CHAPTER THREE

ANALYSIS AND INTERPRETATION OF STATUTORY PROVISIONS

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3.1 Introduction:

The discussion in the present Chapter focuses on the analysis and interpretation of the statutory provisions reproduced in the preceding Chapter. The exercise concentrates on judging the overall significance and correlationship of these provisions, the procedural aspects of the penalties and prosecution under the direct tax laws.

3.2 The Income-tax Act, 1961:

Section 271 (section 28 of 1922 Act): Law to be applied is that is in force on the date of default which attracts penalty. This section is to be applied as it stands on the date when the default which attracts penalty is committed, e.g. when an untrue return is filed, involving concealment of income; and not as it stands in the financial year for which the assessment is made nor as it stands at the time the penalty proceedings are taken where penalty is sought to be levied for concealment of income; but the law to be applied is that in force when the original return was filed and not that is in force when a revised return with an identical concealment is filed or when the return in answer to a notice under section 148 is

filed showing the same income originally returned or assessed. The question whether an act or omission is an offence must be determined by references to the law as it stands at the time the act is done or the omission made. The original explanation which was inserted with effect from 1.4.1964 applied to a case where a false return of income was filed on or after 14.1964 although the return might be in respect of an assessment year prior to 1964-65 but not to a default which took place before that date. Likewise, the quantum of penalty must be determined by reference to the law as it stood when the infringement took place.

Provisions of section 28 of the 1922 Act compared with those of the originally enacted section 271: Sec.271 of the 1961 Act, as originally enacted, embodied the provisions of sub-secs.(1) and (2) of sec.28 of the 1922 Act, with certain material changes in the scheme of imposition of penalty in order to give effect to certain recommendations of the Direct Taxes Administration Enquiry Committee in Chapter-7, paragraph-60, of its report. The material changes above referred to are:

(i) While sec.28(1) of the 1922 Act prescribed only the maximum amount of penalty which could be imposed, this section 271(1) prescribes both minimum as well as maximum penalties for the various defaults or acts stipulated in this section. Further, in case of penalty

under this sec.271(1)(a), a definite basis, with a ceiling of fifty per cent of the tax, has been prescribed so that in such cases, the amount of penalty is to be ascertained on an arithmetical calculation without any discretion on the part of the authority concerned. Also, the limit of maximum penalty imposable under clauses (a) and (b) of section 271(1) has been brought down from 150% to 50%.

(ii) The minimum income on which no penalty was chargeable under sec.28(1)(a) was Rs.3,500; this sec.271(3)(a) links the amount with the maximum income not liable to tax, thus no penalty is imposable where the total income of the assessee does not exceed the maximum amount not chargeable to tax in this case by one thousand five hundred rupees.

(iii) Under the 1922 Act, the Appellate Tribunal had the power to impose penalty; under the 1961 Act, the Appellate Tribunal has no such power.

(iv) Under the 1922 Act, the Income-tax Officer could not impose penalty without the previous approval of the Inspecting Assistant Commissioner; under the 1961 Act, as originally enacted, except in cases which had to be referred under sec.274(2) to the Inspecting Assistant Commissioner (where the latter authority alone could impose penalty), the Income-tax Officer could independently impose penalty.

(v) Under the 1922 Act, there was no time-limit to complete penalty proceedings; sec.275 of the 1961 Act sets down a time-limit beyond which penalty cannot be imposed.

(vi) Under the 1922 Act, no prosecution could be launched on the same set of facts on which a penalty was imposed; under the 1961 Act, both penalty and prosecution are possible on the same set of facts.

Under the original proviso, the Commissioner was required to obtain the previous approval of the Board to the waiver or reduction of the minimum penalty imposable under sec.271(1)(i), for default in furnishing the return of income or the minimum penalty leviable in cases of concealment of income, only where such minimum penalty, for all the years covered by the disclosure, exceeded Rs.50,000 in the aggregate. Under the new proviso, this monetary limit of Rs.50,000 was revised upward. The Commissioner was, under the new proviso, required to obtain the previous approval of the Board to the waiver or reduction of the minimum penalty imposable for concealment of income only where the concealed income in respect of which the penalty was imposable exceeded Rs.5 lakhs in the aggregate for all the years covered by the disclosure. In cases where the concealed income was Rs.5 lakhs or less, the Commissioner was competent to reduce or waive penalty without referring the matter to the Board. The monetary limit of Rs.50,000 continued to apply in regard to

the requirement of obtaining the Board's approval to the waiver or reduction of the penalty imposable for defaults in furnishing the return of income.

By sec.13 of the Direct Taxes (Amendment) Act, 1974, the originally enacted clause (i) of section 271(1) was substituted, with retrospective effect from April 1, 1962, by a new clause (i) added with an Explanation. The effect of the substitution was that penalty for the failure to furnish the return of income or for failure to furnish it within the time allowed or in the manner required was to be calculated with reference to the amount of income-tax chargeable on the total income as reduced by any sum deducted at source or paid in advance under any provision of the Act.

PENALTY PROCEEDINGS:

Penalty is not an additional tax. Sec.271(1) makes the provision for the imposition of penalty on contumacious or fraudulent assessee. Its provisions do not violate the fundamental rights granted under the Constitution. The penalty is in addition to the income-tax, if any, determined as payable by the assessee, but penalty is not an additional tax. The Supreme Court's observations to the contrary in Abraham v.ITO and CIT v. Bhikaji Dadobhia are, it is submitted, incorrect. Tax and penalty, like tax and interest, are distinct and different concepts under this Act. However, the word

'assessment' would cover penalty proceedings, if it is used (as it is in some sections) to denote the whole procedure for imposing liability on the taxpayer and that is correct rationale of the Supreme Court's decision in Abraham's case and Bhikaji Dadobhia's case.

Penalty proceedings are penal in nature. Penalty proceedings under sec.271 are penal in character. One of the principal objects in enacting such a provision is to provide a deterrent against recurrence of default on the part of the assessee. The section is penal, in the sense that its consequences are intended to be effective deterent which will put a stop to practices which the legislature considers to be against the public interest. In England also, it has never been doubted that such proceedings are penal in character.

AUTHORITIES COMPETENT TO IMPOSE PENALTY:

Under sec.271(1), a penalty may be imposed by the following authorities:

(i) The Assessing Officer,

(ii) The Deputy Commissioner (Appeals)

(iii) The Commissioner (Appeals) (w.e.f. 10.7.1978).

The condition for the operation of the section is that the income-tax authority should be satisfied in the course of any proceedings under this Act that a person has been guilty of the

specified default. However, the effect of sec.297(2)(g) is that penalty can be imposed under this section in respect of default committed and detected in the course of proceedings under the 1922 Act if the assessment is completed on or after 1st April 1962.

A penalty may be imposed for defaults in the course of any proceedings under this Act, for instance, a penalty may be imposed on the assessee by the CIT(A) in an appeal filed by the assessee, but the assessing officer cannot impose a penalty in respect of the additional concealed income discovered by the CIT(A) in the course of an appeal against the assessment. Where the assessee files an appeal against an order of penalty under this section, the CIT(A) can himself impose a fresh penalty while allowing the appeal. If the order of penalty is set aside in appeal on the ground that a hearing was not given to the assessee, the AO would be competent to impose a penalty again after correcting the proceedings and hearing the assessee. If the status of an assessee, taken by the AO as that of an individual is converted in appeal into that of a Hindu undivided family, the penalty proceedings originally started against the assessee as an individual cannot be continued in the same status and a penalty cannot be imposed on him as an individual in respect of the concealed income ultimately assessed in the hands of the family.

An order of penalty may be vitiated by vagueness or non-application of mind to the facts of the case, e.g. if in a case of late filing of return, the starting point of default is not indicated or quantum of the penalty computed is less than that statuorily fixed. Furthermore, a protective order of penalty cannot be passed.

Limitations on Powers of ITO/Assessing Officer:

The Direct Tax Laws (Amendment) Act, 1987, has inserted a new sub-sec.(2) in sec.274 w.e.f. 1.4.1989. According to this new section, no order of penalty shall be imposed by: (i) Income-tax Officer where penalty exceeds Rs.10,000; and (ii) by the Assistant Commissioner where the penalty exceeds Rs.25,000, except with the previous approval of the Deputy Commissioner obtained by the Assistant Commissioner. It may be observed that the restriction on the power of imposing penalty under the new sub-sec.(2) of sec.274 is general, i.e. it is applicable to the penalties imposable.

Imposition of penalty purely discretionary:

An order imposing penalty for the failure to carry out a statutory obligation is the result of quasi-criminal proceedings and the penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of a conduct contumacious or dishonest, 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 a matter of discretion of the authority to be exercised judiciously and on consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

Person on whom penalty imposable:

The language of sec.271(1) is that if any person has committed any of the defaults enumerated in clauses (a) (b) and (c) thereof, the penalty may be imposed on such 'person'. The word 'person' has been given an inclusive definition in sec.(2)(3) and it includes an individual, a Hindu undivided family, a company, a firm, an association of persons, a local authority and every artificial juridical person.

Penalty for failure to comply with notice:

Clause (b) of sec.271(1) enumerates the following defaults which will attract penalty in terms of cl.(ii) of that section:

(i) failure to comply with notice under sec.142(i) for production of books of account, documents or information on specified points or under sec.143(2) for production of any evidence in support of return of income; or

(ii) failure to comply with the directions issued under sec. 142(2A) for audit of accounts.

