

No Penalty under Sections 271 & 272 of Income-tax Act 1961, if *Reasonable Cause* Proved



Section 273B provides that no penalty shall be imposed under various provisions of Sections 271 & 272 of the Income-tax Act, 1961, if the assessee proves that there was reasonable cause for the failure. The words *reasonable cause* have not been defined under the Income-tax Act, 1961, however, it has been interpreted by various courts. What would constitute reasonable cause cannot be laid down with precision and each case would have to be tested on its merits by the authorities concerned or the Court, as the case may be, for coming to a conclusion that sufficient grounds in the context of Section 273B have been made out for not imposing a penalty for the failure. This article tries to layout the meaning of the words *reasonable cause* through the judgment of several courts and lay down few examples where the assessee got relief from penalty when reasonable cause proved.



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Introduction

The Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 introduced significant amendments to the penalty provisions by deleting the expression *without reasonable cause* from Sections 270, 271, 271 A, 271 B, 272AA, 272B, 273, and the expression *with reasonable cause or excuse* from Sections 272A, 276A, 276AB, 276B, 276DD and 276E. It also introduced new Sections 273B, 278AA and 278E shifting the burden on the assessee to prove that the failure, omission or commission is

with reasonable cause or *excuse* or there is absence of culpable mental state. By this amendment, the onus of proving the existence of reasonable cause for the defaults shifted on the taxpayer.

The explanatory memorandum to the above amendment stated that one of the reasons for the unsatisfactory performance of the Department in levying penalty and of prosecuting the defaulters is that, invariably, appellate authorities and the courts have cast upon the Department the near impossible burden of proving a culpable state of mind on the part of the defaulters.

In the case *Anantharam Veersinghaiah & Co Vs. CIT*, the Supreme Court held that the burden lies on the Revenue to establish that the disputed amount represents income and that the assessee has consciously concealed the particulars of his income or deliberately furnished inaccurate particulars and that it is for the Revenue to prove these ingredients before a penalty could be imposed.

As per Section 273B of the Income-tax Act, 1961, "Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of Section 271, Section 271A, Section 271B, Section 271BB, Section 271C, Section 271D, Section 271E, Section 271F clause (c) or clause (d) of sub-section (1), or sub-section (2) of Section 272A, sub-section (1) of Section 272AA, or sub-section (1) of Section 272BB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of Section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

Meaning of Reasonable Cause

Section 273B provides that no penalty shall be imposed under various provisions of sections 271 & 272 of the Income-tax Act, 1961, if the assessee proves that there was reasonable cause for the failure. The words *reasonable cause* have not been defined under the Income Tax Act 1961, though, it has been interpreted by various courts.

According to Michigan State University, there is no exact definition of reasonable cause. The concept is fluid. Each case is decided on its own facts and circumstances. Nevertheless, the concept has been described as existing *where the known facts and*

circumstances are sufficient to warrant a man of reasonable prudence in the belief that . . . evidence of a crime will be found.

In order to understand the concept of *Reasonable Cause*, the university has provided the following:

The principal components of a determination of reasonable cause will be the events and circumstances which lead up to the breath analysis test for the particular individual, and then the decision whether these facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable cause. A police officer may draw inferences based on his own experience in determining whether reasonable cause exists. Situations in which a police officer might have reasonable cause to administer a breath analysis test could include those where the individual is under the age of 21 years old and exhibits one or more of the following:

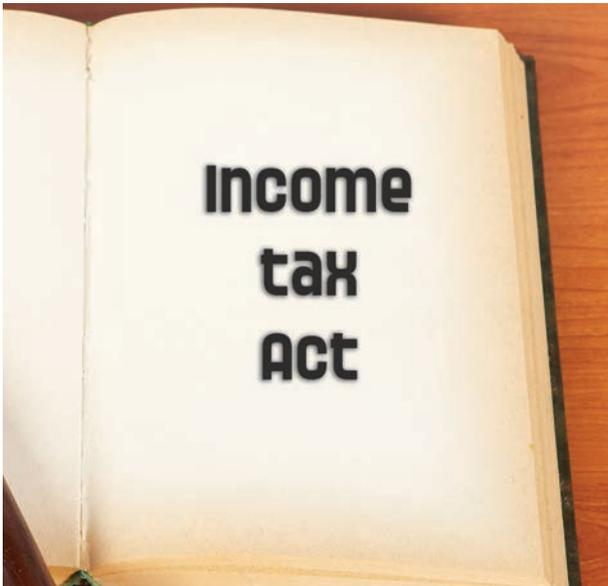
- Odour of alcohol on the person's breath
- Bloodshot eyes (in combination with other factors)
- Slurred speech
- Staggering
- Boisterous conduct
- Carrying alcoholic beverages
- Vomiting

