CHAPTER 19

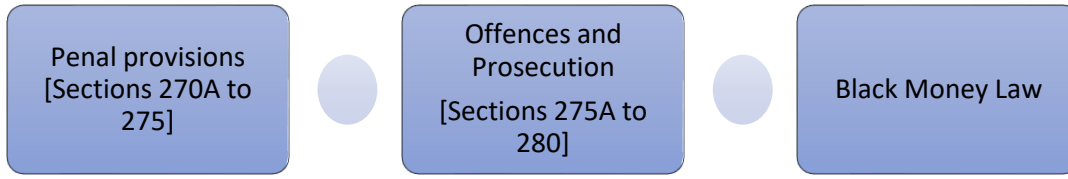
PROVISIONS TO COUNTERACT UNETHICAL TAX PRACTICES

LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **identify and examine** the cases where penalty is leviable and **determine** the quantum of penalty for defaults under various provisions of the Income-tax Act, 1961;
- **list** the conditions to be fulfilled by an assessee for making an application for grant of immunity from penalty and prosecution and the time limit for making such application;
- **appreciate** the powers of the Commissioner to waive penalty in certain cases or grant immunity from penalty in certain cases;
- **comprehend** the procedure to be complied with for imposing penalty under the Act;
- **recall** the limitation period, beyond which penalty cannot be imposed;
- **appreciate** the provisions of Income-tax law relating to offences and prosecution;
- **integrate, analyse and apply** the relevant provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and related Rules to address relevant issues and make computations.

CHAPTER OVERVIEW



19.1 INTRODUCTION

As per Taxpayers' Charter, a taxpayer is expected to be honest, disclose full information, keep accurate records as required under laws, pay timely tax and comply with other requirements of the tax laws. However, where a taxpayer fails in complying with such requirements or indulges in in unlawful activities, the Income-tax Act, 1961 provides for imposition of penalty. The Income-tax Act, 1961 also contains prosecution provisions, which are used as a tool for effective enforcement of tax laws and deterring tax avoidance and tax evasion.

While penalties may be imposed by the income-tax authorities, the imposition of a fine or the launching of prosecution for any offence under the Act can be made only by the Magistrate of a Court under sections 275A to 280. In respect of the same default of an assessee, penalty may be imposed, and a prosecution also may be launched against him.

Penal consequences

In addition to the provisions contained under the Income-tax Act to counteract unlawful tax practices, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 contains provisions to tax undisclosed foreign income and assets.

The provisions to counteract ethical failures include the penal and prosecution provisions contained under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

19.2 PENAL PROVISIONS UNDER THE INCOME TAX ACT

Penalty is levied over and above the amount of any tax or interest payable by the assessee and thus, penalty is distinct and different from the tax payable. Penalty proceedings, however, are a part of the assessment proceedings. The authority concerned is entitled to levy penalty only if he is satisfied in the course of any proceedings under the Act that a person has been found guilty of any default in complying with the provisions of the Act. If the order of the penalty is set aside in appeal on the ground that the assessee was not given a reasonable opportunity of being heard, the Assessing Officer would be entitled to levy a penalty again after rectifying the mistakes in proceedings. The penalty to be levied on an assessee is to be based upon the law as it stood at the time the default was committed and not the law as it stands in the financial year for which the assessment is made.

The various sections prescribe the minimum and the maximum penalty that can be levied in certain cases though the Principal Commissioner or the Commissioner is empowered to waive or reduce the penalty in some cases. The authority concerned has been given the discretion to levy or not to levy a penalty. However, penalty levied cannot be less than the prescribed minimum nor can it exceed the maximum amount prescribed by the Act. The quantum of penalty levied by a lower authority can be modified by a higher authority on appeal, reference or revision. The various defaults in respect of which penalty can be levied under the Act are discussed as follows:

19.2.1 PENALTY LEVIABLE FOR UNDER REPORTING OF INCOME [SECTION 270A]

Upto A.Y. 2016-17, section 271(1)(c) provided for penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income.

For the purpose of ensuring objectivity, certainty and clarity in the penalty provisions, section 270A provides for levy of penalty in cases of under reporting and misreporting of income with effect from A.Y.2017-18. Consequently, the penal provisions under section 271 shall not apply in relation to A.Y.2017-18 and onwards.

(1) **Authorities empowered to levy penalty:** Section 270A(1) empowers the Assessing Officer, the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner or the Commissioner to direct levy of penalty, during the course of proceedings under the Income-tax Act, 1961, if a person has under reported his income. Such penalty

shall be imposed by an order in writing by such authority.

(2) **Cases of under-reporting of income [Section 270A(2)]:** A person shall be considered to have under reported his income if, **A>B** in the cases given hereunder–

is greater than

	Case	(A)	(B)
(i)	Return of income has been filed	Income assessed	Income determined in the return processed u/s 143(1)(a);
(ii)	No return of income has been filed or where return is furnished for the first time u/s 148	Income assessed	Basic exemption limit
(iii)	Reassessment	Income reassessed	Income assessed or reassessed immediately before such re-assessment
(iv)	Return of income has been filed and assessment/ reassess-ment is made on the basis of MAT/AMT provisions	The amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC	The deemed total income determined in the return processed u/s 143(1)(a)
(v)	No return of income is filed or where return has been furnished for the first time u/s 148 and assessment/ reassessment is made on the basis of MAT/ AMT provisions	the amount of deemed total income assessed as per the provisions of section 115JB or 115JC	The basic exemption limit, in case of an assessee being an individual, HUF, AOP, BOI, in respect of whom the provisions of AMT are applicable.
(vi)	Reassessment as per the provisions of sections 115JB or 115JC	The amount of deemed total income reassessed as per the provisions of sections 115JB or 115JC	The deemed total income assessed or reassessed immediately before such reassessment.
Further, a person would be considered to have under-reported his income if the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.			

(3) Calculation of under-reported income in different scenarios [Section 270A(3)]:

<table>
<tr><th></th><th>Case</th><th>Manner of computation of under-reported income</th></tr>
<tr><td>(i)</td><td>Where return is furnished and assessment is made for the first time.</td><td rowspan="4">Assessed income
(-)
Income determined under section 143(1)(a)
[in case of all persons]</td></tr>
<tr><td>(ii)</td><td>Where no return has been furnished or where return has been furnished for the first time u/s 148 and the assessment is made for the first time</td></tr>
<tr><td>(iii)</td><td>Where income is not assessed for the first time</td></tr>
<tr><td>(iv)</td><td>Where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC</td></tr>
</table>

Person	Under-reported income
Company, firm or local authority	Assessed income
Other persons	Assessed income (-) Basic exemption limit

Income reassessed or recomputed

(-)

Income assessed or reassessed or recomputed in the order immediately preceding the order during the course of which penalty u/s 270A(1) has been initiated.

(A - B) + (C - D)

where,

A = Total income assessed as per the general provisions i.e., provisions other than the provisions contained in section 115JB or section 115JC;

B = The total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;

C = The total income assessed as per the provisions contained in section 115JB or section 115JC;

D = The total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.

However, where the amount of under reported income on any issue is considered both under the provisions

		contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.
(v)	Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The loss claimed **(-)** The income or loss, as the case may be, assessed or reassessed.

(4) Meaning of Under-reported income in a case where the source of any receipt, deposit or investment is linked to an earlier year [Section 270A(4) & (5)]:

In a case where the source of any receipt, deposit or investment appearing in the current assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any earlier assessment year and no penalty was levied for such preceding year, under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Note – Such amount shall be deemed to be the amount of income under-reported for the preceding year in the following order –

(i)	The preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
(ii)	Where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(5) Cases not included within the scope of under-reported income under section 270A [Section 270A(6)]:

	Case	Condition
(i)	The amount of income in respect of which the assessee offers an explanation	The Assessing Officer/CIT/PC/ the Joint Commissioner (Appeals) /the Commissioner (Appeals) is satisfied that the explanation is *bona fide* and all the material facts have been disclosed to substantiate the explanation.
(ii)	The amount of under-reported income determined on the basis of an estimate	If the accounts are correct and complete to the satisfaction of the income-tax authority but the method employed is such that the income cannot properly be deduced therefrom

(iii)	The amount of under-reported income determined on the basis of an estimate	If the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance
(iv)	The amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer	Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction
(v)	The amount of undisclosed income on account of a search operation	Where penalty is leviable under section 271AAB[1] in respect of such undisclosed income.

(6) Cases of misreporting of income [Section 270A(9)]:

(i) misrepresentation or suppression of facts;

(ii) failure to record investments in the books of account;

(iii) claim of expenditure not substantiated by any evidence;

(iv) recording of any false entry in the books of account;

(v) failure to record any receipt in the books of account having a bearing on total income; and

(vi) failure to report any international transaction or deemed international transaction or specified domestic transaction under Chapter X.

(7) Quantum of penalty leviable:

	Section	Case	Penalty
(i)	270A(7)	Under reporting of income	50% of tax payable on under-reported income
(ii)	270A(8)	Where under reporting of income results from misreporting of income by any person.	200% of tax payable on such under-reported income

[1] *On account of introduction of 'Block Assessment' (Chapter XIV-B) vide Finance Act, 2024, where search is initiated under section 132 on or after the 1.9.2024, penalty under section 271AAB would not be levied after the said date.*

(8) **Manner of computation of tax payable on under-reported income [Section 270A(10)]:**

	Case	Manner of computation of tax payable on under-reported income
(i)	Where no return of income has been furnished or where return has been furnished for the first time u/s 148 and the income has been assessed for the first time	The tax payable on under-reported income shall be the amount of tax calculated on the under-reported income as increased by the basic exemption limit as if it were the total income.
(ii)	Where the total income determined u/s 143(1)(a) or assessed or reassessed or recomputed in a preceding order is a loss	The tax payable in respect of the under-reported income shall be the amount of tax calculated on the under-reported income as if it were the total income.
(iii)	In any other case	The amount of tax calculated on the under-reported income as increased by the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income ***Minus*** The amount of tax calculated on the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

(9) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year [Section 270A(11)].

(10) **Consequential amendments in other provisions:**

Consequential amendments have been made in sections 119, 253, 271A, 271AA, 271AAB[2], 273A, 276C and 279 to provide reference to section 270A.

	Section	Provision	Amendment
(i)	119(2)(a)	Power of CBDT to relax certain provisions, by way of a general or special order, for the purpose of	The CBDT has been empowered to relax the provisions for levy of penalty u/s 270A also.

[2] *On account of introduction of 'Block Assessment' (Chapter XIV-B) vide Finance (No. 2) Act, 2024, where search is initiated under section 132 on or after the 1.9.2024, penalty under section 271AAB would not be levied after the said date.*

		proper and efficient management of the work of assessment and collection of revenue.	
(ii)	253(1)	Enlists the orders appealable to the Appellate Tribunal.	The order passed by the Joint Commissioner (Appeals) or the Commissioner (Appeals), the Principal Commissioner or the Commissioner u/s 270A would also be appealable to the Appellate Tribunal.
(iii)	271A	Levy of penalty of ₹ 25,000 for failure to keep, maintain or retain books of account as required under section 44AA.	The penalty under this section would be without prejudice to the provisions of section 270A.
(iv)	271AA	Levy of penalty of 2% of value of international transaction or specified domestic transaction, where the person fails to maintain information and documents required u/s 92D or report such transaction or maintains or furnishes an incorrect information or document.	The penalty under this section would be without prejudice to the provisions of section 270A.
(v)	271AAB[3]	Levy of penalty where search is initiated under section 132 on or after 15.12.2016 ***but before 01.09.2024***. Such penalty may be levied either by the Assessing Officer or Commissioner (Appeals)	No penalty under section 270A would be imposable in respect of undisclosed income on which penalty has been levied under section 271AAB(1A).
(vi)	273A(1)	Power of the Principal Commissioner or the Commissioner to reduce or waive penalty in certain cases.	Reduction or waiver of penalty imposable on a person u/s 270A, if prior to detection by the Assessing Officer, the person has voluntarily and in good faith made full and true disclosure of particulars of income i.e., where

[3] *On account of introduction of 'Block Assessment' (Chapter XIV-B) vide Finance (No. 2) Act, 2024, where search is initiated under section 132 on or after the 1.9.2024, penalty under section 271AAB would not be levied after the said date.*

			the excess of income assessed over the income returned is of such a nature as not to attract the penal provisions u/s 270A.
(vii)	273A(2)	Order reducing or waiving penalty under section 273A(1) to be made by the PC/CIT only with the previous approval of the PCC/CC/ PDG/DG, as the case may be.	Previous approval of higher authorities also required if, in a case falling u/s 270A, the amount of income in respect of which the penalty is imposed or imposable for the relevant A.Y., or where such disclosure relates to more than one A.Y., the aggregate amount of such income for those years exceed ₹ 5 lakh.
(viii)	276C	Prosecution to be instituted if a person willfully attempts in any manner to evade any tax, penalty or interest chargeable or imposable under the Income-tax Act, 1961. Rigorous imprisonment for a period of 6 months to 7 years and fine would be attracted in a case where the amount sought to be evaded exceeds ₹ 25 lakhs.	Prosecution to also be instituted if a person under-reports his income under the Income-tax Act, 1961 Rigorous imprisonment for a period of 6 months to 7 years and fine would also be attracted in a case where the tax on under-reported income exceeds ₹ 25 lakhs.
(ix)	279(1A)	Prosecution not to be instituted against a person u/s 276C or 277 in relation to the assessment for an assessment year in respect of which penalty imposed or imposable u/s 271(1)(iii) has been reduced or waived by an order u/s 273A.	Prosecution not to be instituted against a person u/s 276C or 277 in relation to the assessment for an AY in respect of which penalty imposed or imposable u/s 270A or u/s 271(1)(iii) has been reduced or waived by an order u/s 273A.

19.2.2 REDUCTION OR WAIVER OF PENALTY [SECTION 273A]

(1) Power to reduce/ waive penalty under section 270A

(a) **Exercise of power to reduce/waive penalty under section 270A** - Section 273A(1) authorises the Principal Commissioner or the Commissioner of Income-tax to reduce or waive the amount of penalty imposed or imposable on a person under section 270A. The exercise of this power by the Principal Commissioner or the Commissioner is

purely at his discretion and may be done either on his own motion or otherwise, that is on receipt of an application from the assessee.

(b) **Conditions to be satisfied -**The Principal Commissioner or the Commissioner can reduce or waive the penalty payable by any person only if the following conditions are satisfied:

(i) **Full and true disclosure -**The reduction or waiver by the Principal Commissioner or the Commissioner would be permissible only if, prior to the detection by the Assessing Officer of the concealment of income or the inaccuracy of particulars furnished in respect of such income, the assessee has made a full and true disclosure of all the particulars in respect of his income and, that, too voluntarily and in good faith.

For this purpose, a person would be deemed to have made a full and true disclosure of his income or of all the particulars relating thereto, in any case where the excess of income assessed over the income returned is of such a nature as not to attract the imposition of any penalty under section 270A.

(ii) **Co-operation in enquiry -** It is essential that the assessee must have co-operated with the department in any enquiry relating to the assessment of his income.

(iii) **Payment of tax or interest -** He must also have either paid or made satisfactory arrangements for the payment of any tax or interest, which may become payable in consequence of any order passed under the Income-tax Act, 1961 in respect of the assessment year.

(c) **Prior approval of higher authorities required in certain cases -** If, in a case falling under section 270A, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year or where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years exceeds ₹ 5,00,000, the Principal Commissioner or the Commissioner of Income-tax can exercise his power to reduce or waive penalty, only after getting the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General.

PC or C can reduce or waive penalty

- **Without approval of higher authorities, where income ≤ 5 lakhs**
- **With approval of PCC or CC or PDG or DG, where income > 5 lakhs**

(d) **Relief available only once in life time -** Where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order.

