

Income Tax Penalties and Issues Part I

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Topics

- Penalties
- Mistakes & Issues
- Non Compliances
- Time Lines for Compliances

Tax Non Compliance

- Activities which are against Tax Laws.
- Include
 - Tax Avoidance
 - Tax Evasion
 - Procedural Lapses
 - Non Filing of ITRs
 - Non Submission of Information
 - Not Responding to the Notices
 - Suppression
 - False Records and Accounts
 - Intention to Deceit the Government

Tax Payer's Duty

- We live in a welfare society. The Government collects its financial needs by a way of tax from the public
- Duty of the citizen to contribute to development of society.
- The Tax Payer intentionally avoids tax by wrong interpretation of the law which results in loss of revenue to government:
 - This is an offence.
 - Punishable with prosecution.

Compliance

- Duty of the Citizen
 - to pay tax, if it is payable as per law
 - To comply with procedure as per law
- Compliance
 - Having paid the tax to file the return
 - Why to file ITR
 - To prove that the tax which has been paid is correctly determined as per law
- Failure to do the above
 - Former is a default is an offence - punishable
- Later is non compliance – required to pay penalty

Mistakes

- Procedural Lapse
- Required to be corrected once it is noticed by the AO
- Failure to do so, results in non compliance
- Results in payment of Interest and penalty.

Timelines

- All Compliance under the Income Tax Laws is legally bound to do.
- Each Compliance has a time limit within which it is to be complied
- Failure to do
 - Results in Non Compliance
 - Results in Payment of Penalty.
- Failure to pay
 - Results in Prosecution

Penalties under Income Tax Act 1961

- Two Types
 - Mandatory
 - Discretion of the Tax Authorities
- Penalties Levied on
 - Assessee
 - One who fails to pay the tax as required
 - Assessee in Default
 - Meaning: A Person who fails to comply with the provisions of Income Tax Laws.

Primary Duty

- Filing of Income Tax Return before the due date as per Sec.139(1)
- Failure to comply results in penalty u/s.234F
 - Fee for default in furnishing return of income shall be Rs. 5,000 if return has been furnished after the due date prescribed under section 139(1).
 - However, it shall be Rs. 1,000 if the total income of an assessee does not exceed Rs. 5 lakh.

Payment of Self Assessment Tax

- U/s.140A

As per section 140A(1) any tax due (after allowing credit for TDS, advance tax, etc.) along with interest and fee should be paid before filing the return of income.

Tax paid as per section 140A(1) is called 'self-assessment tax'

- *If a person fails to pay either wholly or partly self-assessment tax or, interest, or fee then he will be treated as assessee in default.(Sec.221((1)*
- Liable to pay penalty of such amount as the Assessing Officer may impose and in the case of a continuing default, such further amount or amounts as the assessing officer may, from time to time, direct.
- However, the total amount of penalty cannot exceed the amount of tax in arrears

Default in payment of tax against Notice

- When a demand notice under section 156 has been issued to the taxpayer for payment of tax
- Time Allowed: 30 Days
- Failure to do so, the AO levies penalty at his discretion
- A notice will be given before levy of penalty. The AO will give an opportunity to the tax payer
- No penalty is levied if the taxpayer proves to the satisfaction of the tax authorities that the default was for good and sufficient reason.

TDS/TCS

- As per section 200(3) every person liable to deduct tax at source is liable to file the statement in respect of tax deducted by him i.e. TDS return.
- Further, as per proviso to section 206C(3) every person liable to collect tax at source has to furnish statement in respect of tax collected by him i.e. TCS return.
- Section 234E provides for levy of late filing fees for the delay in filing TDS/TCS return.
- As per section 234E, where a person fails to file the TDS/TCS return on or before the due date prescribed in this regard, then he shall be liable to pay, by way of fee, a sum of Rs. 200 for every day during which the failure continues.
- The amount of late fees however shall not exceed the amount of TDS/TCS. TDS/TCS return cannot be filed (after prescribed due date) without payment of late filing fees as discussed above.