If the assessing officer issues a notice requesting the assessee to produce such accounts, documents or information as the assessing officer may require, sec.143(2) empowers him to issue a notice requiring the assessee to attend at the office or to produce any evidence on which the assessee may rely in support of his return. The notice under his sub-sec. may be issued even before the return is filed, whereas the notice under sec.143(2) can be issued only after the return is filed. Under sec.143(2), the assessee may produce such evidence as he pleases or elects not to produce any evidence at all whereas under this sub-section the assessee must produce the accounts or documents required by the assessing officer and a wilful failure to produce the same would be punishable under sec.276-D and entail a 'best judgment assessment' under sec.144 upon the assessee's refusal or failure to comply with the notice. Under sec.142(i), the assessing officer has the right to enter on the assessee's premises to search for and seize accounts. A combined notice under secs.142(i) and 143(2) is legal and valid.

The nature and complexity of the accounts of the assessee and the interest of the revenue, if the assessing officer deems it necessary, he may with previous approval of the Commissioner, direct the assessee under sub-sec.(2A), to get

the accounts audited by an accountant nominated by the Commissioner. Rule 14A prescribes the form of audit-report. Failure to comply with such a direction entails a 'best-judgement assessment' under sec.144, attracts penalty under sec.271(1) and is an offence punishable under sec.276D.

Minimum and maximum limits:

The minimum and maximum limits of penalty will be as under for each default:

(i) Minimum penalty Rs.1,000;

(ii) Maximum penalty Rs.25,000.

It may be observed that, as noticed earlier, the minimum and the maximum limits have to be adhered to. It may also be noted that the penalty may be imposed in respect of each default mentioned in clause (b) because all defaults are distinct and independent of each other.

Penalty for concealment of income:

Clause (c) of sec.271(1) enumerates defaults attracting penalty for concealment of income as follows:

(i) Concealment of particulars of income; or

(ii) Furnishing inaccurate particulars of income.

The meaning of the word 'concealment' as found in the "Shorter Oxford English Dictionary" is as folllows:

In law, the intentional suppression of truth or fact known, to the injury or prejudice of another.

The dictionary meaning of 'concealment' is "to hide, to keep

secret". The word 'conceal' is derived from the Latin 'concealare', which implies 'to hide'. Webster, in his new International Dictionary equates its meaning "to hide or to withdraw from observation, to cover or to keep from sight; to prevent the discovery of or to withhold knowledge of". The offence of concealment is thus a direct attempt to hide an item of income or portion thereof from the knowledge of the income-tax authorities.

Section 271(1)(c) can be divided into two parts: (i) concealment of particulars of income; and (ii) inaccurate particulars of such income given in the return. These parts have to be read as independent parts and any ingredient may be the cause for the imposition of the penalty. One may treat concealment to one part and the same part can also be considered in some respects as a matter of furnishing inaccurate particulars. Both the parts may be overlapping in some cases, both the parts have been used distinctly, but at the same time, the intention of the legislature should be considered and one case may fall with the purview of both the parts also. Though the expression 'concealed the particulars of his income' and 'furnished inaccurate particulars of such income' are used as disjunctive terms in sec.271(c) and these are two separate offences. The commission of one does not exclude the possibility of the commission of the other, the two charges can, and very often do, subsist together.

It is, therefore, clear that sec.271(c) deals with two specific facts. Some cases may attract both the offences and in some cases, there may be an overlapping of the two offences, but in such cases, the initiation of penalty proceedings must also be for both the offfences. But drawing up a penalty proceeding for one offence and finding the assessee guilty of another offence or for either the one or the other offence cannot be sustained in law.

Failure of a non-resident to disclose his foreign income in cases where it is required to be disclosed and deliberate non-disclosure of receipt which is taxable under a deeming provisions like sec.41(1) are covered by this clause. But the assessee who does not include in his return the income of his wife or minor child, which is includable in his total income under sec.64 is not liable to penalty under this clause if the basic facts are disclosed to the Income-tax Department. The Supreme Court decision in CIT v. Kochamma Amma that the assessee's failure to include in his return the spouse's or minor child's share of partnership profits would attract penalty under this clause must be confined, it is submitted, to cases where the basic facts are not disclosed to the department, where an assessee makes a false return or by misleading the income-tax authorities, evades tax. Proceedings may not only be taken under this section to assess such income, but penalty proceedings may be launched under sec.271(i) and prosecution under secs.276 and 277.

The word 'income' in this section is not used in the popular sense of money received but connotes the assessable figure arrived at after accounting for all the legitimate deductions and exemptions. Therefore, if an assessee falsely claims a deduction, it would amount to concealing the particulars of his income or deliberately furnishing inaccurate particulars of such income within the meaning of this clause and he can be penalized under this section. Concealment of income in the original return would attract penalty even if the assessee submits a revised return before the assessment is completed or the penalty proceedings are started.

However, the original return is not the decisive factor in every case. The section comes into operation if "in the course of any proceedings under this Act", the assessing officer is satisfied that income has been concealed. Therefore, if the assessee, having filed a false return, makes a voluntary disclosure or files a revised return even before the assessing officer takes up the original return for consideration and the assessment is made on the basis of such disclosure, penalty should not be imposed.

If the only default on the part of the assessee is that he did not furnish any return of income, the case would fall within clause (a) and not within clause (b) or clause (c). Mere failure to file a return of income is not tantamount to the concealment of the particulars of the income. However,

an exception to this principle is now made in Explanation-3 to sub-sec.(i), under which failure to furnish a return of income is, in certain circumstances, deemed to be tantamount to concealment of the particulars of income.

Where any adjustment in the returned income is made under the provision to sec.143(1)(a) and additional tax is charged under sec.143(1A), penalty under this clause is not to be levied in respect of such adjustment.

In cases of concealment falling under sec.271(1)(c), the maximum and minimum penalty imposable was calculated prior to the amendment in 1968 by reference to the difference between the tax on income returned and the tax on the income assessed; thereafter, upto the amendment with effect from 1.4.1976, by reference to the amount of income concealed and is now to be calculated by reference to the amount of tax sought to be evaded.

Quantum of Penalty:

Since cl.(iii) of sec.271(i) has undergone frequent changes the quantum of penalty imposable thereunder for concealment of income may be analysed as under:

From	1.4.1962	20% to 15% of tax which would have been avoid-
To	31.3.1968	ed if the income returned had been accepted as correct.
From	1.4.1968	The minimum penalty leviable on a person for
To	31.3.1976	concealment of income, i.e. concealment of the

	particulars of his income or furnishing of inaccurate particulars of such income was somewhat equal to the amount of the concealed income and the maximum amount of such penalty was twice the amount of the concealed income.
From 1.4.1976	100% to 200% of the amount of the tax sought to be evaded by reason of concealment.
From 1.4.1989	100% to 300% of the amount of tax sought to be evaded.

Penalty on legal representatives:

If the legal representative of a deceased assessee does not file an estimate of advance-tax in respect of the income of the deceased, penalty under sec.273 can be validly imposed on him.

Penalty on Hindu Undivided Family after disruption:

Section 171(8) expressly enacts that the provisions of the section apply in relation to the levy and collection of penalty, interest, fine or other sum in respect of any period upto the date of partition, as they apply in relation to the levy and collection of tax.

In some earlier cases, it was held that the provision of sec.25A of 1922 Act did not apply to penalty proceedings. But the Supreme Court ruled in Gaurishankar v. CIT that even

under that section, a Hindu family once assessed as an undivided was deemed to continue to be aw Hindu undivided family for all the purposes of the Act till order accepting the partition was passed under that section. Therefore, a penalty could be imposed on a disrupted family, even while its application for recognizing that the partition was pending.

Penalty on dissolved Association of Person:

Section 177 - The provisions of this section apply where an association of persons is dissolved or its business or profession is discontinued. The assessing officer, the deputy commissioner (appeals) or the commissioner (appeals) may impose any penalty on the association of persons in respect of any such association of person as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter-XXI, he may impose or direct the imposition of penalty in accordance with the provisions of that Chapter. This section does not apply to Hindu Undivided Families.

Penalty on Dissolved Firm:

Sub-section (2) of sec.189 specifically authorizes the assessing officer or the deputy commissioner (appeals) or the commissioner (appeals) to impose penalty under secs.271 to 273B of Chapter-XXI, if they are satisfied during the course of any proceedings in respect of a dissolved firm whose business

has been discontinued that such firm was guilty of any defaults specified in those sections of that Chapter. Penalty proceedings may be initiated and penalty may be imposed on a firm even after its dissolution. This principle iis applicable to all firms, whether registered or not under the Act.

If an assessee conceals his income or commits any other defaults in the course of proceedings under sec.147 to assess a past year's income which has escaped tax, penalty would clearly be leviable under this section.

Penalty on Registered Firms:

Sub-section (2) of sec.271 does not violate Article 14 of the Constitution. Under sub-sec.(1), a penalty can be validly imposed on a registered firm, but the quantum of penalty for some defaults, depends upon the amount of tax payable by the assessee; and only registered firm's tax is payable by a registered firm. This sub-section provides that the registered firm is to be treated as if it were unregistered and the penalty is to be imposed on that basis. The corresponding provision in the 1922 Act was inserted as an amendment in 1940 and it was held that no penalty could be imposed under the amended provision upon a registered firm, which had committed a default prior to the date when the amendment came into force. Penalty cannot be imposed on a registered firm for not voluntarily filing a return, if its income is below the taxable minimum, or if the tax

deducted at source and paid in advance equals to or exceeds the registered firm's tax as assessed on regular assessment. This sub-section cannot be invoked in such a case but if a registered firm files a return of income and is guilty of concealment, according to Gujarat High Court, it would be liable to penalty.

For a default by a firm, penalty cannot be levied both on the firm and its individual partenrs.

Section 245-H empowers the Settlement Commission to grant immunity in certain circumstances from the imposition of any penalty under this Act with respect to the case recovered by the settlement.

