



Penalties under Sections 271AAC, 271AAD & 271J

Jagdish T Punjabi

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General

Penalties imposable under Chapter XXI of Income-tax Act, 1961

- Chapter XX-B of the Act containing Sections 269SS, 269ST, 269SU, 269T and 269TT. is captioned "Requirement as to mode of Acceptance, Payment or Repayment in certain cases to counteract evasion of tax".
- Chapter XXI of the Act containing Sections 270 to 275 deals with Penalties imposable and is captioned "Penalties Imposable".
- Penalties imposable vide each of the Sections contained in Chapter XXI are listed in the table below –

Sr.No.	Section	Particulars
1	270A	Penalty for under reporting and misreporting of income
2	270AA	Immunity from imposition of penalty, etc.
3	271	Failure to furnish returns, comply with notices, concealment of income, etc. [Applies upto AY 2016-17]
4	271A	Failure to keep, maintain or retain books of account, documents, etc.
5	271AA	Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
6	271AAA	Penalty where search has been initiated – for searches initiated on or after 1.6.2007 but before 1.7.2012
7	271AAB	Penalty where search has been initiated – for searches initiated on or after 1.7.2012
8	271AAC	Penalty in respect of certain income
9	271AAD	Penalty for false entry, etc in books of account – inserted by the Finance Act, 2020 w.e.f. 1.4.2020
10	271AAE	Benefits to related persons – inserted by the Finance Act, 2022 w.e.f. 1.4.2023
11	271B	Failure to get accounts audited
12	271BA	Penalty for failure to furnish report under section 92E
13	271BB	Failure to subscribe to eligible issue of capital
14	271C	Penalty for failure to deduct tax at source

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
15	271CA	Penalty for failure to collect tax at source
16	271D	Penalty for failure to comply with the provisions of section 269SS
17	271DA	Penalty for failure to comply with the provisions of section 269ST
18	271DB	Penalty for failure to comply with provisions of section 269SU – inserted by Finance (No. 2) Act, 2019 w.e.f. 1.11.2019
19	271E	Penalty for failure to comply with the provisions of section 269T
20	271F	Penalty for failure to furnish return of income
21	271FA	Penalty for failure to furnish statement of financial transaction or reportable account
22	271FAA	Penalty for furnishing inaccurate statement of financial transactions or reportable account

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
23	271FAB	Penalty for failure to furnish statement or information or document by an eligible investment fund
24	271FB	Penalty for failure to furnish return of fringe benefits
25	271G	Penalty for failure to furnish information or document under section 92D
26	271GA	Penalty for failure to furnish information or document under section 285A
27	271GB	Penalty for failure to furnish report or for furnishing inaccurate report under section 286
28	271H	Penalty for failure to furnish statements, etc.
29	271I	Penalty for failure to furnish information or furnishing inaccurate information under section 195
30	271J	Penalty for furnishing incorrect information in reports or certificates

Penalties imposable under Chapter XXI of Income-tax Act, 1961

Sr.No.	Section	Particulars
31	271K	Penalty for failure to furnish statements – inserted by Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020, w.e.f. 1.4.2021
32	272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
33	272AA	Penalty for failure to comply with the provisions of section 133B
34	272B	Penalty for failure to comply with the provisions of section 139A
35	272BB	Penalty for failure to comply with the provisions of section 203A
36	272BBB	Penalty for failure to comply with the provisions of section 206CA
37	273	False estimate of, or failure to pay, advance tax

Powers, immunity, procedure and limitation in relation to penalties

- The other sections in Chapter XXI deal with the following –

Sr.No.	Section	Particulars
1	273A	Power to reduce or waive penalty, etc., in certain cases
2	273AA	Power of Principal Commissioner or Commissioner to grant immunity from penalty
3	273B	Penalty not to be imposed in certain cases
4	274	Procedure
5	275	Bar of limitation for imposing penalties

- In addition to above, penalty could be imposed under Black Money Act for failure to disclose Foreign Asset.

Scope of the presentation

- The presentation gives a brief idea about the penal provisions covered in this presentation. It is advisable to take note of contrary rulings on the same issue as also to avoid planning on the basis of hyper-technical interpretation of the provisions. Of course, if the transaction / event has happened, all possible arguments need to be taken and should be taken.

Penalty in respect of certain income Section 271AAC

Object and purpose of the amendments by Taxation Laws (Second Amendment) Act, 2016

- Consequent to demonetization, interpretations prevailed that some of the existing provisions (including 115BBE) could be used for concealing black money. To overcome, these views, Section 115BBE has been amended by Taxation Laws (Second Amendment) Act, 2016 w.e.f. 1.4.2017.
- Statement of Objects & Reasons appended to the Taxation Laws (Second Amendment) Bill, 2016, inter alia states the object and purpose of introducing PMGKY as under –
 - “1.
 - 2. Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 could possibly be used for concealing black money. It is, therefore, important that the Government amends the Act to plug these loopholes as early as possible so as to prevent misuse of the provisions. The Taxation Laws (Second Amendment) Bill, 2016, proposes to make some changes in the Act to ensure that defaulting assesseees are subjected to tax at a higher rate and stringent penalty provision.

Background of Section 115BBE

- The provisions of Amendment Act have tightened the regime of taxation of cash credits, unexplained money, unexplained investments, unexplained expenditure, etc.
- Prior to the enactment of the Amendment Act, 2016 there could have been a question as to whether an assessee, on his own, could offer certain amounts for taxation under the provisions of sections 68, 69, 69A, 69B, 69C and 69D (“specified sections”).
- It is now clear that items which could have been taxed by the provisions of sections 68, 69, 69A, 69B, 69C and 69D (“specified sections”) can also be offered for taxation by the assessee in his return of income by paying tax, on or before the end of the previous year, at the rates mentioned in section 115BBE.

What do specified sections deal with?

