PHD CHAMBER

PROGRESS HARMONY DEVELOPMENT

Estd. - 1905

REPRESENTATION ON

BLACK MONEY

CONTRIBUTED BY DEWAN P.N. CHOPRA & CO.

PHD CHAMBER OF COMMERCE AND INDUSTRY
PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi 110016
Tel: 91-11-26863801-04, 49545454, Fax: 91-11-26855450, 49545451,
Website: www.phdcci.in, E-mail: phdcci@phdcci.in

Representation from
PHD Chamber of Commerce and Industry
on recommendation by Special Investigation Team ('SIT') on Black Money regarding limitation of cash holdings and provisions for confiscation of cash held beyond prescribed limits

The Second Report of Special Investigation Team (SIT) on Black Money has given various suggestions and recommendations to curb black money transactions in the country. One of the suggestions includes putting limitation on cash holdings at prescribed limit of say Rs 10 Lacs or Rs 15 Lacs and confiscation of cash held beyond such prescribed limit. The relevant extract from SIT report is produced below:

"**4.** *It is suggested that for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use and including provisions for confiscation of cash held beyond prescribed limits, provision in the Act should be made. It is to be stated that a number of European countries bar any cash transaction above a particular limit. This can be done in India too. Again, while implementing the suggestions, to ensure that small transactions, which make a bulk of common man's daily transactions, are not affected and for that, a threshold limit could be kept.*

Further, for holding of cash/currency notes also, there should be a limit, by prescribing a reasonable threshold, may be Rs.10 lacs or Rs.15 lacs. This would control holding of unaccounted money to a large extent. This would also control transfer of unaccounted cash from one destination to other, which at present is rampant, may be by Angadias or by other means."

We at PHD Chamber, appreciate the Government's intent to address the growing menace of Black Money in the country and strongly believe that businesses must follow the practice of good ethics. Transactions in cash are one of the cause for generation of black money in the country. Thus, it is the need of the hour to put reasonable but fair restrictions on unaccounted cash transactions and to promote transactions by cheque, electronic transfers and through use of debit/ credit cards etc.

Contributed by Dewan P N Chopra & Co.

The aforementioned suggestion made by the second report of SIT regarding putting limit on cash holdings and confiscation of the cash held in excess of the prescribed limits though well intended to curb black money, do not appear to have considered various aspects such as discussed hereunder. These aspects relate to practical difficulties, ground realities, adverse effect on economy and citizen, and related hardships etc.

1. India is a developing country with majority of the Indian consumer market being unorganized due to the presence of small businesses like retailers, contractors, jobworkers etc. which largely deal in cash. Businesses may also be carried on in places such as rural areas where there are inadequate banking facilities. As such, it is imperative for them to carry cash balances. Implementation of the above suggestion will adversely affect such businesses and livelihood of the people dependent on them.

2. Our economy is still mainly an Agrarian society wherein the activities are based in rural areas. These places have inadequate banking facilities and they are reliant on settling transactions in cash only. Similarly the traders in such products have to deal in cash only to settle transactions. Putting limits of cash holdings will adversely affect the economic fabric of the rural economy.

3. In India, declared cash sales are made even in organized sector in various industries. For example in FMCG sector major sales are on cash basis to various small shop keepers/retailers, a petrol pump sells mostly in cash, international food chains like McDonalds, KFC sells in cash etc. Cash sales leads to accumulation of cash in hand which may or may not be possible for such business houses to deposit in the bank accounts very frequently. Taking the example of a petrol pump/CNG station which sells in cash in Crores, the application of the prescribed limit of cash holding of Rs 10-15 lacs seems impracticable. At the same time the cash needs to be maintained for various business needs. For example in a manufacturing sector or real estate sector where employment of labour class is very high, the cash needs to be maintained for payment of daily wages to various labourers which generally do not have any bank account. In such a scenario, implementation of cash holding limits as prescribed would result in unnecessary restrictions which

would hinder the growth of the economy by affecting businesses in various sectors.

4. Regarding, proposal for confiscation of cash held beyond prescribed limits, it could be said that mechanical application of such a provision would result in potential abuse of powers by the officials and unnecessary harassment of the tax payers specially when the cash held is legitimate, accounted and is from explained sources. If sweeping powers are given to officials, the cash would be confiscated anytime when it increases the proposed threshold limits, without giving any opportunity of explanation about the legitimacy of the cash held. This would be against the Principle of Natural Justice as enshrined in our legal framework. “No one is guilty till proved so”. It would also be against the principles of fair play and the reasonable rights of citizen.

