

Topics

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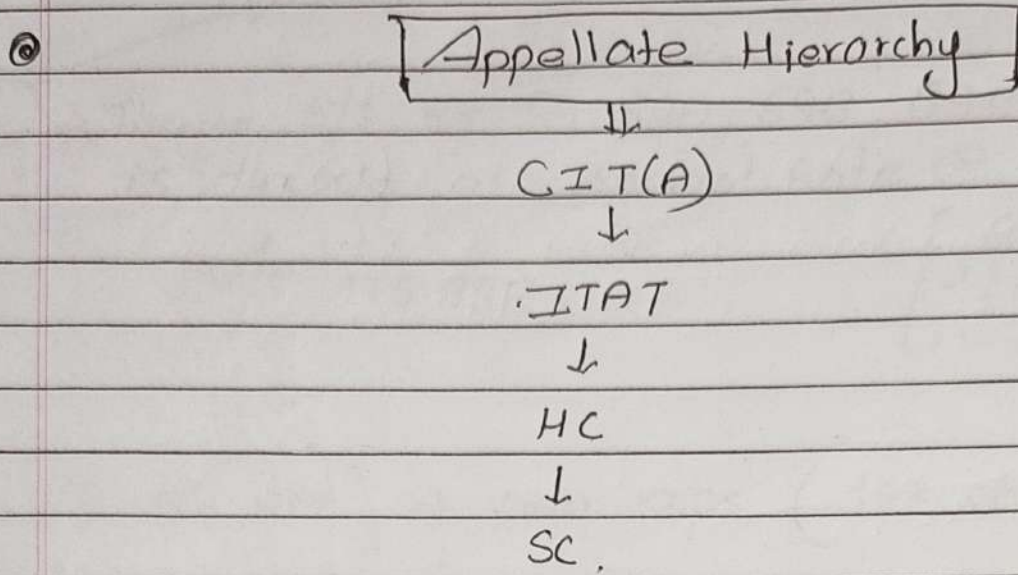
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Appeals & Revision :-



② No Right of appeal against following Order :-

- Order of Interest u/s 234A/B/C
- Revision order u/s 264
- Order of settlement commission
- Order of advance Ruling Authority.

③ Appeal to CIT(A) [Sec. 246A to 251]

→ Following orders can be appealable before ~~(ITAT)~~

- CIT(A)
- assessment order by AO (143(3)/144/147/153A)
 - Rectification order u/s 154
 - Intimation u/s 143(i), TDS/TCS intimation
 - Any other order of A.O.

→ Appeal before CIT(A) can be filed only by Assessee.

→ Time limit:- within 30 days from service of order (delay can be condoned by CIT(A))

→ Appeal shall be filed in Form No. 35 along with

- Statement of facts
- Grounds of appeal
- Copy of order of A.O.

⇒ Memorandum of appeal.



In Duplicate

→ Stay of Demand

CIT(A) can grant stay of demand on applⁿ made by Assessee.

→ Power to admit additional Evidence:-

CIT(A) can admit additional evidence by record, reasons in writing in following cases:-

→ AO refused to admit evidence,

→ Assessee was prevented by sufficient cause to produce evidence.

→ A.O. made order without giving opportunity to produce evidence.

→ CIT(A) may confirm, reduce or enhance the assessment.

→ CIT(A) can pass order within 1 year from end of year in which appeal is filed, if possible.

② Appeal to ITAT [Sec. 252 to 255]

→ In ITAT, appeal can be heard by -

- Division Bench (2 Judge → 1 Judicial & 1 Accountant member)
- Special Bench (more than 2 judges)
- Single Judge Bench (1 judge) → ~~if upto~~
if Total Income upto ₹ 50 Lak

Decision shall be taken based on opinion of majority. If members equally divided on any point, then such point shall be referred to ITAT president. He further referred such point to other member.

→ Following order can be appealable before ITAT

- order of CIT(A)
- order u/s 144C
- Revision order u/s 263
- Ag Any other order of CIT/DIT/PCIT/DCIT

→ Time limit: within 60 days from communication of order (delay can be condoned by ITAT)

→ Appeal shall be filed in Form NO. 36 along

with

- Statement of facts
- grounds of appeal
- copy of order

⇒ Memorandum of appeal

↓
In triplicate

→ Stay of Demand -

- ITAT can grant Stay of Demand on application made by Assessee for maximum 180 days.

- If ITAT fails to give judgement within 180 days and delay is not due to Assessee, then ITAT can extend stay period but (original + extension) shall not exceed 365 days.

Note For stay of Demand, Assessee has to deposit at least 20% amount.

→ ITAT can also admit additional Evidence.

→ Memorandum of cross objections

- Respondent can file memorandum of cross objection within 30 days of receipt of Notice of appeal

