

# Analysis of Section 270A and 270AA of Income Tax Act, 1961

- Penalty for under-reporting and misreporting of income &
- Immunity from imposition of penalty and initiation of proceedings u/s 276C or 276CC

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# Background Sec 270A

## Introduction

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Imposition of penalty for under-reporting and misreporting of income.

- In the Finance Act of 2016, a significant amendment was made by introducing a new section, 270A, which became applicable from Assessment Year 2017-18. Section 270A governs penalty provisions in cases of 'under-reporting' and 'misreporting' of income."

# Objective

The primary objective of Section 270A is to deter taxpayers from under-reporting or misreporting their income and to ensure tax compliance.

## Key Provisions

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### Under-reporting of Income [270A(2) & 270A(3)]

- Occurs when the income assessed is greater than the income declared by the taxpayer.
- If income is under-reported due to any circumstances other than misreporting, then the penalty shall be 50% of the tax payable on under-reported income (as per section 270A(7))

### Misreporting of Income [Sec 270A(9)]

- Occurs when the taxpayer provides inaccurate information or conceals particulars of income.
- If income is under-reported due to misreporting of income, then penalty shall be levied at 200% of tax payable on such under-reported income.

# Section 270A(1)

The AO/CIT(A)/CIT or Pr. CIT 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.

**When a person shall be considered to have under-reported his income [Section 270A(2)]**

a) The income assessed is greater than the income determined in the return processed under section 143(1)(a)

**Quantum of under-reported income [Section 270A(3)]**

The difference between the amount of income assessed and the amount of income determined under section 143(1)(a);

b) Where no return of income has been furnished and the income assessed is greater than the maximum amount not chargeable to tax;

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 the case of an assessee other than a company, firm or local authority;

c) The income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

The difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order:

Explanation: "Preceding order" means an order immediately preceding the order during the course of which the penalty under section 270A(1) has been initiated.

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 section 143(1)(a);

e) Where no return of income has been furnished and 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;

The calculation of under-reported income is determined by the following formula:

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

The total income assessed as per the provisions other than the provisions contained in section 115B or section 115C (herein called "general provisions").

A = Total income assessed according to the general provisions of the Act

B = Total income assessed according to the general provisions of the Act minus the amount of under-reported income

C = Total income assessed under the provisions of section 115JB or section 115JC

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

D = Total income assessed under the provisions of section 115JB or section 115JC minus the amount of under-reported income

In cases where an amount is considered under both normal provisions and Minimum Alternate Tax (MAT) or Alternate Minimum Tax (AMT), it shall not be subtracted from the total income assessed when determining the amount under item D.

The amount of under reported income is the difference between the loss claimed and the income or loss, as the case may be assessed or reassessed.



# Tax payable in respect of the under- reported income : S. 270A(10)

1. In cases where no return of income has been furnished and the income has been assessed for the first time, the amount of tax calculated on the under-reported income is increased by the maximum amount not chargeable to tax, as if it were the total income.

## **For example:**

If the under-reported income is Rs. 8 Lacs and the maximum amount not chargeable to tax is Rs. 2.5 Lacs, the tax on under-reported income is calculated as tax on Rs. (8 + 2.5) Lacs minus tax on Rs. 2.5 Lacs.

2. In situations where the total income determined under section 143(1)(a) or assessed, reassessed, or recomputed in a preceding order results in a loss, the amount of tax calculated on the under-reported income is as if it were the total income.



# Tax payable in respect of the under- reported income : S. 270A(10)

3. In another scenario, the under-reported income is determined according to the formula (X-Y), where:

- X represents the amount of tax calculated on the under-reported income, increased by the total income determined under section 143(1)(a) or assessed, reassessed, or recomputed in the preceding order, as if it were the total income.
- Y represents the amount of tax calculated on the total income determined under section 143(1)(a) or assessed, reassessed, or recomputed in the preceding order.

**For example: In a specific case:**

Tax on under-reported income = Tax on Rs. (5.5 + 3) 8.5 Lacs minus Tax on Rs. 3.00 Lacs.

# SECTION 270A (4) & (5) (Intangible Additions)

- Section 270A(4) stipulates that subject to the provisions of section 270A(6) if a receipt, deposit, or investment claimed in an assessment year was previously added to income or deducted while computing loss in a preceding assessment year without incurring a penalty, then the under-reported income shall include such amount to cover said receipt, deposit, or investment.
- Moreover, Section 270A(5) clarifies that the amount under subsection (4) shall primarily be sourced from the immediately preceding assessment year, followed by the year preceding that, and so forth.

# Exceptions in certain instances - Section 270A(6)

(Under-reported income shall not include the instances referred herein)

- a. The amount of income in respect of which the assessee offers an explanation and the AO/CIT or Pr. CIT/CIT(A) is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered
- b. The amount of under-reported income is determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the AO/ CIT(A)/ CIT or Pr. CIT, as the case may be, but the method employed is such that the income cannot properly be deduced therefrom.

