



RESPONSES TO 148A NOTICES ISSUED UNDER INCOME TAX ACT

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History ... in Brief

Year	Evolution
Section 25 of ITA 1918	Empowered the collector to reassess income of the preceding year, if he found that income chargeable to tax has escaped assessment.
Section 34 of ITA 1922	Similar power to the ITO to reassess income, if he believed in good faith that income for some reason has escaped assessment. Cross checks and limitations introduced time and again.
Section 147 to 153 of ITA 1961 (year 1961)	Systematic and legally comprehensive reassessment procedure. The concept of recording reasons before reopening was inserted so that settled assessments are not disturbed merely on the basis of suspicion or apprehension. Search and Seizure proceedings were a part of these provisions.
Section 147 to 153 of ITA 1961 (year 1995 – introduced in 2003)	Search and Seizure proceedings bifurcated and concept of block assessment was introduced. Sections 153A to 153D introduced in 2003.
Section 147 to 153 of ITA 1961 (year 2021)	New scheme introduced due to revenue leakages on account of technical positions taken by tax payers and approved by courts

Re-assessment Discussion

- Reason for receipt of notices – Data is King
- Overview of old re-assessment procedures
- New Scheme of re-assessment
- 148A Discussion
- Litigation on transitional phase
- Open questions
- How to Deal with notices

HOW DO THEY KNOW?

- IT department has not various sources from where information is obtained by them regarding past years:
 - Registrars, etc. – for immovable property
 - Banks – For cash deposits , credit card payments, etc.
 - Brokers, Depositories – For shares related transaction
 - TDS/ TCS credit by vendors/ Customers
 - GST and Customs – For sales, imports and exports
 - Search and Seizure of other entities
 - Other information obtained from SFT filings
 - Information sharing under any Treaty (FATCA, DTAA, etc)

Overview of Re-assessment procedures

- **Under the old provisions i.e. before 1 April 2021**
 - Officer to record 'reason to believe' with evidence as per section 148(2) and obtaining approval from supervisor u/s 151
 - Show cause is issued with 'reason to believe' post approval from supervisor u/s 151. For initiating re-assessment beyond 4 years, AO has to conclude income has escaped assessment on the failure on the part of assessee to disclose material facts.
 - Assessee asks for reasons (if not provided) files objections against 'reason to believe'
 - Officer disposes objections by a speaking order and initiates re-assessment. Can be challenged in HC.
 - On initiation of re-assessment proceedings, assessee to file return within 30 days and make submissions (as done in scrutiny assessment).
 - AO to pass order along with applicable interest and penalty within section 153 timelines

Overview of Re-assessment procedures

- 'Reason to believe' was the key point of litigation. Numerous courts have held that re-assessment can/ cannot be initiated where 'reason to believe' is on account of the following:
 - **Reason to believe should be based on a tangible information :**
S.Narayanappa vs CIT 63 ITR 219 (SC), Ganga Saran Sons (P) Ltd vs ITO 130 ITR1 (SC), Raymond Woollen Mills Ltd vs ITO 236 ITR 34 (SC),
 - Cannot be initiated for carrying out **fishing and roving enquiries**. Necessary enquiry /investigation should precede initiation of re assessment proceedings
Ref Chhugamal Rajpal vs S P Chaliha 79 ITR 603 (CIT vs Batra Bhatta Co 321 ITR 526 (SC)
 - Re-assessment based on **Change of opinion** or reviewing assessment not permissible - CIT vs Kelvinator of India Ltd 320 ITR 561 (SC)
- **Proper sanction** necessary: United Electrical Co Pvt Ltd 258 ITR 317
- Furnishing of reason to believe and evidences mandatory - **GKN Driveshafts (India) Ltd vs ITO 259 ITR 19 (SC)**

GKN Driveshafts (India) Ltd vs ITO 259 ITR 19 (SC)

Procedure laid down by the Hon'ble Supreme Court for re-assessment :

When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action is as under:

- a) Assessee to file the return,
- b) If he so desires, he should seek reasons for issuing the notices.
- c) The assessing officer is bound to furnish reasons within a reasonable time.
- d) On receipt of reasons, the assessee is entitled to file objections to issuance of notice, and
- e) the assessing officer is bound to dispose of the same by passing a speaking order. **Assessing officer cannot proceed with the reassessment without considering the objections filed by assessee.**
- f) the assessee may file a writ in HC challenging the disposal order or can proceed with the assessment as he still has a right to challenge the reopening of assessment after the assessment order is passed, before appellate authority.

