



# The Institute of Chartered Accountants of India

Mangaluru Branch – SIRC  
17<sup>th</sup> January, 2020

Penalties under Income-tax Act, 1961

- CA. Nitish Ranjan

# Overview of Penalty Provisions



Failure to file  
returns and forms  
– ROI, TDS etc.

Failure to deduct  
or pay tax

Failure of comply  
with notices or  
directions

Failure to furnish  
or maintain  
information,  
documents etc.

Underreporting /  
Misreporting  
income

Carrying out  
prohibited  
transactions

Others

## Sec. 271(1)(C)

Prior to  
AY 2017-18

*271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person—*

*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income*

*he may direct that such person shall pay by way of penalty,—*

*(iii) in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.*

# Sec. 271(1)(C) - History

Prior to  
AY 2017-18

## Key changes:

1. Section 271 of the 1961 Act initially provided for levy of penalty where any person *“has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income.”* Penalty was leviable at 20% - 150% of tax.
2. Omission of the word “deliberately” by Finance Act 1964.
3. Vide Finance Act, 1968 sub-clause (iii) of section 271 was substituted to change the **basis for levy of penalty** from ‘tax on income’ to ‘income’, minimum penalty being not less than the concealed income itself.

# Sec. 271(1)(C) – History – Contd.

Prior to  
AY 2017-18

## 4. Insertion of Explanation 1 to 4 by Finance Act, 1975:

**Explanation 1** – explanation found to be false – not able to substantiate the explanation

**Explanation 2** – Source of any receipt, deposit, outgoing or investment claimed to be any addition / disallowance made by AO in earlier year for which not penalty was levied in that year. (**telescoping**)

**Explanation 3** – Not filed return within the due date and until that time notice u/s. 148 has not been issued and the Authority is satisfied that such person has taxable income.

**Explanation 4** – **Amount of tax sought to be evaded.** Basis was changed from **income to tax.**

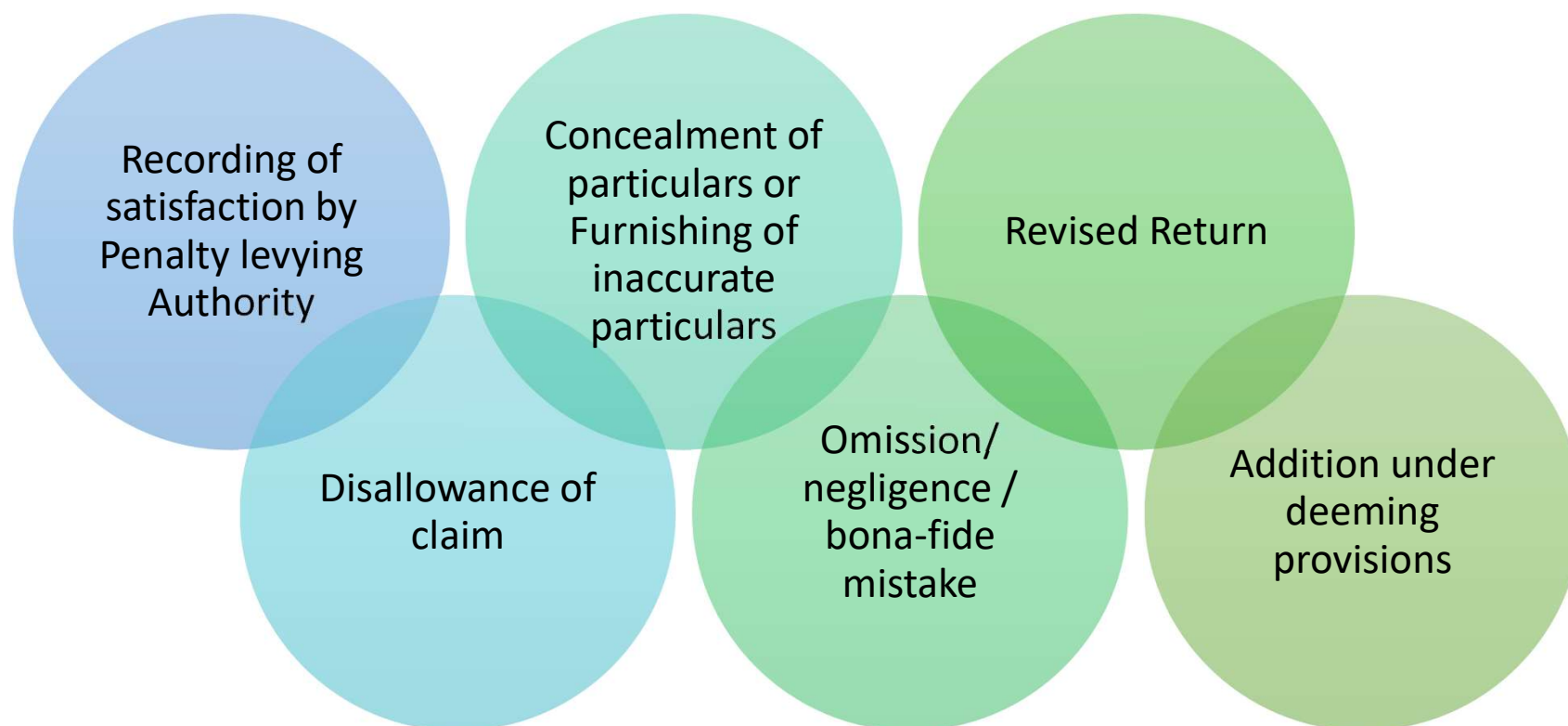
## Sec. 271(1)(C) – History – Contd.