- Sections 68, 69, 69A, 69B, 69C and 69D of the Act deal with –

Section	Heading of the Section
68	Cash Credits
69	Unexplained investments
69A	Unexplained money, etc.
69B	Amount of investments, etc., not fully disclosed in books of account
69C	Unexplained, expenditure, etc.
69D	Amount borrowed or repaid on hundi

Section 115BBE prior to its amendment by Amendment Act

- Section 115BBE prior to its amendment by the Amendment Act provided that the income of the nature referred to in sections 68, 69, 69A, 69B, 69C or 69D (“specified sections) which is included in total income of the assessee shall be charged to tax @ 30% of such income. Finance Act, 2016 provided for a Surcharge and a Cess. Surcharge depends upon the legal status of the person and his total income e.g. when the amendment to section 115BBE was carried out - in case of an individual surcharge was payable @ 12% if his total income exceeds Rs 10 crore and not otherwise. In case of domestic companies, surcharge was payable @ 7% where total income exceeds Rs. 1 crore but does not exceed Rs. 10 crore and in case of domestic companies whose total income exceeds Rs 10 crore surcharge was payable @ 12%. Corresponding rates for foreign companies were 2% and 5%. Cess is payable @ 4%. Thus, the tax incidence on the income of the nature referred to in specified sections was @ 30.90% to 34.608%.

Section 115BBE prior to its amendment by Amendment Act

- Prior to the amendment by the Amendment Act, 2016 it could have been debated as to whether an assessee could, in the return of income, include in his total income amounts of the nature referred to in sections 68, 69, 69A, 69B, 69C or 69D of the Act.
- Consequent to demonetisation, views were expressed by professionals that the undisclosed income held in the form of demonetized currency can be deposited in the bank and the said amount can be offered for taxation under specified sections and tax thereon paid at the rates mentioned in section 115BBE i.e. 30% plus applicable surcharge and cess. If this was done, the pre-ponderant legal view was that the person doing so would not be liable to any penalty under the Act.

Amendments to section 115BBE

- It was with a view to prevent such a disclosure and to overcome the views expressed that the amendments have been made to section 115BBE of the Act. The amendments are applicable with effect from AY 2017-18 and therefore would apply to–
 - income under specified sections from 1st April, 2016 to 8.11.2016;
 - income under specified sections during 8th November, 2016 to 30th December, 2016 but not on account of demonitised notes;
 - income of subsequent assessment years i.e. AY 2018-19 onwards.
- The section applies to all assesseees –
 - irrespective of the legal status i.e. it applies to individuals, HUFs, firms, LLP, co-operative society, AOP, BOI, political party, etc. ;
 - irrespective of their residential status i.e. it applies to residents as well as non-residents
 - including those covered by COFEPOSA, IPC, PMLA, etc.
 - including those covered by presumptive taxation under sections 44AD / 44ADA / 44AE

Amendments to section 115BBE

- The section applies irrespective of the minimum threshold i.e. the section applies to even a small amount of Rs. 5,000 if the amount is chargeable as income under the provisions of the specified sections.
- Since the amendment is prospective w.e.f. AY 2017-18, the income under specified sections for earlier years will continue to be governed by the pre-amended provisions irrespective of the fact that the assessments of such years are completed after the amendment.

Amendments to section 115BBE ...

- Clause (a) of sub-section (1) of section 115BBE deals with income referred to in specified sections and which is included in the return of income furnished under section 139.
- Clause (b) of sub-section (1) of section 115BBE deals with income referred to in specified sections and which is determined by the AO if such income is not covered under clause (a)
- Irrespective of whether the case of the assessee falls under clause (a) or clause (b), the rate of tax is 60% plus surcharge plus cess. However, the levy of penalty depends on whether the case of an assessee falls under clause (a) or clause (b) of 115BE(1).

Amendments to section 115BBE ...

- Sub-section (2) of section 115BBE begins with a non-obstante clause and provides that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).
- Position prior to the Amendment Act was that the set off of loss was allowed to the assessee though deduction in respect of any expenditure or allowance was not allowed.
- It was debatable and continues to be a debatable question as to whether deductions under Chapter VI-A are allowable against such income.
- Clause (a) covers income referred to in specified sections which has been reflected in return of income furnished under section 139. Such income reflected in a belated return or in a revised return furnished under section 139(5) would certainly be covered by clause (a).

Amendments to section 115BBE ...

- Pre-requisite for revising a return of income is “discovery” of omission or any wrong statement in the return of income filed by the assessee. Consequently, income covered by specified sections which is reflected in revised return after issue of notice by the AO may not be regarded being covered by clause (a).
- Return furnished under section 153A of the Act is regarded as if it is a return filed under section 139 of the Act and therefore it appears to be arguable proposition that a disclosure in the return filed under section 153A would be regarded as covered by clause (a).
- However, income referred to in specified sections which has been reflected in returns furnished under section 148 will not be covered by clause (a).

Amendments to section 115BBE ...

- Tax rate of 60% is on income under specified sections “included” in total income. If donations are given which donations qualify for deduction under section 80G, a question arises as to whether tax is payable on gross income under specified sections or net income [See Distributors (Baroda) Pvt. Ltd. v. UOI (1985) 155 ITR 120 (SC); CBDT Circular under section 112.]
- In addition to the tax @ 60%, surcharge is payable @ 25% of advance tax. Surcharge is payable by all assessees irrespective of their legal status or residential status or quantum of income. Thus, a person having income of Rs. 5,000 covered by specified sections will also be liable to pay surcharge @ 25% of tax of 60%.
- In addition to tax @ 60% and surcharge @ 25% of the tax payable, Health & Education Cess @ 4% is also payable.

Amendments to section 115BBE ...

