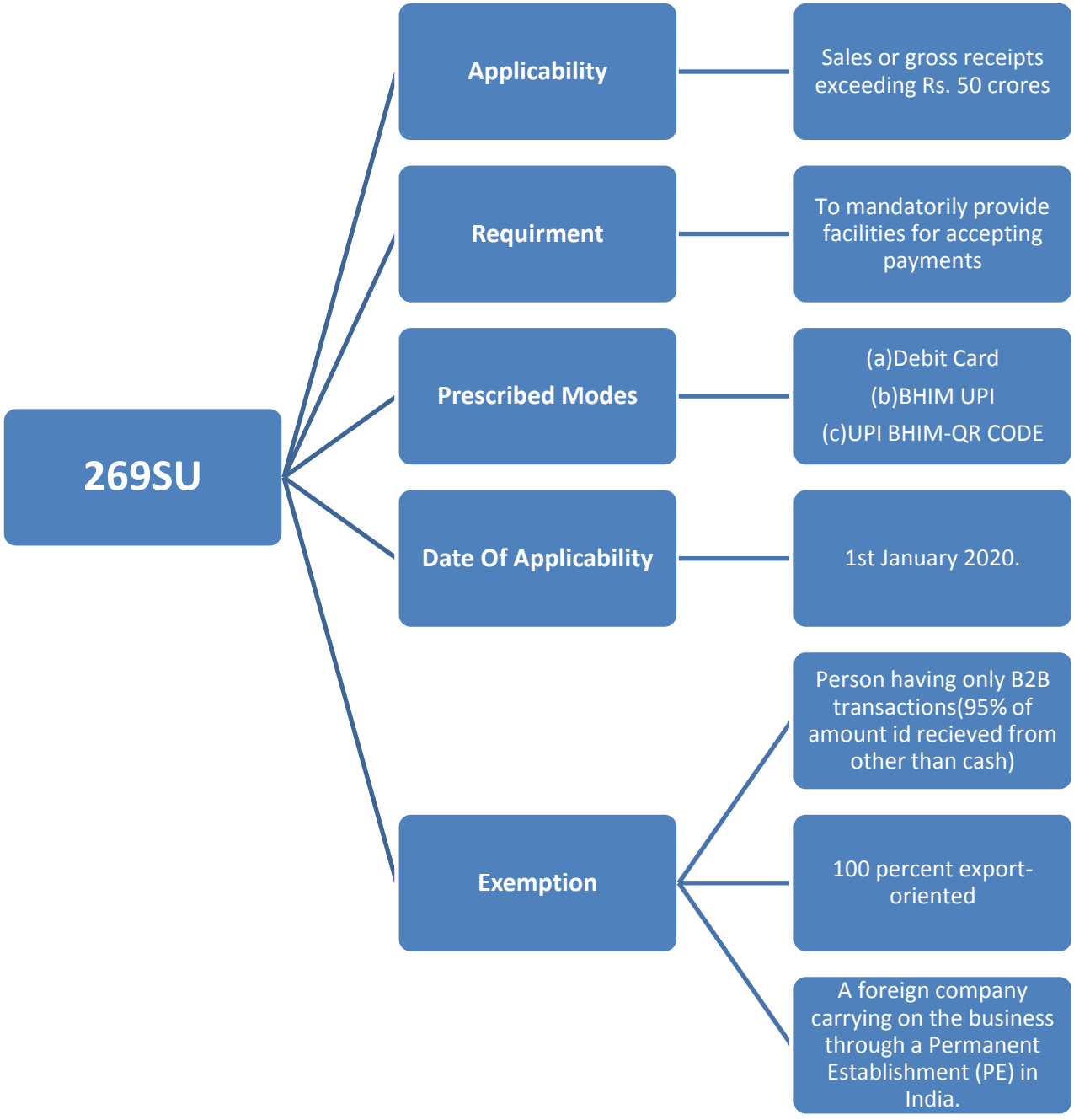
- an assessee which is 100 percent export-oriented (i.e. no domestic sales, and therefore, all payments will always be received through normal banking channels); and
- a foreign company carrying on the business through a Permanent Establishment (PE) in India.

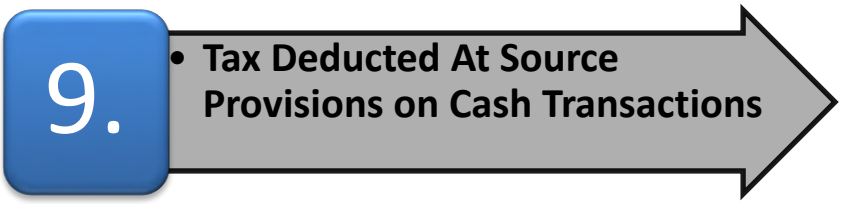
PENALTY

The Penal provision for non-compliance of Section 269SU is covered by Section 271DB.

As per Section 271DB, if the above provision not fulfilled w.e.f. 01.02.2020 penalty of 5,000/- per day would be levied after 01st Feb 2020.

However, if the business fulfilled the criteria of install or operationalizes Digital payment system till 31st January 2020 so the penalty would not be levied.


269SU
Applicability
Sales or gross receipts exceeding Rs. 50 crores
Requirment
To mandatorily provide facilities for accepting payments
Prescribed Modes
(a)Debit Card
(b)BHIM UPI
(c)UPI BHIM-QR CODE
Date Of Applicability
1st January 2020.
Exemption
Person having only B2B transactions(95% of amount id recieved from other than cash)
100 percent export-oriented
A foreign company carrying on the business through a Permanent Establishment (PE) in India.



Section 194N – TDS on cash withdrawal from banks/post offices

[Applicable from September 1, 2019]

194N. *Every person, being,—*

*(*i*) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);*

*(*ii*) a co-operative society engaged in carrying on the business of banking; or*

*(*iii*) a post office,*

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax:

Provided *that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—*

*(*i*) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and*

*(*ii*) the deduction shall be—*

*(*a*) an amount equal to two per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or*

*(*b*) an amount equal to five per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:*

Provided further *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:*

Provided also *that nothing contained in this section shall apply to any payment made to—*

*(*i*) the Government;*

(ii) *any banking company or co-operative society engaged in carrying on the business of banking or a post office;*

(iii) *any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);*

(iv) *any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):*

Provided also *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification.***]**

1. Who is responsible to deduct tax u/s 194N?

Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it .

2. Who is the Payee?

TDS deduction on cash withdrawal u/s 194N is applicable to all taxpayers, including

- An Individual
- A Hindu Undivided Family (HUF)
- A Company
- A partnership firm or an LLP
- A local authority
- An Association of Person (AOPs) or Body of Individuals (BOIs)

3. Are there any exemptions to TDS on cash withdrawal u/s 194N?

No tax shall be deducted if amount is withdrawn from the bank or post office by following recipients:

1. Central or State Government
2. Banks
3. Co-op. Banks
4. Post Office

5. Banking correspondents
6. White label ATM operators
7. Other persons notified by the Govt. in consultation with the RBI

4. When to Deduct TDS under Section 194N?

At the time of payment of such sum

5. Rate & Threshold limit of TDS under Section 194N

(i) If an individual receiving the money has filed income tax return for any of the three years immediately preceding the year, then TDS to be deducted is an amount equal to two per cent of withdrawal sum exceeding one crore rupees

(ii) If an individual receiving the money has not filed income tax return for all the three years immediately preceding the year, then the TDS is 2% on the cash payments/withdrawals of more than Rs 20 lakh and up to Rs 1 crore, and 5% for withdrawal exceeding Rs 1 crore. (Amendment w.e.f 01.07.2020)

6. Is this section applicable to Non-resident?

The section applies to cash withdrawals made by resident as well as Non-resident. Therefore, if a NRI withdraws an amount of ₹ 150 lakhs on 15.02.2020 from his NRE Account maintained in India, the bank shall deduct TDS of ₹1,00,000.

