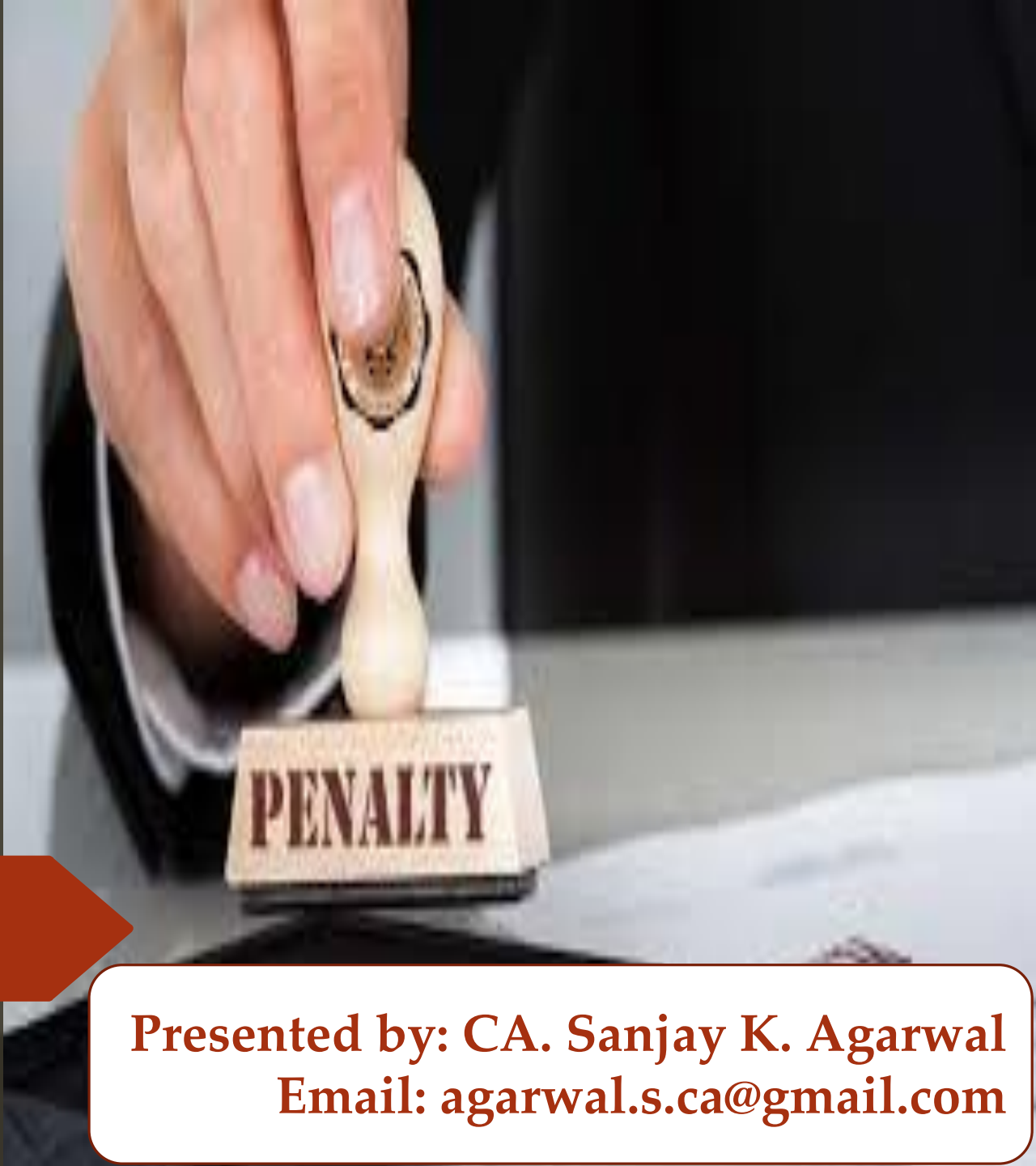


Penalties under the Income Tax Act, 1961



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Topics to be covered

- Basic Provisions of Penalty under the Income Tax Act, 1961
- Penalty related to Search under the Income Tax Act, 1961
- Penalty related to International transactions

Basic Provisions of Penalty under the Income Tax Act, 1961

Penalty at a Glance

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
1.	270A	-	Underreporting and misreporting of income	Under-reported income- 50% of the amount of tax payable. Misreporting of income- 200% of the amount of tax payable.	01-04-2017 [AY 2017-18]	-
2.	271(1) (b)	115WD(2), 115WE(2) or 142(1), 143(2), 142(2A)	Failure to comply with notice u/s 115WD(2), 115WE(2) or 142(1), 143(2) or failure in compliance of getting accounts audited u/s 142(2A)	Rs. 10,000 at each failure		AY 2016-17
	271(1) (c)	-	Concealment of particulars of income or furnishing inaccurate particulars of such income	Max. – 300% of amount of tax evaded Min. – 100% of amount of tax evaded		AY 2016-17

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
3	271A	44AA	Failure to maintain or retain books of account as per sec. 44AA	Rs. 25,000	01-04-1976	-
4	271AAC	68-69D	Income determined includes any income referred to in section 68-69D	10% of Tax payable u/s 115BBE(1)(i)	01-04-2017	-
5	271B	44AB	Failure to get accounts audited or to furnish audit report as required u/s 44AB	0.5% of total sales, turnover or gross receipts, as the case may be Rs. 1,50,000 w.e.f. 01-04-2011	01-04-1985	-

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
6	271C	Chapter XVIIIB, i.e. provisions of TDS	Failure to deduct the whole or any part of tax as required under Chapter XVIIIB	Amount equal to tax which has not been deducted	01-04-1989	-
			Failure to pay the whole or any part of corporate dividend tax as required u/s 115-O or 194B	Amount equal to tax which has not been paid		
7	271CA	Chapter XVIIIBB, i.e. TCS	Failure to collect the whole or any part of tax as required under Chapter XVIIIBB	Amount equal to tax which has not been collected	01-04-2007	-
8	271D	269SS	Any loan or deposit or specified advance taken or accepted in contravention of the section 269SS	Amount equal to the loan or deposit or specified advance taken or accepted	01-10-1998	-
9	271DA	269ST	Any sum received in contravention of Sec. 269ST	Amount received	01-04-2017	-

S. No	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
10	271E	269T	Any loan or deposit or specified advance which is repaid in contravention of section 269T	Amount equal to the deposit or specified advance which is re-paid	01-04-1989	
11	271F	139(1)	Failure to furnish a return of income as required by section 139(1) before the end of relevant AY	Rs. 5,000	01-04-1997	01-04-2018 [AY 2017-18]
12	271FA	285BA (1)	Failure to furnish Statement of Financial Transaction or Annual information return up to A.Y. 2014-15 within prescribed time u/s 285BA(1)	Rs. 500 per day during which failure continues	01-04-2005	-
	Proviso to section 271FA	285BA (5)	Failure to furnish Statement of Financial Transaction or Annual information return up to A.Y. 2014-15 within time specified in the notice issued u/s 285BA(5)	Rs. 1,000 per day during which failure continues		

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
13	271FAA	285BA (1)(k)	Furnishing of inaccurate statement of financial transaction or reportable account	Rs. 50,000	01-04-2015	-
14	271H	200(3)/ proviso to 206C(3)	Failure to deliver the statement within the prescribed time	Max. – Rs. 1,00,000 Min. – Rs. 10,000	01-07-2012	-

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
15	272A(1) (a) & (b)	-	Being legally bound to state the truth of any matter touching the subject of assessment, refuses to answer any question.	Rs. 10000 for each such default.	01-04-1976	-
			Refuses to sign any statement demanded by the income tax authority.			
	272A(1) (c)	131(1)	Failure to comply with the summons issued U/s 131(1) as to attend or to produce books or documents at certain place and time.	Rs. 10000 for each such default.		
	272A(1) (d)		Failure to comply with the notice U/s 142(1) or 143(2) or fails to comply with the direction issued U/s 142(2A)		01-04-2017 [AY 2017-18]	

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
15 cont d..	272A (2)	94(6)	Failure to comply with the notice issued U/s 94(6) regarding furnishing of information of securities, etc.	Rs. 100 for every day during which such failure continues.	01-04-1976	-
		176(3)	Failure to give notice of discontinuance of business or profession U/s 176(3)	Rs. 100 for every day during which such failure continues.		
		133, 206, 206C, 285B	Failure to furnish in due time any of returns, statements or particulars mentioned in section 133, 206, 206C or 285B	Max.- for default U/s 206 & 206C penalty can't exceed the amount of tax deductible or collectible, as the case may be. Min.-Rs. 100 for every day during which such failure continues.		
		134	Failure to allow inspection of any register of the company as per section 134 to allow copies of such register	Rs. 100 for every day during which such failure continues.		

S. No	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
15 Contd...	272A (2)	139 (4A) & (4C)	No filing of return of income U/s 139(4A) & U/s 139(4C) or delay in filing of the said return of income	Rs. 100 for every day during which such failure continues.	01-04-1976	-
		197A	Failure to deliver or caused to be delivered in due time a copy of the declaration mentioned in section 197A.	Max.- can't exceed tax deductible or collectible. Min.-Rs. 100 for every day during which such failure continues.		
		203, 206C	Failure to furnish a certificate of TDS/ collection at source u/s 203 or u/s 206C, as the case may be.	Max.-can't exceed tax deductible. For certificate of TCS same as minimum Min.-Rs. 100 for every day during which such failure continues.		
		226(2)	Failure to deduct and pay tax as required by section 226(2)	Rs. 100 for every day during which such failure continues.		
		192(2C)	Failure to furnish a statement as required U/s 192(2C)	Rs. 100 for every day during which such failure continues.		

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
15 Contd...	272A (2)	206C (1B)	Failure to deliver or cause to be delivered in due time a copy of declaration referred in section 206C(1A).	Rs. 100 for every day during which such failure continues.	01-04-1976	-
		200 (3) Proviso to 206C (3)	Failure to deliver or cause to be delivered a copy of the statement within prescribed time in respect of deduction/collection of tax at source. In lieu of this late fee of Rs. 200 per day U/s 234E & penalty U/s 271H shall be leviable.	Max.- can't exceed tax deductible or collectible. Min.-Rs. 100 for every day during which such failure continues.		
		206A (1)	Failure on the part of banking company, co-operative society, etc. to deliver or cause to be delivered statement in respect of payment of interest to resident without deduction of tax on or after 01/04/2005.	Rs. 100 for every day during which such failure continues.		

