



# Section 270A – Penalty for under reporting and misreporting of Income

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**1. Finance Act, 2016 introduced Section 270A which is applicable from assessment year 2017-18 onwards.**

Tax experts and tax administration were entangled in interpreting the very same legal provisions of Section 271(1) (c) in the backdrop or providing relief from penalty. The Finance Act, 2016 has made a departure from the earlier legal requirements for levy of penalty relating to concealment of income chargeable to tax. When tax assessments got completed the taxpayers felt that these legal provisions were harsh and putting up huge financial burden on them. The instances of underreporting of income due to misreporting of income costs heavy burden on the tax payers. Penal provisions have deterrent effect on the assessee.

**2. Under reporting of income:**

The Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or the Commissioner may during the course of any proceedings under the Act, direct any person who has under reported his income shall be liable to pay penalty in addition to tax, if any, on the unreported income.

The Assessing Officer during the course of assessment can

- Initiate proceedings for penalty
- The CIT(A) when adjudicating the case can initiate penalty proceedings afresh for levy of penalty
- Where the CIT(A) deviates from the proceedings, that is altering the base of penalty, initiated by the Assessing Officer then CIT(A) is competent authority to initiate penal proceedings
- Where the CIT(A) enhances the assessment he can initiate consequent proceedings for levy of penalty due to such enhancement. His order of assessment supplements the assessment order of the Assessing Officer, he is the competent person to initiate penalty proceedings for levy of penalty under Section 270A of Income-tax Act.
- The CIT can initiate proceedings for levy of penalty under Section 270A when he invokes Section 263 of the Income Tax Act, i.e., Revision of Order prejudicial to the revenue.

Sub-section (2) of Section 270A does not define under reporting of income. It only lists out the instances of unreported income. They are as under:

- a) Where the income assessed is greater than the income determined in the income-tax return processed under Section 143(1)(a), when the return is processed under Section 143(1)(a) with some upward revision of income, it is not considered as under reporting of income. After the ITR is processed and when the income assessed is greater than income processed under Section 143(1)(a), it is treated as under reporting of income.
- b) Where the assessee has not furnished return of income and the income assessed is greater than the maximum not chargeable to tax, it is treated as under reported income. In a case, where the income tax return has been furnished for the first time under Section 148 of the Income-tax Act and the income and the income assessed is more than the maximum amount not chargeable to tax, it is treated as a case of under reporting of income.
- c) Where the income reassessed is greater than the income reassessed or reassessed immediately before such reassessment in such a case it would be treated as under reported income.
- d) Where the amount of deemed total income assessed or reassessed is greater as per the provisions of Section 115JC, as the case may be, is greater than deemed total income determined in the return processed under Section 143(1)(a).
- e) Where the amount of deemed total income assessed, as per Section 115JB or Section 115JC, is greater than the maximum amount not chargeable to tax where no return of income has been furnished or where the return has been furnished for the first time under Section 148.
- f) Where the amount of deemed total income reassessed as per Section 115JB or Section 115JC is greater than the deemed total income assessed or reassessed before such reassessment.
- g) Where the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

### Illustration of underreported income

Sr. No.	1	2	3	4	5
1	Income assessed under Section 143(3)	20,00,000	Income determined under Section 143(1)(a)	15,00,000	5,00,000
2	Where the income-tax return filed, income assessed above the maximum amount not chargeable to tax	7,00,000	Maximum amount not chargeable to tax	4,00,000	3,00,000
3	Income assessed under Section 147	15,00,000	Income assessed under Section 143(3)	10,00,000	5,00,000

Sr. No.	1	2	3	4	5
4	Deemed total income under Section 115JB or reassessed	10,00,000	Deemed total income originally assessed under Section 115JB determined under Section 143(1)	7,00,000	3,00,000
5	Where not ITR fled and deemed total income under Section 115JB determined in assessment or reassessment for the first time	12,00,000	Maximum amount not chargeable to tax	---	12,00,000
6	Where ITR is furnished for the first time under Section 148 and deemed total income determined under Section 115JB	9,00,000	Maximum amount on income not chargeable to tax	---	9,00,000
7	Deemed total income under Section 115JB reassessed under Section 147	15,00,000	Deemed total income assessed as per Section 115JB in the assessment or reassessment	10,00,000	5,00,000
8	Income assessed under Section 143(3)	(6,00,000)	Income determined under Section 143(1)(a)	(9,00,000)	3,00,000
9	Income assessed under Section 143(3)	5,00,000	Income determined	(4,00,000)	9,00,000

### **Amount of under reported income:**

#### Sub-section (3) of Section 270A:

Where the income has been assessed for the first time

- a) and the return of income has been furnished by the assessee, in that case the difference between the income assessed and the amount of income determined under Section 143(1)(a) would be the under reported income.
- b) Where no return of income has been furnished or where the return of income has been furnished in response to notice under Section 148, then:
  - i. The amount of income assessed would be treated as under reported

income, in the case of a company, firm or local authority; and,

- ii. the difference between the amount of income reassessed or recomputed and the amount of income assessed or reassessed would be the under reported income for other taxpayers. Further, where the under reported income arises out of determination of deemed total income in accordance with the provision of under Section 115JB or Section 115JC, then the amount of total under reported income shall be the total income assessed other than the provisions contained in Section 115B or Section 115JC less the 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, plus the total income assessed as per the provisions contained in section 115JB or Section 115JC less the total income that would have been chargeable had the total income assessed under Section 115JB or Section 115JC been reduced by the amount of under reported income. Further, where the amount of under reported income on any issued is considered both under the provisions of Section 115JB or under Section 115JC and under the general provisions. Such amount shall not be reduced from the total income.

