Penalty and Prosecution Provisions

CA. PIYUSH S. CHHAJED

FCA., DISA

piyush@cndindia.com

Mob : 9819084820

Income-tax Act, 2025 – An Overview

- The Government of India introduced the Income-tax Bill, 2025 on 13 February 2025, aiming to modernize and simplify the country's six decade-old tax law. The Bill was referred to the Select Committee of Parliament for detailed examination. After receiving extensive recommendations and suggestions from stakeholders, the Government decided to withdraw the Bill and introduce a revised version Income-tax (No.2) Bill, 2025. It was passed by both Houses of the Parliament in the Monsoon session. The assent of the Hon'ble President of India was obtained on 21st August, 2025. The Income-tax Act, 2025 comes into force on 1st April, 2026. The Income-tax Rules, 2026 were notified on 20^{th} March, 2026.

- The Income-tax Act, 1961 (1961 Act) had seen more than 4,000 amendments over the years based on the evolving taxation policy. Consequently, the 1961 Act had become complex, voluminous, scattered, and has redundant provisions.

- This comprehensive reform aims to make the income-tax law more concise, lucid and easier to understand by enhancing clarity, removing ambiguities and reducing litigation.

- The Income-tax Act, 2025 (2025 Act) largely retains the basic tax provisions, tax regimes (old and new), tax rates and judicially interpreted terms to provide tax certainty.

Income-tax Act, 2025 – Significant Amendments by the Finance Act, 2026

- The Finance Act, 2026 has made the following significant amendments in the Income-tax Act, 2025.
  - Decriminalisation of prosecution provisions,
  - Provision of immunity from penalty where under-reported income is in consequence of misreporting,
  - Enabling application for lower deduction of tax in online mode,
  - Exemption from TAN for a resident buying immovable property from a non-resident,
  - Filing of updated return permitted in case of reduction of losses,
  - Extension of time for filing revised return

Procedure for levying Penalty

Penalties are never imposed automatically, they follow strict principles of natural justice:-

- Issue of Show-Cause Notice (SCN): The Assessing Officer must send a formal notice explaining the proposed penalty.
- Opportunity to be Heard: The assessee is given a fair chance to explain their side or present evidence.
- Reasonable Cause Exception: If the assessee proves there was a genuine, valid reason for the lapse, the penalty can be waived.
- Final Order: If the explanation is unsatisfactory, the officer passes a formal written order imposing the penalty.

Rationalisation of Penal provisions – Chapter XXI of the 2025 Act

Amendment as per Finance Act, 2026 in case of Penalty under Misreporting or under – reporting of income: -

- Penalty proceedings for under-reporting or misreporting of income will be integrated into the assessment order itself, streamlining the process and reducing litigation. Interest will be levied only after appeals are resolved. This amendments apply from Tax Year 2026–27 onwards.

- With a view to provide fast-track settlement of disputes, the assessment and penalty proceedings u/s 439 of the Income Tax Act, 2025 Act would be integrated by way of a common order. Further the interest on penalty would be kept in abeyance during the pendency of appeal before first appellate authority.

Rationalisation of Penal provisions

Section 439 of Income Tax Act, 2025 (erstwhile section 270A of Income Tax Act, 1961) - ‘Penalty for under – reporting and misreporting of Income’

Section 439 of the Income Tax Act is a clause targeting taxpayers who understate what they earn. It cleanly separates errors into two distinct buckets: Under-reporting (unintentional mistakes/omissions) and Misreporting.

There two types of penalties u/s 439 of the 2025 Act, u/s 270A of the 1961 Act/ –

- For underreporting of income due to mistakes or oversight where penalty is 50% of tax payable on under-reported income.

- For underreporting in consequence of misreporting of income on account of giving wrong or faulty information or misrepresenting the type of income where the penalty is 200% of tax payable on under-reported income.