Any apparent mistake in an order of penalty passed by the assessing officer may rectified under sec.154(1). An appeal lies to the CIT(A) against the order passed by the assessing officer imposing a penalty under this section. The commissioner (appeals) may, in appeal, confirm, cancel, enhance or reduce the penalty [sec.251(1)(B)]. An appeal lies to the Appellate Tribunal against an order passed by the commissioner (appeals) under this section, imposing a penalty against an order passed by him under section 150 in appeal against a penalty imposed by the assessing officer [Sec.253(1)(a)].

Penalty for failure to keep, maintain books of account, documents, etc.:

Section 271A was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.4.1976.

Section 271A was inserted to provide for penalty for failure to keep and maintain books of accounts, etc. Every person, carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the assessing officer to compute his total income in accordance with provisions of the Act.

Every person carrying on business or profession, if his income from business or profession, exceeds Rs.25,000 or his total sales turnover or gross receipts, as the case may be, in business or profession exceeds Rs.2,50,000, in any one of the three years immediately preceding the previous year, where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed Rs.25,000, keep and maintain such books of account and other documents as may enable the assessing officer to compute his total income in accordance with the provisions of this Act.

The Board has also been given the power to proscribe,

through rules, the books of account, documents, etc., to be maintained by any class of taxpayers. The Board has been empowered to prescribe the period for which the books of accounts are to be retained. In case of default in computing with these provisions, the assessee will be liable to penalty which shall not be not less than Rs.2,000 but which may extend to Rs.1,00,000. Rule-6F prescribes the books of account and other documents to be kept and maintained by the specified assessee.

Under this section, the following authorities can impose penalty for the default:

(i) The Assessing Officer,

(ii) The Deputy Commissioner (Appeals);

(iii) The Commissioner (Appeals).

Before any penalty can be imposed under this section, the authority concerned is required to give a reasonable opportunity of being heard to the assessee. An appeal has been provided under sec.246(1)(a) till 31.3.1989 and under sec.246(1)(ii) from 1.4.1989 to the Deputy Commissioner (Appeals) against the order of the assessing officer imposing penalty under sec.271A and to the Appellate Tribunal under sec.253(1)(a) against the order of the Commissioner (Appeals) imposing the penalty under this section.

Quantum of penalty:

The quantum of penalty under sec.271A is as follows;

Period	Minimum	Maximum
From 1.4.1976 To 31.3.1989	10% of tax which would have been payable	50% of tax which would have been payable
From 1.4.1989 onwards	Rs. 2,000/-	Rs.1,00,000/-

Failure to get accounts audited:

Section 271B was inserted by the Finance Act, 1989, with effect from 1.4.1985 to provide for imposition of penalty for the failure to get the accounts audited. It may be observed that section 44-AB was inserted by the Finance Act, 1984, with effect from 1.4.1985 to provide for compulsory audit of accounts in the case of the assessees specified thereunder. This section provided for imposition of penalties for the failure to get the accounts audited, etc.

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Defaults attracting the penalty:

The following defaults would attract the penalty under section 271B.

1. Failure to get accounts audited, or
2. Failure to obtain report of audit, or
3. Failure to furnish report of audit along with the return of income furnished in response to notice under section 142(1).

Every person carrying on business shall if his total sales turnover or gross receipts in business exceeds Rs.40.0 lakh in any previous year, or carrying on profession shall, if his gross receipts in profession exceed Rs.10.0 lakh in any previous year, get his accounts of such year audited by an accountant before the specified date and obtain before that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. In case of default in complying with these provisions, the assessee will be liable to penalty which shall not be less than 1/2% of the total sales or turnover or Rs.1.0 lakh whichever is less.

This section empowers only the assessing officer to impose penalty for the defaults enumerated thereunder.

No appeal lies against the order imposing the penalty under this section to the Commissioner (Appeals) under section 246(2) till 31.3.1989 and to the Deputy Commissioner (Appeals) under sec.246(1)(ii). If the order of penalty is passed by an assessing officer (other than the deputy commissioner) or to the commissioner (appeals) under sec.246(2)(c) in any other case with effect from 1.4.1989.

Penalty for failure to deduct tax at-source:

Section 271-C has been inserted by the Direct Tax Laws

(Amendment) Act, 1987, with effect from 1.4.1989 to provide for imposition of penalty for the failure to deduct tax at-source. If any person fails to deduct the whole or any part of the tax 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 tax which he has failed to deduct as aforesaid.

If the payer does not deduct the tax or after deducting it, fails to pay the same to the government, he would be deemed to be an assessee in default in respect of the tax and would be personally liable to pay the tax with interest thereon and would also be liable to penalty under sec.221 in case of failure to deduct and pay the tax, without good and sufficient reasons, or under sec.271, in the absence of reasonable cause, failure to pay to the government the tax deducted at source would also be an offence under sec.276B.

Penalty for failure to comply with the provisions of section 269-SS.

Section 271-D has been inserted by the Direct Tax Laws (Amendmnt) Act, 1987, with effect from 1.4.1989, to provide for levy of penalty for the failure to comply with the provisions of sec.269-SS regarding the mode of taking or accepting loans and deposits.

Section 269-SS, inserted by the Finance Act, 1984, with effect from 1.4.1989, prohibits taking or accepting a loan

or deposit after 30.6.1989 in an amount of Rs.20,000 (Rs.10,000 till 31.3.1989) or more, otherwise than by an account-payee cheque or bank-draft. New sec.271-D provided for levy of penalty where any person takes any loan or deposit in contravention of the provisions of sec.269-SS. The amount of penalty is of a fixed sum equal to the amount of loan or deposit so taken or accepted.

Penalty for failure to comply with Sec.269T regarding the mode of repayment of certain deposits:

This section was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989, to provide for penalty in case of failure to comply with the provisions of sec.269T regarding the mode of repayment of deposits.

The object of insertion of sec.269T was to counteract tax evasion by regulating the mode of repayment of deposits In certain cases, section 269T prohibits repayment of any deposits in an amount of Rs.20,000/- (Rs.10,000/- till 31.3.1989) otherwise than by an account-payee cheque or bank-draft. New sec.271-E provides for imposition of penalty on a person repaying any deposit in contravention of the provision of sec.269-T. The penalty is of a sum equal to the amount of deposit so repaid.

Penalty for failure to answer questions or sign statements, furnish information, return or statements, allow inspection, etc.

Sec.272-A was inserted by the Taxation Laws

(Amendment) Act, 1975, with effect from 1.4.1976. Simple defaults attracting minimum and maximum penalty are included in clauses (a) to (d) of new sub-sec.(1).

(i) refusal to answer any question before the income-tax authority;

(ii) refusal to sign a statement;

(iii) non-compliance with summons issued under sec.131(1);

(iv) any person who fails to apply for allotment of permanent account number under sec.139A.

Every person, if his total income or the total income of any other person in respect of which he is assessable, under this Act, during any previous year, exceeded the maximum amount which is not chargeable to income-tax and he has not been allotted any permanent account number, should within such time as may be prescribed, apply to the assessing officer for the allotment of a permanent account number. If he fails to apply for the allotment of permanent account number under sec.139A, he shall be liable to pay the penalty.

Minimum and maximum penalty for simple defaults:

Sub-section (1) of sec.272A secures minimum penalty of Rs.500/-, extending upto the maximum of Rs.10,000/- for each default. Clauses (a) to (h) of sub-sec.(2) of the new section 272 enumerates the following defaults which will attract penalties:

(i) Failure to furnish information regarding securities, etc.;

(ii) Failure to give notice of discontinuance of business or profession;

(iii) Failure to furnish certain returns and statements;

(iv) Failure to allow inspection of registers;

(v) Failure of a representative-assesee in respect of the income of the charitable trust, etc., to furnish return of income;

(vi) Failure to deliver to the commissioner, a copy of the declaration furnished by the payee under sec.197A;

(vii) Failure to furnish certification for tax deducted at source as required by section 203;

(viii) Failure to deduct tax from salary in accordance with the order of the assessing officer under sub-sec.(2) of section 226.

Sub-section (20 of sec.272A brings together at one place various existing provisions dealing with defaults now enumerated in clauses (a) to (h) of the sub-section, whereas the existing section provides for different modes of computation of penalty for different defaults, the new sub-section accords uniform treatment by providing for a minimum penalty of Rs.100 extending to the maximum of Rs.200/- per everyday of any of the specified defaults.

Sub-section (3) enumerates the authorities empowered to impose penalties for defaults mentioned in sub-secs.(1) and (2):

(i) Income-tax authority concerned, where default is committed before such authority not lower in rank than a Deputy Director or Deputy Commissioner;

(ii) Chief Commissioner or Commissioner for the failure to deliver a copy of the declaration of no tax deduction under sec.197A;

(iii) Deputy Director or Deputy Commissioner in any other case.

The explanation to new sec.272 clarifies that in this section 'income-tax authority' includes a Director-General, Director, Deputy Director and an Assistant Director and in consequence to the amendment of sec.131 enabling the Director-General, etc., to exercise the powers under that section.

Penalty for failure to comply with section 133-B:

Section 272-AA was introduced by the Finance Act, 1986, with effect from 13.5.1986, to provide for penalty for failure to comply with the provisions of section 133B, conferring power an income-tax authority to enter into any place of business or profession for collection any information useful for or relevant to.

Section 272-AA provides for imposition of penalty for failure of any person to comply with the provisions of sec.133-BB relating to furnishing of information prescribed, the quantum of penalty imposable under this section may extend to Rs.1,000/-. However, no penalty, as aforesaid,

can be imposed on any person without giving him an opportunity of being heard in the matter.

In this section, an 'income-tax authority' means a Deputy Commissioner, an Assistant Director or an Assessing Officer and includes an Inspector of Income-tax who has been authorized by the Assessing Officer to exercise the powers conferred under this section, in relation to the area in respect of which the assessing officer exercises jurisdiction of part thereof.

