CHAPTER 2: PENALTIES AND PROSECUTION

PENALTIES

Penalty is monetary sum

Levied by Income Tax

authority

For Concealment

Other Penalty

PROSECUTIONS

Prosecution is imprisonment

with or without fine

Prosecution is done by **COURT**

on a case being filed by CIT/ CIT(A)

"MENS REA":- It is an evil state of mind. It means a person does anything knowingly that his action is against law.

PRIOR TO THE AMENDMENT:

Onus of proof that a person is guilty was on **income tax department.**

AFTER THE AMENDMENT:

As such, concept of **"mens rea"** was introduced in **penalty proceeding** under the income tax act.

By this amendment, **ONUS OF PROOF** has been shifted to assessee.

Section 273B was introduced providing that **NO PENALTY** will be levied if there was reasonable cause of failure.

WHO CAN IMPOSE PENALTY

- The Assessing Officer
- The CIT(A)
- The CIT

Some important points:

(1.) Penalty proceeding (**issue of SCN**) must be initiated before levying penalty.

(2.) Penalty proceeding must be initiated before the assessment is completed.

Practically the following thing happens:

143(3) ORDER	+	156 DEMAND NOTICE	+	SCN u/s 271(1) (C)

Practically when assessment order u/s 143(3) comes, then it is accompanied by 2 more documents :

- **Demand notice u/s 156 (To pay tax)**
- **SCN u/s 271(1) (c)-** That means penalty proceeding has already Initiated.

In order u/s 143(3), it is written that **"Penalty proceedings have been initiated separately".** It means that before the assessment completion, penalty proceeding have started **(i.e. SCN must also accompanied with the assessment order).**

If penalty is to be levied by

CIT (A) for the Concealment of Income

↓

Penalty proceeding must be started before passing order u/s 250

CIT increase the income u/s 263

↓

initiate the penalty proceeding before passing order u/s 263

CASE STUDY: SHADIRAM BALAMUKUND

Assessee filed return declaring income of ₹ **20,00,000.00.** A.O. added (unexplained cash) of ₹ **6,00,000.00** and assessed income at ₹ **26,00,000.00.**

Assessee appeals to CIT (A) and CIT(A) thereby confirms the order of A.O. u/s 250 & further added ₹ **500,000.00** and income increased to ₹ **31,00,000.00.**

ASSESSING OFFICER LEVIED PENALTY ON ₹ 11,00,000.00.

ISSUE → Whether action of A.O. is correct or not?

DECISION:

Supreme court held that assessing officer can levy penalty only on **<u>ADDITION</u>** made by him and not on addition made by CIT(A) and vice versa.

In this case A.O. can levy penalty only on ₹ **6,00,000.00** and CIT(A) will levy penalty on ₹ **5,00,000.00.**

SOME OTHER ISSUES:

(1.) NO PENALTY: For concealment of income on addition made on **Question Of Law.** It means when HC/SC decides a question of law & income of assessee increases then no penalty to be levied on such addition.

(2.) PENALTY PROCEEDINGS → TO BE INITAITED

- **Penalty for the Concealment of income** → Before the Completion of the assessment
- **Other than concealment** → Can be initiated at any time even after the completion of assessment

(3.) Penalty and assessment proceedings (i.e. 143(3), 144, 147) are different and as such **penalty & assessment orders are also different.**

(4.) Against penalty order passed by A.O. —**APPEAL TO**→

I. CIT(A)
II. Revision application to CIT
III. Rectification order u/s 154

AGAINST PENALTY ORDER OF CIT(A) ↓

Appeal to ITAT

SECTION 271(1) (C) : PENALTY FOR CONCELAMENT OF INCOME

If assessing officer or CIT(A) or CIT in course of the proceedings under this act, is satisfied that person has concealed

-- > Particulars of income OR
-- > Furnished inaccurate particulars of such income

then A.O./ CIT (A) / CIT may direct to pay penalty:

NOT LESS THAN 100%	NOT MORE THAN 300%
Levied in mostly all the Cases of concealment of income.	If the assessee misbehave or don't cooperate etc.

(5.) Before levying penalty A.O. is required to be satisfied:

CASE STUDY : **RAM COMMERCIAL ENTERPRISES LTD.**

Order u/s 143(3) and A.O. added ₹ **10 crores**

"Words" written:
" Penalty proceedings have been initiated separately"

→ Assessee contended that the satisfaction of A.O. is not recorded in the order
HIGH COURT ALSO FAVOURED THE ASSESSEE

