Penalties & Prosecutions

CHAPTER 23- PENALTIES & PROSECUTIONS

WHO CAN IMPOSE THE PENALTY

Penalty can be levied by:
(i) The Assessing Officer
(ii) The CIT(Appeals)
(iii) The Commissioner of Income-tax

KEY NOTES:
1. Income Tax Appellate Tribunal (ITAT) cannot impose penalty.

2. The penalty proceedings must be initiated before levying any penalty. Penalty proceedings are initiated by issuing a show cause notice.

3. Assessing Officer shall levy penalty for under reporting or mis-reporting of income on the additions made by him in an assessment or reassessment under section 143(3)/144/147/153A. CIT (Appeals) shall levy penalty for under reporting or mis-reporting of income on the additions made by him in an order passed under section 250. CIT shall levy penalty for under-reporting or mis-reporting of income on the additions made by him in an order passed under section 263.

4. If Assessing Officer is to levy the penalty for under-reporting or mis-reporting of income, then the penalty proceedings must be initiated by the Assessing Officer before the completion of assessment.

If CIT(Appeals) is to levy the penalty for under-reporting or mis-reporting of income, then the penalty proceedings must be initiated before passing the order under section 250.

If CIT under section 263 increases the income, then he must initiate the penalty proceedings before passing the order under section 263.

5. SHADIRAM BALMUKUND (SUPREME COURT)

Facts:
The assessee filed a return of income declaring an income of Rs. 20,00,000. The Assessing Officer added unexplained cash credits of Rs. 6,00,000 and assessed the income at Rs. 26,00,000. The Assessing Officer initiated penalty proceedings under section 270A before the completion of the assessment.

The assessee filed an appeal to CIT(Appeals) against the order of the Assessing Officer. The CIT (Appeals) by his order under section 250 confirmed the additions made by the Assessing Officer and further increased the income by Rs. 5,00,000 to Rs. 31,00,000.

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Assessee decided not to file any further appeal, Assessing Officer levied penalty on the additions of Rs. 11,00,000.

**Decision:**
The Supreme Court held that the Assessing Officer can levy penalty for under-reporting or mis-reporting on the additions made by him and not on the additions made by the CIT (Appeals). Similarly, the CIT(Appeals) can levy penalty on the additions made by him and not on the additions made by the Assessing Officer.

In the present case, the Assessing Officer can levy penalty on the additions of Rs. 6,00,000 made by him and not on the additions of Rs. 5,00,000 made by CIT(Appeals). The Supreme Court accordingly deleted the penalty levied by the Assessing Officer on the additions of Rs. 5,00,000 made by CIT(Appeals).

The Supreme Court also held that CIT(Appeals) cannot be directed to levy penalty on the additions made by him since he had not initiated the penalty proceedings before passing the order under section 250.

6. Penalty other than penalty for under reporting or mis-reporting of income can be levied by initiating the penalty proceedings (by issuing a show cause notice) and such proceedings can be initiated at any time. Penalties such as penalty for failure to get tax audit done, penalty for non-maintenance of books of account, can be initiated even if an assessment is not made on the assessee.

7. Penalty order and assessment order are distinct order. Similarly, penalty proceedings and assessment proceedings are distinct proceedings.

8. Penalty is levied by passing a penalty order. Against the penalty order passed by Assessing Officer an appeal can be filed to CIT(Appeals) or a revision application can be made to CIT under section 264 or a rectification application can be made under section 154. Against the penalty order passed by CIT(Appeals) or the Commissioner of Income-tax, an appeal can be filed to ITAT.

9. Law relating to penalty for concealment of income was contained in section 271(1)(c) and that section is no more relevant from Assessment Year 2017-18. From Assessment Year 2017-18, new section 270A replaces section 271(1)(c).

## SECTION 270A: PENALTY FOR UNDER REPORTING AND MISREPORTING OF INCOME (INSERTED BY FINANCE ACT, 2016)

{ **DO NOT READ THIS, DIRECTLY DO IT FROM ILLUSTRATION**}

1. The Assessing Officer or the Commissioner (Appeals) or Commissioner 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.

2. A person shall be considered to have under-reported his income, if –
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(a) the income assessed is greater than the income determined in the return processed under section 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 or where return has been furnished for the first time under section 143(1)(a);
(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
(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 under section 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 furnished or where return has been furnished for the first time under section 148; (FA 2019)
(f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 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.

(3) The amount of under-reported income shall be, –

(i) in a case where income has been assessed for the first time, –

(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under section 143(1)(a);
(b) in a case where no return has been furnished or where return has been furnished for the first time under section 148, – (FA 2019)

(A) the amount of income assessed, in the case of a company, firm or local authority; and

(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);

(ii) in any other case, the difference between the amount of income reassessed and the amount of income assessed or reassessed in a preceding order:

Provided that where under-reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC, the amount of total under-reported income shall be determined in accordance with the following formula –

\[(A - B) + (C - D)\]

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.

Explanation. – For the purposes of this section, –

(a) “preceding order” means an order immediately preceding the order during the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

(4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as “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.

(5) 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.

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

(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner(Appeals) or the Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;

(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 Assessing Officer or the Commissioner (Appeals) or the Commissioner, as the case may be, 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;

(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 under section 92D, declared the international transaction in Transfer Pricing Audit Report, and disclosed all the material facts relating to the transaction; and

(e) the amount of undisclosed income referred to in section 271AAB.

(7) The penalty referred to in sub-section (1) shall be a sum equal to **50% of the amount of tax payable on under-reported income.**

(8) 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.

(9) The cases of misreporting of income referred to in sub-section (8) 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 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 Transfer Pricing apply.

(10) The tax payable in respect of the under-reported income shall be-

(a) where no return of income has been 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 in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income;

(c) in any other case determined in accordance with the formula –

\[(X-Y)\]

where,

\[X = \text{the amount of tax calculated in the under-reported income as increased by the total income determined under section 143(1)(a) or total income assessed, or reassessed in a preceding order as if it were the total income; and}\]

\[Y = \text{the amount of tax calculated on the total income determined under section 143(1)(a) or total income assessed or reassessed in a preceding order.}\]

(11) 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.
(12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Commissioner(Appeals) or the Commissioner, as the case may be.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

**Rationalisation of penalty provisions relating to under-reported income**

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under section 148 of the Act.

In order to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under section 148, it is proposed to suitably amend the provisions of section 270A.

These amendments will take effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to assessment year 2017-2018 and subsequent assessment years.

**ANALYSIS OF SECTION 270A**

<table>
<thead>
<tr>
<th>A PERSON SHALL BE CONSIDERED TO HAVE UNDER-REPORTED THE INCOME IF:</th>
<th>AMOUNT OF UNDER-REPORTED INCOME &amp; TAX THEREON:</th>
</tr>
</thead>
</table>
| **Return has been filed and assessment made for first time** | **Under-reported Income:**
Income assessed > Income determined under section 143(1)(a) |

\[
\text{Under-reported Income: Income assessed minus Income determined under section 143(1)(a)}
\]

**Tax on under-reported Income**
Tax on 
[Under-reported Income + Income determined under section 143(1)(a)]

\[
\text{Minus Tax on Income determined under section 143(1)(a)}
\]

<table>
<thead>
<tr>
<th><strong>No Return has been filed and assessment made for first time</strong></th>
<th><strong>Under-reported Income:</strong></th>
</tr>
</thead>
</table>
| Income assessed > Maximum amount not chargeable to Tax | (i) In case of assessee other than individual / HUF = Amount of income assesessed minus Rs. 2,50,000/3 lacs/5 lacs.

\[
\text{Tax on under-reported Income}
\]

(i) Tax on under reported income as if it were the total income
(ii) Tax on (under-reported income + Rs. 2,50,000/3 lacs/5 lacs) as if it were total income of assessee

23.6
<table>
<thead>
<tr>
<th>Case of Re-assessment</th>
<th>Under-reported Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income reassessed &gt; Income assessed or reassessed immediately before such reassessment.</td>
<td>Amount of Income reassessed – Amount of income assessed in preceding order</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax on Under-reported Income</th>
<th>Minus Tax on Income assessed in preceding order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on (Under-reported Income + Income assessed in preceding order)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where section 115JB or 115JC applies and return has been filed by the assessee and assessment made for first time</th>
<th>Under-reported Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deemed Income assessed as per section 115JB/115JC</td>
<td>(A – B) + (C – D)</td>
</tr>
<tr>
<td>&gt;</td>
<td></td>
</tr>
<tr>
<td>5JC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A = Total Income assessed as per general provisions</td>
</tr>
<tr>
<td></td>
<td>B = Total Income assessed as per general provisions reduced by under-reported income</td>
</tr>
<tr>
<td></td>
<td>C = Total Income assessed as per section 115JB/115JC determined under section 143(1)(a)</td>
</tr>
<tr>
<td></td>
<td>D = Total Income assessed as per section 115JB/115JC reduced by under-reported income.</td>
</tr>
<tr>
<td></td>
<td><strong>Note:</strong> If under-reported income in ‘B’ and ‘D’ are the same, then under-reported income shall not be considered in ‘D’.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where section 115JB or 115JC applies and assessment made for first time</th>
<th>Under-reported Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deemed total income assessed &gt; not chargeable to tax as per section 115JB/115JC</td>
<td>(A – B) + (C – D)</td>
</tr>
<tr>
<td></td>
<td>A = Total Income assessed as per general provisions</td>
</tr>
<tr>
<td></td>
<td>B = Total Income assessed as per general provisions reduced by under-reported income</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where section 115JB or 115JC applies and it is a case of reassessment</th>
<th>Under-reported Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deemed total income assessed &gt; income assessed as per section 115JB/115JC immediately</td>
<td>(A – B) + (C – D)</td>
</tr>
<tr>
<td></td>
<td>A = Total Income assessed as per general provisions</td>
</tr>
<tr>
<td></td>
<td>B = Total Income assessed as per general provisions reduced by under-reported income</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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before such reassessment

| C = Total Income assessed as per section 115/JB/115JC |
| D = Total Income assessed as per section 115/JB/115JC reduced by under-reported income. |

**Note:** If under-reported income in ‘B’ and ‘D’ are the same, then under-reported income shall not be considered in ‘D’.

| Returned Income is a Loss and on assessment Loss is reduced or in converted into income |
| Under-reported Income |
| Loss assessed / – Loss as per income assessed section 143(1)(a) |

| Tax on Under-reported Income |
| Tax on under-reported income as if it were total income of the assessee. |

| Case of reassessment and on reassessment |
| Under-reported Income |
| Loss in assessment immediately before such reassessment in reduced or converted into income. |

| Tax on under-reported Income |
| Tax on under-reported income as if it were the total income of the assessee. |

**ILLUSTRATIONS ON SECTION 270A:**

**Illustration 1:**
Details of an individual who filed his return of income is as under:

| Returned Income | 10,00,000 |
| Income under section 143(1)(a) | 11,00,000 |
| Income assessed under section 143(3) | 25,00,000 |

Is penalty under section 270A can be imposed?

**Solution:**

| Chargeability of section 270A: |
| The person is considered to have under-reported the Income since |

| Income assessed > Income determined under section 143(1)(a) |

| Amount of under-reported Income |
| = Income assessed under section 143(3) |

| – Income determined under section 143(1)(a) |

| = Rs. 25,00,000 - Rs. 11,00,000 |

| = Rs. 14,00,000 |

| Tax payable on under-reported Income |
| = Tax on Rs. 25,00,000 – Tax on Rs. 11,00,000 |

| = Rs. - Rs. |

| = Rs. _ |
Illustration 2:
Mr. X filed his return of income claiming loss therein:

| Returned Income | - Rs. 12,00,000 |
| Income under section 143(l)(a) | -Rs. 13,00,000 |
| Income assessed under section 143(3) | - Rs. 2,00,000 |

Can penalty be levied in this case?

Solution:
Chargeability of section 270A: the person is considered to have under-reported the since loss has been reduced because of assessment

**Amount of under-reported Income**

\[= \text{Loss assessed under section 143(3)} - \text{Loss determined under section 143(l)(a)}\]

\[= -2,00,000 \text{ minus } (- \text{ Rs. } 13,00,000)\]

\[= + \text{ Rs. } 11,00,000\]

**Tax payable on under-reported Income**

\[= \text{Tax on Rs. } 11,00,000 \text{ i.e. under-reported Income were the total income of the assessee} = \text{Rs. } _{\_}\]

**Penalty for under-reporting**

\[= 50\% \times \text{Rs. } _{\_}\]

Illustration 3:

ABC Ltd., an Indian Company furnished its return of income disclosing a loss of Rs. 50 lakhs. However, the loss determined under section 143(l)(a) is only Rs. 40 lakhs. The case was taken up for scrutiny. The Assessing Officer made various additions and the income assessed under section 143(3) is Rs. 1,10,00,000.

Determine the penalty leviable by Assessing Officer.

