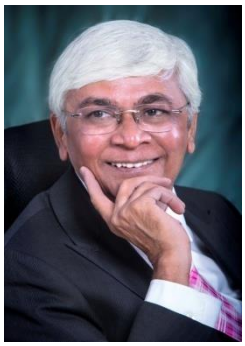
Penalty Provisions under Income Tax Act, 1961



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The levy of penalty for concealment or furnishing of inaccurate particulars of income under the existing provision of section 271(1)(c) of Income Tax Act 1961 has always been a matter of litigation between the revenue authorities and the taxpayers. The discretion regarding quantum of penalty led to corruption. The scope of such provision was always a subject matter of litigation since tax authorities always levied penalty whenever there was an addition or disallowance made by the Assessing Officer, even in case where there was no prima facie case against the taxpayer. With a view to reduce the litigation and the remove the discretion of tax authority, the Finance Act, 2016 has inserted new provision in the form of new Section 270A and 270AA in the Act which will replace the existing provision of Section 271(1)(c).

At the outset, it is clarified that the new provision of section 270A and 270AA will apply to cases pertaining to Assessment Years 2017-18 onwards and existing provision of Section 271(1)(c) will continue to be applicable to all cases up to Assessment Years 2016-17 which is apparent from the insertion of sub-section (7) in section 271. Further the new section will not be applicable to cases where assessment is made in pursuance of search u/s.132 in view of clause (e) of sub section (6) of section 270A and consequently, in such cases, the penalty would be levied under the existing provisions of section 271. It may also be noted that assessment made u/s.153C is outside the scope of section 271AAB and therefore in such cases, the penalty would, henceforth, be levied as per the new scheme.

Under the new scheme, the penalty matters are categorised in two parts – (1) under reporting of income and (2) misreporting of income. Under reported income has been defined in Section 270A(2) which is to be read with section (8) & (9) of this section.

With a view to remove the discretion of the Assessing Officer, a fixed percentage of the amount of penalty would be imposed under the new scheme. Hence penalty for under reported income will be @ fixed rate of **50% of the tax payable on unreported income while it will be @ 200% of the tax payable on the misreported income** as against 100% to 300% of concealed income under the existing provision of section 271. This is a welcome step in the proposed legislation.

The **under - reported income** has been defined in sub –section (2) section 270A. According to this provision, a person shall be considered to have unreported his income where.

a) The assessed income is greater than the income processed u/s.143(1)(a).
b) The income assessed is greater than the maximum amount not chargeable to tax, where no return is filed by the assessee.
c) Where the income reassessed is greater that the income assessed or reassessed immediately before such assessment.
d) Where the deemed total income assessed or reassessed as per the provision of section 115JB/115JC is greater that the deemed total income determined u/s.143(1)(a).

e) Where the deemed total income assessed under the provisions of section 115JB/115JC is greater than the maximum amount not chargeable to tax, where no return is filed by the assessee.

f) Where the amount of deemed total income reassessed as per the provisions of section 115JB and 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment.

g) Where the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

However in order to **avoid litigation** between the tax authorities and the taxpayers, the Act also provides for exclusion of certain amounts from the scope of the expression “Unreported income”. Such exclusions are enumerated in sub section (6) which are narrated below.

a) The additions or disallowances in respect of which assessee offers a bona fide explanation to the satisfaction of the tax authority and proves that he had disclosed all material facts to substantiate the explanation;

b) The additions or disallowance determined on estimate basis, if the account maintained by assessee are correct and complete to the satisfaction of tax authority but the method employed is such that the income cannot properly be deduced there from;

c) The additions or disallowances determined on estimate basis, where the assessee had, suo motto, made a lower amount of disallowance on the same issue in computation of income but had disclosed all material facts in respect of such additions or disallowances;

d) The amount of addition made in conformity of arm's length price determined by TPO if the assessee had maintained information and documents as prescribed u/s.92D of the Act and declared the international transactions and disclosed all material facts relating to such transactions;

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

The **computation** of under reported income is provided in sub section (3) in two parts. **First part** refers to the situation where the income is being assessed for the first time either u/s.143 or 147- **(a)** where the return is furnished, the under reported income will be difference between the amount of income assessed and the amount income determined u/s.143(1)(a); **(b)** where no return is filed by assesse (i) in case of company, firm and local authority, it will be entire income assessed and (ii) in case of other entities, it will be the difference between the income assessed and the maximum amount not chargeable to tax.

