Mo' Cash bubble, Mo' Tax trouble - A comprehensive compendium on taxation of cash receipts and cash payments under the Income Tax Act, 1961

Cash has always been an inevitable element of our economy or any economy for that matter. With the involvement of cash, it is comparatively much easier to maintain anonymity and carry out the transactions without leaving any traces. Ministry of Finance with Income Tax Department has, from time to time,taken various measures to control the involvement of cash in activities, whether or not related to the business. Various amendments have also been made to the Income Tax Act, 1961 in the past few years which have intended to only target cash transactions and limit their involvement. It is without any doubt that the Revenue has fairly been able to do so, either by imposing restrictions on cash transactions or by providing incentives for not dealing in cash.

The Finance Act, 2015; 2016; 2017; 2018; 2019 and 2020 as well witnessed numerous amendments whereby either certain restrictions were imposed with consequential penalties and some incentives were also provided by reduction in tax rates or presumptive income tax rates.

Section 269SS and Section 269T of the Income Tax Act, 1961

To begin with, Finance Act, 2015 amended the provisions of Section 269SS and 269T of the Act, 1961. Section 269SS of the Act prohibits acceptance of loan, deposits, advances or any other specified sums of Rs. 20,000/- or more otherwise than through account payee cheque, or draft or use of ECS through bank account or through 'such other electronic modes as may be prescribed'. This means a person may take or accept loan, deposit or specified sums in cash only upto Rs. 19,999/-. While section 269T prohibits repayment of such loan, deposit or specified sum exceeding Rs. 20,000 or more otherwise than through account payee cheque, or draft or use of ECS through bank account or through 'such other electronic modes as may be prescribed'. This means a person may repay the loans or deposits or specified sums in cash only upto Rs. 19,999/-. Both the sections 269SS and 269T are on similar footing and the only difference in these two sections is the applicable transactions.

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Later on, on the basis of recommendations of Special Investigation Team (SIT), New section 269ST was introduced vide Finance Act, 2017 w.e.f 01.04.2017 which imposed a cap on receipt of cash exceeding Rs. 2,00,000/-. The provisions of Section 269ST of the Act and its consequences are discussed later in this article.

In recent amendments, Finance (No. 2) Act, 2019 substituted the term 'bank account' with 'bank account or through such other electronic modes as may be prescribed'. These 'such other electronic modes' were notified by Ministry of Finance vide Income Tax (Third Amendment) Rules, 2020 on 29.01.2020 under 'Rule 6ABBA of Income Tax Rules, 1962' as the following:

(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) Aadhar Pay

Thus, although the electronic modes were prescribed on 29.01.2020, they stand applicable retrospectively from the date on which the amendment became effective i.e 01.09.2019.

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 propertieswhich 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.

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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 exceeding 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.

In***CIT vs. BMS Projects (P) Ltd. [2014] 44 taxmann.com 206 (Gujarat)***, it was held that where TDS has been deducted on payments to sub-contractors and other details were also furnished, expenditure was to be allowed as a deduction.

Accordingly, it can be inferred from the above decision of Gujarat High Court that deduction of TDS would mean that the transaction is genuine. The transaction of sale of immovable property was included to the purview of Section 269SS of the Act with an only intent to curb the generation of black money by way of dealings in cash in immovable property transactions. Also, Section 194-IA of the Act was inserted by Finance Act, 2013 to prevent the under valuation of transactions and to improve the reporting of such transactions and their capital gains thereof. Considering this fact that if TDS is deducted on cash advances, the transaction would automatically be reported and there remains no scope of diversion of black money. Here, since revenue suffers no loss and the transaction is fully and truly disclosed, it can be said that penalty u/s 271D should not be imposed if TDS is deducted u/s 194-IA of the Act.

To keep the implementation of these two sections in check, Finance Act, 2015 also amended Section 271D and 271E of the Act which provides for penalty of amount equal to the amounts received in contravention of provisions of Section 269SS and 269T of the

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Actrespectively. Section 271D states that where any person receives any amount of loan, deposit or advance for sale of immovable property in contravention of Section 269SS of the Act, he shall be liable for penalty of equal amount under section 271D of the Act. While, on the other side, where any person repays any amount of loan, deposit or the said advance in contravention of Section 269T of the Act, he shall be liable for penalty of equal amount under section 271E of the Act.

<u>Exemptions from Section 269SS and 269T</u>

These two sections also come with an exception to provide that where the loan/deposit/specified advance is accepted from the below stated;or where repayment of the loan/deposit/specified advance taken or accepted from the below stated is made,shall be exempted from the provisions of Section 269SS and 269T of the Act:

- Government
- Any banking company, post office savings back or co-operative bank
- Any corporation established by a Central or State Provincial Act
- Any government company defined under section 2(45) of Companies Act, 2013
- Such other institution, association or body or class of institutions, associations or bodies which the Central Government may notify in this behalf after recording proper reasons in writing.