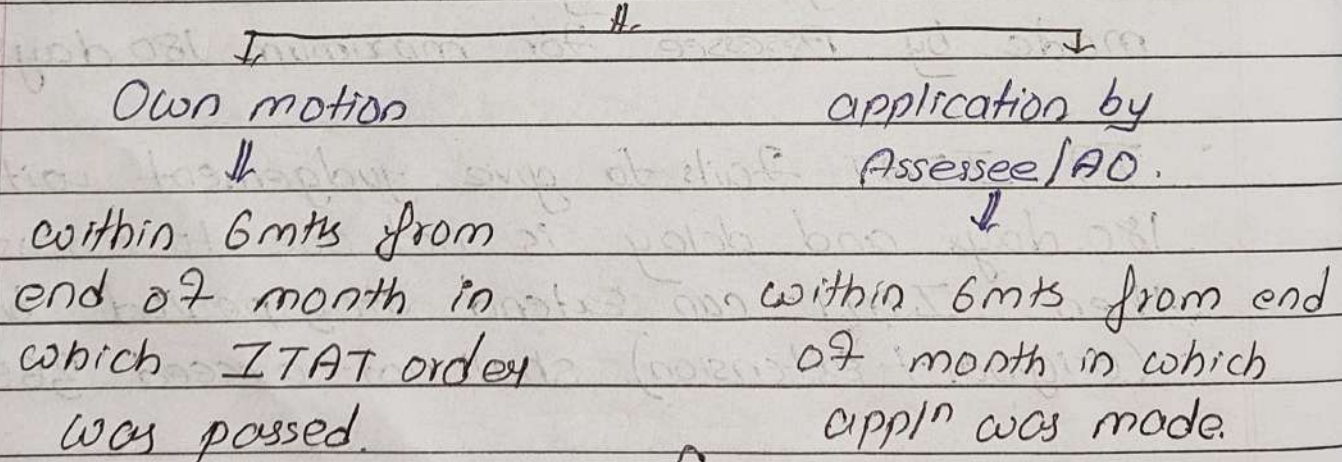
- There is no filing fees for memorandum of cross objection.

→ ITAT may confirm, reduce or set aside the assessment.

→ ITAT can pass order within 4 years from end of year in which appeal is filed, if possible.

→ Rectification of mistake by ITAT

ITAT can rectify a mistake in its order which is apparent on record.



{ has to make applⁿ within 6 mths from end of mth in which ITAT order was passed }

① Appeal Filing Fees in CIT(A) & ITAT:

	<u>CIT(A)</u>	<u>ITAT</u>
<u>Assessed Income</u>		
upto ₹ 1 Lakh	250	500
> 1 Lakh upto ₹ 2 Lakh	500	1500
above ₹ 2 Lakh	1000	1% of Assessed Income (upto 10000)
→ Other cases.	250	500
→ appeal filed by Department to ITAT		NO fees

① Appeal to High court (sec. 260 A & B)

- Appeal against ITAT order can be filed to HC only if there is question of law.
- Time limit: within 120 days from date of receipt of order.
- H.C. have power to Review its order.

② Appeal to supreme court (sec. 261 & 262)

- Appeal against HC order.
- Time limit → within 90 days
- S.C. have power to Review its order.

③ Special provision for appeal by Department (Sec. 268A)

- CBDT can fix monetary limit to regulate appeal by department in order to avoid litigation in small cases.
- Department can file appeal only if the Tax effect is more than following amounts:
 - For appeal to ITAT → more than Rs. 50 Lak
 - to HC → more than Rs. 1 cr.
 - to SC → more than Rs. 2 cr.

→ If Department has not filed appeal on a particular issue in case of a particular Assessee in a particular year due to above limit.

ii.

If shall not stop the department from filing appeal on the same issue.

↳ In case of some Assessee in another yr
↳ In case of another Assessee in any year.

① Sec. 263 → Revision of orders prejudicial to the interest of Revenue.
(Notes VCs PN-409)

② Sec. 264 → Revision of other orders.
(Notes VCs 412)

Settlement Commission

Central govt constituted a authority called ITSC for compromise & settlement.

Sec. 245A to 245C

① Application to ITSC

Assessee can make applⁿ to ITSC only if following cond^{ns} are satisfied

- ① Assessee case shall be pending before AO.
ie. Assessment of Assessee shall be pending u/s 143(3)/144/147/153A.

When case Treated as pending:-

- 143(3) :- From date on which notice u/s 143(2) issued
- 144 :- From date on which SCN u/s 144 issued
- 147 :- From date on which notice u/s 148 issued
- 153A :- From date on which notice u/s 153A issued

Deemed pending - If notice u/s 148 issued for any AY, then case deemed treated as pending for other AY for which notice not issued but could have been issued on that date.

② additional amt of tax on Income disclosed in application shall be more than.

