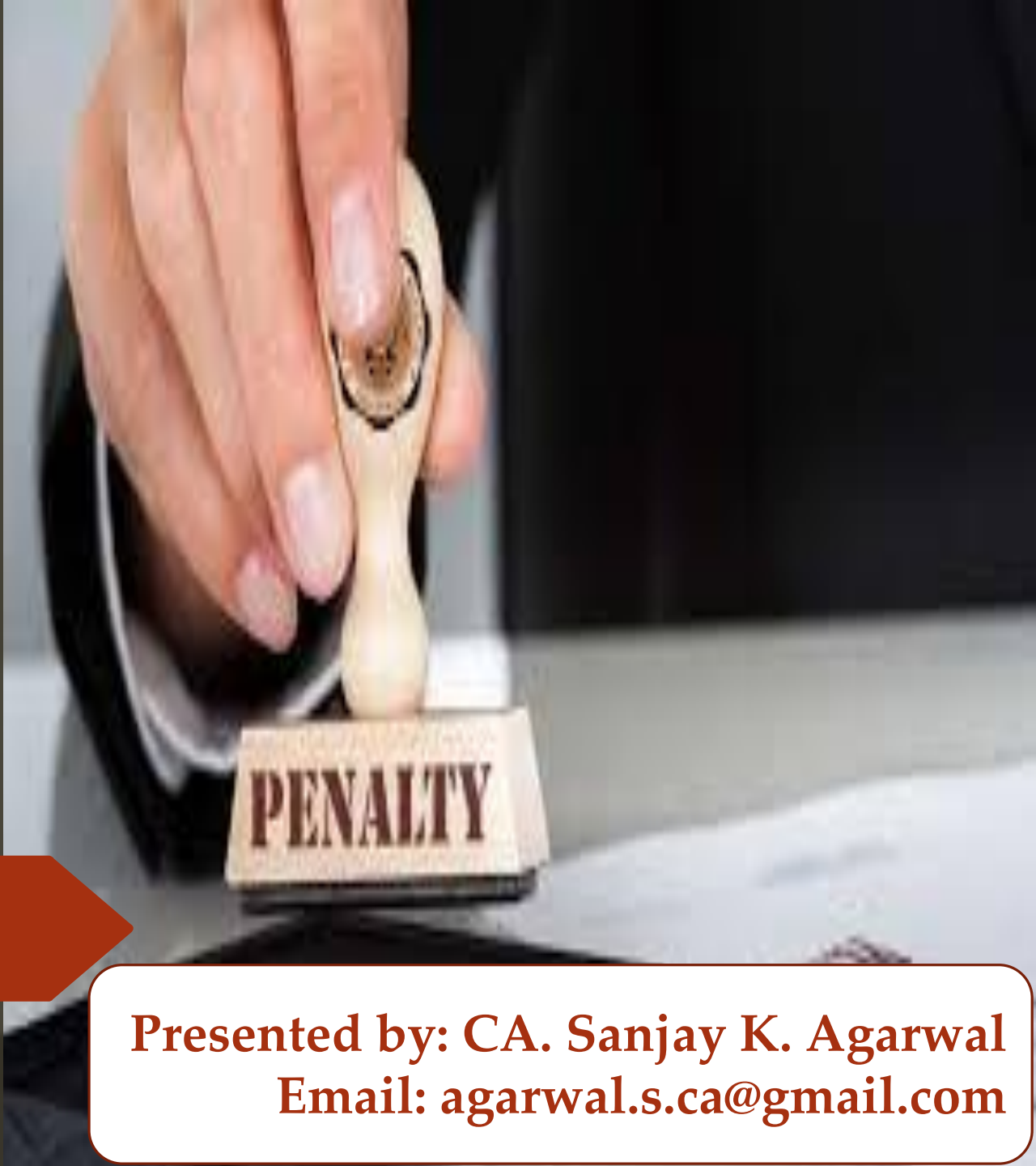


Penalties under the Income Tax Act, 1961



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Topics to be covered

- A. Penalty for under reporting and misreporting of Income.
- B. Immunity from imposition of Penalty.
- C. Penalty u/s 271AAA, 271AAB & 271AAC.
- D. Penalty u/s 271AAD & 271K inserted by Finance Act, 2020
- E. Other issues.

A) Penalty for Under reporting and Misreporting of Income

SECTION – 270A

Penalty for under-reporting and misreporting of income

Applicable from	1 st April 2017 {Inserted by Finance Act, 2016}
Nature of Default	Under reporting and misreporting of income
Applicable from	1 st April 2017 [AY 2017-18]
Amount of Penalty	50% of the tax payable on under reported income. 200% of the tax payable on misreported income.

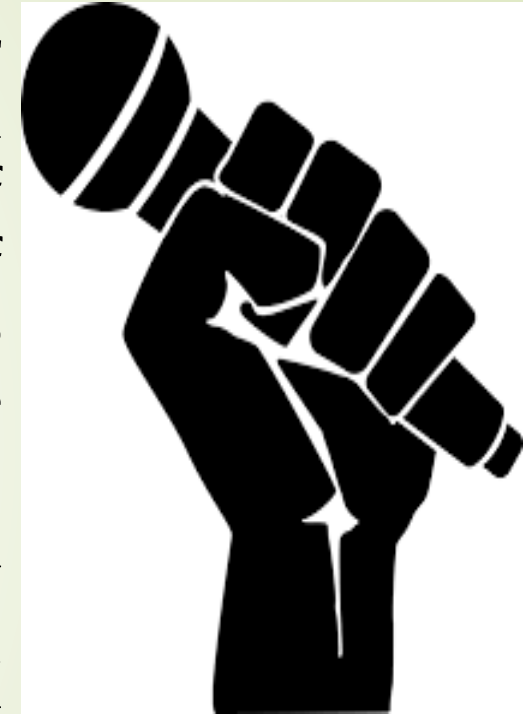
Memorandum explaining the provisions in the Finance Act, 2016

Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act. In order to rationalize and bring objectivity, certainty and clarity in the penalty provisions, it is proposed that section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 1st day of April, 2017 and subsequent assessment years and **penalty be levied under the newly inserted section 270A with effect from 1st April, 2017.** The new section 270A provides for levy of penalty in cases of under reporting and misreporting of income.

