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STUDY CIRCLE MEETING ON 19TH MACRH, 2018

Important issue in respect of Prosecution under Income tax law.

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Introduction

a. Chapter XXII of the Act deals with Offence and Prosecution
b. Wanchoo Committee recommended vigorous prosecution policy. They justified it by saying that the monetary penalties are not enough and public tends to loose faith in the administration if they find that the tax evaders are left away after levying only monetary penalty. The recommendations of this committee led to sea changes in the Act which expanded the scope of prosecution.

Burden of proof

'Mens rea'

a. The standard common law test of criminal liability is usually expressed in the Latin phrase, '*actus non facit reum nisi mens sit rea'* which means that the act is not culpable unless the mind is guilty. As a general rule, criminal liability does not attach to a person who merely acted with the absence of mental fault. Thus, onus is always on the prosecution to prove mens rea on the part of the accused to charge him with any offence.
b. Even, under the Income Tax Act, 1961, the Hon'ble Supreme Court has held in case of **Dharmendra Textile Processors (295 ITR 244),** that *mens rea* is as an essential ingredient in the matter of prosecution
c. Onus shifted by introduction of section 278E of the Act, which was inserted w.e.f. 10.9.1986.
d. Constitutionality of the said section was challenged before the Hon'ble Madras High Court in case of **Selvi J. Jayalaitha v. Union of India (169 Taxman 408)**. Hon'ble Court, upholding the constitutionality of the said section, held that mens rea is sine qua non for prosecution even after the introduction of section 278E; only the burden of proof of culpable mental state has been shifted to accused from Department. On appeal, Hon'ble Apex Court held that in every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary and that too beyond reasonable doubt [**Sasi Enterprises v. ACIT, 361 ITR 163 (SC)**].
e. This legal presumption is justified on the ground that the assessee is in full possession of the facts relating to his affairs

f. Section 278E(2) requires the accused to prove the absence of 'mens rea' beyond reasonable doubt. The section further provides that the mere proof by a preponderance of probability would not be sufficient. This provision is unreasonable, illogical and too harsh. It requires the assessee to do an impractical and almost impossible thing.
g. Here, however, it is important to note that the legal presumption contained in section 278E is limited to the existence of mens rea alone and it does not absolve the prosecution of its responsibility to prove the facts which prima facie establish the charge before 2ognizance of an offence is taken. A prima facie case for prosecution should be made out against the accused by the Department. A suspicion however, strong against the accused may be, but, if there is a reasonable possibility of innocence the accused would be entitled to acquittal.

278AA – Reasonable cause

a. No person shall be punishable for any failure if he proves that there was reasonable cause for such failure as given in section 276A, 276AB and 276B.
b. Thus, the application of this section is restricted to certain offences. However, one has to consider the implication of section 273B of the Act, which requires one to give reasonable cause for deletion of penalty.

Various offences

276B –Failure to pay tax

Section 276B of the Act, standing as on date and introduced w.e.f. 1.6.1997, deals with 3 types of offences given hereunder:

a. Failure of person to pay to the credit of the Central Government tax already deducted at source,
b. Failure of person to pay Divided Distribution Tax (DDT), payable u/s 115-O(2) to the credit of the Central Government and
c. Failure of person to pay to the credit of the Central Government tax payable by him as required under Second Proviso to section 194B.

Above mentioned offences are made punishable with rigorous imprisonment for a term which is not less than 3 months but may extend to 7 years and with fine.

115O offence

a. As per section 115-O(3), liability of payment of tax is on the Company and the Principal Officer of the Company. On failure to comply, Company and the Principal Officer of the Company, are treated as assessee-in-default u/s 115Q. In addition to that, such persons are also liable for monetary penalty u/s 271C. Thus, when a domestic company declares, distributes or pays dividend to its shareholders and when the Company fails to pay DDT to the credit of Central Government within the due date, then Principal Officer of the Company as well as the Company shall be treated as guilty of offence u/s 276B and can be made punishable thereunder.
b. Deemed dividend now also covered by section 115O – one can plead reasonable cause?

Default under second proviso to section 194B

a. Section 194B imposes obligation on the person responsible for paying any person, any income by way of winnings, to deduct tax at source from such winnings at the rates mentioned therein. Second Proviso to the said section deals with the situation where the winnings are partly or wholly in kind and where the cash part of the winning is not sufficient to meet the liability of deduction of tax at source. In such case, Second Proviso, requires the person responsible for paying such winnings to make payment of tax before releasing the winnings. Third limb of Section 276B specifically deals with the Second Proviso to section 194B and provides that an act of the person of releasing the winnings before making payment of tax shall be treated as an offence. Further, this act is also penalized u/s 271C of the Act.

