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CHAPTER TWO

STATUTORY PROVISIONS

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STATUTORY PROVISIONS

2.1 Introduction:

In a developing country like India, direct taxes play an important role in the nation's economy; as these are an important source of revenue to the government. Direct taxes are also looked upon as a tool for achieving social and economic objectives. India's direct tax system has failed to contribute significantly to the planned economic development because the direct taxes' contribution is showing a declining trend compared to the indirect taxes.

The ratio of direct to indirect taxes was 35:65 in 1950-51, but it was only 17:83 in 1991-92. This fact shows as to how the proceeds of the commodity taxes have increased both in volume and in importance. The burden of financing government activity in the country is increasingly borne by the middle and lower income groups; in other words, the Indian tax system is becoming increasingly regressive despite the oft-repeated claim made by the Government to the contrary. The regressive character of the tax system becomes more obvious if we also keep in mind the huge scope for tax evasion and avoidance of taxes by the higher income groups.

Table 2.1
Taxes in India

Year	(Rs.in crores)				
	Direct taxes	Indirect taxes	Total taxes	Percentage of direct taxes	Percentage of indirect taxes
1950-51	230	430	660	35	65
1960-61	420	1040	1460	29	71
1970-71	1100	3590	4600	23	78
1980-81	3690	16100	19790	19	81
1991-92 (Budgeted)	17830	85490	103320	17	83

Source: Reserve Bank of India : "Economic Survey" (various issues) and "Report on Currency & Finance, 1990-91" Vol.II, p.1121.

2.2 Tax Evasion:

The mounting tax evasion has become a crucial and central issue of the direct tax structure. The Royal Commission in the UK has defined 'tax evasion' as an "act" denoting "all these activities which are responsible for a person not paying the tax that the existing law charges upon his income". The problem of tax evasion is the most serious one facing the Indian tax structure today. Examples of tax evasion are found in the omission to report taxable income, fraudulent changes in account books, maintenance of multiple sets of account books, opening of bank accounts under assumed names, securing contracts in the names of dummies and figureheads and keeping transactions out of account books, etc.

The Direct Taxes Administration Enquiry Committee considered high personal income-tax rates to be one of the major causes for tax evasions. Secondly, tax administration has been ineffective in providing adequate machinery to fight the evil of evasion and enforcing the penal and prosecution provisions of law in cases where tax evasion is fully established.

Tax evasion is of the order of Rs.1,890 crores in 1971-72 and it jumped to three times of this figure (approximately Rs.5,400 crores) in 1978-79. This would require strong measures against tax evaders. Heavy penalties should be imposed for tax evasion and every taxpayer should be allotted permanent income-tax account number to organize seizures and raids continuously on tax evaders.

In a taxing statute of this nature, the legislature must envisage and prevent attempts to contravene the provisions of the Act and evade payment of the rightful tax levied thereunder. If such contingencies are not visualized and such leaks are not plugged, no taxation law can be effective and implemented in order to satisfactorily and effectively enforce its provisions. Penalties are generally provided for in all taxation laws. Without such a sanction, there is the danger of the evasion of tax. Thus, provision for levy and collection of penalties for contravening their requirements has become an integral part of such enactments and their purpose.

2.3 Meaning of Penalty:

'Penalty' means punishment for breach of law. Penalty carries the following meaning in Chamber's Twentieth Century Dictionary: "Punishment, suffering or loss imposed for breach of law, a fine or loss agreed upon in case of non-fulfilment of some undertaking, a fine, a disadvantage imposed upon a competitor for break of a rule of the game, for want of success in attaining what is aimed at as a handicap or for any other reason arising out of the rules, a loss or suffering brought upon one by his own actions or condition, ...".

The Bombay High Court held, in the case of *Kuberdas Hargovindas v. State of Bombay*, that a penalty is generally provided by a statute to punish a contravention of statute or the doing of something prohibited by the statute.

The continuance of regular and uniform receipt of the public revenue is essential to the continued existence of the State; it cannot tolerate delay in the payment of taxes and to induce prompt payment of taxes when due, the legislatures of several states have very generally imposed penalties upon the taxpayers who fail to pay their taxes within the constitutional power of the legislature. The state may provide a penalty for the failure to promptly pay a corporate franchise tax. The penalties as provided by section 28 of the Income-tax Act of 1922 are meant for acts of commission and omission

which are set out therein and once an assessee is proved to have been guilty of them, the penal provisions are attracted.

Penalties in modern law are always statutory. The popular and literary notion about penalty and the concept associated with it have to subordinate themselves to the actual words used and terms used in the statute creating the penalty and laying down the procedure for its imposition. It will be trite to say that penalty is penal. It is something to say that penalty is criminal or quasi-criminal. Penalty is statutory just as much as it is legal. Misconduct is not necessarily the popular conduct.

But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and the penalty will not ordinarily be imposed unless the party obliged either acted deliberately or dishonestly or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant circumstances.

The liability for penalty arises because of the

contumacious and fraudulent conduct of the assessee. The Income-tax Act provides for levy of penalties for non-compliance with the provisions relating to advance-tax, concealment or evasion of income-tax, etc.

With the increase in the number of taxpayers, it is essential that the tax administration must be honest, consistent and expeditious in case it is desired that the tax laws are observed voluntarily. Every taxpayer tries to minimize his tax liability and if wilful evasion is allowed to succeed, it will not only lead to a revenue loss but also will bring about a general disrespect for law. As such, it becomes necessary that the statute should provide for appropriate penalties to discourage such tendencies.

2.4 Offences and Prosecution:

A separate Chapter has been included in the Act to deal with the offences and prosecutions. The relevant provisions are contained in Chapter-XXII, constituting sections 275 to 280 in the Act. After its inclusion in 1961, the chapter has been amended from time to time and certain new provisions have been made to provide stringent penal actions against the tax evaders.

There is no doubt that the offences under the Income-tax Act are 'economic offences' and they are aimed at tax evasion,

a malady eating away the vitals of the economic life of the nation. In the fight against tax evasion, monetary penalties alone are not enough. Many a calculating tax dodger finds it profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to loose faith and confidence in the tax administration once it knows that even when a tax evader is caught, the administration lets him get away lightly after paying only a monetary penalty - when money is no longer a major consideration with him, if it serves his business interests. Unfortunately, in the present social milieu, such penalties carry no stigma either. In these circumstances, the provision for imposition of penalty fails to instill adequate fear of the law in the minds of the tax evaders. Prospect of landing in jail, on the other hand, is a far more dreaded consequence - to operate in *terrorem* upon the erring taxpayers. Besides, a conviction in a court of law is attended with several legal and social disqualifications as well. In order, therefore, to make enforcement of tax law really effective, it is necessary for the department to evolve a vigorous prosecution policy and pursue it unsparingly.

✓ The Income-tax Act providing a criminal prosecution includes failure to file a return of income, failure to produce accounts and documents, making a false statement and declaration, failure to deduct and pay tax when required to do.

