

CHAPTER XVII

PENALTIES

Penalties.

176. (1) This section shall apply to penalties under this Act.

(2) Procedures for the assessment, payment, collection, and dispute of a tax shall apply equally to penalties relating to a tax.

(3) A person's liability for a penalty under a section in this Chapter is separate and distinct from the person's liability, if any, for a penalty under another section of this Act or any other law and is in addition to interest levied under Chapter XV and to a criminal sanction imposed under Chapter XVIII.

(4) The burden of proof shall be on the Commissioner-General to show non-compliance with the provisions of this Act with respect to the imposition of a penalty.

(5) The Commissioner-General may make an assessment of a penalty charged as if the penalty were tax payable under this Act, and may specify the date on which the penalty is payable.

(6) A notice of an assessment of a penalty shall be served on the person who is liable to the penalty and shall state the amount of the penalty payable, the provision under which it is payable, and the due date for payment, and on service of the notice —

- (a) the notice and the assessment shall be treated as if they were a notice and assessment of tax payable under this Act;
- (b) the amount of the penalty specified in the notice shall be treated as tax payable under this Act; and
- (c) the due date for payment is the date specified in the notice.

(7) A person's liability to pay a penalty shall arise on the making of an assessment by the Commissioner-General under subsection (6).

(8) The period of limitations for assessing a penalty shall be five years after the violation which causes the penalty, except for a violation under section 180, in which case the limitation for assessing a penalty shall be the same as the limitation for assessing the tax to which the penalty relates.

(9) If a person liable for a penalty shows reasonable cause, the Commissioner-General may—

- (a) refrain in whole or in part from assessing the penalty; or
- (b) remit or waive in whole or in part a penalty that has been assessed.

(10) A penalty payable for each day, month or other period during which a particular state of affairs exists or continues, shall be payable in full for part of that day, month or other period in which the state of affairs commences, continues or ends.

177. A person who fails to register as required by section 102 or notify the Commissioner-General as required by sections 103(5) or 146(4) shall be liable for a penalty not exceeding fifty thousand rupees.

Failure to register or notify of changes in taxpayer information.

178. (1) A person who fails to file a tax return on or before the date by which filing is required shall be liable to pay a penalty equal to the greater of—

Late filing of tax return.

- (a) five *per cent* of the amount of the tax owing, plus a further one *per cent* of the amount of tax owing for each month or part of a month during which the failure to file continues; and

- (b) fifty thousand rupees plus a further ten thousand rupees for each month or part of a month during which the failure to file continues.

(2) The amount of the penalty in respect of a given tax return under subsection (1) shall be limited to four hundred thousand rupees.

(3) The penalty under this section shall be treated as an addition to the tax liability for the tax period to which the return relates and may be assessed and collected in the same manner as the tax for that period.

Late payment.

179. (1) A person who fails to pay all or part of a tax due for a tax period within fourteen days of the due date, or by the due date specified in the notice of assessment, if later, shall be liable to a penalty equal to twenty *per cent* of the amount of tax due but not paid.

(2) A person who fails to pay all or part of an instalment required under this Act within fourteen days of the due date for the instalment shall be liable to a penalty equal to ten *per cent* of the amount of tax due but not paid.

(3) Where an extension is granted under section 151, a person shall not be liable to a penalty under subsection (1) unless the extension period expires without payment having been made.

Negligent or fraudulent underpayment.

180. Where tax is underpaid, as a result of an incorrect statement or a material omission in a taxpayer's tax return, and that statement or omission is a result of intentional conduct or negligence on the part of the taxpayer, the taxpayer shall be liable to a penalty in the amount of—

- (a) twenty five *per cent* of the underpayment if paragraph (b) does not apply; or

- (b) seventy five *per cent* of the underpayment if the amount of the underpayment is —
 - (i) higher than ten million rupees; or
 - (ii) higher than twenty five *per cent* of the person's tax liability for the period.