Prior to  
AY 2017-18

5. Insertion of Explanation 5 by the Taxation Laws (Amendment) Act, 1984:- relating to search cases.
6. Explanation 6 was inserted by 1989 Amending Act declaring that **no penalty was leviable for adjustment made u/s. 143(1)(a).**
7. Vide Finance Act 2001, Explanation 7 was inserted to cover **transfer pricing transactions.**
8. 'Amount sought to be evaded' was substituted by Finance Act, 2015
9. Last amendment vide Finance Act, 2017 – Section 271 was made inapplicable from AY 2017-18.

# Sec. 271(1)(C) - Issues

Prior to  
AY 2017-18



# Sec. 271(1)(C) - Issues

Prior to  
AY 2017-18

## Recording of satisfaction

- It is to be recorded in writing.
- Manner for concealment or furnishing inaccurate particulars was required to be mentioned.
- Insertion of sub-section (1B) w.ref. 01-04-1989.
- It shall be mentioned that penalty u/s. 271(1)(c) is initiated separately.
- *“Presence of prima facie satisfaction for initiation of penalty proceedings **was and remains a jurisdictional fact** which cannot be wished away as the provision stands even today, i.e. post amendment.”*

- Madhushree Gupta & British Airways 317 ITR 107 (Del)



# Sec. 271(1)(C) - Issues

Prior to  
AY 2017-18

## Recording of satisfaction :

Karnataka HC in case of **The Pr. Commissioner Of Income Tax vs M/S Deccan Mining Syndicate Pvt** on **21 June, 2018 I.T.A. No.501/2017** held that the AO Office had not given finding in the penalty order as to how and in what manner the assessee had furnished inaccurate particulars of income resulting in additions to the returned income, except making a bald charge against the assessee that it had furnished the inaccurate particulars, which is an essential requisite of section 271(1)(c) of the Act. In the absence of such finding, the penalty order is liable to be quashed.

## Sec. 271(1)(C) - Issues

### Concealment of particulars or Furnishing of inaccurate particulars :

**The Honorable Supreme Court in CIT vs. SSA's Emerald Meadows I.T.A. NO. 380 OF 2015** has dismissed the SLP by not finding merit in the department's appeal against Karnataka High Court Order which held that omission by the AO to explicitly specify in the penalty notice u/s 271(1) ( c) as to whether penalty proceedings are being initiated for furnishing of inaccurate particulars or for concealment of income makes the penalty order liable for cancellation.

# Sec. 271(1)(C) - Issues

## Revised Return

Calcutta High Court in the case of Commissioner of Income Tax vs. Arun Kumar Khetwat 02.12.2015 held that where revised return for the said assessment year was filed by the assessee before issuance of notice under s 148, the order of Tribunal setting aside penalty imposed u/s 271(1)(c) required no interference.

Delhi ITAT Bench in case of ACIT vs. Ashok Raj Nath [2015-ITRV-ITAT-MUM-129] has held that when the assessee voluntarily disclosed additional income in the course of assessment proceedings and paid tax thereon and revenue has not placed any material that assessee wanted to conceal his income there is no basis for imposition of penalty.

## Sec. 271(1)(C) - Issues

### Revised Return

Chandigarh ITAT Bench in the case of Prabhjit Singh Sidhu vs. Assistant Director of Income Tax ITA No. 909/CHD/2015 held that where revised return has been regularized by the Revenue and the explanation of the assessee for declaring additional income in the said return found to be bonafide, there is no case for levy of penalty u/s 271(1)(c) .

# Sec. 271(1)(C) - Issues

## **Disallowance of claim**

Calcutta High Court in the case of Paharpur Colling Towers Ltd. vs. Commissioner of Income Tax ITA 42 of 2006 held that Merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to Revenue, that by itself would not, attract penalty u/s 271(1)(c)

Agra ITAT Bench in the case of Farrukhabad Investment (India) Ltd vs. Deputy Commissioner of Income tax on 11.09.2018 ITA No. 141/Agra/2009 held that Penalty had been imposed with reference to disallowance of interest and commission expenses, It was not case of Revenue that assessee did not pay such interest/commission and claimed deduction thereof. Merely because certain disallowance of expenses had been made, could not itself justify imposition of penalty u/s 271(1)(c).