(2) Power to reduce/ waive penalty payable under the Act

(a) **Exercise of power to reduce/waive any penalty** - Section 273A(4) authorises the Principal Commissioner or the Commissioner of Income-tax, without prejudice to the powers conferred on him by any other provision of the Act, to reduce or waive the amount of any penalty payable by the assessee under this Act. The Principal Commissioner or the Commissioner may exercise this power on an application made by the assessee, after recording his reason in writing for so doing. He is also empowered to stay or compound any proceedings for the recovery of any penalty in cases where he is satisfied that:

(i) to do otherwise would cause genuine hardship to the assessee having due regard to all the facts and circumstances of the case; and

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

Such order accepting or rejecting application of an assessee in full or part has to be passed within a period of **12 months from the end of the month in which such application is received by the PC or CIT**.

However, order rejecting the application of the assessee shall not be passed unless the assessee has been an opportunity of being heard.

PC or C can reduce or waive penalty

- **Without approval of higher authorities, where income ≤ 1 lakh**
- **With approval of PCC or CC or PDG or DG, where income > 1 lakh**

(b) **Prior approval of higher authorities required in certain cases -** In case the quantum of penalty payable under this Act exceeds ₹ 1 lakh or the application relates to more than one penalty and the aggregate amount of such penalties exceeds ₹ 1 lakh, the PC or the CIT grant relief only with the previous approval of the PCC or the CC or the PDG or the DG, as the case may be.

(3) **Finality of order**

The Principal Commissioner or the Commissioner's order under section 273A for reduction or waiver of penalty is final and cannot be challenged in any court or before any authority.

Waiver order cannot be challenged

ILLUSTRATION 1

M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm for A.Y.2026-27:

	Particulars of total income	₹
(1)	*As per the return of income furnished u/s 139(1)*	*50,00,000*
(2)	*Determined under section 143(1)(a)*	*60,00,000*
(3)	*Assessed under section 143(3)*	*75,00,000*
(4)	*Reassessed under section 147*	*95,00,000*

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

SOLUTION

M/s. XYZ is deemed to have under-reported its income since:

(1) its income assessed u/s 143(3) exceeds its income determined in a return processed u/s 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3) Under-reported income:		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 15 lakhs *plus* tax on total		

income of ₹ 60 lakhs determined u/s 143(1)(a) **[30% of ₹ 75 lakh + HEC@4%]**	23,40,000	
Less: Tax on total income determined u/s 143(1)(a) **[30% of ₹ 60 lakh +HEC@4%]**	18,72,000	
	4,68,000	
Penalty leviable@50% of tax payable		2,34,000
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	95,00,000	
(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 20 lakhs *plus* tax on total income of ₹ 75 lakhs assessed u/s 143(3) **[30% of ₹ 95 lakh + HEC@4%]**	29,64,000	
Less: Tax on total income assessed u/s 143(3) **[30%of ₹ 75 lakh + HEC@4%]**	23,40,000	
	6,24,000	
Penalty leviable@50% of tax payable		3,12,000

Note *– The following assumptions have been made -*

(1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and

*(2) The under-r*eported income is not on account of misreporting.

ILLUSTRATION 2

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y.2026-27. However, the total income assessed in respect of such year under section 144 is ₹ 14 lakh. Is penalty u/s 270A attracted in this case, and if so, what is the quantum of penalty leviable?

SOLUTION

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his tax liability would be computed applying the provisions of section 115BAC, since w.e.f. A.Y. 2026-27 he has to specifically exercise the option to shift to normal provisions along with the return of income. Hence, penalty under section 270A is leviable in his case in the following manner.

Computation of penalty leviable under section 270A

Particulars		₹	₹
Assessment under section 144			
Under-reported income:			
Total income assessed under section 144		12,00,000	
Tax payable on under-reported income as per section 115BAC			
Upto ₹ 4,00,000	Nil		
₹ 4,00,001 – ₹ 8,00,000 @ 5%	20,000		
₹8,00,001 – ₹ 12,00,000 @10%	40,000		
₹ 12,00,001 – ₹ 14,00,000 @15%	30,000	90,000	
Add: HEC@4%		3,600	
		93,600	
Penalty leviable@50% of tax payable			46,800

Note *– It is assumed that the under-reported income is not on account of misreporting.*

ILLUSTRATION 3

ABC Ltd. is a domestic company liable to tax @25%. The following are the particulars furnished by the company for A.Y.2026-27:

	Particulars of total income	₹
(1)	*As per the return of income furnished u/s 139(1)*	*(15,00,000)*
(2)	*Determined under section 143(1)(a)*	*(8,00,000)*
(3)	*Assessed under section 143(3)*	*(5,00,000)*
(4)	*Reassessed under section 147*	*4,00,000*

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

SOLUTION

ABC Ltd. is deemed to have under-reported its income since:

(1) the assessment u/s 143(3) has the effect of reducing the loss determined in a return processed u/s 143(1)(a); and

(2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3) Under-reported income:		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@25%	75,000	
Add: HEC@4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		39,000
Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@25%	2,25,000	
Add: HEC@4%	9,000	
	2,34,000	
Penalty leviable@50% of tax payable		1,17,000

Notes *– The following assumptions have been made -*

(1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and

(2) The under-reported income is not on account of misreporting.

19.2.3 OTHER PENAL PROVISIONS UNDER THE INCOME TAX ACT

Chapter XXI of the Income-tax Act, 1961 contains various penal provisions which are attracted for failure to comply with the requirements of the provisions contained in other chapters of the Act. To provide easy correlation certain penal provisions are discussed along with related provisions in the respective chapters of the Study Material. To give a bird's eye view of the penal provisions discussed in other chapters, the following table summarizes these penal provisions:

Section	Nature of Default	Penalty Leviable	Remarks
271A	Failure to keep or maintain or retain books of account, document etc. as required u/s 44AA or rules made thereunder.	₹ 25,000	Penalty may be levied by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). Penalty is leviable without prejudice to section 270A.
271AA(1)	Failure to keep and maintain any information and document as required u/s 92D(1)/(2); Failure to report such transaction which he is required to do so; Maintaining or furnishing an incorrect information or document.	2% of the value of each international transaction or specified domestic transaction entered into by such person	Penalty may be levied by the Assessing Officer or Commissioner (Appeals). Penalty is leviable without prejudice to section 270A or section 271BA.
271AA(2)	Fails to furnish the information and documents as required under section 92D(4)	₹ 5,000	Prescribed Income-tax Authority
271AAD	Penalty for false entry etc. in books of account or omission of any entry which is relevant for computation of total income of such person, to evade tax liability. False entry includes use or intention to use – • Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or • Invoice in respect of supply or receipt of goods or services or	Sum equal to the aggregate amount of false entry or omitted entry	Penalty may be levied by the Assessing Officer or Joint Commissioner (Appeals) or Commissioner (Appeals). Such penalty is leviable on • the person who makes such false entry or omits an entry to evade tax liability; and • any other person, who caused the person in any manner to make a false entry or omit any entry to evade tax liability.

	both issued by the person or any other person without actual supply or receipt of such goods or services or both; or • Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist		
271AAE	If during any proceeding under this Act, it is found that any person, being any fund or institution or trust referred under section 10(23C)(iv)/(v)/(vi)/(via) or any trust or institution referred to in section 11 applied income of the trust or institution, directly or indirectly, for the benefit of any person referred to in section 13(3)	Sum equal to - (i) 100% of the aggregate amount of income so applied, where the violation is noticed for the first time during any previous year; and (ii) 200% of the aggregate amount of income so applied, where violation is noticed again in any subsequent previous year.	Penalty may be levied by the Assessing Officer
271B	Failure to get accounts audited or obtain audit report u/s 44AB or to furnish the report of such auditor with return of income.	½% of total sales, turnover or gross receipts of business/ gross receipts of profession or ₹ 1,50,000, which-ever is less.	Penalty may be levied by the Assessing Officer

271BA	Failure to furnish audit report as required under section 92E	₹ 1,00,000	Penalty may be levied by the Assessing Officer
271C	Failure to deduct tax at source as per chapter XVII-B or to pay or ensure payment of the whole or any part of the tax as required by - - the proviso to section 194B [winnings from lottery or crossword puzzle] or - the first proviso to section 194R(1) [on benefits and perquisites in respect of business or profession] or - the proviso to section 194S(1) [consideration on transfer of virtual digital assets] or - section 194BA(2) [winnings from online games]. **Note** – In all the four situations mentioned above, the winnings/ benefit/ perquisite/ consideration for transfer, as the case may be, is wholly in kind or partly in cash and partly in kind and the part in cash is not sufficient to meet the TDS liability.	A sum equal to the amount of tax which he failed to deduct or pay or ensure payment of said tax at source.	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.***
271CA	Failure to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB	A sum equal to the amount of tax which he failed to collect.	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.***

271D	Failure to comply with the provisions of section 269SS.	Penalty of a fixed sum equal to amount of loan or deposit or specified sum taken or accepted otherwise than by way of account payee cheque/ bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.***
271DA	Failure to comply with the provisions of section 269ST	Penalty of sum received in contravention of the provisions of section 269ST i.e., sum of ₹ 2 lakh or more received in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque/ bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.***
271DB	Failure to comply with the provisions of section 269SU	Penalty of ₹ 5,000 per day of continuing default, if the person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.*** No penalty imposable if the person proves that there were good and sufficient reasons for such failure

271E	Failure to comply with the provisions of section 269T	A sum equal to the amount of loan or deposit or specified advance repaid otherwise than by an account payee cheque/bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner. ***However, w.e.f. 01.04.2025 penalty shall be imposed by the Assessing Officer.***
271FA	Failure to furnish Statement of financial transaction or reportable account within the time prescribed u/s 285BA(2), i.e., on or before 31st May, immediately following the F.Y. in which the transaction is registered or recorded.	A sum of ₹ 500 for every day during which failure continues.	Penalty leviable by Income Tax Authority prescribed u/s 285BA
	Failure to furnish Statement of Financial Transaction or Reportable Account within the time prescribed u/s 285BA(5).	A sum of ₹ 1,000 for every day during which failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.	
271FAA(1)	Furnishing of inaccurate information in the statement of financial transaction or reportable account or failure to furnish correct information within the period specified or fails to comply with due diligence	₹ 50,000	Leviable by the income-tax authority prescribed under section 285BA
271FAA(2)	Furnishing inaccurate statement of financial transaction or reportable account by reporting	₹ 5,000 for every reportable account, in addition to the penalty of ₹ 50,000 levied	

	financial institution, where the inaccuracy is due to false/inaccurate information furnished by the holder(s) of the relevant reportable account(s).	under section 271FAA(1) above. The reportable financial institution is entitled to recover the sum so paid on behalf of such reportable account holder or to retain out of any money that may be in its possession or may come to it from every such reportable account holder, an amount equal to the sum so paid.	
271FAB	Failure to furnish within the prescribed time, a statement or any information or document as required u/s 9A(5) by an eligible investment fund	₹ 5,00,000	Leviable by the income-tax authority prescribed under section 9A(5)
271G	Failure to furnish information or document under section 92D(3)	2% of the value of the international transaction or specified transaction for each such failure	**Competent Authority to levy penalty:** The Assessing Officer/ the Transfer Pricing Officer/ the Commissioner (Appeals).
271GA	Failure to furnish information or document by an Indian concern under section 285A	2% of the value of the transaction in respect of which such failure has taken place, if such transaction has the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern. In any other case; ₹ 5,00,000.	Penalty imposable by an income-tax authority prescribed under section 285A.

271GB	Non-furnishing of the report by any reporting entity which is obligated to furnish Country-by-Country report as required under section 286		For details, refer section 286 discussed in Chapter 24 on Transfer Pricing
	Period of delay/default	**Penalty**	
	Not more than a month	₹ 5,000 per day	
	Beyond one month	₹ 15,000 per day for the period exceeding one month	
	Continuing default even after service of order levying penalty	₹ 50,000 per day of continuing failure beginning from the date of service of order	
	Failure to produce information and documents within prescribed time		
	Failure to produce information before prescribed authority within the period allowed u/s 286(6)	₹ 5,000 per day of continuing failure, from the day immediately following the day on which the period for furnishing the information and document expires.	
	Continuing default even after service of penalty order	₹ 50,000 per day for the period of default beyond the date of service of penalty order.	
	Penalty for submission of inaccurate information in the CBC report	₹ 5,00,000	Penalty would be leviable on the reporting entity, if,- (a) the entity has knowledge of the inaccuracy at the time of furnishing the report but does not

			inform the prescribed authority; or (b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or (c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 286(6).
271GC	Failure to furnish statement under section 285	₹ 1000 per day for the period of default, if the period of default does not exceed 3 months or ₹ 1,00,000 in any other case.	Penalty leviable by Assessing Officer
271H			Penalty leviable by Assessing Officer
(a)	Failure to furnish TDS/TCS statements within the prescribed time.	₹ 10,000 to ₹ 1,00,000	No penalty would be leviable if the person proves that after paying tax deducted or collected along with the fee under section 234E and interest, if any, to the credit of the Central Government, he had delivered or caused to be delivered the TDS/TCS statements before the expiry of one month from the time prescribed for delivering or causing to be delivered such statements.

(b)	Furnishing incorrect information in the said statements in respect of tax deducted or collected	₹10,000 to ₹ 1,00,000	
271-I	Failure to furnish information or furnishing inaccurate information by a person who is required to furnish information under section 195(6)	₹ 1,00,000	Penalty leviable by Assessing Officer
271J	Furnishing of incorrect information in reports or certificates furnished by an accountant, merchant banker or a registered valuer	₹ 10,000 for each such report or certificate	Penalty leviable by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) who, in the course of proceedings under the Act, finds that the accountant, merchant banker or registered valuer has furnished incorrect information in reports or certificates
271K	Where a research association, university, college or other institution referred to 35(1)(ii)/(iii) or the company referred to in section 35(1)(iia) fails to deliver or cause to be delivered a statement within the time prescribed under 35(1)(i), or furnish a certificate prescribed under 35(1A)(ii). Where an institution or a fund, fails to deliver or cause to be delivered a statement within the time prescribed under section 80G(5)(viii) or furnish a certificate prescribed under section 80G(5)(ix).	₹ 10,000 to 1,00,000	Penalty leviable by the Assessing Officer

272A(1)	(a) Refusal to answer questions put by income tax authority (b) Refusal to sign statements made in the course of income tax proceedings.	₹ 10,000 for each such default or failure	Penalty imposable by Joint director or Joint Commissioner. However, where the contravention, failure default occurs in the course of any proceeding before income-tax authority not lower in rank than a Joint director or Joint Commissioner, penalty is imposable by such income-tax authority.
	(c) Non-compliance with summons issued u/s 131(1) to give evidence or produce books of accounts.		
	(d) Failure to comply with a notice issued u/s 142(1) or section 143(2) or failure to comply with a direction issued u/s 142(2A)	→	Penalty imposable by the income-tax authority who had issued the notice or direction after giving the person an opportunity of being heard in the matter.
272A(2)	**Failure:** – To comply with notice u/s 94(6) – To give notice of discontinuance of business/ profession u/s 176(3) – To furnish in due time returns statements mentioned in sections 133, 206, 206C or 285B. – To allow inspection of register referred in section 134 – To furnish returns of income u/s 139(4A)/(4C)	**<u>₹ 500 for every day</u>** during which default continues. However, the amount of penalty for failure in relation to a declaration u/s 197A, a certificate u/s 203 and a returns u/s 206 and 206C and statements u/s 200(2A)/(3) or proviso to section 206C(3)/(3A) shall not exceed the amount of tax deductible or collectible.	Section 272A(3) specifies that for the default committed u/s 272(A)(1) and (2), where the contravention occurs in the course of any proceeding before an income-tax authority not lower in rank than a Joint Director or a Joint Commissioner, penalty can be imposed by such income-tax authority. In any other case, by the Joint Director or the Joint Commissioner. In either case, the penalty order can be passed only after the person concerned is given an opportunity of being heard in the matter.