2.5 Objects of Prosecution:

Evasion of lawful tax by dishonest means or by fraudulence or sham deserves to be effectively checked. For successful fraud on, and illegal evasion of, tax, revenue must tend to increase pro-tanto the burden of tax on the shoulders of a great body of good and honest citizens, who do not desire to adopt such manoeuvres. This is the idea at the root of creation of various offences under the Act.

In view of the above, it can be said that penalty and prosecution provisions are necessary in the proper implementation of the direct tax laws. In the absence of such provisions, there would not be prompt collection of taxes and the assessee would have no fear in evading their proper tax liability. The presence of penalty and prosecution provisions in a statute go a long way in making people pay their taxes correctly, that too within the specified time.

2.6 Statutory Provisions:

(A) The Income-tax Act, 1961:

CHAPTER XXI PENALTIES IMPOSABLE

Failure to furnish information regarding securities, etc.

¹270. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.]

²[Failure to furnish returns, comply with notices, concealment of income, etc.]

³271. (1) If the [Assessing] Officer or the ⁵[Deputy Commissioner (Appeals)] ⁶[or the Commissioner (Appeals)] in the course of any

proceedings under this Act, is satisfied that any person -

- (a) ⁷[***]
- (b) has ⁸[***] failed to comply with a notice under section (1) section 142 or sub-section (2) of section ⁹[or fails to comply with a direction issued under sub-section (2A) of section 142], or
- (c) has concealed the particulars of his income or ¹⁰[***] furnished inaccurate particulars of such income,

he may direct that such person pay by way of penalty, -

- (i) ⁷[***]
- ¹¹[(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than one thousand rupees but which may extend to twentyfive thousand rupees for each such failure;]
- ¹²[(iii) in the case referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed ¹¹[three times], the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income;

⁷[***]

¹²[Explanation-1: Where in respect of any facts material to the computation of the total income of any person under this Act, -

- (A) such person fails to offer an explanation or offers an explanation which is found by the ⁴[Assessing] Officer or the ⁵[Deputy Commissioner (Appeals)] ⁶or the Commissioner

(Appeals)] to be false, or

(B) such person offers an explanation which he is not able to substantiate ¹³[and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him],

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

¹⁴[***]

Explanation 2: Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years, but in respect of which no penalty under clause (iii) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this Explanation referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this Explanation referred to as the utilized amount)

shall be treated as the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the first preceding year; and where the amount so added or deducted in the first preceding year is not sufficient to cover the utilized amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilized amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilized amount is covered by the amounts so added or deducted in such earlier assessment years.

¹¹[Explanation 3: Where any person who has not previously been assessed under this Act, fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his

income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.]

Explanation 4: For the purposes of clause (iii) of this subsection, the expression "the amount of tax sought to be evaded", -

- (a) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished exceeds the total income assessed, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;
- (b) in any case to which Explanation 3 applies, means the tax on the total income assessed;
- (c) in any other case, means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished;

¹⁴[Explanation 5: Where in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income, -

- (a) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or
- (b) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, ¹⁵[unless, -

- (1) such income is, or the transactions resulting in such income are recorded, -
 - (i) in a case falling under clause (a), before the date of the search; and
 - (ii) in a case falling under clause (b), on or before such date,
- (2) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in ⁷[***] sub-section (1) of section

139, and also specifies in the statement the manner which such income has been derived and pays the tax, together with interest, if any, in respect of such income.]

¹⁷[Explanation 6: Where any adjustment is made in the income or loss declared in the return under the proviso to clause (a) of sub-section (1) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made.]

⁹[(1A) Where any penalty is imposable by virtue of Explanation 2 to sub-section (1), proceedings for the imposition of such penalty may be initiated notwithstanding that any proceedings under this Act in the course of which such penalty proceedings could have been initiated under sub-section (1) have been completed.

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

¹⁸(3) [Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.]

(4) If the ⁴[Assessing] Officer or the ⁵[Deputy Commissioner (Appeals)] ⁶[or the Commissioner (Appeals)] in the course of any

proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.]

(4A)&(4B) [Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.]

¹⁹[(5) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1989, or any earlier assessment year and references to this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

⁹[Failure to keep, maintain or retain books of account, document, etc.]

271A. Without prejudice to the provisions of section 271, if

any person ⁸[***] fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the ⁴[Assessing] Officer or the ⁵[Deputy Commissioner (Appeals)] ⁶[or the Commissioner (Appeals)] may direct that such person shall pay, by way of penalty, ²⁰[a sum which shall not be less than two thousand ruppes, but which may extend to one hundred thousand rupees].]

²¹[Failure to get accounts audited.

²²271B. If any person fails ⁸[***] to get his accounts audited in respect of any previous year or years relevant to an assessment year or obtain a report of such audit as required under section 44AB ²³[or furnish the said report along with the return of his income filed under sub-section (1) of section 139- or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142], the ⁴[Assessing] Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the total sales, turnover or gross receipts, as the case may be in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less.]

²⁴[Failure to subscribe to the eligible issue of capital.

271BB. Whoever fails to subscribe any amount of subscription

of the units issued under any scheme referred to in sub-section (1) of section 88A to the eligible issue of capital under that sub-section within the period of six months specified therein, may be directed by the Deputy Commissioner to pay, by way of penalty, a sum equal to twenty per cent of such amount.]

²⁵[Penalty for failure to deduct tax at source.

271C. ²⁶[(1)] If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B, he shall be liable to pay, by way of penalty, a sum equal to the amount of the tax which he failed to deduct as aforesaid.]

²⁷[(2) Any penalty imposable under sub-section (1) shall be imposed by the Deputy Commissioner.]

²⁵[Penalty for failure to comply with the provisions of Sec.269SS.

271D. ²⁶[(1)] If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.]

²⁸[(2) Any penalty imposable under sub-section (1) shall be imposed by the Deputy Commissioner.]

²⁵[Penalty for failure to comply with the provisions of section 269T.

271E. ²⁹[(1)] If a person repays any deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty,

a sum equal to the amount of the deposit so repaid.

³⁰[(2) Any penalty imposable under sub-section (1) shall be imposed by the Deputy Commissioner.]

Failure to give notice of discontinuance.

³¹272. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.]

³²[Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspection, etc.]

272A. (1) If any person, -

- (a) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by an income-tax authority in the exercise of its powers under this Act; or
- (b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an income-tax authority may legally require him to sign; or
- (c) to whom a summons is issued under sub-section (1) of section 131 either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time; or
- (d) fails to comply with the provisions of section 139A,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(2) If any person fails -

(a)

(34)

- (a) to comply with a notice issued under sub-section (6) of section 94; or
- (b) to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176; or
- (c) to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 or section 206A or section 206B³³ [or section 206C] or section 285B; or
- (d) to allow inspection of any register referred to in section 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken; or
- (e) to furnish the return of income which he is required to furnish under sub-section (4A) of section 139 or to furnish it within the time allowed and in the manner required under that sub-section; or
- (f) to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A; or
- (g) to furnish a certificate as required by section 203³³ [or section 206C]; or
- (h) to deduct and pay tax as required by sub-section (2) of section 226;

he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees, but which may extend to two hundred rupees, for every day during which the failure continues:

³³ [Provided that the amount of penalty for failures in relation to

returns under sections 206 and 206C shall not exceed the amount of tax deductible or collectible, as the case may be].