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
15 Contd...	272A (2)	200(2A) or 206C (3A)	Failure to deliver or cause to be delivered statement prescribed U/s 200(2A) or 206C(3A) within the time prescribed.	Max.- can't exceed tax deductible or collectible. Min.- Rs. 100 for every day during which such failure continues.	01-04-1976	-
16	272AA	133B	Failure to comply with the provisions of section 133B regarding the powers of collecting certain information from the place of business or profession.	Max.- Rs. 1,000 Min.- as directed by Income Tax Authority.	13-05-1986	-

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
17	272B (1)	139A	Failure to comply with the provisions of section 139A relating to PAN.	Rs. 10,000	01-06-2002	-
	272B (2)	139A(5)(c), 139A(5A)	Failure to quote PAN in any document referred to in section 139A(5)(c)	Rs. 10,000	01-06-2002	-
			Failure to intimate PAN as required by section 139A(5A)			
			Quote or intimate PAN which is false & which he either knows or believes to be false or does not believe it to be true.			
18	272BB	203A	Where as person has failed to get tax deduction/collection account number or to quote such number in challans, certificates, returns, etc.	Rs. 10,000	01-06-1987	
		203A (2)	Failure to quote TDAN/TCAN/TDCAN in the challans, certificates, statements, etc.	Rs. 10,000		
19	272BBB	206CA	Failure to comply before 01.10.2004 with provisions of section 206C relating to obtaining and quoting TCAN	Rs. 10,000	01-06-2002	01-10-2004

SECTION – 270A

Penalty for under-reporting and misreporting of income

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

- The AO or CIT(A) or CIT or Pr.CIT during the course of any proceedings under this Act, may direct any person who has under-reported his income to be liable to pay a penalty in addition to tax, if any, on the under-reported income. **[Sub-section (1)]**
- A person shall be considered to have **under-reported his income**, if—
- a) the income assessed is greater than the income determined in the return processed u/s 143(1)(a);
 - b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished;
 - c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

[Sub-section (2)]

- d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed u/s 143(1)(a);
- e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;
- f) the amount of deemed total income reassessed as per the provisions of section 115JB / 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment.
- g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

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

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

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

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

[Sub-section (9)]

- a) misrepresentation or suppression of facts
- b) failure to record investments in the books of account;
- c) claim of expenditure not substantiated by any evidence;
- d) recording of any false entry in the books of account;
- e) failure to record any receipt in books of account having a bearing on total income; and
- f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

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

[Sub-section (3)]

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

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

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

(A – B) + (C – D) where,

A

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

B

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

C

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

D

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

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

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

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

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

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

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

[Sub-section (10)]

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Situation	Tax payable in respect of the under-reported income
Return has been furnished and income has been assessed for the first time	amount of tax calculated on under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income
Total income determined u/s 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss	the amount of tax calculated on the under-reported income as if it were the total income
in any other case	<p style="text-align: center;">(X-Y)</p> <div style="display: flex; flex-direction: column; gap: 10px;"> <div data-bbox="453 896 626 1053"> <p style="text-align: center; background-color: #800000; color: white; border-radius: 10px; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin: 0 auto;">X</p> <p style="margin-left: 20px;">amount of tax calculated on under-reported income as increased by total income determined u/s 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income</p> </div> <div data-bbox="453 1160 626 1318"> <p style="text-align: center; background-color: #800000; color: white; border-radius: 10px; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin: 0 auto;">Y</p> <p style="margin-left: 20px;">amount of tax calculated on the total income determined under clause (a) of sub-section (1) of section 143 or total income assessed, reassessed or recomputed in a preceding order.</p> </div> </div>

Quantum of Penalty

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

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

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

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

[Sub-section (5)]

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

Example:

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

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

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

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

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

Tax on Rs. 10,00,000 = Rs. 1,25,000 + 3% EC

Therefore, penalty leviable:

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

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

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

Answer:

Particulars	ASSESSMENT U/S 143(3)	RE-ASSESSMENT U/S 147
Under-Reported Income	= (-)30 - (-)50 = 20 lakhs	=20 - (-)30 = 50 lakhs
Tax	= 30% of 20 lakhs = Rs. 6,00,000	= 30% of 50 lakhs = Rs. 15,00,000
Penalty leviable in case of under-reporting (50% of tax)	= 50% of 6,00,000 = Rs. 3,00,000	= 50% of 15,00,000 = Rs. 7,50,000
Penalty leviable in case of misreporting (200% of tax)	= 200% of 6,00,000 = Rs. 12,00,000	= 50% of 15,00,000 = Rs. 30,00,000

Memorandum explaining the provisions in the Finance Act, 2016

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

Finance Minister's Speech

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



SECTION – 270AA

Immunity from imposition of penalty, etc.

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

2. An application referred to in sub-section (1) shall be made **within one month from the end of the month in which the order** referred to in clause (a) of sub-section (1) **has been received** and shall be made in such form and verified in such manner as may be prescribed. **[Form no.68]**

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

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

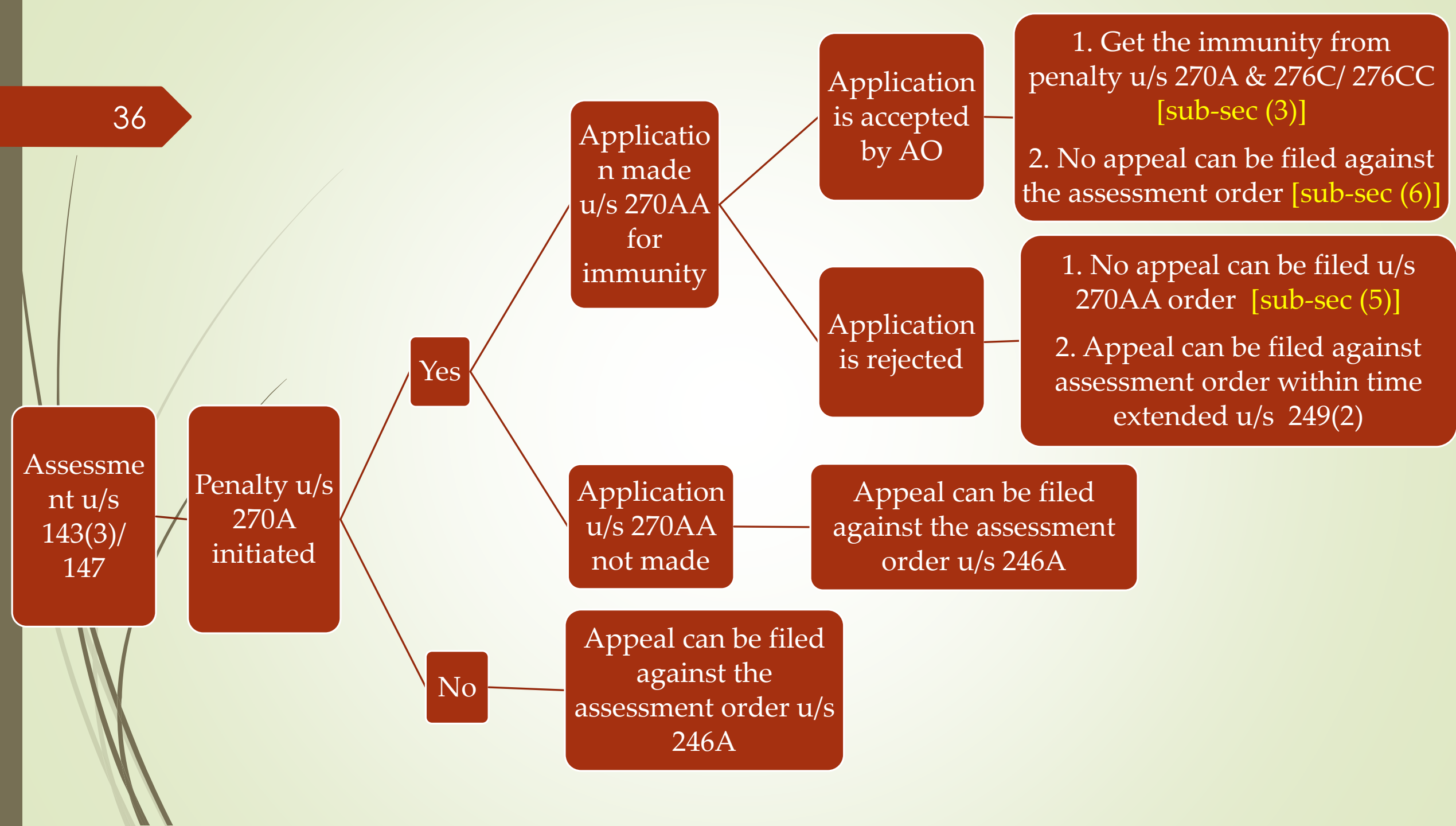
Section 270A(9)

- a) misrepresentation or suppression of facts
- b) failure to record investments in the books of account;
- c) claim of expenditure not substantiated by any evidence;
- d) recording of any false entry in the books of account;
- e) failure to record any receipt in books of account having a bearing on total income; and
- f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

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

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

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



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

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

SECTION – 271

Failure to furnish returns, comply with notices, concealment of income, etc.

Nature of Default	<p>271(1)(b) : Failure to comply with notice u/s 115WD(2), 115WE(2) or 142(1), 143(2) or failure in compliance of getting accounts audited u/s 142(2A). <i>Now, leviable u/s 272A(1)(d).</i></p> <p>271(1)(c) : Concealment of particulars of income or furnishing inaccurate particulars of such income.</p>
Applicable upto	A.Y. 2016-17
Amount of Penalty	<p>271(1)(b) : Rs. 10,000 for each failure</p> <p>271(1)(c) : Max. – 300% of amount of tax evaded Min. – 100% of amount of tax evaded</p>

(1) If the AO or CIT(A) or Pr.CIT or CIT in the course of any proceedings under this Act, is satisfied that any person—

- a) [***]
- b) has failed to comply with a notice under section 115WD(2) or under section 115WE(2) or under section 142(1) or section 143(2) or fails to comply with a direction issued under section 142(2A), or
- c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or
- d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars of such fringe benefits,

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

- i. [***]
- ii. in the cases referred to in clause (b), in addition to tax, if any, payable by him, a sum of **ten thousand rupees for each such failure** ;
- iii. in the cases referred to in clause (c) or clause (d), in addition to tax, if any, payable by him, **a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded** by reason of the concealment of particulars of his income or fringe benefits or the furnishing of inaccurate particulars of such income or fringe benefits.

