



**Penalty for anti-abuse provisions –
Penalty under Ss. 271AAA, 271AAB,
271AAC, 271D, 271DA, 271E**

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Background of introduction of S. 270A

- Chapter XXB inserted by the Finance Act, 1986 w.e.f. 1.10.1986, captioned “Requirement as to mode of acceptance, payment or repayment in certain cases to counteract evasion of tax” contains sections 269SS, 269ST, 269T and 269TT.
- Chapter XXI of the Act containing Sections 270 to 275 deals with Penalties imposable and is captioned “Penalties Imposable”.
- Penalties imposable vide each of the Sections contained in Chapter XXI are listed in the table below –

Penalties imposable under Chapter XXI of Income-tax Act, 1961

- Chapter XX-B of the Act containing Sections 269SS to 269TT is captioned “Requirement as to mode of Acceptance, Payment or Repayment in certain cases to counteract evasion of tax”.
- Chapter XXI of the Act containing Sections 270 to 275 deals with Penalties imposable and is captioned “Penalties Imposable”.
- Penalties imposable vide each of the Sections contained in Chapter XXI are listed in the table below –

Sr.No.	Section	Particulars
1	270A	Penalty for under reporting and misreporting of income
2	270AA	Immunity from imposition of penalty, etc.
3	271	Failure to furnish returns, comply with notices, concealment of income, etc.
4	271A	Failure to keep, maintain or retain books of account, documents, etc.
5	271AA	Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
6	271AAA	Penalty where search has been initiated
7	271AAB	Penalty where search has been initiated
8	271AAC	Penalty in respect of certain income
9	271B	Failure to get accounts audited
10	271BA	Penalty for failure to furnish report under section 92E
11	271BB	Failure to subscribe to eligible issue of capital
12	271C	Penalty for failure to deduct tax at source
13	271CA	Penalty for failure to collect tax at source
14	271D	Penalty for failure to comply with the provisions of section 269SS
15	271DA	Penalty for failure to comply with the provisions of section 269ST

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
16	271E	Penalty for failure to comply with the provisions of section 269T
17	271F	Penalty for failure to furnish return of income
18	271FA	Penalty for failure to furnish statement of financial transaction or reportable account
19	271FAA	Penalty for failure to furnish statement or information or document by an eligible investment fund
20	271FAB	Penalty for failure to furnish statement or information or document by an eligible investment fund
21	271FB	Penalty for failure to furnish return of fringe benefits
22	271G	Penalty for failure to furnish information or document under section 92D
23	271GA	Penalty for failure to furnish information or document under section 285A
24	271GB	Penalty for failure to furnish report or for furnishing inaccurate report under section 286

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
25	271H	Penalty for failure to furnish statements, etc.
26	271I	Penalty for failure to furnish information or furnishing inaccurate information under section 195
27	271J	Penalty for furnishing incorrect information in reports or certificates
28	272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
29	272AA	Penalty for failure to comply with the provisions of section 133B
30	272B	Penalty for failure to comply with the provisions of section 139A
31	272BB	Penalty for failure to comply with the provisions of section 203A
32	272BBB	Penalty for failure to comply with the provisions of section 206CA
33	273	False estimate of, or failure to pay, advance tax

Powers, immunity, procedure and limitation in relation to penalties

- The other sections in Chapter XXI deal with the following –

Sr.No.	Section	Particulars
1	273A	Power to reduce or waive penalty, etc., in certain cases
2	273AA	Power of Principal Commissioner or Commissioner to grant immunity from penalty
3	273B	Penalty not to be imposed in certain cases
4	274	Procedure
5	275	Bar of limitation for imposing penalties

- In addition to above, penalty could be imposed under Black Money Act for failure to disclose Foreign Asset.



Penalty for anti-abuse provisions – Penalty under s. 271AAC

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Object and purpose of the amendments by Taxation Laws (Second Amendment) Act, 2016

- Consequent to demonetization, interpretations prevailed that some of the existing provisions (including 115BBE) could be used for concealing black money. To overcome, these views, Section 115BBE has been amended by Taxation Laws (Second Amendment) Act, 2016 w.e.f. 1.4.2017.

- Statement of Objects & Reasons appended to the Taxation Laws (Second Amendment) Bill, 2016, interalia states the object and purpose of introducing PMGKY as under –
 - “1.

 - 2. Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.

Background of Section 115BBE

- The provisions of Amendment Act have tightened the regime of taxation of cash credits, unexplained money, unexplained investments, unexplained expenditure, etc.
- Prior to the enactment of the Amendment Act, 2016 there could have been a question as to whether an assessee, on his own, could offer certain amounts for taxation under the provisions of sections 68, 69, 69A, 69B, 69C and 69D (“specified sections”).
- It is now clear that items which could have been taxed by the provisions of sections 68, 69, 69A, 69B, 69C and 69D (“specified sections”) can also be offered for taxation by the assessee in his return of income by paying tax, on or before the end of the previous year, at the rates mentioned in section 115BBE.

What do specified sections deal with?

- Sections 68, 69, 69A, 69B, 69C and 69D of the Act deal with –

Section	Heading of the Section
68	Cash Credits
69	Unexplained investments
69A	Unexplained money, etc.
69B	Amount of investments, etc., not fully disclosed in books of account
69C	Unexplained, expenditure, etc.
69D	Amount borrowed or repaid on hundi

Section 115BBE prior to its amendment by Amendment Act

- Section 115BBE prior to its amendment by the Amendment Act provided that the income of the nature referred to in sections 68, 69, 69A, 69B, 69C or 69D (“specified sections) which is included in total income of the assessee shall be charged to tax @ 30% of such income. Finance Act, 2016 provided for a Surcharge and a Cess. Surcharge depends upon the legal status of the person and his total income eg in case of an individual surcharge is payable @ 12% if his total income exceeds Rs 10 crore and not otherwise. In case of domestic companies, surcharge is payable @ 7% where total income exceeds Rs. 1 crore but does not exceed Rs. 10 crore and in case of domestic companies whose total income exceeds RRs 10 crore surcharge is payable @ 12%. Corresponding rates for foreign companies are 2% and 5%. Cess is payable @ 3%. Thus, the tax incidence on the income of the nature referred to in specified sections was @ 30.90% to 34.608%.

Section 115BBE prior to its amendment by Amendment Act

- Prior to the amendment by the Amendment Act, 2016 it could have been debated as to whether an assessee could, in the return of income, include in his total income amounts of the nature referred to in sections 68, 69, 69A, 69B, 69C or 69D of the Act.
- Consequent to demonetisation, views were expressed by professionals that the undisclosed income held in the form of demonetized currency can be deposited in the bank and the said amount can be offered for taxation under specified sections and tax thereon paid at the rates mentioned in section 115BBE i.e. 30% plus applicable surcharge and cess. If this was done, the pre-pendant legal view was that the person doing so would not be liable to any penalty under the Act.

Amendments to section 115BBE

- It was with a view to prevent such a disclosure and to overcome the views expressed that the amendments have been made to section 115BBE of the Act. The amendments are applicable with effect from AY 2017-18 and therefore would apply to—
 - income under specified sections from 1st April, 2016 to 8.11.2016;
 - income under specified sections during 8th November, 2016 to 30th December, 2016 but not on account of demonitised notes;
 - income of subsequent assessment years i.e. AY 2018-19 onwards.
- The section applies to all assesseees –
 - irrespective of the legal status i.e. it applies to individuals, HUFs, firms, LLP, co-operative society, AOP, BOI, political party, etc. ;
 - irrespective of their residential status i.e. it applies to residents as well as non-residents
 - including those covered by COFEPOSA, IPC, PMLA, etc.
 - including those covered by presumptive taxation under sections 44AD / 44ADA / 44AE

Amendments to section 115BBE

- The section applies irrespective of the minimum threshold i.e. the section applies to even a small amount of Rs. 5,000 if the amount is chargeable as income under the provisions of the specified sections.
- Since the amendment is prospective w.e.f. AY 2017-18, the income under specified sections for earlier years will continue to be governed by the pre-amended provisions irrespective of the fact that the assessments of such years are completed after the amendment.

Amendments to section 115BBE ...

- Clause (a) of sub-section (1) of section 115BBE deals with income referred to in specified sections and which is included in the return of income furnished under section 139.
- Clause (b) of sub-section (1) of section 115BBE deals with income referred to in specified sections and which is determined by the AO if such income is not covered under clause (a)
- Irrespective of whether the case of the assessee falls under clause (a) or clause (b), the rate of tax is 60% plus surcharge plus cess. However, the levy of penalty depends on whether the case of an assessee falls under clause (a) or clause (b) of 115BE(1).
- Sub-section (2) of section 115BBE begins with a non-obstante clause and provides

- Position prior to the Amendment Act was that the set off of loss was allowed to the assessee though deduction in respect of any expenditure or allowance was not allowed.
- It was debatable and continues to be a debatable question as to whether deductions under Chapter VI-A are allowable against such income.
- Clause (a) covers income referred to in specified sections which has been reflected in return of income furnished under section 139. Such income reflected in a belated return or in a revised return furnished under section 139(5) would certainly be covered by clause (a).

- Pre-requisite for revising a return of income is “discovery” of omission or any wrong statement in the return of income filed by the assessee. Consequently, income covered by specified sections which is reflected in revised return after issue of notice by the AO may not be regarded being covered by clause (a).
- Return furnished under section 153A of the Act is regarded as if it is a return filed under section 139 of the Act and therefore it appears to be arguable proposition that a disclosure in the return filed under section 153A would be regarded as covered by clause (a).
- However, income referred to in specified sections which has been reflected in returns furnished under section 148 will not be covered by clause (a).

Amendments to section 115BBE ...

- Tax rate of 60% is on income under specified sections “included” in total income. If donations are given which donations qualify for deduction under section 80G, a question arises as to whether tax is payable on gross income under specified sections or net income [See Distributors (Baroda) Pvt. Ltd. v. UOI (1985) 155 ITR 120 (SC); CBDT Circular under section 112.]
 - In addition to the tax @ 60%, surcharge is payable @ 25% of advance tax. Surcharge is payable by all assessees irrespective of their legal status or residential status or quantum of income. Thus, a person having income of Rs. 5,000 covered by specified sections will also be liable to pay surcharge @ 25% of tax of 60%.
 - In addition to tax @ 60% and surcharge @ 25% of the tax payable, Health & Education Cess @ 4% is also payable.
 - Assessee will be liable to pay interest under section 234C of the Act, if assessee in
- Assessee who declares income under specified sections but does not pay

Amendments to section 115BBE ...

- Assessee will be liable to pay interest under section 234C of the Act, if assessee in his return of income declares income under specified sections but does not pay advance tax in accordance with the provisions of the Act.
- Belated returns will be subject to payment of interest under section 234A and default in payment of advance tax will trigger interest under section 234B.
- In a case where advance tax paid is more than 90% of the tax payable but less than 100% of the tax payable, interest under section 234B may not be leviable but the assessee will not be entitled to claim immunity from penalty.

Text of section 271AAC

- **Penalty in respect of certain income.**
- **271AAC.** (1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:
- **Provided** that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

Text of section 271AAC ...

- (2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).
- (3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation of S. 271AAC

- Section 271AAC has been introduced by the Taxation Laws (Second Amendment Act), 2016, w.e.f. 1.4.2017.
- This section was introduced consequent to demonetization.
- The penalty under this section is payable if the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and such income has not been included by the assessee in the return of income furnished under section 139 or having included such income in the return of income the assessee has not paid tax on such income on or before the end of the relevant previous year.
- The penalty can be levied by the Assessing Officer.
- While the provisions of section 115BBE are in force w.e.f. Assessment Year 2013-14, this section is applicable w.e.f. AY 2017-18.
- The provisions of this section are retroactive, as far as AY 2017-18 is concerned.

Explanation of S. 271AAC

- Penalty under this section is leviable if the total income determined includes income of the nature referred to in specified sections (i.e. Sections 68, 69, 69A, 69B, 69C and 69D) and the assessee has not included such income in its return of income or having included it in return of income has not paid tax thereon on or before the end of the relevant previous year then the penalty under this section is imposable on the assessee.
- The quantum of penalty is 10% of the amount of tax payable under clause (i) of sub-section (1) of section 115BBE i.e. 10% of 60% i.e. penalty will be 6% of the amount of income of the nature referred to in specified sections.
- If an assessee needs to avoid penalty under this section then it must
 - include in its return of income, income of the nature referred to in specified sections; and
 - pay tax thereon on or before the end of the previous year.

Explanation of S. 271AAC

- In search cases, for specified previous year, where provisions of section 271AAB are applicable, the penalty will be levied under section 271AAB and not under section 271AAC.
- Once penalty is levied under this section, penalty will not be levied / leviabale under section 270A.
- While the provisions of section 274 will apply for following procedure for levy of penalty under this section, it appears that the penalty under this section will be levied even if assessee had reasonable cause for not including the income of the nature mentioned in specified sections in his return of income or for not paying tax thereon before the end of the previous year. This is because the provisions of section 273B have not been amended to include this section.
- Since order levying penalty is an order imposing penalty under chapter XX of the Act, order passed by the AO levying penalty under this section will be appealable to the CIT(A) under section 246A.

Explanation of S. 271AAC

- For the purposes of computing limitation within which order levying penalty under section 271AAC has to be passed, clause (a) of section 275(1) will apply and not clause (c) of section 275(1).



Penalty for anti-abuse provisions – Penalty under s. 271AAB

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Text of section 271AAB

- **Penalty where search has been initiated.**
- **271AAB.** (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 ⁴⁹[but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—
 - (a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—
 - (i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;
 - (ii) substantiates the manner in which the undisclosed income was derived; and

Text of section 271AAB

- (iii) on or before the specified date—
 - (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and
 - (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

■ (b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—

- (i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and
- (ii) on or before the specified date—
 - (A) declares such income in the return of income furnished for the specified previous year; and
 - (B) pays the tax, together with interest, if any, in respect of the undisclosed income;

Text of section 271AAB

- (c) a sum computed at the rate of sixty per cent] of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

- (1A) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—
 - (a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee—
 - (i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

Text of section 271AAB

- (ii) substantiates the manner in which the undisclosed income was derived; and
- (iii) on or before the specified date—
 - (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and
 - (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

■ (b) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).]

■ (2) No penalty under the provisions of ⁵³[section 270A or] clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) ⁵²[or sub-section (1A)].

■ (3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Text of section 271AAB

- *Explanation.*—For the purposes of this section,—
- (a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;
- (b) "specified previous year" means the previous year—
 - (i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or
 - (ii) in which search was conducted;

Text of section 271AAB

- (c) “undisclosed income” means –
 - (i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—
 - (A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or
 - (B) otherwise not been disclosed to the ⁵⁴[Principal Chief Commissioner or] Chief Commissioner or ⁵⁴[Principal Commissioner or] Commissioner before the date of search; or
 - (II) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

Comparison of Sections 271AAA, 271AAB(1) and 271AAB(1A)

Conditions & Applicability	Section		
	271AAA	271AAB(1)	271AAB(1A)
Applicable to search initiated under section 132	between 1.6.2007 to 30.6.2012	between 1.7.2012 to 14.12.2016	on or after 15.12.2016
Penalty levied at the rate of	10% of undisclosed income of specified previous year subject to immunity provision	Minimum 10% and maximum 90% [maximum 60% w.e.f. 1.4.2017] of undisclosed income of specified previous year	Minimum 30% and maximum 60% of undisclosed income of specified previous year
Immunity from penalty provided	Fully	Partially	Partially

Conditions for immunity / rate of penalty under Sections 271AAA, 271AAB(1) and 271AAB(1A)

Conditions	Section		
	271AAA	271AAB(1)	271AAB(1A)
(a) In a statement recorded under section 132(4), undisclosed income is admitted, manner of earning specified and substantiates the manner of earning undisclosed income and pays tax together with interest in respect of undisclosed income	100% immunity	Penalty levied at 10% with additional condition of filing return of income on or before due date under section 139(1) declaring such undisclosed income	Penalty levied @ 30% with additional condition of filing return of income on or before due date under section 139(1) declaring such undisclosed income

Conditions for immunity / rate of penalty under Sections 271AAA, 271AAB(1) and 271AAB(1A)

Conditions	Section		
	271AAA	271AAB(1)	271AAB(1A)
(b) If condition of manner of earning undisclosed income and substantiation thereof is not fulfilled then,	No immunity – penalty @ 10% of undisclosed income	Penalty levied @ 20% as against 10% stated in (a) above	Penalty levied @ 60% as against 30% stated in (a) above
(c) If none of the conditions specified in above clauses (a) or (b) fulfilled, then	No immunity – penalty @ 10% of undisclosed income	Penalty levied between 30% and 90% of undisclosed income – upto 31.3.2017 AND 60% from 1.4.2017	Penalty levied at 60% of undisclosed income

Definitions under Sections 271AAA, 271AAB(1) and 271AAB(1A)

	Section		
	271AAA	271AAB(1)	271AAB(1A)
Specified date	Not defined and not applicable since filing return within due date under section 139 not mandatory to get immunity	Return to be filed within due date provided under section 139(1) or date specified in notice under section 153A for filing return, as the case may be	Return to be filed within due date provided under section 139(1) or date specified in notice under section 153A for filing return, as the case may be
Specified previous year means	(i) Previous Year ending before date of search and due date of filing return of income under section 139(1) has not expired before date of search and no return of income is filed till date of search; OR (ii) Year of search		
Undisclosed income	As given in earlier slides – same for all sections		

Whether penalty under Section 271(1)(c) / 270A can be imposed?

