Law on Cash transactions – Paradigm Shift - a study

By Kapil Goel FCA LLB Advocate

Advocatekapilgoel@gmail.com

9910272806

1. Prologue

From the time the demonetization is announced in last year November, it is seen that under direct tax laws, the approach and perspective on cash transactions has spasmodically changed disincentivising the same. It is noticed that from the time high denomination notes have been called of, under direct taxes, the transactions done in cash have been started to be viewed with parochial mindset. In this paper author has made an attempt to analyse the legislative journey on cash transactions under income tax act, or "act". Further, the corresponding judicial approach on the cash transactions is also comparatively analysed.

2. Provisions under income tax act dealing with cash transactions

First provision which may struck to our mind regarding cash transactions comes under the head “profits and gains of business or profession”, under section 40A(3) wherein proscription is made for cash expenditure during the course of carrying on of business/profession, exceeding prescribed limits now Rs. 10,000. There is fairly a long list of exceptions provided in rule 6 DD of income tax rules which gives lengthy items where in it is permissible to carry on cash transactions.

To elaborate, or aforesaid provision, it is wiser to look into the memorandum explaining the provisions of the Finance act, by which said provision was inserted. As per CBDT circular number 6P/1968 explaining provisions of Finance act 1968, it is explained that,

“this provision is designed to counter evasion of tax through claims for expenditure shown to have been incurred in cash with a view to frustrating proper investigation by the Department as to identity of the payee and reasonableness of repayment”.

Further from principles culled out from various decisions, it is noticed that primary object of

enacting section 40A(3) was two fold, firstly, putting a check on trading transactions with a mind to evade the liability to tax on income earned out of such transaction and, secondly, to inculcate the banking habits amongst the business community. Apparently, this provision was directly related to curb the evasion of tax and inculcating the banking habits.
Therefore, the consequence, which were to befall on account of non- observation of section 40A(3) must have nexus to the failure of such object. Therefore, the genuineness of the transactions it being free from vice of any device of evasion of tax is relevant consideration. When one further goes deeper into the subject of cash payments, it is found that provisions of section 40A(3) can be invoked only when there is any case of nongenuine expenditure/evasive transactions/flow of unaccounted money or where identity of the payee/source of payment/genuineness of transaction are dispute.

The judicial journey on the subject is analysed in succeeding paragraph:

1st ruling on the subject which merits mention at the outset is in the case of ***Attar Singh Gurmukh Singh vs ITO reported in (1991) 191 ITR 667 (SC)*** **being foundational order on the subject:**

" 3.3.4. Section 40A(3) of the Income-tax Act, 1961, which provides that expenditure in excess of Rs. 2,500 (Rs. 10,000 after the 1987 amendment) would be allowed to be deducted only if made by a crossed cheque or crossed bank draft (except in specified cases) is not arbitrary and does not amount to a restriction on the fundamental right to carry on business. If read together with Rule 6DD of the Income-tax Rules, 1962, it will be clear that the provisions are not intended to restrict business activities. There is no restriction on the assessee in his trading activities. Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed-cheque or crossed-bank draft. The payment by crossed-cheque or crossed bankdraft

is insisted upon to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of income from undisclosed sources. The terms of section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the Assessing officer the circumstances under which the payment in the manner prescribed in section 40A(3) was not practicable

or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed-cheque or crossed-bank draft in the circumstances specified under the rule. It will be clear from the provisions of section 40A(3) and rule 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

The observations in made in a aforesaid order are having everlasting value and are still in good law in present scenario. Further, noteworthy is the decision of Gujarat High Court in case of: ***Anupam Tele Services vs ITO in (2014) 43 taxmann.com 199 (Guj)***

"Section 40A(3) of the Income-tax Act, 1961, read with rule 6DD of the Income-tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limits Rule 6DD(j) Assessment year 2006-07 - Assessee was working as an agent of Tata Tele Services Limited for distributing mobile cards and recharge vouchers - Principal company Tata insisted that cheque payment from assessee's co-operative bank would not do, since

realization took longer time and such payments should be made only in cash in their bank account - If assessee would not make cash payment
and make cheque payments alone, it would have received recharge vouchers delayed by 4/5 days which would severely affect its business operation - Assessee, therefore, made cash payment - Whether in view of above, no disallowance under section 40A (3) was to be made in respect of payment made to principal - Held, yes [Paras 21 to 23] [in favour of the assessee]"