Second part refers to the situation other than that mentioned above. In such case, it will be the difference between the amount of income reassessed and the amount of income assessed, reassessed or recomputed in a **preceding order**. Further, a proviso is added to such provision which provides a formula for determining the under reported income where the income is assessed as per deeming provisions of section 115JB/115JC.

Where, as a result of the assessment or reassessment, the loss returned by the assessee is reduced or converted into positive income, the unreported income will be the difference between the loss claimed and the income or loss as the case may be assessed or reassessed.

The **expression "a preceding order"** referred to earlier is explained to mean an order during the course of which penalty proceeding had been initiated.

Misreporting of Income has been defined in sub section (8) & (9) of section 270A. Combined reading of these sub section reveals that misreporting of income will be where under-reported income is because of following circumstances.

a) Misrepresentation or suppression of facts;
b) Failure to record investment in the books of account;
c) Claim of expenditure not substantiated by any evidence;
d) Recording of false entry in the books of account;

e) Failure to record any receipt in the books of account having a bearing on the total income;
f) Failure to report any international transaction or deemed international transaction or any specified domestic transaction to which provision of chapter X applies;

For the purpose of levy of penalty, the **amount of tax payable** on under reported income as per sub-section (10) shall be computed as under.

(a) Where no return of income has been furnished and the total income has been assessed for the first time, the amount of tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income
(b) Where the total income determined under 143(1)(a) or assessed, reassessed or recomputed in a preceding order is a loss, the amount of tax calculated on the under-reported income as if it were the total income
(c) In any other case determined in accordance with the formula –
(X-Y)
Where
X = the amount of tax calculated on the under-reported income as increased by the total income determined under 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income; and
Y = the amount of tax calculated on the total income determined under 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order

Sub section (12) provides that such penalty shall be imposed by the tax authority by an order in writing.

Immunity from penalty and prosecution

Before analysing the entire scheme, it would be appropriate to refer to the provisions of section 270AA which provides for immunity from levy of penalty u/s.270A and prosecution u/s.276C of the Act. According to this scheme, an assessee shall be granted such immunity if following conditions are satisfied.

a) Tax and interest payable as specified in the notice of demand in pursuance of order of assessment or reassessment has been paid within the time specified in such notice of demand;

and

b) No appeal is filed against the order of assessment or reassessment.

The **procedure** specified is simple which states that assessee is required to file an application in the prescribed form within one month from the end of the month in which such order of assessment or reassessment is received by the assessee. The Assessing Officer, if conditions are fulfilled, shall grant immunity from imposition of

penalty u/s.270A and prosecution u/s.276C or section 276CC provided the penalty is not initiated under the circumstances mentioned in sub section (9). The A.O. shall pass an order within one month from the end of the month in which such application is received.

In other words, such immunity is not available where either (i) penalty initiated in respect of misreporting of income, or (ii) tax and interest as per demand notice is not paid within the time specified in the demand notice, or (iii) application is not made in the prescribed from within one month from the end of the month in which order of assessment or reassessment is received by the assessee.

If the A.O. decides to reject the application, he shall give an opportunity to the assessee of being heard before rejection.

Analysis

The **distinction and similarity** between the existing provision and the new scheme –

- Under the **existing provisions**, the tax authority has to **record his satisfaction** to the effect the assessee had concealed the particulars of income or furnished inaccurate particulars of income. Failure to record such satisfaction rendered the penalty order as nullity. **Under the new scheme**, there is no such statutory requirement. Mere initiation of penal proceeding would be sufficient which may be by issuing direction in the order or by issue of penalty notice.

- Under the **existing provisions**, the tax authority has to prove the fact that assessee has concealed the particulars of income or furnished the inaccurate particulars of income. **Under the new scheme**, there is no such requirement in case of under reporting of income since difference between the assessed income and income determined u/s. 143(1)(a) is presumed to be under reporting of income or difference between the assessed income and maximum amount not chargeable to tax, where no return filed is filed by the assessee. However, in case of misreporting of Income, the tax authority will have to prove or demonstrate that case of assessee falls within the criteria mentioned in sub – section (9).

- Under the **existing provisions,** there is a discretion with the AO to impose penalty between 100% to 300% of the tax but **under the new scheme,** the AO has no such discretion. He is required to impose penalty at flat rate of 50% of tax payable on under reported income and 200% of tax payable on misreported income.

- Under the existing as well as new scheme, no penalty order can be passed without giving an opportunity of being heard in view of the provision of section 274.