Default of non-payment of TDS

Now, coming to the 1st type of offence mentioned in section 276B. It deals with a situation where a tax is already deducted by any person under the provisions of chapter XVII-B like section 192, 194, 194C, 194I, 194J, 195 etc., but the same has not been paid by such person to the credit of Central Government. Offence of non-deduction of tax at source is not covered here.

a. Non-deduction of tax vs. deduction and non-payment

i. If the any person fails to deduct tax at source itself, then the same is liable to monetary penalty u/s 271C of the Act, whereas where a person deducts tax but fails to pay the same to the Government, then he is liable for prosecution u/s 276B of the Act.

ii. Upto 31.3. 1989, non-deduction of tax at source was also an offence u/s 276B of the Act. It was only vide the Direct Tax Law (Amendment) Act, 1987, that the act of non-deduction of tax at source was brought outside the ambit of prosecution and was made liable for monetary penalty u/s 271C. (See Salwan Construction Co. vs. Union of India, 245 ITR 175 (Delhi) and Kaushal Kishore Biyani vs. Union of India through ITO, 256 ITR 679 (MP)]

b. Late payment

i. The question whether late payment of tax can still trigger the provision of section 276B has been answered in affirmative by Hon'ble Supreme Court in case of Madhumilan Syntex Ltd. vs. UOI [160 Taxman 71(SC)].

c. Insignificant amount

i. Instruction issued by the Government of India, Ministry of Finance, CBDT, dt. 28th May, 1980, states as under

"The prosecution under s. 276B should not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the Government".

Courts have considered the above instruction in the below given cases

ii. Where the amount involved is insignificant, prosecution proceedings cannot be sustained [Bee Gee Motors & Tractors vs. ITO, 218 ITR 155(P&H) – Amount of Rs. 10000.

iii. Hanuman Rice & Oil Mills vs. State of Bihar, 96 Taxman 69 (Patna)] - delay of 45 days and interest u/s 201(1A) was Rs. 200.

iv. Where delay in depositing amount of TDS was not substantial and amount involved was not very huge and amount in default had also been deposited, department in its discretion could not launch prosecution under section 276B. [Vijaysingh vs. Union of India (278 ITR 467)]. Delay – 5 months and amount involved = 28000.

v. Recently, Ministry of Finance, have on 6th August, 2013, issued a Press release wherein it was mentioned that the guidelines to pick up cases for launching prosecution has been modified and the criterion of minimum retention period of 12 months have been dispensed with. Thus, now, prosecution can be launched even for a delay of 1 day.

d. Reasonable cause

i. Section 278AA, however, can be relied upon by the accused, if he provides reasonable cause for failure of offence u/s 276B. Further, Courts have held that, mens rea is an essential ingredient for inviting the consequences of section 276B [Vinar & Co. vs. ITO 193 ITR 300 (Cal)]. Contrary view was taken in case of DCITvs. Modern Motor Works [220 ITR 415(P&H)] and Rishikesh Balkishandas and Ors. Vs. ITO [167 ITR 49 (Del)]. But, one can rely upon the judgment of Hon'ble Supreme Court in case of Dharmendra Textile Processors [295 ITR 244] where the court has held that mens rea is essential ingredient in the matter of prosecution under s. 276C.

ii. On reasonable cause to justify the offence, paucity of funds and financial stringency are considered as reasonable causes for delayed payment of TDS [ITO vs. Roshni Cold Storage (P.) Ltd. 245 ITR 322 (Mad)]. Further, in this case the assessment of the creditor company, itself for all the assessment years in question was completed and the tax was paid by the creditor on the whole of its income including 'interest income' which it had earned from the accused-company at the end of the each accounting year in question. The Court held that the ends of justice would require that the whole matter should get extinguished. Also it held that there was no loss to the exchequer caused in any way

iii. Oversight on the part of the Accountant, who was appointed to deal with Accounts and Income-tax matters, can be presumed to be a reasonable cause for not depositing the tax within time. The petitioner immediately after noticing the aforesaid defects by the Statutory Auditors of the petitioner-company deposited the amount before in the next year. Held no prosecution - 396 ITR 636 (Pat) Sonali Autos (P.) Ltd. vs. State of Bihar