Overview of Re-assessment procedures

Under the new provisions w.e.f 1 April 2021

- Revamped sections 147 (power), 148 (notice), 148A (procedure), 149 (timelines) and 151 (approving authority); Sun-set clauses 153A and 153C for assessment initiated in relation to search cases.
- 148A lays down procedure for initiation of re-assessment in 4 parts.
- JO shall issue 148A and 148 notice requiring assessee to file tax return u/s 148 post 148A procedures
- Subsequent proceedings maybe handed over to faceless officer.
- Order completing proceedings to be passed within 12 months from EoAY in which 148 notice was served by the faceless officer.
- Stay, Rectification, Abeyance, etc. to be done with the JO

Bare Sections

Section	Old – before 1 April 2021	New – 1 April 2021 and after
147	147(1). If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income ...	147. If any income chargeable to tax , in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income ...
148	148(1). Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish, within such period, as may be specified in the notice, a return of his income.	“148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A , the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed , if required, under clause (d) of section 148A , requiring him to furnish within such period, as may be specified in such notice, a return of his income Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice. ”

New Scheme of re-assessment

- ‘Reason to believe’ vs ‘which suggests that income chargeable to tax has escaped assessment for the relevant year .. Basis information’
- “Information” specifically defined in Explanation 1 to section 148 **to mean:**
 - i. any information in accordance with **risk management strategy** of the Board;
 - ii. **any audit objection stating that assessment has not been made in accordance with the provisions of the Act;**
 - iii. any information received under agreements u/s 90 or 90A (DTAA/info sharing treaties, etc) ;
 - iv. any information made available to the Assessing Officer under the scheme notified under section 135A; (faceless collection of information)
 - v. **any information which requires action in consequence of the order of a Tribunal or a Court**

Certain information deemed to be available in case of search and survey as per explanation 2 of section 148 post 1 April 2021

Key judicial precedents under old law – Reason for re-opening

Issue	Case law
Reassessment on audit objection	Indian & Eastern Newspaper Society v. CIT (1979) 119 ITR 996 (SC) IL & FS Investment Managers Ltd. v. ITO (2008) 298 ITR 32 (Bom.)(HC) FIS Global Business Solutions India Pvt. Ltd v. ACIT, (2019) 408 ITR 75 (Delhi) (HC) [revenue SLP dismissed by SC]
Reassessment on SC / HC decision	Indra Co. Ltd. v. ITO (1971) 80 ITR 559 (Cal.)(HC) SESA Goa Ltd. v. Jt CIT [2007] 294 ITR 101 (Bom.)(HC)
Reassessment on retrospective amendment	Pravin Kumar Bhogilal Shah v. ITO (2012) 66 DTR 236 (Guj.)(HC) Prashant M. Timblo v. CCIT (2019) 414 ITR 507 (Bom.)(HC) (SC dismissed revenue SLP)
Statement of other person	AMSA India P. Ltd. v. CIT (2017) 393 ITR 157 (Delhi)(HC) Kothari Metals v. ITO (2015) 377 ITR 581 (Karn.)(HC)
Statement by Police officer	Subhash Chander Goel v. ITO (2016) 156 ITD 808 (Chd.)(Trib.)
Incriminating Material found during search and seizure	Rayoman Carriers Pvt. Ltd. v. ACIT (Mum.)(Trib.) (ITA No. 3275/ Mum/2015 & 3276/Mum/2015 dt 9/4/2017 Yamuna Estate P. Ltd. v. ITO (2016) 45 ITR 517 (Mum.)(Trib.)

