



OVERVIEW OF THE BLACK MONEY & IMPOSITION OF TAX LAW



[This Chapter provides an overview of the law and procedures under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the related rules]

LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ☐ **determine** the value of an undisclosed asset;
- ☐ **appreciate** the scope of total undisclosed foreign income and asset;
- ☐ **compute** total undisclosed foreign income and asset for levy of tax under this Act;
- ☐ **identify** the powers of tax authorities under this Act;
- ☐ **appreciate** the provisions relating to assessment, appeal and revision under the provisions of this Act;
- ☐ **appreciate** the penalty and prosecution provisions for various offences under this Act;
- ☐ **integrate, analyse and apply** the relevant provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and related Rules to address relevant issues and make computations.



5.1 INTRODUCTION

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to foreign income and assets. This new law has been formulated to act as a strong deterrent and curb the menace of black money stashed away abroad by Indians. This law would be effective from **A.Y.2016-17**, unless otherwise provided in any section of this Act, and extends to the **whole of India**.



5.2 BASIS OF CHARGE [CHAPTER II – SECTIONS 3 TO 5]

(i) Charge of tax [Section 3]

- (A) **Rate of tax [Section 3(1)]** - Every assessee would be liable to tax @30% in respect of his undisclosed foreign income and asset of the previous year.

However, an **undisclosed asset located outside India** shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

Meaning of certain terms:

Term	Section	Meaning
Undisclosed foreign income and asset	2(12)	The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5
Undisclosed asset located outside India	2(11)	An asset (including financial interest in an entity) located outside India, <ul style="list-style-type: none"> - held by the assessee in his name or - in respect of which he is a beneficial owner, and - he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.
Assessee	2(2)	A person,— <ul style="list-style-type: none"> (a) being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or (b) being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year

		<p>to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired:</p> <p>However, the previous year, in case of acquisition of undisclosed asset outside India, shall be determined <u>without giving effect to the provisions of section 72(c)</u> which states that where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under Chapter VI (Tax Compliance for Undisclosed Foreign Income and Assets), such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act would apply accordingly</p> <p>In effect, it has been clarified that a person would be an assessee, if he is resident in the previous year in which the undisclosed asset located outside India was actually acquired by him and not the year in which notice under section 10 is issued by the Assessing Officer.</p>			
Previous year	2(9)		Circumstance	Period	
				Beginning with	Ending with
		a	In case of a newly set up business	The date of setting up of a business	The date of closure of business or 31 st March following the date of setting up of business, whichever is earlier.
		b	Where a new source of income comes into existence	The date on which the new source comes into existence	The date of closure of business or 31 st March following the date on which such new source comes into existence, whichever is earlier.

		c	In case of discontinuance of business or dissolution/ liquidation	1 st day of the FY	The date of discontinuance of business [other than business referred to in (b) above] or dissolution of an unincorporated body or liquidation of a company, as the case may be.
		d	In any other case	1 st April of the relevant year	31 st March following. (i.e., a period of 12 months commencing from 1 st April and ending on 31 st March)

- (B) **Relevant previous year of chargeability to tax [Proviso to section 3(1)]** - Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the Assessing Officer.
- (C) **Value of an undisclosed asset [Section 3(2)]** - The **fair market value** of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, would be the value of an undisclosed asset. The following table gives the manner of determination of fair market value of different assets -

	Asset	Fair market value as per Rule 3(1)
(a)	Bullion, jewellery or precious stone	<p>Higher of –</p> <p>(i) its cost of acquisition; and</p> <p>(ii) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market on the valuation date.</p> <p>For this purpose, the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of</p>

		bullion, jewellery or precious stone under any regulation or law.
(b)	Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work)	Higher of - (i) Cost of acquisition; and (ii) the price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law;
(c)(I)	Quoted Shares and securities	Higher of – (i) cost of acquisition; and (ii) the price as determined in the following manner, namely:— (A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date; or (B) where on the valuation date there is no trading in such shares and securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market;
(c)(II)	Unquoted shares and securities	Higher of – (i) Cost of acquisition; and (ii) The value, on the valuation date, of such equity shares as determined in the following manner, namely:— the fair market value of unquoted equity shares = $\frac{(A + B - L)}{PE} \times PV$

		Where,
		<p>A book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property)</p> <p style="text-align: center;">minus</p> <p>(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and</p> <p>(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;</p> <p>B fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule</p> <p>L book value of liabilities, but not including the following amounts, namely:—</p> <p>(i) the paid-up capital in respect of equity shares;</p> <p>(ii) the amount set apart for payment of dividends on preference shares and equity shares;</p> <p>(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation</p> <p>(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;</p> <p>(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;</p> <p>(vi) any amount representing contingent liabilities other than arrears of dividends</p>

		PE	payable in respect of cumulative preference shares;
		PV	total amount of paid up equity share capital as shown in the balance sheet;
			the paid up value of such equity shares
(c)(III)	Unquoted share and security other than equity share in a company	Higher of,—	<ul style="list-style-type: none"> (i) its cost of acquisition; and (ii) the price that the share or security shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law
(d)	Immovable property	Higher of,—	<ul style="list-style-type: none"> (i) its cost of acquisition; and (ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law
(e)	An account with a bank	<ul style="list-style-type: none"> (I) the sum of all the deposits made in the account with the bank since the date of opening of the account; or (II) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. <p>However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account</p>	
(f) & (g)	value of an interest of a person in a partnership firm	<p>The net asset of the firm, AOP or LLP on the valuation date shall first be determined.</p> <p>Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be</p>	

	or in an AOP or a LLP of which he is a member	<p>allocated among its partners or members in the proportion in which capital has been contributed by them.</p> <p>The residue of the net asset shall be allocated among the partners or members in the following manner:</p> <table><tr><th>Circumstance</th><th>Manner of allocation</th></tr><tr><td>In the event of dissolution of the firm or AOP</td><td>In accordance with the agreement of partnership or association for distribution of assets</td></tr><tr><td>In the absence of such agreement for distribution of assets on dissolution</td><td>in the proportion in which the partners or members are entitled to share profits</td></tr></table> <p>The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.</p> <p>Net asset of the firm, AOP or LLP shall be $(A + B - L)$, determined in the manner specified in C(II) above.</p>	Circumstance	Manner of allocation	In the event of dissolution of the firm or AOP	In accordance with the agreement of partnership or association for distribution of assets	In the absence of such agreement for distribution of assets on dissolution	in the proportion in which the partners or members are entitled to share profits
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In the event of dissolution of the firm or AOP	In accordance with the agreement of partnership or association for distribution of assets							
In the absence of such agreement for distribution of assets on dissolution	in the proportion in which the partners or members are entitled to share profits							
(h)	Any other asset	<p>Higher of –</p> <p>(I) its cost of acquisition or the amount invested; and</p> <p>(II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction.</p>						

FMV of an asset (other than bank account) transferred before the valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before the valuation date, the FMV of such asset shall be **higher of its cost of acquisition and the sale price**. This is notwithstanding the valuation rules given in Rule 3(1),

However, where such asset was transferred without consideration or for inadequate consideration before the valuation date, the FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

FMV, in a case where a new asset is acquired out of consideration received on account of transfer of an old asset or withdrawal from a bank account [Rule 3(3)]:

In such a case, the fair market value of the old asset or the bank account, as the case may be, determined in accordance with Rule 3(1) and Rule 3(2), shall be reduced by the amount of the consideration invested in the new asset.

Example

House A located in a country outside India was bought in 1995 for ₹15 lakh. It was sold in 2000 for ₹22 lakh. This amount was deposited in a bank account in that country. In the year 2001 another House B was purchased for ₹35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is ₹48 lakh. Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is ₹60 lakh, the fair market value (FMV) of the assets would be computed in the following manner:

FMV of House A = ₹22 lakh (being higher of ₹15 lakh and ₹22 lakh) - ₹22 lakh (invested in foreign bank account) = Nil

FMV of Foreign Bank account = ₹60 lakh - ₹35 lakh (invested in House B) = ₹25 lakh

FMV of House B = Higher of ₹35 lakh and ₹48 lakh = ₹48 lakh

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4) & 3(5)]: The fair market value of an asset determined in a currency which is one of the permitted currencies designated by the RBI under the Foreign Exchange Management Regulations, has to be converted into Indian currency as per the reference rate of the RBI on the date of valuation.

