



# Finance Bill, 2022: Amendments Pertaining to Penalty, Prosecution And Recovery of Taxes

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## Abstract

*The Finance Bill 2022 (Bill) 440 ITR 59 (St) proposed several amendments pertaining to penalties, prosecution and recovery of taxes, inter alia. This article aims at addressing the amendments pertaining to rationalization of the provisions of sections 271AAB, 271AAC and 271AAD of the Income-tax Act, 1961 (Act) (Clause 73, 74 & 75), section 272A of the Act relating to penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc. (Clause 78), section 179 of the Act relating to Liabilities of Directors (Clause 55), section 13 of the Act relating to cases where section 11 of the Act does not apply (Clause 76), Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act (Clause 77, 79, 80, 82 and 83), and section 276CC of the Act relating to failure to furnish returns of income (Clause 81).*

This Article is relevant to Lawyers, Charter Accountants, Tax Practitioners, Income-tax Authorities and Taxpayers. The Article segregates the amendments proposed in the Bill vis-à-vis the Act pertaining to penalties, prosecution and recovery of taxes into six categories and explains the existing law, the proposed amendment, the reason for the proposed amendment and the effective date for the amended provision.

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## 1. Introduction

After almost two years of the Nationwide pandemic and the subsequent lockdown, the stakeholders had a high expectation from the Budget 2022. Relatively, this budget had fewer substantial amendments. However, several amendments have been proposed vis-à-vis penalties, prosecution and recovery of taxes under the scheme of Income-tax Act, 1961 viz. amendments pertaining to rationalization of the

provisions of sections 271AAB, 271AAC and 271AAD of the Act (Clause 73, 74 & 75), section 272A of the Act relating to penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc. (Clause 78), section 179 of the Act relating to Liabilities of Directors (Clause 55), section 13 of the Act relating to cases where section 11 of the Act does not apply (Clause 76), Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act (Clause 77, 79, 80, 82 and 83), and section 276CC of the Act relating to failure to furnish returns of income (Clause 81). The Article segregates the said amendments into six categories and explains the existing law, the proposed amendment, the reason for the proposed amendment and the effective date for the amended provision.

## **2. Proposed amendments in the Bill**

### **2.1. Rationalization of the provisions of sections 271AAB, 271AAC and 271AAD of the Act. [Clause 73, 74 & 75]**

Sections 271AAB, 271AAC and 271AAD of the Act under Chapter XXI contain provisions which give powers to the Ld. Assessing Officer to levy penalty in cases involving undisclosed income in cases where search has been initiated under section 132 of the Act or otherwise, or for false entry etc. in books of account.

Section 271AAB of the Act relates to penalty where search has been initiated, section 271AAC of the Act relates to penalty in respect of certain income i.e., where the income determined includes, any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D of the Act, and section 271AAD of the Act relating to penalty for false entry, etc. in books of account, enables the Ld. Assessing Officer to levy penalty in cases where, during any proceeding, it is found that in the books of account maintained by any person there is a false entry or an omission of any entry which is relevant for computation

of total income of such person, to evade tax liability.

As per Chapter XXI of the Act which deals with penalties, Commissioner (Appeals) has concomitant powers with Assessing Officer to levy penalty in eligible cases under section 270A, section 271, section 271A, section 271AA, section 271G, section 271J of the Act which deal with deliberate concealment, non-disclosure and omission by an assessee to evade tax.

As sections 271AAB, 271AAC, 271AAD of the Act penalise actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts; in order to improve deterrence against non-compliance among tax payers, it is proposed to amend the sections 271AAB, 271AAC and 271AAD of the Act by enabling the Commissioner (Appeals) to levy penalty under these sections to the along with Assessing Officer.

The said amendment will be effective from April 01, 2022

### **2.2. Section 272A of the Act relating to Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.**

Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc.

At present, the amount of penalty for failures listed section 272A (2) of the Act is one hundred rupees for every day during which the failure continues.

Section 272A of the Act was introduced to ensures compliance with various obligations under the scheme of Income-tax Act by penalising non-compliance and acting as a deterrent. However, the penalty of one hundred rupees had been commented upon by the CAG

in their report as being too low and does not have an adequate deterrence value.

Therefore, it is proposed to increase the amount of penalty for failures listed section 272A (2) of the Act to five hundred rupees from the existing sum of one hundred rupees.

This amendment will take effect from April 01, 2022.

