After studying this chapter, you would be able to

- **appreciate** the provisions of Income-tax law relating to offences and prosecution;

- **determine** the quantum of fine and term of imprisonment for a particular offence;

- **examine** the power of Commissioner to grant immunity from prosecution;

- **appreciate** the presumption with respect to books of account, assets found in the possession or control of a person;

- **comprehend** the provisions relating to constitution of special courts and offences triable by Special Courts.
21.1 SUMMARY OF OFFENCES AND PROSECUTION

The punishable offences as well as the prosecution for such offences under the Income-tax Act, 1961 are discussed under Chapter XXII. Prosecution provisions under the Income-tax Act, 1961 are used as a tool for effective enforcement of tax laws and deterring tax avoidance and tax evasion.

While penalties may be imposed by the income-tax authorities, the imposition of a fine or the launching of prosecution for any offence under the Act can be made only by the Magistrate of a Court under sections 275A to 280. In respect of the same default of an assessee, penalty may be imposed and a prosecution also may be launched against him.

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of default</th>
<th>Rigorous imprisonment</th>
<th>Quantum of Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>275A</td>
<td>Contravention of order made under the second proviso to sub-section (1) or sub-section (3) of section 132 regarding search and seizure</td>
<td>Upto 2 Years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>275B</td>
<td>Failure to afford the authorized officer the necessary facility to inspect the books of account or other documents as required under section 132(1)(iib)</td>
<td>Upto 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>276</td>
<td>Removal, concealment, transfer or delivery of property to thwart tax recovery</td>
<td>Upto 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>276A</td>
<td>Failure to comply with the provisions of section 178(1) and (3) regarding company in liquidation or parting with any of the assets of the company or the properties in his hands in contravention of the provision of sections 178(1) and (3).</td>
<td>6 months to 2 years</td>
<td>-</td>
</tr>
<tr>
<td>276AB</td>
<td>Failure to comply with the provisions of section 269UC or 269UE or 269UL relating surrendering of property to Central Government</td>
<td>6 months to 2 years</td>
<td>-</td>
</tr>
<tr>
<td>276B</td>
<td>Failure to pay to the Central Government, tax deducted under the provisions of Chapter XVII-B or the tax payable by him, as required by (i) section 115-O(2); or (ii) Second proviso to section 194B</td>
<td>3 months to 7 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>276BB</td>
<td>Failure to pay to the Central Government tax collected under section 206C</td>
<td>3 months to 7 years (+) fine</td>
<td>No limit specified</td>
</tr>
</tbody>
</table>
### OFFENCES AND PROSECUTION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Evaded amount/Tax on under-reported income exceeding ₹ 25 lakh: 6 months to 7 years (+) fine</th>
<th>Other cases: 3 months to 2 years (+) fine</th>
<th>No limit specified</th>
</tr>
</thead>
<tbody>
<tr>
<td>276C(1)</td>
<td>Wilful attempt to evade tax, penalty or interest chargeable or imposable or under reports his income</td>
<td>Evaded amount/Tax on under-reported income exceeding ₹ 25 lakh: 6 months to 7 years (+) fine</td>
<td>Other cases: 3 months to 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>276C(2)</td>
<td>Wilful attempt to evade payment of tax, penalty or interest.</td>
<td>3 months to 2 years (+) fine, at the discretion of the court.</td>
<td>No limit specified</td>
<td></td>
</tr>
<tr>
<td>276CC</td>
<td>Wilful failure to furnish in due time a return of income u/s 139(1) or u/s 142(1)(i) or u/s 148 or u/s 153A. <strong>Note:</strong> If return of income u/s 139(1) is furnished before expiry of the assessment year or the tax payable by a person, not being a company, on the total income determined on regular assessment, as reduced by advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any TDS/TCS does not exceed ₹ 10,000¹ - No prosecution.</td>
<td>Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years (+) fine</td>
<td>Other cases: 3 months to 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>277</td>
<td>False statements in verification.</td>
<td>Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years (+) fine</td>
<td>In other cases: 3 months to 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
</tbody>
</table>

¹ The enhanced total income limit of ₹ 10,000 for not attracting prosecution proceedings u/s 276CC is effective in respect of total income of A.Y.2020-21 and subsequent assessment years. In respect of earlier assessment years, the total income limit for not attracting prosecution proceedings u/s 276CC is ₹ 3,000. In respect of those years, the tax payable on regular assessment can be reduced by only by advance tax paid and TDS.