Solution:
Chargeability of section 270A: The person is considered to have under-reported the income since LOSS HAS BEEN CONVERTED INTO INCOME.

**Amount of under-reported Income**

\[= \text{Income assessed under section 143(3)} - \text{Income determined under section 143(l)(a)}\]

\[= \text{Rs. } 1,10,00,000 \text{ minus } (-\text{Rs. } 40,00,000)\]

\[= \text{Rs. } 1,10,00,000 + \text{Rs. } 40,00,000\]

\[= \text{Rs. } 1,50,00,000\]
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Tax payable on under-reported Income = Tax on Rs. 1,50,00,000
= Rs. 45,00,000 + 7% surcharge + 4% H & E CESS
= Rs.

Penalty for under-reporting = 50% of Rs.
= Rs.

Illustration 4:
An Individual does not file return of Income for Assessment Year 2017-18. The Assessing Officer assesses the income under section 144 at Rs. 10,00,000. Can the penalty be levied in this case? If, yes, then determine the quantum of penalty.

Solution:
Chargeability of section 270A: Individual is said to have under-reported the income since
Assessed Income > Rs. 2,50,000
Under-reported Income = Rs. 10,00,000 - Rs. 2,50,000
= Rs. 7,50,000
Tax on under-reported Income = Tax on( Rs. + Rs.)
= Rs. 10,00,000
= Rs.
Penalty for under reporting = 50% of Rs.
= Rs.

Illustration 5:
Mr. P filed his return of income. His details are as under:
Returned Income under section 139(1) = 10,00,000
Assessment under section 143(3) = 15,00,000
Reassessment under section 147 = 32,00,000
Additions of Rs. 5,00,000 under section 147 are on the basis of disallowance of an expense in some other case by Supreme Court. The assessee had claimed the deduction of Rs. 5,00,000 on basis of High Court judgment where in High Court has allowed the deduction. The Assessing Officer is satisfied under section 270A(6)(a) that assessee's explanation is bona fide and assessee has disclosed all material facts to substantiate the explanation. Addition of Rs. 5,00,000 shall not be treated as under-reported income.

Solution:
Chargeability of section 270A: Assessee has under-reported the income as Income reassessed > Income assessed in preceding assessment
**Under-reported Income** = Rs. 32,00,000 - Rs. 15,00,000 = Rs. 17,00,000

However as per section 270A(6)(a) under-reported income shall be Rs. 17,00,000 - Rs. 5,00,000 = Rs. 12,00,000

Tax on under-reported Income = Tax on (Rs. _ + Rs. _) - tax on Rs. ______________

= Rs. ______________ - Rs. ______________

= Rs. ______________

**Penalty for under-reporting** = 50% of Rs. ______________

**Illustration 6:**
Return of income filed by the assessee company is as under:

<table>
<thead>
<tr>
<th>Total Income as per Income tax Act</th>
<th>Rs. 80,00,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book profits as per section 115JB</td>
<td>Rs. 2,00,00,000</td>
</tr>
</tbody>
</table>

Income determined under section 143(1)(a) as per normal provision is Rs. 80,00,000 and book profit is Rs. 2,00,00,000.

**Solution:**
Assessing Officer has assessed total income under section 143(3) under general provisions Rs. 1,10,00,000 and assessed book profits at Rs. 2,10,00,000. Presume that addition of Rs. 30,00,000 made to the total income under general provisions and Rs. 10,00,000 additions made to book profits are on different account. Under-reported income shall be:

(A-B) + (C-D)

A = Total income assessed by A.O. under general provisions of I.T. Act. = Rs. 1,10,00,000

B = [Total income assessed by A.O. - Under-reported Income] under general provisions of I.T.

= [1,10,00,000 - 30,00,000] = Rs. 80,00,000

C = Book profits assessed by Assessing Officer under section 115JB = Rs. 2,10,00,000

D = [Book profits assessed by Assessing Officer under section 115JB - Under-reported Income]

= Rs. 2,10,00,000 - (Rs. 10,00,000 = Rs. 2,00,00,000)

**Under-reported income** = (Rs. 1,10,00,000 - Rs. 80,00,000) + (Rs. 2,10,00,000 - Rs. 2,00,00,000)

= Rs. 40,00,000

**Tax on under-reported Income:**

(i) Tax on (Rs. 80,00,000 + Rs. 30,00,000) - Tax on Rs. 80,00,000
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Tax on Rs. 1,10,00,000 - Tax on Rs. 80,00,000
@30% + 7% +4% = Rs._

(ii) Tax on (Rs. 10,00,000 + Rs. 2,00,00,000) - Tax on Rs. 2,00,00,000
@15% + 7% + 4%
= Rs._

(iii) Tax on under-reported income = Rs._

Penalty for under-reporting = 50% of Rs._

Illustration 7:
Suppose in illustration 7, out of Rs. 30,00,000 added by Assessing Officer to total income under normal provisions and Rs. 10,00,000 added by Assessing Officer to book profits under section 115JB, Rs. 4,00,000 is on the same issue e.g., provisions made for unascertained liability.

Solution:
Under-reported income shall be:
(A - B) + (C - D)
A = Rs. 1,10,00,000
B = Rs. 80,00,000
C = Rs. 2,10,00,000
D = Rs. 2,04,00,000

Under-reported Income = (Rs. 1,10,00,000 - Rs. 80,00,000) + (Rs. 2,10,00,000 - Rs. 2,04,00,000)

Tax on under-reported Income:
(i) Tax on (Rs. 80,00,000 + Rs. 30,00,000) – Tax on Rs. 80,00,000
@30% + 7% +4% = Rs._

(ii) Tax on (Rs. 6,00,000 + Rs. 2,00,00,000) - Tax on Rs. 2,00,00,000
@15% + 7% + 4%
= Rs._

(iii) Tax on under-reported Income = Rs._

Penalty for under-reporting = 50% of Rs._

23.12
Illustration 8:
Returned income - Rs. 10,00,000
Returned Book profits + Rs. 2,00,00,000
Return is processed at the same amounts under section 143(1)(a).
Assessing Officer determines the income under section 143(3) as under:
Assessed income under general provision of the Income tax Act + Rs. 70,00,000
[under-reported income is = Rs. 80,00,000]
Book Profit = Rs. 2,10,00,000 (under-reported income Rs. 10,00,000)
Additions of Rs. 80,00,000 to total income under normal provisions and Rs. 10,00,000 to profit are on different account.

Solution:
Under-reported income shall be as under:
\[(A - B) + (C - D)\]
\[A = \text{Rs. 70,00,000}\]
\[B = \text{Rs. 70,00,000} - \text{Rs. 80,00,000} = -\text{Rs. 10,00,000}\]
\[C = \text{Rs. 2,10,00,000}\]
\[D = \text{Rs. 2,00,00,000}\]
Under-reported Income = \[(A - B) + (C - D)\]
\[= [\text{Rs. 70,00,000} - (-\text{Rs. 10,00,000})] + [\text{Rs. 2,10,00,000} - \text{Rs. 2,00,00,000}]\]
\[= \text{Rs. 80,00,000} + \text{Rs. 10,00,000}\]
\[= \text{Rs. 90,00,000}\]

Tax on under-reported Income:
\[\text{Tax on Rs. 80,00,000 @ 30% + 4% = \text{Rs. } _}\]
\[\text{Tax on Rs. 2,10,00,000 - Tax on 2,00,00,000}\]
\[@15%+ 7%+ 4% \text{ @15%+ 7%+ 4% = \text{Rs. } _}\]
\[\text{Rs. } _\]

Penalty for under-reporting = 50% of Rs. _

Illustration 9:
No return filed by assessee and Total Income assessed under section 144 = Rs. 20,00,000
Book profits under section 115JB as per section 144 = Rs. 15,00,000
\[A = \text{Rs. 20,00,000}\]
Solution:
Under-reported Income = (A - B) + (C - D)
= (Rs. 20,00,000 - NIL) + (Rs. 15,00,000 - NIL)
= Rs. 35,00,000

Tax on under-reported Income:
On Rs. 20,00,000 @ 31.2% = Rs.
On Rs. 15,00,000 @ 15% + 4% = Rs.
Penalty @ 50% = Rs.

ANALYSIS OF SECTION 270A(4) & 270A(5) - INTANGIBLE ADDITIONS

Sometimes the Assessing Officer makes additions for purely technical reasons e.g. application of a presumptive rate of gross profit or yield, addition on account of presumptive disallowance of expenditure, additions on account of low drawings. These additions are commonly referred as "INTANGIBLE ADDITIONS". Penalty for under-reporting or misreporting of income cannot be levied on such additions.

Say for example a contractor files return of income for Assessment Year 2020-21 as under:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts</td>
<td>Rs. 10 crores</td>
</tr>
<tr>
<td>Returned Income</td>
<td>Rs. 20 lakhs</td>
</tr>
<tr>
<td><strong>Add:</strong> Assessing Officer under section 143(3) makes additions on account of low Gross Profit Rate (G.P. Rate) and maintains G.P. rate @20% and makes additions of Rs. 180 lakhs</td>
<td>Rs. 180 lakhs</td>
</tr>
<tr>
<td><strong>Assessed Income</strong></td>
<td>Rs. 200 lakhs</td>
</tr>
</tbody>
</table>

Rs. 180 lakhs represents intangible additions and no penalty for under-reporting or misreporting of income shall be levied on such intangible additions.

Suppose, Assessing Officer completed the above assessment on 31.12.2021 and did not initiate penalty for underreporting of income.

The aseesee on 10.2.2022 is found to be in possession of unaccounted cash of Rs. 180 lakhs.

The aseesee explains that the cash of Rs. 180 lakhs represents the intangible additions made by Assessing Officer in Assessment Year 2020-21.

The Supreme Court held in Anantharam Veera Singhaiah & Co. that these intangible additions represent the real income of the aseesee and can be used in subsequent assessment
years for explaining the unexplained investments, unexplained cash credits and unexplained assets. The assessee can take a plea that the unexplained investments, unexplained cash credits and unexplained assets have been acquired out of the intangible additions and the departments shall have to accept his plea.

In this case although the assessee is admitting underreporting of income in Assessment Year 2020-21 but penalty for underreporting cannot be levied because the penalty has not been initiated before the completion of assessment of Assessment Year 2020-21.

The objective of introducing 270A(4) and 270A(5) is to levy penalty for underreporting of income in such case. Section 270A(4) and 270A(5) affirms the Supreme Court judgement that an assessee can explain unexplained investments etc. out of intangible additions made in the past assessment years. **However, the said section provides that the intangible additions so used in explaining the unexplained investments etc. shall be deemed as underreported income on which penalty for under-reporting or misreporting of income shall be levied.**

**Illustration 1:**

The Assessing Officer finds unexplained investments of Rs. 10 lakhs in Assessment Year 2020-21 and the assessee explains that the said investments have been made out of the intangible additions made in the past. The following data is given to you:

<table>
<thead>
<tr>
<th>Assessment Year</th>
<th>Additions made on which concealment penalty has not been levied i.e. the intangible additions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-09</td>
<td>10,00,000</td>
</tr>
<tr>
<td>2009-10</td>
<td>1,00,000</td>
</tr>
<tr>
<td>2010-11</td>
<td>NIL</td>
</tr>
<tr>
<td>2011-12</td>
<td>5,00,000</td>
</tr>
<tr>
<td>2012-13</td>
<td>2,00,000</td>
</tr>
<tr>
<td>2013-14</td>
<td>NIL</td>
</tr>
<tr>
<td>2014-15</td>
<td>NIL</td>
</tr>
<tr>
<td>2015-16</td>
<td>1,00,000</td>
</tr>
<tr>
<td>2016-17</td>
<td>NIL</td>
</tr>
<tr>
<td>2017-18</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Can the assessee explain the unexplained investments out of the above intangible additions? What is the consequence if he can do so?

**Answer:**

By virtue of the Supreme Court's decision in *Anantharam Veerasinghaiah & Co.*, the assessee can explain the investments of Rs. 10 lakhs in Assessment Year 2020-21 out of the intangible additions made in the past assessment years. But by doing so, Explanation 2 to section 271(1)(c) [similar to section 270A(4) and 270(5)] will be attracted and Rs. 10 lakhs will be treated as the concealed income of past assessment years in the following manner:

<table>
<thead>
<tr>
<th>Assessment Year</th>
<th>Concealed Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>1,00,000</td>
</tr>
<tr>
<td>2012-13</td>
<td>2,00,000</td>
</tr>
<tr>
<td>2011-12</td>
<td>5,00,000</td>
</tr>
<tr>
<td>2009-10</td>
<td>1,00,000</td>
</tr>
</tbody>
</table>
Penalty for concealment of income as per the law relevant in above assessment years shall be levied.

**Illustration 2:**
Suppose in Illustration 1 above, further unexplained investments of Rs. 12 lakhs are found in assessment year 2021-22 also, can the assessee explain them out of the intangible additions made in the past assessment years.

