

PART I

Section 270A - Penalty for Under Reporting & Misreporting of Income.

Section 270AA - Immunity from imposition of Penalty & Prosecution



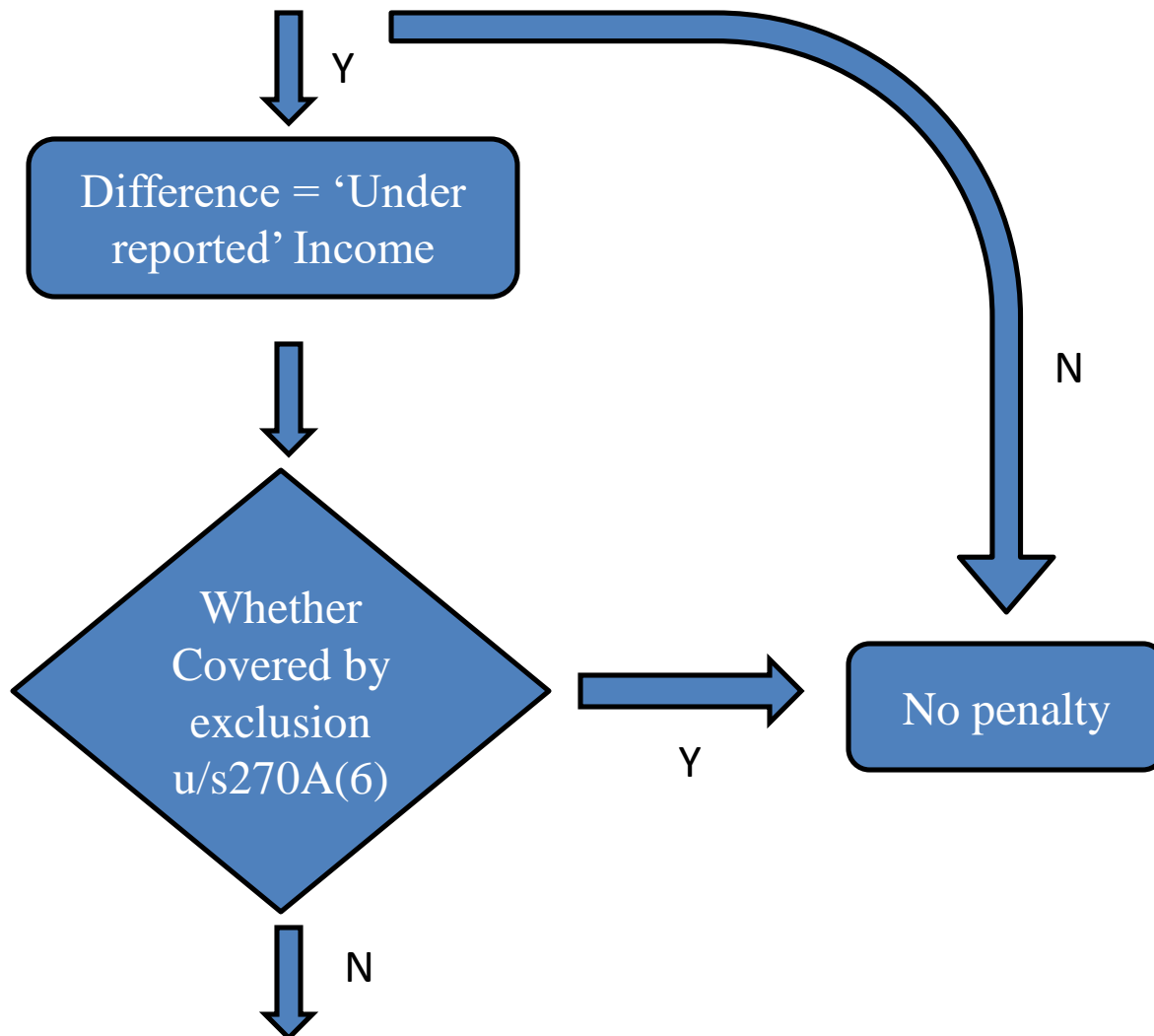
Finance Act, 2016 introduced new penal provisions under section 270A replacing section 271(1)(c) of the Income Tax Act, 1961 w.e.f. Y 2017-2018.