The provisions of section 271D and 271E are explicitly clear and there are no exceptions to it. However, the Income Tax Act comes with a rescuing provision in the form of section 273B of the Act which states that no penalty shall be imposed where the failure to comply with the provisions is due to some reasonable cause. Now the question that arises here is what constitutes to be a reasonable cause and what does not and to what extent it can be resorted to, to escape the penal provisions of Section 271D and 271E of the Act.

This term ‘reasonable cause’is very enormous and is a controversial term in itself. Something that may constitute as ‘reasonable cause’ by one person may not be considered as acceptable on the same footing by another person. Thus, the rebate provided by Section 273B of the Act is quite subjective in nature which has resulted in divergent views of various high courts and appellate tribunals.

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In a recent judgment, **High Court of Madras in the case of M/s. NRK Thangamani ITA Nos. 1431 and 1432 of 2007 dt. 05.09.2019** also held that imposition of penalty depends upon the facts and circumstances of each case and if the assessee has put forth a reasonable cause for accepting the deposits in cash, then such circumstances can be considered by the assessing authority to waive or reduce the penalty.

Adding on to it, the stated reasonable cause has to be mandatorily followed by sufficient evidences to establish the compelling circumstance under which the assessee could not comply with the said provisions of Section 269SS or 269T of the Act.

High Court of Bombay in the case of Nitin Mohan Wadikar [2019] 414 ITR 647 (Bom)observed that merely stating that assessee was forced to accept cash loans as cash credit limitof account got exhausted and the assessee had to purchase raw materials to execute time bound orders, was not sufficient as no evidence was furnished in this regard.A plausible explanation has to be established with the respective evidences.

As stated above, there has to be some compelling circumstance under the mandate of Section 273B of the Act to condone the violation of Section 269SS/ 269T.One cannot raise a plea that cash was received but payment later on made through cheques does not suggest that there was no attempt to bring black money into the business.

In the case of **Ms. Nanda Kumari vs. ITO ITA No. 968 of 2018 dt. 20.12.2018**, penalty u/s 271D was dropped by High Court of Madras. In this case, appellant had taken cash advance from her maternal uncle to repay another person the advance earlier received by her for sale of immovable property as the transactioncould not be materialized. The said amount so repaid was borrowed from her maternal uncle for emergency purposes and the same was done within close family relatives. The Honorable Court observed that there was nothing on record to show that the transaction within the close knit of family relatives lacked bona fides or that the appellant has come forward with a false case.

In order to impose the penalty, the AO has to show that the case as projected by the assessee was false or that the cause established was not bonafide. More particularly, the cause should be supported with necessary evidences without which no contention shall sustain in law. **Hon'ble Apex Court** in the case of **Kum. A.B.Shanti 255 ITR 258** also observed that existence of genuine or bona fide transaction is not sufficient to attract relief

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under section 273B of the Act and it has to be established that on account of some bona fide reasons, the assessee could not get loan/ deposit by account payee cheque or draft or other specified modes.

In another case in **Shivaji Ramchandra Panwar HUF vs. JCIT ITA No. 145, 154, 171 of 2016 dt. 18.07.2018, High Court of Bombay**held that education of Karta of the HUF upto 4th Standard cannot itself lead to presumption that he is ignorant of law, more particularly when the karta is dealing with large amounts of cash and thus, it cannot be taken as a valid plea to bypass the settled law. Therefore, lack of education or ignorance of law cannot be considered as reasonable cause to escape penalty.

Ever since the restriction was imposed on cash transactions vide Sections 269SS and 269ST of the Act, there have been numerous disputes on the applicability of these sections and the consequent validity of penalty imposed under sections 271D or 271E of the Act.

To escape the clutches of penal provisions of Section 271D and 271E of the Act, the assessee has to establish a proper cause. The burden then, shifts on the AO to establish that the cause shown is not a reasonable one by examining it and that it lacks bona fide. When a reasonable cause is put forth, the assessing officer is obligated to discard or disprove the said contention and then only, the penalty could be levied.