- The limitation period specified in section 275 will apply to order passed under both the schemes.

- The **right of appeal** is available under section 246A under both the schemes. *It may be pointed out that the existing clause (q) of section 246A permits the right to appeal against any penalty order passed under any section falling under chapter XXI.* Since penalty orders under the new provisions falls under chapter XXI, right to appeal is not lost even if no specific amendments is made in section 246A.

Whether penalty proceedings can be initiated after completion of assessment proceeding?

In my view, the answer is no for the reason given hereunder.

- Though there is no specific provision to this effect, the inference can be drawn from the Explanation below sub- section (3) which refers to initiation of penalty under sub section (1) of section 270A.

- Since for availing the immunity u/s.270AA, the assessee is required to make an application within 30 days from the end of month in which the order of assessment is received, he must be aware from such order that penalty proceeding u/s.270A has been initiated or not.

- Further, immunity u/s.270AA is available only in case of under reporting of income. Hence A.O must demonstrate whether penalty is initiated for under reporting of income or misreporting of income. This can be done only through initiating the same in the assessment order or by issuing the notice.

- Section 274 provides that no order of penalty can be passed without providing an opportunity of being heard to the assessee.

- **Last but the most important** reason is that section 275 provides the period of limitation according to section 275(1)(c), no penalty order can be passed after the expiry of financial year in which the proceeding, in the course of which action for imposition for penalty has been initiated, are completed OR 6 months from the end of the month in which action for imposition of penalty is initiated, whichever is later. Similar language is there is section 275(1)(a).*So unless the penalty proceedings are initiated in the course of assessment proceedings, the period of limitation cannot be worked out.*

It is the **settled view** that provisions should be interpreted in such manner which makes the provision workable rather than to frustrate. Therefore, in view of the reasons given above, it is **opined** that penalty proceeding must be initiated in the course of assessment proceeding itself.

Computation of Penalty.

Though sub section (2) defines the scope of the expression “under reported income” sub section (3) provides the procedure for computing such income. It is explained as under-

a) Where the income has been assessed for the first time in response to the return filed, it will mean the difference between the amount of income assessed and the amount of income determined u/s.143 (1) (a). Such assessment may be u/s.143(3) or u/s.147. Thus, under reported income would not include the amount of adjustment made in determining the income u/s.143(1)(a).**For example**, assessee files a return declaring income of Rs.10 lakhs but income is determining at Rs.12 lakhs u/s 143(1)(a) and income is assessed at Rs.13 lakhs u/s.143(3)/147. In such case under reported income would be Rs.1 lakh and not Rs.3 lakh.

b) Where no return is filed by the assessee, the computation is in two parts i.e. (i) where the assesse is a company, firm or local authority, it will mean entire amount of income assessed and (ii) in case of other assesses, it will mean the difference between the amount of income assessed and the maximum amount not chargeable to tax.

c) Where the income is assessed as a result of reassessment or re-computation (not being assessed for the first time), it will mean the difference between the amount of income re-assessed or re-computed and the amount of income assessed, re-assessed or re-computed in a preceding order. The preceding order has been defined as the order passed immediately preceding the order during the course of which penalty proceeding is initiated. Such preceding order may be as a result of assessment made u/s.143 or 147 or as a result of direction of appellate/revisionary authority or Tribunal or Court as the case may be.

d) Where the income is assessed by way of deemed assessment u/s.115JB/115JC, it will mean the amount determined as per the formula given in the proviso to sub-section 3(ii) of section 270A. This formula is similar to formula provided in the existing provision of Explanation 4 to section 271(1)(c).

e) Where as a result of assessment/reassessment, the loss is reduced or loss is converted into income, it will mean the **difference** between the amount of loss claimed by the assessee and the income or loss assessed or reassessed. For example, where returned loss is 15 Lakhs assessed income is 5 lakhs, the unreported income will be 20 lakhs.

However, under reported income shall not include the amount of income referred to in sub-section (6) of this section.

What is the scope of sub-section (6) ?