# Exceptions in certain instances - Section 270A(6)

(Under-reported income shall not include the instances referred herein)

c. the amount of under-reported income is 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 and 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 is represented by any TP addition made in conformity with the ALP (arms length price) determined by the TPO, 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

e. The amount of undisclosed income referred to in section 271AAB

# Background Sec 270A(9)

## Misreporting

Section 270A(8) states that if the under-reporting is due to misreporting, the exceptions mentioned in subsection (6) do not apply. Additionally, the penalty will be imposed at 200% of the tax payable on the under-reported income.

# Cases of Misreporting of Income

1

Misrepresentation or suppression of facts

2

Failure to record investments in the books of account

3

Claim of expenditure not substantiated by any evidence

4

Recording of any false entry in the 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 any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

# IMMUNITY FROM IMPOSITION OF PENALTY, ETC. – [Section 270AA]

## CATEGORY I

Conditions to be fulfilled by the Assessee

## CATEGORY II

AO shall grant immunity subject to the following conditions

## CATEGORY III

Certain Other points w.r.t. 270AA



# CATEGORY 1

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## Conditions to be fulfilled by the Assessee

- 1) Payment of tax and interest as per the assessment or reassessment order under sections 143(3) or 147, respectively, must be made within the specified period mentioned in the demand notice.
- 2) There should be no appeal filed against the aforementioned order.
- 3) The application under section 270AA should be submitted within one month from the end of the month in which the order under section 143(3) or 147 is received, adhering to the prescribed form and procedure.

# CATEGORY 2

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**AO shall grant immunity subject to the following conditions**

- 1) Taxes and interest have been paid in accordance with the order under sections 143(3) or 147.
- 2) The time limit for filing an appeal under section 249(2) has expired.
- 3) Immunity under section 270AA will not be granted if the 'under-reporting' is due to 'Misreporting'.

# CATEGORY 3

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## Other significant points to be considered w.r.t Section 270AA

- 1) The Assessing Officer must issue an order either accepting or rejecting the application within one month from the end of the month in which the application is received.
- 2) The Assessing Officer's decision under this section is final.
- 3) Once the application under Section 270AA is accepted, no appeal under Section 246A or revision application under Section 264 against the assessment or reassessment order will be entertained.
- 4) If the application is rejected, the assessee will be provided with an opportunity to be heard.
- 5) Additionally, the assessee retains the right to file an appeal against the assessment order. The period from the date of filing the application until the rejection of the application by the Assessing Officer will be excluded when calculating the thirty-day limit under Section 249(2).

# Legal precedents and judgments

**In case of Natarajan Anandh Kumar v. Deputy Commissioner of Income-tax (159 taxmann.com 637 dt. 23-01-2024), Madras High Court ruled that**

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“Where Competent Authority rejected assessee's application filed under section 270AA requesting for immunity from imposition of penalty on grounds that assessee paid amount demanded beyond period specified and application was not made within specified period, since gross total income and total tax liability disclosed by assessee in return were accepted in assessment order, delay of 30 days in filing application deserved to be condoned.”

# Legal precedents and judgments

In case of **Rohit Kapur v. Principal Commissioner of Income-tax** (148 taxmann.com 397 dt. 14-03-2023), **Delhi High Court** held that

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“Where assessee's application for immunity under section 270AA was rejected on ground that same was filed beyond stipulated period available for filing the said application, however, no opportunity of being heard was granted to assessee, matter was to be remanded to concerned officer to consider assessee's application under section 270AA afresh.”

# Legal precedents and judgments

**In case of Prem Brothers Infrastructure LLPv. National Faceless Assessment Centrex (142 taxmann.com 38 dt. 31-05-2022), Delhi High Court held that**

“Where penalty was levied on assessee under section 270A alleging misreporting of income, however, fact that assessee had furnished all details of transactions relating to disallowance made under section 14A and Assessing Officer as well as assessee had used same details to arrive at different quantum of disallowances, this by no stretch of imagination could be held to be ‘misreporting’ and further, in absence of details as to which limb of section 270A was attracted, impugned penalty order was to be quashed and revenue was to be directed to grant immunity under section 270AA.”

# Legal precedents and judgments

In case of **Chambal Fertilizers and Chemicals Ltd. v. Office of the Principal Commissioner of Income-tax** (158 taxmann.com 184 dt. 4-01-2024), **Rajasthan High Court** held that

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“Where GST Input Credit was mistakenly merged with expenses and same was suo motu surrendered by assessee by revising return, however revenue imposed penalty under section 270A, since revenue wasn't sure whether it was a case of misrepresentation or suppression of facts or claim of expense sub-clauses (a) and (c) of section 270A(9) were not attracted and, thus, assessee was to be granted immunity under section 270AA.”



# Legal precedents and judgments

**In case of IBS Software (P.) Ltd. v. Union of India (158 taxmann.com 209dt. 19-12-2023), Kerela High Court held that**

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“Where assessee's application for immunity under section 270AA was rejected on ground that same was filed beyond stipulated period available for filing said application, however, no opportunity of being heard was granted to assessee, matter was to be remanded to concerned officer to consider assessee's application under section 270AA afresh.”