- Assessee will be liable to pay interest under section 234C of the Act, if assessee in his return of income declares income under specified sections but does not pay advance tax in accordance with the provisions of the Act.
- Belated returns will be subject to payment of interest under section 234A and default in payment of advance tax will trigger interest under section 234B.
- In a case where advance tax paid is more than 90% of the tax payable but less than 100% of the tax payable, interest under section 234B may not be leviable but the assessee will not be entitled to claim immunity from penalty.

Text of section 271AAC

- **Penalty in respect of certain income.**

- **271AAC.** (1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

- **Provided** that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

Text of section 271AAC ...

- (2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

- (3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation of S. 271AAC

- Section 271AAC has been introduced by the Taxation Laws (Second Amendment Act), 2016, w.e.f. 1.4.2017.
- This section was introduced consequent to demonetization.
- The penalty under this section is payable if the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and such income has not been included by the assessee in the return of income furnished under section 139 or having included such income in the return of income the assessee has not paid tax on such income on or before the end of the relevant previous year.
- The penalty can be levied by the Assessing Officer.
- While the provisions of section 115BBE are in force w.e.f. Assessment Year 2013-14, this section is applicable w.e.f. AY 2017-18.
- The provisions of this section are retroactive, as far as AY 2017-18 is concerned.

Explanation of S. 271AAC

- Penalty under this section is leviable if the total income determined includes income of the nature referred to in specified sections (i.e. Sections 68, 69, 69A, 69B, 69C and 69D) and the assessee has not included such income in its return of income or having included it in return of income has not paid tax thereon on or before the end of the relevant previous year then the penalty under this section is imposable on the assessee.
- The quantum of penalty is 10% of the amount of tax payable under clause (i) of sub-section (1) of section 115BBE. It could be debatable as to whether it is 10% of 60% or it is 10% of 78% i.e. 10% of 60% / 78% i.e. penalty will be 6% / 7.8% of the amount of income of the nature referred to in specified sections. The Departmental publication has taken a view that penalty is leviable @ 10% of 60%.
- If an assessee needs to avoid penalty under this section then it must
 - include in its return of income, income of the nature referred to in specified sections; and
 - pay tax thereon on or before the end of the previous year.

Explanation of S. 271AAC

- In search cases, for specified previous year, where provisions of section 271AAB are applicable, the penalty will be levied under section 271AAB on undisclosed income which is charged to tax u/s 68 to 69D as also under section 271AAC.
- Once penalty is levied under this section, penalty will not be levied / leviable under section 270A.
- While the provisions of section 274 will apply for following procedure for levy of penalty under this section, it appears that the penalty under this section will be levied even if assessee had reasonable cause for not including the income of the nature mentioned in specified sections in his return of income or for not paying tax thereon before the end of the previous year. This is because the provisions of section 273B have not been amended to include this section.
- Since order levying penalty is an order imposing penalty under chapter XX of the Act, order passed by the AO levying penalty under this section will be appealable to the CIT(A) under section 246A.

Explanation of S. 271AAC

- For the purposes of computing limitation within which order levying penalty under section 271AAC has to be passed, clause (a) of section 275(1) will apply and not clause (c) of section 275(1).

Penalty for false entry, etc., in books of account- Section 271AAD

Text of section 271AAD

- **Penalty for false entry, etc., in books of account.**
- **271AAD.** (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—
 - (i) a false entry; or
 - (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability, the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals), may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Text of section 271AAD

- **271AAD.** (2) Without prejudice to the provisions of sub-section (1), the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.
- *Explanation.*—For the purposes of this section, "false entry" includes use or intention to use—
 - (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
 - (b) 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
 - (c) invoice in respect of supply or receipt of goods or services or both to or from a

Explanatory Memorandum to FB, 2020 – clause 98

- **“Penalty for fake invoice.**
- *In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.*

Explanatory Memorandum to FB, 2020 – clause 98

- **“Penalty for fake invoice.**
- *Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also proposed to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use –*
- *(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or*

Explanatory Memorandum to FB, 2020 – clause 98

- **“Penalty for fake invoice.**
- *(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or*
- *(b) 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*
- *(c) invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.*
- *This amendment will take effect from 1st April, 2020.”*

Difference between EM and Marginal Note in Section

- The explanation for proposing insertion of this section is given in the Explanatory Memorandum under the caption “Penalty for fake invoice”. The marginal note to the section is captioned “Penalty for false entry, etc. in books of account”. Therefore, a cursory look at the caption in the memorandum and the title as stated in the marginal note suggests that the scope of the provision is much wider than what has been stated in the Explanatory Memorandum.

Salient Features of Section 271AAD

- the provisions of this section are without prejudice to any other provisions of the Act;
- the penalty under this section can be imposed by the Assessing Officer or by Joint Commissioner (Appeals) or the Commissioner (Appeals) [CIT(A) has been inserted w.e.f. 1.4.2022 and JCIT(A) w.e.f. 1.4.2023];
- there has to be a finding during any proceeding under the Act;
- the finding has to be to the effect that in the books of account maintained by any person there is –
 - (a) a false entry; or
 - (b) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability.

Salient Features of Section 271AAD

- The term “false entry” is defined in an Explanation to this section.
- The levy of penalty appears to be discretionary.
- The quantum of penalty is a sum equal to the aggregate amount of such false or omitted entry.
- Any other person who causes the person to make a false entry or omits or causes to omit any entry can also be directed to pay a penalty of a sum equal to the aggregate amount of such false or omitted entry.
- Since this is a provision in Chapter XXI, provisions of sections 274 and 275 are applicable to penalty under this section.
- Each of the above are explained in the subsequent slides.

