CHAPTER 19

PROVISIONS TO COUNTERACT UNETHICAL TAX PRACTICES



LEARNING OUTCOMES

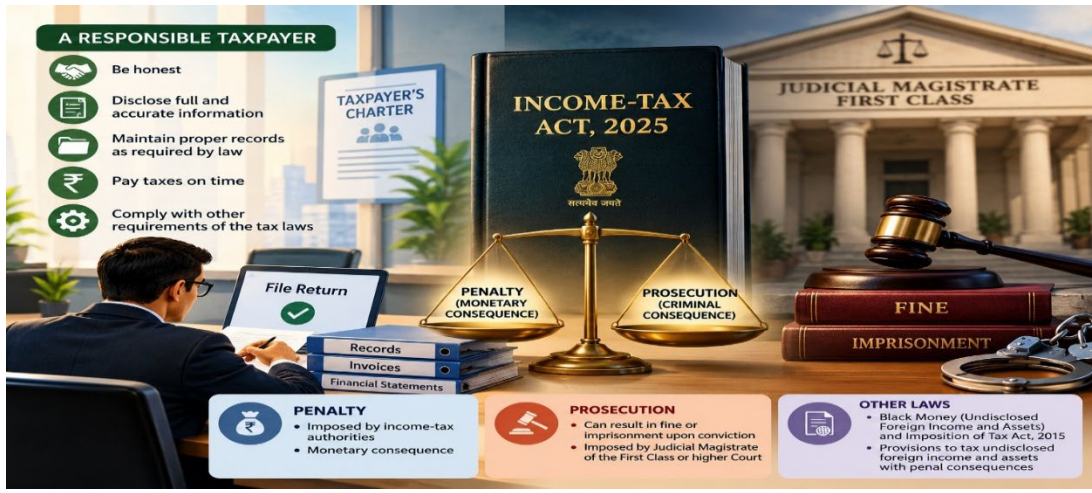
After studying this chapter, you would be able to -

- **identify and examine** the cases where penalty is leviable and **determine** the quantum of penalty for defaults under various provisions of the Income-tax Act, 2025;
- **list** the conditions to be fulfilled by an assessee for making an application for grant of immunity from penalty and prosecution and the time limit for making such application;
- **appreciate** the powers of the Commissioner to waive penalty in certain cases or grant immunity from penalty in certain cases;
- **comprehend** the procedure to be complied with for imposing penalty under the Act;
- **recall** the limitation period, beyond which penalty cannot be imposed;
- **appreciate** the provisions of Income-tax law relating to offences and prosecution;
- **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.

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CHAPTER OVERVIEW

Penal provisions [Sections 439 to 472] | Offences and Prosecution [Sections 473 to 494] | Black Money Law



19.1 INTRODUCTION

As per the Taxpayers' Charter, a taxpayer is expected to be honest, disclose complete and accurate information, maintain proper records as required by law, pay taxes on time and comply with other requirements of the tax laws. Where a taxpayer fails to comply with these requirements or indulges in unlawful activities, the Income-tax Act, 2025 provides for appropriate penal consequences.

The Income-tax Act, 2025 contains provisions relating to **penalty as well as prosecution** to ensure effective enforcement of the tax laws and to deter tax evasion and other serious defaults. While penalty generally results in a monetary consequence, prosecution may result in criminal proceedings and punishment for specified offences.

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Penalty may be imposed by the income-tax authorities in accordance with the relevant provisions of the Act. However, a fine or punishment upon conviction for an offence under the Act can be imposed only by the **Judicial Magistrate of the First Class or a higher Court**, in accordance with the provisions relating to prosecution.

The Income-tax Act, 2025 also adopts a **more proportionate approach towards penal consequences**, with greater emphasis on monetary consequences for specified defaults and prosecution being retained for serious offences. Certain offences have been decriminalised, while the prosecution provisions have been rationalised to provide graded consequences depending, among other factors, on the nature and seriousness of the default.

Penalty and prosecution operate as distinct consequences, and, where specifically permitted by law, the same default may attract both penalty and prosecution.

In addition to the provisions under the Income-tax Act, 2025, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 contains provisions for taxation and penal consequences in respect of undisclosed foreign income and assets. Together, these provisions provide a framework for ensuring compliance with tax laws and addressing serious instances of non-compliance and unlawful tax practices.

19.2 PENAL PROVISIONS UNDER THE INCOME TAX ACT

Penalty is levied in addition to any tax or interest payable by an assessee and is, therefore, distinct from the tax and interest payable. Penalty may be imposed where the conditions prescribed under the relevant provisions of the Act are satisfied.

Before imposing a penalty, the assessee is required to be given a reasonable opportunity of being heard in accordance with the prescribed procedure. The amount of penalty is determined in accordance with the provisions applicable to the relevant default and tax year.

The Income-tax Act, 2025 prescribes the circumstances in which penalty may be imposed and, depending on the nature of the default, provides for a fixed amount, a minimum and maximum amount, or an amount determined with reference to the

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tax or income involved. In certain cases, the competent authority may also reduce or waive the penalty, subject to the prescribed conditions.

Transition of Penalty Proceedings

In respect of a tax year beginning before 1 April 2026, penalty proceedings may continue to be initiated and penalty may be imposed under the repealed Income-tax Act, 1961, as if the Income-tax Act, 2025 had not been enacted [Section 536(2)(d)]. Accordingly, the penalty provisions applicable to earlier tax years should be examined with reference to the repealed Act.

I. PENALTY LEVIABLE FOR UNDER REPORTING OF INCOME [SECTION 439]

(1) Authorities empowered to levy penalty

As per section 439(1), the Competent Authority may, during the course of any proceedings under this Act, impose penalty on any person who has under-reported his income and such penalty shall be payable in addition to tax, if any.

Under reporting of income

"**Competent Authority**" means the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner.

(2) Cases of under-reporting of income [Section 439(2)]

A person shall be considered to have under reported his income if, **A > B** in the cases given hereunder–

is greater than

	Case	(A)	(B)
(i)	Return of income has been filed	Income assessed	Income determined in the return processed u/s 270(1)(a);

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(ii)	No return of income has been filed or where return is furnished for the first-time u/s 280	Income assessed	Maximum Amount not chargeable to tax
(iii)	Reassessment	Income reassessed	Income assessed or reassessed immediately before such reassessment
(iv)	Return of income has been filed and assessment/ reassess-ment is made on the basis of MAT/AMT provisions	The amount of deemed total income assessed or reassessed as per the provisions of section 206(1) or 206(2)	The deemed total income determined in the return processed u/s 270(1)(a)
(v)	No return of income is filed or where return has been furnished for the first time u/s 280 and assessment/ reassessment is made on the basis of MAT/ AMT provisions	the amount of deemed total income assessed as per the provisions of section 206(1) or 206(2)	The maximum amount not chargeable to tax, in case of an assessee being an individual, HUF, AOP, BOI, in respect of whom the provisions of AMT are applicable.
(vi)	Reassessment as per the provisions of sections 206(1) or 206(2)	The amount of deemed total income reassessed as per the provisions of sections 206(1) or 206(2)	The deemed total income assessed or reassessed immediately before such reassessment.
Further, a person would be considered to have under-reported his income if the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.			

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(3) Calculation of under-reported income in different scenarios [Section 439(3)]

<table>
<tr><th></th><th>Case</th><th>Manner of computation of under-reported income</th></tr>
<tr><td>(i)</td><td>Where return is furnished and assessment is made for the first time.</td><td>Assessed income
(-)
Income determined under section 270(1)(a)
[in case of all persons]</td></tr>
<tr><td>(ii)</td><td>Where no return has been furnished or where return has been furnished for the first time u/s 280 and the assessment is made for the first time</td><td>
<table>
<tr><th>Person</th><th>Under-reported income</th></tr>
<tr><td>Company, firm or local authority</td><td>Assessed income</td></tr>
<tr><td>Other persons</td><td>Assessed income
(-)
Basic exemption limit (Maximum amount not chargeable to Tax)</td></tr>
</table>
</td></tr>
<tr><td>(iii)</td><td>Where income is not assessed for the first time</td><td>Income reassessed or recomputed
(-)
Income assessed or reassessed or recomputed in the order immediately preceding the order during the course of which penalty u/s 439(1) has been initiated.</td></tr>
<tr><td>(iv)</td><td>Where under reported income arises out of determination of deemed total income as per section 206(1) or section 206(2)</td><td>(A - B) + (C - D)
where,
A = Total income assessed as per the general provisions i.e., provisions other than the provisions contained in section 206(1) or section 206(2);
B = The total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;
C = The total income assessed as per the provisions contained in section 206(1) or section 206(2);</td></tr>
</table>

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		D = The total income that would have been chargeable had the total income assessed as per the provisions contained in section 206(1) or section 206(2) been reduced by the amount of under reported income. However, where the amount of under reported income on any issue is considered both under the provisions contained in section 206(1) or section 206(2) and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.
(v)	Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The loss claimed **(-)** The income or loss, assessed or reassessed.

(4) Meaning of Under-reported income in a case where the source of any receipt, deposit or investment is linked to an earlier year [Section 439(6) & (7)]

In a case where the source of any receipt, deposit or investment appearing in the current tax year is claimed to be an amount added to income or deducted while computing loss, in the assessment of such person in any year prior to the tax year in which such receipt, deposit or investment appears (being a preceding year) and no penalty was levied for such preceding year, under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Note – Such amount shall be deemed to be the amount of income under-reported for the preceding year in the following order –

(i)	the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
(ii)	Where the amount added or deducted in the Tax Year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

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(5) Cases not included within the scope of under-reported income under section 439 [Section 439(8)]

	Case	Condition
(i)	The amount of income in respect of which the assessee offers an explanation	The Competent Authority i.e., Assessing Officer/CIT/PC/ the Joint Commissioner (Appeals) /the Commissioner (Appeals) is satisfied that the explanation is *bona fide* and all the material facts have been disclosed to substantiate the explanation.
(ii)	The amount of under-reported income determined on the basis of an estimate	If the accounts are correct and complete to the satisfaction of the competent authority but the method employed is such that the income cannot properly be deduced therefrom
(iii)	The amount of under-reported income determined on the basis of an estimate	If the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance
(iv)	The amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer	Where the assessee had maintained information and documents as prescribed under section 171, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction

(6) Cases of misreporting of income [Section 439(11)]

(i) misrepresentation or suppression of facts;

(ii) failure to record investments in the books of account;

(iii) claim of expenditure not substantiated by any evidence;



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(iv) recording of any false entry in the books of account;

(v) failure to record any receipt in the books of account having a bearing on total income;

(vi) failure to report any international transaction or deemed international transaction or specified domestic transaction under Chapter X, and

(vii) Income referred to in section 195(1)(b). The income falling under section 195(1)(b) specifically includes unexplained income under section 102 or 103 or 104 or 105 or 106, which is determined by the assessing officer and not reflected in the return of income furnished under section 263.