- For specified previous years, penalty can be imposed / levied via Sections 271AAA / 271AAB. In respect of specified previous years, no penalty can be imposed / levied under sections 270A / 271(1)(c) of the Act.
- For a specified previous year, if penalty is levied under section 271(1)(c) the same is bad in law and is liable to be quashed.
- Section 271AAA/271AAB and section 271(1)(c) have different concomitant scopes and are mandated to operate exclusively – this view is taken in –
 - **ACIT v. Prakash Steelage Ltd. [(2015) 153 ITD 493 (Mum.)]**
 - **Dr. Naman A. Shastri v. ACIT [(2015) 155 ITD 1003 (Ahd.)]**
 - **Sandeep Chandak v. ACIT [(2017) 55 ITR (Trib.) 209 (Luck.)]**
 - **Gilco Developers & Builders Pvt. Ltd. v. DCIT [(2017) 189 TTJ 355 (Chd.)]**
- A question arises as to whether for a specified previous year, penalty can be imposed /levied under section 271(1)(c) / 270A for concealment / under-reporting of income other than undisclosed income.

Undisclosed Income of years other than `specified previous year`

- In respect of undisclosed income of specified previous years, which could be one year or at best two years, penalty is leviable under Sections 271AAA / 271AAB
- However, undisclosed income in respect of other years (i.e. other than specified previous years) which has been detected during the course of search, penalty is levied under Section 271(1)(c) read with Explanation 5A thereto.
- Explanation 5A to section 271(1)(c) of the Act was inserted w.e.f. 1.6.2007 and provides that –
- Where undisclosed asset/income is found during the course of search initiated under section 132 on or after 1.6.2007 for any previous year which has ended before the date of search and, -
 - where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or
 - the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

Undisclosed Income of years other than `specified previous year`

- Explanation 5A to section 271(1)(c) of the Act was inserted w.e.f. 1.6.2007 and provides that –
 - “Where undisclosed asset/income is found during the course of search initiated under section 132 on or after 1.6.2007 for any previous year which has ended before the date of search and, -
 - (a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or
 - (b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,
 - then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of penalty under section 271(1)(c), be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.”

Undisclosed Income of years other than `specified previous year`

- In connection with Explanation 5A to section 271(1)(c) of the Act, it is relevant to note that –
- **Penalty is mandatory** - As per this Explanation, penalty in respect of undisclosed income found in search action whether offered in return of income filed after search or otherwise [for all the years covered in search action other than years falling in section 271AAA / 271AAB] is mandatory and there is no scope whatsoever for escaping from the rigors of this provision
 - **Mrs. Sarita Kaur Manjeet Singh Chopra v. ITO [(2015) 174 TTJ 516 (Pune)];**
 - **Shri Rajnish Vora v. DCIT [ITA No. 516/Chd/2012; AY 2007-08, Bench `B`, Order dated 31.10.2012].**

Undisclosed Income of years other than `specified previous year`

- **Penalty under Explanation 5A is leviable even if income is recorded in books of account but return of income is not filed by due date –**
- Penalty under section 271(1)(c) read with Explanation 5A is also levied in respect of income that is recorded in the books of account of the assessee in cases where the due date for filing the return of income has expired and no return of income is filed before the date of search action for that assessment year and the assessee is having positive taxable income. Thus, even though regular books of account are maintained and the entries are duly recorded in the books of account, the income would be deemed to have been concealed if the due date for furnishing the return of income has expired and no return of income is filed as on the date of initiation of search action. In other words, the assessee is required to file the return of income within the due date.

Explanation 5A - `due date' whether u/s 139(1) or 139(4)

- Explanation 5A to section 271(1)(c) merely refers to due date for filing return of income and does not specify whether 139(1) or 139(4) due date.
- As the language is not clearly worded, the benefit of doubt is given to the assessee whereby due date in Explanation 5A has been interpreted in various judicial pronouncements to consider due date u/s 139(4) and not u/s 139(1)
 - **ITO v. Gope M. Rochalani [(2014) 151 ITD 642 (Mum.)];**
 - **Rakesh Nain Trivedi [(2015) 152 ITD 869 (Amsr.)].**
- It is relevant to note that provisions of section 271AAB of the Act clearly refer to due date under section 139(1) of the Act. Further, there is no reasonable cause provided in the section for not filing return of income in time.
- However, as per the amendment made in Explanation 4(b), even though there is no such provision in Explanation 5A, credit for taxes paid for that year ought to be allowed while computing the amount of penalty for the reason that similar provision for deeming concealment of income exists in Explanation 3.

Meaning of 'manner' and 'substantiates'

- It may be noted that for levying the penalty the section imposes an additional condition (when compared with *Explanation 5* applicable upto 1-6-2007), namely, substantiation of the manner of deriving income.
- '**Manner**', as explained in the Law Lexicon by P. Ramanatha Aiyar means: 'mode of action, way of performing or effecting anything, method, style the way of managing; the way of doing thing, the method of procedure; ... method or mode or style... '.
- '**Substantiates**', Webster's New Collegiate Dictionary means:
 - '1: to impart substance to
 - 2: to put into concrete form...
 - 3: to establish by proof or competent evidence'.
- Accordingly, in the context of 'deriving income', for claiming concessional penalty, it would be necessary for an assessee to:
 - Explain the way, mode and method of deriving such income; and
 - Prove his explanation by proof or competent evidence.

Meaning of `manner' and `substantiates' ...

- To illustrate, an assessee explains, in the course of search, the cash found represents income derived from speculation. To claim concessional penalty, the assessee will have to:
 - state the manner of deriving the income (that is, the way, mode and method adopted); and
 - support the above by leading concrete and competent evidence in the form of relevant documents, etc.

Is it mandatory to specify the manner and substantiate it

- The question arises is whether it is mandatory for the assessee to specify this or is it necessary for the search officer to ask specific question in this respect while recording statement under section 132(4) of the Act and how far the manner of undisclosed income earned is to be substantiated.
- The proposition that even if the statement does not specify the manner in which the income is derived, if the income is declared, tax thereon is paid and return is filed including the undisclosed income, there would be substantial compliance not warranting any further denial of the benefit of claiming immunity from penal provisions is fortified by the ratio of the following decisions –
 - **CIT v. Mahendra C. Shah [(2008) 299 ITR 305 (Guj.)]**
 - **CIT v. Radha Kishan Goel [(2005) 278 ITR 454 (All.)]**

Is it mandatory to specify the manner and substantiate it

- The proposition that if the search officer does not ask any question relating to the manner of earning income or regarding substantiation of the manner of income earned, at a later stage, this cannot be made a hurdle for not granting benefit of immunity/reduced rate while levying penalty, is fortified by –
 - **ACIT v. Emirates Technologies (P.) Ltd. [(2017) 58 ITR (Trib.) 593 (Delhi)]**
 - **ACIT v. AJit Singh [(2016) 76 taxmann.com 212 (Jp.)]**
 - **ACIT v. Shreenarayan Sitaram Mundra [(2017) 166 ITD 47 (Ahd.)]**
 - **ACIT v. Smt. Ritu Singhal [(2016) 49 ITR (Trib.) 664 (Delhi)]**
- However, the Delhi High Court has in the case of **vide order dated 12.3.2018 in ITA 672/2016 has reversed the decision of Delhi ITAT in the case of ACIT v. Smt. Ritu Singhal [(2016) 49 ITR (Trib.) 664 (Delhi)].**

- The Delhi High Court has **vide order dated 12.3.2018 in ITA 672/2016** has **reversed the decision of Delhi ITAT in the case of ACIT v. Smt. Ritu Singhal [(2016) 49 ITR (Trib.) 664 (Delhi)]** held that the assessee did not specify how she derived that income and what head it fell in (rent, capital gain, professional or business income out of money lending, source of money, etc.). Unless such facts are mentioned with some specificity, it cannot be said that the assessee has fulfilled the requirements that she, in her statement (under section 132(4)) – substantiates the manner in which the undisclosed income was derived. Such being the case, this Court is of opinion that the lower appellate authorities misdirected themselves in holding that the conditions in section 271AAA(2) were satisfied by the assessee.
- The Delhi High Court has considered the decision of Gujarat High Court in **Mahendra C. Shah (supra)** and of Allahabad High Court in **Radha Kishan Goel (supra)**.

Observations of Delhi High Court in order dated 12.3.2018 in ITA 672/2016 passed by Delhi High Court - ACIT v. Smt. Ritu Singhal

- This being recent decision of the High Court in the context of provisions of section 271AAA of the Act and the conditions laid down therein and the decision being rendered after considering the earlier decisions of the High Courts, the liberal interpretation given up till now by the various benches of the Tribunal may require reconsideration and it would therefore not be easy to say henceforth that such question was not asked by the officers since it is for the assessee to reveal the manner as well as substantiate the same.
- Thus, the conclusion that can be drawn from the above rulings is that if only some income is admitted and offered to tax without specifying anything regarding manner & substantiation of earning the same whether or not a specific question is asked in that regard, it may be difficult to still argue that the condition prescribed is fulfilled specially under section 271AAB(1) / (1A) of the Act where immunity is provided as to the rate of penalty on the grounds of fulfilling of conditions as prescribed therein.

Return of income filed belatedly i.e. not within due date under section 139(1)

- In the context of provision of section 271AAB(1)/(1A) of the Act, it is very clearly provided that in order to get immunity of reduced rate of levy of penalty, one of the conditions to be fulfilled is the undisclosed income admitted under section 132(4) of the Act is to be disclosed in the return of income filed within the due date prescribed under section 139(1) of the Act. This particular condition is totally in contrast to the earlier provision of section 271AAA of the Act or even to Explanation 5A to section 271(1)(c) of the Act. In section 271AAA of the Act, the provision of filing return of income within due date under section 139(1) of the Act was not a pre-condition for claiming immunity from penalty. Similarly, as stated earlier, under Explanation 5A to section 271(1)(c) of the Act, what is stated is only due date which has been interpreted to mean due date of filing return of income as provided in section 139(4) of the Act. However, section 271AAB of the Act has prescribed this condition, which is very important to understand.

Return of income filed belatedly i.e. not within due date under section 139(1) ...

- The assessee may fulfil all the other prescribed conditions i.e. offering undisclosed income in statement under section 132(4), explaining manner of earning income and even substantiating the same, paying taxes on the same with interest, etc., however even after complying with all this, if the assessee for any reason, does not file return of income within the due date prescribed under section 139(1) of the Act, then no immunity from penalty would be allowed in respect of reduced rate of penalty and the penalty would be levied at the maximum rate applicable. Here it is also pertinent to note that no reasonable cause provision is laid down to suggest that if the delay is attributable to department for not giving copies of seized material immediately or in a case where there are voluminous seized paper which takes time to exactly compute the amount of undisclosed income or for any other reason, even then penalty would be levied at the maximum rate prescribed.

Manner need not be disclosed and substantiated unless asked

- **Favour of the assessee**
- In absence of query about manner in which undisclosed income was derived and about its substantiation, AO was not justified in imposing penalty under section 271AAA specially when offered undisclosed income was accepted by AO and tax due thereon had been paid by assessee – **ACIT v. Emirates Technologies (P.) Ltd. [(2017) 58 ITR (Trib.) 593 (Delhi)]**
- Where assessee surrendered certain sum as undisclosed income under section 132(4), there was no overt act on part of assessee to avoid taxes, and his request for deposit of taxes through instalments had been accepted and assessee had already tendered post dated cheques, provisions of section 271AAA stood complied with – **Gillco Developers & Builders (P.) Ltd. v. DCIT [(2017) 189 TTJ 35 (Chd.)]**.

Manner need not be disclosed and substantiated unless asked

■ Favour of the assessee

■ Where undisclosed income was duly admitted by assessee in statements recorded during search under section 132(4) and income on basis of seized papers was calculated vide a fund flow statement and tax thereon was paid, AO could not levy penalty under section 271AAA on plea that he failed to substantiate or describe manner of earning undisclosed income – **ACIT v. Ajit Singh [(2016) 76 taxmann.com 212 (Jp.-Trib.)]**

■ Where AO levied penalty under section 271AAA for default of not substantiating manner in which undisclosed income was earned, in view of fact that assessee had made statement that undisclosed income was earned from sale of several commercial & residential units and, moreover, assessee had paid due tax on said income, impugned penalty was unjustified – **ACIT v. Akshar Developers [(2017) 86 taxmann.com 251 (Mum.-Trib.)]**

Manner need not be disclosed and substantiated unless asked

- **Favour of the assessee**

- Where no question was asked during statement recorded under section 132(4), in respect of earning of income declared, revenue later could not plead deficiency on part of assessee for satisfying manner of earning said income and, thus, penalty under section 271AAA could not be levied – **ACIT v. Shreenarayan Sitaram Mundra [(2017) 166 ITD 47 (Ahd.)]**

Manner needs to be disclosed and substantiated

■ Favour of the assessee

- Where assessee admitted undisclosed income and during search he stated that income was derived from business of financing and brokerage and AO himself in assessment order substantiated manner in which undisclosed income was derived, imposition of penalty under section 271AAA was arbitrary – **Dy. CIT v. Nirmal Kumar Agarwal [(2016) 161 ITD 749 (Jp.)]**
- Where pursuant to search proceedings, assessee filed his return declaring certain undisclosed income, in view of fact that assessee had given detailed break-up and proximate source from which said income had been earned, penalty order passed under section 271AAA was to be set aside – **DCIT v. Vijay Ravji Gajra [(2016) 75 taxmann.com 225 (Mum.-Trib.)]**

Manner needs to be disclosed and substantiated

■ Favour of the assessee

- Where offer of additional income was made voluntarily by assessee in disclosure petition under section 132(4) followed by filing of return under section 153A, assessee was entitled for immunity from levy of penalty under section 271AAA – **DCIT v. Salasar Stock Broking Ltd. [(2016) 181 TTJ 527 (Kol.)]**
- In absence of query raised by authorized officer during course of recording of statement under section 132(4) about manner in which undisclosed income had been derived and about its substantiation, imposition of penalty under section 271AAA was unjustified – **ACIT v. Smt. Ritu Singal [(2016) 49 ITR (Trib.) 664 (Delhi)].**

Manner needs to be disclosed and substantiated

- **Favour of the assessee**
- Where during search, assessee offered undisclosed income, explained source and paid tax, penal provision of section 271AAA(2) would apply, and not section 271AAA(4) – **Sarat Chandra Sahoo v. DCIT [(2015) 152 ITD 326 (Ctk.)]**
- Penalty under section 271AAA could not be levied merely on admission of assessee during search proceedings and there must be some conclusive evidence before AO that entry made in seized documents represented undisclosed income of assessee – **SPS Steels & Power Ltd. v. ACIT [(2015) 171 TTJ 749 (Kol.)]**

Manner needs to be disclosed and substantiated

- Where assessee disclosed undisclosed income found in search proceedings as his professional income and had paid tax thereon, no penalty could be levied under section 271AAA – **Uday C. Tamhankar v. DCIT [(2015) 174 TTJ 151 (Mum.)]**
- Where assessee agreed for a declaration on account of excess stock-in-trade and paid tax together with interest, no penalty under section 271AAA would be levied – **DCIT v. Ashok Nagrath [(2015) 154 ITD 448 (Delhi)]**
- Where penalty was levied under section 271AAA on account of incorrect computation of section 234B interest which got deleted, penalty was to be deleted – **CIT v. Parvinder Singh [(2014) 50 taxmann.com 192 (Punj. & Har.)]**

Manner needs to be disclosed and substantiated

- Where no question was asked during statement recorded under section 132(4), in respect of manner of earning income surrendered, assessee could not be expected to substantiate same later on; penalty could not be levied under section 271AAA – **Sunil Kumar Bansal v. DCIT [(2015) 70 SOT 137 (Chd.-Trib.)]**
- Where revenue authorities passed a penalty order without showing as to how and in what manner conditions of section 271AAA(2) had not been complied with, impugned penalty order was to be set aside and matter was to be remanded back for disposal afresh – **Crossings Infrastructure (P.) Ltd. v. CIT [(2014) 41 taxmann.com 474 (All.)]**

Manner need not be disclosed and substantiated unless asked

- **Against the assessee**
- Where assessee made statement that investment made in land/plots and movable and immovable properties represented its undisclosed income, however, he had not explained sources from where he made said investments and taxes due on said income were also not paid, penalty imposed under section 271AAA was justified – **ACIT v. Shailesh Gopal Mhaske [(2017) 167 ITD 344 (Pune)]**

Penalty to be levied on portion of income not admitted in statement

- Where notice was issued under section 153A and assessee filed return, penalty under section 271AAA could not be levied on amount which assessee had already admitted in statement recorded under section 132(4) during search but was leviable on income which was not admitted in above statement – **Ravi Kiran Aggarwal v. ACIT [(2017) 166 ITD 33 (Mum.)]**

Manner needs to be disclosed and substantiated

■ 271(1)(c) versus 271AAC

■ Where Assessing Officer had intended to initiate penalty proceedings under section 271AAA(1), but assessee had been show caused on charge of furnishing of inaccurate particulars of income, which fell under scope and purview of section 271(1)(c), penalty proceedings conducted against assessee under section 271AAA were invalid – **Gilco Developers & Builders (P.) Ltd. v. DCIT [(2017) 189 TTJ 35 (Chd.)]**.

