

Levy of interest and penalty in certain cases.

158BFA. (1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132. or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997, as required by a notice under clause (a) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and—

- (a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or
- (b) where no return has been furnished, on the date of completion of assessment under clause (c) of section 158BC.

(2) The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC :

Provided that no order imposing penalty shall be made in respect of a person if—

- (i) such person has furnished a return under clause (a) of section 158BC;
- (ii) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;
- (iii) evidence of tax paid is furnished along with the return; and
- (iv) an appeal is not filed against the assessment of that part of income which is shown in the return:

Provided further that the provisions of the preceding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of undisclosed income shown in the return.

(3) No order imposing a penalty under sub-section (2) shall be made,—

- (a) unless an assessee has been given a reasonable opportunity of being heard;
- (b) by the Assistant Commissioner or Deputy Commissioner or the Assistant Director or Deputy Director, as the case may be, where the amount of penalty exceeds twenty thousand rupees except with the previous approval of the Joint Commissioner or the Joint Director, as the case may be;
- (c) in a case where the assessment is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are

completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Chief Commissioner or the Commissioner, whichever period expires later;

- (d) in a case where the assessment is the subject-matter of revision under section 263, after the expiry of six months from the end of the month in which such order of revision is passed;
- (e) in any case other than those mentioned in clauses (c) and (d), after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later;
- (f) 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.

Explanation.—In computing the period of limitation for the purpose of this section,—

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;
- (ii) the period during which the immunity granted under section 245H remained in force; and
- (iii) the period during which the proceedings under sub-section (2) are stayed by an order or injunction of any court,

shall be excluded.

(4) An income-tax authority on making an order under sub-section (2) imposing a penalty, unless he is himself an Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.