(7) Quantum of penalty leviable

	Section	Case	Penalty
(i)	439(9)	Under reporting of income	50% of tax payable on under-reported income
(ii)	439(10)	Where under reporting of income is in consequence of any misreporting of income by any person.	200% of tax payable on such under-reported income

(8) Manner of computation of tax payable on under-reported income [Section 439(12)]

	Case	Manner of computation of tax payable on under-reported income
(i)	Where no return of income has been furnished or where return has been furnished for the first time u/s 280 and the income has been assessed for the first time	The tax payable on under-reported income shall be the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income.
(ii)	Where the total income determined u/s 270(1)(a) or assessed or reassessed or recomputed in a preceding order is a loss	The tax payable in respect of the under-reported income shall be the amount of tax calculated on the under-reported income as if it were the total income.
(iii)	In any other case	The amount of tax calculated on the

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		under-reported income shall be determined as follows: (X -Y) X = The amount of tax calculated on under reported income as increased by the total income determined under section 270(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income. Y = The amount of tax calculated on the total income determined under section 270(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

Notes:

1. No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has already formed the basis for imposition of penalty in the case of the person for the same or any other tax year [Section 439(13)].

2. Where additional income-tax (at 10% of the aggregate tax and interest demand is paid which is pursuant to a notice under section 280) is paid in accordance with section 267(5)(ii), the income on which such additional income-tax is paid shall not form the basis of imposition of penalty under this section [Section 439(13A)].

II. REDUCTION OR WAIVER OF PENALTY [SECTION 469]

(1) Power to reduce/ waive penalty levied under section 439

(a) **Exercise of power to reduce/waive penalty under section 439** - Section 469(1) authorises the Principal Commissioner or the Commissioner of Income-tax to reduce or waive the amount of penalty imposed or imposable on a person under section 439. The exercise of this power by the Principal Commissioner or the Commissioner **is purely at his discretion and may be done either on his own motion or otherwise**, that is on receipt of an

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application from the assessee.

(b) **Conditions to be satisfied -**The Principal Commissioner or the Commissioner can reduce or waive the penalty under section 439, if he is satisfied that such person, -

(a) **Full and true disclosure -** before the Assessing Officer detected any concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, has made a full and true disclosure of such particulars voluntarily and in good faith; and

A person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto if the difference between the assessed and returned income does not attract penalties under section 439.

(b) **Co-operation in enquiry -** has cooperated in any enquiry relating to the assessment of his income and has paid or made satisfactory arrangements to pay any tax or interest payable in consequence of an order passed under this Act in respect of the relevant tax year.

(c) **Prior approval of higher authorities required in certain cases (sec. 469(3)) –** As per section 469(3), if in a case falling under section 439,

- the amount of income in respect of which the penalty is imposed or imposable for the relevant tax year or where such disclosure relates to more than one tax year and
- the aggregate amount of such income for those years exceeds ₹ 5,00,000,

PC or C can reduce or waive penalty

- **Without approval of higher authorities, where income ≤ 5 lakhs**
- **With approval of PCC or CC or PDG or DG, where income > 5 lakhs**

the Principal Commissioner or Commissioner shall obtain prior approval from the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be, before waiving or reducing the penalty by order.

(d) **Relief available only once in life time -** Where an order has been made under section 469(1) in favour of any person, whether such order relates to

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one or more tax years, he shall not be entitled to any relief under this section in relation to any other tax year at any time after the making of such order.

(2) Power to reduce/ waive penalty payable under the Act

(a) **Exercise of power to reduce/waive any penalty** - Section 469(5) authorises the Principal Commissioner or the Commissioner of Income-tax**, upon an application from the assessee**, and after recording his reasons for doing so, reduce or waive the amount of penalty or penalties (whether they relate to one or more tax years) payable by the assessee under this Act.

He is also empowered to stay or compound any proceedings for the recovery of any penalty if:

(i) doing otherwise would cause genuine hardship to the assessee having due regard to all the facts and circumstances of the case; and

(ii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

PC or C can reduce or waive penalty

- **Without approval of higher authorities, where penalty ≤ 1 lakh**
- **With approval of PCC or CC or PDG or DG, where penalty > 1 lakh**

Such order accepting or rejecting application of an assessee has to be passed within **12 months from the end of the month in which such application is received by the PC or CIT**.

However, order rejecting the application of the assessee shall not be made without giving the assessee an opportunity of being heard.

(b) **Prior approval of higher authorities required in certain cases -** In case the aggregate amount of penalty payable under this Act exceeds ₹ 1 lakh or the application relates to more than one penalty and the aggregate amount of such penalties exceeds ₹ 1 lakh, the PC or the CIT grant relief only with the prior approval of the PCC or the CC or the PDG or the DG, as the case may be.

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(3) Finality of order

As per section 469(9) the Principal Commissioner or the Commissioner's order under section 469 for reduction or waiver of penalty is final and cannot be challenged in any court or before any authority.

Waiver order cannot be challenged

ILLUSTRATION 1

M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm for Tax Year 2026-27:

	Particulars of total income	₹
(1)	*As per the return of income furnished u/s 263(1)*	*50,00,000*
(2)	*Determined under section 270(1)*	*60,00,000*
(3)	*Assessed under section 270(10)*	*75,00,000*
(4)	*Reassessed under section 279*	*95,00,000*

Can penalty be levied u/s 439 on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 439.

SOLUTION

M/s. XYZ is deemed to have under-reported its income since:

(1) its income assessed u/s 270(10) exceeds its income determined in a return processed u/s 270(1); and

(2) the income reassessed under section 279 exceeds the income assessed u/s 270(10).

Therefore, penalty is leviable under section 439 for under-reporting of income.

Computation of penalty leviable under section 439

Particulars	₹	₹
Assessment under section 270(10) - Under-reported income:		
Total income assessed under section 270(10)	75,00,000	

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(-) Total income determined u/s 270(1)	60,00,000	
	15,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 15 lakhs *plus* tax on total income of ₹ 60 lakhs determined u/s 270(1) **[30% of ₹ 75 lakh + HEC@4%]**	23,40,000	
Less: Tax on total income determined u/s 270(1) **[30% of ₹ 60 lakh +HEC@4%]**	18,72,000	
	4,68,000	
Penalty leviable@50% of tax payable		2,34,000
Reassessment under section 279 Under-reported income:		
Total income reassessed under section 279	95,00,000	
(-) Total income assessed under section 270(10)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 20 lakhs *plus* tax on total income of ₹ 75 lakhs assessed u/s 270(10) **[30% of ₹ 95 lakh + HEC@4%]**	29,64,000	
Less: Tax on total income assessed u/s 270(10) **[30%of ₹ 75 lakh + HEC@4%]**	23,40,000	
	6,24,000	
Penalty leviable@50% of tax payable		3,12,000

Note *– The following assumptions have been made -*

(1) None of the additions or disallowances made in assessment or reassessment qualifies under section 439(8); and

*(2) The under-re*ported income is not on account of misreporting.

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ILLUSTRATION 2

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for Tax Year 2026-27. However, the total income assessed in respect of such year under section 271 is ₹ 14 lakh. Is penalty u/s 439 attracted in this case, and if so, what is the quantum of penalty leviable?

SOLUTION

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his tax liability would be computed applying the provisions of section 202, since he has to specifically exercise the option to shift to normal provisions along with the return of income. Hence, penalty under section 439 is leviable in his case in the following manner.

Computation of penalty leviable under section 439

Particulars		₹	₹
Assessment under section 271			
Under-reported income:			
Total income assessed under section 271		14,00,000	
Tax payable on under-reported income as per section 202			
Upto ₹ 4,00,000	Nil		
₹ 4,00,001 – ₹ 8,00,000 @ 5%	20,000		
₹ 8,00,001 – ₹ 12,00,000 @10%	40,000		
₹ 12,00,001 – ₹ 14,00,000 @15%	30,000	90,000	
Add: HEC@4%		3,600	
		93,600	
Penalty leviable@50% of tax payable			46,800

Note *– It is assumed that theunder-reported income is not on account of misreporting.*

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ILLUSTRATION 3

ABC Ltd. is a domestic company liable to tax @25%. The following are the particulars furnished by the company for Tax Year2026-27:

	Particulars of total income	₹
(1)	*As per the return of income furnished u/s 263(1)*	*(15,00,000)*
(2)	*Determined under section 270(1)*	*(8,00,000)*
(3)	*Assessed under section 270(10)*	*(5,00,000)*
(4)	*Reassessed under section 279*	*4,00,000*

Is penalty leviable under section 439 on ABC Ltd., and if so, what is the quantum of penalty?

SOLUTION

ABC Ltd. is deemed to have under-reported its income since:

(1) the assessment u/s 270(10) has the effect of reducing the loss determined in a return processed u/s 270(1); and

(2) the reassessment u/s 279 has the effect of converting the loss assessed u/s 270(10) into income.

Therefore, penalty is leviable under section 439 for under-reporting of income.

Computation of penalty leviable under section 439

Particulars	₹	₹
Assessment under section 270(10) Under-reported income:		
Loss assessed u/s 270(10)	(5,00,000)	
(-) Loss determined under section 270(1)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@25%	75,000	
Add: HEC@4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		39,000

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Reassessment under section 279 Under-reported income:		
Total income reassessed under section 279	4,00,000	
(-) Loss assessed under section 270(10)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@25%	2,25,000	
Add: HEC@4%	9,000	
	2,34,000	
Penalty leviable@50% of tax payable		1,17,000

Notes *– The following assumptions have been made -*

(1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 439(8); and

(2) The under-reported income is not on account of misreporting.