Sub-section (4) of Section 270A under reported income where the source of receipt, deposit on investment

Where the source of any receipt, deposit or investment is claimed in any assessment year to be an amount added to income or deducted while computing the loss in any preceding year to the assessment year and no penalty was levied for preceding year and no penalty was levied for preceding year, then the under reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Sub-section (5) of Section 270A:

The amount of under reported income in the preceding year shall be in the following order:

- a) The preceding year immediately before the year in which the receipt, deposit, 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 up the receipt, deposit or investment, then the year immediately preceding the first preceding year and so on.

Cases where it is not under reporting of income:

Section 270A(6):

- a) Where the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Commissioner or the Principal Commissioner, as the case may be is satisfied that the explanation is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered by him, the income so enhanced shall not be treated as under reporting of income.
- b) The amount of under reported income determined on the basis of an estimate shall not be treated as under reported income if the accounts are correct and complete to the satisfaction of the Assessing Officer or Commissioner (Appeals) or the Commissioner or the Principal Commissioner provided the method employed is such that the income cannot properly deducted therefrom.
- c) The amount of under reported income determined on the basis of an estimate and the assessee on his own estimated or lower amount of addition or disallowance of the same and has such amount in the computation of his income and has disclosed all the material facts to such addition or disallowance.
- d) The amount of under reported income on the basis of any addition made with reference to the arm's length price (ALP) determined by Transfer Pricing Officer (TPO) in a case where the assessee has maintained information and documents prescribed under Section 92E and declared

the international transaction under Chapter X and disclosed all the material facts relating to the transaction.

The amount of undisclosed income referred to in Section 271AAB:

Sub-section (7) deals with quantum of penalty

The quantum of penalty shall be 50% of the amount payable on underreported income.

Section 270A(6)(a):

The under reported income does not include the following:

- a) Under Section 276A(6), the income-tax authority must record his satisfaction or dissatisfaction before levying the penalty or dropping the penalty, as the case may be. The Assessing Officer or CIT(A) or the Commissioner, or the Pr. CIT, as the case may be, is satisfied that the explanation is bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered. It is for the income-tax authority to record why he is not satisfied with the explanation of the taxpayer.
- b) The amount of under reported income is determined on the basis of an estimate provided the accounts are correct and complete to the satisfaction of the income-tax authority but the method employed is such that the income cannot properly be deducted therefrom. Section 270A(6) read with Section 270A(1) given an overall scope of the provision empowering the income-tax authorities to levy penalty for under reported income sub-section (6) is meant for entire section 270A and not for under reported income simplicitor.
- c) Misrepresentation or suppression of facts:  
Suppression of facts or suppression falsi entail a deliberate act of not revealing the fact. Not furnishing of facts could amount

to suppression of facts. The assessee is given an opportunity of being heard when representing the case there could be misrepresentation.

However, the amount of under reported income is determined on the basis of an estimate if he has on his own estimated lower amount of addition or disallowance and has included such amount in the computation of income and has disclosed all the facts material to the addition or disallowance would not be treated as under reporting of income.

The suppression of facts entail a deliberate act of not revealing the facts. Similarly, not furnishing the facts could amount to suppression of facts. This would cause great hardship to the taxpayers as additions made otherwise then by way of estimated addition would be construed as misrepresentation or suppression of facts by the income-tax authorities.

- d) The amount of under reported income is represented by any addition in conformity with the arm's length price determined by the Transfer Pricing Officer (TPO) and the assessee has maintained information and document prescribed under Section 92D and declared the international transaction and made material disclosure relating to the transaction. It will not amount to under reporting.
- e) The amount of undisclosed income referred to in Section 271AAB (penalty when search has been initiated) would not amount not amount to under reporting.

Section 270A(8): Levy of Penalty:

Notwithstanding anything contained in sub-section (6) or sub-section (7), where under reported income is in consequence of misreporting, the penalty shall be equal to two hundred percent (200%) of the amount of tax payable on under reported income.

Section 270A(a): Cases of Misreporting of income:

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

- 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 the books of account having 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.

Sub-section (10): Tax payable in respect of under reported income:

- a) Where the return of income is furnished:  
or  
Where return has been furnished for the first time under Section 148 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;
- b) Where the total income determined under Section 143(1)(a) or assessed or reassessed or recomputed in a preceding order is a loss.

The amount of tax to be calculated on the under reported income as if it were total income;

- c) In any other case:

Where the amount of tax calculated on the under reported income as increased by the total income determined under Section 143(1)(a) or the total income assessed or reassessed or recomputed in a preceding order.

Sub-section (11): No addition or disallowance 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): Penalty Order:

It shall be imposed by an order in writing by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

**Conclusion**

Under reporting of income due to misreporting is a heavy burden cost on the taxpayers. The penal provisions shall have deterrent effect on the assessee. However, the penal consequences could be mitigated with regard to under reporting income by having recourse to Section 270AA.

The question of penalty is rather too much and this will increase litigations. Section 270AA made be suitably amended by allowing misreporting by limiting the relief for two times during the lifetime of the taxpayers so that tax realization is not affected and to reduce the tax disputes for better and efficient compliance and reducing burden on administration.