iv. In the instant case assessee's failure to deposit the amount collected was beyond its control and was on account of seizure of books of account and documents etc. But for such seizure, the assessee would quite reasonably be

expected to deposit the amount within the time prescribed or at least within the reasonable time. – 391 ITR 98(Del) Sports Infratech (P.) Ltd. vs. DCIT

v. However, non-availability of Director to sign the cheque to make payment of Tax at source could not be accepted as reasonable cause for quashing prosecution. [Enormous delay] [ITO vs. Rayala Corpn. (P.) Ltd. 206 ITR 381 (Mad)].

276C – wilful attempt to evade tax

Elements of s.276C(1)

a. wilfully attempts
b. any manner whatsoever
c. evade tax, penalty or interest
d. chargeable or imposable
e. or under reports his income

Elements of s. 276C(2)

a. wilfully attempts
b. any manner whatsoever
c. evade payment tax, penalty or interest

a. Difference between two sub-sections

i. "*Therefore, it clearly appears that, as words `chargeable' or `imposable' being absent in sub-cl. (2), the clear meaning could be payment of any tax, penalty or interest and that too, which is determined. Therefore, sub-s. (1) contemplates evasion before charging or imposing tax, penalty, or interest. Reading sub-cl. (2), it becomes very clear that it refers to the cases of tax evasion after charging or imposition, that is, evasion after completion of assessment comes within the purview of sub-section".* - 213 ITR 0307 (Guj) CHANDULAL SHAH vs. STATE OF GUJARAT & ANR

b. Issues under section 276C(1)

i. Under reports his income – whether 'wilfully' qualify under reporting of income? (Also see under reporting of income s. 270A(2) – exceptions are there in s. 270A(6) and misreporting is covered by s. 270A(9) whereas s. 270AA deals with immunity from prosecution and penalty – only in case of under reporting which is not misreporting)

ii. Disclosed income but not the source of income - There is no allegation in the petition of complaint that any income was sought to be held back or was not disclosed in the returns. On the contrary, it is a prosecution for refusal to disclose the source of income. It is manifest from a plain reading of the provisions that prosecution can lie only if a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act. In the present case, there is no allegation that the petitioners failed to disclose any taxable income which could have resulted in evasion of any tax, penalty or interest chargeable or imposable under this Act. It follows as a matter of necessary implication that failure to disclose the

source of income, in contradistinction to the failure or refusal to disclose the corpus/income itself is not punishable under s. 276C(1).- 243 ITR 0274(Pat) Patna Guinea House vs. CIT – Can be useful for demonetization cases.

iii. Amount of tax sought to be evaded - Reduction of loss –Whether prosecution can be initiated? See 216 ITR 446(P&H) NUCHEM LTD. vs. DCIY - The assessee was assessed finally at a loss figure. Thus, there was no income and so the motive to avoid tax during the year in question is completely missing. May be, it may give a benefit to the assessee in the coming year as the loss could be carried forward but, by no stretch of imagination, can it be said that during the assessment year in question, the assessee had concealed its income. Inasmuch as the findings recorded by the authorities constituted under the IT Act itself, as on today, are that the assessee has sustained loss, in considered view of this Court, criminal proceedings pending against them under ss. 276C(1), 277 and 278B would be nothing but an abuse of the process of Court.

iv. Bogus purchase – estimated addition – penalty cases can be useful – contingent upon the findings in the appellate and assessment orders.

v. Penny stock – Departments case is based on surrounding circumstances whereas the assessee's case is based on actual evidences – if ultimately Departments case is upheld based on preponderance of probability then prosecution should not stand – again contingent upon the findings in the appellate and assessment orders.

vi. Whether for prosecution u/s 276C(1), assessment is necessary?
    a. In contrast with section 271, for initiating prosecution, there is no requirement of satisfaction in the assessment order. Also, the section only requires the allegation or complain of wilful attempt to evade tax. If the same can be demonstrated from any other material then no need for assessment.
    b. Further, the section uses the term chargeable or imposable.
    c. However, where assessment is under progress, the Court held that Return yet to be filed and the genuineness of the sale agreement is yet to be decided in regular assessment, criminal complaint alleging offence under s. 276C would be premature and hence liable to be quashed- 181 ITR 414(AP)

c. Explanation 1 deems certain situations to be case where there is wilful attempt to evade tax etc.

