

# **PENALTIES**

## **UNDER**

### **INCOME TAX ACT**

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**INCOME TAX OFFICER**

# Penalties & prosecutions, interests & fines

- For the satisfactory implementation of law
- To increase the Number of tax payers
- To ensure voluntary compliance
- To tackle evasion of tax

- HOW MANY?

Total No. of Defaults/Penalties	-	42
Search related	-	3
International Transactions related	-	3
Failure in making Tax payments	-	4
Non filing of returns, statements	-	16
Not responding to Notices	-	4
Concealment	-	2
Failure to maintain books, register-	-	3
PAN, TAN related	-	2
Others	-	5

# Concealment

Penalty u/s	Default u/s	Nature of Default	Amount
271(1)(c) (only upto A.Y.2016-17)  [270A – w.e.f. A.Y.2017-18]		Concealing or furnishing inaccurate particulars of income	Min: 100% of tax sought to be evaded  Max: 300%
271(1)(d)	<b>FBT</b>	Concealing or furnishing inaccurate particulars of fringe benefits	Min: 100% of tax sought to be evaded  Max: 300%

## New Formula for 271(1)(c) – For A.Y.2016-17

- The amount of tax sought to be evaded shall be determined in accordance with the following formula–
- $(A - B) + (C - D)$
- 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 (hereinafter 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 general provisions and under the provisions contained in section 115JB or section 115JC, such amount shall not be reduced from total income assessed while determining the amount under item D:

# Penalty u /s 271(1)(c)

**Note:** 'Amount of tax sought to be evaded' shall be aggregate of tax sought to be evaded under the general provisions and the tax sought to be evaded under the provisions of MAT or AMT. However, if an amount of concealed income is considered both under the general provisions and provisions of MAT or AMT, such amount shall not be considered in computing tax sought to be evaded under provisions of MAT or AMT. Further, where provisions of MAT or AMT are not applicable, the computation of tax sought to be evaded under the provisions of MAT or AMT shall be ignored. <sup>6</sup>

# New Provisions u/s 270A

## Under Reporting of Income

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 under clause (a) of sub-section (1) of section 143;

(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 re-assessment;

(d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;

(e) the amount of deemed total income assessed as per the provisions of section 115JB or 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed;

(f) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

# New Provisions u/s 270A

**The under-reported income under this section shall not include the following cases:**

- (i) where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bona fide and all the material facts have been disclosed;
- (ii) where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;
- (iii) where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;**
- (iv) where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction;
- (v) where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.



# New Provisions u/s 270A

## **Misreporting of income**

- (i) misrepresentation or suppression of facts;
- (ii) non-recording of investments in books of account;
- (iii) claiming of expenditure not substantiated by evidence;
- (iv) recording of false entry in books of account;
- (v) failure to record any receipt in books of account having a bearing on total income;
- (vi) failure to report any international transaction or deemed international transaction under Chapter X.

# New Provisions u/s 270A

## Rate of Penalty

The rate of penalty shall be **fifty per cent** of the tax payable on under-reported income.

In a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of **two hundred per cent** of the tax payable on such misreported income.

**In case of company, firm or local authority, the tax payable on under reported income shall be calculated as if the under-reported income is the total income.**

**In any other case the tax payable shall be thirty per cent of the under-reported income.**

# New Provisions u/s 270A

- **The amount of total under reported income shall be determined in accordance with the following formula-**  
**(A – B) + (C – D) where,**
- A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions);
- B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income;
- C = the total income assessed as per the provisions contained in section 115JB or section 115JC;
- D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income.

# New Provisions u/s 270AA

## With effect from A.Y.2017-18

- An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C, provided he pays the tax and interest payable as per the order of assessment or reassessment within the period specified in such notice of demand and does not prefer an appeal against such assessment order.
- The assessee can make such application within one month from the end of the month in which the order of assessment or reassessment is received
- The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in sub-section (2) of section 249, grant immunity from initiation of penalty and proceeding under section 276C **if the penalty proceedings under section 270A has not been initiated on account of 'MISREPORTING OF INCOME'**.
- Where application u/s 270AA is rejected by A.O, the time period from date of application to date of rejection will be excluded for filing appeal before CIT(A).