7. Applicability of section when amount is withdrawn from one or more account maintained with same bank/cooperative bank?

Date of cash withdrawn	Cash withdrawn from saving account	Cash withdrawn from current account
01-04-2019	20,00,000	20,00,000
05-07-2019	5,00,000	10,00,000
31-08-2019	4,00,000	25,00,000
01-09-2019	50,00,000	45,00,000
01-03-2020	65,00,000	20,00,000
Total amount withdrawn In Financial Year 2019-20		
Up to 31-08-2019	29,00,000	55,00,000
From 01-09-2019 onwards	1,15,00,000	65,00,000
Tax to be deducted	328000{ (26400000-10000000)*2%}	

As Section 194N has been inserted in Income-tax Act with effect from 01-09 2019, the tax shall be required to be deducted only after the said date. However, for the purpose of calculation of threshold limit of ₹ 1 crore, the aggregate amount of cash withdrawn from one or more accounts during the previous year shall be considered.

8. Applicability of section when amount is withdrawn from different branches of same bank?

The limit of Rs 1 crore has to be seen for cash withdrawals made from all branches of a bank.

Illustration-

ABC LTD has withdrawn cash from following branches of Bank of India during the financial year on -

Dates	Branch	Amount
01.07.2019	Delhi Branch	₹70Lakhs
01.10.2019	Kolkata Branch	₹80Lakhs
01.12.2019	Chandigarh Branch	₹90Lakhs

In this case the bank shall deduct TDS on 01.10.2019 at the rate of 2% on ₹50,00,000/- (1.50 crores –1 crore) i.e.₹1,00,000/- from the payment of ₹80,00,000/-.

Similarly bank shall deduct TDS on 01.12.2019 at the rate of 2% on ₹90,00,000/- i.e.₹1,80,000/- from the payment of ₹90,00,000/-.

9. Applicability of section when amount is withdrawn from different banks?

The cash withdrawals from two different banks shall not be aggregated for the limit of ₹ 1 Crore.

Illustration-

ABC LTD has withdrawn cash from following Banks during the financial year on –

Dates	Bank	Amount
01.07.2019	HDFC BANK	₹70Lakhs
01.08.2019	SBI BANK	₹70Lakhs
01.12.2019	BANK OF INDIA	₹70Lakhs

In this case neither of the banks is liable to deduct TDS under Section 194N.

10. Applicability of Section when assessee has not filed return in previous three Assessment Years

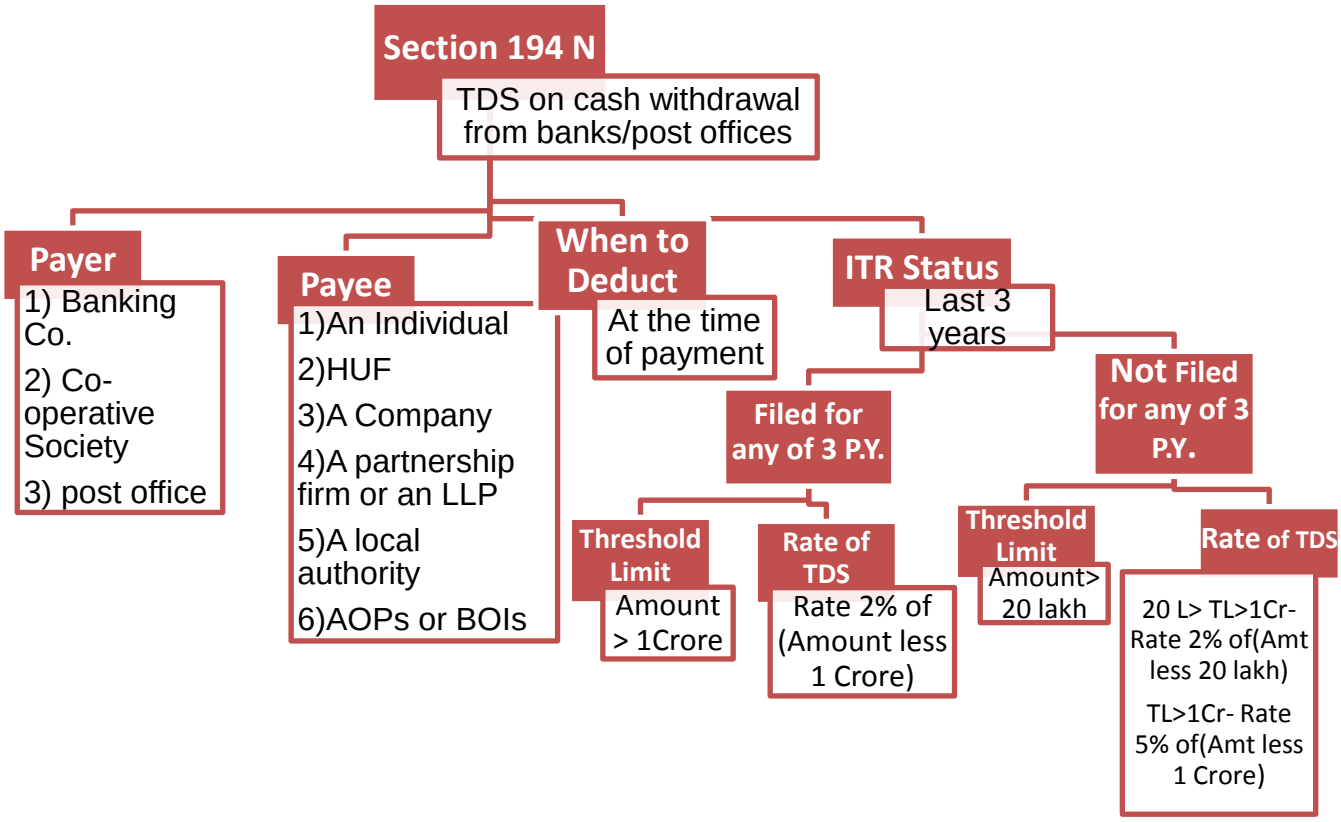
<u>Illustration</u>- Mr. Y -Not Filed his returns for 3 preceding Assessment years 2019-20, 2018- 19 & 2017-18. Mr. Y has withdrawn cash from the bank in following installments-

Date	Amount Withdrawn
30 April	10 Lakh
31 May	15 Lakh
31 July	25 Lakh
30 Sept	80 Lakh

In the present case scenario, no TDS will be deducted by bank on withdrawal of amount on 30 April & 31 May because the aggregate of the said amounts does not exceed Rs.1 Crore and there is no applicability of Section if aggregate withdrawal not crosses the limit of Rs. 1 Crore.

Bank is liable to deduct TDS on withdrawal of amount of Rs. 30 Lakh on 31 July because the aggregate of the said amounts (i.e.50 Lakh) during the financial year 2020-21 is exceeding the limit of Rs. 20 Lakh. Bank shall deduct TDS on 31.07.2020 at the rate of 2% on ₹30, 00,000/- i.e.₹60,000/- from the payment of ₹2500000/-.

On 30 September, bank shall deduct TDS on 30.07.2020 at the rate of 2% on ₹50, 00,000/- i.e.₹1,00,000/- and at the rate of 5% on ₹30, 00,000/- i.e ₹1, 50,000 from the payment of ₹80, 00,000/-.