## Sec. 271(1)(C) - Issues

### Omission / negligence / bonafide mistake

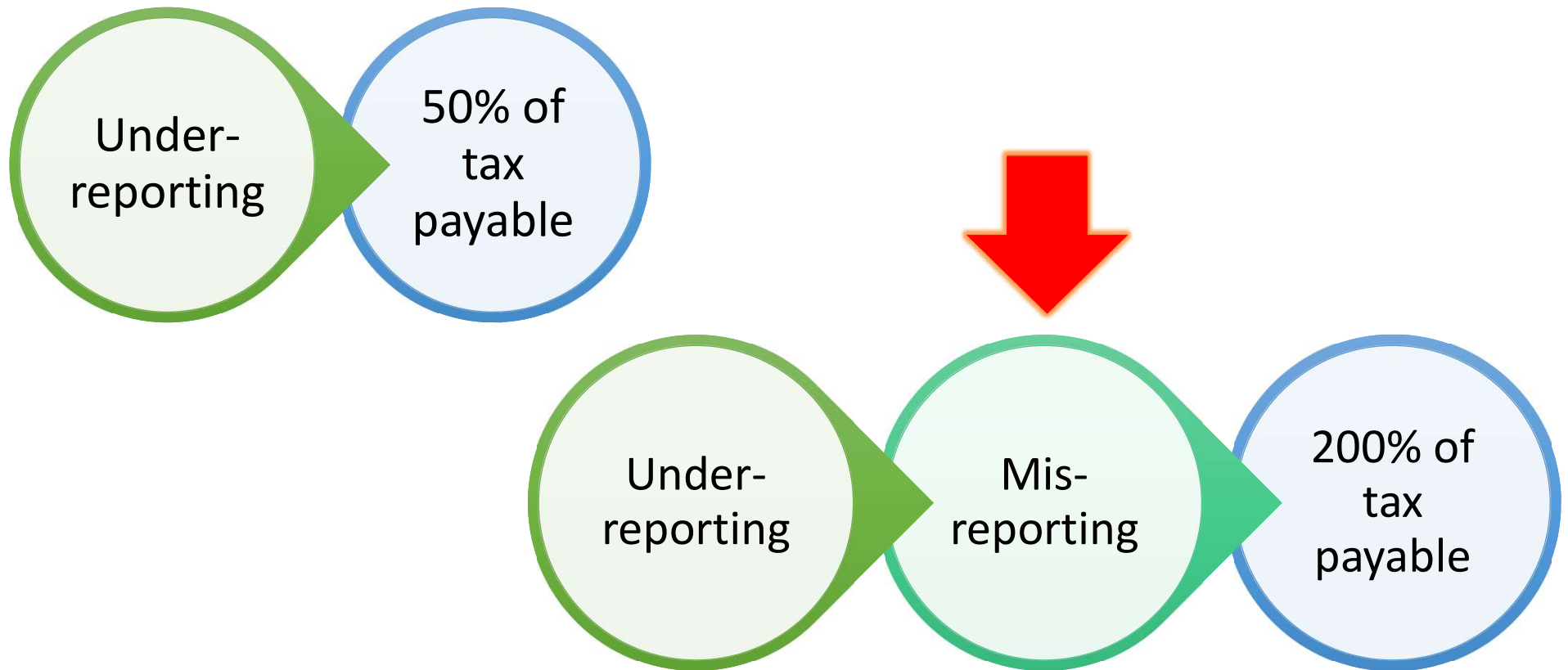
The Hon'able Supreme Court in CIT vs. Pricewaterhouse Coopers Pvt. Ltd. [2012-ITR VSC-244] has held that there would be no s. 271(1)(c) penalty for a "bona fide/ inadvertent/ human error"

The Hon'able Supreme Court in In T. Ashok Pai vs. CIT (2007) 161 Taxmann 340 (SC) held that a mere omission or negligence does not constitute a deliberate act suppressio very (Concealment of truth).

Delhi High Court in the case of Principal Commissioner of Income Tax vs. American Express Pvt. Ltd on 27.08.2018 held that If conduct of assessee in netting of income received from interest paid is bona fide, then no penalty u/s.271(1) ( c) can be imposed on assessee.

# Sec. 270A – Basic Structure

AY 2017-18  
onwards



# Sec. 270A

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

## What is under-reporting?

Scenario	Normal Provisions	MAT / AMT Provisions
ROI filed	Income assessed is greater than the income determined u/s. 143(1)(a)	Deemed total income assessed or reassessed as per sec. 115JB / 115JC is greater than the said deemed total income determined u/s. 143(1)(a).
No ROI filed or ROI filed for the first time u/s. 148.	The income assessed is greater than the maximum exemption limit	Deemed total income assessed as per sec. 115JB / 115JC is greater than the maximum exemption limit.



# Sec. 270A

## What is under-reporting?

Scenario	Normal Provisions	MAT / AMT Provisions
Reassessment	The income reassessed is greater than the income assessed or reassessed immediately before such reassessment.	Deemed total income reassessed as per sec. 115JB / 115JC is greater than the said deemed total income assessed or reassessed immediately before such reassessment.
Loss Assessed	The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	The income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

## Sec. 270A – Mis-reporting

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(a) misrepresentation or suppression of facts;

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(b) failure to record investments in the books of account;

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(c) claim of expenditure not substantiated by any evidence;

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(d) recording of any false entry in the books of account;

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(e) failure to record any receipt in books of account having a bearing on total income;