### **2.3. Section 179 of the Act relating to Liabilities of Directors**

Section 179 of the Act contains provisions which enables Income tax authorities to recover tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself. The section makes each director of the private company jointly and severally liable for the payment of such tax with certain conditions. However, the title of the section inadvertently refers to the liability of directors of private company in liquidation.

The Hon'ble High Court of Allahabad in the case of *Roop Chandra Sharma v. DCIT [1998] 229 ITR 570 (All)(HC)* held that there is nothing in sub-section (1) of section 179 of the Act to indicate that it refers to a private company which is under liquidation. Therefore, directors of a private company though not under liquidation, may be liable for dues outstanding against company.

Au contraire, the Hon'ble Supreme Court in the case of *S. Hardip Singh v. ITO [1979] 118 ITR 57 (SC)* held that there are three stages when a company goes into liquidation, namely, (i) the commencement of the winding-up of the company; (ii) the continuation of the proceeding or the steps for winding-up; and (iii) the final winding-up and dissolution of the company. If all the three stages were completed before the Act came into force on and from April 01, 1962, obviously section 179 of the Act will not be attracted. However, the section will

be attracted if any one or more of the three events occurred after the commencement of the Act even though the first or the first and second events had happened earlier.

To avoid any confusion and to give legislative backing to the case of *Roop Chandra Sharma (Supra)* which was also the intention of the legislature that the liability of directors of a private company under this section is not conditional upon the company being in liquidation and the section makes no reference to liquidation. Therefore, to make the title of the section uniform with its provisions, it is proposed to amend the title of the section to "Liability of directors of private company".

Further, Explanation to the section clarifies that the expression "tax due" in the section includes penalty, interest of any other sum payable under the Act. In order to avoid unnecessary litigation and to provide further clarity, it is also proposed to insert the word "fees" in the scope of the expression "tax due" under Explanation to the section.

Thus, fees such as compounding fee, appeal fee et cetera can be recovered from the directors of the defaulting company.

This amendment will take effect from April 01, 2022.

### **2.4. Section 13 of the Act relating to cases where section 11 of the Act does not apply.**

Under section 13 of the Act, trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified

person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year.

The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

The proposed new section seeks to provide that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to of section 10(23C) of the Act or of section 13(1)(c) of the Act, as the case may be, the Ld. Assessing Officer may direct that such person shall pay by way of penalty:

- A sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in section 13(3) of the Act where the violation is noticed for the first time during any previous year; and
- A sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in section 13(3) of the Act, where violation is noticed again in any subsequent previous year.

The proposed tax rate for such excessive payments is at the rate of 30 per cent under section 115 BBI of the Act. Therefore, the first violation will result in payment of 30 per cent of the excessive payment as tax under section 115BBI of the Act and 100 per cent of the excessive payment under 271AAE of the Act. Subsequently the penalty will increase to 200 per cent of the excessive payment. Further such excessive benefits i.e., payments not applied for the objects of the trust can result

into cancellation of the registration of the Trust. Therefore, the intention of the legislature to strictly penalise such excessive payments are evident.

However, a new issue would arise as what amounts to unreasonable and excessive benefit. The Hon'ble Gujrat High Court in the case of *Shree Kamdar Education Trust v. ITO [2016] 74 taxmann.com 253 (Gujarat)* held that mere payment of lease rent or interest on borrowed funds to trustees, without there being any element of such payments being excessive or unreasonable, would not disentitle assessee exemption under section 13(1)(c) of the Act.

The Hon'ble High Court of Bombay in the case of *CIT v. Sri Balaji Society [2019] 101 taxmann.com 52 (Bombay)* held that in order to invoke provisions of section 13(2)(c) of the Act, it is essential to prove that amount paid to person referred to in sub-section (3) of section 13 of the Act is in excess of what may be reasonably paid for services rendered.

The Hon'ble Madras High Court in the case of *CIT v. Angels Educational Trust [2021] 129 taxmann.com 305 (Madras)* held that where Commissioner had not brought on record any material to show that assessee educational trust was motivated by earning profit and that trustees had applied monies of trust for their personal benefit or for any other purpose other than education, mere excess of income over expenditure for four financial years by itself was not a reason to hold that assessee-trust was not engaged in charitable activities so as to deny it registration under section 12AA of the Act.

Similarly, the Hon'ble Income-tax Appellate Tribunal – Delhi Bench in the case of *Career Launcher Education Foundation v. ITO [2020] 116 taxmann.com 493 (Delhi - Trib.)* held that merely because there is a payment to a related party by a trust, it cannot be inferred that there is 'benefit' to that specified person and to ascertain benefit one has to arrive and ascertain

market value of services rendered by that person and if payment is found in excess of market value, then only it can be said that there is a benefit ensuring to specified person; unless this exercise is carried out, it is not possible to ascertain as to whether there is any violation of provision of section 13(1)(c) of the Act.

