

Wilfulness as the Gatekeeper of Criminal Liability: An Analysis of Section 478 of the Income-Tax Act, 2025

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Abstract: *This article undertakes an analysis of “wilfulness” as the constitutive mens rea element under Section 478 of the Income-tax Act, 2025, as amended by the Finance Bill, 2026, which recalibrates tax prosecution by substituting simple imprisonment for rigorous imprisonment and introducing quantum-graded sentencing tiers. The problem is Post-2025, “wilfulness” emerges as the critical gatekeeper of criminal liability, yet courts lack a clear framework to distinguish wilful evasion from negligence, bona fide error, and interpretational disputes, risking over-criminalisation or under-enforcement. Gap identifies that Existing scholarship focuses on the substantive scope of Section 276C and procedural mechanics of sanction, with insufficient attention to constructing a judicially applicable test for wilfulness aligned with the 2025 Act’s textual refinements and the 2026 reforms’ graded punishment framework. The main aim of the study is to propose a structured, five-element judicial test for wilfulness under Section 478, emphasising subjective intent, objective conduct within the four limbs of sub-section (4), causation (“will have the effect”), absence of bona fides, and corroborative evidentiary patterns. Doctrinal analysis combining textual interpretation of Section 478, legislative history from the Finance Bill, 2026, and selective comparative insights from common-law “willfulness” standards. The paper finds that the absence of a judicial test creates doctrinal uncertainty; the proposed test ensures consistent, context-sensitive determination of wilfulness, aligning criminal liability with the legislature’s intent for proportionate deterrence. A clear test for wilfulness will ensure that criminal liability functions as a precise gatekeeper, balancing enforcement with fairness while safeguarding against over-criminalisation. Study suggests that Courts should adopt the proposed test; administrators should leverage compounding and settlement mechanisms to reserve criminal sanctions for egregious cases.*

Keywords: Wilfulness, Section 478, Income-tax Act, 2025, Tax evasion, Finance Bill, 2026

I. INTRODUCTION

The recodification of India’s direct tax law through the Income-tax Act, 2025, and the subsequent sentencing reforms introduced by the Finance Bill, 2026, mark a pivotal shift in the architecture of tax prosecution. Central to this shift is Section 478, which criminalises “wilful attempt[s]” to evade tax, penalty, or interest, and to under-report income. While the statutory language echoes its predecessor, Section 276C of the 1961 Act, the 2025–2026 reforms recalibrate the stakes: by replacing rigorous imprisonment with simple imprisonment, capping maximum terms, and grading punishments by the magnitude of evasion, the legislature signals a move from punitive severity toward proportionate, deterrence-oriented enforcement.

II. LEGISLATIVE CONTEXT AND STATUTORY FRAMEWORK

Section 478 of the 2025 Act must be understood within the broader legislative trajectory spanning six decades of tax prosecution law. Section 276C of the 1961 Act, enacted during a period of aggressive tax enforcement, established the



foundational framework for criminalising wilful tax evasion with stringent punitive measures. The transition to Section 478 represents not merely a renumbering exercise but a substantive recalibration of the state's approach to tax non-compliance, reflecting evolving policy priorities that balance revenue protection with taxpayer rights.

The Finance Bill, 2026, introduced critical amendments to Section 478, fundamentally altering the sentencing architecture. Key changes include: (i) substitution of simple imprisonment for rigorous imprisonment across all tiers of evasion; (ii) introduction of quantum-graded punishment tiers—evasion exceeding fifty lakh rupees attracts up to two years' simple imprisonment or fine or both; evasion between ten and fifty lakh rupees attracts up to six months' simple imprisonment or fine or both; and evasion not exceeding ten lakh rupees attracts only a fine; (iii) retention of the "without prejudice" language in sub-section (3), preserving the coexistence of civil penalties alongside criminal prosecution; and (iv) explicit linkage to under-reporting provisions, expanding the scope beyond traditional evasion to encompass deliberate understatement of income.