Limitation period for imposing penalty under sections 271D and 271E of the Act

Section 275 of the Act provides for bar of limitation for imposing penalties under the Income Tax Act, 1961. In **Commissioner of Income-tax vs. Hissaria Bros Civil Appeal No. 5254 of 2008 (SC) dt. 22.08.2016,** the Apex Courtheld that penalty proceedings for default in not having transactions through the bank as required under Sections 269SS and 269T are not related to the assessment proceeding but are independent of it. Therefore, the completion of appellate proceedings arising out of the assessment proceedings or other proceedings during which the penalty proceedings under Sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings. Clause (a) to section 275(1) of the Act governs the cases which are integrally related to the assessment proceedings and are not independent of it. Since, the penalty proceedings under section 271D and 271E of the Act are exclusive of the assessment proceedings, the limitation period as prescribed by Section 275(1)(a) of the Act does not apply. In cases like

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271D and 271E of the Act, penalty proceedings can be initiated independent of any proceedings but obviously the penalty proceedings can be initiated only when the default is brought to the notice of the concerned authority which may be during the course of any proceedings and therefore, for such type of cases where the penalty proceedings have been initiated in connection with the defaults for which no statutory mandate is there, a different period of limitation has been prescribed under clause (c) as a separate category. In cases falling under clause (c), penalty proceedings are to be completed within 1 year from the end of the financial year in which the proceedings during which the action for imposition of penalty is initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. Thus, limitation period of six months as prescribed in Section 275(1)(c) of the Act applies to such penalty proceedings.

High Court of Delhi in the case of Pr. CIT vs. JKD Capital &Finlease Ltd ITA No. 780/2015 dated 13.10.2015 and **CIT vs. Worldwide Township Projects Limited (2014) 269 CTR 444** has also given decisions on similar footings by holding the limitation period for imposing penalty under section 271D and 271E of the Act as per the provisions of Section 275(1)(c) of the Act.

Subsequent to this decision by Hon'ble Court, CBDT vide its **Circular No. 10/2016 dt. 26.04.2016** on this subject of *'Limitation for penalty proceedings under sections 271D and 271E of the Income Tax Act, 1961'* also confirmed the above discussed view and settled the position that the period of limitation of these penalty proceedings has to be governed by the provisions of Section 275(1)(c) of the Act.

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

As discussed above, 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 needs 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

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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 favor of 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.

<u>Payments or receipts through journal entries</u>

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

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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. This view has been held by **High Court of Delhi in CIT vs. Worldwide Township Projects Ltd. [2014] 367 ITR 433; CIT vs. Noida Toll Bridge Co. Ltd. [2003] 262 ITR 260 and CIT vs. Mahagun Technologies Pvt. Ltd.ITA No. 4410/Del/2013 dt. 22.06.2015.**

In another case of **CIT vs. Lodha Properties Development SLP (Civil) Diary Nos. 42738/2018**, the **Hon'ble Apex Court** had dismissed the revenue's petition challenging the order of Bombay HC for AY 2009-10. The hon'ble high court had dismissed revenue's appeal in the case of Lodha group of companies and confirmed the order of tribunal of deleting the penalty levied under section 271D/271E on the acceptance/repayment of loans/advances through journal entries.

<u>Loan or deposit – Sine Qua Non for Section 269SS and 269T</u>

Loan or deposit is a sine qua non or foundational fact for the applicability of Section 269SS and 269T of the Act. It cannot be applied to just every cash transaction. Essential attributes of a loan or deposit or advance is the right to claim payment and obligations to re-pay. If this element is missing, Section 269SS cannot be attracted. **High Court of Delhi in the case of CIT vs. I P India Pvt. Ltd. ITA No. 1192/2011 dt. 21.11.2011** held that share application money paid in cash does not partake the character of Loan or deposit or advance whether or not shares are allotted and thus, Section 269SS and 269T cannot be attracted.Now one may wonder whether these sections would be attracted where a large sum of share application is received in cash and only meagre amount of shares are allotted in lieu thereof. Upon these facts, Delhi Tribunal sustained the penalty under section 271D of the Act as it showed the mala fide intent of the company in accepting huge sum in cash for which only few amount of shares were allotted. The Tribunal held that the actual intention of the company for receiving the money in cash has to be considered, which if found mala fide would be liable for penalty under section 271D of the Act.

It is also noteworthy to take the provisions of Section 269ST of the Act into consideration as receiving share application money in cash for an amount exceeding Rs. 2 lakhs would attract the penal provisions of Section 271DA of the Act due to contravention of Section 269ST of the Act.

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Transaction between partner and his firm

Unlike companies, partnership firms are not considered to have separate legal entities as it is formed by two or more persons who decides to carry on business and share the resultant profits/losses is some agreed ratio. The partners are the contributors of capital and provide their own money to the firm. There is no common seal of a partnership firm.