The Delhi High Court has enunciated the meaning of the term *reasonable cause* in the case of *Azadi Bachao Andolan Vs. Union of India 252 ITR 471*. It was held that *Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.*

In *Woodward Governors India (P) Ltd. Vs. CIT 118 Taxman 433 (Delhi)*, the Delhi High Court

Section 273B provides that no penalty shall be imposed under various provisions of sec 271 & 272 of the Income-tax Act, 1961, if the assessee proves that there was reasonable cause for the failure. The words *reasonable cause* have not been defined under the Income Tax Act 1961, though, it has been interpreted by various courts.

No penalty is imposable for any failure under Sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271D, 271E, 271F, 271G, 272A(1)(c) or (d), 272(2), 272AA(1), 272B, 272BB(1) and 272BBB(1), if the person or assessee proves that there was a reasonable cause for such failure (Section 273B).



considered the meaning of *reasonable cause* and held: *Reasonable cause as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as a probable cause. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.*

In the case *I.T.O. Vs. Nanak Singh* [2002] 257 I.T.R. 677 (MP), the High Court observed that Section 237B starts with a *non obstante* clause and provides that notwithstanding anything contained in the several provisions enumerated therein, no penalty is imposable for any failure referred to in these provisions, if the assessee proves that there was '*reasonable cause*' for the failure. It was also mentioned that the words '*reasonable cause*' could receive the same interpretation that is given

to the expression '*sufficient cause*.' Therefore, in the context of the penalty provisions, the words '*reasonable cause*' would mean a cause that is beyond the control of the assessee.

In *Kamen Jaswantlal Shah Vs. Income-tax Officer, Ward 5(3), Baroda* (2012-ITS-520-ITAT), it was held that the words *reasonable cause* have not been defined under the Act, but they could receive the same interpretation which is given to the expression *sufficient cause*. Therefore, in the context of the penalty provisions, the words *reasonable cause* would mean a cause which is beyond the control of the assessee. *Reasonable cause* obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of *bona fides*.

In *Commissioner of Wealth Tax Vs. Jagdish Prasad Choudhary*, (1996) AIR 58 (Patna), it was held that in the context of penalty provision, the word, *reasonable cause* would mean a cause which is beyond the control of the assessee. *Reasonable cause* obviously means a cause which prevents a reasonable man of an ordinary prudence acting under normal circumstances, without negligence or inaction or want of *bona fide* from furnishing the return in time.

In *Gujarat Water Supply & Sewerage Board Vs. Unique Erectors (Gujarat) Pvt. Ltd.* (1989) AIR 973 (Supreme Court), it was held that it is difficult to give an exact definition of the word, 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and the circumstances of which the actor, called upon to act reasonably, knows or ought to know.

Delhi High Court in the case of *Commissioner of Income Tax Vs. M/S Itochu Corporation* held that *Reasonable cause*, as applied to human action, is that which would constrain a person of average intelligence and ordinary prudence. Reasonable cause can be reasonably said to be a cause which

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prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of *bona fides*.

Madras High Court in the case of *O. Ramadoss Vs. R. Sanhasi Chettiar and Ors.* on 27th September, 1957 has taken a reference from Standard Text Books on the Law of Torts to explain the meaning of Probable and reasonable cause:

Salmond on Torts (11e, p.742) has the following to say: Reasonable and probable cause means a genuine belief, based on reasonable grounds, that the proceedings are justified.

American Jurisprudence, pages 731-732 (Section 47) defines probable cause:

With reference to civil actions, probable cause has been said to be such reason supported by facts and circumstances as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are legally just and proper. If a reasonable man would have believed and acted under the circumstances as the defendant did, there would be probable, otherwise not. It is to be noted that the conduct of the defendant is to be weighed in view of what appeared to him at the time of instituting the prior proceeding, not in the light of subsequently appearing facts.