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<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Punishment</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>277A</td>
<td>Falsification of books or documents, etc. to induce or abet any person to evade any tax, penalty or interest chargeable or imposable under the Act. It is not necessary to prove that the other person has actually evaded any tax, penalty or interest chargeable or imposable under the Act for the purpose of establishing the charge under this section.</td>
<td>Imprisonment of 3 months to 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>278</td>
<td>Abetment of false return etc. (relating to any income chargeable to tax)</td>
<td>Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years (+) fine In other cases: 3 months to 2 years (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>278A</td>
<td>Second and subsequent offences under section 276B, 276C(1), 276CC, 277, 278.</td>
<td>6 months to 7 years for every subsequent offence (+) fine</td>
<td>No limit specified</td>
</tr>
<tr>
<td>280(1)</td>
<td>Disclosure of particulars by public servants in contravention of Section 138(2). Prosecution after previous sanction of Central Government under section 280(2).</td>
<td>Up to 6 months (+) fine</td>
<td>No limit specified</td>
</tr>
</tbody>
</table>

Section 278AA provides that where a reasonable cause for the failure is proved, punishment shall not be imposed for offences specified in sections 276A, 276AB and 276B.

For the purposes of offences and prosecutions, the following individuals will be deemed to be guilty of the offence committed by the respective person:

<table>
<thead>
<tr>
<th>Person</th>
<th>Section</th>
<th>Individual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company</td>
<td>278B</td>
<td>Every person in charge of affairs; Director, Manager, Secretary and every officer who is guilty of offence</td>
</tr>
<tr>
<td>Firm</td>
<td>278B</td>
<td>Partner</td>
</tr>
<tr>
<td>AOP/BOI</td>
<td>278B</td>
<td>Members controlling the affairs</td>
</tr>
<tr>
<td>HUF</td>
<td>278C</td>
<td>Karta or member either by acquiescence or negligence.</td>
</tr>
</tbody>
</table>

Section 278B(3) provides that if an offence under the Act has been committed by a person being a company, it shall be punished with fine. Every other person who was in charge of and was responsible for the conduct of business of the company, or any director, manager, secretary or other officer of the company (with whose consent or connivance or due to whose neglect the offence was committed) would be liable for punishment of imprisonment and fine wherever so provided.
21.2 POWER OF PRINCIPAL COMMISSIONER OR COMMISSIONER TO GRANT IMMUNITY FROM PROSECUTION [SECTION 278AB]

Section 278AB empowers the Principal Commissioner or Commissioner to grant immunity from prosecution -

(1) **Eligible applicant** - The application for the immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Principal Commissioner or Commissioner of Income-tax before institution of the prosecution proceedings after abatement.

(2) **Time limit for filing application** - The assessee can approach the Principal Commissioner or Commissioner for immunity any time if prosecution proceedings were instituted before or during the pendency of settlement proceedings. However, if the assessee has received any notice etc. from the Income-tax authority for institution of prosecution, then he must apply to the Principal Commissioner or Commissioner for immunity, before actual institution of prosecution.

(3) **Granting of immunity subject to conditions** - The Principal Commissioner or Commissioner can grant immunity, subject to such conditions as he may think fit to impose, on being satisfied that the assessee has –

   (i) co-operated in the proceedings after abatement; and

   (ii) made a full and true disclosure of his income and the manner in which such income has been derived.

(4) **Withdrawal of immunity: Circumstances** –

   (a) If the assessee fails to comply with any condition subject to which the immunity was granted, the same would be withdrawn.

   (b) The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, -

      (i) concealed any particulars material to the assessment from the income-tax authority; or

      (ii) given false evidence.

Consequently, the person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.
21.3 PRESUMPTION WITH REGARD TO ASSETS, BOOKS OF ACCOUNT [SECTION 278D]

(1) **Presumption with regard to books of account and other documents in search cases** - Section 278D provides that in case where, during the course of any search made under section 132, any money, bullion, jewellery or other valuable articles or things or any books of account or other documents had been found in the possession or control of any person and such assets or books of account or other documents are tendered by the prosecution in evidence against any person and/or against any person who is convicted of an offence under section 278, the provisions of section 132(4A) would apply, in relation to all such books of account and other documents. Accordingly, it would be presumed that such books of account or other documents and assets belong to the person in whose control or possession they were found, at the time of search and also that the contents of such books of account and other documents are true.

(2) **Presumption with regard to books of account and documents in case of requisition** - Similarly, in cases where any books of accounts or other documents and assets are taken into custody from the possession or control of any person by the officer or authority specified in section 132A(1)(a) or (c) and these are delivered to the requisitioning officer under section 132A(2), it would be presumed that the presumption similar to the one mentioned earlier would operate in these cases as well.