The status of the partners qua the firm has been summed up by the **Supreme Court in the case of CIT vs. R.M.Chidambaram Pillai &Ors (1977) 1 SCC 431**wherein the Hon'ble Court was of the view that a firm is not a legal person even though it has some attributes of the personality. According to the honorable court, partnership is a relation between certain persons who agree to share the profits of the business. In Income Tax Law, a firm is a unit of assessment by special provisions but is not a full person.

Thus, if we follow this view point, the partners cannot be considered as separate and distinct from their firm and any money provided by them to the firm cannot be taken as an independent transaction of loan under the purview of Section 269SS of the Act. Despite the position as laid down by the Supreme Court, the legal status of a partnership firm vis-à-vis its partners have always been under debate and so is the applicability of Section 269SS or 269T to money advanced by partner to his firm.

Relying upon this decision, the **High Court of Delhi in the case of CIT vs. Muthoot FinanciersITA No. 336, 338, 341 and 345 of 2002 dated 03.02.2015**has held that Section 269SS of the Act would not be violated when money is exchanged inter-se between the partners and the partnership firm.

Similar position applies to the receipt and payment of partner's capital by partnership firm as held in the case of **ITO vs. Universal AssociatesITA No. 1349/Ahd/2010 dt. 17.06.2011**as partner's capital neither constitutes loan nor deposit.

Section 269ST – Mode of undertaking transactions

With a view to promote digital economy and create a disincentive against cash transactions, Section 269ST was inserted by Finance Act, 2017 w.e.f 01.04.2017 on the basis of recommendations of SIT. This provision has imposed a cap on receiving amount more than Rs. 2 Lakhs in cash. The limit was originally recommended by SIT to Rs. 3 Lakhs which

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was however was reduced to Rs. 2 Lakhs while passing of the Finance Act, 2017. Section 269ST of the Act has the following primary ingredients:

i. It casts an obligation on every person (be it individual or HUF or Firm or Company or AOP or BOI or Artificial Juridical Person etc)
ii. Section 269ST does not apply to Government or banking company, post office savings bank or cooperative bank.
iii. Any person shall not receive amount of Rs. 2 Lakhs or more otherwise than by account payee cheque, draft or through electronic clearing system of bank or through such other electronic modes as prescribed. (Prescribed modes have been mentioned above)
iv. Cap-limit of Rs. 2 Lakhs applies to every transaction of money received:
    - In aggregate from a person in a day
    - In respect of single transaction
    - In respect of transactions relating to one event or occasion from a person
v. This section does not apply to transactions of loan/deposit/ advances for sale of immovable property as referred to in Section 269SS of the Act. For transactions referred to in Section 269SS of the Act, the limit of Rs. 20,000 would apply.
vi. Except for the transactions referred to in Section 269SS and other receipts as exempted by Central Government by notification, Section 269ST of the Act shall apply to every receipt whether taxable or tax free, whether capital or revenue. It shall apply regardless of whether money is received in course of business dealings or non-business dealings, money gifts, sale of old furniture etc.
vii. Section 271DA of the Act was inserted by Finance Act, 2017 which provides for levy of penalty on a person who receives a sum in contravention of the Section 269ST of the Act. Penalty of amount equal to the amounts received shall be levied. However, the said penalty shall not be levied if the person proves that there were good and sufficient reasons for such non-compliance.

CBDT Circular No. 27/2017 dated 03.11.2017– Applicability of Section 269ST to agricultural income received from sale of agricultural produce

CBDT vide Circular No. 27/2017 dated 03.11.2017 clarified that Section 269ST of the Act prohibits receipt of Rs. 2 lakhs or more otherwise than by specified modes in a day or in

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respect of a single transaction or in respect of transactions relating to an event or occasion from a person. As no exception has been given for agricultural income, any cash sale of an amount of Rs. 2 lakh or more by cultivator of agricultural produce is prohibited under this section. This circular also clarified that cash sale of the agricultural produce by its cultivator to the trader for an amount less than Rs. 2 lakhs <u>will not</u>:

- Result in any disallowance of expenditure under section 40A(3) of the Act in case of trader
- Attract prohibition under section 269ST of the Act in the case of cultivator
- Require the cultivator to quote his PAN or furnish Form No. 60.

<u>Circular No. 22/2017 dated 03.07.2017</u>–<u>Repayment of loan by NBFCs and Housing Finance Companies</u>

CBDT has clarified vide circular no. 22/2017 that, in respect of receipt in the nature of repayment of loan by NBFCs or Housing Finance Companies, the receipt of one installment of loan repayment in respect of a loan shall be considered as 'single transaction' and all the installments paid for a loan shall not be aggregated for the purposes of determining the applicability of Section 269ST of the Act.