III. THE CENTRALITY OF WILFULNESS IN THE RECALIBRATED REGIME

Within this recalibrated enforcement landscape, "wilfulness" emerges as the constitutive mens rea element that determines the boundary between civil default and criminal liability. The phrase "wilfully attempts in any manner" in Section 478(1) requires courts to ascertain not merely the occurrence of tax shortfall but the deliberate, conscious intent to evade liability. This mens rea requirement serves as a doctrinal safeguard against over-criminalisation, ensuring that negligence, bona fide errors, and interpretational disputes do not attract criminal sanctions.

The importance of wilfulness is amplified by the 2026 sentencing reforms. By grading punishments according to the magnitude of evasion, the legislature creates a feedback loop where sentencing policy may inadvertently influence judicial inference of mens rea—courts may be more inclined to find wilfulness in high-value cases to justify harsher penalties, while downplaying wilfulness in low-value cases to avoid disproportionate punishment. This dynamic underscores the need for a clear, context-sensitive judicial test to ensure that wilfulness remains a neutral gatekeeper rather than a variable threshold shaped by sentencing considerations.

IV. STRUCTURAL RELATIONSHIP WITH ADJACENT PROVISIONS

Section 478 does not operate in isolation but forms part of a tripartite prosecution framework alongside Sections 477 and 479 of the 2025 Act. Section 477 criminalises wilful failure to furnish returns, targeting procedural non-compliance with relatively lower culpability requirements. Section 479 addresses falsification of books and documents, representing the most severe form of tax misconduct involving active evidentiary tampering. Section 478 occupies the middle ground, targeting substantive evasion and under-reporting where the accused's conduct falls between procedural defaults and active falsification.

This hierarchical structure reflects legislative intent to calibrate criminal liability according to the severity of misconduct: procedural defaults (Section 477) warrant lesser sanctions than substantive evasion (Section 478), which in turn is less severe than active falsification (Section 479). Understanding this hierarchy is essential for interpreting Section 478's scope, as courts must distinguish between conduct that merely fails to comply with procedural requirements and conduct that demonstrates deliberate intent to evade substantive tax liability.

V. POLICY RATIONALE AND ENFORCEMENT PHILOSOPHY

The 2025–2026 reforms reflect a broader policy shift from punitive severity toward proportionate deterrence. By replacing rigorous imprisonment with simple imprisonment and introducing quantum-graded tiers, the legislature acknowledges that excessive criminalisation may stifle compliance, burden courts with borderline cases, and divert enforcement resources from egregious evasion. This approach aligns with global trends in tax enforcement that prioritise voluntary compliance, risk-based audit selection, and alternative dispute resolution mechanisms.



However, this policy shift creates new interpretive challenges. The graded sentencing framework may incentivise over-prosecution in borderline cases, as administrators seek to leverage the threat of criminal liability to secure settlements. Simultaneously, the retention of "without prejudice" language in Section 478(3) raises doctrinal questions about double jeopardy and proportionality, as accused persons face parallel civil and criminal proceedings for the same conduct. These tensions underscore the need for a robust doctrinal framework to guide courts in applying Section 478 consistently and fairly.

VI. PROBLEM STATEMENT

In this recalibrated regime, "wilfulness" emerges as the critical gatekeeper of criminal liability. Without a clear doctrinal framework to ascertain wilfulness, courts risk either over-criminalising bona fide compliance errors or under-enforcing against deliberate evasion. The problem is acute post 2025 because the textual continuity with Section 276C may invite legacy interpretive approaches that are ill-suited to the new sentencing architecture and its policy rationale.

VII. RESEARCH GAP AND CONTRIBUTION

Existing scholarship on tax prosecution in India has predominantly focused on the substantive scope of Section 276C and the procedural mechanics of sanction and compounding. Less attention has been paid to constructing a doctrinally robust, judicially applicable test for "wilfulness" that accounts for the 2025 Act's textual nuances and the 2026 reforms' sentencing tiers. This article fills that gap by: (i) mapping the doctrinal evolution from Section 276C to Section 478; (ii) extracting interpretive principles from the text, structure, and legislative history; and (iii) proposing a judicial test for wilfulness that aligns with the graded punishment framework and safeguards against over-criminalisation.

