

## Advance Payment of Tax

### ADVANCE TAX

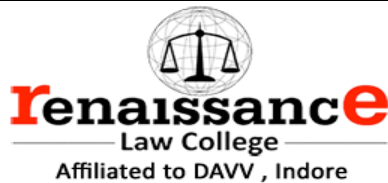
Generally, tax on the income earned in the previous year is paid in the respective assessment year, but in certain cases, an assessee may be required to pay tax during the previous year itself, as Advance tax. The scheme of advance tax is based on the concept “Pay as you earn”. Under this scheme assessee needs to estimate its income and tax liability of the previous year and pay tax on basis of such estimation in the previous year itself. For instance, income earned during the previous year 2018-19 is normally taxable in the assessment year 2019-20; however under the scheme of Advance tax, assessee is required to pay tax on estimated income of previous year 2018-19 in the previous year itself.

### Scheme of Advance tax [Section 2]

Where the advance tax liability of the assessee is Rs 10,000 or more, the assessee should pay such tax in the previous year itself within the due date

### Advance tax liability [Section 209]

PARTICULARS	AMOUNT
Estimated Gross Total Income [other than income covered u/s 44AD]	*****
Less: Deduction under chapter VIA	*****
Estimated Total Income	*****
Gross tax liability on Estimated Total Income	*****
Less: Rebate u/s 87A	*****
Tax liability after Rebate	*****
Add: Surcharge (if applicable)	*****
Tax and surcharge payable	*****
Add: Health & Education cess	*****
Tax liability after Cess	*****
Less: Tax deducted or collected at source / other Rebate & Relief	*****



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

ADVANCE TAX LIABILITY

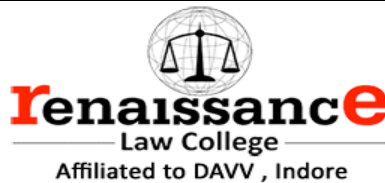
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**Due date for payment of Advance Tax [Section 211]**

Assessee	Due date of installment (of previous year)	Minimum amount payable
An eligible assessee in respect of an eligible business referred to in sec. 44AD or 44ADA	On or before March 15	100% of advance tax liability
Other Assessee	On or before June 15	Upto 15% of advance tax liability
	On or before September 15	Upto 45% of advance tax liability
	On or before December 15	Upto 75% of advance tax liability
	On or before March 15	Upto 100% of advance tax liability

**Additional points:**

- (a) Any amount paid u/s 211 on or before 31st March of the previous year, shall be treated as advance tax paid during the financial year.
- (b) Where an assessee is a senior citizen (or super senior citizen) and does not have any income chargeable under the head “Profits and gains of business or profession”, provision of advance tax is not applicable. In other words, senior citizen not having business income is not liable to pay advance tax irrespective of the amount of tax liability.
- (c) Every income including capital gain, winning from lotteries, etc. is subject to advance tax. However, it is not possible to estimate capital gain or casual gain or where income under the head “Profits and gains of business or profession” accrues or arises for the first time, therefore, where the assessee has paid the whole of the amount of tax payable in respect of such income:
  - 1. As part of the remaining instalments of advance tax which were due; or
  - 2. Where no instalments were due, by March 31 of the financial year immediately preceding the



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

assessment year, - then it is deemed that all the provisions are complied.

- (d) While calculating advance tax, net agricultural income shall also be taken into consideration for computing tax liability.
- (e) If any assessee does not pay any instalment within due date he shall be deemed to be an assessee in default [Sec. 218]
- (f) Any sum, other than a penalty or interest, paid by an assessee as advance tax shall be treated as a payment of tax and credit for such shall be given to the assessee in the regular assessment [Sec. 219]

### **ADVANCE TAX**

#### **A. On assessee's own motion [Section 210(1)] Procedure for 1st installment**

1. Make an estimate of current year's income (excluding income covered u/s 44AD or 44ADA), considering brought-forward losses, after deducting all allowable deductions under chapter VIA.

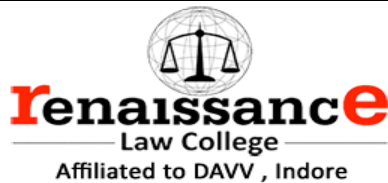
**Note:** The estimate is not required to be filed with the tax authorities.

2. Compute the tax liability on above estimated income at the rates in force during the financial year and reduce rebate, If any.
3. Add surcharge (if applicable).
4. Add Health & Education Cess.
5. Deduct tax deducted or collected at source.
6. The amount so derived is the advance tax payable.

Where the advance tax payable is Rs. 10,000 or more, an appropriate percentage thereof should be deposited.

#### **Procedure for subsequent installments**

1. Check if estimate of income made earlier requires revision.
2. If not, deposit appropriate amount of second, third or fourth installment of advance tax.
3. If estimate of income needs revision then make a revised estimate and compute tax liability thereon.
4. Determine advance tax payable in subsequent installments after deducting amount paid in earlier installments.



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

5. Deposit such advance tax.

**B.** *On receipt of order from the Assessing Officer [Section 210(3) or (4)]*

The A.O. may pass an order and issue a notice of demand u/s 156 requiring the assessee to pay advance tax. Such order can be issued even if assessee has paid any instalment of advance tax during the year, which is, in the opinion of the Assessing Officer, not as per provision of section 211.

The amount determined by the Assessing Officer shall be the higher of the following –

- Tax on latest assessed income as per regular assessment; or
- Tax on income declared by the assessee in the return relating to the previous year subsequent to the previous year for which regular assessment has been made.

As per section 210(4), Assessing Officer can revise his order to pay advance tax at any time before 1st March of the relevant previous year.