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Finance Minister's Speech

- ▶ Levy of heavy penalty for concealment of income has over the years resulted in large number of disputes despite a number of decisions of the Apex court on interpretation of statutory provisions and principles guiding imposition of penalty. At present the Income-tax Officer has discretion to levy penalty at the rate of 100% to 300% of tax sought to be evaded.
- ▶ I propose to modify the entire scheme of penalty by providing different categories of misdemeanor with graded penalty and thereby substantially reducing the discretionary power of the tax officers.
- ▶ The penalty rates will now be **50% of tax in case of underreporting** of income and **200% of tax** where there is **misreporting of facts**.



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

[Sub-section (1)]

➤ A person shall be considered to have **under-reported his income**, if—

- a) the income assessed is greater than the income determined in the return processed u/s 143(1)(a);
- b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
- c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

[Sub-section (2)]

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- d) the 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);
- e) the 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;
- f) the amount of deemed total income reassessed as per the provisions of section 115JB / 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment.
- g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

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Quantum of Penalty in case of Under reporting of income.

- The penalty referred to in sub-section (1) shall be a sum equal to **fifty per cent of the amount of tax payable on under-reported income. [Sub-section (7)]**

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Example of sub-section (1) of sec 270A

- ➔ Where the total income determined u/s 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss (in case of a company liable to tax @ 30%)

	(Figures in Rs. Lakhs)
Returned total income (loss)	(-)60
Total Income (loss) determined u/s 143(1)(a)	(-)50
Total Income (loss) assessed u/s 143(3)	(-)30
Total income reassessed u/s 147	20

Particulars	ASSESSMENT U/S 143(3)	RE-ASSESSMENT U/S 147
Under-Reported Income	= (-)30 - (-)50 = 20 lakhs	=20 - (-)30 = 50 lakhs
Tax	= 30% of 20 lakhs = Rs. 6,00,000	= 30% of 50 lakhs = Rs. 15,00,000
Penalty leviable in case of under-reporting (50% of tax)	= 50% of 6,00,000 = Rs. 3,00,000	= 50% of 15,00,000 = Rs. 7,50,000

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➤ The under-reported income, for the purposes of this section, shall not include the following, namely:— [Sub-section (6)]

- (a) the amount of income in respect of which the assessee offers an **explanation** and the AO / CIT(A)/ CIT/ Pr.CIT is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered; [Reverse of Explanation 1 of Sec 271.]
- (b) the amount of under-reported income determined on the basis of an **estimate**, if the accounts are correct and complete to the satisfaction of the AO / CIT(A)/ CIT/ Pr. CIT but the method employed is such that the income cannot properly be deduced therefrom;
- (c) the amount of under-reported income 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, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;

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- d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed u/s 92D, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction; and
- e) the amount of undisclosed income referred to in section 271AAB. {in such case penalty may be levied u/s 271AAB}

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➤ The amount of under-reported income shall be,—

[Sub-section (3)]

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Situation		under-reported income
where income has been assessed for the first time	return has been furnished	difference between the amount of income assessed & amount of income determined u/s 143(1)(a)
	no return has been furnished	A. <u>Company, firm or local authority</u> – amount of income assessed B. <u>For other persons</u> – difference between amount of income assessed & maximum amount not chargeable to tax
in any other case		difference between amount of income reassessed or recomputed & amount of income assessed, reassessed or recomputed in a preceding order (being an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated)

Note: Where assessment/ reassessment has the **effect of reducing loss** declared in the return **or converting that loss into income**, the under reported income shall be difference between the loss claimed & the income (or loss) assessed/ reassessed.

Where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB/ 115JC, the amount of total under-reported income shall be:

(A – B) + (C – D) where,

A

total income assessed as per the provisions other than the provisions contained in section 115JB / 115JC (herein called general provisions)

B

total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income

C

total income assessed as per the provisions contained in section 115JB / 115JC

D

total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB / 115JC been reduced by amount of under-reported income:

where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB / 115JC & general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

➤ The tax payable in respect of the under-reported income shall be—

[Sub-section (10)]

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Situation	Tax payable in respect of the under-reported income
Return has been furnished and income has been assessed for the first time	amount of tax calculated on under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income
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
in any other case	<p style="text-align: center;">(X-Y)</p> <div style="display: flex; flex-direction: column; gap: 10px;"> <div data-bbox="453 896 626 1051"> <p style="text-align: center; background-color: #800000; color: white; border-radius: 10px; width: 40px; height: 40px; margin: 0 auto;">X</p> <p>amount of tax calculated on under-reported income as increased by total income determined u/s 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income</p> </div> <div data-bbox="453 1160 626 1315"> <p style="text-align: center; background-color: #800000; color: white; border-radius: 10px; width: 40px; height: 40px; margin: 0 auto;">Y</p> <p>amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.</p> </div> </div>

Example of sub-section (3) of sec 270A

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Particulars	Amount (in Rs.)
Income as per general Provision	10,000
Book Profit u/s 115JB	1,00,000
Tax on Income as per general provision	3,000
Tax on books profit u/s 115JB	18,500
Deemed Total income	1,00,000
Assessment u/s 143(3) on income under general provision	25,000
Deemed Total Income u/s 143(3)	1,00,000

- In case, where MAT is applicable, the amount of under reported income is determined as under:- **(A-B) + (C-D)**
- **A** = Total income assessed as per general provision of Act other than 115JB (25,000)
- **B** = Total income assessed as per general provision of Act other than 115JB less under reported income (10,000)
- **C** = Total income assessed as per provision of section 115JB (1,00,000)
- **D** = Total income assessed as per provision of section 115JB less under-reported income (1,00,000)

The amount of under-reported income will be **Rs. 15,000 [(25,000-10,000) + (1,00,000-1,00,000)]**

➤ The **cases of misreporting of income** shall be the following, namely:

[Sub-section (9)]

- a) misrepresentation or suppression of facts
- b) failure to record investments in the books of account;
- c) claim of expenditure not substantiated by any evidence;
- d) recording of any false entry in the books of account;
- e) failure to record any receipt in books of account having a bearing on total income; and
- f) 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.

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Quantum of Penalty in case of Misreporting of Income.

- Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in **consequence of any misreporting thereof** by any person, the penalty referred to in sub-section (1) shall be equal to **two hundred per cent of the amount of tax payable on under-reported income.** [Sub-section (8)]

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- Subject to the provisions of sub-section (6), where the **source of any receipt, deposit or investment** in any AY is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in preceding year and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment. **[Sub-section (4)]**

[Pari materia same as Explanation 2 of Section 271(1)]

- The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—
 - a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
 - b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on. **[Sub-section (5)]**

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- No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year. **[Sub-section (11)]**
- The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by AO / CIT(A) / CIT / Pr.CIT, as the case may be. **[Sub-section (12)]**
- The order levying penalty u/s 270A shall be appealable before Commissioner of Income Tax (Appeals) under clause (q) of Section 246A(1).

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Computation of penalty:

- Where no return of income has been furnished (Individual below 60 years)

Total income assessed u/s 144 = Rs. 10,00,000

Amount of under-reported income as per section 270A(3)

$$\text{Rs. } 10,00,000 - 2,50,000 = \text{Rs. } 7,50,000$$

Tax payable in respect of under reported income shall be the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax i.e. = Rs. 7,50,000 + 2,50,000 = Rs. 10,00,000

Tax on Rs. 10,00,000 = Rs. 1,25,000 + 4% EC

Therefore, penalty leviable:

In case of under-reporting	50% of tax i.e. 1,25,000	Rs. 62,500
In case of misreporting	200% of tax i.e. 1,25,000	Rs. 2,50,00

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Interpretation of Misrepresentation (Sec 270 (9) (a))

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Misrepresentation has not been defined under the Income Tax Act. Definition of Misrepresentation as per decided case law in old regime. **[2014] 46 taxmann.com 14 (Delhi)/[2014] 364 ITR 423 (Delhi)/[2014] 270 CTR 390 (Delhi)**

16. It is evident from the rulings of the Supreme Court that orders of Settlement Commission are final and conclusive as to matters stated therein. The "matters" necessarily could comprehend disputed questions, items or heads of income, disallowance, etc. or variants of it, but always with reference to a particular assessment year. In this case, the Settlement Commission was seized of AY 2006-07. Whilst exercising its authority over the application, the Commission concededly exercised the vast plenitude of its power or jurisdiction. The petitioner had made a disclosure in its application - as it was duty bound to. What is in controversy today is that the subsequent event of search and seizure operation conducted in the premises of Shri Modi -in the contention of the Revenue - have thrown light on material that had been suppressed from the Commission.

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- ▶ If such is the case, it would be only logical that the Commission itself should be approached for a declaration that its order of 17.3.2008 is a nullity. Allowing any other authority, even by way of a notice under Section 153C, would be to permit multiple jurisdictions which can result in chaos. After all non-disclosure or suppression of information in respect of what is required to be revealed to the concerned authorities is akin to fraud and if it has a material bearing on the outcome of the assessment, it would most certainly be misrepresentation. During the course of hearing, the learned counsel for the Revenue had voiced apprehensions that the Commission might well be of the opinion that "misrepresentation" has to fall within the four corners of the meaning of such expression under the Contract Act. This Court sees no *rationale* for such apprehension.

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Misrepresentation has not been defined under the Income Tax Act; importing the definition of misrepresentation or for that matter fraud from the Contract Act in the circumstances would not be appropriate. As one understands, the term "misrepresentation" would mean failure to disclose material or facts which are germane and relevant, or suppressing facts and materials which are germane and relevant or holding out a falsehood which gives the rise to an assumption that what is so stated or represented is true or correct. These are only illustrative and by no means conclusive as to what can be misrepresentation. The facts of each case would throw light on whether the individual or person concerned was guilty of misrepresentation having regard to the totality of the circumstances, given the nature of duty cast on him or her.

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➤ **Section 18 of Indian Contract Act 1872 : "Misrepresentation defined"**

18. "Misrepresentation" means and includes-

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement

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Issues on Section 270A

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- We have had the advantage of penning the judgment in the appeal preferred in relation to the quantum proceedings and have held that the assessee was wrong in not offering the whole or entire amount of the technical fee for tax in the year of receipt. But it does not follow that penalty for concealment must be imposed as the quantum appeal is decided against the assessee. The findings in the assessment proceedings cannot be considered as conclusive and final for the purpose of imposition of penalty under section 271(1)(c) of the Act. As per opinion expressed by the Supreme Court in *CIT vs. Anwar Ali* [\[1970\] 76 ITR 696 \(SC\)](#) such findings may constitute good evidence in the penalty proceedings, but it does not follow that penalty for concealment under Section 271(1)(c) is mandatory whenever an addition or disallowance is made. The language of Section 271(1)(c) has undergone substantial changes since the pronouncement of the aforementioned judgment, but the said legal position, still hold good. In assessment proceedings, we are primarily concerned with the assessment of income i.e. quantification and computation of total income as per the provisions of the Act, whereas in penalty proceedings we are primarily concerned with the conduct of the assessee. Penalty is imposed not because addition is made but because there is concealment or furnishing of inaccurate particulars by the assessee. [\[2014\] 49 taxmann.com 573 \(Delhi\)](#)/[\[2015\] 228 Taxman 66 \(Delhi\)](#)/[\[2015\] 275 CTR 291 \(Delhi\)](#)

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Issues on Section 270A

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- ▶ In the instant case we are not dealing with collection of tax u/s 201(1) or compensatory interest u/s 201(1A). The case of the assessee is that these amounts have already been paid so as to end dispute with Revenue. In the present appeals we are concerned with levy of penalty u/s 271-C for which it is necessary to establish that there was contumacious conduct on the part of the assessee. We find that on similar facts Hon'ble Delhi High Court have deleted levy of penalty u/s 271-C in the case of *Itochu Corporation* [268 ITR 172 \(Del\)](#) and in the case of *CIT v. Mitsui & Company Ltd.* [272 ITR 545](#). Respectfully following the aforesaid judgments of Hon'ble Delhi High Court and the decision of the ITAT, Delhi in the case of *Television Eighteen India Ltd.*, we allow the assessee's appeal and cancel the penalty as levied u/s 271-C. The High Court rejected the appeal only on the ground that no substantial question of law arises in the matter. SC convinced that there is no substantial question of law, the facts and law having properly and correctly been assessed and approached by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal. Thus, we see no merits in the appeal and it is accordingly **dismissed**. [\[2016\] 66 taxmann.com 175 \(SC\)/\[2016\] 237 Taxman 594 \(SC\)/\[2016\] 380 ITR 550 \(SC\)/\[2016\] 283 CTR 128 \(SC\)](#)