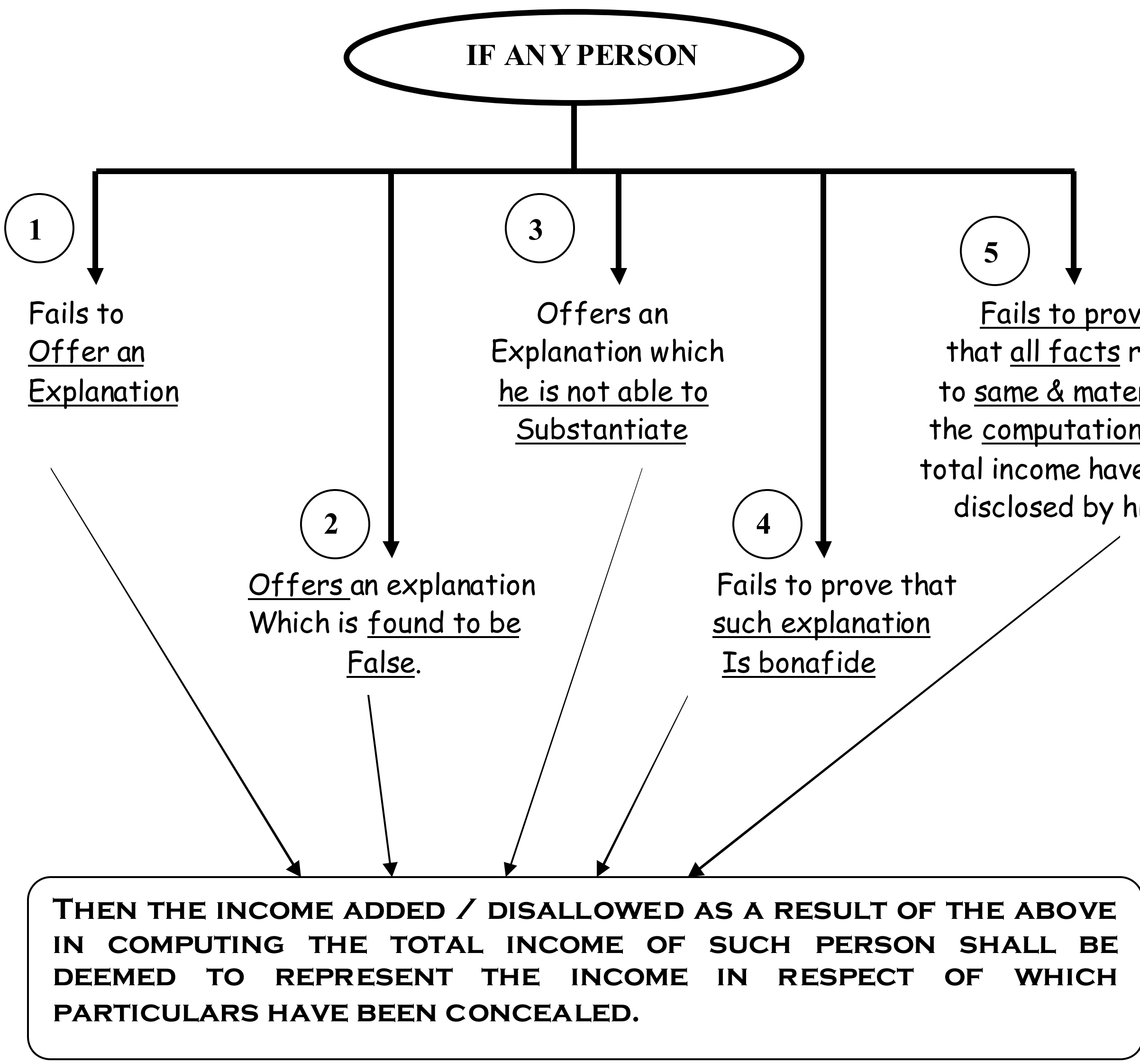
AFTER AMENDMENT:

Finance Act 2008 nullifies the above judgment and provides that the direction of A.O. to initiate the order of assessment/ re-assessment shall be deemed to constitute the satisfaction of A.O. for initiating the penalty proceedings.

There are cases where any amount disallowed or added **shall be deemed to be the concealed income and penalty will be levied under section-271.**

All these cases are being given in **the explanations** to **section 271(1)(c)**

EXPLANATION 1 TO SECTION 271(1) (c)



Now here are the examples being sequenced as per the numbers allotted to each of the above points:-

1.) Assessing officer demanded the required documents from him (Assessee), but the assessee doesn't furnish him the abovesaid documents.

2.) Here assessee has given the A.O. all the explanations but that was not true i.e. the expenditures entered in the books of accounts by the assessee was fake.

3.) Here for instance, the assessee showed a loan in his statement of affairs from his servant. A.O. demanded that the servant should be present before him personally to ascertain the source of the money given by the servant to the assessee. But assessee knows that he will be caught. So here though the **transaction was true and he offers the explanation but he was not able to prove that transaction.**

4.) For example, a person pays his friends' wives (15) an amount of ₹ 20,000.00 per month totaling to ₹ 36,00, 000.00 (₹ 20,000*15*12) for taking the classes. Here all the legal provisions are being complied but the A.O. can ask the assessee of the necessity of paying this huge amount for classes. Here A.O. will ascertain that why the above transaction took place.

5.) For example, assessee doesn't show **the income of capital gain in the return filed by him.** In nut shell, it is duty of the assessee to disclose all the material fact.

IN ALL THESE CASES THE BURDEN OF PROOF IS PLACED ON THE ASSESSEE.

Before doing **explanation 2 of sec-271(1) (c),** we will discuss some of the **"phrases":-**

1.) CASH CREDIT- SEC 68 :- (RECORDED IN BOOKS OF ACCOUNTS)

Where any **sum** is credited in the books of accounts of assessee for any previous year

And

Assessee offers no explanation **OR** explanation offered by him is not satisfactory

CONSEQUENCES: - The amount so credited may be **charged to tax (deemed concealment of income)** as income of that previous year in which **such sum is first credited.**

2.) UNEXPLAINED INVESTMENTS - SEC 69 :- (NOT RECORDED IN BOOKS OF ACCOUNTS)

Where in any previous year, the **assessee** has made investment **but not recorded in books of accounts and**

Assessee offers no explanation about source of Investment **OR** explanation offered by him is not satisfactory

CONSEQUENCES: - The value of investments may be deemed **to be income of such** previous year in which **investments are made.**

For Example:- In books of accounts of the assessee, there was an income under the head **MISCELLANEOUS INCOME**. A.O. investigated that this head includes **"Income of dividend".** But A.O. finds that **no investment** shown in the books of accounts.

3.) UNEXPLAINED MONEY - SEC 69A :- (NOT RECORDED IN BOOKS OF ACCOUNTS)

Where in any previous year assesssee is found to be the owner of any:- *(J,MBA)

- Jewellery **(J)**
- Money **(M)**
- Bullion **(B)**
- Other valuable article **(A)**

And

Assessee offers no explanation about nature & source of acquisition **OR** explanation offered by him is not satisfactory

CONSEQUENCES: - Then the **money** and **value of the bullion, jewellery or other valuable article** may be deemed to be **income of the assessee of such previous year** in which **he is found to be owner.**

4.) AMOUNT OF INVERTMENT ETC. NOT FULLY DISCLOSED - SEC 69B :-

Where in any previous year,

ASSESSEE

- Has made investment.
- Owner of **J, MBA***

→ And A.O. is of the opinion that **value exceeds** the amt. recorded in BOA.

