STRICTLY FOR DEPARTMENTAL USE

Manual on Prosecution & Compounding 2020

VOLUME - I

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कोष मूलो दण्ड:

INCOME TAX DEPARTMENT

STRICTLY FOR DEPARTMENTAL USE

Manual on

Prosecution and Compounding 2020

VOLUME - I

INCOME TAX DEPARTMENT

First Impression: December 2020

Manual on Prosecution and Compounding 2020

Vol. I

DISCLAIMER

The statements in this Manual should not be construed as the final authority about any provision of law. For the same, the actual text of a provision of law or a judgment or Circular etc, which are quoted in this book, may be referred to. Every care has been taken to avoid mistakes. However, if there is any, the same may please be brought to the notice of **Investigation–Division V of Central Board of Direct Taxes.**

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P.C. Mody
Chairman (I/c) Member Inv., CBDT
North Block, New Delhi

FOREWORD

I am happy to learn that Investigation Division V of CBDT is bringing out the revised version of the Prosecution Manual. The earlier edition of the Manual was brought out in 2009. There has been a paradigm shift in the approach of the Department since then. The edifice of the department today is based upon voluntary tax compliance through a non-adversarial system which provides a facilitating and enabling environment to every taxpayer to fulfil his sovereign duty. While the honest taxpayers are celebrated, as a natural corollary, tax delinquents need to be dealt with firmly and decisively. Thus, instances of large, aggressive and deliberate tax defaults are to be discouraged. The provisions of prosecution and compounding provide the required deterrence. With the emphasis of the government towards eradication of black money, pursuit of systematic acts of tax evasion to logical end by filing prosecution complaints in the jurisdictional courts is considered desirable. This process also entails exercise of positive discretion to allow restitution of mistakes in the form of compounding to those willing to come clean.

There was a need to revise the existing guidelines to bring them in sync with the current times. These would help to clarify the doubts in the minds of the departmental officers and officials. It was also felt that a Standard Operating Procedure (SOP) needs to be put into place for uniformity of approach by the field formations. The Prosecution Guidelines and SOP for TDS/TCS related cases were brought out in FY 2016-17. A Working Group (WG) was constituted with the task to propose the revised Compounding Guidelines, Prosecution Guidelines

and the Standard Operating Procedure (for cases other than TDS/TCS) as also to revise the Prosecution Manual. On the recommendations of the WG, the revised Guidelines for Prosecution and Compounding have since been issued.

The revised version of Prosecution Manual now called as the 'Manual on Prosecution and Compounding' is an endeavour to bring all relevant material related to the subject of Prosecution and Compounding into a single compilation for ready reference by the field officers. Old chapters have been updated and new chapters have been added like for Offences under various other acts such as Black Money Act 2015, Prohibition of Benami Property Transactions Act 1988, Overview of Prosecution Module in ITBA and AO Portal of CPC-TDS, List of Courts notified under section 280A of the I.T. Act in various Pr. CCIT regions etc. The relevant case laws on the subject have also been updated. I am sure that the officers shall find the Manual very useful as a guiding tool in addressing the challenges & performing their duties diligently.

I congratulate Shri S.K. Gupta, Member (TPS&S) (I/c) (Legal), Chairman of the WG, along with other members of the group, namely, Smt. Anuradha Bhatia, Principal CCIT, Pune, Shri Omkareshwar Chidara, Principal CIT, Vishakhapatnam, Shri Satish Sharma, CIT (Exemption), Mumbai, Dr. Zakir Thomas, CIT(OSD)(Inv.) CBDT, Shri V.K. Gupta, CIT-TDS, Mumbai, Shri Purushottam Tripuri, CIT DRP, Mumbai, Shri Ramesh Krishnamurthi, ADG (Systems)-3, New Delhi, Smt. Mamta Bansal, Director (Investigation-V), CBDT, Shri Neeraj Kumar, Addl. CIT, New Delhi, Shri Gaurav Kanaujia, Addl. DIT (Inv.), Kolkata, and Shri T. Sankar, Addl. CIT, Ahmedabad for their contribution to the Manual. I hope that this Manual will be put to best use by all in the Department.

(P.C. Mody)

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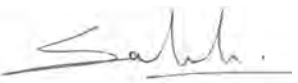
ACKNOWLEDGEMENTS FROM CHAIRMAN, WORKING GROUP

A Working Group (WG) of officers was constituted by the Chairman I/c Member Inv. CBDT on 14.05.2018 for revising the Prosecution Manual 2009. The WG was also mandated to suggest suitable amendments to the Guidelines for Compounding of Offences; Guidelines for identifying and examining Prosecution cases (other than TDS/TCS) as also to suggest a Standard Operating Procedure for examining cases for Prosecution (other than TDS/TCS). Considering the complexity of the subject, several members were co-opted into the WG to make it more broad-based. Multiple rounds of meetings were held wherein the amendments suggested by the group members were scrutinized minutely and discussed extensively. Suggestions made by and clarifications sought by field officers from CBDT on several issues pertaining to Prosecution and Compounding were duly considered and factored in. Discussions were also held with senior officers in the field to elicit their views and opinions at the draft stage. The Investigation Division V of CBDT provided effective and meaningful support during the entire process of revision of the guidelines and the manual. The Chairman I/c Member Inv. CBDT was a great source of encouragement and provided constant guidance to the WG.

The Manual is the outcome of the tireless efforts of the WG members who found time despite their own work commitments to actively participate and contribute to the task at hand. I would like to thank each one of them for their contribution viz., Smt. Anuradha Bhatia, Principal CCIT, Pune, Sh. Omkareshwar Chidara, Principal CIT,

Vishakhapatnam, Sh. Satish Sharma, CIT (Exemption), Mumbai, Dr. Zakir Thomas, CIT(OSD)(Inv.) CBDT, Sh. V.K. Gupta, CIT-TDS, Mumbai, Sh. Purushottam Tripuri, CIT DRP, Mumbai, Smt. Mamta Bansal, Director (Investigation-V), CBDT, Sh. Neeraj Kumar, Addl. CIT, Range 26 New Delhi, Sh. Gaurav Kanaujia, Addl. DIT (Inv.), Kolkata, Shri T. Sankar, Addl. CIT, Range-1, Ahmedabad, and Sh. Ramesh Krishnamurthi, ADG (Systems), New Delhi. I would like to place on record special appreciation for Sh. Satish Sharma, CIT (Exemption), Mumbai and Smt. Mamta Bansal, Director (Investigation-V), CBDT for their valuable inputs and contribution.



(S.K. Gupta)

CHAPTER 1

INTRODUCTION

Article 265 of the Constitution states that "*No tax shall be levied or collected except by the authority of law*". Conversely, it is the duty of every citizen to pay the due taxes. In order to enforce tax compliance, the Act has provided for graded enforcement, in the form of (i) interest for default, (ii) levy of penalties, and (iii) prosecution.

2. In fact, the rationale of launching prosecution under the Income-tax Act has been aptly described in the Wanchoo Committee Report, (Direct Taxes Enquiry Committee Final Report, December 1971) in the following words:

> *"In the fight against tax evasion, monetary penalties are not enough. Many a calculating tax dodger finds it a profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to lose faith and confidence in the tax administration once it knows that even when a tax evader is caught, the administration lets him get away lightly after paying only a monetary penalty–when money is no longer a major consideration with him if it serves his business interests. Unfortunately, in the present social milieu, such penalties carry no stigma either. In these circumstances, the provisions for imposition of penalty fail to instil adequate fear of the law in the minds of tax evaders. Prospect of landing in jail, on the other hand, is a far more dreaded consequence to operate in terrorem upon the erring taxpayers. Besides, a conviction in a court of law is attended with several legal and social disqualifications as well. In order, therefore, to make enforcement of tax laws very effective, we consider it necessary for the Department to evolve a vigorous prosecution policy and to pursue it unsparingly."*

3. The role of taxes cannot be overemphasized for imparting an ever-increasing momentum to the task of nation building and creating an inclusive modern society. A robust domestic revenue generation regime which funds the large investments required for upgrading human capital and infrastructure is absolutely vital for India. There is an undeniable need to affirm, encourage and to secure the highest level of voluntary compliance through a tax system which is not only perceived to be fair and equitable, but actually is so.

4. For meeting these objectives, prosecution serves two pivotal functions. Firstly, it sends out an unambiguous message of deterrence to evaders who abuse and circumvent the system. Secondly, it assures the honest taxpayer that aggressive tax delinquency is being curbed, thereby, minimising the burden generated by non-compliance. It needs to be borne in mind that a wealthy tax evader may not be unduly worried by the levy of interest or monetary penalties, but the prospect of undergoing imprisonment does serve as a forceful deterrent. In this manner, prosecution enhances the efficacy and protects the very integrity of the tax system.

5. The focus of prosecution is not on inadvertent or minor tax deviation or trivial misdemeanours involving small taxpayers. Instead, the objective is to mete out exemplary punishment in deserving cases of significant non-compliant behaviour where taxable income is actively concealed through omission and commission. In this regard, Circular No. 24/2019 dated 09.09.2019, the CBDT has delineated the procedure for identification and processing of cases for prosecution which, inter alia, excludes initiation of prosecution in cases where non-payment of TDS is Rs. 25 lakhs or below and where the delay in deposit is less than 60 days from the relevant due date. In exceptional cases, prosecution may be initiated only with the previous administrative approval of a collegium comprising two CCIT/DGIT rank officers.

6. The ambit of prosecution extends to those who abet, facilitate and enable the occurrence of organised, systematic tax offences which conspires to maliciously erode the tax base. It is in this backdrop that certain enabling provisions were engrafted in the Act. These include incorporating abetment as an offence (section 278) and providing for some rebuttable presumptions with respect to assets, books of accounts (section 278D) and culpable mental state (section 278E). The period of limitation for taking cognizance of an offence has been done away with by including the Income-tax Act, 1961 in the exclusion category of section 468 of the Cr.P.C. Further, the falsification of books of accounts / documents has been made an offence to curb the menace of “accommodation” entries provided by hawala operators (section 277A).The Act also provides for constituting of Special Courts under section 280A for trial of offences under Chapter XXII. Due to the combined effort of CBDT and the field formations, Special Courts have been designated, in consultation with the respective High Courts, for several charges including West Bengal, Karnataka, Gujarat etc.

7. In the past five years, the Government has taken ground-breaking initiatives in the arena of tax reforms, in augmenting tax collection, for improved taxpayer services, for imparting greater transparency in procedure and an irreversible shift towards a non-adversarial regime. However, on another front the Department has a vastly improved mechanism to collect relevant data both from domestic and international sources.

8. The ability of the Department to detect, investigate and determine tax offences is poised to be exponentially enhanced. As a corollary, a vigorous, and an enabled prosecution framework targeted at bringing to book "big-ticket" tax evasion would immensely mature the tax system of our country and send a strong message designed to radically alter perceptions as well as to decisively change the costs and benefits of non-compliance.

9. This Manual has been designed to be a handy one-stop destination for quick reference by officers and officials of the Department. It may be noted that certain actions of omission and commission on the part of the assessee may lead to violation of compliances which can act as offences under the Income-tax Act as well as the Indian Penal Code (IPC). The Income-tax authorities may come across certain offences, which can be dealt with only under IPC. It may be highlighted that there is no bar on prosecution of an offender under the Income-tax Act and under IPC. However, there is a bar on the punishment of the offender twice for the same offence.

10. While preparing this Manual, efforts have been made to bring the following aspects relating to offences and prosecution at one place:

(a) The provisions relating to offences and prosecution under the Income-tax Law.

(b) The relevant provisions of other laws, such as IPC, Cr.P.C, Information & Technology Act, 2000 and Indian Evidence Act, 1872 keeping in view their applicability.

(c) Brief reference to offences under other laws such as Prohibition of Benami Property Transactions Act, 1988; Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;Wealth-tax Act, 1957; Interest-tax Act, 1974; Fringe Benefit Tax (FBT), Security Transaction Tax (STT) and Banking Cash Transaction Tax (BCTT)etc.

(d) The procedure for filing prosecution, which includes identification of cases, roles of various authorities, various steps involved in filing of complaint and maintenance of records, etc.

(e) The procedure for compounding of offences including the eligibility conditions, roles of various authorities, compounding charges etc.

(f) Workflow management functionalities in ITBA and AO Portal of CPC-TDS.

(g) Gist of case laws relevant to the areas of prosecution and compounding.

(h) Various instructions/guidelines relating to prosecution, compounding and allied subjects.

******

CHAPTER 2

LEGAL BASE

Chapter Summary	
S.No.	**Description**
1	Introduction
2	Definitions
3	Constitutional Provision
4	Limitation
5	Relevance of Indian Evidence Act
6	Offences and Prosecutions under Indian Penal Code
7	Relevant Details of Various Legal Provisions from Information Technology Act, 2000 and related provisions of Income-tax Act, IPC & Indian Evidence Act
8	Broad Heads of provisions of prosecution under Income-tax Act, 1961
9	Offences and prosecution under Income-tax Act
10	Some general principles

1. Introduction

Launching of prosecution in relation to various offences under the Income-tax Act is intended to make enforcement of direct tax laws more effective. Imposition of penalty has not been found to be adequate deterrent to check tax evasion and in enforcing tax laws. There may also be occasions to initiate prosecution proceedings under section of IPC independently or in addition to prosecution under the Income-tax Act, 1961. Occasions which may attract offences and prosecution under the Income-tax Act need to be read in conjunction with other laws such as the Indian Penal Code (IPC), Code of Criminal Procedure (Cr.P.C.), the Information Technology Act, 2000, and the Indian Evidence Act. Relevant constitutional provisions also need to be borne in mind.

2. Definitions

There are various words and phrases generally used in proceedings relating to offences and prosecution which are not defined in the Income-tax Act. It is, therefore, necessary to refer to other laws and the dictionary meaning for such purpose.

2.1 Meaning of Offence

(i) Dictionary meaning (Concise Oxford Dictionary 12th edition)

- Offence: an act or instance of offending.
- Offend: commit an illegal act. - break a commonly accepted rule or principle.
- Prosecution: (n.) the prosecuting of someone in respect of a criminal charge.
- Prosecute: (v.) institute legal proceedings against. institute legal proceedings in respect of … (an) offence.

(ii) Definition under Cr.P.C.

Section 2(n): "offence" means any act or omission made *punishable by any law* for the time being in force ….".

(iii) Definition under IPC

- Section 40: Except in the chapters and sections mentioned in clauses 2 and 3 of this section, *the word "offence" denotes a thing made punishable by this Code.*

  In Chapter IV, Chapter VA and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, *the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.*

  (Section 41A: Special Law means 'law applicable to particular subject as defined in section 41A of IPC. Income-tax Act, 1961 is a special law under the above provision.)

2.2 Some other important definitions under section 2 of Cr.P.C.

(i) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. [clause (d)]

(ii) "Warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. [clause (x)]

(iii) "Summons-case" means a case relating to an offence, and not being a warrant-case. [clause (w)]

(iv) "Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or *under any other law for the time being in force*, arrest without warrant. [clause (c)]

(v) "Non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant. [clause (l)]

3. Constitutional provision

Article 20:

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

4. Limitation

4.1 There is a law of limitation under the Cr.P.C. which sets time limits on the Courts for taking cognizance of offences. *Wherever the offence is punishable with imprisonment for a maximum term exceeding 3 years, the law of limitation does not apply.* The relevant sections are s. 468, s.469 and s. 470 of the Cr.P.C. (Refer Annexure-III).

4.2 The law of limitation is subject to The Economic Offences (Inapplicability of Limitation) Act, 1974. (Act No. 12 Of 1974)

4.3 Section 2 of this Act provides that the law of limitation provided in Cr. P.C. would not apply to offences punishable under those laws, which have been specified in the schedule. The relevant extract from the schedule is as under:

THE SCHEDULE

(See Section 2)

1. The Indian Income-Tax Act, 1922 (11 of 1922)

2. The Income-Tax Act, 1961 (43 of 1961)

2A. The Interest-tax Act, 1974 (45 of 1974)….

3. *The Companies (Profits) Surtax Act, 1964 (7 of 1964),*
4. *The Wealth-tax Act, 1957 (27 of 1957)*
5. *The Gift-tax Act, 1958 (18 of 1958).....*

.....

.....

The law of limitation as embodied in Sections 468, 469 & 470 of the Cr.P.C. would not apply for launching prosecutions under Direct Tax Laws as enumerated above by virtue of this provision.

5. Relevance of Indian Evidence Act

The provisions under Indian Evidence Act are crucial in prosecution matters. The relevant chapters and sections of the said Act are reproduced in Annexure-IV. The important Provisions of this Act are as under:

5.1 Chapter V: Sections 61 to 65B; 73, 74, 78, 80, 81, 81A, 84, 86&90

(i) Section 61 states that the contents of documents may be proved either by primary or by secondary evidence.

(ii) **Primary evidence** is defined in section 62. Primary evidence is oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the Court, or the original document itself or the original thing when produced in Court.

(iii) **Secondary evidence** is defined in section 63. Certified copies, copies made from original, oral account of contents of documents given by some person who has himself seen the documents, fall in this category.

(iv) Section 64 states that documents must be proved by primary evidence except in cases mentioned after that section.

(v) Section 65 enumerates the condition or contents of a document where secondary evidence may be given.

Such conditions are provided in clause (a) to (g) in this Section. Some circumstances when the secondary evidence relating to document can be used are

(i) when the original is in possession of accused and he is not producing it,

(ii) when the contents and existence of document have been admitted by the accused,

(iii) when the original is destroyed subject to certain conditions,

(iv) when the original is not easily movable, for example server,

(v) when the original is a public document as specified in Section 74 of the Evidence Act,

(vi) when the certified copy is permitted under any law as original for example certified copies of trust deed submitted in proceedings under Section 12AA of the Act.

(vi) Sections 65A and 65B are special provisions relating to evidentiary value of electronic record *which do away with production of original electronic records subject to certain conditions [these sections are reproduced in Annexure-IV]*

(vii) The following sections deal with presumptions by Courts under certain facts and circumstances:

(a) Section 73 deals with comparison of signature, writing or seal with those admitted or proved in order to ascertain whether a signature, writing or seal is that of a person by whom it purports to have been written or made. The Court may also direct a person present in the Court to write any word or figure so as to compare them with those already on record.

(b) Section 74 *deals with public documents.*

(c) Section 78 *deals with proof of other official records.*

(d) Section 80 deals with presumption as to the documents produced as evidence. Under this provision whenever any document is produced before any Court under conditions mentioned therein, the Court shall presume that the documents are genuine and the statements as to the circumstances under which it was taken, purporting to be made by the person signing it are true.

(e) Section 81 deals with presumption in respect to gazettes, newspapers, private Acts of Parliament and other documents. Section 81A relates to presumption as to gazettes in electronic forms.

(f) Section 84 states that *every book printed or published by the Government containing laws or reports of decisions of the Court is presumed to be genuine.*

(g) Section 86 speaks of presumption as to certified copies of foreign judicial records.

(h) Section 90 deals with presumption as to documents 30 years old.

5.2 Chapter VII: Sections 101, 103, 110 and 114

(i) Section 101 sets out a general principle of burden of proof to be on the person who makes the allegation. Section 103 provides for burden of proof as to a particular fact. It is stated that the burden of proof would lie on the person who makes the allegation *unless it is provided by any law that the proof of that fact shall lie on any particular person*. Under the I.T. Act, the culpable state of mind of the assessee is presumed u/s 278E. Thus, when a prosecution is filed under the I.T. Act, unlike in section 101 of the Evidence Act, the Department is not required to establish the culpable state of mind of the assessee. In fact, it is the other way round. That is to say, in terms of section 103 of the Evidence Act r.w.s. 278E of the I.T. Act, the culpable state of mind of the assessee is presumed.

(ii) Section 110 of the Evidence Act states that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

(iii) Section 114 states that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.

The following illustrations below Section 114 are of great relevance for Income-tax purposes:

……..

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that, if a man refuses to answer questions which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

The above two illustrations may be useful in cases (i) before the A.O./ A.D.I.T when the assessee/witness does not furnish the documents requisitioned, and (ii) before A.D.I.T/A.O. when the assessee/witness refuses to answer questions or gives negative/evasive replies.

6. Offences and Prosecutions under IPC

The Income-tax authorities may come across circumstances where launching of prosecution under various provisions of IPC may be more appropriate. The relevant provisions are discussed in this paragraph. The Income-tax authorities who can launch prosecution under various provisions are also specified against each provision.

6.1 Chapter X: Contempt of the lawful authority of public servants

Prosecution can be launched under various provisions of this chapter, under following circumstances:

(i) When a person absconds to avoid service of summons, notice or order (S.172) [Assessing Officer/Tax Recovery Officer/ Assistant Director of Income-tax/Income-tax Inspector] [A.O./T.R.O./A.D.I.T/I.T.I.]

(ii) When a person intentionally prevents service of summons etc.; prevents lawful affixing of notices etc.; intentionally removes any such summons etc. from any place where it was lawfully affixed; intentionally prevents the lawful making of any proclamation etc.; (S.173) [A.O./T.R.O./A.D.I.T/I.T.I.]

(iii) When a person intentionally omits to attend at a certain place and time in response to summons or notice issued (S.174, S.174A r.w.s. 82(4) of the Cr.P.C.) [A.O./A.D.I.T/ TRO]

(iv) When a person legally bound to produce or deliver up any document or electronic record intentionally omits to do so, (S.175) [A.O./A.D.I.T/TRO]

(v) When a person intentionally omits to give any notice or furnish information which he was legally bound to give or furnish on any subject to any public servant (S.176) [A.O./ A.D.I.T/TRO]

(vi) When a person intentionally furnishes false information (S.177) [A.O./A.D.I.T]

(vii) When a person refuses to bind himself by an oath or affirmation (S.178); and refuses to answer any question when bound by oath to do so (S.179) [A.O./T.R.O./A.D.I.T]

(viii) When a person refuses to sign any statement made by him when required to do so (S.180); [A.O./T.R.O./A.D.I.T]

(ix) when a person intentionally makes a false statement under oath (S.181) [A.O./T.R.O./A.D.I.T]

(x) When a person gives false information to a public servant (S.182). This is of special importance to information supplied by informants in the Investigation Wing. [A.D.I.T/A.O./ T.R.O.]

(xi) When a person offers resistance to taking of any property by the lawful authority of a public servant (S.183) [A.D.I.T/ A.O./T.R.O./Appropriate Authority(A.A)]; and sale of such property (S.184) [A.A./T.R.O.]

(xii) When a person bids for or purchases property on behalf of legally incapacitated person (S.185) [T.R.O./A.A.]

(xiii) When a person voluntarily obstructs any public servant in discharge of public service (S.186) [A.D.I.T/T.R.O./A.O./ I.T.I. Survey etc.]

(xiv) When a person bound by law to render or furnish assistance to any public servant in execution of any public duty intentionally omits to do so (S.187). This may be of special importance to the Investigation Wing in case of witnesses. [A.D.I.T/Authorized Officer]

(xv) When a person knowing that by an order promulgated by a public servant is directed to abstain from a certain act or take certain property in his possession or management, disobeys such order (S.188). This may be of special important in cases of attachment orders by the A.O.s and prohibitory orders by the authorized officers. For the latter purpose section 275A of the Act is also applicable [A.D.I.T/A.O./T.R.O.]

(xvi) When a person holds out any threat of any injury to a public servant or his agent (S.189 & 190). [All officers and officials]

6.2 Chapter XI: False evidence and offences against public justice

Prosecution can be launched under various provisions of this chapter, under following circumstances:

(i) When a person legally bound by oath or by an express provision of law to state the truth fails to do so (S.191) [A.D.I.T/A.O./TRO]

(ii) When one causes any circumstance to exist or makes any false entry in any book or record or electronic record, or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such

circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence." (S.192)

Similar provisions are also there from Sec. 193 to Sec. 196 covering different situations of giving or fabricating false evidences. Sections 193 and 196 of IPC have been referred to in section 136 of I.T. Act, 1961. [Authorities before whom such offences take place.]

(iii) When a person who issues, signs or uses any false certificate making it out to be a true and genuine certificate (S.197 and 198). (For example, any certificate issued by any person/ authority in relation to say claim of deduction under Chapter VIA etc.) [A.D.I.T/A.O./T.R.O.]

(iv) When a person makes a false statement which is receivable as evidence *under Law* and using *it* as true knowing it to be false (S.199 and 200). Example false affidavits, false declaration or false statement made by assessee/related persons or witness. [A.D.I.T/A.O./T.R.O.]

(v) When a person causes disappearance of any evidence or gives false information to screen offender (S.201); intentional omission to give information of offence by person bound to inform (S.202), for example false tax audit report; giving false information in respect of offence committed (S.203); destruction of document or electronic record to prevent its production as evidence (S.204); false personation (S.205); fraudulent removal or concealment or transfer of property/ acceptance, receipt or claim to prevent its seizure (S.206 and 207); [A.O./A.D.I.T/T.R.O./I.T.I.]

(vi) When a person intentionally insults or interrupts to public servant sitting in judicial proceeding (S.228). Under section 136 of the I.T. Act, 1961 proceedings before Income-tax authorities are also judicial proceedings for the purpose of section 228 of I.P.C.

6.3 Miscellaneous provisions

When a person voluntarily causes hurt or grievous hurt or deters/ prevents any public servant from discharging his duties. (S.333). (All officers and officials).

6.4 Prosecution under Income-tax Law vis-à-vis IPC

There is no bar on prosecution of an offender under the Income-tax Act and under the Indian Penal Code simultaneously. However, there is a bar on the punishment for the same offence twice. Prosecution under the Income-tax Act has some specific features.

(i) A complaint under the Income-tax Act is usually more specific to the department's requirements.

(ii) Section 278A provides for more rigorous punishment for second and subsequent offences. The subsequent offence need not be under the same section as the first.

(iii) Section 278AA has put the onus of proving reasonable cause on the accused in respect of offences under Section 276A, 276AB, 276B.

(iv) Section 278B, after its insertion, sets the controversy regarding liability of the company to prosecution at rest. It lays down that the company as well as any person in charge of and responsible for the conduct of the business of the company, would be liable to prosecution for the offence committed under the Act. Such a person shall be guilty unless he proves that the offence was committed without his knowledge and even after exercising due diligence.

(v) Section 278E incorporates an important presumption of culpable mental state, which is very helpful to the department. Though the court shall presume such a state, the accused would be allowed to prove the fact that he had no such mental state.

(vi) Section 279(2) provides for compounding of offence under the Income-tax Act. An offence under the IPC cannot be compounded. It can only be withdrawn with the leave of the Court.

7. Relevant Details of Various Legal Provisions from Information Technology Act, 2000 and related provisions of Income-tax Act, IPC & Indian Evidence Act

The Information Technology Act, 2000 has been enacted to provide legal recognition to transactions carried out by means of electronic data interchange and other means of electronic communication,

which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies. The same enactment has also brought amendments in the **Indian Penal Code, 1861,** the **Indian Evidence Act, 1872,** the **Bankers' Books Evidence Act, 1891** and the **Reserve Bank of India Act, 1934.** A few amendments have been brought in independently to enable Income-tax Authorities to administer Income-tax Law effectively in the changed environment. It is imperative to know the important provisions of Information Technology Act, 2000, coupled with the relevant amendments in the Income-tax Act, 1961, as well as other related enactments to effectively and correctly handle digital evidences which are to be used in prosecution. Therefore, certain provisions of such related Laws have been incorporated below for ready reference.

7.1 Relevant provisions of Income-tax Act, 1961

7.1.1 Sub-sections (12A) and (22AA) have been inserted in section 2 of Income-tax Act, by Finance Act, 2001, with effect from 01.06.2001, where 'books of account' and 'document' respectively have been defined.

(i) Sub-section (12A) provides the books of account or books maintained on computer, the same sanctity as the traditional books of account. As per provisions of section 2(12A)

"*books or books of account" includes ledgers, day books, cash books, account-books and other books, whether kept in the written form or as print outs of data stored in a floppy, disk, tape or any other form of electro-magnetic data storage device".*

(ii) Sub-section (22AA) brings electronic records also in the definition of Document. As per this sub section:

"Document" includes an electronic record as defined in clause (t) of sub-section 1 of section 2 of the Information Technology Act, 2000.

As per Information Technology Act, 2000, clause (t) of sub-section (1) of section 2, an *"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated microfiche.* This definition of electronic record is wide enough to cover person in possession of computer, storage device, server, mobile phone, i-pod or any such device.

7.1.2 Section 132(1)(iib) of Income-tax Act, 1961. This provision was brought on statute by the Finance Act, 2002, with effect from 01.06.2002 to remove difficulties in handling digital evidences found during the course of the search. This section "*require any person who*

is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorized officer the necessary facility to inspect such books of account or other documents."

7.1.3 Provisions of **section 275B** make failure to comply with provisions of section 132(1)(iib) a punishable offence.

As per this section, "*if a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under [clause (iib) of sub-section (1) of section 132] fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine*".

7.2 Relevant Provisions of Information Technology Act, 2000

7.2.1 Important Definitions

Some important definitions have been provided in section 2 of this Act. Few of the clauses of this section having relevant definitions are as under:

(a) "***computer***" *means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network*;

(b) "***Computer network***" *means the interconnection of one or more computers or computer systems or communication device through—*

(i) *the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and*

(ii) *terminals or a complex consisting of two or more interconnected computers or communication device whether or not the interconnection is continuously maintained;*

(c) "***Computer resource***" *means computer, computer system, computer network data, computer data base or software*;

(d) "***computer system***" *means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer*

programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(e) "***data***" *means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;*

(f) "***Digital signature***" *means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3*;

(g) "***electronic form***" *with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device*;

(h) "***electronic record***" *means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche*;

(i) "***Information***" *includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated microfiche*;

(j) "***Intermediary***", *with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;*

(k) "***verify***", *in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether-*

(a) *the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;*

(b) *the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.*

7.2.2 Digital signature and Authentication of electronic records

The Information Technology Act, 2000 has also provided mechanism for authentication of electronic records in the form of digital signatures. Following provisions of this Act have provided definition and legal recognition of digital signatures:

(i) Sec. 3. Authentication of electronic records.

(1) *Subject to the provisions of this section, any subscriber may authenticate an electronic record by affixing his digital signature.*

(2) *The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.*

Explanation - For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible

(a) *to derive or reconstruct the original electronic record from the hash result produced by the algorithm;*

(b) *that two electronic records can produce the same hash result using the algorithm.*

(3) *Any person by the use of a public key of the subscriber can verify the electronic record.*

(4) *The private key and the public key are unique to the subscriber and constitute a functioning key pair.*

(ii) Sec. 4. Legal recognition of electronic records.

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law such requirement shall be deemed to have been satisfied if such information or matter is

(a) *rendered or made available in an electronic form; and*

(b) *accessible so as to be usable for a subsequent reference.*

(iii) Sec. 5. Legal recognition of electronic signatures.

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.

Explanation. - For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

(iv) Sec. 7. Retention of electronic records.

(1) *Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if-*

(a) *the information contained therein remains accessible so as to be usable for a subsequent reference;*

(b) *the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;*

(c) *the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:*

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) *Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.*

7.2.3 Offences punishable under the Information Technology Act, 2000

Under the provisions of section 65 of this Act, whoever knowingly or intentionally, conceals, destroys or alters, or causes another person so to do, any computer source code used for a computer, computer programme, computer system or computer network (where such source code is required to be kept or maintained by law for the time being in force), shall be punishable with rigorous imprisonment for a term up to three years or with fine which may extend to two lakh rupees or with both. For this purpose, computer source code means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form. Similarly, u/s 66 of this Act, whoever with intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public, or any person destroys or deletes or alters any information residing in a computer resource (such act is called hacking) shall be punishable with imprisonment up to three years, or with fine which may extend to five lakh rupees, or with both. Under section 71 of that Act, any misrepresentation or suppression of material facts from the Controller or Certifying Authority under that Act for obtaining any license or Electronic Signature Certificate also constitutes an offence, and shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

7.3 The relevant Provisions of Indian Evidence Act, 1872

By way of the Second Schedule to the Information Technology Act, amendments to the Indian Evidence Act, 1872 have been made, so as to give electronic records, a legal recognition as evidence. Few such relevant amendments are as under:

7.3.1 In **section 3**, in the definition of "*Evidence*", for the words "all documents produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" has been substituted;

7.3.2 In **section 17** defining the word '*Admission*' for the words "oral or documentary," the words "oral or documentary or contained in electronic form" has been substituted.

7.3.3 After section 22, the following **section 22A** has been inserted, namely:

"*When oral admission as to contents of electronic records are relevant.*

Sec. 22A. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question."

7.3.4 In **section 34**, for the words "Entries in books of account", the words "Entries in the books of account, including those maintained in an electronic form" has been substituted.

7.3.5 In **section 35**, for the word "record", in both the places where it occurs, the words "record or an electronic record" has been substituted.

7.3.6 Opinion as to electronic signature: ***Section 47A****. When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact."*

7.3.7 Admissibility of electronic records.

Special provisions as to evidence relating to electronic record have been inserted in the form of sections 65A and 65B, after section 65. These provisions are very important, and they govern the integrity of the electronic record as evidence, as well as, the process for creating electronic record.

(i) Sec. 65A. The contents of electronic records may be proved in accordance with the provisions of section 65B.

(ii) Sec. 65B. *(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) *The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:*

(a) *the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*

(b) *during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*

(c) *throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*

(d) *the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

(3) *Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether*

(a) *by a combination of computers operating over that period; or*

(b) *by different computers operating in succession over that period; or*

(c) *by different combinations of computers operating in succession over that period or*

(d) *in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.*

(4) *In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,*

(a) *identifying the electronic record containing the statement and describing the manner in which it was produced;*

(b) *giving such particulars of any device involved in the production of that electronic record as may be*

appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) *dealing with any of the matters to which the conditions mentioned in sub section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*

(5) *For the purposes of this section,*

(a) *information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;*

(b) *whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*

(c) *a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.*

Explanation. - For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

7.3.8 Evidential value of Digital Signature.

(i) For the **proof of electronic signature, section 67A** has been inserted after section 67. The section is as under:

Sec. 67A. "*Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that such electronic signature is the electronic signature of the subscriber must be proved."*

(ii) With regard to **Proof as to verification of digital signature, section 73A** has been inserted after section 73, which is as under:

Sec. 73A. "*In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct*

(a) *That person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;*

(b) *any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.*

Explanation.-For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000".

7.3.9 Presumption as to gazettes in electronic form or official electronic record.

Section 81A

81A. Presumption as to Gazettes in electronic forms.—The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

7.3.10 Presumption relating to electronic agreements, electronic records, electronic signatures, etc.

After section 85, sections 85A, 85B and 85C have been inserted which provide for presumption with respect to Electronic Agreement, Electronic Record &Electronic Signatures, etc. These provisions are as under:

(i) **Sec. 85A.** *The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.*

(ii) **Sec. 85B**.*(1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.*

(2) In any proceedings, involving secure electronic signature, the Court shall presume

unless the contrary is proved that–

(a) *the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;*

(b) *except in the case of a secure electronic record or a secure electronic signature nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any electronic signature.*

(iii) Sec. 85C. *The Court shall presume, unless contrary is proved, that the information listed in an Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.*

7.3.11 Presumption relating to electronic messages and electronic records

After section 88, section 88A has been inserted which provide for presumptions with respect to Electronic messages. These provisions are as under:

(i) Sec. 88A. *The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.*

Explanation.- For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.'.

(ii) Presumption relating to electronic records- After section 90, section 90A has been inserted which provide for presumptions with respect to Electronic records. These provisions are as under:

Sec. 90A. "*Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorized by him in this behalf.*

Explanation - Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable. This Explanation applies also to section 81A."

7.4 The changes in Indian Penal Code, 1860 in respect of digital evidence

7.4.1 Indian Penal Code refers to various documents and records with reference to several offences. By way of the First Schedule to the Information Technology Act, amendments to the Indian Penal Code have been brought, so as to, incorporate reference to Electronic Records, wherever it is necessary. Few such relevant amendments are as under:

(i) After section 29, **section 29A** has been inserted, namely, "Electronic record"

"Sec. 29A. The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000."

(ii) In **section 192**, for the words "makes any false entry in any book or record, or makes any document containing a false statement", the words "makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement" has been substituted.

(iii) In **section 204**, for the word "document" at both the places where it occurs, the words "document or electronic record" has been substituted.

(iv) In **section 463**, for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury", the words "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury" has been substituted.

In various other sections also wherever the word "document" occurs, it has been substituted by the words "document or electronic record", while the digital/electronic signature has been given same recognition as normal signature.

7.4.2 There are some other provisions of Indian Penal Code, 1861, which have been appropriately amended in view of widening the ambit of digitization of offences prescribed therein. These provisions are section 175, 192 and section 204 of IPC

Section 175:

Whoever, being legally bound to produce or deliver up any document or **electronic record** to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month or with a fine, which may extend to five hundred rupees, or with both;

Or if the document or **electronic record** is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 192:

Whoever causes any circumstance to exist or makes any false entry in any book or record or **electronic record**, or makes any document or **electronic record** containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Section 204:

Whoever secretes or destroys any document or **electronic record** which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before public servant, as such, or obliterates or renders illegible the whole or any part of such document or **electronic record** with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. Broad Heads of Provisions of Prosecution under Income-tax Act, 1961

8.1 There are five broad heads under which prosecution provisions can be classified under the Act:

(i) Provisions relating to Search and Seizure: Sections 275A, 275B, 276CCC and 278D

(ii) Provisions relating to Evasion and payment of tax, false statement in verification, falsification of books of account: Sections 276C, 277 and 277A

(iii) Provisions relating to failure to furnish returns of income: Section 276CC

(iv) Provisions relating to Abetment: Section 278

(v) Other provisions: Sections 276A, 276AB, 276B, and 276BB (Failure to discharge statutory obligations), Sections 276 (removal, concealment, transfer or delivery of property to thwart tax recovery), 276D (failure to produce accounts and documents), 278A (punishment for second and subsequent offences), section 278B (offences by companies), and section 278C (offences by Hindu Undivided Families).

8.2 Certain procedures for examining prosecution have been laid down in the Act such as: 279(1) (prosecution at the instance of Pr. CCIT or CCIT or Pr. CIT or CIT), 278AA (punishment not to be imposed in certain cases), 279(2) (compounding of offences).

8.3 There is a special provision u/s 136 of the Act which enables the Income-tax Authorities to invoke prosecution provisions u/s 193, 196 and 228 of I.P.C. r.w.s. 195 of the Cr.P.C.

9. Offences and prosecution under Income-tax Act

The provisions relevant to offences & prosecution under the Act under broad heads enumerated in Para-8 above are reproduced here as under and important features of these provisions have been discussed in Para 3 of Chapter 4.

9.1 Provisions relating to Search and Seizure

(i) Section 275A: Contravention of order made under second proviso to sub-section (1) or sub-section (3) of section 132

Whoever contravenes any order referred to in the second proviso to sub-section (1) or sub-section (3) of section 132 shall be punishable

with rigorous imprisonment which may extend to two years and shall also be liable to fine.

- Second proviso to section 132(1)

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorized officer and such action of the authorized officer shall be deemed to be seizure of such valuable article or thing under clause (iii).

- Section 132(3)

The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(ii) Section 275B: Failure to comply with provisions of section 132(1)(iib)

If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section (1) of section 132 fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

- Section 132(1)(iib)

require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorized officer the necessary facility to inspect such books of account or other documents.

(iii) Section 276CCC: Failure to furnish return of income in search cases

If a person wilfully fails to furnish in due time the return of total income which he is required to furnish by notice given under clause (a) of section 158BC, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that no person shall be punishable for any failure under this section in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995 but before the 1st day of January, 1997.

(iv) Section 278D: Presumptions as to assets, books of account etc. in certain cases

Where during the course of any search made under section 132, any money, bullion, jewellery or other valuable article or thing (hereafter in this section referred to as the assets) or any books of account or other documents has or have been found in the possession or control of any person and such assets or books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents.

Where any assets or books of account or other documents taken into custody, from the possession or control of any person, by the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A are delivered to the requisitioning officer under sub-section (2) of that section and such assets, books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents.

9.2 Provisions relating to Evasion of tax, false statement in verification, falsification of books of account.

(i) Section 276C: Wilful attempt to evade tax, etc.

(1) *If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable or under reports*

his income, under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable, -

In a case where the amount sought to be evaded or tax on under-reported income exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

In any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

(2) *If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and shall, in the discretion of the court, also be liable to fine.*

Explanation – For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person –

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstances to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

(ii) <u>Section 277</u>: False statement in verification, etc.

If a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, -

(i) *in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true,*

exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) *in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.*

(iii) Section 277A: Falsification of books of account or documents, etc.

If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this 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 relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

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

9.3 Section 276CC: Failure to furnish return of Income

If a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A, he shall be punishable, -

(i) *In a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*

(ii) *In any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine*

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD or return of income under sub-section (1) of section 139 -

(i) *for any assessment year commencing on or after the 1st day of April 1975, or*

(ii) *for any assessment year commencing on or after the 1st day of April 1975, if –*

(a) *the return is furnished by him before the expiry of the assessment year; or*

(b) *the tax payable by such persons, not being a Company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed ten thousand rupees.*

9.4 Section 278: Abetment of false return, etc.

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 or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable, -

(i) *in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*

(i) *in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.*

9.5 Miscellaneous:

(i) Section 276: Removal, concealment, transfer or delivery of property to thwart tax recovery

Whoever fraudulently, removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be

punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

(ii) Section 276A: Failure to comply with the provisions of sub-sections (1) and (3) of section 178

If a person –

(i) *fails to give the notice in accordance with sub-section (1) of section 178; or*

(ii) *fails to set aside the amount as required by sub-section (3) of that section; or*

(iii) *parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section,*

he shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

(iii) Section 276AB: Failure to comply with the provisions of sections 269UC, 269UE and 269UL

Whoever fails to comply with the provisions of section 269UC or fails to surrender or deliver possession of the property under sub-section (2) of section 269UE or contravenes the provisions of sub-section (2) of section 269UL shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

(iv) Section 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B

If a person fails to pay to the credit of the Central Government, -

(a) *the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or*

(b) *the tax payable by him, as required by or under –*

(i) *sub-section (2) of section 115-O; or*

(ii) *the second proviso to section 194B*

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

(v) Section 276BB: Failure to pay the tax collected at source –

If a person fails to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

(vi) Section 276D: Failure to produce accounts and documents

If a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (1) of section 142, such accounts and documents as are referred to in the notice or wilfully fails to comply with a direction issued to him under sub-section (2A) of that section, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine.

(vii) Section 278A: Punishment for second and subsequent offences

If any person convicted of an offence under section 276B or sub-section (1) of section 276C or section 276CC or section 276DD or section276E or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

(viii) Section 278B: Offences by companies

(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:*

Provided that nothing contained in this sub-section shall render any such person 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.

(2) Notwithstanding anything contained in sub-section (1), 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 or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Explanation – 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.*

(ix) <u>Section 278C</u>: Offences by Hindu undivided families.

(1) *Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;*

Provided that nothing contained in this sub-section shall render the karta 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9.6 Provisions relating to procedure for launching prosecution:

Certain provisions have been laid down in the Act which relate to procedure for launching prosecution, which are as under:

(i) Section 278AA: Punishment not to be imposed in certain cases.

Notwithstanding anything contained in the provisions of section 276A, section 276AB, or section 276B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.

(ii) Section 278E: Presumption as to culpable mental state.

(1) *In any prosecution for any offence under this Act which requires a 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.*

Explanation.- In this sub-section, "culpable mental state" include intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) *For the purposes of this section, 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.*

(iii) Section 279(1): Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(1) *A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority:*

Provided that the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

Explanation.- For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.

(iv) Section 279(2): Prosecution can be compounded by the Chief Commissioner or Director General.

Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

10. Some General Principles

10.1 Section 280D of the Act provides that the procedure for prosecution would be governed by the Criminal Procedure Code, 1973 (Cr.P.C. for short), save as otherwise provided in the Act. As per the provisions of Section 280A, offences under this chapter and other offences are to be tried by Special Courts so notified by the Central Government. Section 280B provides that Special Courts will take cognizance of the offence only when an authority authorized under the Act makes a complaint.

10.2 In the procedure for trial, a case is either 'summons case' or 'warrant case' as per the provisions of Cr.P.C. **Section 280C** defines what is a summons case, according to which an offence will be tried as a summons case if it is punishable with imprisonment not exceeding 2 years or with fine or with both. The main points of difference between the two types of cases are given in **Annexure-B** (of Guidelines for identifying and examining prosecution cases dated 27.06.2019) for basic understanding.

(i) *In a summons case, as per section 257 of Cr.P.C the complainant may request the court's permission to withdraw the prosecution complaint on justified grounds, at any time before final order is passed by the court. However, no such withdrawal of complaint shall be requested without justified reasons and prior administrative approval of the CCIT or DGIT.*

(ii) *In a warrant case, where it is found that the prosecution instituted under the provisions of the Act and/or Indian Penal Code needs to be withdrawn in view of the change in circumstances (due to appellate orders or otherwise), the proposal for withdrawal shall be submitted to the Board for seeking the approval of the Central Government as required u/s 321 of Cr.P.C.*

(iii) *Section 279(2) of the Act confers the power of compounding the offence even after institution of complaint in court. In case an offence has been compounded after filing of the complaint in accordance with guidelines, a copy of the compounding order u/s 279(2) shall be produced before the Trial Court through the Prosecution Counsel.*

10.3 Commission or omission of certain acts, constitute offence both under the Act as well as under the Indian Penal Code (IPC for short). However, under the Act 'culpable mental state on part of the accused' can be presumed by the department as per section 278E thereof. Thus, onus gets shifted to the accused to prove that he did not have such mental state. Such presumption is not available under the IPC. Therefore, it is desirable that where specific provisions under the Act are available in respect of an offence, proceeding should preferably be initiated under those provisions of the Act.

10.4 Entries in records and documents in the custody of the Income-tax Department are admissible evidence in the prosecution proceedings.

10.5 Offences under the Act are non-cognizable, irrespective of provisions of Cr.P.C. Some of the offences are expressly non-cognizable as per section 279A of the Act, and others are non-cognizable being summons cases. Therefore, prosecution is initiated by filing complaint in the competent court of law and procedural provisions of Cr.P.C. relating to "Cases instituted otherwise than on police report" are applicable. A cognizable offence as per section 2(c) of Cr.P.C. is the one where a police officer has the authority to make an arrest without a warrant and start investigation with or without permission of the court.

10.6 For companies in liquidation (section 178 of the I.T. Act) there is a special provision u/s 276A for prosecution of liquidator for failure to comply with section 178(1) and 178(3).

10.7 Compounding of offences under the Act can be done by the Pr. CCIT/CCIT/Pr. DGIT/DGIT [Sec. 279(2)]. Prosecution launched under IPC cannot be compounded. These can, however, be withdrawn.

10.8 There are special provisions in the case of offences by companies (section 278B), and by HUF (278C) besides prosecution in the case

of individual person(s). When offences are committed by such legal person i.e. Company, Firm, LLP, AOP, HUF etc., natural persons who are in-charge of affairs of that entity can be proceeded against as co-accused in accordance with the provisions of section 278B and 278C.

10.9 If the defaulter is a public servant referred to in Section 197 of Cr.P.C. and the default is related to discharge of his official duties, then as required under this section, the approval of State Government or Central Government is mandatory.