■ Before initiating penalty proceeding under section 271AAB, notice must be issued in view of giving assessee reasonable opportunity of being heard, which is a mandatory requirement; issuing notice under section 271(1)(c) will not automatically deem that AO has initiated proceedings for imposition of penalty under section 271AAB – **Sandeep Chandak v. ACIT [(2017) 55 ITR (Trib.) 209 (Luck.)]**

Are penalties under 271(1)(c) and 271AAC mutually exclusive?

- **271(1)(c) versus 271AAC**
- Provisions of sections 271AAA and 271(1)(c) are mutually exclusive and, thus, once penalty initiated under section 271AAA for `specified previous year`, there cannot be any occasion to impose penalty under section 271(1)(c) – **Dr. Naman A. Shastri v. ACIT [(2015) 155 ITD 1003 (Ahd.)]**
- Where assessee, during search and seizure proceedings, categorically admitted that certain undisclosed income had been accrued to him along with his three brothers in their individual capacity by way of trading in various commodities and real estates and all these facts got duly corroborated from seized material, penalty, if any, should be levied under section 271AAA(1) and not under section 271(1)(c) – **Ashwani Kumar Arora v. ACIT [(2016) 50 ITR (Trib.) 37 (Delhi)].**
- Once penalty is initiated under section 271AAA for `specified previous year`, there cannot be any occasion to impose penalty under section 271(1)(c) – **Dr. Naman A. Shastri v. ACIT [(2015) 155 ITD 1003 (Ahd.)]**

271AAA in case of survey / can AO be directed by CIT to initiate penalty proceedings

- Where only there was a survey under section 133A, penalty under section 271AAA could not be levied – **Sarat Chandra Sahoo v. DCIT [(2015) 152 ITD 326 (Ctk.)]**
- In terms of section 271AAA, AO has discretionary power to initiate penalty proceedings and, therefore, revisional order under section 263 cannot be passed for directing AO to initiate penalty proceedings – **Amarjeet Dhall v. CIT [(2014) 46 taxmann.com 168 (Chd.-Trib.)]**
- Penalty under section 271AAA cannot be levied where assessee has paid entire tax and interest within time limit provided in notice of demand under section 156 and also well before penalty proceedings are concluded – **DCIT v. Pioneer Marbles & Interiors (P.) Ltd. [(2012) 14 ITR (Trib.) 608 (Kol.)]**

Time limit within which tax needs to be paid to comply with 271AAA

- Since no time-limit for payment of tax along with interest is prescribed in section 271AAA, penalty under said section cannot be levied for paying dues after filing of return – **DCIT v. Pioneer Online Ltd. [(2012) 20 taxmann.com 668 (Kol.)]**

Instances where income was held to be NOT `undisclosed income`

- Income shown in belated return after the date of search is was not undisclosed income – [***CIT v. A. M. Mohan Babu* (2008) 24 (I) ITCL 343/10 DTR 235 (Mad.)**]
- If the advance tax is paid but the return is not filed till the date of search, it is not a case of undisclosed income. The advance tax reflects the income admitted by the assessee –
 - ***Asstt. CIT v. A R Enterprises* [(2005) 274 ITR 110 (Mad.)]**
 - ***Dr. (Mrs.) Alaka Goswami v. CIT*[(2004) 138 Taxman 212/ 268 ITR 178 (Gau.)]**
 - ***CIT v. Shelly Products* [(2003) 129 Taxman 271/ 261 ITR 367 (SC)]**
 - ***Saurashtra Cement & Chemical Industries Ltd. v. ITO* [(1992) 194 ITR 659/[1993] 69 Taxman 37 (Guj.) (FB)]**
- Where the return is filed though after search showing income in respect of which advance tax and self- assessment tax has been paid and tax had been deducted at source, such income could not be treated as undisclosed income - ***CIT v. Kerala Roadways Ltd.* [(2010) 322 ITR 609 (Mad.)]**

Instances where income was held to be NOT 'undisclosed income'

- Income disclosed in belatedly filed return cannot be treated as undisclosed income
 - ***CIT v. P. S. Mani* [(2009) 311 ITR 463 (Mad.)]**
 - ***CIT v. K. Ramasamy* [(2008) 296 ITR 358 (Mad.)]**
- Cash deposits already disclosed in return cannot be treated as undisclosed income -
***CIT v. J. M. D International* [(2009) 179 Taxman 253 (Delhi)]**
- Undervaluation of closing stock of raw material and finished goods is not covered within the definition of 'undisclosed income' –
 - ***Mahavir Rolling Mills Pvt. Ltd. v. ITSC* [(2010) 191 Taxman 358 (Guj.)]**
 - ***N R Paper & Board Ltd. v. Dy. CIT* [(1998) 101 Taxman 525/ 234 ITR 733 (Guj.)]**
- Where the assessee company had issued shares and furnished the details of all shareholders except three shareholders, it could not be said that the share application money is undisclosed income - ***CIT v. ASK Brothers Ltd.* [(2011) 333 ITR 111 (Kar.)]**

Instances where income was held to be NOT `undisclosed income`

- Where the employer has deducted the TDS on salary and the employee has not filed a return of his income, salary income could not be treated as undisclosed income - ***Salvi Divakar Shankar v. Asstt. CIT* [2000] 72 ITD 552 (Pune - Trib.)**
- Difference between the value of bungalow shown in Departmental valuer's report and the amount shown in assessee's books as its cost cannot be treated as undisclosed income - ***CIT v. Vinod Danchand Ghodawat* [(2001) 114 Taxman 90/ 247 ITR 448 (Bom.)]**
- Difference between the value of building as per DVO and value disclosed in return by the assessee cannot be treated as undisclosed income where no evidence or material discovered in search - ***CIT v. Bimal Auto Agency* [2009] 314 ITR 191 (Gauhati) *Ltd. v. Dy. CIT* [(1998) 64 ITD 396 (Pune - Trib.)]**

Instances where income was held to be NOT `undisclosed income`

- Where the assessee had disclosed income and particulars either in returns or in course of assessment proceedings or return has not become due and the income is recorded in the books of account, then such income cannot be treated as undisclosed income - ***Parakh Foods Ltd. v. Dy. CIT* [(1998) 64 ITD 396 (Pune - Trib.)]**
- Where the income is below taxable limit and hence not required to be disclosed. Such income cannot be treated as undisclosed income
 - ***Pradip C. Patel v. Dy. CIT* [(1997) 58 TTJ 409 (Ahd. - Trib.)]**
 - ***Kasturchand Baid v. Asstt. CIT* [(1997) 58 TTJ 253 (Nag. - Trib.)]**
 - ***Smt . Sitadevi Daga v. Asstt. CIT* [(1998) 67 ITD 151 (Indore - Trib.)]**
- Discount given by the assessee to its customer at different rates and such discounts are not bogus; there is no suppression of stock detected during the search and seizure. Addition on basis of average of discount is not valid - ***Rupa & Co. Ltd. v. CIT* [(2011) 335 ITR 478 (Cal.)]**

Instances where income was held to be NOT `undisclosed income`

- Commission paid on sale of flat was bogus but it was accounted in books prior to search; therefore it can be called as undisclosed income but it is matter of finding of facts - ***CIT v. Ansal Buildwell Ltd.* [(2008) 304 ITR 378 (Delhi)]**
- Non-compete fee received by an assessee was disclosed in regular return filed prior to search and therefore it cannot be treated as undisclosed income - ***CIT v. Vivek Dougall* [(2008) 305 ITR 270 (Delhi)]**
- Noting on seized paper representing payment schedule of agreement yet to be executed is not undisclosed income - ***CIT v. Tips Industries (P.) Ltd.* [(2010) 321 ITR 154 (Bom.)]**
- Where the AO making no efforts to verify explanation towards the unaccounted wages paid to the employees which was noted in seized loose papers; no addition can be made without any distinguishing feature - ***CIT v. Tips Industries (P.) Ltd.* [(2010) 321 ITR 154 (Bom.)]**

Instances where income was held to be NOT `undisclosed income`

- Where the return for the assessment is not falling due and all the receipts are duly reflected in bank statements as well as in the books; it is not a case of block assessment and bank account cannot be treated as undisclosed - ***CIT v. Arman Sheikh*** [(2007) 293 ITR 266 (Gau.)]

Instances where income was held to be `undisclosed income`

- Unexplained investment in jewellery to be treated as undisclosed income - ***K P Agarwal v. Asstt. CIT [(2008) 306 ITR (AT) 181 (Agra - Trib.)]***
- Where the assessee contended that jewellery seized from his premises was bequeathed in favour of his wife by her grandmother under a will but genuineness of said will was not proved by the assessee, addition made by the assessing authorities on account of said unexplained jewellery was justified - ***Sunil Dua v. CIT [(2011) 330 ITR 413 (Delhi)]***
- Where certain amount had not been accounted for and no advance tax had been paid in respect thereof, it can be treated as undisclosed income - ***M A Anto v. CIT [(2010) 326 ITR 212 (Ker.)]***
- Non submission of confirmation from the creditors amounts to undisclosed income - ***CIT v. Ram Babu Roy [(2009) 319 ITR 103 (Pat.)]***

Instances where income was held to be `undisclosed income`

- Where no satisfactory information was furnished by the assessee in regards to the documents seized , addition made of amount mentioned on those documents was to held justified - ***Hazari Lal v. CIT [(2011) 336 ITR 290 (Punj. & Har.)]***
- Where assessee cannot explain source for making repayment of loan, Assessing Officer is justified in treating said amount as undisclosed income of assessee - ***CIT v. M. K. Shanmugam [(2011) 203 Taxman 136 (Mad.)]***
- Discovery of payment violative of section 40A(3); amount assessable as undisclosed income - ***Ganesh Foundry & Casting Ltd. v. ITAT [(2010) 328 ITR 202 (Pat.)]***
- Disallowance of illegal expenses incurred in accordance with statutory provisions is treated as undisclosed income - ***Pranam Foundations v. Asstt. CIT [(2009) 313 ITR 286 (Mad.)]***



Penalty for anti-abuse provisions – Penalty under s. 271DA

Jagdish T Punjabi

December 1, 2018

Text of section 269ST

- ¹⁸[**Mode of undertaking transactions.**^{18a}
- **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:
- **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^{18b}, specify.

Text of section 269ST

- *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.]

Text of section 271DA

- **Penalty for failure to comply with provisions of section 269ST**
- **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:
- **Provided** that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.
- (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 271DA – Penalty in respect of “cash” receipts

- Section 271DA has been inserted w.e.f. 1.4.2017 to provide for penalty for failure to comply with provisions of section 269ST.
- Essentially, the section provides as follows –
 - (a) 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.
 - (b) Any such penalty shall be imposed by the Joint Commissioner.
 - (c) The penalty shall not be imposable if such person proves that there were “good and sufficient” reasons for the contravention.
- Section 271DA states that if a person receives any “sum” as against section 269ST using the expression “any amount”. At the same time, subsequently, in section 271DA it is provided that the penalty shall be equal to “the amount” of the receipt. This suggests that the term “sum” and “amount” have been used interchangeably.

Meaning of “liable”

- Section 271DA provides that a person contravening section 269ST shall be “liable to pay” a sum equal to the amount of receipt. The term “liable to” has been judicially explained as follows –
- (a) It is true that ordinarily, the word “liable” denotes : (1) ‘legally subject or amenable to’, (2) ‘exposed or subject to or likely to suffer from (something prejudicial)’, (3) ‘subject to the possibility of (doing or undergoing something undesirable)’(see Shorter Oxford Dictionary). According to Webster’s new World Dictionary, also, the word ‘liable’ denotes ‘something external which may befall us’.
- Accordingly, the word ‘liable’ occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words ‘shall be’
- **[Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity, AIR 1979 SC 1029]**

Meaning of “liable” ...

- (b) The word `liable' used in the section gives a discretion to the Court with regard to the imposition of fine. The Court may either choose to impose fine or may dispense with the imposition of fine. [**ITO v. Lakshmi Enterprises (1990) 52 Taxman 450 (AP)**].
- Penalty is not automatic [**Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]**].
- The aforesaid aspects may have to be borne in mind by the Joint Commissioner before imposition of penalty under Section 271DA.

Meaning of “good and sufficient reasons”

- The words “good and sufficient reasons” only mean “appropriate” or “suitable” or “satisfactory” or “fit” and “enough” or “adequate” reasons for cancelling the registration [**DCST v. Imperial Trading Company [(1990) 76 STC 183 (Ker)]** – for the purpose of section 14(7) of the Kerala General Sales Tax Act enabling the AO to cancel registration for “good and sufficient cause”. A similar meaning may apply in section 271DA.
- Whether the reason is good and sufficient or not has to be seen from the perspective of the recipient [**Maharaja Shri Devi Singh Ji of Jodhpur v. WTO [(1985) 14 ITD 445 (JP. – Trib.)(TM)]** – in the context of “reasonable cause”. To illustrate, if the payer’s cheque has been returned unpaid due to insufficient funds, the recipient may not be inclined to again take a cheque from him and may not want to even wait for a wire transfer or draft from the payer. In such circumstances, if he accepts cash in lieu of his debt, it may be possible to argue that there were good and sufficient reasons for receiving cash.

Is reasonable cause wider than sufficient cause?

- **Is reasonable cause wider than sufficient cause?**
- The expression 'reasonable cause' used in section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in sections 249(3), 253(5) and 260A(2A), the legislature has used the expression 'reasonable cause' in section 273B. 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'. Therefore, the expression 'reasonable cause' in section 273B for non-imposition of penalty under section 271E would have to be construed liberally depending upon the facts of each case. [Para 23 of **CIT v. Triumph International Finance (I) Ltd.** [(2012) 22 taxmann.com 138 (Bom.)]

Meaning of “contravention”

- Section 271DA applies if there is a “contravention”.
- For the purposes of section 7 of the Essential Commodities Act, 1955, the Courts have interpreted the expression “contravention” as follows –
 - (a) “A person can be said to contravene a provision if *mens rea* is established, except in cases where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated [**Nathulal v. State of Madhya Pradesh, AIR 1966 SC 43, 1966 CriLJ 71**]
 - (b) before an accused person can be held to be guilty for having contravened any provision of the Licensing Order, it must be established that he had the necessary *mens rea*. If on the other hand, it is found that the contravention was ‘unknowingly and unintentionally’, he cannot be held guilty for contravention of and such provision. [**Mewalal Kapildeo Prasad v. State of Bihar [(1978) 26 BLJR 367]**]

Meaning of “contravention”...

■ (c) Mr. Joshi has, no doubt, pointed out that the meaning of the word ‘contravene’ in the Oxford English Dictionary is given as “to go counter to; to transgress, infringe (a law, provision, etc.); to act in defiance or disregard of’ and hence, the word is wide enough to include non-compliance. But the question is whether in the context in which the words are used, the words imply an offence of contravention within the meaning of section 7 of the Essential Commodities Act. [**State of Maharashtra v. Hansraj Debar, (1971) 39 BomLR 712**]

■ The aforesaid interpretation could be relevant in the context of section 271DA.