Next important decision is from Andhra Pradesh High Court in case of:
Sri Laxmi Satyanarayana Oil Mill vs CIT reported in (2014) 49 taxmann.com 363
(Andhrapradesh High Court)
"Section 40A(3) of the Income-tax Act, 1961, read with Rule 6DD of the Income-tax Rules, 1962- Business disallowance - Cash payment exceeding prescribed limit (Rule 6DD) - Assessee made certain payment of purchase of groundnut in cash exceeding prescribed limit - Assessee submitted that he made payment in cash because seller insisted on that and also gave incentives and discounts - Further, seller also issued

certificate in support of this - Whether since assessee had placed proof of payment of consideration for its transaction to seller, and later admitted payment and there was no doubt about genuineness of payment, no disallowance could be made under section 40A(3) - Held, yes [Para 23] [In favour of the assessee]"

Also relevant are 2 important decisions from Punjab and Haryana High Court:

The landmark decision from Punjab&HaryanaHighCourt Gurdas Garg Vs. CIT in ITA No.413 of 2014, dated 16.7.2015 held as under

"It is important to note some of the findings of fact by the CIT (Appeals). The identity of the payees i.e. the vendors in respect of the lands purchased by the appellant, was established. The sale deeds were produced. The genuineness thereof was accepted. The amount paid in respect of each of these agreements was certified by the Stamp Registration Authority. The CIT (Appeals) held the transactions to be genuine. Accordingly, the CIT held that the bar against the grant of deductions under Section 40A(3) of the Act was not

attracted. 5. It is important to note that the Tribunal did not upset these findings including as to the genuineness and the correctness of the transactions. It is also important to note that the Tribunal noted the contention on behalf of the appellant that there was a boom in the real estate market; that it was necessary, therefore, to conclude the transactions at the earliest and not to postpone them; that the appellant did not know the vendors and obviously therefore, insisted for payment in cash and that as a result thereof, payments had to be made immediately to settle the deals. The Tribunal did not doubt this case. The Tribunal, however, held that the claim for deduction was not sustainable in view of Section 40A(3) as the payments which were over `20,000/- were made in cash. The Tribunal, therefore, disallowed the same only on a construction of Section 40A(3). The Tribunal restricted the ambit of the proviso to the circumstances mentioned in Rule 6DD of the Income Tax Rules, 1962

<u>At the cost of repetition, the Tribunal has not disbelieved the transactions or the genuineness thereof. Nor has it disbelieved the fact of payments having been made. More important, the reasons furnished by the appellant for having made the cash payments, which we have already adverted to, have not been disbelieved. In our view, assuming these reasons to be correct, they clearly make out a case of business expedienc In the</u>

circumstances, the order of the Tribunal in this regard is set aside. The payments cannot be disallowed under Section 40A(3) of the Act."

This order is subsequently followed in various decisions by the ITAT as mentioned below:

Dreamland Colonizers Pvt. Ltd- Chandigarh ITAT (15.02.2016)-

expenses incurred in cash were genuine which were paid to the seller for purchase of land and there were practical expediency because of which the payments have to be made in cash. (Gurdas garg supra applied);

Dhuri Wine, Chandigarh ITAT 09.10.2015

expenses incurred in cash were genuine Which were paid to distilleries through Excise Department for purchase of liquor and there were practical expediency because of which the payments have to be made in cash

Amritsar ITAT Rakesh Kumar , Muktsar vs Assessee on 9 March, 2016 :

In the present case, the genuineness of payment has not been doubted as Assessing Officer himself has held that sale deeds of properties were registered with the Revenue Department of Govt. Therefore, the case of the assessee is fully covered by the above decision of Hon'ble Punjab and Haryana High Court

Further same High Court in case of CIT vs Smt. Shelly Passi reported in (2013) 350 ITR 227 (P&H) has held as under:

In this case the court upheld the view of the tribunal in not applying section 40A(3) of the Act to the cash payments when ultimately, such amounts were deposited in the bank by the payee.

