Offences & Prosecution under Income tax act,1961

CONTRAVENTION

Contravention of order made under section 132(3) – Sec.275A.

A person contravening the order made u/s. 132(1) (second proviso) or 132(3),in case of search and seizure, shall be punishable with rigorous imprisonment up to 2 years and also with fine.

Failure to comply with the provisions of section 132(1) (iib) –Sec.275B.

Where the authorised officer, during the course of search proceeding u/s.132 requires facility to inspect the books of account or other documents and if any person fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment up to 2 years and also with fine.

Removal, concealment, transfer or delivery of property to defeat tax recovery - Sec.276

Any person fraudulently removing, concealing, transferring or delivering property to thwart(stop) tax recovery will be punishable with rigorous imprisonment up to 2 years and also with fine.

Failure to comply with the provisions of sub-sections (1) and (3) of Sec178 & Sec 276A.

Any person failing to comply with provisions of Sec.178(1)or (3) regarding company in liquidation or parting with assets of the company in contravention of these subsections shall be punishable with rigorous imprisonment for 6 months to 2 years.

Failure

Failure to pay tax to the credit of Central Government under Chapter XVII – B or XII-D –Sec.276B

Any person failing to pay any amount to the credit of the Central Government being –
I. Tax deducted at source under Chapter XVII-B; or
II. Tax payable on distributed profits by a company u/s.115-O;or
III. Tax required to be paid before releasing winning, in case of cash being not shall be punishable (non-cognizable offence u/s.279A) with rigorous imprisonment for 3 months to 7 years and also with fine.

Failure to pay tax collected at source – Sec.276BB

Any person failing to pay the tax collected under the provisions of Sec.206C, shall be punishable with rigorous imprisonment for 3 months to 7 years and also with fine.

Wilful attempt to evade tax, etc. – Sec.276C

According to Sec.276C(1),any person wilfully attempting to evade any tax, penalty or interest (non-cognizable offence u/s.279A);
I. Where tax sought to be evaded exceeds Rs.1 lakh,shall be punishable with rigorous imprisonment for 6 months to 7 years and also with fine
II. In other cases, shall be punishable with rigorous imprisonment for 3 months to 3years and also with fine.
Any person wilfully attempting to evade payment of any tax penalty or interest(non-cognizable offence u/s.279A) will be punished with rigorous imprisonment for 3months to 3years and also with fine – Sec.276C (2).

Failure to furnish return of income – Sec.276CC

Any person wilfully failing to furnish return of income u/s.139 (1) or in response to notice u/s.142 (1) (i) or Sec.148 or Sec.153A (non-cognizable offence u/s.279A).
I. Where tax sought to be evaded exceeds Rs.1 lakh will be punished with rigorous imprisonment for 6months to 7years and also with fine.
II. In other cases will be punished with rigorous imprisonment for 3months to 3years and also with fine.
This section shall not apply if the return of income is furnished by the assessee before the expiry of the assessment year or if the

tax payable on the total income determined on regular assessment as reduced by advance tax and TDS does not exceed Rs.3,000.

Special Audit-

Failure to produce accounts and documents or non compliance of direction for special audit – Sec.276D

Any person wilfully failing to produce accounts and documents u/s.142(1) or to comply with a notice u/s.142(2A),shall be punishable with rigorous imprisonment up to 1year or with fine of Rs.4 to Rs.10 for every day of default or both.

False statement in verification ,etc- Sec.277

Any person making false statement in verification or delivering false account, etc., (non-cognizable offence u/s.279A).

I. Where tax sought to be evaded exceeds Rs.1lakh will be punished with rigorous imprisonment for 6 months to 7years and also with fine.

II. In other cases, will be punished with rigorous imprisonment for 3 months to 3years and also with fine.

Falsification of books- Sec.277A

If any person wilfully and with intent to enable any other person to evade tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document, then such person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 3 years and with fine.

Explanation – For the purpose of establishing the charge under this section, it shall not be necessary to prove that the other person has actually evaded any tax, penalty or interest chargeable or imposable under the Act.

Abatement of false return ,etc.- Sec.278

If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration

relating to any income chargeable to tax which is false he shall be punishable(Non-cognizable offence u/s.279A).
I. In a case where tax, penalty or interest sought to be evaded exceeds Rs.1lakh with rigorous imprisonment for 6 months to 7 years and also with fine;
II. In other cases, with rigorous imprisonment for 3 months to 3 years and also with fine.