The concept of '*inaccurate particulars*' & '*concealment*' has been replaced by *under reporting of income*.

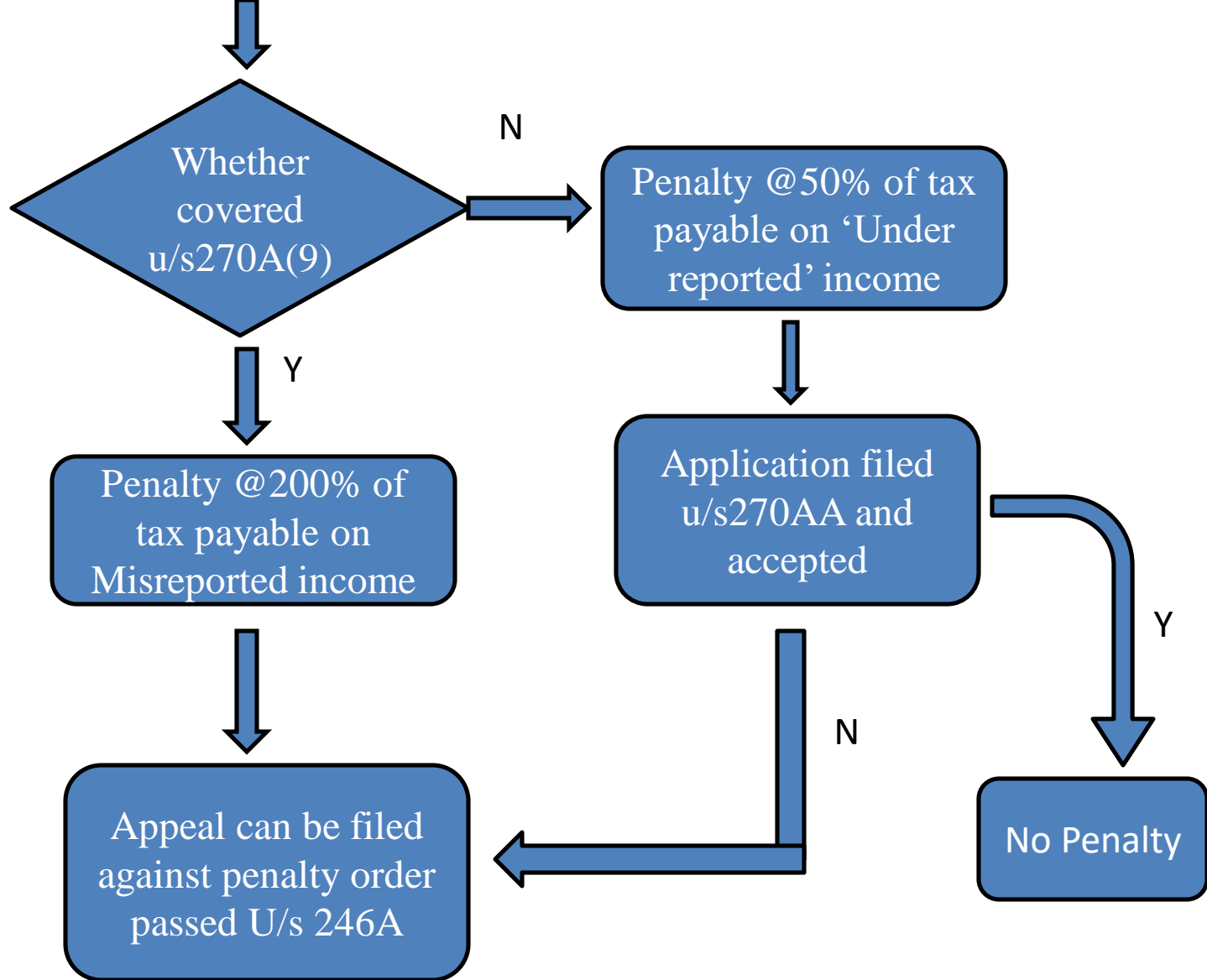
The new section provides for different category of violation with graded penalty of 50% & 200% there by substantially reducing the discretionary power of the Officer.