► Explanation 1

Where in respect of any facts material to the computation of the total income of any person under this Act, —

- (A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or
- (B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is *bona fide* and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this subsection, be deemed to represent the income in respect of which particulars have been concealed.

Explanation 2

Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years but in respect of which no penalty under clause (iii) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this *Explanation* referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this *Explanation* referred to as the utilised amount) shall be treated as the income of the assessee, particulars of which had been concealed

► Explanation 2.....

or inaccurate particulars of which had been furnished for the first preceding year; and where the amount so added or deducted in the first preceding year is not sufficient to cover the utilised amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilised amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilised amount is covered by the amounts so added or deducted in such earlier assessment years.

► Explanation 3

Where any person fails to furnish return of his income u/s 139 within specified period, without any reasonable cause in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under section 142(1)(i) or section 148 and the Assessing Officer or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income,

Then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.

► Explanation 4

For the purposes of clause (iii) of this sub-section,—

- a) the amount of tax sought to be evaded shall be determined in accordance with the following formula (Same method has been specified in section 270a)—

$(A - B) + (C - D)$ where,

A

amount of tax on the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions)

B

amount of tax that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished

C

amount of tax on the total income assessed as per the provisions contained in section 115JB or section 115JC

D

amount of tax 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 income in respect of which particulars have been concealed or inaccurate particulars have been furnished

Provided that where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished 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* :

Provided further that in a case where the provisions contained in section 115JB or section 115JC are not applicable, the item (*C - D*) in the formula shall be ignored;

(*b*) where in any case the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the **effect of reducing the loss** declared in the return **or converting that loss into income**, the amount of tax sought to be evaded shall be determined in accordance with the formula specified in clause (*a*) with the modification that the amount to be determined for item (*A - B*) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;

(c) where in any case to which *Explanation 3 applies*, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.

Provided that where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished 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* :

Provided further that in a case where the provisions contained in section 115JB or section 115JC are not applicable, the item (*C - D*) in the formula shall be ignored;

Example of explanation 4 to section 271(1)c

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- Return of income filed by assessee company for AY 2015-16 as under:

Total income as per Act	Rs. 50,00,000.00
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Book profit as per section 115JB	Rs. 1,10,00,000.00
----------------------------------	--------------------

- Addition of Rs.25,00,000 made to total income under general provisions and Rs. 20,00,000 added by A.O to book profits under section 115JB, Rs. 5,00,000 is on the same issue e.g., provisions made for uncertain liability.
- As per explanation 4 to section 271(1)(c)
 - A = Rs. 23,17,500 [30.90% of Rs.75,00,000/-]
 - B = Rs. 15,45,000 [30.90% of Rs.50,00,000/-]
 - C = Rs. 26,01,010 [20.00775% of Rs.1,30,00,000/-]
 - D = Tax on [Book profits assessed by AO under section 115JB – Rs. 5,00,000]
 - = Tax on Rs. 1,15,00,000 = Rs. 23,00,890
 - Amount of tax sought to be evaded = $[23,17,500 - 15,45,000] + [26,01,010 - 23,00,890] =$ Rs.10,72,620/-

- b) where in any case the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to be evaded shall be determined in accordance with the formula specified in clause (a) with the modification that the amount to be determined for item (A - B) in that formula shall be the amount of tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;
- c) where in any case to which *Explanation 3* applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.

► Explanation 5

Where in the course of a search initiated under section 132 before the 1st day of June, 2007, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income, —

(a) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein ; or

(b) for any previous year which is to end on or after the date of the search, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income, unless, —

- 1) such income is, or the transactions resulting in such income are recorded,—
 - (i) in a case falling under clause (a), before the date of the search; and
 - (ii) in a case falling under clause (b), on or before such date,in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the said date ; or
- 2) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income.

► Explanation 5A

Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

- i. any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or
- ii. any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year, which has ended before the date of search and,—

- (a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or
- (b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

► Explanation 6

Where any adjustment is made in the income or loss declared in the return under the proviso to clause (a) of sub-section (1) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made.

► Explanation 7

Where in the case of an assessee who has entered into an international transaction or specified domestic transaction defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, then, the amount so added or disallowed shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed or inaccurate particulars have been furnished, unless the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence.

- (1A) Where any penalty is imposable by virtue of Explanation 2 to sub-section (1), proceedings for the imposition of such penalty may be initiated notwithstanding that any proceedings under this Act in the course of which such penalty proceedings could have been initiated under sub-section (1) have been completed.
- (1B) Where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under clause (c) of sub-section (1), such an order of assessment or reassessment shall be **deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings** under the said clause (c).
2. When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm. **[sub-section (2)]**

3. If the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction. **[sub-section (4)]**

4. The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1989 shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year. **[sub-section (5)]**
5. Any reference in this section to the income shall be construed as a reference to the income or fringe benefits, as the case may be, and the provisions of this section shall, as far as may be, apply in relation to any assessment in respect of fringe benefits also. **[sub-section (6)]**

Issues on Section 271(1)(b)

56

- Where order was passed u/s 143(3) and not u/s 144, subsequent compliance in the assessment proceedings was considered as good compliance. The defaults made earlier were ignored by the AO. Therefore, it cannot be concluded that the default was willful and penalty u/s 271(1)(b) cannot be levied. **Akhil Bhartiya Prathmik Shikshak Vs Asst. DIT (2008) 115 TTJ 419 (Delhi – Trib.)**
- Where assessee fails to appear before AO on different dates of hearing in response to notice issued u/s 143(2), penalty u/s 271(1)(b) could not be imposed for each and every notice issued by the AO which remained not complied with on the part of the assessee. It could be imposed only for the first default made by the assessee in this regard. The provision of section 271(1)(b) is of deterrent nature and not for earning revenue. **Smt. Rekha Rani v. DCIT [2015] 60 taxmann.com 131 (Delhi - Trib.)**
- Where AO seeks voluminous information on single day by issuing notice u/s 142(1) and given a short time period of 4 days for compliance of notice, then it can be concluded that effective opportunity of being heard was not provided to assessee in terms of sec. 274(1) and, therefore, penalty u/s 271(1)(b) would not be levied. **Aaryan Motels v. DCIT (2017) 88 taxmann.com 7 (Agra - Trib.)**

Issues on Section 271(1)(c)

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- ▶ Where assessee made statement regarding seized unaccounted gold and explained manner in which same was derived and treating its value as income tax paid, penalty was not to be levied under section 271(1)(c). **L. Giridharlal & Co. v. ITO [2015] 57 taxmann.com 382 (Andhra Pradesh and Telangana)**
- ▶ In case, Assessing Officer while discharging his duty is recalculating total income in accordance with law which is not same as calculated by assessee, it cannot be held that assessee has concealed particulars of his income or has furnished inaccurate particulars of such income or there is a deemed concealment in accordance with Explanation 1 to section 271(1). **Mimosa Investment Co. (P.) Ltd. v. ITO [2009] 28 SOT 470 (Mum.- ITAT)**
- ▶ Surrender of income made by assessee after detection made by the Assessing Officer in the search conducted in the sister concern of the assessee cannot be termed as voluntary so as to absolve assessee from the mischief of penal proceedings under section 271(1)(c). Statute does not recognize those types of defences under the Explanation 1 to section 271(1)(c). **MAK Data (P.) Ltd. vs CIT [2013] 358 ITR 593 (SC)**

Issues on Section 271(1)(c)

58

- ▶ In case, where income from house property was assessed on basis of notional income and facts on record showed that there was neither concealment of income nor furnishing of incorrect particulars in respect of notional income derived from said property and, hence, it was not established by Department that there was evasion of income from said property, levy of penalty under section 271(1)(c) was not warranted. And, where assessee admits that property belonged to him as a measure of compromise subject to a condition that no penalty would be levied and sale of property was also disclosed to Department, it could not be said that there was concealment with regard to capital gains attracting levy of penalty under section 271(1)(c). **CIT vs. Smt. B. Saroja Devi [1999] 236 ITR 203 (Madras)**
- ▶ Mere offer of the amount as additional income in the revised return by assessee after Survey in the absence of any explanation for the source of income, renders the assessee's argument insubstantial in the totality of circumstances, thereby attracting penalty u/s 271(1)(c). **Pr.CIT Vs Dr. Vandana Gupta, ITA 219/2017, Delhi High Court, Pronounced on: 20.02.2018**

Issues on Section 271(1)(c)

59

- ▶ Where Commissioner (Appeals) set aside penalty order taking a view that there was no specific mention of proceedings taken under Explanation 1(B) to section 271(1), in view of fact that when a notice was issued u/s 271, Explanation also being included under provision, assessee was sufficiently put to notice of entire provision as available u/s 271(1), impugned order setting aside levy of penalty was not sustainable. **CIT vs. Smt. Vasantha Anirudhan [2018] 90 taxmann.com 74 (Kerala)**
- ▶ In case, assessee delayed declaration of income to subsequent year and furnished inaccurate particulars of income for year under appeal, and, thus, avoided tax liability, merely because in subsequent year disclosure was made voluntarily, assessee would not be released from liability to pay penalty. **Shanti Ramanand Sagar v. [2017] 88 taxmann.com 72 (Bombay)**
- ▶ Where assessee had unintentionally claimed a rebate of 50% on total tax payable and on being probed had submitted a revised computation withdrawing rebate claimed and there was no allegation against assessee of furnishing inaccurate particulars or concealment of income, imposition of penalty u/s 271(1)(c) was not reasonable. **Gopalratnam Santha Mosur v. ITO [2017] 88 taxmann.com 13 (Madras)**

Issues on Section 271(1)(c)