Where the FMV of an asset is determined in a currency other than one of the permitted currencies designated by the RBI, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the Central Bank of the country or jurisdiction in which the asset is located. Such value in United States Dollar shall be converted into Indian currency as per the reference rate of the RBI on the date of valuation:

However, where the Central Bank of the country or jurisdiction in which the asset is located does not specify the rate of conversion from its local currency to United States Dollar, then, such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

Meaning of certain terms [Explanation 1 to Rule 3]

	Term	Meaning
(a)	Established securities market	An exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange
(b)	Meaningful annual value of shares traded on the exchange	With respect to an exchange, it means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years immediately preceding the calendar year in which the determination is being made.

(c)	Meaningful volume of trading on an on-going basis	With respect to each class of shares, it means,- (i) trades in each such class are effected, other than in <i>de minimis</i> quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year
(d)	Quoted share or security	The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business.
(e)	Unquoted share and security	In relation to share or security, means share or security which is not a quoted share or security.

Relevant Date for determination of market value and conversion of currency
[Explanation 2 to Rule 3]

For the purpose of determining the market value as on valuation date referred to in Rule 3(1), and for the purpose of conversion into Indian currency or conversion of foreign currency into United States Dollar and thereafter into Indian currency, the date would be —

	Case	Date
(a)	in respect of asset declared under section 59 of the Act	1 st July, 2015
(b)	in any other case	1 st April of the previous year

(ii) **Scope of total undisclosed foreign income and asset [Section 4]**

(a) **Total undisclosed foreign income and asset** of any previous year would be -

- (1) the income from a source located outside India **which has not been disclosed in the return of income** filed under the Income-tax Act, 1961 on or before the due u/s 139(1) or in the belated return of income u/s 139(4) or in the revised return of income u/s 139(5).
- (2) the income from a source located outside India in respect of which a return is required to be filed under section 139 of the Income-tax Act, 1961, but **no return, belated return or revised return has been filed under section 139(1)/(4)/(5) of that Act.**
- (3) the value of any **undisclosed asset located outside India.**

- (b) Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act, 1961 in accordance with the following provisions of the Income-tax Act, 1961 is not includible in the total undisclosed foreign income:

Section	Provision
29	Manner of computation of income under the head "Profits and gains of business or profession"
43C	Special provision for computation of cost of acquisition of an asset which becomes the property of an amalgamated company under a scheme of amalgamation and is sold by the amalgamated company as stock-in-trade of the business carried on by it.
57	Manner of computation of income chargeable under the head "Income from other sources"
59	Profits (Deemed income) chargeable to tax
92C	Computation of arm's length price

- (c) **Non-inclusion of income included in undisclosed foreign income and asset in the total income under the Income-tax Act, 1961** - The income included in the total undisclosed foreign income and asset under this enactment would not form part of total income under the Income-tax Act, 1961.

(iii) **Computation of total undisclosed foreign income and asset [Section 5]**

- (a) **Disallowance of expenditure and set-off of loss** - No deduction in respect of any expenditure or allowance or set off of any loss would be allowed in computing the total undisclosed foreign income and asset of any previous year of an assessee, irrespective of whether the same is allowable under the Income-tax Act, 1961.
- (b) **Permissible deduction from value of undisclosed asset located outside India** - From the value of undisclosed asset located outside India, **any income which has so far been assessed to tax** for any assessment year under the Income-tax Act, 1961 prior to the assessment year to which the Act applies and **any income which is assessable or has been assessed to tax** for any assessment year under this Act, will be **reduced**.

However, the assessee has to furnish evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or assessable to tax.

- (c) **Permissible deduction from value of immovable property** - If the deduction referred to in (b) above in respect of income which is assessable or has been assessed to tax is in relation to an **immovable property**, the quantum of deduction would be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Example

A house property located in a country outside India was acquired by Mr. A, an assessee in the previous year 2009-10 for ₹ 60 lakh. Out of the investment of ₹ 60 lakh, ₹ 35 lakh was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2019-20. If the value of the house property in the year 2019-20 is ₹120 lakh, the amount chargeable to tax shall be $X - Y = Z$ where,

$X = ₹ 120 \text{ lakh},$

$Y = ₹ 120 \text{ lakh} \times 35/60 = ₹ 70 \text{ lakh},$

$Z = ₹ 120 \text{ lakh} - ₹ 70 \text{ lakh} = ₹ 50 \text{ lakh}.$



5.3 TAX MANAGEMENT [CHAPTER III – SECTIONS 6 TO 40]

(i) **Tax Authorities [Section 6]**

- (a) Income-tax authorities specified under section 116 of the Income-tax Act, 1961 would be the tax authorities for the purpose of this Act.
- (b) Such authorities have to exercise the powers and perform the functions of a tax authority under this Act in respect of a person within his jurisdiction.
- (c) Jurisdiction of a tax authority under this Act to be the same as he has under the Income-tax Act, 1961 by virtue of the orders or directions issued under section 120 of that Act or any other provision of that Act.
- (c) Jurisdiction of a tax authority in case of an assessee having no income assessable under the Income-tax Act, 1961 – The tax authority having jurisdiction in his case under this Act to be the tax authority having jurisdiction in respect of the **area in which the assessee resides or carries on its business or has its principal place of business.**

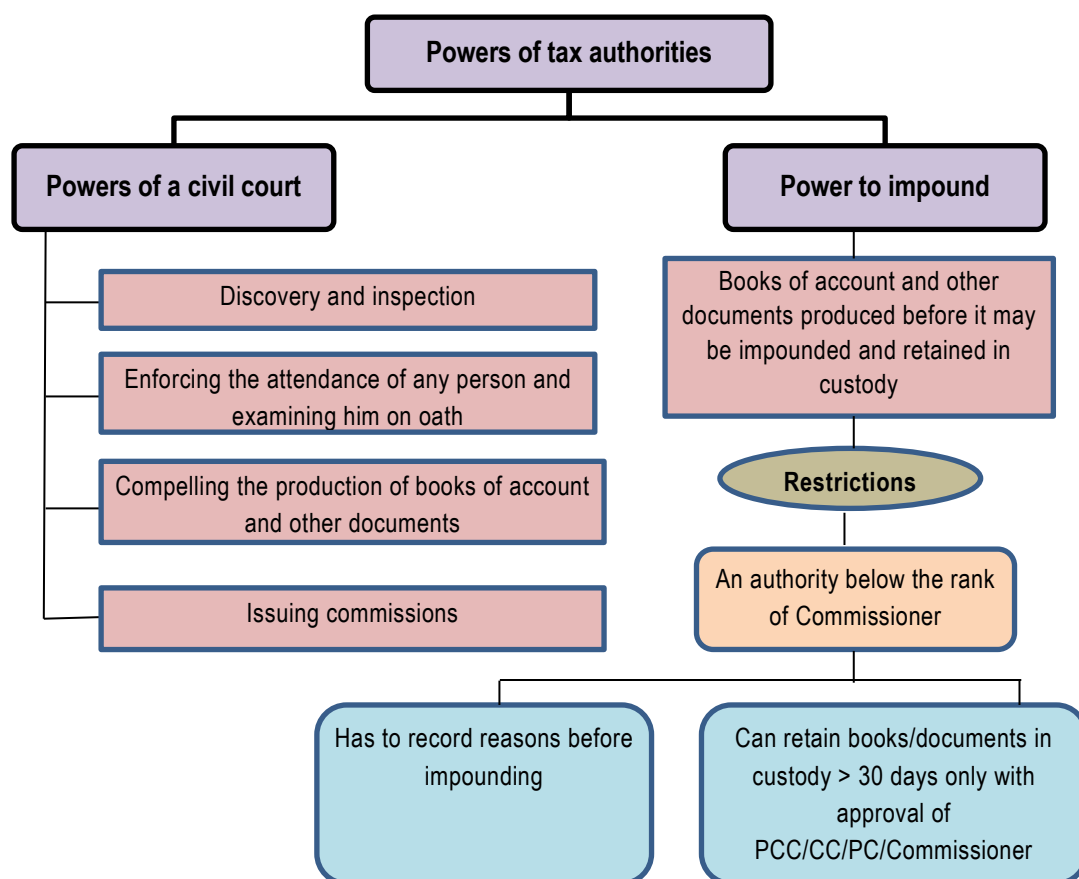
(ii) **Change of incumbent [Section 7]**

- (a) The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, has to continue the proceedings from the stage at which it was left by his predecessor.
- (b) If the assessee makes a written requirement, he may be given an opportunity of being heard, before passing any order in his case.