Who can impose the penalty

- The Assessing Officer may direct that a person shall pay a penalty under this section. By Finance Act, 2022, Commissioner (Appeals) has also been empowered to direct levy of penalty under this section. This amendment is effective from 1.4.2022. By Finance Act, 2023, Joint Commissioner (Appeals) has also been empowered to direct levy of penalty under this section. This amendment is effective from 1.4.2023.
- In a case where jurisdiction has been conferred on a Joint Commissioner or an Additional Commissioner to do an assessment then in such a case, such a Joint Commissioner or Additional Commissioner will be an ‘Assessing Officer’ and consequently will be empowered to levy penalty under section 271AAD.

Who can impose the penalty

- Since the penalty under this section is based on a finding during 'any proceeding under this Act', for the period prior to 1.4.2022 a question arises as to how can an Assessing Officer direct penalty in the course of appellate proceedings or revision proceedings. Does one conclude that it can be based on a finding in the proceedings before the Assessing Officer or CIT(A), as the case may be? In order to avoid litigation on this, it is advisable that a suitable clarification be issued by CBDT clarifying the nature of proceedings in the course of which a finding can be taken cognizance of for the purposes of this section.

What is the penalty for?

- The penalty under this section is for –
 - (i) a false entry; or
 - (ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability.
- in the books of account maintained by a person.
- For the purpose of this section, the term "false entry" is defined in an Explanation to section 271AAD. The Explanation defines the term "false entry" inclusively as follows –

What is the penalty for?

- “false entry” **includes** use or intention to use –
- (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
- (b) 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
- (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

- **Quantum of penalty** - A sum equal to the aggregate amount of such false or omitted entry.

Since when is the provision effective

- Section 1(2) of the Finance Bill, 2020 provides that save as otherwise provided in this Act sections 2 to 104 shall come into force on 1st April, 2020. Section 98 of the Finance Act, 2020 inserts section 271AAD.
- There is nothing contrary stated in section 98 of the Finance Act, 2020. Therefore, the provisions of section 271AAD are inserted with effect from 1.4.2020.
- The Explanatory Memorandum to the Finance Bill, 2020 states that this provision will take effect from 1st April, 2020.
- A question arises as to whether the provision is effective from Assessment Year 2020-21 and therefore it will also apply to even acts done before the enactment of the provision.

Since when is the provision effective

- Since this is a penal provision which has not been expressly made retrospective a better view appears to be that this section will apply to entries made or omission of an entry after the date of enactment of the provision.
- It is a principle of interpretation of a penal provision that the penalty on the date of committing the offence will apply.
- In the cases covered by section 271AAD the offence is recording of a false entry or omitting an entry which is relevant for computation of total income with a view to evade tax liability.
- In the event the act or omission is before 1.4.2020, it is possible to argue that the provisions of section 271AAD should not be made applicable to such acts / omission.

Without prejudice to any other provisions of this Act

- The provisions of this section are without prejudice to any other provisions of the Act meaning thereby that the penalty under this section can be in addition to any other penalty, if any, to be levied under any other provision of the Act. In other words, penalty under this section cannot be avoided on the ground that a penalty under some other provision of the Act has already been levied on the person.

Without prejudice to any other provisions of this Act

- The meaning of the expression 'without prejudice to any other provisions of the Act' has been explained in –
 - Apogee International Ltd. v. UOI [(1996) 220 ITR 248 (Delhi)]
 - CIT v. Regional Soyabean Products Co-op. Union Ltd., [(1999) 239 ITR 217 (MP)]
 - A P State Financial Corporation v. GAR Re-Rolling Mills [AIR1994 SC 2151]
 - CIT v. Punjab National Bank [(2001) 116 Taxman 310 (Delhi)]
 - Ajay Canu v. UOI [AIR 1988 SC 2027];
 - Shiv Kripal Singh v. V V Giri [1970 2 SCC 567];
 - Eli Lily Company [312 ITR 225]
 - King Emperor v. Sibnath Banerjee [AIR 1945 PC 156]
- In the circumstances, it appears that the penalty under this section will be irrespective of the fact that a penalty under any other provision of the Act has been initiated or levied. Action taken under this section shall not be adversely affected by the action taken under any other provision of the Act.

'during any proceeding under this Act'

- The phrase '*during any proceeding under this Act*' is very wide and can mean proceedings for assessment, survey, search, appeal, revision, rectification, passing an order to give effect to an appellate order, etc. They would even cover proceedings under section 133(6). However, since the power to direct payment of penalty is only with the Assessing Officer and the Joint Commissioner (Appeals) or Commissioner (Appeals) and not with the other authorities like or the Principal Commissioner or Commissioner it could be debated as to whether this phrase should be read to mean only those proceedings which are before the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). Taking a different view would mean that the Assessing Officer can direct payment of penalty on the basis of finding of a different authority.

'books of account maintained by any person'

- The penalty is not on an assessee but on a person. While every assessee is a person, every person may not necessarily be an assessee. The person should be maintaining books of account. The term '*books or books of account*' is defined in section 2(12A) of the Act.
- A question arises as to whether penalty can be levied for a false entry or for omission of an entry from the books of accounts in a case where a person is not mandatorily required to maintain books of accounts say e.g. a case where a person chooses to be governed by the provisions of presumptive taxation or where the requirement of maintaining books of account is not applicable to the person. Such a person may choose to maintain books of account to comply with the requirements of some other law. In such a case, will such a person be liable for penalty under this section, in case there is a false entry in such books of account or an omission of an entry which is relevant for computation of total income of such person to evade tax liability.

'may direct'

- The language of the section is the Assessing Officer or Commissioner (Appeals) '*may direct*'. This is similar to the language of section 271 and several other penalty provisions. In the context of provisions of levy of penalty under section 271(1)(c) of the Act, the phrase '*may direct*' has been explained to confer a discretion on the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). It appears that here also the phrase '*may direct*' will mean that a discretion has been conferred on the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). Therefore, in a case where an Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) has, exercising the discretion, not levied penalty no fault may be found with such an action of the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals).