5. The present provisions of the Act vide section 132 confers wide range of powers of Search & Seizure to the Income Tax Authorities. These interalia empowers tax authorities to conduct search and seizure operations where they have reasons to believe that any person is in possession of money which represents his undisclosed income. Also, as per section 69A where any person is found to be the owner of any money not accounted for in its books of accounts and where no explanation is offered regarding nature and source of such money or where explanation offered is not found satisfactory, then such money shall be deemed to be the income of such person. As such, the present provisions of the Act already empower the tax authorities to seize/ confiscate the undisclosed/unexplained cash. Thus, there appears to be no need to bring such a stringent provision in the Act which will result in unwanted confiscation of cash just because the same was held beyond the prescribed limits even though the same was genuine/accounted and explained. There are provisions in the Income Tax Act of carrying out survey, where too the source of cash would need to be explained under law and if not accounted or explainable, there would be adverse inference. Thus no further mechanical confiscation after any such threshold limits would be justified.

6. The said provisions would lead to hardships. Putting such provisions in place would be taken adversely by the public at large and would be regarded as

infringement of their fundamental rights. If somebody is possessing cash, he is answerable for the same and if the source is explained, no confiscation should be made.

7. The government may follow "Carrot approach" rather than "Stick approach" in order to discourage cash transactions. It is advisable to promote the use of e-commerce and plastic money to reduce the cash transactions. In India, the major chunk of the population lives in rural areas where banking channels are not well developed and thus not vastly used. Even in the urban cities, where banking channels are there, the same is not fully utilized because of lack of financial literacy. Major chunk of the population find ease in buying/selling in cash rather than going online, using internet banking or credit cards. Use of e-commerce and plastic money should be encouraged by reducing/eliminating charges levied on credit card transactions, various incentives should be provided, and corporates should also discourage cash transactions.

8. In India perspective, this is not the right time to bring such provisions as envisaged in the SIT report. Before bringing such provisions, the focus should be on creating such an environment in the country wherein more and more people are encouraged to use banking facilities, plastic money and online payment mechanism. Recently the Government has rightly initiated such steps towards making the country a cashless economy. The Finance Minister in his budget speech for the Union Budget 2015-16 made the following announcement:

> *"One way to curb the flow of black money is to discourage transactions in cash. Now that a majority of Indians has or can have, a RUPAY debit card. I therefore, proposes to introduce soon several measure that will incentivize credit or debit card transactions and disincentivize cash transaction".*

Accordingly, draft proposals for facilitating electronic transactions have been prepared and put on public domain for comments which includes (i) tax incentive to merchants for accepting electronic payments (ii) Tax benefits in terms of income tax rebates to be considered to consumers for paying a certain proportion of their expenditure through electronic means etc. This is the right step in the right direction. Pradhan Mantri Jan Dhan Yojana is also an another example of positive step taken by the government in this regard which has been a great success. The endeavor should be to launch such kind of incentives/ schemes rather than bringing harsh provisions as envisaged in SIT report.

9. There are also various other provisions in the Income Tax Act which restrict or discourage transactions in cash. For example (i) u/s 40A(3) any payment made in cash for business purposes beyond Rs. 20,000/- is disallowed as business expenditure, (ii) section 269SS and 269T discourage accepting and repayment of loans in cash exceeding Rs 20,000 and violation of the same is subjected to penalty u/s 271D and 271E respectively, (iii) There are certain transactions in respect of which there is a need to furnish PAN numbers to conclude them like deposit in bank in cash exceeding Rs 50,000/-, obtaining bank draft for payment in cash exceeding Rs 50,000/- etc. We feel that such kind of provisions may be further strengthened/ widened so that the need of such harsh provisions as envisaged in the SIT report does not arise.

In view of the above, the steps of mechanical cash threshold limits with powers of confiscation being considered by SIT report would be damaging to the interest of Trade & Commerce in India. These steps would also create much hardship for our people. Their impact would be much more adverse in times when the Trade & Industry worldwide is reeling in economic slowdown and when India is trying its best to come out of it. It is a negative step, wherein we shall go back to the earlier days of “Inspector & Licence Raj”.

Contributed by Dewan P N Chopra & Co.