TDS Non Compliance

- **Failure to comply with provisions relating to Tax Deduction Account Number or Tax Collection Account Number**
- As per section 203A, every person deducting tax at source or collecting tax at source has to obtain the Tax Deduction Account Number or Tax Collection Account Number (as the case may be).
- Section 203A(2) provides that the deductor or collector of tax at source should quote his Tax Deduction Account Number or Tax Collection Account Number (as the case may be) in the challans, certificates, statement and other documents relating to TDS/TCS. Section 272BB(1) provides for penalty for failure to obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be) and section 272BB(1A) provides for penalty for quoting incorrect Tax Deduction Account Number or Tax Collection Account Number (as the case may be).
- Penalty under section 272BB is Rs. 10,000

Failure to comply with the notice

- Penalty Under Sec.272A
- Notice u/s.142(1)
 - to file the return of income if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require or
 - to furnish in writing and verified in the prescribed manner, information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require

Special Audit

- Section 142(2A) deals with special audit.
- As per section 142(2A), if the conditions justifying special audit as given in section 142(2A) are satisfied, then the Assessing Officer can direct the taxpayer to get his accounts audited or re-audited from a chartered accountant nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner

Scrutiny Assessment

- Section 143(2) deals with the provisions relating to the issuance of notice before conducting a scrutiny assessment under section 143(3).
- In all the Cases
 - If the taxpayer fails to comply with notice issued to him under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A),
 - then as per section 272A he shall be liable for a penalty of Rs. 10,000 for each failure

Misreporting of Income - Corporates

- 1. Misrepresentation or suppression of facts;
- 2. Failure to record investments in the books of account;
- 3. Claim of expenditure not substantiated by any evidence;
- 4. Recording of any false entry in the books of account;
- 5. Failure to record any receipt in books of account having a bearing on total income; and
- 6. Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply
- ***Penalty of an amount equal to 200% of tax payable on the underreported income***

Maintenance of Books of Accounts

- Certain Persons who have professional income
- For the purpose of Income-tax Act, a taxpayer is required to maintain the books of account as provided in section 44AA.
- If the taxpayer fails to maintain books of account as per the provisions of section 44AA, then he shall be liable to pay penalty under section 271A.
- Penalty under section 271A is Rs. 25,000.

Undisclosed Income

- An assessee under section 68, section 69, section 69A, section 69B, section 69C or section 69D if assessee fails to explain the nature and source of his income.
- The Assessing Officer may make addition to the income of an assessee in all the above cases.
- Section 271AAC of the Income-tax Act empowers AO or Commissioner (Appeals) to levy penalty at the rate of 10% of the tax payable under section 115BBE if any addition is made under section 68, section 69, section 69A, section 69B, section 69C, section 69D.
- However, no penalty shall be levied if such income is disclosed in the return of income and tax on such income is paid under Section 115BBE on or before the end of the relevant previous year.

Tax Audit

- Section 44AB prescribes when the accounts of the taxpayer are to be audited.
- If a taxpayer, in spite of the requirement of section 44AB, fails to get his accounts audited, then he can be held liable for penalty under section 271B.
- Penalty under section 271B will be levied for failure to get the accounts audited or failure to furnish a report of audit as required under section 44AB.
- Penalty shall be one-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, whichever is less.

AIS (New)

- **Failure to furnish statement of financial transaction or reportable account as required under section 285BA(1).**
- Non-furnishing of statement of financial transaction or reportable account will attract penalty under section 271FA.
- Penalty shall be levied of Rs. 500 per day of default.
- However, section 285BA(5) empower the tax authorities to issue a notice to the person directing him to file the statement within a period not exceeding 30 days from the date of service of such notice and in such a case person shall furnish the statement within the time specified in the notice.
- If person fails to file the statement within the specified time, then a penalty of Rs. 1,000 per day shall be levied from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

Incorrect Information

- **Furnishing inaccurate statement of financial transaction or reportable account**
- As per section 271FAA, if a person who is required to furnish statement of financial transaction or reportable account under section 285BA, provides inaccurate information in the statement, and where:
 - a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed* under section 285BA(7) or is deliberate on the part of that person;
 - b) the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;The person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days as specified under section 285BA(6), then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of fifty thousand rupees

Professionals

- **Professionals for furnishing incorrect information in statutory report or certificate**
- Certification of various reports and certificates by a qualified professional has been provided in the Act to ensure that the information furnished by an assessee under the provisions of the Act is correct.
- Various provisions exist under the Act to penalise the defaulting assessee in case of furnishing incorrect information.
- However, there exist no penal provision for levy of penalty for furnishing incorrect information by the person who is responsible for certifying the same.
- In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, a new section 271J is inserted under Income-tax Act
- If an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10,000 for each such report or certificate by way of penalty.