10.10 Proceedings before I.T. Authorities to be judicial proceedings (section 136)

Any proceeding under the Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) [and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

Broadly it means that:

i) *Proceedings before I.T. authorities are deemed to be 'judicial proceedings';*

ii) *Commission of offences u/s 193, 228 and 196 of IPC before Income-tax authorities tantamount to commission of offences in a judicial proceeding;*

iii) *In this regard, Income-tax authorities are deemed to be 'civil courts' for the purpose of section 195 of Cr.P.C. but not for the purpose of Chapter XXVI of Cr.P.C. That is to say, if such offences are committed before Income-tax authorities in judicial proceedings, they are Civil Courts for the purpose of launching prosecution u/s 195 of Cr.P.C.*

iv) *Section 195 of Cr.P.C. deals with 'Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.' Chapter XXVI of Cr.P.C., comprising sections 340 to 351, deals with 'Provisions as to offences affecting the administration of justice' and is applicable for Criminal Courts.*

v) *The relevant provisions for section 136 of the I.T. Act are section 195(1)(b)(i) and section 195(3) of the Cr.P.C. for 'civil courts';*

vi) *Hence, I.T. authorities, acting under these sections, have to file a complaint before the competent judicial authority. It is not necessary to file a police complaint. Since they are not declared*

to be 'criminal courts', they cannot punish the persons accused of such offences, but have to file complaint in a court of law.

vii) *In case of such offences committed before C.I.T. /C.I.T.(A), the complaint has to be filed by the C.I.T./C.I.T.(A) concerned or by 'some other public servant to whom he is administratively sub-ordinate' [section 195(1)(a) of Cr.P.C.]*

viii) *In the absence of this section, the Departmental Authorities would have had to (a) file a police complaint, or (b) file a complaint in the Appropriate Court like any other complainant in which case the complainant is to be examined on oath by the Magistrate before admission of the complaint.*

10.11 Similar provisions occur u/s 245L for Income-tax Settlement Commission, u/s 245U(2) for Authority for Advance Ruling and u/s 255(6) for ITAT.

10.12 Immunity from prosecution:

Certain provisions relating to immunity for prosecution are as under:

(i) The Income-tax Settlement Commission (ITSC) has power to grant immunity from prosecution and penalty under Section 245H of the Act. These provisions are, however, subject to certain conditions such as full and true disclosure of income by the assessee and also disclosure of the manner in which such income has been derived. The ITSC however cannot grant immunity in cases where prosecution proceedings have been instituted prior to the receipt of application u/s 245C.

Under sub-section 1 of section 245H, the ITSC earlier had the power to grant immunity "from prosecution for offence under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force". However, w.e.f. 1.6.2007, the Act has been amended whereby the ITSC can no more grant immunity for offences under the IPC, or any other Central Act except under Income-tax Act and Wealth tax Act.

(ii) Immunity from prosecution was also granted under VDIS 1997, KVSS and for Special Bearer Bond 1981, IDS-2016, PMGKY- 2016.

(iii) For obtaining the evidence of any person directly or indirectly concerned in or privy to the concealment of income / evasion of tax, the Central Government has been vested with powers to tender immunity from prosecution under I.T. Act, I.P.C or any other Central Act u/s 291(1) of the I.T. Act. Under sub-section (3) of section 291 the Central

Government has also been given power to withdraw such immunity. For granting immunity and withdrawing the same, some conditions have been prescribed in said section.

(iv) Under section 292A of the Act, nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under the Act (Income-tax Act) unless that person is under eighteen years of age.

(v) There is a bar u/s 293 of any suit in any civil court against any order made under I.T. Act. It has also been provided that "no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act."

(vi) Under section 270AA of the Act, the AO may grant immunity from imposition of penalty u/s 270A and initiation of proceedings under section 276C or section 276CC in admitted cases subject to fulfillment of conditions specified u/s 270AA itself.

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CHAPTER 3

PROCEDURE FOR INITIATING PROSECUTION (NON-TDS/TCS RELATED OFFENCES)

Chapter Summary	
S.No.	**Description**
1	Introduction
2	Procedure for Identification and processing of cases for prosecution under Direct Tax laws – Prior administrative approval by Collegium-Circular No. 24/2019 dated 09.09.2019
3	Guidelines for Identifying and Examining Prosecution cases (other than TDS/TCS related) under the Income-tax Act 1961dated 27.06.2019 and 09.09.2019
	Standard Operating Procedure (SOP) for examining cases for Prosecution (Other than TDS/TCS related) under the Income-tax Act 1961dated 27.06.2019

1. Introduction

1.1 The Identification and examination of cases for initiating prosecution for offences are governed by Guidelines and Standard Operating Procedure (SOP) issued vide F. No. 285/08/2014-IT(Inv.V)/155 dated 27.06.2019 read with F.No. 285/08/2014-IT(Inv.V)/351 dated 09.09.2019for all offences other than TDS/TCS offences. The Guidelines and SOP are comprehensive and serve to streamline the procedure of identifying and examining the cases for initiating prosecution for offences (other than TDS/TCS cases) under Direct Tax laws. They have been issued in supersession of all earlier guidelines on the subject.

1.2. The Guidelines not only provide the framework for identification of cases for mandatory processing and priority processing of cases for prosecution but also a broad framework of applicable law and legal principles taken from the Income-tax Act, Cr. P.C., and IPC. The same therefore need to be carefully studied. It is highlighted that examination of mandatory or priority cases for prosecution does not necessarily mean mandatory filing of prosecution. The authorities concerned shall file prosecution complaint only in deserving cases. However, once a case is identified for prosecution by initiating proceedings, it shall either culminate in filing of prosecution complaint or compounding or dropping the proceedings after following due procedure. The Guidelines have been reproduced in this Chapter, subsequently.

The Guidelines broadly deal with the following aspects:

(a) General Guidelines for prosecution

(b) Broad Heads of provisions of prosecution under Income-tax Act, 1961

(c) Categories of mandatory cases to be examined for prosecution

(d) Categories of priority cases for prosecution

(e) Offences under IPC

(f) Special provisions relating to Section136 of Income-tax Act, 1961

(g) Immunity from prosecution

(h) Provisions relating to withdrawal of prosecution complaints

(i) Some general principles

2. Prior administrative approval by Collegium

Circular No. 24/2019 dated 09.09.2019 issued vide F.No. 285/08/2014-(Inv.V)/349 has laid down a monetary threshold above which prosecution in appropriate cases will ordinarily be considered. A system of Collegium of two CCIT/DGIT rank officers has been put in place to give administrative approval to the Sanctioning Authority prior to launching of prosecution in most cases, except where the threshold of default exceeds Rs. 25 lakhs in cases of non-payment of tax deducted at source or tax collected at source or wilful attempt to evade tax/payment of tax or failure to file returns of income, or false statement in verification or abetment of false return/account/ statement etc. With this Circular, it is being ensured that prosecution proceedings would be initiated commensurate to the degree of offence committed.[1]

3. The detailed stage wise procedure along with roles of various authorities in handling prosecution (other than TDS/TCS related prosecution u/s 276B and u/s 276BB of the Act) matters has been provided in SOP issued vide F. No. 285/08/2014-IT (Inv.V)/155 dated 27.06.2019. The same has been reproduced in this Chapter subsequently. The broad headings of the Prosecution Procedure outlined in SOP (cases other than TDS/TCS) which govern the entire procedure relating to prosecution are as under:

[1]Refer Circular No. 24/2019 dated 09.09.2019 (pages 91-94)

(a) General issues

(b) Identification of cases & institution of proceedings

(c) Proposal for seeking previous sanction

(d) Sanction u/s 279(1)

(e) Preparation of Complaint

(f) Filing of Complaint

(g) Safe custody of documents

(h) Compounding Application before filing of complaint

(i) Procedure after filing complaint

(j) Timelines for institution of proceedings

(k) Prosecution Provisions under the Income-tax Act, 1961 & Indian Penal Code, 1860

(l) Withdrawal of prosecution

(m) Reporting Mechanism

It is further highlighted that:

(i) **Annexure-I** to SOP prescribes the format in Form A for submitting prosecution proposal for approval u/s 279(1). The same has been designed so as to capture all relevant details. Below this proforma, there are instructions which need to be carefully followed.

(ii) When the offences are committed by artificial juridical persons i.e. Company, Firm, LLP, AOP, HUF etc., natural persons who are in charge of affairs of that entity can be proceeded against as co-accused in accordance with provisions of section 278B and 278C. The detailed guidance for gathering necessary information and evidence which is helpful to derive a well-reasoned satisfaction is provided in **Annexure-II** to the SOP.

3.1 The Guidelines dated 27.06.2019 & 09.09.2019, SOP dated 27.06.2019, and Circular No. 24/2019 dated 09.09.2019 are reproduced below:

Confidential

F.No.285/08/2014-IT(Inv. V)/155
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
****

Room No.- 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 27.06.2019

To,

The Pr. CCsIT/ CCsIT/ Pr. DGsIT/DGsIT

Madam/Sir

Subject: Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) and Standard Operating Procedure (SOP) for examining cases for Prosecution (Other than TDS/TCS related) under the Income-tax Act, 1961-reg.

Kindly refer to the captioned subject.

2. In this regard, the undersigned is directed to enclose herewith the following documents:

(i) Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 and

(ii) Standard Operating Procedure (SOP) for examining cases for Prosecution (Other than TDS/TCS related) under the Income-tax Act, 1961.

3. The undersigned is further directed to state that the aforesaid Prosecution Guidelines and SOP are meant **strictly for departmental use** and are to be circulated among all the officers of your charge for information and guidance.

Yours faithfully,

Encl: As above

Sd/-
(**Mamta Bansal**)
Director, Inv. V,
CBDT, New Delhi

Confidential/Strictly for Departmental Use
F. No. 285/08/2014.-IT (Inv. V)/155 dated 27.06.2019

Guidelines for identifying and examining Prosecution cases (other than TDS or TCS related) under Income-tax Act, 1961[2]

1. The Board has issued guidelines from time to time for streamlining the procedure of identifying & examining the cases for initiating prosecution for offences under Direct Taxes Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961, (hereinafter referred to as "the Act") these comprehensive Guidelines are being issued in supersession of all existing guidelines (except the Guidelines issued vide F. No. 285/90/2013-IT(Inv-V)/384 dated 18.10.2016 in respect of identification of offenses relating to section 276B and 276BB) on the subject, in general and the following in particular in so far as non TDS/TCS cases are concerned:

i. F.No.285/16/90-IT(Inv.)/43 dated 14.05.1996

ii. F.No.285/90/2008-IT(Inv.-I)/05 dated 24.04.2008

2. These guidelines shall come into effect from01.07.2019 in respect of all cases where sanction u/s 279(1) has not yet been granted. A Standard Operating Procedure (SOP) is being issued separately to outline the procedure (other than prosecution under sections 276B and 276BB of the Act, which is governed by separate SOP issued on 09.12.2016) to be followed for examining the prosecution cases.

3. General Guidelines for prosecution

i. Chapter XXII of the Act lays down provisions regarding offences and prosecutions. A summary of offences liable for prosecution under this Chapter is given in **Annexure-A** of the guidelines for ready reference.

ii. The offences and punishment specified in Annexure-A are as per provisions existing on the date of issue of these Guidelines. However, the offences and quantum of punishment would be in accordance with the law as it stood at the time of commission of the offence.

iii. Section 280D of the Act provides that the procedure for prosecution would be governed by the Criminal Procedure Code, 1973 (Cr.P.C. for short), save as otherwise provided in the Act. As per the provisions of Section 280A, offences under

[2]Refer Circular No. 24/2019 dated 09.09.2019 (pages 91-94) and F. No. 285/08/2014-IT(Inv.V)/351 dated 09.09.2019 (page 68)

this chapter and other offences are to be tried by Special Courts so notified by the Central Government. Section 280B provides that Special Courts will take cognizance of the offence only when an authority authorized under the Act makes a complaint.

iv. As prosecution is a criminal proceeding, the ingredients described for particular offence in the respective section, need to be proved beyond reasonable doubt based upon the evidence gathered by Income-tax authorities. Moreover, records and documents *in original* are required for presenting before the court.

v. In the procedure for trial, a case is either '*summons case*' or '*warrant case*' as per the provisions of Cr.P.C. Section 280C defines what is a summons case, according to which an offence will be tried as a summons case if it is punishable with imprisonment not exceeding 2 years or with fine or with both. The main points of difference between the two types of cases are given in **Annexure-B** for basic understanding.

vi. Offences under the Act are non-cognizable, irrespective of provisions of Cr.P.C. Some of the offences are expressly non-cognizable as per section 279A of the Act, and others are non-cognizable being summons cases. Therefore, prosecution is initiated by filing complaint in the competent court of law and procedural provisions of Cr.P.C. relating to "*Cases instituted otherwise than on police report*" are applicable. A cognizable offence as per section 2(c) of Cr.P.C. is the one where a police officer has the authority to make an arrest without a warrant and start investigation with or without permission of the court.

vii. Although no time limit has been prescribed in the Act for initiation of prosecution, in order to make the tool of prosecution effective, it is desirable that the case should be examined and complaint should be filed at the earliest, once a prosecutable offence is detected. Unreasonable delay may weaken the case and the original and important records/evidences may get misplaced / lost with the passage of time.

viii. The nature of offence in a particular section has to be clearly understood so that its commission can be proved. For instance, in order to invoke the provision under section 276C(1), "attempt to evade tax" in itself is sufficient for prosecution and establishing actual 'evasion of tax' is not necessary, if attempt can be proved.

ix. In some sections, non-compliance of certain obligation within time prescribed constitutes a punishable offence. Subsequent compliance shall not obliterate the offence of not meeting the legal timeline, which once committed, is punishable.

x. Wherever the punishment depends on amount of any tax, penalty or interest, as may be applicable, that would have been evaded, it is necessary to compute that amount before filing complaint on the basis of available facts, because the trial process (i.e. summons case or warrant case) depends on that quantum.

xi. Commission or omission of certain acts constitute offence both under the Act as well as under the Indian Penal Code (IPC for short). However, under the Act '*culpable mental state on part of the accused*' can be presumed by the department as per section 278E thereof. Thus, onus gets shifted to the accused to prove that he did not have such mental state. Such presumption is not available under the IPC. Therefore, it is desirable that where specific provisions under the Act are available in respect of an offence, proceeding should preferably be initiated under those provisions of the Act.

xii. When an offence punishable under the IPC has been committed by any person and there is no provision for prosecution of such offence available under the Act, the prosecution under the IPC may be considered. In such cases, administrative approval of the Principal Commissioner/Commissioner or Principal Director/Director shall be obtained before instituting complaint in the appropriate court. However, this clause shall not bar filing of an FIR in cases involving offences such as obstruction to duty or physical assault, where previous sanction may not be possible due to urgency of the matter. In such cases, an intimation should be given to the Commissioner at the earliest.

4. Broad Heads of provisi submitted in the new prescribed proforma (Form A) enclosed ons of prosecution under Income-tax Act, 1961

4.1 There are five broad heads under which prosecution provisions can be classified under the Act:

(i) Provisions relating to Search and Seizure: Sections 275A, 275B, 276CCC & 278D

(ii) Provisions relating to Evasion and payment of tax, false statement in verification, falsification of books of account: Sections276C, 277 and 277A

(iii) Provisions relating to failure to furnish returns of income: Section 276CC

(iv) Provisions relating to Abetment: Section 278

(v) Other provisions: Sections 276A, 276AB, 276B, and 276BB (Failure to discharge statutory obligations). Sections 276 (removal, concealment, transfer or delivery of property to thwart tax recovery), 276D (failure to produce accounts and documents), and 278A (punishment for second and subsequent offences), section 278B (offences by companies), section 278C (offences by Hindu Undivided Families).

4.2 Certain procedures for examining prosecution cases have been laid down in the Act such as: 278AA (punishment not to be imposed in certain cases), 279(1) (prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner), 279(2) (compounding of offences).

4.3 There is a special provision u/s 136 of the Act for initiating prosecution u/s 193, 196 and 228 of I.P.C. r.w.s. 195 of the Cr.P.C.

5. Provisions relating to Search and Seizure

5.1 Section 275A: Contravention of order made under section 132(3)

This section provides that whoever contravenes any order referred to in the second proviso to sub-section (1) or sub-section (3) of section 132 shall be punishable with rigorous imprisonment and shall also be liable to fine. The orders referred to here are deemed seizure order and prohibitory order.

5.2 Section 275B: Failure to comply with provisions of section 132(1)(iib)

This section provides that if a person who is required to afford to the authorised officer necessary facility to inspect the books of account or other documents, as required under clause (iib) of sub-section (1) of section 132 and fails to afford such facility to the authorised officer then he/she shall be punishable with rigorous imprisonment and shall also be liable to fine.

5.3 Section 278D: Presumption as to assets, books of account, etc., in certain cases

This section creates a rebuttable presumption. It states that where during the course of any search made u/s 132, any money, bullion,

jewellery or other valuable article or thing (hereafter referred to as the assets) or any books of account or other documents has or have been found in the possession or control of any person or requisitioned under section 132A and such assets or books of account or other documents are tendered by the prosecution in evidence against such person or against such person and the person referred to in section 278 for an offence under this Act, the provisions of sub-section (4A) of section 132 shall, so far as may be, apply in relation to such assets or books of account or other documents. This means that such books of account, documents, money, bullion, jewellery or other valuable article or things would be deemed to be belonging to the person in whose possession or control these were found and that such books of account and documents are true and signed and so executed or attested.

6. Provisions relating to Evasion and payment of tax, false statement in verification, falsification of books of account

6.1 Section 276C(1): Wilful attempt to evade tax, etc.

(a) Under this section '**attempt to evade tax, penalty or interest chargeable or imposable or under reporting of income**' itself is a punishable offence with imprisonment and fine. Therefore, proving actual tax evasion is not necessary, if attempt (it can be an attempt which failed or partially succeeded) can be proved beyond reasonable doubt. Prosecution can be initiated even before completion of assessment in appropriate cases where attempt can be established, for example cases covered by Explanation below that section which is reproduced hereunder for ready reference.

Explanation - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) *has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or*

(ii) *makes or causes to be made any false entry or statement in such books of account or other documents; or*

(iii) *wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or*

(iv) *causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.*

(b) The circumstances as mentioned in clause (i) to (iii) of the Explanation as above, will normally arise in search and survey cases. Therefore, wherever strong and irrefutable evidence to prove *attempt to evade tax,* as defined above, are found to exist, the case should be examined to initiate prosecution at the earliest.

(c) In survey cases where evidence for tax evasion in current year is found but assessee declares such income in the return, normally penalty proceeding u/s 271(1)(c)/270A is not initiated as concealment of income is seen with respect to the return filed. However, in such cases, 'attempt to evade tax' can be proved. Hence such cases may be considered for prosecution under this section.

(d) In cases where prosecution is considered after completion of assessment, the amount of evasion for which attempt was made may be higher than the amount of addition made, as part of income might be already declared in return or the attempt to evade might be successful partially only. In some cases, this may help in invoking clause (i) of section 276C(1).

(e) In respect of applicants who approach Income-tax Settlement Commission (ITSC for short), the following cases are fit for prosecution under this section, namely:

(1) where the settlement application has been rejected or not admitted by ITSC, particularly on account of lack of true and full disclosure;

(2) where the ITSC has not granted immunity from prosecution;

(3) where immunity from prosecution stands withdrawn in terms of section 245H(1A);

(4) Where ITSC has withdrawn immunity from prosecution u/s 245H(2).

(f) This provision also allows filing of prosecution where attempt to evade only penalty independent of tax is there as in the case of penalty u/s 271DA etc.

6.2 Section 276C(2): Wilful attempt to evade payment of tax, etc.

(a) Under this section, any **'attempt to evade payment of tax, penalty or interest'** has been made a punishable offence with imprisonment and fine. The provisions would be attracted, inter alia, in following circumstances:

i. Cases where self-assessment tax is shown as payable in return filed, but not paid.

ii. Cases where demand has attained finality after conclusion of appellate proceedings but is not paid.

iii. Any amount, as per demand notice under section 156 of the Act duly served, is not paid, unless the assessee is not treated as "assessee in default" or an application, not to treat him assessee in default, is pending before appropriate authority.

iv. Cases where tax deducted at source and tax collected at source has not been paid by deductor or collector after such deduction or collection. In other words, this section can be invoked in addition to section 276B and section 276BB.

(b) Prosecution can also be filed in appropriate cases where after due service of demand notice full outstanding demand has not been paid, even if they are pending in appeal (including first appeal), provided that no stay or instalments have been granted by any Authority, and no stay application is pending before any Authority.

6.3 Section 277: False statement in verification, etc.

This section applies in the following circumstances:

i) Making 'false statement in verification'.

ii) Since return of income has to be statutorily verified, for any falsity in the return filed.

iii) If someone (including any person other than assessee) delivers an account or statement which he knows or believes to be false or does not believe to be true.

iv) Filing of false Statement of Financial Transaction or Reportable Account u/s 285BA of Act.

6.4 Section 277A: Falsification of books of account or document, etc.

(a) Where a person (first person) makes or causes to be made any entry or statement, which is false with intention to help some other person (second person), then such first person is liable for prosecution under this section.

(b) Only making or causing to be made of false entry in books by first person with the intention to help second person is required to be proved. It is not necessary to prove that the second person has actually evaded tax.

(c) This provision is inter alia applicable to persons indulging in the act of providing bogus or accommodation entry to others for tax evasion.

(d) Prosecution under this section often involves criminal conspiracy with the beneficiary (second person) which is punishable under section 120B of the IPC. The same may be explored and if the ingredients are fulfilled, the beneficiary may be included along with the first person under section 120B of the IPC in the same complaint. For instance, in the case of an accommodation entry provider to a beneficiary through dummy concerns, the entry provider along with the dummy directors are prosecutable under this section as well as section 120B of IPC whereas the beneficiary is liable for prosecution under section 120B of IPC. The beneficiary in addition may also be liable under section 276C(1) and section 277 of the Act.

7. Provisions relating to failure to furnish returns of income

7.1 Section 276CC: Failure to furnish returns of income

(a) Under this section, failure to furnish return within time allowed is punishable with imprisonment and fine. This is applicable in following circumstances:

i. Cases where return u/s 139(1) has not been filed within due date or before the end of the assessment year voluntarily, except where the tax payable on regular assessment reduced by Advance tax and TDS is less than Rs. 3,000/-.

ii. In case of companies w.e.f. 01.04.2018, where return u/s 139(1) has not been filed within due date or before the end of the assessment year voluntarily, irrespective of whether any tax was payable or not.

iii. Cases where return in response to notice u/s 142(1), 148 or 153A has not been filed within the time allowed by notice.

(b) The Supreme Court in its judgment in *Sasi Enterprises Vs. ACIT 361 ITR 163* has held that benefit of Proviso to section 276CC is available only to voluntary filing of return as required under section 139(1) of the Act, and said proviso would not apply after detection of failure to file return and after a notice under section 142(1) or section 148 is issued calling for filing of return of income.

(c) It may be noted that the punishment depends upon the amount of tax that would have been evaded, if failure was not discovered.

(d) Potential cases for prosecution under this section identified by the Systems Directorate must be examined for Prosecution by the Assessing Officer and if deemed fit, complaint may be filed in appropriate cases. Notwithstanding such identification by the Systems Directorate, the Assessing Officer may independently examine any case for Prosecution under this section in case of proven non-compliance.

(e) It is necessary to estimate the extent of tax evasion before filing prosecution under this section in order to determine whether the case falls under clause (i) or clause (ii) of the section. The Assessing Officer may determine the quantum keeping in view, the amount of tax paid in the last return filed, if any, or tax payable on income escaping assessment, if any, on the basis of information available with the Assessing Officer at the time of filing complaint etc. In case after filing prosecution complaint under clause (ii), on the basis of any information, it is found that the quantum of tax evasion exceeds the threshold provided under clause (i), the Assessing Officer/complainant may move the court for converting the summons case into a warrants case under section 259 of Cr.P.C.

8. Provisions relating to abetment

8.1 Section 278: Abetment of false return, etc.

(a) Where a person abets or induces another person to make and deliver a false account or statement or declaration relating to any income chargeable to tax, he is liable for prosecution as abettor.

(b) The quantum of punishment depends upon the tax that would have been evaded, if such declaration, account or statement were accepted as true.

(c) This provision is also applicable to professionals / persons rendering assistance to an assessee in evasion of tax.

9. Other Provisions

9.1 Section 276: Removal, concealment, transfer or delivery of property to thwart tax Recovery

This section provides that whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment and shall also be liable to fine.

9.2 Section 276A: Failure to comply with the provisions of sub-sections (1) and (3) of section 178

This section provides that a person shall be punishable with rigorous imprisonment if he:

(a) fails to give the notice in accordance with sub-section (1) of that section; or

(b) fails to set aside the amount as required by sub-section (3) of that section; or

(c) parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section.

9.3 Section 276D: Failure to produce accounts and documents

(a) Under this section, the following is punishable:

i. Failure to produce on or before due date, accounts or documents(and not failure to furnish merely some information called for) as specified in the notice u/s 142(1) of the Act.

ii. Failure to comply with direction issued u/s 142(2A) to get accounts audited.

(b) Careful drafting of notice u/s 142(1) as to its requirements, will be helpful in invoking this provision.

9.4 Section 278A: Punishment for second and subsequent offences

This section makes the second and subsequent offence punishable much more severely. It provides that if any person convicted of any offence under section 276B or sub-section (1) of section 276C or section 276CC or section 276DD or section276E or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment which may extend to seven years and with fine.

9.5 Section 278B: Offences by companies, body corporates, firms, AOPs & BOI

This section provides for punishing not only company but also 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. Such co-accused person may not be prosecuted 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. This section also provides for punishing any director, manager, secretary or other officer of the company, if it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any of them and they shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In such cases the company is punished with fine but every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Explanation–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 where 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.

9.6 Section 278C: Offences by Hindu undivided families

This section provides that where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, if the Karta proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then he shall not be liable to any punishment. It is further provided that if an offence under the Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family then such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Mandatory Cases to be examined for prosecution

10.1 The following category of cases shall be mandatorily examined for prosecution at the earliest under relevant provisions, irrespective of monetary limit-

(a) The offence that involves major fraud or scam or misappropriation of government funds or public property;

(b) The cases where it is proved that a person has enabled others in large-scale tax evasion such as through shell companies or by providing accommodation entries in any other manner as mandated in section 277A;

(c) Cases in which additions have been made on account of detection of undisclosed assets outside India including undisclosed foreign bank accounts; and

(d) The cases where the accused is linked to any anti-national/ terrorist activity and case is being investigated by CBI, Police, Enforcement Directorate or any other Law Enforcing Agency.

10.2 The examining of a case for prosecution does not necessarily mean filing of Prosecution complaint in the court, the decision regarding which needs to be taken by the Commissioner, after considering entire facts and circumstances of the case, during proceedings u/s 279(1) of the Act. ***The terms "examined" and "examining" refer to and include all actions leading to either filing of prosecution complaint in the court, or compounding the offence u/s 279(2), or taking a decision that the case is not fit for prosecution.***

11. Priority cases for prosecution

The following cases may be examined on the priority basis depending on the facts and circumstances of such cases-

(a) Cases where the assessee has filed Settlement application but is not eligible for immunity from prosecution under conditions as referred to in clause 6.1(e) above.

(b) Cases where penalty under section 270A or 271(1)(c) or 271AAA or 271AAB of the Act has been confirmed by CIT(A) or ITAT, are fit for prosecution, as confirmation of penalty establishes tax evasion and consequently, the attempt thereof.

(c) Cases where the amount sought to be evaded is more than the limit specified for stricter punishment in respect of offences in Chapter XXII of the Act, should be prioritized.

(d) In respect of the following offences, the punishment does not depend on any tax amount evaded. Therefore, these may be examined irrespective of the tax effect, on a case to case basis:

i. Offence u/s 275A for contravention of order made u/s 132(3).

ii. Offence u/s 275B for failure to comply with the provisions of section 132(1)(iib).

iii. Offence u/s 276 for removal, concealment, transfer or delivery of property to thwart recovery of tax.

iv. Offence u/s 276A for failure to comply with the provisions of sub-section (1) and (3) of section 178 of the Act.

v. Offence u/s 277A for falsification of books of account or documents.

(e) Cases of outstanding demand, confirmed at any appellate stage, with financial capacity to pay such demand; where no stay or instalments have been granted by any Authority; and no stay application is pending before any Authority.

(f) The cases which are identified from time to time as defaulters under different sections by the Directorate of Systems based on the criteria approved by CBDT.

12. Offences and Prosecutions under IPC

The Income-tax authorities may come across circumstances where initiation of prosecution under various provisions of other statutes including those of IPC may be more appropriate. Details of some of the

offences relevant to the department contained in Chapters X, XI, XVI and XVII of IPC are given in **Annexure-C**.

13. Special provisions relating to section 136-Proceedings before income-tax authorities to be judicial proceedings

Any proceeding under the Act before an income-tax authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every Income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). Details are given in **Annexure-D**

14. Immunity from prosecution

14.1 Certain provisions relating to immunity from prosecution are as under-

(i) The Income-tax Settlement Commission (ITSC) has power to grant immunity from prosecution and penalty under the Act u/s 245H. These provisions are, however, subject to certain conditions such as full and true disclosure of income by the assessee and also disclosure of the manner in which such income has been derived. The ITSC however cannot grant immunity in cases where prosecution proceedings have been instituted prior to the receipt of application u/s 245C.

Under sub-section 1 of section 245H, the ITSC earlier had the power to grant immunity "from prosecution for offence under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force". However, w.e.f. 1.6.2007, the Act has been amended whereby the ITSC can no more grant immunity for offences under the IPC, or any other Central Act except under Income-tax Act and Wealth tax Act.

(ii) Immunity from prosecution was also granted under VDIS 1997, KVSS and for Special Bearer Bond 1981, IDS-2016, PMGKY- 2016.

(iii) For obtaining the evidence of any person directly or indirectly concerned in or privy to the concealment of income/evasion of payment of tax, the Central Government has been vested with powers to tender immunity from prosecution under the Act or under IPC or under any other Central Act u/s 291(1) of the Act. Under sub-section (3) of section 291 the Central Government has also been given power to withdraw such immunity. For granting immunity and withdrawing the same some conditions have been prescribed in the said section.

14.2 Under section 292A of the Act, nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under the Act (Income-tax Act) unless that person is under eighteen years of age.

14.3 There is a bar u/s 293 of bringing any suit in any civil court against any order made under the Act. It has also been provided that "no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act."

14.4 Under section 270AA of the Act, the AO may grant immunity from imposition of penalty u/s 270A and initiation of proceedings under section 276C or section 276CC in admitted cases subject to fulfilment of conditions specified u/s 270AA itself.

15. Withdrawal of prosecution complaints

15.1 In a summons case, as per section 257 of Cr.P.C. the complainant may request the court's permission to withdraw the prosecution complaint on justified grounds, at any time before final order is passed by the court. However, no such withdrawal of complaint shall be requested without justified reasons and prior administrative approval of the CCIT or DGIT.

15.2 In a warrant case, where it is found that the prosecution instituted under the provisions of the Act and/or Indian Penal Code needs to be withdrawn in view of the change in circumstances (due to appellate orders or otherwise), the proposal for withdrawal shall be submitted to the Board for seeking the approval of the Central Government as required u/s 321 of Cr.P.C.

15.3 Section 279(2) of the Act confers the power of compounding the offence even after institution of complaint in court. In case an offence has been compounded after filing of the complaint, a copy of the compounding order u/s 279(2) shall be produced before the Trial Court through the Prosecution Counsel.

16. Some General Principles

i. Prosecution under the Act cannot be initiated except with previous sanction of the Principal Commissioner or Commissioner which also means Principal Director or Director of Income-tax as per section 2(16) of the Act.

ii. Although there is no statutory requirement for giving opportunity of being heard to the person against whom prosecution proceeding is contemplated, however, such an

opportunity should be given by the Commissioner intimating him of the proposed action and calling for accused's version on facts in respect of offences mentioned in the notice and any other offences committed, which he may offer to disclose (in view of the fact that for second/subsequent offence, higher punishment is prescribed and compounding is prohibited). This will, inter alia, facilitate verification of correctness of facts as well as ascertaining intention of the accused to have the offence compounded.

iii. There is no mandatory requirement of obtaining opinion of the counsel before granting sanction u/s 279(1). Only if there is any doubt as to whether facts of a case justify initiation of prosecution, the Commissioner may obtain opinion of a prosecution counsel considered appropriate by him. Such opinion is only for assisting the Commissioner and neither binding nor the sole deciding factor to grant sanction for prosecution.

iv. In case a legal person i.e. Company, Firm, LLP, AOP, HUF etc. is to be prosecuted for an offence, every natural person, who was in-charge of or was responsible for the conduct of the affairs of that entity at the relevant time, shall be deemed to be guilty of the offence and be treated as co-accused in the complaint filed. The Income-tax Authority may carefully examine the facts and records (such as Financial Statements, Minutes of Board's meeting(s), Resolution(s) and other relevant documents etc.) to ascertain role of any Director, Partner, Member, Manager, Secretary or any other officer of the legal person; or Karta of HUF to apply provisions of section 278B or, as the case may be section 278C, for treating such person as co-accused. However, no such person can be punished, if he is able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence as provided in sections 278B & 278C.

v. A case of an Individual shall not ordinarily be considered for initiating prosecution for any offence, if the individual concerned has attained the age of 70 years at the time of commission of the offence. However, if such individual has played active role in commission of offence, this clause shall not apply.

vi. While proposing prosecution for any offence, care should be taken to include in the proposal, notice, sanction order and

complaint, all the provisions of punishable offences that may apply in particular facts and circumstances. For example, along with section 276C(1), section 277 shall also apply, if return was filed; or for non-payment of TDS/TCS, section 276C(2) may also apply along with 276B or 276BB. In the case of Company or HUF, it is necessary to invariably invoke, section 278B or, as the case may be, section 278C.

vii. Entries in records and documents in the custody of the Income-tax Department are admissible evidence in the prosecution proceedings.

viii. For companies in liquidation (section 178 of the Act) there is a special provision under section 276A for prosecution of liquidator for failure to comply with section 178(1) and 178(3) etc.

ix. Prosecution launched under IPC cannot be compounded. It can, however, be withdrawn.

x. Non-filing of return itself is an offence, since the law has cast a duty to file voluntary return u/s 139(1) of the Act, where the assessee has taxable income. Where no such return was filed voluntarily within time, the argument that there was no wilful failure cannot be accepted unless the assessee is able to rebut the presumption of culpable state of mind.

xi. The best-judgment assessment u/s 144 of the Act does not nullify the duty to file return u/s 139(1) of the Act. The legal obligation to file a return is not washed out by the assessment. The argument that no prosecution could be instituted till the culmination of assessment proceedings cannot be accepted, when no return is filed within the prescribed time limit for filing return.

xii. Prosecution u/s 276CC of the Act is maintainable in the case of non-filing of voluntary return within time and non-compliance of statutory notices would further justify the proceedings. In the case of the firm, the argument that the firm's accounts were not finalised as an explanation for not having filed individual returns, is also not acceptable. The fact that the assessment was a best judgment one would also not make a difference.

xiii. The mere fact that appeal proceedings against assessment were pending, need not await finality for purposes of prosecution. In

fact, such a view has been taken in *P. R. Metrani Vs. CIT [2006] 287 ITR 209 (SC)* besides *Ravinder Singh Vs. State of Haryana [1975] 3 SCC 742* and *Standard Chartered Bank Vs. Directorate of Enforcement [2006] 130 Comp Cas 341 (SC)*. The argument for reconsidering the decision on the subject in *Prakash Nath Khanna Vs. CIT [2004] 266 ITR 1 (SC)* was not found acceptable. In fact, it was this decision, which was followed by the High Court for dismissal of the appeals by the accused.

xiv. As regards the presumption of culpable mental state, it is merely a rule as regards burden of proof. Though the presumption would require existence of *mens rea* with burden on the accused to prove the absence of the same and that too beyond reasonable doubt, the accused would be satisfying the law, if he proves the circumstances which prevented him from filing returns as per section 139(1) or in response to notice under section 142 or 148 of the Act. This clarification, no doubt, lightens the burden of the assessee, since even in the absence of presumption; it is the explanation for not having complied with law that would decide the ultimate outcome of the prosecution.

xv. Section 276CC mandates that an offence is committed on non-filing of the return of income in contravention to provisions of section 139(1) or in response to notice u/s 142(1) or 148 or 153A of the Act and it is totally unrelated to the pendency of the assessment proceedings except for the second part of offence where for determination of period of sentence of the offence is involved. Accordingly, the Revenue may resort to the best judgement assessment or otherwise rely upon past year income to determine the extent of the breach. In this context, reference may be made to the decision of Hon'ble Supreme Court in case of *Sasi Enterprises Vs. Asst. CIT [2014] 361 ITR 163*.

xvi. If an assessee does not submit the return of income in time as stipulated u/s 139(1), he is liable to pay interest u/s 234A or fee u/s 234F of the Act. However, the Act also provides for prosecution proceedings u/s 276CC in case of non-filing or late filing of Income-tax return in addition to the levy of interest, fee etc. In other words, mere payment of interest, fee or penalty could not absolve criminal liability of the assessee as held by Hon'ble Apex Court and Madras High Court in cases of *N.A. Mulbary Bros. Vs. CIT (1964) 51ITR 295* and *DCIT Vs. M. Sundaram (2010) 322 ITR 196* respectively. Hon'ble Supreme

Court in case of *T.S. Balaiah Vs. ITO (1969) 72 ITR 787* as held that prosecution itself could be both under the Income-tax Act and under the Indian Penal Code as the principle of double jeopardy was held inapplicable.

xvii. Hon'ble Supreme Court in case of *K.C. Builders Vs. ACIT (2004) 265 ITR 562* following its earlier decision in case of *G.L Didwania Vs. ITO (1997) 224 ITR 687* has held that where penalty is found inexigible prosecution cannot survive and has also rejected the contention of the revenue that penalty and prosecution proceedings are independent of each other. However, Hon'ble Punjab and Haryana High Court in the case of *ITO Vs. Mukesh Kumar (2002) 254 ITR 409* has pointed out that trial court is not bound by the penalty order. Keeping in view the above legal principle, the Assessing Officer and their supervisors must ensure proper drafting of legally sustainable penalty orders of the Act so that prosecution complaints filed by them survive before trial court. It is pertinent to mention here that prosecution complaint should not be solely based on penalty order but must contain all the ingredients as stipulated u/s 276CC of the Act.

xviii. When a penalty is deleted on technical ground, the merit of evidence of concealment or evasion or under-reporting or mis-reporting is not examined, in such cases prosecution u/s 276C has to be examined on merits and prosecution should be initiated if the facts so warrant.

xix. Notwithstanding anything contained hereinabove, the Commissioner of Income-tax may initiate proceedings for prosecution in any case deemed fit, keeping in view the nature and magnitude of the offence.

(Note: The Clause 16. xix has since been withdrawn by the Board. *See Page 68 of this Volume.)*

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Annexure – A

Prosecutable offences under Income-tax Act, 1961

Section	Nature of default	Punishment
275A	**Contravention of order made under section 132(1) (Second Proviso) or 132(3)** in case of search and seizure	Up to 2 years (rigorous imprisonment or RI)
275B	**Failure to afford necessary facility to authorized officer to inspect books of account** or other documents as required under section 132(1)(*iib*)	Up to 2 years (RI)
276	**Removal, concealment, transfer or delivery of property to thwart tax recovery**	Up to 2 years (RI)
276A	**Failure to comply with provisions of section 178(1) and (3)** – reg. company in liquidation	6 months to 2 years (RI)
276AB	**Failure to comply with provisions of sections 269UC, 269UE and 269UL** reg. purchase of properties by Government	6 months to 2 years (RI)
276B	**Failure to pay to credit of Central Government** (*i*) **tax deducted at source** under Chapter XVII-B, or (*ii*) **tax payable u/s 115-O(2)** or second proviso to section 194B	3 months to 7 years (RI)
276BB	**Failure to pay to the credit of Central Govt the tax collected a source** under section 206C	3 months to 7 years (RI)
276C(1)	**Wilful attempt to evade tax, penalty or interest or under-reporting of income**-	
	(*a*) where tax which would have been evaded exceeds Rs 25 lakh	6 months to 7 years (RI)
	(*b*) in other case	3 months to 2 years (RI)
276C(2)	**Wilful attempt to evade payment of any tax, penalty or interest**	3 months to 2 years (RI)
276CC	**Wilful failure to furnish** returns of fringe benefits under section 115WD/115WH or **return of income under section 139(1) or in response to notice under section 142(1)(*i*) or section 148 or section 153A -**	
	(*a*) where tax sought to be evaded exceeds Rs 25 lakh	6 months to 7 years (RI)
	(*b*) in other case	3 months to 2 years (RI)
276CCC	**Wilful failure to furnish in due time return** of total income required to be furnished by notice u/s **158BC(*a*)**	3 months to 3 years

276D	**Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)**	Up to 1 year (RI)
277	**False statement in verification or delivery of false account or statement etc. -**	
	(*a*) where tax which would have been evaded exceeds Rs 25 lakh	6 months to 7 years (RI)
	(*b*) in other case	3 months to 2 years (RI)
277A	**Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act**	3 months to 2 years (RI)
278	**Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax** -	
	(*a*) where tax, penalty or interest which would have been evaded exceeds Rs 25 lakh	6 months to 7 years (RI)
	(*b*) in other case	3 months to 2 years (RI)
278A	**Second and subsequent offences** under section 276B, 276C(1), 276CC, 277 or 278	6 months to 7 years (RI)

Annexure – B

Difference between Summons case and Warrant case

Summons Case	Warrant Case
Offence punishable with imprison-ment up to 2 years-Summons normally issued against accused	Offence punishable with imprisonment exceeding 2 years - Summons or Warrant may be issued against the accused
Trivial/minor offences – simple and speedy one stage procedure [Section 251 to 259 of Cr.P.C.]	Serious/grave offences – elaborate two stage (pre- and post-charge framing) procedure [Section 244 to 250 of Cr.P.C.]
Trial of a summons case as a warrant case is only a minor irregularity which is curable under section 465 of Cr.P.C.	The trial of a warrant case as a summons case is a serious irregularity, which would vitiate the trial if the accused has been prejudiced.
When the accused appears before the Magistrate, the particulars of the offence are stated to him and he is asked as to whether he pleads guilty. It is not necessary to frame formal charges [Section 251 of Cr.P.C.].	When, the accused appears or is brought before a Magistrate, the Magistrate shall hear the prosecution and take all such evidence as may be produced in support of the prosecution. If Magistrate is of the opinion that triable and punishable offence is made out, he shall frame in writing a charge against the accused which is read out and explained to the accused who is then asked whether he pleads guilty or has any defence to make. [Section 244 & 246 of Cr.P.C.]
The Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The accused can cross-examine any of the prosecution witnesses immediately after their examination-in-chief. (Section 254 of Cr.P.C.). The accused will be discharged only in a case instituted on complaint case and not in the case of Police Report.	During trial, evidence of all witnesses for the prosecution is first taken who can be cross-examined and re-examined. Then evidence of defence witness shall be taken who may be cross-examined and re-examined. Thus, in warrant case, the accused can cross-examine a witness twice, once before framing of charge and also during trial after charges are framed. [Sections 246 of Cr.P.C.]

Summons Case	Warrant Case
If the complainant is absent on the date of hearing the accused ***shall*** be ***acquitted***, unless for some reason Magistrate thinks it proper to adjourn the hearing of the case. Where complainant is represented by a pleader, personal attendance of complainant may be dispensed with. [Section 256 of Cr.P.C.].	If the complainant is absent on the day of hearing, the Magistrate may, in his discretion, at any time before the charge has been framed, ***discharge*** the accused if the offence is compoundable or non-cognizable. But if it is otherwise, he shall proceed with the trial and dispose of the case on merits [Section 249 of Cr.P.C.].
The accused may be convicted from the facts admitted or proved whatever may be the nature of the complaint or summons. [Section 255(3) of Cr.P.C.].	A specific charge must be framed, read and explained to the accused and he shall then be asked to enter upon his defence and produce his evidence. [Sections 246 and 247 of Cr.P.C.]
If there are sufficient grounds to justify, in a summons case, the complainant can withdraw the complaint with the permission of the court, at any time before the final order is passed. [Section 257 of Cr.P.C.]	In a warrant case, prosecution complaint can be withdrawn only with the prior approval of the Government [Section 321 of Cr.P.C.]
The Magistrate is empowered to convert a summons case into a warrant case under section 259 of Cr.P.C.	A warrant case cannot be converted into a summons case.

Annexure – C

Offences under Indian Penal Code

Chapter X of IPC: Contempt of the lawful authority of public servants

Prosecution can be initiated under various provisions of this chapter, under following circumstances:

(i) When a person absconds to avoid service of summons, notice or order (S.172) [A.O./T.R.O./A.D.I.T/I.T.I.]

(ii) When a person intentionally prevents service of summons etc.; prevents lawful affixing of notices etc.; intentionally removes any such summons etc. from any place where it was lawfully affixed; intentionally prevents the lawful making of any proclamation etc.; (S.173) [A.O./T.R.O./A.D.I.T/ I.T.I.]

(iii) When a person intentionally omits to attend at a certain place and time in response to summons or notice issued (S.174, S.174A r.w.s. 82(4) of the Cr.P.C.) [A.O./A.D.I.T/TRO]

(iv) When a person legally bound to produce or deliver up any document or electronic record intentionally omits to do so, (S.175) [A.O./A.D.I.T/TRO]

(v) When a person intentionally omits to give any notice or furnish information which he was legally bound to give or furnish on any subject to any public servant (S.176) [A.O./A.D.I.T/TRO]

(vi) When a person intentionally furnishes false information (S.177) [A.O./A.D.I.T]

(vii) When a person refuses to bind himself by an oath or affirmation (S.178); and refuses to answer any question when bound by oath to do so (S.179) [A.O./T.R.O./A.D.I.T]

(viii) When a person refuses to sign any statement made by him when required to do so (S.180) [A.O./T.R.O./A.D.I.T]

(ix) When a person intentionally makes a false statement under oath (S.181) [A.O./T.R.O./A.D.I.T]

(x) When a person gives false information to any public servant (S.182). This is of special importance to information supplied by informants in the Investigation Wing. [A.D.I.T/A.O./T.R.O.]

(xi) When a person offers resistance to taking of any property by the lawful authority of a public servant (S.183) [A.D.I.T/A.O./ T.R.O./A.A.]; and sale of such property (S.184) [A.A./T.R.O.]

(xii) When a person bids for or purchases property on behalf of legally incapacitated person (S.185) [T.R.O./A.A.]

(xiii) When a person voluntarily obstructs any public servant in discharge of public functions (S.186) [A.D.I.T/T.R.O./A.O./ I.T.I. etc.]

(xiv) When a person bound by law to render or furnish assistance to any public servant in execution of any public duty intentionally omits to do so (S.187). This may be of special importance to the Investigation Wing in case of witnesses. [A.D.I.T/Authorized Officer]

(xv) When a person, knowing that, by an order promulgated by a public servant, is directed to abstain from a certain act or take certain property in his possession or management, disobeys such order (S.188). This may be of special importance in cases of attachment orders by the Assessing Officers and prohibitory orders by the authorized officers. For the latter purpose Section 275A of the Income-tax Act is also applicable [A.D.I.T/A.O./T.R.O.]

(xvi) When a person holds out any threat of injury to any public servant or his agent (S.189 & 190). [All officers and officials]

Chapter XI of IPC: False evidence and offences against public justice

Prosecution can be initiated under various provisions of this chapter, under following circumstances:

(i) When a person legally bound by oath or by an express provision of law to state the truth fails to do so (S.191) [A.D.I.T/A.O./ TRO]

(ii) When one causes any circumstance to exist or [makes any false entry in any book or record or electronic record, or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence." (S.192)

Similar provisions are also there from Section 193 to Section 196 covering different situations of giving or fabricating false evidences. Sections 193 and 196 of IPC have been referred

to in section 136 of the Act. [Authorities before whom such offences take place.]

(iii) When a person who issues, signs or uses any false certificate making it out to be a true and genuine certificate (S.197 and 198). (For example, any certificate issued by any person/ authority in relation to say claim of deduction under Chapter VIA etc.) [A.D.I.T/A.O./T.R.O.]

(iv) When a person makes a false statement, which is receivable by law as evidence and using as true such statement knowing it to be false (S.199 and 200). (For example, false affidavits, false declaration or false statement made by assessee/related persons or witness.) [A.D.I.T/A.O./T.R.O.]