Section 194 N
TDS on cash withdrawal from banks/post offices
Payer
1) Banking Co.
2) Co-operative Society
3) post office
Payee
1)An Individual
2)HUF
3)A Company
4)A partnership firm or an LLP
5)A local authority
6)AOPs or BOIs
When to Deduct
At the time of payment
ITR Status
Last 3 years
Filed for any of 3 P.Y.
Threshold Limit
Amount > 1Crore
Rate of TDS
Rate 2% of (Amount less 1 Crore)
Not Filed for any of 3 P.Y.
Threshold Limit
Amount> 20 lakh
Rate of TDS
20 L> TL>1Cr- Rate 2% of(Amt less 20 lakh)
TL>1Cr- Rate 5% of(Amt less 1 Crore)

In India, a large population is engaged in the agriculture sector and there are numerous transactions regarding sale and purchase of agriculture produce. The farmers sell their agriculture produce to Pacca Arahtias i.e. traders through kachha Arahtias. Kachha arahtia are commission agents and are only facilitators of auctions/sales of agricultural produce, which farmers bring to mandi for sale. They act as an agent in between pacca arahtia and farmers and safegaurd the interests of farmers, who are otherwise illiterate, naive and thus, vulnerable to be exploited by way of cheap returns, and default/delay in recovery of sale consideration. As kachha arahtia are commission agents between farmers and pacca arahtias dealing in different commodities in different parts of country and the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtia. In case of Pacca arahtia i.e the trader, his turnover will be taken into consideration for the purposes of sec 44AB of the Act. At the same time, a Kachha Arahtia receives commission from Pacca Arahtia to ensure delivery of agricultural produce to Pacca Arahtia, and to ensure delivery of sale consideration to the farmers, in this case commission received by the kachha arahtia is taken as turnover for the purposes of sec 44AB of the Act.

Now a question arises what is difference between kachha arahtias and pacca arahtias. The difference between kachha & pacca arahtias can be understood by **t**he circular by C.B.D.T. in Circular No.452 dated 17-03-1986.

(*i*) A kachha arahtia acts only as an agent to his constituent and never act as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods on his personal accounts and thus he acts as a principal as regards his constituent;

(*ii*) A kachha arahtia brings a privity of contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable person upon the contract not only to the third party but also to his constituent;

(*iii*) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he had entered into a contract on his behalf.

(*iv*) The remuneration of kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia;

(*v*) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods;

(*vi*) The kachha arahtia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agency's charges and certain out of pocket expenses where as a pacca arahtia has a personal interest of his own when he enters into a transaction;

(*vii*) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.

Due to the restrictions on cash transactions imposed by the government, there is a confusion amongst these agriculturist people regarding the cash receipts from the sale of agriculture produce. In this write up we are discussing different situations for the cash payments for agriculture produce within the framework of law.

1. Whether cash Payments exceeding Rs.10000/- to farmers on account of agriculture produce by Kachha Arahtia can be disallowed?

The provisions of section 40A(3) provide for the disallowance of expenditure exceeding Rs.10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which *inter alia*, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.
Further, section 269ST, subject to certain exceptions, prohibits receipt of ` 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ` 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.
Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ` 2 lakh or less.
In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ` 2 lakh will not -
a) result in any disallowance of expenditure under section 40A(3) in the case of trader.

b) attract prohibition under section 269ST in the case of the cultivator; and

c) require the cultivator to quote his PAN/ or furnish Form No. 60.
The same has been held in the following judicial prononcements
In *CIT v. Pehlaj Raj Daryanmmal – 190 ITR 242,* it was held that the words cultivator, grower or producer occurring at the end of Rule 6DD – Clause, qualify the word occurring all the preceding clauses. Thus, the exemption is confined to grower or producer of forest produce and not available for purchases from others
Krishnasa Bhute Vs ITO (ITAT Bangalore) All ITAT (6826) ITAT Bangalore (357)

2. Where assessee purchased agricultural produce from farmers through kachha arathia who charged their commission for facilitating said transaction of sale and purchase, payments made to kachha arahtia exceeding Rs. 10,000 in cash could not be disallowed by invoking provisions of section 40A(3)

It is a very interesting issue, whether cash payments exceeding Rs. 10,000 made by pacca kachha to kachha arahtia be allowed or disallowed u/s 40A(3) of the Act. In this connection ,it is to be noted that the pucca arahtia have made purchases through 'kachcha arhatia', who are agents for their farmers constituent.The pacca arahtia make payments for these purchases either in cash or by banking channel system.But in some cases, kachha arahtia do not accept cheques payments, as they have to deliver cash payments to the respective farmers and hence payments are made in cash under the bonafide belief that the payments were covered under sec 40A(3) read with rule 6DD. In such a situation,the issue under consideration is whether cash payments exceeding Rs.10000/-made by pucca arahtia to kachha arahtia are allowed u/s 40A(3) of the Act.?

Regarding the issue of applicability of provisions of section 40A (3) read with rule 6DD, following are some important points to be considered.

(*a*) There is a world of difference between status and role of a Kachha Arahtia, and that of a Pacca Arahtia/wholesaler. Although both are called and termed Arahtia; these two cannot be equated at all.

Kachha Arahtias do not trade; they are only facilitators of auctions/sales of agricultural produce, which farmers bring to mandi and, thus Kachha Arahtia are only agents for farmers. Kachha Arahtia is to safeguard the interests of farmers, who are otherwise less educated, naive and thus, vulnerable to be exploited by way of cheap returns, and default/delay in recovery of sale consideration.

At the same time, a Kachha Arahtia receives commission from Pacca Arahtia, ensures delivery of agricultural produce to Pacca Arahtia, and ensures delivery of sale consideration to the farmers. In this way, Kachha Arahtia acts as agent for Pacca Arahtia also.

(*b*) The kachha arahtia receives the payment from the pucca arahtia and pass on in Toto, to the respective farmers and pucca arahtia pays commission and brokerage to kachha arahtias as per specific guidelines and rates laid down by the government.

Kachha arahtias receive cash payments from the assessee, on behalf of the farmers. They keep their commission and brokerage, and disburse the purchase consideration to respective farmers.The kachha arahtia to whom cash payments have been made by the assessee for the impugned purchases, are del credre agents who are acting as agent, not only for the farmers, but, also for the pacca arahtias/wholesalers like the assessee; they receive commission from the assessee for such kind of mediating services and they are bringing privity of contract between the farmers and the assessee so that each

becomes liable to the other; they are communicating name of the pacca arahtia to the farmers and thus they are acting as an agent of pacca arahtia also.In this connection,firstly we must see the meaning of agent.