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed -

(a) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceedings before an income-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such income-tax authority;

(b) in a case falling under clause (f) of sub-section (2), by the Chief Commissioner or Commissioner; and

(c) in any other case, by the Deputy Director or the Deputy Commissioner.

(4) No order under this section shall be passed by any income-tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

Explanation: In this section, 'income-tax authority' includes a Director General, Director, Deputy Director or an Assistant Director while exercising the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the matters specified in sub-section (1) of section 131.]

³⁴[Penalty for failure to comply with the provisions of section 133B.

272A. (1) If a person ⁸[***] fails to comply with the provisions of section 133B, he shall, on an order passed by the ³⁵[Deputy] Commissioner, ³⁶[Assistant Director] or the ³⁷[Assessng] Officer, as the case may be, pay, by way of penalty, a sum which may extend to one thousand rupees.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

Penalty for failure to comply with the provisions of section 139A.

³⁸272B. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1987].

³⁹[Penalty for failure to comply with the provisions of section 203A.

272BB. (1) If a person fails to comply with the provisions of section 203A, he shall, on an order passed by the ⁴[Assessing] Officer, pay, by way of penalty, a sum which may extend to five thousand rupees.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter].

⁴⁰[False estimate of, or failure to pay, advance tax.

273. ⁴¹[(1) If the ⁴[Assessing] Officer, in the course of any proceedings in connection with the regular assessment for any assessment year, is satisfied that any assessee -

(a) has furnished under clause (a) of sub-section (1) of section 209A, a statement of the advance tax payable

by him which he knew or had reason to believe to be untrue, or

- (b) has ⁸[***] failed to furnish a statement of the advance tax payable by him in accordance with the provisions of clause (a) of sub-section (1) of section 209A,

he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum-

- (i) which, in the case referred to in clause (a), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of-

- (1) seventyfive per cent of the assessed tax as defined in sub-section (5) of section 215, or
- (2) the amount which would have been payable by way of advance tax if the assessee had furnished a correct and complete statement in accordance with the provisions of clause (a) of sub-section (1) of section 209A,

whichever is less;

- (ii) which, in the case referred to in clause (b), shall not be less than ten per cent but shall not exceed one and half times of seventyfive per cent of the assessed tax as defined in sub-section (5) of section 215]:

⁴²[Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventyfive per cent", at both the places where they occur, the words "eightythree and one-third per cent" had been substituted.]

⁴¹[(2) If the ⁴[Assessing] Officer, in the course of any proceedings in connection with the regular assessment for the assessment year commencing on the 1st day of April, 1970, or any subsequent assessment year, is satisfied that any assessee-

⁴³[(a) has furnished under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5) of section 209A, or under sub-section (1) or sub-section (2) of section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or]

⁴⁴[(aa) has furnished ⁴¹[under sub-section (4) of section 209A or] under sub-section (3A) of section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or]

(b) has ⁸[***] failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of ⁴⁵[clause (b) of sub-section (1) of section 209A], or

(c) has ⁸[***] failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of ⁴¹sub-section (4) of section 209A or] sub-section (3A) of section 212,



he may direct that such person shall, in addition to the amount of tax, if any, payable by him, pay by way of penalty a sum -

(i) which, in the case referred to in clause (a), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of-

(1) seventyfive per cent of the assessed tax as defined in sub-section (5) of section 215, or

⁴³(2) where a statement under clause (a) of sub-section (1) of section 209A was furnished by the assessee or where a notice under section 210 was issued to the assessee, the amount payable under such statement or, as the case may be, such notice,]

whichever is less;

⁴⁴[(ia) which, in the case referred to in clause (aa), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of seventyfive per cent of the assessed tax as defined in sub-section (5) of section 215;]

(ii) which, in the case referred to in clause (b), shall not be less than ten per cent but shall not exceed one and a half

times of seventyfive per cent off the assessed tax as defined in sub-section (5) of section 215; and

⁴³[(iii) which, in the case referred to in clause (c), shall not be less than ten per cent but shall not exceed one and a half times the amount by which-

(a) where the assessee has sent a statement under clause (a), or an estimate under clause (b) of sub-section (1) of section 209A, or an estimate in lieu of a statement under sub-section (2) of that section, the tax payable in accordance with such statement or estimate; or

(b) where the assessee was required to pay advance tax in accordance with the notice issued to him under section 210, the tax payable under such notice,

falls short of seventyfive per cent of the assessed tax as defined in sub-section (5) of section 215;]]

⁴²Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventyfive per cent", wherever they occur, the words "eightythree and one-third per cent" had been substituted.

⁴⁴Explanation ⁴⁶[1]: For the purposes of clause (ia), the amount paid by the assessee on or before the date extended by the ¹⁶[Chief Commissioner or Commissioner] under the ⁴⁷[first] ⁴¹[proviso to sub-section (4) of section 209A or, as the case may be,]

⁴⁷ [first] proviso to sub-section (3A) of section 212 shall, where the date so extended falls beyond the financial year immediately preceding the assessment year, also be regarded as tax actually paid during the financial year.]

⁴⁸ [Explanation 2: When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then, notwithstanding anything contained in the other provisions of this Act, the penalty imposable under this Section shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.]

²⁵ [(3) The provisions of this section shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

⁴⁹ [Power to reduce or waive penalty, etc., in certain cases.

⁴⁷ 273A. (1) Notwithstanding anything contained in this Act, the ¹⁶ [Chief Commissioner or Commissioner] may, in his discretion, whether on his own motion or otherwise,-

(i) ⁹ [***]

(ii) reduce or waive the amount of penalty imposed or imposable on a person under clause (iii) of sub-section (1) of section 271;

(iii) ⁷ [***]

if he is satisfied that such person-

- (a) ⁷[***]
- (b) in the case referred to in clause (ii) has, prior to the detection by the ⁴[Assessing] Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;
- (c) ⁷[***]

and also has, ¹¹[in the case referred to in clause (b)], cooperated in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.

Explanation ⁵⁰[***]: For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract the provisions of clause (c) of sub-section (1) of section 271.

⁵⁰[***]

- (2) Notwithstanding anything contained in sub-section (1),-
- (a) ⁷[***]
- (b) if in a case falling under clause (c) of sub-section (1) of section 271, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year; or, where such disclosure relates to more than one

assessment year, the aggregate amount of such income for those years, exceeds a sum of five hundred thousand rupees,

in order to reducing or waiving the penalty under sub-section (1) shall be made by the ¹⁶[Chief Commissioner or Commissioner] except with the previous approval of the Board;

(3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order.

