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## **PROSECUTIONS AND PUNISHMENT UNDER THE INCOME-TAX LAW**

Apart from penalty for various defaults, the Income-tax Act also contains provisions for launching prosecution proceedings against the taxpayers for various offences. In this part you can gain knowledge about the various provisions relating to prosecution which can be launched under the Income-tax Act.

### **Contravention of order made under section 132(1) (Second Proviso) or under section 132(3) in case of search and seizure**

Section 132 empowers the tax authorities to initiate search proceedings at the premises of the taxpayer. During the course of search the tax authorities are also empowered to seize money, bullion, jewellery or other valuable article or thing found from the taxpayer. Generally, the seized money, bullion etc. is taken by the tax authorities in their custody (i.e., in the custody of the Government) but in certain cases it may not be possible or practicable for the tax authorities to take physical possession of the same or to remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature.

In such a case, second proviso to section 132(1) empowers the tax authorities to seize the asset by keeping the asset at the place of the taxpayer only. In such case, the asset will be seized by the tax authorities without physically taking the assets with them. For this purpose, the authorised officer would serve an order on the owner or the person who is in immediate possession or control of the asset that he shall not remove, part with or otherwise deal with the asset, except with the previous permission of such authorised officer. This action of the authorised officer shall be deemed to be a seizure of such valuable article or thing under the Income-tax Act.

Many times, during the course of search it may not be practicable to seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to section 132(1) (as discussed above). In such cases, as per section 132(3), the tax authorities may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer. Such officer may take such steps as may be necessary for ensuring compliance with the provisions of section 132(3).

Section 275A provides for prosecution in the case of contravention of any of the above discussed provisions by the taxpayers. As per section 275A, whoever contravenes of any of the above provisions shall be punishable with rigorous imprisonment of upto a period of 2 years and shall also be liable for fine.





### **Failure to afford necessary facility to authorised officer to inspect books of account or other documents as is required under section 132(1)(iib)**

In a case where a search is conducted by the tax authorities, the tax authorities as per Section 132(1)(iib) may require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents.. Person who fails to provide such facility shall be punishable with rigorous imprisonment of up to a period of 2 years and shall also be liable to fine.

### **Removal, concealment, transfer or delivery of property to thwart tax recovery**

If a taxpayer fails to discharge his tax liability, then the tax authority can recover the tax dues from him by attaching his movable and immovable property. If the taxpayer fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being attached for recovery of tax, then prosecution proceedings can be initiated under section 276. As per section 276 a taxpayer shall be punished with rigorous imprisonment for a term which may extend to two years and shall also be liable for fine.

### **Failure to comply with provisions of section 178(1) and (3) dealing with company-in-liquidation**

As per section 178(1) every person:

- (a) who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise; or
- (b) who has been appointed the receiver of any assets of a company,

shall, within 30 days after he has become such liquidator give notice of his appointment to the tax authority who is entitled to assess the income of the company.

As per section 178(3) the liquidator:-

- (a) shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer in this regard; and
- (b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Nothing contained above shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law for priority payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.





Section 276A provides for prosecution in the case of failure to give notice or setting aside the sum in compliance with the above provisions of sections 178(1)/178(3) as well as prosecution in case the liquidator parts with any of the assets of the company or the properties in his hands in contravention of the provision of section 178(3). A person who fails to comply with these provisions shall be punishable with rigorous imprisonment for a minimum period of 6 months which may extend to 2 years.

The Finance Act 2023 has amended section 276A by providing a sunset date that no fresh prosecution proceedings shall be initiated under this provision on or after 01-04-2023.

### **Failure to pay/ensure payment of TDS or DDT to the credit of the Government**

If a person fails to:

- (i) Pay to the credit of the Central Government, the tax deducted by him (i.e., TDS); or
- (ii) Pay tax or ensure payment of tax to the credit of the Central Government, as required by or under:
  - a. Section 115-O(2) - dividend distribution tax (DDT);
  - b. Section 194B – Tax on winnings from lottery or crossword puzzle;
  - c. Section 194R – Tax on benefit or perquisite in respect of business or profession;
  - d. Section 194S – Tax on payment on transfer of virtual digital asset;
  - e. Section 194BA – Tax on winning from online games.

Then such person shall be punishable with rigorous imprisonment which shall not be less than 3 months but which may extend to 7 years and with fine.

Note: The provision of this section shall not apply if payment in respect to TDS has been made to the credit of the Central Government at any time on or before the time prescribed for filing the TDS statement in respect to such payment. (applicable w.e.f. 01-10-2024)

### **Failure to pay the tax collected under the provisions of section 206C**

Section 206C governs the provisions relating to collection of tax at source. If a person fails to pay the tax collected by him to the credit of the Government, then as per section 276BB he shall be punishable with rigorous imprisonment for a period of which shall not be less than 3 months but which may extend to 7 years and with fine.

### **Wilful attempt to evade tax, penalty or interest**

Section 276C provides for punishment in the case of wilful attempt to evade tax, penalty or interest or under-reporting of income. As per section 276C if a person wilfully attempts to evade tax, penalty or interest or under-reports his income, then he shall be punished as follows:

With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).