Time limits under new provisions

As per section 149, Time limit for notice u/s 148:

- a) Within 3 years from the end of relevant assessment year
- b) Within 10 years from the end of the relevant assessment year, where, the AO has in his possession 'books of accounts' or 'other documents' or '**evidence**' which reveal that income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to Rs 50 lakhs or more for the said year, and is represented in the form of
 - an asset
 - expenditure in respect of a transaction **or** in relation to an event **or** occasion or
 - an entry or entries in the books of account

If time-limit for issuance of notice under section 148 has expired on 31.03.2021, in terms of the pre-amended provisions, then notice cannot be issued under the new reassessment scheme. The only year which gets this benefit is AY 2012-13 as under old provisions, time barring was 31 March 2019 therefore, time limit under old law was expired.

Time limits under new provisions

- Time limit prescribed under section 149 of the Act shall exclude:
 - the time or extended time allowed to the assessee to respond to show cause notice under section 148A(b); and
 - any period during which the proceedings under section 148A are stayed by an order of any Court.
- If after excluding the aforesaid period, time available for passing order under section 148A(d) is less than 7 days, the remaining time shall be deemed to be extended to 7 days.

Approvals

- **Approval of Specified Authority [section 151]**
 - For cases where 3 years or less have elapsed from the end of the relevant assessment year, Pr. CIT, Pr. DIT, CIT or DIT;
 - For cases where more than 3 years have elapsed from the end of the relevant assessment year, Pr. **CCIT**, Pr. **DGIT**, **CCIT** or **DGIT**, as applicable.
- For '**deemed information**' cases, reassessment order shall be passed only by an AO below the rank of Jt. CIT except with prior approval of the Addl. CIT/ Addl. DIT or Jt. CIT/ DIT. [Section 148B]
– Search and Survey order

Summary of key differences between old and new re-assessment procedures in scope and timelines

Provisions	Old	New
Basis	Reason to believe	Information available
Time limit	<p>4 years - general</p> <p>6 years – where escaped income exceeds INR 1 lakh</p> <p>16 years – in case of discovery of foreign assets</p>	<p>3 years – General</p> <p>10 years – where escaped income in form of asset/expense/entry is 50 lakh or more</p>
Whether show-cause required before issuance of 148 proceedings	Not required	Mandatory 148A procedure

148A - Conducting inquiry, providing opportunity before issue of notice under section 148.

148A. The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, **if required**, with the **prior approval of specified authority, with respect to the information** which suggests that the income chargeable to tax has escaped assessment;

Key Points: Conducting enquiry is **optional. However, when conducted, enquiry may be** With Prior Approval **AND** In **only** respect of suggested information .

What to do: Ask copy of approval for conducting enquiry and information available.

Key judicial precedents under old law – Valid Information ©

Issue	Case law
Reasons to be recorded and provided before issue of notice	GKN DRIVESHAFTS (INDIA) LTD (Supra) CIT v. Safetag International India Pvt Ltd [2012] 332 ITR 622 (Delhi) (HC)
New reason cannot be allowed to be introduced and Current reasons cannot be improved upon	New Delhi Television Ltd. v. DCIT (2020) 424 ITR 607 (SC) Mohinder Singh Gill v. Chief Election AIR 1978 SC 851 Hindustan Lever Ltd. v. R.B. Wadkar [2004] 268 ITR 332 (Bom.)(HC) Godrej Industries Ltd. v. B.S. Singh, Dy. CIT (2015) 377 ITR 1 (Bom.) (HC) Indivest PTE Ltd v. ADDIT (2012) 206 Taxman 351 (Bom.) (HC)
Vague /general / incorrect reasons not permissible	Balakrishna H. Wani v. ITO 321 ITR 519 (Bom.)(HC) PCIT v. Rajesh D. Nandu (HUF) (2019) 261 Taxman 110 (Bom.)(HC) Sagar Enterprises v. ACIT (2002) 257 ITR 335 (Guj.)(HC).

