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Tax Digest

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CBDT Notifies Rules for 'Foreign Assets of Small Taxpayers – Disclosure Scheme, 2026

[Notification No. 114/2026 dated August 14, 2026]

The CBDT has notified the *Foreign Assets of Small Taxpayers – Disclosure Scheme Rules, 2026* under the Finance Act, 2026, operational from August 16, 2026, to December 31, 2026. It provides a voluntary window to declare undisclosed foreign income/assets up to ₹1 crore (payable @ 60% tax and penalty) or unreported tax-paid/non-resident foreign assets up to ₹5 crore (payable at a flat fee of ₹1 lakh), based on valuation as of March 31, 2026. Declarations are filed electronically in Form 1, followed by a tax order in Form 2, payment submission via Form 3, and final immunity certification in Form 4.

1. Mere Delay in Payment of Tax, Without Wilful Intent to Evade, Does Not Attract Section 276C(2)

In the instant case[1], the assessee had declared its income and corresponding tax liability in its return for AY 2012-13, which was accepted by the Revenue. However, due to suspension of mining operations and consequent financial difficulties, the assessee could not discharge the tax liability within the prescribed period and sought time from the Revenue. The assessee continued to make payments towards the outstanding demand along with applicable interest and ultimately discharged the entire liability. Despite the same, a complaint was filed alleging wilful attempt to evade payment of tax under section 276C(2) and the Chief Judicial Magistrate issued process against the assessee. Aggrieved by the same, the assessee filed a writ petition before the Hon'ble High Court.

The Hon'ble High Court observed that section 276C(2) requires a wilful attempt to evade payment of tax, penalty or interest. It was further observed that the expression "wilful" introduces a mental element and requires the conduct to be deliberate, intentional and conscious. Mere delay or failure to discharge a tax liability, in the absence of mens rea, would not satisfy the statutory requirement of a wilful attempt under section 276C(2).

The Hon'ble High Court further held that, since section 276C(2) is a penal provision, the complaint must specifically disclose the acts constituting the alleged wilful attempt to evade tax, penalty or interest. A mere allegation of wilful evasion, without establishing the necessary ingredients of the offence, would not be sufficient to sustain prosecution. In the present case, the assessee had continuously made payments towards the outstanding liability, sought time from the Revenue and ultimately discharged the entire tax liability along with interest. The Hon'ble High Court observed that such conduct could not be regarded as a deliberate or conscious attempt to evade payment of tax.

The Hon'ble High Court, therefore, held that the complaint did not disclose the essential ingredients of an offence under section 276C(2) and that the Chief Judicial Magistrate had mechanically issued process without properly considering the material facts. The impugned order issuing process and the criminal proceedings pending before the Chief Judicial Magistrate were consequently quashed and set aside.

2. Reopening of assessment based on same material amounts to change of opinion

In the instant case[2], the assessee's assessment for A.Y. 2012-13 had been completed under section 143(3) after examination of the relevant material, including the bank statements and the bank account in question. Subsequently, the assessment was sought to be reopened under section 147 based on information received from the Investigation Wing, alleging that substantial credits in the bank account represented unexplained income.

The Hon'ble Gujarat High Court observed that the bank account and the relevant bank statements had already been furnished and examined during the original scrutiny assessment and had been accepted by the Assessing Officer. It further observed that

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[1] Dinar Tarcar Resources (India) Pvt. Ltd. & Ors. v. Income Tax Department, Criminal Writ Petition No. 202 of 2026, (High Court of Bombay, Goa Bench)

[2] Mahendra Gumanmalji Lodha v. Assistant Commissioner of Income-tax, Circle 5(2)(1) [2026] 189 taxmann.com 228 (High Court of Gujarat)

the Revenue had not established that the Investigation Wing had relied upon any new tangible material which was not available with the Assessing Officer at the time of the original assessment.

