



Income Tax Department

Ministry of Finance, Government of India

Penalty for under-reporting and misreporting of income.

270A. (1) The Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner or Commissioner may, during the course of any proceedings under this Act, direct that any person who has under-reported his income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.

(2) A person shall be considered to have under-reported his income, if—

- (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 or where return has been furnished for the first time under section 148;
- (c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
- (d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under 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 section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 148;
- (f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;
- (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

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

- (i) in a case where income has been assessed for the first time,—
 - (a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;
 - (b) in a case where no return of income has been furnished or where return has been furnished for the first time under section 148,—
 - (A) the amount of income assessed, in the case of a company, firm or local authority; and
 - (B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);
- (ii) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:

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

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

where,

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

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

C = the total income assessed as per the provisions contained in section 115JB or section 115JC;

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

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

Explanation.—For the purposes of this section,—

- (a) "preceding order" means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated;
 - (b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.
- (4) Subject to the provisions of sub-section (6), where the source of any receipt, deposit or investment in any assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any year prior to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year") and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.
- (5) The amount referred to in sub-section (4) shall be deemed to be amount of income under-reported for the preceding year in the following order—
- (a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
 - (b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.
- (6) The under-reported income, for the purposes of this section, shall not include the following, namely:—
- (a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is *bona fide* and the assessee has disclosed all the material facts to substantiate the explanation offered;



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- (b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but the method employed is such that the income cannot properly be deducted therefrom;
- (c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance;
- (d) the amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction 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.
- (7) 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.
- (8) Notwithstanding anything contained in sub-section (6) or sub-section (7), where under-reported income is in consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income.
- (9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—
- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in books of account having a bearing on total income; and
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.
- (10) The tax payable in respect of the under-reported income shall be—
- (a) where no return of income has been furnished or where return has been furnished for the first time under section 148 and the income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income;
- (b) where the total income determined under clause (a) of sub-section (1) of section 143 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;
- (c) in any other case, determined in accordance with the formula—
- $(X - Y)$
- where,
- X = the amount of tax calculated on the under-reported income as increased by 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 as if it were the total income; and
- Y = the 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.
- (11) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.
- ⁶[(11A) Where additional income-tax is paid in accordance with sub-section (3A) of section 140B, the income on which such additional income-tax is paid shall not form the basis of imposition of penalty under this section.]
- (12) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer, the Joint Commissioner (Appeals) or the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.