Rule 112E prescribes the form in which the information required under this section should be furnished,; failure to comply with the direction under this section may attract the penalty under sec.272-AA.

Penalty for failure to comply with provisions of section 203-A:

Section 272-BB was inserted by the Finance Act, 1987, with effect from 1.6.1987 to make a provision for levy of penalty for failure to comply with the provisions of section 203-A, relating to obtaining of tax deduction account numbers and quoting the same on all challans, certificates, returns, etc.

Every person deducting tax in accordance with the provisions of secs.192 to 194, 194A, 194B, 194BB, 194C, 194D, 195 and 196A. if he has not been allotted any tax deduction account number shall, within such time as may be prescribed, apply to the assessing officer for the allotment of a tax

deduction account number. This number will be quoted in all the challans for payment of any tax deducted at source, in all certificates for the tax deducted, in all the prescribed returns filed by the persons paying salary and interest to residents and in all other documents pertaining to such transactions which the Central Board of Direct Taxes may prescribe.

Rule-114A prescribes the form in which an application for the allotment of a tax deduction account number is to be made under sub-sec.(1) failure to comply with the provisions of this section may attract penalty under section 272-BB. The penalty may extend upto a sum of Rs.5,000/- and it can be imposed only by the assessing officer. However, no penalty can be imposed without giving the person concerned an opportunity of being heard in the matter.

False estimate of, or failure to pay, advance tax:

Section 273 corresponds to the provisions of sub-sec.(9) of sec.18 of the 1922 Act. The provision of this section apply only in respect of assessments for the assessment-years prior to 1989-90 (sub-sec.3). A penalty may be imposed under this section for deliberately furnishing an untrue estimate, or not furnishing an estimate, of advance tax under sec.212 and later under sec.209A (now both deleted). The fact that the assessee himself later returns a higher income in the

regular assessment proceedings than what he had estimated under sec.212, does not by itself lead to the inference that at the time of sending the estimate he knew that it was incorrect. Under the 1922 Act, it was held that in the assessee has made an honest and fair estimate, no penalty could be imposed although he failed to submit subsequently a revised estimate when there was a sudden rise in income.

The effect of section 297(2)(g) is that penalty can be imposed under this section in respect of a default committed and detected in the course of proceedings. Under the 1922 Act, if the assessment is completed on or after 1st April 1962. An assessment is completed when the assessing officer makes the assessment order. If the original assessment is set aside, in the appeal and the matter is remanded to the assessing officer, the assessment is completed when the assessing officer makes the fresh assessment. The Gujarat High Court held in Gunvantlal Mangaldas v. CIT that the words 'any assessment completed before the 1st day of April 1962' mean in the context of any stage in the procedure of imposing the tax liability upon the taxpayer and cover the mere issue notice for a payment of advance tax. It is submitted that the decision is incorrect and the words 'assessment completed' are not suspectable of such construction.

Clause (g) constitutes an exception to the general principle that the law to be applied is that in force on the

date when default which attracts penalty has been committed. It enacts that in respect of the assessment years prior to 1962-63, if the assessment is completed on or after 1st April, 1962, penalty may be levied under the provisions of this Act.

The quantum of penalty should be determined with reference to the provision of sec.271 of this Act and not sec.28 of the 1922 Act and the assessee is liable to both penalty and prosecution for the same default.

In the case of failure without reasonable cause to send an estimate of advance tax under sec.212(3) or 209(A), a penalty may be imposed under this section. However, no such penalty can be imposed on an agent of a non-resident for not having made an estimate and advance payment of tax under secs.212(3) or 209A before he was held assessable as an agent under sec..163 for that year. A penalty under this section cannot be levied both on the firm and on the individual-partner whose estimate of income is based on the estimate filed by the firm.

The provision of this section is applicable only for the assessment year 1988-89 and earlier years in view of sub-sec.(3) inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989. The provisions of sec.273, which provides for the levy of penalty in case of

false estimate of, or failure to pay, advance tax may be analysed in a tabular form as under:

Defaults	Minimum penalty	Maximum penalty	Section
1. False statement of advance-tax under section 209(1)(a)	10% of amount by which advance tax actually paid falls short of - (a) 75% of assessed tax defined in sec.251(5), or (b) Amount of tax payable if correct and complete statement filed, whichever is less	15% of the amount mentioned in col.3.	273(1)(a)(i)
2. Failure to furnish statement of advance-tax under section 209A(1)(a)	10% of 75% of the assessed tax as defined in sec. 215(5)	15% of 75% of assessed tax as defined iin section 215(5)	273(1)(b)(ii)
3. False estimate of advance tax under sec.209A(1)(2)(3) or (5) or sec.212 (1) or (2)	10% of amount by which advance tax actually paid falls short of (a) 75% of assessed tax defined in sec.215(5), or	15% of 75% of amount mentioned in col.3.	273(2)(a)(i)

...contd.

Defaults	Minimum penalty	Maximum penalty	Section
	(b) amount payable under statement furnished under sec.209A (1)(a) or notice under sec.210, whichever is less		
4. False estimate of advance-tax under sec.209A(4) from assessment year 1979-80 or under sec.212(3A) from assessment year 1978-79	10% of amount by which tax actually paid falls short of 75% of assessed tax defined in sec. 215(5)	15% of amount by which tax actually paid falls short of assessed tax defined in sec.215(5)	273(2) (aa) (ia)
5. Failure to furnish estimate of advance tax under sec. 209A(1)(b)	10% of 75% as assessed tax defined in sec. 215(5)	15% of 75% of assessed tax defined in section 215(5)	273(2) (b)(ii)
6. Failure to furnish estimate of advance-tax under sec. 209A(4) from the assessment year 1979-80 or under section 212(3A).	10% of amount of which tax payable under statement under sec. 209A(1)(a) or estimate under sec.209A(1)(b) or estimate in lieu of statement u/s. 209(2) or notice u/s.210 falls short of 75% of assessed tax.	15% of amount mentioned in col.(3)	273(2) (c)(iii)

Assessed Tax:

Section 215(5) defines the expression 'assessed tax' for the purpose of this section. Assessed tax means the tax determined on the regular assessment but which is to be reduced by the tax deducted at source under secs.192 to 194, 194A, 194C, 194D and 195, so far as such tax is related to income, subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year in which the regular assessment is made.

The Commissioner is empowered to reduce or waive the penalty imposed or imposable under this section. The penalty imposed for filing untrue estimate of the advance tax can be cancelled by the appellate authority if it finds that the estimate filed was an honest and fair estimate. An appeal lies under sec.246 against an order imposing a penalty under this section.

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

Section 273A is a new section, without any corresponding provision in the 1922 Act and it was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.10.1975 in place of sub-secs. (4A) and (4B) of section 271, which were omitted, though under sec.271(4A).

The Commissioner had no jurisdiction to reduce okr waive penalties under sec.273. The distinction between the

the provisions of sec.271(4A) and (4B) and 273-A is that under sec.271(4A), the Commissioner had power to reduce or waive the penalties under section 271(1)(a) and 271(1)(a) only. This power has been enlaged to cover reduction or waiver of penalty under section 273 for furnishing false estimate of, or failure to pay, advance tax, as also interest chargeable under secs.139(8), 215 and 217. The power to waive or reduce the penalty imposable under sec.273 or interest chargeable under secs.139(B), 215 or 217 will be available only in cases where the commissioner is satisfied that, apart from making volunarily and in good faith full and true disclosure of his income, the assessee has paid the tax on the basis of income so disclosed before a notice under sec.139(2) or 148 is issued to him. Another pre-requisite for the exercise of the power by the commissioner will be that he should be satisfied that the assessee has cooperated in any inquiry relating to the assessment of his income for the relevant assessment year. This section should be liberally construed. The power of the commissioner under this section is quasi-judicial and has to be exercised judicially and according to law; it is a power coupled with the duty to do justice to the assessee. The commissioner is under statutory duty to exercise the power in favour of the assessee who has fulfilled all the conditions of the section; he must not take into account factors or reasons which are invalid or extraneous to the section.

One of the conditions prescribed by clauses (a) and (b) for relief under sub-sec.(1) is that the assessee should have voluntarily and in good faith made full disclosure of his income prior to the issue of notice to him under sec.139(2) (now deleted) and the notice is issued to the assessee only when it is served on him. Another condition, embodied in cl.(b) is that the assessee should have voluntarily disclosed the particulars of the concealed income prior to the assessing officer detecting concealment; this condition is not fulfilled where the assessing officer calls for certain information and the assessee makes disclosures realizing that the supply of such information would expose the concealment. The disclosure may be made otherwise than in the return of income, e.g. in a petition to the commissioner. A further condition for relief under sub-sec.(1) is that the assessee should have made satisfactory arrangements for the payment of tax and interest and making an application to the assessing officer under sec.220(3) for extending time for the payment or allowing payment by instalments does not satisfy this condition.

There is no time limit for making an application under this section, the commissioner can exercise his power under this section, not only after but also before, penalty or interest is levied. An assessee can apply to the commissioner under this section even if he has appealed against the order of penalty and even after the tribunal has decided his appeal.

Conversely, an assessee who has unsuccessfully applied to the commissioner under this section is still entitled to appeal against the original order of penalty. The order of the commissioner under this section is open to scrutiny by the court and, therefore, it has to be a speaking order.

For the reduction or waiver of penalty in the following cases, no order can be made without the prior approval of the Board:

(i) where the penalty under sec.271(1)(i) for late filing of return or the minimum penalty under sec.273 and the disclosure relates to more than one assessment year, the aggregate of penalty under sec.271(1)(i) or, if the minimum penalty under sec.273 exceeds Rs.1,00,000;

(ii) where the amount of income in respect of which or the aggregate of such income it discloses relates to more than one year, penalty under sec.271(1)(c) for the concealment of income is imposed or imposable exceeds Rs.5,00,000.

