

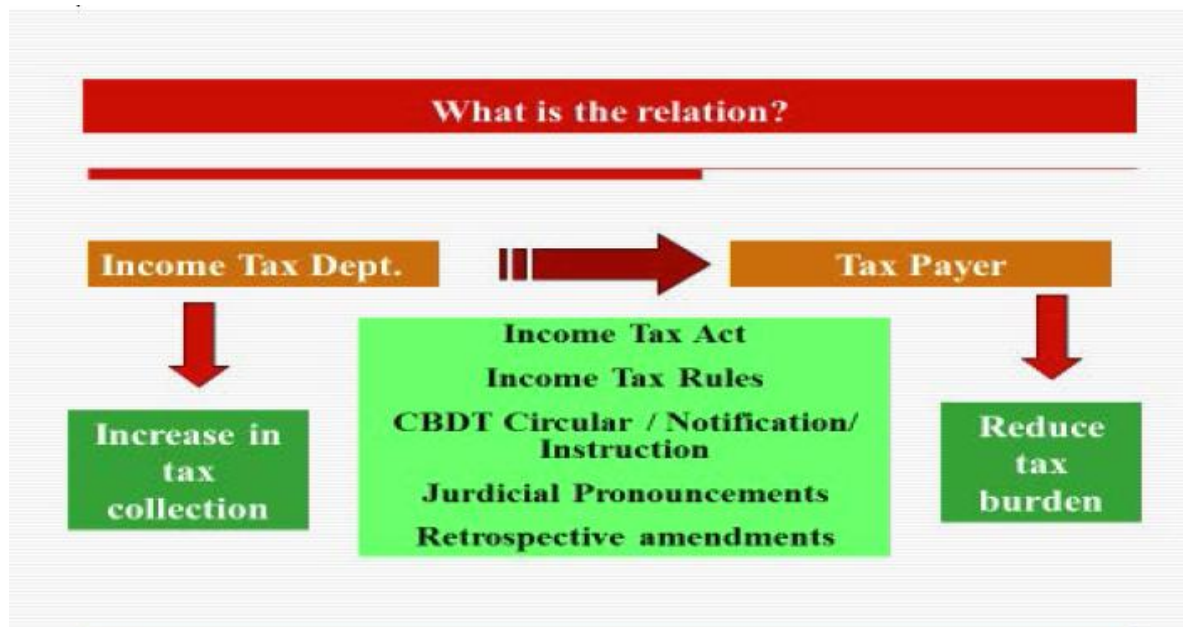


PENALTIES FOR NON-COMPLIANCE TO PROVISIONS OF INCOME TAX ACT

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Income tax act and rules framed there under having provisions which required to be complied with by an assessee and to be followed by the income tax department. Tax payers while attempted for reducing tax burden either by making tax planning or by adopting tax evasion or tax avoidance at the same time the income tax department tried to maximize the tax collection.



Default in complying with such provisions or conditions as prescribed under the Income-tax Act would attract certain penalty and also in some cases prosecutions as well. There are three mode built in the fiscal legislation for encouraging tax compliance:

- Charge of Interest,
- Imposition of penalty
- Launching of prosecution against tax delinquents.

While charging of interest is compensatory in nature due to delay in payment of taxes, the imposition of penalty and institution of prosecution proceedings act as strong deterrents against delinquent tax payers. Some of the penalties are mandatory and a few are at the discretion of the tax authorities. In this article an attempt is made to consolidate the quantum of penalties that can be imposed under the law.

What are the defaults which may invite levy of penalty?

Chapters XVII and XXI of Income-tax Act, 1961, contain various provisions empowering an Income-tax Authority to levy penalty in case of certain defaults. The following defaults may invite levy of penalty:

Section	Nature of Default	Penalty leviable
140A(3)	Failure to pay wholly or partly – (a) self-assessment tax/fringe benefit tax, or (b) interest, and fee, or (c) both under section 140A(1)	Such amount as Assessing Officer may impose but not exceeding tax in arrears
158BFA(2)	Determination of undisclosed income of block period	Minimum: 100 per cent of tax leviable in respect of undisclosed income Maximum: 300 per cent of tax leviable in respect of undisclosed income.
221(1)	Default in making payment of tax	Such amount as Assessing Officer may impose but not exceeding amount of tax in arrears
234E	Failure to file statement within time prescribed in section 200(3) or in proviso to section 206C(3)	Rs. 200 for every day during which failure continues but not exceeding tax deductible/collectible
234F	Default in furnishing return of income within time as prescribed under section 139(1)	(a) Rs. 5000 if return is furnished on or before 31 December of assessment year. (b) Rs. 10,000 in any other case Note: if total income of the person does not exceeds Rs.5 lakh then fee payable shall be Rs. 1000
270A(1)	Under-reporting and misreporting of income	A sum equal to 50% of the amount of tax payable on under-reported income. However, if under-reported income is in consequence of any misreporting thereof by any person, the penalty shall be equal to 200% of the amount of tax payable on under-reported income
271(1)(b)	Failure to comply with a notice under section 115WD(2)/115WE(2)/142(1) or section 143(2) or failure to comply with a direction under section 142(2A)	Fixed at Rs. 10,000 for each failure Note: - However, the above penalty shall not be levied to and in relation to any assessment for the A.Y commencing on or after the 1st day of April, 2017.
271(1)(c)	Concealment of particulars of income or fringe benefits or furnishing of inaccurate particulars of income or fringe benefits Note: - However, the above penalty shall not be levied to and in relation to any assessment for the A.Y commencing on or after the 1st day of April, 2017.	Minimum : 100 per cent Maximum : 300 per cent of tax sought to be evaded in addition to tax payable Note: 'Amount of tax sought to be evaded' shall be aggregate of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of MAT or AMT. However, if an amount of concealed income is considered both under the general provisions and provisions of MAT or AMT, such amount shall not be considered in computing tax sought to be evaded under provisions of MAT or AMT. Further, where provisions of MAT or AMT are not applicable, the computation of tax sought to be evaded under the provisions of MAT or AMT shall be ignored.
271(4)	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	Not exceeding 150 per cent of difference between tax on partner's income assessed and tax on income returned, in addition to tax payable

	Note: - However, the above penalty shall not be levied to and in relation to any assessment for the A.Y commencing on or after the 1st day of April, 2017.	
271A	Failure to keep, maintain, or retain books of account, documents, etc., as required under section 44AA	Rs. 25,000
271AA(1)	(1) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) (2) Failure to report such transaction (3) Maintaining or furnishing incorrect information or document	2% of value of each international transaction/or specified domestic transaction entered into
271AA(2)	Failure to furnish information and document as required under Section 92D(4)	Rs. 5,00,000/-
271AAA	Where search has been initiated before 1-7-2012 and undisclosed income found	10% of undisclosed income
271AAB(1)	Where search has been initiated on or after 1-7-2012 but before 15-12-2016 and undisclosed income found	(a) 10% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income (b) 20% of undisclosed income of the specified previous year if assessee does not admit the undisclosed income, and on or before the specified date declare such income in the return of income furnished for the specified previous year and pays the tax, together with interest thereon; (c) 60% of undisclosed income of the specified previous year if it is not covered by (a) or (b) above
271AAB(1 A)	Where search has been initiated on or after 15-12-2016 and undisclosed income found	(a) 30% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income (b) 60% of undisclosed income of the specified previous year in any other case.
271AAC	Income determined by Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year. [if such income is not included by assessee in his return or tax in accordance with section 115BBE has not been paid]	10% of tax payable under section 115BBE.
271B	Failure to get accounts audited or furnish a report of audit as required under section 44AB	One-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, which-ever is less
271BA	Failure to furnish a report from an accountant as required by section 92E	Rs. 1,00,000
271BB	Failure to subscribe any amount to units	20 per cent of such amount