(v) When a person causes disappearance of any evidence or gives false information to screen offender (S.201); intentional omission to give information of offence by person bound to inform (S.202), for example, false tax audit report; giving false information in respect of offence committed (S.203); destruction of document or electronic record to prevent its production as evidence (S.204); false personation (S.205); fraudulent removal or concealment or transfer of property/ acceptance, receipt or claim to prevent its seizure (S.206 and 207); [A.O./A.D.I.T/T.R.O./I.T.I.]

(vi) When a person intentionally insults or interrupts to public servant sitting in judicial proceeding (S.228). This section has been referred to in section 136 of the Act. [Authorities before whom such offence take place.]

Chapter XVI of IPC: Offences Affecting the Human Body

(i) When a person voluntarily causes hurt or grievous hurt or deters/prevents any public servant from discharging his duties (S.333). [All officers and officials.]

Chapter XVII of IPC: Offences against Property

(i) When a person entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust” (S.405). [Authorities before whom such offence take place.]

Annexure – D

Special provisions relating to Section 136

Section 136: Proceedings before income-tax authorities to be Judicial Proceedings

Any proceeding under this Act before an income-tax authority shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Broadly it means that:

i. Proceedings before Income-tax authorities are deemed to be 'judicial proceedings';

ii. Commission of offences u/s 193, 228 and 196 IPC before Income-tax authorities tantamount to commission of offences in a judicial proceeding;

iii. In this regard, Income-tax authorities are deemed to be 'civil courts' for the purpose of section 195 of Cr.P.C. but not for the purpose of Chapter XXVI of Cr.P.C. That is to say, if such offences are committed before Income-tax authorities in judicial proceedings, they are Civil Courts for the purpose of launching prosecution u/s 195 Cr.P.C.

iv. Section 195 of Cr.P.C. deals with 'Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.' Chapter XXVI of Cr.P.C., comprising sections 340 to 351, deals with 'Provisions as to offences affecting the administration of justice' and is applicable for Criminal Courts.

v. The relevant provisions for section 136 of the Act are section 195(1)(b)(i) and section 195(3) of the Cr.P.C. for 'civil courts';

vi. Hence, Income-tax authorities, acting under these sections, have to file a complaint before the competent judicial authority. It is not necessary to file a police complaint. Since they are not declared to be 'criminal courts', they cannot punish the persons accused of such offences, but have to file complaint in a court of law.

vii. In case of such offences committed before C.I.T/C.I.T.(A), the complaint has to be filed by the C.I.T./C.I.T.(A) concerned or by 'some other public servant to whom he is administratively sub-ordinate' [section 195(1)(a) of Cr.P.C.]

viii. In the absence of this section, the Departmental Authorities would have had to (a) file a police complaint, or (b) file a complaint in the Appropriate Court like any other complainant in which case the complainant is to be examined on oath by the Magistrate before admission of the complaint.

Similar provisions occur u/s 245L for Income-tax Settlement Commission, u/s 245U(2) for Authority for Advance Ruling and u/s 255(6) for ITAT.

Confidential

F.No.285/08/2014-IT(Inv. V)/351[3]
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
****

Room No. 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 09.09.2019

To,

The Pr. CCsIT/ CCsIT/ Pr. DGsIT/DGsIT

Madam/Sir

Subject: Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 dated 27.06.2019-reg.

The undersigned is directed to refer to the Para 16(xix) of the Guidelines for identifying and examining Prosecution cases (Other than TDS/TCS related) under the Income-tax Act, 1961 issued vide F.No.285/08/2014-IT(Inv. V)/155 dated 27.06.2019, which is reproduced as hereunder:

"*16(xix). Not with standing anything contained here in above, the Commissioner of Income-tax may initiate the proceedings for prosecution in any case deemed fit, keeping in view the nature and magnitude of the offence."*

2. Para 16 (xix), as reproduced above, is hereby withdrawn with immediate effect.

3. Pr. CCsIT/CCIT/Pr. DGsIT/DGsIT are requested to circulate the above, among all the officers of their region.

4. This issues with the approval of the Competent Authority.

Yours faithfully,
Sd/-
(Mamta Bansal)
Director, Inv. V
CBDT, New Delhi

[3]Refer relevant portion of the Guidelines for identifying and examining cases (other than TDS or TCS related) under Income-tax Act 1961 dated 27.06.2019 at page no. 59

Confidential/Strictly for Departmental Use
F. No. 285/08/2014-IT (Inv. V)/155 dated 27.06.2019

Standard Operating Procedure for examining cases for Prosecution (other than TDS/TCS related) under the Income-tax Act, 1961

1. Prosecution under Income-tax Act, 1961(hereinafter referred to as 'the Act') is an important tool to be used as deterrence against tax evasion. Recently revised Guidelines for identifying and examining cases for initiating prosecution for offences have been issued on 27.06.2019 vide F. No. 285/08/2014-IT (Inv. V)/155. These guidelines should be studied along with this Standard Operating Procedure (SOP) which dwells more on procedural part.

1.2 The procedure for examining of cases for prosecution needs to be uniform and streamlined. This SOP lays down a detailed stage wise procedure along with roles of various authorities in handling prosecution matters (other than TDS/TCS related prosecution u/s 276B and 276BB of the Act). The SOP should be followed as far as possible and shall apply prospectively to all prosecution proceedings (except prosecution proceedings u/s 276B & 276BB of the Act) w.e.f. 01.07.2019 in respect of all cases where sanction u/s 279(1) has not yet been granted. In all such cases the proposals should, henceforth, be submitted in the new prescribed proforma (Form A) enclosed as **Annexure-1** with this SOP. However, prosecution proposals which have already been submitted by the Assessing Officer (AO for short) to the Commissioner, need not be revised but rest of the procedures should be as per this SOP.

2. General reasons for non-acceptance of the reasons submitted as

(i) Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence or crime, as defined in the relevant provision, has to be proved beyond reasonable doubt by the complainant.

(ii) Even though presumption of culpable state of mind is available u/s 278E, the offence under relevant provision has to be made out against the accused on facts of the case.

(iii) Where offence is by a legal person i.e. Company, Firm, LLP, AOP, HUF etc., natural persons who are in-charge of affairs of that entity are also to be proceeded against as co-accused in accordance with the provisions of section 278B and 278C. The

necessary information and evidence with regard to roles of such persons shall be brought on record to derive a well-reasoned satisfaction. For detailed guidance in this regard **Annexure-2** should be referred to.

(iv) In criminal proceedings, all documentary evidence has to be proved before the court, therefore, records and documents *in original* are required to be preserved for production before the court.

(v) As far as practicable, it may be ensured that all pages in a multi-page document like submissions, statement etc. are signed by the person duly authorized to do so. If the case has potential of prosecution, it is even better if the papers are signed by the assessee and not the Authorized Representative.

(vi) Although no time limit has been prescribed in the Act for initiation of prosecution, it is desirable that proceeding is initiated and complaint filed at the earliest once a prosecutable offence is detected. Unreasonable delay may weaken the case and the original and important records, evidences may get misplaced/lost with passage of time.

(vii) The entire work relating to prosecution should be done through the Prosecution Module in ITBA, once it is fully functional. This module provides facility for all actions like submission of proposal, issue of notice, sanction order u/s 279(1), uploading of complaint filed and tracking of subsequent actions.

(viii) In respect of existing prosecution cases, the necessary particulars are to be filled up and scanned documents should be uploaded in the Module.

(ix) If the defaulter is a public servant referred to in Section 197 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and the default is related to discharge of his official duties, then as required under that section, the AO should seek approval of State Government or Central Government as the case may be. The AO should follow up for expediting the required sanction of the Central Government or the State Government, as the case may be.

2.1 The examining of a case for prosecution does not necessarily mean filing of prosecution complaint in the court, the decision regarding which needs to be taken by the Commissioner, after considering entire facts and circumstances of the case, during proceedings u/s 279(1) of the Act. The term examining/examined refers to and includes all actions leading to -

a) filing of prosecution complaint in the court, or

b) compounding the offence u/s 279(2) before or after filing of the complaint with court, or

c) taking a decision that the case is not fit for prosecution.

3. Identification of cases & institution of proceedings

3.1 Para 11 of Guidelines for identifying and examining the Prosecution cases (other than TDS/TCS related) issued vide F. No**.** 285/08/2014-IT (Inv. V)/155dated 27.06.2019 provides for certain categories of cases which should be examined for prosecution on priority. As per clause (f) of Para 11, the Directorate of Systems based on the criteria approved by the CBDT may also identify defaulters under different sections from time to time, which also need to be examined on priority. Other cases for examining for prosecution under various sections may be selected by the field, based on the above-mentioned Guidelines.

3.2 Field Authorities responsible for identification and institution of prosecution proceedings

3.2.1 Investigation Directorates

i. The Officers of Investigation Directorate (i.e. DDIT/ADIT/ ITO(Inv.)in-charge) conducting search shall be responsible for examining cases for prosecution and initiating proceedings under sections 275A (Contravention of order made under sub section 3 of section 132) and 275B (Failure to comply with provisions of clause (iib) of sub section (1) of section 132) of the Act.

ii. Based upon the evidence collected during Search/Survey, he/she shall also be responsible for identification of potential cases as well as for filing complaints for offences under sections 276C(1) [particularly cases covered by the *Explanation* to the said section], 277, 277A, 278 etc. wherever ingredients of those sections are duly satisfied. In other cases, they should pass on specific information along-with the evidences for necessary action by the Central/Assessment Charges.

3.2.2 Directorate of Intelligence & Criminal Investigation

The Officers of Directorate of Intelligence & Criminal Investigation (i.e. DDIT/ADIT/ITO) shall be responsible for examining of cases for prosecution under sections 277, 277A and 278 of the Act for furnishing

false statement of financial transaction or reportable account u/s 285BA of the Act. Further during survey operations, cases may come to light where offences u/s 276C(1) or any other provision of the Act have been committed.

3.2.3 Assessment including Central Charges & CIT(A)

i. The Assessing Officer concerned shall primarily be the authority responsible for identification of all potential cases for prosecution under various provisions of Chapter XXII of the Act including sections 276A, 276C(1), 276C(2), 276CC, 276D, 277, 277A and 278.

ii. There is greater scope of identifying potential cases for prosecution u/s 276C(1), 276C(2), 276CC, 276D, 277, 277A, 278 etc. in Central Charges having jurisdiction over search and seizure cases.

iii. Even though, the responsibility for identification of potential cases u/s 276B & 276BB rests with TDS/International Taxation charges, other AOs may also come across such defaults. Upon such identification, they shall intimate the jurisdictional TDS charges at the earliest.

iv. Investigation in potential cases shall be taken to logical conclusion with a view to institute prosecution proceedings at the earliest.

v. Where completion of assessment is considered necessary to strengthen the evidence etc., for initiating prosecution proceedings, assessment proceedings shall be completed expeditiously.

vi. If any offence is noticed by the CIT(A) during the appellate proceedings or by the Pr. Chief Commissioner, Chief Commissioner, Pr. Director General, Director General, Commissioner during the revision or any other proceeding, the concerned CIT(A) or the Commissioner or any other Income-tax authority, as the case may be, may direct the jurisdictional AO to examine the case for prosecution under the appropriate sections.

vii. If any Income-tax authority, during any proceeding before him/her, notices that an offence under chapter XXII of the Act has been committed by a person on whom he/she does not have jurisdiction, he/she will pass on the information, through his/her Controlling Officer, in the form of a self-

contained report to the Commissioner having jurisdiction over the case immediately upon noticing such offence.

viii. There is no bar on initiating prosecution proceedings by the AO either before the commencement of assessment proceedings or during the pendency of assessment proceedings or after the completion of assessment proceedings.

4. Proposal for seeking previous sanction

i. No prosecution complaint under the Act can be filed without previous sanction from Commissioner u/s 279(1) of the Act. The authority proposing the prosecution (such officer referred to as Complainant Officer or CO for short) should examine the records to bring the facts in a self-contained proposal for sanction u/s 279(1) of the Act. The proposal may be prepared in the format as per **Form A** enclosed as **Annexure-1** to this SOP so that all required particulars are included.

ii. As far as possible, the proposal should be submitted on ITBA Module, so that notice u/s 279(1), order etc. may be generated through ITBA Module.

iii. The CO should submit the proposal for each assessment year and each offence separately. However, one proposal may include more than one offence for the same assessment year in case the facts are inextricably linked. For example, if attempt to evade tax u/s 276C(1) is detected based on the return of income filed and duly verified as per section 140 of the Act, then offence u/s 277 of the Act is also invariably committed and in such cases the proposal for prosecution may include both the sections.

iv. For preparing the proposals of prosecution in the cases of Company/Firm/LLP/AOP/HUF etc. natural persons who are in-charge of affairs of those entities can also be proceeded against in accordance with provisions of section 278B and 278C. For careful selection of co-accused certain basic details about roles of various persons in conducting affairs of legal persons are required. Therefore, such details as discussed in Annexure-2, may be collected by the AO from assessee or other sources, while examining prosecution complaint in such cases.

v. For each proposal entered in ITBA, a unique prosecution ID shall be generated for identification of case. The same ID shall continue for entire period till the case is closed by way of

dropping, compounding before filing complaint or on disposal by court.

vi. The Range/Unit Head on receipt of Form A in ITBA shall examine the proposal received offline also. It is the responsibility of Range/Unit Head to ensure that the prosecution proposal is proper and complete in all respects. If there is any deficiency, he/she should send it back to the AO for removing the deficiency and re-submit the proposal at the earliest. He/she shall forward the complete proposal after duly checking the same to the Commissioner on ITBA as well as in the offline mode.

5. Sanction u/s 279(1)

i. The Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he/she should issue show cause notice to all proposed accused and co-accused to ascertain the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. The Commissioner may also seek any additional facts/documents/information as he/she deems fit. The show cause notice should be drafted in such a manner that it enables him to take a fair and judicious decision for granting sanction u/s 279(1) in the case of accused as well as each of the proposed co-accused, if any.

ii. If there are more than one accused or co-accused in case of company, firm, HUF etc., the show cause notice seeking above clarification should be sent to all the accused or co-accused. The Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he may seek clarification with regard to the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. He may also seek any additional facts/documents/information as he deems fit.

iii. After receiving reply or expiry of time granted, the Commissioner may consider whether prosecutable offence on part of accused/co-accused is made out on facts gathered.

iv. If Commissioner is satisfied of ingredients of the offence, he may grant previous sanction u/s 279(1) of the Act through a speaking order duly recording facts of the case and evidences relevant thereto. The application of mind and fairness of decision should reflect in the order. If applicable, the provisions

of section 278AA should be kept in mind before giving any sanction u/s 279(1).

v. If on consideration of facts and reply of accused or co-accused, the Commissioner is in doubt whether prosecutable offence is made out, he may seek opinion of Special Public Prosecutor regarding fitness of case for prosecution. Such opinion is only for assisting the Commissioner and is neither binding nor the sole deciding factor to grant sanction for prosecution.

vi. It shall be ensured that sanction order contains names of all accused and co-accused, Assessment year and correct sections under which offences were committed, role(s) of each co-accused, reasons for sanction of prosecution under relevant provisions for which sanction is granted, keeping in view the provisions of section 278B/278C of the Act in case of Company, Firm, HUF etc.

vii. Separate sanction order should be passed for each complaint.

viii. While considering a case of second and subsequent offence as mentioned u/s 278A of the Act, the Commissioner should incorporate particulars of earlier offence while according sanction u/s 279(1).

ix. Where the Commissioner, after considering reply of accused or otherwise, is of the opinion that the case is not fit for prosecution, he may record the reasons for his conclusion and communicate the decision not granting sanction to the authority who submitted proposal for prosecution.

x. The activity of generation of show cause letter and passing the order u/s 279(1) of the Act should be done on ITBA as far as possible. In case the Commissioner has issued the show cause notice/sanction order offline the same should be uploaded on ITBA for proper tracking and record of prosecution proceedings.

xi. Prosecution should not ordinarily be initiated against a person who has attained the age of 70 years at the time the offence was committed. However, if such individual has played active role in commission of offence, this clause shall not apply.

6. Preparation of complaint

i. The Commissioner shall forward copy of sanction order to the CO for record and as many additional copies as are required to be filed in the court with complaint as per rules of the court. One copy of the order u/s 279(1) shall also be sent to the

Nodal Officer in Prosecution Cell, responsible for monitoring of prosecution matters, if the prosecution cell is functional.

ii. On receipt of previous sanction u/s 279(1), the CO shall send all relevant documents to Special Public Prosecutor (SPP for short) for drafting of the complaint. The CO shall vet the draft prepared by SPP and correctness of facts and figures in the complaint shall be the responsibility of CO. In complex cases, the CO may involve Unit/Range Head in vetting the draft complaint.

iii. Complaint should bring out clearly the facts regarding commission of the alleged offence and fulfillment of ingredients as provided in the Act, chronology of events leading to the commission of offence(s), evidence collected during investigation etc. The correct names and complete addresses of the accused and co-accused person(s), if any, should be mentioned to prevent delay in service of summons/warrant etc., by the court.

iv. The complaint should incorporate the reasons recorded in the sanction u/s 279(1) and the section(s) under which the prosecution proceedings are initiated. The provisions of section 278E may suitably be incorporated in the complaint to strengthen the case.

v. If the offence is committed by a company/Firm etc. or HUF, role(s) of persons as mentioned in section 278B or 278C of the Act has to be discussed in the complaint and the name of such persons, against whom sanction has been accorded under section 279(1), should be included as co-accused (Annexure-2).

vi. In case the offence is second or subsequent (in terms of section 278A), this fact should be incorporated in the complaint.

vii. In case, any prosecution proceeding is pending for similar offence or it has been compounded, these facts may also be incorporated in the complaint.

viii. The complaint should be duly signed and verified by the CO.

ix. The following documents are normally required to be annexed to the complaint:

(a) Sanction order u/s 279(1) in original.

(b) List of documentary evidences including depositions, submissions etc. to prove the offence.

(c) List of witnesses on which departmental case depends.

(d) Any other documents required as per procedure of the court.

7. Filing of Complaint

The CO should ensure that:

i. The complaint is filed in the court of jurisdiction

ii. The relevant documents are attached

iii. The complaint is signed by CO concerned

iv. The particulars of complaint number and date of filing are intimated to the sanctioning authority and the Nodal Officer in Prosecution cell.

v. As soon as the complaint is filed the complaint number should be entered on the ITBA. Office copy of complaint (with complaint number) duly signed by the CO should be scanned and uploaded on the ITBA.

8. Safe Custody of Documents

i. The original documents and other evidence, based on which the offence is sought to be proved, should be kept in the personal safe custody of the CO. In the case of transfer/decentralization of case, the documents should be duly handed over and mentioned in the handing over note. It would be desirable to keep scanned images in soft form and print out may be used for day to day work.

ii. In order to ensure evidentiary value of document, it is necessary that the relevant documents are identified and maintained, inter alia, as per the requirements of provisions of Indian Evidence Act.

iii. In case of digital evidence, necessary precautions are to be taken as per the provisions of the Information Technology Act, 2000 and Indian Evidence Act, 1872 along with the detailed guidelines provided in Digital Evidence Investigation Manual, 2014.

9. Compounding application before filing of complaint

i. Where the person(s) proposed to be proceeded against submits that he/she would opt for compounding of the offence, the

Commissioner may ask such person to submit evidence of filing the compounding application within reasonable time. The filing of complaint should not be delayed beyond a reasonable period on such grounds.

ii. In a case where the compounding application has been filed, the Commissioner should keep the proposal for prosecution pending till a decision is taken on the compounding application. In such cases, the Competent Authority should dispose of the compounding application expeditiously.

iii. Where the compounding of offence is rejected by the Competent Authority during the pendency of proposal for sanction u/s 279(1), the Commissioner should proceed with the proposal for sanction u/s 279(1) without any delay.

iv. Where sanction u/s 279(1) is given before receipt of the compounding application, the filing of the complaint should not be delayed.

10. Procedure after filing complaint

i. The filing of complaint in court is merely the beginning of the prosecution process. The ultimate objective is to secure conviction of the accused. Therefore, regular follow up of complaint cases in court and coordination with Prosecution Counsel to ensure timely attendance of witness(es) and production of evidences is key to achieve the objective.

ii. For this purpose, a "Prosecution Cell" (PC) may be created in the office of Pr. CCIT with an officer of the rank not less than Addl. CIT working as Nodal Officer under the overall supervision of CIT (Judicial). For other stations, the work of PC can be assigned to officers/officials as deemed appropriate by respective CCIT having jurisdiction over the station. The PC will monitor the progress of prosecution cases and co-ordinate with Prosecution Counsel, field officers and the Court for ensuring proper representation before the Court.

iii. The Prosecution Cell shall keep track of prosecution proceedings in the court. They should collect the cause list showing fixation of date for hearing and take necessary steps to ensure proper and timely representation before the court.

iv. The Inspector(s) shall remain present through the hearings and note down the requirements of each case in consultation with the Prosecution Counsel representing the case.

v. Timely intimation to the CO and witnesses for ensuring evidence in the court to preclude unnecessary adjournments is necessary.

vi. The record of the specific reasons for adjournments such as non-availability of officers on the day fixed for trial, non-availability of witness, non-availability of prosecution counsel or adjournment sought by the accused should be maintained. This record will also be helpful at the time of sanctioning bills of prosecution counsels vis-a-vis effective hearings. Record of proceedings may also be available online and in such cases the same may be downloaded from the court website for record.

vii. The Prosecution Cell/CO/AO should keep in touch with the prosecution counsel.

viii. The Prosecution Cell should keep track of the stay granted by the Higher Courts, if any, and advise the field authorities to take necessary steps to get the same vacated.

11. Timelines for institution of proceedings

11.1 Section 468 of Criminal Procedure Code specifically excludes offences committed under various provisions of the Act from the purview of limitation. The Act also does not provide any time limit for instituting prosecution for any offence under Chapter XXII. It is, however, desirable that the prosecution in deserving cases is instituted at the earliest once the offence is detected. The efforts should be made to complete the entire process beginning from the submission of proposal by the CO up to the grant of sanction u/s 279(1) of the Act within three months. Once the sanction u/s 279(1) has been accorded, the institution of complaint should be done as soon as possible.

11.2 In the case of offence u/s 275A and u/s 275B, the investigating authority concerned should submit the proposal for sanction u/s 279(1) of the Act before the Pr. Director of Income-tax (Inv.) incorporating the facts, chronology of events, the list of evidences and witnesses in a self-explanatory form as soon as the offence comes to his notice. In such cases, the decision regarding sanction u/s 279(1) is to be conveyed by the Pr. Director concerned, as far as possible, within 15 days from receipt of the proposal from investigating authority and wherever such sanction has been accorded, prosecution should be instituted as soon as possible.

11.3 Wherever the Department is not satisfied with the order of the Trial Court, appeal in the deserving cases is required to be filed by the CO in Sessions Court within 60 days with the approval of Commissioner.

11.4 Thereafter, if the Department is not satisfied with the order of the Sessions Court, appeal in the deserving cases is required to be filed by the incumbent officer holding the office of the CO, in the High Court within 90 days with approval of Pr.CCIT/CCIT/Pr.DGIT/DGIT.

11.5 For any appeal against any order of High Court, the existing timeline and procedure for filing Appeal/SLP in the Supreme Court should be followed.

12. Prosecution Provisions under the Income-tax Act, 1961 & Indian Penal Code, 1860

12.1 There are offences for which specific prosecution provisions exist under the Income-tax Act, 1961. Some of such offences may also constitute an offence under the Indian Penal Code, 1860 (IPC for short). As mentioned in para 3(xi) of Guidelines dated 27.06.2019,commission or omission of certain acts, constitute offence both under the Act as well as under the IPC. However, under the Act '*culpable mental state on part of the accused*' can be presumed by the department as per section 278E thereof. Thus, onus gets shifted to the accused to prove that he/she had no such mental state. Such presumption is not available under the IPC. Therefore, it is desirable that where specific provisions under the Act are available in respect of an offence, proceedings are preferably initiated under those provisions of the Act. However, if the same set of acts/omissions also amount to an offence under IPC, the same can also be invoked in suitable cases in the same complaint. A list of prosecution provisions under the Income-tax Act, 1961 is given in Annexure-A & under the IPC is given in Annexure-C of the Guidelines dated 27.06.2019.

12.2 When an offence punishable under the IPC has been committed by any person and there is no provision for prosecution of such offence available under the Act, the prosecution under the IPC may be considered. In such cases, administrative approval of the Principal Commissioner/Commissioner or Principal Director/Director shall be obtained before instituting complaint in the appropriate court. However, this clause shall not bar filing of an FIR in cases involving offences such as obstruction to duty or physical assault, where previous sanction may not be possible due to urgency of the matter. In such cases, intimation should be given to the Commissioner at the earliest after filing the FIR. Appropriate entries of such FIR and subsequent proceedings should be made in the prosecution module of ITBA.

13. Provisions relating to procedure for initiating prosecution under Income-tax Act, 1961

Certain important provisions have been laid down in the Act, which relate to procedure for initiating prosecution, which are as under:

13.1 Section 279(1): Prosecution to be at instance of Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner.

The Act provides that a person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority under section 269UA(c). However, the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

13.2 Section 279(2): Prosecution can be compounded by the Pr. Chief Commissioner or Chief Commissioner or Pr. Director General or Director General.

Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Pr. Chief Commissioner or Chief Commissioner or Pr. Director General or Director General.

13.3 Section 278AA: Punishment not to be imposed in certain cases.

Notwithstanding anything contained in the provisions of section 276A, section 276AB, or section 276B, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure.

13.4 Section 292C: Presumption as to assets, books of account, etc. in search and survey cases.

Though this provision is not in the "Chapter XXII Offences and Prosecutions" and appears in the "Chapter XXIII Miscellaneous" it may be invoked in the cases of search u/s 132 or survey u/s 133A and may be used in the complaints filed in the courts. It provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or

control of any person in the course of a search u/s 132 or survey u/s 133A, it may, in any proceeding under this Act, be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

13.5 Section 278E: Presumption as to culpable mental state.

This is a very useful provision and, as stated earlier, must be invariably used wherever the facts so warrant. It provides that in any prosecution for any offence under this Act which requires a 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. For the purposes of this section, 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. However, in this section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

This provision is to be read in the context of provisions u/s 101 and 103 of the Evidence Act which stipulate that the burden of proof lies with the person who wishes the Court to believe in the existence of a particular fact "unless it is provided by any law that the proof of that fact shall lie on any particular person". The Income-tax Act is one such "any law", within the meaning of section 103 of the Evidence Act, which provides for presumption of culpable mental state of the assessee/witness. The burden of proof to that extent shifts to the accused in relation to prosecutions filed under Income-tax provisions. But this benefit is not available if prosecution is initiated under IPC.

14. Withdrawal of prosecutions

14.1 There is no specific provision under the Act regarding withdrawal of prosecution proceedings already instituted. However, in a summons case, as per section 257 of Cr.P.C., complainant may request the court's permission to withdraw the prosecution complaint on justified grounds, at any time before the final order is passed by the court. Such withdrawal of complaint shall not be requested without prior administrative approval of the CCIT or DGIT. The Commissioner shall submit proposal to the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned, who after recording reasons for doing so, may approve withdrawal of the complaint.

14.2 In a warrant case, where it is found that the prosecution instituted under the provisions of Act and/or IPC needs to be withdrawn in view of the change in circumstances (due to appellate orders or otherwise), the proposal for withdrawal shall be submitted to the Board for seeking the approval of the Central Government as required u/s 321 of Cr.P.C.

14.3 In either case, after receiving approval of Pr.CCIT/CCIT/ Pr.DGIT/DGIT/Central Government, the Commissioner shall authorize the CO to approach the court through the prosecution counsel to withdraw the prosecution complaint. A report of all such cases where withdrawal of prosecution has been approved shall be sent to the Board on monthly basis.

14.4 Section 279(2) of the Act confers the power of compounding the offence even after institution of complaint in court. In case an offence has been compounded after filing of the complaint, a copy of the compounding order u/s 279(2) shall be produced before the Trial Court through the Prosecution Counsel seeking courts permission for withdrawal of the complaint.

15. Reporting Mechanism

The management of all tasks relating to prosecution on ITBA is mandatory. The present system of monthly and quarterly progress reports on prosecution will continue till such time an alternative online system of reporting is prescribed by the Board. The Pr. CCIT, through the Prosecution Cell, if functional, or otherwise will be the repository of all data regarding prosecution in his charge.

16. The timelines given in this SOP do not provide limitation period, but they serve the purpose of expediting the prosecution proposals.

Annexure – 1

FORM A

Proforma for submitting Prosecution Proposal u/s 279(1) of Income-tax Act, 1961

1. Section(s) under which prosecution is proposed:
2. Details of Accused:
   - i) Name :
   - ii) Address :
   - iii) PAN :
   - iv) Status :
   - v) Date of Birth/Incorporation :
3. Details of proposed co-accused (if any) u/s 278B/278C of the Income-tax Act, 1961i.e. partners, directors, karta, principal officer, DDO etc. who are proposed to be prosecuted, in the case of firm, company, HUF, AOP or BOI etc.

Name of the Director/ Partner/ Principal Officer, etc. (i)	Position Held (ii)	Date of Birth (iii)	PAN (iv)	Residential address of the person (v)

4. Assessment Year
5. Date of filing of return
6. Name & designation of the person who verified the return
7. Total income declared as per the return
8. Date of assessment order, if assessment completed
9. Section under which assessment made
10. Assessed income
11. Sections of other laws such as IPC which are also proposed for simultaneous prosecution
12. Status of proceedings of appeal of order, if any, relating to offence
13. Status of penalty proceedings, if any, relating to offence
14. The date of sanction order u/s 197 of Cr.P.C. from Government, in the case of a public servant

15. Details of evidence required to prove the offence
    i) Return of income/Revised return of income
    ii) Admission
    iii) Oral evidence of third party
    iv) Other Documentary evidence
    v) Any other evidence (Please specify)
16. Name and address of witnesses required to prove prosecution case
17. Name of the Approver in the case, if any
18. i) Whether any prosecution proceedings for offence under same provision instituted earlier?

    ii) If yes, Complaint Number and date of filing, status of prosecution
19. If the provisions of section 278A are attracted, following details;
    i) Complaint Number and date of filing of earlier complaint.
    ii) Sections under which conviction has taken place.
    iii) Date and other details of conviction order.
    iv) Enclose the copy of conviction order.
20. A note containing chronology of events with detailed facts indicating offence as defined in the relevant section (use annexure, if needed). See Appendix to this form for suggestive contents of the note.
21. Compounding Status:
    i) Whether compounding petition for this year or any other year was filed?
    ii) If yes:

Sr. No.	The year(s) for which compounding application(s) were filed	Chargeable section(s) of offence under Income-tax Act, 1961 against which compounding application(s) filed	Status of the application

22. Details of the Income-tax Authority(ies) passing relevant order/recording statement etc.
    (i) Name (s) :
    (ii) Present designation :
    (iii) Present posting :

(iv) Employee code, if available :

(v) Permanent address, if available :

Date: _____ **Signature** : _____

Name : _____

Employee Code : _____

Designation : _____

Permanent address : _____

Instructions for filling up this Form-

i) No column of the Form should be left blank. If the column is not applicable, the same shall be clearly mentioned.

ii) At Sr. No. 3, the details of the co-accused to be filled-in on the basis of details gathered as per procedure laid down in Annexure-2 of SOP.

iii) The original copies of prosecution documents mentioned in Sr. No. 15 should be kept safely in personal custody of the CO and a proper handing over of such documents should be done at the time of change of incumbent.

iv) Following facts may be incorporated in Sr. No. 20 –Specific defaults constituting offence under relevant section

- Facts which prima facie lead to conclusion (for guidance, see appendix) about commission of the offence
- Brief explanation for the default, if any, submitted by the accused and observation of the CO on factual accuracy of the same
- The relevance of various evidence in proving the offence
- The role of each proposed witness in proving the offence
- The reasons for proposing names of different co-accused at Sr.No.3, if any, for Prosecution.

vi) Income-tax Authorities to be mentioned in Sr. No.22 would include those who have signed important documents or passed the relevant order which are required for proving the offence such as officers passing assessment orders; recording statements; signing notices u/s 142(1), 148, 153A for prosecution u/s 276B etc.

vii) In Sr. No.1 & 11 include all the sections for which sanction u/s 279(1) is being sought.

Appendix

Note: Suggestive contents in respect of some provisions

Section 275A - Contravention of order made under sub section (3) of section 132.

i. Offence u/s 132(3) or second proviso to 132(1)
ii. Date of Warrant u/s 132
iii. Name of the Person in whose case search was conducted
iv. Address of the premises searched
v. Date of Prohibitory Order (PO)
vi. Name & Designation of the Officer issuing the PO
vii. Particulars of the place put under prohibition
viii. Contents placed in the PO
ix. Name and other details of the persons on whom the PO order was served and date of service
x. Date on which the contravention of PO was detected
xi. Nature of contravention
xii. Name & Designation of the Officer who detected contravention

Section 275B - Failure to comply with the provisions of Clause (iib) of sub-section (1) of section 132.

i. Date of Warrant u/s 132
ii. Name of the Person in whose case search was conducted
iii. Address of the premises searched
iv. Date of Search
v. Particulars of the person found to be in possession or control of books of accounts maintained in form of electronic records (including name, address, designation/relation to searched person)
vi. Description of offence (how the person at (v) above restricted access/denied facility to inspect such books of accounts)
vii. Documentary Proof relied upon in this regard (statements/ *panchnama*) (upload PDF)
viii. Name & Designation of the Authorised Officer at the premises

Section 276 - Removal, concealment, transfer or delivery of property to thwart tax recovery.

i. Name of the assessee/defaulter
ii. Name & Designation of the TRO
iii. Section under which Certificate has been drawn by TRO
iv. Date of issue of Certificate
v. Date of Service on the defaulter/assessee
vi. Mode of service
vii. Details of the property w.r.t which certificate has been issued by TRO and has been alienated to thwart recovery
viii. Nature of offence (brief description)
ix. Documentary Proof w.r.t. alienation of property involved, if any. (upload PDF)

Section 276A - Failure to comply with the provisions of sub-sections (1) and (3) of section 178.

i. Contravention of section involved
   a. 178(1)
   b. 178 (3)
ii. Name/PAN of the Company is liquidation
iii. Name, Address & PAN of the liquidator
iv. Date of appointment of liquidator

In case, section 178(1) is involved

i. Last date for notifying the Assessing Officer of his appointment as the liquidator.
ii. Document or order w.r.t. appointment of liquidator containing date of appointment

In case, section 178(3) is involved

i. Date of notice of appointment given by Liquidator to the Assessing Officer
ii. Date of Notification by the Assessing Officer to the Liquidator of the amount to be set aside on account of taxes due or likely to be due.
iii. Amount notified by the Assessing Officer
iv. Details of the failure on part of the Liquidator to set aside the assets of the company in liquidation equivalent to the amount notified by the Assessing Officer.

<u>Section 276C(1)</u> - Wilful attempt to evade tax, penalty and interest

i. Whether it is a case of attempt to evade any tax, penalty or interest.

ii. Whether it is a case of evading only penalty independent of tax for example section 271DA.

iii. Whether the assessee has already evaded the tax, penalty or interest or it is an attempt.

iv. What is the amount of tax, penalty or interest sought to be evaded or under-reported or mis-reported.

v. Whether it is case covered in any one of the clauses of explanation to Section 276C.

vi. Whether it is a case of search or survey or otherwise.

vii. Whether the assessment is completed or not, if so, under which section

viii. Whether any penalty has been levied or pending to belevied under any section

ix. Whether it is a case in which assessee has approached Settlement Commission and if so, whether the application has been rejected or not admitted or immunity from prosecution not granted or immunity withdrawn u/s 245H(1A)/245H(2)

<u>Section 276C(2)</u> - Wilful attempt to evade the payment of tax, interest or penalty

i. Whether it is a case of Self-assessment tax shown as payable in return but not paid.

ii. Whether it is a case where demand has been confirmed in any appellate proceedings and the same has not been paid even though there is no stay order.

iii. Whether it is a case where assessee has not paid any demand and the assessee has been declared as “assessee in default” and no stay application is pending.

iv. Whether it is a case where TDS/TCS has not been paid by the deductor/collector after such deduction/collection. This section can be invoked in addition to Section 276B/276BB.

Section 276CC - Failure to furnish return of Income

i. Section under which return was required to be filed [section 139(1); 148; 153A or 142(1)(i)]

ii. Date of notice, if any

iii. Amount of tax which would have been evaded if the failure of furnish return would not have been detected (the amount is to be computed after giving credit of the pre-paid taxes and TDS)

iv. Whether any reasons for non-furnishing of return have been submitted by the assessee.

v. Brief reasons for non-acceptance of the reasons submitted as reasonable cause.

Section 276D - Failure to produce accounts and Documents

In case of non-compliance to section 142(1)

i. Date of issue of notice u/s 142(1)

ii. Date of service of notice and mode of service

iii. Date specified in the notice for furnishing accounts and documents

iv. Nature of books and documents sought by the AO, in brief

v. Reasons in brief, if any, submitted by the assessee for non-compliance

vi. Brief reasons by the AO for non-acceptance of the reasons submitted by the assessee to be reasonable cause for non-compliance

In case of non-compliance to section 142(2A)

i. Date of issue of notice to assessee for invoking provisions of section 142(2A)

ii. Date of approval of the Principal Chief Commissioner/ Principal Commissioner/Commissioner

iii. Date of order issuing directions to assessee to get its books of accounts audited.

iv. Date of service of such order

v. Name & Particulars of the accountant selected for the Audit

vi. Date for the submission of the Audit Report (including extension, if any)

vii. Brief details of the failure on part of the assessee to comply with the directions under section 142(2A)

viii. Brief description of the failure of the assessee to comply, as reported by the accountant appointed for the special audit.

Section 277 - False statement in verification, etc.

i. Particulars of the (a) statement made under verification which has been found to be false; (b) account or statement delivered which has been found to be false

ii. Section under which statement recorded under verification, if applicable

iii. Nature of the income/investment/expenses etc. w.r.t. which false statement has been made under verification

iv. Amount of income sought to be evaded by making such false statement or furnishing false documents/accounts.

v. Amount of taxes sought to be evaded by making false statement

Section 277A - Falsification of books of account or document

i. Name, Address, PAN of the person (first person) who has enabled the second person to evade taxes.

ii. Name, Address, PAN of the assessee who has been enabled to evade taxes (second person)

iii. Assessment Year(s) involved

iv. Nature of the false entry or statement made/caused to be made by the first person with the intention to enable the second person to evade taxes.

v. Documentary evidence relied upon as evidence to establish that the entry/statement/account under examination is false/ not true.

vi. Whether second person has actually evaded any tax, penalty or interest chargeable or leviable under the Act, if yes, amount thereof.

Section 278 - Abetment of False Return

i. Name, Address, PAN of the accused/person involved in abetment

ii. Name, Address, PAN of the assessee who has been induced to make and deliver a false account or statement or declaration relating to any income chargeable under the Act.

iii. Assessment Year(s) involved

iv. Nature of the false declaration or statement or account made/ caused to be made by the accused relating to the income of the assessee.

v. Amount of tax, penalty and interest that would be evaded if false account or statement or declaration relating to any income chargeable under the Act was accepted to be true.

vi. Documentary evidence relied upon as evidence to establish that the declaration/statement/account under examination is false/not true.

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Annexure – 2

Procedure for initiating prosecution in the case of Company/Firm/LLP/AOP/BOI/HUF

1. Companies/Firm/LLP/AOP/BOI, etc. are legal entities. Though such entities can also be convicted, but they cannot be imprisoned. Moreover, it is always the persons in control of the business who are responsible for commission and omission of various acts. It is, therefore, necessary to carefully identify the persons who are responsible for offence committed by the Company/Firm/LLP/AOP/BOI etc. so that they also can be prosecuted.

2. In the case of Company/Firm/LLP/AOP/BOI, provisions of Section 278B are relevant in deciding the accused and co-accused. As per Section 278B(1) of the Act, "*where any offence is committed by a Company/Firm/LLP/AOP/BOI, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company/Firm/LLP/AOP/BOI for the conduct of the business of the company/Firm/LLP/AOP/BOI as well as the Company/Firm/LLP/AOP/BOI shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, unless 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*". Company includes Firm/LLP/BOI/AOP for the purpose of this section.

3. Further, u/s 278B(2) of the Act, when an offence is committed by a Company/Firm/LLP/AOP/BOI and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company/Firm/LLP/AOP/BOI, such director, partner, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. For the purposes of section 278B —

(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.

5. In this regard, it is important to mention that Hon'ble Supreme Court in the case of *Madhumilan Syntex Ltd. Vs. Union of India (2007), 290 ITR 199 (SC)* has held that from the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown that he/she is a 'principal officer' under section 2(35) of the Act **or** is 'in charge of' and 'responsible for' the business of the company or firm.

Thus, the persons who are held Principal Officer u/s 2(35) of the Act, **or** the persons "in charge of" and "responsible for" business of the Company or the Firm are liable to prosecution besides the person(s) with whose consent, connivance or because of whose neglect the offence has been committed. The AO, therefore, should keep these provisions in mind while collecting the details and evidences and preparation of prosecution proposals while proposing the names of the accused and co-accused.

6. The following details may, therefore, be collected in the case of Companies while examining prosecution complaint by the AO/CO from assessee or other sources:

(i) Details of the Company:

Registered address	Other address(s), if any	PAN	Date of incorporation	Contact numbers

(ii) Details of All Directors (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Whether Active or not	Responsibilities handled *	Date of appointment

(*) In support, copies of relevant resolution or other relevant documents may be submitted.

(iii) Details of person responsible for finalization of accounts, filing of Returns and verification and submission of details before Income-tax authorities, for relevant Assessment Year:

Name	Date of Birth	PAN	Residential address	Mobile Number	Designation	Other Responsibilities handled **	Date of appointment

(**) In support, copies of relevant resolution or other relevant documents can be sought. These persons are prima facie covered under section 278B of the Act. These persons are also prima facie responsible and liable for prosecution under section 278B of the Act, unless they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent commission of such offence.

(iv) Details of every person (including Directors) who was in charge of and was responsible for conduct of business of the company (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Designation	Responsibilities handled ***	Date of appointment

(***) In support, copies of relevant resolution or other relevant documents can be sought.

(v) Duly certified copy of Minutes book showing minutes of the meeting of the Board of Directors. From these details the facts about the role of various persons in conduct of business and their control can be gathered. The minutes will also be helpful in verification of details provided at Sr. No. (iii) & (iv) above along with audit reports and annual reports.

7. Appropriate changes in above the format can be made to collect information in respect of Firm/AOP/BOI, etc.

8. Similarly, appropriate changes in above format can be made to collect information in respect of HUF keeping in mind the provisions of section 278C(1) and 278C(2).

9. The Principal Commissioner or Commissioner, before according sanction u/s 279(1), should carefully ascertain that no person should be made co-accused unless he fulfils the ingredients of the sub section (1) or (2) of section 278 whichever is applicable.

10. The Principal Commissioner or Commissioner shall examine the proposal received and if prima facie case for prosecution is made out, he may seek clarification with regard to the facts contained in the proposal from all proposed accused and co-accused within a reasonable time. He may also seek any additional facts/documents/information as he deems fit. The letter seeking clarification/information from the assessee should be drafted in such a manner that it enables him to take a fair and judicious decision for granting sanction u/s 279(1) in the case of accused as well as each of the proposed co-accused, if any.

11. If there are more than one accused or co-accused in case of company, firm, HUF etc., letter seeking such clarification should be sent to all the accused or co-accused.

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Circular No.24/2019

F.No.285/08/2014-IT(Inv. V)/349
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
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Room No. 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi-110002.
Dated: 09.09.2019

Subject: Procedure for identification and processing of cases for prosecution under Direct Tax Laws-reg.

The Central Board of Direct Taxes has been issuing guidelines from time to time for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act 1961 (the Act), and to remove any doubts on the intent to address serious cases effectively, this circular is issued.

2. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes in exercise of powers under section 119 of the Act lays down the following criteria for launching prosecution in respect of the following categories of offences.

i. <u>Offences u/s 276B:</u> Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.

Cases where non-payment of tax deducted at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

ii. <u>Offences u/s 276BB:</u> Failure to pay the tax collected at source.

Same approach as in Para 2.i above.

iii. Offences u/s 276C(1): Wilful attempt to evade tax, etc.

Cases where the amount sought to be evaded or tax on under-reported income is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

Further, prosecution under this section shall be launched only after the confirmation of the order imposing penalty by the Income-tax Appellate Tribunal.

iv. Offences u/s 276CC: Failure to furnish returns of income.

Cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

3. For the purposes of this Circular, the constitution of the Collegium of two CCIT/DGIT rank officers would mean the following-

As per section 279(1) of the Act, the sanctioning authority for offences under Chapter XXII is the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. For proper examination of facts and circumstances of a case, and to ensure that only deserving cases below the threshold limit as prescribed in Annexure get selected for filing of prosecution complaint, such sanctioning authority shall seek the prior administrative approval of a collegium of two CCIT/ DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies. The Principal CCIT(CCA) concerned may issue directions for pairing of CCsIT/DGIT for this purpose. In case of disagreement between the two CCIT/DGIT rank officers of the collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event that the Pr.CCIT(CCA) is one of the two officers of the collegium, in case of a disagreement the decision of the Pr.CCIT(CCA) will be final.

4. The list of prosecutable offences under the Act specifying the approving authority is annexed herewith.

5. This Circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed.

6. Hindi version shall follow.

Encl: As above

sd/-

(Mamta Bansal)

Director to the Government of India

Annexure

Section	Nature of default	Approving Authority
275A	**Contravention of order made under section 132(1) (Second Proviso) or 132(3)** in case of search and seizure	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
275B	**Failure to afford necessary facility to authorized officer to inspect books of account** or other documents as required under section 132(1)(*iib*)	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276	**Removal, concealment, transfer or delivery of property to thwart tax recovery**	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers.
276A	**Failure to comply with provisions of section 178(1) and (3)** – reg. company in liquidation	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276AB	**Failure to comply with provisions of sections 269UC, 269UE and 269UL** reg. purchase of properties by Government	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276B	**Failure to pay to credit of Central Government** (*i*) **tax deducted at source** under Chapter XVII-B, or (*ii*) **tax payable u/s 115-O(2)** or second proviso to section 194B -	-
	(a) where non-payment of TDS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276BB	**Failure to pay to the credit of Central Government the tax collected a source** under section 206C-	-
	(a) where non-payment of TCS exceeds Rs. 25 lakhs	Sanctioning Authority
	(b) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276C(1)	**Wilful attempt to evade tax, penalty or interest or under-reporting of income** -	-
	(*a*) where tax which would have been evaded exceeds Rs 25 lakh	Sanctioning Authority
	(*b*) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276C(2)	**Wilful attempt to evade payment of any tax, penalty or interest -**	-

	(a) where payment of any tax, penalty or interest exceeds Rs 25 lakhs	Sanctioning Authority
	(*b*) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276CC	**Wilful failure to furnish** returns of fringe benefits under section 115WD/115WH or **return of income under section 139(1) or in response to notice under section 142(1)(*i*) or section 148 or section 153A -**	-
	(*a*) where tax sought to be evaded exceeds Rs 25 lakhs	Sanctioning Authority
	(*b*) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276CCC	**Wilful failure to furnish in due time return** of total income required to be furnished by notice u/s **158BC(*a*)**	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
276D	**Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)**	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
277	**False statement in verification or delivery of false account or statement etc -**	-
	(*a*) where tax which would have been evaded exceeds Rs 25 lakhs	Sanctioning Authority
	(*b*) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
277A	**Falsification of books of account or document, etc, to enable any other person to evade any tax, penalty or interest chargeable/ leviable under the Act**	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers
278	**Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax** -	-
	(*a*) where tax, penalty or interest which would have been evaded exceeds Rs 25 lakhs	Sanctioning Authority
	(*b*) in other case	Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers

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CHAPTER 4

PROCEDURE FOR INITIATING PROSECUTION IN TDS/TCS RELATED OFFENCES

Chapter Summary	
S.No.	**Description**
1.	Introduction
2.	Procedure for identification and processing of cases for prosecution – prior administrative approval by collegiums – Circular No. 24/2019 dated 09.09.2019.
3.	Unique features in TDS/TCS Prosecutions, which are not applicable in other cases.
4.	Guidelines for identification and processing of cases for prosecution in TDS/TCS default cases – Guidelines for identification and processing of cases for prosecution under Sections 276B & 276BB of the Income-tax Act 1961, and related issues dated 18.10.2016 and Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default dated 09.12.2016.