III. OTHER PENAL PROVISIONS UNDER THE INCOME TAX ACT

Chapter XXI of the Income-tax Act, 2025 contains various penal provisions which are attracted for failure to comply with the requirements of the provisions contained in other chapters of the Act. To provide easy correlation certain penal provisions are discussed along with related provisions in the respective chapters of the Study Material. The penal provisions including those discussed in other chapters are given hereunder:

Section	Nature of Default	Penalty Leviable	Remarks
441	Fails to (a) keep and maintain the books of account and other documents as per section 62 or the rules made thereunder, in respect of any tax year; or (b) retain such books of account and other	₹ 25,000	Penalty may be imposed by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals).

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	documents for the period specified in the said rules.		
442(1)	If a person enters into an international transaction or specified domestic transaction and in respect of such transactions, if he (a) Fails to keep and maintain any information and document as required u/s 171(1); (b) Fails to report such transaction which he is required to do so; (c) Maintains or furnishes an incorrect information or document.	2% of the value of each international transaction or specified domestic transaction entered into by such person	Penalty may be imposed by the Assessing Officer or Commissioner (Appeals).
442(2)	Fails to furnish the information and documents as required under section 171.	₹ 5,00,000	Penalty may be imposed by the prescribed Income-tax Authority referred u/s 171(4).
444	As per section 444(1), during any proceedings under this Act, it is found that in the books of account maintained by any person there is - a false entry or - an omission of any entry which is relevant for computation of	Penalty equal to the aggregate amount of false entry or omitted entry	Penalty may be imposed by the Assessing Officer or Joint Commissioner (Appeals) or Commissioner (Appeals).

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	total income of such person, to evade tax liability. As per section 444(2) penalty may also be imposed on any other person, who caused the person referred in sub-section (1) in any manner to make a false entry or omit or caused to omit any entry referred above. False entry includes use or intention to use - • Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or • Invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or • Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.		

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445	If during any proceeding under this Act, it is found that any person, being any registered Non-profit Organisation has any specified income which is chargeable to tax as per section 337 (Table: Sl. No. 2) i.e., directly or indirectly, for the benefit of any related person referred to in section 355(h).	Penalty of - (i) 100% of the aggregate amount of income so applied, directly or indirectly, by such person, for the benefit of such related person, if the violation is noticed for the first time during any tax year; and (ii) 200% of the aggregate amount of income so applied, directly or indirectly, by such person, for the benefit of such related person, if the violation is noticed again in any subsequent tax year.	Penalty may be levied by the Assessing Officer

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446(1)	Failure to furnish a statement in respect of a transaction of a crypto asset under section 509(1) within the prescribed time limit	Penalty of ₹ 200 for every day for which such failure continues	Penalty may be imposed by the Prescribed Income Tax Authority
446(2)	If any person provides inaccurate information in the statement and fails to remove such inaccuracy as per section 509(4) or Fails to comply with due diligence under section 509(5)	Penalty of ₹ 50,000	Penalty may be imposed by Prescribed Income Tax Authority
448	Failure to • deduct the whole or any part of the tax at source as per chapter XIXB or • pay or ensure payment of the whole or any part of the tax as required by or under- - Note 2 Below Table in Section 393(3) [winnings from lottery or crossword puzzle] or - Note 6 to Section 393(1) (Table Sl. No. 8) [on benefits and perquisites in respect of	Penalty equal to the tax which he failed to deduct or pay or ensure payment of said tax at source.	Penalty imposable by the Assessing officer.

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	business or profession or consideration on transfer of virtual digital assets] ***Note*** *– In all the three situations mentioned above, the winnings/ benefit or perquisite/ consideration for transfer, as the case may be, is wholly in kind or partly in cash and partly in kind and the part in cash is not sufficient to meet the TDS liability, the person responsible for paying or providing shall ensure that the tax required to be deducted has been paid, before releasing such consideration or providing such benefit or perquisite..*		
449	Failure to collect the whole or any part of the tax as required by or under the provisions of Chapter XIX-B	Penalty equal to the tax which he failed to collect.	Penalty imposable by the Assessing officer.
450	Failure to comply with the provisions of section 185.	Penalty equal to amount of loan or deposit or specified sum taken or accepted otherwise than by way of account	Penalty imposable by the Assessing officer.

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		payee cheque/ bank draft or use of ECS through a bank A/c.	
451	Failure to comply with the provisions of section 186	Penalty equal to the sum received in contravention of the provisions of section 186	Penalty imposable by the Assessing Officer.
452	Failure to comply with the provisions of section 187	Penalty of ₹ 5,000 per day of continuing default, if the person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 187, fails to provide such facility	Penalty imposable by the Assessing officer.
453	Failure to comply with the provisions of section 188	Penalty equal to the loan or deposit or specified advance repaid otherwise than by an account payee cheque/bank draft or use of ECS through a bank A/c.	Penalty imposable by the Assessing officer.

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454	Fails to furnish such statement or reportable account within the period specified in the notice issued under section 508(7)	Penalty of ₹ 1000 for every day for which such failure continues, beginning from the day immediately after the period specified in such notice for furnishing such statement or reportable account expires and such penalty shall not exceed ₹ 100000.	Penalty imposable by Income Tax Authority prescribed u/s 508(1)
455(1)	If a person, who requires to furnish Statement under section 508(1) – (a) provides inaccurate information in the statement or fails to furnish correct information within the period specified under section 508(8); or (b) fails to comply with the due diligence requirement under section 508(9)	Penalty of ₹ 50,000	Leviable by the income-tax authority prescribed under section 508
455(2)/(3)	If the reporting financial institution referred to in section 508(1)(k) - (a) provides inaccurate information in the statement required to be furnished under section 508(1); and	Penalty of ₹ 5,000 for every reportable account, in addition to the penalty of ₹ 50,000 levied under section	

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	(b) the inaccuracy in the said statement is due to false or inaccurate information furnished by the holder or holders of the relevant reportable account or accounts.	455(1) above shall be payable by the reporting financial institution. The reporting financial institution referred to in section 508(1)(k) is entitled to recover the amount paid under sub-section (2) on behalf of the Reportable Account holder or retain an amount equal to the sum so paid out of any moneys that may be in its possessions, or may come to it from every such account holder.	
456	If an eligible investment fund fails to furnish within the prescribed time, a statement or any information or document as required under Paragraph 4 of Schedule I.	Penalty of ₹ 5,00,000	Leviable by the income-tax authority prescribed under Paragraph 4 of Schedule I
457	If any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required under section 171(2)	Penalty equal to 2% of the value of such international transaction or specified transaction for each such failure	Penalty imposable by the Assessing Officer/ the Transfer Pricing Officer as per section 166/ the Commissioner (Appeals).

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458	If any Indian concern, which is required to furnish any information or document under section 506, fails to do so.	Penalty equal to (a) 2% of the value of the transaction in respect of which such failure has taken place, if such transaction has the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern. (b) In any other case; ₹ 5,00,000.	Penalty imposable by the prescribed income-tax authority under section 506.
459	Non-furnishing of the report by any reporting entity which is obligated to furnish Country-by-Country report as required under section 511		Penalty imposable by prescribed authority under section 511. [For details, refer section 511 discussed in Chapter 24 on Transfer Pricing]
	Period of delay/default	**Penalty**	
	Not more than a month	₹ 5,000 per day	
	Beyond one month	₹ 15,000 per day for the period exceeding one month	
	Continuing default even after service of order	₹ 50,000 per day of continuing failure beginning from the date of service of order	

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	Failure to produce information and documents within prescribed time		
	Failure to produce information before prescribed authority within the period allowed u/s 511(7)	₹ 5,000 per day of continuing failure, from the day immediately following the day on which the period for furnishing the information and document expires.	
	Continuing default even after service of penalty order	₹ 50,000 per day for the period of default beyond the date of service of penalty order.	
	Penalty for submission of inaccurate information in the CBC report	₹ 5,00,000	Penalty would be leviable on the reporting entity, if - (a) the entity has knowledge of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or (b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and

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			furnish correct report within fifteen days of such discovery; or (c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 511(7)
460	If a person fails to furnish statement as required under section 505	(a) ₹ 1000 for every day for which failure continues, if the period of failure does not exceed 3 months or (b) ₹ 1,00,000 in any other case.	Penalty leviable by Assessing Officer
461(1)	(a) Failure to furnish TDS/TCS statements within the prescribed time. (b) Furnishing incorrect information in the said statements in respect of tax deducted or collected at source	₹ 10,000 to ₹ 1,00,000	Penalty leviable by Assessing Officer No penalty would be leviable for the delay in filing or non-filing of statement, if the person proves that - the tax deducted or collected along with the fee under section 427 and interest, if any, to the credit of the Central Government, and

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			- he had delivered or caused to be delivered the TDS/TCS statements before the expiry of one month from the time prescribed u/s 397(3)(b).
462	Failure to furnish information or furnishing inaccurate information by any person who is required to furnish information under section 397(3)(d)	Penalty of ₹ 1,00,000	Penalty imposable by Assessing Officer
463	Furnishing of incorrect information in reports or certificates furnished by an accountant, merchant banker or a registered valuer	₹ 10,000 for any incorrect information in any reports or certificate. The penalty shall be payable for each such report or certificate.	Penalty shall be payable on directions of Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) who, in the course of any proceedings under the Act, finds that the accountant, merchant banker or registered valuer has furnished incorrect information in reports or certificates.
464	Where a research association, university, college or other institution referred to in section 45 fails to deliver or furnishing the statement, prescribed under section 45(4)(a).	Penalty of ₹ 10,000 to 1,00,000	Penalty imposable by the Assessing Officer.

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	Where an institution or a fund, fails to deliver or cause to be delivered a statement within the time prescribed under section 354(1)(e) or furnish a certificate prescribed under section 354(1)(g).		
465(1)	(a) Refusal to answer questions put by income tax authority in respect of any matter touching the subject of his assessment. (b) Refusal to sign statements made in the course of income tax proceedings.	₹ 10,000 for each default or failure	Penalty imposable by Joint director or Joint Commissioner. However, if the contravention, failure or default occurs in the course of any proceeding before an income-tax authority below the rank of Joint director or Joint Commissioner, penalty is imposable by such income-tax authority.
	(c) Non-compliance with summons issued u/s 246(1) to give evidence or to produce books of account or documents at a certain place and time.		
	(d) Failure to comply with a notice issued u/s 268(1) or section 270(8) or failure to comply with a direction issued u/s 268(5)	→	Penalty imposable by the income-tax authority who had issued the notice or direction.