This is an important aspect which needs to be elaborated. This sub section encompasses the circumstances where penalty in respect of under reporting of income cannot be levied. The income relatable to such circumstances shall be excluded from the computation of unreported income. Thus, it will reduce the litigation between the taxpayer and the revenue authorities. Such circumstances are discussed below-

a) **First situation** is where any addition or disallowance is made by the A.O but assessee has offered an explanation which is bona fide to the satisfaction of tax authority AND has disclosed all the material facts to substantiate the explanation. **For example,** take a case of cash credit. If the assessee has furnished all material facts i.e. name and address of the creditors, his PAN, copy of ITR, ward where he assessed, confirmation from creditor, copies of bank statement etc. but the addition is made by simply because the creditor could not be produced or not responded in response to summons. As per the judicial opinions, it cannot be said that explanation of assessee was not bona fide. Hence it will not constitute under reporting of income since all material facts are disclosed.

   However some litigation cannot be ruled out as the A.O may not be satisfied with the explanation of the assessee and in such case the Appellant authority/Tribunal is likely to accept the case of assessee in view of settled legal position. There are various other situations which may fall under this category but all such cases cannot be discussed at this stage. It may be pointed out that this clause, being general one, will be applicable to any kind of addition or disallowance made by A.O. Whether a case would fall under this category or not would depend on the facts of each case.

b) **Second situation** is where the accounts of the assessee are correct and complete as per the accounting system but the method employed is such that income cannot properly be deduced there from and as result thereof the addition is made on estimate basis. **For example,** GP rate is enhanced on estimated basis merely on the grounds that it is lower than the other assessees in the same trade or because of non maintenance of stock register etc. such addition shall not be considered in computing the unreported income.

   However, this category would not be included where books of account are rejected on the ground that the same are not correct and complete to the satisfaction of AO. **For example**, non –recording of purchase/sales bogus purchases; under recording of closing stock, manipulation in entries etc. In such cases, penalty can be levied.

c) **Third situation** is where some disallowance is made by the assessee of his own but the A.O. enhances the same on estimate basis provided all material facts are disclosed by the assessee. **For example,** some disallowance is made by the assessee u/s.14A but the AO not being satisfied enhances the same even though

all material facts are disclosed by the assesse.In such cases, it will not amount to under reported income.

d) **Fourth situation** is where the assessee had maintained information and documents prescribed under section 92D, disclosed the international transactions under Chapter X and also disclosed all material facts relating to such transactions but addition is made in conformity with the arm's length price determined by TPO. Thus merely because addition is made on the basis of TPO's order, it will not amount to under reported income. This will really reduce the litigation.

e) **The last situation** is where penalty u/s.271AAB. S.271AAB applies where additions are made in case of a person in whose case search is initiated u/s.132.

Scope of the expression "misreporting of income"

"Misreporting of income" is considered to be more stringent as compared to "under reported income" since penalty in case of misreporting of income is to be imposed @ 200% of the tax payable as against 50% in case of under reported income. It is to be noted that it is not an independent expression. A combined reading of sub-section (8) & (9) shows that it is the under reported income which is to be treated as misreporting of income if under reported income is in consequence of items specified under sub- section (9). So firstly, under reported income is to be computed and then AO has to give a finding that such under reported income is in consequence of the items specified under sub section (9). So if any addition or disallowance does not fall within the scope of "under-reported income" then question of treating the same as misreporting of income does not arise.

Thus, in my opinion, the **onus** is on the revenue to prove that under reported income is in consequence of the circumstances mentioned is sub section (9). Let us have a look at these items.

- The **first item** in sub section (9) is misrepresentation of suppression of facts which involves the elements of *mensrea* i.e the guilty mind on the part of assessee. This aspect will always be a subject matter of litigation.

- The **second item** is failure to record investment in the books of account while the **fifth item** refers to failure to record receipt in the books of account which has a bearing on the total income. Such facts can be proved by AO just by referring to books of account of the assessee. But there may be cases where assessee does not make books of account even though such receipts are revenue receipts. For example, assessees filling u/s.44AD or 44ADA are not required to maintain books of account. In such cases, this sub section would become inapplicable.

- **The third item** in the list refers to claim of assessee regarding expenditure not substantiated by any evidences. The word "any" is important which can be read as **no evidence**. So where evidences have been filed by the assesse, it will not be a

case of misreporting of income merely because it is not believed by the tax authority. This aspect of the matter shall be a matter of litigation.

- **Fourth item** refers to recording of false entry in the books of account. The word " false" also involves mensrea on the part of assessee. Hence, onus will be on revenue to prove the *mensrea* on the part of assessee.

- **The fifth and last item** is failure of report international transaction or specified domestic transaction.

How the penalty is to be computed?