(iii) **Powers regarding discovery and production of evidence [Section 8]**

- (a) **Powers vested in a court under the Code of Civil Procedure, 1908** – The prescribed tax authorities, namely, the Assessing Officer, Joint Commissioner, Commissioner (Appeals), Commissioner or Principal Commissioner, Chief Commissioner and Principal Chief Commissioner, would have the same powers as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters -
 - Discovery and inspection

- Enforcing the attendance of any person, including an officer of a banking company and examining him on oath
 - Compelling the production of books of account and other documents; and
 - Issuing commissions.
- (b) **Inquiry and Investigation** – The prescribed tax authorities are vested with these powers even for the purpose of making any inquiry or investigation, irrespective of whether any proceedings are pending before it.
- (c) **Power to impound** - The prescribed tax authorities may impound any books of account or other documents produced before them and retain the same in their custody for such period as they think fit. However, this power is subject to Rules to be made in this regard.
- (d) **Restrictions on power to impound** - A tax authority below the rank of Commissioner can impound any books of account or other documents only after recording reasons for doing so. Further, such authority can retain in his custody the books or documents impounded for a period exceeding 30 days only after obtaining the approval of the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner.



(iv) **Proceedings before tax authorities to be judicial proceedings [Section 9]**

- (a) **Purposes for which a proceeding under this Act would be deemed to be a judicial proceeding** - Any proceeding under this Act before a tax authority to be deemed as a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Section of IPC	Heading	Provision
193	Punishment for false evidence.	Whoever intentionally gives false evidence in any of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. A trial before a Court-martial is a judicial proceeding. An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.
196	Using evidence known to be false	Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.
228	Intentional insult or interruption to public servant sitting in judicial proceeding	Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

- (b) **Purposes for which a tax authority shall be deemed to be a civil court** - A tax authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, which provides for prosecution for contempt of

lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. However, he would not be so deemed for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, containing the provisions as to offences affecting the administration of justice.

(v) **Assessment [Section 10]**

- (a) **Service of Notice** - Where the Assessing Officer receives information from an income-tax authority or any other authority under any other law or any information comes to his notice, he may, for the purpose making an assessment or reassessment under this Act, **serve a notice** on any person requiring him to produce, or cause to be produced, on the date to be specified, **such accounts or documents or evidence** which he may require for the purposes of this Act.
- (b) **Service of further notices** - He may also serve further notices from time to time requiring production of such other accounts or documents or evidence as he may require.
- (c) **Making inquiry** - The Assessing Officer may, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year(s), **make such inquiry** as he considers necessary.
- (d) **Passing an Assessment Order** - After considering the accounts, documents or evidence produced by the assessee, and any relevant material which he has gathered, the Assessing Officer has to **pass an order in writing assessing or reassessing the undisclosed foreign income and asset and determining the sum payable by the assessee**.
- (e) **Best Judgement Assessment** - Where any person fails to comply with all the terms of the notice issued, the Assessing Officer shall, after giving the assessee an **opportunity of being heard** and after taking into consideration all the relevant material, make the assessment **or reassessment** of undisclosed foreign income and asset to the **best of his judgment** and determine the sum payable by the assessee.

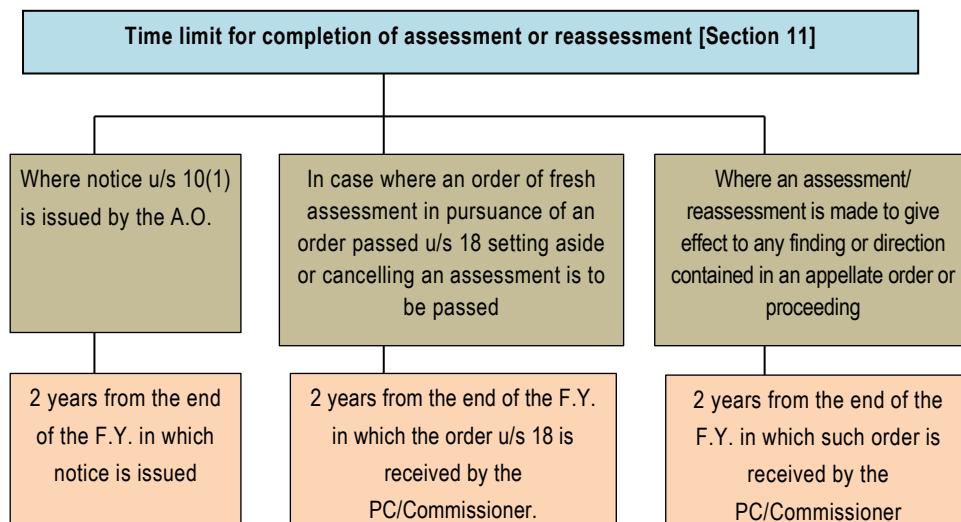
(vi) **Time limit for completion of assessment and reassessment [Section 11]**

- (a) **Two-year time limit** – The time limit for passing an order of assessment or reassessment under section 10 is two years from the end of the financial year in which notice under section 10(1) is issued by the Assessing Officer.

An order of fresh assessment in pursuance of an order passed under section 18 setting aside or cancelling an assessment may be made at any time before the expiry of 2 years from the end of the financial year in which the order under section 18 is received by the Principal Commissioner or Commissioner.

- (b) **Non-applicability of the two-year time limit** – The time limit of two years would not apply in respect of the assessment or reassessment made in the consequence of, or to give effect to, **any finding or direction contained in the order of any appellate authority or a court** in a proceeding otherwise than by way of appeal.

Such assessment may be completed at any time before the expiry of two years from the end of the financial year in which such order is received by the Principal Commissioner or Commissioner.



- (c) **Exclusion of specified time period** - The time taken in reopening the whole or any part of the proceeding, the period during which the assessment proceeding is stayed by an order or injunction of any court or the period commencing from the date on which a reference or the first of the references for exchange of information is made by the competent authority (with reference to section 90/90A of the Income-tax Act, 1961 or under section 73 of this Act) and ending with the date on which the information requested is last received or a period of one year, whichever is less, shall be excluded in computing the period of limitation.

If, after exclusion of such time period, the period of limitation available to the Assessing Officer for making an assessment order is less than 60 days, **the period of limitation shall be deemed to be extended to 60 days.**

(vii) **Rectification of mistake [Section 12]**

- (a) **Rectification of a mistake apparent from the record** – Any order passed by the tax authority can be amended by it to rectify any mistake apparent from the record.
- (b) **Time period for rectification** – A **four year time period** has been prescribed and the same has to be reckoned from the end of the financial year in which the order sought to be amended was passed.

- (c) **Opportunity of being heard** – Any amendment which has the effect of enhancing the undisclosed foreign income and asset or reducing a refund or otherwise increasing the liability of the assessee cannot be made without giving the assessee an opportunity of being heard.
 - (d) **Time limit for deciding an application** – Where a tax authority receives an application from the assessee or the Assessing Officer for amendment of an order, the time limit within which such application has to be decided is **six months from the end of the month in which the application is received by it**. The tax authority may also make an amendment on its own motion.
 - (e) **Rectification of an order which is a subject matter of appeal or revision** – In such a case, the power of the tax authority to amend the order would be restricted to matters other than those decided in appeal or revision.
- (viii) **Notice of Demand [Section 13]**
- (a) Service of notice of demand upon the assessee in the prescribed form and manner would be mandatory for a tax authority to demand any sum payable in consequence of an order made under this Act.
 - (b) Rule 5 provides that where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, the Assessing Officer shall serve upon the assessee a notice of demand in Form 1 specifying the sum so payable.
- (ix) **No bar on Direct Assessment or Recovery [Section 14]**
- The following are not barred by any provision in Chapter III of this Act:
- (a) Direct assessment of the person on whose behalf or for whose benefit the undisclosed income from a source located outside India is receivable or undisclosed asset located outside India is held.
 - (b) Recovery of the tax or any other sum of money payable in respect of such income and asset from such person.
- (x) **Appeal to Commissioner (Appeals) [Section 15]**
- (a) **Who can file an appeal?** - The Act provides for appeal to Commissioner (Appeals) in the prescribed form [Form 2] and manner by any person who -
 - (1) objects to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or
 - (2) denies his liability to be assessed under this Act; or
 - (3) objects to any penalty imposed by the Assessing Officer; or

- (4) objects to a rectification order enhancing the assessment or reducing the refund; or
- (5) objects to an order refusing to allow the rectification claim made by the assessee.
- (b) **Manner of filing appeal** - Form 2, the grounds of appeal and the form of verification appended thereto relating to an assessee has to be signed and verified by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.
- (c) **Fees** - Every appeal filed under section 15 shall be accompanied by a fee of ₹10,000.
- (d) **Payment of tax, interest and penalty: Pre-condition for filing appeal** - No appeal under section 15(1) shall be admitted unless, at the time of filing of the appeal, the assessee has paid the tax alongwith penalty and interest thereon on the amount of liability which has not been objected to by the assessee.
- (e) **Time limit for filing appeal to Commissioner (Appeals) – 30 days from:**

Circumstance	Date
Where notice of demand relating to an assessment or penalty is served	the date of service of the notice of demand
In any other case	the date on which the intimation of the order sought to be appealed against is served.