1. Introduction

The Guidelines issued vide F.No.285/90/2013-IT(Inv-V)/384 dated 18.10.2016 lay down the procedure of identifying and examining the cases for initiating prosecution for offences related to TDS/TCS under Direct Tax Laws. These have been issued in modification of all earlier Guidelines dated 24.04.2008 and 07.02.2013 on the subject. The Guidelines broadly cover that the selection criteria will be more scientific, and risk based rather than quantum based. This will also consider compliance behaviour of the deductors and will be issued by the DGIT(Systems) every year after taking approval of Member (Inv.), CBDT. In addition to the cases of defaulters generated by DGIT (Systems), the CIT(TDS) may consider any other case for prosecution based on information from sources such as survey/spot verification/ grievances received. The CIT(TDS) may also select any other case, based on facts and circumstances of that case, under intimation to the Pr. CCIT/CCIT(TDS) along with reasons for selecting the case. If any default is detected during search, the processing ADIT/DDIT shall inform the AO having jurisdiction over TDS at the earliest for processing the case for launching prosecution.

2. Prior administrative approval by Collegium

Circular No. 24/2019 dated 09.09.2019 issued vide F.No. 285/08/2014-(Inv.V)/349 has laid down that cases where non-

payment of tax deducted/collected at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers. Thus, a monetary threshold has been prescribed above which prosecution in appropriate cases will ordinarily be considered. Below the prescribed threshold, prosecution will be launched only after administrative approval from the Collegium of two CCIT/DGIT rank officers. Thus, it is being ensured that prosecution proceedings initiated would be in deserving cases and which would be commensurate to the degree of offence committed.

3. Unique features in TDS/TCS Prosecutions, which are not applicable in other cases

3.1 Where a case is selected for processing under Sections 276B or 276BB of the Act for a particular year, the defaults for other years in respect of such case, if any, may also be considered for processing for prosecution irrespective of whether or not the case was previously considered for processing for prosecution.

3.2 Prosecution in the TDS/TCS cases have to be launched after considering provisions of section 278AA, which provides that no person shall be punishable for any failure referred to in the said provision if he proves that there was a reasonable cause for such failure. While processing the cases for prosecution u/s 276B/276BB, a fair and judicious view should be taken in view of the provision of section 278AA before taking a decision for filing of complaints. The fact that the deductor has remitted the tax before filing of TDS statement and interest before receipt of notice from AO(TDS) for prosecution, may be taken note of amongst other submission of the defaulter while considering his case for prosecution. Provisions of section 278AA are applicable to prosecutions provisions related to section 276A, 276AB and 276B only.

4. Guidelines for identification and processing of cases for prosecution in TDS/TCS default cases

4.1 For the sake of easy reference, the broad headings of Prosecution Procedure provided in Standard Operating Procedure (SOP) dated 09.12.2016 issued vide F.No.285/51/2013-IT(INV.V)/471 which govern entire procedure relating to prosecution are reproduced as under-

a) Identification of cases

b) Proposal for Prosecution

c) Procedure for processing of case for prosecution

d) Preparation of Complaint

e) Time frame

f) Role of different TDS authorities in addressing the issue of Prosecution and Compounding of TDS/TCS cases.

g) Annexure-1- Proforma for submitting proposal for prosecution u/s 276B, 277 & 278

h) Annexure-2- Procedure for launching Prosecution in the case of a Company/Firm/AOP/BOI

4.2 Filing of complaint, safe custody of documents, procedure after filing complaints, withdrawal of prosecution, reporting mechanism has been explained in guidelines for initiating prosecution for offences (other than TDS/TCS) cases. It is highlighted that examination of mandatory or priority cases for prosecution does not necessarily means filing prosecution. The authorities concerned shall file prosecution only in deserving cases. However, once a case is identified for prosecution by initiating procedure, it shall either culminate in prosecution complaint or compounding or dropping the proceedings after following due procedure.

4.3 The Guidelines dated 18.10.2016 & SOP dated 09.12.2016 are reproduced as under:

F.No.285/90/2013-IT(Inv.-V)/384[1]
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
*****

E2, ARA Centre, Jhandewalan Extn.
New Delhi-110055
Dated, the 18th Oct. 2016

To

All Pr. CCIT(CCA)/CCIT/CCIT(TDS), all DGIT(Inv.) and all CCIT(Central)

Madam/Sir,

Subject: Streamlining of procedure for identification and processing of cases for prosecution under Sections 276B & 276BB of the Income-tax Act 1961, and related issues — reg.

*****

"Guidelines issued vide F.No.285/90/2008-IT(Inv.-I)/05 dated 24.04.2008 contains the procedure for identification and processing of potential prosecution cases for various categories of offences. Paragraph 3.1 (i) and (ii) of the said guidelines pertain to identification of cases for processing relating to the offences under Sections 276B and 276BB of the Income-tax Act, 1961 (the Act) respectively for failure to pay tax deducted at source (TDS) or tax collected at source (TCS), as the case may be, to the credit of Central Government. These paragraphs were modified vide Guidelines issued vide. F.No.285/90/2013-IT(Inv.) dated 07.02.2013.

2. It has been decided to broaden the selection criteria from quantum based to a more scientific and risk based approach which factors in the compliance behaviour of the Deductors. In accordance with this, the following guidelines are issued for identification of potential prosecution cases forthwith, in supersession of earlier guidelines of the Board on the subject, including those contained in F.No.285/90/2013-IT(Inv.) dated 07.02.2013:

[1]Refer Circular no. 24/2019 dated 09.09.2019 (page no. 91-94)

(i) Offences u/s 276B: Failure to pay tax deducted at source to the credit of Central Government by the due date

A list of cases of defaulters shall be generated periodically by the DGIT(Systems) based on criteria approved by the Member (Inv.) CBDT which shall be processed for prosecution in addition to the other steps including recovery as may be necessary in such cases.

The authority for processing the cases for prosecution under this section shall be the officer having jurisdiction over the TDS cases. These cases have to be mandatorily processed for prosecution. Mandatory processing does not mean mandatory filing of prosecution. It requires due application of mind of the CIT concerned on all relevant facts and arriving at a judicious decision with regard to action u/s 276B.

(ii) Offences u/s 276BB: Failure to pay tax collected at source to the credit of Central Government

The guidelines for identification and processing of cases under this section would be the same as for offences u/s 276B of the Act.

3. It is reiterated that in addition to the above list of cases of defaulters generated by DGIT(Systems), the CIT(TDS) may consider any other case for prosecution based on information from sources such as survey/spot verification/grievances received. The CIT(TDS) may also select any other case, based on facts and circumstances of that case, under intimation to the Pr.CCIT/CCIT(TDS) along with reasons for selecting the case. If any default is detected during search, the processing ADIT/DDIT shall inform the AO having jurisdiction over TDS at the earliest.

4. Where a case is selected for processing under Sections 276B or 276BB of the Act, as the case may be, for a particular year, the defaults for other years in respect of such case, if any, may also be considered for processing for prosecution irrespective of whether or not the case was previously considered for processing for prosecution.

5. Each CIT(TDS) would ensure fair distribution of work among officers of his charge, as far as possible, by assigning or reassigning the jurisdiction of the cases.

6. Another set of guidelines were issued vide F.No. 285/90/2013-IT(Inv.V)/112 dated 27.12.2014 on the subject *"Addressing genuine concerns of the assessee while processing cases for TDS/TCS related prosecution under Direct Tax Laws"*. Doubts have been raised

regarding interpretation of words "before detection" used in para 4.1 of the said guidelines. It has been decided to supersede the above guidelines with the following:

(i) *Section 278AA of the Act provides that for the purposes of section 276B, no person shall be punishable for any failure referred to in the said provision if he proves that there was a reasonable cause for such failure. The fact that the Deductor has remitted the tax before filing of TDS Statement and interest before receipt of notice from the AO (TDS) for prosecution, may be taken note of amongst other submissions of the defaulter while considering his case for prosecution. While processing the cases for prosecution u/s 276B/276BB, a fair and judicious view should be taken in view of the provision of section 278 AA before taking a decision for filing of complaints.*

(ii) *If a person who has committed an offence(s) under section 276B/276BB files application for compounding of the said offence(s), the compounding application should be processed on priority and mandatorily disposed of within the time frame prescribed by the CAP guidelines.*

7. The Pr.CCsIT/CCsIT and DGsIT are requested to circulate the amended guidelines among all officers of their region for strict compliance.

Yours faithfully,
Sd/-
(Mamta Bansal)
Director, Inv-V,
CBDT, New Delhi

F.No.285/51/2013-IT(Inv.-V)/471
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
*****

E2, ARA Centre, Jhandewalan Extn.
New Delhi
Dated: 09.12.2016

To

All Pr. CCIT(CCA)/CCIT/CCIT(TDS), all DGIT(Inv.) and all CCIT(Central)

Madam/Sir,

Subject: Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default-Reg.

Kindly refer to this office letter F.No. 285/51/2013(Inv. V)/386 dated 18.10.2016 regarding withdrawal of Standard Operating Procedure (SOP) for Prosecution in the cases of TDS/TCS defaults dated 02.02.2015.

2. In this regard, the undersigned is directed to enclose herewith the Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default with a request to circulate the same among all officers of your charge for information and guidance.

Yours faithfully,
Sd/-
(Mamta Bansal)
Director, Inv-V,
CBDT, New Delhi

Encl: As above

Revised Standard Operating Procedure (SOP) for Prosecution in cases of TDS/TCS default dated 09.12.2016:

1. Introduction

1.1 This SOP is issued for the use of the departmental officers with the objective to streamline the procedure for processing cases of TDS/ TCS defaults for prosecution and make it more efficient. The SOP should be followed as far as possible and shall apply prospectively to all prosecution proceedings, for TDS/TCS defaults, which are pending at any stage in the office of the Commissioner/Chief Commissioner or its subordinate office(s) as on the date of issue of this SOP. **In all cases the proposals should, henceforth, be submitted in the new prescribed proforma (Form 'T') annexed with this SOP.** However, prosecution proposals which have already been submitted by the AO to the CIT(TDS), need not be revised.

2. Identification of the cases

2.1 Vide revised guidelines issued by the CBDT in F.No. 285/90/2013-IT(Inv.-V)/384 dated 18.10.2016, it has been decided that a list of cases **shall be generated periodically by the Pr. DGIT(Systems) based on the criteria approved by Member(Inv.) CBDT which shall be mandatorily processed for prosecution** in addition to the recovery steps as may be necessary in such cases. **It has been clarified in the guidelines that mandatory processing does not mean mandatory filing.** It has also been reiterated in the revised guidelines that in addition to the cases selected on the basis of the approved criteria (which are to be processed mandatorily), the CIT(TDS) may consider any other case for prosecution, based on information from sources such as survey/spot verification/grievances received. In such cases, the CIT(TDS) shall send intimation to the Pr.CCIT/CCIT(TDS) along with the reasons for selecting the said case. If any TDS/TCS default is detected during action u/s 132/132A of the I.T. Act (hereinafter referred to as 'the Act'), the processing ADIT/DDIT shall inform the Assessing Officer having jurisdiction over TDS about such defaults under intimation to the Range Head and CIT(TDS). While passing such information, he shall also forward copies of the relevant documents.

3. Proposal for Prosecution

No prosecution complaint u/s 276B/276BB of the Act can be filed without proper sanction from CIT(TDS) u/s 279 of the Act. The proposal for prosecution needs to be sent by the AO to the CIT(TDS) for obtaining sanction u/s 279(1) of the Act in Form No. 'T', which

is enclosed as **Annexure-1** to this SOP. The AO should, therefore, carefully go through this proforma and prepare a complete and correct prosecution proposal, which is the foundation of any successful prosecution proceedings.

4. Procedure for processing of cases for Prosecution

4.1 After potential cases for prosecution are identified and uploaded on the AO Portal by the CPC-TDS, the AO shall initiate Prosecution proceedings by issuing notice to the deductor preferably within 30 days of uploading of list by CPC-TDS on the AO portal.

4.2 Such prosecution notices shall be generated through TRACES functionality in respect of all the cases whether identified by the CPC-TDS or by the CsIT(TDS).

4.3 For the cases identified by the CIT(TDS), the AO shall add the same in the prosecution functionality on TRACES Portal through option ***"manually identified cases"*** available under ***"Enforcement Menu"*** and issue the show cause notice preferably within 30 days of the case being identified.

4.4 In the case of a Company/Firm/AOP/BOI, provisions of Sec. 278B are relevant in deciding the accused and co-accused(s) for the purposes of prosecution. The detailed protocol expected to be followed in this regard is enclosed as **Annexure-2.**

4.5 The details of late payment defaults for each case identified for mandatory processing shall be generated by the CPC(TDS). These details shall include the section under which TDS was deducted, amount of TDS, date of deduction, due date of payment and actual date of payment.

4.6 In respect of cases selected by CIT(TDS):

a) Wherever corresponding TDS statements have already been filed, late payment details as per TDS statement, if any, shall be obtained by AO from AO portal on TRACES.

b) In the case of a non-filer, AO will upload order passed under section 201(1)/201(1A) on the basis of default details obtained during the survey or otherwise.

4.7 The details of late payment defaults should be enclosed as annexure to the notice issued by the AO and preserved as they are the basis for initiating Prosecution. The purpose of enclosing these details with the notice is also to confront the deductor and require him to confirm these defaults.

4.8 In case, the deductor does not object to these details, the same will form part of Sr. No. 6 of Form 'T'. In case the deductor objects to the details of defaults, the AO shall examine the relevant documents submitted by the deductor and prepare a statement of defaults on the basis of such verification and such statement of defaults will form part of Sr. No.6 of From 'T'. The documents on the basis of which the statement of default has been prepared shall be preserved and made prosecution document to be used before court.

4.9 By way of this notice, the deductor shall also be asked to furnish his explanation as to why the prosecution proceedings u/s 276B/276BB of the Act should not be initiated against him.

4.10 Following information/documents regarding the Deductor, as may be applicable, may also be collected from the Deductor and/or through other sources including from TRACES:

a) Copies of the TDS statement(s) filed by the Deductor.

b) Copies of challans of late deposit of TDS filed by the Deductor.

c) Copies of the intimations u/s 200A of the Act showing late payment interest for all the quarters of the relevant assessment year, if they are available.

d) Copies of Order u/s 201(1)/(1A) of the Act showing default of delayed payments, if any passed.

e) Statement(s), of relevant person(s), if any, recorded in connection with the defaults.

f) Certified copies of Audit report in Form 3 CD, if they show default, along with Balance sheet, Profit & Loss A/c. and Annual Reports.

g) Copies of Ledger of Deductees in whose case the TDS deducted has not been deposited in time.

h) While collecting above information, AO(TDS) may also collect other details, such as, whether the deductor himself rectified the mistake and deposited the tax along with interest prior to issue of first notice relating to prosecution by the department.

i) Whether the deductor has been convicted earlier u/s 276B/276BB of the Act for any other year, to find out the applicability of Sec. 278A of the Act.

The documents mentioned above are important prosecution documents, which are useful in establishing the offence before the Court and should be collected and preserved carefully by the AO. The original copies of prosecution documents mentioned in Sr. No. 13(e) of Form 'T' should be kept safely in personal custody of the AO and a proper handing over of such documents should be done at the time of change of incumbent.

4.11 The AO may ensure, to the extent possible, that the reply is obtained normally within 30 days of the issue of the show cause notice. In case no reply is furnished within the prescribed time, it may be presumed that the person responsible for tax deduction and deposit has no explanation to offer and the matter may be pursued forward. It is also advisable for the AO to simultaneously make attempt to collect relevant details from other sources such as TAN/PAN records, assessment records, TRACES, website of Registrar of Companies, so that non-compliance on the part of the deductor doesn't come in the way of proceeding further and/or filing prosecution complaint.

4.12 The AO(TDS) shall examine the reasons/reply for default and prepare the proposal in Form 'T'. **This form should be filled with due care ensuring that all details required are complete and correct and send the same to the CIT(TDS) through proper channel on TRACES.** Detailed proposal has to be submitted offline. **Separate proposal should be submitted for each assessment year.**

4.13 The AO(TDS) shall refer all the cases falling in the list of TDS defaulters generated by CPC-TDS for mandatory processing to the CIT(TDS) through the Range Head. He may also refer any other case found fit for Prosecution to the CIT(TDS), keeping in view CBDT revised guidelines issued in F. No.285/90/2013-IT(Inv.V)/384 dated 18.10.2016. The AO shall submit prosecution proposal to the CIT(TDS) preferably within 90 days of the issue of show cause notice by him. However, CIT(TDS) may extend the timeline for submission of prosecution proposal considering the facts and circumstances of each case.

4.14 The Range Head on receipt of Form 'T' on TRACES shall examine the proposal received offline also. **It is the responsibility of Range Head to ensure that the prosecution proposal is fit and complete before it is submitted to CIT(TDS).** If there is any deficiency, he should send it back to the AO for removing the deficiency and re-submit the proposal at the earliest. After satisfying himself, he shall forward it to CIT(TDS) on TRACES as well as in the offline mode. Once, the Form 'T' is forwarded to CIT(TDS) on TRACES, he may also download the proposal from TRACES.

4.15 The CIT(TDS) is the competent authority to accord sanction u/s 279(1) for filing of prosecution complaint. The CIT(TDS) shall follow the procedure as under:

a) He should examine the proposal thoroughly and if he finds that the case is not fit for prosecution, then he may drop the proceedings and intimate the decision to the AO, who will make the entry of dropping the proceedings in the TRACES. The AO shall also intimate the decision to drop the proceedings to the deductor.

b) If he is of the opinion that the case is prima facie fit for prosecution, then, issue show cause notice(s) to all proposed accused(s) u/s 276B/276BB r.w.s. 278B of the Act, as to why sanction for launching of prosecution should not be accorded. The show cause notice should be generated from the online module on TRACES. In case he wants to add certain other details/issues, he can manually issue show cause also while the notice generated on CPC (TDS) may be downloaded and kept on record to ensure that necessary entry is made in the system.

c) After examining the explanation of accused(s) along with the documents adduced for supporting the explanation and material relied upon by the AO in his proposal, the CIT(TDS) shall take a fair and judicious view to proceed further by either according sanction u/s 279(1) of the Act or dropping the proceedings, keeping in view the provisions of Sec. 278AA of the Act.

d) There could be possible extraordinary circumstances or situations beyond the control of the deductor which may prevent or hinder timely compliance at his end. Vide F.No. 285/90/2013-IT(Inv.V)/384 dated 18.10.2016, clarification has been issued by the Board for interpretation of section 278AA to address genuine concerns of the deductors. **The fact that the deductor has remitted the tax before filing of TDS statement and interest before receipt of notice from the AO (TDS) for prosecution, may be taken note of amongst other submissions of the deductor while considering his case for prosecution.** Some of the other circumstances where section 278AA could be invoked, **provided the deductor has remitted the money with interest** are highlighted below:

i) Payment of TDS by the deductor within 60 days of the due date on account of genuine hardship.

ii) Deductor having filed application under BIFR or under the Insolvency and Bankruptcy Code, 2016 during the relevant period which has been admitted.

iii) Where only provision has been made in the books of account without actual payment to the Deductees due to financial constraints, court order, statutory obligations under various laws including under the Companies Act, 1956, pending legal proceedings, etc.

iv) Cases of genuine financial hardship leading to closure of business.

v) Sudden demise of person responsible for deposit of taxes in cases of defaults of payment of TDS for small period i.e. upto six months.

vi) Lock out in the factory and/or office premises due to labour strike, court cases, natural disaster or calamity, law and order problem in the area, etc. justifying the period of delay.

The above enumerations are only suggestive and indicative in nature, and the CIT(TDS) is not bound by these and should take a judicious view based on facts and circumstances of each case.

(e) There is no statutory requirement for obtaining opinion of the Legal Counsel before granting sanction for prosecution. However, reference may be made in complex situations like identification of accused(s), etc. to avoid legal infirmities in prosecution complaints. In such cases, it should be ensured that the opinion is obtained from the Counsel within 30 days.

(f) If after examining the proposal received from the AO, the evidence and other material on record, explanation of the deductor along with evidence adduced to support the explanation and the opinion of the Counsel (wherever it is obtained), if the CIT(TDS) is satisfied that-

(i) **It is a fit case for prosecution,** he shall pass a speaking order u/s 279(1) separately for each assessment year. The application of mind and fairness of decision should reflect in the order. In view of provisions of Sec. 278AA of the Act, it is expected that the explanation given by the accused is properly rebutted. Further, brief reasons should also be given for according sanction in the cases

of Directors/Partners/Other responsible persons for offence committed by Companies, Trusts, Firms, etc. keeping in view provisions of sec. 278B of the Act.

(ii) **It is not a fit case for Prosecution,** he may drop the proceedings after recording reasons for the same for internal purposes. The decision to drop the proceedings should be intimated to the deductor.

(g) An entry shall be made by the CIT(TDS) in the TRACES on passing of such orders as mentioned in para (f) above or as soon as the decision to drop proceedings is made. The CIT(TDS) shall complete the process and pass an order u/s 279(1) sanctioning prosecution or dropping the show cause notice preferably within 90 days from receipt of proposal from the AO(TDS) through the Range Head excluding the additional time taken to dispose off compounding petition filed, if any.

4.16 The Deductor can at any stage of the proceedings, file a compounding application before the Pr. Chief Commissioner of Income-tax /Chief Commissioner of Income-tax. Instruction vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 should be followed in dealing with the compounding applications. If a person who has committed an offence(s) under S.276B/276BB files an application for compounding of the said offence(s), the application should be processed expeditiously and disposed off within the time frame prescribed in the Central Action Plan for the FY. During the pendency of the compounding application, the CIT(TDS) shall keep the prosecution proposal pending. As soon as an application for compounding is moved, an entry should be made in TRACES. Entries of subsequent action on compounding application should also be made on TRACES.

4.17 The CIT(TDS) after according sanction u/s 279(1) shall send back the records to the authority seeking sanction along with the sanction order in duplicate, one for filing in the Court with complaint and other for the record.

4.18 If the defaulter is a government servant, then as required u/s 197 of the Code of Criminal Procedure, 1973 (Cr.PC), the AO should seek approval of State Government or Central Government as the case may be. If no timely response is received from the Government, the AO should continuously follow up with the Government, so that the required sanction order is expedited.

4.19 Once the AO receives the sanction order u/s 279(1) of the Act he should get the prosecution complaint drafted by the departmental

Prosecution Counsel and file it in the Jurisdictional (Economic Offences) Court within 30 days.

4.20 Brief guidelines for proper drafting of complaints

The prosecution complaint should be drafted with due care to ensure that the ingredients of the offence are clearly brought out with the relevant facts. While drafting the complaint, the following points may be considered:

a) The place of commission of the offence shall specifically be mentioned and accordingly the jurisdiction of the court should also be mentioned.

b) The correct names and complete addresses of the accused should be specifically mentioned. This prevents delay in service of summons, etc., by the court.

c) Before prosecution is filed, it is mandatory to obtain sanction for such prosecution u/s 279(1) of the Act. Therefore, the reference of order u/s 279(1) of the Act passed should invariably be mentioned in the complaint.

d) Chronological events leading to the commission of offence should be spelt out. Why the explanation submitted by assessee is not acceptable, in view of provisions of sec. 278AA, should be discussed. The reasons for filing complaint against all co-accused(s) in terms of sec. 278B should also be mentioned.

e) The following should be annexed to the complaint:

   i) Sanction order for prosecution.

   ii) List of important documents/exhibits.

   iii) List of prosecution witnesses.

   iv) Sanction order u/s 197 of Cr.PC in case of a government servant.

f) It may, however be noted, that prosecution can also furnish additional list of witnesses during trial [Section 204(2) of the Cr.PC].

4.21 The CIT(TDS), Range Head & the AO(TDS) shall make necessary entries in TRACES at various stages of processing prosecution. For procedural aspects of handling cases on TRACES, **tutorials** are also available on TRACES which may be referred to by all the authorities.

4.22 Similarly, if any such prosecutable offence comes to light during the proceedings before the appellate authorities, revision authorities or any other proceedings, same shall also be treated at par with other prosecutable cases as enumerated under Chapter-XVII of the Income-tax Act, 1961 and action shall be initiated in accordance with the procedure laid down in this SOP.

5. TIME FRAME

5.1 The time period for the entire process from identification to passing of order u/s 279(1)/279(2) is summarized as under:

S. No.	Section	Time limit for submitting proposal for sanction u/s 279(1)	Time limit for according sanction u/s 279(1)	Time limit for filing prosecution complaint
1.	276B	Preferably within 90 days from issue of SCN by AO TDS[CIT(TDS) may extend the timeline for submission of prosecution proposal considering the facts and circumstances of each case] (Refer Para 4.13)	Preferably within 90 days of receipt of proposal from the AO(TDS) through Range Head (excluding the additional time taken to dispose off compounding application filed, if any) [Refer Para 4.15(g)]	Preferably within 30 days of receiving approval u/s 279(1) (Refer Para 4.19)
2.	276BB	-do-	-do-	-do-

5.2 The timelines given above should be followed as far as possible. However, any deviation from the timelines shall not render prosecution proceedings barred by limitation. The Pr.CCIT/CCIT (TDS) should monitor progress of the cases identified for processing for prosecution, particularly cases in which the timelines have not been followed.

6. Roles of Different TDS Authorities in Addressing the Issue of Prosecution and Compounding of TDS/TCS Cases

6.1 Role of Principal CCIT/CCIT(TDS)

(i) Taking quarterly review meeting with CIT(TDS), CIT(International Taxation) & CIT(LTU) monitoring progress in cases identified for prosecution for TDS/TCS defaults and timelines laid down.

(ii) Apprising the Zonal Member of the progress made/ outcome achieved during the month in the monthly DO. Copy of such progress shall also be sent to Pr. DGIT(Admn.), New Delhi for information.

(iii) Disposing all compounding petitions expeditiously and within the time period prescribed in the Central Action Plan for the FY. While disposing off compounding petitions, speaking orders are expected to contain those facts based on which a fair and judicious view has been taken in accordance with relevant provisions of the Act.

6.2. Role of CIT(TDS)

(i) Ensuring that fair distribution of work relating to prosecution among officers of his charge, is done.

(ii) Monitoring on a regular basis the progress of processing the cases for prosecution flagged by CPC-TDS.

(iii) Guiding AO(TDS) to shortlist the cases for processing of prosecution on the basis of information received from sources such as survey/spot verification/grievances received and monitoring timely action being taken thereon.

(iv) Ensuring entries of various actions undertaken by the AO, Range Head and his own office on the TRACES.

(v) Processing all the proposals received by him. If he is of the opinion that the case is prima facie fit for prosecution, issue show cause notices to the defaulter(s) u/s 276B/276BB r.w.s. 278B or 278C as to why sanction for launching of prosecution should not be accorded.

(vi) Seeking opinion of the Prosecution or Legal Counsel, if need is felt in view of the complexity of facts involved and ensuring that the opinion is obtained from the Counsel within 30 days.

(vii) Examining the replies to the SCN, other material and the opinion of the legal Counsel where ever it is obtained, and on satisfaction that it is a fit case for prosecution, passing speaking order u/s 279(1) in the case of defaulter(s) for each assessment year separately. In case he is satisfied with the submissions of the deductor, he shall drop the proceedings after recording the reasons in writing with an intimation to the deductor.

(viii) Completing the process and passing an order u/s 279(1) sanctioning prosecution or dropping the show cause notice expeditiously, preferably within 90 days of receipt of the proposal from the AO(TDS) through Range Head.

(ix) Ensuring an entry for the following events in TRACES:

a) On issue of show cause notice to the accused/co-accused.

b) Reference of legal opinion sought/received.

c) On passing of sanction order u/s 279(1) or on dropping of the proceedings as the case may be.

d) On receipt of compounding application/report on the compounding application.

e) On filing of prosecution complaint before the competent court.

f) On receipt of order of competent Court.

g) On appeal, if any appeal is filed by the accused or by the Department.

(x) Ensuring that the guidelines for compounding of offences under Direct Tax Laws issued vide F.No. 285/35/2013-IT(Inv.V)/108 dated 23.12.2014 are adhered to.

(xi) Providing feedback regarding quality of cases selected for mandatory processing in the previous year to Director Inv-V, CBDT.

6.3 Role of Addl./Joint CIT(TDS)

(i) Monitoring timely action in all the cases involving mandatory processing for prosecution or cases identified otherwise and to report the progress to the CIT (TDS) in the monthly DO.

(ii) Discussing cases prepared on the basis of information received from sources such as survey/spot verification/grievances received with AO(TDS) and also guiding them in short listing the cases fit for prosecution.

(iii) Ensuring that the prosecution proposal submitted by AO(TDS) is fit and complete and in case of any deficiency, he should get it rectified from the AO(TDS) at the earliest.

(iv) Monitoring the AO for making entries in TRACES for the following events:

a) On issue of show cause notice to the accused/co-accused.

b) On receipt of compounding application/report on the compounding application.

c) On filing of prosecution complaint before the competent court.

d) On receipt of order of competent Court.

e) On appeal, if any appeal is filed by the accused or by the Department.

(v) Ensuring timely submissions of reports on compounding applications by the Assessing officer and Range office for timely disposal of the applications

6.4 Role of AO (TDS)

(i) Monitoring list of cases identified by CPC-TDS for mandatory processing and ensuring action in all such cases.

(ii) Examining cases of TDS default other than those already identified by CPC-TDS based on survey/spot verification/grievances received and shortlist cases fit for prosecution after discussion with Range Head and CIT(TDS).

(iii) Issuing show cause notice to the defaulters giving due opportunity to them once the cases are identified by CPC(TDS) or otherwise and collect information in accordance with the procedure laid down in this SOP.

(iv) Sending the proposal prepared in Form 'T' on TRACES along with other details/documents to the CIT(TDS) through proper channel.

(v) Making entries for all the events associated with prosecution and compounding on TRACES.

(vi) Timely submissions of reports on compounding applications for disposal of the applications.

(vii) Submission of reports along with records to the CIT(TDS) through proper channel in all cases where notice is issued by AO along with comments either recommending or dropping prosecution.

6.5 Role of CIT(CPC-TDS), Ghaziabad

(i) Providing analysis of the data with respect to TDS statements filed during the previous F.Y. to the Director, (Inv.-V), CBDT immediately after 15th July of the relevant Financial Year.

(ii) Generating list of TDS/TCS defaulters along with their statement of defaults for mandatory processing of cases for prosecution based on the parameters approved by the Member (Investigation), CBDT and make it available to AO(TDS) as well as the CIT(TDS) in the second quarter of every F.Y. preferably by 31st July of the relevant Financial Year.

(iii) Providing monthly disposal status of prosecution and compounding for TDS/ICS defaults to Pr.CCIT/CCIT(TDS), CIT(TDS), Directorate of TDS, Member(Revenue), and Member (Inv.).

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Annexure – 1

Form-T

Proforma for submitting proposal for prosecution u/s 276B, 277 & 278 of the I.T. Act, 1961

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1. Details of deductor (accused):

   i) Name :

   ii) TAN :

   iii) Address :

   iv) PAN :

   v) Status :

2. Details of proposed co-accused (if any) u/s 278B of the I.T. Act i.e. partners, directors, karta, principal officer etc. who are proposed to be prosecuted, if the deductor is firm, company, HUF, AOP or BOI and DDO in the case of Government deductor.

Name of the Director/ Partner/ Principal Officer/ DDO, etc.	**Date of Birth**	**PAN. No**	**Residential address of the persons**

3. The date of sanction order u/s 197 of Cr. PC from Government, in the case of a government deductor:

4. Financial years / Assessment Years involved:

Financial year	**Assessment Year**

5. Details of TDS statements of the quarters in which defaults have been committed:

Form No. and quarter	Due date of filing of statement	Date of filing of statement	Total amount of TDS paid for the quarter	Tax paid after due date(s)

6. Details of default in payment of TDS:

   (a) Details of Defaults under Chapter XVII except section 194B:

Section under which TDS is deducted	Amount of deduction	Date of Deduction of TDS	Due date for Payment to the credit of Govt.	Actual date of payment to Government	Period of delay	Outstanding payment, if any	Date of service of first notice relating to prosecution

Or

(b) Details of default in payment of TDS under proviso to section 194B:

Total value of winning (including winning in kind)	Amount of liability of TDS	Date of release of winning	Due date for payment to Govt.	Actual date of payment to Govt., if any.	Period of delay

Or

(c) Details of default in payment of Dividend Distribution Tax (DDT) referred to in section 115-O:

Total amount of distributed profit	Amount of DDT payable	Date of declaration/ payment/ distribution of dividend, whichever is earlier	Due date for payment to the credit of Govt.	Actual date of payment to Govt.	Period of default

7. Details of Late payment interest (LPI):

Form No. & quarter	Amount of LPI chargeable u/s 201(1A)	Amount of LPI paid before filing of statement	LPI demand generated in order u/s 201(1A) or 200A	Date of payment of Demand	Outstanding amount of LPI

8. Details of late filing fee u/s 234E:

Form No. & quarter	Amount of late filing fee levied	Amount of late fee paid	Date of payment of late fee	Whether appeal filed	Status of appeal

9. Details of penalty u/s 221(1) of the I.T. Act for relevant A.Y., if imposed:

Date of order u/s 221(1) of I.T. Act	Amount of penalty levied	Amount of penalty paid	Date of payment of penalty	Date of appeal before CIT(A), if filed	Status of appeal before CIT(A)	Status of further appeal, if any

10. Please specify the other sections of Income-tax Act and other laws such as IPC, which are also proposed for simultaneous prosecution.

11. Whether the provisions of sec. 278A are applicable i.e. whether the defaulter has been convicted of an offence u/s 276B of the I.T. Act earlier?

12. Details of compounding applications filed, if any:

a) Whether compounding application for this year or any other year was filed: Yes / No

b) If yes:

Sr. No.	The year(s) for which compounding application(s) were filed	Status

13. Detailed note justifying the proposal for prosecution:

a) The details of defaults in terms of frequency and quantum.

b) Present state of demand and short note on efforts for recovery.

c) Brief explanation for the defaults submitted by the accused and observation of AO on factual accuracy of the same.

d) The reasons for proposing names of different co-accused at Sr. No.2, if any, for prosecution.

e) The details of prosecution documents on the basis of which offence is sought to be proven before Court.

i) Details of relevant TDS statement(s).

ii) The copies of challan of late deposit of TDS.

iii) The audit report in form No. 3CD.

iv) The minute book.

v) Copies of ledgers of deductee in whose cases the TDS deducted has not been deposited in time.

vi) Statements of any person recorded in connection with the default.

vii) The copies of order u/s 201(1)/(1A) of the I.T. Act, if passed.

viii) The sanction order of the government u/s 197 of Cr PC in the case of government deductor.

ix) Any other document which may be relevant to establish the offence or the role of accused and co-accused(s).

14. List of proposed prosecution witnesses:

15. Details of the Assessing Officer passing order u/s 201(1)/(1A) of the I.T. Act, details of his present posting / address may also be given.

i. Name

ii. Present designation

iii. Present posting

iv. Employee code, if available

v. Permanent address, if available

Date: _____ **Signature:** _____

Name of Officer

Submitting proposal: _____

Employee Code: _____

Designation: _____

Permanent Address: _____

Instructions for filling up this Form:

i) No column of the Form should be left blank. If the column is not applicable, the same shall be clearly mentioned.

ii) At Sr. No. 2, the details of the co-accused to be filled in on the basis of details gathered as per procedure laid down in Annexure-2 of SOP.

iii) At Sr. No. 5, the details of only those quarters shall be given in which defaults of delayed payments are there.

iv) At Sr. No. 6(a), details of defaults generated by CPC should be enclosed if they are not contested by the defaulter. If contested, the details shall be prepared on the basis of verification of documents submitted by the defaulter.

v) For preparing details in Sr. No.13(e), the minutes book, signatures on audit report, balance sheet, etc. may also be relevant along with other material, as they throw light on role of various directors/partners, etc. in controlling the business and their responsibility in accordance with sec. 278B of the I.T. Act.

vi) The original copies of prosecution documents mentioned in Sr. No. 13(e) should be kept safely in personal custody of the AO and a proper handing over of such documents should be done at the time of change of incumbent.

vii) This proforma shall also be used for submitting prosecution proposals u/s 276BB with relevant changes as applicable.

Annexure – 2

Procedure for launching prosecution in the case of a Company/Firm/AOP/BOI

1. The Companies/Firm/AOP/BOI, etc. are artificial entities. Though such entities can also be convicted, but they cannot be imprisoned. Moreover, it is always the persons in control of the business who are responsible for commission and omission of various acts. It is, therefore, necessary to carefully identify the persons who are responsible for offence committed by the Company/Firm/AOP/BOI etc. so that they also can be prosecuted.

2. In the case of Company/Firm/AOP/BOI, provisions of Sec. 278B are relevant in deciding the accused and co-accused. As per Sec. 278B (1) of the I.T. Act, 1961 *"where any offence is 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, unless 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".* The company include Firm/BOI/AOP for the purpose of this section.

3. Further, u/s 278B(2) of the I.T. Act, 1961 where an offence is committed by a Company/AOP/BOP and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, partner, manager, secretary or other officer of the company/AOP/BOI, such director, partner, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. For the purposes of section 278B—

(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.

5. In this regard, it is important to mention that Hon'ble Supreme Court in the case of Madhumilan Syntex Ltd. Vs. Union of India (2007), 290 ITR 199 (SC) has also held that from the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown

that he/she is a 'principal officer' under section 2(35) of the Act **or** is 'in-charge of' and 'responsible for' the business of the company or firm.

Thus, the persons who are held Principal Officer u/s 2(35) of the I.T. Act, 1961 **or** the persons "in charge of" and "responsible for" business of the Company or the Firm are also liable to prosecution besides the person (s) with whose consent, connivance or because of whose neglect the offence has been committed. The AO, therefore, should keep these provisions in mind while collecting the details and evidences and preparation of prosecution proposals while proposing the names of the accused and co-accused(s).

6. The following details may therefore be collected in the case of Companies through the Show Cause Notice to the defaulter and/or through other sources:

(i) Details of the Company:

Address (present)	Other address(s), if any	PAN Number	Date of incorporation	Contact numbers

(ii) Details of Directors (From 1st April of relevant F.Y. till date):

Name	Date of Birth	PAN	Residential address	Mobile Number	Whether Active or not	Responsi-bilities handled*	Date of appointment

(*) In support copies of relevant resolution or other relevant documents can be sought.

(iii) Details of person responsible for payment on which TDS is deducted (From 1st April of relevant F.Y. till date):

Name and desig-nation	Date of Birth	PAN	Residential address	Mobile Number	Desig-nation	Other Responsi-bilities handled**	Date of appointment

(**) In support, copies of relevant resolution or other relevant documents can be sought. These persons are prima facie covered under section 278B of the I.T. Act. These persons are also prima facie responsible and liable for prosecution under section 278B of the I.T. Act, unless they prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent commission of such offence.

(iv) Details of every person (including Directors) who was in charge of and was responsible to the company for conduct of business of the company (From 1st April of relevant F.Y. till date):

Name and desig-nation	Date of Birth	PAN	Residential address	Mobile Number	Desig-nation	Responsi-bilities handled***	Date of appoint-ment

(***) In support, copies of relevant resolution or other relevant documents can be sought.

(v) Duly certified copy of Minutes book showing minutes of the meeting of the Board of Directors. From these details the facts about the role of various persons in conduct of business and their control can be gathered. The minutes will also be helpful in verification of veracity of details provided at Sr. No. (iii) & (iv) above along with audit reports and annual reports.

7. Appropriate changes in above format can be made to collect information in respect of Firm/AOP/BOI, etc.

8. The AO may issue a notice to the Principal Officer of Company confronting him with the defaults and seek explanation for the default and to show cause as to why the prosecution proceedings u/s 276B of the I.T. Act shall not be initiated. Through the same notice, the persons who were in-charge of and were responsible to the Company/Firm/AOP/BOI at the time of commission of offence may also be required to submit their explanation as to why he/she should not be treated as principal officer and co-accused along with the Company/Firm/AOP/BOI and be prosecuted against u/s 276B/276BB r.w.s. 278B of the I.T. Act, 1961.

Further, the persons who were responsible for payment on which tax is deducted may also be asked through the same notice to show cause as to why the provisions of Sec. 278B of the I.T. Act are not applicable to them.

9. The above details will be helpful to the AO for identification of other accused in terms of section 278B of the I.T. Act, 1961. The show cause notice being generated by the TRACES has been designed keeping above in view.

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CHAPTER 5

GENERAL PRINCIPLES INVOLVED IN PROSECUTION

Chapter Summary	
S.No.	**Description**
1.	Introduction
2.	General issues relevant to procedure for launching prosecution
3.	Important features of offences under Income-tax Act, 1961
4.	The offences committed by "Artificial Juridical Person"
5.	Procedure for launching prosecution
6.	Important aspects in preparation of Complaint
7.	Selection of Witness(es)
8.	Custody of records and evidence relating to prosecution
9.	Safeguards for trial proceedings
10.	Publicity of convicted cases

1. Introduction

The Guidelines, Standard Operating Procedures and Circulars dealing with prosecution as reproduced in previous chapters are quite informative and exhaustive. This chapter provides further guidance and insight into various aspects relating to prosecution.

2. General Issues relevant to procedure for launching prosecution

2.1 Place of prosecution

As per para 7(i) of SOP dated 27.06.2019 the complaint is to be filed in court of jurisdiction. Section 177 of Cr.P.C. provides that every offence shall ordinarily be tried by the Court in whose jurisdiction the offence is committed. The provision of this section is also applicable to offences under the Direct tax laws.

2.2 Authority competent to launch prosecution

The field authorities responsible for identification and institution of prosecution proceeding are discussed in para 3.2 of SOP dated 27.06.2019. In this regard, it is further explained that:

(a) **Authority under whose jurisdiction offence was committed**

The assessing officer, having jurisdiction over assessment, is the appropriate person to launch prosecution with the previous sanction of Pr. CIT/CIT having jurisdiction over the case. It is not material whether the AO himself made the assessment or not. Similarly, in case of TDS default, prosecution can be launched by the assessing officer having jurisdiction over TDS matter.

(b) **Prosecution by Authority before whom false evidence is given**

It may be mentioned that the authority, before whom false evidence is tendered, can also launch prosecution. For example, if a statement on oath recorded by an ADIT/ DDIT/authorized officer is found to be false, then the ADIT/DDIT/A.O. concerned can file prosecution with the previous sanction of the Pr. CIT/CIT/Pr. DIT/DIT having jurisdiction over such person.

(c) The prosecution under sections 193 and 196 of IPC can be launched only by the officer before whom the offence is committed. Such officer may be revisional authority or the first appellate authority or assessing officer/ADIT/DDIT. However, section 195(1) (a) of Cr.P.C. provides that the authority, superior to the officer before whom offence is committed, can also launch prosecution.

(d) The authorities competent to launch prosecution, under various provisions of IPC, have been discussed in chapter-2 on legal base. (Para No.6)

2.3 Authority competent to grant sanction

The procedure for sanction u/s 279(1) is provided in para 5 of SOP dated 27.06.2019. It is further clarified that -

(a) The Pr. Commissioner or Commissioner or Commissioner (Appeals) or the Appropriate Authority as defined in clause (C) of section 269UA is vested with the authority u/s 279(1) of the IT Act to accord previous sanction for launching of prosecution under various provisions of the IT Act.

(b) Under the proviso to Section 279(1), the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General may also give directions for institution of prosecution proceedings to aforesaid Income-tax authorities.

(c) Similar authority is vested in CWT /CWT (Appeals) and CCWT/ DGWT u/s 35 I of the Wealth- tax Act.

(d) For launching prosecution under different sections of IPC, there is no statutory requirement to obtain previous sanction of any authority. However, the authority competent to grant previous sanction for prosecution under the Income-tax Act shall also accord administrative sanction to launch prosecution under IPC. In this regard, Para 12.2 of SOP dated 27.06.2019 may also be referred to.

(e) If the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction, there is no requirement to make sanctioning authority a prosecution witness. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non-application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority. That is why it is advisable to prepare sanction order u/s 279(1) in such a manner that it reflects competence of the sanctioning authority, application of mind by him and validity of sanction order.

(f) In the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh AIR 1979SC677, the Hon'ble Supreme Court held that:

> *"It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio."*
>
> The above judgment not only underlines the importance of well-reasoned sanction order demonstrating the validity of the sanction but also the importance of safe keeping of original file of such proceedings in the office of the Sanctioning Authority.

(g) Circular No. 24/2019 dated 09.09.2019 issued vide F.No. 285/08/2014-(Inv.V)/349 has prescribed a system of **Collegium of two CCIT/DGIT rank officers**, including the CCIT/DGIT in whose jurisdiction the case lies, to give prior administrative approval to the Sanctioning Authority before launching of prosecution in most cases, except where the threshold of default exceeds Rs. 25 lakhs in cases of non-payment of tax deducted at source or tax collected at source or

wilful attempt to evade tax/payment of tax or failure to file returns of income, or false statement in verification or abetment of false return/ account/statement etc. With this Circular, it is being ensured that prosecution proceedings are initiated in deserving cases only. The Principal CCIT(CCA) concerned may issue directions for forming collegium of CCsIT/DGIT for this purpose. In case of disagreement between the two CCIT/DGIT rank officers of the collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event that the Pr. CCIT(CCA) is one of the two officers of the collegium, in case of a disagreement, the decision of the Pr. CCIT(CCA) will be final.

2.4 No Limitation of time for launching prosecution

Section 468 of Criminal Procedure Code imposes limitation of three years for launching prosecution. However, offences under the Income-tax Act &Wealth-tax Act are excluded from the purview of the limitation provided in Section 468 of the Criminal Procedure Code. But, the prosecution provisions relating to newly introduced Securities Transaction Tax and Banking Cash Transaction Tax have not been excluded from the purview of limitation prescribed u/s 468 of CrPC. It may however be mentioned that though law does not provide any limitation of time for launching prosecution, Hon'ble Bombay High Court has quashed the prosecution on the ground of unreasonable delay which remains unexplained when the complaint was filed nearly 14 years after the date of alleged offence u/s 278B. [KMA Ltd vs Sundararajan ITO (1996) Tax LR 248 (Bom)].

2.5 Prosecution under Income-tax Law vis-a-vis IPC

There is no bar on prosecution of an offender under the Income-tax Act and under the Indian Penal Code simultaneously. However, there is a bar on the punishment for the same offence twice. Prosecution under the Income-tax Act has some specific features.

(i) A complaint under the Income-tax Act is usually more specific to our requirements.

(ii) Section 278A provides for more rigorous punishment for second and subsequent offences. The subsequent offence need not be under the same section as the first.

(iii) Section 278AA has put the onus of proving reasonable cause on the accused in respect of offences under Section 276A, 276AB and 276B.

(iv) Section 278E incorporates an important presumption of existence of culpable mental state, which is very helpful to

the department. Though the court shall presume such a state, the accused would be allowed to prove the fact that he had no such mental state.

(v) Section 278B, after its insertion, sets the controversy regarding liability of the company to prosecution at rest. It lays down that the company as well as any person in charge of and responsible for the conduct of the business of the company at the time the offence was committed, would be liable to prosecution for the offence committed under the Act. Such a person shall be guilty unless he proves that the offence was committed without his knowledge or even after exercising due diligence by him to prevent the commission of such offence.

(vi) Section 279(2) provides for compounding of offences under the Income-tax Act. An offence under the IPC cannot be compounded. It can only be withdrawn with the leave of the Court.