It has been expressly provided by sub-sec.(3) of sec.273 that the power of reduction or waiver under sec.273A(1) is exercisable only once in favour of an assessee. In other words, an assessee can get relief under sec.273(1) only once. Whether the assessment relates to one or more assessment year, if an assessee has got the relief once for a particular year, he will not be entitled to get the relief in any other

assessment year.

Penalty not to be imposed in certain cases:

The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, inserted section 273-B with effect from 10th September 1986 to cast the burden of showing the existence of a reasonable cause or excuse for default under various actions so that he may escape penalty.

It may be observed that by the same amending Act, by which sec.273-B was inserted, the words "without reasonable cause" or "without reasonable excuse" were omitted from various provisions to secure that the default by itself will attract penalty without there being any question of proving the absence of reasonable cause by the revenue. However, in order to mitigate the hardships in genuine cases, sec.273-B provides that notwithstanding anything contained in the provisions of sec.270 till 31.3.1989, sec.271(1)(a) or (b) till 31.3.1989 and section 271, thereafter secs.271A, 271B, 271C, 271D and 271E, all with effect from 1.4.1989. Sec.272A(1)(c) or (d) from 1.4.1989, secs.272A(2), 272AA(10, 272BB from 1.6.1987, secs.273(1)(b) or 273(2)(b) or (c), penalty shall not be imposed on the taxpayer for any defaults under the aforesaid provisions, if he proves that there was reasonable cause for the said default. Reasonable cause depends upon the facts and circumstances of each case. However, the

existence or absence of a reasonable cause is essentially a question of fact.

Procedure for levy of penalty:

Section 274 corresponds to the provisions of sec.28(3)(b) of the 1922 Act. Sec.274 expressly refers to the procedure. The liability to penalty is no doubt attracted by virtue of the provisions of sec.271(1) but how that liability is to determined and by whom and what is the procedure to be adopted for the determination of that liability is provided for in sec. 274. Section 274 is thus clearly a procedural provision.

The section provides that no penalty shall be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard. If such an opportunity to show cause is not given to the assessee, the imposition of penalty would be invalid. A notice calling upon the assessee "to show cause in writing or in person" fulfils the requirements of the section. A notice not signed by the assessing officer or a notice in the printed form in which the ground on which the penalty is sought to be levied is not indicated by striking out the other grounds would be invalid; unless in the latter case, the assessee is aware of the offence he is charged with. The notice may, in the case of a firm, be served on only one partner.

Under the 1922 Act, position under sec.28(6) was that the income-tax offficer was not empowered to impose penalty for concealment of income, except with the prior approval of the income-tax assistant commissioner. Sub-sec.(2) of sec.274, as originally enacted and operating till 31.3.1971, provided that where in the case of penalty for concealment of income under sec.271(1)(c), minimum penalty imposable exceeded Rs.1,000/-, the income-tax officer had to refer the case to the assistant commissioner for imposition of penalty. This sub-section was simple and pure, a procedural provision which prescribed the jurisdiction of two officers namely, the income-tax officer and the assistanta commissioner of income-tax. In such a case, the income-tax officer had no jurisdiction to ask the assessee to appear before him and show cause against the imposition of penalty. However, for the purpose of finding out the jurisdiction of the income-tax officers, the date when the income-tax officer initiated proceedings for penalty alone was relevant and not the filing of the return or any other date.

Restriction on imposition of penalty:

The present sub-sec.(2), which was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1st April, 1989, provides that an order of penalty shall not be passed by the income-tax officer where the penalty exceeds Rs.10,000/- or by the assistant commissioner where it exceeds Rs.20,000/-, without the prior approval of the

Deputy Commissioner.

Bar of Limitation on imposing penalties:

Section 275 is a new section, in the sense that it has no corresponding provisions in the 1922 Act. Therefore, there was no period of limitation for levy of penalty under the 1922 Act. Section 275 only provides the period of limitations for imposition of penalty and it is not a provision for imposing a penalty; it is nearly a procedural or machinery provision.

Section 275 imposes time limits both for commencement and completion of penalty proceedings. This section sets out to prescribe the period of limitation for passing an order of penalty and it uses the words which are crucial as regards the starting of penalty proceedings.

Prescribing a period of limitation for imposition of penalty may be analysed in a tabular form as under:

Assessment year	Period of limitation	Provisions
1.	2.	3.
1961-62 to 1970-71	Two years from the date of completion of proceeedings on which penalty proceedings commenced.	Old section 275
1971-72 to 1988-89	a) Two years from the end of the financial year in which proceedings in the course of which penalty proceedings initiated, completed or six months from the end of month in which appellate order is received by the chief commissioner or commissioner, whichever expires later, where assessment or other order is subject matter or appeal to the appellate authorities or tribunal expires.	Clause (a) of section 275.

contd.on next page.

1.	2.	3.
	b) Two years from the end of financial year in which proceedings, in the course of which action for penalty initiated, are completed, in any other case.	Clause (b) of section 275.
1989-90 onwards	a) Within the financial year in which proceedings, in the course of which action for penalty initiated, are completed, are within six months from the end of the month in which the appellate order is received by the chief commissioner or commissioner, whichever expires later, where the assessment or other order is a subject matter of appeal to the appellate authorities or the tribunal.	Clause (a) of section 275
	b) Within six months from the end of month in which the revisional order under section 263 is passed, where the assessment or the other order is a subject matter of revision under that section.	Clause (b) of section 275
	c) Within the financial year in which the proceedings giving rise to the penalty proceedings, completed or within six months from the end of the month in which the penalty proceedings initiated, whichever expires later, in other cases.	Clause (c) of section 275

Whereas there was no time limit under the 1922 Act, either for commencing penalty proceedings or for completing them and passing a penalty order, section 275 imposes time limits both for commencement and for completion of the penalty proceedings. This section sets out to prescribe the period of limitation for passing an order of penalty and it uses

words which are crucial as regards the starting of the penalty proceedings. Prior to 1971, the section required the penalty order to be passed within two years from the date of completion of the proceedings in the course of which the proceedings for the imposition of penalty have bbeen commenced. The amendment of the section with effect from 1.4.1971 and 1.4.1989 have made no change in the law as regards the time limit for the commencement of the penalty proceedings; the same time limit is enjoyed by the present law.

Contravention of order under section 132(3):

Section 275A was inserted by the Income-tax (Amendment) Act, 1965, with effect from 12.3.1965. There was no corresponding provision in the 1922 Act. The section has remained unchanged since its inception.

This section provides that whoever contravenes any order passed by an authorized officer under sec.132(3) for not removing or parting with or otherwise dealing with any books or account, documents, money, bullion, etc., except with the previous permission of such officer, shall be punishable with rigorous imprisonment, which may extend to two years and shall also be liable to fine. Though the expression 'whoever' has not been defined, it may, in the context, mean an association of persons, firm, and must mean any person who commits the contravention of the order, without exception.

No order is effective and valid unless it is served upon the person concered, therefore, there can be no contravention of an order under sec.132(3) unless it was served upon the person concerned. The criminal liability attaching with the contravention of the order ensures its service on the person concerned.

Removal, concealment, transfer or delivery of property to thwart the tax recovery:

Section 276, which deals with the above, was omitted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.4.1976, consequent upon the recommendations of the Wanchoo Committee in its final report and its provisions were re-enacted from time to time in other provisions of Chapter-XXII. The following cases may be referred to in the context of the omitted sec.276:

(i) ITO v. Balaji Chit Funds -

on amendment of complaint under omitted sec.276(C);

(ii) ITO v. East India Coal Co.Ltd. -

on desirability of enhancement of punishment;

(iii) ITO v. Taurus Equipment (P) Ltd. -

holding that the expression falls without reasonable cause or excuse involved the element of mens rea.

Introduction of new Section 276:

The Direct Tax Laws (Amendment) Act, 1987, has inserted new section 276 with effect from 1.4.1989 to provide for

punishment of fraudulent removal, concealment, transfer or delivery of property to thwart tax recovery.

New sec.276 makes the fraudulent removal, concealment, transfer of delivery to any person, or any property or interest therein by any person to thwart the tax recovery, a punishable offence. The punishment is rigorous imprisonment extending to two years in addition to fine. The word 'fraudulently' and 'intending thereby' employed in this section clearly indicate that mens rea is an essential ingredient of the offence which has to be proved before the accused can be punished.

Failure to comply with the provisions of sub-secs.(2) and (3) of section 178:

Section 276A was inserted by the Finance Act, 1965, with effect from 1.4.1965. There was no provision of section 178 in the 1922 Act, corresponding to this section. Under this section, the liquidators of any company which is being wound-up, whether under the order of a court or otherwise, is bound, under sec.276A. The following offences committed by a liquidator of a company are punishable:

(i) failure to give notice to the assessing officer concerned of his appointment as such within 30 days of such appointment, or

(ii) failure to set aside the amount notified by the assessing officer, sufficient to meet the tax liability of the company; or

(iii) parting with any assets of the company or the properties in his hands, except for the purpose of paying the tax liability of the company or for making any payment to the secured creditors who are entitled to priority over the government-dues or for meeting reasonable costs and expenses of the winding up of the company.

A liquidator committing any of the aforesaid offences will be punishable with rigorous imprisonment which may extend to two years. It may, however, be noted that the punishment for any of the aforesaid offences cannot be an imprisonment for less than six months in the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court. At the same time, the alleged offender may escape punishment if he proves that there was reasonable cause for the failure constituting an offence under sec.276A.