Received from an agent

1. Representing recipient – receipt from own agent is receipt from self. Section 269ST is not attracted

2. Representing payer – receipt from agent of a payer is like receipt from payer. Section 269ST is attracted

From the above it is evident that any agent who acts on behalf of the recipient, he steps into the shoes of the recipient and the same provisions of the act be applicable as in the case of the recipient of the payment. In the present case, recipient is the farmer whose payment for agriculture produce is being paid by pacca arahtia to his agent i.e. kachha arahtia in cash. The kachha arahtia is receiving the payment on behalf of the farmers for further submission to them. In case where payment is received by the agent on behalf of his principal in cash, the provisions of the Act shall be applicable to the principal. But in this case the cash payment has been made in cash by pacca arahtia to kachha arahtia which is covered by the provisions of Sec. 40A(3) of the Act read with Rule 6DD. 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 the capacity of holder of POA is different from the payment made in his own capacity. Therefore, Section 40A(3) of the Act does not apply as the cash paid in each circumstance does not exceed the limit of Rs. 10,000/-. The same has been held in the following judicial prononcements:

- Sunil Kumar Agarwal, Aligarh vs Department Of Income Tax on 3 January, 2013
  ITAT AGRA No. 319/Agra/2009
- In *Anurag Radheshyam Attal V. ITO – 69 Taxmann.com 324*

3. Whether unpaid payment by kachha arahtia can be considered as Deposit?

Where a 'Kachha Arahtia' sells goods belonging to an agriculturist, the sale proceeds thereof which remain with him cannot be regarded as a deposit made by the agriculturists with the 'Kachha Arahtia'. Further, whether the 'Kachha Arahtia' remits only a part of the sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269T of the Act. However, such unremitted sale proceeds would assume the character of a deposit if the amount is retained by the 'Kachha Arahtia' in pursuance of a direction in this regard by the agriculturist, irrespective of whether the amount is retained in the same account or transferred to different accounts and irrespective of whether the directions are to call it a deposit or just to retain the same

for future payment. The repayment in such cases will be covered under section 269T of the Act .

4. Applicability of sec 269ST in case of kachha arahtia and pacca arahtia.

To resolve this issue, we need to know whether the agent is representing recipient or representing the payer. In case, the agent is representing recipient, receipt from own agent is receipt from self. Section 269ST is not attracted. In case, the agent is representing the payer, receipt from agent of a payer is like receipt from payer. In this case provisions of section 269ST are attracted.

Now a question arises whether the provisions of sec 269ST are applicable in the case of payment received through an agent.In this connection it is to be noted that when your agent receives from a third party on your behalf, it tantamounts to receipt by you and sec 269ST is attracted and subsequent payment by agent to you is not a receipt and hence sec 269ST is not applicable.

Example: If a person who holds a Power of Attorney ('PoA') 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 the 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/-.

5. Whether the provisions of Sec 194N applicable on Agriculture Produce Market Committee (APMC)

The commission agents/ traders in Agriculture Produce Market Committees withdraw cash from the bank account to make payments to farmers. To give relief to the rural economy, the government has exempted agriculture produce marketing committees (APMCs) from the purview of the 2% tax deducted at source (TDS) on payments above ₹1 crore. The government has tried to save these agents/ traders from any genuine hardships. The copy of circular is reproduced here:

In exercise of the powers conferred by clause (v) of the proviso to section 194N of the Income-tax Act, 1961 (43 of 1961), the Central Government after consultation with the

Reserve Bank of India, hereby specifies the commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through which he wishes to withdraw cash in excess of rupees one crore in the previous year along with his **Permanent Account Number (PAN)** and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of rupees one crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose necessary evidences have been collected and placed on record.

6. Applicability of sec 269SS in case of Agriculturists

Sec 269SS imposes restrictions on acceptance of cash loans/ deposits/ specified sums in excess of Rs. 20,000

The proviso to sec 269SS provides "***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."*

It specifies that acceptance of deposit/ loan /specified sum shall not attract provisions of sec 269SS where both the parties are agriculturists and both have income below basic exemption limit

Example: Mr. Lal Singh purchased an agriculture land for Rs. 1,80,000 in cash from Mr. Nijjar Singh. Both of them are agriculturists and none of them have income exceeding the basic exemption limit. Whether sec 269SS be applicable on them and whether penalty u/s 271D will be imposed on them?

Whether the answer will remain same if the land is other than agriculture land?

Whether the answer will remain same if land is purchased for Rs. 5,00,000?

Answer: Sec 269SS deals with receipt of specified sum. Explanation to the section provides the meaning of specified sum *"means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the*

transfer takes place." It covers not only advance related to immoveable property, but also money received at time of transfer of property.

However, as both Mr. Lal Singh and Mr. Nijjar Singh are agriculturists and both have income below basic exemption limit, sec 269SS shall not be applicable on them. Mr. Nijjar Singh have received 'specified sum' other than account payee cheque/ draft or ECS. But this will not amount to violation of sec 269SS and hence, penalty u/s 271D shall not be imposed.

The answer would remain same even if the land is other than agriculture land because the exemption provided is not related to type of property. Rather, the exemption is for the agriculturists. Therefore, sec 269SS will not be applicable in this case.

If the consideration for the land is Rs. 5,00,000 the answer will still remain same. However, in this case sec 269ST will be applicable. Sec 269ST provides that

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

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

Sec 269ST is not applicable on the transactions which are covered by sec 269SS. The transaction between two agriculturists who are having income below taxable limit is not covered by sec 269SS and hence sec 269ST shall be applicable on it.

As cash received by Mr. Nijjar singh exceeds Rs. 2,00,000, provisions of sec 269ST are violated. Penalty amounting to Rs. 5,00,000 shall be imposed u/s 271DA.

7.Applicability of sec 269T in case of Agriculturists

Sec 269T imposes restrictions on repayment of loans/ deposits/ specified sum other than by A/c Payee cheque, bank draft/ ECS.

The exemption provided to agriculturists u/s 269SS is not applicable in case of sec 269T. Any repayment in violation of sec 269T by agriculturists having income below basic exemption limit shall lead to imposition of penalty u/s 271E. Therefore, if any outstanding balance including interest on account of loan/ deposit/ specified sum is Rs. 20,000 or more, repayment can be made only by A/c Payee Cheque/ Bank Draft/ ECS.

Example: Suppose in above example of Mr. Lal singh and Mr. Nijjar Singh, Mr. Lal Singh has paid advance of Rs. 1,70,000 to Mr. Nijjar Singh for purchase of another property. Sec 269SS shall not be applicable on Mr. Nijjar Singh.
Later the deal between them has been cancelled. Now Mr. Nijjar Singh returned Rs.1,70,000 to Mr. Lal Singh in cash. Mr. Nijjar singh has violated sec 269T as the outstanding balance on account of specified sum on the date of repayment is more than

Rs. 20,000. There is no exemption to agriculturists on repayment of specified sum. Hence penalty of Rs. 1,70,000 u/s 271E shall be imposed on Mr. Nijjar singh.

8.Whether disallowance will be made if any cash payment made excess of Rs. 10000 to producers of animal husbandry , livestock & meat?

- Product of animal husbandry-If payment exceeding Rs. 10,000 is made to a producer of the products of animal husbandry (including livestock, meat, hides and skins) otherwise than by an account payee cheque or draft for the purchase of such produce, no disallowance should be attracted under section 40A(3). This exception is, however, not be available on the payment for the purchase of livestock, meat, hides and skins from a person who is not proved to be the producer of these goods and is only a trader, broker or any other middleman by whatever name called-Circular No.4/2006 dated March 29, 2006.
- Purchase of animals - Any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as producer of livestock and meat. The exemption is subject to the following conditions

1. A declaration from the person receiving the payment that he is a producer of meat:
3. A confirmation that the payment, otherwise than by an account payee cheque or account payee bank draft, was made on his insistence; and
4. A further confirmation from a veterinary doctor certifying that the person specified in the certificate is a producer of meat and that slaughtering was done under his supervision-Circular No.8/2006, dated October 6, 2006.

9.Whether the benefit of adoption of stamp duty value on date of agreement is available in case payment is received in cash by an agriculturist from an agriculturist, where both of them have income below basic exemption limit?