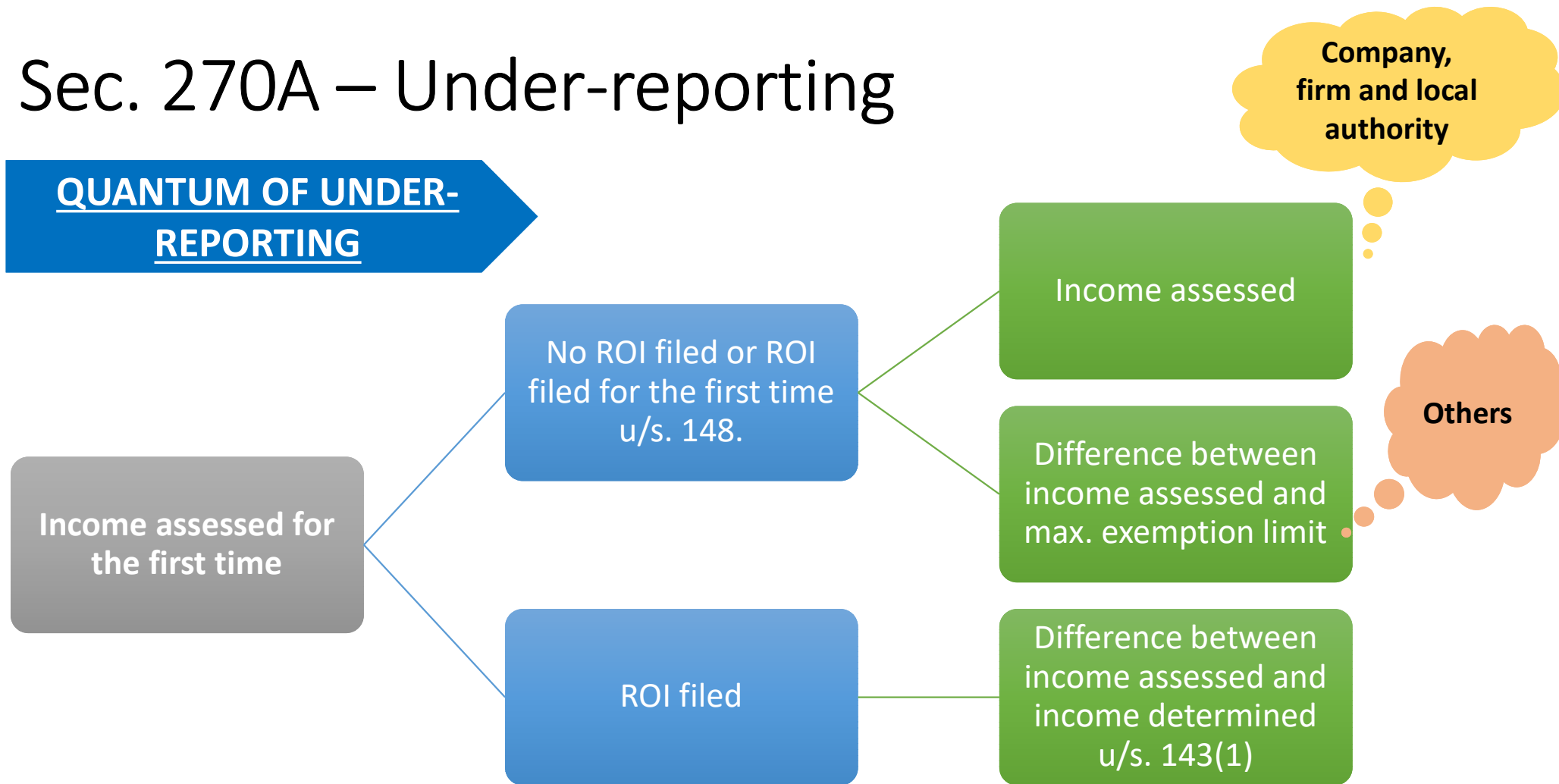
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(f) failure to report any international transaction or any transaction so deemed or any specified domestic transaction, to which the provisions of Chapter X apply.

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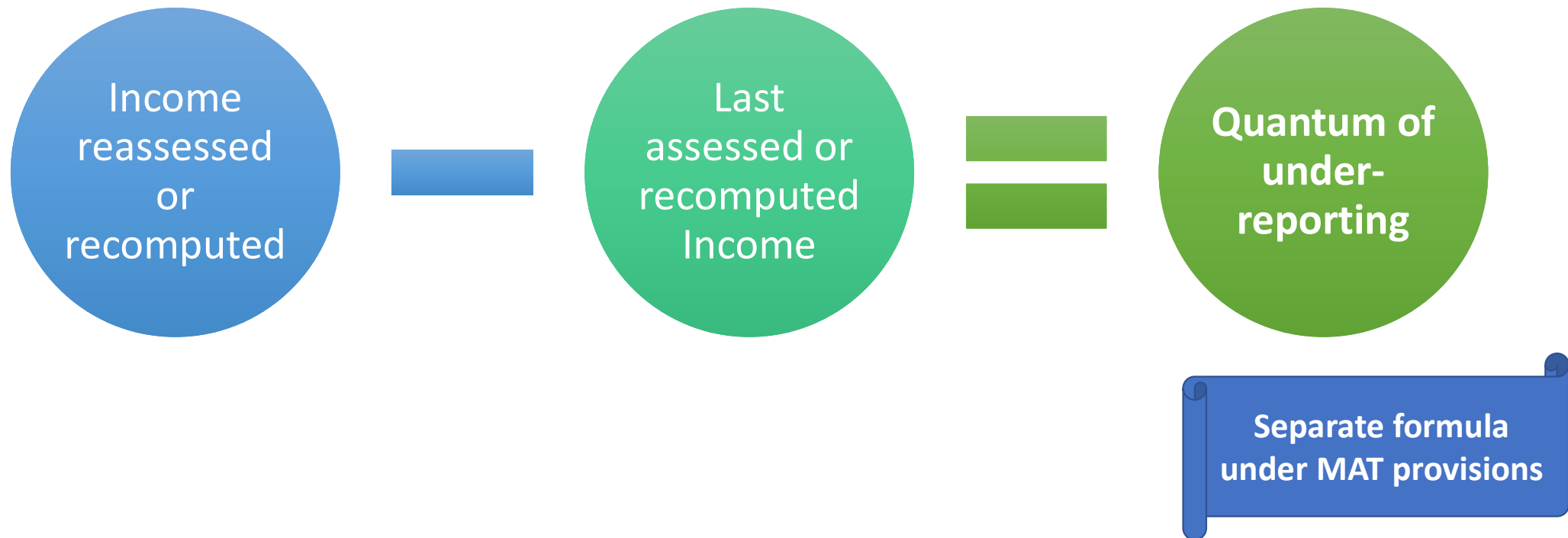
# Sec. 270A – Under-reporting