Therefore, in light of a catena of judicial pronouncements it can be observed that the primary onus is upon the Ld. Assessing Officer to establish what amounts to being excessive or unreasonable.

These amendments will take effect from April 01, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

## **2.5. Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act.**

Sections 269UC/UE/UL of the Act along with other provisions of Chapter XX-C have been made inapplicable with effect from July 01, 2002. Section 269UP was introduced vide Finance Act, 2002 providing that the provisions of the Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after July 01, 2002. Consequently, prosecution provisions under section 276AB are not relevant, as launching prosecution against offences committed more than twenty years ago, that is prior to 2002 would be beyond reasonable time.

Since such cases involve transfer of immovable property, it is not improbable that prosecution cases launched previously while the relevant provisions were still in effect might be ongoing. Therefore, in order to take those cases to logical conclusion without any interpretational issue arising on applicability of the section or otherwise, it is proposed to amend section 276AB of the Act to align it with the provisions of the Act that have been made inapplicable, by providing a sunset clause.

Hence, it is proposed that no fresh prosecution proceeding shall be initiated under section 276AB of the Act on or after April 01, 2022.

Section 276B of the Act provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. Under this section, a person shall be punishable for failure to a) deduct the tax as required under the provisions of Chapter XVII-B which deals with deduction of tax at source, or b) to pay the tax, as required by or under— (i) sub-section (2) of section 115-O or (ii) the second proviso to section 194B.

Section 194B of the Act was amended vide Finance Act 1999 with effect April 01, 2000 by which the first proviso to the section was omitted and the section currently has only one proviso. Therefore, to avoid ambiguity among the sections 276B and 194B of the Act, it is proposed to substitute the sub-clause (ii) of clause (b) of section 276B of the Act with “proviso to section 194B”. Similar amendment is proposed in Section 271C of the Act.

Further sections 278A and 278AA of the Act are related to punishment with prosecution against persons for failure to pay tax to the credit of Central Government under Chapter XVII-B for tax deducted at source. However, similar provisions for offence with respect to tax collected at source under Chapter XVII-BB, providing for punishment with prosecution against persons failing to pay tax collected at source is not there under sections 278A and 278AA of the Act. Therefore, it is proposed to include section 276BB of the Act under sections 278A and 278AA of the Act owing to the similar nature of offences that are punishable under section 276B and section 276BB of the Act.

These amendments will take effect from April 01, 2022.

## 2.6. Section 276CC of the Act relating to failure to furnish returns of income

The Finance Bill 2022 has proposed a new beneficial provision i.e., section 139(8A) of the Act for filing an updated return beyond the due date for a revised/belated return. This has been introduced with a view to avoid unnecessary litigation and give the assessee a chance to avoid a dispute. A new section i.e., 140B of the Act has been proposed to provide for the tax required to be paid for opting to file a return under the proposed provisions i.e., section 139(8A) of the Act.

As per these provisions, where a return is updated before completion of period of twelve months from the end of the relevant assessment year, the taxpayer would have to pay an additional tax of 25 per cent along with interest. However, if such return is furnished after the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year, the additional tax payable shall be fifty per cent of aggregate of tax and interest payable.

Now, section 276CC of the Act relates to failure to furnish returns of income. The proviso to the said section, inter alia, provides that a person shall not be proceeded against under the said section, for failure to furnish the return of income in due time, if a return is furnished by such person before the expiry of the assessment year or the tax payable by such person, not being a company, on the total income determined on regular assessment does not exceed rupees ten thousand.

To harmonise these provisions, a consequential amendment is proposed to be carried out in section 276CC of the Act, to provide that a person shall not be proceeded against under the said section for failure to furnish in due time the return of income under section 139 (1) of the Act, if such a person has furnished

return under section 139(8A) of the Act for the relevant assessment year.

## 3. Dénouement

Most of the amendments pertaining to penalty and prosecution relate to rationalising of provisions and consequential amendments. The proposed amendments seem to well drafted and with a clear intention to make the statute water tight. The proposed amendment pertaining to recovery i.e., section 179 of the Act widens the scope of tax dues to even include fees thereby not leaving any form of Government dues out of the scope recovery. The proposed Penalty on benefits given by a Charitable Trust to its trustees or specified persons is a welcoming provision as it will be a deterrent on such malicious payments.



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