	issued under scheme referred to in section 88A(1)	
271C	Failure to deduct tax at source, wholly or partly, under sections 192 to 196D (Chapter XVII-B) or failure to pay wholly or partly tax u/s 115-O(2) or second proviso to section 194B	Amount equal to tax not deducted or paid
271CA	Failure to collect tax at source as required under Chapter XVII-BB	Amount equal to tax not collected
271D	Taking or accepting any loan or deposit or specified sum in contravention of the provisions of Section 269SS. "Specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.	Amount equal to loan or deposit or specified sum so taken or accepted
271DA	Receipt of an amount of Rs. 2 lakh or more in contravention of provisions of Section 269ST.	Amount equal to such receipt`
271E	Repayment of any loan or deposit or specified advance otherwise than in accordance with provision of Section 269T. "Specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not transfer takes place.	Amount equal to loan or deposit or specified advance so repaid
271F	Failure to furnish return as required by section 139(1) or by its provisos before the end of the relevant assessment year	Rs. 5,000 Note: Applicable up to the Assessment year 2017-18
271FA ¹	Failure to furnish an annual information return as required under section 285BA(1) ² Failure to furnish annual information return within the period specified in notice u/s 285BA(5)	Rs. 500 per day of default Rs. 1,000 per day of default
271FAB	Section 9A provides that fund management activity carried out by an eligible offshore investment fund through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India (subject to certain conditions). The provision requires that eligible investment fund shall furnish within 90 days from the end of the financial year a statement, in respect of its activities in a financial year, in the prescribed form containing information relating to fulfillment of specified conditions and such other information or documents as may be prescribed. Penalty to be levied if investment fund failed to comply with the requirement	Rs. 5,00,000
271FB	Failure by an employer to furnish the return of fringe benefits as required under section 115WD(1)	Rs. 100 for every day of default
271G ³	Failure to furnish any information or	2% of the value of the international transaction

	document as required by section 92D(3)	/specified domestic transaction for each failure
271GA	<p>Section 285A provides for reporting by an Indian concern if following two conditions are satisfied:</p> <p>a) Shares or interest in a foreign company or entity derive substantial value, directly or indirectly, from assets located in India; and b) Such foreign company or entity holds such assets in India through or in such Indian concern.</p> <p>In this case, the Indian entity shall furnish the prescribed information for the purpose of determination of any income accruing or arising in India under Section 9(1)(i).</p> <p>In case of any failure, the Indian concern shall be liable to pay penalty.</p>	<p>Penalty shall be:</p> <p>(a) a sum equal to 2% of value of transaction in respect of which such failure has taken place, if such transaction had effect of, directly or indirectly, transferring right of management or control in relation to the Indian concern; (b) a sum of Rs. 5,000 in any other case.</p>
271GB(1)	Failure to furnish report under section 286(2)	Rs. 5,000 per day up to 30 days and Rs. 15,000 per day beyond 30 days
271GB(2)	Failure to produce the information and documents within the period allowed under section 271GB(6)	Rs. 5,000 for every day during which the failure continues.
271GB(3)	Failure to furnish report or failure to produce information/documents under section 286 even after serving order under section 271GB(1) or 271GB(2)	Rs. 50,000 for every day for which such failure continues beginning from the date of serving such order.
271GB(4)	<p>Failure to inform about inaccuracy in report furnish under section 286(2)</p> <p>Or furnishing of inaccurate information or document in response to notice issued under section 286(6).</p>	Rs. 5,00,000
271H ⁴	Failure to deliver/cause to be delivered a statement within the time prescribed in section 200(3) or the proviso to section 206C(3), or furnishes incorrect information in the statement	W.e.f. 1-10-2014 Assessing Officer may direct payment of penalty. Penalty shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000
271-I	As per section 195(6) of the Act, any person responsible for paying to a non-resident or to a foreign company, any sum (whether or not chargeable to tax), shall furnish the information relating to such payment in Form 15CA and 15CB. Penalty shall be levied in case of any failure.	Rs. 1,00,000
271J	Furnishing of incorrect information in any report or certificate by an accountant or a merchant banker or a registered valuer	Rs. 10,000 for each incorrect report or certificate
272A(1)	<p>Refusal or failure to :</p> <p>(a) answer questions (b) sign statement (c) attend to give evidence or produce books of account, etc., in compliance with summons under section 131(1) (d) comply with notices u/s 142(1)/143(2) or failure to comply with direction issued u/s 142(2A).</p>	Rs. 10,000 for each failure/default

