

DESAI SAKSENA & ASSOCIATES

04th April, 2025

Friday Tax Alert

From:

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DESAI SAKSENA & ASSOCIATES

CBDT directs CCIT/DGIT to reduce/waive the interest on delayed TDS/TCS payments due to technical glitches beyond the control of deductor/collector.

Section 201(1A) of the Income-tax Act (hereinafter "the Act") provides for levy of interest on account of failure to deduct or pay the deducted tax to the credit of the Central Government by the deductor. Further, section 206C(7) of the Act provides for levy of interest on account of failure to collect or pay the collected tax to the credit of the Central Government by the collector.

Representations have been received by the Central Board of Direct Taxes (hereinafter "the Board") that while making payments of taxes deducted at source (TDS) and taxes collected at source (TCS) to the credit of the Central Government as per section 200 and 206C of the Act, the taxpayers have encountered technical glitches. **On account of such glitches, while the payment is initiated by the taxpayers/ deductors/ collectors and the amounts are debited from their bank accounts on or before the due date, the actual credit to the Central Government is done after the due date. In such cases, notices have been received by such taxpayers for levy of interest under section 201(1A)(ii)/ 206C(7) of the Act, as the case maybe.**

In exercise of the powers under section 119 of the Act, the Board, hereby directs that the Chief Commissioner of Income-tax (CCIT) or Director General of Income-tax (DGIT) [or in case there is no CCIT and DGIT, then Principal Chief Commissioner of Income-tax (Pr. CCIT)] may reduce or waive interest charged under section 201(1A)(ii)/206C(7) of the Act in the class of cases where-

- the payment is initiated by the taxpayers/ deductors/ collectors and the amounts are debited from their bank accounts on or before the due date, and
- the tax could not be credited to the Central Government, before due date because of technical problems, beyond the control of the taxpayer/ deductor / collector.

The CCIT or DGIT or Pr. CCIT, as the case maybe, examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant and after verification of technical glitches from the bank/Directorate of Systems.

Even if the interest under section 201(1A)(ii)/ 206C(7) of the Act has already been paid by the taxpayer, the same can be considered for waiver and a refund maybe given to the deductor, if waiver is ordered.

No waiver application shall be entertained beyond one year from the end of the financial year for which the interest under section 201(1A)(ii)/ 206C(7) of the Act is charged.

An application received for waiver of interest under section 201(1A)(ii)/ 206C(7) of the Act shall be disposed of within a period of six months from the end of the month in which such application is received.

The order issued by the CCIT or DGIT or Pr. CCIT, as the case maybe, shall be **final** and no petition against that order shall be entertained by the Board.

The above will come into effect from the date of issue of this Circular.

[Circular No. 5/2025 dated 28.03.2025]

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A loan recorded through journal entry falls outside the scope of section 269SS of the Income Tax Act, 1961. Hence, section 271D penalty is not leviable.

Where Assessee-firm recorded loan received from NBFC in its books of account by way of journal entry, since section 269SS applied only to transactions involving acceptance of money and did not extend to cases where a debt or liability arose merely due to book entries, impugned transaction was outside ambit of section 269SS and, consequently, penalty levied under section 271D was to be deleted - ITAT Mumbai.

FACTS OF THE CASE:

- The Assessee was engaged in the business of film production, distribution and related activities. During the assessment year the Assessee was sanctioned a loan of Rs. 15 lakhs from a Non-Banking Financial Company (NBFC). The said NBFC **distributed the loan amount directly to the Assessee's party through banking channel**. The Assessee also made a payment of Rs. 10 lakhs to the same party from its own funds towards the work done by it. Consequently, **the Assessee recorded the loan from the NBFC in its books of account by way of journal entry recognizing the liability amounting to Rs. 15 lakhs.**
- The Assessing Officer completed the assessment of Assessee under section 143(3) and initiated penalty proceeding under section 271D on the ground of alleged violation of section 269SS.
- During the penalty proceedings the Assessing Officer treated the journal entry reflecting the loan as contravening the provisions of section 269SS and levied the penalty under section 271D.
- On appeal, the Commissioner of Income Tax (Appeals) dismissed the Assessee's appeal.
- Aggrieved from the Commissioner of Income Tax (Appeals) order, the Assessee preferred an appeal to the Tribunal.

CONCLUSION:

There is no dispute regarding the fact that the amount of Rs. 15 lakhs was paid through banking channel and was duly confirmed by both the NBFC and the concerned party. The loan amount of Rs. 15 lakhs was disbursed directly to the said party. Furthermore, the balance amount of Rs. 10 lakhs was paid by the Assessee to the same party towards film promotion and other incidental charges. In its books of account, the Assessee recorded the said transaction through a journal entry recognizing the liability as a loan. Since the Assessee is responsible for repaying the said amount, the loan is duly reflected in its books of accounts. A plain reading of section 269SS reveals that the provision applies to transactions where a deposit or loan is accepted by an Assessee otherwise than by an account payee cheque, an account payee draft, or other prescribed banking modes. **The scope of section 269SS is restricted to transactions involving the acceptance of money and does not extend to cases where a debt or liability arises merely due to book entries.**

DESAI SAKSENA & ASSOCIATES

The legislative intent behind section 269SS is to prevent cash transactions, as is evident from clause (iii) of the Explanation to the section, which defines a 'loan or deposit' as a 'loan or deposit of money.' Consequently **a liability recorded in the books of account through journal entries - such as crediting the account of a party to whom money is payable or debiting the account of a party from whom money is receivable-falls outside the purview of section 269SS, as such entries do not involve the actual acceptance of a loan or deposit in monetary form.** The imposition of penalty under section 271D in relation to section 269SS is, therefore, not justified. Considering the facts of the case, the relevant provisions of law, and the binding judicial pronouncements, it can be conclusively held that the transaction entered into by the Assessee is outside the ambit of section 269SS. Consequently, the penalty levied under section 271D is liable to be deleted.

[Jeevangani Films v. Joint Commissioner of Income-tax [2025] 172 taxmann.com 739 (Mumbai – Tribunal)]