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Offences and Prosecution Under Income Tax Act, 1961

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ABSTRACT

The government has funds for public welfare when taxes are paid on time and consistently. The Act stipulates a number of penalties to make sure that taxpayers don't fail to pay taxes or disclose facts in their returns or statements. The taxpayers are penalized or punished for their noncompliance. Let's examine a few of the most significant and prevalent punishments.

Failure to Make Tax Payments The tax officer will decide the applicable penalty if the taxpayer does not pay tax, TDS, or TCS. The sum will not, however, be greater than the amount of overdue taxes. It was suggested that the deadline for filing an Updated Return be extended from the current 24-month period to 48 months from the end of the relevant assessment year under section 139. Furthermore, it was suggested that beyond 36 months from the end of the relevant assessment year, a person for whom a notice to show-cause under section 148A was issued could not file an updated return.

KEY WORDS – Prosecution, Taxpayer, Culpable mental state, Payment of taxes, Violation, Concealing, Tax deduction scheme, Penalty.

INTRODUCTION

The Income Tax Act is legislation that oversees income tax imposition, administration, and collection. The Act establishes several requirements and guidelines for calculating taxable income, claiming deductions and exemptions, and paying taxes to the government.

The Income Tax Act also specifies different offences and penalties for failure to comply with its provisions. The Act includes severe restrictions to ensure that taxpayers follow the Act's obligations, and any noncompliance may result in penalties and prosecution. Depending on the gravity of the offence, penalties range from monetary fines to jail. Furthermore, prosecution proceedings may be initiated against a person who has committed an offence under the Income Tax Act of 1961.

Failure to file income tax returns, concealing income, failing to maintain books of accounts, failing to deduct or pay taxes, and failing to furnish PAN are all offences under the Income Tax Act of 1961. The Act imposes a variety of penalties for these offences, including fines, imprisonment, or both.

Prosecution procedures can also be filed against someone who has violated the Income Tax Act of 1961. The prosecution might result in jail for 6 months to 7 years, as well as a fine. The harshness of the punishment is determined by the kind and seriousness of the offence committed.

So, it is important for taxpayers to comply with the provisions of the Income Tax Act, 1961 to avoid penalties and prosecution. Proper record keeping, timely filing of returns, and payment of taxes are some of the important aspects of compliance with the Act.

RESEARCH QUESTION

1. What are the different types of offenses under the Income Tax Act, and what are the corresponding penalties for non-compliance?
2. Whether the provision of income tax are effective in deterring taxpayers from committing offenses and promoting compliance?
3. What are the challenges faced by tax authorities in prosecuting offenders under the Income Tax Act, 1961, and how can challenges to be addressed?

RESEARCH OBJECTIVES

- To know about the various provision related to the offences and prosecution under the income tax act,
- To know the corresponding penalties for the non compliance of the provisions,
- To know the effectiveness of the provision and deterring from committing and offence,

- To know the challenges faced by the authority in prosecution of the offence,
- To know the procedure of prosecution offences related to income tax act**.**

RESEARCH METHODOLOGY

The methodology used in this research is empirical and doctrinal research. The research was done mainly by e-resources (books, Articles, blogs and various online resource).

HYPOTHESIS

Stricter provisions for offenses and penalties under the Income Tax Act, will result in increased compliance and deterrence among taxpayers. The effectiveness of prosecution proceedings under the Income Tax Act, 1961 in deterring non-compliance will depend on the efficiency and effectiveness of the tax authorities in conducting investigations and prosecutions.

LITERATURE REVIEW

Indian authors such as Dr. V.K. Singhania and T.N. Manoharan in their authoritative commentaries, have elaborated on these sections. Key offences include: Section 276C – Wilful attempt to evade tax Section 276CC – Failure to furnish returns of income Section 277 – False statement in verification Section 278 – Abetment of false return These are considered criminal offences and can lead to imprisonment and/or fine. Literature reflects that these provisions are intended not for technical breaches but for serious and intentional violations.