It is to be noted that the provisions of sec 269SS i.e acceptance of loan/ deposits/ specified sum of Rs. 20,000 or more shall not be attracted where both the parties are agriculturists and both of them have income below basic exemption limit. Amount in cash up to Rs. 1,99,999 can be accepted for transfer of immovable property. Now a question arises, that if an abovesaid agriculturist has entered into an agreement for purchase/ sale of immovable property and earnest money less than Rs. 2,00,000 is being paid in cash, whether benefit of adoption of stamp duty value on date of agreement available? From the literal interpretation of sec 43CA, 50C and 56(2)(x), the option to adopt stamp duty value on date of agreement is not available as payment is by mode other than the specified mode.

Introduction

A charitable or religious institution has substantial source of receipts in form of donations. Such donations may be corpus or voluntary. The Income Tax Law provides blanket exemption to corpus contributions (received for a particular purpose such as for construction of a building) whereas it requires application of voluntary contributions in general for charitable or religious purposes.

Donations can also be bifurcated into anonymous and non-anonymous form i.e. a donation where donor identity is available and disclosure thereof, if required by the authorities is not denied can be termed non-anonymous donation whereas the other form in which anonymity of donor particulars' is maintained are called anonymous donation (*Gupt Daan*).

Restrictions on the Donor

Section 80G

It is only a charitable trust who can get registered under section 80G and provide receipts to the donors making them eligible to claim deduction under section 80G (in computation of donor's total income). Thus, religious trusts are not eligible for section 80G registration.

The Finance Act 2017 has amended the provisions of section 80G (5D) wef AY 2018-19 providing that "No deductions shall be allowed under this section in respect of donation of any sum exceeding **two thousand rupees** unless such sum is paid by any mode other than cash." Thus a person donating more than Rs. 2,000/- in cash on or after 01.04.2017 shall not be entitled to claim benefit of such deduction under section 80G. It is further to be noted that this limit is for donor and not for donee.

Example: If a person donates Rs. 1,000 each in cash to 5 trusts registered u/s 80G, he shall be eligible to claim deduction only for Rs. 2,000 and not for total Rs. 5,000.

If Rs. 5,000 is donated in cash to 1 trust registered u/s 80G, then no deduction shall be allowed u/s 80G.

For a charitable trust, there is no limit per donee or on aggregate basis on receipt of donation in cash. The only limit is that the aggregate anonymous donation (where records of identity of donor not available) should not exceed higher of Rs. 1,00,000 or 5% of total donations in a financial year.

The taxation of such donation in the hands of recipient charitable trust would depend on this fact even that whether donor identity is available with the trust or not.

Restrictions on the Donee i.e Trust

Taxation of Anonymous Donation

The taxability of anonymous donation is covered by the provisions of section 115BBC of the Income Tax Act 1961 attracting tax liability @ 30% depending on the status of trust being charitable or religious i.e. if a trust is a religious trust it need not pay tax per above section 115BBC whereas if it is a charitable trust the anonymous donations are taxable @30% (if anonymous donation exceeds- Rs. 1,00,000 or 5% of total donations whichever is higher)

"Anonymous donations" are not taxable under section 115BBC if

(i) Such donations are received by any trust / institution established wholly for religious purposes. Therefore, in case of a trust owning a temple, the offerings / donations made by the devotees etc. shall not be taxable under this section even if the names and addresses of donors are not available. Such donations shall be covered under section 11 and 12.

(ii) Such donations are received by any trust / institution established wholly for religious and charitable purposes. However such donations shall be taxable under section 115BBC if the anonymous donation is made specifically for any university / school / educational institution OR hospital / medical institution run by such trust or institution.

Where the total income of an assessee, being the person in receipt of income on behalf of; ¬ any university or other educational institution or any hospital or other institution referred to in Section 10(23C) or ¬ any trust or institution u/s 11 includes any income by way of any anonymous donation, the income tax payable shall be aggregate of:

(a) the amount of income-tax calculated at the rate of 30% on the aggregate of ANONYMOUS DONATIONS received in excess of -
5% of the total donations received by the assessee; OR
Rs. 1,00,000, WHICHEVER IS HIGHER, and
(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of the anonymous donations which is in

excess of the 5% of the total donations received by the assessee or ` 1,00,000, as the case may be.

NOTE: Anonymous donations which are taxable under section 115BBC shall not be entitled to exemption under section 11 and 12 as per provision of section 13(7). ¬ Anonymous donations which are not taxable under section 115BBC shall be taxable under the normal provisions subject to exemption under section 11 and 12.

ANALYSIS: Any donation received by trust or institution established: ¬

- Wholly for RELIGIOUS purpose – 115BBC NOT applicable, Section 11 & 12 shall apply. So, if any temple, gurdwara, mosque, Church, etc. owned by trust and donations received from devotees, without disclosing their names and address shall not be taxed under section 115BBC. ¬
- Wholly for CHARITABLE purpose – 115BBC applicable
- Partly for RELIGIOUS & Partly for CHARITABLE purpose - 115BBC NOT applicable. But where donation is made with specific direction that such donation is for any university / educational institutional hospital / medical institutional run by such trust / institution, then such anonymous donations is covered under section 115BBC and taxable at the rate of 30%.

NOTE: Sec. 13(7) provides that the exemption provided u/s 11 and 12 shall not be applicable for the anonymous donation chargeable to tax under section 115BBC.
ANALYSIS: For example, section 11(1)(d) of the Act provides that any income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of such trust/institution for charitable purposes. However, any anonymous donation received with a specific direction that it shall form part of the corpus of the trust/institution, would not be exempt by virtue of section 11(1)(d). It would be taxable at 30% as provided in section 115BBC.

Taxation of Non-Anonymous Donation

Any kind of non-anonymous donations received by a trust can be claimed exempt subject to the provisions of section 11 & 12 of the Income Tax Act 1961. In other words, a trust may accumulate 15% of such donations and required to apply remaining 85% for public charitable or public religious purposes. The law further provides exemption from tax if the conditions specified for deemed application or accumulation are duly satisfied.

It's important to note that anonymous donations received by religious trust which are not taxable as per section 115BBC are dealt at par level of non-anonymous donations for taxation of religious trusts.

Whether cash donations are anonymous donations:

Where the donor identity is available and can be disclosed, if required, even if such donation is received in cash it can't be called as anonymous donation. Therefore, treating cash donations as anonymous is not *prima-facie* correct proposition.

Applicability of section 269ST on cash donations

The Finance Act 2017 has inserted a new section 269ST in the Income Tax Law to restrict a person receiving Rs. 2 lakh or more in cash from a person in aggregate in a day or in respect of a single transaction or in respect of transactions relating to one even or occasion from a person. The contravention of such provision shall attract penalty under new section 271DA i.e. equivalent to the amount so received by the recipient.

Therefore, in case of receipt of cash donations by a trust (may be charitable or religious) if donations are found received in contravention of section 269ST then relevant trust shall be liable to attract penal consequences. Thus, a trust must be cautions that cash donations received by it should not fall under the ambit of section 269ST detailed above.

For example, a temple trust receiving cash amount of Rs. 3,50,000 from a donor towards 'Pooja' program can be said to be non-compliant for the purposes of section 269ST.

In such circumstances, it will be a herculean task for a trust to established that none of the total cash donations received during a particular financial year are in contravention of the provisions of section 269ST.

