

Misreporting Penalty? Section 440 Now Offers a Way Out

Waiver of penalty under the Income-tax Act,
2025, and the new Form No. 161

CBDT Notification No. 134/2026 | Section 439 | Section 440 | Form No.
161 | Section 270AA



What CBDT Notification 134/2026 Changed

Why the form changed: the Finance Act, 2026 substituted sub-sections (1) to (4) of section 440 with effect from 1 April 2026. Before that, section 440(4) granted no immunity where the penalty under section 439 was initiated in the misreporting circumstances in section 439(11).

Item	Detail
Instrument	Notification No. 134/2026, G.S.R. 871(E), dated 8 October 2026
Name	Income-tax (Sixth Amendment) Rules, 2026
Power	Section 533 read with section 440 of the Income-tax Act, 2025
Commencement	On the date of publication in the Official Gazette
Rule 231	The words "or waiver" inserted after "imposition"
Form No. 161	Substituted: "Application for seeking waiver of penalty under section 440(2) of the Income-tax Act, 2025"

The Penalty at Stake: Section 439

50% of the tax payable on under-reported income: section 439(9)

200% of the tax payable where the under-reported income is in consequence of misreporting: section 439(10)

The misreporting cases in section 439(11):

1. (a) Misrepresentation or suppression of facts
2. (b) Failure to record investments in the books of account
3. (c) Claim of expenditure not substantiated by any evidence
4. (d) Recording of any false entry in the books of account
5. (e) Failure to record any receipt in books of account having a bearing on total income
6. (f) Failure to report an international transaction, a deemed international transaction or a specified domestic transaction to which Chapter X applies
7. (g) Income referred to in section 195(1)(b), inserted by the Finance Act, 2026 with effect from 1 April 2026

What a Waiver Costs

100% additional income-tax for cases
(a) to (f)

120% additional income-tax for case
(g)

Type of under-reported income	Penalty under section 439	Payable for waiver under section 440
Under-reporting, not in consequence of misreporting	50% of tax on under-reported income	Tax and interest under the order
Misreporting, section 439(11)(a) to (f)	200% of tax on under-reported income	Tax and interest, plus additional income-tax of 100% of tax on under-reported income
Misreporting, section 439(11)(g)	200% of tax on under-reported income	Tax and interest, plus additional income-tax of 120% of tax on under-reported income

The Four Conditions in Section 440(1)

- ① **Tax and interest paid:** the tax and interest payable under the order of assessment under section 270(10) or reassessment under section 279 is paid within the period specified in the notice of demand.
- ② **Cases (a) to (f):** additional income-tax of 100% of the tax payable on under-reported income is paid within that period, in lieu of the penalty.
- ③ **Case (g):** additional income-tax of 120% of the tax payable on under-reported income is paid within that period, in lieu of the penalty.
- ④ **No appeal:** no appeal is filed against the order of assessment or reassessment and the levy of penalty.

The bar: no waiver or immunity is granted if any proceeding has been initiated under Chapter XXII (section 440(4)).

Which Act Applies to Your Order?

Tax year beginning before 1 April 2026 (FY 2025-26 and earlier)

- Section 536(2)(c) and (d) of the Income-tax Act, 2025 keep the Income-tax Act, 1961 in force for assessment and penalty proceedings for these years
- Section 270AA of the Income-tax Act, 1961, substituted by the Finance Act, 2026 with effect from 1 March 2026
- Additional income-tax of 100% for the misreporting cases in section 270A(9)
- Rule 129 of the Income-tax Rules, 1962: application in Form No. 68

Tax year 2026-27 onward

- Section 440 of the Income-tax Act, 2025
- Additional income-tax of 100% for cases (a) to (f) and 120% for case (g)
- Rule 231 of the Income-tax Rules, 2026: application in Form No. 161



The Income-tax Act, 1961 has no counterpart to the 120% rate.

Before You Apply: Four Points to Weigh

01 Pay on time. The total amount payable for waiver is to be paid within the due date for payment under the notice of demand (Note 3 to Form No. 161).

02 No appeal. The Form No. 161 verification declares that no appeal has been filed and undertakes that none will be filed before the expiry of the period in section 440(5).

03 Acceptance closes the appeal route. Once the application is accepted, no appeal under section 356 or 357 and no revision under section 378 lies against the assessment or reassessment order (section 440(8)).

04 Rejection protects the appeal clock. The period from the date of the application to the date the rejection order is served is excluded from the thirty-day appeal period (section 358(4)).

From Order to Waiver: The Steps

- 1 **Order received:** read which limb of section 439 the penalty invokes
- 2 **Pay:** tax, interest and any additional income-tax within the period in the notice of demand
- 3 **Apply:** Form No. 161 within one month from the end of the month in which the order is received (section 440(2))
- 4 **Grant:** the Assessing Officer grants the waiver after the appeal period in section 358(3)(a), thirty days from service of the notice of demand, expires (section 440(3))
- 5 **Decision:** an order accepting or rejecting the application within three months from the end of the month of its receipt; no rejection without an opportunity of being heard; the order is final (section 440(5) to (7))

What Form No. 161 Asks For

Part A: name, PAN, address and contact details

Part B: tax year, section of the order, DIN, date of order and of service, due date under the notice of demand, income assessed, and under-reported income split three ways: misreporting under section 439(11)(a) to (f), misreporting under section 439(11)(g), and not in consequence of misreporting

Computation: tax and interest on assessed income, tax on under-reported income (section 439(12)), additional income-tax at 100% and 120%, total payable for waiver, and challan details

Verification: no appeal filed, and an undertaking not to file one

Weighing a waiver against an appeal? Book a quick call with A S Banka Advisors Private Limited.

Source: Central Board of Direct Taxes, Notification No. 134/2026, G.S.R. 871(E), dated 8 October 2026, incometaxindia.gov.in

