

SECTION 269ST – A BRIEF ANALYSIS

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Introduction of Section 269ST

The Government of India has been continuously making efforts to increase digital payments system and Section 269ST of the income Tax Act, 1961 is one of the vital provisions in curbing black money generation.

From being primarily a cash-obsessed economy, India's digital payment story is new but exciting. Driven by progressive regulatory policies by our government and increased use of mobile internet, Indian payment industry is going through a transformational phase. The next few years will witness a whole new way of how money is moved in the Indian economy. The ease of use, interactive offers on digital payments and the penetration of digitalization in the country are one of the big reasons on the expanding usage of digital payment system in our economy. A person can freely make payment at shopping malls, supermarkets, grocery stores, restaurants, gas/petrol stations, etc. by just providing a phone number or scanning a QR(quick response) code.

The Finance Act of 2017 introduced Section 269ST in the Income Tax Act with effect from April of 2017. This was implemented in order to make provisions to narrow down cash transactions as the effectiveness to control black money could not be achieved by the previous sections. The following are the provisions under Section 269ST.

Provisions

No person shall receive an amount of two lakhs rupees or more-

- (a) In aggregate from a person in a day; or
- (b) In respect of a single transaction; or
- (c) In respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account.

Provided that the provisions of this section shall not apply to-

- (i) Any receipt by-
 - (a) Government;
 - (b) Any banking company, post office savings bank or co-operative bank;
- (ii) Transactions of the nature referred to in section 269SS;
- (iii) Such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

What is a transaction?

Transaction of course, is the making of the payment. It pertains to one event or occasion. Each payment is an event and it is difficult to argue that sale is an event, and the payments are simply transactions that follow from that event.

Analysis of clauses –

(a) One payer; one or many transaction, one day.

The first clause states that the amount of 2 lakhs or more cannot be received by a person in a day. Therefore, the prerequisites for applicability of this clause are:

- ❖ A single payer.
- ❖ A single receiver.
- ❖ Cash received must be Rs.2 Lakhs or more.
- ❖ Payment must be received in a single day.

Examples:

- (i) If Mr. X receives a single payment of Rs. 1 lakhs from Mr. Y in a day there is no violation of this section as the receipt is within the threshold limit.
- (ii) If Mr. X receives single payment of Rs. 2 lakhs from Mr. Y, there is a violation, as the receipt exceeds the threshold limit.
- (iii) If Mr. X receives Rs.2 Lakhs from Mr. Y in different transactions in a day, there is a violation.
- (iv) If Mr. X receives Rs.1 Lakhs from Mr. Y and also Rs. 1 Lakhs from Mr. Z in a day (transaction with Mr. Y & Mr. Z is not a single joint transaction) then there is no violation.

(b) One payer, one transaction, one or several days

Through clause (b) restriction is put in respect of each transaction also irrespective of fact that the amount could be received in a single day or several days. This limit will work simultaneously with the limit of aggregate receipt per day from a single entity. According to this an entity can receive an amount only less than Rs.2 lakhs in respect of a single transaction through cash. Hence, the prerequisites for the second clause are

- ❖ A single payer.
- ❖ A single receiver.
- ❖ Transaction should exist to which the payment is related.
- ❖ The aggregate amount of cash received in a day or in several days amounts to Rs.2 lakhs or more.

Part receipt through Permissible Banking Mode and remaining through Cash:

When a part amount is received through banking mode and the balance amount is received through cash, then the whole limit of amount less than Rs.2 lakhs will be only in respect of amount received through cash and the amount received through permissible modes will not be considered for the above limit.

Examples:

- (i) If Mr. A sells goods of Rs. 3 lakhs to Mr. B through two separate bills of Rs. 1.50 Lakhs each. In this case Rs. 3 lakhs can be received by him from Mr. B in cash etc. in two or more days complying with the limit of per day per entity because here the limit of per transaction as well as of per day per entity is not crossed.
- (ii) If Mr. A sells goods to Mr. B through a single bill for Rs. 3 lakhs then amount below Rs. 2 lakhs” can be received by A from B in cash. The balance amount will have to be received through account payee cheque or banking channel only. If the bill amount is above the ceiling limit (Rs. 2 lakhs or more) the payee cannot receive cash amount of Rs.2 Lakhs or more.

(c) One payer, one receiver, multiple transaction, one single event

Clause (c) of section 269ST restricts in respect of all the transactions which are related with any single event or occasion. This limit will be applicable simultaneously with the limit of aggregate receipt per day from a single entity as well as with the limit in respect of single transaction. According to this, an entity can receive only less than Rs.2 lakhs in respect of all the transactions which are related to single event or occasion. The payment may be against several transaction scattered or spread over several days but pertain to a single event or occasion. Hence, the prerequisites for this clause are

- ❖ A single payer
- ❖ A single receiver
- ❖ Single event or occasion to which the payments are related
- ❖ Duration of the transactions can be over one or several days

No definition/ description of the words “event” or “occasion” has been given in section 269ST. Further, no clarification has been given by the CBDT through any circular etc. The legal meaning of the expression “event” is eventus est qui ex causa sequitur; et dicitur eventus quia ex causis event. An event is that which follows from the cause, and is called an “event” because it eventuates from causes.