Penalty u/s	Default u/s	Nature of Default	Amount
271AAB (w.e.f.1.7.2012) // Assessing Officer	132	Penalty where search has been initiated	a) 10% of UDI if 'A' admits UDI & specifies the manner in which earned & pays tax & int. b) 20% of UDI-not admitted in search but declares in ROI & pays tax & int. c) 30 to 90% of UDI in other cases <b><u>W.e.f 1.4.2017,</u></b> under clause (c), penalty leviable flat @ 60%

# Search Related

Penalty u/s -- Authority to levy	Default u/s	Nature of Default	Amount
158BFA(2) // Assessing officer or CIT(Appeals) // [Applicable only if search conducted upto 31.5.2003]	158BC	Failure to disclose full income of the block period	100% to 300% of the tax on undisclosed income determined u/s 158BC(c)
271AAA (01-06-07) (upto 30.6.12) // Assessing Officer	132	Failure to admit substantiated undisclosed source of income	10% of undisclosed income

# International Transactions Related

Penalty / Authority	Default u/s	Nature of Default	Amount
271AA // A.O or CIT(A)	92D	Failure to keep and maintain infn & docs as required u/s 92D(1) and (2)	2% of Intl. transaction value
271BA // A.O	92E	Failure to furnish report from an accountant as required u/s 92E	1,00,000 Fixed
271G // A.O or TPO (w.e.f. 1.10.14) or CIT(A)	92D(3)	Failure to furnish infn & docs as required u/s 92D(3)	2% of Intl. transaction value

# Failure in making Tax payments

Penalty u/s	Default u/s	Nature of Default	Amount
140A(3)	Self asst tax – 140A(1)	Failure to pay tax u/s 140 A(1)	Max: Tax Arrears
221(1)	220	Failure in making payment of tax (DN 156)	Max: Tax Arrears
271C // By JCIT	Ch.XVIIB, 115-O, 194B	TDS, Tax on distributed profits, Lottery	Tax not deducted or paid
272A(2)(h) // By JCIT	226(2)	Attachment of Salary	Min: 100/d Max: Tax



# Non filing of returns, statements

Penalty u/s	Default u/s	Nature of Default	Amount
1. 271F	139(1)	Return of Income	5000
2. 271FA	285BA	AIR	100/day
3.271FA	285BA(1)  285BA(5)	<b>W.E.F. 1.4.2015 furnish statement of fin.trans.within time u/s285BA(2).</b> <b>Failure to furnish return/stat/within the period specified u/s 285BA(5)</b>	100/day  500/day

Penalty u/s // Authority	Default u/s	Nature of Default	Amount
4.271FAA	285BA(6) or 285BA(7)	Persons u/s 285BA(1)(k) furnishing statement with inaccurate information	Rs.50000
5.271FB	115WD(1)	Failure to furnish FBT return	Rs.100/day
6. 272A(2)(c ) // By JCIT	133(1 to 6), 206, 206C, 285B	1.Return of Names & addresses /Particulars 2. TCS 3. Movie Producer	Min:100/day Max: TDS/TCS

# Non filing of returns, statements

Penalty u/s // Authority	Default u/s	Nature of Default	Amount
7. 272A(2)(e) // By JCIT	139(4A) 139(4C)	Charitable Trust Scienc.Instn, News Agency, Hospital, Edu.Instn, Trade Union	100/day
8. 272A(2)(f) // Pr CIT / CIT	197A	Form 15H, 15G	Min:100/day Max: TDS/TCS
9. 272A(2)(g) // By JCIT	203, 206C	Failure to issue Form-16, 16A (TDS) TCS:Form-27D	Min:100/day Max: TDS/TCS
10. 272A(2)(i) // By JCIT	192 (2C)	Salary Perks/Profits in Lieu of Salary – Form 12BA	100/day

## Non filing of returns, statements

Penalty u/s	Default u/s	Nature of Default	Amount
11. 272(A)(2)(j) // JCIT	206C(1B) (on or before 7 <sup>th</sup> of next month)	206C(1A) – TCS declaration (goods for mfr & not trdg)	100/day
12. 272(A)(2)(k) (upto 30.6.2012) // JCIT	200(3), 206C(3)	Quarterly Statement TDS & TCS	100/day
13. 271H w.e.f.1.7.2012	200(3), 206C(3)	Quarterly Statement TDS & TCS, furnish incorrect information	Rs.10000 to Rs.100000(w.ef 1.10.2014 levy as per AO's order)

## Non filing of returns, statements

Penalty u/s	Default u/s	Nature of Default	Amount
14. 272(A)(2)(1) (from A.Yr.2006-07) // By JCIT	206A(1) (see Rule 31AC & 31ACA)	Quarterly Return – Interest without TDS by banks	100/day
15. 272(A)(2)(m) (w.e.f. 1.6.2015) // By JCIT	200(2A) or 206C(3A) (Form 24G)	TDS / TCS by Govt office (book adj by PAO / TO / CDDO), failure to give particulars in prescribed form.	Rs.100 / day
16. 271-I // A.O (w.e.f. 1.6.2015)	195(6) (Rule 37BB – Forms 15CA & CB)	Failure to furnish information required u/s 195(6)	Rs.one lakh.