Time limit for commencement of penalty proceeding

- It appears that there is no express time limit for initiation of penalty proceedings. Now, Courts have held that where there is no period of limitation, the power must be exercised in reasonable time. Thus, in **State of Gujarat v. Patil Raghav Natha, [AIR 1969 SC 1297]**, – for the purpose of section 65 and 211 of the Bombay Land Revenue Code, 1879, it was observed as follows –
 - “The question arises whether the Commissioner can revise an Order made under section 65 at any time. It is true that there is no period of limitation prescribed under section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the Order being revised.”

Time limit for commencement of penalty proceeding ...

- Also see:
- (a) **Mohamad kavi Mohamad Amin v. Fatmabai Ibrahim, [(1997) 6 SCC 713];**
- (b) **State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd., [(2007) 11 SCC 363];**
- (c) **Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale, [(2009) 9 SCC 352]**

- In **CIT v. NHK Japan Broadcasting Corporation [(2008) 172 Taxman 230 (Delhi)]**, the Court prescribed a time limit of three years from the end of the financial year, for the purposes of section 201.

- Hence, a view may be taken that depending on the facts, the penalty proceedings under section 271DA should commence within a reasonable period after the contravention of section 269ST.

Time limit for imposing penalty

- Section 275(1)(c) reads as follows :
 - “No order imposing a penalty under this Chapter shall be passed –
 - in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been 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.”
- In this connection, the following observations in CBDT Circular dealing with initiation of penalty proceedings under section 271D/271E are relevant:
 - "The Hon'ble Kerala High Court in the case of ***Grihalaxmi Vision v. Addl. Commissioner of Income Tax, Range 1. Kozhikode [(2015) 379 ITR 100(Kerala)]***, vide its order dated 8.7.15 in ITA Nos. 83 & 86 of 2014, observed that, "Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with

Time limit for imposing penalty

- the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and F are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply.“

Time limit for imposing penalty

- The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax) may be advised to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed u/s 275(1)(c) of the Act."

General principles applicable to penalty proceedings / order u/s 271DA

- Some of the general principles as mentioned below would be applicable to penalty proceedings / order under section 271DA –
- (a) a penal provision must be strictly construed - **Dilip Kumar Sharma v. State of Madhya Pradesh [AIR 1976 SC 133]**;
- (b) a case should be held to fall within a penal statute only if it comes within the reasonable interpretation of the statute - **Dilip Kumar Sharma v. State of Madhya Pradesh [AIR 1976 SC 133]**;
- (c) if two constructions are possible upon the language of the statute, the Court must choose the one which exempts the subject from penalty rather than the one which imposes penalty - **CIT v. Vegetable Products Ltd. [(1973) 88 ITR 192 (SC)]**;
Tolaram Relumal v. The State of Bombay [AIR 1954 SC 496];
- (d) penal action cannot be taken on the basis of intendment, and the general purpose or object of law **Assistant Commissioner v. Velliappa Textiles Ltd. [AIR 2004 SC 86]**;

General principles applicable to penalty proceedings / order u/s 271DA ...

- (e) a penal statute generally presupposes mens rea element - **People's union for Civil Liberties v. UOI, AIR 2004 SC 456**];
- (f) penalty will not ordinarily be imposed unless the party concerned, either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation - **Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]**];
- (g) penalty will not be imposed merely because it is lawful to do so - **Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]**];
- (h) even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute - **Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]**];
- (i) the burden of proof to establish violation is on the authority - see **CIT v. Anwar Ali [AIR 1970 SC 1782]** and **CIT v. Khoday Eswarsa & Sons [AIR 1972 SC 132]**

Power to the Commissioner to reduce or waive penalty

- Section 273A(4) gives power to the Commissioner to reduce or waive any penalty payable by an assessee, subject to satisfaction of the conditions specified in it. This power includes the power to reduce or waive the penalty under section 271DA.

Appeal against an order passed under section 271DA

■ Appeal before the Tribunal

- Section 253 (1)(a) provides for appeal to the Tribunal against order passed by CIT(A). The said section has not been amended to cover an order under section 271DA.

■ Appeal before CIT(A)

- Section 246A(1)(q) provides as follows:

- “(1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against

-

- (q) an order imposing a penalty under Chapter XXI.:

Is order under S. 271DA appealable to CIT(A) ?

- Order under s. 271DA is an order under Chapter XXI. However, unless the recipient is an assessee, he cannot file an appeal against the penalty order. To illustrate, suppose an agriculturist who is not liable to tax, receives the specified amount in respect of transactions other than those which are exempt. In such a case, can the agriculturist be regarded as an assessee within the meaning of section 246A?

S. 246A does not apply to an order under S. 271DA

- According to one view, section 246A does not apply on account of the following reasons :
 - (a) Section 246A applies to penalty order on a person in his capacity of assessee. Here, the person penalized does not receive the penalty order in his capacity as an assessee. Hence, the order is not appealable.
 - (b) If the term “assessee” was to cover any tax payer then, there was no need to add the terms “tax deductor” or “tax collector” in section 246A. Even, a tax deductor or tax collector could be an assessee; but it was necessary to make a special reference to them only because the expression “assessee” did not cover defaults in other capacities such as “tax deductor” or “tax collector”.
 - (c) If there is no appeal against order by CIT(A), by parity of reasoning, there ought not be an appeal against the penalty order by the AO.

S. 246A applies to an order under S. 271DA

■ The other view is that a person who is penalized is an assessee for the purpose of section 271DA :

- (a) The term “assessee” has been defined in section 2(7) as “a person by whom any tax or any other sum of money is payable under this Act.” The person on whom penalty has been levied under section 271DA is clearly a person by whom a sum of money is payable under the Act. Hence, he is an assessee within the meaning of section 2(7). [Also see B. Shah Mahmood v. Asst. Commissioner (1963) 47 ITR 55 (Mys.) where the Court observed that an employer who neglected to deduct the tax payable by his employee may, nevertheless, file an appeal because he is deemed to be an assessee].
- (b) The general principles regarding appeal are as follows:

S. 246A applies to an order under S. 271DA – General principles regarding appeal

- (b) The general principles regarding appeal are as follows:
 - (i) It is true that there is no inherent right of appeal to any assessee and that it has to be spelt from the words of the Statute, if any, providing for an appeal. But it is an equally well settled proposition of law that, if there is a provision conferring a right of appeal it should be read in a reasonable, practical and liberal manner. [**CIT v. Asoka Engineering Co. (1992) 63 Taxman 510 (SC)** – for the purpose of section 69 of the Act]
 - (ii) The right of appeal is by way of a remedy provided by the statute and should not ordinarily be denied to the assessee unless the law prohibits it. [**Patel & Co. v. CIT (1986) 24 Taxman 203 (Guj.)**]
 - (iii) A statutory provision conferring a right of appeal should, in case of doubt, be liberally construed. [**Durgaprasad Rajaram Adatiya v. CIT (1982) 134 ITR 601 (MP)**]

Is order under S. 271DA appealable to CIT(A) ?

- There is no express prohibition against an appeal against an order under section 271DA. Applying the aforesaid principles of interpretation of `an appeal provision', section 246A(1) has to be liberally construed and even if there is any doubt, it should be resolved in favor of the person on whom penalty is imposed. Accordingly, an appeal against the penalty order under section 271DA should be allowed.

Relevant portion of text of section 246A

- ³¹[**Appealable orders before Commissioner (Appeals).**
- ³² **246A.** (1) Any assessee ³³[or any deductor] ³⁴[or any collector] aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—
 - (a) an order ³⁵[passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order] against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of ³⁶[section 143 or ³⁷[sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector] objects] to the making of adjustments, or any order of assessment under sub-section (3) of section 143³⁸[[except an order passed in pursuance of directions of the Dispute Resolution Panel ³⁹[***] ⁴⁰[or an order referred to in sub-section (12) of section 144BA]]] or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

Relevant portion of text of section 246A ...

- ³¹[**Appealable orders before Commissioner (Appeals).**
- ³² **246A.** (1) Any assessee ³³[or any deductor] ³⁴[or any collector] aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—
 - (aa)
 - (ab)
 - (ha) an order made under section 201;]
 - (hb) an order made under sub-section (6A) of section 206C;]
 - (i) an order made under section 237;

Relevant portion of text of section 246A ...

- (j) an order imposing a penalty under—
 - (A) section 221; or
 - (B) section 271, section 271A, ⁵³[section 271AAA,] ⁵⁴[section 271AAB,] section 271F, ⁵⁵[section 271FB,] section 272AA or section 272BB;
 - (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;
- (ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;]
- (k) an order of assessment made by an Assessing Officer under clause (c) of sec 158BC, in respect of search initiated under sec 132 or books of account, other documents or any assets requisitioned under sec 132A on or after the 1st day of

Relevant portion of text of section 246A ...

- (l) an order imposing a penalty under sub-section (2) of section 158BFA;
- (m) an order imposing a penalty under section 271B or section 271BB;
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C⁵⁷[, section 271CA], section 271D or section 271E;
- (o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;
- (p) an order made by a Deputy Commissioner imposing a penalty under section 272AA;
- (q) an order imposing a penalty under Chapter XXI;
- (r)

Text of section 273B

- ¹¹**Penalty not to be imposed in certain cases.**
- ¹² **273B.** Notwithstanding anything contained in the provisions of ¹³[clause (b) of sub-section (1) of] ¹⁴[section 271, section 271A, ¹⁵[section 271AA,] section 271B¹⁵[, section 271BA], ¹⁶[section 271BB,] section 271C, ¹⁷[section 271CA,] section 271D, section 271E, ¹⁸[section 271F, ¹⁹[section 271FA,] ²⁰[section 271FAB,] ²¹[section 271FB,] ²²[section 271G,]] ²³[section 271GA,] ²⁴[section 271GB,] ²⁵[section 271H,] ²⁶[section 271-I,] ²⁷[section 271J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or ²⁸[section 272B or] ²⁹[sub-section (1) ³⁰[or sub-section (1A)] of section 272BB or] ³¹[sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable **on the person or the assessee**, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause³² for the said failure.]

Text of section 273B

- ¹¹[Penalty not to be imposed in certain cases.]
- ¹² **273B.** Notwithstanding anything contained in the provisions of ¹³[clause (b) of sub-section (1) of] ¹⁴[section 271, section 271A, ¹⁵[section 271AA,] section 271B¹⁵[, section 271BA], ¹⁶[section 271BB,] section 271C, ¹⁷[section 271CA,] section 271D, section 271E, ¹⁸[section 271F, ¹⁹[section 271FA,] ²⁰[section 271FAB,] ²¹[section 271FB,] ²²[section 271G,]] ²³[section 271GA,] ²⁴[section 271GB,] ²⁵[section 271H,] ²⁶[section 271-I,] ²⁷[section 271J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or ²⁸[section 272B or] ²⁹[sub-section (1) ³⁰[or sub-section (1A)] of section 272BB or] ³¹[sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable **on the person or the assessee**, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause³² for the said failure.]

Text of Sections 271D, 271DA and 271E

Section 271D	Section 271DA	Section 271E
<p>If a person takes or accepts any loan or deposit ⁷⁷[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 ⁷⁷[or specified sum] so taken or accepted. [Sub-section (1)]</p>	<p>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.</p> <p>Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention. [Sub-section (1)]</p>	<p>If a person repays any ⁸³[loan or] deposit ⁸⁴[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 ⁸³[loan or] deposit ⁸⁴[or specified advance] so repaid. [Sub-section (1)]</p>

Text of Sections 271D, 271DA and 271E ...

Section 271D	Section 271DA	Section 271E
Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]	Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]	Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]



Penalty for anti-abuse provisions – Penalty under Ss. 271D and 271E

Jagdish T Punjabi

December 1, 2018

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Text of section 269SS

- ¹³[**Mode of taking or accepting certain loans, deposits and specified sum.**
- ¹⁴ **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,—
 - (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
 - (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:

Text of section 269SS

- **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 company¹⁵ 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, notify¹⁶ in this behalf in the Official Gazette:
- **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 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

Text of section 269SS

- *Explanation.*—For the purposes of this section,—
- (i)—¹⁷"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"¹⁷ means loan or deposit of money;
- (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.]

Text of section 269T

- ¹⁹[**Mode of repayment of certain loans or deposits**²⁰.
- ²¹ **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 ²²[or any specified advance received by it] 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 ²²[or paid the specified advance,] ²³[or by use of electronic clearing system through a bank account] if—
 - (a) the amount of the loan or deposit ²⁴[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,

Text of 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:
- **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 :
- ²⁵**Provided further** that nothing contained in this section shall apply to repayment of any loan or deposit ²⁶[or specified advance] taken or accepted from—
 - (i) Government;
 - (ii) any banking company, post office savings bank or co-operative bank;
 - (iii) any corporation established by a Central, State or Provincial Act;

Text of section 269T

- (iv) any Government company²⁷ as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) 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.]

■ *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);
- (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;]]
- (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.]

Text of section 269T

- (iv) any Government company²⁷ as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) 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.]

■ *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);
- (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;]]
- (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.]

Text of section 271D

- **Penalty for failure to comply with the provisions of section 269SS.**
- **271D.** ⁷⁶[(1)] If a person takes or accepts any loan or deposit ⁷⁷[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 ⁷⁷[or specified sum] so taken or accepted.]
- ⁷⁸[(2) Any penalty imposable under sub-section (1) shall be imposed by the ⁷⁹[Joint] Commissioner.]

Text of section 271E

- ⁸¹[Penalty for failure to comply with the provisions of section 269T.]
- **271E.** ⁸²[(1)] If a person repays any ⁸³[loan or] deposit ⁸⁴[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 ⁸³[loan or] deposit ⁸⁴[or specified advance] so repaid.]
- ⁸⁵[(2) Any penalty imposable under sub-section (1) shall be imposed by the ⁸⁶[Joint] Commissioner.]

CBDT Circulars on Ss. 269SS, 269T, 271D and 271E

- The object for introduction of section 269T - **CBDT in Circular No. 345 dated 28.6.1982**
- The object for introduction of section 269SS - **CBDT in Circular No. 387, dated 6-7-1984**
- Amendments of the provisions which require the taking or accepting of a loan or deposit by an account-payee cheque or account-payee bank draft [section 269SS – increase in limit from Rs. 10,000 to Rs. 20,000 - **Circular No. 551, dated 23-1-1990**
- Acceptance and Repayment by internet banking facilities or by use of payment gateways permissible under Ss. 269SS / 269T - **Circular No. 1/2015, dated 21-1-2015**

CBDT Circulars on Ss. 269SS, 269T, 271D and 271E

- Limitation for penalty proceedings under Ss. 271D and 271E – Acceptance by the Board of the decision of the Delhi High Court in Commissioner of Income Tax v. Worldwide Township Projects Ltd., *vide* its order dated 21-5-2014 in ITA No. 232/2014 – For computing limitation period in respect of penalties under Ss. 271D and 271E, S. 275(1)(c) applies and S. 275(1)(a) - **Circular No. 10/2016 [F.NO.279/MISC./M-140/2015-ITJ, DATED 26-4-2016]**
- Commencement of limitation for initiation of penalty proceedings from the date of initiation of proceedings by JCIT – Acceptance of the Department of the decision of Kerala High Court in the case of *Grihalaxmi Vision v. Addl. Commissioner of Income Tax, Range 1, Kozhikode*, *vide* its order dated 7-8-2015 in ITA Nos. 83 & 86 of 2014 – **Circular No. 9/DV/2016 [F.NO.279/MISC./M-116/2012-ITJ], DATED 26-4-2016**

Text of Sections 271D, 271DA and 271E

Section 271D	Section 271DA	Section 271E
<p>If a person takes or accepts any loan or deposit ⁷⁷[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 ⁷⁷[or specified sum] so taken or accepted. [Sub-section (1)]</p>	<p>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.</p> <p>Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention. [Sub-section (1)]</p>	<p>If a person repays any ⁸³[loan or] deposit ⁸⁴[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 ⁸³[loan or] deposit ⁸⁴[or specified advance] so repaid. [Sub-section (1)]</p>

Text of Sections 271D, 271DA and 271E ...

Section 271D	Section 271DA	Section 271E
Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]	Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]	Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner. [Sub-section (2)]

Object of introduction of S. 269SS, are the provisions of S. 269SS violative of Article 14, is the section draconian?

- The Apex Court in the case of *Asstt. Director of Inspector v. Kum A.B. Shanthi* [(2002) 122 Taxman 574 (SC)] was dealing with challenge to the constitutional validity of sections 269SS and 271D against order of Single Judge of Madras High Court quashing the prosecution against the respondent by holding that section 269SS was violative of article 14 of the Constitution and so the prosecution was illegal. The Apex Court held –
- "The object of introducing s. 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main object of s. 269SS was to curb this menace.