The Hon'ble High Court held that where the relevant material had already been considered during the original assessment, reopening the assessment on the basis of the same material would amount to a mere change of opinion. Accordingly, in the absence of any new tangible material, the reassessment proceedings could not be sustained in law.

Accordingly, the Hon'ble High Court quashed and set aside the impugned notice dated 28.03.2019 and allowed the writ petition.

3. Addition under section 69A deleted where cash was explained through family savings and telescoping

In the instant case[3], the assessee, an individual, filed his return for A.Y. 2022-23 declaring total income of ₹12.36 lakhs. During a search conducted under section 132 at his residential and business premises, cash of ₹19.14 lakhs was found, out of which ₹16.64 lakhs was seized. The assessee explained the cash as belonging to himself and his family members, including his mother and minor children, and furnished a person-wise explanation regarding the source thereof.

The Assessing Officer rejected the explanation and made an addition under section 69A treating the seized cash as unexplained. On appeal, the CIT(A) accepted the explanation in respect of the assessee, his wife and father and deleted addition of ₹7.77 lakhs, but sustained addition of ₹8.87 lakhs attributable to the assessee's mother and minor children.

Aggrieved thereby, the assessee preferred appeal before the Hon'ble Mumbai ITAT.

The Hon'ble Tribunal observed that the explanation regarding household savings of the assessee's mother and customary gifts received by the minor children could not be rejected merely because they did not maintain regular books of account or file returns of income. It further held that such explanations were required to be examined having regard to human probabilities and surrounding circumstances.

The Hon'ble Tribunal further accepted the assessee's plea of telescoping, noting that ₹20,60,970 had been accepted by the CIT(A) in an earlier year as available family cash arising from sale of agricultural land. Since the Revenue had not established that such cash had been utilised or invested elsewhere, the same remained available to explain the cash found during the search.

Accordingly, the Hon'ble Tribunal held that the addition of ₹8,87,400 under section 69A could not be sustained and directed the Assessing Officer to delete the same.

4. Addition Under Section 56(2)(vii)(b) Cannot Be Made in Hands of Co-owner Who Did Not Contribute Towards Purchase Consideration

In the instant case[4], the assessee jointly purchased an immovable property along with her husband. The purchase consideration disclosed in the sale

[3] Pawan Onkardas Chandak v. Assistant Commissioner of Income-tax. [2026] 189 taxmann.com 144 (Mumbai - Trib.)

[4] Ruby Shome v. Income-tax Officer, Ward-49(1), Kolkata, ITA No. 2837/Kol/2025 (Kolkata - Trib.)

deed was lower than the value adopted by the Stamp Valuation Authority. Accordingly, the Assessing Officer invoked the provisions of section 56(2)(vii)(b) and made an addition in the hands of the assessee on account of the difference between the stamp duty value and the purchase consideration. The Commissioner of Income-tax (Appeals) upheld the addition.

Aggrieved by the same, the assessee preferred an appeal before the Hon'ble Income-tax Appellate Tribunal (ITAT) contending that she was merely a co-owner in the property and had not contributed any part of the purchase consideration. It was submitted that the entire consideration had been paid by her husband from his own sources and, therefore, no addition under section 56(2)(vii)(b) could be made in her hands.

The Hon'ble ITAT observed that the assessee had produced evidence demonstrating that the entire purchase consideration had been paid by her husband. It was further observed that the Revenue had not conducted any enquiry to controvert the assessee's claim despite the relevant material being placed on record. Referring to section 45 of the Transfer of Property Act, 1882, the Hon'ble ITAT observed that where evidence exists regarding the share of contribution made by the purchasers, their respective interests in the property are to be determined accordingly.

Accordingly, the Hon'ble ITAT held that where the entire purchase consideration had been contributed by the assessee's husband, the provisions of section 56(2)(vii)(b) could not be invoked in the hands of the assessee who had not contributed any amount towards acquisition of the property. Consequently, the addition made by the Assessing Officer and sustained by the Commissioner of Income-tax (Appeals) was deleted.