Is section confined to only cases of 'fake invoice'

- The Explanatory Memorandum has the rationale for introduction of this section under the caption 'Fake Invoice'. The rationale, as given, is that certain racketeers are issuing invoices without supplying goods or services so as to enable a person who receives such an invoice to claim Input Tax Credit on the basis of the invoice so issued. The GST on the supply mentioned in such invoice is not paid to the government. However, the person in whose books purchase entry is recorded on the basis of such an invoice fraudulently claims ITC. It is with a view to punish such persons harshly that the provision has been introduced.

Is section confined to only cases of 'fake invoice'

- However, sub-section (1) provides that the penalty under this section may be levied in one of the two situations mentioned in sub-section viz.-
 - (i) there is a false entry in the books of account maintained by any person; or
 - (ii) in the books of account maintained by a person there is an omission of any entry which is relevant for computation of total income of such person, to evade tax liability.

Omission of entries other than those of recording fake invoice could also qualify as 'false entry'. Moreover, the term 'false entry' has been inclusively defined. Therefore, the scope of the provision is much wider than what has been explained in the Explanatory Memorandum.

Is section confined to only cases of 'fake invoice'

- A question arises as to whether the courts will hold that the scope of the provision be restricted to the intention mentioned in the Explanatory Memorandum. In view of the clear language of the provision it appears that it may be difficult to hold that the scope of the provision be restricted only to those cases which are covered by the Explanatory Memorandum.

Meaning of 'false entry'

- Having a false entry in the books of accounts maintained by a person and such a false entry being found in the course of any proceeding under the Act empowers the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) to direct levy of penalty under section 271AAD.
- As has been stated, the term '*false entry*' has been inclusively defined in the Explanation to the section. The three cases mentioned in clauses (a) to (c) of the Explanation are undoubtedly cases of 'false entry' but it may be argued, on behalf of the revenue, that even a case other than the one covered by the three clauses of the Explanation is also covered by the term '*false entry*' since the definition is inclusive and not exhaustive.

Meaning of `false entry`

- It appears that though the term `*includes*` has been used, the definition has to be taken as an exhaustive definition and not an inclusive definition. A definition which uses the word `*includes*` can also be regarded as an exhaustive definition if the words which follow the word `*includes*` are those which would be covered by the natural meaning of the term sought to be defined. As has been stated above, the three circumstances mentioned in Explanation are undoubtedly cases of `*false entry*`. Since what has been stated in the inclusive part is what even otherwise would have been covered by the natural meaning of the term `*false entry*`.

Meaning of `false entry`

- Relying on the ratio of the following decisions it is possible to argue that the definition is an exhaustive definition –
 - Commissioner of Customs v. Caryaire Equipment India Private Limited (2012) 4 SCC 645
 - Urmila Devi v. U P Power Corporation and Ors. 2003 (53) ALR 643
 - Jeramdas Vishendas v. Emperor, AIR 1934 Sindh 96
 - South Gujrat Roofing Tiles Manufacturers Association and another v. The State of Gujarat and Another, AIR 1977 SC 90
- In other words it appears to be possible to contend that only in the three cases mentioned in the Explanation be regarded as cases of `*false entry*` and not any other case.

Meaning of 'false entry'

- While clause (ii) of sub-section (1) dealing with omission to make an entry, makes a reference to an entry which is relevant for computation of total income and also that the omission is to evade tax liability, these two pre-requisites are missing in clause (i). Therefore, even if a false entry is not relevant for computation of total income and/or it is inadvertently recorded in the books of account, still the requirement of clause (i) of sub-section (1) will be regarded as having been satisfied and the person will be covered by the provisions of this section.

Meaning of 'omission'

- While the term 'false entry' is defined, 'omission' is not defined. Webster's Dictionary explains the meaning of 'omission' as "1. The act of omitting; 2. The state of being omitted. 3. Something left out, not done, or neglected; an important omission in a report."
- The Advanced Law Lexicon, 3rd Edition, 2005, explains the meaning of 'Omission' inter alia as –
 - "Omission" with reference to the performance of a duty involves the idea of conscious or wilful omission. *Lond & S. W. Ry. V. Flower*. 45 LJCP 54. See also 11CPLR (Cr.) 16.
 - The expression 'omission' does not connote any obligation. 'Omission' is a colourless word which merely refers to the not doing of something and if the assessee in fact does not make a return, it is an omission on his part, whether the law casts any obligation upon him to make a return or not. *Pannalal Nandlal Bhandari v. CIT*, AIR 1956 Bom 557, 558. [Income-tax Act (11 of 1922), S. 34(1)].
 - A person cannot be said to have omitted or failed to disclose something when, of such thing, he had no knowledge. *P. R. Mukherjee v. CIT*, AIR 1956 Cal. 197, 200.

Meaning of 'omission'

- In the circumstances, it appears that the "omission" referred to in clause (ii) of sub-section (1) is not recording an entry which a person was obliged to record and therefore if there is no duty on a person to record a particular entry, omission thereof may not qualify for levy of penalty. Therefore, in a case where an assessee is not required to maintain books of accounts a person cannot be said to have omitted all the entries.
- Clause (ii) of sub-section (1) refers to omission of an entry which is relevant for computation of total income of such person and is to evade tax liability. Therefore, omission of an entry which is not to evade tax liability will not attract the rigors of section 271AAD.

Penalty under other provisions

- An entry / omission which qualifies for levy of penalty under section 271AAD may also attract penalty under other provisions of the Act. Therefore, a question arises as to whether a person can be penalised twice for the same offence. Relying on Article 20 of the Constitution an argument of 'double jeopardy' may be sought to be taken up. While double jeopardy is an argument which will work in criminal proceedings / criminal offences, it has been stated in H. M N. Seervai : Constitutional Law of India (3rd Edition), Vol. 1, p. 759, quoted in Shiv Dutt Rai Fateh Chand and Others v. Union of India (1983) 3 SCC 529 that "... Article 20 relates to the constitutional protection given to persons who are charged with a crime before a criminal court."
- 'double jeopardy' does not apply to tax cases as has been held in –
 - ITO v. Sultan Enterprises [(2002) 256 ITR 185 (Bombay)];
 - CIT v. Ram Chandra Singh [(1976) 104 ITR 77 (Patna)] - Rule of double jeopardy applies to criminal cases and that rule cannot be made applicable in respect of penalties for various defaults under taxation statute.