A person shall be deemed to have <u>under-reported</u> his income, if: -

a) The income assessed is greater than the income determined in the return processed under section 270(1)(a).

b) The income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280.

c) The income reassessed is greater than the income assessed or reassessed immediately before such reassessment.

d) The amount of deemed total income assessed or reassessed as per section 206(1) and (2), is greater than the deemed total income determined in the return processed under section 270(1)(a).

e) The amount of deemed total income assessed as per section 206(1) and (2), is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280.

f) The amount of deemed total income reassessed as per section 206(1) and (2), is greater than the deemed total income assessed or reassessed under the said sections immediately before such reassessment.

g) The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

The cases of <u>misreporting</u> of income referred to in sub-section (10) of section 439 shall be the following:—

a) Misrepresentation or suppression of facts.

b) Failure to record investments in the books of account.

c) Claim of expenditure not substantiated by any evidence.

d) Recording of any false entry in the books of account.

e) Failure to record any receipt in books of account having a bearing on total income.

f) Failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X [apply; and].

g) Income referred to in section 195(1)(b).

Recent case laws: -

Whether a penalty order passed under Section 270A is legally sustainable if it fails to specify the exact limb and charge (under-reporting vs. misreporting) under which the penalty is being levied?

- **Prem Brothers Infrastructure LLP ; [2022] 142 taxmann.com 38 (Delhi): -**

Where penalty was levied on assessee under section 270A alleging misreporting of income, however, fact that assessee had furnished all details of transactions relating to disallowance made under section 14A and Assessing Officer as well as assessee had used same details to arrive at different quantum of disallowances, this by no stretch of imagination could be held to be 'misreporting' and further, in absence of details as to which limb of section 270A was attracted, impugned penalty order was to be quashed and revenue was to be directed to grant immunity under section 270AA.

Recent case laws: -

Whether immunity under section 270AA can be denied where the assessee met the statutory pre-conditions under section 270AA(1), but the section 270A notice failed to specify whether the charge was under-reporting or misreporting of income?

- **GE Capital US Holdings Inc. Vs Dy. Commissioner of Income tax [2024] 163 taxmann.com 146 (Delhi):**

Where Assessing Officer had issued show cause notices under section 270A for initiating consequential penalty proceedings and application filed by assessee to avail of statutory remedy as codified under section 270AA was also rejected, since impugned notices in terms of which action under section 270A came to be initiated failed to specify whether assessee was being tried on an allegation of under-reporting or misreporting of income, application filed under section 270AAcould not have been rejected and, therefore, impugned orders in terms of which application under section 270AA came to be rejected were liable to be quashed

Section 440 of Income Tax Act, 2025 erstwhile section 270AA of Income Tax Act, 1961.

Section 440 of the Income Tax Act offers taxpayers immunity from penalties (under Section 439) and prosecution for under-reporting income.

To take immunity, assessee must satisfy all of the following conditions: -

- Tax Payment: Assessee must have paid the entire tax and interest demanded in the assessment/reassessment order within the stipulated time.
- No Appeal Filed: Assessee must not have filed an appeal against the assessment or reassessment order
- Prior to amendment by the FA, 2026, immunity u/s 270AA of the 1961 Act / u/s 440 of the 2025 Act can only be granted in the cases of underreporting of income and not in the case of under-reporting of income in consequence of misreporting.

Consequent to amendment by FA, 2026, provision of immunity has been extended to such cases where under-reporting of income is in consequence of misreporting, Subject to fulfillment of certain prescribed condition.

Section 440 of Income Tax Act, 2025 erstwhile section 270AA of Income Tax Act, 1961. (In continuation)

- However, the taxpayer is required to pay an additional income-tax amounting **100%** of the amount of tax payable on such income within the period specified in the notice of demand in lieu of the penalty.

- The additional income-tax payable would be **120%** of the amount of tax payable on income which is the nature referred to in section 102 to 106 of the 2025 Act / section 68 to 69D of the 1961 Act (unexplained investment/asset/expenditure etc).

- This amendment has been effected both in the 2025 Act and 1961 Act.

Recent case laws: -

Can an assessee be penalized under Section 270A for an interest discrepancy caused entirely by a bank's delayed 26AS update?

- **Ravindra Madhukar Kharche Vs Ass. Commissioner of Income Tax [2024] 161 taxmann.com 712 (Nagpur – Trib): -**

Where assessee offered interest income as per Form 26AS and difference in interest income came to light post filing of ITR on account of delayed reporting by payer bank, same could not tantamount to under-reporting of income, consequently, it would not attract any penalty under section 270A.

