

Assessment Procedure



Sec 139(1): submission of return of income

- Being a co. or a firm (even those co.'s whose entire income is exempt u/s 10, etc.)
- Being a person other than co, firm
 - 1) if his total income or
 - 2) Total income of any other person in respect of which he is assessable exceeds max. Amount not chargeable to tax.

NOTE: even a public ltd. Co. though incorporated but has not received certificate of commencement has to file return.

Sec 139(1B): Return may be filed on a specific computer readable media, same shall be deemed to be return furnished u/s 139(1)

Sec 139(1) Explanation 2: Due date of furnishing return

- a) Company
- b) Person whose a/s's required to be audited under IT Act or any other act.
- c) Working partner of firm – if firm required to be audited
- d) 1 by 6 scheme
- e) Any other case

For a) to d) 30th Sept

For e) 31st July

Sec 139(3): Return of loss

The loss return to be furnished in time if such loss or any party thereof should be carried forward u/s 72/73/74 or 74A.

- NA for Sec 71B i.e. c/f and set off of loss of house property
- Unabsorbed depreciation can also be C/F if loss return is not filed in time.
- Although the loss cannot be c/f if return not filed in time, but losses of earlier year can be carried forward.

Sec 139(4): Belated Return

Max time limit-

- a) any time before expiry 1 year from end of relevant AY
- b) before completion of assessment (i.e. Sec 144, because in any other section assessment cannot be completed before filing of return)

NOTE: If the return of income is not filed u/s 139(1), AO can issue notice u/s 142(1), requiring him to file ITR. The return so filed shall be Belated Return, if the assessee was required to file return u/s 139(1) or Prov. To Sec 139(1)

Sec 139(4A): Return of Income of charitable trust and institutions

ITR to be filed if such income before allowing exemption u/s 11 & 12 exceeds the max. amt. not chargeable to tax.

- If income of trust (before exemption u/s 11 & 12 exceeds max. amount chargeable to tax, a/c's are required to be audit.
- If no exemption is desired to be claimed due date = 31st July

Sec 272A (2): Penalty if return of charitable trust/ religious trust not filed in time – Rs. 5000. Here Sec 271F NA

Sec 139(4B): Return of income of political party

ITR to be furnished if total income (before allowing exemption u/s 13A) exceeds the max. amt chargeable to tax.

Due date – 30th Sep (Amendment applicable)

Audit compulsory

If no exemption is claimed, due date is 31st July

Sec 139(4C): Return of income of certain associations and institutions

ITR if income exceeds max. Amount not chargeable to tax:

- a) Scientific research association – sec 10(21)
- b) News agency – sec 10(22B)
- c) association/inst. Referred u/s 10(23A) having object to control, supervise, regulate or encourage profession of law, medicine, accounts, engineering, architecture, other notified profession.
- d) Khadi or village indu u/s 10(23B)
- e) Funds, institution referred u/s 10(23C)
- f) Trade union u/s 10(24)

Sec 272A (2): Penalty for failure to file return u/s 139(4C) – Rs 100 for every day during which the default continues.

Sec 139(4D):

Every university, collage or other institution referred u/s 35(1) shall furnish compulsory ITR (irrespective of whatever)

Sec 139(5): Revised Return

When: after furnishing ITR u/s 139(1) or in pursuance to notice u/s 142(1) in case of discovery of any omission or any wrong statement. **(Should be bonafide inadvertence or mistake on part of assessee discovered by assessee not by AO)**

Time limit:

- * Before expiry of 1 year from end of relevant AY
 - * OR before completion of assessment (u/s 143(3)/144)
- Whichever is earlier

Note: assessment here does not mean u/s 143(1) (SRKoshti v/s CIT (2005))

Belated return cannot be revised:

Because it is specifically provided that only return filed u/s 139(1) or in pursuance to notice u/s 142(1) can be revised.

- If CBDT extends time to file return, then also such return can be revised
- Can a revised return be revised further? Yes the prescribed time limit applies
- Revised return shall substitute original return
- Can a return be revised after receipt of notice u/s 143(2)/ show cause notice u/s 144? – Yes, because assessment is not yet completed.