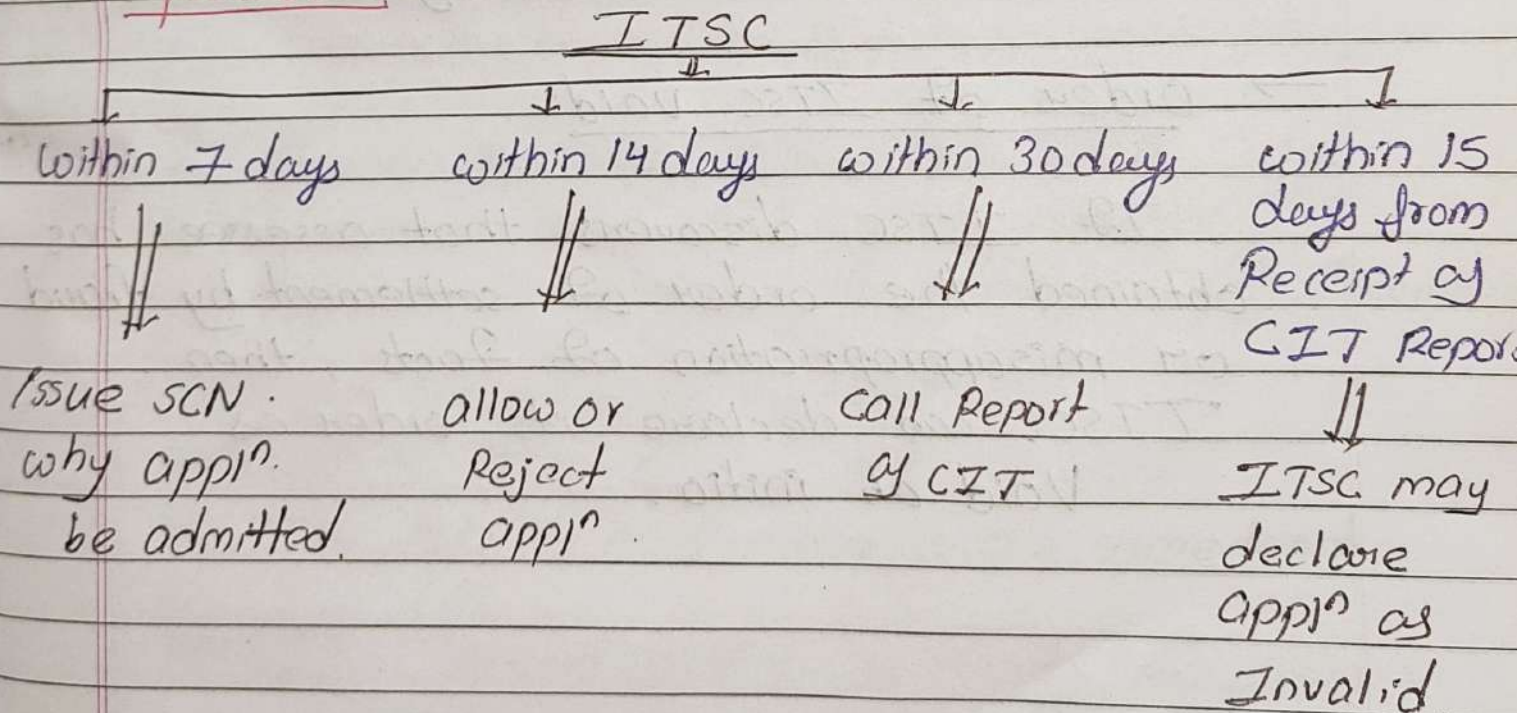
- Rs. 50 lakh in search cases (153A)
- Rs. 10 lakh in other cases (143(3)/144/147)

③ Additional tax along with interest shall be paid before making applⁿ to ITSC.

Notes:-

- Application once filed cannot be withdrawn by Assessee.
- after filing application, Assessee shall intimate to A.O.

④ Procedure:-



→ after examining & giving opportunity of being heard, ITSC shall pass order of settlement within 18 mths from end of mths in which applⁿ is made by Assessee.

→ Order of ITSC shall provide for:
Terms of settlement:-

→ Income settled & tax thereon
(extra tax has to be paid by Assessee within 35 days otherwise Int. @ 1.25% p.m / rate)

→ Immunity from penalty (whole or in part) and prosecution.

→ Order of ITSC is final.

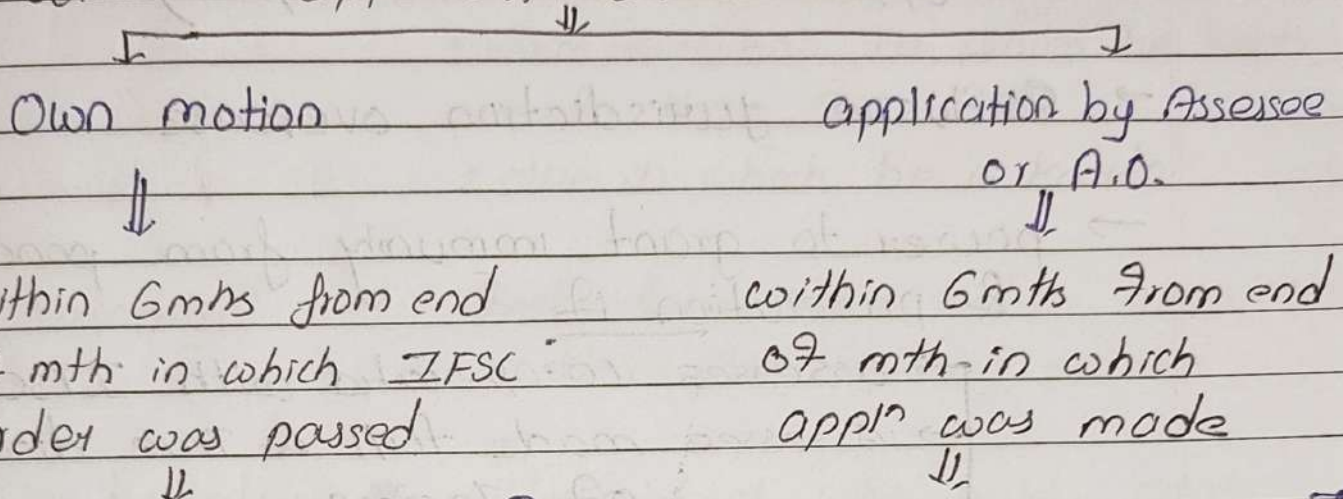
No appeal can be filed against ITSC order.

→ Order of ITSC void:-

If ITSC discovers that assessee has obtained the order of settlement by fraud or misappropriation of facts, then ITSC can declare its order as Void ab initio.

① Rectification of mistake

ITSC can rectify a mistake in its ~~order~~ order which is apparent on record.