272A(2)	<p>Failure to:</p> <p>(a) furnish requisite information in respect of securities as required under section 94(6)</p> <p>(b) give notice of discontinuance of business or profession as required under section 176(3) ;</p> <p>(c) furnish in due time returns, statements or certificates, deliver declaration, allow inspection, etc., under sections 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206C, 206C(1A) and 285B;</p> <p>(d) deduct and pay tax under section 226(2)</p> <p>(e) file a copy of the prescribed statement within the time specified in section 200(3) or the proviso to section 206C(3) (up to 1-7-2012)</p> <p>(f) file the prescribed statement within the time specified in section 206A(1)</p> <p>(g) Failure to deliver or cause to be delivered a statement under Section 200(2A) or Section 206C(3A) within prescribed time.</p> <p>With effect from June 1, 2015, it is mandatory for an office of the Government, paying TDS or TCS, as the case may be, without production of a challan, to deliver a statement in the prescribed form and manner to the prescribed authority.</p>	Rs. 10,000 for each failure/default. (In respect of penalty for failure, in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns u/ss 206 and 206C and statements under Section 200(2A) or section 200(3) or proviso to section 206C(3) or section 206C(3A), penalty shall not exceed amount of tax deductible or collectible)
272AA(1)	Failure to comply with section 133B	Not exceeding Rs. 1,000
272B	Failure to comply with provisions of section 139A/139A(5)(c)/(5A)/(5C)	Rs. 10,000
272BB(1)	Failure to comply with section 203A	Rs. 10,000 for each failure/default
272BB(1A)	Quoting false tax deduction account number/ tax collection account number/ tax deduction and collection account number in challans/ certificates/ statements/ documents referred to in section 203A(2)	Rs. 10,000

*¹ - With effect from assessment year 2015-16 "annual information return" has been changed to "statement of financial transaction or reportable account" and word "return" has been changed to "statement".

*² - With effect from assessment year 2015-16 a new section 271FAA has been inserted to provide for a penalty of Rs. 50,000 for furnishing inaccurate statement of financial transaction or reportable account in certain cases.

*³ - With effect from 1-10-2014 TPO can also levy penalty.

*⁴ - Section 271H as amended with effect from 1-10-2014 provides that penalty shall be levied by Assessing Officer.

Analysis of few aspects of provisions:

- i. **Is the levy of penalty automatic?** No penalty under the Income-tax Act is imposed unless the person concerned has been given reasonable opportunity of being heard.
- ii. **Penalty is not to be imposed if there is no conscious breach of law: Section 270 Hindustan Steels Ltd v. State of Orissa, 83 ITR 26 (SC):** An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless

the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute

iii. **Relaxation from penalty:** Apart from designing penalty provisions, the Income-tax Act also contains provisions for granting relief from penalty in genuine / deserving cases. Relief can be granted in the following manner:

- a) Under section 273A(4) the Principal Commissioner or Commissioner of Income tax has power to waive or reduce any penalty levied under the Income-tax Act. Penalty can be waived or reduced by the Commissioner of Income-tax if the conditions specified in section 273A(4) in this regard are satisfied.
- b) Apart from shelter of section 273A(4) as discussed earlier, section 273B also provides relief from penalty in genuine cases. As per section 273B, no penalty shall be levied under section 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271I, 271J, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1) or 273(2)(b) or (c), if the taxpayer proves that there was reasonable cause for such failure.
- c) Section 273AA provides that a person may make application to the Principal Commissioner/Commissioner for granting immunity from penalty, if
 - a. he has made an application for settlement under section 245C and the proceedings for settlement have abated; and
 - b. penalty proceeding have been initiated under this Act.The application shall not be made after the imposition of penalty after abatement.
- d) **Penalty for reasonable failure:** Section 273B provides that the penalties shall not be imposable (under sections 271C, 271CA, 271H and 272A(2) on the person or assessee as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure. The term reasonable cause has not been defined under the Act but decided in few judgements are given below.

Azadi Bachao Andolan vs. Union of India [2001] 252 ITR 471 (Delhi)- It was held that reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of *bona fides*.

Woodward Governors India (P.) Ltd. vs. CIT [2001] 118 Taxman 433 (Delhi) - 'Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.

