

CBDT press release on cash transaction u/s 269ST - A contradictory view

CBDT press release of 5th April 2017 on the applicability of Section 269 ST of the [Income Tax Act 1961](#) states as follows:-

"Any contravention to the said provision shall attract penalty of a sum equal to the amount of such receipt. However, the said restriction is not applicable to any receipt by Government, banking company, post office savings bank or co-operative bank. **It has also been decided that the restriction on cash transaction shall not apply to withdrawal of cash from a bank, co-operative bank or a post office savings bank.** Necessary notification in this regard is being issued."

It seems that the press release is against the spirit and meaning of the amendment brought into the Act which is intended to curb the black money.

According to Section 269 SS there is no restriction to receive cash from the exempted entities such as Banking Companies as the proviso states as follows:-

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted **from**, or any loan or deposit or specified sum taken or accepted **by**,—

- (a) the Government;
- (b) any banking company, post office savings bank or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
such other institution, association or body or class of institutions, associations or bodies which
- (e) the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Embargo in [Section 269 SS](#) is to receive deposit or loan. This Section does not apply to:-

1. Receipt by way of repayment of loan (against loan disbursed by the assessee/person

2. Receipt by way of withdrawal of deposit (from deposit of the assessee/person made earlier).
3. Loans and deposits accepted from an exempted entity such as Banking Company. Any transactions not in the nature of loans and advance.

Therefore a person shall not accept deposits and loans in cash violating Sec. 269SS from another person which is not an exempted entity, but shall accept loan repayment against loan once given by such person and shall make withdrawal from own deposits. In other words, restriction of Sec.269SS is applicable for the transactions in the nature of acceptance of deposits and loans and not acceptance by way of loan repayment and withdrawal from own deposits.

Further, loans and deposits shall be accepted in cash from an exempted entity such as a Bank without the limit prescribed in Section 269SS. Same is the case of acceptance of loan repayment or deposit withdrawal or any other receipts as observed above.

Section 269 ST targets the cases of which are spared in Section 269 SS i.e. acceptance of loan repayment, deposit withdrawal and receipts other than by way of loan and deposits amounting to Rs. 2 lakhs and more. Needless to say that these transactions are outside the purview of Section 269SS.

Proviso of Section 269 ST which states that the section does not apply to receipts by Banking Company simply means that a Banking company shall accept Rs. 2 lakhs and more by way of loan repayment and withdrawal from its own deposit with other persons. The exemption proviso is as follows:-

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

Any receipt by -

- Government;
- Any banking company, post office savings bank or co-operative bank;

This does not mean that a person shall receive cash by way of withdrawal of Rs. 2 lakhs or more from his own deposit in a Bank in contravention of provisions of Sec. 269ST.

CBDT circular appears to be against the provisions of Sect 269ST to that extent.

Applicability of the Sections 269SS and 269 ST can be summarized as follows:-

Sec. 269 SS - Applies to acceptance of Deposits and loans. Not applicable to receipts of such nature accepted from exempted entities including Banking Companies.

Sec. 269 ST - Applies to any receipt other than those in the nature of deposits and loans. (Not applicable to receipts **by** exempted entities including Banking companies).

Receipts **from** Banking Company, not in the nature of deposit or loan (e.g. withdrawal of deposit by a depositor) are not exempted.

Thus, if the intention of the Government is that of the CBDT press release the Section 269 ST is to be amended incorporating the word "from" after the word "by" in the proviso to the said Section.

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