With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases.

Where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh till 30-6-2012), imprisonment could be for a period of not less than 6 months which may extend to 7 years and with fine.

- In other cases imprisonment cannot be of less than 3 months, which may extend to 2 years (3 years upto 30-6-2012) and with fine.

### **Wilful failure to furnish return of income**

Section 276CC provides for imprisonment in case of failure to file the return of income. Section 276CC is attracted for any of the following defaults by the taxpayer :





- Failure to file the return of income as per section 139(1).
- Failure to file the return of income in response to a notice issued under section 142(1)(i) or section 148 or section 153A.

**Punishment for the above failures shall be as under:**

- Rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).
- Rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases .

The taxpayer shall not be proceeded against under this section for failure to furnish in due time the return of income under section 139(1), if:

- (a) the return is furnished by him before the expiry of the assessment year; or
- (b) the tax payable by him (not being a company) on the total income determined on regular assessment, as reduced by advance tax and TDS, if any, does not exceed Rs. 10,000.

**Note:** With effect from Assessment Year 2022-23, no prosecution under this provision shall be launched for failure to furnish a return of income under section 139(1), if an updated return is furnished by the assessee within the time provided in Section 139(8A). [Amendment by the Finance Act, 2022]

**Wilful failure to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A)**

Section 142(1) deals with the general provisions relating to an inquiry before assessment. Under section 142(1), the Assessing Officer can issue notice asking the taxpayer to file the return of income, if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

Section 142(2A) deals with special audit. As per section 142(2A) if the conditions justifying special audit given in section 142(2A) are satisfied, the Assessing Officer may direct the taxpayer to get his accounts audited or re-audited from a chartered accountant as nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form.

Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A). As per section 276D, if a person wilfully fails to produce accounts and documents as required in any notice issued under section 142(1) or wilfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.





### **False statement in verification or delivery of false account, etc.**

Section 277 provides for prosecution for making false statement or producing false accounts / documents. If a taxpayer makes statement in any verification under the Act or under any rules made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe it to be true, he shall be punishable as follows:

- With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).
- With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases.

### **Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act**

Section 277A provides for prosecution in the case of falsification of books of account or document etc. As per section 277A, if any person (hereafter referred to as the first person) wilfully and with an intent to enable any other person (hereafter referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe it to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person under the Act, then the first person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years (3 years upto 30-6-2012) and with fine.

### **Abetment to make a false return, etc.**

As per section 278 if a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be punished as under:

- With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).
- With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases.

### **Second and subsequent offences under sections 276B, 276C(1), 276CC, 277 or 278**

The provisions of sections 276B, 276BB 276C(1), 276CC, 277 or 278 have already been discussed. Section 278A provides for prosecution in the case of second or subsequent offence under those sections. As per section 278A, a person shall be punishable with imprisonment for a period which shall not be less than 6 months but which may extend to 7 years and with fine.





### **Punishment in case of offence by a company**

As per section 278B, where an offence under the Income-tax Act has been committed by a company (\*), then every person who, at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However if such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then he shall not be deemed to be guilty of the offence.

Where an offence under the Income-tax Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Where an offence under the Income-tax Act has been committed by a person, being a company, such company shall be punished with fine and every person referred to above or the director, manager, secretary or other officer of the company referred to above, shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

(\* ) For the purposes of this section:

(a) "company" means a body corporate, and includes :-

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director" in relation to :-

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

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

### **Punishment in case of offence by Hindu Undivided Family**

As per section 278C, where an offence under the Income-tax Act has been committed by a Hindu Undivided Family, the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, the karta shall not be 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.

Where an offence has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.





## **Disclosure of particulars by public servant**

Section 138(1) deals with disclosure of information by the tax authorities to other officer, authority, etc. Section 138(2) relates to restriction on declaring of information by the public servant. Section 280 provides for prosecution in the case of disclosure of information by the public servant in contravention of section 138(2). In such a case the public servant shall be punished with imprisonment for a term which may extend to 6 months and with fine.

However, no prosecution shall be instituted against a public servant as discussed above except with the previous sanction of the Central Government.

## **No imprisonment in case of reasonable cause for failure**

As per section 278AA no person is punishable for any failure under section 276A, section 276B and section 276BB if he proves that there was reasonable cause for such failure.

## **Initiating prosecution with the previous sanction of tax authorities**

As per section 279, prosecution for offences under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A and section 278 are to be instituted with the previous sanction of Principal Commissioner or Commissioner or Commissioner (Appeals), The Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

## **Immunity from prosecution**

As per section 278AB, a person may apply to the Principal Commissioner or Commissioner for granting immunity from prosecution, if he has applied for settlement under section 245C and the proceedings have abated under section 245HA. However, the application for immunity shall not be made after institution of prosecution proceedings.

## **Other provisions relating to offences and prosecution**

Provisions like compounding of offence, cognizable and non-cognizable offence, technical and non-technical offence, etc., are discussed separately under the topic “Offences and Prosecution”.





