Sec. 269SS & 269T of IT Act 1961

A brief informative paper on the said sections, useful for 3CD reporting as well as statutory aspects for disallowance as per IT Act

April 2012

Pipara & Company

Chartered Accountants

Finance is the important part and need of every business. The own capital of a person may not be always sufficient to meet the needs of finance of the business. Therefore the Loans and deposits become necessary and important to meet the financial needs of the business. But while taking loans and accepting deposits one also has to keep in mind the restrictions imposed under the Income Tax Act on the mode of taking such loans and deposits.

Such provisions regulating the mode of accepting or taking loans or deposits and mode of repayment of certain loans and deposits are contained under section 269SS and 269T of the Income Tax Act 1961.

Section 269SS: Section 269SS provides that any loan or deposit shall not be taken or accepted from any other person otherwise than by an account payee cheque or account payee bank draft if,

(a) The amount of such loan or deposit or the aggregate amount of such loan and deposit ; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid and the amount or the aggregate amount remaining unpaid ; or

(c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Thus it is clear that no person can accept any loan or deposit of Rs 20000 or more otherwise than by way of an account payee cheque or an account payee draft. The limit of Rs 20000 will also apply to a case even if on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from such depositor is remaining unpaid and such unpaid amount along with the loan or deposit to be accepted, exceeds the aforesaid limit.

This can be explained with an example: If Mr X has a credit balance of a loan of Rs 19000 from Mr Y. Now in this case Mr X cannot take loan in excess of Rs 999 more from Mr Y except with an account payee cheque or account payee bank Draft.

Exemptions from section 269SS: The Following persons are exempted from the purview of section 269SS:

a) Government;

(b) Any banking company, post office savings bank or co-operative bank ;

(c) Any corporation established by a Central, State or Provincial Act ;

(d) Any Government company as defined in section 617 of the Companies Act, 1956

(e) Other notified institutions

(f) Where the depositor and the acceptor are both having agricultural income and neither of them have any taxable income.

Consequences of contravention of section 269SS:

Section 271D of Income Tax Act 1961 provides that if a loan or deposit is accepted in contravention of the provisions of section 269SS then a penalty equivalent to the amount of such loan or deposit may be levied by the Joint commissioner.

Section 269T: Section 269T of Income Tax Act provides that any branch of a banking company or a cooperative society, firm or other person shall not repay any loan or deposit

Otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person, who has made the loan or deposit, if

(1) The amount of the loan or deposit together with interest is Rs 20000 or more, or

(2) The aggregate amount of loans or deposits held by such person, either in his own name or jointly with other person on the date of such repayment together with interest, is Rs 20000 or more.

For example if X is having loan of Rs 30000 outstanding to Y. Then X cannot repay such loan in cash to Y.

Exemptions from Section 269T: The Following persons are exempted from the purview of section 269T:

a) Government;

(b) Any banking company, post office savings bank or co-operative bank ;

(c) Any corporation established by a Central, State or Provincial Act ;

(d) Any Government company as defined in section 617 of the Companies Act, 1956

(e) Other notified institutions

Consequences of contravention of section 269T: Section 271E of Income Tax Act 1961 provides that if a loan or deposit is repaid in contravention of the provisions of section 269T then a penalty equivalent to the amount of such loan or deposit repaid may be levied by the Joint commissioner.

No Penalty to be levied u/s 271D or 271E if there is reasonable cause: as per Section 273B of Income Tax Act, a penalty shall be levied if the failure to comply with the provisions of section 269SS or 269T is due to some reasonable cause. Now the question arises what can be a reasonable cause to justify the violation of the provisions of section 269SS and 269T. Some of the reasonable causes based upon judicial decisions are provided as follows:

Repayment or receipt of amount to partners: If a partner introduces capital in cash in the firm or withdraws the same to the tune of Rs 20000 or in excess of Rs 20000, then Provisions of section 269SS or 269T shall not be attracted as the introduction of capital or withdrawal from firm cannot be called as loans or deposits.

Amount paid by firm to partners or vice versa - is payment to self and does not take the character of loan or deposits in general law. Provisions of section 269SS are not applicable to such facts (CIT v. Lokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj.)

Deposit assessed as income, No penalty can be imposed u/s 271D in such case: It was held by Jodhpur tribunal in Bajrang Textiles v. Additional CIT [2009] 122 (JD.) 190 that where the A.O having treated the impugned amount of deposit as income, he is precluded from treating the same amount as deposit or loan for the purpose of section 269SS and levy penalty u/s 271D. The penalty ought to be cancelled.

Acceptance or repayment through Journal entry do not attract section 269SS or 269T: Acceptance or repayment through Journal Entry would not come within the ambit of the words 'loans or deposits'-section 269SS applies only where money passes from one person to another by way of 'loan or deposit'[CIT v. Noida Toll Bridge Co. Ltd. 262 ITR 260 (Del.)]

A genuine transaction made in an emergency, does not attract penalty u/s 271D: held in Mrs Rupali R. Desai v. ACIT 88 ITD 76 (Mum.). In ITO v. Shree Mahaveer Industries 82 TTJ 549 (Jd.) it was held that cash paid to meet medical treatment expenditure in emergency, does not attract penalty u/s 271D.

In ITO v. Prabhulal Sahu [2006] 99 TTJ (Jd.) 177 it was held that Assessee was not aware of provisions of section 269SS or 269T. His council did not apprise him about the provisions. No penalty u/s 271D shall be attracted.

Where Depositors residing in rural areas are not having access to banking facility and are ignorant of relevant provisions of law, it would constitute bonafide reasons for payment in cash. (ACIT v. Vinman Finance & Leasing Ltd. [2008] 306 ITR (AT) 377 (Visakha.)

Loan given by relatives on Sunday for safe custody and for use in business. No contravention of section 269SS takes place- ITO v. T.R. Rangarajan [2005] 279 ITR 587 (Mad.)

Cash Transaction made on Sunday. No penalty could be imposed in such a case.- ITO v. Narsing Ram Ashok Kumar[1993] 47 ITD 38(Pat)

Transfer of money exceeding Rs. 20000 by way of bank voucher instead of a/c payee cheque or draft does not attract penalty u/s 271D as the transaction are through banking channels only held in Asst. CIT v. Jag Vijay Auto Finance (p) Ltd.[2000] 68 TTJ (Jp) 44

Loan in cash under compelling circumstances have been held to be reasonable cause: Industrial Enterprises v. DCIT [2000] 68 TTJ (Hyd) 373

Where the Lenders did not have any bank account which compelled the assessee to accept the loan in cash. This has been considered as reasonable cause in Balaji Traders v. DCIT [2001] 73 TTJ (Pune) 246

Although the provisions of section 269SS and 269T have been enacted with a view to prevent the increase in black money and to stop the tax evasion. Still the amount of Rs 20000 is very small in the present scenario considering the rate of inflation resulting in decrease in value of money and the rise in prices of various goods, which in turn also has enhanced the working capital needs of every businessman. Therefore the limits u/s 269SS and 269T also need to be raised similar to the increase in the audit limit u/s 44AB which has been done to benefit the small assessees in the current budget by the Finance minister.