

## Sidestepping The Pitfalls of Section 269T

### FE NEWSLINE

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Unlike section 269SS which deals with the provision regarding acceptance of both loans or deposits, Section 269T, dealt only with repayment of deposits and , thus, had no application in the case of repayment of loans, till recently. As held by The Delhi High Court in Baidya Nath Plastic Industries (P) Ltd., v. K.L.Anand, ITO(1998) 230 ITR 522 and The Madras High Court in a later judgment in A.M.Shamsudeen v. Union of India(2000) 244 ITR 266 with effect from June 1,2002, the existing section 269T has been substituted by a new section so as to extend its scope to loan also.

## New Section 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 otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if:

- (a) the amount of the loan or deposit 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, is Rs. 20,000 or more-provided that where the repayment is by a branch of a banking company or co-operative 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 bank branch of the person to whom such loan or deposit has to be repaid.

*Explanation- For the purposes of this section:*

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.

This section intends to check laundering of black money, as understood. But following practical problems seems to have arisen:

- i) Whether the deposits in the cash credit (CC) account in the general course of business tantamounts to repayment of loan and is covered by this section.?

In the opinion of the banks and a plain reading of the section, it is covered w.e.f. 1.6.2002.

- ii) What happens in case of a borrower who has cash sales to the tune of Rs.50,000 daily and is required to deposit the same in the CC account, as per the RBI guidelines , to route the sales through the CC account ?

A plain reading of the section does not anywhere specify to permit this transaction. In my opinion this may not be the intention of the legislation. But nowhere is this exemption specified..

A CC account is a running account where the limit of credit is once settled and the borrower is free to operate the account within the limit by depositing and withdrawing the amount in the course of business. The limit is adjustable on demand but is usually renewed annually or the drawing power is fixed monthly, based on the value of hypothecated stocks. At times the balance in CC accounts may even be credit for a short duration; therefore it is not a loan account in the strict sense.

In my opinion, deposits in such account are not made with a final intention to repay the loan rather it is a revolving account and therefore such account when operating within the limit should not be covered under section 269T but a clarification in this regard is required.

iii) what is the way out if the authorities do no budge? The borrower will have to open a current account to deposit the cash sales and should give standing instruction that the balance in the current account be daily transferred to the specified CC account. This being necessary to same the interest charged on CC limit account.

Is Section 269T applicable to squaring up of accounts without involving repayment in cash ?

If the account of the depositor is squared up without any payment in cash, say by adjustment of old loans or purchase of goods or rendering of services, it is not a repayment attracting the provisions of section 269T. Adjustment of the account is not repayment but is only a constructive payment.

**Opinion:**

Checking black money laundering is understood but genuine hardship to the business folks has to be pragmatically imagined and taken care of while framing a provision. Cash credit limits should be permitted to be out of the purview of this section. Necessary clarification is required.