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465(2)	**If a person fails to:** – comply with notice u/s 175(7); or – give notice of discontinuance of business/ profession u/s 320(3); or – furnish in due time returns statements mentioned in sections 252 or 397(3) or , 507;or. – allow inspection of register referred in section 255; or allow copy of such register or any entry therein or – furnish returns of income u/s 263(1)(a)(iii) or (iv) within the time allowed and in manner required under section 263(1) and 263(2);or – deliver or cause to be delivered in due time a copy of the declaration required under section 393(7) – furnish a certificate as required in section 395(4);or – deduct and pay tax u/s 416(3); or)	**Penalty of ₹ 500 for every day** during which such failure continues. However, the amount of penalty shall not exceed the amount of tax deductible or collectible, for failure in relation to the following : - (i) a declaration required u/s 393(7) , (ii) a certificate as required u/s 395(4):and (iii) a statement u/s 397(3)(b) or (e)	Penalty imposable by Joint director or Joint Commissioner. However, if the contravention, failure or default occurs in the course of any proceeding before an income-tax authority below the rank of Joint director or Joint Commissioner, penalty is imposable by such income-tax authority. Further, in case of failure to deliver or cause to be delivered in due time a copy of the declaration required under section 393(7), penalty is imposable by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

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	– furnish a statement as required under section 392(5)(a);or – deliver or cause to be delivered in due time a copy of the declaration referred to in section 394(3) – deliver or cause to be delivered the statements within the time specified in section 397(3)(b)/ 397(3)(e)/ 397(3)(g)(i)		
466	Failure to comply with the provision of section 254.	Penalty may extend upto ₹ 25,000	Penalty imposable by the Joint Commissioner/ Dy. Director / Asst. Director/ Assessing Officer
467	(1) Failure to comply with the provisions of section 262	₹ 10,000	Penalty imposable by Assessing Officer
	(2) If a person, required to quote or intimate his Permanent Account Number or Aadhaar number in any document as referred to in section 262(9)(a), provides or quotes or intimates a number which is false, knowing or believing it to be false, the Assessing	₹ 10,000 for each such default	

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	Officer may impose a penalty of ` 10000 on him for each such default		
	(3) If a person fails to quote or authenticate his Permanent Account Number or Aadhaar number in any document referred to in section 262(9)(a)	₹ 10,000 for each such default	
	(4) If a person referred to in section 262(9)(b) responsible for ensuring the correct quoting or authentication of Permanent Account Number or Aadhaar number, in documents relating to transactions prescribed under section 262(9)(a) fails to do so.	₹ 10,000 for each such default	
468	(1) Failure to comply with the provisions of section 397	₹ 10,000	Penalty imposable by Assessing Officer.
	(2) Quoting false TAN willfully in challans/ certificates/ statements/other documents referred to in section 397(1)(b).		

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IV. Penalty not leviable in certain cases [Section 470]

No penalty is leviable on a person or assessee under sections 441, 442, 446, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462 or 463, 465(1)(c), 465(1)(d), 465(2), or 466 or 467 or 468, if he proves that there was reasonable cause for the said failure.



CIT v Jindal Tractebel Power Co. Ltd. (2025) 474 ITR 77 (Karn.)

Issue: Whether reliance on professional advice can be treated as a reasonable cause for not deducting tax at source, and consequently, whether penalty u/s 448 is leviable for failure to deduct tax?

Facts, Analysis and Decision: The assessee-company did not effect TDS from the monies payable to a foreign entity under the contract relating to supply and services of off-shore equipment. This it did on the professional advice that no tax was required to be deducted by way of TDS in as much as no income was deemed to accrue or arise in India pursuant to off-shore contract. The foreign entity had also applied for advance ruling seeking a final opinion in this regard which was not processed. The penalty proceedings initiated under section 448 for failure to deduct tax and disregarded the explanation offered by the assessee that the non-deduction of tax was due to the *bona fide* belief formed on the basis of the professional advice.

The Hon'ble High Court noted that, the assessee in its reply specifically stated that the non-deduction of tax for the subject period was due to the *bona fide* belief formed on the basis of the legal opinion obtained from a Law firm of repute; and the opinion of a Chartered Accountant's firm. This apart, the foreign entity had also sought advance ruling and the did not processed. Added what benefit the assessee could derive by not deducting the tax at source is also a factor. All these certainly constitute a reasonable cause for not effecting TDS and, therefore, the impugned order being consistent with the same is not vulnerable for challenge, as rightly contended by the assessee. Accordingly, it was held that non-deduction of TDS was not tainted with *mala fide* and reasonable cause was shown for not deducting TDS, therefore, penalty under section 448 was not leviable.

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V. Levy of fee in certain cases

While penalty is generally imposed for defaults or failures to comply with the provisions of the Income-tax Act, certain instances of non-compliance are addressed through the levy of a fee instead of a penalty. The Finance Act, 2026 has, in certain cases, replaced penalties for technical or procedural delays with mandatory fees. The rationale is to provide a simpler and more certain mechanism for dealing with such defaults and thereby reduce litigation arising from technical or procedural lapses.

(1) Fee for default in furnishing statements (Section 427)

Section	Default	Amount of Fee
427(1)/(2)	Failure to furnish the statement under section 397(3)(b) within the prescribed time	₹ 200 for every day during which the failure continues, subject to the fee not exceeding the amount of tax deductible or collectible. Further, such fee shall be paid before furnishing the statement.
427(3)	Failure to furnish the statement of financial transaction or reportable account under section 508(1) within the prescribed time	₹ 200 for every day during which the failure continues, subject to a maximum of ₹ 1,00,000.

(2) Fee for default in furnishing return of income, audited accounts and reports (Section 428)

Section	Default	Amount of Fee
428(a)	Failure to furnish return of income under section 263(1) within the due date	- ₹ 1,000, if total income does not exceed ₹ 5,00,000. - otherwise ₹ 5,000
428(b)	Furnishing return of income under section 263(5) beyond 9 months from the end of the relevant tax year	- ₹ 1,000, if total income does not exceed ₹ 5,00,000; - otherwise ₹ 5,000

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428(c)	Failure to get accounts audited under section 63 for any tax year or years or furnishing the reports of such audit	- ₹ 75,000 for a delay upto 1 month for which failure continues and - ₹ 1,50,000, thereafter
428(d)	Failure to Furnish Report from an accountant under section 172	- ₹ 50,000 for a delay upto 1 month for which failure continues and - ₹ 1,00,000, thereafter

(3) Fee for default relating to statement or certificate (Section 429)

Section	Default	Amount of Fee
429(1)(a)	Failure by a research association, university, college, other institution or company to furnish the prescribed documents or certificate under section 45(4)(a) within the prescribed time	₹ 200 for every day during which the failure continues
429(1)(b)	Failure by an institution or fund to furnish the statement under section 354(1)(e) or certificate under section 354(1)(g) within the prescribed time	
Note - *The fee shall not exceed the amount in respect of which the failure occurred and shall be paid before furnishing the statement or certificate [Section 429(2)].*		

(4) Fee for default relating to intimation of Aadhaar number [Section 430]

Default	Amount of Fee
Failure to intimate Aadhaar number under section 262(6) within the prescribed time.	Fee as may be prescribed, subject to a maximum of ₹ 1,000, payable at the time of making the delayed intimation.

VI. Procedure for Assessment of Penalties [Section 471]

(1) Section 471 provides that no penalty under Chapter XXI can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard by way of a show cause notice to that effect.

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(2) No order imposing a penalty under this Chapter shall be made without the prior approval of the Joint Commissioner, where -

S. No.	Income-tax authority passing the penalty order	Quantum of penalty
(i)	The Income-tax Officer	> ₹ 10,000
(ii)	The Assistant Commissioner or the Deputy Commissioner	> ₹ 20,000

(3) An income-tax authority making an order imposing penalty under Chapter - XXI has to send a copy of such order to the Assessing Officer, unless he himself is the Assessing Officer.

(4) Section 471(4) provides that irrespective of anything contained in any other provision of this Act, where any draft of the proposed order of assessment under section 275 or assessment under section 270 or reassessment under section 279 is made on or after the 1st April, 2027:-

a. penalty under section 439, if any shall form part of the Draft Assessment Order or shall be imposed as a part of such Order of Assessment or Reassessment, as the case may be.

b. the reference to the assessment order or the penalty order under section 439 in any of the provisions of this Act shall take reference to such order of assessment or reassessment, as the case may be.

Section 471(4) has introduced a significant shift in procedure for imposing penalty specifically in relation to penalty for under-reporting and misreporting of income under section 439. The Penalty under section 439 shall be imposed through the Assessment Order or Reassessment Order itself and not through a separate Penalty Order.

(5) Section 471(5) provides for where the approval of the Joint Commissioner is taken for passing of an order of assessment or reassessment on or after the 1st April, 2027, such approval shall also be deemed to be the approval for the imposition of penalty under section 439, if any, constituting part of such order of assessment or reassessment.

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VII. Time limit for imposition of penalty [Section 472]

(1) No order imposing a penalty under Chapter XXI shall be passed **after the expiry of six months from the end of the quarter** in which-

Time limit for passing penalty order	Circumstances
Proceedings, in the course of which action for the imposition of penalty has been initiated, are completed.	Where the relevant assessment or other order is not the subject matter of an appeal under section 356 or 357 or 362.
Order of revision under section 377 or 378 is passed.	Where the relevant assessment or other order is the subject matter of revision under section 377 or 378.
Order of an appeal is received by the jurisdictional Principal Commissioner or Commissioner	Where the relevant assessment or other order is the subject matter of an appeal under section 356 or 357 or 362
Notice for imposition of penalty is issued.	Any other case

(2) Where the relevant assessment or other order is the subject matter of an appeal under section 356 or 357 or 362 or 365 or 367 or revision under section 377 or 378, the order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be revised on the basis of assessment as revised by giving effect to order passed under the said sections [Section 472(2)].