VIII. METHODOLOGY

This article employs a doctrinal research methodology, combining textual, structural, historical, and comparative analysis. Textual analysis focuses on the language of Section 478 and its sub-clauses, particularly the phrase "wilfully attempts in any manner." Structural analysis examines the relationship between Section 478 and adjacent provisions (Sections 477 and 479) to infer legislative intent regarding the hierarchy of offences. Historical analysis traces the evolution from Section 276C to Section 478, including the Finance Bill, 2026's sentencing reforms. Comparative analysis draws selectively on common-law "willfulness" standards in tax evasion to illuminate conceptual parallels, without advocating wholesale adoption.

IX. STATUTORY CONTEXT AND LEGISLATIVE TRAJECTORY

From Section 276C (1961 Act) to Section 478 (2025 Act)¹

Section 276C of the 1961 Act criminalised "wilful attempt[s]" to evade tax, penalty, or interest, with sub-section (1) addressing evasion of chargeability and sub-section (2) addressing evasion of payment post-assessment. The provision was notable for its breadth ("in any manner whatsoever") and its coexistence with civil penalties ("without prejudice to any penalty"). Section 478 of the 2025 Act retains this core architecture but introduces textual refinements and a more explicit linkage to under-reporting².

Finance Bill, 2026 Changes: Simple Imprisonment, Thresholds, 'Without Prejudice' to Penalties:

The Finance Bill, 2026, amended Section 478 to replace rigorous imprisonment with simple imprisonment, cap maximum terms at two years (three years for subsequent offences), and introduce quantum-graded tiers: evasion

¹ Income-tax Act, 1961, § 276C (India)

² Income-tax Act, 2025, § 478 (India)



exceeding fifty lakh rupees attracts up to two years' simple imprisonment or fine or both; evasion between ten and fifty lakh rupees attracts up to six months' simple imprisonment or fine or both; and evasion not exceeding ten lakh rupees attracts only a fine. The "without prejudice" language preserving civil penalties remains, underscoring the legislature's intent to maintain parallel civil and criminal tracks.

Relationship with Sections 477 and 479

Section 477 criminalises wilful failure to furnish returns, while Section 479 addresses falsification of books and documents. Section 478 occupies the middle ground: it targets substantive evasion and under-reporting, whereas Section 477 targets procedural non-compliance and Section 479 targets evidentiary tampering. This tripartite structure suggests a legislative hierarchy: procedural defaults (Section 477) are less severe than substantive evasion (Section 478), which in turn is less severe than active falsification (Section 479).

X. TEXTUAL ANALYSIS OF 'WILFUL ATTEMPT' UNDER SECTION 478³

Sub-section (1): Evasion of Tax/Penalty/Interest and Under-Reporting

Section 478(1) criminalises wilful attempts to evade "any tax, penalty or interest chargeable or imposable, or under-reports his income." The phrase "chargeable or imposable" indicates that the offence lies in the attempt prior to actual imposition, aligning with judicial interpretations of Section 276C(1) that focus on deliberate conduct rather than actual evasion. The inclusion of "under-reports his income" expands the scope beyond traditional evasion to encompass under-reporting as a distinct limb, potentially lowering the evidentiary threshold for establishing wilfulness in cases of deliberate understatement.

Sub-section (2): Evasion of Payment Post-Assessment

Section 478(2) addresses wilful attempts to evade payment of tax, penalty, or interest "under this Act" post-assessment. This sub-section mirrors ⁴Section 276C(2) and targets conduct after liability has crystallised, such as asset diversion or concealment to frustrate recovery. The doctrinal distinction between sub-sections (1) and (2) is temporal: sub-section (1) targets pre-imposition evasion, while sub-section (2) targets post-imposition payment evasion.

Sub-section (3): Coexistence with Civil Penalties

Section 478(3) preserves the "without prejudice" language, ensuring that criminal prosecution does not preclude civil penalties. This coexistence raises doctrinal questions about double jeopardy and proportionality, but the legislature's intent appears to be complementary enforcement: civil penalties address fiscal loss, while criminal sanctions address moral culpability.

