

# RESTRICTION ON CASH TRANSACTIONS



SECTIONS 269SS, 269ST & 269T  
READ WITH  
SECTIONS 271D, 271DA & 271E

CHYTHANYA K.K., B. Com, FCA, LLB  
Chythanya Law Chambers  
*Advocates*  
#1109, 9th Main, Vijayanagara,  
Bengaluru – 560 040, Karnataka, India.  
chyti@clclawyers.com, 09844114184



## Underlying philosophy



- ❑ NEED TO COMPLY AND SUPPORT THE INITIATIVE
- ❑ PARTICIPATE IN FIGHT AGAINST BLACK MONEY
- ❑ DON'T PLAN BUT WORK ON DEFENSE



## Attar Singh Gurmuk Singh I9I ITR 667 SC : sec 40A(3)



- ❑ SECTION 40A(3) ONLY EMPOWERS AO TO DISALLOW DEDUCTION CLAIMED AS EXPENDITURE IN RESPECT OF WHICH PAYMENT IS NOT MADE BY CROSSED CHEQUE OR CROSSED BANK DRAFT.
- ❑ THE PAYMENT BY CROSSED CHEQUE OR CROSSED BANK DRAFT IS INSISTED ON TO ENABLE THE ASSESSING AUTHORITY TO ASCERTAIN WHETHER THE PAYMENT WAS GENUINE OR WHETHER IT WAS OUT OF THE INCOME FROM DISCLOSED SOURCES.
- ❑ THE TERMS OF SECTION 40A(3) ARE NOT ABSOLUTE. CONSIDERATION OF BUSINESS EXPEDIENCY AND OTHER RELEVANT FACTORS ARE NOT EXCLUDED. THE GENUINE AND *BONA FIDE* TRANSACTIONS ARE NOT TAKEN OUT OF THE SWEEP OF THE SECTION.



## Attar Singh Gurmuk Singh I9I ITR 667 SC : sec 40A(3)



- ❑ IT IS OPEN TO THE ASSESSEE TO FURNISH TO THE SATISFACTION OF THE ASSESSING OFFICER THE CIRCUMSTANCES UNDER WHICH THE PAYMENT IN THE MANNER PRESCRIBED IN SECTION 40A(3) WAS NOT PRACTICABLE OR WOULD HAVE CAUSED GENUINE DIFFICULTY TO THE PAYEE.
- ❑ IT IS ALSO OPEN TO THE ASSESSEE TO IDENTIFY THE PERSON WHO HAS RECEIVED THE CASH PAYMENT. RULE 6DD PROVIDES THAT AN ASSESSEE CAN BE EXEMPTED FROM THE REQUIREMENT OF PAYMENT BY A CROSSED CHEQUE OR CROSSED BANK DRAFT IN THE CIRCUMSTANCES SPECIFIED UNDER THE RULE.
- ❑ IT WILL BE CLEAR FROM THE PROVISIONS OF SECTION 40A(3) AND RULE 6DD THAT THEY ARE INTENDED TO REGULATE THE BUSINESS TRANSACTIONS AND TO PREVENT THE USE OF UNACCOUNTED MONEY OR REDUCE THE CHANCES TO USE BLACK-MONEY FOR BUSINESS TRANSACTIONS. - *MUDIAM OIL CO. V. ITO* [1973] 92 ITR 519 (AP).



## Attar Singh Gurmuk Singh 191 ITR 667 SC : sec 40A(3)



- ❑ IF THE PAYMENT IS MADE BY A CROSSED CHEQUE DRAWN ON A BANK OR A CROSSED BANK DRAFT, THEN IT WILL BE EASIER TO ASCERTAIN, WHEN DEDUCTION IS CLAIMED, WHETHER THE PAYMENT WAS GENUINE AND WHETHER IT WAS OUT OF THE INCOME FROM DISCLOSED SOURCES.
- ❑ IN INTERPRETING A TAXING STATUTE THE COURT CANNOT BE OBLIVIOUS OF THE PROLIFERATION OF BLACK-MONEY WHICH IS UNDER CIRCULATION IN OUR COUNTRY.
- ❑ ANY RESTRAINT INTENDED TO CURB THE CHANCES AND OPPORTUNITIES TO USE OR CREATE BLACK-MONEY SHOULD NOT BE REGARDED AS CURTAILING THE FREEDOM OF TRADE OR BUSINESS