#### **Interest on non-payment of advance tax**

Where an assessee fails to pay advance tax or defers the payment of advance tax on specified date, he shall be liable to pay interest u/s 234B & 234C.

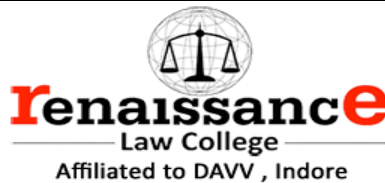
### **APPEALS**

The expression “Appeal” has been defined in Mozley and Whiteley’s Law Dictionary as “a complaint to a superior court of an injustice done by an inferior one”. The party complaining is styled as the “appellant”. The other party is known as “respondent”. The right to appeal must be given by express enactment and cannot be implied- Harihar Gir vs CIT [1941] 9 ITR 246 (Pat.).

#### **APPELLATE HIERARCHY:**

Appellate Authorities in Income-tax Act

Appeal	Appellate authority	Against which order	Appellant
1 <sup>st</sup>	Commissioner (Appeals)	Against specified order of the Assessing Officer	Assessee only
2 <sup>nd</sup>	Income Tax Appellate Tribunal (ITAT)	Against the order of Commissioner (Appeals)	



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

3 <sup>rd</sup>	High Court	Against the order of ITAT (the case must involve substantial question of law)	Assessee or the Commissioner (or Principal Commissioner) of Income tax
Final	Supreme Court	Against the order of High Court	

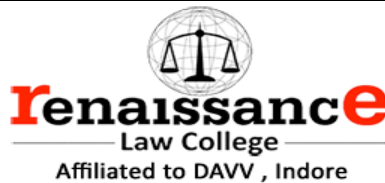
### **APPEALS TO COMMISSIONER (APPEALS) [SECTION 246A TO 250]**

Aggrieved tax payer can file appeal before the Commissioner (Appeals) having, jurisdiction over the tax payer. Designation of the Commissioner (Appeals), with whom appeal is to be filed is also mentioned in the notice issued by the Assessing Officer u/s 156.

#### **Appealable Orders**

##### **1. U/s 246A**

- Order passed by a Joint Commissioner u/s 115VP(3)(ii);
- Order against the assessee, where the assessee denies his liability to be assessed under this Act;
- Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [Scrutiny assessment] [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)] or u/s 144 [Best judgment assessment] in respect of income assessed or tax determined or loss computed or residential status;
- Order of assessment, reassessment or re computation u/s 147 [(except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)], 150 & 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)];
- Order u/s 154 (Rectification of Mistake) or u/s 155 (other amendments) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee [except where it is in respect of an order referred to in sec. 144BA(12)]
- Order of assessment or reassessment u/s 92CD(3)
- Order u/s 163 treating assessee as an agent of a non-resident;
- Order u/s 170 relating to assessment on succession;
- Order u/s 171 refusing to recognize partition of an HUF;
- Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

- Order u/s 237 relating to refunds;
- Order relating to Penalty;
- Order imposing penalty under chapter XXI;
- An order of penalty imposed under chapter XXI or an order of imposing or enhancing penalty u/s 275(1A)
- Any order made by an Assessing Officer other than a Joint Commissioner, as the Board may direct.

## **2. U/s 248**

Where under an agreement or other arrangement –

- the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; &
- such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income

**Time limit for filing appeal:** Appeal should be filed within 30 days from –

<b>Where the appeal is u/s 248</b>	<b>The date of payment of the tax</b>
Where the appeal relates to any assessment or penalty	The date of service of notice of demand relating to the assessment or penalty
In any other case	The date on which intimation of the order, sought to be appealed against, is served.

**Period to be excluded [Section 268]:** While calculating the above time limit, following period shall be excluded –

- a) The day on which order complained of was served; and
- b) Time required for obtaining a copy of the order, where a copy of the order was not furnished with notice of demand.
- c) Where an application has been made u/s 270AA (seeking immunity from penalty and prosecution), the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee.



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

**Delay in filing appeal:** The Commissioner (Appeals) may admit belated application on sufficient cause being shown.

**Note:** It is statutory obligation of the appellate authority (where an application for condonation is filed) to consider whether sufficient cause was shown by the appellant

**Form of appeal:** Form 35 (Mode of filing depends i.e., electronically or in paper form, on mode of filing return of income of the assessee)

#### **Documents to be submitted**

- Order against which appeal is made
- Statement of facts
- Grounds of appeal
- Notice of demand (in Original)
- Challan

**Verification of Form:** Form & grounds of appeal must be verified by the person authorized to verify the return of income u/s 140.

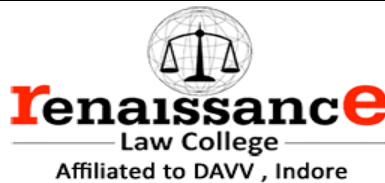
#### **Payment of tax before filing of appeal**

**If a return has been filed** – Tax as per the return should be paid.

**If no return has been filed** – The assessee should pay an amount equal to the advance tax which was payable by him. However, CIT (A) may, for any good and sufficient reason (recorded in writing), accept the appeal without payment of such advance tax.

**Power of Assessing Officer:** As per section 220(6), where an assessee has presented an appeal u/s 246A, Assessing Officer may treat the assessee as not being in default in respect of the amount in dispute in the appeal.

It may be applied –



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

- at the discretion of the Assessing Officer;
- subject to such conditions as Assessing Officer may think fit to impose;
- even though the time for payment has expired;
- as long as such appeal remains undisposed of.