Objective stated by the Government is to rationalise and bring objectivity, certainty and clarity in the penalty provisions

Assessed Income > Income u/s 143(1)/Income as per immediate preceding order or
Assessed Income > Max Exemption limit (where return is not filed or where Return
U/s 148 has been filed for the first time)



contd.....



Sec 270A(2)

WHAT CONSTITUTE UNDER REPORTING OF INCOME

When return of income is filed	When return of income is not filed OR <u>Filed for the first time under section 148</u>
Normal income / Book profit assessed <u>EXCEEDS</u> Normal income / Book profit assessed u/s 143(1)(a);	Income / book profit assessed <u>EXCEEDS</u> Maximum amount not chargeable to tax
Normal income / Book profit reassessed <u>EXCEEDS</u> Normal income / Book profit assessed or reassessed previously;	
Total income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	

270A(3)

Computation of Under-reported Income

Situation	Amount of under-reported income
<u>(I)Where income is assessed for the first time</u>	
(a)Return has been filed	Excess of assessed income over income determined u/s.143(1)(a).
<u>(b) Return has not been filed / Filed U/s 148 for the first time:</u>	
i)In case of a company ,firm or local authority.	Income Assessed
ii) In case of other assesses	Excess of assessed income over maximum amount not chargeable to tax
	(contd...)

contd....

Situation	Amount of under-reported income
<u>(II) In case of reassessment</u>	Excess of Income re-assessed over income assessed/re-assessed in a preceding order
<u>(III) Where under reported income arises due to determination of income as per section 115JB/115JC</u>	Similar to provisions of Explanation 4 to section 271(1).
<u>(IV) Where assessment / reassessment has the effect of reducing the Loss or converting the loss into income</u>	Difference between Loss claimed in the <u>RETURN</u> and the income / loss Assessed

270A(6)

Exclusion from under reported income

- **Bonafide explanation substantiated with material facts.**
eg:- claim of deduction based on advise from an expert.
- **Disalloawnces / additions based on estimate without rejecting the books of accounts.**
eg:- estimation of GP rate without rejecting the books.
- **Disallowance / additions on estimate rejecting the lower disallowances made by the Assessee on estimate basis.**
eg:- disallowance made u/s 14A by Assessee and enhanced by the AO.

(contd....)

270A(6)

Exclusion from under reported income

(.....contd)

- Additions under Transfer pricing assessment if documentation required u/s 92D are maintained, **international transactions** under chapter X are declared and all material facts concerning relevant transactions are disclosed.
- Undisclosed income referred to in section 271AAB (search assessment)
- Income assessed u/s 68 / 69 / 69A / 69B / 69C / 69D [Section 271AAC(2)]

Sec 270A (9)

Instances of under reported income being categorised as Misreported income

- Misrepresentation or suppression of facts;
- **Failure to record investments in the books of account;**
- Claim of expenditure not substantiated by ANY evidence;
- Recording of any false entry in books of account;

(Contd....)

Sec 270A (9)

Instances of under reported income being categorised as Misreported income

(contd...)

- Failure to record any receipt in books of account having a bearing on total income (*eg: addition on account of 26AS reconciliation*) ; and
- Failure to report any international transaction or deemed **international transactions** or any **specified domestic transaction** under chapter X.



**On under reported
income –
Section 270A(7)**

**50% of Tax Payable on
under reported income**

**Misreported income –
Section 270A(8)**

**200% of Tax Payable on
Misreported income**

Reasonable cause cannot be pleaded in absence of corresponding amendment to Section 273B



