



## • Cash Transactions in Agriculture Sector

In India, a large population is engaged in the agriculture sector and there are numerous transactions regarding sale and purchase of agriculture produce. The farmers sell their agriculture produce to Pacca Arahtias i.e. traders through kachha Arahtias. Kachha arahtia are commission agents and are only facilitators of auctions/sales of agricultural produce, which farmers bring to mandi for sale. They act as an agent in between pacca arahtia and farmers and safeguard the interests of farmers, who are otherwise illiterate, naive and thus, vulnerable to be exploited by way of cheap returns, and default/delay in recovery of sale consideration. As kachha arahtia are commission agents between farmers and pacca arahtias dealing in different commodities in different parts of country and the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB. But the position is different with regard to pacca arahtia. In case of Pacca arahtia i.e the trader, his turnover will be taken into consideration for the purposes of sec 44AB of the Act. At the same time, a Kachha Arahtia receives commission from Pacca Arahtia to ensure delivery of agricultural produce to Pacca Arahtia, and to ensure delivery of sale consideration to the farmers, in this case commission received by the kachha arahtia is taken as turnover for the purposes of sec 44AB of the Act.

Now a question arises what is difference between kachha arahtias and pacca arahtias. The difference between kachha & pacca arahtias can be understood by the circular by C.B.D.T. in Circular No.452 dated 17-03-1986.

(i) A kachha arahtia acts only as an agent to his constituent and never act as a principal. A pacca arahtia, on the other hand, is entitled to substitute his own goods on his personal accounts and thus he acts as a principal as regards his constituent;

(ii) A kachha arahtia brings a privity of contract between his constituent and the third party so that each becomes liable to the other. The pacca arahtia, on the other hand, makes himself liable person upon the contract not only to the third party but also to his constituent;

(iii) Though the kachha arahtia does not communicate the name of his constituent to the third party, he does communicate the name of the third party to the constituent. In other words, he is an agent for an unnamed principal. The pacca arahtia, on the other hand, does not inform his constituent as to the third party with whom he had entered into a contract on his behalf.

(iv) The remuneration of kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pacca arahtia;

(v) The kachha arahtia, unlike the pacca arahtia, does not have any dominion over the goods;

(vi) The kachha arahtia has no personal interest of his own when he enters into a transaction and his interest is limited to the commission agency's charges and certain out of pocket expenses whereas a pacca arahtia has a personal interest of his own when he enters into a transaction;

(vii) In the event of any loss, the kachha arahtia is entitled to be indemnified by his principal as is not the case with pacca arahtia.

Due to the restrictions on cash transactions imposed by the government, there is a confusion amongst these agriculturist people regarding the cash receipts from the sale of agriculture produce. In this write up we are discussing different situations for the cash payments for agriculture produce within the framework of law.

#### 1. **Whether cash Payments exceeding Rs.10000/- to farmers on account of agriculture produce by Kachha Arahtia can be disallowed?**

The provisions of section 40A(3) provide for the disallowance of expenditure exceeding Rs.10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which *inter alia*, include payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of ` 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ` 2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ` 2 lakh or less.

In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ` 2 lakh will not -

a) result in any disallowance of expenditure under section 40A(3) in the case of trader.

b) attract prohibition under section 269ST in the case of the cultivator; and

c) require the cultivator to quote his PAN/ or furnish Form No. 60.

The same has been held in the following judicial pronouncements

In *CIT v. Pehlaj Raj Daryanmmal – 190 ITR 242*, it was held that the words cultivator, grower or producer occurring at the end of Rule 6DD – Clause, qualify the word occurring all the preceding clauses. Thus, the exemption is confined to grower or producer of forest produce and not available for purchases from others

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**2. Where assessee purchased agricultural produce from farmers through kachha arathia who charged their commission for facilitating said transaction of sale and purchase, payments made to kachha arathia exceeding Rs. 10,000 in cash could not be disallowed by invoking provisions of section 40A(3)**

It is a very interesting issue, whether cash payments exceeding Rs. 10,000 made by pacca kachha to kachha arathia be allowed or disallowed u/s 40A(3) of the Act. In this connection, it is to be noted that the pucca arathia have made purchases through 'kachcha arhatia', who are agents for their farmers constituent. The pacca arathia make payments for these purchases either in cash or by banking channel system. But in some cases, kachha arathia do not accept cheques payments, as they have to deliver cash payments to the respective farmers and hence payments are made in cash under the bonafide belief that the payments were covered under sec 40A(3) read with rule 6DD. In such a situation, the issue under consideration is whether cash payments exceeding Rs. 10000/- made by pucca arathia to kachha arathia are allowed u/s 40A(3) of the Act.?