Restrictions on Payment of Expenditure

The Finance Act, 2018 has inserted Explanation 3 to Section 11(1). The said Explanation 3 provides as under

"For the purposes of determining the amount of application under clause (a) or clause (b), the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of Expenses or payments not deductible in certain circumstances section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

Thus, a new Explanation 3 has been inserted after section 11(1) with effect from assessment year 2019-20 to provide that for the purposes of determining the amount of application of income under section 11(1)(a)/(b), the provisions of section 40(a)(ia), and of section 40A(3)/(3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". Section 40(a)(ia) provides that in computation of profits and gains of business, 30% of any sum payable to a resident on which tax is not deducted/paid in accordance with the said section is not allowable as a deduction. Section 40A(3) provides that no deduction is allowable in computation of profits and gains in respect of cash payments exceeding Rs.10,000. Section 40A(3A) provides that if a deduction is allowed in year 1 on

mercantile basis and subsequently in year 2 the assessee makes cash payment, the payment so made shall be deemed to be profits and gains of business of year 2, if the payment exceeds Rs.10,000.

As per the Memorandum to the Finance Bill 2018, the Explanation is inserted to encourage cash less economy and curb generation of black money. The relevant extract is as under :

“At present, there are no restrictions on payments made in cash by charitable or religious trusts or institutions. There are also no checks on whether such trusts or institutions follow the provisions of deduction of tax at source under Chapter XVII-B of the Act. This has led to lack of an audit trail for verification of application of income.

Prior to insertion of Explanation 3, the department were making the provisions of section 40(a)(ia) and 40A(3) applicable to the trust. However, in following decisions it was held that said provisions were not applicable for computing income of the trust u/s 11 :

Bombay Stock Exchange Ltd. v. Dy. DIT [2015] 228 Taxman 195 (Mag.) (Bom);

Vidya Pratishthan v. Dy. CIT [2011] 44 SOT 90 (Pune) (URO);

ITO v. Mother Theresa Educational Society [2016] 68 taxmann.com 320 (Visakh)(Trib.);

ITO v. Haryana State Counseling Society [2016] 71 taxmann.com 274 (Chd)(Trib);

Kendriya Academy Vidhyalaya Shiksha Samiti v. Asstt. CIT [2016] 73 taxmann.com 391 (Jp)(Trib.);

ITO v. Kalinga Cultural Trust [2018] 61 ITR (Trib.) 24 (Hyd)

EXPLANATION 3 IS APPLICABLE PROSPECTIVELY

The Explanation is applicable from A.Y. 2019-2020 and subsequent years. Though the provisions of Section 40(a)(ia) and 40A(3) are made applicable to computation of Income u/s 11 by way of an explanation, it cannot be said that the explanation will be applicable retrospectively. This is because there is a presumption under the law that the amendment is prospective unless made applicable retrospectively. The Finance Act, 2018 itself states that the Explanation is applicable prospectively. Further, Section 40(a)(ia) and 40A(3) are specific disallowances only applicable for computing income under the Head profit and gains of business and profession and thus it could not have been presumed to be applicable to computation of income u/s 11 prior to insertion of Explanation 3.

MUTATIS-MUTANDIS

As per websters dictionary the expression "mutatis mutandis" means “with the necessary changes having been made” and/or “with the respective differences having been considered” . It means "with due alteration of details".

Thus, when a law directs that a provision made for a certain type of case shall apply mutatis mutandis in another type of case, it means that it shall apply with such changes as may be necessary, but not that even if no change be necessary, some change shall nevertheless be made. The phrase is an adverbial phrase, qualifying the verb "shall apply" and meaning "those changes being made which must be made". The phrase has

its own and usual meaning, viz., that only such verbal changes are to be made in the statute as would make the principles embodied therein applicable in respect of an application for reference. [See Paresh Chandra Chatterjee v. The State of Assam AIR 1962 SC 167 & Aparna Trading Corporation (I) Private Limited v. CCT (1982) 51 STC 199 (Cal)]
Thus, the expression permits due alteration of changes as may be necessary.

Applicability Of Explanation 3 To Capital Expenditure

The provisions of section 40(a)(ia) and 40A(3) are not applicable to capital expenditure as same is not claimed as a deduction while computing total income. This legal position has been laid down by several judicial precedents. As far as computation of income u/s 11 is concerned, it has been held that Capital Expenditure incurred towards the objects of the trust are allowed as application of Income. Thus, if the legal position existing u/s 40(a)(ia)/40A(3) is applied, then while computing income u/s 11, application of capital expenditure without deducting TDS or incurred in cash cannot be disallowed. However another view is also possible that as provisions of section 40(a)(ia)/40A(3) are applicable mutatis mutandis (ie with the necessary changes having been made and/or with the respective differences having been considered) capital expenditure incurred without complying with the provisions of Section 40(a)(ia) /40A(3) shall not be allowed as application of income.
A similar restriction has been provided by proviso in clause (23C) of section 10 so as to provide similar restrictions on the entities covered under item (a) of the third proviso which refer to only sub-clauses (iv), (v), (vi) or (via) of said clause in respect of application of income. Even the memorandum explaining the provisions speaks only about sub clauses (iv),(V),(vi) or (via). This means the proposed amendment will not apply to other fund/ institution/trust covered under sub-clauses (i) to (iiiae) of clause (23C) of section 10 since the amendment will apply only to sub-clause (iv) to (via).

The sub-clauses (i) to (iiiaaaa) are pertaining to certain funds created by the Central Government like Prime Minister, Chief Minister relief funds and such other funds. But sub-clause (iiiab), (iiiac) (iiiad) and (iiiae) are applicable to educational and medical institutions which are falling under certain criteria or within certain prescribe limits are fully exempted but these are not covered under the proposed amendment. The proposed amendment is applicable for determining the application of income which will be restricted to the extent of disallowance. The impact of these provisions will not be very effective since the whole income of the Trust even after the reduction in application of income will be exempt.

Receipt of Donation by Placing Collection Boxes by Religious & Charitable Trusts

Collection Boxes (Golaks) are generally placed at temples, gurdwaras, mosque, church etc. for collection of donations and contributions. Charitable Trusts owning hospitals,

schools etc. also have donation boxes at these institutions. At times, some of the donation boxes have an inscription or a sign nearby stating that the donation made in that particular box would be for a particular capital purpose, or that it is for the corpus of the trust. The issue here is whether these donations are voluntary contributions or will form part of corpus of fund and whether these receipts can be taxable as anonymous donations u/s 115BBC.

Different collection boxes with different inscriptions

The provisions are different for religious trusts and charitable trusts which are discussed as:

A. Wholly Religious Trusts: In case of donations received in collection boxes, it is not possible to maintain identity and record of the donors. These donations and contributions are anonymous donations as defined by sec 115BBC(3). However, the provisions of sec 115BBC i.e taxation of anonymous donations (in excess of higher of Rs. 1,00,000 or 5% of total donations) at the rate of 30% is not applicable to trusts which are established wholly for religious purposes. It is provided in sec 115BBC(2) that the provisions of taxation of anonymous donations shall not apply in case of wholly religious trusts.

In *Gurudev Siddha Peeth vs. ITO 59 taxmann.com 400*, the Mumbai bench of the Tribunal also held that amount of offerings put by various devotees in donation boxes of the assessee-trust, a sidh peeth/deity, could not be treated as anonymous donations taxable u/s. 115BBC merely on ground that assessee had not maintained any records of such offerings. According to the Tribunal, it is clear that the provisions of section 115BBC(1) will not apply to donations received by the assessee in donation boxes from numerous devotees who have offered the offerings on account of respect, esteem, regard, reference and their prayer for the deity/siddha peeth. Such type of offerings are made/put into the donation box by numerous visitors and it is generally not possible for

any such type of institutions to make and keep record of each of the donors, with his name, address *etc*.