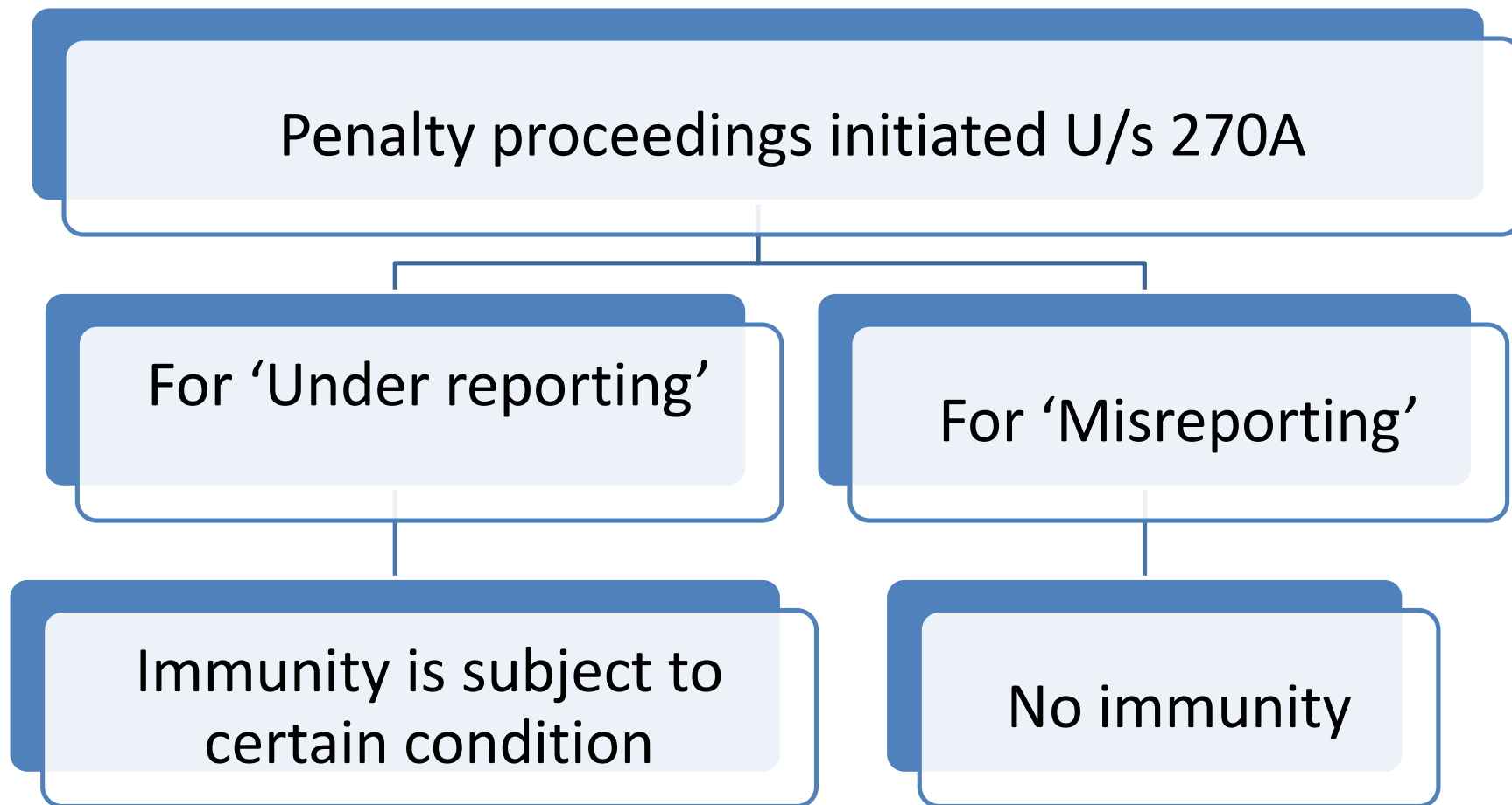
Good News,
Everyone!

Section 270AA

IMMUNITY FROM IMPOSITION OF PENALTY & PROSECUTION

Section 270AA

IMMUNITY FROM IMPOSITION OF PENALTY & PROSECUTION



Conditions for immunity

- Application to be filed in Form No.68 within one month from the end of the month in which the order initiating the penalty proceedings is received provided that:
 - ❖ Payment of the tax and interest payable as per the assessment / reassessment order is paid within the specified time
 - ❖ Appeal against the above mentioned order is not preferred

If all the above conditions are satisfied the AO **SHALL** grant immunity from imposition of penalty and initiation of prosecution proceedings within a period of ONE month from the end of the month in which the application is received by him