Key judicial precedents under old law – Sanction / Approval ©

Issue	Case law
Appropriate sanction required	Ghanshyam K. Khabrani v. ACIT (2012) 346 ITR 443 (Bom.)(HC) DSJ Communication Ltd. v. DCIT (2014) 222 Taxman 129 (Bom.)(HC)
Application of Mind while granting Sanction	German Remedies Ltd v. Dy. CIT (2006) 287 ITR 494 (Bom.)(HC) CIT v. Suman Waman Chaduahry (2010) 321 ITR 495 (Bom.)(HC)
Sanction should be prior to issuance of notice	ITO v. Ashok Jain, [ITA.No.1505/Ahd/2017, (Surat)(Trib.) Smt. Sonu Khandelwal v. ITO [2018] 173 ITD 67 (Jaipur)(Trib.)

148A - Conducting inquiry, providing opportunity before issue of notice under section 148.

148A. The Assessing Officer shall, before issuing any notice under section 148,—

(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to **show cause** within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

Key Points: Show-cause notice should be served. Time of ATLEAST 7 and maximum of 30 days from date of issue— can be extended. Results of enquiry conducted in point (a). Explanation only in context of information available

What to do: Denying/not giving an opportunity of hearing is against the principles of natural justice. Ask for results of enquiry.

Key judicial precedents under old law – Service of Notice ©

Issue	Case law
Notice should be served upon assessee only	CIT v. Kanpur Plastipack Ltd. (2017) 390 ITR 381 (All)(HC) Suraj Mal HUF v. ITO (2007) 109 ITD 327 (TM) (Delhi)(Trib.)
Notice to deceased person	Jaydeep kumar Dhirajlal Thakkar v. ITO (2018) 401 ITR 302 (Guj.)(HC) Bhaskar Sharma L/H Late Smt. Tara Bhardwaj v. CIT [W.P. No.17529 of 2017 (Raj.)(HC)
Notice to non-existed company	ACIT v. Dharmnath Shares & Services (P.) Ltd. (2019) 260 Taxman 174/ 409 ITR 4 (St) (SC)] Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 390 (SC)
Notice to old address	Veena Devi Karnani v. ITO (2019) 410 ITR 23 (Delhi)(HC) PCIT v. Iven Interactive Ltd. (2019) 418 ITR 662/267 Taxman 471(SC)

148A - Conducting inquiry, providing opportunity before issue of notice under section 148.

148A. The Assessing Officer shall, **before issuing** any notice under section 148,—

(c) **consider the reply of assessee furnished**, if any, in response to the show-cause notice referred to in clause (b);

Key points: AO has to 'CONSIDER' the reply

What to do: It is be seen that whether the reply of assessee is actually considered in letter and spirit or actually, is a non-speaking order. (SIMILAR TO DISPOSING OF OBJECTIONS)

(d) decide, on the **basis of material available on record** including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, **with the prior approval of specified authority**, within **one month** from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, **within one month from** the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Key Points: Approval, One month timeline

To do: Check timeline, Check Approval

Provided that the provisions of this section shall not apply in a case where,—

148A - Conducting inquiry, providing opportunity before issue of notice under section 148.

Provided that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, ²⁴[relate to, the assessee; or
- (d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]

(Basically not applicable for SEARCH CASES)

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in [section 151](#).]

148A - Conducting inquiry, providing opportunity before issue of notice under section 148.

- 148A(a) – Conduct enquiry with approval
 - 148A(b) – Share information, issue show-cause, and ask for explanations (7 – 30 days) from assessee
 - 148A(c) – consider assessee's reply
 - 148A(d) – Pass order post necessary approvals.
-
- 148 – Issue notice u/s 148
 - 142(1) – Information called for during reassessment proceedings

148 rws 143(3) – Assessment order to be passed.