Penalty under other provisions

- Recording a false entry constitutes under-reporting in consequence of misreporting thereof in view of provisions of section 270A(9)(d) attracting a penalty @ 200% of the amount of tax on under-reported income. If a 'false entry' comes within the definition of 'undisclosed income' for a specified previous year it will attract penalty under section 271AAB.
- Omission of entry is covered by Section 271AAD. Section 270A(9)(e) covers 'failure to record any receipt in books of account having a bearing on total income'. While it may be arguable to contend that there is a distinction will between 'omission' and 'failure'. Omission of an entry, will attract penalty under section 270A for under-reporting of income if not for under-reporting in consequence of misreporting thereof.
- Making or causing to be made any false entry and also wilful omission or causing to be omitted any relevant entry from books of account constitutes 'wilful attempt to evade any tax, penalty or interest' for the purpose of Section 276C which deals with prosecution for wilful attempt to evade tax [Explanation (ii) and (iii) to Section 276C]

Amount of penalty

- **Amount of penalty**
- The amount of penalty is aggregate amount of false entry or omitted entry. Since the penalty under this section is in addition to penalty under other provisions of the Act, the penalty is draconian and in several cases may even lead to a financial disaster as the amount of penalty is not linked to the profit which one has made but to the amount of the entry / omission.

Penalty on other person as well

- Sub-section (2) of the Act is without prejudice to the provisions of sub-section (1). Under sub-section (2) any person who causes the person referred to in sub-section (1) [hereafter referred to as "other person"] to make a false entry or omits or causes to omit any entry then such other person shall also be liable to pay penalty equal to aggregate amount of such false or omitted entry.
- While implementing the provisions of sub-section (2) an issue may arise as to whether the Assessing Officer of a person in whose books a false entry is recorded or an omission of an entry is found comes to a conclusion that 'other person' has caused the person to make a false entry and such other person also needs to be penalised under sub-section (2), then how will such an Assessing Officer levy penalty on the other person because the Assessing Officer may not have jurisdiction over the other person and/or there may be no proceedings which may be going on in the case of the other person unless of course the conclusion is arrived at in the course of a survey on the other person or in proceedings under section 133(6), etc. However, even in such cases the issue of jurisdiction could still be there.

Provisional attachment to protect interest of revenue

- Section 281B of the Act has been amended by the FA, 2021 w.e.f. 1.4.2021 to provide that where during the pendency of any proceeding for imposition of penalty under section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds two crore rupees, the AO is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, with the previous approval of PCC or CC, PCIT or CIT, PDG or DG or PDIT or DIT, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.
- What is the significance of the expression 'aggregate of amounts of penalty'?

Appeal, Reasonable cause and Opportunity of hearing

- **Appeal against order levying penalty:**
- An appeal against the order imposing penalty under section 271AAD shall lie to CIT(A) by virtue of the provisions of Section 246A(1)(q) of the Act.

- **No amendment to section 273B**
- A penalty which is leviable under the sections mentioned in section 273B of the Act shall not be levied if a person has reasonable cause. Consequent to insertion of section 271AAD no amendment is proposed to section 273B. Therefore, it appears that 'reasonable cause' as a plea cannot be taken as a statutory right.

- **Opportunity of being heard**
- Section 274 and 275 shall apply to a penalty to be levied under section 271AAD and therefore, before penalty is levied an opportunity of being heard shall be provided to the person.

Conclusion

- The provision as is proposed is draconian to say the least. The provision needs to be amended drastically to provide clarity in implementation of the provision. Also, it needs to be stated that the same transaction will not attract provision under more than one provisions of the Act. Therefore, if there is undisclosed income as a result of false entry then penalty may be levied only under section 271AAB and not under this section. One can only hope that if the suitable amendments are not made, CBDT issues a Circular diluting the rigors of the provision.

Penalty for furnishing incorrect information in reports or certificates- Section 271J

Text of Section 271J

Penalty for furnishing incorrect information in reports or certificates.

271J. Without prejudice to the provisions of this Act, where the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals), in the course of any proceedings under this Act, finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder, the Assessing Officer or the Commissioner (Appeals) may direct that such accountant or merchant banker or registered valuer, as the case may be, shall pay, by way of penalty, a sum of ten thousand rupees for each such report or certificate.

Explanation.—For the purposes of this section,—

- (a) "accountant" means an accountant referred to in the *Explanation* below sub-section (2) of section 288;
- (b) "merchant banker" means Category I merchant banker registered with the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (c) "registered valuer" means a person defined in clause (oaa) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)

Paraphrasing section 271J

General Observations on section 271J

- Section 271J is a section in chapter XXI captioned Penalties Imposable
- Section 271J has been introduced in the Act by the Finance Act, 2017 w.e.f. 1.4.2017. While from the language it appears that the penalty under section 271J may be imposed even in respect of a report or certificate furnished before 1.4.2017. However, a better view appears to be that it should apply to all reports or certificates furnished on or after 1.4.2017 which reports or certificates have incorrect information.
- The provisions of Section 271J will not apply if the accountant or merchant banker or registered valuer proves that there was a reasonable cause for his furnishing incorrect information in the report or certificate furnished [Section 273B]