Other points

- The Order rejecting the application shall not be passed without providing an opportunity of being heard.
- The order passed under this section shall be Final .
- No appeal U/s 246A or application for revision u/s 264 shall be admissible in respect of assessment / reassessment order , in a case where immunity is granted u/s 270AA

Part II –Section 271AAD



- Proposed Penalty Under section 271AAD is applicable **w.e.f.1.4.2020** for:
 - ❖ A false entry or
 - ❖ An Omission of relevant entry to evade tax liability.
- The penalty is over and above the penalty leviable under other provisions of the Act.
- Penalty is leviable on the Assessee and also on **'any other person'** who causes in any manner to make a false entry or omits any entry

Section 271AAD

- False entry is includes **use** or **intention to use**:
 - forged documents, forged invoice or false documentary evidence.
 - invoice issued without issue of goods or services
 - invoice issued by a person who does not exist
- Penalty is a sum equal to the aggregate amount of such false or omitted entry.
- Reasonable cause cannot be pleaded in absence of corresponding amendment to Section 273B

The justification for such a HARSH penalty as per Memorandum Explaining the provisions



In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Examples of cases covered

- Fake Bills
- Forged documents
- Bills without actual supply of goods or services
- Person issuing the invoice does not exist
- Omission of entry in books to evade tax

PART III

Section 115BBE:-

Post demonitisation

**Tax on Income referred to in
section 68/69/69A/69B/69C /69D.**

&

Penalty Under section 271AAC



Introduction

- Section 115BBE was introduced by the Finance Act, 2012 w.e.f AY 2013-2014.
- Section 115BBE of the Income tax Act deals with Rate of tax on income referred to in sections.
 - (i) 68 – Cash Credits,
 - (ii) 69 – Unexplained Investments,
 - (iii) 69A – Unexplained Money, bullion, jewellery or other valuable articles,
 - (iv) 69B--Amount of Investments, jewellery etc. not fully disclosed,
 - (v) 69C – Unexplained Expenditure and
 - (vi) 69D – Amount borrowed or repaid on a Hundi in cash.

Introduction (contd..)

- Section 115BBE originally provided for tax rate of 30% plus SC and E cess, which was increased to 78% (including SC & E cess) vide Taxation Laws Second Amendment Act 2016 (48 of 2016), which got Presidential assent on 15-12-2016. This amendment was introduced w.r.e.f. 1-4-2016 i.e. from AY 2017-2018.
- Section 115BBE has come in the lime light due to the amendments post demonitisation.
- Section 115BBE has been made very rigorous to bring the tax rates close to 90% as publicised by the Government post demonitisation.
- The tax rates can be termed as '**Confiscatory**' rates

Tax Rate U/s 115BBE

Description	Tax Rate (If Income is disclosed in Return filed and Tax is paid on / before end of PY)	Tax Rate (If Income is disclosed but Tax is not paid before end of PY)	Tax Rate (Income determined by the AO)
Rate of tax	60%	60%	60%
Surcharge (25%)	15%	15%	15%
Education cess (4%)	3%	3%	3%
Penalty u/s 271AAC (10%)*	NA	6%	6%
Effective Tax	78%	84%	84%