- (f) **Extension of time period for filing appeal** – The Commissioner (Appeals) may admit an appeal after the expiry of the 30 day period:
 - (1) if he is satisfied that the appellant had sufficient cause for not presenting it within that period; and
 - (2) the delay in preferring the appeal does not exceed one year.
- (g) **Passing an order** - The Commissioner (Appeals) has to hear and determine the appeal. He may pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty. However, an order enhancing the assessment or penalty cannot be made unless the assessee has been given a reasonable opportunity of being heard.
- (xi) **Powers of Commissioner (Appeals) [Section 17]**
 In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

	Order appealed against	Powers of Commissioner (Appeals)	Restriction on Power of Commissioner (Appeals)
(i)	Order of assessment	Power to confirm, reduce, enhance or annul the assessment;	Power to enhance an assessment or a penalty can be exercised only after giving the appellant an opportunity of being heard.
(ii)	Order imposing penalty	Power to confirm or cancel or vary such order either to enhance or reduce the penalty ;	
(iii)	Order, other than (i) and (ii) above	Power to determine the issues arising in the appeal and pass such orders thereon, as he thinks fit	

Note – (1) *The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer*

(2) *In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.*

(xii) **Appeal to Appellate Tribunal [Section 18]**

(a) **Who can file an appeal?** - The following persons can make an appeal to the Appellate Tribunal -

- (1) Any assessee who is aggrieved by an order passed by the Commissioner (Appeals);
- (2) Any assessee who is aggrieved by an order passed by the Principal Commissioner or Commissioner under any provision of the Act;
- (3) The Assessing Officer, on a direction received from the Principal Commissioner or Commissioner objecting to any order passed by the Commissioner (Appeals).

(b) **Time limit for filing an appeal** - The appeal has to be filed within **60 days** from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or the Commissioner, as the case may be.

(c) **Memorandum of Cross Objections** - The Assessing Officer or the assessee can file a memorandum of cross objections, within **30 days** of receipt of notice that an appeal against the order of Commissioner (Appeals) has been preferred by the other party. The memorandum can be filed against any part of the order of the Commissioner (Appeals). Such memorandum has to be disposed of by the Appellate Tribunal as if it were an appeal presented within the 60 day time period.

- (d) **Extension of time period for filing an appeal or Memorandum of Cross Objections** – The Appellate Tribunal may admit an appeal or permit the filing of memorandum of cross objections after the expiry of the prescribed period mentioned in (b) and (c) above if –

- (1) it is satisfied that there was sufficient cause for not presenting it within that period; and
- (2) the delay in filing the appeal does not exceed a period of one year.

- (e) **Prescribed Form [Rule 7]**

Form of Appeal [Rule 7(1)] - An appeal to the Appellate Tribunal has to be made in **Form 3**. Where the appeal is made by the assessee, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.

Form of Memorandum of Cross Objections [Rule 7(2)] - The memorandum of cross-objections to the Appellate Tribunal has to be made in **Form 4**. Where the memorandum of cross objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross- objections and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.

- (f) **Fees [Rule 7(3)]** - Every appeal filed by the assessee to the Appellate Tribunal has to be accompanied by a fee of **₹ 25,000**.

- (xiii) **Appeal to High Court [Section 19]**

- (a) **Substantial question of law** - An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.
- (b) **Time limit for filing appeal** - The time limit for filing an appeal is **120 days** from the date on which the order appealed against is received by the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/ Commissioner/ assessee. The appeal shall be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved
- (c) **Extension of time for filing appeal** - The High Court may admit an appeal after the expiry of the 120 day period, if it is satisfied that there was sufficient cause for not filing an appeal within that period.

- (d) **Applicability of the Code of Civil Procedure, 1908** - The provisions of Code of Civil Procedure, 1908, relating to appeals to the High Court shall, so far as may be, apply in the case of appeals under this section.
- (xiv) **Appeal to Supreme Court [Section 21]**
- (a) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered under section 19 which the High Court certifies to be fit case for appeal to the Supreme Court.
- (b) The provisions of the **Code of Civil Procedure, 1908**, relating to appeals to the Supreme Court shall, so far as may be, apply in case of appeal to the Supreme Court under this Act as they apply in the case of appeals from decrees of a High Court.

Summary of significant Appellate Provisions

Particulars	Appellate Authority		
	Commissioner (Appeals)	Appellate Tribunal	High Court
Form of Appeal	Form 2	Form 3	Memorandum of appeal stating the substantial question of law
Fees	₹10,000	₹ 25,000 (where appeal is filed by the assessee)	As per the High Court Rules of the respective State/Court Fees Act, 1870.
Time period for filing appeal	30 days of service of notice of demand relating to an assessment or penalty or in any other case, 30 days from the date on which the intimation of the order sought to be appealed against is served.	60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or the Commissioner	120 days from the date on which the order appealed against is received by the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner/assessee
Extension of time period for filing appeal	Permitted	Permitted	Permitted
Permissible Reasons for extension	The Commissioner (Appeals) should be satisfied that the	The Appellate Tribunal should be satisfied that there	The High Court should be satisfied that there was sufficient cause for not

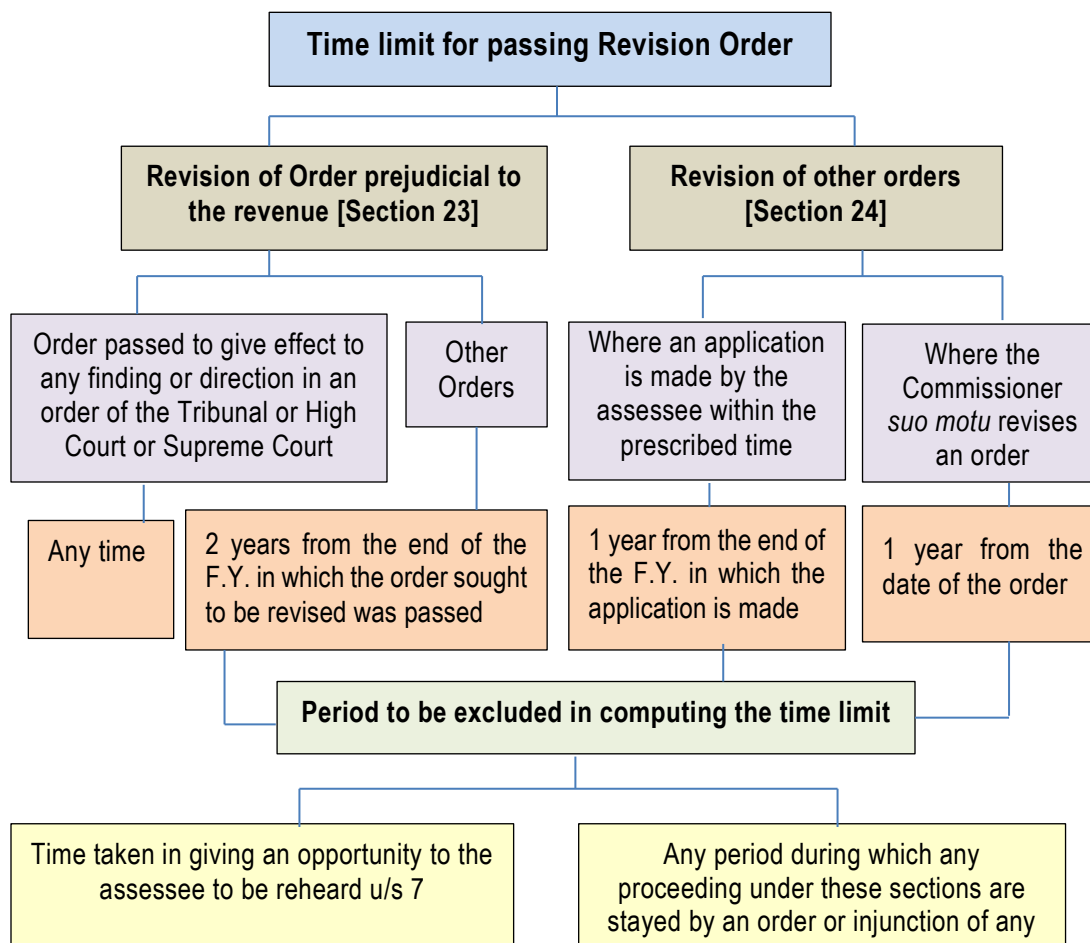
	appellant had sufficient cause for not presenting it within that period; and the delay in preferring the appeal does not exceed one year	was sufficient cause for not presenting it within that period; and the delay in filing the appeal does not exceed a period of one year.	filing an appeal within that period.
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(xv) **Revision of orders prejudicial to revenue [Section 23]**

