POWER OF PRINCIPAL COMMISSIONER OR COMMISSIONER TO REDUCE OR WAIVE PENALTY

In the tutorial on "Penalties Under the Income-tax Act", we discussed various penalties imposable under the Income-tax Act in respect of various defaults. Apart from enacting penalty provisions, the Income-tax Act also designed provisions empowering the Principal Commissioner of Income-tax or Commissioner of Income-tax to grant relief from penalty to taxpayers in genuine cases. Such power is granted under section 273A and section 273AA. In this part you can gain knowledge about the provisions of section 273A and section 273AA.

Overview of major penalties under the Income-tax Act

Before understanding the provisions of section 273A and 273AA it is better to take an overview of the penal provisions under the Income-tax Act. The following table highlights major penalties imposable under the Income-tax Act.

Nature of default/failure	*Sections*	*Penalty*
Non-payment of self-assessment tax	Section 140A(3)	Such an amount as the Assessing Officer may impose but not exceeding the amount of tax.
Default in payment of any tax due	Section 221(1)	Such an amount as the Assessing Officer may impose but not exceeding the amount of tax.
Determination of undisclosed income of block period	Section 158BFA(2)	Minimum : 100 per cent of tax leviable in respect of undisclosed income Maximum : 300 per cent of tax leviable in respect of undisclosed income.
Failure to comply with notice issued under section 142(1) or section 143(2) and direction for audit under section 142(2A).	Section 271(1)(b)	Rs. 10,000 for each failure.
Concealment of income or furnishing inaccurate particulars of income	Section 271(1)(c)	100% to 300% of the tax evaded.

Distribution of profits by registered firm otherwise than in accordance with partnership deed and as a result of which partner has returned income below the real income	Section 271(4)	Not exceeding 150 per cent of difference between tax on partner's income assessed and tax on income returned, in addition to tax payable
Failure to keep, maintain or retain books of account, documents, etc., as are required under section 44AA	Section 271A	Rs. 25,000
Failure to keep and maintain information and documents required in respect of international transaction or specified domestic transaction, failure to report such transaction, etc.	Section 271AA	2% of the value of each international transaction or specified domestic transaction entered into by the taxpayer.
Penalty in case of search	Section 271AAB	10%, 20% and ranging from 30% to 90% of the undisclosed income.
Failure to get accounts audited or furnish a report of audit as required under section 44AB	Section 271B	One-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, whichever is less
Failure to furnish a report from an accountant as required by section 92E	Section 271BA	Rs. 1,00,000
Failure to deduct tax at source, wholly or partly or failure to pay wholly or partly tax under section 115-O(2)	Section 271C	An amount equal to tax not deducted (in case of TDS) or tax not paid (in case of dividend distribution tax)
Failure to collect tax at source	Section 271CA	An amount equal to tax not collected.
Taking or accepting certain loans and deposits in contravention of provisions of section 269SS	Section 271D	An amount equal to loan or deposit taken or accepted

Repaying loans or deposits in contravention of provisions of section 269T	Section 271E	An amount equal to loan or deposit repaid
Failure to furnish the return of income before the end of the assessment year	Section 271F	Rs. 5,000
Failure to furnish statement of financial transaction or reportable account (previously called as Annual Information Return) as required under section 285BA(1)	Section 271FA	Rs. 100 or Rs.500, as the case may be, per day of default
Failure to furnish an accurate statement of financial transaction or reportable account	Section 271FAA	Rs. 50,000
Failure to furnish any information or document as required by section 92D(3)	Section 271G	2% of the value of the international transaction or specified domestic transaction for each such failure
Failure to file the TDS/TCS return	Section 271H	Not less than Rs.10,000 and uptoRs. 1,00,000
Failure to co-operate with the tax authorities, i.e., not answering any question, not signing statements, etc.	Section 272A(1)	Rs. 10,000 for each failure/default
Penalty under section 272A(2)	Section 272A(2)	Rs. 100 per day for every day during which the default continues.
Failure to comply with section 133B	Section 272AA(1)	An amount not exceeding Rs. 1,000
Failure to comply with provisions relating to Permanent Account Number (PAN)	Section 272B	Rs. 10,000
Failure to comply with provisions relating to Tax Deduction Account Number	Section 272BB(1)	Rs. 10,000

or Tax Collection Account Number		

Power of PrincipalCommissioner or Commissioner to reduce or waive penalty under sections 273A(1), 273A(4) and 273AA

➢ Waiver or reduction of penalty under section 273A(1)

Section 273A(1) empowers the Principal Commissioner or Commissioner to grant waiver or reduction from penalty imposed or imposable under section 271(1)(c) (i.e., penalty for concealment of particulars of income or furnishing inaccurate particulars of income).