But penalty u/s 271(1)(c) for concealment shall be levied on additional income disclosed in revised return.

- Revised return after detection of concealed income offers no immunity from penalty.

Sec 139(6)/ (6A): Particulars to be furnished with ITR.

Sec 139(9): Defective Return

AO intimate defect to assessee and give him an opportunity to rectify the defect within 15 days from date of intimation.

If not rectified, it shall be treated as INVALID RETURN and consequences of the same will be as if no return is filed.

- AO can treat the return by assessee as valid return and make the assessment even

- if it contains any of the defects.
- If a return is filed without a tax audit report and such failure is not on account of any fault of the assessee, the AO should condone the delay for removing the defect u/s 139(9)
- Defects are prescribed

Sec 139A (1A): Compulsory PA No.

- exporter and importer
- Assessee defined under rule 2(3) of Central Excise Rule 1944
- Traders, etc. requiring registration under Central Excise
- Those assessed to Service Tax (should have PA No. before making application for reg. under Service Tax)
- Person registered under Sales Tax laws.

Sec 139A: CG (Central Govt.) may for the purpose of collecting any information which may be useful for or relevant to the purpose of Act, by way of notification specify any class or classes of persons and such person shall within prescribed period apply AO for PA No.

Sec 139A (5): Compulsory quoting of PA No.

- Any person not allotted PA no., entering into prescribed transaction has to fill Form 60
- Where a person making application for opening a/c (as prescribed) is minor, shall quote PA no. of father/mother/guardian

Form 61: Declaration by a person who has 'agricultural income' and no other income

Sec 139A (5A): Obligatory to intimate PA NO to person who deducts tax at source

Sec 139A (5B):

Obligatory on person who deducts TDS to quote PA No of deductee

Sec 139A (5C) & 139A (5D):

- 5C- obligation of buyer or licensee or lessee
- 5D obligation of seller
 - Of alcoholic liquor, timber or any other forest products referred in Sec 260C to quote PA no. in relevant correspondence.

Sec 272B (1): Failure to comply

With provision of Sec 139A penalty of Rs. 10000/-

Sec 272B (2): Quoting false PA No. which he either knows or believes to be false or does not believe to be true, penalty Rs. 10000/-

- opposite of being heard to be given – **Sec 272B(5)**

Sec 139B - Provision relating to Scheme of TAX RETURN PREPARERS

Sec 140 – Who should sign return?

Individual – himself/authorized person (POA) if he is mentally incapable then his parent/guardian

- HUF – Karta
- CO – MD (liquidator in case of winding up)
- Firm – managing partner (or any other partner)
- Local authority/ other association – Principal Officer

Return if not signed is an invalid return

Sec 140A – Self assessment

Mandatory for every assessee

If assessee fails to pay self-assessment tax, he shall be deemed to be an assessee in default in respect of tax or interest or both – all prov. Of Act shall apply, penalty u/s 221

PROCEDURE OF ASSESSMENT:

Sec 143(1): on the basis of return of income

Sec 143(3): scrutiny assessment

Sec 142(1) – Service of notice

Sec 142(1)(i) – For making assessment AO require the assessee to furnish ITR, if he has not filed ITR within time allowed u/s 139(1) or before the end of relevant AY.

Notice u/s 142(1) shall be valid if it is issued after end of relevant AY to a person who has not made ITR before end of relevant AY

Sec 142(1) (ii) – Notice to any person who has filed ITR/ or return of fringe benefits. Accounts of period more than 3 year prior to previous year cannot be called for.

Sec 142(1) (iii) - service of notice to a person who has filed ITR or in whose case time allowed u/s 139(1) is expired. Here AO can call for statement of assets and liability of any no. of pervious year with prior approval of Jt. Comm. of IT.

Time: Notice u/s 142(1) (i) to file return can be given only after the time allowed u/s 139(1) has expired.

- It is not mandatory to issue notice u/s 142(1)(i) if AO wants to make Best Judgement Ass. 144

Sec 142(2) – Sec 142(1) empower AO to collect information from assessee himself, Sec 142(2) empowers him to collect info. From sources other than assessee.