⁵¹[Provided that where an order has been made in favour of any person under sub-section (1) on or before the 24th day of July, 1991, such person shall be entitled to further relief only once in relation to other assessment year or years if he makes an application to the income-tax authority referred to in sub-section (4) at any time before the 1st day of April, 1992.]

(4) Without prejudice to the powers conferred on him by any other provision of this Act, the ¹⁶[Chief Commissioner or Commissioner] may, on an application made in this behalf by an assessee, and after recording the reasons for so doing, reduce or waive the amount of penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that-

(i) to do otherwise would cause genuine hardship to the

assessee, having regard to the circumstances of the case; and

- (ii) the assessee has cooperated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him;

¹⁴[Provided that where the amount of any penalty payable under this Act or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds one hundred thousand rupees, no order reducing or waiving the amount or compounding any proceeding for its recovery under this sub-section shall be made by the ¹⁶[Chief Commissioner or Commissioner] except with the previous approval of the Board.

(5) Every order made under this section shall be final and shall not be called into question by any court or any other authority.]

²⁵[(6) The provisions of this section ¹⁹[as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989] shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and references in this section to the other provisions of this Act shall be considered as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

¹³[Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions

of ¹⁹[clause (b) of 271BB,] section 271C, section 271D, section 271E, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or ³⁹[sub-section (1) of section 272BB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be referred to in the said provisions if he proves that there was reasonable cause for the said failure.]

Procedure.

274. (1) No order imposing a penalty under this Chapter be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

²⁵[(2) No order imposing a penalty under this Chapter shall be made -

- (a) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;
- (b) by the Assistant Commissioner, where the penalty exceed twenty thousand rupees.

except with the prior approval off the Deputy Commissioner.]

⁵³[(3) An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.]

⁵⁴[Bar of limitation for imposing penalties.

275. ⁵⁵[(1)] No order imposing a penalty under this Chapter shall be passed-

⁵³[(a) in a case where the relevant assessment or other order is the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner [Appeals] under section 246 or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of the which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of ¹⁹[the Deputy Commissioner (Appeals) or] the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief-Commissioner or Commissioner, whichever period expires later;

(b) in a case where the relevant assessment or other order is the subject matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.]

⁵⁶[(2) The provisions of this[^] section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989.]

⁵⁷[Explanation: In computing the period of limitation for the purposes of this section,-

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;
 - (ii) any period during which the immunity granted under section 245H remained in force; and
 - (iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court,
- shall be excluded.]]

CHAPTER - XXII
OFFENCES AND PROSECUTIONS

⁵⁸[Contravention of order made under sub-section (3) of section 132.

275A. Whoever contravenes any order referred to in ²⁴[the second proviso to sub-section (1) or] sub-section (3) of section 132 shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.]

⁵⁹[Removal, concealment, transfer or delivery of property to thwart tax recovery.

276. Whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent the property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.]

⁶⁰[Failure to comply with the provisions of sub-sections (1) and (3) of section 178.

276A. If a person ⁸[***]-

- (i) fails to give the notice in accordance with sub-section (1) of section 178; or
- (ii) fails to set aside the amount as required by sub-section (3) of that section; or
- (iii) parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section,

he shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.]

Failure to comply with the provisions of sections 269AB or 269-I.

⁶¹276AA. [Omitted by the Finance Act, 1986, w.e.f. 1.10.1986].

³⁴[Failure to comply with the provisions of sections 269UC, 269UE and 269UL.

276AB. Whoever ⁸[***] fails to comply with the provisions of section 269UL or fails to surrender or deliver possession of the property under sub-section (2) of section 269UE or contravenes the provisions of sub-section (2) or section 269UL shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.]

⁶²[Failure to pay the tax deducted at source.

276B. If a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

⁶³[Failure to pay the tax collected at source.

276BB. If a person fails to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

⁶⁴[Wilful attempt to evade tax, etc.

276C. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation: For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

- (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
- (iv) causes any other circumstances to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]

⁶⁵
X [Failure to furnish returns of income.

276CC. If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under ⁶⁶[clause (i) of sub-section (1) of section 142] or section 148, he shall be punishable,-

- (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with imprisonment of a term which shall not be less than three months but which may extend to

three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of section 139-

- (i) for any assessment year commencing prior to the 1st day of April, 1975; or
- (ii) for any assessment year commencing on or after the 1st day of April, 1975, if-
 - (a) the return is furnished by him before the expiry of the assessment year; or
 - (b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.]

⁶⁷[Failure to produce accounts and documents.

276D. If a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (1) of section 142, such accounts and documents as are referred to in the notice ⁹[or wilfully fails to comply with a direction issued to him under sub-section (2A) of that section], he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues,

or with both.]

Failure to comply with the provisions of section 269SS.

⁶⁸276DD. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989].

⁶⁹[Failure to comply with the provisions of section 269T.

276E. [Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989].

⁶⁴[False statement in verification, etc.

277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

⁷⁰[Abetment of false return, etc.

278. If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be

true or to commit an offence under sub-section (1) of section 276C, he shall be punishable, -

- (i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

⁶⁵[Punishment for second and subsequent offences.

278A. If any person convicted of an offence under section 276B- or sub-section (1) of section 276C or section 276CC ⁷¹[or section 276DD] ⁷²[or section 276E] or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.]

¹³[Punishment not to be imposed in certain cases.

278AA. Notwithstanding anything contained in the provisions of section 276A, section 276AB ⁶²[or section 276B] no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.]

⁶⁵[Offences by companies.

278B. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section,-

- (a) "company" means a body corporate, and includes-
- (i) a firm; and
 - (ii) an association of persons or a body of individuals whether incorporated or not; and

- (b) "director", in relation to-
- (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.]

⁶⁵[Offences by Hindu undivided families.

278C. (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.]

⁷³[Presumption as to assets, books of account, etc., in certain cases.

278D. (1) Where during the course of any search made under section 132, any money, bullion, jewellery or other valuable article or thing (hereafter in this section referred to as the

assets) or any books of account or other documents has or have been found in the possession or control of any person and such assets or books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents.

(2) Where any assets or books of account or other documents taken into custody, from the possession or control of any person, by the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A are delivered to the requisitioning officer under sub-section (2) of that section and such assets, books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents.]

¹³[Presumption as to culpable mental state.

278E. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the

fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this sub-section, "culpable mental state", includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Prosecution to be at the instance of ¹⁶[Chief Commissioner or Commissioner]

⁷⁴~~279~~ ⁷⁵ [(1) A person shall not be proceeded against for an offence under section 275A, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278, except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority:

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings, under this sub-section.

Explanation: For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.]

[(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed

or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.]

⁷⁵ [(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or Director General.]

⁵⁸ [(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in ⁴ [clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, ⁷⁶ [under section 273A] or that the offence in respect of which such proceeding was taken would be compounded.]

