# SECTION - 270A

Penalty for under-reporting and misreporting of income

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# Background:

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Finance Act, 2016 inserted sub-section (7) to Section 271which provides that Provisions of Section 271 shall not be applicable from A.Y. 2017-18

Further, Finance Act also introduced new section 270A, applicable from A.Y. 2017-18, governing the penalty provisions in case of 'under-reporting'.

Section 270A(1):

The AO/CIT(A)/CIT or Pr. CIT **may** during the **course of any proceedings** under this Act, direct that any person who has **under-reported** his income shall be liable to pay a penalty in addition to tax.

# 'Under-reporting' S. 270A(2)

## When can it be said that there is 'Under-Reporting'-

**<u>In case of regular assessment where income is taxable as per the normal provisions:</u>**

(1) income assessed is greater than the income determined u/s 143(1)(a).

E.g.1: If income assessed is Rs. 12.50 Lacs as against income u/s 143(1) Rs. 3 lacs.

The above implies that there can not be any penalty for adjustments made u/s 143(1)(a).

(2) income assessed is greater than the maximum amount not chargeable to tax, where no return has been furnished.

E.g. 2 : If income assessed is Rs. 12.50 Lacs and no ROI filed by the individual.

# When can it be said that there is ‘Under-Reporting’-

**In case of Reassessment :**

(3) income reassessed is greater than the income assessed or reassessed immediately before such reassessment

**In case of conversion of loss into income or reduction of loss**

(4) income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

# When can it be said that there is 'Under-Reporting'-

**In case where the income computed under 115JB/ 115JC is the deemed total income:**

(5) amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed u/s 143(1)(a).

(6) amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed

(7) amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment.

# Quantum of under-reported income: S. 270A(3)

# Quantum of under-reported income:

***A. If assessed for the First Time:***

**If Return has been furnished:** Difference between the assessed income and the amount of income determined u/s 143(1)(a).

In Ex 1, UI = 12.50 -3.00 = 9.50 Lacs.

**If Return has not been furnished:**

**(a) In case of Firm, Company or Local Authority:** Assessed Income

**(b) In any other case:** difference between the assessed income and maximum amount not chargeable to tax.

In Ex 2, UI = 12.50 -2.50 = 10.00 Lacs.

# Quantum of under-reported income:

***B. In case where there is Effect of reducing loss or converting loss into income:***

Difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

- ***C. In any other case:***

Difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order.

## Quantum of under-reported income: where Sec. 115JB/115JC are applicable-

D. Under-reported income will be calculated as per the formula:

$$(A - B) + (C - D)$$

Where,

**A** = the total income assessed as per general provisions of the Act

**B** = the total income assessed as per general provisions of the Act **less** the amount of under-reported income

**C** = the total income assessed as per the provisions contained in section 115JB or section 115JC

**D** = the total income assessed as per the provisions contained in section 115JB or section 115JC **less** the amount of under-reported income

Where amount is considered under both normal provision and MAT/AMT, then such amount shall not be reduced from total income assessed while determining the amount under item D.

# Exceptions in certain scenerios- Section 270A(6)

## The 'Under-reported' income shall not include the following amount:

- Where explanation is offered:

the amount of income in respect of which the **assessee offers an explanation**

**and**

the **AO/CIT or Pr. CIT/CIT(A) is satisfied** that the explanation is bona fide

**and**

the **assessee has disclosed** all the material facts to substantiate the explanation offered

## The 'Under-reported' income shall not include the following amount:

❖ Under reporting on account of estimated additons:

(1) the amount of under-reported income is determined on the basis of an estimate, **if the accounts are correct and complete to the satisfaction** of the AO/ CIT(A)/ CIT or Pr. CIT, as the case may be, but the method employed is such that the income cannot properly be deduced theref rom.

(2) the amount of under-reported income is determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance

## The 'Under-reported' income shall not include the following amount:

❖ Additions on account of ALP determined by TPO:

The amount of **under-reported income is represented by any TP addition made in conformity with the ALP determined by the TPO**, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction

❖ Search cases covered by Section 271AAB:

The amount of undisclosed income referred to in section 271AAB

## Effect of S. 270A(6)

The formula for Under-reported income as given in S. 270A(3) has to be read with S. 270A(6).