Conversion of penalty into fee [Section 271B, 271BA & 271FA of the 1961 Act vis-à-vis Section 428 & 427 of the 2025 Act]

Income-tax Act, 2025	Income-tax Act, 1961
Fee for failure to get accounts audited and furnish the report of audit u/s 63 **Fee u/s 428(c)** - Sum of **Rs.75,000** for delay upto one month for which the failure continues. - Sum of **Rs.1,50,000** thereafter.	**Penalty for failure to get accounts audited or furnish report of audit u/s 44AB** **Penalty u/s 271B** – Lower of - - **0.5%** of the total sales, turnover or gross receipts in business or gross receipts in profession; or - **Rs.1,50,000**
Fee for failure to furnish TP report u/s 172 **Fee u/s 428(d)** - Sum of **Rs.50,000** for delay upto one month for which the failure continues. - Sum of **Rs.1,00,000** thereafter.	**Penalty for non-furnishing of TP report u/s 92E** **Penalty u/s 271BA Rs.1,00,000**

Conversion of penalty into fee [Section 271B, 271BA & 271FA of the 1961 Act vis-à-vis Section 428 & 427 of the 2025 Act]

Income-tax Act, 2025	Income-tax Act, 1961
Fee for failure to furnish a statement of financial transaction or reportable account within the prescribed time i.e., on or before 31st May immediately following the F.Y. in which the transaction is registered or recorded.	Penalty for default in furnishing statement for financial transaction or reportable account within the prescribed time i.e., on or before 31st May immediately following the F.Y. in which the transaction is registered or recorded.
Fee u/s 427(3) Rs.200 for every day for which the failure continues**. Such fee shall not exceed Rs.1 lakh.**	**Penalty u/s 271FA Rs.500** for every day during which such failure continues.
Penalty u/s 454 for failure to furnish statement of financial transaction or reportable account after a notice Rs.1000 for every day for which failure continues. **Such penalty should not exceed Rs.1 lakh.**	**Penalty for failure to furnish statement within the time allowed by notice u/s 285BA(5) Rs. 1000** per day during which the failure continues.
Penalty u/s 455 for furnishing inaccurate statement of financial transaction or reportable account - Rs.50,000	**Penalty for furnishing inaccurate stt or reportable account u/s 271FAA– Rs.50,000**

Recent case laws: -

Can a penalty under Section 271B be levied if the audit report was obtained on time but filed late along with a belated return?

- **Jigneshbhai Rasikbhai Savalia Vs ITO [2023] 149 taxmann.com 276 (Surat-Trib.): -**

Assessee was engaged in trading of sarees and embroidery hand work - He filed his return of in come belatedly, on 29-2-2016 along with audit report. Case was selected for scrutiny and assessment was completed under section 143(3) on 3-11-2017. Subsequently, assessing officer levied penalty under section 271B by holding that assessee had not filed audit report before due date of filing return of income under section 139(1). Whether when accounts were audited and assessee got audit report but same was filed along with returned income. which was filed belatedly, penalty could not be imposed under section 271B, therefore, Assessing Officer was directed to delete penalty under section 271B.

Recent case laws: -

Whether a penalty under Section 271BA for non-filing of the Transfer Pricing audit report (Form 3CEB) can be sustained if the report was obtained before the due date but submitted belatedly during the assessment proceedings?

- **Magick Woods Exports (P.) Ltd. Vs Ass. Commissioner of Income Tax [2017] 81 taxmann.com 231 (Chennai - Trib.): -**

Assessing officer imposed penalty undersection 271BA for non-filing of audit report on or before due date of filing of return. It was found that assessee obtained audit report much before due date of filing of return. However, report was submitted to TPO belatedly but before due date of completion of proceedings -Whether since assessee had complied with provisions of Act by obtaining audit report in time, though filed same belatedly but before date of completion of assessment. Hence, penalty levied upon assessee was to be deleted.

Penalty for failure to furnish information or for furnishing inaccurate information on transaction of crypto asset – Section 446 of the 2025 Act

Penalty provision for non-furnishing of statement or furnishing inaccurate information in a statement on transaction of crypto-assets [Section 446 of the 2025 Act]

- Penalty of Rs. 200 per day is leviable for non-furnishing of statement of transaction of crypto assets
- Penalty of Rs. 50,000 is leviable for furnishing inaccurate particulars, failure to correct such inaccuracy and failure to comply within due diligence requirement for identification of any crypto asset user or owner.