CONSEQUENCES: - The excess amount may be deemed to be **income of the assessee for such previous year.**

For Example: - Mr. A purchase gold jewellery amounting to ₹ 1,00,000.00 but the A.O. the gold has been purchased for **₹4,50,000.00** being the market value. As such, **₹ 3,50.000** will be income of the assessee in the year in which gold was purchased.

5.) UNEXPLAINED EXPENDITURE - SEC 69C :- (RECORDED IN BOOKS OF ACCOUNTS)

Where in any previous year, asssessee has incurred **any expenditure** (e.g., party, marriage) **And**

Assessee offers no explanation about source of expenditure or part thereof **OR** explanation offered by him is not satisfactory

CONSEQUENCES: - The amount of such expenditure or part thereof may be deemed to be **income of the assessee for such previous year.**

For Example: - An assessee pays two month electricity expenses out of the money not recorded in the books of accounts. A.O. add these expenses under **this section (69C) and it is deemed to be income of the assessee,** but there may arise a question that whether it (expense) is to be allowed as expenditure or not?

AS PER AMENDEMENT MADE BY FINANACE ACT, 1998

"Notwithstanding (overruling) anything contained in any other provisions of this act, such **unexplained expenditure which is deemed to be income of the assessee** shall **NOT BE ALLOWED** as **deduction UNDER ANY HEAD OF INCOME."**

EXPLANATION 2 TO SECTION 271(1) (c)

-- Where any unexplained investments, unexplained expenditures etc found in any A.Y. (**2011-12**) is claimed to have been **met out of** **intangible additions** made in the earlier assessment years. **Explained on Pg 13**

-- Then the amount of **intangible additions made in** the assessment year **(2008-09)** Immediately preceding the assessment year **(2011-12)** in which such **unexplained investments, expenses** etc **is found, WHICH IS SUFFICIENT TO COVER** the amount of unexplained **investments, expenditure etc** shall be treated as **CONCEALED INCOME** of such preceeding year**(First Preceeding A.Y.-2008-09)**.

-- Where the **intangible additions** made in the **FIRST PRECEEDING YEAR** are not sufficient to **cover the UNEXPLAINED INVESTMENTS, EXPENDITURE** etc, then the amount of intangible additions made in the **A.Y. immediately preceeding* (2006-07,2005-06, 2003-04, 2002-03),**the FIRST PRECEEDING A.Y. **(2008-09), WHICH IS SUFFICIENT TO COVER** the balance amount of unexplained **investments, expenditure etc** shall be treated as **CONCEALED INCOME** of **A.Y. immediately** such preceeding the **First Preceding A.Y.)**.

-- And **SO ON** till the **entire UNEXPLAINED INVESTMENTS, EXPENDITURE** etc gets **COVERED.**

-- AS PER SECTION 271(1A), in the above case penalty for concealment of income can be initiated even if the assessment proceedings have been completed. **(Explained on page 14)**

- Reason of such is explained on page 16

INTANGIBLE ADDITIONS

Sometimes the A.O. makes the additions for purely **technical reasons e.g.** applying the **presumptive rate of gross profit or yield. These additions are commonly known as "INTANGIBLE ADDITIONS".** This can be explained with the help of an example:-

In case of **Builder (Contractor)**

PROFIT & LOSS A/C **(In Cr.)**

To Bricks	**XXX**	**By Gross Receipts**	**10.00**
To Sand	**XXX**		
To Badarpur	**XXX**		
To Steel	**XXX**		
To NET Profit	**0.20**		
	10.00		**10.00**

A.O. u/s- 143(3), maintains GROSS PROFIT **(here it means NET PROFIT RATE),** at the rate of 20%. As such:

NP as per A.O. = ₹ 2,00,00,000.00

NP declared = ₹ 20,00,000.00

₹ 1,80,00,000.00

This addition made of Rs. 180 lakhs, is known as "INTANGIBLE ADDITIONS"

<u>Case study</u> : **<u>ANANTHARAM VEERA SINGHAIAH & CO.</u>**

{REASON FOR INTRODUCING EXPALANTION 2 TO SECTION 271(1) (C)}

ISSUE: - In this case the issue was that whether assessee can explain the unexplained **investments, cash credits and assets** from the intangible additions?

In this case, DEPARTMENT CONTENDED that the addition made is **NOTIONAL INCOME** and hence **assessee cannot explain** unexplained assets, cash credit, investments **from the additions made.**

HELD:- Supreme Court in this case held that there is no concept of **notional income** under **Income Tax Act, 1961,** and these tangible assets **represents the REAL INCOME** of the assessee and can be used for explaining the unexplained **investments, cash credits and assets.**

BUT THERE IS A ⇩ LOOP HOLE IN THIS

It may happen that assessee will explain **the unexplained investments, cash credits and assets** after the completion of the assessment. But **as per provision NO PENALTY CAN BE LEVIED AFTER THE COMPLETION OF THE ASSESSMENT. (Discussed** on Page 2 of **penalty notes).**

IN THIS CASE ALTHOUGH ASSESSEE ADMITTING CONCEALMENT OF INOCME IN RELEVANT A.Y., <u>NO PENALTY</u> CAN BE LEVIED BECAUSE NO PENALTY WAS INITIATED BEFORE THE COMPETION OF THE ASSESSEMNT PROCEDURE.