Very recently Hon'ble Kerela high court in case of M/S.KEERTHI AGRO MILLS (P) LTD., MATTOOR on 03/10/2017 in appeal number ITA.No. 257 of 2015 has held as under:

"....Similarly, in Attar Singh Gurmukh Singh, the Supreme Court has examined both Section 40-A(3) and Rule 6DD. It has held that Section 40A(3) must not be read in isolation or to the exclusion of Rule 6DD; the Section must be read along with the Rule. If read together, it will be clear that the provisions are not intended to restrict

the business activities. Section 40A(3) only empowers the assessing officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from disclosed sources. The terms of Section 40A(3) are not absolute. Consideration of business expediency and other relevant factors are not excluded. The genuine and bona fide transactions are not taken out of the sweep of the Section.

25. It is open to the assessee, Attar Singh Gurmukh Singh further observes, to furnish to the satisfaction of the assessing officer the circumstances under which the payment in the manner prescribed in Section 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the Rule. It will be clear from the provisions of Section 40A(3) and Rule 6DD that they are intended to regulate the business transactions and to prevent the use of unaccounted money or reduce the chances to use black-money for business transactions....”

When one has dispassionate and objective look to the aforesaid jurisprudence, it can be easily made out that any such law which proscribes transactions in cash has to be treated as recommendatory and cannot be treated as absolute. Given such viewpoint it will not be out of place to mention here that when a person engaged in the business

of sale purchase of immovable properties, purchases certain immovable property in cash wherein said instance is not falling under rule 6DD, but said transaction is duly confirmed and vouched from impregnable audit trail including registered sale deeds, sellers identity being thoroughly confirmed, transaction being fully verifiable etc. in author's opinion on basis of aforesaid jurisprudence said payment may not be subject to disallowance under provision of section 40A(3) of the act just because payment is made in cash. This view that support from various decisions of Hon'ble ITAT some of which are discussed above.

Next provision, which comes to mind in matter of cash payments is section 269SS/269T where in it is punitively prescribed that if a person accepts/repays loan/deposit/specified some in cash mode, same may be subject to equivalent penalty prescribed in sections 271D/271E of the act. There has been long history of these provisions from the time they have been incorporated in the law book. Again to recapitulate in hindsight, it will be profitable to refer to the legislative intent behind these provisions, which is to prevent generation of black money as clarified by the C.B.D.T's Circular No. 387 dated 06/07/1984 :

"32.1 Unaccounted cash found in the course of searches carried out by the IT Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and taxpayers are also able to get confirmatory letters from such persons in support of their explanation. 32.2 With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new s. 269SS in the IT Act debarring persons from taking or accepting, after 30th June, 1984 from any other person, any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount of such loan or deposit or the aggregate amount of such loan and deposits is Rs. 10,000 or more....."

Further the issue relating to constitutional validity of provisions of section 269SS came before the Supreme Court in the case of Asst. Director of Inspection (Investigation) vs. A.B. Shanti (255 ITR 258) (SC) wherein their Lordships confirmed the constitutional validity of this section and the object of provisions of section 269SS is as under as enumerated in that judgement:

"*The object of introducing section 269SS is to ensure that the tax payer is not allowed to give false explanation for his unaccounted money, or if he makes some false entry, he shall not escape by giving false explanation for the same. During search and seizure, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from its relatives or friends and it is easy for the so called lender also to manipulate his records to suit the plea of the taxpayer. The main object of the section 269SS was to curb this menace of making false entries in the accounts books and later giving an explanation for the same"*

In various decisions aforesaid objective has been considered to hold that penalty cannot be levied under subject provisions, one of the decision which is noteworthy is decision of Allahabad High Court in case of Dimple Yadav 379 ITR 177 wherein it is held as under:

"In the instant case, we find that the Tribunal has given a categorical finding that the assessee had established a reasonable cause for failure to comply with the provision of Section 269SS of the Act. The Tribunal further found that the loan given by the Samajwadi Party was a genuine loan, which was reflected in the books of accounts on account of the Samajwadi Party as well as in the books of account of the assessee and that the cash given by the party was deposited

in the bank of the assessee and, thereafter, used for the purpose of converting the nazul land into free hold. The Tribunal found that the genuineness of the transaction was also not disputed by the Assessing Officer.