Initiation to be taken by Principal Commissioner or Commissioner or the taxpayer

The waiver or reduction under section 273A(1) can be granted by the Principal Commissioner or Commissioner either on his own motion or otherwise, i.e., on an application made by the taxpayer.

Conditions for granting relief

Relief under section 273A(1) is granted if following conditions are satisfied :

(1) Prior to the detection by the Assessing Officer of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, the taxpayer voluntarily and in good faith, makes a full and true disclosure of such particulars.

For the purpose of section 273A(1), a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract penalty under section 271(1)(c).

(2) The taxpayer should have co-operated in any enquiry relating to the assessment.

(3) The taxpayer either should have paid or made satisfactory arrangements for paying any tax or interest payable in consequence of an order passed under the Act in respect of the relevant year.

Previous approval of Principal Chief Commissioner or Chief Commissioneror Principal Director General or Director General

If the amount of income in respect of which the penalty is imposed or imposable for the relevant year or, where such disclosure relates to more than one year, the aggregate amount of such income for those years exceeds a sum of Rs. 5,00,000, no order reducing or waiving the penalty under section 273A(1) shall be made by the Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or PrincipalDirector General or Director General, as the case may be.

Finality of the order

Every order made under section 273A shall be final and shall not be called into question by any Court or any other authority.

No relief if waiver claimed earlier

As per section 273A(3), where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more years, he shall not be entitled to any relief under section 273A in relation to any other year at any time after the making of such order.

Thus, if a person has claimed relief under section 237A(1) at any time, then he cannot claim relief under section 273A [i.e., 273A(1) as well as section 273A(4)] thereafter.

➢ Waiver or reduction of penalty under section 273A(4)

Section 273A(4) empowers the Principal Commissioner or Commissioner to waive or reduce any penalty imposable under the Income-tax Act as well as to stay or compound any proceeding for the recovery of penalty.

Initiation to be taken by the taxpayer

For obtaining waiver or reduction or stay or compound any proceeding for the recovery of penalty, the taxpayer has to make an application to the Commissioner.

Conditions for granting relief

Relief under section 273A(4) is granted if following conditions are satisfied :

(1) Levy of penalty will cause genuine hardship on the taxpayer.
(2) The taxpayer has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Previous approval of Chief Commissioner or Director General

If the amount of any penalty or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds Rs. 1,00,000, no order of reducing or waiving the amount or compounding any proceeding for its recovery under section 273A(4) shall be made by the Principal Commissioner of Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

Finality of the order

Every order made under section 273A shall be final and shall not be called into question by any Court or any other authority.

No relief if waiver claimed earlier

Section 273A(1) empowers the Commissioner to grant waiver or reduction from penalty levied under section 271(1)(c) (i.e., penalty for concealment of particulars of income or furnishing inaccurate particulars of income).

As per section 273A(3), where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more years, he shall not be entitled to any relief under section 273A in relation to any other year at any time after the making of such order.

Thus, if a person has claimed relief under section 273A(1) at any time, then he cannot claim relief under section 273A [i.e., section 273A(1) as well as section 273A(4)] thereafter.

Waiver of penalty under section 273AA

Section 273AA empowers the Principal Commissioner or Commissioner to grant immunity from imposition of any penalty under the Income-tax Act in a case where the taxpayer has made an application for settlement under section 245C and the proceedings for settlement have been abated under section 245HA and penalty proceedings are initiated under the Income-tax Act.

Initiation to be taken by the taxpayer

For obtaining waiver, the taxpayer has to make an application to the Commissioner.

Other provisions applicable to the case of waiver under section 273AA

- The application to the Commissioner for waiver shall not be made after the imposition of penalty after abatement.
- The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under the Income-tax Act.
- Before granting the waiver, the Commissioner should be satisfied that the taxpayer has, after the abatement, co-operated with the Income-tax authority in the proceedings before him and made a full and true disclosure of his income and the manner in which such income has been derived.
- The immunity granted under section 273AA shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and after the withdrawal of the immunity, the provisions of the Act shall apply as if such immunity had not been granted.
- The immunity granted under section 273AA may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under the Act to which such person would have been liable, had not such immunity been granted.

MCQ ON POWER OF COMMISSIONER TO REDUCE OR WAIVE PENALTY

Q1. Principal Commissioner or Commissioner of Income-tax is empowered to grant relief from penalty to taxpayers in genuine cases. Such power is granted under section 273A and section _______.