This penal provision has been introduced by the FA, 2026 in the 2025 Act. There is no corresponding provision in the 1961 Act.

Penalty under Chapter XXI of the 2025 Act and 1961 Act

	Income-tax Act, 1961	2025 Act
In the following provisions, there is no change in the quantum of penalty. **However, "without prejudice to the provisions of section 270A or any other provisions of this Act)" in the beginning of each of these sections in the 1961 Act is missing in the 2025 Act.**		
Failure to keep maintain or retain books of account, documents etc. as per sec 44AA of 1961 Act/ sec 62 of 2025 Act read with related Rules	Sec 271A **[This is without prejudice to sec. 270A on penalty for under-reporting of income]** Rs.25,000	Section 441 No change in quantum
Failure to keep & maintain info & document etc. as reqd. in resp. of international transaction/ specified domestic transaction, to report such transaction, maintains or furnishes incorrect information or document	Section 271AA(1) [**This is without prejudice to sec 270A and 271BA]** AO or Commissioner (Appeals) may impose 2% of value of each international transaction/specified domestic transaction	Section 442(1) No change in quantum
False entry or omission of any entry which is relevant for computation of total income of such person, to evade tax liability	Section 271AAD **[This is without prejudice to any other provisions of this Act]** AO, JC (Appeals) or Commissioner (Appeals) may direct **penalty of sum equal to aggregate amount of such false or omitted entry.**	Section 444 No change in quantum

Penalty under Chapter XXI of the 1961 Act and 2025 Act

	Income-tax Act, 1961	2025 Act
In the following provisions, there is no change in the quantum of penalty. **However, "without prejudice to the provisions of the Act" in the beginning of each of these sections in the 1961 Act is missing in the 2025 Act.**		
Failure to furnish TDS/TCS statements within the prescribed time or furnishing incorrect information in the said statement	Sec 271H **[This is without prejudice to the provisions of this Act]** A.O. may direct penalty of Rs.10,000 to Rs.1,00,000	Section 461 No change in quantum
Furnishing incorrect info in statements and certificates by accountant, merchant banker or registered valuer	Section 271J [**This is without prejudice to the provisions of this Act]** AO or JC(Appeals) or Commissioner (Appeals) may impose penalty of Rs.10,000 for each such report or certificate	Section 463 No change in quantum
Failure to furnish statements by research association, university, college or other institution within the prescribed time.	Section 271K **[This is without prejudice to the provisions of this Act]** AO may direct penalty of sum of Rs.10,000 to Rs.1,00,000	Section 464 No change in quantum

Penalty not to be imposed if reasonable cause is shown – Sec 273B of 1961 Act vis-à-vis Sec 470 of 2025 Act

	1961 Act	2025 Act
Section 273B of the 1961 Act and section 470 of the 2025 Act provides that no penalty shall be imposed under the sections mentioned thereunder, if the assessee proves that there was reasonable cause for failure. **<u>New provisions included within the scope of section 470 are section 446, 451 and 452</u>, for which the corresponding provisions were not included in the scope of section 273B of the 1961 Act.**		
Failure to keep, maintain or retain books of account, documents, etc.	271A Included	441 Included
Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions	271AA Included	442 Included
Penalty for failure to furnish information or for furnishing inaccurate information on transaction of crypto-asset	**Not incl (new sec in 2025 Act)**	**New sec 446 Included**
Penalty for failure to deduct/collect tax at source	271C/271CA Included	448/449 Included
Penalty for failure to comply with provisions of :		
section 269SS of the 1961 Act / section 185 of the 2025 Act	271D Included	450 Included
section 269ST of the 1961 Act / section 186 of the 2025 Act	**271DA Not included**	**451 Included**
Section 269SU of the 1961 Act/ section 187 of the 2025 Act	**271DB Not included**	**452 Included**
Section 269T of the 1961 Act/ section 188 of the 2025 Act	271E Included	453 Included

Recent case laws: -

Can penalty under section 271A be levied on the assessee (a Local Authority, registered u/s 12A, income exempt u/s 10(46)) for not maintaining books of account under section 44AA?

- **Yamuna Expressway Industrial Development Authority Vs CIT [2025] 179 taxmann.com 44 (Delhi - Trib.): -**

Section 44AA applies only to persons carrying on business or profession. Since the assessee was a Local Authority not engaged in business or profession, section 44AA itself was not applicable to it. As the primary obligation under section 44AA didn't arise, no penalty could be imposed under section 271A for its non-compliance.