As already stated, sub section (7) provides that penalty shall be computed @ 50% of the tax payable on under reported income and 200% of tax payable in case of under reported income falling under sub- section (9) i.e. misreported income. Tax payable is to be computed as per the provision of sub- section (10) of section 270A. For example, an individual declaring income of Rs.6 lakhs[which is also the income determined in a return processed under section 143(1)(a)] is assessed at Rs.8 lakhs. In such case, under reported income would be Rs.2 lakhs [i.e., the difference between the income assessed and income determined in a return processed under section 143(1)(a)]and the tax payable on under-reported income and penalty would be computed as follows:

Tax on under reported income of Rs 2 lakhs plus total income of Rs.6 lakhs determined under section 143(1)(a)	
First Rs 2,50,000 = Nil Next Rs 2,50,000 – Rs 5,00,000 = Rs 25,000 Balance Rs. 3,00,000 = Rs.60,000 Plus EC & SHEC@3%	87,550
Less: Tax on Total income of Rs6,00,000determined in a return processed under section 143(1)(a)	46,350
Tax payable on Under-reported income	41,200
Penalty leviable @50% of tax payable	20,600

If such income falls under subsection (9) then penalty would be Rs.82,400/-. However, if such assessee had not filed the return at all for any reason then, under reported income will amount to Rs.5.5 lakhs (Rs.8 lakhs – Rs.2.5 lakhs) on which tax payable would be the amount of tax calculated on under-reported income as increased by the basic exemption limit i.e, tax calculated on Rs8 lakhs (Rs5.5 lakhs

plus Rs 2.5 lakhs)which would be Rs 87,550on which penalty would be Rs.43,775/ and if such income falls under sub section (9) then penalty would be Rs.1,75,100/-.

In my opinion, the provisions are too harsh and drastic in those cases where an assessee fails to file the return for bona fide reasons beyond his control. **For example**, a firm earned income of Rs.50 lakhs during a year in respect of which TDS and advance tax are fully paid as per law. However, it fails to file the return due to bonafide unavoidable circumstances. The assessment is completed assessing the income at Rs.52 lakhs u/s.144. In such case, the entire amount of Rs.52 lakhs will be treated as under reported income as per sub section (3). The tax payable on such assessed income will be Rs.16.068 lakhs including of education cess on which penalty of Rs.8.034 lakhs will be imposed even though the entire tax is already paid. On the contrary, had it filed the return, the under reported income would only be Rs.2 lakhs on which tax payable would be tax on under-reported income of Rs 2 lakhs plus total income of Rs 50 lakhs (Rs 16.068 lakhs) less tax on total income of Rs 50 lakhs declared or determined u/s 143(1)(a) (Rs15.45 lakhs)i.e, Rs.61,800 /- only and penalty would be only Rs.30,900 /-.

It appears that penalty, in such cases, is mainly for late filling of return rather than for under reported income. **In my opinion, suitable amendment needs to be made in this behalf.** In order to avoid hardship, the only option with the assessee is to avail immunity by paying tax and interest in accordance with the provision of section 270AA.

Amendment in section 271AA

Sub- section (2) has been inserted in this section. According to this amendment, if there is failure to furnish information and documents as required u/s.92D(4) on the part of assessee, then it shall be liable to pay penalty of Rs5 lakh.

So, the assessee has to be very careful in this regard.

The Taxation Laws (Second Amendment) Act, 2016 has amended the penalty provisions in respect of survey, search and seizure cases. The existing slab for penalty of 10%, 20% & 60% of income levied under section 271AAB has been rationalised to levy penalty of 30% of undisclosed income in respect of searches initiated on or after 15-12-2016, if the undisclosed income is admitted and taxes are paid. In all other cases, penalty @60% of income shall be levied. However, effective tax and penalty is much higher in case of Survey conducted during A.Y. 2017-18 and for the search cases after 15th December 2016 i.e. after Hon'ble President of India gave the assent to The Taxation Laws (Second Amendment) Act, 2016.

GIST OF THE SPECIFIC AMENDED PROVISIONS OF INCOME TAX ACT VIDE THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016.