60

- ▶ Where assessee was a beneficiary of amount received as a consequence of transfer performed by her husband of which she had no awareness and she offered that during assessment proceedings, penalty provision u/s 271(1)(c) not attracted. **CIT v. Smt. Madhuri Satish Misal [2017] 86 taxmann.com 147 (Bombay)**
- ▶ Where though huge cash was seized, assessee filed his return without addressing cash detected, and when scrutiny notice was issued, filed revised return and offered cash receipts as undisclosed income, penalty was to be levied u/s 271(1)(c). **Dilip Aakaram Gayakwad v. DCIT [2017] 83 taxmann.com 294 (Ahmedabad - Trib.)**
- ▶ Concealment penalty could not be levied merely because assessee on advice of his CA made a wrong claim of deduction u/s 80-IA. **CIT v. Abhishek Industries Ltd. [2018] 90 taxmann.com 150 (Punjab & Haryana)**
- ▶ Penalty order u/s 271(1)(c) could not be cancelled on mere ground that returned income and assessed income was a loss. **CIT v. Shree Chowatia Tubes (India) (P.) Ltd. [2017] 80 taxmann.com 388 (SC)**

Issues – Protective penalty

61

- ▶ In case of assessee making addition in hands of assessee, initiation of penalty proceedings is not permissible with respect to protective assessment order, unless and until substantive assessment is made and final assessment order is passed. **Bhailal Manilal Patel v. CIT [2014] 49 taxmann.com 539 (Gujarat).**
- ▶ Penalty could not be levied on assessee when protective assessments were made in case of assessee and income was actually assessed in hands of another person for several years. There can be protective assessment but there cannot be any protective penalty. He is liable only if it is his income which has been concealed. In other words, a person upon whom a substantive assessment is made would only be liable for penalty provided conditions precedent in respect of penalty are satisfied. **CIT v. Super Steel (Sales) Co. [1989] 47 Taxmann 036 (CAL.)**

Issues – Satisfaction of Assessing Officer

62

- Mere using the words that there has concealment of income and / or furnishing inaccurate particulars of income would not in the absence of same being particularized, lead to imposition of penalty. It is only when the specified officer of the Revenue is satisfied that there has been concealment of particulars of income or furnishing inaccurate particulars of income that the occasion to explain the conduct in terms of Explanation I to Section 271(1)(c) of the Act would arise. **CIT vs. L&T Finance Ltd, ITA No. 1363 of 2015, Bombay High Court, Date of Order: 4th June, 2018.**
- The remarks of AO in the assessment order that 'penalty proceedings u/s 271(1)(c) have been initiated separately' does not satisfy the requirement of satisfaction to be recorded by AO u/s 271(1)(c). Further, where even on a detailed perusal of the assessment order, no satisfaction of AO that penalty proceedings were required to be initiated against the assessee was evident, penalty was to be deleted. **CIT vs. Krishna Maruti Ltd [2009] 309 ITR 138 (Delhi) Also see Safina Hotels (P.) Ltd. v. CIT, [2016] 66 taxmann.com 334 (Kar.)**

SECTION – 271A

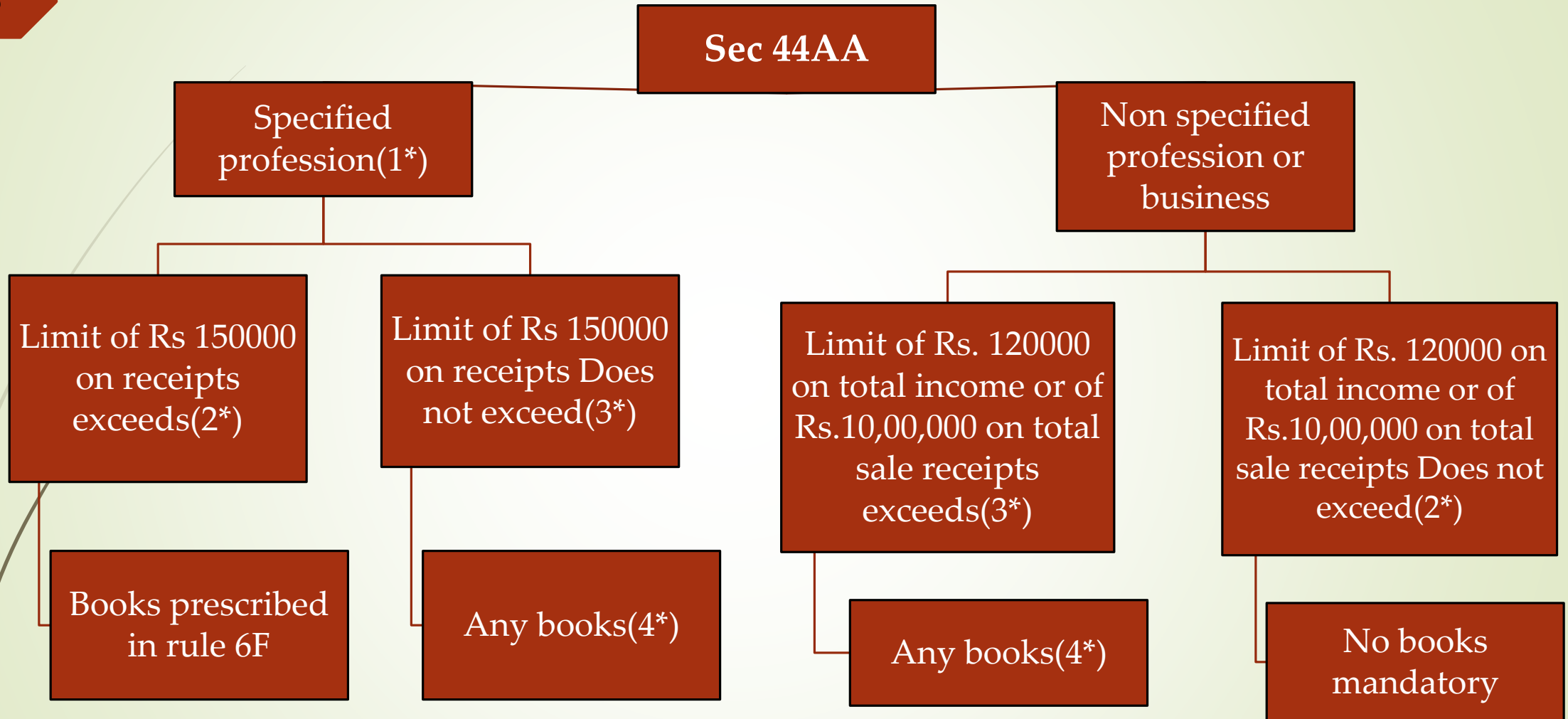
Failure to keep, maintain or retain books of account, documents, etc.

Nature of Default	Default in maintaining or retaining books of account
Applicable since	1 st April, 1976
Amount of Penalty	Rs. 25,000

- ▶ Without prejudice to the provisions of section 270A or section 271, if any person fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a **sum of twenty-five thousand rupees.**

Sec. 44AA – Requirement to maintain books.....

65



Limit of Rs.1,20,000/- for Total Income & Rs.10,00,000/- for total sale receipts enhanced to Rs.2,50,000/- & Rs.25,00,000/- respectively in respect of Individuals/ HUF [Finance Act, 2017 (w.e.f 01-04-2018)]

Sec. 44AA

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Note:

- (1*) specified person: legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession
- (2*) In all of the three years immediately preceding the P.Y. or where the business/profession has been newly set up in the P.Y., then such P.Y.
- (3*) In any one of the three years immediately preceding the previous year, or, where the business/profession has been newly set up in the previous year, then such P.Y.
- (4*) Any books: means the books so as to enable the AO to compute his total income in accordance with the provisions of this Act.

Where gross professional receipts in 1 of 3 years preceding the previous year in question have not exceeded Rs.1,50,000, assessee is not required to maintain books of account for that previous year even though such gross receipts have exceeded Rs.1,50,000 in the other 2 preceding years. **A. Keshava Bhat v. ITO [2001] 237 ITR 83 (Kar.)**

Sec. 44AA

67

Assessee shall also keep and maintain such books of account & other documents as may enable the AO to compute his total income in accordance with the provisions of this Act where:

1. Profits and gains from business are deemed to be profits and gains of assessee u/s 44AE, 44BB, 44BBB and the assessee has claimed his income to be lower than the profits or gains so deemed, or
2. Profits and gains from the business are deemed to be the profits and gains of assessee u/s 44AD and he has claimed such income to be lower than the profits and gains so deemed and his income exceeds the maximum amount which is not chargeable to income-tax.

However, **in respect point 2 above**, w.e.f. AY 2017-18, the assessee shall keep/maintain such books of account & other documents, if the provisions of Sec. 44AD(4) are applicable *{i.e. withdrawal of benefit u/s 44AD for next 5 A.Y.(s)}* and his income exceeds the maximum amount which is not chargeable to income-tax. **[as amended by Finance Act, 2016]**

Prescribed Books [RULE 6F (2) &(3)]

68

- Cash book
- Journal (if the accounts are kept on mercantile basis)
- Ledger
- Serial numbered carbon copies of the bills and receipts issued
- Original purchase bills/ payment vouchers.
- **For a person carrying on medical profession is required to keep the following apart from the aforesaid books of accounts : A daily case register in Form No. 3C and an inventory of stock of drugs, medicines & other consumable accessories used for his profession as on the 1st & last day of the P.Y. For clarification, these do not constitute books of accounts & thus, same need not be mentioned under Clause 11(a).**

- Prescribed books of account are to be kept at the place of profession or principal place of profession, if carried at more than one place **[sub-rule (4)]**
- To be maintained for a period of **6 years** from the end of the relevant assessment year. **[Sub-rule (5)]**

RULE 6F (2) &(3)...

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➤ Notified Specified Profession

Authorized representative and film artist - vide notification : No. SO 17(E), dated 12-1-1977.

Company Secretary – vide Notification : No. SO 2675, dated 25-9-1992

Profession of information technology – vide Notification : No. SO 385(E), dated 4-5-2001

➤ Books or Books of account defined Sec 2(12A) to include:-

Ledgers, Day Books, Cash books, Account books, Others

- For the purpose of Section 44AB, it is not necessary that any books of account or any accounts maintained by the assessee should at first be such books of account as are required u/s 44AA. Whether the books of account as prescribed u/s 44AA are maintained or not, other books of account are subject to audit u/s 44AB. **S.J Agarwal and Co. v. ITO [2008] 114 ITD 27(Pune) (SMC)**

Issues

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- ▶ Non-initiation of penalty proceedings u/s 271A could not be basis to hold assessment order erroneous and prejudicial to interest of revenue. **Rakesh Nain Trivedi v. CIT [2014] 48 taxmann.com 290 (Amritsar - Trib.)**
- ▶ Where assessee in spite of having turnover in excess of Rs. 10 lakh, failed to maintain books of account in accordance with section 44AF so as to determine correct taxable income, AO was justified in imposing penalty on assessee u/s 271A. **Ashok Kumar Varshney v. ITO [2012] 28 taxmann.com 266 (Agra-ITAT)**

SECTION – 271AAC

Penalty in respect of certain income

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

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

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

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

Section 271AAC....