B. **Wholly Charitable Trusts**: The donations received in collection boxes by wholly charitable trusts are anonymous donations as record of identity of donor is not maintained by the trust. As per sec 115BBC, anonymous donations are taxable at the rate of 30% of anonymous donations received in excess of higher of Rs. 1,00,000 or 5% of total donations.

However, in *DCIT vs. All India Pingalwara Charitable Society 67 taxmann.com 338,* the Amritsar bench of the Tribunal took a view that section 115BBC does not apply at all to box collections of genuine charitable trusts. According to the Tribunal, the object of the section was to catch the 'unaccounted money' which was brought in as tax free income in the hands of charitable trusts, and this section was never meant for taxing the petty charities. The Legislature intended to tax the unaccounted money or black money which was brought in the books of charitable trusts in bulk, and not to tax the small and general charities collected by genuine charitable trusts.

C. **Partly Religious & Partly Charitable Trust:** Sec 115BBC(2) provides that anonymous donations shall not be taxable for wholly religious & charitable trusts. However, if any anonymous donation is received with specific direction that such donation is for any university/ educational institution/ hospital/ medical institution run by such trust/ institution shall be taxable.

Example: A trust runs a temple and a hospital. Two collection boxes are placed in a temple. One of the boxes has an inscription that it is for temple and other has an inscription that it for hospital. The donations received in box with inscription that it is for temple shall not be taxable as anonymous donation whereas the collections in box with inscription that it is for hospital shall be taxable as anonymous donations.

Issue: Whether donations in collection boxes are voluntary contributions or will form part of corpus of fund?

Many times, some of the donation boxes have an inscription or a sign nearby stating that the donation made in that particular box would be for a particular capital purpose such as for construction of building, or that it is for the corpus of the trust.

We know that voluntary contributions received by a charitable or religious trust are taxable as its income, by virtue of the specific provisions of section 2(24)(iia) of the Income-tax Act, 1961, subject to exemption under sections 11 and 12. Section 12(1) provides that any voluntary contribution received by a trust created wholly for charitable or religious purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust), shall be deemed to be income derived from property held under trust wholly for charitable or religious purposes for the purposes of section 11. Section 11(1)(d) provides for a specific exemption for income in the form of voluntary contributions made with a specific direction that they shall form part of the

corpus of the trust. Therefore, on a comprehensive reading of sections 2(24), 11 and 12, it can be inferred that corpus donations are entitled to the benefit of exemption, irrespective of whether the trust has applied 85% of the corpus donations for charitable or religious purposes, or not. The issue has been considered at various judicial forums. The observations given are as under:

Shree Mahadevi Tirath Sharda Ma Seva Sangh's case

The issue came up before the Chandigarh bench of the tribunal in the case of *Shree Mahadevi Tirath Sharda Ma Seva Sangh vs. ADIT 133 TTJ 57(Chd.) (UO)*.

In the case, the assessee was a society registered under the Societies Registration Act, 1860 and u/s. 12AA of the Income-tax Act, 1961, running a temple, Vaishno Mata Temple, at Kullu. A resolution had been passed whereby the different boxes were decided to be kept in the temple premises for enabling the devotees to make donations according to their discretion. It included keeping of a box for collection of donations, which were to be used for undertaking construction of building. Any devotee/donor desirous of making a donation towards construction of buildings would put the money in this box. In the temple premises, donation boxes were kept with different objectives. One donation box was kept for "Construction of Building", and other boxes for donations meant for langar and general purposes. At specified intervals, the boxes were opened and the amounts collected were put into respective accounts. The donations were duly entered in either the building fund donation register or the normal donation account, and thereafter entered in the books of account accordingly.

The return of income was filed, claiming exemption for donations received in the box kept for donations for construction of building. The donations were reflected in the balance sheet under the head "Donation for Building Construction with Specific Directions from Individuals".

The assessing officer however, treated such donations of Rs. 40,55,480 as donations, and not as receipts towards corpus, and included the donations in the total income liable to tax. It was done on the reason that the assessee did not possess any evidence to show that the donation credited under the Building Fund had been donated by donors with the specific direction to utilise the same for building construction only.

The Commissioner(Appeals) rejected the appeal of the assessee, on the ground that the assessee failed to provide the requisite details or any documentary evidence to prove that the donations were made with specific directions for construction of building.

Before the Tribunal, it was pointed out that the assessee had collected donations earmarked for being spent on construction of building in the same manner as in the past years. It was pointed out that the amount was credited to the Building Fund in the balance sheet, which also included the opening balance, and, on the assets side, the assessee had shown the expenditure on construction of the building. The amount had been spent exclusively towards construction of the building, on which there was no dispute. The fact that the donation boxes were kept with different objectives in the temple premises was demonstrated with the help of photographs and certificates from the local gram

panchayat, Councillor, *etc*. It was claimed that the certificates testified the system evolved by the assessee since earlier years for collection of donations towards construction of building.

It was further argued that in view of the nature of collection undertaken by the assessee, which was supported by past history, the assessing officer was not justified in insisting on production of specific names of donors.

On behalf of the revenue, it was pointed out that the assessee could not furnish the complete names and addresses of the donors who had made the donations with specific directions for building construction, though such details were asked for during the course of assessment proceedings. It was only because such information was not available that the amounts had been treated as voluntary/general donations, and not as corpus donations.

The Tribunal considered the various facts placed before it, supported by photographs, testimony of the local gram panchayat, resolution, the fact that different boxes were kept for separate purposes, the utilisation of the Building Fund, etc. It noted the fact that the assessee had received general donations of Rs. 19,53,094 and other incomes, which were credited to the income and expenditure account.

Analysing the provisions of section 12(1), the Tribunal noted that any voluntary contributions made with a specific direction that they shall form part of the corpus of the trust were not to be treated as income for the purposes of section 11. It observed that the moot question was whether or not the manner in which the assessee had collected the donations could be said to signify a direction from the donor that the funds were to be utilised for the construction of building. It noted that the manner in which the specific direction was to be made had not been laid down in the Act or the Rules; there was no method or mode prescribed by law of giving such directions. Therefore, according to the Tribunal, it was in the fitness of things to deduce that the same was to be gathered from the facts and circumstances of each case.

The Tribunal noted that the resolution of the Society clearly showed that a donation box had been kept in the temple premises with the appeal that the amount collected would be spent for building construction. The devotees visiting the temple or other donors were depositing money in the donation box, which was to be utilised for construction of building only. The assessing officer had not disputed the manner in which such donations had been collected by the assessee. The only dispute was that the assessee could not provide the names and addresses of individual donors who had contributed towards Building Fund. According to the Tribunal, since the donations were being collected from the devotees at large, the insistence of the assessing officer of production of individual names and addresses was not justified. Further, the bona fides of such practice being carried out by the assessee, either in the past or during the year under consideration, was not doubted.

Therefore, in the opinion of the Tribunal, having regard to the facts and circumstances of the case, the donations of Rs. 40,55,480 collected by the assessee were to be considered as carrying specific directions for being used for construction of the building. Ostensibly, the devotees putting money in the donation box did so in response to the

appeal by the society that the amounts collected would be used for construction of building. Under such circumstances, the Tribunal was of the view that the assessee's plea, that these amount should be taken as donations towards corpus, was reasonable.

The Tribunal accordingly held that such amounts received in the box for construction of building would form part of the corpus of the Society, and would not constitute income for the purposes of section 11.