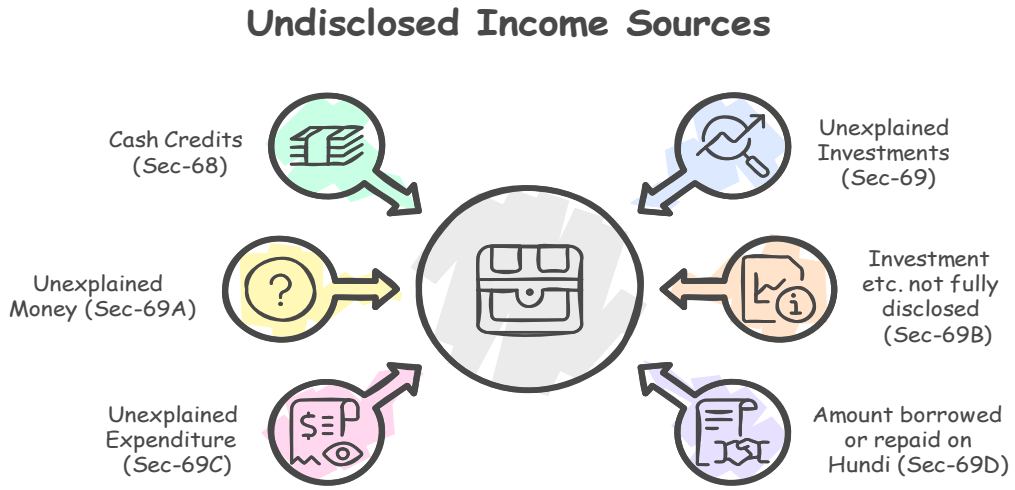
	– To furnish a certificate as required in section 203 or 206C – To deduct and pay tax u/s 226(2) – To furnish a statement as required by section 192(2C) – To deliver or cause to be delivered in due time a copy of the declaration referred to in section 206C(1A) – To deliver or cause to be delivered the statements within the time specified in section206A(1)/200 (2A)/ 206C(3A) – To deliver or cause to be delivered copy of the declaration u/s 197A	→	Penalty is imposable by the PCC/CC/PC or the Commissioner of Income-tax after giving the person an opportunity of being heard in the matter.
272AA	Failure to comply with the provision of section 133B	Any amount upto ₹ 1,000	Penalty imposable by the Joint Commissioner/Asst. Director/ Dy. Director/Assessing Officer after giving the person an opportunity of being heard in the matter.
272B	Failure to comply with the provisions of section 139A	₹ 10,000	
	Failure to quote/intimate PAN/Aadhaar No. in any document referred to in	₹ 10,000 for each such default	

	section 139(5)(c) or to intimate such no. as required u/s 139A(5A) or 139A(5C) or quoting/intimating false PAN/Aadhaar No.		Penalty imposable by Assessing Officer No penalty imposable unless the person on whom penalty is to be imposed is given an opportunity of being heard in the matter.
	Failure to quote PAN/Aadhaar No. in documents referred to in section 139A(6A)	₹ 10,000 for each such default	
	Failure to authenticate PAN/Aadhaar No. in accordance with section 139A(6A)	₹ 10,000 for each such default	
	Failure to ensure that PAN/Aadhaar No. has been - - duly quoted in documents relating to transactions referred to in section 139A(5)(c) or 139A(6A); or - duly authenticated in respect of transactions referred to u/s 139A(6A).	₹ 10,000 for each such default	
272BB(1)	Failure to comply with the provisions of section 203A	₹ 10,000	Penalty imposable by Assessing Officer No penalty imposable unless the person on whom penalty is to be imposed is given an opportunity of being heard in the matter.
272BB(1A)	Quoting false TAN willfully in challans/ certificates/ statements/other documents referred to in section 203A(2)		

19.2.4 TAXATION OF UNDISCLOSED SOURCES OF INCOME

There are many occasions when the Assessing Officer detects cash credits, unexplained investments, unexplained expenditure etc., the source for which is not satisfactorily explained by the

assessee to the Assessing Officer. The Act contains a series of provisions to provide for these contingencies:



(1) Cash Credits [Section 68]

Where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee of that previous year.

Unexplained loan or borrowing - Where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by the assessee in whose books such sum is credited would not be deemed to be satisfactory, unless

- the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited and
- in the opinion of the Assessing Officer, such explanation has been found to be satisfactory.

Unexplained Share Capital/ Premium - Any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or any such amount, by whatever name called, in the accounts of such company would not be deemed to be satisfactory, unless

- the person, being a resident, in whose name such credit is recorded in the books of such company also explains about the nature and the source of such sum so credited and
- in the opinion of the Assessing Officer, such explanation has been found to be satisfactory.

Non-applicability to Venture Capital Fund or Venture Capital Company – The above-mentioned additional conditions would not apply if the person, in whose name the sum is recorded, is a Venture Capital Fund or Venture Capital Company registered with SEBI.[4].

(2) Unexplained Investments [Section 69]

Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and the source of investments or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the value of the investments are taxed as deemed income of the assessee of such financial year.

(3) Unexplained money etc. [Section 69A]

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the books of account and the assessee offers no explanation about the nature and source of acquisition of such money, bullion etc. or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the money and the value of bullion etc. may be deemed to be the income of the assessee for such financial year. Ownership is important and mere possession is not enough.

(4) Amount of investments etc., not fully disclosed in the books of account [Section 69B]

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Assessing Officer finds that the amount spent on making such investments or in acquiring such articles exceeds the amount recorded in the books of account maintained by the assessee and he offers no explanation for the difference or the explanation offered is unsatisfactory in the opinion of the Assessing Officer, such excess may be deemed to be the income of the assessee for such financial year.

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[4] defined under section 10(23FB)

(5) Unexplained expenditure [Section 69C]

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or the explanation is unsatisfactory in the opinion of the Assessing Officer, Assessing Officer can treat such unexplained expenditure as the income of the assessee for such financial year. Such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction under any head of income.

(6) Amount borrowed or repaid *on hundi* [Section 69D]

Where any amount is borrowed on a *hundi* or any amount due thereon is repaid other than through an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying for the previous year in which the amount was borrowed or repaid, as the case may be.

However, where any amount borrowed on a *hundi* has been deemed to be the income of any person, he will not be again liable to be assessed in respect of such amount on repayment of such amount. The amount repaid shall include interest paid on the amount borrowed.

Unexplained money, investments etc. to attract tax @60% [Section 115BBE]

(1) In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would be taxed at the rate of 60% plus surcharge @25% of tax. Thus, the effective rate of tax (including surcharge@25% of tax and cess@4% of tax) is 78%.

(2) No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.

(3) Further, no set off of any loss shall be allowable against income brought to tax under sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

Penalty in respect of undisclosed income in the form of unexplained money, investments etc. under section 271AAC:

In a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year, in addition to the tax payable under section 115BBE, penalty@10% of tax payable under section 115BBE would be attracted.

Penalty may be levied by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished u/s 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

The provisions of section 271AAC are notwithstanding anything contained in the Income-tax Act, 1961, other than the provisions for levy of penalty under section 271AAB[5] on undisclosed income detected in search cases.

No penalty under section 270A for under-reporting of income is leviable in respect of income on which penalty is leviable under this section.

19.2.5 PENALTY NOT LEVIABLE IN CERTAIN CASES [SECTION 273B]

No penalty is leviable under sections 271A, 271AA, 271B, 271BA, 271C, 271CA, 271D, 271E, 271FA, 271FAA 271FAB, 271G, 271GA, 271GB, 271GC, 271H, 271-I, 271J, 272A(1)(c) or 272(A)(1)(d), 272A(2), 272AA(1), 272B, 272BB(1)/(1A), if the assessee proves that there was reasonable cause for the said failure.

19.2.6 PROCEDURE FOR ASSESSMENT OF PENALTIES [SECTION 274]

(1) Section 274(1) provides that no penalty under Chapter XXI can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard.

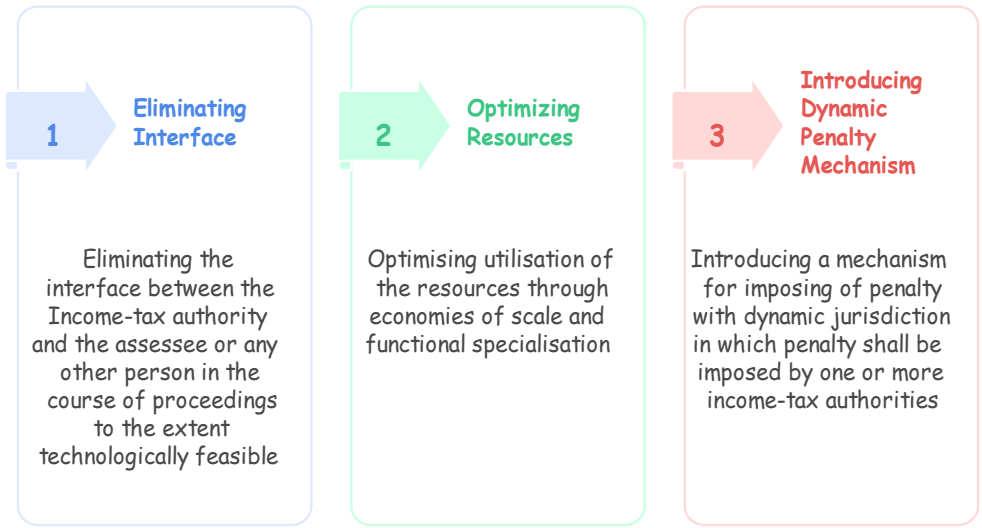
(2) Section 274(2) stipulates obtaining prior approval of the Joint Commissioner by the income-tax authorities mentioned in column (2) where the quantum of penalty exceeds the amount specified in column (3).

S. No.	Income-tax authority passing the penalty order	Quantum of penalty
(i)	The Income-tax Officer	> ₹ 10,000
(ii)	The Assistant Commissioner or the Deputy Commissioner	> ₹ 20,000

[5] *On account of introduction of 'Block Assessment' (Chapter XIV-B) vide Finance (No. 2) Act, 2024, where search is initiated under section 132 on or after the 1.9.2024, penalty under section 271AAB would not be levied after the said date.*

(3) Section 274(2A) empowers the Central Government to formulate a scheme[6], by notification in the Official Gazette

To impart greater efficiency, transparency and accountability by :



(4) In order to give effect to the scheme so formulated, section 274(2B) empowers the Central Government to direct, by notification in the Official Gazette, that any of the provisions of the Income-tax Act, 1961 relating to jurisdiction and procedure for imposing penalty would not apply or would apply with such exceptions, modifications and adaptations as may be mentioned in the notification. Though such direction cannot be issued after 31.3.2022, however, the Central Government may amend such direction by issuing notification.

(5) Every notification issued under section 274(2A)/(2B) has to be laid before each House of Parliament as soon as may be after the notification is issued.

(6) An income-tax authority making an order imposing penalty under Chapter XXI has to send a copy of such order to the Assessing Officer, unless he himself is the Assessing Officer.

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[6] *Accordingly, the Central Government has notified Faceless Penalty Scheme,2021 which is available at* https://incometaxindia.gov.in/Pages/faceless-scheme.aspx

19.2.7 TIME LIMIT FOR IMPOSITION OF PENALTY [SECTION 275]

1) *No order imposing a penalty shall be passed* ***after the expiry of six months from the end of the quarter*** *in which-*

Time limit for passing penalty order (1)	*Circumstances* (2)
Proceedings, in the course of which action for the imposition of penalty has been initiated, are completed.	*Where the relevant assessment or other order is not the subject matter of an appeal under section 246 or 264A or 253., the proceeding in which imposition of penalty has been completed*
Order of revision under section 263 or 264 is passed.	*Where the relevant assessment or other order is the subject matter of revision under section 263 or 264.*
Order of an appeal under section 246 or 246A is received by the jurisdictional Principal Commissioner or Commissioner.	*Where the relevant assessment or other order is the subject matter of an appeal under section 246 or 246A and no further appeal has been filed under section 253.*
Order of an appeal under section 253 is received by the jurisdictional Principal Commissioner or Commissioner.	*Where the relevant assessment or other order is the subject matter of an appeal under section 253.*
Notice for imposition of penalty is issued.	*Any other case*

2) Where the relevant assessment or other order is the subject matter of an appeal under section 246 or 246A or 253 or 260A or 261 or revision under section 263 or 264, the order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be revised on the basis of assessment as revised by giving effect to order passed under the said sections [Section 275(2)].

3) No order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed:

a) unless the assessee has been heard or has been given a reasonable opportunity of being heard;

b) after the expiry of ***six months from end of the quarter*** *in which the order passed under section 246 or 246A or 253 or 260A or 261 is received by the jurisdictional Principal Commissioner or Commissioner or the order of revision under section 263 or 264 is passed.*

4) *The provisions of 274(2) shall apply to the order imposing or enhancing or reducing penalty under section 275(2).*

Note: *Section 274(2) provides that for passing an order imposing penalty exceeding ₹10,000, the Income-tax officer has to take the prior approval of the Joint Commissioner. Also, for passing an order imposing penalty exceeding ₹20,000, the Assistant Commissioner or the Deputy Commissioner should take the prior approval of the Joint Commissioner.*

5) *Following period shall be excluded from computing the period of limitation:*

a) *time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;*

b) *period commencing on the date on which stay on proceeding for levy of penalty was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner.*

19.3 OFFENCES AND PROSECUTION UNDER THE INCOME TAX ACT

The punishable offences as well as the prosecution for such offences under the Income-tax Act, 1961 are discussed under Chapter XXII. The prosecution provisions are discussed hereinbelow-

Section	Nature of default	Rigorous imprisonment	Quantum of Fine
275A	Contravention of order made under the second proviso to sub-section (1) or sub-section (3) of section 132 regarding search and seizure	Upto 2 Years **(+) fine**	No limit specified
275B	Failure to afford the authorized officer the necessary facility to inspect the books of account or other documents as required under section 132(1)(iib)	Upto 2 years **(+) fine**	No limit specified
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Upto 2 years **(+) fine**	No limit specified
276B	Failure to pay to the credit of the Central Government, tax deducted at source by a person as required by or under the provisions of Chapter XVII-B.	3 months to 7 years **(+) fine**	No limit specified

	If the payment, however, has been made to the credit of the Central Government on or before the time prescribed for filing the statement under section 200(3), no prosecution would be attracted. Failure to pay tax or ensure payment of tax to the credit of the Central Government as required by or under - the proviso to section 194B [winnings from lottery or crossword puzzle] or - the first proviso to section 194R(1) [on benefits and perquisites in respect of business or profession] or - the proviso to section 194S(1) [on transfer of virtual digital assets] or - section 194BA(2) [Winnings from online games]. ***Note** – In all the four situations mentioned above, the winnings/ benefit/ perquisite/ consideration for transfer, as the case may be, is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the TDS liability.*		
276BB	Failure to pay to the Central Government tax collected under section 206C. ***However, the above provision may not apply if the payment of tax collected at source has been made to the credit of the Central Government on or before the time prescribed for filing the statement under section 206C(3).***	3 months to 7 years (**+) fine**	No limit specified
276C(1)	Wilful attempt to evade tax, penalty or interest chargeable or imposable or under reports his income	Evaded amount/Tax on under reported income exceeding	No limit specified

		₹ 25 lakh: 6 months to 7 years **(+) fine** Other cases: 3 months to 2 years **(+) fine**	
276C(2)	Wilful attempt to evade payment of tax, penalty or interest.	3 months to 2 years **(+) fine, at the discretion of the court.**	No limit specified
276CC	Wilful failure to furnish in due time a return of income u/s 139(1) or u/s 142(1)(i) or u/s 148. **Note:** If return of income u/s 139(1) is furnished before expiry of the assessment year or an updated return is furnished within the time specified under section 139(8A) or the tax payable by a person, not being a company, on the total income determined on regular assessment, as reduced by advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any TDS/TCS does not exceed ₹ 10,000 - No prosecution.	Evaded tax exceeding ₹ 25 lakh : 6 months to 7 years **(+) fine** Other cases: 3 months to 2 years **(+) fine**	No limit specified
276CCC	Wilful failure to furnish in due time a return of income in search cases u/s 158BC(1)(a).	3 months to 3 years (+) fine.	No limit specified
276D	Wilful failure to produce accounts and documents under section 142(1)/ 142(2A)	Up to one year **(+) fine**	No limit specified
277	False statements in verification.	Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years **(+) fine** In other cases: 3 months to 2 years **(+) fine**	No limit specified

277A	Falsification of books or documents, etc. to induce or abet any person to evade any tax, penalty or interest chargeable or imposable under the Act. It is not necessary to prove that the other person has actually evaded any tax, penalty or interest chargeable or imposable under the Act for the purpose of establishing the charge under this section.	Imprisonment of 3 months to 2 years (**+) fine**	No limit specified
278	Abetment of false return etc. (relating to any income chargeable to tax)	Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years (**+) fine** In other cases: 3 months to 2 years (**+) fine**	No limit specified
278A	Second and subsequent offences under section 276B, 276BB, 276C(1), 276CC, 277, 278.	6 months to 7 years for every subsequent offence (**+) fine**	No limit specified
280(1)	Disclosure of particulars by public servants in contravention of section 138(2). Prosecution after previous sanction of Central Government under section 280(2).	Up to 6 months (**+) fine**	No limit specified

Section 278AA provides that where a reasonable cause for the failure is proved, punishment shall not be imposed for offences specified in sections 276B or 276BB.