Sec 142(2A) to (2D):

At any stage of proceedings AO may direct the assessee to get the accounts audited by CA nominated by Chief Commissioner/Commissioner of IT

If

- i. having regard to nature and complexity of a/c
- ii. Interest of revenue.
- iii. direction of audit can be given even if accounts are audited

Sec 142(2C):

CA shall submit report in Form 6B

Max Period including extended period – 180 days from date on which direction of audit received by assessee.

Sec 142(2D): Audit exp. shall be paid by assessee as decided by Chief comm.

- No appeal is possible against the orders u/s 142(2A) for audit of accounts
- Opp. Of being heard should be given before issue of direction
- Approval of special audit cannot be given by Comm. mechanically.

Sec 142(3): Opportunity of being heard

No opp. Is case of assessment u/s 144

Consequence of non-compliance of notice u/s 142(1) & 142(2A)

- Best judgement ass. 144
- Penalty u/s 271(1)(b) – Rs. 10000/-

- Prosecution u/s 276D (max.)
 - i. 1yr. imprisonment OR
 - ii. Fine not less than Rs. 4 or not more than Rs. 10 per day during which default continues
- Search u/s 132

Sec 142A: Estimates by valuation officer in certain cases.

Where an estimate of value of any investment referred to in Sec 69/Sec 69B or value of bullion/jewellery or other valuable article u/s 69A/Sec69B, is required for purpose of making an assessment or re-assessment AO may require valuation officer to make estimate

Sec 143(1): Summary Ass.

- Intimation of tax due u/s 143(1) shall be deemed to be notice of demand u/s 156. If he does not pay in 30 days, he shall be liable for interest (Sec220) & penalty (Sec221)
- No intimation shall be send after 1 year form end of FY in which ITR filed
- The said period of intimation is not applicable for issue of cheque for refund (strange)
- NO NOTICE U/S 143(2) after expiry of 12 months form the end of month in which return filed.
- If no ITR furnished (not filed) by assessee, assessment u/s 143(3) cannot be done (meaning thereby 144 shall apply)
- If AO feels that personal attendance of assessee is necessary, notice u/s 131 (summons) can be issued.
- A fresh notice u/s 143(2) must be served if he furnish revised return
- Burden on revenue to prove that notice u/s 143(2) was served to assessee within prescribed 12 months.

Sec 271(1)(b): Failure to comply with notice u/s 143(2) –

Rs. 10000 per failure.

- Diff bet 142(1) & 143(2) – refer Bharat
- Assessment u/s 143(3) of those institutions which is required to furnish ITR u/s 139(4C) cannot be made without giving effect of prov. of Sec 10 unless –
 - I. intimated to CG or prescribed authority
 - II. notification or approval granted is withdrawn
- assessment is completed only when tax is computed by AO under his signature

Protective Assessment: Taxing the same income in hands of two assessee, to protect the interest of revenue. This matter can be resolved at level of ITAT or High court (such should be expressed in order)

- Under law, a protective order of assessment can be passed but not the protective order of penalty
- Reference to wrong section in assessment order does not vitiate the assessment
- Ass Order should be speaking order ie. It should give reasons in support of conclusions.
- Assessment on the basis of invalid return shall remain in effect and continue to operate until its validity is declared by court.
- LAW APPLICABLE: in case of ass. Of income and determination of tax liab. Relevant law to be applied is law as in force on first day of AY.

Sec 144: Best judgement assessment

- i. Where person fails to make the return u/s 139(1) or has not made return or revised return u/s 139(4) & 139(5)
- ii. where person fails to comply with notices issued u/s 142(1)/ or direction u/s 142(2A)
- iii. where any person, having made a return fails to comply with all terms of notice issued u/s 143(2)

- an opposite should be given before applying sec 144
- AO cannot assess income u/s 144 for an assessment below returned income or cannot assess loss higher than returned loss
- Best judgement ass. Should accord with fair play and justice considering local knowledge, repute in regard to assesses circumstances, his own knowledge of previous returns, all other matters which he thinks will assist him in arriving at a fair and proper estimate.