⁷⁷ [Explanation: For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or direction (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.]

⁶⁵ [Certain offences to be non-cognizable.]

279A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable

under section 276B or section 276C or section 276CC or section 277 or section 278 shall be deemed to be non-cognizable within the meaning of that Code.]

¹⁹[Proof of entries in records or documents.

279B. Entries in the records or other documents in the custody of an income-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Chapter, and all such entries may be proved either by the production of the records or other documents in the custody of the income-tax authority containing such entries, or by production of a copy of the entries certified by the income-tax authority having a custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.]

Disclosure of particulars by public servants.

280. (1) If a public servant ⁷⁸[furnishes any information or produces any document in contravention of the provisions of sub-section (2) of section 138] he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government.

contd.on next page.

(B) The Wealth-tax Act, 1957:

CHAPTER - IV
ASSESSMENT

⁷⁹ [Penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.]

⁸⁰ 13. (1) If the ⁸¹ [Assessing Officer], ⁸² [Deputy Commissioner (Appeals)], ⁶ [Commissioner (Appeals),] ¹⁶ [Chief Commissioner or Commissioner] or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

- (a) ⁸³ [***]
- (b) has ⁸ [***] failed to comply with a notice under sub-section (2) or sub-section (4) of section 16; or
- (c) has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts,

he or it may, by order in writing, direct that such person shall pay by way of penalty-

- (i) ⁸⁴ [***]

⁸⁵ [(ii) in the cases referred to in clause (b), in addition to the amount of wealth-tax payable by him, a sum which shall not be less than one thousand rupees, but which may extend to twentyfive thousand rupees for each such failure;]

⁸⁶ (iii) in the cases referred to in clause (c), in addition to any wealth-tax payable by him, a sum which shall not be less than, but which shall not exceed five times, the amount of tax sought to be evaded by reason of the

concealment of particulars of any assets or the furnishing of inaccurate particulars in respect of any assets or debts;

⁸⁷[Provided that in the cases referred to in clause (b), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.]

Explanation I: For the purposes of clause (iii) of this subsection, the expression "the amount of tax sought to be evaded"-

- (a) in a case to which Explanation 3 applies, means the tax on the net wealth assessed;
- (b) in any other case, means the difference between the tax on the net wealth assessed and the tax that would have been chargeable had the net wealth assessed been reduced by the amount which represents the value of any assets in respect of which particulars have been concealed or inaccurate particulars have been furnished and of any debts in respect of which inaccurate particulars have been furnished.

Explanation 2: Where in respect of any facts material to the computation of the net wealth of any person under this Act,-

- (A) such person fails to offer an explanation or offers an explanation which is found by the ⁸¹[Assessing Officer] or the ⁸²[Deputy Commissioner (Appeals)] ⁶[or the Commissioner (Appeals)], to be false, or
- (B) such person offers an explanation which he is not able to substantiate ¹³[and fails to prove that such explanation is

bona fide and that all the facts relating to the same and material to the computation of his net wealth have been disclosed by him],

then, the amount added or disallowed in computing the net wealth of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the value of the assets in respect of which particulars have been concealed.

⁸⁸ [***]]

⁸⁹ [Explanation 3: Where any person who has not previously been assessed under this Act, fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 17A, a return of his net wealth which he is required to furnish under section 14 in respect of any assessment year commencing on or after the 1st day of April 1989, and until the expiry of the period aforesaid no notice has been issued to him under clause (i) of sub-section (4) of section 16 or sub-section 16 or sub-section (1) of section 17 and the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has assessable net wealth then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his assets or furnished inaccurate particulars of any assets or debts in respect of such assessment year, notwithstanding that such person furnishes a return of his net wealth

at any time after the expiry of either of the periods aforesaid applicable to him in pursuance of a notice under section 17.]

Explanation 4: Where the value of any asset returned by any person is less than seventy percent of the value of such asset as determined in an assessment under section 16 or section 17, such person shall be deemed to have furnished inaccurate particulars of such asset within the meaning of clause (c) of this sub-section, unless he proves that the value of the asset as returned by him is the correct value.]

⁹⁰ Explanation 5: Where in the course of a search under section 37A, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets represent or form part of his net wealth, -

- (a) on any valuation date falling before the date of the search, but the return in respect of the net wealth on such date has not been furnished before the date of the search or, where such return has been furnished before the said date, such assets have not been declared in such return; or
- (b) on any valuation date falling on or after the date of the search,

then, notwithstanding that such assets are declared by him in any return of net wealth furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of such assets

or furnished inaccurate particulars of such assets, ⁹¹[unless-

(1) such assets are recorded,-

(i) in a case falling under clause (a), before the date of the search; or

(ii) in a case falling under clause (b), on or before such date,

in the books of account, if any, maintained by him or such assets are otherwise disclosed to the ¹⁶[Chief Commissioner or Commissioner] before the said date; or

(2) he, in the course of the search, makes a statement under sub-section (4) of section 37A that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, forms part of his net wealth which has not been disclosed so far in his return of net wealth to be furnished before the expiry of the time specified in sub-section (1) of section 14, and also specifies in the statement the manner in which such net wealth has been acquired and pays the tax, together with interest, if any, in respect of such net wealth].]

¹⁹[Explanation 6: Where any adjustment is made in the wealth declared in the return under the proviso to clause (a) of sub-section (1) of section 16 and additional wealth-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.]

(1A) ⁹²[***]

(2) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.

(2A) and (2B) ⁹³[***]

⁹⁴[(3) No order imposing a penalty under sub-section (1) shall be made, -

(i) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(ii) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Deputy Commissioner.]

(3A) ⁹⁵[***]

(4) A ⁵[Deputy Commissioner (Appeals)], ⁶[a Commissioner (Appeals),] a ⁴[Chief Commissioner or Commissioner] or the Appellate Tribunal on making an order under this section imposing a penalty, shall forthwith send a copy of the same to the ⁷⁹[Assessing Officer.]

⁹⁶[(5) No order imposing a penalty under this section shall be passed-

(i) in a case where the assesment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or the Commissioner (Appeals) under section 23 or an appeal to the Appellate Tribunal under sub-section (2) of section 24, after the expiry of the financial year in which the proceedings, in the course of which action for the

imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;

- (ii) in a case where the relevant assessment is the subject-matter of revision under sub-section (2) of section 25, after the expiry of six months from the end of the month in which such order of revision is passed;
- (iii) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation: In computing the period of limitation for the purposes of this section:

- (i) any period during which the immunity granted under section 22H remained in force;
- (ii) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 39; and
- (iii) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

(6) The provisions of this section as they stood immediately before their amendments by the Direct Tax Laws (Amendment) Act, 1989, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

⁹⁷ [Penalty for failure to answer questions, sign statements, furnish information, allow inspection, etc.