Failure to comply with the provisions of sections 269UC, 269UE and 269UL:

Section 276AB was inserted by the Finance Act, 1986, with effect from 13.5.1986 to provide for punishment for the failure to comply with the provisions of secs.269UC, 269UE and 269UL inserted by the same Act.

The following offences are punishable under sec.276AB:

(i) Failure to comply with the provisions of sec.269UC, that is, failure to enter into written agreement for transfer of an immovable property of the value of the apparent

consideration of more than Rs.10.0 lakhs, situate in Delhi, Greater Bombay, Calcutta Metropolitan Area, Madras Metropolitan Region or Ahmedabad Urban Development Area; or failure to submit statement to the appropriate authority for such transfer in form no.37-1 within 15 days of the agreement of transfer;

(ii) Failure to surrender or deliver possession of the immovable property to the appropriate authority or its authorized agent under sec.269E(2) within 15 days of the service of the order by the said authority, etc.;

(iii) Contravention of the provisions of sec.269UL(2) regarding doing or omitting to do anything having the effect of transferring any immovable property covered by sec.269UC(3) without 'no-objection certificate' from the appropriate authority.

A person committing any of the abovementioned offences will be punishable with rigorous imprisonment extending to two years in addition to fine. The rigorous imprisonment under this section cannot be less than six months. In the absence of special and adequate reasons to the contrary to be recorded in the judgement of the convicting court, if the accused wants to escape the punishment, provided there was reasonable cause for the offence.

Failure to pay the tax deducted at source:

Section 276B, as it stood prior to its substitution by the

Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989, made failure to deduct tax at-source also an offence. The implications of this section were analyzed in Goel v.Verma. The section applies also where there is delay in payment of tax deducted at-source. Prosecution under this Act cannot be launched for failure under the 1922 Act to pay to the government the tax deducted from dividend. A limited company cannot be prosecuted under this section since it cannot be punished with imprisonment, while imprisonment is imperative under this section; but in such cases, its directors and officers may be prosecuted and punished in the circumstances set out in section 278B.

Under section 276B existing till 31.3.1989, the failure to deduct tax at-source and also the failure to deposit the tax so deducted was a punishable offence. The substituted sec.276B excludes the failure to deduct tax under sec.80E or Chapter XVII-B from the purview of the section as sec.80E has been omitted with effect from 1.4.1989 and the failure to deduct tax under Chapter XVII-B is punishable under the new sec.271C by imposition of penalty.

Sec.276 will now cover only those cases where tax deducted under the provisions of Chapter XVII-B, i.e. secs.192 to 194, 194A, 194B, 194C, 194D and 195, if not paid to the credit of the central government. The punishment for the offence has been made uniform by specifying rigorous imprisonment for

atleast three months, extending to seven years and with fine. Accordingly, the provisions of sec.276B, which provided for different terms of imprisonment for the two categories of offenders, depending on whether or not the tax involved was above Rs.1,00,000, were omitted. The proposition of law discussed above will equally hold good even after 1.4.1989.

Failure to pay the tax collected at-source:

Section 276BB was introduced by the Finance Act, 1988, with effect from 1.6.1989 to be applicable from the assessment year 1989-90.

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It may be observed that the Finance Act, 1988, has also inserted sec.206E w.e.f. 1.6.1988 to require every seller of the Indian-made country liquor meant for human consumption and of forest produce to collect tax at the specified percentage and pay the same to the credit of the central government, or as the Board directs, within seven days of such collection. Section 276BB makes the failure to pay the tax so collected at-source punishable. Accordingly, a seller failing to pay the tax so collected to the credit of the central government punishable with rigorous imprisonment extending to seven years and also with fine. However, the rigorous imprisonment shall not be less than three months. This is the minimum punishment.

Wilful attempt to evade tax, etc.:

The present sec.276C, which was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.10.1975, does

not apply to an offence committed prior to that date. Prosecution under this section would be set aside if the department lets it drag on for years without making a serious effort to proceed with it or if the assessment on which it is based is set aside on appeal but not merely on the ground that the assessment proceedings are pending. Formerly, mens rea had to be established to attract this section, even in a case covered by clause (i) of the Explanation "from 10th September, 1986, the onus is on the accused to establish his innocence (Sec.278E). The assessee is liable for prosecution under this section for filing a false return, even if he has subsequently filed a correct revised return. Gifting away property with a view to evading payment of tax already levied and demanded is an offence under sub-sec.(2) of this section.

Section 276C makes a wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Income-tax Act or to evade the payment of any such tax, penalty or interest punishable under the law. Any person: (i) who has in possession or control any books of accounts or other documents containing a false entry or statement, or (ii) who makes or causes to be made any false entry in such books or documents, or (iii) who omits or causes to be omitted any entry or statement in such books or documents, or (iv) who causes any other circumstances to exist which will have the effect of enabling him to evade any tax or

payment thereof, shall be guilty of offence under this provision, where the amount sought to be evaded through the wilful attempt exceeds Rs.1.0 lakh, the punishment will be rigorous imprisonment for a minimum term of six months and a maximum term of seven years and fine, where the amount sought to be evaded is Rs.1.0 lakh or less, the punishment will be rigorous imprisonment for a minimum term of three months and a maximum term of three years and fine.

Mens Rea:

It may be observed that the opening portion of sub-section (i) of sec.276C uses the expression 'wilfully attempts to evade tax,' etc. The word 'wilfully' in Chambers' Twentieth Century Dictionary carries the following meanings: "governed only by one's will, obstinate, done intentionally". When a person acts wilfully, he acts without reasonable cause, but the converse is not true. The word 'wilful' imparts the concept of 'mens rea', while it is absent in the expression 'without reasonable cause'. The opening words of sec.276C(1) imply existence of a particular guilty state of mind in the person sought to be punished. The requisite mens rea is defined by the expression 'wilfully'. Explanation (i) does not in any way restrict or cut down the ambit of the expression 'wilfully' occurring either in cls.(i) or (ii) or the Explanation or sec.276C(1). Mere possession or control of any books of

account and other documents containing a false entry or statement is not punishable. It is only where a person in possession or control of such books of account or other documents has knowledge of a false entry or statement, he renders himself punishable. It is not difficult to visualize that a person can come into possession of books of account containing false entries or statements without knowledge of the same. The requisite mens rea, namely, knowledge on the part of a person of a false entry or statement in any books of account or other documents in his possession or control must be established before he is sought to be visited with the penalty prescribed thereunder. All bona fide mistakes made by an assessee while filling in the income-tax return forms would not necessarily amount to an intention to commit a crime and if sec.276C were to be used for penalizing every delinquent assessee on that score, it would wreck havoc. What is to be found by the court as to whether the assessee wanted to defraud the revenue.

Company and Mens Rea:

It cannot be said that a company cannot have a guilty mind. The company's mind is the mind of the persons controlling the company. If the persons controlling the company have acted fraudulently on behalf of the company, it is the company which would be indicated for the said fraud committed by its controlling persons. Hence, even though

mens rea is one of the elements of the offence, which are the subject matter of the criminal complaint, yet the company can be held guilty of the said offence, if the persons controlling the said company had acted on behalf of the company in committing the aforesaid offences.

Failure to furish returns of income:

Section 276CC was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.10.1975, covering the subject matter of the old sec.276 in a modified form and new sec.276C was also substituted, prior to old sec.276C, similar provisions were contained in sec.276C. The provision of this section corresponds to the old provision contained in sec.51(c) of the 1922 Act where the accused was not called upon to meet the charge under sec.51(c) and no sanction for prosecution under that section was obtained, conviction under that section could not be sustained on a charge under sec.52 of the 1922 Act.

Section 276CC provides for punishment for wilful failure to furnish returns of income under sub-sec.(1) of sec.139 or in response to notice under sec.142(1)(i), sec.139(1) till 31.3.1989 or sec.148. The punishment under this section will depend on the amount of tax which would have been evaded if the failure had not been discovered, where the amount of such tax exceeds Rs.1.0 lakh, the punishment will be rigorous imprisonment for a minimum term of six months and and

a maximum term of three years and fine.

Failure to produce accounts and documents:

Section 276D was inserted by the Taxation Laws (Amendment) Act, 1970, with effect from 1.4.1971 and corresponds to the provisions contained in sec.51(D) of the 1922 Act.

Under sec.142(1), the assessing officer has the power to issue a notice for the production of such accounts and documents as he may require. The power under this sub-section can be exercised in two cases: (1) where a return has been made under sec.139, and (2) where a notice has been issued under sec.139(2).

Section 276D provides that the punishment on the conviction of a person for wilful defaults in producing the accounts and documents called for by a notice under section 142(1) shall be rigorous imprisonment upto one year, or fine ranging from Rs.4 to Rs.10 for everyday during which defaults continues, or boths, at the discretion of the court. Further, in view of the amendment with effect from 1.4.1976, the failure on the part of the assessee to comply with the direction for the audit of accounts under sec.142(2A) will also render him liable to the aforesaid punishment.

It may be observed that mens rea is an essential ingredient of the offence under sec.276D, which is clear from the use of the expression wilfully. It cannot be contended

that simply because an authorization for search and seizure was not issued under sec.132 for failure to produce books of account in response to notice issued under sec.142, prosecution cannot be launched for the same default, such a prosecution is not barred.

False statement in verificattion, etc.:

Section 277 and the corresponding provision of sec.52 of the 1922 have to be constitutionally valid. A company, or a firm, cannot be prosecuted under this section. In this section, 'person' includes person other than the assessee, e.g. managing director of the assessee company.

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 with rigorous imprisonment for a term which may extend to two years. Under sec.277, punishment for false verification in a statement or for delivery of a false account or statement has been linked to the quantum of the tax sought to be evaded. Where the amount of tax which would have been evaded if the statement of account had been accepted as true exceeds Rs.1.0 lakh, the punishment will be rigorous imprisonment for a minimum term of six months and a maximum term of seven years and fine. In any other case, the punishment will be rigorous imprisonment

for a minimum term of three months and a maximum term of three years and fine.