## QUANTUM OF UNDER-REPORTING



# Sec. 270A – Under-reporting

Income has been assessed earlier



# MAT Provisions

- $(A - B) + (C - D)$  where,
- $A$  = the **total income assessed** as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called **general provisions**);
- $B$  = 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**;
- $C$  = the **total income assessed** as per the provisions contained in **section 115JB or section 115JC**;
- $D$  = the **total income** that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been **reduced by the amount of under-reported income**
- **Provided further** that where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item  $D$ .

## Sec. 270A – Exclusions

Authority is satisfied that the explanation offered by the Assessee is bonafide and he has disclosed all the material facts.

Income assessed by AO on estimate basis but the accounts are correct and complete to the satisfaction of the Authority

Variation in amount of addition and disallowance made by AO and Assessee but all the facts have been disclosed.

Adjustment made to Arms Length Price for **international transactions** but all material facts have disclosed.

Undisclosed income referred u/s. 270AAB

# Sec. 270A – Illustration

The provisions of section 270A are illustrated through examples as below:

**Example 1.** Case is of a firm liable to tax at the rate of 30 per cent.:

	(Figures in Rs lakh)
Returned total Income	100
Total Income determined under section 143(1)(a)	110
Total Income assessed under section 143(3)	150
Total Income reassessed under section 147	180

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated as under:

	Assessment under section 143 (3)	Re-assessment under section 147
Under-reported Income	$(150-110) = 40$	$(180-150) = 30$
Tax Payable on under-reported Income	30 % of 40 = 12	30 % of 30 = 9
Penalty Leviable*	50 % of 12 = 6	50 % of 9 = 4.5

\* Considering under-reported income is not on account of misreporting

## Sec. 270A – Illustration

**Example 2.** Case is of an individual below 60 years of age and no return of income has been furnished:

	(Figures 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	$30\% \text{ of } 7,50,000 = 2,25,000$
Penalty Leviable**	$50\% \text{ of } 2,25,000 = 1,12,500$

\* Being maximum amount not chargeable to tax

\*\* Considering under-reported income is not on account of misreporting



# Sec. 270A – Illustration

**Example 3.** Case is of a company liable to tax at the rate of 30 per cent.:

	(Figures 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

Considering that none of the additions or disallowances made in assessment or reassessment as above qualifies under sub-section (6) of section 270A, the penalty would be calculated as under:

	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

\* Considering under-reported income is not on account of misreporting

## Sec. 270A – Issues

Recording of  
satisfaction

Assessed Income vs  
Intimation u/s.  
143(1) - (not ROI)

No penalty for  
adjustments made in  
Intimation u/s.  
143(1)

Assessment reducing  
loss or converting  
loss into income

Time limit to pass  
order

Can penalty be  
levied if on the same  
issue penalty was  
not levied earlier?

## Sec. 270A – Issues

SDTs are not covered under exclusion.

Burden to provide mis-reporting

No disclosure of personal assets

Impact of S. 275 – reasonability

## Sec. 270A – Issues

Mr. A did not file his ROI for the AY 2017-18. Notice u/s. 148 was issued to him on 01.01.2020. In response thereto, he filed his ROI declaring business income of Rs. 20 lakh, STCG of Rs. 10 lakh and IFOS (appearing in his Form 26AS) of Rs. 2 lakh.

Assessment was completed u/s. 143(3) r.w.s. 147 accepting the ROI. No additions / disallowances were made.

Can this be a case of 'under-reporting' u/s. 270A?

If yes, what is the quantum of under-reporting?



## Sec. 270A – Issues

Mr. A filed his ROI for the AY 2017-18 which included long term capital gain on sale of immovable property of Rs. 20 lakh. In the course of assessment, the AO invoked provision of section 50C and enhanced the capital gain to 55 lakh.

Can this be a case of 'under-reporting' u/s. 270A?

If yes, what is the quantum of under-reporting?

Is there any relief Assessee can avail u/s. 270A?



## Sec. 270A – Issues

A ltd. filed its ROI for the AY 2017-18 with total income of Rs. 60 lakh after claiming brought forward loss of Rs. 30 lakh. The b/f was disputed in appeal and thus, in the intimation u/s. 143(1), the claim of b/f was denied, assessing the income at 90 lakh.

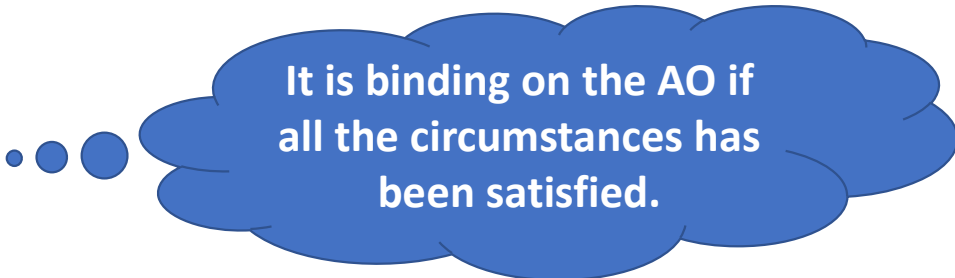
While in scrutiny assessment, **the AO makes disallowance of Rs. 25 lakh.** However, the disputed issue was decided in favor the Assessee and thus, the total assessed income u/s. 143(3) worked out to Rs. 85 lakh.