18A. (1) If any person,-

(a) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a wealth-tax authority in the exercise of his powers under this Act; or

Explanation: ⁹⁸ [***]: For the purposes of this sub-section, a person shall be deemed to have made full and true disclosure of the particulars of his assets or debts in any case where the excess of net wealth assessed over the net wealth returned is of such a nature as not to attract the provisions of clause (c) of sub-section (1) of section 18.

⁹⁹ [***]

(2) Notwithstanding anything contained in sub-section (1), if in a case falling under clause (c) of sub-section (1) of section 18, the net wealth in respect of which the penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the net

wealth for any one of the relevant assessment years, exceeds five hundred thousand rupees, no order reducing or waiving the penalty under sub-section (1) shall be made by the 4[Chief Commissioner or Commissioner], except with the previous approval of the Board.

(3) Where an order has been made under sub-section (1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order:

¹⁰⁰[Provided that where an order has been made in favour of any person under sub-section (1) on or before the 24th day of July 1991, such person shall be entitled to further relief only once in relation to other assessment year or years if he makes an application to the wealth-tax authority referred to in sub-section (4) at any time before the 1st day of April 1992.]

(4) Without prejudice to the powers conferred on him by any other provision of this Act, the ¹⁰⁰[Chief Commissioner or Commissioner] may, on an application made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that-

(i) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case, and

- (ii) the assessee has cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.
- (5) Every order made under this section shall be final and shall not be called into question by any court or any other authority.]

¹⁹[(6) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, and reference in this section to other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.]

¹⁰¹[Wilful attempt to evade tax, etc.

35A. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

- (i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months

but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provisions of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation: For the purposes of this section, a wilful attempt to evade tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

- (a) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement, or
- (b) makes, or causes to be made, any false entry or statement in such books of account or other documents, or
- (c) wilfully omits, or causes to be omitted, any relevant entry or statement in such books of account or other documents, or
- (d) causes any other circumstances to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

Failure to furnish returns of income.

Failure to furnish returns of net wealth.

35B. If a person wilfully fails to furnish in due time the return of his net wealth which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or under sub-section (1) of section 17, he shall be punishable,-

- (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine;

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of net wealth under sub-section (1) of section 14-

- (i) for any assessment year commencing prior to the 1st day of April, 1975; or
- (ii) for any assessment year commencing on or after the 1st day of April, 1975, if-
 - (a) the return is furnished by him before the expiry of the assessment year; or
 - (b) the tax payable by him on his net wealth determined on regular assessment does not exceed three thousand rupees.

Failure to produce accounts, records, etc.

35C. If a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice under subsection (4) of section 16, such accounts, records and documents as are referred to in the notice, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both.

False statement in verification, etc.,
made under certain provisions of the Act.

35D. If a person makes a statement in any verification under this Act (other than under section 34AB) or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-

- (i) in a case where the amount of tax which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

False statement in verification mentioned
in section 34AB.

35E. If a person makes a statement in a verification mentioned
in section 34AB, which is false, and which he either knows
or believes to be false, or does not believe to be true,
he shall be punishable with imprisonment for a term which
may extend to six months or with fine or with both.

¹⁴[Failure to furnish particulars
under section 34ACC.

35EE. If a person referred to in section 34ACC fails ⁸[***] to
intimate to the Board the particulars of conviction or finding
referred to in the said section, he shall be punishable
with rigorous imprisonment for a term which may extend
to two years and shall also be liable to fine];

¹³[Provided that no person shall be punishable under this
section if he proves that there as reasonable cause or excuse
for the said failure.]

²⁴[Contravention of order made under second proviso to sub-
section (1) or sub-section (3A) of section 37A.

35EEE. If a person contravenes any order referred to in the
second proviso to sub-section (1) or sub-section (3A) of
section 37A, he shall be punishable with rigorous imprisonment
for a term which may extend to two years and with fine.]

Abetment of false return, etc.

35F. If a person abets or induces in any manner another person
to make and deliver an account, statement or declaration

relating to any net wealth chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 35A, he shall be punishable,-

- (i) in a case where the amount of tax, penalty or interest, which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Punishment for second and subsequent offences.

35G. If any person convicted of an offence under sub-section (1) of section 35A or section 35B or section 35D or section 35F is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Offences by Hindu undivided families.

35H. (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed

to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member thereof, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

¹⁰² [Prosecution to be with the previous sanction of certain wealth-tax authorities and their power to compound offences.

35-I. ¹⁰³ [(1) A person shall not be proceeded against for an offence under this Act except with the previous sanction of the Commissioner or Commissioner (Appeals):

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions to the aforesaid wealth-tax authorities as he may deem fit for institution of proceedings under this sub-section.

(2) Any such offence may, either before or after the institution of proceedings, be compounded by the Chief

Commissioner or Director General.]]

³³[Explanation: For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other wealth-tax authorities for the proper composition of offences under this section.]

Certain offences to be non-cognizable.

35J. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 35A or section 35B or section 35D or section 35F shall be deemed to be non-cognizable within the meaning of that Code.

Bar on prosecution and on inadmissibility of evidence in certain circumstances.

35K. (1) A person shall not be proceeded against for an offence under section 35A or section 35D in relation to the assessment for ¹⁰⁴[an assessment year] in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 18 has been reduced or waived by an order under section 18B.

(2) Where any proceeding for prosecution has been taken against any person under this Act, any statement made or account or other document produced by such person before

¹⁰⁵ [any wealth-tax authority (not being an Inspector of Income-tax)] shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under section 18B or that the offence in respect of which such proceeding was taken would be compounded.

Jurisdiction of courts.

35L. No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply.

35M. Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

Presumption as to books of account, etc.
in certain cases.

35N. (1) Where during the course of any search made under section 37A, any books of account or other documents, articles or things including money have been found in the possession or control of any person and such books of account or other documents are tendered, or such articles or things including money are relied upon, by the prosecution in evidence against

such person or against such person and the person referred to in section 35F for an offence under this Act, the provisions of sub-section (5) of section 37A shall, so far as may be, apply in relation to such books of account or other documents, articles or things including money -

(2) Where-

- (i) any books of account or other documents, taken into custody, from the possession or control of any person by any officer or authority under clause (a) or clause (b) of sub-section (1) of section 37B, are delivered to the requisitioning officer under sub-section (2) of that section; or
- (ii) any note or inventory of any articles or things including money taken into custody, from the possession of any person, by any officer or authority under clause (c) of sub-section (1) of section 37B, is furnished to the requisitioning officer under sub-section (2) of that section,

and such books of account or other documents are tendered or such note or inventory is relied upon, by the prosecution in evidence against such person or against such person and the person referred to in section 35F for an offence under this Act, the provisions of sub-section (5) of section 37A shall, so far as may be, apply in relation to such books of account or other documents or, as the case may be, the articles or things including money, covered by such note or inventory.

¹⁰⁶[Presumption as to culpable mental state.

35-0. (1) In any prosecution for any offence under this Act, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact, or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

¹⁹[Proof of entries in records or documents.