Regarding the issue of applicability of provisions of section 40A (3) read with rule 6DD, following are some important points to be considered.

(a) There is a world of difference between status and role of a Kachha Arahtia, and that of a Pacca Arahtia/wholesaler. Although both are called and termed Arahtia; these two cannot be equated at all.

Kachha Arahtias do not trade; they are only facilitators of auctions/sales of agricultural produce, which farmers bring to mandi and, thus Kachha Arahtia are only agents for farmers. Kachha Arahtia is to safeguard the interests of farmers, who are otherwise less educated, naive and thus, vulnerable to be exploited by way of cheap returns, and default/delay in recovery of sale consideration.

At the same time, a Kachha Arahtia receives commission from Pacca Arahtia, ensures delivery of agricultural produce to Pacca Arahtia, and ensures delivery of sale consideration to the farmers. In this way, Kachha Arahtia acts as agent for Pacca Arahtia also.

(b) The kachha arathia receives the payment from the pucca arathia and pass on in Toto, to the respective farmers and pucca arathia pays commission and brokerage to kachha arathias as per specific guidelines and rates laid down by the government.

Kachha arathias receive cash payments from the assessee, on behalf of the farmers. They keep their commission and brokerage, and disburse the purchase consideration to respective farmers. The kachha arathia to whom cash payments have been made by the assessee for the impugned purchases, are del credere agents who are acting as agent, not only for the farmers, but, also for the pacca arathias/wholesalers like the assessee; they receive commission from the assessee for such kind of mediating services and they are bringing privity of contract between the farmers and the assessee so that each

becomes liable to the other; they are communicating name of the pacca arahtia to the farmers and thus they are acting as an agent of pacca arahtia also. In this connection, firstly we must see the meaning of agent.

### Received from an agent

1. Representing recipient – receipt from own agent is receipt from self. Section 269ST is not attracted
2. Representing payer – receipt from agent of a payer is like receipt from payer. Section 269ST is attracted

From the above it is evident that any agent who acts on behalf of the recipient, he steps into the shoes of the recipient and the same provisions of the act be applicable as in the case of the recipient of the payment. In the present case, recipient is the farmer whose payment for agriculture produce is being paid by pacca arahtia to his agent i.e. kachha arahtia in cash. The kachha arahtia is receiving the payment on behalf of the farmers for further submission to them. In case where payment is received by the agent on behalf of his principal in cash, the provisions of the Act shall be applicable to the principal. But in this case the cash payment has been made in cash by pacca arahtia to kachha arahtia which is covered by the provisions of Sec. 40A(3) of the Act read with Rule 6DD. Rule 6DD(k) provides that no disallowance under Section 40A(3) shall be made where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person b) Applying the aforesaid principle, payment made in the capacity of holder of POA is different from the payment made in his own capacity. Therefore, Section 40A(3) of the Act does not apply as the cash paid in each circumstance does not exceed the limit of Rs. 10,000/-. The same has been held in the following judicial pronouncements:

- Sunil Kumar Agarwal, Aligarh vs Department Of Income Tax on 3 January, 2013  
ITAT AGRA No. 319/Agra/2009
- In *Anurag Radheshyam Attal V. ITO – 69 Taxmann.com 324*

### **3. Whether unpaid payment by kachha arahtia can be considered as Deposit?**

Where a 'Kachha Arahtia' sells goods belonging to an agriculturist, the sale proceeds thereof which remain with him cannot be regarded as a deposit made by the agriculturists with the 'Kachha Arahtia'. Further, whether the 'Kachha Arahtia' remits only a part of the sale proceeds to the agriculturist, the unremitted part of the sale proceeds would also not assume the character of a deposit. Therefore, the repayment of such sale proceeds does not fall within the purview of section 269T of the Act. However, such unremitted sale proceeds would assume the character of a deposit if the amount is retained by the 'Kachha Arahtia' in pursuance of a direction in this regard by the agriculturist, irrespective of whether the amount is retained in the same account or transferred to different accounts and irrespective of whether the directions are to call it a deposit or just to retain the same

for future payment. The repayment in such cases will be covered under section 269T of the Act .