# Not responding to Notices

Penalty u/s	Default u/s	Nature of Default	Amount
271(1)(b) // By A.O or CIT(A) or Pr. CIT / CIT	142(1), 143(2), 142(2A)	Calling for Return/particulars/ Direction to get the accounts audited	10000 for each default
272A(1)(c)	131(1)	Summons	10000 for each default
272AA // By A.O or JCIT	133B	Collection of Information-45D	Max:1000
272A(2)(a)	94(6)	Failure to furnish details of securities called for vide notice u/s 94(6)	Rs. 100/d

# Failure to maintain books,register

Penalty u/s	Default u/s	Nature of Default	Amount
271A // By A.O or CIT(A)	44AA	Maintain books of account / document for 6 years from A.Y. <i>(Rule 6F)</i>	25000
271B // By A.O	44AB	Getting accounts audited / furnish the audit report	½% of sales /gross receipts or 1.5 lakh whichever is less(upto AY 2010-11 one lakh)
272A(2)(d)	134	Allow Inspection of a register of members or Deb. Holders of company or allow copies	100/day

# PAN, TAN related

Penalty u/s	Default u/s	Nature of Default	Amount
272B	139A	Apply or quote PAN	10000
272BB	203A	Apply or quote TAN	10000



# OTHERS

Penalty u/s // Authority	Default u/s	Nature of Default	Amount
271D // By JCIT	269SS	Loan or Deposit <u>or immovable property advance</u> taken in cash – 20000 or more	Amount taken
271E // By JCIT	269T	Loan or Deposit <u>or immovable property advance</u> repaid in cash – 20000 or more	Amount repaid
271(4) // By A.O or CIT(A)		Firm – profits distribution to partner violating deed – partner showing less income	150% of (tax on assessed income minus tax on returned income)

# OTHERS

Penalty u/s // Authority	Default u/s	Nature of Default	Amount
272(A)(2)(b) // By JCIT	176(3)	Give Notice of discontinuance of business/profession 176(3) (within 15 days)	100/day
272(A)(1)(a)&(b) // By JCIT		Refusal to answer question or sign statement	10000
<b>Amendment with effect from 1.4.2017: 272(A)(1)(d)</b>	142(1) / 143(2) / 142(2A)	Failure to comply with a notice u/s 142(1) / 143(2) or failure to comply with a direction issued under 142(2A)	10000 for each default

# *Mens Rea & Reasonable cause*

## With effect from 10.09.1986

- The words 'reasonable cause' omitted
- Now **mens rea is inbuilt in penalty proceedings**
- No need for the revenue to establish such mens rea.
- However with the introduction of sec 273B
  - If the assessee proves that the default is not on account of mens-rea and there was reasonable cause for failure, no penalty shall be imposed (concealment & search penalties not covered)
  - **Sections covered u/s 273B** : 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271H, 271I, 272A(1)(c), 272A(1)(d), 272A(2), 272AA(1), 272B, 272BB, 272BBB, 273(1)(b), 273(2)(b) & 273(2)(c)

Madras HC – CIT v. T. Perumal – dt 29.10.2014 held that owing to the nature of business of assessee (civil contractor), if cash loans are found to be genuine and unavoidable, then penalty u /s 271D & 271E for violation of provisions of sec.269SS and 269T are not attracted.

# *Mens Rea*

The debate as to whether mens rea is required to be proved for levy of penalty u/s 271(1)(c) of the Act is now settled by the decision of **hon'ble Supreme Court in the case of Dharmendra Textiles – 306 ITR 277.**

## **Apex court held:**

*“..Object behind enactment of section 271(1)(c ), read with the Explanations thereto, indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability, as is the case in the matter of prosecution under section 276C...”*

# *Mens Rea*

In the case of **CIT v. Reliance Petroproducts Ltd**, Apex court also held that :

**Merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271(1)(c) .**

**Madras H.C – in the cases of CIT vs. C. Anantharaman Chettiar 273 ITR 401 and Christopher vs. CIT 286 ITR 511, held that**

*Disclosure of additional income by filing revised return with an assertion that disclosure is to buy peace is not bar on penalty and penalty can be imposed even in the case of so-called voluntary disclosure.*

# Law applicable

- Which law is applicable? Whether
- Law as it stood at the time of the commitment of default OR
- Law as it stood in the F.Y in which the assessment is completed OR
- Law as it stood at the time of levy of penalty

- The substantive law applicable is
- as it stood as on the date of default
- However - procedural law
  - with regard to time limits
  - obtaining approval of JCIT
  - quantum etc.,law as on the date of initiation/levy.

Is it necessary to take prior approval of any higher authority for levy of any penalty? If so, what are the occasions ?

- Yes -- prior approval of the JCIT.
  - ITO can levy upto Rs.10,000/-
  - ACIT/DCIT can levy upto Rs.20,000/-
  - above this limit with the approval

Sec. 274(2)

- If penalty is levied by the JCIT after passing the penalty order, he shall send a copy to the AO

Sec. 274(3)



# Time limits

- What are the time limits for levy of penalties?

