

# Cash Restrictions & Deemed Gifts



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**Shared at**

**Webcast, Jain Social Group**

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# CASH RESTRICTIONS

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# DONATION

- Not admissible if donation made exceeding Rs. 2000 in cash by a person
- A Trust receives Rs. 9000/- from Mr. B in cash on 19<sup>th</sup> March 2020. Is there any implication on Trust or Mr. B ?
- Mr. X gives following donations to PQR Trust?:
  - 20.2.2020 Rs. 1900/-
  - 25.2.2020 Rs. 2100/-
  - 27.2.2020 Rs. 1500/-
- Mr. A gives following donations:
  - To ABC Trust Rs. 500/-
  - To PQR Trust Rs. 1000/-
  - To XYZ Trust Rs. 1800/-

• Nil

• Nil

# EXPENDITURE

- ABC & Co pays wages to 100 employees as per the minimum wages Act Rs. 13000/- per month in cash?
- Service of Car of Rs. 11500/-?
- Payment of Rent Rs. 15000/- pm?
- Payment of bill at Restaurant of Rs. 10500/-
- XYZ P. Ltd. purchases raw material through an invoice dt 20.9.2019 of Rs. 63000/-. Makes payment Rs. 9000/- per day?
- Would there be any difference if invoice is of Rs. 2.50 Lakhs and payment is less than Rs. 10K per day?
- XYZ P. Ltd. makes payment to its Sundry Creditor Mr. A of FY 2018-19 of Rs. 1.50 Lakhs of Rs. 15000/- per day in cash in **December 2019?**

# ASSETS / LOANS

- Depreciation disallowed on cash component of asset cost exceeding Rs. 10000/- per person per day.
- Mr. A deposits Rs. 15 lacs in his bank account in cash...say less than Rs. 50k per day.
  - Case picked for scrutiny
  - Advice 1 – it was on account of sale of immovable property
  - Advice 2 – It was loan given by a relative

# THE 2 LAKH LIMIT

- No person to receive an amount  $\geq$  Rs. 2 Lakhs otherwise than by A/c payee cheque/draft or use of electronic clearing using bank a/c (i.e. primarily in cash):
  - in aggregate from a person in a day; or
  - in respect of a single transaction; or
  - in respect of transactions relating to one event or occasion from a person

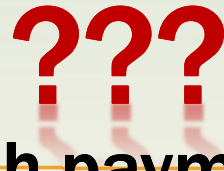
# 2 LAKH LIMIT

- Not applicable to receipts by:
  - Government,
  - Bank,
  - Post Office Savings Bank or Co-operative Bank,
  - S. 269SS transactions
  - Such other persons or class of persons or receipts, which the CG may notify
- Not applicable to receipts from Bank, Post Office Savings Bank or Co-operative Bank
- Penalty of equal amount



- **A sells his personal Innova car to Y for Rs. 3 L in cash?**
  - Yes
- **Shyam a farmer sells his produce to M/s ABC & Co. for Rs. 2.5 Lakhs in Cash**
  - Yes
- **Son receives gift Rs. 5 L in cash from his father**
  - Yes
- **Father of Ms. C receives gifts from various persons on occasion of C's marriage aggregating Rs. 5 Lakhs?**
  - No





- **M/s. ABC receives cash payment of Rs. 3.75 L from M/s XYZ . on 25<sup>th</sup> February 2020 for the following:**
  - **Rs. 2.10 Lakhs part payment for invoice no. 4. dt. 17.9.2019 of Rs. 3 Lakhs**
  - **Rs. 95000/- part payment for invoice no. 6 dt. 30.12.2019 of Rs. 2.50 Lakhs**
  - **Rs. 70000/- part payment for invoice no. 12 dt 10.1.2020 of Rs. 1.50 Lakhs**
- **Implications are:**
  - **271DA penalty on M/s ABC for Rs. 3.75 Lakhs**
  - **M/s. ABC to report Rs. 2.10 Lakhs in SFT in Form 61A**
  - **M/s XYZ expense of Rs. 3.75 Lakhs would be disallowed u/s 40A(3)**

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- **PQR P. Ltd receives Rs. 5 lacs each from its 2 subscribers on incorporation in cash**
  - Yes
- **Mr. B introduces Rs. 3 Lacs as capital in partnership firm ABC & Co?**
  - Yes
- **Mr. B partner withdraws the following in cash from ABC & Co. during FY 2019-20:**
  - **Rs. 1.80 Lacs remuneration Rs. 15K p.m.**
  - **Rs. 36000 being interest on 31.3.2020**
  - **Rs. 3 L on different dates, being profit**
    - S. 40A(3)

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- **Mr. A takes loan of Rs. 5 Lakhs from ABC Ltd (NBFC) by cheque, but repays instalment of Rs. 20000/- p.m. in cash. Is ABC Ltd liable for penalty?**
  - **No**
- **Circular No. 22 of 2017 dated 3rd July 2017**
  - **Receipt in nature of repayment of loan by NBFCs /HFCs - receipt of 1 instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in S. 269ST(b) & all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of S. 269ST**