(3) No order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed:

a) unless the assessee has been heard or has been given a reasonable opportunity of being heard;

b) after the expiry of **six months from end of the quarter** in which the order passed under section 356 or 357 or 362 or 365 or 367 is received by the jurisdictional Principal Commissioner or Commissioner or the order of revision under section 377 or 378 is passed.

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(4) The provisions of 471(2) shall apply to the order imposing or enhancing or reducing penalty under section 472(2).

Note: *Section 471(2) provides that for passing an order imposing penalty exceeding ₹ 10,000, the Income-tax officer has to take the prior approval of the Joint Commissioner. Also, for passing an order imposing penalty exceeding ₹ 20,000, the Assistant Commissioner or the Deputy Commissioner should take the prior approval of the Joint Commissioner.*

(5) Following period shall be excluded from computing the period of limitation:

a) time taken in giving an opportunity to the assessee to be reheard under section 244(2);

b) period commencing on the date on which stay on proceeding for levy of penalty was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner.

19.3 OFFENCES AND PROSECUTION UNDER THE INCOME TAX ACT

I. Offences and Prosecution

The punishable offences as well as the prosecution for such offences under the Income-tax Act, 2025 are discussed under Chapter XXII. These prosecution provisions are discussed hereinbelow-

Section	Nature of default	Imprisonment
473	Whoever contravenes any order referred to in section 247(4) regarding search and seizure	Simple imprisonment of upto 2 Years (+) **fine**
474	If a person, who is required to afford the authorised officer with the necessary facility to inspect the books of account or other	Simple imprisonment for a term upto 6 months (and/or) Fine

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	documents, under section 247(1)(ii), fails to do so.	
475	Whoever, fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, with the intent to prevent such property or interest therein from being taken in execution of a certificate drawn under section 413.	Simple imprisonment for a term upto 2 years (+) **fine**
476	If a person fails to - (a) pay the tax deducted at source by him to the credit of the Central Government, as required by or under the provisions of Chapter XIX-B; or ***Note –*** *No prosecution or fine or both would apply if the TDS payment referred above has been made to the credit of the Central Government on or before the time prescribed for filing the statement under section 397(3)(b).* (b) pay tax or ensure payment of tax to the credit of the Central Government in respect of – (A) any income by way of winnings from online games as referred to in section 393(3) [Table: Sl. No. 2], excluding such winnings which are wholly in kind, as referred to in Note 2 to the said Table; or	(i) with simple imprisonment for a term up to 2 years, or with fine, or with both, where the amount of such tax exceeds ₹ 50 lakh or (ii) with simple imprisonment for a term up to 6 months, or with fine, or with both, where the amount of such tax exceeds ₹ 10 lakh rupees but does not exceed ₹ 50 lakh; or (iii) with fine, in any other case.

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	(B) any sum by way of consideration for transfer of a virtual digital asset as referred to in section 393(1) [Table: Sl. No. 8(vi)], excluding such consideration which is wholly in kind, as referred to in Note 6 to the said Table. ***Note -*** *No prosecution or fine would apply for the failure by such person if he proves that there was reasonable cause for such failure [Section 486].*	
477	If a person fails to pay the tax collected by him to the credit of the Central Government, as required under section 397(3)(a). ***Note -*** *No prosecution or fine or both would apply if the payment of tax collected at source has been made to the credit of the Central Government on or before the time prescribed for filing the statement under section 397(3)(b).* *Further, no prosecution or fine would apply for the failure by such person if he proves that there was reasonable cause for such failure [Section 486]*	(a) with simple imprisonment for a term up to **2 years, or with fine, or with both,** where the amount of such tax **exceeds ₹ 50 lakh** or (b) with simple imprisonment for a term up to **6 months or with fine, or with both,** where the amount of such tax exceeds **₹ 10 lakh but does not exceed ₹ 50 lakh** or (c) with fine, in any other case.
478(1)	If a person wilfully attempts in any manner to evade any tax, penalty or interest chargeable or imposable, or under-reports his income	(a) with simple imprisonment for a term up to **2 years, or with fine, or with both**, where the amount sought to be evaded or tax on under-

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		reported income **exceeds ₹ 50 lakh**; or (b) with simple imprisonment for a term up to **6 months, or with fine, or with both**, where the amount sought to be evaded or tax on under-reported income exceeds ₹ 10 lakh but does not exceed ₹ 50 lakh rupees; or (c) with fine, in any other case.
478(2)	If a person wilfully attempts in any manner to evade payment of any tax, penalty or interest under this Act.	(a) with simple imprisonment for a term up to **2 years, or with fine**, **or with both**, where the **amount sought to be evaded exceeds ₹ 50 lakhs** ; or (b) with simple imprisonment for a term **up to six months, or with fine, or with both,** where the amount **sought to be evaded exceeds ₹ 10 lakh but does not exceed ₹ 50 lakh**; or (c) with fine, in any other case.

Notes - *As per section 478(3), the punishment referred to in this section, shall be without prejudice to any penalty that may be imposable under any other provision of this Act.*

As per section 478(4), ***a wilful attempt to evade any tax, penalty or interest chargeable or imposable*** *under this Act, or the payment thereof,* ***shall include*** *a case where any person -*

(a) 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

(b) makes or causes to be made any false entry or statement in such books of account or other documents; or

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(c) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or *(d) 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.*		
479	If a person wilfully fails to furnish in due time the return of income, which is required to be furnished under section 263(1), or by notice given under section 268(1) or 280.	(a) with simple imprisonment for a term **up to 2 years, or with fine, or with both**, where the amount of tax, which would have been evaded if the failure had not been discovered, **exceeds ₹ 50 lakh**; or (b) with simple imprisonment for a term up to **6 months**, **or with fine, or with both,** where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds **₹ 10 lakh but does not exceed ₹ 50 lakh**; or (c) with fine, in any other case.
Note - As per section 479(2), a person shall not be proceeded against for failure to furnish in due time the return of income under section 263(1) for any tax year, if - (a) a return is furnished by him under section 263(4) or 263(6); or (b) the **tax payable by such person, not being a company**, on the total income determined on regular assessment, as reduced by the - advance tax or self-assessment tax, if any, paid before the expiry of period specified under section 263(4), and - any tax deducted or collected at source, does not exceed ₹ 10000.		
480	If a person wilfully fails to furnish in due time the return of income, setting forth his undisclosed income for the block period, which is	(a) with simple imprisonment for a term up to **2 years, or with fine, or with both,** where the amount of **tax exceeds ₹ 50 lakh;** or

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	required to be furnished by notice given under section 294(1)(a).	(b) with simple imprisonment **up to six months, or with fine, or with both,** where the amount of tax **exceeds ₹ 10 lakh but does not exceed ₹ 50 lakh**; or (c) with fine, in any other case.
481	If a person wilfully fails to comply with a direction of special audit and valuation issued to him under section 268(5)	Simple imprisonment for a term **up to six months, or with fine, or with both.**
482	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.	(a) with simple imprisonment for a term up to **2 years, or with fine, or with both**, where the amount of tax, which would have been evaded if the statement or account had been accepted as true, **exceeds ₹ 50 lakh**; or (b) with simple imprisonment for a term **up to six months, or with fine, or with both,** where the amount of tax, which would have been evaded if the statement or account had been accepted as true, **exceeds ₹ 10 lakh but does not exceed ₹ 50 lakh**; or (c) with fine, in any other case.
483	If any person (herein referred to as the **first person**) wilfully and with intent **to enable** - any other person (herein referred to as the **second person**) - to **evade any tax** or interest or penalty	The **first person shall be punishable** with simple imprisonment for a term up to **2 years and with fine.** It may be noted that for the purposes of establishing the charge under this section, it shall **not be necessary to prove** that the **second person** has **actually evaded any** tax, penalty or

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	chargeable and imposable under this Act, - makes or causes to be made any **entry** or statement which is **false** and - which the **first person either knows to be false or does not believe to be true**, - in any books of account or other document - **relevant to or useful** in any proceedings against - **the first person or the second person**, under this Act.	interest chargeable or imposable under this Act [Section 483(2)]
484	If a person abets or induces in any manner another person - (a) to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true; or (b) to commit an offence under section 478(1)	The person who abets or induces shall be punishable - (i) with simple imprisonment for a term up to **2 years, or with fine, or with both,** where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds ₹ 50 lakh; or (ii) with simple imprisonment for a term up to **6 months, or with fine, or with both,** where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds

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		₹ 10 lakh rupees but does not exceed ₹ 50 lakh; or (iii) with fine, in any other case.
485	If any person convicted of an offence under section 476, 477, 478(1), 479, 480, 482 or 484 is again convicted of an offence under any of the said sections.	Punishable for the second and for every subsequent offence with simple imprisonment for a term which shall not be **less than 6 months, but which may extend to 3 years and with fine**
494(1)	Disclosure of particulars by public servants in contravention of section 258(3). Prosecution after previous sanction of Central Government under section 494(2).	simple imprisonment for a term up to 1 months **or with fine** or with both

Section 486 provides that where a reasonable cause for the failure is proved, punishment shall not be imposed for offences specified in sections 476 or 477.



Union of India v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP

Issue: Would prosecution proceedings under section 479 be attracted where the failure to furnish return in time was not willful?

Analysis & Decision: The provisions of section 479 to get attracted, there should be a willful delay in filing return and not merely a failure to file return in time. There should be clear, cogent and reliable evidence that the failure to file return in time was 'willful' and there should be no possible doubt of its being 'wilful'. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them.

In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 479 are not attracted in such a case.

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II. Offences by companies [Section 487]

(1) **Liability of Persons in Charge of the Company:** If 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 shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) **Without knowing or with due diligence:** Not deemed to be guilty if the 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.

(3) **Liability of Directors and Officers for Consent, Connivance or Neglect**: 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.

(4) **Punishment for Company and Officers:** If an offence under this Act has been committed by a company and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person or the director, manager, secretary or other officer of the company, shall be liable to be proceeded against and punished as per the provisions of this Act.