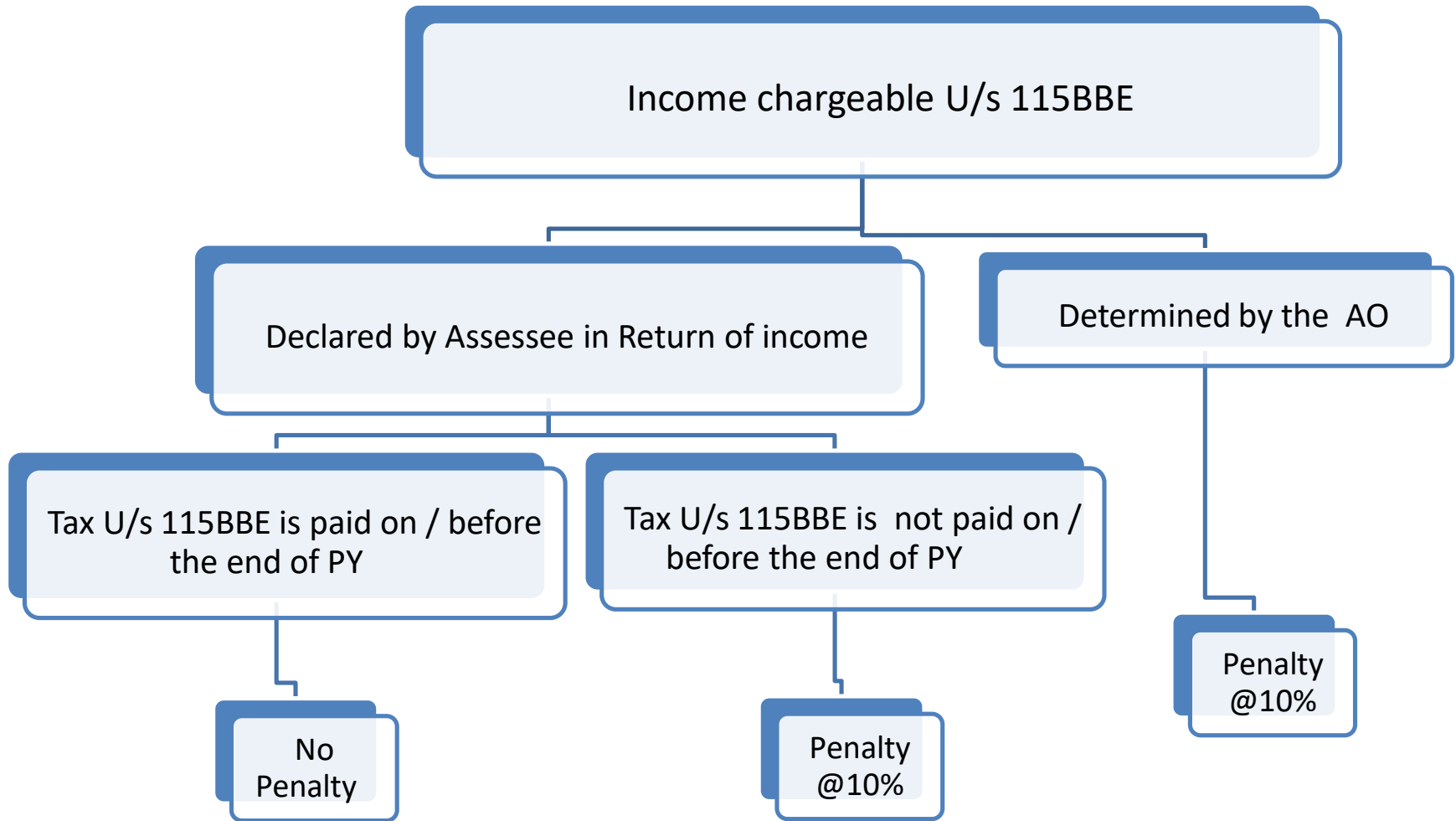
* In case of search assessment the penalty will be levied U/s 271AAB @ 30% or 60% of undisclosed income as the case may be. **Effective tax with interest for 18 months would be 92-98% or 137.25% as the case may be**

Points to be noted

Following benefits are not allowed where income is chargeable U/s 115BBE

- Basic exemption limit.
- Set off of loss (CY / B fd losses)
- Deduction under chapter VI-A