Where assessee has not made an application u/s 220(6) or his application u/s 220(6) has been rejected, he can approach the appellate authority for stay order against collection

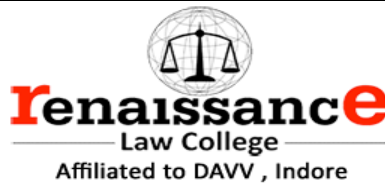
**Fee for filing an appeal:** Where assessed income as computed by the Assessing Officer is –

- Up to Rs 1,00,000 - Rs 250
- Exceeds Rs 1, 00,000 but does not exceed Rs 2, 00,000 - Rs 500
- Exceeds Rs 2,00,000 - Rs 1000
- Where the subject matter of appeal is not covered in above cases - - Rs250

### Procedure

1. **Fixation of Day & Place:** The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.
2. **Hearing:** The appellant (either in person or by an authorized representative) and the Assessing Officer (either in person or by an authorized representative) shall have the right to be heard at the hearing of the appeal.
3. **Adjournment:** The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.
4. **Inquiry:** The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).
5. **Order:** Commissioner (Appeals) must dispose of the appeal by passing an order which shall –
  - be in writing;
  - mention the points for determination;
  - mention the decision thereon; and
  - mention the reason for the decision.





B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

6. **Communication of Order:** The Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

**New grounds during hearing:** The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the 'grounds of appeal', if he is satisfied that the omission of that ground from the Form of appeal was not willful or unreasonable.

**Time limit for disposal of appeal:** Within one year from the end of financial year in which appeal is filed (if possible).

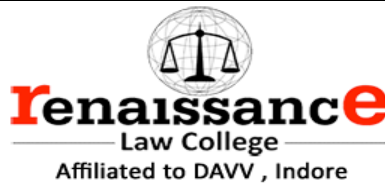
**Production of additional evidence:** Appellate authority has the power to accept additional evidence (after recording reason for its admission in writing) and may make further enquiry at his discretion before disposing of the appeal

In the following circumstances additional evidence shall be admitted by the Commissioner (Appeals):

- a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
- b) Where appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence, which is related to any ground of appeal; or
- c) Where the appellant was prevented by sufficient cause from producing the evidence, which he was called upon to produce by the Assessing Officer; or
- d) Where the Assessing Officer has made an order (appealed against) without giving sufficient opportunity to the appellant to produce evidence relevant to any ground of appeal.

### **Powers of Commissioner (Appeals) u/s 251**

1. Against an order of assessment: To confirm, reduce, enhance or annul the assessment
2. Against an order imposing a penalty: To confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
3. Against the order of assessment in respect of which the proceeding before the Settlement Commission abates u/s 245HA: To confirm, reduce, enhance or annul the assessment after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record,
4. Relating to any other case: To pass such orders as he thinks fit.



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

**APPEALS TO INCOME TAX APPELLATE TRIBUNAL (ITAT) [SECTION 252 TO 255]**

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer can file appeal before the Appellate Tribunal. Several Benches of the Appellate Tribunal constituted all over India by the Central Government and it functions under the Ministry of Law. It consists of as many judicial and accountant members as the Central Government thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

**President of the ITAT**

- The Central Government shall appoint:
  - a a person who is a sitting or retired Judge of a High Court and who has completed not less than 7 years of service as a Judge in a High Court; or
  - b one of the Vice-Presidents of the Appellate Tribunal, - to be the President thereof.

The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President(s) thereof.

The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

**Appealable Orders**

**A. Appeal by assessee**

1. An order passed by a Commissioner (Appeals) u/s 154, 250, 270A, 271, 271A or 272A; or
2. An order passed by a Principal Commissioner or Commissioner u/s 12AA [registration of trust], 80G(5) (vi), 263 [revision order], 154, 270A or 271 or 272A; or
3. An order passed by an Assessing Officer u/s 143(3) or 147 or 153A or 153C in pursuance of the directions of the Dispute Resolution Panel or with the approval of the Commissioner (or Principal Commissioner) as referred to in sec. 144BA(12) or an order passed u/s 154 or 155 in respect of such order.
4. An order passed by an Assessing Officer u/s 115VZC(1)
5. An order passed by the prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via)
6. An order passed by Principal Chief Commissioner or Chief Commissioner or Principal Director



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

General or Director General or Principal Director or Director u/s 272A [penalty].

## **B. Appeal by the Principal Commissioner or Commissioner**

The Principal Commissioner or Commissioner may direct the Assessing Officer to appeal against the order passed by the Commissioner (Appeals) u/s 154 or 250 [The Board has directed that the appeal shall be filed by the department only if tax effect exceeds Rs 10,00,000]

**Time limit for filing appeal:** Within 60 days. The period shall start from the date on which sought to be appealed is communicated to the assessee or Commissioner.

**Delay in filing appeal:** Tribunal may admit belated application on sufficient cause being shown.

**Withdrawal of appeal:** An assessee cannot withdraw an appeal filed to Tribunal

**Form - Form 36**

## **Documents to be submitted and number of copies thereof**

1. Memorandum of Appeal
2. Order appealed against (including one certified copy)
3. Order of Assessing Officer
4. Grounds of appeal before first appellate authority
5. Statement of facts filed before first appellate authority
6. In case, appeal against order levying penalty, relevant order

**Verification of Form:** Form 36 and grounds of appeal should be verified by the person authorized to verify the return of income u/s 140 [Rule 47]

**Cross objection:** Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been filed by the other party, may file a memorandum of cross objection with the Tribunal.

**Time limit for filing of cross-objections:** Within 30 days of receipt of notice that appeal has been filed by the other party. However, Tribunal may admit belated memorandum of cross objection on sufficient cause being shown.