Mens rea was formerly necessary to attract the application of this section. From 10.9.1986, the onus is on the accused to establish his innocence, if the assessee conceals a part of his income when submitting a duly verified return, whether under sec.139(1) or in response to an individual noice under sec.139(1) or in response to an individual notice under sec.139(2) (now replaced by sec.142(1)(i)), it would constitute an offence under this section. But if the return is incomplete and the assessee openly and expressly states that the return is incomplete, it would not amount to the commission of an offence under this section. When the assessee verifies and submits a false return, an offence under this section is committed and the fact that subsequently, the assessee files a revised return of his true income under sec.139(5) will not condone the offence, though it may be regarded as a mitigating circumstance.

Where an assessee deliberately conceals a part of his income, he would be liable to prosecution under this section. If an agent, having authority to make a return on behalf of his principal, deliberately makes a fraudulent return, he is liable to prosecution under this section, but in the absence of any evidence that the principal knew that his agent was making a fraudulent return, the principal

cannot be convicted.

Prosecution under the Indian Penal Code:

The Income-tax Officer and other income-tax authorities referred to in sec.116 of the Act are 'public servants' within the meaning of the Indian Penal Code. Further, sec.136 expressly enacts that proceedings under this Act must be deemed to be 'judicial proceedings' within the meaning of secs.193 and 228 and for the purpose of sec.196 of the Indian Penal Code. The result is that for an offence committed in relation to the income-tax proceedings, the assessee may be prosecuted and tried both under the provisions of this Chapter and under the Indian Penal Code, but he cannot be punished twice for the same offence.

But once an accused is acquitted of an offence under this section, he cannot be tried again in respect of the same offence and on the same facts under any other provision of law. However, if the papers are merely returned by the magistrate to the income-tax authorities at their request to enable them to re-present the complaint with all the relevant documents, that would not amount to a withdrawal of the complaint or an acquittal of the accused and the trial of the accused upon the re-presentation of the complaint would be valid.

No Limitation:

No period of limitation is provided for prosecution

under the Chapter XXXVI. The Code of Criminal Procedure 1973 lays down the period of limitation beyond which no court can take cognizance of an offence which is punishable with fine only or with imprisonment not exceeding three years, but the Economic Offences (Inapplicability of Limitation) Act, 1974, provides that nothing in the aforesaid Chapter XXXVI shall apply to any offence punishable under the income-tax law.

Jurisdiction:

Where a false verification in a return is made or a false statement is delivered by the assessee at one place and return or statement is received by the assessing officer in another place, the trial for the offences should ordinarily be by the court having jurisdiction over the place where the verification was made or the statement delivered and not by the court having jurisdiction over the place where the verification or statement was received (sec.177 of the Code of Criminal Procedure, 1973). The complaint should be filed by the assessing officer before whom the offence was committed and not by the assessing officer to whom the case is subsequently transferred.

Abetment of false return, etc.:

Section 278 is new and does not have any corresponding provisions in the 1922 Act.

If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he knows to be false and does not believe it to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years.

This section was substituted with a view to linking the punishment for abetment of making and delivery of a false account, statement or declaration relating to any taxable income as also abetment of wilful attempt to evade tax, with the quantum of tax, etc., sought to be evaded. Under this provision, the abetment of the aforesaid offences in cases where the amount of tax, penalty or interest which would have been evaded if the account, statement or declaration had been accepted as true or which is wilfully attempted be evaded, exceeds Rs.1.0 lakh, the punishment will be rigorous imprisonment for a minimum period of six months and the maximum period of seven years and fine. In any other case, the punishment will be rigorous imprisonment for a minimum period of three years and fine.

Punishment for second and subsequent offences:

This section provides that where a person who has been convicted of an offence under secs.276B or 276C or 276CC or 276DD (from 24.5.1985) or 276E (from 11.7.1981) or 277 or 278 is again convicted for an offence under any of these

provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a minimum term of six months and a maximum term of seven years and with fine. It is clear from the provisions of this section that on conviction for the second offence under the aforesaid sections, the minimum sentence will be rigorous imprisonment of six months notwithstanding the amount of tax, etc., sought to be evaded.

Punishment not to be imposed in certain cases: (Section 278AA):

This section was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 10.9.1986; which Act, at the same time, deleted the words 'without reasonable cause or excuse' from the sec.278AA. The effect of the amendment is to cast the burden on the assessee to prove that he had reasonable cause for the failure referred to in the section. A favourable decision of the appellate or revisional authority on merits would amount to a discharge of that burden.

No person shall be punishable for any failure referred to in these provisions, if he proves that there was reasonable cause for such failure. By this section, it has been secured that the assessee has to prove the existence of a reasonable cause for the failure as specified above in order to escape punishment. Before this amendment, the position was that unless the revenue proved the absence of reasonable cause,

no case was made out but after the amendment, the assessee has to prove the existence of a reasonable cause for the failure so that he may escape punishment.

Offences by companies:

Section 278B was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.10.1975. Sub-sec.(1) of this section provides that where an offence under this Act has been committed by a company, every person who, at the time of 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. The provision thereto lays down that nothing contained in sub-section (1) 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. Further, sub-sec.(2) provides that notwithstanding anything contained in sub-section (1), if in the case of a company it is proved that the offence had been committed with the consent of or connivance of or is attributable to any negelect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer will be deemed to be guilty of the offence and will be liable to be prosecuted

and punished accordingly. Section 278B also applies mutatis mutandis in relation to offences committed by a firm, association of persons or a body of individuals.

Company and Mens Rea:

Though the Kerala High Court opined in 1976 that a company could not have mens rea, much water has flown since then to clear the judicial thinking and it cannot be argued with any rationality that a company cannot have a guilty mind. The company's mind is of the persons controlling the company. If the persons controlling the company have acted fraudulently on behalf of the company, it is the company which would be indicated for the said fraud committed by its controlling persons. Therefore, even though the mens rea is one of the elements of the offences subject matter of the criminal complaint, yet the company can be held guilty of the said offence if the person controlling the said company had acted on behalf of the company in committing the aforesaid offences.

Offences by Hindu Undivided Families:

Section 278C was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1.10.1975. The section has remained unchanged since its inception.

Karta liable for offences by the HUF:

Before the insertion of this section, the position was

that for the defaults of a HUF, the Karta thereof could not be proceeded against. Thus, for the recovery of tax payable by the HUF, its Karta could not be subjected to coercive measures, i.e. he could not be arrested. Section 278C was inserted to provide for the criminal liability of the Karta or the members of the HUF in respect of the offences committed by the family. Under this provision, where an offence has been committed by a HUF, the Karta thereof will be deemed to be guilty of the offence and will be liable to be prosecuted and punished accordingly, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

Member of HUF where liable:

Sub-section (2) of sec.278C opens with a non-obstinate clause and lays down that where an offence under the Act has been committed by the HUF and it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of any other member of the family, such other member shall also be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly.

Presumption as to assets,
books of accouts, etc.:

Section 278D provides that the rule of evidence contained in sec.132(4A) in respect of assets, books of account or

other documents found in the course of any search or obtained on requisition from other authorities under sec.132A will apply for the purposes of evidence in prosecution proceeedings under sec.278.

It is true that sec.132(4A) read with sec.278D enables the court to presume the truth of the contents of books of account seized from a person. However, it is a presumption which can be rebutted. Moreover, the presumption envisaged therein is only a factual presumption. It is in the discretion of the court, depending on other factors, to decide whether the presumption must be drawn. The expression used in the sub-section is 'may be presumed', as is used in sec.114 of the Evidence Act, 1872; it is not a mandate that whenever the books of account are seized, the court shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court from doing so.

Presumption as to culpable mental state:

The position before the insertion of sec.278E was that the prosecution had to prove mens rea on the part of the accused for any offence committed by him under the Act. But this section now provides that in any prosecution for any offence under the Act, which requires a culpable mental state on the part of 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. Culpable mental state

includes intention, motive or knowledge of fact or belief in or reason or belief in a fact. Further, a' fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Under this section, a court has to presume the existence of a criminal mental state on the part of the accused in any prosecution requiring such a mental state. However, this presumption can be rebutted by the accused to prove that there was no intention, motive or knowledge of that prosecution. As regards the degree of proving the absence of a culpable mental state, it has been provided that a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Prosecution to be at the instance of Chief Commissioner or Commissioner:

Section 279 corresponds to the provision contained in sec.53 of the 1922 Act, with a difference that the power to sanction prosecution is vested in the chief commissioner or commissioner as against in the IAC under sec.13 of the old Act.

This section is Constitutional, the machinery of prosecution under secs.275A to 278 can be set in motion only by the authorities referred to in this section. The

expression 'at the instance of the commissioner' meas with his sanction or on his authority; it does not require the complaint to be filed by the commissioner himself. If the prosecution is without the sanction of the appropriate authority, the conviction would be illegal. Where the commissioner, holding that an assessee had made a return containing false entries, gives sanction for prosecution for an offence under sec.277 and the accused was found not guilty under sec.277 but guilty of an offence under sec.276CC (failure to furnish a return on time) and was convicted of an offence under sec.276CC, it was held in revision that an offence under sec.276CC was of a different nature from the one under sec.277 and as there was no sanction for prosecution for an offence under sec.276CC and further as the accused had not been called upon to meet a charge under sec.276CC, the conviction was illegal.

Prohibition against prosecution:

Sub-sec.(1A) does not come into operation until the penalty is actually reduced or waived. Further, it has no application where the penalty is cancelled by the tribunal and not reduced or waived by the commissioner under sec.273A.

