taxsutra All rights reserved

INCOME-TAX ACT, 2025

Chapter XXI: PENALTIES

Section 439 - Penalty for under-reporting and misreporting of income.

(1) The Competent Authority may, during the course of any proceedings under this Act, impose penalty on any person who has under-reported his income and such penalty shall be payable in addition to tax, if any.

(2) A person shall be deemed to have under-reported his income, if—

(a) the income assessed is greater than the income determined in the return processed under section 270(1)(a);

(b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280;

(c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;

(d) the amount of deemed total income assessed or reassessed as per section 206 (1) and (2), is greater than the deemed total income determined in the return processed under section 270(1)(a);

(e) the amount of deemed total income assessed as per section 206(1) and (2), is greater than the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time under section 280;

(f) the amount of deemed total income reassessed as per section 206(1) and (2), is greater than the deemed total income assessed or reassessed under the said sections immediately before such reassessment;

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

(3) The amount of under-reported income shall be,—

(a) if income has been assessed for the first time,—

(i) where return has been furnished, the difference between the amount of income assessed and the amount of income determined under section 270(1)(a);

(ii) where no return of income has been furnished or where return has been furnished for the first time under section 280,—

(A) the amount of income assessed, in the case of a company, firm or local authority; and

(B) the difference between the amount of income assessed and the maximum amount not chargeable to tax, in a case not covered in item (A);

(b) in any other case, the difference between the amount of income reassessed or recomputed and the amount of income assessed, reassessed or recomputed in a preceding order.

(4) If under-reported income arises out of determination of deemed total income as per section 206 (1) and (2), the amount of total under-reported income shall be determined as under—

(A – B) + (C – D)

Downloaded by @weboapps.com at 29/11/26 03:52pm

taxsutra All rights reserved

where,—

A = the total income assessed as per the provisions other than the provisions contained in section 206 (herein referred to as “general provisions”);

B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;

C = the total income assessed as per section 206;

D = the total income that would have been chargeable had the total income assessed as per section 206 been reduced by the amount of under-reported income.

5) (a) If the amount of under-reported income on any issue is considered both under section 206(1) and (2) and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under D referred to in sub-section (4);

(b) in a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income, the amount of under-reported income shall be the difference between the loss claimed and the income or loss, assessed or reassessed.

(6) Subject to sub-section (8), where the source of any receipt, deposit or investment in any tax year is claimed to be an amount added to income or deducted while computing loss, in the assessment of such person in any year prior to the tax year in which such receipt, deposit or investment appears (herein referred to as the preceding year) and no penalty was levied for such preceding year, then, the under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

(7) The amount referred to in sub-section (6) shall be deemed to be income under-reported for the preceding year in the following order:—

(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and

(b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(8) The under-reported income, for the purposes of this section, shall not include the following:—

(a) the amount of income in respect of which the assessee offers an *explanation* and the Competent Authority, is satisfied that the *explanation* is *bona fide* and the assessee has disclosed all the material facts to substantiate the *explanation* offered;

(b) the amount of under-reported income determined on the basis of an estimate, if the accounts are correct and complete to the satisfaction of the Competent Authority, but the method employed is such that the income cannot properly be deduced therefrom;

(c) the amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue, has included such amount in the computation of his income and has disclosed all the facts material to the addition or disallowance; and

(d) the amount of under-reported income represented by any addition made in conformity with the arm’s length price determined by the Transfer Pricing Officer, where the assessee had maintained such information and documents as may be prescribed under section 171, declared the international transaction under Chapter X, and, disclosed all the material facts relating to the transaction.

(9) The penalty referred to in sub-section (1) shall be 50% of the tax payable on under-reported income.

(10) Irrespective of anything contained in sub-section (8) or (9), where under-reported income is in

Downloaded by @weboapps.com at 29/11/26 03:52pm

taxsutra All rights reserved

consequence of any misreporting thereof by any person, the penalty referred to in sub-section (1) shall be 200% of the tax payable on under-reported income.

(11) The cases of misreporting of income referred to in sub-section (10) shall be the following:—

(a) misrepresentation or suppression of facts;

(b) failure to record investments in the books of account;

(c) claim of expenditure not substantiated by any evidence;

(d) recording of any false entry in the books of account;

(e) failure to record any receipt in books of account having a bearing on total income; [1]

(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply ; and

(g) income referred to in section 195(1)(b). [2]

(12) The tax payable in respect of the under-reported income shall be—

(a) where no return of income has been furnished or where return has been furnished for the first time under section 280 and the 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 section 270(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 as follows—

(X – Y)

where,—

X = the amount of tax calculated on the under-reported income as increased by the total income determined under section 270(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 section 270(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

(13) No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has already formed the basis for penalty in the case of the person for the same or any other tax year.

(14) The penalty referred to in sub-section (1) shall be imposed, by an order in writing by the Competent Authority.

(15) For the purposes of this section,—

(a) “Competent Authority” means the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner; and

(b) “preceding order” means an order immediately preceding the order during the course of which the penalty under sub-section (1) has been initiated.

Downloaded by @weboapps.com at 29/11/26 03:52pm

taxsutra All rights reserved

1. Omittedby The Finance Act, 2026

; and

2. Inserted by The Finance Act, 2026

(g) income referred to in section 195(1)(b).

Downloaded by @weboapps.com at 29/11/26 03:52pm