**Form for filing of cross-objections: Form 36A**



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

**Fee for cross objection:** Nil

**Order of tribunal:** The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. Tribunal must record its reasons for its decisions. Order should set out all facts and contentions.

**Communication of order:** Tribunal shall send a copy of the order passed by it to the assessee and to the Principal Commissioner or Commissioner.

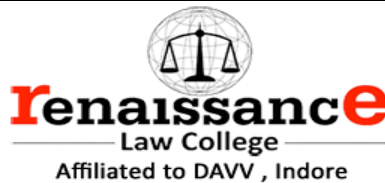
**Additional grounds which may be taken in appeal:** Tribunal has discretionary power to refuse additional ground to be raised. Tribunal may permit the assessee to urge grounds of appeal not mentioned in the memorandum of appeal.

**Additional evidence:** The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

**Paper Book:** The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately.

**Time limit for passing order:** Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of 4 years from the end of the financial year in which such appeal is filed.

However, the Tribunal may pass an order of stay in any proceedings for a period not exceeding 180 from the date of such order and the Tribunal shall dispose of the appeal within the said period of stay specified in that order.



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

Further where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

Further if such appeal is not so disposed of within the period allowed (original and extended), the order of stay shall stand vacated after the expiry of such period (i.e., 365 days), even if the delay in disposing of the appeal is not attributable to the assessee.

**Cost of appeal:** Cost of appeal shall be borne by the person as decided by the Tribunal.

#### APPEAL TO HIGH COURT [SECTION 260A]

**Who can file appeal:** Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner, being aggrieved by the order of ITAT.

**Tax point:** Only order passed by the ITAT (which involves substantial question of law) can be appealed in the High court.

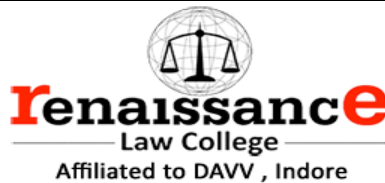
[The Board has directed that the appeal shall be filed by the department only if tax effect exceeds Rs 20,00,000.]

**Appealable order:** Any order of the Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

#### Substantial question of law

- The word “substantial” means having substance, essential, real, of sound worth, important or considerable;
- The substantial question of law, need not necessarily be a substantial question of law of general importance (i.e. it should be a question of law between the parties);
- To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case.

**Time limit for filing appeal:** 120 days from the date on which order of the Tribunal is received by the assessee or Principal Chief Commissioner / Chief Commissioner / Principal Commissioner /



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

Commissioner.

The High Court may admit an appeal after the expiry of said period, if it is satisfied that there was sufficient cause for not filing the same within that period.

**Court Fee:** The Court fee shall be as specified in relevant law relating to Court fees for filing an appeal to High Court.

**Manner of appeal:** The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal.

**Formulation of question of law:**

- Where the High Court is satisfied that a substantial question of law is involved, it shall formulate the question.
- The appeal is to be heard only on the questions formulated. However, the respondents shall, at the hearing of appeal, be allowed to argue that the case does not involve such question.

**Hearing of appeal**

- The appeal is to be heard by a bench of not less than 2 judges of the High Court. Decision will be in accordance with opinion of the majority of judges.
- Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court.

**Hearing of other substantial question of law:** The Court has the power to hear the appeal on any other

substantial question of law not formulated by it, if it is satisfied that the case involves such question.

**Decision:** The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the ground on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which –

- a) has not been determined by the Tribunal; or
  - b) has been wrongly determined by the Tribunal, by reason of a decision on such question of law .
- Stay of recovery proceedings:** High Court has power to stay proceedings for recovery of demand arising out of the assessment order, pending disposal of appeal.

## APPEAL TO THE SUPREME COURT [SECTION 261]

**Who can file appeal:** Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner aggrieved from the judgment of High Court.

[The Board has directed that the appeal shall be filed by the department only if tax effect

exceeds Rs 25,00,000.]

**Order against which appeal is possible:** Any order passed in the High Court, provided that High Court

- is satisfied that the case involves a substantial question of law; and
- certifies the case is fit for appeal to the Supreme Court.

**If High Court refuses to certify the case:** The aggrieved party may make an application to the Supreme Court under Article 136 of the Constitution of India.

**Cost of appeal:** The costs of the appeal shall be borne by the person as decided by the Supreme Court.

**Effect of judgment:** Where the judgment of the High Court is varied or reversed by the Supreme Court, Tribunal should pass necessary order to dispose the case in conformity with such judgment.

## **REVISIONS**

### **REVISION BY THE COMMISSIONER OF INCOME TAX [SECTION 263 & 264]**

The right to file such appeals against the orders of the Assessing Officer is not available to the Department. It is for this reason that the Commissioner has been vested with revisional powers under Section 263, where the order of Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. But such revisional power can be exercised only in respect of orders which are not the subject matter of appeals. The reason is that once an assessment order is appealed against, the Commissioner (Appeals) has got the powers to enhance the assessment under Section 263 and a right of appeal up to the Tribunal is provided to the assessee against the orders of the Assessing Officer. In the following cases Commissioner of Income-tax can revise an order passed by the Assessing Officer:

### **REVISION OF ORDER PREJUDICIAL TO THE REVENUE [SECTION 263]**

#### **Orders which may be revised**

Any order passed by the Assessing Officer, which is –

- a) Erroneous;
- b) Prejudicial to the interests of the revenue; and



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

**c)** Passed by an authority subordinate to the Principal Commissioner or Commissioner  
**Notes**

**a)** Orders passed by the Assessing Officer includes –

**i.** An order of assessment made by the Assistant Commissioner on the basis of the directions issued by the Joint Commissioner u/s 144A;

**ii.** An order made by the Joint Commissioner as an Assessing Officer.

**b)** Even an intimation u/s 143(1) can be revised

**Tax point**

- Order made by the Assessing Officer after making proper enquiries and considering relevant details and decisions of Supreme Court cannot be said to be erroneous and prejudicial to the interest of the revenue, hence such order cannot be revised.
- An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner:

**a)** the order is passed without making inquiries or verification which should have been made;

**b)** the order is passed allowing any relief without inquiring into the claim;

**c)** the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

**d)** the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person

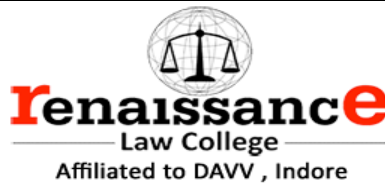
**Treatment of an order, which is subject matter of the appeal**

Revision u/s 263 of an order, which is subject matter of appeal, cannot be made.