Other Provisions

Section of the 2025 Act	Provision	Section of the 1961 Act
465	Penalties for failing to furnish to answer questions from an income tax authority or refusing to do so	272A
185	levy a 100% penalty for defaulting on the cash loan accepted above the prescribed limit.	269SS
188	Mode of Repayment of certain repayment of loans or deposits.	269T
186	Mode of Undertaking transaction	269ST
187	Acceptance of payment through prescribed mode	269SU

Section 465 of the Indian Income Tax Act, 2025 erstwhile section 272A of the Income Tax Act, 1961

‘Penalties for failing to furnish to answer questions from an income tax authority or refusing to do so.’

The Section 272A of the Income Tax Act, 1961 penalizes taxpayers for failing to comply with statutory duties, such as not responding to notices, refusing to sign statements, or failing to furnish returns.

Penalty can be applied in these case:-

- **Refusing to answer:** Legally bound to answer questions from an income tax authority but refusing to do so.
- **Refusing to sign:** Refusing to sign a statement made during tax proceedings.
- **Non-compliance with notices/summons:** Failing to comply with a notice for assessment (e.g., Section 142/143) or failing to produce evidence/documents when summoned (e.g., Section 131).
- **Failing to file declaration:** Failing to provide in due time a copy of the declaration mentioned in Section 197A

Section 465 of the Indian Income Tax Act, 2025 erstwhile section 272A of the Income Tax Act, 1961 –

‘Penalties for failing to furnish to answer questions from an income tax authority or refusing to do so.’

Monetary amount of penalty may be depending on the specific non-compliance, penalties can range from a fixed ₹10,000 per default to ₹100–₹500 per day of continuing default.

- A flat penalty of ₹10,000 is levied under Section 272A(1) for failing to: Answer questions truthfully when legally bound to do so.
- Sign any statement required by an income-tax authority during proceedings.
- Comply with a summons issued to attend or produce books of account/documents.
- Comply with notices issued under Sections 142(1) or 143(2) (e.g., failing to respond to scrutiny/assessment notices

Under Section 272A(2), a penalty ranging from ₹100 to ₹500 for every day the default continues for other non - compliance as prescribes in the section.

Recent case laws: -

Can penalty under section 272A(1)(d) be levied for non-compliance with notices issued under section 142(1), where the Assessing Officer in the subsequent assessment order passed under section 143(3), has expressed satisfaction with the compliances made by the assessee?

- **Shilpa Shetty Kundra Vs Dy. Commissioner of Income-tax; [2025] 173 taxmann.com 342 (Mumbai - Trib.): -**

Since the Assessing Officer himself expressed satisfaction with the assessee's compliance while passing the assessment order under section 143(3), he is deemed to have condoned the earlier non-compliance. Once such condonation is evident from the assessment order itself, penalty under section 272A(1)(d) cannot be sustained, and the impugned penalty is liable to be set aside.

Section 185 of the Indian Income Tax Act, 2025 erstwhile section 269SS of Income Tax Act, 1961 –

‘levy a 100% penalty for defaulting on the cash loan accepted above the prescribed limit’

Section 185 erstwhile section 269SS prohibits taking or accepting loans, deposits, or specified sums to limit of Rs 20,000.

Penalty for the exceeding the above limit is 100% of the amount so accepted **u/s 450 erstwhile u/s 271D.**

- The limit of ₹20,000 applies to the aggregate amount
- To ensure transparency and prevent tax evasion, all such amounts must be accepted via account payee cheque, bank drafts, or other permitted electronic modes

Section 188 of the Indian Income Tax Act, 2025 erstwhile section 269T of Income Tax Act, 1961 –

‘levy a 100% penalty for defaulting on the cash loan repayment above the prescribed limit’

Section 188 erstwhile section 269T prohibits the repayment of any loan, deposit, or specified advance of ₹20,000 or more in cash.