**Answer:**
The assessee can explain the investment of Rs. 9 lakhs out of the intangible additions made in Assessment Year 2008-09. As per section Explanation 2 to section 271(1)(c) [similar to section 270A(4) and 270(5)], Rs. 9 lakhs shall be deemed as concealed income of Assessment Year 2008-09 for which penalty proceedings can be initiated at any time. Rs. 3 lakhs is the misreported income of Assessment Year 2021-22, on which the assessee shall pay:

(a) tax,
(b) interest under section 234A/234B/234C, and
(c) penalty for misreporting of income under section 270A @200%

**ANALYSIS OF SECTION 270A(6) - CERTAIN ADDITIONS/DISALLOWANCES NOT REGARDED AS UNDER-REPORTED INCOME OR MISREPORTED INCOME**

Section 270A(6) provides that the following shall not be treated as under-reported income/ mis-reported income and therefore no penalty under section 270A shall be levied.

1. **BONAFIDE EXPLANATION [CLAUSE (a)]**
   It provides:
   - Under-reported income shall not include amount of income for which the assessee offers an explanation:
   - The specified authority is satisfied about the explanation that it is bona fide; and
   - The assessee has disclosed all the material facts to substantiate the explanation.
   There is possible where disallowance/addition in made by the Revenue Authorities but assessee proves that he has claimed the deduction/ exemption on the basis of a High Court Judgment.

2. **UNDER-REPORTED INCOME ESTIMATED, WHERE ACCOUNTS CORRECT AND COMPLETE [CLAUSE (b)]**
   It provides that where:
   - amount of under-reported income is estimated,
   - the accounts are correct and complete to the satisfaction of the specified authority, and
   - the method employed does not enable proper determination of income,
This is possible where additions are made based on estimation of gross profit, as against the declared profits, without rejecting the books of account and/or without finding that the audited financial statements of the assessee are not true and correct. In such a case, the difference attributable to estimated amount of gross profit shall be excluded from the underreported income.

3. **ENHANCEMENT OF THE ESTIMATE OF THE ASSESSEE RESULTING IN UNDERREPORTING OF INCOME [CLAUSE (c)]**
   It contemplates a situation where:
   - an assessee estimated an amount in respect of a claim or disallowance;
   - such claim is reduced or disallowance is increased in the assessment;
   - such difference in the estimate shall not be considered as amount of income underreported; and
   - the assessee has disclosed all the facts material to the addition or disallowance.
   Such a case can arise where, to illustrate personal expenditure is estimated at a certain amount in respect of travel or conveyance or the like expenditure and accordingly disallowed in computing the returned income, which is accepted in the intimation. In the assessment, the disallowance is increased or deduction decreased. The incremental disallowance or reduction shall not be treated as underreported income provided all the facts necessary in relation to the same are disclosed.

4. **UNDER-REPORTED INCOME REPRESENTED BY TRANSFER PRICING ADJUSTMENT [CLAUSE (d)]**
   It contemplates a situation where:
   - Addition is made to the total income returned on account of adjustment in arm's length price determined by the Transfer Pricing Officer;
   - the assessee has maintained information and documents prescribed under section 92D of the Act;
   - the assessee has declared the international transaction in Transfer Pricing Audit Report
   - the assessee has disclosed all the material facts relating to the transaction, in such a case, the addition will not be regarded as under-reported income.

5. **UNDISCLOSED INCOME [CLAUSE (e)]**
   In respect of undisclosed income found in case of search & seizure, in the Act, there is a separate provision for levy of penalty, namely, section 271AAB. The undisclosed income referred in the said provision should be excluded from the amount of under-reported income.

**ANALYSIS OF SECTION 270A(8) & 270A(9)**
200% of amount of tax on under-reported income shall be the penalty where under-reported income is in consequence of misreporting of income.
The following cases are the cases of misreporting of income:
(a) **Misrepresentation or suppression of facts**
   i. Cash deposits made and source of income not disclosed. It amounts to misrepresentation or suppression of facts.
   ii. STCG shown as LTCG to claim lower rate of tax.
   iii. Capital gains claimed exempt although they are not exempt.
   iv. Deduction under section 43B claimed by declaring the amount has been paid by due date although amount paid after due date.

(b) **Failure to record investments in the books of account**
    Assessing Officer discovers unexplained investment e.g. immovable property, FDR, Jewellery etc. which are not there in books of account.

(c) **Claim of expenditure not substantiated by any evidence**
   - Bogus bills of expenditure.
   - Claim of expenditure without Bills.

(d) **Recording of any false entry in the books of account**
   - Cash deposits made and declared to be current year income
   - Bogus expenditure
   - Income received shown as advances
   - Loans given shown as expenses.

(e) **Failure to record any receipt in books of account having a bearing on total income**
    Sales not accounted.

(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 Transfer Pricing apply.

**ANALYSIS OF SECTION 270A(11)**
Suppose unexplained investments are found in Assessment Year 2020-21 of Rs. 1 crore. The said investments are not recorded in books of account. The Assessing Officer levies penalty @ 200% under section 270A for Assessment Year 2020-21 on additions made on account of unexplained investment.

Now assessee records these investments in books of account in Assessment Year 2021-22. Now no penalty under section 270AA shall be levied in Assessment Year 2021-22 as per section 270A(11).

**SECTION 270AA: IMMUNITY FROM IMPOSITION OF PENALTY, ETC.**
(INSERTED BY FINANCE ACT, 2016)

(1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely: —
   (a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 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.

(3) The Assessing Officer 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 clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 286CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer 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 under section 246A or an application for revision under section 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.

**ANALYSIS OF SECTION 270AA**

For Assessment Year 2020-21, the Assessing Officer passes assessment order under section 143(3) on 01.01.2021. Notice of demand under section 156 and assessment order under section 143(3) is served on the assessee on 01.01.2021. The Assessing Officer also initiates penalty proceeding under section 270A on 01.01.2021. A demand of Rs. 15,00,000 (Rs. 12,00,000 Tax and Rs. 3,00,000 interest) has been created on the assessee.

Now assessee can make an application to Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of prosecution proceeding under section 276C and under section 276CC if:

- Assessee pays the demand of Rs. 15,00,000 (Tax plus interest) by 31.01.2021.
- Assessee does not file an appeal to CIT(A) against the order under section 143(3).
- Assessee makes application as aforesaid on or before 29.02.2021.

Assessing Officer shall by 31.03.2021 make an order of acceptance or rejection of application made under section 270AA.

**Key Notes:**
1. The order of rejection passed under section 270AA is final and no appeal/revision is possible against such order.
2. Where application of the assessee has been admitted, i.e. he gets immunity from penalty and prosecution, then assessee cannot file an appeal/revision application under section 264 against the order of assessment/reassessment.

3. Suppose the assessee made application on 29.02.2021 and the application of the assessee is rejected by an order under section 270AA, dated 31.03.2021 and the said order is received by the assessee on 02.04.2021. Now as per amendment by Finance Act, 2016 in section 249, the period beginning from date of application i.e. 29.02.2021 to the date on which rejection order under section 270AA is received by the assessee i.e. 02.04.2021, shall be excluded from the period of limitation for filing appeal to CIT(Appeals). Therefore, appeal can be filed to CIT(Appeals) by 31.01.2021 + (29.02.21 to 02.04.2021) 34 days. = 5th March, 2021. This is an ERROR IN LAW.

4. The Assessing Officer cannot grant immunity from penalties and prosecution under section 270AA where penalty proceedings have been initiated on account of misreporting of income i.e. on account of 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 books of account having a bearing on total income; or
   (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 of Transfer Pricing apply.

NEW LAW OF PENALTY FOR CONCEALMENT OF INCOME IN CASE OF SEARCH & SEIZURE (AS INTRODUCED BY FINANCE ACT 2012)

SECTION 271AAB

(1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—
   (a) a sum computed at the rate of 30% of the undisclosed income of the specified previous year, if such assessee—
      (i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;
      (ii) substantiates the manner in which the undisclosed income was derived; and
      (iii) on or before the specified date—
         (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and
Penalties & Prosecutions

23.21

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of 60% of the undisclosed income of the specified previous year, if it is not covered by clauses (a) above.

(2) No penalty under the provisions of section 270A or 271(1)(c) shall be imposed upon the assessee in respect of the undisclosed 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.

Explanation.—For the purposes of this section,—

(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 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 date of search; or

(ii) in which search was conducted;

(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 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.
ANALYSIS OF SECTION 271AAB

Search is conducted on 2nd August, 2019. Cash of Rs. 3 crores and jewellery of Rs. 4 crores are seized. The due date of filing of return is 30th September of the Assessment year and the Assessing Officer issued notice under section 153A on 4th August, 2019 to file the returns of income under section 153A for Assessment Year 2014-15 to Assessment year 2019-20 on before 5th September, 2019. Assessee has not filed the return of income for Assessment Year 2019-20 upto 1st August, 2019.

1. Now "Specified Previous year" means:
   (i) Previous year 31.03.2019 i.e. the previous year which has ended before the date of search but the due date of furnishing the return of Income under 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 said previous year before the date of search.
   (ii) Previous year 31.03.2020 i.e. the previous year in which search is conducted.

2. Now "Specified Date" means:
   (i) For previous year 31.03.2019 i.e. Assessment Year 2019-20 ➔ 5th September, 2019, i.e. the date on which the period specified in the notice issued under section 153A for furnishing the return of income expires.
   (ii) For previous year 31.03.2020 i.e., Assessment Year 2020-21 ➔ 30th September, 2020 i.e. the due date of furnishing the Return of Income under section 139(1).

3. Let us say that out of cash of Rs. 3 crores & Jewellery of Rs. 4 crores seized, cash of Rs. 75 lakh and jewellery of Rs. 1.20 crores was recorded in regular books of account of previous year 31.03.2019 and/ or previous year 31.03.2020 on or before 02.08.2019. Then, cash of Rs. 75 lakhs and jewellery of Rs. 1.20 crores shall not be treated as undisclosed income of previous year 31.03.2019 and / or 31.03.2020 and no penalty of concealment under section 271AAB or under section 270A shall be levied.

4. Regarding remaining cash of Rs. 2.25 crores and jewellery of Rs. 2.80 crores (which is not recorded in regular books of account before 2.8.2019 of Previous Year 31.3.2019 and/ or 31.3.2020), if the assessee proves that cash of Rs. 2.25 crores and jewellery of Rs. 2.80 crores is but of the income of previous year 31.3.2019 and/ or previous year 31.03.2020 in the following manners:
   - He makes statement under section 132(4) in the course of search and admits the undisclosed income of Rs. 2.25 crores and Rs. 2.80 crores and specifies the manner in which such income has been derived.
   - And proves the manner in which undisclosed income has been derived.
   - And pays tax and interest in respect of undisclosed income of previous year 31.03.2019 on or before 5.9.2019 and of previous year 31.3.2020 on or before 30.09.2020.
then penalty of 30% on Rs. 5.05 crores i.e., Rs. 1,51,50000 shall be levied under section 271AAB. This is in addition to income tax and interest on the said income. Penalty under section 270A shall not be levied.

5. If assessee is not able to admit the concealed income and substantiate it in the statement given under section 132(4) but assessee declares such income in the return of previous year 31.03.2019 and / or previous year 31.03.2020, then there shall be a penalty of 60% of Rs. 5.05 crores i.e. of Rs. 3.30 crores. This is in addition to income tax and interest on the said income. Penalty under section 270A shall not be levied.

6. If assessee does not admit / disclose the income in manner given in para 4 and 5 above and A.O. assesses the above income in previous year 31.03.2019 / 31.03.2020, then assessee shall pay penalty of 60% of undisclosed income. Penalty under section 270A shall not be levied.

**AMENDMENT MADE BY FINANCE ACT 2017:**

**PENALTY ON PROFESSIONALS FOR FURNISHING INCORRECT INFORMATION IN STATUTORY REPORT OR CERTIFICATE [SEC. 271 J]**

In order to ensure that the person furnishing report or certificate undertakes due diligence before making such certification, section 271J has been inserted (with effect from April 1, 2017). This section provides that if a chartered accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act (or the rules made thereunder), the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10,000 for each such report or certificate by way of penalty. If, however, the concerned person proves that there was reasonable cause for the aforesaid failure, referred to above, then penalty shall not be imposable under section 271J.

**SECTION 274: PROCEDURE FOR IMPOSITION OF PENALTY**

(1) No order imposing a penalty 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 shall be made -

(a) by the Income-tax Officer, where the penalty exceeds Rs. 10,000;

(b) by the Assistant Commissioner/ Deputy Commissioner where the penalty exceeds Rs. 20,000;
except with the prior approval of the Joint Commissioner.
SECTION 273A: POWER TO REDUCE OR WAIVE PENALTY IN CERTAIN CASES

1. **Section 273A(1):** Notwithstanding anything contained in this Act, the Commissioner may, in his discretion, reduce or waive the amount of penalty imposed or imposable under section 271(1)(c) or 270A of the Act.

