

Offences and Prosecutions

Some Key Points : Recent Amendments

Increased limits for applicability of rigorous punishment under section 276C, 276CC, 277, 277A & 278

- (i) The punishable offences as well as the prosecution for such offences under the Income-tax Act, 1961 are discussed under Chapter XXII. Prosecution provisions under the Income-tax Act, 1961 are used as a tool for effective enforcement of tax laws and deterring tax avoidance and tax evasion.
- (ii) Under sections 276C (Punishment for wilful attempt to evade tax, etc), 276CC (Punishment for failure to furnish returns of income), 277 (Punishment for making false statement in verification) and 278 (Punishment for abetment of false return, etc), in a case where the amount of tax, penalty or interest, as the case may be, which would have been evaded by a person exceeds ₹ 1,00,000, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine. In case the amount which would have been evaded by a person does not exceed ₹ 1,00,000, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Since the threshold of ₹ 1,00,000 was introduced more than three and a half decades back, in 1975, the same has now been increased to ₹ 25,00,000. The maximum term of imprisonment where the amount which would have been evaded by a person does not exceed ₹ 25,00,000 has been reduced from 3 years to 2 years.

Therefore, in case the amount sought to be evaded exceeds ₹ 25,00,000, the assessee may be punishable with rigorous imprisonment for a term not less than 6 months extended to a maximum of 7 years and with fine. In case the amount sought to be evaded is less than or equal to ₹ 25,00,000 the person may be punishable with rigorous imprisonment which shall not be less than 3 months extended to a maximum of 2 years with fine.

The maximum time limit for rigorous imprisonment under section 277A, imposing punishment for falsification of books of account or document, etc, has also been reduced from 3 years to 2 years.

Prosecution mechanism strengthened [Sections 280A, 280B, 280C & 280D]

In order to further strengthen the prosecution mechanism new sections 280A, 280B, 280C and 280D have been inserted with effect from 1st July, 2012 –

26.2 Direct Tax Laws

- (1) providing for constitution of Special Courts for trial of offences.
- (2) application of summons trial for offences under the Act to expedite prosecution proceedings as the procedures in a summons trial are simpler and less time consuming.
- (3) providing for appointment of public prosecutors.

Question 1

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.*

Answer

- (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 or with a fine of ₹4 to ₹10 for every day during which the default continues or with both.
- (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.

Question 2

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 assessment year 2010-11 within the prescribed time. 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 ₹ 1,000. 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.

Answer

Section 276CC provides for prosecution for willful failure to furnish a return of income within the prescribed time. However, prosecution proceedings will not be attracted if the tax payable by the assessee on the total income determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed ₹ 3,000. Even though the tax liability of the firm as per the original order of assessment exceeded ₹ 3,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 1,000, which is, less than ₹ 3,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 1,000, 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 as unwarranted.

Self-examination Questions

1. Is prosecution attracted in respect of the following offences? If so, what is the period of imprisonment?
 - (a) Removal, concealment, transfer or delivery of property to thwart tax recovery;
 - (b) Failure to pay to the Central Government, tax collected under section 206C;
 - (c) Wilful attempt to evade tax, penalty or interest;
 - (d) Wilful failure to produce accounts and documents under section 142(1);
 - (e) Abetment of false return of income.
2. Write short notes on the following -
 - (a) Offences by companies; and (b) Presumption as to culpable mental state.
3. Enlist the offences which are deemed to be non-cognizable offences.
4. Discuss the power of the Commissioner to grant immunity from prosecution.
5. 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?

Answer

5. 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.