(5) **Meaning of "Company" and "Director":** For the purposes of this section, -

(a) "company" means a body corporate and includes -

(i) a firm; and

(ii) an association of persons or a body of individuals, whether incorporated or not; and

(b) "director", in relation to -

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

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III. Offences by Hindu undivided family [Section 488]

(1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) The karta would not be liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Where an offence under this Act, has been committed by a Hindu undivided family 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 member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

IV. Presumption as to culpable mental state [Section 490]

(1) **Onus of proof on accused -** 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 but 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.



It specifically provided that where any prosecution requires a culpable mental state *(mens rea*) the court shall presume the existence of such mental state but the assessee is entitled to prove that he had no such mental state with respect to the act charged with. Thus, the burden to prove the non-existence of *mens rea* has been effectively placed on the assessee in prosecution cases.

(2) **Meaning of 'Culpable mental state' –** "Culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

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(3) **Proof of fact -** For the purposes of this section 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.

V. Prosecution to be made at the instance of the Principal Chief Commissioner OR Chief Commissioner or Principal Commissioner or Commissioner [Sections 491 and 492]

(1) Prior sanction of higher authorities

Section 491(1) provides that the proceedings to punish a person for an offence under sections 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, or 484 can be initiated only after previous sanction of the Principal Commissioner or Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals).

However, the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General may issue such instructions or directions to the said authorities as he may deem fit for institution of proceedings under section 491(1).

(2) Cases where prosecution cannot be initiated

Section 491(3) provides that the proceedings to punish a person for an offence under section 478 or 482 cannot be initiated in relation to the assessment of a tax year in respect of which the penalty imposed or imposable on him under section 439 has been waived or reduced under section 469.

(3) Compounding of offences

Any offence under this Chapter may be compounded, either before or after the institution of proceedings, by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(4) Admissibility of statement made or books of account produced as evidence

Where any proceeding has been taken against any person under sub-section (1), any statement made, or account or other document produced by such person before any

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income-tax authority specified in section 236(a) to (k) shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that -

(a) such statement was made, or such account or document was produced in the belief that the penalty imposable would be reduced or waived, under section 469; or

(b) the offence for which such proceeding was taken would be compounded.

(5) Scheme to be formulated by Central Government

The power of the Board to issue orders, instructions or directions under this Act shall include the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.

(6) Non-cognizable offences

Irrespective of anything contained in the Bharatiya Nagarik Suraksha Sanhita, 2023, an offence punishable under section 476, 478, 479, 480, 482 or 484 shall be deemed to be non-cognizable within the meaning of that Sanhita.

VI. Waiver of penalty and immunity from prosecution [Section 440]

(1) Application to be made by the assessee to the Assessing Officer for grant of immunity from penalty and prosecution [Section 440(1)]

Pay tax and interest + No appeal filed

An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 439 and initiation of proceedings under section 478 or section 479, if he -

(i) **pays the tax and interest payable** as per the order of assessment under section 270(10) or reassessment under section 279, within the period specified in such notice of demand;

(ii) Penalty levied under section 439(11)(a) to (f) where additional income tax amounting to 100% of the amount of tax payable on under reported income has been paid within the period specified in the notice of demand, in lieu of such penalty.

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(iii) Penalty is levied under section 439(11)(g) where additional income tax amounting to 120% of the amount of tax payable on under reported income has been paid within the period specified in the notice of demand, in lieu of such penalty.

(iv) No appeal has been filed against such assessment/reassessment order and levy of penalty referred in (i), (ii) or (iii) above.

(2) Time limit for making application [Section 440(2)]

The assessee can make such application in the prescribed form and verified in the prescribed manner **within one month from the end of the month** in which the order of assessment or reassessment is received by the assessee.

(3) Circumstances in which the Assessing Officer can grant immunity from penalty and prosecution [Section 440(3) & (4)]

The Assessing Officer shall, on fulfilment of the conditions as specified in (1) above and after the expiry of the period of filing appeal as specified in section 358(3)(a), grant waiver of penalty under section 439 and immunity from initiation of proceedings under section 478 or 479.

However, no waiver or immunity shall be granted if any proceeding has been initiated under Chapter XXII i.e., offences and prosecution.

(4) Time limit for passing order accepting or rejecting application for immunity from penalty and prosecution [Section 440(5)]

3 months from the end of the month of receipt of application

The Assessing Officer shall pass an order accepting or rejecting the application for immunity from penalty under section 439 or prosecution under section 478 or section 479 within a period of ***three months*** **from the end of the month in which such application is received**.

However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer **unless the assessee has been given an opportunity of being heard**.

(5) Finality of order passed by the Assessing Officer under section 440(5) [Section 440(7)]

The order of the Assessing Officer passed under section 440(5) shall be final.

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(6) Order of assessment/reassessment, in respect of which application for immunity is accepted, is neither appealable before the Joint Commissioner (Appeals) or Commissioner (Appeals) nor can the same be admitted by the Commissioner for revision under section 378 [Section 440(8)]

No appeal under section 356 or section 357 or an application for revision under section 378 shall be admissible against the order of assessment or reassessment in respect of which an order under section 440(5) has been made accepting the application.

VII. Power to tender immunity from prosecution [Section 519]

CG empowered to tender immunity from prosecution

The Central Government may, if it is of the opinion that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income it is necessary or expedient so to do, for reasons to be recorded in writing, tender to such person,-

(a) immunity from prosecution for any offence under this Act or under the Bharatiya Nyaya Sanhita, 2023, or under any other Central Act in force; and

(b) from imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income.

A tender of immunity made to or accepted by the person concerned shall, to that extent, render him immune from prosecution for any offence in respect of which tender was made or from the imposition of any penalty under the Act.

Section 519(3) states that if it appears to the Central Government that any person to whom immunity has been tendered under this section-

(a) has not complied with the condition on which the tender was made or

(b) is willfully concealing anything or

(c) is giving false evidence,

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the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn.

Further, any such person may be tried for the offence in respect of which tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

VIII. Cognizance of offences and Certain laws not to apply [Sections 520 & 521]

As per section 520, no court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act.

Section 521 provides that the provisions of the Probation of Offenders Act, 1958 and section 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall not apply to a person convicted of an offence under this Act unless that person is under 18 years of age.

19.4 OVERVIEW OF THE BLACK MONEY & IMPOSITION OF TAX LAW

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

Important Note

The Income-tax Act, 2025, as amended by the Finance Act, 2026, has come into force with effect from 1 April 2026. However, the consequential amendments substituting references to the repealed Income-tax Act, 1961, in the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Black Money Law), have not yet been incorporated.

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Accordingly, the provisions discussed in this chapter are presented with reference to the Income-tax Act, 1961, wherever applicable, along with the corresponding provisions of the Income-tax Act, 2025.

It may further be noted that, for the purposes of the Black Money Law, the terms "assessment year" and "previous year" are defined in sections 2(4) and 2(9), respectively, of the Black Money Law. These terms continue to apply for the purposes of the Black Money Law, notwithstanding that the Income-tax Act, 2025 has replaced the term "previous year" with "tax year" and does not use the term "assessment year".

Accordingly, the provisions of the Black Money Law discussed in this chapter are presented with reference to P.Y. 2026-27.

I. 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 **[Proviso to section 3(1)].**

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, - held by the assessee in his name or

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		- 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, - (a) being a **resident in India** within the meaning of section 6 of the Income-tax Act, 1961 (corresponding to section 6 of the Income-tax Act, 2025) in the previous year; or (b) being a **non-resident or not ordinarily resident in India** within the meaning of section 6(6) [corresponding to section 6(13) of the Income-tax Act, 2025] of the Income-tax Act, 1961 in the previous year, **who was resident in India either** - **in the previous year 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.** However, the previous year, in case of acquisition of undisclosed asset outside India, shall be determined **without giving effect to the provisions of section 72(c).** Section 72(c) 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

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<table>
<tr>
<td></td>
<td></td>
<td>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.
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.</td>
</tr>
<tr>
<td>Previous year</td>
<td>2(9)</td>
<td>
<table>
<tr><th></th><th>Circumstance</th><th colspan="2">Period</th></tr>
<tr><th></th><th></th><th>Beginning with</th><th>Ending with</th></tr>
<tr><td>a</td><td>In case of a newly set up business</td><td>The date of setting up of a business</td><td>The date of closure of business or 31st March following the date of setting up of business, whichever is earlier.</td></tr>
<tr><td>b</td><td>Where a new source of income comes into existence</td><td>The date on which the new source comes into existence</td><td>The date of closure of business or 31st March following the date on which such new source comes into existence,</td></tr>
</table>
</td>
</tr>
</table>

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					whichever is earlier.	
		c	In case of discontinuance of business or dissolution/ liquidation	1st 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	1st April of the relevant year	31st March following. (i.e., a period of 12 months commencing from 1st April and ending on 31st March)	

(B) **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 –

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	Asset	Fair market value as per Rule 3(1)
(a)	Bullion, jewellery or precious stone	Higher of – (i) its cost of acquisition; and (ii) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the **open market on the valuation date.** 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 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,

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<table>
<tr><td></td><td></td><td colspan="2">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;</td></tr>
<tr><td rowspan="6">(c)(II)</td><td rowspan="6">Unquoted shares and securities</td><td colspan="2">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 =</td></tr>
<tr><td colspan="2">$\frac{(A+B-L)}{PE}\times PV$</td></tr>
<tr><td colspan="2">Where,</td></tr>
<tr><td>A</td><td>book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property)
minus
(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and
(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;</td></tr>
<tr><td>B</td><td>fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule</td></tr>
<tr><td>L</td><td>book value of liabilities, but not including the following amounts, namely:</td></tr>
</table>

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			(i)	the paid-up capital in respect of equity shares;
			(ii)	the amount set apart for payment of dividends on preference shares and equity shares;
			(iii)	reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation
			(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;
			(v)	any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
			(vi)	any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
		PE	total amount of paid-up equity share capital as shown in the balance sheet;	
		PV	the paid-up value of such equity shares	
(c)(III)	Unquoted share and security other than equity share in a company	Higher of, - (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		

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		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, - (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	(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. 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
(f) & (g)	value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member	The net asset of the firm, AOP or LLP on the valuation date shall first be determined. Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them.