(3) **Presumption rebuttable** - It would be for assessee to rebut the presumption wherever necessary by producing cogent and reliable evidence.

21.4 PRESUMPTION AS TO CULPABLE MENTAL STATE [SECTION 278E]

(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 may be noted that penalty proceedings being quasi-criminal in nature, it has been judicially held in the context of various penalty and prosecution proceedings, that the burden is on the department to establish that the assessee concealed the particulars of his income or deliberately furnished inaccurate particulars thereof and it is not enough for the revenue merely to show that a certain amount was received by the assessee. Section 278E has clearly overruled this view and has specifically placed the burden of proof on the assessee.

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.

(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.

### 21.5 PROSECUTION TO BE MADE AT THE INSTANCE OF THE PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER [SECTIONS 279 AND 279A]

(1) **Prior sanction of higher authorities** - Section 279(1) provides that the proceedings to punish a person for an offence under sections 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A and 278 can be initiated only after previous sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals) or the appropriate authority. 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 for institution of proceedings under section 279(1).

(2) **Cases were prosecution cannot be initiated** - Section 279(1A) provides that the proceedings to punish a person for an offence under section 276C or 277 cannot be initiated in relation to the assessment of an assessment year in respect of which the penalty imposed or imposable on him under section 270A has been waived or reduced under section 273A.

(3) **Compounding of offences** - An offence may either before or after the institution of prosecution proceedings be compounded by the concerned authorities under section 279(2).

(4) **Admissibility of statement made or books of account produced as evidence** - If a person is proceeded against under section 279(1), then a statement made or account or documents produced before any authority under Act shall not be inadmissible as evidence for purpose of the prosecution proceedings merely on the ground that such account or document was produced or statement was made in the belief that the penalty imposed or imposable under section 270A would be reduced or waived under section 273A or that the offence would be compounded.

(5) **Non-cognizable offences** - Section 279A provides that offences punishable under sections 276B, 276C, 276CC, 277 and 278 shall be deemed to be non-cognizable offences.

### 21.6 PROOF OF ENTRIES IN RECORDS OR DOCUMENTS [SECTION 279B]

(1) **Admissibility of entries in records as evidence in prosecution proceedings** - Entries in the records or other documents in the custody of an income-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Chapter.
21.8 DIRECT TAX LAWS

(2) **Proof of entries** - All such entries may be proved either:-

(i) by the production of the records or other documents in the custody of the income-tax authority containing such entries; or

(ii) by the production of a copy of the entries certified by the income-tax authority having custody of the records; or

(iii) other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records of other documents in its custody.

21.7 DISCLOSURE OF PARTICULARS BY PUBLIC SERVANTS [SECTION 280]

(1) **Imprisonment and fine for contravention of section 138(2)** - If a public servant furnishes any information or produces any document in contravention of section 138(2), he shall be punishable with imprisonment which may extend to 6 months and shall also be liable to pay fine.

Under section 138(2), the Central Government is empowered to issue notification directing that no information or document shall be furnished or produced by a public servant in respect of specified matters in relation to certain class of assesses. While issuing such notification, the Central Government takes into account the practices and usage customary or other relevant factors.

(2) **Prior sanction of the Central Government required** - No prosecution shall, however, be instituted under this section except with the previous sanction of the Central Government.

21.8 CONSTITUTION OF SPECIAL COURTS & OFFENCES TRIABLE BY SPECIAL COURT [SECTIONS 280A & 280B]

(1) **Under section 280A**, for the purpose of trial of offences under Chapter XXII i.e. Offences & Prosecution, one or more courts of Magistrate of the first class may be designated by the Central Government, in consultation with the Chief Justice of the High Court, by way of a notification as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.

(2) A Special Court, while trying an offence punishable under the Act, shall also try any other offence with which the accused may be charged, under the Code of Criminal Procedure, 1973.

(3) **Under section 280B**, the offences punishable under Chapter XXII, shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed. This is notwithstanding anything containing in the Code of Criminal Procedure, 1973.
(4) However, a court competent to try offences under section 292 which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under the Act after such designation. Further, a court competent to try offences under section 292, which has not been designated as a Special Court under this section, may continue to try such offence pending before it till its disposal.

(5) Further, notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Special Court may take cognizance of the offence for which the accused is committed for trial, upon a complaint made by an authority authorized in this behalf under the Act.

21.9 TRIAL OF OFFENCES AS SUMMONS CASE [SECTION 280C]

(1) The Special Court shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, try an offence under Chapter XXII punishable with imprisonment not exceeding two years or with fine or with both, as a summons case.