#### 4. Applicability of sec 269ST in case of kachha arahitia and pacca arahitia.

To resolve this issue, we need to know whether the agent is representing recipient or representing the payer. In case, the agent is representing recipient, receipt from own agent is receipt from self. Section 269ST is not attracted. In case, the agent is representing the payer, receipt from agent of a payer is like receipt from payer. In this case provisions of section 269ST are attracted.

Now a question arises whether the provisions of sec 269ST are applicable in the case of payment received through an agent. In this connection it is to be noted that when your agent receives from a third party on your behalf, it tantamounts to receipt by you and sec 269ST is attracted and subsequent payment by agent to you is not a receipt and hence sec 269ST is not applicable.

**Example:** If a person who holds a Power of Attorney ('PoA') of another person, pays Rs.1,50,000 in cash in his own capacity and another Rs. 1,50,000 in cash on behalf of the person who has issued the PoA, will the recipient be liable to penalty for receipt of Rs.3,00,000 in cash ?

a) Rule 6DD(k) provides that no disallowance under Section 40A(3) shall be made where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person b) Applying the aforesaid principle, payment made in the capacity of holder of POA is different from the payment made in his own capacity. Therefore, Section 269ST does not apply as the cash paid in each circumstance does not exceed the limit of Rs. 2,00,000/-.

#### 5. Whether the provisions of Sec 194N applicable on Agriculture Produce Market Committee (APMC)

The commission agents/ traders in Agriculture Produce Market Committees withdraw cash from the bank account to make payments to farmers. To give relief to the rural economy, the government has exempted agriculture produce marketing committees (APMCs) from the purview of the 2% tax deducted at source (TDS) on payments above ₹1 crore. The government has tried to save these agents/ traders from any genuine hardships. The copy of circular is reproduced here:

In exercise of the powers conferred by clause (v) of the proviso to section 194N of the Income-tax Act, 1961 (43 of 1961), the Central Government after consultation with the

Reserve Bank of India, hereby specifies the commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through which he wishes to withdraw cash in excess of rupees one crore in the previous year along with his **Permanent Account Number (PAN)** and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of rupees one crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose necessary evidences have been collected and placed on record.

## 6. Applicability of sec 269SS in case of Agriculturists

Sec 269SS imposes restrictions on acceptance of cash loans/ deposits/ specified sums in excess of Rs. 20,000

The proviso to sec 269SS provides “**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 under this Act.”

It specifies that acceptance of deposit/ loan /specified sum shall not attract provisions of sec 269SS where both the parties are agriculturists and both have income below basic exemption limit

Example: Mr. Lal Singh purchased an agriculture land for Rs. 1,80,000 in cash from Mr. Nijjar Singh. Both of them are agriculturists and none of them have income exceeding the basic exemption limit. Whether sec 269SS be applicable on them and whether penalty u/s 271D will be imposed on them?

Whether the answer will remain same if the land is other than agriculture land?

Whether the answer will remain same if land is purchased for Rs. 5,00,000?

Answer: Sec 269SS deals with receipt of specified sum. Explanation to the section provides the meaning of 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.*” It covers not only advance related to immovable property, but also money received at time of transfer of property.

However, as both Mr. Lal Singh and Mr. Nijjar Singh are agriculturists and both have income below basic exemption limit, sec 269SS shall not be applicable on them. Mr. Nijjar Singh have received ‘specified sum’ other than account payee cheque/ draft or ECS. But this will not amount to violation of sec 269SS and hence, penalty u/s 271D shall not be imposed.

The answer would remain same even if the land is other than agriculture land because the exemption provided is not related to type of property. Rather, the exemption is for the agriculturists. Therefore, sec 269SS will not be applicable in this case.