Sec 145(3) – Assessment on Rejection of accounts:

If books are false, unreliable, incorrect or incomplete

- A. he is not satisfied about the correctness of accounts of assessee
- B. although a/c of assessee are complete and correct, to satisfaction of AO but method of accounting employed is such that in opinion of AO profit cannot be correctly arrived at
- C. where method of accounting has not been regularly followed
- D. where Accounting standards notified by CG from time to time has not been regularly followed by assessee

He can reject books for any assessment i.e. 144/143(3)/147 etc.

Sec 144A: Power of Joint Comm. to issued direction:

- A. on his own motion
- B. on reference by AO
- C. on application by Assessee.
- D. to call for and examine the record of any proceeding in which an assessment is pending if he considers that having regard to
 - E. nature of case
 - F. amt. involved
 - G. for any other reason

It is necessary to expedient so to do, he may issue direction to AO as he thinks fit to enable him to complete assessment.

- Power u/s 144A can be evoked only if, notice u/s 143(2) is issued and assessment proceedings are pending

Sec 147: Income escaping assessment (subject to provision of Sec 148 & 153)

If AO has reason to believe, that income chargeable to tax has escaped assessment he may

- A. Assess or reassess such income
- B. Recomputed loss or depreciation allowance or any other allowance as the case may be

- Belief must be reasonable and honest based on reasonable grounds. He cannot act based on suspicion.
- During course of proceedings, if any other income chargeable to tax has also escaped assessment, he can assess or reassess that income also

DEEMED ESCAPEMENT:

- where no return filed despite income exceed max limit
- where ITR filed, no assessment (scrutiny/best judgement) made & it is noticed that income is understated or excessive loss claimed
- where assessment u/s 143(3) or 144 made but
 - i. income under assessed
 - ii. taxed at low rates
 - iii. excess relief
 - iv. Excess dep. Or any other allowance claimed

Re-assessment proceedings can be taken more than once u/s 147

Sec 148: Issue of notice where income has escaped assessment (Sec147):

The return filed in response to notice u/s 148(1) shall be treated as if such return was a return required to be furnished under Sec 139 and therefore the AO shall have to issue notice u/s 143(2) within 12mth from end of month in which return is furnished by assessee u/s 147 rw Sec 143(3) (He has to file ITR again even if he has filed it once – he can write a letter that ITR filed u/s 139 may be treated as ITR for this notice)

Before issuing notice u/s 148, AO has to **record his reasons** for doing so.

1. Otherwise notice issued becomes illegal
2. reasons need not be mentioned in notice, but it should be on record 3) assessee can request for the reasons, if AO refuse, the notice can be quashed
3. on receipt of reasons the assessee can file his objections against the issuance of notice ie. Notice is challenged, n AO is bound to pass speaking order (called interim order) before he commence the proceedings.
4. Assessee can challenge the Interim order in a writ petition.

Assessee shall be liable to pay interest u/s 234A(3) for late filing of return or for not filing the return.

Separate notice to be issued for each AY in which income has escaped.

Where reasons recorded are not relevant to issues involved in reopening the assessment, proceedings were held to be invalid.

Reason to believe:

Eg:

- a. where in a case chief mining officer has issued letter to ITO informing him that there was under reporting of income
- b. Where ITO while examining one of the creditor of assessee, came to know that the advances were bogus.

Sec 149/151:

Sec 149(1) provides that notice u/s 148 can be issued only:

1. within 4 yrs. from the end of relevant AY (wat eva may b da amount)
2. within 6 yrs from end of relevant AY in cases where amount of income escaping assessment is likely to be Rs. 100000 or more for that yr.

(for detail c table pg. 1110)

Sanction to issue notice has to be obtained from higher authority.

Notice u/s 148 has to be issued n **not served** within the time period prescribed.