So as to avoid the non-levy of the penalty in case of **concealment of income,** as such **EXPALANTION 2 TO SECTION 271(1) (C)** was introduced and it was held that as per section 271(1A), penalty for concealment can be initiated even **the assessment proceedings have been completed.**

Example for the above explanation of section-271(1)(c)

A.O. finds **unexplained investments of** ₹ 20,00,000.00 in **A.Y. 2011-12** and assessee explains that the said investments have been made out of the intangible additions made in the past:

Assessment Year	Additions made on which concealment penalty has not been levied i.e. **Intangible Additions**
2002-03	**8,00.000.00**
2003-04	**3,50,000.00**
2004-05	**Nil**
2005-06	**2,00,000.00**
2006-07	**4,50,000.00**
2007-08	**Nil**
2008-09	**5,00,000.00**
2009-10	**Nil**
2010-11	**Nil**

Solution

By virtue of **ANANTHARAM VEERA SINGHAIAH & CO.** the assessee can explain the **unexplained investments of** ₹ 20,00,000.00 in the **A.Y. 2011-12,** out of the intangible additions made in **the PAST A.Y.** But by doing so **explanation 2 of section 27191)(c)** will get attracted and ₹ 12,00,000.00 will be **treated as the CONCEALED INCOME OF PAST ASSESSMENT YEAR** in the following manner:

Assessment Year	Concealed Income
2008-09	5,00.000.00
2006-07	4,50,000.00
2005-06	2,00,000.00
2003-04	3,50,000.00
2002-03	5,00,000.00
TOTAL	20,00.000.00

Penalty proceeding for all **above assessment year** shall be initiated and such proceeding can be initiated at any time. **PENALTY** SHALL **BE LEVIED AS PER THE RATES IN FORCE IN THE RESPECTIVE ASSESSMENT YEARS.**

*Reason for the thing that unexplained **investments, assets** to be covered from the **latest additions:-**

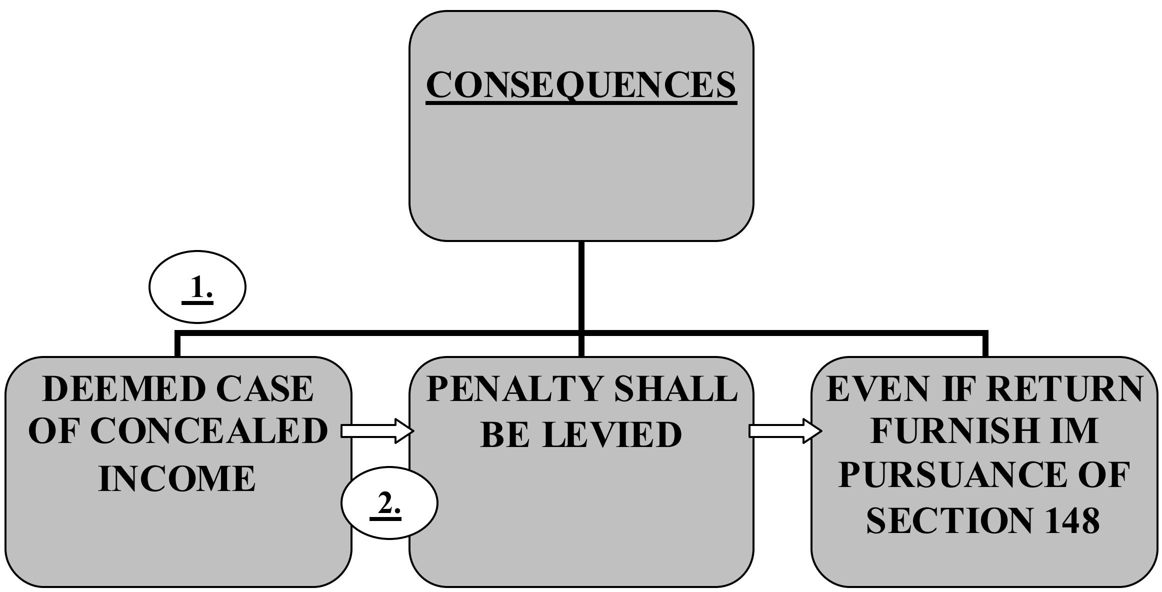
For earlier assessment year the rate of penalty was low. As such the assessee will try to prove that the additions pertain to earlier years. So to curb down such practice, EXPLANATION 2 TO SECTION 271(1) (c) provide that unexplained investments, assets **to be covered from latest additions.**

EXPLANATION 3 TO SECTION 271(1) (c)

Where any person—

- Fails to furnish **return of income** within the time **specified** under section 139(4), which he is required to furnish u/s- 139 in respect of any **A.Y.**