36. Entries in the records or other documents in the custody of a wealth-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the wealth-tax authority containing such entries or by the production of a copy of the entries certified by the wealth-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents

in its custody.]

¹⁰⁸[Power to tender immunity from prosecution.

36A. (1) The Central Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of particulars of net wealth or to the evasion of payment of tax on net wealth, it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of particulars of net wealth or evasion of payment of tax on net wealth.

(2) A tender of immunity made to, and accepted by, the person concerned shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person or whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence,

the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.]

(C) The Gift-Tax Act, 1958:

¹⁰⁹[Penalty for failure to furnish returns, to comply with notices and concealment of gifts, etc.]

17. (1) If the ¹¹⁰[Assessing Officer], ¹¹¹[Deputy Commissioner (Appeals)], ⁶[Commissioner (Appeals), ¹⁶[Chief Commissioner or Commissioner] or Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person-

- (a) ⁷[***]
- (b) has ⁸[***] failed to comply with a notice under sub-section (2) or sub-section (4) of section 15; or
- (c) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof,

he or it may, by order in writing, direct that such person shall by way of penalty-

- (i) ¹¹²[***]

¹¹²[(ii) in the cases referred to in clause (b), in addition to the amount of gift-tax payable by him, a sum which shall not be less than one thousand rupees, but which may extend to

twentyfive thousand rupees for each such failure;]

- (iii) in the cases referred to in clause (c), in addition to any gift-tax payable by him, a sum which shall not be less than twenty per cent, but which shall not exceed one and half times the amount of the tax, if any, which would have been avoided if the return made by such person had been accepted as correct:

⁸⁷[Provided that in the cases referred to in clause (b), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.]

¹¹³[Explanation: Where any adjustment is made in the taxable gifts declared in the return under the proviso to clause (a) of sub-section (1) of section 15 and additional gift-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.]

(2) No order imposing a penalty under sub-section (1) shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

¹¹⁴[(3) No order imposing a penalty under sub-section (1) shall be made,-

(i) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(ii) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees,

except with the prior approval of the Deputy Commissioner.]

(4) ⁵[Deputy Commissioner (Appeals), ⁶[a Commissioner (Appeals),]

a ¹⁶[Chief Commissioner or Commissioner] or the Appellate Tribunal on making an order under this section imposing a penalty, shall forthwith send a copy of the same to the ¹⁶[Assessing Officer].]

¹⁹[(5) No order imposing a penalty under this section shall be passed-

- (i) in a case where the assessment to which the proceedings for imposition of penalty relates is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 22 or an appeal to the Appellate Tribunal under sub-section (2) of section 23, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;
- (ii) in a case where the relevant assessment is the subject-matter of revision under sub-section (2) of section 24 after the expiry of six months from the end of the month in which such order of revision is passed;
- (iii) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated,

are completed, or six months from the end off the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation: In computing the period of limitation for the purposes of this section,-

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 38; and
- (ii) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

(6) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant year.]

¹¹⁵ [Penalty for failure to answer questions, sign statements, furnish information, allow inspection, etc.

17A. (1) If a person,-

(a)

being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a gift-tax authority in the exercise of his powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which a gift-tax authority may legally require him to sign; or

(c) to whom a summons is issued under sub-section (1) of section () either to attend, to give evidence or produce books of account or documents at a certain place and time, omits to attend or produce the books of account or documents at the place and time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure;

Provided that no penalty shall be imposable under clause (c) if the person proves that there was reasonable cause for the said failure.

(2) If a person fails to furnish in due time any statement or information which such person is bound to furnish to the Assessing Officer under section 37, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees, but which may extend to two hundred rupees for every day during which the failure continues:

Provided that no penalty shall be imposable under this sub-section if the person proves that there was reasonable cause for the said failure.

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed,-

(a) in a case where the contravention, failure or default in

respect of which such penalty is imposable occurs in the course of any proceeding before a gift-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such gift-tax authority;

(b) in any other case, by the Deputy Director or the Deputy Commissioner.

(4) No order under this section shall be passed by any gift-tax authority referred to in sub-section (3) unless the person on whom penalty is proposed to be imposed.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the gift-tax authority concerned.

(5) Subject to the provisions of sub-section (2) of section ¹¹⁶[33A], where any such amendment has the effect of reducing the assessment, the ¹¹⁷[Assessing Officer] shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the ¹¹⁷[Assessing Officer] shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice

of demand shall be deemed to be issued under section 31 and the provisions of this Act shall apply accordingly.

(7) No amendment under this section shall be made after the expiry of four years ¹¹⁸[from the end of the financial year in which the order sought to be amended was passed].]

Prosecution.

35. (1) If any person fails without reasonable cause,-

- (a) to furnish in due time any return of gifts under this Act;
- (b) to produce, or cause to be produced, on or before the date mentioned in any notice under ¹¹⁹[***] sub-section (4) of section 15, such accounts, records and documents as are referred to in the notice;
- (c) ¹¹⁹[***]

he shall, on conviction before a magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(2) If a person makes a statement in a verification in any return of gift furnished under this Act or in a verification mentioned in section 22, 23 or 25 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand, or with both.

¹²⁰[(2A) If a person abets or induces in any manner another person to make and deliver an account, statement or declaration

relating to any gifts chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.]

¹²¹ [(3) A person shall not be proceeded against for an offence under this Act, except with the previous sanction of the Commissioner or Commissioner (Appeals):

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid gift-tax authorities as he may deem fit for institution of proceedings under this sub-section.

(4) Any such offence may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or Director General.]

¹²² [¹²³ Explanation 1]: For the purposes of this section, "magistrate" means a presidency magistrate or a magistrate of the first class.]

¹²⁴ [Explanation 2: For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions to obtain the previous approval of the Board) to other gift-tax authorities for the proper composition of offences under this section.]

¹²⁵[Offences by companies.

35A. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of any was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,-

- (a) "company" means a body corporate, and includes-
 - (i) a firm; and
 - (ii) an association of persons or a body of individuals,

whether incorporated or not; and

(b) "director", in relation to-

(i) a firm means a partner in the firm,

(ii) an association of persons or a body of individuals means any member controlling the affairs thereof.

Offences by Hindu undivided families.

35B. (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply.

35C. Nothing contained in section 360 of the Code of Criminal

Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.]

¹³[Presumption as to culpable mental state.

35D. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this sub-section, "culpable mental state", includes intention, motive or knowledge of a fact, or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

¹⁹[Proof of entries in records or documents.

35E. Entries in the records of other documents in the custody of a gift-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the gift-tax authority containing such entries, or by the production of a copy of the entries certified by

the gift-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.]

¹²⁰[Power regarding discovery, production of evidence, etc.]

36. (1) The ¹⁶[Assessing Officer], the ⁵[Deputy Commissioner (Appeals)], ⁶[the Commissioner (Appeals)], the ⁷[Chief Commissioner or Commissioner] and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of accounts and other documents; and
- (d) issuing commissions.