General Observations on section 271J

- This section is without prejudice to the provisions of this Act and therefore will apply in addition to other provisions, if any. The phrase `without prejudice to' has been judicially explained in –
 - A P State Financial Corporation v. GAR Re-Rolling Mills [AIR1994 SC 2151]
 - CIT v. Punjab National Bank [(2001) 116 Taxman 310 (Delhi)]
 - Ajay Canu v. UOI [AIR 1988 SC 2027];
 - Shiv Kripal Singh v. V V Giri [1970 2 SCC 567];
 - Eli Lily Company [312 ITR 225]
 - King Emperor v. Sibnath Banerjee [AIR 1945 PC 156]

Paraphrasing section 271J

- The penalty under this section can be imposed by either an Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) and not by any other authority .
- Section 271J applies if the following conditions are cumulatively satisfied –
 - in the course of proceedings under this Act;
 - there is a finding;
 - the finding is that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate;
 - such finding is by an AO or the JCIT (A) or the CIT(A);
 - such report or certificate which has incorrect information has been furnished under any provision of the Act or Rules made thereunder.
- Upon satisfaction of all the above mentioned conditions, the AO or the JCIT(A) or the CIT(A) may direct that such accountant or a merchant banker or a registered valuer shall pay by way of a penalty a sum of Rs. 10,000 for each such report or certificate.
- Thus, the penalty is qua each report or certificate and not qua the number of incorrect information in each such report or certificate.

Paraphrasing section 271J

- The terms “accountant”, “merchant banker” and “registered valuer” are defined in Explanation to Section 271J.
- The proceedings referred to in this section appear to be the proceedings in the case of an assessee to whom such report or certificate has been issued by the accountant or a merchant banker or a registered valuer
- Since this is a provision under Chapter XX-A, the provisions of sections 274 and 275 are applicable.
- It is only when there is one penalty order for multiple reports or certificates issued by the same accountant or merchant banker or registered valuer that the amount of penalty will exceed Rs. 10,000 / Rs 20,000 and the question of AO / ACIT seeking approval of JCIT will arise [Section 274(2)].
- Order levying penalty under section 271J, passed by –
 - an AO, is appealable to JCIT(A) or CIT(A) under section 246(1)(g) / 246A(q); and
 - JCIT(A) / CIT(A) is appealable to ITAT under section 253(1)(a)

Paraphrasing section 271J

- It appears that the AO / JCIT(A) / CIT(A) before whom the proceedings in which a certificate or report having incorrect information is found are going on is authorized to levy a penalty and not the jurisdictional AO / CIT(A). Such AO / JCIT(A) / CIT(A) may be situated at a place different from the place where the accountant or merchant banker or registered valuer is and availing an opportunity of hearing may mean travelling distant places.
- The AO / JCIT(A) / CIT(A) can levy penalty under section 271J only in the course of proceedings before such AO / JCIT(A) / CIT(A) and not if the proceedings are before some other authority.
- Penalty under section 271J is for furnishing “incorrect information”. It is possible to argue that there is a difference between “information” and “opinion”. Information is restricted to facts. Hence, if there is any factual incorrectness in the report or certificate the accountant or merchant banker or registered valuer may be penalized under Section 271J. However, he cannot be so penalized for having taken a wrong view in respect of which adequate disclosure has been made.

Paraphrasing section 271J

- Section 274(3) reads as under –
 - (3) An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.
- Section 116 lists down Income-tax Authorities for the purposes of the Act. Section 2(7A) defines “Assessing Officer”.
- While the phrase “proceedings under this Act” is quite wide, it appears that in the context of section 271J it may cover only those proceedings before the Assessing Officer / JCIT(A) / CIT(A) in the course of which the impugned report or certificate comes up for consideration by such AO / JCIT(A) / CIT(A) and not any proceedings e.g. a survey, TDS survey, search, etc. Also, the AO / JCIT(A) / CIT(A) ought to be the AO / JCIT(A) / CIT(A) of the person to whom the report / certificate relates and not any person.

Paraphrasing section 271J

- Penalty under Section 271J is for incorrect information and not false information.
- The word “incorrect” has been defined in dictionaries as –
 - Not true; inaccurate, faulty; unbecoming, improper [<https://www.merriam-webster.com/dictionary/incorrect>]
 - Not correct or not true [<https://dictionary.cambridge.org/dictionary/english/incorrect>]
 - Something that is incorrect is wrong and untrue; something that is incorrect is not the thing that is required or is most suitable in a particular place [<https://www.collinsdictionary.com/dictionary/english/incorrect>]
- Information in the report or certificate may be incorrect due to various reasons including errors which may have crept in inadvertently such as a typographical mistake and it may be contended that a literal interpretation would cover them as well subject to such a mistake being held to be reasonable cause under section 273B.

Paraphrasing section 271J

- However, it appears that in the context it will not be any and every incorrect information which may attract the rigors of section 271J but it will exclude that incorrect information which the accountant or merchant banker or registered valuer bonafide believes to be correct. For this proposition, reliance may be placed on **State of Tamil Nadu v. India Silk Traders, Tax Case (Revision) No. 1008 of 1984.**
- Considering the fact that legislature has chosen to use the word "incorrect": and not "false", it may be debatable and possible to contend that irrespective of the cause of the incorrectness, penalty may still be imposable.
- A line of distinction has to be drawn in-between "false representation" and "wrong representation". ***"Wrong representation" may be on account of some inadvertence or some omission.*** "False representation" takes place when a person knowingly makes representation for certain things when he knew that he is not entitled to make the said representation - **Sanjiv Fabrics v. Commissioner of Sales Tax [(2004) 137 STC 563 (All.)]**

Paraphrasing section 271J

- Use of the word "may" signifies that levy of penalty under Section 271J is discretionary and not mandatory. For this proposition reliance may be placed on –
 - **CIT v. Smt. P K Noorjahan [(1999) 103 Taxman 382 (SC)]**
 - **CIT v. Standard Mercantile Co. [(1985) 23 Taxman 452 (Patna)]**
 - **J M Sheth v. CIT [(1965) 56 ITR 293 (Mad)]**
 - **Smt. S. Anitha v. CIT [(2012) 25 taxmann.com 175 (Bang.-Trib.)]**
- Considering the ratio of the above mentioned decisions, it can be contended that the penalty is not automatic.

