



Non-filing of ITR may lead to prosecution... Incase of wilful evasion

By: Vivek Jalan

FCA, LL.M (Constitutional Law), LL. B, MBA (International Trade), B. Com (H)

Team Tax Connect

Non-Filing of ITR and non-payment of taxes can cause prosecution u/s Section 276 C which provides that a person who willfully attempts to evade tax, penalty, or interest under the Income Tax Act, 1961, or under-reports income, may be subject to rigorous imprisonment and fines. If the amount evaded or tax on under-reported income exceeds Rs.25 Lakhs, imprisonment ranges from 6 months – 7 years with a fine; otherwise, imprisonment ranges from 3 months – 2 years with a fine.

Wilful evasion includes possession or control of false accounting records, making false entries, omitting relevant entries, or causing circumstances enabling tax evasion. The court may impose fines at its discretion. These provisions apply without prejudice to other penalties under the Act.

As per the provisions of Income Tax Act, there is difference between “willful evasion” and “failure” to pay tax. There are certain kinds of tax which if not paid then that itself is sufficient to attract penal provisions of Income Tax Act. Eg. TDS, whereas in case of ‘willful evasion’, there must be averment that the assessee deliberately and intentionally attempted to evade the tax and it must be substantiated. However, as per the provisions of 278 E ‘relating to presumption as to culpable State’ - the burden lies on assessee to establish that failure was not on account of willful intension.

Now, in hindsight it needs to be seen that Section 276-B will be applicable when the tax deducted at source is not credited to Government. This is one of the contingency. 'Failure to credit' itself is sufficient. It need not be willful. Because once you have deducted a tax from the income of other person (who is liable), such person is bound to credit it. That omission itself is an offence without addition of willfulness / intension; but the legislatures have cautiously used the word 'willful evasion' in Section 276-C of the Income Tax Act. It indicates there maybe cases wherein there is a genuine case for not paying tax on or before the due date even though return is submitted.

Incase a failure cannot be considered as a willful evasion. Such cases will be outside the clutches of Section 276-C of the Income Tax Act as was held in the case of VILAS BABANRAO KALOKHE Vs PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), PUNE [2025-VIL-290-BOM-DT].

Hence taxpayers who disclose in their ITRs specifically tax payable, need to be very sure that they have paid such taxes. A lapse may land them into deep trouble.

LET'S DISCUSS FURTHER!

OUR OFFICES:

MUMBAI

Unit No. 312, Omega Business Park, Near Kaamgar Hospital, Road No. 33, Wagle Industrial Estate, Thane West, Maharashtra- 400604

Contact Person:
Prashant Kumar Jha

Email:
prashant.jha@taxconnect.co.in

BENGALURU

951, 24th Main Road, J P Nagar, Bengaluru, Karnataka – 560078.

Contact Person:
Anil Pal

Email:
anil.pal@taxconnectdelhi.co.in

DELHI

B-139, 2nd Floor, Transport Nagar, Noida-201301 (U.P)

Contact Person:
Poonam Khemka

Email:
poonam.khemka@taxconnect.co.in

KOLKATA

6, Netaji Subhas Road, 3rd Floor, Royal Exchange Building, Kolkata – 700001

Contact Person:
Sandeep Mandal

Email:
sandeep.mandal@taxconnect.co.in

KOLKATA

R No 119; 1st Floor; Diamond Arcade; 1/72, Cal Jessore Road, Kolkata – 700055

Contact Person:
Uttam Kumar Singh

Email:
uttam.singh@taxconnect.co.in

DUBAI

Azizi Feirouz, 803, 8th Floor, AL Furjan, Opposite Discovery Pavillion, Dubai, UAE

Contact Person:
Rohit Sharma

Email:
rohit.sharma@taxconnect.co.in

Disclaimer:

This publication is for private circulation only. Views expressed herein are of the Tax Connect team and are based on the information, explanation, and documents available on Government portal platforms. Tax Connect or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of Tax Connect. While this e-article has been prepared based on published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.