## MCQ ON PROSECUTION AND PUNISHMENT UNDER THE INCOME-TAX LAW

**Q1.** If a person fails to pay to the credit of the Central Government the tax deducted by him (i.e., TDS) or (ii) the dividend distribution tax (DDT) as per section 115-O(2) then such person shall be punishable with rigorous imprisonment for a period of not less than 3 months which may extend to 1 year and with fine

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

If a person fails to:

- (i) Pay to the credit of the Central Government, the tax deducted by him (i.e., TDS); or
- (ii) Pay tax or ensure payment of tax to the credit of the Central Government, as required by or under:
  - f. Section 115-O(2) - dividend distribution tax (DDT);
  - g. Section 194B – Tax on winnings from lottery or crossword puzzle;
  - h. Section 194R – Tax on benefit or perquisite in respect of business or profession;
  - i. Section 194S – Tax on payment on transfer of virtual digital asset;
  - j. Section 194BA – Tax on winning from online games.

Then such person shall be punishable with rigorous imprisonment which shall not be less than 3 months but which may extend to 7 years and with fine. However, the provision of this section shall not apply if payment in respect to TDS has been made to the credit of the Central Government at any time on or before the time prescribed for filing the TDS statement in respect to such payment. (applicable w.e.f 01-10-2024)

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q2.** As per section 206C, if a person fails to pay the tax collected by him to the credit of the Government, then as per section 276BB he shall be punished with rigorous imprisonment for a period of which shall not be less than 3 months but which may extend to 7 years and with fine.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

Section 206C governs the provisions relating to collection of tax at source. If a person fails to pay the tax collected by him to the credit of the Government, then as per section 276BB he shall be punished with rigorous imprisonment for a period which shall not be less than 3 months but which may extend to 7 years and with fine.



Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q3.** Section\_\_\_\_\_provides for punishment in the case of wilful attempt to evade tax, penalty or interest or under-reporting of income.

- (a) 276B (b) 276C  
(c) 276D (d) 276E

**Correct answer : (b)**

**Justification of correct answer :**

Section 276C provides for punishment in the case of wilful attempt to evade tax, penalty or interest. As per section 276C if a person wilfully attempts to evade tax, penalty or interest, then he shall be punished as follows:

- With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).
- With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases .

Thus, option (b) is the correct option.

**Q4.** Section\_\_\_\_\_provides for imprisonment in case of failure to file the return of income.

- (a) 276AA (b) 276BB  
(c) 276CC (d) 276DD

**Correct answer : (c)**

**Justification of correct answer :**

Section 276CC provides for imprisonment in case of failure to file the return of income. Section 276CC is attracted for any of the following defaults by the taxpayer:

- Failure to file the return of income as per section 139(1).
- Failure to file the return of income in response to a notice issued under section 142(1)(i) or section 148 or section 153A.

Punishment for the above failures shall be as under:

- With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).
- With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases .

Thus, option (c) is the correct option.





**Q5.** Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1).

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A). As per section 276D, if a person wilfully fails to produce accounts and documents as required in any notice issued under section 142(1) or wilfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q6.** Section 277 provides for prosecution in the case of falsification of books of account or document etc.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Section 277A provides for prosecution in the case of falsification of books of account or document etc. As per section 277A, if any person (hereafter referred to as the first person) wilfully and with an intent to enable any other person (hereafter in this referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe it to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person under the Act, then he (the first person) shall be punished with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years (3 years upto 30-6-2012) and with fine.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q7.** If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under [section 276C\(1\)](#), then he shall be punished under section 278

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

As per section 278 if a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be punished as under:

- With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).





- With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases .

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q8.**Section 278A provides for prosecution in the case of second or subsequent offence under sections 276B, 276C(1), 276CC, 277 or 278.

- (a) True (b) False

**Correct answer : (a)**

**Justification of correct answer :**

Section 278A provides for prosecution in the case of second or subsequent offence under sections 276B, 276C(1), 276CC, 277 or 278. As per section 278A, a person shall be punished with rigorous imprisonment for a period of which shall not be less than 6 months but which may extend to 7 years and with fine.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

**Q9.**As per section 278B, where an offence under the Income-tax Act has been committed by a company, then the directors shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

As per section 278B, where an offence under the Income-tax Act has been committed by a company, then every person who, at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

**Q10.**No prosecution can be initiated against public servant for improper disclosure of the information.

- (a) True (b) False

**Correct answer : (b)**

**Justification of correct answer :**

Section 138(1) deals with disclosure of information by the tax authorities to other officer, authority, etc. Section 138(2) relates to restriction on declaring of information by the public servant. Section 280 provides for prosecution in the case of disclosure of information by the public servant in contravention of section 138(2). In such a case the public servant shall be punished with imprisonment for a term which may extend to 6 months and with fine.

However, no prosecution shall be instituted against a public servant as discussed above except with the previous sanction of the Central Government.

Thus, the statement given in the question is false and hence, option (b) is the correct option.