Conduct Limbs under Section 478(4)

Section 478(4) enumerates conduct limbs that constitute a wilful attempt: (a) possession or control of books/documents with false entries; (b) wilful omissions; (c) doctored books; and (d) "any other circumstance" that will have the effect of evasion.

False Entries/Statements; Wilful Omissions; Possession/Control of Doctored Books

The first three limbs focus on documentary misconduct: false entries, deliberate omissions, and tampered books. These limbs are evidentiary shortcuts: possession of doctored books creates a rebuttable presumption of wilfulness, shifting the burden to the accused to demonstrate bona fides.

Causation Language ('Will Have the Effect') and Its Interpretive Consequences

The fourth limb—"any other circumstance" that "will have the effect" of evasion—introduces a causation element. This language requires courts to assess not only the accused's intent but also the likely consequence of their conduct. Doctrinally, this raises the bar for wilfulness: mere negligence or inadvertent errors that do not "will have the effect" of evasion may fall outside the scope of Section 478.

³ Income-tax Act, 2025, § 478 (India)

⁴ Income-tax Act, 1961, § 276C(2).



XI. MENS REA AND EVIDENTIARY CONSIDERATIONS

Distinguishing Wilfulness from Negligence, Bona Fide Error, and Interpretational Disputes

The crux of Section 478 is mens rea: wilfulness requires a deliberate, conscious intent to evade, not mere negligence or bona fide error. Judicial precedents under Section 276C emphasise that interpretational disputes—where the assessee adopts a plausible but aggressive tax position—do not constitute wilfulness absent evidence of concealment or falsification. Post 2025, courts must remain vigilant against conflating aggressive tax planning with criminal evasion, particularly given the graded sentencing regime that may incentivise over-prosecution in borderline cases.

Evidentiary Patterns Courts Rely On (Scale, Repetition, Concealment, Fund Diversion)

Courts typically infer wilfulness from patterns of conduct: large-scale evasion, repetition across assessment years, active concealment of assets, and diversion of funds to frustrate recovery. Under Section 478(4), possession of doctored books or false entries serves as direct evidence of wilfulness, while circumstantial evidence (e.g., unexplained cash flows, shell entities) supports inference of intent.

Interaction with Penalty Proceedings and Compounding/Settlement Mechanisms

The coexistence of civil penalties and criminal prosecution under Section 478(3) necessitates careful coordination to avoid double punishment. Compounding and settlement mechanisms—such as the Vivad se Vishwas scheme and its successors—offer doctrinal safeguards by allowing accused persons to settle disputes without admitting guilt, thereby reducing the burden on courts and ensuring that criminal liability is reserved for egregious cases.

Sentencing Architecture and Doctrinal Feedback

Graded Punishments by Quantum; Policy Rationale (Deterrence vs. Over-Criminalisation)

The Finance Bill, 2026's graded sentencing framework—ranging from fines only for evasion under ten lakh rupees to up to two years' simple imprisonment for evasion over fifty lakh rupees—reflects a policy shift from punitive severity toward proportionate deterrence. This architecture aims to reserve criminal sanctions for high-value, high-culpability cases while depenalising minor defaults.

XII. PUNISHMENT UNDER SECTION 478: "WILFUL ATTEMPT" TO EVADE TAX

Statutory Framework and Sentencing Architecture

Section 478 of the Income-tax Act, 2025, as amended by the Finance Bill, 2026, establishes a quantum-graded punishment framework that replaces the uniform rigorous imprisonment regime under Section 276C of the 1961 Act with a tiered system of simple imprisonment and fines. This recalibration reflects legislative intent to align criminal sanctions with the severity of evasion, reserving imprisonment for high-value cases while depenalising minor defaults through fine-only penalties.

Three-Tier Punishment Structure

Section 478(1) prescribes three distinct punishment tiers based on the amount of tax, penalty, or interest sought to be evaded, or the tax on under-reported income:

Tier 1: High-Value Evasion (Exceeding Fifty Lakh Rupees)- Punishment: Simple imprisonment for a term up to two years, or with fine, or with both.