- (a) **Examination of “record”** - The Principal Commissioner/Commissioner may call for and examine all available records for the purpose of revising any order passed in any proceeding under this Act by a tax authority subordinate to him. For this purpose, “record” shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or the Commissioner.
- (b) **Opportunity of being heard to be given to the assessee before passing a revision order** - If he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard, pass a revision order
- (c) **Making inquiry before passing revision order** - The Principal Commissioner or the Commissioner may make, or cause to be made, such inquiry as he considers necessary for the purposes of passing the order.
- (d) **Revision order cannot cancel assessment or direct fresh assessment** - The revision order passed by the Principal Commissioner or Commissioner may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.
- (e) **Revision of matter not considered and decided in appeal** - The power of the Principal Commissioner or the Commissioner for revising an order shall extend to such matters as have not been considered and decided in any appeal.
- (f) **Time limit** - A revision order cannot be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed. An order in revision under this section may, however, be passed at any time in respect of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.
- (g) **Period to be excluded in determining the time limit** - In computing the above period of limitation, the following shall not be included, namely:—

- (1) the time taken in giving an opportunity to the assessee to be reheard under section 7; or
 - (2) any period during which any proceeding under this section is stayed by an order or injunction of any court.
- (h) **Circumstances when an order shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue** - Without prejudice to the generality of the foregoing provisions, an order passed by a tax authority 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 the Commissioner—
 - (1) the order is passed without making inquiries or verification which should have been made; or
 - (2) the order has not been made in accordance with any order, direction or instruction issued by the Board; or
 - (3) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person under this Act or the Income-tax Act
- (xvi) **Revision of other orders [Section 24]**
 - (a) **Revision of other orders suo motu by the Principal Commissioner/ Commissioner or on an application made by the assessee** - The Principal Commissioner/Commissioner may, either on his own motion or on an application made by the assessee, for the purposes of revising any order passed by an authority subordinate to him, other than an order prejudicial to revenue to which section 23 applies, call for and examine all available records relating thereto.
 - (b) **Revision Order not to be prejudicial to assessee** - The Principal Commissioner or the Commissioner may pass an order, as he considers necessary, which is not prejudicial to the assessee. An order by the Principal Commissioner or the Commissioner declining to interfere shall, however, be deemed **not** to be an order prejudicial to the assessee for the purposes of this section.
 - (c) **Orders which cannot be revised** - Such power of the Principal Commissioner or the Commissioner to revise an order would **not** extend to such order—
 - (1) against which an appeal has not been filed but the time for filing an appeal before the Commissioner (Appeals) has not expired;
 - (2) against which an appeal is pending before the Commissioner (Appeals); or
 - (3) which has been considered and decided in any appeal

- (d) **Time limit for application for revision by assessee** - The assessee has to make the application for revision of any order, within a period of **one year** from the date on which the order sought to be revised was communicated to him, or the date on which he otherwise came to know of it, whichever is earlier.
- (e) **Extension of time limit for making an application** - If the Principal Commissioner or the Commissioner is satisfied that the assessee was prevented by sufficient cause from making an application within the period of one year, he may admit the application made after the expiry of one year but before expiry of **two years** from the date on which the order sought to be revised was communicated to the assessee, or the date on which the assessee otherwise came to know of it, whichever is earlier.
- (f) **Fees** - Every application by an assessee for revision under this section shall be accompanied by such fees as may be prescribed.
- (g) **Time limit for passing Revision Order** - No Revision order under this section shall be made after the expiry of—
- (1) a period of **one year** from the end of the financial year in which an **application is made** by the assessee or
 - (2) a period of **one year** from the **date of the order** sought to be revised, if the order is revised *suo motu* by the Commissioner.
- (h) **Period to be excluded in computing the time limit** - The following period shall not be included, namely:—
- (1) the time taken in giving an opportunity to the assessee to be reheard under section 7; or
 - (2) any period during which any proceeding under this section is stayed by an order or injunction of any court.



(xvii) **Tax to be paid pending appeal** – The tax has to be paid in accordance with the assessment made under this Act, irrespective of any appeal being preferred to the High Court or the Supreme Court

(xviii) **Recovery of Tax Dues [Sections 30 to 40]**

- (a) **Recovery of tax dues by Assessing Officer [Section 30]** – The time period of payment of dues specified in the notice of demand to the credit of the Central Government is 30 days from the service of notice of demand. The period may be reduced by the Assessing Officer, with the previous approval of the Joint Commissioner, if he has reason to believe that allowing 30 day period is detrimental to the interests of revenue. An application for extension of time period or allowing payment by installments may be entertained by the Assessing Officer before the expiry of the 30 day period or the period reduced, subject to such conditions as he may think fit to impose. An assessee shall be deemed as an assessee-in-default for failure to pay tax arrears within such specified period.

- (b) **Recovery of tax dues by Tax Recovery Officer [Section 31]** - The Tax Recovery Officer may draw up under his signature a statement of tax arrears of the assessee in the prescribed form [Form 5]. He has the power to rectify any mistake apparent from the record and the power to extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose.
- (c) **Modes of recovery of tax dues [Section 32]** – The modes of recovery of tax arrears, such as deduction by employer from payment to the assessee, recovery from the debtor of the assessee have been provided.
- (d) **Tax Recovery Officer by whom recovery of tax dues is to be effected [Section 33]** – The Tax Recovery Officer, within whose jurisdiction the assessee carries on business or the principal place of business of the assessee is situated or the assessee resides or any movable or immovable property of the assessee is situated would be the Tax Recovery Officer competent to recover tax dues of the assessee.
- (e) **Recovery of tax dues in case of a company in liquidation [Section 34]** – The liquidator has to inform the Assessing Officer, who has jurisdiction to assess the undisclosed foreign income and asset of the company, of his appointment within a period of thirty days of his becoming the liquidator. Within a period of three months from the date of receipt of such information, the Assessing Officer has to intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Act.
- (f) **Liability of manager of a company [Section 35]** – Every person being a manager at any time during the financial year would be jointly and severally liable for the payment of any amount due under this Act in respect of the company for the financial year, if the amount cannot be recovered from the company. However, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, he would not be so liable.
- (g) **Joint and several liability of participants [Section 36]** – Every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Act. In case of a limited liability partnership, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership, he would not be so liable.

Meaning of participant [Section 2(7)]

In relation to	Participant
A firm	a partner thereof
An AOP/BOI	a member thereof

- (h) **Recovery through State Government [Section 37]** – If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax has to be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the manner as the municipal tax or local rate is recovered.

Note – As per article 258(1) in the Constitution of India, the President may, with the consent of the Governor of a State, entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends, notwithstanding anything in the Constitution

- (i) **Recovery of tax dues in pursuance of agreements with foreign countries or specified territory [Section 38]**

- (1) The Tax Recovery Officer may, in a case where an assessee has property in a country or a specified territory outside India, forward a certificate to the CBDT for recovery of the tax arrears from the assessee, where the Central Government or any specified association in India has entered into an agreement with that country or territory under section 90 or section 90A of the Income-tax Act or under section 73(1)/(2)/(4) of this Act, as the case may be, for the purposes of recovery of tax.
- (2) The CBDT may, on receipt of the certificate from the Tax Recovery Officer, take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country or a specified territory

- (j) **Recovery by suit or under other law not affected [Section 39]** – The modes of recovery in this Chapter would not affect in any manner any other law for the time being in force relating to the recovery of debts due to the Government or the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.