Judicial decisions like Sasi Enterprises v. ACIT [(2014) 361 ITR 163 (SC)] and Madhumilan Syntex Ltd. v. UOI [(2007) 290 ITR 199 (SC)] have been widely analyzed by Indian scholars. These cases stress the importance of mens rea (guilty mind) as a precondition for successful prosecution. Legal scholars from National Law University Delhi and NLSIU Bangalore have emphasized that prosecution without proving intent can result in misuse and overreach.

The Central Board of Direct Taxes (CBDT) plays a crucial role in guiding tax officers in prosecution matters. Literature from sources such as "Taxmann's Journal on Income Tax" regularly features commentaries on CBDT Circulars – especially CBDT Circular No. 24/2019, which instructs that prosecution should not be launched for minor offences and focuses on thresholds (e.g., Rs. 25 lakh tax evasion).

OFFENCES UNDER THE INCOME TAX ACT

Chapter XXII of The Income Tax Act, 1961 provides for various offences and penalties to ensure that taxpayers comply with their tax obligations. Some of the key offences and penalties under the Act are as follows:

Late Filing of Returns: Late filing of income tax returns may result in a penalty. The penalty amount varies depending on the length of the delay and the amount of tax owed. Income Under-Reporting: Section 270A[1] imposes a penalty for income under-reporting. The penalty can be up to 50% of the under-reported income tax. Non-Filing of Income Tax Returns: Section 271F[2] imposes a penalty for failure to file income tax returns. The penalty amount varies depending on the length of the delay and the amount of tax owed.

Non-Payment of Tax: Section 221[3] provides for a penalty for non-payment of income tax. The penalty amount can be up to 1% of the outstanding tax liability for each month of delay. Concealment of Income: Section 271(1)(c)[4] provides for a penalty for concealing income. The penalty can be up to 300% of the tax payable on the concealed income. Non-Disclosure of Assets: Section 271(1)(c)[5] provides for a penalty for non-disclosure of assets. The penalty can be up to 10% of the value of the undisclosed assets. Non-Maintenance of Books of Accounts: Section 271A[6] provides for a penalty for non-maintenance of books of accounts.

for direct tax cases, the offence is said to be committed at the place where a false return of income is submitted, even though it may have been prepared elsewhere or accounts may have been fabricated at some other place. This is because the place where the return is filed is considered the place where the taxpayer made the false statement. In the case of "**J. K. Synthetics Ltd. v. ITO**[7]", the Delhi High Court held that the offence under section 277 of the Income Tax Act can only be tried at the place where the false statement is delivered. This means that if a false statement is delivered in one place and the prosecution is initiated in another place, the trial would be invalid.

[1] Section 270 income tax act, 1961
[2] Section 271F income tax act,1961
[3] Section 221 Income Tax Act, 1961
[4] Section 271(1) (C) Income Tax Act, 1961
[5] Supra note 4
[6] Section 271A Income Tax Act, 1961
[7] (1987) 168 ITR 467

PRESUMPTION AS TO CULPABLE MENTAL STATE UNDER INCOME TAX ACT

Under the Income Tax Act, 1961, there are certain provisions which presume the existence of a culpable mental state in certain situations. These presumptions are listed under Section 278E[8] of the Act. Section 278E[9] provides that in any prosecution for an offence under the Income Tax Act, the court shall presume, unless the contrary is proved, that the person accused of the offence has committed the offence with the culpable mental state specified in the section which describes the offence. The culpable mental states include intention, knowledge, willful default or gross negligence.

For example, if a person is charged with the offence of willful evasion of tax under Section 276C[10] of the Income Tax Act, the court will presume, unless the contrary is proved, that the person had the necessary culpable mental state of willful default or intention to evade taxes. This means that the burden of proof is on the accused to show that they did not have the required mental state to commit the offence.

It is important to note that these presumptions can be rebutted if the accused is able to provide evidence to the contrary. However, the burden of proof is on the accused to prove that they did not have the required culpable mental state.