⁶³[(1A) If the Director General or Director or Deputy Director or Assistant Director has reason to suspect that any gifts chargeable to tax under this Act have been concealed, or are likely to be concealed, by any person or class of persons within his jurisdiction, then, for the purposes of making any inquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the gift-tax authorities referred to in

that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other gift-tax authority.

REFERENCES:

1. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
2. Restored to its original version by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
3. See also relevant extracts of minutes of 10th Meeting of DTAC held on 23.12.1967 and Circular no.162 dated 24.3.1975 as amended by Circular no.186 dated 23.12.1975.
4. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
5. Substituted for "Appellate Assistant Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
6. Inserted by the Finance (No.2) Act, 1977, w.e.f. 10.7.1978.
7. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
8. "without reasonable cause", omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.
9. Inserted by the Direct Tax Laws (Amendment) Act, 1976, w.e.f. 1.4.1976.
10. "deliberately" omitted by the Finance Act, 1964, w.e.f. 1.4.1964.
11. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
12. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
13. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.

14. Proviso omitted, Ibid.
15. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.
16. Substituted for "Commissioner" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
17. Inserted, ibid.
18. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
19. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
20. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
21. Inserted by the Finance Act, 1984, w.e.f. 1.4.1985.
22. See also Circular No.628 dated 6.3.1992.
23. Inserted by the Finance Act, 1988, w.e.f. 1.4.1989.
24. Inserted by the Finance Act, 1990, w.e.f. 1.4.1990.
25. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
26. Numbered as sub-section (1) by the Finance Act, 1990, w.e.f. 1.4.1990.
27. Inserted, ibid.
28. Inserted, ibid.
29. Numbered as sub-section (1) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
30. Inserted, ibid.
31. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
32. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
33. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
34. Inserted by the Finance Act, 1986, w.e.f. 13.5.1986.
35. Substituted for "Inspecting Assistant" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.

36. Substituted for "Assistant Director of Inspection", ibid.
37. Substituted for "Income-tax", ibid.
38. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
39. Inserted by the Finance Act, 1987, w.e.f. 1.4.1987.
40. Substituted by the Finance Act, 1969, w.e.f. 1.4.1970.
41. Substituted for "Income tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
42. Inserted by the Finance (No.2) Act, 1980, w.e.f. 1.4.1980.
43. Substituted by the Finance Act, 1978, w.e.f. 1.6.1978.
44. Inserted by the Finance (No.2) Act, 1977, w.e.f. 1.9.1977.
45. Substituted for "sub-section (3) of section 212" by the Finance Act, 1978, w.e.f. 1.6.1978.
46. Numbered as Explanation-1 by the Direct Tax Laws (Amendment) Act, 1984, w.e.f. 1.4.1985.
47. Inserted by the Finance Act, 1981, w.e.f. 1.4.1981.
48. Inserted by the Finance Act, 1978, w.e.f. 1.6.1978.
49. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
50. "1" and Explanation-2, as inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.10.1984, omitted by the Finance Act, 1985, w.e.f. 24.5.1985.
51. Inserted by the Finance (No.2) Act, 1991, w.e.f. 27.9.1991.
52. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
53. Substituted for clauses (a) and (b) by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
54. Substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
55. Renumbered by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1.4.1989.
56. Inserted by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1.4.1989.
57. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.

58. Inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12.3.1965.
59. Inserted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
60. Inserted by the Finance Act, 1965, w.e.f. 1.4.1965.
61. Omitted by the Finance Act, 1986, w.e.f. 1.10.1986.
62. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
63. Inserted by the Finance Act, 1988, w.e.f. 1.6.1988.
64. Substituted for section 276C by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
65. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
66. Inserted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1.4.1971.
67. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
68. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
69. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
70. Substituted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
71. Inserted by the Finance Act, 1985, w.e.f. 24.5.1985.
72. Inserted by the Income-tax (Second Amendment) Act, 1981, w.e.f. 11.7.1981.
73. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
74. See also Letter [F.No.4/7/69-IT (Inv.)], dated 21.3.1969.
75. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
76. Substituted for "under sub-section (4A) of section 271" by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
77. Inserted by the Finance (No.2) Act, 1991, w.e.f. 1.4.1992.

78. Substituted for "discloses any particulars, the disclosure of which is prohibited by section 137" by the Finance Act, 1964, w.e.f. 1.4.1964.
79. Substituted by the Wealth-tax (Amendment) Act, 1964, w.e.f. 1.4.1965.
80. See also Circular no.8-WT, dated 15.11.1965.
81. Substituted for "Wealth-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
82. Substituted for "Appellate Assistant Commissioner", ibid.
83. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
84. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
85. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
86. Substituted, alongwith Explanations 1 and 2, by the Finance Act, 1968, w.e.f. 1.4.1968.
87. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
88. Omitted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.
89. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
90. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.10.1984.
91. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 10.9.1986.
92. Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1976.
93. Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
94. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
95. Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

96. Substitution, sub-section (5).
97. First restored to its original version, i.e. prior to its substitution by the Direct Tax Laws (Amendment) Act, 1987, and then substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
98. "1" omitted by the Finance Act, 1985, w.e.f. 24.5.1985.
99. "Explanation-2" omitted by the Finance Act, 1985, w.e.f. 24.5.1985.
100. Inserted by the Finance (No.2) Act, 1991.
101. Sections 35A, 35B, 35C, 35D, 35E, 35F, 35G, 35H, 35-I, 35J, 35K, 35L, 35M and 35N incorporating provisions of section 36 were inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.
102. Substituted by the Finance Act, 1988, w.e.f. 1.4.1989.
103. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
104. Substituted by the Finance Act, 1990, w.e.f.1.4.1989.
105. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
106. Inserted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 19.9.1986.
107. Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
108. Inserted by the Wealth-tax (Amendment) Act, 1964, w.e.f. 1.4.1965.
109. Substituted by the Gift-tax (Amendment) Act, 1962, w.e.f. 1.4.1963.
110. Substituted for "Gift-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
111. Substituted for "Appellate Assistant Commissioner", ibid.
112. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.
113. Inserted, ibid.
114. Substituted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1.4.1989.

115. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1989.
116. Substituted for "33" by the Finance Act, 1964, with retrospective effect from 1.4.1958.
117. Substituted for "Gift-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
118. Substituted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.10.1984.
119. "sub-section (2) or" omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
120. Inserted by the Gift-tax (Amendment) Act, 1962, w.e.f. 1.4.1963.
121. Substituted by the Finance (No.2) Act, 1991, w.e.f. 1.10.1991.
122. Substituted Gift-tax (Amendment) Act, 1962, w.e.f. 1.4.1963.
123. Renumbered by the Finance (No.2) Act, w.e.f. 1.4.1963.
124. Inserted, ibid. w.r.e.f. 1.4.1958.
125. Sections 35A, 35B and 35C inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975.