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

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

Section 115BBE

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

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

the income-tax payable shall be the aggregate of—

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

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

Example –

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

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

SECTION – 271B

Failure to get accounts audited

Nature of Default	Failure to get accounts audited or to furnish audit report as required u/s 44AB
Applicable from	1 st April, 1985
Amount of Penalty	0.5% of total sales, turnover or gross receipts or Rs. 1,50,000, whichever is less

- ▶ If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to 0.5% of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of 1,50,000, whichever is less.
- ▶ **Issues:**
- ▶ Where Assessing Officer had failed to record its satisfaction in assessment order that assessee had not obtained audit report well on time and further, there was no whisper in said assessment order regarding levy of penalty, no penalty would be leviable. **CIT v. E.C.C. Project (P.) Ltd. [2014] 49 taxmann.com 17 (Allahabad)**
- ▶ Requirement of satisfaction is not a sine qua non for initiation of a proceeding under section 271B. **Assam State Warehousing Corporation Vs CIT [2007] 288 ITR 25 (Gauhati)**

- Where assessee could not file audit report as required u/s 44AB because its books of account got damaged due to flood, it being a reasonable cause for not getting accounts audited, penalty order passed under section 271B was to be set aside. **Kanjan Marketing v. ITO [2017] 85 taxmann.com 274 (Mum. - Trib.)**
- Where assessee, a licensed vendor for sale of stamps on commission was under a bona fide belief that he was not liable for audit of accounts u/s 44AB as per circular No. 452 and ICAI guidelines, penalty u/s 271B was not to be imposed. **Prem Prakash Gupta v. ITO [2015] 55 taxmann.com 291 (Jaipur - Trib.)**
- Where securities held by assessee were disclosed as investment in books of account whereas profit arising on sale of those securities was reflected as business income, said method being accepted by ICAI, plea raised by assessee that it was under bona fide belief that provisions of section 44AB did not apply to its case, therefore impugned penalty order was to be set aside. **Off Shore India Ltd. v. DCIT [2017] 87 taxmann.com 202 (Kol. - Trib.)**

- Where assessee was completely in dark about the taxation laws and had with bonafide belief had entrusted the job of handling the entire taxation matters to a chartered accountant and fails to get his accounts audited and assessee had also filed a complaint against said CA with the ICAI for professional misconduct, penalty u/s 271B should not be levied on assessee. **Calcutta Urology Research Centre (P.) Ltd. v. ACIT [2017] 82 taxmann.com 240 (Kol. - Trib.)**
- If penalty is not leviable u/s 271A for non-maintenance of books of account in case of civil contractor, there is no question of imposing penalty u/s 271B for not getting books of account audited. **K.V. Ramachandran v. DCIT [2013] 32 taxmann.com 200 (Cochin - Trib.). Also see Ram Prakash C. Puri Vs ACIT [2001] 77 ITD 210 (Pune)**
- Where assessee maintained proper documents for conducting its partnership business, however, failed to get its accounts audited within prescribed time period due to absence of accountant. In such case penalty order passed u/s 271B was to be upheld as once proper documents for conducting partnership business of assessee were maintained, it was not difficult for assessee to engage services of another accountant to finalize accounts in order to file returns and then submit audit report within prescribed time. **Metro Agenvies v. DCIT [2014] 45 taxmann.com 97 (Kerala)**

- Where an assessee has two businesses- chemical and paper and he gets his account audited in respect of chemical business only and fails to do so in respect of paper business, the AO can impose penalty u/s 271B in respect of the business whose accounts were not audited (not of aggregate turnover of chemical and paper businesses) **CIT Vs Bharti Sharma (2011) 44 SOT 230 [Delhi]**
- Where there was no difference between the returned income and the finally assessed income, there was no loss of revenue to the Government. It is well settled law that when there is a technical or venial breach of the provisions of law, the ends of justice require that discretion should not be exercised in favour of punishing a minor default. Thus, the Assessing Officer should not have imposed penalty under section 271B. **ITO Vs Bindra Ban Bansi Lal [2001] 78 ITD 228 (ASR.)**
- Pacca book of cash sales and purchase register are account books as defined u/s 2(12A). Thus, the account books maintained by assessee are required to be audited u/s 44AB when turnover exceeds the prescribed limit. Therefore, the assessee would be liable to penalty u/s 271B. **CIT v S.C. Naregal [2011] 16 taxmann.com 420 (Karnataka)**

- Here it was held that value of sale transactions of commodity through MCX without delivery cannot be considered as turnover for purpose of Section 44AB, therefore, failure on part of assessee to get its accounts audited does not lead to levy of penalty u/s 271B. **Om Stock & Commodities (P.) Ltd v DCIT [2014] 48 taxmann.com 186 (Mumbai - Trib.)**
- Board are of the view that the income of the political parties are governed by the special provisions i.e. Section 13A of the I.T Act, 1961, and accordingly the provisions of Chapter-IVD which are applicable for 'profits and gains of business or profession' cannot be applied in the cases of political parties. Income of political parties from voluntary contributions cannot be said to be income from profession so as to attract Sections 44AB or 271B of the Income tax Act. **[Instruction No : 1988, [F. No. 225/128/99-ITA-II(Pt.)dt.19.10.2000]**

SECTION – 271C

Penalty for failure to deduct tax at source

Nature of Default	<ul style="list-style-type: none"> a) Failure to deduct the whole or any part of tax as required under Chapter XVIIIB. b) Failure to pay the whole or any part of corporate dividend tax as required u/s 115-O or 194B.
Applicable from	1st April, 1989
Amount of Penalty	<ul style="list-style-type: none"> a) Amount equal to tax which has not been deducted b) Amount equal to tax which has not been paid

- 1) If any person fails to—
 - (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
 - (b) pay the whole or any part of the tax as required by or under—
 - (i) sub-section (2) of section 115-O; or
 - (ii) the second proviso to section 194B,then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.
- 2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Issues

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- Where view adopted by assessee based upon certificate of CA that engineering services availed by it were not technical services, was one of possible views, there was reasonable cause as envisaged under section 273B for not deducting tax at source by assessee and, thus, penalty u/s 271C was not to be imposed. **ADIT v. Leighton Welspun Contractors (P.) Ltd [2016] 65 taxmann.com 68 (Mum. - Trib.)**
- On failure of assessee firm to establish reasonable cause for not deducting tax at source on payments of interest made to sister concerns u/s 194A, penalty was to be levied. **CIT v. Muthoot Banker [2017] 86 taxmann.com 34 (Kerala)**
- In case of payments on which assessee had deducted tax at source under section 194C, merely because debate was whether provisions of section 194J are attracted or not, it does not make assessee liable for penalty u/s 271C. **Volkswagen India (P.) Ltd. v. ACIT [2017] 81 taxmann.com 8 (Pune - Trib.)**
- Merely because the assessee had reversed the interest credited earlier in a later year, the same cannot be a reason for non-levy of penalty on the assessee. **Marg Constructions Ltd. Vs Jt.CIT [2004] 2SOT 851 (Chennai)**

Issues

- Assessee entered into a Licence Agreement(LA) with Airport Authority of India(AAI) in terms of which premises at first floor of IGI Airport were given on license basis to assessee for purpose of operating an executive lounge. The payment by the assessee to the AAI for the operation of the executive lounge is split into two parts i.e., royalty and the fees for the space. Payment for use of space was inseparable from payment of royalty for right to operate lounge. The payment made by assessee to AAI under LA fell within definition of 'rent' under section 194-I. The assessee failed to deduct tax at source from the rent payments made to the AAI under the above LA. Thus in the instant case penalty u/s 271C shall be levied. **CIT. v. I.T.C. Ltd. [2017] 397 ITR 214 (Delhi)**
- TDS from warehouse charges was to be deducted under section 194C or 194-I being a debatable one. Thus, penalty could not be imposed upon assessee under section 271C. **Hindustan Coca Cola Beverages Pvt. Ltd. v. JCIT [2016] 387 ITR 471 (Delhi)**

SECTION – 271CA

Penalty for failure to collect tax at source

Nature of Default	Failure to collect the whole or any part of tax as required under Chapter XVIIIBB
Applicable from	1 st April, 2007
Amount of Penalty	Amount equal to tax which has not been collected

- 1) If any person fails to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB, then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to collect as aforesaid.
- 2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

SECTION – 271D

Penalty for failure to comply with the provisions of section 269SS.

Nature of Default	Any loan or deposit or specified advance taken or accepted in contravention of the section 269SS.
Applicable from	1 st October, 1998
Amount of Penalty	Amount equal to the loan or deposit or specified advance taken or accepted.