2. **Section 273A(1):** This power can be exercised by the Commissioner on his own motion or on an application made by the assessee.

3. **Section 273A(1):** The Commissioner shall exercise this power if he is satisfied that
   (a) the assessee has cooperated in any enquiry relating to the assessment of his income and
   (b) the assessee has either paid or made satisfactory arrangements for the payment of tax and interest payable in respect of the relevant assessment year/years and
   (c) the assessee has prior to detection by the Assessing Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars.

**ANALYSIS OF SECTION 273A(1)**

The objective of introducing section 273A(1) is to encourage voluntary disclosure of undisclosed incomes. The intent of section 273A(1) is to encourage those taxpayers to disclose the undisclosed income where they have not been caught by the department and wants to become honest. Section 273A affords an opportunity to such assessees to declare their incomes and avail waiver of penalties for concealment from the CIT.

**Illustration:**
It after demonetization of currency, assessee deposits cash currency (Rs. 500 / Rs. 1000) in bank account from 9.11.2016 to 30.12.2016 say Rs. 10 crores and voluntarily discloses this income in his return of income of Previous Year 31/3/2017, then penalty for misreporting of income under section 270A amounting to 200% of tax on 10 crores shall be levied. This is because he has misreported or suppressed the facts of income of Rs. 10 crores and he is not able to explain satisfactorily the source of Rs. 10 crores. Assessee cannot seek waiver under section 273A(1) because disclosure is NOT VOLUNTARY AND IN GOOD FAITH. He has no alternative but to deposit the money in bank account consequent to demonetisation. Assessee also cannot seek waiver under section 273A(4) since he has enough money to pay tax and penalty and no genuine hardships arise to him on payment of penalty.

4. **Section 273A(2):** No order reducing or waiving the penalty under section 273A(1) shall be made by the Commissioner without the approval of Chief Commissioner or Director General, as the case may be, in a case where the amount of income in respect of which penalty is imposed or imposable for the relevant assessment year, or, where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years, exceeds Rs. 5,00,000
5. **Section 273A(3):** Where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after making of such order. In other words, the order under section 273A(1) can be made in favour of the assessee once in his life time.

6. **Section 273A(4):** The Commissioner may, on an application made by the assessee and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee under the Act if he is satisfied that:
   
   (a) to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case and
   
   (b) the assessee has cooperated in any enquiry relating to assessment or any proceeding for the recovery of any amount due from him.

   **NOTE:** Where the amount of any penalty or where the application relates to more than one penalty, the aggregate amount of such penalties exceed Rs. 1 lakh, no order under section 273A(4) shall be passed by the Commissioner without the prior approval of Chief Commissioner or Director General, as the case may be.

7. **Section 273A(4A):** The order under sub-section (4), either accepting or rejecting the application in full or in part, shall be passed within a period of 12 months from the end of the month in which the application under the said sub-section is received by the Commissioner.

   Provided that no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.  

   *(Added by Finance Act, 2016)*

8. The order under section 273A is a final order and no appeal is possible against such order.

**IMPORTANT KEY NOTES ON SECTION 273A:**

1. **Anwar Ali:** The power conferred on the Commissioner under section 273A is a quasi-judicial power. It should be exercised judiciously and not arbitrarily. The order under section 273A should be a "Speaking Order", i.e., it should state the reasons as to why the relief has not been granted to the assessee or why it has been restricted to a specified percentage as against the claim of the assessee for 100% waiver. An order which is not a speaking order is void ab-initio.

2. There is no time limit for passing an order under section 273A(1). However Finance Act, 2016 prescribes time limit of 12 months for passing order under section 273A(4).

3. Application under section 273A can be made for a number of Assessment Years.
4. If penalty has been paid by the assessee, then also the CIT can waive/ reduce the penalty under section 273A and in such a case, the penalty shall be refunded to the assessee.

5. If income is detected in a raid, i.e. search and seizure, then, benefit under section 273A is not applicable.

6. If conditions referred to in 273A are satisfied then the CIT is duty bound to grant the relief under section 273A.

7. Where the applications for waiver under section 273A were made on different dates for different Assessment Years by the assessee, then the CIT must consider all the applications together and pass an order under section 273A in respect of all the applications. The CIT will not be justified in considering the first application only and rejecting the subsequent applications.

8. CIT under section 273A cannot waive or reduce interest under sections 234A, 234B and 234C.

9. Section 279(1A) provides that the prosecution proceedings shall be dropped for an assessment year in respect of which penalty under section 271(1)(c) has been reduced or waived by an order passed by the CIT under section 273A.

10. The order under section 273A is a final order and no appeal is possible against it. However, the assessee can challenge the order passed under section 273A in the High Court through a WRIT PETITION. Thereafter, a SPECIAL LEAVE PETITION can be filed to the Supreme Court. If the CIT has not acted in accordance with the law, the Courts will quash the order passed under section 273A and direct the CIT to make an order under section 273A in accordance with the law.

11. CBDT Circular: "Genuine Hardships" referred to in section 273A(4) should exist at the time at which the application is made by the assessee and should also exist even at the time of passing of an order under section 273A(4) by the CIT.

**COMPARISON BETWEEN SECTION 273A(1) AND SECTION 273A(4)**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Section 273A(1)</th>
<th>S. No.</th>
<th>Section 273A(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CIT can waive/ reduce penalty under section 271(1)(c) or 270A</td>
<td>1.</td>
<td>CIT can waive/ reduce any penalty including penalty under section 271(1)(c) or 270A.</td>
</tr>
<tr>
<td>2.</td>
<td>CIT can act suo-moto or an application made by the assessee.</td>
<td>2.</td>
<td>CIT can act on an application made by the assessee.</td>
</tr>
<tr>
<td>3.</td>
<td>Approval of Chief CIT or Director General required if the concealed Income exceeds Rs. 5 Lakhs.</td>
<td>3.</td>
<td>Approval of Chief CIT or Director General required if penalties exceed Rs. 1 Lakh.</td>
</tr>
<tr>
<td>4.</td>
<td>Condition to be fulfilled - Cooperation</td>
<td>4.</td>
<td>Condition to be fulfilled - Genuine hardships</td>
</tr>
</tbody>
</table>
**Penalties & Prosecutions**

**Penalties & Prosecutions**

23.27

- Payment
- True & Full disclosure

- Cooperation

<table>
<thead>
<tr>
<th></th>
<th>Penalty if paid shall be refunded on waiver.</th>
<th>No waiver possible if penalty has been paid.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>5.</td>
<td>6.</td>
</tr>
<tr>
<td>6.</td>
<td>No time limit for passing order under section 273A(1).</td>
<td>Order under section 273A(4) has to be passed within 12 months from the end of the month in which application is received by CIT.</td>
</tr>
</tbody>
</table>

**PENALTIES**

**Disclaimer:**
This is just for reference purpose of students. By far you would have realized that. It is practically impossible to remember so many things for exam. On this note we are concluding that following penalties cannot be by hearted. Further it is pertinent to note that such individual meagre penalties are not tested by ICAI in exams regularly.

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of default</th>
<th>Penalty leviable</th>
</tr>
</thead>
<tbody>
<tr>
<td>140A(3)</td>
<td>Failure to pay wholly or partly (a) Self-assessment tax, or (b) interest, or (c) both under section 140A(1).</td>
<td>Such amount as Assessing Officer may impose but not exceeding tax and interest in arrears. [Penalty under section 221(1) for being an assessee in default].</td>
</tr>
<tr>
<td>221(1)</td>
<td>Default in making payment of tax or interest or any demand.</td>
<td>Such amount as Assessing Officer may impose but not exceeding amount of demand in arrears [Penalty under section 221(1) for being an assessee in default].</td>
</tr>
<tr>
<td>271(1)(c)</td>
<td>Concealment of particulars of income or furnishing of inaccurate particulars of income. (upto Assessment Year 2016 – 17)</td>
<td>Minimum: 100% of tax sought to be evaded. Maximum: 300% of tax sought to be evaded.</td>
</tr>
<tr>
<td>270A (Finance Act, 2016)</td>
<td>- Under Reporting of income - Misreporting of income (From Assessment Year 2017-18)</td>
<td>50% of tax on under – reported income 200% of tax on misreported income</td>
</tr>
<tr>
<td>271A</td>
<td>Failure to keep, maintain, or retain books of account, documents, etc., as required by section 44AA or failure to retain such books of accounts or documents for the period specified in section 44AA.</td>
<td>Rs. 25,000</td>
</tr>
<tr>
<td>271AA</td>
<td>(1) In respect of international transaction or specified domestic transaction: (i) Failure to keep and maintain any such information and document as required by section 92D(1) or section</td>
<td>2% of the value of each international transaction or specified domestic transaction entered into by such person</td>
</tr>
<tr>
<td>Rule</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>271AAB</td>
<td>Undisclosed income of the previous year in which search has been initiated or previous year whose due date of filing of ROI has not expired before the date of search.</td>
<td>30% of the undisclosed income or 60% of the undisclosed income</td>
</tr>
<tr>
<td>271B</td>
<td>Failure to get accounts audited or furnish a report of audit as required under section 44AB.</td>
<td>½ % of total sales, turnover, or gross receipts, etc., or Rs. 1,50,000, whichever is less.</td>
</tr>
<tr>
<td>271BA</td>
<td>Failure to furnish a report from an accountant as required by section 92E.</td>
<td>Rs. 1,00,000</td>
</tr>
</tbody>
</table>
| 271C | - Failure to deduct the whole or part of tax deducted at source tax at source (TDS)  
- Failure to pay the whole or part of Corporate Dividend Tax under section 115-O.  
- Failure to pay the whole or part of tax on winnings from lotteries, crossword puzzles etc. where such winnings are wholly or partly in kind under second proviso to section 194B. | Amount equal to tax not deducted or paid. |
<p>| 271CA | Failure to collect the whole or any part of the tax as required by or under the provisions of Section 206C. | Amount of tax, which such person failed to collect. |
| 271D | Taking or accepting certain loans and deposits or specified sum in contravention of the provisions to section 269SS. | Amount equal to loan or deposit or specified sum taken or accepted. |
| 271E | Repaying any loan or deposit or specified advance specified in section 269T in contravention of its | Amount equal to loan or deposit or specified advance repaid. |</p>
<table>
<thead>
<tr>
<th>Provision No.</th>
<th>Description</th>
<th>Penalty Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>271FA</td>
<td>Failure to furnish Statement of Financial Transaction or Reportable Account (SFTRA) [Earlier known as Annual Information Return] as required under section 285BA within the time prescribed under section 285BA.</td>
<td>Rs. 500 per day for everyday during which the failure continues. Rs. 1,000/- per day from the date assessee was asked to file SFTRA by a notice under section 285BA(5).</td>
</tr>
<tr>
<td>271FAB</td>
<td>Failure to furnish statement or information or document by an eligible investment fund within the time prescribed under section 9A.</td>
<td>Rs. 5,00,000</td>
</tr>
<tr>
<td>271G</td>
<td>Failure to furnish information or documents in pursuance of a notice under section 92D(3).</td>
<td>2% of the value of the international transaction or specified domestic transactions for each such failure.</td>
</tr>
<tr>
<td>271H</td>
<td>(i) Failure to deliver the quarterly returns of TDS / TCS within the time prescribed. (ii) Furnishing incorrect information in the quarterly returns of TDS/TCS.</td>
<td>Penalty minimum Rs. 10,000 and maximum up to Rs. 1,00,000. Note: No penalty for failure to deliver quarterly returns of TDS/TCS in time, if quarterly return submitted before the expiry of one year from time prescribed and Fees under section 234E and interest under section 201(1A) paid.</td>
</tr>
<tr>
<td>271-I</td>
<td>Failure to furnish information or furnishing inaccurate information under section 195(6).</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td>272A(1)</td>
<td>(a) Refusal to answer any question put to by an Income tax Authority. (b) Refusal to sign any statement made in the course of proceedings under the Act. (c) Failure to attend or produce books of account or documents required under a summon issued under section 131. (d) Failure to comply with a notice under section 142(1) or section 143(2) or failure to comply with a direction issued under section 142(2A).</td>
<td>Rs. 10,000 for each failure or default.</td>
</tr>
<tr>
<td>272A(2)</td>
<td>(a) Failure to give notice of discontinuance of business or profession u/s 176. (b) Failure to furnish in due time the information required under furnishing of TDS/TCS certificate.</td>
<td>Rs. 100 for every day during which the failure continues. However, in respect of penalty for failures in relation to declaration mentioned in section 197A, furnishing of TDS/TCS certificate,</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Penalty</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>133(c)</td>
<td>Failure to furnish the return of income under section 139(4A) or under section 139(4C) or to furnish within the time allowed therein.</td>
<td>Returns under section 206 and 206C and 200(3) and 206C(3A), the penalty shall not exceed amount of TDS/TCS.</td>
</tr>
<tr>
<td>197A(d)</td>
<td>Failure to deliver in due time a copy of declaration in section 197A.</td>
<td></td>
</tr>
<tr>
<td>139(4A)</td>
<td>Failure to furnish TDS or TCS certificate.</td>
<td></td>
</tr>
<tr>
<td>139(4C)</td>
<td>Failure to deliver or cause to be delivered a statement within the time as may be prescribed under section 200(2A) or section 206C(3A)</td>
<td></td>
</tr>
<tr>
<td>139(4D)</td>
<td>Failure to furnish the return of income under section 139(4A) or under section 139(4C) or to furnish within the time allowed therein.</td>
<td>Returns under section 206 and 206C and 200(3) and 206C(3A), the penalty shall not exceed amount of TDS/TCS.</td>
</tr>
<tr>
<td>133B</td>
<td>Failure to comply with section 133B</td>
<td>Not exceeding Rs. 1,000</td>
</tr>
<tr>
<td>139A</td>
<td>Failure to quote permanent account number required; or failure to intimate such number as required; or to quote or intimate a number which is false and which he either knows or believes to be false or does not believe to be true.</td>
<td>Rs. 10,000</td>
</tr>
<tr>
<td>203A(i)</td>
<td>Failure to obtain Tax Deduction and collection Account Number (TDCAN).</td>
<td>Rs. 10,000 for each failure / default.</td>
</tr>
<tr>
<td>203A(ii)</td>
<td>Failure to quote TDCAN in the challans, certificates, returns of TDS and TCS and prescribed documents.</td>
<td></td>
</tr>
<tr>
<td>203A(iii)</td>
<td>If a person is required to quote &quot;tax deduction account number&quot; or, as the case may be, &quot;tax collection account number&quot; or &quot;tax deduction and collection account number&quot;, quotes a number which is false, and which he either knows or believes to be false or does not believe to be true.</td>
<td>Rs. 10,000 for failure/ default</td>
</tr>
</tbody>
</table>
Where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the sum so credited may be charged to tax as the income of that previous year (i.e., the previous year in the books of which such sum is first credited).