## **EXEMPTIONS - NOT. NO. 57/2017 DT. 3.7.17**

- Receipt by a business correspondent on behalf of bank or co-operative bank, as per RBI
- Receipt by a white label automated teller machine operator from retail outlet sources on behalf of bank or co-operative bank, as per RBI
- Receipt from an agent by an issuer of pre-paid payment instruments as per RBI
- Receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards
- Receipts which is not includible u/s 10(17A) - Awards by CG / SG

# DEEMED GIFTS

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# DEEMED GIFTS

- ✗ w.e.f. 1<sup>st</sup> April 2017
- ✗ Earlier
  - + Individual & HUF covered for all assets; and
  - + Firms and Companies for shares
- ✗ Now ANY PERSON covered for:
  - + Money
  - + Immovable Property
  - + Property other than Immovable Property

# MONEY

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- ✗ **Receives any sum of money**
- ✗ **Without consideration**
- ✗ **Aggregate value of which exceeds Rs. 50000/-**
- ✗ **Income - whole of the aggregate value of such sum**
- ✗ **Exceptions – relatives, etc.. discussed later**

# IMMOVABLE PROPERTY

- ✗ **Covers land, building or both**
- ✗ **Receives without consideration - stamp duty value exceeds Rs. 50000/-**
- ✗ **Receives through inadequate consideration less than stamp duty value being higher of :**
  - + Rs. 50000/-**
  - + 5% of consideration**
- ✗ **Where date of agreement & date of registration are not same, value on date of agreement if some payment made by a/c payee cheque /bank draft / ECS on or before date of agreement**



# OTHER THAN IMMOVABLE PROPERTY

- ✗ **Property –Capital Asset namely:**
  - + **Imm. Property being land or building or both**
  - + **Shares and securities**
  - + **Jewellery**
  - + **Archaeological collections**
  - + **Drawings**
  - + **Paintings**
  - + **Sculptures**
  - + **Any work of art**
  - + **Bullion**