Conflict for notices issues between 1 April 2021 till 30 June 2021

- Conflict between old assessment vs new assessment for certain years where provisions are overlapping **(For reassessment notices issued between 1 April 2021 till 30 June 2021 in old section)**
- CBDT issued several notifications extending the applicability of old re assessment provisions and due dates from 20/03/2020 till 30/06/2021.
- Notices under erstwhile re assessment scheme was issued to various assessee's after 01/04/2021 without following the provisions of new re assessment scheme
- Numerous high courts held that notice under section 148 issued after 01/04/2021 without following the provisions of new re assessment provisions, are invalid. The matter went to supreme court in the case of Ashish Aggarwal [2022] 138 taxmann.com 64 (SC) where the SC held that:
 - Notices issued are to be deemed under new section
 - Officers are supposed to provide the assesses 'information' based on which re-assessment is initiated within 30 days
 - Assessess are required to response to the same within 14 days of receipt of such show-cause

Conflict for notices issues between 1 April 2021 till 30 June 2021

- Thereafter, CBDT issues detailed instruction to deal with re-assessment notices issued under the old provision between April 1, 2021 and June 30, 2021. With the combined reading of the Supreme Court's Judgment and the CBDT's instruction, it can be interpreted that the notice issued between **April 1, 2021 and June 30, 2021** shall be deemed to be valid only if the following two conditions are satisfied:
 - (i) **For AYs 2013-14, 2014-15 and 2015-16:** Fresh notices for reopening of assessment can be issued only if the case falls under section 149(1)(b) as per the new re-assessment provisions. (above 50 lakh)
 - (ii) **For AYs 2016-17 and 2017-18:** Fresh notices for reopening of assessment can be issued under section 149(1)(a) as per the new re-assessment provisions, since they are within three years from end of the relevant AY (below 50 lakh).

Eg. For AY 2013-14, officer has detected income escaped of INR 60 lakh. Under new law, 148 notice can be till 31 March 2024. However, as per old 148 law, the same can be re-opened only till 31 March 2020. Therefore, the grandfathering provisions fail. However, these dated have been extended by notification. Similarly for AY 2016-17, time limit under new law is 31 March 2020 – so how can department issue notices? – Second round of litigation.

What About?

- Whether officers are required to give source of 'information'?
- Information vs 'evidence' in above 50 lakh cases
- How easy (or difficult) will it for the officer to judge from the available 'information' that income chargeable to tax has escaped?
- What is the extent to which an 'Enquiry' regarding 'information' can be conducted?
- Whether the judicial decisions developed under the erstwhile regime will still be applicable?
- Statements recorded during survey –whether sufficient cause?
- Whether uploading notices on e-filing account sufficient to be considered as notice served? Or on a defunct email ID? Or an email ID provided to some other authority?

How to deal practically?

- Try and close re-assessment at 148A(a) stage itself.
 - Check validity – Time, approvals, issues
 - Give elaborate explanations and documents
 - Explain to JO
 - Challenge reopening in case procedure, timelines, approvals not followed
- Keep an eye on e-filing account, update email ID, etc.
- Re-assessment proceedings are done by Faceless Officer. Hence, proper detailed transactional and legal explanations with judicial precedents need to be given.
- Give summary of issues, contentions and key case laws and also request 'expressly' for virtual hearing to explain the case
- If not satisfied with re-opening / outcome of assessment :
 - File a Writ with jurisdictional HC
 - Appeal/ Application with CIT(A) / DRP

Q & A

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Important Penalties under Income Tax Act

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Penalty Discussion

- Penalty proceeding principles
- Penalty for under-reporting and mis-reporting
- Other penalties
- Immunity and Waiver of penalty

Penalty Proceedings Principles

- Penalty proceedings have to be initiated under specific sections and are not automatic like interest/fees.
- Chapter XXI – Dedicated to penalties
 - **Section 270 to Section 273B** – List of penalties, Immunities and waivers
 - **Section 274** – Procedure and authority to pass penalty order
 - **Section 275** – Limitation of time to pass penalty order
- Legal and factual submissions to be made
- Officer needs to give 'Show-cause' before levying penalty
- Penalty orders can be challenged / appealed against
- In case of penalty for escapement / under reporting / mis reporting of income, merit order should specify penalty is being initiated
- Always check for immunity or waiver of penalty + **abeyance**