<u>Applicability of Section 269ST to cash gifts taxable under section 56(2)(x)</u>

Section 56(2)(x) of the Act provides that where, on or after 01.04.2017, an aggregate sum exceeding Rs. 50,000/- is received from any person during the previous year without consideration, then the entire sums so received shall be taxed as 'Income from Other Sources' in the hands of recipient.

Taxability under section 56(2)(x) shall arise irrespective of whether sum is received in cash or non-cash mode. Now let us assume Mr. A has received has received cash gift of Rs. 3 lakhs and paid due tax thereon as per Section 56(2)(x) of the Act. So, the question that arises here is whether Section 269ST of the Act would still be applicable on this cash gift and would penalty under section 271DA of the Act would be attracted even if the said amount has already been offered to tax. Section 56(2)(x) of the Act does provide certain exemptions which does not include transactions covered under section 269ST of the Act. Thus, it appears that even if the gift taxable under section 56(2)(x) of the Act has been

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included in the return of income and offered to tax, penalty under section 271DA of the Act would still be leviable for receiving sums exceeding Rs. 2 lakhs in cash.

However, the position would stand slightly different where the transaction is exempt from tax under section 56(2)(x) of the Act say, exemption of gift received from relatives. Section 269SS was brought out to discourage the use of unaccounted money and thus, transactions between relatives and sister concerns cannot be the subject of Section 269SS. In one case, the assessing officers treated the cash given by father to his son as unsecured loan and treated this transaction to be covered by Section 269SS in order to levy penalty under section 271D of the Act. However, the assessee maintained the contention that the cash given by his father was a gift although no formal gift deed was drafted at that time. The controversy that arose here is whether the delay in preparation of gift deed can cause prejudice to the assessee by holding that cash transactions is a loan and not in the nature of gift. The **Ahmedabad Tribunal** in the case of **HareshkumarBecharbhai Patel vs. JCIT ITA No. 2996/Ahd/2016 dt. 01.01.2019** observed that gift deed is nothing but an understanding in writing which establishes the nature of transaction carried out. Once the donor has agreed that he had given a gift to the assessee, then the same cannot be denied merely on the ground that the gift deed was not prepared at the relevant time. Even if the amount was given as a loan and later on the parties have agreed to treat it as a gift, then the matter comes to an end. This is the basic difference between gift and loan/deposit. A gift is never paid back or returned to the donor while that is not the case of loan/deposit. As there was nothing to suggest that the assessee has paid back the money to his father directly or indirectly, the penalty imposed by AO under section 271D was deleted.

Applicability of Section 269ST to the share application money received by companies

Section 269ST of the Act shall also apply to the share application money received by companies if it is received in cash exceeding Rs. 2 lakhs or more in aggregate from a person in a day, in respect of a single transaction or in respect of transactions relating to one event or occasion from a person. Section 42 of the Companies Act, 2013 read with Rule 14(5) of Companies (Prospectus and Allotment of Securities) Rules, 2014 also provide that the payment for subscription of securities in private placement offer shall be made from the bank account of the person subscribing to such securities.

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<u>Applicability of Section 269ST on capital contribution from partner in cash or drawings by partner</u>

Capital contribution by a partner is a capital receipt and hence, not taxable. However, Section 269ST of the Act applies to all the receipts, whether capital or revenue or whether taxable or exempt. Adopting the view of Apex Court in the case of **R.M.Chidambaram Pillai &Ors**(supra)that their legality cannot be separated from its partners, it is possible to state Section 269ST will not apply to the capital contribution made by the partner in cash. On similar grounds, drawings by a partner in cash shall also not be subject to the limits of Section 269ST of the Act.

<u>Applicability of Section 269ST to transactions between sister concerns</u>

In **Shree Durga Distillery vs. Addl. CIT (Inv.) ITA No. 349/Bang/2004 dated 30.11.2015**, the Tribunal had the occasion to consider whether transactions between sister concerns can constitute a loan or deposit for the purposes of Section 269SS and 271D of the Act. The Tribunal held that transfer of funds inter se between two sister concerns cannot be termed as a loan or deposit. Deposit is given by the lender for a fixed term while loan is given on the request of the borrower. If decision on behalf of the lender or borrower is taken by the same person controlling the financial affairs then it is difficult to term such transactions as loan or deposit. The tribunal also relied upon **ACIT vs. G.P.Thapadia [2004] 84 TTJ (Jodh.) 34** that cash transactions with sister concerns will not attract penalty as default of assessee would only be a technical one.