In "**Sasi Enterprises v. ACIT**[11]**"**, The Supreme Court held that the provision of Section 278[12]E of the Income Tax Act, which presumes the existence of a culpable mental state in certain situations, is a drastic provision that shifts the burden of proof onto the accused. The burden of proof is to show the absence of the necessary ingredients of the intent to commit the crime, and it is a radical departure from traditional criminal jurisprudence. The presumption arising under the section may be rebutted by the accused, but the burden is heavy, and the accused must prove absence of culpable mental state not by mere preponderance of probability. The section provides an inclusive definition of culpable mental state which includes intention, motive, knowledge of a fact, and belief in or a reason to believe a fact.

In "**Prakash Nath Khanna v. CIT**[13]", the Supreme Court held that the court must presume the existence of a culpable mental state in cases where it is required for an offense under the Income Tax Act. However, the absence of such a mental state can be pleaded by the accused as a defense in the prosecution. The court stated that it is open to the accused to plead the absence of a culpable mental state when the matter is taken up for trial. Therefore, the accused has the opportunity to prove that they did not have the intention or knowledge required to commit the offense.

PROSECUTION UNDER THE INCOME TAX ACT

The procedure governing prosecution proceedings under the Income Tax Act, 1961 is as follows:

Initiation of Proceedings: The tax authorities can initiate prosecution proceedings against a person who has committed an offense under the Income Tax Act, 1961. Before initiating the proceedings, the tax authorities will conduct an investigation to gather evidence of the offense committed.

Sanction for Prosecution: Before filing a complaint in a court of law, the tax authorities must obtain the sanction of the appropriate authority. The appropriate authority is usually the Chief Commissioner or Commissioner of Income Tax, depending on the nature and gravity of the offense. Filing of Complaint: Once the sanction for prosecution has been obtained, the tax authorities can file a complaint in a court of law. The complaint must contain details of the offense committed, the evidence gathered during the investigation, and the names of the accused persons. Trial: The court will then initiate the trial proceedings. The accused person will be given an opportunity to present his case and defend himself against the charges. The prosecution will present its case and provide evidence to prove the charges.

The court will then pronounce its verdict based on the evidence presented before it. If the accused person is found guilty, he will be sentenced as per the provisions of the Income Tax Act, 1961. If the accused person is not satisfied with the verdict, he can file an appeal in a higher court. The prosecution proceedings are initiated only in cases where the tax authorities have sufficient evidence to prove the offense beyond reasonable doubt. The severity of the punishment depends on the nature and gravity of the offense committed. It is therefore important for taxpayers to comply with the provisions of the Income Tax Act, 1961 to avoid prosecution proceedings.

PENLTIES FOR OFFENCES

Chapter XXI of Income Tax Act, 1961 prescribes various punishments for offenses committed under its provisions. The severity of the punishment depends on the nature and gravity of the offense committed. Here are the punishments for some of the key offenses under the Income Tax Act, 1961:

Failure to File Return of Income: Any person who is required to file an income tax return and fails to do so within the prescribed time limit can be punishable with a fine of Rs. 1,000 to Rs. 10,000. In certain cases, imprisonment for a term of up to one year may also be imposed.

[8] Section 278E Income Tax Act, 1961

[9] Supra note 7

[10] Section 276C Income Tax Act, 1961

[11] (2014) 361 ITR 163 (SC)

[12] Supra note 7

[13] (2004) 266 ITR 1 (SC)

Concealment of Income: Any person who conceals income or furnishes inaccurate particulars of income can be punishable with a penalty of 100% to 300% of the tax sought to be evaded, in addition to the tax payable on the concealed income. In addition, imprisonment for a term of six months to seven years may also be imposed.