Penalty for the exceeding the above limit is 100% of the amount so accepted **u/s 453 of Income Tax Act, 2025 erstwhile u/s 271E of Income Tax Act, 1961 .**

- The limit of ₹20,000 applies to the aggregate amount
- To ensure transparency and prevent tax evasion, all such repayments must be made via account payee cheque, bank drafts, or other permitted electronic modes

Recent case laws: -

Question: Whether penalty under section 271E for cash repayment of loan (violating section 269T) is leviable where assessee shows reasonable cause under section 273B — repayment being genuine, at lender's insistence, and accepted in assessment?

- **Kamaljeet Kaur Gill Vs Joint Commissioner of Income-tax; [2025] 174 taxmann.com 147 (Chhattisgarh): -**

No. Genuineness and bona fide nature of the transaction constitute reasonable cause under section 273B. Since the repayment was genuine, recorded in books, and undisputed, penalty under section 271E was not leviable, and authorities erred in ignoring section 273B. in suchcircumstances, assessee was not liable to pay penalty under section 271E for non-compliance of section 269T.

Section 186 of the Indian Income Tax Act, 2025 erstwhile section 269ST of Income Tax Act, 1961 –

‘Mode of Undertaking Transaction’

Section 186 erstwhile section 269ST prohibits anyone from receiving ₹2,00,000 or more in cash from a single person in a single day, across a single transaction, or on a single occasion.

- Cash received from a single person across multiple transactions/receipts on the same day cannot total ₹2 Lakhs or more
- A single transaction/bill worth ₹2 Lakhs or more cannot be paid in cash.
- Multiple payments to the same person for a single event (e.g., weddings, large purchases) cannot total ₹2 Lakhs or more in cash, even if spread out over several days.
- Penalty for the exceeding the ₹ 2,00,000 limit is 100% of the cash amount so received **u/s section 451 of Income Tax Act, 2025 erstwhile u/s 271DA of Income Tax Act, 1961.**
- All such amounts must be received via account payee cheque, bank draft, or digital payment.

Section 187 of the Indian Income Tax Act, 2025 erstwhile section 269SU of Income Tax Act, 1961

‘Acceptance of payment through prescribed electronic mode’

Section 187 erstwhile section 269SU mandates that businesses with annual sales, turnover, or gross receipts exceeding ₹50 crore in the immediately preceding financial year. Must mandatorily provide prescribed electronic payment facilities to their customers.

If an eligible business fails to provide these electronic payment options, it faces a steep daily fine **u/s 452 of Income Tax Act, 2025 erstwhile 271DB of Income Tax Act, 1961** for Penal Amount of ₹5,000 per day for as long as the non-compliance continues.

Businesses are exempt from this mandate if they meet both of the following conditions:

- They operate exclusively with B2B (business-to-business) transactions and have no retail/consumer transactions.
- At least 95% of their total business receipts for the preceding year were received through non-cash modes (e.g., bank transfer, cheque).

Decriminalisation of prosecution provisions – Chapter XXII of the 1961 Act *vis-à-vis* Chapter XXII of the 2025 Act

Decriminalisation of certain Prosecution Provisions in the 1961 Act and 2025 Act

- FA, 2026 has completely decriminalised offences in the following cases in **both the 1961 Act and the 2025 Act–**
  - **Section 276D of 1961 Act/ section 481 of the 2025 Act for failure to produce accounts and documents**
  - **Section 276B of the 1961 Act/ section 476(1) of the 2025 Act for failure to ensure payment of tax in case of** –
    - benefits and perquisites provided or
    - winnings from lotteries, crossword puzzles, online games or
    - consideration for transfer of virtual digital asset,

    where the winnings/consideration are wholly in kind.

Decriminalisation of prosecution provisions – Chapter XXII of the 1961 Act *vis-à-vis* Chapter XXII of the 2025 Act

Decriminalisation of certain Prosecution Provisions in the 1961 Act and 2025 Act (List of provisions given in the next slide)

- Offences where the amount sought to be evaded does not exceed Rs.10 lakh would attract fine only (no imprisonment in such cases).
- Prosecution for the offences under Income-tax Act, 2025 would be based on the amount of tax evaded and the punishment shall be proportionate to the gravity of crime.
- Maximum punishment for any offence (except for repeated offence) has been reduced to simple imprisonment of upto 2 years instead of rigorous imprisonment of 7 years. Also, the same shall be applicable where the amount sought to be evaded or the tax on under-reported income exceeds Rs.50 lakhs.
- Where the amount sought to be evaded or the tax on under-reported income is between Rs.10 lakhs to Rs.50 lakhs, the maximum imprisonment is simple imprisonment of up to 6 months.
- Fine can be levied in lieu of or in addition to imprisonment

