

TOPIC : OFFENCES & PROSECUTIONS

The following offences committed by person are punishable:

- (i) Removal, parting with or otherwise dealing with book of account, documents, money, bullion, jewellery or other valuable article or thing put under restraint under search [Sec 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 [Sec 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 withheld by the AO, or parting away of company's properties in contravention of Income tax provisions [276A]
- (iv) Failure to enter into written agreement or failure to furnish the statement of immovable property intended to be transferred u/s 269 UC, or failure to surrender or deliver the property u/s 269 UE; purchased by the Appropriate Authority or doing or omitting to do anything u/s 269 UL, ~~which~~ which will have the effect of transfer of property without the permission of the appropriate Authority [Sec 276 AB]

- (v) Failure to pay to the credit of the Central Government the tax deducted at source [Sec 276B]
- (Va) Failure to pay the tax collected at source [276BB]
- (vi) Willful attempt to evade any tax, penalty or interest levied under income tax act [Sec 276C(1)]
- (vii) Willful attempt to evade the payment of any tax, penalty or interest levied under Income Tax act [Sec 276C(2)]
- (viii) Willful failure to furnish in due time return of income [Sec 276CC]
- (viii a) Failure to furnish return of income in search case as required under section 158BC [Sec 276CCC]
- (ix) Willful Failure to produce accounts and documents as directed by issue of notice u/s 142(1) [Sec 276D]
- (x) Willful failure to get the accounts audited as directed by the AO u/s 142(2A) [Sec 276D]
- (xi) Making of a statement in verification of 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 [Sec 277]
- (xii) A betting 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 [Sec 278]

- (XIII) Punishment for 2nd & subsequent offences in cases of certain defaults [Sec 278 A]
- (XIV) No person shall be punished for any failure if he proves that there is reasonable cause failure [Sec 278 A A]

WHO IS LIABLE TO BE PROSECUTED?

Any person, committing the offence is liable to be prosecuted. In this connection it is not necessary that the person should be an assessee under the Income-tax act. In the case of an offence committed by a company, firm, AOP or BOI, every person in charge of or responsible for the conduct of the business of the concern as well as the concern are deemed to be guilty. Similarly, in the case of an offence by a Hindu Undivided family, the karta thereof is deemed to be guilty of the offence.

IS MENS REA OR CULPABLE MENTAL STATE OR GUILTY INTENTION NECESSARY?

In case of willful act of commission 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 [Sec 278 E]

Cont: OFFENCE & PROSECUTION

There are some laps on the part of the assessee which are punishable through the courts. Whenever Income tax Department feels that a particular person has committed a particular offence, a wrongful act or he is guilty of a crime, the department will initiate the proceedings before a magistrate. The proceeding, before the magistrate shall be heard under the Criminal Procedure Code and onus to prove the guilt before the magistrate shall fall, upon the department. The assessee is considered to be an innocent person unless proved otherwise. Punishment given by the department is of monetary nature whereas for some specific offences punishment can be in the shape of imprisonment. But for that the Income tax authorities have to launch the proceedings in a court of law.

In the Section 275A, A person shall be punishable with rigorous imprisonment

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which may extend upto 2 years and shall also be liable to fine. and similarly in sec 27B 276A 276 AB and so on the same punishment as given section 275A. but if there are no specific reasons, or special reasons, the imprisonment shall not be less than 6 months.

CAN THE OFFENSE BE COMPOUNDED?

Sec 279(2) of IT Act empowers a Chief Commissioner or Director General of Income tax to compound an offence either before or after the institution of prosecution proceeding.

WHEN PUBLIC SERVANT LIABLE TO BE PROSECUTED?

If a public servant furnishes any information in contravention of the provision of section 138(2) prosecution may be instituted against him with the previous sanction of the central Government [Section 280]