Can this be a case of ‘under-reporting’ u/s. 270A?

If yes, what is the quantum of under-reporting?



## Sec. 270AA – Immunity



It is binding on the AO if all the circumstances have been satisfied.

It allows Assessee to make application to the AO to grant immunity from imposition of penalty u/s. 270A and imposition of proceedings u/s. 276C or 276CC, if:

- tax and interest payable as per sec. 143(3) or sec. 147 is paid within the specified date; **and** no appeal has been filed against the said order.

To be filed in Form 68 within 1 month from the end of the month in which the order is received.

Immunity cannot be granted where penalty is leviable for **mis-reporting** of income.

## Sec. 270AA – Practical Issues

1. What happens in case of nil demand?
2. What about incorrect demand case, where rectification petition is filed u/s. 154?
3. Delay in payment of demand
4. Tax and interest both has to be paid
5. Jurisdiction with only the AO
6. Final order of the AO
7. Form 68 to be filed manual?
8. What if the assessment is made u/s. 144?
9. Time limit for AO to pass order – 1 month from the end of the month in which application is received.
10. Order of the AO is compulsory
11. What if SCN mention under-reporting and misreporting both?
12. Expenditure disallowed on estimate basis – can it be treated as misrepresentation of facts; - safer to file form 68 also.



## Sec. 271AAC *cum* 115BBE

Provision for levy of penalty u/s. 271AAC overrides entire Act other than section 271AAB and applies to all additions made under section 69, 69A, 69B, 69C and 69D. Tax rate is prescribed at 60% of income mentioned under aforesaid sections.

No penalty if this income was included in the ROI filed u/s.. 139 and tax was paid on or before the end of the PY.

Penalty at the rate of 10% of tax payable u/s. 115BBE.

No penalty u/s 270A.

Sec. 274 and 275 continues to apply.

## Sec. 271AAC *cum* 115BBE

- Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.
- **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) <sup>9</sup>[and clause (b)] of sub-section (1).

# Sec. 271AAC *cum* 115BBE

**Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.**

- **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) <sup>9</sup>[and clause (b)] of sub-section (1).

## Sec. 271AAC – Issues

A survey u/s. 133A was carried out in the case of Mr. A on 14-Sept-2016. During the course of survey, Mr. A admitted an additional income of Rs. 1.5 crs for the AY 2017-18, which was duly offered to tax in the return of income filed by Mr. A u/s. 139.

AO completed the assessment accepting the income declared in ROI but charged the sum of Rs. 1.5 Crs u/s. 68 and levied tax as per the amended provisions of section 115BBE.

Is the action of AO justified?



## Sec. 271AAC *cum* 115BBE – Issues

Declared  
income can also  
be unexplained

Income  
declared under  
five heads

Sec. 44AD cases

Agricultural  
income cases

Search cases –  
diary found

# Section 271AAA

**Section 271AAA(1)** - Where search has been initiated u/s. 132 on between 1st day of June, 2007 and 1st day of July, 2012

**10% of undisclosed income**

**If the assessee** admits the undisclosed income and specifies the manner in which such income has been derived

Substantiates such manner

Pays the tax, together with interest in respect of the undisclosed income.

**No penalty**

# Section 271AAB (1)

**Section 271AAB(1) - Where search has been initiated between 1st day of July 2012 and 15-12-2016:**

**a) At the rate of 10% of the undisclosed income if:**

- Assessee admits the undisclosed income along with the manner of deriving the same;
- Substantiates the manner in which undisclosed income was derived; and
- Pays the tax along with interest and furnishes the return of income for the specified previous year declaring undisclosed income on or before the specified date.

**b) At the rate of 20% of the undisclosed income if:**

- The assessee does not admit the undisclosed income but
- Declares the income for the specified previous year and pays the tax along with interest on the undisclosed income on or before the specified date

**c) If not covered under clause (a) or (b) above – 60% of the undisclosed income of the specified PY**

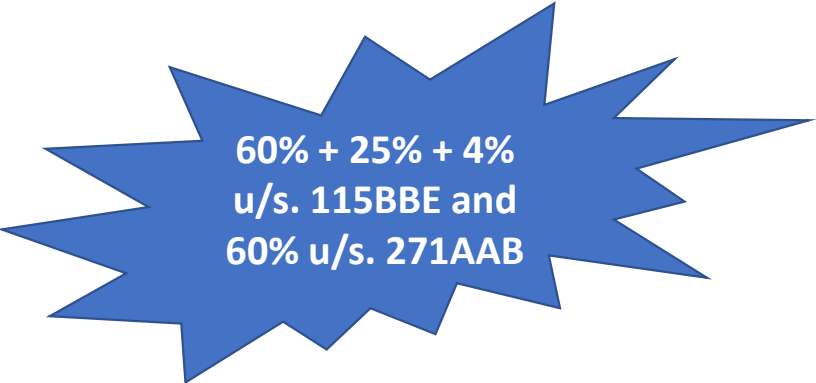
# Section 271AAB (1A)

Where search has been initiated **after 15-12-2016:**

**a) At the rate of 30% of the undisclosed income if:**

- Assessee admits the undisclosed income along with the manner of deriving the same;
- Substantiates the manner in which undisclosed income was derived; **and**
- Pays the tax along with interest and furnishes the return of income for the specified previous year declaring undisclosed income on or before the specified date.