The following provisos shall be inserted in section 68 by the Finance Act, 2012:

Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in section 10(23FB).

Where in the previous year relevant to the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the value of investments may be deemed to be the income of such previous year (i.e., the previous year in which investments are made).

Where in any previous year, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or other article is not recorded in the books of account, if any, maintained by him, and the assessee offers no explanation about the nature and source of acquisition of such assets or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee of such previous year (i.e., the previous year in which he is found the owner).

Where in any previous year, the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by him, and the assessee offers no explanation about such excess amount or the
explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the excess amount may be deemed to be the income of the assessee for such previous year.

For example, Mr. X has purchased gold and amount recorded in the books is Rs. 1 lakh. But according to the Assessing Officer, the gold has been purchased for Rs. 3 lakhs being its market value. Then 2 lakhs will be the income of the assessee under this section of the previous year in which gold was purchased.

SECTION 69C: UNEXPLAINED EXPENDITURE

Where in any previous year, an assessee has incurred any expenditure (e.g., marriage/party) and he offers no explanation about the source of such expenditure or part thereof, or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such expenditure or part thereof, may be deemed to be the income of the assessee of such previous year.

The Finance Act, 1998 has made the following amendment in section 69C:

"Notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

This amendment has been made to over-rule certain judgements wherein it was held that the unexplained expenditure not recorded in the books of account but actually incurred for business purposes shall be allowed as deduction. The effect of these judgements was that if an assessee incurred some business expenditure out of his black money, then such expenditure was deemed as income under section 69C and the same was also allowable as business expenditure and the net result was that nothing was added to the income of the assessee. The above amendment nullifies these judgements and now such expenditure shall be deemed as income and shall not be allowed as a deduction.

Note: The judgement of Supreme Court in SUN ENGINEERING PVT. LTD. which provides that expenditure incurred to earn the escaped income can be allowed from the escaped income is not applicable in this case since section 69C has been specifically amended to provide that the unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction.

SECTION 69D: AMOUNT BORROWED OR REPAID ON HUNDI

Where any amount is borrowed on a hundi from a person, or any amount due thereon is repaid to any person, otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid. Such income shall be charged to tax in the previous year in which the amount was borrowed or repaid, as the case may be. However, in case the amount borrowed under this section has been deemed as income of the borrower, then the borrower shall not be liable to be assessed again in respect of such amount under this section on repayment of such amount.
Suppose Mr. A borrows Rs. 10,00,000 on hundi from Mr. B in cash on 1.1.2019. Rs. 10,00,000 will be deemed to be the income of Mr. A for Assessment Year 2019-20. Now, if Mr. A repays the hundi in cash on 30.4.2019 of Rs. 10,00,000, then it shall not be again deemed to be his income under this section.

SECTION 115BBE: TAX ON INCOME REFERRED TO IN SECTION 68 OR SECTION 69 OR SECTION 69A OR SECTION 69B OR SECTION 69C OR SECTION 69D (INSERTED BY FINANCE ACT, 2012)

(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 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) or (b) of sub-section (1).

KEY NOTE:
Effective Tax Rate = 60% + 25% surcharge = 75% + 4% = 78%.

Sec 271AAC: Penalty in Other Cases:

(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)
No person shall take or accept from any other person (herein after called "depositor"), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee draft or by use of electronic clearing system through a bank account or such other electronic mode as may be prescribed, (Finance Act (No.2) 2019).

If, (a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit accepted sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is Rs. 20,000 or more.

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, –

(a) the government

(b) any banking company, post office saving bank or cooperative bank,

(c) any corporation established by a Central, State or Provincial Act.

(d) any Government company company as defined in section 2(45) of the Companies Act, 2013;

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.
**Explanation.** —For the purposes of this section, —

(i) "loan or deposit" means loan or deposit of money;

(ii) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

**ANALYSIS**

Section 269SS, as substituted, applies to cash received in relation to transfer of an immovable property. It does not matter whether immovable property being transferred is held as capital asset or as stock-in-trade.

The limit of Rs. 20,000 will have to be reckoned person-wise.

The provisions of this section shall not apply to any loan or deposit or specified sum where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under the Income tax Act. (i.e. neither of them have any income under any head of income. Even one of them has income of Rs. 4,00,000 from P/G/B/P, then this exception is not applicable).

For example, an agriculturist farmer A agrees to sell his land to agriculturist farmer B. A receives cash advance of Rs. 50,00,000. Section 269SS is not attracted if both A and B do not have any income chargeable to tax under the Income tax Act. However, section 269SS will be attracted even if one of them has say income of Rs. 4,00,000 from Profits and Gains of Business or Profession chargeable to tax.

**Illustration:**

<table>
<thead>
<tr>
<th>Situations</th>
<th>Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Mr. A takes loan of Rs. 19,000 in cash from Mr. B</td>
<td>Section 269SS not attracted</td>
</tr>
<tr>
<td>(ii) Mr. A takes loan of Rs. 20,000 in cash from Mr. B</td>
<td>Section 269SS attracted. Mr. A has to pay penalty of Rs. 20,000.</td>
</tr>
<tr>
<td>(iii) Mr. A on 1-1-2017 takes a loan of Rs. 15,000 in cash from Mr. B and a loan of Rs. 19,000 in cash from Mr. C</td>
<td>Section 269SS not attracted</td>
</tr>
<tr>
<td>(iv) Mr. A on 1-1-2017 takes a loan of Rs. 15,000 in cash from Mr. B. Mr. A repays loan of Rs. 15,000 in cash on 10-1-2017. Mr. A again takes a loan of Rs. 19,000 in cash from Mr. B on 1-2-2017</td>
<td>Section 269SS not attracted</td>
</tr>
<tr>
<td>(v) Mr. A on 1-1-2017 takes a loan of Rs.</td>
<td>Section 269SS attracted. Mr. A has to pay penalty of Rs. 20,000.</td>
</tr>
<tr>
<td>(vi)</td>
<td>Mr. A on 1-1-2017 agrees to transfer his immovable property to Mr. B for Rs. 1 crore. Mr. A receives advance money of Rs. 10,00,000 by cash.</td>
</tr>
<tr>
<td>(vii)</td>
<td>Mr. A on 1-1-2017 agrees to sell gold to Mr. B for Rs. 1 crore and receives advance money of Rs. 10,00,000 by cash</td>
</tr>
</tbody>
</table>

**SECTION 271D: PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 269SS**

If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit or specified sum taken or accepted. The penalty shall be imposed by Joint Commissioner.

**SECTION 269T: MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS**

No Person including a banking company shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee draft drawn in the name of the person who has made the loan or deposit or paid the specified advance or by use of electronic clearing system through a bank account or such other electronic mode as may be prescribed, if-

(a) the amount of the loan or deposit or specified advance together with interest payable thereon is Rs. 20,000 or more; or

(b) the aggregate amount of the loans or deposits held by such person with the branch of a banking company or other person, either in his own name or jointly with any other person on the date of such repayment together with interest if any payable on such loan or deposit is Rs. 20,000 or more. (Therefore, if assessee made a fixed deposit with the bank for Rs. 18,000 and after one year the bank has to repay Rs. 21,000, then the bank cannot pay such amount in cash).
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(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances is Rs. 20,000 or more.

**KEY NOTES:**

1. Where the repayment is by branch of a banking company or cooperative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account with such branch of the person to whom such loan or deposit has to be repaid.

2. Nothing contained in section 269T shall apply to repayment of any loan or deposit or specified sum taken or accepted from:
   (i) Government;
   (ii) any banking company, post office savings bank or co-operative bank;
   (iii) any corporation established by a Central, state or Provincial Act;
   (iv) any Government company

3. "Loan or Deposit" means any loan or deposit of money, which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

4. "Specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

**ANALYSIS**

Illustration 1:
Mr. A has taken a cash loan from B of Rs. 20,000 and repaid the same in cash. Section 269SS and 269T are attracted. Penalty of Rs. 40,000 shall be levied.

Illustration 2:
Mr. X took the advance of Rs. 15,00,000 in cash from Mr. Y on 1-1-2017 against the flat situated at Dwarka. However, the deal could not materialized and later on Mr. X refunded the money to Mr. Y on 31-3-2017 by cash.

Answer:
Section 269T and section 269T attracted Mr. X has to pay penalty of Rs. 15,00,000 + Rs. 15,00,000 = Rs. 30,00,000.
Illustration 3:

<table>
<thead>
<tr>
<th>Situations</th>
<th>Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Mr. A has received a loan of Rs. 1,00,000 on 1-1-2017 from Mr. B by account payee cheque. Mr. A repays in cash on 20-1-2017 the loan to Mr. B of Rs. 10,000.</td>
<td>Section 269T is attracted and Mr. A has to pay penalty of Rs. 10,000.</td>
</tr>
<tr>
<td>(ii) Mr. A agrees to sell his house property to Mr. B and receives Rs. 10,00,000 in cash as advance money on 1-6-2016. The sale agreement is cancelled and Mr. A refunds Rs. 10,00,000 is cash to Mr. B on 31-3-2017.</td>
<td>Section 269SS and section 269T are attracted. A will have to pay penalty of Rs. 20,00,000</td>
</tr>
<tr>
<td>(iii) A house property is registered in the name of Mr. A and Mrs. A jointly. Both agree to sell property to Mr. B on 1-1-2017 and receives advance of Rs. 15,000 each in cash. Now agreement to sell is cancelled and Mr. A returns Rs. 15,000 by cash and Mrs. A return Rs. 15,000 by cheque.</td>
<td>Section 269SS is not attracted. However, section 269T is attracted since the aggregate advance received by Mr. A jointly with Mrs. A exceeds Rs. 20,000. Since Mr. A has paid Rs. 15,000 in cash, he shall have to pay penalty of Rs. 15,000.</td>
</tr>
</tbody>
</table>

**SECTION 271E: PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 269T**

If a person repays any loan or deposit or specified sum referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so repaid. The penalty shall be imposed by Joint Commissioner.

**SECTION 129: CHANGE OF INCUMBENT OF AN OFFICE**

Whenever in respect of any proceeding under this Act, an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

**PROVISO TO SECTION 129**

Provided that the assessee concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

Illustration:
For Assessment Year 2020-21, the case of the assessee was taken up for scrutiny assessment under section 143(3) by Assessing Officer Mr. X.
Mr. X during the course of assessment proceedings from 3rd July 2021 to 30th November 2021 examined the purchase & sales ledger.

The assessment is pending on 01.12.2021 and Mr. X is transferred on that date and new Assessing Officer Mr. Y takes up the case.

Assessee does not demand rehearing. Mr. Y re-examined purchase and sales ledger and this re-examination is done in the period 15.12.2021 to 31.01.2022.

Time period for completion of assessment under section 143(3) = 31.3.2022

Proviso to sec. 129 will apply

Time period for completion of assessment under section 143(3) 31.3.2022 + 48 days (15.12.2021 to 31.01.2022) = 18.04.2022. This is as per Explanation 1 to section 153.