# Legal precedents and judgments

In case of **GE Capital US Holdings Inc. v. Deputy Commissioner of Income-tax (International Taxation)** (163 taxmann.com 146 dated 31-05-2024) **Delhi High Court** held that

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“The notices themselves sought to take a wholly ambivalent stance while alleging that the petitioner had indulged in “under-reporting/misreporting”. We thus have no hesitation in holding that the impugned SCNs’ are rendered unsustainable on this short ground alone.”

“Since there was a clear and apparent failure on the part of the respondents to base the impugned proceedings on a contravention relatable to section 270A(9), the application for immunity could not have been rejected.”

# Legal precedents and judgments

In case of **Ravindra Madhukar Kharche v. Assistant Commissioner of Income-tax (161 taxmann.com 712 dated 16-04.2024)** **Nagpur Tribunal** held that

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“The tax authorities failed to appreciate the facts and circumstance of the present case holistically and further in right spirit of law, but dealt therewith without application of mind and perfunctory imposed / confirmed the penalty at the accelerated rate of 200 per cent under section 270A in unwarranted case like this.”

# Legal precedents and judgments

**In case of Saltwater Studio LLP (I.T.A. No.13/Mum/2023 dated 22-05-2023) Mumbai Tribunal held that**

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“Since AO failed to bring the addition/disallowance he made in quantum assessment, under the ken of (a) to (f) of the sub section(9) of section 270A of the Act, the penalty levied for misreporting @ 200% cannot be sustained because it is trite law that penalty provisions have to be strictly interpreted. We find that the levy of penalty by the AO u/s 270A of the Act suffers from the vice of non application of mind as well as violates principles of natural justice and cannot be sustained.”

# Legal precedents and judgments

In case of **Alrameez Construction (P.) Ltd. v. CIT/NFAC, Delhi (I.T.A. No.13/Mum/2023 dated 12-06-2023)** Mumbai Tribunal held that

“Penalty was initiated and imposed under section 270A of the Act for misreporting of income is not only erroneous but also arbitrary and bereft of any reason as in the penalty notice the Revenue have failed to specify the limb - "underreporting" or "misreporting" of income, under which the penalty proceedings had been initiated.”

# Legal precedents and judgments

In case of **Mohd. Sarwar** (ITA No.238/Hyd/2024 dated 02-04-2024) **Hyderabad Tribunal** held that

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“In my view, once the assessee himself admitted the fact that there was under-reporting of income which was also accepted by the Assessing Officer then the penalty should have been levied only on account of under reporting of income and not for mis-reporting of income.”

# Legal precedents and judgments

In case of **Sree Navaladiyan Finance** (161 taxmann.com 641 dated 23-02-2024) **Chennai Tribunal** held that

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“In the present case, the Assessing Officer has not at all applied his mind or he is in a confused state of mind for that the penalty under section 271(1)(c) for concealment of income or may be furnishing of inaccurate particulars of income because no case is made out for that. Hence, the penalty is deleted in all these assessment years.”



# Legal precedents and judgments

**In case of Jaina Marketing & Associates (162 taxmann.com 439 dated 20-03-2024) Delhi Tribunal held that**

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“Different rates of penalty are prescribed for 'under reporting of income' alone and for 'under reporting' in consequence of 'misreporting of income'. Hence, it is all the more essential to mention in the show cause notice itself as to which of the offence is committed by the assessee for which explanations are being sought for by the Assessing Officer. In fact two notices were issued by the Assessing Officer and in both the notices, the Assessing Officer had only directed the assessee to reply with regard to 'under reporting of income'. But the penalty had been levied ultimately for both 'underreporting' and 'misreporting of income' at the rate of 200% in terms of section 270A(9) for which showcause notice was never issued to the assessee. Hence, the Assessing Officer is directed to delete the penalty levied under section 270A.”

# Legal precedents and judgments

**In case of Enrica Enterprises P. Ltd. (163 taxmann.com 105 dated 06-03-2024) Chennai Tribunal held that**

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“Penalty levied by the AO under section 270A, is unsustainable in law on two counts, i.e. for failure to specify in the notice issued under Section 274 r.w.s.270A, as to under which limb of sub- section, 270A, penalty is initiated, i.e. ‘under reporting of income’ or ‘misreporting of income’, the penalty proceedings are initiated. Further, the AO accepted income admitted by the assessee with categorical statement without any allegation against the income admitted or incorrectness of the books of accounts or evidence for the expenditure. In our considered view, income voluntarily admitted by the assessee does not constitute ‘under reporting of income’ or ‘misreporting of income’, and thus, penalty levied under Section 270A is unsustainable in law on merits, and thus, the order passed by the AO imposing penalty under section 270A(9) is quashed.”

# Legal precedents and judgments

In case of **Smt. Saroj Shrivastava** (164 taxmann.com 1409 dated 31-05-2024) **Raipur Tribunal** held that

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“In backdrop of the aforesaid facts of the present case , the Penalties imposed by the Assessing Officer, vide order under section 270A cannot be approved, on account of no satisfaction in the assessment order or with recording of satisfaction but without specifying the relevant reason / Limb for which the penalties have been initiated / imposed. Therefore, the impugned order of the Commissioner (Appeals) is liable to be set aside and penalties forced on the assessee are directed to be deleted.





**THANK YOU**

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