Reasonable cause Sec.278AA
No person is punishable for any failure u/s.276A, or 276B if he proves that there was reasonable cause for such failure.

Immunity when Settlement proceedings abate – Sec.278AB
Commissioner has the power to grant immunity from prosecution u/s278AB where the proceedings before the settlement commission have abated.

Punishment for second and subsequent offences- Sec.278A
Second and subsequent offences u/s.276B, 276C (1).276CC, 277 or 278 shall be punishable with rigorous imprisonment for 6 months to 7 years and also with fine.

Offences by Companies etc.
Sec.278B(1) - 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 shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
Sec.278B (2) - However, no such person shall 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. 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 of, or is attributable to any neglect on the part of, any director, manager,

secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly-.

Sec.278B (3) - Where an offence 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 and every person who is responsible for such offence such as director, Manager etc., shall be liable to be proceeded against and punished in accordance with the provisions of the Act –For the purposes of this section:-

a.“company” means a body corporate, and includes –

i. A firm; and

ii. An association of persons or a body of individuals whether incorporated or not; and

b.“director”, in relation to –

i. A firm, means a partner in the firm;

ii. Any association of persons or a body of individuals, means any member controlling the affairs thereof

Offences by Hindu Undivided Family – Sec.278C

Where an offence is committed by a HUF, the Karta of the HUF shall be deemed to be guilty of the offence and he shall be proceeded against and punished. Karta can prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence in which case he will not be liable for punishment. If it is established that any member of the HUF is guilty of the offence, such member is liable to be proceeded against and punished accordingly.

Presumption as to culpable mental state – Sec.278E

In any prosecution for any offence under the income tax Act which requires 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 –Sec.278E.

“Culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. 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.

Sanction for prosecution and compounding of offences-Sec.279

a. Prosecution for offences-u/s.275A,275B,276,276A,276B,276BB,276C,276CC,276D,277,277A and 277 is required to be instituted with the previous sanction of Director General/Chief Commissioner/Commissioner, except where the prosecution is at the instance of the commissioner (Appeals).

b. The offences under chapter XXII can be compounded (either before or after the institution of proceedings) by the Director General or Chief Commissioner.

Certain Offences to be non-cognizable – Sec.279A

Notwithstanding anything contained in the code of Criminal Procedure, an offence punishable u/s.276B or 276C or 276CC or Sec.277 or Sec.278 shall deemed to be non-cognizable within the meaning of the code of Criminal Procedure. According to the Code of Criminal Procedure "non-cognizable offence "means an offence for which a police officer has no authority to arrest without warrant. Only in the case of a cognizable offence arrest can be made without warrant.

Proof of entries in records or documents-Sec.279B

Entries in the records or other documents in the custody of an Income-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence committed. All such entries may be proved either by the production of the records or other documents in the custody containing such entries or by the production of copy of the entries certified by the Income-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody.

Disclosure of particulars by public servants – Sec.280

If a public servant publishes any information or produces any document in contravention of the provisions of Sec.138 (2) he shall be liable to fine. No prosecution shall be instituted under this section except with the previous sanction of the Central Government.

Case Laws

i) The assessee being a company is a juristic person and substantive sentence cannot be imposed on it. However,other consequences like payment of fine etc., would ensue – Madhumilan Syntex Ltd.vs.Union of India (2007) 290 ITR 199 (SC) & ACIT Vs. Velliappa Textiles Ltd.(2003),263 ITR550 (SC).

ii) Prosecution for evasion of tax would depend upon the final verdict in respect of additions made in the assessment. Even where the additions are sustained, it is possible that levy of penalty is ruled out in the facts of the case. If penalty itself is not liveable or deleted, the case for the prosecution where means rea is required cannot survive. It has been held that prosecution is not eligible where penalty action had been dropped –K. C. Bulders vs.ACIT(2004) 265 ITR 562 (SC) and G.L.Didwania vs.ITO (19970 224 ITR 687 (SC).

iii) In a complaint for a tax offence, it is possible that the accused (assessee) may be either discharged or acquitted. Where there is mere discharge of the accused for non pursuance of the complaint, there is scope for a second complaint .On the other hand, if the accused is acquitted, no second complaint is possible. This is the basic difference between sections 249 and 256 of the Code of Criminal Procedure.Consequently,in a case where the complaint was absent and there is no representation on behalf of revenue resulting in discharge of the accused ,second complaint filed shall be entertain by issue of summons to the accused – N.Rengaraj vs.P.Dhamodarasamy (2009) 319 ITR 216 (Mad).