

INSTRUCTIONS / CIRCULARS

1. INSTRUCTIONS / CIRCULARS RELEVANT TO PROSECUTION:

1. F.No.285/90/2008-IT(Inv.-I)/05
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
North Block, New Delhi.

Dated:- 24th April, 2008

To

All CCsIT (CCA), all DGsIT (Inv.) and all CCsIT(Central).

Sirs/Madam,

Subject:- Streamlining of procedure for identification and processing of case for Prosecution under Direct Tax Laws- matter reg.-

It is noticed that prosecution is being launched in very few cases and that too only in cases of technical offences. In spite of Action plan targets, many regions have not filed even a single prosecution case in a year.

2. In order to ensure that prosecution provisions are effectively implemented so as to create adequate deterrence against tax evasion, I am directed to inform the following revised procedure for identification and processing of cases for launching prosecution. This procedure will regulate the launching of prosecution for offences under Direct Tax laws with effect from 01.05.2008 and this procedure will not apply to a case where the prosecution has already been launched.

3. Identification and processing of potential prosecution cases:

3.1 The following categories of offences shall be processed for launching prosecution:-

- (i) **Offences u/s 276B:** Failure to pay taxes deducted at source to the credit of Central Government

Cases, where amount of tax deducted is Rs.25,000 or more, and the same is not deposited even within 12th months from the date of deduction, shall be processed for prosecution in addition to the recovery steps as may be necessary in such cases.

The authority for processing the prosecution under this section shall be the officer having jurisdiction over TDS cases. The prosecution shall preferably be launched within 60 days of such detection. If any such default is detected during search / survey, the processing ADIT/DDIT or the authorized officer shall inform the A.O having jurisdiction over TDS forthwith.

- (ii) **Offences u/s 276BB:** Failure to pay taxes collected at source to the credit of central government

The guidelines for launching prosecution under this section would be the same as for offences u/s 276B of the Act.

(iii) Offences u/s 276C(1): Wilful attempt to evade taxes

All cases where penalty u/s 271(1)(c) exceeding Rs.50,000/- is imposed and confirmed by the ITAT (if any second appeal has been filed) shall be processed for filing prosecution complaint.

The case for prosecution under this section shall be processed by the A.O. preferably within 60 days of receipt of the ITAT's order, if any.

(iv) Offences u/s 276C(2): Wilful attempt to evade payment of taxes

All cases, where an assessee wilfully evades payment of outstanding tax, interest, penalty or any other sum amounting to more than Rs.1 lakh for 180 days or more after its final determination i.e. after giving effect to appellate orders, if any, shall be processed for filing prosecution complaint.

The case for prosecution under this section shall be processed by assessing officer/TRO preferably within 60 days of expiry of the said period.

(v) Offences u/s 276D: Failure to produce accounts and documents

The following cases shall be processed for filing prosecution complaint:-

(a) Cases, where an assessee wilfully fails to produce any books of accounts and/or documents involving transaction of Rs. five lakhs or more and penalty u/s 271(1) (b) has been confirmed upto second appeal (if any),

(b) Cases, where an assessee wilfully fails to comply with the directions issued u/s 142(2A) of the I.T. Act, 1961 to get the accounts audited and the accounts involve turnover of Rs. 40 lakhs or more in case of business income or Rs. 10 lakhs or more in case of professional income and penalty u/s 271(1)(b) has been confirmed upto second appeal (if any).

The A.O. shall process the case for prosecution preferably within 60 days of receipt of the penalty order from ITAT (if any).

(vi) Offences u/s 277A: Falsification of books of account or documents etc

Prosecution shall be processed in the case of any person found to have indulged in falsification of books of account or documents etc, irrespective of the amount of evasion by the person concerned.

The processing ADIT/DDIT or the assessing officer shall process the case for prosecution preferably within 180 days of its detection during the course of search or survey or any other proceeding. The prosecution in the case of any person, who has provided hawala entries to any other person, shall not preclude the A.O. concerned from launching prosecution against the beneficiary on receipt of information from the ADIT/DDIT/A.O. processing the main case.

(vii) Offences u/s 278: Abetment of false return

Prosecution shall be launched by A.O. depending on the facts and circumstances of each case. However, if the abetment is for any offence against which prosecution has been initiated, then the officer initiating prosecution in the main case, shall preferably initiate prosecution under this section simultaneously.

3.2 Whereas the cases falling in various categories enumerated in para 3.1 above shall be processed for launching prosecution, for offences u/s 275A, 275B, 276, 276 (prior to 1.4.76), 276 (w.e.f. 1.4.89), 276A, 276AA, 276AB, 276CC, 276CCC and 277 of the I.T. Act, 1961, each case should be examined and decision may be taken on the facts of each case. Similarly, for offences committed under Wealth Tax Act and in respect of BCTT and STT decision may be taken on the facts of each case.

3.3 All cases, where search or survey action is conducted under I.T. Act, 1961 and the person covered is found not to have filed return of income u/s 139(1) or in response to notice u/s 142(1)/148 of the I.T. Act, 1961 in respect of any previous year, should be processed for launching prosecution u/s 276CC of I.T. Act, 1961 or corresponding provisions of other Direct tax laws.

3.4 A case of an Individual shall not ordinarily be processed for launching prosecution for any offence, if the individual concerned has attained the age of 70 years at the time of commission of the offence.

4. Notwithstanding anything contained in this procedure, prosecution under relevant provisions of Direct tax laws shall be launched in all cases where:

- (a) The offence involves major fraud or scam or misappropriation of government funds or public property or;
- (b) The assessee is linked to any anti-national/terrorist activity and cases being investigated by CBI, Police, Enforcement Directorate or any other Central Govt. agencies ; or
- (c) The assessee has enabled others in large-scale concealment of income; or
- (d) Any other case, where the CIT considers it a fit case for launching prosecution, keeping in view the nature and magnitude of the offence.

5. In case the assessee has filed any petition for compounding, the same shall be disposed before filing of the prosecution complaint.

6. The CCsIT and DGsIT are requested to circulate the above revised procedure among all the officers of their region.

Yours faithfully,

Sd/-

(D. K. Gupta)

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