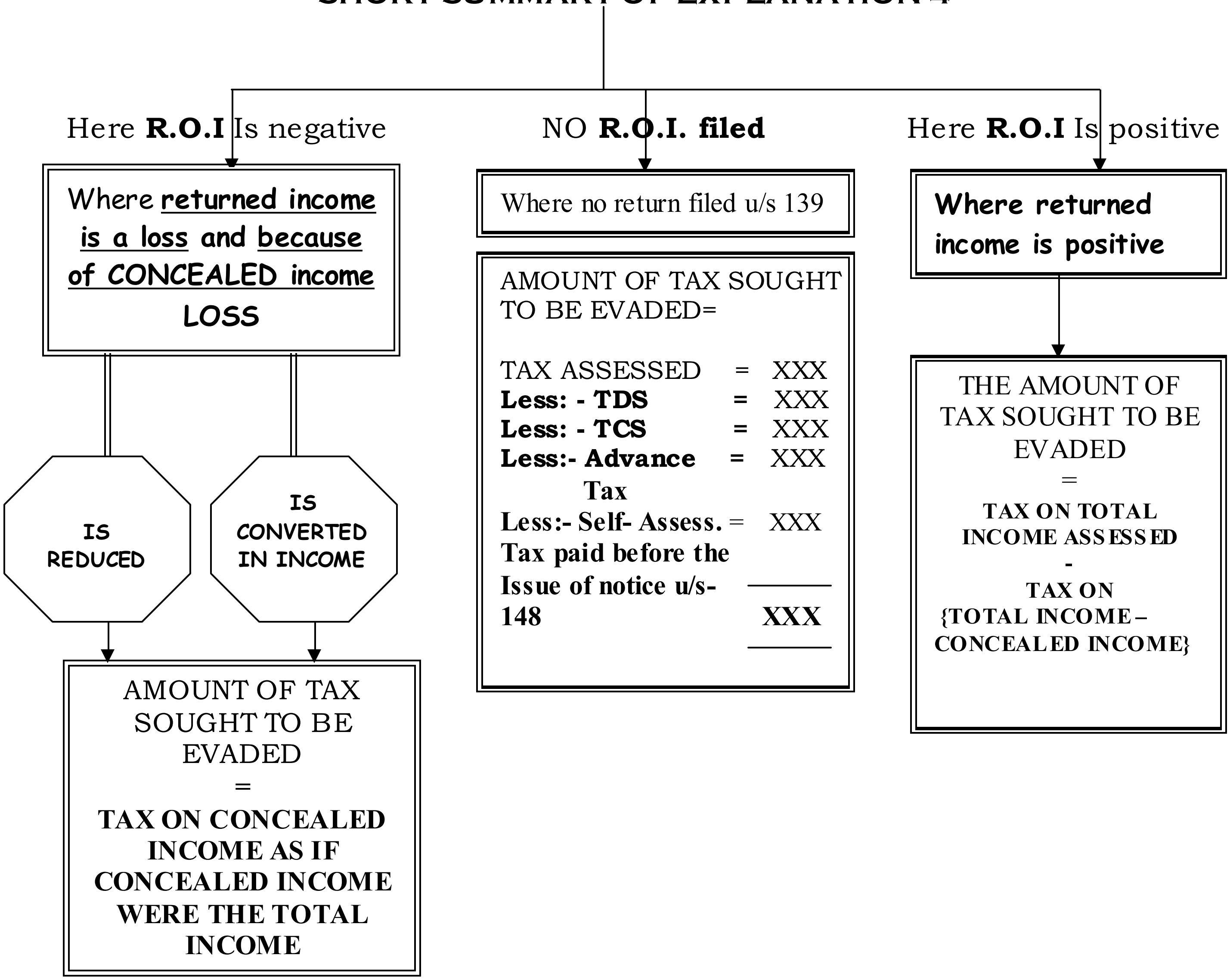
- And **A.O. / C.I.T. (A)** is satisfy that that in respect of such **A.Y. such person has TAXABLE INCOME.**



Here the above chart shows that if the conditions of **EXPLANATION 3 TO SECTION 271(1) (c)** satisfied then it will be the case of **concealed Income and Penalty shall be levied even if the assessee has filed return of income under section 148**

EXPLANATION 4 TO SECTION 271(1) (c)

SHORT SUMMARY OF EXPLANATION 4



For levy of penalty under section **271(1) (c),** the A.O. / C.I.T (A) / C.I.T. will ascertain the "**AMOUNT OF TAX SOUGHT TO BE EVADED"** (The same is discussed on page 5).

Under **EXPLANATION 4 OF SECTION 271(1) (c),** we ascertaining the amount of tax sought to be evaded under 3 cases mentioned in the above diagram:

Now the language of law:-

For the purpose of sec- 271(1) (c), the expression "the amount of tax sought to be evaded"-

(a) In case where the amount of income in respect of which particulars **have been concealed or inaccurate particulars have been furnished** has the effect of **reducing the loss declared** in the **return OR converting** that loss into income.

(Here **R.O.I** Is negative)

EXAMPLE:- Assume case of Individual in both the cases

	Case I		**Case II**
Loss **(ROI)**	= - ₹ 5,00,000.00	Loss **(ROI)**	= - ₹ 5,00,000.00
(+) Concealed income	= ₹ 3,00,000.00	(+) Concealed income	= ₹ 9,00,000.00
	- ₹ 2,00,000.00		₹ 4,00,000.00

CONCEALED INCOME
=
₹ 3,00,000 & 4,00,000.00

	Case I	Case II
TAX SOUGHT TO BE EVADED	= ₹ 14,420.00	₹ 1,27,720.00
PENALTY (Let 300%)	= **₹ 43,260.00**	**₹ 3,83,160.00**

(REFER CHART ON PAGE 18-CASE 1)

(b) In any case to which **explanation 3** applies **(i.e. NO RETURN IS FILED U/S 139)** means the total income assessed as **reduced by the amount of advance tax, tax deducted at source, tax collected at source and self assessment* tax paid before the issue of notice under section 148.**

(NO **R.O.I. filed)**

EXAMPLE:-

Suppose individual is assessed at a salary income of ₹ 1,00,00,000.00. His actual income is also ₹ 1, 00, 00,000.00.He also paid ₹ 30,00,000.00 by way of **TDS (supposed).** But the assessee has not filed the **RETURN.**

Prior amendment (Without allowing deduction TDS,TCS etc.):-

Tax sought to be evaded = Tax on ₹ 1,00,00,000.00.

= ₹ 30,00,000.00

Here there is no evasion of tax because TDS is already deducted.

After amendment (After allowing deduction TDS,TCS etc.):-

AMOUNT OF TAX SOUGHT TO BE EVADED=

TAX ASSESSED	=	**XXX**
Less: -TDS	=	**XXX**
Less: -TCS	=	**XXX**
Less:- Advance Tax	=	**XXX**
Less:- Self- Assess. Tax paid before the Issue of notice u/s-148	=	**XXX**

(REFER CHART ON PAGE 18-CASE 2)

* **SELF ASSESSMENT:-** (Contained in (b) on page 20)

In case 2, which self assessment tax to be considered. It is before or after issue of notice u/s 148. If self assessment tax paid after the notice u/s 148 is allowed then **it would result in NIL OR LOW tax sought to be evaded i.e.** the assessee will pay the demand. As such to curb this loophole in this provision, it was added that:

"Self assessment to be deducted paid before the notice under section 148 is issued".