3. Important features of offences under Income-tax Act, 1961

Guidelines deal with some basic criteria for identification of potential cases for prosecution. They specify certain categories of cases, which are necessarily required to be processed for prosecution. However, if the facts and circumstances warrant, other types of cases may also be processed for prosecution. Important features of offences under various provisions of I.T. Act are as follows:

3.1 Section 275A: Contravention of order under sub-section (1) or (3) of Section 132

(a) Whenever violation of any order served under second proviso to sub section (1) or sub section (3) of section 132 of the Act is noticed, the Authorized Officer or the Assessing Officer concerned as the case may be, should inform the processing ADIT/DDIT (Inv.) to examine such violation from the angle of launching prosecution.

(b) The ADIT/DDIT (Inv.) shall take possession of all documents evidencing the commission of offence forthwith on receipt of intimation and process the case for prosecution and forward the prosecution proposal to the Pr.DIT/DIT for previous sanction.

(c) For making a successful case under this section, the Authorized Officer would be required to prove that a proper restraint order was passed by him and was duly served on the person concerned (accused).

(d) The DDIT/ADIT/Authorized officer would have to bring evidence on record to establish that the accused removed or parted with or

otherwise dealt with the valuable articles or things (as contemplated in second proviso to sub-section 1 of section 132) or books of account, other documents, money, bullion, jewellery or other valuable articles or things (as contemplated in sub-section 3 of section 132) either deliberately or did not take reasonable steps to discharge the obligations cast upon him by virtue of the restraint orders, thus contravening the order. It would also be imperative that the Authorized Officer or ADIT/ DDIT (Inv.) examine persons or witnesses concerned. The evidence regarding the presence of Panchas and their statement as witnesses, recorded contemporaneously, would be important to establish the commission of offence under this section.

(e) It may be mentioned that if a person who is in control/ possession of books of account/ documents etc., destroys the same, it will constitute an offence u/s 204 of IPC.

3.2 Section 275B: Failure to comply with the provisions of clause (iib) of sub-section (1) of section 132

(a) A person, who during a search operation is found to be in control /possession of books /documents in electronic media, fails to afford the authorized officer necessary facilities to inspect the same as per provisions of section 132(1)(iib), would render himself liable for prosecution, as such failure amounts to commission of an offence under this section.

(b) If the authorized officer is unable to open or have access to files containing books of account or documents maintained on electronic media such as computers and the person incharge of the premises does not make available such computer codes or passwords, this act will constitute an offence u/s 275B [Explanatory note 55 to Finance Act 2002]. The authorized officers are advised to ask the passwords / secret codes specifically in the statement recorded on oath and the denial or deliberate non-furnishing of such passwords / secret codes shall be brought out in the statement recorded by the authorized officer. The evidence regarding the presence of Panchas, and their statements as witnesses, recorded contemporaneously, would be important to establish the commission of offence under this section.

(c) Whenever any violation of provisions of section 132(1)(iib) of the Act is noticed, the Authorized Officer or the Assessing Officer concerned as the case may be, should inform the processing ADIT/DDIT(Inv.) to examine such violation from the angle of launching prosecution, who in turn shall examine the offence from the point of feasibility of launching prosecution under this section. After processing the case, he will forward the proposal to Pr.DIT/DIT having jurisdiction over the

accused for prior sanction. For a successful prosecution under this provision, the ADIT/DDIT (Inv)/Authorized officer would have to bring evidence on record to prove deliberate failure of the accused to afford necessary facilities to the authorized officer for inspection.

(d) It may be mentioned that if a person who is in control / possession of books of account / documents in electronic media, destroys the same to prevent their access by the authorized officer, it will constitute an offence u/s 204 of IPC.

3.3 Section 276: Removal, Concealment, transfer or delivery of property to thwart tax recovery

(a) This provision is in the statute w.e.f 1/04/1989 as a deterrent to tax defaulters attempting to checkmate or thwart recovery proceedings by the TRO u/s 222 of the Income-tax Act, 1961.

(b) The prosecution has to establish that the act of thwarting recovery on the part of the accused was with the intention to defeat taking over of the assets towards the satisfaction of outstanding demand as drawn up in the certificate. It is important to establish correlation between determination of demand/ steps taken for recovery of demand and transfer of asset to prove the intention to defeat the recovery of taxes as this would help in conducting a successful trial.

3.4 Section 276A: Failure to comply with the provisions of sub-section (1)and (3) of section 178

(a) This section is a safeguard against fraudulent or even careless evasion of tax by the liquidator of a company, who is bound to act as per the provisions of section 178(1) & (3).

(b) If a liquidator of a company, being wound up under the orders of the court or otherwise or a liquidator, appointed as receiver of any assets of a company, fails to inform the AO having jurisdiction over the company, by giving notice of his appointment within 30 days of such appointment [section 178(1)]; or without the leave of the CCIT or the CIT and after being notified by the AO., parts with any of the assets of the liquidated company without setting aside the notified amount [section 178(3)], renders himself liable for prosecution.

(c) Under Section 178, the AO, within three months of receipt of the intimation from the liquidator, has to notify the amount sufficient to pay the company's tax dues. The liquidator can part with the assets only after setting aside such amount.

However, such liquidator can part with the assets for the purpose of paying of the taxes payable by the company or for making payment

to the secured creditors, who have a priority over Government dues or for meeting the cost of liquidation as are in the opinion of the Pr. CCIT/CCIT or Pr. CIT/CIT, reasonable.

(d) The liquidator is personally liable [section 178(4)] for the dues of company. He invites conviction in case of contravention of duties required as above. The prosecution is not required to prove that there was any fraudulent intention on the part of the liquidator. It has to only prove that the liquidator has acted without reasonable cause.

(e) However, if the liquidator has given intimation to the A.O, then the evidence of service of notification of demand to the liquidator would be crucial to the success of prosecution.

3.5 Section 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B

(a) A person may be prosecuted if he fails to pay to the credit of the Govt., the tax deducted at source, under provisions of Chapter XVII-B or on distributed profits of a domestic company (115-0) or from winnings from lottery or crossword puzzle [section 194 B].

(b) Violation of provisions of Section 194B was made an offence with insertion of this section in section 276B, to cover cases, where such winning was payable partly in cash and partly in kind and the cash component of the winning was not sufficient to pay entire TDS liability. Duty is then cast on the payer of such winnings to ensure that before releasing the winning in kind, the taxes are paid. The payer has to deposit full TDS by collecting the same from the winner at the existing rates. Such a situation may arise when a lottery ticket provides for a car or plot of land, etc.

(c) It is highlighted that the Provision of section 278AA bars Prosecution in respect of offences prescribed u/s 276A/276B/276BB of the I.T. Act, if the defaulter proves that there was reasonable cause for such failure. Therefore, the defaulter should be given an opportunity before launching prosecution under these sections.

(d) Circular No. 24/2019 dated 09.09.2019 issued vide F.No. 285/08/2014-(Inv.V)/349 has laid down that cases where non-payment of tax deducted at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In exceptional cases like those of habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/ DGIT rank officers.

3.6 Section 276BB: Failure to pay the tax collected at source

The propositions, as applicable to section 276 B, would prevail, if a person fails to pay the tax collected at source u/s 206C.

3.7 Section 276C: Wilful attempt to evade tax. etc.

(a) A person, who wilfully attempts to evade tax, penalty or interest imposable [section 276C (1)] or already imposed [section 276C (2)], will be punishable under section 276C of I.T. Act 1961.

(b) Under this section '**attempt to evade tax, penalty or interest chargeable or imposable or under reporting of income**' itself is a punishable offence with imprisonment and fine. Therefore, proving actual tax evasion is not necessary, if attempt (it can be an attempt which failed or partially succeeded) can be proved beyond reasonable doubt. Prosecution can be initiated even before completion of assessment in appropriate cases where attempt can be established, for example cases covered by Explanation below that section which is reproduced hereunder for ready reference.

> *Explanation - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—*
>
> > *(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or*
> >
> > *(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or*
> >
> > *(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or*
> >
> > *(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.*

(c) The circumstances as mentioned in clause (i) to (iii) of the Explanation as above, will normally arise in search and survey cases. Therefore, wherever strong and irrefutable evidence to prove *attempt to evade tax,* as defined above, are found to exist, the case may be examined to initiate prosecution at the earliest.

(d) In survey cases where evidence for tax evasion in current year is found but assessee declares such income in the return, normally

penalty proceeding u/s 271(1)(c)/270A is not initiated as concealment of income is seen with respect to the return filed. However, in such cases, 'attempt to evade tax' can be proved. Hence such cases may be considered for prosecution under this section.

(e) In cases where prosecution is considered after completion of assessment, the amount of evasion for which attempt was made may be higher than the amount of addition made, as part of income might be already declared in return or the attempt to evade might be successful partially only. In some cases, this may help in invoking clause (i) of section 276C(1).

(f) In respect of applicants who approach Income-tax Settlement Commission (ITSC for short), the following cases are fit for prosecution under this section, namely:

i. Where the settlement application has been rejected or not admitted by ITSC, particularly on account of lack of true and full disclosure;

ii. Where the ITSC has not granted immunity from prosecution;

iii. Where immunity from prosecution stands withdrawn in terms of section 245H(1A);

iv. Where ITSC has withdrawn immunity from prosecution u/s 245H(2).

(g) When duplicate sets of books of accounts or documents containing false entries are found in proceedings u/s 132 or 133A of the Act or statement recorded u/s 132(4) in a search operation proves an attempt to evade tax, AO should be careful from the beginning to identify crucial evidences to be used for launching a good and sustainable prosecution against the assessee indulging in such practices.

(h) Instruction No.1618, dtd.03.06.85 (Please see Chapter-7) specifies certain parameters for spotting prosecution potential. It also deals with certain precautions, which shall be taken during scrutiny assessment for developing prosecution potential of such cases.

(i) If additions based on the facts are confirmed at first appellate stage, it will be advisable to conduct pending penalty proceedings carefully to plug the loopholes keeping prosecution angle in mind.

(j) Circular No. 24/2019 dated 09.09.2019 prescribes that cases where amount sought to be evaded or tax on under-reported income is Rs. 25 lakhs or less shall not be processed except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers. Further, as per the Circular, prosecution under this section

shall be launched only after confirmation of that order imposing penalty by the Income-tax Appellate Tribunal.

3.8 Section 276C(2): Wilful attempt to evade payment of tax, etc.

(a) Under this section, any 'attempt to evade payment of tax, penalty or interest' has been made a punishable offence with imprisonment and fine. The provisions would be attracted, inter alia, in following circumstances:

i. Cases where self-assessment tax is shown as payable in return filed, but not paid.

ii. Cases where demand has attained finality after conclusion of appellate proceedings but is not paid.

iii. Any amount, as per demand notice under section 156 of the Act duly served, is not paid, unless the assessee is not treated as "assessee in default" or an application, not to treat him assessee in default, is pending before appropriate authority.

iv. Cases where tax deducted at source and tax collected at source has not been paid by deductor or collector after such deduction or collection. In other words, this section can be invoked in addition to section 276B and section 276BB.

(b) Prosecution can also be filed in appropriate cases where after due service of demand notice full outstanding demand has not been paid, even if they are pending in appeal (including first appeal), provided that no stay or instalments have been granted by any Authority, and no stay application is pending before any Authority.

(c) Circular No. 24/2019 dated 09.09.2019 prescribes that cases where wilful attempt to evade payment of any tax, penalty or interest is Rs. 25 lakhs or less shall not be processed except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers.

3.9 Section 276CC: Failure to furnish returns of income

(a) If a person wilfully fails to furnish in due time, returns of income under section 139(1) or return of fringe benefits u/s 115WD(1) or in response to notices under sections 142(1) (i), 148, 153A or u/s 115WD (2), u/s 115 WH, he makes himself liable for prosecution under this section.

(b) Under this section, failure to furnish return within time allowed is punishable with imprisonment and fine. This is applicable in following circumstances:

i. Cases where return u/s 139(1) or 115WD(1) has not been filed within due date, or before the end of assessment year unless notice u/s 142(1)/148/153 has been issued after due date (139(1) and return has not been filed within due date specified in such notice.

ii. However, as per the proviso to section 276CC, where the tax payable on regular assessment reduced by Advance tax, self assessment tax and TDS is less than Rs. 3,000/- (Rs. 10,000 w.e.f. 01.04.2020) in cases of persons, not being a company, the prosecution under this section cannot be filed for non-filing of return of income within due date u/s 139(1) or return of fringe benefits u/s 115WD (1).

iii. In case of companies, where return u/s 139(1) has not been filed within due date or before the end of the assessment year voluntarily, irrespective of whether any tax was payable or not.

iv. However where return in response to notice u/s 142(1), 148 or 153A has not been filed within the time allowed by notice, the prosecution under this section can be initiated immediately after the due date specified therein.

(c) The Supreme Court in its judgment in *Sasi Enterprises Vs ACIT 361 ITR 163* has held that benefit of Proviso to section 276CC is available only to voluntary filing of return as required under section 139(1) of the Act, and said proviso would not apply after detection of failure to file return and after a notice under section 142(1) or section 148 is issued calling for filing of return of income.

(d) The Supreme Court in its judgement in Prakash Nath Khanna Vs CIT [2004] 135 Taxman 327 (SC) has held that since the time within which return is to be furnished is indicated in only sub-section (1) of section 139 and not in sub section (4) of section 139, hence even if a return is filed in terms of sub-section(4) of section 139, that would not dilute infraction in not furnishing return in due time as prescribed u/s 139(1). This is relevant for returns filed till AY 2016-17, as after this, under section 139, a return of income cannot be filed beyond the end of the relevant assessment year.

(e) It may be noted that the punishment depends upon the amount of tax that would have been evaded, if failure was not discovered.

(f) It is necessary to estimate the extent of tax evasion before filing prosecution under this section in order to determine whether the case falls under clause (i) or clause (ii) of the section. The Assessing Officer may determine the quantum keeping in view, the amount of tax paid in the last return filed, if any, or tax payable on income escaping assessment, if any, on the basis of information available with the Assessing Officer at the time of filing complaint etc. In case after filing prosecution complaint under clause (ii), on the basis of any information, it is found that the quantum of tax evasion exceeds the threshold provided under clause (i), the Assessing Officer/complainant may move the court for converting the summons case into a warrants case under section 259 of Cr.P.C.

(g) Circular No. 24/2019 dated 09.09.2019 prescribes that cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers

3.10 Section 276D: Failure to produce accounts and documents

(a) If a person wilfully fails to produce such accounts and/or documents as referred to in the notice u/s 142(1) on or before the date fixed therein or fails to comply with the direction issued to him under section 142(2A), he shall be liable to be proceeded against punishment under section 276D.

(b) The AO has to prove that notice u/s 142(1) of the I.T. Act or the order directing him to get the accounts audited u/s 142(2A) was properly served on him. Proof of service & intimation from the nominated Auditor, regarding failure of the assessee to comply with such a direction, should be carefully preserved to prove the charge in the court.

(c) Careful drafting of notice u/s 142(1) as to its requirements, will be helpful in invoking this provision.

(d) Adjournments, if any sought by the assessee should be properly dealt with, to make out a successful case under this section.

(e) The confirmation of penalty, if imposed under u/s 271(1) (b) of I.T. Act, by the appellate authority will be very useful.

3.11 Section 277: False statement in verification etc.

(a) A person who knows or believes that the statement or account he has given or delivered is false, becomes liable for prosecution under this section.

This section applies in the following circumstances:

i) Making 'false statement in verification'.

ii) Since return of income has to be statutorily verified, for any falsity in the return filed.

iii) If someone (including any person other than assessee) delivers an account or statement which he knows or believes to be false or does not believe to be true.

iv) Filing of false Statement of Financial Transaction or Reportable Account u/s 285BA of Act.

(b) 'Person' used in Section 277 refers not only to an assessee but also to a person who has made verification on behalf of the assessee. It will include in the case of a company, the Managing Director who signed the return of income. [M R Pratap Vs. Muthukrishna 62 Taxman 49 (SC)].

(c) The A.O. shall keep in mind the elements of mens-rea while processing cases for prosecution under this section.

(d) Circular No. 24/2019 dated 09.09.2019 prescribes that cases where tax which would have been evaded is Rs. 25 lakhs or less shall not be processed except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers.

3.12 <u>Section 277A:</u> Falsification of books of account, document etc.

(a) This provision has been inserted by the Finance Act, 2004 with effect from 01.10.2004. One of the main objectives of this provision is to counter the menace of hawala or accommodation bills by making such action punishable and making the persons, indulging in such activities, liable for prosecution.

(b) It may be noted that:

- the element of falsity may be in the form of any entry or statement &
- it is not necessary to prove that the other person has actually evaded tax.

(c) It may be highlighted that the conviction can also be based on an admission by the accused before any tax authority (ITO Vs Shivlal Dulichand Agarwal-184 ITR 414,424-(AP). There is an emerging trend these days that hawala operators or entry providers candidly admit their modus operandi before authorized officers as such admissions

lead to assessment of income only attributable to earning of commission, which is a small fraction of the amount given undercover of loans/accommodation entries. Tax evasion by resort to this practice is becoming rampant. The remedy lies in curbing this increasing trend by promptly launching prosecution against such persons. Therefore, such admissions should be carefully and properly recorded with prosecution angle in mind.

(d) Prosecution under this section often involves criminal conspiracy with the beneficiary (second person) which is punishable under section 120B of the IPC. The same may be explored and if the ingredients are fulfilled, the beneficiary may be included along with the first person under section 120B of the IPC in the same complaint. For instance, in the case of an accommodation entry provided to a beneficiary through dummy concerns, the entry provider along with the dummy directors are prosecutable under this section as well as section 120B of IPC whereas the beneficiary is liable for prosecution under section 120B of IPC. Besides the beneficiary may also be liable for prosecution under section 276C(1) and section 277 of the Act.

3.13 Section 278: Abetment of false return etc.

(a) This section provides for punishing any person who induces another person to commit an offence or abets in commission of offence like filing of false return of income or making a false statement which he either knows to be false or does not believe to be true.

(b) The prosecution has to establish that the abetter knew the act to be offence when he induced the other person to do so or he knew the statement to be false or did not believe to be true while making it. The role of the person being accused of abetment, therefore, needs to be examined carefully.

(c) The quantum of punishment depends upon the tax that would have been evaded, if such declaration, account or statement were accepted as true.

(d) This provision is also applicable to professionals / persons rendering assistance to an assessee in evasion of tax.

(e) Circular No. 24/2019 dated 09.09.2019 prescribes that cases where tax, penalty or interest which would have been evaded is Rs. 25 lakhs or less shall not be processed except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers.

4. The Offences committed by "Artificial Juridical Person"

4.1 Offences by companies [Section 278B]

(a) If an offence is committed by a company, then the company and every person [director, manager, secretary, other officer of the company] who was/were in charge of the affairs of the company or responsible for them, at the time of commission of the offence, will be guilty of the offence and liable to be proceeded against and punished.

(b) For the above

(i) the Company is defined as a body corporate and also includes

. A firm

. an AOP, BOI - incorporated or not

(ii) A director in relation to

. a firm means a partner

. an AOP or BOI - a member controlling the -affairs thereof

(c) Each of the offenders may be separately prosecuted or along with the company [Sheoratan Agarwal Vs. State of MP, AIR 1984 SC 1824, 1825].

(d) If the above persons are able to prove that the offence was committed without his/ their knowledge or that due diligence was exercised to prevent commission of the offence, provisions of this section will not apply to them.

Therefore, the burden of proof is on such officers of the company / *partners of the* firm/ members of the AOP to prove his/their innocence.

(e) The procedure for dealing prosecution in such case is dealt in Anexxure-2 to the SOP dated 27.06.2019.

4.2 Offences by Hindu undivided families [Section 278C]

In case of an offence by HUF, the Karta and also if proved that the offence had been committed with the consent or connivance of a member of the HUF, such member too will be deemed guilty and punishable.

5. Procedure for launching of prosecution

The detailed procedure for launching prosecution in case of offences related to TDS/TCS is governed by SOP dated 18.10.2016 and in

case of all other offences the same shall be governed by SOP dated 27.06.2019. The brief procedure for launching prosecution is as discussed in these Paragraphs:

5.1 Steps for launching prosecution

(a) The ADIT/DDIT/ Authorised officer/ Assessing officer/TRO should initiate the process by identifying the case if the case is covered by the guidelines on launching of prosecution and/or he finds it is a fit case for prosecution on the basis of evidence available. Once the case is identified, he shall send a proposal containing the brief facts of the case and identify the offences committed along with the case records to the Pr.CIT/CIT, having jurisdiction over the case, for his approval.

(b) The Pr.CIT/CIT shall examine the feasibility of prosecution potential in the given facts and circumstances of the case. If the Pr.CIT/CIT finds the proposal prima facie fit to be proceeded with, he shall issue a notice u/s 279(1) of the I.T. Act or otherwise (for offences under I.P.C.) to the assessee intimating him of the proposed action and call for his version on the facts and events. The assessee should be required to file his reply to the notice within stipulated time.

(c) On expiry of stipulated time from the service of notice to the assessee, the Pr.CIT/CIT shall:

> If no reply is received from assessee, proceed further to decide the issue on the basis of facts available on record as per (f) and (g) below;
>
> Or
>
> If the assessee furnishes his response/version/reply, then take further action as per (d) to (g) below.

(d) If the assessee prays for compounding of offence, then he should be advised to submit his prayer in the prescribed proforma of application for compounding within reasonable time to be specified clearly in such advisory to the concerned Competent Authority. If the compounding application is not filed in specified time, the sanctioning authority should proceed ahead without further delay. If compounding application is received, the same would be regulated by the procedure laid down in Guidelines on compounding of offences issued under File No 285/08/2014 – IT(Inv.V)/147 dated 14.06.2019. If the Competent Authority compounds the offence, the proposal for prosecution need not be further processed.

(e) If in assessee's reply, no request for compounding is made and on consideration of its reply it is not found to be a fit case for launching

of prosecution, the prosecution may not be launched after recording reasons for the same.

(f) If Commissioner is satisfied of ingredients of the offence, he may grant, previous sanction u/s 279(1) of the Act, 0after taking the prior approval of the Collegium of two CCIT/DGIT rank officers in appropriate cases as prescribed, through a speaking order duly recording facts of the case and evidences relevant thereto. The application of mind and fairness of decision should reflect in the order. If applicable, the provisions of section 278AA should be kept in mind before giving any sanction u/s 279(1).

(g) If on consideration of facts and reply of accused or co-accused, the Commissioner is in doubt whether prosecutable offence is made out, he may seek opinion of Special Public Prosecutor regarding fitness of case for prosecution. Such opinion is only for assisting the Commissioner and is neither binding nor the sole deciding factor to grant sanction for prosecution.

5.2 Important aspects regarding preparation of the proposal for prosecution

The Para 4 of SOP dated 27.06.2019 deals with procedure to prepare proposal for Prosecution. The Proposal shall be prepared in Form A which is attached to SOP as Annexure-1. In preparing such proposals following aspects may be kept in mind:-

(a) The AO is required to study the entire records of a delinquent assessee with special reference to the following:-

(i) Background of the case with particular attention to past lapses

(ii) Stages of the relevant proceedings from the issue of the notice requiring submission of return to the completion of assessment and finalisation of penalty proceedings.

(iii) Appellate Proceedings.

(iv) Identification of documentary evidence like notices, return, statement of accounts etc.

(v) Identification of other documentary evidences

(vi) Identification of departmental witnesses

(vii) Identification of outside witnesses

(viii) Expert testimony, if any

(ix) Identification of corroborative evidence

(b) After study of records a proposal in prescribed proforma shall be drafted incorporating all the required details as provided in the proforma enclosed as Annexure-1 of SOP, strictly following the instructions to fill the proforma. Further, an appendix to Form A also suggests contents of proposals in respect of offences falling under different provisions of Prosecution, which provide very useful guidance for preparation of proposals.

5.3 Safeguards in granting sanction for prosecution u/s 279(1) of the IT Act

The Para 5 of SOP dated 27.06.2019 deals with various aspects of mandatory sanction u/s 279(1) of the I.T. Act. Following safeguard in granting sanction u/s 279(1) may be taken.

(a) It is important to remember that it should be discernible from the sanction order u/s 279(1) that it was issued by the authority after due application of mind on the materials available with him. The application of mind must be substantive, real and honest.

(b) The provision for sanction is intended to be a safeguard against frivolous prosecutions and also to give an opportunity to the authority concerned to decide whether prosecution is necessary and desirable in the facts & circumstances of a particular case. It should be apparent from the sanction itself that the sanctioning authority has applied its mind to the facts of the case.

(c) There are several decided cases wherein complaints were dismissed, at the threshold itself, for want of a proper & valid sanction. The sanction order should demonstrate application of mind so that the sanction accorded by CIT/CCIT is not found to be defective or deficient, in a court of law.

(d) Importantly, the sanction must be given separately for each & every offence even though the order may be same. If the sanction is, say, for an offence u/s 276C, and proceedings are taken u/s 277, the proceedings may be declared invalid and are likely to be quashed.

(e) Similarly, the previous sanction u/s 279(1) of I.T. Act should be separate for each assessment year by way of a separate order specifying each and every offence separately.

6. Important aspects in the preparation of complaint

The Para 6 of SOP dated 27.06.2019 deals with procedure for preparation of complaints. As the complaint is foundation of Prosecution proceedings, it is necessary to prepare the same carefully. The following aspect may be kept in mind:

6.1 The complaint:

(a) A complaint is the foundation of a prosecution proceeding. It should be written in such a manner that a person with a reasonable intelligence should be convinced about the commission of the offence by the accused.

(b) Another important feature relates to the mention of appropriate charging section of the Act as well as the Indian Penal Code so that at the time of framing of the charge, the Magistrate would have necessary assistance.

(c) The complaint should be signed by the competent officer.

(d) Chapter XVII of Cr.PC (Section 211 to Section 224) is relevant for drafting complaint.

(e) Section 218 of Cr.PC provides for separate charge for every distinct offence and separate trial for each of them. However, section 219 provides that three offences of same kind (punishable with the same amount of punishment under same section of IPC or any special law which include I.T. Act) committed within the space of 12 month from the first to the last of such offence may be charged with and tried in one trial.

6.2 Brief guidelines for proper drafting of complaints:

(a) Before prosecution is launched, it is imperative that there must be a sanction for such prosecution and that it should be at the instance of the authority enumerated in section 279(1) of the Act. Otherwise prosecution is likely to be quashed.

(b) The place of commission of the offence shall specifically be discussed with the Prosecution Counsel and accordingly the jurisdiction of the court should be mentioned.

(c) The correct names and complete addresses of the accused should be specifically mentioned. This prevents delay in service of summons etc., by the court.

(d) The following should be annexed to the complaint:

(i) Sanction order for prosecution

(ii) List of important documents / exhibits

(iii) List of prosecution witnesses.

(e) It may be however noted, that prosecution can also furnish additional list of witnesses during trial [section 204(2) of Cr.P.C]

(f) Chronological events leading to commission of offences should be spelt out. The evidence collected during the investigation should be set out precisely so that the Magistrate is able to appreciate the grounds to proceed with the case.

Care, therefore, needs to be taken to establish clearly the ingredients of the offence in the complaint.

6.3 Selection of evidence as exhibits

Almost every prosecution trial will involve the use of evidence in form of books of account and documents maintained in the regular course of business. The documentary evidence can come to the possession of authorities during Income-tax proceedings, as documents submitted by assessee or gathered from third parties. They may also come to the possession as a result of impounding u/s 131(3) or 133A or as a result of seizure u/s 132(1) or u/s 132A of I.T. Act. Such records and documents are admissible evidences. The original return and the amended return if any, statement of accounts whenever required, and deposition of the assessee admitting an offence or contradicting his earlier stand should specifically be listed as exhibits to the complaint. It is important that the books of account and documents that are to be relied upon as evidence are kept safely. More reliance should be placed on the documents of government evidence / bank / other authorities.

For Digital/electronic evidence, Hon'ble Supreme Court in SLP (CRL) No. 2302 of 2017 in the case of Shafi Mohammed Vs The State of Himachal Pradesh has stated that Certificate required u/s 65B(4) of the Evidence Act can be relaxed by Court when a party is not in possessions of device from which the document is produced. In TDS cases u/s 276B/276BB, default sheet generated by CPC-TDS System can be submitted as admissible evidence in the Court.

7. Selection of witness(es)

Selection of prosecution witness is part of preparation of complaint, However, looking into importance attached to careful selection of witness, separate discussion under the head has been made.

(a) In the matter of selection of prosecution witnesses, it should be borne in mind that to prove a particular point, there might be several witnesses. It is advisable not to list all the witnesses for eliciting evidence on identical facts and circumstances. Those witnesses who can easily be produced before the court, should be preferred.

(b) The complainant officer should invariably be witness.

(c) If the prosecution complaint is based on any order passed by any authority, who himself if not complainant officer, such officer should also be witness.

(d) A scene or event comprises several stages. Accordingly, the witnesses' evidence should be so phased as to account for a particular stage of the event.

(e) Preference should be given to independent witnesses, such as officers of banks, government employees, assessee's business constituents etc., as the circumstances of the particular case warrant.

(f) If the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction, there is no requirement to make sanctioning authority a prosecution witness. If at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority/signing/ authenticating authority. In fact, it is advisable to get the signature of sanctioning authority authenticated by the complainant officer, who invariably will be knowing the fact of sanction granted by the sanctioning authority. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non-application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority. In this regard the DOPT Office Memorandum No.142/22/2007-AVD.I dated 10.11.2008 on the subject Prosecution sanction and the judgments relied upon therein are relevant. This O.M. has been included in Volume II of this Manual.

(g) In selecting witnesses, it is advisable not to depend upon the delinquent assessee's witnesses or those upon whom he is depending for his defense. The defense should be forced to lead his own witnesses to prove his contentions.

8. Custody of records and evidence relating to Prosecution

A brief discussion on safe custody of evidence has been provided in Para 8 of SOP dated 27.06.2019. In a large number of cases, the department loses cases due to its inability to lead evidence before the court. Therefore, the material evidence sought to be utilized in prosecution proceedings should be painstakingly identified and the originals shall be kept in safe custody by the officer.

8.1 If any authority during any proceeding comes across any fraud or serious tax evasion, he should conduct further proceedings keeping prosecution angle in mind. Such cases shall be treated as "potential prosecution cases". In such cases, the evidences should be collected carefully. The A.Os should ensure that returns are filed in proper proforma and are signed by the competent person. Special care shall be taken to ensure that the documents filed by assessee during the various proceedings are duly signed and verified. Whenever statement of assessee or any witness is recorded it should be ensured that oath is properly administered and statement is properly concluded. All original documents including Return of Income, documents obtained during assessment proceedings, documents impounded u/s 131 or u/s 133A or seized u/s 132(1) of I.T. Act should be kept in personal custody. It should be ensured that timely extension for retention of impounded/ seized records is obtained from the competent authorities. All such original records shall be handed over personally to the succeeding officer while handing over charge with a proper mention of potential of the case and importance of record in the charge handing over report, a copy of which should also be given to range head.

8.2 Whether the case was identified as "potential prosecution case" or not, once the prosecution proceedings are initiated, the entire original records should be kept in personal custody and further processing of the case should be done on xerox copies. The assessment records and impounded/seized documents shall be kept in the personal custody of the A.O while other original records such as Panchanama, Prohibitory Order, Statements etc. shall be kept in the custody of authority concerned such as DDIT(Inv.)/ADIT(Inv.). Same procedure for handling of original records as enumerated in para-6.1 above shall be followed, in the cases where prosecution has been initiated.

8.3 At the time of launching the prosecution certified photocopies of the relevant records should be handed over to the prosecution counsel. Thereafter, it should be the duty of the prosecution Counsel to produce the same at the time of each hearing. Once the complaint is filed in the court, the original records shall be handed over to prosecution cell, wherever they exist. Otherwise it shall be kept in the personal custody of complainant officer and his successor. The original record can be produced by the Inspector or any other official working in the prosecution cell or in the office of complainant officer as and when specifically asked for by the Court on any date of hearing.

8.4 The seized / impounded material having bearing on prosecution proceedings should not be released till the completion of such prosecution proceedings and it should be ensured that timely approval

of competent authority is obtained for its retention. It should be ensured that the importance of crucial seized / impounded documents finds a mention in charge handing over report along with date of expiry of retention period, whenever the officer concerned is transferred.

8.5 As soon as proceeding for Prosecution is initiated, name of the case shall be entered in prosecution register by the A.O/TRO/ADIT on ITBA if the facility is there or else in a register maintained manually. Such register should be handed over to succeeding officers personally.

9. Safeguards for trial proceedings

In several cases, the accused persons were discharged / acquitted because of repeated failure of prosecution to lead evidence. Prolonged delays also often go against the department. Accordingly, following safeguards shall be taken for effective prosecution:

(a) It is advisable to keep following details of departmental witness(s), so that even in the case of their transfer or superannuation, he can be produced before the Court:-

(i) Name

(ii) Present designation and Posting

(iii) Employee Code

(iv) Permanent Address

(v) Aadhar Number

(vi) Phone / E-mail

(b) Liaison should be maintained with the complainant assessing officers and the departmental witnesses so that unnecessary adjournments from the department's side are avoided;

(c) The prosecution counsels should strongly oppose adjournments sought by accused persons on frivolous grounds;

(d) The Prosecution Cell, if it is functioning or else the office of Complainant Officer (CO) should keep track of stay granted by higher courts and get them vacated in time; He should relentlessly pursue the departmental interest with the objective of expeditious finalisation of cases;

(e) For speedy decision from Trial Court in the cases which are also stuck in appeals under Income-tax provisions, the following steps can also be taken:-

(i) The complaints should be filed as early as possible so that it is easier to produce the records and witnesses.

(ii) However, in cases where the trial court's decision would invariably depend on appellate authority's decision, complaints may be filed only after the ITAT has decided the quantum and / or penalty appeal, as the case may be.

(iii) Cases having potential for prosecution should be identified soon after assessment is finalized. Thereafter, these cases may be put on a fast track though an appropriate monitoring mechanism aimed at faster disposal of appeals and levy of penalty at the earliest.

(f) As soon as prosecution is launched in a case, all original records may be handed over to the custody of the prosecution cell wherever they exist, which should be responsible for their safe custody and for producing them in the court whenever required. For all other departmental purposes, only a dummy file containing photocopies of the original documents may move. If this is not feasible, then the complainant and his succeeding officers should be custodian of the recorder.

(g) In cases having potential for prosecution, the assessing officers should obtain signatures of the assessee on all relevant documents during the course of the proceedings.

(h) Whenever, the departmental witness attends, he should be briefed about the case by officer holding office of Complainant Officer and the departmental counsel. He should also be shown the relevant records, so that when he is produced in the court, he does not make factual mistakes.

(i) The prosecution cells wherever they exists, the prosecution counsels and the officers / complainant should maintain complete prosecution folders relating to proceedings in the courts.

10. Publicity of Convicted cases

All cases, where prosecution proceedings launched by the Department have resulted in conviction of the assessee should be given appropriate publicity by the CIT concerned.

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CHAPTER 6

COMPOUNDING OF OFFENCES

Chapter Summary	
S.No.	**Description**
1.	Introduction
2.	The Compounding Guidelines and their applicability
3.	Some important aspects relating to compounding
4.	Procedure for compounding of offences
5.	Withdrawal of Prosecution complaint after Compounding of offences
6.	Compounding Guidelines dated 14.06.2019
7.	Circular No. 25/2019 dated 09.09.2019

1. Introduction

Provisions of compounding are provided in Section 279(2) of the Act to reduce litigation and to give another chance to the accused so that the effect of the offence can be erased. Section 279(2) of the Act provides for compounding of offence by the Pr.CCIT/ CCIT/Pr.DGIT/ DGIT (Competent Authority). Such compounding of offence can be done

- either before, or
- after the institution of prosecution proceedings

By virtue of explanation to section 279, CBDT also has the power to issue order, instructions or directions for proper composition of offences under this section.

There are no parallel provisions under the Indian Penal Code for compounding of offences. However, the charges can be withdrawn.

2. The Compounding Guidelines and their applicability

The CBDT from time to time has issued guidelines to deal with the procedure and also prescribed the compounding charges. A brief backdrop of various compounding guidelines and their applicability on pending and future compounding petitions is as under-

a) Vide F.No.285/90/2008-IT(I & V)/12 dated 16.05.2008 comprehensive guidelines on compounding of offences, in supersession of all earlier instructions, were issued. The procedure mentioned in these guidelines was made applicable to all the pending petitions for compounding of offence under all direct tax laws also.

b) Vide F.No.285/35/2013/IT(I&V)/V)/108 dated 23.12.2014 revised guidelines were issued in supersession of all earlier guidelines including guidelines dated 16.05.2008. These guidelines were however made applicable to all the applications for compounding received on or after 01.01.2015. It was provided in these guidelines that the applications received before 01.01.2015 shall continue to be dealt with in accordance with the guidelines dated 16.05.2008.

c) The latest guidelines on compounding of offences have been issued vide F.No.285/08/2014-IT(INV.V)/147 dated 14.06.2019 which have become effective from 17.06.2019. These guidelines are applicable on compounding applications received on or after 17.06.2019. The applications received before 17.06.2019 but after 31.12.2014 continue to dealt with in accordance with the guidelines dated 23.12.2014.

d) CBDT has issued Circular no. 25/2019 vide F.No. 285/08/2014-IT(Inv.V)/350 dated 09.09.2019 for relaxing the 12 months condition for filing compounding application as a one-time measure. **This relaxation would be available only till 31.12.2019 for cases which are compoundable on merits.** Taxpayers can avail the relaxation in cases where prosecution proceedings are pending before any court of law for more than 12 months, or any compounding application for an offence filed previously which was withdrawn by the applicant solely for the reason that such application was filed beyond 12 months, or any compounding application for an offence which had been rejected previously solely for technical reasons swuch as non-attendance, non-payment of compounding fees, outstanding demand etc. The intent behind this Circular is to reduce the pendency of existing prosecution cases before the courts, and to mitigate unintended hardship to taxpayers in deserving cases.

2.1 Thus, the compounding applications received upto 31.12.2014 are to be dealt under Guidelines dated 16.05.2008, compounding applications received between 01.01.2015 to 16.06.2019 are to be dealt in accordance with Guidelines dated 23.12.2014 and compounding applications received on or after 17.06.2019 are to be dealt in accordance with latest Guidelines dated 14.06.2019.

Further, certain clarifications with regard to compounding offences have been issued vide following instruction:

i) F.No.285/90/2013-IT(INV.V)/212 dated 04.09.2015 regarding undisclosed foreign bank accounts/assets.

ii) F.No.285/35/2013-IT(INV.V)/135 dated 24.02.2015 regarding compounding of offences of directors etc.

All these instructions, circulars and guidelines have been made a part of Volume II of this Manual.

3. Some important aspects relating to compounding

(a) Under section 279(2), as amended from time to time, any offence under Chapter-XXII (containing sections 275A to 280) may, either before or after the institution of proceedings, be compounded by (w.e.f. 1.10.1991) the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General. The authority empowered to compound an offence has, hereinafter, been referred to as the "Competent Authority".

(b) Section 279(2) provides that the Competent Authority may compound any offence under the Act at any time, either before or after the institution of proceedings.

(c) Section 279(2) does not say that the offence can be compounded only if it is proved to have been committed. If there is a proceeding or charge for any offence, it would come within the purview of section 279 and a composition may well be effected. [*Shamrao Bahagwantrao Deshmukh Vs. Dominion of India (1955) 27 ITR 30 (SC)*].

(d) The Competent Authority however should obtain prior approval of committee/authority *wherever it is* prescribed in the applicable guidelines for compounding.

(e) In view of Para 8 (iii) of the compounding guidelines dated 14.06.2019 issued under F.No.285/08/2014-IT(INV.V)/147, once conviction order is passed, normally the offence should not be compounded. Similar provisions were there in earlier guidelines also.

(f) The acceptance by the competent authority of the agreed compounding charges by passing an order has the effect of erasing out the offense. It imposes a bar to proceed any further with the intended or actual prosecution.

(g) Assessee cannot claim, as a matter of right that his offence has to be compounded. In fact, the enabling provision of compounding does not even give a right to a party to insist on the CCIT / DGIT to make an offer of compounding before the prosecution is launched [*UOI vs Banwerelal Agarwal 238 ITR 461 (SC)*]. In fact, in the present

compounding guidelines as well as in earlier guidelines certain restrictions have been placed as Compounding of several classes of offences besides certain procedural restrictions.

(h) As per guidelines dated 04.09.2015 issued vide F.No. 285/90/2013/IT(Inv V), the offences under I.T. Act, which are related to undisclosed foreign bank accounts/assets can be compounded only after filing prosecution complaints in the court. Moreover, the cases where assessee has not admitted the foreign bank accounts/ assets and/or has not cooperated in Income-tax proceeding shall not be compounded. In the latest Guidelines dated 14.06.2019, it has been clearly stated that any offence which has a bearing on an offence relating to undisclosed foreign bank account/assets in any manner are normally not to be compounded. It may be noted that under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 there is no provision for compounding of offence.

(i) As per clarification dated 24.02.2015 vide F.No. 285/35/2013 IT(Inv V)/136 only those directors/persons, who were in charge of, and responsible to the company for the conduct of the business or to whom the consent/connivance/neglect etc. mentioned in section 278B could be attributed, are to be proceeded against. In the light of these provisions, in the case of a company prosecution is initiated against the company as well as its directors separately. Since prosecution proceedings are against the specific persons for specific defaults as per relevant provisions of the Act, the compounding application is to be filed separately by the company and each of the directors against whom the prosecution proceedings have been initiated, in case they desire for compounding. In the case of compounding application of Directors of a company for TDS/TCS related offences, compounding fee at the rate of 10% of the compounding fee determined in the case of the company for compounding of the TDS/TCS related offence may be charged from each of the directors seeking compounding. The compounding applications of directors shall be considered only if the company itself has applied for compounding and its case has been found fit for compounding.

The above clarification was for compounding of offences of directors in context of TDS/TCS related prosecutions. However, same principles apply for offences related to other prosecutions.

(j) As per the latest Guidelines dated 14.06.2019, offences under sections 275A, 275B and 276 of the Act will not be compounded.

4. Procedure for compounding of offences

The various guidelines issued by the CBDT from time to time, including the latest guidelines dated 14.06.2019, are comprehensive and not only prescribe the facts and circumstance under which a compounding petition may be accepted or rejected but also the basic parameters to decide the quantum of compounding fees and the broad procedure to be adopted for compounding of offences. All these guidelines also specify certain offences which cannot be compounded. The compounding applications are to be processed as per applicable guidelines as discussed above. In the back drop of these guidelines, the following basic steps can be adopted to deal with the compounding petitions.

Step-1: The compounding proceedings are initiated once the applicant makes written request for compounding of offense in the prescribed form in the affidavit. The Competent Authority should send it to the A.O. for report.

Step-2: The A.O. shall examine the application for compounding of offence for factual accuracy from the records. He shall also verify as to whether it falls within the parameters of applicable compounding guidelines.

Step-3: On the basis of verification, the A.O shall prepare the check list (as prescribed in annexure) of applicable guidelines for sending its report to the Competent Authority through proper channel. The Addl. CIT and CIT/Pr. CIT concerned, should also give their comments.

Step-4: The Competent Authority having jurisdiction over the person seeking compounding of an offence shall examine the report.

(a) The Pr. CCIT/CCIT/Pr. DGIT/DGIT having jurisdiction over the person, seeking compounding of an offence, is the competent authority for compounding. However, in respect of certain category of offences, he is required to take prior approval of Committee as prescribed in applicable guidelines (Para 10 of Guidelines dated 14.06.2019 and Para 7 of Guidelines dated 14.05.2008).

(b) The applications which do not require approval of the Committee shall be examined along with the reports received from the authorities below. After considering all the relevant facts, circumstances and reports, he will decide to either accept or reject the compounding application. He shall also decide the compounding charges in view of the facts and circumstances of the case as per applicable guidelines. He shall record his decision and the brief facts for taking the decision along with the computation of compounding charges and its basis.

(c) The other applications for compounding shall be put up by the Competent Authority, before the Committee (as prescribed under of applicable guidelines) along with the reports received from the authorities below. The committee, after considering all the relevant facts, circumstances and reports shall recommend either acceptance or rejection of the compounding application. The compounding charges will also be decided by the committee in view of the facts and circumstances of the case as per applicable guidelines. The committee shall record minutes of its proceedings, which shall be maintained by the Competent Authority through the nodal officer for prosecution, if any.

Step-5: If the Competent Authority, with the approval of the committee, wherever required, decides acceptance of the compounding petition, he shall intimate to the assessee, the amount of compounding charges which need to be deposited by the assessee within one month from the end of month of receipt of such intimation (a copy this intimation should also be sent to the A.O/TRO/ADIT concerned etc). The Competent Authority may however extend this period on the request of the applicant in accordance with existing Compounding Guidelines and charging interest wherever applicable.

(or)

In case, considering the facts and circumstances of the case, the Competent Authority, with the approval of Committee wherever required, is not in favour of accepting the compounding request, he shall pass the order u/s 279(2) rejecting the compounding petition [A suggestive proforma/format for such an order has been prescribed in Annexure of various guidelines].

Step-6: If the assessee is being prosecuted for the same offence for which compounding is being considered, then it is advisable that the prosecution counsel is advised to obtain an adjournment in court.

Step-7: Once the compounding charges are deposited and proof of the same is furnished, the Competent Authority shall pass the order u/s 279(2) of the Act as far as possible within 30 days from such payment [A suggestive proforma/format for such an order has been suggested in annexure of various guidelines referred to above].

5. Withdrawal of Prosecution complaint after Compounding of offences

Whenever, Compounding order is passed in respect of an offence for which prosecution complaint was already filed, following steps need to be taken for withdrawal of prosecution complaint-

(a) After passing the compounding order, a copy of the compounding order shall also be sent to the Standing Counsel for withdrawal of case. When the complaint is filed for an offence only under I.T. Act, 1961, the Standing Counsel shall withdraw the prosecution complaint by producing a copy of the compounding order before the Trial Court on the request of CO or AO concerned.

(b) In case prosecution under IPC has also been filed simultaneously for such offence, which has been compounded with prior administrative approval of CCIT/DGIT, the due procedure for withdrawal of such complaint as prescribed in Section 257 of Cr.P.C. in summons cases (with prior approval of CCIT/DGIT) and Section 321 of Cr.P.C. in case of warrant cases (with prior approval of Central Government by sending a proposal to the Board) should be followed.

6. The latest guidelines on Compounding of Offence issued by CBDT vide F.No.285/08/2014-IT(INV.V)/147 dated 14.06.2019, and Circular no. 25/2019 dated 09.09.2019 are as under:

Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated 14.06.2019[1]

In the light of references received from the field formation from time to time, the existing Guidelines on Compounding of Offences under the Income-tax Act, 1961 (the Act) have been reviewed. In supersession of earlier Guidelines on this subject, including the Guidelines of the Board issued vide F.No.285/35/2013IT(Inv.V)/108 dated 23rd December 2014, the following Guidelines are issued for compliance by all concerned.

2. These Guidelines shall come into effect from 17.06.2019 and shall be applicable to all applications for compounding received on or after the aforesaid date. The applications received before 17.06.2019 shall continue to be dealt with in accordance with the Guidelines dated 23.12.2014.

3. Compounding Provision

Section 279(2) of the Act provides that any offence under Chapter XXII of the Act may, either, before or after the institution of proceedings, be compounded by the Pr.CCIT/CCIT/Pr.DGIT/DGIT. As per section 2(15A) and 2(21) of the Act, Chief Commissioner of Income-tax includes Principal Chief Commissioner of Income-tax, and Director General of Income-tax includes Principal Director General of Income-tax. These Guidelines are issued in exercise of power u/s 119 of the Act read with explanation below sub-section (3) of section 279 of the Act.

[1]Refer Circular No. 25/2019 dated 09.09.2019 on page 175-176

4. Compounding is not a matter of right

Compounding of offences is not a matter of right. However, offences may be compounded by the Competent Authority on satisfaction of the eligibility conditions prescribed in these Guidelines keeping in view factors such as conduct of the person, the nature and magnitude of the offence in the context of the facts and circumstances of each case.