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<table>
<tr><td></td><td></td><td>The residue of the net asset shall be allocated among the partners or members in the following manner:<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>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.
Net asset of the firm, AOP or LLP shall be (A + B - L), determined in the manner specified in C(II) above.</td></tr>
<tr><td>(h)</td><td>Any other asset</td><td>Higher of –
(I) its cost of acquisition or the amount invested; and
(II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction.</td></tr>
</table>

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.

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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.



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 lakhs. Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is ₹60 lakhs, 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

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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 *de minimis* 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

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		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	1st July, 2015
(b)	in any other case	1st 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 *[Now Income-tax Act, 2025]*

- on or before the due date u/s 139(1) *[Corresponding to section 263(1) of the Income-tax Act, 2025]* or
- in the belated return of income u/s 139(4) *[Corresponding to section 263(4) of the Income-tax Act, 2025]* or
- in the revised return of income u/s 139(5) *[Corresponding to section 263(5) of the Income-tax Act, 2025]*.

(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*[Corresponding to section 263 of the Income-tax Act, 2025]*, but **no return, belated return or revised return has been filed**

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under section 139(1)/(4)/(5) *[Corresponding to section 263(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 (now tax year), of the assessee under the repealed Income-tax Act, 1961 (now Income-tax Act, 2025] in accordance with the following provisions of the repealed Income-tax Act, 1961(now Income-tax Act, 2025] is not includible in the total undisclosed foreign income:

Section under the repealed Income-tax Act, 1961	Section under the Income-tax Act, 2025	Provision
29	27	Manner of computation of income under the head "Profits and gains of business or profession"
43C	40	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	93	Manner of computation of income chargeable under the head "Income from other sources"
59	95	Profits (Deemed income) chargeable to tax
92C	165	Computation of arm's length price

(c) **Non-inclusion of income included in undisclosed foreign income and asset in the total income under the repealed Income-tax Act, 1961 (now Income-tax Act, 2025)** - The income included in the total

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undisclosed foreign income and asset under this enactment **would not form part of total income** under the repealed Income-tax Act, 1961(now Income-tax Act, 2025).

(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 shall 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 repealed Income-tax Act, 1961 (now the Income-tax Act, 2025)**.



(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 repealed Income-tax Act, 1961 **(now the Income-tax Act, 2025)** 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.

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A house property located in a country outside India was acquired by Mr. A, an assessee in the previous year 2013-14 for ₹ 60 lakh. Out of the investment of ₹ 60 lakh, ₹ 35 lakh was assessed to tax in the total income of the previous year 2013-14 and earlier years.

Such undisclosed asset comes to the notice of the Assessing Officer in the previous year 2026-27. If the value of the house property in the year 2026-27 is ₹ 120 lakh, the amount chargeable to tax shall be X-Y=Z where,

X = ₹ 120 lakh,

Y = ₹ 120 lakh x 35/60 = ₹ 70 lakh,

Z = ₹ 120 lakh – ₹ 70 lakh = ₹ 50 lakh.

II. PENALTIES [CHAPTER IV – SECTIONS 41 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) *[Corresponding to section 263(1) of the Income-tax Act, 2025]* 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

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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]** - Penalty under sections 42 and 43 would, however, not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹ 20 Lakh**.**

(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 -

(a) answer any question put to him by a tax authority in exercise of his powers under the Act

(b) 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

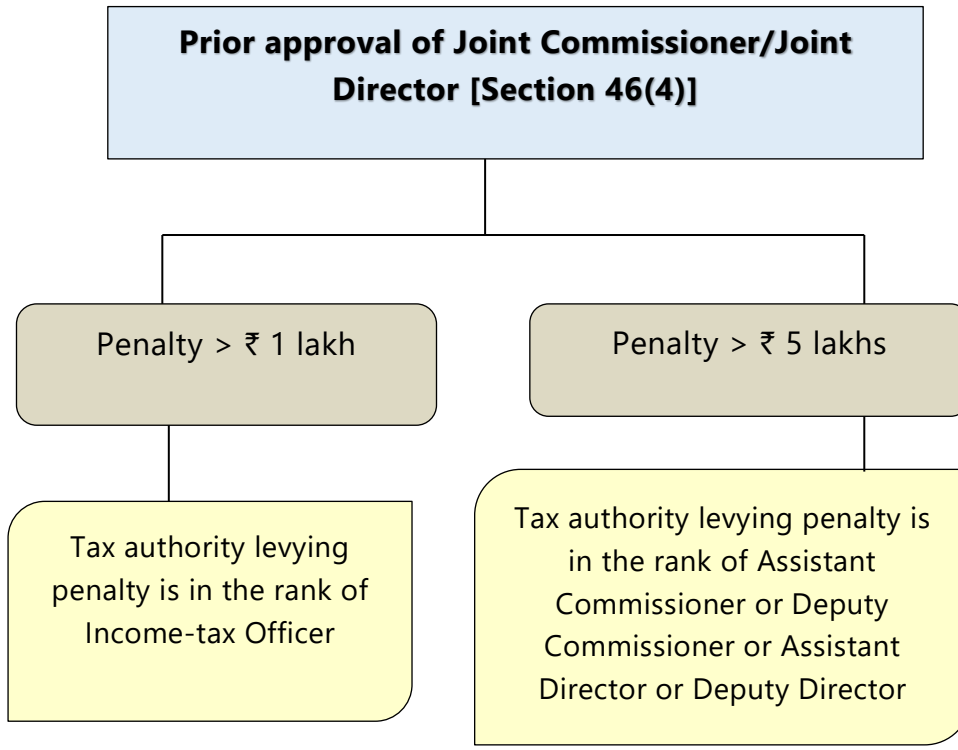
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(c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents at certain place and time in response to summons issued under section 8.

(viii) 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



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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

IV. 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.

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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*[Corresponding to section 263(1) of the Income-tax Act, 2025]* 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.**



Further, with effect from 1st October 2024, the provision of this section shall not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹20 lakhs.

(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**.

Further, with effect from 1st October 2024, the provision of this section shall not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹20 lakhs.

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(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**.

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(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 in charge 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

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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**

<table>
<tr><th></th><th>Term</th><th>Meaning</th></tr>
<tr><td>(1)</td><td>Company</td><td>Means a body corporate.
Includes —
(i) an unincorporated body (i.e., a firm, AOP or BOI);
(ii) a Hindu undivided family.</td></tr>
<tr><td>(2)</td><td>Director</td><td>
<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>
</table>
</td></tr>
</table>

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		(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. However, prosecution would not be attracted if he furnishes such return before the expiry of the assessment year.	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine

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	Further, with effect from 1st October 2024, the provision of this section shall not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹ 20 lakhs.	
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 *However, with effect from 1st October 2024, the provision of this section shall not apply in respect of an asset or assets (other than immovable property), where the aggregate value of such asset or assets does not exceed ₹ 20 lakhs.*	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

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53	Abetting or inducing a person to make or deliver a false statement, account or declaration knowingly or to commit an offence u/s 51(1)	Rigorous Imprisonment: 6 months to 7 years **(+)** Fine
58	Second and subsequent offence	Rigorous Imprisonment: 3 to 10 years **(+)** Fine: ₹ 5 lakh to ₹1 crore.

Note: *Students are advised to read the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 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*

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TEST YOUR KNOWLEDGE

Questions

1. *What is the quantum of penalty/fee that could be levied in each of the following cases-*

   (i) Failure to get books of accounts audited as required under section 63 within the time prescribed under the Act.

   (ii) Failure to comply with a direction issued under section 268(5).

   (iii) Failure to furnish report from an accountant as required under section 172.

2. *State the conditions, if any, to be satisfied by an assessee in order to get relief under section 469(5) regarding the waiver of penalty. Can the Principal Commissioner or the Commissioner refuse to grant relief, when the conditions laid down in the section was complied with, by the assessee?*

3. *Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 2025.*

   (i) Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites but had not deducted tax at source as per section 393(1) (Table No. 6(i)).

   (ii) Hotels and Hotels were asked by the Assistant Director of Income-tax with the prior approval of Principal Director to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000. They have not furnished the requisite information in spite of various reminders.

4. *Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure?*

5. *What would be the penalty leviable under section 439 in case of the following assessees, if none of the additions or disallowances made in the assessment or*

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reassessment qualify under section 439(8) and the under-reported income is not on account of misreporting?

	Particulars of total income of T.Y.2026-27	***M/s. Alpha, a resident firm***	***Beta Ltd., an Indian company***
		(₹)	***(₹)***
(1)	*As per the return of income furnished u/s 263(1)*	*35,00,000*	*(12,00,000)*
(2)	*Determined under section 270(1)*	*45,00,000*	*(6,00,000)*
(3)	*Assessed under section 270(10)*	*62,00,000*	*(2,00,000)*
(4)	*Reassessed under section 279*	*81,00,000*	*6,00,000*

Note – *Beta Ltd. is a trading company. The total turnover of Beta Ltd. for the T.Y. 2024-25 was ₹401 crore and the company has not exercised option under section 200.*

6. *Can prosecution be launched for each of the following actions or defaults committed? If yes, then explain the relevant provisions of the Act and the quantum of prescribed punishment.*

   (i) The assessee had restrained and not allowed the officer authorized as per section 247(1)(ii) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts.

   (ii) The assessee deliberately has failed to comply with the requirement of section 268(5).

   (iii) The assessee deliberately has failed to make the payment of the tax collected tax at source as per section 397(3)(a).

7. *The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 479 of the Income-tax Act, 2025 for failure to furnish its return of income for the T.Y.2026-27 within the due date under section 263. The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was ₹60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the*

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Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹ 8,900. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case.

Would your answer change if the person against whom complaint was lodged was KLM Ltd., a company, instead of a firm?

