



Global Business Tax Alert Delivering Clarity

**CBDT clarifies¹ that
preferring immunity u/s
270AA is no bar to
challenge on same issue
in earlier years**

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¹ CBDT Circular No. 05/2018 dated 16 August 2018

Background

- Finance Act (FA) 2016 had introduced a new penalty regime under section 270A of the Income Tax Act, 1961 (the Act) with effect from 1 April 2017. Under the new penalty regime, penalty is leviable @ 50% on the tax payable on under-reported income. Under-reported income typically means the difference between assessed income and returned income, subject to certain exclusions. However, if the under-reported income is classified as "misreporting of income", the amount of penalty is increased to 200% of the tax payable on such misreporting of income.
- Also, FA 2016 had introduced section 270AA which grants immunity to an assessee from imposition of penalty under section 270A and initiation of prosecution under section 276C or 276CC on compliance of following two conditions:
 - 1) payment of demand raised for tax and interest as per the assessment order within the specified time; and
 - 2) assessee files no appeal against the assessment order of tax authority.However, the benefit of immunity provision is not available to assessee if the penalty is levied due to "misreporting of income".
- Apprehensions were raised before the CBDT that if any assessee avails the benefit of immunity under section 270AA of the Act and penalty is initiated under section 271(1)(c) of the Act on same issue in the case of assessee for earlier year(s), , the tax authority may view the same as acceptance of default by the assessee for earlier year(s). Hence, the tax authority may take an adverse view in the penalty proceedings in the case of assessee for earlier year(s) under section 271(1)(c) of the Act.

Clarification issued by the CBDT

- The CBDT, vide Circular No. 05/2018 dated 16 August 2018, has clarified that an application made by an assessee under section 270AA of the Act seeking immunity, will not bar the assessee from contesting the same issue in any earlier assessment year. The circular also clarifies that the tax authority shall not take an adverse view in penalty proceedings for earlier assessment years under old penalty regime merely because the taxpayer has applied for immunity under the new penalty regime (i.e., section 270AA).

Conclusion

Through the above circular, the CBDT has clarified that the dispute of earlier assessment years will be decided on the basis of merits of the each case which will avoid potential disputes between the tax authority and tax payers in respect of cases governed by old penalty regime.

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