Object of introduction of S. 269SS, are the provisions of S. 269SS violative of Article 14, is the section draconian?

- Section 269SS is not in any way violative of article 14 and, consequently, quashing of the proceedings by the Single Judge of the Madras High Court for this reason was not sustainable.
- Dealing with the contention that original section 276DD was draconian in nature as penalty imposed for violation of section 269SS was imprisonment which may extend to two years and shall also be liable to fine equal to the amount of loan or deposit. The Apex Court observed that this section was subsequently omitted and a new section 271D was enacted. The penalty of imprisonment was deleted in the new section. The new section 271D provides only for fine equal to the amount of loan or deposit taken or accepted.

Object of introduction of S. 269SS, are the provisions of S. 269SS violative of Article 14, is the section draconian?

- It is important to note that another provision, namely, section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for failure to take a loan or otherwise than by account payee cheque or account payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B. If there is a genuine and bonafide transaction and if for any reason the taxpayer cannot get a loan or deposit by account payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power.
- In that view of the matter, sections 269SS and 271D and the earlier section 276DD are not unconstitutional on the ground that they are draconian or expropriatory in nature.

What is the meaning of `reasonable cause`?

- The law spares penalty where there is reasonable cause.
- The expression `reasonable cause` has not been defined in the Act. The Hyderabad Bench of the Tribunal in the case of **ACIT v. Gayatri Traders [(1996) 58 ITD 121 (Hyd.)(SB)]** observed that a cause which appears to be reasonable to a judicious mind has to be accepted as reasonable cause in appreciating a reason tendered by a party, it was cautioned that a pedantic approach should be avoided and in its place soft and practical approach has to be adopted.
- The issue as to what can constitute reasonable cause had come up rather indirectly in **Azadi Bachao Andolan v. Union of India [(2001) 252 ITR 471 (Delhi)]**. It contains an interesting definition of what is reasonable in following words (page 475):
 - “What would constitute reasonable cause cannot be laid down with precision. It would depend upon the factual background and scope for interference in a reference application or much less in a writ petition is extremely limited and unless the conclusions are perverse based on conjectures or surmises and/or have been arrived at without consideration of relevant material and/or taking into account irrelevant material, there is no scope for interference.”

What is the meaning of `reasonable cause`?

- Reasonable cause, as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. The expression “reasonable” is not susceptible of a clear and precise definition; for an attempt to give a specific meaning to the word “reasonable” is trying to count what is not number and measure what is not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate.
- The word “reasonable” has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know [see *A. Solicitor, In re* (1945) KB 368(CA)].
- Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bonafides.

What is the meaning of `reasonable cause`?

- The expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. Therefore, the expression 'reasonable cause' in section 273B for non-imposition of penalty under section 271E would have to be construed liberally depending upon the facts of each case - **CIT v. Triumph International Finance (I) Ltd. [(2012) 22 taxmann.com 138 (Bom.)]**

For penalties under Ss. 271D and 271E there is no time limit for initiation but only for completion

- No time limit has been prescribed for initiating penalty action in respect of acceptance and return of loans in cash infringing section 269SS and 269T – **Dewan Chand Amrit Lal v. DCIT [(2006) 283 ITR (AT) 203 (Chandigarh)(SB)]**.
- Limitation as applicable for completion of penalty proceedings, however, have application.
- Where penalty is levied within six months of notice, it cannot be treated as time barred.
- Only persons vested with the authority to levy penalty can exercise such authority to levy penalty - **Dewan Chand Amrit Lal v. DCIT [(2006) 283 ITR (AT) 203 (Chandigarh)(SB)]**.

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

■ Dewan Chand Amrit Lal v. DCIT [(2006) 98 ITD 200 (Chd.)(SB)]

- There is a marked distinction in the language of the provisions of section 271 as well as sections 271D and 271E of the Act.
- When the language of the provisions of section 271 is compared with sections 271D/271E, the distinction is prominently visible. Under section 271, recording of satisfaction before initiation of penalty in the course of proceedings is a condition precedent for imposition of penalty for specified defaults.
- Under sections 271D and 271E, there is no such requirement of recording of satisfaction in the course of any proceedings. Moreover, the authority for imposition of penalty under section 271 is the AO or the CIT(A) as the case may be. On the other hand, the authority for imposition of penalty under sections 271D and 271E is the DCIT which has later on been substituted by JCIT.

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- In the context of section 271, courts have held that jurisdiction to impose penalty under section 271 flows from recording of satisfaction of the AO regarding concealment of income –
 - **CIT v. Munish Iron Store [(2003) 263 ITR 484 (Punj. & Har.)]**
 - **CIT v. Vikas Promoters (P.) Ltd. [(2005) 277 ITR 337 (Delhi)]**
- In the context of sections 271D and 271E the above decisions lose significance when the plain language of provisions of sections 271D and 271E vis-a-vis section 271.
- It is evident from the language used by the Legislature that the condition precedent of recording satisfaction as required for the defaults specified under section 271 is not intended for the purposes of defaults contemplated under sections 271D and 271E.
- **Does the interpretation that there is no time limit to initiate penalty proceedings under sections 271D and 271E lead to uncertainty and ambiguity and is against the intention of the legislature?**

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- Under section 271, recording of satisfaction in the course of any proceedings is a condition precedent for initiation of penalty proceedings. However, there is no time limit fixed as such for initiation of proceedings except that the initiation has got to be in the course of any proceedings under the Act. Admittedly, there is a limitation for completion of assessment proceedings and, therefore, by implication, there is a limitation for initiation of penalty proceedings which are initiated in the course of assessment proceedings.
- However, it may be relevant to point out that even under section 271, the CIT(A) has the power to enhance the penalty and also the additional power to initiate penalty proceedings for concealment of income, etc., in the proceedings before him. Though there is limitation for filing of appeals to the CIT(A) yet there is no limitation prescribed for the CIT(A) to dispose of the appeal. Therefore, it is implied that the CIT(A) does not have any limitation for initiation of penalty proceedings except that these are to be initiated in the course of proceedings before him. In other words, the limitation starts from the point of initiation. So, however, for initiation of penalty proceedings, in certain cases there is no limitation.

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- In the case of **Food Corporation of India v. CTS [(1998) 109 STC 131 (SC)]**, the issue relating to limitation within which a penalty order could be passed by the appellate authority / Commissioner of Madhya Pradesh General Sales Tax Act, 1958 arose before the Hon'ble Supreme Court. Their Lordships explaining similar provisions under the M. P. General Sales Tax Act, 1958 as the provisions of the Income-tax Act relating to penalty, held that when the appellate authority/Commissioner has been given additional powers to impose penalty for the first time in the course of proceedings before him, the limitation prescribed for initiation of penalty proceedings by the Assessing Officer do not apply for initiation by the appellate authority / Commissioner. Under the Income-tax Act, 1961, section 271 also gives additional power to the CIT(A) to impose penalty. As pointed out earlier, the CIT(A) not having any limitation for deciding an appeal by implication means that there is no limitation for initiation of penalty proceedings by him. The limitation starts from initiation of penalty in the course of proceedings before the CIT(A).

- Another example of uncertain period of limitation may be derived from the judgment of Madhya Pradesh High Court in the case of **Prabhudayal Amichand v. CIT [(1999) 237 ITR 483 (MP)]**, wherein penalty order was set aside by the Tribunal. When the fresh order was passed on the direction of the Tribunal, a question was raised about the period of limitation. Their Lordships of the Madhya Pradesh High Court held that the limitation under section 275 did not apply to the set aside proceedings. It is, therefore, evident that uncertainty of period in initiation of penalty proceedings under section 271D or 271E is not solitary.
- In the light of the above discussion, it appears that the Legislature has not considered it necessary to provide for limitation for initiation of penalty proceedings under sections 271D and 271E. It becomes more probable when we consider the intention of the Legislature behind incorporation of provisions of sections 269SS and 269T. We have referred to the Legislative intent behind incorporation of sections 269SS, 269T, 271D and 271E in the preceding paragraphs. The intention behind

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- incorporation of these provisions was to counter the proliferation of black money, which when found in the course of search is sought to be explained by cash loans from various persons. As it is, there is no time-limit for conducting searches. When in the course of search, some information is found about cash loans or deposits or repayment of loans or deposits or such claims are made, the necessity for initiating proceedings under section 271D or 271E arises. If one were to compute the limitation with reference to the assessment proceedings, then in no case, penalty under sections 271D or 271E could be initiated in cases where the information is gathered in the course of search. That would defeat the very purpose of the legislating the provisions of sections 271 and 271E. Looking from the background which gave rise to incorporation of sections 269SS, 269T, 271D and 271E, the Legislature has consciously not prescribed any limitation for initiation of penalty proceedings under sections 271D and 271E. The limitation of course has been prescribed for imposition after its initiation by the competent authority.

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- **Limitation to begin from date of issue of notice by JCIT**
- Supreme Court in the case of CIT v. **Dhadi Sahu [(1993) 199 ITR 610 (SC)]** and in the case of **Varkey Chacko v. CIT [(1993) 203 ITR 885 (SC)]** has held that the validity of the penalty proceedings has got to be seen with reference to the authority empowered to impose the penalty on the relevant date.
- The authority to impose the penalty under sections 271D and 271E is the DCIT (now JCIT). When the AO does not have jurisdiction either to initiate or impose penalty under section 271D or 271E, a notice issued by him for making inquiries relating to the contravention of section 269SS or section 269T cannot be construed to be initiation of penalty proceedings by competent authority. Even if a show cause notice is issued by the AO for imposition of penalty under section 271D or under section 271E that notice would be without any jurisdiction as the AO has no authority under law either to initiate or impose the penalty under sections 271D or under section 271E. The Special Bench of the Tribunal held that, at the relevant point of time, the

Are Ss. 271D and 271E isolated cases where there is no time limit for initiation, is penalty for violation of Ss. 269SS, 269T to be initiated after recording satisfaction in the course of assessment proceedings

- The Karnataka High Court in the case of **Shanbagh Restaurant v. DCIT [(2004) 266 ITR 393 (Karn.)]** has held that the period of six months has got to be computed from the date of issue of notice by the DCIT.
- In the case of **Bharat Construction Co. v. ITO [(1999) 153 CTR 414 (MP)]** also a similar view has been expressed for the purposes of levy of penalty under section 271B, the limitation for imposition of penalty is six months from the date of initiation by the competent authority.
- The authority competent to impose penalty under sections 271D and 271E is vested with DCIT (now JCIT) and the AO does not have the power to either initiate the penalty proceedings or impose the same. There is no procedure for reference by the AO to the competent authority for imposition of penalty under section 271D or 271E. Therefore, the limitation for completion of penalty proceedings as provided under section 271(1)(c) has got to be computed from the date of issue of show-cause notice by the competent authority, which is in the present case is DCIT (now JCIT).

- The Special Bench of the Tribunal in the case of **Dewan Chand Amrit Lal v. DCIT [(2006) 98 ITD 200 (Chd.)(SB)]** agreed with the view expressed in the following cases –
 - **ACIT v. Shree Nivas Chemicals [(2003) 84 Itd 76 (Chandigarh)]**
 - **ITO v. Ramnivas Agrawal [(2004) 89 TTJ 795 (Nag.)]**
- The Special Bench did not agree with the contrary view expressed in the following cases –
 - **Dillu Cine Enterprises (P.) Ltd. v. Addl. CIT [(2002) 80 ITD 484 (Hyderabad)]**
 - **Hissaria Bros. v. JCIT [(2001) 73 TTJ 1 (Jodh.)]**
 - **Farrukhabad Investment (I) Ltd. v. JCIT [(2003) 85 ITD 230 (Delhi)]**

Can revisionary powers be exercised by CIT to direct AO to initiate penalty?

- Revisionary power of the Commissioner under section 263 is limited to setting right any deficiency in the assessment.
- Therefore, his direction to the Assessing Officer to initiate penalty proceedings would fall outside the scope of this power with the result that any penalty levied in pursuance of that order would not be valid - **CIT v. Nihal Chand Rekyan [(2000) 242 ITR 45 (Delhi)]**
- Where the Assessing Officer failed to initiate penalty proceedings during the course of assessment as required by law, this omission cannot be made good by the Commissioner acting under section 263 - **CIT v. Dr. Suresh G. Shah [(2007) 289 ITR 110 (Guj.)]**. The Court in coming to the conclusion, followed its own decision in **CIT v. Parmanand M. Patel [(2005) 278 ITR 3 (Guj.)]**, wherein it was observed that -
 - “the satisfaction required by the statute was that of the Assessing Officer, so that the omission could not be made good by the satisfaction on the part of the Commissioner.”

Can revisionary powers be exercised by CIT to direct AO to initiate penalty?

- In fact, the issue stands concluded by an observation made by the Supreme Court in **Harshad Shantilal Mehta v. Custodian [(1998) 231 ITR 871 (SC)]**, when it endorsed the decision of the Special Court that penalty in respect of undisclosed income could not be treated as tax and be the subject matter of special powers for recovery of the dues under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- The preponderant view has been that such initiation of penalty proceedings does not fall within the purview of revisional powers under section 263

Can revisionary powers be exercised by CIT to direct AO to initiate penalty?

- Similar is the ratio of the following decisions –
 - **Addl. CIT v. Achal Kumar Jain [(1983) 142 ITR 606 (Delhi)]**
 - **Addl. CIT v. J. K. D'Costa [(1982) 133 ITR 7 (Delhi)]**
 - **P. C. Puri v. CIT [(1985) 151 ITR 584 (Delhi)]**
 - **CIT v. Keshrimal Parasmal [(1986) 157 ITR 484 (Raj.)]**
 - **Surendra Prasad Singh v. CIT [(1988) 173 ITR 510 (Gauhati)]**
 - **CIT v. Linotype and Machinery Ltd. [(1991) 192 ITR 337 (Cal.)]**
 - **Addl. CIT v. Sudershan Talkies [(1993) 200 ITR 153 (Delhi)]**
 - **CIT v. C. R. K. Swamy [(2002) 254 ITR 158 (Mad.)]**
 - **CIT v. Nihal Chand Rekyan [(2000) 242 ITR 45 (Delhi)]**
- However, a contrary view has been taken in –
 - **CIT v. Surendra Prasad Agrawal [(2005) 275 ITR 113 (All.)]; and**
 - **Addl. CIT v. Kantilal Jain [(1980) 125 ITR 373 (MP)],.**

Jurisdiction for penalty appeals

- Jurisdiction in case of penalty appeals at the stage of first appeal is spelt out under section 251(1)(b) which reads as under:
 - “(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or reduce the penalty.”
- Therefore, the Commissioner (Appeals) himself can only confirm, cancel or vary penalty. He cannot set it aside.
- If the circumstances warrant such setting aside, the only course open is to delete penalty on the inference that a case for penalty has not been made out against the assessee.
- The power of the Tribunal cannot extend beyond that of the Commissioner in matters of disposal of penalty appeals under these circumstances. This aspect of jurisdiction is often lost in the first appeal and the second appeal, unnecessarily prolonging penalty matters by treating them on par with assessments and appeals against assessments.

Jurisdiction for penalty appeals

- Though there is probably no restraint on the High Court or the Supreme Court in setting aside the penalty in view of its inherent jurisdiction. Even in such cases, it would be desirable that where penalty could not be sustained on the materials already available, there should be a closure of the penalty proceedings by cancellation of such penalty.

Ignorance of law can be excused

- In **CIT v. K. P. V. Shaik Mohammed Rowther & Co. (P.) Ltd. [(1988) 232 ITR 176 (Mad.)]** the lower authorities rejected the explanation of the assessee on the ground that ignorance of law is not an excuse.
- The Tribunal accepted the explanation and the High Court endorsed the same following the law laid down in **Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)]** on the ground that the delay was not in conscious disregard or deliberate defiance of law nor was the assessee guilty of conduct contumacious or dishonest.
- Thus, penalty would be leviable where there is a conscious disregard of statutory obligations or deliberate defiance of law or the assessee is guilty of conduct contumacious and dishonest.

