

PENALTIES

Under the Income Tax Act, 1961

SKK & CO.

CHARTERED ACCOUNTANTS



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Introduction

The Income Tax Act 1961 [the “Act”] provides for imposition of penalty on an assessee who commits any default/offence under the Act. ‘Penalty’ is a sum that is levied over and above the Tax or Interest that is payable by the assessee. Hence, penalty is distinct from the Tax payable.

The IT Authority shall levy a penalty only if he is satisfied that the assessee has been found **guilty** of any default in complying with the Act. The PCIT or CIT is empowered to waive or reduce the amount of penalty in some cases. The amount of penalty that is levied by a lower authority can be modified (increased or decreased) by a higher authority in any appeal, revision or reference.

Penalties

Sec 221(1) - General

When any default is made in making whole or part payment of self-assessment tax, demand of tax, TDS or TCS - Penalty up to the amount of Tax due can be demanded by the AO.

Section & Description	Quantum of Penalty
271A: Failure by an assessee to maintain books of accounts or documents that he is required to maintain under the Act	Amount of Rs. 25000/- may be levied on the assessee
271B: Failure by an assessee to get his accounts audited/obtain audit report when he is required by the Act to do so	Amount of 0.5% of sales/gross receipts or Rs. 1,50,000/-, whichever is lower may be levied
271BA: When an assessee fails to furnish audit report as required under transfer pricing rules for International Transactions/SDT	Rs. 1,00,000/- may be imposed
Sec 271C/CA: When an assessee fails to deduct TDS/collect TCS	Penalty equal to amount failed to deduct or collect may be levied

Basic

As per Sec 269SS/269T, an assessee should accept/repay any loan, deposit or advance in relation to an immovable property only by way of A/c payee cheque, DD, Online transfer, if the amount exceeds Rs. 19,999/-. This provision however, doesn't apply to any loan/deposit/advance taken from or by Govt., Banks, Post Office, Govt. Companies or other person notified by CBDT.

Penalty: Non-compliance with the above section may result in a penalty of an amount **equal** to the amount of Loan/Deposit/Advance, taken/repaid in default of above provisions.



IMPORTANT

As per the Act, no person shall receive an amount of Rs. 2,00,000/- or more in aggregate from any person in a single day or in respect of a single transaction or in respect of a transaction in relation to a single event or occasion other than by way of A/c payee cheque, DD, Electronic Means.

Penalty on breach of the above provision maybe imposed equalling to 100% of the amount received.

Penalty on Under-reporting and Mis-reporting of Income

Under-reporting of Income	Penalty = 50% of the tax on under-reported income
Mis-reporting of Income	Penalty = 200% of the tax on mis-reported income

Reporting

In the following scenarios, an assessee shall be considered to have **under-reported** his income:

- Where return has been filed and income that is assessed by AO or assessed as per MAT/AMT provisions > Income determined as per intimation in 143(1)
- Where return has not been filed and income that is assessed by AO or assessed as per MAT/AMT provisions > basic exemption limit of the assessee
- Where reassessment of any assessee is carried out and Income reassessed by the AO > Income determined immediately before such reassessment
- Also, a person is considered to have under-reported his income if the income assessed or reassessed by AO has the effect of reducing the loss claimed by assessee.

Search/Raid

Description	Quantum of Penalty
In cases where is Search (Raid) is initiated on or after 15.12.2016	
a) If the assessee admits to the undisclosed income found during the search/raid, explains the manner of earning it, pays the amount of tax and interest on it and files a return of income	30% of the undisclosed income
b) In any other case	60% of the undisclosed income

In following scenarios, it shall be considered that income has been **mis-reported**, by the assessee:

- Misrepresent or suppresses any facts
- Fails to record investments in books of accounts
- Claims any expenditure but doesn't have any evidence to substantiate it
- Records any false entry in books of accounts
- Fails to record any receipt in books of accounts
- Fails to record any international transaction or specified domestic transaction in books of accounts

Miscellaneous

Example

Assume that Mr. A's total income assessed by AO after completion of search/raid is Rs. 40,00,000/- & total income declared by assessee and confirmed by intimation u/s 143(1) before conduct of search is Rs. 25,00,000/-. The penalty on such undisclosed income shall be computed as under:

Particulars	Amount
Total Income assessed by AO after search	40,00,000
(-) Income declared by assessee before search	25,00,000
Under/Misreported income	15,00,000
Tax on income assessed after search	10,53,000
(-) Tax on Income declared by assessee before search	5,85,000
Additional Tax Payable	4,68,000
Penalty = 50% of above tax payable, if the addition is due to under-reporting	2,34,000
Penalty = 200% of above tax payable, if addition is due to mis-reporting	9,36,000

Description	Penalty that maybe levied
Assessee fails to furnish SFT Statement within time limit	Rs. 500/- per day of default, till the period specified in the notice Rs. 1000/- per day of default, after the expiry of period in the notice
Assessee furnishes inaccurate SFT statement	Rs. 50,000/-
Failure to furnish TDS/TCS statements within time limit	Rs. 10,000 to Rs. 1,00,000/-
Furnishing incorrect information in the TDS/TCS statements	Rs. 10,000 to Rs. 1,00,000/-
If assessee has any credits in his books or investments, money, expenditure, for which he offers no explanation	10% of tax payable on such unexplained items.

Immunity from Penalty

The assessee, **may be** granted immunity from imposition of penalty, if he makes an application within **1 month** from the end of the month in which the assessment/ reassessment order was passed, to the AO, provided, he

- Pays the tax and interest payable as per the assessment/reassessment order within the time limit &
- Does not prefer an appeal against such assessment/reassessment order

Immunity

Any queries on the topic can be emailed to the author at teamskk@gmail.com