Penalty Proceedings

Important Case laws

- In the case of *Rajeev Kumar Gupta v. CIT (1980)*, it was held that any authority before imposing a penalty on any person must give him an **opportunity to be heard**. This is also mentioned under Section 274 (1) of the Act, which makes it mandatory for the authorities while imposing the penalty on the assessee to give him an opportunity to be heard or else it will be considered as a statutory violation.
- The Supreme Court in the case of *Reliance Petroproducts Pvt. Ltd. v. CIT (2010)* / *Dilip N. Shroff v. CIT (2007)*, held that to impose any penalty on the assessee, his **malafide intention must be proved**. The word 'inaccurate' means a deliberate act or omission. Thus, **mens rea is necessary** to attract a penalty on the assessee.
- In the case of *Vijay Power Generators LTD. v. ITO (2007)*, it was held that the material facts or evidence found in the assessment proceedings must not be ignored. It must be examined carefully to determine whether the **assessee has concealed the income** or part of it.

Penalty Proceedings

Important Case laws

- In the case of *CIT v. Caplin Point Laboratories Ltd. (2021)*: Held that if the claim of any deductions or allowances has been made by the assessee based on any **case law under bona fide belief but the assessing officer interpreted it differently, then in such a case there will be no penalty. (Question of law)**
- If a **legal claim for taxability** of a particular income under a particular head has been **rejected** by the assessing officer, then it is not an appropriate ground to impose a penalty on him. Mere speculation of a loss also does not attract any kind of penalty. (*CIT v. Bharatesh Jain, 2010*)

Penalty u/s 270A

- Penalty u/s 270A is levied for under reporting or misreporting of income.
- This section has replaced 271(1)(c) from year 2017-18
- Key change being: 'Under-reporting' and 'Misreporting' have replaced the terms 'inaccurate particulars' and 'concealment'
- Quantum:
 - 50% of the amount of **tax payable** on **under-reported income**.
 - For **misreporting cases**, 200% of the amount of **tax payable** on under-reported income

Penalty u/s 270A

- What is under-reporting?

When tax return is filed

Assessed Income exceeds income assessed u/s 143(1)(a)

Re-Assessed income exceeds income already assessed previously

When loss is reduced or converted to income

When tax return is not filed or is filed first time u/s 148

Income exceeding maximum amount not chargeable to tax

Penalty u/s 270A – Quantum of under reported income

For income under normal provisions

- If Return has been furnished: Difference between the assessed income and the amount of income determined u/s 143(1)(a).
- If return has not been furnished: difference between assessed income and basic exemption, if any,

For Loss cases

- Difference between the loss claimed and the income or loss, as the case may be, assessed or reassessed.

For Other cases

- Difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order.

Penalty u/s 270A – Quantum of under reported income

Return filed?	Returned income	143(1)(a) income	Assessed income	Quantum of under reporting
Yes	10	12	15	3
Yes	10	12	15 / 20	3 + 5
No (Ind)	-	-	10	7.5
No (Co.)	-	-	10	10
Yes	(10)	(8)	(6)	4
Yes	(10)	(8)	5	15

Penalty u/s 270A – Quantum of under reported income

For income under 115JB/JC

- Formula based **(A – B) + (C – D)**

Where,

A = the total income **assessed** as per general provisions of the Act

B = the total income **assessed** as per general provisions of the Act **less** 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 **assessed** as per the provisions contained in section 115JB or section 115JC **less** the amount of under-reported income

Where amount is considered under both normal provision and MAT/AMT, then such amount shall not be reduced from total income assessed while determining the amount under item D.