In other words, if any of the situations as given in S. 270A(6) are applicable, that much amount is to be excluded from the formula of S. 270A(3).

In Ex. 1, if the addition includes an amount of say Rs. 4 lacs, in respect of which assessee has given a bonafide explanation with disclosure of facts, UI will be reduced by Rs. 4 lacs i.e. UI = 9.50-4.00=5.50 Lacs.

Similarly, if it is a situation as in Ex. 2, UI = 10.00-4.00 =6.00 Lacs.

# PENALTY FOR UNDER-REPORTING S. 270A(7)

## Penalty For Under-Reporting

Penalty = **50**% of the amount of **tax payable** on **under reported income.**

# Tax payable in respect of the under-reported income : S. 270A(10)

## Section -270A(10) : Tax payable in respect of the under-reported income shall be:

i. where no return of income has been furnished and the income has been assessed for the first time:- the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income.

In Ex. 2, Tax on UI = Tax on Rs. (6 + 2.5) 8.5 Lacs – Tax on Rs. 2.50 Lacs.

ii. where the total income determined u/s 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income.

## Section -270A(10) : Tax payable in respect of the under-reported income shall be:

iii. In other case determined as per the formula **(X-Y),** where,

- X – amount of tax calculated on the under-reported income as increased by the total income determined u/s 143(1)(a) or assessed, reassessed or recomputed in the preceding order as if it were the total income and
- Y - amount of tax calculated on the total income determined u/s 143(1)(a) or assessed, reassessed or recomputed in the preceding order

In Ex. 1, Tax on UI = Tax on Rs. (5.5 + 3) 8.5 Lacs – Tax on Rs. 3.00 Lacs.

# Intangible Addition

## Section 270A (4) & (5):

- 270A(4) is somewhat similar to erstwhile explanation 2 to section 271(1) and provides that where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in any preceding assessment year and no penalty was levied in such preceding assessment year then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

- Further, section 270A(5) specifies that the amount for the purpose of sub-section (4) shall firstly be from the immediately preceding assessment year and then from the year preceding that and so on.

# MISREPORTING: S. 270A(9)

# Background

270A(8) provides that incase where the under-reporting is because of misreporting

than provision of sub-section(6) shall not apply (i.e. exceptions not applicable in case of Misreporting)

and also that the **penalty shall be levied at 200% of the amount of tax payable on under reported income.**

# What Is Misreporting? S. 270A(9)

The following shall be considered as misreporting:

i. misrepresentation or suppression of facts;

ii. failure to record investments in the books of account;

iii. claim of expenditure not substantiated by any evidence;

iv. recording of any false entry in the books of account;

v. failure to record any receipt in books of account having a bearing on total income; and

vi. failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

# IMMUNITY FROM IMPOSITION OF PENALTY, ETC. –[Section 270AA]

# Conditions to be fulfilled by the assessee:

(1) Tax and interest payable as per the assessment / reassessment order u/s 143 (3) or 147 respectively, has been paid within the period specified in such notice of demand; and

(2) No appeal is filed against the said order.

(3) Application u/s 270AA shall be made within one month from the end of the month in which the order u/s 143(3) or 147 is received in such form & manner as prescribed

AO **shall** grant immunity subject to the following conditions –

(1) Payment of taxes & interest has been made as per the order u/s 143 (3) or 147

(2) Time limit for filing the appeal u/s 249(2) has been elapsed.

(3) No immunity u/s. 270AA shall be granted in case where 'under reporting' is on account of 'Misreporting'.

# Other points w.r.t. 270AA

(1) Assessing Officer shall pass an order accepting or rejecting such application within a period of one month from the end of the month in which such application is received.

(2) Order of Assessing Officer under the said section shall be final.

(3) Once the application u/s 270AA is accepted, no appeal u/s 246A or revision application u/s 264 shall be accepted against the assessment or the reassessment order.

(4) In case of rejection, an opportunity of being heard shall be granted to the assessee.

(5) Further, assesse can file appeal against the assessment order. [Time from the date of filing the application till the rejection of application by the AO shall be excluded for counting thirty days u/s 249(2)]


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