

Failure to furnish returns, comply with notices, concealment of income, etc.

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the [Principal Commissioner or] Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(a) [* * *]

(b) has failed to comply with a notice under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or under sub-section (1) of section 142 or sub-section (2) of section 143 or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,

he may direct that such person shall pay by way of penalty,—

(i) [* * *]

(ii) in the cases referred to in clause (b), in addition to tax, if any, payable by him, a sum of ten thousand rupees for each such failure ;

(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

Explanation 1.—Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the [Principal Commissioner or] Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

Explanation 2.—Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years but in respect of which no penalty under clause (iii) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this *Explanation* referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this *Explanation* referred to as the utilised amount) shall be treated as the income of the assessee, particulars of which had been concealed

or inaccurate particulars of which had been furnished for the first preceding year; and where the amount so added or deducted in the first preceding year is not sufficient to cover the utilised amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilised amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilised amount is covered by the amounts so added or deducted in such earlier assessment years.

Explanation 3.—Where any person fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.

Explanation 4.—For the purposes of clause (iii) of this sub-section, the expression "the amount of tax sought to be evaded",—

- (a) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;
- (b) in any case to which *Explanation 3* applies, means the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148;
- (c) in any other case, means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

¹[*Explanation 4.*— For the purposes of clause (iii) of this sub-section,—

- (a) the amount of tax sought to be evaded shall be determined in accordance with the following formula—

$$(A - B) + (C - D)$$

where,

A = amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);

¹ Substituted with effect from April 1, 2016

B = amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished;

C = amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC;

D = amount of tax that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished:

Provided that where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D:

Provided further that in a case where the provisions contained in section 115JB or section 115JC are not applicable, the item (C – D) in the formula shall be ignored;

- (b) where in any case the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to be evaded shall be determined in accordance with the formula specified in clause (a) with the modification that the amount to be determined for item (A – B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;
- (c) where in any case to which Explanation 3 applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.]

Explanation 5.—Where in the course of a search initiated under section 132 before the 1st day of June, 2007, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income,—

- (a) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein ; or
- (b) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, unless,—

- (I) such income is, or the transactions resulting in such income are recorded,—
 - (i) in a case falling under clause (a), before the date of the search ; and
 - (ii) in a case falling under clause (b), on or before such date,

in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner before the said date ; or

- (2) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income.

Explanation 5A.— Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

- (i) any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or
- (ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of search and,—

- (a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or
- (b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

Explanation 6.—Where any adjustment is made in the income or loss declared in the return under the proviso to clause (a) of sub-section (1) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made.

Explanation 7.—Where in the case of an assessee who has entered into an international transaction or specified domestic transaction defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, then, the amount so added or disallowed shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished, unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the [Principal Commissioner or] Commissioner that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence.

(1A) Where any penalty is imposable by virtue of *Explanation 2* to sub- section (1), proceedings for the imposition of such penalty may be initiated notwithstanding that any proceedings under

this Act in the course of which such penalty proceedings could have been initiated under sub-section (1) have been completed.

(1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings under the said clause (c).

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

(3) *[Omitted by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.]*

(4) If the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(4A) and (4B) *[Omitted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1-10-1975. Original sub-sections (4A) and (4B) were inserted by the Income-tax (Amendment) Act, 1965, w.e.f. 12-3-1965. Later on sub-section (4A) was substituted by the Taxation Laws (Amendment) Act, 1970, w.e.f. 1-4-1971.]*

(5) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

(6) Any reference in this section to the income shall be construed as a reference to the income or fringe benefits, as the case may be, and the provisions of this section shall, as far as may be, apply in relation to any assessment in respect of fringe benefits also.