The word “event” or “occasion” in the law are vague and may cause a lot of confusion. The intent behind the provisions is that people may not split their payment into various tranches and avoid the provisions. The extended scope of the offence of the section, therefore, anti-avoidance, and not to extend the scope of the provision to smaller value of transactions which otherwise are not hit by the section.

The example given below will clarify as to what is an event or occasion.

Example

If a person has done work of different nature in a marriage of his customer providing services such as giving garden on rent for marriage reception, florist services, services of decorators and has issued three different bills of Rs.1.50 lakhs each for each separate service (total Rs.4.50 lakhs). He can receive amount below Rupees 2 lakhs from his customer in cash etc. mode in respect of all the 3 bills / transactions. If entire Rs.4.50 lakhs are taken in cash etc. then even though the limit of per transaction and also limit per day per entity is not crossed, but since all the transactions are related with the single occasion of a marriage, the total limit of less than Rs.2 lakhs will be a consolidated limit for all the related transactions.

Transactions between Firm and Its Partners

The cash transactions are made in respect of introduction or withdrawal of capital from partnership firm by the partners and if the amount is Rs.2 lakhs or more, whether the said transactions will be covered by the provisions of section 269ST. There are different opinions in respect of such transactions. As per one school of thought, since the partnership firm and partners are distinct persons, the provisions of section 269ST are applicable. As per another school of thought, the partners and firm are same, as partnership firm is not a legal entity from partners.

Under the Indian Partnership Act, a partnership has not been given any legal status. It is not a juristic person and the independent status given to the partnership firm under the Act has to be limited only for the purposes of that Act. Such a legal position becomes clear from the landmark judgment of the Supreme Court in **CIT vs. R.M. Chidambaram Pillai [1977] 106 ITR 292**. In this case, Supreme Court exclusively dealt with the concept of a partnership firm and quoted with approval a paragraph from Lindley on Partnership–

“In point of law, a partner may be the debtor or the creditor of his co-partners, but he cannot be either debtor or creditor of the firm of which he is himself a member, nor can he be employed by his firm, for a man cannot be his own employer.”

The Supreme Court has in its various judgments pointed out that the Indian law of partnership is substantially same in this regard. In another case **Dulichand Laxminarayan v. CIT [1956] 29 ITR 535**, the Apex Court quoted with approval:

“In some systems of law this separate personality or a firm apart from its members has received full and formal recognition, as, for instance, in Scotland. That is, however, not the English common law conception of a firm. English lawyers do not recognise a firm as an entity distinct from the members composing it.”

The partners of the firm are collectively referred as partners and the amount withdrawn or introduced contains part of their own capital. Hence, the provisions of section 269ST are not applicable. However there is controversy in this regard.

Notifications:

- 1) Vide clarification made by Circular No.22 of 2017 Dated 03rd July, 2017 it has been clarified that all the installments paid for the loan granted by Non-Banking Financial Companies and Housing Finance Companies shall not be aggregated for the purpose of Section 269ST.
- 2) Vide Notification no. 28/2017, F.No.370142/ 10/2017-TP, S.O. 1057 (E) dated 05th April, 2017 the provisions of Section 269ST have been made not applicable in respect of cash receipt from banking company, post office savings bank or co-operative bank.
- 3) Vide Notification No. 57/2017 Dated 03rd July, 2018 the provisions of Section 269ST have been made not applicable in respect of the receipt by a business correspondent on behalf of a banking company etc., receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company etc., receipt from an agent by an issuer of pre-paid payment instruments, receipt by a company or institution issuing credit cards against bills, receipt which is not includible in the total income under clause (17A) of section 10 of the Income-tax Act, 1961.

Penalty u/s 271DA

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.

Any penalty u/s 271DA (1) shall be imposed by the Joint/ Addl. Commissioner of Income Tax if the person fails to establish reasonable and sufficient cause for the contravention.

Reportable u/s 285BA –

Any person who is liable for audit u/s 44AB of the Act has to report receipt of cash payment exceeding two lakhs rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of Rule 114E) in Form 61A as prescribed u/s 285BA read in Rule 114E.

SFT in Form 61A shall be submitted on or before 31st May of the financial year, immediately following the financial year in which the transaction is recorded or registered.

Consequences of non-furnishing of SFT within due date–

Penalty u/s 271FA of Rs.500/- per day from the expiry of original due date till due date mentioned in the notice and Rs.1,000/- per day beyond the due date specified in the notice.

Conclusion:

The above manners of computing the limit are only in respect of several typical circumstances. There may be much other type of circumstances where these limits are to be applied according to the circumstances. The tax payers should avoid the lacunas and should make best effort to comply with the provisions as per the intent of the government to make the economy cashless.

The provisions of section 269ST may hit a large number of persons and therefore the person who received cash should be very careful so that there is no violation of section 269ST otherwise he may suffer penal consequences.

Limit on Cash Transactions is an efficient way to create a two-fold opportunity for India. This has created an opportunity to curb Black Money, as well as help, develop India as a modern economy on the digital platform. Section 269ST has provided for a way to limit the perpetrator from involving in black money transactions. Also, the contravention of the same cannot be easily justified either. To prove the presence of good and sufficient cause is more difficult than proving reasonable cause. The Limit on Cash Transactions can be a way out for India from the nightmare of Black money which has terrorized the country for so long.