Penalty U/s 271AAC



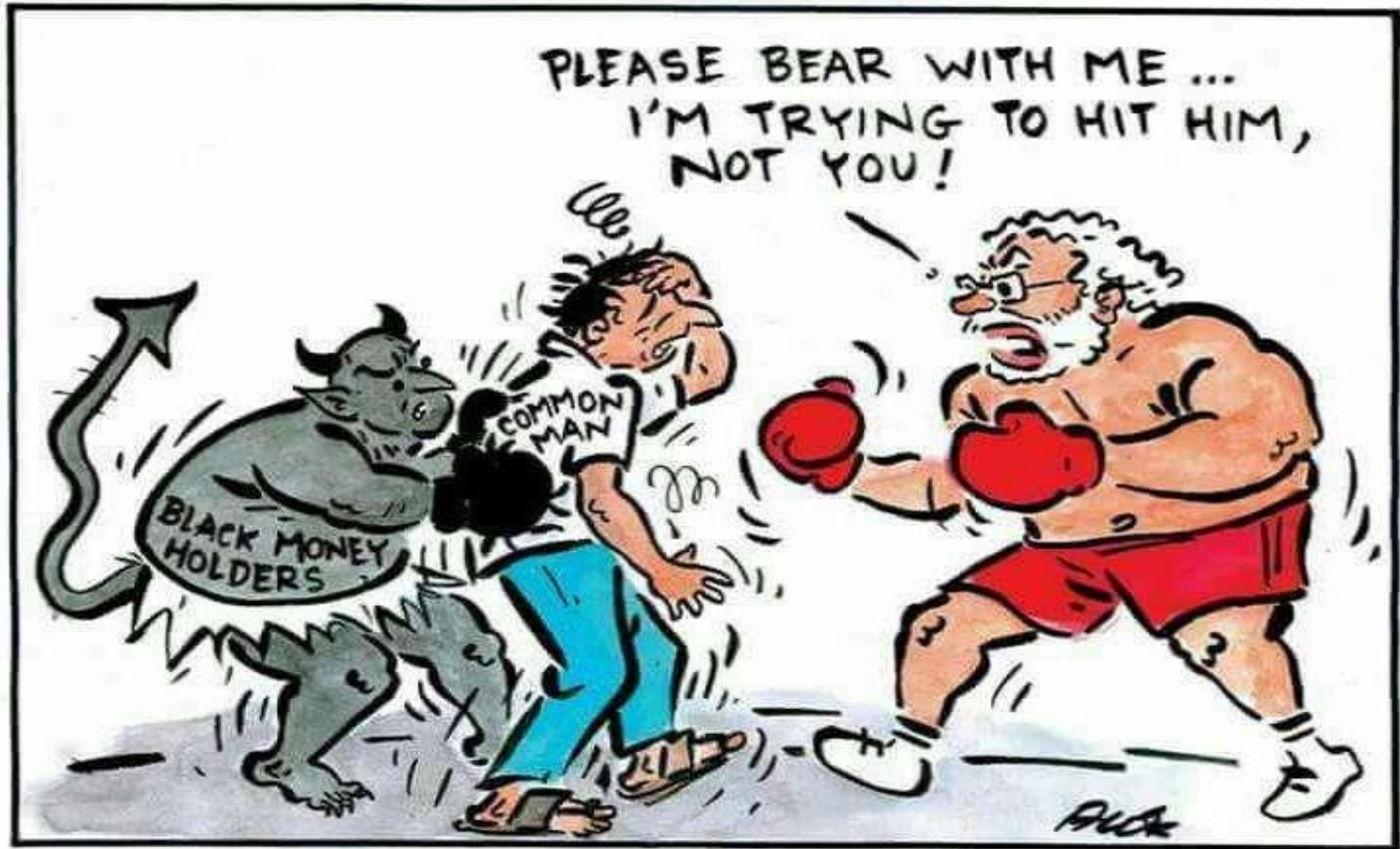
Penalty- Section 271AAC

- Section 271AAC is introduced by The Taxation Laws(Second Amendment) Act, 2016 w.e.f.AY 2017-2018.
- Penalty leviable is @ 10% of the tax payable u/s 115BBE(1)(i) i.e.6% of income chargeable U/s 115BBE.
- The levy of penalty is automatic and is triggered with invocation of section 115BBE.

Penalty- Section 271AAC- contd...

- Opportunity of being heard U/s 274 is to be given, which is irrelevant as there is no discretion available to AO in absence of corresponding amendment to section 273B (reasonable cause).
- A separate Order is required to be passed for levy of this penalty.
- An appeal can be filed U/s 246A
- Section 270A will not apply to cases covered U/s 271AAC

To conclude.....



ACHE DIN ANE WALE HAI???



Question Answer session (Last 15 Minutes)



ANY QUERIES??

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