5. Applicability of these Guidelines to prosecutions under IPC

Prosecution instituted under Indian Penal Code('IPC'), if any, cannot be compounded. However, section 321 of Criminal Procedure Code, 1973, provides for withdrawal of such prosecution. In case the prosecution complaint filed under the provisions of both Income-tax Act, 1961 and the IPC are based on the same facts and the complaint under the Income-tax Act, 1961 is compounded, then the process of withdrawal of the complaint under the IPC may be initiated by the Competent Authority.

6. Classification of Offences

The offences under Chapter-XXII of the Act are classified into two parts (Category 'A' and Category 'B') for the limited purpose of Compounding of Offences.

6.1 Category 'A'

Offences punishable under the following sections are included in **Category 'A'**:

S.No.	Section	Description/Heading of section
i.	276	(Prior to 01/04/1976) - Failure to make payment or deliver returns or statements or allow inspection
ii.	276B	(Prior to 01/04/1989) - Failure to deduct or pay tax
iii	276B	(w.e.f. 01/04/1989 and up-to 30/5/1997)- Failure to pay tax deducted at source under Chapter XVII-B
iv	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -O or 2nd proviso the section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
v.	276BB	Failure to pay the tax collected at source
vi.	276CC	Failure to furnish Return of Income
vii	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
viii.	276DD	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269SS
ix.	276E	(Prior to 1.04.1989) - Failure to comply with the provisions of section 269T

S.No.	Section	Description/Heading of section
x.	277	False statement in verification etc. with reference to **Category 'A'** offences
xi.	278	Abetment of false return etc. with reference to **Category 'A'** offences

6.2 Category 'B'

Offences punishable under the following sections are included in **Category 'B'**:

S. No.	Section	Description/ Heading of section
i.	276A	Failure to comply with the provision of sections 178(1) and 178(3)
ii.	276AA	(prior to 01/10/1986)- Failure to comply with the provisions of section 269 AB or section 269 I.
iii.	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
iv.	276C(1)	Wilful attempt to evade tax, etc
v.	276C(2)	Wilful attempt to evade payment of taxes, etc
vi.	276D	Failure to produce accounts and documents
vii	277	False statement in verification etc. with reference to **Category 'B'** offences
viii	277A	Falsification of books of account or documents, etc.
ix.	278	Abetment of false return, etc. with reference to **Category 'B'** offences

6.3 Offences under sections 275A, 275B and 276 of the Act will not be compounded.

7. Eligibility Conditions for Compounding

All the following conditions should be satisfied for considering compounding of an offence:

i. An application is made to the Pr.CCIT/CCIT/Pr.DGIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format (Annexure-1)** in the form of an affidavit on a stamp paper of Rs. 100/-.

ii. The compounding application may be filed *suo-moto* at any time after the offence(s) is committed irrespective of whether it comes to the notice of the Department or not. However, no application of compounding can be filed after the end of 12 months from the end of the month in which prosecution

complaint, if any, has been filed in the court of law in respect of the offence for which compounding is sought.

iii. The person has paid the outstanding tax, interest(including interest u/s 220 of the Act), penalty and any other sum due, relating to the offence for which compounding has been sought before making the application. However, if any related demand is found outstanding on verification by the Department, the same should be intimated to the applicant and if such demand including interest u/s 220 is paid within 30 days of the intimation by the Department, then the compounding application would be deemed to be valid.

iv. The person undertakes to pay the compounding charges determined in accordance with these Guidelines by the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned.

v. The person undertakes to withdraw appeals filed by him, if any, related to the offence(s) sought to be compounded. In case such appeal has mixed grounds, one or more of which may not be related to the offence(s)under consideration, an undertaking shall be given for withdrawal of such grounds as are related to the offence to be compounded.

vi. Any application for compounding of offence u/s 276B/276BB of the Act by an applicant for any period fora particular TAN should cover all defaults constituting offence u/s 276B/276BB in respect of that TAN for such period.

8. Offences normally not to be compounded

8.1 The following offences are generally not to be compounded:

i. Category 'A' offence on more than three occasions. However, in exceptional circumstances compounding requested in more than three occasions can be considered only on the approval of the Committee referred to in Para 10 of these Guidelines. The 'occasion' is defined in Para 8.2.

ii. Category 'B' offence other than the first offence(s) as defined in Para 8.2 for the purpose of these Guidelines.

iii. Offences committed by a person for which he was convicted by a court of law under Direct Taxes Laws.

iv. Any offence in respect of which, the compounding application has already been rejected, except in the cases where benefit of rectification is available in these Guidelines.

v. The cases of a person as main accused where it is proved that he has enabled others in tax evasion such as, through entities used to launder money or generate bogus invoices of sale/purchase without actual business, or by providing accommodation entries in any other manner as prescribed in section 277A of the Act.

vi. Offences committed by a person who, as a result of investigation conducted by any Central or State Agency and as per information available with the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity.

vii. Offences committed by a person who was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine and which has a bearing on the offence sought to be compounded.

viii. Offences committed by a person which, as per information available with the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State Agency.

ix. Offences committed by a person whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' in respect of any offence is pending in a Court or where a Court has recorded that a 'mutually satisfactory disposition of such an application is not worked out' and such offence has bearing on offence sought to be compounded.

x. Any offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner.

xi. Any offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

xii. Any offence which has bearing on any offence under the Benami Transactions (Prohibition) Act,1988.

xiii. Any other offence, which the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned considers not fit for compounding in view of factors such as conduct of the person, nature and magnitude of the offence.

8.2 Meaning of terms "occasion" and "first offence" for the purpose of these Guidelines will be as under-

8.2.1 If in one instance the assessee files multiple applications for one or more than one Assessment Year (AYs), all of these applications shall be treated as one "occasion".

8.2.2 First offence means, offence(s) under any of the Direct Tax Laws:

(a) Offences committed prior to any of the following-

i. the date of issue of any letter/notice in relation to the prosecution, or

ii. Any intimation relating to filing of prosecution complaint sent by the Department to the person concerned, or

iii. Launching of any prosecution,

whichever is earlier.

Or

(b) Offence(s) not detected by the department but voluntarily disclosed by a person prior to the filing of application for Compounding of Offence(s) in the case under any Direct Tax Acts for one assessment year or more.

For this purpose, the offence is relevant if it is committed by the same person/entity. Further, the first offence is to be determined separately with reference to each section of the Act under which it is committed.

8.3 Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions in Para 8.1 above for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

9. Relaxation of time

9.1 The restrictions imposed in Para 7(ii) of these Guidelines for compounding of an offence in a deserving case may be relaxed, where application is filed beyond 12 months but before completion of 24 months from the end of month in which complaint was filed, by the Committee defined in Para 10 of these Guidelines, provided that such delay should be attributable to reasons beyond the applicant's control. However, a plea of pendency of appeal at any stage or before any authority cannot be treated as a reason beyond the applicant's control, because furnishing an

undertaking to withdraw the appeal(s)having bearing on the offence is a prerequisite as per clause 7(v)above.

9.2 However, in all such cases where relaxation has been provided in this Para, the compounding charges would be 1.25 times the normal compounding charges as applicable to the offence on the date of filing of the original compounding application.

10. Authority Competent to Compound an Offence

10.1 The Pr.CCIT/CCIT/Pr.DGIT/DGIT having jurisdiction over the person, seeking Compounding of an Offence, is the Competent Authority for compounding of all Category 'A' and Category 'B' offences. However, an order in case of an application for compounding of an offence, involving compounding charges (as explained in Para 12below) in excess of Rs. 10,00,000/- (Rupees Ten Lakhs)shall be passed by the Pr.CCIT/CCIT/Pr.DGIT/DGIT concerned only on the prior approval of a Committee comprising of three officers of the Region concerned, namely Pr.CCIT/CCIT/Pr.DGIT/DGIT having jurisdiction over the case and two other Officers of the rank of Pr.CCIT/CCIT/Pr.DGIT/ DGIT constituted by the Pr.CCIT of the Region. In case such officers are not available within the Region, a suitable Officer of the rank of CCIT/DGIT from any nearby Region may be co-opted as Member by the Pr.CCIT.

10.2 If a deductor has committed an offence u/s 276B/276BB of the Act for non-payment of TDS in respect of both resident and non-resident deductees and therefore the jurisdiction over such deductor lies with more than one Pr.CCIT/CCIT/Pr.DGIT/DGIT, then the Pr.CCIT/CCIT/Pr.DGIT/DGIT in whose jurisdiction compounding application has been filed will be the Competent Authority. However, he shall compound the offence only on the approval of Committee comprising of three Officers of the rank of CCIT from among the CCIT/DGIT/Pr.CCIT/Pr.DGIT having jurisdiction over the applicant, constituted by the Pr.CCIT of the region.

10.3 In case an applicant having more than one TAN lying in the jurisdiction of two or more Pr.CCIT/CCIT/Pr.DGIT/DGIT wants to file compounding application in respect of offences committed u/s 276B/276BB in respect of two or more TANs falling in the jurisdiction of two or more Pr.CCIT/CCIT/Pr.DGIT/DGIT, the application shall be filed before the Pr.CCIT/CCIT having jurisdiction over the TAN of the region in which PAN jurisdiction of the applicant is falling. Such Pr.CCIT/CCIT having jurisdiction over such TAN will be treated as Competent Authority. For such cases the Committee will be constituted by the Pr.CCIT in whose region jurisdiction over PAN lies

and will also be comprising of three members including Competent Authority. The report from all jurisdictional authorities concerned from different offender TANs shall be called by the Competent Authority.

10.4 The Competent Authority will act as the Member Secretary and convene the meeting, as well as maintain the records.

11. Compounding Procedure

i. On receipt of the application for compounding, the report on the same shall be obtained from the Assessing Officer/ Assistant or Deputy Director concerned who shall submit it promptly along-with duly filled in check-list (**Annexure-2**), to the authority competent to compound, through proper channel.

ii. The Competent Authority shall duly consider and dispose of every application for compounding through a speaking order in the suggested format (**Annexure-3**)either by rejecting or by intimating the compounding charges payable. Such order may be passed within six months from the end of the month of its receipt (excluding the time for payment of the compounding charges) as far as possible.

iii. Where compounding application is found to be acceptable, the Competent Authority shall intimate the amount of compounding charges to the applicant, requiring him to pay the same **within one month** from the end of the month of receipt of such intimation. On written request of applicant for further extension of time under exceptional circumstances, the Pr.CCIT/CCIT/Pr.DGIT/DGIT may extend this period by **three months**. Extension beyond three months shall not be permissible except with the previous approval in writing of the Committee defined in Para 10 of these Guidelines. However, no extension beyond **twelve months** from the end of month in which intimation of compounding charges was given to the applicant shall be given except with the previous approval of Member (Inv.), CBDT on a proposal of the competent authority concerned.

iv. Whenever the compounding charges are paid beyond one month from the end of month in which it was intimated to the applicant, if extended by the Competent Authority, he shall have to pay additional compounding chargeat the rate of 2% per month or part of the month on the unpaid

amount of compounding charges upto three months and 3% if the Competent Authority has extended the payment period beyond three months.

v. The Competent Authority shall pass the compounding order **within one month** from the end of the month of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application shall be rejected after giving the applicant an opportunity of being heard only in relation to compounding charges payable.

vi. The order of acceptance/rejection of application of compounding shall be brought to the notice of the Court, where the prosecution complaint was filed/or the complaint is pending, immediately through prosecution counsel in all cases where prosecution proceedings have been instituted.

vii. Normally any offence in respect of which the compounding application has been rejected is not considered for compounding as per Para 8.1(iv). However, if any compounding application has been rejected solely on account of late payment of compounding charges or shortfall in payment of compounding charges and if such shortfall is for some bonafide mistakes or on some other technical grounds, such compounding order can be rectified at the written request of applicant provided the payment of compounding charges was made before rejection or time allowed by the Competent Authority whichever is applicable. A decision to rectify such order can be taken by the Committee as per Para 10 after considering various facts and circumstances of the case. However, the applicant will be required to pay interest as per Clause (iv) of this Para, on the unpaid compounding charges from the due date of payment as per original intimation of compounding along with the shortfall in compounding charges.

viii. The timelines mentioned for processing the compounding applications prescribed in these Guidelines are administrative and indicative for work management and do not prescribe a limitation period for disposal of the compounding application.

ix. Wherever the facility to perform any function relating to processing of any compounding application is available on ITBA, such function should be performed on ITBA.

12. Compounding Charges

The compounding charges shall include compounding fee, prosecution establishment expenses and litigation expenses, including Counsel's fee.

12.1 The compounding fee shall be computed in accordance with Para 13 of these Guidelines for various offences. Prosecution establishment expenses will be charged at the rate 10% of the compounding fees subject to a minimum of Rs. 25,000/- in addition to litigation expenses including Counsel's fees paid/payable by the Department in connection with offence(s) compounded by a single order. In a case where the litigation expenses are not readily ascertainable, the competent authority may arrive at litigation expenses, *inter alia*, on the basis of rates prescribed by the Government and on the basis of existing records with the Government and the counsels.

12.2 In all cases where relaxation of time as provided in Para 9 of the Guidelines is allowed, the compounding charges shall be 1.25 time of the normal compounding charges.

12.3 Wherever, extension of time allowed to make compounding charges is allowed beyond one month from the end of intimation of compounding charges in accordance with Compounding Guidelines, the applicant shall have to pay additional compounding charges @ 2% per month or part of month on the unpaid amount of the compounding charges upto three months and 3% for period beyond three months.

12.4 The compounding charges are payable in addition to the tax, interest and penalty, if any payable or imposable as per provisions of the Act. Such tax, interest and penalty as mentioned in Para 7(iii) are to be paid before filing the compounding application as required in these Guidelines.

13. Fees for compounding

For the purpose of computation of the compounding fee, the word "tax" means-tax including surcharge and any cess by whatever name called, as applicable.

The fees for compounding of offences shall be as follows:

13.1 Section 276B - Failure to pay the tax deducted at source

Section 276BB - Failure to pay the tax collected at source

13.1.1 In respect of application for Compounding of Offences, the compounding fee shall be calculated as under-

(i) 2% per month or part of a month of the amount of tax in default disclosed in the compounding application in those cases, where the assessee has *suo-moto*filed compounding application, before any offence u/s 276B/276BB of the Act for any period is brought to his knowledge by the Department. Such type of offence would also constitute an "occasion" for the purpose of Para 8.1. Such offences which are detected in the course of any search and seizure or survey operation will not fall in this category.

However, the compounding fee under this clause shall not exceed the TDS amount and interest u/s 201(1A) taken together, if the default in deposit of TDS is less than Rs. 1,00,000/- (Rupees One lakh).

(ii) 3% per month or part of a month of the amount of tax in default disclosed in the compounding application for first occasion in cases not covered in Para 13.1.1(i) above.

(iii) In respect of any application for subsequent occasion, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default.

13.1.2 The period of default for calculating compounding fee in this category shall be calculated from the date of deduction to the date of deposit of tax deducted at source as is done in respect of calculating interest under section 201(1A) of the Act in respect of compounding application filed.

13.2 Section 276C(1) - Wilful attempt to evade tax, etc.

(a) In the cases involving tax sought to be evaded (where evasion of interest and penalty may be consequential)

i. Where such tax sought to be evaded exceeds Rs. 25 lakhs, 150% of the tax sought to be evaded.

ii. In any other case, 125% of the tax sought to be evaded.

(b) In cases involving attempt to evade only the penalty, 100% of penalty sought to be evaded. For example, penalties which are not directly related to tax evasion, such as penalty u/s 271DA etc.

13.3 Section 276C(2) - Wilful attempt to evade payment of any tax, interest and penalty

3% per month or part of the month of the amount of tax, interest and penalty, the payment of which was sought to be evaded, for the period

of default. The period of default for calculating the compounding fees shall be as under:

i) Where tax, interest or penalty as per notice of demand under section 156 of the Act is not paid, from the date immediately following the due date of payment till the date of actual payment.

ii) Where the self-assessment tax was not paid as specified in section 140A of the Act, from the due date of filing of return of income u/s 139(1) of the Act to the date of actual payment.

For computing the period of default, any period of stay of demand granted by any Income-tax Authority, the Appellate Tribunal or Court shall be excluded.

13.4 Section 276CC - Failure to furnish returns of income

13.4.1

(a) In case of default in furnishing the return of income on or before due date u/s 139(1) of the Act, the default period will be computed from the due date u/s 139(1) to the date of actual filing of return or completion of assessment, whichever is earlier and compounding fees will be;

i. Where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs, Rs. 4000/- per day.

ii. In any other case; Rs. 2000/- per day.

However, in cases where the difference between the aggregate of taxes paid/payable on the returned income and the aggregate of taxes already paid under any provision of the Act as enumerated in section 140A(1) of the Act, is less than Rs. 1,00,000/-, the compounding fees will be restricted to that said difference amount subject to a minimum of Rs. 10,000/-.

(b) In case of offence of non-compliance of notice u/s 142(1)(i) of the Act, the compounding fees shall be charged at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 142(1), and at the rate of Rs. 5000/- per day where tax

on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3000/- per day in other cases, for the period between date specified in notice u/s 142(1) to the date of filing of return of income or completion of assessment, whichever is earlier.

(c) In case of offence of non-compliance of notice u/s 148 of the Act, the compounding fees shall be charged at the rate of Rs. 5000/- per day where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3000/- per day in other cases, from the date specified in such notice till filing of return or assessment whichever is earlier. In case, there was also default of not filing return of income within due date prescribed u/s 139(1), then for the period between due date u/s 139(1) to the date specified in the notice u/s 148, compounding fees at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 148 will also be charged.

(d) In case of offence of non-compliance of notice u/s 153A/153C of the Act, the compounding fees shall be charged at the rate of Rs. 5,000/- per day where tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 3,000/- per day in other cases, from the date specified in such notice till filing of return or assessment whichever is earlier. In case, there was also default of not filing return of income within due date prescribed u/s 139(1), then for the period between due date u/s 139(1) to the date specified in the notice u/s 153A/153C, compounding fees at the rate of Rs. 4000/- per day where the tax on returned income as reduced by tax deducted at source and advance tax, if any exceeds Rs. 25 lakhs and Rs. 2,000/- per day in other cases from the due date u/s 139(1) to the date specified in the notice u/s 153A/153C will also be charged.

(e) In case where return of income filed is not only late but Self Assessment Tax is not paid:

i. These constitute two separate offences which are to be handled separately under sections 276CC and 276C(2), and

ii. Action u/s 276C(2) is to be undertaken only after the issue of demand notice u/s 143(1)/143(3) etc.

13.4.2 In cases where no return of income was filed, the compounding fee is computed upto the date of completion of assessments. In such cases, for computing the slab prescribed in Para 13.4.1 tax on assessed income (as reduced by tax deducted at source and advance tax) will be adopted.

13.4.3 In case the income determined u/s 143(1) is more than the returned income, tax on the same will be applied for computing tax slab prescribed in Para 13.4.1.

13.4.4 Tax on returned income in the context of Para 13.4 means tax leviable (including surcharge and cess) on the returned income as reduced by tax deducted at source and advance tax.

13.5 Section 276 CCC - Failure to furnish return of income as required under section 158BC

The fee for this offence shall be calculated in the same manner as for offences u/s 276CC was prescribed in the Compounding Guidelines dated 16.05.2008.

13.6 Section 276DD - Failure to comply with the provisions of Section 269SS (prior to 01.04.89)

A sum equal to 20% of the amount of any loan or deposit accepted in contravention of the provisions of Section 269SS.

13.7 Section 276E - Failure to comply with the provisions of Section 269T (prior to 01.04.89)

A sum equal to 20% of the amount of deposit repaid in contravention of the provisions of Section 269T.

13.8 Section 277 - False statement in verification etc.

Section 278 - Abetment of false return etc.

13.8.1 Where same set of facts and circumstances attract prosecution u/s 277 as well as section 278, the compounding fee shall be charged for offences under these sections by treating them as one offence.

13.8.2 Where same set of facts and circumstances attract prosecution u/s 277 in addition to another offence in connection with which

prosecution u/s 277 was attracted in case of the same person, no separate compounding fee shall be charged for offence u/s 277. For example, where a person is charged with an offence u/s 276C(1) as also u/s 277, in respect of the same facts and circumstances, the compounding fees shall be charged only for the offence u/s 276C(1) at the rates prescribed for the said section.

13.8.3 Where same set of facts and circumstances attract prosecution under any offence as well as u/s 277 and/or 278, normally, a compounding fee at the rate of 10% of the 'compounding fee for the main offence' shall be charged from each of the person charged under sections 278B or 278C. However, the authority competent to compound, after considering the extent of involvement of any or all co-accused or abettor, may enhance or reduce or waive the amount of compounding fee to be charged from any or all the co-accused or abettor. The compounding fees chargeable from the co-accused or abettor shall be in addition to the compounding fees which may be chargeable from the main accused.

It is further clarified that:

(a) In the case of prosecution proceedings under sections 278B or 278C of the Act unless the main accused i.e. Company/ HUF comes for compounding, the offence of the co-accused cannot be compounded separately.

(b) If one or more co-accused has not filed the compounding application or is not agreeable to the payment of compounding charges as the case may be, then unless the main accused, on an undertaking obtained and furnished from such co-accused, unequivocally undertakes to pay the compounding charges on his own behalf and on behalf of all such co-accused as well, the Compounding of the Offence of the main accused cannot be accepted.

13.8.4 In case where no offence under any other sections of the Act is involved except u/s 277 or 278 of the Act, the compounding fee shall be decided by the Committee as per Para 10 having regard to the amount of tax which would have been evaded as a result of such offence u/s 277 or 278 subject to a minimum compounding fee of Rs. 1,00,000/- (Rupees One Lakh) which may be increased based on the assessment of loss caused to the revenue directly or indirectly for each of such offence on completion of assessment/reassessment.

13.9 Offences, other than those described in Para 13.1 to 13.8, for which no compounding fee has been prescribed, the authority competent to compound may determine the amount of compounding fee having regard to the nature and magnitude of the offence, loss of revenue directly or indirectly attributable to such offence, subject to levy of a **minimum compounding fee of Rs 1,00,000/-** (Rupees One lakh) for each such offence.

13.10 The prescribed compounding charges shall be applicable while compounding any offence. However, in extreme and exceptional cases of genuine financial hardship, the compounding charges may be suitably reduced with the approval of the Finance Minister.

14. In case any penalty proceedings which have bearing with the offence sought to be compounded are pending at the time of filing of the compounding application, efforts should be made to conclude such penalty proceedings expeditiously and recover demand before concluding the compounding proceedings.

15. Applicability of these Guidelines to offences under other Direct Tax Laws

These Guidelines shall apply *mutatis mutandis* to offences under other Direct Tax Laws and the compounding fee for offences under the other Direct Tax Laws will be same as prescribed supra for the corresponding provisions of offences under the Income-tax Act, 1961.

Sd/-
(Mamta Bansal)
Director Inv. V,
CBDT, New Delhi

Annexure – 1

Format of application in the form of Affidavit for Compounding of Offences under Income-tax Act, 1961 to be submitted separately by each applicant

S. No.	Particulars	Remarks
1.	Name of the applicant	
2.	Status	
3.	Offences committed u/s *	
4.	AYs / Date/ period involved in offence	
5.	Statusofcase(i.e.whethercontemplated/ pendinginCourt/convicted/acquitted)	
6.	Date of filing of complaint, if any	
7.	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the filing of the application for compounding	
8.	Particulars of offences alongwith justification for compounding(separate sheet)	
9.	Whether the applicant has paid the amount of tax, interest, penalty and any other sum due relating to the offence	
10.	Whether the applicant undertakes to pay further tax, interest, penalty and any other amount as is found to be payable on verification of the record.	
11.	Whether the applicant undertakes to pay the compounding charges as shall be intimated by the department.	
12.	Whether similar offences in the case of the applicant have been compounded earlier. If yes, how many times. Give details in annexure.	
13.	Whether the offence is first offence as defined in Para 8.2 of the Guidelines	
14.	Whether the offence has been committed by the applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/ terrorist activity	
15.	Whether any enquiry/investigation being conducted by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency is pending against the applicant? If so, particulars may be given	
16.	Whether the applicant was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine. If so, particulars may be given along with a copy of the court's order.	

S. No.	Particulars	Remarks
17.	Whether, the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court and the Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out?	
18.	Whether the applicant was convicted by a court of law for the offence sought to be compounded	
19.	Whether it is an offence in respect of which, the compounding application has already been rejected.	
20.	Whether it is an offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner	
21.	Whether it is an offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.	
22.	Whether it is an offence which has bearing on any offence under The Benami Transactions (Prohibition) Act, 1988.	
23.	Whether it is an offence u/s 275A, 275Band/or 276	

VERIFICATION

I.....son/daughter of.....in the capacity of .....certify and solemnly affirm that the information in the above columns is true and correct to the best of my knowledge and belief.

Place: Signature

Date: Designation

Current address

* All offences for which compounding is sought

Annexure – 2

Suggested Check List for Compounding as per the Guidelines issued by the CBDT vide F.No.285/08/2014-IT(Inv.V) dated 14.06.2019 on Compounding of Offences

(To be submitted by AO/ADIT/DDIT to the authority competent to compound through proper channel)

(A case can be compounded only if the answers to S. No. 1 to 22 match with the answers given below in remarks column.)

Name of the applicant :-

Status :-

Offences u/s :-

AYs/ Date/ period involved in offence :-

Date of filing of complaint, if any :-

Status of case (i.e. whether Contemplated/ :-

Pending in Court/ Convicted/ Acquitted) :-

S.No.	Particulars *(vis-a-vis Compounding Guidelines)*	Remarks	Reference of the File submitted
1.	The applicant has filed a written request for compounding the offence in the prescribed Proforma.	Yes	On Page no…..
2.	Whether the applicant has paid the amount of tax, interest and penalty & any other sum due relating to the default as prescribed in the Guidelines.	Yes	On Page no…..
3.	Whether on verification of record any further amount of tax, interest and penalty & any other sum was found payable by the applicant.	Yes/No If yes, date of intimation and date of payment.	If yes, give details in brief. Add annexure if required. On Page no….
4.	Whether the applicant has undertaken to pay the compounding charges computed as per Paras 12 & 13 of the Guidelines.	Yes	On Page no
5.	Whether the offence(s) committed by the applicant is one for which complaint(s) was filed with the competent court 12 months prior to the receipt of application for compounding.	No	On Page no
6.	Whether the offence is under the same section under which offences have been committed by the applicant earlier and which have been compounded three times prior to the present application. NOTE: THIS IS APPLICABLE ONLY IN CASE OF A CATEGORY 'A' OFFENCE.	No	If yes, give details in brief. Add annexure if required. On Page no….

S.No.	Particulars *(vis-a-vis Compounding Guidelines)*	Remarks	Reference of the File submitted
7.	Whether the offence is the first offence as defined in para 8.2 of the Guidelines NOTE: THIS IS APPLICABLE ONLY IN CASE OF A CATEGORY 'B' OFFENCE.	Yes	If no, give details in brief. Add annexure if required. On Page no....
8.	Whether the offence has been committed by an applicant who, as a result of investigation conducted by any Central or State agency has been found involved, in any manner, in anti-national/terrorist activity	No	If yes, give details in brief. Add annexure if required. On Page no....
9.	Whether the offence committed by the applicant has a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency*	No	If yes, give details in brief. Add annexure if required. On Page no....
10.	Whether the offence has been committed by the applicant who was convicted by a court of law for an offence under any law, other than the Direct Taxes Laws, for which the prescribed punishment was imprisonment for two years or more, with or without fine*	No	If yes, give details in brief. Add annexure if required. On Page no....
11.	Whether the application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition' of such an application is not worked out*	No	If yes give details in brief. Add annexure if required. On Page no....
12.	Whether the offence is one committed by an applicant for which he was convicted by a court of law	No	If yes, give details in brief. Add annexure if required. On Page no....
13.	(i) Whether it is an offence in respect of which, the compounding application has already been rejected, (ii) If yes, whether it is a case where relaxation is available in the Guidelines.	(i) Yes/No (ii) Yes [If (i) is yes]	If yes, give details in brief. Add annexure if required. On Page no....
14.	Whether it is a case of a person who is main accused and where it is proved that he has enabled others in tax evasion such as, through shell companies or by providing accommodation entries in any other manner as mandated in sec. 277A of the Act	No	If yes, give details in brief. Add annexure if required. On Page no....
15.	Whether it is an offence which has bearing on an offence relating to undisclosed foreign bank account/assets in any manner	No	If yes, give details in brief. Add annexure if required. On Page no....
16.	Whether it is an offence which has bearing on any offence under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.	No	If yes, give details in brief. Add annexure if required. On Page no....

S.No.	Particulars *(vis-a-vis Compounding Guidelines)*	Remarks	Reference of the File submitted
17.	Whether it is an offence which has bearing on any offence under The Benami Transactions (Prohibition) Act, 1988.	No	If yes, give details in brief. Add annexure if required. On Page no....
18.	Amount of compounding charges computed by AO/ADIT/DDIT as per Paras 12 & 13 of the Guidelines.	Rs.	On Page no
19.	The compounding charges are in accordance with Paras 12 and 13 of the Guidelines	Yes	If no, give reasons. On Page no....
20.	The factors, such as conduct of the person, nature and magnitude of the offence and facts and circumstance of the case have been considered while dealing with the compounding application and in calculating compounding charges	Yes	If no, give details in brief. Add annexure if required. On Page no....
21.	Whether the cases of Co-accused are being considered as per Para 13.8	Yes/Not Applicable	If yes, give details in brief. Add annexure if required. On Page no....
22.	Any other fact relating to the person/ case relevant for consideration of the Competent Authority	No	If yes, give details in brief. Add annexure if required. On Page no....

Signature:

Name:

Designation:

Date:

Recommended by: 1. Addl. CIT/Jt.CIT/Addl. DIT/Jt. DIT..... Signature/Name/Designation/Date

2. PCIT/PDIT/CIT/DIT.....Signature/Name/Designation/Date

***Note: This may be given on the basis of information furnished by the applicant in his application for compounding or information already available with the Competent Authority for compounding**

Annexure – 3

(Suggested Format)

Part-I

Format for Order u/s 279(2) of the Income-tax Act, 1961 for Compounding of an Offence as mentioned in Para 11 (ii)of the Guidelines issued by the CBDT vide F.No.285/08/2014-IT(lnv.V) dated 14.06.2019 on Compounding of Offences

Order u/s 279(2) of Income-tax Act, 1961

Name of the person	:-
Status	:-
Offences u/s	:-
AYs / Date/ period involved in offence	:-
Date of filing of complaint, if any	:-
Status of case (i.e. whether contemplated/ Pending in Court/ Convicted/ Acquitted)/	:-
Date of hearing, if any	:-
Date of order	:-

Order u/s 279(2) of the Income-tax Act, 1961

I, the Principal Chief Commissioner/Chief Commissioner of Income-tax /Principal Director General/Director-General of Income-tax,……. in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income-tax Act, 1961 hereby compound the offence(s) u/s…….of the Income -tax Act,1961 for the A.Y.(s) / Date/ period……., committed by M/s./Shri/Ms…….

The Statement of the facts of the case are enclosed as **Annexure 'A'**
Place:

Date:

Seal:

Signature

Principal Chief Commissioner/
Chief Commissioner of Income-tax/
Principal Director General/Director
General of Income-tax

Copy to:

The Commissioner of Income-tax/ Director of Income-tax—

The Assessing Officer/ ADIT/DDIT—

The ADIT/DDIT (Prosecution)

The Prosecution Counsel (if the case is pending in the Court)

The applicant (By name)-

Guard file.

Signature
ACIT/ ITO (Hq.)
O/o the Pr. CCIT/CCIT/ Pr. DGIT/DGIT

Annexure – 3

(Suggested Format)

Part-II

Format for Order u/s 279(2) of the Income-tax Act, 1961 for rejecting the Compounding of an Offence as mentioned in Para 11 (ii) of the Guidelines issued by the CBDT vide F.No. 285/08/2014-IT(lnv.V) dated 14.06.2019 on Compounding of Offences

Order u/s 279(2) of Income-tax Act, 1961

Name of the person	:-
Status	:-
Offences u/s	:-
AYs / Date/ period involved in offence	:-
Date of filing of complaint, if any	:-
Status of case (i.e. whether Contemplated/ Pending in Court/ Convicted/ Acquitted)	:-
Date of hearing, if any	:-
Date of order	:-

Order u/s 279(2) of the Income-tax Act, 1961

I, the Principal Chief Commissioner/Chief Commissioner of Income-tax/Principal Director General/Director-general of Income-tax, …… in exercise of powers vested in me by virtue of the provisions of sub-section 2 of section 279 of the Income-tax Act, 1961 hereby decline the prayer to compound the offence(s), u/s……of the Income-tax Act, 1961 for the A.Y.(s) / Date/ period……., committed by M/s./Shri / Ms…….

The case was not found to be a fit case for compounding as "……. (mention reasons) ……."

The Statement of the facts of the case are enclosed as **Annexure 'A'**

Place:	Signatures ----
Date:	Principal Chief Commissioner / Chief
Seal:	Commissioner of Income-tax / Principal Director General/Director General of Income-tax.

Copy to:

The Commissioner of Income-tax/ Director of Income-tax

The Assessing Officer/ ADIT/DDIT

The ADIT/DDIT(Prosecution)

The Prosecution Counsel (if the case is pending in the Court)

The applicant (By name)

Guard file

Sd/-

ACIT/ ITO (Hq.)

O/o the Pr. CCIT/CCIT/ Pr. DGIT/DGIT

Annexure – A

Statement of Facts

The statement of facts should, inter alia, contain the following:

1. Detail of application filed

An application for Compounding of Offences committed u/s..... of the Income-tax Act, 1961 was filed in prescribed format by M/s. /Mr. /Ms.....on.....

2. Brief facts

3. Whether complaint has been filed

A complaint was filed in the Court of.....on.....and the case is

still pending in the court/the Court has convicted the person who has filed an appeal against the conviction order that is pending in the Court/ the Court has acquitted the person& the department has filed an appeal against the acquittal order that is pending in the Court or an appeal against the acquittal order is contemplated.

OR

The complaint is yet to be filed in the Court.

4. In case of order accepting compounding, details of payment of compounding charges by the person.

5. Direction to the AO/ Standing Counsel to take necessary action to implement the orders at the earliest.

Circular No. 25/2019

F.No.285/08/2014-IT(Inv. V)/350
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
****

Room No. 515, 5th Floor, C-Block,
Dr. Shyama Prasad Mukherjee Civic Centre,
Minto Road, New Delhi -110002.
Dated: 09.09.2019

Subject: Relaxation of time-Compounding of Offences under Direct Tax Laws-One-time measure-Reg.

The Central Board of Direct Taxes (CBDT) has been issuing guidelines from time to time for compounding of offences under the Direct Tax Laws, prescribing the eligibility conditions. One of the conditions for filing of Compounding application is that, it should be filed within 12 months from filing of complaint in the court.

2. Cases have been brought to the notice of CBDT where the taxpayers could not apply for Compounding of the Offence, as the compounding application was filed beyond 12 months, in view of para 8(vii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2014 dated 23.12.2014 or in view of para 7(ii) of the Guidelines for Compounding of Offences under Direct Tax Laws, 2019 dated 14.06.2019.

3. With a view to mitigate unintended hardship to taxpayers in deserving cases, and to reduce the pendency of existing prosecution cases before the courts, the CBDT in exercise of powers u/s 119 of the Income-tax Act, 1961 (the Act) read with explanation below sub-section (3) of section 279 of the Act issues this Circular.

4.1 As a one-time measure, the condition that compounding application shall be filed within 12 months, is hereby relaxed, under the following conditions:

i) Such application shall be filed before the Competent Authority i.e. the Pr. CCIT/CCIT/Pr. DGIT/DGIT concerned, **on or before 31.12.2019**.

ii) Relaxation shall not be available in respect of an offence which is generally/normally not compoundable, in view of Para 8.1 of the Guidelines dated 14.06.2019.

4.2 Applications filed before the Competent Authority, on or before 31.12.2019 shall be deemed to be in time in terms of Para 7(ii) of the Guidelines dated 14.06.2019.

4.3 It is clarified that Para 9.2 of the Guidelines dated 14.06.2019, shall not apply to all such applications made under this one-time measure. The other prescriptions of the Guidelines dated 14.06.2019 including the compounding procedure, compounding charges etc. shall apply to such applications.

5. For the purposes of this Circular, application can be filed in all such cases where-

a) prosecution proceedings are pending before any court of law for more than 12 months, or

b) any compounding application for an offence filed previously was withdrawn by the applicant solely for the reason that such application was filed beyond 12 months, or

c) any compounding application for an offence had been rejected previously solely for technical reasons.

6. Hindi version shall follow.

Sd/-
(Mamta Bansal)
Director to the Government of India

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CHAPTER 7

CASE LAWS RELEVANT TO PROSECUTION/COMPOUNDING

(Latest case laws of Supreme Court and High Courts only with citation and a small note highlighting the salient features)

Chapter Summary	
S.No.	**Discussion**
1.	Judicial Approach to Economic Offences
2.	Person not coming with clean hands is not entitled to relief
3.	Drawing of inference
4.	Framing of Charges
5.	Electronic Evidence
6.	Prosecution for an offence punishable under two enactments can be launched simultaneously, but one cannot be punished for same offence twice
7.	Admission can be implied by conduct of litigant
8.	No bar on civil and criminal proceedings to proceed simultaneously
9.	Non-imposition of penalty by the AO does not impact the prosecution proceedings
10.	Prosecution cannot be quashed on the ground that assessment / appellate proceedings are pending
11.	Presumption of mens rea
12.	Prosecution of Person – who can be prosecuted
13.	Prosecution of Lady Member
14.	Prosecution of partner – Condition Precedent
15.	A company can also be prosecuted
16.	Liability of Firm to file Returns
17.	Who can be prosecuted for an offence under section 277?
18.	No bar on fresh trial where earlier trial quashed on technical grounds
19.	No exemption from prosecution on the ground of agreed assessment
20.	Powers of CBDT to issue directions
21.	No element of quid pro quo in compounding
22.	No directions for compounding by Court
23.	Where Compounding Offer made by the Department was rejected
24.	No right of getting offer for compounding before prosecution is launched
25.	Where assessee prolonged appeal, Department cannot be held at fault

26.	No writ petition lies against show-cause notice
27.	No writ of Prohibition to initiate prosecution proceedings
28.	First Offence
29.	Resort to statutory remedies not to hold up criminal trial
30.	Prosecution fit to be quashed without statutory sanction u/s 279 of I.T. Act.
31.	Object behind grant of sanction
32.	Proof & essential ingredients of sanction
33.	No opportunity is needed prior to according sanction
34.	Some proceedings before I.T authorities can be treated as proceedings before court but the authority is not a court
35.	Complaint by a public servant (an income-tax authority) – not to be forwarded to police for parallel investigation
36.	Prosecution must be launched within a reasonable time
37.	Adequacy of the sentence / Quantum of Punishment
38.	Place of trial
39.	Right of cross-examination
40.	Officer competent to file a complaint
41.	Attempt to commit a particular offence – meaning of
42.	Departmental Instructions not binding on courts for prosecution proceedings
43.	Independent evidence like false books of accounts can be the basis of prosecution even when assessment is quashed
44.	Can prosecution proceedings continue when assessment is set aside - Yes
45.	Status of prosecution cases when the petitions are admitted by Settlement Commission
46.	Criminal complaint maintainable for non-deduction of TDS, even when the TDS was paid subsequently along with the interest
47.	Normally, when the penalty imposed u/s 271(1)(c) of the I.T. Act fails on the ground that there is no concealment, the prosecution u/s 276C also fails
48.	Change of Head of Addition does not invalidate prosecution proceedings
49.	Prosecution may be quashed in the light of a finding under the Act
50.	No prosecution u/s 276C(2) for failing to pay Advance Tax
51.	Prosecution if return is not filed voluntarily u/s 139(1)
52.	TDS prosecution proceedings are independent
53.	Violation of prohibitory order is punishable
54.	Evidence of Sanctioning Authority

1. Judicial Approach to Economic Offences

In the State of Gujarat Vs. Mohanlal Jitamalji Porwal, (1987) I Judgement Today 183 (SC) the Hon'ble Supreme Court has observed as under: "...Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a person-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the truth and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....". The observations are reproduced by Appellate Tribunal for Forfeited property in -**Mira Rani Mazumdar Vs. Competent Authority, Calcutta in (1987) 166 ITR 237**. [refer CBDT Instruction No. 1769 [F.No. 279/82/87-ITJ], dated 13-8-1987].

2. Person not coming with clean hands is not entitled to relief

- In the case of -**Ramjas Foundation Vs. Union of India (Civil Appeal No.6662 Of 2004), DoJ: 09.11.2010, the Hon'ble Supreme Court** has held as under: "14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums."
- In -**Dalip Singh Vs. State of U.P. (2010) 2 SCC 114**, "In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

3. Drawing of inference

A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular inference from a particular fact. It is of three types, (i) "may presume", (ii) "shall presume" and (iii) "conclusive proof". "May presume" leaves it to the discretion of the Court to make the presumption according to the circumstances of the case. "Shall presume" leaves no option with the Court not to make the presumption. The Court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. Conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebuttable presumption. -**P.R. Metrani Vs. CIT, 287 ITR 209 (SC) [2006]**

4. Framing of Charges

- "We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law." -**Om Wati Vs. State [2001] 4 SCC 333 (SC)**
- If on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. -**State of Maharashtra Vs. Som Nath Thapa AIR 1996 SC 1744 (SC)**

5. Electronic Evidence

"We clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies." -**Shafhi Mohammad Vs. The State of Himachal Pradesh SLP (Criminal) No.2302 of 2017 [2018]**

6. Prosecution for an offence punishable under two enactments can be launched simultaneously, but one cannot be punished for same offence twice

As per Section 26 of the General Clauses Act, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence"

Relying on the above, Hon'ble Supreme Court has held that "a plain reading of the section shows that there is no bar to the trial or conviction of the offender under two enactments but there is only a bar on the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes and offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence." –**T.S. Baliah Vs. T.S. Rangachari, ITO, Central Circle VI, Madras (1968) 72 ITR 787 (SC)**.

7. Admission can be implied by conduct of litigant

In this case, the assessee contended that Department could not prove its case beyond all reasonable doubt. It was contended that the signature in the return of income was not proved. The Hon'ble SC ruled in favour of Department by noting the conduct of the litigant, "It is trite that admission is best evidence against the maker and it can be inferred from the conduct of the party. Admission implied by conduct is strong evidence against the maker but he is at liberty to prove that such admission was mistaken or untrue." Since the accused had not raised any dispute at any point of time and paid the penalty, the prosecution has proved his admission of filing and signing the return. Once the prosecution has proved that, it was for the accused to demonstrate that he did not sign the return. There is no statutory requirement that

signature on the return has to be made in presence of the Income-tax authority. -**ITO Vs. Mangat Ram Norata Ram Narwana, 336 ITR 624 (SC) [2011]**

8. No bar on civil and criminal proceedings to proceed simultaneously

It is true that the Act provides for imposition of penalty for non-payment of tax. That, however, does not take away the power to prosecute accused persons if an offence has been committed by them. The Hon'ble Court relied upon its own decision in -**Rashida Kamaluddin Syed Vs. Shaikh Saheblal Mardan [2007] 4 JT 159**: "Finally, the contention that a civil suit is filed by the complainant and is pending has also not impressed us. If a civil suit is pending, an appropriate order will be passed by the competent Court. That, however, does not mean that if the accused have committed any offence, jurisdiction of criminal Court would be ousted. Both the proceedings are separate, independent and one cannot abate or defeat the other." -**Madhumilan Syntex Ltd Vs. Union of India, 290 ITR 199 (SC) [2007]**

9. Non-imposition of penalty by the AO does not impact the prosecution proceedings

The omission on the part of the assessing officer to impose such penalty by itself does not mean that, in his opinion, the default was not wilful. To determine whether the default was wilful or otherwise, the explanation offered, may be in response to the show cause notice, will have to be seen and construed. -**Rakshit Jain Vs. ACIT, 99 taxmann.com 299 (Delhi) [2018]**

10. Prosecution cannot be quashed on the ground that assessment/ appellate proceedings are pending

- This issue relates to prosecution for offences punishable under section 276C and section 277 and under sections 193 & 196 of the Indian Penal Code instituted by the Department while the reassessment proceedings under the Act are pending. There is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. A mere expectation of success in some proceedings in appeal or reference under the Act cannot come in the way of the institution of criminal proceedings under section 276C and section 277 of the Act. The pendency of the reassessment proceedings cannot

act as a bar to the institution of the criminal prosecution for offences punishable under section 276C or section 277 of the Act. The institution of the criminal proceedings cannot in the circumstances also amount to an abuse of the process of the court. -**P. Jayappan Vs. S.K. Perumal, First ITO, Tuticorin (1984) 149 ITR 696 (SC) [3 judge bench]**.

- Pendency of appellate proceedings relating to assessment is not a bar for initiating prosecution proceedings under section 276CC. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for determination of the sentence of the offence; the department may resort to best judgment assessment or otherwise to determine the extent of the breach. -**Sasi Enterprises Vs. ACIT, 361 ITR 163 (SC) [2014]**

11. Presumption of mens rea

- Section 278E deals with the presumption as to culpable mental state, which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986. Court in a prosecution of offence, like Section 276CC has to presume the existence of mens rea and it is for the accused to prove the contrary and that too beyond reasonable doubt. -**Sasi Enterprises Vs. ACIT, 361 ITR 163 (SC) [2014]**

- There is a statutory presumption prescribed in section 278E. The Court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. This is a matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial. -**Prakash Nath Khanna Vs. CIT, [2004] 266 ITR 1 (SC)**.

- Under the Income-tax Act, 1961 there are various provisions for compliance with taxing provisions and the collection of taxes. The Income-tax Act seeks to enforce tax compliance in a threefold manner; namely (1) Imposition of interests (2) Imposition of penalties and 3) Prosecutions. In the fight against tax evasion, monetary

penalties are not enough. When a calculating tax dodger finds it a profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to lose faith and confidence in tax administration when a tax evader is caught, but the administration lets him get away lightly after paying only a monetary penalty - when money is no longer a major consideration with him if it serves his business interest. The sections dealing with offences and prosecution proceedings are included in Chapter XXII of the Income-tax Act, 1961 i.e. S. 275A to S. 280D of the Act. The provisions of the said Code are to be followed relating to all offences under the Income-tax Act, unless the contrary is specially provided for by the Act. The concept of mens rea is integral to criminal jurisprudence. An offence cannot be committed unintentionally. Generally, a guilty mind is a sine qua non for an offence to be committed. However, The Taxation Laws S. 278E has carved out an exception to this rule. The said Section places the burden of proving the absence of mens rea upon the accused and also provides that such absence needs to be proved not only to the basic threshold of 'preponderance of probability' but 'beyond reasonable doubt'. In every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt. No doubt, this presumption is a rebuttable one. -**Ankur Arya Vs. ITO, [2018] 98 taxmann.com 470 (Jammu & Kashmir)**

12. Prosecution of Person – who can be prosecuted

- 'Person' used in section 277 refers not only to an assessee but also to person who has made verification on behalf of said assessee. -**M.R. Pratap Vs. ITO, [1992] 196 ITR 1 (SC)**
- Directors other than Managing Director are also equally responsible for furnishing of return on behalf of company. In a situation where the managing director may not be in a position to verify or submit the return of income, this on account of numerous reasons which may be presented as "unavoidable" and in case of such difficulties for the managing director to abide by the requirements of law on behalf of the company, the responsibility of other directors

cannot be ignored in view of the expression "any director thereof". -**Rakshit Jain Vs. ACIT, 99.taxmann.com 299 (Delhi) [2018]**

- Since assessee had subscribed her signature in profit and loss account and balance sheet for relevant assessment year which were filed along with returns, Assessing Officer was justified in naming her as principal officer and accordingly she could not be exonerated for offence under section 277. For filing a complaint under section 276(C)(1), section 277 and section 278B determination of a Principal Officer was not necessary and non-issuance of individual notice before filing of complaint would be of no consequence. -**Sujatha Venkateshwaran Vs. ACIT, [2018] 257 Taxman 195 (Madras).**
- In terms of section 278B, once offence is shown to have been committed by company, liability of directors in charge of its affairs is attracted. Where both directors of company had signed Company's balance sheets, their defence that they were not in charge of affairs of company was untenable and they could not be acquitted merely on ground that no separate notices were issued to them. -**ITO Vs. Anil Batra, [2018] 409 ITR 428 (Delhi).**
- Section 2(35) specifies that there is no bar for treating more than one person as Principal Officer for initiation of criminal proceedings. -**Kingfisher Airlines Ltd Vs. Income-tax Department, [2014] 265 ITR 240 (Karnataka)**

13. Prosecution of Lady Member

On the issue of prosecution of lady member, in the past, Supreme Court had held in certain cases that normally a lady member may not be aware of day to day business of the Firm or the Company. In -**Madhumilan Syntex Ltd Vs. Union of India, 290 ITR 199 (SC) [2007]**, this stand was reversed when the Hon'ble Apex Court held as under: "Without laying down general rule, it would be sufficient if we observe that in the case on hand, she was also treated as 'principal officer' under the Act and, hence, proceedings cannot be dropped at this stage against her". Thus, the prosecution would be based on facts and not based on gender.