i. not exhaustive but inclusive

ii. Mere possession or control of any books of account and other documents containing a false entry or statement is not punishable. It is only where a person in possession or control of such books of account or other documents has knowledge of the false entry or statement, he renders himself punishable. Thakasi Satyanarayana vs. State of Andhra Pradesh [(1985) 153 ITR 818 (AP)].

iii. Books must be relevant to any proceedings under the Act. Thus, if the books relate to the period for which no action can possibly be taken under the Act for the reason of expiry of limitation, there will be no offence.
iv. Though the provision does not say that the books should belong to the person in whose possession or control they are found, it implies that he should be the owner thereof or they should relate to him. This inference is drawn from the language of sub-section (1) which refers to the tax, penalty or interest imposable upon him and not on any other person
v. Incomplete books not containing all the transactions entered into by the assessee during the relevant period would be sufficient to prima facie establish the guilt. Thus, if on comparison with the accounts of the other party it is found that certain transactions have been omitted, the offence is committed
vi. Last clause is of the widest import. Thus, doing business or entering into the transaction in benami name may fall under this clause.
vii. Explanation 1 can be invoked only if the situations lead to evasion of tax etc.

d. 276C(2)

i. Failure to pay advance tax – The Gujarat HC has held that failure to pay advance tax would be covered by section 276C(2) as Sub- s. (2) of s. 276C could be attracted only when a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act and not otherwise - 213 ITR 0307 (Guj) CHANDULAL SHAH vs. STATE OF GUJARAT & ANR
ii. Failure to pay S A Tax – Can be covered by Section 276C(2) subject to mens rea.
iii. Non-payment after receipt of 156 demand notice, within the specified period would invite prosecution provided its wilful and the intention is to evade payment of tax. (Consideration should be given to promptness of payment, conduct of the assessee while determining mens rea)
iv. Failure by a Debtor to pay under garnishee proceedings. One can argue that the recovery of the amount under garnishee proceedings is not in the nature of tax, interest or penalty under this Act in so far as the debtor is concerned.
v. wilful transfer of property so as to thwart the recovery of the same would get covered by section 276C(2).

<u>276CC – wilful failure to furnish return</u>

a. Evasion of tax is sin qua non for section 276CC – strength can be derived from s.276CC(i) - it states tax that would be evaded if the failure was not discovered –
b. How to calculate the amount to tax which would have been evaded? tax evaded should be reduced by the amount of S A Tax, TDS, Advance tax. One can get strength from the Compounding guidelines also.
c. There would be overlapping of 276C and 276CC.
d. Delay in filing of Return - Late filing of return – difficult to prove mens rea
    a. See - 184 ITR 0047 (AP) ITO vs. AUTOFIL & ORS. - It is not simple failure in submission of the returns by the due date that amounts to an offence

under s. 276CC but that failure should be wilful so as to call for a conviction. In the instant case the respondents filed an explanation stating that their clerk was not well and, therefore, the day-to-day accounts could not be finalised and the profit and loss account could not be drawn up so as to file the return in time. They have also stated that they were not conversant with the preparation of profit and loss account and the balance sheet and thus the delay was neither wilful nor wanton. Even if for any reason the explanation does not receive acceptance, still the conduct of the respondents in paying the advance tax, the penal interest and penalty and want of mens rea absolve them from criminal liability.

e. Exceptions are given in the Proviso, however the same is applicable only in case of failure u/s 139(1) and not in case of s.142, 148, 153A
f. Amendment by Finance Bill 2018 - In order to prevent abuse of the said proviso by shell companies or by companies holding Benami properties, it is proposed to amend the provisions of the said sub-clause so as to provide that the said sub-clause shall not apply in respect of a company.

276D – failure to file response to notice u/s 142

if a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (1) of section 142, such accounts and documents as are referred to in the notice or wilfully fails to comply with a direction issued to him under sub-section (2A) of that section, he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine

277 – false statement or verification

a. There should be evasion of tax - A reading of cls. (i) and (ii) of s. 277 makes it clear that the punishment under s. 277 can be imposed under cl. (i), if evasion of tax exceeds one hundred thousand rupees with rigorous imprisonment and three months in other cases, other than those cases where the evasion of tax is less than one hundred thousand rupees. Therefore, the punishment under cl. (ii) can be imposed only if there is any evasion of tax, otherwise the question of imposing punishment does not arise. Therefore, the question of punishing the accused arises, provided there is an evasion of tax. Since the appellants have admitted that the accused are not liable for payment of tax, the trial judge is right in acquitting the accused — 219 ITR 263(AP) ITO vs. GADAMSETTY NAGAMAIAH CHETTY & ORS.