Has to give notice of Intention & opportunity of being heard to Assessee & CIT

has to make applⁿ within 6mths from end of mth in which ITSC order was passed

② Allotment of proceeding

In following cases, proceeding with ITSC shall abate and AO shall complete assessment as per normal provisions of Income tax.

- applⁿ to ITSC is Rejected
- applⁿ to ITSC is declared invalid
- ITSC fails to pass order within time limit
- ITSC passed order without providing Terms of settlement.

① power of ITSC:

→ All powers of Income tax authorities
(can consider other issues/matter not in application or CIT Report.)

→ Exclusive jurisdiction over case

→ power to grant immunity from penalty & prosecution if

- assessee co-operated with ITSC
- Assessee made full & True disclosure of Income
- manner of deriving such Income.

② Restriction on making 2nd time application :-

Assessee can settle his case only once in a lifetime.

Even related person of such Assessee shall not be allowed if Assessee application is admitted

Assessee.

Related person

- Individual.
 - company in which he holds more than 50% voting power
 - firm/AOP/BOI in which he holds more than 50% PSR
 - HUF in which he is Karta.
- Company Individual who holds more than 50% voting power
- Firm/AOP/BOI. Individual who holds more than 50% PSR.
- HUF Karta of HUF.

Penalties:-

⑥ Penalty for under reporting of income (Sec. 270A)

→ Under Reporting :- addition/increase in Income in Assessment or Reassessment.

→ Quantum of penalty :-

Under Reporting :- 50% of tax on under reported income

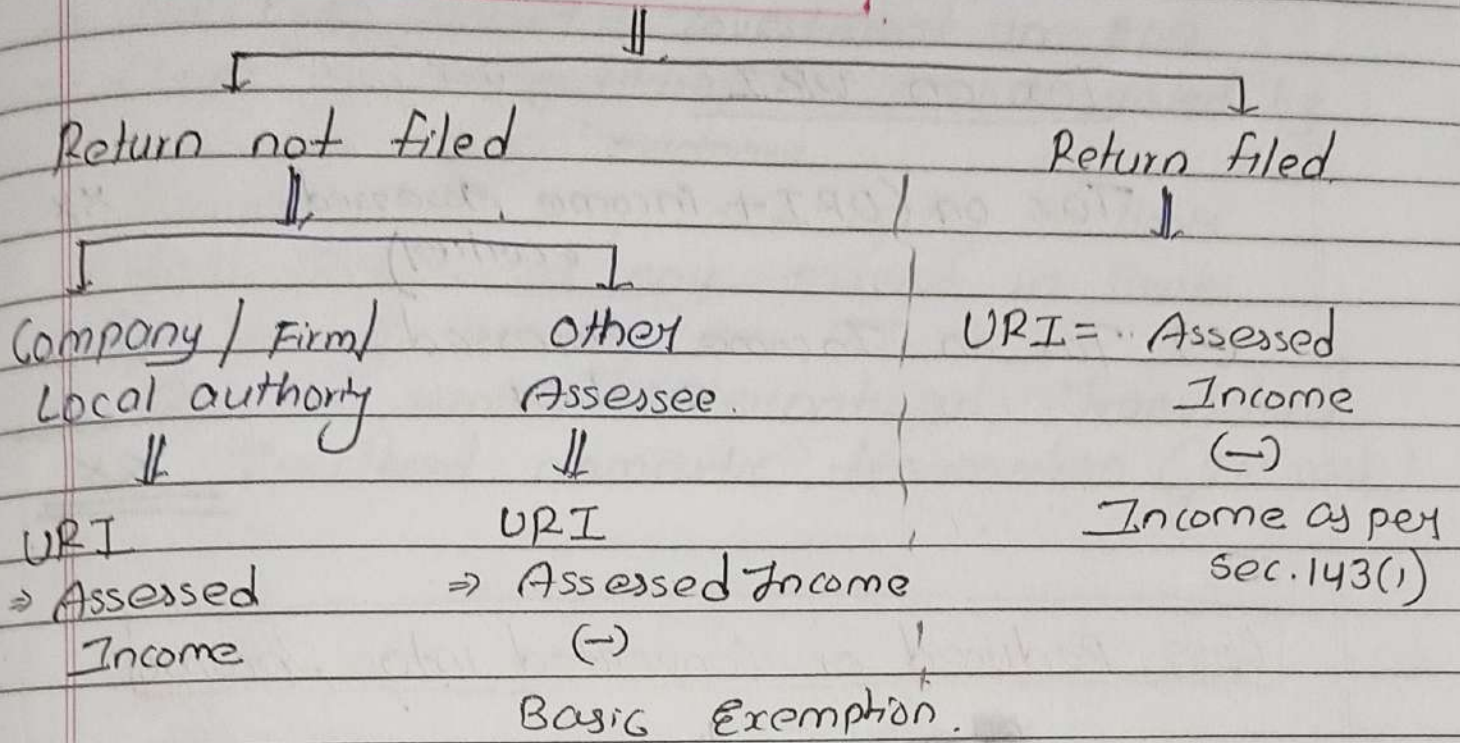
If under reporting

is due to misreporting :- 200% of tax on under reported income

Note :- Tax includes surcharge (if any) & cess.