Ignorance of law can be excused

- In **P. V. Devassy v. CIT [(1972) 84 ITR 502, 507]**, Kerala High Court, reproduced the following passage from Glanville Williams in Criminal Law, which reads as under:
 - “The view that everyone is presumed to know the law is now generally rejected; it is not a true proposition of law, and even if it were, it would not only be a legal fiction not a moral justification. Lord Mansfield Drily observed that “it would be very hard upon the profession, if the law was so certain, that everybody knew it”; and Maule J. is credited with the observation that ‘everybody is presumed to know the law except His Majesty’s judges who have a Court of Appeal set over them to put them right’. The idea that the law can be known by everyone is today, in the ‘planned’ and ‘welfare’ State, more ludicrous than ever”.
 - “The normal presumption is that almost all the assesseees are completely dependent upon their lawyers and advisers for the highly technical taxation affairs involving change almost every year and sometimes more than once within one year and, consequently, they cannot comply with the terms of the Act unless they are advised by their taxation lawyers.”

Ignorance of law can be excused

- In **CIT v. Eetachi Agencies [(2001) 248 ITR 525 (Bom.)]**, ignorance of law was the defence against penalty in the context of section 269T requiring return of deposits by account payee cheque.
- It was held that where the assessee's wrong impression that the section applied only to return of loans and not to deposits was considered a good enough Explanation, when it was found that it was an instance of genuine belief, though wrong. It is in this context that the High Court upheld the deletion of penalty by the Tribunal.

Ignorance of law can be excused

- The Supreme Court in **Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh [(1979) 118 ITR 326 (SC)]** cited a passage from English decision of House of Lords in *Evans v. Bartlam* [(1937) AC 473 (HL)] to the following effect
 - *“..... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of law does not excuse, a maxim of very different scope and application.”* It is not often realised that the oft-repeated maxim that ignorance of law is no excuse, has its exceptions.

Ignorance of law can be excused

- Where an assessee accepted a loan in cash because of the ignorance of requirement of law, penalty was found to be inexigible in **CIT v. Raj Kumar Sharma [(2007) 294 ITR 131 (Raj.)]**.
- Where the assessee had accepted deposits from persons residing in rural areas not having access to banking facility and the assessee was also ignorant of the relevant provisions of the law, acceptance and repayment of loan in cash, it was held, did not justify penalty, since the explanation was reasonable as held by the Tribunal in Asst. **CIT v. Vinman Finance and Leasing Ltd. [(2008) 306 ITR (AT) 377 (Vishakapatnam)]**.

Section 269SS inapplicable where loan is not genuine

- It is only a genuine loan, which is accepted in cash without a reasonable cause, that it is liable for penalty under section 271D. But where the Assessing Officer treated the loan as unproved and as undisclosed income of the assessee, the question of application of section 269SS would not arise as held in **CIT v. Standard Brands Ltd. [(2006) 285 ITR 295 (Delhi)]**. It was incidentally also found, that the block assessment in respect of which the proceedings were initiated was found to be unsustainable, so that penalty action could not survive even otherwise.
- In **CIT v. Idhayam Publications Ltd. [(2006) 285 ITR 221 (Mad.)]**, a deposit received by a private company from its director cannot be treated as a deposit or loan, so as to justify penalty under section 271D.

Section 269SS not applicable for trading transactions

■ Section 271D is confined to loan or deposit and not to other trading transactions. In **CIT v. Indore Plastics Pvt. Ltd. [(2003) 262 ITR 163 (MP)]**, the assessee company received moneys from its promoter to the extent of about Rs. 2 lakhs. Since it was received in cash, penalty of an equal amount was levied. The Tribunal found that the receipt was neither a deposit nor a loan, but merely an adjustment of amount, which he owed to the company, so that the receipt did not fall within the meaning of loan or deposit under section 269SS of the Act. The finding was challenged by seeking reference to High Court under section 256(2) of the Act, but the High Court agreed with the Tribunal that there was no question of law involved in the finding of the Tribunal.

■ Where the assessee had received an advance towards future supply of goods, such advance cannot fall under section 269SS, so as to require the transactions to be by account payee cheque. It was so held in **CIT v. Kailash Chandra Deepak Kumar [(2009) 317 ITR 351 (All.)]** holding that penalty under section 271D cannot apply for

Transaction with sister concerns

- Where payments were made in cash to sister concern, so as to enable them to meet their immediate cash needs, the explanation being reasonable was held to have been rightly accepted by the Tribunal in **CIT v. Maheswari Nirman Udyog [(2008) 302 ITR 201 (Raj.)]**.
- Transactions as between sister companies do not attract penalty in **CIT v. Lakshmi Trust Co. [(2008) 303 ITR 99 (Mad.)]**
- Where the transactions are between two sister concerns both within the family and the fund transfers were for purposes of business with the transaction accounted for in the books, the requirement of reasonable cause was held to be satisfied in such circumstances in **CIT v. Sunil Kumar Goel [(2009) 315 ITR 163 (Punj. & Har.)]**. The High Court endorsed the finding of the Tribunal upheld by the High Court in **CIT v. Saini Medical Store [(2005) 277 ITR 429 (Punj. & Har.)]**, where it was held that bonafide and genuine transactions themselves would constitute reasonable cause.

Transaction with sister concerns

- Similar view was also taken in **CIT v. Makhija Construction Co. [(2002) 257 ITR 8 (MP)]**. Such a view would take into consideration the purpose of the provision to have the necessary information for checking the correctness of accounts with identity of the parties with whom the assessee has transaction.
- The Board Circular itself concedes that the section is intended to tackle unaccounted monies moving in cash. Unfortunately, this purpose of legislation has been consistently ignored and conclusions are arrived at on the basis of mere technicalities.

Transaction with sister concerns

- Acceptance of loan or deposit and return of the same by modes other than by account payee cheques and account payee draft would attract penalties under section 271D and 271E. Action was initiated under section 271E against a housing development firm and a penalty of Rs. 14.72 crores was levied, the penalty being equal to the amount paid to sister institutions by cash to enable them to discharge their liability to contractors. It was argued that the transactions were inter-firm transactions tied up with common business interest with a common partner and the payments were for immediate use on the same date. Karnataka High Court had held that in such cases, there was reasonable cause, when the payments were otherwise genuine and were made to assesseees with PAN numbers as decided in an unreported case of the jurisdictional High Court in **H. S. Ananthasubbaraya in I.T.A. No. 453 of 2003 dated 9th March, 2004**. The decision of the Tribunal in such a case of group company transactions in **Muthoot M. George Bankers v. ACIT [(1993) 46 ITD 10 (Cochin)]** was also relied upon.

Transaction with sister concerns

- The Tribunal noticed the favourable decision of the Madras High Court in **CIT v. Idhayam Publications Ltd. [(2006) 285 ITR 221 (Mad.)]** in respect of a transaction between a company and its directors.
- Though there are some conflicting Tribunal decisions, the Tribunal deleted the penalty in **Canara housing Development Co. v. Addl. CIT [(2010) 1 ITR (Trib.) 165 (Bangalore)]** accepting the assessee's explanation following the aforesaid precedents, while distinguishing the decision relied upon by revenue in **Chaubey Overseas Corporation v. CIT [(2008) 303 ITR 9 (All.)]**, where the excuse for not accepting the explanation was that it was a case of trade deposit.

Non-applicability to mutual association and its members and transactions between firm and its partners

- It cannot also apply to transactions between a mutual association and its members as was decided in **Muslim Urban Co-operative Credit Society Ltd. v. JCIT [(2005) 278 ITR (AT) 246 (Pune)]**.
- It was held inapplicable to a transaction between a firm and its partners as was canvassed, but it was found to be necessary to decide the issue as the explanation was even otherwise acceptable in **CIT v. Lokhpat Film Exchange (Cinema) [(2008) 304 ITR 172 (Raj.)]**.
- But as a legal proposition, there cannot be two legally different parties as between a firm and partners as was decided in a different context in **CIT v. R. M. Chidambaram Pillai [(1977) 106 ITR 292 (SC)]**.

Contribution towards Share Capital / Genuine transactions

- Contribution towards share capital, it was held, could not be treated as loans or deposits to be covered by these provisions as held in **CIT v. Rugmini Ram Ragav Spinners P. Ltd. [(2008) 304 ITR 417 (Mad.)]**.
- Where the transactions are genuine beyond any possible doubt, the provision should not be applied, as they are not meant for such cases. But if the transactions are not genuine, the amounts could even otherwise be added without the assistance of this provision. Apparently, the intention is to cover those cases, where the transaction is not capable of verification, because of lack of identity of the other party in cash transaction. It is necessary, that the Board should clarify this intent of law again, so that a large number of disputes could be reasonably resolved.

Penalty is not automatic – CIT v. Bombay Conductors & Electricals Ltd. [(2008) 173 Taxman 434 / 301 ITR 328 (Guj.)

- Paragraphs 6 to 9 of the decision of the Gujarat High Court in the case of **CIT v. Bombay Conductors & Electricals Ltd. [(2008) 173 Taxman 434 / 301 ITR 328 (Guj.)**, read as follows:
- '6. The object of introduction of s. 269SS of the Act has been stated by the Apex court in the aforesaid case of ***Asstt. Director of Inspector v. Kum A.B. Shanthi (supra)*** in the following terms :
- "The object of introducing s. 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main object of s. 269SS was to curb this menace.

Penalty is not automatic – CIT v. Bombay Conductors & Electricals Ltd. [(2008) 173 Taxman 434 / 301 ITR 328 (Guj.)

■ At the same time, while introducing s. 269SS, s. 273B was also incorporated in the statute which provides that no penalty shall be imposed on a person or an assessee, as the case may be, for any failure referred to in the said provision if the assessee proves that there was reasonable cause for such failure. In other words **penalty is not automatic under s. 271D of the Act on mere violation of provisions of s. 269SS of the Act.**

■ 7. The Tribunal has found that there is no evidence on record to show that infraction of the provisions was with knowledge or in defiance of the provisions. It has further been held that there is nothing on record to indicate that the assessee had indulged in any tax planning or any tax evasion. To the contrary, the Tribunal has recorded that by making the book entries the assessee has made the adjustment bona fide without having the knowledge that such book entries may render the assessee liable to penalty under s. 271D of the Act on account of violation of provisions of s. 269SS of the Act. That there was a reasonable cause and hence, no penalty was leviable.

Penalty is not automatic – CIT v. Bombay Conductors & Electricals Ltd. [(2008) 173 Taxman 434 / 301 ITR 328 (Guj.)

- 8. In light of the findings of the facts recorded by the Tribunal after appreciating evidence on record and applying the ratio of the apex Court decisions it is not possible to find any legal infirmity in the impugned order of the Tribunal. Not only there is a reasonable cause, as found by the Tribunal, but in light of the finding of the Tribunal that the breach, if any, is merely a technical or venial breach no penalty is leviable as laid down by the apex Court merely because it is lawful to do so without exercising discretion before imposing the penalty.
- 9. In the result, the question referred is answered in the affirmative i.e. in favour the assessee and against the Revenue."

Factors which led to conclusion that there was a reasonable cause- CIT v. Balaji Traders [(2008) 303 ITR 312 (Mad.)]

- The Madras High Court has in the case of **Balaji Traders [(2008) 303 ITR 312 (Mad.)]** held as follows –

- 7. In the instant case, the CIT (A) and the Tribunal found that (i) there was business exigency forcing the assessee to take cash loans for the purpose of honouring the commitment, viz. issuance of cheque on a particular date; (ii) the creditors were genuine persons and the transactions were never doubted by the authorities below; and (iii) there was no revenue loss to the State exchequer, and satisfied that the assessee has shown reasonable cause for the above transactions.

- 8. The authorities have also noticed that all the transactions were brought into the account of the assessee and there were corresponding entries in the book of account of respective parties/creditors which satisfied the test of business exigency.'

Reasonable cause must be considered even if plea is not taken - CIT v. Smt. M. Yesodha [(2013) 31 taxmann.com 153 (Mad.)]

- In the case of *Smt. M. Yeshodha*, the AO in the course of assessment proceedings noticed that the assessee has in her balance sheet shown a loan from her father-in-law, which loan of Rs. 20.99 lakh was received by her in cash.
- The AO initiated proceedings for levy of penalty under section 271D.
- In penalty proceedings, the assessee contended that the amount received was a gift and not a loan. This contention was rejected by the AO since, according to the AO, the assessee has herself in the balance sheet reflected the amount as a loan and not as a gift. He levied penalty under section 271D.
- CIT(A) confirmed the action of the AO.
- The Tribunal held that the transaction in question was between father-in-law and daughter-in-law and the genuineness of the transaction was not disputed, in which, the amount had been paid by the father-in-law for the purchase of the property. The Tribunal set aside the penalty order.
- On revenue's appeal, the High Court held -

Reasonable cause must be considered even if plea is not taken - CIT v. Smt. M. Yesodha [(2013) 31 taxmann.com 153 (Mad.)]

- 8. Under Section 273B of the Income Tax Act, on 'reasonable cause' being shown, no penalty shall be imposable. As rightly pointed out by the learned counsel appearing for the assessee, in the reply furnished before the Assessing Officer, the assessee clearly mentioned that her father-in-law - M. Kathirvel sent the amount of Rs. 20,99,393/- directly to the seller of the house bought in the name of the assessee at Chennai and that necessary funds were provided by the assessee's father-in-law as a cash gift and the said cash gift was taken urgently by the assessee to get the purchase deed executed and no loan was taken from her father-in-law. **Even though the assessee had not taken a specific plea of reasonable cause, it must be considered as applied to human action. Where the transactions are bonafide, penalty cannot be imposed.**

Reasonable cause must be considered even if plea is not taken - CIT v. Smt. M. Yesodha [(2013) 31 taxmann.com 153 (Mad.)]

- 9. To substantiate the plea that her father-in-law had advanced the amount as cash gift, the assessee's father-in-law had filed an affidavit before the Commissioner of Income Tax (Appeals). Regarding the affidavit, remand report was called for from the Assessing Officer. In the remand report, the Assessing Officer has doubted the nature of transaction. In our considered view, **in the light of the relationship between the assessee and her father-in-law, the Tribunal has rightly held that the genuineness of the transaction is not disputed, in which, the amount has been paid by the father-in-law for purchase of property and the source had also been disclosed during the assessment proceedings. If there was a genuine and bonafide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.**

- **10.** The contention of the Revenue is that the amount received by the assessee from her father-in-law has to be treated only as a loan and if it is a loan, then the assessee is liable to pay penalty under Section 271D of the Income Tax Act. **Whether it is a loan or other transaction, still the other provision, namely, Section 273B of the Income Tax Act, comes to the rescue of the assessee, if she is able to show reasonable cause for avoiding penalty under Section 271D of the Income Tax Act.** The Tribunal has rightly found that the transaction between the daughter-in-law and father-in-law is a reasonable transaction and a genuine one owing to the urgent necessity of money to be paid to the seller. We find that this would amount to reasonable cause shown by the assessee to avoid penalty under Section 271D of the Income Tax Act.

■ 11. Referring to the decision reported in ***CIT v. Kundrathur Finance and Chit Co.*** [2006] 283 ITR 329 (Mad.), this Court in the decision reported in *Lakshmi Trust Co.* (*supra*), held as follows:

■ "In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal **found on the facts that the transactions were genuine and the identity of the lenders was also satisfied.** The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

■ **Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on the facts, following the decision of this Court in CIT v. Ratna Agencies [2006] 284 ITR 609, wherein it was held that the finding recorded by the Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this court to interfere with such a finding of fact.**

■ **12.** The Tribunal, referring to the decision of this Court reported in *Lakshmi Trust Co. (supra)*, has rightly allowed the appeal. We do not find any error or infirmity in the order of the Tribunal to warrant interference. Accordingly, the substantial question of law is answered in favour of the assessee and this Tax Case (Appeal) stands dismissed. No costs.

■ **Facts of the case:**

- The assessee-company was engaged in business of shares, stock broking, investment and trading in shares and securities.
- In the course of assessment proceedings it was found that assessee had accepted a loan/inter corporate deposit of Rs. 4,29,04,722 from Investment Trust of India.
- During relevant assessment year, it had transferred shares held by it to Investment Trust of India for Rs. 4,28,99,325. Instead of repaying loan and receiving sale price of shares, both the parties had decided that said amount be set off in respective books of account by making journal entries and balance be paid by account payee cheques.
- However objections was raised by audit report regarding repayment otherwise than by an account payee cheque or draft. Thereupon the Assessing Officer passed an order under section 271E imposing penalty upon the assessee for violating the provisions of section 269T.