Failure to Get Accounts Audited: Any person who is required to get his accounts audited under the Income Tax Act, 1961 and fails to do so can be punishable with a penalty of 0.5% of the total sales, turnover or gross receipts, subject to a maximum penalty of Rs. 1,50,000. In addition, imprisonment for a term of up to one year may also be imposed, on failure to maintain books of account penalty of Rs. 25,000 and a term of up to two years may also be imposed

Failure to Deduct or Pay TDS: Any person who is required to deduct tax at source (TDS) and fails to do so or deducts tax at a lower rate than the prescribed rate can be punishable with a penalty equal to the amount of tax not deducted or deducted at a lower rate. In addition, imprisonment for a term of up to seven years may also be imposed.

Failure to Comply with Provisions of the Act: Any person who fails to comply with the provisions of the Income Tax Act, 1961 can be punishable with a penalty of Rs. 10,000. In addition, imprisonment for a term of up to six months may also be imposed.

It is important for taxpayers to comply with the provisions of the Income Tax Act, 1961 to avoid penalties and prosecution. The severity of the punishment can have a significant impact on the financial and personal life of the taxpayer.

RECENT AMENDMENTS

There have been several recent amendments and updates to the provisions related to offences and penalties under the Income Tax Act, 1961. Some of the key changes are as follows:

Increased Penalty for Late Filing of Return: The Finance Act, 2021[14] has increased the maximum penalty for late filing of income tax returns. The penalty can now be up to Rs. 10,000 for taxpayers with income up to Rs. 50 lakh and up to Rs. 20,000 for taxpayers with income above Rs. 50 lakh. Penalty for Fake Invoices: The Finance Act, 2021 has introduced a penalty for taxpayers who issue or use fake invoices to claim input tax credit or other benefits. The penalty can be up to 200% of the value of the transaction. Section271AAC[15] provide Penalty for Under-reporting of Income: The Finance Act, 2021 has increased the penalty for under-reporting of income. The penalty can now be up to 200% of the amount of tax payable on the under-reported income.

Section 276B[16] Penalty for Non-Filing of TDS/TCS Returns: The Finance Act, 2021 has introduced a penalty for non-filing of TDS/TCS returns. The penalty can be up to Rs. 1,000 per day for each day of default. Penalty for Non-Maintenance of Books of Accounts: The Finance Act, 2021 has increased the penalty for non-maintenance of books of accounts. The penalty can now be up to Rs. 2,50,000.

Penalty for Non-Furnishing of Statement of Financial Transactions (SFT): The Finance Act, 2020[17] has introduced a penalty for non-furnishing of SFT. The penalty can be up to Rs. 500 per day for each day of default.

These amendments and updates have made the provisions related to offences and penalties under the Income Tax Act, 1961 more stringent. Taxpayers need to ensure that they comply with the provisions of the Act to avoid penalties and prosecution.

ANALYSIS

According to the income tax act Section 276[18], deliberate attempts to avoid being charged, imposed, or paying taxes, penalties, or interest are punishable by law. There are two sections to the aforementioned clause sub-section’s deals with willful attempt to evade tax, penalty, or interest that is chargeable, imposable, or under-reporting of income. As a result, both subsections address two types of offenses that an assessee may have committed at two distinct times. The stage at which an offense is committed is the primary distinction between the applicability of subsections (1) and (2). Subsection (1) will apply if an offense is committed prior to the filing of an income return. Subsection (2) would apply to any offense committed at or after the time of submitting an income return. Nonetheless, there can be situations where the applicability of subsections (1) and (2) overlap.

The first criteria under both of the sub-sections to Section 276C is that the attempt to evade must be "willful." The Act does not provide a definition for this term. In everyday speech, the phrase "willful" implies that the person is culpable. To put it another way, the assessee has made a purposeful effort to prevent the chargeability or payment of tax, interest, or penalties. Furthermore, such a deliberate attempt should be to "evade" being charged, imposed, or paying taxes, etc. Additionally, the Act does not define the phrase "evade." According to the K.J. Aiyar's Judicial Dictionary, "evade can be used in two different ways: it can mean dishonest business practices or it can simply mean purposefully avoiding something unpleasant."