Calculation of Under Reported Income (URI) & Tax on URI :-

First Time Assessment



Tax on URI

Ⓐ Tax on Assessed Income

Tax on

(URI + Income)
as per 143(1) xx

(-) Tax on Income (xx)
as per 143(1)

xx

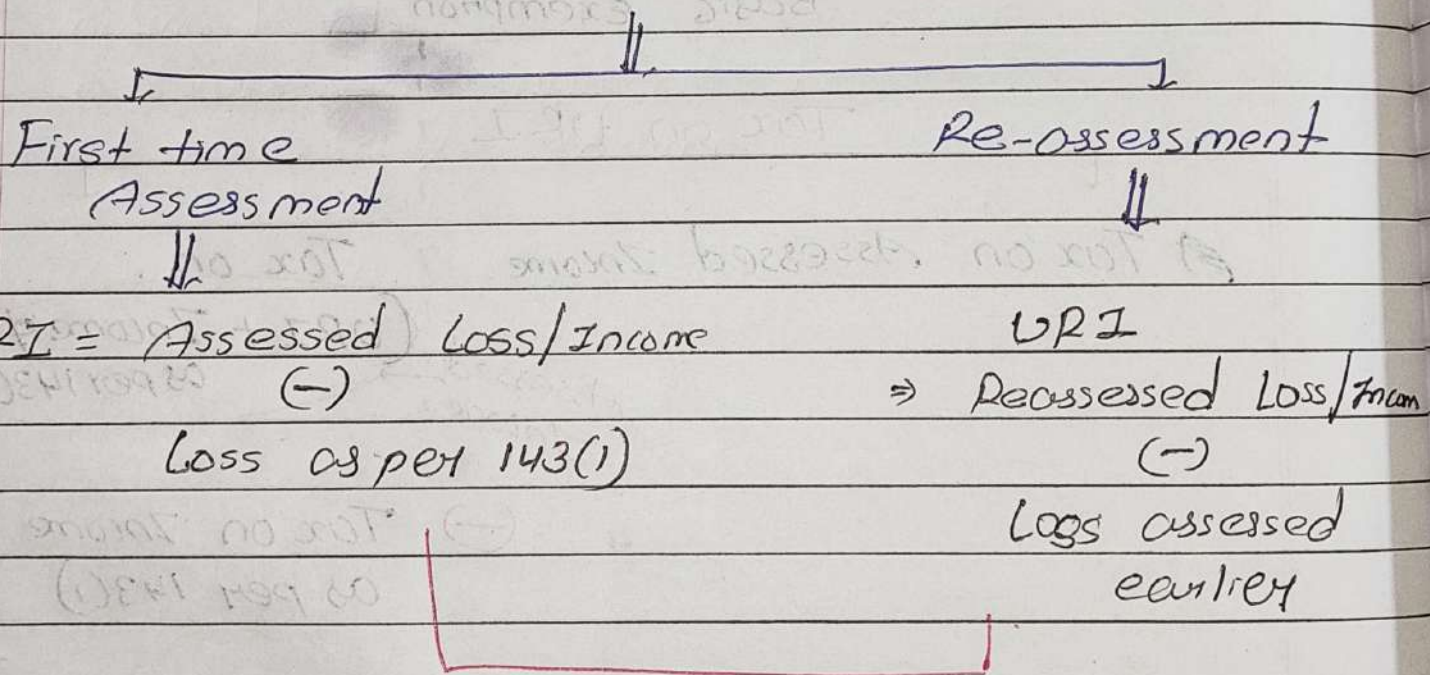
Re-assessment

$$URI = \text{Re-assessed Income} - \text{Income Assessed Earlier}$$

Tax on URI

Tax on (URI + income Assessed earlier)	XX
(-) Tax on Income Assessed earlier	(XX)
	<u>XX</u>

Loss Reduced or converted into Income



$$\text{Tax on URI} = \text{Tax on URI or if it was Total Income of Assessee.}$$

① Cases in which underreporting is Treated as Misreporting :-

- Misrepresentation or suppression of facts.
- Fails to record Investment in BOA
- Claim of Expenditure not substantiated by any evidence.
- Recording of any False entry in Books
- Fails to record any receipt in Books having bearing on I.T
- Fails to report international Transaction / Specified domestic transaction. (TP case)

② Other penalties:-

Section	Nature of Default	Quantum of penalty	Other points
Sec. 221.	Fails to pay tax, TDS, TCS, demand, etc. within 30 days of demand notice	max. upto amt of tax in arrears.	-
Sec. 271A	Fails to keep or maintain Books of Accounts u/s 44AA.	Rs. 25000	-
Sec. 271AAB	undisclosed Income found in search	30% / 60% of undisclosed Income	<p>30%, if following <u>cond^{ns} are fulfilled:</u></p> <ul style="list-style-type: none"> • Assessee admits undisclosed Income in statement • specifies manner in which such Income was earned • pay tax & interest on such Income • furnish ROI declaring such Income upto due date.

NO penalty u/s 270A on undisclosed Income found in search.

Sec.
271
AAC

Income vs
68, 69, 69A
to 69D.

10% of tax
vs 115BBE

- No penalty if such Income declared in PGT & tax paid.
- No penalty vs 270A.

Sec.
271
AAD

making false
entry/ omission
of entry in
Books to evade
tax liability

Equal to
aggregate
amt of False
Entry or
omitted Entry.

- penalty is levied on:
- person who makes false entry or omits entry.
- other person who caused the person to make false entry or omits entry.