Decriminalisation of prosecution provisions – Chapter XXII of the 1961 Act *vis-à-vis* Chapter XXII of the 2025 Act

	1961 Act	2025 Act
The offences which have been decriminalized in this manner in the 1961 Act and 2025 Act are as follows -		
Failure to pay tax deducted at source to credit of Central Govt.	276B	476
Failure to pay tax collected at source to the credit of Central Govt.	276BB	477
Willful attempt to evade tax	276C	478
Failure to furnish returns of income in due time, or in response to notice	276CC	479
Failure to furnish return of income setting forth undisclosed income.	276CCC	480
Making false statement in verification under the Act or Rules	277	482
Abetment of false return	278	484

Section 476 of Income Tax Act, 2025 erstwhile section 276B of Income Tax Act, 1961

'Failure to pay tax deducted at source to credit of Central Government'

Decriminalisation of Prosecution Provisions U/S 276B in the 1961 Act and section 476 of 2025 Act: -

- The transition from Section 276B to Section 476 marks a shift from a penal mindset to a compliance mindset.
- Under Section 276B, a business owner could technically face criminal trial for a genuine cash-flow delay that caused a 10-day lag in depositing TDS.
- Under Section 476, the law recognizes business realities and guarantees that as long as you clear your TDS obligations before your quarterly filing deadlines, you are legally safe from prosecution

Though standard interest and late fees will still apply.

Section 477 of Income Tax Act, 2025 erstwhile section 276BB of Income Tax Act, 1961

‘Failure to pay tax collected at source’

Punishment in case of the failure to deposit Tax Collected at Source (TCS) with the government, but the consequences have been amended:

- **Section 276BB:** Automatic rigorous imprisonment (3 months to 7 years) regardless of the tax amount skipped.
- It Punishes a business for pocketing tax money (TCS) collected from a buyer instead of paying the government.

<u>Whereas,</u>

- **Section 477:** It changes rigrous imprisonment to simple imprisonment and introduces slabs in case of defaults below ₹10 Lakhs now result only in a fine, completely eliminating imprisonment for smaller offenses.
- It Punishes the illegal destruction, tearing, or forging of a Will or valuable legal document (carrying up to life imprisonment).

Section 478 of Income Tax Act, 2025 erstwhile section 276C of Income Tax Act, 1961

‘Willful attempt to evade tax, etc’

This section deals with the prosecution and punishment for the wilful attempt to evade tax, penalty, or interest. It is designed to penalize deliberate tax evasion and under-reporting of income.

Section 276C (Income-tax Act, 1961): Utilized a two-tiered threshold for punishment.

- If the tax evaded exceeded ₹25 Lakhs, it carried strict rigorous imprisonment from 6 months up to 7 years + fine.
- If the evasion was under ₹25 Lakhs, it carried rigorous imprisonment from 3 months to 2 years + fine

Section 478 (Income-tax Act, 2025):

- Evasion over ₹50 Lakhs: **Simple imprisonment up to 2 years, a fine, or both.**
- Evasion between ₹10 Lakhs and ₹50 Lakhs: Simple imprisonment up to 6 months, a fine, or both.
- Evasion below ₹10 Lakhs: Punishable by fine only, removing imprisonment time entirely for smaller infractions.
- Immunity Route: The new law pairs Section 478 directly with a standardized exit route (Form 161), which allows taxpayers who accept their assessment, clear all dues, and waive appeal rights to be granted official immunity from criminal prosecution entirely

Section 479 of Income Tax Act, 2025 erstwhile section 276CC of Income Tax Act, 1961

‘Failure to furnish returns of Income’

Section 479 of the Income Tax Act, 2025, deals with the prosecution and punishment for the wilful failure to furnish income tax returns. It penalizes taxpayers who intentionally fail to file their returns within the prescribed deadlines

According to new provisions of Section 479 (Income-tax Act, 2025):

- The legislative updates have completely eliminated "rigorous" imprisonment terms for non-filing and shifted to a far more lenient, slab-based simple imprisonment model:
- Tax Evaded over ₹50 Lakhs: Simple imprisonment up to 2 years or a fine or both.
- Tax Evaded between ₹10 Lakhs and ₹50 Lakhs: Simple imprisonment up to 6 months or a fine or both.
- Tax Evaded below ₹10 Lakhs: Punishable by fine only.
- imprisonment time has been completely removed for smaller non-filing offenses.