181. (1) A person who makes a statement to a tax official that is false or misleading in a material particular shall be liable for a penalty if an amount properly payable by or refundable to the person under this Act exceeds or is less than the amount that would be payable or refundable if the person were assessed on the basis that the statement was true.

False or
misleading
statements.

(2) The amount of the penalty for which the person is liable shall be the greater of fifty thousand rupees —

- (a) if an amount payable by the person would have been less if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so reduced; or
- (b) if the amount of a refund that the person applied for would be increased if it were determined on the basis of the information provided in the statement, the amount by which that amount would have been so increased.

(3) No penalty shall be imposed under this section if the person who made the statement did not know and could not reasonably be expected to know that the statement was false or misleading in a material particular.

(4) A reference in this section to a statement made to a tax official shall include a reference to a statement made orally,

in writing, or in another form to that officer acting in the performance of the officer's duties under this Act, and shall include a statement made—

- (a) in an application, certificate, declaration, notification, return, objection or other document made, prepared, given, filed, submitted or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a tax official otherwise than pursuant to this Act;
- (d) in an answer to a question asked of a person by a tax official; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a tax official.

(5) A reference in this section to a statement that is misleading in a material particular shall include a reference to a statement which contains an omission of a matter or thing from the statement.

(6) This section shall not apply to conduct subject to the penalty under section 180.

Failure to
maintain
documents or
provide
facilities.

182. (1) A person who fails to maintain proper documents as required by this Act shall be liable for a penalty for each month or part of a month during which the failure continues.

(2) The penalty shall be one thousand rupees per day for each day the failure continues.

(3) Before assessing a penalty under this section, the Commissioner-General shall issue a warning notice, and no

penalty shall be due under this section if the taxpayer complies with the warning notice within the time specified in the notice.

(4) A person who fails to render reasonable facilities and assistance to a tax official as required by or under this Act shall be liable for a penalty in an amount not exceeding ten thousand rupees.

183. A person who fails to comply with a notice issued under section 170 shall be liable for a penalty of twenty five *per cent* of the difference between the amount payable by the third party and the amount paid to the Commissioner-General by the due date specified in the section 170 notice.

Failure to comply with third party notice.

184. Where any person fails to comply with the requirements, of section 76 or 77 in relation to transactions with associated enterprises, the Commissioner- General may impose on such person—

Transfer pricing penalties.

- (a) a penalty of a sum not exceeding one *per centum* of aggregate value of transactions with associated enterprises, where required documents have not been maintained;
- (b) a penalty of a sum not exceeding two hundred and fifty thousand rupees, where required documents have not been submitted;
- (c) a penalty of a sum not exceeding two *per centum* of aggregate value of transactions with its associated enterprises, in case of non-disclosure of any required information;
- (d) a penalty of a sum not exceeding one hundred thousand rupees, where required documents have not been submitted on the specified date; or

- (e) a penalty of two hundred *per centum* of the value of additional tax where such person has—
 - (i) concealed the particulars of his income, or furnished inaccurate particulars of such income; and
 - (ii) sought to evade by reason of concealment of particulars of his income or the furnishing of inaccurate particulars of such income,

and by notice in writing require such associated enterprise, to pay such penalty within such period as may be specified in such notice.

Failure to
comply with
notice to give
information.

185. (1) A person who fails to comply with a request for information properly made under this Act, within the specified time, shall be liable for a penalty of an amount not exceeding one million rupees.

(2) Before assessing a penalty, the Commissioner-General shall issue a notice of warning, and no penalty shall be due under this section where the taxpayer complies with the warning notice within thirty days of service of the notice.

CHAPTER XVIII

CRIMINAL PROCEEDINGS

Criminal
proceedings.

186. (1) The Commissioner-General may investigate an offence under this Act.

(2) The Attorney-General or a delegate authorized by the Attorney-General shall prosecute any person who commits an offence under this Act. Such criminal proceedings shall be initiated in the name of the Commissioner-General.

(3) Proceedings under this Act shall not affect criminal proceedings that may be brought under any other law.