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Issues on Section 270A

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- ▶ The levy of penalty cannot be resorted to as a matter of course. By their very nature, the returns are bound to be at variance from what is contemplated under the Act or the estimates of the Assessing Officers. Many a time, the understanding of a given provision in a particular way, itself would lead to a considerable difference as to the income or the corresponding tax. The very fact that quite large number of remedies in the form of appeals at various stages is provided for, discloses that even the understanding of the assessing or adjudicatory authorities; not absolute. The levy of penalty is not going to leave the matter at that. It would expose the assessee to prosecution also by treating him as an economic offender. An assessee can be made to suffer such far reaching consequences, if only facts of the case support, and it emerges that the assessee had a clear intention to suppress the income. **[CIT vs M/s Cheenupati Tyre & Products, I.T.T.A 190 of 2003, Dt. 21.10.2014]**
- ▶ In this case, no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed. **[2015] 64 taxmann.com 75 (SC)/[2016] 237 Taxman 375 (SC)/[2015] 379 ITR 521 (SC)/[2016] 286 CTR 159 (SC)**

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Issues on Section 270A

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- ▶ **Doubtful penalization:** This principle applies not only to criminal statutes but also to provisions which create a deterrence and results in punitive penalty. Section 40(a)(ia) is a deterrent and a penal provision. It has the effect of penalizing the assessee, who has failed to deduct tax at source and acts to the detriment of the assessee's property and other economic interests. It operates and inflicts hardship and deprivation, by disallowing expenditure actually incurred and treating it as disallowed. The Explanation, therefore, requires a strict construction and the principle against doubtful penalization would come into play. The detriment in the present case, as is noticeable, would include initiation of proceedings for imposition of penalty for concealment, as was directed by the Assessing Officer in the present case. The aforesaid principle requires that a person should not be subjected to any sort of detriment unless the obligation is clearly imposed. When the words are equally capable of more than one construction, the one not inflicting the penalty or deterrent may be preferred. In Maxwell's *The Interpretation of Statutes*, 12th edition (1969) it has been observed:—

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Issues on Section 270A

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- ▶ "The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction." **[In favour of assessee] [2015] 53 taxmann.com 139 (Delhi)/[2015] 370 ITR 454 (Delhi)/[2015] 273 CTR 1 (Delhi)**

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31 Comparison: Old Provision & New Provision

Old Provisions	New Provisions
Any person has concealed the particulars of his income or furnished inaccurate particulars of such income. Sec 271(1)(c).	Any person who has Under-reporting and/or misreporting his income.
Section 271(1)(b) dealing with penalty direction there.	No such separate provision in section 270A. (Now Leviable under section 272A(1)(d)).
No separate clause of estimate-based addition	Estimate based addition separately covered
Transfer pricing cases penalty not levied.	If Information maintained; declared under chapter X, and all material facts disclosed – no penalty transfer pricing cases.
<i>Explanation 1.</i> fails to offer an explanation or offers an explanation which is not able to substantiate and fails to prove that such explanation is <i>bona fide</i>	Reverse of explanation 1 of sec 271 added in 270A(6)(a).
Explanation 5A: Deemed concealment in search/raid cases.	No such separate provision in section 270A. Leviable in following sec. 271AAA (from 01.06.2007 to 30.06.2012) 271AAB(1) (From 01.07.2012 to 14.12.2016) 271AAb(1A) (From 15.12.2016 onwards)

B) Immunity from imposition of Penalty.

SECTION – 270AA

Immunity from imposition of penalty, etc.

Applicable from	1st April 2017
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1. An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C / 276CC, if he fulfils the following conditions, namely:—
 - a) the tax and interest payable as per the order of assessment or reassessment u/s 143(3) / 147, as the case may be, has been paid within the period specified in such notice of demand; and*
 - b) no appeal against the order referred to in clause (a) has been filed.
2. An application referred to in sub-section (1) shall be made **within one month from the end of the month in which the order** referred to in clause (a) of sub-section (1) **has been received** and shall be made in such form and verified in such manner as may be prescribed. **[Form no.68]**

* The notice of demand u/s 156 provides for time limit of 30 days from the date of service of notice for the payment of tax and interest as per the order of assessment or reassessment u/s 143(3) / 147

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3. The AO shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in section 249(2)(b), grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C / 276CC, **where the proceedings for penalty u/s 270A has not been initiated under the circumstances referred to in section 270A(9) ie mis-reporting of income.**

Section 270A(9)

- a) misrepresentation or suppression of facts
- b) failure to record investments in the books of account;
- c) claim of expenditure not substantiated by any evidence;
- d) recording of any false entry in the books of account;
- e) failure to record any receipt in books of account having a bearing on total income; and
- f) 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.