Sec.
271B

Fails to get
accounts
audited or to
Furnish Report
upto due date
vs 144AB

0.50% of
TIO / GR
(max. Rs.
1.5 lacs)

If Books are not
maintained penalty
vs 271A shall
be levied & not
vs 271B

Sec.
271C

Fails to
deduct TDS

Equal to amt
of TDS not
deducted

penalty imposable
by JC.

Sec.
271CA

Fails to collect
TCS

Equal to amt
of TCS not
collected

penalty imposable
by JC.

Sec. 271D	Fails to comply with provision of 28 sec. 269SS.	amt of loan deposit taken	penalty imposed by IC.
Sec. 271DA	Fails to comply with provision of 269ST	amount Received.	penalty imposed by IC.
Sec. 271E	Fails to comply with provision of 269T	amt of loan deposit Repaid.	penalty imposed by IC.
Sec. 271FA	Fails to furnish statement of Financial Transaction (SFT) or Reportable accounts within prescribed time (31st may of next FY)	Rs. 500 per day till period specified in notice. Rs. 1000 per day after that period	-
Sec. 271 FAA	Furnishing inaccurate SFT or Reportable accounts.	Rs. 50000	If person informs about Inaccuracy within 10 days to tax authorities // No penalty.

Sec-
271J

Furnishing of
incorrect info.
in any report
or certificate
by CA/
merchant Banker/
Registered valuer

Rs. 10,000 for
each such
Report or
certificate.

Sec-
272
A(1)

- Fails to answer
questions ~~ask~~
ask by ~~J.T.~~
J.T. authority
- fails to sign
Statement in
proceeding
- Non-compliance
with summon
u/s 131
- Fails to comply
with notice
u/s 142(1) & 143(2)
- Fails to comply
with special audit.
Directions u/s 142(2A)

Rs. 10,000 for
each such.
Default or
failure

Sec-
272
A(2)

- Fails to
Furnish Info.
u/s 133
- Fails to furnish
ROI u/s
139(4A)/(4C)

Rs. 100 per
day till
default
continues

② prosecution :-

Sec.	Nature of offence	Rigorous <u>Imprisonment</u>	other points
Sec. 275B	Fails to afford necessary facility to authorised officer to inspect Books up 132	upto 2 years (+) Fine	-
Sec. 276B	Fails to deposit TDS with govt.	3 mths to 7 yrs (+) Fine.	-
Sec. 276 BB	Fails to deposit TCS with govt	3 mths to 7 yrs (+) Fine	-
Sec. 276C	willful attempt to Evade payment of tax, penalty, interest or under reports income.	<ul style="list-style-type: none"> • If tax evaded exceeds Rs. 25 Lacs 6 mths to 7 yrs. (+) Fine. 	-
		<ul style="list-style-type: none"> • <u>other cases-</u> 3 mths to 2 yrs (+) Fine. 	-

Sec. 276 CC	willful fails to furnish ROI upto due date	① 77 tax evaded exceeds <u>Rs. 25 lakh</u>	In case of a person (other than company)
		6 mths to 7 yrs (+) Fine	if tax payable liability is upto Rs. 10000
			↓
		② Other case?	NO prosecution
		3 mths to 2 yrs (+) Fine	
Sec. 276D	willful fails to comply with requirement of Sec. 142(1) & 142(2A)	upto 1 year (+) Fine	

① In case of following persons, individual who is deemed to be guilty of offence:-

Company :- Every person in charge of affairs, Director, manager, secretary.

Firm :- partner.

AOP/BOI :- Member

MUF :- Karta or Member.

Note :- If individual proves that offence was committed without his knowledge or he exercised all due diligence to prevent such offence.

∥
then, such individual is not liable to any punishment.

Advance Tax

→ Advance Tax means Tax paid in PY on Estimated total income of PY.

→ Calculation of Estimated advance tax liability

Tax on Estimated total Income $\times x$.

(-) Estimated TDS/TCS/Relief/Credit (xx)

Estimated advance tax liability $\Rightarrow \underline{\underline{xx}}$

→ No requirement to pay advance tax

- If advance tax liability is less than Rs. 10,000
- Resident Senior citizen not having Income under PGBP.

→ Due date of payment of advance tax:-

Due Date

Amount of advance tax to be paid

- upto 15th June of PY → upto 15% of advance tax liability
- upto 15th September of PY → upto 45% of advance tax liability
- upto 15th Dec. of PY → upto 75% of Adv. tax liability
- upto 15th March of PY → upto 100% of advance tax liability

Note:-

- If assessee opts for sec. 44AD/44ADA, then due date of payment of Advance tax is 15th March of PY (1st installment)
- Tax paid upto 31st March of PY is treated as advance tax.

Interest u/s 234A/234B/234C :-

Sec. 234A :- Interest for delay in filing of ROI :-

$$\left(\text{Tax payable on Self-Assessment} \right) \times \text{Rate} \times \text{period}$$

