CHAPTER XXI -- PENALTIES IMPOSABLE

Penalty is a monetary fine for committing some default or for failure to comply with a particular provision of the Income Tax Act.
It is levied with a motive to discourage people from committing or repeating defaults. Various penalties have been prescribed under Chapter - XXI of the Income Tax Act, but before that we must understand the relief provided U/S 273B of this chapter.

Section 273B: Reasonable cause for default **can save from penalty:**
If assessee has a reasonable cause for committing any default under any provision of the Act, except in case of Penalty leviable U/S 271(1)(c), then no penalty can be levied for the same.

Sr.	Section	Particulars	Penalty
1	271(1)(b)	**Penalty for failure to comply with certain notices:** > Any person who fails to comply with the terms of : -- notice U/S 142(1) or 143(2) ; or -- a direction U/S 142(2A) ; or -- a notice U/S 115WD(2) or U/S 115WE(2)	***Rs. 10,000/-*** *for each such failure.* *(in addition to tax payable)*
2	271(1)(c)	**Penalty for :-** **1) Concealment of particulars of Income, or** **2) Furnishing inaccurate particulars of Income** > Where the claim made by the assessee is debatable, penalty cannot be imposed under this sec. > Where there has been change in the AO after initialisation of penalty proceedings, the successor AO can continue with the proceedings from the stage at which it was left pending by the predecessor and levy penalty. However, in this case, assessee is vested with a right to ask for re-hearing in the matter before the successor passess the order. Once assessee exercise such a right, the succeding AO cannot refuse to provide such an opportunity. But having not made any specific request of re-hearing, the assessee cannot feel aggrieved later, that penalty has been imposed without giving an opportunity.	***Minimum 100 % to Maximum 300 %*** *of the Tax sought to be evaded.* *(in addition to tax payable)*
3	271A	**Penalty for failure to maintain the Books of Accounts,** documents, etc. as required **U/S 44AA** of the Act	***Rs. 25,000/ -.***
4	271AA	Penalty for failure to keep and maintain Documents / Information, as required U/S 92D	***@ 2 %*** *of the value of each International transaction for which Documents / Information have not been maintained.*

5	271AAA	**<u>Penalty in Search Cases</u>** In case of a person in whose case a search is initiated U/S 132. **<u>“Undisclosed Income” means –</u>** a) any income of a specified P.Y. represented by any Money, Bullion, Jewellery or any other valuable article or a thing which is i) not recorded in the Books of Accounts on or before the date of search relating to the specified P.Y. ii) otherwise not been disclosed to CIT / CCIT on or before the date of search relating to the specified P.Y. b) any income of the assessee for any specified P.Y., represented by an entry in the Books of Accounts or documents or any transaction, which is found to be false. **<u>“Specified Previous Year” means –</u>** any Previous Year, a) which has ended before the date of search, but the time limit to furnish ROI u/s 139 for such year has not yet expired and ROI has not been furnished for such year. b) the year in which the search is conducted. However, in the following two cases penalty U/S 271AAA shall not be levied:– a) In a case, where such income was already disclosed by assessee to CCIT or CIT before the date of search. b) In a case where assessee admits in the Statement recorded U/S 132(4) – Admits the concealment, also discloses the manner of deriving such income and pays the tax + interest if any on such undisclosed income. -- > If penalty is levied under this section, Penalty u/s 271(1)(c) shall not be levied.	***10% of the “undisclosed income” of the “specified previous year”.*** **Amendment** ***[Provisions of this sec. would be applicable, where search is initiated u/s 132 on or before 30st June, 2012]*** ***[Provisions of New Sec. 271AAB would be applicable, where search is initiated u/s 132 on or after 01st July, 2012.]***
6	271AAB ***New Section*** **Amendment**	**<u>Penalty in Search Cases</u>** In case of a person in whose case a search is initiated U/S 132.	
		(1) <u>In a case where assessee admits, the undisclosed income, in the Statement recorded U/S 132(4)</u> – * Admits the concealment, * also discloses / explains the manner of deriving such income and * pays the tax + interest, if any, on such undisclosed income. * on or before the specified date , i.e. :-- - the due date for filing ROI , or - the date on which period specified in notice u/s 153A expires.	***10% of the “undisclosed income” of the “specified previous year”.***
		(2) <u>In a case where assessee **does not admit**, the undiscolsed income, in the Statement recorded U/S 132(4)</u> – * Does not Admits the concealment, * but discloses the same, in the ROI, filed after the date of search and * pays the tax + interest, if any, on such undisclosed income. * on or before the specified date , i.e. :-- - the due date for filing ROI , or - the date on which period specified in notice u/s 153A expires.	***20% of the “undisclosed income” of the “specified previous year”.***
		(3) In all other cases.	***30% to 90% of undisclosed income.***
		> If penalty is levied under this section, Penalty u/s 271(1)(c) shall not be levied. > An order u/s 271AAB, would be appealable u/s 246A before the CIT(A). > Sec. 274 -- providing for procedure for imposing penalties , and Sec. 275 -- providing for a bar of limitation for imposing penalties , shall apply.	

