

Penal Provision – Section 270A

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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
- ▶ Income from unexplained sources not liable for penalty under Section 270A
 - ▶ Penalty @10% of tax may be levied under Section 271AAC



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



Supporting 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)
- ▶ Is there any misreporting of income?
 - ▶ Sub-section (9)



Supporting Provisions

- ▶ Compute tax payable on under-reported income
 - ▶ Sub-section (10)
- ▶ Compute penalty
 - ▶ Sub-section (7) & (8)
 - ▶ Penalty = % 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

- ▶ Assessed for the first time
 - ▶ 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
- ▶ Subsequent 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



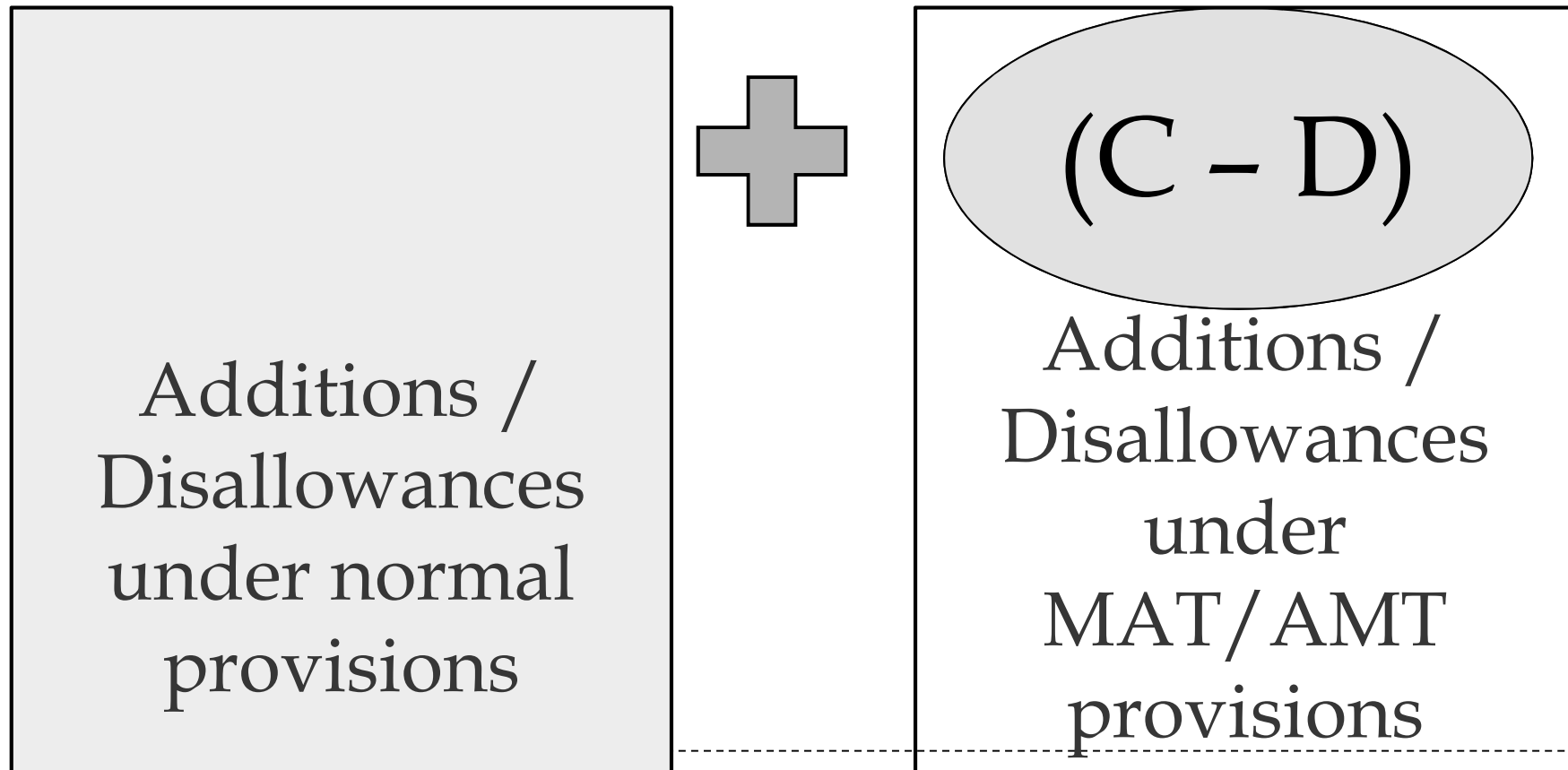
Computation of Under-Reported Income

- ▶ 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



$$(A - B)$$

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
- ▶ Onus on the assessee to prove



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
- ▶ Penalty = 200% of tax payable