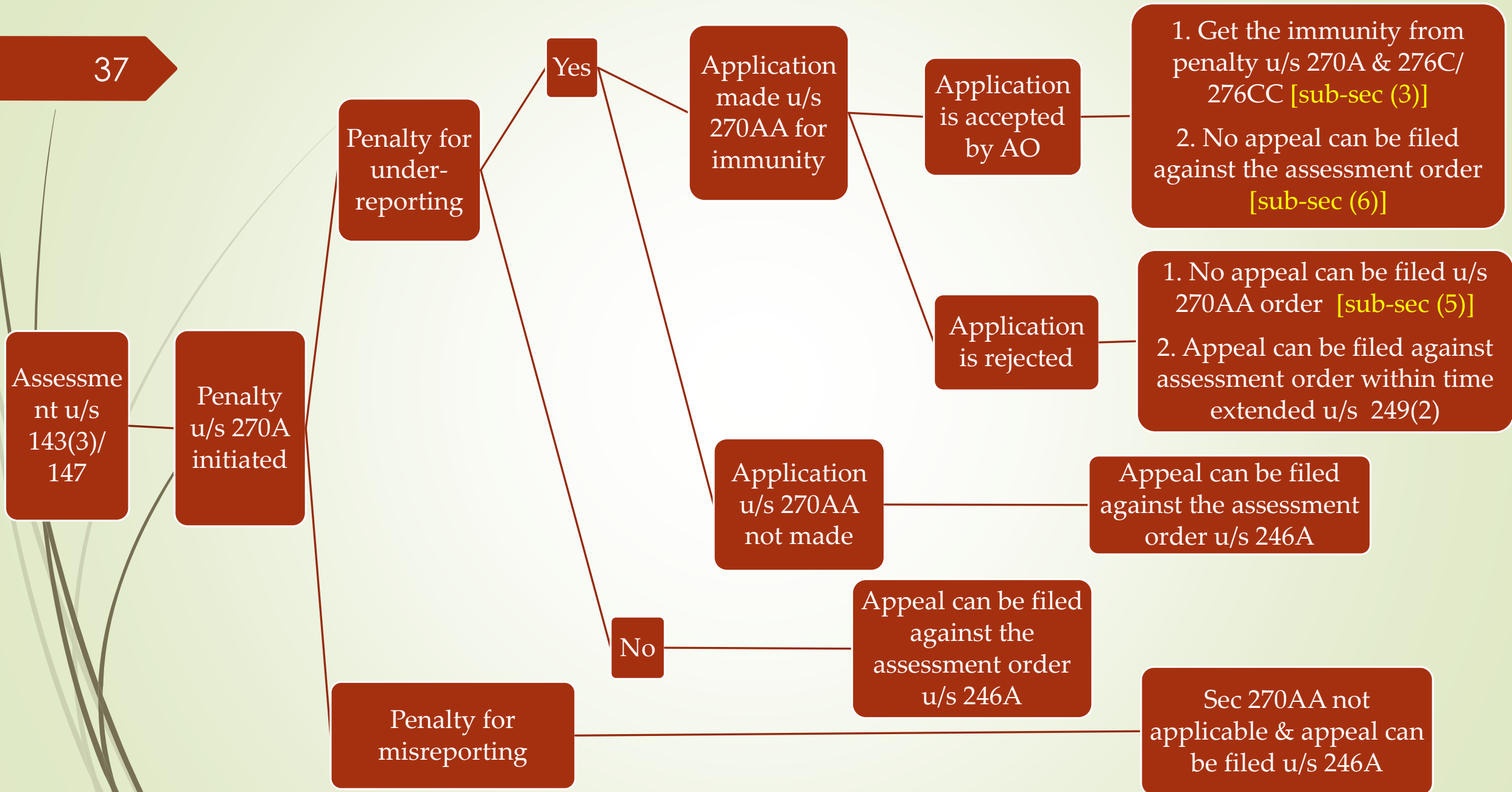
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4. The AO shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application:

Provided that no order rejecting the application shall be passed unless the assessee has been given an opportunity of being heard.

5. The order made under sub-section (4) shall be final.
6. No appeal u/s 246A or an application for revision u/s 264 shall be admissible against the order of assessment or reassessment, referred to in clause (a) of sub-section (1), in a case where an order under sub-section (4) has been made accepting the application.

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CBDT Circular No. 5/2018 dated 16/08/2018 – Clarification on the immunity provided u/s 270AA of the Income-tax Act, 1961

Where an assessee makes an application seeking immunity under section 270AA of the Act, it shall not preclude such assessee from contesting the same issue in any earlier assessment year. Further, the Income-tax Authority, shall not take an adverse view in the proceedings for penalty under section 271(1)(c) of the Act in earlier assessment years merely on the ground that the assessee has acquiesced on the issue in any later assessment year by preferring an immunity on such issue under section 270AA of the Act.

**C) Penalty u/s 271AAA, 271AAB &
271AAC.**

Penalty at a Glance

S. No.	Penalty Section	Nature of Default	Amount of Penalty
1.	271AAA	Search has been initiated u/s 132 from 1st June, 2007 before 1st July, 2012	10% of the undisclosed income of the specified previous year.
2	271AAB(1)	Search has been initiated u/s 132 on or after 1st July, 2012 upto 14th December, 2016	30% or 60% of the undisclosed income of the specified previous year.
	271AAB(1A)	Search has been initiated u/s 132 on or after 15th December, 2016	10% / 20% / 30-90% / 60% of the undisclosed income of the specified previous year.
3	271AAC	Income determined includes any income referred to in section 68-69D	10% of tax payable u/s 115BBE(1)(i)

SECTION – 271AAA

Penalty where search has been initiated.

Nature of Default	Search has been initiated u/s 132
Applicable from and upto	1 st June 2007 & before 1 st July, 2012
Amount of Penalty	10% of the undisclosed income of the specified previous year. (in addition to tax amount)

S. No.	Particular	Quantum of penalty
1.	<ul style="list-style-type: none"> • Where assessee in its statement recorded u/s 132(4) admits undisclosed income • Specifies and substantiates the manner in which such income has been derived • pays the tax, together with interest, if any, in respect of the undisclosed income. 	No Penalty
2.	Other cases	Penalty would be levied at 10% of undisclosed income.

- No penalty under the provisions of section 271(1)(c) shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).
- The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

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► For the purposes of this section, —

a) "undisclosed income" means —

- i. any income of the specified previous year represented, either wholly or partly, by any money, bullion, Jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has —
 - A. not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or
 - B. otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or
- ii. any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

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b) "specified previous year" means the previous year—

- i.** which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or
- ii.** in which search was conducted.

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ISSUES

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- ▶ Where assessee made statement that investment made in land/plots & movable and immovable properties represented its undisclosed income, however, he had not explained sources from where he made said investments & taxes due on said income were also not paid, penalty imposed u/s 271AAA was justified. **ACIT v. Shailesh Gopal Mhaske [2017] 86 taxmann.com 263 (Pune - Trib.)**
- ▶ Where during course of search and post search investigation assessee did not surrender any money but during course of scrutiny assessment, he surrendered an income which was claimed to be his wife's savings/ pin money, same would not be considered as 'undisclosed income', thus, penalty u/s 271AAA was not justified. **Mahavir Prasad Jaipuria v. ACIT, [2017] 86 taxmann.com 264 (Del. - ITAT)**
- ▶ Where AO levied penalty u/s 271AAA for default of not substantiating manner in which undisclosed income was earned, in view of fact that assessee had made statement that undisclosed income was earned from sale of several commercial & residential units and, moreover, assessee had paid due tax on said income, impugned penalty was unjustified. **ACIT v. Akshar Developers [2017] 86 taxmann.com 251 (Mum. - ITAT)**

Contd...

