



Prosecution for non-filing of ITR or non-payment of taxes u/s 276CC/ 276C...but only on wilful evasion

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The following are offences to note in Income Tax Act 1961 & Income Tax Act 2025 –

Income Tax Act 1961	Income Tax Act 2025
Section 276C - Wilful attempt to evade tax, etc.	Section 478 - Wilful attempt to evade tax, etc.
Section 276CC - Failure to furnish returns of income	Section 479 - Failure to furnish returns of income
Section 276B - Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B	Section 476- Failure to pay tax to credit of Central Government under Chapter XIX-B.
Section 276BB - Failure to pay the tax collected at source	Section 477 - Failure to pay tax collected at source.

Consider the case The assessee company filed its income tax return for AY 2023-24 belatedly on 31.12.2023 without paying the admitted tax liability of Rs.8,72,81,520/- . Notices were issued to the company to pay the tax dues, but it failed to do so. Thereafter, a complaint was filed against the company and its directors for the offence under Section 276C(2) of the Income Tax Act. Thereafter, the Company has paid a sum of Rs.3,85,19,770/- on 19.12.2024 and a further sum of Rs.4,87,61,750/- on 13.01.2025 towards the tax liability for the AY 2023-24. The question is whether the delay in payment of tax can constitute a "wilful attempt to evade payment of tax" under Section

276C(2) of the Income Tax Act, warranting prosecution of the assessee was the question in the case of M/s G SQUARE LAYOUT PRIVATE LIMITED Vs THE DEPUTY COMMISSIONER OF INCOME TAX [2025-VIL-292-MAD-DT].

The Court has held that the mere delay in payment of tax without any wilful attempt or mens rea to evade the payment would not attract the prosecution under Section 276C(2) of the Income Tax Act. The intention not to evade tax in this case was in the fact that all funds of the Company were locked in illiquid assets. The continuation of prosecution post payment of taxes would be an abuse of process of law and infringe the rights of the assessee. Accordingly, the Court quashed the complaint filed against the assessee company and its directors under Section 276C(2) of the Income Tax Act

For prosecution under Section 276C(2), there must be a positive act or deliberate attempt on the part of the assessee to evade the payment of tax. The apex court in Tamil Nadu Housing Board v. Collector of Central Excise [1995] Supp (1) SCC 50 while dealing with section 11A of the Central Excises and Salt Act, 1944, has held that the word "evade" in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word "intent". In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law and held that when the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more.

LET'S DISCUSS FURTHER!

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