## Black money menace



➤ *Binoy Viswam TS-217-SC-2017* **Black money menace & corruption weighs heavily on Apex Court's mind as a division bench upholds constitutional validity of Sec. 139AA of Income tax Act, that mandates compulsory quoting of Aadhar no. as a pre-requisite for filing I-T returns; SC acknowledges at the very outset that the instant case falls in the basket of "hard cases", makes it clear that a law made by Parliament/Legislature can be struck down on only two grounds, namely i) The Parliament/Legislature lacks legislative competence to enact such a law ii) It violates fundamental rights enshrined under the Constitution ; Rejects arguments of petitioners counsels that the provision has been 'mandatory' under the Income tax Act while the same is 'directory' under Aadhaar Act, holds that " It is the prerogative of the Parliament to make a particular provision directory in one statute and mandatory/compulsory in other."**;



## Black money menace

- *Rejects Senior Advocate Shyam Diwan's arguments vis-a-vis Article 14 of the Constitution, wherein he submitted that Sec. 139AA was discriminatory in nature as it created two classes - one class of those who volunteered to enrol themselves under Aadhar and other class of those who did want it to be so; Terming such an argument an attempt to create an 'artificial' class, Apex Court observes " Merely because a section of persons opposes the law, would not mean that it has become a separate class by itself. What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. All income tax assesseees constitute one class and they are treated alike by the impugned provision.";*
- *Accepts in toto Attorney General Mukul Rohatgi's submission that to crack down on over 10 lakh duplicate PANs, Parliament embarked on the "de-duplication" exercise by legislating Sec. 139AA with the objective of ensuring "One PAN to one person";*



## Black money menace

- *Also observes that the menace of black money and corruption has reached "alarming" proportions, quotes from SIT Report on Black Money as also a CBDT Committee which suggested that one singular proof of identity of a person for entering into business transactions may help in curbing this menace; Therefore SC upholds constitutional validity of Sec. 139AA vis-a-vis Article 14 & Article 19(1)(g), subject however to the outcome of Constitution bench case where the more stringent tests of whether Aadhaar violates the Right to Privacy and Right to Dignity, shall be decided; SC enforces Sec. 139AA for those assesseees who possess an Aadhaar card but grants partial relief to non-Aadhaar holders by staying the operation of the provision for them; Also reads down proviso to Sec. 139AA by making its operation prospective, holds that the proviso, that seeks to make PAN void ab initio ( as if the person had never applied for a PAN ) in case of failure to intimate Aadhaar, would have " rippling effect of unsettling the settled rights of the parties... It has the effect of undoing all the acts by a person on the basis of such a PAN... the rights which are already accrued to a person in law cannot be taken away.*



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



### SECTION 269SS



## Section – 269SS



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



## Section – 269SS



- 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



## Section – 269SS



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

➤ is twenty thousand rupees or more:



## Section – 269SS – 1<sup>st</sup> Proviso



- 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,—



## Section – 269SS – 1<sup>st</sup> Proviso



- 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:



## Section – 269SS – 2<sup>nd</sup> Proviso



- 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



## Section – 269SS – 2<sup>nd</sup> Proviso



- 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.





## Section – 269SS – Explanation



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;



## Section – 269SS – Explanation



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



### SECTION 271D



## Section – 271D(1)



- If a person takes or accepts any loan or deposit 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 or specified sum so taken or accepted.



## Section – 271D(2)



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



## Mode of repayment of certain loans or deposits



### SECTION 269T



## Section – 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



## Section – 269T



- 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 if—



## Section – 269T



- 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



## Section – 269T



- c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances

➤ is twenty thousand rupees or more:



## Section – 269T– 1<sup>st</sup> Proviso



- 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 :



## Section – 269T – 2<sup>nd</sup> Proviso



- Provided further that
- nothing contained in this section shall apply to
- repayment of any loan or deposit or specified advance taken or accepted from—



## Section – 269T – 2<sup>nd</sup> Proviso



- 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 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.



## Section – 269T – Explanation



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);



## Section – 269T – Explanation



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;



## Section – 269T – Explanation



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.





## Penalty for failure to comply with the provisions of Section 269T



### SECTION 271E



## Section – 271E(1)



- If a person repays any loan or deposit 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.



## Section – 271E(2)



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



## Mode of undertaking transactions



### **SECTION 269ST**

INSERTED BY FINANCE ACT, 2017  
W.E.F. 01.04.2017



## Section – 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:



## Section – 269ST ~ Proviso



- 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.



## Section – 269ST ~ Explanation



➤ 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.



