



Penal Provision – Section 270A

CA Bhadresh Doshi

Introduction

- ▶ New Section 270A
- ▶ Objectives
 - ▶ To rationalize
 - ▶ To bring objectivity, certainty & clarity
- ▶ Effective from A.Y. 2017-18 onwards
- ▶ Old penalty provision u/s. 271 to apply till A.Y. 2016-17



Primary Provision – Sub-section (1)

- ▶ The Assessing Officer / CIT (A) / Pr. CIT / CIT may
- ▶ during the course of any proceeding under this Act
- ▶ direct that any person who has under-reported his income
- ▶ shall be liable to pay penalty in addition to tax, if any, on the under-reported income



Flow of Provisions

- ▶ Is there any under-reporting of income?
 - ▶ Sub-section (2)
- ▶ Compute under-reported income
 - ▶ Sub-section (3)
- ▶ Beneficial Provision - Certain amount required to be excluded from under-reported income
 - ▶ Sub-section (6)
- ▶ Compute tax payable on under-reported income
 - ▶ Sub-section (10)



Flow of Provisions

- ▶ Is there any misreporting of income?
 - ▶ Sub-section (9)
- ▶ Compute penalty
 - ▶ Sub-section (7) & (8)
 - ▶ % of Tax payable on Under-reported Income
 - ▶ 50% in case of under-reporting
 - ▶ 200% in case of misreporting



Trigger of Under-Reporting of Income

- ▶ Sub-section (2)
- ▶ There has to be an assessment
 - ▶ Any type of assessment
 - ▶ In case of multiple assessments for the same year – under-reporting of income to be considered separately for each assessment
- ▶ Covers different types of cases
- ▶ Captures under-reporting of income under both –
 - ▶ Normal provision
 - ▶ MAT / AMT provisions (deemed total income)



Trigger of Under-Reporting of Income

- ▶ First Assessment

- ▶ Return is furnished

- ▶ Assessed Income > Income as per intimation u/s. 143(1)(a)

- ▶ Return is not furnished

- ▶ Assessed Income > Maximum amount not chargeable to tax

- ▶ Second Assessment

- ▶ Reassessed Income > Income assessed earlier

- #Regular Income or Deemed Income u/s. 115JB / 115JC



Trigger of Under-Reporting of Income

- ▶ In case of loss –
 - ▶ Reduction in loss
 - ▶ Converting loss into income



Computation of Under-Reported Income

- ▶ Sub-section (3)
- ▶ Income is assessed for the first time –
 - ▶ Return is furnished
 - ▶ Assessed Income – Income as per intimation u/s. 143(1)(a)
 - ▶ Return is not furnished
 - ▶ Co./Firm → Assessed Income
 - ▶ Others → Assessed Income – Maximum amount not chargeable to tax



Computation of Under-Reported Income

- ▶ Income is reassessed –
 - ▶ Reassessed Income – Assessed Income as per preceding order
- ▶ Loss case –
 - ▶ Difference between income or loss assessed and loss claimed



Computation of Under-Reported Income

- ▶ Where under-reported income arises in respect of deemed total income u/s. 115JB / 115JC
 - ▶ $(A - B) + (C - D)$



$$(A - B)$$

A = Total income assessed as per the general provisions

B = Total income that would have been chargeable had the total income assessed been reduced by the amount of under-reported income

$$(C - D)$$

C = Total income assessed as per the provisions of Section 115JB / 115JC

D = Total income that would have been chargeable had the total income assessed as per the provisions of Section 115JB / 115JC been reduced by the amount of under-reported income

Excluding under-reporting on the same issue



Under-reporting – Exclusions

- ▶ Sub-section (6) – Beneficial Provision
- ▶ Certain cases of exclusions from under-reporting of income
- ▶ 5 types of disallowances / additions cannot be considered as Under-reporting of Income



Under-reporting – Exclusions

- ▶ Bona fide
 - ▶ Assessee to offer an explanation
 - ▶ Assessee should have disclosed all material facts to substantiate the explanation
 - ▶ Authority to be satisfied about bona fide
- ▶ Estimated amount of under-reported income if
 - ▶ Accounts are correct and complete
 - ▶ But method employed is such that income cannot be deduced therefrom