EXAMPLE:-

ABC Ltd. (A company) did not filed ROI for the A.Y. 2007-08. Officer issued the company notice u/s-148 as on 01-01-2011 and assessee filed ROI on 10-01-2011 declaring income of ₹ 10,00,000.00 and tax thereon of ₹ 3,00,000.00.**(Assumed 30% tax rate with no E.C).** The company has already paid taxes for the A.Y. 2007-08.

TDS= ₹ 40,000 **TCS=** ₹ 10,000 **Advance Tax=** ₹ 90,000

Self Assessment tax paid on 30-06-2008 = ₹ 60,000.00

Assessee pays balance self assessment tax on 10-01-2011 ₹ 1,00,000.00
The A.O. assesses the income u/s -147 at:

CASE I : 10,00,000.00
CASE II : 15,00,000.00

CASE I :- ₹ 10,00,000.00

Demand u/s 147 = Nil (∵ Co. has already declared income of ₹ 10,00,000

Amount of tax = ₹3,00,000*-₹ 40,000-₹10,000-₹60,000-₹ 90,000
Sought to be
Evaded = **1,00,000.00**

Therefore penalty = 100% of tax sought to be evaded

= ₹ 1,00,000*100%

= ₹1,00,000.00

* Tax assessed = ₹ 10,00,000.00*30% **(Income Assessed by A.O.)**

= ₹ 3,00,000.00

CASE II :- ₹ 15,00,000.00

Demand u/s 147 = ₹ 1,50,000.00 (15,00,000* 30%- 3,00,000.00)

Amount of tax = ₹4,50,000*-₹ 40,000-₹10,000-₹60,000-₹ 90,000
Sought to be
Evaded = ₹ **2,50,000.00**

Therefore penalty = 100% of tax sought to be evaded

= ₹ 2,50,000*100%

= ₹ 2,50,000.00

* Tax assessed = ₹ 15,00,000.00*30% **(Income Assessed by A.O.)**

= ₹ 4,50,000.00

(c) In any other case, means the **difference between the tax on the total** income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

THE AMOUNT OF TAX SOUGHT TO BE EVADED

TAX ON TOTAL INCOME ASSESSED

-

TAX ON {TOTAL INCOME –CONCEALED INCOME}

-----XXX-----

SECTION 271AAA: New Law for concealment of income in case of **search & Search**

Reason for inserting the SECTION:

- ∅ If income tax authority do **search & Seizure.**
- ∅ And founds **CASH & JEWELLERY.**
- ∅ The assessee will contend that it belongs beyond **6 years (Because A.O. can't open case beyond 6 years).**
- ∅ Department will try to prove that it belongs to the relevant 6 years.
- ∅ As such there may be a long litigation time involved in this.

271AAA was thus introduced to avoid such litigation.

EXPLAINED ON NEXT PAGE

SECTION SAYS:

1.) Section applies to **" Specified Previous year"**

2.) "Specified Previous year" mean the previous year ---

(i) Which has ended before the **date of search, but the date of filing** The return of income u/s 139(1) **has not expired before the date of search** and the assessee has **not furnished the return of income for the previous year.**

(ii) In which the search was conducted.

♣ **HERE DUE DATE NOT EXPIRED AND ROI NOT FILED.**

"SPECIFIED PREVIOUS YEAR" can be explained with the help of example:

LET ASSUME that search **conducted on 20-06-2010**. As such **previous year ending on 31-03-2010** has ended before the date of search **(i.e. 30-07-2010). And the previous year** in which search is conducted is **2010-11**

Therefore, **"SPECIFIED PREVIOUS YEAR" is- (1) 31-03-2010**

(2) 31-03-2011

PENALTY WILL BE LEVIED @ 10%.

3.) This section provides a **penalty of 10% on undisclosed income of the specified previous year,** in addition to **tax if any.**

Amount payable = **Normal Tax + $\underbrace{\text{10\% of undisclosed Income of Specified Year}}_{\text{Provided by 271AAA}}$**

SECTION 271AAA DOESN'T APPLY IN THESE TWO CASES:

(A.) This section will not apply and as such no penalty for concealment of income for the **"Specified Previous years"** if the assessee:

- In the course of the search u/s 132(4), admits the **undisclosed income** and specify the manner in which such income earned

- Substantiate (Proves) the manner in which disclosed income is derived.

- Pays **tax, together with interest,** if any, i.r.o. **disclosed income.**

[Here the amount of income IS NOT RECORDED IN BOOKS OF ACCOUNTS]

E.G.:- When raid is conducted, then during the **examination on Oath** assessee admits the undisclosed income **and explain the manner in which it is earned** and also pays **taxes with interest** thereon.

(B.) This section **will not apply** and as such **no penalty** for **concealment** of income for the **"Specified Previous years"** represented, either **partly or wholly,** by any **money, bullion, jewellery etc.** in the **BOOKS OF ACCOUNTS** or other **DOCUMENTS** found in the **course of a search u/s 132,** has been:

- Recorded **on or before the date of search** in the books of account or other documents maintained in **normal course (Only books of accounts not any diary)** relation to such P.Y.