## Penalty for failure to comply with the provisions of Section 269ST



### SECTION 271DA

INSERTED BY FINANCE ACT, 2017  
W.E.F. 01.04.2017



## Section – 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:



## Section – 271DA(1) ~ Proviso



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



## Section – 271DA(2)



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



## Analysis & Issues



### SECTION 269ST

## Section 269ST – Analysis of Clauses

No person shall receive an amount of Rs.2L or more

| Clauses                                                                          | Qua                                                   | Irrespective of                          |
|----------------------------------------------------------------------------------|-------------------------------------------------------|------------------------------------------|
| (a) in aggregate from a person in a day                                          | Number of persons – 1<br>Number of days – 1           | Number of transactions                   |
| (b) in respect of a single transaction                                           | Number of transactions – 1                            | Number of persons<br>Number of days      |
| (c) – in respect of transactions relating to one event or occasion from a person | Number of persons – 1<br>Number of event/occasion – 1 | Number of days<br>Number of transactions |

## General Objectives ~ Memorandum

- Recognises the menace of domestic black money
- Recognises that black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash
- Aims to move towards less cash economy
- Intends to reduce generation and circulation of black money



## General Objectives



- Marginal head : 'Mode of undertaking transactions'
- Chapter head : Requirement as to mode of acceptance, payment or repayment in certain cases to **counteract evasion of tax**



## Series of steps taken prior to sec 269ST



- Black Money Act
- Jandhan
- Income Declaration Scheme 2016
- Demonetisation
- Section 115BBE



## Routine cases that may come under sec 269ST

- Rental receipts on a month on month basis
- Hospital receipts
- Receipts by a cooking/catering contractor on the occasion of wedding
- Statement by a third party that he made payment to you in cash
- Forced recoveries by lenders from borrowers
- Gifts/donations received from relatives/non relatives

## Routine cases that may come under sec 269ST

- Receipts by co-op society
- Receipts from co-op society
- Receipts by Paytm, Paypal etc.
- Receipt through credit card/debit card
- Does section 269ST apply to a non resident [whether the receipt takes place in India or outside India]



## Immunity provisions



- Section 40A(4)
- Section 290



## Meaning of 'person'



- Section 2(31) – includes natural, legal and fictional persons
- Person acting in dual capacities
  1. Individual capacity
  2. Representative capacity
- Trustee to beneficiary
- Trustee of several beneficiaries making payment to a third party
  1. As per beneficiaries' direction
  2. As per terms of trust deed



## Meaning of 'person' ~ 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
- Received through an agent
  1. When your agent receives from a third party on your behalf, it tantamounts to receipt by you and sec 269ST is attracted
  2. Subsequent payment by agent to you is not a receipt



## Person ~ Agent



- 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/-.



## Meaning of 'receive'



### ❑ As per Ballentine's Law Dictionary 1093:

*"To receive means to get by a transfer, as to receive a gift, to receive a letter, to receive money.*

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

*"To receive means to get by a transfer, as to receive a gift, to receive a letter, to receive money and involves actual receipt."*



## 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."*



## Meaning of 'amount'



- ❑ 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)]*



## Meaning of 'sum'



❑ 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.”*



## Meaning of 'amount'



### ➤ Sum v. Amount

- HH Sri Rama Verma v. CIT (1991) 187 ITR 308 SC : “Any sums paid” contemplates payment of an amount of money
- No TDS on payments in kind
  1. Chief Accounts Officer BBMP [TS-596-HC-2015(KAR)]
  2. Red Chillies Entertainment Pvt. Ltd [TS-336-ITAT-2016(Mum)]
  3. CIT Vs M/s Hindustan Lever Ltd 2013-TIOL-878-HC-KAR-IT
  4. Contra : Kanchangang Sea Foods Ltd. v. CIT (SC) 325 ITR 540



## Meaning of 'amount'



- Section 68 uses 'sum' whereas section 69D uses 'amount'
- Section 195 uses 'sum'
- Section 43CA(4) – Earlier 'by any mode other than cash' changed to 'by way of an account payee cheque, account payee draft or by use of ECS through a bank account' by FA 2018 wef 1.4.19



## 'amount' v. 'sum'



- Section 271DA uses the expression 'receives any *sum* in contravention of the provisions of section 269ST'
- The expression used in section 271DA is 'sum'. As section 271DA provides for penalty in case of contravention of section 269ST, the word 'amount' used in section 269ST should be understood as 'sum'.
- Alternatively, irrespective of how wider an interpretation is laid upon the word 'amount' for the purpose of section 269ST, statute provides for penalty under section 271DA only in a case where the receipt is by way of a 'sum' i.e. money. Section 271DA doesn't provide for penalty for receipt by way of other forms of 'amount'



