New penal provision – Section 270A of the Income Tax Act

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Penalty under section 270A

- Replacement of existing provision i.e section 271 (1)(c) of the Income Tax Act,1961
- Object -

  To reduce litigation.

  To remove the discretion of tax authority.

  To rationalize and bring objectivity, certainly and clarity.
- Effective from 1st April 2017.

Difference between 271(1)(c) & 270A

Section 271(1)(c)	Section 270A
Applicable upto 31.03.2016 i.e A.Y.2016-17	Applicable from A.Y.2017-18 onwards
For concealment of income or filing of inaccurate particulars of income	Under-reporting of income & misreporting of income
Variable penalty amount between 100% to 300% of tax sought to be evaded	Fixed penalty -50% of tax payable on under- reported income -In case of misreporting of income-200% of tax payable on under-reported income
No Immunity	Immunity u/s 270AA
A.O. is required to record his satisfaction in assessment order	No such requirement u/s 270A
Time-limit	No Time-limit
More litigation	Less litigation
Penalty under either normal provision of the Act or provision under MAT which ever is higher	Peanlty under both normal provision and provision under MAT
Discretionary and not automatic	Less discretionary and calculated as per set formula

Basic Features

- **Penalty for what ?**

  -Penalty for "under reporting of income" and "misreporting of income" instead of concealment of income or filing of inaccurate particulars of income.

- **Who can levy ?**

  -The A.O., CIT(Appeals) or Principal CIT or CIT during the course of any proceedings under the Act.

- **Rate of penalty ?**

  - 50% of the tax payable on under-reported income.

  - where under-reported income is in consequence of any misreporting, the penalty shall be equal to 200% of the amount of tax payable on under-reported income.

What is under reporting of income ?

When return of income is filed	When return of income is not filed
Income assessed > income determined u/s 143(1)(a);	Income assessed > maximum amount not chargeable to tax;
Income reassessed > income assessed or reassessed immediately before such reassessment;	
Deemed total income assessed or reassessed u/s 115JB or 115JC > Deemed total income processed u/s 143(1)(a);	Deemed total income assessed u/s 115JB or 115JC > maximum amount not chargeable to tax
The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	

How to calculate under-reporting of income

Situations	Quantum of under-reporting of income
ROI is filed and income has been assessed for the first time	▪ The difference between the amount of income assessed and income determined u/s 143(1)(a)
ROI is not filed and income has been assessed for the first time	▪ In the case company/firm/local authority- amount of income assessed ▪ In any other case- The difference between amount of income assessed and maximum amount not chargeable to tax.
In any other case	▪ The difference between the amount of reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order

Calculation of under-reported income in case of applicability of provisions of section 115JB/115JC

It shall be determined on the basis of the following formula :

Under-reported Income = (A-B) + (C-D)

Where,

A = The total income assessed under the general provisions

B = The total income assessed as per the general provisions been reduced by 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 been reduced by the amount of under-reported income. (If amount is considered under both the general provisions and provisions u/s 115JB or 115JC, then amount shall not be reduced from total income while determining the amount under item D).

Income not considered as under-reported income

- In respect of which the assessee offers an explanation which found to be bonafide and disclose all material facts to substantiate the explanation offered ;

- where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;

- where the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

- where the assessee maintain documentation u/s 92D and declares international transaction under chapter X along with the disclosure of all material facts;

- where undisclosed income is on account of a search operation referred to in section 271AAB.

What is Misreporting of Income

- Misrepresentation or suppression of facts;
- Failure to record investments in the books of account;
- Claim of expenditure not substantiated by any evidence;
- Recording of any false entry in the books of account;
- Failure to record any receipt in books of account having a bearing on total income; and
- 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.

CASE – 1

An individual below 60 years of age and no return of income has been furnished :

	(In Rs)
Total Income assessed under section 143(3)	10,00,000
Under-reported Income	10,00,000-2,50,000* =7,50,000
Tax Payable on under-reported Income	5 % of 2,50,000 = 12,500 20% of 5,00,000 = 1,00,000
Penalty Leviable**	50 % of 1,12,500 = 56,250

* Being maximum amount not chargeable to tax
** Considering under-reported income is not on account of misreporting

CASE – 2

A company liable to tax at the rate of 30 per cent :

	(In Rs lakh)
Returned total Income (loss)	(100)
Total Income (loss) determined under section 143(1)(a)	(90)
Total Income (loss) assessed under section 143(3)	(40)
Total Income reassessed under section 147	20

	Assessment under section 143 (3)	**Re-assessment under section 147**
Under-reported Income	(-)40 minus (-)90 = 50	20 minus (-)40 = 60
Tax Payable on under-reported Income	30 % of 50 = 15	30 % of 60 = 18
Penalty Leviable*	50 % of 15 = 7.5	50 % of 18 = 9