Defaults on which Section 273B is Applicable under Income-tax Act, 1961

No penalty is imposable for any failure under Sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271D, 271E, 271F, 271G, 272A(1)(c) or (d), 272(2), 272AA(1), 272B, 272BB(1) and 272BBB(1), if the person or assessee proves that there was a reasonable cause for such failure (Section 273B). Below is a list of defaults on which Section 273B is applicable:

Section	Nature of Default
271(1)(b)	Non-compliance with notice under Section 142(1) to file returns or to produce documents required by assessing officer or under Section 143(2) to produce evidence on which assessee relies or under Section 142(2A) to get accounts audited.

Section	Nature of Default
271A	Failure to maintain books or documents under Section 44AA.
271AA	Failure to keep and maintain information and documents under Section 92D.
271B	Failure to get accounts audited and furnish Tax Audit Report as required under Section 44AB.
271BA	Failure to furnish a report as required under Section 92E.
271C	Failure to deduct the whole or part of the tax as required by or under Chapter XVII-B (sub-section. 192 to 196D) or failure to pay the whole or part of tax under Section 115-O.
271D	Contravention of the provisions of Section 269SS; i.e., by taking or accepting any loan or deposit otherwise than by ways specified therein.
271E	Contravention of Section 269T; i.e. repayment of any deposit otherwise than by modes specified therein.
271F	Failure to furnish Return of Income under sub-section (1) of Section 139 before the end of the relevant Assessment Year.
271G	Failure to furnish information or document under Section 92D (3).
272A(1)	Failure to answer questions, sign statements, attend summons under Section 131(1), apply for permanent account number under Section 139A.
272B	Failure to apply for Permanent Account Number (PAN)
272BB(1)	Failure to apply for Tax Deduction Account No. (TAN) (Section 203A)
272BBB	Failure to apply for Tax Collection Account No. (TCN)



In the case of *CIT Vs. Mitsui & Co. Ltd. (2004) 190 CTR (Del) 38*, it was held that a *bona fide* belief of the company based on legal opinion of its internal cell that the retention/continuation pay, paid by it in Japan to its expatriate employees deputed to India, was not taxable in India and accordingly, the provisions of Chapter XVII-B were not applicable, constituted a reasonable cause for not deducting tax at source.

Few Examples where Reasonable Cause Proved

a) Assessee is under Bona fide believe and default not being deliberate:

The Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa (1972) 83 ITR 26 (SC)* has laid down following conditions on the penal proceedings:

- (i) Penalty can be levied only if assessee acted deliberately, i.e. *mens rea*, guilty mind is essential before penalty can be levied,
- (ii) Power to levy penalty is discretionary and penalty cannot be levied merely because it is lawful to do so,
- (iii) No penalty can be levied for technical or venial breach of the provisions, and
- (iv) No penalty can be levied where breach of provisions flows from *bona fide* belief of the assessee.

The *Jharkhand High Court in OMEC Engineers Vs. C.I.T. (294 I.T.R. 599)* relied on one of the cardinal principles of the English criminal law,

which is expressed in the maxim *actus non facit reum, nisi mens sit rea*, that is, a person cannot be convicted and punished in a proceeding of a criminal nature unless it can be shown that he had a guilty mind.

ITAT Ahmedabad Bench 'A' in the case of *Kamen Jaswantlal Shah Vs. Income-tax Officer, Ward 5(3), Baroda* held that the *bona fide* transactions of the assessee carried out in accordance with commercial expediency and business need amounts to reasonable cause. Before imposition of penalty under these sections, the assessing officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions.