- Under section 132(4), during recording statement, if no question was asked in respect of earning of income declared, revenue later could not plead deficiency on part of assessee for satisfying manner of earning said income; penalty u/s 271AAA could not be levied. **ACIT v. Shreenarayan Sitaram Mundra [2017] 83 taxmann.com 231 (Ahmedabad - Trib.)** Also see **Sunil Kumar Bansal Vs. DCIT [2015] 62 taxmann.com 78 (Chandigarh - Trib.)**
- Where notice was issued u/s 153A and assessee filed return, penalty u/s 271AAA is leviable only on such income which the assessee had not admitted in the statement u/s 132(4). Penalty could not be levied on amount which assessee had already admitted in statement during search. **Ravi Kiran Aggarwal v. ACIT [2017] 82 taxmann.com 173 (Mumbai - Trib.)**
- Where assessee admitted undisclosed income and during search he stated that income derived from business of financing and brokerage and AO himself in assessment order substantiated manner in which undisclosed income was derived, imposition of penalty u/s 271AAA was arbitrary. **DCIT v. Nirmal Kumar Agarwal [2016] 75 taxmann.com 266 (Jaipur - Trib.)**

Contd...

- ▶ Penalty u/s 271AAA could not be levied merely on admission of assessee during search proceedings and there must be some conclusive evidence before AO that entry made in seized documents represented undisclosed income of assessee. **SPS Steel & Power Ltd. v. ACIT [2015] 63 taxmann.com 193 (Kol. - Trib.)**
- ▶ Where AO had intended to initiate penalty proceedings under section 271AAA(1), but, assessee had been show caused on charge of furnishing of inaccurate particulars of income, which fell under scope and purview of section 271(1)(c), penalty proceedings conducted against assessee u/s 271AAA were invalid. **Gillco Developers and Builders (P.) Ltd. v. DCIT [2017] 85 taxmann.com 339 (Chandigarh - Trib.)**
- ▶ In terms of sec. 271AAA, AO has discretionary power to initiate penalty proceedings and, therefore, revisional order u/s 263 cannot be passed for directing the AO to initiate penalty proceedings. **Amarjeet Dhall v. CIT [2014] 46 taxmann.com 168 (Chandigarh - Trib.)**

SECTION – 271AAB

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Penalty where search has been initiated.

Nature of Default	Undisclosed income during Search u/s 132
Applicable from & upto	1st July 2012 & before 15 th December 2016
Amount of Penalty	10% / 20% / 30-90% / 60% of the undisclosed income of the specified previous year.

Search conducted on or after 1st July, 2012 upto 14th December, 2016 - 271AAB(1)

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S. No.	Particular	Quantum of penalty
a.	If additional income <u>is admitted during course of search & substantiates the manner in which such income has been derived</u>	Penalty would be 10% of Undisclosed Income.
b.	If additional income <u>is not admitted during course of search but is disclosed in return of income filed after search</u>	Penalty would be 20% of Undisclosed Income.
c.	<u>Other cases</u> (i.e. where the additional income is not admitted during course of search nor is disclosed in return of income filed after search)	<u>Upto AY 2016-17</u> – Penalty would vary between 30% to 90% of undisclosed income. <u>AY 2017-18</u> – Penalty of 60% is leviable (as Amended by Finance Act, 2016)

Contd...

Search conducted on or after 15th December, 2016 – 271AAB(1A)

S. No.	Particular	Quantum of penalty
1.	<p>If undisclosed income is admitted in statement u/s 132(4) and manner specified</p> <hr/> <p>Substantiates the manner in which income was derived</p> <hr/> <p>Declare such income in the return on income and pays tax and interest thereon, on or before the specified date (i.e. due date for filing return u/s 139(1)/ 153A)</p>	<p>Penalty would be 30% of Undisclosed Income.</p>
2.	Other cases	<p>Penalty would be 60% of undisclosed income.</p>

Contd...

- No penalty under the provisions of section 270A or section 271(1)(c) shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) or sub-section (1A).
- The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.
- **Explanation**
 - a) "**specified date**" means the due date of furnishing of return of income under section 139(1) or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;
 - b) "**specified previous year**" means the previous year—
 - (i) which has ended before the date of search, but the date of furnishing the return of income section 139(1) for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or
 - (ii) in which search was conducted;

Contd...

c) "**undisclosed income**" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, Jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

Contd...

ISSUES

- ▶ Levy of penalty under section 271AAB is automatic in nature and, thus, where assessee's accountant failed to record profits derived from commodity trading in books of account seized in course of search, impugned penalty order passed by Assessing Officer was to be confirmed. **DCIT v. Amit Agarwal [2017] 88 taxmann.com 288 (Kolkata - Trib.)**
- ▶ Section 271AAB provides the procedure for penalty where the search has been initiated. In the case where the assessee in the course of search in a statement admits the undisclosed income and specified manner in which such income has been derived, then the provisions of Section 271AAB automatically attracts and the proceedings are to be carried out/completed. Even where the penalty notice was issued u/s 274 r.w.s. 271 yet the AO has clearly indicated that the proceedings u/s 271AAB are being initiated and the reply to the show cause notice in writing on or before the date so as indicated will be considered before any such order is made u/s 271AAB, the proceedings cannot be held to be illegal. **Sandeep Chandak Vs. Pr.CIT [2018] 255 Taxman 367 (SC)**

Contd...