To Levy

(a) Within the F.Y. in which proceedings, in the course of which penalty is initiated, are completed (or)

(b) Within 6 months from the end of the month in which **penalty action was initiated**

- whichever is later

However, if appeal is pending, within 6 months from the end of the month in which the order of CIT(A) or ITAT is received by the CIT/CCIT

Contd.

- within six months from the end of the month
  - in which order u/s 263 is passed (w.e.f. 1.4.2004 order u/s 264 is also included)
- Finance Bill 2003 – CIT(A) Order passed on or after 01-06-2003
  - Proviso is inserted
  - To enhance the time limit from 6 months
  - Within one year from the end of the F.Y. in which the order of CIT(A) is received by the CCIT/CIT

# Contentious Issues & Clarifications

- Vide Finance Act 2002, Sec.271(1)(c) amended (Expln 4) to the effect that reduction of loss would also attract penalty.
- The Supreme Court, in the case of **Virtual Soft Systems** held that there should be a positive income to levy penalty u /s 271(1)(c) prior to 1.4.2003 in view of the above amendment.
- However, subsequently, in the case of **CIT v. Gold Coin Health Food Pvt Ltd (304 ITR 308)**, the Apex Court has **overruled** its own decision and observed that *‘Even for the period prior to amendment, the position was that penalty was leviable even in a case where addition of concealed income reduced the returned loss’* and held that the said amendment is only clarificatory in nature.
- This view was again upheld by **Supreme court in the case of Saheli Leasing & Industries Ltd – 324 ITR 170.**

# Contentious Issues & Clarifications

- **The Delhi High Court – case of Nalwa Sons Investment Ltd – 327 ITR 543**, held that where the income tax payable on the total income under normal provisions is less than tax payable on book profits u/s 115JB, then penalty u/s 271(1)(c) is not attracted.
- Vide Fin Act 2015, expln 4 to sec.271 modified to the effect that cumulative sum of concealment under both provisions should be taken into account for penalty u/s 271(1)(c)
- **Vide Circular No.25 / 2015 dated 31.12.2015**, the CBDT accepted the above decision and **clarified that the amendment to expln 4 is prospective and applicable w.e.f. 1.4.2016.**

# Contentious Issues & Clarifications

- The Supreme court, in the case of **CIT v. Atul Mohan Bindal - 317 ITR 1**, held that the A.O has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income.
- **Subsection (1B) to sec.271 – inserted vide Finance Act 2008 with retrospective effect from 1.4.1989 clarifies that :**
- “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 u/s 271(1)(c), such an order shall be deemed to constitute satisfaction of the AO for initiation of penalty proceedings u/s 271(1)(c)**”

# Contentious Issues & Clarifications

- CBDT Circular No.10/2016 dated 26.04.2016 clarifies that

“The period of limitation of penalty proceedings u/s 271D and 271E of the Act is governed by the provisions of section 275(1)(c) of the Act. Therefore, the limitation period for the imposition of penalty under these provisions would be 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.

**The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a) of the Act.”**

- Reliance placed on Delhi High Court’s decision in the case of CIT v. Worldwide Township Projects Ltd – ITA No.232/2014 dated 21.05.2014.

# Whether any authority can waive or reduce the penalty levied?

Yes, u/s **273A** of the Act, the **CIT** was empowered to **wave/reduce/compound /stay in certain cases**

Under sec.273AA (w.e.f 1.4.2008), where an assessee made an application for settlement u/s 245C and the proceedings have abated u/s 245HA

- **W.E.F. 1.6.2016:** An order accepting or rejecting the application of an assessee u/s 273A / 273AA shall be passed by the Principal Commissioner or Commissioner within a period of twelve months from the end of the month in which such application is received.
- In respect of **applications pending as on 1st day of June, 2016**, the order under said sections shall be passed **on or before 31<sup>st</sup> May, 2017.**

What are these cases ? What is the procedure?

Power to reduce or waive penalty etc., in certain cases

- CIT can waive/reduce
- on his own motion
- or otherwise
- penalty leviable/levied
- u/s 271(1)( c )



if he is satisfied that

- voluntary disclosure prior to detection of concealment was there and
  - assessee, cooperated with enquiries
  - either paid/made satisfactory arrangements for payment
  - Prior approval of CCIT/DGIT is required if aggregate amount of such concealed income for different years exceeds 5 lakhs
  - Assessee will be having this benefit only once in life time
- Sec. 273A(3)

- CIT may waive/reduce/stay/compound
  - any other penalty
  - on the application of the assessee
  - after recording his reasons to waive/reduce
    - if the CIT is satisfied - that
      - assessee will be put into genuine hardship
      - assessee has cooperated
      - if exceeds One Lakh
        - » with the previous approval of CCIT/DGIT

**SEC 273A(4)**

# THANK YOU