However, there are two **contrary judgments** given by Bombay Bench and Calcutta Bench of ITAT which are given here:

Prabodhan Prakashan's case

The issue first came up before the Bombay bench of the Tribunal in the case of *Prabodhan Prakashan vs. ADIT 50 ITD 135.*

In that case, the main object of the assessee was promotion and propagation of ideologies, opinions and ideas for furtherance of national interest, and for this purpose, publishing of books, magazines, weeklies, dailies and other periodicals. Contributions were invited by the assessee from the public towards the corpus fund of the trust through an appeal.The words "donations towards corpus" were written on the offeratory boxes. The boxes were opened in the presence of Trustees, and the amount of Rs. 13,77,465 found in these boxes was credited to the account "Donations Towards Corpus".

Before the assessing officer, it was claimed that the donations were made to the corpus of the trust, and were therefore exempt u/s. 11(1)(d). The assessee was asked to furnish specific letters from the donors confirming that they had given directions that the donations were to be utilised towards the corpus of the trust. Such letters could be furnished only for donations of Rs. 3,90,277, but not for the balance of Rs. 9,86,188. For such balance amount, it was submitted that the Income-tax Act did not specify that the directions of the donors should be in writing. It was claimed that in view of the appeal issued for donations, and the words "donations towards corpus" on the offeratory boxes, it should be held that specific directions were indeed given by the donors. The assessing officer did not accept this contention, and treated donations of Rs. 9,86,188 as ordinary contributions, which were taxable.

The Commissioner(Appeals) referred to the provisions of section 11(1)(d), according to which, income in the form of voluntary contributions made with the specific direction that they shall form part of the corpus of the trust, would not be included in the total income of the person in receipt of the income. According to him, a specific direction of the donor was necessary, and the circumstances relevant to prove such direction included the need to establish the identity of the donor, which was not established in this case. According to the Commissioner(Appeals), merely writing "donations towards corpus" on the offeratory boxes was not sufficient, since many of the donors might not even know as to what was the corpus of the trust. He therefore, upheld the action of the assessing officer in treating the donations of Rs. 9,86,188 as voluntary contributions in the nature of income.

Before the Tribunal, on behalf of the assessee, it was argued that the appeal had been issued for donations towards the corpus, and the offeratory boxes had the inscription that

the donations were towards the corpus and that the directions were to be inferred from the facts and circumstances.

Considering the provisions of section 11(1)(d), the Tribunal noted that it was true that there was no stipulation in that section that the specific directions should be in writing. It agreed that it should be possible to come to a conclusion from the facts and circumstances of the case, whether a specific direction was there or not, even where there were no written directions accompanying the donation. However, according to the Tribunal, at the same time, it needed to be kept in mind that the specific direction was to be that of the donor, and not that of the donee. In the opinion of the Tribunal, when there was no accompanying letter to the effect that the donation was towards corpus, at least such subsequent confirmation from the donor was a necessity. In the case before it, such subsequent confirmation was also absent, and all that was there, according to the Tribunal, was the intention of the donee and the actual carrying out of that intention.

The Tribunal therefore held that the facts did not fulfil the requirement of section 11(1)(d), and that it could not be said that there was a specific direction from the donor to use the contribution towards the corpus of the trust. It accordingly held that the amount was not exempt u/s. 11(1)(d).

A similar view was taken by the Calcutta bench of the Tribunal in the case of *Shri Digambar Jain Naya Mandir vs. ADIT 70 ITD 121*

- The common thread running through both these decisions is that both confirm that the direction of the donors, that the amount of donation is towards corpus **need not be in writing**, and that it is sufficient if the surrounding circumstances indicate that the donors intended to give the funds put in the boxes for corpus/capital purposes, for such amounts to be treated as corpus donations.
- There should be evidence to show that the direction came from the donor. The onus is on the trust to show the existence of the directions from the donors

A. Compulsorily Filing of Income Tax Return u/s 139

Who all are required to file return of income under newly inserted SEVENTH proviso to Section 139(1)?

Seventh proviso to section 139 has been inserted with effect from 1st April 2020 which is as under:

Provided also *that a person referred to in clause (*b*), who is not required to furnish a return under this sub-section, and who during the previous year—*

(i) *has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or*

(ii) *has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or*

(iii) *has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or*

(iv) *fulfils such other conditions as may be prescribed*,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

Analysis of Condition – (i)

- The proviso applies only if the deposit/deposits are made in a current account; it will not apply if such deposits are made in a savings account.
- The deposit may be made in cash or by cheque or by any other electronic mode. It may even be made by transfer from another bank account, including a current account.
- The deposit has to be made in one or more current accounts 'maintained with a banking company or a co-operative bank'. **'A'** is often interpreted as **'any'** and not 'one' *[see CIT v. Khoobchand M. Makhija [2014] (Kar.); CIT v. D. Ananda Basappa [2009] (Kar.*)]. In the context, it appears that the 'a' banking company may be read as any banking company and the aggregate of deposits in all current accounts should be reckoned to ascertain whether the limit of Rs. 1 crore is fulfilled or not.
- It is the aggregate of all such deposits made by the person that is relevant during a previous year for the purpose of the condition.

On a literal reading, the deposit may be made in the current account maintained by the person or by any other person. To illustrate, if an individual directly deposits Rs. 1 crore in a current account maintained by another person "B", the said deposit will be reckoned for the purpose of calculating the aggregate sum of Rs. 1 crore. However, it is to be noted

that while clause (i) is silent as to who maintains the account with the bank, clause (ii) expressly refers to foreign travel expenses for himself or any other person. This suggests that clause (i) ought to be reasonably construed as an account being maintained by the assessee. Further it will be difficult to track the amount deposited by one person in another person's account

B. Section 13A

Exemption of Income in the hands of political Parties-

Political parties which is registered with the Election Commissioner of India, are exempt from paying income tax. To avail exemption political parties are required to submit a report with Election Commissioner of India and furnish details of contributions received in excess of **Rs. 20,000**/- from any person.

In order to discourage the cash transactions, additional conditions are provided for availing the benefit of the said section:

- No donation of **Rs. 2,000/-** or more is received otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through electoral bonds. With effect from assessment year 2020,21, these donations may also be accepted through any electronic mode as may be prescribed.
- Political party furnishes a return of income for the previous year in accordance with the provisions of Sec.139(4B) on or before the due date.

Further Political parties cannot accept a cash donation even as small as Re. 1 from a company.

C. Sec 13B read with Rule 17CA

For availing the benefit of exemption u/s 13B, an electoral Trust shall accept contributions only by way of an account payee cheque or account payee bank draft or by electronic transfer and shall not accept any contribution in cash.

About the Book

Cash is backbone of the Indian economy although with so many transactions got to hide behind the curtains of cash, the government had from time to time put in place various amendments and laws so they can dig these kinds of transactions. But in the process the law has turned more or less into a labyrinth so we have tried to gather all the knowledge relating to cash transactions in one book so that it could be understood in a simplified manner.

This book will be highly beneficial for professionals as well as CA students, helping them to gain a sound understanding of intricacies relating to cash transactions arising out of practical issue

To update the readers regarding these changes, we have taken an initiative to share our knowledge with the readers. The **book "Know When to Say No to cash Transactions"** is a mobile guide for the taxpayers.

All the sections are well explained with the help of examples and illustrations. It is an attempt to keep the taxpayers updated as well as informed and provides all the information related to cash transactions in summarized as well as simple manner.

In case of any doubt or query, readers are requested to approach the author at ca.rskalra@yahoo.com. Author requests for the suggestion and feedback from the readers for making it better.

Thanks for Reading.

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