

## Section 270A(6): A Window to Assessee Under Penalty Proceedings

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### Section 270A(6) acts as a window to the Assessee under penalty proceedings

#### **Introduction**

Any incorrect declaration of income or inconsistency appearing in the return of income filed by the Assessee with the income assessed by the Assessing officer ('AO'), shall create way for penalty proceeding.

Accurate disclosure of income is imperative while filing return of income, however income should be offered to tax after considering disallowances of expenses and other adjustments as prescribed under provisions of Income tax Act ('the Act'), the income computed in accordance with the Act shall make the return of income valid and protect the Assessee from penalty.

When the Assessee intentionally suppresses the income by not declaring it or claims inaccurate amount of deduction or claims inadmissible amount of expenses as deduction, such inconsistencies shall be considered as underreporting or misreporting and Penalty under section 270A of the Act shall be imposed.

#### **Imposition of penalty by virtue of under reporting of income**

The Act has prescribed instances where under reporting of income is triggered as per section 270A(2):

1. When the income assessed under section 143(1)(a) is greater than income disclosed under ROI.
2. Income assessed exceeds maximum amount chargeable to tax however the ROI is not filed.
3. Income reassessed exceeds assessed Income.
4. Amount of deemed income u/s 115JB OR 115JC exceeds income assessed as per section 143(1)(a).
5. Amount assessed or reassessed has the effect of reducing the losses or converting loss into income.

The income shall be said to be under reported only if they fall within any of the limbs of the penalty under section 270A(2) of the Act.

On plain reading of section 270A of the Act, the below process shall emerge under penalty proceeding:

1. When any income is brought to penalty assessment and scrutinised, onus is on the AO to establish the limb under which the Assessee is attracted to penalty provisions u/s 270A(2) of the Act, however, the Assessee should give an opportunity of being heard by serving show cause notice.
2. When the under reporting is established by AO, the onus now shall be shifted to the Assessee to prove that the disputed undisclosed income shall not fall in any of the clauses under section 270A(2) of the Act.

3. If the Assessee is not able to repudiate the claim of under reporting of income, the claim of under reporting gets confirmed. Now the AO shall be entitled to pass Penalty Order after giving opportunity of being heard.
4. Once the charge against under reporting is confirmed, the AO may proceed to determine the misreporting and has to establish the limb under which the misreporting is done as per section 270A (9). The misreporting should be a consequence of under reporting. There are various judicial rulings which held that the AO cannot jump directly to misreporting without justifying the charge of under reporting.

At the outset, as per provisions of section 270A(6) of the Act, any under reporting of income shall be precluded from penalty under the following instances:

1. Assessee offers an explanation regarding the alleged under reporting of income by submits all material facts to the officer (AO or CITA) and the officer finds the explanation bonafide and is satisfied about the explanation.
2. The amount of under reported income determined based on estimate, however, the AO or CIT(A) is satisfied on correctness and completeness of accounts.
3. The amount of under reported income determined based on estimate, however, the Assessee has estimated a lower amount of addition or disallowance on the same basis.
4. The under reporting of income is due to different view or methodology taken by TPO in determining the ALP on international transaction and pursuant to which addition is made to that effect under chapter X.

The provision under section 270A(6) is a window given by the legislature to give a leave to the Assessee.

### **Immunity granted u/s 270AA of the Act**

Alternatively, the Assessee may choose to avail the immunity u/s 270AA of the Act based on satisfaction of three fundamental conditions, namely:

- (i) payment of tax demand;
- (ii) non-institution of appeal; and
- (iii) initiation of penalty on account of underreporting of income and not on account of misreporting of income.

Once the conditions are met by the Assessee, the revenue is bound to grant immunity and should not be prejudicial to the Assessee.<sup>[1]</sup>

### **Judicial view**

Hon'ble High court of Delhi in the case of Schneider Electric South East Asia (HQ) PTE Ltd. V. Commissioner of Income Tax (International Taxation) & Ors. [\[TS-226-HC-2022\(DEL\)\]](#). Held that the law requires the AO to substantiate the claim of underreporting or misreporting, when the AO fails to indicate the exact clause under which underreporting or misreporting is triggered, such proceedings are said to be untenable in the eyes of law and invalid.

Illustration 1: When the Assessee files its return of income by taking a wrong position to allow expense incurred on employee contribution to PF paid beyond due date prescribed by respective PF Act, shall violate the provisions of the Act under section 36(1)(va) and shall be adjusted by AO during assessment, consequently demand shall be raised along with Penalty notice. Now under this scenario, AO has to substantiate the exact cause under which underreporting is done.

Held in the case of IIFL Samasta Finance Limited [\[TS-726-ITAT-2024\(Bang\)\]](#) <sup>[2]</sup> before the ITAT Bangalore, when the Assessee genuinely accepts the disallowance and offers tax on the additions made to income, before completion of assessment. Since the Assessee in this case had no option to revise his return of income, such Bonafide disclosure even during assessment can be treated a valid and the claim of AO as misreporting or under reporting can be set aside.

While interpreting the language used section 270A, legislators uses the word 'may' under the provisions of section 270A, the ITAT of Karnataka in the case of IIFL Samantha Finance Ltd (supra) held that penalty shall not be par with tax or interest paid under the Act, therefore penalty should not be imposed in routine manner and not all additions or disallowances are liable for penalty.

From the close understanding of provision laid out under section 270A, it becomes clear that Levy of penalty should not be considered as mandatory in nature and is to be considered as discretionary provision.

## Conclusion

**The Assessee may either defend the penalty proceeding by taking shelter under provisions of section 270A(6) of the Act or gain the immunity granted under section 270AA by paying the tax on underreported income.**

However, when the claims made by the Assessee are genuine and Bonafide, the AO has to prove that Assessee falls under particular limb of default.

As per the judgement pronounced by IIFL Samantha Finance Ltd (supra), when satisfactory explanations are offered to the AO as per the Act, now the onus is on the AO to bring the case in four corner of the section 270A to levy penalty. When the evidence and facts are presented to substantiate the claim made by Assessee is Bonafide, AO should not initiate penalty on ad hoc basis.

The revenue when satisfied about the explanation given by the Assessee, may exercise the provision of section 270(6) and set aside the penalty proceedings.

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[1] Ultimate Infratech (P) Ltd. V. National faceless Assessment Centre Delhi & Anr [\[TS-5176-HC-2022\(Delhi\)-O\]](#),

[2] IIFL Samasta Finance Limited Vs. DCIT Circle-6(1)(1) Bangalore, IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH: BANGALORE, ITA No.1054/Bang/2024