CASE - 3

- A pvt. ltd. company is a domestic company and liable to pay tax at the rate of 25%

- For the A.Y. 2018-19, filed ROI with income of 1,00,00,000
  (includes LTCG of RS.10,00,000 & STCG of Rs.20,00,000)

- **Addition made in the assessment are following-**

Addition because of failure to record investment -	20,00,000
Addition on estimate basis –	5,00,000*
Addition on account of disallowance out of motor car (instead of 1/3 it is 2/3) –	2,00,000*
Disallowance of expenses not supported by documents -	10,00,000

- Total assessed income 1,37,00,000

Calculation of penalty

	Under-reported income 10,00,000	Misreporting income 20,00,000
Tax payable (25%+SC+EC)	2,75,525	5,51,050
Penalty leviable u/s 270A - 50% of tax payable (under-reported income) - 200% of tax payable (misreporting of income)	1,37,763	11,02,100

*Addition on estimate basis and addition on account of disallowance out of motor car are exclusions of under-reported income.

CASE - 4

X (61 years) does not furnish his return of income for the assessment year 2018-19. The Assessing officer completes the assessment order u/s 144. Income assessed by the A.O. is Rs.1,20,00,000/-. It incudes an unrecorded/unexplained investment of Rs.50,00,000/- in gold during the year. Income of Rs.1,20,00,000/- includes a short-term capital gain of Rs.15,00,000/- on transfer of shares in the NSE.
Determine the amount of penalty u/s 270A.

Income as per section 144	Rs.1,20,00,000
Less: Exemption Limit	Rs. 3,00,000
Under-reported income	Rs.1,17,00,000
(out of which Rs.50,00,000 is misreporting of income)	

In this case ROI is not filed and income is assessed for the first time

Under-reported income	Rs.1,17,00,000
Add: Exemption limit	Rs.3,00,000
Total	Rs.1,20,00,000

Tax on Rs.1,20,00,000-	
Income-tax (15% of Rs.15,00,000 and normal tax on balance of Rs.105,00,000)	Rs.31,85,000
Add: Surcharge @ 15%	Rs.4,77,750
Add: Education cess	Rs.1,09,883
Tax on under-reported income	Rs.37,72,633

CASE - 4

	Under-reported income Rs.	Misreporting of income Rs.	Total Rs.
Under-reported income/misreporting of income	67,00,000	50,00,000	1,17,00,000
Tax on under-reported income/misreporting of income	21,60,397	16,12,236	37,72,633
Penalty leviable u/s 270A (50% of tax on under-reported income,200% of tax on misreporting income)	10,80,199	32,24,472	43,04,671

CASE – 5

In the case of X Ltd. following is the information given for the A.Y. 2018-19

	General provisions Rs.	MAT Rs.
Income/book profit as per return of income	10,00,000	20,00,000
Add: Addition on estimated basis (not representing under-reported income)	10,000	Nil
Add: Misreporting of income (sale to D Ltd. not recorded in books of account as discovered by the assessing officer) (as per assessment order)	30,000	30,000
Add: Under-reported income (weighted deduction is wrongly claimed u/s 35) (as per assessment order)	60,000	Nil
Add: Under-reported income (deferred tax which appeared on the debit side of P&L a/c, not added by X Ltd.) (as per assessment order)	Nil	80,000
Net income/book profit (as per assessment order)	11,00,000	21,10,000

CASE - 5

Under- reported income will be calculated as under-

	Rs.
A = Total income assessed under general provisions	11,00,000
B = A-under-reported income-misreporting of income (Rs.11,00,000- Rs.30,000-Rs.60,000)	10,10,000
C = Book profit	22,00,000
D = Book profit- under-reported income-misreporting of income (Rs.21,10,000 – Rs.80,000) (Rs.30,000 which is deducted under B will not be deducted again from D)	20,30,000
Under-reported income = (A-B)+(C-D) (out of which Rs.30,000 is misreporting of income)	2,60,000

Computation of penalty u/s 270A

Tax on under-reported income- **- 30.9% of Rs. 2,30,000** **- 30.9% of Rs. 30,000**	 **71,070** **9,270**
Penalty leviable u/s 270A - 50% of tax payable (under-reported income) - 200% of tax payable (misreporting of income)	 35,535 18,540

Immunity from Imposition of Penalty u/s 270AA

Upon fulfillment of certain conditions A.O. grant immunity from imposition of penalty u/s 270A

- Payment of tax alongwith the interest as per the assessment order u/s 143(3) or 147 within specified time limit;
- No filing of appeal against the assessment order;
- Application within 1 month from the end of the month of the receipt of order;
- Immunity not applicable to misreporting of income.