For the purposes of offences and prosecutions, the following individuals will be deemed to be guilty of the offence committed by the respective person:

Person	Section	Individual
Company	278B	Every person in charge of affairs; Director, Manager, Secretary and every officer who is guilty of offence
Firm	278B	Partner
AOP/BOI	278B	Members controlling the affairs
HUF	278C	Karta or member either by acquiescence or negligence.

Section 278B(3) provides that if an offence under the Act has been committed by a person being a company, it shall be punished with fine. Every other person who was in charge of and was responsible for the conduct of business of the company, or any director, manager, secretary or other officer of the company (with whose consent or connivance or due to whose neglect the offence was committed) would be liable for punishment of imprisonment and fine wherever so provided.

19.3.1 PRESUMPTION AS TO CULPABLE MENTAL STATE [SECTION 278E]

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

It may be noted that penalty proceedings being quasi-criminal in nature, it has been judicially held in the context of various penalty and prosecution proceedings, that the burden is on the department to establish that the assessee concealed the particulars of his income or deliberately furnished inaccurate particulars thereof and it is not enough for the revenue merely to show that a certain amount was received by the assessee. Section 278E has clearly overruled this view and has specifically placed the burden of proof on the assessee.

It specifically provided that where any prosecution requires a culpable mental state *(mens rea*) the court shall presume the existence of such mental state but the assessee is entitled to prove that he had no such mental state with respect to the act charged with. Thus, the burden to prove the non-existence of *mens rea* has been effectively placed on the assessee in prosecution cases.

(2) **Meaning of 'Culpable mental state' -** Culpable mental state includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

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

19.3.2 PROSECUTION TO BE MADE AT THE INSTANCE OF THE PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER [SECTIONS 279 AND 279A]

(1) **Prior sanction of higher authorities -** Section 279(1) provides that the proceedings to punish a person for an offence under sections 275A, 275B, 276, 276B, 276BB, 276C, 276CC, 276D, 277, 277A and 278 can be initiated only after previous sanction of the Principal Commissioner or Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the appropriate authority. However, the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General may issue such instructions or directions to the said authorities for institution of proceedings under section 279(1).

(2) **Cases where prosecution cannot be initiated -** Section 279(1A) provides that the proceedings to punish a person for an offence under section 276C or 277 cannot be initiated in relation to the assessment of an assessment year in respect of which the penalty imposed or imposable on him under section 270A has been waived or reduced under section 273A.

(3) **Compounding of offences -** An offence may, either before or after the institution of prosecution proceedings be compounded by the concerned authorities under section 279(2).

In order to provide better understanding with respect to the revised guidelines, the CBDT has issued clarifications, v*ide [F.No. 285/08/2014-IT(Inv.V/t63 dated 17.10.2024 and Circular No. 4/2025 dated 17.3.2025, in the form of FAQs which are discussed below:*

Revised Guidelines for Compounding of Offences along with FAQs

Before moving to these Guidelines, lets first understand what is compounding of offence as included in the FAQs.

Q. What is compounding of offence?

Ans *Compounding of an offence is a mechanism whereby the defaulter is reprieved of major legal consequences by affording him an opportunity to pay certain sum of money to escape prosecution. The specified offences can be compounded by the competent authority either before or after the initiation of proceedings.*

Q. Are there any offence(s) under Income-tax Act, 1961 which are not compoundable?

Ans *All offence under the Income-tax Act, 1961 is compoundable in these revised guidelines.*

1. Scope of the Guidelines to prosecutions under Income-tax Act, 1961

These guidelines shall come into effect from the date of issuance i.e.,17th October 2024 and applies to all compounding applications filed after this date as well as to applications which have already filed earlier but not yet disposed of.

Q. Whether revised guidelines are applicable on pending compounding applications? If yes, whether applicants have to file a fresh application?

Ans: *Yes, revised guidelines are applicable on the applications, pending before issuance of these guidelines. The applicants whose applications were pending on 17.10.2024 are not required to file a fresh application or pay any fresh application fees.*

In case applications under earlier guidelines were rejected solely on account of curable defects, fresh applications may also be filed again.

Curable defects are such as non-payment of outstanding tax, interest, penalty, or any other sum related to the offence, filing of application in incorrect proforma, mention of incorrect assessment year/financial year or section under which offence has been committed, non-payment or short payment of compounding charges, non-submission of undertaking regarding withdrawal of appeals, etc.

Applications rejected in the past on merits by the Competent Authority shall not be reconsidered under these revised guidelines.

Q. Whether the applicant whose application was rejected in earlier guidelines on the ground of being convicted is eligible to re-apply for compounding as per revised guidelines?

Ans: *Yes, in case the rejection was solely on account of conviction, without examination of merits, as per any of the earlier guidelines, such applicant can reapply in terms of revised guidelines.*

2. Conditions for consideration of Compounding Application

Offences may be considered for compounding provided all the following conditions are satisfied:

(i) Compounding Application

An application for compounding is made to the Jurisdictional Principal Chief Commissioner/ Chief Commissioner/ Principal Director General/ Director General of Income-tax, being the Competent Authority, for compounding of the offence(s).

The compounding application may be filed for offence(s) pertaining to one financial year (in case of taxpayers) or quarter (in case of tax deductors) or for multiple years/quarters. The compounding

application filed for multiple years/ quarters are referred to as "Consolidated Compounding Application".

If there are more than one rejected application under the previous Guidelines, one Consolidated Compounding Application may be filed for all such previous applications.

Q. Whether applicant can withdraw a compounding application and file a new application?

Ans: *The applicant can file a new single application or consolidated application after withdrawal of earlier application(s). However, such new application shall be treated as a subsequent application and higher compounding rate shall be applicable which is discussed later on.*

Q. Whether applicant is required to file compounding application for all the offences together, for which prosecution proceedings has been initiated?

Ans: *No, the applicant may apply for one or multiple offences in an application. His application cannot be rejected on the ground that he has not applied for particular offence for which notice for prosecution has been issued and proceedings are under progress.*

Q. Is there any limitation as to the number of times compounding applications can be filed by a person?

Ans: *No, there is no limitation on the number of times a person can file compounding application. However, the Competent Authority may reject an application filed by a person on the ground of him being a "habitual offender".*

(ii) Time limit for filing application

The compounding application or Consolidated Compounding Application may be filed suo-moto at any time after the offence(s) is committed, irrespective of whether it comes to the notice of the Department or not. The Compounding Application or the Consolidated Compounding Application may also be filed after the launch of prosecution proceedings.

Q. Is there any time limit for filing of an application for compounding?

Ans: *No, an application for compounding can be filed at any time after committing the offence, regardless of whether the same has come to the notice of the department or prosecution proceedings have been launched.*

(iii) Compounding Application Fee

For Compounding Applications or the Consolidated Compounding Applications, filed on or after 17.10.2024, the applicant has to deposit non-refundable Compounding Application Fee of ₹25,000

for a single Compounding application (per application) and ₹ 50,000 for a consolidated Compounding application (per such application).

The said fee is a non-refundable fee, but adjustable against applicable total compounding charges decided by the Competent Authority, if any.

Q. Whether compounding application fee is adjustable against compounding charge payable?

Ans: *Yes, compounding fee is adjustable but only against compounding charges payable for the offence(s) sought to be compounded* ***in the particular application****. Cross application adjustment is not allowed. However, if compounding application is rejected for any reasons, the application fees shall neither be refundable nor adjustable against any subsequent application.*

Q. Whether compounding is allowed if the application for such an offence was previously rejected? If so, whether separate applications need to be filed for more than one application rejected under the previous guidelines? How will the compounding application fees be charged?

Ans: *Yes, an applicant may apply for compounding of offence(s) through a single consolidated application, if one or more applications had been rejected under previous guidelines.*

However, the fresh application can only be filed if such rejection(s) were on account of curable defects and no application is allowed to be filed for any of the rejection(s), made by the Competent Authority, on merits with those particulars i.e. offence and relevant financial year.

Compounding application fees chargeable for a "consolidated compounding application" would be charged in this case.

(iv) Payment of all taxes, interest & other sums relating to offence for which compounding sought

All outstanding tax, interest (including interest u/s 220), penalty and any other sum due, relating to the offence(s) for all relevant year(s) and/or quarter(s) for which compounding has been sought is to be paid before making the Compounding Application or the Consolidated Compounding Application, as the case may be.

However, if on verification by the Department, any related demand is found outstanding or is considered payable, the same, on being intimated to the applicant, has to be paid (including interest u/s 220) within 30 days of the intimation by the Department or such period (not exceeding three months) allowed by the Competent Authority. The compounding application or the consolidated compounding application, as the case may be, shall be considered valid only consequent to the payment of all the demand pertaining to the offence(s) for respective years/quarters.

(v) Undertaking by the applicant

The applicant has to undertake to pay the Compounding charges within the stipulated timeframe.

(vi) Withdrawal of appeals

The person/applicant has to undertake to withdraw appeals filed by him, if any, related to the offence(s) sought to be compounded. In case such an appeal has mixed grounds, one or more of which may not be related to the offence(s) under consideration, an undertaking has to be given for withdrawal of such grounds as are related to the offence to be compounded.

Q. Whether an applicant is required to withdraw appeal related to offence sought to be compounded before filing a compounding application?

Ans: *No such withdrawal is required. However, applicants shall undertake to withdraw appeals including Writ petitions, if any, related to offences being compounded and in case where appeal has mixed grounds, grounds of appeal related to the offence to be compounded.*

(vii) Consolidation of offences

Any application for compounding of offence u/s 276B/276BB by an applicant for any period for a particular TAN should cover all defaults constituting offence u/s 276B/276BB in respect of that TAN for such period.

The total default on account of non-payment of TDS/TCS for a quarter shall be considered by combining the defaults in all the statements filed by the TDS deductor, in respect of the relevant quarter.

3. Revival of a defective application

Applications which do not fulfil any of the specified conditions or are not acceptable due to curable defects such as

- *Non-payment of outstanding tax, interest, penalty, or any other sum related to the offence;*
- *Application not filed in correct proforma;*
- *Applications filed for incorrect financial year or assessment year or under incorrect section, etc.;*

shall be treated as 'defective' under these guidelines and shall not be proceeded with.

However, such applications can be revived without additional payment of Compounding Application Fee, provided the defects are cured within a period of one month from the date of intimation of the

defect(s). In case, the defect is not cured within time allowed, defective application will be returned back to the applicant.

Any further application filed for the same purpose, will be considered as subsequent compounding application and charges will be applicable.

4. Offences compoundable with the approval of higher authority

The Competent Authority, in the following cases, may compound only with the approval of Chairman, CBDT.

(a) In case of an offence for which the applicant has been convicted with imprisonment for 2 years or more, with or without fine, by a court of law;

(b) In case of an offence which is related to another offence under any other law for which he has been convicted with imprisonment for 2 years or more, with or without fine, by a court of law;

(c) If the applicant, as per information available on the basis of an investigation conducted by any Central or State Agency, has been found to be involved, in any manner, in anti-national or terrorist activity. In such cases, the Competent Authority shall consult with relevant Agency and seek inputs regarding the said activity and its implications, for the purpose of deciding it as a deserving case and incorporate them while seeking approval;

(d) In the case of an applicant, being a person other than the main accused, where it is proved that the applicant facilitated tax evasion through mechanisms such as use of entities for laundering of money, generation of bogus invoices of sale/purchase without actual business, by providing accommodation entries or in any other manner, as prescribed in section 277A;

(e) If the offence is directly related to an offence under the following Acts:

- *the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015; or*
- *Prohibition of Benami Property Transactions Act,1988;*

(f) In case of an offence under section 275A and/or 275B.

Q. Whether offence can be compounded where applicant has been convicted for imprisonment for two years or more?

Ans: *Yes, even if applicant has been convicted with imprisonment of two years or more for any offence under Income-tax Act, 1961 or for an offence under any other law, which is related to offence under the Income-tax Act, 1961, may apply for compounding. Such offence shall, however, be compoundable only with the approval of Chairman, CBDT.*

Q. Whether cases involving other agencies such as ED /CBI can be compounded?

Ans: *Yes, such offence(s) may be compounded by the competent authority if applicant is not found to be involved in anti-national or terrorist activity. However, if the applicant is found to be involved in such activity, the offence shall be compounded only with the approval of Chairman, CBDT.*

5. Authority Competent to Compound an Offence

The jurisdictional Principal Chief Commissioner/ Chief Commissioner/ Principal Director General/ Director General of Income-tax is the Competent Authority for compounding of offences.

If a person has committed an offence u/s 276B/276BB for non-payment of TDS/TCS in respect of both resident and non-resident payees/ collectees then the jurisdiction over such person normally lies with more than one jurisdictional charge. In such case, the Principal Chief Commissioner/ Chief Commissioner/ Principal Director General/ Director General of Income-tax in whose jurisdiction compounding application has been filed will be the Competent Authority. However, in case the applicant files applications in more than one jurisdictional charge, the Competent Authority will be the jurisdictional authority where the quantum of TDS default is higher. All other applications shall be transferred to such Competent Authority.

In case an applicant files Compounding application for offences committed u/s 276B/276BB, in respect of two or more TANs falling in two or more jurisdictions, the jurisdictional authority where the quantum of TDS default is higher shall be the Competent Authority. All other applications shall be transferred to such Competent Authority.

6. Compounding Procedure

Report from Assessing Officer/Assistant or Deputy Director - *On receipt of the Compounding application, the Competent Authority has to obtain a report from the Assessing Officer/Assistant or Deputy Director concerned who has to submit it promptly to the Competent Authority, through proper channel.*

Time to pass application order if application is not acceptable - *In cases where, the compounding application is not found to be acceptable, then the Competent Authority shall dispose of such application through a speaking order. Such order may be passed* ***within two months from the end of the month of receipt of the application as far as possible****.*

Time to pass application order if application is acceptable - *In cases where, the compounding application is found to be acceptable, then the Competent Authority has to intimate the applicant accordingly, along with the compounding charges payable and other pending liabilities, if any. Such intimation may be issued within 2 months from the end of the month of receipt of the application as far as possible.*

Time limit for payment for compounding charges - *The Competent Authority shall, while intimating the amount of compounding charges to the applicant, require him to pay the same within 1 month from the end of the month of receipt of such intimation.*

Extension of time limit for payment of compounding charges - *On written request of the applicant for further extension of time period for payment of compounding charges, the Competent Authority, under exceptional circumstances, may extend this period up to six months. Extension beyond 6 months and upto 12 months shall not be permissible except with the prior approval in writing of the Principal Chief Commissioner of Income Tax of the Region concerned. Extension beyond 12 months and upto 24 months from the end of month shall not be permissible except with the prior approval of Chairman, CBDT or a Member, CBDT authorized by the Chairman, CBDT on a proposal of the Competent Authority concerned. No extension shall be allowed after 24 months from the end of the month of receipt of such intimation of compounding charges.*

Rejection of application on non payment of compounding charges - *Where compounding charge is not paid within the time allowed/extended, the application will be rejected and prosecution proceedings shall be initiated, if not already done so.*

The complainant shall serve a copy of the prosecution complaint to each accused within 15 days of filing complaint to allow prompt filing of compounding application.