The Assessing Officer or the Government shall have recourse to any such law or suit, notwithstanding that the tax arrears are being recovered from the assessee by any mode specified in this Chapter.

(k) **Interest for default in furnishing return and payment or deferment of advance tax [Section 40]**

- (1) **Interest under section 234A** of the Income-tax Act, 1961 would be attracted for failure to disclose income from a source outside India in the return filed under section 139(1) or failure to furnish return of income under section 139(1) of the Income-tax Act, 1961.
- (2) **Interest under sections 234B and 234C** of the Income-tax Act, 1961 would be attracted for failure to pay advance tax on undisclosed income from a source outside India in accordance with Part C of Chapter XVII of the Income-tax Act, 1961.

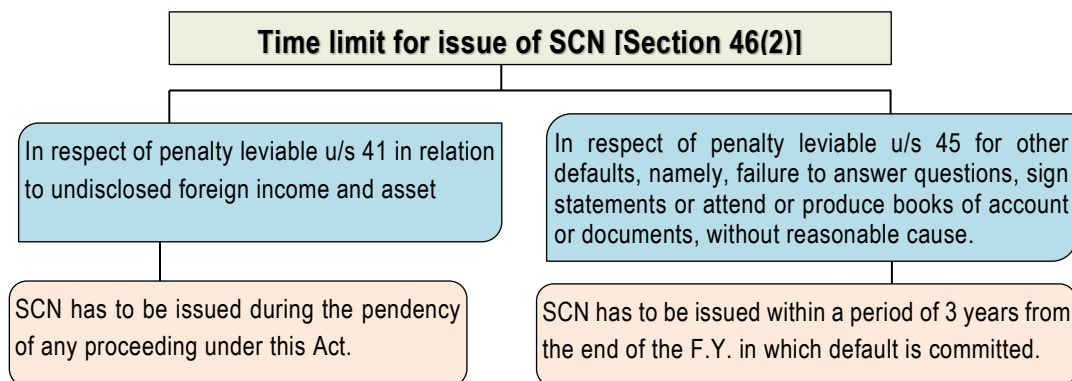


5.4 PENALTIES [CHAPTER IV – SECTIONS 40 TO 47]

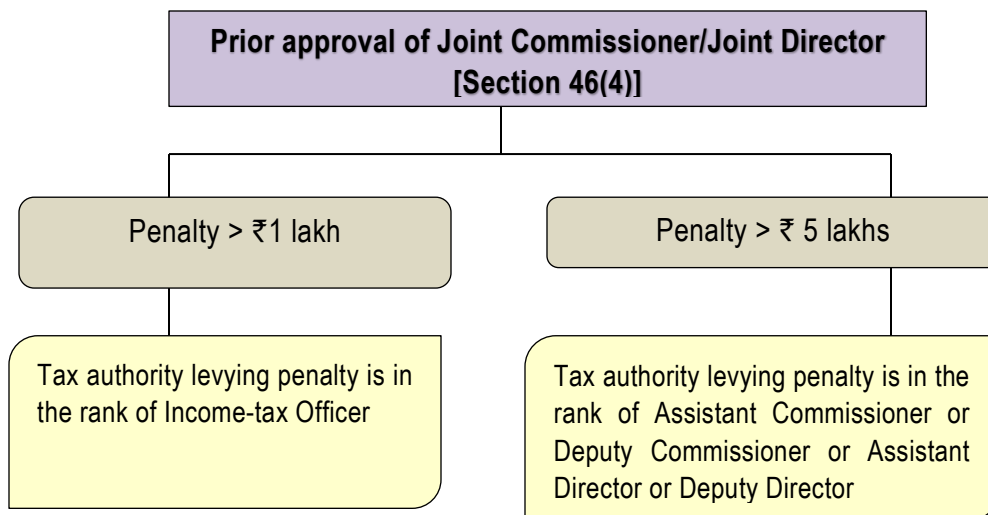
- (i) **Penalty in relation to undisclosed foreign income and asset [Section 41]** - In case, where tax has been computed in respect of undisclosed foreign income and asset, the Assessing Officer may direct the assessee to pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to **three times the tax so computed**.
- (ii) **Penalty for failure to furnish return in relation to foreign income and asset [Section 42]** - Failure to furnish return of income as required under section 139(1) before the end of the relevant assessment year by a person, being a resident other than not ordinarily resident in India, holding any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise or being a beneficiary of any asset (including financial interest in any entity) located outside India or having any income from a source located outside India, would attract penalty of **₹ 10 lakh**.
- (iii) **Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43]** - If such failure is in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India, as a beneficial owner or otherwise, or in respect of which such person was a beneficiary, or if such failure is in relation to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct such person to pay, by way of penalty, a sum of ₹10 lakh..
- (iv) **Non-applicability of penalty under sections 42 & 43 in certain cases [Proviso to sections 42 & 43]** - Such penalty under sections 42 and 43 would, however, not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to ₹5 lakh at any time during the previous year
- (v) **Determination of the value equivalent in rupees of the balance in an account maintained in foreign currency [Explanation to sections 42 & 43]** – For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying

rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the SBI Act, 1955.

- (vi) **Penalty for default in payment of tax arrear [Section 44]** – Penalty equal to the amount of tax arrears is leviable in case of an assessee in default or an assessee deemed to be in default in making payment of tax and in case of continuing default by such assessee. An assessee shall not cease to be liable to any penalty merely by reason of the fact that before levy of such penalty, tax has been paid by him.
- (vii) **Penalty for other defaults [Section 45]** – Penalty of a sum not less than ₹50,000 but extending upto ₹ 2 lakh would be attracted in case a person liable to penalty has, without reasonable cause, failed to -
- answer any question put to him by a tax authority in exercise of his powers under the Act
 - sign any statement made by him in the course of any proceedings under the Act which a tax authority may legally require him to sign
 - attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents at certain place and time in response to summons issued under section 8.
- (viii) **Procedure [Section 46]**
- Issue of show cause notice** - For the purposes of imposing any penalty under Chapter IV, the tax authority has to issue a notice to an assessee requiring him to show cause why the penalty should not be imposed on him
 - Time limit for issue of show cause notice [Section 46(2)]** - The show cause notice (SCN) has to be issued—
 - during the pendency of any proceedings under this Act for the relevant previous year, in respect of penalty referred to in section 41;
 - within a period of three years from the end of the financial year in which the default is committed, in respect of penalties referred to in section 45.



- (c) **Opportunity of being heard to be given to the assessee** - An order imposing a penalty under this Chapter can be made only after giving the assessee an opportunity of being heard.
- (d) **Prior approval of Joint Commissioner or Joint Director** - An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner or Joint Director, if –
- (1) the penalty exceeds ₹1 lakh and the tax authority levying the penalty is in the rank of Income-tax Officer; or
 - (2) the penalty exceeds ₹ 5 lakhs and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director



(ix) **Bar on Limitation for imposing penalty [Section 47]**

- (a) **Time limit for passing penalty order** – An order imposing a penalty under this Chapter cannot be passed after the expiry of a period of **one year** from the end of the financial year in which the notice for imposition of penalty is issued under section 46.
- (b) **Revision or revival of penalty order** - An order imposing, or dropping the proceedings for imposition of, penalty under Chapter IV may be revised, or revived, as the case may be, on the basis of assessment of the undisclosed foreign income and asset as revised after giving effect to the order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court or order of revision under section 23 or section 24.
- (c) **Time limit for revision or revival of penalty order** - An order revising or reviving the penalty cannot be passed after the expiry of a period of **six months** from the end of

the month in which order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the order of revision under section 23 or section 24 is passed.