(2) When an offence is so tried as a summons case, the provisions of the Code of Criminal Procedure, 1973, as applicable in the case of trial of summons case, would be applicable.

21.10 APPLICATION OF CODE OF CRIMINAL PROCEDURE, 1973 TO PROCEEDINGS BEFORE SPECIAL COURT [SECTION 280D]

(1) The provisions of the Code of Criminal Procedure, 1973, including the provisions regarding bails and bonds, would apply to proceedings before a Special Court, unless otherwise provided under the Income-tax Act, 1961.

(2) The person conducting the prosecution before the Special Court shall be deemed to be a Public Prosecutor.

(3) The Central Government may also appoint a Special Public Prosecutor for any case or class or group of cases.

(4) A person shall be qualified for appointment as a Public Prosecutor or a Special Public Prosecutor only if he has been in practice as an advocate for at least seven years, requiring special knowledge of law.

(5) Every person appointed as Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of section 2(u) of the Code of Criminal Procedure, 1973. The provisions of the Code of Criminal Procedure, 1973, would have effect accordingly.
Question 1

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 132(1)(iib) 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 142(1) and/or 142(2A).

(iii) The assessee deliberately has failed to make the payment of the tax collected under section 206C.

Answer

(i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which prosecution can be launched under section 275B and such person shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

(ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which prosecution can be launched under section 276D and such person shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

(iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which prosecution can be launched under section 276BB and such person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

Question 2

The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2018-19 within the due date under section 139(1). 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 Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹2,900. 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?

Answer

(i) Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since the amount of tax which would have been evaded does not exceed ₹ 25 lakh, the imprisonment would be for a term of 3 months to 2 years. In addition, fine would also be attracted.

However, in a case where the return of income is not filed within the due date, prosecution proceedings will not be attracted if the tax payable by a person, other than a company, on the total income determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed ₹ 3,000.

In this case, even though the tax liability of the firm as per the original order of assessment exceeded ₹ 3,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 2,900, which is less than ₹ 3,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 2,900, the prosecution proceedings 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.

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

Question 3

Explain section 278C applicable in respect of offences committed by Hindu undivided families.

Answer

As per section 278C(1) of the Income-tax Act, 1961, where an offence under the Income-tax Act, 1961 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 278C(2), where an offence under the Income-tax Act, 1961 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.
Question 4

Can the Department launch prosecution in a case where they have accepted the revised return filed by the assessee, rectifying a mistake in the original return of income?

Answer

This question came up before the Karnataka High Court in K.E. Sunil Babu, Asst. CIT v. Steel Processors (2006) 286 ITR 315. The High Court observed that since the Department had accepted the revised returns filed under section 139(5), it was clear that there was a \textit{bona fide} mistake in the original return and there was no element of \textit{mens rea}. Therefore, the High Court held that the Department cannot launch prosecution under sections 276C, 277 and 278.
SIGNIFICANT SELECT CASES

1. Whether payment of sums due, after the deadline stipulated by the Settlement Commission, would save the petitioner from withdrawal of immunity from prosecution?

_Sandeep Singh v Union of India [2017] 393 ITR 77 (SC)_

**Facts of the case:** The petitioner is a dealer in real estate at Amritsar. A search was conducted on August 21, 2009 at his business and residential premises under section 132(1) subsequent to which the assessee filed an application before the Settlement Commission under section 245C(1). The case was settled before the Settlement Commission on December 12, 2014. Pursuant to the assessment after settlement, the petitioner was unable to pay the amount due by the stipulated date. He sought an extension for 14 months but was only given time until July 31, 2015.

The assessee filed a writ petition before the High Court seeking quashing/ modification of the Settlement Commission’s order granting partial extension of time. By the time the matter was heard by the Supreme Court, he had paid off all pending amounts.

**Supreme Court’s Observations:** The Supreme Court explained that in case payments are not made within the time granted by the Settlement Commission or in case the person fails to comply with any other condition, subject to which the immunity was granted, the immunity shall stand withdrawn.

It is not in dispute that all payments were made by the assessee on January 20, 2016 before approaching the Supreme Court. Though the time originally granted was only up to July 31, 2015, all sums having been paid now, there is no need to relegate the assessee to the Settlement Commission. Settlement Commission has the power to extend the timelines. Hence, in the instant case, it shall be taken that the assessee has made the payments within the time granted under section 245H(1A).

**Supreme Court’s Decision:** The Supreme Court held that the assessee having cleared all taxes due vide order of Settlement Commission, albeit after stipulated deadline, is immune from prosecution.
2. Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?

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

High Court's Observation and Decision: In this case, the High Court observed that for the provisions of section 276CC 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 276CC are not attracted in such a case.