ISSUES

- ▶ The AO has recorded his satisfaction while passing the assessment order that there is undisclosed income found during the course of search and other conditions being satisfied and therefore, the assessee is liable for penalty u/s 271AAB. It is an undisputed fact that the jewellery so found during the course of search has been found from the bedrooms of various members of the assessee's family and thus, such jewellery found in possession of family members belongs to them and doesn't belong to assessee alone. Therefore, merely because the assessee has declared the same in his statement recorded u/s 132(4), it will not be regarded as undisclosed income of the assessee in absence of any fact or material to establish that entire jewellery was acquired by the assessee and belongs to the assessee alone. Therefore, mere disclosure of such jewellery in the statement of the assessee recorded u/s 132(4) of the Act would not represent undisclosed income as defined in the explanation to section 271AAB. **Late Shri Prakash Chand Surana VS DCIT, Central Circle-02, Jaipur ITA No. 116/JP/2018**

ISSUES

- ▶ For levying penalty u/s 271AAB of the Act the Ld. A.O needs to primarily issue notice u/s 274 of the Act so for initiating proceedings u/s 271AAB of the Act the Ld. A.O has to first pass through the hurdle of Section 274. in the notice issues by AO we find that there is no mention about various conditions provided u/s 271 AAB - A.O has very casually used the proforma used for issuing notice before levying penalty u/s 271(1)(c) of the Act. AO just mentioned section 271AAB and nothing else about it in the notice. Certainly such notice has a fatal error and technically is not a correct notice in the eyes of law because it intends to penalize an assessee without spelling about the charge against the assessee. wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus quashed. Since the penalty proceedings itself has been quashed the impugned penalty stands deleted. **Shri Ashok Bhatia VS DCIT Central-1, Indore ITA No. 869/Ind/2018.**

SECTION – 271AAC

Penalty in respect of certain income

Nature of Default	Income determined includes any income referred to in section 68/69/69A/69B/69C/69D.
Applicable from	1st April 2017 {Inserted by the Taxation Laws (Second Amendment) Act, 2016}
Amount of Penalty	10% of tax payable u/s 115BBE(1)(i)

- 1) The Assessing Officer may, **notwithstanding anything contained in this Act other than the provisions of section 271AAB**, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

- 2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).
- 3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Contd...

Section 271AAC....

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- ▶ Levy of Penalty in case of addition under following sections:
 - Cash credits u/s 68
 - Unexplained investments u/s 69
 - Unexplained money etc. u/s 69A
 - Undisclosed investments etc. u/s 69B
 - Unexplained expenditure etc. u/s 69C
 - Amount borrowed or repaid on hundi etc. u/s 69D.

- ▶ Section 271AAC starts with non-obstante clause 'notwithstanding anything contained in this Act other than the provisions of section 271AAB'. Thus, penalty u/s 271AAC is attracted where AO detects any income referred to in section 68/69/69A/69B/69C/ 69D **otherwise than by search.**

Contd...

Section 115BBE

(1) Where the total income of an assessee,—

- (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or
- (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),

the income-tax payable shall be the aggregate of—

- (i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub-section (1).

Contd...

Example –

- For Instance, income of Rs.10,00,000/- is determined by the Ld. AO after making addition u/s 68-69D of the Act. The liability of tax and penalty would arise as under:

Tax @ 60% [as per section 115BBE]	6,00,000/-	60%
Surcharge @ 25% of Tax payable [7 th Proviso to Section 2(9) of Finance Act, 2016 as Inserted by the Taxation Laws (Second Amendment) Act, 2016, w.e.f. 15-12-2016]	1,50,000/-	
	7,50,000/-	75%
EC & SHEC @3%	22,500/-	
	7,72,500/-	77.25%
Penalty u/s 271AAC [10% of tax-payable u/s 115BBE]	60,000/-	
Total	8,32,500/-	83.25%
interest under sections 234A, 234B and 234C shall also be chargeable		

**D) Penalty inserted by Finance Act
2020.
271AAD & 271K**

SECTION – 271AAD

Penalty for false entry, etc. in books of account.

Nature of Default	Penalty for false entry, etc. in books of account.
Applicable from	1 st April 2020 (Inserted by Finance Act, 2020)
Amount of Penalty	A sum equal to the aggregate amount of such false or omitted entry.

271AAD. (1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, “false entry” includes use or intention to use—

- (a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
- (b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
- (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.’.

This section is newly inserted w.e.f.01-04-2020, Finance Act, 2020.

Brief Impact:

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Therefore, a new provision has been inserted in the Act to provide for a levy of penalty.

This amendment has taken effect from 1st April 2020.

SECTION – 271K

Penalty for failure to furnish statements, etc.

Nature of Default	Penalty for failure to furnish statements, etc.
Applicable from	1 st June 2020 (Inserted by Finance Act, 2020)
Amount of Penalty	Rs. 10,000/- which may extend to 1,00,000/-

271K. Penalty for failure to furnish statements, etc.

Without prejudice to the provisions of this Act, the Assessing Officer may direct that a sum not less than ten thousand rupees, but which may extend to one lakh rupees shall be paid by way of penalty by—

- (i) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia), of sub-section (1) of section 35, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or*
- (ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.*

This section is newly inserted w.e.f. 01-06-2020, Finance Act, 2020.

SECTION – 274

Provision for e-penalty

Nature of Default	Provision for e-penalty
Applicable from	1 st April 2020 (Inserted by Finance Act, 2020)

In section 274 of the Income-tax Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

- 2A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by—
- a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
 - b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

2B) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March 2022.

2C) Every notification issued under sub-section (2A) and sub-section (2B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.”.

This section is newly inserted w.e.f. 01-04-2020, Finance Act, 2020.

Brief Impact:

With the advent of the E-Assessment Scheme-2019 and in order to ensure that the reforms initiated by the Department to eliminate human interface from the system reaches the next level, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme-2019.

Therefore, a new sub-section (2A) has been inserted in the said section so as to provide that the Central Government may notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability.

This amendment has taken effect from 1st April 2020.

E) Other issues.

SECTION – 273B

Penalty not to be imposed in certain cases.

- ▶ Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB 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.
- ▶ Note : Sec 271DA & 271DB are not covered here but they covered by their section by mentioning **“no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention”**

Sections not covered u/s 273 B

Section	Particulars
270A	Penalty for under-reporting and misreporting of income
270AA	Immunity from imposition of penalty, etc.
271(1)(c)	Concealment of particulars of income or furnishing inaccurate particulars of such income.
271AAA	Penalty where search has been initiated
271AAB	Penalty where search has been initiated
271AAC	Penalty where search has been initiated
271FAA	Penalty for furnishing inaccurate statement of financial transaction or reportable account
271AAD	Penalty for false entry, etc. in books of account.
271K	Penalty for failure to furnish statements, etc.