■ ***Facts of the case***

- On appeal, the Commissioner (Appeals) confirmed the penalty levied upon the assessee.
- On further appeal, the Tribunal held that the payment through journal entries did not fall within the ambit of section 269SS or 269T and, consequently, no penalty could be levied either under section 271D or section 271E.
- On revenue's appeal :

- ***The question to be considered by the Court:***
- *The basic question to be considered is, whether repayment of loan of Rs. 4,28,99,325 by making journal entries in the books of account maintained by the assessee is in contravention of section 269T, and, if so, for failure to comply with the provisions of section 269T, the assessee is liable for penalty under section 271E. [Para 14]*
- ***Object of introducing provisions of sections 269SS and 269T***
- *Chapter XXB containing section 269SS to section 269TT was introduced by the Income-tax (Second Amendment) Act, 1981 with effect from 11-7-1981 with a view to counter the evasion of tax. The object of the provisions contained in Chapter XXB of the Act as explained by the CBDT in its circular No. 345, dated 28-6-1982 is that the proliferation of black money poses a serious threat to the national economy and to counter that major economic evil, Chapter XXB has been introduced. [Para 16]*

■ ***Is repayment of the deposit in the manner prescribed by section 269T mandatory?***

- The obligation to repay the deposit by account payee cheque/bank draft for the entities specified in section 269T would have to be construed as mandatory in view of the negative language used in the section. Section 269T provides that none of the entities specified therein shall repay deposit otherwise than by the modes set out therein. In other words, the section provides that irrespective of the fact that there are several modes for repaying the deposit, the entities specified in section 269T shall repay the deposit only by the modes set out therein. The mandatory requirement of section 269T is further fortified by section 276E inserted along with section 269T on 11-7-1981 which provides that if a person referred to in section 269T repays any deposit in contravention of section 269T then such person shall be punishable with imprisonment for a period upto two years and also liable to fine equal to the amount of deposit.

- Thus, the negative language used in section 269T as also the penal consequences provided in section 276E for non-compliance of the procedure prescribed under section 269T leave no manner of doubt that repayment of deposit in the manner prescribed under section 269T is mandatory. [Para 17]
- With effect from 1-4-1989, section 276E dealing with the consequences on failure to comply with section 269T has been omitted and section 271E has been inserted which provides penalty for failure to comply with section 269T. Section 269T has been substituted by Finance Act, 2002 with effect from 1-6-2002 wherein the provision relating to repayment of deposit exceeding the prescribed limit by account payee cheque/draft has been extended to repayment of loans as well. Thus, with effect from 1-6-2002, it is mandatory under section 269T for the persons specified therein to repay any loan/deposit together with interest, if any, exceeding the limits prescribed therein, by account payee cheque/bank draft and failure to do so is made liable for penalty under section 271E. [Para 18]

- **Is repayment by debiting the account through journal entries a contravention of section 269T?**
- **Can it be contended that the section does not apply to bonafide transactions?**
- **Does the section apply only to cases where repayment results in an outflow of funds?**
- In the present case, it is not in dispute that the assessee has repaid loan/deposit by debiting the account through journal entries. The question is, whether such repayment of loan/deposit is in contravention of the modes of repayment set out in section 269T. The argument advanced by the assessee that the bona fide transaction of repayment of loan/deposit by way of adjustment through book entries carried out in the ordinary course of business would not come within the mischief of section 269T cannot be accepted, because, the section does not make any distinction between the bona fide and non-bona fide transactions and requires the entities

- **Is repayment by debiting the account through journal entries a contravention of section 269T?**
- specified therein not to make repayment of any loan/deposit together with the interest, if any otherwise than by an account payee cheque/bank draft if the amount of loan/deposit with interest if any exceeds the limits prescribed therein. Similarly, the argument that only in cases where any loan or deposit is repaid by an outflow of funds, section 269T provides for repayment by an account payee cheque/draft cannot be accepted because section 269T neither refers to the repayment of loan/deposit by outflow of funds nor refers any of other permissible modes of repayment of loan/deposit, but merely puts an embargo on repayment of loan/deposit except by the modes specified therein. Therefore, in the present case, where loan/deposit has been repaid by debiting the account through journal entries, it must be held that the assessee has contravened the provisions of section 269T. [Para 19]

- **273B has been introduced to mitigate genuine hardship which may be caused to genuine business transactions on account of bar imposed under section 269T and penalty imposable under section 271E**
- It is relevant to note that with a view to mitigate the hardship that may be caused to the genuine business transactions on account of the bar imposed under section 269T and the penalty imposable under section 271E, the legislature, by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 has introduced section 273B with effect from 10-9-1986. Section 273B inter alia provides that notwithstanding anything contained in section 271E, no penalty shall be imposed on the person or the assessee as the case may be for any failure referred to in the said section, if such person or assessee proves that there was reasonable cause for such failure. Thus, reading sections 269T, 271E and 273B together it becomes clear that:

- ***273B has been introduced to mitigate genuine hardship which may be caused to genuine business transactions on account of bar imposed under section 269T and penalty imposable under section 271E ...***
- (a) Under section 269T it is mandatory for the persons specified therein to repay loan/deposit only by account payee cheque/draft if the amount of loan/deposit together with interest, if any, exceeds the limits prescribed therein;
- (b) Non-compliance of the provisions of section 269T renders the person liable for penalty under section 271E; and
- (c) Section 273B provides that no penalty under section 271E shall be imposed if reasonable cause is shown by the concerned person for failure to comply with the provisions of section 269T. [Para 21]

- **Can it be contended that if section 269T is construed literally, it will lead to absurdity**
- The argument advanced on behalf of the assessee that if section 269T is construed literally, it would lead to absurdity cannot be accepted, because, repayment of loan/deposit by account payee cheque/bank draft is the most common mode of repaying the loan/deposit and making such common method as mandatory does not lead to any absurdity. No doubt, that in some cases genuine business constraints may necessitate repayment of loan/deposit by a mode other than the mode prescribed under section 269T. To cater to the needs of such exigencies, the legislature has enacted section 273B which provides that no penalty under section 271E shall be imposed for contravention of section 269T if reasonable cause for such contravention is shown. [Para 22]

■ **Is reasonable cause wider than sufficient cause?**

- The expression 'reasonable cause' used in section 273B is not defined under the Act. Unlike the expression 'sufficient cause' used in sections 249(3), 253(5) and 260A(2A), the legislature has used the expression 'reasonable cause' in section 273B. 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'. Therefore, the expression 'reasonable cause' in section 273B for non-imposition of penalty under section 271E would have to be construed liberally depending upon the facts of each case. [Para 23]

- **Where –**
- **(i) genuineness of the receipt of loan/deposit is not doubted;**
- **(ii) the transaction of repayment of loan by way of adjustment through book entries carried out in ordinary course of business has not been doubted in regular assessment;**
- **(iii) there is nothing on record to suggest that amounts advanced to assessee represented unaccounted money of lender or the assessee;**
- **settling claims by making journal entries in respective books is also one of the recognized modes of repaying loan/deposit. It would be an empty formality to repay the loan/deposit amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares.**

- In the present case, the cause shown by the assessee for repayment of the loan/deposit otherwise than by account payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. It would have been an empty formality to repay the loan/deposit amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee.

- The fact that the assessee-company belongs to the 'K' which is involved in the securities scam cannot be a ground for sustaining penalty imposed under section 271E if reasonable cause is shown by the assessee for failing to comply with the provisions of section 269T. It is not in dispute that settling the claims by making journal entries in the respective books is also one of the recognized modes of repaying loan/deposit. Therefore, in the facts of the present case, though the assessee has violated the provisions of section 269T, the assessee has shown reasonable cause and, therefore, the decision of the Tribunal to delete the penalty imposed under section 271E deserves acceptance. [Para 24]

■ **Decision of the Court**

- In the result, the Tribunal was not justified in holding that repayment of loan/deposit through journal entries did not violate the provisions of section 269T. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a bona fide transaction and was made with a view to evade tax, the cause shown by the assessee was a reasonable cause and, therefore, in view of section 273B, no penalty under section 271E could be imposed for contravening the provisions of section 269T.

- **Receipt of deposits / loans through journal entries is in breach of section 269SS.**
- **The test of reasonable cause cannot, in the present facts, be determined on the basis of number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference.**

■ **FACTS OF THE CASE**

- Penalty under section 271D was imposed upon assessee as it had accepted loans/deposits by way of passing journal entries in its books of account in breach of section 269SS.
- This imposition of penalty under section 271D was upheld by the Commissioner (Appeals).
- On further appeal, the Tribunal noted that neither genuineness of receipt of loans/deposits by way of an adjustment through journal entries carried out in ordinary course of business had been doubted in the regular assessment proceedings and transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. He held that penalty under section 271D was not imposable in view of section 273B as there was a reasonable cause for the failure to comply with section 269SS.
- On appeal :

■ **DECISION OF THE COURT**

- On merits of the issue, both parties agreed that the Tribunal was correct in holding that receipt of any advance/loan by way of journal entries is in breach of section 269SS as the decision of the High Court in *CIT v. Triumph International Finance (I) Ltd.* [2012] 22 taxmann.com 138/208 Taxman 299/345 ITR 270 (Bom.) is binding upon it. However, the revenue's grievance is with the impugned order of the Tribunal further holding that no penalty under section 271D is imposable in view of section 273B in the present facts. This is so as the Tribunal holds that the failure to comply with section 269SS was on account of reasonable cause on the part of the assessee. This finding of reasonable cause was on the application of parameters laid down by this Court in *Triumph International Finance (supra)* to determine reasonable cause for not complying with the provisions of section 269SS.

- The Revenue seeks to challenge the impugned order of the Tribunal on the ground that Section 273B will have no application as the test of reasonable cause is not satisfied for the reasons that the decision of this Court in ***Triumph International Finance (supra)*** will have no application as that was case of only one transaction while in this case, there are numerous transactions reflected through the passing of journal entries; the reasons set out for taking advances/deposits by way of journal entry would not satisfy the test of reasonable cause; and the non-satisfaction of showing reasonable cause as required under section 273B gives rise to a question of law.

- The Tribunal has, on application of the test laid down for establishment of reasonable cause, for breach of section 269SS, found that there is a reasonable cause in the present facts to have made journal entries reflecting deposits. The Tribunal has held that in the present facts, neither the genuineness of receipt of loans/deposits by way of an adjustment through journal entries carried out in the ordinary course of business has been doubted in the regular assessment proceedings. It held in the present facts the transaction by way of journal entries was undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc. Further, the Tribunal records that journal entries constituted a recognized mode of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes outside the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with section 269SS. [Para 3]

- The test of reasonable cause cannot, in the present facts be determined on the basis of the number of entries. If there was a reasonable cause for making the journal entries, then, the number of entries made, will not make any difference. Besides, on facts, the Tribunal was satisfied with the reasons given by the assessee for reasonable cause and this finding is not shown to be perverse. Finally, the issue of there being a reasonable cause or not is an issue of fact. No inference of law and/or issue of interpretation is to be made. [Para 3]
- Thus, there was reasonable cause for assessee to receive deposit/loan through journal entries. This non-compliance with section 269SS would certainly be a reasonable cause under section 273B for non imposition of penalty under section 271D. [Para 3]
- In the above circumstances, the view taken by the Tribunal in the impugned order holding that no penalty can be imposed upon the assessee as there was a reasonable cause in terms of section 273B for having received loans/deposits through journal entries is at the very least is a possible view in the facts of the case. [Para 3]

Can penalty under section 271D be levied in respect of an amount which has been assessed to tax under section 68

- Once booking advance received by constructor had been assessed as undisclosed income under section 68, same could not be considered as deposit for levy of penalty under sections 271D and 271E – **CIT v. Shyam Corporation [(2013) 35 taxmann.com 519 (Gujarat)]**
- Once certain amount was subjected to tax under section 68, question of treating it as transaction in violation of section 269SS or section 269T did not arise as it stood mutually excluded - **Director of Income-tax (Exemptions), Chennai Young Men Christian Association [(2014) 49 taxmann.com 72 (Madras)]**
- Once AO had made addition under section 68 treating deposits received in cash as non-genuine, then no penalty could be imposed under section 271D – **ITO v. Smt. Gurmeet Kaur [(2012) 27 taxmann.com 173 (Jodh.)]**

If deposits are non-genuine then penalty under s. 271D cannot be imposed

- It is always not necessary to impose penalty under sections 271D and 271E if there have been bonafide reasons with the assessee for accepting the loans / deposits in cash or the assessee may be under bonafide belief that the amount so received is not a loan or deposit but as security. Moreover, the revenue cannot blow hot and cold. **Once the revenue has taken a stand that deposits are non-genuine then penalty under section 271D cannot be imposed. Penalty is a civil liability and for that some satisfaction is required to be needed for imposing such penalty.**

Are provisions of Section 269SS and 271 D applicable when assessee receives back the money?

- Are provisions of Section 269SS and 271 D applicable when assessee receives back the money?
- Provisions of sections 269SS and 271D were not applicable where assessee had received back money in cash and not advanced money or accepted loan in cash – **DCIT v. Ankush Rao Ingle [(2010) 29 SOT 263 (Hyd.)]**
- Provisions of sections 269SS and 271D were not applicable where the assessee had received back the money in cash and not advanced money or accepted the loan in cash. Penalty could not be levied under section 271D for receiving cash from the borrower of the assessee.

Mens rea is not an essential ingredient for attracting civil liability like penalty under section 271D

- Mens rea is not an essential ingredient for attracting civil liability like penalty under section 271D – Mahak Singh v. ITO [(2010) 127 ITD 1 (Delhi)]
- Mens rea is not an essential ingredient for attracting civil liability like penalty under section 271D. The main object of insertion of provisions of section 269SS is to ensure that a tax payer is not allowed to give false explanation for his unaccounted money. Therefore, **it is incorrect to plead that where a loan is found to be genuine, the same will constitute a reasonable cause within the meaning of section 273B and penalty under section 271D will not be attracted.**

Ignorance of law will not constitute reasonable cause for not complying with the provisions of section 269SS

- Ignorance of law will not constitute reasonable cause for not complying with the provisions of section 269SS – Mahak Singh v. ITO [(2010) 127 ITD 1 (Delhi)]
- The Supreme Court, in the case of Union of India v. Dharmendra Textiles Processors [(2008) 306 ITR 277] has held that wilful concealment is not an essential ingredient for attracting civil liability, as is the case in the matter of prosecution under section 276C. Therefore, the plea of the assessee that there was no mens rea or malafide intention on his part, is no longer valid after the decision of the Supreme Court. Hence, the assessee cannot plead that he was not aware of law and, therefore, the same would constitute the reasonable and sufficient cause for not complying with the provisions of section 269SS.

It is not necessary that the proceedings under sections 271D and 271E can be initiated only during course of regular assessment proceedings

- There is no merit in contention that penalty proceedings under sections 271D and 271E can be initiated only during course of regular assessment proceedings – **DCIT v. Emeskay Financial Services Ltd. [(2010) 124 ITD 435 (Vishakapatnam)]**
- There is no merit in contention that penalty proceedings under sections 271D and 271E can be initiated only during the course of regular assessment proceedings. Since the Act does not prescribe any limitation for initiation of the penalty proceedings under section 271D and under section 271E, such proceedings can be initiated after the search also, as held by the Special Bench in its decision in **Dewan Chand Amrit Lal v. DCIT [(2005) 98 TTJ 947 (Chd.)(SB)]**.