In the light of the aforesaid, we find that even though the assessee had taken a loan in cash, nonetheless, the loan transaction was a genuine transaction and was routed through the bank account of the assessee which clearly shows the bonafides of the assessee. The cash given by the lender was not unaccounted money but was duly reflected in their books of account. The Assessing Officer also accepted the explanation and found the transaction to be genuine. The contention of the learned counsel for the appellant that since there was no urgency, the assessee could have taken the loan through cheque and should have processed the matter through regular banking channels is immaterial, inasmuch as the genuineness of the transaction has not been disputed by the Assessing Officer. Further, we find that the cash was deposited in the bank account of the assessee and the money was thereafter, routed through the banking channel for payment to the government for converting the land into free hold property.

In the light of the aforesaid, we are of the view that reasonable cause had been shown by the assessee and the provisions of Section 273B of the Act was applicable. The appellate authorities were justified in holding that no penalty could be imposed since a reasonable cause was shown by the assessee"

Above decision, is a clincher. The legislative journey of 2 provisions of section 40A(3) and section 269SS before amendment by Finance act 2015 clearly highlights that neither of the 2 prescriptions are mandatory. Wherever the transaction is genuine and there is no tax evasion probably the use of these 2 provisions might not be possible unless some incriminating material is thereon records.

By Finance 2015 there was an amendment in section 269SS whereby 1st time in the law, inside provision, word specified sum "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 " were inserted in the statute book. To explain this amendment, CBDT circular No. 19/2015

"54. Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances 54.1 Provisions contained in section 269SS of the Income-tax Act, before amendment by the Act, provided that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more. However, certain exceptions were provided in the section. 54.2 Similarly, the provisions contained in section 269T of the Income-tax Act, before amendment by the Act, provided that any loan or deposit shall not be repaid, otherwise than by an

account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more 54.3 ***In order to curb generation of black money by way of dealings in cash in immovable property transactions,*** *section 269SS of the Income-tax Act has been amended to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property(specified sum) otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more. 54.4 Section 269T of the Income-tax Act has also been amended to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place. T 54.5 Consequential amendments in section 271D and section 271E, to provide penalty for failure to comply with the amended*

provisions of section 269SS and 269T, respectively, have also been made. 54.6 Applicability: These amendments have taken effect from 1st day of June, 2015."

The italicised words above, again highlights that legislative intent was to curb black money generation in dealing in immovable property. That is if there is no generation of black money in a given transaction of immovable property the provision/amendment may not be applicable.. One issue which has drawn a lot of attention was meaning of word otherwise which is in company of the word advance, to this in authors opinion the principle of *edusjem generis* should apply and same may not include sale consideration which is well-documented in registered sale deed, having huge evidentiary value under provisions of Indian evidence law specially sections 90, 91, 92 of the said law. That is consideration received in cash through registered sale deed on which due stamp duty has been paid, and genuineness of the transaction is not called in question, and there is no black money generation involved, penalty may not be leviable under section 269SS of the act, as per aforesaid CBDT circular.

So aforesaid chequered history of cash transactions under income tax law leaves no doubt that any prohibition may not be

treated as absolute and final and there is room for exception to genuine and bonafide transactions.

3. *Now comes the turn of section 269 ST which is inserted by Finance act, 2017 which is discussed now.* By this provision for the transactions other than the transactions referred to in section 269SS a prohibition is created to accept in cash in (in simple words) amount of Rs. 2 lakhs or more in enumerated circumstances, with a view to promote digital economy and create a disincentive against cash economy. There are 3 circumstances *mentioned in that provision. All these 3 circumstances seems to be operating in different fields. The idea behind the insertion of the provision as resonated in the Hon'ble finance Minister speech is "162. The Special Investigation Team (SIT) set up by the Government for black money has suggested that no transaction above ` 3 lakh* (later made 2 lacs) *should be permitted in cash. The Government has decided to accept this proposal. Suitable amendment to the Income-tax Act is proposed in the Finance Bill for enforcing this decision."*

The memorandum behind said change is stating as follows:

"Restriction on cash transactions

In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programmes. Black

money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash. In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST in the Act *to provide that no person shall receive an amount of three lakh rupees or more,— (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. It is further proposed to provide that the said restriction shall not apply to Government, any banking company, post office savings bank or co-operative bank. Further, it is proposed that such other persons or class of persons or receipts may be notified by the Central Government, for reasons to be recorded in writing, on whom the proposed restriction on cash transactions shall not apply. Transactions of the nature referred to in section 269SS are proposed to be excluded from the scope of the said section. It is also proposed to insert new section 271DA in the Act to provide for levy of penalty on a person who receives a sum in contravention of the provisions of the proposed section 269ST. The penalty is proposed to be a sum equal to the amount of such receipt. The said penalty shall however not be levied if the person proves*

that there were good and sufficient reasons for such contravention. It is also proposed that any such penalty shall be levied by the Joint Commissioner. It is also proposed to consequentially amend the provisions of section 206C to omit the provision relating to tax collection at source at the rate of one per cent. of sale consideration on cash sale of jewellery exceeding five lakh rupees. These amendments will take effect from 1st April, 2017. [Clauses 71, 83 & 84]"

The passage in aforesaid discussion stating that "*Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash"* is a very broad generalisation and may not be fully accurate and authentic. That is, it is viewed that black money is generally transacted in cash and lot of unaccounted wealth is stored and used in form of cash. These 2 statements are very general and may not be correct to be standardised/benchmarked. Lot of discussion on cash transactions in various legislative amendments and judicial interpretations came to observe that there is nothing like all cash is unaccounted and all cash is black money. The moot point which arises here is whether the hypothesis on which the new provision is inserted in the law book, is not only arbitrary but also based on a vague and general presumption which presupposes all cash transactions generates black money and unaccounted wealth. Therefore it shall be open for debate

whether said provision passes constitutional scrutiny specially under article 14 of Indian Constitution which clearly says that any law which is arbitrary would be prone to serious constitutional challenge. Even if said provision is presumed to be fully and completely constitutional piece of legislation, it would be interesting to watch whether given criteria of black money and unaccounted wealth would as a assume significance in application of said provision. It would be further interesting to watch how the available jurisprudence under sections 40A and section 269SS are used in context of section 269ST which have somewhat analogous and homogeneous objective.

The term black money which has become an aphorism, is not used as such in the subject provision under the express language. Only saving grace is provided in section 271DA which squarely puts burden on the taxpayer to prove "good and sufficient reasons for the contravention" in that situation penalty under section 269ST shall not be imposed.

Coming to the express language used in the statute under section 269ST, following words/phrases may be noted for better understanding:

a) Person
b) Receive

c) Amount

d) occasion/event

Opening language of the section stating “no person” shall “recveive” an “amount” of 2 lakh rupees or more, highlights that firstly there should be a person on which penalty may be tried/imposed. Definition of what person in section 2 of the act that is definition clause of income tax act is provided in clause 31 wherein 7 categories of persons are mentioned, from which one can infer that taxpayers who are not falling in definition of word person like some joint-ventures (374 ITR 35), etc. would not be falling under section 269ST of the act. Further two different legal persons must be involved as evident from the express language in section 269ST of the act. That is where there are no 2 legal persons involved said provision may not be applicable. Like one case can be mutuality. Further the word receive which in law lexicon has been defined as “to receive means to get by a transfer, as, to receive a gift, to receive a letter, or to receive money and involves an actual receipt” at page 4368 of said legal compendium. Therefore in author’s opinion receive should be interpreted and construed as actual receipt, in assessees own capacity, therefore any sort of implied/constructive receipt should not be included and receipts which are not assessees own receipts may not be includable. Reference can be made to various decisions like Hardarshan Singh by Delhi High Court reported in 350 ITR 427 in

context of intermediaries/facilitator. Further the word amount has been defined in law lexicon as “the substance, or result of a thing; the total or aggregate sum. Quantity; to come up to, resulting, equalling in effect” at page 260 of said compendium. So it seems that amount requires something in monitory form as also evident from the context of the section 269ST, nonmonetary items may not be falling under subject provision of section 269ST given the legislative background. Further the mysterious words which have created hue and cry that is word occasion/event, to bring within the fold of the law receipt of 2 lakh rupees or more in respect of transactions relating to one event or occasion from a person, have been subject matter of unending professional and academic debate . The law lexicon at page 1842 has clarified the world event as “the consequence of anything, the issue, conclusion and that in which an action, operation, or series of operations, terminates” and word occasion has been defined at page 3562 as “something that produces an effect or brings about an event”. When two definitions of word occasion and event are analysed and compared hand-in-hand in conjunction, it will be glaring that occasion gives rise to event and various occasions can also be included in any event. However if those words are given wider and liberal interpretation that too in punitive provision, which is not in consonance with principles of interpretation, howsoever the language can be wide, in author’s personal opinion before applying this said clause where these 2 words are used it will be of huge significance that revenue 1st establishes that transactions need to be clubbed and