Non Co-operation

- Many times the tax authorities requires any information from a person, in such a case, the tax authorities may request such person to answer questions raised by them or may require the person to sign the statements or may issue him a summon for his attendance
- Failure to comply with these directions or notices can attract penalty under section 272A(1)
- Tax authorities also issues notice under Section 142(1)/Section 143(2) or issues direction for special audit under Section 142(2A).

Non co-operation

- In other words, penalty under section 272A(1) shall be levied if a person refused or fails to:
 - ➤ Answer questions
 - ➤ Sign statement
 - ➤ Attend office to give evidence or produce books of account, etc., in compliance with summons under section 131(1)
 - ➤ Comply with notice under Section 142(1)/Section 143(2) or fails to comply with direction issued under Section 142(2A)
- Penalty leviable under section 272A(1) is Rs. 10,000 for each failure/default.

Tax on Lottery Income

- **Failure to Pay Tax With respect to Winning from lottery or Crossword Puzzle**
- If any taxpayer fails to pay whole or part of the tax as per section 194B than, such person shall be liable to pay the penalty under section 271C of an amount equal to tax not paid.
- Penalty for failure to collect tax at source
- Section 206C of the Act provides that certain items of which tax is to be collected at source by the person receiving payment in respect of certain specified items.
- In case the person who is required to collect tax at source fails to collect the tax, he shall be liable to pay the penalty as per section 271CA.
- The penalty amount shall be equal to tax not collected.

Serious Offences - Search

- **Offence Under Income Tax Section 158BFA with Penalty**
- **Offence:** Income not disclosed, while below section 132 any search is executed or in context to any books of account/any other credentials or the kind of asset can be seized beneath section 132A, towards the case of any individual.
- **Penalty:** For the case of 100% of the tax shall be the min penalty that is to be levied with respect to the unspecified income that is to be increased to the highest of 300% of the tax that is subjected to imposed towards to the unspecified income

PAN

- The Income Tax Act provides a penalty in case of default in complying with the provisions relating to PAN or knowingly quoting incorrect PAN.
- PAN is required to be quoted by the taxpayer in certain prescribed financial transactions, and a contravention which has the effect of defying the provision could attract a penalty of up to Rs.10,000.

Prosecution

- Against tax evasion, the imposition of monetary penalty alone is not sufficient.
- A calculating tax evader finds it profitable to evade tax for years, if he knows that he may get away with it by paying penalty in the year in which he is caught.
- However, the prospect of landing in jail is a far more dreaded consequence and works as a deterrent.
- Further, for more serious defaults, sometimes launching of prosecution is prescribed without prescribing monetary penalties.
- The Parliament has, therefore, been enacting deterrent laws for effective implementation of tax laws.
- The Income-tax Act contains a separate chapter XXII wherein offences have been defined and punishment provided

Prosecution and Imprisonment

- Se .275A/275B/276/276A
 - Dealing with seized assets in contravention of the order for conducting search.
 - Failure to comply with provisions of sec.132(1) (estimating the undisclosed income during search operations)
 - Removal/transfer property to avoid search
 - Failure to comply by liquidator of company
- Minimum 2 years RI and with fine also

Punishable Offences

- (i) Removal, parting with or otherwise dealing with books of accounts, documents, money, bullion, jewellery or other valuable article or thing put under restraint during the search. [Section 275A]
- (ii) Fraudulent removal, concealment, transfer or delivery of any property or any interest in the property with the intention to thwart recovery of tax. [Section 276]
- (iii) Failure on the part of a liquidator or receiver of a company to give notice of his appointment to the Assessing Officer or failure to set apart amount notified by the Assessing Officer, or parting away of company's properties in contravention of income-tax provision. [Section 276A]
- (iv) Failure to enter into written agreement or failure to furnish the statement of immovable property intended to be transferred u/s.269UC, or failure to surrender or deliver the property u/s.269UE, purchased by the Appropriate Authority or doing or omitting to do anything u/s.269UL, which will have the effect of transfer of property without the permission of the Appropriate Authority (under the provisions of Chapter XX-C) [Section 276AB]