Under-reporting – Exclusions

- ▶ Estimated amount of under-reported income if
 - ▶ Assessee has estimated addition/disallowance on same issue but on a lower side
 - ▶ Offered to tax such lower amount
 - ▶ Disclosure of all related material facts
- ▶ TP Adjustments if information maintained, transaction reported and disclosure of facts
- ▶ Undisclosed income of Sec. 271AAB [Search]



Misreporting of Income

- ▶ Sub-section (9)
- ▶ 6 cases of misreporting
- ▶ Under-reporting shall be considered as misreporting



Misreporting of Income

1

Misrepresentation or suppression of facts

2

Non-recording of investments in books of account

3

Claiming of expenditure not substantiated by evidence

Misreporting of Income

4

**Recording of
false entry in
books of
account**

5

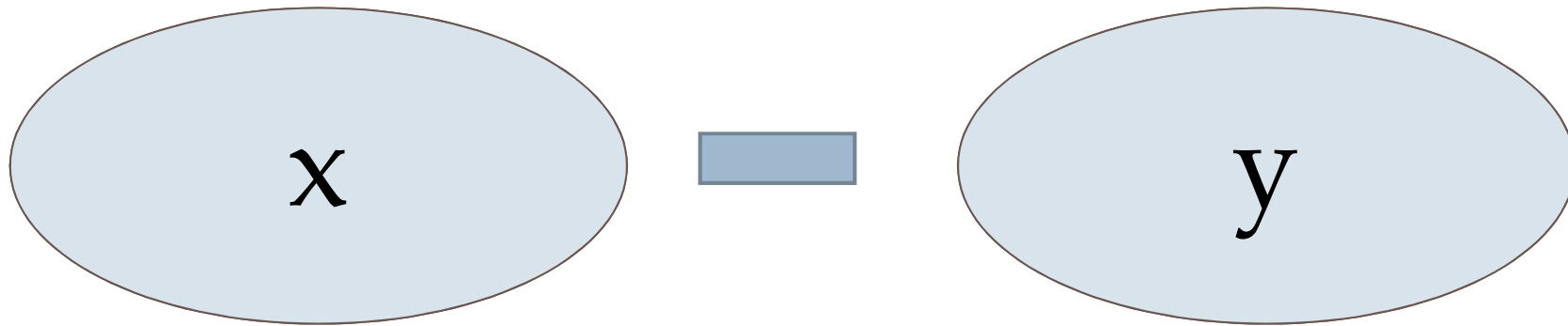
**Failure to
record any
receipt in
books of
account
having a
bearing on
total income**

6

**Failure to
report any
international
transaction or
specified
domestic
transaction**

Tax on Under-reported Income

- ▶ Sub-section (10)



- ▶ $X =$ Tax calculated on (Under reported income + Income as per immediate preceding order / intimation)
- ▶ $Y =$ Tax on Income as per immediate preceding order / intimation



Tax on Under-reported Income

- ▶ Exceptions –
- ▶ Return has not been furnished and first assessment
 - ▶ Under-reported Income + Maximum amount not chargeable to tax
 - ▶ Tax on above as if it is the total income
- ▶ It was a loss as per the intimation or preceding order
 - ▶ Under-reported income
 - ▶ Tax on it as if it is the total income



Immunity from Penalty / Prosecution

- ▶ New Sec. 270AA
- ▶ Providing for immunity from Penalty u/s. 270A and Prosecution u/s. 276C / 276CC
- ▶ Application to be made to the AO but only if –
 - ▶ Tax & Interest as per the order is paid within the period given in notice of demand u/s. 156
 - ▶ No appeal against the order is filed
- ▶ Within 1 month from the month in which order was received



Immunity from Penalty / Prosecution

- ▶ If the penalty is not initiated due to misreporting of income
 - ▶ AO shall grant an immunity
 - ▶ But only after expiry of time available for filing of appeal
- ▶ AO to pass an order accepting or rejecting application for granting immunity –
 - ▶ Within 1 month from end of month in which application was received



Immunity from Penalty / Prosecution

- ▶ Opportunity of being heard should be given to assessee before rejecting application
- ▶ AO's order shall be final and non-appealable
- ▶ If application is accepted then no appeal or revision petition can be filed against the order of assessment / reassessment
- ▶ If application is rejected then period from the date of application till receipt of order of rejection will be excluded from period of 30 days for filing appeal before CIT (A)



bhadresh@bhadreshdoshi.com

98 33 60 50 80