Threshold: Amount sought to be evaded or tax on under-reported income exceeds ₹50,00,000. Policy Rationale: This tier targets egregious evasion cases where the quantum justifies custodial sentences, albeit in the less severe form of simple imprisonment rather than rigorous imprisonment.

Tier 2: Medium-Value Evasion (Exceeding Ten Lakh but Not Exceeding Fifty Lakh Rupees)- Punishment: Simple imprisonment for a term up to six months, or with fine, or with both.

Threshold: Amount sought to be evaded or tax on under-reported income exceeds ₹10,00,000 but does not exceed ₹50,00,000.

Policy Rationale: This intermediate tier acknowledges that moderate evasion warrants criminal sanctions but limits custodial exposure to six months, reflecting proportionality principles.



Tier 3: Low-Value Evasion (Not Exceeding Ten Lakh Rupees)- Punishment**: Fine only (no imprisonment prescribed). Threshold: Amount sought to be evaded or tax on under-reported income is ₹10,00,000 or less.

Policy Rationale: This tier effectively decriminalises minor defaults by removing imprisonment as a sentencing option, reserving criminal liability for fiscal deterrence through monetary

Sub-section (2): Evasion of Payment Post-Assessment

Section 478(2) addresses wilful attempts to evade payment of tax, penalty, or interest post-assessment, with punishment tiers mirroring sub-section (1).

Exceeding Fifty Lakh Rupees: Simple imprisonment up to two years, or fine, or both.

Exceeding Ten Lakh but Not Exceeding Fifty Lakh Rupees: Simple imprisonment up to six months, or fine, or both.

Not Exceeding Ten Lakh Rupees: Fine only.

This parallel structure ensures that post-assessment payment evasion is treated with equivalent severity to pre-imposition evasion, recognising that both conduct types undermine tax administration.

Sub-section (3): Coexistence with Civil Penalties

Section 478(3) retains the "without prejudice" language, explicitly preserving the imposition of civil penalties alongside criminal prosecution. This provision ensures that criminal sanctions do not preclude fiscal recovery through penalties under Section 270A or other civil provisions, reflecting legislative intent to maintain complementary enforcement tracks.

XIII. DOCTRINAL IMPLICATIONS:

Double Jeopardy Concerns: The coexistence of civil and criminal proceedings raises questions about double punishment for the same conduct, though Indian courts have historically upheld parallel proceedings as constitutionally permissible.

Proportionality: Administrators must balance civil penalties and criminal sanctions to avoid disproportionate cumulative punishment, particularly in low-value cases where imprisonment is no longer available.

Sub-section (4): Conduct Limbs and Evidentiary Shortcuts

Section 478(4) enumerates four conduct limbs that constitute a wilful attempt, serving as evidentiary shortcuts for prosecutors:

1. False Entries or Statements: Possession or control of books of account containing false entries.
2. Wilful Omissions: Deliberate omission of material particulars from books or documents.
3. Doctored Books: Possession or control of books that have been altered, falsified, or tampered with.
4. Any Other Circumstance: Any other conduct that "will have the effect" of evading tax, penalty, or interest.

Causation Language: The phrase "will have the effect" in limb (4) introduces a causation element, requiring courts to assess not only the accused's intent but also the likely consequence of their conduct. This language raises the evidentiary bar for wilfulness, as mere negligence or inadvertent errors that do not "will have the effect" of evasion may fall outside Section 478's scope.

Sentencing Guidelines and Judicial Discretion

The Finance Bill, 2026, grants courts broad discretion in sentencing within each tier, subject to the following constraints:

- No Mandatory Minimum: Unlike Section 276C, which prescribed a minimum three-month term for high-value evasion, Section 478 imposes no mandatory minimum, allowing courts to impose fine-only sentences even in Tier 1 cases.
- Proportionality Principle: Courts must consider the accused's culpability, cooperation with authorities, and prior compliance history when determining whether to impose imprisonment, fine, or both.



- Compounding and Settlement: The 2026 reforms encourage compounding of offences under Section 484, allowing accused persons to settle disputes without admission of guilt, thereby reducing the burden on courts and reserving criminal sanctions for egregious cases.