DO NOT READ OTHERWISE YOU WILL GO MAD

Disclaimer:
This is just for reference purpose of students. By far you would have realized that. It is practically impossible to remember so many things for exam. On this note we are concluding that following penalties cannot be by hearted . Further it is pertinent to note that such individual meagre penalties are not tested by ICAI in exams.

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of offence</th>
<th>Minimum period of rigorous imprisonment</th>
<th>Maximum period of rigorous imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>275A</td>
<td>Dealing with seized assets in contravention of the order made under section 132(3) by the officer conducting search</td>
<td>Any period up to 2 years and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>275B</td>
<td>Failure to afford necessary facility to the authorized officer to inspect books of account or other documents as required under section 132(1)(iib)</td>
<td>Any period up to 2 years and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>276</td>
<td>Removal, concealment, transfer or delivery of property to thwart tax recovery</td>
<td>Any period up to 2 years and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>276A</td>
<td>Failure to comply with the provisions of section 178(1), (3) by liquidator of a company</td>
<td>Any period up to 2 years. Imprisonment shall not be less than 6 months unless special</td>
<td>2 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Penalties &amp; Prosecutions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>and adequate reasons are recorded in the judgement of court.</td>
<td></td>
</tr>
<tr>
<td>276B</td>
<td>Failure to pay to the Government's treasury deducted tax at source or tax payable under proviso to section 194B</td>
<td>3 months and fine</td>
<td>7 years and fine</td>
</tr>
<tr>
<td>276BB</td>
<td>Failure to pay to the credit of Central Government tax collected under section 206C</td>
<td>3 months and fine</td>
<td>7 years and fine</td>
</tr>
<tr>
<td>276C(1)</td>
<td>Wilful attempt to evade tax penalty or interest imposable under the Act</td>
<td>If amount sought to be evaded exceeds Rs. 25,00,000: 6 months and fine otherwise 3 months and fine.</td>
<td>If amount sought to be evaded exceeds Rs. 25,00,000: 7 years and fine otherwise 2 years and fine.</td>
</tr>
<tr>
<td>276C(2)</td>
<td>Wilful attempt to evade the payment of any tax penalty or interest.</td>
<td>3 months and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>276CC</td>
<td>Wilful failure to file return of income in time under section 139(1), or in response to notice under section 142(1) or section 148 or section 153A.</td>
<td>If tax sought to be evaded exceeds Rs. 25,00,000: 6 months and fine. In any other case: 3 months and fine. <strong>Note:</strong> No prosecution for failure to furnish the return in due time under section 139(1) if: (i) the return is filed before the expiry of the assessment year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed Rs. 3000.</td>
<td>If tax sought to be evaded exceeds Rs. 25,00,000: 7 years and fine. In any other case: 2 years and fine. <strong>Note:</strong> No prosecution for failure to furnish the return in due time under section 139(1) if: (i) the return is filed before the expiry of the assessment year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed Rs. 3000</td>
</tr>
<tr>
<td>276D</td>
<td>Wilful failure to produce books of account and documents under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A)</td>
<td>Any period upto 1 year and fine</td>
<td>1 year and fine</td>
</tr>
<tr>
<td>277</td>
<td>Making a false statement in verification or delivering a false account or statement</td>
<td>If tax evaded exceeds Rs. 25,00,000: 6 months and fine: otherwise: 3 months</td>
<td>If tax evaded exceeds Rs. 25,00,000: 7 years and fine otherwise: 2 years and fine</td>
</tr>
</tbody>
</table>

**Note:** No prosecution for failure to furnish the return in due time under section 139(1) if: (i) the return is filed before the expiry of the assessment year; or (ii) the tax payable on regular assessment, as reduced by TDS and advance tax does not exceed Rs. 3000.
### Penalties & Prosecutions

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Minimum Period of Rigorous Imprisonment</th>
<th>Maximum Period of Rigorous Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>278</td>
<td>Abetment to make a false statement or declaration relating to any income.</td>
<td>3 months and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>If tax evaded exceeds Rs. 25,00,000:</td>
<td>6 months and fine</td>
<td>7 years and fine</td>
<td></td>
</tr>
<tr>
<td>Otherwise:</td>
<td>3 months and fine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>278A</td>
<td>Punishment for second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278</td>
<td>6 months for every offence</td>
<td>7 years for every offence</td>
</tr>
<tr>
<td>280(1)</td>
<td>Disclosure of particulars by public servants in contravention of Section 138(2) (prosecution to be instituted with the approval of Central Government)</td>
<td>Upto 6 months and fine</td>
<td>6 months and fine</td>
</tr>
</tbody>
</table>

**Section 276C:** Prosecution for concealment or under reporting of income. It provides as follows:

<table>
<thead>
<tr>
<th>Amount of Tax Sought to be Evaded</th>
<th>Minimum Period of Rigorous Imprisonment</th>
<th>Maximum Period of Rigorous Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>If amount of tax sought to be evaded or tax on under reported income is Rs. 25 lakh or less</td>
<td>3 months and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>If amount of tax sought to be evaded or tax on under reported income is more than Rs. 25 lakh</td>
<td>6 months and fine</td>
<td>7 years and fine</td>
</tr>
</tbody>
</table>

### SECTION 276CC: PROSECUTION IN CASE OF WILFUL FAILURE TO FILE RETURN OF INCOME UNDER SECTION 139/148/153A OR IN RESPONSE TO NOTICE UNDER SECTION 142(1)

1. Failure to file ROI within the time allowed in a notice under section 142(1)/148/153A
   - PROSECUTION WILL BE THERE

2. Failure to file ROI within the time allowed under section 139(1)
   - PROSECUTION WILL BE THERE

   **EXCEPTIONS**

   - If ROI filed before the expiry of the relevant AY
     - No prosecution whatever may be the amount of income tax payable.

   - If ROI filed after the expiry of the relevant AY
     - Tax on Income Assessed
       - Less: TDS/TCS
       - Less: Advance tax
       - Balance Rs. 3,000 or less
       - NO PROSECUTION
### AMENDMENT MADE BY FINANCE ACT 2018:
Section 276CC provides that if a person wilfully fails to furnish in due time the return of income which he is required to furnish, he shall be punishable with imprisonment for a term, as specified therein, with fine.

**Amendment** - Proviso to section 276CC provides that a person shall not be proceeded against under the said section for failure to furnish return if the tax payable by him on the total income determined on regular assessment (as reduced by advance tax/TDS) does not exceed Rs. 3,000.

This proviso has been amended (with effect from April 1, 2018) so as to provide that this proviso will not be applicable in the case of a company.

### AMENDMENT MADE BY FINANCE ACT (NO.2) 2019:
**Rationalisation of the provisions of section 276CC**
The existing provisions of section 276CC of the Act, inter alia, provide that prosecution proceedings for failure to furnish returns of income against a person shall not proceeded against, for failure to furnish the return of income in due time, if the tax payable by such person, not being a company, on the total income determined on regular assessment does not exceed three thousand rupees. The existing provisions do not provide for taking into account tax collected at source and self-assessment tax for the purposes of determining the tax liability.

Since the intent of said provision has always been to take into account pre-paid taxes, while determining the tax payable, it is proposed to amend the said section so as to make the legislative intention clear and to include the self-assessment tax, if any, paid before the expiry of the assessment year, and tax collected at source for the purpose of determining tax liability.

Further, in order to rationalise the existing threshold limit of tax payable under said section, it is further proposed to amend the said section so as to increase the threshold of tax payable from the existing rupees three thousand to rupees ten thousand.

These amendments will take effect from 1st April, 2020 and will, accordingly, apply in relation to assessment year 2020-21 and subsequent assessment years.

### SECTION 278B: OFFENCES BY COMPANIES

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

<table>
<thead>
<tr>
<th>Amount of Tax Sought to be evaded</th>
<th>Minimum period of rigorous imprisonment</th>
<th>Maximum period of rigorous imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>It amount of tax sought to be evaded is Rs. 25 lakh or less</td>
<td>3 months and fine</td>
<td>2 years and fine</td>
</tr>
<tr>
<td>If amount of tax sought to be evaded is more than Rs. 25 lakh</td>
<td>6 months and fine</td>
<td>7 years and fine</td>
</tr>
</tbody>
</table>
Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate, and includes—
   (i) a firm; and
   (ii) an association of persons or a body of individuals whether incorporated or not.

(b) "director", in relation to—
   (i) a firm, means a partner in the firm;
   (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

SECTION 278C: OFFENCES BY HINDU UNDIVIDED FAMILIES

(1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
SECTION 279: PROSECUTION TO BE AT INSTANCE OF CHIEF COMMISSIONER OR COMMISSIONER

(1) A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278 except with the previous sanction of the Commissioner or Commissioner (Appeals):

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.

(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 271(1)(c) has been reduced or waived by an order under section 273A.

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or a Director General.
AMENDMENT MADE BY FINANCE ACT 2020

PROVISION FOR E-PENALTY:
In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. Section 274 of the Act provides for the procedure for imposing penalty under Chapter XXI of the Act. In response to a show cause notice issued by the Assessing Officer (AO), assessee or his authorised representative is still required to visit the office of the Assessing Officer. 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, it is proposed to insert a new sub-section (2A) 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 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.

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March, 2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

This amendment will take effect from 1st April, 2020.

AMENDMENT MADE BY FINANCE ACT 2020

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, the following provision is introduced:

Sec 271AAD- PENALTY FOR FAKE INVOICE:

(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
<table>
<thead>
<tr>
<th>(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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(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.</td>
</tr>
</tbody>
</table>
| **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.' |
Who can impose the Penalty u/s 270A?

Penalty can be levied by The Assessing Officer or CIT(Appeals) or Commissioner of Income-tax.

Key Notes:

1. Income Tax Appellate Tribunal (ITAT) cannot impose penalty.
2. Penalty proceedings are initiated by issuing a show cause notice.
3. If Assessing Officer or CIT(A) or CIT wants to impose Penalty u/s 270A then the respective ITA has to initiate Penalty proceedings before passing their Assessment/Appeal or Revision Orders.

4. **Shadiram Balmukund (Supreme Court)**

   **Decision:**
   
   The Supreme Court held that the Assessing Officer can levy penalty for under-reporting or misreporting on the additions made by him and not on the additions made by the CIT (Appeals). Similarly, the CIT(Appeals) can levy penalty on the additions made by him and not on the additions made by the Assessing Officer.

5. Penalties such as penalty for failure to get tax audit done, penalty for non-maintenance of books of account, can be initiated even if an assessment is not made on the assessee.

6. **Penalty order and assessment order are distinct order.** Similarly, penalty proceedings and assessment proceedings are distinct proceedings.

7. **Appeal can be filed** against a Penalty Order.

8. Law relating to penalty for concealment of income was contained in sec 271(1)(c) and that Sec is no more relevant from Assessment Year 2017-18. From Assessment Year 2017-18, new sec 270A replaces sec 271(1)(c).
### Sec 270A

A person shall be considered to have under-reported the income if:

**Return has been filed and assessment made for first time**
- Income assessed > Income determined under sec 143(1)(a)

#### Under-reported Income:
- Income assessed minus Income determined under sec 143(1)(a)

#### Tax on under-reported Income
- Tax on \([\text{Under-reported Income} + \text{Income determined under sec 143(1)(a)}]\) minus Tax on Income determined under sec 143(1)(a)

**No Return has been filed/ Return u/s 148 has been filed and assessment made for first time**
- Income assessed > Maximum amount not chargeable to Tax

#### Under-reported Income:
(i) In case of assessee other than individual / HUF = Amount of income assessed.
(ii) In case of Individual / HUF = Amount of income assessed minus Rs. 2,50,000/3 lacs/5 lacs.