- (d) **Period to be excluded while computing the period of limitation** - In computing the period of limitation for the purposes of this section, the following time or period shall not be included—
- (1) the time taken in giving an opportunity to the assessee to be reheard under section 7; and
 - (2) any period during which a proceeding under Chapter IV for the levy of penalty is stayed by an order, or injunction, of any court

Summary of Penal Provisions contained in Chapter IV

Section	Failure/Default	Quantum of penalty
41	Where tax has been computed in relation to undisclosed foreign income and asset	In addition to tax, a sum equal to three times the tax so computed.
42	Failure to furnish return in relation to foreign income and asset	₹ 10 lakh
43	Failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India	₹ 10 lakh
44	Default in payment of tax arrear	Amount equal to the amount of tax arrears
45	Failure, without reasonable cause, to answer any question put to him by a tax authority or to sign any statement made by him in the course of any proceedings under the Act or to attend or produce books of account or documents at the place or time in response to summons issued under section 8	₹ 50,000 to ₹ 2 lakh



5.5 OFFENCES AND PROSECUTION [CHAPTER V]

- (i) **Provisions of Chapter V not in derogation of any other law or any other provision of the Act [Section 48]** – The provisions relating to offences and prosecution contained in Chapter V are in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences thereunder. Further, the provisions of Chapter V to be independent of any order under this Act that may be made, or has not been made, on any

person. Also, it shall not be a defence that the order has not been made on account of time limitation or for any other reason.

- (ii) **Punishment for failure to furnish return in relation to foreign income and asset [Section 49]** – Willful failure to furnish return required to be furnished under section 139(1) of the Income-tax Act, 1961 in due time, by a person, being a resident other than not ordinarily resident in India, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India, would be punishable with rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine. However, prosecution would not be attracted if he furnishes such return before the expiry of the assessment year.**
- (iii) **Punishment for failure to furnish information about an asset located outside India in the return of income [Section 50]** - If such failure in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India, as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or if such failure in relation to any income from a source located outside India, at any time during such previous year, is willful, the punishment would be rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine.**
- (iv) **Punishment for willful attempt to evade tax [Section 51]** – Willful attempt to evade any tax, penalty or interest under this Act by a person, being a resident other than not ordinarily resident in India, is punishable with rigorous imprisonment for a term **not less than three years but extending to ten years and with fine.**

Willful attempt to evade payment of any tax, penalty or interest under the Act, is punishable with rigorous imprisonment for a term **not less than three months but extending upto three years** and also a fine, in the discretion of the Court.

Meaning of willful attempt to evade tax, penalty or interest

A willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof includes a case where any person—

- (1) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
- (2) makes or causes to be made any false entry or statement in such books of account or other documents; or
- (3) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

- (4) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.
- (v) **Punishment for false statement in verification [Section 52]** – If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term **not less than six months but extending to seven years and with fine**.
- (vi) **Punishment for abetment [Section 53]** – Rigorous imprisonment for a term **not less than six months but extending to seven years and fine** would be attracted for abetment to make and deliver an account or statement or declaration relating to tax payable under this Act which is false or to commit an offence under section 51(1).
- (vii) **Presumption as to culpable mental state [Section 54]** – In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. However, it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. “Culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. For this purpose, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability
- (viii) **Prosecution to be at instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner. [Section 55]** - A person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be. The Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General may issue such instructions, or directions, to the tax authorities as he may think fit for the institution of proceedings under this section.
- (ix) **Offences by companies [Section 56]** -
- (a) **Persons incharge at the time when offence was committed deemed guilty of offence** - Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence and would be liable to be proceeded against and punished accordingly. If, however, such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he would not be deemed guilty of the offence

- (b) **Director/manager/secretary/officer of company deemed guilty of offence committed with their consent or connivance** - Where an offence under this Act has been committed by a company 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.
- (c) **Fine and imprisonment** - 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, such company shall be punished with fine. Further, every person, referred to in (a), or the director, manager, secretary or other officer of the company referred to in (b), would be proceeded against and punished in accordance with the provisions of this Act.
- (d) **Meaning of certain terms for this section**

	Term	Meaning																		
(1)	Company	Means a body corporate. Includes — (i) an unincorporated body (i.e., a firm, AOP or BOI); (ii) a Hindu undivided family.																		
(2)	Director	<table> <tr> <th></th><th>In relation to</th><th>Meaning of Director</th></tr> <tr> <td>(i)</td><td>A firm</td><td>A partner in the firm</td></tr> <tr> <td>(ii)</td><td>An AOP/BOI</td><td>A member of the AOP/BOI</td></tr> <tr> <td>(iii)</td><td>A HUF</td><td>an adult member of the family</td></tr> <tr> <td>(iv)</td><td>A company</td><td>a whole-time director</td></tr> <tr> <td>(v)</td><td>A company not having a whole-time director</td><td>any other director or manager or officer, who is in charge of the affairs of the company</td></tr> </table>		In relation to	Meaning of Director	(i)	A firm	A partner in the firm	(ii)	An AOP/BOI	A member of the AOP/BOI	(iii)	A HUF	an adult member of the family	(iv)	A company	a whole-time director	(v)	A company not having a whole-time director	any other director or manager or officer, who is in charge of the affairs of the company
	In relation to	Meaning of Director																		
(i)	A firm	A partner in the firm																		
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(iii)	A HUF	an adult member of the family																		
(iv)	A company	a whole-time director																		
(v)	A company not having a whole-time director	any other director or manager or officer, who is in charge of the affairs of the company																		

(x) **Proof of entries in records or documents [Section 57]**

The entries in the records, or other documents, in the custody of a tax authority are admissible in evidence in any proceeding for the prosecution of any person for an offence under Chapter V of this Act. These entries may be proved by the production of –

- (a) the records or other documents (containing such entries) in the custody of the tax authority; or
- (b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

(xi) Punishment for second and subsequent offences [Section 58]

If any person convicted of an offence under section 49 to section 53 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term of three to ten years and with fine ranging from ₹ 5 lakh to ₹ 1 crore.

(xii) Summary of Prosecution Provisions in Chapter V

Section	Offence	Punishment
49	Willful failure to furnish return in relation to foreign income and asset (including financial interest in any entity) before the expiry of the assessment year by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years (+) Fine
50	Willful failure to furnish in the return of income, any information about an asset (including financial interest in any entity) located outside India by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years (+) Fine
51(1)	Willful attempt to evade any tax, penalty or interest chargeable or imposable under the Act by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 3 to 10 years (+) Fine
51(2)	Willful attempt to evade payment of any tax, penalty or interest under the Act by any person	Rigorous Imprisonment: 3 months to 3 years (+) Fine, at the discretion of the court.
52	Making false statement in verification or delivering an account of statement which is false knowingly	Rigorous Imprisonment: 6 months to 7 years (+) Fine
53	Abetting or inducing a person to make or deliver a false statement, account or	Rigorous Imprisonment: 6 months to 7 years

	declaration knowingly or to commit an offence u/s 51(1)	(+) Fine
58	Second and subsequent offence	Rigorous Imprisonment: 3 to 10 years (+) Fine: ₹ 5 lakh to ₹1 crore.