## Meaning of 'amount'



- Meaning of receipt : Raghava Reddi v. CIT [1962] 44 ITR 720 SC, CIT v. Toshoku Ltd. (1980) 125 ITR 525 SC
- Barter/Exchange/Set off
  1. Motor and general stores 66 ITR 692 SC
  2. Orient Trading Co Ltd v. CIT 224 ITR 371(SC)
  3. Bombay Burmah Trading 161 ITR 386 SC
  4. Dhampur Sugar Limited (2006) 61 KLJ 130 (SC)



## Meaning of 'amount'



- Receipt in foreign exchange in India wherever permitted
- Receipt in foreign exchange outside India wherever permitted
- Loan waiver is same as receipt of cash : Mahindra and Mahindra 404 ITR 1 SC





## Journal entry



### ➤ Not acceptable

1. Triump International Finance 22 Taxmann.com 138 Bby
2. Lodha Builders 163 TTJ 778 Mum ITAT

### ➤ Acceptable

1. Worldwide Township Projects 48 Taxmann.com 118 Delhi
2. Vardaan Fashion 60 Taxmann.com 407 Delhi ITAT
3. Gujaraj Ambuja Proteins 3 SOT 811 Ahm



## Meaning of ‘Transaction’



### ❑ As per Black’s Law Dictionary – Sixth Edition

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



## Meaning of ‘Transaction’



- ❑ As per P Ramanatha Aiyar’s - Advanced Law Lexicon 3<sup>rd</sup> Edition:

*“A ‘transaction’, in the ordinary sense of the word, is some business or dealing which is carried on, or transacted between two or more persons. Chamnoo Mahto v. Jang Bahadur Singh, AIR 1957 Pat 293, 297. [Indian Evidence Act (1 of 1872), S. 13(a)].*

*The word ‘transaction’ cannot be read narrowly to mean as synonymous to the word ‘contract’. In one contract there may be many business transactions. Baldeo Kumar v. Managing Director, AIR 1997 MP 147, 153, para 15.*

*[“Includes any agreement, arrangement or understanding, whether or not legally enforceable,, and a series of transactions”. [Finance Act, 1998 (c. 36), Shed. 20 para 25(1)]. (Stroud, 6th Edn., 2000)*



## Meaning of ‘Transaction’



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

*“1. An instance of buying or selling something; a business deal.”*

- ❑ As per Cambridge dictionary: <http://dictionary.cambridge.org>:

*“an occasion when someone buys or sells something, or when money is exchanged or the activity of buying or selling something: a business transaction each transaction at the foreign exchange counter seems to take forever. We need to monitor the transaction of smaller deals.*



## Meaning of ‘Transaction’

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



## Meaning of ‘Transaction’ – some cases

- Same guy buying goodies from different units of big bazar
- Series of sales in a rate contract
- Series of sales under an agreement for sale at prevailing rate



## Meaning of ‘Transaction’



- Bi partite and tri partite transactions – are they to be construed as single transaction or multiple transactions
- Is wedding a transaction? Marriage is a contract under Mohammadan law!
- In the case of medical treatment, what is a transaction
  1. Each treatment
  2. Each visit
  3. Each day of hospitalization
  4. Each surgery
  5. Each round



## 269ST v. 269SS and 269T



- Proviso to Section 269ST exempts only the ‘*transactions of the nature referred to in Section 269SS*’, it does not cover ‘*transactions of the nature referred to in Section 269T*’.
- In case of repayment of loan or deposit, while sec 269T is attracted qua repayer, sec 269ST is attracted qua the lender.
- Reasonable cause for repayer v. good and sufficient reason for the lender



## Section 69D ~ Implications



- Borrowal in hundi : For the borrower, both section 269SS and section 69D will be attracted [section 269ST is not applicable]
- Repayment in hundi :
  1. For the repayer, section 269T and section 69D are attracted
  2. For the lender, section 269ST is attracted



## 269ST General coverage



- Amount received within the family/relatives?
- Gifts received by the relatives – cash or kind
- Gifts received by the relatives – cash or kind and though taxable under sec 56(2)(x)