Similar decision was made in the following cases where reasonable cause was proved on account of the assessee is under *bona fide* belief and default not being deliberate- *CIT Vs. Dex Travel (P) Ltd [2008] 172 Taxman 142 (Delhi)*, *ITO Vs. ABN Amro Bank [2008] 23 SOT 52 (Delhi)*, *CIT Vs. Mitsui & Co Ltd [2004] 140 Taxman 430 (Delhi)*, *CIT Vs. HCL Info System Ltd. [2005] 146 Taxman 227 (Delhi)*, *Savani Financial Ltd Vs. ITO [2005] 1 SOT 112 (Mum.)*, *Lintas India Ltd Vs. CIT [2006] SOT 311 (Mum.)*, *Bharat Kumar Manilal Vs. CIT [2002] 121 Taxman 361 (Rajkot)*, *R. Wadiwala & Co Vs. CIT [2002] 120 Taxman 125 (Ahd.)*

b) Assessee acted bona fide on Experts Advice:

Supreme Court in the case of *T. Ashok Pai Vs. CIT (2007) 210 CTR (SC) 259: (2007) 292 ITR 11 (SC)*, held that no penalty could be levied when the assessee had acted on the advice of a legal expert.

In the case of *CIT Vs. Mitsui & Co. Ltd. (2004) 190 CTR (Del) 38*, It was held that a *bona fide* belief of the company based on legal opinion of its internal cell that the retention/continuation pay, paid by it in Japan to its expatriate employees deputed to India, was not taxable in India and accordingly, the provisions of Chapter XVII-B were not applicable, constituted a reasonable cause for not deducting tax at source.

Delhi High Court in the case of *CIT Vs. Fourways International*, in *IT Appeal No. 382 of 2007*, decided on 25th September, 2007, where it has been held that Section 273B does not make liable for penalty under

Delhi High Court in the case of *Commissioner of Income Tax Vs. Harnarain* held that where assessee surrenders his full income, though at a later stage, there was no question of any concealment on his part and consequently no penalty under Section 271(1)(c) was leviable, and that a omission from return of income did not amount to concealment.

Section 271C mandatory and the assessee would not be liable to penalty if he was able to prove that there was a reasonable cause for failure to deduct tax. In this case, the assessee had given an explanation that based on the wrong advice given by its chartered accountant, the assessee made certain payments for fabrication charges but had not deducted tax at source.

Decided by ITAT, Pune Bench 'B', Pune, In the case of *L T John Deere P. Ltd. Vs. ACIT, Appeal No.: ITA Nos. 1347 to 1351/PN/2007 Dated: 28th March, 2008* where the assessee has given a bona fide explanation for its failure to deduct tax at source, the assessee should not be made liable to penalty leviable under Section 271C for failure to deduct tax at source.

c) Delay in completion of audit or filing of Return:

The ITAT-Pune in the case *Kripa Industries (I) Ltd Vs. CIT [2002] 76 TTJ (Pune) 502*, held: *The delay in non-completion of the statutory audit was not on account of any non-compliance by the assessee or any conscious neglect on its part. The delay was on account of the fact that the statutory auditors had left the assessee in lurch in the middle. From the facts of the case, it is evident that the auditors started the work well before the due date, but they stopped work in between. Thus, there was reasonable cause for the delay.*

The ITAT-Ahmedabad in the case *Ahmedabad Co-operative Dept. Store Vs. ITO [2001] 73 TTJ (Ahd.) 784* held: *Auditors carry out audit as per the statutory requirements and the assessee can have no control or authority over such auditors. It is settled law that penalty is to be imposed for defiance of law or for not carrying out a statutory obligation. It cannot be imposed on the assessee for non-performance of duties by public agencies*

like government auditors. The assessee right from beginning contended that delay is attributable to late auditing done by the statutory auditors. For the act of statutory auditor, the assessee cannot be held to be responsible under a provision like Section 271B. The auditors raised some points in the audit report which were required to be looked into and complied with by the assessee.

ITAT-Bangalore in the case of *HTSL Community Service The Joint Director of Trust, #151/1, Doraisanipalya, Income Tax (Exemptions), Bannerghatta Road, Bangalore. Vs. Range-17, Bangalore. PA No.AAATH3434M* held: *In the present case, the appellant was under a bona fide impression/belief for not filing the return of income within the prescribed time limit. The appellant did not act dishonestly or negligently. The delay in filing the return was due to a reasonable and genuine cause. It is also not a case that the appellant did not file a return of income at all.*



Although the word *reasonable cause* is not defined in Income Tax act, however, on the basis of judgments in various cases, it can be understood that *reasonable cause* means a cause that prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides. Additionally one should remember that there are no standard guidelines or rule of thumb to test the existence of reasonable cause and each and every case has to be examined for any conclusion.