#### Tax on under-reported Income:
(i) Tax on under reported income as if it were the total income
(ii) Tax on (under-reported income + Rs. 2,50,000/ 3 lacs/ 5 lacs) as if it were total income of assessee

**Case of Re-assessment**
- Income reassessed > Income assessed or reassessed immediately before such

#### Under-reported Income:
- Amount of Income reassessed - Amount of Income assessed in preceding order

#### Tax on Under-reported Income:
- Tax on (Under-reported Income + Income assessed in preceding order)
<table>
<thead>
<tr>
<th>Where Sec 115JB or 115JC applies and return has been filed by the assessee and assessment made for first time</th>
<th>Minus Tax on Income assessed in preceding order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reassessment</td>
<td>Under-reported Income</td>
</tr>
<tr>
<td>A = Total Income assessed as per general provisions</td>
<td>(A - B) + (C - D)</td>
</tr>
<tr>
<td>B = Total Income assessed as per general provisions reduced by under-reported income</td>
<td></td>
</tr>
<tr>
<td>C = Total Income assessed as per Sec 115JB/115JC</td>
<td></td>
</tr>
<tr>
<td>D = Total Income assessed as per Sec 115JB/115JC reduced by under-reported income.</td>
<td></td>
</tr>
<tr>
<td><strong>Note:</strong> If under-reported income in 'B' and 'D' are the same, then under-reported income shall not be considered in 'D'.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Where Sec 115JB or 115JC applies and it is a case of reassessment</th>
<th>Under-reported Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reassessment</td>
<td>(A - B) + (C - D)</td>
</tr>
<tr>
<td>A = Total Income assessed as per general provisions</td>
<td></td>
</tr>
<tr>
<td>B = Total Income assessed as per general provisions reduced by under-reported income</td>
<td></td>
</tr>
<tr>
<td>C = Total Income assessed as per Sec 115JB/115JC</td>
<td></td>
</tr>
<tr>
<td>D = Total Income assessed as per Sec 115JB/115JC reduced by under-reported income.</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** If under-reported income in 'B' and 'D' are the same, then under-
<table>
<thead>
<tr>
<th><strong>Returned Income is a Loss and on assessment Loss is reduced or in converted into income</strong></th>
<th><strong>Under-reported Income</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Loss assessed / - Loss as per Sec 143(1)(a) assessed</td>
</tr>
<tr>
<td><strong>Tax on Under-reported Income</strong></td>
<td>Tax on under-reported income as if it were total income of the assessee.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Case of reassessment and on reassessment</strong></th>
<th><strong>Under-reported Income</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss in assessment immediately before such reassessment in reduced or converted into income.</td>
<td>Loss assessed / - Loss assessed income in preceding assessment order</td>
</tr>
<tr>
<td><strong>Tax on under-reported Income</strong></td>
<td>Tax on under-reported income as if it were the total income of the assessee.</td>
</tr>
</tbody>
</table>

**Analysis of Sec 270A(4) & 270A(5) – Intangible Additions**

The Supreme Court held in Anantharam Veera Singhaiah & Co. that these intangible additions represent the real income of the assessee and can be used in subsequent assessment years for explaining the unexplained investments, unexplained cash credits and unexplained assets. The assessee can take a plea that the unexplained investments, unexplained cash credits and unexplained assets have been acquired out of the intangible additions and the departments shall have to accept his plea.

However, the said Sec provides that the intangible additions so used in explaining the unexplained investments etc. shall be deemed as underreported income on which penalty for under-reporting or misreporting of income shall be levied. (Refer Textbook for Illustration on how to explain the Unexplained Money etc from Intangible Addition of earlier years)
Sec 270A(6) - Certain Additions/Disallowances not regarded as Under-reported income or Misreported income

1. It provides that where an assessee provides a bonafide explanation then it shall not be treated as under-reported income/ mis-reported income and therefore no penalty under Sec 270A shall be levied. (Also Refer Transfer Pricing Later on)

Analysis of Sec 270A(8) & 270A(9)

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

The following cases are the cases of misreporting of income:

(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
(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 Transfer Pricing apply.

Analysis of Sec 270A(11)

Suppose unexplained investments are found in Assessment Year 2020-21 of Rs. 1 crore. The said investments are not recorded in books of account. The Assessing Officer levies penalty @ 200% under Sec 270A for Assessment Year 2020-21 on additions made on account of unexplained investment.

Now assessee records these investments in books of account in Assessment Year 2021-22. Now no penalty under Sec 270A shall be levied in Assessment Year 2021-22 as per Sec 270A(11).
Sec 270AA: Immunity from Imposition of Penalty, etc of Sec 270A
New law of Penalty for concealment of income in case of Search & Seizure
Analysis of Sec 271AAB
Sec 271J: Penalty on professionals

This Sec provides that if a chartered accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate under any provisions of the Act (or the rules made thereunder), the Assessing Officer or the Commissioner (Appeals) may direct him to pay a sum of Rs. 10,000 for each such report or certificate by way of penalty. If, however, the concerned person proves that there was reasonable cause for the aforesaid failure, referred to above, then penalty shall not be imposable under Sec 271J.

Sec 274: Procedure for Imposition of Penalty

(1) A reasonable opportunity of being heard should be given before passing the penalty order.

(2) No order imposing a penalty shall be made -

(a) by the Income-tax Officer, where the penalty exceeds Rs. 10,000;

(b) by the Assistant Commissioner/ Deputy Commissioner where the penalty exceeds Rs. 20,000;

except with the prior approval of the Joint Commissioner.

Sec 273A: Power to reduce or waive penalty in certain cases

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Sec 273A(1)</th>
<th>S. No.</th>
<th>Sec 273A(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CIT can waive/ reduce penalty under Sec 271(1)(c) or 270A</td>
<td>1.</td>
<td>CIT can waive/ reduce any penalty including penalty under Sec 271(1)(c) or 270A.</td>
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<tr>
<td>2.</td>
<td>CIT can act suo-moto or an application made by the assessee.</td>
<td>2.</td>
<td>CIT can act on an application made by the assessee.</td>
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<tr>
<td>3.</td>
<td>Approval of Chief CIT or Director General required if the concealed Income exceeds Rs. 5 Lakhs.</td>
<td>3.</td>
<td>Approval of Chief CIT or Director General required if penalties exceed Rs. 1 Lakh.</td>
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<tr>
<td>4.</td>
<td>Conditions to be fulfilled: Cooperation</td>
<td>4.</td>
<td>Conditions to be fulfilled: Genuine hardships</td>
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</table>
### PENALTIES

<table>
<thead>
<tr>
<th></th>
<th>- Payment</th>
<th>- Cooperation</th>
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</thead>
<tbody>
<tr>
<td>5.</td>
<td>Penalty if paid shall be refunded on waiver.</td>
<td>5. No waiver possible if penalty has been paid.</td>
</tr>
<tr>
<td>6.</td>
<td>No time limit for passing order under <strong>Sec 273A(1)</strong>.</td>
<td>6. Order under <strong>Sec 273A(4)</strong> has to be passed within 12 months from the end of the month in which application is received by CIT.</td>
</tr>
</tbody>
</table>

#### Notes:
1. The order under **Sec 273A** can be made in the favour of the assessee **once in his lifetime**.
2. The order under **Sec 273A** is a final order and **no appeal is possible** against such order. *(Writ can be filed)*
3. The order under **Sec 273A** should be a "**Speaking Order**".
4. Application under **Sec 273A** can be made for a number of Assessment Years.
5. If income is **detected in a raid**, i.e. search and seizure, then, benefit under **Sec 273A** is **not applicable**.
6. If conditions referred to in **273A** are satisfied then the **CIT is duty bound to grant the relief under Sec 273A**.
7. **CIT under Sec 273A cannot waive or reduce interest under Secs 234A, 234B and 234C. {CC or DGIT or ITSC can waive it}*.
8. **CBDT Circular: "Genuine Hardships" referred to in Sec 273A(4) should exist at the time at which the application is made by the assessee and should also exist even at the time of passing of an order under Sec 273A(4) by the CIT.**
9. Where the **applications for waiver under Sec 273A were made on different dates for different Assessment Years by the assessee, then the CIT must consider all the applications together and pass an order under **Sec 273A** in respect of all the applications.**
10. **The prosecution proceedings shall also be dropped.**
Sec 68: Cash Credits

Where any sum is found credited in the books, and the assessee offers no explanation, or the explanation is not satisfactory in the opinion of the Assessing Officer, then the sum so credited is deemed to be income.

The following provisos shall be inserted in Sec 68 by the Finance Act, 2012:

Provided that where the assessee is a Closely held company, and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company.

Sec 69: Unexplained Investments

Where the assessee has made investments which are not recorded in the books and the assessee offers no explanation or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then it will be deemed to be Income.

Sec 69A: Unexplained Money, etc.

Where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and is not recorded in the books of account and the assessee offers no explanation or the explanation offered by him is not satisfactory, in the opinion of the Assessing Officer, then it will be deemed to be Income.
Sec 69B: Amount of Investments, etc., not fully disclosed in the books of Account

Where in any previous year, the assessee has made investments and the Assessing Officer finds that the amount expended on making such investments exceeds the amount recorded in this behalf in the books and the assessee offers no explanation about such excess amount or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the excess amount may be deemed to be the income of the assessee for such previous year.

Sec 69C: Unexplained Expenditure

Where an assessee has incurred any expenditure (e.g., marriage/party) and he offers no explanation or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such expenditure or part thereof, may be deemed to be the income of the assessee.

"Notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income."

Note: The judgement of Supreme Court in SUN ENGINEERING PVT. LTD. is not applicable in this case since Sec 69C has been specifically amended to provide that the unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction.

Sec 69D: Amount Borrowed or Repaid on Hundi

Where any amount is borrowed on a hundi from a person, or any amount due thereon is repaid to any person, otherwise than through an account payee cheque drawn on a bank, then it shall be deemed to be the income. However, in case the amount borrowed under this Sec has been deemed as income of the borrower, then the borrower shall not be liable to be assessed again in respect of such amount under this Sec on repayment of such amount.
Sec 115BBE: Tax on income referred to in Sec 68 or Sec 69 or Sec 69A or Sec 69B or Sec 69C or Sec 69D (Inserted by Finance Act, 2012)

(1) Where the total income of an assessee includes any income referred to in Sec 68, Sec 69, Sec 69A, Sec 69B, Sec 69C, or Sec 69D then it shall be taxable at 60%.

(2) Further 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.

Key Note:
Effective Tax Rate = 60% + 25% surcharge = 75% + 4% = 78%.

Sec 271AAC: Penalty in Other Cases:
Sec 269SS: Mode of taking or accepting certain loans, deposits and specified Sum

- No person shall take from any other person, any loan or deposit or any specified sum, otherwise than by 4 modes, (Finance Act (No.2) 2019)

- If,

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit accepted sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is Rs. 20,000 or more.

Provided that the provisions of this Sec shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, -

(a) the government

(b) any banking company, post office saving bank or cooperative bank,

(c) any corporation established by a Central, State or Provincial Act.

(d) any Government company company as defined in Sec 2(45) of the Companies Act, 2013;

Explanation. —For the purposes of this Sec, —

(i) "Specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

The provisions of this Sec shall not apply to any loan or deposit or specified sum where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or
accepted are both having agricultural income and neither of them has any income chargeable to tax under the Income tax Act.

**Sec 271D:** Penalty for failure to comply with the provisions of Sec 269SS

If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of Sec 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit or specified sum taken or accepted. The penalty shall be imposed by Joint Commissioner.

**Sec 269T:** Mode of repayment of certain loans or deposits

No Person including a banking company shall repay any loan or deposit made with it or any specified advance received by it otherwise than by 4 modes if-

(a) the amount of the loan or deposit or specified advance together with interest payable thereon is Rs. 20,000 or more; or

(b) the aggregate amount of the loans or deposits held by such person with the branch of a banking company or other person, either in his own name or jointly with any other person on the date of such repayment together with interest if any payable on such loan or deposit is Rs. 20,000 or more.

(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances is Rs. 20,000 or more.

**Key Notes:**

1. Nothing contained in Sec 269T shall apply to repayment of any loan or deposit or specified sum taken or accepted from:-

   (i) Government;

   (ii) any banking company, post office savings bank or co-operative bank;

   (iii) any corporation established by a Central, state or Provincial Act;

   (iv) any Government company

2. "Specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.
Sec 271E: Penalty for failure to comply with the provisions of Sec 269T
If a person repays any loan or deposit or specified sum referred to in Sec 269T otherwise than in accordance with the provisions of that Sec, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so repaid. The penalty shall be imposed by Joint Commissioner.

Sec 129: Change of Incumbent of an Office
Whenever in respect of any proceeding under this Act, an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Proviso to Sec 129
Provided that the assessee concerned may demand that before the proceeding is so continued, the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.


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Sec 245A: "CASE" which can be referred to Settlement Commission

"CASE" means any proceedings for assessment or reassessment of any previous year which is pending before an Assessing Officer on the date on which an application is made to Settlement Commission under Sec 245C:

(i) In assessment proceedings under Sec 143(3)/144, CASE becomes pending under Sec 143(3)/144 on the date on which notice under Sec 143(2)/ show cause notice under Sec 144 is issued.

(ii) In assessment or reassessment proceedings under Sec 147. A proceeding for assessment or reassessment under Sec 147 shall be deemed to have commenced—

(a) from the date on which a notice under Sec 148 is issued for any assessment year;

(b) from the date of issuance of the notice referred to in sub-clause (a), for any other assessment year or assessment years for which a notice under Sec 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished under Sec 139 or in response to a notice under Sec 142.

(iii) In fresh assessment proceedings where fresh assessment is made in pursuance of an order passed under Sec 254/ 263/ 264 cancelling the assessment and directing a fresh assessment. Such fresh assessment proceedings shall be deemed to have been commenced on the date on which order under Sec 254/ 263/ 264 cancelling the assessment was passed.

(iv) In assessment or reassessment proceedings under Sec 153A for the 6/10 Assessment Years immediately preceding the Assessment Year relevant to the previous year in which search is conducted.