Penalty u/s 270A – Quantum of under reported income

For income under 115JB/JC

- Formula based **(A – B) + (C – D)**

Eg. 1

Addition of 2 lakh made by officer under both Regular and MAT provisions

Assessed Income under general provisions is INR 17 lakh

143(1)(a) income under general provisions is INR 15 lakh

Assessed Income u/s 115JB is INR 19 lakh

143(1)(a) income u/s 115JB is INR 17 lakh

$$(17-15)+(19-17-2)$$

Under reproting income INR 2 lakh

Penalty u/s 270A – Quantum of under reported income

For income under 115JB/JC

- Formula based **(A – B) + (C – D)**

Eg. 2

Addition of 2 lakh made by officer only under MAT provisions

Assessed Income under general provisions is INR 15 lakh

143(1)(a) income under general provisions is INR 15 lakh

Assessed Income u/s 115JB is INR 19 lakh

143(1)(a) income u/s 115JB is INR 17 lakh

$$(15-15)+(19-17)$$

Under reprofing income INR 2 lakh

Penalty u/s 270A – Items not be considered a part of 'under-reported income'

- If the assessee makes **an application giving a proper explanation** and **material facts** of the income and the **officer is satisfied** with the explanation provided that it **is bonafide**, the income will not be considered as under-reported.
- If the **under-reported income is calculated with the help of estimation** and the method used is not reliable and does not provide a fixed income, then such an income cannot be considered as underreported. (eg. Gross profit method)
- If the under-reported income has been **determined by the assessee and he has himself estimated a lower addition** on an issue or disclosed all the material facts related to disallowance, then such income will not be considered. (eg. Travel expense)

Penalty u/s 270A – Items not be considered a part of 'under-reported income'

- The under-reported income in transfer pricing cases can be exempted only if:
 - All the documents have been prepared by the assignee as given in Section 92D of the Act.
 - The assignee has disclosed all the international transactions.
 - Provided all the material facts related to such transactions.
- During search cases, the amount that is undisclosed income and the penalty that is levied under Section 271AAB are also exempt.
- **Important to note that these exceptions not available if under-reporting is on account of Misreporting of income**

Penalty u/s 270A –Tax on under reported income

- **Where return is filed and processed /assessed :** Amount of tax computed on under-reported income
- **When return is not filed / filed first time u/s 148:** Tax to be computed on under reported income + basic exemption (if applicable)
- **Any other case: (X-Y)** where
X is Tax on Under-reported income + 143(1)(a)/ assessed income
Y is Tax on 143(1)(a)/ assessed income

Penalty for under-reporting will be 50% of above

Penalty u/s 270A – Intangible Additions

If in Year 1 an **addition** was made and in year 2, 3, 4 there is a receipt, deposit or investment, the source of which is claimed to be the addition made in Year 1 then, **if no penalty was levied in Year 1** on the amount of addition made then the amount of receipt, deposit or investment shall be deemed to be **under-reported income of the preceding year in which the addition was made**. If the addition was made in more than one year, then to cover up the amount of receipt, deposit or investment in subsequent years one has to go backwards.

Eg. AO made addition of undisclosed income in Year 1 of INR 10 lakh. In year 2, the tax-payer deposited INR 10 lakh in bank account and claimed that the same was offered to tax in Year 1. In this case, amount of INR 10 lakh will be considered as under-reported income of year 1 and penalty will be levied accordingly. (if penalty was not levied in year 1)

Penalty u/s 270A – Misreporting of Income

- Penalty of 200% of tax on under-reported income on account of mis-reporting
- No exemptions as provided for pure under-reporting
- Following cases will fall in mis-reporting (exhaustive definition):
 - i. misrepresentation or suppression of facts;
 - ii. failure to record investments in the books of account;
 - iii. claim of expenditure not substantiated by any evidence;
 - iv. recording of any false entry in the books of account;
 - v. failure to record any receipt in books of account having a bearing on total income; and
 - vi. 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.
- Computation of under-reported income and tax thereon remains the same.

270AA : Immunity from penalty 270A

Steps for obtaining immunity from penalty:

- An application to the assessing officer to be made to grant immunity from the penalty proceedings within one month of the assessment order 143(3) or 147 and
 - It is necessary that the tax + interest be paid within the specified period as given in the notice.
 - No appeal must be made with respect to the assessment order.
- The officer, after satisfaction of all the above conditions and on the expiry of the period of appeal, grants such immunity.
- The immunity can be given in the case of misreported income.
- The officer can either accept or reject the application within one month after it has been received.
- It is mandatory to give an opportunity to the assessee to present his case before rejecting the application.
- The order of the assessing officer will be considered final is not appealable.