CIT vs. Triumph International Finance (I) Ltd. [2012] 345 ITR 270 (Bom.) - The expression 'reasonable cause' would have wider connotation than the expression 'sufficient cause'. The expression 'reasonable cause' in section 273B for non-imposition of penalty under section 271E is to be construed liberally depending upon the facts of each case.

In view of above no order imposing penalty shall be passed by any Income-tax Authority, unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such Authority.

e) **No penalty in case of controversial issue or bona fide act**

Penalty for concealment should not be imposed where an assessee acts honestly without having any *mala fide* intention to evade tax or where issue is controversial.

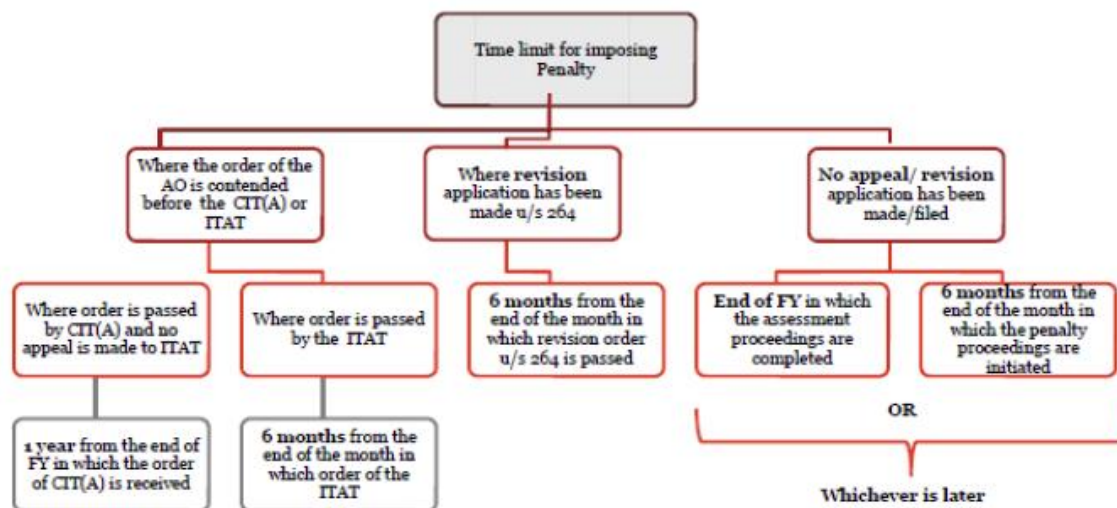
CIT vs. Reliance Petro Products [2010] 189 TAXMAN 322 (SC): "no penalty can be levied upon rejection of a bonafide claim of a taxpayer under law, even if such claim is highly debatable," majority of the Assessing Officers are not following the same.

Price Waterhouse Coopers (P.) Ltd. v. CIT [2012] 25 taxmann.com 400 (SC): Through a *bona fide* and inadvertent error the assessee failed to add the provision for gratuity to its total income which is described as a human error which we are all prone to make. The caliber and expertise of the assessee had little or nothing to do with the inadvertent error. That the assessee should have been careful could not be doubted, but the absence of due care, would not mean that the assessee was guilty of either furnishing inaccurate particulars or was attempting to conceal its income. Consequently, given the peculiar facts of this case, the imposition of penalty on the assessee was not justified.

DCIT v. Rural Electrical Co-operative Society Ltd. [2006] 152 Taxman 237 (MP): Every concealment does not attract the rigour of section 271(1) (c). It must be deliberate and intentional being in the knowledge of the assessee so as to evade payment of income-tax. Hence, no penalty could be imposed where one entry could not be subjected to tax due to some accounting mistake.

CIT v. Harshvardhan Chemicals & Mineral Ltd. [2003] 133 Taxman 320: When the assessee claimed some deduction that was debatable, in such cases, it could not be said that the assessee had concealed any income or furnished inaccurate particulars of income for the evasion of tax.

iv. **Time limit for passing the Penalty Order (section 275):**



Conclusion: Non-compliance of provisions of income tax act and payment of penalty is not only a cost to assessee but a long travel to resolve the litigation. Let comply and buy peace as a good citizen of India.