- ▶ 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 the loan or deposit [or specified sum] so taken or accepted.
- ▶ Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.
- ▶ **Issues:**
- ▶ Once the share application money received by the assessee was treated as undisclosed income, penalty proceedings could not have been initiated u/s 269SS read with section 271D. **CIT v. R. P. Singh and Co. Pvt. Ltd. [2012] 340 ITR 0217 (Del)**
- ▶ Expression 'any other person' in section 269SS does not exclude directors or members of company which has received or accepted loans or deposits. **CIT v. Samora Hotels (P.) Ltd. [2012] 19 taxmann.com 285 (Delhi)**
- ▶ Where assessee had received loan/ deposit through non-banking mode, in contravention of section 269SS but could not provide reasonable cause for such contravention, Tribunal was not justified in deleting penalty. **CIT v. Sunil Sugar Co [2017] 85 taxmann.com) 254 (Allahabad)**

Issue – Applicability of 269SS on Share Application money

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- Share application money partakes the character of a deposit even if it cannot be considered as a loan within the meaning of section 269SS. Since it is payable in specie on refusal to allot shares and was repayable if recalled by the applicant, before allotment of shares and the conclusion of the contract. Therefore, acceptance of share application money in cash amounting to Rs. 20,000 or more would violate provisions of section 269SS. **Balotia Engineering Works (P) Ltd. Vs. CIT (2005) 275 ITR 0399 (Jhar.)**.
- However, in **DIT (Exemption) v. Acme Educational Society [2010] 326 ITR 146**, it was held that a loan grants temporary use of money, or temporary accommodation, and that the essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf it has been made, on fulfilment of certain conditions. If these tests are applied to the receipt of share application money, it may be seen that the receipt of share application monies from other companies for allotment of shares cannot be treated as receipt of loan or deposit. **Also see CIT Vs I.P. India (P.) Ltd. [2012] 343 ITR 353 (Delhi)**
- Where the assessee was under bonafide belief that share application money was neither loans or deposits, penalty u/s 271D could not be levied **CIT Vs Object Frontier Software (P.) Ltd. [2017] 244 Taxman 292 (Madras)**

Issue- Applicability of section 269SS in case of Loan or deposit received/repaid by way of journal entries

- **CIT vs Noida Toll Bridge Co. Ltd. (2003) 262 ITR 260 (Del)** Where the transaction is by an account payee cheque, no payment on account is made in cash by the assessee or on its behalf, no loan has been accepted by the assessee in cash, and the payment of Rs. 4.85 crore has been made through IL&FS company, which holds more than 30% of the paid up capital of the assessee by journal entries by crediting the account of IL&FS, the Hon'ble Delhi High Court observed that provisions of section 269SS are not attracted. Neither the assessee nor IL&FS had made any payment in cash.
- However, Hon'ble Bombay HC held that receipt of any advance/loan by way of journal entries is in breach of section 269SS in **CIT Vs Ajitnath Hi-Tech Builders (P.) Ltd. [2018] 92 taxmann.com 228 (Bombay)**
- **DCIT vs Forging Ltd. [2012] 25 taxmann.com 156 (Delhi-ITAT)**

Facts: The consideration for land is paid to farmers through an agent and the agent's account was credited by way of journal entries. The amount was paid in cash by agent to the farmers.

Held: The term 'loan or deposit' has been defined to mean loan or deposit of money. The assessee has not accepted any deposit from 'D' by way of money in cash. It has credited the account of 'D' by way of journal entries in respect of purchase consideration paid on its behalf by 'D' through 'J'. Thus the section is not applicable.

Issue - Whether penalty is leviable on loan taken in cash by partners from firm?

- **No**, In **CIT v. R.M. Chidambaram Pillai [1977] 106 ITR 292(SC)**, it has been held that partnership is only a collective of separate persons and not a legal person in itself. Thus, there cannot be a contract of service in strict law between a firm and one of its partners.
- Thus, relying on the above principle, various courts have held that In case of a partnership firm, there is no separate identity of partner and firm and, therefore, where a partner took loan in cash from firm, there was no violation of section 269SS so as to invoke penal provisions of section 271D. **CIT vs V. Sivakumar [2013] 32 taxmann.com 62 (Madras)**, **CIT vs Lokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj.)**, **Shreepak Enterprises vs DCIT [1998] 64 ITD 300 (Ahd.- Trib.)** Capital contribution in cash of a partner in the partnership firm does not attract provisions of Section 269SS even if the amount is returned on non-approval of Government for constitution of partnership firm. **Bhikhabhai Dhanjibhai Patel v. Asstt. CIT [2010] 127 TTJ 479 (AHD.- ITAT)**

SECTION – 271DA

Penalty for failure to comply with provisions of section 269ST

Nature of Default	Any sum received in contravention of the provisions of section 269ST
Applicable from	1 st April, 2017
Amount of Penalty	Equal to amount received

- 1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

- 2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

SECTION – 271E

Penalty for failure to comply with the provisions of section 269T

Nature of Default	Any loan or deposit or specified advance which is repaid in contravention of section 269T
Applicable from	1 st April, 1989
Amount of Penalty	Amount equal to the deposit or specified advance which is re-paid

- If a person repays any loan or deposit or specified advance 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 advance] so repaid.
- Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

- **Issues:**
- Where pursuant to directions issued by Commissioner (Appeals), Assessing Officer passed a fresh assessment order wherein no satisfaction was recorded for initiating penalty proceedings under section 271E, impugned penalty order passed under said section deserved to be set aside. **CIT v. Jai Laxmi Rice Mills Ambala City [2015] 64 taxmann.com 75 (SC)**

- Where amounts have been received or paid in cash were mere book entries and were part of transactions on behalf of family members, it could not be said that there was violation of sections 269SS and 269T so as to attract penalty. **CIT v. Natvarlal Purshottamdas Parekh [2008] 303 ITR 5 (GUJ.)**
- Where assessee made repayment of loan in a manner other than by account payee instruments before 1-6-2002, it did not result in violation of section 269T. **CIT v. Jet Life India Ltd. [2011] 16 taxmann.com 403 (Delhi)** and **ITO v. Sudesh Kumar Sareen [2010] 005 ITR 829 (Del- Trib.)**
- Repayment of loan by partners to firm does not attract provisions of Section 269T and penalty could not be imposed as the firm and the partners are not independent of each other. **CIT v. Lokhpat Film Exchange (Cinema) [2008] 304 ITR 172 (Raj.)**

SECTION – 271F

Penalty for failure to furnish return of income.

Nature of Default	Failure to furnish a return of income as required by section 139(1) before the end of relevant assessment year
Applicable from & to	1 st April, 1997 - 1 st April, 2018 [upto AY 2017-18]
Amount of Penalty	Rs. 5,000

- If a person who is required to furnish a return of his income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.
- **Provided** that nothing contained in this section shall apply to and in relation to the return of income required to be furnished for any assessment year commencing on or after the 1st day of April, 2018. **[inserted by Finance Act, 2017, w.e.f. 1-4-2018]. Now Fee for default in furnishing return of income is levied as per Section 234F in respect of return filed for AY 2018-19 and onwards]**
- **Issues:**
- Where a cause is found to be reasonable for non-filing of return immediately in response to notice issued under section 153A, such cause can also be construed as a reasonable cause, while considering as to whether penalty has to be levied u/s 271F. **S. Jayanthi Shri v. ACIT [2016] 75 taxmann.com 248 (Madras)**
- Failure to furnish Annual Information Return in time is a technical or excusable breach of provision of Act flowing from a bona fide ignorance of assessee. For such failure penalty proceeding need not be initiated. **Malda District Central Co-op Bank Ltd. v. DIT [2016] 72 taxmann.com 306 (Kolkata - Trib.)**

SECTION – 271FA

Penalty for failure to furnish statement of financial transaction or reportable account

Nature of Default	Failure to furnish Statement of Financial Transaction or Annual information return: <ul style="list-style-type: none">• within prescribed time u/s 285BA(1)• within time specified in the notice issued u/s 285BA(5)
Applicable from	1 st April, 2005
Amount of Penalty	<ul style="list-style-type: none">• Rs. 500 per day during which failure continues• Rs. 1,000 per day during which failure continues

- ▶ If a person who is required to furnish a statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the time prescribed under sub-section (2) thereof, the income-tax authority prescribed under said sub-section (1) may direct that such person shall pay, by way of penalty, a sum of **Rs.500/-** (*Substituted for Rs.100/- by the Finance Act, 2018 w.e.f. 01-04-2018*) for every day during which such failure continues:

Provided that where such person fails to furnish the statement within the period specified in the notice issued under sub-section (5) of section 285BA, he shall pay, by way of penalty, a sum of **Rs.1000/-** (*Substituted for Rs.500/- by the Finance Act, 2018 w.e.f. 01-04-2018*) for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

Issues

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- Where Annual Information Reports of transactions over Rs. 30 lakhs had been filed by specified persons beyond period of limitation, said specified person would be held to be in default, and liable to levy of penalty under section 271FA. **Sub-Registrar v. Director of Income-tax [2014] 42 taxmann.com 444 (Chandigarh - Trib.)**
- Where Assessing Authority on appreciation of material had concluded that assessee was a habitual defaulter, in absence of any satisfactory explanation having been furnished by him for delay in furnishing annual information return, levy of penalty under section 271FA could not be faulted. **Joint Sub Registrar v. Director of Income-tax [2014] 51 taxmann.com 197 (Punjab & Haryana)**
- Appeal against an order of Director of Income-tax passed under section 271FA is to be filed before Tribunal who is higher in rank and not before Commissioner (Appeals) who is equivalent in rank with Director of Income-tax. **Raibareilly District Co-operative Bank Ltd. v. Director of Income-tax [2015] 54 taxmann.com 382 (Lucknow - Trib.)**

SECTION – 271FAA

Penalty for furnishing inaccurate statement of financial transaction or reportable account

Nature of Default	Furnishing inaccurate statement of financial transaction or reportable account u/s 285BA(1)(k).
Applicable from	1 st April, 2015
Amount of Penalty	Rs. 50,000

- ▶ If a person referred to in clause (k) of sub-section (1) of section 285BA, who is required to furnish a statement under that section, provides inaccurate information in the statement, and where—
 - (a) the inaccuracy is due to a failure to comply with the due diligence requirement prescribed under sub-section (7) of section 285BA or is deliberate on the part of that person; or
 - (b) the person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency; or
 - (c) the person discovers the inaccuracy after the statement of financial transaction or reportable account is furnished and fails to inform and furnish correct information within the time specified under sub-section (6) of section 285BA,then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of **fifty thousand rupees**.

Section 285BA(1)(k) requires furnishing of statement of financial transaction or reportable accounts by a prescribed reporting financial institutions under Rule 114F, 114G & 114H.

SECTION – 271H

Penalty for failure to furnish statements, etc.

Nature of Default	Failure to deliver the statement within the prescribed time as per section 200(3)/ proviso to sec-206C(3).
Applicable from	1 st July, 2012
Amount of Penalty	Min. – Rs. 10,000 Max. – Rs. 1,00,000

- 1) Without prejudice to the provisions of the Act, the AO may direct that a person shall pay by way of penalty, if, he—
 - (a) fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C; or
 - (b) furnishes incorrect information in the statement which is required to be delivered or caused to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.
- 2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

200(3) – Furnishing of Statement of TDS under Form Nos. 24Q, 26B, 26Q, 27A & 27Q to the Director General of Income-tax (Systems)/NSDL.