**b) If not covered under clause (a) above – 60% of the undisclosed income of the specified PY**



60% + 25% + 4%  
u/s. 115BBE and  
60% u/s. 271AAB



# Section 271AAB (1A) – Case Laws

## Penalty due to substantiation of undisclosed income before introduction of section 271AAB

- **Facts of the Case:**

Search was initiated and the income was assessed. No question was asked during statement recorded under section 132(4) with respect to the manner of earning the income surrendered. The assessee duly paid the taxes on the undisclosed income.

- **Judgement:**

*Where no question was asked during statement recorded under section 132(4), in respect of manner of earning income surrendered, assessee could not be expected to substantiate same later on; penalty could not be levied under section 271AAA - **Sunil Kumar Bansal vs. DCIT [2015] 70 SOT 137 (Chd.)***

- **Similar Judgement has been passed in the following cases:**

- ACIT v. Emirates Technologies (P.) Ltd. [(2017) 58 ITR (Trib.) 593 (Delhi)]
- ACIT v. AJit Singh [(2016) 76 taxmann.com 212 (Jp.)]

# Sec. 271D, 271DA and 271E

## Section 271D

- TAKES, ACCEPTS, any loan or deposit or specified sum in contravention to Section 269SS
- **Penalty:** A sum equal to the amount of the loan or deposit or specified sum so taken or accepted

## Section 271DA

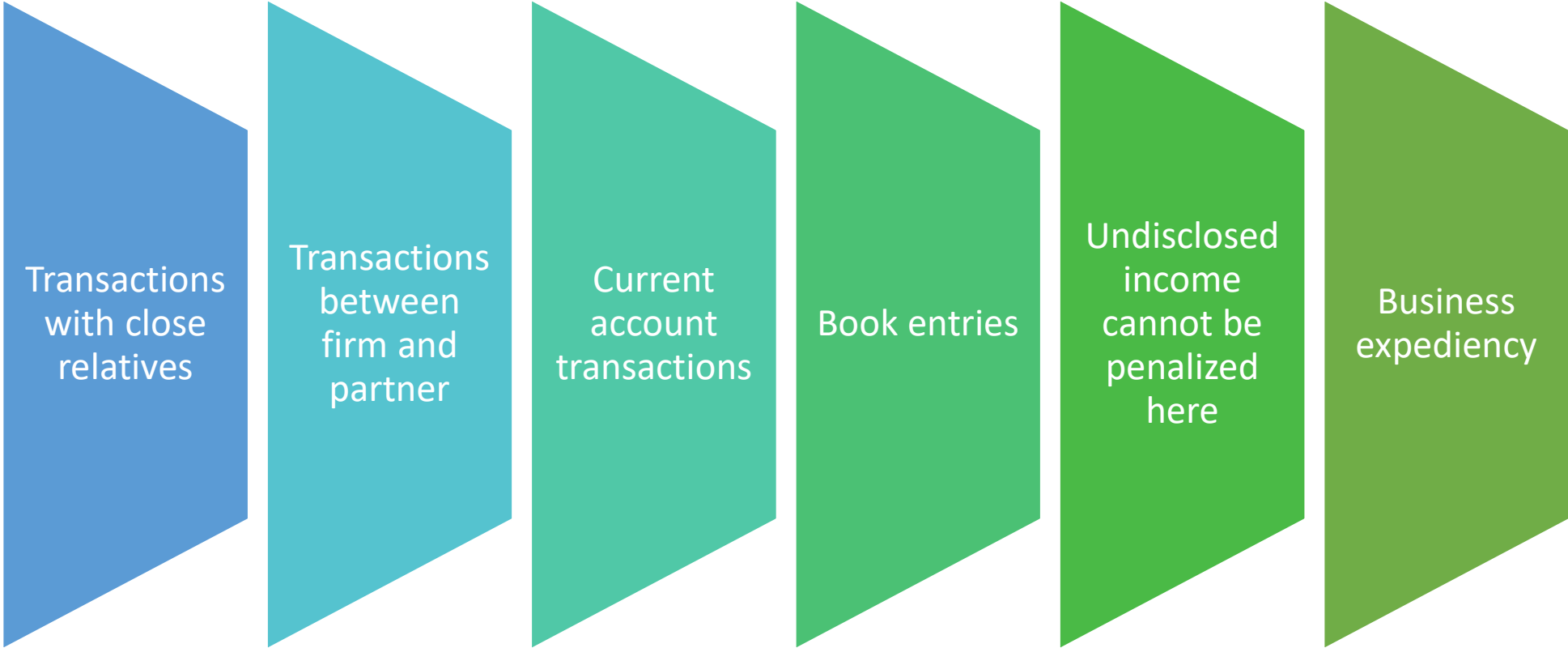
- Receives any sum in contravention to Section 269ST
- **Penalty:** A sum equal to the amount of such receipt

## Section 271E

- If a person repays any loan or deposit or specified advance referred and is in contravention to section 269T.
- **Penalty:** a sum equal to the amount of the loan or deposit or specified advance so repaid