Is recording of satisfaction necessary for initiation of proceedings

- Where pursuant to directions issued by Commissioner (Appeals), AO passed a fresh assessment order wherein no satisfaction was recorded for initiating penalty proceedings under section 271E, impugned penalty order passed under said section deserved to be set aside – CIT v. Jai Laxmi Rice Mills Ambala City [(2015) 379 ITR 521 (SC)]
- The assessee was engaged in large scale purchase and sale of wheat. For relevant assessment years, the AO passed assessment order determining certain taxable income. While framing the assessment, the AO also opined that the assessee had contravened provisions of section 269SS and, thus, penalty proceedings were initiated under section 271E. The Commissioner (Appeals) set aside the assessment order with a direction to frame assessment de novo. After remand, the AO passed fresh assessment order but in said assessment order, no satisfaction regarding initiation of penalty proceedings under section 271E was recorded. The Tribunal as well as the High Court held that when original assessment order itself was set aside,

Is recording of satisfaction necessary for initiation of proceedings

- **CIT v. Jai Laxmi Rice Mills Ambala City [(2015) 379 ITR 521 (SC)] ...**
- satisfaction recorded therein for purpose of initiation of penalty proceedings under section 271E would also not survive. Accordingly, impugned penalty order was set aside.
- *Held that since impugned penalty order was passed under section 271E without recording any satisfaction, same was rightly set aside by authorities below.*

Does book adjustment of funds violate S. 269T

- **Making book adjustment of funds by assessee firm with sister concern without making payment of cash, could not said to be violation or contravention of section 269SS and section 269T – Gururaj Mini Roller Flour Mills v. Addl. CIT [(2015) 370 ITR 50 (AP & Telangana)]**
- A notice was issued to the assessee-firm proposing to levy penalty on ground that certain receipts / payments exceeding ceiling limit were made in cash to/from sister concern and to one `S`. The assessee submitted that there were only book adjustments of funds with sister concern and no cash was paid. As regard payment to `S`, it was stated that same was paid to `S` on death of her husband who was legal advisor of company.
- *Held, that there was no violation or contravention of section 269SS and section 269T.*

Does book adjustment of funds violate S. 269T

- 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 –**CIT v. Worldwide Township Projects Ltd. [(2014) 367 ITR 433 (Delhi)]**
- Ambit of section 269SS is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries.
- The assessee showed PACL as a sundry creditor in its books. PACL purchased lands on behalf of the assessee. PACL made payments to land owners through demand drafts. The AO concluded that transaction disclosed by the assessee amounted to a loan to the assessee and that no funds had passed through bank accounts of the assessee for acquisition of lands.
- *Held that there was no infringement of section 269SS and penalty proceedings were to be quashed.*

Does liability created via journal entry violate S. 269SS

- **Where there was no monetary transaction between assessee and creditor, rather by mere journal entry liability was created, it could not be said that loan or deposit was accepted by assessee from creditor was in violation of section 269SS – ACIT v. Vardaan Fashion [(2015) 38 ITR (Trib.) 247 (Delhi)]**
- The AO noticed that the assessee had accepted loan or deposit otherwise than by account payee cheque or account payee draft and accordingly, levied penalty under section 271D. It Was observed that there was no monetary transaction between the assessee and the creditors. The monetary transaction had taken place between the creditors and some third party which were all by account payee cheques. In books of the assessee also, there was only a journal entry by debiting account of some other party and crediting to account of creditor.
- *Held that since there was no monetary transaction between the assessee and the creditor, it could not be said that the assessee accepted loan or deposit from creditor in violation of section 269SS; hence penalty levied u/s 271D was to be cancelled.*

Does extinguishment of a liability via journal entry violate S. 269T

- Where transactions by way of journal entries are aimed at extinguishment of mutual liabilities between assessee and sister concerns of group, penalty is not leviable under sections 271D / 271E – **Lodha Builders (P.) Ltd. v. ACIT [(2014) 34 ITR (Trib.) 157 (Mum.)]**
- Receiving loans and repayments through journal entries is hit by relevant provisions of section 269SS/269T. However, completing `empty formalities' of payments and repayments by issuing / receiving cheque to swap / square up transactions, is not intention of provisions of section 269SS / 269T when transactions are otherwise bonafide or genuine. Where impugned journal entries in respective books were done with view to raise funds from sister concerns, to assign receivable among sister concerns, to adjust or transfer balances, to consolidate debts and to correct clerical errors, etc., and it was not case of revenue that any of impugned transactions was aimed at non-commercial reasons and outside normal business operations, though there was violation of provisions of Ss. 269SS/T, penalty was not leviable u/s

Are Debentures or bonds covered by the term `deposit`

- **Debentures or bonds are not covered by term `deposit` – CIT v. Jet Life India Ltd. [(2012) 204 Taxman 382 (Delhi)]**
- The AO imposed penalty under section 271E holding that the assessee had repaid amounts under Golden Bonds Scheme in violation of section 269T. The Commissioner (Appeals) and the Tribunal held that the payment under the Golden Bonds Scheme was not repayment of any deposit, but was repayment of a loan and there was no violation of section 269T, as it stood at that time.
- *Held, that debentures or bonds are not covered by the term `deposit`. The Legislature by Finance Act, 2002 had expanded the ambit and scope of section 269T to cover repayment of loans. This amendment, however, is with effect from 1.6.2002. The repayment in the instant case was made before 1.6.2002. Hence, penalty was not leviable.*

Satisfaction of unpaid purchase price by issue of shares does not violate S. 269SS

- Where assessee had not received any loan or deposit of money and it was only debt by way of unpaid purchase price that was satisfied by allotment of shares to a party, there was no contravention of provisions of section 269SS and, therefore, penalty was not leviable – *Vatika Hotels (P.) Ltd. v. Addl. CIT [(2010) 134 TTJ 708 (Delhi)]*
- The assessee had purchased land from 'V' Ltd. for a consideration of Rs. 50.50 crores. The amount was not paid in cash but adjusted by allotment of shares to 'V' Ltd. As per resolution of the board of directors of the assessee-company. The AO was of the view that the sum of Rs. 50 crores shown as share application money was received otherwise than by account payee cheque or account payee draft and same was in contravention of the provision contained in section 269SS. Accordingly, the AO passed a penalty order under section 271D.
- Held, that the assessee had a running account with 'V' Ltd. This account was credited by a sum of Rs. 50.50 crores for purchase of land, the account was debited

Satisfaction of unpaid purchase price by issue of shares does not violate S. 269SS

- – **Vatika Hotels (P.) Ltd. v. Addl. CIT [(2010) 134 TTJ 708 (Delhi)] ...**
- By a sum of Rs. 50 crores on 31.3.2006 for share application money and also on 30.6.2006 by a sum of Rs. 50 lakhs in respect of share application money. Thus, there was a direct relation between the land cost and share application money, as the aggregate of two debits was the same as land cost. In the financial year 2005-06, the account was debited by a sum of Rs. 50 crores by way of share application money. Thus, this debit had a direct correlation with the credit made on 28.4.2004. The penalty was levied in respect of this amount. The credit in the account on 28.4.2004 was not for receipt of money but for purchase of the land and the liability was partly discharged by taking Rs. 50 crores as share application money. Therefore, it could not be said that the share application money was received in cash. Accordingly, impugned order of penalty was to be set aside.

Does S. 269SS apply to amount advanced for future supply of goods

- **Provisions of section 269SS were not applicable to amount advanced for future supply of goods – CIT v. Kailash Chandra Deepak Kumar [(2009) 317 ITR 351 (All.)]**
- The respondent assessee had accepted various amounts from BR, during March, 1991, and the total amount came to Rs. 1,00,000. The amount was received otherwise than by way of account-payee cheque or bank draft. The assessing authority initiated penalty proceedings under section 271D and imposed penalty on the assessee.
- Held that on the quantum side the assessing authority had added Rs. 1,00,000 which was the same amount as unexplained cash credit under section 68 and the Commissioner (Appeals) had held that the aforesaid amount had been taken as advance from BR against subsequent purchase of pulses made from the assessee-respondent. The provisions under section 269SS are applicable only in case of loan or deposit and do not cover cash advance for purchase of goods in future.
- Hence, the provisions of section 269SS were not applicable to the present case.

Does 'any deposit' in S. 269T cover 'trade deposits' as well?

- Words 'any deposit' in section 269T have been used to cover all sorts of deposits and include 'trade deposit' also – **Chaubey Overseas Corpn. v. CIT [(2008) 303 ITR 9 (All.)]**
- Clause (ii) of the Explanation to section 269T is in two parts. It uses the word 'means' in the first part and in the last part it uses the word 'includes'. Not only this, the use of word 'any' is also of much significance. A plain reading of clause (ii) leaves no doubt that the word 'deposit' has been used by the Legislature in its widest connotation. This view further finds support from the use of word 'includes' as well as of 'any'. From clause (ii) to the Explanation to section 269T, it is evident that here also the word 'any' has been used in a wider sense. The words 'any deposit' in section 269T have been used to cover all sorts of deposits and include 'trade deposit' also.
- The applicability of section 269T is not dependent on facts as to whether the transaction is a genuine one or of a doubtful character. Even the genuine deposits

Does `any deposit' in S. 269T cover `trade deposits' as well?

- – **Chaubey Overseas Corpn. v. CIT [(2008) 303 ITR 9 (All.)]**
- Are also covered under section 269T. The source of the deposit, capacity of the depositors, etc., are wholly irrelevant so far as the applicability of section 269T is concerned.
- The assessee-company, carrying on the business of silk fabrics, received certain amounts as advances for supply of silk fabrics by four parties, but it could not arrange for the required silk fabrics and, therefore, returned the said advances in cash. The AO held that the advances were deposits to which section 269T was applicable and, accordingly, imposed penalty upon the assessee under section 271E. On appeal, the Commissioner (Appeals) held that the provisions of section 269T were not attracted and the penalty could not be levied as the word `deposits' stipulates that a person should keep his money for earning interest with a person or a bank and the `deposits of any nature' does not cover up normal transactions of trade as in the case of the assessee.

Does 'any deposit' in S. 269T cover 'trade deposits' as well?

- – **Chaubey Overseas Corpn. v. CIT [(2008) 303 ITR 9 (All.)]**
- On the revenue's appeal, the Tribunal confirmed the penalty under section 271E, taking the view that section 269T is applicable to every kind of deposit whether it is 'trade deposit' or 'business deposit' or 'deposit'.
- Held that in the instant case, the money was given to the assessee for supply of silk fabrics, as per the case of the assessee itself. But as soon as the said supply could not be made, whatever might have been the nature of deposit earlier, the person who had received the advance was under a legal obligation to return it. It became 'deposit' at that very moment, if not earlier. The obligation to return is very much included in the word 'deposit'. It was not in dispute that the assessee had shown those deposits in his account books as deposits. It was true that the nature and quality of receipt, and not the head under which it was entered in the account books, would prove decisive in the matter. If a receipt was a trading receipt, the fact that it was not so shown in the account books of the assessee would not prevent the taxing authority from treating it as a trading receipt.
- Therefore, there was no error in the order of the Tribunal. The tribunal had rightly interpreted section 269T.

Is penalty leviable when unpaid purchase price is treated as loan

- **Where assessee purchased goods and as assessee was not in a position to make payment of outstanding purchase price immediately, parties arrived at an understanding where under outstanding purchase price was to be treated as a loan on sarafi account after making part payment of outstanding dues, Assessing Officer was not justified in imposing penalty by treating outstanding amounts as acceptance of deposit in violation of section 269SS – CIT v. Bombay Conductors & Electricals Ltd. [(2008) 301 ITR 328 (Guj.)]**
- The assessee purchased goods from time to time from the creditor company. As the assessee was not in a position to make payment of the outstanding purchase price immediately, the parties arrived at an understanding whereunder the outstanding purchase price was to be treated as a loan on sarafi account after making part payment of the outstanding dues. As per the terms agreed upon, on 31.5.1989, a sum of Rs. 24,908 was paid by account payee cheque out of total of Rs. 9,24,908 and the balance of Rs. 9 lakhs was simultaneously transferred to sarafi account.

Is penalty leviable when unpaid purchase price is treated as loan

- – **CIT v. Bombay Conductors & Electricals Ltd. [(2008) 301 ITR 328 (Guj.)] ...**
- The balance outstanding liability in the goods account was adjusted by way of journal entries. Similarly out of total outstanding dues of Rs. 14,08,165 a sum of Rs. 8,165 was paid by account payee cheque and balance amount of Rs. 14 lakh was identically treated as a loan outstanding in the sarafi account with requisite journal entries in support thereof. The AO treated the outstanding amounts of Rs. 9 lakh and Rs. 14 lakh respectively as acceptance of deposit in violation of the provisions of section 269SS and imposed penalty on the assessee. The Tribunal deleted the penalty.
- Held that the Tribunal had found that there was no evidence on record to show that infraction of the provisions was with the knowledge or in defiance of the provisions. It had further been held that there was nothing on record to indicate that the Tribunal had recorded that by making the book entries the assessee had made the adjustment bonafide without having the knowledge that such book entries were liable to penalty under section 269SS. There was a reasonable cause and, hence, no penalty was leviable. In the light of the finding of the Tribunal that the breach, if any, was merely a technical or venial breach no penalty was leviable.

Is balance in current account a deposit?

- **‘Deposit’ versus ‘current account’ – Kans Raj & Sons v. ITO [(2005) 92 TTJ 931 (Asr.)]**
- ‘Loan’ and ‘Deposit’ are not identical in meaning but it is true that both in the case of loan and in the case of deposit, there is a relationship of debtor and creditor between the parties giving money and the parties receiving money. In the case of deposit, the delivery of money is usually at the instance of the giver and it is for the benefit of the person who deposited the money. The benefit normally being earnings of interest from a party who customarily accepts deposits. The deposit could also be for safe keeping or as a security for the performance of an obligation undertaken by the depositors. In the case of loan, however, it is the borrower at whose instance or for whose needs money is advanced. Borrowing is primarily for the benefit of the borrower although the person who lends the money may also stand to gain thereby by earning interests on the amount lent.

Is balance in current account a deposit?

- **`Deposit' versus `current account' – Kans Raj & Sons v. ITO [(2005) 92 TTJ 931 (Asr.)] ...**
- Ordinarily, though not always, in the case of a deposit, it is the depositor who is the prime mover while in the case of a loan, it is the borrower who is the prime mover. The other and more important distinction is in relation to the obligation to return the amount so received. In the case of a deposit which is payable on demand, the deposit would become payable when a demand is made. In the case of a loan, however, the obligation to repay the amount arises immediately on receipt of the loan. It is possible that in case of deposits which are for a fixed period or loans which are for a fixed period, the point of repayment may arise in a different manner. But, by and large, the transaction of a loan and the transaction of making a deposit are not always considered identical.

Is balance in current account a deposit?

- **‘Deposit’ versus ‘current account’ – Kans Raj & Sons v. ITO [(2005) 92 TTJ 931 (Asr.)] ...**
- ‘Loan’ and ‘deposit’ are not identical in meaning and cannot be inter-changed. Some loans may be deposits and some deposits may be loans but all loans are not deposits and vice versa.
- Where the assessee, without stating the complete particulars of the deposit and without giving any particulars as to why he was accepting those deposits and as to why those depositors were making those deposits with the assessee and how those deposits were to be returned / repaid by the assessee to the depositors, had called those deposits in the nature of current accounts:
- Held that unless the assessee had given/supplied the complete details to the AO at the time of assessment or at the time of penalty proceedings, while giving his explanation, it was difficult to hold that those depositors were having any current account with the assessee or the deposits with the assessee-firm made by the

Issues under Sections 271D and 271E

- **`Deposit' versus `current account' – Kans Raj & Sons v. ITO [(2005) 92 TTJ 931 (Asr.)] ...**
- Depositors were not covered within the meaning of loan or deposit as provided in section 269SS. Hence, the amount of deposits by the depositors with the assessee were deposits within the meaning of section 269SS and the assessee had violated the provisions of section 269SS.

Does S. 269T apply to loans refunded w.e.f. 1.6.2002?

- Since the word `loan' had been introduced in amended section 269T for the first time in year 2002 with effect from 1.6.2002, penalty under section 271E could not be levied in respect of AY 1990-91 for contravention of section 269T where amount refunded was loan amount – CIT v. Motilal Subhodh Kumar Jain [(2005) 277 ITR 524 (MP)]
- A bare reading of section 269T, prior to the amendment with effect from 1.6.2002 and section 269SS, which provided for the mode of taking or accepting certain loans and deposits, makes it abundantly clear that the Legislature made a distinction between the modes of repayment of certain deposit for which conditions were provided in section 269T and which were not made applicable to a case of loan; loan and deposit had been treated differently in section 269SS and unamended section 269T. Loan had not been included in `deposit' under unamended section 269T. Thus, scheme of sections 269SS and 269T, as the provision stood before the amendment, provided for repayment of certain `deposit' by way of account payee cheque and not that of loan.

S. 269T applies to repayment of loan w.e.f. 1.6.2002 irrespective of the date of receipt of the loan

- **If repayment of loans was made after insertion of word `loan' in section 269T with effect from 1.6.2002 though loans were raised earlier, provisions of section 269T would be equally applicable – Ajay Goel v. ACIT [(2010) 126 ITD 89 (Delhi)]**
- Even though the loans were taken before insertion of the word “loan” in section 269T, if the repayment was made after the insertion of word “loan” in section 269T with effect from 1.6.2002 the provisions of section 269T would be equally applicable.

Prior to 1.6.2003 repayment of loan in cash would not attract penalty under s. 271E

- **Prior to amendment in section 271E with effect from 1.6.2003, repayment of loan in cash would not attract penalty under that section. – ITO v. Sudesh Kumar Sareen [(2010) 5 ITR (Trib.) 829 (Delhi)]**
- Upto 31.5.2003, i.e., before the amendment effective from 1.6.2003, penalty under section 271E was to be imposed if a person had repaid any deposit referred to in section 269T otherwise than in accordance with the provisions of that section. Only after amendment, penalty under section 271E is imposable in cases of repayment of loan referred to in section 269T.
- Therefore, where repayment of loans/advances from customers was made during January 2003 to March 2003, no penalty was imposable under section 271E.