# EXCEPTIONS

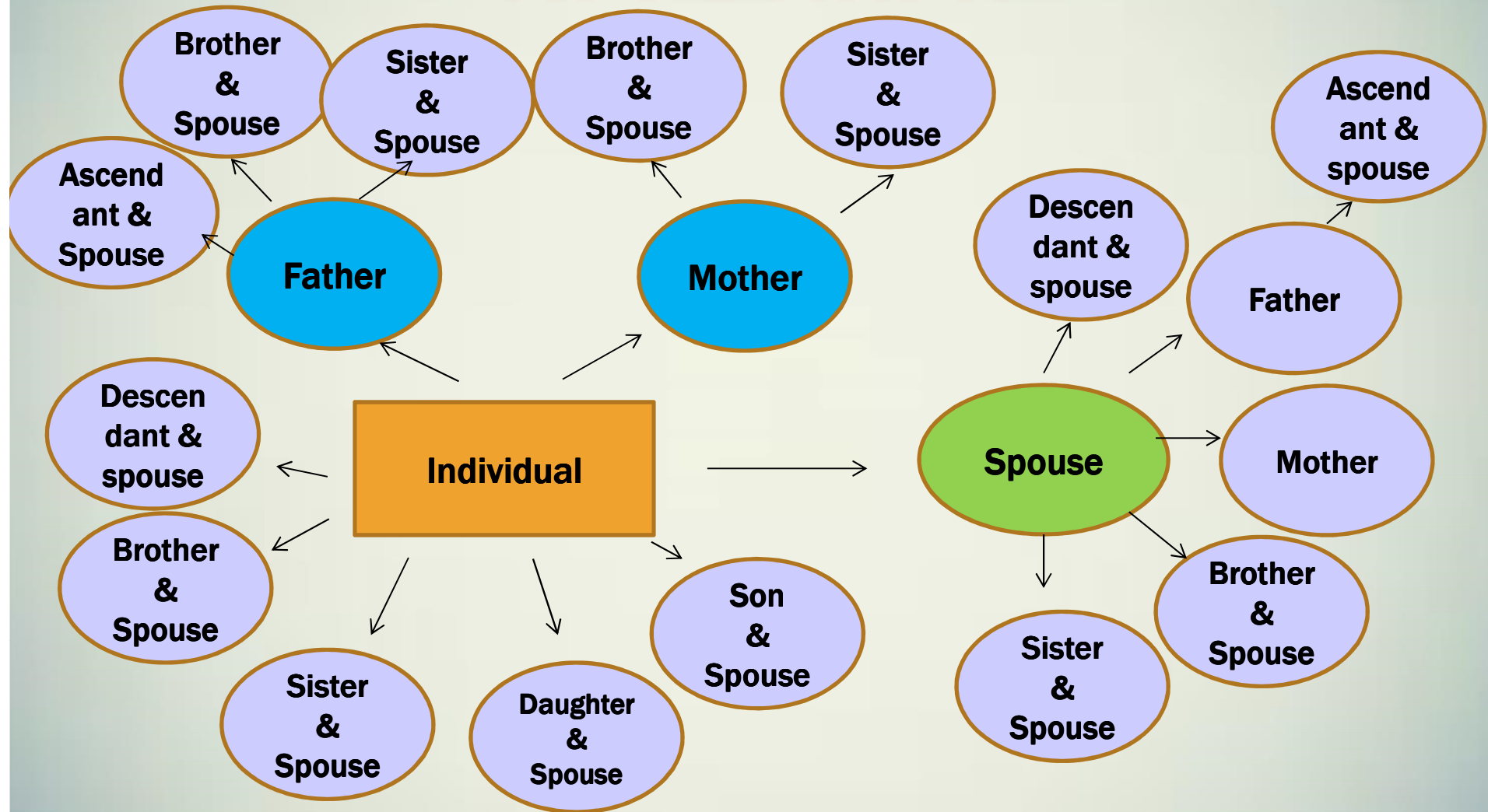
## × Relative

### + In case of an individual:

- a) Spouse;
- b) Brother or sister;
- c) Brother or sister of the spouse;
- d) Brother or sister of either of the parents;
- e) Any lineal ascendant or descendant;
- f) Any lineal ascendant or descendant of the spouse;
- g) Spouse of person referred to in (b) to (f)

### + In case of a HUF, any member thereof

# RELATIVES



# EXCEPTIONS

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- ✘ On the occasion of the marriage of the individual
- ✘ Under a will or by way of inheritance
- ✘ In contemplation of death of the payer or donor, as the case may be
- ✘ From any Local Authority as defined in the Explanation to section 10(20)
- ✘ From any Fund or Foundation or University or other Educational Institution or Hospital or other Medical Institution or any Trust or Institution referred to in section 10(23C)

# EXCEPTIONS

- ✗ From or by any Trust or Institution registered u/s 12A /12AA
- ✗ By any Fund or Trust or Institution or any university or other educational institution or any hospital or other medical institution referred in
  - + S. 10(23C) (iv) – Importance in India / states
  - + S. 10(23C) (v) – Approved religious or charitable trust
  - + S. 10(23C) (vi) – Approved university or educational institute
  - + S. 10(23C) (via) – Approved hospitals

# EXCEPTIONS

- ✖ **By way of transaction not regarded as transfer:**
  - + **S. 47 (i) – Total / partial partition of HUF**
  - + **S. 47 (vi) – Amalgamation if amalgamated co. Indian**
  - + **S. 47 (via) – Amalgamation of two foreign companies asset being shares subject to certain conditions**
  - + **S. 47 (viaa) – Amalgamation of banks sanctioned by CG**
  - + **S. 47 (vib) – Demerger if resulting co. in Indian Co**
  - + **S. 47 (vic) – Demerger of foreign company asset being shares subject to certain conditions**

# EXCEPTIONS

- ✖ **By way of transaction not regarded as transfer:**
  - + **S. 47 (vica) - business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank**
  - + **S. 47 (vicb) - business reorganisation, of a capital asset being shares by predecessor co-operative bank to successor co-operative bank**
  - + **S. 47 (vid) - transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company**
  - + **S. 47 (vii) - trf by a shareholder, in scheme of amalgamation, of capital asset being share or in amalgamating co. subject to certain conditions**

# EXCEPTIONS

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- ✗ **From an individual by a trust created or established solely for the benefit of relative of the individual**



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- ✗ Mr. A gifts immovable property whose stamp duty value is Rs. 10 Lakhs to Mr. B (not a relative). Is there any tax on Mr. A or Mr. B?

✗ On B

- ✗ Mr. X gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Mr. Y (not a relative) on the occasion of her daughter marriage. Is there any tax on Mr. X or Mr. Y?

✗ On Mr. Y

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- ✗ A buy commercial property at Mumbai for Rs. 9 L (stamp value 9.50 lacs) and another residential property at Gurgaon for Rs. 9.50 L (stamp value 10.00 Lacs)??  
+ No
- ✗ A acquires Shares of listed Co for Rs. 5 L (FMV 5.5 L) & jewellery for Rs. 3 L (FMV 3.50 L)??  
✗ Yes
- ✗ B buys agricultural land at Rajasthan for 15 Lacs (stamp value 25 L)??  
✗ No


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



- ✗ Partner at time of dissolution withdraws immovable property whose book value is 25 Lakhs but stamp duty value is 50 Lakhs. Taxation in hands of firm as well as partner?
  - ✗ Yes, in both hands Rs. 25 L each
- ✗ An unregistered religious Trust receives Rs. 5 Lakhs as corpus donation for building of temple? Is it taxable?
  - ✗ Yes
- ✗ Mr. A gives interest free unsecured loan of Rs. 10 Lacs to Mr. Y? Is it taxable?
  - ✗ No

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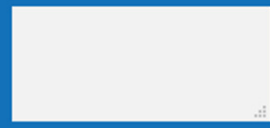
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