In all cases where prosecution proceedings have been instituted, the order of acceptance/rejection of application of compounding has to be brought to the notice of the Court immediately through prosecution counsel, where the said prosecution proceedings are pending before the Court.

Time to pass compounding order - *Where the payment of compounding charges is made within time allowed/extended, the Competent Authority shall pass the compounding order within 1 month from the end of the month of payment of total compounding charges.*

In case proceedings to impose penalty related to the offence sought to be compounded are pending at the time of filing of the compounding application, such proceedings should be concluded expeditiously and the demand related to penalty, if any, recovered before issuing the compounding order.

Taxpayers, particularly NRIs, avoid opting for compounding due to a misconception that it constitutes an admission of offences, which could affect their reporting obligations at various statutory and international forums. To address this misconception and encourage taxpayers to seek compounding, it is directed that the Competent Authority has to include the following paragraph in the compounding order issued under section 279(2):

"This compounding order is intended to resolve the offence under section 279(2) of the Act and should not be construed as an admission of the offence(s) by the applicant."

The timelines for processing the compounding applications by the Competent Authority prescribed in these Guidelines, are administrative and do not prescribe a limitation period for disposal of the compounding application.

Q. Whether time for payment of compounding charges may be extended beyond 24 months?

Ans: *No, beyond 24 months extension is not allowable and the application shall be rejected followed by initiation of prosecution proceedings, if not already initiated. However, the applicant can file new application for the same particulars which shall be treated as a subsequent application for the purpose of determination of compounding charges.*

Q. As per the revised guidelines, the payment period for compounding charges may be extended up to 24 months only from the end of the month in which the compounding charges were intimated. For pending applications where the payment initiation was made before the issuance of the revised guidelines but not fully paid, how will the period of 24 months be calculated? Additionally, will such applications require approval for extension?

Ans: *For applications pending as on 17.10.2024, wherein compounding charges were not fully paid within time allowed as per earlier Guidelines or wherein time allowed had not elapsed, the period of 24 months will commence from the end of the month of issuance of these guidelines i.e., October 2024. The extension of timelines will require approval as prescribed in the Guidelines.*

Q. Are extension for payment of compounding charges subject to interest or additional charges?

Ans: *No, interest or additional charges are not applicable on extension allowable under the guidelines. Further, for cases pending as on date of issuance of revised guidelines, additional compounding charge (chargeable under previous guidelines) shall not be applicable and compounding charge shall be determined as per these revised guidelines.*

7. Compounding Charges

For the purpose of computation of the compounding charges, the word "tax" means tax including surcharge and any cess, by whatever name called, as applicable. However, interest shall not be included in 'tax' to be considered for computation of Compounding Charge.

The compounding charges for the 'first' compounding application or consolidated compounding application by a person has to be computed, for each offence disclosed in the application.

Further, any application filed subsequent to the first application, shall be counted as second, third and fourth compounding application or consolidated compounding application and so on.

Furthermore, if a person applied for compounding of an offence(s), the type of which was applied for earlier, then compounding charges for subsequent offence(s) shall be 1.2 times, 1.4 times, 1.6 times, and so on of the compounding charges for the second, third, fourth, etc. time of such offence.

If a subsequent application(s) includes any offence(s), the type of which had not been disclosed in any of the earlier applications, the compounding charges for the said offence(s) shall be computed only as per the charges given in these Guidelines.

Where the compounding application(s) had been filed in accordance with prior guidelines and are either pending or were rejected or have been compounded, all such applications, filed prior to issuance of these guidelines, shall together be considered as 'first' compounding application.

If the application is made beyond 12 months from the end of the month in which the prosecution complaint is filed, the compounding charges shall be increased by 50% of the amount calculated above.

Q. What will be the date of applications in case of carried forwarded applications - original date of application or date of issue of revised guidelines?

Ans: *The application pending as on 17.10.2024 shall be governed under these revised guidelines. However, date of such pending application shall be the original date of application for any purpose.*

Q. How shall the compounding charges be calculated for applications pending before issuance of these guidelines?

Ans: *The compounding charges for pending application are subject to redetermination as per the revised guidelines. All pending applications, whether for single or multiple years/quarters, shall be treated as first compounding application and compounding charge shall be re-computed for each offence disclosed in the application.*

Q. If a new consolidated application includes a year for which application was filed earlier and then withdrawn, whether partial compounding charges paid for such year for which application is withdrawn can be adjusted against total compounding charges towards consolidated application?

Ans: *No. Partial compounding charges paid for the year for which application is withdrawn can be adjusted in new consolidated application only towards the offence and particular year for which payment was made.*

Q. An applicant has filed compounding applications under earlier guidelines, two of which were rejected on account of curable defects, two were compounded and three are pending as on issuance of this guideline. How should the applicant file a compounding application after issuance of these guidelines and how shall the new application be treated?

Ans: *No action is pending for the applications which have been compounded. A consolidated application may be filed for all applications which were rejected (on account of curable defects) and no fresh application is required to be filed for pending applications.*

All pending applications, whether for single or multiple years/quarters, shall be treated as first compounding application and compounding charge shall be re-computed for each offence disclosed in the application. The fresh consolidated application for rejected applications will be considered as second application. Accordingly, the application filed after issuance of these guidelines shall be treated as subsequent application (2nd application) and compounding charge shall be re-computed for each offence disclosed in the application.

Q. How the rate of compounding charges will be determined in subsequent application(s)?

Ans: *The rate of compounding charge is based on sequence of application as well as offence applied for. If a subsequent application includes an offence which has also been included in earlier application(s), it shall be liable for higher rate i.e. 1.2 times, 1.4 times, 1.6 times and so on; irrespective of the fact that the offence and year of the offence are same in subsequent application and earlier application was rejected or pending or even compounded.*

However, if subsequent application includes offence(s) which were not included in any compounding application filed earlier (rejected or compounded or pending) and the offence has been applied for first time, the compounding charge for such offence(s) shall be computed at normal rate.

Illustration *- An applicant has filed different applications on different dates to compound different offences which will be considered as below:*

Scenario			***Clarification***		
Application Date	***Status***	***Offence (FY)***	***Sequence of Application***	***Offence included in Earlier Application?***	***Rate***
15/01/2021	*Compounded*	*276B (2012-13)*	*NA*	*NA*	*NA*
17/10/2022	*Compounded*	*276C(1) (2018-19)*	*NA*	*NA*	*NA*

18/08/2023	*Rejected*	*276B (2013-14)*	*NA*	*NA*	*NA*
17/09/2024	*Pending*	*276D (2019-20)*	*First (No fresh application required)*	*NA*	*Normal rate*
01/11/2025	*Single application (for earlier application rejected)*	*276B (2013-14)*	*Second*	*Yes, in application dated 15/01/2021 and 18/8/2023 (Considered as 2nd time)**	*1.2 times of normal rate*
18/12/2025	*Consolidated application*	*276B (2017-18)*	*Third*	*Yes, in application dated 15/01/2021, 18/08/2023 and 01/11/2025 (3rd time)#*	*1.4 times of normal rate*
		276C(1) (2019-20)		*Yes, in application dated 17/10/2022 (2nd time)*	*1.2 times of normal rate*
		275A (2023-24)		*No, first time applied for (1st time)*	*Normal rate*

** The applicant has opted for compounding for section 276B offence for the third time in third application and accordingly compounding charges at 1.4 times of normal rate should apply. However, since both applications were filed under previous guidelines, all such applications will be cumulatively considered as "first" application. Thus, offence under first two applications will be considered as clubbed together for calculation of compounding charges.*

 # The applicant has opted for compounding for section 276B offence for the fourth time in fourth application and accordingly compounding charges at 1.6 times of normal rate should apply. However, since first two applications were filed under previous guidelines, both these applications will be cumulatively considered as "first" application. Application filed on 01.11.2025 will be considered as "second" and this application will be considered as "third". Thus, offence under first two applications will be considered as clubbed together for calculation of compounding charges.

Q. Whether compounding application may be filed after launch of the prosecution? If yes, how the compounding charge will be determined?

Ans: *Yes. If application is filed within 12 months from end of the month in which prosecution complaint is filed, the compounding charge will be determined as per the guidelines as illustrated in above question. For applications filed after 12 months, the compounding charge so calculated shall be increased by 50% as per the guidelines.*

Illustration: *Assessee had made TDS default of ₹ 10,00,000 for 3 months during F.Y. 2019-20. The prosecution has been launched on 01/04/2022 u/s 276B of the Act. Normal compounding charges in this case, suppose is ₹ 45,000.*

Scenario	Case	Date of Application	Time Elapsed	Rate	Compounding charges
Scenario 1 (No earlier application rejected)	Case-1	12/10/2022 (Pending as on 17/10/2024)	Less than 12 months	Normal compounding charges	₹ 45,000
	Case-2	31/10/2025	More than 12 months	Increase by 50% of normal compounding charges	₹ 67,500 (1.5 x ₹ 45,000)
Scenario 2 (First application rejected, revised application filed)	Cace-3	12/10/2022 (Rejected)	Less than 12 months	NA (Application rejected)	NA
		31/10/2025	More than 12 months	1.2 times of normal compounding charges increased by 50%	₹ 81,000 [1.5 x (1.2 x ₹ 45,000)]

8. Co-accused and Abettor- Section 278B (Offences by companies) and Section 278C (Offences by Hindu undivided families)

Where an offence under this Act has been committed by a Company or HUF as defined in section 278B or 278C, an application for compounding may be filed separately or conjointly by the main accused i.e., Company, or HUF and/or any of the person(s) deemed to be guilty of the offence under section 278B or 278C (Co-accused) which are referred as "Co-accused" for the purpose of compounding.

In cases of offences by a company or HUF, the main accused or co-accused may apply separately or conjointly. On payment of compounding charges for the offence, by any one of them separately

or jointly, the Competent Authority shall compound the offences of the main accused as well as all the co-accused, vide an order u/s 279(2).

In case liability of a company for an offence committed prior to the commencement of the corporate insolvency resolution process ceases due to the provisions of section 32A of the Insolvency Bankruptcy Code (IBC), the prosecution proceedings against the co-accused can still continue. In such a case, the compounding application and payment of compounding charges can be made by the co-accused and/or the main accused company.

Q. Whether co-accused can file compounding application under revised guideline?

Ans: *Yes, co-accused may apply for compounding of offence separately or conjointly.*

Q. Where the compounding application of the co-accused was rejected earlier on the ground that the main accused has not filed for compounding, whether such applicants will be eligible for filing again? If yes, whether such application shall be a subsequent application?

Ans: *Yes, other than the case where application was rejected in past on merit, any of the co-accused applicant is eligible to file compounding application again separately or conjointly. Such application shall be treated as a subsequent application for the purpose of determination of compounding charges.*

Q. Similarly, where the compounding application of the main accused was rejected earlier on the ground that the co-accused has not filed for compounding or given undertaking, whether such applicants will be eligible for filing again? If yes, whether such application shall be a subsequent application?

Ans: *Yes, other than the case where application was rejected in past on merit, the main accused applicant is eligible to file compounding application again separately or conjointly with the co-accused. Such application shall be a subsequent application for the purpose of determination of compounding charges.*

Q. If any application filed by co-accused or accused under previous guidelines is pending, whether they are required to file a fresh application under revised guidelines?

Ans: *No. All such pending applications will be clubbed together and none of the applicants (main accused and/or co-accused) are required to file a fresh application under revised guidelines. This consolidated application shall be considered as first application for the purpose of determination of compounding charges.*

Q. If application is filed by main accused or co-accused or by both of them co-jointly, whether separate compounding fee shall be applicable for co-accused or not?

Ans: *No separate compounding fee for co-accused shall be payable, irrespective of the fact that application has been filed by main accused or co-accused or by both of them co-jointly. Only compounding charge(s) for the concerned offence(s) shall be payable. Once such payment is made by the applicant being main accused or co-accused or both of them conjointly, the Competent Authority shall compound concerned offences for main accused as well as all the co-accused.*

Q. Whether any person other than mam accused or co-accused can file compounding application for compounding of an offence of company or HUF?

Ans: *No, person other than main accused or co-accused cannot file compounding application. The applicant is required to disclose his status as main accused or co-accused in the compounding application.*

Q. Can co-accused furnish an undertaking for withdrawal of appeals as required in of the guidelines, on behalf of the main accused?

Ans: *No, co-accused cannot furnish undertaking for withdrawal of appeal on behalf of the main accused. Such undertaking shall be furnished by the main accused only which must be attached with the application if application has been filed by the co-accused, since offences of both main accused and co-accused are being compounded.*

Q. If application has been filed by only main accused or co-accused, in such case against whom name the compounding order shall be passed?

Ans: *The compounding order u/s 279(2) shall be passed in the name of person(s) who have applied for compounding. If co-accused has applied, then order shall include the name of main accused also. Further, in a case where main accused has applied and co-accused has been identified, the order shall be passed in the name of main accused and co-accused.*

(4) **Admissibility of statement made or books of account produced as evidence -** If a person is proceeded against under section 279(1), then a statement made or account or documents produced before any authority under Act shall not be inadmissible as evidence for purpose of the prosecution proceedings merely on the ground that such account or document was produced or statement was made in the belief that the penalty imposed or imposable under section 270A would be reduced or waived under section 273A or that the offence would be compounded.

(5) **Scheme to be formulated by Central Government -** The Central Government is empowered to make a scheme, by notification in the Official Gazette, for the purposes of granting sanction under section 279(1) or compounding under section 279(2), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based sanction to proceed against, or for compounding of, an offence, with dynamic jurisdiction.

In order to give effect to such scheme, the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after 31st March, 2022. Further, every such notification issued has to be laid before each House of Parliament, as soon as may be after the notification is issued.

(6) **Non-cognizable offences -** Section 279A provides that offences punishable under sections 276B, 276C, 276CC, 277 and 278 shall be deemed to be non-cognizable offences.

19.3.3 IMMUNITY FROM IMPOSITION OF PENALTY AND PROSECUTION [SECTION 270AA]

(1) Application to be made by the assessee to the Assessing Officer for grant of immunity from penalty and prosecution [Section 270AA(1)]

An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he -

Pay tax and interest + No appeal

(i) **pays the tax and interest payable** as per the order of assessment under section 143(3) or reassessment under section 147, within the period specified in such notice of demand; and

(ii) **does not prefer an appeal** against such assessment/reassessment order.

(2) Time limit for making application [Section 270AA(2)]

The assessee can make such application in the prescribed form and verified in the prescribed manner **within one month from the end of the month** in which the order of assessment or reassessment is received

(3) **Circumstances in which the Assessing Officer cannot grant immunity from penalty and prosecution [Section 270AA(3)]**

The Assessing Officer shall grant immunity from initiation of penalty under section 270A and prosecution under section 276C or section 276CC, on fulfilment of the conditions specified in (1) above, and after the expiry of period of filing appeal as specified in section 249(2)(b).

However, immunity shall be granted by the Assessing Officer only if the penalty proceedings u/s 270A have not been initiated on account of the following, namely:—

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in the books of account having a bearing on total income; or

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.