aggregated in a single event/occasion. The potential for litigation in this provision of section 269 ST is immense which can be experienced and vouched from provisions like section 40A(3) and section 269SS/Section 269ST. At some day one will have 2 again go onto the 1st principles of law to find out the true nature of this provision which can be suitably called as drastic in nature. Rule 6DD of income tax rules may be of some use in context of section 269ST being having similar intent .

Some crucial aspects of this provision are now discussed. One aspect which may arise in this law is whether where assessee has accounted all the receipts in cash in its profit and loss account and paid appropriate and correct taxes on the same and there is no prejudice caused to to the revenue, and the breach and contravention if any remains purely venial in nature, on strength of Hon'ble Supreme Court decision in case of Hindustan steel Ltd reported in 83 ITR 26, which insulates against purely technical breach where there is no prejudice to the revenue, the ratio of said decision should be applicable in context of section 269ST too. Further the angle of bona fide and genuine transaction may also be of some significance in context of section 269ST given available and abundant jurisprudence on the subject of cash transactions. Further the transactions where already revenue has applied section 68 dealing with unexplained cash credits and thereby section 115BBE giving exorbitant and draconian tax rate of 60% is already applied thereto, whether on same transaction said provision of section 269ST would be applicable given

the fact that assessee has already been penalised under section 115BBE and on same amount whether two types of penalties can be imposed simultaneously which in author's opinion should be no. Further on assumption basis that is by artificial clubbing of various transactions which are independent penalty under said provision of section 269ST may not be levied. Further as held by Hon'ble Supreme Court in case of 379 ITR 321 without valid and proper prior assessment initiating the penalty like present one may not be lawful. Further journal entries transaction should remain out of this as there is no legislative intent to bring such kind of transactions under the ambit of new provision of section 269ST.

4. Further on cash transactions the deposits made in the bank account have been subject matter of inquiry and examination by revenue authorities in the recent past. In this connection it is noteworthy that one Cardinal principle of taxation is all receipts are not income and income are not taxable income will be squarely applicable to cash deposits also. Therefore merely because there are sizeable cash deposits in assessees bank account same may not confer any valid jurisdiction to reopen the case under section 148 on account of income escaping assessment. There are a dozen of decisions on this issue from various benches of income tax appellate tribunal wherein it is

held that mere cash deposit in the bank account cannot be treated as sufficient to clothe assessing officer with the belief that income as escaped assessment. One decision which has been used in numerous orders is of Bir Bahadur Singh reported at 68 SOT page 197 is considering the controversy in its entirety. Further, apart from reopening provisions under section 148, the scrutiny provisions under section 143(2) which may be applied to the taxpayer by the revenue, which applies to valid return filed under section 139/142, would require assessee to explain nature and source of the deposit. Once nature and source of the deposit is explained satisfactorily, assessing officer may not be allowed to draw adverse inference on the same. In what circumstances the assessees explanation would be treated as satisfactory to depend upon the facts and circumstances of each case. Like one instance can be revenue can add peak amount in the bank account concerned where there are frequent withdrawals and deposits. Further likewise where assessee is engaged in certain business activity revenue may be required to apply profit rate to the deposits in the bank account treating them as assessees trading transactions. Further where there are deposits succeeded by earlier withdrawals, plea of recycling and rotation of the cash can be used. Filing of revised computation on plain paper giving disclosure of said cash and offering the same to tax with due interest, where option of filing revised return u/s 139(5) is not available, may be evaluated, keeping in

mind that same may exonerate the assessee from possible penal consequences. Notices may be issued by revenue under other provisions of the act which may be replied keeping in mind the facts of the case. Cash flow statement is one document which can have serious and critical importance in explaining the cash deposits. Various court rulings supports the evidentiary value of cash flow statement. Further in recent decision in case of late Rewati Singh reported in 397 ITR page 512 on requisition of cash under section 132A has held as under:

"13. The submission that there was sufficient information and material for forming an opinion in sending the requisition under Section-132A(1) as is reflected from the ordersheet is of no substance inasmuch as the information and the reason to believe has to be contained in the letter of requisition itself. Even otherwise, the order-sheet only contains that the local Hindi Newspaper contains the news item that Smt. Rewati Singh was murdered and looted and the looted amount of about Rs.51 lacs was seized by Muzaffar Nagar Police from the accused persons. A further order dated 13.8.2010 states that the seizure of the aforesaid amount is a strong reason to believe that Hukum Singh is having income which is not being disclosed. Therefore, the newspaper information is sought to be made the basis for issuing the above requisition letter but the availability of such information by itself without there being any other material or information which would justify that the person in possession was having income over and above that disclosed and that he had concealed the real income is not sufficient to order requisition of the seized cash.

14. Apart from this validity of the letter of requisition has to be

adjudicated on the basis of its contents and its contents cannot be supplemented by any material which may be part of the record but not disclosed or referred to in the requisition letter itself. Moreover, the cash recovered by the police or SSP had became the case property which cannot be produced before the income tax authorities without the leave of the court concerned.

15. In the case of Vindhya Metal Corporation Vs. Commissioner of Income Tax reported in [(1985) 156 ITR 233 Allahabad] a Division Bench of this Court was seized with a similar matter pertaining to the requisition under Section 132A of the Act and the question before it was whether the information available with the authority concerned in issuing the requisition constitute a valid information or not. The Court held that mere unexplained possession of the amount without anything more could hardly be said to constitute information which could be treated as sufficient by a reasonable person leading to an inference that it was income which was not disclosed by the person in possession of it for the purpose of the Act. After all, the belief for the purpose of Section 132A is to be belief entertainable by a reasonable man and is not the belief arbitrarily entertained on material or grounds which will not lead a reasonable man to that belief. In other words, the possession of some amount by a person was not held to be sufficient for the purpose of issuing requisition under Section-132A of the Act.

16. In another case of Manju Tandon Vs. T.N. Kapoor, Deputy Superintendent of Police reported in [(1978) 115 ITR 473 (Allahabad)] another Division Bench of this Court while considering the provisions of Section 132A(1) of the Act held that it is only the material available with the authority concerned at the time of issuing authorization under Section 132A of the Act that is relevant for forming an opinion for requisition under Section 132A(1) of the Act. In the said case certain ornaments were

ceased by the Central Bureau Of Investigation and was in its custody. The Court held that there was absolutely no material before the authority concerned to show that the said ornaments had been obtained with the aid of any concealed income.

17. In line with the above decisions there is another judgment of this Court in the case of Sri Janki Solvent Extraction Limited Vs. D.D.I.C. reported in [(1996)221 ITR 30 (Allahabad)]. In the said case, it was held that requisitioning of books of accounts and their documents under section 132A(1) (b) without recording satisfaction or reason for believe is not sustainable in law and is therefore liable to be quashed.

18. It may not be out of context to mention here that the income tax authorities have no jurisdiction to issue any requisition under Section 132A of the Act to any Court for either summoning the books of accounts or assets which may include cash as per the case of CIT Vs. Balbir Singh report in [(1993) 203 ITR 650(P & H).

19. In view of the above decisions no requisition could have been made under Section 132A(1) of the Act to the S.S.P. Muzaffar Nagar for producing the cash which was recovered from one of the accused.

20. The documents or the books of accounts in respect whereof the requisition is said to have been issued have not been disclosed either in the requisition or in any other supportive material which means that the requisitioning authority had no intimation whatsoever as to the documents or the books of accounts which he proposes to be requisitioned. In such a situation, the only inference which can be drawn is that no satisfaction or any reason to believe was validly recorded by the requisitioning authority for issuing the requisition"

This ruling can be of huge importance in handling cash requisitions made by revenue authorities in the past.

5. Epilogue

With a aforesaid discussion on basis of *rule of law* enshrined in our Constitution, and on basis of principle *that no tax can be collected accept by authority of law* enshrined in article 265 of Indian Constitution, it is expected with some hope that revenue authorities will not be unfair to the taxpayers in assessment of cash transactions and judicial principles which have hold the field for long would be obediently abided and followed.