## 269ST General coverage



- ❑ Direct deposits into bank account by customer
  1. Receipt by whom?
  2. Receipt by person from customer followed by receipt by bank from person
  3. JB Boda 223 ITR 271 SC
  4. First Proviso to section 269T where a branch of a banking company or a co-operative bank is explicitly permitted to credit the proceeds to saving bank account of customer
  5. Tolerating direct deposits may assist laundering



## Section 269ST – Mode of payment



- ❑ **Cash deposited by a purchaser directly to the bank account of the seller:** In the following cases courts have held that no disallowance if cash exceeding Rs.20,000 is directly deposited in bank account of supplier.
  - CIT v. Smt. Shelly Passi [2013] 350 ITR 227 (Punjab & Haryana)
  - Rampada Panda v. ITO [2016] 65 taxmann.com 213 (Kolkata - Trib.)



## Section 269ST – Mode of payment



- ❑ **By way of crossed cheque and not account payee cheque:**
  - ✓ Held in favour of assessee
    - CIT v. Makhija Construction Co. [2002] 257 ITR 8/ 123 Taxman 1003 (MP)
    - Asstt. CIT v. Jag Vijay Auto Finance (P.) Ltd. [2000] 68 TTJ (JP) 44 – **by way of bank voucher – as it is paid through banking channel.**
  - ✓ Held against assessee:
    - Rajmoti Industries v. Asstt.CIT [2014] 45 taxmann.com 72/223 Taxman 428 (Guj.) – **SLP granted against the order of the High Court**



## Section 269ST – Mode of payment



- ✓ CBDT Circular 1 of 2007 dated 27.04.2007 [Explanatory notes to Taxation Laws (Amendment) Act, 2006) in respect to amendment to Section 40A(3) for issue of crossed cheque or crossed bank draft stated that:

*“14.2 A crossed cheque or crossed bank draft is not a non-negotiable instrument. This has, at times, resulted in crossed cheques being endorsed making it difficult to trace final payee and thus defeating the provisions of section 40A(3). However, as per the RBI’s instructions to commercial banks, an account payee cheque or account payee bank draft cannot be credited to any account other than the account of the payee. The Act has accordingly amended the aforementioned sub-section (3) and sub-section (4) to substitute the expression ‘a crossed cheque drawn on a bank or by a crossed bank draft’, in both the sub-sections, by ‘an account payee cheque drawn on a bank or account payee bank draft’.”*



## 269ST General coverage



### ❑ White label ATMs [non bank ATMs]

1. RBI authorized private operator collects moneys from merchant establishments and stores them in ATMs – such collection may be hit!
2. In the designated bank, equivalent fund would be transferred from his account to that of merchant establishment
3. General public withdraw money from such ATMs – Such withdrawal may be hit provided there are built in daily limits of less than Rs.2L



## Cash credits under section 68 – paying way for next demonetization



- Applicability of section 68 read with section 115BBE : Tax at 60%
- Surcharge as per Sixth proviso to sec 2(3) of Finance Act : 25%
- Cess at 3%
- Normal penalty at 10% as per section 271AAC(1)
- Penalty at 30% or 60% in case of search under section 271AAB(1A)
- Penalty under section 271DA at 100%
- KR Ganesh Kumar 383 ITR 165 Mad: 40A(3) applies to cash payments found in search





## Illegal business

- In the following cases, it was held that sec 40A(3) applies to even illegal business
  1. **Hynoup Food and Oil Ind. P. Ltd.** (2007) 290 ITR 702 (Guj)
  2. **S. Venkata Subba Rao** 173 ITR 340 AP
- Carrying illegal business and compliance with section 269ST may be mutually exclusive
- Impossibility of performance could be a good and sufficient reason?



## Section 269ST – Mode of payment

Whether the following ‘modes of payment’ attract Section 269ST?

- By way of credit card/e-wallet (like PayTM, Airtel Money ItzCash etc):** Sub-Clauses (vi) & (vii) of Rule 6DD(c) provides that no disallowance under Section 40A(3) shall be made if the payment exceeding Rs.20,000/- is made by a credit card and debit card respectively
- Book adjustment :** Rule 6DD(d) provides that no disallowance under Section 40A(3) shall be made 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



## Section 269ST – Mode of payment



- ❑ **Book adjustments:** 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:
  - Gururaj Mini Roller Flour Mills v. Addl. CIT [2015] 370 ITR 50 (Andhra Pradesh and Telangana)
  - CIT v. Worldwide Township Projects Ltd [2014] 367 ITR 433 (Delhi)
  - Sunflower Builders (P.) Ltd. v. Dy. CIT [1997] 61 ITD (Pune) 227 – **Applicable only where money passes from one person to another person**