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**

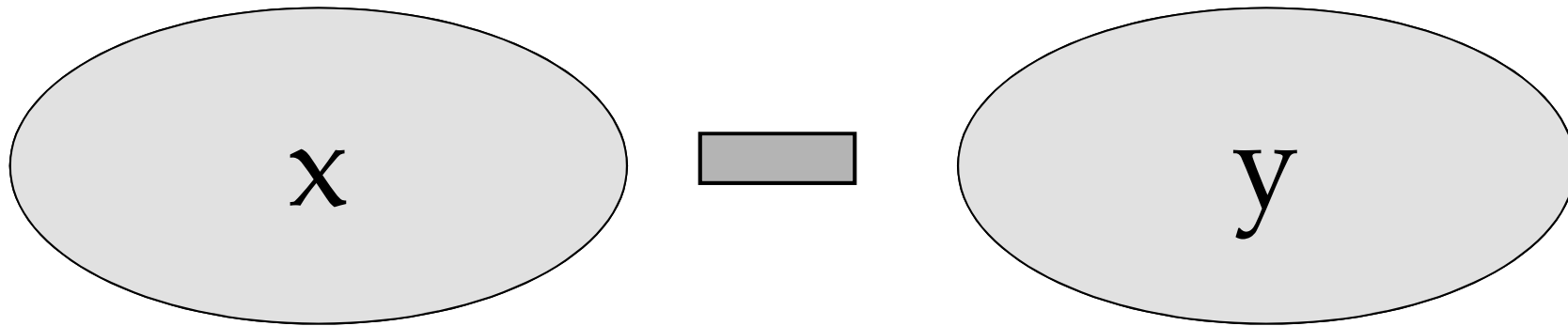
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**Failure to
report any
international
transaction or
specified
domestic
transaction**



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



COMMUNITY

Immunity from Penalty / Prosecution

- ▶ New Sec. 270AA
- ▶ Providing for immunity from
 - ▶ Penalty u/s. 270A
 - ▶ Prosecution u/s. 276C / 276CC
- ▶ Pre-conditions for making application –
 - ▶ 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
- ▶ Refers only to orders u/s. 143(3) or 147



Immunity from Penalty / Prosecution

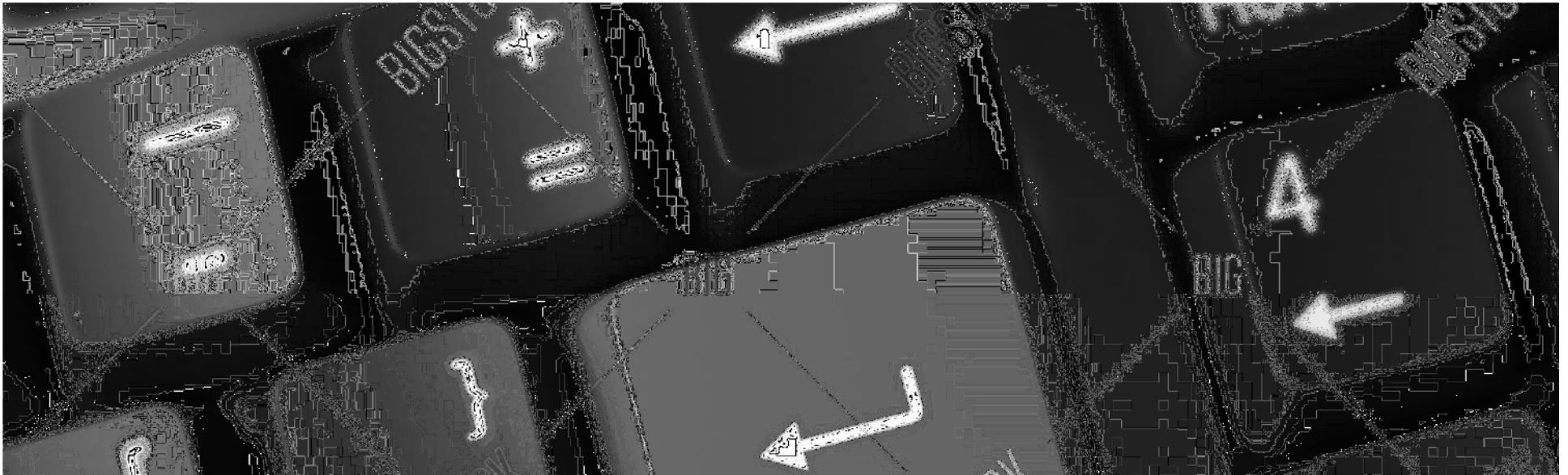
- ▶ If the penalty is not initiated due to misreporting of income
 - ▶ AO shall grant an immunity
 - ▶ Sec. 276CC – not covered in such mandate
 - ▶ But only after expiry of time available for filing of appeal
- ▶ Time bound process
 - ▶ Application within 1 month from month in which order is received
 - ▶ AO to pass an order within 1 month from end of month in which application was received



Immunity from Penalty / Prosecution

- ▶ Application is accepted
 - ▶ No appeal or revision
- ▶ Application is rejected
 - ▶ Exclusion of period from the date of application till receipt of order of rejection – for limitation of 30 days for appeal
 - ▶ Rejection order is final and non-appealable





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