

Applicability of Section 269ST on Co-Operative Societies

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admin

Radhakrishnan K.V.

As per Section 269ST transactions in the nature referred to in Section 269SS are exempted from the ambit of Section 269ST. 269 SS refers to the transactions of receiving Deposits and Loans from others. Therefore, 269 ST is not applicable to the receipt of deposits and loans. Resultantly, Deposits and loans of Rs.20,000/- or more and receipts other than deposits and loans of Rs. 2 lakhs or more shall not be accepted in cash.



Section 269 SS does not cover receipt of **repayment of loan** and therefore such transactions are covered under section 269 ST. Therefore, receipt of loan repayment of Rs.2 lakhs and above shall not be accepted in cash. So is the case of **withdrawal of Deposits** also. All other receipts (other than deposits and loans) also shall attract provisions of section 269 ST.

So, theoretically, **Section 269 ST** affects a person (other than Government, Banking Company, Post Office savings Bank and Co-operative Bank) or a Co-operative Society which is not a Co-operative Bank in the following manner:-

- (1) Deposits and loans from others, amounting to Rs. 20,000/- or more, shall not be **accepted** in cash. [Sec.269SS]
 - (2) Loan repayment from loanees amounting to Rs. 2 lakhs or more shall not be **accepted** in cash.[Sec.269ST]
 - (3) Deposits accepted from depositors shall not be **repaid** in cash if the amount is Rs.20,000/- and more. [Sec.269T]
 - (4) Loans availed by the Society shall not be **repaid** in cash if the amount is Rs.20,000/- and more. [Sec.269T]
 - (5) Deposit with other institutions shall not be **withdrawn** if the amount is Rs.2,00,000/- and more. [Sec.269ST].
- Government, Ministry of Finance, by notification No.S.O.1057(E) dated 5-04-2017 has exempted withdrawals from the deposits with Government, Banking Company, Post Office savings Bank and a Co-operative Bank from this provision.

As far as all other transactions are concerned the liability of adherence to the provisions of section 269ST is on the recipient of the amount if it is Rs.2 lakhs and above. A co-operative society is liable for penalty for the violation of the provisions of sec. 269 ST only in a case where the transaction involves acceptance, not payment, of money.

Restrictions imposed by Section 269SS and 269 ST are not applicable in the case of Co-operative Banks [State Co-operative Banks, Central Co-operative Banks and Urban Co-operative Banks (Primary Co-operative Banks)]. These entities shall receive any amount of any nature in cash without any limit prescribed in the said Sections. Besides, by virtue of Government notification No. S.O.1057 (E) dated 5-4-2017, receipts in the nature of **withdrawal of deposits** from the Co-operative Banks by other persons are also not restricted by the provisions of these Sections. Similarly, repayment made by any person towards loans taken from Co-operative Banks are exempted from the provision of Section 269 T and therefore such repayments need not be made by account payee cheque or draft or electronic clearing system or by crediting the amount to the Savings Bank account or current account even if the amount is Rs.20,000/- or more.

There are several decisions of ITATs to the effect that Section 269 SS and 269 ST are not applicable to Co-operative Societies as transactions of Co-operative Societies are only with members which cannot be treated as transaction "by a person with another person". For that reason, Section 269 ST also is not applicable to Co-operative societies.

Some of the decisions in the subject matter are quoted below:-

“In view of the transaction took place between the assessee and its member, the strict provisions of the sec.269SS/269T cannot be applied.”

Income Tax Appellate Tribunal – Hyderabad

The Citizen Co-Op. Society Ltd., vs. Assessing officer – on 19 October, 1997

“The repayments of the deposits were made to the Members of the Society and it is obvious that the assessee Society entertained a bona fide belief that no contravention of any provisions of Income-tax Act is being made while making the repayments of loans/deposits in cash.”

Income Tax Appellate Tribunal – Pune

Muslim Urban Co-Op. Credit Society vs. Jt. Commissioner of Income tax, Sangli- on 25 March, 2004

“According to us, these observations of the Tribunal are good enough to show that the view of the assessee society that its members being not any separate/distinct persons as contemplated in section 269T, the deposits repaid to them were not covered by the said provisions was a possible or conceivable view and the belief entertained by it on the basis of such view was a bona-fide belief. As such, considering all the facts and circumstances of the case, we are of the view the assessee society had entertained bona-fide belief that the deposits repaid by it to its members were not covered by the provisions of section 269T and this bona-fide belief coupled with the fact that the deposits were genuine and were also accepted and repaid in the regular course of business constitutes a reasonable cause for its failure to comply with the requirements of section 269T. In that view of the matter, we find no justification in the action of the learned CIT (A) confirming the penalty imposed U/s 271E and reversing his impugned order, we direct the A.O. to cancel the said penalty.”

Income Tax Appellate Tribunal – Mumbai

Salgaon Sanmitra Sahakari vs. Assessing Officer- on 21 December, 2010