Issues:

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- On failure of assessee firm to form reasonable cause for not deducting TDS on payments of interest made to sister concerns under section 194A, penalty was to be levied. **CIT v. Muthoot Bankers [2017] 86 taxmann.com 34 (Kerala)**
- Where assessee had sufficiently proved that share application money was taken in cash from a director to meet urgent and immediate requirement of business and there was a reasonable cause to take 'loan' or deposit otherwise than by account payee cheque or account payee bank draft, penalty u/s 271D could not have been levied. **Valley Extraction (P.) Ltd. v. JCIT [2016] 68 taxmann.com 202 (Chandigarh - Trib.)**
- Where even though assessee had taken a loan in cash, since loan was routed through bank account of assessee for payment to Government for converting land into free hold property, no penalty could be imposed under section 271D. **CIT v. Smt. Dimpal Yadav [2015] 61 taxmann.com 219 (Allahabad)**
- Language of section 194A does not leave scope for any ambiguity on liability of a partner to deduct tax on interest paid by him to firm; therefore, belief of partner that he is not liable to deduct TDS on interest paid to firm, cannot be considered as reasonable cause as contemplated under section 273B. **CIT v. Thomas Muthoot [2015] 61 taxmann.com 76 (Kerala)**

SECTION – 274

Procedure

1. No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.
2. No order imposing a penalty under this Chapter shall be made—
 - a) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;
 - b) by the Assistant Commissioner or Deputy Commissioner, where the penalty exceeds twenty thousand rupees,
except with the prior approval of the Joint Commissioner.
3. An income-tax authority on making an order under this Chapter imposing a penalty, unless he is himself the Assessing Officer, shall forthwith send a copy of such order to the Assessing Officer.

Note : Sub section 2A, 2B & 2C inserted by

Issues – Notice u/s 274 to specify limb

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Notice u/s 274 should specifically state the grounds mentioned in Section 271(l)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law. The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. **CIT Vs Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Karnataka). Approved by Apex Court in CIT Vs SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC).**

- ▶ Penalty u/s 271(1)(c) has to be made only on ground of which penalty proceedings has been initiated, and it cannot be on other ground of which assessee has not been given notice. **CIT Vs Samson Perinchery [2017] 392 ITR 4 (Bombay)**
- ▶ The AO cannot initiate penalty on the one limb i.e. concealment of particulars of income, but ultimately find the assessee guilty in the penalty order of other limb i.e. furnishing inaccurate particulars of income (and vice versa). Also, he cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. This error renders the penalty order unsustainable in law. **HPCL Mittal Energy Ltd. v. ACIT, ITA No. 554 & 555, Date of Pronouncement 07.05.2018 (Amritsar – Trib.)**

Issues – Notice u/s 274

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- ▶ The assessee has challenged the validity of penalty proceedings, in light of non striking of irrelevant portion in the notice u/s 274. AO has arrived at proper satisfaction for initiating penalty proceedings u/s 271(1)(c) for furnishing inaccurate particulars of income leading to concealment of income. held that when, proper satisfaction has been recorded in the assessment order, as well as in the penalty order then mere non striking of notice or vague notice does not invalidate penalty proceedings. **Posco Maharashtra Steel Pvt. Ltd. VS DCIT, Panvel Circle Aaykar Bhawan Mumbai ITA No.2313/Mum/2018**

SECTION – 275

Bar of limitation for imposing penalties

1. No order imposing a penalty under this Chapter shall be passed —
 - a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) u/s 246 / 246A or an appeal to the Appellate Tribunal u/s 253,
 - after the expiry of FY in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed,
 - or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Pr.CCIT / CCIT / Pr.CIT / CIT,whichever period expires later :

Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) u/s 246 / 246A, and the **Commissioner (Appeals) passes the order on or after 01-06-2003** disposing of such appeal, an order imposing penalty shall be passed before the expiry of FY in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within 1 year from the end of FY in which the order of the Commissioner (Appeals) is received by the Pr.CCIT / CCIT / Pr.CIT / CIT, whichever is later;

- b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;
- c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

(1A) In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264 :

Provided that no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed—

- a) unless the assessee has been heard, or has been given a reasonable opportunity of being heard;
- b) after the expiry of six months from the end of the month in which the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision under section 263 or section 264 is passed :

Provided further that the provisions of sub-section (2) of section 274 shall apply in respect of the order imposing or enhancing or reducing penalty under this sub-section.

2. The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any action initiated for the imposition of penalty on or before the 31st day of March, 1989.

► Explanation

In computing the period of limitation for the purposes of this section,—

- (i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;
- (ii) any period during which the immunity granted under section 245H remained in force; and
- (iii) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court, shall be excluded.

Issues:

- ▶ Period of limitation under section 275 should be estimated from date on which order of Tribunal permitting withdrawal of appeal was received and it was an adjudicatory 'order' which concluded in proceedings and to be deemed a terminus quo for completion of Penalty Proceeding. **Salora International Ltd. v. CIT [2018] 91 taxmann.com 287 (Delhi)**
- ▶ Where provisions of sections 271D and 271E were invoked after six months of limitation, penalty imposed was to be quashed. **CIT v. Hissaria Brothers, Hanumangarh Jn. [2016] 74 taxmann.com 22 (SC)**
- ▶ Given scheme of section 275(1)(c) limitation would begin to run from date on which AO recommended for issuance of show cause notice for initiating penalty proceedings. **PCIT v. Mahesh Wood Products (P.) Ltd. [2017] 82 taxmann.com 39 (Delhi)**

- ▶ In case, assessee challenged penalty order contending that period of limitation prescribed in section 275(1)(c) was reckoned from date of assessment order and penalty order passed by Joint Commissioner was beyond time permitted. Concluded that penalty proceedings under provisions of sections 271D and 271E are initiated not by Assessing Officer but only with issuance of notice by Joint Commissioner. **Grihalakshmi Vision v. Addl. CIT [2015] 63 taxmann.com 196 (Kerala)**
- ▶ Transfer/change of jurisdiction of Commissioner can extend period of limitation provided in section 275(1). **ITO v. Andhra Bank Financial Services Ltd. [2011] 10 taxmann.com 68 (Trib. - Hyderabad)**

Thank You!