206C(3) proviso – Furnishing of Statement of TDS under Form Nos. 27A and 27EQ to the Director General of Income-tax (Systems)/NSDL

- 3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.
- 4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.

SECTION – 272A

Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.

Applicable from	1 st April, 1976
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109	Nature of Penalty	Amount of Penalty
	<ul style="list-style-type: none"> • Being legally bound to state the truth of any matter touching the subject of assessment, refuses to answer any question. • Refuses to sign any statement demanded by the income tax authority. • Failure to comply with the summons issued U/s 131(1) as to attend or to produce books or documents at certain place and time. • Failure to comply with the notice U/s 142(1) or 143(2) or fails to comply with the direction issued U/s 142(2A) [inserted w.e.f. 01-04-2017] 	<p>Rs. 10,000 for each such default.</p>
	<ul style="list-style-type: none"> • Failure to comply with the notice issued U/s 94(6) regarding furnishing of information of securities, etc. • Failure to give notice of discontinuance of business or profession U/s 176(3) • Failure to furnish statements mentioned in section 133 or 285B • Failure to allow inspection of any register of the company as per section 134 to allow copies of such register • No filing of return of income U/s 139(4A) & U/s 139(4C) or delay in filing of the said return of income • Failure to furnish a certificate of TCS u/s 206C • Failure to deduct and pay tax as required by section 226(2) 	<p>Rs. 100 for every day during which such failure continues.</p>

110	Nature of Penalty	Amount of Penalty
	<ul style="list-style-type: none"> • Failure to furnish a statement as required U/s 192(2C) • Failure to deliver or cause to be delivered in due time a copy of declaration referred in section 206C(1A). • Failure to deliver/ cause to be delivered statements as required u/s 206A(1) 	<p>Rs. 100 for every day during which such failure continues.</p>
	<ul style="list-style-type: none"> • Failure to furnish returns/ particulars mentioned in sec. 206, 206C • Failure to deliver or caused to be delivered a copy of declaration mentioned in section 197A. • Failure to furnish a certificate of TDS u/s 203 • Failure to deliver or cause to be delivered a copy of the statement within prescribed time u/s 200(3) or proviso to section 206C(3) [No penalty on or after 01-07-2012] • Failure to deliver or cause to be delivered statement within prescribed time u/s 206A(1) • Failure to deliver or cause to be delivered statement prescribed U/s 200(2A) or 206C(3A) with in the time prescribed. [inserted w.e.f. 01-06-2015] 	<p>Min.- Rs. 100 for every day during which such failure continues.</p> <p>Max.- shall not exceed tax deductible or collectible.</p>

- (3) Any penalty imposable as above shall be imposed —
 - a) in a case where the contravention, failure or default in respect of which such penalty is imposable **occurs in the course of any proceeding** before an income-tax authority not lower in rank than a Jt. DIT / Jt.CIT, by such income-tax authority;
 - (aa) in a case of failure to comply with the notice U/s 142(1) or 143(2) or fails to comply with the direction issued U/s 142(2A) as inserted w.e.f. 01-04-2017, by the income-tax authority who had issued the notice or direction referred to therein;
 - b) in a case of failure to deliver or caused to be delivered a copy of declaration mentioned in section 197A, by the Pr.CCIT or CCIT or Pr.CIT or CIT; and
 - c) in any other case, by the Jt.DIT / Jt. CIT.
- (4) No order under this section shall be passed by any income-tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.
- "**income-tax authority**" includes a Pr.DGIT / DGIT, Pr.DIT / DIT, Jt.DIT and an ADIT / DDIt while exercising the powers vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the matters specified in section 131(1).

Issues

- Where in view of change in IT system requiring furnishing details of PANs of all deductees for validation and uploading of e-TDS return, assessee delayed in filing its return in making efforts to obtain such details of deductees spreading throughout country, no penalty could be levied. **Argus Golden Trades India Ltd. v. Jt. CIT [2017] 82 taxmann.com 479 (Jaipur - Trib.)**
- Where assessee had challenged penalty u/s 272A(2)(k) on ground that delay in filing TDS Statement occurred due to non-availability of PANs in respect of few deductees but failed to substantiate same with evidences, assessee was to be directed to produce necessary evidences before AO to substantiate its claim who would then determine issue on merits after examination of such evidences. **Dr. Khan Industrial Consultants (P.) Ltd. v. Addl. CIT [2017] 81 taxmann.com 219 (Mumbai - Trib.)**
- Penalty u/s 272A(2)(k) is to be imposed for non-filing of e-TDS statements in time, irrespective of fact that it has not resulted in any loss to revenue. **Raja Harpal Singh Inter College v. PCIT [2016] 70 taxmann.com 246 (Allahabad)**

SECTION – 272AA

Penalty for failure to comply with the provisions of section 133B.

Nature of Default	Failure to comply with the provisions of section 133B regarding the powers of collecting certain information by an Income Tax Authority from the place of business or profession.
Applicable from	13 th May, 1986
Amount of Penalty	Max.- Rs. 1,000 Min.- as directed by Income Tax Authority.

- 1) If a person fails to comply with the provisions of section 133B, he shall, on an order passed by the Joint Commissioner, Assistant Director or Deputy Director or the Assessing Officer, as the case may be, pay, by way of penalty, a sum which may extend to one thousand rupees.
- 2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

133B Power to collect certain information.

(1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may, for the purpose of collecting any information which may be useful for, or relevant to, the purposes of this Act, enter —

- (a) any building or place within the limits of the area assigned to such authority ; or
- (b) any building/place occupied by any person i.r.o. whom he exercises jurisdiction, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information as may be prescribed. [Rule 112E – Form No. 45D]

SECTION – 272B

Penalty for failure to comply with the provisions of section 139A.

Nature of Default	<ul style="list-style-type: none">• Failure to quote PAN in any document referred to in section 139A(5)(c)• Failure to intimate PAN as required by section 139A(5A)• Quote or intimate PAN which is false & which he either knows or believes to be false or does not believe it to be true.
Applicable from	1 st June, 2002
Amount of Penalty	Rs. 10,000

- 1) If a person fails to comply with the provisions of section 139A [Permanent Account Number], the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **ten thousand rupees**.
- 2) If a person who is required to quote his permanent account number in any document referred to in clause (c) of sub-section (5) of section 139A, or to intimate such number as required by sub-section (5A) or sub-section (5C) of that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **ten thousand rupees**.
- 3) No order under sub-section (1) or sub-section (2) shall be passed unless the person, on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter.

Issues:

- ▶ No penalty was imposable under section 272B where assessee failed to mention correct PAN of few deductees in quarterly e-TDS return which in fact were not available with it at relevant time but on being show-caused it obtained correct PANs and filed revised return. **ITO v. Executive Engineer [2015] 58 taxmann.com 134 (Delhi - Trib.)**
- ▶ Where assessee failed to quote permanent account number(PAN) while filing appeal before Commissioner (Appeals), since default made on part of assessee was because of her ignorance and not because of any mala fide intention, penalty levied under section 272B was to be deleted. **Halimaben Jamalbhai Momin v. ACIT [2015] 61 taxmann.com 280 (Ahmedabad - Trib.)**

SECTION – 272BB

Penalty for failure to comply with the provisions of section 203A

Nature of Default	Where a person has failed to get tax deduction/ collection account number or to quote such number in challans, certificates, returns, etc.
Applicable from	1 st June, 1987
Amount of Penalty	Rs. 10,000

- 1) If a person fails to comply with the provisions of section 203A [Tax deduction and collection account number], he shall, on an order passed by the Assessing Officer, pay, by way of penalty, a sum of ten thousand rupees.
- 1A) If a person who is required to quote his "tax deduction account number" or, as the case may be, "tax collection account number" or "tax deduction and collection account number" in the challans or certificates or statements or other documents referred to in sub-section (2) of section 203A, quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.
- 2) No order under sub-section (1) or sub-section (1A) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

SECTION – 272BBB

Penalty for failure to comply with the provisions of section 206CA

Nature of Default	Failure to comply before 01.10.2004 with provisions of section 206CA relating to obtaining and quoting Tax-Collection Account Number.
Applicable from & upto	1 st June, 2002. 1st October, 2004
Amount of Penalty	Rs. 10,000

Penalty related to Search under the Income Tax Act, 1961

Penalty at a Glance

S. No.	Penalty Section	Nature of Default	Amount of Penalty
1.	271AAA	Search has been initiated u/s 132 from 1st June, 2007 before 1st July, 2012	10% of the undisclosed income of the specified previous year.
2	271AAB(1)	Search has been initiated u/s 132 on or after 1st July, 2012 upto 14th December, 2016	30% or 60% of the undisclosed income of the specified previous year.
	271AAB(1A)	Search has been initiated u/s 132 on or after 15th December, 2016	10% / 20% / 30-90% / 60% of the undisclosed income of the specified previous year.

SECTION – 271AAA

Penalty where search has been initiated.

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

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

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

► For the purposes of this section, —

a) "undisclosed income" means —

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

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

ISSUES

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

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

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

SECTION – 271AAB

Penalty where search has been initiated.