**Procedure to be followed**

**1. Examination of Records:** The Principal Commissioner or Commissioner may call for and





B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

examine the records of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment.

**Record** shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner. This means that any material, which was not available at the time of assessment but available at the time of examination by the Principal Commissioner or Commissioner, shall also be considered for order u/s 263.

2. **Inquiry:** He must make or cause to be made such inquiry as he deems necessary.
3. **Opportunity of being heard:** No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard.

**Order:** Finally, he may pass such revision order as the circumstances of the case justify including an order enhancing, modifying or cancelling the assessment and directing a fresh assessment.

**Time limit for passing revision order:** 2 years from the end of the financial year in which the order sought to be revised was passed.

In computing the above period of limitation following period shall be excluded-

- Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
- Any period during which any proceeding under this section is stayed by an order or injunction of any court.

**Exception:** There is no time limit for passing a revision order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

**Appeal against order u/s 263:** A revisional order passed by the Principal Commissioner or Commissioner u/s 263 can be appealed to the Tribunal.

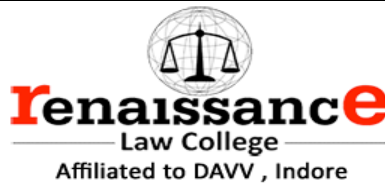
**Section 263 vs. Section 154:** Principal Commissioner or Commissioner can exercise the power even in a case where the issue is debatable. Revisional power u/s 263 is not comparable with the power of rectification of mistake u/s 154.

#### REVISION OF ORDER IN FAVOUR OF ASSESSEE [SECTION 264]

##### Orders which may be revised

Any order which is –

- erroneous;



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

- not covered u/s 263 (i.e. not prejudicial to the interest of the revenue);
- passed by an authority subordinate to the Principal Commissioner or Commissioner.

**Procedure to be followed**

1. **Examination of Records:** Once revision proceedings have been initiated, the Principal Commissioner or Commissioner may call for and examine the record of any proceeding.
2. **Inquiry:** He must also make or cause to be made such inquiry as he deems necessary
3. **Order:** He may pass such revision order as the circumstances of the case justify. However, the order passed should not be prejudicial to the assessee.

**Time limit for filing an application:** Where revision has been initiated by the assessee, the application must be made within 1 year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier.

However, the Principal Commissioner or Commissioner can admit a belated application if the assessee was prevented by sufficient cause from making the application within time. In computing the above period of limitation following time shall be excluded:

- The day on which the order complained of was served; and
- If the assessee had not received the copy of the order, the time required to obtain copy of such order.

**Time limit for passing a revisional order:** Where the Principal Commissioner or Commissioner acts on his own motion, Within 1 year from the date of original order.

Where the application is made by the assessee, Within 1 Year from the end of the financial year in which such application is made.

In computing the above period of limitation following period shall be excluded.

- Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
- Any period during which any proceeding under this section is stayed by an order or injunction of any court. [Section 264(6)]
- However, there is no time limit for passing a revision order for giving effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

**Orders which cannot be revised [Section 264(4)]**

- a) Where an order is appealable but no appeal has been made to CIT (Appeals) or to the Tribunal and time within which such appeal can be made, has not expired.

**Note:** Where an appeal lies to the Commissioner (Appeals) or to the Appellate Tribunal and the right of appeal is waived by the assessee, the Principal Commissioner or Commissioner may revise the order even before the expiry of time limit of appeal.

- b) Where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

E.g., the assessee has been aggrieved with point A and point B in the order passed by the Assessing Officer. He preferred an appeal to the Commissioner (Appeals) in respect of point A and seeks to file revision petition u/s 264 in respect of point B. It is not possible, he cannot file revision petition u/s 264 due to doctrine of total (or complete) merger of the order. He has to choose either way of the course.

It is to be noted that for the purpose of sec. 264, doctrine of total merger is applicable, on the other hand, for the purpose of sec. 147, 154 and 263, doctrine of partial merger is applicable.

**Note**

The assessment order could not be said to have been made subject matter of appeal, where an appeal was dismissed –

- a) on the ground that the same was incompetent; or  
b) as barred by limitation; or

**Fee:** Rs 500 where the application for revision is made by the assessee.

**Appeal against order u/s 264:** A revisional order passed by the Principal Commissioner or Commissioner u/s 264 cannot be appealed to the Tribunal or the High Court. However, a petition for a writ of certiorari under Article 226 is maintainable.

**Other points**

- The assessee cannot claim the right of revision in respect of an earlier year on the basis of finding of the Tribunal for a subsequent year.
- An order by the Principal Commissioner or Commissioner declining to interfere shall not be deemed to be an order prejudicial to the assessee.

