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Tax Flash News

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Delayed compliance without concealment does not attract penalty for under-reporting

Executive summary

In the case of *Ishit Kamleshbhai Sheth*[1], the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) held that filing of tax return for the first time in response to the reassessment notice does not *ipso facto* constitute under-reporting of income, warranting penal consequences.

The Tribunal emphasised that the imposition of penalty cannot be mechanical and should be exercised judicially, particularly when the tax return so filed was complete, accurate, supported by verifiable evidence; the entire income was fully traceable in tax department's systems and had already been subjected to tax deduction at source; and the reassessment had been concluded without any additions or disallowances.

[1] *Ishit Kamleshbhai Sheth* v. *ITO* (ITA No. 753/ Ahd/ *2025)*

Facts of the case

The taxpayer was a salaried employee with an Indian company.

During the year under consideration, the taxpayer did not file his tax return within the prescribed timeline[2], despite having taxable income exceeding the basic exemption limit.

Based on the data available from the Annual Information Return and Form 26AS, the Revenue issued a notice under section 148 of the Income-tax Act, 1961 (the Act) initiating the reassessment proceedings. In response to the notice, the taxpayer filed his tax return which was eventually accepted by the Revenue without any additions or disallowances.

However, the Revenue alleged under-reporting of income under the Act and levied penalty[3] as no return was filed within the prescribed time limit despite the income exceeding the maximum amount not chargeable to tax. The tax return was filed only after detection by the Revenue and upon the issuance of reassessment notice.

The taxpayer filed an application (Form No. 68) with the Revenue seeking immunity from imposition of such penalty[4]. Though there was a delay in filing Form No. 68, the taxpayer paid the tax and complied with reassessment order within the prescribed time.

Relevant provisions

Any person who has under-reported his income is liable to pay penalty, in addition to tax, if any, on such under-reported income[5].

A person shall be considered to have under-reported his income in specified situations, including, where the assessed income is higher than the maximum amount not chargeable to tax, and no tax return has been filed, or the tax return has been filed for the first time in response the reassessment notice[6].

However, under-reported income shall not include income in respect of which the person offers an explanation, and the relevant tax authority[7] is satisfied that the explanation is *bona fide* and such person has disclosed all the material facts to substantiate the explanation offered[8].

[2] Section 139(1)
[3] Section 270A
[4] Section 270AA
[5] Section 270A(1)
[6] Section 270A(2)(b)
[7] Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be.
[8] Section 270A(6)(a)

Immunity from imposition of penalty for under-reporting may be granted where an application in Form No. 68 is made within one month from the end of the month of receiving the reassessment order and the following conditions are cumulatively satisfied:

- tax and interest payable as per the reassessment order has been paid within the period specified in the notice of demand; and
- no appeal against the reassessment order has been filed.

Taxpayer's contentions

The failure to timely file the tax return was inadvertent and *bona fide* oversight, arising out of a misunderstanding about compliance obligations and lack of professional advice.

The taxpayer believed that as the entire tax had already been deducted at source by the employer and the details were duly reflected in Form 26AS, he was not required to file the tax return.

Initiation of penalty proceedings on account of under-reporting of income was not justified as the tax return filed in response to the reassessment notice was accepted without any variation[9] and full material disclosure was made during the reassessment proceedings, including furnishing of Form 16, salary slips, bank statements etc.

Immunity from imposition of penalty should be granted as the taxpayer complied with the prescribed conditions. The delay in filing of application for immunity from penalty was procedural and should not override the substantive right to immunity.

Tribunal's decision

The Tribunal decided the matter in favour of the taxpayer and held that no penalty was leviable as the failure to file the tax return within the prescribed timeline, though not condonable, does not *ipso facto* constitute under-reporting of income.

Key observations of the Tribunal include:

Penalty for under-reporting of income cannot be imposed mechanically merely because the taxpayer filed the tax return in response to the notice. The

[9] *Archana Achyut Sail v. ITO [2025] 173 taxmann.com 52 (Mumbai Tribunal); Suresh Rao v. ITO (ITA No.1235/ Ahd/ 2024)*

provision is not mandatory in nature. The statute does not intend to penalise delayed but truthful compliance.

The timing of filing is not determinative; what is crucial is whether there is any concealment, misreporting, or deliberate non-disclosure of income. The discretion to levy penalty must be exercised judiciously considering the relevant facts, explanations, conduct, and supporting documents.

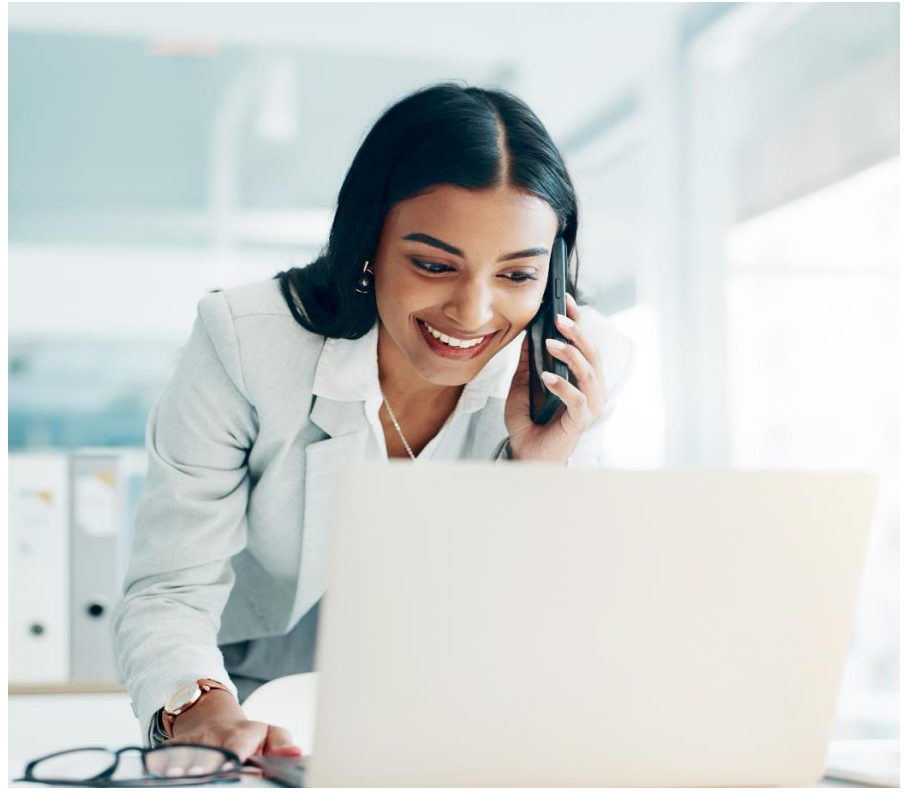
Complete disclosure of income in response to a statutory notice, especially where such income is accepted as-is without any variation, cannot be equated with under-reporting of income.

Entire income so declared was duly reflected in Form 26AS, subjected to deduction of tax at source and the taxpayer did not claim any false deduction or exemption. In such a case, the possibility of tax evasion is inherently neutralised.

Although there was a delay in filing Form 68 for seeking immunity from imposition of penalty, all substantive conditions for immunity were satisfied - procedural delay should not override equitable considerations.

Our comments

This ruling reaffirms that delayed filing of tax return does not, by itself, constitute under-reporting of income unless it can be demonstrated that the taxable income was suppressed or misrepresented. The decision to impose penalties should be guided by judicial discretion rather than being applied automatically.



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