(4) Time limit for passing order accepting or rejecting application for immunity from penalty and prosecution [Section 270AA(4)]

The Assessing Officer shall pass an order accepting or rejecting the application for immunity from penalty under section 270A or prosecution under section 276C or section 276CC within a period of ***three months*** **from the end of the month in which such application is received**. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer **unless the assessee has been given an opportunity of being heard**.

(5) **Finality of order passed by the Assessing Officer under section 270AA(4) [Section 270AA(5)]**

The order of the Assessing Officer passed under section 270AA(4) accepting or rejecting the application made by the assessee for immunity from penalty under section 270A or prosecution under section 276C or section 276CC shall be final.

(6) **Order of assessment/reassessment, in respect of which application for immunity is accepted, is neither appealable before the Commissioner (Appeals) nor can the same be admitted by the Commissioner for revision under section 264 [Section 270AA(6)]**

No appeal under section 246 or section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in section 270AA(1)(a), in a case where an order under section 270AA(4) has been made accepting the application.

(7) **Exclusion of period when application for immunity is pending before Assessing Officer from the time limit for filing of appeal before the Commissioner (Appeals), in a case where such application is rejected [Second Proviso to section 249(2)(b)]**

As per section 249(2)(b), an appeal before the Commissioner (Appeals) is to be made within 30 days of the receipt of the notice of demand relating to an assessment or penalty, where the appeal relates to such assessment or penalty.

In a case where the assessee makes an application under section 270AA seeking immunity from penalty, then, the following period has to be excluded for calculation of the aforesaid 30 days period –

Exclusion of period	
beginning from	**ending with**
the date on which application under section 270AA for immunity from penalty under section 270A is made	the date on which the order rejecting the application is served on the assessee.

19.4 OVERVIEW OF THE BLACK MONEY & IMPOSITION OF TAX LAW

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to foreign income and assets. This new law has been formulated to act as a strong deterrent and curb the menace of black money stashed away abroad by Indians. This law is effective from **A.Y.2016-17**, unless otherwise provided in any section of this Act and extends to the **whole of India.**

19.4.1 BASIS OF CHARGE [CHAPTER II – SECTIONS 3 TO 5]

(i) **Charge of tax [Section 3]**

(A) **Rate of tax [Section 3(1)]** - Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year.

However, an **undisclosed asset located outside India** shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

Meaning of certain terms:

Term	Section	Meaning
Undisclosed foreign income and asset	2(12)	The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5
Undisclosed asset located outside India	2(11)	An asset (including financial interest in an entity) located outside India, - held by the assessee in his name or - in respect of which he is a beneficial owner, and - he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.
Assessee	2(2)	A person,— (a) being a **resident in India** within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or (b) being a **non-resident or not ordinarily resident in India** within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, **who was resident in India either in the previous year to which the income referred to in section 4 relates**; or in the previous year in which **the**

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<td><u>undisclosed asset located outside India was acquired</u>:

However, the previous year, in case of acquisition of undisclosed asset outside India, shall be determined <u>without giving effect to the provisions of section 72(c)</u> which states that where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under Chapter VI (Tax Compliance for Undisclosed Foreign Income and Assets), such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act would apply accordingly

In effect, it has been clarified that a person would be an assessee, if he is resident in the previous year in which the undisclosed asset located outside India was actually acquired by him and not the year in which notice under section 10 is issued by the Assessing Officer.</td>
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<tr>
<td>Previous year</td>
<td>2(9)</td>
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<table>
<tr><th></th><th>Circumstance</th><th colspan="2">Period</th></tr>
<tr><th></th><th></th><th>Beginning with</th><th>Ending with</th></tr>
<tr><td>a</td><td>In case of a newly set up business</td><td>The date of setting up of a business</td><td>The date of closure of business or 31st March following the date of setting up of business, whichever is earlier.</td></tr>
<tr><td>b</td><td>Where a new source of income comes into existence</td><td>The date on which the new source comes into existence</td><td>The date of closure of business or 31st March following the date on which such new source comes into existence, whichever is earlier.</td></tr>
<tr><td>c</td><td>In case of discontinuance</td><td>1st day of the FY</td><td>The date of discontinuance of</td></tr>
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				of business or dissolution/ liquidation		business [other than business referred to in (b) above] or dissolution of an unincorporated body or liquidation of a company, as the case may be.
			d	In any other case	1st April of the relevant year	31st March following. (i.e., a period of 12 months commencing from 1st April and ending on 31st March)

(B) **Relevant previous year of chargeability to tax [Proviso to section 3(1)]** - Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the Assessing Officer.

(C) **Value of an undisclosed asset [Section 3(2)]** - The **fair market value** of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, would be the value of an undisclosed asset. The following table gives the manner of determination of fair market value of different assets -

	Asset	Fair market value as per Rule 3(1)
(a)	Bullion, jewellery or precious stone	Higher of – (i) its cost of acquisition; and (ii) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the **open market on the valuation date.** For this purpose, the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose

		of valuation of bullion, jewellery or precious stone under any regulation or law.
(b)	Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work)	Higher of - (i) Cost of acquisition; and (ii) the price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law;
(c)(I)	Quoted Shares and securities	Higher of – (i) cost of acquisition; and (ii) the price as determined in the following manner, namely: (A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date; or (B) where on the valuation date there is no trading in such shares and securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market;
(c)(II)	Unquoted shares and securities	Higher of – (i) Cost of acquisition; and (ii) The value, on the valuation date, of such equity shares as determined in the following manner, namely:— the fair market value of unquoted equity shares = $\frac{(A+B-L)}{PE} \times PV$

		Where,		
		A	book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) ***minus*** (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;	
		B	fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule	
		L	book value of liabilities, but not including the following amounts, namely:	
			(i)	the paid-up capital in respect of equity shares;
			(ii)	the amount set apart for payment of dividends on preference shares and equity shares;
			(iii)	reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation
			(iv)	any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
			(v)	any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

			(vi)	any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
		PE		total amount of paid-up equity share capital as shown in the balance sheet;
		PV		the paid-up value of such equity shares
(c)(III)	Unquoted share and security other than equity share in a company	Higher of,— (i) its cost of acquisition; and (ii) the price that the share or security shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law		
(d)	Immovable property	Higher of,— (i) its cost of acquisition; and (ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law		
(e)	An account with a bank	(I) the sum of all the deposits made in the account with the bank since the date of opening of the account; or (II) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. However, where any deposit is made from the proceeds of any withdrawal from the account,		

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<tr><td></td><td></td><td>such deposit shall not be taken into consideration while computing the value of the account</td></tr>
<tr><td>(f) & (g)</td><td>value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member</td><td>The net asset of the firm, AOP or LLP on the valuation date shall first be determined.

Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them.

The residue of the net asset shall be allocated among the partners or members in the following manner:

<table><tr><th>Circumstance</th><th>Manner of allocation</th></tr><tr><td>In the event of dissolution of the firm or AOP</td><td>In accordance with the agreement of partnership or association for distribution of assets</td></tr><tr><td>In the absence of such agreement for distribution of assets on dissolution</td><td>in the proportion in which the partners or members are entitled to share profits</td></tr></table>
The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.

Net asset of the firm, AOP or LLP shall be (A + B - L), determined in the manner specified in C(II) above.</td></tr>
<tr><td>(h)</td><td>Any other asset</td><td>Higher of –

(I) its cost of acquisition or the amount invested; and

(II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction.</td></tr>
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FMV of an asset (other than bank account) transferred before the valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before the valuation date, the FMV of such asset shall be **higher of its cost of acquisition and the sale price**. This is notwithstanding the valuation rules given in Rule 3(1),

However, where such asset was transferred without consideration or for inadequate consideration before the valuation date, the FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

FMV, in a case where a new asset is acquired out of consideration received on account of transfer of an old asset or withdrawal from a bank account [Rule 3(3)]:

In such a case, the fair market value of the old asset or the bank account, as the case may be, determined in accordance with Rule 3(1) and Rule 3(2), shall be reduced by the amount of the consideration invested in the new asset.

Example

House A located in a country outside India was bought in 1995 for ₹ 15 lakh. It was sold in 2000 for ₹ 22 lakh. This amount was deposited in a bank account in that country. In the year 2001 another House B was purchased for ₹ 35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is ₹ 48 lakhs. Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is ₹ 60 lakhs, the fair market value (FMV) of the assets would be computed in the following manner:

FMV of House A = ₹ 22 lakh (being higher of ₹ 15 lakh and ₹ 22 lakh) - ₹ 22 lakh (invested in foreign bank account) = Nil

FMV of Foreign Bank account = ₹ 60 lakh - ₹ 35 lakh (invested in House B) = ₹ 25 lakh

FMV of House B = Higher of ₹ 35 lakh and ₹ 48 lakh = ₹ 48 lakh

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4) & 3(5)]:
The fair market value of an asset determined in a currency which is one of the permitted currencies designated by the RBI under the Foreign Exchange Management Regulations, has to be converted into Indian currency as per the reference rate of the RBI on the date of valuation.

Where the FMV of an asset is determined in a currency other than one of the permitted currencies designated by the RBI, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the Central Bank of the country or jurisdiction in which the asset is located. Such value in United States Dollar shall be converted into Indian currency as per the reference rate of the RBI on the date of valuation:

However, where the Central Bank of the country or jurisdiction in which the asset is located does not specify the rate of conversion from its local currency to United States Dollar, then, such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

Meaning of certain terms [*Explanation 1 to Rule 3*]

	Term	Meaning
(a)	Established securities market	An exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange
(b)	Meaningful annual value of shares traded on the exchange	With respect to an exchange, it means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years immediately preceding the calendar year in which the determination is being made.
(c)	Meaningful volume of trading on an on-going basis	With respect to each class of shares, it means,- (i) trades in each such class are effected, other than in *de minimis* quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year
(d)	Quoted share or security	The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business.
(e)	Unquoted share and security	In relation to share or security, means share or security which is not a quoted share or security.

Relevant Date for determination of market value and conversion of currency [*Explanation 2* to Rule 3]

For the purpose of determining the market value as on valuation date referred to in Rule 3(1), and for the purpose of conversion into Indian currency or conversion of foreign currency into United States Dollar and thereafter into Indian currency, the date would be —

	Case	Date
(a)	in respect of asset declared under section 59 of the Act	1st July, 2015
(b)	in any other case	1st April of the previous year

(ii) **Scope of total undisclosed foreign income and asset [Section 4]**

(a) **Total undisclosed foreign income and asset** of any previous year would be -

(1) the income from a source located outside India **which has not been disclosed in the return of income** filed under the Income-tax Act, 1961 on or before the due u/s 139(1) or in the belated return of income u/s 139(4) or in the revised return of income u/s 139(5).

(2) the income from a source located outside India in respect of which a return is required to be filed under section 139 of the Income-tax Act, 1961, but **no return, belated return or revised return has been filed under section 139(1)/(4)/(5) of that Act.**

(3) the value of any **undisclosed asset located outside India**.

(b) Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act, 1961 in accordance with the following provisions of the Income-tax Act, 1961 is not includible in the total undisclosed foreign income:

Section	Provision
29	Manner of computation of income under the head "Profits and gains of business or profession"
43C	Special provision for computation of cost of acquisition of an asset which becomes the property of an amalgamated company under a scheme of amalgamation and is sold by the amalgamated company as stock-in-trade of the business carried on by it.

57	Manner of computation of income chargeable under the head "Income from other sources"
59	Profits (Deemed income) chargeable to tax
92C	Computation of arm's length price

(c) **Non-inclusion of income included in undisclosed foreign income and asset in the total income under the Income-tax Act, 1961** - The income included in the total undisclosed foreign income and asset under this enactment would not form part of total income under the Income-tax Act, 1961.

(iii) **Computation of total undisclosed foreign income and asset [Section 5]**

(a) **Disallowance of expenditure and set-off of loss** - No deduction in respect of any expenditure or allowance or set off of any loss would be allowed in computing the total undisclosed foreign income and asset of any previous year of an assessee, irrespective of whether the same is allowable under the Income-tax Act, 1961.

(b) **Permissible deduction from value of undisclosed asset located outside India** - From the value of undisclosed asset located outside India, **any income which has so far been assessed to tax** for any assessment year under the Income-tax Act, 1961 prior to the assessment year to which the Act applies and **any income which is assessable or has been assessed to tax** for any assessment year under this Act, will be **reduced**.

However, the assessee has to furnish evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or assessable to tax.

(c) **Permissible deduction from value of immovable property** - If the deduction referred to in (b) above in respect of income which is assessable or has been assessed to tax is in relation to an **immovable property**, the quantum of deduction would be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Example

A house property located in a country outside India was acquired by Mr. A, an assessee in the previous year 2012-13 for ₹ 60 lakh. Out of the investment of ₹ 60 lakh, ₹ 35 lakh was

assessed to tax in the total income of the previous year 2012-13 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2025-26. If the value of the house property in the year 2025-26 is ₹ 120 lakh, the amount chargeable to tax shall be X-Y=Z where,

X = ₹ 120 lakh,

Y = ₹ 120 lakh x 35/60 = ₹ 70 lakh,

Z = ₹ 120 lakh – ₹ 70 lakh = ₹ 50 lakh.

19.4.2 PENALTIES [CHAPTER IV – SECTIONS 40 TO 47]

(i) **Penalty in relation to undisclosed foreign income and asset [Section 41] -** In case, where tax has been computed in respect of undisclosed foreign income and asset, the Assessing Officer may direct the assessee to pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to **three times the tax so computed**.

(ii) **Penalty for failure to furnish return in relation to foreign income and asset [Section 42]** - Failure to furnish return of income as required under section 139(1) before the end of the relevant assessment year by a person, being a resident other than not ordinarily resident in India, holding any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise or being a beneficiary of any asset (including financial interest in any entity) located outside India or having any income from a source located outside India, would attract penalty of **₹ 10 lakh**.

(iii) **Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43] -** If such failure is in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India, as a beneficial owner or otherwise, or in respect of which such person was a beneficiary, or if such failure is in relation to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct such person to pay, by way of penalty, a sum of ₹ 10 lakh.

(iv) **Non-applicability of penalty under sections 42 & 43 in certain cases [Proviso to sections 42 & 43]** -

Penalty under sections 42 and 43 would, however, not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹ 20 Lakh.

(v) **Determination of the value equivalent in rupees of the balance in an account maintained in foreign currency [*Explanation* to sections 42 & 43]** – For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the SBI Act, 1955.

(vi) **Penalty for default in payment of tax arrear [Section 44] –** Penalty equal to the amount of tax arrears is leviable in case of an assessee in default or an assessee deemed to be in default in making payment of tax and in case of continuing default by such assessee. An assessee shall not cease to be liable to any penalty merely by reason of the fact that before levy of such penalty, tax has been paid by him.