## **PENALTY**

In Income Tax Act, 1961 provides for the imposition of a penalty on an assessee who commits any offences under the provisions of the Act. Penalty levied over and above the amount of any tax



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

or interest payable by the assessee and thus, penalty is distinct and different from the tax payable. Penalty proceedings, however, are a part of the assessment proceedings. The authority concerned is entitled to levy penalty only if satisfied in the course of any proceedings under the Act that a person has been found guilty of any default in complying with the provisions of the Act. If the order of the penalty is set aside in appeal on the ground the assessee was not given a reasonable opportunity of being heard, the Assessing Officer would be entitled to levy a penalty again after rectifying the mistake in proceedings. The penalty to be levied on an assessee is to be based upon law as it stood at the time the default was committed and not the law as it stands in the financial year for which the assessment is made.

### **1. Default in making payment of tax**

The amount of penalty leviable will be as determined by the Assessing Officer. However, the amount will not exceed the amount of tax in arrears

### **2. Under-reporting of income**

- If the income assessed/ re-assessed exceeds the income declared by the assessee, or in cases where return has not been filed and income exceeds the basic exemption limit, penalty at **50%** of tax payable on such under reported income shall be levied.
- **200%** of the tax is payable if under-reporting results from misreporting of income

### **3. Failure to maintain books of accounts and other documents**

- Normally, the amount of penalty leviable is **Rs.25,000**
- In case, the assessee is a person who has entered into international transaction, the penalty will be **2% of the value of such international transactions or specified domestic transactions**

### **4. Penalty for false entry such as fake invoices**

In case the income tax officer finds that the books of accounts provided by the assessee in the proceeding contains the following:

1. forged or falsified documents such as a fake invoice or a false piece of documentary evidence
2. an invoice in respect of supply or receipts of goods or services issued by any person without actual supply or receipt of goods or services
3. an invoice of supply or receipt of goods or services received from a person who does not exist
4. an omission of any entry which is relevant for computation of total income

Then, the assessee might have to pay a penalty of the amount equal to sum of such false or omitted entries.

### **5. Undisclosed income**

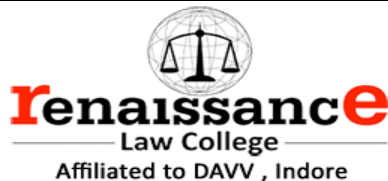
- Where the income determined includes **undisclosed income**, a penalty @ **10%** is payable. However, no such penalty will be leviable, if such income was included in the return and tax was paid before the end of the relevant previous year.
- Where Search has been initiated on/ after 1/7/2012 but before 15/12/2016,
  - a. If undisclosed income is **admitted** during the course of search and assessee pays tax and interest and files return, a penalty @ **10% of such undisclosed income** is payable.
  - b. If undisclosed income is **not admitted** but the same is furnished in the return filed after such search, **20% of such undisclosed income** is payable.
  - c. In all other cases, penalty is leviable @ **60%**
- Where Search has been initiated on/ after 15/12/2016,
  - a. If undisclosed income is **admitted** during the course of Search and assessee pays tax and interest and files return, a penalty @ **30% of such undisclosed income** is payable.
  - b. In all other cases, penalty is leviable @ **60%**

### **5. Audit and Audit Report**

- If the assessee **fails to get his accounts audited, obtain audit report, or furnish report** of such auditor, a penalty will be leviable at the **₹1,50,000 or 1/2% of the total sale/ Turnover/ gross receipts** whichever is lesser.
- Failure of assessee to furnish **Audit report** related to **foreign transaction**, a penalty @ **₹1,00,000** will be payable

### **6. TDS/TCS**

- Where a person **fails to deduct tax at source**, he will be liable to pay a penalty equal to the **amount of tax** which he has failed to deduct/ pay.
- Where a person **fails to collect tax at source**, he will be liable to pay a penalty equal to the **amount of tax** which he has failed to collect.
- Failure to **furnish TDS/TCS statement or furnishing incorrect statements**, shall attract a penalty ranging from **₹10,000 to ₹1,00,000**



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

- Failure to furnish information/ furnishing inaccurate information related to **TDS deduction related regarding Non residents** shall attract a penalty of **₹100,000**

#### 7. Penalty for using modes other than Account payee cheque/ draft/ ECS

- If a person takes/ accepts loan/ deposit **except by way of Account payee cheque/ account payee draft/ ECS**, and if the aggregate amount **exceeds ₹20,000**, he shall be liable to pay a penalty of an amount **equal to such loan/ deposit**.
- If, an amount of **₹2,00,000 or more is received** in aggregate from a person in a day/ single transaction/ relating to one event, a penalty **equal to such amount** will be payable.

If a person **repays loan/ deposit** and such amount so repaid exceeds **₹20,000** and such amount has been repaid **except by way of Account payee cheque/ account payee draft/ ECS**, an amount **equal to such loan/ deposit** shall be payable.

#### 8. Failure to furnish statements/ information

- Failure to furnish a **statement of financial transaction or reportable account** shall attract a penalty of **₹500 for each day of failure**. And if the failure is in response to a notice to report on specified financial transaction, the penalty shall be **₹1,000 for each day of failure**
- A penalty of **₹50,000** shall be attracted for furnishing inaccurate statement of a financial transaction/ reportable account
- Failure of an eligible investment fund to furnish any statement / information/ documents within the prescribed time shall attract a penalty of **₹5,00,000**
- Failure to furnish any information/ document in relation to international transaction shall attract a penalty of 2% of the value of such transaction
- Failure to furnish any information/ document by an Indian Concern related with international transaction, shall attract a penalty of 2% of the value of transaction or **₹50,000** in some cases.
- If a report/ certificate is required to be furnished by an Accountant/ Merchant Banker/ Registered Valuer and such information is found to be incorrect, a penalty of **₹10,000** for each incorrect report/ information is payable
- Failure to furnish information by any person who is attending/ helping carrying the business/ profession of any person, in whose building/ place the income tax authority has entered for collecting information shall attract a penalty of upto **₹1,000**
- Non furnishing of report by any reporting entity which is obliged to furnish **Country by Country report** will attract penalty as follows:

Period of delay	Penalty
Less than or equal to 1 month	₹5000 per day

Continuing default	₹50,000 per day from the beginning of service of order
Submission of inaccurate information	₹5,00,000

### 9. Others

- Failure to apply/quote/ intimate PAN/ quoting false PAN shall attract a penalty of **₹10,000**
- Failure to apply/quote TAN/ quoting false TAN shall attract a penalty of **₹10,000**
- In case of the following defaults, **₹10,000** will be the penalty leviable,
- Refusal to answer questions put by the department
- Refusal to sign statements made in income tax proceedings
- Non compliance with summons to give evidence/ produce books of accounts
- Failure to comply with a notice

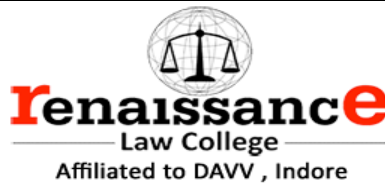
### "PROSECUTIONS" Under Income Tax Act.

There are some lapses on the part of the assessee which are punishable through the courts. Whenever Income-tax department feels that a particular person has committed a particular offence, a wrongful act or he is guilty of a crime, the department will initiate the proceedings before a magistrate. The proceedings, before the magistrate shall be heard under the Criminal Procedure Code and onus to prove the guilt before the magistrate shall fall, upon the department. The assessee is considered to be an innocent person unless proved otherwise. Punishment given by the department is of monetary nature whereas for some specific offences punishment can be in the shape of imprisonment. But for that, the income-tax authorities have to launch the proceedings in a court of law. The following are cases where the person commits offence under the Act, making the guilty persons liable to be punished by the court.

**1. For removing any Asset, Books of account, documents etc. found during search in contravention of order served under [Section 132 (3)].** Such a person shall be punishable with rigorous imprisonment which may extend up to 2 years and shall also be liable to fine. [Section 275A].

**2. Removal, Concealment, transfer or delivery of property to avoid tax recovery [Section 276].** When a person fraudulently removes, conceals, transfers or delivers an asset with the objective of thwarting recovery of tax, he shall be liable to rigorous imprisonment up to 2 years and with fine.





B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

**3. Default on the part of Liquidator [Section 276 (A)].** Under the provisions of Section 178 (1), a liquidator of a company is supposed to inform the Assessing Officer about his appointment as such within 30 days. Under Section 178 (3) he is required not to part with any assets or properties without the permission of the Commissioner. He is further supposed to set aside an amount equal to the amount of tax payable by the company (as intimated by the I.T.O.).

If the liquidator contravenes any of these provisions, he shall be punishable with rigorous imprisonment which may extend up to a maximum of 2 years. If there are no special reasons, the imprisonment shall not be less than 6 months.

**4. Failure to comply with provisions regarding transfer of immoveable property [Section 276 AB].** When a person fails to comply with provisions u/s 269 UC, 269 UE and 269 UL, (covered under acquisition of immovable property) he shall be liable to a punishment of rigorous imprisonment up to 2 years and with fine. If there are no special reasons, the imprisonment shall not be less than 6 months.

**5. Failure to pay the tax deducted at source [Section 276 W].** If a person fails to pay to the credit of the Central Government the tax deducted at source by him as required or tax payable by him as required u/s 1150; or second proviso of section 194B by or under the provision of this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.

**6. Failure to pay the tax collected at source [Section 276 (BB)].** If a person fails to pay to the credit of the Central Government, the tax collected by him as authorize under the provisions of Section 206 C, 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.

**7. Willful attempt to evade Tax, Penalty, Interest etc. [Section 276 C (1)].** If a person intentionally tries to evade any tax, penalty or interest, he shall be liable to a punishment of rigorous imprisonment of 6 months to 7 years and fine if the tax sought to be evaded exceeds Rs. 1,00,000 and 3 months to 3 years and fine if the amount of evasion is less than Rs. One lakh.

In case a person willfully attempts to evade the payment of tax, penalty or interest, he shall be punishable with rigorous imprisonment of a term from 3 months to 3 years and with fine [Section 276 C(2)]. The punishment of imprisonment is without prejudice to any penalty that may be imposable on him under any other provision of the Act





B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

**8. Failure to furnish return of income (Section 276 CC).** If a person willfully or intentionally fails to furnish in due time the return of income which he is required to furnish u/s 15WD(1) or I 15WH(2) or 139 (1) or 142 (1)(i) or 148, or u/s 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 Rs. 1,00,000 with a rigorous imprisonment which shall not be less than 6 months but which may extend to 7 years and with fine

(ii) in any other case, with imprisonment which shall not be less than 3 months but which may extend to 3 years and with fine.

It may be noted that person shall not be proceeded against under this section in the following cases :

1. For any assessment year commencing prior to 1-4-1975.

(ii) For any assessment year commencing on or after 1-4-1975 if

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

(b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax paid, if any, and any tax deducted at source, does not exceed Rs. 3,000.

**9. Failure to furnish return of income in search cases u/s 158 BC (Section 276 CCC).** In case a person willfully fails to furnish in due time, return of total income under a notice served u/s 158 BC, he shall be punishable with imprisonment for 3 months to 3 years and with fine.

