

A STUDY OF PROSECUTION UNDER SECTION 276C OF INCOME – TAX ACT, 1961

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Abstract

This paper aims at analyzing the mechanism of enforcement of compliance of tax under the Income-tax Act 1961. The section 276C of the Income-tax Act deals with prosecution against willful attempts to evade any tax, penalty or interest chargeable. The difference between the two subsections are studied and every subsection has been explicitly portrayed with different kinds of interpretation and elucidation. The description of every phrase in the law, the applicability and rules of interpretation are rendered in detail.

Keywords: evade, wilful attempt, impassable.

Introduction

The method to ensure compliance of tax under the Income – tax Act, 1961 ('the Act') is given in the form of three parts namely imposition of interests, imposition of penalties, and prosecutions. Section 276C of the Income tax Act relates to prosecutions against "willful attempt to evade any tax, penalty or interest chargeable or imposable or under – reporting of income or, to evade payment of such tax, penalty or interest".

Analysis of legal provisions

Section 276C of the Act reveals that it provides prosecution for willful attempt to evade the chargeability or imposition or payment of tax, penalty of interest. This provision is divided in to two Sub – sections (1) deals with 'wilful attempt' to 'evade' tax, penalty or interest, which is "chargeable" or "imposable" or "under – reporting of income" whereas sub – section (2) deals with 'wilful attempt' to 'evade' 'payment' of tax, penalty or interest. These sub – sections refer to two kinds of offences committed during two different times by an assessee.

Under sub-section (1), a 'wilful attempt' by an assessee to 'evade' the chargeability of imposition of tax, penalty or interest of an income either by partly or fully non reporting of income which is planned and executed either by altering of books of accounts or hiding of income, may lead to prosecution. It is pertinent to note that sub – section (1) stresses on the evasion of tax, etc., before charging or imposition or under reporting of income. It deals with all acts pertaining to an assessee wherein the income is not subjected to tax either by altering of books of accounts or hiding of income would be a punishable offence u/s.276C(1) of the Act.

Under sub-section (2), a ‘wilful attempt’ by an assessee to avoid the payment due taxes, interest or penalties or claiming extra amount in the return of income. It can be stated as the provisions of sub – section (2) would come into vogue when the payment of tax, penalty or interest is due and an attempt is made to avoid such payment.[Vinodchandra C. Patel Vs. State of Gujarat – (2002) 253ITR (Guj.)]

Sub section (1) is applicable when an the offence is committed at time of filing returns and sub section (2) is applicable when the offence is committed after filing returns and sometimes the applicability of both may overlap.

The Underlying governing word is willful in the sub section 276C of the Act which means that the assessee is fully aware and is guilty of non – payment of tax, interest or penalty. The word evade means elude, avoid, dodge especially by guile or trickery. Evade is defined as to be deceitful to get around or escape from. Further, the Hon’ble Supreme Court in the case of Tamil Nadu Housing Board, has held that:

“When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word ‘evade’ in the context means defeating the provisions of law of paying duty. It is made more stringent by use of the word ‘intent’. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law.”

In the light of the above it can be construed that if an assessee purposefully evades the payment of tax, penalty or interest will be considered as a wilful attempt to ‘evade’. This law does not cover cases of bonafide claim or delay in payment of tax on account of financial difficulties or similar situations.

Further, description to Section 276C also defines the term “wilful attempt to evade any tax, penalty or interest chargeable or imposable under this act or the payment thereof”. The narration attached to the provision includes an illustrative list of cases which can be covered under the said term. Therefore, the elucidation is not exhaustive but inclusive in nature and any other circumstance which has been not defined therein but is hit by the rigours of the provisions of Section 276C of the Act, would also be punishable.

However, a question arises as to whether the rendition is applicable to the entire section 276C is restricted either to sub – section (1) or (2) to the said section? The rules of interpretation of statutes states that where an explanation is appended to a section, it is to explain the meaning of words contained in that section. The explanation has been inserted after sub – section (1) & (2) and starts with the words “for the purpose of this section”. It could mean that the said explanation applies to both the sub – sections to Section 276. However, it could also be taken that the illustrative list of cases contained in the said discription, suggests that the situations mentioned therein would occur before the stage of

filing of return of income and therefore, are relevant only for the purpose of sub – section (1) to Section 276C. Nothing explicitly has been stated as to what situation can be termed as “evasion”. In the case of G. Viswanathan [(1987)167 ITR 103 (ker.)], it was held that the explanation is applicable only to sub – section (1) and it does not cover “willful attempt to evade payment of any tax, penalty or interest” as covered by sub – section (2) to Section 276 of the Act.

“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 153 A**, 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 :

Conclusion

Section 276C of the Act permits for prosecuting an assessee who has willfully attempted to avoid the chargeability or imposition of tax, penalty or interest or has wilfully tried to avoid the payment of tax, penalty or interest. However before a prosecution is executed, it is necessary to show that the intention of assessee was willful as well as to evade the tax, interest or penalty. A bonafide claim or financial distress to pay the taxes, are some of the examples which should not be covered by the rigours of Section 276C of the Act.

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