KEY PENALTIES



Microsoft Excel
Worksheet

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273B – Penalty not to be imposed in certain cases

For penalties leviable under below sections, penalty shall not be imposable on the person in case the person can prove that there **was reasonable cause for failure** of non-compliance of the relevant section.

Azadi Bachao Andolan v. Union of India [2001] 116 Taxman 249 (Delhi)

*“What would constitute reasonable cause **cannot be laid down with precision**. It would **depend upon factual background** Reasonable cause, as applied to human action, is that **which would constrain a person of average intelligence and ordinary prudence**.*

*.....The word 'reasonable' has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to **act reasonably**, knows or ought to know. The reasonable cause can be reasonably said to be **a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.**”*



Microsoft Excel
Worksheet

Examples could be:

- Genuine belief that certain reporting was not required (legal basis)
- No malafied intention
- Genuine Difficulty

273A(1) - Power to Waive Penalty

Section 273A(1) empowers the Principal Commissioner or Commissioner to grant waiver or reduction from penalty imposed or imposable under section 270A (i.e., **penalty for under-reporting and misreporting of income**) or under section 271(1)(iii) [271(1)(c) and (d)]

Conditions for granting relief:

(1) **Prior to the detection** by the Assessing Officer of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, **the taxpayer voluntarily and in good faith, makes a full and true disclosure of such particulars.** *For the purpose of section 273A(1), a person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature as not to attract penalty under section 270A or under section 271(1)(iii).*

(2) The taxpayer should have **co-operated in any enquiry** relating to the assessment.

(3) The taxpayer either should have **paid** or made satisfactory arrangements for paying any **tax or interest** payable in consequence of an order passed under the Act in respect of the relevant year.

273A (1) - Power to Waive Penalty

Above INR 5 lakh waiver, additional approvals required.

Order cannot be challenged. Writ may be the only option? In any way, penalty order can be challenged.

If a person has claimed relief under section 273A(1) at any time, then he cannot claim relief under section 273A [i.e., 273A(1) as well as section 273A(4)] thereafter.

273A(4) - Power to Waive Penalty

Section 273A(4) empowers the Principal Commissioner or Commissioner to waive or reduce any penalty imposable under the Income-tax Act as well as to stay or compound any proceeding for the recovery of penalty.

Initiation to be taken by the taxpayer

For obtaining waiver or reduction or stay or compound any proceeding for the recovery of penalty, the taxpayer has to make an application to the Principal Commissioner or Commissioner.

Conditions for granting relief

Relief under section 273A(4) is granted if following conditions are satisfied :

- (1) Levy of penalty will cause genuine hardship on the taxpayer.
- (2) The taxpayer has **co-operated in any inquiry** relating to the assessment or any proceeding for the **recovery** of any amount due from him.

273A - Power to Waive Penalty

Previous approval of Chief Commissioner or Director General

If the amount of any penalty or, where such application relates to more than one penalty, the aggregate amount of such penalties exceeds Rs. 1,00,000, no order of reducing or waiving the amount or compounding any proceeding for its recovery under section 273A(4) shall be made by the Principal Commissioner of Commissioner, except with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.

Time-limit for passing order under section 273A(4)

The Principal Commissioner or Commissioner, as the case may be, shall pass order, either accepting or rejecting assessee's application to reduce or waive penalty, within a period of 12 months from the end of the month in which application is received.

Order cannot be challenged

Immunity vs Waiver

- **270AA** – Immunity from penalty of 270A
- **273B** – Penalty not to be imposed for certain section in case of reasonable cause of failure
- **273A(1)** – Waiver of penalty u/s 270A / 271(1)(iii) on account of suo-moto disclosure and co-operation + no appeal + taxes paid
- **273A(4)** – Waiver of penalty under any section in case of genuine hardship and co-operation in recovery proceedings

Q & A

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