		For this section, "Undisclosed Income" means – 1) any income of a specified P.Y. represented by -- * any Money, Bullion, Jewellery or any other valuable article or a thing ; or * any entry in BOA or other document or transactions, found in course of search, which is i) not recorded in the Books of Accounts on or before the date of search relating to the specified P.Y. ii) otherwise not been disclosed to CIT / CCIT on or before the date of search relating to the specified P.Y. 2) any income of the assessee for any specified P.Y., represented by an entry in the Books of Accounts or documents or any transaction, which is found to be false.	
6	271B	**Failure to get the Books of Accounts audited as required U/S 44AB** of the Act and furnish the audit report whenever required. > If "Resonable Cause of Delay" is shown, no penalty can be imposed. > If penalty u/s 271A is imposed for not maintaining BOA, the offence is complete and there after no penalty can be imposed under section 271B.	***lower of:-*** **** 0.5 % of Gross Receipt / Sales/ Turnover*** ***or*** **** Rs. 1,00,000/- flat***
7	271BA	**Failure to furnish a report of a CA** in Form No. 3CEB as required **U/S 92E**, with regards to International transaction	***Rs. 1,00,000/-*** .
8	271C	i) Failure to deduct the tax at source wholly or partly u/s 192 to 196D ii) Failure to pay the tax deducted at source. > when the asseesee has been subjected to penalty for not deducting TDS, the penalty for further defaults such as non-filing of TDS Returns or issue of TDS Certificates would not arise.	***Penalty equal to the amount of TDS not Deducted / Paid.***
9	271CA	**Failure to collect the tax at source** > Such penalty shall be imposed by JC > If assessee proves that there was a reasonable cause for such failure, no penalty can be imposed u/s 273B.	***Penalty equal to the amount of Tax not Collected.***
10	271D	Any person taking or accepting any loan or deposit in contravention of provisions of section 269SS. > In simple words, if any person takes or accepts a loan or a deposit from any person for an amount of Rs. 20,000/- or more in cash or any other mode other than an account payee crossed cheque.	***Penalty equal to the amount of loan or deposit taken or accepted in contravention.***
11	271E	Any person repaying any loan or deposit in contravention of provisions of section 269T. > In simple words, if any person repays a loan or a deposit to any person for an amount of Rs. 20,000/- or more in cash or any other mode other than an account payee crossed cheque	***Penalty equal to the amount of loan or deposit repaid in contravention.***
12	271F	If a person who is required to furnish a ROI as per section 139(1), fails to furnish such ROI by the end of the relevant Assessment Year	***Rs. 5,000/-.***
13	271FA	**Failure to furnish an Annual Information Return (AIR)** within the time allowed, as required U/S 285BA.	***Rs. 100/- per day during which the default continues.***
14	271G	Failure to furnish certain Data /Document / Information in connection with an International transaction, whenever called upon by AO or CIT (A) as required **U/S 92D(3)** of the Act.	***@ 2 %*** ***of the value of each such International transaction for which Documents / Information have not been furnished by aseessee.***

15	272A(1)	> If any person, without reasonable cause, fails or refuses to:- Answer any question put to him, Sign any statement made by him, Comply with any summons issued to him U/S 131(1), requiring him to attend, give evidence or produce Books of Accounts, documents, etc.	***Rs. 10,000/- for each such default or failure.***
16	272A(2)	<u>**Failure to furnish Returns / Statements or allow inspections, etc :**</u> <u>following five defaults :</u> * Failure to furnish requisite information as required U/S 94(6) in respect of securities, * Failure to furnish in due time Returns, Statements or Certificates or to deliver declarations, allow inspections, etc. U/S 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206A(1), 206C, 285B and 200(3), * Failure to give notice of discontinuance of business or profession as required U/S 176(3), * Failure to deliver or cause to be delivered, in due time, the declaration for non-collection of tax U/S 206C(1A). * Failure to deduct and pay tax U/S 226(2).	***Rs. 100/- per day of default***
17	272AA	**Failure to comply with the provisions of section 133B (Door – to – Door Survey)**	*Not exceeding* ***Rs. 1,000/-*** *.*
18	272B	Failure to comply with the provisions of <u>**section 139A**</u> with reference to <u>**Permanent Account Number .**</u> > Any person who fails -- * to obtain PAN * to quote such no. or quotes false no. > Any person holds more than 1 PAN.	***Rs. 10,000/- for each such failure.***
19	272BB	Any person who is required to apply and obtain a 'Tax Deduction and Collection Account Number'. > if fails to apply and obtain such number or > fails to quote such number wherever required to be quoted or > quotes a false number knowing it to be false.	***Rs. 10,000/- for each such failure.***
20	273A	**Powers of CIT to Reduce / Waive off Penalty:** There are two sub-sections to this section under which this power can be exercised, as follows:-	