278 – Abetment of false returns

a. Role of auditor - There is no allegation in the complaint, that these documents had actually been placed before the petitioner, at the time when he prepared the returns for the first accused. It could not be even stated that the petitioner had knowledge that these additional documents existed. The auditor could prepare returns only on the materials placed before him by his client. There is no presumption that all materials available with the client are being placed before the auditor. Merely, preparing returns on the basis of the accounts placed before him and having the same typed in his letter-head and delivering it

to the client for signature, will not make him liable, even if the returns are subsequently found to be false, on the basis of some new material gathered by the Department. The petitioner could not, therefore, be prosecuted. No allegation in the complaint that documents unearthed subsequently were placed before auditor while preparing returns for assessee—Prosecution of auditor invalid - 168 ITR 788(Mad) NAVARATHNA & CO. vs. STATE BY INCOME TAX OFFICER

SOME COMMON ISSUES IN RESPECT OF ALL PROSECUTION SECTIONS.

I. Limitation

a. The Hon'ble Bombay High Court in the case of, K.M.A. Ltd. vs. ITO [(1996) Tax LR 248 (Bom.)] held that complaint filed after 13 to 14 years after the date of alleged offence was liable to be quashed on the ground of inordinate and unreasonable delay.
b. The Hon'ble Patna High Court in the case of, Gajanand vs. State [(1986) 159 ITR 101 (Pat.)] set aside the prosecution under section 276C of the Act holding that if the department lets proceedings drag for years without making any serious efforts to proceed with it, the same is liable to be quashed.
c. The Hon'ble Apex Court in the case of, State of Maharashtra vs. Natwarlal Damodardas Soni [AIR 1980 SC 593] held that a long delay in prosecution is a factor which should along with the other circumstance, be taken into consideration in mitigation of the sentence.
d. The Hon'ble Bombay High Court in the case of, Vishnoo Kamat vs. First ITO [(1994) 207 ITR 1040 (Bom)] quashed the criminal proceedings initiated before the Magistrate on the facts that penalty was already imposed on the accused and the criminal proceedings were instituted after a long delay of about ten years reckoned from due date of return.

TDS

e. Prosecution must be launched within reasonable time [Vinar & Co. vs. ITO (193 ITR 300 Cal) Lapse of 10 to 16 years is not permissible- and Bee Gee Motors & Tractors vs. ITO, 218 ITR 155(P&H)].
f. prosecution launched against the petitioner after lapse of about three years from the date of deposit of due tax along with interest by the petitioner under Section 201(1A) of the Act, which is contrary to the instructions bearing F. No.255/339/79-IT (Inv.) dated 28.05.1980 no maintainable - 396 ITR 636 (Pat) Sonali Autos (P.) Ltd. vs. State of Bihar
g. Against view on limitation taken by Hon'ble Bombay High Court in case of UOI vs. Gupta Builders P. Ltd. [297 ITR 310 (Bom)].

II. Finding in assessment / penalty proceedings.

a. The Apex court in K.C. Builders & Anr. vs. ACIT [(2004) 265 ITR 562 (SC)] held that levy of penalty under section 271(1)(c) of the Act and prosecution under section 276C of the Act are simultaneous. Once the penalty levied under section 271(1)(c) of the Act has been cancelled / deleted on the ground that there was no concealment of income, the quashing of prosecution was automatic.

b. Followed by the Hon'ble Bombay High Court in the case of, Indian Plywood Manufacturing Co. Ltd. vs. Dave (PS) [(2007) 291 ITR 430 (Bom)] and ITO vs. Nandlal and Co. [(2012) 341 ITR 646 (Bom)]
c. The Hon'ble Andhra Pradesh High Court in the case of, ITO vs. Siddique (K.A.) [(1997) 227 ITR 677 (AP)] held that a criminal court has to give due regard to the result of any proceedings under the Act having a bearing on the question in issue and in suitable cases it may drop the proceedings in the light of an order passed under the Act.
d. Although the criminal court has to judge the case independently on the evidence placed before it, the finding of facts recorded by the ultimate income-tax authority is conclusive and binding on the criminal court. Further the Hon'ble Madras High Court in the case of, Mohammed I. Unjawala vs. CIT [(1995) 213 ITR 190 (Mad)] held that Criminal Court is bound to accept the findings of Tribunal on questions of fact more so when such findings are in favour of assessee.