- Otherwise has been disclosed to the **COMMISSIONER** before the **date of search.**

Now **UNDISCLOSED INCOME MEANS:** INCOME which has

I.) Not been recorded on or before the date of search in the books of account or other documents maintained in **normal course.**

II.) Not been disclosed to the **COMMISSIONER** before the **date of search.**

III.) Not been admitted by the assessee in the statement u/s-132(4) **[**as discussed in **Point (a)** on page no **25.]**

IV.) Any income of the **"Specified Previous years"** represented, either **partly or wholly,** by any entry in respect of an **expenses** recorded in the **BOOKS OF ACCOUNTS** or other **DOCUMENTS found maintained in normal course relating** to the **"Specified Previous years"** which is **FOUND TO BE FALSE** and would not have been found if the **search has not been conducted.**

EXPLANATION 5A TO SECTION 271(1)(C): DEEMED CONCELAMENT

This explanation is applicable for:

- ∅ Previous year which has ended before the date of **search**
- ∅ Due date of **filing** the **return of Income** has **expired** and assessee has not **filed the return of income.**

AND **SUCH INCOME *** IS DECLARED BY HIM IN THE **RETURN OF INCOME FURNISHED ON OR AFTER THE DATE OF SERACH**

THEN THIS INCOME WILL BE **CONCEALED INCOME**

* Where in course of search initiated u/s 132 on or after 01-06-2007, the assessee is found to be owner of -

- ✓ Any **money, bullion, jewellery or other valuable articles** and the assessee claims that such **assets** have been acquired by him by utilizing his income for previous year.
- ✓ Any income based on **any entry in the books of accounts/documents/ transactions** and he claims that **such entry in the books of accounts/documents/ transactions** represent his income **for any previous year.**

Undisclosed Income Pertains to PY	**Due Date of ROI**	**Date of filing of ROI**	**Consequences**
PREVIOUS YEAR 31-03-2009	30-09-2009	30-06-2010 **Undisclosed income Disclosed**	Here the due date has expired & the **assessee** has not filed **ROI** till 30-9-9 and if he **furnish ROI** after the Date **Of search (20-06-10),** then penalty Will be levied @ **100% or 300%.**

RESTROPECTIVE ADITION IN EXPLANATION 5A TO SECTION 271(1) (C)
BY FINANCE ACT 2009

Where in course of search initiated u/s 132 on or after 01-06-2007, the assessee is found to be owner of -

- ✓ Any **money, bullion, jewellery or other valuable articles** and the assessee claims that such **assets** have been acquired by him by utilizing his income for previous year.
- ✓ Any income based on **any entry in the books of accounts/documents/ transactions** and he claims that **such entry in the books of accounts/documents/ transactions** represents his income **for any previous year,**

Which has ended **(31-03-2010)** before the date of search **(20-06-2010)** and where the return of income for such previous year has been **furnished before the date of search** but such **income has not been disclosed,** and after that such **income has been declared in the REVISED RETURN** furnished **on or after date of search,** then penalty will be levied under section 271(1) (c) for the deemed case of concealment of the income.

Undisclosed Income Pertains to PY	Due Date of ROI	Date of filing of ROI	Consequences
PREVIOUS YEAR 31-03-2009	30-09-2009	30-09-2009 Unclosed income Not shown. & Revised return Filed on 30-06-10	Deemed concealment of income as per EXPLANATION 5A to sec-271(1) (c) as amended by the FA 2009. Penalty will be levied @ 100% or 300%.

SECTION 274 : PROCEDURE FOR IMPOSING OF PENALTY

☑ This section applies to all types of penalty.

"NO ORDER IMPOSING A PENALTY SHALL BE MADE UNLESS THE ASSESSEE"

- Has been heard
- **OR**
- Has been given a reasonable Opportunity of being heard

If penalty order is **passed by A.O.** w'out giving a **reasonable opportunity of being heard;** then such PENALTY ORDER is **VOID-AB-INTIO.**

Prior approval of JOINT COMMISSIONER to be taken where

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Penalty order made by the

Assessing Officer	Assistant/ Deputy Commisioner
EXCEEDS ₹ 10,000.00	EXCEEDS ₹ 20,000.00

SECTION 275: TIME LIMIT FOR PASSING ORDER FOR PENALTY FOR CONCEALMENT OF INCOME

Where income is increased by an assessing officer in an assessment, then A.O. shall levy penalty UPTO:

Appeal made To CIT (A) or ITAT

- Where order is passed by CIT(A) & no Appeal is Made to ITAT
  - **1 year***from the end of the F.Y. in which order of CIT(A) is received by CIT.
- Where order is passed by the ITAT
  - **6 months** form the end Of the month in which Order of **ITAT** is received by **CIT**

Revision application has been made to CIT u/s-264

- **6 months** from the end Of the **month** in which Revision order u/s-264 is passed

No appeal has been Filed & no revision application u/s-264

- **End of the FY** in which assessment proceedings are completed
- **6 months** from end of month in which the penalty proceeding is **intiated.**

* 1 Year: - **Here the time limit is 1 year as compared to 6 months; it is so because the A.O.s' said that they have to do all assessments (i.e. 143,144,147 etc), so more time to be given to them so that they can levy the penalty. As such time limit extended to 1 YEAR.**

SECTION 275(1A): BAR OF LIMITAION FOR IMPOSING PENALTIES

Section says:

- → **Where the relevant assessment is pending**
- → **in an appeal before CIT(A) / ITAT/ HC/SC**
- → **or revision under section 263 or 264**
- → **and penalty order is passed by the A.O.**
- → ***without waiting* for the decision of appeal / revision**
- → **then the A.O. shall by passing order u/s 275(1A)**
- → ***cancel, reduce, enhance or impose penalty***
- → **on the basis of assessment as revised in appeal / revision**

This is indeed rectification Order passed by A.O. after decision comes by CIT(A) or ITAT.

- → **and order u/s 275(1A) has to be passed** WITHIN 6 MONTHS FROM THE END OF THE MONTH **in which order u/s 250/254/260A/262 is received by CIT or order u/s 263/ 264 is passed by CIT.**

Reason for introducing this section:

EARLIER

A.O. do assessment ----- initiate Penalty
u/s 143(3) &

↓

Appeal to CIT (A)

↓

Appeal to ITAT
(Assessee knows he Will loose case)

Assessee do it Intentionally to Delay the penalty since AO can't initiate penalty till final decision.