(vii) **Penalty for other defaults [Section 45]** – Penalty of a sum not less than ₹50,000 but extending upto ₹ 2 lakh would be attracted in case a person liable to penalty has, without reasonable cause, failed to -

(a) answer any question put to him by a tax authority in exercise of his powers under the Act

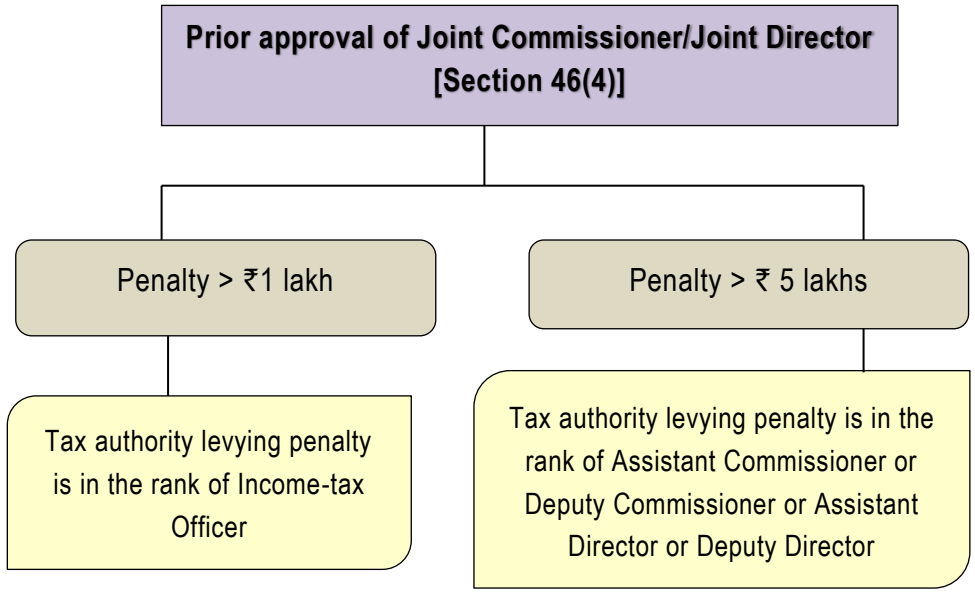
(b) sign any statement made by him in the course of any proceedings under the Act which a tax authority may legally require him to sign

(c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents at certain place and time in response to summons issued under section 8.

(viii) **Prior approval of Joint Commissioner or Joint Director** - An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner or Joint Director, if –

(1) the penalty exceeds ₹1 lakh and the tax authority levying the penalty is in the rank of Income-tax Officer; or

(2) the penalty exceeds ₹ 5 lakhs and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director



Summary of Penal Provisions contained in Chapter IV

Section	Failure/Default	Quantum of penalty
41	Where tax has been computed in relation to undisclosed foreign income and asset	In addition to tax, a sum equal to three times the tax so computed.
42	Failure to furnish return in relation to foreign income and asset	₹ 10 lakh
43	Failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India	₹ 10 lakh
44	Default in payment of tax arrear	Amount equal to the amount of tax arrears
45	Failure, without reasonable cause, to answer any question put to him by a tax authority or to sign any statement made by him in the course of any proceedings under the Act or to attend or produce books of account or documents at the place or time in response to summons issued under section 8	₹ 50,000 to ₹ 2 lakh

19.4.4 OFFENCES AND PROSECUTION [CHAPTER V]

(i) **Provisions of Chapter V not in derogation of any other law or any other provision of the Act [Section 48]** – The provisions relating to offences and prosecution contained in Chapter V are in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences thereunder. Further, the provisions of Chapter V to be independent of any order under this Act that may be made, or has not been made, on any person. Also, it shall not be a defence that the order has not been made on account of time limitation or for any other reason.

(ii) **Punishment for failure to furnish return in relation to foreign income and asset [Section 49]** – Willful failure to furnish return required to be furnished under section 139(1) of the Income-tax Act, 1961 in due time, by a person, being a resident other than not ordinarily resident in India, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India, would be punishable with rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine. However, prosecution would not be attracted if he furnishes such return before the expiry of the assessment year.**

(iii) **Punishment for failure to furnish information about an asset located outside India in the return of income [Section 50]** - If such failure in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India, as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or if such failure in relation to any income from a source located outside India, at any time during such previous year, is willful, the punishment would be rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine**.

(iv) **Punishment for willful attempt to evade tax [Section 51]** – Willful attempt to evade any tax, penalty or interest under this Act by a person, being a resident other than not ordinarily resident in India, is punishable with rigorous imprisonment for a term **not less than three years but extending to ten years and with fine.**

Willful attempt to evade payment of any tax, penalty or interest under the Act, is punishable with rigorous imprisonment for a term **not less than three months but extending upto three years** and also a fine, in the discretion of the Court.

Meaning of willful attempt to evade tax, penalty or interest

A willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof includes a case where any person—

(1) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(2) makes or causes to be made any false entry or statement in such books of account or other documents; or

(3) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(4) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

(v) **Punishment for false statement in verification [Section 52] –** 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 **not less than six months but extending to seven years and with fine**.

(vi) **Punishment for abetment [Section 53] –** Rigorous imprisonment for a term **not less than six months but extending to seven years and fine** would be attracted for abetment to make and deliver an account or statement or declaration relating to tax payable under this Act which is false or to commit an offence under section 51(1).

(vii) **Presumption as to culpable mental state [Section 54] –** In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. However, it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. "Culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. For this purpose, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

(viii) **Prosecution to be at instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner. [Section 55] -** A person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or

Commissioner or the Commissioner (Appeals), as the case may be. The Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General may issue such instructions, or directions, to the tax authorities as he may think fit for the institution of proceedings under this section.

(ix) Offences by companies [Section 56] -

(a) **Persons in charge at the time when offence was committed deemed guilty of offence** - Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence and would be liable to be proceeded against and punished accordingly. If, however, 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, he would not be deemed guilty of the offence.

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

(c) **Fine and imprisonment** - Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine. Further, every person, referred to in (a), or the director, manager, secretary or other officer of the company referred to in (b), would be proceeded against and punished in accordance with the provisions of this Act.

(d) **Meaning of certain terms for this section**

	Term	Meaning
(1)	Company	Means a body corporate. Includes — (i) an unincorporated body (i.e., a firm, AOP or BOI); (ii) a Hindu undivided family.

(2)	Director		In relation to	Meaning of Director
		(i)	A firm	A partner in the firm
		(ii)	An AOP/BOI	A member of the AOP/BOI
		(iii)	A HUF	An adult member of the family
		(iv)	A company	A whole-time director
		(v)	A company not having a whole-time director	Any other director or manager or officer, who is in charge of the affairs of the company

(x) Proof of entries in records or documents [Section 57]

The entries in the records, or other documents, in the custody of a tax authority are admissible in evidence in any proceeding for the prosecution of any person for an offence under Chapter V of this Act. These entries may be proved by the production of –

(a) the records or other documents (containing such entries) in the custody of the tax authority; or

(b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

(xi) Punishment for second and subsequent offences [Section 58]

If any person convicted of an offence under section 49 to section 53 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term of three to ten years and with fine ranging from ₹ 5 lakh to ₹ 1 crore.

(xii) Summary of Prosecution Provisions in Chapter V

Section	Offence	Punishment
49	Willful failure to furnish return in relation to foreign income and asset (including financial interest in any entity) before the expiry of the assessment year by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine
50	Willful failure to furnish in the return of income, any information about an asset (including financial interest in any entity) located outside India by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine

51(1)	Willful attempt to evade any tax, penalty or interest chargeable or imposable under the Act by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 3 to 10 years **(+)** Fine
51(2)	Willful attempt to evade payment of any tax, penalty or interest under the Act by any person	Rigorous Imprisonment: 3 months to 3 years **(+)** Fine, at the discretion of the court.
52	Making false statement in verification or delivering an account of statement which is false knowingly	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine
53	Abetting or inducing a person to make or deliver a false statement, account or declaration knowingly or to commit an offence u/s 51(1)	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine
58	Second and subsequent offence	Rigorous Imprisonment: 3 to 10 years **(+)** Fine: ₹ 5 lakh to ₹1 crore.

Note: *Students are advised to read the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 available at the website of the Income-tax Department, Government of India, www.incometaxindia.gov.in*

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	*CIT v Jindal Tractebel Power Co. Ltd. (2025) 474 ITR 77 (Karn.)*	
	Issue	**Facts, Analysis and Decision**
	Whether reliance on professional advice can be treated as a reasonable cause for not deducting tax at source, and consequently, whether penalty u/s 271C is leviable for failure to deduct tax?	**Facts of the Case:** The assessee-company did not effect TDS from the monies payable to a foreign entity under the contract relating to supply and services of off-shore equipment. This it did on the professional advice that no tax was required to be deducted by way of TDS in as much as no income was deemed to accrue or arise in India pursuant to off-shore contract. The foreign entity had also applied for advance ruling seeking a final opinion in this regard which was not processed. The competent authority-initiated penalty proceedings under section 271C for failure to deduct tax and disregarded the explanation offered by the assessee that the non-deduction of tax was due to the bona fide belief formed on the basis of the professional advice. The Commissioner of Income-tax agreed with the explanation offered by the assessee and granted relief to it observing that the non-deduction of tax was not tainted with mala fide; there was reasonable cause for not deducting. The Tribunal rejected revenue's appeal. **Analysis and Decision**: The Hon'ble High Court noted that, the assessee in its reply specifically stated that the non-deduction of tax for the subject period was due to the *bona fide* belief formed on the basis of the legal opinion obtained from a Law firm of repute; and the opinion of a Chartered Accountant's firm. This apart, the foreign entity had also sought advance ruling and the Chairman of the Advance Ruling Authority (now Board of Ruling Authority) did not process the same for personal reasons. Added what benefit the assessee could derive by not deducting the tax at source is also a factor. All these certainly constitute a reasonable cause for not effecting TDS and, therefore, the impugned order being consistent with the same is not vulnerable for challenge, as rightly contended by the assessee. Accordingly, it was held that non-deduction of TDS was not tainted with *mala fide* and reasonable cause was shown for not deducting TDS, therefore, penalty under section 271C was not leviable.

2.	*US Technologies International Pvt. Ltd. v. CIT [2023] 453 ITR 644 (SC)*	
	Issue	**Analysis and Decision**
	Can penalty under section 271C be levied for non-payment or belated remittance of the tax deducted at source under Chapter XVII-B to the credit of the Central Government?	Section 271C(1)(a) is applicable in a case of failure on the part of the assessee to "deduct" the whole or any part of the tax as required by or under the provisions of Chapter XVII-B of the Act. The words "fails to deduct" used in section 271C(1)(a) are clear; and it does not speak about belated remittance of the tax deducted at source. On a plain reading of section 271C(1)(a), no penalty would be leviable on belated remittance of TDS after it is deducted by the assessee. The scope of section 271C(1)(a) and the extent of its application are discernible from the provision itself, in unambiguous terms. Wherever Parliament intended consequences for non-payment or belated remittance of the tax deducted at source, Parliament has provided for it, such as in section 201(1A) and section 276B of the Act. Section 201(1A) provides that in case a tax has been deducted at source but is subsequently remitted belatedly, such a person is liable to pay interest as provided under section 201(1A). The consequences of non-payment or belated remittance/payment of the tax deducted at source are specifically provided under section 201(1A). Similarly, section 276B speaks about prosecution for failure to pay the tax deducted at source to the credit of the Central Government within the prescribed time. The words "fails to deduct" in section 271C(1)(a) cannot be read as "failure to deposit/pay the tax deducted". Therefore, on correct interpretation of section 271C, no penalty would be leviable under section 271C on delay in remittance of the tax deducted at source after deducting it on time. ***Note:*** *Section 271C provides that if any person fails to* *(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or* *(b) pay or ensure payment of the whole or any part of the tax as required by or under* *- the second proviso to section 194B,* *- the first proviso to section 194R(1);*

		- the proviso to section 194S(1) *- section 194BA(2)* *then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay or ensure payment of, as aforesaid.* *Penalty under clause (a) above is attracted where a person fails to deduct tax wholly or partly. However, under clause (b) penalty is attracted for failure to pay tax or to ensure payment of such tax. These are specific cases where winnings/ benefits/ perquisites/ consideration for transfer, as the case may be, are wholly in kind or partly in cash or partly in kind, but the cash portion is not sufficient to meet the TDS liability.* *Therefore, the above Apex court ruling is applicable only with respect to clause (a) of section 271C(1). In respect of clause (b), both penalty u/s 271C and prosecution u/s 276B would be attracted.*
3.	***ACIT v. AT-Dev Prabha (JV) and others (2023) 454 ITR 59 (SC)***	
	Issue	**Analysis & Decision**
	Can prosecution proceedings under section 276B be launched for delay in depositing tax to the credit of Central Government, where the period of delay and the amount of TDS were not substantial and the amount of TDS has been subsequently deposited with some delay along with interest?	**Relevant provision of law**: As per section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under Chapter XVII-B, he shall be punishable with rigorous imprisonment for not less than 3 months but which may extend to 7 years. ***No prosecution would be attracted if TDS is paid to the credit of the Central Government on or before the time prescribed for filing the statement u/s 200(3) (i.e., Quarterly Statement under Rule 31A).*** **Analysis and Decision**: In the present case, the High Court, considering the CBDT Circular (wherein it is mentioned that prosecution under section 276B shall not normally be proposed when the amount involved, or the period of default was not substantial and the amount in default had been deposited in the meantime to the credit of the Central Government) quashed the criminal proceedings and orders passed by the Special Economic Offences court against the assessee holding that the tax deducted at source in all the

		cases had been deposited with interest, though there was some delay in depositing the tax. Moreover, apart from one or two cases, the deducted amounts were not more than ₹ 50,000. The Apex Court upheld the High Court decision and accordingly, dismissed the special leave petition. ***Note -*** *The CBDT has, vide Circular No. 24/2019 dated 9.9.2019, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days. However, for these offences, in exceptional cases like habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers though the amount involved does not exceed the threshold limit of ₹ 25 lakhs.* *Students may read the detailed circular available at the following link–* *https://incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf*
4.	***Union of India v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP)***	
	Issue	**Analysis & Decision**
	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	The provisions of section 276CC to get attracted, there should be a willful delay in filing return and not merely a failure to file return in time. There should be clear, cogent and reliable evidence that the failure to file return in time was 'willful' and there should be no possible doubt of its being 'wilful'. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them. In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.

5.	*Income-tax department v. D. K. Shivakumar [2021] 434 ITR 367 (Kar)*	
	Issue	**Analysis & Decision**
	Can prosecution be launched in every case where unaccounted transactions (like unaccounted loan) are unearthed during search, irrespective of whether there is a liability to pay tax, penalty or interest under the Act in respect thereof?	The gist of the offence under section 276C(1) is the wilful attempt to evade any tax, penalty or interest chargeable or imposable on income. What is made punishable is "attempt to evade tax, penalty or interest". In legal parlance, an "attempt" is understood to mean "an act or movement towards commission of an intended crime". It is doing "something in the direction of commission of offence". A positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under section 276C(2). There is no presumption under law that every unaccounted transaction (uncounted loan, in the present case) would lead to imposition of tax, penalty or interest. Therefore, until and unless it is determined that the unaccounted transactions unearthed during search were liable for payment of tax, penalty or interest, no prosecution could be launched on the ground of attempt to evade such tax, penalty or interest.

TEST YOUR KNOWLEDGE

Questions

1. *What is the quantum of penalty that could be levied in each of the following cases -*

   (i) Failure to get books of accounts audited as required under section 44AB within the time prescribed under the Act.

   (ii) Failure to comply with a direction issued under section 142(2A).

   (iii) Failure to furnish report from an accountant as required under section 92E.

2. *X, an individual whose total sales in the business of food grains for the year ending 31.3.2026 was ₹ 205 lakhs, did not maintain books of account for P.Y.2025-26, even though his turnover was ₹ 28 lakhs in the P.Y.2024-25. During the previous year 2025-26, majority of payment were made either in cash or by bearer cheque by Mr. X. The Assessing Officer levied penalty of ₹ 25,000 under section 271A for non-maintenance of books of account and penalty of ₹ 1,02,500 under section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?*

3. *State the conditions, if any, to be satisfied by an assessee in order to get relief under section 273A(4) regarding the waiver of penalty. Can the Principal Commissioner or the Commissioner refuse to grant relief, when the conditions laid down in the section was complied with, by the assessee?*

4. *Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 1961.*

   (i) Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites, but had not deducted tax at source as per section 194C.

   (ii) Hotels and Hotels were asked by Income-tax Officer (CIB) to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000. They have not furnished the requisite information in spite of various reminders.