Where assessment u/s 143(3)/147 has already been made, no action u/s 147 is possible after 4 years **from the end of relevant AY** unless income chargeable to tax has escaped assessment by reason of failure on part of assessee to

- a. make return u/s 139 or in response to notice u/s 142(1)/148
- b. disclose fully and truly all material facts necessary for assessment.

After expiry of 4 years **and** if already assessed u/s 143(3)/147, AO in addition of "recording the reason" has to establish the fact that such escapement is on account of **omission or commission attributable to the assessee concern.**

Sec 149(9):

If a person on whom notice is served is an **agent of a NR**, no notice can be served after the expiry of period of **2 years** form the end of relevant AY.

Sec 150(1):

No time limit for issuance of notice in pursuance of order on appeal, etc ie. Consequences of or to give effect to any finding or direction contained in an order passed

- a. by any authority in proceedings by way of appeal or revision u/s 250 (CIT)/254

(ITAT)/260A (High court)/262 /263 (revision of order prejudicial to revenue) /264 (revision of order in favour of assessee)

b. by court in any proceeding under any other law.

Sec 150(1) relates to an AY in respect to which an assessment or reassessment **could not** have been made at the time the order which was the subject matter of appeal, reference or revision as the case may be.

Purpose of Sec 147 is to charge income which has escaped assessment and is only for the benefit of the revenue.

Proceedings u/s 147 can be dropped if the following conditions are satisfied

1. Assessee did not file any appeal to Comm. (appeals) or an application of revision u/s 264 to CIT against the original AO.
2. Assessee can show that
3. he has been already assessed on an amount not lower than what he would be rightly liable to even if the escaped amount is considered
4. the original assessment of income has been properly made.

Sec 153: Time limit for completion of all assessment and reassessment:

- 1) 143/144/115WE/115WF – 21 months from the end of relevant AY
- 2) 147/115WG – 9 months from the end of FY in which notice u/s 148 was served
- 3) Fresh assessment where original assessment has been set aside or cancelled by appellate authority u/s 250/254/263/264 – 9 months from end of FY in which such order of set aside etc. issued.

NOTE – Demand note u/s 156 can be issued after the expiry of period but order should be passed within limit.

Sec 153(3): No time limit in following case-

- A. where assessment/reassessment, etc is made on the assessee or to give effect to any findings or directions contained in order u/s 250/254/260/262/263 and 264 or order of court under any other law and
- B. where in case of a firm an assessment is made on a partner of the firm in consequences of an assessment made on the firm u/s 147

IF in above case original assessment is set aside or cancelled the period for fresh assessment will be 9 months.

Period of limitation to exclude certain period:

- i. time taken in reopening the whole or any part of proceeding or in giving an opportunity to assessee to rehear u/s 129 relating to change of incumbent of an office
- ii. Period when order is stayed or injunction of any court.
- iii. period of audit u/s 142(2A)
- iv. In case where an application made before IT settlement commission u/s 245C is rejected, period from application to rejection.
- v. period commencing from date on which application is made before Advance Ruling Authority.

If after the exclusion of the above said period, if the period of limitation available to AO for making order is less than 60 days, it may be extended to 60 days.

Sec 154: Rectification of mistake (apparent from records)

The concerned authority

- On its own motion

- Or on application made by assessee.

Rectification can be done for any matter other than the matter considered and decided in appeal/revision.

Opposite of being heard is necessary if rectification results into enhancement or reduction of refund or otherwise liability of assessee is increased.

Time limit: only within 4 years from the end of FY in which the order sought to be amended was passed.

Order to be passed within 6 months from the end of month in which application is received

Rectification is possible even if matter is in appeal and not decided as yet.

Non consideration of order of High Court or Apex court would constitute mistake apparent from record regardless of the judgment being rendered prior to or subsequent to the order proposed to be rectified.

Sec 156: Notice of demand

Amount to be deposited within 30 days of service of notice

Notice u/s 156 is mandatory to initiate recovery proceedings.

Where demand is enhanced, an additional notice is mandatory.

Sec 157: Intimation of loss

Where in course of assessment of total income of any assessee, it is established that loss has taken place which the assessee is entitled to C/F, AO notify by an order in writing the amount of such loss computed by him.