XIV. PRACTICAL IMPLICATIONS FOR COURTS AND ADMINISTRATORS

For Courts:

Mens Rea Determination: The graded sentencing framework may inadvertently influence judicial inference of wilfulness, as courts may be more inclined to find wilfulness in high-value cases to justify harsher penalties.

Evidentiary Standards: Courts must apply consistent evidentiary standards across tiers, ensuring that wilfulness is established through corroborative evidence (e.g., scale, repetition, concealment) rather than presumption based on quantum alone.

For Administrators:

Prosecution Prioritisation: The three-tier framework encourages administrators to prioritise high-value cases (Tier 1) for criminal prosecution while resolving low-value cases (Tier 3) through civil penalties or compounding.

Settlement Mechanisms: Administrators should leverage compounding and settlement mechanisms to reduce litigation backlog and ensure that criminal liability is reserved for deliberate, high-culpability evasion.

XV. HOW SENTENCING TIERS MAY SHAPE JUDICIAL INFERENCE OF WILFULNESS

The sentencing tiers may inadvertently shape judicial inference of wilfulness: courts may be more inclined to find wilfulness in high-value cases to justify harsher penalties, while downplaying wilfulness in low-value cases to avoid disproportionate punishment. Doctrinally, this creates a feedback loop where sentencing policy influences mens rea determination, potentially undermining the neutrality of wilfulness as a gatekeeper.

Comparative Insights (Selective)- Common-Law ‘Wilfulness’ Standards in Tax Evasion (Conceptual Parallels, Not Wholesale Adoption)

In common-law jurisdictions, “wilfulness” in tax evasion requires a voluntary, intentional violation of a known legal duty, distinguishing it from negligence or good-faith misunderstandings. This standard emphasises subjective intent and knowledge, aligning with Indian judicial interpretations of Section 276C that focus on deliberate conduct rather than actual evasion. While wholesale adoption is inadvisable due to contextual differences, the common-law emphasis on subjective intent offers a conceptual parallel for refining India’s doctrinal test for wilfulness.

XVI. DOCTRINAL SYNTHESIS: A PROPOSED JUDICIAL TEST FOR WILFULNESS

To address the identified gap, this article proposes a structured judicial test for wilfulness under Section 478, comprising the following elements:

1. Subjective Intent: The accused must have acted with a conscious, deliberate intent to evade tax, penalty, or interest, or to under-report income.
2. Objective Conduct: The accused’s conduct must fall within one of the four limbs of Section 478(4), such as possession of doctored books or false entries.
3. Causation: The conduct must “will have the effect” of evasion, as required by Section 478(4)(d).
4. Absence of Bona Fides: The accused must not have acted under a bona fide belief or interpretational dispute that negates wilfulness.
5. Evidentiary Safeguards: Wilfulness must be supported by corroborative evidence, such as scale, repetition, concealment, or fund diversion.

XVI. FINDINGS & SUGGESTIONS

- Wilfulness is the constitutive mens rea element under Section 478, distinguishing criminal liability from civil penalties.



- The 2025–2026 reforms recalibrate sentencing toward proportionate deterrence, reserving criminal sanctions for high-value, high-culpability cases.
- The absence of a judicially articulated test for wilfulness creates doctrinal uncertainty and risks over-criminalisation.
- Courts should adopt the proposed five-element test to ensure consistent, context-sensitive determination of wilfulness.
- Compounding and settlement mechanisms should be leveraged to reduce the burden on courts and reserve criminal liability for egregious cases.

XVIII. CONCLUSION

Section 478 of the Income-tax Act, 2025, as amended by the Finance Bill, 2026, positions wilfulness as the gatekeeper of criminal liability in tax evasion cases. This article has traced the doctrinal evolution from Section 276C, analysed the textual and structural nuances of Section 478, and identified a critical gap: the absence of a judicially applicable test for wilfulness. By proposing a structured, five-element test, this article offers a doctrinal framework to guide courts in distinguishing wilful evasion from negligence, bona fide error, and interpretational disputes. The practical implications are significant: a clear test for wilfulness will ensure that criminal liability functions as a precise, proportionate deterrent, aligning with the legislature's intent to balance enforcement with fairness.

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