14. Prosecution of partner – Condition Precedent

Income-Tax authorities must apply their minds and indicate in the complaint the manner in which the partner is in charge of, or responsible

for the conduct of the business of the firm. Mere reproduction of words used in section 278B is not sufficient. In the following circumstances, an order of the magistrate issuing process against the accused can be quashed or set aside:

i. Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

ii. Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

iii. Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary, being based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

iv. Where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of a complaint by a legally competent authority or the like. The cases mentioned are purely illustrative and provide sufficient guidelines to indicate contingencies where the high court can quash proceedings

-Smt. Thangalakshmi Vs. I.T.O (1993) 205 ITR 176 (Madras).

15. A company can also be prosecuted

- The matter has been decided by a **5-judge constitutional bench** of Supreme Court in the case of -**Standard Chartered Bank Vs. Directorate of Enforcement [2005] 275 ITR 81**, in which it has been held that:

  "it was contended on behalf of the company that when a statute fixes criminal liability on corporate bodies and also provides for impositions of substantive sentence, it could not apply to persons other than natural persons and companies and corporations cannot be covered by the Act. The majority, however, repelled the contention holding that a juristic person is also subject to criminal liability under the relevant law. The only thing is that in a case of substantive sentence, the order is not enforceable and the juristic person cannot

be ordered to suffer imprisonment. Other consequences, however, would ensue, e.g. payment of fine, etc. "

K.G.Balakrishnan J., speaking for the majority, summarized the law as under:

"As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards a company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the Legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy."

- A similar stand had been taken by the Hon'ble Apex Court in -**M.V. Javali Vs. Mahajan Borewell & Co, [1998] 230 ITR 1 (SC)**. It was held that keeping in view the 47th Report of the Law Commission which recommended punishment of fine in substitution of imprisonment in the case of a corporation and the principles of interpretation of statutes, the only harmonious construction that could be given to section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely, on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely, on a company, fine will be the only punishment.
- By the above decisions, the earlier decision in ACIT Vs. Velliappa Textiles Ltd, 263 ITR 550 (SC) that a company cannot be prosecuted for offences under sections 276C, 277 and 278 has been over-ruled.

16. Liability of Firm to file Returns

A firm is independently required to file return of income and merely because partners of firm in their individual returns disclosed that no return has been filed by firm due to non-finalisation of books of account, it would not nullify liability of firm to file its return as per section 139(1). -**Sasi Enterprises Vs. ACIT, 361 ITR 163 (SC) [2014]**

17. Who can be prosecuted for an offence under section 277?

For an offence under section 277 only that person who actually makes a statement or verifies the return filed under the Act is liable to be prosecuted, if it can be shown that the said statement or the verification was false to his knowledge or he believed it to be false or did not believe it to be true [**Jasbir Singh Vs. ITO, (1987) 168 ITR 770, 772 (Punj)**]. In that case, the prosecution proceedings against those partners of a firm who never signed the verification of the impugned return nor made any statement before the Income-tax Officer or produced any account in that regard were quashed.

18. No bar on fresh trial where earlier trial quashed on technical grounds

- ITO filed complaint against assessees under sections 276C, 277 and 278 but same was dismissed by Magistrate on ground that proper authorization as provided under section 279 had not been taken from Commissioner. Thereafter, revenue filed second complaint under same sections after obtaining fresh sanction. It was appealed that accused persons had already faced a trial by a court of competent jurisdiction for same offences, had been acquitted, and hence could not be tried again for same allegations. On appeal, it was held that when a complaint is dismissed and accused is discharged, it does not amount to an acquittal for purpose of section 300 of Code and fresh trial can be held. -**ITO Vs. Globe Walker, [2009] 183 Taxman 167 (Delhi)**
- Once the accused is acquitted under section 256 of the Criminal Procedure Code, second complaint is not maintainable but if a person is discharged under section 249 of the Criminal Procedure Code, second complaint is maintainable. -**N. Rengaraj Vs. P. Dhamodarasamy, [2009] 319 ITR 216 (Madras)**

19. No exemption from prosecution on the ground of agreed assessment

There is no material to indicate that any understanding was given to the assessee that no penal action could be taken. There is no provision of the Income-tax Act, whereby a compromise assessment could have been arrived at between the assessee and the Commissioner of Income-tax. The question whether there was any understanding or not, even if it could have been there, is one of fact which will have to be proved before the trial court. The prosecution proceedings were not liable to be quashed. -**Union of India & Another Vs. Banwari Lal Agarwal (1999) 238 ITR 461 (SC)**

20. Powers of CBDT to issue directions

- The Act empowers the CBDT to issue orders, instructions or directions for the proper composition of the offences under section 279(2) and further specifically provides that directions for obtaining the previous approval of the Board can also be issued. Reading section 279(2) along with the Explanation, there is no doubt that the Commissioner has to exercise his discretion under section 279(2) in conformity with the instructions issued by the Board from time to time. -**Y.P. Chawla Vs. M.P.Tiwari, [1992] 195 ITR 607 (SC)**
- The compounding guidelines are exhaustive in nature and provide different compounding charges for different offences. The CBDT, while issuing the said guidelines, has obviously borne in mind the various established principles for compounding of offences including gravity of the offences, conduct of the parties, manner in which the offence is sought to be committed, etc. The Explanation to Section 279 clearly vests the CBDT with the powers to issue circulars, orders, instructions or directions "for proper composition" of offences. The circular does not suffer from any illegality. The guidelines do not reflect any exercise of power which is arbitrary or illegal, inasmuch as such guidelines are issued by authorities for compounding of various kinds of offences. -**Vikram Singh Vs. Union of India, [2018] 89 taxmann.com 327 (Delhi)**

21. No element of quid pro quo in compounding

- There is no element of quid pro quo required, in as much as, the compounding fee charged is in the nature of tax under

the Act. The legislation has vested the CBDT with power to prescribe compounding fee, etc., for different offences. It is well within the powers of CBDT as vested in it under the Act. The principle of proportionality also would not apply, in as much as, compounding fee is in the nature of a payment made to avoid punishment for a criminal offence. Having filed the compounding application the petitioner cannot attempt to wriggle out of his obligations to pay the compounding charges by alleging that the same are exorbitant. -**Vikram Singh Vs. Union of India, [2018] 89 taxmann.com 327 (Delhi)**

- Compounding of an offence after the prosecution is launched is the exception and not the rule. The fact that the CBDT has the power to issue directions including instructions or directions to obtain its prior approval does not carry with it an obligation to hear the applicant for compounding having regard to the scheme of section 279 and the purpose for which that section was enacted. -**M. P. Purusothaman Vs. Asstt. DIT, [2001] 252 ITR 603 (Madras)**

22. No directions for compounding by Court

Section 279(2) of the Act enables compounding of offences by the Chief Commissioner. Mere fact that there is provision for compounding of offence is not a ground for issue mandamus to compound the offence. It is not the case of the petitioners that the compounding rejection order is mala fide or perverse. Discretionary powers of a statutory authority can be interfered with only on the ground of factual or legal mala fides or perversity. -**Punjab Rice Mills Vs. CBDT, [2011] 12 taxmann.com 225 (P&H)**

23. Where Compounding Offer made by the Department was rejected

An offer was made by the Department to the assessee for compounding of offence, but for the reasons best known to the assessee-firm, the same was not acceptable to it. Subsequently, the assessee was convicted and sentenced by the Chief Judicial Magistrate. The application for compounding of offence was moved after the conviction order passed by the criminal court and, therefore, the question of compounding of offence did not arise. -**Anil Tools & Forgings Vs. CCIT, Ludhiana, [2011] 334 ITR 265 (Punjab & Haryana)**

24. No right of getting offer for compounding before prosecution is launched

- Sub-section (2) of section 279 is a provision which enables the Chief Commissioner or the Director General to compound any offence either before or after the institution of proceeding. There is no warrant in interpreting this sub-section to mean that before any prosecution is launched, either a show cause notice should be given or an opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched. -**Union of India & Another Vs. Banwari Lal Agarwal (1999) 238 ITR 461 (SC)**

- Commissioner is empowered to suomoto initiate proceedings leading to criminal prosecution by issuing show cause notice under section 279 followed by grant of sanction for prosecution for offense under section 276CC even if assessing authority is Assistant Commissioner. There is no requirement in law that prior to sanction for prosecution being accorded under Section 279 (1) of IT Act, the complainant authority of Income-tax must issue show cause notice. But where a show cause notice was issued for the purpose of inquiry, the reply submitted by the company accused in response thereto will have to be looked into. -**Rakshit Jain Vs. ACIT, 99.taxmann.com 299 (Delhi) [2018]**

25. Where assessee prolonged appeal, Department cannot be held at fault

- More than fifteen years have passed but it cannot be ignored that prosecution could not be over in view of the fact that applications were made by the appellants for their discharge under section 245 of the Code initially in the trial court, then in the Sessions Court and then in the High Court. Even after dismissal of the petition by the High Court, the appellants approached the Supreme Court and obtained interim stay of further proceedings. It is because of the pendency of proceedings and grant of interim relief that the case remained pending. It, therefore, cannot be urged that there was failure, negligence or inaction on the

part of the prosecuting agency in not proceeding with the matter. -**Madhumilan Syntex Ltd Vs. Union of India, 290 ITR 199 (SC) [2007]**

- Right to speedy trial shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the accused concerned or on account of any other action of the accused which results in prolonging the trial. -**Raja Babu Vs. ITO, [2001] 251 ITR 206 (Madras)**.

26. No writ petition lies against show-cause notice

Where a show cause notice as to why prosecution under sections 277 and 276C(1) and under provisions of Indian Penal Code for concealment of income and filing of false statements in return should not be initiated against assessee was issued, assessee had to respond to it and same could not be questioned in a writ petition. **Krishnaswami Vijayakumar Vs. Pr.DIT, [2018] 404 ITR 442 (Madras)**

27. No writ of Prohibition to initiate prosecution proceedings

Where assessee had been subjected to multiple searches by Income-tax department/Investigation wing in respect of undisclosed foreign income, writ of prohibition could not have been issued to prevent Authorities from initiating prosecution against assessee under Act on apprehension of assessee that prosecution will be initiated. -**Srinidhi Karti Chidambaram Vs. PCCIT, [2018] 404 ITR 578 (Madras)**

28. First Offence

As per Guidelines for compounding offence, only in case of 'first offence', compounding is permissible. As per clause 8(ii) of Direct tax laws, first offence means offence under any of Direct Tax Laws committed prior to (a) date of issue of any show cause notice for prosecution or (b) any intimation relating to prosecution by the Department to person concerned or (c) launching of any prosecution, whichever is earlier. Where there was already a show cause notice issued against assessee under section 276CC for non-filing of return before due date for assessment year 2011-12 and despite same, assessee did not file return of income for assessment year 2013-14 within time prescribed, offence for assessment year 2013-14 could not be said to be first offence. -**Vinubhai Mohanlal Dobaria Vs. CCIT, [2017] 81 taxmann. com 60 (Gujarat)**

29. Resort to statutory remedies not to hold up criminal trial

"It is settled law that a criminal trial should not be held up merely because some statutory remedies are being resorted to by the parties concerned. It, therefore, follows that merely because a petition for compounding the offences is pending before the income-tax authorities, the criminal trial could not be stayed" **-Kamala Ganeshan Vs. ITO (1992) 198 ITR 152, 155 (Mad), followed in Y. Jayalakshmi Vs. ITO (1993) 202 ITR 369 (Mad.)**

30. Prosecution fit to be quashed without statutory sanction u/s 279 of I.T. Act.

While deciding the quantum "whether the prosecution of the petitioner is fit to be quashed as no sanction as required under section 279 of the Act has been obtained which is the condition precedent for taking cognizance?". It was held that the prosecution of the petitioner is fit to be quashed as no sanction as required under section 279 of the Act has been obtained which is the condition precedent for taking cognizance." -**Raj Kumar Sodera Vs. Chief Commissioner of Income-tax and Others. (1996) 229 ITR 626 (Patna)**

31. Object behind grant of sanction

The object of the provision for sanction is that the authority giving the sanction should be able to consider for itself the evidence before it comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case **-Jaswant Singh Vs. State of Punjab, AIR 1958 SC 124, 126. Also see, Gokulchand Dwarkadas Morarka Vs. The King, AIR 1948 PC 82, 84. Also, see, S.N. Banerjee Vs. Babulal Gupta, AIR 1979 SC 1526.**

32. Proof & essential ingredients of sanction

It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out. This should be done in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds

of satisfaction or (2) by adducing evidence to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio. What the court has to see is whether or not the sanctioning authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same, any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the persons against frivolous prosecutions and must therefore be strictly complied with before any prosecution can be launched against the person concerned -**Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, AIR 1979 SC 677, 679. Also see, Balaram Swain Vs. State of Orissa, (1991) 1 SCC 510 (SC).**

33. No opportunity is needed prior to according sanction

- Granting of a sanction is an administrative act. While construing a somewhat similar provisions in R.S. Nayak Vs. A.R. Antulay (AIR 1984 SC 684), the Supreme Court has observed that the object behind creating a bar to the court from taking cognizance of offences is to save the party from the harassment of frivolous or unsubstantiated allegations. The policy underlying such provisions is that there should not be unnecessary harassment, and this is the reason why in section 279(1) of the 1961 Act, it is laid down that a person shall not be proceeded against for an offence, as enumerated therein, except with the previous sanction of the Commissioner or Commissioner (Appeals) or the Appropriate Authority. After sanction is accorded, a court can take cognizance of the offence and then start the regular trial wherein the accused is given full opportunity to defend and put forward his case. Therefore, it is not possible to import even by implication the principles of natural justice in this administrative action of granting or refusing sanction -**Cf. Naresh PranJivan Mehta Vs. State of Maharashtra, (1986) 61 STC 309, 312-13 (Bom)**.
- The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to

consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise. In that view of the matter, even though no opportunity of hearing has been given, the order of sanction cannot be said to have been vitiated by violation of the principles of natural justice -**Superintendent of Police Vs. Deepak Chowdhary (1995) 6 SCC 225, 226. Also see, State of M.P. Vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439, 444-45**.

- For filing a criminal complaint, no opportunity of hearing is required to be afforded to assessee before grant of sanction by Commissioner. -**ACIT Vs. Velliappa Textiles Ltd, [2003] 263 ITR 550 (SC)**
- No separate notice and/or communication ought to have been issued before issuance of show-cause notice under section 276B, read with section 278B, that the directors were to be treated as principal officers under the Act. When in the show-cause notice itself it was stated that the directors were to be considered as principal officers under the Act and a complaint was filed, such complaint was entertainable by a Court, provided it was otherwise maintainable. -**Madhumilan Syntex Ltd Vs. Union of India, 290 ITR 199 (SC) [2007]**
- No notice is required to be given to the accused before passing an order of sanction under section 279 of the Act. When law does not contemplate notice to the accused person, either under the Income-tax Act or under the Indian Penal Code, the prosecuting agency cannot be blamed for not giving any such notice. -**Tip Top Plastic Industries P Ltd Vs. ITO, 214 ITR 778 (Madras) [1995]**

Note: It may, however, be mentioned that the issue of a show cause notice, to the delinquent assessee by the CIT, has been provided in the procedure for launching of prosecution, to file prosecution only in suitable cases.

34. Some proceedings before I.T authorities can be treated as proceedings before court but the authority is not a court

In Lalji Haridas Vs. State of Maharashtra the majority took the view that in view of section 37 of the Income-tax Act, 1922, when an Income-

tax Officer exercises power under that section, the proceedings held by him are judicial proceedings for the purposes of sections 193, 196 and 228 of the Penal Code; Section 37 of the Income-tax Act, 1922, inter alia, provides that the Income-tax Officer shall, for the Purpose of the Act, have the same powers as are vested in a court under the Code of Civil Procedure when trying a suit in respect of discovery and inspection and enforcing the attendance of any person, including any officer of a banking company and examining him on oath, etc. The court also observed that though the said proceedings are to be treated as proceedings in a court, the Income-tax Officer was not a revenue Court. -**Balwant Singh And Another Vs. L.C. Bharupal, Income-Tax Officer, New Delhi and Another (1967) 70 ITR 89 (SC)**.

35. Complaint by a public servant (an income-tax authority) – not to be forwarded to police for parallel investigation

The Income-tax Act is a special law, which prescribes a special mode of enquiry and investigation. Where a criminal complaint is filed by an income-tax authority, after enquiring into the matter and after obtaining the sanction of the authority concerned, as a public servant, acting or purporting to act in the discharge of its official duty, under section 200(a) of the code of Criminal Procedure, the Criminal Court cannot exercise the powers conferred on it under section 156(3) of the Code and forward the same to the police for a parallel investigation. Such a procedure will result in conflicting conclusions and nullify the investigation made by the income-tax authorities. In such a case, the Court has to proceed only under section 204 of the Code which makes provision for issue of the process -**S. Sundaram, IAC Vs. Deputy Inspector of Police (Crimes), (1992) 197 ITR 696, 697-98 (Mad.)**.

36. Prosecution must be launched within a reasonable time

- It is true that offences under the Income-tax Act, being economic offences, are saved from the applicability of the period of limitation as prescribed under section 468 of the Code; However, the prosecution is liable to be quashed on the ground of unreasonable delay which remains unexplained **[K.M.A. Ltd Vs. T. Sundara Rajan, ITO (1996) Tax LR 248, 248 (Bom), Relying on Srinivas Pal Vs. Union Territory of Arunachal Pradesh, AIR 1988 SC 1729]**. In the Bombay case, the complaint was filed nearly 13-14 years after the date of the alleged offence under section 278B. The criminal proceedings were quashed in view of inordinate and unreasonable delay which was also not explained by the Department.

- In view of provisions of section 2 of Economic Offences (Inapplicability of Limitation) Act, 1974, bar of limitation specified in section 468 of Code of Criminal Procedure, 1973, will not apply to prosecution under I.T. Act. -**Friends Union Oil Mills Vs. ITO (Kerala), 106 ITR 571 [1977]**.
- The assessee sought quashing of the prosecution on the ground that there was delay of 10 years in filing of complaint by the Department. It was seen that after having deducted tax at source, the assessee had kept this amount and there was delay of nearly 4 years, 11 months and 24 days in making the payment. Nature of the offence is such that it is a continuing offence and if amount is not paid, it would be considered fresh offence every day and therefore, the allegations are very serious as there is failure on the part of the assessee to deposit the amount which belongs to the Central Government. Prosecution proceedings could not be quashed. -**Union of India Vs. Gupta Builders P Ltd., [2008] 297 ITR 310 (Bombay)**

37. Adequacy of the sentence / Quantum of Punishment

- In judging the adequacy of the sentence, it is necessary that the nature of the offence, the circumstances of its commission and also the age and character of the offender have to be considered, for the courts and the law are functionally bodyguards of the people against bumptious power, official or otherwise **[Union of India Vs. Jayalakshmi & Co., (1979) 119 ITR 955, 958 (Mad)]**. In that case, the High Court refused to enhance the sentence awarded to the accused on the ground that the accused had already been penalized twice – once by the department by imposing penalty and again by the Magistrate – and the Magistrate had dealt with the offences committed by the accused in detail and had taken all factors into consideration in awarding the sentence.
- For ascertaining the quantum of punishment, the law applicable is the law existing on the date the offence was committed. Where alternative punishments – imprisonment or fine- are provided for, the alternative punishment of fine may be awarded in the discretion of the trial court. In revision, such discretion is not to be interfered with unless the sentence awarded is wholly disproportionate and thus improper -**ITO Vs. Sita Ram, (1983) 144 ITR 503, 505 (All); Modi Industries Ltd Vs. B.C.Goel, (1983) 144 ITR 496, 499-500 (All)**.

- Although convicted, the Magistrate granted the benefit of the Probation of Offenders Act to the assessee. By virtue of section 292A of the Income-tax Act, the benefit of section 4 of the Probation of Offenders Act and section 360 of the Criminal Procedure Code, is not available to a person held guilty of the offences punishable under the Income-tax Act. The illegality cannot be allowed to be perpetuated and matter was remitted back to the Magistrate to decide afresh on the quantum of sentence. -**Bhagwan Dass Vs. IAC, [1999] 235 ITR 511 (P&H)**.

38. Place of trial

- The proper court having jurisdiction to try an accused for an offence is of the place where the offence was committed. Thus, where a false verification in a petition was made at Kottaipatnam in Tanjore district and the petition was presented to the Divisional Officer, Devakotta, it was held that the offence having been committed at Kottaipatnam, the charge cannot legally be tried by the Devakotta Court but only by the court having jurisdiction over Kottaipatnam -**Mohidin Pakiri Marakayar, In re, AIR 1923 Mad 50 1 ITC 193**.

- An offence under section 277 can be said to have been committed at the place where the false statement, etc., is delivered. The offences under section 277 of the 1961 Act and section 177 of the Indian Penal Code are complete the moment the false statement is delivered. Similarly, offences under section 278 of the 1961 Act and section 109 of the IPC are complete where the abetment was made. These offences are not at all dependent on assessment proceedings. The question of convenience is of no relevance because that cannot override the provisions contained in section 177 of the Code of Criminal Procedure **[J.K. Synthetics Ltd Vs. ITO (1987) 168 ITR 467, 471 (Del)]**. In that case, the High court directed the complaint to be transferred to the proper criminal court.

- In this case, the appellants had residences both at Bhopal and Aurangabad and had been submitting their Income-tax returns at Bhopal. The search operations were conducted simultaneously both at Bhopal and Aurangabad in course whereof, in spite of queries made, did not disclose that they in fact did hold a locker located at Aurangabad. They in fact denied to hold any locker, either individually or

jointly. The locker, eventually located, at Aurangabad, had a perceptible co-relation or nexus with the subject matter of search assessment. A single and combined search operation had been undertaken simultaneously both at Bhopal and Aurangabad for the same purpose, the alleged offence can be tried by Courts otherwise competent at both the aforementioned places. To confine the jurisdiction within the territorial limits to the court at Aurangabad would amount to impermissible and illogical truncation of the ambit of sections 178 and 179 of the Code. The Court of the Chief Judicial Magistrate, Bhopal was competent to conduct the trial. -**Babita Lila Vs. Union of India, 387 ITR 305 (SC) [2014]**

39. Right of cross-examination

It was not the case of the petitioner that he was not permitted to examine any defence witness. The petitioner not having utilised the opportunity to examine any defence witness, cannot, at a later stage, request the Court to give him opportunity to examine some defence witnesses. -**G Gopi Vs. G Thiyagarajan, [2004] 266 ITR 378 (Madras)**

40. Officer competent to file a complaint

- In the case of an offence under sections 193 and 196 of the Indian Penal Code, 1860, it is only the officer before whom the offence was committed or his superior who can initiate criminal proceedings. Offences under section 276C (1) and 277(i) of the 1961 Act are independent of sections 193 and 196 of the Code **[R. Bharathan Vs. ITO (1989) 180 ITR 356, 359-60 (Kerala)].** In that case, the complaint filed for offences under sections 193 and 196 of the Indian Penal Code was held not maintainable as the same was not filed by the Income-tax Officer competent to do so.
- In this case, the statement was recorded by ITO, Nashik and Dhule. The prosecution complaint was filed by the DDIT(Inv.), Bhopal. It was held that Deputy Director of Income-tax cannot be construed to be an authority to whom appeal would ordinarily lie from decisions/orders of ITOs involved in search proceedings so as to empower him to lodge complaint in view of restrictive preconditions imposed by section 195 of Indian Penal Code. -**Babita Lila Vs. Union of India, 387 ITR 305 (SC) [2014]**

- Where authorisation was given to predecessor officer but complaint was actually filed by successor officer as the predecessor had relinquished his office or been transferred, the prosecution proceedings were valid. -**ITO Vs. Balaji Chit Fund, [2003] 264 ITR 428 (Madras)**

41. Attempt to commit a particular offence – meaning of

As pointed out in Abhayanand Mishra Vs. State of Bihar (AIR 1961 SC 1698), there is a distinction between 'preparation' and 'attempt'. Attempt begins where preparation ends. In sum, a person commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence does an act towards its commission, such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence [**State of Maharashtra Vs. Mohd. Yakub, AIR 1980 SC 1111, 1114-15**]. Section 276C deals with the attempt to evade tax which was chargeable or imposable indicating that it need not be relating to the tax that was paid already [**ITO Vs. Dharamchand Surana, (1995) 216 ITR 678, 688 (Mad)**]. In that case, for the return to be submitted in June, 1977, the fabricated document (account book relating to 1976-77 transactions prepared to conceal the real income for the purpose of evading income-tax) was created. Therefore, the creation of this document and also using it before the commercial tax authorities, namely, one wing of the tax authorities, prove that the respondent has started the process of committing the offence though the same was not completed. Therefore, certainly it is an attempt under section 420 of the Indian Penal Code read with section 511 of that Code and also section 276C of the 1961 Act. The court below has not considered these aspects in the offence and, therefore, has wrongly held that no offence was made out against the respondent. In that view of the matter, the order of acquittal passed by the lower court was set aside by the High Court, thus convicting the respondent with adequate sentences to run concurrently.

42. Departmental Instructions not binding on courts for prosecution proceedings

Instructions or guidelines given to the Income-tax Department relating to the prosecution of persons above a certain age and above certain limits of penalties cannot override the specific provisions of the Income-tax Act. -**Madura Chit and Investments Pvt Limited and another Vs. Income-Tax Officer (1994) 208 ITR 228 (Madras)**

43. Independent evidence like false books of accounts can be the basis of prosecution even when assessment is quashed

Pendency of assessment or reassessment proceedings do not constitute a bar to prosecution if based on independent evidence of the offence. Hence, generally criminal proceedings are not interfered with or dropped particularly where the allegations in the complaint were referable not solely to the finding arrived at in the assessment order, but on independent evidence of attempted evasion of income-tax by preparing false books of account or on allegations of independent evidence having been unearthed during the search operations giving rise to the belief of attempted concealment of income with intent to evade income-tax. -**Rinkoo Steels Vs. ITO (1989) 179 ITR 482 (Del); Madras Vanaspati Ltd. Vs. Subramanian (S) (1989) 175 ITR 172 (Mad.)**

44. Can prosecution proceedings continue when assessment is set aside - Yes

- An affirmative answer to this question was given by Hon'ble Madras High Court in the case of **Raja Corporation & Others Vs. ITO (1990) 194 ITR 487**.
- In case of **Tip Top Plastic Industries Pvt Ltd Vs. ITO (1995) 214 ITR 778, 792 (Mad)**, Special Leave Petition was dismissed by the Supreme Court and Prosecution under sections 276C and 277 read with section 278B was held valid because there was discovery of suppression of stock and the accused was given opportunity of being heard prior to the launching of the prosecution and the remand of the assessment proceedings to the Officer would not debar prosecution.

45. Status of prosecution cases when the petitions are admitted by Settlement Commission

- During the pendency of proceedings before the Settlement Commission, in view of the exclusive jurisdiction enjoyed by the Settlement commission u/s 245F, complaint cannot be authorized or filed against the petitioner. Similarly, any prosecution already launched before the filing of application before the Settlement Commission, will have to be stayed pending final decision by the Settlement Commission. (196 ITR 82, 215 ITR 49). Where Settlement Commission gives the finding that no concealment is established on the part of the assessee, prosecution cannot be continued. (168 ITR 220, 178 ITR 385). Similarly, where Settlement Commission

finds that there was full and true disclosure of income and penalty is not imposed, complaint is liable to the quashed. (214 ITR 265). *[However, w.e.f. 01.06.87, the commission ceased to have powers to grant immunity in cases where the proceedings for prosecution for any such offence has been instituted before the receipt of application under section 245C]*

- Settlement Commission had not granted immunity from prosecution already launched under section 276CC and issue before it was different; such prosecution for non-filing of return could not be held as bad in law. -**Anil Kumar Sinha Vs. UOI, [2013] 352 ITR 170 (Patna)**.

46. Criminal complaint maintainable for non-deduction of TDS, even when the TDS was paid subsequently along with the interest

- The company had deducted TDS but the same was not paid to the central government. The TDS along with the interest was paid to the government later on. The ITO(TDS) issued show cause notice for prosecution u/s 276B to three directors including one lady director. In the notice itself it was proposed to consider the directors as "principal officer" within the meaning of section 2(35) of the I.T. Act. While deciding the issue of quashing the proceedings, the Hon'ble Supreme Court held as under:

(i) "*In the case on hand, in the show-cause notice dated March 11, 1991, issued under section 276B read with section 278B of the Act, it was expressly stated by the Income-tax Officer, TDS, Bhopal that the directors were considered to be principal officers under section 2(35) of the Act. In the complaint dated February 26, 1992, filed by respondent No.2-Commissioner also, it was stated that the appellants were considered as principal officers. In the above view of the matter, in our opinion, the contention of learned counsel for the appellants cannot be accepted that the complaint filed against the appellants, particularly against appellants Nos.2-4 is ill-founded or not maintainable.*

It was urged that a separate notice and/or communication ought to have been issued before issuance of show-cause notice under section 276B read with section 278B of the Act that the directors are to be treated as principal officers under the Act. In our opinion, however, no such independent and separate notice is necessary and when in the show-cause notice it was stated that the directors were to be considered as principal officers

under the Act and a complaint was filed, such complaint is entertainable by a court provided it is otherwise maintainable."

(ii) "On the question of applicability of section 276B when the TDS was subsequently paid, Hon'ble Supreme Court observed that "*once a statute requires to pay tax and stipulates the period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. Interpretation canvassed by the learned counsel would make the provision relating to prosecution nugatory. It is true that the Act provides for imposition of penalty for non-payment of tax. That, however, does not take away the power to prosecute accused persons if an offence has been committed by them*."

(iii) With regard to applicability of section 278AA in relation to reasonable cause, it has been held that "*as to the contention that the case is squarely covered by section 278AA of the Act and that no offence has been committed in view of 'reasonable cause' shown by the appellants, we may state that the question can be decided on the basis of evidence which would be adduced by the parties before a competent court. Hence, even that contention does not detain us*."

(iv) It may be mentioned that in the above case, Hon'ble Supreme Court has once again reiterated its earlier position that a company can also be prosecuted. **-Madhumilan Syntex Ltd Vs. Union of India (2007) 290 ITR 199 (SC).**

- Provisions of section 276B will apply even when tax has been deposited later than the prescribed date but before filing of the complaint. -**Rishikesh Balkishan Das Vs. 167 ITR 49 (Del)**.
- Mere delay in depositing TDS within the time limit prescribed in S.200 & Rule 30 is an offence sufficient to attract S.276B. The fact that the TDS has been deposited subsequently does not absolve the offence. The fact that penalty u/s 221 has not been levied in not relevant because there is an admitted delay in depositing TDS. Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. -**Golden Gate Properties Ltd Vs. DCIT, CP No.868/2014, [2019] (Karnataka)**.

47. Normally, when the penalty imposed u/s 271(1)(c) of the I.T. Act fails on the ground that there is no concealment, the prosecution u/s 276C also fails

- Levy of penalties under section 271(1)(c) and prosecution under section 276C are simultaneous and, therefore, once penalties are cancelled on ground that there is no concealment, quashing of prosecution under section 276C is automatic. It is a well established principle that the matter which has been adjudicated and settled by the Tribunal need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. -**K.C. Builders Vs. ACIT, [2004] 265 ITR 562 (SC)**
- Income of a firm in which assessee's minor child was partner was added in hands of assessee on ground that firm was not genuine and prosecution was launched on that basis. However, Tribunal holding that firm was genuine, deleted the addition and held that assessee did not make false statement in his return. It was held that the prosecution proceeding could not be sustained. -**G.L. Didwania Vs. ITO, 224 ITR 687 (SC) [1997]**

48. Change of Head of Addition does not invalidate prosecution proceedings

A search was conducted, wherein it was found that the assessee had deliberately suppressed the real turnover and income. The department assessed the same as Business Income while the Tribunal ruled that the same was Income from Other Sources. Prosecution was launched in respect of the offences punishable under sections 276C(1) and 277. The prosecution was held to be sustainable. -**R Bharathan Vs. ITO, 246 ITR 538 (Kerala) [2000]**

49. Prosecution may be quashed in the light of a finding under the Act

The prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings. -**Uttam Chand Vs. ITO (1982) 133 ITR 909 (SC)**.

50. No prosecution u/s 276C(2) for failing to pay Advance Tax

As the words 'chargeable' and 'imposable' are absent in section 276C (2), a reading of section 276C(2) makes it very clear that it refers to the cases of tax evasion after charging or imposition. Non-payment of

advance tax cannot be said to have been covered by section 276C(2). In that view of the matter, section 276C (2) is not attracted in a case of non-payment of advance tax [**Vinaychandra Chandulal Shah Vs. State of Gujarat (1995) 213 ITR 307, 313 (Guj)**]. In that case, the process issued in respect of a complaint for an offence under section 276C (2) for non-payment of advance tax was quashed.

51. Prosecution if return is not filed voluntarily u/s 139(1)

- The proviso under section 276CC takes care of genuine assesses who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax dues by pre-paid taxes, from the rigor of the prosecution under section 276CC of the Act. Section 276CC, takes in sub-section (1) of Section 139, Section 142(1)(i) and Section 148. But, the proviso to Section 276CC takes in only sub-section (1) of Section 139 of the Act and the provisions of Section 142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of proviso is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. -**Sasi Enterprises Vs. ACIT, 361 ITR 163 (SC) [2014]**
- One of the significant terms used in section 276CC is 'in due time'. The time within which the return is to be furnished is indicated only in sub-section (1) of section 139 and not in sub-section (4) of section 139. That being so, even if a return is filed in terms of sub-section (4) of section 139, that would not dilute the infraction in not furnishing the return in due time as prescribed under sub-section (1) of section 139. The plea that the provisions of section 276CC are applicable only when there is discovery of the failure regarding evasion of tax, and not in a case where return under sub-section (4) of section 139 was filed before the discovery of any evasion, has no substance. -**Prakash Nath Khanna Vs. CIT, [2004] 266 ITR 1 (SC)**.
- Offence under section 276CC, stood constituted upon failure on part of assessee to furnish return of income for assessment year in question within period prescribed in law and, thus, mere fact that he had subsequently furnished return of income for assessment year in question would not exempt him from liability to be prosecuted. Subsequent notice u/s 142(1) and 148 could not be read so as to

supersede previous notice particularly to have effect of giving to assessee indefinite period for compliance because that could never be intention of law or of process. -**Karan Luthra Vs. ITO, [2018] 259 Taxman 209 (Delhi)**

- Where there was a failure to furnish return of income within time stipulated under section 139(1) or in response to notice under section 142(1), omission to mention belated filing of return by assessee in complaint would not come in way of criminal prosecution under section 276CC. -**Rakshit Jain Vs. ACIT, 99 taxmann.com 299 (Delhi) [2018]**

- After amendment of section 139 of the Act, on and from April 1, 1971, mere charging of interest by the Income-tax Officer cannot be deemed to be implied extension of time to file the return, which would in effect, exclude wilful default and a consequent prosecution. Thus, where the respondent-assessee accused had not filed his returns in time for the respective assessment years, he was liable to be prosecuted for the offence under section 276CC and since he had not filed the returns in time, mere payment of interest/penalty would not absolve him of his criminal liability. -**DCIT Vs. M Sundaram, 322 ITR 196 (Mad) [2010]**.

52. TDS prosecution proceedings are independent

Pendency of proceedings under section 201(1) and 201(1A) cannot act as a bar to institution and continuance of criminal prosecution for offences punishable under section 276B. The contention of the petitioners that it is only on the instructions or direction of Chief Commissioner or Director General, the Commissioner can issue a sanction and not on his own is unacceptable. -**Kingfisher Airlines Ltd Vs. Income-tax Department, [2014] 265 ITR 240 (Karnataka)**

53. Violation of prohibitory order is punishable

Pursuant to search, a prohibitory order was placed u/s 132(3) on almirah, which on next day it was noticed that steel plates on rear side of almirah had been cut at two places. The prosecution being at the instance and on behalf of the State, section 279 had no application. The act of the accused in opening the almirah in question by effecting cuts at two places was derogatory to the direction as contained in the prohibitory order, constituted contravention of the order and was liable for punishment u/s 275A. -**State of Maharashtra Vs. Narayan Champalal Bajaj, [1993] 201 ITR 315 (Bombay)**

54. Evidence of Sanctioning Authority

If the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction, there is no requirement to make sanctioning authority a prosecution witness, if at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority. In this regard the DOPT Office Memorandum No.142/22/2007-AVD.I dated 10.11.2008 on subject Prosecution sanction can be seen.

In the case of **Mohd. Iqbal Ahmad Vs. State of Andhra Pradesh, 1979 AIR 677, 1979 SCR (2)1007 dated 18.01.1979**, Hon'ble Supreme Court held that It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio.

The same was again reiterated by Hon'ble Supreme Court in the case of **Inspector of Police Vs. Sri. K. Narasimha Chari in Civil appeal (C 82 of 2004) dated 07.10.2005.**

The issue of sanction was dealt with by the Judicial Committee in the case of **Gokulchand Dwarkadas Morarka Vs. The King AIR 1948 PC 82 (1949 Cri LJ 261)**. The Judicial Committee in this context observed (at page No.84 of AIR 1948 PC) that in their Lordships' view, to comply with the provisions of Clause 23 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.

The same view was taken in the case of **Shiv Rai Delhi Administration, AIR 1968 SC 1419** and in the case of **State of Rajasthan Vs. Tarachand AIR 1973 SC 2131**.

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CHAPTER 8

REPORTING MECHANISM

Chapter Summary	
S.No.	**Description**
1.	Current Reporting Mechanism- Monthly Progress Report (MPR) & Quarterly Progress Report(QPR)
2.	Control Registers
3.	Overview of the Prosecution Module in ITBA
4.	Overview of the Prosecution Module on AO Portal of CPC-TDS

1. Current Reporting Mechanism- Monthly Progress Report(MPR) & Quarterly Progress Report (QPR)

I. Presently, a **Monthly Prosecution Report** is being submitted in the following format:

S. No	Particulars	Number of	
		Complaints	**Cases**
	PROSECUTION		
1	Prosecutions pending with courts as on 1st April, ————	0	0
2	Fresh prosecution launched upto end of month (a+b+c+d)	0	0
	a) Concealment of income	0	0
	b) Late filers / Non–filers	0	0
	c) Other offence	0	0
	d) Only IPC offences	0	0
3	Disposal upto end of the month (a+b+c)	0	0
	a) Court passes order of conviction	0	0
	b) Court passes order of acquittal	0	0
	c) Prosecutions withdrawn due to	0	0
	i) Compounding	0	0
	ii) Reasons other than compounding	0	0
4	Prosecution pending with courts at the end of month (1+2-3)	0	0
5	Prosecutions revived due to appeals filed against court orders upto the end of month (a+b)	0	0
	a) acquittal orders	0	0
	b) convicted orders	0	0
6	Total Prosecution pending with courts at end of month (4+5)	0	0

S. No	Particulars	Number of	
		Complaints	Cases
	POTENTIAL CASES		
7	Potential prosecution cases identified (during search / survey / scrutiny / other enquiry) upto end of month	0	0
	COMPOUNDING		
8	Prosecution compounded before filing of complaint in the Court	0	0
9	Compounding petitions pending as on 1st April, – – – – – – (a+b)	0	0
10	Compounding petitions received upto end of month	0	0
11	Compounding petitions decided upto end of month (a+b)	0	0
	a) compounding rejected	0	0
	b) compounding accepted	0	0
12	Compounding petitions pending upto end of month (9+10-11)	0	0
	a) pending for more than 6 months	0	0
	b) pending for 6 months and less	0	0

Note:

No list needs to be enclosed with the report. The above report from the office of each PCCIT is required to be submitted to the CBDT by 7th of the succeeding month. For the purpose of compiling the above report, the PCCIT may collect the above information in the similar format from the field offices with suitable changes, if any required.

II. Apart from the above monthly report, a **Quarterly Progress Report** on Prosecution Work is also submitted as follows.

S. No	Particulars	Number of	
		Complaints	Cases
	PROSECUTION		
1	Prosecutions pending with Courts as on 1st April, _____	0	0
2	Prosecution Launched during the Quarter	0	-
3	Fresh prosecution launched upto end of quarter (a+b+c+d)	0	-
	a) Concealment of income	0	-
	b) late filers / Non-filers	-	-
	c) Other offences	-	-
	d) Only IPC offences	-	-

S. No	Particulars	Number of	
		Complaints	Cases
4	Disposal of Prosecution during the Quarter	-	-
5	Disposal upto end of the quarter (a+b+c)	-	-
	a) Court passes order of Conviction	-	-
	b) Court passes order of acquittal	-	-
	c) Prosecutions Withdrawn due to	0	0
	i) Compounding	0	0
	ii) Reasons other than compounding (Discharged by the Court)	-	-
6	Prosecution pending with Courts at the end of quarter (1+3-5)	0	0
7	Prosecutions revived upto end of the quarter due to appeals filed against Court orders (a+b)	-	-
	a) acquittal orders	-	-
	b) convicted orders/discharged orders	-	-
8	Total Prosecution pending with Courts at end of quarter (6+7)	0	0
	a) Concealment of income	0	-
	b) late filers / Non-filers	-	-
	c) Other offences	-	-
	d) Only IPC offences	-	-
	POTENTIAL CASES		
9	Pendency of Potential prosecution cases identified as on 1st April, _____	0	**0**
10	Number of potential prosecution cases identified (during search / survey / scrutiny / other enquiry) upto end of quarter	0	0
11	No. of prosecution compounded before filing of complaint in the court up to end of quarter	-	-
12	Prosecutions launched out of cases (at 9 & 10) upto end of quarter	-	-
13	Prosecutions not launched upto end of quarter for any reason (a+b)	-	-
	a) quantum / penalty is deleted by appellate authorities	-	-
	b) not found to be a fit case by CCIT/CIT	-	-
14	No. of potential prosecution cases pending at end of the quarter (9+10-11-12-13)	0	**0**
	COMPOUNDING		
15	Compounding petitions pending as on 1st April,_____(a+b)	0	0
16	Compounding petitions received upto end of quarter	0	0

S. No	Particulars	Number of	
		Complaints	Cases
17	Compounding petitions decided upto end of quarter (a+b)	0	0
	a) compounding rejected	-	-
	b) compounding accepted	-	-
18	Compounding petitions pending upto end of quarter (15+16-17)	0	0
	a) Pending for more than 6 quarters	0	0
	b) Pending for 6 quarters and less	-	-

Note:

1. The Quarterly Report shall reach Board by 15th of the month following each quarter.

2. The Quarterly Report shall be prepared after physical verification of the pendency so that any mistake in figures reported in MPR could be rectified and the performance of the region is duly reflected.

3. The PCCIT shall collect the above information in the similar format from the field offices with suitable changes, if any required.

4. The list of cases, in support of number of cases reported against each Sl.No. of Quarterly report, shall be enclosed in following format.

S. No.	Name of the case	AYs	Offence u/s	No. of cases	No. of complaints	CCIT/ DGIT Charge	Date of filing complaint/ Compoun-ding petition	Remarks

2. Control Registers

For exercising proper control over the records, and subsequent prosecution proceedings, it is necessary that the AO/TRO/ADIT and the CIT/DIT concerned maintain control registers.

Accordingly, register of prosecution to be maintained by the AO/ TRO/ADIT has been prescribed as follows. As soon as a potential prosecution case is identified at the level of AO/TRO/ADIT level, name of such case should be entered in the prosecution register.

Register of Prosecution to be maintained by the Assessing Officer/TRO/ADIT

(1. This register will be valid for each year and hence new registers need not be created every year

2. This register is to be included in the charge hand over note to the new incumbent)

First Page – **Index**

S.No.	Name of the main cases	Page no.

Separate pages shall be provided for each case,
Where prosecution is either contemplated of initiated.

S.No.	**Particulars**	
	Prosecution	
1	Name, & address of main case & abettors	
2	PAN of main case	
3	Nature of offence (in brief)	
4	Assessment Year	
5	Sections under which prosecution is contemplated	
6	Where potential prosecution case is identified during search/ survey/ scrutiny/ other enquiry	
7	Prosecution not launched in a potential case as a) Compounded before filing of complaint in the Court. b) Quantum/ penalty is deleted by appellate authorities. c) Not found to be a fit case by CCIT/CIT	
8	Date of proposal	
9	Date of approval u/s 279(1) of I.T. Act or otherwise	
10	Date of filing of complaint	
11	Name of officer having custody or evidences	
12	Name, address & telephone no. of complainant	
13	Name, address & telephone no. of prosecution witnesses	
14	Name, address & telephone number of prosecution Counsel	
15	Date of receipt of compounding petition	
16	Date of compounding/ rejection	
17	Date of filing appeal, if any	

The case should be entered in the register maintained by the office of CIT, as soon as initial proposal for prosecution is received in his office.

Register of Prosecution to be maintained in the office of the CIT/Nodal officer

(1. This register will be valid for each year and hence new registers need not be created every year

2. This register is to be included in the charge hand over note to the new incumbent)

First Page – **Index**

S.No.	Name of the main cases	Page no.

Separate pages shall be provided for each case,
Where prosecution is either contemplated of initiated.

S.No.	**Particulars**	
	Prosecution	
1	Name, & address of main case & abettors	
2	PAN & Circle/Ward of main case	
3	Nature of offence (in brief)	
4	Assessment Year	
5	Sections under which prosecution is contemplated	
6	Where potential prosecution case is identified during search/ survey/ scrutiny/ other enquiry	
7	Prosecution not launched in a potential case as a) Compounded before filing of complaint in the Court. b) Quantum/ penalty is deleted by appellate authorities. c) Not found to be a fit case by CCIT/CIT	
8	Date of proposal	
9	Date of show cause notice	
10	Date of formal approval u/s 279(1) or otherwise	
11	Date of filing of complaint in Court	
12	Name of officer having custody or evidences	
13	In case of compounding petition: a) Date of reference to Competent authority b) Date of receipt of letter from competent authority c) Whether case found fit / unfit d) Date of intimation of decision to the assessee	
14	Name, address & telephone number of prosecution Counsel	
15	Nature of the Court decision and its date	
16	Date of filing appeal, if any	

Subsequently, at various stages of prosecution proceedings, the registers should be updated from time to time.

Both the above registers should be kept in the personal custody of AO/TRO/ADIT and ACIT(HQ)/ITO(HQ) to CIT. The registers shall be handed over to the succeeding officers personally by them.

Note: It is expected that with the gradual increased usage of ITBA and with the relevant information being captured in ITBA, the above registers and reports will go online completely and manual registers / reports be replaced.