8. *Explain section 488 applicable in respect of offences committed by Hindu undivided families.*

9. *An apartment located in Country X was bought in 1988 for ₹ 10 lakh. It was sold in the year 2003 for ₹ 30 lakh. This amount was deposited in a bank account in Country X. In the year 2004, another apartment was purchased for ₹ 45 lakh. The investment in the new apartment was made through withdrawal from the bank account in Country X. The new apartment has not been transferred before the valuation date and its value on the valuation date is ₹ 55 lakh. Assuming that the value of foreign bank account in Country X as computed under Rule 3(1)(e) is ₹ 70 lakh, what would be the fair market value of the new apartment as per Rule 3 of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Rules, 2015?*

10. *Deepak, aged 45 (an Indian citizen) has settled in California, USA since 2015. Prior to that, he has always been in India. He had acquired a residential property in California on 25-06-2009 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15-04-2010.*
Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20-10-2026. The fair market value of residential property as on 01-04-2026 was USD 25,000; on 01-04-2027 USD 32,000 and 20-10-2026 USD 30,000. The bank deposit with accrued interest thereon was USD 12,500 on 01-04-2026; USD 12,800 on 01-04-2027 and USD 12,700 on 20-10-2026.

***Note:** USD = United States Dollar*

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are:

01-04-2026 = ₹ 71

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20-10-2026 = ₹ 72

01-04-2027 = ₹ 73

Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answers

1. The fee/penalty that could be levied in each case is:

(i) **Failure to get books of accounts audited as required under section 63 –** Failure to get book of account audited attracts fee under section 428(c) of ₹ 75,000, for a delay up to 1 month and ₹ 1,50,000 for delay thereafter.

(ii) **Failure to comply with a direction issued under section 268(5)** would attract penalty of ₹ 10,000 as per section 465(1).

(iii) **Failure to furnish report from an accountant as required by section 172** would attract fee under section 428(d) of ₹ 50,000 for delay up to 1 month and ₹ 1,00,000, thereafter.

2. There are two conditions to be satisfied by an assessee in order to get relief in the form of a waiver or reduction of penalty by the Principal Commissioner or the Commissioner of Income-tax under section 469(5) of the Act. These conditions are:

(i) The payment of penalty would cause "genuine hardship" to the assessee. The existence of genuine hardship would entitle the assessee to relief. The CBDT in its *Circular No 784 dated 22-11-1999* has clarified that "genuine hardship" referred to in the provisions of section 469(5) should exist both at the time at which the application under section 469(5) is made by the assessee before the Principal Commissioner or the Commissioner and at the time of passing of order under section 469(5) by the Principal Commissioner or the Commissioner.

(ii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

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As per the decision of Andhra Pradesh High Court in *K.S.N. Murthy v. Chairman, CBDT (2001) 252 ITR 269,* if the above conditions laid down for exercise of the discretion are satisfied, the Principal Commissioner or the Commissioner cannot refuse to exercise the discretion. Though the power given to the Commissioner under section 469 is discretionary, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective, once the conditions required for exercise of discretion in any judicial or quasi-judicial proceedings are satisfied. Such discretion must be exercised taking into consideration all relevant facts. The satisfaction for exercise of discretionary power under section must be based on objective consideration and not on subjective satisfaction.

Also, as per section 469(6), in case the quantum of penalty exceeds ₹ 1 lakh, the Principal Commissioner or the Commissioner can grant relief only with the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, as the case may be.

Note - The Principal Commissioner or the Commissioner has to pass an order under section 469(5), either accepting or rejecting the application in full or in part, within a period of 12 months from the end of the month in which the application is received. Further, no order rejecting the application shall be made unless the assessee has been given an opportunity of being heard.

3. (i) Penalty under section 448 is attracted for failure to deduct tax at source. The penalty would be equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed by the Assessing Officer. Therefore, Raman & Associates shall be liable for penalty under section 448 equal to the amount of tax which they have failed to deduct under section 393(1) [Table No. 6(i)] from the payments made to the contractors. The penalty would be in addition to the disallowance of 30% of expenditure/payment under section 35(b)(i).

(ii) Section 252(1)(a) empowers the Assessing Officer to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 465(2) of ₹ 500 for every day during which the failure continues.

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4. Under section 457, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 171(2) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, the Transfer Pricing Officer is a competent authority to levy penalty.

Penalty would be equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

5. Penalty leviable under section 439 in case of M/s. Alpha, a resident firm

M/s. Alpha is deemed to have under-reported its income since:

(1) its income assessed under 270(10) exceeds its income determined in a return processed under section 270(1); and

(2) the income reassessed under section 279 exceeds the income assessed under section 270(10).

Therefore, penalty is leviable under section 439 for under-reporting of income.

Computation of penalty leviable under section 439

Particulars	₹	₹
Assessment under section 270(10)		
Under-reported income:		
Total income assessed under section 270(10)	62,00,000	
(-) Total income determined u/s 270(1)	45,00,000	
	17,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 17 lakhs *plus* total income of ₹ 45 lakhs determined u/s 270(1) ***[30% of ₹62 lakh + HEC@4%]***	19,34,400	

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Less: Tax on total income determined u/s 270(1) ***[30% of ₹45 lakh + HEC@4%]***	14,04,000	
	5,30,400	
Penalty leviable@50% of tax payable		2,65,200
Reassessment under section 279		
Under-reported income:		
Total income reassessed under section 279	81,00,000	
(-) Total income assessed under section 270(10)	62,00,000	
	19,00,000	
Tax payable on under-reported income		
Tax on under-reported income of ₹ 19 lakhs *plus* total income of ₹ 62 lakhs assessed u/s 270(10) ***[30% of ₹81 lakh + HEC@4%]***	25,27,200	
Less: Tax on total income assessed u/s 270(10) ***[30% of ₹62 lakh + HEC@4%]***	19,34,400	
	5,92,800	
Penalty leviable@50% of tax payable		2,96,400

Penalty leviable under section 439 in the case of Beta Ltd., an Indian company

Beta Ltd. is deemed to have under-reported its income since:

(1) the assessment under 270(10) has the effect of reducing the loss determined in a return processed under section 270(1); and

(2) the reassessment under section 279 has the effect of converting the loss assessed under section 270(10) into income.

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Therefore, penalty is leviable under section 439 for under-reporting of income.

Computation of penalty leviable under section 439

Particulars	₹	₹
Assessment under section 270(10)		
Under-reported income:		
Loss assessed u/s 270(10)	(2,00,000)	
(-) Loss determined under section 270(1)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: HEC@4%	4,800	
	1,24,800	
Penalty leviable@50% of tax payable		62,400
Reassessment under section 279		
Under-reported income:		
Total income reassessed under section 279	6,00,000	
(-) Loss assessed under section 270(10)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: HEC@4%	9,600	
	2,49,600	
Penalty leviable@50% of tax payable		1,24,800

Note – The applicable rate of tax for Beta Ltd., a trading company, for T.Y.2026-27 is 30%, since its turnover for the T.Y.2024-25 exceeded ₹ 400 crores.

6. **(i)** Failure to afford facility to the authorized officer as per section 247(1)(ii) is a case for which **prosecution can be launched under section 474** and such person shall be punishable with simple imprisonment **for a term which may up to 6 months or with fine or both.**

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(ii) Wilful failure to comply with a direction issued under section 268(5) is a case for which **prosecution can be launched under section 481** and such person shall be **punishable with simple imprisonment for a term up to 6 months or with fine or both.**

(iii) Deliberate failure to deposit the tax collected at source as per section 397(3)(a) to the credit of the Central Government is a case for which **the provisions of section 477 are attracted.**

Accordingly, such person shall be **punishable**

- with simple imprisonment for a term up to 2 years or with fine or with both if the tax amount is more than ₹ 50 lakhs or punishable
- with simple imprisonment for a term up to 6 months with fine or with both if the tax amount is more than ₹ 10 Lakhs and not more than ₹ 50 lakhs or
- only fine if the tax amount does not exceed ₹ 10 lakhs.

7. As per section 479, if a person wilfully fails to furnish in due time the return of income *inter alia* under section 263(1), he shall be punishable

(a) with simple imprisonment for a term **up to 2 years, or with fine, or with both**, where the amount of tax, which would have been evaded if the failure had not been discovered, **exceeds ₹ 50 lakh**: or

(b) with simple imprisonment for a term up to **6 months**, **or with fine, or with both,** where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds **₹ 10 lakh but does not exceed ₹ 50 lakh**; or

(c) with fine, in any other case.

However, as per section 479(2), a person shall not be proceeded against for failure to furnish in due time the return of income under section 263(1) for any tax year, if -

(a) a return is furnished by him under section 263(4) or 263(6); or

(b) the **tax payable by such person, not being a company**, on the total income determined on regular assessment, as reduced by the

- advance tax or self-assessment tax, if any, paid before the expiry of period specified under section 263(4), and

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- any tax deducted or collected at source,

does not exceed ₹ 10000.

In the present case, since amount of tax, which would have been evaded if the failure had not been discovered does not exceed Rs. 10 lakhs, only fine is imposable.

However, since in the present case, even though the tax liability of the firm as per the original order of assessment exceeded ₹ 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 8,900, which is less than ₹ 10,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 8,900, the proceedings under section 479 are not maintainable.

In *Guru Nanak Enterprises v. ITO (2005) 279 ITR 30*, where the facts were similar, the Supreme Court held that prosecution was unwarranted.

Yes, in case of a company, the answer would be different and prosecution proceedings would be maintainable.

However, since the amount of tax which would have been evaded does not exceed ₹ 10 lakhs, the punishment would be fine only.

8. As per section 488, where an offence has been committed by a Hindu undivided family (HUF), the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

As per section 488(3) , where an offence has been committed by a HUF 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 member of the HUF, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

9. FMV of the new apartment = ₹ 55 lakh, being higher of cost of acquisition i.e., ₹ 45 lakh and price which the property would ordinarily fetch if sold in the open market on the valuation date as per the valuation report i.e., ₹ 55 lakh.

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10. The definition of "assessee" under the Black Money Law, *inter alia,* includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired**.** Therefore, Deepak is an assessee under the Black Money Law since he was resident in India in the P.Y. 2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2026-27, when notice under Black Money Law was issued. Accordingly, the value of undisclosed asset located outside India of Deepak would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2026-27, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	USD	₹
Value of residential property in California acquired on 25.6.2009	25,000	
Value of residential property would be the fair market value, being the higher of -		
- Cost of acquisition	USD 20,000	
- Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2026	USD 25,000	
Converted into Indian currency taking the rate as on 1.4.2026	₹ 71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2026 [The sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	10,000	
Converted into Indian currency taking the rate as on 1.4.2026	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		**24,85,000**

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