Paraphrasing section 271J

- The AO / JCIT(A) / CIT(A) will have to satisfy all the principles of natural justice before imposing the penalty, including the following –
 - the notice clearly explains the ground on which an explanation is sought from the assessee;
 - a reasonable opportunity of being heard is given;
 - the time given for the purpose is adequate;
 - no information is used behind the assessee's back;
 - cross examination is allowed;
 - the order is a speaking order recording reasons in support of the conclusions.

Requirements of a valid show cause notice

- The requirements of a valid show cause notice are succinctly stated by the Apex Court in its decision in the case of *Oryx Fisheries v. Union of India* [Order dated 29.10.2010] –
 - "...31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

Requirements of a valid show cause notice

- “32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.
- 33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.”

Decisions in support of various propositions

“without prejudice”

“without prejudice”

- A P State Financial Corporation v. GAR Re-Rolling Mills [AIR1994 SC 2151]
 - “The expression “without prejudice to the provisions of section 29 of this Act as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at a later stage, with the sole object of enabling the Corporation to recover its dues.”

“without prejudice”

- CIT v. Punjab National Bank [(2001) 116 Taxman 310 (Delhi)]
 - “... the intimation under section 143(1)(a) is without prejudice to the provisions of section 143(2). In this case notice for assessment under section 143(2) has been issued. The expression “without prejudice to the provisions of section 143(2)” is of great significance. It means that right of the Assessing Officer to proceed under section 143(2) despite intimation to the assessee of the sum payable as tax or interest was preserved and not taken away. It was not curtailed and on the other hand it was saved.”

“incorrect”

“incorrect”

- State of Tamil Nadu v. India Silk Traders, Tax Case (Revision) No. 1008 of 1984 -
The words "false return" connotes certain amount of deliberateness or wilfulness, or an element of suppression on the part of the assessee. On the other hand, the words "incorrect and incomplete" do not imply such deliberateness, suppression or wilfulness in making a return. But even to come to a conclusion that a return is incorrect or incomplete, the assessing authority has to take note of the exceptional cases where an assessee bona fide believes that he is not liable to include a turnover in the return or whether a particular turnover attracts duty under one or other of the entries in the First Schedule to the Act or whether the item is taxable as a multi-point item, etc. To this extent we are of the opinion that the observation of the Supreme Court in Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax [1980] 45 STC 197, which we have extracted above, do apply even in the case of an incorrect or incomplete return. The conclusion therefore is inevitable that each case will depend upon its own facts. It is said that in the game of chess, no two games are the same after the fifth or sixth move. So also, the cases of assesseees which are brought to the portals of courts of law, are not always identical.

“false representation” and “wrong representation”

- Sanjiv Fabrics v. Commissioner of Sales Tax [(2004) 137 STC 563 (All.)]
 - A line of distinction has to be drawn in-between "false representation" and "wrong representation". **"Wrong representation" may be on account of some inadvertence or some omission.** "False representation" takes place when a person knowingly makes representation for certain things when he knew that he is not entitled to make the said representation.

“may”

“may”

■ CIT v. Smt. P K Noorjahan [(1999) 103 Taxman 382 (SC)]

- The submission of the Revenue is that the word `may' in section 69 should be read as `shall'. We are unable to agree ... in other words, a discretion has been conferred on the ITO under section 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

“may”

■ CIT v. Standard Mercantile Co. [(1985) 23 Taxman 452 (Patna)]

- If the default is not willful, it would be discretionary for the authorities to refuse or not to refuse the benefit conferred by section 185. But once it is held that the default was willful, the expression “may” in Section 186(2) can be fulfilled only by giving a mandatory complexion to that expression. It must be conceded that mere failure to comply with the notices issued under Sections 139, 142 and 143 will not invite the wrath of the penal provisions, but where the non-compliance of those provisions is willful, the assessee must be visited with the wrath of Section 186(2). The expression “may” in Section 186(2) must, therefore, be read as discretionary where the default is not willful and must be held to be mandatory where the default was willful.

“may”

■ J M Sheth v. CIT [(1965) 56 ITR 293 (Mad)]

- The use of the words “may refuse” in section 23(4) would rather indicate that the Income-tax Officer has a discretion not to refuse registration or cancel registration even in spite of the default of the assessee. Significantly, the statute uses the words “shall make the assessment to the best of his judgement” in the first part of the section. If the words “shall” and “may” are found in two different limbs of the same section, there cannot be a better legislative pointer to indicate that the first is obligatory and the second is discretionary.

... What consideration should weigh with the officer in the matter of his decision regarding registration cannot of course be laid down exhaustively or comprehensively. Suffice it to say that the matter is purely one of discretion to be exercised by the officer and, therefore, he should exercise it not arbitrarily or capriciously but in a manner consistent with judicial standards. This, in our opinion, is the true scope of section 23(4) of the Act.”

“may”

■ Smt. S. Anitha v. CIT [(2012) 25 taxmann.com 175 (Bang.-Trib.)]

- The use of the word “may” in the earlier portion of the aforesaid phrase is relatable backwards to the existence or otherwise of the defaults mentioned in clauses (a), (b) and (c) of sub-section (1) of section 271 of the Act; the said term “may” permits the Assessing Officer to exercise discretion as to whether penalty should be levied or not upon fulfilment of the prerequisite conditions in either of the situations mentioned in clause (a), (b) or (c).



Jagdish T Punjabi

B.Com., B.G.L., FCA.