## Section 269ST – Mode of payment



- ❑ **By way of telegraphic transfer through a bank:** Sub-Clause (ii) of Rule 6DD(c) provides that no disallowance under Section 40A(3) shall be made if the payment exceeding Rs.20,000/- is made by telegraphic transfer through a bank



## Other cases



- Take over of business, demerger, amalgamation, conversions
- Sec 269ST and sec 40A(3) will apply simultaneously
- A person coming under presumptive taxation like sec 44AD is also covered
- Use of electronic clearing system through a bank account v. debit/credit cards [Sec 40A(3) uses similar language but Rule 6DD(c) (vi) and (vii) refer to credit card and debit card in addition to clause (v) referring to use of electronic clearing system through a bank account.
- Inheritance – receipt from an executor/succeeding to cash left behind by deceased.



## Other cases



- Chit funds payments
- Mutual payments
- Amount received before 1.4.2017 with respect to a transaction 1.5L, amount received with respect to the same transaction after said date 1.5L - applicability?
- Firm receiving capital contributions from partner
- Partner's drawings from the firm



## Other cases



- Winnings from card games or other games, gambling, betting etc.
- Receipts by temples – hundi collections



## Clause (a)



- Meaning of 'day'
- Sale of two or more items to the same person in a day at different times with separate invoices, where aggregate of invoices is Rs. 2,00,000/- or more?
  - Should the seller insist the purchaser to pay money only in the modes specified in Section 269ST?
  - How would seller know that the same person would buy another item from him?



## Clause (a)



- When the person and the buyer have multiple branches/offices, aggregate of receipt may be Rs.2L or more
- Normal/corpus donations by a trust
- Hundi collection by a religious trust – Onus on whom?
- Anonymous donation under sec 115BBC
- Dowry
- Bribe



## Clause (a)



- Withdrawals by partner from firm/LLP for self or for the firm [concept of mutual agency]
- Advances received by employees for official purpose
- Reimbursement received by partners, employees, directors etc.
- Share allotment money



## Clause (a)



### Cash withdrawals?

- Notification No.28/2017, F.No.370142/10/2017-TPL dated 05.04.2017 provides that Section 269ST does not apply to any receipt by any person from any banking company, post office savings bank or co-operative bank
- Withdrawals from co-operative societies including credit societies
- Withdrawals from APMCs
- Chits/NBFCs/Micro finance



## Clause (a) ~ Splitting



### Splitting between days permissible as per

1. Aloo Supply Co [1980] 121 ITR 680 (Orissa HC) [contra held in Dalip Chand and Sons v. Commissioner of Income-Tax [2008] 301 ITR 276 (HP) HC and Shri Radhika Prakashan v CIT (2002) 123 Taxman 213 MP]
2. Raja & CO Vs DCIT 2013-TIOL-531-ITAT-COCHIN

- However, ensure that clauses (b) and (c) are not attracted



## Clause (b)



- Whether in respect of repayment of loan in installments by a co-operative banks not covered under Section 269SS, each installment constitutes ‘single transaction’ or all the installments put together constitutes ‘single transaction’?
  - a) ‘Transaction’ under Section 269ST, refers to ‘act of receiving money’.
  - b) Circular 22 of 2017 dated 3.7.17
  - c) Therefore, each installment constitutes a ‘transaction’
  - a) However, are they relating to one event i.e. repayment of loan for the purpose of Clause (c) to Section 269ST?



## Clause (b)



- Chit
  1. Manager receiving contributions
  2. Winning bidder receiving chit prize
  3. Participants receiving dividends either by cash or by adjustment against their contribution
  4. Participants receiving back their contributions
  5. When bidder returns the loan/prize money, who is the receiver? Manager or all members collectively [consider a chit with huge membership with individual members not known to each other]



## Clause (c)



- Meaning of event or occasion
- Several events in an occasion
- Several occasions in an event



## Clause (c) ~ Meaning of ‘Occasion’



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

*“To cause or bring about by furnishing the condition or opportunity for the action of some other cause. Smart v. Raymond, Mo.App., 142 S.W.2d 100, 104. To give occasion to, to produce; to cause incidentally or indirectly; bring about or be the means of bringing about or producing.”*

- As per P Ramanatha Aiyar’s ~ Advanced Law Lexicon 3rd Edition

*As a noun, that which immediately brings to pass an event, without being its efficient cause suitable juncture or opportunity; necessity or need. As a verb, to give occasion to; cause incidentally, or casually.*

.....