(a) 274
(b) 273AA
(c) 273B
(d) 273AB

Correct answer : (b)

Justification of correct answer :

Apart from enacting penalty provisions, the Income-tax Act also designed provisions empowering the Principal Commissioner or Commissioner of Income-tax to grant relief from penalty to taxpayers in genuine cases. Such power is granted under section 273A and section 273AA.

Thus, option (b) is the correct option.

Q2. Section 273A(1) empowers the Principal Commissioner or Commissioner to grant waiver or reduction from penalty imposed or imposable under section 271F *i.e.* penalty for failure to file the return of income.

(a) True
(b) False

Correct answer : (b)

Justification of correct answer :

Section 273A(1) empowers the Principal Commissioner or Commissioner to grant waiver or reduction from penalty imposed or imposable under section 271(1)(c) (*i.e.*,penalty for concealment of particulars of income or furnishing inaccurate particulars of income). The relief is subject to conditions specified in this regard.

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

Q3. Section 273A(4) empowers thePrincipal Commissioner or Commissioner to waive or reduce any penalty levied under the Income-tax Act as well as to stay or compound any proceeding for the recovery of penalty.

(a) True
(b) False

Correct answer : (a)

Justification of correct answer :

Section 273A(4) empowers the Principal Commissioner or Commissioner to waive or reduce any penalty levied under the Income-tax Act as well as to stay or compound any proceeding for the recovery of penalty. The relief is subject to conditions specified in this regard.

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

Q4. Section 273AA empowers the Principal Commissioner or Commissioner to waive off penalty in a case where the taxpayer has made an application for settlement under section 245C and the proceedings for settlement have been completed and penalty proceedings are initiated under the Income-tax Act.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

Section 273AAempowers the Principal Commissioner or Commissioner to waive off penalty in a case where the taxpayer has made an application for settlement under section 245C and the proceedings for settlement have been **abated** under section 245HA and penalty proceedings are initiated under the Income-tax Act.

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

Q5. The waiver or reduction under section 273A(1) can be granted by the Principal Commissioner or Commissioner on his own motion but not on an application made by the taxpayer.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

The waiver or reduction under section 273A(1) can be granted by the Principal Commissioner or Commissioner either on his own motion or otherwise, *i.e.*, on an application made by the taxpayer.

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

Q6. If the amount of income in respect of which the penalty is imposed or imposable for the relevant year(s) exceeds Rs. _______, then no order reducing or waiving the penalty under section 273A(1) shall be made by the Principal Commissioner or Commissioner, except with the previous approval of the Principal Chief Commissioneror Chief Commissioner or Principal Director General or Director General, as the case may be.

(a) 1,00,000 (b) 5,00,000

(c) 10,00,000 (d) 20,00,000

Correct answer : (b)

Justification of correct answer :

If the amount of income in respect of which the penalty is imposed or imposable for the relevant year or, where such disclosure relates to more than one year, the aggregate amount of such income for those years exceeds a sum of Rs. 5,00,000, no order reducing or waiving the penalty under section 273A(1) shall be made by the Principal Commissioner or Commissioner, except with the previous approval of the Principal Chief Commissioneror Chief Commissioner or Principal Director General or Director General, as the case may be.

Thus, option (b) is the correct option.

Q7. Every order made under section 273A shall be final and shall not be called into question by any Court or any other authority.

(a) True (b) False

Correct answer : (a)

Justification of correct answer :

Every order made under section 273A shall be final and shall not be called into question by any Court or any other authority.

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

Q8. As per section 273A(3), where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more years, he shall not be entitled to any relief under section 273A in relation to any other year at any time after the making of such order.

(a) True (b) False

Correct answer : (a)

Justification of correct answer :

As per section 273A(3), where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more years, he shall not be entitled to any relief under section 273A in relation to any other year at any time after the making of such order.

Thus, if a person has claimed relief under section 237A(1) at any time, then he cannot claim relief under section 273A [*i.e.*, 273A(1) as well as section 273A(4)] thereafter.

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

Q9. Relief under section 273A(4) is granted if levy of penalty will cause genuine hardship on the taxpayer.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

Relief under section 273A(4) is granted if following conditions are satisfied :

(1) Levy of penalty will cause genuine hardship on the taxpayer.

(2) The taxpayer has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

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

Q10. The immunity granted under section 273AA may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence

(a) True (b) False

Correct answer : (a)

Justification of correct answer :

The immunity granted under section 273AA may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under the Act to which such person would have been liable, had not such immunity been granted.

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