These proceedings shall be deemed to have commenced on the date on which notice under Sec 153A is issued.

(v) In assessment proceedings under Sec 143(3)/144 of the Assessment Year relevant to the previous year in which search is conducted.
These proceedings shall be deemed to have commenced from the date on which the return of income for that assessment year is furnished under Sec 139 or in response to a notice served under Sec 142.

Key Note:
Application for settlement cannot be made for an assessment year which is not pending under Sec 143(3)/144/147/153A.

Analysis of amendment by Finance Act 2015
The Assessing Officer issues notice under Sec 148 on 1-1-2020 for Assessment Year 2016-17 to tax the income escaping assessment. For the following Assessment Years, notice under Sec 148 has not been issued and following assessment years are not pending in any assessment / reassessment.

<table>
<thead>
<tr>
<th>Assessment Years</th>
<th>Return of income filed under Sec:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>139(1)</td>
</tr>
<tr>
<td>2013-14</td>
<td>139(4)</td>
</tr>
<tr>
<td>2014-15</td>
<td>No Return of Income filed</td>
</tr>
<tr>
<td>2015-16</td>
<td>139(1)</td>
</tr>
<tr>
<td>2017-18</td>
<td>No Return of Income filed</td>
</tr>
<tr>
<td>2018-19</td>
<td>142(1)</td>
</tr>
<tr>
<td>2019-20</td>
<td>139(1)</td>
</tr>
</tbody>
</table>

Now, no notice under Sec 148 has been issued for the above Assessment Years but on 1.1.2020 Assessing Officer could have issued notice for Assessment Year 2013-14 and onwards.

Now if on 20-1-2020, the assessee wants to make an application to Settlement Commission, then as per Finance Act, 2015:

(i) Assessment of Assessment Year 2016-17 is pending under Sec 148 and application can be made to the Settlement Commission

(ii) For Assessment Years 2013-14, 2015-16, 2018-19 and 2019-20, application can be made to settlement Commission since returns for these Assessment Years have been filed under Sec 139/142(1) and notice under Sec 148 could have
been issued for these Assessment Years on 1-1-2020. The assessment of these Assessment Years shall be deemed to be pending under Sec 147.

⇒ Key Notes:
1. Assessee shall make an application to ITSC in prescribed form making a true and full disclosure of his income which has not been disclosed before Assessing Officer.
2. The application to ITSC can be made if:
   (i) Additional amount of income tax on the income disclosed in application exceeds Rs. 50 lakhs for 6/10 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted.
   (ii) If the person on whom search is conducted is a person related to the person referred to in (i) above and person referred in (i) above has filed settlement application ⇒ Additional amount to income tax on the income disclosed in application exceeds Rs. 10 lakhs for 6/10 Previous Years preceding the Previous Year in which search is conducted and for the Previous Year in which search is conducted.
   (iii) Other case i.e. 143(3)/ 144/ 147, the additional amount of income tax should exceed Rs. 10 lakhs.
3. Calculation of additional amount of income-tax
   I. Where return of income has not been furnished by the assessee:
      Tax on total income disclosed in the application to Settlement Commission.
   II. Where return of income has been furnished by the assessee:
      Tax on [Income disclosed in the application to Settlement Commission + Returned Income] minus [Tax on Returned Income]
4. An application made shall not be allowed to be withdrawn. { }
5. As assessee shall, on the date on which he makes an application to the ITSC, also intimate the Assessing Officer in the prescribed manner of having made such application to the ITSC.
6. Sec 245D: Procedure on Receipt of Application

Applications filed to settlement commission (ITSC)

Application can be filed before ITSC if following conditions are satisfied:

1. Additional amount of income tax exceeds Rs. 50,00,000 in case of applicant and Rs. 10,00,000 in case of related applicants in case of search & seizure and Rs. 10,00,000 in other cases.

2. Case is pending before AO only in an assessment or reassessment proceeding u/s 143(3)/144/147/153A.

For filing application, assessee shall have to pay the additional amount of income tax and interest on or before the date of making application. And assessee should also send copy of application to AO on the date of making application.

On receipt of application, ITSC within 7 days from the date of receipt of application, issue a notice to the applicant to explain as to why his application be admitted.

Within 14 days of date of filing of application, ITSC has to decide whether to admit the application or to reject the same.

If no order is passed within 14 days, the application is deemed to be admitted.

After admission of application, ITSC within 30 days of date of filing of application shall call for a report from CIT. And CIT shall submit report within 30 days of receipt of communication.

If report is received on time then on the basis of such report, the ITSC may declare the application invalid, such order shall be passed within 15 days of receipt of report, after giving an opportunity of being heard to the applicant.

If report is not received from CIT within prescribed time, ITSC shall proceed without the report.
If application was declared invalid, proceedings shall abate on last day of the month in which application was declared invalid. And proceedings shall revive before the respective Income tax authority as if no application was made.

If application is allowed to be proceeded.

ITSC may call for records from the CIT and direct the CIT for further inquiry and investigation, as ITSC may deem necessary.

CIT shall furnish the report within 90 days of receipt of communication from ITSC.

ITSC may also proceed without such report, if report is not received within 90 days.

After examining the records and the report by CIT, and after giving an opportunity of being heard, shall pass an order under Sec 245D(4) within 18 months from the end of the month in which application was made.

If settlement order is not passed within the prescribed time proceedings shall abate after the expiry of 18 months as aforesaid. And proceedings shall revive before the respective Income tax authority as if no application was made.
7. The order of settlement passed under Sec 245D(4) shall provide for:

1. Income settled and tax thereon.
2. Interest under Sec 234A/B/C. As per Supreme Court in Anjum M. H. Ghaswala, ITSC cannot waive/reduce the interest under Sec 234A/B/C. It can waive/reduce to the extent Chief CIT/DG can do.
3. Immunity from penalty and prosecution.
4. Levy of penalty and filing of case of prosecution.
5. Manner in which tax due on settlement shall be paid.
6. Other matters to make settlement effective.
7. That the order of settlement shall be declared void if it is found that the settlement was obtained by fraud or misrepresentation of facts. (ITSC suo motu or even Department can make an application later on, that settlement was obtained by fraud or mis representation of facts)

Note:
The Settlement Commission has to consider both the material brought on record before it by Income Tax Authority and independent examination of the evidence and material on record.

8. If the settlement becomes void since it was obtained by fraud or misrepresentation of facts, the income tax proceedings in respect of Assessment Years covered by settlement shall be deemed to have been revived from the date of the application for settlement. Notwithstanding anything contained in Income-tax Act the Income-tax authority can complete such proceedings at any time before the expiry of 2 years from the end of the Financial Year in which the settlement became void.

9. Sec 245D(6B): Rectification of Mistake Apparent from Record

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-Sec (4)-

(a) at any time within a period of six months from the end of the month in which the order was passed; or
(b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be. Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which an order under sub-Sec (4) is passed by the Settlement Commission. Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-Sec unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

Illustration:
Settlement Commission passed order under Sec 245D(4) on 1-12-2019. There is a mistake apparent from record in the said order passed under Sec 245D(4). Now the Settlement Commission:
(a) Suo-moto can pass rectification order under Sec 245D(6B) rectifying the order passed under Sec 245D(4) up to 30-6-2020.
(b) Assessee and / or Commissioner of Income-tax can file an application for rectification of mistake only up to 30-6-2020. If application for rectification is made by assessee and / or Commissioner of Income-tax after 30-6-2020, the Settlement Commission cannot rectify the mistake apparent from record. Suppose assessee/ Commissioner of Income-tax made rectification application on 10.5.2020 to rectify the order passed under Sec 245D(4). Now Settlement Commission shall pass the rectification order under Sec 245D(6B) up to 30-11-2020.

10. Powers of ITSC
(a) It cannot reopen the completed proceedings.
(b) It can attach property. Attachment initially is for 6 months but can be extended.
(c) It has **all the powers** which are conferred by Income-tax Act on IT Authorities. Therefore, ITSC can levy penalty, launch prosecution, levy interest under **Sec 234A/B/C**.

(d) ITSC shall have **exclusive jurisdiction** i.e. no I.T. authority will touch the case:

- From the date the application is made to ITSC:
  - (i) till the date ITSC passes order of settlement under **Sec 245D(4)**; or
  - (ii) Till the date ITSC passes rejection order under **Sec 245D(1)**
  - (iii) Till the date ITSC declares application invalid on the basis of CIT's objections

11. **Sec 245H**: Powers of the Settlement Commission to grant immunity from Prosecutions and Penalties

1. Settlement Commission, if it is satisfied that:
   - (i) any person who made the application under **Sec 245C** has **co-operated** with it in proceedings before it and
   - (ii) has made a full and **true disclosure** of his incomes subject to conditions as it may think fit to impose for reasons to be recorded in writing, grant immunity with respect to the case covered by Settlement, from:
     - (i) **Prosecution** for any offence under Income-tax Act.
     - (ii) **Imposition of penalty** under Income-tax Act.

As per amendment by Finance Act, 2015 Settlement Commission is bound to record reasons in writing for granting immunity from penalties and prosecution.

2. An **immunity** granted by Settlement Commission shall be **withdrawn** by Settlement Commission if:
   - (i) the assessee **fails to pay** the sum specified in the order of Settlement passed under **Sec 245D(4)** within the **time specified** in the order or within such further time which Settlement Commission has allowed.
   - (ii) the assessee fails to comply with the conditions subject to which immunity was granted.
   - (iii) If it is found that the assessee **has concealed any particular** material or has given false evidence to Settlement Commission.
12. Sec 245HA: Abatement of proceeding before Settlement Commission

(1) Proceedings before settlement commission shall abate

(i) Where an application made under Sec 245C has been rejected under Sec 245D(1).

(ii) Where an application made under Sec 245C has been declared as invalid under the basis of CIT's objections.

(iii) In respect of any other application made under Sec 245C, an order under 245D(4) has not been passed within 18 months.

(iv) in respect of any application made under Sec 245C, an order under Sec 245D(4) has been passed not providing for the terms of settlement.

(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer before whom the proceeding at the time of making the application was pending shall dispose of the case in accordance with the provisions of this Act as if no application under Sec 245C had been made.

The Assessing Officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission.

For the purposes of the time-limit for making the assessment, the period commencing on and from the date of the application to the Settlement Commission under Sec 245C and ending with date of abatement shall be excluded.

13. Sec 251: Power of the Commissioner (Appeal)

In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under Sec 245HA, the CIT(A) shall consider all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission and confirm, reduce, enhance or annul the assessment.
Sec 273AA: Power of Commissioner to grant Immunity from Penalty

(1) A person may make an application to the Commissioner for granting immunity from penalty, if—

(a) he has made an application for settlement under Sec 245C and the proceedings for settlement have abated under Sec 245HA; and

(b) the penalty proceedings have been initiated under this Act.

(2) The application to the Commissioner shall not be made after the imposition of penalty after abatement.

The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under this Act.

Note: As per Finance Act, 2016, the order under this Sec either accepting or rejecting the application, shall be passed within a period of twelve months from the end of the month in which the application is received by the Commissioner.

15. Sec 278AB: Power of Commissioner to grant Immunity from prosecution

(1) A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under Sec 245C and the proceedings for settlement have abated under Sec 245HA.

(2) The application to the Commissioner shall not be made after institution of the prosecution proceedings after abatement.

The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act.

16. Sec 245HAA: Credit for tax paid in case of Abatement of Proceedings

Once proceedings abate under Sec 245HA, Assessing Officer has to give credit for taxes paid at the time of making application before Settlement Commission while making assessment.
17. Sec 245K: Bar on Subsequent application for Settlement

Where a person has made an application under Sec 245C and if such application has been allowed to be proceeded with under Sec 245D(1), he or any person related to such person (herein referred to as related person) shall not be entitled to make an application under Sec 245C.

Note: "RELATED PERSON" with respect to a person means,—

(i) where such person is an individual,
   - any company in which such person holds more than 50% of voting rights, or
   - any firm or AOP/BOI in which such person is entitled to more than 50% of the profits
   - any Hindu undivided family in which such person is a karta;

(ii) where such person is a company,
   - any individual who held more than 50% of the voting rights in such company

(iii) where such person is a firm or AOP/BOI,
   - any individual who was entitled to more than 50% of the profits in such firm, AOP/BOI;

(iv) where such person is a Hindu undivided family,
   - the karta of that Hindu undivided family.

18. Sec 245-I: Order of Settlement Commission to be Conclusive

- Matters covered by the order of Settlement Commission cannot be reopened in any proceeding under the Act or under any other law. Hence, the matters covered by the order of Settlement Commission cannot be reopened by issuing a notice under Sec 148 of the Income-tax Act. Also, such matters cannot be reopened under any other law.

- The order of the Settlement Commission is final and conclusive, and no appeal is possible against such an order. However, it can be challenged in the High Court through a WRIT PETITION and thereafter in Supreme Court through a Special Leave Petition.

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