PARTICULARS	EXISTING PROVISIONS	AMENDED PROVISIONS
General provision for penalty	PENALTY (Section 270A) Under-reporting - @50% of tax Misreporting - @200% of tax (Under-reporting/ Misreporting income is normally difference between returned income and assessed income)	No changes made
Provisions for taxation & penalty of unexplained credit, investment, cash and other assets (i.e. *Section 68,69,69A,69B,69C & 69D)	TAX (Section 115BBE) Flat rate of tax @30% + surcharge + cess (No expense, deductions, set-off is allowed)	**TAX (Section 115BBE)** Flat rate of tax @60% + surcharge @25% of tax (i.e. 15% of such income). +Cess @ 3% of Tax and Surcharge. So total incidence of tax is 77.25% approx. (No expense, deductions, set-off is allowed) **PENALTY (Section 271AAC)** If Assessing Officer determines income referred to in section 115BBE, penalty @10% of tax payable in addition to tax (including surcharge) of 75% i.e. 83.25%.
Penalty for search seizure cases	Penalty (271AAB) (i) 10% of income, if admitted, returned and taxes are paid (ii) 20% of income, if not admitted but returned and taxes are paid (iii) 60% of income in any other case	Penalty (271AAB) (i) 30% of income, if admitted, returned and taxes are paid (ii) 60% of income in any other case.

Important:

Therefore it is extremely important to note that survey conducted u/s. 133A of the Act anytime during 01/04/2016 to 31/03/2017 i.e. relevant AY. 2017-18 and in case of search u/s 132 of the Act conducted after 15th December 2016, higher rate of Tax and penalty as mentioned below shall be leviable. Therefore one has to be careful for disclosing the Income in consequence of Survey, in as much as if disclosed or assessed u/s. 68, 69A, 69B, 69C and 69D then higher rate of Tax will be applicable. If assessee discloses as higher sale proceeds or under other heads and not under aforesaid sections, and if AO does not accept the same and makes addition under any one of such sections, then huge Pandora Box of litigations may open.

However the penalties applicable for A.Y 2017-18 are extremely harsh and heavy. The whole idea is that all dishonest assesses or person having taxable Income but not declared so far should have declared Income under Income Disclosure Scheme which was up to 30th September, 2016 and for balance, left out or still having not declared must declare the Income under Pradhan Mantri Garib Kalyan Yojna,2016 or else face heavy penalties.

At the end, I feel that increased litigation may take place even if number of cases selected for scrutiny is less. Particularly for cases of searches involving high Income and heavy tax it would be advisable to approach Hon'ble Settlement Commission. Undoubtedly whether in a particular case Income have been concealed or inaccurate particulars are filed or not would remain matters of litigation. The idea of ease of paying Tax and easy Income Tax structure and compliance may not be fulfilled to that extent.

PENALTY CHART ON UNDISCLOSED INCOME

Sr No.	Particulars	Total Tax with Penalty
1	***Income declared under Pradhan MantriGaribKalyanYojana, 2016*** 25% of income declared to be deposited in interest free bonds for 4 years	**49.90%** [30 (30% tax rate) + 9.90 (Surcharge 33% of tax i.e 30) + 10 (Penalty 10 % of income declared)]
2	Unexplained income is disclosed voluntarily in ITR and tax has been paid on or before the end of the relevant previous year.	**77.25%**[60 (60% tax rate) + 15 (Surcharge 25% of tax i.e 60) + 2.25 (Edu. Cess 3% of 75 i.e. Tax 60+ Surcharge 15)]

3	Unexplained income is disclosed voluntarily in ITR but advance tax is not paid on or before March, 31 , 2017	**83.25%** [60 (60% tax rate) + 15 (Surcharge 25% of tax i.e 60) + 2.25 (Edu. Cess 3% of 75 i.e. Tax 60+ Surcharge 15) + 6 (Penalty 10% of tax)]
4	Income disclosed in ITR but treated as unexplained by Tax Officer	**83.25%** [60 (60% tax rate) + 15 (Surcharge 25% of tax i.e 60) + 2.25 (Edu. Cess 3% of 75 i.e. Tax 60+ Surcharge 15) + 6 (Penalty 10% of tax)]
5	Income admitted in a search conducted on or after 15-12-2016, where the manner in which income was derived has been substantiated and the tax with interest has been paid and declared in ITR	**107.25%**[60 (60% tax rate) + 15 (Surcharge 25% of tax i.e 60) + 2.25 (Edu. Cess 3% of 75 i.e. Tax 60+ Surcharge 15) + 30 (Penalty 30% of Undisclosed income)]
6	Income not admitted in a search initiated on or after 15-12-2016 and / or not declared in ITR	**137.25%**[60 (60% tax rate) + 15 (Surcharge 25% of tax i.e 60) + 2.25 (Edu. Cess 3% of 75 i.e. Tax 60+ Surcharge 15) + 60 (Penalty 60% of Undisclosed income)]