ITAT-Ahmedabad in the case of *Parjanya Associates Vs. Assistant Commissioner of Income-Tax. 2005 (12) TMI 201 (Tri)* observed: ...the assessee's counsel remained under the bona fide impression that since the income is being disclosed under Section 44AD, the audited account is not required to be furnished. In our opinion, the assessee cannot be penalised under Section 271B. The above bona fide impression of the assessee's counsel would constitute reasonable cause. The bona fides of the assessee are also proved from the fact that the income disclosed by the assessee as per Section 44AD was more than the income as determined in the audited P&L a/c. Apart from there being reasonable cause for assessee's failure, default committed by the assessee is only a technical/venial breach because the audited statement has not been relied upon either by the assessee or by the Revenue for determining the income of the assessee."

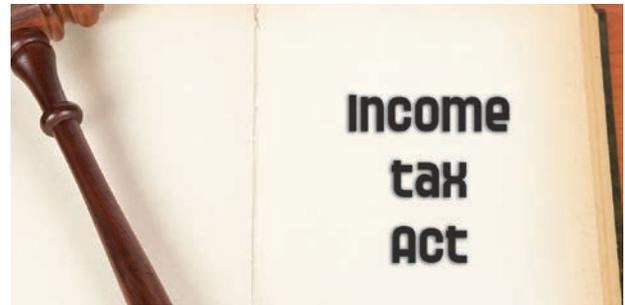
d) Voluntarily disclosures before any detection by department:

The High Court of Karnataka in its judgement of the case *Commissioner Of Income Tax & Additional Commissioner of Income Tax Range-16 Vs. Rajajinagar Co-Operative Bank Ltd* held that where the assessee committed a bona fide mistake in misconstruing the provisions of law and did not deducted TDS and afterwards on being aware of its mistake deposited the TDS along with interest then penalty u/s 271C shall not be levied.

Co-ordinate Bench of Tribunal 'A' Bangalore in the case of *Wipro GE Medical Systems Ltd. Vs. ITO (2005) 3 SOT 627 (Bang)* held that there would be no reason for levy of penalty for the default in not deducting the tax at source once the amount of tax has already been paid by the assessee deductee.

Delhi High Court in the case of *Commissioner of Income Tax Vs. Harnarain* held that where assessee surrenders his full income, though at a later stage, there was no question of any concealment on his part and consequently no penalty under Section 271(1) (c) was leviable, and that a omission from return of income did not amount to concealment.

Madhya Pradesh High Court and the Jharkhand High Court in the case of *CIT Vs. S.V. Electricals P. Ltd. (155 Taxman 158)* and *CIT v. Ashim Kumar Agarwal (153 Taxman 226)* respectively held that where the assessee surrenders his full income,



though at a later stage, there was no question of any concealment on his part and consequently no penalty under Section 271(1)(c) was leviable, and that a omission from return of income did not amount to concealment.

Conclusion

Although the words, *reasonable cause*, is not defined in Income-tax Act, however, on the basis of judgments in various cases, it can be understood that *Reasonable cause* means a cause that prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides.

Additionally, one should remember that there are no standard guidelines or rule of thumb to test the existence of reasonable cause and each and every case has to be examined for any conclusion.

This fact has been highlighted by Delhi High Court in the case of *Shyam Gopal Charitable Trust Vs. Director of Income Tax*, where it was held: *Each case would have to be tested on its merits by the authorities concerned or the Court, as the case may be, for coming to a conclusion that sufficient grounds in the context of Section 273B have been made out for not imposing a penalty for the failure.*

Additionally, as mentioned by Delhi High Court in the case of *Azadi Bachao Andolan Vs. Union of India: 252 ITR 471*, what would constitute reasonable cause cannot be laid down with precision. It would depend upon factual background and the scope for interference in a reference application, or much less in a writ petition, is extremely limited and unless the conclusions are perverse based on conjectures or surmises and/or have been arrived at without consideration of relevant material and/or taking into account irrelevant material, there is no scope for interference. ■