5.6 GENERAL PROVISIONS [CHAPTER VII]

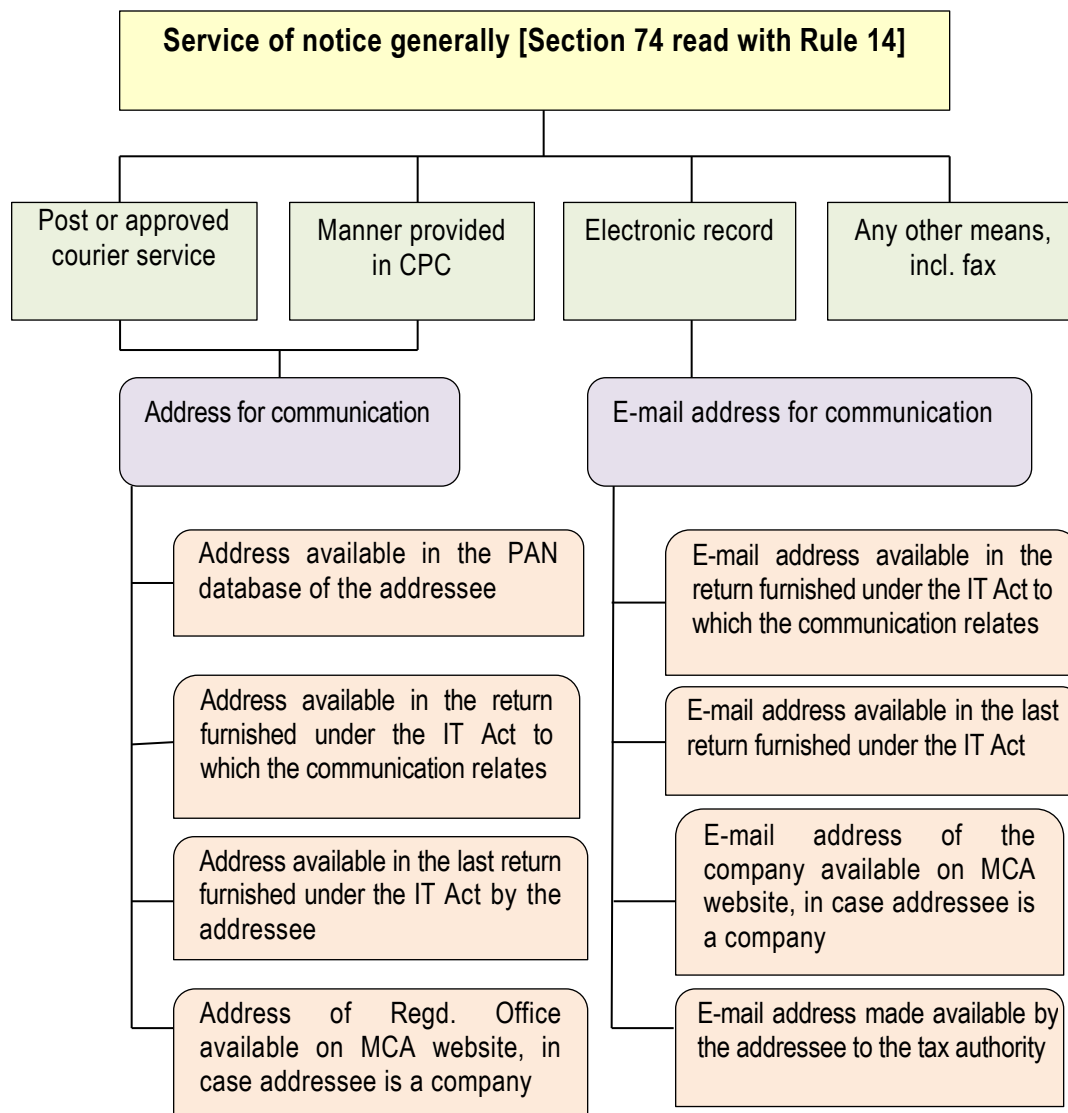
- (i) **Agreement with foreign countries or specified territories [Section 73]** - The Central Government may enter into an agreement with the Government of any other country or specified territory outside India for the purposes mentioned in (a) and (b) below. Also, any specified association in India may enter into an agreement with any specified association in the specified territory outside India for such purposes:

- (a) Exchange of information for prevention of evasion or avoidance of tax on undisclosed foreign income chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance.
- (b) Recovery of tax under this Act and under the corresponding law in force in that country.

The Central Government is empowered to notify such provisions as may be necessary for implementing such agreements entered into by it. Also, it is empowered to notify such provisions as may be necessary for adopting and implementing such agreements entered into by any specified association in India.

Terms used but not defined in this Act or in such agreements would have the meaning assigned in the notification issued by the Central Government, provided such meaning is not inconsistent with the provisions of the Act or the agreement or such term is not required to have any other meaning in the given context. The meaning assigned in the notification would be deemed to be effective from the date on which such agreement comes into force.

- (ii) **Service of notice** – Any notice, summons, requisition, order or any other communication under this Act may be served by delivering or transmitting a copy thereof by post or approved courier service or in such manner as provided under the Code of Civil Procedure, 1908 (CPC) for service of summons or in the form of electronic record or by other means of transmission of documents, including fax message or electronic mail message as may be prescribed.



Note - In case of service of notice by post or approved courier service or in the manner provided in CPC, where the addressee furnishes in writing communication to the tax authority or any person authorised by such authority issuing the communication, the communication should not be sent to the any of the addresses mentioned above.

- (iii) **Authentication of notices and other documents [Section 75]** - Every notice or other document required to be issued, served or given for the purposes of this Act by any tax authority shall be authenticated by that tax authority and the same shall be deemed to be authenticated, if the name and office of a designated tax authority is printed, stamped and otherwise written thereon. The designated tax authority means any tax authority authorised by the CBDT to issue, serve or give such notice or other document after such authentication.

- (iv) **Notice deemed to be valid in certain circumstances [Section 76]** - The notice shall be deemed to be duly served upon a person, if the person has appeared in any proceeding or co-operated in any enquiry relating to assessment. Such person cannot take any objection in any proceeding or inquiry under the Act that the notice was not served upon him or was not served upon him in time or was served upon him in an improper manner. Notice shall, however, not be deemed to have been served if the person has raised the objection before the completion of an assessment.
- (v) **Appearance by approved valuer in certain matters or authorized representative [Sections 77 & 78]** - Any assessee who is entitled or required to attend before any tax authority or Appellate Tribunal in connection with any proceeding under this Act may do so through an authorised representative. In the case of any matter relating to valuation of any asset, he may attend through a valuer as approved by Principal Commissioner or Commissioner in accordance with the prescribed Rules. However, the said provision would not apply in a case, where assessee is required to attend personally for examination on oath or affirmation under section 8.

Meaning of Authorised Representative:

- (a) a person related to the assessee in any manner, or a person regularly employed by the assessee;
- (b) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;
- (c) any legal practitioner who is entitled to practice in any civil court in India;
- (d) an accountant;
- (e) any person who has passed any accountancy examination recognised in this behalf by the CBDT; or
- (f) any person who has acquired a degree in Commerce or Law conferred by any Indian University incorporated by any law for the time being in force or certain prescribed foreign universities.

- (vi) **Rounding off of income, value of asset and tax [Section 79]** - The amount of undisclosed foreign income and assets shall be rounded off to the nearest multiple of one hundred rupees. The amount payable or receivable by the assessee under this Act shall be rounded off to the nearest multiple of ten rupees. For this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.
- (vii) **Cognizance of offences [Section 80]** - A court inferior to that of a metropolitan magistrate or a magistrate of First Class cannot try any offence under this Act.

- (viii) **Assessment not to be invalid on certain grounds [Section 81]** - An assessment, notice, summons or other proceeding under this Act shall not be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings if such assessment, notice, summons or other proceeding is in substance and effect, in conformity with the intent and purpose of this Act.
- (ix) **Bar of suits in civil courts [Section 82]** – No suit shall be brought in any civil court to set aside or modify any proceeding or order under this Act. Further, no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government, for anything done or intended to be done in good faith under this Act.
- (x) **Income-tax papers to be available for the purposes of this Act [Section 83]** – All information contained in any statement or return furnished under Income-tax Act or obtained or collected for the purposes of that Act may be used for the purpose of this Act.
- (xi) **Certain provisions of the Income-tax Act to apply to this Act [Section 84]** – The same will apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income-tax.

Section	Provision
119	Instructions to subordinate authorities
133	Power to call for information
134	Power to inspect registers of companies
135	Power of Principal Director General or Director General or Principal Director or Director, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Joint Commissioner to make an enquiry
138	Disclosure of information respecting assessee
144A¹	<i>Power of Joint Commissioner to issue directions in certain cases</i>
237	Refunds
240	Refund on appeal, etc.
245	Set off of refunds against tax remaining payable
280	Disclosure of particulars by public servants
280A	Special Courts
280B	Offences triable by Special Court

¹ With effect from 1.9.2019

280D	Application of Code of Criminal Procedure, 1973 to proceedings before Special Court
281	Certain transfers to be void
281B	Provisional attachment to protect revenue in certain cases
284	Service of notice in the case of discontinued business
Chapter XV	Liability in special cases – Firms, AOPs and BOIs.

- (xii) **Power to make Rules [Section 86]** – The CBDT may, with the approval of the Central Government, notify Rules to carry out the provisions of this Act. The power to make rules conferred by this section includes the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act. However, a retrospective effect should not be given to any rule so as to prejudicially affect the interest of assesseees.

Every rule made under this Act has to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions. If, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment would be without prejudice to the validity of anything previously done under that rule.

- (xiii) **Power to remove difficulties [Section 86]** – The Central Government may, by order not inconsistent with the provisions of the Act, remove any difficulty arising in giving effect to the provisions of this Act. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act came into force. Every such order shall be laid before each House of the Parliament.

- (xiv) **Amendment of PMLA [Section 88]** – The Prevention of Money Laundering Act (PMLA), 2002 has been amended to include offence of willful attempt to evade any tax, penalty or interest referred to in section 51 under this legislation as a scheduled offence under PMLA.

Note: Students are advised to read the *Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [As amended by the Finance (No.2) Act, 2019]* and the *Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015* available at the website of the Income-tax Department, Government of India, www.incometaxindia.gov.in