Tax payable on
TI as per ROI xx

(-) TDS/TCS/
Relief u/s 89, 90, 91 (x)
MAT, AMT, credit

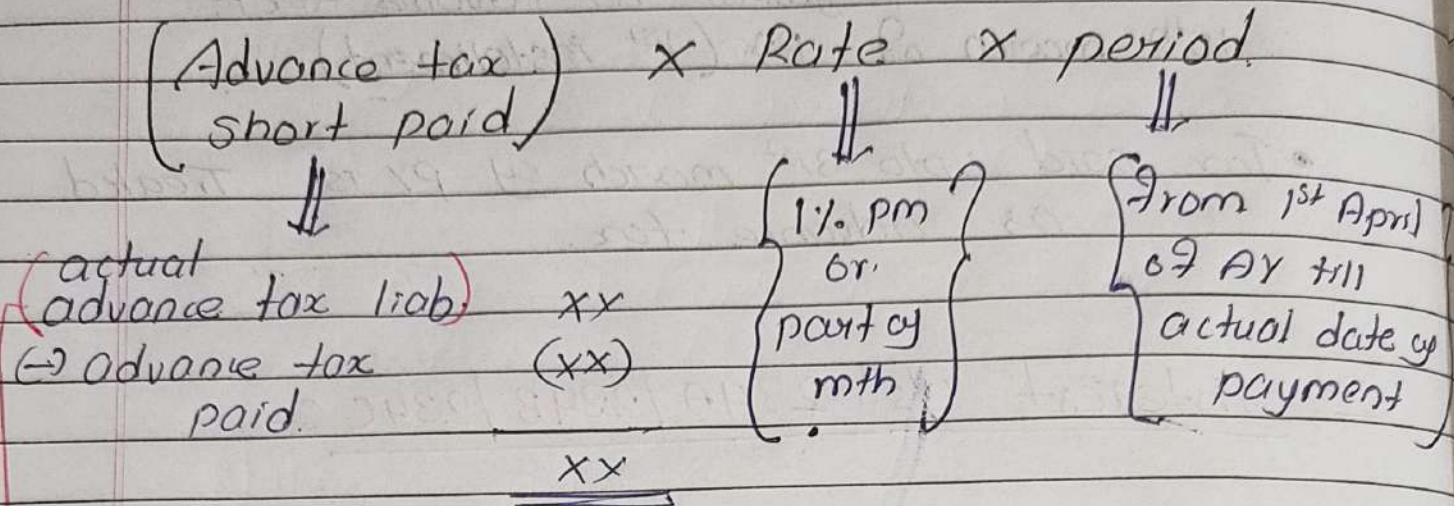
(-) advance tax paid (x)

—————
xx
—————

Rate
↓
{ 1% p.m.
or.
part of
mth. }

period
↓
{ from next day
after due date of
ROI till actual
date of filing
of ROI }

Sec. 234B:- Interest for short payment of advance tax:-



→ Actual advance tax liability:-

Tax payable on TI as per ROI	xx
(-) TDS / TCS / Relief u/s 89, 90, 91	(xx)
MAT, AMT Credit	(xx)
	xx

Note:-

- Sec. 234B is not applicable if advance tax paid by assessee is 90% or more of actual advance tax liability.
- If there is change in Total income due to ~~pro~~ processing of return u/s 143(i) or Assessment, then Tax payable on TI as per 143(i) / Assessment will be taken instead of tax payable on TI as per ROI (applicable for 234A & 234B)

① Fees for default in filing ROI :- Sec. 234F

If any person who is required to file ROI u/s 139 fails to do so within time given u/s 139(i)

||

If ROI filed upto 31st Dec. of AY = Rs. 5,000
 other case = Rs. 10,000

Notes

If total income of person is upto Rs. 5 Lakh; then fees shall not exceed Rs. 1000.

Other modes of Recovery of Tax:

① By Assessing officer:

- By way of serving of Notice of Demand u/s 156
- Amt as specified in notice shall be paid within 30 days of Notice. (Sec. 220)

② By Tax Recovery officer:

- attachment and sale of assessee's movable / Immovable properties.
- Assessee property includes any property transferred by Assessee to spouse, minor child, son's wife, son's minor child without consideration / Inadequate consideration.
- If minor child, son's minor child attain majority after transfer, then also treated as assessee's property.

Refund :-

→ If actual Tax paid is more than tax payable, then assessee is entitled to claim refund.

Interest on refund.

• Interest @ 0.5% per mth or part of mth will be paid by the Department on amount refunded.

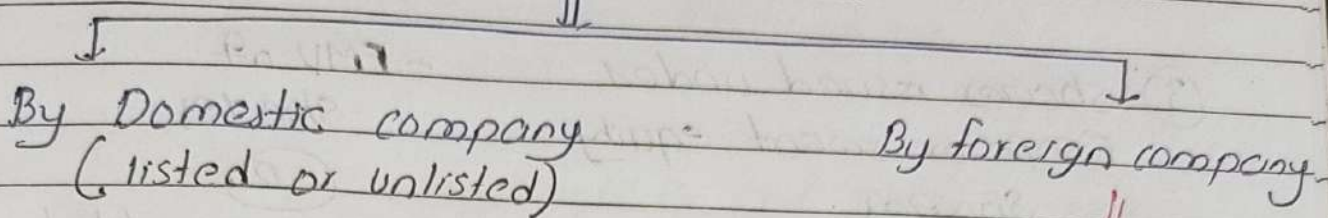
period of interest.

→ If ROI is filed \Rightarrow From 1st April of AY upto due date \Rightarrow till Date of Grant of Refund.

→ If ROI is filed after due date \Rightarrow From Date of Filing of ROI till Date of Grant of Refund.

Tax on Buyback of shares by Domestic company (Sec. 115BA)

Buyback of shares



Company \Rightarrow Taxable @ 23.296% on Distributed Income.
 (20% + 12% + 4%
 sc.)

Shareholder \Rightarrow Exempt u/s 10(34A) - Capital gain arise

Distributed Income \Rightarrow Buybacks - Issue price

Issue price

Case

issue price

① Normal share issue

amt. (including premium) received by company.