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

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

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

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

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

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

c) "**undisclosed income**" means—

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

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

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

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

ISSUES

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

Penalty related to International Transactions

Penalty at a Glance

S. No.	Section	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
1.	271AA	92D	(i) Failure to keep information or document related to international transaction or specified domestic transaction.	2% of the value of each international transaction or specified domestic transaction	01-04-2002 [substituted w.e.f. 01-07-2012]	-
			Failure on the part of constituent entity of the international group to furnish the information and the document as per sec 92D(4).	Rs. 5,00,000		
2.	271BA	92E	Failure to furnish report from an accountant as required u/s 92E	Rs. 1,00,000	01-04-2002	-
3.	271FAB	9A(5)	Failure to furnish statement or information or document by an eligible investment fund within prescribed time u/s 9A(5)	Rs. 5,00,000	01-04-2016	-

S. No.	Section 138	Default u/s	Nature of Default	Amount of Penalty	Applicable from	Applicable till
4.	271G	92D (3)	Failure to furnish information or document as required u/s 92D(3)	2% of the value of the international transaction or specified domestic transaction for each such failure	01-04-2002	-
5.	271GA	285A	Failure to furnish information or document u/s 285A	2% of the value of that transaction which effect directly or indirectly transferring the right of management in relation to the Indian concern and Rs. 5 lakhs in any other case.	01-04-2016	-
6.	271GB	286	Penalty for failure to furnish report or for furnishing inaccurate report u/s 286	Rs. 5,000 per day if period of failure does not exceed 1 month Rs. 15,000 per day if period of failure exceeds 1 month	01-04-2017	-
7.	271-I	195(6)	failure to furnish information or for furnishing inaccurate information u/s 195(6)	Rs. 1,00,000	01-06-2015	-

SECTION – 271AA

Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions

Nature of Default	<p>a) Failure to keep information or document related to international transaction or specified domestic transaction.</p> <p>b) Failure on the part of constituent entity of the international group to furnish the information and the document as per sec 92D(4).</p>
Applicable since	1 st April, 2002 (Substituted by Finance Act, 2012 w.e.f. 1 st July, 2012)
Amount of Penalty	<p>a) 2% of the value of each international transaction or specified domestic transaction</p> <p>b) Rs. 5,00,000</p>

- 1) Without prejudice to the provisions of section 270A or section 271 or section 271BA, if any person in respect of an international transaction or specified domestic transaction,—
 - i. fails to keep and maintain any such information and document as required by section 92D(1) or 92D(2);
 - ii. fails to report such transaction which he is required to do so; or
 - iii. maintains or furnishes an incorrect information or document,the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to **2%** of the value of each international transaction or

- 2) If any person fails to furnish the information and the document as required under sub-section (4) of section 92D, the prescribed income-tax authority referred to in the said sub-section may direct that such person shall pay, by way of penalty, a sum of **five hundred thousand rupees**.

ISSUES

- ▶ Where revenue had not controverted that assessee had provided similar services during relevant AY as provided in preceding AY and, therefore, comparable companies applied for in preceding year were relevant to transaction made during relevant AY, if assessee provided updated results of same comparable in relevant AY, that could not be reason to impose penalty u/s 271AA. **ACIT v. Integrated Decisions & Systems (India) (P.) Ltd [2016] 68 taxmann.com 185 (Jaipur - Trib.)**
- ▶ Where clause by clause documentation required under rule 10D, had been maintained by assessee in respect of international transactions with AEs, levy of penalty u/s 271AA was not justified. **DCIT v. Kodak Graphic Communication India Ltd. [2014] 52 taxmann.com 205 (Mum. - Trib.)**
- ▶ In case, where AO passed a penalty order u/s 271AA without stating nature of documents assessee failed to maintain in terms of rule 10D, order so passed being invalid, deserved to be quashed. **DCIT v. Bebo Technologies (P.) Ltd [2013] 40 taxmann.com 168 (Chandigarh - Trib.)**

- ▶ Penalty under section 271AA need not be imposed upon assessee when assessee had explained that delay occurred as auditor was busy in marriage of his son. **Augustan Knitwear (P.) Ltd. v. ACIT [2016] 67 taxmann.com 139 (Chennai - Trib.)**
- ▶ Where assessee followed cost plus method in respect of its international transactions whereas Assessing Officer followed Transaction Net Margin Method, but, both methods finally gave same value for international transactions, in such a case, even if there was a failure on assessee's part to maintain proper records as per rule 10D, it was only a benign one for which penalty order could not be passed under section 271AA. **ACIT v. Pentasoft Technologies Ltd. [2012] 17 taxmann.com 74 (Chennai-ITAT)**

SECTION – 271BA

Penalty for failure to furnish report under section 92E.

Nature of Default	Failure to furnish report under section 92E
Applicable from	1 st April, 2002
Amount of Penalty	Rs. 1,00,000

- If any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **one hundred thousand rupees**.

92E - Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction.

Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed [Rule 10E – Form No. 3CEB]

SECTION – 271FAB

Penalty for failure to furnish statement or information or document by an eligible investment fund

Nature of Default	Failure to furnish statement or information or document by an eligible investment fund within prescribed time u/s 9A(5).
Applicable from	1 st April, 2016
Amount of Penalty	Rs. 5,00,000

- If any eligible investment fund which is required to furnish a statement or any information or document, as required under sub-section (5) of section 9A fails to furnish such statement or information or document within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such fund shall pay, by way of penalty, a sum of **five hundred thousand rupees**.

SECTION – 271G

Penalty for failure to furnish information or document u/s 92D.

Nature of Default	Failure to furnish information or document as required u/s 92D(3).
Applicable from	1 st April, 2002
Amount of Penalty	2% of the value of the international transaction or specified domestic transaction for each such failure.

- If any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by sub-section (3) of section 92D, the Assessing Officer or the Transfer Pricing Officer as referred to in section 92CA or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to **two per cent of the value of the international transaction or specified domestic transaction for each such failure.**

92D. Return Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction

(1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed [Rule 10D]

(3) AO or CIT(A) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information/ document in respect thereof, as may be prescribed under sub-section (1), within a period of 30 days from date of receipt of a notice issued in this regard :

Issues

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- Where assessee had filed relevant information during assessment proceedings as soon as it was brought to notice and accordingly Assessing Officer completed assessment without making any adjustment, assessee having complied with provisions of section 92D(3), penalty under section 271G was to be deleted. **Karvy Computershare (P.) Ltd. v. Addl. CIT [2017] 85 taxmann.com 182 (Hyderabad - Trib.)**
- No penalty was leviable under section 271G when assessee failed to submit documentation under section 92D due to pendency of its application of shifting of its head office and he had also communicated same before Assessing Officer. **NTT Data Global Delivery Services Ltd. v. ACIT [2017] 87 taxmann.com 343 (Delhi - Trib.)**
- Where in course of transfer pricing proceedings, revenue could not point out any specific non-compliance on part of assessee regarding production of documents maintained under section 92D(1), impugned penalty order passed under section 271G was to be set aside. **ACIT v. Gillette India Ltd. [2015] 54 taxmann.com 313 (Jaipur - Trib.)**

SECTION – 271GA

Penalty for failure to furnish information or document under section 285A.

Nature of Default	Failure to furnish information or document u/s 285A
Applicable from	1 st April, 2016
Amount of Penalty	2% of the value of that transaction which effect directly or indirectly transferring the right of management in relation to the Indian concern and Rs. 5 lakhs in any other case.

- If any Indian concern, which is required to furnish any information or document under section 285A, fails to do so, the income-tax authority, as may be prescribed under the said section, may direct that such Indian concern shall pay, by way of penalty,—
 - i. a sum equal to two per cent of the value of the transaction in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;
 - ii. a sum of five hundred thousand rupees in any other case.

SECTION – 271GB

Penalty for failure to furnish report or for furnishing inaccurate report u/s 286

Nature of Default	Penalty for failure to furnish report or for furnishing inaccurate report u/s 286 [Furnishing of report in respect of international group]
Applicable from	1 st April, 2017
Amount of Penalty	<ul style="list-style-type: none">• Rs. 5,000 per day, if period of failure does not exceed 1 month• Rs. 15,000 per day, if period of failure exceeds 1 month• Failure continued even after Order served with direction to pay – 50,000 per day from date of order

- 1) If any reporting entity referred to in section 286, which is required to furnish the report referred to in sub-section (2) of the said section, in respect of a reporting accounting year, fails to do so, the authority prescribed under that section (herein referred to as prescribed authority) may direct that such entity shall pay, by way of penalty, a sum of,—
 - i. five thousand rupees for every day for which the failure continues, if the period of failure does not exceed one month; or
 - ii. fifteen thousand rupees for every day for which the failure continues beyond the period of one month.
- 2) Where any reporting entity referred to in section 286 fails to produce the information and documents within the period allowed under sub-section (6) of the said section, the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of five thousand rupees for every day during which the failure continues, beginning from the day immediately following the day on which the period for furnishing the information and document expires.

- 3) If the failure referred to in sub-section (1) or sub-section (2) continues after an order has been served on the entity, directing it to pay the penalty under sub-section (1) or, as the case may be, under sub-section (2), then, notwithstanding anything contained in sub-section (1) or sub-section (2), the prescribed authority may direct that such entity shall pay, by way of penalty, a sum of fifty thousand rupees for every day for which such failure continues beginning from the date of service of such order.
- 4) Where a reporting entity referred to in section 286 provides inaccurate information in the report furnished in accordance with sub-section (2) of the said section and where—
 - a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or
 - b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or
 - c) the entity furnishes inaccurate information or document in response to the notice issued under sub-section (6) of section 286,then, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of five lakh rupees.

286. Furnishing of report in respect of international group.

(1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed^{77a},—

(a) whether it is the alternate reporting entity of the international group;
or

(b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

SECTION – 271-I

Penalty for failure to furnish information or furnishing inaccurate information under section 195

Nature of Default	Failure to furnish information or for furnishing inaccurate information u/s 195(6)
Applicable from	1 st June, 2015
Amount of Penalty	Rs. 1,00,000

- If a person, who is required to furnish information under sub-section (6) of section 195, fails to furnish such information, or furnishes inaccurate information, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one lakh rupees.

195(6) – The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed [Rule 37BB - Form Nos. 15CA, 15CB and 15CC]

SECTION – 273B

Penalty not to be imposed in certain cases.

- ▶ Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, [section 271FAB,] section 271FB, section 271G, [section 271GA,] [section 271GB,] section 271H, [section 271-I], [section 271J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

Sections not covered u/s 273 B

Section	Particulars
270A	Penalty for under-reporting and misreporting of income
270AA	Immunity from imposition of penalty, etc.
271(1)(c)	Concealment of particulars of income or furnishing inaccurate particulars of such income.
271AAA	Penalty where search has been initiated
271AAB	Penalty where search has been initiated
271DA	Penalty for failure to comply with provisions of section 269ST
271FAA	Penalty for furnishing inaccurate statement of financial transaction or reportable account

Issues:

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

SECTION – 274

Procedure

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

Issues – Notice u/s 271(1)(c) to specify limb

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Notice u/s 274 should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Sending printed form where all the ground mentioned in Section 271 are mentioned would not satisfy requirement of law. The assessee should know the grounds which he has to meet specifically. Otherwise, principles of natural justice is offended. **CIT Vs Manjunatha Cotton & Ginning Factory [2013] 359 ITR 565 (Karnataka). Approved by Apex Court in CIT Vs SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC).**

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

SECTION – 275

Bar of limitation for imposing penalties

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

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

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

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

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

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

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

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

► Explanation

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

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

Issues:

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

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

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