3. Overview of the Prosecution Module in ITBA

The Prosecution Module of ITBA provides broadly the following processes:

- Prosecution Proceedings – This functionality includes submission of proposal by an officer, remarks by his senior authority, issuance of notice u/s 279(1) and passing of order u/s 279(1) or rejection of the proposal by the PCIT. The proposal can be initiated by all the officers who have powers under the I. T. Act/ W. T. Act to launch prosecution under any provision.
- Maintain Court Proceedings – This functionality includes facility to record details of complaint filed in Court, details of hearings in Court and judgment passed by the Court.
- Compounding Proceedings – Facility is provided to record the details of compounding application and pass order u/s 279(2) of I. T. Act. This also includes recording the details of compounding charges and generation of intimation letter before passing the compounding order.
- Grant/ Withdraw Immunity – Functionality to grant immunity u/s 278AB on the pending prosecution proceedings is provided. Option is also provided to withdraw the immunity granted u/s 278AB(4)/ 278AB(5) if any of the conditions on which the immunity was granted is not fulfilled.

The CCIT/ PCIT/ Range Head/ AO/ DGIT (Inv)/ DIT (Inv)/ Investigation Unit Head/ Investigating Officer / TRO/ CIT (A) can initiate Prosecution

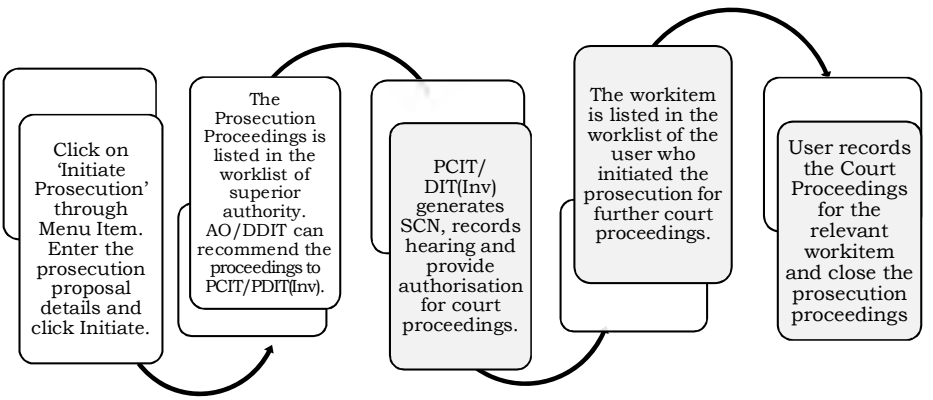
Proposal. The PCIT/ PDIT(Inv) can generate the show cause notice u/s 279(1) and record the hearings done in response to the same.

The user–wise screen access to ITBA is as follows:

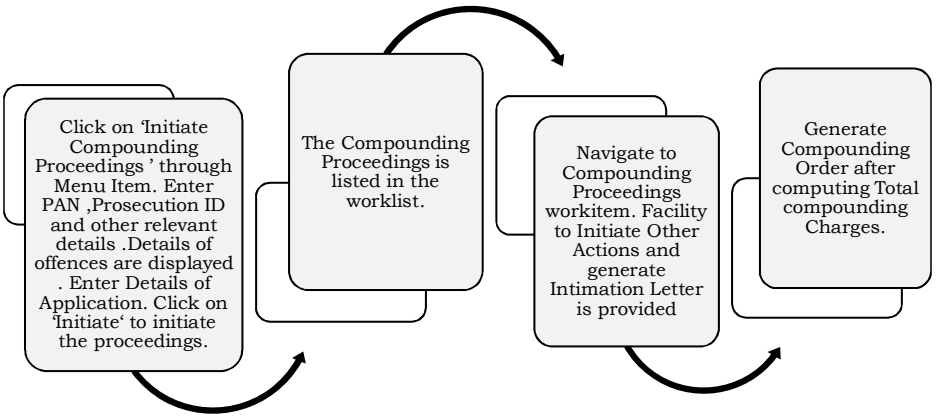
S.No.	Users	Screens
1	CCIT/PCIT/Range Head/ AO PDGIT/DGIT (Inv)/ PDIT/ DIT(Inv)/ Additional/ Joint DIT (Inv.)/ DDIT/ ADIT/ ITO (Inv.) TRO/CIT(A)	• Initiate Prosecution • Prosecution Proceedings • Maintain Court Proceedings
2	HQ/ Staff	• Prosecution Proceedings • Maintain Court Proceedings
3	PCIT (Including CIT(exemption) and PCIT(International Taxation)) HQ of CIT	• Grant Immunity • Withdraw Immunity
4	CCIT/DGIT HQ of CCIT/DGIT	• Compounding Proceedings

One important feature of ITBA is that it has the facility to capture the court proceedings. Once the authorisation is provided, the prosecution proceedings is listed in the work list of the user who initiated the proposal. User can record the details of complaint filed in the Court, details of hearing and the judgement passed by the Court. In case after judgement the Department or the accused move for appeal, facility is provided to record such appellate proceedings details also. User can select "Yes" in the field "Whether any appeal filed against judgement" and start recording the appellate details.

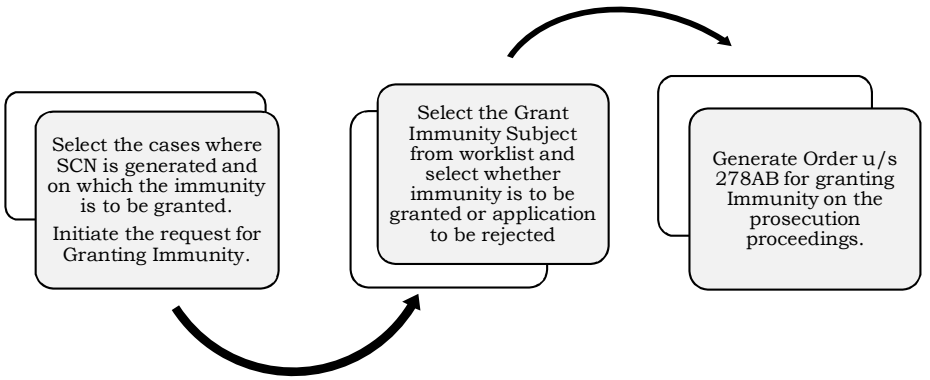
The workflow of prosecution proceedings is as follows:



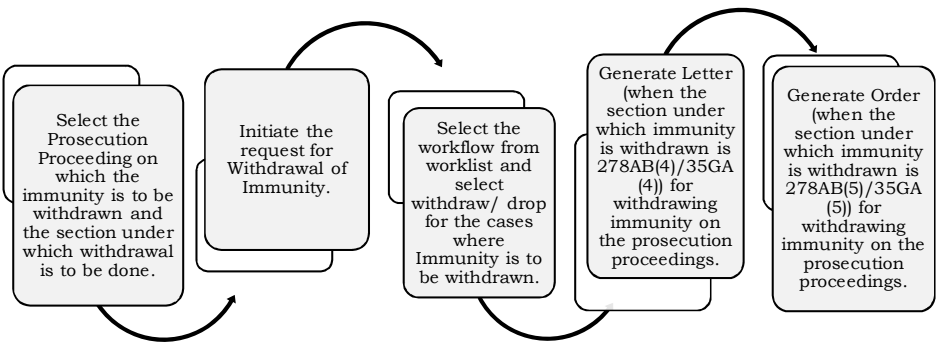
The workflow of compounding proceedings is as follows:



The workflow of proceedings to grant of Immunity is as follows:



The workflow of immunity withdrawal process is as under:



Dashboard is a real time feature provided by the ITBA system to all users to track the pendency and status of the work assigned to them and their subordinates according to the role of the user. The

dashboard for Prosecution module is accessible through Prosecution Home Page. User having access to Prosecution functionality will have facility to view the dashboard according to their respective roles. Go to Prosecution→ Dashboard. MIS reports are also available in ITBA to aid management control and decision making.

FAQs, step by step process details, User Manual, Power point presentation on usage of Prosecution Module of ITBA etc. are available on ITBA and can be accessed anytime. Since the system related processes are continuously optimized and improved, the latest versions may be perused for assistance.

4. Overview of the Prosecution Module on AO Portal of CPC-TDS

The AO Portal of CPC-TDS (TRACES) enables the TDS Wing of the Department to use the Prosecution Module on end-to-end basis. The entire functionality and workflow from AO (initiation of proceedings) to PCIT (show cause to assessee, sanction of prosecution), to CCIT (compounding) are available in the AO Portal of CPC-TDS.

Barring the computation of compounding fees (which includes elements of various fees), all other functions are working seamlessly in ITBA.

FAQs, step by step process details, User Manual, Power point presentation on usage of Prosecution Module etc. are available on AO Portal of CPC-TDS and can be accessed anytime. Since the system related processes are continuously optimized and improved, the latest versions may be perused for assistance.

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CHAPTER 9

OFFENCES UNDER VARIOUS OTHER ACTS

Chapter Summary	
S.No.	**Description**
1.	Prosecution provisions under the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 ('Black Money Act')
2.	Prosecution provisions under the Prohibition of Benami Property Transactions Act, 1988 ("Benami Act")
3.	Comparative chart of prosecution under I.T. Act vis-à-vis Black Money Act & Benami Act
4.	Provisions of prosecution under other direct tax laws

1. Prosecution provisions under the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 ('Black Money Act')

Assessee: Section 2(2) of the Act defines the term "assessee", which means a person,- (i) being a resident other than not ordinarily resident in the previous year or, (ii) being a non-resident or not-ordinarily resident in the previous year but who was resident in India in the previous year to which the undisclosed foreign income relates or in which the undisclosed foreign asset was acquired.

Resident: Section 2(10) of the Act defines resident as a person who is resident in India within the meaning of section 6 of the Income-tax Act.

The term "not ordinarily resident" is not defined in the Black Money Act and thus, in terms of section 2(15) of the Act, its meaning shall be taken from the Income-tax Act.

Nature of offence: In absence of any non-obstante clause (like section 279A of the Income-tax Act) in the Black Money Act, the classification of offences under the Black Money Act shall be governed by the Code of Criminal Procedure, 1973. Part II of the First Schedule of the Cr. P.C. as reproduced below, which classifies "Offences under other laws" (other than IPC), shall be applicable for offences under the Act.

Offences	Cognizable or non-cognizable	Bailable or non-bailable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years	Cognizable	Non-bailable
If punishable with imprisonment for 3 years and upwards but not more than 7 years	Cognizable	Non-bailable
If punishable with imprisonment for less than 3 years or with fine only	Non-cognizable	Bailable

The offences under sections 49 to 53 of the Black Money Act are punishable with a maximum imprisonment for a term of at least seven years. Thus, in accordance with the classification of Cognizable/Non-Cognizable and Bailable/Non-Bailable offences under the Cr.P.C., the offences under Sections 49 to 53 of the Act are Cognizable and Non-Bailable offences.

Compounding: As against the compounding provision under the Income-tax Act, the Act does not provide for compounding of offences. Thus, the offences under the Black Money Act are non-compoundable.

1.1 Prosecution provisions under the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act 2015:

Section 48	Chapter not in derogation of any other law or any other provision of this Act	It clarifies that provisions of prosecution under the Black Money Act are independent of and in addition to the provisions of prosecution under any other law and also independent of any order made or not made under the Black Money Act. Thus, prosecution can be filed under the Act irrespective of prosecution under any other law including the Income-tax Act. The Black Money Act clarifies that pendency of assessment under the Act is no bar for launching prosecution under the Act
Section 49	Punishment for failure to furnish return in relations to foreign income and asset	This section is identical to section 276CC of the Income-tax Act. The punishment for wilful failure to file the return of income u/s 139(1) before the expiry of the assessment year by a resident other than not ordinarily resident, having any asset or, financial interest in any entity, located outside India as a beneficial owner or as a beneficiary shall be rigorous imprisonment from six months to seven years and with fine.

		Fourth proviso to section 139(1) of the Income-tax Act provides that every person being a resident other than not ordinarily resident, who is otherwise not required to furnish a return under section 139(1) but holds any foreign asset, as a beneficial owner or otherwise, or is a beneficiary of any foreign asset shall furnish a return on or before due date. Therefore, a resident even if having nil taxable income is required to furnish a return if he holds or is a beneficiary to any foreign asset. The terms "beneficial owner" and "beneficiary" are not defined in the Black Money Act and as per section 2(15) of the Act their definitions shall be taken from the Income-tax Act. Explanation 4 and 5 to Section 139(1) of the Income-tax Act defines "beneficial owner" and "beneficiary" respectively.
Section 50	Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India	This provision will apply if any person (resident), as a beneficial owner or as a beneficiary, wilfully fails to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India. Punishment is rigorous imprisonment for a term of six months to seven years and fine.
Section 51	Punishment for wilful attempt to evade tax	This section is identical to section 276C of the Income-tax Act (except for the quantum of punishment) and is applicable only for Residents other than not ordinarily residents. As per the section 51(1), in case of wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act, the person is punishable with rigorous imprisonment for a term from three years to ten years and with fine. As per the section 51(2), in case of wilful attempt to evade payment of any tax, penalty or interest chargeable or imposable under the Act, the person is punishable with rigorous imprisonment for a term from three months to three years and with fine. Section 88 of the Act amends the Prevention of Money Laundering Act, 2002 and makes this offence as a scheduled offence under the PMLA.

Section 52	Punishment for false statement in verification	This section is identical to section 277 of the Income-tax Act except that there is no linkage with the quantum of evasion of tax. The punishment is rigorous imprisonment for six months to seven years and fine. Application of this section is not limited to "residents".
Section 53	Punishment for abetment	This section is identical to section 278 of the Income-tax Act except that there is no linkage with the quantum of evasion of tax. The punishment is rigorous imprisonment for six months to seven years and fine. Application of this section is not limited to "residents".
Section 54	Presumption as to culpable mental state	This section is identical to section 278E of the Income-tax Act.
Section 55	Prosecution to be at the instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner	This section is identical to section 279 of the Income-tax Act. Sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals) is required for filing prosecution u/s 49 to 53. The Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General may give directions for institution of prosecution proceedings to aforesaid tax authorities.
Section 56	Offences by Companies	This section is identical to section 278B of the Income-tax Act. However, in the definition of Company, HUF has also been included (In the Income-tax Act for offences by HUF a separate Section 278C is provided). The definition of the Director given in this Section is slightly different from definition of Director given in Section 278B of the Income-tax Act. In this Act the term "Director" in relation to a Company means whole time director, or when there is no such director, any other director or manager or officer, who is in charge of the affairs of the Company. In case of HUF any adult member can be prosecuted if it is proved that the offence has been committed with his consent or connivance, or is attributable to his neglect. This provision is in slight variance with the provision of Section 278C of the Income-tax Act wherein Karta is to be prosecuted unless 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 (Section 278C also provides for the prosecution of any member of HUF if it is proved that the offence has been committed with his consent or connivance or is attributable to any neglect on his part).

Section 57	Proof of entries in records or documents	This section is identical to section 279B of the Income-tax Act.
Section 58	Punishment for second and subsequent offences	This section is identical to section 278A of the Income-tax Act. However, punishment for second and subsequent offences u/s 49 to 53 is three years to ten years with fine which shall not be less than Rs. 5 lakhs but which may extend to Rs. 1 crore. (Punishment for second and subsequent offences under section 278A is six months to seven years and with fine).

2. Prosecution provisions under the Prohibition of Benami Property Transactions Act, 1988 ("Benami Act")

Section 3	Prohibition of benami transactions	For offences prior to the amendment of the Benami Act w.e.f. 01.11.2016, entering into any benami transaction is punishable with imprisonment for a term which may extend to three years or with fine or with both. In such case the definition applicable for benami transaction shall be as given in the original section 2(a) of the principal Act (pre-amended) i.e. any transaction in which property is transferred to one person for a consideration paid or provided by another person. For offences after the amendment of the Benami Act w.e.f. 01.11.2016, entering into any benami transaction is punishable in accordance with the provisions contained in Chapter VII of the Act. The definition applicable for benami transaction shall be as per section 2(9) which is much wider in scope that the original definition of benami transaction in the principal Act.
Chapter VII - Offences and Prosecutions		
Section 53	Penalty for benami transaction	Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction and shall be punishable with rigorous imprisonment for a term from one year to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.
Section 54	Penalty for false information	Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding shall be punishable with rigorous imprisonment for a term from six months to five years and shall also be liable to fine which may extend to ten percent of the fair market value of the property.
Section 55	Previous sanction	Sanction of the Board is required for filing prosecution

Chapter VIII - Miscellaneous		
Section 60	Application of other laws not barred	It clarifies that provisions of prosecution under the Benami Act are independent of and in addition to the provisions of prosecution under any other law. Thus, prosecution can be filed under the Benami Act irrespective of prosecution under any other law including the Income-tax Act.
Section 62	Offences by Companies	This section is identical to the Section 278B of the Income-tax Act and covers Company, Firm, BOI and AOP but does not cover HUF
• There is no provision for compounding of offences like Section 279(2) of the Income-tax Act. • There is also no provision corresponding to Section 278E of the Income-tax Act regarding "Presumption as to culpable mental state". • The offences under the Benami Act are non-cognizable as mentioned in Section 61 of the Act.		

3. Comparative chart of prosecution under I.T. Act vis-à-vis Black Money Act & Benami Act

Sl.	Provision under I.T. Act	Comparative provision under Black Money Act	Comparative provision under Benami Act
1.	**Section 276C**- Wilful attempt to evade tax	**Section 51**- Punishment for wilful attempt to evade tax	**Section 53**- Penalty for Benami Transaction
2.	**Section 276CC**- Failure to furnish return of income	**Section 49**- Punishment for failure to furnish return in relations to foreign income and asset **Section 50**- Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India	N.A.
3.	**Section 277**- False statement in verification	**Section 52**- Punishment for false statement in verification	**Section 54**- Penalty for false information
4.	**Section 278**- Abetment of false return, etc.	**Section 53**- Punishment for abetment	N.A.
5.	**Section 278A**- Punishment for second and subsequent offences	**Section 58**- Punishment for second and subsequent offences	N.A.

6.	**Section 278B**- Offences by companies **Section 278C**- Offences by Hindu undivided families	**Section 56**- Offences by companies (company includes an unincorporated body and HUF)	**Section 62**- Offences by Companies (company includes firm, AOP, BOI)
7.	**Section 278E**- Presumption as to culpable mental state.	**Section 54**- Presumption as to culpable mental state	N.A.
8.	**Section 279**- Prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner	**Section 55**- Prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Principal Director General or Director General	**Section 55**- Previous sanction of the Board is required for filing prosecution.
9.	**Section 279A**- Certain offences to be non-cognizable	N.A.	**Section 61**- Offences to be non-cognizable
10.	**Section 279B**- Proof of entries in records or documents	**Section 57**- Proof of entries in records or documents	N.A.

4. Provisions of prosecution under other direct tax laws:

4.1. There are specific provisions for prosecution under the Wealth-tax Act, 1957; Interest-tax Act, 1974; Fringe Benefit Tax (FBT), Security Transaction Tax (STT) and Banking Cash Transaction Tax (BCTT).

4.2 Prosecution provisions under the Wealth-tax Act (Chapter-VIII)

Section	Provision	Corresponding section under I.T. Act
35A	Wilful attempt to evade tax, etc.	276C
35B	Failure to furnish returns of net wealth	276CC
35C	Failure to produce accounts, records, etc.	276D
35D	False statement in verification, etc., made under certain provisions of the Act	277
35E	False statement in verification mentioned in Section 34AB	N.A.

35EE	Failure to furnish particulars under section 34ACC	N.A.
35EEE	Contravention of order made under proviso to sub-section (1) or (3A) of section 37A	275A
35F	Abetment of false return, etc.	278

4.3 General proposals governing offences & prosecution under W.T. Act are as under:

Section	Provision	Corresponding section under I.T. Act
35H	Offences by HUF	278C
35HA	Offences by companies	278B
35J	Certain offences to be non-cognisable	279A
35I	Prosecution to be with the previous sanction of CWT or CWT(A)	279
35I(2)	Power of compounding vested with CCWT or DGWT	279
35K	Bar on prosecution and on admissibility of evidence in certain cases	-
35L	Only Metropolitan Magistrates and Magistrates of first class can try offences	292
35M	Section 360 of Cr.P.C. and Probation of Offenders Act, 1958 do not apply	292A
35-O	Presumption as to culpable state of mind	278E
35N	Presumption as to books of account in relation to search and seizure action	278D
36	Proof of entries in records or documents in the custody of WT Authorities	279B
36A	Power to tender immunity from prosecution vests with the Central Government	291

4.4 The provisions under Interest-tax Act for initiation of prosecution proceedings are as follows:

Section	Provision	Corresponding section under I.T. Act
24	False statement in verification	277
25	Wilful attempt to evade Interest -tax etc.	276C
26	Abetments of false returns of Income-tax	278
26A	Offences by credit institutions	-
26B	Sanction/institution and compounding of prosecution proceedings	279

4.5 The provisions for launching prosecution under **Fringe Benefit Tax Act** is covered u/s 276CC of the I.T. Act, 1961.

4.6 Under **Security Transaction Tax (STT)**, prosecution can be launched for false statement in verification under section 112 of Finance (No. 2) Act, 2004. Such offence shall be deemed to be a non-cognizable offence.

Section 113 provides that the sanction of prosecution has to be at the instance of the Chief Commissioner of Income-tax.

4.7 Under **Banking Cash Transaction Tax (BCTT)**, prosecution can be launched for false statement in verification under section 109 of the Finance Act 2005.

Section 110 provides that sanction of prosecution has to be at the instance of the Chief Commissioner of Income-tax.

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CHAPTER 10

MISCELLANEOUS

Chapter Summary
Part A. Statistical Summary: Performance Down the Years
Part B. List of Special Courts notified under section 280A of the Income-tax Act, 1961 (updated till 16.12.2019)#

Part A
Statistical Summary: Performance Down the Years

Financial Year	Prosecution cases filed in court during the year	Prosecution cases disposed of by courts	No. of convictions	No. of Cases compounded
1	**2**	**3**	**4**	**5**
2008–09	162	133	14	13
2009–10	312	308	32	291
2010–11	244	273	51	83
2011–12	209	196	14	397
2012–13	283	68	10	205
2013–14	641	103	41	561
2014–15	669	76	34	900
2015–16	552	66	28	1019
2016–17	1252	46	16	1208
2017–18	4527	233	75	1621
2018–19	3512	570	105	2235

Part B
LIST OF SPECIAL COURTS NOTIFIED UNDER SECTION 280A OF THE INCOME-TAX ACT, 1961

(updated till 16.12.2019)

Part B
List of Special Courts notified under section 280A of the Income-tax Act, 1961

1. STATE OF GUJARAT

SL. NO.	DESIGNATION OF COURT	AREA
1	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, AHMEDABAD (RURAL)	AHMEDABAD (RURAL)
2.	METROPOLITAN MAGISTRATE, AHMEDABAD	AHMEDABAD CITY
3.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GANDHINAGAR	GANDHINAGAR DISTRICT
4.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MEHSANA	MEHSANA DISTRICT
5.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BHAVNAGAR	BHAVNAGAR DISTRICT
6.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BOTAD	BOTAD DISTRICT
7.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, SURENDRANAGAR	SURENDRANAGAR DISTRICT
8.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, PALANPUR	BANASKANTHA DISTRICT
9.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, HIMATNAGAR	SABARKANTHA DISTRICT
10.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MODASA	ARVALLI DISTRICT
11.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, PATAN	PATAN DISTRICT
12.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, VADODARA	VADODARA DISTRICT
13.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, ANAND	ANAND DISTRICT
14.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, NADIAD	KHEDA AT NADIAD DISTRICT
15.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BHARUCH	BHARUCH DISTRICT

SL. NO.	DESIGNATION OF COURT	AREA
16.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, DAHOD	DAHOD DISTRICT
17.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, RAJPIPLA	NARMADA AT RAJPIPLA DISTRICT
18.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, LUNAVADA	MAHISAGAR DISTRICT
19.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, CHHOTAUDEPUR	CHHOTAUDEPUR DISTRICT
20.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GODHRA	PANCHMAHALS AT GODHRA DISTRICT
21.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, RAJKOT	RAJKOT DISTRICT
22.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GANDHIDHAM	GANDHIDHAM DISTRICT KACHCHH
23.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BHUJ	KACHCHH DISTRICT (EXCEPT GANDHIDHAM)
24.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MORBI	MORBI DISTRICT
25.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, JUNAGADH	JUNAGADH DISTRICT
26.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, VERAVAL	GIR SOMNATH DISTRICT AT VERAVAL
27.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, AMRELI	AMRELI DISTRICT
28.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, JAMNAGAR	JAMNAGAR DISTRICT
29.	ADDITIONAL CIVIL JUDGE ANDJUDICIAL MAGISTRATE FIRST CLASS, PORBANDAR	PORBANDAR DISTRICT
30.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KHAMBHALIYA	DEVBHUMI DWARAKA DISTRICT AT KHAMBHALIYA
31.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, SURAT	SURAT DISTRICT
32.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, NAVSARI	NAVSARI DISTRICT
33.	ADDITIONAL CIVIL JUDGE ANDJUDICIAL MAGISTRATE FIRST CLASS, VAPI	VAPI
34.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, VALSAD	VALSAD DISTRICT (EXCEPT VAPI)
35.	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, VYARA	TAPI
Refer to Notification No. 87/2019 Dated 05.11.2019		

2. STATE OF KARNATAKA

SL. NO.	DESIGNATION OF COURT	AREA
1.	PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, BALLARI	BALLARI
2.	JUDICIAL MAGISTRATE FIRST CLASS -II, BELAGAVI	BELAGAVI
3.	(I) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, CHITRADURGA	CHITRADURGA
	(II) I ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, CHITRADURGA	
4.	(I) JUDICIAL MAGISTRATE FIRST CLASS -II COURT MANGALURU.	DAKSHINA KANNADA MANGALURU
	(II) JUDICIAL MAGISTRATE FIRST CLASS III COURT, MANGALURU	
5.	(I) PRINCIPAL CIVIL JUDGE, DHARWAD	DHARWAD
	(II) II ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, DHARWAD	
	(III) I ADDITIONAL CIVIL JUDGE, HUBBALI	
	(IV) III ADDITIONAL CIVIL JUDGE, HUBBALI	
	(V) CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, NAVALGUND	
6.	SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, RON	GADAG
7.	(I) SENIOR CIVIL JUDGE, PANDAVAPURA	MANDYA
	(II) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MANDYA	
	(III) ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MANDYA	
	(IV) II ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MANDYA	
	(V) JUDICIAL MAGISTRATE FIRST CLASS, MANDYA	
	(VI) CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, SRIRANGAPATNA	
	(VII) ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, SRIRANGAPATNA	
	(VIII) CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KRISHNARAJPET	
	(IX) CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, NAGAMANGALA	
	(X) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MALAVALLI	
	(XI) I ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MALAVALLI	

SL. NO.	DESIGNATION OF COURT	AREA
	(XII) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MADDUR	
	(XIII) I ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MADDUR	
	(XIV) II ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MADDUR	
	(XV) CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, PANDAVAPURA	
8.	(I) III ADDITIONAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE, MYSURU	MYSURU
	(II) SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KRISHNARAJANAGARA	
	(III) III ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MYSURU	
	(IV) V ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, MYSURU	
9.	(I) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, KUNIGAL	TUMAKURU
	(II) PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, GUBBI	
	(III) SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, TIPTUR	
	(IV) IV ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, TUMAKURU	
10	ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, UDUPI	UDUPI
11.	CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, ANKOLA	UTTARA KANNADA KARWAR
Refer to Notification No. 79/2019 Dated 11.10.2019		

3. JURISDICTION OF GAUHATI HIGH COURT FOR THE NORTH EASTERN REGION

SL. NO.	DESIGNATION OF COURT	AREA
1.	COURT OF MUNSIFF NO. 3 — CUM — JUDICIAL MAGISTRATE, 1ST CLASS, KAMRUP(M)	NORTH EASTERN REGION
Refer to Notification No. 37/2018 Dated 08.08.2018		

4. JURISDICTION OF HIGH COURT OF HIMACHAL PRADESH

SL. NO.	DESIGNATION OF COURT	AREA
1.	CIVIL JUDGE -CUM-JMIC (3), SHIMLA	WITHIN THEIR RESPECTIVE JURISDICTION
2.	CIVIL JUDGE-CUM-JMIC(2), HAMIRPUR	
Refer to Notification No. 102/2019 Dated 04.12.2019		

5. STATE OF WEST BENGAL AND UNION TERRITORY OF ANDAMAN AND NICOBAR ISLANDS

SL. NO.	DESIGNATION OF COURT	AREA
1.	1ST COURT OF JUDICIAL MAGISTRATE	IN THE HEADQUARTERS OF EACH DISTRICT JUDGESHIP INCLUDING THAT OF THE UNION TERRITORY OF ANDAMAN AND NICOBAR ISLANDS
2.	4TH COURT OF METROPOLITAN MAGISTRATE	IN THE JUDGESHIP OF CITY SESSIONS COURT, BICHAR BHAWAN, CALCUTTA
Refer to Notification No. 87/2018 Dated 11.12.2018		

 # Many more special courts under section 280A of the I.T. Act are in the process of being notified.

CHAPTER 11

ANNEXURES

i. Table of Prosecution provisions under **Direct Tax Laws**

ii. Relevant provisions under the **Indian Penal Code, 1860**

iii. Relevant provisions under the **Code of Criminal Procedure, 1973**

iv. Relevant provisions under the **Indian Evidence Act, 1872**

v. Relevant provisions under the **Information Technology Act, 2000**

Annexure – I

A. Table of Prosecution provisions under Income-tax Act, 1961

Section	Nature of default	Punishment
i	ii	iii
275A	**Contravention of order made under section 132(1) (Second Proviso) or 132(3)** in case of search and seizure	Up to 2 years (RI) and with fine
275B	**Failure to afford necessary facility to authorized officer to inspect books of account** or other documents as required under section 132(1)(*ii*b)	Up to 2 years (RI) and with fine
276	**Removal, concealment, transfer or delivery of property to thwart tax recovery**	Up to 2 years (RI) and with fine
276A	**Failure to comply with provisions of section 178(1) and (3)** – reg. company in liquidation	6 months to 2 years (RI)
276AB	**Failure to comply with provisions of sections 269UC, 269UE and 269UL** reg. purchase of properties by Government	6 months to 2 years (RI) and with fine
276B	**Failure to pay to credit of Central Government** (*i*) **tax deducted at source** under Chapter XVII-B (non-cognizable offence under section 279A), or (*ii*) **tax payable u/s 115-O(2)** or second proviso to section 194B	3 months to 7 years (RI) and with fine
276BB	**Failure to pay to the credit of Central Govt the tax collected at source** under section 206C	3 months to 7 years (RI) and with fine
276C(1)	**Wilful attempt to evade tax, penalty or interest or under-reporting of income**-	
	(*a*) where tax which would have been evaded exceeds Rs 25 lakh	6 months to 7 years (RI) and with fine
	(*b*) in other case	3 months to 2 years (RI) and with fine

Section	Nature of default	Punishment
i	ii	iii
276C(2)	Wilful attempt to evade payment of any tax, penalty or interest	**3 months to 2 years (RI)** and with fine
276CC	Wilful failure to furnish returns of fringe benefits under section 115WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A -	
	(a) where tax sought to be evaded exceeds Rs 25 lakh	**6 months to 7 years (RI)**and with fine
	(b) in other cases	**3 months to 2 years (RI)** and with fine
276CCC	Wilful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(a)	**3 months to 3 years** and with fine
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)	**Up to 1 year (RI)** and with fine
277	False statement in verification or delivery of false account or statement etc	
	(a) where tax which would have been evaded exceeds Rs 25 lakh	**6 months to 7 years (RI)**and with fine
	(b) in other case	**3 months to 2 years (RI)** and with fine
277A	Falsification of books of account or document, etc. to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	**3 months to 2 years (RI)** and with fine
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax (non-cognizable offence under section 279A)	
	(a) where tax, penalty or interest which would have been evaded exceeds Rs 25 lakh	**6 months to 7 years (RI)** and with fine
	(b) in other case	**3 months to 2 years (RI)** and with fine
278A	Second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278	**6 months to 7 years (RI)** and with fine

B. Prosecution provisions in Direct tax Acts (other than Income-tax Act)

S.No.	Act	Section	Description	Punishment
1	Securities Transaction tax	112	False statement in verification	Upto 3 yrs+ fine (Non-cog)
2	Banking Cash Transaction Act	109	-do-	-do-
3	Wealth Tax Act	35A	Wilful attempt to evade tax etc.	a) RI of 6 months to 7 yrs+ may be fine b) RI of 3 months to 3 yrs + may be fine
4	-do-	35B	Failure to furnish returns of net wealth	-do-
5	-do-	35C	Failure to produce A/c & records etc.	Upto 1 yr or fine @Rs. 4 Rs. 10 for each day or both
6	-do-	35D	False statement in verification other than under S.34AB	a) RI for 6 months to 7 yrs+ fine b) RI for 3 months to 3 yrs+ fine
7	-do-	35E	False statement in verification u/s 34AB	Imprisonment upto 6 months or fine or both
8	-do-	35EE	Failure to furnish particulars u/s 34ACC	RI of upto 2 yrs + fine
9	-do-	35EEE	Contravention of order under 2nd proviso to sub-sec. 1 or sub-sec. 3A of S.37A	RI upto 2 yrs + fine
10	-do-	35F	Abetment of false return	a) RI of 6 months to 7 yrs + fine b) RI of 3 months to 3 yrs + fine
11	-do-	35G	Punishment for second and subsequent offences	RI of 6 months to 7 yrs + fine

Annexure – II

Relevant provisions under the Indian Penal Code, 1860

Chapter X of IPC: Contempt of the lawful authority of public servants

- When a person absconds to avoid service of summons, notice or order (S.172) [Assessing officer/Tax Recovery officer/Assistant Director of Income-tax/Income-tax Inspector] [A.O./T.R.O./A.D.I.T/ I.T.I.]
- When a person intentionally prevents service of summons etc.; prevents lawful affixing of notices etc.; intentionally removes any such summons etc. from any place where it was lawfully affixed; intentionally prevents the lawful making of any proclamation etc.; (S.173) [A.O./T.R.O./ A.D.I.T/ I.T.I.]
- When a person intentionally omits to attend at a certain place and time in response to summons or notice issued (S.174, S.174A r.w.s. 82(4) of the Cr.P.C.) [A.O./A.D.I.T/ TRO]
- When a person legally bound to produce or deliver up any document or electronic record intentionally omits to do so, (S.175) [A.O./A.D.I.T/TRO]
- When a person intentionally omits to give any notice or furnish information which he was legally bound to give or furnish on any subject to any public servant (S.176) [A.O./A.D.I.T/TRO]
- When a person intentionally furnishes false information (S.177) [A.O./A.D.I.T]
- When a person refuses to bind himself by an oath or affirmation (s.178); and refuses to answer any question when bound by oath to do so (S.179) [A.O./T.R.O./A.D.I.T]
- When a person refuses to sign any statement made by him when required to do so (S.180) [A.O./T.R.O./A.D.I.T]
- When a person intentionally makes a false statement under oath (S.181) [A.O./T.R.O./A.D.I.T]
- When a person gives false information to a public servant (S.182). This is of special importance to information supplied by informants in the Investigation Wing. [A.D.I.T/ A.O./T.R.O.]

- When a person offers resistance to taking of any property by the lawful authority of a public servant (S.183) [A.D.I.T/ A.O./T.R.O./Appropriate Authority(A.A)]; and sale of such property (S.184) [A.A./T.R.O.]
- When a person bids for or purchases property on behalf of legally incapacitated person (S.185) [T.R.O./A.A.]
- When a person voluntarily obstructs any public servant in discharge of public service (S.186) [A.D.I.T/T.R.O./A.O./ I.T.I. etc.]
- When a person bound by law to render or furnish assistance to any public servant in execution of any public duty intentionally omits to do so (S.187). This may be of special importance to the Investigation Wing in case of witnesses. [A.D.I.T/Authorized Officer]
- When a person knowing that by an order promulgated by a public servant is directed to abstain from a certain act or take certain property in his possession or management, disobeys such order (S.188). This may be of special important in cases of attachment orders by the Assessing Officers and prohibitory orders by the authorized officers. For the latter purpose Section 275A of the Income-tax Act is also applicable [A.D.I.T/A.O./T.R.O.]
- When a person holds out any threat of any injury to a public servant or his agent (S.189 & 190). [All officers and officials]

Chapter XI of IPC: False evidence and offences against public justice

- When a person legally bound by oath or by an express provision of law to state the truth fails to do so (S.191) [A.D.I.T/A.O./TRO]
- When one causes any circumstance to exist or makes any false entry in any book or record or electronic record, or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before

a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence." (S.192)

- Similar provisions are also there from Section 193 to Section 196 covering different situations of giving or fabricating false evidences. Sections 193 and 196 of IPC have been referred to in section 136 of the Act. [Authorities before whom such offences take place.]
- When a person who issues, signs or uses any false certificate making it out to be a true and genuine certificate (S.197 and 198). (For example any certificate issued by any person/authority in relation to say claim of deduction under Chapter VIA etc.) [A.D.I.T/A.O./T.R.O.]
- When a person makes a false statement, which is receivable by law as evidence and using as true such statement knowing it to be false (S.199 and 200). Example false affidavits, false declaration or false statement made by assessee/related persons or witness. [A.D.I.T/A.O./ T.R.O.]
- When a person causes disappearance of any evidence or gives false information to screen offender (S.201); intentional omission to give information of offence by person bound to inform (S.202), For example false tax audit report; giving false information in respect of offence committed (S.203); destruction of document or electronic record to prevent its production as evidence (S.204); false personation (S.205); fraudulent removal or concealment or transfer of property/acceptance, receipt or claim to prevent its seizure (S.206 and 207); [A.O./A.D.I.T/T.R.O./ I.T.I.]
- When a person intentionally insults or interrupts to public servant sitting in judicial proceeding (S.228). This section has been referred to in section 136 of the Act. [Authorities before whom such offence take place.]

Chapter XVI of IPC: Offences Affecting the Human Body

– When a person voluntarily causes hurt or grievous hurt or deters/prevents any public servant from discharging his duties (S.333). [All officers and officials.]

– **Chapter XVII of IPC: Offences against Property**

– When a person entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "**criminal breach of trust**" (S.405). [Authorities before whom such offence take place.]

Annexure – III

Relevant Provisions under the Code of Criminal Procedure, 1973

177. Ordinary place of inquiry and trial.

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

211. Contents of charge.

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code(45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged under section 326 of the Indian Penal Code(45 of 1860) with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crime contained in the Indian Penal Code(45 of 1860); but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code(45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

212. Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated.

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e) A is accused of the murder B at a given time and place. The charge need not state the manner in which A murdered B.

(f) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

214. Words in charge taken in sense of law under which offence is punishable.

In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

215. Effect of errors.

No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Indian Penal Code, (45 of 1860.) with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit", the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defense. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882.In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882.A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh.

The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882.When charged for the murder of Haidar Baksh, he was tried for the murder of KhodaBaksh. The witnesses present in his defense were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defense or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

217. Recall of witnesses when charge altered.

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed –

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall

or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.

218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code(45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code,(45 of 1860) and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code(45 of 1860).

Illustrations to sub-section (1)

(a) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code(45 of 1860).

(b) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860).

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code(45 of 1860).

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing

several forgeries punishable under section 466 of the Indian Penal Code(45 of 1860).A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code(45 of 1860).

(f) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code(45 of 1860).

(g) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of offences under sections 147, 325 and 152 of the Indian Penal Code(45 of 1860).

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860).

The separate charges referred to in Illustrations (a) to (h), respectively, may be tried at the same time.

(I) Where it is doubtful what offence has been committed.- A wrongfully strikes B with a cane. A may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860).

(j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pita and B may be separately charged with, and convicted of, offences under sections 41 and 414 of the Indian Penal Code (45 of 1860).

(k) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure.

A may be separately charged with and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860).

(l) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code(45 of 1860).A may be separately charged with, and convicted of, offences under sections 471 (read with section 466) and 196 of that Code.

Illustration to sub-section (4)

(m) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code (45 of 1860).

221. Trial for more than one offence-1

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A statement on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C.A may be charged in the alternative and convicted of intentionally

giving false evidence, although it cannot be proved which of these contradictory statements was false.

222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged, under section 407 of the Indian Penal Code, (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. he may be convicted under section 335 of that Code (45 of 1860).

223. What persons may be charged jointly.

The following persons may be charged and tried together, namely:-

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code(45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) Persons accused of any offence under Chapter XII of the Indian Penal Code(45 of1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

224. Withdrawal of remaining charges on conviction on one of several charges.

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge of charges so withdrawn.

Chapter XXXVI	**Limitation For Taking Cognizance Of Certain Offences**

467. Definitions.

For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be –

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence, -

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation. In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both the excluded.

(4) In computing the period of limitation, the time during which the offender:-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

471. Exclusion of date on which Court is closed.

Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.

Explanation.- A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

472. Continuing offence.

In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

473. Extension of period of limitation in certain cases.

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

THE ECONOMIC OFFENCES (INAPPLICABILITY OF LIMITATION) ACT, 1974 ACT NO. 12 OF 1974 [27th March, 1974.]

An Act to provide for the inapplicability of the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 to certain economic offences. BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Economic Offences (Inapplicability of Limitation) Act, 1974. (2) It extends to the territories to which the Code of Criminal Procedure, 1973 (2 of 1974) applies. (3) It shall come into force on the 1st day of April, 1974.

2. Chapter XXXVI of the Code of Criminal Procedure, 1973 not to apply to certain offences.— Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to— (i) any offence punishable under any of the enactments 1 [or provisions, if any, thereof] specified in the Schedule; or (ii) any other offence, which under the provisions of that Code, may be tried along with such offence, and every offence referred to in clause (i) or clause (ii) may be taken cognizance of by the Court having jurisdiction as if the provisions of that Chapter were not enacted.

THE SCHEDULE (See section 2)

1. The Indian Income-tax Act, 1922 (11 of 1922).
2. The Income-tax Act, 1961 (43 of 1961).

2A. The Interest-tax Act, 1974 (45 of 1974).

2B. The Hotel-Receipts Tax Act, 1980 (54 of 1980).

2C. The Expenditure-tax Act, 1987 (35 of 1987).

3. The Companies (Profits) Surtax Act, 1964 (7 of 1964).
4. The Wealth-Tax Act, 1957 (27 of 1957).
5. The Gift-Tax Act, 1958 (18 of 1958).

Annexure – IV

Relevant provisions under the Indian Evidence Act, 1872

58. Facts admitted need not be proved.—No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

59. Proof of facts by oral evidence.—All facts, except the 1[contents of documents or electronic records, may be proved by oral evidence.—All facts, except the contents of documents or electronic records, may be proved by oral evidence."

60. Oral evidence must be direct.—Oral evidence must, in all cases whatever, be direct; that is to say— If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds: Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable: Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

61. Proof of contents of documents.—The contents of documents may be proved either by primary or by secondary evidence.

62. Primary evidence.—Primary evidence means the document itself produced for the inspection of the Court. Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document; Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it. Explanation 2.—Where a number of documents are all made

by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original. Illustration A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

63. Secondary evidence.—Secondary evidence means and includes—

(1) Certified copies given under the provisions hereinafter contained;»

(2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;

(4) Counterparts of documents as against the parties who did not execute them;

(5) Oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

64. Proof of documents by primary evidence.—Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power—of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence2; 1[India] to be given in evidence2;»

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

65A. Special provisions as to evidence relating to electronic record.—The contents of electronic records may be proved in accordance with the provisions of section 65B.

65B. Admissibility of electronic records.—

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the

original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

67. Proof of signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

67A. Proof as to electronic signature.—Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that

such electronic signature is the electronic signature of the subscriber must be proved.

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

70. Admission of execution by party to attested document.—The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

72. Proof of document not required by law to be attested.—An attested document not required by law to be attested may be proved as if it was unattested.

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. This section applies also, with any necessary modifications, to finger-impressions.

73A. Proof as to verification of digital signature.—In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—2[73A]. Proof as to verification of digital signature.—In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—"

(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person. Explanation.—For the purposes of this section, "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.

74. Public documents.—The following documents are public documents:—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country; 1 of any part of India or of the Commonwealth, or of a foreign country;"

(2) Public records kept in any State of private documents.

75. Private documents.—All other documents are private.

76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and

shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

77. Proof of documents by production of certified copies.—Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

78. Proof of other official documents.—The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government,— the Central Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government,— by the records of the departments, certified by the head of those departments respectively, or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative; or, as the case may be, of the Crown Representative;

(2) The proceedings of the Legislatures,— by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government concerned;

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,— Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,— by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's printer;

(4) The acts of the Executive or the proceedings of the Legislature of a foreign country,— by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some Central Act;

(5) The proceedings of a municipal body in a State, a State, by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(6) Public documents of any other class in a foreign country,— by the original, or by a copy certified by the legal keeper thereof, with a

certificate under the seal of a Notary Public, or of an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country. 3[an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country."

78A. Copies of public documents, to be as good as original documents in certain cases.—Notwithstanding anything contained in this Act or any other law for the time being in force, where any public documents concerning any areas within West Bengal have been kept in Pakistan, then copies of such public documents shall, on being authenticated in such manner as may be prescribed from time to time by the State Government by notification in the Official Gazette, be deemed to have taken the place of and to be, the original documents from which such copies were made and all references to the original documents shall be construed as including references to such copies."

79. Presumption as to genuineness of certified copies.—The Court shall presume 1[to be genuine] every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer 2 [of the Central Government or of a State Government, or by any officer 3] [in the State of Jammu and Kashmir] [who is duly authorized thereto by the Central Government]: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

80. Presumption as to documents produced as record of evidence.—Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume— that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.—The Court shall presume the genuineness of every document purporting to be the London Gazette, or any Official Gazette, or the Government Gazette of any colony, dependency of possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the United Kingdom printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

81A. Presumption as to Gazettes in electronic forms.—The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody. Presumption as to Gazettes in electronic forms.—The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

84. Presumption as to collections of laws and reports of decisions.—The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the Courts of such country.

85A. Presumption as to electronic agreements.— The Court shall presume that every electronic record purporting to be an agreement containing the electronic signature of the parties was so concluded by affixing the electronic signature of the parties.

85B. Presumption as to electronic records and electronic signatures. —

(1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2) In any proceedings, involving secure electronic signature, the Court shall presume unless the contrary is proved that—

(a) the secure [electronic signature is affixed by subscriber with the intention of signing or approving the electronic record];

(b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

85C. Presumption as to Electronic Signature Certificates. —The Court shall presume, unless contrary is proved, that the information listed in a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

86. Presumption as to certified copies of foreign judicial records.—The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records. An officer who, with respect to any territory or place not forming part of India or Her Majesty's dominions, is a Political Agent therefore, as defined in section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

88A. Presumption as to electronic messages.—The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation.—For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.

90. Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. Explanation.—Documents are said to be in proper custody if

they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

90A. Presumption as to electronic records five years old.—Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in this behalf. Explanation.—Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable. This Explanation applies also to section 81A

101. Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

102. On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B.

103. Burden of proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Illustration

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

104. Burden of proving fact to be proved to make evidence admissible.—The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

110. Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations

The Court may presume—

a) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

b) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.

Annexure – V

Relevant provisions of the Information Technology Act, 2000

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(d)—affixing electronic signature with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(ha)—communication device means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image;

(i)—computer means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network;

(j)—computer network means the inter-connection of one or more computers or computer systems or communication device through–

(i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the inter-connection is continuously maintained;

(k)—computer resource means computer, computer system, computer network, data, computer data base or software;

(l)—computer system means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(o)—data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or

computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p)—digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q)—Digital Signature Certificate means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r)—electronic form with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s)—Electronic Gazette means the Official Gazette published in the electronic form;

(t)—electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(ta)—electronic signature means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature;

(tb)—Electronic Signature Certificate means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate;

(v)—information includes data, message, text, images, sound, voice, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;

7A. Audit of documents, etc., maintained in electronic form.—Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form

65. Tampering with computer source documents.—Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation.—For the purposes of this section,—computer source code‖ means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

71. Penalty for misrepresentation.—Whoever makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any license or electronic signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

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