Power to compound offences:

Sub-section (2) gives the specified authority the right to compound any offence under secs.275A to 278, either before or after the institution of proceedings. The sanction of the

court is in no case necessary for such compounding. The provisions for compounding are not intended to confer on the department the power to obtain as much money as possible by holding out a threat of prosecution.

The section does not say that the offence can be compounded only if it is proved to have been actually committed. If there is a proceeding on a charge, it would come within the purview of sec.179 and compounding of the offence would be within the section and the assessee cannot claim a refund of the compensation fee on the ground that that he had really committed an offence.

Authorities empowered to compound:

The following authorities are empowered to compound any offence with effect from 1.4.1989:

(i) The Board or Chief Commissioner or Director-General authorised by the Board, where the prosecution would lie at the instance of the Commissioner (Appeals) or an appropriate authority;

(ii) Chief Commissioner, Director-General or Commissioner, in other cases.

Immunity:

The Central Government has the power to tender immunity from prosecution for any offence under this Act (sec.291) and a similar power is conferred upon the Settlement Commission (sec.245H).

No appeal or reference:

No appeal lies against an order sanctioning the prosecution under this Chapter and consequently, no reference can lie to the High Court upon any question arising out of such an order sanctioning the prosecution.

Certain offences to be non-cognizable:

Section 279A provides that notwithstanding anything contained in the provisions of the Code of Criminal Procedure, 1973, the following offences shall be deemed to be non-cognizable within the meaning of that Code:

(i) Failure to deduct or pay tax (sec.276B);

(ii) Wilful attempt to evade tax (sec.276C);

(iii) Failure to furnish returns of income (sec.276C);

(iv) False statement on verification, etc. (sec.277);

(v) Abetment of false return (sec.278).

A non-cognizable offence is that for which a Police Officer has no authority to arrest without a warrant.

Proof of entries in records or documents:

Section 279B provides that entries in the records or other documents in the custody of an income-tax authority shall be admitted in evidence during proceedings for the prosecution of any person for an offence under Chapter-XXII of the Act and all such entries may be proved either by production of such records or other documents or by production

of a copy of entries certified by the income-tax authority having custody of such records or other documents. Under its signature and stating that it is a true copy of the original entries which are contained in the records or other documents in its custody.

Disclosure of particulars by public servants:

Section 280 corresponds to the provision of sub-section (2) and (5) of section 54 of the 1922 Act.

Sub-section (2) of section 138 provides that the central government may by order notified in the official gazette direct that no information or document shall be furnished or produced by public servant in respect of such matters relating to such class of assessee except to such authorities as may be specified in the order. Sub-section (1) of sec. 280 makes the functioning of any information or production of any document in contravention of section 138(2) by a public servant punishable with imprisonment extending to six months and also liable to fine.

A public servant cannot be prosecuted under sec.280(1) without the previous sanction of the central government. Under the corresponding provisions of sec.54(5) of the 1922 Act, the previous sanction for prosecution would be accorded by the Commissioner.

3.3 The Wealth-tax Act, 1957:

For non-compliance with the provisions of the Wealth-tax Act, secs.18, 18A and 32 provide for the levy of penalty on the assessee. However, penalty cannot be levied without giving a reasonable opportunity of being heard to the assessee. The levy of penalty is not obligatory but it is discretionary.

Once the authority decides to levy the penalty, the quantum can neither be less than nor more than what is prescribed. Further, the penalty has to be computed in accordance with the law in force on the date of default and not as per the law on the date to which the assessment relates.

Penalty proceedings commenced against the deceased cannot be continued after his death against his legal representatives.

Penalties under different sections are as follows:

Section	Nature of default	Penalty/Fine
1.	2.	3.
18(1)(ii)	Failure to comply with notice under sec.16(2) or (4) without reasonable cause	Minimum Rs.1000/- for each failure. Maximum Rs.25000/- for each failure
18(1)(iii)	Concealment of wealth	Minimum Rs.100% of tax sought to be avoided Maximum 500% of each failure of default.

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1.	2.	3.
18(1), (b) & (c)	Failure to answer questions: 1. legally bound to, or 2. sign statements legally required to, or 3. comply with summons under sec.37(1) without reasonable cause.	Minimum Rs.500/- for each default Maximum Rs.10,000/- for each failure or default.
18(A)(2)	Failure to furnish in due time statement/information required under sec.38 without reasonable cause	Minimum Rs.100/- for every day of default. Maximum Rs.200/- for everyday of default
32	Committing default in the payment of tax	Not exceeding 100% of tax in arrears.
35(A)(i)	Wilful attempt to evade tax, penalty or interest in case amount sought to be evaded exceeds Rs.1,00,000.	6 months rigorous imprisonment, which may extend to 7 years and fine, without prejudice to penalty imposable under any provisions of the Act.
	In any other case	3 months rigorous imprisonment which may extend to 3 years and fine, without prejudice to the penalty imposable under any other provisions of the Act.
35(A)(2)	Wilful attempt to evade payment of tax, penalty or interest.	3 months rigorous imprisonment which may extend to 3 years and fine, without prejudice to penalty imposable under any other provisions of the Act.

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1.	2.	3.
35B	Wilful failure to furnish in due time return of wealth in terms of secs.14(1) or 14(2) or 17(1):	
	(a) in case where tax sought to be evaded exceeds Rs.1.0 lakh.	6 months' rigorous imprisonment which may extend to 7 years with fine.
	(b) in any other case	3 months' rigorous imprisonment, which may extend to 3 years with fine.
35C	Wilful failure to produce accounts/records in terms of section 16(4)	Upto 1 year rigorous imprisonment or fine between Rs.4 and Rs.10 everyday of default or with both.
35D	Filing a false statement in verification (other than under sec.34AB regarding the registration of valuers), delivery of false statement	
	(a) in case where tax sought to be evaded exceeds Rs.1.0 lakh;	6 months' rigorous imprisonment which may extend to 7 years with fine
	(b) in any other case	3 months' rigorous imprisonment which may extend to 3 years and fine
35E	Making a false statement in verification mentioned in sec.34AB.	Imprisonment upto six months or fine or both.
35EE	Failure without reasonable cause to furnish particulars under sec.34ACC regarding intimation by the registered valuer of his conviction of any offence	Rigorous imprisonment and fine.

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1.	2.	3.
35EEE	Making contravention of order made under sec.37A(1),(3A)	Upto 2 years rigorous imprisonment and fine.
35F	Abetting or inducing another person to make and deliver false accounts, statements or declaration relating to net wealth chargeable to tax	
	(a) in case where tax, etc., sought to be evaded exceeds Rs.1,00,000/-;	6 months' rigorous imprisonment which may extend to 7 years and fine.
	(b) in any other case	3 months' rigorous imprisonment which may extend to 3 years and fine.
35G	Second and subsequent offences under secs.35A(1), 35AB, 35D or 35F.	6 months' rigorous imprisonment which may extend to 7 years and with fine.

Offences and Prosecutions:

A person shall not be proceeded against for an offence under this Act without the previous sanction of the Chief Commissioner or the Director-General or the Commissioner. However, such sanction will not be required if the prosecution is at the instance of the Commissioner (Appeals).

The Taxation Laws (Amendment) Act, 1975, inserted secs.35A to 35N with effect from 1.10.1975. The amendments made three major changes. The range of the offences has been

defined. The phraseology has been almost bodily lifted from the USA's Internal Revenue Code. The rich caselaw under that code would be very illuminating. The discretion of the courts to award lesser punishment has been taken away. It has to be minimum specified.

3.4 The Gift-tax Act, 1958:

For non-compliance with the provisions of the Gift-tax Act, 1958; secs.17, 17A and 33 provide for the levy of penalty on the assesee. Penalties under different sections are as follows:

Section	Nature of defaults	Penalty/Fine
1.	2.	3.
17(1)(ii)	Failure to comply with notice under sec.15(2) or (4) without reasonable cause.	Minimum Rs.1000 for each failure Maximum Rs.25,000 for each failure
17(1)(iii)	Concealment of gift	Minimum 20% of tax but not more than 1/2 time of the tax which would have been avoided.
17A(1)(a),(b) & (c)	Failure to answer questions: 1. legally bound; or 2. sign statements legally required, or 3. to comply with the summons under sec.36(1) without reasonable cause	Minimum Rs.500 for each failure/default Maximum Rs.10,000/- for each failure/default.
17A(2)	Failure to furnish statement or information required under sec. 37 without reasonable cause	Minimum Rs.100/- for every day of default. Maximum Rs. 200 for every day of default.

1.	2.	3.
33	Committing defaults in payment of tax	Not exceeding Rs.100/- of tax in arrears.
35(1)	Failure without reasonable cause to furnish return of gifts in time or to produce accounts, etc.	Fine upto Rs.10/- per day for every day of default.
35(2)	False statement in verification	Simple imprisonment upto one year or fine upto Rs.10,000/- or both.
35(2A)	Abetting or inducing another person to make and deliver false account, statement or declaration.	Simple imprisonment upto six months or fine upto Rs.1000 or both.

The interpretation of the terms used in the Wealth-tax Act and the Gift-tax Act are synonymous with the similar terms used in the Income-tax Act; hence, the provisions of penalty and provisions as have been interpreted earlier in the Income-tax Act need not be interpreted again under the Wealth-tax and the Gift-tax Acts.

3.5 Summary:

It is evident from the foregoing discussions that the entire procedure of penalties and prosecution under the direct tax laws, though thoroughly codified, is much too intricate for lay taxpayers to understand and follow through. It is also full of highly complex legal technicalities and administrative

bottlenecks and eventually, time-consuming and laborious at every step. Adoption of a common tax code covering all direct taxes with a view to simplify the procedural aspects issues, if implemented, will provide a harmonious and uniform penal procedure.

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