<u>**Section 273A**</u>

<u>**Section 273A(1)**</u>	<u>**Section 273A(4)**</u>
I] CIT may on his own motion or on an application made by assessee reduce or waive off penalty levied / leviable U/S. 271(1)(c) / 271(1)(d), if he is satisfied that:- a. Before the detection of concealment by A.O. assessee has voluntarily and in goods faith made true and full disclosure of his income, b. Assessee has co-operated in any inquiry or for assessment of his income, c. Assessee has paid or has made satisfactory arrangement for the payment of tax + interest if any.	I] CIT may on an application made by assessee reduce / waive of any penalty or may compound any recovery proceedings, if he is satisfied that:- a) to do otherwise, would cause genuine hardship to the assessee. > Genuine hardship should exist --> at the time of making application and --> at the time of CIT reducing/waiving penalty b) assessee has co-operated in any inquiry relating to assessment of his income or for any recovery of the amount of tax due from him.

		II] If the amount of 'Concealed income' or incomes exceed Rs. 5 Lacs then CIT shall require a prior approval of CCIT before passing an order U/S 273A(1)	II] If the amount of penalty or penalties for which an application is made by assessee exceed/s Rs. 1 lacs, then CIT shall require a prior approval of CCIT before passing an order under this section.
		III] This is once in a life time opportunity. Assessee cannot approach CIT under this section for the 2nd time in his whole life, once an order is passed under this section in his favour.	
		Note: 1. An order passed U/S 273A(1) or 273A(4) by CIT is final and conclusive and cannot be challenged in an appeal. 2. The charge of penalty and the levy should be for same reason, i.e. the basis for issue of notice and the basis for imposition of penalty should be same. 3. Penalty can be imposed within period of 6 months from the end of the month in which order was received.	
21	273AA	**Power of CIT to grant immunity from Penalty :** I] Any person can make an application to CIT, if -- a. He made application for settlement u/s 245c and proceedings for settlement have abated u/s 245HA, and b. Penalty proceeding have been initiated under this Act. II] In order to avail above immunity, the foll. conditions to be satisfied : a. The application shall not be made after the imposition of penalty, pursuant to abatement; b. During the proceedings, the person shall -- -- fully co-operate ; -- make full and true disclosures of income ; -- explain the manner in which such income was derived ; -- not conceal any particulars from the income tax authority ; and -- not given any false information to the authority. III] The immunity granted shall be withdrawn, if foll. circumstances : a. If the person fails to comply with any condition subject to which immunity was granted. b. If CIT is satisfied that the person has concealed any particulars or had given false evidence in the course of any proceedings, prusuant to such abatement ; => In above circumstances, penalty shall be levied as if no immunity has been grated.	
22	274	**Procedure and Opportunity :** I] No order imposing a penalty shall be made unless the assessee has been heard or has given oppoutunity of being heard. II] No order imposing penalty shall be made, without prior approval of JC, if -- > by the Income Tax Officer, where the penalty exceeds Rs. 10,000/- ; > by the AC / DC , where the penalty exceeds Rs. 20,000/-. III] An Income tax authority, on making an order of imposing penalty, unless he himself is AO. shall forthwith send a copy of such order to the AO.	
23	275	**Time limit to pass Penalty Order:** [A.] In a case where the Assessment Order or any other order is a subject matter of an appeal to ITAT, then no penalty order can be passed:- (i) after the expiry of the F.Y. in which the proceedings (which gave rise to penalty proceedings) are completed, or (ii) after the expiry of 6 months from the end of the month in which the order of ITAT is received by CIT or CCIT. (i.) or (ii.) whichever, is later.	

		[B.] In a case where Assessment Order or any other order was a subject matter of appeal to CIT(A) and CIT(A) passes an order disposing off the appeal, then no penalty order can be passed:- (i) after the expiry of the F.Y. in which the proceedings (which gave rise to penalty proceedings) are completed, or (ii.) after the expiry of 1 year from the end of the F.Y. in which the copy of order of CIT(A) is received by CIT or CCIT . (i.) or (ii.) whichever, is later.
		[C.] In a case where the Assessment Order or any other order is subject matter of Revision U/S 263 or 264: then no Penalty Order can be passed after the expiry of 6 months from the end of the month in which the Revisional Order of CIT was passed U/S 263 or 264.
		[D.] In any other case, no penalty order can be passed: (i) after the expiry of F.Y. in which the proceedings (which gave rise to Penalty proceedings) are completed, or (ii) after the expiry of 6 months from the end of the month, in which the Penalty proceedings are initiated (i.e. the date on which notice U/S 274 issued.) (i.) or (ii.) whichever is later. => Plz note that no time limit has been anywhere for issue of or service of notice u/s 274.