Also, in **Muthoot M.George Bankers vs. Asstt. CIT [1993] 46 ITD 10 (Cochin)**, the tribunal had held that:

> *"….From the copies of the accounts furnished before us all that can be gathe=-red is that funds have been transferred from and to the sister concerns as and when required and since the managing partner is common to the sister concerns, the decision to transfer the funds from one concern to another concern or to repay the funds could be said to have been largely influenced by the same individual. In other words, the decision to give and the decision to take rested with either the same group of people or with the same individual. In such circumstances, we hold that the transactions inter se*

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between the sister concerns and the assessee cannot partake of the nature of either 'deposit' or 'loan'…."

Considering the above, it is possible to take a view that ratio of above decisions would apply to the applicability of Section 269ST as well and no penalty would be attracted under section 271DA of the Act.

However, as per clause (ii) of first proviso to Section 269ST, the transactions covered by Section 269SS shall not be covered under Section 269ST of the Act. Thus, it can be inferred that all the transactions to which Section 269SS of the Act is not applicable would be covered under the provisions of Section 269ST of the Act. For example, sale proceeds collected by the selling agent on behalf of his principal, advance received against sale of goods, share application money etc.

<u>Some Examples to understand the implication of section 269ST</u>

As discussed above, section 269ST comes into play when any payment is received of Rs. 2 lakhs or more in (a) aggregate from a person in a day, (b) in respect of a single transaction or (c) in respect of transactions relating to one event or occasion from a person. Let us understand the same with the help of certain illustrations:

i. If amount of Rs. 90,000/-, Rs. 1,70,000/- and Rs. 40,000/- is received in cash on same day against 3 different bills from the same person, then whether section 269ST would be contravened or not ?

- Yes, since the amount received from one person in aggregate exceeds Rs. 2,00,000/-. But if the said amounts are received on three different dates, then it will not amount to violation of Section 269ST.

ii. Whether section 269ST would be violated where various bills of amounts less than Rs. 2,00,000/- each are raised and total cash of Rs. 15,00,000/- is received on different dates. Each time the cash is received, it is less than Rs. 2,00,000.

- In this case, section 269ST would not be violated as the cash received are towards different bills and does not pertain to a single transaction. However, let us assume that different bills raised are for one event say, wedding. Then in such cases, Section 269ST would be violated in terms of clause (c) 'in respect of transactions relating to one event

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or occasion from a person', since the total amount of cash received from one person relating to a single occasion exceeds Rs. 2,00,000, Penalty under section 271DA would be attracted.

iii. Whether Section 269ST would be violated where 4 cash gifts of Rs. 1,00,000/- each are received on different dates from some relative?

- None of the clauses of Section 269ST are violated here for the following reasons:-
  1. The amount of cash received in aggregate from one person in a day is less than Rs. 2,00,000.
  2. The transactions of 4 cash gifts received on different dates cannot be construed as single transaction.
  3. The cash received is not relating to one event or occasion from a person.

iv. Whether Section 269ST would be violated if an old car is sold for Rs. 2,50,000/- and the consideration is received in cash instalments of Rs. 75,000/- and Rs. 1,75,000/- on two different dates?

- Here, Section 269ST would be violated as cash received is relating to a single transaction and is exceeding the statutory limit of Rs. 2,00,000/-. More so, it also tantamount to cash received relating to one event from one person.

v. Atthe 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/-.

vi. Suppose X, a contractor undertakes a contract for renovation of a house and charges Rs. 5,00,000 (Rs. 2,00,000 related to civil work and re-modelling, Rs. 2,00,000 related to woodwork, Rs. 50,000 related to plumbing and Rs. 50,000 related to electrical work).

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He bills separately for each of these and receives 3 cash payments of Rs. 1,50,000 each on 02.04.2019, 03.04.2019 and 04.04.2019 and balance of Rs. 50,000 in cash on 05.04.0219. Will section 269ST be attracted?

- Yes, section 269ST will be attracted as sum received in cash is Rs. 2,00,000/- or more "in respect of transactions relating to one event or occasion from a person."

vii. Whether Section 269ST would be attracted where a partner brings capital contribution in cash to the partnership firm?

- Section 269ST would be attracted if the amount of capital contribution exceeds the statutory limit of Rs. 2,00,000/-. The position would remain the same even if the capital contribution in cash is made on different dates and is less than Rs. 2,00,000/-. This is due to the operation of clause (b) and (c) i.e in respect of transactions relating to one event or occasion from a person and, in respect of a single transaction.

viii. Whether Section 269ST would be attracted if sole proprietor introduces capital of Rs. 3,00,000/- into his proprietary business in cash?

- Here, Section 269ST would not be violated as the proprietary concern is not a separate legal entity. Section 269ST would come into play when a transaction involving cash is done between two separate and distinct persons.