Offences

- (v) Failure to pay to the credit of the Central Government the tax deducted at source. [Section 276B] (va) Failure to pay the tax collected at source. [Section 276BB]
- (vi) Willful attempt to evade any tax, penalty or interest [Section 276C(1)]
- (vii) Willful attempt to evade the payment of any tax, penalty or interest levied under Income Tax Act. [Section 276C(2)]
- (viii) Willful failure to furnish in due time return of income. [Section 276CC)]
(viii a) Failure to furnish return of income in Search Cases as required under section 158BC [Section 276CCC]
- (ix) Willful failure to produce accounts and documents as directed by issue of notice under section 142(1) [Section 276D]

Offences

- (x) Willful failure to get the accounts audited as directed by the Assessing Officer under section 142(2A). [Section 276D]
- (xi) Making of a statement in verification or delivery of an account or statement which is false and which the concerned person knows or believes to be false or does not believe to be true. [Section 277]
- (xii) Abetting or inducing another person to make and deliver an account or statement or declaration relating to any taxable income which is false and which he either knows or believes to be false. [Section 278]
- (xiii) Punishment for 2nd & subsequent offences in cases of certain defaults. [Section 278A]
- (xiv) No person shall be punished for any failure if he proves that there is reasonable cause failure. [Section 278AA].

Explanation of *MENS REA*

- Is mens rea or culpable mental state or guilty intention necessary?
 - *Civil Intention or knowledge of the wrongfulness of the act that a person commits.*
 - *If a person deliberately does knowing that the action is against the law*
- In case of willful act of omission or commission, the court shall presume the existence of culpable mental state. However, the accused can rebut this presumption by producing necessary evidence before the court. (Section 278E).

Public Servant

- If a public servant furnishes any information in contravention of the provisions of Section 138(2), prosecution may be instituted against him with the previous sanction of the Central Government. (Section 280).

Issue of Concealment of Income

- Occurs in computation of income u/s 115JB(MAT) or 115JC(AMT)
- Resulting in evasion of tax.
- If there is a concealment of income under general provisions, and when tax is paid under MAT/AMT, the courts held that penalty u/s. 271(1)(c) cannot be levied.
- Question is: Is there a loss of revenue if tax payable under MAT/AMT
- In this when tax is paid over and above the normal provisions of Income Tax Act 1961.
- Credit is available for set off in future years resulting loss of revenue.

continue

- When there is revenue loss when tax is calculated under both the provisions, still penalty can be levied.
- Only concealment of income is considered under both provisions.
- If tax is payable under normal provisions, computation of tax under MAT/AMT is ignored.
- Concealment of income under both the provisions is considered before penalty is levied under section 271(1)(c).

Penalty for violation of provisions

- Sec.269SS
 - A person cannot accept any loan or deposit in excess of Rs.20,000 otherwise than through banking channel.
- Sec.269T
 - A bank or company/firm shall not repay any loan or deposit otherwise than through account payee cheque or electronic clearing. (Limit is Rs.20,000)
- Violation of Provisions:
 - Penalty leviable of a sum equal to the amount of loan or deposit.
 - However, Sec.273B provides for not to levy penalty, if there is reasonable cause for the failure. (Business Exigencies)
 - *Mens rea is not essential in this case.*

Example 1

- When the Assessee taken a loan from his wife in cash for construction of house in joint name.
 - No interest is involved in this transaction
 - No promise to return the loan.
- There was a reasonable cause for not complying with sec.269SS.
- Hence penalty cannot be imposed.

Other issues u/s.269SS

- The assessee accepted deposits from agriculturists who had no bank accounts .
 - Default is technical – No penalty.
- No penalty when the assessee-firm receives loan from its Partners even if there is violation of 269SS and 269T

No penalty

- Additions to income is made by AO for purely technical reasons:
- Examples:
 - Application of Presumptive Percentage of Gross Profit
 - Estimated disallowance of certain expenses
 - Estimated Shortfalls
 - Estimated Wastages, etc.

No penalty for want of adequate evidence to establish that the said additions represent concealed income.