The above penalties shall be imposed by Joint Commissioner of Income Tax

# Issues



Transactions  
with close  
relatives

Transactions  
between  
firm and  
partner

Current  
account  
transactions

Book entries

Undisclosed  
income  
cannot be  
penalized  
here

Business  
expediency

# Case laws

**CIT vs. Panchsheel  
Owners Associations**  
**395 ITR 380 (Gujarat)**

- Where assessee-AOP borrowed cash loan of Rs. 40 lakhs from its promoter for acquisition of land, in view of fact that genuineness of transaction had not been disputed by lower authorities, so also importance and urgency of raising cash loan, Tribunal was right in deleting penalty under section 271D [In favour of assessee]

**Builtec Engineers &  
Builders vs. DCIT,**  
**Range-III 256 CTR 205**  
**(Madras)**

- Assessee justified that it was a necessity for making payment to labour or to small suppliers in cash and the same was not accepted as a good and justifiable ground for receiving cash by assessee. Hence, Penalty u/s 271D imposed was justified.

**Jagvijay Auto Finance**  
**(P) Ltd. Vs. ACIT 128**  
**Taxation 122(Trib)**

- Application of money received for acquiring shares later transferred to loan account not to be treated as violation of Sec 269SS as the amount initially had no character of a loan or deposit. Hence Penalty u/s 271D cannot be levied.

## Issues around 271D

**Whether money received from members of co-operative society or partners of firm partakes the nature of loan ?**

- In case of ***CIT Vs M/s Muthoot Financiers (ITA 336/2002)*** Hon'ble Delhi High Court allowed the argument of Assessee that cash payments received from partners do not partake the nature of loan and the transaction should not be taken as independent transaction as partner and partnership firm don not have separate identification then one another.'

## Issues around 271D

**Whether penalty can be imposed in case of amount to be taxed as undisclosed income?**

- Penalty is not leviable when in case the Revenue takes the stand that the alleged deposit was undisclosed income of the Assessee.

***-CIT v. Standard Brands Ltd. (2006 285 ITR (Delhi HC)***

## Section 269SU – Section 271DB

**Section 269SU** provides that every person engaged in business should mandatorily provide the facility for accepting payment through prescribed electronic mode, if the gross receipts from such business exceeds Rs. 50 crores during the immediately preceding previous year., fails to provide such facility, he shall be liable to pay, by way of penalty, a sum of five thousand rupees, for every day during which such failure continues:

**Penalty:** A Sum of Rs. 5,000 rupees for every day of default in case the person does not accept payment through notified digital modes (until such failure continues).

Shall be imposed by the joint commissioner

Effective from 1-11-2019

# Section 269SU – Section 271DB

## Prescribed Electronic Modes of Payment

- **Every person** with a business turnover of more than Rs. 50 crores has to mandatorily provide all the following modes for the purpose of acceptance of payment, which is **in addition** to the facility for other electronic modes of payment, if any, being provided by such person:
  - Debit Card powered by RuPay;
  - Unified Payments Interface (UPI) (BHIM-UPI); **and**
  - Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).
- **Note:** On perusal of the above notification, it can be inferred that **all the 3 alternatives** as mentioned in (a), (b) & (c) need to be provided for accepting payment through electronic modes.



# Relaxation from Penalty Provisions

- **Under section 273A(4)** the Principal Commissioner or Commissioner of Income tax has power to waive or reduce any penalty levied under the Income-tax Act. Penalty can be waived or reduced if the conditions specified in section 273A(4) in this regard are satisfied.
- **Section 273B** provides relief from penalty in genuine cases i.e. if the tax payer proves that there was **reasonable cause** for such failure, then relief from sections 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, 271J, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1) or 273(2)(b) or (c)

# Time limits

Relevant order is  
appealed before CIT(A)

- Within the 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 the FY in which the order of the CIT (Appeals) is received by the Pr. CIT or CCIT or CIT, **w.e.l**

Relevant order is  
revised u/s. 263 / 264

- Within 6 months from the end of the month in which such order of revision is passed;

Any other case

- Within the FY in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or
- Within 6 months from the end of the month in which action for imposition of penalty is initiated, **w.e.l**

# Issues around section 275

**Whether the six month period starts after the Assessing Officer receives the adjudicating order?**

- **Facts** : Order passed by Tribunal on 27-Jan-2017, Order giving effect passed on 22-May-2017. Penalty Order u/s 271(1)(c) passed on 26-Apr-2018. DCIT contended that the order on 27-Jan-2017 was received by his office on 01-Nov-2017.
- **Held that** “The mandatory period of limitation under section 275(1)(a) cannot be sought to be defeated by delaying the dispatch of the relevant order of the Tribunal to the concerned 'jurisdictional' Commissioner. What is relevant is when the Commissioner (Judicial) representing the Department before the Tribunal received the order”.

**-GE Energy Parts Inc Vs DCIT 111 taxmann.com 56**

# Issues around 271D

## Who can initiate the proceeding?

- The proceedings can be initiated only by the JCIT and date of initiation is taken as the date of issue of show cause notice by the JCIT.
- “The statement in the assessment order that the proceedings under Section 271D initiated is inconsequential” - held in the case of **Grihalaxmi Vision Vs. ACIT – Kerala HC.**

# Issues around 271D

## Time limit for initiating penalty proceedings?

- JCIT can initiate the penalty proceedings u/s 271D at any time for any assessment year even after indefinite period. It is only the imposition of penalty which has time barring once initiated [as per section 275] - ITO vs **Ramnivas Agrawal (2004) 89 TTJ Nag 795**

*Thank  
you!*