## Clause (c) ~ Meaning of ‘Occasion’



❑ As per P Ramanatha Aiyar’s - Advanced Law Lexicon 3rd Edition

*OCCASION, CAUSE. Webster defines an occasion, as distinguished from a cause, to be that which incidentally brings to pass an event, without being itself efficient cause of sufficient reason.*

*Occasions – does not necessarily mean to cause or to be immediate cause – it means in a wider sense to bring about especially in a incidental or subsidiary manner. Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras, AIR 1971SC 870, 882.*

*The expression ‘occasions’ means the immediate and direct cause. Mohd. Serajuddin v. State of Orissa, AIR 1975 SC 1564, 1573. [Central Sales Tax Act (74 of 1956), S. 5 (1)].*



## Clause (c) ~ Meaning of ‘Occasion’



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

- “ 1. A particular time or instance of an event.
2. A special or noteworthy event, ceremony, or celebration.
3. A suitable or opportune time for doing something.”

❑ As per Cambridge Dictionary <http://dictionary.cambridge.org>:

*“a particular time, especially when something happens or has happened:*

*an opportunity or reason for doing something or for something to happen.”*



## Clause (c) ~ Meaning of 'Event'



### ❑ As per Black's Law Dictionary – Sixth Edition:

*“The consequence of anything; the issue or outcome of an action as finally determined; that in which an action, operation, or series of operations, terminates. Noteworthy happening or occurrence. Something that happens. Distinguished from an act in that an act is the product of the will whereas an event is an occurrence which takes place independent of the will such as an earth quake or flood. See also Fortuitous event.”*

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

*Any relevant Occurrence that could happen, also sometimes known as a state of nature in the USA. (International Accounting).....*



## Clause (c) ~ Meaning of 'Event'



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

*The consequence of anything, the issue, conclusion, and that in which an action, operation, or series operations, terminates; issue, or success, that follows doing anything; equivalent to “result” the final success in an action; the final outcome and end of the litigation; the outcome or the result of a trial or proceeding, of which there may be more than one.*

*‘EVENT’ is something different from the “delivery, retainer, satisfaction, discharge or payment”. An assent or a retainer is not an event,. Re Cunliffe (Deceased) Mountain. V. Inland Revenue Commissioner, (1953) 2 All ER 196, 204 (CA). [Finance Act, 1949, S. 27(2)(b)].*



## Clause (c) ~ Meaning of 'Event'



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

- “ 1. A thing that happens, especially one of importance.
2. A planned public or social occasion.
3. Each of several particular contests making up a sports competition.
4. Physics a single occurrence of a process, e.g. the ionization of one atom.”

As per Cambridge Dictionary <http://dictionary.cambridge.org>:

“Anything that happens, especially something important or unusual:”



## Clause (c)



- Wedding : Engagement/ betrothal, nuptial knot, varapuja,, reception are all one occasion
- Receipts by hospitals on various dates from patient? : Usually hospital collects various sums as payable to surgeon, anaesthetist, nursing etc.
- Receipts by contractors for constructing of residential houses etc.
  - Constructing residential house is one event
  - Receiving amount on completion stage basis on various dates is multiple transaction
- Receipt of school/college fees



## Clause (c)



- ❑ **Receipts of rent on monthly basis:**
  - Giving the building for rent is one event
  - Receiving rent every month is separate transaction
  - So, where the aggregate rent in a year is Rs. 2,00,000/- or more, the owner has to receive monthly rent only by way of modes of specified in Section 269ST.



## Clause (c)



- ❑ **Can an 'event' or 'occasion' be long enough to cover a duration of a month or a year? Example, a seller organises 'Sale Festival' to sell his goods at a discount which may extend up to a month. In such a situation, should he keep track of purchases made in cash by each buyer for each day to ensure that the total cash received by any buyer does not exceed Rs.2,00,000/-?**
  - One 'event' or 'occasion' should be looked from both the seller and purchaser. For a seller, it may be a single event. But for the purchaser, it is not a single event. Each purchase for a purchaser is an event.
  - However, the question that arises is whether Clause (a) would attract if the buyer in a day makes aggregate payment exceeding Rs. 2,00,000/-.