5. *Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure?*

6. *What would be the penalty leviable under section 270A in case of the following assessees, if none of the additions or disallowances made in the assessment or reassessment qualify under section 270A(6) and the under-reported income is not on account of misreporting?*

	Particulars of total income of A.Y.2026-27	**M/s. Alpha, a resident firm**	**Beta Ltd., an Indian company**
		(₹)	(₹)
(1)	As per the return of income furnished u/s 139(1)	35,00,000	(12,00,000)
(2)	Determined under section 143(1)(a)	45,00,000	(6,00,000)
(3)	Assessed under section 143(3)	62,00,000	(2,00,000)
(4)	Reassessed under section 147	81,00,000	6,00,000

Note – *Beta Ltd. is a trading company. The total turnover of Beta Ltd. for the P.Y.2023-24 was ₹ 401 crore and the company has not exercised option under section 115BAA.*

7. *Can prosecution be launched for each of the following actions or defaults committed? If yes, then explain the relevant provisions of the Act and the quantum of prescribed punishment.*

   (i) The assessee had restrained and not allowed the officer authorized as per section 132(1)(iib) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts.

   (ii) The assessee deliberately has failed to comply with the requirement of section 142(1) and/or 142(2A).

   (iii) The assessee deliberately has failed to make the payment of the tax collected under section 206C.

8. *The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2024-25 within the due date under section 139(1). The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was ₹ 60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹ 8,900. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case.*

Would your answer change if the person against whom complaint was lodged was KLM Ltd., a company, instead of a firm?

9. *Explain section 278C applicable in respect of offences committed by Hindu undivided families.*

10. *Can the Department launch prosecution in a case where they have accepted the revised return filed by the assessee, rectifying a mistake in the original return of income?*

11. *Ravinder, an Indian citizen, left India and settled in United Kingdom from 10.4.2016. He had never left India previously since April, 2008. He acquired a property worth ₹ 200 lakhs in his name in the financial year 2013-14 at Malaysia. The Assessing Officer came to know of this in March, 2026 based on the investigation made by Enforcement Directorate in some other person's case.*

The Assessing Officer, having recorded some concrete evidences against Ravinder, issued a notice under section 10 of the Black Money and Imposition of Tax Act, 2015 on 27.3.2026. Mr. Ravinder's counsel contended that since Mr. Ravinder is not a resident in the financial year 2025-26, a notice under section 10 could not be issued to him.

Is the issue of notice on Ravinder under section 10 of the Black Money Act, 2015 tenable in law? Examine.

12. *Mr. Harshit stayed in India only for 48 days during P.Y.2025-26. He had acquired a house property located in Country A in September 2013 for ₹ 80 lakh. Out of the investment of ₹ 80 lakh, ₹ 55 lakh was assessed to tax in the total income of the P.Y.2013-14 and P.Y.2012-13, when he was resident in India. The remaining income has not been assessed to tax in any year. This asset comes to the notice of the Assessing Officer in March 2026. The value of the house property on 1.4.2025 was ₹ 120 lakh.*

What is the value of undisclosed asset (house property located in Country A) in the hands of Mr. Harshit for the purpose of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and in which year would the same be chargeable to tax?

13. *An apartment located in Country X was bought in 1988 for ₹ 10 lakh. It was sold in the year 2003 for ₹ 30 lakh. This amount was deposited in a bank account in Country X. In the year 2004, another apartment was purchased for ₹ 45 lakh. The investment in the new apartment was made through withdrawal from the bank account in Country X. The new apartment has not been transferred before the valuation date and its value on the valuation date is ₹ 55 lakh. Assuming that the value of foreign bank account in Country X as computed under Rule 3(1)(e) is ₹ 70 lakh, what would be the fair market value of the new apartment as per Rule 3 of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Rules, 2015?*

14. *Mr. Piloo (age 72) was the managing director of Ashok (P) Ltd. at Surat. He retired in June, 2009 and left India permanently in January, 2012. It came to the notice of the Joint Director of Income-tax (Investigation) in June, 2025 that Mr. Piloo had accumulated assets during the previous year 2008-09 exceeding ₹ 500 lakhs outside India (consisting of residential apartments and deposits in banks) which were not disclosed for income-tax purposes up to the assessment year 2012-13 for which the return of income was filed in India. Mr. Piloo was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in August, 2025.*

Mr. Piloo is of the opinion that since 10 years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Mr. Piloo is a non-resident for the assessment year 2026-27.

Discuss the liability of Mr. Piloo under the Black Money law and state the procedure and methodology for determination of the value of undisclosed asset outside after evaluating the validity of the contentions raised by him.

15. *Deepak, aged 45 (an Indian citizen) has settled in California, USA since 2015. Prior to that, he has always been in India. He had acquired a residential property in California on 25-06-2009 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15-04-2010.*

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20-10-2025. The fair market value of residential property as on 01-04-2025 was USD 25,000; on 01-04-2026 USD 32,000 and 20-10-2025 USD 30,000. The bank deposit with accrued interest thereon was USD 12,500 on 01-04-2025; USD 12,800 on 01-04-2026 and USD 12,700 on 20-10-2025.

***Note:** USD = United States Dollar*

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are:

01-04-2025 = ₹ 71

20-10-2025 = ₹ 72

01-04-2026 = ₹ 73

Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answers

1. The penalty that could be levied in each case is:

(i) **Failure to get books of accounts audited as required under section 44AB of the Income-tax Act, 1961 -** a sum equal to ½% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years, or a sum of ₹ 1,50,000, whichever is less [Section 271B].

(ii) **Failure to comply with a direction issued under section 142(2A)** – a sum of ₹ 10,000 [Section 272A(1)(d)].

(iii) **Failure to furnish report from an accountant as required by section 92E** - a sum of ₹ 1,00,000 [Section 271BA].

2. X is required to maintain books of account as per section 44AA for the P.Y.2025-26 since his turnover exceeded ₹ 25 lakhs in the P.Y.2024-25. He also has to get them audited under section 44AB, since his gross sales in the P.Y.2025-26 exceeds ₹ 1 crore. He is liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty of ₹ 25,000 under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly X has not maintained books, he cannot obviously get the audit done.

In *Surajmal Parsuram Todi v. CIT (1996) 222 ITR 691*, the Guwahati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is **not** justified in levying penalty under section 271B.

3. There are two conditions to be satisfied by an assessee in order to get relief in the form of a waiver or reduction of penalty by the Principal Commissioner or the Commissioner of Income-tax under section 273A(4) of the Act. These conditions are:

(i) The payment of penalty would cause "genuine hardship" to the assessee and the Commissioner is satisfied about the existence of genuine hardship having regard to

the circumstances of the case. The existence of genuine hardship would entitle the assessee to relief. The CBDT in its *Circular No 784 dated 22-11-1999* has clarified that "genuine hardship" referred to in the provisions of section 273A(4) should exist both at the time at which the application under section 273A(4) is made by the assessee before the Principal Commissioner or the Commissioner and at the time of passing of order under section 273A(4) by the Principal Commissioner or the Commissioner.

(ii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

As per the decision of Andhra Pradesh High Court in *K.S.N. Murthy v. Chairman, CBDT (2001) 252 ITR 269,* if the above conditions laid down for exercise of the discretion are satisfied, the Principal Commissioner or the Commissioner cannot refuse to exercise the discretion. Though the power given to the Commissioner under section 273A is discretionary, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective, once the conditions required for exercise of discretion in any judicial or quasi-judicial proceedings are satisfied. Such discretion must be exercised taking into consideration all relevant facts. The satisfaction for exercise of discretionary power under section must be based on objective consideration and not on subjective satisfaction.

Also, as per the proviso to section 273A(4), in case the quantum of penalty exceeds ₹ 1 lakh, the Principal Commissioner or the Commissioner can grant relief only with the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, as the case may be.

Note - The Principal Commissioner or the Commissioner has to pass an order under section 273A(4), either accepting or rejecting the application in full or in part, within a period of 12 months from the end of the month in which the application is received. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

4. (i) Penalty under section 271C is attracted for failure to deduct tax at source. The penalty would be a sum equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed only by the Assessing Officer. Therefore, Raman & Associates shall be liable for penalty under section 271C equal to the amount of tax which they have failed to deduct under section 194C from the payments made to the contractors. The penalty would be in addition to the disallowance of 30% of expenditure/payment under section 40(a)(ia).

(ii) Section 133(6) empowers the Income-tax authority to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 272A(2) of ₹ 500 for every day during which the failure continues.

Note – An income-tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner. Such power can, however, be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner. In this case, it is presumed that the Income-tax authority has obtained the approval of the Principal Director/Director or Principal Commissioner/ Commissioner before exercising this power.

5. Under section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, the Transfer Pricing Officer is a competent authority to levy penalty.

Penalty would be a sum equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

6. Penalty leviable under section 270A in case of M/s. Alpha, a resident firm

M/s. Alpha is deemed to have under-reported its income since:

(1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and

(2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Total income assessed under section 143(3)	62,00,000	
(-) Total income determined u/s 143(1)(a)	45,00,000	
	17,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 17 lakhs *plus* total income of ₹ 45 lakhs determined u/s 143(1)(a) ***[30% of ₹ 62 lakh + HEC@4%]***	19,34,400	
Less: Tax on total income determined u/s 143(1)(a) ***[30% of ₹ 45 lakh + HEC@4%]***	14,04,000	
	5,30,400	
Penalty leviable@50% of tax payable		2,65,200
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	81,00,000	
(-) Total income assessed under section 143(3)	62,00,000	
	19,00,000	
Tax payable on under-reported income		
Tax on under-reported income of ₹ 19 lakhs *plus* total income of ₹ 62 lakhs assessed u/s 143(3) ***[30% of ₹ 81 lakh + HEC@4%]***	25,27,200	
Less: Tax on total income assessed u/s 143(3) ***[30% of ₹ 62 lakh + HEC@4%]***	19,34,400	
	5,92,800	
Penalty leviable@50% of tax payable		2,96,400

Penalty leviable under section 270A in the case of Beta Ltd., an Indian company

Beta Ltd. is deemed to have under-reported its income since:

(1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and

(2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
Assessment under section 143(3)		
Under-reported income:		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: HEC@4%	4,800	
	1,24,800	
Penalty leviable@50% of tax payable		62,400
Reassessment under section 147		
Under-reported income:		
Total income reassessed under section 147	6,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: HEC@4%	9,600	
	2,49,600	
Penalty leviable@50% of tax payable		1,24,800

Note – The applicable rate of tax for Beta Ltd., a trading company, for A.Y.2026-27 is 30%, since its turnover for the P.Y.2023-24 exceeded ₹ 400 crores.

7. **(i)** Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which **prosecution can be launched under section 275B** and such person shall be punishable with rigorous imprisonment **for a term which may extend to two years and shall also be liable to fine.**

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which **prosecution can be launched under section 276D** and such person shall be **punishable with rigorous imprisonment for a term which may extend to one year and with fine.**

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which **prosecution can be launched under section**

276BB and such person shall be **punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.**

8. (i) Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since the amount of tax which would have been evaded does not exceed ₹ 25 lakh, the imprisonment would be for a term of 3 months to 2 years. In addition, fine would also be attracted.

However, in a case where the return of income is not filed within the due date, prosecution proceedings will not be attracted if the tax payable by a person, other than a company, on the total income determined on regular assessment, as reduced by the advance tax or self assessment tax, if any, paid and any tax deducted at source, does not exceed ₹ 10,000.

In this case, even though the tax liability of the firm as per the original order of assessment exceeded ₹ 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 8,900, which is less than ₹ 10,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 8,900, the prosecution proceedings are not maintainable.

In *Guru Nanak Enterprises v. ITO (2005) 279 ITR 30*, where the facts were similar, the Supreme Court held that prosecution was unwarranted.

(ii) Yes, in case of a company, the answer would be different and prosecution proceedings would be maintainable.

9. As per section 278C(1) of the Income-tax Act, 1961, where an offence under the Income-tax Act, 1961 has been committed by a Hindu undivided family (HUF), 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.

As per section 278C(2), where an offence under the Income-tax Act, 1961 has been committed by a HUF 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 HUF, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. This question came up before the Karnataka High Court in *K.E. Sunil Babu, Asst. CIT v. Steel Processors (2006) 286 ITR 315***.** The High Court observed that since the Department had accepted the revised returns filed under section 139(5), it was clear that there was a *bona fide* mistake in the original return and there was no element of *mens rea.* Therefore, the High Court held that the Department cannot launch prosecution under sections 276C, 277 and 278.

11. Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

The term "assessee" defined under section 2(2) of the Black Money Act includes a person being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the relevant previous year; or being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, who was resident in India in the previous year in which the undisclosed asset located outside India was acquired.

Since Mr. Ravinder left India and settled in United Kingdom from 10.4.2016 and has not visited India at any time thereafter, he would be **non-resident in India in the previous year 2025-26** in which notice is issued. However, he was resident and ordinarily resident in India in the financial year 2013-14 when he acquired the property at Malaysia. Accordingly, the issue of notice on Mr. Ravinder under section 10 of the Black Money Act, 2015, is tenable in law.

12. Although Mr. Harshit is a non-resident in A.Y.2026-27 (since he stayed in India only for 48 days in the P.Y.2025-26), he is a resident in the P.Y. 2013-14 in which the undisclosed asset located in Country A was acquired. Hence, he is an assessee under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

If the value of the house property in the year 2025-26 is ₹ 120 lakh, the amount chargeable to tax shall be X-Y=Z where,

X = ₹ 120 lakh,

Y = ₹ 120 lakh x 55/80 = ₹ 82.50 lakh,

Z = ₹ 120 lakh – ₹ 82.50 lakh = ₹ 37.50 lakh.

₹ 37.50 lakh chargeable to tax in the hands of Mr. Harshit in the A.Y. 2026-27.

13. FMV of the new apartment = ₹ 55 lakh, being higher of cost of acquisition i.e., ₹ 45 lakh and price which the property would ordinarily fetch if sold in the open market on the valuation date as per the valuation report i.e., ₹ 55 lakh.

14. The contention of the assessee that the proceedings under the Black Money law are barred by limitation is not tenable in law. The time limitation given in the Income-tax Act, 1961, will not apply for the purpose of Black Money law. There is no time limit for initiation of proceedings under the Black Money Law, therefore, proceedings can be initiated against Piloo, even though 10 years have elapsed from the last assessment year in which he was assessed in India.

Every assessee would be liable to tax @ 30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Since Mr. Piloo left India permanently in January, 2012, he is a non-resident in India for the previous year 2025-26, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2008-09, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term "assessee" defined under section 2(2) of the Black Money Act, *inter alia* includes a person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, but who was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Accordingly, Piloo who was resident in India in the P.Y.2008-09 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2025-26.

Accordingly, Piloo is liable to pay tax @30% in respect of undisclosed foreign asset during the previous year 2025-26, the year in which such assets came to the notice of the Assessing Officer.

The relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year in which the undisclosed asset located outside India comes to the notice of the Assessing Officer. The notice under the Black Money law was served in August, 2025 and the question states that it came to the notice of Joint Director of Income-tax (Investigation) in June, 2025. Accordingly, the fair market value of the asset as on 01.04.2025 would be adopted.

He is also liable to pay penalty, in addition to tax, if any, payable by him, of a sum equal to three times the tax so computed.

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the higher of -

(i) its cost of acquisition; and

(ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date

The value of bank deposits would be the sum of all the deposits made in the account with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

15. The definition of "assessee" under the Black Money Law, *inter alia,* includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired**.** Therefore, Deepak is an assessee under the Black Money Law since he was resident in India in the P.Y.2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2025-26, when notice under Black Money Law was issued. Accordingly, the value of undisclosed asset located outside India of Deepak would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2025-26, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	USD	₹
Value of residential property in California acquired on 25.6.2009	25,000	
Value of residential property would be the fair market value, being the higher of -		
- Cost of acquisition	USD 20,000	
- Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2025	USD 25,000	
Converted into Indian currency taking the rate as on 1.4.2025	₹ 71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2025 [The sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	10,000	
Converted into Indian currency taking the rate as on 1.4.2025	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		**24,85,000**