Other Restrictions or Disincentives under the Income Tax Act for dealing in cash

1. Encouraging small unorganized businesses to accept digital/cashless payments

Section 44AD:

In order to promote digital transactions and to encourage small unorganized businesses to accept digital payments, proviso to Section 44AD(1) of the Act has been inserted by Finance Act, 2017 to allow the eligible assesses to declare profit at a lower profit of 6% as against the normal rate of 8% of the turnover or gross receipts. The option to declare profit at lower rate of 6% is subject to the following conditions:

- Turnover or gross receipts should be received through permissible modes of payment which is account payee cheque or draft or by use of ECS through bank or through such other electronic modes as may be prescribed.

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- The turnover or gross receipts should be received during the relevant previous year or before the due date for filing of return of income as specified in Section 139(1) of the Act for that previous year.

Section 44AB:

In order to reduce compliance burden on the small and medium enterprises and to encourage them more to move towards digital transactions, Finance Act, 2020 has w.e.f 01.04.2020 has increased the threshold limit for getting the books of audited under section 44AB of the Act to Rs. 5 crore as against the limit of Rs. 1 crore. This increased limit is subject to the following conditions:

- Aggregate of all receipts in cash during the previous year does not exceed 5% of the total receipts, and
- Aggregate of all payments in cash during the previous year does not exceed 5% of the total payments.

Thus, the assessee whose business activities do not significantly include cash transactions may fall under this new threshold limit by keeping the element of cash below 5%.

2. Restrictions on receiving cash donations by political parties [Section 13A]

In order to discourage cash transactions and to bring transparency in the source of funding to political parties, Section 13A of the Act was amended by Finance Act, 2017 w.e.f 01.04.2018 to provide that the political party shall not receive donation of Rs. 2,000 or more otherwise than by account payee cheque or draft or use of ECS through bank or such other electronic modes as prescribed.

This condition is in addition to all the other conditions so provided for availing the benefit of exemption of income under Section 13A of the Act. Thus, if donation of Rs. 2,000 or more is received in cash, the political party will not be able to claim exemption of its income. It must also be noted here that, as per Section 182 of Companies Act, 2013, a political party cannot accept cash donations for an amount as small as Re.1 from a company. Thus, in nutshell, the limit of Rs. 2,000 appears to be only for donations received from persons other than companies. Although, cash donations by corporate or

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non-corporate assesses have been made ineligible for claiming deduction under Section 80GGB/80GGC of the Act, thereby making this amendment to Section 13A as redundant.

3. Mandatory to accept payment through prescribed electronic modes for certain assesses

   Finance (No.2) Act, 2019 has inserted a new Section 269SU of the Act w.e.f 01.11.2019 to provide that every person carrying on business, whose total sales, turnover or gross receipts exceeds Rs. 50 crores during the previous year,shall have to provide facility for accepting payments through the prescribed electronic modes (prescribed modes have been discussed above). These prescribed modes shall be in addition to the other electronic modes of payment already provided by the assessee.

   The following points are noteworthy:

   - This section applies to every person (Individual, HUF, firm, AOP, BOI, company etc)
   - Limit of Rs. 50 crore relating to sales, turnover, gross receipts has to be applied person wise and not business wise.
   - Turnover of Individual and his firm/ HUF are not to be clubbed.
   - Turnover of two firms with same partners are not to be clubbed.
   - The definition of Total sales, turnover or gross receipts has to be construed in accordance with the definition as given by ICAI in Para 5.9 of the Guidance Note on Tax Audit under section 44AB (2014).

4. TDS on cash withdrawals from bank

   Finance (No.2) Act, 2019 has inserted new section 194N in the Act w.e.f 01.09.2019 to provide for levy of TDS at the rate of 2% on cash withdrawals exceeding Rs. 1 crore made from the bank account during the previous year. This limit of cash withdrawals has to be computed in aggregate from all the accounts maintained by the assessee.

   However, this provision was made more stringent by Finance Act, 2020 (w.e.f. 01.07.2020) and was also made applicable on cash withdrawals exceeding Rs. 20 Lakhs in case of assesses who have not filed the return of income for 3 preceding years

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for which the time limit to file return of income has expired u/s 139(1). The first proviso provides that :

where the cash withdrawals during the previous year exceeds Rs. 20 Lakhs but not exceeding 1 crore:	TDS to be deducted at 2% on the amount exceeding Rs. 20 lakhs
where the cash withdrawals exceeds Rs. 1 crore:	TDS to be deducted at 5% on the amount exceeding Rs. 20 lakhs

Now, the amended provisions have, without any doubt, made the cash withdrawals more rigid especially for those assesses who have not been filing their ITRs. One thing that has struck here is would this first proviso would still apply if an assessee has filed belated return u/s 139(4) for any of the three preceding years which is obviously after the due date as mentioned u/s 139(1) of the Act has expired. The legislature should here mention 'Section 139' and not specifically earmark 'Section 139(1)'.