Further, the Hon’ble Supreme Court in the case of Tamil Nadu Housing Board, has held that: “when the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must

[14] The finance act 2021
[15] Section 271AAC Income tax act 1961
[16] Section 276B Income tax act 1961
[17] The finance act 2020
[18] Supra 16

deliberately avoid paying it. The word ‘evade’ in the context means defeating the provisions of law of paying duty. It is made more stringent by use of the word ‘intent’. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law.”

Given the discussion above, an act that is purposefully performed by an assessee to avoid being charged, imposed, or required to pay any tax, penalty, or interest will be considered a deliberate attempt to "evade." Therefore, cases of "bona fide claim" or "delay in payment of tax, etc., on account of financial difficulties or similar situations" are not covered by the law, which requires the deliberate avoidance of chargeability, imposition of tax, etc., or non-payment of taxes due.

Additionally, the term "willful attempt to evade any tax, penalty, or interest chargeable or imposable under this act or the payment thereof" is defined in the Explanation to Section 276C. An example list of circumstances that fall under the aforementioned word is provided in the explanation appended to the clause. Because of this, the explanation is inclusive rather than thorough, and any further situation that is not covered but is nonetheless subject to the strictures of Section 276C of the Act would likewise be subject to punishment.

SUGGESTIONS

The Income Tax Act of 1961's prosecution measures are essential for preventing deliberate tax evasion and guaranteeing adherence to tax regulations. Nonetheless, an increasing number of Indian legal experts and officials agree that these clauses require modification in order to improve the effectiveness, equity, and transparency of enforcement. Only in extreme cases—particularly when there is unmistakable proof of repeated non-compliance or fraudulent intent—should prosecution be pursued. Compounding procedures or civil penalties under Section 279(2) should be promoted for small, technical, or first-time defaults. To avoid arbitrary decisions, the compounding process should be made uniform, time-bound, and simple. Prosecutors and tax authorities should get specialized training in criminal law, evidence, and trial procedures in order to increase conviction rates. Furthermore, the establishment of fast-track courts or dedicated benches to handle tax-related offenses might help alleviate prosecution case delays brought on by overworked courts. To concentrate enforcement on high-value frauds, the threshold amount for initiating prosecution (such as tax evasion exceeding ₹25 lakhs) should be updated on a regular basis. By offering a chance to resolve conflicts outside of court, pre-prosecution hearings or talks with taxpayers can help to minimize harassment. In order to take targeted action, the government should also leverage technologies like artificial intelligence (AI) and data analytics to identify habitual defaulters and high-risk taxpayers. It will be more transparent and accountable to publish yearly data on prosecution, including convictions, pending cases, and compounded matters. Additionally, educating taxpayers about infractions and associated sanctions might promote voluntary compliance. It is necessary to put safeguards in place to stop the abuse of prosecution laws and to shield law-abiding taxpayers from excessive harassment. All things considered, a fair strategy that makes a distinction between willful fraud and actual defaults will increase the legitimacy and efficiency of India's income tax enforcement system.

CONCLUSION

The Income Tax Act, 1961 provides a comprehensive framework for the administration of income tax in India, including provisions related to offences and penalties. The Act provides for various penalties and punishments for non-compliance with its provisions, including late filing of returns, under-reporting of income, non-furnishing of information, and non-maintenance of books of accounts, among others. The penalties under the Act have been recently updated and made more stringent, with increased penalties for various offences. These changes aim to improve compliance and deter tax evasion. The prosecution proceedings under the Act are governed by a specific procedure, which ensures that the accused has an opportunity to defend themselves and provides for fair trial. The process involves various stages, including investigation, prosecution, trial, and appeal.

It is important for taxpayers to comply with the provisions of the Income Tax Act to avoid penalties and prosecution. The Act provides for various measures to assist taxpayers in complying with its provisions, including e-filing of returns, online payment of taxes, and tax compliance by design. The Income Tax Act, 1961 plays a vital role in the collection of revenue for the government and ensures that taxpayers comply with their tax obligations. The provisions related to offences and penalties act as a deterrent to non-compliance and help to promote tax compliance.

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