NOW AFTER 275(1A)

A.O. u/s ---- > now as per sec-275(1A)
143(3)

↓

CIT (A)

↓

ITAT

Now u/s 275(1A), assessee has to pay **penalty** at the time of initiating by A.O. He will not wait for the decision of CIT (A) or ITAT.

------ PENALTIES------

While doing the penalty part one of the major problem faced by me was that how to remember the amount of penalty for various defaults. So I make a way to learn it for some of the sections & respective penalties:

(Not complied)	(Default)		(Not maintained)	(No audit)
NOTICE COME →	PAY TAX →	Possible only if →	BOA Maintained →	and Audit done
STEP 1	**STEP 2**		**STEP 3**	**STEP 4**

STEP -1

☑ NON-COMPLAINCE OF NOTICE :

Section	Nature Of Default	Amount Of Penalty
271(1)(b)	Failure to comply with notice u/s 142(1) – return/ Produce BOA 143(2) – **Notice of scrutiny Ass.** 142(2A) – **Special Audit Order**	₹ **10,000.00** for each failure.

STEP -2

☑ DEAFAULT IN PAYMENT OF THE TAX :

Section	Nature Of Default	Amount Of Penalty
140A(3)	Fails to pay whole/part **Self Assess. Tax** **Interest** **Both**	Amount not exceeding -- **Tax & interest**
221(1)	Default in making the payment of tax or the interest or any demand	Amount not exceeding -- **Tax & interest**

STEP -3 ☑ BOOKS OF ACCOUNTS/ DOCUMENSTS NOT MAINTAINED :

	PART I: Section 44AA	PART II: Transfer Pricing
OFFENCE NATURE	Fails to keep BOA, documents etc.	Fails to keep & maintain the documents/ information u/s 92D
PENALTY AMOUNT	**₹ 25,000.00**	**2% of the value of each international transaction**

STEP -4. ☑ NO AUDIT OF BOOKS OF ACCOUNTS/ REPORT FURNISHED :

	PART I: Section 44AB	PART II: Transfer Pricing
OFFENCE NATURE	Fails to get BOA or, furnish a report of audit	Fails to furnish a report from an CA required by section 92C
PENALTY AMOUNT	**0.5% of total sales** OR **₹ 1,50,000.00** (WHICHEVER IS LOWER)	**₹ 1,00,000.00**

Other selected penalties are as follows:-

SECTION	NATURE OF DEFAULT	PENALTY LEVAIBLE
271 D	**Taking or accepting** certain **loans & advances** in contravention of its provisions.	**Amount** equal to **loan or deposit taken or accepted**.
271 E	**Repaying** any **loans & advances** specified in section **269T** in contravention of its provisions.	**Amount** equal to **loan or deposit repaid.**
271 F	Failure to furnish return as required **bye section 139(1)** on or before the **end of the relevant assessment year.**	₹ **5,000.00**
271 G	Failure to furnish information or documents u/s 92D	**2% of the value of each international transaction**
PENALTIES IN RESPECT OF PAN (PERMANENT ACCOUNT NUMBER)		
272B(1)	Failure to comply with the provisions section **139A**	₹ **10,000.00**
272B(2)	**(a)** Fails to quote **PAN** in any document **(b)** Fails to intimate **PAN** **(c)** To quote/ intimate **PAN** which is **false** & which he knows or believes to be false or doesn't believe to be true.	₹ **10,000.00**

------ PROSECUTIONS------

Way to learn:

SECTION	NATURE OF OFFENCE	MINIMUM PROSECUTION	MAXIMUM PROSECUTION
☞ **CASES OF SEARCH & SEIZURE**			
275A	Dealing with **seized assets** in contravention of order made u/s 132(3) by the officer conducting search.	Any period **upto 2 years & fine**	**2 years & fine**
275B	Failure to afford **necessary facility** to the authorized officer to inspect BOA or other documents as required u/s 132(1)(iib)	Any period **upto 2 years & fine**	**2 years & fine**
☞ **CASES OF TDS/ TCS**			
276B	Failure to pay to the **govt.'s treasury** TDS or tax payable under proviso to section 194B	3 Months & Fine	7 years & Fine
276BB	Failure to **pay to the credit** of **Central govt. tax collected at source u/s 206C.**	3 Months & Fine	7 years & Fined
☞ CASES FOR CONCEALMENT OF INCOME			
276C	Amount sought to be evaded : **₹ 1,00,000.00 or less** **More than ₹ 1,00,000.00**	 3 months & Fine 6 months & fine	 3 years & Fine 7 years & Fine

278	Abatement to make a false statement or declaration relating to any income.	3 months & Fine 6 months & fine	3 years & Fine 7 years & Fine

However under section 278, the prosecution is against the person who gives false statement or helps in tax evasion. But this prosecution depends on the amount of tax evaded by the assessee. As such for the income tax department it is rather impossible to **evaluate the amount of tax evasion** in respect of a particular person who helped the assessee to evade the tax. So a new section was introduced i.e. **277A**:

☑ ***Let understand it with the help of an example:***

A printer prints **bills of the bogus** expenditure for an assessee.

☑ ***Now will read the language of the section with the help of example:***

- If any person **(printer)** **[FIRST PERSON]**
- **Willfully** and with the **intent** to enable any other person **(assessee)** **[SECOND PERSON]**
- To evade any tax or interest or penalty chargeable & imposable under this act
- **Makes or causes to be made any entry** or **statement which is false** and which the first person **(printer)** either knows to be false or doesn't believe to be true
- **In any books of accounts** or **other documents** relevant to or useful in any proceedings against first person **(printer)** or second person **(assessee),** under this act
- **The** first person **(printer)** shall be punishable with imprisonment :

  MINIMUM IMPRISONMENT: **3 MONTHS AND FINE**

  MAXIMMUM IMPRISONMENT: **3 YEARS AND FINE**