Deletion of penalty (TDS)

a. On survival of prosecution proceedings, one can say that where the Hon'ble ITAT has held that assessee was not liable to deduct tax at source, there can be no prosecution [Detecon Indian Project Office vs. ITO, 210 ITR 260 (Delhi)]. Further, quashing of penalty is sufficient ground for quashing prosecution proceedings [Harkawat and Co. vs. UOI, 302 ITR 7 (MP)].

III. Setting aside of assessment order

a. Assessment order set aside with direction to re-examine the witnesses so that accused is given opportunity to cross-examine them—Basis of allegations not existing—There is no basis to proceed against the accused until the Department once again after fresh assessment comes to the conclusion that the vouchers and receipts are fabricated—Proceedings quashed—Department free to initiate criminal action after fresh assessment—It is also open to assessee to agitate the question of limitation if and when fresh assessment is made - THANJAI MURASU & ORS. vs. ITO 247 ITR 0465(Mad). Also see 253 ITR 0551 (Del) SMT. SHEELA GUPTA vs. IAP
b. Against view - pendency of proceedings under section 201(1) and 201(1A) (Set aside by ITAT to do denove) cannot act as a bar to institution and continuance of criminal prosecution. [Kingfisher Airlines Ltd. vs. Income Tax Department, 265 ITR 240 (Kar)].

IV. Non-initiation of penalty

a. There is no co-relation between the penalty proceedings under s. 271 and criminal prosecution under s. 277 and initiation of penal proceedings is not a condition precedent to institution of a complaint under s. 277. - 134 ITR 0397 (Del) RAJINDER NATH vs. M.L. KHOSLA, INCOME-TAX OFFICER & ANR.
b. Charging of interest u/s 201(1A) and mere absence of levy of penalty cannot obliterate prosecution [Universal Supply Corporation vs. State of Rajasthan 206 ITR 222(Raj)].

c. However, one has to look at the facts of each case. If the AO has not recorded any satisfaction in the assessment order u/s 271, then in that case one can argue, that the AO did not feel it was a fit case for levy of penalty, in which scenario, prosecution cannot be launched.

V. Pendency of appellate proceedings

a. Pendency of the appellate proceedings is not a relevant factor for not initiating prosecution proceedings under Section 276CC of the Act. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence, the department may resort to best judgment assessment or otherwise to past years to determine the extent of the breach. – SC in case of Sasi Enterprises vs. ACIT – 361 ITR 163(SC)

VI. Pendency of penalty proceedings.

a. Pendency of appeal against penalty proceedings under section 271(1)(c) of the Act was held not to be a bar to launching of prosecution under the Act – C.R. Balasubramaniam vs. CIT [(1999) 235 ITR 35 (Mad)].
b. However, it was held that hearing in the prosecution proceedings can be postponed / stayed till the finality of assessment / penalty proceeding - Gauri Shankar Prasad vs. UOI [(2003) 261 ITR 522 (Pat)] and Prabhava Organics P. Ltd. vs. DCIT [(2008) 297 ITR 392 (AP)].

VII. Stay of prosecution proceedings by Tribunal

a. 169 TTJ 704 (Delhi - Trib. Jindal Steel & Power Ltd. vs. ACIT - Where revenue had not launched prosecution against assessee in any criminal court, stay application filed by assessee for keeping in abeyance launching of said prosecution proceedings was to be granted

VIII. Hearing before granting of sanction

a. 263 ITR 550(SC) ACIT vs. VELLIAPPA TEXTILES LTD. & ORS - Grant of sanction is purely an administrative act and affording of opportunity of hearing to the accused is not contemplated at that stage—Therefore, no opportunity of hearing is required to be afforded to the accused before grant of sanction by the CIT under s. 279

IX. Other arguments available

a. Adequate disclosure – no concealment – mere wrong claim – no penalty - 322 ITR 158(SC) CIT vs. RELIANCE PETROPRODUCTS (P) LTD.
b. Legal Counsel's advice – no penalty leviable - T. ASHOK PAI vs. CIT – 292 ITR 11(SC)
c. Two views possible – debatable issue – no penalty