## Clause (c)



- An individual may celebrate his 50th wedding anniversary for the whole of the year. Will the gifts received in cash on different days from a person (on the occasion of 50th anniversary) during the entire year be considered for the limit of Rs 2,00,000 ?
- In the above example of 50th anniversary, should the value of gift articles received from the same person during the year be considered for the purpose of the limit of Rs 2,00,000? The term used in section 269ST is "an amount" which is in contrast to the term "money" used in Explanation (iii) in section 269SS.



## Analysis & Issues



### SECTION 271DA



## Section 271DA – Analysis



- Penalty is levied in respect of contravention of the provisions of Section 269ST
- The quantum of penalty is a sum equal to the amount of money received by contravening the provisions of Section 269ST
- No penalty if person proves that there were good and sufficient reasons for the contravention.
- Penalty shall be imposed by the Joint Commissioner of Income Tax



## Section 271DA – Issues



- Is penalty levied on entire receipt or only on any sum received in excess of Rs. 2 Lakhs?
  - Expression used is ‘any sum received .....such receipt’
  - Aloo Supply Co [1980] 121 ITR 680 (Orissa HC) - The word 'sum', as used in Section 40A(3) has been construed to mean an amount of money only and **not the totality of expenditure**



## Section 271DA – Issues



- **Penalty only on the amount received in excess of Rs. 2 Lakhs:**
  - CIT v. Ajanta Dyeing & Printing Mills [2003] 264 ITR 505 & 130 Taxman 442 (Raj.) – While imposing penalty under Section 271DA, permissible amount of Rs. 20,000/- has to be adjusted under Section 269SS.
  - Shankar S. Koliwad v. ITO [ITA No. 5040 of 2009 dated 06.01.2012] (Kar. – HC) & Smt. Ch. Mangayamma v. Union of India [1999] 106 Taxman 339 (AP) – amount received in excess of Rs. 20,000/- should be disallowed under Section 40A(3)
  - MG Pictures (Madras) Ltd. 2015 TIOL 37 SC



## Section 271DA – Issues



- ❑ **Good and sufficient reason v. Reasonable Cause: Whether the scope under Section 273B is wider than the scope under proviso to Section 271DA or vice versa?**
  - The expression ‘reason’ as per Oxford Dictionary would mean ‘*cause, explanation’ or ‘justification’*
  - The expression ‘cause’ as per Oxford Dictionary would mean “*A person or thing that gives rise to an action, phenomenon, or condition*”.
  - Thus, expression ‘reason’ also include ‘cause’.



## Section 273B v. 271DA



### ❑ Reasonable cause v. Good and sufficient reason:

- CIT v. Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bom. - HC):

*“23. The expression 'reasonable cause' used in Section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in Section 249(3), 253(5) and 260A(2A) of the Act, the legislature has used the expression 'reasonable cause' in Section 273B of the Act. A cause which is reasonable may not be a sufficient cause. Thus, the expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'.”*



## Section 269ST – Other Issues



- ❑ Could the receipt of cash through forceful recovery by a lender from a defaulter be considered as good and sufficient reason to avoid penalty as otherwise, the possibility of recovery from that defaulter through A/c payee cheque was 'nil'?

- ❖ In favour of Assessee:

- CIT v. M. Ramakrishnan [2015] 63 taxmann.com 321 (Madras)/[2015] 378 ITR 437 (Madras) - Where repayment of loan in cash was made out of compulsion by financier as he did not lend or receive back loan amount in cheque or draft from anybody, penalty under section 271E was to be deleted.
- CIT v. Sahara India Mutual Benefit Co. Ltd. [2012] 28 taxmann.com 199 (Delhi) - No penalty under section 271D for dealing in cash deposits as assessee dealt with rural dweller, being a reasonable cause for failure





## Section 269ST – Other Issues



### ❖ In favour of Revenue:

- Where there was no urgency and necessity to accept loan in cash, imposition of penalty under section 271D to be upheld
  - Auto Piston Mfg. Co. (P.) Ltd. v. CIT [2013] 355 ITR 414 (Punjab & Haryana)
  - CIT v. Nandhi Dhall Mills [2015] 373 ITR 510 (Madras)



## Section 269ST – Related aspects



### ❖ Reporting requirements:

- Section 285BA
- Rule 114E
- Form 61A/61B



CHYTHANYA K.K.,  
B. Com, FCA, LLB

Chythanya Law Chambers  
*Advocates*  
#1109, 9th Main, Vijayanagara,  
Bengaluru – 560 040,  
Karnataka, India.  
E-mail: [chyti@clclawyers.com](mailto:chyti@clclawyers.com)  
Mob: 09844114184