The second proviso to Section 194N exempts the cash payments made to certain recipients such as Government, banking company, cooperative society engaged in the business of banking, post office, banking correspondents and white label ATM operators who are involved in the handling of substantial amounts of cash as a part of their business operation.

It is needless to say that TDS on cash withdrawals will lead to unnecessary blockage of funds till the return of income is filed and tax so deducted at source is claimed or refund is obtained and thus, it is wise to keep a check on the quantum of cash withdrawals made from the bank accounts.

Note: Owing to COVID-19 pandemic and its grave repercussions on the Indian Economy, the Ministry of Finance vide Press Release dt. 13.05.2020 has reduced the rate of TDS by 25% for the period starting from 14.05.2020 to 31.03.2021 for certain specified sections. Though the benefit of reduced TDS rates should apply to section 194N as well but it has not been specifically mentioned in the Press release.

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5. Deduction of employee cost under Section 80JJAA

   Section 80JJAA of the Act provides for deduction of wages paid to employees for an amount equal to 30% of the additional employee cost incurred by an assessee in the previous year in the course of business. Sub clause (b) of clause (i) of the Explanation to this section specifies that the additional employee cost in case of an existing business shall be nil if the emoluments are paid otherwise than by account payee cheque or draft or by use of ECS through bank account or through such other electronic modes as may be prescribed.

   Thus, payment of wages to employees through the specified modes will also help in claiming deduction under section 80JJAA. Paying wages in cash would lose out the 80JJAA deduction.

6. Denial of deduction to donors when donation is made in cash

   i. Any donation made in cash for an amount exceeding Rs. 2,000 shall not be allowed to be claimed as deduction under *Section 80G* of the Act.
   ii. Deduction under S*ection 80GGA* of the Act in respect of donations made for scientific research or rural development shall not be allowed if the amount exceeding Rs. 10,000 is paid in cash as donation.
   iii. With a view to discourage cash donations to political parties and electoral trusts by the contributors, deduction for donation to political parties by companies and any other person under *Section 80GGB and 80GGC*of the Act respectively shall not be allowed if it is paid in cash.
   iv. Deduction under *Section 80D* which allows deduction to individuals in respect of health insurance premium shall not be allowed if the premium is paid in cash.
   v. The limit of expenditure or aggregate of payments as provided in *Section 40A(3)* of the Act made to a person in a day otherwise than by prescribed banking channels has been decreased to Rs. 10,000 as against the erstwhile limit of Rs. 20,000.
   vi. In order to discourage cash transactions even for capital expenditure, provisions of *Section 43* of the Act was also amended to provide that where the expenditure for acquisition of an asset for which payment or aggregate of payments made to a

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person in a day otherwise than by prescribed banking channels exceeds Rs. 10,000, then such expenditure shall be ignored for the purposes of determination of actual cost of such asset. Similar amendments were also made to Section 35AD of the Act wherein if any expenditure which is paid otherwise by prescribed banking channels and is exceeding Rs. 10,000 shall not be allowed be deduction.

7. R.equirement to file ITR by persons making large cash deposits in current account

   New proviso to Section 139 was inserted by Finance (No.2) Act, 2019 w.e.f 01.04.2020 which provided that any person who has deposited an amount or aggregate of the amounts exceeding Rs. 1 crore in one or more current account maintained with a banking company or a cooperative bank shall be obligated to file his return of income for that previous year. It is noteworthy here that limit of Rs. 1 crore cash deposit in the current account is to be taken as person wise and not current account wise. A question arises here that whether direct cash deposits made by others such as customers, friends, relatives etc in the current account of the assessee would also be taken into account for the limit of Rs. 1 crore. Going by the spirit of the new provision, direct cash deposits by others should be counted in the depositor's limit and not in the account holder's limit.

Conclusion:

All the restrictions and incentives have been inserted in the Income Tax Act with a single intent to restrict dealings in cash and at the same time encourage the use of money through digital modes. Post demonetization in November, 2016, the use of digital transactions has witnessed humongous increase of around 440%. In most tier-II and tier-III towns, digital payments have doubled. It can be suggested that the restrictions by the government on dealing in cash and incentives for digital transactions have also played a significant role. Targeting cash transactions in a way that does not affect those complying with law but make it difficult for those who intend to generate and utilize black money has always been the objective of the Government which it has fairly been able to accomplish and will continue to do by making necessary revisions and rewriting of the law.

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