Section 480 of Income Tax Act, 2025 erstwhile section 276CCC of Income Tax Act, 1961

‘Failure to furnish returns of Income setting forth undisclosed income’

Section 480 of the Income Tax Act, 2025, deals with the individuals who willfully fail to furnish their tax returns within the prescribed time following search operations face criminal prosecution

Section 276CCC: Mandated a harsh rigorous imprisonment (3 months to 3 years) plus a fine, giving tax officers aggressive leverage to push for immediate prosecutions and arrests without strict supervisory oversight.

Section 480: Softens the blow of penalty by switching to simple imprisonment and introducing a fair slab-based system.

- Evasions over ₹50 Lakhs face up to 2 years of simple imprisonment time, while smaller defaults under ₹10 Lakhs are entirely decriminalized to a fine-only penalty.

The tax officers cannot arrest anyone without a court-issued warrant, and they must secure formal approval from senior tax officials before even starting a prosecution

Section 482 of Income Tax Act, 2025 erstwhile section 277 of Income Tax Act, 1961

False statement in verification, etc

Section 482 of the Income Tax Act, 2025, deals with the taxpayers who provide false statements or submit incorrect accounts during verification. It is designed to strictly deter tax evasion and ensure accuracy in the newly integrated digital reporting framework.

Section 277 (Income Tax Act, 1961)	Section 482 (Income Tax Act, 2025)
Punishment for False Statement in Verification or delivering false accounts.	Retains the exact same offense (False Statement in Verification).
The legacy provision used for decades to prosecute tax fraud/false filing.	The modernized equivalent designed for the overhauled tax code.
Rigorous imprisonment (6 months to 7 years + fine) if evaded tax exceeded ₹25 Lakhs.	Carries forward the same graded punishment structure based on the ₹25 Lakh tax evasion threshold.

- **If the Income Tax department files a criminal complaint against someone under Section 277, that person's lawyers will likely rush to the Sessions Court or High Court to move an application under Section 482 to seek protection from arrest.**

Section 484 of Income Tax Act, 2025 erstwhile section 278 of Income Tax Act, 1961

Abetment of false return, etc

Section 484 of the Income Tax Act, 2025 criminalizes the abetment or inducement of false returns, statements, or accounts. It replaced Section 278 of the 1961 Act and establishes a two-tier penalty structure for those who intentionally facilitate tax evasion

Section 278 (Icome Tax Act, 1961)	Section 484 (Income Tax Act, 2025)
Abetment of false returns (Punishing the CA, lawyer, or accomplice who helps an assessee file a fake tax return or false statements)	Abetment or Inducement to deliver a false account, statement, or declaration.
Primarily used against professionals or third parties who actively colluded in tax evasion.	Retains the exact same target but with updated, streamlined legal syntax to map into the new tax code.
Punishment above Rs. 25,00,000 - Rigorous imprisonment from 6 months to 7 years + a fine.	**Punishment above Rs. 25,00,000 -** Identical threshold and penalty: 6 months to 7 years + a fine.
Punishment Below ₹25 Lakhs - Rigorous imprisonment from 3 months to 2 years + a fine.	**Punishment Below ₹25 Lakhs -** Identical threshold and penalty: 3 months to 2 years + a fine.

Recent case laws: -

Whether reassessment and penalty proceedings initiated against a deceased assessee, without bringing his legal representatives on record are valid? expressed satisfaction with the compliances made by the assessee?

- **Subhadeep Deb Vs Union of India; [2026] 186 taxmann.com 822 (Calcutta): -**

Proceedings initiated and continued against a dead person, without substituting the legal representatives on record even after the department became aware of the death, are void and cannot be sustained in law. Since no corrective steps were taken to bring the legal representatives into the proceedings, the reassessment order under section 147 read with sections 144 and 144B, as well as the penalty orders under sections 272A and 270A and the consequential notices of demand all pertaining to the assessment year, are liable to be set aside.

THANK YOU

CA PIYUSH .S. CHHAJED

Let’s Get Connected