② If prior to Buyback, company refunded any sum out of amt received
 amt received reduced by sum so returned

③ shares issued under ESOP or sweat equity shares
 - FMV of shares
 - Amt credited to share capital & share premium A/c
 Higher

④ Shares issued in amalgamation by amalgamated co. in lieu of shares of amalgamating co.
 amt received by amalgamating co.

⑤ Shares issued in Demerger by Resulting co. in lieu of shares of Demerged Co.
 amt received by Demerged Co.
 Net Book value of Asset trf in Demerger
 Net worth of Demerged Co.

⑥ Bonus Shares. Nil

Other points:

→ Tax on Buyback shall be paid to the central govt within 14 days from date of payment of any consideration of Buybacks to Shareholders.

→ If tax on buybacks is not paid within 14 days, interest is leviable @ 1% p.m/cent of such tax not paid

||

From Date after
14 days

till Date on which
tax is actually paid

→ Principal officer & the company will also be deemed to be an Assessee in Default (if tax not paid within 14 days)

↓

↓

→ Special provision relating to income of Indian shipping companies :-
(Sec. 115V to sec. 115V2C)

⇓
Tonnage taxation

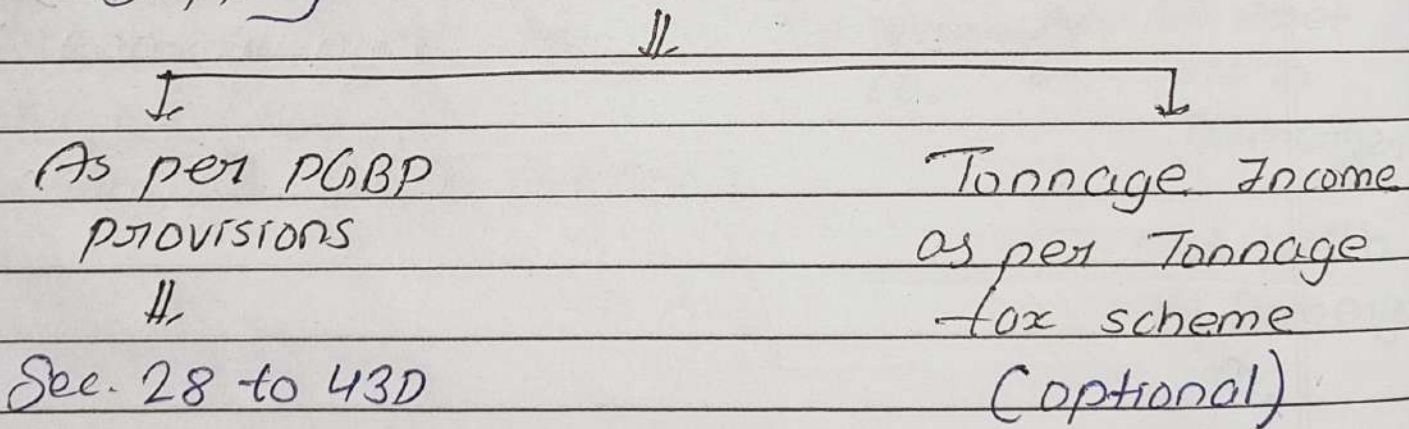
① Qualifying company

⇓
Indian company (POEM in India) engaged in business of operating ships.

and

owns at least 1 qualifying ship
(min Tonnage of 15 tons or more)

② PCBP Income of qualifying company from shipping business



Calculation of Tonnage Income:-

$$\left(\begin{array}{c} \text{Daily Tonnage} \\ \text{Income} \end{array} \right) \times \left(\begin{array}{c} \text{No. of days in which} \\ \text{Ship is operated in PY} \end{array} \right)$$

Daily Tonnage Income

<u>Qualifying ship having</u> <u>net Tonnage (in Tons)</u>	<u>Daily Tonnage</u> <u>Income</u>
---	---------------------------------------

Upto 1000

Rs. 70 for each 100 tons

> 1000 upto 10000

Rs. 700 + Rs. 53 for each
100 tons exceeds 1000

> 10,000 upto 25000

₹ 5470 + Rs. 42 for
each 100 tons > 10,000

> 25000

₹ 11770 + Rs. 29 for
each ~~100~~ tons

> 25000 tons

Note:

- Tonnage shall be rounded off to the nearest multiple of 100 tons
- Deductions, setoff of any loss shall not be allowed against tonnage Income.
- Tonnage Tax Income shall not be liable to MAT

Conditions for applicability of Tonnage tax scheme

→ ~~min~~ Minimum 20% of Book profit shall be transferred to "tonnage tax Reserve A/c" in each P.Y.

→ Reserve amt shall be utilised in

- ↳ purchase of ship before 8 yrs
- ↳ Business of operating ships.

① Shortfall in Reserve :-

$$\text{Taxable amt} = \frac{\text{Relevant Shipping Income}}{\text{Relevant Shipping Income}} \times \frac{\text{Shortfall in Reserve}}{\text{minimum Reserve to be created}}$$

② Consequences of Misutilization / non-utilization

$$\text{Taxable amt} \Rightarrow \frac{\text{Relevant Shipping Income}}{\text{Relevant Shipping Income}} \times \frac{\text{amt misutilised / unutilised}}{\text{total Reserve created during year}}$$

③ Relevant Shipping Income :-

$$\left(\text{profit from core Shipping activity} \right) + \left(\text{profit from Incidental activity} \right)$$