If the consideration for the land is Rs. 5,00,000 the answer will still remain same. However, in this case sec 269ST will be applicable. Sec 269ST provides that

***Provided that the provisions of this section shall not apply to—***

*(ii) Transactions of the nature referred to in section 269SS;*

Sec 269ST is not applicable on the transactions which are covered by sec 269SS. The transaction between two agriculturists who are having income below taxable limit is not covered by sec 269SS and hence sec 269ST shall be applicable on it.

As cash received by Mr. Nijjar Singh exceeds Rs. 2,00,000, provisions of sec 269ST are violated. Penalty amounting to Rs. 5,00,000 shall be imposed u/s 271DA.

### **7.Applicability of sec 269T in case of Agriculturists**

Sec 269T imposes restrictions on repayment of loans/ deposits/ specified sum other than by A/c Payee cheque, bank draft/ ECS.

The exemption provided to agriculturists u/s 269SS is not applicable in case of sec 269T. Any repayment in violation of sec 269T by agriculturists having income below basic exemption limit shall lead to imposition of penalty u/s 271E. Therefore, if any outstanding balance including interest on account of loan/ deposit/ specified sum is Rs. 20,000 or more, repayment can be made only by A/c Payee Cheque/ Bank Draft/ ECS.

**Example:** Suppose in above example of Mr. Lal Singh and Mr. Nijjar Singh, Mr. Lal Singh has paid advance of Rs. 1,70,000 to Mr. Nijjar Singh for purchase of another property. Sec 269SS shall not be applicable on Mr. Nijjar Singh.

Later the deal between them has been cancelled. Now Mr. Nijjar Singh returned Rs.1,70,000 to Mr. Lal Singh in cash. Mr. Nijjar Singh has violated sec 269T as the outstanding balance on account of specified sum on the date of repayment is more than

Rs. 20,000. There is no exemption to agriculturists on repayment of specified sum. Hence penalty of Rs. 1,70,000 u/s 271E shall be imposed on Mr. Nijjar Singh.

#### **8. Whether disallowance will be made if any cash payment made excess of Rs. 10000 to producers of animal husbandry , livestock & meat?**

- Product of animal husbandry-If payment exceeding Rs. 10,000 is made to a producer of the products of animal husbandry (including livestock, meat, hides and skins) otherwise than by an account payee cheque or draft for the purchase of such produce, no disallowance should be attracted under section 40A(3). This exception is, however, not be available on the payment for the purchase of livestock, meat, hides and skins from a person who is not proved to be the producer of these goods and is only a trader, broker or any other middleman by whatever name called-Circular No.4/2006 dated March 29, 2006.
- Purchase of animals - Any person, by whatever name called, who buys animals from the farmers, slaughters them and then sells the raw meat carcasses to the meat processing factories or to the traders/retail outlets would be considered as producer of livestock and meat. The exemption is subject to the following conditions
  1. A declaration from the person receiving the payment that he is a producer of meat:
  3. A confirmation that the payment, otherwise than by an account payee cheque or account payee bank draft, was made on his insistence; and
  4. A further confirmation from a veterinary doctor certifying that the person specified in the certificate is a producer of meat and that slaughtering was done under his supervision-Circular No.8/2006, dated October 6, 2006.

#### **9. Whether the benefit of adoption of stamp duty value on date of agreement is available in case payment is received in cash by an agriculturist from an agriculturist, where both of them have income below basic exemption limit?**

It is to be noted that the provisions of sec 269SS i.e acceptance of loan/ deposits/ specified sum of Rs. 20,000 or more shall not be attracted where both the parties are agriculturists and both of them have income below basic exemption limit. Amount in cash up to Rs. 1,99,999 can be accepted for transfer of immovable property. Now a question arises, that if an abovesaid agriculturist has entered into an agreement for purchase/ sale of immovable property and earnest money less than Rs. 2,00,000 is being paid in cash, whether benefit of adoption of stamp duty value on date of agreement available? From the literal interpretation of sec 43CA, 50C and 56(2)(x), the option to adopt stamp duty value on date of agreement is not available as payment is by mode other than the specified mode.