**10. Failure to produce accounts and documents [Section 276 (D)].** If a person willfully fails to comply with the provisions of the notice served under Section 142 (1) regarding production of accounts, books or other documents, or willfully fails to comply with a direction issued to him under section 142 (2A) to get accounts audited by a Chartered Accountant, he shall be punishable with rigorous imprisonment which may extend up to one year or fine of Rs. 4 to Rs. 10 per day of default or with both.

**11. False Statement in Verification [Section 277].** A person making a false statement or delivering a false account or statement, which he either knows or believes to be false or does not believe to be true, shall be punishable with rigorous imprisonment for- 6 months to 7 years, if the amount of tax evaded would have been more than Rs. One lakh and 3 months to 3 years and fine in any other case.

**12. Falsification of books of account or document, etc. [Section 277A].** If any person (hereafter in this section referred to as the first person) authorize 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 impossible under this Act, makes or cause 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 three years and with fine.

It shall be sufficient in any charge under this section to allege a general intent to enable the second person to evade any tax, penalty or interest, without specifying any particular instance or sum of tax, penalty or interest which has been or would have been evaded by such second person.

**13. Abetment in False Return (Section 278).** If a person abets or induces in any manner another person to make and deliver a false account, statement or declaration relating to any income chargeable to tax or to commit an offence u/s 276 C (1), he shall be punishable with rigorous imprisonment for a minimum term of six months and a maximum of seven years, if the amount of tax evaded would have been more than Rs. 1,00,000 and 3 months to 3 years in any other case and with fine.

**.14. Punishment of Second and Subsequent Offences (Section 278 A).** If a person convicted of an offence under Section 276 B, 278 C(l), 276 CC, 276 DD, 276 D, 276 E, 277 or 278 is again convicted for an offence under any of these provisions, he shall be punishable for second and every subsequent offence with rigorous imprisonment of a term of not less than 6 months but which may extend to 7 years and with fine.

The approval of Commissioner of Income-tax is necessary to launch prosecution for offences under section 275, 276 A, 276 B, 276 C, 276 CC, 276 D, or 277 or 278 A, against any person. The Commissioner may compound any such offence (279). All the offences mentioned in Section 279 shall be deemed to be non-cognizable under the code of Criminal Procedure 1973.

**15. Punishment not to be imposed in certain cases (Section 278 AA).** Notwithstanding anything contained in Section 276 A, 276 AB or Sec. 276 B, no person shall be punishable for any failure referred to in the aforesaid provisions if he proves that there had been a reasonable cause for such failure.

#### **Power of Commissioner to grant immunity from Prosecution [Section 278AB]**

I. If a person has made an application for settlement, he may make an application to the commissioner for granting immunity from prosecution.



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

2. This type of application shall not be made after the institution of the prosecution proceedings after abatement.
3. If the commissioner is satisfied, that the person has, after the abatement, co-operated with income-tax authority and has made full and true disclosures of his income and the manner in which income has been derived, the commissioner may grant to the person immunity from prosecution and he may also impose such conditions as he may think fit.
4. The immunity granted shall stand withdrawn if conditions imposed by the Commissioner are not complied with.
5. The immunity granted can be withdrawn by the Commissioner at any time if he is satisfied that the person has concealed any particular material to the assessment or had given false evidence. Such a person shall be tried for the offence in respect to which immunity was granted or for any other offence of which he appears to have been guilty.

#### **16. Offences by Companies (Section 278 B).**

(1) Where an offence under the Act has been committed, by a company, *every person* who, at the time offence was committed, was in charge of, and was responsible to the company for the conduct of the business as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Such a person shall not be held liable to any punishment if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Section 278B says that notwithstanding anything contained in sub-section (1) where an offence by a company under this Act is committed 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) Section 278B 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



B.COM.LL.B- IV Semester

INCOME TAX LAW AND  
PRACTICE

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.”

**17. Offences by Hindu Undivided Families. (Section 278 C).** For any offence committed by H.U.F., its Karta shall be liable for punishment and if any member was also involved, he shall also be punishable.

But if Karta can prove that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence he can escape punishment.

**18. Presumption as to Assets, Books of Account etc. in certain cases. (Section 278 D).** Where during any search conducted u/s 132, any money, bullion, uthori or other valuable article or thing 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 or documents are tendered by the prosecution in evidence against such person the provisions of Section 132 (4A) shall apply to such assets.

**19. Prosecution to be at the instance of commissioner [Section 279]**

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

It is also provided that the Chief Commissioner or, as the case may be Director General, may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for the institution of proceeding under this sub-Section. Appropriate authority shall have the same meaning as in Section 269 UA ©.

No prosecution u/s 276 or 277 shall be made in relation with assessment years in respect of which penalty has been reduced or waived by the Chief Commissioner or Commissioner. [279(1A)J.

Any offence under this chapter may either before or after the institution of proceedings be compounded by the Chief Commissioner or Director General. [Section 279 (2)]

Where any proceedings has been taken against any person, any statement made or account or other document produced by such person before any of the income-tax authorities shall not be inadmissible as evidence for the purposes of such proceedings merely on the ground that such statement was made or account or document was produced in the belief that the penalty imposable would be reduced or



B.COM.LL.B- IV Semester

**INCOME TAX LAW AND  
PRACTICE**

waived under section 273 A or that the offence in respect of which such proceeding was taken would be compounded. [Section 279 (3)]

**QUESTIONS:-**

- 1) Explain briefly the different types of assesment?
- 2) What are the main provisions regarding deductions of tax at source?
- 3) When does the liability to pay advance tax arise? When such a tax is to be paid and how it is calculated and paid?
- 4) Describe briefly the procedure of an appeal to the Commissioner (Appeals).
- 5) Describe the provisions of Income Tax Act regarding revision by the commissioner of Income Tax.