



## ROLE BACK OF PENALTY PROCEEDINGS FROM SECTION 271(1)(C) TO SECTION 270A

**Tapas Majumdar**  
Advocate & Tax Consultant

**W**e.f. the normal assessment which is going to be barred on 31/12/2019 pertaining to the F.Y. 2016-17 the existing provisions and procedures of initiation of penalty has become widened replacing section 271(1) (C) to section 270A of the Income tax Act.

Here the Assessing Officers must be careful so as to initiate the penalty proceedings u/s 270A correctly and the same will be initiated on satisfaction of any one of the following basic elements as under.

- i. under-reporting of income or
- ii. under-reporting in consequence of misreporting thereof.

Taking into consideration above case laws and provisions of section 270A, penalty u/s 270A may be initiated as follows:

1. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income
2. Penalty proceedings u/s 270A of Income Tax Act are hereby initiated for under-reporting of income which is in consequence of misreporting thereof.

Two different rates are applicable herein.

One @ 50% & another @ 200% which are required to be levied u/s 270A based on the addition of Income. Hence, after each addition, it must be clearly specified whether penalty is being initiated on what grounds.

Section 270A has clearly defined under-reporting of income in Section 270A(2) and misreporting of income in Section 270A(9). In comparison, 'furnishing inaccurate particulars of income' and 'concealed particulars of income' were not defined in section 271(1)(c). Hence, as far as possible, while recording satisfaction for initiation of penalty, the assessing officer should try to identify in which clause or sub-clause of Section 270A(2) or Section 270A(9) that particular addition falls. Similarly, in the penalty order also the relevant clause or sub-clause of Section 270A(2) or Section 270A(9) should be specified. Moreover, if the assessing officer has specified the clause or sub-clause in assessment order, it is essential that in the penalty order also, same clause or sub-clause has to be relied upon.

Courts have consistently held that at the time of initiation of penalty, charge should be clearly specified. Understanding of this basic concept by the assessing officers will go a long way in correct initiating of penalty and passing of sustainable penalty orders. Each and every word in the sentence for initiation of penalty is crucial. Hence, the assessing officers must stop, think and ponder before recording satisfaction for initiation of penalty.

As reproduced above, Hon'ble Karnataka High Court in the case of CIT Vs Manjunatha Cotton & Ginning Factory held that notice under Section 274 of the Act should specifically state the grounds mentioned in Section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income. Similarly, in the printed notice u/s 274 r.w.s 270A, it is essential to tick the applicable part in printed penalty notice and strike off inapplicable part in printed penalty notice. Thus, if penalty is initiated only for under reporting of income, the printed notice must not contain mention of misreporting of income. In such a case, misreporting of income is required to be essentially struck off.

Section 270AA provides for immunity from imposition of penalty u/s 270A. The section is reproduced below:

### **Immunity from imposition of penalty**

270AA. (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he fulfils the following conditions, namely:

a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of section 143 or section 147, as the case may be, has been paid within the period specified in such notice of demand; and

b) no appeal against the order referred to in clause (a) has been filed.

(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in clause (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.

(3) The Assessing Officer shall, subject to fulfillment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in clause (b) of sub-section (2) of section 249, grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, where the proceedings for penalty under section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said section 270A.

(4) The Assessing Officer shall, within a period of one month from the end of the month in which the application under sub-section (1) is received, pass an order accepting or rejecting such application”

In view of the above provision, penalty u/s 270A is required to be waived by the assessing officer if the assessee pays entire tax and interest within the time specified in notice of demand and does not file appeal against the order. However, it may be noted that in view of provisions of section 270AA(3), immunity is not provided for cases of misreporting of income refer to in section 270A(9).

Penalty proceedings u/s 271(1)(c) are required to be initiated in assessments upto A.Y. 2016-17. In view of various case laws discussed above, as far as possible, penalty u/s 271(1)(c) for a particular addition should be initiated either for furnishing inaccurate particulars of income or concealment of income, not both limbs. Penalty u/s 271(1)(c) may be initiated as follows:

- i. Penalty proceedings u/s 271(1)(c) of Income Tax Act are initiated for furnishing inaccurate particulars of income
- ii. Penalty proceedings u/s 271(1)(c) of Income Tax Act are initiated for concealing particulars of income

Penalty proceedings u/s 271(1)(c) initiated in the following manner may not stand the test of appeal:

- i. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income and concealing particulars of income
- ii. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income or concealing particulars of income
- iii. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income and/or concealing particulars of income

Thereafter, inapplicable part in printed penalty notice is required to be struck off

Thus, correct initiation of penalty is the foundation upon which entire penalty order stands. Correct initiation of penalty after due application of mind will go a long way in penalty orders being sustained.

#### Penalty in Cash Deposit Cases

Assessing Officers are making addition u/s 68 or section 69A of Income Tax Act on account of unexplained cash deposits.

In many cases, Assessing Officers have initiated penalty u/s 271(1)(c) or 270A.

In this regard, attention is drawn to provisions of section 271AAC of Income Tax Act applicable from A.Y. 2017-18 onwards. Penalty is required to be levied under this section where addition has been made u/s section 68, section 69, section 69A, section 69B, section 69C or section 69D and tax is payable u/s 115BBE of IT Act. Section 271AAC is reproduced below:

Penalty in respect of certain income.

271AAC. (1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Hence its undoubtly remarkable that the new provisions make stronger to the department and the Assessing Officer also where the assessee should give proper attention while filing Income Tax Return.